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

Adopted September 12, 1985
Last Amended: 08/28/2014

Section I: Authority.

The Planning Commission of the Town of Essex hereby adopts the following Rules of Procedure and Conflict of Interest Policy (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 Commission member will gain a personal or financial advantage from his or her work for the Commission, so that the public trust in municipal government will be preserved.

Section III: Definitions.

A. “Applicant” means the individual, organization, or entity signing any application for review before the Planning Commission, or a designee.

B. “Commission” means the Planning Commission.

C. “Commission member” means a regular or alternate member of the Planning Commission.

D. “Conflict of interest” means any one of the following:

1. A direct or indirect personal interest of a Commission 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 Planning Commission.

2. A direct or indirect financial interest of a Commission 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 Planning Commission.
3. A situation where a Commission 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 Commission member has not disclosed ex parte communications with a party in a proceeding before the Commission, pursuant to Section XII of these Rules.

D. “Deliberative session” means a private session of the Commission to weigh, examine, and discuss the reasons for and against an act or decision. 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 Commission 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 Commission 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. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any Commission member.

H. “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.

I. “Recuse” means to remove oneself from a particular Commission proceeding because of a real or perceived conflict of interest.

Section IV: Regular Officers.

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

A. The Chairperson shall preside at all meetings, hearings, and deliberations, decide all points of order or procedure, and appoint members to any committee of the Commission. The Chairperson may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.
The Chairperson or Vice-Chairperson shall sign all decisions on behalf of the Commission. The opportunity for all members to sign decisions will be provided but is not required.

B. The Vice Chairperson shall assume the duties of the Chairperson whenever the Chairperson is absent, or at the Chairperson’s request. The Clerk shall assume such duties whenever the Chairperson and the Vice Chairperson are absent, or at their request.

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

Section V: Attendance Policy.

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

Section VI: Regular and Special Meetings.

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

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

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

C. All meetings shall be open to the public unless the Commission, by majority vote, enters into a deliberative or executive session. The Commission 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.

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

E. The Chairperson shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
F. At each meeting, there shall be a ten-minute period of time reserved for public comment near the beginning of the meeting. The Chairperson may extend or reduce this period of time as necessary. Speakers may participate at other times throughout the meeting but only when recognized by the Chairperson. Such comment shall be limited to three minutes per speaker, unless by majority consent the Commission sets a different time limit. The Commission shall apply consistent time limits to all recognized to speak.

G. Notice for hearings on the adoption, amendment, or repeal of the bylaws and other regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended.

H. Open meetings: The Planning Commission shall conduct all meetings and business in accordance with the Vermont Open Meeting Law. 1 V.S.A § 310 et seq. Robert’s Rules, Newly Revised shall be used for reference.

I. Executive Session: The Planning Commission may enter into Executive Session to discuss matters as permitted by statute, provided that all decisions shall be made in public.

J. Minutes: Meeting minutes shall be taken by staff. It shall be the duty of all members to review the minutes and other official records of Planning Commission meetings and actions, and correct and ratify those when appropriate and necessary. Unapproved minutes shall be marked “DRAFT” and shall be reviewed and approved by the Planning Commission at the subsequent meeting. All Planning Commission minutes and official papers shall be filed promptly by staff with the Town Clerk as a public record.

K. The Planning Commission Chair shall sign and date the minutes with the date of approval by the Planning Commission.

L. Tape recordings of meetings will be made available for the Planning Commission’s use, or for the public, for a period of two years after the official minutes of the meeting have been approved.

M. For the conduct of any hearing and the taking of any action, a quorum shall not be less than a majority of the members of the panel, and any action of the panel shall be taken by the concurrence of a majority of the panel pursuant to 24 V.S.A.§ 4461(a).

N. Tie vote: A tie vote constitutes no action by the Planning Commission.

O. Special meetings may be called by the Chairperson, 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.
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. Hearings shall not exceed three and one-half hours in length unless approved by a majority of members present.

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

The Chairperson may 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. Review the definition of interested persons in 24 V.S.A. § 4465(b).

D. 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.

E. Ask all who believe they meet the definition of interested person to identify themselves and to provide contact information. The Commission shall not make any determination as to party 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 Chairperson.

