

## **Bylaws of the Damariscotta Planning Board**

### **1. Purpose and Scope**

The purpose of these bylaws is to establish reasonable rules of procedure for Board meetings and to promote the fair, orderly and efficient conduct of the Board's proceedings and affairs. These rules shall govern the Board's practices and procedures except as otherwise provided by law and shall be liberally construed so as to accomplish their intended purpose. Authority to adopt such rules is articulated within the Town Charter (Article II. Section 2.03 A4). These rules are intended to supplement those contained within the Town Charter and the various land use related ordinances.

### **2. Board Structure and Officers**

The Planning Board is composed of five regular members and two alternate members appointed by the Select Board for staggered three-year terms. All members of the Planning Board shall be legal residents of the Town of Damariscotta and are expected to have a clear understanding of the ordinances which they are required to administer and, in particular, the Land Use, Site Plan Review and Subdivision Ordinances. At the Planning Board's annual organizational meeting, the five regular members of the Board shall elect a Chair and by separate vote the Vice-Chair.

The Chair shall preside at all Board meetings and shall have authority to rule on questions of evidence and procedure, to maintain order and determine the course of proceedings, and to take such other action as may be necessary and not inconsistent with these bylaws or other law to enable the Board to perform its duties and conduct its affairs. In the absence of the Chair, the Vice-Chair shall preside and shall have the same authority as the Chair.

The Secretary of the Board is the Deputy Town Clerk or her/his designee and shall maintain a permanent record of all Board meetings including resolutions, transactions, correspondence, findings and determinations of the Board. All records shall be deemed public and may be inspected at reasonable times. The Town Planner shall provide staff support to the Board under the direction of the Chair and the Town Manager. The Chair, Town Planner and Town Manager shall work together to set the agenda for each meeting. All agenda item materials shall be submitted to the Town Planner, posted, included electronically into the Town Newsletter and website and published at least two weeks before scheduled meetings.

### **3. Meetings**

**A. Regular Meetings.** Regular meetings of the Board shall generally be held at the Damariscotta Town Office on the first Monday of the month at 6:00 p.m. unless the date conflicts with a holiday or the meeting is rescheduled by the Board at the prior month's meeting.

**B. Annual Organizational Meeting.** The annual organizational meeting of the Board shall be the first regular meeting of the year in July.

**C. Special Meetings.** A special meeting may be called by the Chair or by a request of any

three regular Board members. The Chair shall call a special meeting within fourteen (14) days of receipt of a written request from any three regular members of the board, which request shall specify the matters to be considered at such special meeting. To schedule a special meeting, at least thirteen (13) days written notice of the time, place and business of the meeting shall be given each member of the Planning Board, Select Board, Town Planner and Code Enforcement Officer. Public notice of any special meeting shall be provided in accordance with State Statutes, posted in Town Hall at least ten days prior to the meeting and be on the Town website.

**D. Agenda.** The order of business (agenda) at regular meetings of the Board shall be as follows: (a) Pledge of Allegiance; (b) Call to Order and determination of a quorum; (b) Public Hearing (when scheduled); (c) Approval of the Minutes of the preceding meeting(s); (d) Old Business (action on unfinished cases); (e) New Business; (f) Other Business (including questions from the public and staff reports – no board decisions on questions or sketch plans are allowed unless they are specifically published as part of the agenda for that meeting under old or new business; (g) Adjournment.

All agenda item materials shall be submitted to the Town Planner at least two weeks prior to the scheduled meeting addressing that item.

**E. Open to the Public.** All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except as permitted by the Right to Know Law.

**F. Work Sessions.** Informal work sessions may be held immediately prior to regular meetings or may be called as special meetings from time to time. The purpose of this type of meeting is to discuss business which may appear on the agenda of an immediate or future regular meeting of the Board or to discuss updates to ordinances and regulations or other matters of Board administration or procedure. All work session meetings shall be open to the public in accordance with State Law.

