

Select Board Special Meeting
Monday August 19th, 2019
Town Offices, Nowak Room
Final Minutes

1. Call Meeting to Order

Members present: Anne Surman, Kathy Corson, Julie Gilman, Niko Papakonstantis, and Russ Dean were present at this meeting. Molly Cowan was not present. The meeting was called to order by Ms. Corson at 6 PM.

2. Exeter Hospital Proposed Merger - Tom Donovan, Charitable Trust Division, Attorney General's Office

Ms. Corson said there will be a public meeting on this issue at Town Hall on September 9th, 4-6 PM, where the public can speak to representatives of Exeter Hospital and Mr. Donovan.

Tom Donovan, the Director of Charitable Trusts in the New Hampshire Attorney General's office, spoke about the proposed merger. An agreement has been signed by Exeter Hospital, Wentworth Douglass in Dover, and Mass General in Boston. He reviews such proposals; by law, he must look at whether the Exeter Hospital Board of Directors has done their due diligence, looked at the best interests of the hospital, reviewed alternatives to the proposed merger, and is doing what's in the community's best interest.

There is a 120 day review period after the merger submittal to the Attorney General's office. During this period, they review the paperwork that Exeter Hospital filed, which is also posted on the website. Mr. Donovan conducted interviews of health care leaders on the Seacoast and reviewed the proposal looking at the "Triple Aim" of access, quality, and cost of care.

Mr. Donovan said that the public meeting on September 9th at Town Hall is part of the fact-gathering process. Management from Exeter Hospital, Mass General, and Wentworth Douglass will be there, along with a panel of experts who can give commentary on the state of health care and the issues, and who may ask pointed questions of the hospital. There will also be time for questions from the audience at this meeting. He's also accepting written comments at tom.donovan@doj.nh.gov or on the Attorney General's website under "Charitable Trusts." His report is due Sept 23rd. He can't comment on the direction of his report, since the proposal is still under review.

Mr. Donovan discussed the proposed structure of the transaction. Wentworth Douglass Hospital is part of the Mass General family now, and he reviewed that transaction in 2016. They still have their own Board of Directors. Here, a new entity would be formed in New Hampshire which would become the parent of both Wentworth Douglass and Exeter Hospital. The Boards of Directors of Wentworth Douglass and Exeter Hospital would be the same people. He added that all endowment money from Exeter Hospital would stay with Exeter Hospital.

Ms. Surman asked what level of influence or input the Select Board has on this process. Mr. Donovan responded that anyone can give comments on the proposal and he will consider them. What members of the community feel is important. Ms. Surman asked if the endowment is

detailed in the paperwork on the website. Mr. Donovan said not in great detail, but he's asked questions of the hospital and the responses are online. He's continuing to follow up.

Mr. Papakonstantis asked if the purchasing agent is Mass General or Partners HealthCare. Mr. Donovan said that he asked that question of the Wentworth Douglass transaction. In Massachusetts, Mass General is under Brigham and Women's, which is under Partners HealthCare. The hospitals are structuring their transactions so the new entities are subsidiaries of Mass General or Brigham and Women's. There are two exceptions which are direct subsidiaries of Partners, but that's not their general practice.

Mr. Papakonstantis asked if the Exeter Hospital endowment could be used to switch Exeter Hospital over to Mass General's expensive billing system. Mr. Donovan responded that part of the plan is for Exeter Hospital to transition to the EPIC electronic health records system. He clarified that there is a difference between a "donor restricted endowment"/ "true endowment," which they could not use for such a project, as opposed to a "board restricted endowment," which is a surplus the hospital has earned and is available to the hospital to spend. The plan is to reserve some of that board restricted endowment money for the EPIC system, while the donor restricted endowment would continue to support the hospital.

Mr. Donovan said that hospitals are required to have community benefits, such as providing extra support to community health centers. He'll be looking at the current level of support Exeter Hospital provides to those organizations. Ms. Corson asked if continued support would be written down as part of the agreement, and Mr. Donovan said they have added similar stipulations in the past.

Ms. Gilman asked about the hospital board structure. Mr. Donovan said that both boards would be subsidiaries of this New Hampshire hospital parent. Ms. Corson asked if there's a requirement that there are people from both communities on the board. Mr. Donovan thought that board representation is divided between Strafford County and Rockingham County. Ms. Surman asked if it would be the same people on the boards, and Mr. Donovan said they would be "mirror boards," and the same people would do business as the Exeter Hospital board and the Wentworth Douglass board.

Mr. Papakonstantis asked if Mr. Donovan anticipated that the cost of Exeter Hospital will increase with the merger. Mr. Donovan said he doesn't know. He mentioned that there is an independent review also being done by the Antitrust Bureau of the Attorney General's office, and cost is one of the things they look at.

Ms. Surman said her overall concern is that the merger will serve the community. Bigger isn't necessarily better, and EPIC is expensive. Mr. Donovan said that he thought the hospital would respond that every hospital now needs to have a robust electronic health records system, it's the cost of doing business.

Ms. Gilman asked if one hospital wants to do something with their property, must the combined boards approve that transaction? Mr. Donovan said he believes so.

Ms. Corson opened the discussion to the public.

