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In September of 2016, Jeffrey Politus, the Chair of the Arden Town Meeting, contacted the parliamentarian to look at a review the procedures of the Arden Town Meetings and make recommendations regarding the procedures. This opinion is the result.

The minutes of the meetings of January, March and May meetings were reviewed as part of this opinion, and the audio of March meeting was also reviewed. Other than the charter, which is online, however, no rules or bylaws were submitted. The ordinances that are online do not suggest any procedural application by title.

Part of the nature of a review of this type is to look for things that are somehow improper, and to generally ignore the proper. In general these meetings are functional. They have a fairly large number of members in attendance¹, conduct a fairly large amount of business, and last for 2-3 hours; while the parliamentarian may recommend some methods of shortening the meeting, he does not expect that they will *greatly* shorten the meeting.

There are two recommendations that the parliamentarian will make that deal with the basic conduct of the meeting *as an assembly* and not the specific transaction of business within the meeting.

Recommendation 1: The meeting should adopt a specific parliamentary authority to govern its proceedings.

The Arden Town Meeting had the established custom of using a parliamentary authority.² In the case of Arden, the custom is to use the current edition of *Robert's Rules of Order Newly Revised* (RONR)³.

While a parliamentary authority may be established by custom, it is considered "unwise (RONR, p. 17, ll. 7-10)." Further, there is the possibility that other customs, conflicting with the parliamentary authority may develop.⁴ The recommendation is to codify all of these customs into written rules, in order to minimize any dispute as to what the rules are.

Arden may adopt a parliamentary authority by resolution, as opposed to an ordinance. Such an ordinance could incorporate any special rules that would permit variation from the parliamentary authority. For example, a specific order of business can be established. Setting of different limitations on debate can also be established.

Adopting it by a resolution eliminates any need for advertising that might be associated with an ordinance. Further it would permit the rules to be amended in the future without going through the process needed to amend an ordinance.

The parliamentarian will be happy to discuss the pros and cons of adopting any specific parliamentary authority or edition thereof.

Recommendation 2: The minutes need not be full transcripts. A shorter, and more easily read, version should be used.

RONR notes that the minutes should show what is *done* at a meeting, not what is said. The minutes should show the motion, as it was put to a vote by the chair; the minutes should also show the

disposition of the motion, including the temporary disposition. For example, there was a motion relating to the slide in the playground area in the March 28, 2016 minutes. The minutes included discussion and an amendment, as well as a motion to take a ballot vote. This discourse ran for three pages.

The proper manner for recording this motion is as follows:

Mr. Rosenkranz moved the motion, which after amendment was stated as, "That all continuing work on the Arden Green be suspended until a) No part of the mound slide project is more than 6' 8" above grade and the plastic slide is no more than 30 degrees from horizontal and all other listed specifications from the Village meeting minutes and diagrams from when the motion was passed are brought into compliance. b) The Village insurance underwriter has deemed the slide and plans safe for use for children less than eight years of age." The motion was defeated by a vote of 27 yes, to 32 no. (see RONR, pp. 469-79; p. 472, ll. 21-27).

Committee reports are normally not included in the minutes. For example, the minutes should show "Ms. Bovard gave the report of the Safety Committee." Motions growing out of reports should be included in the minutes. The minutes should indicate if the regular secretary was present and, if not, how served as secretary.

Shorter minutes should be easier on the secretary and should make finding previously transacted business much easier as well. There should be this type minutes even if transcripts are kept.

The remaining recommendations deal with the actual transaction of business within the meeting. These are things that are not quite done within the rules of RONR but are not of the overarching type of things that the first two recommendations cover.

Recommendation #3: Unanimous consent should be used properly. There were several various instances:

First, the minutes are properly adopted by a form of unanimous consent. A motion is not necessary. The chair asks, "Are there any corrects to the minutes." After any are made, the chair declares the minutes adopted.

Second, at one point in the June meeting, a member ask for the "sense of the meeting⁵," that the motion should be postponed. The term is improper. The member should say, after the motion, "I ask for unanimous consent." Likewise the chair could ask, "Is the any objection?" If there is no objection, the chair would state that the motion was approved.

Third, at the March meeting the chair appeared to impose debate limits; there was no objection. This was improper though the chair could have phrased it as asking for unanimous consent. The chair, however cannot properly impose debate limits, without the consent of the meeting⁶.

Recommendation #4: The motion "the Previous Question" was improperly used. At the March meeting, a member apparently misused the motion by calling it out. That was highly improper. It is a motion like all others. It cannot interrupt a member speaking. The member making the motion must be recognized; the motion is put to a vote⁶.

