

A special meeting of the Board of Aldermen was held Wednesday, September 8, 2010, at 7:30 p.m. in the Aldermanic Chamber.

President Brian S. McCarthy presided; Deputy City Clerk Patricia Piecuch recorded.

Prayer was offered by Deputy City Clerk Patricia Piecuch; Alderman LaRose led in the Pledge to the Flag.

The roll call was taken with 15 members of the Board of Aldermen present.

Her Honor Mayor Donnalee Lozeau and Corporation Counsel James M. McNamee were also in attendance.

COMMUNICATIONS

MOTION BY ALDERMAN CLEMONS THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY MOTION CARRIED

From: Brian S. McCarthy, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

MOTION BY ALDERMAN CLEMONS TO ACCEPT AND PLACE ON FILE MOTION CARRIED

NON-PUBLIC SESSION

MOTION BY ALDERMAN CLEMONS THAT THE BOARD OF ALDERMEN 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 Clemons, Alderman Vitale, Alderman Craffey,
Alderman Deane, Alderman Pressly, Alderman LaRose
Alderman Tabacsko, Alderman Melizzi-Golja, Alderman Cox,
Alderman Sheehan, Alderman Wilshire, Alderman Chasse,
Alderman Flynn, Alderman Cookson, Alderman McCarthy 15

Nay: 0

MOTION CARRIED

Mayor Lozeau

I'll take this opportunity before we get started tonight to introduce you all to John Griffin. I don't think everybody has had a chance to meet John, our new CFO. Some of you have met him at the finance meeting. I thought tonight would be a good opportunity for all of you to put the face to the name and the bio that you received. John will stick around a little bit tonight at the end to say hello to any of you that would like to say hello.

Jamie is passing around more information than you could imagine. Things are pretty hot off the press. As matter of fact, I just finished the last negotiation session about 6:15 p.m. tonight. Tonight, we thought it was important to do a few things: 1) give you the status and update of the definitive merger agreement, otherwise known as the DMA and what the next steps are there; 2) to talk to you about the PUC and what that letter to our filing actually meant, and what the next steps are with the PUC because there's still some unfinished business there which we will cover tonight in our discussion.

I've told you that we all want to talk about the structure and the governance so we'll start some of that discussion tonight. Then we'll talk about next steps after that. There are no decision points tonight. Tonight is information, questions, answers, give-and-take, but John is probably also going to give you a sense of where he thinks those decision points are coming to. I think they are both to do that. You've all met Bill. So between John and Bill, they will walk us through tonight. David Fredette, who you have not seen often in these meetings, as you know was the acting interim CFO so he came to the table for the first time on Pennichuck. After all these years when you think about the city dealing with it since 2003, David was first brought up to speed in the last two months. It is still a good use of his time to participate where we are now, and it is good for him to work with John on that so I've included him this evening as well. Mr. Chairman if that's okay, we'll lead off with Mr. Patenaude.

Mr. Patenaude

First let just say that what we'd like to do is talk about the Definitive Merger Agreement and where we are with that. As the mayor said, we ended a session today on the negotiation of the merger agreement. There is basically, and Bill can chime in anytime here, is one issue that remains to be resolved. I think we're probably 90 percent of the way there relative to the issue, and that is confidentiality as it pertains to the right-to-know. This is not something where private corporations are used to dealing with. Usually when you're dealing with corporation-to-corporation, confidentiality agreements are very easy to negotiate. Here we have the right-to-know law to deal with so people had to get their mindset around how do we deal with this. As a matter of fact, Pennichuck hired a formal attorney general to help them through the process. I think after today's session, we're close. Bill had drafted a change to a confidentiality agreement which they are now reviewing and expect to come back to us hopefully within the next couple of days.

Mayor Lozeau

And today is the first day that you've had some confidence that you got through to them.

Mr. Patenaude

Yes.

Mayor Lozeau

On what that means and what our obligations are as elected officials.

Mr. Patenaude

Right.

Alderman Pressly

Name of the Attorney General, please. The former one.

Mayor Lozeau

Greg Smith.

Mr. Ardinger

Greg Smith. Up until now, none of this has been public. That's a great stress on a public body, like your board and like the mayor's office. As have heard me in the past, it is very important that you maintain that confidentiality as you have and it's a credit to your organization that you have done so. As soon as we reach agreement on the merger agreement, we complete our due diligence and we publicly announce, the world changes. Now the issue is in public debate. You all are getting a lot of questions about your views, how you might vote on the question whether to authorize bond, and so what John and Jamie – Jamie has taken a great lead role in this in trying to educate Pennichuck on how open that debate has to be. We've been telling them that if we get information from them during that period or we have information about their earnings, about their personnel, we can keep them confidential as long as they stamp it. But almost everything else that we've been talking about, our position says at that moment when you all are on the hot seat in public, you're no longer constrained. You can talk about what you've learned, how you feel, what you heard.

The only thing we're going towards, we don't want you to talk about things like "Oh in 2012, they projected their earnings will be X." That's their information and that's material non-public information and we're going to have to try and struggle to keep that confidential. We think under the right-to-know law, Jamie has made it clear we think we can. But everything else, our position has been the minutes of all of these non-public, the information that the mayor has received in her office because she's a public agency, within the mean of their office, everything else is available for disclosure or public inspection. That's been our goal. I know that there have been folks here who have struggled mightily with why has this been confidential. If we reach agreement, our goal is to open the doors and let the public debate begin.

Alderman McCarthy

Can we make sure that we get an exact list of the things that will remain non-public because we have a fairly daunting task in front of us to transcribe. Just to keep the board up-to-date, Sue has compiled a list of all of the non-public sessions that we would want to disclose. I forget how many hours that is, but the transcription time is about 210 hours.

Mayor Lozeau

That's over 1000 pages.

Alderman McCarthy

So we have a fair amount of work to do there. If parts of those will still need to be redacted. That means two things. It means probably we are going to have to Sue actually do the transcription so she can read the parts that may not be disclosed and determine those; and she's going to have to have some way of knowing which parts to redact.

Mr. Ardinger

Alderman McCarthy, if I could point to Jamie.

Attorney McNamee

We can compile for Sue a list –and I was going to work with her on that – of the material non-public, confidential information. Primarily it's going to be all the information that the SEC would also consider

something that should not be revealed in public without a SEC disclosure. I'll work with Sue on it. We do have some lists of what we requested the last time that they disclosed. Some of it is material non-public, some of it isn't. Some of it is in the public domain already. We can probably show that list to Sue, and I'll go over it with her. Then there was a previous disclosure of non-public information in the last negotiation session. When we get to those minutes, we can go through that as well.

Alderman McCarthy

What I'm concerned about, and maybe we can figure out an answer to this, if there is stuff still in there that we are going to want to redact, we certainly can't hire out the transcription the way we do on a normal basis. And, if Sue has to do it, it's over five weeks of full time work to transcribe it. I'm going to suggest that one of the things we might want to do to simplify that is there's almost certainly until the point where negotiations started, nothing in the previous minutes that would fit those definitions because Pennichuck wasn't sharing anything with us in those days. If we had information, it was information that came from a different source.

Attorney McNamee

That's actually good information to have because, of course, we don't have the background of when the negotiations were occurring when Alan Reich was discussing them. Our assumption has been that Alan was not taking material, confidential information, and bringing it to the board. Perhaps even in derivative sense so that's good information to know. We know that most of what has been given to the board while we've been presenting it is not confidential. There's very little confidential information or the other thing we have to be concerned about is what is derivative information, things that incorporate confidential information for projections.

The one thing that we do know is the projections that you've already seen which show that Pennichuck rates projected out over the next 20 or 30 years. But it is very likely that they will agree that that can be released anyway because that's such an important piece of information to the entire discussion. But as right now, that for instance is something that would be if they said: "No, that's confidential, we don't want it released," we believe we could honor that because of the public importance of keeping it confidential. I think the answer is it's probably not as big a task or big a problem as Sue is concerned with. I've had a lot of talks with her about that. I was planning on working very closely with her on it. I also think we probably could contract out, especially we know there's not a lot of material non-public information in there anyway, contract out to people who also would then have to be subject to the confidentiality agreement.

Alderman McCarthy

That's why I suggest if we can do some archeological work and figure out when negotiations started, we could certainly contract out everything up to that date which would make it easier.

Alderman Cookson

Just a quick question as we're talking about Ms. Lovering and the transcription of these minutes, is she also covered by our confidentiality agreements? I know that we are.

Alderman McCarthy

She will have to be a signatory to it when the time comes to start the transcriptions.

Alderman Pressly

I think what would worry me more is that I would not recognizing slip and say something that was confidential, and not knowing that it was confidential. When we come to that point, will you make it very clear what we might think is pretty ordinary stuff that we have to keep secret.

Mr. Ardinger

Absolutely. We will be very careful. I'll say, Alderman Pressly, as Jamie put it, you all in these non-public meetings have received information from Arthur Gottlieb at CW Downer. Most of that information has been publicly available. Our goal in the negotiations is to not have you worry at all about whether you can answer questions.

Alderman Pressly

Thank you. I would like once this out be free from having to be concerned what I say might be accidentally not available.

Mr. Ardinger

Understood. We have to make...

Alderman Pressly

You'll give us training lessons. Thank you.

Attorney McNamee

Just another thing too which is something that I am learning too. This definitive merger agreement when you get it is going to be a lot thicker than what you have right now. It's going to have a lot of schedules and a lot of information attached to it. That information is for the most part going to be non confidential information, correct? And I think there will be some comfort if you can focus on that document. That will have a lot of the background information that explains the details in the document. I anticipate that your public debate will revolve an awful lot around that because we've made sure that the information they are disclosing is stuff that supports the agreement. That will be very helpful to you.

Alderman McCarthy

You brought up something that leads me to believe we have a fundamental Catch 22 if we can't get around some of the issues with confidentiality which is, I understand why Pennichuck wants the rate projections to be confidential because under SEC law those are a forward-looking statement that they are responsible for. On the other hand, we're going to go out to the public and say here's what our rate structure would be and Pennichuck would be at least more than that or we wouldn't be doing this. So there's a fundamental problem of we're putting a floor on their earnings no matter what we do in the public debate.

Attorney McNamee

They can disclose around that. I mentioned that to them today. That is one of the pieces of their confidential information that we will need and that they will also want to have out in the public. I think we'll be able to use that.

Mr. Ardinger

I agree.

Mr. Patenaude

We'll need their waiver, and at the same time as that information goes out, most likely they will be required to file that same document with the SEC so that their shareholders know the same thing that's out in the public domain.

