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October 23, 2026

Gerald Melchiori, Supervisor
Rock River Township
P.O. Box 195
Chatham, MI 49816

via email: rockrivertwpsupervisor@outlook.com

Supervisor Melchiori and Township Board:

I am responding to your request for legal review and advice concerning a Township Board public hearing scheduled to address charges of malfeasance, misfeasance, or nonfeasance against two Township Planning Commissioners and a ZBA member. As I have explained when other conflicts have arisen, the Township Attorney generally represents the legal interests of the Township as a whole, and in many instances cannot provide legal advice or representation to individual elected or appointed officials. My responses to your questions should be viewed as general legal guidance to the Township as a whole regarding malfeasance, misfeasance, and nonfeasance and the legal process that should be followed.

I am unable to express an opinion that advocates for or against particular action by the Township Board in this type of circumstance. Additionally, an attorney is generally prohibited from providing further legal advice in a dispute in which he or she becomes a witness. Depending on how this issue evolves, it is conceivable that I may become a witness, either supporting or opposing certain issues in this matter. If that occurs, it may become necessary for me to discontinue providing legal advice on this issue. I will notify the Rock River Township Board immediately if I feel this has occurred.

1. Legal Standard for Removal

Please advise:

1. **What must the Township Board establish to remove an appointed Planning Commission member for malfeasance, misfeasance, or nonfeasance?**

Michigan courts have defined malfeasance as the doing of an illegal or wrongful act. *People v. Coutu*, 235 Mich App 695; 599 NW2d 556 (1999). Examples might include embezzlement, granting of political favors in exchange for personal gifts, or a police officer conducting a search without a warrant. Misfeasance has been defined as performance of a lawful act in a wrongful manner. *Id.* Examples might include checking the accuracy of voting tabulators, but omitting steps in the procedure specified by the Bureau of Elections; or accepting tax payments, but crediting the wrong amount to the taxpayer's account. Nonfeasance has been defined as the failure to perform an act required by the duties of an office. Examples might include failure to update the tax roll for new construction or other additions, failure to convene the Board of Review on the correct days in March of each year, or failure to notify property owners within 300 feet of a parcel when considering a zoning variance.

2. **Is an alleged violation of a Township policy or an administrative requirement, by itself, sufficient to constitute one of these statutory grounds for removal?**

This will frequently depend on the severity of the act or omission. For example, violation of state or federal statutes is typically more severe than violation of an administrative policy. As a practical matter, removal from office is usually reserved as a last resort. A censure or reprimand may be appropriate when a violation involves an administrative policy. I am aware of at least one situation in which the Township required an officer to participate in training offered by the Michigan Township Association, rather than terminating him. The determination of whether the alleged violation is sufficient to justify removal from office, however, ultimately rests with the Township Board.

3. **Must each written charge identify conduct that, if proven, actually meets the legal definition of malfeasance, misfeasance, or nonfeasance?**

Yes.

4. **If a charge does not meet that threshold even when its factual allegations are assumed to be true, should it be dismissed before conducting a removal hearing?**

Once the allegations are adopted and served on the officers, a determination of whether they are sufficient to justify dismissal should be made at the hearing.

2. Tammy Shega — Contact With Township Attorney

One charge against Tammy concerns her contact with Township legal counsel.
The Township's Legal Council Policy, adopted August 19, 2025, states:

"The Supervisor-Clerk-Treasurer-Trustees-and Zoning Administrator May contact the legal counsel directly."

The policy identifies those officials who may contact legal counsel directly, but it does not expressly state that Planning Commission or ZBA members are prohibited from contacting counsel, nor does it specify a penalty or characterize such contact as malfeasance, misfeasance, or nonfeasance.

Please advise:

5. **Does this language constitute an affirmative prohibition against a Planning Commission or ZBA member contacting Township counsel?**

The word "directly" contained in the above-quoted policy is important. Clearly, the Supervisor, Clerk, Treasurer, Board Trustees, and Zoning Administrator are authorized to make direct contact. These types of policies are implemented to help determine **how** the Township Attorney will be contacted, rather than prescribing **who** may contact the Attorney. Persons or officers not listed in this policy would have the right to make "indirect" contact with the Attorney. It is highly doubtful that the Township Board can lawfully prohibit Planning Commissioners or ZBA members from seeking legal advice from the Township Attorney in the course of performing their official duties. By not being granted the right to make direct contact, however, this means that Planning Commissioners and ZBA members should generally route their requests through one of those persons having authority to make direct contact. This is most often the Township Supervisor, but can also arise through others, including the Zoning Administrator. The Township Supervisor generally has the authority to authorize the Attorney to discuss an item directly with a Planning Commissioner, ZBA member, or other Township representative to reduce the risk of miscommunication of either a question or a response.

