



**AGENDA**  
Municipal Officers Electoral Board  
Village of Arlington Heights

Village Board Room  
Arlington Heights Village Hall  
33 S. Arlington Heights Road  
Arlington Heights, IL 60005  
January 6, 2023  
9:00 AM

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. REMARKS BY BOARD CHAIR**

**IV. REVIEW OF LEGAL AND PROCEDURAL ISSUE**

A. Approval of Minutes - January 3, 2023

**V. ADOPTION OF ELECTORAL BOARDS RULE OF PROCEDURE**

**VI. HEARINGS REGARDING OBJECTIONS**

A. Consideration and Entry of Proposed Final Decisions:

1. *Scott Shirley v. Martin Bauer*, Case No. 22 MOEB 01
2. *Thomas Drake v. Martin Bauer*, Case No. 22 MOEB 02
3. *Keith Moens v. Martin Bauer*, Case No. 22 MOEB 03

**VII. CITIZENS TO BE HEARD**

**VIII. ADJOURN OR RECESS**



**Municipal Officers Electoral Board  
1/6/2023**

**Item:** Approval of Minutes

**Department:** Village Clerk

**ATTACHMENTS:**

**Description**

01/03/2022

**Type**

Minutes



**THE MUNICIPAL OFFICERS ELECTORAL BOARD  
OF THE VILLAGE OF ARLINGTON HEIGHTS**

**VILLAGE BOARD ROOM  
33 South Arlington Heights Road, Arlington Heights, Illinois 60005  
January 3, 2023 at 4:00 p.m.**

**Minutes**

I. Call to Order

II. Roll Call

President Hayes, Trustee Scaletta and Village Clerk Hume responded to roll.

Also Present were: Village Attorney Hart Passman, Martin Bauer, Scott Shirley, Thomas Drake and Keith Moens.

III. Introductory Remarks by Board Chair

President Hayes provided introductory remarks concerning the statutory purpose, scope, and membership of the Electoral Board. He noted that the Village has received three objections to the nomination papers of Trustee candidate Martin Bauer. President Hayes outlined the expected general schedule for the Electoral Board proceedings concerning the three objections.

IV. Review of Legal and Procedural Issues by Village Attorney

Village Attorney Passman provided further explanation of the statutory underpinnings of the Electoral Board process. He also summarized the proposed Rules of Procedure set forth in the agenda materials.

V. Adoption of Electoral Board's Rules of Procedure

Mr. Moens suggested that Rule 13 of the proposed Rules of Procedure be amended to using the Roberts' Rules of Order 12<sup>th</sup> edition versus the 11<sup>th</sup> edition cited in the proposed rules.

Trustee Scaletta moved to adopt the Electoral Board's Rules of Procedure with the amendment of Rule 13, by which the Board's default Rules of Order shall be Roberts Rules of Order Newly Revised 12<sup>th</sup> Edition. Clerk Hume seconded the motion.



Ayes: Scaletta, Hume, Hayes

The motion: Passed.

VI. Hearings regarding Objections to Nominating Petitions Submitted for Village Offices to be Voted Upon at the April 4, 2023 Consolidated Election.

President Hayes recommended the consolidation of the common objection regarding the insufficient number of signatures on the petition as the three objectors all cited this issue. He asked if any objector or the candidate opposed consolidation; all objectors and the candidate indicated they did not oppose.

Clerk Hume moved to consolidate the common argument regarding the number of signatures on the petition. Trustee Scaletta seconded the motion.

Ayes: Scaletta, Hume, Hayes.

The motion: Passed.

Mr. Bauer, Mr. Shirley, Mr. Drake and Mr. Moens were sworn in.

Signature Discussion

Mr. Shirley said he reviewed Mr. Bauer's petition and counted 125 signatures. The candidates in this election were required to submit no less than 472 signatures. He stated that Mr. Bauer had not met the requirement.

