
*Report on 2003 Ward 1
Election Challenge*

Riverdale Park Elections Appeals Board

Executive Summary of Decision

The Riverdale Park Board of Election Appeals has met four times over the ten days since receiving the challenge to the 2003 Ward 1 Town Council Race. As a body we have interviewed judges of election to determine facts and practices, determined applicable law, discussed questions of law and legal precedents with the town attorney and each other, and consulted with county and state boards of election. We recommend to the Town Council of Riverdale Park that the election results as certified on 5 May 2003 be allowed to stand.

However, we have found during our investigations that there are many areas of the law which are unclear, discrepancies between state and town election law, and questionable practices in the handling of absentee ballots. We thus recommend that the council review in detail discrepancies between state and town election law and practices, especially as it applies to absentee voting. We include in our report a list of specific problems we have found, but recommend that the council discover and solve other problems that we may not have found in the short time we have to review this challenge.

Signatures of Board Members

Alan K. Thompson
Ward 1 Representative (Board Chair)

Simon Plog
Ward 2 Representative

Robert Fuerst
Ward 3 Representative

Simon McNabb
Ward 4 Representative

Doris Pullman
Ward 6 Representative

Susan Sheehan
Mayor's Representative

Chapter 1: Information About the Board

The Riverdale Park Board of Election Appeals is legally authorized by § 29-22 of the Town Code (§ 29 of the Town Code is included in Appendix D). § 29-22 specifies that the board shall consist of seven (7) members, one (1) each appointed by the Mayor and each Council Member. The current board consists of six members because the Council Member from Ward 5 failed to appoint anyone.

Alan Thompson was appointed by Ward 1 Council Member Rebecca Feldberg. He was appointed at the March 2003 regular legislative meeting. Mr. Thompson was chosen to chair the board at its first meeting on 16 May 2003.

Simon Plog was appointed by Ward 2 Council Member Matt Hart. He was appointed at the February 2003 regular legislative meeting.

Robert Fuerst was appointed by Ward 3 Council Member Guy Tiberio. Mr. Fuerst was appointed at the February 2003 regular legislative meeting.

Gerald “Simon” McNabb was appointed by Ward 4 Council Member Christina Davis. Mr. McNabb was appointed at a special legislative meeting on 16 May 2003.

Doris Pullman was appointed by Ward 6 Council Member Wendall Davis. Ms. Pullman was appointed at a special legislative meeting on 16 May 2003.

Susan Sheehan was appointed by Mayor Michael Herman. Ms. Sheehan was appointed at a special legislative meeting on 16 May 2003.

Chapter 2: Description of Challenge

Ward 1 Town Council candidate Vernon Archer submitted a notarized document titled “Statement of Support for Contest of Election – Ward One Riverdale Park Council” to Town Administrator Patrick Prangley on 13 May 2003, eight (8) days after the Town Council certified the election results. This document will hereafter be referred to as “the challenge.” A copy of the challenge is included in this report as Appendix A. The challenge included a petition with twenty-five (25) signatures supporting the challenge. Deputy Chief Judge of Elections Louis King confirmed the registration status of twenty-one (21) of the signatures at the 19 May 2003 Board meeting.

The petition was given to board member Robert Fuerst on 14 May 2003. Mr. Fuerst contacted the (then) two other members of the board and recommended meeting on 16 May 2003 after a special legislative session scheduled to appoint members to the vacant board slots by the Mayor and Ward 4, Ward 5, and Ward 6 Council Members.

Mr. Archer submitted an additional document titled “Additional Statement to Riverdale Park Board of Election Appeals” to Town Administrator Patrick Prangley on 14 May 2003. This document was given to Mr. Fuerst on 15 May 2003. A copy of this document is also included in Appendix A.

The reason given for the challenge, in summary form, was that it was not clear that persons carrying absentee ballots to and/or from absentee voters (“agents”) had been required by the Judges of Election to complete documentation intended to prevent fraud which was required by Maryland Code, included by reference in the Town Code. The challenge requested that any ballots lacking this documentation be removed from the count, or removal of the entire absentee count if the votes were no longer distinguishable and the rejection would possibly modify the outcome of the election.

The “Additional Statement” included the names of witnesses that the Board might wish to interview, who might have some knowledge of handling of absentee ballots allegedly contrary to Maryland State and Town Codes.

Chapter 3: Investigation

The main activity of the Board was our exploration of facts and law in determining the validity of the challenge, and possible remedies if necessary. This activity can be divided into two sections: Findings of Fact and Findings of Law. Findings of Fact will describe the testimony of what occurred with absentee ballots and results of absentee voting in the Ward 1 election. Findings of Law will describe our exploration of possible applicable law and determination of the meaning of imprecise law.

Findings of Fact

Verification of Petition Signatures

As described in the meeting minutes for the 19 May 2003 meeting in Appendix C, one of the first activities of the Board was to verify the signatures on the petition accompanying the petition appealing the election results. Deputy Chief Judge Louis King checked the twenty-five (25) signatures against voter registration records, and found that at least twenty-one (21) were valid. The others may have been valid, since the list against which Mr. King was checking was not the final registration list. Nevertheless, Town Code (see § 29-21 in Appendix D) requires only twenty (20) signatures, and the petition was ruled valid by the board.

Breakdown of Ward 1 Vote

The next finding of fact was the determination of various ways to describe the absentee votes in Ward 1. Most of this determination was done at the 19 May 2003 meeting (minutes are in Appendix C), but some facts were determined at the 21 May 2003 meeting.

The total number of votes accepted by the Board of Elections for Ward 1 is shown below in Table 1. This was reported by Mr. King at the 19 May 2003 meeting.

Table 1: Ward 1 Election Results as Certified by Town Council on 5 May 2003

	Vernon Archer	Christina Davis
Machine Votes	126	120
Absentee Votes	4	18
Total	130	138

The most important breakdown of absentee votes was to determine the number of *potentially* challenged votes vs. unchallenged votes, which was done by checking for a postmark and stamp on the outer envelope for all returned absentee ballots. The number of postmarked/stamped outer envelopes was seven (7). Twenty-three (23) envelopes with “Ward 1” on the outside without postmark or stamp were in the Board of Elections materials. The total number of absentee ballots received by the

Board of Elections for Ward 1 was 32, which left two unaccounted for. Chief Judge of Elections Marcos stated at the 21 May 2003 meeting that a few absentee ballots had come in unmarked envelopes; at least three unmarked envelopes were in the “outer envelope” materials saved by the Board of Elections. Since the challenge only specified absentee ballots carried by someone other than the voter (and specifically included ballots returned by mail as acceptable), the number of potentially challenged absentee votes was twenty-five (25), with seven (7) presumably unchallenged. These results are shown below in Table 2.

Table 2: Breakdown of Received Absentee Ballots by Challenge Status

Delivery Method	Number of Ballots
Mail (Unchallenged)	7
Hand (Potentially Challenged)	25
Total	32

Another breakdown was the number of ballots received from Crescent Cities Center. Since Crescent Cities Center was specifically mentioned in the “Additional Statement” (see Appendix A) the Board thought it important to try to distinguish these votes. This number was determined by looking at the voter address on the absentee ballot request forms, and was twenty-one (21). A total of thirty-six (36) absentee ballots were requested; at least thirty-four (34) were sent. This breakdown is shown in Table 3 below.

Table 3: Geographical Breakdown of Requests for Absentee Ballots in Ward 1

Location	Number of Ballots
Crescent Cities Center	21
Elsewhere	15
Total	36

The Board was concerned with the discrepancy between the number of accepted absentee ballots (22) and the number of received absentee ballots (32). This discrepancy was explained at the 19 May 2003 meeting by Deputy Chief Judge King: ten (10) ballots had been spoiled, because either the name of the voter was illegible on the ballot envelope or the name on the ballot envelope was not that of a registered voter who had requested an absentee ballot. This breakdown is shown below in Table 4. Board member Simon McNabb attempted to match the signatures on the ballot envelopes with signatures on ballot request forms, and thought that perhaps as many as nine (9) of the ten (10) spoiled ballots were from Crescent Cities Center.

Details of his analysis are in the 19 May 2003 meeting minutes in Appendix C.

Table 4: Spoiled vs. Accepted Absentee Ballots in Ward 1

Ballot Status	Number of Ballots
Spoiled	10
Accepted	22
Total	32

A final attempted breakdown of absentee ballots was in regular vs. “Emergency” absentee ballots. An “Emergency” ballot is requested sufficiently late that it cannot be reliably sent or returned by mail, and often is requested on the day of the election. The County and State Boards of Election are meticulous in their record-keeping for this type of absentee ballot because of heightened concerns of fraud. The Board assumed at the 19 May 2003 meeting that any absentee request dated later than 25 April 2003 would be an “Emergency” request, and found that there were six (6) such requests, with thirty (30) requests dated 25 April 2003 or earlier. Judge Marcos had actually hand-delivered ballots for all of the requests she received in the last ten days before election day. Judge Marcos stated that there was only one “Emergency” absentee ballot request on the day of election, and it was not in Ward 1. This information is shown below in Table 5.

Table 5: Absentee Ballots Requested Early and Late

Date on Absentee Ballot Request Form	Number of Ballots
On or before 25 April 2003	30
On or after 26 April 2003	6
Total	36

Sequence of Events for Crescent Cities Absentee Ballots

Another issue central to the deliberations of the Board was the exact sequence of events for the entire process of requesting, delivering, marking, and returning of the absentee ballots for Crescent Cities Center, again motivated by statements on the “Additional Statement” submitted with the petition of challenge. The sequence of events was determined by the Board to be as follows:

- “Jim” Eugene Reed requested a large number of absentee ballot request forms from the Chief Judge of Elections.
- These requests were delivered to residents at Crescent Cities Center and completed on several dates (a large majority on 03 April 2003 and 11 April 2003).
- The completed forms were delivered to the Town Office by “Jim” Eugene Reed.
- The Chief Judge of Elections hand-delivered ballots to Crescent Cities Center on 22 April 2003 to Christy Johnson, the activities director at the Center.

- The completed ballots, sealed in outer envelopes and bundled together with rubber band, was delivered by a member of the Crescent Cities Center staff to the Town Office. Chief Judge Marcos happened to be at the Town Office and accepted them and stored them with other completed absentee ballots for processing after the closing of the polls.

Findings of Law

Applicable Law

The first task of the Board under Findings of Law was to determine exactly which law governed the challenge of the election. The Board initially thought that Maryland State or Prince George's County law would apply, and called the County Board of Elections to discuss the law (the report of this conversation is part of the minutes of the 19 May 2003 meeting, and can be found in Appendix C). Essentially the first statement made by the representative of the County Board was that municipal law was independent of State or County Law. Upon looking at the Town's Code, the Board discovered that the section of the Code applicable to absentee voting referred to the Maryland Code, Article 33, §§ 27-1, 27-2, and 27-4 through 27-11. (See §29 of the Town Code in Appendix D).