6. **If Tammy contacted the Township attorney for legal guidance concerning the performance of her official duties, would that contact constitute malfeasance, misfeasance, or nonfeasance?**

Contacting the Township Attorney could not constitute malfeasance or nonfeasance. Requesting legal guidance from the Township Attorney in the course of performing official duties is clearly a lawful act. If the Township Board were to conclude that contact was made in an incorrect manner, it must then decide whether this rose to the level of misfeasance. The distinction being made is that the act of requesting legal advice cannot constitute misfeasance, but following an incorrect procedure arguably could.

7. **Is there a legal distinction between asking the Township's existing attorney for guidance and independently retaining counsel, authorizing legal services, or committing the Township to legal expenses?**

Yes.

8. **If Tammy technically acted contrary to this policy, would that fact alone constitute statutory grounds for removal?**

This is addressed in the prior responses. The Township Board would need to conclude that the Planning Commissioner contacted the Attorney in an incorrect manner. Whether this justifies removal rather than censure, a reprimand, or some other action is for the Township Board to determine.

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3. Tammy Shega — ZBA Minutes

Another charge concerns Tammy's handling of ZBA minutes.

The ZBA bylaws we have reviewed do not appear to establish a specific deadline requiring Tammy to provide the minutes to the Township Clerk.

MCL 125.3602(2) provides that the zoning board of appeals shall maintain a record of its proceedings and that the record shall be filed in the office of the clerk of the legislative body. The Open Meetings Act, MCL 15.269(3), provides that the public body shall make proposed minutes available for public inspection within 8 business days after the meeting and approved minutes within 5 business days after the meeting at which they are approved.
Because these statutes refer to duties of the ZBA/public body and filing in the clerk's office, rather than expressly assigning the 8-business-day obligation to an individual ZBA secretary, please clarify the respective legal responsibilities of Tammy, the ZBA as a public body, and the Township Clerk.

Please advise:

9. What statute, ordinance, bylaw, policy, or other authority imposed a specific personal duty and deadline on Tammy to prepare, deliver, or file these minutes?

The statutes you cite are what govern your next set of questions. MCL 125.3602 imposes a mandatory requirement upon the ZBA, as a public body, to create a record of its proceedings and to file it with the Township Clerk. There are similar provisions in the respective bylaws. It does not place that duty on a particular person or prescribe the exact procedure that must be followed to accomplish this. It is imperative that the record is created and that it is sent to the Township Clerk, however. That duty usually belongs to the person assigned to take the minutes. The procedure for taking and filing minutes varies among municipalities. Some townships will request the Township Clerk or Deputy Clerk to take minutes and otherwise create a record of the Planning Commission and ZBA proceedings. Other townships pay an employee or outside independent contractor to perform this function at meetings, though this practice is fairly uncommon. The usual practice is that whoever takes the minutes is responsible for transmitting them to the Township Clerk. This is not directly stated in any statute, however. Again, the manner in which those minutes are transmitted can vary. In some townships the person taking the minutes delivers a hard copy to the Clerk. In other municipalities the minutes are posted on the Township website, if authorized by the Township Board, so they are available for the public to view. When this occurs, the preferred practice is to notify the Clerk that this has occurred, but no statute requires this. In other municipalities, the minutes are posted on a bulletin board at the Township Hall, and the Township Clerk obtains a copy. All of these scenarios envision a situation in which the Township Clerk and the person taking the minutes coordinate a procedure that reliably gets them to the Clerk. Some Township Clerks reach out to the Planning Commission, ZBA, or other committees if the minutes are not received or posted. There is no statute requiring this, however. The Michigan Township Association has stated: "It is not required by law, but a good way to establish that the draft and approved minutes are 'available to the public' is to post them publicly or on the Township's website." I am aware that Rock River Township's website was nonfunctional for an extended period of time. There is no statute requiring a township to create a website or internet presence. When it does, however, the duty to maintain the website rests

with the Township Board. It is entirely permissible for the Township Board to assign that duty to an employee or independent contractor, as the Board may not have the technical expertise to maintain a website. If the website is nonfunctional, the person taking Planning Commission or ZBA minutes must use one of the alternate methods discussed above to transmit them to the Clerk.

