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# MEMORANDUM

**To:** Maine Township Board

**CC:**

**From:** Robert T. McCabe  
Margaret Kostopulos

**Subject:** Investigation Report – Attorney Work Product; Attorney/Client Privileged

**Date:** July 30, 2018

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## INTRODUCTION

Trustee Kimberly Jones complains that on three (3) separate occasions, Trustee David Carrabotta touched her buttocks. On May 22, 2018 and after speaking with attorney Keri-Lyn Krafthefer about an incident that allegedly occurred on May 16, 2018, Trustee Kimberly Jones spoke with Trustee Carrabotta privately and prior to a scheduled board meeting. Trustee Carrabotta denied the accusations and requested an investigation. Trustee Jones filed a formal written complaint on May 25, 2018. Trustee Jones' complaint also mentioned that two (2) Township employees had also complained of harassment. An email attached to Trustee Jones' complaint identified Township employees Dayna Berman and Vikki Rizzo as having complained about Trustee Carrabotta. Based upon the request of the Township Board, it was determined that a formal investigation would be conducted to determine whether there was a violation of the Township's sexual harassment policy. Ancel Glink was asked to conduct the investigation. Attorneys Robert T. McCabe and Margaret Kostopulos were assigned to conduct the investigation.

We identified witnesses who may have knowledge regarding the events discussed above. We interviewed eight (8) potential witnesses, including Trustee Jones, Assessor Moylan-Krey, Highway Commissioner Kazmierczak, Clerk Gialamas, and employees Marie Dachniwsky, Dawn Hayman, Dayna Berman and Mike Saaman on June 7, 2018. Employee Vikki Rizzo was interviewed on June 8, 2018. Township Supervisor Laura Morask, Trustee Sweeney and employee Doriene Prorak were interviewed on June 13, 2018. Trustee David Carrabotta was interviewed on July 1, 2018. Trustee Claire McKenzie was interviewed on July 9, 2018.

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Except for Trustee Carrabotta and Trustee McKenzie, all other interviews were conducted in the Supervisor's Conference Room at the Township Hall. Trustee Carrabotta was interviewed in our Chicago office located at 140 S. Dearborn Avenue. Trustee Carrabotta's personal attorney, Robert Bell, was present for his interview.

In addition to interviewing a total of twelve (12) witnesses and Trustee Carrabotta, we reviewed audio tape of a portion of the May 22, 2018 interaction between Trustees Jones and Carrabotta, as well as video footage of the December 22, 2017 Township holiday party and a link to video footage of the January 23, 2018 Township board meeting. We reviewed all of the video footage and audio tape, as well as the exhibits that were attached to Trustee Jones' written complaint, as part of our investigation.

## **COMPLAINTS**

### **Trustee Jones' Written Complaint**

Trustee Kimberly Jones filed a written complaint on May 25, 2018. In her complaint, Trustee Jones alleges as follows:

- The complaint states that it is a recitation of events that occurred between January 23, 2018 and May 16, 2018;
- The complaint alleges that on January 23, 2018, while posing for a photo with an Eagle Scout, Trustee Carrabotta "lightly swiped" his hand across Trustee Jones' "bottom;"
- The complaint states that Trustee Jones felt awkward, but that she gave Trustee Carrabotta the "benefit of the doubt" and "chalked it up as an inadvertent mistake;"
- The complaint states that on January 24, 2018, Trustee Jones texted Supervisor Morask and Assessor Moylan-Krey stating as follows: "BTW when we posed for the photo last night Dave touched my ass. I don't think it was intentional but I'm not sure;"
- The complaint states that Trustee Jones also told Highway Commissioner Kazmierczak about the January 23, 2018 allegations during a breakfast meeting on a later date;
- The complaint further alleges that Trustee Carrabotta touched Trustee Jones' buttocks on May 16, 2018 at the MaineStreamers' 90-Year-Old Birthday Party at Chateau Ritz;
- Specifically, the complaint alleges that "...as we were disassembling from the photo, Trustee Carrabotta again lightly swiped his hand across my bottom;"

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- Trustee Jones goes on to say that, “At that time, as I believed this to be the third occurrence of something like this happening, I turned to him and gave him a dirty look. He pretended as if he didn’t see me;”
- The complaint states that “immediately after the swipe,” Trustee Jones informed Clerk Gialamas and Assessor Moylan-Krey of what happened;
- The complaint states that, upon being informed of this alleged incident, Clerk Gialamas told Trustee Jones that there were two Township employees who had alleged similar misconduct and actually complained about Trustee Carrabotta;
- Finally, Trustee Jones states that she sent an email to Supervisor Morask on May 19, 2018 stating the following: “Yes it is insane! I didn’t say anything to you yet, but I did share this with Pete and Susie immediately after it happened. Carrabotta touched my ass AGAIN at the 90 year old birthday party. He swipes his hand across is [sic] gently as if it was inadvertent. What I previously chalked up as accidental can no longer be viewed that way since it is at least the second time and possibly the third time. This last incident I immediately turned to him with a dirty look and he pretended he didn’t see me;”
- Trustee Jones also stated that she told Highway Commissioner Kazmierczak about the incident;
- Trustee Jones concludes her complaint by stating that the conduct is unwelcome and of a harassing nature.
- Trustee Jones complaint has a total of 4 attachments marked as Exhibits 1 through 4;
- Exhibit 1 is an article about the Eagle Scout and a copy of the photo;
- Exhibit 2 is a screen shot of a text sent by Trustee Jones to three (3) other people on January 24, 2018;
- Exhibit 3 is a copy of the photograph taken on May 16, 2018 at the MaineStreamers’ 90<sup>th</sup> Birthday Party;
- Exhibit 4 is a copy of any email sent by Trustee Jones to Supervisor Morask on May 19, 2018 which includes a response from Supervisor Morask

A complete copy of Trustee Jones’ complaint is attached hereto as Exhibit A.

## **WITNESS INTERVIEW SUMMARIES**

### **Trustee Kimberly Jones**

We met with Trustee Kimberly Jones on Thursday, June 7, 2018. She has served on the Maine Township Board since 2013. She has worked with Trustee David Carrabotta for approximately one (1) year. While she ran for office in the 2017 local governmental elections on the same slate as Trustee Carrabotta, she did not know him before that campaign and only knows him as a fellow Trustee. On May 25, 2018,

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Trustee Jones drafted a formal written complaint regarding what she believes to be intentional inappropriate touching of her buttocks by Trustee Carrabotta on two (2) separate occasions.<sup>1</sup> According to the complaint, the first incident is alleged to have occurred on January 23, 2018 during a photo opportunity at a board meeting where an Eagle Scout was being honored. The second incident is alleged to have occurred on May 16, 2018 at the MaineStreamers' 90-Year-Old Birthday Party celebration.

