

02023-15

February 24, 2023

Robert Wall
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Sterling, AK 99669

**Kenai Peninsula Borough Feb. 14, 2023 Special Mayoral Election:
After Action Review (AAR) of the Ballot Counting Procedures, and Canvassing and
Certification of Election Results**

To whom it may concern:

On Tuesday, February 14, 2023, the Kenai Peninsula Borough held a special election for borough mayor to complete the previous mayor's term, which expires Oct. 2023. To win, a candidate had to be awarded 50% plus 1 of the total ballots cast. If no candidate achieved that threshold, a run-off election between the top two candidates was scheduled to be held on March 7.

I, Robert Wall, filed to run as a write-in candidate, after the regular filing period deadline of Nov. 30 had passed. Many people had already voted early, before knowing of my candidacy. Some told me they went to the borough clerk and asked to redo (spoil) their ballot but were told doing so was not allowed. One resident emailed the borough attorney this request, and he responded with the same answer. Because the ballots are not tabulated right away, but rather are held in a secure location for tabulation after election day, I call this judgement into question. Why didn't these early voters have the same right to spoil up to 2 ballots as the voters on election day?

On election night, I came in 3rd place, ahead of two other candidates who had been campaigning longer, and whose names were printed on the ballot. My (presumably) 807 votes were simply listed as "Unresolved Write-In" on the KPB's Unofficial Results election summary report posted on their website. The next day I learned that there were 1800 absentee ballots still to be processed, which included the early in-person and mail-in ballots. Without counting those, it was unknown if any candidate had achieved the 50% plus 1 threshold.

Kenai Peninsula Borough residents waited. Throughout the week, there were no changes to the initial unofficial results. I studied the KPB election codes, and by Friday, started to be concerned. The election results were to be certified at the Borough Assembly meeting on Tuesday, Feb. 21. Monday, Feb. 20, was a borough holiday, and offices would be closed. If I wanted to request a recount or to contest the election, my request had to be filed with the clerk by 5pm Tuesday or submitted to the assembly at their regular meeting that evening, before the election results were certified.

How could I determine if a recount or contest of election was needed without previewing the election results? In fact, I still didn't know how many write-in ballots were specifically cast for me on election day (as opposed to some other name). According to KPB code 4.70.050 C, the write-in votes were to "be **tabulated by person** if the total number of write-in votes for an office exceeds the smallest number of votes cast for a candidate for that office whose name is printed on

the ballot.” As even the unofficial results showed a week later, however, that had still not been done; the write-in votes were simply “unresolved”.

Also, when would the canvassing committee be counting the 1800 early absentee and mail-in ballots? According to KPB code 4.70.070.A, this process was to be “in a manner that allows watchers to see the ballots when opened and read.” Also, KPB code 4.90.020.A stated that, “**No later than the Monday following each election**, the election canvass board shall meet **in public session** and canvass all election returns. In full view of those present,..(it) shall judge the applicability of absentee and questioned ballots, shall open and tally those accepted , and shall compile the total votes cast in the election.” As of Friday afternoon, however, there was no information on the KPB website about when or where this was going to occur, nor had there been any signs posted at the borough building.

The borough was officially closed on Monday (President’s Day), and my calls to the borough clerk’s office went unanswered. I took a chance and stopped by the administrative building. Seeing cars in the parking lot, I found the front door open, and walked down to the clerk’s office. The clerk noticed me through a glass window and unlocked her office door to speak with me.

When I asked about the canvassing, the clerk informed me it had occurred Friday. I asked for the final count, but was told the canvassing was not done, and so the results were not available. I pointed out to her the borough code defining Monday as the deadline for providing the election results, by name. The clerk was unfamiliar with the code, told me she had some calls to make, and shut her door. It appeared that, on a borough holiday and without public notice, the canvass board was called back to work, and they began to tally the write-in votes by name as described in borough code 4.70.050C.

On Tuesday morning, February 21, my calls to the clerk again went unreturned. I drove to the administrative building and found the canvassing board in a crowded room, with boxes on every chair. The clerk ushered me out into the hallway, informed me they were very busy, and recommended that I see the borough attorney.

I shared my concerns with the borough attorney, informing him of the borough codes that had been violated. I pointed out the opportunity the borough had now to regain public trust, by delaying certification of the election and recanvassing the ballots openly according to code. The attorney was not familiar with the codes but did not feel a re-count was warranted.

The election results were scheduled to be submitted to the Policies and Procedures Committee that afternoon. During that meeting, the borough attorney informed the Committee of the complaint, that borough election codes had been violated, and that a delay of election certification was requested. The committee members responded with a few questions that revealed their unfamiliarity with the KPB election codes and processes, and then moved on to other business.

After the Policies and Procedures Committee meeting, the clerk finally provided me the opportunity to review the now 907 write-in ballots, accompanied by the attorney, two canvass board members, and my wife. I saw the 47 ballots that had been rejected due to incorrect names

(for instance, last name Hall, instead of Wall), no name given, or a completely different name written, resulting in **860** votes counted for Robert Wall.

