

Thomas J. Balch, PRP
Professional Registered Parliamentarian
102 Huntington Hills Lane
Fredericksburg, Virginia 22401-5180

202-365-0029

ThomasBalchParliamentarian@gmail.com

July 4, 2017

Supervisor Jeanine Lawson
Prince William Board of County Supervisors

Dear Supervisor Lawson:

You have requested my professional parliamentary opinion* concerning the conduct of the meeting of the Prince William County, Virginia Board of County Supervisors held June 27-28, 2017.

SUMMARY OF FACTS

The relevant portion of the meeting concerned consideration of your proposed Resolution 10B relating to a special use permit. After a substitute resolution moved by Supervisor Nokes was defeated by a tied vote, a motion was made to divide the question, which was declared adopted. Thereafter, a vote was taken on a putative motion “to approve the mosque” which passed unanimously. Then a vote was taken on a putative motion “to approve the sewer” which was defeated by a tied vote. A motion to reconsider was made by Supervisor Principi, who had voted in favor of the sewer approval; it was announced as adopted by a vote of 5 to 3. Finally, a vote was taken on another putative motion to approve the sewer, which was announced as being adopted 5-3. Then a motion to adjourn was adopted.

* My qualifications are that I am accredited as a Professional Registered Parliamentarian by the National Association of Parliamentarians, and am a member of the authorship team for the 10th, 11th and forthcoming 12th editions of *Robert's Rules of Order Newly Revised*. This document constitutes a professional parliamentary opinion and not a legal opinion; with respect to the applicability or potentially superseding effect of provisions of law, legal counsel should be consulted.

Parliamentary Opinion of Thomas J. Balch PRP on PWC Bd. of Supervisors Mtg. 6/27-28/2017
July 4, 2017

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SOURCES CONSULTED

- Videorecording of Prince William Board of County Supervisors Meeting June 27-8, 2017 (excluding citizen comment) <https://youtu.be/1yhiP-3R-Ko>
- Resolution 10B entitled “SPECIAL USE PERMIT #PLN2014-00313, DULLES AREA MUSLIM SOCIETY GREATER GAINESVILLE-BRENTSVILLE MAGISTERIAL DISTRICT”
- Rules of Procedure, Board of County Supervisors, Prince William County, Virginia as amended June 21, 2016
- Henry M. Robert et al., *Robert’s Rules of Order Newly Revised* : 11th ed. (Philadelphia, Pa: Da Capo Press, 2011) [hereafter cited as RONR (11th ed.)]¹

ANALYSIS

A. Errors in Parliamentary Procedure

There were numerous errors of parliamentary procedure during the Prince William County Board of Supervisors meeting on June 27, 2017:

1. Among the “Principles Underlying Parliamentary Law” in the Board’s adopted parliamentary authority, the current edition of *Robert’s Rules of Order Newly Revised*, is that “as a protection against instability—arising, for example, from such factors as slight variations in attendance—the requirements for changing a previous action are greater than those for taking the action in the first place.” RONR (11th ed.), p. li.

Consequently, “During the meeting or series of connected meetings (called a “session,” ...) in which the assembly has decided a question, the same or substantially the same question cannot be brought up again, except through special procedures.” RONR (11th ed.), p. 75, ll. 7-10 (italics omitted).²

The only difference between Resolution 10B and the defeated Nohe substitute was that the substitute did not include Special Condition 12, with the presumed consequence that connection to public sewers would be permitted.

¹ The Board of County Supervisors Rules of Procedure Section I(1) provides, “Robert’s Rules of Order Newly Revised shall govern the conduct of all meetings of the Board to the extent that they are not inconsistent with these Rules of Procedure.”

² Thus, for example:

[M]any of the rules governing the different forms of amendment are particular applications of the following principle: After the assembly has voted that certain words (or a certain paragraph) shall, or shall not, form part of a pending resolution, it is not in order to make another motion to Amend that raises the same question of content and effect. Common sense should guide the presiding officer in interpreting the rules, both to give freedom for improvement of the main motion finally to be voted on, and at the same time to protect the assembly from motions for amendment that present questions it has already decided.

RONR (11th ed.), p. 139, ll. 23-33.

Apart from other considerations (see # A2 below), dividing the question so as to allow another vote on the inclusion of Special Condition 12 in the resolution violated this principle.

The appropriate “special procedure” to revisit the septic versus sewer question while the main motion to grant the Special Use Permit was still pending³ would have been proper use of the motion to *Reconsider* the vote on the Nohe substitute:

If, in the same session that a motion has been voted on but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to *Reconsider . . .* the vote, propose that the question come before the assembly again as if it had not previously been voted on.

RONR (11th ed.), p. 76, ll. 25-32.⁴

2. The motion to *Divide the Question* was also out of order because that motion applies only “[w]hen a motion relating to a single subject contains several parts, each of which is capable of standing as a complete proposition if the others are removed.” RONR (11th ed.), p. 270, ll. 30-32.

