

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

SEPTEMBER 16, 2010

A meeting of the Pennichuck Water Special Committee was held on Thursday, September 16, 2010 at 7:05 p.m. in the Aldermanic Chamber.

Alderman-at-Large Brian S. McCarthy presided.

Members of the Committee present: Alderman-at-Large Barbara Pressly
Alderman-at-Large Mark S. Cookson (7:55 p.m.)
Alderman Jeffrey T. Cox

Members not in Attendance: Alderman Michael J. Tabacsko

Also in Attendance: Mayor Lozeau
Alderman Richard LaRose
Alderman-at-Large David W. Deane
Alderman Arthur T. Craffey, Jr.
Alderman Kathryn Vitale
Alderman-at-Large Ben Clemons

ELECTION OF COMMITTEE CLERK

Chair McCarthy called for nominations for a Committee Clerk

Alderman Pressly nominated Alderman Cox

MOTION BY ALDERMAN PRESSLY THAT THE NOMINATIONS BE NOW CLOSED MOTION CARRIED

VOTE ON ELECTION OF ALDERMAN COX TO THE POSITION OF CLERK OF THE PENNICHUCK WATER SPECIAL COMMITTEE

ON THE QUESTION

Alderman Deane

I have a point of order. You stated the other evening that you would allow other non-committee members to vote. Are you going to suspend the rules for this vote?

Chairman McCarthy

We will do that as soon as we get this out of the way.

Alderman Deane

We will let the committee handle this.

ALDERMAN COX ELECTED UNANIMOUSLY

MOTION BY ALDERMAN PRESSLY THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW ALL MEMBERS OF THE BOARD OF ALDERMEN PRESENT TO VOTE FOR THE DURATION OF THE MEETING
MOTION CARRIED

NON-PUBLIC SESSION

MOTION BY ALDERMAN PRESSLY THAT THE COMMITTEE GO INTO NON-PUBLIC SESSION BY ROLL CALL PURSUANT TO RSA 91-A:3,II(e) TO CONSIDER A PENDING CLAIM OR LITIGATION WHICH HAS BEEN THREATENED IN WRITING OR FILED AGAINST THE CITY

SECONDED BY ALDERMAN COX

A Viva Voce Roll Call was taken, which resulted as follows:

Yea: Alderman Clemons, Alderman Vitale, Alderman Craffey, Alderman Deane, Alderman Pressly,
Alderman LaRose, Alderman Cox, Alderman McCarthy

8

Nay: 0

MOTION CARRIED

The committee went into non-public session at 7:10 p.m.

James McNamee, Esq.

Probably the only details and I will let John fill it in further, it is substantially the same agreement that you have seen before, but in terms of timeframe now we are going to start the due-diligence process. Actually I do need to turn it over to you because you have organized that and you have a meeting with people right?

John Patenaude

Right. We will start that process Monday. We went pens down this afternoon and mainly the last point we had was the confidentiality agreement, which we discussed last time at the Aldermen meeting. We got through that. That ended today. Monday morning I have a meeting with Tom Leonard the CFO of Pennichuck and Don Ware who is more or less the COO. We will be starting the due-diligence process. Our team will be meeting with their team just as an introduction of our team members to them so they can go directly to the executive officers of Pennichuck to get information. They already started gathering information for us, which they will provide us on disc. We also are setting up a meeting to work on the PUC issue for the filing at the end of this month, the joint filing. We're proceeding there.

Alderman Deane

Who are the team officers you alluded to?

John Patenaude

It will be Tom Leonard. He is the Chief Financial Office.

Alderman Deane

Who from your group is going in

John Patenaude

It will be me, Arthur Gottlieb from C.W. Downer & Co. and a member of his team, Dave Heath from Melanson, Heath & Co. who will be doing the financial due diligence, Steve Gates from R.W. Beck – he won't be there, but he is sending somebody in his stead, and also a fellow by the name of Dave McLane from GeoInsight on the environmental side.

Alderman Deane

Are we under contract with Beck still?

Chairman McCarthy

We approved a contract extension to cover this 2 meetings ago; I think the July 21st meeting. It is actually in the stuff that we were given in the non-public session.

Alderman Deane

That was the same meeting that we sucked \$500,000 out of CERF? Was that the same meeting?

Chairman McCarthy

Yes. Part of that was for Beck, and I am pretty sure that was one of the....

John Patenaude

Yes it was.

James McNamee, Esq.

Billing you for the labor.

John Patenaude

We also have labor attorneys. They will not be there, but they will be reviewing labor contracts and pension contracts so that we can get their expertise. Most of their stuff will be afforded to them via e-mail for their review.

Alderman Pressly

Before we get into the governance, there is quite a buzz going around about Anheuser Busch. In the newspaper it indicated that their rate is going to increase 61% and the rumors that are flying is that they are no longer going to be purchasing water, but they are going to be providing their own, either drawing it from the river or from their underground reservoir.

John Patenaude

I can't comment on that. I haven't seen their contract yet. That will be part of due diligence.

Alderman Pressly

If that is true that should affect the price I would think.

Chairman McCarthy

I guess I don't understand how they would do that. They don't have a withdrawal permit from the Merrimack for that water, and they have wells on the property and the reason they buy water from Pennichuck is because the wells were contaminated.

Alderman Pressly

Well these are rumors that are flying around and the 61% rate increase sort of fueled that rumor a bit.

Chairman McCarthy

I would suspect that if anything the more likely scenario is that they close the plant because it is...

Alderman Pressly

That is a possibility too with the new ownership and...

Chairman McCarthy

...it is the smallest of the Anheuser Busch breweries.

Alderman Pressly

All of those things, but I think just their status in general is a big question mark right now.

John Patenaude

That is one of the things that we have to review during our due diligence as to how much they contribute to the whole in revenues. But we don't have any of that information today.

Alderman Pressly

Just be on your alert.

Chairman McCarthy

Do we know offhand what the duration of the contract is with them?

John Patenaude

I personally don't know.

Chairman McCarthy

They are not subject to the rate as set by the PUC they are subject to a bulk water agreement.

Alderman Pressly

Which could account for the 61%, but it still jumped out at you as being quite unusual.

Alderman Clemons

I assume that all of the terms that we wanted were agreed to.

John Patenaude

Yes I would say so.

James McNamee, Esq.

Yes.

Alderman Clemons

Including that once we make this deal final that we can speak about our reasoning?

John Patenaude

Yes.

James McNamee, Esq.

That was the last issue, and they saw it our way.

John Patenaude

The only thing that you will have to maintain confidential is anything that they provided to us that is marked confidential that has data that should be confidential in there so you have to make that assessment.

James McNamee, Esq.

Right. If it is otherwise available publicly then it is not, but if it is actual material confidential information. For instance, they gave an example today; they talked about a presentation that had revenue projections for a number of years including years that are past and future years. In coming to see it our way they wanted to know how we would treat it, and I said we would consider all of the future years to be information that would have to be redacted because it is material confidential information about the company and can't be disclosed by the company or anyone else un SEC rules without an SEC disclosure. We would redact that. But otherwise that information would come out. That was with regard to document requests.

We're already started and Susan is doing an excellent job, she has about 5 or 6 non-public meeting dates already transcribed and they have a plan to transcribe these in real time. I think you worked that with them in a way to distribute it to the committee members.

Chairman McCarthy

Dawn will start on the minutes of this meeting tomorrow and we will distribute them in hard copy to the board.

Alderman Clemons

Thank you.

Alderman LaRose

When will the joint announcement be made?

James McNamee, Esq.

Once we finish our due diligence you will need to take a vote in non-public session on whether or not to approve the DMA either as agreed to or if there is something in due diligence that makes us renegotiate something about it, whatever the final version is. That will be in non-public session. One of the things I'm going to ask from you is permission to report to Pennichuck, because this is in the agreement, the number votes you know is it a 10/5, 12/3 whatever the split is, and shortly, within a few days, their board will make their vote on it. If they also agree to the DMA then they will announce it that day or the next day, and at that point it will be public.

Alderman Pressly

Will they reveal their split also?

James McNamee, Esq.

We didn't negotiate that no.

John Patenaude

The reason they were concerned with our split is because of the 2/3 vote that is needed at the 90-day vote.

James McNamee, Esq.

Because the next step you have to do is take a bond vote, which will require 10 votes of this board.

Alderman Clemons

That makes sense.

Alderman Pressly

We know a lot of the players so it is of interest to me.

James McNamee, Esq.

It would be interesting.

Alderman Deane

Attorney McNamee you had talked about information that had been given to us. I think back over the last umpteen years about that, and most of what we discussed and most of the information that was disseminated in hard copy to the board at that time was collected when we were done. Other than taking this governance suggestions home to review and look at, the rest of everything I don't have any other paper. I have always turned it back in. When Dave Connell was here that was basically our practice. It was mine anyway, but he used to come and collect anything at the end of any sessions that we had.

James McNamee, Esq.

I have done that too, but I have also put a copy of what was considered into an envelope and given it to Sue to be kept with the sealed minutes so that the documents that were discussed would be available if the minutes are unsealed. I don't know what the practice was before, whether anyone was doing that. Most of the documents you have seen I think will be public records and will not have to be redacted. I just figured it is going to be easier for someone trying to read the minutes to know what it is you are referring to when you are talking about a document.

Chairman McCarthy

In terms of the revenue projections, and this goes to Alderman Clemons' question about the reasoning, we have to redact the future revenue projections from Pennichuck, but things like our analysis from Downer that pre-dates the discussions with Pennichuck, which simply speaks to what we think the revenue requirements are, in fact is not covered by the agreement...

James McNamee, Esq.

Correct. It does ...

Chairman McCarthy

...we derived separately.

James McNamee, Esq.

Based on the Sansoucy model and then improvements to the Sansoucy model. Even the revenue projections of Pennichuck though they probably would agree that we can disclose those and they will just make a disclosure to the SEC about that because they realize that is a very important piece of the public debate that is going to occur about whether or not to bond this.

Chairman President

Hopefully those numbers are very similar to the ones we have in the revenue requirement projections anyway.

James McNamee, Esq.

Yes.

Alderman Clemons

So that speaks to like the graph that we got July 21st. I have it here actually, this graph.

John Patenaude

Yes.

Alderman Clemons

That is redacted or not redacted?

James McNamee, Esq.

That has confidential information from Pennichuck in it because it shows what the Pennichuck rates are projected to be by Pennichuck over the next what is it 20 years, 30 years?

John Patenaude

Ten years.

James McNamee, Esq.

But that is the graph that we have already spoken to them and they understand that is going to need to be disclosed. We can't disclose it until they have made an SEC disclosure.

