

# THE PUSHING OF J. BERG'S BUTTONS

*OR JUST MORE UNINTENDED CONSEQUENCES?*



Following my below comments are J. Berg's REBUTTAL comments to my comments submitted to the board prior to the 08-03-22 board meetings (Budget and Regular) that I read into the record on video via Zoom to what I sent to the District prior the meeting and what I read into the record during the meeting(s). I guess my comments can be considered a rebuttal to J. Berg's rebuttal.

As I recall, there was "some reluctance" to 'allow' speakers to speak at the regular meeting during public comment period held during the regular board meeting that was held immediately after testimony and public comments were taken (as a matter of the legal requirement) during the SKSD Budget Hearing.

It's notable that one of the board members stated that no one had submitted a request to speak during public comment during the regular board meeting that followed the meeting where testimony was taken during the Budget Hearing meeting. As a matter of record, there was no place in the 'instructions posted by the District" that suggested anyone had to register 'twice" in order to also give public comments during the second and regular school board meeting.

Fast forward for a moment: At the current board meeting held on 09-07-22 the board voted to permit written comments and questions sent in by "any" constituents (or persons) that have those questions read aloud during the meeting(s) by the Board Chair. A comment was made by the Board Chair (Mr. Wilson) that he believed that reading the comments when the person(s) submitting the comments was proper given that the comment writers were not present for the meeting and perhaps could not access Zoom if they needed that accommodation. A second board director also agreed that it was proper to allow the submitted comments to be read, provided they they had been submitted in timely manner (my words here) at no later than the prescribed time ((before but not later than 3:00 pm on the same day of the board meeting. One director clearly states and is recorded on video that he felt a bad precedent was being set by allowing this - that comments were meant to be read by attendees of the board meeting, be it in Zoom or in person.

Video clip of J. Berg making these comments here:

Video of Board Chair ruling that comments were proper to be read aloud even if the submitter was not present or attending on Zoom during the meeting:

Video clip of another board member supporting the board chair on reading comments aloud during board meetings when the submitter(s) were not present:

Here is what (I) was actually read into the record (and recorded on video) during the SKSD Board Budget Hearing and the Regular Board Meeting that followed:

- Budget and employee stuff is now on consent agenda yet the board produced a policy that resulted in no comments, no questions on any consent agenda items. Just how effective is this for the community to get answers to financial issues such as budgets such as employment.
- How are other board members much less the public able to comment on reoccurring consent agenda items that involve manning and budget with the exception of only a hearing?

- Why is Director Berg permitted to maintain a private website where he has regularly siphoned off very official looking school district and board information. His site looks like an official school board website.
- Why is Director Berg permitted to maintain a private website with official looking info when none of the other board members maintaining any websites?
- Of the number of school district I have so far contacted, none of them permit their board members to maintain private websites related to school district business. The only exception I have found is for board members who then become candidates during elections for their seats. The elections end - the websites go away!
- Why don't any other board member other than (Director Daily) circulate around the district and visit schools except one director.
- How can (Dr.) Jeffee Wilson (current school board chair) suggest and explain that full community involvement is attained from the community when only survey monkey type surveys or thought exchange surveys are conducted. This feels more like a buyer beware if you don't ask the questions the way we want you to ask the questions. The outreach to me looks and smells more like a 'check box' proposition for the district so they can show they did outreach.
- If this is the example of outreach I will be thrilled to see how much effort at outreach will be expended as we get closer to a levy request. What will be telling is to see just how sincere the board is regarding doing outreach to ask the community what they want to see for capital project improvements.
- I keep hearing (Dr.) Jeffee and other directors present and past say) "We decide (meaning the district) on what we spend money on how (we will) be spending it". What about the taxpayers? We all are painfully aware that no one can boss the district around or tell the district to do anything. Unless there is a provable crime regarding financials, even SAO says it's all up to the district how they spend their money.
- Speaking of money and programs for students. Why is the District maintaining a 42-foot sailing sloop with no one to train the students? And why are the only students permitted to be trained on this sloop only NJROTC students? How can this be such an exclusive sailing club?

