

BAY COUNTY ELECTION COMMISSION

NOVEMBER 14, 1990

THE BAY COUNTY ELECTION COMMISSION MET ON WEDNESDAY, NOVEMBER 14, 1990, IN THE COMMISSIONERS GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING. THE MEETING WAS CALLED TO ORDER FOR THE PURPOSE OF CLARITY HEARING ON PETITION LANGUAGE SUBMITTED FOR THE RECALL OF BAY COUNTY EXECUTIVE, KIM A. HIGGS. THE MEETING WAS CALLED TO ORDER BY THE CHAIRMAN OF THE COMMITTEE, JUDGE PAUL DONER, AT 2:15 P.M. THE FOLLOWING GUESTS AND COMMITTEE MEMBERS WERE IN ATTENDANCE.

ROLL CALL: PROBATE JUDGE PAUL N. DONER, CHAIRMAN
 COUNTY TREASURER, EDWARD LEWANDOWSKI
 COUNTY CLERK, BARBARA ALBERTSON

ALSO PRESENT: CYNTHIA A. LUCZAK, SECRETARY TO THE CLERK
 KIM A. HIGGS, COUNTY EXECUTIVE
 PATRICK O. DUGGAN, DEPUTY EXECUTIVE
 GEORGE MULLISON, PROSECUTOR
 CONSTANCE FAUBLE, RECALL PETITIONER
 NEWSMEDIA

THE MEETING OF THE ELECTION COMMISSION WAS CALLED IN ACCORDANCE WITH MCLA SECTION 168.952; SAID REQUIRED APPROVAL OF THE ELECTION COMMISSION PRIOR TO CIRCULATION OF ANY PETITION FOR RECALL. FURTHER, THAT PROSECUTOR MULLISON ATTEND THIS SESSION PURSUANT TO AUTHORIZATION OF THE BOARD OF COMMISSIONERS, TO PROVIDE LEGAL COUNSEL TO THE ELECTION COMMISSION REGARDING THE RECALL ISSUE. THE BOARD OF COMMISSIONERS APPROVED THE ASSISTANCE OF MR. MULLISON BY MOTION #325 OF NOVEMBER 13, 1990. IN ACCORDANCE WITH THE OPEN MEETINGS ACT, MR. DONER ASKED IF ANY GUESTS WISHED TO ADDRESS THE COMMISSION WITH THEIR PERSONAL COMMENTS REGARDING THE CLARITY OF PETITION FILED BY CONSTANCE FAUBLE.

PETITIONER CONSTANCE FAUBLE, REITERATED THE MICHIGAN CASE LAW IN WHICH THE FILING OF HER PETITION WAS BASED. SHE CITED CONTENTIONS OF MICHIGAN CASE LAW WHICH WERE PRESENTED IN THE PETITION SUBMITTED TO THE BOARD. IN ADDITION, SHE REMINDED COMMISSION MEMBERS, THEIR DECISION TO ACCEPT OR REJECT HER PETITION WAS TO BE BASED ONLY ON THE CLARITY OF THE LANGUAGE SUBMITTED. ANOTHER LETTER FROM MS. FAUBLE HAD REQUESTED A FINAL REBUTTAL ALLOWANCE ON HER BEHALF. IT WAS AT THIS TIME THE BOARD WAS ASKED WHETHER OR NOT MS. FAUBLE WOULD BE AFFORDED THE OPPORTUNITY TO SPEAK AN ADDITIONAL TIME. CHAIRMAN DONER INDICATED THE DECISION OF THE BOARD WOULD BE MADE FOLLOWING THE PUBLIC INPUT PORTION, ONCE THE BOARD TOOK THE FLOOR WITH DISCUSSION. MS. FAUBLE INDICATED HER PETITION SHOULD BE APPROVED BY THE COMMISSION AS THE PETITION WAS NOT BURDENSOME IN DETAIL; JUSTIFIED THE REASONS FOR THE ELECTORATE; POINTED OUT THE COURSE OF CONDUCT NOT ADHERED TO IN OFFICE; AND PRESENTED WORDING THAT WAS CLEAR AND UNDERSTANDABLE.

