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**TOWN OF ESSEX  
PLANNING COMMISSION  
RULES OF PROCEDURE AND  
CONFLICT OF INTEREST POLICY**

Adopted September 12, 1985

Last Amended: 08/28/2014

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**Section I: Authority.**

10 The Planning Commission of the Town of Essex hereby adopts the following Rules of  
11 Procedure and Conflict of Interest Policy (hereinafter referred to as these Rules) in  
12 accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h).

13  
14

**Section II: Policy.**

15  
16 These Rules are adopted to ensure consistent and fair treatment of applicants and  
17 interested persons, and participants, orderly and efficient public proceedings, and  
18 compliance with state and federal law. These Rules shall also ensure that no Commission  
19 member will gain a personal or financial advantage from his or her work for the  
20 Commission, so that the public trust in municipal government will be preserved.

21  
22

**Section III: Definitions.**

- 23  
24 A. "Applicant" means the individual, organization, or entity signing any application  
25 for review before the Planning Commission, or a designee.  
26  
27 B. "Commission" means the Planning Commission.  
28  
29 C. "Commission member" means a regular or alternate member of the Planning  
30 Commission.  
31  
32 D. "Conflict of interest" means any one of the following:  
33  
34 1. A direct or indirect personal interest of a Commission member, his or her spouse,  
35 household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt  
36 or uncle, brother or sister in law, business associate, employer or employee, in the  
37 outcome of a cause, proceeding, application or any other matter pending before  
38 the Planning Commission.  
39  
40 2. A direct or indirect financial interest of a Commission member, his or her spouse,  
41 household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt  
42 or uncle, brother or sister in law, business associate, employer or employee, in the  
43 outcome of a cause, proceeding, application or any other matter pending before  
44 the Planning Commission.

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- 45           3. A situation where a Commission member has publicly displayed a prejudgment of  
46           the merits of a particular proceeding before the board. This shall not apply to a  
47           member’s particular political views or general opinion on a given issue.  
48
- 49           4. A situation where a Commission member has not disclosed ex parte  
50           communications with a party in a proceeding before the Commission, pursuant to  
51           Section XII of these Rules.  
52
- 53   D. “Deliberative session” means a private session of the Commission to weigh, examine,  
54   and discuss the reasons for and against an act or decision. There shall be no taking of  
55   evidence or submission of testimony, nor need a deliberative session be publicly  
56   noticed. By motion and majority vote, the Commission may enter deliberative session  
57   during a hearing to consider a matter before it.  
58
- 59   E. “Executive session” means a session of a public body from which the public is  
60   excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one  
61   of the reasons permitted by the statute, and no binding action may be taken in  
62   executive session.  
63
- 64   F. “Ex parte communication” means direct or indirect communication between a  
65   member of the Commission and any party, party’s representative, party’s counsel or  
66   any person interested in the outcome of any proceeding before the panel, that occurs  
67   outside of a public proceeding, and concerns the substance or merits of the  
68   proceeding.  
69
- 70   G. “Official act or action” means any legislative, administrative or quasi-judicial act  
71   performed by any Commission member.  
72
- 73   H. “Public deliberations” means the weighing, examining, and discussing, in a public  
74   proceeding, the reasons for and against an act or decision, but expressly excludes the  
75   taking of evidence and the arguments of parties.  
76
- 77   I. “Recuse” means to remove oneself from a particular Commission proceeding because  
78   of a real or perceived conflict of interest.  
79

80   **Section IV: Regular Officers.**  
81

82   The Planning Commission shall consist of seven regular members appointed by the  
83   Selectboard. The Planning Commission shall hold an organizational meeting on or  
84   around July 1st each year and elect by majority vote, a Chairperson, Vice Chairperson  
85   and Clerk.  
86

- 87   A. The Chairperson shall preside at all meetings, hearings, and deliberations, decide all  
88   points of order or procedure, and appoint members to any committee of the  
89   Commission. The Chairperson may administer oaths and may request the attendance  
90   of witnesses and the production of material germane to any issue under consideration.

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91 The Chairperson or Vice-Chairperson shall sign all decisions on behalf of the  
92 Commission. The opportunity for all members to sign decisions will be provided but  
93 is not required.

