

5/15/2007

To: Paula Flowers, City Attorney

During last night's city commission meeting the Mayor made a number of statements criticizing me and attacking my performance as City Planner and my personal integrity. She also supplemented her interview with you (made under oath) about the allegations in Mr. Wright's ethics complain with further testimony which, although relevant, was unsworn. When I attempted to speak in response to the Mayor's attack, Commissioner Bradshaw made a motion to suspend the rules to allow me to speak. The Mayor had described and interpreted the Mt. Juliet Subdivision Regulations incorrectly in an attempt to discredit me. Jim Bradshaw made the motion and Ray Justice seconded to allow me to respond. The Mayor stated (incorrectly) that suspending the rules required a 4/5 vote. When the vote was taken, Jim Bradshaw, Ray Justice, and Ed Hagerty voted for the motion, Will Sellers against.

The Mt. Juliet City Commission adopted Robert's Rules of Order many years ago. Those Rules clearly call for a two-thirds majority vote to suspend the rules (not 4/5 as the Mayor incorrectly stated). Further, Roberts' Rules clearly state that a 2/3 majority is of those voting, not those in attendance. With three out of four votes in favor of the motion to suspend the rules, the motion clearly succeeded. The Mayor failed to correctly apply Roberts' rules and you failed to correct her. One of the reasons why the City Attorney is required to be at all meetings is to insure that the Commission follows the rules. Your inability to do so kept me from responding to the Mayor's derogatory comments in a public forum.

This is the second instance in which there has been an obvious error in the application of Roberts' Rules – each time with serious consequences.

As you may recall, at the regular City Commission meeting on April 9<sup>th</sup>, the City Commission voted to suspend the rules in order to consider and approve the proposed settlement of the Sandy Dempsey lawsuit. After the Commission voted on that item, the Mayor then introduced an un-noticed resolution concerning the investigation of the Reitz sexual harassment complaint. This also was an error. Roberts' Rules clearly spells out that the rules may be suspended only for a specific purpose and that the motion to suspend the rules must state that purpose. Once the Dempsey matter had been acted upon, if the Mayor wished to take up another matter, then she was required, under Roberts' Rules to make a separate motion to suspend the rules to consider her resolution. We will never know now whether the City Commission would have approved that motion because the Mayor failed to follow Roberts' Rules and you, the City Attorney did not advise her that the action was improper.

I am at a loss as to how the situation can now be rectified, since the City Commission proceeded to a vote on both occasions. Any comments by me at this point would have diminished value and would not have anything like the effect an immediate response would have had in answering the allegations made against me.

If the Mayor is unwilling to observe Roberts' Rules, and the City Attorney is unable or unwilling to correct her, perhaps the City Commission should consider creating the post of parliamentarian and filling it with a full-time, competent professional.

At the very least, I would request that you review Roberts' Rules regarding a motion to suspend the rules and instruct the entire commission (including the Mayor) in its proper use: 1) MUST include the purpose for which the rules are being suspended; 2) requires a 2/3 majority of the vote; 3) Abstentions do not count as votes.

Sincerely,

Bobby Franklin, City Planner

## ***Robert's Rules of Order - FAQ***

### **Two-thirds Vote.**

A two-thirds vote means two-thirds of the votes cast, ignoring blanks which should never be counted. This must not be confused with a vote of two-thirds of the members present, or two-thirds of the members, terms sometimes used in by-laws. To illustrate the difference: Suppose 14 members vote on a question in a meeting of a society where 20 are present out of a total membership of 70, a two-thirds vote would be 10; a two-thirds vote of the members present would be 14; and a vote of two-thirds of the members would be 47.

### **Do abstention votes count?**

The phrase "abstention votes" is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an "abstention vote."

In the usual situation, where either a majority vote or a two-thirds vote is required, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, if the vote required is a majority or two thirds of the members present, or a majority or two thirds of the entire membership, an abstention will have the same effect as a "no" vote. Even in such a case, however, an abstention is not a vote. [RONR (10th ed.), p. 387, l. 7-13; p. 388, l. 3-6; p. 390, l. 13-24; see also p.66 of *RONR In Brief*.]

### **Suspending the Rules**

When an assembly wishes to do something during a meeting that it cannot do without violating one or more of its regular rules, it can adopt a motion to Suspend the Rules interfering with the proposed action.

Suspending the rule cannot conflict with the organization's by laws, constitution, local, provincial or national law, or with a fundamental principle of parliamentary law.

In making the motion the particular rules need not be mentioned; but **the motion must state its specific purpose, and its adoption permits nothing else to be done under the suspension.**