EXECUTIVE KIM HIGGS WAS GIVEN AN OPPORTUNITY TO EXPRESS HIS VIEWS REGARDING THE RECALL PETITION LANGUAGE SUBMITTED FOR CLARITY. HE INDICATED THE PETITION LACKED CLARITY AND THAT THE FORM ITSELF DID NOT MEET STATUTORY REQUIREMENTS. FURTHER, THAT A RECALL PETITION WAS SOMEWHAT DIFFERENT THAN A REGULAR NOMINATING PETITION IN THAT IT REQUIRED THE FILING OF A STATEMENT OF THE CIRCULATOR VERIFYING THE SIGNATURES WERE NOT OBTAINED IN ANY TYPE OF FRAUDULENT MANNER. SHOULD ANY OF THESE SIGNATURES HAVE BEEN COLLECTED IN ERROR, THE CIRCULATOR WOULD BE GUILTY OF A MISDEMEANOR CHARGE. IN ADDITION, MR. HIGGS FELT THE REASONS STATED IN THE PETITION CONTAINED LIES, MISREPRESENTATIONS AND HALF-TRUTHS AND THEREFORE CITED A COURT OF APPEALS OPINION STATING THE VALIDITY OF THE ACCUSATIONS FOR RECALL MAY BE CONSIDERED IN CLARITY HEARINGS. MR. HIGGS THEN RESPONDED TO THE CONTENTIONS OF THE PETITION: COUNT I (STATED THE EXECUTIVE FAILED TO PROTECT THE FRAGILE ENVIRONMENT OF BAY COUNTY BY NOT ACTING AGAINST THE PINCONNING TOWNSHIP LANDFILL SITE). MR. HIGGS RESPONDED THAT THE RECALL MUST SPELL OUT THE "COURSE OF CONDUCT" NOT FOLLOWED PURSUANT TO MCLA 15.952. DOCUMENTATION FROM 1988 RESOLVED THAT THE BOARD OF COMMISSIONERS ENDORSED THE PINCONNING TOWNSHIP LANDFILL SITE BASED ON THE RECOMMENDATION OF THE 641 COMMITTEE AND DEPARTMENT OF NATURAL RESOURCE APPROVAL, PRIOR TO HIS INSTALLATION AS EXECUTIVE.

