

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

SEPTEMBER 27, 2010

A meeting of the Pennichuck Water Special Committee was held on Monday, September 27, 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

Members not in Attendance: Alderman Michael J. Tabacsko
Alderman-at-Large Mark S. Cookson
Alderman Jeffrey T. Cox

Also in Attendance: Mayor Donnalee Lozeau
Alderman-at-Large Ben Clemons
Alderman-at-Large David W. Deane
Alderman-at-Large Lori Wilshire
Alderman Diane Sheehan

Chairman McCarthy

Alderman Clemons being the Alderman-at-Large present with the lowest alphabetical surname will serve as a member of the committee.

Alderman Deane

Who are the members of the committee?

Chairman McCarthy

It is me, Alderman Pressly, and Alderman Clemons will serve as the third member for the moment.

Alderman Deane

It goes by alphabetical order instead of by seniority?

Chairman McCarthy

The ordinances claim alphabetical order.

MOTION BY ALDERMAN CLEMONS 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 CLEMONS

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

Yea: Alderman Clemons, Alderman Deane, Alderman Pressly, Alderman Sheehan, Alderman Wilshire,
Alderman McCarthy

6

Nay:

0

MOTION CARRIED

The committee went into non-public session at 7:05 p.m.

Mayor Lozeau

John took everybody's comments and put together draft documents that we handed out tonight in that envelope that you got. If we want to hand the ball over to John I think he would probably walk us through how far he got us and what he thinks is left that needs to be done.

Chairman McCarthy

Do we have copies of the things you had sent me in here?

John Patenaude

No, but I have extra copies...

Chairman McCarthy

I have copies.

John Patenaude

I have the note if you want me to pass that out.

Chairman McCarthy

Yes.

Alderman Sheehan

How many directors were there for \$182,000?

John Patenaude

There were 9 or 10.

Mayor Lozeau

How many directors currently at Pennichuck is that the question?

John Patenaude

Yes.

Alderman Sheehan

I am wondering how many were compensated for the \$182,000 because not necessarily all of them would have received pay if they are paid currently to serve in a management capacity.

John Patenaude

There are two that are unpaid. Montopoli is not paid because he is an employee. Also in that number that does not include Charlie Clough. While he is paid, he was non-voting member so they don't show his compensation.

Alderman Sheehan

Okay so this reflects the pay for 8 people is that a fair assessment?

John Patenaude

Yes.

Alderman Sheehan

Thank you.

John Patenaude

What I tried to do with that schedule is tried to get as many water company in the same – what I tried to do is go to market cap, in the vicinity of the market cap, so up until the last water company is really, the York Water Company, after that they are different types of companies. The Full House Resorts, Five Star Quality Care, they are just companies that are in roughly a range of the market caps and you can see that their annual fees differ, but they are different kinds of companies as well. I was just trying to get a feel or a flavor there. That is something you had asked for last week so I put that together.

The other is the issues, which we talked about last week which are remaining on the table, which is the compensation. We talked about the qualifications of directors. What you have received tonight is our first attempt, based on some of the information we got from the last two meetings, in putting together revised articles of incorporation and bylaws. The trick here was really we have, and Bill Ardinger and I went round and round on this over the last few days, is we have a quasi organization, it is not municipal and yet it is not public. We tried to craft something around that so it works for everybody. If you could just take a few minutes, I don't expect any comments on this tonight because I expect you to look at it and think about it, but I will point out some of the differences here. You will see that the Articles of Incorporation have really been shortened drastically from the ones you saw, the Pennichuck existing articles, mainly because you have taken out all of the preferred stock data that is in there.

The one thing that is different here is that we have a section called reserve powers and the reserve powers are really powers that are for the shareholders of the company. They are a little different than what the powers were before. One is to change the name of the company, not a big deal, amend the Bylaws. Remember last time we had that the directors could amend the bylaws we have changed that so that is a power reserved to the shareholders. In creating indebtedness, any new indebtedness, if you buy the company after that, would have to be approved by the shareholders. I thought that was something you would want to consider going forward; selling of the assets, making advances to individuals. Those are reserved powers strictly for the shareholders.

There is a section here on dissolution, and when you see it you will probably cringe, but the piece that was put in here by the lawyers was mainly to try to get around the taxability issue on the built in gains on the corporate level. What it says is if you dissolve the company, which will probably never happen because mergers don't count for dissolutions so you could set up a municipal corporation, merge this in, and it would never be triggered or you could change this article at some future date, but it says that 95% of the assets after everything is paid off so it is whatever is left over after debts are paid off and bonding is paid off and everything, if you were to dissolve the company 95% would go to the city and 5% would go to a 501(C)3 charitable organization. It is a way of resolving it. It could be a political hot potato for you and I recognize that, but we put it in there so you could think about it and then we can deal with that once you go through that thought process. That is it on the articles.

On the Bylaws, small things; notice of meetings and adjourn meetings we set a meeting notice for the minimum to be 5 days. It was up to 10 or 15 days. The board of directors I think follows what you discussed last week. It doesn't put parameters, it says up to a number so it does give you latitude. Then it talks about the members who cannot serve on the board and part of the process in electing the directors. I think it pretty well follows what you all agreed to last week.

Alderman Clemons

With one exception; I noticed that the Board of Public Works was left off of that unless I am reading it...

John Patenaude

That is on I think page 3. It talks about shall not be and I think...

Alderman Clemons

Okay. So that would be #2?

John Patenaude

Yes. Maybe the title is wrong, but we can change that easily.

Mayor Lozeau

You are saying the director of public works is what we had talked about right or are you saying the board of public works?

Alderman Clemons

The board of public works I think we were supposed to include as well. We voted on that.

John Patenaude

The board as well?

Mayor Lozeau

Yes so #2 should say the Director of the Public Works Division or any member of the Board of Public Works.

Alderman Clemons

Yes.

John Patenaude

The rest here the elections they leave the election of the Chair, the President, and the Clerk with the shareholders and the other officers are elected by the board. That is a change from what we had before. Basically the rest is, there might be nits, but it is the same.

The only place where there is a bracket here is a conflict of interest, and Bill was thinking through whether we shouldn't put anything relative to a conflict of interest rule in the bylaws.

Alderman Pressly

That we should or should not?

John Patenaude

Probably should.

Alderman Pressly

I would think so.

John Patenaude

I leave that for you to read through and get back to us with comments.

Chairman McCarthy

Can we go back to the articles of incorporation for a minute? On Article 3 should we name Attorney McNamee or should it just refer to the Office of Corporation Counsel?

John Patenaude

I will check with Bill, but I think we can just do office of corporation counsel for the City because you could have a change in individuals.

Mayor Lozeau

229 Main Street.

Chairman McCarthy

In Article 8, reserve powers 3, creating of debt, do we want to put some exception in there for small amounts of sort of working debt? If we are just...

John Patenaude

We are working through that. For instance if we had a line of credit you would approve a full line of credit, but not the individual borrowings I think. That is the way I was thinking of it.

Chairman McCarthy

If we need working capital for a small number of days for example the board shouldn't have to...

John Patenaude

I think you would approve the line and then the company could draw down on that line and pay it back.

Chairman McCarthy

Okay.

Alderman Sheehan

This gives almost no signature authority to them whatsoever the way I am reading it.

Chairman McCarthy

Yes.

John Patenaude

It was worse than this before this morning. I tidied it up a little, but we know we still have some work to do on that one.

Chairman McCarthy

On the dissolution section, this basically requires that 95% go to the city and 5% go somewhere else. Do we want to do that or make it no less than 95% and no more than 5%?

John Patenaude

We can do that. I wasn't sure that you would be comfortable with the whole concept that is why we left it in brackets. That is really the safe haven, it is to make sure that the IRS couldn't come in, they could come in and challenge without this, they just feel that this is more belts and suspenders to add to the challenge if the IRS were coming in.

