Efficient Meetings

November 23, 2026

Todd Kays

Executive Director - *First District Association of Local Government*

City of Watertown – *Planning Commission / Board of Adjustment*

Luke Muller

Senior Planner - *First District Association of Local Government*

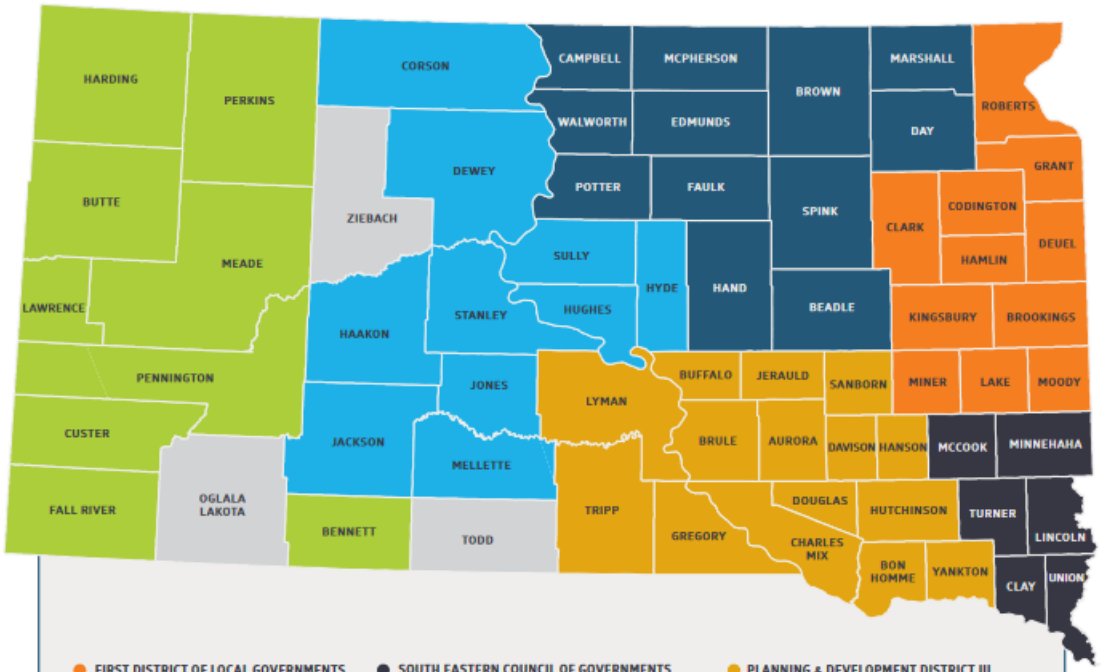
Zoning Officer – *Codington County*

Who are we?

Not attorneys

South Dakota

PLANNING DISTRICTS MAP



FIRST DISTRICT OF LOCAL GOVERNMENTS
Todd Kays, Executive Director
418 18th Avenue NE, PO Box 1207
Watertown, SD 57201
Phone: (605) 882-5115
Fax: (605) 882-5049
E-mail: todd@1stdistrict.org

SOUTH EASTERN COUNCIL OF GOVERNMENTS
Lynne Keller Forbes, Executive Director
500 N Western Avenue, Suite 100
Sioux Falls, SD 57104
Phone: (605) 367-5390
Fax: (605) 367-5394
E-mail: lynne@secog.org

PLANNING & DEVELOPMENT DISTRICT III
Greg Henderson, Executive Director
1808 Summit Street, PO Box 687
Yankton, SD 57078
Phone: (605) 665-4408
Fax: (605) 665-0303
E-mail: districtiii@districtiii.org

NORTHEAST COUNCIL OF GOVERNEMNTS
Eric Senger, Executive Director
416 Production Street N Suite 1
Aberdeen, SD 57401
Phone: (605) 626-2595
Fax: (605) 626-2975
E-mail: eric@necog.org

CENTRAL SOUTH DAKOTA ENHANCEMENT DISTRICT
Nicole Gordon, Executive Director
3431 Airport Road, Suite 3, PO Box 220
Pierre, SD 57501
Phone: (605) 773-2780
E-mail: nicoleg@csded.org
www.csded.org

BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS
Jennifer Sietsema, Executive Director
730 E Watertown Street
Rapid City, SD 57701
Phone: (605) 394-2681 ext 1225
Fax: (605) 394-6140
E-mail: jsietsema@wrbsc.com
www.blackhillscouncil.com

HOW I THINK IT'S GOING



HOW IT'S ACTUALLY GOING



HOW'S IT GOING?

