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MEMO TO: **Town Board**

FROM: **Jerry Green**

RE: **Bond Vote – Recount Process**

DATE: **April 11, 2007**

It has been reported to me by Town Clerk, Gail Young, that certain errors were made in the vote count on March 29, 2007. These errors were discovered by the Town Clerk on April 2, 2007 all as more fully explained in the Town Clerk's chronological recitation of the facts set forth below.

March 28, 2007 - Between 2 – 4:00 P.M. distributed election day materials to
Wednesday Election Inspectors, except Certificate(s) of Election forms
which were being finalized

March 29, 2007 - Polls opened at 12:00 Noon in accordance with Resolution
Thursday No. 13, adopted January 17, 2007

Between 3 – 4:00 P.M. and at 6:30 PM, delivered blank
Certificate(s) of Election (tally sheets) to the five (5) polling
districts, reviewing the form with the inspectors and which form
they would need to complete when the polls closed

Polls closed at 8:00 P.M. and each of the voting machines
was sealed; chairman of each of the five (5) polling districts
returned all election day materials to the Town Clerk, including the
Certificate(s) of Election (aka tally sheets); voting machine keys
were locked in a safe

Figures from the five (5) Certificate(s) of Election (tally

sheets) were transferred by Town Clerk onto a chart; these figures did not include absentee and/or affidavit ballots. Unofficial results were distributed to various persons, including the news media. Chinki Sinha of OD was informed that absentee/affidavit ballots would be opened 8 – 10 A.M. the next morning and she was welcome to attend

March 30, 2007
Friday

- At 8:01 A.M., without doing anything else in the office, Town Clerk and Deputy moved five (5) boxes of election day materials to the ground-level meeting room in Butler Hall where the absentee/affidavit ballots would be opened. Awaited Councilmen Waszkiewicz and Woodland, each of whom had been asked a couple weeks ago to be present for opening of these ballots. Phoned Councilman Woodland's home and was told he left at 7 A.M. for work where he was contacted and learned he was unable to attend. J.C. inquired if he could invite someone from the public and then phoned Cathy Lawrence. Learned that Ed Wiatr had wanted to attend. J.C. phoned Mr. Wiatr who said he sent Town Clerk an e-mail and left a voice mail today. Waited for Mr. Wiatr to arrive and Town Clerk asked him to participate in the count. During the count, Oneida County DPW worker Doug Potter and another man came in to move the two (2) voting machines from Butler Hall to be stored and locked in a storage building in Sherrillbrook Park and which building is locked and equipped with a security alarm system; also, County Voting Machine Custodian James Staffo came in to report that the inspectors had sealed all the machines and that he would pick up the County's voting machine keys on Monday, April 2, 2007. Town Clerk introduced him to Councilman Waszkiewicz. Chinki Sinha also arrived and when J.C. had to leave for another meeting at 10 A.M., Town Clerk asked Chinki to participate in the count in J.C.'s place. Town Clerk phoned Oneida County Board of Elections to verify registration status of several voters who completed affidavit ballots. At 11:17 A.M. the count of absentee/affidavit ballots concluded and it appeared that all eight (8) propositions had been defeated, with one proposition (No. 4) by only six (6) votes; with figures being compiled and completed by Deputy Margaret Jones, Edmund Wiatr and J.C./Chinki Sinha. The absentee/affidavit votes were hand-written on a copy of last night's vote result chart, with the original totals crossed out and "w/ballots" written on it.

April 2, 2007 -

Oneida County Voting Machine Custodian James Staffo Monday came in 1st thing to pick up County voting machine keys that had been locked in a safe since the election; he would store them elsewhere. He was given his check for services rendered.

In A.M. discussed with Deputy Jones that the Certificate(s) of Election (tally sheets) totals should be verified against each voting machine print-out to ensure the figures were added correctly – two (2) voting machines in each of the five (5) polling sites – and that there was such a close defeat of one of the propositions. This had bothered me all weekend.

