



**TOWN OF MORRISTOWN DEVELOPMENT REVIEW BOARD  
WARNED PUBLIC HEARING  
COMMUNITY MEETING ROOM OF THE OLD TEGU THEATER  
43 Portland Street in Morrisville, VT 05661  
6:00 PM Wednesday, December 10, 2025**

[Join Zoom Meeting](#) or by phone join via conference call (audio only): 1 (646) 558-8656 | Meeting ID: [810 342 4528](#) | Passcode 05661  
The meeting will be live streamed on the Town of Morrystown's website:  
<https://www.morrystownvt.gov/community/page/meetings-agendas-minutes>

- I. CALL MEETING TO ORDER**
- II. PROPOSED CHANGES TO THE AGENDA**
- III. APPROVE PRIOR MEETING MINUTES**
  - 1. Approve minutes from 10/22/25.
- IV. PUBLIC COMMENTS**
- V. HEARING OF APPEALS AND DEVELOPMENT APPLICATIONS**
- VI. ACTION ITEMS TO BE CONSIDERED**
  - 1. Discussion and possible approval of new DRB rules and procedures document.
- VII. OTHER BUSINESS**
  - 1. DRB Recap for 2025 and Town Report.
- VIII. ADJOURN**



**DEVELOPMENT REVIEW BOARD MEETING MINUTES  
OF OCTOBER 22, 2025**

Members: Gary Nolan, Lenny Wing, Susanna Burnham, Christy Snipp, Mary Ann Wilson, Donald Blake, Jr.

Absent: Paul Trudell

ADMINISTRATION and STAFF: Tyler Machia Zoning and Planning Administrator

PARTICIPANTS/GUESTS: Jack Haagensen, Stephen Cohen, Gary & Debbie Mercy, Ethan & Elisha Coffey, Carol Lunber, Charles Cooley, Christien Pepe, Chuck Pepe, Sheila Tarbox, Tony Cote, Lisa Oniel, Mary Goderwis, Reid Westort, Anna Kern, Samuel Terhune, Doug Lisa Cross, Drew Eberts, Kaleb Magoon, Jerry Throne, Hilary Warner, Juliet Oniel, Sandra Conklin, Robin Cute, Tom Rogers

---

**CALL MEETING TO ORDER**

The meeting was called to order at 6:03 PM

**PROPOSED CHANGES TO THE AGENDA**

The Chair asked if there were any proposed changes to the agenda; there were none.

**APPROVE PRIOR MEETING MINUTES**

**1. Approve Minutes from 9-24-25**

Donald Blake, Jr moved, seconded by Maryanne, to approve the minutes from September 24, 2025.  
The motion passed (6/0)

**PUBLIC COMMENTS**

**HEARING OF APPEALS AND DEVELOPMENT APPLICATIONS**

- # 2025-106 Conditional Use and possible Subdivision Review.** The Applicants, Vermont Land Use Planning LLC, are applying for Conditional Use Review to convert a non-owner-occupied short-term rental use of the former Muddy Moose property located at 2930 Cote Hill Road parcel ids 03-002 & 03-002-2 to multi-family housing. The non-owner-occupied short-term rental is a legally nonconforming use that was previously permitted by the DRB. The plan calls for converting the cabins over to year-round occupancy which would create a multi-family housing use on the property. This multi-family housing use is not a permitted use in the Rural Residential Agriculture district (RRA). However, Section 437 of the Morrystown Zoning and Subdivision Bylaws (The Bylaws) allows for a preexisting non-conforming use to be converted to another legally non-conforming use provided that the DRB approves the change in use through Conditional Use Review. The DRB will consider whether or not the use is more compatible with the surrounding area than the existing non-conforming use. The Applicants could potentially be required to adjust the boundaries of parcels 03-002 & 03-002-2 to make sure all of the cabins are located on parcel 03-002-2. If this is deemed necessary, the Zoning Administrator will be requiring this boundary adjustment to be reviewed as a subdivision as noted in Section 795.2 of The Bylaws and will be reviewed as a Major Subdivision along with the previously mentioned conditional use review. The project will be reviewed under the 2023 Morrystown Bylaws.

Application #2025-106. Todd Thomas of Vermont Land Use Planning presented the proposal for conditional use and subdivision review of the former muddy moose property located at 2930 Cote Hill Road parcel ids 03002 & 03002-2. Thomas noted that the objective was to convert the legally non-conforming use of a non-owner-occupied short-term rental facility into owner-occupied multi-family housing (year-round occupancy). Since multi-family housing is not a permitted use in the Rural Residential Agriculture (RRA) district, the conversion was sought under Section 437 of the Morristown Zoning and Bylaws, which permits converting a pre-existing non-conforming use to another non-conforming use if the Development Review Board (DRB) deems the change more compatible with the surrounding area.

A key component of the plan is the preservation of undeveloped land. The proposal is contingent upon the sale of the 18-acre parcel (containing the existing seven cabins, a three-bedroom home, and a recreation building) to Down Street Housing and Community Development, while the adjacent 150+ acres of undeveloped land are to be permanently conserved by the Stowe Land Trust.

The project received support from groups like Lamoille County Planning Commission and the Morristown Conservation Commission. Tom Rogers, Executive Director of the Stowe Land Trust, confirmed that if the sale proceeds, the 150+ acres would be permanently conserved and opened to the public for uses such as hiking, hunting, and fishing, with plans for a small, basic gravel parking lot to serve as a trailhead.

Stephen Cohen from Down Street Housing emphasized that their mission is centered on owner-occupied housing. He explained that the units would be sold as shared equity homes to income-qualified, middle-income buyers (80–120% AMI) who work locally. Down Street subsidizes the down payments, ensuring that the affordability of the units remains "in perpetuity" for subsequent buyers, as this arrangement runs with the land via VHCB special conditions.

Concerns were raised by residents about the lack of documentation confirming the owner-occupancy mandate and the potential for new owners to engage in short-term rentals. The ZA confirmed that if the cabins were sold individually, those owners, provided the unit was their principal Vermont property, could legally rent them out short-term unless the HOA documentation prohibited it. Several members of the public requested that the approval be conditional upon two main points: that the units be permanently restricted to the seven cabins plus the main house (and potentially the recreation building, making nine total potential dwellings), and that the HOA bylaws prohibit rentals, including short-term rentals. The applicant confirmed they were "okay" with accepting a condition of approval requiring the submission of HOA documents for review, which could restrict rentals and cap the number of units.

Area residents voiced concerns about speeding traffic on Cody Hill Road and the impact of cars accessing the Stowe Land Trust trail network. Several members were especially troubled by the possibility of cars parking in the cul-de-sac/turnaround that he helped establish. Stowe Land Trust representatives guaranteed that the public access parking would be an off-site gravel lot, assuring the DRB and residents that there would be no public parking on the cul-de-sac.

**Motion by Susanna Burnham seconded by Mary Ann Wilson, to move the application to deliberative session. The motion passed (6/0)**

## **ACTION ITEMS TO BE CONSIDERED**

## **OTHER BUSINESS**

## **ADJOURN**

Meeting adjourned 7:38 PM

*Please note all minutes are in Draft form and are subject to approval at the next Development Review Board meeting.*

# **Charlotte Development Review Board Rules of Procedure and Conflict of Interest Policy**

*As adopted by the Charlotte DRB, January 12, 2022*

## **Section I: Authority.**

The Development Review Board [DRB] of the Town of Charlotte 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 their 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 member of the DRB.

C. “Chair” means chairperson of the DRB.

D. “Conflict of interest” means any one of the following:

1. A direct or indirect interest or involvement of a Board member, their spouse, partner, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister-in-law, cousin or other familial relation, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
2. A situation where a Board member has publicly displayed 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.
3. 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.
4. A situation in which a Board member qualifies as an Interested Party (as defined in Sec. H, below)

E. “Deliberation” means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

F. "Executive session" means a session of a public body from which the public is excluded, as authorized by 1 V.S.A. § 313. In addition to other requirements, 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.

G. "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.

H. "Interested Persons" are those 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 as further defined per 24 VSA 4465.

I. "Official act or action" means any legislative, administrative or quasi-judicial act performed by any DRB member.

J. "Public deliberations" means the weighing, examining, and discussing, at an open meeting, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

K. "Recuse" means to remove oneself from a particular Board proceeding because of a real or perceived conflict of interest.

L. "Vice Chair" means the vice chairperson of the DRB.

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

The DRB shall consist of at least five regular members, and up to two (2) alternate members. After Town Meeting and appointments are made by the Selectboard, 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 and a Vice Chair.

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. In the absence of both the Chair and the Vice Chair, the quorum of members shall appoint an acting Chair for the meeting.

C. All members will review the minutes and other official records of DRB meetings and actions and correct and ratify these when appropriate and necessary.

D. A recording secretary shall take minutes of all meetings.

**Section V: Alternate Members.** The Selectboard may annually, or as needed, appoint up to two alternates who may temporarily serve as DRB members in the event there is no quorum.

A. Whenever there is not a quorum, the Chair of the DRB, or their designee, shall appoint one of the alternates to obtain a quorum to serve as an active member.

B. If the Chair of the DRB does not appoint an alternate(s) as required under paragraph A, a majority of the members of the DRB present and voting may appoint an alternate.

C. 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 the alternate member serves as an active member. Participation includes attending deliberations 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 DRB shall be held in the Town Hall at 7:00 PM on the second and fourth Wednesday of the month, as warranted. Site visits may be scheduled at the convenience of the members. 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 members of the entire Board.

C. Members may participate by telephone or virtual meeting platform, as long as all members 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 proper motion and vote, has entered an executive or deliberative session. The Board may convene a closed deliberative session upon a majority vote. 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. Public comment.
2. Public hearings on applications.
3. Deliberations (in open or closed session), if any.
4. Other business – i.e., approval of draft meeting minutes.