We began our interview with Trustee Jones by discussing the January 23, 2018 incident. Trustee Jones told us that she attended a board meeting on that date where an Eagle Scout was being honored by the board. Trustee Jones and her fellow board members assembled for a photo with the Eagle Scout. Trustee Jones provided us with a copy of the photo. In her complaint, Trustee Jones states that, while posing for the photo, Trustee Carrabotta "lightly swiped his hand across my bottom." In the photo, she can be seen standing to the right of Trustee Carrabotta. During her interview, Trustee Jones said that while she and the others were disassembling from the photos she felt Trustee Carrabotta "brush" against her buttocks. She also stated, "And when the photo started to, you know, disassemble, I felt like a brush against my butt, my bottom, so I was kind of like, hmm, maybe that was inadvertent, maybe I backed up, and I just kind of, well, that was weird, but okay." Trustee Jones did not actually see this occur. She did not know which hand was used and if it was the palm or the back of Trustee Carrabotta's hand that allegedly touched her. During her interview, we asked, "So during the photo, his hand or arm was not behind you?" She replied, "No. It's usually when we're moving away. I mean, the times I recall, it's been more like when everybody is kind of disassembling, you know, when you kind of – no, we don't have our – we don't have our arms around each other or anything like that, no." Trustee Jones sent a text message to Township Supervisor Laura Morask and Assessor Susan Moylan-Krey the day after the meeting. The text said, "BTW when we posed for the photo last night Dave touched my ass. I don't think it was intentional but I'm not sure." Trustee Jones spoke to Laura Morask, Susan Moylan-Krey and Wally Kazmierczak, the Highway Commissioner about the January 23, 2018 incident. The incident was still bothering her and she may have mentioned it to Kazmierczak when they met for breakfast the following Monday, January 29, 2018, because it brought back the memory of a possible similar incident that occurred with Trustee Carrabotta a few months prior, that she had concluded was, at worst, an inadvertent touching of her

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<sup>1</sup> Trustee Jones filed the complaint at the request of the attorney, following the Township Board's request to investigate allegations prompted by Trustee Carrabotta's request. Trustee Jones prepared the complaint so that the attorneys would know exactly what they were investigating. The situation is somewhat odd that the request to investigate the complaint actually prompted the complaint in this instance. It is unclear whether Trustee Jones would have actually filed a formal complaint had it not been requested that she do so in order to facilitate the investigation requested by Trustee Carrabotta.

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buttocks. She said that the impact at the time was minimal, but that she may have been keeping more distance from people in social settings after the incident.

Trustee Jones sincerely believes that Trustee Carrabotta touched her, whether on purpose or inadvertently, and her actions in sending out e-mails the following day are consistent with her statement. We told Trustee Jones that when the investigation is complete, she will be given written documentation of our findings. We asked Trustee Jones to contact us if she remembered any other facts that may be pertinent to our investigation. She said that she would. After our initial conversation with Trustee Jones, Attorney Kostopoulos followed up with her to determine whether the touching occurred while posing or while disassembling from the photo, because of the conflicting information. In response, Trustee Jones responded to Attorney Kostopoulos that “To be clear, the swipe on my buttocks at the January 23, 2018 meeting was NOT as we were disassembling it was as stated in my outcry text the next morning, my written complaint and my deposition to you, done by Dave while **posing** and (my look of discomfort and shock was witnessed by an audience member whom I believe you interviewed.)”

The second incident is alleged to have occurred on May 16, 2018. On that date, Board members were attending the MaineStreamers 90<sup>th</sup> Birthday Celebration. Trustee Jones said what occurred that day was similar to the January 23, 2018, incident. She and other board members, including Trustee Carrabotta, assembled for a picture. She provided a copy of the picture in her complaint. Trustee Jones can be seen standing in the middle of the photo, to the right of Trustee Carrabotta. Trustee Jones said that, similar to the January 23, 2018 incident, when she and the other trustees were disassembling after the photo was taken, she felt a “faint touch” to her buttocks. Again, she did not see Trustee Carrabotta touching her buttocks; she felt it. This time, she reacted by giving Trustee Carrabotta a “dirty look,” but he ignored her. Trustee Jones states that she was very upset by this incident because it was the third such occurrence. Since Trustee Jones formal complaint only referenced two incidents in January and May of 2018, I asked about the third incident. Trustee Jones said that although her formal complaint only references two (2) incidents, she believes that there was a third incident, possibly in November or December of 2017. She did not have a specific date or event for the alleged first incident. She believes that the incident occurred during a photo, like the other two incidents, and that it also involved a “light brush” against her buttocks. She added that it may have been while they were receiving awards at the annual Township Officials of Illinois meeting or it may have been when employee Mary Swanson retired. After the May 16, 2018 incident, she immediately told Township Clerk Peter Gialamas what happened as they were going to sit down for lunch. She asked Gialamas if he thought maybe Trustee Carrabotta touched her buttocks accidentally. Gialamas told her, “No. Ask Dayna (Berman) and Vikki (Rizzo).” Berman and Rizzo are female Township employees. Trustee Jones did not

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see anyone else immediately after the incident occurred other than Gialamas. Trustee Jones said she spoke with Supervisor Morask about the issue and discussed speaking with Village Attorney Keri-Lyn Krafthefer. After speaking with Attorney Krafthefer, Trustee Jones decided that she would privately tell Trustee Carrabotta that she was offended by him touching her buttocks so that he would be aware of them, if inadvertent, or so he would stop them, if intentional. She did this privately prior to the start of the May 22, 2018 Township Board Meeting.

Trustee Jones said that during “bill pay” (prior to the meeting when the trustees all review Township bills), she asked Trustee Carrabotta if she could speak with him privately. He agreed and they went to a private office. Trustee Jones told Trustee Carrabotta that he had touched her buttocks and his conduct bothered her. Trustee Carrabotta became outraged, told her not to talk to him anymore and said that he was going to sue her. Trustee Carrabotta also allegedly told Trustee Jones that she was sexually harassing him. Trustee Carrabotta also requested an emergency closed session meeting to discuss the allegations.

#### **Assessor Susan Moylan-Krey**

We met with Assessor Moylan-Krey on Thursday, June 7, 2018. Assessor Moylan-Krey knows Trustee Jones from their work at the Township and membership in the local Republican Women’s Group. She has known Trustee Carrabotta since he served as a Committeeman.

Assessor Moylan-Krey was aware of the allegations made by Trustee Jones against Trustee Carrabotta. Trustee Jones made her aware of an incident that had occurred on January 23, 2018 on the night that it occurred. Assessor Moylan-Krey stated that Trustee Jones said, “He touched my butt again.” Assessor Moylan-Krey said Trustee Jones had told her of a previous incident that had happened a month or two prior, maybe October of 2017 contemporaneously, as well, possibly on the phone. Assessor Moylan-Krey said that Trustee Jones said “it feels like it may be deliberate – a definite feel.” Assessor Moylan-Krey may have talked to Highway Commissioner Wally Kazmierczak and Township Clerk Peter Gialamas about the incident, but she could not remember what was said. Assessor Moylan-Krey did not witness the incident on January 23, 2018.

Assessor Moylan-Krey was with Trustee Jones at the Maine Streamers’ 90<sup>th</sup> Birthday Party on May 16, 2018. Trustee Jones approached her and said, “I can’t believe it; he did it again.” Assessor Moylan-Krey told Trustee Jones that she should “smack him” and that she needs to say something. Assessor Moylan-Krey added that Clerk Gialamas was also present when Trustee Jones told her what happened and he said that Trustee Jones should talk to employees Dayna Berman and Vikki Rizzo. I

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asked her specifically what Clerk Gialamas had said about Dayna Berman and Vikki Rizzo, and she said that she thinks he said that Trustee Carrabotta had been “inappropriate” with other Township members at a Christmas luncheon. Assessor Moylan-Krey identified Clerk Gialamas, Highway Commissioner Wally Kazmierczak and employees Dayna Berman and Vikki Rizzo as people who may have additional information related to the investigation. Assessor Moylan-Krey added that she thought that “job fear” might keep Berman and Rizzo from coming forward and that she had heard that from Trustee Jones.

### **Highway Commissioner Walter Kazmierczak**

Commissioner Kazmierczak is the Township’s current highway commissioner. We met with him on Thursday, June 7, 2018. He was a Township trustee prior to becoming the highway commissioner. He was first elected as a trustee in 2001. He has known Trustee Jones for a “long time.” He has known Trustee Carrabotta for approximately eighteen (18) months.

