
**CITY OF VERGENNES
DEVELOPMENT REVIEW BOARD (DRB)**

**RULES OF PROCEDURE
AND
RULES OF ETHICS**

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DEVELOPMENT REVIEW BOARD (DRB)

Rules of Procedure and Rules of Ethics

Section I: Authority.

The DRB of the City of Vergennes hereby adopts the following rules of procedure and rules of ethics with respect to conflict of interest (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 his or her work for the board, so that the public trust in municipal government will be preserved.

Robert’s Rules of Order, newly revised “Procedures in Small Boards” is the basis of the DRB’s Rules of Procedures.

Section III: Definitions.

- A. “Board” means the DRB.
- B. “Board member” means a regular or alternate member of the DRB.
- C. “Conflict of interest” means any one of the following:
 - 1. A direct or indirect personal interest of a board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in-law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
 - 2. A direct or indirect financial interest of a board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in-law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
 - 3. A situation where a board member has publicly displayed a prejudgment of the merits of a particular proceeding before the board. This shall not

apply to a member's particular political views or general opinion on a given issue.

4. A situation where a board member has not disclosed *ex parte* communications with a party in a proceeding before the board, pursuant to Section XII of these Rules.
- D. "Deliberative session" means a private session of the board 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 shall a deliberative session be publicly noticed. The board may enter deliberative session by majority vote, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.
 - E. "Development Review Board (DRB)" means the Development Review Board (DRB) made up of board members and/or alternate board members as appointed by the City Council.
 - F. "Executive session" means 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.
 - G. "*Ex parte* communication" means direct or indirect communication between a member of the Development Review Board 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.
 - H. "Official act or action" means any legislative, administrative or quasi-judicial act performed by any board member.
 - I. "Public deliberations" means 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.
 - J. "Recuse" means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

Section IV: Officers.

At the first regular meeting in November of each year or at other times throughout the year as needed, the DRB shall hold an organizational meeting and elect by majority vote, a Chair, Vice-Chair, and Secretary.

- A. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint members to any committee of the board. The Chair may administer oaths and/or affirmations 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. The Secretary shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request.
- C. It shall be the duty of all members to review the minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.
- D. The DRB shall assure that minutes are taken at all meetings. The City Zoning Administrator (ZA) may act as the recording clerk for the DRB and take minutes of all meetings. In the case of absence, Conflict of Interest of the ZA, or appeal of an act made by the ZA, the Secretary or designated member of the DRB shall take minutes.

Section V: Alternate Members.

(The City Council may appoint alternate(s) who may temporarily serve as DRB members in situations when one or more members of the board are disqualified or are otherwise unable to serve.)

In the event that the City Council appoints alternate members:

- A. A roster of all alternate members shall be kept by the zoning administrator.
- B. Each alternate will be either primary or backup on a rotational basis.
- C. The alternates will be designated as primary for a period of 6 months.
- D. The alternate assignment calendar shall be established and maintained by the zoning administrator.
- E. Whenever a regular member has or suspects they have a conflict of interest or is expected to be absent from the DRB, the member shall promptly notify the Chair of the DRB or his or her designee. The Chair of the DRB, or his or her designee, shall designate an alternate to serve as an active member of the DRB by selecting an individual from the roster as provided in paragraph G.
- F. The assignment of alternates for active duty will begin with the first alternate designated as primary for the date they are activated. In the event that the primary is not available, the first alternate designated as backup will be contacted for activation.
- G. If the Chair of the DRB does not designate an alternate as required under paragraph A, a majority of the members of the DRB present and voting may designate an alternate to serve.
- H. The zoning administrator shall communicate assignment to the alternates.
- I. Activated alternates shall be required to be a part of the DRB until a final decision is made on any application heard by the DRB while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

Section VI: Regular and Special Meetings.

Regular meetings shall be held in City Hall at 7 p.m. on the first Monday of the month, or as otherwise warned as determined by the Chair. 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 entire board.
- C. Members may participate by telephone as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the board member.
- D. All meetings shall be open to the public unless the board has entered a deliberative or executive session. 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. The Chair shall determine the content of the agenda after consultation with the Zoning Administrator. The minimum standard agenda is as follows:

- Review and Accept Minutes of Previous Meeting(s)
- Report of Zoning Administrator
- Other Business

Section VII: Public Hearings and Order of Business.

Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2), as amended. Participation at hearings shall be limited to the applicant and to those granted interested person status or those allowed under subsection O below.

As to the conduct of the hearing, the Chair shall:

- A. Open the hearing by reading the public notice of the hearing.
- B. Review the order of events, remind all present that the proceeding will be conducted in an orderly manner, and make copies of these Rules available via the web at www.Vergennes.org.

