PretiFlaherty

Exhibit A

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M E M O R A N D U M

TO: Town of Lisbon, Town Council

FROM: Kristin M. Collins

DATE: July 8, 2025

RE: **External Review of Recall Affidavit Related to Councilor Larochelle**

On June 18, 2025, Grace Dube submitted a recall affidavit (the "Recall Affidavit") in support of a recall petition seeking to recall Town Councilor Ferndale Larochelle. At the June 30, 2025 Town Council Meeting, Councilor Larochelle requested an independent third-party review of the Recall Affidavit pursuant to the Lisbon Charter, Article VIII, Section 8.31(a)(2) "to review the affidavit stating the reasons for recall in order to determine the sufficiency of those reasons in accordance with the standards set forth in [Article VIII, Section 8.31(a)(1) of the Lisbon Charter.]" Lisbon Charter, Article VIII, Section 8.31(a)(2). The independent reviewer is required to submit a written report stating whether the petition meets the required criteria, and if it is determined that the criteria are not met, "the petition will go no further and have no further effect." Lisbon Charter, Article VIII, Section 8.31(a)(2).

Upon motion, the Town Council requested that the Town Attorney conduct the third-party review. Upon review, I find that the Recall Affidavit does not sufficiently state a basis for recall. Accordingly, the recall petition will go no further and have no further effect.

I. Permitted Basis for Recall Petition

The Lisbon Charter, Article VIII, Section 8.31(a)(1) provides that the stated reasons for the recall "shall be directly related to the requirements, duties, and obligations of the position for which the recall is sought. The reasons for removal shall constitute acts which are in and of themselves contrary to law or to a specific requirement or obligation of the office, the improper and/or unlawful execution of some action where the action itself is not unlawful or improper, or the failure to perform some action which is officially required as a requirement or obligation of the office." Town of Lisbon Charter, Article VIII, Section 8.31(a)(1). The Lisbon Charter, Article II, Section 2.02 outlines the powers and duties of the Town Council. In pertinent part it notes that, "[t]he Town Council shall provide for the exercise of all powers and for the performance and administration of all the fiscal, prudential, and municipal affairs of the Town. …" Article II, Section 2.02. The reasons cited in the Affidavit must demonstrate a failure of one of these general duties, or of another more specific duty under the Town's Charter or ordinances.

II. The Recall Affidavit Does Not State A Permitted Reason For Recall

The Recall Affidavit outlines three reasons underlying the recall attempt: (1) willful financial irresponsibility; (2) failure to act on constituent demands to reduce spending; and (3) conflicts of interest. Recall Affidavit, 2-3. A true and accurate copy of the Recall Affidavit is attached hereto as Exhibit A. As outlined below, none of these allegations sufficiently states a permitted reason for recall.

A. Allegation of Willful Financial Irresponsibility

The Recall Affidavit alleges that Councilor Larochelle willfully engaged in financial irresponsibility by (1) attempting to "ween the town of the unassigned fund balance"; (2) increasing municipal expenditures by nearly 60%; and (3) increasing spending without increasing revenues. Recall Affidavit, 2. The Recall affidavit alleges that these actions "contradict basic principals of municipal fiscal leadership, which the Chair is obligated to uphold." Recall Affidavit, 2.

As noted above, pursuant to Lisbon Charter Article VIII, Section 8.31(a)(1) and Article II, Section 2.02 a recall pertaining to a member of the Town Council must state that the councilor at issue committed an unlawful act, is not administering the fiscal, prudential or municipal affairs of the Town, or is not legislating on behalf of the Town. In alleging financial mismanagement of the Town, the Recall Petition implicitly concedes that Councilor Larochelle is, in fact, participating along with the rest of the Council in administering the fiscal affairs of the Town as required by the office. Mere disagreement with the policy supported by Councilor Larochelle, or the Town Council more generally, is not sufficient to state a reason for recall.

B. Allegation of Failure to Act on Constituent Demands to Reduce Spending.

The Recall Affidavit further alleges that Councilor Larochelle "ignored the repeated and document pleas of taxpayers and residents…to control or reduce municipal spending." Recall Affidavit, 2. The Recall Petition notes that "his continued refusal to address these concerns, or to propose actionable alternatives, constitutes a dereliction of the representative function of the office." *Id.* The Recall Petition concludes noting, "Town Councilors are duty-bound not only to listen to constituents but also to meaningfully incorporate their concerns into policy decisions, especially regarding taxation and spending." *Id.*

While these allegations do allege a dereliction of duty, the duties raised are not requirements of Councilor Larochelle's position, and therefore can not serve as a sufficient basis for recall. No provision of state law, Town Charter or Town Ordinance requires a Town Councilor to incorporate constituent demands into their policy decisions. Rather, if a resident dislikes the policy decisions made by an elected official, their recourse is to vote them out at the subsequent, regularly scheduled, election. *See Dobbs v. Me. School Admin. Dist. No. 50.*, 419 A.2d 1024, 1029 (noting that, when citizens' disagree with the actions taken by elected officials, "their remedy lies in the ballot box at the next time those [officials] are up for reelection"). As such, the Recall Affidavit's allegations related to adequately respond to resident concerns cannot serve as a basis for recall.

C. Conflicts of Interest

Last, the Recall Petition alleges that, while presiding as Chair, Councilor Larochelle has been "personally involved in matters where conflicts of interest have been alleged or identified, exposing the Town to potential and ongoing legal action" Recall Affidavit, 3. The Recall Petition further alleges that Councilor Larochelle has violated ethical and procedural obligations of his role, "potentially in breach of state law and municipal ethics codes." *Id.*

As noted above, pursuant to Lisbon Charter Article VIII, Section 8.31(a)(1) and Article II, Section 2.02, a recall pertaining to a member of the Town Council must state that the councilor at issue the councilor at issue committed an unlawful act, is not administering the fiscal, prudential or municipal affairs of the Town, or is not legislating on behalf of the Town. The allegations involving conflicts of interest do not implicate these duties.

Critically, the Recall Affidavit only alleges that Councilor Larochelle was "*potentially* in breach of state law and municipal ethics codes." Recall Affidavit, 3 (Emphasis added). The Affidavit does not, however, enumerate any specific local, state, or professional codes of conduct or regulations that Councilor Larochelle violated. The Recall Affidavit's failure to concretely assert any unlawful or improper action renders these allegations insufficient to state a basis for recall. It is not a violation of law to have a conflict of interest; a councilor's duty is to declare a conflict if one exists and to refrain from participating in a vote that could be affected by the conflict. See Charter Article IX, Section 9.03. Importantly, Chapter 12 of the Town's Code of Ordinances also prescribes a process by which ethical issues caused by conflicts of interest may be decided by the Ethics Panel. In the absence of any specific allegations in the Affidavit, or a determination by the Ethics Panel or a court of law that Councilor LaRochelle has improperly participated in a vote despite a conflict of interest, the allegation of conflict of interest is an insufficient basis for recall.

III. Procedure Following this Determination

As outlined in Section II above, the Recall Affidavit does not state a permitted reason for recall. Accordingly, pursuant to the Town of Lisbon Charter, Article VIII, Section 8.31(a)(2), the petition will go no further and have no further effect; no recall election should be scheduled.

Pursuant to the Town of Lisbon Charter, Article VIII, Section 8.31(5) this determination may be appealed to the Ethics Panel.

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Kristin Collins, Town Attorney