Alderman Deane

Is this board going to have any role in the filtering process of the meeting minutes? I have grave concerns about what's going on here. I think taking non-public meeting minutes and filtering them, redacting, whatever you want to call it – I understand we're still somewhat in the process, but I don't think the right-to-know law should be twisted into a knot to make it work for certain situations and that seems like exactly what we're doing. I know the meeting minutes, I believe that you said go back to 2003, and none of those have been transcribed at all. Nothing.

Alderman McCarthy

No. We have the recordings.

Alderman Deane

So we'll have to buy a new cassette deck so we can listen to the...

Alderman McCarthy

We probably still have the cassette deck somewhere.

Alderman Deane

Or an 8-track or whatever it was. Mr. President, I think it is our responsibility as a board to decide upon how the process is going to take place. I think we should also get a list of the recommendations from these fellows as well as from Attorney McNamee and the mayor's office on where we stand. To me anyways, it would be helpful.

Alderman McCarthy

I guess what I would propose doing is having a full set of the transcriptions with the parts to be redacted noted in the text to distribute to the board. And then we will, unless there is objection to the pieces that fit that criteria, we would then produce a set of those that were the publicly available ones.

Alderman Deane

I think that's a great idea. I think it would be even more helpful if whomever came up with the decision that it should be redacted, I guess Attorney McNamee or whomever, could put a reasoning in a bullet frame with numbers, this was redacted because of number four. This was redacted because of number two. That way we could read through it and then we could go through all of it and look at it and review them before we release them all.

Alderman McCarthy

My recollection of the meetings and my general understanding of what is desired to remain confidential leads me to believe there will be a very small number of items. If the forward rate is going to be one of the ones that is excluded from that and is publicized, I'm not sure I can think of any instances where we have other information than that. There's information about Pennichuck salaries, but many of the ones we have discussed are the ones that are reported in the 10K anyway so those are public by necessity. There may be a small number of employees who are not required to disclose in that filing that we would have to protect. We'll just look at those when we get to them.

Mayor Lozeau

I want the board to understand that we have spent weeks, weeks arguing with them and explaining just how important it is to have as much as possible public. I don't want to be jumping through the hoops or as Alderman Deane described tie the right-to-know law into knots. The first goal is making sure that we agree on what has to be remain confidential and why it has to, making sure that we all understand that. And then it's obvious to us so you don't have to worry about I'm going to trip over that. It should be a very small amount of items and what I've recommended is first I want to look at whether or not we should be transcribing it outside of the city because I don't think it's really necessarily feasible to have somebody spend five weeks full time and still having the job to do that they have to do without that additional work and how might that play out. Two, to identify what those confidential things are. To work from our minutes backwards from the most recent to the oldest because I think most people are going to be particularly interested in right now what our discussions have been since negotiations have started up again. And then to do exactly as some of you are describing – to determine what should be redacted, let you read it before anybody crosses a line through it, and explain and what it's affiliated to. That has been our goal from the beginning talking about this the last couple of meetings when we talked about it.

Mr. Ardinger

Since I've been involved and each meeting that I have been that's been a non-public meeting, the only piece of information that would qualify as a confidential information as we're settling in it is that one graph that has Fiscal Year 2011 estimates in it. Everything else that you have heard and discussed has been information that I believe is not tied to the confidential agreement. Alderman Deane, it has been the exact position of the mayor's negotiating team to be consistent with the way you're explaining. It's been hard to teach these folks, the private sector, what our obligations are. But I think we got there, as John said, today.

Alderman Deane

So that one item, that one graph that you mentioned, the rest of it can be transcribed without an issue.

Mr. Ardinger

It has to be looked over with care. But I can say from my recollection which I'm getting older every day and my recollection is getting worse and worse, I don't remember hearing any of the stuff that we are negotiating as the confidential information. I think you transcribe it, look at it, but I think at the end of the day you're going to find out – and I also wasn't at every meeting so I don't want to get pinned down, Alderman Deane on my recollection and for the meetings I wasn't hear. But for the ones I was here, I think the only thing I can remember was that FY11 estimate of what they thought their earnings might be.

Alderman Pressly

My understanding of redacting of any public document is that the whole document has to be transcribed in total, everything that took place. So when you turn this over to the press or anybody else who's likely to ask

about it, it's blacked out so they can say: "Okay, there were 1,000 sheets of paper and they redacted only two or three." The right of the public is to sort of know what percentage of what we talked about is still secret and from what you're saying it's really important that the whole, everything, be recorded. That is documented and whenever you turn it over to the public, you give them that piece of public with the blacked-out information.

Alderman McCarthy

I don't know where you get that from. There is no statutory requirement on a nature of the minutes we produce other than they have to provide a list of the attendees, any motions that were made and what the votes were on those motions. There is absolutely no requirement in the right-to-know law that we transcribe discussions at all, let alone verbatim.

Alderman Pressly

Then maybe I would like to say that maybe we should do that because I know my one experience with...

Alderman McCarthy

I anticipate doing something similar to that. I'm not sure that we will do it by blacking out an exact number of lines because that tends to give away information. But I would put in there a note that said some stuff was redacted at this point.

Alderman Pressly

From my one experience with redaction that is what it is and that helps the public and anyone else to understand exactly how much and how much isn't.

Alderman McCarthy

I think that's a discussion we can have when we find something that needs to be redacted because I'm not sure we're going to.

Attorney McNamee

Because the point has been made and I just want to make sure that the Board feels comfortable, I think Alderman Deane's points are right to the mark. We have made it abundantly clear to Pennichuck every time we talk about this that the information, the minutes will be transcribed. They will be looked through, Sue, myself, so we can identify what we believe, what I believe, should be redacted or should be considered by you for redaction. The final decision on what gets unsealed and what doesn't get unsealed is this Board's decision informed by counsel's recommendations obviously. We have preserved that, and we've had to preserve that very carefully because they have been very picky about trying to figure out exactly what are you going to let go, what are you going to give out, how are you going to do this.

We have been very careful to preserve the process that it's this Board's minutes and this Board has to make the determination for what gets release and what stays seals. They were concerned about whether or not people would have access to the electronic records. I said probably if anything is redacted out of those, we don't redact out of the electronic records so it would only be the written record that we would release. But again, this Board could decide to find a way to redact the electronic record as well but you still by the way would have to keep that record. What we've told them is these things are sealed. They wanted to see them before they got released because they were concerned. We said: "You can't see them; we can't even see them until the Board says we can see them. They are sealed. No member of the Board can see them; they are sealed." They are finally getting it through their head that this is something that does have to be revealed at some point if there's a request for it. It is this Board that is going to make the decision on which minutes it

unseals. I think all the points that have been made are excellent, and you can rest assured we have made them to Pennichuck. It seems like it has gotten through to them at this point.

Alderman Deane

I would be supportive of unsealing everything, not just portions of this and portions of that. I think we should go back to day one. Although it entails a lot of work, I think everything should be transcribed. I think we should have a meeting to review and understand what you might feel is appropriate to redact and let us make a decision.

Alderman McCarthy

That's certainly the intent to transcribe everything, identify the places where we think there may be sensitive information and bring that forward to the Board.

Alderman Pressly

Would you please clarify if that's verbatim transcription.

Alderman McCarthy

It is verbatim in the same sense that our other minutes are.

Alderman Pressly

With no hmms and ha's and that sort of thing?

Alderman McCarthy

Yeah.

Alderman Chasse

We just spoke about this one piece of paper that we should keep quiet, what's the chance of the Telegraph saying we're going to take our minutes and go backwards and they are going to probably transcribe the earliest or the latest meetings first? So what happens if the Telegraph gets this little thing saying there's one piece of paper. How are their chances in the right-to-know law and secure that one piece of paper.

Mayor Lozeau

We're hopeful we get a waiver for that piece of paper so that won't be a problem.

Attorney McNamee

The short answer to that is they are going to agree that we can release that.

Alderman Chasse

In a certain timeframe, though. Not right away, right?

Attorney McNamee

You're going to vote on the DMA. That will be in non-public session. Then their board will vote on it a few days later. If both boards vote yes, then it will be signed, it will be public, and at that point we've got to be ready to go with information. That's one of the first pieces of information we want to get out there. As a practical matter, it won't be a problem. But if it is what's considered material non-public information that would have a material effect on the stock if it got out into the general public, we feel very confident that that information can be kept from disclosure, those records, because there's a strong public interest. As a matter of fact, the SEC, there's federal law that says that that should not be disclosed in that sort of a fashion. It should be disclosed by the corporation through the SEC so that everybody has the information at the same time. I doubt that any court would require us to disclose that information. But again, and this is the difficult thing for Pennichuck to grasp, but it is something that you all know, the worse thing in the world is to say you can't have that piece of information especially if it is informing a decision of this magnitude. And we keep making that point to them. You want this information out in the public. You want it out there.

Mayor Lozeau

The whole point tonight was to bring it up so that you understand what our approach has been and what our recommendation is about transcribing everything and trying to have nothing that we have to worry about being confidential and try to set us on a course to get things transcribed so that when the DMA is public and there's a request for minutes, we are ready to go. Nobody is saying to somebody, oh we're going to get started on transcribing or it will take 10 days. We want to be ready and want to know what it is. The goal of tonight's meeting was just to tell you that it's something we're struggling over. We think we've gotten through to them. I think we're making a recommendation that all of you I think are likely to embrace about getting all the information as public as possible and available.

Alderman Deane

Alderman McCarthy, did you sit in on any of this meeting that we're discussing tonight?

Alderman McCarthy

The negotiation meetings?

Alderman Deane

Yeah.

Alderman McCarthy

No, I did not.

Alderman Deane

You didn't sit in on any of this?

Alderman McCarthy

I met once with Arthur Gottlieb and Don Ware and Mr. Montopoli a number of months ago, but I haven't been involved.

Alderman Deane

Thank you.

Alderman McCarthy

I think I'm prone to have Sue start doing the transcriptions sooner rather than later so we can get ahead on that and to start with the latest ones and work backwards.

Attorney McNamee

That makes sense.

Alderman McCarthy

What I'll have her do is transcribe those and let you look at them. Once we have a better handle on whether there is information that we need to worry about, we'll be better posed to worry about it.

Alderman Deane

Can Dawn help with the minutes?

Attorney McNamee

I don't see why not. It depends on your staffing problems.

Alderman McCarthy

We can have Dawn work on them. We'll have to get her to sign the confidentiality agreement as well.