Mr. Drake said he filed an objection as the number of required signatures as shown on page 28 in the State of Illinois 2023 Candidates Guide issued August 2022 is that each independent candidate must get was between 5% and 8% of the number of persons who voted in the last regular election in 2021. That total was 9,440 or between 472 and 755 signatures. In reviewing Mr. Bauer's filing of 12/14/22, he observed a total of 125 signatures, which is far short of the required amount per the statute referenced above (10/ILCS 5/10-3). Mr. Drake submitted an exhibit noting the signature count on the nominating petition pages.

Mr. Moens said the nomination papers of Mr. Bauer are legally insufficient because they contain fewer than 472 validly collected signatures. He asked that the Electoral Board issue a decision that the name of the Candidate not appear or be printed on the ballot for election to the position of Trustee of the Village of Arlington Heights at the Consolidated Election on April 4, 2023.

Mr. Bauer said he began his petition circulation two weeks prior to his submission. He said he based his numbers on the Candidates Guide pages 28-32 and he interpreted that the Village was a



nonpartisan form of government. As such his number of signatures is sufficient as it requires 1% of the total vote cast at the last preceding election. He noted that the Village's website says it is nonpartisan. He did not have the packet created by the Village Clerk as he did not know it existed when he began his campaign. Mr. Bauer said he came to Village Hall to try and see the Clerk's packet, but she was not in the office on December 9<sup>th</sup>. The Clerk did not inform him that his documents were not in compliance when he filed his paperwork December 12<sup>th</sup>. He did what he thought was correct and many residents want to see his name on the ballot. Mr. Bauer submitted pages 28-32 of the Candidates Guide as an exhibit. He said if he used the incorrect forms, it was an honest mistake.

Mr. Shirley said the forms submitted should have been those of an Independent Candidate, not a Nonpartisan one.

Mr. Drake said he reviewed other candidates petitions and Mr. Bauer's petition was the only one lacking the correct number of signatures and using a different set of guidelines.

Mr. Bauer said he followed the forms to the letter based on his reading of the Electoral Guide. He asked for clarification on the rules of Arlington Heights and where in the Statutes or Village Code the election rules are identified.

President Hayes said no one is questioning Mr. Bauer's honesty or sincerity. The issue for the Electoral Board is we have to decide if the petition complies with State Law and if the objections are valid based on State Law. The Board must decide if the signatures comply with State Law.

Mr. Passman said the question of the number of signatures turns on whether the Village is partisan or nonpartisan. He said in his research the Village did not have a referendum adopting a nonpartisan form of government. The tradition in Arlington Heights is that candidates run as Independents in a partisan election; however, candidates could run under a party. He agreed the Candidates Guide is confusing, but the Guide indicates that it is not automatic that the Village is nonpartisan. He cited page 28 of the Guide, which states "This procedure for election of officers includes municipalities which have adopted the managerial form and retained or later adopted the mayor-alderperson or president-trustee form of electing their officers". He read the Statute which explained that the election process in place at the time of the adoption of the managerial form of government stands. There is nothing that dictates whether the Village is partisan or nonpartisan. A village incorporated after 1992 is automatically nonpartisan. Villages that have held partisan elections and were incorporated prior to 1992 must hold a referendum to change the election process. He said he could not find evidence of a referendum occurring in Arlington Heights. Therefore, the Village still operates under a partisan election system.



Mr. Passman added that nonpartisan filings were due in November, not in December. Their filing period is different.

President Hayes said he has run in 9 elections. The Guide always says that candidates should seek legal counsel. He's always taken that to heart.

Clerk Hume stated the signature requirement came from 10 ILCS 5/10-3, and that the Village does not have its own Election rules, but follows the State rules completely. She explained she was at the County offices on December 9<sup>th</sup> and missed Mr. Bauer, but no email or phone number was left for her, so she did not know he had stopped by. If contact information had been left, she would have responded appropriately. On the day of filing, the Clerk offered Mr. Bauer a packet, but he declined. When packets are turned in, the Clerk cannot make comments or suggestions regarding their compliance; the role is ministerial.