Unfortunately, Article 33 had been redrafted in 1998, and the chapter numbers referenced no longer existed. Town Attorney Sussman had researched the redrafting, and was able to find a map to where the referenced chapters had been moved during the redrafting. Mr. Sussman had some concern, because of the exact wording of the first paragraph of § 29-23 of the Town Code, that the State Code as amended in 1998 might not be the applicable law, but he was fairly sure that it would be. The board accepted as a working assumption that the applicable law was Maryland State Code, ELECTION LAW (formerly Article 33), § 9, with some deletions, and § 11-302 and § 11-303. The Maryland State Code, ELECTION LAW, § 9, with strikeouts for sections not referenced from the Town Code through the redrafting map, can be found in Appendix D, along with § 11-302 and § 11-303 of the ELECTION LAW. This was determined to be the applicable law.

Requirement for Agent Affidavit

Another question of law requiring resolution by the board was whether it was necessary for an affidavit to be signed by a person other than the voter hand-delivering a marked absentee ballot. Maryland State Code, ELECTION LAW, § 9-307 makes it clear that a duly authorized agent who picks up **AND** delivers an absentee ballot is required to sign an affidavit, but does not speak specifically to an agent **ONLY** delivering a completed and sealed absentee ballot. At the 19 May 2003 Board meeting, the Board discussed this at length and provisionally determined that an affidavit was required even for **ONLY** delivery (this was based on the question not being specifically asked by Mr. Thompson in his discussion with the County Board of Election, advice from Town Attorney Sussman, and the reading of § 9-307 by Board members). For details, see the minutes for the 19 May 2003 meeting in Appendix C.

At the 21 May 2003 Board meeting, Chief Judge of Elections Marcos stated that the Board of Elections had not required affidavits from agents, and that she did not believe based on her years of experience working at the county level that these affidavits were required. There was intense discussion and the Board determined, at the end of the discussion, that affidavits were not required in this exact circumstance. For details, see the minutes for the 21 May 2003 meeting in Appendix C.

Requirement for Designation of Agent by Voter

The board determined that designation of an agent by a voter for pickup and delivery of an absentee ballot was required. This was not disputed by any Judges of Election with whom the members of the Board spoke.

Relevant Legal Opinions

Although the Board did not discuss these at any meeting, Town Attorney Sussman provided the Board with three legal cases which he thought had some relevance to the challenge. These three cases are *Lamb v. Hammond* (308 Md. 286, 518 A.2d 1057), *Pelagatti v. Board of Elections* (343 Md. 425, 682 A.2d 237), and *Seat Pleasant v. Jones*, (364 Md. 663, 774 A.2d 1167), and are included in Appendix E. Copies of these opinions were distributed at the 21 May 2003 meeting to all members of the board. A summary analysis of the cases by Board Chair Alan Thompson (and description of a telephone conversation between Town Attorney Sussman and Mr. Thompson) is included in Appendix F.

Chapter 4: Recommendations

Recommendation for Resolution of Challenge

We recommend to the Town Council of Riverdale Park that the election results as certified on 5 May 2003 be allowed to stand. This recommendation is made mainly on the basis of the Finding of Law that an affidavit of agent was not required under these circumstances (see See “Requirement for Agent Affidavit” on page 4 of Chapter 3).

Recommendations for Future Efforts

Resolution of this challenge required an immense effort from the members of the Board, the Town Attorney, and the Chief and Deputy Chief Judges of Election. This section will suggest changes to laws and practices governing the handling of absentee ballots such that future challenges will be less likely to occur, and easier to resolve if they do occur. We offer both a broad recommendation for review, and a list of specific changes that we have noted.

We recommend that the council review in detail discrepancies between state and town election law and practices, especially as it applies to absentee voting. A review of and changes to the Town Code, Town Charter, and Election Manual will be necessary. Whether this review is done by the Town Council as a body, the Legislative Committee of the Town Council, the Town Attorney, or a citizen committee is left to the discretion of the Town Council.

Specific Recommended Changes

This section will present issues in State and Town Code, and the realization of those laws in practice, that we believe warrant change. We will recommend specific changes, but these recommendations should be taken only as a starting point. Because of the limited time the Board had to review these laws, our list will be far from complete, and we would not consider a review and implementation of just these changes to satisfy our request to the Town Council.

Amend Election Manual to Specify Handling of Absentee Ballot

The only mention of absentee voting in the Elections Manual is a reference to the relevant chapter of the Town Code. The Town Council should consider inserting a detailed description of procedures to be used in the handling of absentee ballots into the Elections Manual. This might include copies of the forms used for designation of an agent to carry an absentee ballot, acceptance by the agent of the charge, and affidavit of having successfully completed the charge by the agent.

Clarify References to State Code

The Town Code, § 29-23, references State Code that has been significantly redrafted

and rearranged. These references should be updated to reflect the reorganization of the State Code. The Town Council should consult with the Town Attorney on the exact phrasing of these references to make clear the Council's will to incorporate or not incorporate future amendments to the State Code into the Town Code.

Clarify Instructions to Absentee Voters

Although this was far from our charge as a Board, several members noted that a large fraction of the spoiled absentee ballots from Ward 1 were spoiled because the Board of Elections could not identify the voter from the signature on the ballot envelope. The "Instructions to Voters" supplied to absentee voters by the Board of Election says simply that you must "sign (**Do Not Print**) your name" on the "Oath of Absentee Voter" envelope. It should state that if this signature is not legible, your vote is likely to be rejected. Another alternative that would reduce spoiled ballots even further would be to modify the "Oath of Absentee Voter" envelope to have the voter's name printed **AND** signed; this would allow easier identification by the Board of Election as well as being legally binding.

Specify Appeals Process More Clearly

This appears to be mainly a problem with consistency between the Town Code and referenced State Code. The Town Code § 29-21 strongly implies that the Board of Election Appeals should be the first avenue for challenging an election, with challenges in court to follow if there is not adequate resolution from the Board of Election Appeals and Town Council. However, the State Code, ELECTION LAW, § 11-304 (a) and (b), says that the appeal of a decision of a local Board of Election to reject, or not reject, an absentee ballot shall have five (5) days from the date from completion of the original canvass to appeal to the circuit court for the county. While the courts could clarify the ambiguity between § 29-21 and § 11-304(a)/(b), it would be better for the Town Council to do so with legislation. We recommend explicitly stating that all challenges to elections should be taken to the Board of Election Appeals, and giving the challenger the right to appeal the Board's and Council's decisions to circuit court within some reasonable time frame.

Implement a Special Process for Absentee Voting at Nursing Homes

Both the County and State Boards of election implement special procedures for the handling of absentee balloting at nursing homes, such as Crescent Cities Center. The Town Council should explore whether the Town would like to implement a similar procedure.

Encourage the Use of the Mail

Many of the perceived irregularities in this election would have never happened if the Board of Election and voters had used the mail for transport of absentee ballots. This should be encouraged, perhaps even by paying postage on return envelopes. While this will be an additional expense, in the case of this election the fees paid the town attorney could probably pay absentee ballot postage for several decades.

Create Special Procedures for Documenting Agents in Absentee Voting

As discussed on page 4 of Chapter 3, the requirements for documentation of agents for delivery of an absentee ballot in State Code are unclear. Especially given the language of Town Code, § 29-23 (d), which excludes large classes of people from “delivering absentee ballots to and from any absentee voters, *whether of emergency nature or not*” (emphasis added), it seems that a higher level of verification is required for absentee ballot control in Riverdale Park than is required at the county or state level. A possible procedure for implementing this verification, is suggested in the paragraphs to follow. This procedure has not been reviewed by any Judges of Election, and may require significant modification to be practical.

Possible Procedure for Verifying Requirements of Town Code § 29-23 (d)

When the Chief Judge of Elections receives a request for an absentee ballot, in addition to sending the usual package (ballot, ballot envelope, Oath of Absentee Voter envelope, Return Envelope, and Instructions), the Chief Judge should fill out multiple copies of an “Absentee Voter Authority Card”. One copy of this card should be distributed to each location where absentee ballots would be returned.

This card would contain four sections describing how the ballot was returned, and the name of the voter. Only one section would be completed upon the return of a given ballot. Each section would have a check box indicating that this was the method of return for the given ballot.

The first section would be titled “Returned by Voter in Person.” If the voter dropped off the ballot in person, they would sign and date this section.

The second section would be titled “Returned by Agent.” If an agent of the voter dropped off the ballot, the agent would print their name and sign and date an affidavit promising that the requirements of Town Code § 29-23 (d) had been satisfied. The requirements would be spelled out explicitly in this affidavit.

The third section would be titled “Returned by Mail.” Any absentee ballot returned by US Postal Mail or a commercial equivalent would trigger filling out this section of the form. The Judge of Election or Town Hall employee receiving the mailed absentee ballot would check this box, print their name, and sign and date the form.

The fourth section would handle all other cases. The unusual circumstances of the delivery of the ballot would be documented (*e.g.*, “Sealed Return Envelope found taped to front door of Town Hall at 6:00a.m. on day of election by arriving Judge of Election”), and whoever had been involved in the delivery would print their name, sign, and date this section.

This form would be firmly attached to the outer envelope of the returned absentee ballot, and could be reviewed by the Judges of Election at canvassing to aid them in deciding whether to accept or reject a given absentee ballot.

Appendix A: Challenge as Submitted

This appendix contains the documents submitted by Vernon Archer to the Board to create the challenge to the Ward 1 election.

Statement of Support for Contest of Election - Ward One Riverdale Park Town Council

I, Vernon Archer, a candidate for the council position in Ward One in the election of May 5, 2003, do hereby request that the Town of Riverdale Park Board of Election Appeals review the procedures followed in the issuing, receiving, recording, canvassing and storing of the absentee ballots in the Ward One election to determine whether there were violations of the laws of the Town of Riverdale Park and of the State of Maryland, Title 9-307, Annotated Code.

