

**Town of Randolph**  
**Development Review Board**

**RULES OF  
PROCEDURE and ETHICS**

*Adopted – November 24, 1997*  
*Amended – February 9, 1999*  
*Amended – March 30, 1999*  
*Amended – March 27, 2001*  
*Amended – November 29, 2005*  
*Amended – October 23, 2012*

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## **ARTICLE I - ADMINISTRATION**

### SECTION 101 - AUTHORIZATION AND PURPOSE *(amended November 2005)*

The Town of Randolph Development Review Board, hereinafter referred to as the Board, has adopted these Rules of Procedure, hereinafter referred to as these Rules, as required in Section 4461 of Chapter 117 of Title 24 of the Vermont Statutes Annotated (VSA), and the zoning and subdivision regulations.

### SECTION 102 - AMENDMENTS

These rules may be amended at any 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 preceding the public meeting at which the vote is taken.

## **ARTICLE II - MEMBERSHIP AND PERSONNEL**

### SECTION 201 - APPOINTMENTS AND TERMS

#### A. Regular Members *(amended March 2001)*

The Board shall consist of seven regular members appointed by the Selectboard. New appointees shall be recommended by the remaining regular Board members. Each member shall serve a term of three years or shall complete a term, if appointed to fill a midterm vacancy. Term years shall commence and end at the first meeting of the Selectboard after the annual Town Meeting, commonly called the organization meeting. Terms shall be staggered so that no more than three expire in any one year.

#### B. Alternates

The Board may also have up to two alternates. Alternates shall be appointed by the Selectboard pending recommendation by the regular Board members. Each alternate shall serve a term of two years, as described above.

#### C. Administrative Officer *(amended November 2005 and October 2012)*

The Administrative Officer, hereinafter referred to as the Administrator, shall be hired by the Selectboard and serve a term of three years, all as prescribed by 24 VSA ch. 117. Similarly, the removal of the Administrator shall be as prescribed in 24 VSA ch. 117.

#### D. Support Staff

The Board may direct the Administrator to coordinate with the Town the hiring of a support staff member.

### SECTION 202 - REMOVAL OF MEMBERS *(amended November 2005 and October 2012)*

A. The Chair shall, in writing, ask the Selectboard for the removal of any Board member who is absent from three consecutive public hearings and is unable to provide an acceptable excuse to a majority of the members attending the 4th consecutive hearing, or whose repeated absences are hindering the function of the Board.

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- B. The Selectboard may remove any member as prescribed in 24 VSA ch. 117.

SECTION 203 - FILLING BOARD VACANCIES

- A. At the direction of the Chair, the Administrator shall give immediate notice of any vacancy to the Selectboard. Such notice shall include an advertisement in *The Herald* for two consecutive weeks and the posting of the notice in at least three public places including in or near the Town Clerk's Office.
- B. Any vacancy among the officers of the Board shall be filled by election, for the unexpired term, at the next public meeting of the Board.

SECTION 204 - ELECTION OF OFFICERS

- A. The officers of the Board shall consist of a Chair, Vice Chair, and a Secretary.
- B. Officers shall be elected by regular Board members following each year's new appointments. A candidate receiving a majority of the vote of the entire Board shall be declared elected and shall serve a term of one (1) year, or until his or her successor takes office.
- C. All officers shall be regular members of the Board.

SECTION 205 - DUTIES

The officers and alternate members of the Board, Administrator and support staff member shall perform the duties prescribed by state law, the Town of Randolph bylaws, and these Rules as described as follows:

- A. Chair (*amended November 2005*)
1. The Chair shall call the public hearing together, preside over all hearings and deliberative sessions of the Board, put all questions, maintain order, decide all questions of order and procedure, subject to these rules, shall appoint an Acting Secretary if necessary, and shall appoint any committees found necessary to carry out the business of the Board, subject to the order of a majority of the members of the Board.
  2. The Chair shall have the privilege of discussing all matters before the Board, and shall be allowed to make and second motions and shall vote thereon.
- B. Vice Chair  
The Vice Chair shall act for the Chair in his or her absence.
- C. Secretary  
The Secretary shall act for the Chair in the absence of the Vice Chair and the Chair. The Secretary shall fulfill the responsibilities prescribed by state statutes and shall keep the minutes of the meeting when the Administrator and/or other support staff is absent.
- D. Alternate Members
1. The purpose of alternates is to maintain a full board or as close to full as possible during public hearings. The duty of the alternates is to attend public hearings where a regular Board member or members are unable to attend for any reason. If a regular Board member must recuse him or herself from an application the alternate will be called to serve on the Board for that application only. For an ill or otherwise completely absent regular Board member, attendance of the alternate shall be for the complete agenda.