GOALS OF A WELL RUN MEETING…

It's not that the decision you make must be correct, but each decision you make must be correctly made.

- To facilitate the transaction of business
- To promote cooperation and harmony
- To ensure that all members have equal rights, privileges, and obligations
- Ensure the majority has the right to decide, but the minority has rights which must be protected as well
- Rules that limit, guide and protect the individual
- Protect the rights of the minority

Types of Bodies

Legislative

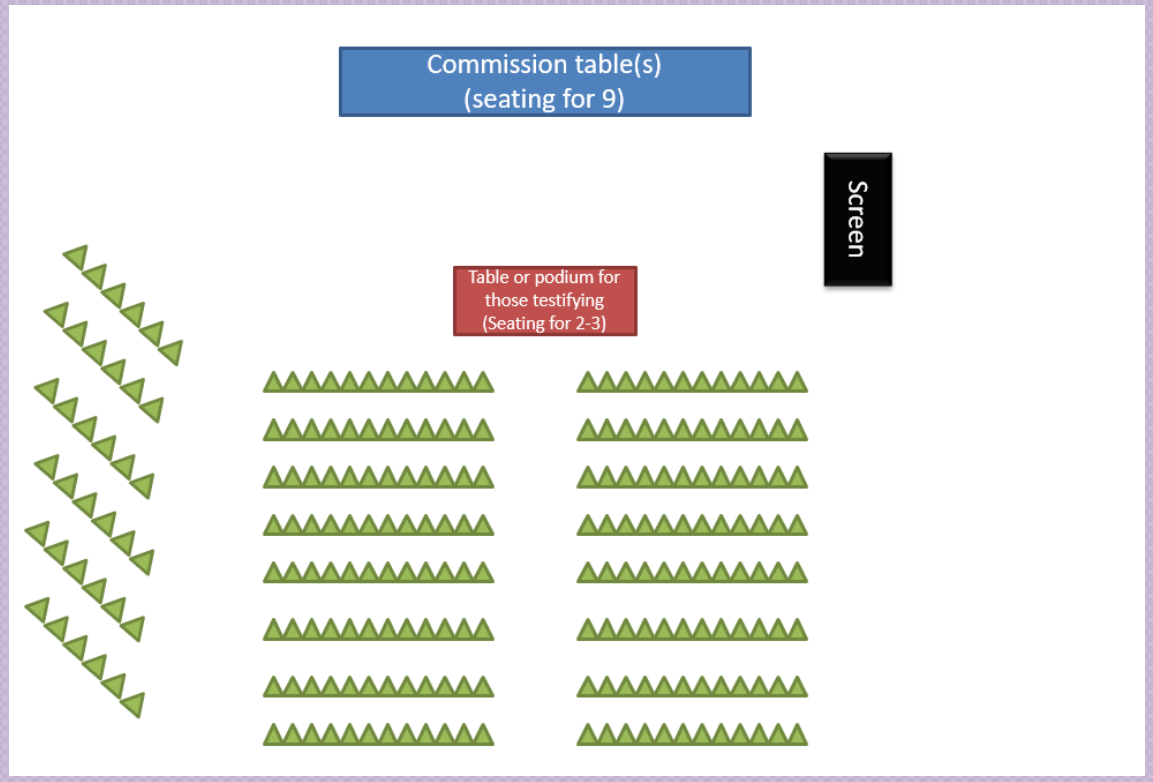
- Prospective in nature – future applicability
- General applicability rather than to a specific property.
  - Not normally restrict to identifiable person or specific property
- Examples:
  - City Council/Town Board
  - Planning Commission

