

APPENDIX H CLAREMONT PLANNING BOARD BYLAWS*

***Editor's note:** Printed herein are the Claremont Planning Board Bylaws adopted February 8, 1988 and amended and re-adopted April 11, 2005. Style and capitalization have been made uniform. Obviously misspelled words have been corrected without notation. Amendments have been included.

A. Rules and regulations.

1. *Planning board meetings.* The planning board shall meet in regular session on the second and fourth Monday of each month at 7:00 p.m. When Monday is a holiday, the regular meeting date will be determined by a majority vote of those present at the preceding meeting. Additional meetings, hearings or work sessions may be scheduled by the chairperson, with the agreement of the members, as the need arises.

2. *Acting chairperson.* In the absence of the chairperson and vice-chairperson, the board will choose one (1) of its regular members to act as chair.

3. *Alternates.* In the absence of a regular member at any meeting of the planning board, the chairman shall designate an alternate member to act in the place of the absent regular member. Alternates shall not replace ex officio members unless they have been appointed specifically as an alternate for said ex officio. Attendance requirements for Alternates are the same as for regular board members.

4. *Quorum.* In order to transact any business before the board, a quorum consisting of at least five (5) members must be present (see RSA 673:10, III).

5. *Officers and employees to attend.* Any employee or agent of the city, when requested by the city manager or his designee or presiding officer of the board, shall attend any regular, adjourned or special meeting of the planning board in order to confer with the board on any relevant matters.

6. *Voting.* Every member present when a motion is put to vote shall vote either yes or no by raising his hand when called by the chair. Any abstentions shall not be counted as a "yes" or no vote, but shall be counted to meet quorum requirements. Any member wishing to be excused from voting on a question must--prior to the vote--briefly state the reason for his request. The decision thereon shall be determined by the chair and shall be made without debate. Unless excused, the Chair shall participate in all votes of the Board. All votes shall be recorded in such a manner that the public may know who voted for or against each motion. Motions pass with a majority of those present voting in favor. No member shall vote on any matter in which the member has not been present for any hearing, presentation or deliberation on the matter being put to a vote.

7. *Rules of order.* The rules of order for all meetings shall be determined by the chairperson to maintain order and to allow open, informal discussion in favor of substance rather

than procedure. Any ruling of the chair may be challenged by any board member. Upon such challenge, the ruling shall be voted on by the board, with a majority vote of members present required to overrule the chair.

8. *Recognition.* Board members do not have to stand to be recognized to speak or to make a motion. The chairperson shall recognize any member raising his or her hand.

9. *Excusal during meetings.* Any member may leave the board chambers while in regular session after notice to the chairperson of pressing business while attempting to maintain a quorum (RSA 673:10, III.).

10. *Order of business.* The business of all regular meetings of the planning board shall proceed in the following order:

- Roll call
- Appointment of alternates
- Minutes of the preceding meeting(s)
- Old business and related public hearings
- New business and related public hearings
- Reports of board committees
- Communications
- Adjournment

The chairperson shall have the discretion to rearrange the agenda should the need to do so arise. Any member may request, and have placed on the agenda, an item for discussion.

11. *Duties of the secretary.* It shall be the duty of the non-board member secretary to take complete and accurate minutes, to tape-record all meetings, to prepare in writing the official minutes of all meetings and submit said minutes to the Planning and Development Office ~~for distribution~~ who will mail to each board member the official minutes of prior meetings, and the agenda for the upcoming meeting no later than Friday morning prior to the meeting. Minutes of Planning Board meetings will be available to the public pursuant to RSA 91-A.

12. *Motion to be stated by the chair; withdrawal of motion.* When a motion is made and seconded, it shall be reiterated by the chairperson before the motion is offered for debate. At the request of the chairman or any member of the board, the motion shall be in writing. A motion may not be withdrawn by the mover without the consent of the second.

13. *RSA requirements.* All meetings of the planning board shall be held in accordance with RSA 91-A:2 and 91-A:3 relating to meetings open to the public, and nonpublic sessions.

14. *Board service limitations.* No member of the planning board shall represent himself as a spokesperson for the board before any group without prior authorization by the board.

15. *Permission required to address the board.* Persons other than members of the board shall not be permitted to address the board except by consent of the chairperson. Anyone wishing to address the board shall indicate his intent and the subject matter to the chairperson.

16. *Conflict of interest.*

A. *Abutters.* Anyone owning or leasing land abutting a piece of property which is the subject of an application before the board is disqualified from acting on that application. (*Totty v. Grantham Planning Board*, 120 NH 390 1980).

B *City Code of Conduct.* All members shall abide in the performance of their duties in accord with the City's Code of Conduct.

C. *Conflict of Interest or Prejudgment.* In accordance with RSA 673:14, no member shall participate in deciding or shall sit upon the hearing of any question if that member has a direct personal or pecuniary interest in the outcome which differs from the interests of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.

Reasons for disqualification include when a member:

1. Is related to the applicant or any abutter;
2. Has assisted or advised the applicant or any abutter; or,
3. 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.

Reasons for disqualification also includes prejudgment which occurs when a Member has directly or indirectly taken a position, formed a conclusion, or has prejudged, the application to be decided by the Board. Prejudgment includes, but is not limited to, a position taken either for or against an application expressed at a public meeting, by letter, by *ex parte* communication, or by comment made in some public forum. Prejudgment does not include questions or statements made by Board members in response to the details of the application expressed during the public hearing held on that application or during the Board's deliberations.

