

**REGIONAL WATER DISTRICT
MEETING MINUTES
February 12, 2004**

A meeting of the Water District Commission was held on Thursday, February 12, 2004 at the NRPC, Nashua. Present were: Chairperson- Marilyn Peterman (Amherst), George Woodbury (Hollis), Ken Massey (Hudson), Cynthia Herman (Milford), Brian McCarthy (Nashua), Jeremy Lamson (Pittsfield), Karen White (Staff Research – Bedford), Vice Chairman-Fred Britton (Nashua), Kevin Waterhouse (Windham), Jean Guy Bergeron (Pelham), Ray Peeples, Mike Scanlon (Bedford), Walter Warren (Merrimack), Andre Garron (6:50 p.m. Londonderry)

GUEST: Atty Steve Judge

Chairperson Peterman opened the meeting with public input.

PUBLIC SESSION

(Letter submitted by Barbara Pressley to the Committee)

December 19, 2003

*Barbara Pressley
11 Orchard Avenue
Nashua, NH 03060*

Dear Ms. Pressley,

This is in response to your letter of December 16, 2003 to Alderman Britton regarding records of meetings of city officials and employees who formulated the city's position on governing a regional water district.

records of the group, which formulated the proposed charter, are held by the Nashua Regional Planning Commission and available to some extent on its web site.

records of special aldermanic committee meetings are kept in the aldermanic legislative office. Your letter has been forwarded to Mrs. Lovering for response as to those records.

Meetings among the Mayor, city staff, consultants, and individual aldermen on this topic are not covered by the Right-to-Know law. There have been several such meetings, but no minutes or other records of who was present when they met, and what they discussed are kept.

Should you have any other questions, please feel free to call me.

Sincerely,

*Mark A. Sousa
Legislative Business Liaison
City of Nashua
Office of the Mayor*

Barbara Pressley (Nashua) – stated she has been a supporter and a leader with the idea of a Regional Water District. My major concern in this difficult situation is a classic case of miscommunication. Half way through the deliberation of the Charter, Litchfield came

through with a plan and for those of us who went to get the Nashua residents to vote in that direction, your committee has eliminated it in this copy of the Charter. I became concerned because in December, under the Right to Know law, I asked Alderman Britton who is Nashua's representative on this board and I have placed a letter in front of you regarding the concern from some of the Nashua Aldermen. To my knowledge, there have been some meetings on some topics that are not covered by the Right to Know law, such as when they met, what they discussed and this has been going on relative to Nashua's position. I have another document, from the Pennichuck Water committee, the special committee that worked day to day to develop the Charter. I will reference the language in the Memo of Understanding; I believe the Memo of Understanding would work well in a Town form of government, but not in the City. Many Aldermen expressed great concern, such as how will one person speak for 15. Particularly interesting records are on pg 14 and 15, a quotation by Alderman McCarthy and by the City attorney at the bottom page 32 who stated in a critical matter, it would be crazy to vote without consult of the full governing body. When I read this Charter in December, I struggled with the conclusion that no one had been going back to Nashua, at least in a public forum. I understand that it is easy to discuss Charter in consensus and share as a community. On the board of alderman you need a piece of legislation or a purpose to call the aldermanic board together. It is interesting that this committee accepted the Memo of Understanding with reservations. On Jan 2nd there was a meeting of the internal committee working to develop the Charter, on April 23rd there was a meeting following original draft, on June 18 it was announced Litchfield proposed the changed course of the Charter. June 18th was last meeting until Dec 16 when and the Board of Aldermen were informed of Nashua's position. You have a problem and we have a problem together in order to proceed with a Regional District. I am going to fight hard to get the Board of Aldermen to go back to the original project.

(Letter presented to the Committee from the Nashua Board of Aldermen)

*Board of Aldermen
City of Nashua
229 Main Street/P.O. Box 2019
Nashua, NH 03061-2019*

February 10, 2004

Dear Members of the Regional Water Charter Committee:

It has been reported that you may soon finish your proposal for a charter for a Regional Water District. Thank you for your hard work.

The City of Nashua's form of government has not permitted the members of our governing body to seriously review your work until you had a final product. We look forward to understanding your proposal and possibly making some recommendations.

Our 15 member Board of Aldermen, the governing body of the City of Nashua, will be considering your proposed language for the first time. We would appreciate adequate time to understand the ramifications of your proposal before finalizing any commitment. As you know, our constituents represent approximately 80% interest in the project.

We respectfully request that you give us the opportunity to study your work product before you make a final decision to take the proposal to other governing bodies. We believe this will make for a better understanding between our communities.

Sincerely,
Nashua Board of Aldermen (signed by 9 Nashua Aldermen)

Kathy Hersh (Nashua) - stated although I agree with Barbara we would want the Board of Alderman to review every thing this committee receives such as minutes or amended copies of the Charter, I do know that the Board of Aldermen also receives the same e-mails that this committee receives which includes copies of the minutes and amended Charter. I did check with the office today and those minutes and amended Charters have been posted for the Board of Aldermen and tomorrow I will have the date they were received.

Fred Britton-Vice Chairman responded to Ms. Pressley concern regarding the meetings of the internal committee. He stated the committee did have 6 meetings since last June and one in December, but as Kathy Hersh has mentioned the minutes were posted and the Charter is posted. They are also posted on the City's web site and on the NRPC web site. Also in the Aldermen meetings, we always mention when this committee meets again. We are not trying to hide anything and information was not discussed in secret. The letter you received when internal meeting took place of the City with the Mayor and that had been forwarded to council. As far as meetings over the last year, we have had 1-2 meetings with the full board to discuss confidential strategies and the Charter was discussed briefly. Could we have done more yes, but I think we have done a lot.

David Dean (Nashua) - stated he would hope the Committee would understanding the Nashua Aldermen's position and give us the opportunity we need to review the final Charter.