Alderman Clemons

Are they going to do that?

James McNamee, Esq.

Yes they will.

Alderman Clemons

Before we agree to the DMA or after that point?

James McNamee, Esq.

After the agreement with the DMA, we haven't talked to them about timing, but timing would probably be most appropriate that they do it when they make their announcement of the DMA. I would think that would be the best time to disclose it because they are disclosing in an SEC disclosure the DMA and they can also cover that as well. That will put it into the public debate at exactly the same time.

Alderman Clemons

As long as they do that because the issue that I have is that agreeing to this proposal relies heavily on that information as you know so it is sort of like a catch 22 situation because what we are saying is okay this is the information that we have, this is what we are going on, we are basing it on this, and whatever come out obviously of due diligence; those two things combined. We're agreeing to that and then they are asking for what our votes are to see if the bond is going to pass, but if they don't agree to release that information after we vote then – do you understand the conundrum?

James McNamee, Esq.

How many times have I mentioned it to them about 5 in our negotiations?

John Patenaude

At least.

James McNamee, Esq.

And they have confirmed it every time that they will be releasing it.

Alderman Clemons

Okay.

James McNamee, Esq.

I understand exactly what you are saying. I think that is the critical piece of information.

Alderman Clemons

The thing about it is it has to be on the day that they go public with it; it has to be on that day that we can discuss that graph.

James McNamee, Esq.

I agree.

Alderman Clemons

If I can't discuss that graph on that day that they go public, if we agree to the DMA and they agree to it and then a couple of days later they go public and the newspapers are calling us, if I can't discuss that graph and defend the vote that I had that is going to be a problem. They are definitely going to release that on that day? Okay.

James McNamee, Esq.

We will make sure they do.

Mayor Lozeau

It has been discussed a lot for exactly those reasons and others.

James McNamee, Esq.

It is good that you make the point like that because it is a point that I think needs to be made repeatedly and not lost in the details. We have to start addressing it with them over the next four weeks.

Mayor Lozeau

And it is important for them to hear it from you.

John Patenaude

As a matter of fact we will be reviewing the data in that Melanson will be reviewing the details behind that.

Alderman Clemons

It might be something nice to get in writing. It would be very nice to get in writing.

James McNamee, Esq.

That will take us another 6 months. Just kidding.

Alderman Deane

What if it doesn't happen?

James McNamee, Esq.

What if what doesn't happen?

Alderman Deane

If they don't go for the release of the data that Alderman Clemons is talking about?

James McNamee, Esq.

I suppose we can...

Alderman Deane

His phone is ringing off the hook and people want to know why he did what he did and he just sits there saying I can't talk about it.

James McNamee, Esq.

Here is what I think we should do; you are not going to vote on this DMA for another 4 weeks. It is when you vote on the DMA that you want to know that this is information that will be in the public. We will make it clear to them that they won't get the vote on the DMA unless they agree to a release, and it is that simple.

Alderman Deane

So the vote on the DMA will trigger the release of the data?

James McNamee, Esq.

They will have to agree to that and if they don't then you can vote accordingly.

Alderman Deane

So when the motion is prepared Mr. President I believe it in the best interest of everyone that language be part of that motion, it is approval contingent. That is where the word contingent really fits in. I share your concerns. Thank you.

Chairman McCarthy

Is there any reason they wouldn't want to make that disclosure other than they are planning not to sell it to us and they don't want to disclose the basis for the value of the stock?

John Patenaude

No. I think that we have had the discussion with them on that data and they agreed that data is crucial to selling this to the City for your vote and for the open discussions and public discussions that will have to occur. We have had that discussion with them, they have said they understand its importance; they want the deal to go through. The only thing we will have to do is get a written release because that is our agreement we get a written release and we can do that before we close...

Mayor Lozeau

And I think the other part of this and one of the things that I was thinking about when we talked about this is if they are not willing to do something like that then how do you know that you can vote on accurate information? You are predicating, all of us are predicating our whole vote knowing all of the facts, and if a critical component of the fact is that the rates won't go up at the same that they would have under Pennichuck under City ownership you have to have those pieces of facts so that people understand that was one of the components you made your decision on, and they have to ensure that those are accurate.

John Patenaude

One of the things that they may likely, most probably need in their SEC filing even when they go to the vote for the shareholders is projections as well. That is one of the things that is typically required in the final proxy so that the shareholders can evaluate whether they should vote for the transaction or not, and it is usually the projections.

Alderman Deane

I guess we will see how the cookie crumbles ha Alderman McCarthy?

Chairman McCarthy

It looks that way.

James McNamee, Esq.

In our discussions by the way about disclosure, they were not as concerned about that disclosure. I made the point a number of times as did John, but it was essentially agreed to. What they were fighting about was other things. They were concerned about the course of negotiations from prior negotiations coming whether they would be made public or not, and that is what they finally came to realize had to come public, but that was what they were dealing with. They were trying to get their heads around the Right to Know Law.

Chairman McCarthy

What is there from prior negotiations that we possibly disclose?

James McNamee, Esq.

Frankly I think they are concerned about the fact that here they are selling for \$29 and they had an agreement to sell it for \$32. The question they get asked is why didn't you sell it at \$32 when you had the chance?

Alderman Pressly

Sell it to the City for \$32?

James McNamee, Esq.

Yeah.

Alderman Pressly

Yeah.

James McNamee, Esq.

Or whatever that number is, frankly I don't even know what that number is.

Alderman Pressly

We all wonder that.

Chairman McCarthy

That number didn't work out to be \$32 after tax consequences right?

James McNamee, Esq.

And that is exactly how they said they were going to handle it, they were going to point out there were contingencies and tax concerns.

Chairman McCarthy

That was a post tax asset sale, which would have incurred the \$60 million change so that was really down at around \$18 or \$17 a share after...

James McNamee, Esq.

For them.

Chairman McCarthy

For them after taxes.

James McNamee, Esq.

Anyway they have to deal with that.

Chairman McCarthy

Are there any other questions before we take on the governance issue? I have been looking at the scope of this, and I think unless somebody has a better idea what I would like to do tonight is go through the slides on the bylaws, not try to resolve the issues necessarily, but understand which ones are the ones we should concentrate on first, what are the priorities. Then we will come back and start working on them in this meeting and others. I think there are some articles where we will be able to just say it is obvious what we should do, but for the board structure, etc. are the ones we will want to concentrate on so I would like to get to a point where we understand that at least, and then we will schedule another meeting for as soon as we can I guess.

Alderman Deane

Mr. Chairman I spent some time going through this. Who prepared this?

John Patenaude

I did.

Alderman Deane

When I go through here and I see the bullets, these are your suggestions what is in here for language changes and whether things should stay or go or...

John Patenaude

Yes.

Alderman Deane

How did you formulate your positions on the portions of this?

John Patenaude

Mainly from experience. Some of this is, you've got complexity for instance in some of the articles and some of the bylaws because you are dealing with a public company who has different types of stocks and different rationale for raising money. A lot of it had to do with just experience in dealing with corporate governance in the past.

Alderman Deane

So you have migrated a publicly traded corporation over into a...

John Patenaude

A closed corporation, private corporation yes.

Alderman Deane

Your opinions or your recommendations were from some of the basic corporation models that you have dealt with in your profession?

John Patenaude

Yes and also had discussions with Bill Ardinger who is a corporation attorney as well.

Alderman Deane

I know one of my biggest concerns is the board structure and the politics behind that appointment process and the terms. A lot of the comments that I have heard about any of this from people and it is basically people speaking at me were is this going to become a political cash cow for former Mayor and Aldermen to serve on. People in the community were concerned that may be the case. I told them that we hadn't discussed any part of this and the whole process was still being dealt with and I couldn't talk about it. But I have heard a lot of comments like that and for good reason too. We want to assure the public that this whole process and the governance is aboveboard and it is not manipulated into something that is going to be self-serving to friends or others, not going to be political appointments. This whole thing is going to have to be kind of ironed out so it is fair and that we have some good people that are going to serve hopefully over the asset. It is very important.

Alderman Pressly

I agree with that, and I would suggest that we start with that. I think that is the most critical.

Chairman McCarthy

I want to get a list of what the issues are first that we have to deal with and that is the one I intend to...

Alderman Pressly

That is the thing that concerns me the most; who are going to be the decision makers, represent the people...

Chairman McCarthy

That is the one I want to come back to first. I think we understand that, but I just want to understand the scope of...

Alderman Pressly

One thing that has confused me with all of this, with all of these shares and the City owns it, are we still going to talk about having shares?

James McNamee, Esq.

Yes. We will be the shareholders.

Alderman Pressly

So how will...

Chairman McCarthy

We will still have stock. We can decide that there aren't 4 million shares outstanding. We can decide that there are now 1,000 shares outstanding I believe if we want to.

Alderman Pressly

Okay or you give a share to everyone who pays a bill...

Chairman McCarthy

No no no, we own the shares.

Alderman Pressly

Okay. So we are still using the word shares but it doesn't have the same meaning at all that it has...

John Patenaude

It is not publicly traded.

Alderman Pressly

Okay.

Alderman LaRose

It could be as few as 15, one for each Alderman.

Chairman McCarthy

Right.

Alderman Pressly

Okay.

Chairman McCarthy

On the presentation, the Articles of Incorporation start on page 16 so why don't we just run through them from there and identify the ones that we want to spend a lot of time on.

James McNamee, Esq.

Mr. President if you start on page 11, there is an overview the articles, which may be helpful just as a start for everybody to understand what they do. John might be able to run through them.

Chairman McCarthy

Alright.

James McNamee, Esq.

Because it has the recommendation as well in there, which addresses the issue that was just raised about stock for instance.

John Patenaude

The first one is really the name of the company, Pennichuck Corporation. Actually page 11 relates back to 16 as well so if you want to follow both. That is almost a no-brainer you want to keep the name Pennichuck Corporation. If you change the name then it is going to cost you a fortune to change letterheads, billings...

Alderman Clemons

Contracts.

John Patenaude

...contracts you name it.

Alderman Deane

Checking account, all the lettering on the trucks.

John Patenaude

Exactly.

Chairman McCarthy

I think we are convinced on that one.

John Patenaude

Alright. The term is, it is a perpetual corporation, it is not limited by – it is a life of 10 years, 15 years whatever, it is perpetual so that is a no brainer as well. The next article is the purpose. In Pennichuck Corporation itself the parent company, is a holding company. Its purpose is to hold the shares of those subsidiaries in the other chart. Pennichuck Corporation itself does not conduct water business the parent itself is just a holding company. That we would say you would want to retain as well because if you change the structure then you get into the whole PUC filing relative to a change of structure and it also if there are any other strategies in the future relative to the subsidiaries they are better off being held by the subsidiary until a long-term strategy is formulated, developed, and enacted.