The final tally was still not completed, however. When the Borough Assembly convened at 6:00 p.m., the election certification was moved to much later in the agenda, in order for the clerk's office to finish their work. Finally, at about 9:15 p.m., Resolution 2023-021 certifying the results of the February 14, 2023 Special Mayoral Election was approved unanimously. The final certified vote count for Robert Wall was now **858**.

Lastly, during the public comment period at the end of the Borough Assembly meeting, a concerned resident expressed her frustration with the lack of information and transparency while the ballots were being tallied after the February 14 election. She visited the clerk's office during that time to ask, "What's the process now? What's going on now?" and had the distinct impression that procedures were being made up as people went along.

The Borough Assembly's response was, sadly, very dismissive of this resident's concerns. The Vice President of the Assembly responded by telling her that, "The process was followed exactly how the code asks the process to be done," and "There are mechanisms put in where you can come in and watch. That is all there, it's all part of that process." Another Assemblyman told her that he, too, kept checking the borough website, looking for updated election results; he knew, however, that even when there was no update, "there was a reason. I know there was work being done and so I didn't have to be suspicious of anything because I know the quality of our elections and the things that are going on." Her own Borough Assembly representative simply told her to come to him if she was concerned. Lastly, the Borough Assembly president simply admitted, "This was a unique special election. We did the best job we could... We will never again have an election where we will be taking votes until 6 p.m. and expecting the clerk to get that done so that we can start a meeting immediately after. That's a poor plan and we won't do it again."

Conclusions:

The ballots were counted, in effect, secretly. No public notice was given of the Canvassing Board's work. There were no signs posted, and nothing was posted on the borough website. In addition, it appears some canvassing work was conducted on a holiday when the building was closed to the public. (When I asked the borough attorney if this was accurate, his response was that I needed to hire my own attorney.) All these actions by the Canvassing Board are in violation of the Open Meetings Act, AS 44.62.310. I have no evidence of, nor do I suspect election fraudulence; however, borough codes and state statute were not followed.

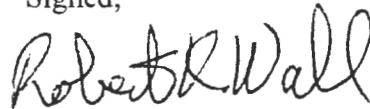
The clerk and canvassing committee did not tally the ballots in the time specified by borough code. While code clearly stated work was to be completed no later than the Monday following the election, it was still being done even during the Borough Assembly meeting Tuesday night. This delay negated my right, as a candidate, to contest the election or ask for a recount before the election results were certified.

The clerk and canvassing committee did not provide a vote tally of the write-in candidate by name until asked to do so, and then not until the Tuesday afternoon of certification. Again, borough code was not followed.

Because of this lack of transparency and timeliness in violation of borough code, the election results (as canvassed) are voidable (see AS 44.62.310f) and should not have been certified. While fraudulence is not suspected, this does not negate the fact that public trust has been violated. Public officials should openly acknowledge the errors that occurred and conduct a recount, in full public view and following all borough ordinances (*Ibid*). Again, this is an opportunity to regain public trust in the election process.

Finally, the Borough Assembly members (who also comprise the Policies and Procedures Committee) and the borough attorney were all notably unfamiliar with both Borough election codes and with the work of the Canvass Board. To correctly oversee borough elections (as representatives of their constituents) or to legally advise the Assembly, they need to learn these things. Additionally, when borough citizens bring their concerns and reports of wrongdoing to them, their response should be to investigate and correct any errors, rather than to casually dismiss or belittle this public input.

Signed,

A handwritten signature in black ink that reads "Robert Wall". The signature is written in a cursive style with a large, prominent "R" and "W".

Robert Wall
Sterling, AK

Postscript: I view this experience as an opportunity for the Kenai Peninsula Borough to improve the integrity of its elections. I contacted the State of Alaska Local Government Specialist for the Kenai Peninsula for assistance, and she is in communication with the KPB clerk. The LGS hopes to plan workshops to help re-write and “button up” weaknesses in the KPB election codes. I hope to participate in those workshops.

From: [Turner, Michele](#)
To: [Ward, Tamera](#)
Subject: FW: New Public Comment to Assembly Members
Date: Tuesday, July 11, 2023 9:04:48 AM

Public Comment Resolutions 2023-048 & 2023-049 and Ordinance 2023-15

Michele Turner, CMC
Acting Borough Clerk
Kenai Peninsula Borough
(907) 714-2162 direct

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Monday, July 10, 2023 10:44 PM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Cc: Turner, Michele <MicheleTurner@kpb.us>
Subject: New Public Comment to Assembly Members

Your Name: Joan Corr

Your Email: corrjoan@hotmail.com

Subject: 2023-048, 2023-049, 2023-15

Message:

Picking up my son and his wife in Anchorage tomorrow night, so will miss the meeting tomorrow night. If 2023-048 wants to change our election day from October to our national election day, I am all for it! If 2023-049 wants to prohibit males from competing in women's sports, I am all for that. If you're born with a penis, you don't play in women's sports, even if you cut it off. And then Ordinance 2023-15 is a big disappointment. Needs to go back to the drawing board. It is less clear and does not incorporate any of the suggestions and safeguards recommended in the recent past. Very disappointing. Joan Corr