

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

OCTOBER 6, 2010

A meeting of the Pennichuck Water Special Committee was held on Wednesday, October 6, 2010 at 7:45 p.m. in the Aldermanic Chamber.

Alderman-at-Large Brian S. McCarthy presided.

Members of the Committee present: Alderman-at-Large Barbara Pressly
Alderman Michael J. Tabacsko
Alderman-at-Large Mark S. Cookson
Alderman Jeffrey T. Cox

Members not in Attendance:

Also in Attendance: Alderman-at-Large Ben Clemons
Alderman Arthur T. Craffey, Jr.
Alderman-at-Large David W. Deane
Alderman Richard LaRose
Alderman Diane Sheehan
Alderman-at-Large Lori Wilshire
Alderman Richard P. Flynn

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 LAROSE

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

Yea: Alderman Pressly, Alderman Tabacsko, Alderman Cookson, Alderman Cox, Alderman McCarthy, Alderman Clemons, Alderman Craffey, Alderman Deane, Alderman LaRose, Alderman Sheehan, Alderman Wilshire, Alderman Flynn

12

Nay:

0

MOTION CARRIED

The audio recording of the non-public session malfunctioned and did not record the beginning of the meeting wherein the committee discussed draft articles of incorporation and Article 1 of draft by-laws Attorney McNamee presented to the committee for consideration. No motions occurred during the malfunctioning of the tape.

James McNamee, Esq.

...about the documents of the operations of the corporation and I would suggest most of those water quality documents are available anyway because it is going to be a regulated entity and were there a concern with

that it could be raised by the sole shareholder with the board of directors and the shareholder then could demand from the directors the water quality information. So you would have access to that. I will offer this, living with the Right to Know Law as a municipality it is a great expense and you don't want to add the expense to the ratepayers of having to comply with numerous document requests from anybody who walks in. I think you want to be able to request them as the sole shareholder through your normal channel.

I would suggest that you probably don't want to go so far as to say, aside from the board of directors, that the entire corporation has to comply with the requirements of the Right to Know Law. I am not entirely sure that a court would find that...that you could grant that jurisdiction to a court because this is not an entity that is defined under the Right to Know Law as being subject to it. I don't think we would be able to import all of the case law and the Right to Know Law into an interpretation of this board's determination or the board of Pennichuck's board's determination that the Right to Know Law as it applies to documents should apply to the corporation.

I think you get most of what you want by simply saying that as directors your bylaws says you must comply with the Right to Know Law, which would include also producing their documents.

Alderman Pressly

As need be you could request if some thing came up that you wanted...

James McNamee, Esq.

As the sole shareholder yes.

Alderman Pressly

Thank you.

Alderman Cookson

Thank you. I am wondering, to Alderman Pressly's point, and the idea of a board of directors, is it possible that a board of directors could set an expectation or a practice or a policy that says this information is going to be public? Just taking Alderman Pressly's inquiry about water samples, could it not be the board of directors that establishes a practice that says our water samples are going to be made public and this is the practice that we are going to do from this point forward? Is that something...rather than waiting for someone to come and request the information the board of directors has every purview to do that. Is that correct?

James McNamee, Esq.

They could.

Alderman Cookson

Thank you.

President McCarthy

Last call on Article I. Moving on to Article II – Section 1 – Establishment of the Board of Directors – is there any questions or comments on that section?

Section 2 – Number and Qualifications?

Alderman Cookson

Thank you. I had a question about Section 2, paragraph 3, and the way it reads “at least one shall be a person who take water service from Pennichuck Water Works.” Again it is the term person and is that the general or a natural or unnatural person? I wanted to say unnatural person earlier.

President McCarthy

That one should be a natural person.

Alderman Cookson

Okay so it is a natural person, but I thought that at one point it was not an individual that took the water service, I thought it was an individual within a community that took that service so that you didn't restrict it to a person that took the service.

President McCarthy

I think we went around on that a couple of times, and we initially had two numbers in there one of which was Nashua residents and one of them was 1-3 as you said people from communities that took it, and I think through some magination we changed to putting some general qualifications after we had a discussion of not wanting to preclude someone who wasn't either a Nashua resident or a member of one of those towns, but had unique skills that we thought were wanted.

Alderman Cookson

I remember having that conversation. But I believe the way that this is stated it says that the person that you select that is outside of the City of Nashua that person has to receive the service, has to have water from the utility.

James McNamee, Esq.

It is written that way.

Alderman Cookson

Again, I thought our goal was to make it as flexible so that if someone in Tyngsboro had the skill set that we wanted to bring in or someone from Merrimack had the skill set that we wanted to bring in on to the board of directors and they don't receive the water service, this excludes them. I think it needs to be re-stated to say that it is a person who belongs to a community that takes the water service from Pennichuck Water Works.

President McCarthy

I think the rationale is there are 7-13 directors and 5 of them must be from Nashua and 1 of them must be a person who is outside of Nashua...and I am not sure that says it has to be someone outside of Nashua.

James McNamee, Esq.

No it wouldn't have to be.

President McCarthy

It says that they may or may not be from Nashua, but do take water service from Pennichuck. That totals 6, which means the other 7 can be non-Nashua residents and non-consumers of the system, which I think covers...

James McNamee, Esq.

Mr. President in fact the way you have written it here so far I think those 5 residents of Nashua don't necessarily need to be consumers of water from the utility either.

Alderman Cookson

And I read it that way so I understood the 5 residents within the City of Nashua. So we have the Mayor, we have the 5 residents in the City of Nashua so that makes 6, you have at least 1 person who takes water service so that gets you up to 7 and that person may not be a resident of the City of Nashua, but the other potential 5 members of the board of directors can be anybody from any community?

