

TOWN OF MIDDLEBURY

Development Review Board

Rules of Procedure

I. ESTABLISHMENT OF RULES OF PROCEDURE

A. Authority: The Middlebury Development Review Board (Board or DRB) shall be governed and have the powers accorded by the provisions of all applicable state statutes, including 24 V.S.A. Chapter 117 (Municipal Planning & Zoning Act), 24 VSA Chapter 36 (Municipal Administrative Procedure Act), the Middlebury Zoning and Subdivision Regulations and these Rules of Procedure.

B. 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.

II. MEMBERS, OFFICERS AND DUTIES

A. Members: The Board shall consist of seven (7) voting members appointed by the Select Board. The Select Board will appoint one (1) alternate. Members and alternates may be concurrent members of the Planning Commission or any other Town Board.

B. Participation by Alternate Members: Alternate members shall receive all information given to regular members and may participate to the same extent as regular members, except that for voting, not more than seven members shall vote on any application. Alternates shall be designated by the Chair to serve in place of regular members at any time when there is an absence, recusal or vacancy of a regular member.

C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular members in April of each year, or as soon as possible after the Select Board make annual appointments. The terms of office of the Chair and Vice Chair are for one (1) year. An officer may serve more than one term.

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 shall have authority to administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair shall designate the alternate member who is to serve on any matter when there is an absence, recusal or vacancy of a regular member.

E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's absence, recusal or vacancy.

F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Board shall elect an Acting Vice Chair who shall perform the duties of the Chair.

G. Clerk/Secretary: The DRB Coordinator shall serve as ex-officio (non-voting) Clerk/Secretary of the Board. The Clerk/Secretary shall be responsible for the following duties:

- (1) Publish and distribute approved minutes of all Board actions and proceedings. The Clerk/Secretary may employ a minutes clerk or assistant to take and prepare draft minutes. Minutes shall show the vote of each member upon every motion, or if absent, disqualified, or failing to vote, shall so indicate. Minutes shall include the names of all Interested Persons participating, witnesses and others who appeared and were heard. Minutes shall summarize the discussion, major points raised and who made them, and the sequence of presentation, action, consensus, and any decisions reached.
- (2) Issue decisions and preserve these and all records of the Board by causing those to be filed in the Planning and Zoning Office, and as appropriate by recording with the Town Clerk and filing with the Listers and other Town offices;
- (3) Receive and transmit all official correspondence to and from the Board and be responsible for all preparation of meeting materials, notices of public hearings and other meetings per 24 VSA 4464;
- (4) Inform persons who are to come before the Board of Rules of Procedure provisions that pertain to that person's appearance before the Board;
- (5) Handle inquiries from the public and interested persons to avoid ex parte communications to the Board.
- (6) Arrange for video DVD recording of proceedings which shall be preserved for appeals;
- (7) Cause information on the Board's proceedings to be posted on the Town web site and in public places and newspapers as appropriate.

H. Absences and Vacancies: Members and alternates should notify the Clerk/Secretary if they will be absent for an upcoming meeting. Any member or alternate intending to resign should do so by letter. The Clerk/Secretary shall give immediate notice of any vacancy on the Board to the Town Manager and the Select Board.

III. RECORDS TO BE PUBLIC; FEES; PUBLIC / INTERESTED PERSON PARTICIPATION

A. Records: All records of the Board shall be public records. The record video DVD of a meeting may be viewed at the Town Offices. A copy may be purchased from the video service at a cost of \$20 each.

B. Fees: The Select Board shall establish and amend any fees, per 24 VSA 4440.

C. Participation by the public and Interested persons: In every meeting there shall be an opportunity for public comment and for each person or group wishing to achieve status as an Interested Person under 24 VSA 4465(b) to demonstrate that the criteria set forth in that section are met for the purposes of Section VI below and appeal to Environmental Court. The Clerk/Secretary shall keep a sign-in sheet with each attendee's name and address, and a record of each person's participation and areas of concern.

IV. MEETINGS

A. Regular Meetings; agendas; delivery of information: Regular meetings of the Development Review Board shall be held on the second and fourth Mondays of each month unless there is a conflict with a holiday or unless no applications are pending or there is no business to transact, in which case the meeting may be canceled. The agendas shall be set by the Chair in consultation with the DRB Coordinator. Agendas and information for the meetings shall generally be delivered to members and alternates on the Friday preceding the meeting.

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 not intended for testimony, but 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. The DRB should, at the subsequent hearing, summarize members' general site visit observations for the record. 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, and receives testimony or information outside the hearing, he or she shall present that information at the next hearing.

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. Chapter 117.

D. Order of Business: The order of business at all regular meetings of the Board will generally be as follows:

- (1) Call to order and determination of quorum (usually at 7 pm).
- (2) Review, correction and approval of the minutes of the preceding meeting.
- (3) Public hearings (when scheduled).
- (4) New applications
- (5) Other business.
- (6) Adjournment (usually not later than 10 pm).