Mike Scanlon (Bedford) in speaking to Barbara's request. The problem I have with this letter that is signed by the Aldermen of Nashua is that it is giving Nashua and Nashua only the ability to read this Charter and bring it back to this committee. If we afford Nashua this opportunity, then we need to send it to other towns. I have had discussions with Bedford Town Councilors and with every e-mail that has come from this Committee, both Karen White and Keith Hickey (Town Manager) make sure the Councilors are up to date. When I go back to my Council for final approval, their chances for changing this Charter is over. I have asked repeatedly for their input. This Committee was projected for a year now we are pushing 2 years. It is important to get this Charter to our communities. We have a mechanism in the Charter to make changes. I would urge the committee to vote this Charter tonight and get it back to our Towns. Then our work as a committee is done.

Brian McCarthy (Nashua) stated that the minutes of every meeting have been made available. I would not accuse my board of being shy of not asking for copies. The committee has met as needed. The last time there was a recorded meeting was when the change of government was proposed. Most of the changes to the Charter were done when we got the services of Atty Judge and Atty Van Loan. Everything is being done in the open. That aside, I will recommend that we send the draft off tonight to have the committee look at it and this committee will not lose ownership.

Chairperson Peterman stated at the end of the discussion tonight we will have that discussion. I personally feel that because we have been talking to our committees and we have sent out minutes and they have been able to make comments on a regular basis. The majority of the Charter is pretty much the way we have consistently drafted it, except for the changes after the 2 public hearings. I would not believe that the structure or organization of this District would change in any substantial way. I would think that there maybe some minor language changes or small technical changes. The changes that might come are worked out right here. Regarding the original draft that we started with, it was just a draft. There was nothing cast in stone. To say that this looks nothing like the original charter is true, but what were we doing except working from that. I know it was a draft and we have worked with it.

Claire McCue – (Nashua State Rep) perhaps you should set a time where the communities represented here have a time to review this. I strongly urge that you set a time frame for the communities to review this document.

Barbara Pressley (Nashua) - I don't want to hurt anyone's feelings, you worked so hard. I just want to make you aware that very few people really read your minutes. I did not read the minutes during the second half, as I felt it was a work in progress and it was difficult for anyone to read and just because you put minutes out on the web site, it doesn't mean they were read. When I was an Alderman I was rarely able to read what came before me. Please review the front page of this letter, those are secret meetings and they happen at City Hall where a lot of public policy is developed. This is one of those policies and it is a topic that should not be discussed in a confidential nonpublic sessions. I would recommend that you please take it back to the communities to review.

Cynthia Herman (Milford) - I guess, I am concerned about what the crunch is to get this done. The other piece of information that I want to understand Barbara is, what you are suggesting now, if we potentially finish going through the sections of the Charter tonight, are you suggesting that we really will not be done? Are you suggesting that we submit the Charter to all the communities again for input so that Nashua has the time to do what it sounds like did not get done over the past 6 months? I was not aware of Nashua's process prior to the past week, and I am frustrated because it strikes me that Nashua's process would have necessitated sessions with the subcommittee. In addressing Alderman McCarthy and Fred Britton who represent Nashua on this committee, I have to ask the question, "Where you said you were supporting the full board of Alderman's support, you did not have their support?" I am frustrated. This committee has done a lot of work where votes have been taken. Now this committee has a signed letter from 9 Nashua Alderman.

Brian McCarthy stated I will debate, but I must ask Barbara, did I understand you to say you have not read the minutes. Ms. Pressley stated not the ones from meetings that I did not attend. I also know that the Mayor said he wasn't going to read them and I know other Aldermen who said they didn't read them. Ms. Pressley stated she was waiting to get the finished product.

Ken Massey (Hudson) responded that we are in public input, but Chairperson Peterman, we do need to expedite this meeting. Public speaking should only be to clarify questions made we need to close public input and go into this debate session.

Chairperson Peterman stated if that is that okay with the committee we will close public input. Before we close is there anyone else in the public that would like to speak.

Chairperson Peterman - 7:15 p.m. closed public input at this time. At the last meeting of this committee, we finished Article 15; we are now on Article 16- Purchasing. The suggestion was to delete without public notice or in cases of emergency. *The Operations Staff shall prepare a Purchasing Policy for review and adoption by the BOD. All contracts in excess of an amount to be determined in the Purchasing Policy for any supplies, materials, equipment, construction work or other contractual services shall be in writing and shall be awarded upon sealed bids or proposals made in compliance with a public notices duly advertised by publications, except for contracts for professional services, except for purchases of supplies, materials, equipment or work which can only be furnished by a single party and except for when the Board determines by a 2/3 vote (Voting by Members) that the award of such contract be negotiation without public notice will be in the best interest of the District. The BOD may, in its sole discretion, reject all bids or proposals or any bids received from a person, firm or corporation of the BOD finds to be unqualified to perform the contract, and may, at its sole discretion, award the bid to the bidder who best meets the needs of the District.* The suggestion was to delete without public notice or add in cases of emergency.

Chairperson Peterman asked Atty Judge when we talked that language out along with the discussion at the public hearing was to allow sole source contracting, we have it in purchases of supplies, and I don't know what this other provision will get us.

Ken Massey (Hudson) stated in cases where 1 or more people or entities qualified to bid but the nature of the service or award is such, expeditiously without bid process, it might turn out that the cost to go to formal bid will be more than the cost of the contract that you are doing and this gives you a waiver to do that. We need to be aware that there is a possibility that there may be circumstances where a single individual may be in the best position.

Karen White suggested a possible example, you need two water hydrants and one contractor in the town and the other is 50 miles away and it would cost more to write the bid specs. Ken stated yes that is what I am talking about.

George Woodbury (Hollis) stated another example is when you have an emergency and you need to do an immediate repair.

Chairperson Peterman stated so the suggestion is to add in cases of emergencies.

Brian McCarthy stated he is sensitive to the emergency nature part, but preparing bid specs for the work, in the end you have to develop bid specs anyways. It is more

important to have that documented. Chairperson Peterman stated your saying take that out. Brian McCarthy stated I don't buy the argument that bid specs are going to cost the District more. Karen White asked Brian then you're in favor of adding in cases of emergency without public notice.