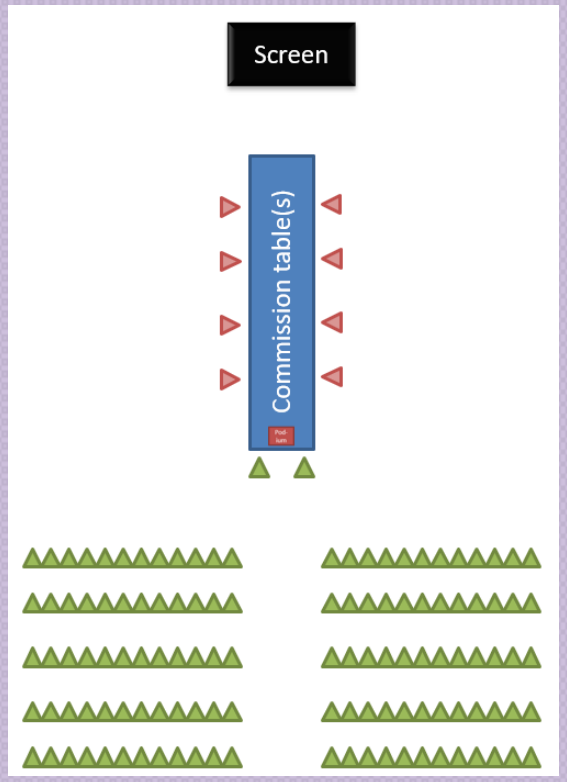
Quasi-Judicial

- A discretionary body required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.
- Deals with specific request on specific property.
- Determination of rights, duties and obligations of specific individuals.
- Example:
  - Board of Adjustment

Before the Meeting

SETTING UP THE ROOM





Before the Meeting



Establish By-Laws



Establish Quorum



Prepare Agenda



KEY RULES FOR BY-LAWS

AUTHORITY AND JURISDICTION

- What gives this Board the Authority to Act?

  - State Law (11-6-2) requires municipalities to Appoint a Planning Commission
  - State Law (11-6-25 & 11-4-13) allows Commissioners to Appoint Planning Commission as Board of Adjustment

  OR

  - State Law (11-4-24) allows Council to Appoint themselves as Board of Adjustment

  - Reference (county) Ordinance that gives authority to Board of Adjustment to handle Variances, Conditional Use Permits, and Appeals
  - What is the jurisdiction? (within city limits, has joint jurisdiction been established?) ***OpEn dOoR to TANGENT***

APPOINTMENT/TERMS/DUTIES

- How are members appointed
  - Recital of requirement for alternates
  - Specify that all members are voting members
  - Specify how officers are appointed
- Describe Appointment Term
- Describe Duties for key members (Board and staff)
  - Chair, Vice Chair
  - Other Board Members
  - Administrative Official, Attorney, Auditor, etc… (if necessary)

RULES FOR PUBLIC: GENERALLY

- Public is to sign in; indicate their intent to testify; which side (proponent/opponent/neutral)
- Cell phones silenced
- Process for testimony
  - Call individual by name
  - Testify into a microphone, directly to the Board.
- Private conversations to be held outside the meeting
- This is not a pep rally
- These rules are a bond, I WILL KICK YOU OUT!

RULES/PROCESS FOR VARIANCES, CONDITIONAL USES AND OTHER HEARINGS

- Motion to approve the application
- Staff presents report/summary/recommendations
- Formal opening of the public hearing
- Testimony by applicant
  - Establish time limit (recommend 10 – 15 minutes)
- Testimony by other governmental entities
  - School Board/Township/County/Utilities/HOA's
  - Establish Time Limit (slightly more than general public)
- Rest of public testimony
  - Proponent testimony; Opponent testimony; Neutral testimony (in that order)
  - All comments directed to the Board
  - Repetitive testimony discouraged (time limit)
  - No dialogue between person testifying and applicant
  - Staff calls names of individuals to come up
  - 3-5 minute max per person (no sharing time) More time if representing a group
    - Other individuals do not speak
  - Individuals that did not indicate an intent to speak on the sheet will be allowed 1 minute
  - Written testimony is referenced and summarized by staff

