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Jim Duvall

Amy M. Biddison

June 11, 2001

Mr. Grey White, City Administrator
City of Buda P. O. Box 1218 Buda,
TX 78610

Re: Parliamentary Procedure Related to ETJ Committee

Dear Grey:

You have asked me to discuss the legal effect of the council's actions related to the appointment of an ETJ Committee to negotiate with the City of Austin, My understanding is that the following facts are undisputed

April 10, 2001. A council meeting was held when the Mayor and Councilmembers Lane, Smith, and Greenholtz were present. At the meeting, Councilmember Lane made a motion which was worded substantially as follows:

"I move that the Mayor appoint a committee consisting of two Buda City council members, two public members, and a representative of the Barton Springs/Edwards Aquifer Conservation District to initiate dialog with the City of Austin regarding release of all of the Hays County ETJ surrounding Buda."

That motion was adopted by the Council.

Immediately thereafter, Councilmember Greenholtz moved to:

". . . appoint Councilmember Lane and Warren to be the two councilmembers, along with the Mayor, to represent the City of Buda."

This motion was also adopted.

Written minutes were prepared, which recited:

"Councilmember Lane made a motion to table the issue on Water Quality Ordinance. Mayor Pro-tern Greenholtz made the second. Motion carried.."

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Mayor Pro-tem Greenholtz made the motion to appoint Councilraember Lane and Councilmcmber Warren and the Mayor to the committee.

At the May 1, 2001 meeting, the above written minutes were corrected to read:

"Mayor Pro-tem Greenholtz made the motion to appoint Councilmember
Lane and Councilmember Warren to the ETJ Negotiation Committee."

These minutes, as corrected, were approved at the May 1, 2001 meeting.

The City of Buda has never adopted Robert's Rules of Order or any local Parliamentary rules.

The question is, how do we analyze this situation?

I have reminded the council many times, that to my knowledge and information, dating back to February 1984, the City has never adopted rules of parliamentary procedure, Mayor Pete Stone, the source of my information, recently confirmed this fact. State Law does not mandate any form of rules, and it seems that the Council can proceed on any set of rules it chooses, so long as those rules are consistently and uniformly applied. My own experience with the council over the years indicates that this has not been a problem. The council has always entertained motions, required seconds, and voted the motions up or down, Councilmembers have always been able to speak on issues, and parliamentary procedure has rarely, if ever, been an issue.

Now you are confronted with what can only be described as a combination of conflicting, inaccurate, and incomplete minutes, and council actions that are unclear and could form the basis in the future for using "corrections" to minutes to overturn completely accurate actions. Yet, when asked to give an opinion as to the legal effect of this matter, I have no controlling authority upon which I may rely, and any opinion I give is subject to criticism that my opinion carries no more weight than someone else's. None the less, I will analyze what I think happened, and why I think so.

Candidly, my opinion is based in large part by review of Robert's Rules of Order Newly Revised ("RR"). This procedural manual at least provides a framework to analyze this situation.

First, I find no reference in RR that accords any primacy to a tape recorded version of minutes over written minutes, The government code requires only that the municipal secretary keep "accurate minutes" of the governing body's proceedings, including all laws, resolutions, and ordinances of the governing body.

Obviously, none of the minutes are accurate, except the tape recording. The tape recording was never approved by the Council.

As I read the original motion, it gave the Mayor the right to appoint a committee of five. Before he could do that, Councilmember Greenholtz increased the committee to six and co-opted the Mayor's right to name the councilmembers, by having the Council itself appoint its representatives. I believe this was an amendment to the prior motion, and as such, under RR, would require the approval of 2/3 of the Council,

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since no previous notice of the intent to amend was given. Under Buda's system of procedure, that requirement seems hyper technical to me, and I am willing to accept the immediate, second motion by Councilmember Greenholtz as the true expression of the will of the Council,

At that point in time, the Mayor was entitled to not only membership on the Committee, but the right to appoint the remaining members.

Where the problems come in is with subsequent action. First, the printed minutes are inaccurate and incomplete. Then when the council "corrected them," they actually corrected them back to Councilmember Lane's original motion, which was the five member committee appointed by the Mayor, plus Councilmember Greenholtz's motion to name the councilmembers. This seems to me to clearly be a motion to amend something previously adopted. If the motion to correct was passed by 2/3 of the Council (in this case, four members) then under RR it would stand without prior notice, and certainly under the more relaxed majority rules, would stand with the vote of three members.

What is perplexing, though, is whether the Council intended the committee to be two members (as the "corrected minutes" could be read) or whether it was to be composed of five members. If it was to be composed of five members, the other three would have had to have been appointed by the Mayor as originally approved by the Council. My understanding is that the Mayor didn't appoint anyone. No one else had authority to appoint members to the committee.

In that event, the committee never properly functioned because my understanding is that the Mayor didn't appoint the members (except by proclamation, which all parties seem to now have abandoned) and no one else was authorized to do so. In other words, there is no record that a properly constituted committee has ever been appointed or functioned.

What are we then left with? Do we just say, "Oh well, something has been done and we'll just pretend everyone knew and agreed to it?" I cannot recommend this course because of the precedence it would set. On the other hand, I don't see how you can ignore the fact that something was done that will have a significant impact on the City.

My recommendation, at this point, is that the Council pass a motion ratifying the work done by Councilmembers Lane and Warren. I really don't see any other way to both properly authorize what was done, and to bring this whole issue into focus, so it doesn't happen again.

I also recommend that the Council adopt formal rules of procedure. These could be RR, or something that is crafted by the Council.

Very truly yours,

Jim Duvall

JD/fw