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2. An alternate that is called upon to serve shall be required to be a part of the Board until a decision is made on that application. This includes attending deliberative sessions and the continuance of the public hearing if it has been tabled or recessed.

E. Administrator (*amended November 2005*)

1. In addition to the duties of the Administrator as prescribed by state statute, the Administrator shall compile all information, maps, and records for the Board's review; shall send out all notices required by law, the zoning and subdivision regulations, and by these Rules; shall maintain clear records of all decisions made by the Administrator and the Board; shall promptly file all such decisions of the Board and minutes of meetings and hearings with the Town Clerk as a public record; shall provide the Board with staff notes which may include recommended actions; shall keep the minutes of hearings when the support staff member is not available; and shall assist the Board insofar as possible provided the requested assistance is reasonable and pertinent to the Board's duties and responsibilities.
2. The Administrator shall attend all hearings and deliberative sessions of the Board except if the matter is an appeal of an Administrator's decision. Planned absences and emergencies may dictate attendance. Frequent absences may be cause for removal from the position.

F. Acting and Assistant Administrators (*new November 2005*)

1. As prescribed by state statute, the Selectboard may appoint an Acting Administrator who shall have the same duties and responsibilities as the Administrator. The term of the Acting Administrator shall be clearly defined and shall include times of extended absences of the Administrator and when there is a conflict of interest as provided for in these Rules. The Acting Administrator's term shall continue until the matter in which he or she is acting has reached final adjudication.
2. Also as prescribed by state statute, the Selectboard may establish the position of Assistant Administrator. If so established, the exact duties and responsibilities of the Assistant Administrator shall be clearly defined.

G. Support Staff Member

The support staff member shall keep and prepare minutes of meetings and public hearings, as required by the Board. Prepared minutes shall be signed and delivered to the Administrator for filing and distribution.

## ARTICLE III - PUBLIC HEARINGS AND DELIBERATIVE SESSIONS

SECTION 301 - APPLICATION PROCEDURE (*amended March 1999*)

- A. When the Administrator has received a zoning permit application that requires Board approval, the Administrator shall deem the application complete prior to commencing public notification for the next scheduled public hearing date of the Board for which the application may be properly warned.
- B. An application shall be deemed complete when the Administrator determines that the application includes all of the following, as applicable:
  1. All applications - All required application forms and supplemental information sheets properly completed.

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2. All applications - List of abutters properly completed.
  3. All applications - The required application fee.
  4. All applications - Additional information the Administrator determines necessary for the Board to evaluate the application in accordance with the regulations.
  5. Site plan reviews - Site plan showing all the information required in the regulations.
  6. Subdivision reviews - Full-sized paper copy of the subdivision plat.
- C. The Administrator shall review application materials within 10 days of receipt of said materials. If the application is not complete, the Administrator shall inform the applicant of what is needed to complete the application. Failure of the Administrator to review an application within the 10 days of receipt shall not have any cause or effect. If the Administrator has not reviewed the application within 20 days of receipt, the Administrator shall commence public notification for the next scheduled public hearing date of the Board for which the application may be properly warned.
- D. Provided an applicant has submitted items 1, 2 and 3, and a site plan or sketch of a proposed subdivision (as applicable), an applicant may, at any time, request in writing that the Administrator commence public notification for the public hearing without the Administrator deeming the application complete. In such an event, the Administrator shall notify the applicant that the Board may not proceed with its review of the application at the scheduled hearing and/or may deny the application without prejudice because it is not complete. Upon receipt of the requisite number of copies of the materials, as required in the regulations, the Administrator shall commence public notification for the next scheduled public hearing date of the Board for which the application may be properly warned.
- E. Although the regulations require multiple copies of each exhibit (exhibits are application materials other than the required forms), it is not recommended that the applicant provide the Administrator with the requisite number of copies until such time as the application is deemed complete.
- F. The Board reserves the right to request additional information from an applicant for an application that the Administrator has deemed complete in order to evaluate the application.