RULES/PROCESS FOR VARIANCES, CONDITIONAL USES AND OTHER HEARINGS

- Public hearing is closed
- Board discussion
  - Applicant called back up to answer questions posed by the Board (including those applicable questions from the audience)
  - Board discusses application, rules, past permits, etc.
  - Amendments to conditions/motions may be made
  - Board is questioned in reference to findings of fact
    - (lack of response is assumed agreement/satisfaction)
- Roll call vote

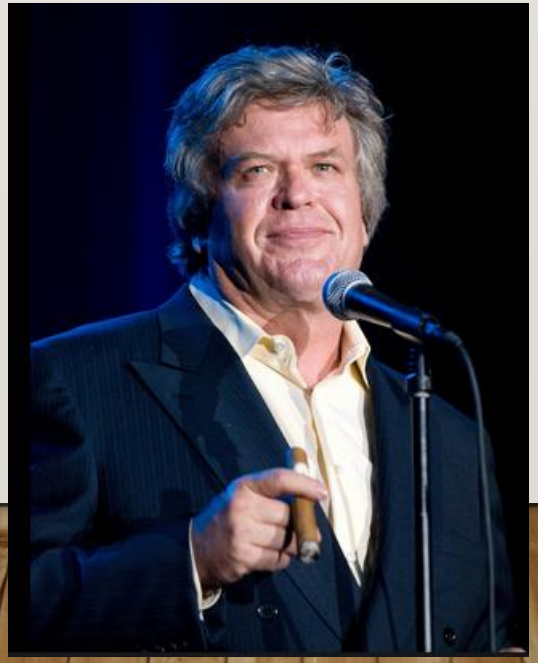
SUBMISSION OF WRITTEN DOCUMENTS

- Establish deadline for applications
  - Keep in mind publication deadlines, work flow, staffing, your time for review…
- Establish deadline for submittal of written testimony for the public hearing
  - Give public time to prepare
  - Give Board time to review
  - Give applicant and rest of public time to review
  - Any written testimony intended for delivery at the meeting will be discarded and may only be included into the record if read out loud and does count toward allotted time of testimony.
    - Exception: Petitions may be submitted at the meeting provided the content of the petition is read by the person submitted it according to the rules for public testimony.

INSTRUMENTS AND DOCUMENTS OF THE BOARD

- Identify various types of documents which may be part of the record
- Identify who is responsible for preparation of those documents
- Identify who is responsible for keeping track of them.

BEING A BOARD MEMBER IN PUB-LIC



Ex Parte Communication

Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Commission or Court (including such person's counsel); and

(ii) The Commissioner or Judge handling that proceeding.

Bias

- "**Direct pecuniary interests**," when an official votes on a matter benefiting the official's own property or affording a direct financial gain;
- "**Indirect pecuniary interests**," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
- **"Direct personal interest,"** when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue;
- **"Indirect Personal Interest,"** when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

"Unacceptable Risk"

- "Officials [shall] disqualify themselves when they have a business or personal interest in the subject on which they must vote, regardless of whether this interest creates an actual bias." [Hanig]
- "An individual's right to due process includes fair and impartial consideration"
  - "…Not only is a biased decision maker constitutionally unacceptable, but our system of… law has always endeavored to prevent even the probability of unfairness."
- "Thus to prove his hearing was not fair and impartial, *appellants*, **need only show an <u>unacceptable risk</u> of actual bias**."
- "If the circumstances show a likely capacity to tempt the official to depart from his duty [to serve their government and the people, uninfluenced by adverse motives and interests], then the risk of actual bias is unacceptable and the conflict of interest is sufficient to disqualify the official."
- "[Board members should only be expected to recuse themselves] when a reasonably-minded person would conclude that the official's interests in the matter had **<u>the likely potential</u>** to influence his impartiality in its resolution."

What about Constituent Correspondence

HOW CAN I EVER LEAVE MY HOUSE???

- Encourage them to come to the meeting to state their opinions
- Encourage them to submit questions, comments, or opinions to the zoning officer/staff.
- Note that talking to them can jeopardize the validity of any vote you make
- Keep a log of any calls or conversations you had about an issue
- Forward copies of any emails or letters received to staff
  - Staff notes ___ letters in support; ___ in opposition. Those in support cite the following reasons. Those in opposition cite the following reasons. Copies of all letters and emails are available for viewing by the public.
- **Does it appear that** I am getting information someone else from the public could not?
- Make sure you note any conversations relating to the issue before a vote. (Due process)

What about site visits?

