

BOARD OF ELECTIONS

Ken Raymond
Chairman

Stuart Russell
Secretary

Fleming El-Amin
Member



Robert H. Coffman
Director of Elections

Lamar Joyner
Deputy Director

FORSYTH COUNTY BOARD OF ELECTIONS BOARD MEETING MINUTES – NOVEMBER 21, 2013 TOBACCOVILLE COUNCILMAN PROTEST HEARING

Meeting Called to Order

A meeting of the Forsyth County Board of Elections was held in the elections storage room on November 21, 2013. The meeting convened at 8:30 AM, Chairman Ken Raymond presiding.

Board Members in attendance: Chairman Ken Raymond, Secretary Stuart Russell, Member Fleming El-Amin

Staff Members in attendance: Director Robert Coffman, Deputy Director Lamar Joyner, Joshua Chunn, Chris Duffey, Judy Speas, Jacob Wright

Chairman Raymond began discussion by stating that this meeting was originally intended to hold a protest hearing. However, the accuracy of the Tobacconville recount of November 15, 2013 is in doubt. Accuracy in all elections is very important but even more so when there is a close race. For this reason, the Board members decided that it is necessary to hold the Tobacconville recount again for the sake of accuracy and to reflect the will of the Tobacconville voters.

Mr. Coffman explained that Precinct 091 – Tobacconville Community Center had 80 ballots in the initial Tobacconville recount. However, 79 ballots were tabulated in that precinct on Election night. The question is whether there is an additional ballot or whether it was a human error during the recount. It is the goal of the Board of Elections to accurately reflect the voter's choice. The State Board of Elections suggested that a hand/eye recount for all three precincts should be held in advance of considering the protest hearing. The recount may change the necessity for the protest.

Public Comment Session

Chairman Raymond opened the public comment session which would address the Tobacconville Councilman election and recount only. Speakers were asked to complete a public comment card and would have three minutes to speak. Questions to the Board members should be included during the allotted time and answers would be given at the end of the session. The public comment session included the following speakers:

Scott Cumbie – 140 Mayfield Road, Winston-Salem, NC 27104

Gardenia Henley – 4920 Old Walkertown Road, Winston-Salem, NC 27105

Stephen W. Wood – 8098 Reynolda Road, Pfafftown, NC 27040

Jonathan S. Dills – 411 N. Cherry St., Winston-Salem, NC 27101

Forsyth County Government Center, 201 North Chestnut Street, Winston-Salem, North Carolina 27101-4120

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Jo Anne Allen – PO Box 284, Winston-Salem, NC 27102

Member El-Amin made and Secretary Russell seconded a motion to close the public comment session. **Motion carried unanimously.**

Discussion:

Chairman Raymond began discussion and asked Mr. Coffman to address Ms. Henley's comments of the recount error. Mr. Coffman stated that the discrepancy probably occurred due to human error since the recount is a very manual process.

Mr. Wood questioned whether today would be the final recount, and the custody and resealing of the ballots. Mr. Coffman stated that the Board should make the decision of a final recount after the conclusion of today's recount. The chain of custody procedure was followed to reseal and maintain the ballots in a locked facility. Secretary Russell referred to NCGS 163-182.7(a), that states that the county board of elections has the discretion to order a recount which occurred with the recommendation of the director and State Board of Elections. Assistant County Attorney Albright agreed that he had also advised the director. Chairman Raymond stated that this also addressed Mr. Dills' question.

Chairman Raymond acknowledged Ms. Allen's concerns regarding the integrity of the election process.

Recount

Chairman Raymond stated that the recount would occur in the adjoining room. Mr. Coffman distributed the Recount Procedure document and explained the six steps. The major importance would be balancing the ballot totals with Election Day amounts. Secretary Russell stated and Mr. Coffman agreed that the Tobaccoville ballots would be separated from the Winston-Salem ballots in the split precincts. The ballot count would be compared with the precinct judge report, returned absentee ballots, the vote image ballot log of each One-Stop I votronic touch screen device and provisional ballots. One precinct would be recounted at a time with one caller and two talliers at the table. Candidates and their representatives were invited to observe the process.