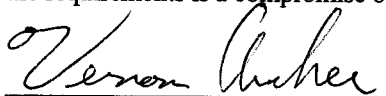
In support thereof, I do hereby depose and state:

Maryland law requires that all absentee ballots that are handled by persons other than the voter, or election officers, follow procedures designating an agent to handle such ballots. Maryland Code ELECTION LAW Title 9-307 states that "(b) an agent of the voter under this (1) must be at least 18 years old; (2) may not be a candidate on the ballot; (3) shall be designated in a writing signed by the voter under penalty of perjury; and (4) shall execute an affidavit under penalty of perjury that the ballot was: (i) delivered to the voter who submitted the application; (ii) marked and placed in an envelope by the voter, or with assistance as allowed by regulation, in the agent's presence; and (iii) returned to the local board by the agent." [Formerly in Article 33 Annotated Code of Maryland]

The Board is requested to:

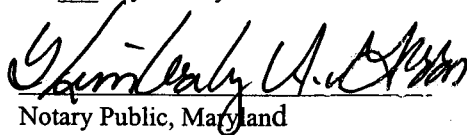
1. Determine whether a designation of agent was provided for each absentee ballot that was delivered by hand (note that all ballots that were hand delivered by an agent would be identified by being in an outer envelope without a postmark) and whether the signature of the voter was decipherable under the standard applied by the judges of election for counting a ballot.
2. Determine whether an affidavit signed by the agent so named was provided for each absentee ballot that was delivered by hand (note that all ballots that were hand delivered by an agent would be identified by being in an outer envelope without a postmark).
3. Declare such votes that utilized agents, but lack the voter designation of agent and/or the affidavit of agent as null and void as it violates the requirements of the laws of the Town of Riverdale Park (Town Code 29-23) and of the Code of Maryland (Title 9-307). If such votes are no longer distinguishable, and are sufficient in number to have decided the race (eight, 8) the entire absentee count must be ruled compromised and therefore invalid.
4. Determine if more than 10 ballots were given to a single agent, or sent to a single address, and rule whether due diligence was exercised in protecting the integrity of the election in such cases. Such a concentration of ballots in effect constitutes a polling place and demands supervision by duly sworn town officials.

Further, it is brought to the attention of the Board that the laws regarding absentee ballots are promulgated to avoid abuse of the absentee voting privilege and to prevent undue influence. Any waiver of a portion of the requirements is a compromise of the entire process and a violation of the laws that control the process.



Vernon Archer

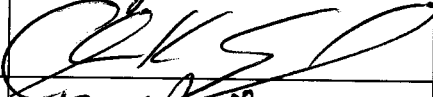
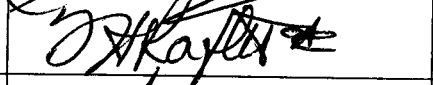
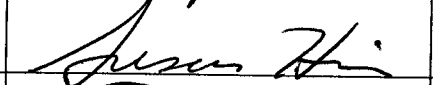
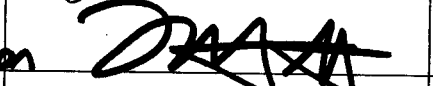
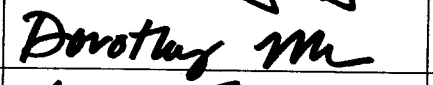

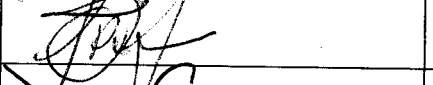
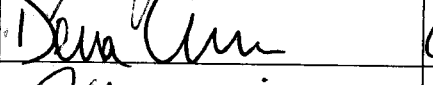
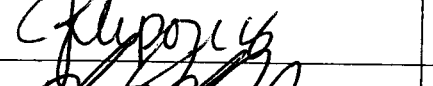

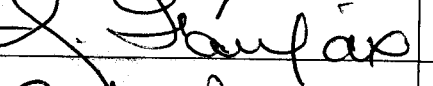
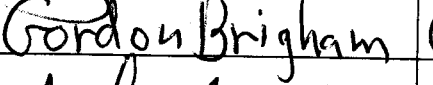
Subscribed and sworn to before me
this 12th day of May 2003.



Notary Public, Maryland

We, the undersigned, registered voters in the Town of Riverdale Park and residents of Ward One, do hereby support the request of Vernon Archer as submitted to the Board of Election Appeals, (see statement attached) for a review of the procedures in the processing of absentee ballots in the Ward One council election to determine if such procedures were in compliance with the laws of the Town of Riverdale Park and of the State of Maryland.

Confirmed by Louis Kay

	Name (Print)	Signature	Address	
1	Vernon Archer	Vernon Archer	4510 Oliver St.	✓ 1
2	THOMAS KOLOS	Thomas Kolos	4507 OLIVER ST	✓ 2
3	Scott Spearl	Scott Spearl	4508 Oliver St.	?
4	OLGA CABLE	Olga K Cable	4512 Oliver St	✓ 3
5	Chuck Spearl		4508 OLIVER ST	✓ 4
6	FRANK RAFTER		4511 OLIVER ST.	✓ 5
7	Susan Hines		4510 Oliver St.	✓ 6
8	Janice Byrum-Jackson		6206 44th Ave	✓ 7
9	Dorothy Murdoch		6209 44th ave.	✓ 8
10	Tracy Toscano		4609 Oliver St.	✓ 9
11	Joseph Toscano		4609 OLIVER ST.	✓ 10
12	Dena Coosson		6100 44th Place	✓ 11
13	JODY KLEPONIS		4509 Riverdale Rd.	*
14	Ken Kleponis		4509 Riverdale Rd	*
15	Jennifer Fairfax		4609 Riverdale Rd	✓ 12
16	Mozel Brigham		6004 Rhode Island Ave	✓ 13
17	JACK BOND	Jack Bond	4605 OLIVER ST.	✓ 14

	Print	Signature	Address	
18	Janet M. Bond	Janet M. Bond	4605 Oliver St	✓ 15
19	Joanne Hampton	Joanne Hampton	4505 Oliver St	✓ 16
20	Sheryl Cottrell	Sheryl Cottrell	4515 Oliver St	* ✓ 17
21	Lilian E Weinrich	Lilian E Weinrich	4601. Oliver St	✓ 18
22	MARTIN L. WEINRICH	Martin L. Weinrich	4601 Oliver St	✓ 19
23	ROY YOUNG	Roy Young	4606 OLIVER ST.	✓ 20
24	ROBYN C. BASSON	Robyn C Basson	4510 Oliver Street Riverdale, MD 20737	✓ 21
25	CHLH	CHARLES BASSON	Riverdale, MD 20737 4513 Oliver St	✓ 21 KJ


Additional Statement to Riverdale Park Board of Election Appeals

I, Vernon Archer, having set forth the points that require review by the Board do further wish to provide the Board with a list of witnesses and an outline of the positions they can attest to in order to facilitate a speedy conclusion to this matter. It is my assumption that the Board will call on witnesses as it sees fit, and is not my responsibility to provide affidavits in advance. The following list does not preclude the addition of other witnesses, nor are the summaries intended as complete statements.

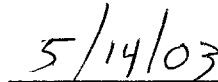
1. Mary Donaldson, 4906 Sheridan, will attest that while acting as agent for a resident of Ward Two, she was neither required to provide a signed statement of agency from the absentee voter, nor was she asked to provide an affidavit upon depositing the ballot at Town Hall. This suggests that the failure to follow Maryland Code ELECTION LAW Title 9-307 did in fact occur.
2. Mary Paridiso, contact through Town Office, can attest that one "Jim" Eugene Reed, did hand carry—thereby act as agent—a large enough bundle of absentee ballots to require enclosure in a large brown envelope. These ballots were presumably from the Crescent Cities Center nursing home in WARD ONE.
3. Frank Randall, 6313 46th Street, and numerous others, can attest that Mr. Reed has openly and unabashedly stated that he actively worked to deliver "support" from the Crescent Cities nursing home to Candidate Christine Davis.

Again, this list is provided as a courtesy to assist the Board to speedily conclude its review.

Sincerely



Vernon Archer



Date

Appendix B: Meeting Agendas

This Appendix includes agendas for the 19 May 2003 and 21 May 2003 meetings, as amended. There was no agenda for the 16 May 2003 meeting, and the 27 May 2003 agenda will not be prepared before completion of this report.

Agenda
Riverdale Park Board of Elections Appeals
19 May 2003 Meeting

1. Approval of Agenda
2. Adoption of Rules of Order
3. Distribution of Minutes for 16 May 2003 meeting
4. Questions for Deputy Chief Judge of Elections
5. Report on discussion with County Board
6. Legal issues with Petition
7. Unfinished Business
8. New Business
9. Schedule next meeting
10. Adjourn

Agenda
Riverdale Park Board of Elections Appeals
21 May 2003 Meeting

1. Approval of Agenda
- 1a. Explanation of Authority of Board
2. Approval of 16 May 2003 Minutes
3. Distribution of 19 May 2003 Minutes - Review/Approve?
4. Distribution of "Instructions for Absentee Ballots"
5. Questions for Kay Marcos, Chief Judge of Elections
6. Report - Chair's Discussion with Town Attorney Sussman on 20 May 2003
(Case law, State Code additions)
7. Further Discussion of Findings of Fact
8. Further Discussion of Findings of Law
9. Pellagatti Analysis?
11. Create roadmap
12. Schedule next meeting
13. Adjourn

Appendix C: Minutes of Board Meetings

This section includes minutes prepared for the three meetings of the Board before the meeting where this report was approved.

***Board of Elections Appeals
Minutes of May 19 Meeting***

In Attendance: Robert Fuerst, Doris Pullman,
 Alan Thompson, Susan Sheehan,
 Simon Plog, Simon McNabb

The meeting was not officially called to order.

Mr. Fuerst suggested that we should choose a chair for the board, and nominated Ms. Sheehan based on her experience as an elections judge and long involvement with the elections process in the town.

Ms. Sheehan politely declined the nomination, citing personal issues that would not allow her to devote the time she thought necessary to doing a good job as the chair, although she thought she did have the time to do a good job as a member of the board.

Mr. Thompson pointed out that he had been a judge of elections for the prior (2001) election and had been a watcher for two other elections. Mr. McNabb nominated Mr. Thompson to chair the board, with unanimous consent from the other members.

He pointed out that the timetable for coming to a decision was very tight, and that a ruling would be required by the Wednesday after Memorial Day weekend. There was discussion of various member's schedules; all members thought they would be able to meet in the evenings as much as necessary during this time frame.

Mr. Fuerst then delivered the sealed envelopes he had received from the Town Administrator to Mr. Thompson, who passed them to the other members of the board for inspection. The members of the board agreed that there was no apparent tampering with the envelopes. Mr. Fuerst noted that he had signed and dated the envelopes upon receipt, and that the date on the main petition was the 15th of May 2003, although he had erroneously initially dated the envelope the 14th, but then corrected and initialed his correction. Mr. Fuerst also distributed copies of chapter 29 of the Town Code, governing elections, to all members of the board.

Mr. Thompson then opened the envelopes and allowed all members of the board to inspect the materials. He offered to read the material out loud, or to make copies and allow all members of the board to read it separately. The board requested that copies be made, so Mr. Thompson left to do this.

Upon returning, Mr. Thompson distributed copies of the one page main petition, two pages of signatures of voters supposedly qualified to vote in the contested election, and a one page supplement to the main petition, to all members of the board.