SECTION 302 - PUBLIC HEARINGS *(amended March 2001, November 2005 and October 2012)*

- A. The Board shall hold public hearings as required in 24 VSA, Ch. 117.
- B. The Board shall conduct all public hearings in accordance with the Open Meeting Law, 1 VSA Sections 310-314. Additionally, the Town has adopted the Municipal Administrative Procedures Act (MAPA) as provided for under 24 VSA Ch. 36. As described in MAPA, the following shall occur for all public hearings of the Board:
1. The public hearing shall be audio recorded. A copy of the audio recording shall be in a secure location for a period of no less than two years from the date of the hearing, or longer if the recording is needed for an appeal of a Board decision. A transcript shall be made of the recording if so requested and upon payment of the reasonable costs of transcription. All costs for the making and copying of the transcript shall be borne by the person requesting it.

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2. The Chair shall swear in all persons who wish to provide testimony at a public hearing. No one shall be allowed to testify who has not been sworn in. Comments from persons who have not been sworn in shall not be considered evidence for any application.
- C. The Board may elect to hold deliberative sessions, as needed, pursuant to 1 VSA Section 312 (e-f), and as provided in Section 307 of these Rules.
- D. The Board may recess a public hearing for any reason.

SECTION 303 - PUBLIC NOTIFICATION *(amended November 2005 and October 2012)*

- A. All public hearings shall be warned and noticed as prescribed in 24 VSA §4464(a). The Administrator shall arrange to give the public notice, as required and prescribed in 24 VSA Ch. 117 and the zoning and subdivision regulations. However, it shall be the applicant's responsibility to provide the Administrator with the names and addresses of abutters and to post the notice of public hearing provided by the Administrator at the subject property as required in 24 VSA §4464(a)(1)(B) .
- B. Publishing of a public notification shall, when possible, be in *The Herald*. *The Times-Argus* shall be the secondary choice for publishing a public notice.
- C. Posting of a public notice shall be, at a minimum, in at least three public places, including in or near the Town Clerk's office, in Randolph Center and in East Randolph. Posting on the Town's website is encouraged.
- D. When a public hearing is recessed, its continuance shall not require public notification as herein described provided that the date, time, and place of the continuance is announced prior to adjournment.

SECTION 304 - ORDER OF BUSINESS

The order of business at all public hearings shall be as follows:

- A. Public to be heard
- B. Public Hearings (applications)
- C. Approval of minutes of previous hearing(s)
- D. Old business/new business
- E. Adjournment

SECTION 305 –MEMBER PARTICIPATION *(new November 2005)*

- A. Conflicts of Interest
  1. For the purposes of these Rules, a conflict of interest means a direct personal or pecuniary interest of a Board member, or the member's spouse, household member, business associate, employer, or employee, in the outcome of a matter under consideration by the Board. Conflict of interest does not arise in the case of decisions of matters in which the member has a personal or pecuniary interest in the outcome that is no greater than that of other persons generally affected by the decision.

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2. No Board member shall participate as a Board member in any hearing or vote on any matter in which he or she has a conflict of interest in the matter under consideration. Any member so recused shall not sit with the rest of the Board, but may remain in attendance for the public hearing.
3. If a Board member is confident that he or she has a conflict of interest in a matter under consideration, he or she shall inform the Chair and the Administrator in a timely manner that allows the Administrator to fill his or her seat with an alternate Board member. If there is a question as to whether a Board member's direct or indirect interest in a matter under consideration is a conflict of interest, he or she shall disclose the interest at the beginning of the public hearing for the matter. Upon disclosure, the remaining Board members shall determine, after allowing comment from the public present, if the interest is a conflict of interest. If the remaining Board members determine that it is, then that Board member must recuse him or herself from participating in that matter as a Board member. The appearance of any conflict of interest shall be avoided, if possible, in order to assure public confidence in the integrity of the Board.
4. Nothing in this subsection shall prevent a recused Board member from participating in the matter under consideration as a party if that Board member is so qualified.

B. Absences

1. Members shall not participate (deliberate or vote) as a Board member in any decision regarding an application unless they have heard all testimony and reviewed all other evidence submitted for the Board's decision. Presence at a site visit, if one was conducted, is not required.
2. Members who have not attended every public hearing and/or deliberative session on a matter under consideration may participate in the decision if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony, if available) and reviewed all exhibits and other evidence, prior to deliberation and vote. However, if more than one public hearing on the matter under consideration is missed, that member shall not participate in that decision.

