

**WARREN DEVELOPMENT REVIEW BOARD
RULES OF PROCEDURE**

Article I. Governing Rules

- 1.1 **Source of Authority.** The Development Review Board of the Town of Warren shall be governed by the provisions of all applicable state statutes, municipal bylaws, and these rules.
- 1.2 **Establishment of the Board.** As used in these rules, the term “board” shall mean the development review board duly appointed by the Town of Warren selectboard in accordance with 24 V.S.A. §4461.
- 1.3 **Adoption.** Upon adoption, a copy of these rules and all amendments shall be filed with the town clerk as a public record and posted in one or more public places.
- 1.4 **Amendments.** These rules may be amended at any regular meeting by an affirmative vote of a quorum of the board provided that such an amendment has been presented in writing to each member of the board at least 48 hours prior to the meeting at which the vote is taken.

Article II. Appointments

- 2.1 **Members.** Members of the development review board shall be appointed by the selectboard and may be removed for cause by the selectboard upon written charges and after public hearing in accordance with 24 V.S.A. §4461.
- 2.2 **Alternates.** In situations when one or more board members are disqualified due to a conflict of interest, or are otherwise unable to serve, the selectboard may assign alternates to the board for a term to be determined by the selectboard.
- 2.3 **Vacancies.** Vacancies shall be filled by the selectboard for unexpired terms and upon the expiration of such terms.
- 2.4 **Notification.** For the purpose of maintaining a quorum the secretary, at the direction of the chairperson, shall give immediate notice to the selectboard of a board vacancy, or in the event of a disqualification, the request for an alternate appointment.

Article III. Officers & Duties

- 3.1 **Election of Officers.** At the first meeting in _____ of each year, the board shall elect by majority vote a chairperson, vice chairperson and secretary. The secretary may or may not be a member of the board. These officers shall perform the duties prescribed by state law, municipal bylaws, and these rules.
- 3.2 **Chairperson.** The chairperson shall call and preside over all meetings, hearings, and deliberative sessions of the board; shall maintain order and decide all questions of order and procedure, subject to these rules; and shall appoint any committees found necessary to carry out the business of the board. The chairperson may administer oaths and compel the attendance of witnesses and the production of material germane to any matter before the board. The chairperson shall have the

same right to act on matters before the board as other members, including the right to make and second motions. The chairperson's signature shall be the official signature of the board and shall appear on all decisions of the board.

- 3.4 **Vice Chairperson.** The vice chairperson shall assume the duties and powers of the chairperson in the chairperson's absence.
- 3.5 **Secretary.** The secretary shall conduct all official correspondence, subject to these rules and the direction of the board; shall issue forms, compile all information, maps and records for board review; shall send out all notices required by law and these rules; shall keep the minutes of all board actions and proceedings; shall keep records of the board's examinations and other official actions; and shall perform other duties as directed by the board.
- 3.6 **Vacancies.** Any vacancy among the officers of the board shall be filled by election, for the unexpired term, at the next regular meeting of the board.

Article IV. Conflicts of Interest

- 4.1 **Avoidance.** In order to secure, protect and preserve the highest level of public trust in the deliberations and decisions of the board, it is incumbent upon each member not only to avoid any act which constitutes a conflict of interest established in law and these rules, but also to avoid any act which gives the appearance of an undue special privilege or a conflict of interest.
- 4.2 **Definition.** Conflict of interest shall mean that the board member, his or her spouse, relative by blood or marriage (parent, child, sibling, grandparent or grandchild), business associate, employer or employee, has a direct personal or pecuniary interest in the outcome of a case, proceeding, application, or any other matter pending before the board. A conflict of interest will not arise in the case of votes or decisions on matters in which the board member has a personal or pecuniary interest in the outcome no greater than that of other persons generally affected by the decision.
- 4.3 **Disqualification.** No member shall participate in matters before the board in which he or she has a conflict of interest, nor appear for nor negotiate on behalf of any person or organization in matters pending before the board. If a conflict of interest exists, the board member shall withdraw from all participation with the board regarding the matter, including all formal and informal discussions, voting and deliberations by the board. When a member has withdrawn he or she shall not sit with the board at any time when the board is considering the matter, and shall leave the meeting room at the time of the final vote.
- 4.4 **Disclosure.** A board member who has reason to believe that he or she may have an apparent conflict of interest, but is able to act fairly, objectively and in the public interest in spite of the conflict shall, prior to participating in any official action on the matter, prepare a statement describing the nature of the potential conflict, and an explanation of why he or she does not have a conflict and can act fairly, objectively and in the public interest. The statement shall be signed by the chair and filed as part of the record of the meeting.
- 4.5 **Recommendation to Withdraw.** Other members of the board shall have the authority to question a board member about a possible conflict of interest, and to recommend that the member withdraw him or herself from the matter. If the member believes that he or she does not have a conflict of interest, or can act fairly, objectively and in the public interest in spite of the apparent conflict, he or she shall, prior to participating in the matter, prepare a disclosure statement to be signed by the chair and entered into the record of the meeting, as required under Section 3.4.

