
RULES OF PROCEDURE

DEVELOPMENT REVIEW BOARD TOWN OF SHAFTSBURY, VT

May 2015

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Table of Contents

Rules of Procedure:	Shaftsbury Development Review Board.....	3
Section I:	Authority.....	3
Section II:	Policy.....	3
Section III:	Definitions.....	3
Section IV:	Regular Officers.....	4
Section V:	Alternate Members.....	4
Section VI:	Regular and Special Meetings.....	5
Section VII:	Public Hearings and Order of Business.....	6
Section VIII:	Site Visits.....	7
Section IX:	Evidence.....	7
Section X:	Service List.....	8
Section XI:	Decisions.....	9
Section XII:	Conflict of Interest.....	9
Section XIII:	Ex Parte Communication.....	9
Section XIV:	Removal.....	10
Section XV:	Amendments.....	10
Rules of Procedure:	Interested Person Information Sheet.....	11
Rules of Procedure:	Interested Persons Oral Testimony Oath.....	12
Rules of Procedure:	Interested Persons Record and Service List.....	13

DEVELOPMENT REVIEW BOARD

Rules of Procedure and Conflict of Interest Policy

Section I: Authority

The Development Review Board of the Town of Shaftsbury shall be governed by 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h), Town Zoning Bylaws, Subdivision Regulation, Road Access Ordinance, and the Rules of Procedure.

Upon adoption of these rules, The Chair shall file a current copy including all amendments to the Town Clerk as public record. Rules of Procedure shall be reviewed annually and updated when necessary.

Section II: Policy

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 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.

Section III: Definitions

- A. "Board" means the Development Review Board.
- B. "Board member" means a regular or alternate member of the Development Review Board.
- C. "Conflict of interest": refer to the Town of Shaftsbury Conflict of Interest Policy as approved by the Select Board for definition.
- D. "Deliberative session" means either a private or public session of the board to weigh, examine, and discuss the reasons for and against an act or decision. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. By motion and majority vote, the board may enter deliberative session during a hearing to consider a matter before it.
- E. "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.

- F. “Ex parte communication” means direct or indirect communication between a member of the 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.
- G. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any board member.
- H. “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.
- I. “Recuse” means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

Section IV: Regular Officers

The Board shall consist of five regular members. After Town Meeting but prior to May 1, or at other times throughout the year as needed, the Board shall hold an organizational meeting and elect by majority vote, a Chair and 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. Whenever the Chair and Vice Chair are absent, or at their request, the Chairman or Vice Chairman shall appoint someone, or in their absence the majority of the members of the Board present and voting may appoint someone to temporarily assume such duties.
- C. It shall be the duty of all members to review the minutes and other official records of Board meetings and actions, and correct and ratify these when appropriate and necessary.
- D. The Development Review Board Recording Clerk shall take minutes of all meetings, unless delegated to a Board member.

Section V: Alternate Members

The Select Board shall annually, or as needed, appoint up to two alternates who may temporarily serve as Board members when a full (five members) board is not present or individual full members are unable to serve for any reason.

- A. A list of alternate members shall be kept by the Board. The assignment of alternates for active duty rotates.
- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the Board, the chairperson of the Board, or his or her designee, shall appoint an alternate to serve as an active member of the Board by selecting an individual from the list as provided in paragraph A.
- C. If the chairperson of the Board does not appoint an alternate as required under paragraph B, a majority of the members of the Board present and voting may appoint an alternate to serve in accordance with paragraph B.
- D. An alternate member who is called upon to serve shall be required to be a part of the Board until a final decision is made on any application heard by the Board 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 to conduct business of the Board shall be held in the Town Hall at 7 p.m. on the first and third Wednesday of the month, or as warranted. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least 24 hour 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, by majority vote, has entered a private 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 Zoning Administrator and the Chair shall determine the content of the agenda.
- 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.
- 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 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. Hearings shall not exceed three hours in length unless approved by a majority of members present.