- C. DRB members shall disclose conflicts of interest and *ex parte* communications and if deemed appropriate, recuse themselves from the proceedings.
- D. The ZA shall document interested parties in attendance for each hearing on the agenda.
- E. Direct the applicant or his/her representative and all interested persons 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.*
- F. Accept written information presented to the board.
- G. Invite the applicant or applicant's representative to present such application or proposal as is the subject of the hearing to the DRB.
- H. Invite board members to ask questions of the applicant or applicant's representative.
- I. Invite interested persons to present information regarding the application or proposal to the DRB.
- J. Invite the applicant, applicant's representative, or interested persons to respond to information presented to the DRB.
- K. Invite more questions or comments from members of the board.
- L. Allow final comments or questions from the applicant or applicant's representative to the DRB.
- M. Upon motion and majority approval, either continue the hearing to a time certain, or close the proceedings.
Upon final adjournment, the board, by vote can enter into deliberative session until a written decision is issued.

Section VIII: DRB Site Visits.

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:

- A. If, prior to a hearing, the board determines that a site visit will be necessary, the site visit shall be scheduled prior to a public hearing.
- B. If necessary, the board may recess a hearing and conduct a site visit at a property that is the subject of an application before the board.

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- C. If necessary, the board may adjourn a hearing to a time certain to conduct a site visit at a property that is the subject of an application 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 City Zoning Administrator shall create a list of individuals present at the hearing or who participated through the submission of written testimony in their absence. In the case of absence or Conflict of Interest of the ZA, the Secretary or designated member of the DRB shall create the list. All decisions of the board shall be issued in accordance with 24 V.S.A. §§ 4464 (b) (3).

Section X: Decisions.

The board may make decisions in deliberative session. Deliberative sessions are not open to the public and shall not be warned pursuant to 1 V.S.A. §§ 312(e), (f). Members of the board who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal are not allowed to vote unless they have reviewed audiotapes of the proceedings. The following rules shall apply to voting on decisions:

- A. Motions are encouraged to be made in the affirmative.
- B. The Chair has the same voting rights as other members and can make motions.
- C. No second shall be required for a motion to have the floor.
- D. All members present are required to vote unless they have recused themselves.
- E. For a motion to pass, it must receive the concurrence of a majority of the entire board, regardless of how many are present as required by 1 V.S.A. § 172; 24 V.S.A. § 4461(a).
- F. The board shall issue a written decision within 45 days of the final public hearing.
- G. The DRB may allow the attendance of the ZA or City Attorney at a deliberative session. However, the ZA is not allowed at a deliberative session involving an appeal of a decision or action of the ZA.

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 he or she has a conflict of interest in the matter under consideration. A board member shall not, personally or through any member of his or her 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 DRB.
- B. **Disclosure.** It is required that board members disclose all potential conflicts of interest as early as possible so that an alternate member can be notified in accordance with Section V

After disclosing a potential or perceived conflict, a member shall recuse oneself if deemed appropriate.

- C. **Recusal.** A board member shall recuse him or herself from any matter in which he or she has admitted to or has been determined to have a conflict of interest, pursuant to the following:
 - 1. A board member who has recused him or herself 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.
 - 2. 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.

Section XII: *Ex Parte* Communications.

Ex parte communication is prohibited. Any board member who inadvertently conducts *ex parte* communication must disclose such communication as required below.

- A. **Disclosure.** At each hearing, it is required that members disclose any *ex parte* communications. Board members who have received written *ex parte* communications shall place on the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the *ex parte* communication.

Section XIII: Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.

In cases where the conflict of interest procedures in Section XI have not been followed, the board may take progressive action to discipline an offending board member. In the discipline of a member, the board shall follow these steps in order:

- A. The Chair shall meet informally, in private, with the board member to discuss possible conflict of interest violation.
- B. The board may meet to discuss the conduct of the board member. Executive session may be used for such discussion pursuant to 1 V.S.A. § 313(4). The board member may request that this meeting occur in public. If appropriate, the board may admonish the offending board member in private.
- C. If the board decides that further action is warranted, the board may admonish the offending board member at an open meeting and reflect this action in the minutes of the meeting. The board member shall be given the opportunity to respond to the admonishment.
- D. Upon majority vote, the board may request that the offending board member resign from the board.

Section XIV: Removal.

Upon majority vote, the board may request that the legislative body remove a board member from the DRB. (Board members may be removed for cause by the legislative body upon written charges and after public hearing pursuant to 24 V.S.A. § 4460(c).

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(s) at least 24 hours before the meeting at which the vote is taken. Only those Section(s) of the Rules proposed for amendment, which are presented to the members prior to the meeting, may be amended at that meeting.