

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

MYLES SPIRES, JR.

:

Plaintiff

:

v.

: CAL06-19914

TOWN OF FOREST HEIGHTS, et.al.

:

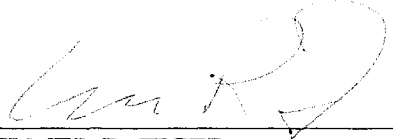
Defendants

:

OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR CONTEMPT

Defendant, Town of Forest Heights, by counsel, opposes the motion for contempt filed herein and for the reasons set forth in the attached memorandum.

----- BY: RK
RECEIVED
MAR 21 2007


WILMER R. TICOR
Attorney for Defendant
5875 Crain Highway, Suite 100
La Plata, Maryland 20646
301-392-1011

MEMORANDUM OF GROUNDS AND AUTHORITIES

This motion contains factual allegations that are not a part of the record or contained in any affidavit filed with the motion. As such the motion is improper and in violation of Maryland Rule 2-311 (c)(d). The motion should be denied.

There is pending before the Court a motion to dismiss the individual Defendants from this suit. That motion is scheduled for oral argument on May 4, 2007. Action on this motion should be deferred until that motion is decided.

The order on which this motion is premised – January 4, 2007 – has been appealed. Memoranda are due shortly. The issue whether a Town Council may bring itself up to voting

strength when vacancies have caused it to fall below Charter requirements for action on ordinances and resolutions is important to the ability of this Town and other municipalities to govern themselves. The Court should reserve consideration of this motion until that issue is finally decided.

Should the Court decline to deny the motion for the reasons previously advanced, it should be denied on its merits. The Board of Elections of the Town of Forest Heights requested an election be held to fill one of the vacancies then extant in Ward I. Exhibit 1. The other vacancy in that Ward – as well as one Council seat in each of the other two Wards – was scheduled to be filled by regularly scheduled election on March 14, 2007. The election was noticed and nominations were accepted; write-in candidates were allowed. Exhibit 2. The balloting resulted in the election of Carmelita Smith-Barnes to the vacant seat.

Once the vacant seat on the Council had been filled by election, the Council, by a vote of four in favor and none against, voted to fill the remaining vacant seat. The Council then voted to suspend Spires under section 33-90(b) of the Town Charter to suspend Myles Spires, Jr., from the position of Mayor for a second time. This time, the suspension was dictated by the fact that Spires had been indicted by the grand jury of this County for various crimes committed during his term of office and since his first suspension. CT-07-0356X. He was advised of the action of the Council and advised that he would be granted a hearing at his convenience. Exhibit 3.

It is worth noting that the exhibit filed by Plaintiff contains an affidavit signed by Councilman Worthington Ross in which he indicates he attended a Council session on January 17, 2007, but voted against appointment of replacement members to the vacant seats in Ward I. Councilman Ross failed and refused to attend the Council meeting of March 5, 2007. He did however, attend the next Council meeting on March 9, 2007. During that meeting the subject of a

report in the Washington Post quoting counsel for plaintiff was raised and questions were addressed to Councilman Ross regarding his reported sworn affidavit that a vote on a bogus resolution took place in January, 2006, when there is no evidence of any such vote ever taking place or of the resolution ever even being introduced. Exhibit 4. Councilman Ross declined to answer any questions regarding that affidavit asserting the pendency of criminal charges as his reason for declining to answer or discuss the matter. Exhibit 5.


There is no basis for sustaining the motion of Plaintiff, and Defendant respectfully requests that it be denied.



WILMER R. TICER

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 19th day of March, 2007, a copy of the foregoing document was mailed, first class postage prepaid, to Timothy F. Maloney, Esq., and Paul R. Sciubba, Esq., 6404 Ivy Lane, Suite 400, Greenbelt, Maryland 20770.



WILMER R. TICER

February 23, 2007

Mr. Freddie L. Colston
Professional Registered Parliamentarian
Forest Heights Board of Elections
119 Onondaga Drive
Forest Heights, MD 20745

Mr. Larry M. Stoner, Acting Mayor
Town of Forest Heights
5508 Arapahoe Drive
Forest Heights, MD 20745

RE: Emergency Special Elections March 5, 2007 for Ward I

Dear Mayor Stoner:

I Freddie L. Colston, would like to call for a Emergency Special Election for Ward I only, to be held Monday, March 5, 2007 at the Municipal Building.

I would like to make this request due to the fact Ward I is does not have representation.

If you have any questions or concerns please feel free to contact me at (301) 839-7353.

