

PLANNING BOARD RULES OF PROCEDURE
TOWN OF DEERFIELD, NEW HAMPSHIRE
(11 January 2012)

I. AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (**RSA 676:1 (Method of Adopting Rules of Procedure)**).

II. MEMBERS AND ALTERNATES

1. The Planning Board shall consist of five members. The Selectmen shall designate one selectman as an ex-officio member with power to vote.

2. Selection, qualification, term, removal of members, and filling of vacancies shall conform to **RSA 673 (Local Land Use Boards)**.

3. Alternate members may serve on the Planning Board as authorized by **RSA 673:6 (Appointment, Number and Terms of Alternate Members)** and participate as nonvoting members, unless designated by the Chairperson to sit in the place of an absent or disqualified member, in which case they shall participate as voting members.

4. Up to five alternate members shall be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

5. At planning board meetings, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other board members, the applicant, abutters and the public. However, they shall not be allowed to make or second motions and shall not participate in any way during the deliberations by the board. Upon the close of the public hearing, alternates must remove themselves from the table and sit with other members of the public unless they are sitting in place of another member. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

6. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chair as soon as possible. The Chair shall designate one of the alternate members to sit in place of the absent or disqualified member. However, the Selectmen must designate their alternate if the selectman ex officio cannot serve. Members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

7. Each newly elected or appointed (including re-elected or re-appointed) member shall be sworn in and take an oath of office as required by **RSA 42:1 (Oath Required)**.

8. The Recording Secretary shall forward to the municipal clerk for recording the appointment/election and expiration dates of the terms of each member of the Board.

9. Vacancies in the membership of the Board occurring other than through expiration of term of office, shall be filled in accordance with **RSA 673:12 (Filling Vacancies in Membership)**.

III. OFFICERS AND STAFF

1. The officers of the Board shall be as follows:

- Chair: The Chair shall preside over all meetings and hearings; shall prepare, with the assistance of the Recording Secretary, an annual report; and shall perform other duties customary to the office.
- Vice-Chair: The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board in the absence of the Chair.

2. Recording Secretary: The Recording Secretary is not a member of the Planning Board. This position is administrative in nature to the Board and distributes and accepts planning board applications on behalf of the Board. He/she may assist the applicant in locating names and addresses of abutters and may determine the fees associated with the individual application and record those fees payable to the Town. Once the application is marked as received, the Recording Secretary creates a folder and turns the application over to the Town Planner. Any funds collected go to the depositor for the town selectmen's funds. After the application is reviewed by the Town Planner, the Recording Secretary in conjunction with the Town Planner and Planning Board Chair will create the monthly agenda and abutter notifications to be mailed certified mail. The Recording Secretary further will post the agenda at the Town Office, Post Office and emails the agenda to the Town of Deerfield web site administrator and others on the distribution listing.

The Recording Secretary and town planner shall attend each planning board meeting for the purpose of taking and recording meeting minutes which are to be available to the public within 5 business days from the date of the meeting. After the draft minutes are reviewed by the Chair and planner, they will be made available to the public.

The Recording Secretary in conjunction with the Town Planner prepares monthly package mailers to the members of the Board. Mailers must be sent to the members of the Board at least 5 days in advance of the meeting to allow for sufficient time for members to review the information.

Once a plan is appropriately signed, the Recording Secretary will send or transport the plan to the Rockingham County Registry of Deeds for recording.

3. Town Planner: Shall:

- a. provide technical support,
- b. Introduce new planning and community development techniques and theories to the Board.
- c. Coordinate with the building inspector/code enforcement officer to enforce local planning related ordinances and regulations.
- d. Respond to complaints of potential violations conveyed by the general public, staff and Board members.
- e. Follow through on enforcement procedures in the case of the violation of local regulations.
- f. Provide assistance to the public and the Board in the interpretation of Federal, State and local laws and regulations.
- g. Ensure that local regulations are in conformance with State laws.
- h. Assist in the development of new or revised local government ordinances, regulations and policies.
- i. Serve as a general conduit of information for the Board between various other board and committees serving the Town.
- j. Maintain continuous dialog between the Board and Selectmen.
- k. Attend various meetings as necessary to maintain effective communication between various boards.
- l. Maintain communication between town staff in relations to Board's activities and initiatives.
- m. Distribute information to the public.
- n. Serve as liaison between the Town and State agencies in regard to planning-related issues.
- o. Provide assistance to the public in preparation of applications to the Board.
- p. Utilize training opportunities and attends workshops and seminars to stay abreast of current planning techniques.
- q. Update the Board on various activities occurring in town such as major development projects, State programs and related endeavors.
- r. Oversee the maintenance of Board files and related records.
- s. Maintain logs and records necessary to monitor development activity in the community.
- t. Assist in the development of the Board's annual budget preparation.