- 4.6 **Complaints.** In the event that a board member with a conflict of interest refuses to withdraw from related board proceedings, a formal complaint may be filed in writing with the Warren Selectboard. The selectboard shall have the authority to order the board member to withdraw from the matter, and to appoint an alternate, as appropriate.

Article V. Meetings & Minutes

- 5.1 **Open Meeting Law.** All meetings of the board shall be held in accordance with the requirements of the Vermont Open Meeting Law, 1 V.S.A. §310, et seq. All meetings and hearings of the board, with the exception of deliberative sessions under Section 7.2, shall be open to the public and include opportunity for public comment.
- 5.2 **Regular Meetings.** Regular meetings of the board to conduct business and public hearings shall be held on the _____ and _____ of each month unless no cases are pending or there is no other business to transact, in which case no meeting shall be held. The chairperson shall give each member of the board at least 24 hours prior notice of a meeting cancellation. A cancellation notice shall also be posted at the town office. Agendas for regular meetings shall be posted at the town office, and provided upon request prior to meetings.
- 5.3 **Special Meetings.** A special meeting of the board may be called by the chairperson provided that at least 24 hours notice of the time, place, and business of such meeting is given to each member of the board. In addition, the board secretary shall post a notice of the special meeting in the town clerk's office and in at least two other public places in town at least 24 hours before the meeting.
- 5.4 **Continuation.** The board may continue a meeting or hearing if all 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 next session is announced prior to adjournment.
- 5.5 **Minutes.** The secretary of the board shall keep minutes of every regular or special meeting of the board. Minutes shall include at minimum the names of all board members present; all other active participants in the meeting; all motions, proposals, and resolutions made, offered and considered, and what disposition is made; and the results of any votes, with a record of the individual vote of each member if a roll call is taken. Minutes shall be matters of public record, and shall be made available for public inspection at the town office, during normal working hours, within five days of the date of the meeting or hearing. Copies shall be provided, at cost, upon request.

Article VI. Quorum & Voting

- 6.1 **Quorum.** For the conduct of any meeting or hearing and the taking of any action a quorum must be present, which shall be not less than a majority of the members of the entire board. A member of the board may participate electronically if the individual can hear everything that goes on at the meeting, and can be heard by all present. Similarly, a member can participate in a public hearing electronically, but cannot participate in the final decision unless the member is also able to review all physical evidence submitted in the case. To ensure a quorum, alternates may be appointed in accordance with Section 2.2.
- 6.2 **Majority Vote.** The taking of any action by the board shall require the concurrence of a majority of the members of the entire board, regardless of any unfilled vacancies or

disqualifications. If the board is unable to obtain the concurrence of a majority of its members due to the absence or disqualification of one of its members, the chair may recess and reconvene the meeting, within the time period required for action by statute, to reconsider the matter before its full membership.

6.3 **Tie Vote.** In the event of a tie vote, the proposition being voted shall be defeated.

6.4 **Abstentions.** Abstentions shall not count with the majority. If a member of the board abstains from voting for any reason, but thereafter does not leave the meeting room at the time of vote, such member shall be identified as abstaining with no vote cast.

Article VII. Public Hearings

7.1 **Applications.** Applications and notices of appeal shall be filed with the secretary of the board on forms provided by the town, together with the payment of a fee as set by the Warren Selectboard. Notices of appeal shall be filed by the applicant or other interested party, as defined by statute, within 15 days of the date of a decision or act of the administrative officer.

7.2 **Assignment for Hearing.** Applications and appeals shall be assigned by the secretary for hearing in the order in which they are received. All hearings shall be held within 60 days of the filing date of the application or notice of appeal. Where practicable, a hearing on a request for a stay of enforcement will be held within 15 days of the date of filing.

