

The Commission Will Come to Order:

COMMENTARY ON ADAPTING THE RULES OF PARLIAMENTARY PROCEDURE FOR PLANNING COMMISSIONS, ZONING BOARDS & BOARDS OF ADJUSTMENT

by David J. Allor

As part of my work, I often observe planning commission meetings. I appreciate the conscientious efforts of members to examine complex aspects of specific issues under the principles of the comprehensive plan, adopted public policy, and development regulation. This is a difficult enough task in itself; yet, under our system of government these processes of deliberation and decision must comply with established procedures.

To structure their efforts, many planning commissions have adopted, and come to rely upon, *Robert's Rules of Order*, in one or another edition. I doubt, however, that many commissions have either a clear understanding of parliamentary procedure or the ability to effectively apply *Robert's Rules*.

In this short article, I want to summarize the essential features of parliamentary procedure, and review some of the problems planning boards face in using *Robert's Rules*. The "Model Outline of Motions for Planning Commissions," which follows this article, seeks to adapt *Robert's Rules* to better meet the particular needs of today's planning and zoning boards. The Model Outline of Motions represents a simpler and, I hope, more understandable set of procedural rules to guide a planning or zoning board's deliberative processes — and, of equal importance, promote public understanding of commission deliberations.

1. WHY HAVE RULES OF PROCEDURE?

I am aware that many planning commissioners will read this discussion and the Outline with little enthusiasm, if not with real dread. Permit me to argue three reasons for understanding and applying parliamentary procedures. First, failure to adopt and follow formal, fair, and coherent procedures erodes public confidence in planning. Where planning is an optional power of local government, such an erosion of confidence could endanger planning altogether.

Even where planning is a mandated power of local government, public participation could be reduced to a paralyzing conflict over proper procedure. Second, failure to consistently apply procedures could result in a deprivation of individual rights and damage to individual interests. Third and finally, failure to consistently apply procedures would invite litigation against the local unit of government.

THE FAILURE TO ADOPT AND FOLLOW FORMAL, FAIR, AND COHERENT PROCEDURES ERODES PUBLIC CONFIDENCE IN PLANNING.

These considerations do reflect certain basic principles of self-government. First, as Henry Roberts notes is "the right of the *deliberate* majority to decide" — which is immediately coupled to the second, the right of the minority to secure "considered judgment after a full and fair 'working through' of the issues involved." (*Robert's Rules* [1915] 1971). Moreover, such procedures assure that all members of the body are treated equally, and that all are free to participate fully in the discussion.

Parliamentary procedure seeks to provide for both efficient and effective decision-making and both open and full debate of issues. They are closely allied to constitutional requirements of due process and to

common law concepts of reasonableness, non-arbitrariness, and non-capriciousness. Perhaps, the best advice on the balance between discipline and reasonableness comes from Henry Robert himself:

Know about parliamentary law, but do not try to show off your knowledge. Never be technical, or more strict than is absolutely necessary for the good of the meeting. Use your judgment; the assembly may be of such a nature through its ignorance of parliamentary usages and peaceful disposition, that a strict enforcement of rules, instead of assisting, would greatly hinder business; but in large assemblies, where there is much work to be done, and especially where there is liability to trouble, the only safe course is to require a strict observance to the rules.

Robert's Rules (1915 edition)

2. PROBLEMS WITH ROBERT'S RULES.

The preceding quotation, while containing valuable advice, also reflects the first of three weaknesses within *Robert's Rules*. The text, now more than a century-old, is not written in a manner coherent to speakers accustomed to the contemporary use of the English language. The complexity of the language undermines the ability to understand and apply the procedure. More seriously, misunderstandings of the language of parliamentary procedure aggravate suspicion of deception or manipulation within debate. Again, dual requirements must be addressed: parliamentary procedure must be comprehensible as contemporary language but be sufficiently disciplined to fulfill the requirements of law.

The second weakness is largely historical. In the early years of its independence, the United States of America felt a strong need to give discipline to the processes of self-government. Thomas Jefferson's *Manual of Parliamentary Practice* (1801) sought to guide the conduct of the national congress. Both Luther S. Cushing's *Manual of Parliamentary Practice* (1845) and Henry M. Robert's *Rules of Order* (1876) extended procedures to non-legislative bodies and

voluntary associations. Yet, many manuals focus upon large legislative bodies, where contending interests, perhaps politically-partisan interests, reinforce a “win-lose” rather than “argument-to-consensus” conception of decision-making. The rigidity of certain procedures impairs the collaborative exploration of alternatives.

