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**PLANNING BOARD  
Durham, New Hampshire  
RULES OF PROCEDURE**

***December 9, 2015***

***July 12, 2017***

***\*Public Hearing on proposed amendments – July 12, 2017\****

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***Proposed deletions from the existing document are shown like this***

***[Explanatory comments are shown like this. They will not be included in the amended document]***

**I. AUTHORITY**

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance of Durham, New Hampshire.

**II. OFFICERS**

- A. **Chair**. A Chair shall be elected annually by a majority vote of the Board ~~*in the month of May*~~. The chair shall preside over all meetings and public hearings, appoint such committees from the Board members as necessary, and affix his/her signature in the name of the Board. The Chair serves as an active voting member of the Board.
- B. **Vice- Chair**. A Vice-Chair shall be elected annually by a majority vote of the Board ~~*in the month of May*~~. The Vice-Chair shall preside in the absence of the Chair and shall have the full power of the Chair on matters which come before the Board during the absence of the Chair.
- C. **Secretary**. A Secretary shall be elected annually by a majority vote of the Board ~~*in the month of May*~~. The Secretary shall verify and review Board records, which the Planning Department maintains, and shall see that minutes of site inspections are drafted and made available to the full Board.
- D. ~~**Re-election**~~ **Elections**. All officers shall serve for one year and shall be eligible for re-election. ***Elections of officers shall be held at the May workshop, unless another date in the month of May is deemed preferable.***
- E. **Alternates**. Up to five (5) alternate members may be appointed, as provided for by the local legislative body pursuant to RSA 673:6, to serve whenever a regular member of the Board is ~~*unable to fulfill his/her responsibilities*~~ ***absent or recused***. Alternates should attend and fully participate in discussions at all Board meetings, but shall not be

permitted to introduce a motion, second a motion, or vote unless appointed by the Chair to fill the vacancy of an absent or recused ~~absent, recused, or disqualified~~ regular Board member.

### III. MEETINGS

- A. Meetings. Regular meetings shall be held at 7:00 p.m. in the Town Council Chambers, Durham Town Offices, on the second and fourth Wednesday of each month, except where holidays and other considerations call for a different schedule. Other meetings may be held on call of the Chair provided public notice and notice to each member is given at least 24 hours, excluding Saturdays, Sundays and legal holidays, prior to such a meeting.
- B. Quorum. A quorum for all meetings of the Board shall be four members, including alternates sitting in place of members. As long as there is a quorum of members at the meeting, it is not necessary that at least four members vote on any specific item (as may result, for example, when one or more members recuse themselves on an item).
- C. ~~Disqualification~~ Recusal. If any board member thinks it appropriate to be recused (or “disqualified”) from hearing a particular case, as provided in RSA 673:14, that board member shall notify the Chair as soon as possible so that an alternate may be requested to sit in that board member’s place. The recusal shall be announced by either the Chair or the recused member. The member being recused shall leave the table during the public hearing and all deliberation on the application.
- D. Order of Business. The order of business for regular meetings shall be as follows:
- I. Call to Order
  - II. Roll Call
  - III. Seating of Alternates
  - IV. Approval of Agenda
  - V. Town Planner’s Report
  - VI. Reports from Board Members who serve on Other Committees
  - VII. Public Comments
  - VIII. Review of Minutes (old)
  - IX. Public Hearings <sup>a</sup>
  - X. Development Projects – old projects <sup>b</sup>
  - XI. Development Projects – new projects <sup>b</sup>
  - XII. Other Business <sup>c</sup>
  - XIII. Review of Minutes (new)
  - XIV. Adjournment

<sup>a</sup> For items other than development projects that require public hearings.

<sup>b</sup> This includes acceptance, public hearings, final action, amendments, extensions, etc.

<sup>c</sup> This includes discussion/review of ordinances, regulations, master plans, special projects, etc.

(Note: Unless approved by a 2/3 vote of the members’ present, no new item of business shall be taken up after 10 p.m.)

For items IX, X, XI, and XII, public hearings shall be held prior to items that are not public hearings.

In preparing the agenda in advance of the meeting, the Planning Board chair and Town Planner may rearrange and rename items on the agenda, particularly items IX, X, XI, and XII as they see fit, in order to facilitate the efficient and productive flow of the meeting.