The members of the board quietly read the material. After reading it, most members agreed that they would require some time to digest it fully, but that there were apparent questions of fact as well as law in the petition.

The question of verifying the signed voters as valid came up; it was agreed that this duty should be performed by the Chief Judge of Elections.

Various other questions that the board had for the Chief Judge of Elections came up, including the total number of absentee ballots in Ward 1 (Mr. Thompson thought that there had been a total of 22, but was not sure), how many were mailed, and how many were hand-delivered. Mr. Plog wanted to know whether state/county certification was required for hand-carrying an absentee ballot. Mr. Fuerst stated that he did not believe so; the members of the board agreed that it was a question worthy of asking the Chief Judge and/or the County Board of Elections.

Mr. Thompson requested contact information from the other members of the board, and promised to distribute said information as soon as practical.

It was generally agreed that a meeting should be scheduled for Monday the 19th, and that the chief judge of elections should be requested to be in attendance. Mr. McNabb stated that he would be more comfortable if a legal advisor was present. After some discussion of whether an attorney was absolutely necessary at the first meeting, it was generally agreed that it would be a good idea. All members of the board thought that working with the Town Attorney would be acceptable.

Mr. McNabb stated that he hoped that the motivating factor in the board's investigation and decision was that the will of the voters should be expressed. There was unanimous agreement.

Mr. Thompson stated that he would arrange for the Town Attorney and the Chief Judge of Elections to be present at the next meeting, and would discuss absentee procedures with the County Board of Elections during the day on Monday.

The meeting ended without a formal adjournment.

Prepared from notes and memory by Alan Thompson

***Board of Elections Appeals
Minutes of May 19 Meeting***

Board Members: Robert Fuerst, Doris Pullman,
 Alan Thompson, Susan Sheehan,
 Simon Plog, Simon McNabb

Honored guests: Louis King (*Deputy Chief Judge of Elections*)
 Fred Sussman (*Town Attorney*)

Before the meeting was called to order, Mr. Sussman noted that the meetings of the board were subject to the open meetings act. Mr. Thompson and Mr. Sussman discussed the requirements of the open meetings act. After the discussion, Mr. Thompson accepted Mr. Sussman's opinion and promised to contact the press and the Town Office about publicizing future meetings.

Mr. Thompson called the meeting to order at approximately 8:05 p.m.

Mr. Thompson passed out a draft agenda and asked if there were any changes. None were offered.

Mr. Thompson asked that the board formally adopt Robert's Rules of Order. He went on to say that he hoped that the easy conversational style of the first meeting could be preserved (and the difficulties of careful attention to Robert's Rules avoided), but he would like to have the formal structure of Robert's to fall back upon if necessary. Robert's Rules were adopted by unanimous consent.

Mr. Thompson passed out copies of draft minutes of the 16 May 2003 meeting. He said that people could review it at their leisure and give him comments at the next meeting.

Mr. Thompson introduced Louis King, Deputy Chief Judge of Elections, and explained that Mr. King had come because the Chief Judge, Kay Marcos, had a conflict and could not attend. Mr. Fuerst stated that he would prefer to have the Chief Judge. Mr. Thompson agreed that this would be ideal, but that he had felt it was necessary to move quickly and had invited Mr. King in order to do so.

Mr. King had with him a large stack of materials from the election, and was available to answer any and all questions. Mr. Thompson requested that Mr. King validate the list of voters attached to the petition from Mr. Archer. Mr. King explained that the registered voter list (which was all that he had since the voter authority cards were at the county) was arranged by street address, so this would take a little time. He proceeded to start verifying names.

Mr. McNabb asked if we could move on to the next agenda item, *Report on Discussion with County Board*, while waiting for Mr. King to complete the verification.

Mr. Thompson proceeded to present his report on discussing absentee procedures with Mr. Harold Ruston.

Mr. Thompson's Report of Discussion with County Board of Elections

He reported that while he had gotten answers to most of the questions previously

circulated to board members, it had been a discussion and not all questions had been answered in the exact order they were written.

He reported that Mr. Ruston had told him quickly that the County Board would be happy to discuss what they did for absentee voting, but that Municipal Law (i.e. the Code of Riverdale Park) was what was applicable, and did not have to follow the state or county regulations, although many did. Mr. Thompson said "If a municipality wanted to require voters to wear a red bandana and sing 'Mary Had a Little Lamb' in order to get an absentee ballot, they could do so." Mr. Thompson said he would come back to the point of municipal law trumping state and county law after the remainder of his report.

Mr. Thompson said that Mr. Ruston went on to say that there were two types of absentee ballot requests for the county, and that they were the same as those available from the State Board of Elections. The "Regular" request had to be received at least seven days before the election, and would generally result in a ballot being mailed out to the voter, although it was also possible for a voter to come to the Board of Elections, fill out a form in the office, receive their ballot, vote at the counter, and turn it in. The "Late" request could be delivered through election day, and generally covered unexpected reasons for not being able to vote.

Mr. Thompson reported asking Mr. Ruston about agents of the voter picking up or dropping off ballots. Mr. Ruston said that this was unusual, but that the affidavits for an agent picking up and dropping off a ballot were on the "Late" request form. (Mr. Thompson confessed that he had not gotten a clear answer about agents for the "Regular" absentee request; Mr. Sussman stated that it was possible for an agent to return the "Regular" absentee request, and affidavit forms needed to be filled out for this to happen). The agent who picked up the absentee ballot had to be the same person who dropped it off, must be 18, and could not be a candidate for election.

Mr. Thompson stated that he had asked Mr. Ruston about voter assistance (for people who needed help by reason of disability or inability to read or write), and Mr. Ruston replied that there was a form for that purpose, and that the assistant had to be of a reasonable age (he was not sure if it was 10 or 12), could not be a candidate on the ballot, could not be the voter's employer or an agent of the employer, or an officer or agent of the voter's union. He said that the agent picking up and delivering the ballot and the assistant could be the same person.

Mr. Thompson asked if the County Board would have any issues with someone bringing in a large number ("100") of designation of agent/agent affidavits with ballots. Mr. Ruston replied that while this would worry them, and they would be extremely careful to look over the forms, he thought that the law was silent on this, and that it was allowed.

Mr. Thompson reported that he had asked Mr. Ruston what materials the county had from the election, and Mr. Ruston stated that the county was only involved in tracking voter registration, which meant they would receive the voter authority cards for voters who had voted, and the ledger, and would enter this information into their records before returning it to the municipality. Mr. Ruston did not know what the status of Riverdale Park's materials were, but gave Mr. Thompson the name of the

person who could tell him.

Mr. Thompson made a clarifying remark at this point, saying that Mr. Plog had specifically asked in the previous meeting whether agents handling absentee ballots required training, and that the answer to this was definitely “no”.

Return to Main Meeting

Mr. Thompson reminded the board that he had promised to get back to the Town's Code being the applicable election law. He said that Chapter 29-23 of the Town Code referenced several chapters of the Maryland State Code, Article 33, which no longer existed (at least with the same numbers) since the State Code had been re-drafted in 1998. Mr. Sussman stated that he had the correspondence between the old state code and new state code, and that a court would probably assume that references to the old state code in the Town's Code would follow the correspondence. Mr. Sussman proceeded to carefully tell the board how the renumbering had proceeded. Mr. Thompson, who had a copy of Chapters 9-301 through 9-312, checked off which parts of the old Maryland Code as adopted by the Town's Code still existed in the new code. The only sections that did not apply, assuming as Mr. Sussman suggested that the references would follow the redrafting of the Md. State Code in 1998, were 9-301(a), 9-311, and 9-312. Mr. Sussman apologized for not having copies of two sections that had jumped chapter numbers to 11-302 and 11-303; he promised to get copies of those to Mr. Thompson the next day.

Questions for Deputy Chief Judge King

(I did not record who asked most of these questions; here are the questions and responses as best I can remember -- AKT)

During this report and discussion, Mr. King completed the check of the petition, and had found that at least 21 signatures were valid. He did not say whether he had carefully checked all signatures on the petition or not. (The Town Code requires 20).

The Board proceeded to ask Mr. King a large number of questions about absentee ballot procedures, and results of looking at the various documents the Judges of Election had from the Ward 1 election.

Mr. King pointed out that Mr. Thompson had been a poll watcher and had observed much of the handling of the absentee ballots himself, which Mr. Thompson acknowledged.

Mr. King said that 32 absentee ballots had been requested. He later amended this to say that 36 had been requested, but 32 sent out. He was able to determine that at least one had not been sent out because the name on the request did not match the name of a registered voter at that address, but did not have time to track down the others.

When asked how many had been mailed in or mailed out, he said that this was apparently not documented. He stated at this point that Chief Judge Marcos had handled most of the absentee ballots, and he could not give firm answers on many questions, but would answer as best he could. Looking at the outer envelopes later,

he determined that seven (7) had been returned by mail, and twenty-three (23) had no postmark.

Looking at the dates on the forms requesting absentee ballots (which were the same regardless of whether it was a “Regular” or “Late” request), he said that thirty (30) requests were dated on or before April 25, and six (6) requests were dated April 26 or later.

Of the thirty forms dated April 25 or earlier, Twenty-one requests were from Crescent Cities Center, all of which were marked sent on April 22. Twenty-five were marked “sent” with date, all thirty were marked “AB”.

Of the six forms dated April 26 or later, four were marked “sent”, and two were not marked as sent.

There were a total of eleven (11) spoiled ballots, either because the name was impossible to identify or the name was not that of a registered voter who had requested an absentee ballot. Ten (10) of these spoiled ballots were from the Ward 1 race.

He could not find any forms designating agents by voters, or certifying the ballot by an agent. He did not know if these forms existed, and said that Chief Judge Marcos should be asked. He did find six forms requesting assistance with completion of the ballot. Mr. Fuerst and Ms. Sheehan both stated that though they had carried many absentee ballots over the years for family members and friends, they could not recall ever having filled out a designation of agent form or affidavit. There was a good bit of discussion of this point, with Mr. Plog and Mr. Sussman pointing out that this would indicate a violation of Town Code, by reference to the State Code. Discussion of this point ended when it was pointed out that the board needed to speak with Chief Judge Marcos before knowing whether this was an issue or not.

Mr. Sussman pointed out that neither the State Code nor State Elections Board regulations *required*, specifically, that ballots delivered by an agent without an agent affidavit be rejected. The State Election Board regulations are important because they are authorized in the Code.

He did not have a copy of the instructions given to absentee voters, but would provide one to Mr. Thompson the next day.

