

# **Town of Calais Development Review Board**

## **Rules of Procedure and Conflict of Interest Policy**

### **April 16, 2025**

#### **Section I: Authority.**

The Development Review Board (DRB) of the town of Calais hereby adopts the following rules of procedure (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 promote consistent and fair treatment of applicants, interested persons, and participants; orderly and efficient public proceedings; and compliance with state, federal, and local law. These Rules are intended to ensure that no board member will gain a personal or financial advantage from their 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 Action” means a decision of the Development Review Board made when a quorum is present.
- C. “Board member” means a regular or alternate member of the Development Review Board.
- D. “Business meeting” means a gathering of DRB members to discuss the business of the board, but not to conduct a public hearing or deliberative session.
- E. “Conflict of interest” means an actual conflict of interest which is 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.
- F. “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 need a deliberative session be publicly noticed. By motion and majority vote, the board may enter a deliberative session during a hearing to consider a matter before it.

- G. “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.
- H. “Full Board” means, for the purpose of a Business Meeting, all of the individuals appointed as regular members, not as alternate members of the DRB, and for the purpose of a Proceeding or Deliberative Session, all of the individuals appointed as regular members and any alternate members appointed for the matter.
- I. “Ex parte communication” means direct or indirect communication between a member of the DRB 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.
- J. “Interested person” means, pursuant to 24 V.S.A. § 4465(b), any one of the following:
  - 1. A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
  - 2. The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
  - 3. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, 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 not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
  - 4. Any 20 persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal. For purposes of this subdivision, an appeal shall not include the character of the area affected if the project has a residential component that includes affordable housing.
  - 5. Any department and administrative subdivision of this State owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the Agency of Commerce and Community Development of this State.
- K. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any board member.
- L. “Proceeding” means a meeting, which may include a public hearing or both, an executive session, or a deliberative session.

- M. "Participate in a hearing" means to offer oral or written testimony, evidence, or a statement related to the subject of the proceeding.
- N. "Perceived Conflict of Interest" means the existence of an interest by a member of the Board, not otherwise described in Section III(C), which causes another member of the Board, an applicant, an appellant, or a hearing participant to state on the record that they believe such relationship prevents the Board Member from participating as a quasi-judicial officer acting in a fair and impartial manner. The Board may discuss and either agree or disagree that the stated perceived conflict of interest nevertheless merits requiring recusal. Notwithstanding that agreement or disagreement, the Board Member may recuse themselves from a proceeding.
- O. "Potential conflict of interest" means one that may fall within the definition of conflict of interest (Section III-E) and which the board must discuss and decide whether it is an actual conflict of interest.
- P. "Public hearing" means a quasi-judicial session held in order to receive testimony from all interested parties on a proposed development and may result in issuance or denial of a development permit
- Q. "Quorum." A quorum for a business meeting is a majority of the full board; participation of alternates is welcome, but alternates do not count toward a quorum. A quorum for a Proceeding means a majority of the members of a DRB; if an alternate has been appointed for a Proceeding pursuant to Section V, that alternate shall be treated as a member of the DRB for the proceeding and shall count toward the quorum.
- R. "Recuse" means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

#### **Section IV: Regular Officers.**

The DRB shall consist of seven regular members. At a meeting held following Town Meeting and prior to May 1, 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 Clerk.

- A. The Chair presides at all meetings, hearings, and deliberations, decides all points of order or procedure, and appoints 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 assumes the duties of the Chair whenever the Chair is absent, or at the Chair's request.
- C. The Clerk assumes such duties of the Chair whenever the Chair and the Vice Chair are absent, or at their request.
- D. The Clerk takes minutes of all meetings, unless taking minutes is delegated to staff (whether an employee or volunteer of the Town of Calais) or another DRB member.
- E. All members have a duty to review the minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.

## **Section V: Alternate Members**

The Selectboard may annually, or as needed, appoint up to three alternates who may temporarily serve as DRB members in the event of a recusal or absence of one or more members.

If a regular member has a conflict of interest or is expected to be absent from the DRB, the chair, or their designee, shall appoint an alternate to serve as an active member of the DRB.

If the chairperson of the DRB does not appoint an alternate, a majority of the members of the DRB present and voting may appoint an alternate to serve if an alternate member is required either to have a quorum for a proceeding or to take board action.

An alternate member called upon to serve in a proceeding will continue to participate as a member of the DRB until a final decision is made on any application heard during that proceeding. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

When an alternate member is appointed for a proceeding, they shall be counted toward meeting a quorum and the majority needed for board action.

When an alternate member participates in a business meeting, that member does not count toward the quorum necessary to hold a public meeting. However, the alternate member in all other ways is a member of the DRB and may fully participate in all agenda items.

## **Section VI: Regular and Special Meetings.**

Meetings of the DRB shall be held as needed in the Town Hall or other public place.

In addition to all requirements of Vermont's public meeting law:

- A. Regular meetings are scheduled by resolution approved by the full board. They are generally scheduled on a monthly basis at the organizational meeting following Town Meeting and publicly announced as required for all public meetings. Regular meetings may be cancelled by the Chair if there is no business for the Board to address, or by the Vice Chair if asked by the Chair to assume the duties of the Chair. Agendas are posted at least 48 hours in advance of each meeting.
- B. 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.
- C. A quorum shall be established as defined in Section III.
- D. The DRB will hold all meetings with both an in-person and virtual option for participation. Members of the DRB and members of the public may participate using either option. The Chair will exercise discretion to recommend a vote to continue a hearing if the virtual option for participation has technical difficulties that cannot be easily resolved.