President McCarthy

Yeah.

Alderman Cookson

Alright.

President McCarthy

I don't know if that is general enough or not, but...

Alderman Clemons

I read it differently. The way that I read it here is #3 says at least one shall be a natural person who take water from Pennichuck Water Works who may not be residents of the City of Nashua – the way that is written is that could be ..okay no I am sorry I read that incorrectly. I take back what I said.

Bill Ardinger, Esq.

I think you are on to something. I am finding another mistake that I made.

Alderman Cookson

All these three paragraphs do, these three paragraphs get you to the number 7 and that is all it does. It gets you to the minimum number and then you have the additional 5 or 6 people on top of that that can be put to the board of directors that can be from any community and it does not have the condition that they specifically need to have the water utility at their residence.

Alderman Clemons

Right.

President McCarthy

And ...

Bill Ardinger, Esq.

And I think the one thing is...what I meant it to mean at the end is that I thought what I had reported back was you were looking for non-residents of Nashua in that last one and so that is supposed to read who cannot be a resident of Nashua in paragraph 3.

President McCarthy

Okay.

Bill Ardinger, Esq.

And it didn't, this didn't put a cap on that like at least 1 but not more than 3. It was leaving a lot of flexibility. I don't know that I made a mistake on this one Mayor I just want to make sure that I properly heard. I made plenty of other mistakes. So it is what you want, but I wanted to say what I was writing and I may not have written what you want.

President McCarthy

May I suggest to make that unambiguous if we want this not to be a Nashua resident at least one person shall be a natural person who take...at least one is take. At the end instead of who may not be residents should say and are not residents...

Bill Ardinger, Esq.

Or who shall not be a resident of the City of Nashua. Okay. Understood. But does that Alderman McCarthy leave you the flexibility that you were describing to the board because you can go up to 13 and then you have a lot of room.

Alderman Deane

You are leaving residents plural?

Bill Ardinger, Esq.

No in the re-write...

President McCarthy

The paragraph is essentially plural except that it is written in the singular because it is at least 1.

Alderman Deane

So you are taking the "s" off of residents?

Bill Ardinger, Esq.

Yes now we are with the shall who shall not be a resident of the City of Nashua. At least 1 who shall not be a resident.

Alderman Tabacsko

We can have more in that category, but...

President McCarthy

In that case, it should be takes water.

Bill Ardinger, Esq.

Exactly right.

Alderman Clemons

Thank you. Going back to #1, which is 1 shall be the Mayor of Nashua by virtue of holding the office, I think the Mayor and I had discussion with Alderman Pressly briefly about this, I think that maybe we should perhaps limit that to the first two years or something like that. In other words, if you go down to the director in Class A you know the Mayor would fit under there for the first, a term to expire in 2012 or 2013 or something like that and then their replacement be someone else that the board of directors chooses. I don't know how we would word that, but to fit the Mayor into one of those initial periods of time and then write it so that the appointment after is someone else that fits the criteria listed in there. I think that would be a good way because the Mayor is right she would be an asset to the board to have on it and I think it is something that we want to make sure should Mayor Lozeau be the Mayor at that time going forward that we have that and even if she is not the Mayor it doesn't matter anyway we will just have that in there as the case.

I think it strikes a balance between the two of you want to make sure that the transition goes smoothly on the board and you want to make sure that everything is going well and to have that experience there to kind of get things going and then thereafter remove that, for the concerns that I stated previously which is you don't want too much control coming out of that office.

Now the other portion to that would be changing the way the appointments are made, but I think that is a separate issue we can talk about separately. My suggestion would be to fit the Mayor into one of the classes listed below specifically and then have that term expire to be however we make the appointments thereafter.

James McNamee, Esq.

I think the simple way of doing that would be to simply list where you have the initial directors instead of saying Mayor just say Class A and name the Mayor as one of those initial directors. Then you would amend the prohibition to be except for initial directors, the Mayor and a member of the Board of Aldermen would be prohibited and you would take out in the first paragraph the 1 there, that 1 person would be the Mayor. So you just take all of those out and then that would achieve what you were looking for.

Is it the desire of the board to have a majority of residents of the City of Nashua represented on the board of directors?

Alderman Pressly

That is what I want to bring up.

James McNamee, Esq.

Instead of saying 5 you might just say a majority of the board and then you constitute the initial board as 7.

Alderman Pressly

Or percentage.

President McCarthy

The discussion that we have had has gone back and forth with do we want it to be predominantly Nashua residents or do we want it to be predominantly professionals who understand how to run a water company. I think the last discussed sentiment the later of those was the more popular option, which is why it was amended back to 5.

Alderman Pressly

That was when the Mayor was going to be on it forever. With not having the connection of the sitting Mayor that changes things. I think it should be a percentage.

President McCarthy

I think that gets you back into the we have to pick people based on where they live rather than whether they are qualified to be on the board. Basically we say there are 85,000 from whom we have to draw most of the expertise and 300,000,000 from whom we miss.

Alderman Clemons

Right.

Alderman Sheehan

Just to illustrate that, how many director positions have we only had people from the City of Nashua be allowed to apply for or have we only hired if they lived in Nashua? It is very concerning that it severely limits our pool. For the Superintendent of Schools we cast a wide net. I think we're better off doing that, and we would also probably eliminate most of the existing board. If we wanted to do plug and play with the existing board if they don't live in Nashua they would be eliminated. I hate to see the possible talent eliminated because they don't have real estate in Nashua. The best brains don't necessarily live here. To get the widest net to make sure you have the best.