Alderman Clemons

There are tax consequences.

John Patenaude

None basically unless it was to go outside. The capital stock one is the more complex for the public company. They have both common shares and they have the right to issue 11,500,000 common shares. They have 4,006,000 currently roughly and they also have the right to issue preferred shares, which they have today a rights program, which is a mechanism for anti-takeovers where these preferred shares would be utilized if someone were trying to take them over today on an unfriendly basis. We would recommend that structure be simplified that the City own anywhere from 1 to 100 shares of common stock of Pennichuck Corporation, and that just simplifies 1) the structure and 2) the whole article section. There are about 5 pages I think that deal ...

James McNamee, Esq.

Half of the articles of incorporation deal with the shares.

John Patenaude

Right.

James McNamee, Esq.

And we bring it down to just a paragraph or two.

John Patenaude

Right.

Alderman Deane

Can you explain the benefit of that other than reducing it from eleven and a half million down to a hundred?

John Patenaude

It just simplifies the whole structure. I am not sure where they file, but there are some filings for instance in the franchise tax world if you are multi-state company, and they do business in Massachusetts I believe so they would be subject to Massachusetts excise tax and part of that structure is the number of shares that you have outstanding. Even in New Hampshire I think with the franchise tax, I forget what it is called now I haven't dealt with it in a number of years. The simpler the structure, the less number of shares, the cheaper it is, and I think it is \$50 a year that you pay for the structure and it ratchets up as the number of shares issued. It is just a simpler structure, cheaper structure, and the articles are much cleaner at that point in time.

Chairman McCarthy

A large portion of that article deals with the poison pill, which we have no need for.

John Patenaude

Right.

Alderman Clemons

I guess I don't understand why 100 or why wouldn't we just do 1.

John Patenaude

You can do 1. You are authorized 100. Typically 100 is the minimum that I have seen. I have seen 50. The 100 came from Bill. It can be 1 it can be whatever you want it to be. The authority is just the authority it doesn't say issue 100, it says you have the right to issue 100 so you can issue 1 share at the end of the day and it is 1 share that has been issued. The articles give you the authority and the number of shares. What you issue can be different.

Alderman Clemons

That brings up other questions. If a future Board of Aldermen were to give out a share for some reason. Maybe that is why it is better to only have 1.

Chairman McCarthy

They can't issue them as publicly traded shares. Elsewhere we will cover that the shares are...

John Patenaude

You have 1 shareholder. Otherwise if you were to issue shares to a vendor...

Alderman Clemons

Then it becomes...

John Patenaude

Then you have the whole SEC, the ...

Alderman Clemons

Right.

John Patenaude

The 100 was what Bill had recommended. On the authority to pledge, dispose of the shares, or the distribution of cash or property, we would say that you would probably want to retain that. It says you need authority to either acquire hold, or pledge. The shareholders would need to vote on that or to vote on the distribution of property or cash to shareholders in the form of dividends or out of the capital surplus. That is just a normal part of articles that allow for distribution of property and cash if the shareholders vote to do that.

Alderman Deane

Why would that happen?

John Patenaude

Dividends. Some of your debt is going to be held at a high level so you need dividends to fund some of the debt. Some of the debt will be dropped down. You need that authority to move cash up as a dividend.

There is a whole section on business combinations and the dealing with interested parties, which can be very simplified because a lot of the language in Article 6 deals with dealings with interested parties who are defined to be shareholders who own 10% or more of the corporation. You get into a whole dissertation about what do you do if they want to buy something or if you want to sell something to them. That won't be the case after you buy. You will be the sole shareholder so the whole section relative to dealing with interested parties can be taken out. You will still require approval for business combinations, sale of assets, but other than that about half of that article comes out in dealing with interested parties.

Article 7 deals with preferred shares and again if you only have common shares you don't need Article 7 relative to the preferred shares. The article V8 deals with the bylaws and the authority to amend bylaws, and I think it gives the directors authority to amend bylaws, but then the shareholders have a right there as well, and we would recommend to retain that article.

Article 9 deals with directors and it deals with the staggered board because they have, and this is one you may want to consider changing. We said retain because we believe you should have a staggered board, you shouldn't have a board whose period all ends in one year because you are losing a lot of knowledge. Bill and I went back to the Manchester Charter and they had 6 year service with 1 year dropping off every year so you had one person going off and a new person coming on and it was like whatever it is, if there are 6 members 1 member would come off and you would have a new member, but they all serve 6 year terms so you have a continuity of ...

Alderman Clemons

How would you start that out?

John Patenaude

The way you would have to start it out is you would have to appoint people for a 1 year cycle, a 2 year cycle, a 3 year cycle...

Alderman Clemons

Okay.

John Patenaude

...or whatever you decide. These here are 3 year cycles. They have 3, 3, and 3 so they have 3 directors that come off each year and are replaced by 3 directors voted on each year on the staggered board. If you were to maintain this exact, we said retain, we meant retain the staggered board. It doesn't have to be exactly like they have it here. You need to decide whether you want 6 year terms or 3, 3, and 3 or whatever.

Chairman McCarthy

I think one of the other things we are going to have to think about with the board is whether it is compensated or not.

John Patenaude

Exactly.

Chairman McCarthy

I am not sure what the expectation here is, but if you want directors of the caliber that the corporation has now, that is probably going to require that they be paid.

Alderman Deane

Is Manchester's board elected or appointed?

Chairman McCarthy

I don't know.

John Patenaude

It is appointed. In Manchester the Mayor recommends the appointment, the term, and the Board of Aldermen would vote on that appointment, either accept or reject.

Alderman Deane

So the appointments are brought forward by the Mayor and then approved by the Board?

John Patenaude

Yes.

Alderman LaRose

And are they paid?

John Patenaude

That I don't know.

Chairman McCarthy

We will have to try and get an answer to that.

Alderman Pressly

Is this where you would like to discuss that further or do you want...we will come back to that later?

Chairman McCarthy

I just want to capture the issues that...

Alderman Pressly

Okay because I have some thoughts on that too.

Chairman McCarthy

The other comment I would make is one avenue that is open to us in terms of initially populating the board is to ask some of the existing directors to stay on for some of the early terms.

Alderman Pressly

I suppose.

Chairman McCarthy

Well they are very successful at running a water company at this point.

Alderman Clemons

I noted the arrival of Alderman Cookson.

James McNamee, Esq.

This is also one area in the Articles of Incorporation where you can try and achieve some of that separation that you were talking about between the political process and the directors. If you have longer terms, 3 years would be short and they would be maybe more subject to the shareholders removal if they didn't like the way...but if you have the 6 year terms like they have in Manchester they have more longevity beyond the ordinary terms of office.

Alderman Clemons

Is it possible to do something like a 6 and a 4 year term or do they all have to be the same?

Alderman Pressly

They would be the same.

Chairman McCarthy

We can do whatever will work.

James McNamee, Esq.

I think you can do what you want as long as you can figure out the math.

Alderman Deane

And how are they removed? You want to come back to this right?

Chairman McCarthy

Yes.

John Patenaude

Article 10 talks about the removal and it says here 2/3 a vote by the shareholders entitle the vote can remove a director. If you are 100% shareholder you can remove. Under these bylaws you can remove the director.

Article 11 deals with the authority to amend the articles and the shareholders can amend the articles by a 2/3 vote. Since you will be the sole shareholder you can amend. There is no requirement for a 2/3 vote, but there is no harm in retaining it. Indemnification, under the DMA we're required to maintain the indemnification of directors and officers so we would say you would want to retain that. Most directors and officers would not want to serve unless they were indemnified regardless of the articles.

Alderman Cookson

Thank you. Going back to your previous statement about shareholders and requiring a 2/3 vote, would there every be or could we ever foresee an instance where the City of Nashua would not be a shareholder and if that were the case would these bylaws and articles have to be re-written by whomever the shareholder would be or would these bylaws and articles go along with potentially the sale?

John Patenaude

They could. Once you are 100% owner you can do whatever you want right? You can change the articles or you can change the bylaws to whatever you want them to be.

Alderman Cookson

Can we foresee an instance where we wouldn't be a shareholder? If the federal law changed would we then in fact continue to maintain shares?

Chairman McCarthy

No we would likely dissolve the corporation.

John Patenaude

Not right away though. It would take time to do that.

Alderman Cookson

Thank you.

Alderman Deane

We basically have one look at this and after that, if everything proceeds and this is enacted then this Mayor and this Board no longer have any control over these bylaws that would be under the privy of those who are appointed to serve.

Chairman McCarthy

That depends on the nature of the Articles of Incorporation. The method for amending the articles and the bylaws is in the articles of the corporate charter so if we want to make sure that we can do that at least for some period of time we can build that into the language of the new articles.

John Patenaude

And you still have that here because the 2/3 vote is you are 100% shareholder so you can amend the articles.

James McNamee, Esq.

And right now, I am looking at the actual article; the bylaws can be amended only by a majority of the board of directors.

John Patenaude

The bylaws.

James McNamee, Esq.

Yeah. But it is subject to repeal or change only by a vote of the holders of 2/3 of the shares entitled to vote. It is a 2/3 vote at both levels.

Alderman Deane

So this board as well as that board of directors?

James McNamee, Esq.

Yeah as it is written now.

John Patenaude

You can change that.

James McNamee, Esq.

You can change it. This is something where you can think of how you might want to insulate as you say from the political process the amendment of the bylaws. It is probably not in the bylaws that you really would be as concerned as with the articles of incorporation. If you are trying to insulate the corporation from political involvement by the City you probably don't want the City to have a lot of control over how the bylaws are going to be amended.

Alderman Deane

But we have to start somewhere so we are the City.

James McNamee, Esq.

You start with the articles of incorporation, which establishes the corporation as a perpetual corporation and lays out these terms. In that, you can put some provision on how the bylaws are going to be amended. Correct me if I am wrong, but if you don't do that at all then just under regular corporate law the board of directors would be the ones responsible for the bylaws.

John Patenaude

Right.

Chairman McCarthy

I understand I think where you are coming from Alderman Deane, which is we basically have two competing ...**audio inaudible**... one is to protect the enterprise from what might happen in the future that is politically motivated, but on the other hand we want to maintain complete control for the moment so that we can fix anything that is not correct.

Alderman Deane

Right.

Chairman McCarthy

To put it another way, we want this board to have absolute control and the next one to have none. We need to sort out how we are going to achieve that. I think what we can do is provide for a process that changes it sometime so that the bar gets higher for changing the bylaws after a couple of years of existence. That may be a reasonable thing to do.

