

# Chapter Six

## *Town Governance: The Decision-Making Process*

### § 6-1. Overview

Conducting town business involves everything from following legal procedures to expressing personal values in the decisions one makes. This chapter identifies the major elements of the decision-making process to set out a structure supervisors can use when performing their duty to make decisions on behalf of the town.

### § 6-2. Decision-Making Authority

All officers have powers that allow them to carry out their duties. However, only the supervisors constitute the town board and have the authority to act on behalf of the town to make decisions and set policy. As stated earlier, the town treasurer and the town clerk do not have the authority to vote on matters before the board, or to vote to break a tie vote among the supervisors. It must also be remembered the power to act on behalf of the town is vested in the board, not the individual supervisors. The chairperson, for example, has no extra powers in the role of chair and cannot make decisions without the other supervisors. Each supervisor has the power to vote on matters coming before the board, but only a majority can decide matters for the board.

#### Inside this chapter

6-1 Overview.....	35
6-2 Decision-Making Authority.....	35
6-3 Parliamentary Procedure.....	36
6-4 Types of Meetings.....	36
A. Town Board Meeting.....	36
B. Town Hearing.....	36
C. Annual Town Meeting.....	37
6-5 Annual Town Meeting versus Annual Town Election.....	38
6-6 Methods of Taking Action.....	38
A. Motions.....	38
B. Resolution .....	38
C. Ordinances .....	39
6-7 Decision-Making Powers .....	40

## § 6-3. Parliamentary Procedure

Parliamentary rules are a set of rules that govern how a deliberative assembly carries out its business. They are usually designed to regulate actions of larger bodies, not small boards.

Towns are not required to use any parliamentary procedures. Robert's Rules of Order are most often discussed for parliamentary procedure, but there are other sets of rules as well. If the board can get along with one another, they may not need any formal

procedures. MAT recommends not to adopt specific rules unless suggested by a town attorney.

A board may use several sets of rules and tailor them most efficiently for their meetings. This may mean writing their own rules such as for regulating public input at board meetings. Decisions regarding the scope and types of rules adopted must be carefully weighed by each board. Only Supervisors are responsible for adopting a set of rules.

Refer to Document Number **TM3000** for additional information on parliamentary procedure and Document Number **TM7000** for a sample administrative policy that includes a simple set of parliamentary rules.

## § 6-4. Types of Meetings

To exercise the power given the town, the board must be in the proper forum to make decisions. Most decisions are made at regular board meetings. However, the statutes granting the authority may indicate that a different procedure be followed to exercise the power. For example, a board must hold a hearing as part of undertaking a special assessment project or to create a subordinate service district. The three most common meetings are: Town Board Meeting, Town Hearings, and Annual Town Meeting.

### A. Town Board Meeting

Town boards conduct most business at what is called a board meeting. Most towns hold one board meeting a month to pay any claims (bills) and to conduct the town's business.

The board conducts the business of the town at board meetings and only the supervisors (including the chair) are authorized to make, second, and vote on motions. The town board chair, as the presiding officer, is responsible for conducting the meeting and enforcing parliamentary rules adopted by the board. Boards must also follow the requirements of the open meeting law. Minn. Stat. Chap. 13D. (*Discussed in Chapter 7*)

See Document Number **TM2100** for information on conducting and controlling town board meetings.

### B. Town Hearings

There are essentially two types of township hearings:

- (1) those required as part of a statutory procedure (referred to here as "statutory hearings"); and
- (2) those conducted merely to exchange information (referred to here as "informational hearings").

Even though both types of hearings involve the exchange of information, the differences between them are important.

*Statutory hearings* are a vital part of carrying out the statutory process to which they relate. Examples of processes requiring a hearing, or the right to a hearing, include:

- the special assessment procedure;
- adoption and amendment of zoning ordinances;
- the tree removal procedure; and
- road and cartway establishment, alteration, and vacations.

Without a properly conducted hearing or fair access to a hearing, these processes

would fail for a lack of due process, required under the Constitutions of both Minnesota and the United States. As such, the need to carefully follow the correct procedure in calling and holding a statutory hearing is extremely important.

It is possible for a local ordinance to require a hearing. In these cases, the procedure provided in the ordinance is followed as if it were a statutory procedure. Since ordinance hearings are conducted with the same formalities as statutory hearings, they will not be discussed separately in this chapter.

*Informational hearings*, on the other hand, are not part of a statutory procedure. These hearings can be called anytime, with sufficient notice, to discuss any item of town business. Informational hearings serve two purposes: (1) to provide information to the public; and (2) to allow the board to receive comments and information from community residents.

A hearing seeking input on whether the town should begin zoning activities is an example of an informational hearing.