Walter Warren (Merrimack) if it is limited solely to cases of emergencies. Atty Judge stated it is in there earlier. Chairperson Peterman responded, I think it is the public notice that we are hung up on because we are without notice if we add without notice in cases of emergencies does it covers the concern?

Karen White responded maybe stating which a single party can only furnish, or except when the board determines by 2/3 vote (Voting by Member) by negotiations will be in the best interest of the District.

Ken Massey stated with a 2/3 vote, it is a compelling vote, that is the most difficult vote in any governing body to achieve. I believe, in addition to emergency situations there has to be a way to waiver of the formal bid process if 2/3 of the board feels it is in the best interest of the District. Down the line someone will want to put it in the Charter. I think we need both of them in there. The award of such contract by negotiations after public notice would be in the best interest of the District or in emergency situations at the end of the sentence. Maybe stating by negotiations with public notice would be in the best interest of the District or without Ray Peebles (Litchfield) suggested in cases of emergencies without public notice.

Atty Judge within the purchasing policy there may be times when this comes up where there may be contracts that could be awarded without public notice.

Jeremy Lamson (Pittsfield) some wanted public notice when it didn't involve an emergency. Atty Judge stated you have public notice.

Karen White stated if we have a purchasing policy it will set a threshold. Suggested language could read, work which can only be furnished by a single party, or except for when the Board determines by a 2/3 vote that the award of such contract by negotiation without public notice in cases of emergency will be in the best interest of the District.

MOTION made to change the language as suggested by Karen White. Fred Britton seconded.

Ken Massey stated that still doesn't get us the language that a waiver should be made available except for emergencies. I don't understand why contracts for professional services are not subject to negotiations for public bid.

Vote taken, all in favor – Motion passed.

Ken Massey asked if we could include a waiver in the purchasing policy. Kevin Waterhouse consensus of the board is to keep, as it is always done with public notice and

trying to get away from having a waiver except for emergencies. Jeremy Lamson stated maybe state without public notice we have a waiver provision as long as we have public notice. Ray Peeples stated he can understand what Ken saying, because in our purchasing policy we spent more on the bidding process. George Woodbury stated if the operations staff prepares a purchasing policy that includes a waiver provision does this preclude us from adopting this. Atty stated it does.

MOTION: The Board may include a waiver provision in the Purchasing Policy subject to public notice duly advertised by publication. Kevin Waterhouse second.

George Woodbury stated duly advertised puts a 24-hour delay. Ken Massey stated but you still have an emergency.

Vote taken, All in favor – Motion passed.

Atty Judge stated on a technical point, first line we refer to the Operations Staff and it should be the Operations Group.

MOTION made by Jeremy Lamson to change to Operations Staff to read Operations Group. Seconded by Cynthia Herman. Vote taken, All in favor – Motion passed.

Chairperson Peterman stated on to Article 17 Conflict Of Interest – Review (not of looking at perception). Karen White stated suggestion of any employee of a company doing business with the District is disqualified to be a director.

George Woodbury curious as to general feeling how wide to you defines indirectly. Example my twin brother selling supplies, my son, how wide is the net.

Atty Judge they cannot do business with the District.

Chairperson Peterman stated if we go back to the Conflict of Interest laws in the Stated, if you are benefiting from the relationship or business with the District. I think this is the most challenging part of sitting on any board or group.

Walter Warren stated normally in statues where an individual may have a conflict they must disclose that and the board determines whether it is real. This doesn't seem to allow that of this board. That individual director can recluse himself or herself.

George Woodbury stated I would strive for the board to make that decision. I feel the conflict of the issue is presented to the board and discussed.

Chairperson Peterman stated part of being a board member, which is to disclose a conflict. In this statement, the suggestion was with the wording perception of conflict. I

feel you should leave it up to the board whether you step down. Walter Warren stated this language doesn't allow that.

Atty Judge stated with any board, the first part is that it up to the directors to inform the board. Brian McCarthy stated you need an objective standard.

Jeremy Lamson stated there may be a perception, but there may not be a COI. The way it is worded the board has no way to make that judgment. Once there was a perception announced whether it was real or imaginary there is no way for the other directors to determine.

Karen White responded that you either have a conflict or you don't. If you raise it, we should have language in here, if you are not sure have the board decides. Leave perception out, you raised the issue and you should let the board decide. Perception is that, it is not Conflict of Interest. I don't think perception has any place in this.

MOTION made by Cynthia Herman to insert in letter a), if the Board determines that such an interest exists, shall take no part in the deliberations or vote concerning such contract or purchase order. Seconded by Fred Britton. Vote taken, All in favor – Motion passed.

Chairperson Peterman stated the word knowingly under b). Atty Judge the issue is to take that word out. I was curious about this and looked at state laws & federal laws they both have it in. Chairperson Peterman stated so we should leave that in.

MOTION made by Ken Massey to propose in letter d) No Director or alternate – or member of the Director's or alternate's immediate family – shall accept a paid employee position with the District for a period of two (2) years after serving on the Board. Seconded by Kevin Waterhouse.

Atty Judge suggested it is a fairly limited provision. Waiting 2 yrs wouldn't be a legal problem. State statute says 1-year provision. Karen White responded that when she left the City of Nashua I had a clause and 1 year seemed a long time. Mike Scanlon suggested leaving it at 1 year; you may be eliminating someone who is qualified for the position.

Vote taken, 6 in favor, 6 opposed – Vote on the Motion is a tie and Motion fails.

MOTION made by Jeremy Lamson proposing letter d) 1 year after serving on the board or 2 years for any position in the Operations Group. Seconded by Cynthia Herman.

Ken Massey stated the Operations Group is too board. I think that I believe Mike is right, having one year for anything so this doesn't preclude a highly qualified individual.

Vote taken, 1 in favor, 11 opposed. Motion fails.

Chairperson Peterman stated in Article 18 - Resource Plan and Capital Improvement Plan in letter a) *Within two years from the date it acquires all or part of the Water Supply and Distribution System of Pennichuck Corporation and its subsidiaries, the Operations Group shall recommend and the BOD shall adopt the Districts Resource Plan.* The recommended suggestion is change it to 1 year vs. 2 years.