Mr. McNabb attempted to match the signatures on the requests for absentee ballots with spoiled ballots. (Mr. Thompson noted that while this might be interesting, it was not something that the Judges of Election would have been able to do by law.) Mr. McNabb thought that he could readily match four, reasonably match two more, and noted that there were four requests marked with an “X”, and three spoiled ballots also marked with an “X”. All of the ballot request forms he identified came from Crescent Cities Center, suggesting, if Mr. McNabb's matching is correct, that nine of the twenty-one requests from Crescent Cities Center ended up as spoiled ballots.

Mr. Sussman asked Mr. King to describe the process that probably occurred with the Crescent Cities ballots. Mr. King *speculated* that someone had picked up a stack of applications for absentee ballots, taken them to Crescent Cities, asked voters if they would like to vote absentee in the election and, if yes, helped them fill out and sign

the applications, and then turned in the applications. The dates on the application forms would support this having happened on two separate days – April 3 and April 11. Mr. King noted that there was nothing illegal about this, and that similar events probably occurred on blocks of homes in the town, not just at Crescent Cities.

Ms. Sheehan asked Mr. King if absentee ballots mailed to Crescent Cities would have been sent without affidavits. Mr. King strongly believed that no designation of agent or agent affidavit forms would have been sent with the absentee ballots.

Mr. King read the official tally of votes for the Ward 1 race:

Archer:	126 “machine” votes,	4 absentee votes
Davis:	120 “machine” votes,	18 absentee votes

Mr. Sussman at this point asked what outstanding questions the board had. The board responded that the questions remaining were:

What instructions were provided with the absentee ballots?

- Were any designation of agent or agent affidavit forms filled out?
- What should the Chief Judge have done if someone turned in several absentee ballots without agent affidavit forms?
- How many people personally turned in their absentee ballots?
- What do completed court cases say about remedies for a lack of affidavit with a ballot?

Prepared from notes and memory by Alan Thompson

(CCC), where Ms. Christy Johnson, the activities director at CCC, had help coordinate the absentee process. She mentioned that Mr. Reed, whom she had never met and wouldn't know if she saw him on the street, had helped to register CCC residents and that he had also asked for a large number of absentee ballot request forms. Ms. Marcos had delivered a large envelope containing the request forms to Mr. Reed's wife, because when she got to his house he was cutting the grass in the back. She had received the completed forms from CCC in a large sealed envelope and most of the names were in order, although there were three requests that were for voters registered after her list had been printed so she had to call the County Board to verify registration before sending them out. She also stated that a few CCC residents, while listing their permanent address as being at CCC, wanted the forms mailed to another address, perhaps to their home address, so they could get their families to help them complete them. She said that most of the CCC ballots came back in one group, which was delivered by a CCC staff member; the envelopes were delivered in a bundle bound with a rubber band. In response to a question about the bundle, she said that there was obviously a lot of confusion about envelopes, and she wanted to clear it up. The standard which all boards of election she had ever worked with, and that included town and state boards, applied was that there was the ballot envelope, on which the voter signed their name, and that as long as that was contained in an outer envelope anyone could deliver it without fear of the contents being tampered with.

At this point Ms. Marcos said that she worked with the county nursing home absentee ballot program, and that she would carry raw unenclosed ballots to the nursing home, and she did not have to fill out any forms to do this, so she did not see why there should be any excitement about anyone carrying a ballot sealed inside three separate envelopes.

Mr. Thompson asked, as long as we were discussing outer envelopes, that the numbers from Mr. King for the Ward 1 election for outer envelopes were a little off, and could we try to clear that up. Mr. King and Ms. Marcos were both a little confused about the question, so Mr. Thompson explained that Mr. King had said last time that there were 7 envelopes that were mailed (had a postmark) and 23 that did not, and that this added up to 30 total, while all of the other numbers added up to 32 (e.g. 22 valid votes, 10 spoiled ballots). Ms. Marcos responded that there had been at least two or three envelopes that had nothing on the outside, and perhaps Mr. King had not counted those as Ward 1 envelopes. Mr. King agreed that this was probably the case, and proceeded to find three entirely blank envelopes in the outer envelope stack (he did not continue looking after finding three). Ms. Marcos noted that the blank envelopes, of course, were hand returned.

In response to a question, Ms. Marcos stated that many other absentee ballots besides those from CCC had been returned by hand, and that this practice was not unusual.

The discussion at this point came back to the issue of a *sealed outer envelope* vs. the *ballot envelope*. Ms. Marcos was adamant that there was no way that the board of election could have handled that high of a level of documentation, and described the scenes of insanity at the County Elections office during the general election, and that there was no way that they could handle the level of documentation that we seemed

to be thinking was appropriate. Mr. Fuerst and Ms. Sheehan were saying that this fit in with their previous experience with carrying absentee ballots for family members.

Mr. Sussman was looking a bit concerned at this point, and Mr. Thompson asked if he would weigh in. Mr. Sussman said that he found it hard to believe that this was the intent of the law, but if the law had never been tested then it might well be the way things were done. Mr. Thompson, looking at the text of the law, said that he could see enough wiggle room in the wording of the law that he could understand why this practice might happen, especially given what he had been reading in court decisions recently.

Pressing on with the questioning, Mr. Thompson asked Ms. Marcos if she could explain the wording on the County/State Late Absentee Application, which required (1) Designation of Agent by the Voter, (2) affidavit from the agent that they are serving as the agent of the voter and will deliver the ballot application (*I think this is another error on the form -- AKT*) to the voter and (3), upon returning the marked ballot, a signed affidavit that the voter had marked the ballot and sealed it while in the agents presence, and the agent had returned it to the Board of Elections. Ms. Marcos said that she was not familiar with the Late Application form, and was surprised to see all of this since she had never seen these affidavits used. She pointed out multiple times that the forms required affidavits for persons *assisting* the voter in completing the ballot, but she did not know of any requirement for people other than the voter returning a ballot already marked, and had never seen this happen in her many years of experience.

There was a little more discussion of the exact meaning of the notation on the applications for absentee ballots and the ledger; Ms. Marcos said that both “sent” and a check mark meant that the absentee process was complete, but that “AB” meant an absentee ballot had been sent out.

Mr. Thompson and Ms. Marcos had a discussion of Ms. Marcos’ work as an absentee judge at county nursing homes. Ms. Marcos stated that she and a judge from the other party would sit within earshot of each other and provide assistance to the residents. Because they could hear each other they made sure that the residents were not influenced in one direction or another, and that the voting went fairly. Ms. Marcos said she had done this at many area nursing homes, including CCC.

The board thanked Ms. Marcos for her testimony and told her she could leave if she wished.

After Ms. Marcos and Mr. King departed, there was some more discussion of the exact meaning of the law, and how the lack of clarity in the law meant that we as a board would have to decide on it ourselves. Mr. Thompson stated that he thought that this was an open question and we would have to do more research. After a bit more discussion, Mr. Thompson asked Mr. Sussman if there was any case law on this topic. Mr. Sussman said that he had already delivered all of the case law he knew of for absentee balloting in Maryland, so no more guidance would be coming from the courts.

There was a small amount of discussion of whether or not Mr. Reed had carried absentee ballots (as stated in the “Additional Statement” submitted with the chal-

lenge) or just absentee applications, Mr. Thompson had been confused by it, and thanked Ms. Sheehan for correcting his misunderstanding. Mr. McNabb said that he had initially been confused as well, but later recognized his confusion.

Mr. Thompson said that this really meant the board would have to decide, and began to move on to the next agenda item.

At this point Mr. Plog interrupted and said that he didn't think we should move on to the next item, and that we should decide whether the procedures described by Ms. Marcos were consistent with the law. If we agreed to that, everything else was moot because that was the basis of the appeal. Mr. Thompson agreed that this was true, and asked the board what they wished to do.

Mr. McNabb said he would like to make a motion. He said that given the vagueness in the law and in the practice, that he thought it was not appropriate for this board to overturn the election. Thus, he moved to recommend to the council that they let the results of the election stand as they were.

The motion was seconded by Mr. Fuerst.

Mr. Thompson asked if there was discussion of the motion. Mr. Plog said that he would like to move that substantial changes be made in the town code and election manual to prevent events such as this from happening in the future. Mr. Thompson asked if Mr. Plog was making a motion to amend the main motion. Mr. Plog said that he would like to do so, and his motion was seconded by Mr. McNabb. Before Mr. Thompson could re-state the motion, Mr. Fuerst stated that he thought that Mr. Plog's motion should be made, but as a separate motion. Mr. Plog said he didn't agree. Mr. Fuerst said he would support it as a separate motion, but not as an amendment to the main motion. Mr. Plog said that if Mr. Fuerst felt that strongly about it, he would withdraw the amendment. Mr. McNabb agreed that this was acceptable. The amendment having been withdrawn, Mr. Thompson asked if there was discussion of the main motion to recommend to the council to let the results of the election stand.

There were no comments from the board. Mr. Thompson noted that the rules of order did not allow him to comment on the question, which he would like to do, but if the board would agree to suspend the rules of order he could make his comment. The board unanimously agreed that this was acceptable.

Mr. Thompson said that he was disappointed in the law, and in the way the law was practiced. He thought that this was an important practice, and the vagueness of the law as written allowed the spirit of the law to be ignored in practice. However, he did not think that this board should wade into the legal difficulties of challenging such widespread practice, and would probably support the motion.

After calling for any more discussion and finding none, Mr. Thompson called for the vote. The motion passed unanimously on voice vote.

Mr. Thompson asked Mr. Plog if he had a motion. Mr. Sussman asked if he could comment before any more motions were made. The board seemed amenable, so Mr. Sussman spoke. He said that there were substantial inconsistencies between the state

and municipal treatment of absentee voting, and that the board probably did not have enough time to make detailed suggestions to the council on how to resolve those inconsistencies.

Mr. Thompson again asked if Mr. Plog had a motion. Mr. Plog said he did. He moved that the Board include in its report to the council a recommendation to review in detail discrepancies between state and town election law, especially as it applies to absentee voting.

The motion was seconded by Ms. Pullman.

Mr. McNabb said that he thought that it was not just the law that was discrepant, but also the practice of the law. Mr. Thompson asked if Mr. McNabb was proposing an amendment. Mr. McNabb said he was, and it was to add “and practice” after “town election law”. The amendment was accepted as a friendly amendment by both Mr. Plog and Ms. Pullman.

There was little or no discussion. Motion passed unanimously on voice vote. Mr. Thompson apologized for voting, saying that he was not allowed to do so by the rules of order.

Mr. Fuerst asked what exactly was going to be in the report, and Mr. Thompson replied that he was planning to take the motions made by the board and draft a report to be delivered to the council. He said that after passing the motions, the board had effectively jumped to item 11 of the agenda, *Create roadmap*.

