

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

VIRGINIA PEASE,

Complainant,

v.

LORI BOYER, CLERK AND TIM CLARK,
VILLAGE PRESIDENT,

Respondent.

Case No. EL 21-06

NOTICE OF APPEARANCE

Hector de la Mora, Esq. hereby gives notice that he appears on behalf of both Respondents in the above referenced complaint matter and requests that all pleadings and communications regarding this matter and/or intended for the Respondents be provided to him as indicated hereafter.


MOTION TO DISMISS/ RESPONSE

The Respondents hereby move the State of Wisconsin Elections Commission to *dismiss* the above referenced complaint in its entirety on the following basis, and alternatively respond to the complaint:

1. The factual grounds for this motion are contained in the attached affidavits of each of the Respondents.

2. The complaint fails to demonstrate non-compliance with any discretionary or ministerial duty on the part of a Village President or Village Clerk with respect Wis. Stats. §§ 6.02, 8.05 and 10.01.
3. Even if the complaint reflects inexact compliance with the posting of a notice, or the taking of an action to select a date for the holding of a caucus:
 - a. Any such action was due to inadvertence and promptly rectified;
 - b. There is an absence of any evidence of any wrongful intent to disregard the purpose of or public policy embodied in any statutory requirement;
 - c. There was no harm caused to any individual or to the integrity of any voting or nominating process.
 - d. The prevalence of the COVID-19 pandemic justified the setting of the date for the 2021 caucus session at the village board meeting in November, 2020. This was a reasonable exercise of discretion which did not prejudice or compromise the rights of any potential nominator or nominee for an elected position on the village board.
4. The complaint was filed on January 8, 2021 and was not timely with respect to the requirements of Wis. Stat. §5.06(3) particularly in view of the fact that the complainant has pointed out that she has “...14 years of experience as an election worker and the training in voter registration....”

Dated: January 28, 2021



Héctor de la Mora (State Bar No.1013947)
Attorney for Respondents

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**AFFIDAVIT OF LORI SCHIEK IN RESPONSE TO
WISCONSIN ELECTIONS COMMISSION COMPLAINT**

Lori Schiek (also known as, and named as Lori Boyer in Complaint), of lawful age, being duly sworn under oath, hereby deposes and states as follows:

1. I make this affidavit based on my knowledge as Clerk for the Village of Lac La Belle.
2. I am the part-time Village Clerk for the Village of Lac La Belle. I am employed full-time at the Waukesha County Courthouse and interact with the Waukesha County Clerk.
3. **In response to complaint No. 1** regarding Michael and Lara Anderson.

I have obtained the following information from Mike Sindorf, the Village of Lac La Belle Building Inspector:

- a. On information and belief the Andersons purchased the property located at 681 Lac LaBelle on March 18, 2020 for \$1.2 million. A razing permit for the existing

house was issued on April 7, 2020. Building permits were issued for the construction of a new house and detached garage on April 14, 2020.

- b. The builder of the new home requested permission from the building inspector to have the Andersons move some belongings into the detached garage in July, 2020. The building inspector gave them permission to do so. An occupancy permit has not been issued as of January 25, 2021. The building inspector expects he will be getting a request for an occupancy permit any day soon.
4. On information and belief, the Andersons listed the address of 640 West Glenview Avenue in Oconomowoc on the above building permits submittals.
5. On information and belief, the Andersons on their own initiative went to WisVote and registered to vote.
6. I had never interacted with the Andersons until Mrs. Anderson asked me where voting takes place in Lac La Belle. I informed her that the village uses an area within the facilities of the golf club located in the village
7. Given that the Andersons were allowed to register, it is a logical inference that they met the requirements set up to vote during the November 3, 2020 election.
8. I consulted with the Waukesha County Clerk regarding Ms. Pease's questions about their ability to vote.
9. The Waukesha County Clerk informed me that the Andersons could live wherever they chose while building a home.