ONCE THE LANDFILL PERMITS WERE APPROVED AND ISSUED, THEY COULD NOT BE REVOKED OR RESCINDED BY THE BOARD OF COMMISSIONERS AND/OR THE EXECUTIVE. ALL ACTION HAD BEEN TAKEN PRIOR TO MR. HIGGS IN OFFICE AS THE EXECUTIVE. AS MR. HIGGS ACTED AS BAY COUNTY'S CORPORATION COUNSEL IN THE DUMP-BUSTER VS. BAY COUNTY LITIGATION, HE CONTENDED HE WOULD POSE A CONFLICT OF INTEREST SHOULD HE EXPRESS PERSONAL OBJECTION TO THE LANDFILL PROJECT ENDORSED BY THE BOARD OF COMMISSIONERS. COUNT II (ALTERATION OF 1991 BUDGET WITH LARGE TAX HIKE TO JEOPARDIZE PUBLIC SAFETY) MR. HIGGS RESPONDED THAT THE BOARD OF COMMISSIONERS APPROVED THE BUDGET WITH THE 6 MILL LEVY FOLLOWING A PUBLIC HEARING REQUIRED BY THE TRUTH IN TAXATION STATUTE. ANY BUDGET IMPLEMENTED WAS UNDER THE ACTION TAKEN BY BOARD OF COMMISSIONERS. COUNT III - MR. HIGGS ADMITTED THE WORDING IN COUNT III WAS TRUE. COUNT IV (SOUND INVESTMENT POLICY FOR COUNTY MONEY/BAY CO. LOST LARGE SUMS OF MONEY FOR THE LACK OF A PLAN). REGULATION OF FUNDS WAS DESIGNATED BY THE BOARD OF COMMISSIONERS. IN THE PAST THE COMMISSION HAD DELEGATED THE COUNTY TREASURER TO PERFORM THAT FUNCTION. FURTHER, LOSS OF MONEY FROM THE MORTGAGE & REALTY TRUST INVESTMENT (CHAPTER 11) SHALL BE RECOVERED WITH INTEREST IN EXCESS OF THAT ORIGINALLY RECEIVED. MR. HIGGS THEN STATED HE ENDORSED THE TREASURER IN HIS INVESTMENTS 100%. COUNT V (FAILING TO CORRECT THE DEFICIENCIES AT THE BAY COUNTY JAIL) IN RESPONSE OF THAT CONTENTION, MR. HIGGS CLAIMED HE HAD NO AUTHORITY TO TAKE ACTION FOR THE REPAIR OF THE JAIL. THE JAIL REMAINED OWNED BY THE BAY COUNTY BUILDING AUTHORITY, APPOINTED BY THE BOARD OF COMMISSIONERS. THIS STATEMENT THEREFOR PROVIDED NO BASIS FOR THE EXECUTIVE TO RESPOND AND HE FURTHER CITED MICHIGAN CASE LAWS SUPPORTING THAT THE RECALL PETITION "MUST CLEARLY STATE THE CHARGE". HE CONTENDED HE WOULD HAVE REPAIRED THE JAIL BY NOW SHOULD IT HAVE BEEN HIS DUTY. THIS DUTY, HE FELT HE DID NOT FAIL TO FULFILL. HE FELT THE "DUTY" STATEMENT IN THIS REGARD HAD NO BASIS. ALONG WITH THESE STATEMENTS AGAINST THE PETITION'S CLARITY, MR. HIGGS ELABORATED ON MCLA 168.952 (1) WHICH STATED THE FORM THE PETITION ITSELF MUST COMPLY WITH. PROPER PETITION FORMS COULD BE OBTAINED FROM THE COUNTY CLERK FOR USE BY THE ELECTORS OF THE COUNTY. A PERSON MAY PRINT HIS OWN PETITION, BUT THEY MUST COMPLY WITH THE FORMS APPROVED BY THE SECRETARY OF STATE. MR. HIGGS DID NOT FEEL THE FORM COMPLIED WITH THE STATUTE. TYPED/PRINTED; SPECIFIC SIZE; STATE REASONS FOR RECALL; CONTAIN CERTIFICATE OF CIRCULATOR; FOLLOW THE FORM BY SECRETARY OF STATE. MS. FAUBLE FAILED TO UTILIZE THE FORM ISSUED BY THE COUNTY CLERK AND ATTACHED A SEPERATE STATEMENT OF REASONS FOR RECALL. THE SEPERATION OF DOCUMENTS COULD POTENTIALLY LEAD TO FRAUD AND MISREPRESENTATION, DIFFERENT REASONS COULD BE ATTACHED IN PLACE OF THOSE WHICH MAY HAVE BEEN APPROVED BY THE COMMISSION. FURTHER, MR. HIGGS EXPRESSED DISSATISFACTION WITH THE SIGNATURE OF ELECTORS/CIRCULATOR LISTED PRIOR TO THE REASONS PAGE, THE INDIVIDUAL MAY NOT EVEN READ WHAT THEY MAY BE SIGNING. THE PAGES AND THE HEADINGS OF THE PETITION WERE TO BE A SPECIFIC SIZE, WHICH THE PETITIONER DID NOT COMPLY WITH, ACCORDING TO THE STATUTE. AMPLE SPACE WAS ALLOWED FOR THE 200 WORD LIMITATION OF RECALL REASONS IN MR. HIGGS OPINION, FORMERLY CONTENDED BY MS. FAUBLE. THE NUMBER OF WORDS ON THE PETITION CONSIDERED AT THIS HEARING, EXCEEDED THE 200 WORD LIMITATION, (SEE MCLA 168.966). FOR THE ABOVE CLARITY AND PROCEDURAL DEFICIENCIES, MR. HIGGS ASKED THE COMMISSION TO REJECT THE RECALL PETITION SUBMITTED BY MS. FAUBLE. TO CONCLUDE, HE PRESENTED A DEMAND TO MS. FAUBLE TO WITHDRAW COUNTS I-II, IV-V OF THE RECALL PETITION AND IF NOT WITHDRAWN, THAT SHE BE PREPARED TO RECEIVE A LIABLE SUIT FROM HIM.

