

RE: Docket number is A-2021-3024267
Sale of Lower Makefield Township Sewer System to Aqua Wastewater

From: Protestant Barry Summers
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What follows are my questions and points of objection to the sale. My response to the letters of today, 9/8/2021 are at the end of this document.

1. My Statement: I object to the sale of LMT Sewer system to Aqua on the grounds that (in my opinion):

- a. **Alternatives may not have been sufficiently considered** if LMT is not taking the wisest long-term decision, over a quick short-term payoff that will cost its citizens (“we”/”us”) in the longrun. The information and details (financial and otherwise) for the basis of the decision have not been well-communicated to us. Rather, only a few videos of the meeting are posted on social media. Details of the causes for this financial need have not been well-communicated. Based on certain decisions the township has recently made (please see below), I feel that these are indicative of a poor decision making process that does not fulfill the township’s fiduciary responsibility to its citizens.
- b. **We do not understand the vetting process**, other bids and financial alternatives, their amounts both short and long term.
- c. **Poor Planning as opposed to Need is forcing the sale of the Sewer System to erase unnecessary debt. Not fulfilling their proper fiduciary duty to the Citizens of LMT:** According to Bucks News, there are “three balloon debts” and “the proceeds from the sale would be used to improve the township’s overall financial status by paying off the debt on the township’s golf course”. I am concerned that the townships’ spendthrift attitude is causing it to suffer financially for its true needs such as the sewer system. On the other hand, if LMT is in debt, it is because it chose to spend \$2.8M on its senior center, whose current schedule shows only card games, movies once a month and a book club, all of which could have happened at the existing local library. There is also a \$212,000 dog park, multiple alternatives of which exist locally. Debt of \$27.5M on Highlands golf course and sewer system still exist. I am concerned that they are not financially well thought out, and as a result the township will suffer with an eternal loss of its sewer system. LMT Supervisor Weiss, who was for the sale, said (per Bucks County Herald News “My idea is we use it (the funds) to protect the (sewer) ratepayers first, then protect the taxpayers, and after that increase township services to make the township a better place”. However, the sewer rates have doubled in the last few years (see below), and I wonder how they will accomplish this goal given that the majority of the payoff will be used immediately for the golf course debt, leaving far less than \$20M for a township of 11,800 residents, and squandered debts on the Senior Center, dog park, a planned football field at Snipes and other ideas this township never had the money for. I am concerned that this remaining revenue will be squandered too on other unnecessary ‘wants’ over ‘needs’. Supervisor Lewis objects to the sale of the sewer system. Other notes regarding poor planning in that same newspaper article:

- i. Although Lower Makefield appears to have a sufficient number of fields, nearly all of the fields at Macclesfield Park are overused to some degree on account of team scheduling. It is reasonable to conclude, the commission continues, that additional fields are warranted to allow other sports groups access and facilitate current participation levels. The township has budgeted \$500,000 for improvements at Memorial Park, including tennis and bocce courts and ADA-compliant ramps, to be offset with a \$250,000 state grant it received in December 2017. However, as others point out, there are out of town teams using the fields and better scheduling could alleviate the need for more fields. Per <https://lmt-trust.org/> Over 60 athletic fields currently available in LMT; many underutilized.
 - ii. A proposed \$600,000 bike path along Woodside Road, between the Makefield Highlands Golf Club and Taylorsville Road, also hinges on the township's receipt of a \$480,000 grant from the Delaware Valley Regional Planning Commission.
 - iii. Also budgeted is \$465,000 for a new wall at the community pool, which previously had undergone short-term touch-ups. This is an exorbitant amount given the area of the wall, and I wonder how many competitive bids were required. Again, this information is very hard to find online.
 - iv. Declining population of participating age group for field use, I wonder if this has been considered in the expense analyses.
 - v. Up to 45% of participants NON-LMT residents according to LMT-Trust.
 - vi. Per the newspaper article: "As great as it would be for all township projects to be completed in one fell swoop, Ferguson said, it is fairly common for a project the size of Snipes — which he said could cost between \$2.5 million and \$3.5 million for extra football fields". That would be a sizeable chunk of the remaining revenue. It seems that our township is overspending on fields and needs to sell off public assets to pay for them.
 - vii. Per Bucks County Courier Times, "The township's budget has \$1.3 million allocated toward relocating Sandy Run Road's entrance onto Edgewood Road, a move the board has said could be financed through any money the township recoups through its ongoing litigation with Boucher & James. The township's former engineer is alleged to have worsened line-of-sight problems at the intersection, leading police to close a stretch of Sandy Run nearly two years ago." Which remains closed to this day. The Townships' alleged incompetence and desire for many sports fields without fiduciary care for its citizens could very likely be the pressing cause for the township to sell the sewer system to cover its' various construction goals.
- d. That the offered price of the sewer system (\$53M) is less than 5 times annual revenue (\$11M according to their email) and that is too low given that LMT is permanently selling a public asset.
 - e. That LMT should either get far more for this asset, or retain it and use government grants for repairs (which Aqua as a public company would seek to do in order to fulfill their fiduciary responsibility to their shareholders – that is, to privatize profit and publicize debt), or retain it and high Aqua to manage the asset.
 - i. One of the discussions around the sale and its consideration is that Aqua will provide much needed repairs to the system. What repairs to the system is Aqua committing to, and what percentage of required repairs need to be done? How is this amount determined, by whom, and what is the criticality of these repairs

– is it all of the critical, some of the severe, etc. What is the projected cost to Aqua over the next few years, and what is the expected increase to the customer (per customer)? Will this be of debt they incur, or of public grants they will not pay for but whose ‘expenses’ are passed on to customers as price increases?

- f. The following articles point out how private ownership of public assets is driven by return on investment, not on citizen approval when there is no alternative for the citizen:
1. https://www.washingtonpost.com/national/health-science/towns-sell-their-public-water-systems--and-come-to-regret-it/2017/07/07/6ec5b8d6-4bc6-11e7-bc1b-fddb8359dee_story.html - Washington Post article from 2017 **“Towns sell their public water systems — and come to regret it”**. They also stress that once sold, there is **“no going back”**.
 2. <https://www.foodandwaterwatch.org/2015/08/02/water-privatization-facts-and-figures/> - **“Privatizing local water and sewer systems usually does far more harm than good for our communities.”** This article also suggest a public-private hybrid and many other suggestions for improving utilities. Have these recommendations been made to LMT’s facility? Also, this article stresses that quality of service declines sharply once private companies take over. **One reason service suffers is because water companies reduce the workforce by 34 percent on average in order to grow profits, thus increasing unemployment and causing repairs to suffer.**
 3. <https://hbr.org/1991/11/does-privatization-serve-the-public-interest> - Harvard article on **financial incentives for CEOs that have taken over public assets**
 4. <https://newint.org/features/web-exclusive/2018/05/10/public-ownership-cat-hobbs> - **“Privatization has failed repeatedly”**
 5. <https://www.commondreams.org/views/2013/08/05/8-ways-privatization-has-failed-america> **“8 Ways Privatization Has Failed America” which calls out, among other things, public utilities**
 6. <https://nextcity.org/daily/entry/privatization-water-utilities-inequality-poverty> - **“Examples of How City Services Privatization Leads to Inequality Are Piling Up”** One such example says that because private companies raise rates, elderly in one town shower only once a week to save on their water/sewer bills, while **“..residents pay four to six times more for their water than residents of neighboring towns.”**
 7. <https://www.nap.edu/read/10135/chapter/3> - National Academy Press article stating that governments borrow money at rates lower than private companies, implying that **repairs funded publicly are less expensive in the long run than for Private companies**
 8. <https://www.cbsnews.com/news/can-the-private-sector-save-americas-aging-water-systems/> - A 2017 CBS article stating that water and wastewater bills increased **“4.4 percent per year on average, according to Bluefield. And a recent Michigan State University study found the percentage of U.S. households who will find water bills unaffordable could triple, from 11.9 percent to 35.6 percent, in the next five years.”**