- E. Attendance. Members shall notify the Planning Board Chair and/or the Town Planner, as much in advance as possible, when they will not be able to attend a meeting. ~~The unexcused absence of a member from three (3) consecutive meetings or six (6) meetings in a twelve (12) month period shall constitute grounds for removal by the Town Council.~~ Continuous failure by regular members as well as alternates to attend these meetings can result in serious information gaps, causing an inadequate basis for decision making. [suggestion lifted from RYE, NH PLANNING BOARD: <[http://www.town.rye.nh.us/Pages/RyeNH\\_BComm/Planning/PB\\_Rules.pdf](http://www.town.rye.nh.us/Pages/RyeNH_BComm/Planning/PB_Rules.pdf)>]
- F. Non-public Sessions. All deliberations shall be held in public except for non-public sessions held in accordance with the provisions of RSA 91-A.

~~**G.** Communications. Discussions on applications should only be held at public meetings/public hearings. Discussions outside of these meetings by Planning Board members (including Alternates) should be discouraged as much as possible. This includes the use of email, and other forms of electronic communications, regarding Planning Board matters. Email should be directed to the Chair and sent to the Town Planner. The email, from Board members and non-members, will then be forwarded to all members and be placed in the record of the proceedings.~~

*[See Section VII. Miscellaneous, below]*

~~**G H.** Public Comments. The public is welcome to speak during the Public Comments time. However, the Planning Board will not accept comments at that time on: 1) any items on that evening's agenda, except at the board's discretion on a case-by-case basis; nor on 2) matters currently under review for which the public hearing has been closed.—~~Note, however, that the public may comment on items on the agenda (unless the public hearing has been closed) via email or letters sent to the board in advance of the meeting. Comments from individuals shall be limited to five minutes each unless the time is extended by the chair.~~~~

~~**H I.** Submission of information. Emails and letters received from the public that pertain to current Planning Board matters (except when the public hearing has been closed) are: a) emailed to the Planning Board; b) mailed to the board members if received by the Thursday prior to the meeting, or placed on the table the evening of the meeting, if received later; and c) posted on the Town's website. Email and letters should be sent to the Town Planner and addressed to the Planning Board Chair and/or members of the Planning Board. Emails and letters received by individual Planning Board members shall be forwarded to the Town Planner who will then forward them to the Planning Board.~~

Any email, letter, document, or other information that is pertinent to a decision ~~which~~ the Planning Board is expected to make at the upcoming Wednesday meeting, must be received in the Planning Office by the prior Monday at 5:00 p.m., or the ~~B~~board will consider the submitted material only at its discretion (This limitation does not apply to comments made in person at the ~~actual~~ public hearing).

- I J. Public Hearings. The Planning Board will not accept any public input after ~~the a~~ hearing has closed, including verbatim transcripts of statements made at the public hearing. However, for administrative matters (master plans, site plan regulations, etc.) the Planning Board may, on a case-by-case basis, prior to closing the public hearing, provide that the record remain open for a limited period of time after the public hearing closes to accept any additional input. (See below, for public hearings related to quasi-judicial matters.)

The public is welcome to submit information via emails and letters on matters prior to the opening of ~~the a~~ public hearing and while the public hearing is open. This correspondence will be posted and forwarded to the Planning Board.

- J K. Remote Participation. A member who is not physically present may participate in the meeting as long as: 1) the board votes to allow the remote participation; 2) the member could not reasonably be at the meeting in person; 3) the absent person can hear the proceedings; and 4) everyone at the meeting can hear the absent person.

#### IV. APPLICATIONS/DECISIONS

##### A. Applications.

1. Submission of application. All *new* applications for consideration by the Board shall be made on forms provided by the Planning Department and shall be submitted to the Town Planner at least twenty-one (21) days prior to the scheduled meeting date as provided in the Site Plan or Subdivision Regulations. ~~Submissions that fail to meet this requirement will be considered at the next appropriate meeting, except as may otherwise be provided in the Site Plan or Subdivision Regulations or when special provisions are approved by the Planning Board Chair.~~

For applications that are already under review, applicants may submit revisions and provide supplementary information and documentation less than 21 days prior to the meeting at which the material will be reviewed by the Planning Board; however, applicants should coordinate with the Town Planner on the timeframe for submittal of the material in order to allow for, as appropriate, review by the Technical Review Group, provision of comments by staff, inclusion in Planning Board packets, and sufficient review by Planning Board members in advance of the meeting.