10. On information and belief, the Anderson purchased the property with the home that was demolished and also are the owners of the new home on the same property.
11. On information and belief, the address of 681 Lac LaBelle, Village of Lac La Belle is assigned to Michael and Lara Anderson who apparently demonstrated intent to establish residency at that address in March of 2020.
12. The November election was extremely busy as we experienced a 90% registered voter turnout in the Village of Lac La Belle.
13. On information and belief, the Andersons came and showed proper ID to vote and voted.
14. None of my poll workers requested any help from me when the Andersons voted.

15. In response to Complaint No. 2.

- a. I believe President Clark did his research concerning setting the caucus date in November, 2020.
- b. The setting of the caucus date was clearly an item of the November, 2020 Board of Trustee meeting agenda.
- c. The November, 2020 Board of Trustee meeting agenda was also informally posted on the village's website.

16. In response to complaint No. 3.

- a. I did post the notice dated December 13, 2020. The November, 3, 2020 election was hectic beyond words.

- b. The Village had an over 90 percent registered voter turnout, with many absentee ballots and walk in voters.
- c. After the November 3, 2020 election, the outcome was not confirmed until days later and I neglected to post the notice until December.

Dated:

1/28/2021

Lori Schiek
Lori Schiek, Village of Lac La Belle Clerk

Subscribed and sworn to before me

This 28 of January

[Signature]
Notary Public, Wisconsin

My Commission: 11/18/24



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**AFFIDAVIT OF TIM CLARK IN RESPONSE TO
WISCONSIN ELECTIONS COMMISSION COMPLAINT**

Tim Clark, of lawful age, being duly sworn under oath, hereby deposes and states as follows:

1. I make this affidavit based on my personal knowledge as president for the Village of Lac La Belle.
2. As background information I state the following:
 - The Village of Lac La Belle is one of the smallest villages in the state.
 - We have 130 homes in the village with voter rolls that total approximately 240 registered voters; we do not have a village hall nor do we have any full-time staff of any type.
 - The total annual compensation for our village board, the president and four trustees, is \$660.
3. Our part-time Village Clerk, ("Clerk") Lori Schiek (named as "Lori Boyer" in the Complaint), is employed full time at the Waukesha County Courthouse and has regular contact with the Waukesha County Clerk.

4. The Clerk and I strive to follow the state statutes and anytime there is a question, we seek the counsel of the Waukesha County Clerk, or our village attorney and with their guidance we endeavor to follow all required statutory processes.
5. The date for our January caucus was set at the November 18th meeting of the Village Board. The caucus date was set, consistent with the practice that has been in place for decades in the Village of Lac La Belle, to take place prior to our regularly scheduled Village Board meeting on January 20, 2021. Our Village Ordinance§ 1.2 specifies that the board shall meet on the third Wednesday of the month and January 20th was the third Wednesday this year. The setting of the date, which was published as an agenda item for the November 18th meeting, was done twelve (12) days early for the following reasons:

- The Village Board was attempting to comply with Governor Evers' Emergency Orders #94 and #95 to limit gatherings of no more than ten people.
- In the weeks preceding the November meeting our local area had experienced a 240% increase in those testing positive for COVID-19.
- As was announced at the November meeting, we hoped to cancel the scheduled December meeting of the Village Board as a precaution against the possibility of anyone contracting or passing on COVID-19 just prior to the holidays.

6. I believe one of the most important duties of our Village Board is to do everything we can to protect the health and safety of our residents. The guidelines related to any part of the State's statutory processes had not anticipated the current pandemic, the challenges associated with the setting a caucus date or the permissibility of conducting a virtual caucus. Hence, with the concurrence of our village attorney the date was set as reported.