The portion of Resolution 10B that was sought to be separated from the rest of the main motion, Special Use Permit Condition 12, reads as follows:

Septic - The overall development intensity and building footprint, including the building size, maximum capacity, and building floor area shall be proportionately reduced if the septic requirements, generated by the number of fixtures and flow rates for the proposed building development, cannot be accommodated on-site.

Under the heading “Motions That Cannot Be Divided,” RONR (11th ed.), p. 272, ll. 19-28, states:

A motion cannot be divided unless each part presents a proper question for the assembly to act upon if none of the other parts is adopted, and unless the effect of adopting all of the parts will be exactly the same—no more, no less—as adoption of the compound main question. Thus, if it is moved to establish a committee and give it instructions, this motion is indivisible because, should the part establishing the committee fail, the part giving the committee instructions would be absurd.

³ Once a main motion is adopted, an alternative way to reverse or alter elements in it is the motion to *Amend Something Previously Adopted*. See RONR (11th ed.), p. 76, ll. 13-17; pp. 305-310.

⁴ Under Section E of the Board “Rules of Procedure,” which supersedes *Robert’s Rules* to the extent of the conflict, a motion to *Reconsider* may also be made at the next regular meeting following that at which the motion sought to be reconsidered was originally disposed of, subject in some cases to specified notice requirements.

In this case, Special Condition 12 would not “present a proper question for the assembly to act upon” if the rest of Resolution 10B were defeated. The predicate of Special Condition 12 is that the Special Use Permit for the proposed building is approved; were it to be rejected, imposing the special condition “would be absurd.”⁵ Consequently, the motion to *Divide the Question* should have been ruled out of order for that reason.

3. The chair announced that he “was going to call a recess for ten minutes.” Under *Robert’s Rules*, to *Recess* requires a majority vote; ordering one is not the prerogative of the presiding officer alone unless a recess has already been provided for in the adopted agenda. RONR (11th ed.), p. 231, l. 33; cf. p. 231, ll. 3-11. No provision of the Board “Rules of Procedure” supersedes this rule in the parliamentary authority.

4. Upon adoption of the motion to *Divide the Question* being announced, the chair asked for a motion “to approve the mosque.” In fact, the question having been (improperly) divided, the question was on the existing main motion, Resolution 10B, except for Special Condition 12. A new main motion “to approve the mosque” was out of order, since a new main motion “cannot be moved when any other question is pending”. RONR (11th ed.), p. 102, ll. 32-33.

The same error occurred following the vote to adopt the first part of the divided motion when the chair asked for a motion “to approve the sewer,” and again following adoption of the motion to *Reconsider*. (See #s A 6 & A9 below.)

5. While the first part of the main motion was pending (after the question had been divided), a supervisor said, “Call the Question,” whereupon the chair said, “Okay. Please vote. *Robert’s Rules* emphasizes:

[R]egardless of the wording of a motion or "call" seeking to close debate, it always requires a second and a two-thirds vote, taken separately from and before the vote(s) on the motion(s) to which it is applied, to shut off debate against the will of even one member who wishes to speak and has not exhausted his right to debate

RONR (11th ed.), p. 202, ll. 18-23 (italics in original).

The presiding officer cannot close debate so long as any member who has not exhausted his right to debate desires the floor, except by order of the assembly, which

⁵ There was apparently some confusion about whether *Divide the Question* requires a second (which it received). Under the standard rules applicable to an assembly, *Divide the Question* “[m]ust be seconded.” RONR (11th ed.), p. 271, l. 33. (Under RONR [11th ed.], p. 487, ll. 26-28; p. 488. l. 1, “In a board meeting where there are not more than about a dozen members present . . . [m]otions need not be seconded.” However, the Board’s “Rules of Procedure” D(1) requiring that votes be taken only on motions that are seconded supersede this provision of *Robert’s Rules*.)

requires a two-thirds vote⁶
RONR (11th ed.), p. 44, ll. 6-9.

6. Following the vote to adopt the first part of the divided motion, the chair improperly asked for a motion “to approve the sewer.” (See #A 4 above.) In fact, the question was then on the second divided portion of Resolution 10B, namely Special Condition 12. A vote in favor should have been a vote to *adopt* Special Condition 12 (relating to septic requirements) while a vote against should have been a vote to defeat it, apparently implicitly allowing connection to a public sewer.

7. The motion to *Reconsider* was improperly permitted to be made by a supervisor who voted in favor of the defeated motion (the one improperly stated as “to approve the sewer”). The Board “Rules of Procedure” Section E allow a motion to *Reconsider* “only upon motion of a Board member voting with the prevailing side on the original vote,” a rule in accord with *Robert’s Rules*. See RONR (11th ed.), p. 76, ll. 25-32 (quoted in #A1 above); see also p. 315, ll. 29-31 (“In other words, a reconsideration can be moved only by one who voted *aye* if the motion involved was adopted, or *no* if the motion was lost.”) Since the motion “to approve the sewer” was defeated by a tie vote, only a supervisor who voted *no* was qualified to move to reconsider that vote.