Regarding the January 23, 2018 allegations, the Commissioner said he attended a board meeting on that date and that an Eagle Scout was honored at the meeting. A photograph was taken and he participated in the photo. He was in the back row with Trustee Carrabotta to his right and Trustee Jones to the right of Trustee Carrabotta. He could not see Trustee Carrabotta, but he could see Trustee Jones from where he was positioned for the photo. He did not see anything happen between Trustee Jones and Trustee Carrabotta. After the photo was taken, Trustee Jones told him that something happened between her and Trustee Carrabotta. After the January 23, 2018 incident happened, Trustee Jones mentioned that Trustee Carrabotta had touched her buttocks on two (2) occasions. He did not mention discussing the incidents during a breakfast meeting. He was aware of a third incident that happened during a senior function on May 16, 2016. He wasn’t there, but knew that Trustee Jones said that Trustee Carrabotta touched her buttocks at that function after a picture was taken. Commissioner Kazmierczak was present for the meeting on May 22, 2018. He heard Trustee Carrabotta yelling, “She said I touched her butt,” “Don’t talk to me,” and “Talk to my lawyer.”

Commissioner Kazmierczak said that Dayna Berman and Vikki Rizzo had told him on more than one occasion when he was dropping off documents to them in their offices that Trustee Carrabotta had touched their buttocks and that that was consistent with what Supervisor Morask had told him about two women complaining about Carrabotta at the Township holiday party on December 22, 2017. Commissioner Kazmierczak said he thinks that he may have been there, but he was not sure. When the Township adopted its sexual harassment policy in late 2017, he thought it odd that Trustee Carrabotta wanted to include the word “unwelcome” in front of “touching” in

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the policy. Trustee Carrabotta said that he wanted this because the Township is a “warm, friendly place with lots of hugging.”

### **Marie Dachniwsky**

We met with Ms. Dachniwsky on Thursday, June 7, 2018. Ms. Dachniwsky runs the Maine Township MaineStreamers, which is a social group for senior citizens. She has worked for the Township since 2003. She has known Trustee Jones since she started on the Board. We were told that Ms. Dachniwsky may have information regarding the alleged May 16, 2018 incident involving Trustee Carrabotta and Trustee Jones at the MaineStreamers’ 90<sup>th</sup> Birthday Celebration.

Ms. Dachniwsky told us that she attended the May 16, 2018 MaineStreamers’ 90<sup>th</sup> Birthday Party because it is part of her job to organize that function. She recalls that a photograph was taken at the event and that Trustee Jones and Trustee Carrabotta were both in the photo. Ms. Dachniwsky was present when the photo was taken. She did not observe anything unusual happen between Trustee Carrabotta and Trustee Jones. She did not observe Trustee Carrabotta touch Trustee Jones. She did not observe any reactions by Trustee Jones during or after the photo was taken. Ms. Dachniwsky was unaware until our meeting that a formal complaint had been made by Trustee Jones alleging that Trustee Carrabotta had touched her inappropriately.

Ms. Dachniwsky was present on May 22, 2018 for the Board meeting. She remembers that Trustee Jones and Trustee Carrabotta may have been having a discussion. The discussion may have been a little louder than normal. She remembers remarking that she hoped they (Carrabotta and Jones) were joking. Trustee Carrabotta seemed very upset when the meeting started and he asked for a closed session. Ms. Dachniwsky was not told what was happening or why the closed session was held. She said that she has never been told, by anyone at the Township, that Trustee Carrabotta has acted inappropriately.

### **Township Clerk Peter Gialamas**

We met with Clerk Gialamas on Thursday, June 7, 2018. Clerk Gialamas has been the Township’s clerk for just over one year. Prior to becoming the Township Clerk, he was a Township Trustee for nine years. He knows Trustee Jones very well. He has known her for several years. He does not know Trustee Carrabotta very well.

Clerk Gialamas said that he was aware of one incident that is alleged to have happened on May 16, 2018 at the MaineStreamers 90<sup>th</sup> Birthday celebration. Trustee Jones told him about the alleged incident at the MainStreamers’ event. He attended the event and was in a photograph lining up from left to right of himself, Assessor Moylan-



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Krey, Trustee Jones, Trustee Carrabotta and Trustee Sweeney. After the photograph was taken and while he and Trustee Jones were walking to their table to eat lunch, Trustee Jones said, “he grabbed my ass.” Trustee Jones told him that this was third time that Trustee Carrabotta touched her buttocks. Specifically, she said that the first time, she thought it was an accident. She said that since it happened a second time and now a third time, she did not think it was an accident. Trustee Jones seemed aggravated and said that she could not believe what was happening. He has never known Trustee Jones to make anything up, so he believes that these incidents of inappropriate touching happened. Trustee Carrabotta is a “touchy feely” guy. Once, Trustee Carrabotta walked by him while he was seated and “forcefully” put his hands on his shoulders. It was not offensive to him; it’s just how Trustee Carrabotta is.

Clerk Gialamas was present for the May 22, 2018 Board meeting. He saw Trustee Jones and Trustee Carrabotta at that meeting. They talked and then at some point, Trustee Carrabotta “flew off the handle.” I asked what that meant, and Clerk Gialamas said that there was more “friction” that night between Trustee Jones and Trustee Carrabotta. Neither of them would look at each other and the meeting was very “tense.”

Clerk Gialamas attended the December 22, 2018 Township holiday party, but left before Trustee Carrabotta arrived. He also attended Supervisor Morask’s holiday party on December 30, 2018. Dayna Berman and Vikki Rizzo attended the party. They were both “asking for help” because there was “a lot going on with that faction,” referring to Trustee Carrabotta, Trustee McKenzie and Trustee Sweeney. Ms. Berman said, “Oh, and he’s handsy on top of it” and both Ms. Berman and Ms. Rizzo said that they were “uncomfortable” with Trustee Carrabotta. Clerk Gialamas mentioned what was said by Berman and Rizzo to Supervisor Morask. He thinks that she talked to Berman and Rizzo in her office the night of the holiday party. He was not present for those alleged discussions.

Clerk Gialamas thought that it was odd that when the Township passed its new sexual harassment policy in December of 2018, Trustee Carrabotta wanted language in the section of the policy that referred to inappropriate touching that clarified that the touching needed to be “unwelcome.” Trustee Carrabotta mentioned that the Township is a “huggy” place, so it is necessary to make sure that there is a distinction between welcome and unwelcome touching.

### **Dawn Hayman**

We met with Ms. Hayman on Thursday, June 7, 2018. She is an employee of the Township who works in Highway Department. Ms. Hayman works in the office and is the Highway Department’s grant administrator. She has known Trustee Jones for about

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five (5) years. She does not know Trustee Carrabotta personally, and she has no relationship with him outside the Township.

Ms. Hayman attended the Board meeting on January 23, 2018. She recalls that a photograph of the Board members was taken that evening by Dick Barton. He typically takes all of the photographs. She was present, but not in the photo. Ms. Hayman could see Trustee Jones when the photo was taken. Trustee Jones was standing next to Trustee Carrabotta. Ms. Hayman said that she thought she saw a “flinch” or “twitch” from Trustee Jones before the photo was taken and during the photo. She also said that she thought that she saw a “weird” expression on Trustee Jones’ face. She said it was odd, so she asked the supervisor’s assistant, Doriene Prorak, if something was wrong with Trustee Jones. Ms. Prorak told her that nothing was wrong. She did not learn of the allegations of inappropriate touching by Trustee Carrabotta until she saw it in a recent newspaper article. When she read the article, she was reminded of the uncomfortable or disconcerted look on Trustee Jones’ face during the photographing that night which she also described as notable to her because Trustee Jones is always so “put together” and “professional.”

Ms. Hayman said that she has heard that other Township employees have made complaints and that Trustee Carrabotta has a “creepy reputation.” She thinks that he has an “aggressive tone” and that his banter can be “a little abusive” and “negative.” She does not like the alleged abusive, negative banter.

### **Dayna Berman**

We met with Ms. Berman on Thursday, June 7, 2018. Ms. Berman is the Township’s administrator. She has been employed by the Township for twenty-two (22) years. She handles Township personnel matters and programming. She has no personal relationships with Trustee Carrabotta or Trustee Jones. She knows both of them through work and her relationships with them are strictly professional.