Mike Scanlon suggested keeping it to 2 years; they have a lot of work that first year. Ken Massey stated originally he thought 1 year, but 2 years is a more appropriate time frame. George Woodbury stated it doesn't restrict them if they get it done early. Chairperson Peterman asked the committee do we all agree to leave it the way it is.

Chairperson Peterman also within letter a) *Prior to approving the Districts Resource Plan, the Board of Directors shall hold at least 2 public hearings in separate communities to consider the proposed plan. The proposed plan shall be available for public inspection in the offices of the District from the date notice of such hearings is published. The Board may amend such plan from time to time, but public hearings on amendments shall only be held at the discretion of the Board.* The suggested language change is to require a public hearing on major amendments.

Mike Scanlon asked what it means. Chairperson Peterman stated that the requirement of public hearings was something. The Board may amend such a plan from time to time, but a public hearing on amendments shall be held. Mike Scanlon suggested adding or after a public hearings. Atty Judge suggested adding the language prior to approving or amending.

MOTION made by Mike Scanlon, language to read in a) Prior to approving or amending the District Resource Plan, the Board of Directors shall hold at least two public hearings in separate communities to consider the proposed plan. Seconded by Cynthia Herman. Vote taken, All in favor – Motion passed.

Chairperson Peterman stated that 3% of the ratepayers can petition the amended suggestion. Brian McCarthy asked does that mean Resource Plan or Capital Improvement Plan or does it mean both? Kathy Hersh stated the suggestion was talking about the Resource Plan. Chairperson Peterman stated we should assume that it is both.

Brian McCarthy stated in looking at the language, if you are counting ratepayers what does that mean. In my household there are 4 people in one house. The bill may be addressed to who owns the property and therefore they are the ratepayers. There is a definition problem here. The second issue is you eliminate certain municipalities to petition the Plan because they don't have 3% of the rate payers such as, Hollis cannot petition a change and it is difficult for almost anyone but Nashua to use that 3% process.

Mike Scanlon suggested can we make it by vote of BOD majority vote. Would that be easier? Brian McCarthy responded that you have that. Cynthia Herman stated the point here is to give the customer base a method to input that is outside of their representation on the board. Mike Scanlon stated Brian is right. Chairperson Peterman suggested lets take the % out and go back to the concept. Karen White stated we have a definition of customer treated as a unit for ordinary billing, so in Brian's household will be considered one ratepayer. Make it a fixed number not a percentage. Ken Massey stated this does preclude someone like Hudson to initiate a petition. Chairperson Peterman stated if the BOD meetings are open to the public, if someone wanted to suggest an amendment couldn't they just be at the meeting and ask the board and then it would be taken up by the board. Why get involved in all this other stuff.

Brian McCarthy stated he would agree with that. The Resource Plan is compiled by an analysis, we should not change it lightly, there needs so be a rationale basis such as science, not that we just do not like it. If this is going to work we have to have a sound basis.

Chairperson Peterman stated going back to the example of Hudson, one citizen or many have some technical information that they would like to bring forward to amend the Resource Plan. Ray Peeples stated the citizens have the access, every town is sending a representative to the table. You have to believe we are sending the best person to the board.

Atty Judge stated in letter it states c) The Board may establish policies and procedures for adoption or amendment of the Resource Plan and/or the Capital Improvement Plan in addition to those prescribed in this Article 18 or elsewhere in this Charter. This is that, it is a vehicle that they can use to have it done.

Walter Warren we may want to specify that any director may amend. Chairperson Peterman stated as a board member they always have the right to bring that in. Atty Judge if you spell that out, there are other areas you will need to spell it out that that is what is implied.

Chairperson Peterman stated in Article 18, 1) *The Resource Plan shall include an assessment of land owned by the District to provide water supply and an analysis of whether such land is critical to the water supply system, serves as a buffer to the system or disposable.* The suggestion is to define critical and disposable.

Karen White suggested if in #1 we add language and these terms shall be defined within the plan. That would eliminate the vagueness to anyone reading it, they will understand.

Brian McCarthy stated that the problem with this section all along is over the word disposable. We should make an assumption when we make the initial purchases. I hardly think that we will figure out what is disposable over the initial watershed.

Chairperson Peterman stated it is more definitive in buffer. Land that is critical is water shed protection. I see your point. Perhaps we put that in because there are other lands that are not part of the water district like Pennichuck's Southwind.

Brian McCarthy stated I think the way it is set up it makes it too easy. Andre Garron (Londonderry) stated in Article 19 with regard to the issue of disposable. That provision here serves the purpose of the land identified that the District does not need to allow the District to dispose of it.

Chairperson Peterman stated it is redundant we don't need it.

Ken Massey stated my problem on critical and disposable is that I don't know if we can define critical or disposable.

Chairperson Peterman stated there might be a definition for critical land when talking about hydro geologist. We had that same discussion it is used when describing lands for water collection. Karen White responded that these are industry words in every Resource Plan and they are standard industry terms. We may decide that there is no disposable land, so we may be able to eliminate the term.

Ray Peeples stated we are talking about the Resource Plan and we are living in New England, and in the Southern part of NH as a whole can I point to land that should be in the watershed. It changes what the plan says it tells you what is critical and what is a buffer. Karen White stated if you eliminate a term, it is a definition, a tool, you are making a mistake.

Ray Peeples stated the resource we are talking about is water, and buildings don't fall into resources. The Resource Plan is looking to protect the water. It doesn't change the fact.

Kevin Waterhouse stated he would be against getting rid of a word or term, if it would be against our best interest. Mike Scanlon stated this is not allowing the District to sell anything in the Resource Plan that the District may never choose to sell it. We have 3 pages of criteria; it is impossible for the District to sell anything. Brian McCarthy stated hoped so. With Pennichuck's Resource Plan, they did this and then off loaded land that was not disposable.

MOTION made by Ray Peeples language in #1 to read, The Resource Plan shall include an assessment of land owned by the District to provide water supply and an analysis of whether such land is critical to the water supply system or serves as a buffer to the system and these terms shall be defined in the Plan. Seconded by Ken Massey. Vote taken, 8 in favor, 4 opposed. Motion passed.

