



## **DRAINAGE REVIEW BOARD BYLAWS**

### **ARTICLE I. NAME**

Section 1. The name of this organization shall be the Drainage Review Board of Maricopa County.

### **ARTICLE II. POWERS AND DUTIES**

Section 1. Pursuant to Arizona Revised Statutes (A.R.S.) Sections 11-251, Sections 30 & 36 & ARS 11-251.05, the Drainage Review Board shall have the following duties and functions:

- a. Interpret upon appeal the meaning of any word, phrase or section in the Drainage Regulation that is the subject of dispute between the Drainage Administrator and appellant.
- b. The Drainage Review Board shall hear and decide requests for waivers from the requirements of the Regulation. Before granting a waiver the Drainage Review Board shall find that each of the following criteria is met:
  - a. The grant will not result in an increase in the 100-year peak flow or discharge; and
  - b. By reason of special physical circumstances, location or surroundings of the property, strict application of the Regulation would deprive the property of privileges enjoyed by similar property; and
  - c. The variance would not constitute a grant of special privilege inconsistent with the limitations on similar property; and
  - d. The variance request is the minimum necessary, consideration the flood hazard, to afford relief; and
  - e. There is a showing of good and sufficient cause; and
  - f. Failure to grant the variance would result in exceptional hardship to the applicant; and
  - g. Granting the variance will not result in additional threats to public safety, health, welfare, or extraordinary public expense, create a nuisance,

the victimization of or fraud on the public and that the variance does not conflict with existing local laws or ordinances.

### **ARTICLE III. APPLICATION FOR VARIANCE OR APPEAL**

Section 1. Applications for relief of the Regulation or appeals shall be made on forms prescribed by the Drainage Review Board and shall be filed with the Planning and Development Department. An appeal shall be filed within 30 days of issuance of notice of the action that is the subject of appeal.

Section 2. Applications for relief and appeals shall be accompanied by:

- a. For relief, an accurate plot plan and description of the property involved, description of the proposed use and Finish Floor Elevation and estimates of the value of the use.
- b. For appeals, the specific grounds upon which the appeal is made.

Section 3. Except for appeal of interpretation of the Regulation, the property involved in each application for variance shall be posted as to the time, date and location of the hearing.

Section 4. The Drainage Review Board will hear cases (appeals and relief) at their regular hearing on the second Wednesday of each month beginning at 10:00 A.M. as outlined in Article VIII below.

### **ARTICLE IV. MEMBERSHIP**

Section 1. APPOINTMENT. The Drainage Review Board is composed of five (5) Members, one (1) Member is appointed from each of the five (5) Supervisorial Districts; each Member shall be a resident and taxpayer of the Supervisorial District from which he or she is appointed. The appointments shall be for staggered terms of four (4) years each. Members are appointed and / or removed by the Board of Supervisors.

Section 2. MEMBER RESPONSIBILITIES. Members are expected to attend the meetings of the Drainage Review Board and serve on committees, if required. They may also serve as an officer of

the Drainage Review Board. Members will be notified beforehand of each meeting and provided with a copy of the agenda of the cases. Prior notice of the cases will enable Members from each district to familiarize themselves with the locale of each. Members are expected to make decisions on the cases before them based upon the merits of each case.

Section 3. CONFLICT OF INTEREST.

- a. Should a Member have any concern regarding a potential conflict of interest, the Member shall contact the Chairman, staff and / or the County Attorney's Office to discuss the Member's concerns and receive advice on the situation prior to the meeting. Should staff and / or the County Attorney have any concerns regarding a potential conflict of interest by a Member, staff shall contact both the Chairman and the Member concerning the situation. Upon notification of a potential conflict of interest, the Chairman shall discuss the situation with the Member and the County Attorney.
- b. Upon determination of a "remote" or "substantial" conflict of interest in accordance with the Arizona Conflict of Interest Law (A.R.S § 38-502), the Member shall declare said conflict of interest in writing and at the appropriate meeting and prior to any discussion of the issue. If a "remote" conflict of interest has been determined, then the Member may continue to perform all duties. If a "substantial" conflict of interest has been determined, then the member shall refrain from all discussions of the issue both at and prior to the meeting. Further, the member shall physically remove himself / herself from the meeting room during discussion of the issue.