Ms. Berman attended a Township holiday party on December 22, 2017. The party was held in the Township’s boardroom. It was a luncheon for employees and others and it included a grab bag type gift exchange. The party began around 12 p.m. and ended around 3 p.m. Trustee Carrabotta attended the party, but he arrived later, maybe around 2 p.m. She and Vikki Rizzo, her assistant, spoke to Trustee Carrabotta for a while after he arrived. Employee Mike Saaman was also present. They all talked for about forty-five (45) minutes. She could not remember if she left first or if Trustee Carrabotta left first. Ms. Berman said that Trustee Carrabotta did not hug her. She did not discuss the holiday party and Trustee Carrabotta with any other Township officials or employees.

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Ms. Berman attended Supervisor Morask's holiday party at her law office on December 30, 2017, with her husband. Vikki Rizzo also attended that party. There were no discussions about what happened at the Township holiday party on December 22, 2017 at the December 30<sup>th</sup> party. I asked Ms. Berman if she recalled saying that Trustee Carrabotta was "handsy" at the Township party on December 22, 2017. She did not believe that she had made that statement and then was emphatic that she had not made the statement. Trustee Carrabotta had never done anything towards her to make her believe that that statement was true. She said she had never complained about Trustee Carrabotta touching her inappropriately, to anyone.

Ms. Berman said she had recently spoken to Supervisor Morask and that Supervisor Morask asked questions like the ones we were asking. She told the Supervisor that Trustee Carrabotta had not done anything inappropriate on December 22, 2017 and that she had no complaints about him.

### **Mike Saaman**

We met with Mr. Saaman on Thursday, June 7, 2018. Mr. Saaman is the Township's maintenance foreman. He has worked for the Township, in various capacities, for approximately fifteen (15) years. He knows both Trustee Jones and Trustee Carrabotta through work. He does not socialize with them outside of work. He has a good relationship with both of them.

Mr. Saaman attended the Township's holiday party on December 22, 2017. The party started around 12 or 1 p.m. and ended around 3:45 or 4 p.m. Dayna Berman and Vikki Rizzo were both at the party. Trustee Carrabotta came to the party, but he arrived late, around 3:30 p.m. After Trustee Carrabotta arrived, he, Berman, Rizzo and Trustee Carrabotta stood in a group and talked. He did not recall any hugging or physical interaction between Trustee Carrabotta and Berman or Rizzo. Trustee Carrabotta left first, and he left by himself. Neither Berman nor Rizzo complained about Trustee Carrabotta after he left the party and he has not heard any complaints about him since.

Mr. Saaman was present for the January 23, 2018 board meeting, but had no recollection of hearing or seeing anything unusual when the photo was taken with the Eagle Scout. Mr. Saaman was not present on May 16, 2018 for the MaineStreamers' 90<sup>th</sup> Birthday celebration. He was present for the May 22, 2018 board meeting, but he did not recall anything unusual happening between Trustee Jones and Trustee Carrabotta.

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**Trustee Susan Sweeney**

We met with Trustee Sweeney on Wednesday, June 13, 2018. She has known Trustee Carrabotta for a while and that they are friends.

Trustee Sweeney was present for the January 23, 2018 photograph of the Eagle Scout. She did not observe anything unusual happening between Trustee Carrabotta and Trustee Jones. She was in the front row for the photo. Trustees Carrabotta and Jones were in the back row of the photo. She did not hear Trustee Jones make any complaints about Trustee Carrabotta at the meeting when the photo was taken. She first learned of the allegations in this case during a board meeting on May 22, 2018.

Trustee Sweeney was present when for the MaineStreamers 90<sup>th</sup> birthday party when a photo was taken. There was nothing unusual between Trustee Jones and Trustee Carrabotta before or after the photograph was taken. Trustee Jones sat at a table with her for lunch and her demeanor was jovial and happy. Trustee Jones was laughing and did not seem like anything was bothering her. Trustee Jones did not tell her that Trustee Carrabotta had done anything inappropriate.

**Vikki Rizzo**

We met with Ms. Rizzo on Friday, June 8, 2018. Ms. Rizzo is employed as a backup bookkeeper and administrative assistant. She has worked at the Township for fourteen (14) years. She knows Trustee Carrabotta and Trustee Jones, but she only knows them professionally.

Ms. Rizzo attended the Township holiday party on December 22, 2018. She saw Trustee Carrabotta at the party. He arrived late. The party started around 1 p.m. and ended around 4:30 p.m. She spoke to Trustee Carrabotta at the party. She, Dayna Berman and Mike Saaman all stood toward the front of the board meeting room and talked with Trustee Carrabotta. Trustee Carrabotta may have hugged her at some point during their interaction, but she cannot remember. She believes nothing Trustee Carrabotta did at the party was inappropriate. She could not remember if Trustee Carrabotta hugged Dayna Berman. He may have. Berman had never mentioned having a problem with Trustee Carrabotta.

Ms. Rizzo attended a holiday party at Supervisor Morask's office on December 30, 2017. Dayna Berman was also at the party. She said that she did not recall any discussion about the Township holiday party during Supervisor Morask's party. She has never made a complaint about Trustee Carrabotta and he does not make her uncomfortable in any way. As far as she knows, Berman has never complained about Trustee Carrabotta.

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Ms. Rizzo spoke with Supervisor Morask about allegations of harassment against Trustee Carrabotta, maybe a week prior to our meeting. Supervisor Morask said that she had heard and Ms. Rizzo may have a complaint about Trustee Carrabotta. Ms. Rizzo said that she told Supervisor Morask that that was false and that she did not have any complaints about Trustee Carrabotta.

### **Supervisor Laura Morask**

We met with Supervisor Morask on Wednesday, June 13, 2018. Supervisor Morask is the Township Supervisor. She has been in that position since May 15, 2017. Prior to becoming the Township Supervisor, Supervisor Morask was on the Township board. She first became a Township trustee in 2001. She has known Trustee Carrabotta since he was first elected in 2017. She has known Trustee Jones since 2001. Supervisor Morask also knows Dayna Berman and Vikki Rizzo. She has known Dayna since 2001 and Vikki since she started working for the Township.

Supervisor Morask attended the December 22, 2017 Township holiday party. The party started around 1 p.m. and ended around 3:15 p.m. Trustee Carrabotta attended the party, arriving around 3:30 p.m. Supervisor Morask left the party very soon after Trustee Carrabotta arrived. She saw Dayna Berman and Vikki Rizzo speaking with Trustee Carrabotta. She was aware that Trustee Carrabotta hugged Berman. She did not say how she became aware of this, but she left the party prior to anything happening. She was told by the township clerk that the hug made Berman uncomfortable.

Supervisor Morask said Berman and Rizzo attended her holiday party on December 30, 2017. Berman and Rizzo were discussing the December 22, 2017 Township party at her party. The issue was brought to her attention by Township Clerk Peter Gialamas. She spoke to Berman and Rizzo and told them that Clerk Gialamas had told her that they said that Trustee Carrabotta had made them uncomfortable. She spoke to them individually. Berman and Rizzo said that Trustee Carrabotta made them uncomfortable, but that they did not want anything done because they were afraid of retaliation. She did not report the matter and request an investigation because both Berman and Rizzo said that they did not want that. Supervisor Morask also said that both Berman and Rizzo said that they did not feel harassed by Trustee Carrabotta. Berman and Rizzo said that Trustee Carrabotta made them uncomfortable and that his behavior was odd, but they were not making a complaint.

We asked Supervisor Morask if she had had any additional discussions with Berman or Rizzo. She said that she had, about a week or so prior to our interview. She spoke to both Berman and Rizzo about the same issues that were discussed at her party

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several months earlier. Both Berman and Rizzo told her the same thing that they had previously said at her party; Trustee Carrabotta's behavior was odd and made them uncomfortable, but it was not harassing. Supervisor Morask asked Berman and Rizzo to write statements regarding what they had told her. They both initially agreed to do so, but later declined stating that they did not want to be part of "this." I asked Supervisor Morask if anyone else in the Township has told her the Berman and Rizzo have complained of sexual harassment. She said that Clerk Gialamas told her that they complained about Trustee Carrabotta at her party and Trustee Jones told her that Highway Commissioner Kazmierczak told her that Berman and Rizzo had complained to him about Trustee Carrabotta.