8. After putting the question on the motion to *Reconsider*, and after supervisors other than Supervisor Jenkins had voted, the chair improperly urged Supervisor Jenkins to vote yes, and stated that he (the chairman) was in favor of the motion. “Interruptions during the taking of a vote are permitted only before any member has actually voted, unless, as sometimes occurs in ballot voting, other business is being transacted during voting or tabulating. . . . A member has no right to ‘explain his vote’ during voting, which would be the same as debate at such a time.” RONR (11th ed.), p. 408, ll. 9-19.

9. Following the declaration that the motion to *Reconsider* was adopted, the chair erroneously declared that another motion “on the sewer” was needed. In fact, “The effect of the adoption of the motion to *Reconsider* is immediately to place before the assembly again the question on which the vote is to be reconsidered—in the exact position it occupied the moment

⁶ *Robert’s Rules* does say, “Sometimes the mere making of a motion for the *Previous Question* or ‘call for the question’ may motivate unanimous consent to ending debate. Before or after such a motion has been seconded, the chair may ask if there is any objection to closing debate. If member(s) object or try to get the floor, he should ask if there is a second to the motion or call; or, if it has already been seconded, he must immediately take a vote on whether to order the *Previous Question*.” RONR (11th ed.), p. 202, ll. 11-18. The key point is that upon hearing a “call for the question” the chair may ask if there is any objection to closing debate; without ensuring there is no objection, he may not immediately put the underlying motion to a vote as though the motion closing debate has in fact been adopted.

before it was voted on originally.” Taking as given the improper stating of the previously defeated motion as one “to approve the sewer,” (see #A6 above) , the question to be decided as a result of the motion to *Reconsider* was the again pending motion “to approve the sewer.” It was neither necessary nor proper (see #A4 above) for another motion to do so to be made.

B. Whether the Errors in Parliamentary Procedure Invalidate the Action Taken

Despite the numerous violations of parliamentary procedure at the June 27, 2017 Board of Supervisors meeting, it is questionable whether any of them can be cited to invalidate the action taken at the meeting. The reason is that under *Robert’s Rules*, a point of order “must be raised promptly at the time the breach occurs.” RONR (11th ed.), p. 250, ll. 18-19.⁷

For example, if the chair is stating the question on a motion that has not been seconded, or on a motion that is out of order in the existing parliamentary situation, the time to raise these points of order is when the chair states the motion. After debate on such a motion has begun—no matter how clearly out of order the motion may be—a point of order is too late. . . . Points of order regarding the conduct of a vote must be raised immediately following the announcement of the voting result (see pp. 408–9).

RONR (11th ed.), p. 250, l. 19 to p. 251, l. 2.

There are five specific exceptions to the timeliness requirement for a *Point of Order*, most of which are inapplicable to these events. RONR (11th ed.), p. 251, ll. 3-23.

One potentially relevant exception to the timeliness requirement is when “any action has been taken in violation of applicable procedural rules prescribed by federal, state, or local law.” RONR (11th ed.), p. 251, ll. 16-17. Whether the procedural errors violated not merely *Robert’s Rules* but also applicable law is beyond my role as a parliamentarian to express any opinion on, except to state that if such a violation could be identified, then under *Robert’s Rules* a point of order against the validity of the action taken in violation of applicable law could still be made, for example at the next Board meeting. You may wish to consult legal counsel to opine whether the procedural errors identified in this memorandum could be deemed violations of applicable law.

⁷ Although the term “point of order” was not used, arguably Supervisor Lawson sought to raise one at the time that the motion to *Reconsider* was stated by the chair. She asked for a “ruling” from the clerk and then from the legal counsel. (In fact, only the chair can “rule” on a point of order; the clerk or counsel – or a parliamentarian– only advises the chair. See RONR [11th ed.], p. 450, ll. 14-17; p. 467, ll. 1-4.) The chair stated that anyone who voted in favor could move to reconsider; it is not entirely clear whether the chair thereby effectively ruled on the implicit point of order or simply disregarded it; in any case, the appropriate action when the chair does not rule a point of order well taken is to *Appeal* from the decision of the chair. An *Appeal* “must be made at the time of the ruling. If any debate or business has intervened, it is too late to appeal.” RONR (11th ed.), p. 257, ll. 29-31. No such *Appeal* was moved in a timely manner.

Unless that exception to the timeliness requirement for a *Point of Order* is found to apply, the one avenue to obtain a reversal of the declared rejection of Special Condition 12 would be through a motion to *Amend Something Previously Adopted*, which with previous notice would require a majority vote (see footnote 3).

I hope that this opinion has been responsive and helpful. Please do not hesitate to contact me with questions or requests for further advice.

Very truly yours,

Thomas J. Balch

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