Alderman Deane

Attorney McNamee had mentioned the 2/3 and I think that should be somehow clearly delineated that it is 2/3 of members present. Do you know what I am saying?

John Patenaude

You are saying 2/3 of the Board of Aldermen...

Alderman Deane

Two thirds of members present.

John Patenaude

...versus shareholders...

Alderman Pressly

Versus 2/3 of the eligible members.

James McNamee, Esq.

This is similar to what we have had in the negotiation with the other side, you are thinking in terms of the vote by this board.

Alderman Deane

Right.

James McNamee, Esq.

This as it is currently stated is talking about 2/3 of the shares. Now as Alderman Clemons said essentially you have 1 share, you have 1 shareholder. It is this board voting its share or its 100 shares however many you have issued so the 2/3 is misleading in that way because you are thinking in terms of how this board votes 2/3. I guess there is nothing to say that you couldn't put it in there that it would have to be, but then you are inserting the political process right into the articles of incorporation. You might not want to...

Alderman Deane

It exists already in the bylaws right?

Chairman McCarthy

It does. We can eliminate that if we want to. There is a real danger to doing that something we don't foresee may happen that we can't then react to.

Alderman Clemons

If I may, one thing we don't want to do is create – I understand insulating the political process from this. It is generally a good thing to do, but I think about for example the Massachusetts Turnpike Authority and thing like that where you get these agencies that just become ...

Alderman Deane

Family owned and operated?

Alderman Clemons

Yeah. And then the political powers have no control. I don't want to see that happen either. That is the other extreme. We really need to get a balance where we make sure that this is running smoothly and free from politics, but if there ever is a time when the politics does need to take over or the board feels that we don't like something that is going on in the bylaws or something came up that we didn't foresee be it a year or ten years from now, we want to make sure that control is there so that we can address the issue.

Mayor Lozeau

So good government can take over not politics.

Alderman Clemons

Exactly.

James McNamee, Esq.

As you address that and this analogy breaks down fairly quickly, but it is best to think of the articles of incorporation as your charter and the bylaws are the ordinances. You actually at this point have control over both of those. You are going to be adopting both of those. But as it goes forward the board of directors will be able to change the bylaws and you want to know what sort of approval back they have to have through the articles of incorporation. That is how you set that control.

Alderman Deane

So we would want to be looking more at the articles of incorporation than these bylaws is that what you are saying for now?

James McNamee, Esq.

Well you want both.

John Patenaude

I think you need both.

Alderman Deane

I know both, but the articles of incorporation probably are where we should – myself anyway I am looking at...

Chairman McCarthy

That is where the governance model in terms of the structure of the board and the structure for changing both the articles and the bylaws will be articulated so yes. I guess what I would like to do is let's go through the overview of the bylaws and then come back to the board structure. I think we are going to need to just hash that out and then those articles 9, 10, 11, and potentially 8 may need to change as a result of that discussion.

Alderman Deane

But wouldn't you want to look at the articles of incorporation first specifically pertaining to these bylaws?

Chairman McCarthy

I want to understand what is in the bylaws and what work there is to do there because it may affect the way we do some of the things back in the articles. For example, just thinking about the concern over who the corporation hires, we may want to make it so that some sections of the bylaws are more protected from the influence of political boards than others.

Alderman Deane

How long has Manchester own their water company?

James McNamee, Esq.

Over 50 years.

Mayor Lozeau

Always.

Chairman McCarthy

Forever.

Mayor Lozeau

It has always been municipally owned.

Alderman Deane

Did anyone look to their documents to see what they had in place?

James McNamee, Esq.

Yes.

Alderman Deane

Not to always keep up with the Jones', but Mayor don't you think that would be a good idea to start there...

Mayor Lozeau

...audio inaudible...

Chairman McCarthy

We will just have a water **...audio inaudible...**

Alderman Deane

...if somebody has done the work and if somebody has made the mistakes and corrected them...

Mayor Lozeau

Exactly the point and Attorney Ardinger has done some work looking at it. There are other things we have asked him to look at like are they paid and when they started out and what are their terms. Some of that we know, but not all of it. But your point is exactly right. If they have always been municipally owner what didn't they do or what did they do that they then corrected. We could benefit from looking at those. We might make different decisions, but it is still worth looking at. That is really the closest one to us to look at.

Alderman Deane

I think Alderman McCarthy that would be a good place to start. I am sure that they have run into problems and they have made their changes. I am just looking at the process that we are going to go through with something that has probably already been conquered through what they have through their articles of incorporation and their bylaws already that exist.

Chairman McCarthy

They won't have articles of incorporation because they are not a corporation they are a government agency.

Alderman Clemons

They will have ordinances probably.

Chairman McCarthy

We have to figure out how to map their structure into our articles. I made a note to go look and see what we can find about their...

Alderman Deane

Basically if you took this and we purged out whatever wasn't necessary we probably could combine a couple of documents and come up with something that was somewhat palatable and then go into...if they have ordinances in place, I don't know how regularly they have been updated. I am sure things have changed over time and they are pretty well documented such as we do.

Mayor Lozeau

I think John might be able to tell you what they have looked at.

John Patenaude

We are looking at that and we have looked at that. Part of the difference is they are a municipal organization, water commission or whatever you want to call it, while these are corporations these are private corporations so you have a little difference here. But what we have looked at is what do they do, how do they do it, and how does it sort of weigh into here and what can you use. We've done some of that work. Whether they are paid or not we haven't gone that far yet.

Mayor Lozeau

We found out that they had 6 year terms. We were trying to figure out how do they run their company, how do they oversee the operations that sort of things.

John Patenaude

And that is where we saw they have a 6 year term, one person gets in and out every year, and then the Mayor recommends or appoints and the approval or rejection is by their Board of Aldermen. That is in their governance structure perse. We actually went to the City's website and went through the water commission's ordinances.

Mayor Lozeau

It is interesting Alderman Deane. All of you might want to take a look at their annual reports and some of their structure and who their members are. When we were talking the other night about did we want certain disciplines maybe represented on that board, baker, candlestick maker for descriptive terms, but I think that is worth looking at too.

James McNamee, Esq.

What you are doing now is of course if this goes through you are buying this corporation, which has these articles of incorporation and these bylaws and what we were thinking was you would want to take a look at what they have got and then we can start as you say throwing things out and finding other models to add in. But the purpose of the exercise tonight was just to get you familiar with what articles of incorporation, which we have now completed, we have gone through that, and the bylaws are. If you want to go through the bylaws in the same way we just did, John can give some background on what you typically will find in bylaws.

Alderman Cookson

Thank you. I absolutely concur with Alderman's train of thought and I think that we do need to leverage the resources that we have around us and looking to Manchester certainly is one of those, but I can't believe that we are the only municipality in the entire United States that has ever gone through this process to try to take over the responsibility of a water utility. Can you speak to that and are we? We are. Okay.

James McNamee, Esq.

We are.

Chairman McCarthy

In terms of owning it as...

Alderman Cookson

If that is the case then are there other situations which may be similar? I believe that when we were working with one of the vendors down in the Tampa, St. Pete area what their relationship is with...

Chairman McCarthy

There are a lot of water authorities similar to Manchester's, and I think every place else where it has been taken over it has wound up that way. We're not doing that because of the tax implications.

Alderman Cookson

Understood.

Chairman McCarthy

But I think it is a good point. If there are other particularly well run local systems we can look at their structure. Basically we are going to decide on some model for how we get directors, how many we have, and how long they stay on the board. That will become one of the articles of incorporation.

Alderman Cookson

And I think looking at multiple models would benefit us rather than relying solely on a single model to the north. Thank you.

Alderman Clemons

Is there any instance in the country where a municipality or government has taken over a corporation and kept it as a corporation? So not necessarily a water utility, but another corporation of some kind and kept it that way?

John Patenaude

I think there is and I think they are in the Midwest and they actually had a similar tax situation and they just paid the tax.

Chairman McCarthy

Railroads it is fairly common with.

John Patenaude

Yeah they paid the tax and put it into a municipal organization.

Alderman Clemons

That is what I mean by I guess and left it like...

James McNamee, Esq.

With the Connecticut Water Company I think did that.

John Patenaude

There was another one too.

Alderman Clemons

So the answer is no again. Okay.

Chairman McCarthy

I was actually surprised to find out that New Hampshire does allow us to own stock in a railroad, but other than that in this state for example municipalities are forbidden to own stock in corporations with the exception of this one. I don't know how many other states have that prohibition. I suspect a good number of them do.

Alderman Deane

So a municipality can buy railroad stock?

Chairman McCarthy

Yeah apparently. There is some stuff in the low numbered RSAs about boards of selectmen and things that talks about the ownership of railroad stock.

I would like to run through the...

Alderman Deane

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Chairman McCarthy

Yeah the bylaws discussion just to see if there is anything big we are going to run into there.

Alderman Pressly

You are going to do that before we do the...

Chairman McCarthy

Yes. Let's just run through that so we will understand the scope of issues.

John Patenaude

Number 1 it says where their principle office should be and the bylaw today says, at least I haven't seen any amendments to it requires the principle office to be in Nashua.

Chairman McCarthy

So they are in violation of their own bylaws.

John Patenaude

I have asked the question folks and haven't got an answer from them relative to if they have or haven't changed. I would say we would want to change it to just say a city in Hillsborough County. It can be broadened to take in any consideration. It is very narrow and you wouldn't want to put yourself in a very narrow position I don't think. Shareholder meetings, that gives you the place and notice requirements, inspection of votes, and I am okay with the place and the notice requirements. I don't think you need an inspector of votes. That is typically where you have public shareholders and you want to make sure that the votes are all counted for and if you have 1 shareholder you don't have to deal with that. It is one of those things if you don't do it and you check off the box, and if you have it there and somebody didn't do it and the box isn't checked you are in violation of your bylaws. I would say you want to make that as easy as possible.

On the board of directors, I will just go through the highlights here. They have a number between 3 and 13 so they can have between 3 and 13 board members. I said retain, but you may want to expand on that. That is up to you. They have an age limitation, which is 70. You may want to even remove that or increase it. That is up to you as well. Many boards, many public boards have age requirements. I know when I was at Nashua we increased our age requirement from 70 to 75 just because people live longer today. You can still use them.

Alderman Deane

That could be all they are living for is to serve on a water board too you know. We wouldn't want to take that away from someone.

John Patenaude

Their bylaws require the president to be appointed to the board. In my personal opinion, that is not good governance. You can if you want to. If you want to put an officer of the company on the board that is up to the shareholders. It shouldn't be a requirement that they serve on the board. I think that in today's modern governance that would be one that would be amended.

