

# **2017 SPECIAL TOWN MEETING**

## **TO CONSIDER A PETITION FOR A PROPOSED VILLAGE WATER DISTRICT**

Moderator pro tempore Cedric Dustin III called the 2017 Special Town Meeting to order at 10:15 a.m. Saturday, December 16, 2017, in the Pittsfield Elementary School Gymnasium. Moderator pro tempore Dustin explained he was appointed to be moderator pro tempore to fill in for Town Moderator Fred Okrent. Mr. Okrent had recused himself, as he was acting in his role as Chairman of the Pittsfield Aqueduct Committee. Moderator pro tempore Dustin led the *Pledge of Allegiance*.

Moderator pro tempore Dustin explained the rules of procedure for the meeting, and read the introduction to the posted 2017 Special Town Meeting Warrant:

To the inhabitants of the Town of Pittsfield in the County of Merrimack, in said State, qualified to vote in Town affairs:

“The Board of Selectmen received a petition to establish a village water district as described in NH RSA 52. On October 24, 2017, the Board of Selectmen voted to fix the boundaries of the proposed village water district. The next step required in this process is to call a meeting of the voters domiciled in the proposed village water district, therefore:

You are hereby notified to meet at the **Pittsfield Elementary School Gymnasium** at 34 Bow Street in said Pittsfield on **Saturday, December 16, 2017, at 10:00 a.m.** to act on Articles 1 and 2 below.”

### **Article 1:**

Shall those domiciled within the proposed village water district, vote to establish the Pittsfield Village Water District for the purpose of the supply of water for domestic and fire purposes, which may include the protection of sources of supply, as described in RSA 52:1 (d)?

Motion made by Pittsfield Aqueduct Committee Chairman Fred Okrent to accept Article 1 as read. Seconded by Pittsfield Aqueduct Committee member Bill Elkins.

Moderator pro tempore Dustin opened the floor for discussion.

Pittsfield Aqueduct Committee Chairman Okrent made a motion to amend Article 1 as follows:

“Shall those domiciled within the proposed village water district, vote to establish the Pittsfield Village Water District as bounded by the list of proposed boundaries, approved by the Pittsfield Aqueduct Committee on 9/5/17, and submitted to the Board of Selectmen on 9/6/17, for the purpose of the supply of water for domestic, commercial, municipal, institutional and fire purposes, which may include the protection of sources of supply, as described in RSA 52:1 (d)? Said list was posted on the town website.”

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Selectman Carl Anderson called for a point of order. He stated RSA 52:1 clearly states the boundaries of a village district shall be set by the Board of Selectmen, which was confirmed by our Town legal counsel, Matthew R. Serge of Drummond Woodsum. He further stated the Select Board set the boundaries to include all the properties in Pittsfield because they believed everyone would be impacted, not just water rate payers. He encouraged everyone to vote against the proposed amendment.

Selectman Gerard LeDuc asked that the town counsel opinion be read for the public. Moderator pro tempore Dustin read the legal opinion:

“The Board of Selectmen is the body authorized to set the boundaries of the proposed village district. See RSA 52:1. Once the boundaries are set, those voters residing within those boundaries are provided notice of the organizational meeting to see if they will vote to establish that district and choose officers. See RSA 52:2. The state law then goes on to specify what powers the voters have at the meeting to establish the district. These powers are to vote to establish the district, give it a name, and choose necessary officers to hold office until the first annual meeting of the district. See RSA 52:3. RSA 52:3 is silent with respect to allowing the voters to change the designated boundaries at the meeting. This is because there is a separate statutory provision for changing district boundaries found at RSA 52:5. This statutory section states as follows:

- I. The selectmen of towns in which any such district has been established upon petition, after notice to parties interested and a hearing, may change the boundaries thereof; and the district shall cause the petition and the return of the selectmen's proceedings and decision thereon to be recorded in the records of the district, and of the towns in which it is situated, within 60 days after the decision.
  
- II. In the case of any district formed for the purpose of impoundment of water, any such change of boundaries shall be ratified before taking effect by the voters domiciled in the district and in any area proposed to be added to the district in the same manner as is required for the initial establishment of the district.
  
- III. In the case of any district formed for the purpose of the supply of water for domestic and fire purposes, which may include the protection of sources of supply, any such change of boundaries shall be ratified before taking effect by the voters domiciled in the district and in any area proposed to be added to the district in the same manner as is required for the initial establishment of the district.

Thus, the legislature has again signified its intent to have the Selectmen be the body authorized to change the district boundaries, with that Selectmen's vote having to be ratified by those living within the changed district if the purpose for the district is impoundment of water or supplying water for domestic or fire purposes, just as it is done at the initial organizational meeting.

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Indeed, aside from being contrary to the statutory authority, if the voters were to amend district boundaries on the floor of the meeting to establish the district that change would be null and void since notice would not necessarily have been provided to everyone who would be domiciled within the changed boundaries, thereby denying those people due process.