7. I do not agree with the complainant's statement in the Complaint that a motion to set the date was denied. Instead, Trustee Butendorf asked if a motion was needed. It was noted that Wis. Stat. § 8.05 (1) does not specify the manner in which the governing body "shall decide" the date for the caucus. Given that the January 20, 2021 date was consistent with past practices, as the presiding officer I stated that, "without objection, the date would be January 20" no objection was heard and the date was set.
8. During the public comment portion of our November meeting, there was no public objection to the item being on the agenda nor was any objection raised by anyone about the action to set the date, including the complainant's husband who was present and is a trained election inspector. In the past, the complainant has emailed copies of comments that she asked be read aloud during the public comments part of village meetings. In November it was our intent to cancel the December meeting out of concern for public health.
9. The second paragraph relating to complaint No. 2 mentions an email exchange between the complainant and myself; I am attaching a copy of both her email as well as my reply marked as Exhibit A & B. I should note that following receipt of her email, I did attempt to contact the offices of the Wisconsin Election Commission to discuss the actions we had taken and what I considered to be the justifications for that action. I was seeking guidance of the Commission if it was necessary to reconvene a meeting of the village board after December 1st to re-affirm the decision previously made on November 18th. In consultation with our village attorney, I was advised that there was no case law covering the unique and hopefully non-recurring challenges presented by the pandemic.

I believe we acted in good faith, gave sufficient notice of the action to be taken, and that no one was harmed by our acting early on this matter.

10. The complainant also comments on what she considers to be a meeting safety issue and that she does not attend the meetings because of her COVID-19 safety concerns. I would note that the complainant did attend the public test of the voting equipment for the November election while not observing suggested social distancing as she reviewed the resulting test tapes. All of our village functions, board meetings and elections, are conducted in space we lease from a golf club in our village. The room used for meetings is set up for social distancing and there are masks, wipes and hand sanitizer available for all attendees.
11. I provide email updates to our residents on the status of COVID-19 in our area based on regular weekly conference calls with the Western Lakes Fire District and officials from the municipalities in the district. As part of those updates, I strongly encourage our residents to follow all CDC guidelines.
12. I acknowledge that the “unofficial notice” on the village website related to the January caucus was in error as posted. As is obvious from the dates on what was posted, the 2020 notice was reposted instead of the 2021 notice. We have been working on improving our village website, but again have no full-time resources dedicated to that process. We contract with a third party to assist with the website, but errors in what was transmitted or posted have occurred. We also have an “unofficial” email notice system provided by a village resident on a voluntary basis that goes out to approximately 90% of village residents; the information posted through that email system pertaining to the caucus was accurate.

13. In the last paragraph of the second complaint, the complainant identifies three other issues. No. 1 is reasonably accurate. Due to a mistake on my part, setting the date for the January caucus was left off the December 2019 agenda. Our Village Clerk did consult with the Commission as to how to correct my error and bring the village into full compliance with the caucus statutes. With Commission guidance, we decided on a new date for the caucus and rescheduled both the caucus and Village board meeting from the regularly scheduled date of January 15th to the 21st to comply with the public notice requirements for holding a caucus.
14. Item No. 2 in the last paragraph states that both the complainant and her husband “had received numerous questions about caucus procedures from residents who were upset by the actions taken by the Village Board of Trustees.” As previously noted, we are a very small village of 130 homes with a voter roll of about 240 registered voters, most of whom we know on a first name basis. The telephone numbers and email addresses of all elected officials, the clerk, the village attorney and the village administrator are published to all property owners. In a village as small as ours each member of our village board lives within walking distance of every resident, yet none of us have ever heard a concern expressed by anyone other than from the complainant. There is an implication that residents have been concerned about issues like those raised in her complaint for years; I dispute such a conclusion as I am unaware of any evidence, in that regard. I would hope that the WEC insist that the complainant provides a record documenting the names and dates related to these “numerous questions” so that the veracity of that supposition can be examined. Instead, I believe that an overwhelming

majority of our residents would agree that anytime an issue is raised within our village, all elected and appointed officials attempt to respond quickly.