Mr. Thompson went on to say that his plan was to take the motions passed by the board and expand it into a full report by describing the reasoning the board had used, how they had met, who they had questioned, etc. He said that he personally wanted to include a laundry list of aspects of the code which he thought required attention (and which he thought the board had expressed as concerns), but would make sure that it was clear that the list was not exhaustive and the council should look at other aspects of the state and town codes as well. Mr. Thompson went on to say that he would work on the report and try to distribute it to the board over the weekend, accept comments from individual board members, and then we could meet to approve the final report.

After some confusion about the date for the meeting, it was set to be Tuesday, 27 May 2003, at 8 p.m., to be held concurrently with the Council Work session. Mr. Thompson said that if the report or corrections took too long, we might have to delay until Wednesday but he hoped not. If the report was completed Tuesday, the Council could accept it in a special legislative meeting after the work session.

The meeting was adjourned at 10:03 p.m.

Prepared from notes and memory by Alan Thompson

Appendix D: Applicable Laws

This Appendix includes § 29 of the Riverdale Park Code, and sections of State Code to which § 29 refers, including ELECTION LAW (formerly Article 33), § 9 and § 11-302 and § 11-303.

Chapter 29

ELECTIONS

- 29-1. Qualifications to vote.
- 29-2. [Repealed 11-7-94.]
- 29-3. Election officials.
- 29-4. Removal of election officials.
- 29-5. Officeholders or candidates not to be election officials.
- 29-6. Compensation of election officials.
- 29-7. [Repealed 11-7-94.]
- 29-8. [Repealed 11-7-94.]
- 29-9. [Repealed 11-7-94.]
- 29-10. [Repealed 11-7-94.]
- 29-11. Candidates to file petition; fee.
- 29-12. Verification of candidate's qualifications.
- 29-13. Placing names on the ballots; removal; when.
- 29-14. Judges to prepare ballots; sample ballots to be posted.
- 29-15. Use of paper ballots or voting machines.
- 29-16. Limitations on presence in area of ballot box or voting machines.
- 29-17. Who admitted to polling place; watchers.
- 29-18. Judges of election to have police aid.
- 29-19. Election offenses.

29-20. Request for recount.

29-21. Contested election.

29-22. Board of Election Appeals.

29-23. Absentee voting.

29-24. Riverdale Park Election Manual.

[HISTORY: Adopted 3-9-64. Revised and amended 2-10-71. Amended in its entirety 3-15-93. Amended 11-7-94, effective 1-1-95. Amendment history noted where applicable.]

REFERENCES

Elections generally -- See Article V of the Charter.

29-1. Qualifications to vote.

Qualifications to vote in town elections are stated in 501 of the town Charter.

29-2. [Repealed 11-7-94.]

29-3. Election officials. [Revised 3-6-95.]

(a) There shall be eight judges of election: a chief judge, a deputy chief judge, and six (6) other judges.

(b) The chief judge and the deputy chief judge shall be appointed from the town at large by the Mayor, and the other judges shall be appointed by the Council members from their respective wards. Four (4) alternates for the judges other than the chief judge and the deputy chief judge, or as many as is deemed necessary, shall also be appointed by the Council members.

Appointments shall be confirmed by the Council at a February legislative meeting next preceding the town election in May. In the event no judge or alternate is available from a ward, a judge or alternate may be appointed from the town at large. A judge or alternate must be a qualified voter and be able to read and write the English language.

(c) A judge shall serve for a term of two (2) years unless sooner removed by reason of resignation, absence, or incompetence or until a successor is appointed by the Mayor and Council and duly qualified.

(d) The chief judge shall be responsible for the conduct of the registration and the election and all preparatory work that is required. He shall assign to the other judges the duties that shall be required of them. In the event that an appointed judge does not report for duty on the day of election, the chief judge shall immediately contact the alternate. If no alternate is available, the chief judge shall recruit such alternate or alternates who are qualified from whatever recourse is available.

(e) If the chief judge is absent or prevented from discharging his duties, the deputy chief judge shall serve as chief judge. If the absence occurs on election day, the deputy chief judge serving as the chief judge shall immediately appoint a judge to act as deputy chief judge and shall recruit an alternate to replace such judge.

(f) Following his appointment and before assuming the duties of the office, each judge shall appear before the Mayor and take and subscribe to the oath as described in Article I, 9, of the Maryland Constitution.

(g) All rulings shall be by the chief judge, with the concurrence of the majority of the other judges.

(h) The chief judge or acting chief judge shall have the authority to administer oaths and to do all lawful acts required for the conduct of the election.

29-4. Removal of election officials.

In the event that any judge of election fails to comply with this chapter or any of its provisions, or to properly perform the duties of the office, such official may be removed from the office by the Mayor with the consent of the majority of the Council, and a new judge shall be appointed by the Mayor and Council to fill such vacancy as provided in this chapter.

29-5. Officeholders or candidates not to be election officials.

No officeholder, candidate for any town public office, or town employee may serve as a judge of election.

29-6. Compensation of election officials.

The compensation of judges of election shall be established by the Mayor and Council at the February meeting at which the judges are appointed.

29-7. [Repealed 11-7-94.]

29-8. [Repealed 11-7-94.]

29-9. [Repealed 11-7-94.]

29-10. [Repealed 11-7-94.]

29-11. Candidates to file petition; fee.

Any qualified person seeking to be a candidate for any town elective office shall, on or before the 25th day preceding the election, file with the chief judge of election a petition in accordance with 506 of the town Charter. Any candidate filing a petition for any town elective office shall pay to the town a fee of ten dollars (\$10). Any qualified person elected to a town office by write-in vote shall pay the same fee as if he had filed a petition.

29-12. Verification of candidate's qualifications.

Before placing the name of any candidate on the ballot, the judges of election shall verify the qualifications of the petitioners signing the petition and the qualifications of the candidate for whom the petition was filed to hold office if elected.

**29-13. Placing names on the ballots; removal; when.
[Revised 3-6-95.]**

(a) No candidate's name shall be placed on the ballot except by petition, as heretofore prescribed, nor shall any change be made to the ballots after they have been made public unless rendered necessary by the disqualification or death of a candidate named thereon.

(b) In the event of the disqualification or death of an only candidate on the ballot, or in the event no candidate files for an office, such office may be filled by a write-in vote for a person qualified to hold the office if elected, provided that there are at least as many valid votes for such write-in candidate as the number of qualified petition signatures necessary if the candidate had filed a petition for that office. If no such number of votes are cast, the office is declared vacant and the vacancy shall be filled in the manner prescribed for that office by the town Charter.

29-14. Judges to prepare ballots; sample ballots to be posted.

The judges of election shall prepare and have printed distinctive, official ballots for each ward, as may apply, to be used in the town election, and the ballots for any question authorized to be submitted to the voters. The judges shall also cause sample ballots for any election of town officers or questions submitted for referendum to be made public by posting copies of the appropriate ballot in conspicuous places in each ward, as may apply, at least ten (10) days prior to holding of the election. The judges shall within such time give advertised notice of the election, showing the date; the location of the polling place and the hours of operation; the offices to be filled and the names of the candidates appearing on the ballot; and a summary of any question submitted for referendum, as may apply.

29-15. Use of paper ballots or voting machines.

The Mayor and Council shall establish at a February meeting preceding the town election in May whether paper ballots or voting machines shall be used. The procedures for conducting the voting and handling of ballots shall be as set forth in the town election manual.

29-16. Limitations on presence in area of ballot box or voting machines.

No persons other than voters engaged in preparing or depositing their ballots shall be permitted within the immediate area of a ballot box or voting machine, unless by authority of the judges of election for the purpose of keeping order and enforcing the law.

**29-17. Who admitted to polling place; watchers.
[Revised 3-6-95.]**

(a) The judges of election, in order to preserve order, avoid congestion, and facilitate the balloting, shall have authority to limit the number of persons seeking to vote who shall be admitted to the polling place at any one time. No persons other than the election officials, police, and watchers designated

as herein provided shall remain in the polling place longer than is necessary to vote.

(b) Any candidate or the proponents or opponents of any measure submitted to vote may designate in writing to the judges of election a watcher who may sit at the election to observe the proceedings and to challenge the right of any person to vote who is deemed by the watcher to be ineligible for a ballot and/or authority to vote. The judges of election shall arrange for the seating of authorized watchers at such points that they may hear and observe the proceedings in connection with the issuance and counting of the ballots or the issuance of voting authority cards and the tabulation of machine votes at any election.

(c) No watcher shall handle any ballots or registration books or in any manner interfere with the election officials in the discharge of their duties and every watcher shall observe the rulings of the judges of election. No watcher shall electioneer in the polling place or question any citizen as to how he would vote if declared eligible. The judges of election shall exclude any watcher violating the election provisions, as well as all other persons not entitled to be present during the balloting or the counting and tabulation of the votes.

(d) Any candidate or the proponents or opponents of any measure being voted upon at any town election may revoke in writing to the judges of election the designation of their watcher, who shall thereupon retire, and another individual designated in writing in his place shall be admitted as his substitute.

29-18. Judges of election to have police aid.

The judges of election may call to their aid any town police officer to enforce any ruling made by them in connection with the holding of any town election. The Mayor and Council shall assign police personnel to the polling place to serve from the opening of the polls until the counting of the ballots is completed. Police on duty at the polling place shall take their directives from the judges of election during the period of this service.

29-19. Election offenses. [Revised 3-6-95.]

(a) It shall be unlawful for any person at or in connection with any town election to engage in any of the following conduct:

(1) To stand, loiter, electioneer, solicit any vote or pass out sample ballots or literature within any polling place or while within a radius of fifty (50) feet of any entrance to a polling place.

(2) To hinder or obstruct any voter seeking to enter any polling place.

(3) To curse, abuse, threaten, assault, or seek to intimidate any voter or election official.

(4) To bribe, promise, or give any consideration or offer thereof to influence the casting or counting of any ballot.

(5) To stage any demonstration for or against any candidate or measure within a radius of fifty (50) feet of any entrance to a polling place.

(6) To have in his possession without authorization any official ballot.

(7) To use any town property or facility in connection with any election except as authorized by the Mayor and Council.

(b) Any judge or any other person who shall tamper with, or damage, or attempt to damage any voting machine to be used or being used in an election or who shall prevent or attempt to prevent the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to imprisonment for not exceeding ninety (90) days, or a fine of five hundred dollars (\$500), or both, in the discretion of the court.

29-20. Request for recount. [Revised 3-6-95.]

(a) Upon request to the Mayor and Council in writing, within ten (10) days after certification of the vote, for a recount of the votes cast, pursuant to which notification to the chief judge shall also be made, the petitioner seeking the recount shall post a fifty dollar (\$50) fee to defray the cost of the recount. In the event that the election results are reversed in favor of the petitioner, the fifty dollar deposit shall be returned.

(b) The recount shall be conducted in the presence of the general public and the candidates or their representatives.

29-21. Contested election.