Chairman McCarthy

My concern with it is if the federal legislation passes...

John Patenaude

Then we don't need this.

Chairman McCarthy

...but that is a case where we would be dissolving the corporation.

John Patenaude

No you would be merging it I think. You would set up a municipal corporation and you would merge the two companies so that wouldn't technically be dissolution.

Chairman McCarthy

I see.

John Patenaude

Dissolution in this context means for lack of a better term, an accounting term is liquidation of the company where all of the assets are distributed to the...

Alderman Sheehan

My concerns were around the same because if for some reason the tax changes we have spoken about didn't come about but something different came about and what we needed to do was dissolve the company and recreate a company we are going to lose 5% of the assets.

John Patenaude

No. As shareholders you could vote before that event to do away with this section.

Alderman Sheehan

Okay.

John Patenaude

Because you have the right to change the articles as shareholders.

Alderman Sheehan

Would this be an appropriate time to ask for an update on that, if there has been any movement in that direction?

Mayor Lozeau

The conversations have taken place; it looks like the tax extender legislation that we are hopeful to put it on is likely not going to be taken up until after the November election. If it is taken up before then I think we have a shot of getting it on there. But either way I think we will have a definitive answer long before we are in a place where we are making the final decision on the setup of the company. I really think that will happen; we will either get a yes or a no, you know what I mean? I was hoping it could just maybe happen in October and things change there very quickly as you know. It could still potentially happen.

Alderman Sheehan

Okay. Thank you.

Alderman Deane

What rules of order are they operating under – parliamentary rules of order?

John Patenaude

I don't know.

Alderman Deane

Are you going to put that in here, no?

John Patenaude

I am not sure that there would typically be in the articles. I have never seen it in the articles before.

Alderman Deane

The other question I have is on page 3 under the section during the term of any member of the board of directors under #3; again you have as the executive officer of the City of Nashua Public Works that should be changed to Public Works Director – no/yes?

John Patenaude

Are you in the bylaws?

Alderman Deane

Yes. Page #3 of the bylaws. Right below that John, the next paragraph I'm reading and...

John Patenaude

I got it. That should mirror.

Alderman Deane

And the paragraph below that sentence it states that each member of the board of directors, excluding the Mayor, shall be nominated by the Mayor and approved and appointed at a meeting of the City of Nashua Board of Alderman called for such purpose. So there will have to be a special meeting called just to vote for these people or can they follow the same rules of order that we have with nominations and then appointments and then they would be put on the agenda for approval?

John Patenaude

I would think you could follow the latter. I will check with Bill on that.

Alderman Deane

Just when it says called for such purpose, I didn't know if a meeting had to be called for that purpose alone or whether they could just follow through the same nomination, referral, review, and then approval process that we currently operate with.

John Patenaude

I will check on that, but I think you would want it to be the latter so it gets incorporated into a normal meeting and not to be called a special meeting.

Alderman Deane

It should be consistent with our current practices. Unless someone else sees objections to it. I don't see any advantage to calling a special meeting for appointments to this one board.

Alderman Pressly

Where does the annual meeting fit in then?

John Patenaude

You have to call an annual meeting.

Alderman Clemons

That would be a separate meeting.

Alderman Pressly

In the corporate world isn't that where they elect them?

John Patenaude

This is where we get into the quasi...

Alderman Deane

We have to set the board in motion before we can call an annual meeting. There is no board to call an annual meeting really.

Alderman Pressly

Initially, but as you go on...

John Patenaude

As you go on I think what will happen is the Mayor will nominate, you will approve, and then at the annual meeting they will be confirmed.

Alderman Pressly

There is no ability to nominate other people from the shareholders with one shareholder.

John Patenaude

No you own it, it is yours.

Alderman Deane

Wouldn't some of these bylaws then fall by the wayside? If we are setting the bylaws up just to get everything in motion and some of these really wouldn't apply any longer right? Some of them are allowing us to put the process in motion, as the Mayor would be making the appointments and we would be doing the approvals and then once the board is formed then the board is operating outside of some of the parameters that are being put in here...

John Patenaude

The shareholders operate under the articles and the directors would operate under the bylaws. These are really, we tried to skinny it down as much as possible, while there may be things that don't occur or they typically are covered in either the articles or the bylaws, but they are the just in case type of things.

Chairman McCarthy

Where in either of these does it say that a vote of the Board of Aldermen is a vote of the shareholder?

John Patenaude

It doesn't, but the shareholder is – I am not sure if that wouldn't be an ordinance and I can cover that with Bill, but I am not sure if that wouldn't be...

Chairman McCarthy

I am a little worried about it because there are things in the bylaws about what constitutes a quorum and who can vote at the shareholder meeting, and if I read those without inferring something from other law, if one member of the Board of Aldermen shows up they can vote all of the shares as it reads I think.

Alderman Clemons

In addition to that, I would imagine that would have to be clarified in the articles of incorporation themselves and not through a city ordinance because if it was through a city ordinance then a different board could just change that ordinance and run things completely different. We kind of want to get a process in place through the...

Chairman McCarthy

If the board or a majority of it votes to let a minority of it vote the shares of the corporation...

Alderman Clemons

They could change the articles, but it is easier to change an ordinance than I would imagine we are going to make it to change the articles. That is just where I am coming from.

John Patenaude

I will go through that with Bill.

Alderman Pressly

I am just trying to visualize this. It seems to me that initially there should be sort of something special other than just a routine. If you are going to nominate and vote and create this and nominate the full board it seems to me it should be at least initially something sort of special rather than a routine situation. We have just bought a water company.

John Patenaude

When you are saying special, it will have to be approved by the Board of Aldermen so you will be...what I would envision is between the time that you have the 90 day vote and the time that we close the transaction that you would be interviewing potential candidates for the board, and as we get closer to the financing that once we get the financing you would make those nominations or approve the nominations at that point in time. I think there has to be a process. I don't think the process can start, I wouldn't recommend that it start, until you have the 90 day vote approving financing. From there until closure you need to be interviewing people or talking to people and moving that process.

Alderman Pressly

I don't know if this is appropriate. There was at one meeting where it was suggested that there are some current board members that you wanted to carry over to our board. Is it appropriate to know who those are at this point?

Chairman McCarthy

I don't think anybody knows. I had suggested that we may want to do that for continuity of knowledge. I couldn't tell you who more than a couple of the directors currently are at this point.

Alderman Pressly

Or who have the residency requirement.

John Patenaude

There may be just 1 or 2.

Alderman Pressly

Bellavance and Martha.

Mayor Lozeau

Kreick.

John Patenaude

And Kreick.

Alderman Pressly

And Kreick, three.

Alderman Sheehan

Bellavance as our biggest customer once we are the water company might be considered a conflict of interest?

Mayor Lozeau

You are thinking Anheuser Busch. They are not the same.

Alderman Sheehan

Okay.

Alderman Pressly

I didn't hear your response.

Mayor Lozeau

There was just some confusion over whether Bellavance was the biggest customer and Bellavance being on the board, and the answer was that is Anheuser Busch that is not Bellavance. Bellavance is a distributor not a...

Alderman Deane

Bellavance distributes cans and bottles they don't produce...

Mayor Lozeau

That is what I was just saying.

Alderman Sheehan

Just been a busy day.

Mayor Lozeau

There is a connection. That is the product they distribute.

Alderman Sheehan

Right exactly. Just got lumped together in the distribution chain.

John Patenaude

Again, any further comments feel free. You can pass them on to Attorney McNamee and I am sure I will get them. The other two items you had talked about last week was really the compensation issue, and again I put together annual fees and per meeting fees. Each one of these companies has an incremental fee for the chairman and an incremental fee for the audit committee chairman. I don't think that the audit committee chairman in a private company normally would get that. It is only because they are public companies and have to sign off with the SEC that they get paid the incremental piece. They have the quarterly meetings whereas if you are a private company your audit committee would probably meet once a year.