Jeremy Lamson stated you can define any terms all you want, all we are dealing with is critical and buffer as defined.

Atty Judge suggested you put quotation marks around the words “critical” and “buffer”, that means that these terms are referring to the terms in quotation marks.

MOTION made by Ray Peebles to amended the above motion to add quotation marks around the words “critical” and “buffer”. Seconded by Ken Massey. Vote taken, All in favor – Motion passed.

Chairperson Peterman stated in #2) *The Resource Plan shall also include provisions for land use management including whether any of the District’s real property may be suitable for other uses and a policy regarding the disposition of land that is surplus, including dispositions which are unlikely to have any significant effect on the environment.* The comment made at the public hearing was to do something with the word unlikely.

Brian McCarthy asked why after the word surplus is that next statement necessary.

MOTION made by Water Warrant to end Article 18, #2 with the word surplus. Seconded by Ray Peebles. Vote taken - All in favor. Motion passed.

Chairperson Peterman stated #3) no comment from the public hearing, are there any comments from the board. #4) *The Resource Plan shall include a calculation of the safe yield of the District’s existing and future water supplies and an allocation of uncommitted supply.* The comment was to clarify the word allocation.

Karen White stated that we need to leave that for the Resource Plan.

Chairperson Peterman stated #5) The Resource Plan must be reviewed and approved at least once every 5 years. The suggestion to change this to 2 years.

MOTION made by Fred Britton to state that the Resource Plan be reviewed and approved every 2 years Motion RP reviewed and approved every 2 yrs, having this reviewed more frequently keeps us aware. Seconded by Ray Peebles.

Cynthia Herman stated are we establishing a Department for the Resource Plan? Ray Peebles stated after plan is done it shouldn’t take the same amount of time as the initial plan will take, after that it is a maintenance task. Karen White stated she agreed wondering about wording that it must be reviewed and approved once every 2 yrs, that is a bigger process. How many communities re-do their master plan every 5 years?

Chairperson Peterman stated that there are certain cases when things have to be reviewed. At some point you can review and review.

Brian McCarthy stated that Karen raised a good question, how many do review their master plans every 5 years and how many should to see if the assumptions have changed and whether adjustments need to be made in the Resource Plan.

Ken Massey stated what the actual motion is, is it that 5 years should be changed to 2 years? That would give you the option of doing it in less than 2 years.

Mike Scanlon stated it would be better if we say the Resource Plan must be renewed and approved biannually. A higher standard would be every 10 yrs, but every 2 yrs keeps you on track. Brian McCarthy stated it is a reasonable thing to do.

MOTION made by Mike Scanlon to have #5) read that The Resource Plan must be renewed and approved at least once every ten years and reviewed and approved at least once every 2 years. Seconded by Ken Massey.

Cynthia Herman asked if there is a science that tells me how long that should be. Mike Scanlon stated like master plan for a town 10 yrs down the road is still accurate.

Cynthia stated in the Resource Plan is the point to go back to the science of it, that would dictate when it should be done, it sounds like these numbers are arbitrary. Mike Scanlon stated you might find out after 4 yrs the assumptions are not valid. By doing this we are making sure every 2 yrs the assumptions were correct.

Vote taken – all in favor. Motion passed.

Chairperson Peterman stated #6) nothing from the hearing regarding, but does anyone on the committee have any comments.

Cynthia Herman asked for clarification, *Prior to the adoption of the Resource Plan, no extensions of or commitments to extend the District's Service Areas shall be made and no new Service Areas shall be created.* All through the process, I am concerned that if this is the case, then the communities that stand to have lawsuits will have problems.

Jeremy Lamson responded that I think you are reading it differently. There is no requirement for Board approval of any connections that were approved by the Pennichuck Corp prior to its acquisition by the District. This could be done without board approval. Atty Judge stated it requires the board to approve and this section is the exception to that because Pennichuck already approved it.

MOTION made by Ken Massey to propose striking the last sentence in letter b) The Board may amend such plan from time to time, but public hearings on amendments shall only be held at the discretion of the Board. Seconded by Ray Peeples. Vote taken, All in favor. Motion passed.

Chairperson Peterman stated in Article 19-Sale, Transfer, or Development of Real Property, the first comment is to define materially in the first paragraph, last sentence;

materially contributed to a water supply function. Atty Judge stated it is a regular word if we don't know the definition, I suggest they use a dictionary. Chairperson Peterman stated the suggestion is to leave the word materially.

Chairperson Peterman stated in letter f) #1 *Within 90 days after such notice has been given, the Governing Body of the city or town or the commissioner of the appropriate state agency may give written notice to the District, return receipt requested, of the desire of the city, town or state to accept the District's offer to sell the property in question upon the terms and conditions offered, provided that the state's right to acquire the property shall be secondary to that of the city or town. In the event of an acceptance of the District's offer, the District shall transfer the property to the city or town or the state upon the terms and conditions specified in the notice.* The comment was that in the event of the acceptance of the terms and conditions, if the town got into difficulty with the governmental restrictions with board of selectmen, that some towns need more than 90 days if they want to purchase the property.

Mike Scanlon stated in Bedford we have land items and the Town Council can vote and appropriate the money. Chairperson Peterman stated 5 million go to voters for money. Mike stated that the District needs to know within a shorter period of time of the towns the interest, but they do realize they have to allow a longer period of time to do the final purchase. Chairperson Peterman asked if adding the words governing body would help.

**MOTION made by Cynthia Herman to add the language governing body.
Seconded by Ray Peeples.**

Brian McCarthy stated if you get that desire expressed and the bond to buy it is not forthcoming, you leave the District with their hands tied. If a legislative body could pass the motion to intent to buy it without putting a warrant article together until the next year.

Mike Scanlon stated if you put in a clause that the governing body must in diligence and in good faith to buy the property.

Ray Peeples reminded the committee we are back to the disposable question we are not going to be in a hurry to do any of this. If the time frame is 18 months slow and steady gets the job done.