Because the statute does not control informational hearings, there are no procedures that must be followed to call these hearings other than compliance with the open meeting law. However, boards should conduct informational hearings using the same basic procedures followed when conducting statutory hearings.

*Rules:* Boards have the authority to establish procedural rules for their hearings. The fundamental purpose of informational hearings is to afford due process to interested parties by allowing them the opportunity to speak on the issue in question. The balancing consideration is that an orderly process must be maintained so all sides to an issue can be heard and the board has an opportunity to deliberate and reach a decision on the matter. Refer to Document Number **TM1000** for additional information on town hearings.

### C. Annual Town Meeting

The Annual Town Meeting occurs on the second Tuesday in March. A town elector is someone who resides in the town and is eligible to vote at the town election. Town electors (including town officers and the moderator) are authorized to make motions and vote, but anyone one else can attend the meeting. The moderator is the presiding officer for town meetings and so is responsible for running the meeting and upholding parliamentary procedure, which is adopted by the electors.

Unlike other public meetings, there are some parliamentary rules for annual and special town meetings that towns must follow:

1. the clerk calls the meeting to order within one hour of when the meeting is to convene (Minn. Stat. § 365.54, subd. 2);
2. a moderator is selected by the electors at the meeting and is required to state the order of business for the meeting (Minn. Stat. § 365.56, subd. 1);
3. a proposition to vote on a tax must not be acted on out of the order of business stated by the moderator (Minn. Stat. § 365.56, subd. 3);
4. a motion to reconsider a vote must be made within one-half hour of the vote and be favored by a majority of the electors entered on the election register when the motion is made (Minn. Stat. § 365.56, subd. 4);
5. all questions on motions except a motion to reconsider are decided by a majority of the electors voting on the question (Minn. Stat. § 365.56, subd. 5); and
6. the moderator shall decide and declare the vote on each question (Minn. Stat. § 365.56, subd. 6).

See Document **TM 6000** for a checklist when preparing for the Annual Meeting.

If other rules are adopted, they may not be inconsistent with those set by statute. Furthermore, at an elector meeting, the supervisors are not sitting in their official capacity and may not exercise board authority.

## § 6.5 Annual Town Meeting versus Annual Town Election

Determining which items of business must be acted on at the annual town meeting versus the annual town election can be difficult. Part of this difficulty stems from a time in the past when the town meeting and the election were held as part of the annual meeting. As a result, some statutes do not clearly distinguish between the activities meant to occur at the annual town meeting versus the town election.

As a rule of thumb, *if the statute refers to asking a question by ballot of the town electors, the question should be submitted at the election.* However, if the statute just refers to receiving elector authorization at the annual meeting, then the issue may be raised at the town meeting. Also, any item of business that is appropriate to handle at the annual town meeting can also be handled at a properly called special town meeting. Minn. Stat. § 365.52, subd. 1.

Unless the statute requires the electors to act in a particular form, such as by resolution, then a motion made and passed at the meeting is usually sufficient to constitute elector authorization. However, if the board is seeking

specific authority from the electors, it is advisable to draft the language for the motion before the meeting or submit a resolution for elector consideration.

**Ballot questions regarding town business should be asked at the town election.** As part of the election process, there are very specific requirements regarding the preparation and handling of the ballots. Furthermore, the election is not to be used to ask advisory questions, which are questions on issues that are not within the authority of the electors to act on.

In some cases, the wording of the questions towns may ask by ballot is set out in the statute requiring a vote. In other cases, it is up to the board, with the advice of its attorney, to develop the wording of the question and the title. As with all parts of the election process, boards must be very careful with ballot questions. If the board is considering asking a ballot question at its election, the process should begin months before the election in order to give sufficient time to satisfy the applicable requirements.

## § 6-6. Method of Taking Action: Motions, Resolutions & Ordinances

Deciding the method for taking a particular action ranges from the obvious to the uncertain. For example, some statutes require certain township powers be exercised by ordinance, but in other cases no method is specified. When the statute is silent, boards must decide which method for acting is the most appropriate.

### A. Motions

The motion is the workhorse of local decision making. They are used to act on mundane items as well as the important or controversial ones. Even if the board is adopting an ordinance, the adoption is acted upon by motion. Motions normally take the form of a supervisor saying, "I move that we adopt the treasurer's report as presented" or "I make a motion to..." Another supervisor seconds the motion, the chair asks for discussion, and then a vote is taken.

Every supervisor, including the chair, can make, second, and vote on motions. The exceptions are if the supervisor is absent from the meeting (a supervisor may only vote if present at the meeting), or if the supervisor has chosen to abstain because of a conflict of interest.

### B. Resolutions

Developing a resolutions is a more formal way of taking an action. "Technically, a resolution is a formal expression of the will or settled decision of a deliberative assembly..." *Lindahl v. Independent School Dist. No. 306 of Hubbard Co.*, 133 N.W.2d (Minn. 1965).