2. Application deadline. ~~The deadline for submission of applications is provided in the Site Plan and Subdivision Regulations.~~ The Town Planner is granted some flexibility in allowing for additional items to be submitted after the deadline provided: a) the application is substantially complete at the deadline; b) the applicant communicates in a timely fashion with the Town Planner about any items that he or she would like to submit later; and c) The Town Planner determines that the submission of specific items after the deadline will not impair

the review process in any meaningful manner. This issue deals with the timing for submission of materials, assuming that everything is in place when the Planning Board will first see the application and make its determination of completeness. If certain items are not in place when the Planning Board makes its determination of completeness, then the Planning Board shall determine whether or not to accept the application.

3. Documentation. All applications must be accompanied by adequate plans and documentation in accordance with the terms of the Zoning Ordinance, Site Plan Review Regulations, Subdivision Regulations, and Road Regulations, as appropriate. The Planning staff is directed by the Board to advise applicants in meeting these minimum requirements.
4. Scheduling Site Walks. After the acceptance of an application as complete, a site walk of the property may be scheduled at the discretion of the Board. Site walks should be performed prior to the public hearing. However, if the subdivision is a Conservation Subdivision, a site walk should be performed before the Design Review phase (Phase 2) of the application. Site walks are **considered public** meetings of the Board and an agenda must be posted and minutes maintained. The Planning Board may hold a site walk on a preliminary application at its discretion. ~~Members of the public are welcome to attend, but may only be heard at the discretion of the Board. In addition, the~~ Conservation and Historic District Commissions will be notified of the site walks, when the application is germane to the either Commission, and is encouraged to
5. Procedure for Site Walks. The following procedure shall be followed at site walks. The Chair shall explain pertinent elements of the procedure at the outset as he or she deems appropriate.
  - a. The site walk will commence at a specific time and location designated on the agenda. The Chair shall officially open the site walk at the appropriate time.
  - b. Members of the public are welcome to attend site walks. At the discretion of the Chair, participants – including the applicant’s team, Planning Board members, members of other Town boards, staff members, neighbors, and other interested citizens – shall introduce themselves to the group at the start of the meeting.
  - c. The participants will proceed from one specific location to the next, stopping for a presentation of information/group discussion at each spot.
  - d. Generally, a representative of the applicant shall lead the group on the site walk, explaining salient elements of the site and the project, as directed by the Chair.
  - e. Members of the public may ask questions and offer comments as directed by the Chair. Discussion topics shall be limited to those relevant to the site walk, per se.

- f. Participants in the site walk are encouraged to stay together to the extent practical so that everybody may participate in and/or hear the group discussion.
- g. Planning Board members shall not participate in side discussions about the site and the project separate from the group discussion. Other site walk participants ~~are not restricted in this manner but~~ are encouraged to group when it stops for a presentation/discussion.
- h. The Chair shall adjourn the site walk at the appropriate time [~~<<CLARIFY~~]. Planning Board members shall ~~limit—cease any~~ site and the project after the site walk has been adjourned.
- h.i. An individual Planning Board member should [SHALL?] not visit an applicant's property at the applicant's invitation. [source: Windham, NH, Planning Board, and advice of Durham's Town Attorney several years ago <[http://www.windhamnewhampshire.com/sites/default/files/PDF/Ordinances/400ByLaws/ORD400\\_PBRulesofProcedure.pdf](http://www.windhamnewhampshire.com/sites/default/files/PDF/Ordinances/400ByLaws/ORD400_PBRulesofProcedure.pdf)>

~~5~~ 6. ~~Public Hearing.~~ Public Hearings. A public hearing shall not be scheduled, advertised and held unless an accepted application is in full conformity with the Board's requirements, except for Design Review applications as provided herein. The Planning Board will not accept any public input after the public hearing has closed, including emails and letters and verbatim transcripts of statements made at the public hearing. However, the Planning Board may, on a case-by-case basis, prior to closing the public hearing, provide that the record remain open for a limited period of time after the public hearing closes to accept verbatim submissions only. (This pertains to quasi-judicial matters; see the provision for administrative matters, above.)

