

REPORT OF THE PENNICHUCK WATER SPECIAL COMMITTEE

OCTOBER 20, 2010

A meeting of the Pennichuck Water Special Committee was held on Wednesday, October 20, 2010 at 7:13 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 (Arrived at 8:13)
Alderman Jeffrey T. Cox

Members not in Attendance: Alderman-at-Large Mark S. Cookson

Also in Attendance: Mayor Donnalee Lozeau
Alderman Kathy Vitale
Alderman Richard LaRose
Alderman Mary Ann Melizzi-Golja
Alderman Diane Sheehan
Alderman Richard P. Flynn

Chairman McCarthy

I believe that both Alderman Cookson is still traveling, and Alderman Tabacsko is at a meeting of the Nashua Regional Planning Commission which needed a quorum to get a vote on a transportation issue, so he is serving us well there.

MOTION BY ALDERMAN COX 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 COX 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 McCarthy, Alderman Pressly, Alderman Cox, Alderman Vitale, Alderman LaRose,
Alderman Melizzi-Golja, Alderman Sheehan, Alderman Flynn

8

Nay: 0

MOTION CARRIED

Mayor Lozeau

The purpose of tonight's meeting as we discussed at our last meeting is just to give you a snapshot of the due-diligence that we received yesterday. We spent about 10 hours yesterday meeting with each of our resources that we have hired throughout the process; Beck, GeoInsight for environmental, and the legal firm of Rath, Young & Pignatelli. We are not prepared to give you a really deep look, but we wanted to give you some of the highlight. John is going to walk you through that and when he is done giving you that snapshot we will talk a little bit about what this means about our schedule going forward.

John Patenaude

Do you want to talk about confidentiality?

Mayor Lozeau

One of the things that we talked about yesterday at some length with Attorney Ardinger was the concern about the information that we are gathering right now through due-diligence falls under the confidentiality agreement. Now I know you are all thinking what difference does that make everything we are doing falls under that? The distinction here tonight is that some of this discussion is not likely to be transcribed in public minutes because at this stage the information we have has been provided by the company to us and so it is not information about us making decisions about bylaws and articles and purchase and all that sort of stuff, it is really their proprietary information about their business. Bill wanted to make sure that I pointed that out tonight.

Alderman Pressly

I just have a question, once this goes public that there would be someone on our team that will sort of give the details to the press because I think it is going to be difficult for us to know what we can say and what we can't say. We can say how we feel about it and what is going forward, but I think as far as any details it would be nice if we...I presume there will be a person that we can say in order to understand the finite details to go to a central person.

Mayor Lozeau

What we are working on right now on a parallel track is the public presentation ...

Alderman Pressly

Great. Okay.

Mayor Lozeau

...that will be done here, and remember we talked about trying to do a road show in different communities so people could give us their feedback and that sort of thing so we are working on putting together a public presentation because I think that some of the point that you are raising is two-fold, one is let's not say something we can't say obviously, but two we have to be able to give enough information to people for them to understand the rationale by which we made our decisions. If we say well we can't tell them any of this then it is hard for them to have the confidence in the decision that we have made based on the homework we have seen. We will be addressing that.

Alderman Pressly

But at the same time, a lot of the press people I think will probably try to corner a lot of us and get some individual opinions, and they are very clever at soliciting information so it would be nice to be able to say for the details to call someone in particular.

Mayor Lozeau

Right and how we have done it in the past is Brian and I have coordinated together and then depending on what the subject matter might be, we will make sure there is a person that speaks. I think most of the Aldermen have taken the approach of I can't comment, the President speaks on our behalf. Between us...but you will also see the press releases that we are going to do so you can look at the press release and figure out

well I can talk about this...so if you really want to be in a position, but from my perspective if we focus on the press talking to specific people, but make sure...what I am more concerned about with the Aldermen is not how you talk to the press, it is how you are going to talk to your constituents that are going to see you and say so...and I want to make sure that we are all at a comfort level with what are those things that we can discuss pretty readily with people.

Chairman McCarthy

A good rule of thumb to use once this becomes public is that anything about the board's motivation in going forward is probably inbounds, things that one might use in order to decide whether the company was a good investment or not are the things that should be deferred somewhere else. We are going to unseal our motivation stuff and the only place where I think it gets dicey is where you are talking about the affect on the rates and what that means...you can make general statements like we know that the rate will be the same or lower over time, you can't say <REDACTION 1> because that discloses something about the company's financial performance...

Alderman Pressly

So speak in more generalities and maybe not be too specific.

Chairman McCarthy

I'd almost hate to see us take the absolute blanket I know nothing kind of approach to the press.

Alderman Pressly

The sensitivity is around information that impacts the corporation's business until the day that we take it over.

Alderman Pressly

Thank you.