10. **Under MCL 125.3602(2), what does the requirement that the ZBA record "shall be filed in the office of the clerk of the legislative body" require of the ZBA, its secretary, and the Township Clerk respectively?**

See response to number 9 above.

11. **Under MCL 15.269(3), the obligation to make proposed minutes available within 8 business days is stated as an obligation of the "public body." Does that statute impose the deadline personally on Tammy, or on the ZBA as the public body?**

See response to number 9 above. The statute imposes this duty on the ZBA as a public body. As a practical matter, however, it is typically the responsibility of the person taking the minutes to comply with this provision.

12. **Once ZBA minutes or records are filed with or provided to the Township Clerk, what responsibility does the Clerk have for their custody, maintenance, and availability as Township records?**

The minutes and other documents constituting the ZBA record must be filed by the Township Clerk in an orderly manner so they can readily be retrieved for FOIA requests, appeals, audits, or administrative purposes. These are generally kept in perpetuity.

13. **If the Clerk had not previously requested the minutes from Tammy and there was no established or communicated procedure assigning Tammy responsibility for delivery to the Clerk within a particular period, can the alleged delay constitute malfeasance, misfeasance, or nonfeasance?**

This is a question of fact for determination by the Township Board at its public hearing.

14. **What facts would be necessary to elevate a late-minutes or records issue from an administrative or procedural problem to statutory grounds for removal?**

When conducting its hearing, the Township Board should make a finding on the question of whether the problem can be corrected by prescribing a policy to be followed from that point forward. If the person whose termination is being considered were to indicate that she is unable or otherwise refuses to comply with a prescribed policy, this could satisfy grounds for removal. I recommend that the Township Board specifically addresses the question of whether the problem can be corrected by implementing a procedure for future minutes. Such a policy might include the exact manner in which the minutes will be delivered and/or posted so that this problem does not recur. It might also include a requirement that the minutes be taken by some other person on the Planning Commission or ZBA, or by some person who is not a member. I express no opinion on the prospective content of any such policy. That is a matter for Township for determination.

Article I, Section 17, of the Michigan Constitution of 1963 generally requires that a person must be provided with due process of law and that, "[t]he right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." Michigan courts have regularly discussed constitutional due process requirements in various contexts. In *Okrie v. State of Michigan*, 306 Mich App 445; 857 NW2d 254 (2014), the Michigan Court of Appeals elaborated:

> Due process in civil cases generally requires notice of the nature of the proceedings, and opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *Hinky Dinky Supermarket, Inc. v. Department of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004)… Due process, a flexible concept, essentially requires fundamental fairness. *AFP Specialties, Inc. v. Vereyken*, 303 Mich App 497, 514; 844 NW2d 470 (2014). It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process. *Caperton v. AT Massey Coal Company, Inc.*, 556 US 868, 876; 129 SCt 2252; 173 LEd2d 1208 (2009). … The due process clause incorporated the common law rule that a judge must recuse himself when he has a direct, personal, substantial, pecuniary interest in a case… This rule reflects the maxim that no man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. *Okrie v. State of Michigan*, *supra*, pp. 469–470; NW2d at 269–270 (internal quotation marks and notations omitted).

These principles should be employed in this matter.

The June 9, 2026 ZBA minutes also record that the Wilderness Canyons appeal was decided by a roll-call vote of LeJeune, LaRock, and Kallio. After that matter concluded, the minutes state "Old Business – meeting resumes with Shega."

Please advise whether anything reflected in these minutes affects the allegations against Tammy.