In the case of a contested election, the petitioner shall present his request to the Board of Election Appeals, in writing, signed by twenty (20) voters qualified to vote for the office for which the election is contested, accompanied by a statement of the points upon which the appeal is based. This petition shall be presented to the Board of Appeals within ten (10) days after the certification of the vote by the Mayor and Council. The Board of Election Appeals shall make its decision in the form of a recommendation and present it to the Mayor and Council at a public meeting within fifteen (15) days after receipt of the petition.

29-22. Board of Election Appeals.

A Board of Election Appeals shall be appointed at the same time as appointment of the judges of election. The Board shall consist of seven (7) members, one (1) each appointed by the Mayor and each Council member. The duties of the Board shall be to receive petitions and render decisions as described in the preceding section.

29-23. Absentee voting. [Revised 3-6-95.]

Any qualified voter registered to vote in a town election is entitled to vote by absentee ballot. The procedures and provisions of Article 33, 27-1, 27-2, and 27-4 through 27-11, of the Annotated Code of Maryland, as amended, are hereby adopted and incorporated, subject to the following provisions:

(a) Those terms referring to "Baltimore City" or "County" or "State" or an agency, board, or department thereof shall be construed to refer to the Town of Riverdale Park or its counterpart agency, board, or department, as the case may be.

(b) All applications for absentee ballots (other than applications for emergency absentee ballots as described in Section 27-2(a-1) of Article 33) pursuant to Section 27-4 of Article 33 must be received no later than the close of business ten (10) days preceding an election.

(c) All absentee ballots, whether of emergency nature or not, must be received by 8:00 p.m., close of polls, on election day in order to be counted.

(d) No candidates, town officials, town employees, or members of any of their families, that is, spouses, mothers, fathers, sisters, brothers, sons, and daughters, may act as authorized agents for purposes of emergency absentee ballot applications pursuant to 27-2 and 27-4 of Article 33, or for purposes of delivering ballots to and from any absentee voters, whether of emergency nature or not.

29-24. Riverdale Park Election Manual.

In conducting a town election, the judges of election shall follow the provisions and procedures set forth in the Riverdale Park Election Manual in conjunction with Article 5 of the Charter and this chapter. The manual shall apply as part of this chapter and is adopted by reference as though set forth in full herein. Revisions to the manual shall made by Council action.

§ 9-301. In general.

~~(a) Applicability.- This subtitle applies to every election governed by this article.—~~

(b) Forms.- The State Board shall prescribe all forms required to comply with:

- (1) this subtitle; and
- (2) any requirements of relevant federal law.

[An. Code 1957, art. 33, § 9-301; 2002, ch. 291, §§ 2, 4.]

§ 9-302. Documentation by local boards.

Each local board shall maintain a full record of absentee voting in the county, including, for each absentee voter:

- (1) the date and time of the board's receipt of an application for an absentee ballot;
- (2) the action taken with regard to the application;
- (3) the appropriate ballot style;
- (4) the date of issuance of a ballot;
- (5) if mailed, the address to which the ballot is sent;
- (6) the date and time of the receipt of a voted absentee ballot; and
- (7) any other information specified by the State Board.

[An. Code 1957, art. 33, § 9-302; 2002, ch. 291, §§ 2, 4.]

§ 9-303. Guidelines.

(a) Established by State Board.- The State Board shall establish guidelines for the administration of absentee voting by the local boards.

(b) Content.- The guidelines shall provide for:

- (1) the application process;
- (2) late application for absentee ballots;
- (3) ballot security, including storage of returned ballots;
- (4) determining timeliness of receipt of applications and ballots, including applications and ballots for overseas voters;
- (5) the canvass process;
- (6) notice of the canvass to candidates, political parties, campaign organizations, news media, and the general public;
- (7) observers of the process;
- (8) review of voted ballots and envelopes for compliance with the law and for machine tabulation acceptability;
- (9) standards for disallowance of ballots during the canvass; and
- (10) storage and retention of ballots following canvass and certification.

(c) Periodic assessment and revision of guidelines.- The State Board shall:

- (1) in consultation with the local boards, assess the guidelines before each primary election; and
- (2) revise the guidelines if indicated.

[An. Code 1957, art. 33, § 9-303; 2002, ch. 291, §§ 2, 4.]

§ 9-304. Qualification for absentee voting.

(a) In general.- A registered voter may vote by absentee ballot at an election if the voter:

(1) may be absent on election day from the county in which the voter is registered;

(2) because of accident, illness, or physical disability, will be unable to go to the polling place on election day;

(3) because of confinement in or restriction to an institution, will be prevented from going to the polling place on election day;

(4) because of a death or serious illness in the voter's immediate family, will be unable to go to the polling place on election day;

(5) is a full-time student at an institution of higher education located outside the voter's precinct but within the county of registration, and academic requirements prevent the voter from going to the polling place on election day; or

(6) because of employment by or service as an official of the State Board or a local board, is required to be absent from the precinct in which the voter is registered to vote on election day.

(b) Compliance with federal law.- An individual may vote by absentee ballot if authorized under an applicable federal law.

[An. Code 1957, art. 33, § 9-304; 2002, ch. 291, §§ 2, 4.]

§ 9-305. Applications for absentee ballot.

(a) Application.- An application for an absentee ballot, signed by the voter, may be made:

(1) on a form produced by the local board and supplied to the voter on request;

(2) on a form provided under federal law; or

(3) in a written request that includes:

(i) the voter's name and residence address;

(ii) the address to which the ballot is to be mailed, if different from the residence address; and

(iii) the reason, as authorized in § 9-304 of this subtitle, for absentee voting.

(b) Deadline for receipt of application.- Except for a late application under subsection (c) of this section, an application for an absentee ballot must be received by a local board not later than the Tuesday preceding the election, at the time specified in the guidelines.

(c) Late application.-

(1) Beginning on the Wednesday preceding the election, through the closing of the polls on election day, a registered voter or the voter's duly authorized agent may apply in person for an absentee ballot at the office of the local board if the voter is qualified for absentee voting under § 9-304 of this subtitle or § 10-102 of this article.

(2) A special application for an absentee ballot issued under this subsection shall be supplied by the staff of the local board to the voter or the voter's duly authorized agent.

(3) The application shall be made under penalty of perjury, but without a formal oath, specifying the reason for absentee voting.

(4) After review of the application, if the staff of the local board finds that the voter qualifies for absentee voting, the staff shall issue an absentee ballot to the voter or the voter's duly authorized agent.

[An. Code 1957, art. 33, § 9-305; 2002, ch. 291, §§ 2, 4.]

§ 9-306. Review of application; issuance or rejection.

(a) Review of application.- Promptly after receipt of an application, the election director shall review the application and determine whether the applicant qualifies to vote by absentee ballot.

(b) Transmittal of ballot.- If the applicant qualifies to vote by absentee ballot, the local board shall send the ballot:

(1) as soon as practicable after receipt of the request; or

(2) if the ballots have not been received from the printer, as soon as practicable after the local board receives delivery of the ballots.

(c) Rejection of application.-

(1) If the members of the local board determine that the applicant is not entitled to vote by absentee ballot, the local board shall notify the applicant as soon as practicable after receipt of the application of the reasons for the rejection.

(2)

(i) The local board may delegate the determination under paragraph (1) of this subsection to the staff of the local board.

(ii) If the determination has been delegated, the applicant may appeal the rejection to the members of the local board, who shall decide the appeal as expeditiously as practicable.

(d) Number of ballots issued to a voter.- Not more than one absentee ballot may be issued to a voter unless the election director of the local board has reasonable grounds to believe that an absentee ballot previously issued to the voter has been lost, destroyed, or spoiled.

[An. Code 1957, art. 33, § 9-306; 2002, ch. 291, §§ 2, 4.]

§ 9-307. Use of an agent in absentee ballot process.

(a) Use authorized.- A qualified applicant may designate a duly authorized agent to pick up and deliver an absentee ballot under this subtitle.

(b) Qualifications of agent.- An agent of the voter under this section:

(1) must be at least 18 years old;

(2) may not be a candidate on that ballot;

(3) shall be designated in a writing signed by the voter under penalty of perjury; and

(4) shall execute an affidavit under penalty of perjury that the ballot was:

(i) delivered to the voter who submitted the application;

(ii) marked and placed in an envelope by the voter, or with assistance as allowed by regulation, in the agent's presence; and

(iii) returned to the local board by the agent.

[An. Code 1957, art. 33, § 9-307; 2002, ch. 291, §§ 2, 4.]

§ 9-308. Assistance in marking ballot.

(a) In general.- A voter who requires assistance in casting an absentee ballot by reason of disability, inability to write, or inability to read the ballot may be assisted by any individual other than:

- (1) a candidate who is on that ballot;
- (2) the voter's employer or an agent of the employer; or
- (3) an officer or agent of the voter's union.

(b) Certification of assistance.- An individual rendering assistance under this section shall execute a certification as prescribed by the State Board and included in the instructions under § 9-309 of this subtitle.

[An. Code 1957, art. 33, § 9-308; 2002, ch. 291, §§ 2, 4.]

§ 9-309. Instructions.

An absentee ballot shall be accompanied by instructions, prescribed by the State Board, for marking and returning the ballot.

[An. Code 1957, art. 33, § 9-309; 2002, ch. 291, §§ 2, 4.]

§ 9-310. Envelopes.

(a) Required; prescribed by State Board.- An absentee ballot shall be enclosed in specially printed envelopes, the form and content of which shall be prescribed by the State Board.

(b) Optional procedures.-

- (1) A local board may use either two envelopes or three envelopes.
- (2) If two envelopes are used, the inner envelope shall be designated the "ballot/return envelope", and, when issued, it shall fit inside the envelope designated the "outgoing envelope".
- (3) If three envelopes are used, the innermost envelope shall be designated the "ballot envelope", which shall fit inside the envelope designated the "return envelope", both of which, when issued, shall fit inside the envelope designated the "outgoing envelope".

(c) Oath.- When voted and returned to the local board, an absentee ballot shall be enclosed in a ballot envelope or ballot/return envelope, on which has been printed an oath prescribed by the State Board.

[An. Code 1957, art. 33, § 9-310; 2002, ch. 291, §§ 2, 4.]

~~§ 9-311. Additional compensation and expenses.~~

~~(a) In general.—~~

- ~~(1) The members of a local board shall each be entitled to extra compensation, in addition to their regular compensation, for duties actually performed under this subtitle.—~~
- ~~(2) Except as provided in paragraph (3) of this subsection, the amount of the extra compensation shall be \$10 per day, or a greater amount set by the governing body of the county.—~~

~~(3) In Baltimore City, the members of the local board shall receive \$200 per election for duties under this subtitle.—~~

~~(b) Additional expenses.— The governing body of a county shall provide to the local board of the county an amount that is reasonable and necessary to pay for expenses, including the employment of temporary personnel, required for performing the duties required under this subtitle.—~~

~~(c) Payment to be the same as other appropriations.— Payments under this section shall be made by the county governing body in the same manner that other funding is provided to the local board.—~~

~~[An. Code 1957, art. 33, § 9-311; 2002, ch. 291, §§ 2, 4.]—~~

§ 9-312. Penalty for offenses relating to absentee voting.