- Getting the word out on district budget for the community is supposed to be attractive and inviting. The responses by the board that they have ample opportunity strikes a hollow note, as if the district is the victim of some horrible misunderstanding.

**The following is the rebuttal comments that J. Berg posted on his "most very private but public" website (that appears to be an official school district website) following the school board meeting(s) held on August 3, 2022.**

### **Rebuttal to David Kimble's Public Comments of August 3, 2022**

#### **Regular Board Meeting Aug 3, 2022**

#### **Use of a Consent Agenda**

Mr. Kimble complains that budget and personnel matters are on the Board's Consent Agenda and are handled by the Board without any questions or debate. He claims that this precludes the public from commenting on them, and that they don't even have adequate notice of them. These claims are not valid.

The Consent Agenda at the board meetings is intended to contain routine, non-controversial items that are combined and adopted with one vote, without debate. Under the Board's previous policy, a majority of the Board was required to remove something from the Consent Agenda and consider it separately with debate. This is consistent with the WSSDA model policy, but not with *Robert's Rules of Order Newly Revised* (12th ed.), abbreviated as *RONR*. Under *RONR*, one member can have an item removed from the Consent Agenda for separate consideration. When there is a conflict between rules in *RONR* and Board policies, the Board policy prevails. (To take something off the meeting agenda and not consider it at all requires a majority vote.)

When Directors Berg and Daily were first on the Board, questions and debate were allowed on Consent Agenda matters. Director Daily took advantage of that fact and raised questions on minor issues on the consent agenda, such as questioning individual expenditures from a forty-page listing of all expenditures. The questions were left unanswered and the public was left with unresolved suggestions of impropriety on the District's part.

The purpose of debate is to sway votes, but this was not the apparent intent. The intent appeared to be to use the Board meeting as a forum to publicly criticize the District. If any discrepancy was serious enough that the Board should not approve it, it should have been taken off the consent agenda, and postponed until the appropriate questions were answered. Director Daily rarely, if ever, proposed that procedure. He has, however, often objected to the entire concept of a Consent Agenda, wanting debate on every issue, and demanding that only a unanimous vote can adopt items on a Consent Agenda. (This is probably because the term Consent Agenda contains the word "consent", being confused with a different parliamentary procedure called "unanimous consent".) The time taken up in Board meetings by Director Daily to address individual items on the Consent Agenda was not minimal but rather substantial.

While Director Berg initially preferred the *RONR* rule of one member being able to take something off the Consent Agenda (in order to promote free debate), it was the [Aspen Group](#) consultants that warned that one member could hijack a meeting by taking most items off the consent agenda for separate consideration. Requiring two members to take an item off was a compromise arrived at during a workshop with the Aspen Group.

Regarding the public's lack of debate or comment on Consent Agenda items, even if they were debatable during the meeting, the public would not be entering into the Board's discussion at that point in the meeting. The public has advance notice on the published agenda of those matters and is free to correspond with the Board members prior to the meeting or to comment during the Public Comment portion of the meeting. If two Board members are convinced that a matter needs a more complete discussion and consideration before voting, two members can have an item removed from the Consent Agenda. This is occasionally done.

The public has the same rights to comment on Consent Agenda items as to any other Board business. The claim that the public has no notice is false. The claim that the public has no opportunity to comment on Consent Agenda items is also false. It is possible that Mr. Kimble's complaints regarding a lack of public comment is simply echoing Director Daily's ongoing complaint that he, as a director, cannot debate items on the Consent Agenda (without the agreement of one other board member).

