

**BAY COUNTY ELECTION COMMISSION
RECALL CLARITY HEARING
FEBRUARY 22 , 2019**

**RECALL PETITION FOR
SUZETTE RIVARD, GIBSON TOWNSHIP TRUSTEE**

THE ELECTION COMMISSION MET FOR A RECALL MEETING ON FRIDAY, FEBRUARY 22, 2019, IN THE FOURTH FLOOR BAY COUNTY BOARD OF COMMISSIONER'S CHAMBERS IN THE BAY COUNTY BUILDING. THE MEETING WAS CALLED TO ORDER BY JUDGE JAN MINER AT 12:30 P.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT.

ELECTION COMMISSION: CYNTHIA A. LUCZAK, BAY COUNTY CLERK
SHAWNA WALRAVEN, BAY COUNTY TREASURER
JAN MINER, BAY COUNTY PROBATE JUDGE

THIS MEETING OF THE ELECTION COMMISSION WAS CALLED PURSUANT TO THE MICHIGAN STATUTE FOUND AT MCL 168.952 WHICH GOVERNS ELECTIONS IN THE STATE OF MICHIGAN.

THE MEMBERS OF THE BAY COUNTY ELECTION COMMISSION, AS DEFINED BY STATUE ARE: MCL 168.23, THE COUNTY CLERK, CYNTHIA A. LUCZAK, SHE SERVES AS THE SECRETARY OF THE COMMISSION. COUNTY TREASURER, SHAWNA WALRAVEN, SERVES AS A MEMBER OF THE COMMISSION AND JAN A. MINER, PROBATE JUDGE, WHO SERVES AS THE CHAIRPERSON OF THIS COMMISSION.

AS DEFINED BY STATUTE, THE PURPOSE OF TODAY'S MEETING WAS "TO DETERMINE WHETHER EACH REASON FOR THE RECALL STATED IN THE PETITION, WAS FACTUAL AND OF SUFFICIENT CLARITY TO THE OFFICER, WHOSE RECALL WAS SOUGHT, AND THE ELECTORS, TO IDENTIFY THE COURSE OF CONDUCT THAT WAS THE BASIS OF THE RECALL", MCL 168.952(3). THE RECALL COMMISSION DOES NOT DETERMINE THE TRUTH OF ANY ALLEGATIONS. ALLEGATIONS OF FACT MAY BE TRUE OR FALSE, AND THE COMMISSION DOES NOT HAVE THE STRUCTURE, THE RESOURCES OR PROCEDURAL AUTHORITY TO INVESTIGATE, TO SWEAR IN WITNESSES OR TO SUBPOENA TO DETERMINE IF ALLEGATIONS ARE TRUE OR NOT.

THE RECALL COMMISSION WILL CONSIDER ONLY WHETHER THE ASSERTIONS IN THE PETITION ARE STATED CLEARLY AND FACTUALLY. ANY ALLEGATION OF FACT MAY BE TRUE OR FALSE, AND THE TEST EMPLOYED BY THIS COMMISSION WILL BE TO FIND OUT WHETHER THE ALLEGATIONS STATES FACTS AND ARE CLEAR, SO THAT THE RESPONDING OFFICIAL MAY DEFEND.

PLEASE NOTE: IF ANY REASON FOR THE RECALL WAS NOT FACTUAL OR OF SUFFICIENT CLARITY, THE ENTIRE RECALL PETITION SHALL BE REJECTED. (MCL 168.952(3))

IN ADDITION, EACH REASON FOR THE RECALL, "SHALL BE BASED UPON THE OFFICER'S CONDUCT DURING HIS OR HER CURRENT TERM IN OFFICE".

MATTERS OF OPINION ARE NOT FACTUAL.

IF THE COMMISSION APPROVES THE RECALL LANGUAGE, A COPY OF THE APPROVED LANGUAGE WILL BE FORWARDED TO THE FILING OFFICIAL WHO WILL LATER RECEIVE THE SIGNED RECALL PETITION SHEETS. WE WILL MAKE OUR DETERMINATION AT THE END OF THIS MEETING BY VOTE.