Alderman Deane

What does the audit committee do, oversee the audit?

John Patenaude

The audit committee has responsibility for not only the audit of the company but also for their financing of the company and accounting for the company making sure that the appropriate staff is there and making sure that the numbers are reasonable and that they have...

Alderman Deane

So they oversee the firm that was hired to do the audit?

John Patenaude

Not only that but the people themselves in the finance division. In other words, when I was CFO of Nashua Corporation while I reported to the CEO I also reported to the Chair of the Audit Committee. I had a dual reporting line.

Alderman Deane

Thank you.

John Patenaude

So you can see the fees here, the Pennichuck the annual fee is \$10,000. It is in the range. Most of them are a little more than that, but it ranges between \$10,000 and \$20,000 for an annual fee retainer. Most of them are paid quarterly. Then the per meeting fees you can see they range from the highest is \$2,000, and I am just not sure that went so high it is just another way of compensating people, but they range from less than a \$1,000 down.

Alderman Sheehan

Did you find anybody who volunteers?

John Patenaude

These are all public companies. You don't get very much information on private companies.

Alderman Sheehan

That is what I thought.

John Patenaude

I had to go to the SEC filings to get this data.

Alderman Sheehan

Thank you.

Alderman Pressly

As far as per meeting, I believe they break up into sub-committees don't they?

John Patenaude

It depends what they have. Most of them if they meet on the same day some will give you a double fee and others will say no you have one day and that is what it is, it is one meeting. It depends on the company.

Alderman Pressly

I am just thinking it could be a situation and particularly when they first get started that they would have a lot of meetings.

John Patenaude

It could be.

Alderman Pressly

Is it appropriate to put a maximum number on that or a time or...

John Patenaude

It is up to the...it varies again. Some companies don't pay meeting fees they pay a higher annual fee, but they don't pay meeting fees. Some companies are doing that.

Alderman Clemons

Just on that note, I think that may be a good idea. If we are going to go down this road where we are paying these kinds of fees, I think we just do an annual or quarterly rather than pay per meeting. I will just throw that out there.

Alderman Sheehan

Yes as we have had to twice I believe address on the board, people feeling like some people don't show up enough and pay, I firmly disagree and would prefer to see it per meeting because I think there is then incentive to have perfect attendance on very important matters. I would hate to see a quorum missed and not be able to have a meeting on things that the city is waiting to move on. I would rather see a lower yearly fee and a higher meeting fee.

Chairman McCarthy

On the other hand, if people don't show up for meetings in part that is going to be up to us to police under our authority to remove directors who aren't performing...

Alderman Pressly

We won't know though because all of their meetings are closed.

John Patenaude

One of the things I missed here...

Alderman McCarthy

One of the bylaws that is in here says all of the board of directors meetings are subject to the Right-to-Know Law.

John Patenaude

Bill added that.

Alderman Pressly

When did you change that?

Alderman Deane

The Right-to-Know Law is great, but when you really look at it, if you are requiring minutes they are the date, the time, and who was in attendance, and you could hand scratch what was discussed. Are they going to be verbatim minutes?

Chairman McCarthy

That solves the problem of attendance. The attendance has to be recorded.

Alderman Deane

Now you stated earlier if the people didn't show up or if they weren't performing then we could have them removed so if you want to actually create some sort of paper trail of what is happening, would you not want to record the minutes verbatim or would you just look at financial failure and figure it out after it was too late?

Chairman McCarthy

I am more concerned with the attendance issue right at this instant. I will comment that the sections that refer to the Right-to-Know Law ...so the board of directors can meet in closed session and be in compliance with the Right-to-Know Law because under the definitions they are not subject to it.

John Patenaude

I am not knowledgeable enough to get there, but my understanding was after reviewing with lawyers, and I think Attorney McNamee brought this up, if you are owned by a municipality regardless if you are stock, private, whatever, you come under the Right-to-Know Laws.

Chairman McCarthy

Okay. I think we need to say that ...

Alderman Pressly

That changes the whole thing. That is wonderful.

Chairman McCarthy

...I think we need to say that the board not only shall comply with it, but shall be subject to it as a body. Back on the compensation, I worry about the complexity of having the per-meeting fee. In one case it can be an incentive to have meetings. From simplicity sake I would rather see us have a flat rate compensation up front if we are going to do it. We can always change that at some point in the future.

Alderman Pressly

The arguments on that are valid on both sides. One is that what Alderman Sheehan pointed out, but the other side is then they start to pad it. If you have it by the meetings people can start to call extra meetings just to get extra money. Some people do that up at the Legislature if you recall, they would have extra reasons to go to the Legislature so they could get a per diem. To me the whole world changes that it is now open. That was the first thing you said everything had to be secret. This changes everything. Could you tell me more how you got it changed?

John Patenaude

It was because the lawyers went through the Right-to-Know, and as they went through it they discovered if you were owned by a municipality then you had to go through the Right-to-Know.

Alderman Pressly

That changes everything. That is wonderful.

Mayor Lozeau

We looked at it keeping in mind why shouldn't it be. If we could find no reason why it shouldn't be we wanted to make sure that it could...

John Patenaude

And it was one of the items that you raised last week or the week before. We researched it and went through.

Alderman Pressly

Oh thank you. I was going to have to vote against the whole thing because of that.

Mayor Lozeau

It would be horrible to get all the way to this point and not be able to do what we want to do as a municipality. I think I would have had a ...

Alderman Pressly

That was the key to the whole thing is that as a corporation they work in secret, and as a municipality everybody has a right to know what is going on.

Mayor Lozeau

Right, but I think we all felt that same way so if there really wasn't any reason not to...

Alderman Pressly

I agree, but I thought John told us early on that was one of the things we could not change. That has colored just about everything. With that change, that makes a lot of things that were not acceptable now acceptable.

Alderman Clemons

Getting back to compensation, perhaps a cap then would be appropriate. In other words, if we determine that a set amount of money, for example \$15,000 just to say for example, is the appropriate amount of money that we would want to give out as a salary, then we will set a per meeting fee, but say it is capped at \$15,000. It pays by attendance, but it also says we can pretty much figure out how much we are going to pay out each year for this as well. It kind of grabs both concerns I guess.

Alderman Pressly

Just in trying to figure out the comparisons, a lot of the board of directors come from distant places. I have had the impression a lot of them, the salary might or might not reflect transportation...

John Patenaude

No they are all paid for transportation, they are reimbursed for travel.

Alderman Pressly

They are? That is a separate thing?

John Patenaude

Yes.

Alderman Pressly

So there won't be that in this case I wouldn't think.

John Patenaude

Well they will all be locals so it is not...

Alderman Pressly

That is what I am saying. I can see the arguments on both sides of this. Is there any way to find out how many meetings they have a year? What worries me is these sub-committees that are going to be meeting.

John Patenaude

We know there are 4 at a minimum. I think you are concerned about a lot on the front end. Typically the running of the company is done by management so management will be running the company, the board will be overseeing management. There might be 1 or 2 meetings up front more than usual, but I would expect it to probably not go further than 4 or 5 a year. Typically what happens is management provides the board monthly reports. That doesn't count as a meeting. It is sent through the mail just to know what is going on within the company. It is usually not only financial but anything that they should know about relative to is there a disaster looming, is there an issue looming, so the board is typically kept apprised. That is really management's job to keep the board apprised. If management is not doing that then the board should have an issue with management and the shareholders would have an issue with management as well. I think the fear of having a lot of meetings up front I wouldn't expect there would be many.

Alderman Pressly

I don't feel real strongly one way or the other, but one argument for just keeping it the way it is, is that it is a lot easier to explain that to the citizens of Nashua. When they say how did you arrive at that amount we could say we just kept it the way it is done now.

