

A special meeting of the Board of Aldermen was held Monday, November 16, 2009 at 6:30 p.m. in the Aldermanic Chamber for the purpose of conducting a recount of the ballots cast for Ward 5 Alderman at the November 3, 2009 municipal election.

President Steven A. Bolton presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron; Alderman Mark S. Cookson led in the Pledge to the Flag.

The roll call was taken with 10 members of the Board of Aldermen present; MacLaughlin, LaRose, Tamposi, and Plamondon were not in attendance. Alderman Chasse arrived after the roll was taken.

Her Honor Mayor Donnalee Lozeau was also in attendance.

## COMMUNICATIONS

### **MOTION BY ALDERMAN MCCARTHY THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY MOTION CARRIED**

From: Paul R. Bergeron, City Clerk  
Re: Proposed Rules of Procedure Relative to Recounts

### **MOTION BY ALDERMAN MCCARTHY TO ACCEPT, PLACE ON FILE AND THAT THE PROPOSED RULES OF PROCEDURE RELATIVE TO THE RECOUNT SUBMITTED BY THE CITY CLERK BE ADOPTED BY THE BOARD OF ALDERMEN FOR THIS EVENING'S RECOUNT PROCEEDINGS MOTION CARRIED**

#### President Bolton

The order of business tonight is the recount of the election for Ward 5 Alderman. In accordance with the City Charter and the rules already adopted, I will ask the Mayor to open the sealed ballot boxes and the City Clerk will supervise the recount. This board will be in recess and will reconvene to make a ruling if necessary on any challenged ballots.

*The Board recessed at 6:33 p.m.*

Mayor Lozeau opened the sealed ballot boxes from Ward 5 in accordance with Sec. 26 of the City Charter. The election night returns from Ward 5 were examined.

*The Board of Aldermen reconvened at 7:50 p.m.*

Upon completion of the tallies, the Clerk noted that Michael J. Tabacsko had received 424 votes, Michael Gallagher had received 416 votes, and that there were 7 ballots protested, which would require rulings from the Board of Aldermen.

#### President Bolton

Each of you has been given a copy of the 7 protested ballots. I suggest we take them up one at a time, and in each case I will call upon the City Clerk to explain any of the relative procedures or statutes, which may affect our deliberation. If everyone can turn their attention to protested ballot #1, Mr. Clerk what can you tell us about the procedures involving a void ballot?

Paul Bergeron

I also have the originals of all of these ballots if any of the Aldermen would like to examine the original up close. We also provided you with copies of some relevant laws. The law that pertains to voided or cancelled ballot appears on Election Law book page number 114, and it is titled Spoiled Ballots, 659:22 - If any voter spoils a ballot he may receive others one at a time not exceeding 3 in all upon returning each spoiled one. The ballots thus returned shall be immediately marked cancelled by the Moderator over his signature, and at the close of the polls shall be preserved as provided in RSA 659:95.

There is a separate page, 135, 659:95, which talks about sealing and certifying ballots. I won't read the whole thing, but it essentially says that these voided or cancelled ballots must be sealed in with all of the other ballots as well.

In this particular case, the ballot is written void. It was initialed by Gene Fortier the Ward Clerk in Ward 5. I cannot speculate and won't speculate on what the cause was I will just note that there are coffee stains all up and down the side of the ballot.

Alderman McCarthy

From your description, it is my understanding that the person who turned this ballot in when it was voided was given another ballot with which they subsequently we assume voted.

Paul Bergeron

That would be my understanding of the procedure. The voter would have had the option of having it hand counted. You may remember the ballot boxes have side pockets. If a ballot for any reason won't be scanned the voter has the option of dropping it in the side pocket. That is what we call hand counted ballots. It would appear from this that the voter exchanged ballots. This one was, therefore, voided out.

Alderman McCarthy

If it were hand counted it wouldn't be marked void correct?

Paul Bergeron

That is correct.

**MOTION BY ALDERMAN MCCARTHY TO DEEM PROTESTED BALLOT #1 A NO VOTE**

ON THE QUESTION

Alderman Teeboom

I have an inquiry. One of the members of the board here also happens to be one of the two candidates in question, Alderman Tabacsko. Can Alderman Tabacsko vote on any of these motions?

President Bolton

Let me first ask, do you intend to vote Alderman Tabacsko?