Alderman Deane

It just kind of makes sense the two of them can have a wonderful time doing that. But I think it would probably be helpful to Sue and maybe we can start getting the job done. I agree with what the Mayor said. If we're proactive about transcribing and then when people start pushing the envelope, we can drop something similar to the health care bill that was past. Here's 2,000 pages of minutes. Enjoy yourself and let people go through them if they wish. But I think it's good to be proactive in that area just to say: "Here you go."

Alderman Pressly

I agree. I think it's wise to start, but I think it's unreasonable to expect these two employees to do this and do what they do day-to-day for all of us.

Alderman McCarthy

This is what they do day-to-day.

Alderman Pressly

Type? That's all they do is type?

Alderman McCarthy

That is Dawn's job description is to do.

Alderman Pressly

Okay. Well what I'm saying is they are pretty busy doing what they do normally. I think we have to either pay them overtime or we have to have someone who can be cleared to do this.

Alderman McCarthy

We'd certainly have to pay Dawn overtime if she's working overtime.

Alderman Pressly

My point is they seem pretty busy doing their work for us. And to give them a...

Alderman McCarthy

I'll manage the office. We can work it out.

Alderman Pressly

Would you like to tell us how you're going to work it out?

Alderman McCarthy

I'm going to work with them to see what their workload is and we'll work it around.

Alderman Pressly

Well the reason I bring it up is a lot of us ask them to do a lot of things for us. I know based on what you've discussed today, I'm just going to be certainly be hesitate to do some of the things that they normally do for me. If I know they are going to be out straight doing all of this typing.

Alderman McCarthy

Go ahead and ask them if you have things you want them to do. I may at some point tell them that they need to ask about it before they do anything that takes a tremendous amount of time.

Alderman Pressly

My thinking is I think we need to find surely somebody else can be sworn in for secrecy. There's typists that do this all the time.

Alderman McCarthy

We have no budget to pay for someone else. We have a very small external transcription budget. This is an issue that I need to work out with our staff in terms of managing the office. If we need to get somebody else involved, I'll come back to the board and ask for money to do that.

Alderman Melizzi-Golja

So we are not receiving 1,000 pages or more to review and make decisions about what's left and what's removed. Could we be fed chunks of the minutes as they are completed and have an opportunity to review them?

Alderman McCarthy

I think we can.

Alderman Melizzi-Golja

Okay. Rather than getting 1,000 pages and say read them over the weekend and come ready to discuss.

Alderman McCarthy

I want to see how this goes as we get into it.

Alderman Deane

I would kind of speak to the contrary. I'd like the minutes in their entirety. I do agree...

Alderman McCarthy

I think that was being asked for. Just not all 50 meetings at once. Let's get.

Alderman Deane

Get it on a Friday and meet Monday to talk about it.

Alderman Melizzi-Golja

Right.

Alderman Deane

I think we should probably have two different sessions to look at it. Well, if what holds true to form of what our humble legal advisers are telling us that there's very little that's going to be redacted to begin with, I guess the focus would be on that area and then I guess just a basic review by Attorney McNamee on the balance of the beginning. Are we paying these fellows to go through meeting minutes? To review those for redaction? Are we going to do that internally with Mr. Meeting Minutes over there, himself?

Alderman McCarthy

We don't have to pay Attorney McNamee overtime.

Alderman Pressly

I would prefer that when we get all these minutes, if they be in groupings of less than the 1,000 that Attorney McNamee has indicated which ones he suggests. I don't want to be the one who say I think that should be redacted and this should not. I would like to have them already identified when we are given them to us.

Alderman McCarthy

I think that's what I identified would happen. Sue is going to transcribe them. Jamie is going to look at them and say, I think this section is a problem. And we will get them to the Board with those sections noted.

Alderman Pressly

And with all these 1,000 pages all we really need to be concerned about are the items that the attorney is suggesting that be redacted.

Alderman McCarthy

You may want to read the rest of what's coming out. I will caution the board that I do remember members of the board making comments about the internals of Pennichuck at various times in the past. I think those will get unsealed when the time comes, but long term members of the board may want to read their own quotes so they are not surprised by the paper.

Alderman Deane

It was all the truth, though, Mr. President. It was all truthful.

Alderman McCarthy

It may well be.

Alderman Deane

We can't hesitate but look back, Mr. President, about some of the mudslinging that went on in the Pennichuck that had a bottomless pit during election time had no problem lambasting a few of us in this room as well. We're all adults. I think we could all bounce off our shoulders.

Alderman McCarthy

I'm not saying we can do anything about it; I'm just saying you may want to know that it's going to happen.

Alderman Deane

It's going to be some fun reading.

Alderman Pressly

For those of us who weren't there to make those comments, I guess if I want to be recorded, I better make them now and in the future.

Attorney McNamee

Mr. President, this discussion reminds me of one thing. We have to have this sort of process you're talking about so you don't choke on 1,000 pages at once. But it is going to be important to remember that these are non-public minutes. They are sealed. Some boards actually will not let their members even see minutes that are sealed until they decide to unseal them. Now that would not be practical here, obviously, because you do have to have an opportunity to review them. But it may be appropriate for the Board at some point to make a resolution to vote, maybe even in this meeting, that that's what you want to do. That you would like to have

them unsealed, delivered confidentially to the Board members so that you can then in non-public session again decide whether or not you're going to unseal the minutes.

Alderman McCarthy

I'm trying to remember when it's ever been an issue, but I believe that past practice of the Board has been to allow inspection of the recorded minutes of non-public session.

Attorney McNamee

I know the Board of Public Works is much more ...

Alderman McCarthy

We've never done that, and the rationale being that something happens in a non-public session that a member who wasn't present then has to vote on at a later board meeting, you need to be able to get caught up. I would think transcribing them and distributing them to the Board is within our normal practice. But you're right the Board members do need to understand that that document is different from other minutes that we've gotten in the past and that it is sealed.

Alderman Deane

In my nine years here, Mr. President, we've never unsealed anything. Nothing. It makes you wonder when you look at since '03 since this has been going on, we've had a change of people who serve on this board as well as in the mayor's office. As you had mentioned earlier, the adverse effects of remarks and things that were made by other people that are no longer here are going to be out to the public as well to view and they have no say in the matter any longer. It's up to this board how they vote to release the minutes or not. I can't remember a time when we've actually unsealed anything. Can you?

Alderman McCarthy

I don't remember. I think we've done it once since I've been on the Board. There was something where the purpose of it lapsed and we were able to unseal it.

Alderman Deane

It's like all the settlements we make in the finance committee. As soon as we cut the check, it should be done. Those should be released, and those are never released. If there's a settlement with somebody for something.

Alderman McCarthy

Most of the things that we seal are things that were essentially required to keep sealed forever because they are settlements. Real estate transactions, we may have unsealed some of the minutes around the eminent domain proceedings for the north high school because when we finally reached an agreement or when we finally took the property that was no longer necessary.

Alderman Deane

I wasn't here then.

Mayor Lozeau

We'll be doing it in a big way this time.

Alderman Sheehan

I have a question that was triggered by one of the remarks about the election. I know that union with union contracts there's been a lot of conversation about indicating whether or not you've accepted election funding from a union. Would this be held to a similar standard whereas if a campaign contribution was made by either Pennichuck or one of their major participants, it should be disclosed before voting.

Alderman McCarthy

That is in the minutes somewhere. Whether it's a portion that are currently sealed or not, I do not know but the members of the Board who had gotten contributions from Pennichuck had disclosed that at some point in the past.

Alderman Sheehan

Will they need to disclose it before voting?

Alderman McCarthy

There is no requirement that they do so.

Alderman Sheehan

Okay.

Alderman Clemons

Nor should they have to, in my opinion, because that is public information that is recorded in the city clerk's office.

Alderman Deane

I think we already had that discussion.

Alderman McCarthy

Anything else on the confidentiality?

Mr. Patenaude

So where we are with the contract is basically we hope to have a close to final contract by Monday, I would think. The Pennichuck Board is meeting on Friday so I think that is a big determining factor for them because they kept mentioning today that some of these items they would have to bring to the board and confidentiality was one of them as well.

Alderman McCarthy

So we anticipate we may have an agreement on Monday that will already have been acted upon by their Board?

Mr. Patenaude

Not acted upon by their board, but any issues that they have similar to if we have issues from the city side, we would discuss those with the mayor and yourselves. They do the same thing on their side. Our goal here, and it has been for awhile, is once we get to a place and we call it “pens down” once we get to a place where we agree on the document, then pens go down and we start due diligence. If you remember some of the past conversations we had we said that we would not start due diligence because of the cost related to that until we had an agreement we felt both sides were comfortable with so that nobody would spend money and then have to walk away from it because of a disagreement relative to the agreement, itself. That’s where we stand. With that said what we would likely do is start due diligence next week at some point in time. That due diligence will take anywhere from 3 ½ to 4 weeks. When that is complete, you will be meeting as a team to review the results and also expect to meet with the Board of Aldermen here to discuss the results of those findings that we’ve had due diligence.

The next process after that, assuming that due diligence goes well and there’s no major findings, is then to vote to provide approval to execute the DMA, itself. And that document, and that’s was Jamie was saying, you will get for your review will be a complete document will all schedules attached so you will know exactly what the total document looks like. After the signing of that agreement would be when you would consider voting to unseal the non-public minutes.

Any questions on the DMA?

Alderman Deane

You’re beyond the due diligence?

Mr. Ardinger

No, we’re not beyond the due diligence. We’ll be starting the due diligence next week.

Alderman Deane

I mean you’re beyond your remarks about the due diligence?

Mr. Ardinger

Yes, tonight, because we haven’t conducted due diligence yet. We have our teams ready to go.

Alderman Deane

I understand that, but below that privy to this, below that 10-September date for due diligence, there’s another date in September that’s not filled in.

Mr. Ardinger

Right, and that would be at some point in time. I just left it blank because that really depends on your schedule and how the scheduling of due diligence. We’re hoping to get it done within a four-week period but if something comes up during that process that we find, it may drag out a little longer or it could be shorter if we find nothing. So I left that date blank because that’s the time we’d want - when we’re done, we’ll want to meet with you to present those results.

Mayor Lozeau

Also the governance structure piece. Tonight we'll touch on that and talk about options and what it could potentially look like. This is a date that we would use to come back and talk about that as well.

Alderman Pressly

So we will talk about that tonight?

Mayor Lozeau

We'll begin the discussion tonight and talk about it. And then we'll come back again. The issue becomes if everything with the DMA as we've discussed goes as planned, then that will get us into early next week. Due diligence will start. While due diligence is going on, we can still be working on the structure on governance so they are running on parallel tracks. You don't want to wait until one finishes and then start that work.