Andre Garron addressed Brian's concern regarding a towns desire to purchase it, but if they can't come forth with the funds couldn't that be part of the conditions of the purchase. If they don't come up with the money the district moves on. Chairperson Peterman stated that there are constraints. In some places you have to wait a year for a town meeting.

Brian McCarthy stated maybe the town could exchange revenue credits. Mike Scanlon stated I don't think the District should penalize a community if they don't get the money you have to give them a reasonable chance.

Atty Judge suggested that you put a clause in the negotiations. You could give them 90 days for the desire of the purchase and cut the offer off after 6 months that would protect the district.

Kathy Hersh asked, wouldn't the Resource Plan reflect whether or not you had properties to dispose of at some date so that would give the community the heads up. Mike if I approach Pennichuck on this piece of land that I wanted to buy, at the time of negotiations I don't imagine you know that up front it shouldn't be a shock. Cynthia Herman stated the concept was to protect the regional water property assets and one of the mechanisms was to give the town first right to refusal. This is a water district and we should be working towards what is best for the region.

Chairperson Peterman stated the legislative body is the town meeting.

Ray Peoples stated in response to Mike's plan, in the State of NH there was 70 million dollars bonded for purchase of land without a reason. Chairperson Peterman stated we will need to work within the governmental structure like special town meeting and you have to have a reason and there are laws that cover that. We will be required to do that.

Karen White stated it is unrealistic for towns to consummate a purchase within 90 days. We were talking about taking out the word disposable. Brian McCarthy stated if you want to do it you want it done quickly. Karen White stated you want it to fall into the hands of the town. Ken Massey stated that there are towns doing open-ended bonds that have no money attached to it. After the first of January, it wouldn't be until next March to put a bond article on. No more than 90 days and the purchase and sales agreement subject to approval at the next available legislative body convening.

MOTION made by Ken Massey to state at the end after notice, if the legislative body shall fail to approve the purchase of the property in question (say what the time period is) in a timely manner.

Atty Judge suggested to a certain extent it is individual on each parcel and it is up to the District whatever entity it is. The term is if you desire it has to be approved within a time frame, rather than putting it in the Charter.

Chairperson Peterman suggested putting it in the purchase and sale agreement talk about the possibility of moving up that time frame, if it was a critical piece of land that the community needs.

MOTION: To change return receive requested of the desire of the governing body of the. Vote taken, all in favor. Motion passed.

MOTION amendment made by Atty Judge to add the word the before states rights. Fred Britton accepted. Vote taken, all in favor. Motion passed.

MOTION: If the governing body of the city or town fails to give written notice of its desire to accept the Districts notice does not desire transfer the property in question upon such terms and conditions as approve. Vote taken, all in favor. Motion passed.

Chairperson Peterman stated g) no comments from hearing. Suggestion for article. Atty Judge in article 9 we have language.

MOTION made by Jeremy Lamson (Same as Article 9 motion) such notice shall be posted electronically. Fred Britton seconded. Vote taken, all in favor. Motion passed.

Chairperson Peterman stated Article 22, no comments listed.

Chairperson Peterman stated Article 23 – Amendments to Charter, first recommendation was to consider adding the word not. This charter shall not be construed

MOTION made by Mike Scanlon put in the word not in Article 23. Fred Britton seconded.

Jeremy Lamson responded you do not want to have a public hearing or meeting due to the change being grammatical. If it is not a change in the intent, then this shouldn't require a public hearing. Mike Scanlon stated you can change it at the public hearing. If you don't put the word not in there. Karen White suggested the board shall hold a public hearing in accordance with the final form of any amendment voted upon by the board may not subsequently differ from that proposed to and considered at the public hearing without the board having another hearing. Ray Peebles seconded. Vote taken, all in favor. Motion passed.

Chairperson Peterman stated letter b) after the public hearing. Ray Peebles stated it is the same idea. Chairperson Peterman stated any member customer can go to the meeting or representative for change in the Charter. This means 2/3 vote by member and 2/3 vote by customer. High threshold, which gives the entity with the most customers the most, power to change or amend the Charter. Ken Massey stated the members have equal power because a 2/3 vote of the members chooses not to do it. Chairperson Peterman again stated the threshold is high. Karen White asked if there an objection to petitioning. Chairperson Peterman stated one person can come forward and propose something and if the board wants to take it under consideration.

Karen White responded what if the board doesn't want to take it under consideration. If they have 25 signatures and a warrant article form and petition to get it to a public hearing. Mike Scanlon stated if a member of the public comes to a board meeting to change the Charter you still need 2/3 vote of the members to approve it. Ray Peebles stated the mechanism is really the person out there comes to their town representative and lets them come in and bring it to the table, by doing that it will hold more weight. The

people coming to represent the District are going to be doing that. Cynthia Herman responded that the customers voice is being muted terribly.

Chairperson Peterman stated that is also true with the RP, CIP, the rates, where we have the super votes by member or customer. Cynthia shouldn't the Charter as a whole be more accessible. Mike by not addressing it you have made that persons voice louder. This way one person can come to a pubic hearing and the board will have to address that concern. Karen I think that we need a petition and that it requires a public hearing to be held if 10,000 customers show up and the BOD will take a look at it. Ray stated I thought the purpose of this was so they couldn't amend the Charter. All the things you want to make flexible will be in policy not in the Charter. Karen signatures on a petition require a public hearing. Fred Britton stated it is extra protection for the ratepayer. I see no harm with that. Karen White responded if it is a Charter issue the threshold should be high. If it is one town ratepayer it is not a serious Charter amendment. Ray Peeples suggested you make it a percentage of the ratepayers in town. Cynthia Herman asked why there not a mechanism, if we are going to effect a change why would we not afford them the same opportunity. Why is there not a voting process that can go out to them?

MOTION made by Ken Massey – c) upon submission of a petition to amend the Charter by a ratepayer the BOD shall hold a public hearing and take.

Kevin Waterhouse suggested we put a # in there, a number of customers 1000.

MOTION to amendment shall be proposed by a majority verified signatures of 1000 customers. Fred Britton seconded.