Alderman Tabacsko

No I do not.

President Bolton

I think that solves our question.

Alderman Tabacsko recused himself from the recount proceedings in Ward 5.

Alderman Teeboom

That answers my question. Thank you.

President Bolton

The motion before us is that protested Ballot #1 be deemed a no vote. Is there any further discussion?

**MOTION CARRIED**

*President Bolton declared protested ballot #1 a no vote.*

Paul Bergeron

In ballot #2, the instructions are to the voter vote for not more than one. There are two circles filled in; one for Michael J. Tabacsko and one for Michael Gallagher.

President Bolton

Are there any questions?

**MOTION BY ALDERMAN CLEMONS TO DEEM PROTESTED BALLOT #2 A NO VOTE**

ON THE QUESTION

Alderman Teeboom

Is there an RSA that covers this situation?

Paul Bergeron

It is called an over vote. I couldn't site the statute. The voter can only vote for one candidate in that race. I believe that is in our Charter as well, one Ward Alderman will be elected from each ward.

Alderman Teeboom

What does the machine do in this case?

Paul Bergeron

It shows up on the tabulated tape as a blank. There is a line called blanks and those are no votes or over votes. It is not counted at all.

Alderman Teeboom

The machine cannot make up its mind so it doesn't count it at all.

Paul Bergeron

I would prefer to say the voter couldn't make up his or her mind. The machine did what it was supposed to.

President Bolton

Is there further discussion? The motion is to deem protested ballot #2 as a no vote.

**MOTION CARRIED**

*President Bolton declared protested ballot #2 a no vote.*

Paul Bergeron

Protested ballot #3 is a similar situation where the voter was instructed to vote for not more than one cast a vote for Michael J. Tabacsko and Michael Gallagher.

**MOTION BY ALDERMAN COX TO DEEM PROTESTED BALLOT #3 A NO VOTE**

**MOTION CARRIED**

Paul Bergeron

Protested ballot #4 again where the instructions say vote for not more than one the voter cast a vote for Michael Tabacsko and Michael Gallagher.

**MOTION BY ALDERMAN WILSHIRE TO DEEM PROTESTED BALLOT #4 A NO VOTE**

**MOTION CARRIED**

Paul Bergeron

Protested ballot #5 was an absentee ballot. It was not counted or processed by the Moderator at the polling place. It was still enclosed in the absentee voter envelope. The reason given as to why the ballot wasn't cast is written on the envelope. It says "Didn't return request paper so we couldn't compare signature."

In actuality what that means is the Affidavit envelope, which the voter is supposed to seal his or her ballot in, was not enclosed at all. The ballot was just put into a return envelope. The relevant statutes are on your desk. 659:53, which is the two page section, 124 and 125 states that if the Moderator finds that the absentee voter is not entitled to vote, he shall not open the envelope and shall mark across the face of the envelope the reason the ballot is rejected such as rejected as not a voter, voted in person, affidavit improperly executed, not signed by property person, or whatever the reason is.

I would just note that the Moderator could not have known that there was no affidavit envelope executed until he or she opened the envelope. That is the reason why this ballot was not counted by the ward election officials.

Alderman Teeboom

I see scribbling on the bottom. I can't quite make it out. Who wrote that, who signed it, and can you explain what that all means?

Paul Bergeron

I would assume it was signed by the Ward Clerk because it does look like Gene Fortier's handwriting, but I can show you the envelope itself if you wish.

Alderman Teeboom

No that is okay. So you are saying that no affidavit was filed for this particular absentee ballot and therefore you cannot verify that the person that returned this was the person who filed?

Paul Bergeron

Who filled it out correct. The process is that a voter send us a written request for an absentee ballot and when they receive their absentee materials there is an affidavit envelope that the ballot is supposed to be enclosed in, and on that affidavit envelope the voter is stating that he or she is unable to go to the polls because they will be out of town, because they have a physical disability or a religious observance that keeps them from going to the polls, and then they sign that. The election officials are instructed to compare signatures, and that is according to state law, of the original request form against the signature that appears on the affidavit envelope and make a judgment call that they are the same signature. They couldn't do this because there was no affidavit envelope.

Alderman Teeboom

I know I asked this before once in court. Are the people that check these signatures are they signature experts?

Paul Bergeron

In this particular case they weren't making a judgment call as to whether or not the signatures matched because there was no second signature to match with the first.