~~Any person who is convicted of a violation of any of the provisions of this subtitle is subject to a fine of not more than \$1,000 or imprisonment for not more than 2 years or both.—~~

~~[An. Code 1957, art. 33, § 9-312; 2002, ch. 291, §§ 2, 4.]—~~

§ 11-303. Canvassing of provisional ballots.

(a) In general.— Following an election, each local board shall meet at its designated counting center to canvass the provisional ballots submitted in that election in accordance with the regulations and guidelines established by the State Board.

(b) Time for opening provisional ballots.— A local board may not open an envelope of a provisional ballot until the local board has approved the temporary certificate.

(c) Regulations for implementation.— The State Board shall adopt regulations to implement this section.

(d) Rejection of provisional ballot.—

(1) A local board may not reject a provisional ballot except by unanimous vote and in accordance with regulations of the State Board.

(2) The local board shall reject a provisional ballot if:

(i) pursuant to paragraph (4) of this subsection, the local board determines that the individual who submitted the provisional ballot is not a registered voter;

(ii) the individual failed to sign the oath on the temporary certificate of registration;

(iii) the individual received more than one ballot for the same election; or

(iv) the local board determines that a provisional ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot.

(3) If the intent of the voter is not clearly demonstrated, the local board shall reject only the vote for that office or question.

(4) For the purposes of this section, an individual is a registered voter if the local board determines:

(i) that the voter's name is on its list of registered voters; or

(ii) pursuant to paragraph (5) of this subsection, that the voter submitted a temporary certificate of registration that contains the

affirmations required by, and otherwise complies fully with, the requirements of § 3-601 of this article.

(5) In determining under paragraph (4) of this subsection, whether an application for a temporary certificate of registration complies with § 3-601 of this article, a local board shall examine the contents and execution of the application but may not challenge the accuracy of an assertion in the application unless that assertion relates to one or more actions of the local board.

(e) Confirmation.-

(1) Within 10 days after any election, an individual who voted by provisional ballot may request confirmation from the local election board that the ballot submitted by the individual is either accepted or rejected by the local election board.

(2) Upon receiving a request under paragraph (1) of this subsection, the local election board is required to provide confirmation that the individual's ballot is either accepted or rejected.

(3) If the ballot is rejected, at the request of the individual the local election board shall state in writing the basis for rejecting the ballot.

[An. Code 1957, art. 33, § 11-302.1; 2002, ch. 291, §§ 2, 4; ch. 404, § 2; ch. 547, § 2.]

§ 11-304. Rejected absentee ballot; appeal.

(a) Right of appeal.- A candidate or absentee voter aggrieved by the decision of a local board to reject, or not to reject, an absentee ballot shall have the right of appeal to the circuit court for the county.

(b) Time of filing.- The appeal must be filed within 5 days from the date of the completion of the official canvass by the board of all the votes cast at the election.

(c) Procedures.- The appeal shall be heard de novo, without a jury, as soon as possible.

(d) Appeal to Court of Special Appeals.-

(1) The decision of the circuit court may be appealed to the Court of Special Appeals, provided the appeal is taken within 48 hours from the entry of the decision of the circuit court.

(2) The appeal shall be heard and decided on the original papers, including a written transcript of the testimony taken in the case.

(3) The original papers and the transcript shall be transmitted to the Court of Special Appeals within 5 days from the taking of the appeal, and the appeal shall be heard as soon as possible.

[An. Code 1957, art. 33, § 11-303(a)-(d)(3); 2002, ch. 291, §§ 2, 4.]

Appendix E: Relevant Legal Opinions

Copies of legal opinions which Town Attorney Fred Sussman thought had relevance to the challenge are included in this Appendix. These were distributed to the Board at the 21 May 2003 meeting.

Appendix F: Materials Distributed by Chair

Materials distributed to the Board by the Chair not found elsewhere in this document are included in this Appendix.

Questions/Requests for Chief Judge of Elections, Town of Riverdale Park

Please check the list of voters attached to this petition.

How many absentee ballots were there in Ward 1?

How many of these were mailed in/mailed out? How many hand-delivered in either direction?

Is there a training requirement for agents carrying absentee ballots?

Please provide us with all materials that would have been provided to someone requesting to hand-carry an absentee ballot as agent for a voter.

Please provide us with the outer envelopes of all of the Ward 1 absentee ballots received (or copies of same).

Please provide us with affidavits of agency for all hand-delivered ballots in Ward 1 (or copies of same).

Please provide us with all other documents pertaining to absentee ballots in Ward 1 (or copies of same).

Questions/Requests for County Board of Elections

Is there a training requirement for agents carrying absentee ballots?

Are there standard materials provided to municipalities having elections for agents hand-carrying absentee ballots?

What instructions do you give to municipal Chief Judges of Election for handling absentee ballots?

Is Maryland Code Election Law Title 9-307 the appropriate legal requirement for handling of absentee ballots by persons other than the voter and the judges of election? Are there other applicable laws?

Questions/Requests for County Board of Elections

Is there a training requirement for agents carrying absentee ballots?

Are there standard materials provided to municipalities having elections for agents hand-carrying absentee ballots?

What instructions do you give to municipal Chief Judges of Election for handling absentee ballots?

Is Maryland Code Election Law Title 9-307 the appropriate legal requirement for handling of absentee ballots by persons other than the voter and the judges of election? Are there other applicable laws?

***Report on Conversation with Mr. Sussman
(May 20, approx 2:00pm)
and My Analysis of Cases***

Alan Thompson

I had a conversation with Mr. Sussman Tuesday (20 May 2003) afternoon at approximately 2:00pm. We discussed three cases he had found that had relevance to the law we think applies to the Ward 1 race.

The three cases were *Lamb v. Hammond*, *Pellagatti v. Board of Supervisors of Elections*, and *Seat Pleasant v. Jones*.

Lamb v. Hammond discussed at length the right of the court to intervene in elections disputes, which is not particularly important to the case at hand, but in the end had two statements that very much apply to our circumstances. Both of these statements seek to balance the strong and established in law motivation of attempting to execute the will of the voters.

The first statement is that election officials cannot "effectively change the law by giving erroneous, ambiguous, or misleading instructions to the voters". This means that if the Judges of Elections give instructions to voters that are contrary to the law, it is permissible to exclude ballots cast in contradiction to the law even if the intent of the voters who cast them is clear. This, I believe, gives us legal precedent for rejecting absentee votes which should have had an designation of agent / agent affidavit but did not — *if* we can determine that such votes existed, and determine how to reject them. Mr. Sussman's summary of this statement was something similar to "the election officials instructions are deemed less important than the law."

The second statement is actually spread across two paragraphs, and seems somewhat self-contradictory. In the first paragraph it quotes a prior decision that "unimportant mistakes made by election officials should not be allowed to thwart the will of the people freely expressed at the ballot box" and "mere irregularities...should not be allowed to set aside what the voters have decided." The next paragraph quotes another prior decision which says "It is unfortunate that voters should lose their votes by oversight of election officials...but it would be a greater evil for the courts to ignore the law itself by permitting statutory requirements designed to safeguard the integrity of elections, i.e., the rights of all the voters." This suggests that we as a board must decide whether the designation of agent and agent affidavit are "unimportant mistakes" or "statutory requirements designed to safeguard the integrity of elections." Mr. Sussman told me he thinks it is more likely a "statutory requirement."

Pellagatti v. Board of Supervisors of Elections may give us a path out of that tough decision. The summary version of it is that the burden of proof that rejection of the ballots would change the outcome of the election is on the election challenger. In our case this means that Mr. Archer would need to demonstrate that if the ballots lacking designation of agent were rejected, the outcome of the election would be reversed. Although there are some small numerical discrepancies in the number of ballots mailed in vs. hand delivered, we did count seven (7) absentee ballots that were mailed in and completely free of any taint. If all of the absentee ballots not mailed in

were rejected, and the seven ballots mailed in were unanimously for Ms. Davis, the election result would not be changed, by one vote. I discussed another analysis with Mr. Sussman, but need to reconsider my conclusion before committing it to paper. We also need to explore exactly how strong of a legal principle this is — it seems that requiring *absolute proof* that the election would be overturned before rejecting the challenge may be to harsh. On page 9 of *Pellagatti v. Board* another decision is quoted (*Wilkinson v. McGill*) that the challenger "must prove, or at least attempt to prove, how the illegal voters vote. If direct proof cannot be obtained from the illegal voters themselves, other evidence of a circumstantial nature may be offered."

I do not remember Mr. Sussman stating that an important legal principle was demonstrated in *Seat Pleasant v. Jones*, and I did not find one myself, but he was proud of having been the attorney for the winning side, and it does demonstrate that courts have a hard time balancing the twin requirements of accepting the will of the voter and enforcing the law.

Finally, Mr. Sussman and I discussed Article 33 Chapter 11-303.1, which states that the decision of a local board (of elections?) to accept or reject an absentee ballot should be appealed to the circuit court of the county within 5 days from the date of completion of the official canvass. If we decide that this is the applicable law, then Mr. Archer brought his complaint to the wrong place and we do not need to do anything more.

Respectfully submitted,

Alan K. Thompson

Appendix G: Comment on Decision by Chair

Although the recommendation to let the election stand (see first part of *Chapter 4: Recommendations*) was made mainly on the basis of the Finding of Law that an affidavit did not need to be completed for delivery of a completed, sealed absentee ballot in a sealed outer envelope, the resolution would have almost certainly been the same even if the Board had ruled that the above actions were in fact a substantial violation of the Town Code.

The reason for this is that one of the court cases, which was not discussed by the board, lays down a very strict standard for deciding whether to overturn an election. *Pelagatti v. Board of Elections* (343 Md. 425, 682 A.2d 237) said that before an election can be overturned on the basis of improper votes being accepted, the challenger must prove that rejection of the ballots in question *would result in a change to the outcome of the election*. Presumably the court chose this standard because in the case of extremely close elections it is probably better in the long run to leave the results alone than to constantly be overturning the results for imprecise reasons. The challenge at hand only *potentially* challenged twenty-five (25) absentee ballots, leaving seven (7) received ballots unchallenged (see *2 of Chapter 3*). If all seven of the unchallenged ballots had been accepted by the Board of Elections as unspoiled, and all seven ballots had been marked for Ms. Davis, she would still have won the election. The possibility of this being true is legally sufficient for having the results of the election stand.