

IN THE TRIBAL COURT OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

FILED MAY 02 2023

MELISSA A. HINTZ  
CLERK OF COURT

SMSC RESERVATION

STATE OF MINNESOTA

Anthony Muellenberg, Crystal Kilcher, and  
Cherie Crooks,

Petitioners,

vs.

Court File No. 988-23

Keith B. Anderson, Chairman, Rebecca  
Crooks-Stratton, Secretary/Treasurer, Cole W.  
Miller, Vice Chairman, Angela D. Sauro,  
Election Commissioner, and the Shakopee  
Mdewakanton Sioux Community Business  
Council,

Respondents.

**Memorandum Opinion and Order**

The General Council used precise language to describe the vote required to approve a member's relinquishment of a land assignment to an adult child who is not a Community member. Assuming that the facts as pleaded are true for purposes of evaluating the respondents' motion to dismiss, the votes on two recent relinquishments did not meet that precise language, and thus not did receive the necessary number of votes for passage. Therefore, respondents' motion to dismiss the complaints in these consolidated cases is denied.

## I.

Land management in the Shakopee Mdewakanton Sioux Community is governed by the Consolidated Land Management Ordinance (the “Ordinance”). See Ordinance § 1.2. Under the Ordinance, enrolled members “of the Community by order of birth . . . have priority to receive assignments of land for residential uses, except that enrolled members of the Community who are terminally ill, gravely ill or at an advanced age, may request relinquishment of the member’s land assignment” to certain other persons, including adult biological children who are not enrolled in the Community. Ordinance §§ 3.1.1, 4.14, 4.14.1. A member’s request to relinquish an assignment to a nonmember biological child must be approved by the Community’s General Council.<sup>1</sup> Ordinance § 4.14.1.

On January 10, 2023, the General Council convened for a regular meeting to vote on, among other things, a resolution to approve the relinquishment of a land assignment from Barry Welch to Stephanie Welch (No. 01-10-23-011) and a resolution to approve the relinquishment of a land assignment from Gail Campbell to Lynn Blue (No. 01-10-23-012) (collectively, the “Relinquishment Resolutions”). Amended Complaint, *Muellenberg v. Anderson*, No. 988-23 at 1 & Ex. A and B (Feb. 15, 2023). During a 24-hour

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<sup>1</sup> The General Council, the Community’s governing body, is defined in the Community Constitution as “all persons qualified to vote in [C]ommunity elections.” Const. art. III. And “Community members eighteen (18) years of age or over shall qualify as voters” in Community elections. *Id.* at art. IV.

vote, 172 General Council members were recorded as present, and the vote counts for the Relinquishment Resolutions were as follows:

- Resolution No. 01-10-23-011:
  - Yes - 86
  - No - 68
  - Abstentions - 17
  - Chair Not Voting - 1
  
- Resolution No. 01-10-23-012:
  - Yes - 77
  - No - 74
  - Abstentions - 20
  - Chair Not Voting - 1.

*Id.* at 2 & Ex. C, E, I. Based on the votes, the Relinquishment Resolutions were deemed approved. *Id.* at 2 & Ex. C, E.

Petitioners (collectively “Muellenberg”), who are Community members, filed two complaints (since consolidated) challenging the validity of the Relinquishment Resolutions. Muellenberg asks the Court to enjoin the land-assignment relinquishments, rescind the Relinquishment Resolutions, and declare the Relinquishment Resolutions as “failed.” *Id.* at 2.<sup>2</sup> Respondents (collectively “Anderson”), the Community’s officers and

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<sup>2</sup> Crooks also sought to have the Court “discontinue use of the 24 Hour meeting Procedure until it can be re-addressed by the General Council.” Crooks Complaint at 2. At the hearing on the motion to dismiss, however, Ms. Crooks indicated that she is no longer pursuing this relief. Transcript, *Muellenberg v. Anderson*, Nos. 988-23 at 35-36 (Mar. 27, 2023) (“Transcript”).

Election Commissioner, moved to dismiss the consolidated complaints for failure to state a claim upon which relief can be granted.