Mayor Lozeau

This time I think the difference is, as I was saying Brian and I were kind of talking and handling it that way, the difference now is the press is going to have the opportunity to sit here and hear us talk and hear your motivation so they are going to get snippets of your comments and our discussion. I don't think they are going to feel compelled to try to talk to you kind of one at a time and get what they can out of you, I think that they might, depending upon what is talked about here publicly in the horseshoe, they may at the end of a meeting like they typically do call you aside and say so you were concerned about X, Y, or Z, and might ask you a little bit more about that so I think it is very different than what it has been to this point. I think that will help too and with Brian talking about those parameters.

Alderman Pressly

Thank you.

John Patenaude

Thank you. Let me just briefly talk about the process we have gone through. Legal reviews were done by Rath, Young & Pignatelli, and they met with the company personnel and also their lawyers to review old minute books and contracts and everything else. The operational review is done by R.W. Beck. They had interviews with both some of the senior management and with the next layer down of management and also had site visits to a lot of the locations. The environmental and OSHA review done by Geolnsight, they did site reviews

and also interviewed people that were running the plants. The financial review by Melanson Heath, Dave Heath and his team actually went to the Pennichuck auditors and reviewed their work papers and also have received tons of information from the company and talked to the company's financial people to complete their task, which isn't complete yet by the way.

Each group yesterday provided us an update and some of their preliminary findings, and due-diligence continues as we speak because we focused in on certain items that we need to get resolved. <REDACTION 2 >

John Patenaude

Oh yeah, but we have to get their permission. That is one of the items we have covered.

The last item I just want to make you aware of it, and I have been having discussions with Pennichuck for a couple of weeks on this, they are proposing to change their change of control agreements for some of the senior management. Some of the agreements today are for instance you get 2 years, but as you are working down if we keep a person for 6 months let's say you get 2 years less 6 months. They are trying to make it a hard 2 year rule so that no matter how long you keep the individual you pay 2 years. I am not happy about that.

Chairman McCarthy

That would be an incentive not to keep any of them wouldn't it?

John Patenaude

Well no but you know one of the things that was brought up yesterday by the operational review was you have good people to run especially operations and the customer service type, H.R. type areas so you have to be cognizant of that because those people don't get replaced day 1 because they are important, they know the business. You are almost making it so easy for them that to get out as well that I don't like it. I just don't like it because you are buying a business for its management as well as for the assets of the business. That is one of the issues that...

Chairman McCarthy

After a change of control event when does one of those employees who is covered by that effectively become an employee of the new company?

John Patenaude

Day 1. And there are events. Most of them have what I would call a double trigger which means that yeah you have a change of control, you have a new ownership, but you either have to be fired or you have to be moved outside of 35 miles or your job has to change substantially and that could be perceived as a change in control.

Chairman McCarthy

For what period of time does that take affect?

John Patenaude

That is for 2 years.

Chairman McCarthy

Okay.

John Patenaude

If the contract is too loose goosey people could argue that oh yeah you changed my job and therefore I can trigger the change of control and that is what we don't want.

Chairman McCarthy

The two year provision making it hard and fast of a payoff but that provision evaporates after 2 years right?

John Patenaude

Yeah except if the person can trigger it, if it is a single trigger versus a double trigger if the person can trigger the event versus the company triggering the event.

Alderman Sheehan

I am not sure I understand so I want to play it back to you in other words, and tell me if this is correct. So I am a senior manager and if I left the day this happens I get paid for 2 years, if I work for 6 months then I get paid for the 6 months that I worked and I only get 18 months of severance, so I get paid the same whether I work or I don't? So they are providing incentive for everybody to leave?

John Patenaude

Basically yeah.

Alderman Sheehan

I have a problem with that.

Chairman McCarthy

That is the way it is now.

John Patenaude

No right now you get paid for 6 months.

Chairman McCarthy

Right.

John Patenaude

So today you can't leave day 1. If I need you for 6 months or a year you have to say 6 months or a year as long as you are at the same job. I can't have you raising the flag every day or ...

Chairman McCarthy

So what we object to is the ability of the employee to claim their job changed.

John Patenaude

Right.

Chairman McCarthy

I see.

John Patenaude

Plus the two years. You are going to need people for a period of time and you have to make sure that whatever they are ...

Alderman Sheehan

Plug and play.

John Patenaude

...doing is covered.

Chairman McCarthy

Does Pennichuck have any explanation other than sticking it to us why they would do this?

John Patenaude

Their explanation is because they have three of those for instance Montopoli and Oliver and Leonard have a two year deal regardless of when they are let go, but they want to treat everybody the same. It doesn't happen that way in companies. It is whatever you negotiate on your way in and if you are not a good negotiator you get stuck right, but that is between you and the company not between you and the buyer or the old company and the buyer.

