



Approved as amended by City Council on January 7, 2019

**City Council Canvass the Votes Meeting  
6:30PM – Downstairs City Hall  
October 11, 2018**

**Call to Order**

Mayor Giunta called the meeting to order in the downstairs conference room, Franklin City Hall at 6:31PM.

**City Council in attendance:**

Mayor Giunta, Councilor Brown, Councilor Clarenbach (arrived at 7:37PM), Councilor Desrochers, Councilor Dzujna, Councilor Moquin, Councilor Ribas, Councilor Zink.

*Absent:* Councilor Barton and Councilor Trudel.

**Others in attendance:**

City Manager Judie Milner, Attorney Paul Fitzgerald, Councilor-elect Karen Testerman, City Clerk Katie Gargano.

Salute to the flag was led by Councilor Desrochers.

Mayor Giunta welcomed everyone and asked City Manager Milner to explain why tonight's meeting is necessary. City Manager Milner apologized as the intention was not to hold a meeting tonight after last week's recount meeting. She further explained that City Clerk Katie Gargano spoke to the Secretary of State's office and they stated that it was necessary to hold tonight's meeting and it was required that the City Council had to elect the board who would conduct the recount. Since this matter is under a strict timeline, a recount must be completed within seven days of the Canvas of the Votes meeting, which was last Friday October 5<sup>th</sup>. This means an official recount must be conducted by 5pm tomorrow, Friday October 12<sup>th</sup>, 5PM. City Manager Milner offered a couple of recommendations for the Council to accomplish hitting the deadline. One recommendation is that the Council can conduct a recount themselves this evening and the second recommendation is that the Council appoint a committee to do the recount. She added that there are several employees of the City and residents that can be part of the recount committee. City Clerk Gargano is required to be part of the committee. Our W2 moderator is not available tomorrow but election worker Mrs. Janet Desrochers could participate tomorrow.

Mayor Giunta asked the Council if they had questions or comments.

**Motion - Councilor Desrochers stated in the interest of expediency, he moved that the Franklin City Council appoint two City Councilors, who will be agreed to by Karen Testerman and Councilor Zink, so the recount can move forward this evening.  
Seconded by Councilor Dzujna.**

Mayor Giunta asked if the Council had questions or comments.

Councilor Ribas commented that the State manual says the Moderator, City Clerk, and Council members should be present in a recount. Councilor Ribas suggested that they choose two Councilors, the City Clerk, and a fourth person. Councilor Desrochers added that the State Statute says the moderator or elected ward clerk must be present. He further added the City Clerk must be present along with the constituents who are contesting the ballot. To satisfy the State Statute, two additional people need to be appointed since all others are currently present. He continued to state the Councilors who will review the ballots, do not actually count the ballots so impartiality is maintained. They look at the ballots identifying who is checked off. The moderator or ward clerk and the City Clerk do the actual ballot counting.

Mayor Giunta reviewed the recount committee members. He stated that there will be two Councilors, City Clerk, and one other. Councilor Desrochers replied that the other person should be either the moderator of ward 2 or the ward clerk of ward 2. City Manager stated that two people are needed not one so the Mayor corrected Councilor Desrochers by stating that the moderator of ward 2 and the ward clerk of ward 2 need to be present. Councilor Desrochers volunteered to be part of the recount committee.

Councilor Dzujna recalled that the two Councilors should be residents of the recount ward. That would be Councilor Ribas and Councilor Desrochers.

Mayor Giunta requested the guidance from attorney Paul Fitzgerald. Attorney Fitzgerald stated that the State Statute acts as a guideline in these situations. The City of Franklin's charter states that a recount will be conducted by what the Council decides. He added that the Councilors would not have to be from the affected ward. Councilor Dzujna however still felt that the Councilors should be from the affected ward.

**Amendment to the Motion – Councilor Dzujna moved that the chosen councilors should be from the effected ward; Councilor Ribas and Councilor Desrochers.  
Seconded by Councilor Brown.**

Mayor Giunta asked for further discussion. There was none.

**5 in favor. 1 abstained (Councilor Zink). Motion PASSED.**

Attorney Bryan Gould, representing Karen Testerman, stated that he was aware that one of the Councilors wrote a Letter to the Editor of the Concord Monitor opposing Testerman's standing on an issue of the past. Attorney Gould added that this Councilor is biased and should not participate on the recount committee. He objects to allowing this Councilor to participate in the recount.

Attorney Paul Fitzgerald replied to Attorney Gould's comment stating that he was made aware of this situation earlier this afternoon and he feels that a submission to a local paper does not equate with bias in this recount situation. There is no indication that the Councilman who wrote the letter would act improperly given the fact that the entire recount will be subject to code, scrutiny, and scrutiny by the

candidates and their representatives. Attorney Fitzgerald stated that he doesn't feel this constitutes for not allowing the Councilor to serve. This is his recommendation. The Council has the final say and vote.

Mayor Giunta asked what the Councilor's role would actually be in this recount. Attorney Fitzgerald stated that the entire committee would review all the ballots and agree on a sorting method. The Clerk does the actual counting. The committee would discuss and rule on any discrepancies.

Attorney Gould asked Mayor Giunta that if Karen Testerman is going to be part of the group that is ruling on the counting of the ballots and has already expressed her position on the election, he believes this is a conflict. He asked why not appoint another Councilor who has a neutral position on Testerman.

Attorney Paul Twomey, representing Olivia Zink, stated that he agreed with Attorney Paul Fitzgerald and doesn't feel that a Letter to the Editor creates a conflict.