**G. Site Visits.** Site visit meetings may be called by the Chair, Acting Chair or a majority of the Board for the purpose of allowing the Board and interested public to inspect the site of a pending proposal. Site visits are encouraged for all applications before the Board. The Vice Chair or her/his designee is responsible for minutes of site visits. To ensure full and fair disclosure of Board actions to all members of the public, no formal motions shall be made nor votes taken at a site visit. At least a week prior, public notice shall be given of all site visits.

#### **4. Voting**

**A.** A quorum shall consist of three regular members including any alternate members voted onto the Board.

**B.** All members who are present and not disqualified as provided herein shall vote in every matter to be voted upon unless excused by a quorum of the regular Board for good cause shown.

**C.** Quorum. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, when no quorum exists, those members present shall be entitled to request the Chair to call a special meeting for a subsequent date.

**D.** All matters shall be decided by a show of hands vote. Decisions on matters before

the Board shall require the affirmative vote of a quorum (3) of regular voting members of the Board.

E. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

F. Conflict of Interest. No member may participate or vote in any matter in which the member has a conflict of interest or other disqualification as defined by law. Any questions of whether a member has such a conflict of interest or other disqualification shall be decided by a majority vote of the remaining members including an alternate voted onto the Board as a regular member for the particular matter. If a member has a conflict of interest as defined by State Statute, that member shall not be counted by the Board in establishing the quorum for the matter in which he or she has a conflict.

The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., grandfather, father, wife, son, grandson) or to his employer or the employer of any member of the person's immediate family.

G. If there are alternate members in attendance, the Board shall vote to designate an alternate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.

H. If a Board meeting has no alternate members present, no regular member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon; however, where such a member has familiarized himself or herself with the matter by reading the record and listening to or watching any audio or video recording of the meeting(s) from which the member was absent and represents on the record that he or she has done so, that member shall be qualified to vote on that matter.

I. Records of Proceedings. The votes for and against the passage of a motion shall be taken and entered upon the record of the Minutes of the Board by the Clerk. Minutes of all regular and special meetings of the Board, except workshop meetings and site visits, shall be kept by the Clerk and shall take effect upon acceptance by the Board. An amendment by the Board of the minutes of a previous meeting shall not affect a previous vote of the Board.

J. Notice of Decision. The Board's decision on a development application is contained in a Notice of Decision (NOD) that may contain Conditions of Approval (COA). Each finding of fact and condition of approval shall be voted on separately. NODs are public documents.

## **5. Reconsideration**

A. The Board may reconsider any decision.

1. The Board must decide to reconsider any decision, notify all parties and make any change in its original decision at the same meeting or no later than the next monthly regular meeting or thirty-five (35) days at the latest after the original decision was made.
2. After a vote for reconsideration and prior to a vote on a revised or amended action, the Board may conduct additional hearings and receive additional evidence and testimony.

**B. Reconsideration** should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake regarding facts upon which the decision was based; or
2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

## **6. Public Hearings**

Public hearings of the Board shall be called as required by law or on such other occasions, as a majority of the Board may deem appropriate. Notice of all such hearings shall be given as required by law and shall include the date, time, and place of the hearing and a general description of the subject matter.

### **A. Notice of Public Hearings**

Notice of all public hearings shall be published in the Lincoln County News. The date of publication shall be at least seven (7) days before such hearing and the notice shall be posted in at least the Town Hall. The notice shall set forth the nature of the hearing, the time, date and the place of the hearing. (Note: This needs to be consistent with applicable land use ordinances and statutes, such as 30-A M.R.S.A. § 4403 regarding subdivisions, and with 1 M.R.S.A. § 601.)

### **B. Presiding Officer**

The Presiding Officer shall, at all public hearings, either be the Chair or Vice-Chair of the Board or a member of the Board who is selected by those members present at the hearing. The Presiding Officer shall have authority to:

1. Rule upon issues of evidence;
2. Regulate the course of the hearing;
3. Rule upon issues of procedure;
4. Take such other actions as may be ordered by the Board or that are necessary for the efficient and orderly conduct of the hearing, consistent with these rules and applicable statutes.