Alderman Pressly

I don't feel strongly about that one way or the other, but a couple of other things I would like to bring up related to this; there are some relationships with municipalities that they really don't have water, they give services. I was wondering if it might be more appropriate to say the municipalities having a business relationship.

President McCarthy

I actually don't think it is because there is a large difference between the ones that receive water service from the regulated utility, which has a charter monopoly on some connections in their town at least and the ones who deal with Pennichuck water services who do that by contract. They can contract that service somewhere else.

Alderman Pressly

I do have one other thought and this I think is new. I believe at one time the employees of Pennichuck, a certain number of them, were also members on the board. I think that would really serve us all well to have, and there is one person who comes to mind and the Mayor has mentioned him before, in all of the time I have spent studying this and going to things and particularly at the PUC there is one individual at the water company that everybody relies on and his name is Don Ware. I think it would really, I am not sure what his title is right now, but he is the one who consistently showed up at the PUC, the staff of the PUC relied on what he had to say, the board of directors relied on what he had to say, and at one time people in that capacity were actually members of the board of directors. I think that would really be a smart thing to do to have at least one person and maybe more that are the hands on people in the company that have a voting voice on the board of directors.

It educates them, it makes for a better transition and you get a quality of information. You can always have them come in and tell you, but having them there and interacting on a constant basis. I am pretty sure it was done in the past and is probably a thing that corporations do occasionally. I would like to maybe even be specific to the name of that person to be on the board.

Bill Ardinger, Esq.

Can I just make a comment? It used to be that way, but in the last 5-10 years it hasn't been because the role of the board has been defined as to really manage the managers of the company and the managers run the company. The board members in essence don't run the day to day operations of the company. It is the managers that do that.

Alderman Pressly

Is this just for Pennichuck or is this a corporate policy?

Bill Ardinger, Esq.

No it is across the board to all companies. There are very few companies, there are some companies that might have the CEO on the board, maybe a CFO, but the likelihood is going the other way in all corporate governance areas.

James McNamee, Esq.

Alderman Pressly I might point out your point about Mr. Ware is well taken. It is a good point about Mr. Ware and we do hope, that is part of the plan really that we need to talk about would be to try and retain him at the corporation.

Alderman Pressly

If we have a transition period for the Mayor possibly it would be appropriate for a transition to have this person.

President McCarthy

There is a real problem with trying to do that. If we pick a person from the corporation and put them on the board they are then their boss' boss because they work ultimately for the CEO of the corporation whom they hire as a member of the board of directors.

Alderman Pressly

I think it is critical to keep this person really involved. He is the one that the PUC relies on...

President McCarthy

I think it is and I suspect in...

Mayor Lozeau

Keep him in his job.

President McCarthy

...yeah. In any discussion we have ever had of this it is assumed that individual will be around and likely in a position where they will be at the board of directors' meetings. They may not necessarily be a voting member

of the board, but are likely to be important in the executive staff of the corporation. I think it does cause a lot of management complications if you make someone other than the CEO a voting board member from the management.

Bill Ardinger, Esq.

I would just like to comment typically what happens in board meetings it is not just the board of directors it is the whole management team that represents themselves to the board of directors and how they run the company and to give vital information so that the board itself can make the assessment relative to not only employees but the strategy and where the company is going. That is the normal governance for companies. Thank you.

President McCarthy

What else is there on the board of directors?

Alderman Cookson

Thank you. I had a question about board of directors Section III the election of, specifically when we talk about the directors in Class A shall have their term expire in 2012, 2013, 2014, I don't know how you feel about this, but I know that we have experienced delays already. I don't know when we are going to close this deal so I would rather have some language around directors in Class A shall have their term expire a year from being elected, Class B would be 2 years from their election, and Class C 3 years from their election.

Bill Ardinger, Esq.

Understood.

President McCarthy

I think that is an excellent way to do that unless someone has objection to it.

Alderman Sheehan

Rather than election could we do from execution of the new sole ownership because otherwise...

Alderman Cookson

It actually states in the paragraph it says having met the qualifications set forth above shall be elected by the sold shareholder at the annual meeting. So I think election is an appropriate term.

President McCarthy

Election is correct because they will be re-elected at the annual...the directors are re-elected at the annual meeting.

Alderman Clemons

With the exception of course of the Mayor.

President McCarthy

Right.

Alderman Sheehan

I think that we might have jumped out of order because I thought we would be going through the shall not section and we just kind of jumped because I had points on the shall not, if we could back up a little bit.

President McCarthy

Go ahead.

Alderman Sheehan

On Section 3 I thought we had said two years for the Mayor and one year for all others.

President McCarthy

I think Section 3 is going to change so that it is the same for ...oh I see, no I thought we said two years for everybody in the end.

Alderman Clemons

What?

Alderman Tabacsko

We talked about it both ways and I forget how it and I missed that last meeting...

Alderman Sheehan

I though it landed 2 and 1 is what I had written down, but I could be wrong.

Bill Ardinger, Esq.

Which was the one?

Alderman Sheehan

I had 2 for the Mayor, sitting Mayor, and then 1 for anybody else.

Alderman Pressly

I thought it was 2 for everybody.

Alderman Clemons

I am sorry where are we?

President McCarthy

We are in paragraph 3 of the shall not be.

Alderman Sheehan

I thought we said 1 year because in most industry non-competes it is 1 year.

President McCarthy

We discussed it. I don't know whether we changed it or not. It is not a non-compete clause it is a...

Alderman Sheehan

Right.

James McNamee, Esq.

Non interference clause.

President McCarthy

I personally don't care one way or the other, but would prefer it to be 2.

Alderman Sheehan

Okay. My concern is if we are spelling it out specifically and naming Mayor and now we are talking about having a transition time and accepting the first one...