Two examples are important. First, parliamentary procedure disallows discussion of an issue in the absence of a motion; however, if a motion is made, the subsequent discussion is constrained to that motion. Many deliberative bodies employ the option of “Recessing into a Committee of the Whole” to enable broader discussion. This is impracticable on a regular basis and often confuses the public. Second, small deliberative bodies (those of three to five members) may do well to delete the requirement for a “Second” to motions. It would be unfortunate for an otherwise good motion to “die for lack of Second.” In both cases, the ultimate decision should be based upon the quality of the deliberation, not technical considerations of motion-making.

The third weakness of *Robert’s Rules* relates to the application of parliamentary rules to the special nature of planning and zoning boards. Unlike the large, elected or self-constituting assemblies considered by Henry Robert, the work of planning is guided by deliberative bodies which are small, appointed in staggered terms of office, and obligated to conform to provisions of state statute and/or municipal charter.

In general, the work of planning commissions and zoning boards are taken to be *quasi-legislative*; their actions are most frequently recommendations to a legislative body, rather than definitive actions (except, in those states where a planning commission makes final decision on plat approvals). Where a board of adjustment hears requests for variance or appeals of administrative interpretation, its actions are taken to be *quasi-judicial* and are final

(except as they may be appealed to the court). These peculiarities were not envisioned by Robert.

Four other issues also merit discussion:

First, planning commissions, zoning boards, and boards of adjustment often must act within fixed time frames — for example, within thirty days to make recommendation or decision. As a result, motions to “Object to Consideration,” “Lay on the Table,” or “Postpone Indefinitely” are largely inappropriate.

Second, and similarly, a motion to “Reconsider” is very difficult to employ within limited time periods, and taking into account notice requirements.

Third, since the votes of commission and board members should always be taken by roll call, the motion for the “Division of the Assembly” is unnecessary.

Fourth, public hearings — so common to the planning commission deliberative process — are not directly addressed in *Robert’s Rules*. Robert’s provisions for “Occasional or Mass Meetings” offer little direction. For Robert, deliberative bodies did not directly hear the testimony of interested parties. While such information could be introduced through committee report, regular deliberative sessions permitted only commission or board members to speak. In consequence, deliberative bodies in planning need to adopt a number of procedures to facilitate the orderly participation of the public. Such motions as “Open (or Recess into) Public Hearing”, “Accept (written materials) for the Public Record”, “Close the Public Hearing”, and “Close the Public Record” are essential features of due process for planning-related decision-making.

3. SOME FINAL OBSERVATIONS.

I wish to conclude these comments on a very serious note. Each commission or board member is under an obligation to know the relevant statutes and codes, charter provisions, and by-laws. If a question of law or procedure arises, it should — if at all

possible — be referred to and answered by legal counsel and settled prior to the meeting. Recurrent questions to legal counsel on matters of procedure within a meeting cast doubt upon both the dedication and preparedness of commission or board members. Formal procedures can offer little support to proper planning unless they are clearly understood, consistently applied, and broadly-accepted as both fair and effective.

I hope you will read through the “Model Outline of Motions” set out on the following pages. It is designed to make it easier for planning and zoning boards to operate in a manner that is fair and understandable, both to the members themselves and to the public.

I wish to express my appreciation to the many planning commission, zoning board, and board of adjustment members with whom I have worked to clarify decision-making procedures. Many of the comments in both the above essay and the outline on the following pages have been taken from notes made at local, state or national training sessions sponsored by the American Planning Association. I also wish to thank Professor Robert E. Manley, University of Cincinnati, and partner in the law firm of Manley, Burke, Fischer, Lipton and Cook, Cincinnati, Ohio, for his constructive criticism of the draft versions of this work. ♦

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Model Outline of Motions for Planning Commissions and Zoning Boards

by David J. Allor

1. CALL TO ORDER

NS | ND | NA | NV

Action of the chairperson to bring the members, staff, and audience into order.

2. CALL FOR QUORUM

NS | ND | NA | NV

Action of the chairperson, with confirmation by the secretary, that the commission may conduct official business.

3. CALL TO FOLLOW THE AGENDA

NS | ND | NA | NV

Action of the chairperson to proceed with the agenda as published, so that persons attending and possibly wishing to testify may know the order of issues to be heard and decided.

4. Motion to AMEND THE ORDER OF THE AGENDA

S | D | A | V

For very specific reasons, other than those of inconvenience or unpreparedness, a commission member may move to alter the order but not the content of the agenda.

5. Motion to FIX THE TIME TO ADJOURN

S | ND | A | V

Once the order of the agenda has been decided, a planning commission is under an obligation to estimate how much of its work it can reasonably and responsibly conclude within a single meeting. Where a public hearing is required, the chairperson can impose reasonable but equitable time constraints upon public testimony.