9. <https://www.hsdl.org/?view&did=690622> P27 metrics: Suburban Texas fire chief reported that after privatization of their ambulance service, employee satisfaction was down, staffing of ambulances was lower, response time was slower, appropriate equipment was used “some of the time”, and most importantly, “patient **getting a better or worse value**” was rated **67% worse, 23% same, 10% better**. If this is for life saving operations, how much more so for a utility?
 - g. That Aqua’s rate increases are a hardship for many citizens, as determined by the doubling of LMT’s rates in the last 4 years alone compounded by Aqua’s promise (in their communication) to raise rates by about 25% every few years. They should specifically state the reason for this rate increase, substantiate it financially (with data) and demonstrate why this cost is increasing at a rate far in excess of cost of living. For indigent customers, this can lead to liens on property, further indebting the poor.
2. We don’t know if this was properly vetted or if the company researching the sale pressed for a sale rather than alternatives. What role did that company play in the sale of the utility? We do not know what the fair market value is, how it was set, by whom, and what variables were taken into consideration. Is it a ‘going rate / comps’ method, a “likely sale price” method, or some type of guess. What discussion directly between the parties happened? if other bids and township retention of the property was figured; if costs to retain were compared against estimated public grants to offset these prices, and would such grants make township retention of the system a viable decision?
3. LMT’s price increases (my payments shown below) came with what level of system repair? How much of this debt was passed on to the consumer? How does this amount benchmark against what Aqua expects to do – more repairs or less, what criticality, what % of required repairs, and how much debt passed on?
 - a. \$492 in 2016
 - b. \$496 in 2017
 - c. \$505 in 2018
 - d. \$685 in 2019
 - e. \$903 in 2020
4. **Procedural Request**: Dates: 9/15 before noon is okay, otherwise I can not make that call; as protestants are in LMT and registered mail must be sent to HBG for rebuttals, the current deadline of 2-3 days per reply is too brief. Could we allow exclusively e-filing or extend deadline for replies by mail? I can not attend meetings in person.
5. I am signing the NDA regarding the protective order and request that all information addressing the above questions and not limited to those be sent to me. I agree to abide by the NDA. As part of discovery and my case I need access to and be able to review all of those documents, regardless of their level of “Proprietary” or level of “Confidentiality”. Aqua and their representatives must explain, prove and defend why such documents are proprietary and/or confidential. I am not a restricted person and have the right to review these documents for this case.

Counterargument comments to emails dated today, 9/8/2021:

1. “The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base.” RESPONSE: There is no hypothetical impact on rates, there will actually be rate increases according to Aqua. Further, the “recognized benefit” of Aqua’s ability to raise capital is not specifically a feature that LMT wastewater customers would pay for. In other words, raising capital, consolidating services and so on are not value-added features of wastewater processing. Further, should Aqua be able to save money, it is assured that those savings will be passed on to customers. Rather, its fiduciary responsibility to its shareholders (rather than the public trust of LMT as a township) actually assures us that its intentions will be financial rather than public trust.
2. “This acquisition will permit LMT to take advantage of Aqua’s expertise in operating wastewater utility systems and regulatory” The sale is not the only path to take advantage of its expertise; management consulting or just management of the system rather than its sale would allow the same benefit to be realized.
3. The \$54,430,591 valuation presented in the appraisal of AUS Consultants is impossibly specific for an asset such as the town’s wastewater system. A value accurate to a single dollar is not a reasonable result of the valuation of a township’s sewer system. The \$55,505,000 valuation presented in the appraisal of Gannett is still higher than the reduced amount of \$53,000,000 finally agreed upon. This final value, lower than both assessments, is proof that LMT is not honoring its fiduciary responsibility to the LMT citizens, accepting a lower bid overall for an asset that will soon be gone, never to return to our public ownership.

Expert Witness: Peter Lachance will be my expert witness