

CITY OF BARRE
DEVELOPMENT REVIEW BOARD
OPERATIONAL BY-LAWS AND CONFLICTS OF INTEREST POLICY
Revised 11/03/05; Revised 11/01/18

ARTICLE I. Authority and Policy

The Development Review Board of the City of Barre has adopted these Operational Bylaws and Conflict of Interest Policy (hereinafter referred to as the Rules) in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h), and must conduct its proceedings in accordance with Vermont's Open Meeting Law.

These Rules are adopted to ensure consistent and fair treatment of applicants and interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no DRB member will gain a personal or financial advantage from his or her service on the DRB, so that the public trust in municipal government will be preserved. Anything not explicitly conveyed in these bylaws shall be governed by Robert's Rules of Order.

ARTICLE II. Definitions

The following definitions apply to these Rules.

1. **DRB**— the City of Barre Development Review DRB.
2. **DRB member** — a regular or alternate member of the DRB.
3. **Conflict of interest**— any one of the following:
 - a. A direct or indirect personal interest, and/or direct or indirect financial interest of a DRB member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
 - b. A situation where a DRB 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.
 - c. A situation where a DRB member has not disclosed ex parte communications with a party in a proceeding before the DRB, pursuant to Section XII of these Rules.

4. **Deliberative session** — a private session of the DRB to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor is a deliberative session required to be publicly noticed. The DRB shall enter deliberative session by majority vote, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.
5. **Executive session** — a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
6. **Ex parte communication** — direct or indirect communication between a DRB member and any party, party's representative, party's counsel or any person interested in the outcome of any proceeding before the panel, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
7. **Official act or action** — any legislative, administrative or quasi-judicial act performed by any DRB member.
8. **Public deliberations** — the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
9. **Recuse** — means to remove oneself from a particular DRB proceeding because of a real or perceived conflict of interest.

ARTICLE III. Officers and Duties

The DRB shall consist of nine (9) regular members with alternates appointed by the City Council. These memberships consist of two (2) from each Ward and three (3) at-large members. Appointment to the DRB shall be for a term of four (4) consecutive years. No more than one member from each ward shall be appointed in a given year, except to fill vacancies, and not more than three (3) members shall be appointed in any one given year, except to fill vacancies. Members may be appointed to successive terms without limitation. Any member desiring reappointment to the DRB must apply to the Director of Planning in writing.

At a meeting in May of every year, the DRB shall hold an organizational meeting and elect by majority vote, a Chair and Vice Chair from its members, and shall elect a Clerk who may or may not be a DRB member or a municipal employee. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the DRB.

1. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint members to any committee of the DRB. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.

2. The Vice Chair shall assume the duties and powers of the Chair whenever the Chair is absent, recused or at the Chair's request. In the event that both the Chair and Vice Chair are absent or recused, the remaining longest serving member of the DRB shall assume the duties of the Chair.
3. Signature: The Chair or Vice-Chair of the DRB shall sign all decisions of behalf of the DRB.
4. Planning and Permitting Department staff shall assume the responsibilities of Clerk of the DRB.
5. It shall be the duty of all the members to review the minutes and other official records of the DRB meetings and actions, and correct and ratify these when appropriate and necessary.
6. Alternate members are appointed to temporarily serve as DRB members in the event of a recusal or absence or vacancy of one or more regular members.
 - a. Whenever a regular member is recused or is expected to be absent from the DRB, the Chair of the DRB, or the designee, may request that an alternate serve as an active member of the DRB by selecting an individual from the roster.
 - b. An alternate member who is called upon to serve shall be required to be a part of the DRB until a final decision is made on an application heard by the DRB while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.
7. Upon majority vote, the DRB may request that the City Council remove a DRB member from the DRB. DRB members may be removed for cause by the City Council upon written charges and after a public hearing (24 VSA §4460(c)). The DRB may also recommend to the City Council replacement of any member who has missed three (3) consecutive meetings without a reasonable justification.

ARTICLE IV. Meetings and Hearings

1. Regular meetings of the DRB for the hearing of cases shall be held on the first Thursday of each month beginning at 7 p.m. in City Hall, or other publicly accessible location, as warranted based on the number of projects pending. If there are no cases pending or there is no other business to transact, then no meeting shall be held. The Chair may cancel meetings at any time.
2. 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.

3. A quorum shall consist of a majority of the entire DRB.
4. All meetings shall be open to the public unless the DRB has entered a closed deliberative or executive session. The DRB may only hold an executive session pursuant to the reasons permitted by 1 VSA §313, and only after a majority vote to enter executive session.
5. All business shall be conducted in the same order as it appears on the agenda, except the Chair may alter the order of items to be considered as needed, such as to accommodate a late or missing project applicant.
6. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 VSA §312(h).
7. At each meeting, speakers may participate on an agenda item but only when recognized by the Chair. Such comment may be limited to three (3) minutes per speaker, unless the Chair sets a different time limit.
8. The DRB may recess a meeting or hearing if all applications cannot be disposed of on the day set to hear them. No further public notice shall be necessary provided that the date, time, and place of the recessed meeting or hearing shall be announced prior to adjournment.
9. DRB members may participate by telephone or other communication device as long as the absent member can hear everything that is occurring at the meeting, and everyone present at the meeting can hear the DRB member.

ARTICLE V. Proceedings and Order of Business

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

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

1. Open the proceeding by reading the warning of the proceeding.
2. Review the order of events on the agenda, reminding all present that the proceeding will be conducted in an orderly manner.
3. Request disclosure of conflicts of interest and ex parte communication.
4. In accordance with 24 VSA §4471(a), ask all persons who are interested in an agenda item to identify themselves at the time of proceeding on the item of interest, and to provide contact information on the sign-in sheet provided. The list of who signed in and who participated in the hearing, either verbally or in writing shall be noted in the minutes. Only an interested person who has participated in this proceeding may appeal any decision issued from this proceeding.

