

TOWN OF CALAIS DEVELOPMENT REVIEW BOARD

Rules of Procedure and Conflict of Interest Policy

Adopted July 10, 2021

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 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” 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 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 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.
- G. “Interested person”, pursuant to 24 V.S.A. § 4465(b) means 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 ten 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.

(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.

H. "Meeting" means at least a quorum of the DRB gathered to discuss the business of the board.

I. "Proceeding" means a meeting, which may include a business meeting or a public hearing or both, an executive session, or a deliberative session.

J. "Official act or action" means any legislative, administrative or quasi-judicial act performed by any board member.

K. "Participate in a hearing" means to offer oral or written testimony, evidence, or a statement of concern related to the subject of the proceeding.

L. "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.

M. "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.

N. "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 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. The Clerk shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request. The Clerk shall take minutes of all meetings, unless delegated to staff or another DRB member.

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.

Section V: Alternate Members.

The selectboard shall 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.

- A. An alphabetical roster of all alternate members shall be kept by the DRB. The assignment of alternates for active duty will begin with the first alternate in alphabetical order and rotate through the list until all alternates have served and rotation will be repeated.
- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the DRB, the chairperson of the DRB, or his or her designee, shall appoint an alternate to serve as an active member of the DRB by selecting an individual from the roster as provided in paragraph A.
- C. If the chairperson of the DRB does not appoint an alternate as required under paragraph B, a majority of the members of the DRB present and voting may appoint an alternate to serve in accordance with paragraph B.

An alternate member who is called upon to serve 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.

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

- 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 or other telecommunication method 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. Members of the public may also participate in person or remotely, subject to these rules and to the extent remote participation is provided.
- D. 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.
- E. There shall be an agenda for each meeting. The Chair shall determine the content of any 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 and as directed by the selectboard for warning town of Calais meetings. The public notice shall include a statement of which criteria the board will apply in review of the project and a statement that the board may apply other criteria as necessary.

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 interested person 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 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 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 may then decide whether to 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.

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 may be 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).
- B. If necessary, the board may recess a hearing to conduct a site visit at a property which is the subject of an application before the board.
- C. If necessary, the board may adjourn a hearing to a time certain 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 shall create 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 mailed to those on the list. A draft service list is appended to these rules. 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 X: Decisions.

The board may 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 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 entire 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 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.** At all hearings, the Chair shall request that board members disclose all potential conflicts of interest. When recognized by the Chair, any person may request disclosure of potential conflicts of interest.

After disclosing a conflict or perceived conflict, a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall disclose the nature of the potential conflict of interest, and the reason(s) why he or she is able to act in the matter fairly, objectively, and in the public interest. This shall be noted in the minutes of the proceeding. The chair may direct the clerk or other minute taker to record more or less detail about this depending on the nature of the conflict.

C. **Recusal.** A board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:

1. The applicant or any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
2. 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.
3. 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.
4. 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, 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 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 July 10, 2021

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
_____ _____	_____ _____ _____	<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	_____ _____ _____