Councilor Desrochers addressed Councilor Ribas and asked him if he would consider recusing himself in the interest of removing any impropriety or dark cloud over this recount. Councilor Ribas responded stating that he would not as he would fulfill his duties as a Councilor and wants to stay close to what the Statute says that Councilors of the ward should be on the recount committee.

Councilor Desrochers wanted to clarify that he has no doubt that Councilor Ribas would be impartial. He doesn't want any dark cloud to be hanging over this process.

Councilor Dzujna stated that there is a goal needing to be reached here. Given some direction by the State and with the Council Team supposing to be impartial all of the time, if the Council asks Councilor Ribas to recuse himself, it would go down a slippery slope.

Attorney Twomey commented that each of the Council members at some point may have taken a position or commented to friends or family on who they support.

Attorney Gould objected to the Councilor in question participating.

There were no further questions or comments.

**Mayor asked for the vote.**

**5 in Favor. One abstention. Motion PASSED.**

Paul Fitzgerald provided instruction that the recount committee can now assemble, agree on their procedure, make certain that the candidates and their representatives can see the ballots. They will have the opportunity to challenge any ballot. It will be a ballot by ballot count.

City Manager Milner asked Attorney Fitzgerald if the recount needs to occur during the open to the public meeting or after. Attorney Fitzgerald stated that it can be done during either and that there is no reason to close the meeting.

Mayor Giunta requested a recess while the recount is occurring and will reconvene when the recount is complete.

Meeting recessed at 6:48PM

Meeting reconvened at 7:29PM

Mayor Giunta requested the recount results of the votes be read. City Clerk Katie Gargano stated that the results were the same with no changes and read them as follows:

Karen Testerman – 99 Votes

Olivia Zink – 98 Votes

Sharon Simons – 3 Votes (write-in)

Overvote (contested) – 1

Total number of votes = 201

Attorney Twomey stated that 1 vote of the 201 votes cast was challenged.

**Motion – Councilor Dzujna moved to Canvas the Votes.**

**Seconded by Councilor Ribas.**

Councilor Dzujna read the results of votes. Karen Testerman – 99 Votes. Olivia Zink – 98 Votes. Sharon Simons – 3 Votes. 1 of these votes has been contested. The total number of votes was 201.

Mayor Giunta asked if there was any further discussion.

Councilor Dzujna asked how the contested vote is handled. Attorney Paul Fitzgerald state that it does not affect the process tonight. It is not for the Attorneys to decide.

**5 in Favor. 1 abstained. Motion PASSED.**

### **Agenda Item I**

#### **Other Business**

1. City Manager Milner stated that this next topic is a follow-up discussion on the contamination issue at the Ciao Pasta property site. It is all public information and out on DES's One Stop. The PMS has been signed for the Ciao Pasta property. There was a meeting this morning with Tim Andrews from Nobis. The City contacted Tim regarding the PFOS issue due to the Department of

Environmental Services filing a request with the Fire Department. Tim Andrews is the Engineer for the Ciao Pasta site and being paid by DES. The City wanted to utilize Tim (the same engineer) to save money.

Between handling the two issues at the same time, the City will save over \$25K. Eversource is letting the City use their wells that are located at the Fire Station for their issue which has nothing to do at all with PFOS's. City Manager Milner handed out a map which showed the location of the wells and explained which ones will be utilized for testing the water.

Councilor Clarenbach joined the Council Meeting at 7:37PM

Milner continued to explain that the City does not need to monitor wells on private property because using the Eversource wells and the Fire Station wells will be adequate in capturing the encompassing location needing to be monitored.

The City is saving a significant amount of money but there is still a cost which will run \$23K. The City has Pollution Insurance through Travelers Insurance and might be a preexisting pollution but the City doesn't think so. Milner stated that we believe this will be covered on the insurance policy but not sure. A request to expend the Manager's Contingency line was asked by Milner in hopes that the insurance will reimburse the City.

City Manager Milner stated that DES is in agreement with the approach to test the wells explained tonight. There are no private wells on this property. It is all City water and there are no PFOS's in the City water. Time is of the essence and in order to save money on this effort, this project needs to occur at the same time as the Ciao Pasta project (drilling wells paid for by DES).

Councilor Desrochers asked City Manager Milner if Cumberland Farms is still planning to build on that property. Milner responded that they have two issues with the City. One is this contamination issue, which Cumberland Farms is familiar dealing with issues like this. There used to be a gas station there years ago. The other is a title issue. The owner of the property has been contacted and doesn't want a \$400K clean-up bill. Cumberland Farms wants to move forward. She continued that the PFN's were continued to November 30<sup>th</sup> for all three properties (the Elks properties, the Lindberg Property, and the City's property).

**Motion – Councilor Desrochers moved that the City approve the expending of \$23K from the City Manager's Contingency line for the cost of drilling the wells at the Fire Station.**

**Seconded by Councilor Dzujna.**

Mayor Giunta asked if there was any further discussion. There was none.

**All in Favor. Motion PASSED.**

Councilor Dzujna asked City Manager Milner that if she thinks we could have issues utilizing Eversource's wells in the future. Milner responded that there will be an agreement drafted by Attorney Fitzgerald, with Eversource and will cover us and Eversource in case the well is damaged. She stated that before and after pictures will be taken when the cap is removed and placed back on to show proof of non-damage to the well.

**Motion to adjourn was made by Councilor Brown.**

**Seconded by Councilor Moquin.**

**All in Favor. Motion PASSED.**

**Meeting adjourned at 7:43PM.**

Respectfully Submitted,

Audrey Lanzillo