Testimony may be offered during the hearing with the permission of the chair. Such testimony, if recognized, shall be 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 in the following manner:

- A. Open the hearing by reading the warning 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.
- C. Request disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has participated in this proceeding may take an appeal of any decision issued in this proceeding.
- F. Ask all who believe they meet the definition of interested person to identify themselves and to provide contact information. The board shall not make any determination as to party status in all proceedings except for appeals of administrative officer decisions. As these Rules do not differentiate between persons with interested person status and those without, anyone seeking to participate in a proceeding may do so, subject to these Rules and those established by the Chair.
- G. Direct the applicant or his/her representative and all interested persons to step forward and sign the Hearing Service List.
- H. Accept written information presented to the board.
- I. Invite the applicant or applicant's representative to present such application or proposal.
- J. Invite board members to ask questions of the applicant or applicant's representative.
- K. Invite interested persons and members of the public to present their information regarding the application or proposal.

- L. Invite the applicant or applicant's representative to respond to information presented.
- M. Invite more questions or comments from members of the board.
- N. Invite more questions from interested persons and members of the public.
- O. Allow final comments or questions from the applicant or his/her representative or members of the board.
- P. Upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.
- Q. The board shall then conduct public deliberations, or may vote to enter deliberative session. See Section III-D of these Rules, 1 V.S.A. § 312(e).

Section VIII: Site Visits

The Board may convene at a site, 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 upon which a project or activity has been proposed. It is not a hearing. Members may visit a site individually, or as a Board. If a quorum of the Board is present, it is an open meeting and its date and time must be announced and/or posted in accordance with state law. Additionally, the Secretary shall attend and keep a record of the site visit. In order to avoid ex parte communication, statements, questions, concerns or suggestions among those present should be either presented in writing to the Board, or raised directly at the next appropriate hearing for the public record.

Section IX: Evidence

- A. Representation: An interested party may appear in person, or be represented by an attorney or agent. Any representative, other than the applicant, attorney or agent, shall file a notice of appearance authorized and signed by the property owner. Any interested party shall file a notice of appearance.
- B. Record of Proceedings: Proceedings at public hearings shall be recorded electronically and/or by a Secretary at the discretion of the DRB. A transcript of the proceedings may be made at the request of any party, upon payment of the reasonable costs thereof. Notwithstanding the recording of proceedings, the Board's Secretary shall take and publish minutes of all public meetings of the Board, as herein before provided.
- C. Presentation of Evidence: All evidence upon which the applicant or any other party wishes to rely shall be presented at the hearing, identified as to source, (i.e. applicant, interested party, agency, etc.), labeled and made a part of the hearing record.

- D. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chairperson, the Vice-Chairperson, or such other Town official as the Chairperson shall direct. See page 12 for “Interested Persons Oral Testimony Oath”
- E. Examination: The DRB members may examine witnesses. The Chairperson, or the Vice-Chairperson, if presiding, may rule on the relevance or objectivity of the examination. They may limit the scope of the examination to ensure relevancy and objectivity, and expedite the business of the Commission.
- F. Rules of Evidence: - Shall be in accordance 24 V.S.A Section 1206 "Rules of Evidence."
1. All testimony of parties and witnesses must be made under oath or affirmation. See page 12 for “Interested Persons Oral Testimony Oath”
 2. 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 under those rules may be admitted, if it is commonly relied upon by reasonably prudent people in the conduct of their affairs.
 3. 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 the witness is available for direct testimony and cross-examination at the hearing on this evidence.
 4. 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.

Section X: Service List

The Zoning Administrator shall create and maintain a list of all individuals who participated. The list shall include those who participated orally and those who participated in writing. All decisions of the board shall be made available to the public. The list shall include:

- A. The names of those who participated in the proceedings.
- B. The nature and content of participation by those who participated.
- C. The mailing address of each of these persons.

Section XI: Decisions

The board shall make its decisions by public deliberation, unless by majority vote it has determined to make a decision in deliberative session. Deliberative sessions are not open to the public and need not be warned. 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 shall not participate in that proceeding. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative to approve or deny an application.
- B. The Chair has the same voting rights as all members.
- 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 decision within 45 days of closing the public hearing.

Section XII: Conflict of Interest

Please refer to the current version of The Town of Shaftsbury Ethical Conduct and Conflict of Interest Policy, as adopted by the Select Board.