OUR RULING ON THE CLARITY AND FACTUAL NATURE OF THE RECALL LANGUAGE MAY BE APPEALED BY THE OFFICE WHOSE RECALL WAS SOUGHT, OR BY THE SPONSOR OF THE RECALL PETITION, TO THE CIRCUIT COURT IN THIS COUNTY, AND IT MUST BE FILED WITHIN 10 DAYS AFTER OUR DETERMINATION. (MCL 168.952(6))

RECALL PETITION FOR SUZETTE RIVARD
GIBSON TOWNSHIP TRUSTEE

THIS WAS FOR THE TOWNSHIP OF GIBSON IN THE COUNTY OF BAY FOR THE STATE OF MICHIGAN. THE PETITION FOR THE CALLING OF AN ELECTION TO RECALL SUZETTE RIVARD FROM THE OFFICE OF TRUSTEE AND FOIA COORDINATOR OF GIBSON TOWNSHIP FOR THE FOLLOWING REASON(S): AS GIBSON TOWNSHIP (FREEDOM OF INFORMATION ACT) (FOIA) COORDINATOR - SUZETTE RIVARD HAS NOT FULFILLED HER DUTIES, SHE HAS NOT PRODUCED INFORMATION THAT HAS BEEN REQUESTED. THIS IS A VIOLATION AGAINST THE FREEDOM OF INFORMATION ACT OF THE STATE OF MICHIGAN. SIGNED LINDA DIANE PIENIOZEK, DATED FEBRUARY 12, 2019.

LINDA DIANE PIENIOZEK, 2179 BENTLEY ROAD, BENTLEY MI, 48613
DIANE PIENIOZEK STATED THAT THIS PETITION WAS FILED AS SHE HAD PLACED FOUR (4) SEPARATE FOIA REQUEST AND WAS UNSATISFIED WITH THE RESPONSE FROM MS. RIVARD.

MS. PIENIOZEK CONTINUED THAT THE FIRST REQUEST WAS FROM HER TIME IN OFFICE AS GIBSON TOWNSHIP SUPERVISOR. LETTER DATED OCTOBER 29, 2018, MAILED TO SUZETTE RIVARD, REQUESTING EMAILS BETWEEN THE GIBSON TOWNSHIP FIRE DEPARTMENT AND OSHA FIRE MARSHAL. THIS REQUEST WAS MADE WHILE SHE WAS THE GIBSON TOWNSHIP SUPERVISOR AND SHE SHOULD NOT HAVE RECEIVED A CHARGE. MS. PIENIOZEK STATED THAT SHE RECEIVED A LETTER WITH AN ESTIMATED COST OF \$500.00 THERE WAS AN AMOUNT DUE OF \$250.00 BEFORE PROCESSING THE REQUEST.

THE SECOND REQUESTED FOIA REQUEST WAS MADE ON NOVEMBER 30, 2018. THIS REQUEST WAS FOR THE MINUTES FOR THE FIRE DEPARTMENT; SPANNING THE DATES OF SEPTEMBER 2017 THROUGH NOVEMBER 2018. MS. PIENIOZEK STATED THAT SHE DID RECEIVE A RESPONSE REQUESTING AN ADDITIONAL 10 DAYS TO COMPLETE THE REQUEST. MS. PIENIOZEK THEN CONTACTED MS. RIVARD ON THE 11TH DAY AS SHE HAD STILL NOT RECEIVED THE REQUESTED INFORMATION. PIENIOZEK FINALLY RECEIVED A RESPONSE ON DECEMBER 18, 2018, STATING THAT IN ACCORDANCE WITH M.T.A., GIBSON TOWNSHIP FIRE DEPARTMENT WAS NOT REQUIRED TO TAKE MINUTES AT THEIR MEETINGS, THEY ARE NOT A PUBLIC BODY AND NOT REQUIRED TO COMPLY WITH THE OPEN MEETINGS ACT. MS. PIENIOZEK STATED THEY DO HOLD MEETINGS AND HAVE TO POST THE DATE AND TIME OF EACH MEETING. THE FIRE DEPARTMENT MADE DECISIONS ON PURCHASING OF EQUIPMENT AT THESE MEETINGS. SHE CONTINUED THAT SHE HAS ATTENDED MEETINGS AND BEEN AWARE THAT AT THOSE MEETINGS, MINUTES WERE BEING TAKEN.