Section 4. REMOVAL / RESIGNATION FROM MEMBERSHIP. The Board of Supervisors shall have the authority to remove any Member for cause after public hearing. Should a Member desire to resign from the Board prior to expiration of the Member's term, a written letter of resignation must be submitted to the elected Supervisor who represents the District from which the Member was appointed with a copy to the Clerk of the Board

and the Department of Planning and Development. Vacancies will be filled by appointment of the Board of Supervisors for the unexpired term of the Member whose place has become vacant.

**ARTICLE V. DUTIES OF OFFICERS.**

Section 1. CHAIRMAN. The Chairman will preside at all Board meetings. The Chairman will be guided by Robert's Rules of Order unless otherwise directed by a majority of members in session at the time, or unless otherwise specified herein. The Chairman has the right to vote on all matters. The Chairman can make a motion. The Chairman can second a motion. If the Chairman's vote results in a tie, the Chairman has no power to vote again to break the tie. The Chairman shall appoint committee Members and the committee chairman. The Chairman may call special and executive meetings. The Chairman shall preside during all elections.

Section 2. VICE CHAIRMAN. In the absence of the Chairman, the Vice-Chairman will perform all duties of the Chairman. If the Chairman is unable to complete the term of office, the Vice-Chairman shall become the Chairman.

Section 3. TEMPORARY CHAIRMAN. In the event that neither the Chairman nor the Vice Chairman can preside at a Board meeting or portion thereof, the remaining Members shall elect a temporary Chairman to perform all duties of the Chairman for that meeting or portion thereof prior to taking any other action. While holding the Chair, the temporary Chairman shall perform all duties of the Chairman.

Section 4. SUCCESSION DUE TO TEMPORARY ABSENCE. In the event that neither the Chairman nor the Vice Chairman can preside at a Board meeting or portion thereof, the remaining Members shall elect a temporary Chairman to conduct said meeting or portion thereof prior to taking any other action.

**ARTICLE VI. ELECTION OF OFFICERS.**

Section 1. TERM OF OFFICE. At the annual meeting, the Board will elect one of its Members to preside as Chairman for the ensuing year and another Member to be Vice Chairman. Any Officer may serve consecutive terms.

Section 2. SUCCESSION DUE TO PERMANENT ABSENCE. If the position of any officer other than Chairman shall become vacant prior to the annual meeting, the Members shall fill said vacant position from among the Members of the Board; said elected office to serve until the next annual meeting.

Section 3. ELECTIONS. Elections for Chairman and Vice Chairman shall be held at the annual meeting. Special elections shall be held as required. Elections may be conducted by roll call vote.

#### **ARTICLE VII. COMMITTEES.**

Section 1. Committees of the Board shall be created on an as needed basis by majority vote of the Board. The Chairman shall appoint committee members and the committee chairman. The committee chairman will preside at committee meetings and be the contact person for staff regarding committee issues. All committee meetings shall be noticed in accordance with the Open Meeting Law (ARS 38-431.02).

#### **ARTICLE VIII. MEETINGS.**

Section 1. NOTICE OF MEETINGS. All meetings of the Drainage Review Board regardless of type shall be noticed in accordance with the Open Meeting Law (ARS 38-431.02).

Section 2. QUORUM. A minimum of three Members shall be required for a quorum.

Section 3. CONDUCT OF MEETING. The Chairman of the Board may enforce any rule adopted by the Board including the right to clear the hearing room of spectators if the spectators fail to abide by any admonitions or rulings made by the Chairman in an effort to keep order at such hearings. Public demonstrations of any kind by principals, witnesses, or spectators at any hearing before the Board, including cheering, booing, hand clapping, or the interruption of the hearing by voluntary remarks from the audience shall be strictly forbidden, and any person or persons who shall continue to participate in such conduct after having once

been admonished for such conduct, shall be subject to being ejected from the hearing room by order of the Chairman.

Section 4. TYPE OF MEETINGS. The Board may hold regular, special, executive and annual meetings.

- a. REGULAR MEETINGS. Regular meetings of the Board will be held on the second Thursday of each month beginning at 10:00 a.m. in the Board of Supervisor's auditorium. Regular meetings shall be open to the public.
- b. SPECIAL MEETINGS. Special meetings may be called by the Chairman or at the request of any three of the Members. Special meetings shall be open to the public.
- c. EXECUTIVE SESSIONS. Executive sessions may be called by the Chairman or at the request of any three Members. Executive sessions will be conducted in accordance with the Open Meeting Law (A.R.S § 38-431.03). Executive Sessions are not open to the general public and may only be held for the purpose outlined in A.R.S. § 38-431.03, including receiving legal advice or dealing with personnel issues. Personnel issues should be limited to problems that the Board is having with Staff and / or particular Members. The Chairman shall have the right to determine which Staff, if any, may attend any Executive Session. Generally, the Department Director or his / her designated representative will attend and staff below Senior Planner level will not attend. Executive Sessions shall be recorded and have minutes prepared. If minutes are prepared, a Department Administrative Assistant shall attend at the discretion of the Chairman or Department Director
- d. ANNUAL MEETING. The annual meeting shall be held at the first regular meeting of the calendar year. At the annual meeting elections shall be held. Annual meetings shall be open to the public.