- Supreme Court has not weighed in on question of site visits needing notice.
- **Does it appear that** I am getting information someone else from the public could not?
- Have planning and zoning staff conduct site visits and take pictures.
- Be careful when conducting site visits or when talking to one side or another.
- Send a letter to both sides when commissioners are conducting a site visit or meeting with one side notifying of the time and place.
  - Make sure to state that information obtained during the site visit will be made a part of the record and used in the commission's decision.

WHEN CAN I VOTE?

- WHENEVER YOUR ATTORNEY SAYS SO

Best Practices

- Ask yourself and your state's attorney whether you run the risk of unacceptable bias based on the four types:
  - Direct/indirect pecuniary interest
  - Direct/indirect personal Interest
- Ask yourself or state's attorney if your conflict is different than other members of the common public would have.
- Disclose any potential conflict of interest before the hearing
- Specify the number of votes necessary for approval and any absent or abstaining members prior to the hearing.
- Offer the applicant the opportunity to request the matter be acted upon, tabled or withdrawn with the knowledge of the potential conflict or difficulty in obtaining the number of required votes absent an abstaining member.

BEST PRACTICE: DISCLOSURES

BEST PRACTICE:
DEBATING BIAS/HOW TO ABSTAIN

- If another member of the Board of Adjustment feels the potential conflict should result in the abstention of the above referenced member it is recommended a statement similar to the following be made:
  - **"Point of order" ["State your point"** – by Chairperson**] "Member *Jones'* relationship will bias her decision on this request."**
- The Chairperson shall then rule if the relationship should result in the member abstaining. The Chairperson may consult with staff or the State's Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members Board of Adjustment in accordance with Robert's Rules of Order.
- Any member abstaining from voting on a specific item shall note such abstention prior to the motion to approve the request, leaving his/her seat to be replaced by the alternate (if applicable).

BEST PRACTICE:
DISCLOSING RELATIONSHIPS

- When the Board of Adjustment member **does not feel** a potential conflict of interest **should result in the abstention** from voting on a specific request it is recommended a statement similar to the following be made:
  - **"*John Smith* is the applicant for Item "x" on the agenda and is married to my third cousin. I do not feel this relationship will bias my decision in any manner regarding this request."**

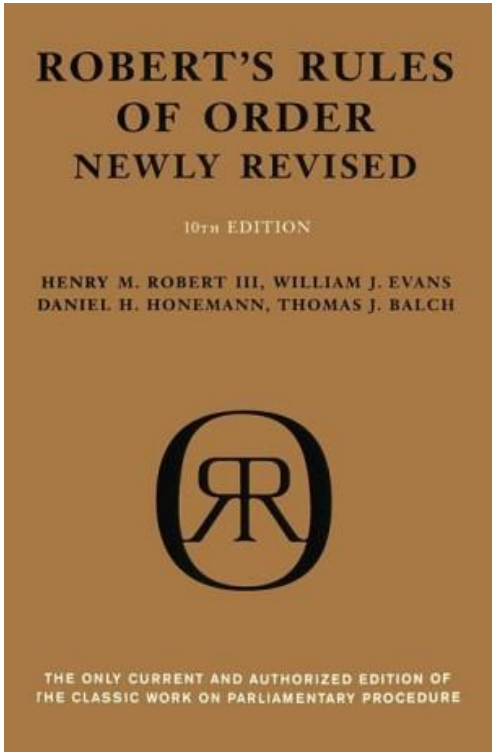
BEST PRACTICE:
DISCLOSING RELATIONSHIPS AND CONVERSATION

- When the Board of Adjustment member feels a potential conflict of interest **should result in the abstention**:
  - **"My father, *John Smith*, is a shareholder in the corporation making application in Item "x" on the agenda. This relationship may bias my decision in regarding this request, and therefore I will be abstaining from voting on that item."**
- When the Board of Adjustment member has engaged in discussion regarding a specific request outside of a meeting that **will result in a perceived bias**:
  - **"I attended a private party at *John Smith's* residence 3 days after he made application for Item "x" on the agenda and spoke with him regarding his application. I feel this conversation may have included information which will not be discussed in the public hearing, and may have predispose me in my decision regarding this request."**