- E. All meetings shall be open to the public unless the board, by majority vote, 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.
- F. There shall be an agenda for each meeting. The Chair shall determine the content of any agenda. 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).
- H. The DRB will post its draft minutes and the recording of the meeting within five days on the Calais town website. The DRB will post its approved minutes within two weeks of their approval.

## **Section VII: Public Hearings and Order of Business.**

Public hearings are conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Hearings must be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2), as amended and as directed by the Selectboard for warning town of Calais meetings. The public notice shall include a statement of which criteria the board expects it will apply in review of the project and a statement that the board may apply other criteria as necessary. The Chair will make efforts to advise the applicant or appellant of the criteria it expects the DRB will use in reviewing the project in advance of the meeting.

The Chair conducts hearings in an orderly manner as follows:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events on the agenda and entertain any motions to change the agenda.
- 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. A member of the public who is not an applicant or appellant and wishes to give testimony in the hearing will be asked to identify for the record on what basis they believe they are an interested person. The board shall not make any determination as to interested person status in any proceeding.
- G. Direct the applicant or their representative and all persons who intend to testify to step forward and take the following oath: I hereby swear 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.

- 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 will 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 will vote to enter a private deliberative session. See Section III-E of these Rules, 1 V.S.A. § 312(e).

#### **Section VIII: Site Visits.**

Site visits are open to the public. The DRB does not take testimony or engage in any ex parte communication during site visits. Site visits will be held pursuant to the following conditions:

- A. Prior to a hearing, the Chair will determine if a site visit is necessary.
- B. Site visits will be, when possible, scheduled immediately prior to a public hearing. Such site visits shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2).
- C. If a site visit was not determined necessary prior to a public hearing the board may vote to recess a hearing to conduct a site visit at a property which 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 Clerk, another DRB member, or staff will create a list of all individuals who participated. The list will identify those who participated orally and those who participated in writing. All decisions of the board be mailed to those on the list. A template for a service list is appended to these rules. The

list shall include:

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

#### **Section X: Decisions.**

The board will make its decisions 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. Absent board members may participate if they have reviewed the audiotape or other recording of the proceedings, and any evidence submitted, subject to the written consent of the applicant and all putative interested persons. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The chair has the same voting rights as all members and can make motions.
- C. No second shall be required for a motion to have the floor.
- D. All members present are expected to vote unless they have recused themselves.
- E. Abstentions shall not count towards either the majority or the minority.
- F. For a motion to pass, it must receive the concurrence of a majority of the full board, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).
- G. The board shall issue a decision within 45 days of the final public hearing.

#### **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 they have a conflict of interest in the matter under consideration.
- B. **Disclosure.** At all hearings, the Chair shall request that board members disclose potential or perceived conflicts of interest.
  - i. A board member, the applicant or any person may request that a member disclose potential or perceived conflicts of interest and recuse themselves due to a conflict of interest. Such request shall not constitute a requirement that the member recuse themselves.

- ii. When a member discloses a potential or perceived conflict of interest or is asked about a potential or perceived conflict of interest, and the member believes there is no conflict of interest, the member shall explain why they are able to act in the matter fairly, objectively, and in the public interest.
  - iii. An applicant or a participant may state on the record that there is a perceived conflict of interest.
  - iv. Disclosure of potential and perceived conflicts and decisions about recusal will be noted by the Clerk in the minutes of the proceeding.
  - v. If a previously unknown conflict is discovered, the board may take evidence pertaining to the conflict, and, if appropriate, adjourn to a short deliberative session to address the conflict.
- C. **Decision.** A perceived conflict of interest may be determined by a vote of a quorum of the DRB to merit recusal of a board member
- D. **Recusal.** A board member shall recuse themselves from any matter in which they have a conflict of interest as decided by the board member or the board, pursuant to the following:
- i. A board member who has recused themselves from a proceeding shall not sit with the board, deliberate with the board, or participate in that proceeding in any manner as a board member in any capacity.
  - ii. 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.

Ex parte communication does not include the Chair (1) notifying the applicant or appellant of the criteria the Chair has determined are likely to be applied in reviewing a project or making a decision or (2) asking the applicant or appellant to provide additional information to the Board.

Board members who receive ex parte communications should direct these to the Chair to determine whether a response is necessary that would not be an ex parte communication by the Chair. Board members should not respond to ex parte communications. Any board member who inadvertently conducts ex parte communication must disclose such communication as required below.

At each hearing, the Chair shall request that members disclose any ex parte communications.

Board members who receive ex parte communications will place in the record copies of all written communications received as well as any written responses to those communications. At the



request of the Chair, a board member who has participated in an oral ex parte communication will reduce to writing their recollection of the substance of that oral communication, and the identity of each person participating. Such writing becomes a part of the record of the proceedings.

### **Section XIII: Removal.**

Upon majority vote, the board may request that the selectboard 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. 24 V.S.A. § 4460(c).

### **Section XIV: Amendments.**

These rules may be amended at any regular or special meeting by majority vote, provided that each DRB member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken.

**Adopted April 16, 2025**

*Applicant* \_\_\_\_\_

*Application No.* \_\_\_\_\_

*Date of Hearing* \_\_\_\_\_

## ***TOWN OF CALAIS***

### ***Development Review Board***

#### ***INTERESTED PERSONS RECORD AND SERVICE LIST***

Under the 2004 revisions to 24 V.S.A. 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 Clerk, or designated staff of the DRB to record information regarding persons who have sought interested person status. 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
		Yes	
		No	
		Yes	
		No	
		Yes	
		No	
		Yes	
		No	