This order may be modified at the meeting by consensus or vote of the Board.

E. Recess of Meeting or Hearing: An applicant or interested person may request a recess in order to prepare additional material for the Board's consideration. Such a request will be reviewed by the Board and may be granted at the Board's discretion. The Board may recess a meeting or hearing on its own motion. The decision to recess shall consider whether this would be unfair or unreasonable to other parties, or disruptive to the efficiency of a proceeding. Any action to recess shall be by vote of the Board, and if possible, the date and time of the reconvened meeting or hearing shall be declared at that time to all parties. If such time of reconvening is not set at the time of recess, written or email notice of the reconvened hearing time shall be sent to all interested persons identified at the initial hearing at least seven days prior to the reconvened hearing date and no further public hearing notice shall be necessary. The DRB may direct that a reconvened meeting or hearing on the matter shall be publicly re-warned in the same manner as the original hearing.

F. Failure to appear: If an applicant fails to appear for a scheduled hearing, such hearing may be rescheduled for the next available meeting. If the applicant fails to appear for a rescheduled hearing, the Board shall have the authority to deny such application or appeal. The Board shall provide for fairness; appearances, changes or rescheduling that would disrupt timely and orderly proceedings shall not be permitted.

G. Deliberations: All meetings of the Board and its committees shall be open to the public; however, the Board reserves the right to deliberate privately. No minutes shall be taken during deliberations, nor shall such deliberations be recorded. All decisions made during closed deliberations shall be put in writing and shall thereafter be published by the Clerk /Secretary and made available to the public.

H. Pre-hearing Conferences and Preliminary Presentations: The Board, at its discretion, may allow a potential applicant to appear before it to make a preliminary presentation and to clarify what material the applicant will need for a hearing. Such a pre-hearing conferences or preliminary presentations shall be scheduled on the posted agenda. The Board shall not allow conferences or presentations that disadvantage Interested Persons, and to the extent possible, pre-

hearing conferences shall be designed to identify affected parties and issues to prepare for an efficient formal public hearing process.

I. Conceptual approval or denial. At a public hearing, or following a subsequent deliberation, the Board may vote conceptual approval or denial. Such action shall not be considered a formal or final action, simply a direction to authorize preparation of final details and information relative to an application that will return for further review as the Board directs.

J. Final decisions. In accordance with 24 VSA section 4464(b)(1), the Board shall vote to recess a hearing and direct the Chair and Clerk/Secretary to prepare findings of fact and conclusions of law and conditions, as appropriate, in a proposed or final decision. In all cases, the Board shall determine the procedure for circulation, review and final action. When the Board determines it is ready to issue its written decision, upon such issuance the hearing shall be deemed adjourned. Copies of the decision shall be sent to the applicant/appellant and to all interested persons and others appearing and having been heard, and shall be filed in the Town Planning and Zoning Office.

K. Submissions: If an applicant has plans, exhibits or written submissions for the Board's consideration, there should be 20 copies included with the original application, delivered to the Planning and Zoning Office prior to warning the public hearing, and in the case of continued hearings or meetings, submissions shall be filed in the offices no later than one week beforehand, with a certificate of service showing mailing or delivery to all Interested Persons. Submissions made at a hearing will likely result in the Board's recessing the hearing to a future date in order to review and consider the information presented.

V. CONFLICT OF INTEREST

All Development Review Board members and alternates shall abide by the conflict of interest provisions in these Rules of Procedure and in 24 VSA Section 1203 and other applicable law. As provided in 12 VSA Section 61(a) no member shall participate in a matter involving an application / property that is affected by the member's spouse, as well as the member's and the spouse's parents, child, brother, sister, grandparent, or grandchild, or partner or client or financial interest.

Each member shall be responsible for acting impartially, and for preventing conflicts of interest, and any appearances of conflict. A member shall disclose the nature of his or her conflict at the outset of a case, shall recuse him or her self and leave the Board table and shall not participate in discussion or action on the matter.

VI. CONDUCT OF HEARING OR REVIEW OF CONTESTED CASES

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 contested proceedings shall be as follows, unless the DRB, in its discretion, determines otherwise:

- (1) Introduction of Board members and designation of any alternates participating.
- (2) Statement of the case and reading by the Chair or Clerk/Secretary of the hearing notice and of correspondence and reports concerning the appeal, application, or procedural matters.
- (3) General presentation of the application and identification of Interested Persons as defined in 24 VSA 4465(b).
- (4) Presentation of his/her case by the applicant along with any witnesses – criterion by criterion. .
- (5) Examination of applicant and witnesses by the Board.
- (6) Cross examination of applicant and witnesses by Interested Persons.
- (7) Presentation of case by any Interested Person or Persons.
- (8) Examination of those parties and their witnesses by the Board.
- (9) Cross examination of opposition witnesses by the applicant.
- (10) Rebuttals.
- (11) Discussion of application; recess of hearing.
- (12) Closed deliberation - Review criteria applicable to application.
- (13) Issuance of decision with Findings of Fact, Conclusions of law and Conditions as appropriate.