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).

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

Public hearings shall be conducted as quasi-judicial proceedings, as defined in 1 V.S.A. § 310(6)(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 vote of members present.

The Chair shall set aside time for interested persons or their duly-authorized representatives and consultants to provide testimony during the hearing -- 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 generally in the following manner, unless a modified procedure is approved by majority vote of the board:

A. Open the hearing by reading the warning of the hearing.

B. Review the order of events, including the time for public comments outside of any hearings, 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 hearings have the right to appeal DRB decisions to the Environmental Court. Ask the applicant and audience members to record their names and contact information on the sign-in sheet. Explain that anyone wishing to speak must identify themselves and:

***“Affirm that the evidence they are giving in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.”***

C. Request Board members disclose any conflicts of interest and ex parte communications.

D. Accept written information presented to the Board.

E. Invite the applicant or applicant’s representative to present their proposal.

F. Invite Board members to ask questions of the applicant or applicant’s representative.

G. Invite interested persons to present testimony, comments, feedback and questions regarding the application or proposal. Interested persons may also present testimony from representatives and consultants.

H. Invite the applicant or applicant’s representative to respond to information presented, or to cross-examine interested persons or their representatives and consultants.

I. Invite more questions or comments from members of the Board.

J. Invite more questions or comments from interested persons.

K. Invite final comments or questions from the applicant or their representative, members of the Board and interested persons.

L. Invite interested community members to comment on the project.

- M. Upon motion and majority approval, the Chair shall either adjourn the hearing to a date and time certain, or request a motion to close the proceedings by vote of a majority of the Board.
- N. After the hearing is closed, the Board may begin deliberations – either immediately or at the end of the meeting, or at some other time as determined by the Board. See Section III-E and J. of these Rules and 1 V.S.A. § 312(e).

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

If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled and be publicly warned in accordance with 24 V.S.A. §§ 4464(a)(1), (2).

A. 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:

B. If necessary, the Board may recess a hearing to conduct a site visit at a property which is the subject of an application or appeal 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 or appeal 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 staff shall create a list of all individuals who actively participated in the hearing for each application reviewed by the Board. This list shall include those who participated orally, and those who participated in writing. All decisions of the Board shall be mailed or emailed to those on the list, if individuals provided their names and mailing and/or email addresses during the proceedings. The list shall include:

A. The names of those who participated in the proceedings.

B. The mailing address of each of these persons, if disclosed.

Participants who did not sign in at all, did not disclose their names during a hearing, or who fail to provide legible contact information to the staff will not receive a copy by mail or email, except upon written request to the staff.

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

The Board shall issue a decision in writing, and may deliberate in public or in private. If it deliberates privately, the Board need not adopt its written decision at an open meeting if the decision will be a public record. The DRB may not hear testimony or consider new evidence during deliberations, but may, in appropriate circumstances, reopen a hearing for such purpose.

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. Members who are absent for a hearing on an application may review recordings of the proceedings, meeting minutes and application materials and choose to participate in decisions on that application. 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. All members present are expected to vote unless they have recused themselves.
- D. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- E. 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).
- F. The Board shall issue a written decision within 45 days following the closure of the final public hearing.
- G. The Chair or Vice Chair may sign the decision on behalf of the Board after the decision has been finalized by support staff pursuant to the Board's deliberation and vote.

**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 they have a conflict of interest in the matter under consideration. A Board member shall not, personally or through any member of their 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.

**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 they are 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 they are 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 themselves from any matter in which they have a conflict of interest, pursuant to the following:

1. The applicant or any person may request that a member recuse themselves due to a conflict of interest. Such request shall not constitute a requirement that the member recuse themselves.

2. A Board member who has recused themselves 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. However, a recused member may offer written testimony to the Board on a matter in which they qualify as an interested person, or participate through legal counsel or a duly authorized representative, or to present their own project application.
3. If a previously unknown conflict of interest is discovered, the Board may take evidence pertaining to the conflict, and if appropriate, adjourn to a short executive 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, including any appointed alternates.

## **Section XII: Ex Parte Communications.**

Ex parte communication is prohibited. Any Board member who participates in ex parte communication with an applicant or their representative must disclose such communication as follows:

**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 must disclose each specific instance of ex parte oral contact with applicants, appellants, interested persons or their representatives during the next public meeting/hearing of the DRB, stating the substance of any conversations on a project under review and the identity of each person making the ex parte communication, which shall be noted in the meeting minutes.

## **Section XIII: Conformance with the Open Meeting Law; Electronic Communication and Minutes of DRB Meetings.**

The DRB is a public body bound by Vermont's Open Meeting Law. See 1 V.S.A. §§ 310-314.

A. Group electronic communication (email and texts) may be used to schedule a meeting, create an agenda, or to distribute materials to discuss at a meeting, but may not be used for discussion purposes, and must generally be available for copying and inspection as public records upon written request.

B. Electronic communication may be used in instances where the Board is engaged in a quasi-judicial deliberation – for instance, when the Board is drafting or reviewing a written decision on a permit application. Before taking advantage of this exception, the public body must have conducted a quasi-judicial public hearing, and then commenced deliberations to discuss the evidence and decide how to proceed.

C. Except during executive session, during which minutes will not be taken, a recording secretary shall take minutes of all DRB meetings. Draft DRB meeting minutes shall be posted to the town website within five business days, with copies made available upon request.

D. Members will review the draft minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.

**Section XIV: Removal.**

Upon majority vote, the Board 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 V.S.A. § 4460(c). Failure to comply with the conflict of interest provisions of these DRB procedures may form the basis for a request for removal and/or constitute cause for removal.

**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.

O:\Development Review Board\Rules of Procedure\DRB Rules of Procedure 2021 - as adopted, 01.2022.doc

TOWN OF STOWE  
DEVELOPMENT REVIEW BOARD  
RULES OF PROCEDURE  
Adopted 04-07-15

I. ESTABLISHMENT OF RULES OF PROCEDURE

- A. Authority: The Development Review Board (Board or DRB) of the Town of Stowe shall be governed and have the powers accorded by the provisions of all applicable state statutes, specifically including 24 V.S.A. §36, Municipal Administrative Procedures Act, the Stowe Zoning and Subdivision Regulations and these Rules of Procedure as initially adopted by the Board on August 5, 2003.
- B. Adoption of These Rules: The Development Review Board Rules of Procedure shall be those adopted by the Board in accordance with 24 VSA § 4461. Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the Town Clerk as a public record and post a copy in one or more public places.
- C. Amendments: These rules may be amended at any regular meeting by an affirmative vote of a majority of the Board provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.
- D. The Board shall follow Roberts Rules of Procedures (as amended) for small boards when not in conflict with these rules or state statutes.

II. MEMBERS, OFFICERS AND DUTIES

- A. Members: The Board shall consist of seven (7) members. Alternate members may be concurrent members of the Planning Commission. Members shall inform the staff and/or Chair of any anticipated absences. A member who misses three meetings in any one year without having first informed the staff or Chair will be asked to resign.
- B. Alternate Members: Alternate members will serve when there is a vacancy, absence, or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. The Zoning Administrator will notify the alternate members when their services are required. The first alternate member who responds that they are available will serve as the alternate for the regular member who is not available. Regular members will rejoin the Board after the Alternate member steps down following final action on that application.
- C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular (not alternate) members in June of each year. The terms of office of the Chair and Vice Chair are for one (1) year and an officer may serve more than one term. Should both the Chair and the Vice Chair be absent from a meeting, an Acting Vice Chair shall be elected by majority vote from those members attending and will serve just for that meeting.
- D. Duties of the Chair: The Chair shall preside over all meetings and hearings of the Board, maintain order, and decide all questions of order and procedure subject to these rules. The Chair may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair may designate an Alternate member to serve in case of the absence or disqualification of a regular member. The presiding officer shall cause the proceedings to be recorded.
- E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's

absence or when the Chair is not presiding.

- F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Acting Vice Chair shall perform the duties of the Chair.
- G. Secretary: A Secretary, who may or may not be a member of the Board, or the Planning staff, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:
  - 1. Keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.
  - 2. Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Zoning Administrator;
  - 3. Cause to be filed all minutes and records of examination and other official actions with the Town Clerk as a public record. (The Secretary may use the Administrative Officer to transmit those minutes and records of examination and official actions to the Town Clerk.)
- H. Administrative Officer: The Zoning Administrator, or his/her designee, who shall not be a member of the Board, shall be the Administrative Officer for the Development Review Board. In that role, the Administrative Officer shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and shall have the following duties:
  - 1. Conduct official correspondence subject to these rules and at the direction of the Board;
  - 2. Issue the proper forms and compile all information, maps, and records for the Board's review;
  - 3. Send and/or post all notices required by law and by these rules of procedure;
  - 4. Inform persons who are to come before the Board of these rules of procedure and the bylaws which pertain to that person's appearance before the Board;
  - 5. Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the Town Clerk; and
  - 6. Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the Town Clerk.
  - 7. Provide an orientation to new Board members.
- I. Vacancies: The Administrative Officer or his/her designee shall give immediate notice of any vacancy on the Board to the Selectboard. If the office of Chair or Vice Chair becomes vacant, the Board shall fill that office by election from amongst its regular members for the unexpired term at the next regular meeting of the Board.