Robert's Rules of Order refers to resolutions as the form in which long or complex main motions are often offered. ROBERT'S RULES OF ORDER NEWLY REVISED § 10, 100-106 (Henry M. Robert III et al. eds., 10<sup>th</sup> ed. 2000). In other

words, a resolution is a formal expression of a main motion made in writing.

The content of resolutions can vary dramatically – from ceremonial acts such as recognizing the efforts of a volunteer, to legislative acts such as establishing permitting procedures for installing additional road approaches. The term “resolution” is more a description of the form of the action rather than its content.

Depending on the statutory power being exercised, acting by resolution may be required, be a very good idea, or just an option available to the board. A resolution must be used when the law requires it (i.e., statute or rule). A resolution should be used, for example, when: expressing a formal position of the board; establishing policies, procedures, or specifications not enacted by ordinance; or making commemorations.

Examples of actions that must be taken by resolution include:

- designating a minimum-maintenance road (Minn. Stat. § 160.095);
- designating a rustic road (Minn. Stat. § 160.83);
- extinguishing an interest in an abandoned road (Minn. Stat. § 164.06, subd. 2);
- designating polling place hours (Minn. Stat. § 205.175, subd. 3); and
- approving a contract under an exception to the conflict of interest prohibition (Minn. Stat. § 471.89).

resolved statement may be used in a resolution. Finally, a resolution should also contain a title, resolution number, date of adoption, how each supervisor voted, signature line for the chair, and a line for the clerk to attest the resolution.

Statutes do not prescribe the actual form of a resolution. Although a resolution is usually described in terms of its form rather than its content, judicial review of resolutions has focused on their content. In *Lindahl*, the court found an oral motion sufficient to satisfy a statute requiring the action to be taken by resolution. *Lindahl*, 133 N.W.2d at 26. (“Generally, where the statute requires a resolution, any official action, though not in form a resolution, may be one in legal effect.”) *Id.* Despite this flexibility, boards should strive to place resolutions in proper form.

A resolution may be used, for example, to:

- designate a polling place (Minn. Stat. § 204B.16);
- designate a bicycle lane (Minn. Stat. § 160.263);
- or set forth an action on a complex matter.

A resolution typically contains a preamble and a resolution statement or statements. The preamble statements start with “*Whereas*,” and they provide the background, authority, and reasons for the decision. While resolutions are not required to have a preamble, a properly worded preamble can add valuable context to the action. Preambles should be succinct, yet sufficiently detailed to give an uninformed reader a basic framework for the context and authority for the board’s decision. The resolution itself is a statement describing the board’s action/decision and is preceded by the words “*Now, Therefore, Be It Resolved*.” More than one

### C. Ordinances

Adopting an ordinance is the most formal method for acting. Adopting an ordinance is the board enacting a local law. Not all ordinances are regulatory in nature, but all are legally more significant than resolutions or motions.

Usually, there are two sets of requirements related to adopting an ordinance. The first are requirements in the statute authorizing the town to adopt the ordinance. These requirements are determined by looking at the statute to see if it contains specific language on the process to adopt the ordinance. The second are the ordinance formality requirements in Minn. Stat. § 365.125 that apply to the adoption of all town ordinances as well as other statutes that speak to when ordinances must be filed. *See* § 5-7 for further information on ordinances.

## § 6.7 Decision-Making Powers

Nothing a town board of supervisors does is both as simple and difficult as making decisions. Anyone who has had the responsibility to vote on a controversial issue knows it is not nearly as simple as merely saying yes or no. While there are no tricks for making the decision making process any easier, understanding the structure behind the statutory authority to make decisions can greatly reduce some of the uncertainty and possible legal challenges that could result.

Many of the lawsuits brought against towns allege that the board failed, in one way or an-

other, in its decision-making process. The claims raised in these suits range from assertions that the board lacked the authority to make the decision to claims that the board's decision was "arbitrary and capricious."

For the purposes of this discussion, "decision" is used broadly to encompass the entire process involved in the board making up its collective mind on a matter. The following are common elements of the decision-making process boards should consider to develop a better understanding of the types of issues raised when their decisions are challenged.

