



**LAKE STEVENS  
SEWER DISTRICT**  
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*Mission Statement: Meeting the challenge of protecting the environment and providing quality sewer service to the community.*

**MINUTES OF SPECIAL  
COMMISSIONER MEETING ON  
October 15, 2019 at 5:30 PM**

**Location: Lake Stevens Sewer District Office  
1106 Vernon Rd Suite A, Lake Stevens, WA 98258**

**Attendees:** Commissioners Dan Lorentzen, Mariah Low and Kevin Kosche; General Manager Tonya Christoffersen and Tara Bighouse. District Counsel Brad Cattle. Bond Counsel: Christie Jacobsen

1. **CALL TO ORDER** – Commissioner Kosche called the meeting to order at 5:30 PM. He made note this meeting is on Bond Resolution No. 970.
2. **PUBLIC FORUM** – None
3. **AGENDA ITEMS:**

- A. Signing of the Joint Statement of Confirmation – Christi Jacobsen noted this is the joint statement of confirmation put together by both the City and Sewer District on items including City's retraction of its previous statements affecting the validity of the bond resolution adopted back in August. Christi summarized the provisions of the joint confirmation. The joint confirmation is important as we move into the bond transaction for knowing there is not going to be a challenge by the City to give investors concern about the validity of the bonds or similar issues. Commissioner Low moved to approve authorize the President of the board to sign the Joint Statement of Confirmation. Commissioner Lorentzen seconded the motion. The Motion passed unanimously.
- B. Resolution No. 970: Build America Bonds Refinancing – Commissioner Kosche recapped this is the revision to Resolution No. 969. Christi explained what this resolution does is removes item 16K and inserts a bond counsel opinion requirement in the case of an early transfer of the system. The bonds will mature before that transfer is currently set to occur. Commissioner Kosche noted the District is capitalizing on a good rate, however not as good as back in September and costs the rate pays approximately \$385,000, in interest rate savings. Commissioner Lorentzen moved to approve Resolution No. 970: Build America Bonds Refinancing. Commissioner Low seconded the Motion. The motion passed unanimously.

Commissioner Kosche read his prepared statement:

"The Lake Stevens Sewer District's focus can be easily summarized by 1) Protect the environment, and 2) Maximize Value to Rate Payers. Very simple, and Very focused.

I am pleased we are moving forward with the districts bond refinance, as it has indeed been too long of a journey. Now that this journey has concluded, with both the City and District finding a path forward, I believe it is appropriate to recap this journey, so the fact pattern is clear to whoever has an interest in understanding the specifics, and frankly so such a fact pattern can be avoided in the future.

The last time the City and District met face to face to discuss the bond refinance concerns was September 17<sup>th</sup>. This discussion concluded with the City strongly encouraging the District to contact our Bond Counsel (the same bond underwriter who serves both the District and the City) and ask them about their recommendations to resolve the bond refinance impasse. I did so the following day, and I will now read directly from an Email from our joint bond council, which succinctly summarizes our bond refinance journey which started in June. This Email is dated September 19<sup>th</sup>.

You may remember that when the financing team first started to put this transaction together in the early summer, the proposed final maturity of the bonds was 2039, which was later than the date set forth in the Unified Sewer Agreement (the "USA") for the mandatory transfer of the sewer system and the obligations under the bonds to the City ("Step 2" under the USA). Because of the possibility that the obligor on the bonds might change from the District to the City while the bonds were still outstanding, we all determined that (a) that the bond offering documents include information about the City, and (b) the USA should be amended to require that the District obtain an opinion of bond counsel that (i) upon the effectiveness of Step 2, the outstanding bonds will be valid and binding obligations of the City, enforceable in accordance with their terms, and (ii) the effectiveness of Step 2 will not adversely affect the exclusion of the interest on the outstanding bonds from federal income tax. Such an amendment was prepared and circulated (a copy is attached) and discussed with the City. The City objected to such an amendment. See attached 6/28/19 email from City Attorney Greg Rubstello.

Sections 24(a)(6) and 16(k) of District Resolution No. 969 (the "Bond Resolution") were the workaround to this obstacle. Section 24(a)(6) requires that the final maturity of the bonds be not later than November 1, 2032, which is prior to the 2033 mandatory Step 2 effective date under the USA. Section 16(k) prohibits the District from agreeing to any transfer of the System pursuant to the USA prior to the earliest to occur of the final maturity date of the Bonds or the date of redemption or defeasance of all outstanding Bonds. The goal of these two sections was to ensure that there would be no bonds outstanding when the transfer of the System to the City pursuant to Step 2 occurred. In that circumstance, there would be no need to provide the bond holders with additional information about the City in case the transfer occurred while the bonds were still outstanding; that could not happen. And there would also be no need for a bond counsel opinion confirming the enforceability and tax-exemption of the bonds because they would no longer be outstanding upon the Step 2 effective date. Once again the City protested, indicating its displeasure with Section 16(k) and throwing up procedural roadblocks by claiming that the Utility Committee established under the USA should have reviewed and approved the Bond Resolution before District adoption, and that did not occur because it was discussed at a Utility Committee meeting at which there was no quorum. See attached 8/28/19 letter from Mayor John Spencer. The City also sent letters dated September 11, 2019 related to these issues.