Alderman Deane

Who would be the company president if we had one?

Mayor Lozeau

Today it is joint.

John Patenaude

That is another question. Today it would be Montopoli for instance who would serve if...

Alderman Deane

If we bought the water company tomorrow who would be the company president?

John Patenaude

I think you have to decide that. It is part of your decision process. They have established a class of non-voting senior directors. Today that is Charlie Clough. He is a senior director, can't vote, but he gets paid. I would say remove that position. You are going to have directors period, you don't have to...

Alderman Pressly

Did you know him when you worked at Nashua Corp?

John Patenaude

Yes I did.

Alderman Pressly

How many years did you work with him?

John Patenaude

I came in in '91 and he left around '95.

Alderman Pressly

Thank you.

John Patenaude

But I have had discussions with him in the past on other business opportunities and stuff so I know him.

Alderman Pressly

Is this where you would like suggestions?

John Patenaude

I would recommend you go through it first and then come back with suggestions.

Chairman McCarthy

If it is something you want us to come back and talk about let's...

Alderman Pressly

I would. I think were you to say from 3 – 13 it should be an uneven number. I think whenever you have a board you want to be able to break a tie vote. I would like to make sure that all of the board members are ratepayers so that you make sure that always the people who pay the bills are involved in the decisions. That may be something the group wants to discuss or vote on. I think that would be a good thing to add.

John Patenaude

They also are required to have quarterly meetings. I think you want to retain that at least quarterly meetings is the way it is termed. They are elected annually by shareholders, that today the class is elected by the shareholders, the class of 3 so out of the 9. I would say you want to retain that. It gives the quorum for a meeting, the numbers. You want to retain that. It talks about the duties and the powers of the board and you would want to retain that as well.

The actual composition of the board and I don't know what you want to do here, but I would recommend that whatever you do you want to stack the deck in your favor and have the majority Nashua citizens or Nashua ratepayers however you want to determine that. Depending if you want other municipalities to be on the board as well.

James McNamee, Esq.

Isn't that in the bylaws or the articles of incorporation?

John Patenaude

You would most likely do it here I think in the bylaws. You could do it in the articles, but typically it would be done here. You have to think about whether you want communities to participate on Pennichuck Corporation board and the underlying subsidiary boards, but again I would caution you to say you want to stack the deck in your favor, it is your money that is on the hook.

Alderman Deane

Could you repeat that?

John Patenaude

You want to stack the board members to be Nashua ratepayers to get a majority vote so that you are never in a position ... it is your dollars here right buys...

Chairman McCarthy

What is the actual level of power of the subsidiary boards?

John Patenaude

They have power over that legal entity perse, but you know what happens in public corporations you have the offices and directors who are the officers and directors of the here holding company who would be directors of the subsidiaries.

Chairman McCarthy

I am thinking out loud, but as a method of implementing regionalization, if we were to change the structure of the subsidiaries so that the boards of the non-Nashua utilities were populated from their local ratepayers is there any inherent danger to that as long as we're...

John Patenaude

I don't think there is any danger. The only thing you want to do is to make sure that you own the majority of those directors because if you want to someday do something with those legal entities you don't want to be boxed out by a director who is a non-Nashua ratepayer...

Chairman McCarthy

So for example a decision to sell one of the subsidiaries would have to be approved by the board of that subsidiary.

John Patenaude

Yes.

Chairman McCarthy

Can we structure the articles such that those decisions are made by the Pennichuck board and not by the subsidiary boards?

John Patenaude

If you were selling shares then the Pennichuck holding company or the directors would vote on that whether to sell the shares or not just like they are today, and then the shareholders would approve the sale. You just don't want to get into a position where you have infighting on your local boards relative to either dispositions or how do you run the company, etc. I think you will want to give the City of Nashua; it is your dollars that are being expended so you want the majority to be City of Nashua directors.

Alderman Pressly

I'm really confused. I know that every subsidiary has sort of their president or their person in charge and they run it, but are you telling me that they have a separate board of directors for each subsidiary?

John Patenaude

Yeah and typically the board of directors for 100% held subsidiaries are the officers of the top company. That is the way public companies; because they are not public they are private companies...

Alderman Pressly

It seems to me we should have one board of directors.

John Patenaude

You will need a board of directors for each company. How you appoint those directors you have to decide within this Chamber I think.

Chairman McCarthy

We are not buying one company we are buying 6, 5 of which happened to be owned by the 6th one, but each of them is structured as a corporation with a board.

Alderman Pressly

Okay, but I didn't realize that they each had to have a board of directors. I knew they had officers that ran it and the people that knew where the ...

Chairman McCarthy

Currently that board of directors is Montopoli and the other Pennichuck officers so that they can just make those decisions.

John Patenaude

I will give you an example. A live example was I was the CFO of Nashua Corporation. We had a board of directors at Nashua Corporation. We had a number of operating subsidiaries just through acquisitions that we required during the years and stuff. The board members of those subsidiaries were typically the CEO and myself and most likely the controller because we didn't have a treasurer. I was a treasurer as well. That was the board of those 100% held subsidiaries, but they were run as if they were – they didn't have a different body that we were selling to customers. It wasn't like we were selling to the different municipalities and ratepayers here. That is the difference here is you've got...

Chairman McCarthy

At the risk of opening Pandora's box does that mean there are 5 more sets of articles of incorporation?

John Patenaude

Yes, but those are typically not like this, they are boilerplate like the ones we have been talking about to retain. We haven't got those yet, but we will have those in due diligence. But they are typically a boilerplate, there is no preferred shares or common shares and it is...

Chairman McCarthy

Where is it established that the officers of the corporation are the board of directors of...

John Patenaude

It is not.

Chairman McCarthy

Okay.

John Patenaude

The shareholders vote in the directors or appoint the directors. In this case here Pennichuck Corporation appoints the directors of Pennichuck Water Works and of Pennichuck Service Company and the realty company, etc.

Mayor Lozeau

So you still have control over that, and they can be same members on both.

John Patenaude

The question is do you want to have those local boards populated by non-officers of Pennichuck Corp.

Chairman McCarthy

I think that is an area where we can come up with...

James McNamee, Esq.

Or do you want to put those people on the Pennichuck Corp. board.

John Patenaude

Right.

Chairman McCarthy

But we can come up with an initial model for that that retains control similar to the way it is today so that the Pennichuck board of directors essentially controls everything...

John Patenaude

And that is fine.

Chairman McCarthy

...and if we want to think about models that include other communities we can do that after we get...

John Patenaude

Right because the only danger, the one it is not a danger, it is a knowledge base right ...let's say you put somebody from Londonderry on your board and so you have ratepayers from Nashua and you've got a ratepayer from Londonderry and a ratepayer from let's say Litchfield, they are going to know across the board what the rates are so if you have a differential rate and I think you do have differential rates between the non-Nashua communities; Pennichuck East and the Aqueduct...

Chairman McCarthy

Some of the non-Nashua communities.

John Patenaude

So they have a different rate base so is that going to cause some consternation? I don't know. It may and it may not. You have to think of those things while you are going through this process.

Alderman Deane

Those remarks you just brought up were very concerns that were raised from 2002, 2003. This Merrimack Valley Regional Water District what purpose does that now serve?

Chairman McCarthy

It exists as a body for a potential water company and if you recall our discussions with them were that after we had finished this we would discuss the future of the water company with them again so I think we are going to have to have that discussion at some point. I think things have changed dramatically in terms of everybody's understanding and in terms of the situation with the stock company so I anticipate that after we have made the announcement I will have to have a lengthy conversation with the other directors in the Merrimack Valley Regional Water District.

Alderman Deane

I know what always existed was the David & Goliath scenario and they...

Chairman McCarthy

There is a charter and...

Alderman Deane

We had some very contentious get-togethers with some of those people.

Chairman McCarthy

Ultimately ...

Alderman Deane

I remember that like it was yesterday. Mr. Scanlon was one of them.

Chairman McCarthy

And ultimately Mr. Scanlon came around to our way of thinking. The charter that resulted gives Nashua a great deal of power because on the acquisition and sale of resources and on setting the rate and in issuing bonds for the water district and by establishing a quorum the votes are done by the number of connections in the municipality so Nashua has about twice as many votes as any of the other communities, all of the other communities put together on those issues the way things lay out in that charter.

Alderman Deane

I think a good number of people that serve on this board, and I don't know how much involvement the Mayor has had with any of that, but I think a good number of people here don't even know much about it. Do you know much about that Merrimack Valley ...

John Patenaude

No I don't.

Alderman Deane

You weren't hired to look at that, but I think that is like you said earlier, that is a discussion for another day, but I want to understand that if this Merrimack Valley Regional Water District was formed now we have to look at these bylaws and how we set things up and whether we want to go down that road. I know the people in Milford were concerned about it way back when and...

Chairman McCarthy

Milford is not a member of the district.

Alderman Deane

I know that is one of the reasons why they felt like they were...

Chairman McCarthy

There are ...

Alderman Deane

They were going to be left in the lurches and we were going to control everything, which basically my philosophy has always been if this community is laying out the money to make the purchase then we're going to be making the decisions. In speaking for myself I don't feel as though, my position anyway, we were into crushing other communities and things like that, but we wanted just to make sure, if they wanted to participate in it because of the importance of water to everyone we were humane on that end of it and understood their position, but when it came to the bottom line since we were the ones making the potential bond sacrifice we wanted to make sure we were controlling our destiny.

Chairman McCarthy

And ultimately the structure of the charter reflects that they understand that. That was a long fought battle that ultimately was resolved in Nashua's favor.

Alderman Deane

So then what purpose does this regional water district serve at this point?

Chairman McCarthy

At the moment, none until such time as...

Alderman Deane

If we purchase this then what purpose does it serve?

Chairman McCarthy

None until we reach an agreement with them to transfer some or all of the water assets to the regional water district.

Alderman Deane

And with that transfer would go a lump sum of the bonding?

Chairman McCarthy

Yes. Essentially they would issue bonds and ...if we were to transfer the whole thing for example we would buy the company, we would turn around and petition the PUC to let us sell it to the regional water district, they would issue bonds in the same amount as the bonds we had outstanding and pay off our bonds and take them over with theirs.

Alderman Deane

How would a regional water district have collateral to issue bonds?

Chairman McCarthy

The bonds are issued against the revenue stream of the corporation not as general obligation bonds.