7.3 **Public Notice.** The secretary shall give public notice of a hearing for an application or appeal in a newspaper of general circulation in the town, post the notice in one or more public places within the municipality, and mail a copy of the notice to the applicant or appellant at least 15 days prior to the hearing date. For a request for a stay of enforcement, public notice will be given in a newspaper of general circulation, posted in at least two public places, and mailed to the appellant at least 5 days prior to the hearing date unless, in the board's judgement, circumstances require prompt action and abbreviated notice.

7.4 **Information Requests.** The board may request from the planning commission or other municipal or state official an evaluation of the impact that the proposed application will have on traffic, the environment, or municipal services, facilities and finances. This information or report shall be presented at public hearing.

7.5 **Record of Proceedings.** Proceedings at a public hearing may [*shall?*] be recorded either electronically or by a stenographer, at the discretion of the board. A transcript of the proceedings shall be made available at request, upon payment of the costs of transcription.

7.6 **Conduct of Hearing.** The board shall provide the applicant or appellant, and all interested persons as defined by statute, with the opportunity to appear and be heard at the hearing, present evidence, question other parties to the proceedings, and be represented by an agent or attorney if the party desires. The order of proceedings generally shall be as follows:

- Identification for the record of all board members present.
- Recitation of the case number, if any, the name of the applicant or appellant, the property at issue, and the matter of business at hand for board consideration.
- Identification or disclosure of any conflicts of interest.
- Administration of an oath by the chair swearing in all parties to the proceedings.
- Presentation by the applicant or appellant and associated witnesses.
- Questions to the applicant by the administrative officer and/or other interested parties.

- Presentation(s) by the administrative officer and/or other interested parties and associated witnesses.
- Questions by the applicant to other interested parties.
- Board request for additional information, if any.
- Adjournment (to a place, date and time, if continued).

7.7 **Rules of Evidence.** In appeal proceedings [*in all hearings?*], the hearing shall be conducted in accordance with applicable rules of evidence as set forth in 3 V.S.A. §810. All testimony shall be made under oath or affirmation. All evidence shall be presented at hearing and made a part of the hearing record. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available; however, upon request, parties shall be given the opportunity to compare the copy with the original. Irrelevant, immaterial or unduly repetitious evidence shall be excluded by the board. Facts that are common knowledge or part of an official record do not have to be proven by parties. When necessary to prove facts not reasonably susceptible to proof, evidence not normally admissible may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

7.8 **Ex Parte Communication.** Board members shall not communicate, directly or indirectly, with any applicant, participant or other person regarding any pending proceeding outside of a properly noticed board meeting. A board member who receives an ex parte communication on any issue related to a proceeding shall place on the record all written communications received, a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication. Exceptions to this include communications by a board member involved in another town committee where discussion of the application is necessary, and site visits at which only town staff and board members are present.

Article VIII. Application & Appeal Decisions

8.1 **Member Participation.** A member of the board may participate in deliberations and vote on a particular matter before the board only if that member has attended all hearing sessions pertaining to the proceeding, or has reviewed all recorded testimony, exhibits, and other physical evidence prior to deliberation.

8.2 **Deliberative Sessions.** Following adjournment of a hearing on an application or appeal, the board may hold one or more deliberative sessions to review testimony and evidence, make findings, and draft a final decision. The board shall not take additional testimony or evidence in deliberative session. Such sessions may be closed to the public, in accordance with state law, as long as the final written decision is made public.

8.3 **Issuance.** The board shall issue all final decisions pertaining to applications and appeals in writing, to include findings of fact, conclusions of law, and a record of the vote, within time periods specified under state statute and municipal bylaws. All final decisions of the board shall be signed by the chair, and include information on procedures for appeal to court. The secretary shall send the applicant or appellant a copy of the decision by certified mail. Copies of the decision shall also be mailed to every person who appeared and was heard at the hearing. The date of mailing and filing of the decision shall be entered into the official records of the board.

8.4 **Filing.** The secretary shall file a copy of the written decision with the administrative officer and the town clerk as part of the land records of the town, in accordance with state statute and municipal bylaws.

8.5 **Appeals to Court.** In the event that a board decision is appealed to court, upon receipt of a notice of appeal the secretary shall provide the appellant with a list of interested parties with instructions to give notice of appeal to all listed parties and the Environmental Court. Within 30 days after a notice of appeal has been filed, the secretary or administrative officer shall send all papers and exhibits related to the case on appeal to the clerk of the Environmental Court.

These rules of procedure were adopted by the Warren Development Review Board on the ____ day of _____, 2001.

Chairperson

Secretary