1. **Does statutory authority exist for this decision?**  
As a creation of the Legislature, towns can only exercise those powers given them by the Legislature. Therefore, it is vital for boards to be able to identify the statutory authority for a proposed decision. In some cases, the Legislature has provided very specific authority to make a specific type of decision. In others, the Legislature has granted general authority and has left it to the discretion of the boards to exercise the authority appropriately in a given situation.
  - a. **Is the decision mandated by statute?**  
Occasionally, the legislative grant of authority comes in the form of a mandate. In these cases, towns have little or limited discretion and must act a certain way in a given situation. For instance, if a town board receives a properly completed petition for the establishment of a cartway to access landlocked property, Minn. Stat. § 164.08, subd. 2 indicates the board must establish the cartway.
  - b. **What is required to exercise the authority?**  
Boards must look carefully at the statute granting the authority in order to determine what is specifically required in order to exercise the authority. Many of the questions that follow are intended to highlight the types of requirements that may accompany the exercise of statutory authority. It is also very important to identify the other statutes that may apply to making a particular decision.
2. **Is the board in a position to exercise the authority?** Some decisions can only be made at a particular time in a sequence of events. For example, the decision to specially assess the costs of a road improvement project under the authority provided in Minn. Stat. Chap. 429 must, for the most part, be made in the initial stages of the project. Also, the decision to exercise the contracting authority to enter into a contract for more than \$175,000 can only occur after the board has satisfied the sealed bid requirements of the municipal contracting law. Minn. Stat. § 471.345.
3. **Is elector authorization needed to exercise the authority?** The need to have the town electors involved in the decision-making process is central to the township form of government. While boards are not required to seek elector authorization for all decisions, some statutes require such authority before the board is allowed to make a decision.
  - a. **What type of elector authorization is needed?**  
Town electors can take action either at a town meeting or at a town election. Some statutes require elector authorization to come in the form of a ballot vote at a town election. Other statutes permit the authorization to occur at a town meeting with a simple voice vote. Still others require the authorization to come in the form of a resolution passed by the electors at a town meeting. Always look carefully for the type of authorization required by the statute.

4. **Is prior notice required, and if so, what kind?**

Notice is a common element of many statutory decision-making procedures. Because providing the required notice goes directly to the ability to exercise the authority, it is extremely important that towns provide the type and length of notice required. Notice may take a variety of forms including posted, published, mailed, telephoned, and personal delivery.

5. **Is a hearing required?**

A hearing is often required when the decision has the potential to impact residents or their property. For example, the adoption or amendment of a zoning ordinance can only occur after a hearing is held. Minn. Stat. § 462.357.

6. **Are there any time limits for making the decision?**

One of the most significant examples of time limits for taking action is the 60-day rule under Minn. Stat. § 15.99. For towns, this rule most directly applies to written requests relating to zoning and septic systems. Minn. Stat. § 15.99, subd. 2. This means towns with zoning ordinances, for example, only have 60 days from receipt of a completed zoning application to approve or deny the application. A limited opportunity is provided to extend the period an additional 60 days. Failure to make a decision within the prescribed period means the application is automatically approved. Refer to Document Number **PZ3000** for additional information on the 60-day rule.

7. **Is the board in the proper forum to make the decision?**

At a minimum, the open meeting law requires board decisions to occur at a properly called public meeting. In addition, some decision should be made as part of a hearing or at a particular type of meeting such as meetings of the board of audit or board of canvass.

8. **Is there a sufficient basis for the decision?**

This is the issue most often raised in attacks against board decisions. If someone believes the board did not have a sufficient basis for its decision, he or she can bring a suit alleging the board's actions were "arbitrary and capricious." The surest way to overcome such attacks is for the board to record its reasons for making the decision in the record (minutes)

of the meeting or hearing as part of making the decision. Anytime the board is facing a controversial decision, particularly if it involves a zoning request, it should set out its findings of fact and rationale in the record. If it is not possible to formally write the board's findings at the meeting or hearing, then direct that they be prepared and entered into the record. There are different techniques for developing and entering into the record findings and rationale, but it is very important to do so. Refer to Document Number **TP4000** for additional information on findings of fact.

9. **Is more than a majority vote of the board required to make the decision?**

If the authorizing statute does not specifically mention the type of majority needed to make a decision, a simple majority is all that is needed. However, some statutes require a super-majority or a unanimous vote of the board in order to make a decision. For example, the authority to transfer town money from one fund to another requires a unanimous vote of the board. Minn. Stat. § 366.04.

10. **Are there any subsequent notice or posting requirements?**

Once a decision is made, some statutes require the board to provide public notice of the decision and/or to record a document reflecting the decision. For example, when a board establishes a road or cartway, it must record the establishment order in the county recorder's office. Minn. Stat. § 164.07.

A variety of consequences can flow from failing to comply with the decision-making procedures. A board could have its decision or enactment (such as an ordinance) invalidated. Civil liability could result to the town and/or individual supervisors. For example, making a decision at a gathering of supervisors that violates the open meeting law could result in a civil penalty of up to \$300 being levied against each supervisor. It is even possible for criminal charges to be brought against a town officer who, for example, intentionally makes a decision in excess of his or her statutory powers. Minn. Stat. § 609.43(2). Gaining a clear working knowledge of how the statutes frame the local decision-making process is key to avoiding these, and other, consequences.