Alderman Clemons

So if we kept it at \$10,000, we know that there are 4 meetings we could say the compensation is \$2,500 per meeting capped at \$10,000. No more than \$10,000 in one year. The annual fee that we give our directors is \$10,000 for example. We know there are four quarterly meetings they are supposed to attend, \$2,500 is \$10,000 divided by 4. So we say that we will pay you \$2,500 per meeting and we will cap that at \$10,000 so if there is a 5th meeting they are not going to be paid more than the \$10,000 that we expect to pay them.

I know that there are some municipally held water companies, lot of information of ones that are out in California actually, but they are actually elected, but they do similar things. I think if we are going to set a fee that should be how we do it because I think that kind of takes into account the attendance issue and in addition

to that it also sets an expectation both for the board member as well as the corporation in how much they are going to be expending on this.

Chairman McCarthy

How many directors did you say Pennichuck had that were being compensated?

John Patenaude

It was either 8 or 9. I don't have the list with me.

Alderman Sheehan

Eight was what you told me.

John Patenaude

Because Montopoli is on there and he is not compensated. Charlie Clough is compensated, but I don't know what he is being compensated because he is not a voting, he is a special...

Chairman McCarthy

The \$182,000 compensation for 9 voting members comes out to \$20,000 each.

John Patenaude

There is other stuff in there. For instance the chairman gets a chunk, the chair of the audit, chair of the compensation committee they get a larger chunk. That is why the average doesn't work out to be \$10,000.

Chairman McCarthy

They get like half again as much right/

John Patenaude

I think the chairman probably gets another between \$75,000 and \$110,000. I don't have the proxy with me, but...

Chairman McCarthy

They are probably getting that up to \$180,000...

John Patenaude

I know, but there are fees in there and there is also their travel is in there...I tried to limit it otherwise you get to so many variables that the comparison would mean nothing. There is even stock, there are stock grants in there, which I have excluded because you are not going to be granting stock. The variables there get convoluted as well because there are some companies that I just excluded where the total compensation is just stock, people get stock and that is it and they get either the ride up or the ride down. That is how they are compensated.

Alderman Wilshire

I guess I have a little bit of trouble with the attendance piece. Someone who serves on a board like that with quarterly meetings, you really expect that they are going to show up for those quarterly meetings. It is not like once a week and gee they might blow off a couple of weeks. If you are having 4 meetings a year I really would think people would show up for that. The whole attendance piece for me...

John Patenaude

That is the minimum is 4 because if you were going through any kind of acquisition, divestiture, special meetings, you get into problems, but the minimum is 4.

Mayor Lozeau

I think there is a reasonable concern about if you do it by meetings are they going to run up the tab just because they can, but by the same token I agree with Alderman Wilshire, we are looking at people that we are expecting to hold to a pretty high standard. We are willing to compensate them and we don't do that for any of our other boards basically. The minimum expectation is that you are going to come to the 4 quarterly meetings that you signed up for, but there may be times when they end up coming to a lot more meetings so some years whatever that dollar amount may be; it was a good year for them they came 4 times, in other years they came 12 times for the same pay.

I think you make a flat this is what you are getting and this is what our expectation is and you show up. I can tell you that I think the shareholders should pay close attention to people that aren't showing up because we really need to find people that can really support us as we are going through this and that bring something to the table and know what they are doing. I wouldn't want to compensate people that aren't going to come. Right now we have great luck with some of our volunteer boards where people are showing up and doing the heavy lifting with no compensation. I wouldn't expect that standard to change any.

I think we are probably better off determining what that number is.

Alderman Sheehan

Can I make a motion for \$12,000 a year flat, no meeting stipends, no travel expenses, just \$12,000 a year flat? I'm choosing that because it is a little bit more than their current base, however, they do not have the per meeting. When I did the math, it was \$22,000 plus change for the 8 people so it is a significant reduction for the ratepayers and it is enough I think to entice someone's interest in finding out what is involved. It is not the lowest one it is the second lowest after you take out Pennichuck currently on the scale.

MOTION BY ALDERMAN SHEEHAN THAT THE COMPENSATION OF THE DIRECTORS BE SET AT TWELVE THOUSAND DOLLARS (\$12,000) A YEARON THE QUESTIONAlderman Deane

What was the analysis for that amount? How did that amount...

Chairman McCarthy

It is approximately the \$10,000 that they are paid now plus \$2,000, which is about what they get for 4 meetings a year at the \$600 figure.

Alderman Sheehan

And without adding in any of the other costs that they get because the average for those 8 people cost Pennichuck shareholders last year \$22,750 on average for each of the 8 people that sit on the board. Looking at the cap comparison we had only one other person other than Pennichuck themselves with a lower annual fee most paid significantly more.

Alderman Deane

Are we aware of what other people pay their boards and what other benefits? I mean other than this. You see their per meeting fee, but what other fees or goodies are they given in lieu of these checks for attending these meetings; dinners, luncheons, golf, gasoline, vehicles? Is there anything else included outside that would be in a 1099 other than the cash here?

John Patenaude

Most of these have travel expenses, but most companies today have you put in for your actual expenses of traveling in boards that are scrutinized. I am talking about boards of medium sized companies. I can't tell you what AT&T does or whatever. What is not on here again is the heads of committee fees and also any stock that they would get. A lot of companies give stock just like they give shares to stock options to management; they would give stock options to the directors as well. Some have rights, some have just straight grants, and it varies company by company.

What I tried to capture here was just a straight cash outlay. Otherwise, it gets very convoluted trying to get through this and you are not going to give shares away so it would be meaningless in that sense.

Alderman Clemons

So is the motion not to take into account attendance?

Chairman McCarthy

Yes.

Alderman Clemons

Personally I could go either way on it. My main concern is that, and I say this because there is a removal process, but my main concern is that the company knows exactly what it is expending each year for this purpose, which could be achieved in the way I described earlier or this way. I am comfortable with either way. Based on what it looks like this is about a \$45,000 savings if you take into account the \$10,000 annual plus add \$600 times four, over the 8 directors that are compensated that is \$144,000. Essentially we are saving about \$44,000 with the current motion.

Chairman McCarthy

Eight directors at \$12,000 would be \$96,000.

Alderman Clemons

Yes, but it is 12 that is...I understand it is \$10,000 plus the ...it is \$12,400 multiplied by 8 is \$99,200.

Alderman Sheehan

Except that the actual expenditure last year was \$182,000. There is a lot that is not spelled out on this chart that they are currently being compensated.

Chairman McCarthy

It is in the mid 70s is the savings.

Alderman Pressly

Thank you. I like this approach it is clean it is predictable. I will be happy to support that.

Alderman Deane

I am wondering if the Mayor has an opinion on this area.

Mayor Lozeau

I'm sorry Alderman Deane I was giving that opinion before you left. I didn't choose a dollar amount, but I think the idea of giving a set amount for the year made sense to me and not by meetings. Twelve thousand dollars I think to some of us sounds like a lot of money, it is more than the members of the board make or things like that, but I think based on the people that we want to attract to this position it is not unreasonable. If you look at it \$1,000 a month I think that is worthwhile, and as Alderman Sheehan pointed out it is greater than half of what they pay out now. You cut that by probably 75%.

Alderman Sheehan

It is a lot less.

Mayor Lozeau

Yes. That will work.

Alderman Pressly

Thank you. I am just having an afterthought here, if we do this and then eventually do become a municipal water company would we be obligated do you think to keep the compensation at the same level or would we start all over with everything?

Chairman McCarthy

I would expect that if we change the articles of incorporation and/or the bylaws we can whatever we please at that point.

Alderman Pressly

Whatever we want. Okay.

Mayor Lozeau

I think we still, no matter what form we take, we are still going to want a board of directors that is somebody that we can all look to and trust for their expertise in this field.

Chairman McCarthy

Is there any further discussion of the motion?