SECTION 306 – EX PARTE COMMUNICATIONS *(new November 2005)*

- A. Board members shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the matter under consideration, on any issue in the matter under consideration, while the matter is pending, without notice and opportunity for all parties to participate.
- B. Any member who receives ex parte communication on any issue related to the matter under consideration 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.
- C. Board members are discouraged from discussing a matter that is or will be before the Board with 3 or more other members outside of the public hearing or a deliberative session.

SECTION 307 - MOTIONS, VOTING AND DECISIONS *(amended February and March 1999, March 2001, November 2005 and October 2012)*

- A. Quorum

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1. A quorum shall consist of a majority of the 7-member board.
2. To conduct a hearing or deliberative session, a quorum shall be present either in person or by telephone or video conference call.

B. Motions and Voting

1. All motions made by the Board regarding development approvals shall be positive (i.e., the motion shall be to approve or grant).
2. For the Board to take action, a motion shall receive at least 4 votes in the affirmative or the negative. That is, a motion shall not be considered as passing unless at least four (4) members of the Board vote to affirm a motion and, conversely, a motion shall be considered failed or denied if it receives at least four (4) negative votes. No action has been taken if a motion fails to receive at least 4 votes in either the affirmative or the negative. In this instance, the Board shall either continue deliberations until there is a concurrence of at least 4 members or all available absent Board members shall be called upon to participate pursuant to §305B. If necessary, alternate Board members may be called upon to participate as well.
3. Votes of abstention shall not be counted as either affirmative or negative votes.

C. Decisions

1. All decisions of the Board shall be put in writing and shall be binding when a quorum of the Board has signed and dated the Memorandum of Decision. The Board may not reconsider a vote nor re-open a public hearing once the written Memorandum of Decision has become binding. The Memorandum of Decision shall indicate which members participated in the matter and, if the decision was not unanimous, shall indicate which members did not agree with the majority. Dissenting member(s) may provide a dissenting opinion which shall be included in the Memorandum of Decision.
2. The Board may, at any time until either the written Memorandum of Decision becomes binding or until the "deemed approval" deadline per state statutes, whichever is first, move to reconsider a vote. A motion to reconsider a vote shall be made by a Board member who voted in the affirmative on the initial motion that passed or who voted in the negative on the initial motion that failed. Any member may second the motion to reconsider and all members who participated in the initial vote may vote on the motion.
3. The Board may, at any time until either the written Memorandum of Decision becomes binding or until the "deemed approval" deadline per state statutes, whichever is first, move to re-open the public hearing to hear new evidence. Any Board member may make a motion to re-open the hearing and all members who participated in prior public hearings for the application may vote on the motion. The public hearing shall require proper public notification.

SECTION 308 - DELIBERATIVE SESSIONS *(amended November 2005 and October 2012)*

- A. The Board may enter into as many deliberative sessions as necessary to reach a decision on the application within 45 days of the close of the public hearing. All decisions reached during deliberative sessions shall be put in writing and signed as prescribed in Section 307. The date, time and place of a deliberative session to be held does not have to be announced and shall be held at the convenience of the participating Board members.

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- B. Deliberative sessions shall not be publicly noticed and shall not be attended by the public.
- C. Deliberative sessions shall be attended by the Board members prepared to vote on the matter under deliberation and by the Administrator, except as otherwise provided in these Rules.
- D. No minutes shall be taken in a deliberative session.
- E. The Board may not hear testimony or consider new evidence at a deliberative session.

SECTION 309 - SITE VISITS *(amended November 2005)*

- A. Site visits are intended to enhance the Board's understanding of a proposed development and, as such, are encouraged. Any member of the Board or the Administrator may request a site visit, the date and time of which shall be scheduled with the applicant.
- B. Attendance at the site visit may include Board members, the applicant, abutters, the Administrator and any other interested parties. A quorum of the Board is not required. In order for the Board to consider any pertinent evidence received or noted at the site visit, it shall be entered into the record at the public hearing for the application by either a Board member or by a participant in the matter.
- C. Notification of a site visit shall involve the posting of the time and date of the site visit in at least three public places, including in or near the Town Clerk's office, in Randolph Center and in East Randolph, at least 48 hours before the scheduled visit. When practicable, the Administrator shall send notification to abutters.

These Rules, originally adopted November 24, 1997, are amended by the Development Review Board on this 23<sup>rd</sup> day of October, 2012.