Both the members and the chair should be made aware of exactly how the Previous Question is made and functions.

Recommendation #5: Committee reports should not be "accepted." There are made and nothing more needs be done with them. Any recommendations from the committee should be moved as motions.

Under *no* circumstances should an unaudited treasurer's report be accepted or approved. Approving it basically takes the burden of accuracy off the secretary and places it on the assembly.

Recommendation #6: Questions should be made through the chair. It is proper for a member to ask a question of an officer or of a committee chair making a report; technically, it is a "Request for Information." The questions should be directed to the chair and the answers should be directed to the chair. Many of these Questions appeared to devolve into a conversation between two members.

Directing questions and answers to the chair can help to depersonalize debate.

Special Note: There was an incident at the March regarding an attempt to withdraw a motion. The parliamentarian wishes to address it in writing. A member which to have a motion that he made withdrawn or modified after the Previous Questioned was "adopted." There was some claim that the motion went beyond what the main motion proposed.

While the "Previous Question" was improperly made, there was no objection to ending debate.

The member who originally made the motion, asked permission to withdraw. The chair ruled that it could not be withdrawn after the question was called. That decision was in error.

Once a motion is stated by the chair, it becomes the property of the assembly. The maker of that motion request that the motion be withdrawn *any time* prior to a vote being taken on that motion (RONR, p. 297, ll. 9-17). This is usually is done by unanimous consent, asking if anyone objects. If there are objections, any other member can move "that the request to withdraw the motion be granted." The motion is not debatable and is decided immediately by a majority vote.

The request to withdraw the motion was in order; they chair erred in ruling it out of order. It is very clear, however that had the request been granted, it was clear that at least one member objected, and that a motion would be needed to consider that request. No member raised a point of order or appealed the decision of the chair. No member attempted to make a motion to grant that request. It is *very unlikely* that the request to withdraw would have been granted.

This note is for future reference, as this error does not rise to the level that would cause the action to be invalid. A point of order would have had been raised at the time the breach occurred (RONR, p. 251, ll. 3-23).

It is also of note that a request to withdraw is usually made well before the Previous Question is adopted. The parliamentarian submitted a fictionalized version to Parliamentary Research Committee of National Association of Parliamentarians⁷, because it was *so* arcane.

In conclusion, there are some areas that can, and should, be improved, but there are no serious problems with the conduct of the meeting. The meeting, however is *strongly* urged to adopt rules governing its meetings.

Signed:

Jonathan M. Jacobs, PRP, CPP

Date:

This is based on general principles of parliamentary procedure and the cited parliamentary authorities; nothing in this opinion should be construed as an interpretation of statutory law.

End Notes

¹ In the parliamentarian's native Pennsylvania, municipalities are governed by some type of board or council. Most school districts have nine member boards; the largest city council, in Philadelphia has 17 members. They also meet more frequently than Arden, usually monthly. In general, their meetings are much longer than those of Arden.

² Surprisingly the rules relating to custom has been a recent development in parliamentary procedure. RONR has been clear that that a parliamentary authority could be established by custom since the 7th edition (1970). It was not until the 10th edition (2000), however, that an actual description of how custom functions. The basic rules have become increasingly standardized across parliamentary authorities. See "Changing Custom," *Parliamentary Journal*, April, 2013.

³ The current edition is Robert, Henry M., *Robert's Rules of Order Newly Revised*, 11th Edition. Eds. Henry M. Robert, III, Daniel H. Honemann, Thomas J. Balch, Daniel E Seabold, Shmuel Gerber, Philadelphia: Da Capo, 2011.

⁴ The parliamentarian has long been of the opinion that if the parliamentary authority is established by custom, any customs varying from the parliamentary will supersede the rules within the parliamentary authority. See "Custom, Usage, and RONR," *National Parliamentarian*, Second Quarter 1996.

⁵ The "Sense of the House" is occasionally used in the US House to express the collective opinion of the House. It is a main motion in the form of a resolution and treated as such. It expresses an opinion and does nothing more.

⁶ RONR requires that motions that extend or limit debate be adopted by a two thirds vote. Section 5 (d) of the Arden Charter, states that a majority vote is required. RONR notes that any rule within a charter "supersedes all other rules."

⁷ The parliamentarian is the Parliamentary Research Editor of the *National Parliamentarian*, which is the publication of the National Association of Parliamentarians. He does serve with a three member committee of other established parliamentarians; it had been his practice to allow the committee to select which questions would be reviewed and for each the member to select the question he would answer. That answer would then be reviewed by the committee (with both dissenting and concurring opinions permitted). The question regarding the withdrawal of the motion was selected by the committee and an answer was written by another member. The answer was approved without dissent.