Mr. Ardinger

And the other thing that we will cover lightly is some of the structure needs to be decided on prior to execution of the DMA because we need to attach new articles and new by-laws to the agreement as an exhibit. So the agreement when it gets sign will have those as an exhibit. What we thought we'd do tonight is present concepts to you, let you read through the documents we gave you, let you think about the concepts and then maybe in a period within the next month get back together – before the end of the next month – to solidify where we want to go relative to the structure process so we can draft those into the documents.

Alderman Deane

If I could continue, are you going to asking us to commit to something before the governance is decided upon through a vote?

Mr. Ardinger

No. We're giving you concepts.

Alderman Deane

I understood that part. I want to understand and I want to agree upon governance before I vote on anything.

Alderman McCarthy

You're question is do we decide the governance model before...

Alderman Deane

We, the Board of Aldermen. The Board of Aldermen makes this decision, right?

Mr. Ardinger

Yes.

Alderman Deane

That's my question. Is this a new piece of paper?

Mr. Ardinger

It's updated.

Alderman Deane

This page was updated, the front page?

Mr. Ardinger

Yes.

Alderman Deane

What's changed? I wish we had the old ones still.

Mr. Ardinger

The dates have changed. We've added PUC information.

Alderman Deane

Has the task changed other than the date?

Mayor Lozeau

Structuring governance has always been one of the items.

Alderman Deane

Has any of the other tasks been moved around off the time line?

Mr. Ardinger

The timeline has moved. We've added city filings relative to ...

Alderman Deane

14-Sept is gone, 15-Sept. is gone, 15-Sept that had nothing is no longer there.

Mr. Ardinger

Right because the negotiations took longer than what we had anticipated. All the dates moved forward as we go ahead. What we would be looking at as a potential timeframe here, and it all depends on due diligence and the completion of the DMA schedule, is that sometime in mid-October, you would be voting to approve the document for signature for execution and then sometime in December, mid-December, you would be taking the vote relative to financing.

Alderman Deane

So the governance would be decided on?

Mr. Ardinger

The actual by-laws and articles need to be decided, not individuals, but just the conceptual by-laws and articles have to be decided before you sign the DMA or before you approve the execution of the DMA.

Alderman Deane

When you say conceptual? Conceptual is just

Mr. Ardinger

You will have a board comprised of individuals, and we'll get into that later as I go through it. I can go through it now if you like.

Alderman Cookson

I understood the comments about moving forward with due diligence and not wanting to spend the money and have issues and have someone walk away. But what needs to be executed before starting the due diligence?

Mr. Ardinger

Nothing. Nothing is executed before ...

Mayor Lozeau

It's just pens down as he described.

Mr. Ardinger

What we agreed to do is we would negotiate the merger agreement itself and then the concept was you drop your pens, there is no more changes other than if you find something in due diligence to the definitive merger agreement.

Alderman Cookson

So the pens will be put down before we start due diligence?

Mr. Ardinger

But there are schedules related to the merger being that are required would be completed during that timeframe.

Mayor Lozeau

One of the most difficult things that we have gone through, and I wait to read the minutes before (inaudible) is that you think you have an agreement – and we've talked about this before. We think that we're agreeing to something and we move to what the next thing is, and then they go back to what we already agreed on and say "Can we look at that again because we think..." and you have the same discussion. It's like Groundhog Day to some degree. You know what I mean? You think you've resolved that and so what I wanted to make sure we were doing is we were in a place where we said: "We now have an agreement." And in that agreement, we've identified the only things that could potentially change and they relate directly to due diligence. What we find, what we thought. Their bottom line was on something that might be different that we might go back and say: "Wait a minute." But the point of pens down is you're not going to go back and open

things that have been closed so we can move forward. I don't want to invest hundreds of thousands of dollars into due diligence only to have them go: "You know, Article 17 on confidentiality? Ya, that's a deal breaker." So that was where we were trying to get to. Issues about governance and structure? Pennichuck is going to have no role in determining what that's going to be. But the PUC is going to have to approve what we're doing which is why we're saying it's an exhibit with what we're filing because that DMA is going to have to go to the PUC which John is going to walk through in the next discussion – what's with the PUC, and then we'll get into the structure and governance. But the only one making a decision on what that structure and governance is this Board and then the PUC saying that's okay. But getting the agreement to the point where pens are down is really been the biggest challenge.

Alderman McCarthy

Can I see if I understand the decision points we have to make. The major ones, at least, are: they are the by-laws and perhaps some other attachments that we need to agree upon in principle before they are attached to the DMA. We then need to vote on executing the DMA which essentially commits us, contingent upon funding, to the purchase and that's the document that goes to the PUC for approval. And then at some point at the very end we decide to actually pull the trigger and issue the bonds and go through with the acquisition.

Mr. Ardinger

Basically, but the timeline is that once you execute the DMA then you've got this 90-day period to approve the financing, itself. Not to issue the bonds but just approve going forward with the financing.

Alderman McCarthy

And at what point in there do we have to have the governance model approved?

Mr. Ardinger

The governance model from articles and by-laws would be prior to execution of the DMA.

Alderman McCarthy

Is that an absolutely completed governance model or is that an agreement on the form with the manner of elections still to be determined?

Mr. Ardinger

Just think of the City of Manchester's water district. They have done, you'll hear as we go through this, they have set up their water district through an ordinance. We're doing something unusual in buying a publicly traded corporation. We've all known that makes us different, but this is how we can get this done. The structure of their board, for example, is seven members. That board makes decisions about the overall governance of the water district. Then they have a management team that does all of the work of the day-to-day operations. The bottom line is the City of Manchester can amend that ordinance through action of its legislative body. What we're going to try to get done in the signed merger agreement is a structure that will have things like the size of the board, how many people. The process for nominating and confirming members of the board.

Then also to each of the subs, especially the regulated ones, the same thing: size and structure of the board. Once you are 100 percent shareholder of those corporations, you can consider amendments to that structure. Indeed, Alderman McCarthy, if we were to get federal legislation passed that solved our tax problems there could be considered a major restructuring that would allow us to have a fully municipal water utility. That could involve changing it from a corporate board structure to district board structure. It's not eminently final. It's not

unchangeable. But it is our first presentation to the public and the PUC staff, the various constituencies, the Town of Merrimack, so we have to put in serious thought into what that basic conceptual structure is. None of the people will actually be identified.

Alderman McCarthy

Right.

Mr. Ardinger

But the basic structure should have thought.

Alderman McCarthy

And that actually looked similar to the way the structure is now with a board of directors.

Mr. Ardinger

Yes, sir.

Alderman McCarthy

The difference being bylaw changes essentially require shareholder ratification and after we own it this board makes the decisions for the shareholder. So, it is this board that then determines the bylaws of the corporation in effect.

Mr. Ardinger

Exactly right. Legislative bodies are never bound to the structure that is in place. They can consider it and change it as they deem necessary. That's the same thing here.

Alderman Cookson

I'm looking at two documents. I'm looking at on July 13th we received a packet and there was a timeline associated with that project. And then I'm looking at this evening's timeline. Back on July 13th, we came together and we received an update on the status of the transaction. We had expected the targeted completed of the definitive merger agreement to be July 16th. Tonight we're hearing that targeted DMA completion is now going to be potentially September 10th. September 10th is that pens down date.

Mr. Ardinger

That is correct.

Alderman Cookson

I believe that earlier in your statements you said there might be a single issue that needs to be resolved and that single issue is about 90 percent there. Is that the one issue that is going to determine whether it's pens down on the 10th?

Mr. Ardinger

Yes it is.

Alderman Cookson

Between July 16th and September 10, July 16th being what we thought was going to be the completion of the DMA, initially, how many times have we met for negotiations to resolve the outstanding issues?

Mr. Ardinger

At least four.

Mayor Lozeau

More than that.

Alderman Cookson

Four times in the last two months.

Mr. Ardinger

And in between there are phone calls and there's ...

Alderman Cookson

But you've met four times?

Mr. Ardinger

Redrafting, Face-to-face probably four times, if not more.

Mr. Patenaude

As a group, we've met four or five times. There have been smaller group meetings on specific issues like Attorney McNamee and me would meet with their attorney on one issue. There's been continuing work to turn documents that would get us to agreement.

Alderman Cookson

Very good. Thank you.

Mayor Lozeau

For what it's worth, there hasn't been a period of time where anybody said: "We're not coming to talk."

Alderman Cookson

I was trying to understand what happened between July 16th and September 8th.

Mr. Ardinger

A lot of it had to deal with this one issue on confidentiality which I guess I personally thought would be easier than it was. It was an extremely difficult concept for them to buy into relative to how confidentiality interacts with the right-to-know laws. It became a very difficult and sticking point. It's not one that we could just say: "Okay, it's not a big issue. We can walk away from it." It's one that the team had to continually pursue

because they kept coming back to us. Again, it wasn't until they hired their own advisors that it sort of moved at a quicker pace.

Mayor Lozeau

Well that and when Mr. Montopoli actually two of the sessions, and that actually helped moved it along. Alderman Deane asked about whether Alderman McCarthy had been in any of the negotiations. I haven't been in any of the negotiations either. We have a team that's been working. I don't think we even expected that Mr. Montopoli was going to go to one of those sessions. He was just there when they met. But there hasn't been any conscious decision to not be talking.

Alderman Cookson

Like I said, I was trying to better understand what took place between the 16th and the 8th of September. Can you help me with some expectations for Friday, the 10th? Is there something we expect to happen after close of business? Is there something that's going to happen at 10:00 AM?

Mr. Ardinger

I think after they meet with their board, they will be discussing their open issues. There are issues we went through. Again, the big one is confidentiality issues today, I think. And again, Jamie and Bill you can hop in any time if you feel differently. But I think there was more of a comfort level when we left the meeting today that they understood our position and they were willing to look at the drafting that we had given to them relative to the confidentiality issue. Whereas in the past it has been a circling event.

Alderman Cookson

I guess what I really would be interested in knowing is on the 10th, will there be some sort of communication expressed to the members of the Board of Aldermen that says that it's pens down or that something came up and there's going to be another delay.

Mr. Ardinger

We could do that.

Mayor Lozeau

If you would like a communication to let you know that one way or another, we can do that.

Alderman Cookson

I think that goes beyond just me. I think ...

Mayor Lozeau

No, no, I don't mean you. I mean if the ...

Alderman Cookson

Thank you.

Mayor Lozeau

I'm not trying to...