## II.

On a motion to dismiss for failure to state a claim, "the Court must assume that all facts alleged in the [c]omplaint are true" and view them "in the light most favorable to the [plaintiff]." *Welch v. SMSC*, 2 Shak. T.C. 112, 115 (Feb. 7, 1996). The Court may also consider "matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned." *Miller v. Redwood Toxicology Lab, Inc.*, 688 F.3d 928, 931 n.3 (8th Cir. 2012) (quotation omitted). A court may dismiss a case under Rule 12(b)(6) if "the [plaintiff] can prove no set of facts in support of the claim that would entitle [the plaintiff] to relief." *Welch*, 2 Shak. T.C. at 115; *see also Bryant & Rouse v. Anderson Air Inc.*, 5 Shak. T.C. 92, 94 (Nov. 6, 2007).

## III.

Here, the motion to dismiss centers on the text of Section 4.14.1 of the Ordinance, which provides:

An enrolled living member holding a valid assignment and lease and who is either terminally ill, gravely ill or at an advanced age, may request the Business Council to place before the General Council a request of the enrolled member to relinquish his/her land assignment to a living biological adult child who is not enrolled and otherwise eligible for adoption except for lack of a land assignment from the Community. . . . Authority to approve a request under this paragraph shall be vested solely in the General Council *and all such approvals shall be made by a majority of the*

*voting members present at a regular meeting where a quorum is present.* The decision of the General Council on any request under this paragraph is final.

(Emphasis added).

Anderson argues that “a majority of the voting members present” means a majority of all members who are present *and* who are voting on the matter.

Memorandum in Support of Respondents’ Motion to Dismiss Amended Complaint,

*Muellenberg v. Anderson*, No. 988-23 at 5 (Feb. 27, 2023) (“Anderson Mem.”). In

Anderson’s view, Resolution No. 01-10-23-011 passed because 86 members voted for it,

while only 68 members voted against it, and Resolution No. 01-10-23-012 passed

because 77 members voted for it, while only 74 voted against it. Muellenberg, on the

other hand, contends that “a majority of the voting members present” means a majority

of all members who are eligible to vote and who are present. *See* Amended Complaint

at 2. In Muellenberg’s view, Resolution No. 01-10-23-011 failed because only 86 of the

172 members who were present voted in favor of it, and Resolution No. 01-10-23-012

failed because only 77 of the 172 members who were present voted in favor of it.

#### IV.

To understand the meaning of Section 4.14.1, the Court must begin with its text.

*Ross v. Blake*, 578 U.S. 632, 638 (2016) (internal citation omitted). “The plainness or

ambiguity of statutory language is determined by reference to the language itself, the

specific context in which the language is used, and the broader context of the statute as

a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). And "[w]hen a word or phrase has a plain meaning," the court "presume[s] that the plain meaning is consistent with legislative intent and engage[s] in no further statutory construction." *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Thus, the Court must examine Section 4.14.1 itself and the broader context of the Ordinance as a whole.

The Ordinance provides that the "sole authority to sell, purchase, assign, lease, or otherwise convey any other interest in Reservation, trust, or tribal lands lies in the General Council unless delegated by the General Council to the Business Council." Ordinance § 2.1. Consequently, it includes numerous instances where the General Council must act. Notably, there are several places where the Ordinance only requires a "simple majority vote" for the General Council to act. *E.g.*, Ordinance §§ 3.4, 4.5, 4.9, 4.10. One such instance is in Section 4.14, regarding appeals from decisions by the Business Council on requests to relinquish land assignments from one member to another: "A quorum must be present to vote on the appeal [of a member denied a request to relinquish a land assignment to another member] and a simple majority vote shall be sufficient to uphold or reject the appeal."<sup>3</sup>

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<sup>3</sup> The parties agree that *Robert's Rules of Order* generally govern the procedure at General Council meetings, although Muellenberg contends the 1970 version governs because that's what the Community selected in its Bylaws and Anderson contends that under General Council Resolution 12-22-84-001, a more current version applies. On the record before it, the Court cannot discern which position is correct. Fortunately, with respect to the meaning of "majority vote," *Robert's Rules of Order* have not changed since 1970. *Robert's Rules of Order* provide that "when the term *majority vote* is used without qualification . . . it means more than half of the