President McCarthy

I think that section is going to be re-written based on what we discussed about the Mayor's term on the board. It is written the way it is because it had to exclude the Mayor as an ex officio member so now it just becomes a prohibition on other than the initial term for the Mayor, no member of the Board of Aldermen, the Mayor, or the Board of Public Works can be a director for a period of X after...

Alderman Sheehan

I am just wondering if maybe the Mayor ought to ring in on that because if God forbid she is not Mayor does she want to still do it. Why would it be different?

Bill Ardinger, Esq.

The only reason I am jumping in is because I wanted to run something by – the Class A thing, which I know what you are trying to do, might not work exactly right. This provision, the best way to think of it is the provision that stops elected officials or members of administrative agencies from becoming lobbyists. You can't do this for 2 years afterwards. This is saying if you are a Mayor of the City of Nashua and you resign so you are no longer Mayor, there is still a 2 year cooling off period so even if you said I guess you are right and these were the changes that you would make – on the front one is it until...what is the period that you would want the first Mayor to serve by virtue of her office? We have just changed the date so it is not going to be until December 31, 2012. Is it for one year after the closing, which Alderman Sheehan you are right on that the closing it is automatically they will be on this board so is it one year from the closing or is it two years from the costing for that, and think about this Mayor possibly. Which were you thinking?

Alderman Clemons

Myself I was thinking 1, but...

Bill Ardinger, Esq.

Okay.

Alderman Clemons

Well no but for the Mayor though...

Bill Ardinger, Esq.

That is what we are talking because we won't put...I don't think it works to put her into the class because the classes are really for the elected ones so you want a rule that says until 1 year after the closing, 1 shall be the Mayor of Nashua by virtue of the office. Then down here you say after that 1 year period the Mayor cannot be a member of the board and then that will ...but then you still the Mayor won't be, but a person who formerly was a Mayor could be so you would need to put in some two year...you will still need it in that section. I guess the first question is think of it in terms of what you have how long do you want the Mayor to serve on the board by virtue of her office?

Alderman Deane

Mr. President can the shareholders suspend these bylaws?

President McCarthy

The shareholders can change the bylaws yes.

Bill Ardinger, Esq.

Amend them.

Alderman Deane

They could suspend the rules of the bylaws that are in place and make exceptions to whatever...

President McCarthy

Can't suspend the rules can amend the bylaws. What I want to do with this, I think we understand what we are trying to do, let's just get the parameters down and let them draft language. We want the Mayor to be on as an ex officio member for 1 year or 2?

Alderman Tabacsko

I am going to say 1 year and the reason is kind of pragmatic. Given the uncertainty of timing on this thing the longer that period of time is, and I think that first year is the crucial year number one, but the longer that period of time is the more likely you are going to bump up against a election cycle and I think that muddies things up quite a bit if at some point in that term there is an election and so now you have two different people serving by virtue of the office. To try and avoid that I am saying the 1 year is how I would go.

Alderman LaRose

I think it is better for 2 years for the reasons that my colleague here stated that you could have a Mayor that starts depending on when this comes about and that Mayor could be on the board for only 6 months and then the new Mayor would be on it for 6 months. If a scenario of that kind happens to give the Mayor who comes in after the fact more time to understand ...

President McCarthy

On the other side of that, if the Mayor who comes in next is not someone who has been involved in these proceedings what value do they bring to the board of directors on day 1 of their tenure as Mayor?

Alderman Tabacsko

I could be convinced either way.

President McCarthy

I don't feel strongly about it I just want to get to alet's pick a number one of two.

Alderman Clemons

Shall we take a vote?

Alderman Sheehan

Yes.

Mayor Lozeau

I guess I would just...

President McCarthy

Why doesn't someone make a ...

Alderman Tabacsko

I would like to hear from...

Mayor Lozeau

I am just thinking that the way that this is playing out, we all know when the election is, September of 2011, so by the time we get all of this wrapped up if it is me I think 2 years is valuable and I think I bring enough to the table that 2 years would be a valuable time to be in there to figure out who the board of directors are, to know what we want to do and whatever might have to happen. If it is not the Mayor that brings the history and I don't see anything that a new Mayor would bring to the table in that instance. I don't know how to capture that. If it is this Mayor it is 2 years, but a new Mayor it is no years. I don't know how to do that exactly and I don't know that we have to...

President McCarthy

Of course if the new Mayor is an ex president of the water company...

Mayor Lozeau

Let's just say the current Mayor doesn't ever want to be that. It is hard to get anything really done in a year.

James McNamee, Esq.

Would it accomplish that goal if that were the goal they decided on to have the continuity to just name Donnalee Lozeau as a Class B share, which is I think a 2 year term? One of the initial directors for Class B not shares, but Class B term?

Bill Ardinger, Esq.

Yes that would work.

James McNamee, Esq.

It is a lot simpler than talking about this Mayor, that Mayor or whatever, if you just decide that you name this particular individual as a Class B.

Mayor Lozeau

As long as we make sure I guess that if I am not the Mayor that I am not there right because I know that some of you don't want me...

Alderman Clemons

The point you may resign...

Mayor Lozeau

Resign okay.

James McNamee, Esq.

This is just a policy thing that you are thinking about. I just wanted to point out the point that you are making Mayor is that you have this history of bringing it to this point and can bring that forward in the interests of the city. It is not as Mayor but because you have been involved in it. You have been involved as Mayor, but it is because of your involvement so even if this deal didn't close until after the next election and you weren't re-elected Mayor you still would bring that to the table, the continuity. That is the policy decision the board has to determine whether or not they want

Mayor Lozeau

I think the board would be okay with it if I didn't get paid like the other board members. We had that discussion too.