Jeremy Lamson stated it should be higher a little over 3% and I think it should be 5%. Your threshold normally higher than 1 or 2. Ken Massey responded if you put a percentage the number will keep increasing. I think 1000 is reasonable.

Chairperson Peterman asked the committee if they are in favor with the number 1000. Vote taken, 2 opposed Ray and Jeremy. Motion passed.

Atty Judge made the suggestion with language to put in a) first sentence The Board shall hold a public hearing upon any proposed amendment to this Charter in accordance with Article 9 hereof. Notwithstanding this requirement, the final form of any amendment votes upon by the Board may differ from that proposed to and considered at the public hearing without the Board holding another public hearing thereon unless the Board so chooses. b) After the public hearing, the Board may at a meeting proceeded by written notice to the Directors at least 10 days prior to the date thereof of the date, time and place of the meeting and the text of the proposed amendment(s), amend this Charter upon a 2/3 Vote by Member and a 2/3 Vote by Customers.

MOTION made by Fred Britton to accept Atty Judge wording with regard to Article 23. Cynthia Herman seconded. Vote taken, all in favor. Motion passed.

Karen White asked Chairperson Peterman if we could look back at Article 5, regarding towns joining after August 31, 2004 we decided that back in October roll it back to

MOTION made by Kevin Waterhouse to roll back to August 31, 2005. Seconded by Fred Britton.

Mike Scanlon suggested we change it to June 1, 2005.

MOTION amended to roll back to June 1, 2005. Vote taken, all in favor. Motion passed.

Chairperson Peterman asked if there are any other comments on other Article that we have already revised.

Atty Judge suggested a revision to Article 10, letter n) that he read in the minutes, but it was not in the draft. To apply for and accept grants, loans, or contributions and to expend the proceeds for any of its purposes; Also the suggestion to add the Table of Content be added to the draft that we made available at the public hearing.

Chairperson Peterman asked the committee if there are any potential names for the Water District.

MOTION made by Kevin Waterhouse to keep the name The Regional Water District. Cynthia Herman second. Vote taken, all in favor. Motion passed.

Chairperson Peterman asked the Committee to approve the Charter as written today. After it is approved we should all take this to our respective governing bodies for comment. I would not think that this document would come back with substantive changes.

Mike Scanlon stated since the beginning of our Committee meetings, most of us have done that. Chairperson Peterman stated that the District doesn't get formed unless Nashua approves this Charter. Mike Scanlon asked the question what if Bedford, Litchfield, and Milford all accept the Charter; can the District then be formed?

Atty Judge stated that the Memo of Understanding states if there was a no vote by Nashua this document wouldn't disappear, but you will need another mechanism to get the District formed.

Chairperson Peterman stated there are other issues. We don't own the company we are proceeding with some discussions. Talked about the urgency there is some urgency because of the discussions to either purchase or take by eminent domain.

Brian McCarthy stated we were doing fine until we did the extensive rewrite of the Charter a couple of months from there we said we wouldn't go backwards. We rewrote

the Charter since October and the Memo of Understanding says Nashua must vote yes. I am fearful that you will get comments that propose changes.

Chairperson Peterman stated it was my understanding that when we changed the Charter through the recommendations of counsel that we agreed to move forward with those changes. We have been operating on that premise for a long time.

Brian McCarthy stated that prior to starting the changes, we were reasonably happy with the Charter, they were not unhappy for some reason from the 2 public hearings for now they will go through the Charter with pain staking details.

Karen White stated that Nashua didn't want to adopt the Memo of Understanding they wanted to make some changes we agreed and took them back to the communities. One of the changes Alderman Bolton wanted inserted #2 each governing body shall be actively involved and encourage the active involvement and citizens of that municipality necessary or related to the formation of the Charter. What troubles me most is a designated representative and has been getting minutes, agendas, Charter changes and that they haven't responded in 14 months or attended a single meeting and now they need more time. I am frustrated.

Kevin Waterhouse stated in November we voted this Charter and now we went to our selectmen and invited them to come to our public hearing. If they didn't come why now do they say they reserve the right and have us go back another step. It was their job. We held another public hearing. Let's now start the deliberative process.

Ken Massey stated we in fact had no public input at the two hearings we agreed the document we voted on was the final version subject to input from the public hearing. I am afraid we are going to experience paralysis by analysis. Make no mistake if all the communities carve this document again we are going to be back another 3 months. We have to say everyone was on the same operating premise and we were to keep our communities abreast and elected officials were invited to the public hearing. The only community right now saying doesn't go is the City of Nashua. It is not the people on the committee, but it is a group of citizens. They say it is an internal problem. If we are going to take it back, we will be sitting here for another year.

Cynthia Herman stated that may be the case, but I would rather come back for another year then end up with 3 communities and no Nashua. I am furious at the lack of communication by one key player, the representative at this table for the past 15 months vs. what should have taken place.

Chairperson Peterman stated what we are working on with the Charter is where changes have been made. I can appreciate that Nashua has 5 new aldermen. If they think the organizational structure of this Charter is going to change after it was acceptable. Vote by customer and we were represented by the one town one vote procedure to protect our source we have pretty much wasted our time. I am not putting blame anywhere except on the people who were not paying attention to what has been going on.

George Woodbury stated he understands the frustrations and where we are. We know the political process. Each of us takes this back sell it without changes to our boards and then if there are any changes, then we can decide whether to wrestle with them. Let's move forward.

Chairperson Peterman stated we agonized to get the legislation to get the bonding. Nashua is proceeding to the PUC. If there is no public support behind it we fall apart. That is not a threat. My community is tied to the Core system. We need to have this District and we need to have it sooner rather than later.

Ray Peoples suggested we take this back to our boards, if there are any changes we will discuss it as a committee. I have sent the Charter to our Town Council as it has progressed just to see if there are problems. Litchfield signed the check for \$5,000 and wanting it to be a part of the Regional Team and Nashua is the biggest part of that team.