Alderman Pressly

Did I hear you say that they are going to do this they have not done it yet?

John Patenaude

They have not done it yet.

Alderman Pressly

Is this something that we can strongly object to?

John Patenaude

Yes.

Mayor Lozeau

That is what we are doing. We are just bringing it to your attention that is one of our concerns.

Alderman Pressly

Okay.

Alderman Sheehan

Would it be out of line to suggest a signing bonus if they walk away from that option and take a job with us on day 1 that they sign that away but they take a bonus like a hiring bonus?

John Patenaude

I would rather have a...

Alderman Sheehan

As a fallback?

John Patenaude

I would rather have it as a retention bonus at the end.

Alderman Sheehan

Yes. In any respect, but have the net same be it is bonus...

John Patenaude

You keep the hook.

Alderman Sheehan

Right. I'm just throwing that out there.

Alderman Pressly

Looks lousy.

Alderman Sheehan

They are torpedoing it.

Mayor Lozeau

I don't think management is necessarily pushing it because they are the ones who are very supportive of the plug and play so some of the motivation...

John Patenaude

There are a couple of people there...

Mayor Lozeau

Right I think it is individually motivated, I don't think it is a conscious thing by the management team saying let's you know because they are the ones who you know really supported the idea of plug and play so to undo it doesn't make...but it is a problem.

John Patenaude

Just makes our negotiation much harder...

Mayor Lozeau

Exactly.

John Patenaude

...with the individuals that we want to keep.

<REDACTION 3 >

Mayor Lozeau

And last night we started talking about some of this stuff and what is our strategy going forward. After ten hours of working on the due-diligence it just made more sense for us to all kind of sleep on everything and then come back and talk about it, but the initial strategy was all of those consultants have to make those calls to get that additional information that we need in order to have a logical discussion after a good night's sleep.

Alderman Sheehan

Did you?

Mayor Lozeau

Well. It was funny because Arthur hadn't been back to his office I think more than half an hour when he sent another e-mail. It was like did you like not go home from here. I will take a minute to say we have a great team. Between John and Bill Ardinger and the people we brought around the table we really had a great team. David Heath from Melanson Heath who does the city auditing who came in at a price that was I don't think even 1/3 of what we were going to look at paying.

John Patenaude

Not even 25%.

Mayor Lozeau

Yeah. To go in there and look at the books. He stayed for all of the due-diligence yesterday even though his piece was just this piece you know what I mean, and it was very helpful and productive during discussions with others, <REDACTION 4>

Mayor Lozeau

So as I said the pressure is off for next week. You can try to have a normal life for a little while.

Alderman Cox

For next week.

Mayor Lozeau

Right. Enjoy a couple of days. The other thing that we talked about and I was going to talk to Brian a little bit about it is the due-diligence information that we are getting is a foot high easily. For those of you that have seen an environmental report before you know what those look like and we have five of them.

What we are thinking we will do is keep a copy up in the legal office, keep a copy in my office so we will give you an executive summary for each piece of it, but if you wanted to go through the reports or anything yourself that you would be able to come in and do that. I don't think it would make a lot of sense to replicate all of those documents for 15 copies of all of that and that sort of thing. If nobody objects to that it is probably where we are going if that makes sense. Does that make sense? Okay.

Chairman McCarthy

I think so.

Mayor Lozeau

We are done now. Thank you for coming.

Chairman McCarthy

Let the record show Alderman Tabacsko has joined us. Alderman Tabacsko to bring you up to <REDACTION
5>

Alderman Tabacsko

If I may, and I apologize NRPC needed a quorum for transportation funding for the whole region. Has this taken the timeframe and...

John Patenaude

It has extended the time frame.

Alderman Tabacsko

...extended everything out considerably?

Mayor Lozeau

We are still working to meet the November 30th deadline with the PUC. The entire advisory group that Bill and John and all of us we are not convinced that we should change that date. We're working to get the information we need, hold their feet to the fire a bit, and still wrap it up by November 30th, but the next week or so you won't have to worry too much about coming in for a lot of meetings.

Alderman Tabacsko

Thank you.

Alderman Sheehan

So am I to surmise that we have checked the infrastructure and it is as they represent and we don't have any surprise unfunded liabilities?

John Patenaude

Yeah. So far.

Mayor Lozeau

We still need more information.

John Patenaude

We are still kicking the tires and making sure.

Alderman Sheehan

Does that have anything to do with the big push to finish the French Hill replacements that they weren't going to get to in this season that they are trying to get done over the next month?

Mayor Lozeau

I don't think it has anything to do with that other than ... I think that is more of the neighborhood's concern that I am still fighting with them over the driveway aprons on Granite Street.

Alderman Sheehan

Yeah I have to tell you about Jefferson Street too.