15. Item No. 3 is accurate in that we do have three public notice posting sites, about one for every 43 homes in the village. Our posting boards were replaced two years ago and are protected from the weather by very clear plexiglass so there is no need to open any door to read the posted materials. These boards are set back just off the road so as not to be damaged by our snow plowing. None of the boards are inaccessible and we try to make the font used on our published notices large enough so that it does not require most people to walk through an occasional snow build up to read the posting.

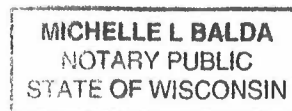
16. The January 20, 2021 caucus was conducted following the current published guidelines. About twelve residents, including the complainant's husband, attended the caucus which was conducted by our village administrator who is a resident and former village president and the village clerk. No objection in any regard with respect to the caucus was raised by anyone in attendance. The three (3) incumbent members of the board, myself and two trustees, were the only ones nominated.

Dated: January 28, 2021

Tim Clark
Tim Clark, Village of Lac La Belle President

Subscribed and sworn to before me

This 28th of January, 2021
Michelle L Balda
Notary Public, Wisconsin



My Commission: expires 12-5-21

EXHIBIT A

From: Ginny Pease <ginnypease1@gmail.com>

Subject: Village 2021 Caucus

Date: November 21, 2020 at 11:52:34 AM CST

To: Tim Clark <tjclark53066@icloud.com>, David Stormo <drstormo@pm.me>, Bob Butendorf <rbutendorf@wi.rr.com>, Dean Koenigs <dean.koenigs@gmail.com>, Mark Wille <mark@cabintek.com>

Good morning,

I am writing to you as Trustees about the Village caucus to nominate candidates for the 2021 spring election. Announcements made at the November meeting are not in line with your responsibilities.

With reference to Wisconsin statutes and the Wisconsin Election Commission's manual *Procedures for Nomination of Candidates by Caucus* it appears as if the actions of the Trustees at the November meeting were insufficient to set the caucus date. Specifically, the date must be set between December 1 and January 1, the governing body is responsible for the date setting, and the required action is that the governing body make the decision. Also notice that the posting of public notice is at least 5 days.

This is not to make as if I am a lawyer or that can advise you on the right information to guide your actions. However, my note is written as an interested citizen who cares about election integrity and reads information that is publicly available. My view is that Village voters deserve to have accurate information pertaining to locally run elections. If ever there was a time for the most accurate information to be distributed it is right now in the polarizing 2020 election event.

Below is the text that referred to above:

Wisconsin Statute: **8.05 Nomination in towns and villages.** Every candidate for an elective office in a town or village shall be nominated under this section.

(1) Caucus.

- a. When nomination papers are not used, there shall be a caucus to nominate candidates. The governing body shall between December 1 and January 1 decide the date of the caucus. The date of the caucus may be established between January 2 and January 21. When possible, preference should be given to having the caucus on January 21.

Caucus Manual: WEC August 2017

When to Hold the Caucus

Between December 1 and January 1 preceding a spring election, the governing body of a town or village nominating candidates by caucus must decide the date on which the caucus will be held. The caucus must be held between January 2 and January 21. The deadline to hold a caucus is not extended if January 21 falls on a weekend. When possible, preference should be given to having the caucus on January 21. The caucus is not required to be conducted on a Tuesday. Wis. Stat. § 8.05 (1)(a).

Public Notice of the Caucus

The municipal clerk must give proper public notice of the caucus. This is accomplished by posting a notice in the clerk's office and by publishing a notice in a newspaper at least 5 days before the date of the caucus. This notice must contain the location, date, and time of the caucus. Wis. Stat. § 8.05 (1)(b).

Where a newspaper is not published within the municipality, clerks can meet the publishing requirement by posting the notice of the caucus in at least three locations within the municipality. Wis. Stat. § 10.05.

When posting is used, the notices must be placed no later than 5 days before the date of the caucus. The notices must be posted in 3 places within the municipality where they are most likely to be seen by electors, or in one location within the municipality and on the municipalities website.