94  
95 B. The Vice Chairperson shall assume the duties of the Chairperson whenever the  
96 Chairperson is absent, or at the Chairperson's request. The Clerk shall assume such  
97 duties whenever the Chairperson and the Vice Chairperson are absent, or at their  
98 request.

99  
100 C. The clerk shall conduct all official correspondence of the Planning Commission that  
101 has not been delegated to the Community Development Director.

102

103 **Section V: Attendance Policy.**

104

105 Less than 75% attendance in any fiscal year or two unexplained absences by a  
106 Planning Commissioner in a row is grounds for recommendation of dismissal to the  
107 Selectboard.

108

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

110

111 Regular meetings to conduct business of the Planning Commission shall be held in the  
112 Town Hall at 6:30 p.m. on the second and fourth Thursday of the month, or as warranted.  
113 The Chairperson may cancel meetings at any time.

114

115 A. A quorum shall be required to open any meeting. A quorum consists of a majority of  
116 the members of the entire Planning Commission regardless of vacancies or  
117 disqualifications.

118

119 B. Members may participate by telephone as long as the absent member can hear  
120 everything that is occurring at the meeting and everyone present at the meeting can  
121 hear the Commission member.

122

123 C. All meetings shall be open to the public unless the Commission, by majority vote,  
124 enters into a deliberative or executive session. The Commission may only hold an  
125 executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after  
126 a majority vote to enter executive session.

127

128 D. All business shall be conducted in the same order as it appears on the agenda, except  
129 that by majority consent, the Chairperson may alter the order of items to be  
130 considered and/or the time allotted.

131

132 E. The Chairperson shall rule on all questions of order or procedure and shall enforce  
133 these rules pursuant to 1 V.S.A. § 312(h).

134

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- 135 F. At each meeting, there shall be a ten-minute period of time reserved for public  
136 comment near the beginning of the meeting. The Chairperson may extend or reduce  
137 this period of time as necessary. Speakers may participate at other times throughout  
138 the meeting but only when recognized by the Chairperson. Such comment shall be  
139 limited to three minutes per speaker, unless by majority consent the Commission sets  
140 a different time limit. The Commission shall apply consistent time limits to all  
141 recognized to speak.  
142
- 143 G. Notice for hearings on the adoption, amendment, or repeal of the bylaws and other  
144 regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended.  
145
- 146 H. Open meetings: The Planning Commission shall conduct all meetings and business  
147 in accordance with the Vermont Open Meeting Law. 1 V.S.A § 310 et seq. *Robert's*  
148 *Rules, Newly Revised* shall be used for reference.  
149
- 150 I. Executive Session: The Planning Commission may enter into Executive Session to  
151 discuss matters as permitted by statute, provided that all decisions shall be made in  
152 public.  
153
- 154 J. Minutes: Meeting minutes shall be taken by staff. It shall be the duty of all members  
155 to review the minutes and other official records of Planning Commission meetings  
156 and actions, and correct and ratify those when appropriate and necessary. Unapproved  
157 minutes shall be marked "DRAFT" and shall be reviewed and approved by the  
158 Planning Commission at the subsequent meeting. All Planning Commission minutes  
159 and official papers shall be filed promptly by staff with the Town Clerk as a public  
160 record.  
161
- 162 K. The Planning Commission Chair shall sign and date the minutes with the date of  
163 approval by the Planning Commission.  
164
- 165 L. Tape recordings of meetings will be made available for the Planning Commission's  
166 use, or for the public, for a period of two years after the official minutes of the  
167 meeting have been approved.  
168
- 169 M. For the conduct of any hearing and the taking of any action, a quorum shall not be  
170 less than a majority of the members of the panel, and any action of the panel shall be  
171 taken by the concurrence of a majority of the panel pursuant to 24 V.S.A. § 4461(a).  
172
- 173 N. Tie vote: A tie vote constitutes no action by the Planning Commission.  
174
- 175 O. Special meetings may be called by the Chairperson, provided at least 24 hours notice  
176 is given to each member and the time and place of each special meeting is publicly  
177 announced at least 24 hours before the meeting.  
178

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

180

181 Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. §  
182 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§  
183 4464(a)(1),(2), as amended. Hearings shall not exceed three and one-half hours in length  
184 unless approved by a majority of members present.