Mayor Lozeau

Oh thanks.

Alderman Sheehan

Tomorrow. Another day.

John Patenaude

There are some real estate items, which we are getting clarification on. I am just not ready to talk about them at this point in time.

<REDACTION 6>

Alderman Flynn

At one time R.W. Beck was supposed to be the oversight area that was going to come in and either keep an eye on Veolia who would be operating the company or the present operation, at least there would be somebody between, it looked like they were going to either be the oversight of the current operations or at Veolia running the company. R.W. Beck do they know that they are most likely out of the picture now?

John Patenaude

I think they might, but I think they still in their minds think they have a glimmer of hope.

Alderman Flynn

I still have a glimmer myself. So they are not sure how they...how did they perform or what areas were they looking at in this diligence part and how did you see their performance?

John Patenaude

They did the operational reviews and they did what they were told to do; they interviewed the management, gave us an assessment on that, they looked at the water operations, gave us it was on distribution, pumping, and a third category, also gave us assessments of that. **<REDACTION 7>**

Mayor Lozeau

If I could just add something; although we have talked about the plug and play model and heading in that direction and that we wouldn't need a Veolia under those circumstances going in and we probably don't need a Beck, plug and play doesn't preclude us saying you know what we think we are going to still find a role for Beck to keep an eye on things and the more some of these things we look at the more you know we may be interested in doing something like that. Instead of saying here is a brand new board of directors and here are the people that have been there and we have to get a CEO in there pretty quickly and that will be enough. We might say we will get a board of directors in, we will get a CEO in, we might look at a Beck coming in we might look at a Veolia like Veolia did an audit of operations at waste water, we may look at is there a role. We may by the time we are done say you know what actually we are going to be fine with this model for now, but if we go with a Veolia down the road we may do it differently. I think it is all about the steps, the timing, deliberative choices that we are making based on what we are finding in due-diligence.

<REDACTION 8>

Chairman McCarthy

Is there anything else?

Alderman Pressly

Can we talk about the schedule going forward or is that premature?

John Patenaude

I think it is premature right now.

Mayor Lozeau

I think the date that you keep in your head is November 30th. I really want to meet that deadline.

Alderman Pressly

Do we do anything more with the bylaws and all of those documents or...

Chairman McCarthy

We are going to need to do a final review. I think we think we gave final instructions to get a new draft and as soon as we have that I will...

John Patenaude

They are drafted. Bill has them to look at and Attorney McNamee has been tied up so as soon as they are freed up.

Alderman Pressly

So things like that we could wrap up and work on while we are waiting for the....

Mayor Lozeau

Right and like I said there are other things we are doing on parallel tracks. We are still doing all of those things we do...I don't want to be caught at the end saying well we didn't do the package for the public meetings and we didn't do any of that because we didn't know it was going to happen, no harm no foul we are still doing it on parallel tracks.

Chairman McCarthy

As soon as we see the draft I will set up another meeting and we will try to finalize those because I would like to go through those once and say great we are done with it.

<REDACTION 9 >

Alderman Flynn

So Brian even though a lot of this stuff may be something that originally would have to be redacted in the minutes, the minutes for this meeting are going to be published in full so that the other 7 or 8 members that are missing tonight will have a full picture of what we talked about right?

Chairman McCarthy

We will have them published, but I suspect a lot of it is going to be redacted at some point.

Mayor Lozeau

That also may be one of those things that we will make a copy of and make it available and they can come and read it and review it instead of distributing it. We have to talk about that and we haven't had a chance to talk to Attorneys McNamee and Ardinger specifically about how to do that. I just want to be very careful about this because then we become liable and I don't want to be in that place.

Chairman McCarthy

If there is liability we already own it because we have seen the information right? The only danger is if it were to become public through...

Mayor Lozeau

I meant the liability of it becoming public by accident. <REDACTION 10 > I mean the piece of you distribute minutes that you are going to redact because you are being courteous to people to see them and then they are out there...

Chairman McCarthy

But that is the case with we haven't decided what needs to get redacted from any of the minutes that have been distributed.

Mayor Lozeau

But tonight...they just brought it to my attention that tonight is specifically...it just concerns me.

<REDACTION 11 >

Chairman McCarthy

Is there anything else?

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 Vitale, Alderman Pressly, Alderman LaRose, Alderman Melizzi-Golja, Alderman Tabacsko,
Alderman Sheehan, Alderman Flynn, Alderman Cox, Alderman McCarthy

9

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
MOTION CARRIED**

ADJOURNMENT

**MOTION BY ALDERMAN TABACSKO TO ADJOURN
MOTION CARRIED**

The Pennichuck Water Special Committee meeting was adjourned at 8:35 p.m.

Alderman Jeffrey T. Cox
Committee Clerk