Alderman Deane

I think it is a little more complex than that. I know when we had looked at this years ago and we were looking at Pittsfield Aqueduct there was little bits and pieces of this water system that they were running out buying and you could watch them do it. It was like a jigsaw puzzle every time you turned around they were buying 80 more condominium units out in east nowhere and putting in a new water line and a well. That was another liability they had. I believe the board back then the intentions were to unload those smaller entities for possibly those communities. I thought the Town of Pittsfield was one that had an interest in buying that.

Chairman McCarthy

Pittsfield has an interest in buying the utility if we can get to a suitable agreement with them. There is nothing we need to do right now. I had some discussions with the regional water district on an alternative structure in the past, and I think given the magnitude of the things that are in front of us, I will probably have that with them again. I'm not sure when we formed the regional water district that anybody understood the number of digits and the value of the first one that were going to be in the bond numbers when we finally reached an agreement.

Alderman Deane

Getting back to this board of directors scenario and starting from day 1, obviously there is going to be a transition period where decisions are going to have to be made, there is not going to be a full board in place, we have to go from their ownership to our ownership and they at that point we have to make decisions on, a good number of things have to be decided upon.

Chairman McCarthy

And that is why I suggest that one thing we could look at if for example we decided on a 6 member board of directors with one changing every year over 6 years, we could ask three of the existing directors to stay on in the 1, 2, and 3 year terms.

Alderman Deane

How they phase in and out, I agree with you and it should be done you shouldn't be cleansing an entire board and throwing in 10 people that might have a good knowledge of what is going on, but it is good to keep people in there that have been there and can offer some assistance to those who are new, but prior to that board being formed, if we go through and we do the purchase the board has not yet been formed and approving these bylaws outside of this articles of incorporation there is going to be a lapse there where decisions...

Chairman McCarthy

I would assume that we will have to have the board in place on the day of the closing.

Alderman Pressly

I would too.

John Patenaude

You are going to have a year once a decision is made or 8 months. I think that is one thing you will have to be dealing with is the composition of that board. The composition is not going to be here.

Alderman Deane

You said a year though, 8 months or a year. What is that timelines?

John Patenaude

That is PUC as you are going through the PUC and then the final financing. As you are getting closer there will have to be a decision made relative to board members, not because you don't name board members in the bylaws, you just give general guidelines of how you want to construct the board from a governance point of view, but I think you will have to think about that; who serves on the board and in what capacity.

James McNamee, Esq.

Just to put an emphasis on that for the timeframe again; now we are going over this process and doing due diligence, then you are going to vote on the DMA, if that is voted yes by both boards you have 90 days to take the bonding authorization vote, which confirms that is going to be the price, then we go to the PUC, then we get approval from the PUC, then we get their shareholders to vote, and then we close. That is when he is talking about 8 months to a year. We are talking from now until the time you close is probably going to be that period of time at least, and we really don't know what will happen at the PUC. If we get a lot of interveners who oppose it there may be a more extended hearing, but our best guess is now if you were to stand here and say when will we actually own the company it will be a year from now.

Alderman Deane

So it will be next October, November of 2011?

James McNamee, Esq.

Best guess.

Alderman Pressly

Thank you. I played a significant role in the creation of the regional water district and at that time that was one of the possible ways of purchasing the company. I think that is now far gone, and I have to assume that even what they have put together could be changed and altered at a future date. But having sat in on many of the meetings with the towns, it was a little bit irritating at times, some of them they had very little interest, they had big mouths and big interests and they often opposed things not because of the value of the water but because they had other agendas involved in that. I completely agree that there has been a suggestion that we should have someone from the towns in order to get through the PUC and appear to be fair, and if we do that I would think we would need a larger board, maybe say 9, with just 1 board member being a ratepayer from one of the towns and that it rotate from town to town on a regular basis.

What that does for you 1 out of 9 has a lot less power than 1 out of 6 and if you have it always a ratepayer that helps a lot because a lot of these towns if they can put up one person they are going to put up a power broker that has a well in his yard and has never paid a water bill in their life. I got the impression that is what they would do. If they were allowed to totally on their own choose their representative, it was not going to be a squeaky clean choice. I think we probably have to have 1, but we would need a larger board to diffuse the power that person has, and it has to be a ratepayer and they have to have the same standards of selection as everybody else and that it rotate from town to town so no town ever has a complete hold on our board.

Chairman McCarthy

I would actually contend if we are going to do that that should be a person who is designated by the regional water district. We need to understand that the towns that joined the regional water district...

Alderman Pressly

They have worked hard and they put in money.

Chairman McCarthy

...have invested a significant amount of money. They are an intervener; those towns have paid either \$15,000 or \$20,000 each to pay the bills that have come out of writing the charter and the representation at the PUC...

Alderman Pressly

I would like to think about that, but I also feel it has to be a ratepayer it can't be you know...

Chairman McCarthy

There is no problem with that...

Alderman Pressly

It can't be a selectman and that it has to rotate between towns. If you want to have it Amherst one year and Litchfield another, it has to rotate so they all feel they have a fair chance.

Chairman McCarthy

I would expect that what you would do is have a person on there who represents the collective opinion of that board of directors, which is made up of numerous communities.

Alderman Pressly

I still think the rotation is important. We are going to have term limits I hope for everybody, and...

Chairman McCarthy

We can do that, but let them decide...if we give them a seat for governance let them decide how that seat gets picked.

Alderman Pressly

Let me think about that.

Chairman McCarthy

If we want to say it's got to be a person of particular qualifications that is fine, but if our purpose is to allow other communities to be represented us saying who is going to represent them doesn't seem to do that.

Alderman Pressly

You are giving the regional water district a lot of power that technically they don't have at this point other than it would be embarrassing for you not to work with them, and I think we should consider that..

Chairman McCarthy

It is not just that it is embarrassing for me, that charter was ratified for governing water by the boards of selectmen of all of those towns, and in many cases by warrant articles that were approved by the voters of those towns. Every one of those boards, in fact in all of the towns it was a Warrant Article to join the regional water district. Thousands of people voted to form that.

Alderman Pressly

I appreciate that and I was there for much of that, but we have a whole different world here today, and I still do feel that we have to make sure that it is rotated, that you don't have one person on the regional water district sort of be a power broker.

Chairman McCarthy

I would expect that person to be someone who is designated to express the will of the board to the board of the corporation.

Alderman Pressly

I would like to think about that because there are other towns that are major players in both providing water and receiving water that for various reasons are not included. I don't know what the ramifications would be to leave them out.

Chairman McCarthy

The major connection holders are. Outside of Nashua the majority of the connections are in Bedford, Londonderry, and Litchfield all of whom are represented on the board of directors.

Alderman Pressly

And is it still possible for every town to join if they choose to?

Chairman McCarthy

Yes.

Alderman Pressly

Okay. Let me think about that.

Chairman McCarthy

It requires a vote of the board of directors.

Alderman Pressly

I still contend ...I was very disturbed at how I saw some of the people from the towns want to grab a lot more power than I felt they were entitled to have.

Alderman Clemons

Thank you. Generally I agree about the ratepayer. However, I am looking at the breakdown or the counts of how many people are in some of these towns, which I believe is on page 6, and it is just the number of customers, which I assume is the number of connections?

John Patenaude

I think they are billable customers.

Chairman McCarthy

The number of meters.

Alderman Clemons

Essentially we have pool, if you look at this, of 33,708 people that if we make it you have to be a ratepayer that is our pool of people to choose from. Now if you are looking at you want it to rotate from town to town if you get to say Chester you have 33 people to pick from. If 1 of those 33 people doesn't meet the qualifications for what we have set forth then we are limiting ourselves. I think we are putting too much restriction on this. I think we need to be a little more open as to who we can allow to be on the board. There may be a couple of different ways to do that. Maybe you make the majority of the board have to be

ratepayers or a supermajority, but I think there needs to be some kind of flexibility in there so that if there are professional people that have a lot of experience with this water company, especially going into this brand new, and we want to get their expertise, but they happen to live at a house that has a well, I don't want to have to say well unfortunately we can't appoint you to the board because you don't draw from the system.

That is just my personal opinion. I think what we should be looking for is quality before we look at whether or not the person is a ratepayer or not. Obviously one of our jobs as the shareholder who appoints these folks I assume is to make sure that they are going to be looking out for the interest of Nashua. If we feel that whoever the appointee is coming forward is not going to be looking out for the interest of Nashua then we would vote not and try to find someone else to fill that position. I would imagine there would be a pretty big interview process that would go forward with this board for the positions that we do fill and these people would be vetted. I think as far as making one of the qualifications be that you have to be a ratepayer I think maybe we ought to think about not having that be the entire case.

In addition to that, I also don't think that we should limit ourselves in the way of having term limits either. I don't agree with them in general because I think what happens with them is that you lose experience that comes with the position. Those are a couple of things I wanted to pointed out because they had been mentioned. That is just my view on it.

Chairman McCarthy

You also bring up a very interesting point; if you look at the 1 next to Tyngsboro, MA at the bottom of page 7.

Alderman Clemons

It is a business.

Chairman McCarthy

It is a real estate holding company that owns two pieces of property one of which is vacant. I wouldn't want to get to the position where by charter we had to make that company a member of the board of directors for a term.

Alderman Pressly

May I respond to the rotation? When I say rotation I didn't mean every town had to have it one time, but I mean I think it is important that one town doesn't have a lock on it, that it should be moved around a little bit. Your issue on term limits, one way that I have seen it really work well is that you have a term limit and then a person goes off if they can come back within a year, and that way you have a term limit, you can absolutely assure that you are not going to get anyone there forever and ever, and if they are really good they can then come back a year later to sort of have that year break in the term, and then if they are that good they can be brought back.

Alderman Clemons

I think if they are that good we shouldn't be losing them in the first place, but I guess...

Alderman Pressly

Nobody is that good.

Alderman Clemons

...well I disagree on that. We will agree to disagree.

John Patenaude

On the point of term limits, term limits only means that you are voted on periodically. It doesn't mean you have to leave. You will see a lot of public company board members who are elected time after time after time. Their election comes up to the shareholders it doesn't mean they are leaving, it just means that the shareholders have to approve whether they stay or go.

Alderman Clemons

I was under the impression that terms limits meaning ...

Alderman Pressly

I did too.

Alderman Clemons

... a 6 year term and you are done as in the political sense of term limits...

John Patenaude

No.

Alderman Clemons

...you are limited to 6 years.

John Patenaude

In the corporate world it means you have to be re-voted in on a certain amount of time. If somebody wants to replace you they can replace you or if you are valuable and they want to keep you they can just vote you back in again.

Alderman Clemons

I look at that as term limits as well and in the political process I call those elections.