THE THIRD REQUEST, DATED FEBRUARY 1, 2019 WAS FOR VEHICLE MANAGEMENT REPORTS AND CUSTOMER STATEMENTS FOR THE GIBSON TOWNSHIP FIRE DEPARTMENT. THIS REQUEST WAS FOR THE STATEMENTS DATED OCTOBER 2018, NOVEMBER 2018 AND DECEMBER 2018. PIENIOZEK'S REQUEST WAS TO SEE WHEN THESE STATEMENTS WERE PAID, AND IF THE TOWNSHIP WAS BEING CHARGED A \$75.00 LATE FEE. THERE HAS BEEN NO RESPONSE TO THIS REQUEST.

THE FOURTH AND LAST REQUEST WAS FOR THE CHECK REGISTER WHICH WAS NOT INCLUDED IN THE GIBSON TOWNSHIP MONTHLY MEETING PACKET. THIS REQUEST WAS EMAILED TO MS. RIVARD AS MS. PIENIOZEK WAS AWARE THAT THE RIVARDS TAKE AN ANNUAL VACATION TO FLORIDA IN THE WINTER. THIS REQUEST WAS ANSWERED IN FEBRUARY, 2019.

JUDGE MINER QUESTION HOW MANY TRUSTEE'S ARE ELECTED IN GIBSON TOWNSHIP AND HOW ONE BECAME THE FOIA COORDINATOR, IF THIS WAS PART OF HER ELECTION PROCESS?

MS. PIENIOZEK ANSWERED THE GIBSON TOWNSHIP BOARD APPOINTS ONE PERSON TO BE THE FOIA COORDINATOR AND CURRENTLY THAT WAS MS. RIVARD.

CLERK LUCZAK ASKED MS. PIENIOZEK WHAT THE LISTED COST PER SHEET WAS IN REGARD TO THE FOIA REQUEST, AND WHEN THAT PRICE WAS SET?

MS. PIENIOZEK STATED THAT THE PRICE PER SHEET LISTED ON THE GIBSON TOWNSHIP WEB SITE WAS \$.10 PER PAGE AS OF JULY 2015, WHICH WAS THE SET PRICE, THAT HAD BEEN SUBMITTED TO THE STATE OF MICHIGAN. SHE CONTINUED THAT EVERY TOWNSHIP HAD TO SUMMIT A PRICE PER SHEET TO THE STATE OF MICHIGAN. MS. PIENIOZEK ESTIMATED THAT THE REQUESTED INFORMATION SHE ASKED FOR WOULD

HAVE BEEN ABOUT 40 PAGES. WAY LESS THAN THE \$500.00 (5000 PAGE) ESTIMATE THAT THE LETTER STATED.

TREASURER WALRAVEN ASKED IF GIBSON TOWNSHIP HAD A WRITTEN FOIA POLICY? SHE ALSO QUESTIONED IF IN THAT POLICY THERE WAS A CALCULATION OF THE FOIA COST? MS. WALRAVEN STATED USUALLY THERE WAS A CHARGE TO SEARCH, PREPARE AND PRODUCE AS WELL AS THE INDIVIDUAL PAGE COST. MS. WALRAVEN ALSO ASKED IF MS. PIENIOZEK HAD BEEN SENT A COPY OF THE APPEAL PROCESS FOR A DENIAL OR FOR EXCESSIVE FEE'S?

MS. PIENIOZEK STATED THAT GIBSON TOWNSHIP HAD TO FILL OUT STATE PAPERWORK AND SUBMIT IT IN JULY OF 2015. SHE CONTINUED THAT SHE WAS UNAWARE EXACTLY WHAT THE \$500.00 ESTIMATE COVERED. SHE STATED SHE DID NOT RECEIVE A COST ITEMIZATION FORM. MS. PIENIOZEK ALSO STATED THAT SHE DID NOT RECEIVE ANY INFORMATION ON THE APPEAL PROCESS FOR GIBSON TOWNSHIP.

JUDGE MINER QUESTIONED IF THE TRUSTEE'S DUTIES WAS BEING THE FOIA COORDINATOR, OR CAN IT BE SOMEONE ELSE THE BOARD APPOINTS?

MS. PIENIOZEK STATED THAT THE BOARD CAN APPOINT ANY BOARD MEMBER AS THE FOIA COORDINATOR.

