

DISTRICT OF SOOKE
Committee of the Whole Minutes
Meeting held May 9, 2011 at 6:00 p.m.
Council Chamber, 2225 Otter Point Road

COUNCIL PRESENT

Mayor Janet Evans
Councillor Sheila Beech
Councillor David Bennett
Councillor Bev Berger
Councillor Ron Dumont
Councillor Herb Haldane
Councillor Maja Tait

STAFF PRESENT

Evan Parliament, Chief Administrative Officer
Bonnie Sprinkling, Corporate Officer
Sue-Lin Tarnowski, Director of Finance
Elisabeth Nelson, Municipal Engineer
Steve Sorensen, Fire Chief
Al Fontes, Manager of Operations
Lisa Urlacher, Corporate Assistant

1. **Call to Order**

The meeting was called to order at 6:00 p.m.

2. **Approval of Agenda**

MOVED to approve the agenda as circulated.

CARRIED

3. **Wastewater Franchise Agreement**

Evan Parliament reviewed the recommendations for proceeding with the Wastewater Franchise Agreement and the alternative approval process. It was explained that the content of the agreement has been vetted by the District's and Contractor's lawyers.

Sue-Lin Tarnowski provided a power point presentation reviewing the key terms of the Wastewater Franchise Agreement:

- Negotiation update
- Highlights of the Wastewater agreement
 - Provision of \$500,000 concession fee
 - Utility upgrades
 - Utility payment
 - Operation accountability
 - District control
- Termination clause – contractor default and District of Sooke default
- Other revision and analysis – DCC Bylaw, pricing structure, independent review
- Next steps – Public Information Session and Alternative Approval Process

The Committee discussed the contents of the contract and required clarification on the following:

- 1.1 (kk) Definitions - the management fee being the operation and maintenance cost divided by 0.875
- 1.1 (kk) Definitions - the management fee formula was agreed to by both parties

- Definitions 1.1 (uu) definition of surety as an undertaking or guarantee, a company that bonds
- Schedule H – the projected capital program is based on a moderate growth over 21 years
- Inquiry as to a recorded log for repairs and additional infrastructure be detailed by the proponent – staff mentioned that they are recorded in the GIS system – See Item 4.2 (l)
- Inquiry as to whether a LWMP or other requirement result in savings; will the rate be adjusted – It was explained that year 1 and 2 are fixed in schedule A and a rotating 3 year adjustment of projections would be applicable in a result of plus or minus results
- Clarification as to the *Community Charter* and how Section 22 applies to the service and management of the asset
- Clarification as to the 2 separate components of the Elector Response
- Discussion as to signing a 21 year agreement and the additional process to expand the sewer system and borrowing
- Clarification of the Wastewater Franchise Agreement forming part of the bylaw as a schedule
- Clarification as to the 24 million being the asset value of the sewer system
- Having the electoral response form 2 sided to ensure proper completion of the form
- Current deficit – the revenues do not support the expenditures – school district generation charges not generated as well as other anticipated revenues not received
- Inquiry as to the number of electors calculation
- Explanation as to paying interest on performance bond
- Schedule G Section 3.1.1 Clarification as to the sampling facility – obligations of the sampling certificate as delivered by EPCOR
- Clarification of the projected capital costs requiring a Council decision to amend the 5 year budget if the executed agreement goes through
- Schedule K – Threshold Amounts are not capital
- Explanation as to breakdown of Schedule A
- Explanation as to capital projects and accepting EPCOR quote (EPCOR assumes risk) or requesting a tender (District of Sooke assumes risk)
- Severance clause discussion as to being tied for the first 5 years – any party can terminate for no cause under Section 12
- Inquiry as to bio-solids being the property of the District of Sooke and if that portion can be removed when implementing cost saving alternatives
- Maintenance outside of the agreement - additional charges
- Section 8.4 - clarification as to the Estimated Project Cost - the District and the proponent agree that any funds remaining from revenue after servicing our current debt to pay the contractor over and above the operating and maintenance costs
- Use of concession fee – Council decision to determine where the money should be used
- Discussion as to borrowing – Council decision
- Within the first year the contract notes an expenditure under capital projects which would require an amendment to the financial plan

The Committee made the following suggestions:

- 1.1 (zz) Definitions “as constructed” should be in quotations or underlined
- Schedule E 44 may all or any of the ___be made and done – missing a word
- Schedule H – incorrect spelling – Gravity
- To use “ form and content” on the first page of the agreement
- Suggestion to have a Public Info meeting similar to a Public Hearing
- Having the electoral response form 2 sided to ensure proper completion of the form
- Notice of the Alternative Process – include the actual fees
- Add a Table of Contents
- Use “plus applicable taxes” where required

The following action items resulted:

- Schedule D (f) (v) paying to install the pipe and providing the insurance – It was noted that the inquiry will be questioned
- Inquiry as to the *Community Charter* Section 22 regarding the provision of one or more of the following – It was noted that staff will provide a specific answer to the question