The most practical solution for people not satisfied with the proposed district boundaries, is to vote to establish the district, as defined, and then petition the Selectmen for a change to the boundaries consistent with RSA 52:5. Otherwise, the voters can reject establishing the district and start the process over.”

Cindy Hayden asked for confirmation that the proposed amendment to the boundaries would only include the existing water customers. Moderator pro tempore Dustin confirmed it would.

Steve Adams called for a point of order. He stated the motion to amend Article 1 was not seconded. Moderator pro tempore Dustin called for a motion to second the proposed amendment.

The motion to amend the boundaries of the proposed village district was seconded by Pittsfield Aqueduct Committee member Bill Miskoe.

Pittsfield Aqueduct Committee Chairman Okrent explained the proposed amendment would reduce the boundaries of the proposed water village district to those properties currently served by Pennichuck Corporation and those properties on the service route from Berry Pond into town. It would limit the liability to just those properties within the proposed amended boundaries and relieve the rest of the town of any financial obligation.

Matt St. George asked if voters did not live in the proposed amended district, would they still have a vote on the matter. Moderator pro tempore Dustin responded that only the voters who lived within the approved village district boundaries would have a vote on village water district matters.

Steve Adams asked if the financial feasibility of the proposed purchase of the Aqueduct was based on the district including the entire town, or the proposed reduced boundaries. Pittsfield Aqueduct Committee Chairman Okrent responded that the committee’s proposal was based on the amended, condensed boundaries. Steve Adams expressed his concern that if the study was based on certain boundaries and then the boundaries were changed, the financial feasibility findings would be flawed.

Scot Palmer reminded the body that property owners who do not use the water system would still be paying for it if this Article passed.

Dawn Calley-Murdough asked if the boundaries were changed, would everyone in town pay for the water, or only the users. Pittsfield Aqueduct Committee Chairman Okrent responded only the property owners within the approved village water district would pay for the water system.

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Dawn Calley-Murdough asked what the financial impact would be to those within the water district should the article pass as amended. Pittsfield Aqueduct Committee Chairman Okrent responded the financial impact would be determined by the village district voters.

Selectman Jim Adams stated the purchase of the Aqueduct Company was projected to be approximately \$4,000,000.00 - \$5,000,000.00, and that everyone's property tax bills would be affected, not just the water rate payers. He also stated that the Aqueduct Company is currently not for sale, so there could be significant legal fees if taken by eminent domain.

Beverly Drolet stated it was already stated that it was illegal to amend the warrant. She questioned whether the amendment should be considered.

Adam Gauthier made a motion to move the question. Teresa Palmer seconded the motion.

Moderator pro tempore Dustin re-read the proposed amendment to Article 1 to change the boundaries of the proposed village district and called for the vote on the amendment.

The amendment failed by card vote.

Moderator pro tempore Dustin re-read Article 1 as originally presented and opened the floor for discussion.

Bob Schiferle asked what the next steps would be should Article 1 pass.

Pittsfield Aqueduct Committee Chairman Okrent explained the voters would vote on the officers noted in Article 2. The first order of business would most likely be to contact the city of Nashua in regard to the purchase of the Aqueduct. The cost doesn't matter at this time. The reason the Aqueduct Committee wanted to reduce the size of the boundaries was to limit the liability of the cost. The cost would not be added to the property tax bills but would be rolled into a bond that would be the responsibility of the water rate payers. There would also be a search for grants and state funding to offset some of the costs.

Selectman Anderson stated that it was mentioned in the public hearing during a Selectmen's meeting that in addition to the \$143,000.00 already spent, there would be approximately \$200,000.00 or more needed to establish the village district and move forward with the preparation to purchase, not to mention the millions that would be needed to actually purchase the aqueduct. Selectman Anderson felt that after going through all the information he could find, there wasn't a lot to show for the money already spent.

Mike Wolfe asked if this article passed, was there any more money left to spend that was previously appropriated, and how much more would it cost to get clear answers as to whether or not we should purchase the aqueduct. He felt it was too bad to spend what we had so far and not move forward, but that it did not make sense to continue to spend money on something that did not make sense at this time.

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Selectman Adams answered that if this article did not pass, it would be the end of the discussion and the process would stop. If the article passed, there would be more trickle-down spending on more engineering and legal expenses. He believed we should stop spending money on this issue and focus on more pressing needs. He believed if the aqueduct was purchased it would add \$2.50 - \$3.00 to the property tax rate. He stated the Select Board and the School Board have been working hard to keep the taxes down. Purchasing the Aqueduct would be a "wild card". The liability insurance is an unknown. He stated the water main issue on Broadway on December 15<sup>th</sup> is a case in point. If the town owned the Aqueduct that would have been our responsibility. There are a lot of unknowns. He stated hypothetically, if the water main along Catamount Road were to burst and take out one mile of the road, it would be approximately \$1,000,000.00 to replace it and it would be the town's responsibility. As it stands now it would be Pennichuck's responsibility. He believed we already have a large responsibility with the sewage treatment plant and that we did not need to add to it at this time. He agreed that it was a lot of money to spend, but stated that the \$143,000.00 already spent was since 2004. However, there wasn't much more information than when we started.