185

186 Public comment may be offered during the hearing with the permission of the  
187 Chairperson. Such comment, if recognized, shall be limited to three minutes per speaker,  
188 unless by majority consent the Commission sets a different time limit. The Commission  
189 shall apply consistent time limits to all persons recognized to speak.

190

191 The Chairperson may conduct the hearing in the following manner:

192

193 A. Open the hearing by reading the warning of the hearing.

194

195 B. Review the order of events, remind all present that the proceeding will be conducted  
196 in an orderly manner, and make copies of these Rules available.

197

198 C. Review the definition of interested persons in 24 V.S.A. § 4465(b).

199

200 D. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has  
201 participated in this proceeding may take an appeal of any decision issued in this  
202 proceeding.

203

204 E. Ask all who believe they meet the definition of interested person to identify  
205 themselves and to provide contact information. The Commission shall not make any  
206 determination as to party status in all proceedings except for appeals of administrative  
207 officer decisions. As these Rules do not differentiate between persons with interested  
208 person status and those without, anyone seeking to participate in a proceeding may do  
209 so, subject to these Rules and those established by the Chairperson.

210

211 F. Direct the applicant or his/her representative and all persons to step forward and take  
212 the following oath: *I hereby swear that the evidence I give in the cause under  
213 consideration is accurate and true to the best of my knowledge.*

214

215 G. Accept written information presented to the Commission. Documentary evidence  
216 shall be marked by the Chairperson or Clerk in order of presentation and a record  
217 shall be maintained of what has been admitted and which party offered each  
218 document.

219

220 H. Ask the applicant or applicant's representative to present such application or  
221 proposal.

222

223 I. Ask Commission members to ask questions of the applicant or applicant's  
224 representative.

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- 225 J. Staff comments and input.  
226  
227 K. Ask interested persons and members of the public to present their information  
228 regarding the application or proposal.  
229  
230 L. Invite the applicant or applicant's representative to respond to information regarding  
231 the application or proposal.  
232  
233 M. Invite more questions or comments from members of the Commission.  
234  
235 N. Invite more questions from interested persons and members of the public.  
236  
237 O. Allow final comments or questions from the applicant or his/her representative or  
238 members of the Planning Commission.  
239  
240 P. Upon motion and majority approval, the Chairperson shall either adjourn the hearing  
241 to a time certain, or close the proceedings by stating that this is the final public  
242 hearing on the matter.  
243  
244 Q. Continuation of application: The Planning Commission may vote to continue an  
245 application if there is insufficient time or information to reach a decision. No further  
246 public notice shall be necessary, and the date, time and place that discussion of the  
247 application will resume shall be announced prior to adjournment.  
248  
249 R. The Commission shall then conduct public deliberations, or may vote to enter  
250 deliberative session. See Section III-D of these Rules, 1 V.S.A. § 312(e).  
251  
252 S. In accordance with Title 24 Vermont Statutes Annotated Section 4464 (b)(1), the  
253 Planning Commission shall issue a written decision, including findings of fact and  
254 conclusions of law, within 45 days of the date of the final public hearing on the  
255 application.  
256

257 **Section VIII: Consent Agenda**  
258

259 Minor site plan amendments, minor subdivision amendments, simple parceling and  
260 boundary adjustments may be handled through the following consent agenda procedure:  
261

- 262 A. Staff shall determine an application's eligibility for the consent agenda review  
263 process. If eligible, it will be placed on the agenda for next available Planning  
264 Commission meeting. All consent agenda items shall be warned as a public  
265 hearing.  
266  
267 B. Staff shall prepare a draft decision and distribute it to the Planning Commission  
268 prior to the meeting.  
269

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- 270 C. Staff shall notify the applicant, adjacent property owners, and other interested  
271 parties of the application, the draft decision, and the date on which the Planning  
272 Commission shall consider the item under its consent agenda.  
273
- 274 D. The Chairperson shall ask for public comments on consent agenda items at the  
275 beginning of the meeting. The Planning Commission may ask clarifying questions of  
276 the applicant or other interested party. An open dialogue, between staff, the  
277 Commission, the applicant and interested parties, is encouraged during the public  
278 comment section of the meeting  
279
- 280 E. By a majority vote of its membership, the Planning Commission may approve the  
281 agenda as a whole without discussion. If a member of the Planning Commission, the  
282 applicant, or other interested party requests a more complete hearing on an item on  
283 the consent agenda, that item may be withdrawn from the consent agenda by a  
284 majority vote of the Commission. A hearing shall be held on that item, either later in  
285 the meeting or to be continued at a subsequent meeting, if necessary.  
286