In afternoon, I read totals from voting machine print-outs for the two (2) machines in each polling site, with Deputy Jones adding the figures. Several errors were found:

In Ward 2, District 1&2, a computation error was discovered for Propositions #3 and #5; the NO votes should be 140, not 130 as reported to the Town Clerk (EX: 98 and 42 = 140)

In Ward 3 and Ward 4, it was discovered that the inspectors read the total from the machine print-outs, going left to right (i.e., Proposition #8 to Proposition #1) rather than from right to left (i.e., Proposition #1 to Proposition #8) and inadvertently entered these totals on their Certificate of Election (tally sheets). Also, in Ward 3, the figure of 336 initially reported as YES for Proposition #1, was actually 236 and wasn't for Proposition #1, but for Proposition #8. Verification of the voting machine print-outs then showed that Proposition No. 4 passed by 75 votes. Made copy of chart showing vote w/absentees (3/30/07) and hand-entered verification of inspector's tally sheets to the machine print-outs.

Town Clerk phoned Supervisor's office, giving information to Secretary Carol Ryan. Town Clerk phoned Highway Superintendent with results as this would affect his department. Town Clerk e-mailed Tom Myers (Bond Counsel) because a legal notice was required to be published

April 3, 2007 -
Tuesday

Received e-mails from Ed Wiatr and Frank Montecalvo who had read today's OD report on my verification of figures and the success of Proposition No. 4.; responded that they could stop into Town Clerk's Office during regular business hours to review the paperwork.

Peg and Gail then converted the hand-written 4/2/07 chart into an Excel chart on the computer and Gail certified a statement about the incorrect figures and what the correct tally was.

Phillip Eastman, Chairman for Ward 3/Butler Hall, phoned around 11 A.M. to apologize for his error in reporting the election results. He had read the morning's paper and realized what he'd done the night of election – started reading the totals from the left instead of the right and wondered why the NO totals were before

the YES totals. When he hesitated, Inspector Rosemari Bennett asked him if anything was wrong and, because the newspaper reporter was standing there, he said no and continued reading the results from left to right, instead of right to left.

Provided Chinki Sinha of OD with a copy of the uncertified election results from April 2, 2007

Ed Wiatr served on the Town Clerk's Office at 1:45 PM a copy of his letter to the Oneida County Board of Elections, itemizing numerous allegations against various Town employees and officials and wanting an impound of voting machines. It referred to a Petition which wasn't included in the papers he served. THIS NOW NEGATES MY RESPONSES TO MESSRS WIATR & MONTECALVO. With charges of wrongdoing, no one will be allowed to access these papers until discussion w/Town Attorney and procedure is established.

Town Clerk phoned Michael Jeffery about a particular allegation Mr. Wiatr had made. Mike was aware that the County employees had delivered the voting machines for storage and security to a building in Sherrillbrook Park. Mike then brought all voting machine keys that had been stored there to be locked in the Town Clerk's safe.

Town Clerk faxed Mr. Wiatr's allegations to the Town Attorney who she found out from his secretary, Jodi, that he was out of town; delivered copies for each Board member to the Supervisor's Office, giving them to Carol Ryan.

April 4, 2007 -
Wednesday

Town Clerk began communicating with County Board of Elections and Town Attorney (although he was still out of town) via his cell phone

E-mailed Tom Myers (Bond Counsel) since I hadn't received a response to my April 2, 2007 e-mail and asking the timeframe for publication of any legal notice and whether Mr. Wiatr's request for impoundment would prevent the Town Board and/or me from doing anything further.

Received phone call from Tom Myers (Bond Counsel) in response to my e-mails of April 2 & April 4, 2007. Explained the tallying process since the night of election and clarified for him how some of the inspectors misread the election results left to right instead of right to left (mirror image). He told me to proceed w/publication and to present a report at the next Town Board

meeting. He then e-mailed the Legal Notice of Estoppel for the stormwater resolution and told me to publish it as soon as possible. I faxed a copy to the OD and asked for a publication either April 6 or April 7; they couldn't do it til April 9th, which is the date it was published.

Received faxed copy of NOTICE OF PETITION from Mr. Wiatr and which NOTICE had been omitted from his communication served yesterday; I faxed it to Town Attorney for his comments.

On April 4, Town Clerk and Deputy called all inspectors in Ward 3 and Ward 4, asking them to come into office at 11 A.M. on April 5 to review their respective machine print-outs and to prepare an Amended Certificate of Election. Again, Mr. Eastman apologized to Peg for this error that was causing the Town Clerk so much trouble. Also, Mary Sheheen in Ward 4 said she didn't write down any figures but recalled the totals being started from the left rather than from the right.