PUBLIC COMMENTS

MICHAEL GEORGE RIVARD, 840 N. GARFIELD ROAD, LINWOOD MI 48634

MR. RIVARD STATED THAT PART OF WHAT MS. PIENIOZEK STATED WAS CORRECT BUT PART WAS NOT. PER MCL 15.236; THE FOIA COORDINATOR WAS APPOINTED BY THE TOWNSHIP SUPERVISOR, SUZETTE WAS NEVER APPOINTED, AT ANY TIME, TO BE THE FOIA COORDINATOR. SHE DID VOLUNTEER TO HELP THE BOARD OUT IN SOME OF THEIR REQUESTS. IT WAS NOT THE TRUSTEES STATUTORY JOB TO BE THE FOIA COORDINATOR. SHE VOLUNTEERED TO HELP THE BOARD, EVERYTHING SHE HAD DONE, WAS WITH THE BOARD APPROVAL, AND WITH BOARD ACCEPTANCE. MR. RIVARD CONTINUED, THERE WAS AN APPEAL PROCESS THROUGH THE FOIA, AFTER SO MANY DAYS, YOU APPEAL, IF YOU DO NOT FEEL YOU RECEIVED EVERYTHING REQUESTED, NO APPEAL HAS BEEN RECEIVED BY GIBSON TOWNSHIP. SUZETTE WAS IN FLORIDA AT THIS TIME, AND MR. RIVARD STATED HE HAS BEEN PICKING UP THE MAIL. THEY DID GET A CERTIFIED LETTER MADE OUT TO SUZETTE RIVARD, WITH NO RETURN ADDRESS. MR. RIVARD SAID HE WOULD NOT SIGN FOR THIS LETTER. SUZETTE HAD NOT, PER MY KNOWLEDGE, RECEIVED ANY EMAIL FOR GIBSON TOWNSHIP FOIA.

LAURA CHAPMAN-REYNOLDS, 8206 STANDISH ROAD, BENTLEY MI 48613

MS. REYNOLDS STATED THAT SHE WOULD CONFIRM THAT SUZETTE RIVARD VOLUNTEERED TO BE THE GIBSON TOWNSHIP FOIA COORDINATOR. SHE CONTINUED

THAT IT WAS DURING HER PREVIOUSLY HELD TERM AS SUPERVISOR. IT WAS NOT HER STATUTORY DUTY AS A TRUSTEE, BUT WAS ALLOWED. THE SUPERVISOR CAN APPOINT A PERSON UNDER SECTION 15.236 OF THE FOIA ACT OF 442 OF 1976. SHE DID CONTINUE, PER MY KNOWLEDGE, THROUGH THE SUBSEQUENT CHANGES IN THE BOARD. MS. CHAPMAN-REYNOLDS CONTINUED, I DO NOT KNOW, IF DIANE APPOINTED HER OR NOT, IF NOT THEN ACCORDING TO THE LAW, DIANE WAS THE FOIA COORDINATOR. SINCE I HAVE BEEN SUPERVISOR AGAIN, SUZETTE HAS REPORTED TO THE FULL BOARD, ON THE FOIA REQUEST AND HER ACTION TAKEN. TO DATE, AS FAR AS WE ARE AWARE, THE RESPONSES HAVE BEEN WITHIN THE TIME CONSTRAINTS REQUIRED WITHIN THE FOIA ACT. AS HAS BEEN STATED, IF A REQUESTING INDIVIDUAL WAS NOT SATISFIED WITH THE RESPONSE, HE OR SHE MAY SUBMIT TO THE HEAD OF THE PUBLIC BODY A WRITTEN APPEAL. THE GIBSON TOWNSHIP BOARD OF TRUSTEES HAS NOT RECEIVED A REQUEST OR A WRITTEN APPEAL FROM LINDA DIANE PIENIOZEK. NOR HAVE WE RECEIVED ANY WRITTEN APPEALS OR CONCERNS FROM ANY OTHER ENTITY OR INDIVIDUAL REQUESTING PUBLIC RECORDS UNDER FOIA. SINCE SHE HAS KEPT THE BOARD INFORMED AND RESPONDED WITHIN THE REQUIRED TIME FRAME, THE BOARD HAS BEEN SATISFIED WITH HER VOLUNTEER PERFORMANCE AS THE FOIA COORDINATOR.