Alderman Clemons

Appreciating everything that has been said I think for simplicity sake we ought to just make it a year and state that it is the Mayor. The other thing is you have to, once we get this done we have to explain to the public why everything was done. I just think if we make it the office of the Mayor that is a year and that is it. I think that regardless of who the Mayor may be they will bring some kind of value to the table just because of the office that they hold and I mean that is who the voters trust and put into office. You have to have a little bit of faith in the system and I think one year although maybe that is not what everybody would want as far as a timeframe, I think it is a good compromise considering that an election could go either way.

MOTION BY ALDERMAN CLEMONS THAT THE MAYOR SHOULD BE A MEMBER OF THE BOARD FOR A PERIOD OF ONE YEAR

Alderman Deane

I have a Point of Order Mr. President. We have made significant language changes throughout this document and now all of a sudden you are asking for votes on changes.

President McCarthy

Because this one there is not general consensus on. We have had almost an hour's worth of discussion on these three paragraphs and I would like to get us through some more of this document.

MOTION CARRIED

Division Taken

Alderman Clemons

To Alderman Deane's point, this is going to be drafted the language that we discussed this evening and we are going to have an opportunity to read it and come back and further discuss it. That is my understanding right?

President McCarthy

Yes.

Alderman Clemons

So nothing we are doing here tonight is final.

President McCarthy

No.

Alderman Clemons

Thank you.

President McCarthy

If we believe we would have greater consensus by making it 2 years let's change it now. I don't want to have to do another draft after the next one just because we changed our mind again so let's try to get stuff hammered out tonight in a form that is going to be as final as we can.

Alderman Pressly

Just to help me out a bit, if I understand how this is going that initially the Mayor will serve on the board and this board will nominate and create the board of directors.

Alderman Clemons

We haven't gotten to that point yet.

Alderman Pressly

And thereafter they will carry on?

President McCarthy

We have not had that discussion yet.

Alderman Pressly

Maybe it would help to see it that way.

President McCarthy

It might, but then we can just go around in circles some more. We need to take these up one at a time and get to some decisions on them. The question that was put on was do we want the Mayor on the board for some period of time, Alderman Clemons offered a motion that that time should be 1 year. It appears that is not a large majority sentiment and I don't know whether the other members of the board feel it should be 2 years or it should be forever or what the difference is. I don't want to get to a point where we are going to come back to this and it is going to be the deal breaker when no one around here said they care.

Alderman Pressly

That is true so could those who don't could you give your argument or your point of view so we could settle this?

Alderman Cookson

I was just going to ask is there any time span beyond 2 years that anybody was considering. Is it just 1 and 2 years that are on the table? Are those the only two options that people were considering within the room tonight?

Alderman Tabacsko

In my case yes.

Alderman Clemons

I think so.

Alderman Sheehan

Would people be more comfortable with 18 months?

President McCarthy

Is there anyone who wants it to be longer than 2 years? Okay. Is there anyone who is deathly opposed to it being the 1 year that we just decided?

Alderman Cookson

I just don't think it is long enough. I think we're undertaking a new beast that we have absolutely no idea what we are doing, we are trying to get a board of directors, there is going to be a period of time where they are going to have to acclimate to one another and really understand the business that they are trying to drive on behalf of the City of Nashua as a corporation. I think it is going to take at least a year for them to start working together and I think they need another year on top of that. I would be more in favor of two years so that they could start working together and really understanding the intricacies of the business.

Alderman Craffey

I happen to agree with Alderman Cookson. I'm looking for continuity on this. This is a major change that is going to be taking place both for the city and the utility itself. Having a two year term regardless of the election outcome allows for continuity and someone in a leadership position to help gel the board together.

**MOTION BY ALDERMAN CLEMONS TO RECONSIDER AND THAT THE MAYOR SHOULD BE A MEMBER OF THE BOARD FOR A PERIOD OF TWO (2) YEARS
MOTION CARRIED**

Alderman Deane

Let the record reflect I did not vote.

President McCarthy

Did you say you didn't vote Alderman Deane?

Alderman Deane

No I did not.

Alderman Tabacsko

Are you okay with 2 years if I can ask?

Alderman Deane

I am not okay with this whole process. We make motions on some things with division and then we discuss it after the majority rules and then we go back and make another motion to change it back to the way it was.

Alderman Tabacsko

I think that was mostly to accommodate your concerns.

Alderman Deane

I think you are incorrect Alderman Tabacsko okay.

President McCarthy

The next issue we had was 1) do we think the provision for exclusion after holding office should be the same for the Mayor and for the members of the boards and 2) what do we think it should be one year or two?

Alderman Tabacsko

As I said earlier I missed an intervening meeting, but I think that two meetings ago I do recall discussing 1 year for board members and 2 years for a former Mayor or someone from the Mayor's position. I thought that made sense. If that is something that we can get to that would be my preference.

Alderman LaRose

My preference would be 2 years for everybody.

Alderman Cox

My preference is the same two years for everybody.

Alderman Pressly

Same.

Alderman Craffey

Same.

President McCarthy

I sort of feel like if we are trying to prohibit cross-over 2 years is better than 1. If we think there is someone that is going to have enough value that they should be in there in 1 year why would we have a delay at all? Unless there is strong objection I think we should make it 2 years for everybody. Are we agreed on that? Okay.

Alderman Clemons

One thing in here that I noticed and it is not a big thing, but it just needs to be corrected. When it mentions the Nashua Board of Public Works in here I think it is referred to the City of Nashua Public Works Department. It needs to be Nashua Board of Public Works. That should be how it is referenced.

