



Town of Shelburne, Vermont

CHARTERED 1763

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Shelburne Development Review Board Rules of Discovery and Evidence

Adopted March 16, 2016

I PURPOSE. The Selectboard of the Town Shelburne adopted on the record review for all appeals from determinations of the Development Review Board (hereinafter “DRB”) pursuant to 24 V.S.A. § 4471 on November 10, 2015. The Selectboard further resolved that the Municipal Administrative Procedure Act (MAPA), 24 V.S.A. §§ 1201–1210, applies to all proceedings subject to on the record review. Under MAPA, 24 V.S.A. § 1202(d), the DRB may adopt additional procedural rules not inconsistent with MAPA. Accordingly, the DRB adopts these additional procedural rules related to discovery and evidence.

II APPLICATION. These procedural rules shall apply to all proceedings before the DRB subject to on the record review. These procedural rules are in addition to all procedures required under MAPA and Shelburne Development Review Board Rules of Procedure and Conflict of Interest Policy (hereinafter also “Shelburne DRB Rules”).

III PROCEDURES.

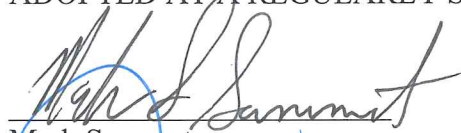
1. The rules of discovery applied in civil cases in the Superior Courts of Vermont (“Vermont Rules of Discovery”) shall be followed. This includes, but is not limited to the following:
 - a. Parties are entitled to conduct reasonable discovery under methods allowed under the Vermont Rules of Discovery, and subject to the obligations and limitations established under the Vermont Rules of Discovery.
 - b. The DRB may limit and control discovery using any of the methods provided by Vermont law, the Vermont Rules of Civil Procedure, or the DRB’s Rules of Procedure. The DRB may compel the production of material germane to any issue under review.
 - c. The DRB may engage in a pre-hearing conference process to discuss the use of discovery procedures and establish deadlines, including deadlines for identification of any expert witnesses.
 - d. Discovery requests shall not be unduly burdensome or expensive when taking into account the needs of the case, the issue for which discovery is sought, limitations on the parties’ resources, and the importance of the information to be discovered. Discovery requests shall also not be unreasonably cumulative or duplicative and, when possible, information should be obtained from

a source that is more convenient, less burdensome, and/or less expensive before relying on discovery requests.


- e. The DRB may review, consider, and/or rule on any objection to discovery requests. Decisions shall be made based on a majority vote of the DRB members.
2. The rules of evidence applied in civil cases in the superior courts of Vermont (“Vermont Rules of Evidence”) shall be followed.
3. All evidence in addition to an original application or decision of an administrative officer and upon which a party or interested person wishes to rely shall be presented at the hearing, subject to Paragraph 12, below, and made part of the hearing record.
4. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
5. Evidence not admissible under the Vermont Rules of Evidence may be admitted if it is (a) of a type commonly relied upon by reasonably prudent people in the conduct of their affairs; and (b) necessary to ascertain facts not reasonably susceptible of proof under the Vermont Rules of Evidence.
6. All testimony of parties and witnesses must be made under oath or affirmation.
7. At the DRB’s discretion, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, which shall constitute pre-filed testimony, provided the author or proponent of the pre-filed testimony is available to testify either in person or electronically pursuant to the provisions of rule 12 below, and provided the evidence is otherwise admissible under Rule 5 above.
8. Pre-filed testimony, as per paragraph 7 above, shall be in accordance with Section VII of the Shelburne DRB Rules and shall be received at least a week before a regularly scheduled meeting in order that it may be distributed to DRB members in advance.
9. The DRB may organize the presentation of evidence as prescribed in the DRB Rules of Procedure currently in effect.
10. The DRB members or their designated representative may examine witnesses either directly or by written interrogatories.
11. The member presiding over the hearing shall rule on relevance and may limit the scope of examination to ensure relevancy and efficient conduct of the proceedings. Upon motion, a majority of the DRB members may overrule an evidentiary decision of the DRB member presiding over the hearing.
12. At the DRB’s discretion, an applicant or interested party may participate in the hearing electronically, subject to the requirements of 24 V.S.A. § 1205(b). The burden will be on the applicant or interested party to facilitate such participation (i.e. provide the technology for communication), unless the DRB requests such participation, in which case the burden is on the town to facilitate the participation. When the request

is by an applicant or interested party, such request shall be made by motion in writing at least one week prior to the hearing.

ADOPTED AT A REGULARLY SCHEDULED MEETING ON March 16, 2016




Mark Sammut
Chair, Development Review Board



Mary Kehoe

Jeff Pauza



Jeff McBride



Ian McCray

Jeff Hodgson