PROSECUTOR GEORGE MULLISON REAFFIRMED THAT THE MICHIGAN CASE LAW REQUIRED A CLEAR STATEMENT OF REASONS AND/OR ACTS ON WHICH THE RECALL OF AN OFFICER WAS BASED. IN HIS OPINION, COUNTS I-IV-V OF THE PETITION DID NOT COMPLY. MR. MULLISON EXPLAINED THAT THE PETITION HAD BEEN DRAWN-UP SIMILAR TO A CIVIL COMPLAINT-BASED ON A BROAD SELECTION OF WORDING FOR LEEWAY IN THE SETTLEMENT PROCESS. FOR A RECALL, THE LANGUAGE SHOULD BE VERY SPECIFIC, UNLIKE THAT OF A COMPLAINT DRAWN UP BY AN ATTORNEY. MR. MULLISON CONCURRED WITH THE LACK OF STATUTORY REQUIREMENTS IN FORM (BROAD LENGTH; ATTACHMENTS) BASED ON INFORMATION RECEIVED FROM THE SECRETARY OF STATE.

JUDGE PAUL DONER QUESTIONED THE STATUTORY ALLOWANCES AND TO WHETHER OR NOT THE RECALL LANGUAGE COULD BE CONTINUED ON THE BACK OF THE PETITION FORM.

PROSECUTOR MULLISON INDICATED UTILIZING THE BACK OR THE BOTTOM PORTION OF THE PETITION FORM WOULD BE PERMITTED. HE FELT THERE WAS ROOM AT THE TOP OF THE FORM, IF SINGLE SPACED, USING SPECIFIC LANGUAGE.

JUDGE PAUL DONER FURTHER INQUIRED IF THE COMMITTEE WAS AUTHORIZED TO APPROVE A PORTION OF THE PETITION THEY MIGHT FEEL CLEAR, OR MUST THE DOCUMENT BE APPROVED OR DISAPPROVED AS A WHOLE.

MR. MULLISON HAD POSED THE SAME QUESTION TO THE STATE ELECTION OFFICIALS PRIOR TO THE CLARITY HEARING. INFORMATION GIVEN TO HIM INDICATED THE DECISION OF THE COMMITTEE TO ACCEPT OR REJECT THE PETITION ON THE WHOLE WAS DEPENDENT ON THE OPINION OF THE COMMITTEE AND THE SITUATION DISCUSSED. HIS RECOMMENDATION WAS TO EITHER APPROVE OR DISAPPROVE THE ENTIRE PETITION AS ONE DOCUMENT - NOT ACCEPT/REJECT INDIVIDUAL COUNTS. NO CASE LAW FOUND TO SUPPORT, ALSO PROVIDE THE PETITIONER DIRECTION FOR FUTURE FILINGS OF CLARITY.

FOLLOWING THESE COMMENTS, MR. MULLISON ASKED TO BE EXCUSED FROM THE HEARING. AS HE HAD A PRIOR COMMITMENT OUT OF TOWN. HE WAS EXCUSED AT 3:00 P.M.

MS. FAUBLE REALIZED A PETITION COULD BE AMENDED WITHIN 72 HOURS FROM BEING ACCEPTED BY THE COUNTY CLERK. MS. FAUBLE REMINDED THE BOARD THEY WERE TO MAKE THEIR DECISION BASED ON CLARITY ONLY, AND THAT THE PETITION SHE SUBMITTED WAS CLEAR IN HER OPINION.

JUDGE PAUL DONER THEN ADDRESSED THE ISSUE OF A SHORT RESPONSE TIME FOR MS. FAUBLE AS SHE HAD REQUESTED BY LETTER, IN THE BEGINNING OF THE MEETING. CHAIRMAN DONER'S OPINION WAS TO NOT LET MS. FAUBLE HAVE AN ADDITIONAL OPPORTUNITY TO SPEAK FOLLOWING THE TIME ALLOWED FOR CITIZENS INPUT AND THE TIME ALLOWED FOR HER COMMENTS PRIOR TO THE COMMITTEE'S DELIBERATIONS. THE OTHER BOARD MEMBERS CONCURRED WITH THE OPINION OF JUDGE DONER, TO NOT LET MS. FAUBLE ADDRESS THE BOARD AGAIN, AFTER THEY BEGAN THEIR DISCUSSION ON ACCEPTANCE/REJECTION.