Section 5. PROCEDURE AUTHORIZATION. The Board shall give staff authority to adopt procedures which include such items as the

Board's docket, agenda, conduct of meetings including order of business, executive sessions, committee meetings, court appeals and record keeping.

## **ARTICLE VI. ORDER OF BUSINESS**

Section 1. The Order of Business shall be set by the procedures as authorized in these Bylaws. An applicant or Member can request of the Chairman at the start of a meeting or with Staff prior to the meeting that their case be taken out of sequence. The Chairman shall determine if anyone is opposing the application. The board shall decide if the reasons for being taken out of order are reasonable and do so upon motion by a board Member.

Section 2. The following sequence shall be the normal Order of Business:

a. Call to Order

The Board Chairman shall announce to the public and staff that the meeting for this date and time has officially been opened. The Chairman shall then announce that the Secretary will call the roll.

b. Roll Call

The secretary for the Board shall take the roll call by announcing each Board Member's name in order for them to acknowledge if they are present.

c. Announcements

The Chairman shall make the normal meeting announcements.

d. Minute Approval

The Planning Department Administrative Assistant assigned to the meeting shall prepare minutes which the Board shall adopt at the earliest convenient meeting. If additions or corrections to the minutes so necessitate, the adoption of minutes shall be postponed until the minutes are in form acceptable

to a majority of those members who were present at the meeting the minutes memorialize. It shall be the responsibility of the Department to properly archive copies of all meeting minutes.

e. Consent Agenda

Items that are considered routine by the Drainage Review Board may be placed on the Consent Agenda. The Consent Agenda shall consist of those cases that meet the following conditions:

1. Approval – Any case which staff recommends approval, the applicant has been contacted prior to the hearing and agrees to all stipulations and for which there is no opposition.
2. Denial – Any case for which the staff recommends denial, the applicant has been contacted prior to the hearing and agrees and for which there is no opposition.

Prior to taking action on the Consent Agenda items, the Chairman shall solicit the Board to determine if any Member wishes an item removed or if anyone is present in opposition to a case on the Consent Agenda. In either event, the case will be automatically removed from the Consent Agenda and heard according to its order under "Case Hearings" on the Agenda. All items remaining on the Consent Agenda may then be acted upon by one single motion.

f. Continuance Agenda

Items that are recommended for continuance by staff with concurrence by the applicant may be placed on this Agenda. These items will not have the benefit of a hearing but shall be moved for continuance after a brief staff presentation. A date for public hearing will be announced after the vote or, if no date certain can be announced, the Chairman shall announce that new notices are



required by law and shall be provided when a new hearing date is established.

g. Regular Agenda

Items that receive a full hearing will be placed on this Agenda and are subject to the procedures outlined in Section G below

h. Case Hearings

A public hearing in the following manner shall be held for each case identified under this section of the Agenda (witness may be sworn in at the discretion of the Chairman): The Chairman shall announce the Case Number, location of the case and the request. Staff shall then present its report including a recommend action along with any proposed conditions. The Chairman shall then call forward the applicant or an authorized agent to present a case for the grant of the relief being sought. Each applicant's presentation shall be limited to ten (10) minutes, unless the Chairman grants a longer period for presentation. Following the applicant's presentation, the Chairman shall allow questions from the Board. The Chairman shall open the public hearing and call upon those who have provided speaker's card to the Board. The Chairman shall provide the opportunity for questions from the Board of each speaker. The applicant may be provided a maximum of five (5) minutes rebuttal. The Chairman shall close the Public Hearing after all relevant testimony has been heard. The Chairman may then recognize staff in order to make comments and/ or modify their recommendation based upon information submitted or heard at the hearing. The Chairman will provide the Board opportunity for questions of staff and / or discussion of the issues. The Chairman shall entertain a motion and a second to the motion from the Board. The Chairman shall call for a vote and the vote shall be recorded by the Administrative Secretary.

i. Other Business

Any item as requested by the Board and / or Staff to be brought to the Board for information or discussion.

j. Adjournment

In the absence of a motion and / or second for adjournment, the Chairman may declare the meeting adjourned upon reaching that point on the Agenda.