BEST PRACTICE:
DISCLOSING CONVERSATION

- When the Board of Adjustment member has engaged in discussion but **does not feel it will result in a perceived bias** which should result in the abstention:
  - **"*John Smith* is the applicant for Item "x" on the agenda and spoke with me regarding his application on *date*. I will summarize the discussion prior to testimony regarding this matter. I do not feel this conversation included anything which will not be discussed in the public hearing, nor did it predispose me in my decision in any manner regarding this request."**

Parliamentary Procedure Primer



Parliamentary Procedure Overview

- *A detailed review of rules on how to make rules*
  - *Types of Motions*
  - *How to make motions*
  - *Questions that nobody seems to know the answer to*
    - *"We just do this…"*



Classes of Motions

- Main Motions
  - A proposal that the Board take a certain action or an expression of certain views
  - "I move that…" EQUALS "*I propose that…*"
  - Made in the affirmative
  - Made **before** discussion on the item
- Motions that bring a Question back before the Board
- Incidental Motions
- Subsidiary Motions
- Privileged Motions

How to make a motion

- What is a Main motion?
  - A proposal that the Board take a certain action or an expression of certain views
  - "I move that…" EQUALS "*I propose that…*"
- How to address a Main motion
  - Made in the affirmative
  - Made **before** discussion on the item
  - After a second the Chair should restate or ask for the motion to be restated
  - Debate (limited to immediately pending question including subsidiary/incidental motions)
    - Staff
    - Public Hearing
    - Board Discussion
      - Typically the time for Incidental and Subsidiary Motions

Classes of Motions

- Subsidiary motions
  - A motion that is made in an attempt to compel an action by the Board relating to a question OTHER than voting directly on the main motion.
  - Huh?????????
    - Lay on table
    - Postpone
    - Limit debate
    - Refer to committee
    - Amend
    - Previous Question/Call the Question
  - Think you know when to use these?

Table or Postpone

- Motion to Table
  - Temporarily delays the pain until you're ready for it
  - Not debatable
  - Can require 2/3 majority (Must specify in by-laws)
  - When should I?
    - More urgent matters to discuss
    - We will come back to it later this *session* (meeting)
    - **Not to** replace calling the question (see next slide)
- Motion to Postpone
  - Tells everyone when you will deal with the pain
  - Debatable
  - Majority vote
  - When should I?
    - Not prepared to handle at this time AND will run out of time at this *session*
    - Only postponed within or to next session
    - Can specify whether the item will take precedence, or at what time the item will be taken up

Previous Question
[Calling the Question]

- Calls for a vote on the matter being discussed
  - Can be made for all amendments and other subsidiary motions at the same time
- Crying "Uncle!"
- Not debatable
- Requires 2/3 majority
  - Don't forget to vote to vote!!
- When should I?
  - To close debate
  - After a public hearing
    - Warns debate nearly over(as part of by-laws.)



AMENDMENTS

Motions which can be amended



To adjourn (except when it is qualified, or when made in an assembly with no provision for a future meeting)

