

PLVC Utility Committee remarks to the UTC
July 14, 2014
Port Ludlow, Beach Club

1. Who is the Village Council?
 - a. The Village Council was incorporated in 2000 by the community and the Developer, Pope Resources, to represent the Port Ludlow Community as a whole.
 - b. It is memorialized in the Development Agreement creating the Port Ludlow Master Planned Resort.
 - c. The Council purpose is not a governing body, its purpose is to develop consensus within the Port Ludlow Community and provide a single point of communication with the County and the Developer (Pope Resources and now Port Ludlow Associates – PLA.)
 - d. Mr. Umbreit is this year's President of the Village Council.

2. What is the Utility Committee?
 - a. The Utility Committee is made up of a group of community members that have an interest in the community's utilities.
 - b. Its membership, past and present, consist of lawyers, engineers, business owners or managers, utility engineering managers and a social worker.
 - c. Its goal is to monitor and/or advise the community of current utility activities and recommend positions that the community may wish to take.
 - d. The committee deals with more than just the water and sewer issues.

3. Why does the committee oppose the current rate increase?
 - a. The committee recognizes that current surcharge request does not represent a huge sum of money.
 - b. At the same time the committee recognizes that the current rate request exposes the community to potential future claims for remediation of the contaminated site on Walker Way.
 - c. Approving any claims for contamination opens the door to future claims involving contamination.

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4. The Specifics of the Utility Committee Review

a. The Law – RCW 70.105D .040

- i. The owner and/or operator of a facility when the contamination occurred is/are liable for all remedial action cost.
- ii. Any owner or buyer of a facility that can show by preponderance of evidence that they had no knowledge of the contamination is not liable for its remediation.

(Note: the UTC was provided with the Buy/Sell agreement in 2001 by Olympic Property Group when seeking approval to sell the Olympic Water and Sewer Inc. to Port Ludlow Associates (PLA). In reviewing that document you will see that PLA was made aware of contamination on the Walker Way property.)

b. WUTC request #4 asked for all cost information supporting the surcharge request be put into separate buckets.

i. Siting and drilling of Well #17

1. No matter what we think about the location of Well #17, it was the companies right to drill wherever they chose. A new well is needed and these costs cannot really be challenged.

2.

(Note: The prudence of the decision would be more convincing if in Mr. Smith's March 26, 2014 response to the UTC there had been some indication of a "what if we hit contamination" consideration for the Well #17 site. While Mr. Smith clearly indicates the company's logic in rejecting the other well site options, there is no indication that they, OWSI, ever consider what would happen if they hit contamination. One can speculate that they, OWSI, never thought they would hit contamination, or more likely they never considered that the cost could not be passed on to Pope Resources and/or the rate payers i.e. a no risk option.)

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ii. Investigation of contamination

1. The investigation is mandated by the Department of Ecology. However, these costs are part of the overall contamination cost and rightfully belong to the contaminator, Pope Resources (Pope).
2. Because Port Ludlow Associates (PLA) acquired Olympic Water & Sewer (OWSI) through a stock purchase, they (PLA) may have acquired some liability depending on the specifics of the Buy/Sell Agreement.

iii. Negotiations with Pope Resources.

1. The Buy/Sell agreement made specific references to holding PLA harmless should contamination be encountered that they (Pope) had failed to disclose (see Sections 3.4 through 3.7 of the Buy/Sell Agreement). The current negotiations between Pope and PLA can only be characterized as a revisiting of the Buy/Sell Agreement as to what specific representations, disclosures and warranties had been made.
2. The committee feels that all legal and other costs incurred in these negotiations are the responsibility of OWSI's purchaser PLA. These costs are entirely the result of a renegotiation of the Buy/Sell Agreement.
3. In that PLA in negotiating with Pope, agreed to pay half of the investigation costs, is a PLA cost not an OWSI cost. The Buy/Sell agreement was between Pope and PLA, OWSI does not have a seat at the table.

iv. Exposure to future liability

1. The committee is very concerned about potential liability resulting from the contamination plume continuing to migrate under neighboring properties or into a ravine adjacent to the property leading to the Ludlow Bay.

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2. The committee feels that if the community does not object to these costs now, they will be exposed to potentially higher costs in the future should the overall cost exceed the limit that Pope has imposed.
3. While Pope has committed to spending up to a maximum of one million dollars on cleanup, the overall costs remain an unknown.

5. Test of Reasonableness

- a. How did the UTC and/or Pope Resources handle the contamination cost in 1991?
 - i. The committee requested all UTC documents supporting any request for a rate or surcharge for the years 1990 through 1993.
- b. In the time period there was one rate increase started in 1988 and granted in 1990 with modifications.
- c. There was no mention of contamination cost in the rate increase requested at that time and no specific surcharge request for contamination cleanup.
- d. Most enlightening was the depreciation schedule for the year 1988.
 - i. Total assets totaled \$1,460,000
 - ii. Of that \$13,400 were not specifically related to wells, pump houses or water mains.
 1. A copy machine
 2. Pickup truck (1987)
 3. Tools
 4. Weed eater
 - iii. Not mentioned or included
 1. Maintenance building
 2. 3 underground fuel storage tanks totaling 5,000 gallons
- e. Clearly Pope Resources did not think of the fuel tanks as belonging to the water company.

Remarks by G. David Armitage

Concurring: Elizabeth Van Zonneveld, Lois Ruggles, Bert Loomis and Fran Wickeham