~~6~~ 7. Forms. All forms and revisions to forms prescribed by the Board shall be adopted by resolution of the Board.

~~7~~ 8. Reconsideration. A member of the Board who originally voted with the majority on a decision may request reconsideration of a decision made on an application. A majority vote of the Board members present is required to reconsider an application. The request for reconsideration shall ~~only~~ be made only by members of the Board and the request shall make clear the reason the request is being made.

~~8~~ 9. Conservation Subdivisions. The Planning Board shall not waive the preliminary phases, Phase I Conceptual Consultation and Phase II Design Review, for any subdivision not given an exemption from the Conservation Subdivision Ordinance.

~~9~~ 10. Conditional Uses. Generally, the Planning Board shall review the criteria for conditional uses of the Zoning Ordinance, i.e. Section 175-23 Approval Criteria, at the final meeting of its deliberations on the prospective conditions of approval for a project. <<RATIONALE WOULD BE HELPFUL.

~~1011~~. Withdrawal. Applications may be withdrawn in writing by the applicant. If an application is withdrawn, the applicant will be allowed to resubmit the application and must pay for reasonable costs (copying, legal, and postage, etc.).

12. Postponements. When an applicant requests that a project be postponed from a Planning Board agenda, the Town Planner may approve the postponement and schedule a new date for the project to be presented to the Planning Board. Applicants are encouraged to provide as much advance notice as possible when requesting a postponement.

B. Public Notice.

1. The public notice of an Acceptance Meeting and/or Public Hearing on an application shall be given in the local newspaper as the legal notice of *the* meeting and shall be posted in two locations at least ten (10) days before the date set for either meeting. The legal notice shall include the name of the applicant, description of the property including tax map identification, action desired by the applicant, and the date, time and place of the meeting.
2. Personal notice of an Acceptance Meeting and/or Public Hearing shall be made by certified mail to the applicant; all abutters; and the surveyor, engineer, architect and/or soil scientist (when applicable) at least ten (10) days before the date of the meeting. This notice shall contain the same information as the legal notice.
3. The Planning Board shall accept the application as complete at one meeting and hold the public hearing at the next available meeting (*except for Boundary Line Adjustments; see below*). Once an application is submitted, if an application appears to be complete, the staff shall include in the public notices the dates at which the application is expected to be accepted as complete and the public hearing is expected to be held.

C. Public Hearing. The conduct of a Public Hearing shall be governed by the following rules:

1. The Chair shall read the ~~official notice of~~ *agenda description of the* Public Hearing.
2. The Chair shall provide appropriate information about the application, by reading the Letter of Intent submitted with the application, or by other means as deemed appropriate.
3. After the approved motion to open the public hearing, the Chair shall announce the opening of the Public Hearing.
4. The Board will hear any information that pertains to the facts of the application and how those facts relate to State law, the Durham Zoning Ordinance, and the Board's regulations. This information shall include, as applicable, reports from the Technical Review Committee, the Technical Review Group (TRG), the Town Engineer, and consultants hired at the request of the Board to provide expertise on specific topics.

5. The Chair may place reasonable time limits on all speakers.
6. All persons wishing to speak shall be required to identify themselves, provide their address and state whether they are a party to the application or an agent or counsel of a party to the application.
7. Persons wishing to speak shall be allowed to do so in the following order:
  - a. The applicant shall present *his the* application.
  - b. *The public may speak. Persons speaking in favor of the application.*
  - c. *The applicant may respond to comments made by the public. Persons who have concerns about the application or those speaking in opposition to the application.*
  - d. *The applicant may speak in rebuttal for up to fifteen minutes.*
  - ~~e. One person representing those in opposition to the application may speak in rebuttal for up to fifteen minutes.~~
  - ~~f. Any member of the Board may request the Chair to allow any party to speak a second time. Any party may speak a second time at the discretion of the Chair.~~
  - ~~e. g. Questions by any member of the Board may be asked at the discretion of the Chair. Any Planning Board member may ask a question(s).~~
  - ~~h. When all parties have been heard, and if no outstanding issues remain to be heard, the Chair may entertain a motion to close the Public Hearing. Only when such a motion is seconded and approved will the Chair announce that the Public Hearing is closed, and no further public testimony may be heard.~~
  - ~~i. When there is sufficient reason, the Public Hearing may be continued after a motion to do so has been approved by the Board. If the date of the meeting to which the Public Hearing is continued is decided and announced, then no further legal notices will need to be sent.~~
  - f. When there is sufficient reason, the Public Hearing may be continued after a motion to do so has been approved by the Board. If the date of the meeting to which the Public Hearing is continued is decided and announced, then no further legal notices will need to be sent.*
  - g. When all parties have been heard, and if no outstanding issues remain to be heard, the Chair may entertain a motion to close the Public Hearing. Only when such a motion is seconded and approved will the Chair announce that the Public Hearing is closed, and no further public testimony may be heard.*