3. The officers of the Board shall be elected annually during the month of March by a majority vote of the Board. If requested by a majority of those present, voting shall be by written ballot.

4. The Recording Secretary shall be an employee of the Town of Deerfield and shall keep a full and accurate record of the proceedings of each meeting; issue notices of all meetings; record the names of the members present; notify applicants and butters of hearings; and prepare such correspondence and fulfill such duties as the Chair may specify. In the absence of the Recording Secretary, the Chair shall appoint a Recording Secretary pro tem to keep records of the meeting.

5. If the Vice-Chair is not present, and the Chair is disqualified for any reason, a temporary Chair shall be appointed by the Chair for the matter under discussion.

6. Ex-officio member shall not serve as Chair.

7. Planning and Engineering Consultants shall: be appointed by the Board; be under contract to the Board; and perform all duties as specified in his/her contract. Consultants shall be retained in accordance with **RSA 673:16 (Staff; Finances)**.

IV. CONFLICTS OF INTEREST

1. Regular and alternate members shall not participate in deciding or sit in a hearing where the Board functions in a quasi-judicial capacity and where said member has a direct personal or pecuniary interest in the outcome of such decision or hearing different from the interest of other citizens or where the member could not meet the "juror" standard discussed in **RSA 673:14, I (Disqualification of Member)**. "Quasi-judicial" capacity means the Planning Board acting in the role of a "judge" relative to development applications.

Reasons for disqualification include when a member:

- a. Is related to the applicant or any abutter;
- b. Has assisted or advised the applicant or any abutter; or
- c. Is biased or prejudiced in any manner or to any degree which would in the eyes of a reasonable and prudent person, prevent the member from acting impartially with respect to the application before the Board.

2. The juror standard is contained in RSA 500-A:12 and provides the following guidelines:

- a. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:
 - (a) Expects to gain or lose upon the disposition of the case;
 - (b) Is related to either party;
 - (c) Has advised or assisted either party;
 - (d) Has directly or indirectly given his opinion or has formed an opinion;
 - (e) Is employed by or employs any party in the case;
 - (f) Is prejudiced to any degree regarding the case; or
 - (g) Employs any of the counsel appearing in the case in any action then pending in the court.

- b. If it appears that any juror is not indifferent, he shall be set aside on that trial.

3. Where uncertainty arises as to disqualification of a member under **RSA 673:14, I**, the Board shall vote on whether the potential member should be disqualified, per guidelines in **RSA 673:14, III**. Such a Board vote is advisory and is not binding on the affected member.

4. In the case of disqualification, an alternate member shall be chosen for Board action.

5. Board members who are abutters to a development proposal under review are automatically disqualified from deciding or sitting in hearing on said proposal.

6. In relation to **RSA 673:14**, Board members must exercise discretion in regards to "ex-parte" communication. Specifically, members should avoid conferring with development project applicants or their representatives, and with proponents, opponents or any other party with an interest in any development project outside of prescribed regular or special meeting times. However, members are free, as desired, to discuss development project

applications, pursuant to project review duties, with each other, the Board's Planning Consultant, other town staff and staff-consultants outside of regular or special meetings, given that any "quorum" discussion requires meeting notice.