## **Director Berg's Website**

Mr. Kimball (Kimble) said:

*Why is Mr. Berg, Director Berg, able to maintain a private website where he has regularly siphoned off off very official-looking school district and board information? The site looks like an official school website. People I've talked to thought it was official. Why is Director Berg permitted to maintain a private website with official-*

*looking info when none of the other board members maintain any websites. Of the number of other school districts that I have so far contacted, none of them permit board members to maintain private websites related to school district business. The only exception that I have found is when board members are running for office and candidacy, and when that's over, they go away -- they are gone. Why aren't any of the other board directors maintaining private websites. And we know what Mr. Berg's website looks like and, John, I don't want to hear you say, "Dave, you get rid of yours and I'll get rid of mine."*

While the word "private" applies to this website only with regard to the fact that it is privately financed and maintained, it is not private in the sense that it is closed to the public view. The public is welcome to view it and respond with comments to Director Berg. Most comments from the public are not posted on this website because it is not intended as a public forum, which would preclude Director Berg from restricting or editing comments. This website is therefore self-identified as a personal website rather than a private website.

Director Berg is able to maintain this website because it is a personal website and no permission is needed from the Board to do so. Director Espy does not need Board permission to walk her dog and talk with constituents about Board business during her walks. Director Daily does not need Board permission to write letters to the editor or to speak to the Port Orchard City Council. Nor can the Board prohibit such actions. Director Daily claims that the Board has no right to limit his rights of free speech, such as with a motion of limit or end debate, in spite of the fact that almost nothing passes the U.S. Senate without first adopting a motion to end debate. Director Berg uses this website to communicate with his constituents and the Board has no right to prevent him from doing so. The use of this website avoids the need of Director Berg to engage in contentious rebuttal during Board meetings. There have been thousands of visits to the website.

Mr. Kimble complains that this website looks like an official District website. The home page of the website very clearly and repeatedly identifies it as a personal website and it even has a link to the official District website. The only time the District logo is shown is in the section directing people to communicate with Director Berg through the official District email system. Perhaps this website looks "official" because of its professional-appearance and organization. If public information is available on or through the District's website or email system, it is not necessary for Director Berg to put the District through the expense of responding to a public disclosure request before posting the available public information on this website.

If the people Mr. Kimble talks with confuse this website with the District's official website, that that is more of an indication of the literacy level of Mr. Kimble's associates than any deficiency in this website's disclosures. At least this website clearly identifies the individual responsible for its content, in contrast to the website managed by Mr. Kimble in association with Director Daily, which refuses to name any individuals taking responsibility for its content.

With the exception of Director Daily, whose views are adequately represented on the website managed by his associate Mr. Kimble, other South Kitsap directors do not feel a need to have their own websites most likely because this website managed by Director Berg is very exhaustive and sufficient in covering Board matters.

While other districts do not have directors maintaining private websites like this one, that could be because the other districts do not have the same circumstances and contention as on the South Kitsap School Board. (How many other districts have a director filing three lawsuits against the Board?) For any that may, this website could become a trendsetter.

Mr. Kimble previously filed a complaint against Director Berg with the [Washington State Public Disclosure Commission](#) (PDC) regarding this website and Director Berg's mentioning it during a board meeting. The PDC found no violations and issued no warnings to Director Berg, but merely reminded him to avoid discussing election matters on the website. Director Berg modified this website and now maintains a separate website addressing his reelection campaign. Mr. Kimble's claims that this website is "illegal" are not substantiated by any facts.

## **Public Involvement**

Mr. Kimble opined that community involvement through survey monkey or thought exchange surveys is inadequate and will backfire. He did not elaborate.

He also complained about the District maintaining a 40-sailboat without someone to train the students to sail it and limiting its use to Navy ROTC students.

He also complained about the District deciding how to spend taxpayer money without adequate public input.

## **Budget Hearing Comments**

The annual budget hearing preceded the regular Board meeting. Mr. Kimble's initial comments can be found on the same video of the meeting from to 39:15 to 42:58.

Mr. Kimble asked , "*When is OSPI going to reimburse the several hundred thousand dollars of ESSER funds that were not properly reported?* " In response, ESSER funds are COVID relief funds from the Federal Government that are reimbursed through the State. Some of the funds were intended to cover "lost revenue" but, while the District documented the lost revenue, the State Auditor found that the

District did not report specific expenditures to be reimbursed corresponding to those lost revenues, and many other districts in the state had the same omission. The ESSER funds were reimbursed to the District and the issue of whether or not additional documentation is required or the funds will need to be returned has not yet been resolved.

