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August 16, 2005

Honorable Joyce A. Beck
Mayor
Town of Forest Heights
5508 Arapahoe Drive
Forest Heights, MD 20745

FAX only to 301-839-9236

Ref: Town Meeting August 17, 2005

Dear Mayor Beck:

As I indicated to you on Monday, I am scheduled to be on vacation from August 17 through August 21 and am not available to attend the meeting. I have reviewed the proposed agenda insofar as it relates to matters in which I might be involved. My comments are as follows. A copy of this letter is being sent to Council President Stoner and may be distributed to the other members of the Council.

I thank the Council for requesting my presence at the Town Meeting. I will always endeavor to meet your request to attend meetings. In this instance I had made prior commitments and am not available. I would note that last month, the Council engaged the services of another attorney to provide it with legal advice. That being said, you should be aware that there are potential conflicts of interest between a legislative counsel engaged by the Council and a town attorney. One of the issues proposed for the agenda at the August meeting is the question of response by the Town Attorney to requests of the Council. Should any member have a concern in that regard, it is my position that requests of Council members are always addressed and given priority. Should a request pose a conflict of interest, I shall immediately advise the member of that conflict.

Another item on the proposed agenda is the matter of reconsideration of the budget. The letter of July 25, 2005, from five members of the Council suggesting the budget resolution certified to the State was not the resolution on which the members "believe" they voted seems to be the basis for the agenda item. The minutes of the Council meeting at which the resolution was adopted are the formal and controlling record of the Council meeting. Those minutes are certified by the Town Clerk. In this case, they control the outcome of this issue.

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The members of the Council have expressed a desire to reconsider and possibly amend the budget if it is not the budget they believe should have been enacted. I have briefly reviewed the law on the subject of a municipality's power to amend the budget and am of the opinion that once passed and certified to the State, the budget may not be further amended or reconsidered.

The powers of the Town are limited by the Constitution to express powers granted by legislative authority which is generally contained in the Charter. Art. XI-A, §2; Art. XI-E. The Charter of Forest Heights requires that appropriations be made in an annual appropriation resolution known as the budget. "From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several objects and purposes named therein." (§ 33-46) Sections 33-44 through 33-48 of the Charter imply that the budget, once adopted is fixed and may not be changed with two exceptions. First, funds may be transferred from one appropriated purpose to another (§33-47); and second, contractual obligations may be incurred. (§33-48). The difficulty with amending or reconsidering the budget is that the amount stated for expenditure in the budget is the tax levy and a "determination of the amount of the tax levy in the corresponding tax year." (§33-52) There does not appear to be room in the Charter for a supplemental budget resolution that levies more tax money.

A general discussion of the power of municipalities is found in *City of Baltimore v. Gorter*, 93 Md. 1 (1901) and *McKaig v. Mayor and City Council of Cumberland*, 208 Md. 95 (1955). More recently, the Supreme Court of Rhode Island had occasion to consider the issue of the legality of a supplemental tax imposed by the City of Providence and held it void as being beyond the authority of the municipality. *Cabana v. Littler*, 612 A. 2d 678, (R.I. 1992) While not binding on our Courts, the reasoning appears to apply with the same import to an attempt to modify or reconsider the budget of Forest Heights.

Respectfully yours,



Wilmer R. Ticer

cc: Larry Stoner
President, Town Council
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