V. MEETINGS

1. Regular meetings shall be held at least monthly at Deerfield Town Offices, Raymond Road, at 7:00 PM on the second and fourth Wednesday of each month, unless otherwise scheduled.
2. Special meetings may be called by the Chair or in her/his absence, by the Vice-Chair, or at the request of three members of the Board provided public notice and notice to each member is given at least 48 hours in advance of the time of such meeting. The notice shall specify the purpose of the meeting.
3. Nonpublic Sessions shall be held only in accordance with **RSA 91-A:3 (Nonpublic Sessions)**.
4. Quorum: A majority of the membership of the Board shall constitute a quorum, including alternates sitting in place of regular members.
5. When there are fewer members present to constitute a quorum but there are one or more alternates present, the Chair shall open the meeting and appoint one or more alternates to create a quorum.
6. A meeting may be cancelled due to inclement weather at the call of the Chair. Any meeting may be cancelled by a majority vote of the Board at a preceding meeting.
7. If any regular Board member is absent from a meeting or hearing, or disqualifies her/himself from sitting on a particular application, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member. Such alternate shall have all the powers and duties of a regular member in regards to any matter under consideration on which the regular member is unable to act. In the case of a disqualification, the alternate should continue until the matter is completed; the regular member does not vote on that matter.
8. Disqualification: If any member finds it necessary to be disqualified from sitting on a particular case, as provided in **RSA 673:14**, s/he shall notify the Chair as soon as possible so that an alternate may be requested to fill the place. The disqualification shall be announced by either the Chair or the member before the discussion or the public hearing on the application begins. The member disqualified shall leave the Board table during all deliberations and the public hearing on the matter.

If uncertainty arises as to whether a Board member should disqualify her/himself, on the request of that member or the request of another member of the Board, the Board shall vote on the question of whether that member should be disqualified. Such request and vote shall be made prior to or at the commencement of any required public hearing. A vote on a question of disqualification shall be advisory and non-binding, and may not be requested by persons other than board members.

9. Order of Business shall be as follows:

- a. Call to order by Chair
- b. Roll call by the Recording Secretary
- c. Minutes of previous meeting
- d. Reading of communications directed to the Board
- e. Report of officers and committees
- f. Unfinished business
- g. Hearings on subdivision/site plans
- h. Other business - public comment

10. A motion, duly seconded, shall be carried by an affirmative vote of a majority of the members present. Where there is not a unanimous vote, the Recording Secretary shall record those voting in favor and those in opposition to the motion.

11. A tie vote or an approval or denial by less than a majority of the entire Board constitutes no action.

12. If the Board is unable to obtain concurrence of a majority of its members on a motion because of the absence of one or more members from the vote, it shall continue the discussion or continue the matter for reconsideration.

VI. APPLICATIONS FOR SUBDIVISION AND SITE PLAN REVIEW

1. Applications for hearings before the Board shall be made on forms provided by the Board and shall be presented to the Recording Secretary of the Board or the Board's agent who shall sign and record the date of receipt.

2. Notice shall be given as required in **RSA 676:4, I (d) (Board's Procedures on Plats)** 10 days before a completed application is submitted to the Board.

3. Completed applications shall be accepted by majority vote of the Board and shall be scheduled for consideration within 30 days of acceptance.

4. The board shall reject all applications not properly completed.

VII. FORMS

All forms prescribed herein and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

VIII. NOTICE

1. Public notice of the submission of and public hearings on each application shall be given by posting at the town offices; post office; Mr. Mike's; and on the Town of Deerfield web site not less than ten (10) days prior to the date fixed for submission and consideration of the application.

2. Personal notice shall be made by certified mail to the applicant, all abutters and any professional whose seal appears on any plat not less than ten (10) days prior to the date fixed for submission of the application to the Board.

3. Personal notice may be waived by any person to whom such notice must be made under Subsection 2 above, if, despite the lack of personal notice as described in Subsection 2, the person is present at the hearing and agrees in writing to waive the personal notice requirement.