To grant leave to speak after indecorum

A request of any kind

To take up a question out of its proper order

To suspend the rules

To lay on the table

To take from the table

To reconsider

To fill a blank

Call for the orders of the day

Question of order, and appeal

To object to consideration of a question

Call for a division of the assembly

To grant leave to withdraw a motion

The previous question

To postpone indefinitely

To amend an amendment

A nomination

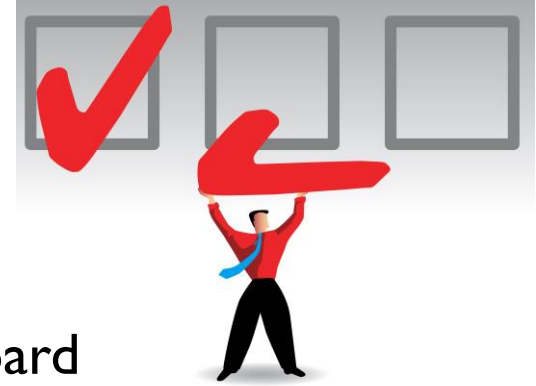


Amend or Substitute



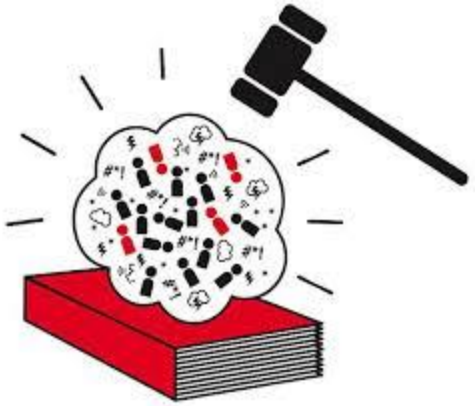
- Motion to Amend
  - Suggest a change to the current question
  - Debatable
  - Requires simple majority vote
  - When should I?
    - Feel there is an error in the language of the motion
      - Form or substance
      - Feel there is an error in the language of the motion
    - The main motion is fine, but needs addition or subtraction
    - What if it fails?
      - Main motion remains as originally proposed
- Substitute Motion
  - *"I have a better idea"*
  - Can be made by **any member**
  - Same rules of vote/debate as original main motion
  - When should I?
    - A motion needs to be overhauled
      - After debate or other discussion
    - What if it fails?
      - **The original main motion is <u>back on the table</u>**

Other Popular Motions: Reconsider



- Brings a decided matter back before the Board
  - *It can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day. It must be made by one who voted with the prevailing side. Not debatable/amendable*
  - *Many have read the above to mean that a decision can be reconsidered at the next MEETING*
- Motion by member of prevailing side/anyone can second it
  - Usually debatable
- When should I?
  - Change a vote/reconsider information
    - Troubling consequences

Other Popular Motions:
Point of Order



- Someone messed up
- Used to point out mistake (typically by chair) in enforcement of rules
- Decided by the chair
- May be appealed to the Board as a whole
  - May be debated at that time
  - Chair may submit the point to the Board without deciding.



Other Popular Motions:
Division of the Question



- Break the Motion into parts
  - Not allowed when considering inter-related topics/rules/by-laws
- Not debatable/amendable
- Simple Majority
- When should I?
  - If a motion is too complex to address altogether
    - Should lead to amendment/handle as amendment as an
  - Practical example:
    - Amendment to a permit is proposed which would add 2 or more conditions

Other Popular Motions:
Suspend the Rules



- Allows you to break from protocol
- Not debatable/amendable
- Super Majority (usually)
  - Can be handled by general consent
  - ***May be less if the "no" vote is equal to the number protected by the rule. (a rule affecting notice of a motion – for example)***
- When should I?
  - Following the rules makes running the meeting impractical
    - Use sparingly
  - Practical example:
    - Take an item on the agenda out of order
    - Item on the agenda with "discussion and ***possible*** action"

Other Popular Motions:

Appeal



- The chair made a mistake on a decision/ruling
  - Not to be used to correct facts during a debate
  - Stand immediately after the decision/ruling is made and state the appeal (can be done while someone else has the floor
- Not debatable/amendable
- Majority (including chair)
- When should I?
  - Practical example:
    - Chair interpreted general consent while someone was still thinking
    - Chair over exerted discretion on a matter

Helpful Links

- https://robertsrules.org/
- https://www.gutenberg.org/cache/epub/9097/pg9097-images.html
- http://diphi.web.unc.edu/files/2012/02/MSG-ROBERTS_RULES_CHEAT_SHEET.pdf
- https://atg.sd.gov/docs/January%2017%202024%20OMC%20brochure.pdf
- https://sdmunicipalleague.org/page/Library-OpenMeetingsLawandOpenRecords

Thank You!

Luke Muller

Senior Planner

First District Association of Local Governments

Phone (605) 882-5115

Fax (605) 882-5049

Email: luke.muller@1stdistrict.org

Todd Kays

Executive Director

First District Association of Local Governments

Phone (605) 882-5115

Fax (605) 882-5049

Email: todd@1stdistrict.org