Sincerely,

/s/

Freddie L. Colston
Professional Registered Parliamentarian
Forest Heights Board of Elections

Cc: Town Council
Forest Heights Board of Elections

EX1



FOREST HEIGHTS NEWS SPECIAL EDITION

DATE CORRECTION

Incorporated 1949

54th Year, Issue No. 5

February 23, 2007

EMERGENCY SPECIAL ELECTION MARCH 5TH, 2007

EMERGENCY SPECIAL ELECTION
MARCH 5TH, 2007
FOR VACANT SEAT IN WARD I
ONLY
TERM ENDS IN 2009

PLEASE SUBMIT YOUR CERTIFICATE
FOR NOMINATION TO THE TOWN
CLERK BY
CLOSE OF BUSINESS
MARCH 1, 2007.

PLEASE CONTACT THE TOWN CLERK
IF YOU HAVE ANY
QUESTIONS

REGULAR SCHEDULED ELECTION IS
MARCH 14TH, 2007

Acting Mayor Larry M. Stoner, Sr.
(301) 839-1030 ext. 222
mayor.fh@verizon.net

TOWN COUNCIL:

Ward II
Clifton Atkinson—(301) 839-1030 ext. 233
cliftonatkinson1@yahoo.com

Andrea McCutcheon—(301) 839-1030
ext. 299
DREINWARD2@aol.com

Ward III
Worthington Ross—(301) 839-1030 ext. 235

ADMINISTRATIVE OFFICES

Phone: (301) 839-1030
Bonita Anderson, Town Clerk—ext. 221
townclerk.fh@verizon.net

Lillian King, Receptionist—ext. 229
receptionist.fh@verizon.net

PUBLIC WORKS DEPARTMENT

Phone: (301) 686-1432—ext. 231
Javier Nazario, Supervisor

POLICE DEPARTMENT

Phone: (301) 839-4040
Michael Eubank, Chief of Police—ext. 224
fhpd2004@verizon.net
Latessa Crawford, Police Clerk—ext. 225
policeclerk.fh@verizon.net

ER, P



FOREST HEIGHTS NEWS SPECIAL EDITION

Incorporated 1949

54th Year, Issue No. 6

March 1, 2007

EMERGENCY SPECIAL ELECTION MARCH 5TH, 2007

EMERGENCY SPECIAL ELECTION

MARCH 5TH, 2007

FOR

VACANT SEAT IN WARD I

ONLY

TERM ENDS IN 2009

CANDIDATES FOR WARD I

C. LYNN SMITH—BARNES

BEVERLY BRANCH

REGINALD NICKENS

REGULAR SCHEDULED ELECTION IS
MARCH 14TH, 2007

Acting Mayor Larry M. Stoner, Sr.

(301) 839-1030 ext. 222

mayor.fh@verizon.net

TOWN COUNCIL:

Ward I

VACANT

Ward II

Clifton Atkinson—(301) 839-1030 ext. 233

cliftonatkinson1@yahoo.com

Andrea McCutcheon—(301) 839-1030 ext. 239

DREINWARD2@aol.com

Ward III

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Phone: (301) 839-4040

Michael Eubank, *Chief of Police*—ext. 224

fhpd2004@verizon.net

Latessa Crawford, *Police Clerk*—ext. 225

policesclerk.fh@verizon.net

2nd Notice

EX 2, p 2

ELECTION BALLOT (WARD D)

TOWN OF FOREST HEIGHTS

5508 ARAPAHOE DRIVE FOREST HEIGHTS, MD 20745

MARCH 5, 2007

POLLS OPEN: 11:00 AM TO 8:00 PM

CANDIDATES

C. Lynn Smith-Barnes	<input type="checkbox"/>	Instructions: The ballot should be marked for one candidate only, and the mark should be inside the box. Print the name of the write-in candidate. Failure to follow these instructions may invalidate the ballot. Do not make erasures -- if you make a mistake, request another ballot. After marking the ballot, fold it once and place it in the ballot box.
Beverly Branch	<input type="checkbox"/>	
Reginald Nickens	<input type="checkbox"/>	
Write-In	<input type="checkbox"/>	



Town of Forest Heights

5508 ARAPAHOE DRIVE
FOREST HEIGHTS, MARYLAND 20745-1998
(301) 839-1030 — (301) 749-8378
Fax (301) 839-9236

Larry M. Stoner, Sr.
Acting Mayor

COUNCIL MEMBERS

C. Lynn Smith-Barnes — *Ward I*
Andrea McCutcheon *Ward II*
Clifton Atkinson — *Ward II*
Worthington Ross — *Ward III*

March 6, 2007

Mr. Myles Spires, Jr.
207 Mohican Drive
Forest Heights, MD 20745

Reference: Special Meeting March 6, 2007

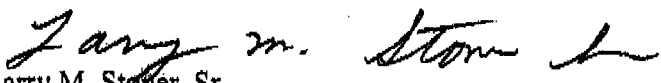
Dear Mr. Spires:

This letter is to notify you of a Special Meeting, today March 6, 2007 at 7:30 pm, called by me in reference to your current status as Mayor of the Town of Forest Heights.