### III. GENERAL RULES

- A. Submissions and Completeness Review: All applications, fees, site plans and other items for review are required one month prior to the DRB hearing date. Plans shall be

deemed substantially complete by the Zoning Administrator before the application will be scheduled and warned for a hearing. A recommendation from the Stowe Historic Preservation Commission, if required, must be obtained before the application is warned. A technical review meeting with the appropriate town staff shall be required in advance of the submittal cut off for all projects deemed to have an impact on town services. This shall include, but is not limited to, construction of new private or public roads, new connections to town utilities, or construction of utilities proposed to be accepted by the Town. Submittals shall include the items required by the applicable bylaws, unless waived by the Zoning Administrator, upon a determination that such information is probably not necessary to determine if the project will comply with the Zoning and/or Subdivision Regulations. A partially completed application may be submitted to the DRB for review when requested by the applicant in order to complete additional plan development after an initial DRB hearing. The applicant must, in writing, identify what sections of the appropriate regulations are not being requested to be initially reviewed. After the initial review, the DRB will recess the hearing to a date certain in order for the applicant to complete the additional materials for review. Partial submittals are only permitted for preparation of more detailed engineering plans such as stormwater management or final grading plans and other situations where the Zoning Administrator determines that the applicant would benefit from attending a hearing before completing the final plans.

- B. Records: A file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question shall be kept by the Administrative Officer as part of the records of the Development Review Board. All records of the Board shall be public records except for legal opinions from the Town Attorney and draft decisions used in deliberation.
- C. Fees: The Selectboard shall determine such fees as may be necessary for the filing of notices and the processing of hearings and action thereon.

#### IV. MEETINGS

- A. Regular Meetings: Regular meetings of the Development Review Board shall be held on the 1st and 3rd Tuesdays in each calendar month, unless no applications are pending or there is no other business to transact, in which case the meeting may be canceled.
- B. Site Visits: The Board may convene at the site at the request of an interested party or if the Board feels a site visit will aid in their understanding of a proposed project. Site visits are intended to familiarize Board members and the public with the site on which a project or activity has been proposed. Members may visit a site individually or as a Board. In either case, the presiding officer shall make a record of the site visit observations. Other Board members or parties shall be given the opportunity to supplement these observations. If a quorum of the Board is expected to be present, the site walk would be an open meeting and its date and time must be announced and/or posted in accordance with state law. If a member visits the site individually, he or she shall present that information at the appropriate hearing or meeting.
- C. Special Meetings: Special meetings of the Board may be called by the Chair or by a majority of the members of the Board provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member of the

Board. Action items requiring public hearing notice shall conform to the notice requirements in 24 V.S.A. §4447 and will not be scheduled for a special meeting.

- D. Order of Business: The order of business at all regular meetings of the Board will generally be as follows, however, changes in the order of the agenda may occur:
    - 1. Call to order and recognition of quorum.
    - 2. Review and take action on recessed and warned applications. The agenda order of the applications shall be established by the Administrative Officer in conjunction with the Chair.
    - 3. Review, correct, and accept the minutes of the preceding meeting.
    - 4. Other business.
    - 5. Adjournment
  - E. Recess of Meeting or Hearing: The Board may recess a meeting or hearing if all the applications or appeals cannot be disposed of on the day set. No further public notice shall be necessary provided that the date, time, and place of the recessed meeting or hearing shall be announced before adjournment.
  - F. Request for Recess: An applicant may request, in writing, a recess. Such a request will be reviewed by the Board and may be granted at the Board's discretion. The Board may grant a recess for the following reasons:
    - 1. Change in schedules that do not allow the applicant or his representative(s) to attend the hearing.
    - 2. Request to make additional changes to the project plans after being heard at a hearing.
    - 3. Request to be heard when more than four Board members will be present.
    - 4. Any other reasons the Board finds reasonable.
  - G. Failure to appear (except appeals of the Zoning Administrator's Notice of Violations): If an applicant fails to appear for a scheduled hearing, such hearing will be rescheduled for the next available meeting. If the applicant fails to appear for the rescheduled hearing, the application will be considered with the available information and without testimony of the applicant.
  - H. Failure to appear (Appeals of the Zoning Administrator's Notice of Violations): An appellant's failure to appear for an appeal of a Notice of Violation hearing will result in the appeal being considered with the available information and without testimony of the applicant.
  - I. Deliberations: All meetings of the Board and its committees shall be open to the public; however, the Board reserves the right to enter into deliberate sessions. No minutes shall be taken during deliberations, nor shall such deliberations be recorded as part of the record. All decisions made during closed deliberations shall be put in writing and signed as prescribed in Section VIII below.
  - J. Submissions: If an applicant has written submissions for the Board's consideration, there should be 9 copies included with the original application. Written submissions made at a hearing will likely result in the Board's recessing the hearing to a future date in order to read and consider the information presented.
- V. CONFLICT OF INTEREST All members of the Development Review Board shall abide by the Town of Stowe Ethics & Fraud Policy for Public Officials (as amended). In addition, all members of the Board shall comply with the provisions of 12 V.S.A § 61(a)

and 24 V.S.A. § 1203 when they conduct hearings make findings. No disqualified member shall preside at the hearing or be counted by the Board in establishing the required quorum. If the Chair is disqualified, the Vice Chair shall preside. In the event the Vice-Chair is unable to preside, the Board shall elect an Acting Vice-Chair for the proceedings.

## VI. CONDUCT OF HEARING OR REVIEW OF ALL APPLICATIONS

- A. Order of Hearing or review of applications: Hearings and review of applications shall generally be conducted in accordance with the applicable rules as set forth in 3 V.S.A. §810. The order of proceedings shall be as follows, unless the DRB, in its discretion, determines otherwise:
1. Roll call.
  2. Statement of the case and reading by the Chair or designated staff of the public notice for the hearing and of correspondence and reports concerning the appeal, application, or petition.
  3. Presentation of his/her case by the applicant along with the witness in favor of the appeal if applicable.
  4. Examination of applicant's witnesses by the Board.
  5. Cross examination of applicant's witnesses by interested parties.
  6. Presentation of a case by any interested party or parties.
  7. Cross examination of opposition witnesses by the applicant.
  8. Rebuttals.
  9. Recess or adjournment of hearing or discussion of application.
  10. Deliberation -Review criteria applicable to application.
  11. Development of Findings of Fact, Conclusions, and Conditions (See VIII).
- B. Representation: Any interested party may appear in person or be represented by an agent or attorney.
- C. Record of Proceedings: Proceedings at public hearings shall be recorded either electronically (including videotape) or by a court stenographer at the discretion of the Board. A transcript of the proceedings shall be made available at the request of any party upon payment of the reasonable costs thereof.
- D. Presentation of Evidence: All evidence upon which the applicant or other party wishes to rely shall be presented at the hearing and made part of the hearing record.
1. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided that the witness is available for direct testimony and cross examination at the hearing on this evidence.
- E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chair or, in the Chair's absence, the Vice Chair or the Acting Vice Chair, if one is serving for this proceeding.
- F. Examination: The Development Review Board members may examine witnesses. The Chair, or Vice Chair/Acting Vice Chair if presiding, shall rule on the relevance and may limit the scope of examination to ensure relevancy and expedite the business of the Board.
- G. Rules of evidence: Rules of evidence as applied in civil cases in the superior courts of the state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to provide facts not reasonably susceptible to proof

under those rules, evidence not ordinarily admissible and not precluded by statute may be admitted if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

- H. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.
- I. Rehearing: An application for rehearing may be made in the same manner as provided for in the original application. The Board may reject an application for rehearing without a hearing and render a decision thereon, which shall include findings of fact, within 10 days of the date of filing of the application if (a) the Board concludes the issues raised by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, or circumstances of the case. The decision shall be rendered, or notice given, as in decisions under Section VIII of these Rules of Procedure.
- J. Ex-parte Communications: While an application is pending, conversations between Board members and any person other than their legal counsel or staff regarding the substance of a particular hearing or application outside of the regular meeting are considered ex-parte contact and are inappropriate.
  - 1. A presiding officer shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending, without notice and opportunity for all parties to participate.
  - 2. No other members of the board sitting in a contested hearing shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, while the proceeding is pending.
  - 3. A presiding officer who receives an ex parte communication on any issue relating to the proceeding and a member who receives any ex parte communication shall place on the record all written communications received, all written responses to those communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.
  - 4. No member shall have ex-parte communications with the Zoning Administrator when there is an appeal of a notice of violation.

## VII. VOTING

- A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum shall be present. A quorum for the Development Review Board shall consist of four (4) members. If a quorum of the Board is present at a meeting, that quorum may transact all matters that may or are required to come before it.
- B. Motions: Upon conclusion of the evidentiary portion of the hearing, the DRB may, by motion, direct the Administrative Officer to prepare draft Findings of Fact for the Board's consideration. All motions require a second. The making or seconding of a motion does not, in all instances, imply support for the motion. A failure to obtain four affirmative votes shall be considered a denial. An abstention shall not be treated

as either a positive or negative vote.

- C. Qualification to vote: A board member shall not participate in the decision unless they have heard all of the testimony and reviewed all other evidence submitted for the Board's consideration. Members who have not attended every session of the hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read the transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.