### **Doriene Prorak**

We met with Ms. Prorak on Wednesday, June 13, 2018. Ms. Prorak is the assistant to the Township Supervisor. She has been in that position for nine (9) years. She knows Trustee Carrabotta from work. She has known him since he started on the board in 2017. She also knows Trustee Jones. She has known her for approximately five (5) years. She also knows Dayna Berman and Vikki Rizzo. She has worked with them for the past nine (9) years.

Ms. Prorak attended the December 22, 2017 Township holiday party. The party started around 1 p.m. and ended around 3 or 3:30 p.m. Ms. Prorak said that she was sitting in the back of the board room talking with former highway commissioner Robert Provenzano and Jan Provenzano. Trustee Carrabotta arrived later for the party, maybe around 3 p.m. She said hello to him, but that was it. Trustee Carrabotta talked with Dayna Berman, Vikki Rizzo and Mike Saaman at the front of the board room. Ms. Prorak did not observe any physical contact between Trustee Carrabotta and Dayna Berman and Vikki Rizzo.

Ms. Prorak attended the December 30, 2017 holiday party at Supervisor Morask's office. Dayna Berman and Vikki Rizzo attended the party. At that party, she did not hear any discussion regarding anything occurring between Dayna Berman and Vikki Rizzo at the Township holiday party.

Ms. Prorak attended the meeting on January 23, 2018 where the Eagle Scout photo was taken. She did not see anything happen between Trustees Jones and Carrabotta when the photo was taken or after it broke up. Ms. Prorak did not attend the MaineStreamers' 90<sup>th</sup> birthday party.

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**Trustee Claire McKenzie**

I spoke with Trustee McKenzie via telephone on July 10, 2018 at 1:40 p.m. I explained that I was investigating allegations of sexual harassment made by Trustee Jones against Trustee Carrabotta. Trustee McKenzie said that she was aware of the investigation.

I asked Trustee McKenzie about each of Trustee Jones allegations. Trustee McKenzie did not recall any specific incidents between October and December of 2017 during photograph sessions where she observed any type of unusual interaction between Trustee Jones and Trustee Carrabotta. She could not recall how many times photographs were taken during that time period. Trustee Jones had never mentioned any unwanted touching or any kind of touching to her between October and December of 2017.

Trustee McKenzie was present at the January 23, 2018 meeting when the photograph with the Eagle Scout was taken. She believed that she was standing to the right of Trustee Jones. She thought Trustee Jones was to the left of Trustee Carrabotta. She did not see Trustee Carrabotta touch Trustee Jones. Trustee Jones had never mentioned anything to her about Trustee Carrabotta touching her buttocks. While we were talking about the January 23, 2018 photograph, Trustee McKenzie added that, when photos are taken, the photographer is always telling them to move closer together so that they get all be in the picture. It is not unusual for them to be shoulder to shoulder touching when they finally get positioned for the photo.

Trustee McKenzie was not present for the MaineStreamers' 90<sup>th</sup> Birthday Celebration on May 16, 2018 and has no knowledge of what happened during the photograph that was taken on that date. Trustee Jones had not mentioned to her that Trustee Carrabotta touched her buttocks when the MaineStreamers' photo was taken.

Trustee McKenzie was present for the board meeting on May 22, she saw Trustees Jones and Carrabotta them go into an office. She did not know what they were going to talk about. Trustee McKenzie said that Trustee Carrabotta came out of the office saying that Trustee Jones said that he touched her buttocks. Trustee McKenzie said that, at first, she thought that they were joking. I asked if Trustee Jones said anything to her on the night of May 22, 2018. Trustee McKenzie said that all she can recall is that Trustee Jones looked at her and said, "That's right, he touched my butt."

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**Trustee David Carrabotta**

We met with Trustee Carrabotta and his attorney, Robert Bell, on July 1, 2018. I explained the nature of the allegations to Trustee Carrabotta and his attorney. I had previously provided them with a copy of Trustee Jones' complaint.

I asked Trustee Carrabotta if he recalled a situation between October and December of 2017 where he may have touched Trustee Jones' buttocks while a photograph was being taken. He said that did not recall ever having touched Trustee Jones buttocks. More specifically, with regard to the October to December 2017 time span, Trustee Carrabotta said that he did not recall any specific photographs during that period. He repeated that he has never touched Trustee Jones buttocks during any photograph sessions for the Township.

Trustee Carrabotta recalled taking a photograph with an Eagle Scout on January 23, 2018. I showed him a copy of the photograph that was made an exhibit in Trustee Jones' complaint (Exhibit 1), and he was familiar with the photograph. He was standing in the back row next to Trustee Jones. Trustee Jones was standing to his right. He was turned at a slight angle for the photo. His hands were folded in front of him. I asked Trustee Carrabotta if it was possible that he touched Trustee Jones while the photo was being taken. He said that he did not touch her. I asked if it was possible that he could have touched Trustee Jones after the photo was taken as the parties were separating. Trustee Carrabotta again said that he did not touch Trustee Jones at any time during the photograph or after it was taken. Specifically, I asked Trustee Carrabotta if he touched Trustee Jones buttocks during or after the taking of the photograph, even if the touching was accidental. He again denied, unequivocally ever touching Trustee Jones' buttocks.

Trustee Carrabotta attended the May 16, 2018 MaineStreamers' 90<sup>th</sup> Birthday Party celebration. He did not stay for lunch as he was very busy that day, but that he did pose for a photograph. Trustee Jones was in the photograph with him. I showed Trustee Carrabotta a photograph that was marked as "Exhibit 3" and attached to Trustee Jones' complaint. He said that he has seen the photograph. Trustee Carrabotta said that he was standing to the left of Trustee Jones. Trustee Carrabotta said that he never touched Trustee Jones at any time during the taking of the photograph or immediately after the photograph was taken. He further stated that he has never touched Trustee Jones' buttocks.

Trustee Carrabotta attended the May 22, 2018 Township board meeting. He specifically recalled the day of the meeting because he remembered having a phone conversation with Township Supervisor Laura Morask on that date. He and Supervisor Morask were on the phone for a while between 3 p.m. and 4 p.m. discussing the



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Township's budget. There was significant disagreement between him and Supervisor Morask regarding the budget. That call ended with them agreeing to disagree. He attended the board meeting on the night of May 22, 2018, and after he finished reviewing bills during the "bill pay" session of the meeting, Trustee Jones asked if she could speak to him privately. He agreed to speak with Trustee Jones and that they went into an empty office near the area where the trustees are typically seated for board meetings. He thought that she wanted to speak with him about the Township budget, which was on the agenda for that evening. He thought, based upon his phone call with Supervisor Morask, that Trustee Jones wanted to continue to lobby him to pass the budget that she and Supervisor Morask favored. When he and Trustee Jones entered the private office, Trustee Jones said, "You touched my butt on May 16<sup>th</sup>." He told her he had never touched her buttocks and that he did not know what she was talking about. In response, Trustee Jones said that, although this could be the third time that he touched her, she did not intend to take any action and she just wanted it to stop. He responded to the allegation that he touched Trustee Jones' buttocks three (3) times by telling her there was, "no 1, 2 or 3." At this point in his conversation with Trustee Jones he just wanted to get out of the room. He felt like he was being falsely accused of something "vile." He told Trustee Jones that the conversation was over and that he was done. Trustee Jones followed him out of the room saying something, but he could not recall exactly what she said.

Trustee Carrabotta said it was not possible that he may have inadvertently touched Trustee Jones' buttocks. He emphatically denied ever touching Trustee Jones' buttocks. He said that when the photographs are taken at meetings, a man named Dick Barton typically orchestrates the photos. He said that Mr. Barton tells people where and how to stand and that he just follows the direction given by Mr. Barton.