President Hayes noted the Village Clerk is not allowed to provide legal advice to candidates. Ms. Hume concurred, saying that is why she creates the packet for Candidates because it is complicated.

Trustee Scaletta said in hindsight, Mr. Bauer probably realizes there was more to the process. The Village does not want staff placing their hands on the scales to favor one candidate over another. Trustee Scaletta said he sometimes finds the Candidates Guide confusing, but called the State Board of Elections for clarification. Trustee Scaletta said based on the evidence provided, in reading the nonpartisan forms, it specifically notes a primary, and Mr. Bauer turned in his paperwork at the partisan deadline, not the primary deadline. At some point, there should have been a realization that something was off. Innocence is not an excuse for not following the law. Trustee Scaletta said he believed Mr. Bauer was doing his best, but there are so many issues, including use of the wrong forms and not enough signatures.

President Hayes concurred with Trustee Scaletta because of the apparent errors and several references to the primary election, which is not the same as a consolidated election. There are some glaring errors and even though it was an honest mistake, stated his opinion that he cannot look away. He believes the consolidated objections should be sustained regarding the insufficient number of signatures.

Trustee Scaletta moved to sustain the objections of the consolidated common argument. Clerk Hume seconded the motion.

Ayes: Scaletta, Hume, Hayes

The motion: Passed.



### Objections #3 and #4 of Thomas Drake

Mr. Drake said Mr. Bauer used a P-5 (Nonpartisan, primary) form for petition signatures rather than the required P-3 (Independent Candidate) form. Mr. Bauer also used the P-1A form for the Statement of Candidacy when a P-1B form was required (Objection #3). He also said the Certificate of Attached List of Deletions did not comply with the requirements as it was not numbered, and declared that there were 2 pages related to the striking of signatures, and yet there was one page (Objection #4).

Mr. Bauer said the forms are part and parcel of his earlier comments. If indeed the Village is partisan, then these are not the right forms. He asked that if this is the case, the Village strike all references in its materials that it is nonpartisan. These references suggest candidates should file nonpartisan paperwork.

Mr. Drake said this pertains to following the law.

Mr. Passman offered information on some other electoral board cases in other municipalities, in which the wrong forms were used; those boards found that this was not grounds to remove a candidate unless the signers were confused. As far as the numbering issue, the Statute does require page numbering. In this context, if the signatures are removed, he was not sure if it makes any difference.

President Hayes said he didn't have strong feelings on way or another, but it is State Law he respects the correct forms being submitted. If it was the only issue with the submissions, he would have difficulty sustaining the objection.

Trustee Scaletta said on Objection #4, it's important that the sheets are numbered as it protects the packet from being changed after submission. It also protects the Clerk. Mr. Passman said the sheets should be numbered consecutively. It is not clear if the Deletions sheets begin again at 1 or take up after the petition page numbers. On Objection #3, he stated that this goes to the heart of the issue, in that Mr. Bauer didn't have the right number of signatures, because he was following the wrong law and using the wrong forms.

Clerk Hume said on Objection #4, the way the laws are written is to make sure that there are no errors and everyone knows what is happening. In this case as there is only one page, it's pretty clear what signatures the candidate is trying to strike. She is inclined to overrule the objection. On #3, she said the signers were unlikely to be confused about what they were signing, Mr. Bauer was running for Trustee. However, in her career, she has processed 61 petitions, and not one time have the wrong forms been completed and not all candidates used the Clerk's packet. She concurred



with Trustee Scaletta that something should have triggered a realization that the forms might not be right. It is noted in the Candidates Guide that Candidates should contact the election authority regarding the form of government; even the State Board of Elections knows it is complicated. The Village was established in 1887 and has run partisan elections since that time. It has not held a referendum to hold nonpartisan elections. She said she needed to follow precedent and agreed to sustaining the objection on #3.

Trustee Scaletta moved to sustain objection #3 and to overrule objection #4. Clerk Hume seconded the motion.