LINDA DIANE PIENIOZEK, 2179 BENTLEY ROAD, BENTLEY MI, 48613

MS. PIENIOZEK STATED THAT THE THIRD FOIA REQUEST WAS MAILED AS A CERTIFIED MAIL, AND IT DID HAVE HER NAME AND ADDRESS ON IT. IT WAS FILLED OUT WHERE ANYONE WHO WAS AT THE RESIDENCE COULD ACCEPT THE CERTIFIED MAIL. MS. PIENIOZEK STATED YOU MUST PAY MORE AT THE POST OFFICE, IF ONLY THE PERSON NAMED ON THE LETTER, CAN ACCEPT THE PIECE OF MAIL.

MICHAEL GEORGE RIVARD, 840 N. GARFIELD ROAD, LINWOOD MI 48634

MR. RIVARD PRESENTED THE BOARD WITH A SCAN OF THE CERTIFIED LETTER THAT WAS MAILED TO SUZETTE RIVARDS HOME, WITH NO RETURN ADDRESS. MR. RIVARD ADDED, THERE WAS NOTHING LISTING "FOIA REQUEST", OR ANYTHING ABOUT GIBSON TOWNSHIP STATED ON THE ENVELOPE. IT SIMPLY STATES A MAILING ADDRESS.

COMMENTS FROM THE BOARD

CYNTHIA A. LUCZAK, BAY COUNTY CLERK, SAID THAT SHE APPRECIATED THE BACKGROUND INFORMATION IN REGARD TO THE FOIA. SHE CONTINUED I TRULY DO NOT THINK THE PETITION REFLECTS ALL OF THIS INFORMATION, IT WAS VERY GENERALIZED AND UNCLEAR IN A NUMBER OF RESPECTS. CLERK LUCZAK CONTINUED THAT SHE HAD NONE OF THIS BACKGROUND INFORMATION TO REFERENCE WHETHER INFORMATION IN THE PETITION WAS TRUE OR FALSE, STATEMENTS PRESENTED, UNDER LAW HAVE TO BE FACTUAL.

SHAWNA WALRAVEN, BAY COUNTY TREASURER, STATED THAT SHE FELT THIS PETITION FAILED TO MEET THE CLARITY STANDARD THAT WERE REQUIRED.

JUDGE JAN MINER STATED THAT SHE WAS CONCERNED ABOUT RATHER OR NOT IT WAS MS. RIVARDS ELECTED RESPONSIBILITY, TO BE THE FOIA COORDINATOR, AND IT WAS NOT. ANYONE CAN BE APPOINTED FOIA COORDINATOR, BY THE GIBSON BOARD. IT WAS NOT PART OF HER ELECTED DUTIES.

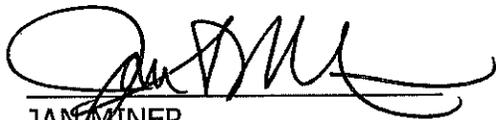
VOTE

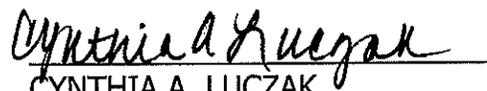
JUDGE MINER CALLED FOR A VOTE: TREASURER, NO; CLERK, NO; AND JUDGE MINER, NO. THE RECALL PETITION FAILED.

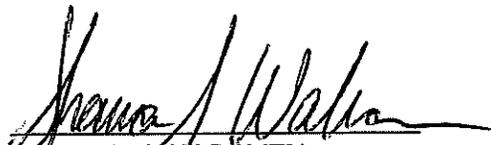
RECESS/ADJOURNMENT

JUDGE JAN MINER MOVED TO ADJOURN THE MEETING OF MARCH 28, 2018. THE MEETING CONCLUDED AT 1:00 PM.

LINDA DIANE PIENIOZEK FILED A SECOND RECALL PETITION CALLING FOR THE RECALL OF SUZETTE RIVARD ON FEBRUARY 22, 2019. AN EMAIL WAS RECEIVED ON FEBRUARY 23, 2019 STATING THAT LINDA DIANE PIENIOZEK WAS WITHDRAWING HER RECALL PETITION FILED ON FEBRUARY 22, 2019 CALLING FOR THE RECALL OF SUZETTE RIVARD, AS SHE WOULD BE SEEKING COUNSEL AND FILING PAPERWORK ON THE STATE LEVEL.


JAN MINER
BAY COUNTY PROBATE JUDGE


CYNTHIA A. LUCZAK
BAY COUNTY CLERK


SHAWNA WALRAVEN
BAY COUNTY TREASURER