6. Motion to APPROVE THE MINUTES

NS | ND | A | V

Action to approve the minutes of a previous meeting. The minutes are amendable to improve clarity, accuracy, and completeness, but not to re-open debate on a previously decided agenda item.

The following outline modifies, withdraws, and inserts motions into the order provided within *Robert's Rules of Order* (Revised 1971 and Newly Revised 1990). However, the motions are not presented in order of precedence, but in the order in which they are most likely to appear within the meeting of a commission or board. In this outline, a single public hearing is heard within a deliberative meeting.

Borrowing from Jon L. Ericson's *Notes and Comments on Robert's Rules* (1991), each motion is coded in four categories:

requires **Second** (S), or **not** (NS),
is **Debatable** (D), or **not** (ND),
is **Amendable** (A), or **not** (NA),
and requires **Vote** (V), or **not** (NV).

A simple majority is required, unless otherwise noted. Immediately below the motion and its codes is a brief explanation of the motion's use and relevance.

7. Motion to RECONSIDER

S | D | NA | V

A procedural motion, used where a commission member in the majority on a previously decided item wishes to have the commission reconsider its vote. The motion is appropriate only where: (1) crucial information, not available at the time of the initial vote, is now available, or (2) there has been a substantial change of circumstances since the initial vote. Great care should be taken with respect to this motion so as to not violate notice requirements or time limitations on action. If the motion for RECONSIDERATION is passed, the item is re-presented in total, after which a new substantive motion may be made.

8. Motion to RECESS INTO PUBLIC HEARING

S | ND | NA | V

To this point the commission is in regular deliberative meeting, it now may RECESS INTO PUBLIC HEARING in order to take public testimony on a specific agenda item. During a public hearing, a commission member may not make substantive motions.

9. Motion to ACCEPT FOR THE RECORD

S | ND | NA | V

A procedural motion to officially incorporate an application, agency report, consultant's report, letter, petition, or other written or visual materials into the public record.

10. Motion to CLOSE THE PUBLIC RECORD

S | ND | NA | V

If the planning commission wishes to proceed with debate on the item, it must close the public record. Both the record of written and visual materials and the oral testimony form the basis of consideration and decision. Where the commission is to deliberate the case at a future meeting, it may leave the public record open for a specific period of time, usually two business days, to receive any additional written materials.

11. Motion to CLOSE THE PUBLIC HEARING

S | ND | NA | V

A procedural motion made when all public testimony has concluded; the planning commission has now returned to deliberative meeting.

12. CALL TO ENTERTAIN A MOTION

NS | ND | NA | NV

After broad discussion and deliberation among the members of the planning commission, the chairperson may invite, but may not make, a motion.

13. Motion to CLOSE DELIBERATION

S | ND | NA | V

A procedural motion to test whether the planning commission is ready to move from deliberation to decision. For smaller commissions, the CALL TO ENTERTAIN A MOTION (see #12) would be sufficient to move the commission toward substantive motion.

14. Motion to APPROVE, APPROVE WITH CONDITIONS, or converse motion to DISAPPROVE

S | D | A | V

A substantive motion (often called the MAIN motion); it may take one of two forms: (1) a definitive action, or (2) a recommendation. Requires recitation of reasons in support of the motion; both the Mover and Seconder must concur in the reasons and in the conditions, if such are attached. A tie vote constitutes defeat of the motion. When a motion to DISAPPROVE is defeated, a converse motion should be made to secure APPROVAL or APPROVAL WITH CONDITIONS.

15. Motion to AMEND the Previous Motion

S | D | A | V

Amending motions may be either procedural or substantive. When a motion has been moved and seconded and is within the period of debate, it is subject to substitution, alteration or perfection. When an amendment is seen as "friendly," that is, compatible with the previous motion by the initial mover and seconder, the amendment may be incorpo-

rated directly into the previous motion by verbal assent; where the amending motion is seen as “unfriendly,” it must be debated and decided first. All motions to AMEND the previous motion must be decided prior to deliberation and vote on the MAIN motion (see #14).

16. Motion to RECESS

S | ND | A | V

A procedural motion to permit a very brief suspension of public hearing or deliberative meeting to facilitate commission operations or for the comfort of the public. Planning commission members should avoid contact with interested parties during recess.