Mr. Kimble noted that this 2022-2023 budget looks similar or the same as the last budget and with no more ESSER funds coming it pretty obvious that the current level of funding cannot be continued. He asked if the District is going to rely of levy funds to hire beyond what the state allocates? In fact, there are more ESSER funds available. The proposed budget is for the 2022-2023 school year and there are millions of dollars in ESSER funding still available for the next year.

He asks if the District going to continue to use levy dollars to hire beyond what the state allocates? The answer is yes. The state "allocates" only 1.267 nurses (that is less than two) for over 8500 students in 17 schools. The District budgets for 9.8. The state allocates for .22 psychologists (that is less than one psychologist) while the District budgets for 14. The state allocates for 14.89 counselors while the District budgets for 27. When the voters approve the levy, they approve the additional staffing deemed necessary to serve the kids. The voters elect the board of directors who direct the superintendent and approve the budget.

He asks how can the District go over budget on the pool and cut the number of days the kids get free lunches. In actuality, the pool repair and renovation costs come from the Capital Levy approved by the voters and the school lunches are Federally funded. The District cannot and does not move lunch money to cover the pool.

See the budget presentation below. Page 14 shows the state funding model. Page 9 shows the breakdown of ESSER funding available through September of 2024.

## **Budget Hearing Follow-up Comments**

Mr. Kimble's follow-up comments from the budget hearing can be found on the same video of the meeting from to 1:32:00 to 1:32:40.

Mr. Kimble said:

*I just wanted to take exception to, you know, often we don't give feedback to the directors, we are not permitted, but I thought it was rather cagey of Director Berg to go after Director Daily and ask those hypothetical questions, "Do you not want to have enough nurses for the students? do you not want to have enough mental health available?" I mean it was all ta da ta da ta da with not really wanting an answer. Just an opportunity to box in a fellow director. Yea, they're suing each other. Yea, Berg's probably getting his legal bills*



*paid, bla bla bla bla bla. But to go in that route is not attractive and that is why the community doesn't like listening to these meetings. Thanks.*

Director Berg's questions to Director Daily were in response to Director Daily's comments about the District not being able to afford to pay for personnel beyond what the state pays for in basic funding. This line was similar to Mr. Kimble's comments a few paragraphs above. Director Daily had opposed the previous levy which pays for these additional services to the students. The question was to determine if Director Daily was in favor of funding the additional services that the levy pays for. They were not rhetorical questions that did not expect an answer. Director Daily answered the questions and Director Berg acknowledged that Director Daily had indeed answered the questions.

Regarding the comment that Director Daily and Director Berg are suing each other, **that statement is false.** Director Berg has no lawsuit against Director Daily. Although Director Daily has threatened a personal lawsuit against Director Berg and even stated at the November 17, 2021 board meeting, "Mr. Berg has/is being served papers regarding a personal lawsuit and an injunction that involves his interaction with the Board", no such papers have ever been served. In a December 16, 2022 email to Board President Wilson, Director Daily wrote, "Mr. Berg is being sued for the content of his website as well as others issues." There have been no such lawsuits. **Director Daily's statements were false.**

What is fact is that Director Daily has filed three suits against the South Kitsap School Board, in [August 2021](#), [February 2022](#), and [April 2022](#). These suits were against the board as a whole. The individual members of the Board were not named as Respondents. Mr. Kimble should know the difference between filing a suit against an entity and against individuals. (Mr. Kimble was the one who personally served the papers on the District on behalf of Director Daily.) Since the suits are against the Board and not against its members as individuals, the District is paying the legal expenses in responding to the suits. Director Daily is responsible personally for his own legal fees as the Plaintiff.

John gets an Atta boy from me and a few maple bars for at least fighting the fight he thinks is right to deny more opportunity for community engagement as far as questions and comments. Specifically those being sent in by community members (or others) who can't attend board meetings in person or via Zoom. This time four against one, as it should be on the polices that really count.