Jeremy Lamson stated the Town of Pittsfield voted to join the District. I also know if Nashua doesn't approve the District will not be formed. I think we have to submit it and see what happens. If Nashua does vote to approve it then there is nothing to cause us to come back.

Ken Massey stated it is clear in his mind without Nashua the Regional Water District cannot work; it is imperative that whatever we do we recognize they are a critical success factor in this element. I also am in agreement with what George said we may be making problems where none exist. I want to emphasize that I have been selling this to my board for the last several months strongly stating that this Charter is in our best interest because of the compromise that was made in October. If anything of substance or voting rights are changed, I would not vote to approve the Charter, as it would not be on our side. I would tell Hudson not to join the District. I am not looking at this there are internal issues in Nashua that need to be addressed. I think the citizen's of Nashua need to be clear if they want a Regional Water District. I feel they have to take the good and the bad. If they want it on their own it then there will be several interveners at the eminent domain route. I have been very happy with the representation from Nashua on this committee.

Brian McCarthy stated he was happy with both Ken and Ray comments regarding Nashua. We have done our level best to make sure the information from this board and the changes have been available. We did not have meetings of the water committee with the proposed changes in October. The December public hearings showed that the Charter was going to change. I don't know what to tell this group other than I am disappointed that the Charter is different now than what we had several months ago. Nashua is not going down the road on buying Pennichuck on our own. I don't want to go down the road with a Regional Water District without Nashua's approval. We need to figure out how to deal with this from here.

Chairperson Peterman made the suggestion to the Nashua committee representatives, offering them the District's Attorney's who would be able to speak to the BOA and they can make a good case. If appropriate this committee can meet with the BOA they need to hear about what we have done together, working together to reach the point that we are at now and we can make it work within this Charter. We have appointed members of this committee to sit with the Steering committee and we endorse Nashua's plan to take the company by eminent domain, but we are all part of the same process and moving in the same direction. Our goal is to have Pennichuck as a locally run company. What will end up happening is a company from out of state or Pennichuck will continue to sue Nashua and maybe the rest of us for interfering with them conducting their business because of what we are doing. They have already gone to court on one level. I hope the City of Nashua will take advantage of our offer to meet with them.

Ray Peeples suggested that this committee send a letter stating that we would come meet with them on whatever level and our attorney's would also be available.

Mike Scanlon stated that Brian and Fred have come to these committee meetings and they have done what they have said. I believe that most of the frustration that the Nashua residents have is for your board and mayor. The thing that bothers me the most is the letter from the BOA. They ask us not to move it on to our communities until they have a right to approve it. Aldermen Dean came here presented this letter and then went home!

Brian McCarthy responded that he doesn't read the paragraph that way and that he has had a discussion with the author of this letter. Mike Scanlon stated that it bothers us that we are sitting right here in the City of Nashua. Brian McCarthy mentioned that Aldermen Dean had to leave because they have budget hearings tonight.

Fred Britton responded by thanking the entire committee. We have done a good team effort and have accomplished a lot, but there is still more to do. I will personally lobby all 15 aldermen and the mayor.

MOTION made by Fred Britton stating that the Draft charter is acceptable by the committee and is now referred to the communities governing body. Comments from the communities are anticipated to be received by the end of March. Seconded by Ray Peeples.

Ken Massey stated what does the end of March mean, does this mean we don't have a final document until April. I would think 30 days is all we should have on this.

Cynthia Herman stated the way that Nashua's process goes; would 6 weeks be enough time, is this possible? Brian answered probably, but it is rushed and we still have to do public hearings.

Ken Massey stated in moving forward, we are not going to have a strong message without the District being formed. Eminent domain is a subject to I think about, but it

does raise some interesting problems, such as not all properties of Pennichuck are located in Nashua. Time is not on our side to keep this District from not being formed.

Brian McCarthy stated that the timeframe is not an issue. Pennichuck has raised a lot of issues even in their lawsuit against us. That doesn't mean all those issues will be upheld. What I don't want to do is to get the feedback that we are trying to rush it through. We have been at it for a year and we will be in it for another 2 years before the first drop of water comes through.

Mike Scanlon stated going back to the beginning after the 2 public hearings we had 55 suggestions and the committee made these changes. Now if 11 communities each come back with 5 suggestions for changes there is another 55 comments. This would mean 3 or 4 more meetings and then we need to go back for public hearings. This is a never-ending cycle and as I sit here, I don't believe we are rushing this. We need to see if there is a majority of the communities to support this and let's get this District formed.

Chairperson Peterman stated we need criteria on what we are going to allow for changes.

Ray Peoples stated we have to admit that some boards are up to speed. Litchfield knows what is in the Charter and we made some good changes. One comment I have to say is that many of the changes came from the Nashua residents. I have had comments from some Nashua residents saying thank you that at least this committee listened to their concerns. We all have an educated boards and Nashua may be the only board that will make changes.

Brian McCarthy stated that the Nashua alderman is concerned with the governing board and he also stated that other committee members have expressed their concern.

Cynthia Herman stated that Milford is concerned and they are going through the Consumer Affairs section of the Charter.

Chairperson Peterman asked the committee members if anyone has come to any of the committee member's boards and asked about the structure of the governing board.

Cynthia Herman stated that Milford is forming a study committee to look at forming their own village district.

Chairperson Peterman asked Cynthia is Milford going to buy the Pennichuck system. Cynthia stated that Milford is looking now at protecting.

Chairperson Peterman responded to Brian that then just one community has a question.

Vote taken, 10 in favor and 2 opposed Cynthia Herman and Kevin Waterhouse. Motion passed.

**MOTION to Adjourn by Kevin Waterhouse. Seconded by Ray Peeples.
Meeting adjourned at 10:35 p.m.**

Chairperson Peterman stated that the next meeting of the committee will be April 1, 2004. She asked Karen White to write a letter to the Nashua Alderman to set up a meeting to answer questions they may have after reading the Charter.

Submitted by Jane O'Brien

#17044

*Due to the late hour of the vote on February 12th, Kevin Waterhouse e-mailed the committee to inform them that he did NOT intend to vote against the Charter. He only intended to vote against re-opening the Charter for substantive changes.