

# South Shore's Measure S bond action taking place illegally

By Kathryn Reed

South Lake Tahoe has begun the process to refinance Measure S bonds without the proper authority to do so.

The city is one of three entities that is part of the South Lake Tahoe Recreation Facilities Joint Powers Authority. The others are El Dorado County and Tahoe Paradise Resort Improvement District. It would take a vote of the JPA board for the bonds to be legally changed. That has not happened. Nor is there a JPA meeting planned in the next month.

City Attorney Patrick Enright told *Lake Tahoe News* that John Upton told him to start the process. Upton is the lone staff member of the JPA.



John Upton and Norma Santiago have not publicly discussed refinancing Measure S bonds.

Photo/LTN file

(The JPA's sole job is to oversee the spending of the money

collected from the 2000 voter approved recreation measure.)

"I assumed John had the power to do this," Enright said.

Upton, who did not return multiple calls, could only get that authority by speaking with the three JPA board members individually. To do that would have been an egregious violation of the Brown Act, completely circumventing the public process through an open meeting. Without a vote by the JPA board, it makes the city's actions illegal.

Upton, who has held multiple elected positions representing the South Shore, knows what the Brown Act is and could not say he was unaware of the process.

South Tahoe wants to refinance the tax-exempt bonds and change them to taxable bonds in order to accommodate IRS rules regarding having a private operator who wants to make a profit run the city-owned ice rink.

(Measure S paid for the ice rink in South Tahoe, but as of August it has been run by a private company.)

"The contract with those guys is contingent upon this. I'm not sure what is going to happen with the ice rink," South Lake Tahoe Mayor Hal Cole and the city's rep on the JPA board said. "We have to adhere to the conveyance of the bond that was sold. If that means we renegotiate the contract for the ice rink, so be it."

Debbie Henderson, Tahoe Paradise's JPA board member, is out of the state on vacation and not reachable for comment. However, as finance manager for South Tahoe Public Utility District, she would be well versed in how the bonds work as well as public meetings.

In August, El Dorado County Supervisor Norma Santiago, who chairs the JPA board, told *Lake Tahoe News* she did not know enough about the bond issue to comment.

In October, she is refusing to return multiple calls to discuss the matter.

But she is aware of the issue because she has spoken to county Auditor-Controller Joe Harn about it. He referenced that conversation in a letter dated Sept. 27.

In the letter to Santiago that was copied to Cole, Henderson, Enright and Lou Green (El Dorado County counsel), it says, "I believe that it is in the best interest of residents and property owners in CFD [community facilities district] 2000-1 to pursue a tax exempt refinancing of the bonds at this time."

Harn told *Lake Tahoe News* it is better for the property owners, who are mostly in the boundaries of Lake Tahoe Unified School District, for the bonds to stay tax-exempt. He said refinancing the existing bonds could create a larger pot of money for recreation needs or help pay down the debt.

"They are going to have to demonstrate to me why this is in the best interests of (residents) and I know of no benefit at this time," Harn said of South Lake Tahoe's desire to switch the bonds to taxable.

The city is going forward on the wrong assumption that Upton has the power to make that decision.

Enright is working with Mark Northcross, who was involved with the original bond sales.

"We have a couple proposals back. We are taking a look at those," Enright said.

It's possible all the hours Northcross has put into this bond action could end up being donated time because state law says he doesn't get paid unless the work to be done was authorized by the board that has the ultimate authority. In this case, that would be the JPA board. And the board has taken no action regarding refinancing the bonds or changing them from tax-

exempt to taxable.