Ayes: Scaletta, Hume, Hayes

The Motion: Passed

#### VII. Adjournment or Recess

The meeting was recessed and will be reconvened at 9:00 a.m., January 6<sup>th</sup>. The written decision will be voted upon at that time.



**Municipal Officers Electoral Board  
1/6/2023**

**Item:** Consideration and Entry of Proposed Final Decisions

**Department:** Village Clerk

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
Electoral Board Written Order	Exhibits



Honorable Thomas W. Hayes, Village President and Chair of the Electoral Board; Honorable Rebecca Hume, Village Clerk and member of the Electoral Board; and Honorable John Scaletta, longest serving Village Trustee and member of the Electoral Board; all three Objectors; and the Candidate.

6. The Electoral Board voted to adopt Rules of Procedure.
7. All evidence was tendered to, received by, and reviewed by the Electoral Board, and the Electoral Board heard and considered all arguments presented at the hearing.
8. The objections concern three alleged errors in the Candidate's nominating papers:
  - a. All three objections argue that the nominating papers do not include a sufficient number of signatures by registered voters of the Village;
  - b. The objection of Thomas Drake further argues that the nominating papers were improperly submitted using "Nonpartisan" forms, and that "Independent" forms were required; and
  - c. The objection of Thomas Drake further argues that the Certificate of Attached List of Deletions submitted as part of the Candidate's nominating papers were improperly completed.
9. Pursuant to Rule of Procedure 2, and the consent of the Candidate and Objectors, the Electoral Board voted to consolidate the common issue of objection presented by the three objection petitions, concerning the quantity of required signatures, and to separately consider the remaining issues of objection presented only by Objector Thomas Drake.
10. The Electoral Board, composed as set forth below, **MAKES THE FOLLOWING FINDINGS** concerning the first issue of objection regarding the quantity of required signatures.

Objectors each timely filed a petition on December 27, 2022, objecting to the nomination papers filed by Candidate, who seeks the office of Village Trustee of the Village of Arlington Heights at the April 4, 2023 Consolidated Election. Each Objector's petition argued that the Candidate's nomination papers were insufficient under the Election Code, because the nomination papers included signatures of 125 registered voters in the Village. Each Objector argues that not less than 472 signatures of registered voters are required for inclusion on the ballot for the office of Village Trustee for the April 4, 2023 Consolidated Election.

The Candidate does not dispute that his nominating papers included signatures of 125 registered voters. The Candidate stated at the hearing that he believes that Village elections are nonpartisan, and, therefore, that he needed only a quantity of signatures equal to 1% of the total vote cast at the last preceding election in the Village for Village President. *See* 65 ILCS 5/3.1-25-30. The Candidate stated that the number of signatures required was 81, and therefore that his submission of 125 signatures is sufficient. The Candidate cited the Illinois State Board of Elections' 2023 Candidate's Guide for support of his position. He also noted that, in at least one instance, the Village's website states that local elections are nonpartisan.

The Objectors argue that Village elections are partisan. They each argue that, under Section 10-3 of the Illinois Election Code, 10 ILCS 5/10-3, a candidate for Trustee must submit a quantity of signatures between 5% and 8% of the number of votes cast in the last Village election. The Objectors argue that this yields a required range of between 472 and 755 signatures. At the hearing, the Objectors also noted that nonpartisan elections and candidate filing occur pursuant to a different schedule than partisan elections.

Thus, the sole legal issue of this shared objection is whether Village elections are partisan or nonpartisan. The Board finds that Village elections are partisan. Section 3.1-25-20 of the Illinois Municipal Code, 65 ILCS 5/3.1-25-20, provides that villages incorporated since January 1, 1992 must conduct nonpartisan elections, unless the voters approve a referendum to conduct partisan elections. However, the Village of Arlington Heights was incorporated long before that date, and thus the default rule of nonpartisan village elections does not apply. Indeed, that same statute provides that “villages that have nominated and elected candidates for president and trustees in partisan elections prior to January 1, 1992, may continue to hold partisan elections without conducting a referendum.” Similarly, Section 5-1-2 of the Illinois Municipal Code, 65 ILCS 5/5-1-2, states that villages that adopt the managerial form of government continue to follow “the procedures for elections” previously in place.