**ARTICLE VII. POST HEARING**

Section 1. NOTICE OF ACTION

Staff shall prepare Notices of Action after the Drainage Review Board hearing. When requested, copies of the Notice of Action will be sent to appropriate homeowners associations.

Section 2. CASE FILES

Case files are maintained by the Planning Department. Any citizen may request access to any material in the case file, before or after hearings. Copies of any material are available and will be provided subject to the cost of making such copies.

Section 4. RECORD OF MEETING

Staff shall document all regular Board meetings, committee meetings, and any Special Meetings by electronic means. Electronic recordings of meetings shall be retained by the Planning Department for six (6) months after the Minutes are accepted and any Appeal of a particular case has been completed. Copies of the recording will be made at no charge upon request provided appropriate blank media is furnished.

**ARTICLE VIII. CASE HEARING RULES**

Section 1. The Chairman shall have the right to define the issues to be considered at any such hearing of the Board, and to limit the testimony offered by any party appearing before the Board

by requiring the testimony be within the issues so defined. Any question asked or any answer given, which is not within the issues so defined, may be stricken by the Chairman and shall be disregarded by the Board in making a decision.

- Section 2. At the first hearing an application is scheduled to be heard, no application or appeal will be considered for any action other than continuation unless there is a personal appearance by the applicant or designated representative, or the item is on the consent agenda.
- Section 3. If previously continued, an application may only be considered for continuation if the applicant or a designated representative appears in person at the hearing or unless the item is on the consent agenda. The Board retains the right to deny any continued application where the applicant fails to appear either in person or by designated representative.
- Section 4. An application of appeal for a rehearing can only be granted on a Motion to Reconsider made by a Member who voted with the majority on the previous action upon the Board finding that the applicant discovered new evidence of that the interests of fundamental fairness would be served. Staff shall be authorized to determine if new evidence has been submitted. An applicant may appeal staff's determination to the Drainage Review Board.
- Section 5. Except as noted in paragraph 4, an application for the same request may not be submitted for one year from the Drainage Review Board original judgment. Within said year, an application may only be considered by the Board if the application is substantially different from the original request.
- Section 6. Only Board Members and staff shall be permitted to examine or cross-examine any person appearing as a witness in any such hearing.
- Section 7. The Chairman shall decide all points of order or procedure unless otherwise directed by a majority of the Board in session at that time.
- Section 8. The Board may prescribe, in connection with the granting of any request; such conditions as the Board may deem necessary in order to fully carry out the provisions and intent

of the Maricopa County Drainage Regulation. Where any such conditions are violated or not complied with, the application shall be deemed to have been denied.

Section 9. No action of the Board shall set a precedent. Each case shall be decided upon its own merits and upon the circumstances pursuant thereto and according to law.

Section 10. To be valid, any interpretation by the Board shall receive at least three affirmative votes. Any other action shall be effective upon a simple majority of those eligible voting Members present.

Section 11. Ex parte contact is prohibited. Any ex parte contact with a Member shall be disclosed by that Member prior to the hearing of the case in question.

#### **ARTICLE IX. Guidelines for reviewing Waivers**

Section 1. Some physical constraint to a parcel should exist including but not limited to:

- a) Topography
- b) Drainage
- c) Easement
- d) Irregular Shape

Section 2. The Problem should not be self-created. Examples of self-created hardship:

- a) Structures built without permits.
- b) Substandard lots created by lot split.
- c) Owner's desire to not meet Regulation standards by his choice of location.

Section 3. Financial hardship and aesthetic considerations are not justification for a Waiver (includes actions by previous owners).

Section 4. The relief requested is the minimum relief necessary to provide the applicant with an economically viable use of his property.

Section 5. No other viable alternative exists to correct the applicant's problem.

Section 6. Some consideration to impacts on surrounding property owners should be given.

Section 7. The granting of numerous similar Waivers may prevent granting relief, as the Board's cumulative actions may be seen as legislative rather than judicial.

Section 8. Some consideration may be given to unique personal circumstances of the applicant.

Section 9. The Applicant's reliance upon an invalidly issued permit may be grounds for relief.

#### **ARTICLE X. AMENDMENT OF BYLAWS.**

Section 1. These bylaws may be amended as needed by the affirmative votes of at least three (3) Members.

Adopted 10-24-84

Revised 08-17-09

Revised 01-11-11

Revised 1-12-12