5. Direct the applicant or their representative, and all persons wishing to participate in a proceeding to take the following oath: *I hereby swear or affirm that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth, under the pains and penalties of perjury.*
6. Accept written information presented to the DRB, including but not limited to staff and other Boards/Commissions' recommendations.
7. Invite the applicant or the applicant's representative to present such application.
8. Invite DRB members to ask questions of the applicant, applicant's representative, or of City Staff.
9. Invite the public to present information regarding the applicant's proposal. Such comments shall be limited to three minutes per speaker, unless approved by a majority vote of the DRB members present. The DRB shall apply consistent time limits to all persons recognized to speak.
10. Invite the applicant, applicant's representative, city staff or members of the public to respond to information presented.
11. Invite DRB members to ask any additional questions or provide comments.
12. Allow final comments or questions from the applicant or applicant's representative.
13. Upon motion and majority approval, the Chair shall either adjourn the proceeding to a time certain, continue the proceeding without a time certain subject to additional public notice being provided as to the time and place of any future proceeding, or close the proceeding stating that this is the final public hearing on the matter.
14. Should new information become available, or the DRB finds it needs more information to render its decision after the close of the proceeding, but before the DRB decision, then the DRB may re-open the proceeding. No information can be received after the proceeding has closed.
15. The DRB shall deliberate and made a decision on an application in a closed deliberative session. Deliberative sessions are not open to the public and need not be warned.

ARTICLE VI. Executive Sessions

1. The DRB may hold an executive session from which the public is excluded after the affirmative vote of a majority of its members present. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session. Minutes of an executive session need not be taken, but

if they are, shall not be made public. The DRB may not hold an executive session except to consider one or more of the following:

- a. Contracts, mediation, civil actions, or prosecutions, where premature general public knowledge would clearly place the municipality at a disadvantage;
 - b. Discussion of the conduct of a DRB member;
 - c. A clear and imminent peril to the public safety.
2. Attendance in executive session shall be limited to the members of the DRB, and in the discretion of the DRB, its staff, legal counsel, and persons who are subjects of the discussion or whose information is needed.

ARTICLE VII. Voting and Decisions

The DRB will make decisions in deliberative session, which are not open to the public. Members of the DRB who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding, unless such absent DRB members review video or audio recordings of the proceedings.

1. The following rules shall apply to voting on decisions:
 - a. Motions shall be made in the affirmative.
 - b. All motions shall require a second for a motion to have the floor.
 - c. The chair has the same voting rights as all members and can make motions.
 - d. All members present are expected to vote unless they have recused themselves.
 - e. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
 - f. No member shall participate in any official action where he or she has a conflict of interest in the matter under consideration. This provision does not prevent the member from providing testimony as a hearing participant and does not require the member to leave the hearing room.
2. For a motion to succeed, it must receive the concurrence of the quorum of the DRB, or five (5) members of the DRB, regardless of how many members are present. 1 VSA §172; 24 VSA §4461(a).
3. The DRB shall issue a written decision within 45 days of the close of the final proceedings.

- a. In the case when a public hearing took place, a written decision signed by the Chair of the DRB constitutes a final decision. This written decision shall include any conditions of approval.

ARTICLE VIII. Site Visits

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

1. If, prior to the hearing, the Chair determines that a site visit by quorum of the DRB will be necessary, the site visit shall be publicly noticed in accordance with 24 VSA §4464(a)(1), (2) if it is scheduled to occur before the hearing.
2. If necessary, the DRB may recess and conduct a site visit at a property which is the subject of an application before them.
3. If necessary, the DRB may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the DRB.
4. 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

Staff shall provide a sign-up sheet for individuals present at the hearing to provide contact information and to identify the agenda item of interest. A service list shall be prepared from the provided sign-up sheet and from any persons who provided testimony or requested to be added on the service list in writing. All decisions of the DRB, related to the particular agenda item, shall be mailed to those on the list.

Section X. Conflicts of Interest

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

1. **Participation.** A DRB member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration.
2. **Disclosure.** At all hearings, DRB members shall disclose all potential conflicts of interest. The nature of the conflict shall be noted in the minutes of the proceeding.
 - a. When recognized by the Chair, any person may request disclosure of potential conflicts of interest. Nonetheless, after disclosing a conflict or perceived conflict, if a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall state on the record the nature of the potential conflict of

interest, and the reason(s) why the member believes he or she is able to act in the matter fairly, objectively, and in the public interest.

3. **Recusal.** A DRB member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - a. The applicant or any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
 - b. The DRB may, by majority vote, (exclude or recuse) one of its members if there is reasonable public perception that a conflict of interest exists.
 - c. A DRB member who has recused him or herself from a proceeding shall not sit with the DRB, deliberate with the DRB, or participate in that proceeding as a DRB member in any capacity.
 - d. If a previously unknown conflict is discovered, the DRB may take evidence pertaining to the conflict, and if appropriate, adjourn to a short deliberative session to address the conflict.
 - e. The DRB may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the DRB. The DRB may then resume the proceeding with sufficient members present.

Section XI. Ex Parte Communications.

Ex parte communication is prohibited. Any DRB member who inadvertently conducts ex parte communication must disclose such communication.

1. DRB 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 shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the ex parte communication, which shall become a part of the record of the proceedings.

ARTICLE XII. Amendments

These operational bylaws may be amended at any regular meeting by an affirmative vote of a quorum of the DRB provided that such amendment has been presented in writing to each member at least 24 hours preceding the meeting at which the vote is taken.