#### VIII. DECISIONS MADE BY THE DEVELOPMENT REVIEW BOARD

- A. Majority Vote: The decision on any application or appeal to the Development Review Board shall be made after a motion, a second and the affirmative vote of the majority of the Board.
- B. Written Findings of Fact and Conclusions: The decision shall set forth the findings of fact and conclusions reached by the Board on that matter. This decision shall be reviewed and adopted by the Board and signed by the member of the Board who presided as Chair or Vice Chair at the hearing if it accurately reflects the findings of fact and conclusions, and any applicable conditions as determined by the Board.
  - 1. A final decision of the Board shall be in writing and shall separately state findings of fact and conclusions law.
  - 2. The findings shall explicitly and concisely restate the underlying facts that support the decision. They shall be based exclusively on evidence contained in the record of the hearing.
  - 3. Conclusions of law shall be based on the findings of fact.
  - 4. The final decision in any case involving local Act 250 review of municipal impacts shall include notice that it constitutes a rebuttable presumption under the provisions of 10 V.S.A. § 151 and notice that presumption may be overcome in proceedings under 10 V.S.A. § 151.
  - 5. The Administrative Officer shall cause copies of the decision to be delivered to each party.
  - 6. Transcriptions of the proceedings shall be made upon the request and upon the payment of the reasonable costs of transcription by any party.
- C. Conditions to Approvals: The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Municipal and Regional Planning and Development Act and the municipality's plan and bylaws. An application for the amendment or removal of a condition from a previously granted approval shall require a new warned public hearing and will be subject to review by the Board under the bylaws then in effect and other applicable standards.
- D. Stay of Enforcement: If a notice of appeal includes a request for a stay of enforcement, the board may, after a public hearing, grant or deny the stay.

#### IX. REFERRALS AND EVALUATION REQUESTS

- A. Referral to State Agencies: Any application subject to state agency review under Section 7 and 11 of the Stowe Zoning Regulations shall not be made final by the Board prior to the expiration of thirty days following submission by the Board of a report to the designated state agency describing the proposed use, the location requested, and an evaluation of the effect of such proposed use on the municipal and

regional plans.

- B. State Agency Report to the Board: The State Agency Report to the Board may be introduced into the hearing record as evidence.
- C. Request for Other Official Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate municipal department or official, an evaluation of the impact a proposed development application will have on traffic, the environment, or community services and finances. This information or report may be presented as testimony at the public hearing and shall become part of the public record.

TOWN OF MORRISTOWN  
DEVELOPMENT REVIEW BOARD  
RULES OF PROCEDURE - DRAFT

I. ESTABLISHMENT OF RULES OF PROCEDURE

- A. Authority: The Development Review Board (Board or DRB) of the Town of Morristown shall be governed and have the powers accorded by the provisions of all applicable state statutes, specifically including 24 V.S.A. §36, Municipal Administrative Procedures Act, the Morristown Zoning and Subdivision Regulations and these Rules of Procedure as initially adopted by the Board on August 5, 2003. You may not want to follow MAPA unless the Town continue to apply Bylaw Section 660 – MAPA is strict on evidence, rejecting evidence, transcripts, and many other legal proceedings (like does the DRB follow and have handy a copy of Chapter 36 requirements and V.R.C.P. rules used in court settings). If this stays as written, the DRB hearing process needs advice of town counsel in order for the DRB decisions to have weight on appeal. Not many towns follow this, but it is an elevated form of governance, and I think the pros and cons of having it adopted for all hearings need more discussion with the town attorney before this adopted (once reviewed in detail, is there sufficient town staff to meet MAPA requirements).
- B. Adoption of These Rules: The Development Review Board Rules of Procedure shall be adopted by the Board in accordance with 24 VSA § 4461. Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the Town Clerk as a public record and post a copy in one or more public places including the town website.
- C. Amendments: These rules may be amended at any regular meeting by an affirmative vote of a majority of the Board provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.
- D. The Board shall follow Roberts Rules of Procedures (as amended) for small boards when not in conflict with these rules or state statutes.

**Commented [DB1]:** I think we should keep simple as possible and not follow MAPA . How do we agree to remove Section 660.

II. MEMBERS, OFFICERS AND DUTIES

- A. Members: The Board shall consist of seven (7) members and two (2) alternate members. Members shall inform the staff and/or Chair of any anticipated absences.
- B. Alternate Members: Alternate members will serve when there is a vacancy, absence, or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. The Zoning Administrator will notify the alternate members when their services are required. The first alternate member who responds that they are available will serve as the alternate for the regular member who is not available. Regular members will rejoin the Board after the Alternate member steps down following final action on that application.
- C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular (not alternate) members the first meeting after town meeting day. The terms of the Chair and Vice Chair are for one (1) year and an officer may serve more than one term. Should both the Chair and the Vice Chair be absent from a meeting, an Acting Vice Chair shall be elected by majority vote from those members attending and will serve just for that meeting. Rotating DRB members through the Chair and Vice-

Chair roles is encouraged but not required.

- D. Duties of the Chair: The Chair shall preside over all meetings and hearings of the Board, maintain order, and decide all questions of order and procedure subject to these rules. The Chair may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair may designate an Alternate member to serve in case of the absence or disqualification of a regular member. The presiding officer shall cause the proceedings to be recorded.
- E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's absence or when the Chair is not presiding.
- F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Acting Vice Chair shall perform the duties of the Chair.
- G. Secretary: A Secretary, who may or may not be a member of the Board, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:
1. Keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.
  2. Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Administrative Officer;
  3. Cause to be filed all minutes and records of examination and other official actions with the Town Clerk as a public record. (The Secretary may use the Administrative Officer to transmit those minutes and records of examination and official actions to the Town Clerk.)
- H. Administrative Officer: The ~~Administrative~~Administrative Officer (a.k.a the Zoning Administrator), or their designee, who shall not be a member of the Board, shall provide ~~administrative support~~administrative support to the Development Review Board. In that role, the Administrative Officer shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and shall have the following duties:
1. Conduct official correspondence subject to these rules and at the direction of the Board;
  2. Issue the proper forms and compile all information, maps, and records for the Board's review;
  3. Send and/or post all notices required by law and by these rules of procedure;
  4. Inform persons who are to come before the Board of these rules of procedure and the bylaws which pertain to that person's appearance before the Board;
  5. Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the Town Clerk; and
  6. Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the Town Clerk.
  7. Provide an orientation to new Board members.
- I. Vacancies: The Administrative Officer or their designee shall give immediate notice of any vacancy on the Board to the Selectboard. If the office of Chair or Vice Chair becomes vacant, the DRB shall fill that office by election from amongst its

Commented [DB2]: DRB can vote every year so it will be what it will be.

regular members for the unexpired term at their next regular meeting.

III. GENERAL RULES

~~A.~~ Submissions and Completeness Review: All applications, fees, site plans and other items for a complete application are required one month prior to the DRB hearing date. All application materials required by the Bylaw shall be accepted and Plans shall be

DRAFT

deemed substantially complete by the Administrative Officer before the application will be scheduled and warned for a hearing, unless a "partial submittal" is requested by the applicant per these Rules (see below). A technical review meeting with the appropriate town staff shall be required in advance of the submittal cut off for all projects deemed to have an impact on town services. This shall include, but is not limited to, construction of new private or public roads, new connections to town utilities, or construction of utilities proposed to be accepted by the Town. Submittals shall include the items required by the applicable bylaws, unless waived by the Administrative Officer, upon a determination that such information is probably not necessary to determine if the project will comply with the Zoning and/or Subdivision Regulations including other town policies, rules, ordinances and municipal plan. A partially completed application may be submitted to the DRB for review when requested by the applicant in order to complete additional plan development after an initial DRB hearing. The applicant must, in writing, identify what sections of the appropriate regulations are not being requested to be initially reviewed. After the initial review, the DRB will recess the hearing to a date certain in order for the applicant to complete the additional materials for review. Partial submittals are only permitted for preparation of more detailed engineering plans such as stormwater management or final grading plans and other situations where the Administrative Officer determines that the applicant would benefit from attending a hearing before completing the final plans.

Formatted: Indent: Left: 0.57"

Commented [DB3]: Agreed

Commented [DB4]: Agreed

B.A. Records: A file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question shall be kept by the Administrative Officer as part of the records of the Development Review Board. All records of the Board shall be public records except for legal opinions from the Town Attorney, unless approved for release by the Town Attorney, or are otherwise deemed confidential under the Vermont Public Records Act 1 VSA 317, and draft decisions used in deliberation.

Formatted: Font: 12 pt

Commented [DB5]: agreed

Formatted: Font: 12 pt

Formatted: Font: 12 pt

C.B. Fees: The Selectboard shall determine such fees as may be necessary for the filing of notices and the processing of hearings, additional technical services fees per Bylaw Section 401.2 and other fees appropriate to the request that should be borne by the applicant/aaction thereon.

Commented [DB6]: agreed

#### IV. MEETINGS

A. Regular Meetings: Regular meetings of the Development Review Board shall be held on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday in each calendar month as deemed necessary or as modified by the Chair.

Commented [DB7]: agreed

B. Site Visits: The Board may convene at the site at the request of an interested party or if the Board feels a site visit will aid in their understanding of a proposed project. Site visits are intended to familiarize Board members and the public with the site on which a project or activity has been proposed. Members may visit a site individually or as a Board. In either case, the presiding officer shall make a record of any site visit observations for each application and those participating. Other Board members or parties shall be given the opportunity to supplement these observations. If a quorum of the Board is expected to be present, the site walk would be an open meeting and its date and time must be announced and/or posted in accordance with state law. If a member visits the site individually, he or she shall present that information at the appropriate hearing or meeting. Members of the public needing accommodations to participate in a DRB announced site visit (quorum or more) shall notify the town office at least 48 hours in advance so the Town can consider appropriate response to the request.

Commented [DB8]: agreed

Commented [DB9]: agreed

C. Special Meetings: Special meetings of the Board may be called by the Chair or by a majority of the members of the Board provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member of the

Board. Action items requiring public hearing notice shall conform to the notice requirements in 24 V.S.A. Section 4464 and will not be scheduled as part of a special meeting.

Formatted: Font: 12 pt

D. Order of Business: The order of business at all regular meetings of the Board will generally be as follows, however, changes in the order of the agenda may occur:

Formatted: Font: 12 pt

Formatted: Font: 12 pt

1. Call to order and recognition of quorum. Review process for online participation.

Formatted: Not Expanded by / Condensed by

~~1-2.~~ Public Comment – 3 mins per person unless majority of DRB allows more time.