April 5, 2007 -

After speaking with NYS Board of Elections shortly after 9 A.M., Town Clerk asked Deputy Jones to call the Ward 3 & Ward 4 inspectors and tell them not to come in today at 11 A.M., but rather, wait until they hear from her further. Establish some procedure and have Town officials and anyone from public present.

Received from Oneida County Board of Elections a copy of their April 3, 2007 response to Mr. Wiatr regarding impoundment and that impoundment must be by court of competent jurisdiction.

After re-reading Mr. Wiatr's communication served on April 3, 2007, I phoned James Staffo, County Voting Machine Custodian for assurance that he had not re-calibrated the ten (10) voting machines; he responded that he had not and said that the inspectors had placed seals on the machines.

Was able to contact Attorney Green (who was in Buffalo) about 1 P.M. to discuss the matter further. He'll review everything when he arrives at his office and will contact me sometime Friday, April 6.

After discussing these facts with Gail, I spoke with the following persons: Supervisor Reed; Patty Dispirito, Oneida County Board of Elections 798-5763; County attorney Linda Dillon 798-5910; Pat Murray, NYS Board of Elections (518) 473-5088; Jim Staffo, voting machine technician for the City of Utica who was hired by the County for this special bond vote 732-7273 (home), 867-0170 (cell).

In addition, I reviewed Section 9-208 of the NYS Election Law which is applicable as our Town does not have its own election law.

It appears the following procedure is warranted for an official recount of the votes cast by machine and absentee paper ballot:

1. Within 15 days of the vote, the Town Board shall appoint a bipartisan committee to conduct the recount. This should be done at the April 11, 2007 Town Board meeting.
2. It is recommended that this bipartisan committee be comprised of the following persons:

Town Clerk or Deputy Town Clerk
Town Councilman Reynolds/Woodland
Town Attorney
Newspaper Reporter Chinki Sinha
Edward Wiatr and/or representative

3. That at said April 11, 2007 Town Board meeting, the Board shall also set the time, date and place for the subject recount.
4. It is recommended that the recount be scheduled for Friday, April 13, 2007 at 12 noon at Sherrillbrook Park where the voting machines in question have been stored under lock and key since March 29, 2007. This is the last day of the 15 days time constraint within which the recount is required to take place under the State Election Law.
5. That at said recount, the Town Clerk, or her representative, shall produce for review and inspection the following documents and records:
 - 5 Certificates of Election (tally sheets) one for each of the 5 polling places
 - ‘Chart’ prepared by the Town Clerk on March 29, 2007 from the Certificates of Election
 - The voting machine paper printouts from each of the 10 machines in question.
 - Absentee ballots
 - The Amended Charts prepared by the Town Clerk which reflect the amended vote count including the absentee votes. The Town Clerk has certified the vote count figures reflected thereon as the official results of the vote.
6. In addition to the appointed committee members, it is recommended that the following persons also be invited by the Town to the recount to answer potential questions and/or provide needed information:
 - One or more of the inspectors from each of the 5 polling places

- Doug Potter, in charge of transporting the subject voting machines
- Jim Staffo, in charge of setting up each of the 10 voting machines
- Mike Jeffery, Park director

7. At the recount, the committee shall retrace the vote count process, as follows:

- A. review and inspect the Certificates of Election. Verify that vote count reflected thereon is as originally recorded on March 29, 2007.
- B. review and inspect the Charts. The chart originally prepared by Gail should reflect the same vote count reflected on the original Certificates. The new chart should reflect the vote count from the absentee ballots and the voting machine paper printouts.
- C. review and inspect the voting machine paper print-outs and verify the vote count reflected thereon.
- D. inspect and record the vote count numbers reflected on each voting machine seal and protective counter and compare same against the vote count Gail recorded on the subsequent chart.

If deemed necessary by the Committee, the 10 voting machines shall be opened to further verify the vote results. If deemed necessary by the Committee, the Absentee Ballots shall be re-counted as well.

8. Upon satisfaction of the committee, the inspectors shall be asked to prepare amended Certificates of Election to reflect the accurate and verified vote count figures. This then becomes the official results of the vote.

For your information, I am attaching a copy of Section 9-208 of the NYS Election Law (as amended).

As a precaution, I reviewed this information in detail with Pat Murray at the NYS Board of Elections to verify the recommendations and prescribed course of action recited herein.

Please call if you have questions.

Jerry

Attachment