IX. PUBLIC HEARINGS

The conduct of public hearings shall be governed by the following rules:

1. The Chair shall call the hearing in session and identify the applicant or agent.
2. The Chair shall read the Notice of the Hearing and report on the manner in which public and personal notice was given.
3. The Board's Planning Consultant shall provide a report on the application as to whether the application is complete and whether or not it could be accepted by the Board.
4. The Board shall vote on whether the application shall be accepted.
5. Upon acceptance of the application, the Chair shall either open the public hearing or schedule a date for the hearing which is within 30 days of acceptance of the application.
6. Members of the Board may ask questions at any point during the presentation.
7. Any party to the matter who desires to ask a question of another party must go through the Chair.
8. Any applicant, any abutter or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the Board at each hearing.
9. Each person who speaks shall be required to state her/his name and address and indicate whether s/he is a party to the matter or an agent or counsel to a party to the matter.
10. The applicant or agent shall be called to present the proposal and those appearing in favor of the proposal shall be allowed to speak.
11. Those in opposition to the proposal shall be allowed to speak.
12. Those neither in favor nor in opposition may speak.
13. Other parties such as representatives of town departments and other town boards and commissions who have an interest in the proposal shall be allowed to present their comments in person or in writing.
14. The Chair shall indicate whether the hearing is closed or adjourned pending the submission of additional material or information or the correction of noted deficiencies. In the case of an adjournment, additional notice is not required if the date, time and place of the continuation is made known at the adjournment.

X. DECISIONS

1. The Board shall render a written decision within 65 days of the date of acceptance of a completed application, subject to extension or waiver as provided in **RSA 676:4 (Board's Procedures on Plats)**.
2. The Board shall act to approve, conditionally approve, or disapprove.
3. Notice of decision will be made available for public inspection at (location) within 5 business days after the decision is made, as required in **RSA 676:3 (Issuance of Decision)**. If the application is disapproved, the Board shall provide the applicant with written reason for this disapproval.

XI. RECONSIDERATION

The Planning Board may reconsider any decision to approve or disapprove an application, for good cause, provided it is within the statutory appeal period, i.e. 30 days after the date of written decision or the date the Board voted to approve or disapprove the application, whichever is greater. This may be done through a motion and that specifies the reasons for reconsideration. Upon successful passage of the motion, the board shall schedule a public hearing, with notice as provided in **RSA 676:4, I (d)**, where they shall consider whether or not to revise or alter their original decision. Should the board reach a new decision, a new appeal period shall be considered to have begun pursuant to **RSA 677:15**, et seq.

XII. RECORDS

1. The records of the Board shall be kept by the Recording Secretary and shall be made available for public inspection at the (office of the Board, or office of the Town Clerk) as required by **RSA 91-A:4**.
2. Minutes of the meetings including the names of Board members, persons appearing before the Board and a brief description of the subject matter shall be open to public inspection within 5 business days after the meeting as required in **RSA 91-A:2 ,II**.

XIII. E-MAIL AND OTHER COMMUNICATIONS BETWEEN MEETINGS

1. PURPOSE. The aims of this Article are:
 - a. To ensure compliance with the letter and spirit of the Right-to-Know Law, **RSA 91-A**, and with the Due Process rights of parties before the Board;
 - b. To clarify Board members' ability, between meetings, to research issues and prepare motions or other potential Board actions, thus promoting efficient use of meeting time, but only to the extent allowed by law; and,
 - c. To clarify the role of electronic media such as E-mail in achieving these goals.

2. DEFINITIONS. In this Article:

- a. Communication means a transfer of information, objective or subjective, from one person to another. It includes face-to-face or phone conversations, letters, memos, E-mails, web sites, or any other medium, regardless of the location or ownership of any device or equipment used.
- b. Distribution is a one-way communication between meetings involving more than one Board member where no between-meeting response (except acknowledgment of receipt) occurs or is expected.
- c. Exchange is a communication between meetings, or series of communications, involving more than one Board member which includes a between-meeting response, or expectation of a response.
- d. Ex Parte Communication is communication, other than at a legally-noticed meeting, between a Board member and a person with an interest in, or affected by, a pending or future case.

3. ACTIVITIES BETWEEN MEETINGS OF INDIVIDUAL MEMBERS. Individual Board members may, between meetings, prepare drafts of motions or other potential Board actions. They may also research or investigate general or specific factual issues. However, if the research pertains to a case, the member shall, at the public hearing, report all findings to the Board, and parties to the case shall be given a meaningful opportunity to respond.