Commented [DB10]: agreed

~~2-3.~~ Review and take action on recessed and warned applications. The agenda order of the applications shall be established by the Administrative Officer in conjunction with the Chair.

Formatted: English (United States)

~~3-4.~~ Review, correct, and accept the minutes of the preceding meeting.

~~4-5.~~ Other business. New Business and Correspondence

Commented [DB11]: agreed

~~5-6.~~ Adjournment

E. Recess of Meeting or Hearing: The Board may recess a meeting or hearing if all the applications or appeals cannot be disposed of on the day set. No further public notice shall be necessary provided that the date, time, and place of the recessed meeting or hearing shall be announced before adjournment.

F. Request for Recess: An applicant may request, in writing, a recess. Such a request will be reviewed by the Board and may be granted at the Board's discretion. The Board may grant a recess for the following reasons:

1. Change in schedules that do not allow the applicant or his representative(s) to attend the hearing.

~~1-2.~~ Provide time for a site visit.

Commented [DB12]: agreed

~~2-3.~~ Request to make additional changes to the project plans after being heard at a hearing.

~~3-4.~~ Request to be heard when more than four Board members will be present.

~~4-5.~~ Any other reasons the Board finds reasonable.

G. Failure to appear (except appeals of the Administrative Officer's Notice of Violations): If an applicant fails to appear for a scheduled hearing, such hearing will be rescheduled for the next available meeting. If the applicant fails to appear for the rescheduled hearing, the application will be considered with the available information and without testimony of the applicant.

H. Failure to appear (Appeals of the Administrative Officer's Notice of Violations): An appellant's failure to appear for an appeal of a Notice of Violation hearing will result in the appeal being considered with the available information and without testimony of the applicant.

I. Deliberations: All meetings of the Board and its committees shall be open to the public; however, the Board reserves the right to recess and enter into deliberate sessions during the public hearing. No minutes shall be taken during deliberations, nor shall such deliberations be recorded as part of the record. All decisions made during closed deliberations shall be put in writing and signed as prescribed in Section VIII below. (Town Attorney should advise if the DRB has an option to enter a closed deliberative session and not report out per Section VIII, just publish a signed decision with the votes of each member below the Chair's signature).

Commented [DB13]: Who will be contacting town attorney

J. Submissions: If an applicant has written submissions for the Board's consideration at a public hearing, there should be 9 copies provided included with the original application. Written submissions made at a hearing will likely result in the Board's recessing the hearing to a future date in order to read and consider the information presented. All other documents submitted with the

application and prior to the hearing must be delivered to the Administrative Officer for distribution to the DRB members.

Commented [DB14]: agreed

V. CONFLICT OF INTEREST All members of the Development Review Board shall abide by the Town of Morristown Ethics & Fraud Policy for Public Officials (as amended). In addition, all members of the Board shall comply with these provisions of 12 V.S.A. § 61(a) and, including 24 V.S.A. § 1203 when they conduct hearings make findings:

Formatted: Font: 12 pt

Local boards shall comply with the provisions of 12 V.S.A. § 61(a) when they conduct contested hearings and make findings under this chapter. For purposes of this section, prohibitions referring to those within the fourth degree of consanguinity or affinity shall refer to the person's spouse, as well as to the person's and the spouse's: parent, child, brother, sister, grandparent, or grandchild.

Formatted: Font: Times New Roman, 12 pt

Formatted: Indent: Left: 1", No bullets or numbering

Commented [DB15]: agreed

No disqualified member shall preside at the hearing or be counted by the Board in establishing the required quorum. If the Chair is disqualified, the Vice Chair shall preside. In the event the Vice-Chair is unable to preside, the Board shall elect an Acting Vice-Chair for the proceedings.

Formatted: Font: 12 pt

Formatted: Normal, Indent: Left: 0.57", No bullets or numbering

VI. CONDUCT OF HEARING OR REVIEW OF ALL APPLICATIONS

A. Order of Hearing or review of applications: Hearings and review of applications shall generally be conducted in accordance with the applicable rules as set forth in 3

V.S.A. §810:

§ 810. Rules of Evidence; official notice

Formatted: Font: Times New Roman, 12 pt

In contested cases:

Formatted: Indent: Left: 1"

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Rules of Evidence as applied in civil cases in the Superior Courts of this State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party may conduct cross-examinations required for a full and true disclosure of the facts.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Commented [DB16]: Agreed

Formatted: Font: Times New Roman, 12 pt

-The order of proceedings shall be as follows, unless the DRB, in its discretion, determines otherwise:

1. Roll call.
2. Statement of the case and reading by the Chair or designated staff of the public notice for the hearing and of correspondence and reports concerning the appeal, application, or petition.
3. Presentation of his/her case by the applicant along with the witness in favor of the appeal if applicable.
4. Examination of applicant's witnesses by the Board.
5. Cross examination of applicant's witnesses by interested parties.
6. Presentation of a case by any interested party or parties.
7. Cross examination of opposition witnesses by the applicant.
8. Rebuttals.
9. Recess or adjournment of hearing or discussion of application.
10. Deliberation -Review criteria applicable to application, either open or closed session.
11. Development of Findings of Fact, Conclusions, and Conditions (See VIII).

B. Representation: Any interested party may appear in person or be represented by an agent or attorney.

C. Record of Proceedings: Proceedings at public hearings shall be recorded either electronically (including videotape) or by a court stenographer at the discretion of the Board. A transcript of the proceedings shall be made available at the request of any party upon payment of the reasonable costs thereof. The Administrative Officer shall be responsible for ensuring the recording is taken in good quality and maintained so that a full transcript can be created for up to the statutory time for such requests following the issuance of a DRB decision.

D. Presentation of Evidence: All evidence upon which the applicant or other party wishes to rely shall be presented at the hearing and made part of the hearing record.

1. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided that the witness is available for direct testimony and cross examination at the hearing on this evidence.

E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chair, or designee, or, in the Chair's absence, the Vice Chair or the Acting Vice Chair, or their designee, if one is serving for this proceeding.

F. Examination: The Development Review Board members may examine witnesses. The Chair, or Vice Chair/Acting Vice Chair if presiding, shall rule on the relevance and may limit the scope of examination to ensure relevancy and expedite the business of the Board.

G. Rules of evidence: Rules of evidence as applied in civil cases in the superior courts of the state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to provide facts not reasonably susceptible to proof

Commented [DB17]: Agreed

Formatted: Font: 12 pt

under those rules, evidence not ordinarily admissible and not precluded by statute may be admitted if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. All evidence reviewed and accepted by the DRB shall be marked with an Exhibit #, Dated Accepted, Who Submitted and the number of pages in the exhibit.

Formatted: Font: 12 pt

Commented [DB18]: Agreed

Formatted: Font: 12 pt

- H. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.
- I. Rehearing: An application for rehearing may be made in the same manner as provided for in the original application. The Board may reject an application for rehearing without a hearing and render a decision thereon, which shall include findings of fact, within 10 days of the date of filing of the application if (a) the Board concludes the issues raised by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, or circumstances of the case. The decision shall be rendered, or notice given, as in decisions under Section VIII of these Rules of Procedure.
- J. Ex-parte Communications: While an application is pending (meaning from date published to issuance of a final permit), conversations between Board members and any person other than their legal counsel or staff regarding the substance of a particular hearing or application outside of the regular meeting are considered ex-parte contact and are inappropriate.
1. A presiding officer shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending, without notice and opportunity for all parties to participate.
  2. No other members of the board sitting in a contested hearing shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, while the proceeding is pending.
  3. A presiding officer who receives an ex parte communication on any issue relating to the proceeding and a member who receives any ex parte communication shall place on the record all written communications received, all written responses to those communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.
  4. No member shall have ex-parte communications with the ~~Zoning Administrator~~ Administrative Officer when there is an appeal of a notice of violation.
  - 4.5. Municipal staff engaged with the project review shall inform the Chair about any substantial conversations they have

Commented [DB19]: Agreed

Commented [DB20]: Agreed

## VII. VOTING

- A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum shall be present. A quorum for the Development Review Board shall consist of four (4) members. If a quorum of the Board is present at a meeting, that quorum may transact all matters that may or are required to come before it.
- B. Motions: Upon conclusion of the evidentiary portion of the hearing, the DRB may, by motion, direct the Administrative Officer to prepare draft Findings of Fact for the Board's consideration in its written decision. All motions require a second. The making or seconding of a motion does not, in all instances, imply support for the motion. A failure to obtain four affirmative votes shall be

considered a denial. An abstention shall not be treated as either a positive or negative vote.

Formatted: Font: 12 pt

- C. Qualification to vote: A board member shall not participate in the decision unless they have heard all of the testimony and reviewed all other evidence submitted for the Board's consideration. Members who have not attended every session of the hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read the transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.