Earlier this week, the District requested us to contact the City Attorney with a proposal that the District would amend the Bond Resolution to eliminate Section 16(k) in return for (a) the retraction of the City's letters of 8/28 and 9/11, (b) a requirement for a bond counsel opinion, prior to the transfer of the System to the City, regarding the continued enforceability and tax-exempt status of the bonds, and (c) a requirement that the City provide additional disclosure information as reasonably requested by the District and the Underwriter of the bonds. By letter dated September 16, the Mayor stated that the City was tentatively amenable to this proposal

contingent on the District's amendment of the Bond Resolution to eliminate Section 16(k) by September 26, 2019. Note that, if this proposal is consummated, the parties will be back to the same position as they would have been if the amendment to the USA had been adopted in June.

So what changed between the proposed language in June, and now where we concluded in October? From my perspective two things occurred: 1) the District issued a press release in September calling out what the District believed was behavior on Mayor Spencer's part that was not in the best interest in rate payers, and 2) Mayor Spencer's actions caused the City's own bond aspirations to be incumbered.

One could also read ARTICLE 9 of the USA (Unified Sewer Agreement) which specific addresses Bond Refinancing and wonder why is the City of Lake Stevens involved AT ALL in the Districts Bond Refinancing.

#### Article 9. Bonds and Other Obligations

9.1 The City and the District each retain their rights to issue bonds and other obligation in accordance with applicable law, but neither Party shall act in such a manner as to impair the rights of the holders or owners of bonds issued by the other Party.

One could carefully listen to all the above and still wonder . . . SO WHAT? A couple of public entities are in a tussle over refinancing bonds, it took 4 months to resolve, it looks like the City shouldn't have been involved in the first place, and after all the dust settled essentially the same June proposed verbiage is now being adopted . . . other than the approximately \$20K of unnecessary legal expenses associated with the City and District's legal teams passing letters back and forth . . . SO WHAT?

Public records show the District has repeatedly warned about Interest Rate risk associated with the delays in refinancing. Small changes in interest rates really matter, when we are talking about a bond refinancing that involves \$28M in debt. I shared these concerns with Mayor Spencer in a phone conversation in July, Tonya Christoffersen articulated Interest Rate Risk concerns in a September press release, and I again called out Interest Rate risk both District Board meetings and/or City/District meetings in July, August and September.

The District concerns regarding interest rate risk, unfortunately have been realized. Beyond the approximately \$20K in unnecessary legal expenses, there is an ADDITIONAL \$385K of costs to rate payers due to the higher interest rates on the refinance bonds, when compared to the first week of September when we were scheduled to conclude the refinancing, until Mayor Spencer effectively blocked the refinance for a SECOND time with his August 28<sup>th</sup> letter. Total costs are in excess of \$400K or put another way . . . the equivalent of nearly SIX ANNUAL MEDIAN INCOMES of our rate payers.

So back to the Districts focus: 1) Protect the environment, and 2) Maximize Value to Rate Payers. Very simple, and Very focused.

So what RATE PAYER VALUE was received for the \$400K? This is a question for which I have no answer . . . but this is a valid question for Mayor Spencer to answer.

And one other part of the fact pattern that I think is important. I had no intentions to run for Sewer Commissioner in 2017, until MAYOR SPENCER asked me to run, until Mayor Spencer hosted a fund rising party for me at HIS home, and until Mayor Spencer himself made a \$500 donation to my campaign. My only promise was to keep an open mind, learn about the District and make my own decisions regarding the proper direction of the District.

I believe Mayor Spencer has done some great things for the City of Lake Stevens. I really do. I have told him so; I have told many members of the City Council so . . . however when it comes to the Lake Stevens Sewer District I believe Mayor Spencer has done significant financial and relational damage, damage that will not be repaired until we have a new Mayor, and a reset of the relationship that is not based on "Merger Acceleration" but rather based on respect and trust." No additional comments were made.

**4. CONCLUDE** – Commissioner Kosche concluded the meeting at 5:47 PM with no action taken.

Signed in a regular open public meeting this 24<sup>th</sup> day of October 2019



  
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Dan Lorentzen, Commissioner

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Mariah Low, Secretary and Commissioner

  
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Kevin Kosche, President and Commissioner