MOTION CARRIED

John Patenaude

The last thing was really I tried to put together just some considerations, some qualifications you might want to think about, and it is really based on the structure of the company. You are looking for somebody with business experience, operational experience, you will want at least one individual with financial experience. H.R. experience is always helpful. And these are not all the same individual. You want to get a mix that gets you there. In our case here, even some regulatory experience would be helpful to help navigate through the company. Legal experience, engineering, and if you can find it, experience in the water industry or within a utility. Those are the kinds of people that you would normally look for a board in this environment I think. As you go through the process, those are the types of things...

Chairman McCarthy

I am not sure it makes sense to put that in the articles of incorporation or the bylaws.

John Patenaude

This is not in the articles of incorporation it is just as I was thinking through and I looked at their organizational chart, I was trying to think what kind of person can help the management of this company going forward, and it is people with those types of skills that can help manage the company, somebody that the managers or the management of the company can turn to if they need some guidance.

Chairman McCarthy

Where it may make sense to do that is in our ordinances if we talk about the procedure for, for example we talked at the last meeting about advertising for and soliciting candidates for directors for the Mayor to consider when a term was up, that would seem to be the place where we would enumerate the sort of things we might ask for in the ad for example.

John Patenaude

I'm not advocating this...this is not a bylaw issue or an article issue as is the salary that is in neither one.

Mayor Lozeau

Which reminds me Mr. President we did say that the Mayor and the CEO of the company, while serving on the board, are not being compensated right? Okay.

Chairman McCarthy

We certainly said that about the Mayor.

Mayor Lozeau

I heard that very clearly, but you wouldn't want to also pay the CEO an additional stipend for going to board meetings. I just want to be clear on that.

Alderman Clemons

We also might want to clarify how we pay that \$12,000 out. Is that currently in the articles?

John Patenaude

No, but they pay, it is in their practices, they pay quarterly.

Alderman Clemons

We probably want to keep that I would assume.

MOTION BY ALDERMAN CLEMONS THAT COMPENSATION BE PAID QUARTERLY

ON THE QUESTION

Chairman McCarthy

Does that need to be in any of the documents we are working on?

John Patenaude

No it doesn't have to be but that will be something that you will want as you are recruiting people. They will want to know so that is...

Alderman Clemons

The reason I think it is important to set that is because if somebody resigns mid-term we don't want to have a practice where we pay everybody up front.

Chairman McCarthy

That would be the practice whether it is in the bylaws or...there are a lot of other documents that describe those things as policy.

Mayor Lozeau

It is a good point for all of us to...

Chairman McCarthy

We can put that one in the bylaws I don't think it matters. The motion is to compensate the directors quarterly. Is there further discussion of that?

MOTION CARRIED

John Patenaude

Alderman Pressly on the rest of it, those were my notes as I was going through so you can disregard all of those because we have gone through those documents and made the changes.

Chairman McCarthy

The stuff that I had from the last time, and let's just make sure we covered this, qualifications I think we addressed, removal do we have that in here somewhere? Is that in the...

John Patenaude

I think it is in the articles.

Alderman Sheehan

Removal of the president or removal of the board members?

Alderman Deane

Director.

Alderman Sheehan

A director?

Alderman Deane

Section 5.

Chairman McCarthy

Okay so where is the removal of directors?

Alderman Deane

Section 5 on page 4.

Chairman McCarthy

Of the...

Alderman Clemons

Of the bylaws.

Chairman McCarthy

Okay and vacancy and removal are covered in there?

John Patenaude

Yes.

Chairman McCarthy

So that takes care of those. Compensation we took care of. Have we dealt with the holdover issue?

Alderman Clemons

It doesn't.

John Patenaude

Which issue is that?

Chairman McCarthy

It is when someone is on beyond their term while they are being replaced. That is sort of moot the way we have them described because they just stop being a director when their term lapses and we have less directors.

John Patenaude

Right.

Chairman McCarthy

Okay so that's handled.

John Patenaude

The process here would be you would have someone to replace them or you would re-vote them in when their term lapses.

Chairman McCarthy

Advertising for openings we will cover in an ordinance. Bylaw changes approved by the shareholders?

John Patenaude

That is in the reservation of rights, reserved powers.

Alderman Clemons

I have a question. Section 4 under vacancy, it seems just a little vague because it says any vacancy occurring in the board of directors in between annual votes of shareholders due to death or resignation may be filled by affirmative vote of the board of directors at a meeting duly called for such purpose. So this leaves filling vacancies up to the board?

Chairman McCarthy

Yeah, that's...

Alderman Clemons

I don't know that is worded correctly either.

John Patenaude

What page is that one?

Chairman McCarthy

Page 4, section 4.

Alderman Clemons

I think I know what it means, but I think it is worded...

Chairman McCarthy

I think that is probably...

John Patenaude

Should have been the Board of Aldermen.

Chairman McCarthy

Board of Aldermen or shareholder?

John Patenaude

Or the shareholder, either one.

Mayor Lozeau

If you are going to be consistent with what you are doing.

Alderman Deane

Is it shareholders or sole shareholder? We have to figure that out too. On page #5 in article 12 you have under the compensation John you have sole shareholder. I have heard Alderman McCarthy say shareholders with an "s".

Chairman McCarthy

That was the language we used until tonight. That should all be sole shareholder.

Alderman Deane

So it should be sole shareholder, which is the majority of the Board of Aldermen.

Alderman Pressly

So on #4 there it would say "and may be filled by the shareholder"?

Alderman Deane

An affirmative vote of the sole shareholder. Again, you run into that other issue Alderman McCarthy with a meeting duly called for such purpose, which should run through the same process that we are using now with all of the other appointments?

Chairman McCarthy

And I think that does. As long as that is an item on the agenda of the Board of Aldermen then that is a meeting called for that purpose right? I don't think that precludes the meeting having another purpose.

John Patenaude

That is correct.

Alderman Pressly

Don't you think you eliminate that last part?

Chairman McCarthy

Alderman Deane are you satisfied with that?

Alderman Deane

Not really. I think it is a lot of legal ...this is kind of twisted into a knot. It seems like it is a meeting that is called solely for that purpose, which...

Alderman Clemons

Thank you. So do we want to clarify this to say that it shall follow the regular appointment process whereas the vacancy is filled by the Mayor appoints someone and then the board confirms?

Chairman McCarthy

I would actually prefer that it just have language that says in the event of a vacancy, the duration of the director's term may be filled by another person under the same process as any other appointment.

Alderman Clemons

Right.

Alderman Pressly

That is good enough for me.

Chairman McCarthy

We can leave it to them to figure out...

Alderman Deane

We could always vote to suspend the rules to not have the process right Alderman McCarthy?

Chairman McCarthy

I don't know that we can.

Alderman Deane

I don't think that should be allowed. I think that people should have to go through the interview process. Although you might disagree with the fact that the majority rules or whatever, but I think once we set an interview process in place then it should be followed. I don't think that it should be circumvented for any such reason.

Chairman McCarthy

Have we seen, other than the case of re-appointments, where there weren't interviews of any of our appointments?

Alderman Deane

What would that have to do with anything?

Chairman McCarthy

I am not aware of any...

Alderman Deane

I am not implying that there has been a situation that has existed, but we wouldn't want that to happen would we?

Chairman McCarthy

No.

Alderman Deane

So if we didn't allow the suspension of rules to forego the normal process as part of the bylaws then it couldn't. That is up to the majority of the voting members in attendance that were allowed to vote under suspension of the rules.

Chairman McCarthy

I don't know if we could do that.

Alderman Deane

But that would be a whole different article wouldn't it?

Chairman McCarthy

No I think we could cover that in the...

Alderman Deane

John could figure some... could you figure some language out in there that was like 4 words long?

John Patenaude

What are you trying to do?

Chairman McCarthy

Just make sure that the person is actually...

Alderman Deane

Trying to make it so that an appointment has to go through the normal process.

John Patenaude

We will add something here...

Alderman Deane

So it can't be circumvented that is all.

John Patenaude

...that designates that it follows the normal process.

Alderman Deane

I just think it shows a lot of good faith.