#### VIII. DECISIONS MADE BY THE DEVELOPMENT REVIEW BOARD

- A. Majority Vote: The decision on any application or appeal to the Development Review Board shall be made after a motion, a second and the affirmative vote of the majority of the Board.
- B. Written Findings of Fact and Conclusions: The decision shall set forth the findings of fact and conclusions reached by the Board on that matter. This decision shall be reviewed and adopted by the Board and signed by the member of the Board who presided as Chair or Vice Chair at the hearing if it accurately reflects the findings of fact and conclusions, and any applicable conditions as determined by the Board.
  - 1. A final decision of the Board shall be in writing and shall separately state the findings of fact and conclusions law.
  - 2. The findings shall explicitly and concisely restate the underlying facts that support the decision. They shall be based exclusively on evidence contained in the record of the hearing.
  - 3. Conclusions of law shall be based on the findings of fact.
  - 4. The final decision in any case involving local Act 250 review of municipal impacts shall include notice that it constitutes a rebuttable presumption under the provisions of 10 V.S.A. § 151 and notice that presumption may be overcome in proceedings under 10 V.S.A. § 151.
  - 5. The Administrative Officer shall cause copies of the decision to be delivered to each party.
  - 6. Transcriptions of the proceedings shall be made upon the request and upon the payment of the reasonable costs of transcription by any party.
- C. Conditions to Approvals: The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Municipal and Regional Planning and Development Act and the municipality's plan and bylaws. An application for the amendment or removal of a condition from a previously granted approval shall require a new warned public hearing and will be subject to review by the Board under the bylaws then in effect and other applicable standards. Amendment requires are subject to an initial Stowe-Highlands Analysis, before the merits hearing, when advised by the town attorney.
- D. Stay of Enforcement: If a notice of appeal includes a request for a stay of enforcement, the board may, after a public hearing, grant or deny the stay.

Commented [DB21]: Where would I find initial Stowe-Highlands Analysis

#### IX. REFERRALS AND EVALUATION REQUESTS

- A. Referral to State Agencies: Any application subject to state agency review under Section 7 and 11 of the Morrystown Zoning Regulations shall not be made final issued by the Board prior to the expiration of thirty days following submission by the Board of a report to the designated state agency describing the proposed use, the location requested, and an evaluation of the effect of

such proposed use on the municipal and regional plans.

- B. State Agency Report to the Board: The State Agency Report if provided to the applicant shall also be submitted to the Board ~~may be introduced and admitted~~ into the hearing record as evidence.
- C. Request for Other Official Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate municipal department or official an evaluation of the impact a proposed development application will have on traffic, the environment, or community services and finances. This information or report may be presented as testimony at the public hearing and shall become part of the public record. The costs of such technical review may be borne by the applicant if so provided in the Selectboard Fee Policy.

Formatted: Font: 12 pt

Commented [DB22]: Agreed

DRAFT

# **Morristown Development Review Board**

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

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

The Development Review Board [DRB] of the Town of Morristown 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 their 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 member of the DRB.
- C. “Chair” means chairperson of the DRB.
- D. “Conflict of interest” means any one of the following:
  - 1. A direct or indirect interest or involvement of a Board member, their spouse, partner, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister-in-law, cousin or other familial relation, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
  - 2. A situation where a Board member has publicly displayed 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.
  - 3. 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.
  - 4. A situation in which a Board member qualifies as an Interested Party (as defined in Sec. H, below)
- E. “Deliberation” means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
- F. “Executive session” means a session of a public body from which the public is excluded, as

authorized by 1 V.S.A. § 313. In addition to other requirements, 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.

G. “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.

H. “Interested Persons” are those 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 as further defined per 24 VSA 4465.

I. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any DRB member.

J. “Public deliberations” means the weighing, examining, and discussing, at an open meeting, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

K. “Recuse” means to remove oneself from a particular Board proceeding because of a real or perceived conflict of interest.

L. “Vice Chair” means the vice chairperson of the DRB.

#### **Section IV: Members, Officers and Dutties.**

A. Members: The Board shall consist of seven (7) members. Alternate members may be concurrent members of the Planning Commission. Members shall inform the staff and/or Chair of any anticipated absences. A member who misses three meetings in any one year without having first informed the staff or Chair will be asked to resign.

B. Alternate Members: Alternate members will serve when there is a vacancy, absence, or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. The Zoning Administrator will notify the alternate members when their services are required. The first alternate member who responds that they are available will serve as the alternate for the regular member who is not available. Regular members will rejoin the Board after the Alternate member steps down following final action on that application.

C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular (not alternate) members in June of each year. The terms of office of the Chair and Vice Chair are for one (1) year and an officer may serve more than one term. Should both the Chair and the Vice Chair be absent from a meeting, an Acting Vice Chair shall be elected by majority vote from those members attending and will serve just for that meeting.

- D. Duties of the Chair: The Chair shall preside over all meetings and hearings of the Board, maintain order, and decide all questions of order and procedure subject to these rules. The Chair may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair may designate an Alternate member to serve in case of the absence or disqualification of a regular member. The presiding officer shall cause the proceedings to be recorded.
- E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's absence or when the Chair is not presiding.
- F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Acting Vice Chair shall perform the duties of the Chair.
- G. Secretary: A Secretary, who may or may not be a member of the Board, or the Planning staff, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:
1. Keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.
  2. Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Zoning Administrator;
  3. Cause to be filed all minutes and records of examination and other official actions with the Town Clerk as a public record. (The Secretary may use the Administrative Officer to transmit those minutes and records of examination and official actions to the Town Clerk.)
- H. Administrative Officer: The Zoning Administrator, or his/her designee, who shall not be a member of the Board, shall be the Administrative Officer for the Development Review Board. In that role, the Administrative Officer shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and shall have the following duties:
1. Conduct official correspondence subject to these rules and at the direction of the Board;
  2. Issue the proper forms and compile all information, maps, and records for the Board's review;
  3. Send and/or post all notices required by law and by these rules of procedure;
  4. Inform persons who are to come before the Board of these rules of procedure and the bylaws which pertain to that person's appearance before the Board;
  5. Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the Town Clerk; and
  6. Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the Town Clerk.
  7. Provide an orientation to new Board members.

- I. Vacancies: The Administrative Officer or his/her designee shall give immediate notice of any vacancy on the Board to the Selectboard. If the office of Chair or Vice Chair becomes vacant, the Board shall fill that office by election from amongst its regular members for the unexpired term at the next regular meeting of the Board.

**Section V: Alternate Members.** The Selectboard may annually, or as needed, appoint up to two alternates who may temporarily serve as DRB members in the event there is no quorum.

A. Whenever there is not a quorum, the Chair of the DRB, or their designee, shall appoint one of the alternates to obtain a quorum to serve as an active member.

B. If the Chair of the DRB does not appoint an alternate(s) as required under paragraph A, a majority of the members of the DRB present and voting may appoint an alternate.

C. 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 the alternate member serves as an active member. Participation includes attending deliberations 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 DRB shall be held in the Town of Morristown Municipal Building located on 43 Portland Street at 6:00 PM on the second and fourth Wednesday of the month, as warranted. Site visits may be scheduled at the convenience of the members. 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 members of the entire Board.

C. Members may participate by telephone or virtual meeting platform, as long as all members 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 proper motion and vote, has entered an executive or deliberative session. The Board may convene a closed deliberative session upon a majority vote. 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.

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).

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

Public hearings shall be conducted as quasi-judicial proceedings, as defined in 1 V.S.A. § 310(6)(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 vote of members present.

The Chair shall set aside time for interested persons or their duly-authorized representatives and consultants to provide testimony during the hearing -- 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 generally in the following manner, unless a modified procedure is approved by majority vote of the board:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events, including the time for public comments outside of any hearings, 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 hearings have the right to appeal DRB decisions to the Environmental Court. Ask the applicant and audience members to record their names and contact information on the sign-in sheet. Explain that anyone wishing to speak must identify themselves and:  
  
***“Affirm that the evidence they are giving in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.”***
- C. Request Board members disclose any conflicts of interest and ex parte communications.
- D. Accept written information presented to the Board.
- E. Invite the applicant or applicant’s representative to present their proposal.
- F. Invite Board members to ask questions of the applicant or applicant’s representative.
- G. Invite interested persons to present testimony, comments, feedback and questions regarding the application or proposal. Interested persons may also present testimony from representatives and consultants.
- H. Invite the applicant or applicant’s representative to respond to information presented, or to cross-examine interested persons or their representatives and consultants.
- I. Invite more questions or comments from members of the Board.
- J. Invite more questions or comments from interested persons.
- K. Invite final comments or questions from the applicant or their representative, members of the Board and interested persons.

- L. Invite interested community members to comment on the project.
- M. Upon motion and majority approval, the Chair shall either adjourn the hearing to a date and time certain, or request a motion to close the proceedings by vote of a majority of the Board.
- N. After the hearing is closed, the Board may begin deliberations – either immediately or at the end of the meeting, or at some other time as determined by the Board. See Section III-E and J. of these Rules and 1 V.S.A. § 312(e).

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

If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled and be publicly warned in accordance with 24 V.S.A. §§ 4464(a)(1), (2).

A. 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:

B. If necessary, the Board may recess a hearing to conduct a site visit at a property which is the subject of an application or appeal 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 or appeal 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 staff shall create a list of all individuals who actively participated in the hearing for each application reviewed by the Board. This list shall include those who participated orally, and those who participated in writing. All decisions of the Board shall be mailed or emailed to those on the list, if individuals provided their names and mailing and/or email addresses during the proceedings. The list shall include:

A. The names of those who participated in the proceedings.

B. The mailing address of each of these persons, if disclosed.

Participants who did not sign in at all, did not disclose their names during a hearing, or who fail to provide legible contact information to the staff will not receive a copy by mail or email, except upon written request to the staff.

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

The Board shall issue a decision in writing and may deliberate in public or private. If it deliberates privately, the Board need not adopt its written decision at an open meeting if the decision will be a public record. The DRB may not hear testimony or consider new evidence during deliberations, but may, in appropriate circumstances, reopen a hearing for such purpose.

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. Members who are absent for a hearing on an application may review recordings of the proceedings, meeting minutes and application materials and choose to participate in decisions on that application. 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. All members present are expected to vote unless they have recused themselves.
- D. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- E. 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).
- F. The Board shall issue a written decision within 45 days following the closure of the final public hearing.
- G. The Chair or Vice Chair may sign the decision on behalf of the Board after the decision has been finalized by support staff pursuant to the Board's deliberation and vote.

**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 they have a conflict of interest in the matter under consideration. A Board member shall not, personally or through any member of their 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.