MS. FAUBLE RECEIVED SOME COMMENTS FROM HER SUPPORTERS IN RESPONSE TO THOSE MADE BY EXECUTIVE HIGGS. SHE STATED A PERMIT FOR THE TRAXLER LAND-FILL SITE IN PINCONNING TOWNSHIP WAS ISSUED 11/14/89 AND EXECUTIVE HIGGS HAD 120 DAYS TO ACT UNDER THE ADMINISTRATIVE RULE AND SECONDLY, MR. HIGGS DID NOT FILE A SUIT ON BEHALF OF BAY COUNTY UNTIL JULY 5, 1990. MS. FAUBLE SPOKE OF OTHER CONCERNS SHE HAD WITH THE ELECTION COMMISSION'S INVOLVEMENT IN THE RECALL PROCESS. ON OCTOBER 29, 1990, SHE HAD DELIVERED A LETTER REQUESTING SHE BE NOTIFIED OF ANY ELECTION COMMISSION MEETING INVOLVING THE PETITION SHE MIGHT HAVE FILED AGAINST KIM HIGGS. ON NOVEMBER 13, 1990, MS. FAUBLE HAD BEEN INFORMED THE BOARD OF COMMISSIONERS APPROVED THE APPOINTMENT OF GEORGE MULLISON TO PROVIDE THE ELECTION COMMISSION LEGAL COUNSEL IN THIS REGARD. MS. FAUBLE STRONGLY OBJECTED TO THE LACK OF NOTIFICATION WITH THIS APPOINTMENT AND FELT THE ELECTION COMMISSION WAS IN VIOLATION OF THE OPEN MEETINGS ACT. SHE FELT THE ELECTION COMMISSION FORMALLY MET TO MAKE THE LEGAL COUNSEL DECISION AND THAT SHE HAD NOT BEEN NOTIFIED PROPERLY. SHE THEREAFTER REQUESTED A COPY OF THE PUBLIC NOTICE OF THE ALLEGED MEETING, MINUTES OF THE ALLEGED MEETING & COPY OF THE ALLEGED MEETING TAPE IN ACCORDANCE WITH THE OPEN MEETING ACT.

TREASURER EDWARD LEWANDOWSKI RESPONDED TO MS. FAUBLE COMMENTS REGARDING LEGAL COUNSEL. HE FELT THAT, AS AN ATTORNEY HAD DRAWN UP THE PETITION, THE ELECTION COMMISSION SHOULD HAVE LEGAL REPRESENTATION AS WELL. A FORMAL MEETING WAS NOT HELD, THE QUESTION WAS VERBALLY POSED TO COUNTY CLERK, BARBARA ALBERTSON, WHO CONCURRED WITH THE TREASURER.

CLERK ALBERTSON ALSO APPROACHED CHAIRMAN DONER INFORMALLY AND SUGGESTED A LEGAL REPRESENTATIVE BE APPOINTED BASED ON THE CONCERNS OF THE BAY COUNTY TREASURER. JUDGE DONER CONCURRED WITH THE RECOMMENDATIONS OF HIS CO-ELECTION COMMISSION MEMBERS AND A LETTER REQUESTING THE SAME WAS SUBMITTED FOR BOARD OF COMMISSIONER APPROVAL ON NOVEMBER 13, 1990. THE BOARD APPROVED THAT REQUEST BY MOTION #325.

CHAIRMAN DONER STATED A FORMAL MEETING WAS NOT CONDUCTED IN THIS REGARD AND HE WAS UNAWARE IF THE COMMITTEE WAS IN VIOLATION OF ANY OPEN MEETING ACTS. MR. DONER ASSURED MS. FAUBLE THAT NO OTHER DISCUSSION WAS HELD ON THE RECALL ISSUE BETWEEN OTHER MEMBERS OF THE COMMITTEE.

FOLLOWING THE ABOVE COMMENTS, MS. FAUBLE STATED THE PEOPLE WILL DECIDE BY RECALL WHETHER OR NOT KIM HIGGS REMAINS IN THE EXECUTIVE'S OFFICE. SHOULD THIS PETITION BE DENIED, MS. FAUBLE SHALL RETURN WITH AN AMENDED ONE.