At the conclusion of all of our witness interviews, we admonished the witnesses to keep the details of the investigation confidential. They all indicated that they understood. We also told them all that retaliation for making a complaint of sexual harassment or participating in an investigation is illegal and they should contact us if that occurred. Again, they all indicated they understood.

### **VIDEO OF JANUARY 23, 2018 TOWNSHIP BOARD MEETING**

We were provided with a link to a video of the Township Board Meeting on January 23, 2108, which we reviewed. In the video, we observed the trustees assembling for the photograph with the Eagle Scout who was being honored at the meeting. Mr. Barton appears to be the person orchestrating the taking of the photograph. We observed, as the photograph was being assembled, that Mr. Barton was asking the trustees and persons being photographed with them to move closer together. We observed Trustee Carrabotta and Trustee Jones moving closer together

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along with the others who were being photographed. At two times on the video, Trustee Jones clearly turned her head to look at Trustee Carrabotta while the participants were assembling. We were not able to see any obvious touching. The view was somewhat obscured at times because of where Mr. Barton was standing. The video camera appears to be behind the vantage point of the photographer, which means that we were unable to see what, if anything was happening behind the individuals being photographed. From the video, it appeared that Trustee Carrabotta folded his hands in front of his body for the entire duration of the photos. The photo that Trustee Jones included with her complaint as Exhibit 1 appears to confirm that Trustee Carrabotta's hands were in front of his body during the photo.

When the parties disassembled from the photograph, Trustee Jones appeared to turn to her right and Trustee Carrabotta appeared to turn to his left. There is some slight obstruction of the view because of where Mr. Barton is standing. However, after watching the video several times, Trustee Carrabotta's hands appear to remain in front of him until after Trustee Jones has move away to her right and he has moved away to his left. While we could not see exactly what happened while they were posing, we were able to see that there did not appear to be any contact between Trustee Jones and Trustee Carrabotta as the two moved away from each other after the photo was taken.

#### **VIDEO OF DECEMBER 22, 2017 TOWNSHIP HOLIDAY PARTY**

We were provided a copy of approximately two (2) hours of video footage from the Township's holiday party on December 22, 2017. We requested this video based upon the fact that Trustee Jones' complaint referenced the fact that Trustee Carrabotta may have inappropriately touched Township employees Dayna Berman and Vikki Rizzo, and that some witnesses stated that this occurred at the holiday party.

Upon reviewing the video, we observed Trustee Carrabotta arrive at the party at approximately 3:02 p.m. At approximately 3:04 p.m., Trustee Carrabotta can be seen hugging Dayna Berman. The hug lasts for approximately two (2) seconds. In the video, it does not appear that Ms. Berman was upset by the hug, nor does it appear that Ms. Berman tried to avoid Trustee Carrabotta's hug in any way. Trustee Carrabotta then talks with Vikki Rizzo, Mike Saaman and Dayna Berman at the front of the board room for approximately fifty (50) minutes. At approximately 3:53:26 p.m., Trustee Carrabotta can be seen shaking hands with and hugging Mike Saaman. The hug lasted for approximately three (3) seconds. At approximately 3:53:31 p.m., Trustee Carrabotta hugs Dayna Berman a second time, apparently as he is leaving. The hug lasted for approximately one (1) or two (2) seconds. At approximately 3:53:40 p.m., Trustee Carrabotta leaves through the door of the conference room that leads to the building exit. He does not return. At approximately 3:53:40 p.m., Dayna Berman exits the board room through a doorway at the front of the room that leads to stairs which go

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to her office. At approximately 4:00:59 p.m. Ms. Berman is seen coming down the stairs and leaving through the doorway that leads to the building exit. At approximately 4:05:51 p.m., Ms. Berman re-enters the board room. At approximately 4:06:46 p.m., employee Doriene Prorak can be seen leaving the board room. At approximately 4:06:51 p.m., Ms. Prorak and Ms. Berman hug each other and Ms. Prorak leaves. At approximately 4:07:10 p.m., Ms. Berman hugs Mr. Saaman and leaves the building. She does not return. At 4:08:08 p.m., it appears that only Vikki Rizzo, Mike Saaman and an unidentified individual remain in the board room. At approximately 4:17:26 p.m., everyone who remains in the room is hugging and they all appear to leave at 4:17:35 p.m. Mike Saaman can be seen coming and going from the room, apparently cleaning up for the remainder of the video, but the room is dark and no other persons are observed. Trustee Carrabotta never appeared to hug or have any physical contact with Vikki Rizzo at any time during the video.

#### **AUDIO TAPE OF MAY 22, 2018 TOWNSHIP BOARD MEETING**

We reviewed an audio tape of the Township's May 22, 2018 board meeting bill pay session with Supervisor Morask on May 30, 2018. A summary of what I heard is below. In the summary, Trustee Jones is referred to as "KJ" and Trustee Carrabotta is referred to as "DC". During the review of the audio tape, I heard the following:

DC: It never happened.  
DC: I'm telling you, it never happened.  
KJ: It happened three times.  
DC: You're crazy.  
KJ: I'm putting you on notice.  
DC: That's sexual harassment.  
DC: I'm done.  
KJ: I'm not the one who touched your butt.  
DC: Don't even address me.  
DC: I'm done.  
DC: I'm done.  
KJ: I don't make stuff up.

The audio recording apparently caught a conversation that occurred immediately after Trustee Jones confronted Trustee Carrabotta after the bill pay meeting. The conversation occurred in an office immediately adjacent to the board room. The audio appears to have recorded the conversation between Trustee Carrabotta and Trustee Jones immediately after Trustee Jones' allegations were made.

The audio tape only proves that there was a conversation between Trustee Jones and Trustee Carrabotta immediately after the allegations were made and that Trustee

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Carrabotta denied the allegations and Trustee Jones reiterated them and added that she does not make things up.

### **APPLICABLE TOWNSHIP POLICY**

On December 27, 2017, the Township adopted a policy which prohibits sexual harassment. In the instant case, the allegations are that Trustee Carrabotta inappropriately touched or had unwanted physical contact with employees Dayna Berman and Vikki Rizzo on December 22, 2017 at a Township holiday party and that, on three occasions, he inappropriately touched Trustee Kimberly Jones' buttocks.

The Township's policy defines the "Employer" as Maine Township in Section I(B) and an "Officer" in Section I(C), as follows:

"Officer" means a person who holds, by election or appointment, an office in Maine Township regardless of whether the officer is compensated for service in his or her official capacity.

The Township's policy prohibiting sexual harassment defines sexual harassment in Section I(D), as follows:

"Sexual Harassment" means any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:

1. Submission to such conduct is made, either expressly or implicitly, a term of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

The Township's policy describes prohibited conduct in Section II. Section II(A) addresses to whom the policy applies as follows:

Each Employee and Officer of Employer has the responsibility to refrain from sexual harassment in the workplace and is prohibited from engaging in conduct that constitutes sexual harassment.

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In the instant case, the type of conduct complained of is physical conduct. The policy defines prohibited physical touching in Section II(B)(4), as follows:

Physical: unwelcome touching, hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.

The Township's policy covers reporting of sexual harassment allegations in Section III. Specifically, Section III(B) provides that sexual harassment can be reported by someone other than the victim of the harassment. Section III(C) provides that during the occurrence of sexual harassment or following reporting of such harassment, the employer may document or record each incident (what was said or done, the date, time, and place of the harassment) and collect or compile related written records such as letters, notes, memos, electronic messages and telephone messages. Section III(D) provides that all complaints, including anonymous complaints, will be investigated. Section III(E) outlines methods of reporting including electronic or direct communication, contacting supervisory personnel, formal written complaints and outside resolution through the Illinois Department of Human Rights or the Equal Employment Opportunity Commission. Finally Section III(F) addresses confidentiality.