17. Motion to DEFER TO SPECIFIC TIME

S | D | A | V

Where testimony on a public hearing or deliberation by the commission on an agenda item cannot be concluded within a single session, a motion to DEFER TO A SPECIFIC TIME, that is, the immediately next meeting, is appropriate. The deferred item becomes the first item in the succeeding agenda. Care must be taken to not violate notice or time limitation requirements (as with #7, Motion to RECONSIDER).

18. Motion to EXTEND THE TIME TO ADJOURN

S | ND | A | V

Having already fixed the time of adjournment (see #5, Motion to FIX TIME TO ADJOURN), the commission may nevertheless extend such time, but by a two-thirds vote.

19. Motion to ADJOURN

S | ND | NA | V

While a motion to ADJOURN is always appropriate, planning commissions are obligated to expedite items on the meeting agenda. A Motion to ADJOURN is best used when all agenda items have been decided or remaining items have been DEFERRED TO SPECIFIC TIME (see #17).

An additional number of motions are necessary to facilitate the internal operations of the commission or acknowledge rights of its members. The following motions have no order of precedence.

20. Motion to ADOPT or the converse motion to REJECT

S | D | A | V

Action to incorporate, alter, or eliminate policies which guide the decision-making of the commission or board. Policy adoption requires only a voting majority; adoption of, or amendment to, by-laws requires a two-thirds vote.

[Editor's Note: For more on by-laws, see David Allor's "Keeping Things In Order: Planning Commission By-Laws, in PCJ #14].

21. Motion to REFER TO COMMITTEE

S | D | A | V

Some larger planning commissions have provision in their by-laws allowing referral of specific issues to smaller committees for deliberation and subsequent recommendation back to the full commission. This does not delegate power to the committee to decide the issue.

22. Motion to DIVIDE A MOTION

S | ND | A | V

Where a motion has been both moved and seconded and is under deliberation, but where that motion is considered as complex. Any member of the commission may seek to divide the motion, thereby permitting independent votes on specific issues. Care must be taken not to divide a motion in such a manner as to subsequently make contradictory decisions among the features of the divided motion.

23. Action to WITHDRAW A MOTION

NS | ND | NA | V

Where the Mover finds that an initial motion is flawed, inappropriate, or premature, the Mover may seek to withdraw the motion in whole. This action is not permissible if the original motion is either subject to an amending motion or has been amended.

24. Motion to SUSPEND THE RULES

S | D | A | V

Where, in extraordinary conditions, established rules would hinder rather than promote effective deliberation, specific rules may be suspended for specific time within a meeting — the reasons for such suspension should be entered into the minutes of the meeting. Any suspension of rules requires a two-thirds vote. Great care must be taken under a suspension of rules to avoid the appearance (or the fact) of unfairness. No rule may be suspended which is otherwise required by law.

25. Action to RULE OUT OF ORDER

NS | ND | NA | NV

To assure the orderly progress of a meeting or hearing, the chairperson may rule individuals — whether members of the commission, staff, or the public — out of order where: (1) comments are irrelevant to the item under discussion, (2) comments have already been made, (3) the specified period of time in which to speak has expired, or (4) comments are disruptive to the order of the meeting.

26. Instruction to DISREGARD

NS | ND | NA | NV

To assure the objectivity of the hearings and meetings, the chairperson may instruct the members to DISREGARD comments and/or written or visual materials that are inflammatory or prejudicial. Such comments, however, are retained

in any recordings or transcribed minutes of the meeting, and in the public record.

27. Motion to APPEAL THE RULING OF THE CHAIR

S | D | NA | V

A right of members of a commission to challenge the action of a chairperson, so as to ensure that proper procedures are followed, not to impede deliberation and decision.

28. A POINT OF ORDER

NS | ND | NA | NV

A right of members of a commission to request that the chairperson follow proper order. The intent is to assure proper progress of deliberation, not to contest action of the chairperson (as in #27 Motion to APPEAL THE RULING OF THE CHAIR). The point of order seeks to address an immediate concern, not debate larger procedural issues. Repeated use of A POINT OF ORDER to delay or frustrate decision is inappropriate and damages the continuity of deliberation.

29. A POINT OF INFORMATION

NS | ND | NA | NV

A right of members of a commission to request the specific inclusion or clarification of matters of fact from the chairperson.

30. A POINT OF PERSONAL PRIVILEGE

NS | ND | NA | NV

A right of any member of the commission to express matters of serious concern. For example, if a member of the commission is aware of a conflict of interest in a specific case, that member should at the time that the case is brought forward on the agenda, raise A POINT OF PERSONAL PRIVILEGE, declare that a conflict of interest exists, and withdraw from all further participation on that case. As a special note: I encourage that a member, having declared a conflict of interest, leave the chamber until that case has been decided. ♦