John Patenaude

We will add something.

Alderman Sheehan

I am skipping ahead a bit to article 3, offices & election, the chair of the board, president, and clerk. At each year the annual meeting of the shareholders the shareholders shall elect persons to serve in the offices of chair of the board, president and clerk for the ensuing year and until their successors are duly qualified or until their death....later it talks about the president shall be the chief executive officer of the corporation. We are hiring this person and it is not actually going to be elected by the board then.

John Patenaude

That is the way it is written. We can change that.

Alderman Sheehan

It is kind of a circle isn't it?

John Patenaude

We can change that.

Chairman McCarthy

Which paragraph are you on?

Alderman Sheehan

Jumping to B on page 6. It kind of disagrees with page 5. Section 2 election, paragraph a, it says that the shareholders shall elect to serve offices the chair of the board president and clerk for the ensuing year yet it says that the president serves as the chief executive officer of the corporation.

John Patenaude

Which you would...

Alderman Sheehan

Correct, but would we elect them? Would that be the board?

John Patenaude

I guess that is where the mixture of the...

Alderman Sheehan

We need to have an initial and then an ongoing don't we?

John Patenaude

That is where the mixture of the municipality and corporations was trying to...you can have the president and CEO elected by the board of directors. That is not a problem. Just this draft chose to have the shareholders appoint the...

Alderman Sheehan

Should we outline that it is initially appointed and then they elect?

Chairman McCarthy

Shareholders shall elect persons to serve in the offices of chair, the board president, and clerk oh I see. Then over here ...

John Patenaude

I can add that change to initial and then following after that have them elected by the board of directors.

Alderman Sheehan

It is a circle.

John Patenaude

I think the toughest part is going to be the first year right?

Alderman Sheehan

Correct.

Chairman McCarthy

How do we want that process to work?

Alderman Sheehan

Exactly what my question is.

John Patenaude

The normal process would be the board would hire the presidency and all of the officers other than chairman.

Chairman McCarthy

And I don't think we want the Board of Aldermen to be appointing the president of the company right?

John Patenaude

You may on the first pass. It is the timing that may drive you crazy here because you will have the day you acquire and then you have the board coming on and will they have enough time to...

Chairman McCarthy

I guess I would prefer to do it this way, why don't we write the articles and the bylaws for the way we want it to work normally that we appoint the directors, the directors elect a chair and the directors hire the president for the corporation, and in the articles we ought to extend to the shareholders the rights of the board if there are not a sufficient number of directors to conduct business so before the board is convened this board can do that if we need to.

John Patenaude

Okay.

Alderman Sheehan

The whole board or part? The whole board or should we name a pecking order as in alphabetical or at-large or President of the Board of Aldermen or...

Chairman McCarthy

No, no, no, the sole shareholder can exercise the rights of the board of directors in the event that the board of directors cannot be convened.

Alderman Sheehan

Okay.

Chairman McCarthy

And that would say before there is a board of directors we are allowed to appoint a company president.

Alderman Clemons

Is that a motion?

Chairman McCarthy

I am just suggesting it as language we need to...

John Patenaude

We will just change the language and then...

Chairman McCarthy

Is there objection to that from the members?

Alderman Deane

Can he re-write this and when he comes back again or...

Chairman McCarthy

Absolutely.

Mayor Lozeau

The point is just so I understand what you are saying, the point is that if the board of directors has not been appointed and gone through the process of this board to be duly appointed and put in place and we have to get a company president hired who is taking over for Duane, we are going to let this board do that work.

Chairman McCarthy

That is probably...

Mayor Lozeau

Not do that work, but hire that president. That is the point.

Alderman Sheehan

May I make a second motion that we call that an interim president and we have them either confirmed or allow the shareholders...

Chairman McCarthy

I am not trying to make it specific to president. What I am trying to say is until there is a board of directors this board, the sole shareholder, exercises those functions on behalf of the board of directors.

Mayor Lozeau

Okay. I just wanted to clarify whether it was just for that point or...

Chairman McCarthy

No it is ...

Mayor Lozeau

No I think you are right...

Chairman McCarthy

This company is going to have to enter into millions of dollars worth of debt before this board of directors...

Alderman Clemons

The way that you had it written or the way that you had stated it would also be in the event that there was not a quorum of the board of directors then this board could also take over that...the way that you worded it.

Chairman McCarthy

I don't think that I intended it to be if there wasn't a quorum as in a meeting, but if there are not – let's say that 6 of the directors resign on mass and there are only three left, then again this board would need to be able to conduct the business.

Alderman Clemons

Okay.

Mayor Lozeau

Let me ask a timing question. One of the exercises that we go through when we do the executive management questions for what is next steps are things that can happen on parallel tracks. The directors that we want to send through the process of appointment that can likely be happening before we get to the final sign of all of the paperwork. We can start identifying who those people are and make the board aware of for instance which directors we would be interested in bringing forward for consideration things like that, that can happen on parallel...okay.

John Patenaude

Yes. Actually once the corporation is formed because this corporation is not even formed and it won't be formed until some time in the latter part of the process, then they could be appointed at that point in time. It would be a shell corporation but that would be it.

Mayor Lozeau

Okay.

Alderman Deane

What is the compensation for these positions?

John Patenaude

It is whatever the board, depends who appoints and I am sure they wouldn't be any more than they are today I just don't know. Today there is a grid and we are going through due-diligence now to look at that, but there is a CEO is paid between X and Y and that doesn't necessarily mean that a new CEO would be paid what the old CEO is paid today because it is a totally different job. It is not a public company there is a whole different standard. But that is not typically defined in any bylaws as to what the pay scales are. I am sure it will be brought before the board whether it is this board or the board of directors.

Chairman McCarthy

Isn't there typically a compensation plan that is brought to the board of directors for approval?

John Patenaude

Yes.

Alderman Deane

Why is the city corporation counsel the clerk?

John Patenaude

Because typically the clerk would just call the meeting. That is all the clerk typically does.

Alderman Deane

The clerk shall record the proceedings of the meetings of the shareholders and directors showing the names of the persons present, the clerk may give notice of all meetings of the shareholders and directors required by these bylaws, the clerk shall furnish a certification identifying the officers annually to the Clerk of the City of Nashua, which is I guess Mr. Bergeron the City Clerk.

John Patenaude

I think it was meant to be Attorney McNamee I think.

Alderman Deane

Pardon me?

John Patenaude

I think that was meant to be more of the legal...

Alderman Clemons

I don't think so.

Alderman Deane

I am on page 6...

Mayor Lozeau

It is supposed to be the City Clerk gets the notice of all board members. Typically isn't it staff that is doing that work for the corporation now?

John Patenaude

Yeah typically it is.

Mayor Lozeau

Right now I think one of their lawyers does it now.

John Patenaude

It's typically...it's not a big deal.

Chairman McCarthy

Do we want that to be corporation counsel...

Alderman Clemons

Probably not.

Chairman McCarthy

...or do we assume that the corporation itself will have an attorney?

John Patenaude

I would say today that you probably don't need a full time attorney for that corporation. You need somebody that can review easements, contracts, and you can contract that out.

Chairman McCarthy

Why not just have the board designate who the clerk is?

John Patenaude

You can do that.

Mayor Lozeau

I think John and Bill were just making decisions as they were going through the list.

John Patenaude

Right.

Chairman McCarthy

Do we think there is a problem with just having the board designate a clerk who may or may not be corporation counsel at any given point in time?

John Patenaude

I don't think so.

Alderman Sheehan

I think if we are going to we need to determine that any city employee who is already being paid to do a job should not receive the same as we are doing with the Mayor. I would have no problem with the lawyer being there, but I would not want to see an extra stipend go.

Chairman McCarthy

We actually ought to cover that in a more general...

John Patenaude

I don't think necessarily and Bill would probably slap me for this, but I don't think necessarily the clerk has to be a lawyer. It is a process; the clerk has to do certain things just to notify for the meeting and such.