President McCarthy

Actually it says a member of the board of the City of Nashua Public Works Department. It is the right people, but the name is correct.

James McNamee, Esq.

The department works for the Board of Public Works. Alderman Clemons I think has made a good point.

Alderman Sheehan

For the next paragraph are we doing now just the initial board shall be nominated by the Mayor and approved by the board? We had talked about having the board of directors self nominate.

President McCarthy

We are at the point where that might be the appropriate discussion to have.

Alderman Cookson

I actually had a question about what we were just speaking about so would it be okay to go back to that paragraph?

President McCarthy

Let's finish that up.

Alderman Sheehan

Sorry thought it was done.

Alderman Cookson

The second point in paragraph 3 says an elected official or of the governing body of the municipality ...I thought and I may recall incorrectly, but I thought even though the board of public works was specified, I thought that it also included employees of the public works department. I might be incorrect so correct me if I am wrong, but I thought it was board of public works and the public works department and I thought the paragraph a few sentences before where it said an elected official or elected body included the board of public works.

Alderman Clemons

It was actually my understanding that the term governing body meant like for example in Nashua it is the Board of Aldermen, in some other towns it is I don't know I guess it is the Selectmen. That is what I think governing body meant. We needed to specify specifically the Nashua Board of Public Works because it is not a governing body but it is a...

Alderman Cookson

But it is an elected body...

Alderman Clemons

But if someone is on the school board in Nashua or the school board in another town, that shouldn't necessarily...that position shouldn't necessarily prevent them from serving on the water board at least in my opinion, but if you are on a board that specifically deals with those types of situations and the board of public works every time we dig up the street you know...that is where I was coming from. To your other point, to the public works department I think we ought to expand that to just generally city employees and keep it so that no city employees may be on the board of directors.

Alderman Pressly

What about making it elected officials or ...

Alderman Cookson

Municipal employees. I thought we had that language in there at one point in time.

President McCarthy

I think we avoided elected officials because that excludes people like the selectmen, moderators, and ward clerks.

Alderman Cookson

I remember that conversation.

James McNamee, Esq.

And you need to be careful with municipal employees too because under our conflict ordinance municipal employees include a lot of your boards and commissions and volunteer like the Ira Harris Trustees and the cemetery trustees.

President McCarthy

If we refer to them as regular employees.

James McNamee, Esq.

Just employees yeah. And you should say the school district if you want school district employees not to be on it as well.

Bill Ardinger, Esq.

I understand excluding the Mayor and the Aldermen from the board of directors because you have a direct role in the selection of board members and you want to avoid the potential for creating a conflict of interest. What is the conflict of interest for people who are not the Mayor or an Alderman? They have no role in the selection of the board members.

President McCarthy

It is a small place they may well be friends of the Mayor or the Board of Aldermen.

Bill Ardinger, Esq.

But anybody could be. Then we should look outside of Nashua. I just need to ask the question because it seems to me that you are drawing a very broad brush of people to exclude who have no direct influence on the selection of board members.

James McNamee, Esq.

They are at least in theory subject to influence by the Mayor and members of this board, elected officials.

Bill Ardinger, Esq.

Elected official of a town not Nashua. An elected member of a school board of a town not Nashua.

President McCarthy

I don't think we are proposing at the moment all...

Bill Ardinger, Esq.

Just asking a selectman of Pittsfield.

President McCarthy

Are you asking that question about the elected officials or about employees?

Bill Ardinger, Esq.

I am asking about the exclusion, why the broad exclusion. I will happily step back.

James McNamee, Esq.

It is just employees of the city I think that were being discussed here not other towns. I think they were only discussing employees...

Bill Ardinger, Esq.

Of any municipality having residents served by any of the water utility subsidiaries?

James McNamee, Esq.

But those are elected officials.

Alderman Clemons

Just to that point, the governing body of these communities I don't think should be involved in much like we are, I think we should prohibit them from being on the board. That is just a conflict of interest in my opinion and it extends to the Board of Public Works in Nashua because as I have said, the water lines lay within our streets and that is the purview of that board. To me it is common sense. No disrespect.

Bill Ardinger, Esq.

It just seemed a very broad, much broader than I normally would have expected.

Alderman Tabacsko

I agree that the governing boards here and other towns, I am not sure I get why we would exclude any other like school board here or fire commission...

Alderman Clemons

We wouldn't.

Alderman Tabacsko

I thought that is where we had gotten to.

Alderman Clemons

No.

President McCarthy

Why don't we go through the prohibitions one at a time and see if we like them. The first one is a member of the Board of Aldermen or member of the elected governing body of a municipality having service from Pennichuck, which basically covers us and the boards of selectmen in the towns. I think we all agree on that one correct?

James McNamee, Esq.

Mr. President you did leave out though elected office and this is subject to interpretation that any elected office within any municipality which includes Nashua. So for instance board of fire commissioners was just mentioned. That is a municipal board with elected officials. I could read this wording to exclude the fire commissioners, but not the board of education because that is not the municipality that is the school district.

President McCarthy

So the question is do we want to leave “elected office or” in there or just restrict this to the governing bodies?

Alderman Tabacsko

I would like to restrict it to the governing bodies is my opinion.

Alderman Wilshire

I agree.

Alderman Clemons

That is my opinion. The governing bodies and the board of public works.

President McCarthy

So it sounds like there is consensus that we can strike “elected office or” so that it reads City of Nashua or of an elected governing body of any municipality having residents served by any of the water utility subsidiaries.

James McNamee, Esq.

Were you also going to include the Mayor in this?

President McCarthy

Yes and that would include the Mayor with whatever the appropriate exclusion is.

Bill Ardinger, Esq.