EXHIBIT B

From: Tim Clark <tjclark53066@icloud.com>

Subject: Setting the Caucus Date

Date: December 3, 2020 at 5:05:01 PM CST

To: Ginny Pease <ginnypease1@gmail.com>

Cc: Bob Butendorf <rbutendorf@wi.rr.com>, Dean Koenigs <dean.koenigs@gmail.com>, Dave Stormo <drstormo@protonmail.com>, Mark Wille <mark@cabintek.com>, Hector de la Mora <hdelamora@vonbriesen.com>, Lori Boyer <ljbvllb@yahoo.com>

Ginny,

I am responding to your email of November 21st concerning the action taken at the November 18th village board meeting related to setting the date for the January caucus that you believe is "not in line" with our responsibilities. We believe that protecting the health and safety of village residents is perhaps our most important responsibility, which is the reason the action was taken at that meeting.

We are aware of Wis. Stat. § 8.05 (1) which calls for setting the date between December 1st and January first. We are also aware of the Governor's recent Emergency Orders #94 and #95 and his recommended actions due to the significant spike in cases of Covid -19. In addition, per Wis. Stat. §323.14, we understand local governments are allowed to take actions to protect village residents during emergencies. Our village attorney was consulted prior to the action.

Setting the date for the caucus was listed on the posted meeting agenda and no one objected prior to the start of the meeting, no one who attended the meeting expressed a concern during the period for public comment or when the item came up for action. Prior to taking the action, I commented that it was our intent to cancel the scheduled December board meeting to avoid another gathering of more than 10 people. No one is harmed by the board acting 12 days early on this matter and there is no case law related to actions taken in connection with the scheduling of a caucus during a public health emergency. The caucus date that was set is consistent with our long standing practice of conducting the caucus prior to the January village board meeting. We are also aware of the requirement for posting notice five days before the caucus; our intent is arrange for the posting well in advance of the required five day period.

I have been advised by our legal counsel that Wis. Stat. § 323.14 arguably allows the selection and announcement of the caucus date in advance of the statutorily required date during this pandemic crisis since an earlier announcement has the potential of attracting more attendees and potential candidates to/for the caucus and likely harms no one since the process was noticed as an action item on the November 18th board agenda with the opportunity for comment by any attendee.

Unless something changes to require a December meeting, the next scheduled session would take place after the caucus had been held. Therefore, the best course of action was determined to be to set the date at the November meeting. Unless a matter comes to my attention that requires a meeting in

December, I do not plan to convene a special meeting on this issue. If for some reason a meeting is required, we will consider the reaffirmation of our decision of November 18th.

As to the caucus, the plan is to proceed as we have in the past. A virtual session was considered, however if a "secret vote" is required as it was in 2019, there are no guidelines as to how to conduct a virtual "secret" vote or how any one of the candidates could verify, as is their right, the reported results. In addition, using a technology like Zoom for the first time for something as important as a caucus could present a number of risks. As far as we are aware, the Wisconsin Election Commission has not published any guidelines for conducting a virtual caucus nor has the League of Municipalities. Moreover, the Waukesha County Clerk has not suggested any specific way as to how to proceed with the scheduling of a caucus in the depth of the pandemic. Thus, we have strived to act prudently and with full transparency.

Further, our village caucus is not covered by any of the requirements or safeguards of the WisVote system; it is our opinion that we would be in "uncharted waters" by conducting a virtual caucus.

I appreciate your concern but I believe the scheduling action taken in November is consistent with our responsibilities to protect the health of our residents; and the plan for the caucus is consistent with our responsibilities to protect the integrity of that process. I agree that "village voters deserve to have accurate information pertaining to locally run elections." I have not heard from any other village resident but I will consult with our village attorney and the trustees about proactively providing all village residents the full story of the issues we considered and why we took the action we did.

Respectfully,

Tim Clark

c: All Trustees