Alderman Deane

I thought we were trying to take the politics out of this. My recommendation would be to have the parties gather some information from what Manchester had to offer and then review that. We can sit here and go through these bylaws, but I think it would be, on my behalf anyway, I think it would be better to have something to review and something to compare it to before we start discussing decisions on some of these bylaws. The other real concern I have with proceeding any further this evening is the fact that you are missing one member, Alderman Sheehan did state the other night that she had an interest in this as well. It just seems like...

Chairman McCarthy

She had spoken to me. She had a family commitment.

Alderman Deane

That is fine, but that doesn't mean she is not going to be here next time.

Chairman McCarthy

And that is why we are having the minutes transcribed and given to everybody so that they can catch up.

Alderman Deane

I am just looking at the pete and repeat. I am thinking if we got a document from Manchester as a boilerplate to work off of I think that would help us out tremendously and then we could look at that and carve and cram what we wanted in or out instead of sitting here discussing different scenarios that may exist. I think if we had a document that we could review, come back and sit down and go over, and then generate something for an end result I think it would be much more productive.

Chairman McCarthy

I do want to finish the exercise and run it through here because I am not sure that John will understand what is important to us until we do that.

Alderman Deane

Are we on page #33?

Mayor Lozeau

Mr. Chairman could I just...

Chairman McCarthy

Sure.

Mayor Lozeau

I just didn't want to forget Alderman Melizzi-Golja also talked to me today and she wasn't able to attend tonight because of a family issue. I told her I would mention it to the group and I was reminded when you said that Alderman Deane.

Alderman Cookson

I have heard the water district come up several times this evening, and as Alderman Deane had stated, I don't know how many people on this particular board have a firm grasp or knowledge of that water district and I am wondering if there is some sort of documentation or oral report that might be, a report of some sort that might be available to us just to get this board up to speed on which communities participate in the water district. One of the questions that I had is I think you were posed a question earlier about are other communities able to join this water district and your response to that was yes. I guess my follow up question would be do those other communities still know that is available to them and what would be their benefit if the water district has no purpose at this particular time? I would like to have an update or increase my knowledge of the water district...

Chairman McCarthy

What I can do is get the charter distributed, which has answers to many of those questions. What value it is to the community is up to the community. Most of them are aware. Over the period since the district was formed, Mr. Scanlon who was the former chairman of the board visited most of those communities and did presentations to their boards of selectmen.

Alderman Cookson

I would assume that was several years ago.

Chairman McCarthy

Yeah as recently as 2 or so in some cases.

Alderman Cookson

Okay.

Chairman McCarthy

We have not done that of late. The board has met several times, but is basically waiting for the outcome of the litigation, which unfortunately I am unable to give them any updates on.

Alderman Cookson

Again, I think the general statement is I would be interested in that. If a charter is available for us to review or to look at and to help us in our decision making process I think it would benefit the board.

Chairman McCarthy

I will get that out. Just in case, I am assuming everybody knows this, but I am the Chairman of the board of directors of the regional water district.

Alderman Cookson

So you can get your hands on the charter?

Chairman McCarthy

Yes. It won't be as easy as you think.

James McNamee, Esq.

Mr. Chairman just so the board knows the first thing that shows up in Google is on the Pelhamweb.com site is a pdf copy of the charter.

Chairman McCarthy

I believe the district actually has a website.

James McNamee, Esq.

They do have a website; it is not kept up that...

Chairman McCarthy

And I think it is on the NRPC website as well.

Alderman Pressly

If my memory serves me correctly when the regional water district first formulated and was going through what we are going through right now, I believe it was Karen White produced many many samples of water districts all over the country and their different structures and bylaws. Might you still have copies of those around?

Chairman McCarthy

I don't know whether those still exist or not.

Alderman Pressly

It would be nice if you could find those. Those were many samples of water companies and water districts and how they structured themselves.

Chairman McCarthy

I don't believe Ms. White is available to us anymore as a resource.

Alderman Pressly

I know how to reach her, but I doubt if she has them too. I thought they would be recorded someplace.

Chairman McCarthy

It is possible. I will ask about it.

Alderman Pressly

There was a good amount of research and there are hundreds of samples of bylaws that we can turn to for ideas.

Alderman Clemons

I guess I am trying to wrap my head around, and maybe we should just stop talking about this and go through the rest of this presentation, but I am going to throw my question out there anyway, and then go from there. What I am trying to wrap my head around is what role the water district would play, and I guess Alderman Deane kind of brought this up earlier. I can tell you that I am not interested and maybe my mind can be swayed, but I don't know if I would be interested in selling Pennichuck to a water district unless someone can sway my opinion.

It just seems like we are going through an awful lot of work for nothing. I did hear that mentioned.

Chairman McCarthy

The presentation I had done to them at some point, which I probably bring up again as a basis for discussion was that rather than necessarily moving all of the assets into the regional water district, if we

treated it more the way water cooperatives do and Nashua continued to own the source, the plant, and the Nashua pipe, I don't think we would have an objection to dealing with letting the other communities purchase water and set their own rates and maintain their own infrastructure that was not part of what influenced Nashua's rate.

There is a presentation that I did, and I think that will be the basis for some discussion of where we ought to go. I think that is going to be a long discussion as to where we go from here.

Alderman Clemons

Okay.

Chairman McCarthy

This is a bigger enterprise than anybody anticipated it was going to be. I don't know that the regional water district, it does not have the statutory authority to take over the company the way we are talking about today. That would have to get fixed. I think if we address the other issues that make it a stock company we can look at other structures for how we would deal with...ultimately, if I look years and years out we are going to have to deal with other sources of water and other communities that will be connected together, and at that point it makes sense for some board to be controlling that that is not necessarily Nashua. I don't think we want to be responsible for dealing with water in every community from here to Manchester up both sides of the Merrimack.

That is a slow process that we can take on, and right now there is nothing that happens the day we buy the enterprise until we reach some agreement with the regional water district.

Alderman Deane

Are we on page 33?

Chairman McCarthy

Yes.

John Patenaude

Actually we are close to page 36. We've really covered composition of the board and we know there is a lot of work to be done there and we have talked about whether board members should be compensated or not. That is another issue that we have to address. As far as officers and the bylaw number 4, it just indicates that the corporation needs to have a chairman of the board, a president, some vice-presidents, treasurer, and secretary, and an individual can have multiple roles so an individual could be treasurer and secretary and a vice-president. It is pretty easy. It also gives a list of general duties of each of these positions. We would say that should possibly be retained.

Number 5 is really the indemnification clause indemnifying directors, employees, and their agents, and that should be retained, and under the DMA in your agreement we need to retain that.

There is a section on contracts, loans, and check deposits that gives authorization for approval. That should be retained as well. Article 7 relates to shares and the form of the shares, the transfers and restrictions on the shares. That is pretty standard for corporations and that should be retained.

Shares and capital, how shares should be purchased, how capital should be purchased or disposed of or distributed, and those are general terms relative to the board. We would recommend that stay there as well.

Item 9 talks about the fiscal year end audit. Currently the bylaws require a calendar year and shareholder ratification of auditors. We would recommend that the City consider changing the year to the city's year. Doesn't necessarily have to, but I think we need that discussion with the City's CFO to see if that makes sense.

Alderman Deane

What is the advantage to that?

John Patenaude

Typically if you wait until year end your audit fees typically go up because a lot of public companies have year end requirements and all of the staff is ...you have a population of staff accountants...

Alderman Deane

So there is a squeeze in the end where in July that is when they are all out golfing and relaxing?

John Patenaude

You can typically get better fees in July and August.

Alderman Pressly

There is a fiscal year versus calendar year.

John Patenaude

Yes. They say that the calendar year is December...

Alderman Deane

July to July.

John Patenaude

The fiscal year is whatever, July, June, whatever your year end is.

Alderman Cookson

But we could establish any fiscal year. It doesn't necessarily have to coincide with the city's fiscal year of July to June. We could do a September to October if depending on the needs or how busy we expect year end close to be for the City and if we offset it by 3 months so not to tax any of the staff.

John Patenaude

I would only say that I would want to talk to your CFO to see how all of this rolls up to make sure that if you made a decision for September it doesn't mess up the city's financials.

Chairman McCarthy

Do we anticipate that the City's finance department would be involved in...

John Patenaude

Well they are going to have to show in the books the shares right so I would say however that rolls up into the City's financials. I wouldn't say they are involved. I think we want to make sure we maintain our tax status we want to keep them as uninvolved as possible. We may need their involvement at some extent, but there would have to be charges between the City and Pennichuck, but we have to understand the rollup to make sure that whatever year end we choose doesn't for some crazy reason mess up the City's financials.

Alderman Deane

Are there going to be CAFA requirements too?

Chairman McCarthy

No and the corporation would produce an annual report, which would...

Alderman Deane

But I mean with our involvement...I don't know...

Chairman McCarthy

It is not governed by municipal law however.

Alderman Pressly

One thing that is probably not in here and that is that every time the board of directors meets they must, at least it is important to me that, the public be allowed to attend, and I don't know if that would be important to have in there to go through the PUC, but whenever the board of directors meets I would hope they would follow municipal law in that they post their meetings and that they allow the public to attend.

John Patenaude

You can do that. The only thing I would caution, and I am not saying no I am just saying you want to make sure that you maintain that tax status. You don't want to trigger anything that is going to trigger a \$60 million hit or \$35 million hit whatever the number is and we will have that better feel for that as we go through due diligence. You have to be careful that...

Alderman Pressly

Why would that trigger it?

John Patenaude

Because you have to segregate you have to make sure it is still a separate corporation and it is not deemed to be a municipality because if it is deemed to be a municipality you may have triggered a taxable event so you have to be careful there.

Alderman Pressly

What about having the minutes available to look at or something? That was one of the reasons to buy the company so we could see what was going on.

John Patenaude

As shareholders you always have the right to see what is going on. I'm just saying if you want to have open public meetings then you are getting closer to a municipality versus a private corporation. I am not saying there is anything crazy that is going on within the board, but it is just you have to try to draw those lines. As shareholders, you can still have the board of directors reporting to you here.

Chairman McCarthy

The easiest way to do that is to have the bylaws articulate what the board has to produce in terms of a report to the shareholders after each meeting...

John Patenaude

Exactly.

Chairman McCarthy

...and then once that is received by us as a public body, it is subject to the Right to Know Law and would be published.

Alderman Clemons

That is a good way to do it.

John Patenaude

There is a requirement that the shareholders ratify the auditors. That is standard stuff for public companies. I don't think you need to do that. You can do that without ratification. The board can make a recommendation. Typically you wouldn't be going with a big 4 firm anyway you would go with a smaller firm, city firm as well.