It will say something like except as allowed by this one appointment, the Mayor of the City of Nashua is excluded.

President McCarthy

So the next one is basically intended to exclude the public works director or a member of the board of public works of the City of Nashua correct? And we should correct the language to have those names. And we are all agreed on those?

Alderman Tabacsko

And the correct names are Director of Public Works or a member of the Board of Public Works?

President McCarthy

Yes, of the City of Nashua. And the third one is intended to exclude the Mayor, a member of a governing body, the public works director or a member of the board of public works for a period of two years after their term in those positions is complete correct?

Alderman Tabacsko

That is right.

President McCarthy

Are there any others that we need to put in there?

Alderman Cookson

Did I hear any comment about employees?

President McCarthy

There is not one at the moment.

Alderman Clemons

We probably should.

Alderman Cookson

Was I incorrect in hearing prior to us going through these three statements I thought there was again consensus about removing employees from consideration.

President McCarthy

Okay. So we want to add a 4 which is employees and which employees do we want to exclude?

Alderman Tabacsko

This is for the two year timeframe?

Alderman Clemons

This is just in general. If they are not an employee then two years after yeah.

Alderman Tabacsko

I don't remember this conversation so I am not sure I am as concerned, but I suppose there is...

President McCarthy

It is simpler if we don't try to impose a waiting period on an employee who leaves, and I am not sure there is a lot of purpose to that. I can go either way on it. Potentially there are cases where we do have an employee whose value as a director would be substantial and after they leave here I don't know whether we care of not.

Alderman Tabacsko

So just not a current city employee, is that too broad?

Alderman Cookson

I think two years is two years and if we are going to make two years for the Mayor two years for this type of person I don't think it is inconceivable that we would just be consistent throughout. As far as the type of employee I know that Attorney McNamee had raised concern about identifying that as a municipal employee. I am not sure how to identify them.

President McCarthy

It is either municipal or employee of the school district I think was Attorney McNamee's concern.

Alderman Tabacsko

But I think there are some volunteer and board memberships that fall under employee...

President McCarthy

I think we would want to do that as regular employees because I believe all of the...

Alderman Cookson

Regular employees of the City of Nashua?

President McCarthy

Yeah. I believe all of the board positions are categorized as special employees are they not Attorney McNamee?

James McNamee, Esq.

Most of the boards are special employees yes under the conflict ordinance. I just want to make one point for your consideration. We do have some employees in the city; you have excluded the director which maybe because of the director's position makes some sense. On the other hand in public works especially I realize it is the other end of the process, but in waste water you have a lot of people who possibly have the sort of expertise that you would not want to throw away by saying I don't want that person for two years to be a director of this corporation.

President McCarthy

There are two questions; 1) do you want them to be a director while they are an employee of the waste water system and I can see that there might be at least perceived conflicts there and then 2) do we want to put in place the two year prohibition afterwards. I am comfortable with it either way. I think we will be able to find directors even if we don't allow municipal employees for two years after they leave.

Alderman Tabacsko

On the two year prohibition I think the distinction in my mind anyway is that the two year prohibition that we have talked about so far has been on elected or certainly in the case of the DPW director that would be the one exception, but to extend that to the other employees it just feels like that is a little bit of overkill and maybe limiting. I am not as comfortable with the two year prohibition on someone who isn't excluded by virtue of having been elected to an office.

Alderman Clemons

I would agree with that last statement and the reason that I agree with it is because as an employee we are restricting them from being on this board so if they leave their employment ... we are restricting their involvement in here whereas if you are an Alderman you are involved because you are the shareholder. If we are restricting their involvement while they are a city employee, if they choose to retire or if they quit their job or move somewhere else and they have that expertise they weren't involved in the process while they were a city employee so I don't think that there should be a time restriction on when they can serve on the board if we choose to approve their appointment. I agree with Alderman Tabacsko on that.

Alderman Cookson

I will just finish up by saying you know we've always got the ability to go back and change these, I think for the sake of getting through this I think we maintain consistency, we say two years, we leave the paragraph as is and if we find that we have some extraordinary employees from waste water or whatever, any employee that might be capable or wanting to sit on the board of directors of said company we can always go back and change the bylaws.

Alderman LaRose

I agree with Alderman Tabacsko and Alderman Clemons. I don't think we should put a restriction on the employee.

Alderman Wilshire

I agree with that too. I don't think we should restrict former employees from serving on the board.

Alderman Clemons

Shall we take a vote?

President McCarthy

Does somebody want to make a motion?

MOTION BY ALDERMAN WILSHIRE THAT EMPLOYEES OF THE MUNICIPALITY AND THE SCHOOL DISTRICT BE EXCLUDED FROM MEMBERSHIP ON THE BOARD BUT ONLY WHILE THEY ARE EMPLOYEES

MOTION CARRIED

Alderman Sheehan Abstained

Alderman Deane Abstained

Alderman Deane

Did that include city employees?

Alderman Sheehan

Yes.

Alderman Deane

I will abstain too. My wife is a lunch lady. That was my reasoning for abstaining. Your Wife is a paraprofessional?

President McCarthy

Yes.

Alderman Deane

You have to abstain as well.

President McCarthy

I certainly don't want to see her be a director of the water company. I don't necessarily believe that given that what we are dealing with is not the specifics of any individual person that any member of this board has a problem with voting on that regardless of whether they have someone who would be covered by that prohibition or not.

Alderman Tabacsko

Can I just ask a general question? How late were you planning on going tonight? I have to be in Fairfield, NJ at 7:30 a.m. and I am driving, which means I need to leave at 3:30 a.m.