287 **Section IX: Site Visits.**  
288

289 Site visits shall be open to the public; however, no testimony shall be taken and no ex  
290 parte communication shall occur. Site visits shall be held pursuant to the following  
291 conditions:  
292

- 293 A. The Planning Commission determines if a site visit will be necessary and if so, the  
294 site visit shall be scheduled and publicly noticed in accordance with 24 V.S.A. §§  
295 4464(a)(1),(2).  
296
- 297 B. If necessary, the Commission may recess a hearing to conduct a site visit at a property  
298 that is the subject of an application before the Planning Commission.  
299
- 300 C. If necessary, the Commission may adjourn a hearing to a time certain to conduct a  
301 site visit at a property which is the subject of an application before the Planning  
302 Commission.  
303
- 304 D. The minutes of the proceeding shall reflect that a site visit was held, who was present,  
305 and the nature and duration of the site visit.  
306

307 **Section X: Service List.**  
308

309 Staff shall create a list of all individuals who participated in the proceedings by providing  
310 testimony either orally or in writing. All decisions of the Planning Commission shall be  
311 mailed to those on the list. The list shall include:  
312

- 313 A. The names of those who participated in the proceedings.  
314
- 315 B. The nature and content of participation by those who participated.

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317 C. The mailing address of each of these persons.

318

319 **Section XI: Decisions.**

320

321 The Commission shall make its decisions by public deliberation, unless by majority vote  
322 it has determined to make a decision in deliberative session. Deliberative sessions are not  
323 open to the public and need not be warned. 1 V.S.A. §§ 312(e), (f). Members of the  
324 Commission who have not heard all testimony and reviewed all evidence submitted for a  
325 particular application or proposal shall not participate in that proceeding. Absent  
326 Commission members may participate if they have reviewed an audiotape or videotape of  
327 the proceedings, or minutes of the meeting, and any evidence submitted. The following  
328 rules shall apply to voting on decisions:

329

330 A. Decisions shall be made in the affirmative or the negative as brought forth and  
331 seconded by two separate Commission members.

332

333 B. Decisions shall be in writing and shall include a statement of factual basis on which  
334 the Planning Commission has made its conclusions, as well as a statement of the  
335 conclusions.

336

337 C. The Chairperson has the same voting rights as all members and can make motions.

338

339 D. All members present are expected to vote unless they have recused themselves.

340

341 E. Abstentions are strongly discouraged and shall not count towards either the majority  
342 or the minority.

343

344 F. For a motion to pass, it must receive the concurrence of a majority of the entire  
345 Commission, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. §  
346 4461(a).

347

348 G. The Commission shall issue a decision within 45 days of the final public hearing.

349

350 **Section XII: Deemed Approved**

351

352 As required by the Town of Essex Outside the Village of Essex Junction Zoning  
353 Bylaws, the Planning Commission shall issue a written decision approving or  
354 disapproving any Site Plan or Final Plat within forty-five (45) days of the adjournment of  
355 the final public hearing. Failure to act within such period shall result in the application  
356 being approved effective on the 46<sup>th</sup> day.

357

358 **Section XIII: Conflicts of Interest.**

359

360 Participation, disclosure of conflicts, and recusal shall be governed by the following  
361 procedures:

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A. **Participation.** A Commission member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration. A Commission 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 Planning Commission.

B. **Disclosure.** At all hearings, a Commissioner shall disclose all potential conflicts of interest. When recognized by the Chairperson, any person may request disclosure of potential conflicts of interest.

Nonetheless, 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.

C. **Recusal.** A Commission 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 Commission member who has recused him or herself from a proceeding shall not sit with the Commission, deliberate with the Commission, or participate in that proceeding as a Commission member in any capacity.
3. If a previously unknown conflict is discovered, the Commission may take evidence pertaining to the conflict, and if appropriate, adjourn to a short deliberative session to address the conflict.
4. The Commission 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 Commission may then resume the proceeding with sufficient members present.