Inspection of the books and records, item 10, the shareholder has the right to inspect books and records. Obviously you have to retain that.

Dividends, allow the declaration and payment of dividends, you want to retain that. You need that to move cash from the corporation to the City.

The corporate seal, there is a seal requirement. Every corporation at least in New Hampshire has a seal requirement. You would retain that.

There is a section on amendments that allows the board to amend the bylaws and it gives the majority vote and you would want to retain that as well. Shareholders can always override that. Majority vote for shareholders, you are sole shareholder so you can overrule that at any time.

That is the basic structure of the bylaws.

Alderman Vitale

It was mentioned before about having information from Manchester available, and I think it was Alderman Cookson pointed out that maybe another good example might be made available. If we are going to have one we should probably have the two right at that time so something doesn't come up at a later point.

Chairman McCarthy

I don't know what another good example is. If anybody knows of one...

John Patenaude

We will do a web search and see if there is anything.

Alderman Deane

I think as we had discussed earlier, that is a good place to start.

Chairman McCarthy

The other one that might be interesting to look at, it is a little different, is the New Haven Water District, which is the one...it is a regional district, but I believe it is organized similarly to the way we are talking about with just a standard board of directors. I will see if we can find that one.

Alderman Deane

Mr. President I know you want some comments and suggestions and whatnot from what was presented here. I think this is just like pretty high overview of what exists. I think maybe some of the governance that we find in these other, perhaps hopefully two documents will help us get through, if there is some decent structure that we all can agree to it will probably cut down the amount of time we spend looking at it. In my humble opinion, I think it would be better for us to review that before we spend any time making a list of things that we are looking at in here. I think we spent a lot of time tonight discussing the Merrimack Valley Regional Water District and that...

Alderman Pressly

Well you brought it up.

Alderman Deane

I know, and that is what I am saying. I think if we start looking at things like this, I think it would be better if we read something, had a little understanding and some structure on what works elsewhere, it would be better for everyone.

Chairman McCarthy

I think we will try to find that...how quickly do we think we can find out at least what the board of director structure is?

John Patenaude

Of Manchester?

Chairman McCarthy

Yes.

Mayor Lozeau

Pretty quickly.

John Patenaude

Yeah. I don't have it with me, but I printed it off their...

Mayor Lozeau

I have it in the office.

Chairman McCarthy

What I would like to do is have a meeting perhaps next week sometime where we discuss just the structure of the board and what we want to see there so if we can get to some closure on that. From what I saw that is the issue we need to work out. The rest of it there is a lot of detail, but we need to understand the board structure and we need to understand how the articles of incorporation and the bylaws will be amended and figure out a process we like to protect that.

I think we also need to understand in the bylaws there may be things that we want to make more rigid than others such as prohibitions on Aldermen taking the CFO role...

Alderman Deane

I think there is going to be a lot of discussion pertaining to language between the articles of incorporation and the bylaws. I go back to your remark earlier about how you want to do it all now, but you also want to put language in there that forbids anyone from the future from doing it. It is not necessarily, I will use this term lightly, our infinite wisdom on how this proceeds forward. But you also have to take into consideration that we just happen to be the ones sitting here. That does count for something.

My ultimate goal is to get the thing set up right and to make it so there are no loopholes for political shenanigans to go on. It is a water company. I think we all have the public's interest at heart. We want to make sure the thing is run properly, but we don't want to turn it into a hack-a-rama and allow that to go on. You see it so often in so many other places, and to me it is plain wrong. I think there is going to be the getting these two items and getting everything off and running. I have no interest in serving on a water board or water company or anything like that, but I want to make sure that what we do sets the precedent so that when we move forward the water company is run without any major glitches.

That is where my main concerns are. It has been what 9 years?

Chairman McCarthy

I was thinking about that point when you were talking about it before, and it strikes me that unless you want to put something that is very difficult to reverse in the articles of incorporation, which has dangers associated with it, the best way to protect things from politics is to make it so that change has to be either accomplished very slowly or by a very large majority. If we provide for a board of directors that turns over slowly because there are 6 of them and they have 6 year terms for example and we make it so that any of the escapes that allow this board to do something require a 2/3 vote or whatever, I think that insulates it reasonably well. You have to either take a long time to replace the board of directors or you have to convince a lot of people that something is drastically wrong and needs to be fixed.

Alderman Pressly

I think one of the hardest things for me with this is to put my mind around the fact that this is a corporation and that we are a municipality. Every role that I have ever played of a public service nature it has been where everything you did was right out there and everything you did you want it to be out there, you didn't want to say a single thing without planning to see it on the front page of the paper. Trying to understand that is not what this is going to be at least until the Federal Government can make some changes.

Chairman McCarthy

I have seen 100 people stand at that microphone and tell us we should run the government like a corporation. They will be very happy.

Alderman Pressly

Now we're doing that. You have mentioned 6 so many times. How many members does Pennichuck have? Don't they have more than 6?

Chairman McCarthy

They have a lot more.

Alderman Pressly

Don't they have more like 9/

Chairman McCarthy

I say that because that is the Manchester number.

John Patenaude

They have 10 I believe. I am not sure how many exactly in Manchester.

Chairman McCarthy

I say 6.

Alderman Pressly

I think Manchester has 3 or 5.

Mayor Lozeau

Do you want me to just walk into the office and go get the...I have their annual report?

Chairman McCarthy

I just use that as an example.

Alderman Pressly

I am just glad we are at this stage where we are going to be buying it.

Chairman McCarthy

Did you want to respond to the other issue there Alderman Deane?

Alderman Deane

I am waiting patiently for my reading material.

Chairman McCarthy

Okay.

Alderman Cookson

I just wanted to say that if we do in fact meet next week to talk about the governance, talk about the structure, that it would absolutely be worthwhile and vital for us to receive documentation or at least pointers to documentation prior to that meeting. I wouldn't expect us to come in and make decisions about numbers and types of individuals that might be appropriate without the opportunity to review. I would just state that for the record.

Chairman McCarthy

Are electronic copies sufficient at this point?

Alderman Cookson

I am happy with electronic copies.

James McNamee, Esq.

We are still under confidentiality and electronic copies create a particular problem because e-mail is so easy to send around. You want to guard those e-mails very carefully.

Chairman McCarthy

If what we are sending are pointers to the Manchester charter, the regional water district and the New Haven one for example those are just public documents anyway.

James McNamee, Esq.

True, but Mario Gabelli getting a hold of that might have a particular point of view of what is going on.

Mayor Lozeau

So that last e-mail that I sent out and when one you sent out today Brian I tried to be very knew it was a term that you would get when I said on Friday Penn is still up and then tonight the one Brian sent said Penn is down.

James McNamee, Esq.

Speculation is really going to be higher and we have done such a great job of keeping it confidential now. When we do our filing at the end of this month with the PUC it is going to be something that asks for more time and something that is going to hard not to telegraph that something is going on, and there will be more and more questions so it is just ...we're still under the confidentiality until...

Alderman Cookson

If this board is concerned about the distribution of e-mails with regard to pointers and speculation and maintaining the confidentiality then I would say that something needs to be couriered to us so that we can review.

Mayor Lozeau

Or we can put it in your packet tomorrow.

Alderman Cookson

If it is available as soon as tomorrow, but I mean Alderman McCarthy was speaking about presentations and the water district's charter and ability to get it quickly. I don't know if we are going to have all of the documentation...

Chairman McCarthy

If I can find all three of those this evening I will have Sue put a page in the packet tomorrow with links to them.

Alderman Cookson

Thank you.

James McNamee, Esq.

I am a big fan of getting things out electronically I just want to if you do it I would put confidential in the subject line so that if there is any request for public documents we know to excise those out, and just make sure you don't forward them on to anybody else.

Alderman Clemons

I am of the opinion we shouldn't send it electronically, but I will just state that for the record.

Alderman Pressly

I agree.

Alderman Clemons

For the reasons stated.

Alderman Deane

I will let my attorney figure out the best way to do it. That way if things go terribly wrong...

James McNamee, Esq.

My recommendation is not to send it electronically, but to accommodate that if that is what you want to do, that is the way I would do it.

Chairman McCarthy

I will try to get it on a piece of paper that is marked confidential in the packet tomorrow.

Alderman Deane

Thank you attorney McCarthy.

Alderman Cookson

Thank you. I am assuming you will soon be making a motion to go out of non-public.

Chairman McCarthy

Yes.

Alderman Cookson

And at that point when we get back into the regular order of business I don't know if it has been documented within the clerk but my attendance at the regular board...thank you very much.

Chairman McCarthy

We will restart the recorder in public session.

James McNamee, Esq.

Mr. President can I just ask a question. You are going to seal these minutes is my understanding.

Chairman McCarthy

Yes.

James McNamee, Esq.

But have them transcribed and distributed to everybody on the board so that everybody can see.

Chairman McCarthy

Yes.

James McNamee, Esq.

As part of your resolution is it also okay for Mr. Patenaude and myself, and Attorney Ardinger to have access to those minutes as we are part of this process of trying to...

Chairman McCarthy

Since you are sitting here I would expect that you are entitled to a copy.

James McNamee, Esq.

I think it needs to be formally stated in some way and that may have been enough right there.

Chairman McCarthy

Okay. How would you suggest that we handle that? Are you suggesting we need to put language in the motion about that or just the fact that we have...

Alderman Deane

You should put language in the motion absolutely.

James McNamee, Esq.

I would put some language in the motion that you are sealing the minutes but that they will be available to members of the board and advisors who are assisting this committee in the process.

MOTION BY ALDERMAN COX THAT THE COMMITTEE SEAL THE MINUTES OF THE NON-PUBLIC SESSION EXCEPT TO MEMBERS OF THE BOARD AND ADVISORS BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED

A Viva Voce Roll Call was taken, which resulted as follows:

Yea: Alderman Clemons, Alderman Vitale, Alderman Craffey, Alderman Deane, Alderman Pressly,
Alderman LaRose, Alderman Cox, Alderman Cookson, Alderman McCarthy

9

Nay:

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MOTION CARRIED

**MOTION BY ALDERMAN LAROSE TO COME OUT OF THE NON-PUBLIC SESSION AND RETURN TO THE REGULAR MEETING OF THE PENNICHUCK SPECIAL WATER COMMITTEE
MOTION CARRIED**

Chairman McCarthy

I wish to note Alderman Cookson joined us shortly into the non-public session.

ADJOURNMENT

**MOTION BY ALDERMAN LAROSE TO ADJOURN
MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 9:30 p.m.

Alderman Jeffrey T. Cox
Committee Clerk