The clause “simple majority vote” in Section 14.1 and elsewhere in the Ordinance is undeniably different from “a majority of the voting members present” in Section 4.14.1. Yet Anderson contends they mean the same thing—more than half of the votes cast, excluding abstentions. As a matter of statutory interpretation, however, the Court must conclude that the General Council intended “a majority of the voting members present” to mean something different from a “simple majority vote.” *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (“We have often noted that when ‘Congress includes particular language in one section of a statute but omits it in another’—let alone in the very next provision—this Court ‘presume[s]’ that Congress intended a difference in meaning.”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

*Blanton v. Hahn* presented a similar question regarding a voting requirement. 763 P.2d 522 (Ariz. 1988). There, members of a church met to vote on terminating the pastor. *Id.* at 523. The meeting was attended by 26 members, and 18 members voted, all in favor of termination. *Id.* The church’s bylaws provided the methods to terminate a pastor, among them a vote of the congregation: “‘If the vote equals or exceeds three-fourths of the voting members present, the service of the Pastor shall terminate immediately.’” *Id.* (quoting the church bylaws) (emphasis removed). The members argued that the three-fourths requirement should be measured from the 18 members who voted on the

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votes cast by persons entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting.” Anderson Mem. at Ex. D p.1 (*Robert’s Rules of Order* § 44:1 (12th ed. 2020)); Pet.’s Opp. Mem. at Ex. 7 p.6 (quoting *Robert’s Rules of Order Newly Revised* at 339 (1970)).

matter, while the pastor argued that it should be measured from the 26 members who attended the meeting, *id.* at 524, which would have meant that 20 members would have had to vote to terminate him. The court looked to *Robert's Rules of Order*, which illustrated various voting requirements. *Id.* Where a voting requirement included "members present," *Robert's Rules of Order* provided that the favorable votes should be measured against the total number of members attending a meeting, not just those members who voted. *Id.* Therefore, the court ruled in favor of the pastor. *Id.* at 524. The circumstances here are similar. Section 4.14.1 includes the phrase "members present," suggesting that the General Council intended the vote to be measured from the members who were present, not just those who voted.<sup>4</sup>

Anderson argues, however, that this interpretation would violate the general rule of construction that "an ordinance should be read to give effect to all its provisions and to avoid interpretations that would render ordinance language to be surplusage." Anderson Mem. at 16; Transcript at 20; *see also Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) ("[N]o word, phrase, or sentence should be deemed superfluous . . . or insignificant."). Anderson argues that because the General Council is comprised of members eligible to vote, Community Const. at art. III, it is redundant to use

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<sup>4</sup> *See also Robert's Rules of Order* § 44:7 (12th ed. 2020); *Robert's Rules of Order Newly Revised* at 341 (1970) (same) (a body can modify the standard rule that a majority vote means a majority of those *present and voting* on a matter by prescribing that the majority vote must be of "the number of members present").



“voting” in the phrase “voting members present,” unless “voting members” means something different from “eligible to vote.” Transcript at 20.

While this argument has some appeal, the Court notes that the General Council used a similar approach in Section 1.10 of the Ordinance, which provides that “[t]his Ordinance may be amended only upon an affirmative vote of a majority of the eligible voting members of the General Council at a duly convened meeting where a quorum is present.” This section demonstrates that in the context of the Ordinance, the General Council has chosen to refer to “voting members,” even where it may be sufficient to refer only to “members.” The Court finds that it also did so in Section 4.14.1.<sup>5</sup>

## V.

Anderson also contends that reading Section 4.14.1 as Muellenberg proposes would mean that abstentions count as “no” votes, which is generally frowned upon by *Robert’s Rules of Order*. Anderson. Mem. at 13. The Court acknowledges that reading Section 4.14.1 to require an affirmative vote of voting members who are present at the meeting—not just an affirmative vote of those voting on a particular resolution brought under Section 4.14.1—would essentially count abstentions (including the Chair’s) as “no” votes. And while it is true that *Robert’s Rules of Order* generally prescribes such voting mechanisms as “undesirable” because as a practical matter they take away a