MCL 125.3601(13) provides as follows:

> (13) A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, planning commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

I was not asked to attend this meeting, and have no firsthand knowledge of the deliberations, voting, or other matters addressed at the June 9, 2026, ZBA meeting, other than the minutes that were provided to me. The minutes reflect that Cindy Kallio, an alternate ZBA member, was designated to chair the public hearing and meeting. Ms. Kallio opened the public hearing at 7:05 p.m. The public hearing was closed at 7:21 p.m. The minutes identify those persons speaking during the public hearing, as well as ZBA discussion and action after the public hearing was closed. There is no indication anywhere in the minutes that Tammy Shega participated in either the public hearing, deliberations, or voting on the Wilderness Canyon matter. As you note, the minutes also reflect that

after the vote on the ZBA appeal, "meeting resumes with Shega." Based on the content of the minutes, that there is no indication that Ms. Shega violated the provisions of MCL 125.3601(13). I have not been made aware of any argument that the minutes taken by Ms. Shega were inaccurate.

4. Olivia — Conflict-of-Interest Disqualification

Olivia was disqualified from participating in a Planning Commission proceeding based upon an alleged conflict of interest associated with her small business.

Please advise:

15. **Under MCL 125.3815(9) and the applicable Planning Commission bylaws, what constitutes a conflict sufficient to disqualify a Planning Commission member?**

I summarized applicable law regarding conflict of interest when voting upon whether to repeal the Zoning Ordinance at pages 5 to 7 of my September 11, 2026, correspondence to Rock River Township. The Michigan legislature has enacted Standards of Conduct for Public Officers and Employees found at MCL 15.341, et seq. This statute and other applicable Michigan law prohibits a public official from voting on a matter if that officer or an immediate family member has a personal financial or pecuniary interest, or when a public officer has an employment or property interest that "may tend to impair his or her independence of judgment or action in the performance of official duties." I also indicated that I had no direct information as to whether Jon Rondeau held an ownership interest in Wilderness Canyon Properties, LLC. I cautioned that if he did, this could constitute a conflict of interest on the Zoning Ordinance repeal question, because of the pending litigation filed by Wilderness Canyon Properties. There would be a direct benefit to Wilderness Canyon Properties with respect to the pending litigation if the Zoning Ordinance is repealed. That potential conflict of interest was due to the pending lawsuit and appeal of site plan denial, which is the subject matter of the lawsuit. To my knowledge, Ms. Kingery has no pending litigation against Rock River Township.

The purpose of MCL 125.3815(9) is to avoid having a planning commissioner vote on issues where he or she has a financial or other conflict of interest. This series of questions, however, is moot and somewhat irrelevant in this case, as the remaining Planning Commissioners voted to disallow Planning Commissioner Kingery from voting on the question of whether to recommend repeal of the Zoning Ordinance. The remaining Planning Commissioners voted to find a conflict of interest (regardless of whether one actually existed), and Ms. Kingery **did not vote**.

The Planning Commissioners arguably acted with abundant caution by voting to disqualify Ms. Kingery from participating in the decision. Neither Jon Rondeau nor Olivia Kingery voted on the matter, so there can be no misfeasance or malfeasance by either of them based on an alleged conflict of interest.

16. **What factual showing must be made to establish that the member has the required business, financial, proprietary, or other disqualifying interest in the matter?**

See the response to question 15, above, and the discussion at pages 5–7 of my September 11, 2026, correspondence.

17. Does merely owning an unrelated small business constitute a conflict of interest concerning a zoning matter when the member has no demonstrated financial or business interest in the applicant, property, or proposed project?

No. Presumably all Planning Commissioners own property in Rock River Township. If this was the sole basis for finding a conflict, no Planning Commissioner could ever vote on anything. The conflict for Mr. Rondeau was the litigation that would benefit from the repeal of the Zoning Ordinance.

18. What procedure must be followed when another Planning Commission member alleges that a commissioner has a conflict?

The remaining Planning Commissioners should vote to determine whether they feel a conflict exists, as set forth in MCL 125.3815(9). If the Planning Commissioner with an alleged conflict abides by that vote, he or she would not be guilty of misfeasance, malfeasance, or nonfeasance.

19. If the required factual basis or procedure was absent, what effect does that have on Olivia's disqualification and the subsequent Planning Commission proceedings?

None, if any motion would have carried regardless of whether Ms. Kingery participated in the vote.

5. Olivia — Charges for Contacting Township Attorney

To the extent Olivia is also charged with improperly contacting Township legal counsel, please apply the same August 19, 2025 Legal Council Policy and advise:

20. What specific provision prohibited Olivia's particular contact?

See responses to questions 5-8, above.