Section XIII: Ex Parte Communications

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

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 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.

Section XIV: Removal

Upon majority vote, the board may request that the Select Board remove a Board member. The Board member may be removed for cause by the Select Board upon written charges and after public hearing. 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 Board member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken.

TOWN OF SHAFTSBURY
RULES OF PROCEDURE
INTERESTED PERSON INFORMATION SHEET

Who are interested persons?

Interested persons are those persons who, under Vermont law, have the right to appeal an act or decision of the Shaftsbury zoning administrator or DRB. Interested persons include:

- The applicant or, if the applicant does not own the subject property, the person owning title to property.
- A municipality that has a plan or bylaw at issue in an appeal, or any municipality adjoining that municipality.
- A person owning or occupying property in the immediate neighborhood of a property that is the subject of any zoning decision or act who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will violate the municipal plan or bylaw.
- Any ten persons, either voters or landowners, who, by signed petition to the DRB, allege that the decision or act, if confirmed, will violate the municipal plan or bylaw. The petitioners must designate one person to serve as their representative.
- Any department or administrative subdivision of the State owning property within the municipality, and the Agency of Commerce and Community Development.

Why is interested person status important?

Though many members of the public may be interested in a zoning permit application, only statutorily-defined interested persons may appeal a decision of a zoning administrator or DRB. If an interested person fails to make a timely appeal, all interested persons are bound by the officer's or DRB decision or act.

Interested persons must participate in a hearing to protect their appeal rights.

Only those interested persons who have participated in a DRB proceeding may appeal a decision rendered in that proceeding to the Environmental Court. Pursuant to State statute, participation consists of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

Interested Persons Oral Testimony Oath

Applicant _____ Application # _____

Date of Hearing _____

Interested Persons Record and Service List

Under the 2004 revisions to Chapter 117, the DRB has certain administrative obligations with respect to interested persons. At any hearing, there must be an opportunity for each person wishing to achieve interested person status to demonstrate compliance with the applicable criteria [24 V.S.A. 4461(b)]. The DRB must keep a written record of the name address and participation of each person who has sought interested person status [24 V.S.A. 4461(b)]. A copy of any decision rendered by the DRB must be mailed to every person or body appearing and having been heard by the DRB [24 V.S.A. 4464(b) (3)]. Upon receipt of notice of an appeal to the environmental court, the DRB must supply a list of interested persons to the appellant in five working days [24V.S.A. 4471(c)].

AFFIRMATION:

The testimony you are about to give to the Town of Shaftsbury Development Review Board is the whole truth and nothing but the truth, under penalty of perjury. By signing your name below, you agree to the above affirmation.

NAME (Please Print) _____

SIGNATURE _____

ADDRESS _____

Participated in hearing: ___ Yes ___ No

Evidence/Statement of Concern Offered _____

Applicant _____

Application No. _____

Date of Hearing _____

***TOWN OF SHAFTSBURY
INTERESTED PERSONS RECORD AND SERVICE LIST***

Under the 2004 revisions to Chapter 117, the DRB has certain administrative obligations with respect to interested persons. At any hearing, there must be an opportunity for each person wishing to achieve interested person status to demonstrate compliance with the applicable criteria. 24 V.S.A. § 4461(b). The DRB must keep a written record of the name, address and participation of each person who has sought interested person status. 24 V.S.A. §4461(b). A copy of any decision rendered by the DRB must be mailed to every person or body appearing and having been heard by the DRB. 24 V.S.A. § 4464(b) (3). Upon receipt of notice of an appeal to the environmental court, the DRB must supply a list of interested persons to the appellant in five working days. 24 V.S.A. §4471(c).

This Interested Persons Record and Service List is intended to be used by the Zoning Administrator, or designated staff of the DRB, to record information regarding persons who have sought interested person status. A separate Interested Persons Record and Service List should be used for each application considered by the DRB. This Interested Person Record and Service List can be used in conjunction with a separate sign in sheet.

Name	Address	Participated in Hearing?	Evidence/Statement of Concern Offered
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____

Name	Address	Participated in Hearing?	Evidence/Statement of Concern Offered
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____