Alderman Teeboom

Thank you.

**MOTION BY ALDERMAN WILSHIRE TO DEEM PROTESTED BALLOT #5 A NO VOTE  
MOTION CARRIED**

*President Bolton declared protested ballot #5 a no vote.*

Paul Bergeron

Protested ballot #6 – in this case again the instructions say vote for not more than one, the voter filled in the circle next to Michael Gallagher and then wrote in the name on the write-in line Mario Lemieux and filled in that circle as well.

**MOTION BY ALDERMAN WILSHIRE TO DEEM PROTESTED BALLOT #6 A NO VOTE**

ON THE QUESTION

Alderman Teeboom

This name Mario Lemieux was written in. For the purpose of the law, does that count the same as if the name was printed because the other candidate's name was not filled in? How is this interpreted? Here you have a candidate who is in dispute against a candidate whose oval was not filled, but there is a name that is not in dispute.

President Bolton

Mr. Clerk if you can answer that you may.

Paul Bergeron

Voters have the right to write in the name of anybody they wish to be elected to an office. The decision here really boils down to they can only vote for one candidate. They voted for two.

Alderman Teeboom

So there is no different meaning to whether they write it in or whether there is another candidate printed on the ballot?

Paul Bergeron

No. They each receive the same weight.

Alderman Teeboom

Thank you.

Alderman McCarthy

I have to conclude by reading the rest of the ballot where not a single candidate who appears on the ballot was checked, but in every case people who, at least as near as I can tell are not entitled to hold these offices were written in, that this person intended to write in Mario Lemieux and checked the wrong box when they were doing it, and then went back and checked the other one. I will support the finding that it is a no vote.

Alderman Clemons

Without trying to interpret the intentions of the voter, in every single case, the voter followed the directions and voted for 3 or 4 candidates except in the ward 5 race where they voted for more than 1 candidate.

President Bolton

The motion is that protested ballot #6 be deemed a no vote. Is there any further discussion?

**MOTION CARRIED**

*President Bolton declared protested ballot #6 a no vote.*

Paul Bergeron

Protested ballot #7, the voter put a dot like the tip of a marker next to the name of Michael J. Tabacsko and then filled in completely the circle next to the name of Michael Gallagher.

**MOTION BY ALDERMAN TEEBOOM THAT PROTESTED BALLOT #7 BE DEEMED A VOTE FOR MICHAEL GALLAGHER  
MOTION CARRIED**

*President Bolton declared protested ballot #7 a vote for Michael Gallagher.*

Based on the decisions of the Board of Aldermen, the Clerk stated the results for the Ward 5 Aldermanic race in the November 3, 2009 election are as follows:

Michael J. Tabacsko, 5 Federal Hill Road, received 424 votes  
Michael Gallagher, 9 Old Coach Road, received 417 votes

**MOTION BY ALDERMAN MCCARTHY THAT THE RESULTS RECORDED ON THE CITY CLERK'S RECORD OF RETURNS FOR THE WARD 5 ALDERMANIC RACE AT THE MUNICIPAL ELECTION OF NOVEMBER 3, 2009 BE DECLARED FINAL AND CONCLUSIVE, AND THAT MICHAEL J. TABACSKO HAVING RECEIVED THE LARGEST NUMBER OF VOTES CAST FOR THE OFFICE BE DECLARED ELECTED BY VOICE VOTE FOR THE ENSUING TERM.  
MOTION CARRIED**

President Bolton

Those results are final and Michael J. Tabacsko has been duly elected by the voters for the ensuing term.

Alderman Tabacsko

Thank you. If you would indulge me for a second, I would like to briefly state publicly my congratulations to Mr. Gallagher on a hard fought campaign. I would also like to thank publicly the City Clerk, his staff, and all of the dedicated election workers especially those on Ward 5. The results validate the process and demonstrate the commitment and professionalism of the workers that run our elections.

To the residents of Ward 5, it has been an honor and a privilege to serve as your representative for the past four years, and I look forward to continuing that relationship for the next two years. Thank you.

ADJOURNMENT

**MOTION BY ALDERMAN WILSHIRE THAT THE NOVEMBER 16, 2009 SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED  
MOTION CARRIED**

The meeting was declared adjourned at 8:10 p.m.

Attest:

Paul R. Bergeron, City Clerk