CHAIRMAN DONER QUESTIONED WHEN THE TOTAL NUMBER OF SIGNATURES NECESSARY FOR RECALL WOULD BE AVAILABLE FROM THE COUNTY CLERK.

MS. ALBERTSON EXPLAINED THE BOARD OF COUNTY CANVASSERS WOULD BE CERTIFYING THE NOVEMBER GENERAL ELECTION RESULTS SOME TIME THAT AFTERNOON, AND THE NUMBER OF SIGNATURES NEEDED, BE CALCULATED FROM THE TOTAL NUMBER OF VOTES CAST IN THE GOVERNORS RACE OF 1990.

THE ELECTION COMMISSION MEMBERS THEN BEGAN THEIR DISCUSSION OF THE RECALL PETITION PRESENTED.

EDWARD LEWANDOWSKI MADE COMMENTS REGARDING PETITION CONTENTION IV, INVOLVING THE BAY COUNTY INVESTMENT POLICY REGULATION. MR. LEWANDOWSKI STATED HE DOES THE INVESTING FOR BAY COUNTY IN ACCORDANCE WITH STATE OF MICHIGAN LAWS AND THE BAY COUNTY BOARD OF COMMISSIONERS. THE STATEMENT IS MISLEADING IN THAT REGARD AND ALSO MISLEADING DUE TO THE LOSS OF FUNDS OF BAD INVESTMENTS. THE TREASURER HAD RECENTLY RECEIVED NOTIFICATION THAT MORTGAGE AND REALTY TRUST INVESTMENT MONIES WERE TO BE RETURNED WITH A SIGNIFICANT AMOUNT OF INTEREST REIMBURSEMENT TO BAY COUNTY.

MS. FAUBLE FELT AS THOUGH THE EXECUTIVE HAD CONTROL OVER THE FUNCTIONS OF THE TREASURER'S OFFICE, SUCH WAS NOT TRUE IN THIS CASE. CHAIRMAN DONER FURTHER REPORTED MS. FAUBLE WAS NOT TOTALLY AWARE OF THE BAY COUNTY STRUCTURE AS IT PERTAINED TO THE EXECUTIVE'S POSITION.

CLERK ALBERTSON NOTED SHE HAD EXPLAINED TO MS. FAUBLE WHEN FILING HER RECALL PETITION, SHE WAS TO SUBMIT IT TO THE ELECTION COMMISSION AS IT WAS TO BE SUBMITTED TO THE ELECTORATE, WITHOUT ANY ATTACHMENTS. THESE REQUIREMENTS WERE TO BE MET AS THE PETITIONS WOULD BE FILED WITH THE SECRETARY OF STATE IN LANSING AFTER BEING CIRCULATED. CLERK ALBERTSON REINFORCED THE REGULATIONS OF MCLA 168.966- PETITION NOT IN PROPER TYPED FORM; THE ATTACHMENTS WERE NOT ALLOWED AND THERE WAS NOTHING TO GUARANTEE THE CONTENTIONS OF THE PETITIONS WOULD NOT BE CHANGED ONCE APPROVED THIS WAY, BY THE ELECTION COMMISSION. MS. FAUBLE REFERRED TO HER ARGUMENT THAT THE PETITION ISSUED BY THE CLERK DID NOT ALLOW SUFFICIENT ROOM FOR HER FIVE COUNTS. MS. ALBERTSON RESPONDED SHE COULD SINGLE SPACE THE WORDING, REDUCE THE NUMBER OF WORDS USED; BEGIN AT THE UPPER MOST LINE OF TYPE AND CONTINUE THE ALLEGATIONS AT THE BOTTOM OR BACK OF FORM AND DO NOT USE CAPITAL LETTER TYPE, FOR IT TO BE APPROVED BY THE ELECTION COMMISSION FOR SUBMISSION TO THE ELECTORATE-FOLLOWING THE STATE GUIDELINES.