Retaliation and the consequences for violating the policy and knowingly making a false report are covered in Sections IV and V, respectively.

## **ANALYSIS**

### **Dayna Berman and Vikki Rizzo**

Neither Ms. Berman nor Ms. Rizzo made a complaint of sexual harassment against Trustee Carrabotta. It is alleged that they said that they were uncomfortable with Trustee Carrabotta while attending a holiday party at Township Supervisor Morask's office on December 30, 2017. It is further alleged that these statements were made in the presence of Township Clerk Gialamas, who then reported them to Supervisor Morask. Supervisor Morask said that she spoke to both Ms. Berman and Ms. Rizzo at her holiday party. Supervisor Morask said that both women said that Trustee Carrabotta made them uncomfortable, but that they did not want anything done about it because they were afraid of retaliation. Supervisor Morask said she had notes from her meeting with Ms. Berman and Ms. Rizzo, but she was unable to locate her notes. In addition to Supervisor Morask and Clerk Gialamas' recollection of Ms. Berman and Ms. Rizzo's alleged complaints, Trustee Jones also mentioned in her written complaint that she had concerns about both of these employees being harassed by Trustee Carrabotta.

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Both Ms. Berman and Ms. Rizzo were interviewed during the course of our investigation. During her interview, Ms. Berman was asked about the December 22, 2017 holiday party. She attended the party and recalls that Trustee Carrabotta also attended. She did not recall being hugged by Trustee Carrabotta. Ms. Berman stated that Trustee Carrabotta had never done anything inappropriate to her. She added that she has never complained about him to anyone. I asked her specifically if she had ever stated that Trustee Carrabotta was “handsy.” Initially, she said that she did not recall ever having made such a statement, but then after thinking about, she said had never said that Trustee Carrabotta was “handsy.” Ms. Berman said she did not have any discussions with anyone at Supervisor Morask’s holiday party on December 30, 2017 about Trustee Carrabotta acting inappropriately towards her at the Township holiday party. As my interview with Ms. Berman concluded, she was again emphatic that she had no complaints about Trustee Carrabotta.

Ms. Rizzo told us she attended the holiday party at the Township on December 22, 2017 and saw Trustee Carrabotta there, and she said that she had seen him, but could not recall if Trustee Carrabotta had hugged her or Ms. Berman. She said that Ms. Berman had not complained to her about Trustee Carrabotta at any time after the December 22, 2017 holiday party. Ms. Rizzo said Trustee Carrabotta had not done anything inappropriate to her at the Township holiday party. She attended Supervisor Morask’s party on December 30, 2018. She did not recall having spoken to anyone about being uncomfortable with Trustee Carrabotta while she was at Supervisor Morask’s party or having any discussions about the Township holiday party while she was at Supervisor Morask’s party. She added that she has never complained about Trustee Carrabotta making her uncomfortable and that he does not make her uncomfortable.

We reviewed the video tape from the Township holiday party on December 22, 2017, after interviewing both Ms. Berman and Ms. Rizzo. From that review, it is apparent that Trustee Carrabotta hugged Dayna Berman two (2) times. The first hug occurred shortly after Trustee Carrabotta arrived at the holiday party and the second hug took place when Trustee Carrabotta left the party. Neither hug lasted for very long. Both hugs appeared to last two (2) seconds or less. From the video, it did not appear that Trustee Carrabotta’s hands were positioned in an inappropriate way when hugged Ms. Berman. Further, it did not appear that Ms. Berman was uncomfortable or trying to escape from the grasp of Trustee Carrabotta. There is no video evidence that Trustee Carrabotta had any physical contact with employee Vikki Rizzo.

After interviewing both Ms. Berman and Ms. Rizzo, reviewing the December 22, 2017 video of the Township’s holiday party and reviewing the applicable policy language, we conclude that the Trustee Carrabotta’s conduct did not violate the Township’s policy prohibiting sexual harassment related to the allegations involving them. The

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video does not reveal any inappropriate contact between Trustee Carrabotta and either Ms. Berman or Ms. Rizzo. Neither Ms. Berman nor Ms. Rizzo complained about Trustee Carrabotta and neither claimed that his behavior towards them was unwanted or unwelcome. Based upon all of the evidence available to us, we conclude that Trustee Carrabotta did not violate the Township policy prohibiting sexual harassment based upon his interactions with Ms. Berman and Ms. Rizzo.

### **Trustee Kimberly Jones' Complaint**

#### **First Allegation – October to December 2017**

Trustee Jones complains of three (3) separate instances of conduct that allegedly violate the Township's sexual harassment policy. The first of these three incidents is a very vague allegation that Trustee Carrabotta touched her buttocks sometime between November and December of 2017. She did not include this allegation in her formal written complaint. When we spoke with Assessor Moylan-Krey, she said that Trustee Jones told her about this incident, but she thought that it may have occurred between October and December of 2017. Regardless, Trustee Jones was never able to pinpoint a specific time, day or event for this allegation. The only details that she provided were that the incident was alleged to have occurred during a photo opportunity, possibly at the annual Township Officials of Illinois conference or possibly at an employee retirement gathering and she believes that it was like the January 23, 2018 incident and the May 16, 2018 incident. She described the alleged touching as a "light brush" against her buttocks.

When we interviewed Trustee Carrabotta, he denied touching Trustee Jones buttocks at any time between October and December of 2017. Given the lack of detail, including a specific date or a narrower time frame and a specific event where the alleged touching occurred, we cannot conclude that there is any evidence to support that Trustee Carrabotta intentionally touched Trustee Jones buttocks between November and December of 2017. Given the lack of evidence, we cannot conclude that Trustee Carrabotta touched Trustee Jones at all between November and December of 2017. We simply have no evidence to corroborate that anything occurred, intentional or unintentional, much less when it occurred.

Given the total lack of specificity and evidence to support that a violation of the Township's sexual harassment policy occurred, we conclude that Trustee Carrabotta did not violate the Township's sexual harassment policy related to this first allegation.

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### **Second Allegation – January 23, 2018**

Regarding the second incident, Trustee Jones alleges that the second incident occurred on January 23, 2018 while posing for a photo at a Township board meeting with an Eagle Scout who was being honored at the meeting. When the photo was taken, Trustee Jones was standing in the back row to the right of Trustee Carrabotta. She alleges that as the participants in the photo were posing, Trustee Carrabotta “lightly swiped his hand” across her buttocks. The next day, Trustee Jones sent a text message to the Supervisor, Assessor and Highway Commissioner stating, “BTW, when we posed for the photo last night Dave touched my ass. I don’t think it was intentional, but I’m not sure.” During Trustee Jones’ interview, she told us that the touch occurred while disassembling from the photo. Because that conflicted with the complaint and the text message, Attorney Kostopoulos followed up for a clarification to pinpoint when the touching occurred. When asked for a clarification, Trustee Jones said that it occurred “while posing.” She did not say anything to Trustee Carrabotta at that time of the alleged incident. Trustee Jones also told Highway Commissioner Kazmierczak about the alleged incident.

There were no witnesses to the alleged touching. Dawn Hayman, a Township Highway Department employee, said that she was present the night of January 23, 2018. She said that before and during the photo, she saw a “flinch” or “twitch” from Trustee Jones. Ms. Hayman also said that she saw a “weird” expression on Trustee Jones’ face. Ms. Hayman said that she asked employee Doriene Prorak if there was something wrong with Trustee Jones, but she was told no, nothing was wrong. Trustee Jones never said anything to Ms. Hayman. Ms. Hayman said that she did not learn of Trustee Jones’ complaint until she read about it in a local newspaper.

Assessor Moylan-Krey was present the night the photo was taken on January 23, 2018. She did not witness Trustee Carrabotta touching Trustee Jones. She said that Trustee Jones told her about the incident the night that it is alleged to have occurred. She said that Trustee Jones said “He touched my butt again.” I asked Assessor Moylan-Krey why Trustee Jones would say it happened “again” and she said that Trustee Jones told her that Trustee Carrabotta had touched her buttocks before in November or December, possibly October of 2017. She added that Trustee Jones told her that the touching “may be deliberate” and that it was a “definite feel.”