4. DISTRIBUTIONS. A Distribution may be made to any number of Board members, so long as it does not become an Exchange. Whenever a member makes a Distribution concerning a pending or future case and it involves a quorum of the Board (counting all senders and recipients):

- a. A copy shall be forwarded to the Town Planner, who shall determine, under **RSA 91-A** or other applicable law, whether the Distribution is subject to public disclosure and shall place the copy in the appropriate file;
- b. The member making the Distribution shall report on it, and its contents, at the public hearing on the case unless the information is exempt from disclosure under **RSA 91-A**; and,
- c. Parties to the case shall be given a meaningful opportunity to respond to the information in the Distribution.

5. EXCHANGES. Exchanges involving a quorum or more of the Board or of any Planning Board Committee are prohibited. Such Exchanges shall be considered deliberations and shall occur only at meetings noticed in accordance with **RSA 91-A**. An Exchange pertaining to any activity allowed under Subsection 3 is permitted if the number of Board or Committee members involved is less than a quorum; however:

- a. Each member involved shall be responsible for preventing the number of members involved from reaching a quorum;
- b. Information discussed in, or generated by, an Exchange between members shall not be subject to further Distribution; and
- c. No Exchange shall include any vote or straw vote, or any Ex Parte Communication.

6. EX PARTE COMMUNICATIONS. Board members shall not initiate Ex Parte Communications. If an Ex Parte Communication is initiated by another person, the Board member contacted shall:

- a. Refrain from discussing the substance or merits of a case;
- b. Inform the person, if necessary, that such a discussion could lead to disqualification;
- c. Refer the person to the Planning Office or to a Board meeting, as appropriate; and
- d. Report on the conversation to the Board at a public meeting.

7. SCHEDULING AND AGENDA. Notwithstanding Subsections 4, 5, and 6, nothing in this policy prevents any Distributions, Exchanges or Ex Parte Communications which pertain solely to:

- a. Scheduling of meetings or hearings;
- b. The determination or ordering of agenda items or topics to be taken up at meetings or hearings; or
- c. General procedural requirements pertaining to such scheduling and agenda matters.

8. PLANNING BOARD COMMITTEES. A Planning Board Committee shall be considered a public body, and all provisions of **RSA 91-A** and this Article, applicable to a quorum of the Board, shall also apply to a quorum of a committee.

XIV. JOINT MEETINGS AND HEARINGS

1. The Planning Board may hold joint meetings and hearings with other "land use boards" including the board of adjustment, the Historic District Commission, the Building Code Board of Appeals, and the Building Inspector. Each board shall have discretion whether or not to hold such joint meeting or hearing **RSA 676:2 (Joint Meetings and Hearings)**.

2. Joint business meetings with another local land use board may be held at any time when called jointly by the chairmen of the two boards.

3. A joint public hearing must be a formal public hearing when the subject matter of the hearing is within the responsibilities of the boards convened.

4. The Planning Board chair shall chair all joint meetings and public hearings when the subject matter involves the Planning Board.

5. The rules of procedure for joint meetings and hearings, the subject matter of which involves the Planning Board, shall be the same as these rules of procedure except that the order of business shall be as follows:

- a. Call to order by Chair
- b. Introduction of members of both boards by Chair
- c. Explanation of reason for joint meeting/hearing by Chair
- d. In the case of a public hearing relative to a requested permit or an application for a plat approval, or both, the applicant shall be called to present his proposal.
- e. Adjournment

6. Each board involved in a joint public hearing makes its own decision, based on its criteria for the particular matter.

XV. AMENDMENT

The Board's rules of procedure may be amended by a majority vote of its members. The board shall vote to adopt or amend the Board's rules at a regularly scheduled meeting in accordance with **RSA 676:1 (Method of Adopting Rules of Procedure)**. The amended procedures shall be filed with the municipal clerk.

These rules were adopted by the Deerfield Planning Board on January 11, 2012.

Frederick J. McGarry, P.E., Chair

Katherine Hartnett, Vice Chair

William Perron, Selectmen Ex-Officio Member

Peter Schibbelhute

Lisa Wolford