*[The order of h. and i. was simply reversed as f. and g.]*



8. Once a public hearing has been closed, the Chair, with approval of the Planning Board, may reopen the public hearing when significant new material or concerns are presented to the Planning Board.
- D. Deliberations. ~~Deliberations-The deliberation period are-is~~ for discussions among the members, only. ~~Deliberations will-shall~~ not begin until the public hearing is closed. At discretion of the Chair, the Board may ask questions of the applicant, or others, for clarification on items of discussion.
  - E. Design Review. For ~~De~~design ~~R~~review applications, at the first meeting of the Planning Board, the project will be presented, and at the next meeting a public hearing will be held. The staff shall state this accordingly in the notices that are mailed and posted when the application is submitted. A public hearing will still be required later after the formal application is accepted as complete.
  - F. Approval of Projects.
    1. All approvals (except where deemed unnecessary) shall include a section outlining “Findings of Fact.”
    2. The Planning Board Chair (or his/her designee) shall sign the Notice of Decision for approved projects (except on minor projects where it is not deemed necessary). The Town Planner shall sign (“certify”) final approved plans.
    3. The timeframe for meeting precedent conditions shall be six months from the date of Planning Board approval (or as specified in the Regulations<<WHICH REGULATIONS: SITE PLAN REVIEW? CLARIFY.>>), though the board may set the timeframe differently as it sees fit.
  - G. Changes to Approved Plans. There are three types of changes to approved plans, as follows:
    1. Administrative Modification. Simple, straightforward changes that would not reasonably be expected to have any impact on abutters, the public, or the quality or character of the project may be approved by the Town Planner administratively. An appropriate record shall be maintained of any approved administrative modification.
    2. Planning Board Modification. Changes that would not reasonably be expected to have any meaningful impact on abutters or the public, but which may be considered more consequential than those appropriate for Administrative Modifications may be approved by the Planning Board with no notices being sent or published. Planning Board modifications may be listed on the agenda as specific items or taken up under Other Business, as appropriate. Applicants shall complete a Modification form for submission to the Planning Board, where appropriate. When a Planning Board modification is presented to the Planning Board, the board, at its option, may determine that the requested change should be treated as an amendment (see below).
    3. Amendments. Changes that are more significant or where the change might reasonably be expected to have a meaningful impact on abutters or the public shall

be treated as amendments. Applicants shall complete an Amendment form for submission to the Planning Board. For amendments a public notice shall be published in the newspaper and notices shall be sent by certified mail to all abutters.

## V. RECORDS

- A. The records of the Planning Board shall be kept by the staff of the Planning Department and ~~be~~ be [keep BE; goes with “helping verb” SHALL] made available for public inspection in accordance with statutory requirements.
- B. Final written decisions will be placed on file and made available for public inspection within 144 hours after a decision is made (per RSA 676:3).
- C. Minutes. Minutes of all public meetings, including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within 5 business days after the public meeting (RSA 91-A:2 II). All members may vote on the minutes even if they were not present at the subject meeting, at their own discretion.
- D. Audio and video of all public meetings, if available, shall be made open to the public.

## VI. JOINT MEETINGS

- A. RSA 676:2 provides that the Planning Board may hold joint meetings with other "land use boards", including but not limited to the Zoning Board of Adjustment, Conservation Commission, or the Historic District Commission, and each board shall have discretion as to whether or not to hold the joint meeting.
- B. Joint meetings with any other land use board may be held at any time when called jointly by the Chairs concerned.
  1. RSA 676:2 requires the Planning Board Chair to chair the joint meeting in which the Board is participating.
  2. The provisions covering the conduct of public hearings, set forth in these Rules of Procedure, together with such additional provisions as may be required by the other participating board, shall be followed.