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

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

H. Ask the applicant or applicant’s representative to present such application or proposal.

I. Ask Commission members to ask questions of the applicant or applicant’s representative.
J. Staff comments and input.

K. Ask 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 regarding the application or proposal.

M. Invite more questions or comments from members of the Commission.

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 Planning Commission.

P. Upon motion and majority approval, the Chairperson 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. Continuation of application: The Planning Commission may vote to continue an application if there is insufficient time or information to reach a decision. No further public notice shall be necessary, and the date, time and place that discussion of the application will resume shall be announced prior to adjournment.

R. The Commission shall then conduct public deliberations, or may vote to enter deliberative session. See Section III-D of these Rules, 1 V.S.A. § 312(e).

S. In accordance with Title 24 Vermont Statutes Annotated Section 4464 (b)(1), the Planning Commission shall issue a written decision, including findings of fact and conclusions of law, within 45 days of the date of the final public hearing on the application.

Section VIII: Consent Agenda

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

A. Staff shall determine an application’s eligibility for the consent agenda review process. If eligible, it will be place it on the agenda for next available Planning Commission meeting. All consent agenda items shall be warned as a public hearing.

B. Staff shall prepare a draft decision and distribute it to the Planning Commission prior to the meeting.
C. Staff shall notify the applicant, adjacent property owners, and other interested parties of the application, the draft decision, and the date on which the Planning Commission shall consider the item under its consent agenda.

D. The Chairperson shall ask for public comments on consent agenda items at the beginning of the meeting. The Planning Commission may ask clarifying questions of the applicant or other interested party. An open dialogue, between staff, the Commission, the applicant and interested parties, is encouraged during the public comment section of the meeting.

E. By a majority vote of its membership, the Planning Commission may approve the agenda as a whole without discussion. If a member of the Planning Commission, the applicant, or other interested party requests a more complete hearing on an item on the consent agenda, that item may be withdrawn from the consent agenda by a majority vote of the Commission. A hearing shall be held on that item, either later in the meeting or to be continued at a subsequent meeting, if necessary.

Section IX: 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. The Planning Commission determines if a site visit will be necessary and if so, the site visit shall be scheduled and publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1),(2).

B. If necessary, the Commission may recess a hearing to conduct a site visit at a property that is the subject of an application before the Planning Commission.

C. If necessary, the Commission 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 Planning Commission.

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 X: Service List.

Staff shall create a list of all individuals who participated in the proceedings by providing testimony either orally or in writing. All decisions of the Planning Commission shall be mailed to those on the list. 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 XI: Decisions.**

The Commission shall make its decisions by public deliberation, unless by majority vote it has determined to make a decision 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 Commission who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding. Absent Commission members may participate if they have reviewed an audiotape or videotape of the proceedings, or minutes of the meeting, and any evidence submitted. The following rules shall apply to voting on decisions:

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

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

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

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

E. Abstentions are strongly discouraged and 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 Commission, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).

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

**Section XII: Deemed Approved**

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

**Section XIII: Conflicts of Interest.**

Participation, disclosure of conflicts, and recusal shall be governed by the following 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.”
Do not represent yourself, the Planning Commission or the Town of Essex in a false or misleading way.

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

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

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

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

Section XVI: Ex Parte Communications.

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

A. Disclosure. At each hearing, the Chairperson shall request that members disclose any ex parte communications. Commission 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 XVII: Communication with Commission

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

Section XVIII: Requests for Reconsideration

In accordance with Title 24 section 4470 (a) of the Vermont Statutes Annotated, the Planning Commission may consider a request to reopen proceedings and/or reconsider an application if all of the following conditions are met:
1) The request must be made by the Planning Commission acting on its own initiative, or by the Applicant or an interested person who has participated in the proceeding.

2) The request must be filed within the time for filing an appeal of the Planning Commission’s decision.

3) All parties must be served with copies of the request or otherwise notified of the request at the time of filing.

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

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

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

Section XIX: Removal.

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

Section XX: Amendments.

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

These Rules of Procedure and Conflict of Interest Policy were adopted by the Planning Commission on the 28th day of August, 2014.

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Chairperson

__________________________________________
Secretary