Public Input:

Rick Kasper, resident, thanked EPCOR for their community support and corporate citizenship. Mr. Kasper submitted a spreadsheet from 2006 detailing the projected operating costs for 10 years and questioned the difference in amounts from what was provided in 2006 to current amounts included in the proposed Wastewater Franchise Agreement. Mr. Kasper noted the amount provided in 2006 for 2011 were \$488,326; the amount within the agreement for 2011 is \$924,752. Mr. Kasper questioned the benefit to the community and stated that there are many unanswered questions remaining in the contract after tonight’s discussion. Mr. Kasper expressed concern that relevant information has not been provided to Councillors to make an informed decision. Mr. Kasper stated that all the tax payers in Sooke will be responsible for this debt and not just the residents in the SSA.

Amber Leonard, resident and CUPE representative asked Council to make all the information available to the public and stated that the sewer service should be operated publicly not using a P3 model. Ms. Leonard advised that there are two decades of available documentation as to why publically owned services are the best choice. Ms. Leonard asked for openness and accountability, and requested that the wastewater service to be provided in-house.

Wendal Milne, resident, commented on the million dollar price tag and stated that he opposes the agreement. Mr. Milne asked why the agreement can not be for 5 years. Mr. Milne stated that this is a sole-source contract and commented that it is costing more than anticipated in 2006. Mr. Milne commented as to the increase to the operating and maintenance cost provided in 2006 and suggested further negotiation. Mr. Milne questioned proceeding with the agreement, even though the agreement costs are not

included in the 5 year budget. Mr. Milne suggested that a \$100,000 consultant fee to tender the contract is the responsible thing to do.

Gail Hall, resident, commented that this Council has been discussing this item in-camera for many months yet still has questions and expressed concern as to the limited public opportunity to ask questions regarding the agreement. Ms. Hall commented on the concession fee compared to what Langford received and stated the whole agreement rests on the definition of provision of service. Ms. Hall asked, is it your opinion that they provide the service? and referred to the definition in the *Community Charter* stating the system is the service. Ms. Hall stated that EPCOR is not providing the service, therefore, they are not entitled to a franchise.

Moonfist, resident, stated that he moved to Sooke because of the sewer service and expressed support for the 21 year agreement.

Ellen Lewers, resident, submitted questions to Council. Ms. Lewers inquired as to the 10% elector increase and whether all tax payers share the cost of the sewer charge. It was explained that the debt is paid for by those within the SSA and that the entire community votes because it is a long term agreement.

Ms. Lewers asked that the acronyms be spelled out within the contract and inquired as to the concession fee, the extension of the service and the rehabilitation fund. Ms. Lewers inquired as to whether the District has investigated managing its own wastewater system. Staff stated that they would provide the estimates and comparisons from other communities.

Ms. Lewers inquired as to the population growth and the total number of SFE in the SSA. Staff noted that there are currently 2552 SFE in the SSA. Ms. Lewers inquired as to the lift station at the public boat launch.

David Mallet, resident, stated that he lives within the SSA and expressed support for the Wastewater Franchise Agreement.

Laurie Wallace, resident, inquired as to how staff determines the number of electors and inquired as to the capital liability for all Sooke residents regarding the long term agreement.

Terrance Martin, resident, expressed concern as to a no tendering process and suggested that the provision of the service be placed on BC Bid. Mayor Evans explained that there is the protection of proprietary information. Mr. Martin stated that if the referendum fails the Municipality will go to tender and based on her comment, could be sued. Mayor Evans explained that if the referendum fails, Council determines the process and options for consideration.

MOVED to recommend that Council approve the form and content of the Wastewater Franchise Agreement with EPCOR WATER (WEST) INC. for staff to proceed with drafting a bylaw for the agreement with an alternate approval process for elector assent.

CARRIED **Councillors Haldane and Berger opposed the motion**

MOVED to recommend that Council introduce and give first and second reading to Bylaw No. 494, *Wastewater Franchise Agreement Approval Bylaw, 2011*;

AND TO direct staff to proceed with approval of the electors by an Alternate Approval Process under the provisions of section 86 of the *Community Charter* for Bylaw No. 494;
AND TO establish Monday, June 27th, 2011 at 9:00 a.m. as the deadline for receiving elector responses;
AND TO make a fair determination that the total number of electors of the District of Sooke is 9838;
AND TO approve the elector response form as presented;
AND TO direct staff to publish notice of the alternative approval process in accordance with section 86 of the *Community Charter* on Wednesday, May 18th, 2011 and on Wednesday, May 25th, 2011;
AND TO direct staff to schedule a Public Information Session for Bylaw No. 494 on May 25th, 2011.

CARRIED **Councillors Haldane and Berger opposed the motion**

4. **Adjournment**

The meeting was adjourned at 8:14 p.m.

Certified Correct:

Janet Evans
Mayor

Bonnie Sprinkling
Corporate Officer