21. Was she seeking legal guidance in connection with her official responsibilities as a Planning Commission member?

Yes.

22. Assuming the contact violated Township policy, does that violation legally constitute malfeasance, misfeasance, or nonfeasance sufficient to support removal?

It is important to note that the resolution adopted by a majority of the Township Board with regard to Olivia Kingery states that it is "for the purpose of hearing public comment and considering the respective written charges of malfeasance against the named individual." This is in contrast to the resolution regarding Tammy Shega, which is "for the purpose of hearing public comment and considering the respective written charges of malfeasance and misfeasance against the named individual." As noted above, malfeasance is defined as the doing of a wrongful act, while misfeasance is the doing of a lawful act in a wrongful manner. From a legal perspective, as noted in prior responses, it is not wrongful conduct for an elected or appointed official to seek legal advice in the course of his or her official duties. The determination of whether a lawful act (contacting the

attorney) in an improper manner is not legally before the Township Board, based on the resolution adopted by a majority of the Board. Consequently, the only issue before the Township Board is whether contacting the Township Attorney was an illegal, unlawful, or wrongful act in and of itself. It is not.

6. Olivia — Authorization and Delivery of Written Charges

I also request legal guidance concerning the manner in which Olivia's written charges were delivered. The charges were delivered to Olivia at her workplace at the farmers market in Marquette by a private citizen who is not a Township employee or official. To my knowledge, there was no Board discussion or vote authorizing that individual to deliver the documents.

Please advise:

23. What Michigan statute, Township ordinance, policy, or other legal authority governs how written removal charges and notice of a hearing must be served on a Planning Commission member?

Unlike lawsuits and other official legal proceedings, there is no statute specifically addressing this. The objective of any service requirement is to provide actual notice to the person being served. This has been satisfied.

24. May the Township Board or an individual trustee authorize a private citizen who is not a Township employee or official to serve or deliver those charges on behalf of the Township?

Yes, with respect to authorization by the Township Board. No, as to an individual Trustee.

25. If the Board did not discuss or authorize that individual to serve the charges, does that affect the validity or adequacy of the notice?

It appears from the resolutions I was provided that the Township Board authorized the Township Clerk or a competent server designated by the Township Clerk to effectuate service of process. Michigan law generally allows any legally competent person over the age of 18 to serve documents. Additionally, if actual notice was received, minor defects in the manner of service will not usually invalidate service.

26. Does delivery of the charges to Olivia at her workplace at the farmers market in Marquette raise any due-process, confidentiality, privacy, or procedural concerns, particularly if the charges were entrusted to a private citizen?

Probably not.

27. Who had legal authority to authorize a private citizen to deliver official Township removal charges?

The Township Board.

28. **Could an individual Township trustee independently authorize or direct a private citizen to deliver those charges without Board authorization?**

Generally not. The resolutions specifically addressed this, however, so this does not appear to be an issue.

29. **If a trustee provided the charges to the private citizen, was that action within the trustee's individual authority?**

See above responses. To my understanding, this is not what occurred.

30. **Was it appropriate for official Township documents concerning a pending removal proceeding to be provided to a private citizen for delivery?**

These became public documents following action by a majority of the Township Board. The contents are not confidential, and are arguably subject to production under the Michigan FOIA. The method of service appears satisfactory from a legal perspective.

31. **Does delivery in this manner affect the sufficiency of notice, fairness of the removal proceedings, or create any confidentiality, records, or other legal concerns?**

No. See response to question 30.

32. **What method of service or delivery should the Township have used for written charges and notice of a removal proceeding?**

See response to questions 23-31.

33. **What proof of service or documentation should the Township maintain to establish that legally sufficient notice was provided?**

An affidavit of Service signed by the server, documenting the date, time, place, and manner of service should be filed with the Township Clerk.

7. Preparation and Authorization of the Written Charges

Please also advise regarding the preparation of the written charges against Tammy Shega and Olivia:

34. **Who prepared or drafted the written charges against Tammy and Olivia?**

Unknown. I can only state that the Township Attorney was not involved in this process.

35. **Were the charges prepared by a Board member, Township official, Township attorney, or another individual?**

The Township Attorney was not involved in this process. I otherwise have no information.