CHAIRMAN DONER EXPLORED THE IDEA THAT MS. FAUBLE COULD PRESENT THE PETITION IN PROPER FORM WITHIN THE AMENDMENT TIME ALLOWED. HIS CONCERNS WERE WITH THE CLARITY AND NOT WHETHER OR NOT THE ALLEGATIONS MADE IN THE PETITION WERE TRUE OR UNTRUE. ANOTHER FUNCTION OF THE COMMISSION WAS TO MAKE SURE THE ELECTORATE UNDERSTOOD WHAT THEY WERE SIGNING AND ALSO A STATEMENT THAT WAS CLEAR TO THE PERSON BEING RECALLED SOAS TO ALLOW HIM A BASIS TO RESPOND TO THE PUBLIC. IN COUNT I THE STATEMENTS WERE MISLEADING AS THEY WERE AFTER-THE-FACT. ADDITIONALLY, COUNT IV, WHEREBY THE EXECUTIVE HAD NO CONTROL OVER ACTS OF COUNTY INVESTMENT FUNDS, ALSO MISLEADING. COUNT V, JAIL DEFICIENCIES, NOT SOMETHING THE EXECUTIVE WAS DIRECTLY INVOLVED WITH, THE FACILITY WAS BUILT, THE DAMAGE DONE. ALSO, MISLEADING AS TO THE EXECUTIVES RESPONSIBILITY/DUTY IN THAT REGARD. HE FELT THE STATEMENT OF COUNT III WERE SUFFICIENT TO PRESENT A RECALL PETITION. IN CHAIRMAN DONER'S OPINION, HE FELT HE WOULD ACCEPT A PETITION SUBMITTED WITH THE LANGUAGE OF COUNT III ONLY. HE HAD HOPED THE BOARD WOULD ALLOW APPROVAL OF COUNT III ONLY, AND NOT HAVE THE COMMISSION MEET AGAIN TO CONSIDER RECALL CLARITY. IT WAS ONLY HIS OPINION TO ACCEPT THE COUNT III PORTION AND A FORMAL VOTE OF THE BOARD HAD NOT BEEN TAKEN YET. DISCUSSION WAS HELD ON THE ELIMINATION OF A PORTION OF A SENTENCE IN COUNT III-ONLY A RECOMMENDATION TO THE PETITIONER.

EXECUTIVE HIGGS RECOMMENDED THE COMMISSION REJECT THE ENTIRE PETITION SUBMITTED BY THE PETITIONER. MS. FAUBLE WOULD BE MORE THAN WELCOME TO FILE ANOTHER PETITION UNDER THE INSTRUCTIONS PROVIDED BY THE COMMISSION.

MOTION 1: CHAIRMAN DONER MOVED THAT THE PETITION ON THE PROPER FORM, CONTAINING THE LANGUAGE FROM COUNT III ONLY (ELIMINATING THE LAST SENTENCE DISCUSSED), MEETS THE STANDARDS OF CLARITY AND WILL BE ACCEPTABLE FOR CIRCULATION.

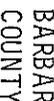
MOTION #1: CHAIRMAN DONER DID NOT RECEIVE SUPPORT OF THE COMMISSION FOR HIS MOTION TO ACCEPT A PETITION WITH AN AMENDED COUNT III ONLY. THE MOTION THEREAFTER DIED FOR A LACK OF SUPPORT.

MOTION #2: TREASURER LEWANDOWSKI MOVED TO DENY THE ENTIRE PETITION SUBMITTED FOR CLARITY OF THE ELECTION COMMISSION IN REGARD TO THE RECALL OF COUNTY EXECUTIVE, KIM A. HIGGS. CLERK ALBERTSON SUPPORTED THE MOTION AND IT WAS CARRIED BY A ROLL CALL VOTE OF 2 YEAS, 1 NAY-DONER.

CHAIRMAN DONER INFORMED THE PETITIONER AND GUESTS THE PETITION HAD BEEN DENIED IN ITS ENTIRETY AND THAT THE MEETING WAS ADJOURNED AT 3:40 P.M.


PAUL N. DONER, CHAIRMAN
PROBATE JUDGE


EDWARD LEWANDOWSKI, MEMBER
COUNTY TREASURER


BARBARA ALBERTSON, MEMBER
COUNTY CLERK


CYNTHIA A. LUCZAK
SECRETARY TO THE CLERK