President McCarthy

So would you like to participate by phone when you are on the road? I think we are probably nearing the point where we should wrap up for the evening. I think we are actually through the ...

Alderman Clemons

We need to deal with the nominating process.

President McCarthy

Do we want to take that on and then adjourn after that?

Alderman Deane

I don't.

Alderman Clemons

I don't care I am just saying we haven't dealt with that and that is a big thing.

Alderman Deane

Why don't you put that up to a vote?

President McCarthy

What is the pleasure of the board do we want to try to deal with that now?

Alderman Wilshire

Yes.

Alderman Craffey

No.

Alderman Deane

No.

Alderman Pressly

No.

Mayor Lozeau

Mr. Chairman does it make some sense based on the discussions we have had around that for maybe Bill and John and Attorney McNamee to give some consideration to bringing a couple of options back maybe for you to think about on whether you prefer to go...you already know the first option, which you have talked about which is I nominate you confirm, but we haven't really put a lot of meat on the bone surrounding what if the board of directors did that. Maybe we could do a little work there and bring back a couple of things just for you to consider. That way you are at least looking at Option A, B, or C. Would that be helpful?

President McCarthy

If we have, do we have room for that in the process that is in front of us? When do we need to have closure on the articles and the bylaws?

John Patenaude

I would say ...

Bill Ardinger, Esq.

John while you are looking at the calendar if I might this is a unique transaction in so many ways there is going to be a long time between the time we sign this agreement and the time it closes if it does because of the PUC process. The parties can amend this merger agreement by mutual consent. I doubt the Pennichuck Corporation that we are contracting with if you wanted to make, direct me to make and others to make further changes, that we couldn't bring that to them and say would you agree that we can substitute this thing in the back. I think there may be some more flexibility. The work you are doing is so important though to get it done to the best extent because as soon as this goes public everyone will scour it. I think there is some room on the details, but the big issues you should slug through and get it done before this goes public.

Alderman Sheehan

Tonight?

Bill Ardinger, Esq.

No.

ohn Patenaude

I would say we want to have this completed and approved by the 22nd at the latest.

President McCarthy

Is that when we have to take a vote or...

John Patenaude

Let me just give you where we are in the schedule. We are in due-diligence currently. We expect to receive draft reports by the 15th or 16th, that will be the Nashua team. We will be sitting down with the due-diligence team the 19th, that is almost an all day meeting for us, and we would expect to bring those results to you after that, either the 21st or 22nd so that you could have the results and also the team, the due-diligence team, here to answer any questions as well.

If everything goes well we would expect to complete the DMA by the 22nd or 25th with your review obviously before that timeframe, and we would bring you up to date on any change from that, I don't expect that many, and you could vote some time during the week of the 25th. That is assuming there are no issues that develop on due-diligence or anything like that.

Alderman Cookson

Thank you. When that final due-diligence report is provided from the Nashua team and like you said I believe you said it was around the 19th that we might see it...

John Patenaude

It will be the 19th for us.

Alderman Cookson

For you. And then the 21st or 22nd...

John Patenaude

Yeah give us a couple of days to turn it around and summarize it. You will get the whole package but...

Alderman Cookson

I just wanted to make sure that was going...it wasn't going to be a presentation the evening that we saw it, we as a board would have time to review it and have the report carried to us.

John Patenaude

That would be the intent.

Alderman Cookson

Okay.

John Patenaude

And then you could review it and we could set the meeting up so that if you need 2 nights or 3 nights or whatever to review it and then at that time we would have the due-diligence team here. The Mayor and I and Bill and Art are going to spend probably 8 or 9 hours with the due-diligence team. I would expect that we would have the product for you and then the team members here to answer questions. I don't think you want to sit through 8 or 9 hours of information. That is up to you.

Alderman Cookson

It depends on the report.

John Patenaude

Again we will have the report, you can read through it and we will have the team here to answer questions. If there is any area that you want to focus in on they will be here to answer the questions.

Mayor Lozeau

Anything that we can get to you ahead of time...

John Patenaude

We will do that.

Mayor Lozeau

Like the DMA and things like that as we have been going along, we will get it to you ahead of time even if we can't get to it the night we are meeting.

Alderman Clemons

So I guess the question then becomes what days do we have available within that timeframe to go over the rest of this document?

President McCarthy

I will sort that out with Sue tomorrow morning.

Alderman Clemons

I guess the real question is do we have enough time before we decide to adjourn this evening.

President McCarthy

We are going to make enough time.

Alderman Deane

I would respectfully request that we don't piggyback these meetings onto anything else.

President McCarthy

I will not do that if there are options. This week there were no good options.

Alderman Deane

What meeting is there tomorrow night?

President McCarthy

I will be in Seattle tomorrow evening.

Mayor Lozeau

We are also trying to accommodate not just board member schedules and meetings but the folks that we are inviting here to join us as well, which is a challenge too.

President McCarthy

Is there any other business we want to finish before we move out of non-public session?

MOTION BY ALDERMAN COX THAT 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 Craffey, Alderman Deane, Alderman Pressly, Alderman LaRose, Alderman Tabacsko, Alderman Sheehan, Alderman Wilshire, Alderman Flynn, Alderman Cookson, Alderman Cox, Alderman McCarthy

12

Nay:

0

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

ON THE QUESTION

President McCarthy

Before I take the note on that I will note that there is going to be a gap in the minutes when they are transcribed because I noticed at some point earlier in the evening the recorder had not been on for some period of time. It has been on since before we started dealing with anything that we took a vote on.

MOTION CARRIED

ADJOURNMENT

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

The Pennichuck Water Special Committee meeting was adjourned at 10:30 p.m.

Alderman Jeffrey T. Cox
Committee Clerk