### **C. Order of Business and Testimony**

The order of business at a public hearing shall be as follows:

1. The Presiding Officer calls the hearing to order.
2. The Presiding Officer determines whether there is a quorum.
3. The Presiding Officer gives a statement of the case and reads all correspondence and reports received.
4. The applicant or their representative and witnesses are given the opportunity to present their case without interruption.
5. The Board and interested parties may ask questions of the applicant through the Presiding Officer.
6. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
7. The applicant may ask questions of the interested parties and Board witnesses through the Presiding Officer.
8. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
9. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views. Every party shall have the right to present its case in the

order determined by the Chairman and without interruption, provided, however, that the Chairman may impose such reasonable time limits as may be necessary to ensure that all parties have an adequate opportunity to be heard.

10. The Board shall receive and retain copies of any written statements, documents, photographs or renderings offered to Board by any and all parties. These submissions shall become a matter of public record.
11. The hearing is closed after all parties have been heard. If additional time is needed, the date and place of the continued hearing shall be announced before adjournment of the initial hearing.
12. Written testimony may be accepted by the Board for seven days after the close of the hearing.
13. No votes by the Board shall be taken during a public hearing. The Board may vote on any matter only in a regular scheduled meeting, either after the close of a public hearing or some other scheduled meeting.

#### **D. Official Notice**

The Board may, at any time, take notice of judicially cognizable facts, generally recognized facts of common knowledge to the general public, physical, technical and/or scientific facts within the specialized knowledge of the Board.

#### **E. Documentary and Real Evidence**

1. Upon Board's acceptance, all documents, materials, and objects offered as evidence shall be numbered or otherwise identified.
2. Board shall exclude irrelevant, immaterial, and/or unduly repetitious evidence, provided however that formal rules of evidence shall not apply. This pertains to all oral, illustrative, and documentary submissions.
3. Documentary and illustrative evidence may be received in the form of copies if the original is not readily available.
4. Board or Presiding Officer shall require that any party offering documentary, illustrative, and/or photographic evidence shall provide Board with an appropriate number of copies of said evidence, unless these documents, illustrations, or photographs are determined to be of such form, size, or character as not to be reasonably susceptible of reproduction.
5. All documents, materials, and objects accepted into evidence shall be made available during the course of the hearing for public examination and explanation.
6. All accepted evidence shall become part of proceeding's public record.

#### **F. Objections**

All objections to rulings of the Presiding Officer regarding evidence or procedure shall be made during the course of the hearing. If after the close of the hearing and during its deliberations the Board determines that any ruling of the Presiding Officer was in error, it may reopen the hearing or take other action as it deems appropriate to correct the error.

#### **G. Conclusion of Hearing**

At the conclusion of the hearing, no further evidence or testimony will be allowed into the record except as provided in Section 6.H.

#### **H. Leaving the Record Open**

Upon such request made prior to or during the course of the hearing, the Presiding Officer May permit persons participating in any hearing pursuant to these regulations to file proposed

findings, determinations, or other written statements with the Board for inclusion in the record after the conclusion of the hearing within such time and upon such notification to the other participants as the Presiding Officer may require.

#### **I. Other**

At any time prior to a final decision, the Board or the Chair may reopen the record for further proceedings consistent with these Rules, provided, however, that the Chair shall give public notice of such further proceedings at least two weeks in advance to the participants and the public in such manner as is deemed appropriate.

#### **J. Record**

The record of the hearing shall consist of the recording of the hearing, all exhibits, all briefs, proposed findings and rulings thereon, and any proposed findings of fact and conclusions of the Presiding Officer. Such record shall be reported to the Board for its decision.

Any participant or other member of the public may obtain a copy of the record from the Board upon payment of the cost of transcription, reproduction, and postage.

#### **7. Amendments/ Waivers**

These bylaws, or any provision thereof, may be waived on any occasion by majority vote of the Board unless otherwise provided by law. These bylaws may be amended at any time in writing by majority vote of the Board after notice and public hearing on the proposed amendment.

Adopted by the Board on September 10, 2018

Planning Board Chair  9/11, 2018  
Jonathon Eaton