When an uncertainty arises as to whether a member is disqualified in particular circumstances, the Board shall, at the request of that member or another Board member, vote on the question, but such vote shall be advisory and non-binding. Any person with a direct interest in the outcome may voice an objection to a Board member's participation, setting forth specific reasons, and may also request such a vote, but such a request shall be non-binding. Any such request or objection shall be made either prior to or at the commencement of the public hearing, or at such later time as the facts claimed to warrant disqualification first become known. No such vote shall be taken if the member involved steps down voluntarily.

If anyone--on or off the board--raises the question of prejudgment or conflict of interest on the part of any board member, and that member is unwilling to voluntarily step down, the remaining members of the board shall hear any evidence the challenger and the challenged may have; subsequently, the board, by two-thirds vote, shall decide whether the challenged member may sit. If there is substantial evidence of prejudgment or direct financial interest, the vote should be to require the challenged member to step down. Any two (2) members of the board may request that the chair or the city manager secure a written opinion as to the potential conflict of interest of any board member.

A Member who is disqualified shall remove himself/ herself from the Board, and shall sit with the public until such time as the Board has completed its consideration of the application at that meeting. The member may then return to the Board. If as a result of disqualification the Board loses its quorum, then there shall be an adjournment or recess of consideration of the matter until there is a quorum either at the same meeting or the next available meeting.

17. *Attendance.* Continued service on the board requires attending at least two-thirds of scheduled meetings in a calendar year and no individual member shall be permitted more than 3 unexcused absences in any one calendar year unless extraordinary circumstances apply. The chairperson shall keep attendance and notify the Board Coordinator of any member who is unable or unwilling to attend scheduled meetings. The Board Coordinator will notify the member in writing of the failure to attend, said communication to include a statement that failure to attend scheduled meetings may result in a request to the Mayor to remove the member pursuant to RSA 673:13.

18. *Right to hold dissenting opinion.* Recognizing that the majority is not always right, no member shall be prevented from seeking information or legal opinions from city staff or elsewhere simply because he is out-voted on an issue. No unanimous opinions may be required when a vote is called.

19. *Election of officers.* Officers will be elected annually the first regular meeting in January.

20. *E-mail and Other Communications Between Meetings* To ensure compliance with the letter and spirit of RSA 91-A and with the due process rights of parties before the Board; 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 to clarify the role of electronic media such as E-mail in achieving these goals, members will abide by the following. Nothing in this policy prevents any distributions, communication, or ex parte communications which pertain solely to:

- scheduling of meetings or hearings
- the determination or ordering of agenda items or topics to be taken up at meetings or hearings; or
- general procedural requirements pertaining to such scheduling and agenda matters.

a) 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 matter before the Board, 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.

b) A distribution may be made to any number of Board members, so long as it does not request a response or raise an expectation of a response between meetings. 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):

1. 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,
2. Parties to the case shall be given a meaningful opportunity to respond to the information in the distribution.

c) Communication means a transfer of information 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.

Communications between meetings, or a series of communications, involving more than one Board member which requests a response or raises an expectation of a response involving a quorum or more of the Board or of any Planning Board Committee are prohibited. Such communications shall be considered deliberations and shall occur only at meetings noticed in accordance with RSA 91-A.

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.

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

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

B. Committees.

1. *Committee appointments and disbandment.* Special purpose and study committees which the planning board may, from time to time, deem necessary in order to conduct its business shall be appointed by the chairperson; and any such committee shall cease to exist when its final report is acted upon by the board or at the next organizational meeting whichever is sooner, unless otherwise voted by the board.

C. Hearings.

1. *Additional hearings.* In addition to hearings required by statute or ordinance, the planning board may, at its discretion, hold public hearings when it decides that such hearings will be in the public interest.

2. *Publication and posting of hearing notices.* Notice of such hearing shall be published and duly posted at least ten (10) calendar days (not including the day of the posting or the day of the hearing) in advance.

3. *Summary of issues.* The matter before the planning board may be presented in summary by a designated member of the board, by staff, or by consultants.

4. *New Material.* Any information pertaining to a matter and not submitted at the time of the application for review of a matter by the Planning Board must be submitted to the Planning Department no less than 10 days prior to the Planning Board meeting at which the matter will be heard. Failure to submit such additional information may result in the additional information not being considered at the meeting at which the matter is to be heard.

5. *Public Hearings.* The conduct of public hearings shall be governed by the following:

1. The Chair shall call the hearing into session.
2. The Chair summarizes the procedure/rules to be followed during the hearing.
3. Staff presents a summary of the application and issues presented.
4. The applicant/agent presents the application.
5. Persons in favor of the application are recognized; correspondence in support of the application is noted for the record.
6. Persons opposed to the application are recognized, correspondence in opposition to the application is noted for the record.
7. Parties in favor of or opposed to an application may speak for a second time, if requested after all those wishing to speak a first time have been heard.
8. Members of the board may ask questions to any party at any point during presentation.
9. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
10. Any party to the case who wants to ask a question of another party to the case must do so through the Chairman.
11. The Chair shall present a summary setting forth the facts of the case and the issues presented.
12. The Chair closes the public hearing and explains that a decision may or may not be made on the application at the close of the Board discussion.
13. The Chair opens the Board discussion.
14. Upon conclusion of the discussion, the Chair entertains a motion to approve, deny, approve with conditions, table or continue the application.

D. Suspension and amendment of bylaws.

1. *Rule suspension.* The planning board may suspend any of these bylaws for a specific purpose by a unanimous vote of the members present.

2. *Rule amendments to bylaws.* These bylaws may be amended at any regular or special meeting by a two-thirds vote of the entire membership of the planning board, provided that the agenda for said meeting specifies the amendment to be voted on.