We were also provided with a video of the January 23, 2018 board meeting. In the video, we were able to observe the photo with the Eagle Scout. We observed the photo being assembled by Dick Barton. The video confirms that Mr. Barton asked participants to move close together for the photo. In the video, it appears that the participants are so close together that they may be touching each other. The video shows that, two times during posing, Trustee Jones distinctly turned her head to the left



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to face Trustee Carrabotta, but she never mentioned that this was in relation to her feeling that she was being touched on the buttocks. We could see that after the posing and during the photo, and consistent with the photo itself, it appeared that Trustee Carrabotta's hands were clasped in front of his body. We could see that when the parties to the photograph disassembled, Trustee Carrabotta turned to his right, as did Trustee Jones left. We can see space between Trustee Carrabotta and Trustee Jones as they walk back toward their seats. Not until after Trustee Jones and Trustee Carrabotta are apart, does Trustee Carrabotta unclasp his hands. From the video, we do not see Trustee Carrabotta ever move his right or left hand in the direction of Trustee Jones' buttocks. In fact, there is no indication from the video that Trustee Carrabotta touched Trustee Jones buttocks, but we cannot see behind the two Trustees before or during the posing for the photo, when Trustee Jones contends the touching occurred in her complaint, her text message sent on January 24, 2018, and her follow up e-mail to Attorney Kostopoulos.

Based upon the conflicting statements of Trustee Jones and Trustee Carrabotta, we cannot conclusively determine what happened while they were posing. Both Trustees are very credible, and they were equally passionate about their contentions that there was a touching (Jones) and there was not (Carrabotta). It would be odd for Trustee Jones to send the text message to the other officials the next day if she did not, in fact, believe that the touching occurred. However, Trustee Jones' text message of the next day itself accounts for the possibility that any touching may have been inadvertent. Because there is no evidence to show that Trustee Carrabotta intentionally touched Trustee Jones, and Trustee Jones herself is not convinced the touching was intentional, we do not believe that any inadvertent touching, if it occurred, violates the provisions of the Township's sexual harassment policy. For all of the foregoing reasons, we do not find that Trustee Carrabotta violated the Township's sexual harassment policy on January 23, 2018 by intentionally touching Trustee Jones buttocks.

### **Third Allegation – May 16, 2018**

The third incident is alleged to have occurred at the MaineStreamers 90<sup>th</sup> Birthday celebration. A photo was taken prior to the luncheon to honor those celebrating 90<sup>th</sup> birthdays. Trustee Jones was again standing to the right of Trustee Carrabotta. She told us that she felt a "faint touch" after the photo was taken and while the parties were disassembling. She told us that this was particularly upsetting because this was the third time that she believed this had happened. When I mentioned to her that her complaint only alleges two incidents, she told me that the first incident had happened sometime in November or December of 2017 during an unknown photo opportunity.

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After the alleged incident, Trustee Jones states that she told Clerk Peter Gialamas what happened. She asked Clerk Gialamas if he thought that the touching was accidental. Clerk Gialamas told her that she should talk to Dayna Berman and Vikki Rizzo, apparently implying that they had had similar experiences with Trustee Carrabotta. Neither Ms. Berman nor Ms. Rizzo confirmed that they had had any issues with Trustee Carrabotta. Clerk Gialamas was present for the MaineStreamers photo, but he did not actually see Trustee Carrabotta touch Trustee Jones. We asked Clerk Gialamas exactly what Trustee Jones said to him. He said that she said, "He grabbed my ass." Trustee Jones also told him that the first time it happened, she thought it was an accident. She then said that since it happened a second time and now a third time, she no longer thought it was an accident. Clerk Gialamas stated that he has never known Trustee Jones to make anything up, so he thinks that she is telling the truth. He added that Trustee Carrabotta is a "touchy feely" guy.

Trustee Jones also told Assessor Moylan-Krey about the incident right after it is alleged to have occurred. Assessor Moylan-Krey said that Trustee Jones told her, "I can't believe it; he did it again."

In addition to telling Assessor Moylan-Krey and Clerk Gialamas about the May 16<sup>th</sup> incident, Trustee Jones sent an email to Supervisor Morask regarding the incident on May 19, 2018. In the email, she told Supervisor Morask, "Yes it is insane! I didn't say anything to you yet, but I did share this with Pete and Susie immediately after it happened. Carrabotta touched my ass AGAIN at the 90 year old birthday party. He swipes his hand across is [sic] gently as if it was inadvertent. What I previously chalked up as accidental can no longer be viewed that way since it is at least the second time and possibly the third time. This last incident I immediately turned to him with a dirty look and he pretended he didn't see me."

Trustee Sweeney also attended the MaineStreamers party on May 16, 2018. She told us that after the photo was taken, she sat with Trustee Jones at the same table for lunch. She said that she was "jovial" and "happy" and that she was laughing. She added that Trustee Jones did not appear to be bothered by anything.

After conferring with the board's attorney, Keri-Lyn Krafthofer, Trustee Jones privately addressed Trustee Carrabotta about her allegations on May 22, 2018, prior to a board meeting. When she did, Trustee Carrabotta denied that he had ever touched her. There were no witnesses to the private conversation.

In this incident, much like the first two alleged incidents, there is the word of Trustee Jones against that of Trustee Carrabotta and no evidence to support the conclusion that Trustee Carrabotta intentionally touched Trustee Jones' buttocks. It is clear that Trustee Jones believed a touching occurred based on the fact that she told

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people immediately after the alleged event. There are no independent witnesses. Her description of the alleged conduct as “faint,” “light” and “gentle” causes doubt that Trustee Carrabotta intentionally touched her buttocks, if the contact occurred, but it seems odd that Trustee Jones would immediately comment to several people that she was touched if she did not truly believe that she was. Trustee Carrabotta firmly denies that any touching occurred at all. Given all of these factors, we conclude that we cannot substantiate whether or not the May 16<sup>th</sup> touching occurred, and perhaps if it did, it was unintentional, and therefore cannot find that there was a violation of the Township’s policy prohibiting sexual harassment on May 16, 2018.

### **CONCLUSION**

Trustee Jones clearly believes that Trustee Carrabotta touched her. Trustee Carrabotta clearly believes he did not. Based upon the lack of independent witnesses and corroborating evidence in this case, we cannot conclude that Trustee Carrabotta touched Trustee Jones’ buttocks on January 23, 2018, while the photo was disassembling, as she claimed in her interview, nor can we determine whether Trustee Carrabotta inadvertently touched Trustee Jones at some other time while posing for the January 23<sup>rd</sup> and May 16<sup>th</sup> photographs as she alleges in her complaint, text and confirmation e-mail. Regarding any inadvertent, unintentional touching or bumping, other than the conflicting testimony of Trustees Jones and Carrabotta, there is simply no evidence proving whether it occurred or not. However, even if an unintentional touching occurred, while posing for the photographs, such would not rise to the level of violating the Township’s sexual harassment policy. Employees Dayna Berman and Vikki Rizzo both stated that Trustee Carrabotta had done nothing offensive to them at any time. Accordingly, the complaint as to them is unfounded. Trustee Jones’ complaints regarding Trustee Carrabotta touching her lack sufficient details (regarding the first incident) and evidence of an intentional touching (regarding the second or third incidents), and Trustee Jones herself contemplates the possibility that any touchings were unintentional, which is why she tried to address this matter informally with Trustee Carrabotta initially without filing a formal complaint. Under these circumstances, we cannot find that a violation of the Township’s sexual harassment policy occurred. It is our strong recommendation that Trustee Jones and Trustee Carrabotta not be positioned next to one another in any future township photographs to avoid similar issues in the future.