Alderman Clemons

Perhaps the language could read that the clerk be elected by the board but not necessarily have to be amongst the membership of the board. If we do have a...

John Patenaude

It typically wouldn't be a member of the board anyway.

Chairman McCarthy

Just the board shall designate a clerk of the corporation.

Alderman Clemons

Right.

Chairman McCarthy

I think with regard to Alderman Sheehan's point, somewhere else we need a section that says if a, although this may be a problem with your blurring lines issue, if a city employee is doing work on behalf of the corporation they shall not receive additional compensation. We will consider it a donation from the shareholder.

Alderman Pressly

The job description suggests that it is the traditional job of a clerk, which is to keep the records, take minutes, that is what it appears to be in the language.

Chairman McCarthy

I believe there are two things here. One is who is going to be the keeper of records with regard to the public that is most certainly the City Clerk. Who is going to be the generator of records with regard to the corporation is whatever clerk the board designates. I would assume that once those minutes are taken or records are set they will be sent to the City Clerk to be kept with...

Alderman Pressly

I think that might be clarified someplace in the document.

Alderman Deane

It is. It is on page 6. The clerk may give notice of all meetings to shareholders and directors required by these bylaws. The clerk shall furnish a certificate identifying the officers annually to the Clerk of the City of Nashua.

Chairman McCarthy

I think we could put in there and copies of other corporate records, whatever the right language is for that.

Alderman Clemons

I am just concerned with the compensation issue because if you make the position of clerk a non-paid position then it is not a problem. If somebody gets appointed and they accept the appointment then that is their own prerogative they know it is not a paid position, but if the situation is that it is a paid position unless you are a city employee then I think we are...

Chairman McCarthy

I think you are overcomplicating it. If it is a person that works for the corporation they are being paid to do that as part of their job. If it is the city Corporation Counsel who is going to be doing that at the time that he is being paid by the city then he is just being paid by the city and not by the corporation. Whoever is doing it is getting paid precisely once is the intent.

Alderman Clemons

I know, but then we are paying for work that is being done at the corporation level and that could be again blurring that line.

Chairman McCarthy

The corporation can reimburse the city for that if that is what it takes. I think the point is you don't have a person working for different entities simultaneously.

Alderman Clemons

I agree with that, but I don't think we should be crossing into ... I think we should try to keep things as separate as possible. Perhaps maybe not allowing city employees to be the clerk or to have one of these roles with the exception of course of the Mayor being on the ...I just think...

Chairman McCarthy

So you want the Mayor to be the clerk?

Alderman Clemons

Maybe the Mayor could be the clerk. That would take care of the problem right there.

Mayor Lozeau

That would be a no thank you.

Alderman Deane

There would definitely be a his/her designee in that area I would imagine. John it would seem that under this prestigious position of clerk that we would probably want to get rid of that first sentence and probably pop something in there that the board of directors will appoint a clerk. When you look at what Alderman Clemons alluded to a little earlier, this position is probably – there is a lot of work. I just look at what our City Clerk does for work and when you are keeping track of all of these things with reports and minutes and meetings and postings and things like that, there is probably going to be somebody such as the type of situation we have where someone transcribes the minutes and somebody does the agendas, etc. I don't think you are going to find our corporation counsel having much interest in that.

The other thing is how detailed we want the reporting of these meetings. I think that should be described in here somewhere as well, and I think that is going to have some net impact on the amount of work the clerk is going to be charged with overseeing. I don't know what they compensate their clerk for now, but I think this person is going to...if I wanted it done my way I think this person is going to have quite a bit of work to do and...

Chairman McCarthy

I think coming back to that issue I am hesitant to put the word verbatim in there because it got us in trouble in here the last time we did it, but I do think we want to put something in there that says that we want detailed minutes of the board meetings or something to that affect that says you know something from which you can reconstruct the arguments that were used in the discussion. I don't know how you want to refer to them.

Alderman Deane

What are you concerned with the umms and the ahhs? Is that all you are concerned with?

Chairman McCarthy

Yeah.

Alderman Deane

I look at some of these other boards and commissions minutes that aren't transcribed verbatim and sometimes they are really hard to reconstruct what happened because they leave a lot out.

Chairman McCarthy

They are not detailed either.

Alderman Deane

Right and you know as well as I do when you try to reconstruct something you could misconstrue what the discussion was about because some of the key words or key sentences that were stated by some of the members were totally left out. Barring the umms and the ahhs and any other non-approved words in the English language under some dictionary you could put in there, I just think that they should be transcribed verbatim. I think people should know what their investment dollars are doing for them.

Chairman McCarthy

I would be fine if we said something like generally verbatim and allow for flexibility to fix the umms and ahhs.

Alderman Deane

I agree with you and I think we should somehow word that in there so that it ...

Chairman McCarthy

We can probably put that in the description of the clerk or we can add another paragraph that describes how the records will be kept of the board meetings.

Alderman Clemons

If that was the case I would assume that the board would have to hire a transcriptionist or somebody that does...

Chairman McCarthy

This is a corporation with a lot of employees.

Alderman Clemons

Well they would have to designate somebody that as Alderman Deane said that does this much like our legislative assistant does that type of...

Chairman McCarthy

The clerk may not be the transcriptionist.

Alderman Clemons

Right.

Alderman Pressly

My recollection is that the clerk at these meetings is a lawyer, but we don't need that...

John Patenaude

It doesn't necessarily have to be.

Alderman Pressly

What I am thinking in this situation the clerk should have the same position so to speak as the treasurer and the executive, they should get the job through the same process.

John Patenaude

Not necessarily. I had an individual who worked for me, Delaware has a secretary and Massachusetts has clerks, we are a Massachusetts company and she was the clerk and her job was to take the minutes, put out the notices, and it probably took up I would say at the most 15% of her time at the most.

Alderman Pressly

I guess what I was trying to say I think that...

John Patenaude

And she wasn't the lawyer.

Alderman Pressly

I think in a corporate world though they have other jobs, which include the proxies and that sort of thing, which we won't have.

John Patenaude

She did that yeah. She did everything.

Alderman Pressly

It seems to me that we just need a regular traditional clerk that keeps good minutes and then sends copies to our office too.

John Patenaude

You don't want to buttonhole yourself. I think you want to give the person that is choosing enough latitude so that you can make a good choice to get somebody who will transcribe and do the job.

Chairman McCarthy

We just described the expectation of what the minutes are supposed to look like. Let's let the company figure out how to do that. This could potentially be someone whose job is doing billing the rest of the year that happens to get through a quarter and not have much to do after the bills are paid.

Alderman Pressly

We don't need a lawyer there.

John Patenaude

It could be a part-time person.

Chairman McCarthy

I think we should say the board will designate a clerk, the clerk will take the records, we expect that the records will be generally verbatim, copies will be shared with the City Clerk's Office, and I don't think we need to go any further than that.

Are there any other issues that we see at the moment?

Alderman Clemons

I don't know if it says this in here, but how are we determining the salaries of the president and the executive vice-president, the treasurer?

Chairman McCarthy

We talked about that before that is generally in the compensation plan that the board approves for the officers. Typically there is a compensation plan that covers all of the employees that requires the directors to act on it.

Alderman Clemons

Okay.

Alderman Deane

Are we going to get anything that gives us any information on that, what currently exists?

John Patenaude

We have that in due-diligence.

Alderman Deane

Some of those salaries are rather large right/

John Patenaude

Again, I don't think they would apply in a private sector position especially the current CEO and president, it is a totally different position than being with a public company so it would probably pay less. I can give you all of the numbers...

Alderman Deane

Later.

John Patenaude

...that they are given now. I can send that.

Mayor Lozeau

In the due-diligence packet you will have all of that, that layer and...right?

John Patenaude

Yeah, but going forward that is something you have to negotiate.

Mayor Lozeau

Right.