**Section XIV: ETHICS.**

When commenting on Town of Essex business or applications, be transparent and state that you are a Planning Commission member for the Town of Essex. Make it clear that you are speaking for yourself and not on behalf of the Planning Commission or the Town of Essex; use a disclaimer such as “*the views expressed here are my own and do not necessarily represent the views of the Planning Commission or the Town of Essex.*”

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408 Do not represent yourself, the Planning Commission or the Town of Essex in a false or  
409 misleading way.

410

411 **Section XV: Progressive Consequences for Failure to Follow the Conflict of Interest**  
412 **Procedures.**

413

414 In cases where the conflict of interest procedures in Section XII have not been followed,  
415 the Commission may take progressive action with respect to an offending Commission  
416 member. In the discipline of a member, the Commission shall follow these steps, in  
417 order:

418

419 A. The Chair shall meet informally, in private, with the Commission member to discuss  
420 the possible conflict of interest situation.

421

422 B. If the Commission decides that further action is warranted, the Commission may  
423 admonish the offending Commission member at an open meeting and reflect this  
424 action in the minutes of the meeting. The Commission member shall be given the  
425 opportunity to respond to this admonishment.

426

427 **Section XVI: Ex Parte Communications.**

428

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

431

432 A. **Disclosure.** At each hearing, the Chairperson shall request that members disclose any  
433 ex parte communications. Commission members who have received written ex parte  
434 communications shall place in the record copies of all written communications  
435 received as well as all written responses to those communications. Members shall  
436 prepare a memorandum stating the substance of all oral communications received, all  
437 responses made and the identity of each person making the ex parte communication,  
438 which shall become a part of the record of the proceedings.

439

440 **Section XVII: Communication with Commission**

441

442 All communication to the Commission from members of the public or applicants,  
443 including e-mails, shall be coordinated through the Community Development  
444 Department staff or be provided directly to the Commission at public meetings.

445

446 **Section XVIII: Requests for Reconsideration**

447

448 In accordance with Title 24 section 4470 (a) of the Vermont Statutes Annotated, the  
449 Planning Commission may consider a request to reopen proceedings and/or reconsider an  
450 application if all of the following conditions are met:

451

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- 452 1) The request must be made by the Planning Commission acting on its own  
453 initiative, or by the Applicant or an interested person who has participated in the  
454 proceeding.  
455 2) The request must be filed within the time for filing an appeal of the Planning  
456 Commission's decision.  
457 3) All parties must be served with copies of the request or otherwise notified of the  
458 request at the time of filing.  
459

460 In determining whether or not to grant the request, the Planning Commission shall be  
461 guided by the standards of Rules 59 and 60 of the Vermont Rules of Civil Procedure.  
462 Those standards allow the Planning Commission to revisit its decisions for reasons of  
463 mistake, inadvertence, surprise, excusable neglect, newly discovered evidence or fraud,  
464 among other reasons.

465 If the request raises the same issues already decided or substantially the same facts  
466 already considered, the Planning Commission may deny the request without hearing by  
467 issuing a decision, including findings of fact, within ten days of the filing of the request  
468 for reconsideration. 24 V.S.A § 4470(a).  
469

470 If the Planning Commission determines that a request raises new issues or new facts that  
471 if presented previously may have led it to render a different decision, it may in its  
472 discretion order the reopening of the hearing for purposes of taking additional evidence  
473 and argument. Adequate notice of the reopened hearing must be provided to all  
474 interested parties, and they should be allowed to present any additional evidence and  
475 argument at that hearing. A written decision shall be issued consistent with Section X  
476 above.  
477

478 **Section XIX: Removal.**  
479

480 Upon majority vote, the Commission may request that the legislative body remove a  
481 Commission member from the Planning Commission. Planning commissioners may be  
482 removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4323 (a).  
483

484 **Section XX: Amendments.**  
485

486 These rules may be amended at any regular or special meeting by a majority vote,  
487 provided that each Planning Commission member has been presented a written copy of  
488 the proposed amendment at least 24 hours before the meeting at which the vote is taken.  
489

490 These Rules of Procedure and Conflict of Interest Policy were adopted by the Planning  
491 Commission on the 28<sup>th</sup> day of August, 2014.  
492

493 \_\_\_\_\_  
494 Chairperson

495 \_\_\_\_\_  
496  
497 Secretary

g:\pc\operating procedures\revised Aug 2014