Alderman Cookson

And that's what I was ...

Mayor Lozeau

... trying to

Alderman Cookson

I don't know if the other members have that same expectation or interest. I certainly would like to know what happens on the 10th. This is the timeline. This is what we are working toward. I would just like to know if there's a delay or if we were successful on that day. And, I think

Alderman McCarthy (remarks inaudible)

Alderman Cookson

...would be appropriate to have.

Alderman McCarthy

I'll (inaudible) that gets out.

Alderman Cookson

Thank you.

Attorney McNamee

I thought I'd just add a little bit color to the answer to this question because it's a frustration that you all reasonably should have. Why is this keep getting pushed back. My compatriots here are pulling some punches on it. So I'll give you a good example. One of the reasons why it has gone – and unfortunately this will be public so I want Pennichuck to know I'm not really casting aspersions here but it was on my vacation that I had a 4 ½ hour telephone conference where they went page-by-page through all 63 pages. There were not a lot of issues, and Pennichuck was supposed to turn those around and make their comments and get them back to us. It was over a week and a half before we got that document back. It's not clear to us why it took that long. I think in part we have the advantage of hired professionals who really know what they are doing on this, and Pennichuck is trying to do this in-house. That's often a big mistake.

Something this big and this complex, I think it has been something where they are not quite sure what they are going to do next. That has been a real frustration and one of the reasons why this has slowed down. I would not want you to get too more frustrated than we will be on Friday if the message is: "It's not pens down because we've got some other issues to go." There could in fact be some other issues, just as a result of the way that's the way it has been going. They have come along. We've taught them a lot. I think Bill has taught them a lot about mergers and acquisitions.

Alderman Cookson

I think it is understood that there may be other issues that arise. But I think it is important to maintain the communication with this Board that says: “yes, we’ve met those expectations. We’ve met the timeline that we put out before you, that we shared with you two days ago” or “you know what? Something else has come up and we need to continue to do some work.” But I think it is important to maintain that line of communication to the members of the Board.

Alderman McCarthy

If we haven’t heard something by the end of the day on Friday, I will remind the mayor.

Mayor Lozeau

You don’t have to. I mean, really. I know you’re kidding, but you know. I think we’ve done a great job communicating when there’s information to communicate. Asking for a special meeting. I reached out to Alderman McCarthy at the end of the week to say: “I think we’ve got something to give you.” I don’t want to pull you in here just for the sake of pulling you in here. And the timeline, I don’t want it to reflect the failure anywhere. It’s an estimate of what we thought was best case scenario. But the timing of when we do things, like structure and governance, remember the first day I brought John to a meeting, we said: “Here are the items we need to talk about.” And structure and governance has always been one. It was always our intention to use some of that time during the due diligence period when that work was being done to do that work in here. So, we’ve done the DMA piece which was very complex and walked through that. I’ll continue to ...

Alderman McCarthy

I think what I’m hearing is that occasionally it is important to convey that there is no information.

Mayor Lozeau

Okay so, I’ll be happy to send out no news or news.

Mr. Ardinger

Just so you know what gave me more of a good feeling today was that as we left the meeting, we were really talking about ahead. The next steps and not talking about: “Well, we got to turn this document around, and we’re not sure.” That gave me a feeling that we are ready to move ahead. I think because of the PUC letter that is forcing a lot of action on their side to get this thing moving and done.

On the PUC side, we did receive a letter. If you remember back, June 30th, we had filed with the PUC asking them to rule or give us a date for the determination on the eminent domain side. They have sent back a letter. I think either Jamie or Bill would be better to explain those issues, but with some questions relative to the legal side that they are looking at.

Mayor Lozeau

That’s in your packet tonight too.

Mr. Ardinger

The letter is in your packet.

Attorney McNamee

Let me give it a shot and Bill you can fill in the important details that I leave out. The PUC taking process, which whether we're going by eminent domain or whether we are going under the special legislation that allows us to acquire the stock of Pennichuck Corporation, requires one thing. It requires a final determination of value. In the eminent domain process, we have to take this 90-day vote that we are talking about to approve the bonding within 90 days of the final determination of value. Now that final determination of value could either be the DMA, where we've agreed what the value is, or it could be the value as set by the PUC.

The problem that we had within 90 days of the Supreme Court order was the question of whether or not that Supreme Court order, itself, was the final determination of value because there was no further appeal. Both Pennichuck and the City agree that that final PUC order was not a final determination of value because it says right in the order that this is the value as of December 31, 2008, and that there would need to be, because of additions to plan and equipment and retirement of plan and equipment and depreciation, all the things that happen in a operating enterprise, there would have to be a truing up of the value from December of '08 until the date that we actually decide to take the property. If we were going the eminent domain route, we would have to have the PUC set that value. Of course, if we had a negotiated agreement, we set it ourselves. The problem we had, of course, was that 90 days after the PUC order was confirmed by the Supreme Court, some person could say – one of the interveners that had opposed this all along, perhaps – “Well you no longer have the opportunity to take that 90-day bond vote because the time has passed.” The 90 days after the final determination.

It's a fairly technical legal issue, but we feel very confident that all we need to do is have the PUC schedule a hearing on final determination of value for some time in the future. If we agree with Pennichuck on a value before then, the issue goes away. So that was the motion that we filed with the PUC. We said: “Please hold off on scheduling a final determination of value until after the first of October.” Well, the PUC has hit us just a few days ago with this order that you've been given which says: “Gee, you've raised some interesting legal issues, and we want you to file briefs by September 30th that say whether or not there really was a final determination of value; whether or not we really can set a final determination of value hearing at a later time.” It's all laid out in here what they are asking for. That particular order we view as a good thing because it's been taken by Pennichuck as a clarion call to get the deal done. When this order came out, within two days of that that Dwayne Montopoli was at the table negotiating with us and for the past two sessions he has been there. And that has given us incredible traction in getting a deal here.

That's what the order is. Once we have pens down on the DMA, the next thing we have to sit down and talk with them about is what we are going to do with this secretarial letter. We have to file something with the PUC. We're probably file something with them that says: “Why don't you delay this for a little while longer.” And we may even have a meeting with staff to make sure they understand that they will be seeing something else from us, and they are not going to have to make a decision on this particular issue.

Alderman Deane

Could you define the word “staff?”

Attorney McNamee

Staff? The PUC have a staff of attorneys that work for them and other consultants.

Alderman Deane

So what's going to be submitted to them they are going to be told probably just to review but don't spend too much time on it?

Attorney McNamee

I think it's going to be a meeting with staff. Bill you can address it because you do PUC work more.

Mr. Ardinger

With respect to this particular issue of how to address this letter we've received, Jamie's right. We're going to work out with Pennichuck together the best strategy. That may include a meeting with one or more staff members of the PUC. We may decide that's not the right strategy, but we're going to do it together. If what you're asking is the longer term with the PUC, there is going to be once we reach an agreement and it's public and when assuming you all approve the authorization to issue the bonds, the PUC approval will be a very complete, very thorough six to twelve-month process to decide whether our acquisition of Pennichuck Water Works is consistent with the public interest. Staff will have a role to play in that. There will be many meetings between the parties and staff during that process. Did I answer or did I miss the question?

Alderman Deane

I want to go back to the governance, and I know you have supplied us with some different variables in here. Bill made comments earlier about the governance model that would have to be approved by the PUC. Am I correct?

Mr. Ardinger

Yes, sir. The PUC won't have to specifically approve the governance model. But, they will have to determine whether this transaction is in the public interest. In making that public interest determination, it's expected that they are going to look at: "Is this structure set up in a way so it will be fair to all rate payers?" I think that's the question they will ask is, The PUC's interest will be to make sure that the three public utilities, that Pennichuck, the holding company own, our Pennichuck Water Works and the two other little ones, make sure that our ownership structure is set up in a way with good corporate governance that will run those utilities like high quality businesses that are designed to make sure they keep providing good water service. The PUC interest is to make sure the governance structure serves the public interest along with other parts of the deal.

Alderman Deane

So once the governance structure is given to the PUC and they approve it and it comes back here and this board looks at it and says: "You know what? We really don't want to have governance like this. We want to make some significant changes to it." What's to stop the city from doing that. Would there have to be complaints filed to the PUC on behalf of the whom? Do we have the ability by our elected authority to make those changes even though they might be contrary to what the PUC had approved to begin w/?

Mr. Ardinger

Alderman Deane, here's where I think it sets up. The entities that the PUC has jurisdiction over, there's a chart in your ...

Alderman Deane

I saw that.

Mr. Ardinger

That chart. They only have real jurisdiction by statute over Pennichuck Water Works, Pennichuck East Utility and Pittsfield AquaDuct Co., Inc. The most important entity for the city's corporate governance structure will be

that Pennichuck Corporation entity; that top holding company. The PUC is going to be very concerned about its regulated utilities, but in general, the PUC is very flexible on the size of board, is one board member slot always reserved for a town of Merrimack resident, is one board member slot at Pennichuck East Utility reserved for its local residents. They are very flexible on that. The most important thing about this structure is that those three utilities are going to remain fully regulated utilities subject to the regulation by the PUC. If we do anything with rates, rates will have to be approved by the PUC. If we want to issue any debt, for debt there's specific statutes that say require approval by the PUC.

Changing the governance, there's no specific statute. But as long as those things are regulated and we own them, it would be wise to run in a positive, proactive way any ideas we have by the PUC to make sure we wouldn't be running into trouble. I believe you're going to have a lot of flexibility with that top box, Pennichuck Corporation, in terms of what's the number of board members, are there slots reserved for particular communities, how long do board members serve – do they serve for six year terms, four year terms? There is going to be flexibility to look at that and change those items. Let's assume you set up a situation that you elect a board member and they serve for six years, and then they go off. You could come back in and change that, I believe; my view is, change that to four year terms and the PUC would not bother with it. But if you were to dramatically change the board from 12 members to 3, I think the PUC is going to start worrying that that governance structure may pose risks to the ability of those three utilities to continue doing what they are suppose to do which is sell water at reasonable prices in a safe way. The PUC is responsible for that. So there is flexibility to change it, but while those three entities are regulated, we have to pay attention to the PUC.

Alderman Deane

So if we in turn offload and liquidate those Pittsfield and Pennichuck East and Water Works, Inc., that will take us out from under the thumb of the PUC?