**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 they are 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 they are 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 themselves from any matter in which they have a conflict of interest, pursuant to the following:

1. The applicant or any person may request that a member recuse themselves due to a conflict of interest. Such request shall not constitute a requirement that the member recuse themselves.

2. A Board member who has recused themselves 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. However, a recused member may offer written testimony to the Board on a matter in which they qualify as an interested person, or participate through legal counsel or a duly authorized representative, or to present their own project application.
3. If a previously unknown conflict of interest is discovered, the Board may take evidence pertaining to the conflict, and if appropriate, adjourn to a short executive 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, including any appointed alternates.

## **Section XII: Ex Parte Communications.**

Ex parte communication is prohibited. Any Board member who participates in ex parte communication with an applicant or their representative must disclose such communication as follows:

**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 must disclose each specific instance of ex parte oral contact with applicants, appellants, interested persons or their representatives during the next public meeting/hearing of the DRB, stating the substance of any conversations on a project under review and the identity of each person making the ex parte communication, which shall be noted in the meeting minutes.

## **Section XIII: Conformance with the Open Meeting Law; Electronic Communication and Minutes of DRB Meetings.**

The DRB is a public body bound by Vermont's Open Meeting Law. See 1 V.S.A. §§ 310-314.

A. Group electronic communication (email and texts) may be used to schedule a meeting, create an agenda, or to distribute materials to discuss at a meeting, but may not be used for discussion purposes, and must generally be available for copying and inspection as public records upon written request.

B. Electronic communication may be used in instances where the Board is engaged in a quasi-judicial deliberation – for instance, when the Board is drafting or reviewing a written decision on a permit application. Before taking advantage of this exception, the public body must have conducted a quasi-judicial public hearing and then commenced deliberations to discuss the evidence and decide how to proceed.

C. Except during executive session, during which minutes will not be taken, a recording secretary shall take minutes of all DRB meetings. Draft DRB meeting minutes shall be posted to the town website within five business days, with copies made available upon request.

D. Members will review the draft minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.

**Section XIV: Removal.**

Upon majority vote, the Board 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 V.S.A. § 4460(c). Failure to comply with the conflict-of-interest provisions of these DRB procedures may form the basis for a request for removal and/or constitute cause for removal.

**Section XV: Amendments.**

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

TOWN OF MORRISTOWN  
DEVELOPMENT REVIEW BOARD  
RULES OF PROCEDURE

I. ESTABLISHMENT OF RULES OF PROCEDURE

- A. Authority: The Development Review Board (Board or DRB) of the Town of Morristown shall be governed and have the powers accorded by the provisions of all applicable state statutes, specifically including ~~24 V.S.A. §36, Municipal Administrative Procedures Act~~, the Morristown Zoning and Subdivision Regulations and these Rules of Procedure as initially adopted by the Board on August 5, 2003.
- B. Adoption of These Rules: The Development Review Board Rules of Procedure shall be those adopted by the Board in accordance with 24 VSA § 4461. Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the Town Clerk as a public record and post a copy in one or more public places.
- C. Amendments: These rules may be amended at any regular meeting by an affirmative vote of a majority of the Board provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.
- D. The Board shall follow Roberts Rules of Procedures (as amended) for small boards when not in conflict with these rules or state statutes.

**Commented [TM1]:** Municipal Admin Procedures Act is very burdensome and I would prefer to not follow it.

II. MEMBERS, OFFICERS AND DUTIES

- A. Members: The Board shall consist of seven (7) members and two (2) alternate members. Members shall inform the staff and/or Chair of any anticipated absences.
- B. Alternate Members: Alternate members will serve when there is a vacancy, absence, or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. The Zoning Administrator will notify the alternate members when their services are required. The first alternate member who responds that they are available will serve as the alternate for the regular member who is not available. Regular members will rejoin the Board after the Alternate member steps down following final action on that application.
- C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular (not alternate) members the first meeting after town meeting day. The terms of the Chair and Vice Chair are for one (1) year and an officer may serve more than one term. Should both the Chair and the Vice Chair be absent from a meeting, an Acting Vice Chair shall be elected by majority vote from those members attending and will serve just for that meeting.
- D. Duties of the Chair: The Chair shall preside over all meetings and hearings of the Board, maintain order, and decide all questions of order and procedure subject to these rules. The Chair may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair may designate an Alternate member to serve in case of the absence or disqualification of a regular member. The presiding officer shall cause the proceedings to be recorded.
- E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's

absence or when the Chair is not presiding.

- F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Acting Vice Chair shall perform the duties of the Chair.
- G. Secretary: A Secretary, who may or may not be a member of the Board, or the Planning staff, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:
  - 1. Keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.
  - 2. Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Zoning Administrator;
  - 3. Cause to be filed all minutes and records of examination and other official actions with the Town Clerk as a public record. (The Secretary may use the Administrative Officer to transmit those minutes and records of examination and official actions to the Town Clerk.)
- H. Administrative Officer: The Zoning Administrator, or his/her designee, who shall not be a member of the Board, shall be the Administrative Officer for the Development Review Board. In that role, the Administrative Officer shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and shall have the following duties:
  - 1. Conduct official correspondence subject to these rules and at the direction of the Board;
  - 2. Issue the proper forms and compile all information, maps, and records for the Board's review;
  - 3. Send and/or post all notices required by law and by these rules of procedure;
  - 4. Inform persons who are to come before the Board of these rules of procedure and the bylaws which pertain to that person's appearance before the Board;
  - 5. Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the Town Clerk; and
  - 6. Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the Town Clerk.
  - 7. Provide an orientation to new Board members.
- I. Vacancies: The Administrative Officer or his/her designee shall give immediate notice of any vacancy on the Board to the Selectboard. If the office of Chair or Vice Chair becomes vacant, the Board shall fill that office by election from amongst its regular members for the unexpired term at the next regular meeting of the Board.

### III. GENERAL RULES

- A. Submissions and Completeness Review: All applications, fees, site plans and other items for review are required one month prior to the DRB hearing date. Plans shall be

deemed substantially complete by the Zoning Administrator before the application will be scheduled and warned for a hearing. A technical review meeting with the appropriate town staff shall be required in advance of the submittal cut off for all projects deemed to have an impact on town services. This shall include, but is not limited to, construction of new private or public roads, new connections to town utilities, or construction of utilities proposed to be accepted by the Town. Submittals shall include the items required by the applicable bylaws, unless waived by the Zoning Administrator, upon a determination that such information is probably not necessary to determine if the project will comply with the Zoning and/or Subdivision Regulations.

**Commented [TM2]:** How would the Board like me to address this. Should I issue a memo noting that the application is complete?

**B. Partial Applications:** A partially completed application may be submitted to the DRB for review when requested by the applicant in order to complete additional plan development after an initial DRB hearing. The applicant must, in writing, identify what sections of the appropriate regulations are not being requested to be initially reviewed. After the initial review, the DRB will recess the hearing to a date certain in order for the applicant to complete the additional materials for review. Partial submittals are only permitted for preparation of more detailed engineering plans such as stormwater management or final grading plans and other situations where the Zoning Administrator determines that the applicant would benefit from attending a hearing before completing the final plans.

**Commented [TM3]:** This seems potentially useful but it could be abused given that "probably not necessary" is a vague term. Should the Board consider adding this but clearly define on what basis the ZA can waive permitting requirements.

**Formatted:** Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.57" + Indent at: 0.82"

**B.C. Records:** A file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question shall be kept by the Administrative Officer as part of the records of the Development Review Board. All records of the Board shall be public records except for legal opinions from the Town Attorney and draft decisions used in deliberation.

**Commented [TM4]:** Rather than using a lot of conditions could we utilize this process more? Allow more incomplete applications but use more continuations to allow applicants to assemble their materials .

**C.D. Fees:** The Selectboard shall determine such fees as may be necessary for the filing of notices and the processing of hearings and action thereon.

#### IV. MEETINGS

**A. Regular Meetings:** Regular meetings of the Development Review Board shall be held on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday in each calendar month as deemed necessary.

**B. Site Visits:** The Board may convene at the site at the request of an interested party or if the Board feels a site visit will aid in their understanding of a proposed project. Site visits are intended to familiarize Board members and the public with the site on which a project or activity has been proposed. Members may visit a site individually or as a Board. In either case, the presiding officer shall make a record of the site visit observations. Other Board members or parties shall be given the opportunity to supplement these observations. If a quorum of the Board is expected to be present, the site walk would be an open meeting and its date and time must be announced and/or posted in accordance with state law. If a member visits the site individually, he or she shall present that information at the appropriate hearing or meeting.

**C. Special Meetings:** Special meetings of the Board may be called by the Chair or by a majority of the members of the Board provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member of the Board. Action items requiring public hearing notice shall conform to the notice requirements in 24 V.S.A. §4447 and will not be scheduled for a special meeting.

**D. Order of Business:** The order of business at all regular meetings of the Board will generally be as follows, however, changes in the order of the agenda may occur. The agenda order of the applications shall be established by the Administrative Officer in conjunction with the Chair.

The order of business shall generally follow the following order of business:

E. ÷

**Formatted:** Indent: Left: 0.82", No bullets or numbering

1. Call to order and recognition of quorum
- ~~2. Proposed changes to the agenda-~~
3. Approve prior meeting minutes
4. Public comments
5. Hearing of appeals and development applications
6. Action items to be considered
7. Other business
8. Adjourn
- ~~2. Review and take action on recessed and warned applications. The agenda order of the applications shall be established by the Administrative Officer in conjunction with the Chair.~~
- ~~3. Review, correct, and accept the minutes of the preceding meeting.~~
- ~~4. Other business.~~
- ~~5. Adjournment~~

~~F.E.~~ Recess of Meeting or Hearing: The Board may recess a meeting or hearing if all the applications or appeals cannot be disposed of on the day set. No further public notice shall be necessary provided that the date, time, and place of the recessed meeting or hearing shall be announced before adjournment.