Board members observed that each ballot box was sealed before opening. The Precinct 032 - Northwest Middle School recount revealed that Shore-Smith gained one vote while Dodson and Wood remained the same as the last report. The results of the Precinct 091 – Tobaccoville Community Center recount were different from the prior November 15th recount in that it gave Steve Wood one fewer vote. However, the results of the second Precinct 091 recount were the same as the Election Night total for Precinct 091. The Precinct 092 - Macedonia Baptist Church recount remained the same as the last report. All Board members and Mr. Coffman calculated the results of the 328 Tobaccoville votes in the three precincts. Dodson received 192 votes; Wood received 187 votes; and, Shore-Smith received 188 votes which was one additional vote from the previous recount calculation. The ballots boxes were resealed and Chairman Raymond signed the seals. Secretary Russell stated that the Board would certify the manual recount reconciliation sheets. Member El-Amin made and Secretary Russell seconded a motion to rescind the prior results of the blind draw in the November 15, 2013 meeting. **Motion carried unanimously.**

After assembling again in the storage room, Chairman Raymond announced to the crowd that the results of the recount changed the outcome of the election.

Election Protest Hearing

Considering the results of the recount, Chairman Raymond asked for Ms. Shore-Smith to address the outcome and the election protest. Jones Byrd, attorney representing Lori Shore-Smith, commented that the only concern would be whether there could be an additional recount or election protest. Otherwise, there would be no reason to have a protest hearing.

Mr. Coffman explained that the provisional ballot in this election was voted by a same day transfer voter. If a voter is already registered in the county, an Election Day transfer may be conducted because of an unreported move. Since the pollworker was unsure whether the voter had already voted in their current precinct, the ballot was considered a provisional ballot. After research, it was confirmed that the voter had not voted in the prior precinct and the ballot was approved.

Mr. Byrd stated that one major issue was whether another recount would occur and the second issue would be to verify whether the provisional voter resides in Tobaccoville. Mr. Coffman stated that the address was confirmed to be in Tobaccoville based on a self-report from the voter. Referring to NCAC 9.0106(i), Mr. Coffman stated that any candidate would have a right to file an election protest within 24 hours or by noon of the next business day. There would need to be some specific allocation of error or fraud given. Secretary Russell questioned Mr. Albright whether Shore-Smith could file an additional protest if another one was filed. Secretary Russell made and Member El-Amin seconded a motion to go into recess to consult with Don Wright, General Counsel to the State Board of Elections. **Motion carried unanimously.**

Chairman Raymond called the meeting to order after recess at 11:30 AM. Board members had consulted with Mr. Wright of the State Board of Elections to verify the legality of whether Ms. Shore-Smith may suspend her protest and resubmit it within 24 hours. The consensus of the communication was that the protest may be refiled if withdrawn today. Mr. Byrd stated that with that understanding, Ms. Shore-Smith would withdraw the protest at this time. Chairman Raymond stated that the Board members would investigate how a second recount could be avoided in the future.

Closed Session

Secretary Russell made a motion for closed session by stating: I move that the Board go into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee, pursuant to the provisions of NCGS 143-318.11(a) (6). **Motion carried unanimously.** Board members exited closed session at 1:00 PM.

Adjournment

After opening session, Member El-Amin made and Secretary Russell seconded a motion to adjourn the meeting. **Motion carried unanimously** and the meeting was adjourned at 1:05 PM.

Reconvene

Board members called an emergency meeting to go back into closed session for the same previous reason at 1:10 PM.

Adjournment

Member El-Amin made and Secretary Russell seconded a motion to adjourn the meeting. **Motion carried unanimously** and the meeting was adjourned at 1:40 PM.

Approved:

Ken Raymond, Chair

Date

Stuart Russell, Secretary

Date

Fleming El-Amin, Member

Date

Attachments on File: Recount Procedure

RECOUNT PROCEDURE

1. The initial step in a recount will be to determine the number of ballots that are in the ballot storage container for the precincts to be recounted. Ballots will be counted and placed in stacks of ten to determine the total number of ballots that will be recounted. That number will be compared against the unofficial ballots cast that were reported on election night. The Board will note and investigate any discrepancies in total ballots.
2. Recount teams shall consist of three people. One person will call the votes for the recounted office and two shall keep individual tallies of the votes the caller announces. After every fifth vote for an individual choice the callers will say “check”. If for any reason the tally team gets out of sync during the recount the process shall start over for that precinct.
3. The caller shall call out the name of candidate(s) receiving votes on each individual ballot for the recounted office. The caller shall also indicate number of under-votes, over-votes and any write-in votes cast on each ballot for the recounted office.
4. The total number of votes cast will be compared against ballots cast to insure the manual count was accurate.
5. Once the recount of the office is complete, for that precinct, the vote totals will be transferred from the tally sheets to the Reconciliation Sheet of the recounted precinct.
6. The Board will certify the results of the recount by way of a motion approving the vote totals for the recounted office.