Mr. Ardinger

Before we get there, the girl who brought me to the dance's tax law, the only reason we're acquiring these corporations this way and owning it this way, which is different from other municipalities, is there's an unusual tax roll that if we did liquidate Pennichuck Water Works, it would trigger anywhere between a \$40 million and a \$60 million federal income tax liability. We cannot trigger that without adversely affecting our ratepayers. We could not liquidate that entity without triggering that tax. Nothing to do with the PUC, but because the tax regime. I have a poster in my office that says: "Buying a bankrupt utility isn't the easiest thing in the world to do." That was the PSNH deal. In this case, it's not easy. There's a lot of different inputs that have got to be managed. If we were to get the federal legislation, Alderman Deane, that opens up path on the tax issue. Now we can really start thinking about, as a city, as a board, you can think about, should we consider restructuring this.

The last part of your question, what about these two little utilities and the other company. Could we sell them off? The answer? Yes. You could sell them off even before we fix the tax issue, but that transaction would be subject to approval by the PUC.

Alderman Deane

Forever?

Mr. Ardinger

As long as they are regulated utilities, yes sir.

Alderman McCarthy

As long as it's a stock company. If we get the federal legislation then...

Mr. Ardinger

Alderman McCarthy, I think with respect to those two little utilities, which are not within our city boundaries, we are not going to be able to liquidate those. We may be able to transfer them to their communities, transfer them to another company, but I don't think we can liquidate that up to say a Nashua water district, or even a regional water district because it's so non-contiguous.

Alderman McCarthy

What about the contiguous of Pennichuck East? Part of Pennichuck East are connected.

Mr. Ardinger

I think those are really options that are in play. Again, fully subject to PUC regulatory approval.

Alderman McCarthy

In that case if we sell off Pittsfield, for example, if we sold it to Pittsfield, does that participate the tax event?

Mr. Ardinger

In that case, selling that to Pittsfield, without a change in legislation would trigger the tax event with respect to Pittsfield Aquaduct, not PWW.

Alderman McCarthy

No, I'm saying if the federal legislation passes.

Mr. Ardinger

We're clean. If the federal legislation passes, it's been drafted in a way that makes it very clear which I believe is the right answer those regs. were never intended to apply to the unique situation of a city taking a major step that's a long term plan to acquire and protect its own water supply. That's what we are asking Congress to pull those rules. If we get it pulled off, there's much more flexibility.

Alderman McCarthy

What happens if we sell parts of Pennichuck East to a water company?

Mr. Ardinger

I believe in that case there would be tax recognized. Before or after the tax legislation?

Alderman McCarthy

After the tax legislation.

Mr. Ardinger

No tax recognized. We could do that approval by the PUC.

Alderman McCarthy

That is clearly the case that the existing legislation was put in place to prevent – a municipal acquisition and then a private sale avoiding the tax.

Mr. Ardinger

You're right. I think that the legislation we're drafting, you are absolutely right. As a matter of fact, the joint committee asked about that. The build-in gain at those two utilities is very small. The risk has not been my focus. The real problem is in the Pennichuck Water Works, Inc. entity.

Alderman Vitale

That legislation is in the process of being written to be something that change take place. Is that how I understand it? Federal legislation that would take care of the tax portion of it?

Mr. Ardinger

Yes, Alderman Vitale, that legislation has been drafted. It's about a page and a half. It's been submitted first through Senator Gregg's office, to the joint committee. Senator Gregg is working with Senator Sheehan. There is no promise that we will see any federal legislation of any kind any time soon. But if there is some bill, the hope is that through their – and they have been working very hard – through their efforts, that legislation may get amended onto one of those bills and get through to the President's signature.

Alderman Vitale

So basically, if that would go through it gives us an option of something we could do in the future down the road to take care of some of that tax liability.

Mr. Ardinger

Absolutely. The constraints, the handcuffs that are on us to avoid triggering that unexpected \$50 to \$60 million gain, those handcuffs come off.

Mayor Lozeau

And the cost of the bonds for purchasing significantly change that rate – tax exempt bonds versus taxable bonds.

Mr. Ardinger

Exactly. That legislation will allow the issuance of tax exempt bonds which would pay a lower rate to investors.

Mayor Lozeau

It's the crown jewel.

Alderman Pressly

If I understand this correctly, given the circumstances of today, we have no choice but to purchase it in the way that we are hoping to purchase it and as a municipal pretend or function or purchase this and sort of become a corporate entity. We've become a corporation which we are not used to being.

Mr. Ardinger

Alderman Pressly, the city will function ... If you look at that picture of the boxes. Do you have this picture in your material? This is a corporate structure. You can see the current corporate structure has the current public shareholders owning Pennichuck Corporation. And then Pennichuck owns all five of these subs. All we're doing in this transaction is having the city become the shareholder. We're going to buy the shares from those public shareholders; the city is going to own it. The city will continue to be as perfect a municipal enterprise as it has always been, but it will be in the weird unique position of owning a private corporation and running as a shareholder – just like right now you may own stock in a corporation, not to even mention Pennichuck. You're a shareholder of Pennichuck so you have a vote. The city will have a vote as a shareholder. You're going to be a unique voter because you own all the votes.

Alderman Pressly

I think I understand that.

Mr. Ardinger

Sorry.

Alderman Pressly

What I'm trying to get out is the way we can only purchase it now places us in a situation that we, as public officials are not accustomed to. We have to function in a way that we are not used to, and we'll have to get used to that. The only way it can change it to get the federal tax laws to get that changed. Now once that happens then we can go back to becoming a municipal water company?

Mr. Ardinger

Yes we can as long as our plan to get there is approved by the PUC.

Alderman Pressly

We still would get the PUC approval?

Mr. Ardinger

Yes.

Alderman Pressly

Okay. I think what I'm really trying to get to in a very roundabout way, the thing that concerns me the most is the governance. It's frustrating. I know it's only between us, all the other negotiation has been with Pennichuck. But for me, and I think for other members on this Board possibly, that could be the deal breaker. Because a lot of us feel real strongly we want to make absolutely sure that the governance is as non-political as it can be; that it is as squeaky clean as it can be. Those of us who worked on this for over eight years and played a role in getting the vote to purchase, one of the frequent questions that would come up from the public

was: “We don’t want the mayor and board of aldermen to run the water company. We want it to be a separate, independent group of people who know how to run a water company, and they are not beholden to any political entity,

So what you are telling me makes me sort of nervous in that we can set up something now, and you’re going to present some choices to us. But that could all change, and another board of aldermen, another mayor could come along and restructure it and do whatever they want. Should I be worried?

Mr. Ardinger

No, I don’t think so unless you question the democratic process that elects this legislative body. The Pennichuck Corporation Team has nothing to say about governance.

Alderman Pressly

I know that.

Mr. Ardinger

The only people that say what governance is this body. If you come to agreement, as a body, on a governance structure that you really support and it works and it gets it done, that’s fantastic. But as you know if a subsequent legislative body were to decide that there should be a change, by virtue of being elected, they have the full right to do so with open debate and in public. There’s no way to lock down and take away the right away of future elected boards of aldermen.

Alderman McCarthy

The next board could independently just decide to sell it to American Water.

Mr. Ardinger

They could sell it outright. And I don’t think that’s anyone’s intent, and I don’t mean to diminish at all with that hypothetical but the truth is that’s the power of this legislative body.

Alderman Pressly

And that’s one of the fear of the public. So, I think the sooner we can get to what the choices are and have a chance to look them over, digest them and to come up with what is the most appropriate way to function with it, the better off we all will be. I know I am eager to get to that part of it and understand it.

Alderman Sheehan

I was just going to point out that right now we could decide to sell off wastewater or sell off the library or any of these things that we currently run.

Alderman Pressly

The police department.

Alderman Sheehan

Right. Technically, ...

Alderman McCarthy

The library actually turns out to be remarkable hard to sell.

Alderman Sheehan

It does.

Alderman McCarthy

City Hall we could get rid of but the library we're pretty much stuck with.

Alderman Sheehan

That I have no problem with. I'm just saying there's nothing we can't change legislatively. Now. Us. So it could happen with anything within the city.

Alderman Tabacsko

For that matter, we could change the form of government of the city if there was enough political support. That's the governance that we have right now.

Alderman Clemons

The points that I was going to make have been said.

Alderman Deane

I understand what you are saying. Alderman Sheehan brought it up. We don't control the destiny of the future. The future is controlled by whomever sits in here. I think one of the major concerns, and I won't speak for Alderman Pressly, that I heard from day one was this water company tuning into a regular hacker-rammer where people's kids were working here and aldermen's kids and members of the aldermen were resigning and working for the water company. That was one of the things that were stated more often than not. The majority rules, and I guess it all just comes down to how each one of us feels. We are all entitled to our vote and our opinion on how the governance model is set.

I had concerns about the governance as well. I had concerns about being asked to pull the trigger before the governance was decided upon because I would not do that. I think it should be well documented, through a separate meeting on the governance, what the spirit and intent of this board was when we went through this initial process. Barring any substantial issues that arise or the change in technology, or whatever, that the spirit and intent of this board be kind of kept intact for all the reasons that we will probably end up discussing when we agree upon a governance model. I still have concerns over that. There's nothing you can do about it, but at least from my standpoint I feel I can put my input in on the governance model. If I'm not happy with the governance model that is formed, I vote no. I will not vote to purchase this thing regardless of the time and the money and everything else. I don't want to be part of forming some hack situation for people to benefit out of. I just won't do it. I feel that strongly about it. I think it would be wrong. In my opinion, I think this board has the tenacity to step forward and say this is what we want as a group and this is how we want the governance model to work. Hopefully people will follow that model. We can't be assured of it. If it is not like how I want it to begin with, I will not support moving forward with any of this. To me the governance is the most important thing. I think there's a public trust out there associated with it, and there's a lot of public concern right now with this.

Alderman McCarthy

Alderman Deane, if you could, can you just outline how you would like to see it work?

Alderman Deane

I would like go through his models and I would like to meet separately so we can sit down as a group and go over and discuss how we want it to be formed.

Alderman McCarthy

I'm trying to get some information. I want to set that up sooner rather than later so we can start having that discussion. What's in front of us, as I understand it, is a proposal to do something that looks essentially very similar to the current board structure for the corporation with the obvious difference that we get to vote as the shareholders to confirm the directors, etc.

Alderman Deane

That's the initial formation. It's similar to when the Charter was enacted when everything was formed and then all of that dropped off and it didn't exist any longer – when the city was first formed is how we would do this. But I think restrictions should be put in on aldermen's family members working for the company.

Alderman McCarthy

I think we actually done that. We passed an ordinance to that effect.

Alderman Deane

But I think it has to be spelled out. I don't think we should be digging through ordinances. I think the whole thing should be laid out so people can see how it's going to operate.