~~G.F.~~ Request for Recess: An applicant may request, in writing, a recess. Such a request will be reviewed by the Board and may be granted at the Board's discretion. The Board may grant a recess for the following reasons:

1. Change in schedules that do not allow the applicant or his representative(s) to attend the hearing.
2. Request to make additional changes to the project plans after being heard at a hearing.
3. Request to be heard when more than four Board members will be present.
4. Any other reasons the Board finds reasonable.

~~H.G.~~ Failure to appear (except appeals of the Zoning Administrator's Notice of Violations): If an applicant or their representative fails to appear for a scheduled hearing, such hearing will be rescheduled for the next available meeting. If the applicant or their representative fails to appear for the rescheduled hearing, the application will be ~~considered with the available information and without testimony of the applicant~~ rejected.

~~H.H.~~ Failure to appear (Appeals of the Zoning Administrator's Notice of Violations): An ~~appellant's~~ failure of the applicant or their representative to appear for an appeal of a Notice of Violation hearing will result in the appeal being considered with the available information and without testimony of the applicant.

~~H.I.~~ Deliberations: All meetings of the Board and its committees shall be open to the public; however, the Board reserves the right to enter into deliberate sessions. No minutes shall be taken during deliberations, nor shall such deliberations be recorded as part of the record. All decisions made during closed deliberations shall be put in writing and signed as prescribed in Section VIII below.

~~K.J.~~ Submissions: If an applicant has written submissions for the Board's consideration, there should be 9 copies included with the original application. Written submissions made at a hearing will likely result in the Board's recessing the hearing to a future date in order to read and consider the information presented.

V. CONFLICT OF INTEREST All members of the Development Review Board shall abide by the Town of Morristown Ethics & Fraud Policy for Public Officials (as amended) as well as the State Code of Municipal Ethics found in Sec 22 of 24 VSA Chapter 60. In the event the Morristown

Code of Ethics or State Code of Ethics are in conflict the stricter of the two shall control. In addition, all members of the Board shall comply with the provisions of 12 V.S.A § 61(a) and 24 V.S.A. § 1203 when they conduct hearings make findings. No disqualified member shall preside at the hearing or be counted by the Board in establishing the required quorum. If the Chair is disqualified, the Vice Chair shall preside. In the event the Vice-Chair is unable to preside, the Board shall elect an Acting Vice-Chair for the proceedings.

~~✓.~~

Formatted: Not Expanded by / Condensed by

Formatted: Normal, Indent: Left: 0.57", No bullets or numbering

## VI. CONDUCT OF HEARING OR REVIEW OF ALL APPLICATIONS

~~A. Order of Hearing or review of applications: Hearings and review of applications shall generally be conducted in accordance with the applicable rules as set forth in 3~~

~~A. V.S.A. §810.~~ The order of proceedings shall be as follows, unless the DRB, in its discretion, determines otherwise:

Formatted: List Paragraph, Right: 0.12", Space Before: 0.5 pt, Numbered + Level: 2 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.57" + Indent at: 0.82", Tab stops: 0.82", Left

~~1.~~ Roll call.

~~2.~~ Statement of the case and reading by the Chair or designated staff of the public notice for the hearing and of correspondence and reports concerning the appeal, application, or petition.

~~3.~~ Presentation of his/her case by the applicant along with the witness in favor of the appeal if applicable.

~~4.~~ Examination of applicant's witnesses by the Board.

~~5.~~ Cross examination of applicant's witnesses by interested parties.

~~6.~~ Presentation of a case by any interested party or parties.

~~7.~~ Cross examination of opposition witnesses by the applicant.

~~8.~~ Rebuttals.

~~9.~~ Recess or adjournment of hearing or discussion of application.

~~10.~~ Deliberation -Review criteria applicable to application.

~~11.~~ Development of Findings of Fact, Conclusions, and Conditions (See VIII).

Formatted: Indent: Left: 1.44", No bullets or numbering

B. Representation: Any interested party may appear in person or be represented by an agent or attorney.

C. Record of Proceedings: Proceedings at public hearings shall be recorded ~~either electronically (including videotape) or by a court stenographer at the discretion of the Board.~~ A transcript of the proceedings shall be made available at the request of any party upon payment of the reasonable costs thereof.

D. Presentation of Evidence: All evidence upon which the applicant or other party wishes to rely shall be presented at the hearing and made part of the hearing record.

~~1. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided that the witness is available for direct testimony and cross examination at the hearing on this evidence.~~

E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chair or, in the Chair's absence, the Vice Chair or the Acting Vice Chair, if one is serving for this proceeding.

F. Examination: The Development Review Board members may examine witnesses. The Chair, or Vice Chair/Acting Vice Chair if presiding, shall rule on the relevance and may limit the scope of examination to ensure relevancy and expedite the business of the Board.

G. Rules of evidence: ~~Rules of evidence as applied in civil cases in the superior courts of the state shall be followed.~~ Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. ~~When necessary to provide facts not reasonably susceptible to proof under those rules, evidence~~

~~not ordinarily admissible and not precluded by statute may be admitted if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.~~

- H. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.
- I. Rehearing: An application for rehearing may be made in the same manner as provided for in the original application. This application may be made by either the original applicant or an interested person provided that this person meets the definition of interested ~~The person. The~~ Board may reject an application for rehearing without a hearing and render a decision thereon, which shall include findings of fact, within 10 days of the date of filing of the application if (a) the Board concludes the issued ruling by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, or circumstances of the case. The decision shall be rendered, or notice given, as in decisions under Section VIII of these Rules of Procedure.
- J. Ex-parte Communications: While an application is pending, conversations between Board members and any person other than their legal counsel or staff regarding the substance of a particular hearing or application outside of the regular meeting are considered ex-parte contact and are inappropriate.
  - 1. A presiding officer shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending, without notice and opportunity for all parties to participate.
  - 2. No other members of the board sitting in a contested hearing shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, while the proceeding is pending.
  - 3. A presiding officer who receives an ex parte communication on any issue relating to the proceeding and a member who receives any ex parte communication shall place on the record all written communications received, all written responses to those communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.
  - 4. No member shall have ex-parte communications with the Zoning Administrator when there is an appeal of a notice of violation.

## VII. VOTING

- A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum shall be present. A quorum for the Development Review Board shall consist of four (4) members. If a quorum of the Board is present at a meeting, that quorum may transact all matters that may or are required to come before it.
- B. Motions: Upon conclusion of the evidentiary portion of the hearing, the DRB may, by motion, direct the Administrative Officer to prepare draft Findings of Fact for the Board's consideration. All motions require a second. The making or seconding of a motion does not, in all instances, imply support for the motion. A failure to obtain four affirmative votes shall be considered a denial. An abstention shall not be treated as either a positive or negative vote.
- C. Qualification to vote: A board member shall not participate in the decision unless they have heard all of the testimony and reviewed all other evidence submitted for the Board's consideration. Members who have not attended every session of the hearing may participate in

the decision if they have listened to the recording of the testimony they have missed (or read the transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.

VIII. DECISIONS MADE BY THE DEVELOPMENT REVIEW BOARD

- A. Majority Vote: The decision on any application or appeal to the Development Review Board shall be made after a motion, a second and the affirmative vote of the majority of the Board.
- B. Written Findings of Fact and Conclusions: The decision shall set forth the findings of fact and conclusions reached by the Board on that matter. This decision shall be reviewed and adopted by the Board and signed by the member of the Board who presided as Chair or Vice Chair at the hearing if it accurately reflects the findings of fact and conclusions, and any applicable conditions as determined by the Board.
  - 1. A final decision of the Board shall be in writing and shall separately state the findings of fact and conclusions law.
  - 2. The findings shall explicitly and concisely restate the underlying facts that support the decision. They shall be based exclusively on evidence contained in the record of the hearing.
  - 3. Conclusions of law shall be based on the findings of fact.
  - 4. The final decision in any case involving local Act 250 review of municipal impacts shall include notice that it constitutes a rebuttable presumption under the provisions of 10 V.S.A. § 151 and notice that presumption may be overcome in proceedings under 10 V.S.A. § 151.
  - 5. The Administrative Officer shall cause copies of the decision to be delivered to each party.
  - 6. Transcriptions of the proceedings shall be made upon the request and upon the payment of the reasonable costs of transcription by any party.
- C. Conditions to Approvals: The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Municipal and Regional Planning and Development Act and the municipality's plan and bylaws. An application for the amendment or removal of a condition from a previously granted approval shall require a new warned public hearing and will be subject to review by the Board under the bylaws then in effect and other applicable standards.
- D. Stay of Enforcement: If a notice of appeal includes a request for a stay of enforcement, the board may, after a public hearing, grant or deny the stay.

Commented [TM5]: Do we want to have the whole board look at the decision before it is signed by the Chair?

IX. REFERRALS AND EVALUATION REQUESTS

- A. Referral to State Agencies: Any application subject to state agency review under Section 7 and 11 of the Morristown Zoning Regulations shall not be made final by the Board prior to the expiration of thirty days following submission by the Board of a report to the designated state agency describing the proposed use, the location requested, and an evaluation of the effect of such proposed use on the municipal and regional plans.
- B. State Agency Report to the Board: The State Agency Report to the Board may be introduced into the hearing record as evidence.
- C. Request for Other Official Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate municipal department or official an evaluation of the impact a proposed development application will have on traffic, the environment, or community services and finances. This information or report may be presented as testimony at the public hearing and shall become part of the public record.