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<sup>5</sup> Because this is so, the Court need not examine the legislative history of the Ordinance presented by Anderson. *Ex parte Collett*, 337 U.S. 55, 61 (1949) (“[T]here is no need to refer to the legislative history where the statutory language is clear.”).

member's ability to abstain, *Robert's Rules of Order* § 44:9 (12th ed. 2020); *Robert's Rules of Order Newly Revised* at 341-342 (1970), the Rules also clearly permit such voting mechanisms so long as they are specified. *Id.* Here, the Court is persuaded that the General Council intended such a result by using the language it did in Section 4.14.1, which, as noted above, requires something more than a "majority vote." When a "majority vote" is all that is called for, only a majority of those voting on a particular question would be required for the measure to pass—and abstentions would not impact the number needed for a majority.

Such was the case in *Feezor v. SMSC Business Council*, 3 Shak. T.C. 155 (May 19, 1999), cited by Anderson. *Feezor* involved the validity of two adoption ordinances, both enacted under Article II of the Community Constitution, which does not require any particular vote threshold.<sup>6</sup> 3 Shak. T.C. at 157. There, the Court upheld a 1993 adoption ordinance that was passed by a vote of 33 for, 32 against, 6 abstentions and 1 spoiled ballot. *Id.* at 159, 174, 187-88. But only a simple majority of those voting was required (as is typical under *Robert's Rules of Order*), *id.* at 174, so it made sense for the Court to find that the ordinance passed even though it would not have passed if the abstentions had counted as "no" votes.

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<sup>6</sup> It simply provides that "[t]he governing body shall have power to pass resolutions or ordinances, subject to the approval of the Secretary of the Interior, governing future membership, adoptions and loss of membership." Const. art. II, § 2.

Anderson also relies on *Paiute Indian Tribe of Utah v. Clark*, where the Paiute court noted that “because abstentions do not count as votes, ‘majority vote’ usually means the vote of those present and voting.” 18 NICS App. 27, 30 (Aug. 2020). In that case, the tribal council consisted of six members, and removal of a member required a “majority vote of its members” where a quorum was present. *Id.* at 28, 30-31. At a meeting where three members were present, two voted in favor of removing another member. *Id.* at 30-31. The court concluded that three members did not constitute a quorum. *Id.* at 31. But notably, it went on to explain that the two votes in favor of removal was insufficient:

But, even assuming a quorum, we believe the vote still violated the Constitution. The Constitution says the Tribal Council “by a majority vote of its members” may remove a council member. Paiute Indian Tribe of Utah Constitution art. XII, sec. 2(a). Because the Tribal Council consists of six members, a majority of four members would need to vote for removal to accomplish a removal. Had the Constitution stated that the Tribal Council could “by a majority vote” remove a council member, then perhaps a number less than four would suffice (assuming a quorum). But because the Constitution included the words “by a majority vote *of its members*,” we read the Constitution as requiring at least four affirmative votes to remove.

*Id.* (emphasis in original). So while the court observed the general rule regarding majority votes, it found a different meaning where the language indicated that the vote should be measured against the membership, not the number of votes cast. This again is an example where particular language evidenced a legislative purpose to impose a heightened voting requirement. Thus, it supports Muellenberg’s view that “a majority

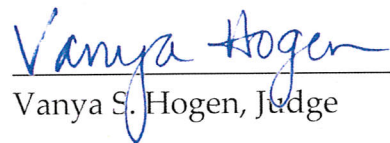
of voting members present” means a majority of all members who are eligible to vote *and* who are present, not a majority of members present and voting.

VI.

In the Ordinance, the General Council used very specific language regarding the vote necessary for a member to relinquish a land assignment to a non-member child. That language differs from the more typical “simple majority vote” used elsewhere in the Ordinance, and the Court must effectuate the specific language by giving it its plain meaning, which is a majority vote of the voting members *present* at a regular meeting. Taking the allegations in the amended complaint as true, the Court cannot find that Muellenberg has failed to state a claim upon which relief can be granted.

**Accordingly, it is hereby ordered** that Anderson’s motion to dismiss is denied.

Dated: May 2, 2023

  
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Vanya S. Hogen, Judge