Mayor Lozeau

As part of that governance structure, not necessarily the DMA, but as part of the governance structure. There are some options.

Alderman McCarthy

It would be in the bylaws.

Alderman Deane

And that has to be approved by the PUC.

Alderman Clemons

I don't know how this would work because I know that the PUC is involved somehow and there are multiple channels that have to approve certain things, but there are some strong concerns with regards to another board can come in and sell the company. Or we could sell off pieces of the land for example around the ponds. Those sorts of concerns, or have people's relatives working for the company, I don't know. But what I am wondering is is there a way that we could somehow say after the acquisition that there are certain things that we could perhaps propose. For example, the company will never be sold. The land will never be redeveloped, whatever else there may be that we could potentially present to the voters to say this is a Charter

amendment that we want to put forward so that this is in the City Charter so no future board of aldermen could come forward and just change this unless the voters approve it as well. That's my question, and how would the PUC play into that or would they not?

Alderman McCarthy

I think, subject to correction by counsel, that those are not issues that affect the governance that is stated in the bylaws of the water company. I think we can do that by virtue of constraining the behavior of the way the board of aldermen works in exercising its rights as the shareholder of the corporation. If we were to say the board of aldermen cannot vote to approve an item disposing of more than three percent of the real estate of the corporation, for example, we could do that.

Alderman Clemons

You mean in the bylaws of the corporation?

Alderman McCarthy

No, that would be in the City Charter.

Alderman Clemons

Right. So in other words we could amend the City Charter to include language like that. Okay.

Attorney McNamee

Except for the home rule statute may not actually have a place that allows us to put that in. What you could vote on, you could have restrictions and easements that you put on the property, similar to the way you do conservation easements, that would have the same effect.

Mayor Lozeau

If I could just remind some of you we had talked a little bit about – remember the airport and the mitigation in looking at seeing if we could have some of that land go into a conservation easement, receive the \$2 million that had been set aside for that to help with some of the cost of the company to which accomplishes a few things. It buys the price down, and it also conserves a tract of land that we want to make sure nobody develops. If we do some of that before another legislative body comes in, I think that's a great way to protect some of the land too.

Alderman McCarthy

We certainly could put conservation easements on the land that we want to conserve.

Mayor Lozeau

Give it to a third party as a conservation.

Alderman Clemons

Does that have any tax complications to us?

Mr. Ardinger

Thank you, Alderman Clemons, for one easy question. No.

Alderman Clemons

That's the kind of discussion I think we need to have. I think, in my opinion, there's going to have to be some Charter changes. Maybe it's something we have to work out with the legislature to allow them to allow us to do that. I don't want to see the company sold by another board either because there's financial problems or somebody mismanaged it. I don't know. I don't see that happening, but it's a possibility that I wouldn't like to have unless the majority or 2/3 of the voters in Nashua decide.

Mayor Lozeau

In the interest of time, if we could maybe walk through the packet that they have presented, identify some of those issues that we want to come back to, I think that might set it up in a way.

Alderman McCarthy

I want to make sure that we understand what to do at our next meeting discussing the governance and then let's set that meeting up in the next couple of days for the next couple of weeks.

Mr. Ardinger

We've had a good discussion. We've identified a number of issues – all go to governance. But with respect to these companies, the documents that are important for governance for you, it's the Charter. For the state, it's the Constitution. For the Concord School District, it's its own Charter. For these companies, it's its articles of incorporation and its bylaws. Every corporation that exists has got articles of incorporation and bylaws. The issue that Alderman Pressly and Alderman Deane I think eloquently have put forward is the need for independence of the board of this top box. The way that gets done in any corporation is you select a good number of board members. You include a requirement that says: "We would like the board members to have competent, professional expertise that can serve the interest of this particular water business, but also reflect the interest of citizens." You can have that.

And then what you do is, the independence point, the biggest point in all corporate governance for independence is you don't say that this board of aldermen nominates ... the mayor nominates the member, this board of aldermen says yes or no. They have the power. But you don't have that happen every year for all those board members so you have full big wide turnovers. You slow the control. You have to find a balance. Alderman Clemons, I can tell you where there are going to be cases where you don't know what the future brings. You don't want to inextricably make it impossible to do things with this because you never know what comes. You want to have some balance of power. What you do is say, for example, your board members would serve a term of six years, or of five years. And then you put maybe term limits on so they would serve only one term. That means if you had a board of 10 members, the Mayor might serve ex officio which means by virtue of her office or his office, depending on who. You would end up having nine members. One would go off, eight would stay and there would be one new. That person would learn the ropes. You see how that independence works.

It's a very hard unless you amend the bylaws, as a shareholder, to do a takeover where you're going to say: "We're going to switch the whole bunch of them." By doing that, you achieve a form of independence that I know would probably be in line with Alderman Pressly, what you were laying out. It also, I can imagine, the PUC would like to see that. The PUC doesn't want to see a management that is not focused on running a good water company. The independence part is really important. That's how you achieve it. These articles and bylaws that you read have a lot of provisions in them. You will see by the table that John has prepared,

we don't recommend big changes to most of them. It's on the board structure, how many, do you allocate to the town of Merrimack? You have information in your packet about the customers of these companies. The key thing to work on is lock down that top box first and then work on the three utilities that serve different communities. You can get this done.

It won't answer the Charter questions that are bigger. That will take longer. But for these companies, it's pretty straight forward where you have to focus. You have to balance independence and the need for change. There will be powers to resign, how do you fill those vacancies. All of those things are part of it. I would say rather than, mayor, saying necessarily going through this presentation now, the big focus is to debate how many board members and how long they serve. It is important to look it you don't have to remake the wheel. Other communities have done this. So if you go to the City of Manchester website, you will see that they have a board of seven members. It's a six year term, six year rotation. The mayor serves ex officio and any opening for board member the mayor nominates and the board of aldermen confirm. Why did they choose it? It's the way all of their nominations work. They just put that into the same boat.

If you're thinking about a model that I can tell you gets through the PUC, I know that would. But it might not serve your interests completely. Those are the real working parts. There aren't that many working parts. Remember, that board will meet like your board meets in accordance with the bylaws. They will meet as necessary at annual meetings, regular meetings and special meetings. It will all be in there. They will vote on key things: proposals to raise rates. They will vote on proposals to borrow money. They will vote on proposals to enter into significant contracts. But they are going to have a management team that works for that board that's under the current program, the plug-and-play program. We're going to take that entire management team at Pennichuck, plus or minus a few. Attorney McNamee, I'm not going to say who the minuses might be, but I can imagine a few from my meeting today.

Mayor Lozeau

They've already said that.

Mr. Ardinger

But there will be plus or minus a few, and they will be selected by that board. So I don't think it is impossible to do this. But those, Mr. President and Mayor, are the key working parts.

Mayor Lozeau

I can't remember the answer to this question. I know I asked you. I don't know if we got off on some other discussion when I asked but, did Manchester pick out disciplines that they wanted represented. That there will be an attorney, a business person, a utility person. Did they pick out any determination of the kind of slots that they wanted. Do you know what I mean?

Mr. Ardinger

I don't believe they did. Their ordinance is just the number and the mayor's appointment.

Mayor Lozeau

And I was picking like we should have an attorney. I wasn't saying that. A lot of boards will say we need a baker, a candlestick maker, you know what I mean. I just wondered if they had done that.

Mr. Ardinger

And one other issues was raised about nepotism. Typically anti-nepotism rules are not in the articles or bylaws. They are done by policy that the board adopts or they are done as, for example, part of the Charter or ordinance of the city. You'd pass an amendment to the ordinance saying this ordinance prohibits nepotism would be applied to these acquired water companies. There's a lot of issues that are on your side of the ledger with tools that you have that you don't have to implement in the short-time frame. The real timeframe which is during due diligence here, getting this ready here for the vote, is to talk about that board. That's the key thing, unless I'm misstating it, to me, that's the working part.

Alderman McCarthy

It sounds to me like when we discussed the governance, there's four separate things we need to come up with. One is the actual corporate bylaws which is the thing we need right away. Second is any potential changes to the city Charter that we might want to discuss and things like you just described – the changes to the ordinances to deal with that. And the third is sort of third-party agreements, covenants and easements to protect things like the land with conservation easements on it. There's going to be a number of things that we will have to consider as pieces. We will have to follow up on the rest of those because a Charter change is going to take awhile to get in place if you have to do that.

I did want to point out that when we look at the bylaws, if we want is continuity with the board of directors that things like Article 10, providing that a director can be removed by 2/3 vote of the stockholders sort of gets around the wholesale change by the board of aldermen because we can then remove all of the directors and simply appoint new ones.

Mr. Ardinger

You've got it because right there if it were a majority vote to remove, it's one thing. Two-thirds is super majority. A little harder. Three-quarters, a little harder.

Alderman McCarthy

Actually it's two-thirds of the shareholders.

Mr. Ardinger

Oh, you're right.

Alderman McCarthy

The majority vote of this board constitutes a unanimous vote of the shareholders.

Mr. Ardinger

That's current. I think you can have the power and these articles, let me say, there's no precedent here. The articles of incorporation here can be more creative. They could say that the shareholder will vote in accordance with votes of this body. You can have some flexibility there, and I think that would be one of them.

Alderman McCarthy

So we could effectively make it that the shares. Let's say we establish it with 15 shares and they are voted in the same proportion of the votes on the board of aldermen directing them.

Mr. Ardinger

Or it would be that in order to have the shares voted, the action will be taken by vote of this body and usually it will be majority, but in certain cases it could be super majority. You could have that, and I think that's a great change to do.

Alderman Deane

I guess we could look south to our neighbors and reflect on how the MWRA is set up where every time you pick a paper up somebody's uncle's brother's cousin is working in a toll booth. It's just out of control. I alluded to it earlier. The public has, those I have spoken to, have grave concerns about that. Alderman McCarthy had listed four items. Are those the to do for our next gathering?

Alderman McCarthy

The thing we need to produce first is the bylaws. I think we need to be taking notes on the other three as to what things need to be brought forward and put in place.

Alderman Deane

I agree.

Alderman McCarthy

The covenants we can't do until we own the resources. The others we will need to work on.

Alderman Deane

But the covenants we can get a good idea of what the majority of this board wants to do in that area, cant' we, prior to...