John Patenaude

If you are expecting to say well the president won't be paid more than \$90,000 I would just say you get what you pay for. You have to think through what is the right compensation for a person in that position and what do you want him to do.

Mayor Lozeau

And we had talked a little bit about that when we talked about when you look at Duane's salary and some of the others at that level and which positions we think we don't have to have at that level. There is a significant savings. But when you get down into operations and the replacement CEO and things like that, I would very strongly suspect that we are not going to pay them typical salaries of our division directors. It is not going to be that kind of level of compensation.

Alderman Deane

It will be higher?

Mayor Lozeau

It is going to be higher. The current operations director is making I want to say it is close to \$150,000 maybe.

John Patenaude

Plus he gets a bonus plus stock options. You sort of have to factor that in.

Mayor Lozeau

So when you look at the plug and play model you are going to be keeping some of those positions at that level and those salaries and you are not going to then bring in somebody that is going to be above the operations director and say we are going to pay you \$100,000 a year. I think those are things that we are going to have to take into consideration based on what is there, what we want there, and how we see it going forward. And because we're making this conscious decision to not make this another city division, I think we have to look at it very differently. That is the same with this compensation issue for the board and things, we just have to look at it different than we are accustomed to from the seats that we are in.

John Patenaude

Because you are making a big investment and you don't want to lose that investment day 1 right. You have to keep people motivated to run the business so that it is generating money to pay down your debt. You have to keep that in mind.

Mayor Lozeau

And delivering a quality product, which is really the whole point of this whole undertaking.

Alderman Deane

Who is going to set the compensation the sole shareholder or the board of directors that is approved by the sole shareholder?

John Patenaude

Typically compensation is approved by the board of directors.

Alderman Deane

So until the board of directors is in place nothing else will be happening then?

John Patenaude

Depends on if you only have 1 director by the time you are ready to go then the Board of Aldermen here has the ...

Alderman Deane

So basically we kind of have a problem because we are at the mercy of people that work there now when you think about it aren't we?

John Patenaude

Well when you say at the mercy...

Alderman Deane

We are at their mercy because we have little or no idea, maybe a concept of how the system is run, but when you get into the bowels of it the people that are currently employed there have that knowledge...

John Patenaude

That is correct.

Alderman Deane

So we are at their mercy so basically they are going to dictate the terms to us so when we look at their salary compensation along with their stock options along with all of the other bonuses and things I'm sure that when negotiations take place knowing that those things are going away and knowing the position they are in which is definitely the driver's seat, they will be dictating the terms of their compensation packages to the boards of directors. I don't think the board of directors will be telling them what they are going to be paid.

John Patenaude

It becomes a negotiation put it that way. A person can take a short-term view for themselves and forget the long-term because whatever you do in the short term comes back to haunt you later on in your career. Most reasonable people would negotiate in good faith.

Mayor Lozeau

And part of this too that I am considering when proposing or recommending any of this is when we were first looking at this and we were looking at Veolia being the operating company, there was a certain cost to that and we were looking at Beck having the oversight of the operating company and reporting to us on how that was working and there was a cost associated with that. When we come into plug and play, I think the one thing that has been pretty consistent is there hasn't been any complaint about how well Pennichuck has run its operation or the product it has delivered, and so if we are taking out those two layers; we don't have Beck and we don't have Veolia, and instead we have a new CEO and we keep the operations person and some of that level of staff, those cost savings just from not having those operational contracts should have a significant impact, and I don't mean that to say so we have money to burn by any means, but we certainly have to look at companies of this caliber and what they pay their CEOs and their operations people and the ones doing the real heavy lifting.

Knowing that one of the things that we are looking at for a board of directors especially as we have said that we are going to compensate are people that are going to come with a skill set that look at operating a company like this. It is not just going to be a volunteer group that is coming in and sharing their opinions and voting up and down on things, they are going to bring bringing a level of expertise to the table that we are going to have to count on to be able to make these decisions. So I think there is significant cost savings there that we should reinvest in people that can do the job we are asking them to do. The last thing I want to do end up having the city, as you hear some people say, in the water business and not running it. You can't fill a pot hole, but you are going to...you know I mean, although I will say we are filling pot holes, but the point I am making is there are a lot of people out there that are very worried about how the city is going to operate this company and I think we have to make sure that we hold things to a certain standard, and we are not going to do that by compensating people less than they could make at another water company of this same caliber. I think we have to keep that in mind.

Alderman Sheehan

This is a rather interesting example or rub of the old argument that well private sector versus public sector and pay versus benefits. I think this is the first time that we are having a really good look at are private benefits so much less expensive, are private pays so much more. I think these are the examples we are going to see that yes in a free market people are compensated when they are professionals and doing a specialized job that you have a specialized set of knowledge for and we need that. We need to have them there, and there are other water companies. There are huge ones and they could go work there or we should be bringing people in from other water companies as well and they are not going to want to come to a company that is paying less just because the sanitation department head makes more. It is irrelevant. It is their profession and there are going rates and you can't just walk in and say okay we would like everybody to be paid 30% less. It is going to blow up the company that way. We need to keep it as smooth as possible. That is just editorial I guess.

Chairman McCarthy

So from here how long is it going to take to...

John Patenaude

I will talk to Bill tomorrow. Hopefully a couple of days max.

Chairman McCarthy

Can we get a new draft out by the end of the week?

John Patenaude

Yes.

Chairman McCarthy

And I will schedule a meeting for the beginning of next week.

Mayor Lozeau

You probably want to schedule a time for walking through the DMA and answering any questions there. Maybe it can be the same night if we only have a few loose ends.

Chairman McCarthy

Anything else we need to talk about this evening?

Alderman Pressly

May I just bring up something? Someone sent me a letter of September 27th referencing Anheuser Busch and some negotiation.

Mayor Lozeau

Is that the letter from Mr. McGreevy?

Alderman Pressly

This one is from Deborah Howland.

Mayor Lozeau

Well that is the PUC.

Alderman Pressly

Right. Did the parties to amend the procedural schedule in the above referenced matter, the company's special contract with Anheuser Busch – it appears as though there is going to be some renegotiation with the contract with Anheuser Busch?

John Patenaude

I saw that letter today. That was the extension I believe for our filing of contracts, Veolia and Beck and also answering of the questions and also on the Pennichuck side while they are working on temporary rates. I know also the PUC is looking at the Anheuser Busch rates.

Alderman Pressly

Well we talked at one time there were lots of rumors floating around and it just seemed like this sort of confirms something is happening with their contract.

John Patenaude

I viewed the contract, I looked at that contract. That contract if they were giving notice today they would have to give four years notice so they couldn't get out of it until 2014. The contract goes until 2015 by its natural terms.

Alderman Pressly

That is for both parties?

John Patenaude

For both parties. Well no we're suppliers so they would have to give us, if they wanted to get off our system, they would have to give us a four year notice and there are minimum payments during that 4 years.

Alderman Pressly

Thank you.

John Patenaude

So it is very unlikely while they may be planning something for 2015, I think in my personal opinion it is very unlikely that they are planning on ending the contract prematurely.

Alderman Pressly

Thank you.

Chairman McCarthy

They being Pennichuck or...

John Patenaude

No, they being Anheuser Busch.

Chairman McCarthy

Is there anything else?

MOTION BY ALDERMAN PRESSLY THAT AT THE COMMITTEE SEAL THE MINUTES OF THE NON-PUBLIC SESSION 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 Deane, Alderman Pressly, Alderman Sheehan, Alderman Wilshire,
Alderman McCarthy

6

Nay:

0

MOTION CARRIED

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

MOTION CARRIED

ADJOURNMENT

MOTION BY ALDERMAN PRESSLY TO ADJOURN

MOTION CARRIED

The Pennichuck Water Special Committee meeting was adjourned at 8:55 p.m.

Alderman-at-Large Brian S. McCarthy
Committee Clerk Pro Tem