The Village utilizes the managerial form of government (as the Candidate and Objectors agree). There is no record of any referendum in the Village to utilize a nonpartisan election system. The Board also notes that all other candidates for the upcoming April 4, 2023 Consolidated Election utilized “Independent” designations for partisan elections in their nominating papers. The Village Clerk stated at the hearing that all other petitions filed during her tenure with the Village followed the partisan election system and requirements.

The Board thus finds that Village elections are partisan. Therefore, the minimum quantity of signatures required is, as the Objectors correctly argue, per Section 10-3 of the Illinois Election Code, a candidate for Trustee must submit a quantity of signatures between 5% and 8% of the number of votes cast in the last Village election. This requires a minimum of 472 signatures, and the Candidate’s nominating papers fall far short of that requirement.

11. The Electoral Board, composed as set forth below, **MAKES THE FOLLOWING FINDINGS** concerning the issue of objection by Objector Thomas Drake, regarding the “Nonpartisan” forms utilized by the Candidate:

Objector Drake argues that, because the Village operates under a partisan election system, the Candidate’s use of the P-5 and P-1A forms, which are labeled “Nonpartisan,” was improper. Objector Drake contends that the Candidate was required to use P-3 and P-1B forms instead, which are for “Independent” candidates.

The Candidate acknowledged that he used “Nonpartisan” forms, and, as noted in the findings set forth in Paragraph 10 above, argued that the Village’s elections are nonpartisan. The Candidate acknowledged that if Village elections are partisan, his forms were wrong.

The Board finds that candidates for Village office should use the proper forms designated therefor, and that use of “Nonpartisan” forms for nomination to the office of Village Trustee is prohibited. The Board therefore determines that all of the Candidate’s nominating papers labeled as “Nonpartisan” are insufficient as a matter of law.

12. The Electoral Board, composed as set forth below, MAKES THE FOLLOWING FINDINGS concerning the issue of objection by Objector Thomas Drake, regarding the Candidate’s Certificate of Attached List of Deletions:

Objector Drake argues that the Candidate improperly completed the Certificate of Attached List of Deletions included within his nominating papers. Specifically, Objector Drake argues that the Certificate of Attached List of Deletions identifies two pages of deletions, but only one was submitted, and that the page of deletions was not numbered as required by the Election Code.

The Board finds that the Candidate properly completed the Certificate of Attached List of Deletions, having noted that there was one page of Certifications of Deletions. The Board further finds that, because there was only one page of deletions, there was no harm or consequence for the failure to number that one page. The Board notes that, in light of the other fatal errors in the Candidate’s nominating papers set forth in paragraphs 10 and 11 above, this objection is irrelevant. Even if the objection is correct, the consequence would be to add two signatures back to the total, which would still be too few under the law for the Candidate to appear on the ballot.

IT IS THEREFORE ORDERED that the objections of Scott Shirley, Thomas Drake, and Keith Moens to the nomination papers of Martin Bauer as a candidate for the office of Village Trustee of the Village of Arlington Heights, located in the County of Cook, State of Illinois, are: (i) SUSTAINED in conformity with the findings in paragraphs 10 and 11 of this Final Decision; and (ii) OVERRULED in conformity with the findings in paragraph 12 of this Final Decision. The nomination papers of Martin Bauer are hereby declared invalid, and the name of Martin Bauer, candidate for the office of Village Trustee of the Village of Arlington Heights, shall not be printed on the ballot for the Consolidated Election to be held on April 4, 2023.

DATED, at Arlington Heights, Illinois this \_\_\_\_\_ day of January, 2023.

THOMAS W. HAYES, Chair

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Thomas W. Hayes

REBECCA HUME, Member

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Rebecca Hume

JOHN SCALETTA, Member

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John Scaletta