Stuart Hooker asked for the upside of approving this article. What is the financial case for this enterprise?

Ed Patterson asked if the article passed, would there be more votes needed to make the purchase happen. He also asked for clarification regarding the comment addressing the potential loss of property tax income. He believed that the property taxes that the Pittsfield Aqueduct Company currently pays are raised by the water rate payers and that if the town purchased the Aqueduct Company, that money charged by Pennichuck Corporation would go to the town instead.

Selectman Anderson responded that the \$200,000.00 currently paid by Pittsfield Aqueduct Company would no longer be paid by the water rate payers resulting in a shortfall in our general operating budget. The entire town would need to make up that shortfall, which would result in an increase in the tax rate.

Ed Patterson asked whose decision it would be to cut that revenue.

Selectman Anderson responded that it would be up to the Village District to decide what to charge those using the water system.

Ed Patterson voiced his concern about the current management of Pennichuck Corporation.

Pittsfield Aqueduct Committee member Bill Miskoe spoke to the question regarding the benefits of purchasing the Aqueduct Company. He stated that if the district was formed, the Commissioners would look into the feasibility of acquiring the assets of Pennichuck Corporation for the village district, paid for by a bond to be returned by payments from the water users. The immediate benefits would be that we would stop paying the transfer to the city of Nashua, which for 2018 is budgeted at \$70,000.00. Another benefit would be because all the customers would

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be within the town, the Public Utilities Commission (PUC) would no longer have a say in district decisions. If the district wanted to expand, for example, it would not need to contact the PUC. A third benefit would be the elimination of hydrant fees, which is approximately \$100,000.00 a year. He believed moving forward would give the town charge of a major portion of its destiny. He encouraged the voters to think about these benefits.

Selectman Anderson stated that the hydrant fees are actually \$176,000.00, and only \$12,000.00 actually goes toward the maintenance of the hydrants, the remaining \$164,000.00 goes toward the general operating fund of the water system. Therefore, there would only be a savings of \$12,000.00. The \$164,000.00 would need to be raised to support the water system.

Paul Nickerson shared some history of when Pittsfield Aqueduct was privately owned prior to the acquisition by Pennichuck Corporation. He believed the system has been managed very well by Pennichuck Corporation. He did not feel the town should proceed with the purchase of the aqueduct system.

Diane Vaughan asked who owned Berry Pond.

Moderator pro tempore Dustin responded most of the property around Berry Pond is owned by Pittsfield Aqueduct Company. He explained it was his understanding that if a body of water was a certain size it was owned by the State, and believed Berry Pond fell under the State's ownership.

Pittsfield Aqueduct Committee member Miskoe stated Pennichuck (aka Pittsfield Aqueduct Company) owns about 95% of the lots around Berry Pond. It is public water, but there is some privately owned land around the pond.

Scot Palmer asked if this article passed and there was another water main break, who would service the problem.

Pittsfield Aqueduct Committee member Miskoe stated all those details have not yet been addressed, but the water commissioners would most likely contract with a company similar to the partnership the town has with Utility Partners, who manage our waste water treatment facility. It would be more economical to contract that work out. It would not be the responsibility of our public works department.

Scot Palmer responded there would be more costs to the taxpayers to contract with an outside company.

Mike Wolfe asked if there were many privately owned water companies currently in the state.

Moderator pro tempore Dustin responded there appeared to be 23 privately owned water companies.

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Pittsfield Aqueduct Committee member Miskoe responded to Scot Palmer's concern regarding additional management costs, stating those costs are already incorporated into the water users utility bills. If the Aqueduct was purchased by the village district and it was managed by a contracted company, he believed it would be a cost savings to the water users because they would not be paying for maintaining staff and equipment.

Gail Nickerson stated she believed "the devil you know is better than the one you don't". We do not know what the costs would be in the long run.

Scot Palmer reiterated that the entire town is within the proposed village district and therefore everyone would be paying for the water system, not just the water users.

Scot Palmer made the motion to move the question. Seconded by Teresa Palmer.

Moderator pro tempore Dustin called for the vote.

Article 1 failed by card vote.

### **Article 2:**

If Article 1 establishes a village water district, choose by ballot the following officers:

- one Clerk for a one (1) year term
- three Commissioners for a one (1) year term
- one Moderator for a one (1) year term
- one Treasurer for a one (1) year term

Moderator pro tempore Dustin explained that because Article 1 did not pass, Article 2 need not be addressed.

Meeting was adjourned at 11:05 a.m.

Respectfully Submitted,

Erica Anthony  
Town Clerk