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

Interested Persons are (reference 24 VSA 4465(b):

- (1) The applicant.
- (2) The Town of Middlebury and any adjoining Town.
- (3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of the application or appeal, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed.
- (4) Any ten or more persons (who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection) who, by signed petition to the DRB, allege that the application or appeal will not be in accord with the policies, purposes, or terms of the Middlebury Town Plan or Zoning and Subdivision Regulations. This petition to the DRB must designate one person to serve as the representative of the petitioners regarding all matters related to the application or appeal.

- (5) Any department and administrative subdivision of the State owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development.

C. Record of Proceedings: Proceedings at public hearings shall be recorded by video / DVD. At the request of one or more parties made at the outset of the proceedings, a record may be made by a court stenographer paid for by the requesting parties. Any transcript shall be made available to the Board.

D. Presentation of Evidence: All evidence upon which the applicant or other Interested Person 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 prefiled 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.

(2) The DRB may establish deadlines for identification of any expert witnesses and rebuttal witnesses and may organize and limit the time of expert testimony.

E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chair or Clerk/Secretary.

F. Examination: The Board members may examine witnesses. The Chair, or Vice Chair/Acting Vice Chair, shall rule on the relevance and may limit the scope of examination to ensure relevancy and efficient conduct of the proceedings 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 at any time 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.

J. Ex-parte Communications: While an application is pending, conversations or other communications 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 member 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) A member 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

VII. VOTING

A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum must be present. It is intended that alternates be assigned so that if possible, actions of the Board shall be decided by seven voting members. However, the Board shall have authority to act with a quorum of at least 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 staff 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 members voting in concurrence on a motion shall be considered a failure to act. An abstention shall not be treated as either a positive or negative vote.

C. Qualification to vote: A 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 viewed the video DVD of the testimony they have missed (or read any 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 by 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 and any conditions set by the Board on that

matter. The 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.

(1) A final decision of the Board shall be in writing and shall separately state findings of fact and conclusions of law.

(2) The findings shall explicitly and concisely state 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 contested 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 Clerk/Secretary shall cause copies of the decision to be delivered to each 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 24 VSA Chapter 117 and the municipality's plan and bylaws. An application for amendment or removal of a condition from a previously granted approval shall require a new warned public hearing, if the Board deems this to be a substantial change.

D. Minor vs. substantive changes: Changes, or requests for amendments to previously approved or preexisting developments that will have no substantive impacts under the Ordinance standards may be approved by the Administrative Officer. The Officer may consult with the Board, however such consultations with the Board shall be considered Administrative Officer decisions for the purposes of administration and any appeal.

If it is determined that an amendment or substantive change has occurred to an issue that was specifically contested [in a prior proceeding], then the change or amendment should be noticed to the Interested Persons and a hearing held. Alternatively, the Board may direct that changes be reviewed by notice to Interested Persons delivered by the applicant with proof of receipt, and if no request for hearing or objection is received within a reasonable time, the Board may act without holding a hearing.

In any event, the Board reserves the right to attach conditions as it deems appropriate to address the standards in the Zoning and Subdivision Regulations.

IX. REFERRALS AND EVALUATION REQUESTS

A. Request for Other Official or Board or Independent Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate department or official, or Board or Committee, or from an independent expert retained by the Board, an evaluation of the impact a proposed

development application will have on any of the standards, review criteria or technical matters arising from the submissions of parties or otherwise covered under the Zoning and Subdivision regulations. This information or report may be presented as testimony at the public hearing and shall become part of the public record.

X. DELEGATION; HEARING OFFICER.

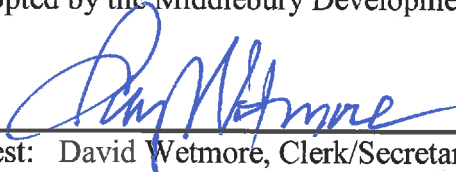
Any of the powers set forth in these rules of procedure may be delegated by the Board to the Town Planner as a hearing officer, or to another specifically authorized agent or representative, except where such delegation conflicts with the Vermont Municipal Administrative Procedure Act, 24 VSA Chapter 36.

Any decision of a hearing officer or agent shall be reported to the Board and the Board may adopt, modify or reject such decision. Any decision, modification or rejection shall be made as provided in Section VIII above.

XI. ADOPTION

These rules of procedure are hereby adopted by the Middlebury Development Review Board, pursuant to 24 VSA 4461(a), and shall replace all prior such rules.

Adopted by the Middlebury Development Review Board on April 22, 2019



Attest: David Wetmore, Clerk/Secretary