Should you choose to attend, the Town Council will discuss the pending charges against you, which you are aware of by the Grand Jurors of the State of Maryland in reference to Count IV Counterfeiting, Criminal Law Article § 8-609-b-1. Resolution 01-06 — Payment of Legal Consultants, which is in violation of the Town of Forest Heights Town Charter Section 33-93 Code of Conduct (b) Pending Criminal Charges. Any Town Official facing pending criminal charges may be subject to suspension of duties pending the outcome of the criminal charges against him. Suspension from office shall only be effected with a 2/3 majority Council vote. In the case of the Mayor being suspended, the Council shall carry out the duties of the Mayor until said suspension expires. The terms of the suspension shall be clearly delineated by resolution.

Thank you for your cooperation.

Sincerely,


Larry M. Stoner, Sr.
Acting Mayor

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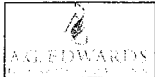
Print This Article
E-Mail This Article

Forest Heights Mayor Indicted

Spires's Charges Include Forgery, Embezzlement

By *Eric Rich*
Washington Post Staff Writer
Friday, February 23, 2007; Page B01

Released MARCH 14, 2007



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The mayor of the Prince George's County town of Forest Heights was indicted yesterday on charges of embezzling public funds and forging a Town Council resolution that allowed him to seek reimbursement of more than \$21,000 in personal legal expenses.

The indictment of Myles Spires Jr., 40, is the latest development in a series of public scandals that have roiled Forest Heights, a town of fewer than 1,000 homes tucked between Indian Head Highway and the District border, and spanned two mayoral administrations.

Spires, appointed by the Town Council one year ago, was suspended in September as questions swirled about his handling of public money. He has initiated a legal effort to remain in office, and last month a judge effectively invalidated a council resolution that would have permanently removed him.

An attorney for Spires, Paul R. Sciubba, said yesterday that his client is innocent. "I'm extremely confident that he'll be exonerated in the end," Sciubba said.

Spires is charged with theft, embezzlement, misconduct in office, submitting a counterfeit invoice, forgery, uttering and attempt to commit theft.

The indictment, obtained by State Prosecutor Robert A. Rohrbaugh, says that Spires embezzled money by submitting false expense reimbursement claims, including one for \$2,500 for "private investigative services."

The indictment accuses Spires of forging the signatures of council members and the town clerk on a resolution authorizing payment for council members who retain lawyers for matters relating to their official duties. In a statement, Rohrbaugh's office said Spires gave the document to his attorneys to induce them to seek reimbursement, "though no such resolution existed."

Sciubba provided The Washington Post with a signed affidavit in which Worthington S. Ross asserts that the council, of which he is a member, passed the resolution Jan. 24. Ross said in the affidavit that he and the other council members signed the resolution.

"Mayor Spires is adamant that the resolution was validly adopted," Sciubba said. Asked how such a matter could be in dispute, Sciubba said, "The town record-keeping is absolutely atrocious."

He accused the prosecutor's office of "taking sides in a small-town fight based on records which are in shambles and the word of the mayor's political opponents."

Rohrbaugh's office would not comment on the indictment.

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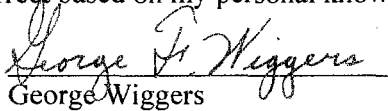
EW 4

Affidavit of George Wiggers:

The undersigned, being over the age of eighteen and competent to testify states as follows:

1. I have been an elected and appointed member of the Town Council of Forest Heights.
2. I was most recently appointed to fill an unexpired term in Ward I on March 5, 2007.
3. On March 9, 2007, at a meeting of the Town Council, I specifically asked Councilman Worthington Ross whether he had signed an affidavit on behalf of Myles Spires, Jr., asserting that the Town Council passed a resolution authorizing payment of legal expenses for Council members as reported in the Washington Post on February 23, 2007.
4. Councilman Ross refused to answer or discuss the matter stating that it was the subject of a criminal action and he would not comment.
5. When available, the minutes of the Council meeting will verify the statements made herein by me.

I solemnly swear and affirm under the penalties of perjury that the facts set forth in the foregoing affidavit are true and correct based on my personal knowledge.


George Wiggers

Date: March 18, 2007