## VII. MISCELLANEOUS

- A. Correspondence.
  1. All correspondence shall be directed to the Chair of the Planning Board, Durham Town Office, 8 Newmarket Road, Durham, NH 03824 and shall be distributed to members of the Board.
  2. All documents or communications from the Board shall be signed by the Chair or his/her designee.
  3. The Board may authorize the Chair, or any other member of the Board, to speak on behalf of the Board.
- B. Annual Report. An annual report shall be prepared by the Chair, reviewed by the Board if he or she so desires, and submitted to the governing body for inclusion in the

Town Report.

C. Planning Workshops. Planning workshops to discuss issues related to general planning, the Master Plan, prospective amendments to the Zoning Ordinance and regulations, policies and procedures, and other “housekeeping” business shall be held at least twice each year. Workshops shall be held on the second meeting date in May and October in place of regular meetings or as called by the Planning Board Chair. *Business at the May workshop shall include election of officers, appointments to boards and committees, review of the prior year, and plans for the upcoming year, unless another date is deemed appropriate for these items.*

D. *Appointments to Committees. The Planning Board shall appoint a representative (regular or alternate member) to each of the following boards and committees, to the extent that interested board members are available to serve. The board may appoint a second person to serve/an alternate member, as appropriate.*

1. *Conservation Commission*
2. *Economic Development Committee*
3. *Energy Committee*
4. *Historic District Commission*
5. *Integrated Waste Management Advisory Committee*
6. *Technical Review Group*
7. *Traffic Safety Committee*
8. *Other boards and committees as the Planning Board deems appropriate*

E. Scheduling Public Hearings. Public hearings shall be scheduled as follows:

Public hearing held at first meeting:

- Boundary line applications – staff sets public hearing date
- UNH (and Oyster River and Town) applications – staff sets date
- Scenic roads – staff sets date

Public hearing held at second meeting with presentation at first meeting:

- Site plan applications - staff sets public hearing date
- Subdivision applications - staff sets date
- Design review application - staff sets date
- Conditional use applications - staff sets date
- Amendments (to approved projects) – Planning Board sets date
- Zoning amendments – Planning Board sets date
- Site plan and subdivision amendments – Planning Board sets date
- Sign master plans – Planning Board sets date

F. *Communication outside of meetings. There are two kinds of matters that come to the Planning Board: a) Applications and project reviews, called “quasi-judicial” matters; and b) All other matters, including administrative, policy, and legislative (such as proposed amendments to the Zoning Ordinance or Site Plan Regulations) matters.*

*For quasi-judicial matters, all discussions (including email and other electronic communication) by individual Planning Board members shall be limited to Planning Board meetings, other pertinent public meetings, and communication with staff.*

*Planning Board members are discouraged from discussing quasi-judicial matters with other Planning Board members, applicants, neighbors, and members of the general public outside of these settings. If Planning Board members are contacted about quasi-judicial matters by interested parties outside of meetings, they should redirect the interested party and the matter to the appropriate Town staff.*

*For administrative/policy/legislative matters, it is generally recommended that Planning Board members refrain from discussing these matters outside of Planning Board meetings. Otherwise, a Planning Board member may speak on any given matter outside a meeting with no more than two other members, so as to comply with RSA 91-A, the so-called Right To Know law. <<COMMENT: According to the NH Office of Energy and Planning, there is no RSA prohibiting such communication. This option may encourage more residents to consider volunteering for the Planning Board or facilitate the crafting of language for zoning amendments and complex motions, thus benefitting the entire Board.*

## **VIII. AMENDMENTS**

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that a public hearing is held on the proposed amendment.

These Rules of Procedure were adopted at the Planning Board meeting on April 17, 1996 and revised at Planning Board meetings on the dates shown below.

March 21, 2001

January 16, 2002

September 10, 2003

February 1, 2006

October 10, 2007

April 9, 2008

September 19, 2012

September 25, 2013

December 9, 2015

*July 12, 2017*