Alderman McCarthy

Absolutely. The one thing we could do is pass a resolution that indicates what are preference is for those other things as sort of a declaration of here is where we want to head with it. And then introduce things like the Charter changes. That will at least get you a recorded sense of it. I am very sensitive to the issues that you and Alderman Pressly have brought up. I have no preconceived notion of how the governance ought to work other than it ought to make sure that things carry on pretty much they have been for the last 150 years. The water regulation part of it works pretty well. I'd like to see us not disturb that model. I want to put in place a structure that does that. For the record, I have absolutely no interest in working at this thing once we own it. I've stated that before, and I'll state it anytime anybody wants.

Alderman Deane

Through all our discussions, I am constantly asked by Pennichuck employees who have been told absolutely nothing by anybody. These guys are all concerned. They will start and say: "We know you can't talk about it." I say: "That's exactly correct. I can't talk about anything." But I think the agreement back from the time we kind of put this over was that we were very interested in looking into the direction of maintaining the staff that works down in streets that knows the meters, that knows all the quirks in the system, the fellows that have been on the meter readings and all that other stuff, and it was basically some of the upper level that there may be some adjustments made in that area. It was going to be pretty much business as usual with the current situation that we have there. That's always the impression I've been under, along with Alderman McCarthy. It works. Something happens and they are there.

Alderman McCarthy

Right. The way I've always described it when I was asked by those employees is I would like it to be the only thing you notice when it changes is the sign over the door. Apparently under this model that doesn't even change.

Alderman Pressly

I don't know how to say this, but I think we have to be realistic about the reputation that Pennichuck, itself, has. That's one of the reasons I think we need to do our very best to put in place the good government rules such as term limits that you reference. Pennichuck, itself, had a history that the mayor rezoned the land and then resigned and became the CEO of Pennichuck. That still is well known. I want to get it in the record.

Mayor Lozeau

I just want to say "no thanks."

Alderman Pressly

They know it's not you.

Mayor Lozeau

I don't have any plans either.

Alderman Pressly

If you've read the 150 year history, this has gone on for years. It's very scandalous. I think it is extra important for us to make sure that we have in place the generic good government language that at least any future board, if they are tempted, will have language to turn to and say: "Hey we shouldn't do this because that's one of the rules there." I think there are lots of those around besides term limits. You can have rules that no city hall employee or elected official can be appointed for a year after they leave that service. There's all sorts of languages that I would like to see put in place. Even if future groups change them. At least I think they are there to remind people that we're trying to keep this as squeaky clean. And also this current mayor mentioned having categories. I think that is a good idea. To have educational requirements or experience requirements that relates to the actual service. I'm hoping that we will have a chance to go through that and do our very best that it be so squeaky clean that we do the best we can to assure that it will be that way for awhile anyway.

Alderman Chasse

Alderman McCarthy, what's our homework. Take this home with us?

Alderman McCarthy

Yup.

Alderman Chasse

Take this home with us and do something with it and come back the next time around. It is awfully warm in here. I know the mayor said we'd only put up with it for three weeks then winter will be here, but I don't know.

Alderman McCarthy

Yes. Read through that. I will set up a meeting within the next couple of weeks. I think what we want to do is probably go through the bylaws page-by-page and propose whatever changes to the governance model.

Alderman Chasse

Set time limits and stuff like that? I know there's going to be another special meeting. We just seem to be having all these special meetings now, not just your committee. Take this home, do the homework and come back and take care of it. Thank you.

Alderman Cookson

I was hoping to get your impression the following: I know a lot of work gets done in committee. I know it is important to include and engage the entire board in this conversation. I'm curious, again, your comment on would it be appropriate to engage the Special Pennichuck Water Committee to do some preliminary work to come back to this board with some information or some suggestions or some guidance versus the entire board of aldermen.

Alderman McCarthy

We can do that. I don't know how the rest of the board feels about that.

Alderman Deane

We have a committee meeting, as we all know, everyone is cordially invited to attend.

Alderman Sheehan

As it was painfully pointed out to me, however, not everyone can vote.

Alderman Deane

I don't think there's going to be much voting going on.

Alderman Sheehan

I'm just saying if it happened.

Alderman Deane

I think what would happen in a committee meeting is to put a rough draft of the bylaws together and then bring it here and look at it.

Alderman McCarthy

I will say I don't remember off the top of my head who's even on the I believe we appointed one. Does anybody know that they are on it? Alderman LaRose is. I believe you're the chair.

Alderman Cookson

No, you are.

Alderman McCarthy

Oh, I am?

Alderman Cookson

Yes. I don't know who is the vice chair.

Alderman Clemons

It might be advantageous to...

Alderman Deane

McCarthy, Pressly, Tabacsko, Cookson and Cox.

Alderman Pressly

Pennichuck Special Water Committee: McCarthy, myself, Tabacsko, Cookson and Cox.

Alderman Clemons

If I may, it might actually be advantageous to do that only because if it's hard for people to make multiple meetings, the quorum requirement is less. That way, if you can make the meeting obviously you are going to be able to participate, as Alderman Deane has said, but it won't require eight of us to be in the room.

Alderman Chasse

Less hot air. That was a joke.

Alderman Deane

When does it turn into a Committee of the Whole? After seven?

Alderman McCarthy

At 15. We may be able to operate that at a more lax set of rules for the members that are present. I think it's probably a good idea to do that if there's no objections or strong objections.

Alderman Deane

There will be no legislation; there will be no voting, right?

Alderman McCarthy

There would be on recommendations back to the board on the draft.

Alderman Deane

But when the draft is being created...

Alderman Clemons

And everything is non-public, right?

Alderman McCarthy

We'll have to have the meeting in non-public. What I would propose we do is at the beginning of the meeting suspend the rules to allow all members of the board of aldermen who are present to vote on anything that requires a vote, unless Attorney McNamee is going to throw anything at ...

Attorney McNamee

That sounds like a reasonable ...

Alderman McCarthy

I think that allows us to ...

Alderman Deane

Are we going to have Attorney McNamee sit in on those meetings in case we need some legalese?

Alderman McCarthy

That's probably a good idea if he is willing to do so.

Attorney McNamee

I have a choice? Yes.

Alderman McCarthy

That's probably a reasonable idea.

Alderman Melizzi-Golja

I have a question. If this special committee meets, minutes will be taken.

Alderman McCarthy

Yes.

Alderman Melizzi-Golja

And those minutes will be sealed.

Alderman McCarthy

Yes.

Alderman Melizzi-Golja

Then when a Committee of the Whole meets to review recommendations, what will happen to those minutes? Will we have the benefit of those? We will be ...

Alderman McCarthy

Under the circumstances, I would have them transcribed anyway.

Alderman Melizzi-Golja

Right. Okay. I just wanted to make sure that that's what would happen.

Alderman Deane

We can unseal them and seal them.

Alderman Melizzi-Golja

So then they would just be resealed as part of the meeting of the Committee of the Whole which is confidential?

Alderman McCarthy

We don't really need to unseal them and then seal them again. If we just seal them at the committee, transcribe them, transmit them to the board. In a non-public session people will understand what the ...

Alderman Melizzi-Golja

I was just concerned because a comment had been made that once minutes are sealed, they are not even open up for ... I can't get the 2003 minutes. So I just wanted to make sure we were clear on that. Then my other question was in terms of the timelines. In looking at this projected timeline we received tonight and based on the conversation not only about the need for articles and bylaws but also the desire to unseal minutes when everything goes public, it looks like somewhere between October 15, maybe October 30, we're going to have to minutes and articles and bylaws? Is that correct?

Mr. Ardinger

Articles and bylaws you'll need prior ...

Alderman Melizzi-Golja

Prior, right.

Mr. Ardinger

...prior to executing the DMA.

Alderman Melizzi-Golja

Right, but we're talking about executing the DMA October 13th.

Mr. Ardinger

Around that time.

Alderman Melizzi-Golja

So we're looking at by mid-October we need to have a whole lot of work done because we're going to be looking at...

Mr. Ardinger

Because those have to be attached.

Alderman Melizzi-Golja

Right. And then also if we want those minutes available when everything starts for public comment, that's going to have to follow very quickly after the execution of the DMA. Did I follow that correctly?

Mr. Ardinger

Yes.

Alderman Melizzi-Golja

I just think we need to all be thinking about the next month, five weeks, we're going to have minutes and bylaws and all of that coming before us.

Alderman Deane

I know I've done a little; I don't know how much legislation has been put in. But maybe if we're looking at trying to work a timeline, other than the finance committee which has to meet to approve the warrant anyway, and whatever else, if there's no other pressing legislation, maybe we should just take those regularly scheduled committee dates that we have and then just focus on the things that we need to do in the next couple of weeks. If nobody has any objections. Sometimes Lori has grants that need to be approved because there's a timeline. Things like that, but if there's nothing that's really pressing, it might help free up some dates as we move out a little bit.

Alderman McCarthy

That's a good suggestion. I'll work with the committee chairs.

Alderman Deane

I'm cancelling all budget meetings until we're done with this.

Alderman McCarthy

One thing I would suggest as part of the homework, read the articles of incorporation and if we could produce written questions by section, and I'll even volunteer to roll those all together, if we can. That way as we go through the sections, we can take everybody's comments and reach agreement.

Alderman Melizzi-Golja

Would you like those in color sticky by sections?

Alderman McCarthy

I would prefer them electronically.

Alderman Cox

Any confidentiality issue with that?

Alderman McCarthy

Not if we keep them to ourselves. The confidentiality issue for the moment is the fact that the articles exist, and virtually nothing else. What's in them is essentially public now and will be public when we finish them. It's the fact that they exist implies that they are an attachment to a merger agreement that is confidential.

We had actually started to work on the water ordinance, which we probably ought to dust off and take a look at. I'm not sure how much of that is applicable to the bylaws so much as things that may need to go in place afterwards.

MOTION BY ALDERMAN CLEMONS THAT THE BOARD OF ALDERMEN 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 Vitale, Alderman Craffey, Alderman Deane, Alderman Pressly, Alderman LaRose Alderman Tabacsko, Alderman Melizzi-Golja, Alderman Cox, Alderman Sheehan, Alderman Wilshire, Alderman Chasse, Alderman Flynn, Alderman Cookson, Alderman McCarthy	15
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Nay:		0
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MOTION CARRIED

MOTION BY ALDERMAN CLEMONS TO COME OUT OF THE NON-PUBLIC SESSION AND RETURN TO THE SPECIAL MEETING OF THE BOARD OF ALDERMEN

MOTION CARRIED

ADJOURNMENT

**MOTION BY ALDERMAN LAROSE THAT THE SEPTEMBER 8, 2010, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED
MOTION CARRIED**

The meeting was declared adjourned at 9:50 p.m.

Attest:

Patricia Piecuch, Deputy City Clerk