Anthony Zwaan of 7 Marlboro Street asked whether there is a public input process for the Antitrust Division review. Mr. Donovan said no, that process is confidential. Mr. Zwaan asked about the deadline for public comment. Mr. Donovan said that this week is the unofficial deadline, but he will continue to take comments. Mr. Zwaan asked about the public meeting on

Sept 9; who determines who is an expert for the purposes of this meeting? Mr. Donovan said he's engaged the Endowment for Health, a statewide trust foundation that makes grants in the healthcare area, to determine the panelists. Community health centers have already weighed in. Mr. Zwaan said the review looks at whether the Board of Directors has done their due diligence. The Board members are interested in the success of Exeter Hospital as an institution, but how are they responsive to the needs of the community? Mr. Donovan said he looked for whether they're thinking about the hospital's future and have hired experts in this field to advise them. In this transaction he's received that information, but some of it is not public because of competitive intelligence. Mr. Zwaan asked if a joint board is necessary, and Mr. Donovan said he's asked questions of the proposal, such as why they want to do it this way, and had discussions. Mr. Zwaan said he'd like to see a condition that a joint board would include an Exeter resident. Mr. Donovan said that he's writing down that comment.

Mr. Zwaan asked how to have their concerns be part of the agreement. Mr. Donovan said that it's a question of public comment. Any terms that get added are in the written report, and if the hospital wants to go forward the conditions would be enforced. Mr. Zwaan asked if he would take public comment after the written report is submitted. Mr. Donovan said people can always comment, but the report is final. Any challenges to the report would be before a judge. Mr. Zwaan asked if Mr. Donovan's report could be considered the conditions for a merger. Mr. Donovan said his report plus the Antitrust Division's and any lawsuit. Ms. Gilman asked if the conditions would be in the bylaws. Mr. Donovan said either in the bylaws or written down.

Mr. Zwaan asked if a merger fails, whether there are contingencies written into the agreement, and what happens to the hospital's current assets if it doesn't work out. Mr. Donovan said there are terms in the acquisition agreement. One contingency is if Mass General goes for-profit, Exeter Hospital can exit. There are also other dispute resolution terms.

Dr. Bob Bayer of Rye indicated that he wished to speak. The Board agreed that he could speak [there was no motion].

Dr. Bayer said that years ago when Cheshire Medical Center merged with Dartmouth, their endowment was held in a separate fund, not able to be accessed by Dartmouth. Mr. Donovan said he wasn't at the Attorney General's office for that, but that there can be differences in the mechanics. The end result is that the endowment for Cheshire can only be used for Cheshire. Mr. Bayer said that Dartmouth also has the EPIC system, and they wanted to use endowment funds to pay for the transition for Cheshire, but the endowment fund refused. Dartmouth loaned money to Cheshire instead, and they're still paying it off. Mr. Donovan said this was likely a question of whether a board restricted endowment could be used.

Dr. Bayer said that if Mass General became a for-profit and Exeter Hospital were disengaged, they would have an enormous MGH at Wentworth Douglass, but little assets left to move Exeter Hospital forward. Regarding the cost of health care, there was an article in the New York Times about eight months ago studying mergers like this across the country, and typically when a large nonprofit takes control of a small hospital, prices go up. Partners HealthCare will say there are economies of scale which should reduce the cost of care, but the savings is to the hospital, not the consumer. Dr. Bayer asked whether the endowment is strictly for benefiting Partners or for benefiting the community. Given that the original mission of Exeter Hospital is improving the health of the community, some money should go for the direct benefit

of the community. He has heard that \$100 million will be used to renovate the hospital so they can draw patients from Massachusetts for elective surgeries and open up space in Massachusetts for tertiary issues they can bill more for. They'll be using money in New Hampshire to increase the profitability of operations in Massachusetts.

Sally Oxnard of 5 Greenleaf Drive said she used to be the Medical Director at Lamprey Health, one of the community organizations that have benefited from Exeter Hospital's support. She asked what has happened in Dover since they merged. Dr. Bayer said they have improved services in psychiatric and mental health care. The document from the Attorney General's office specified some increase in funding and that has been exceeded. Ms. Oxnard said that Exeter Hospital has provided quality care for the community, and it would be regrettable if their money were no longer used to support the community.

Ms. Gilman asked if a review saying that the transaction is not satisfactory or not good for the community would stop the merger. Mr. Donovan said he can either issue a report that he has no objection, but which may have conditions, or he can object, go to court, and seek an injunction to prevent it from happening. Ms. Surman asked what factors would stop the merger. Mr. Donovan said he looks at what the board is supposed to be considering, as well as the best interest of the hospital and the community it serves. If they haven't met the list of standards he would object.

Ms. Corson suggested that the Select Board write a letter with their concerns, such as there being an Exeter citizen on the hospital board after the merger. She asked them to think about the hospital's money and how important it is in the community. They need to consider whether the town loses control of the hospital's plans. If the hospital wants to demo a house they own, how will the town give input? Ms. Corson said she and Mr. Dean can work on a draft and they can all edit it at the next meeting. She asked the Select Board members to email her any thoughts or concerns, although they can't discuss it over email.

Mr. Papakonstantis thanked Mr. Donovan for presenting, and added that the Select Board must advocate vigilance to make sure that Exeter Hospital, Mass General, and the State of New Hampshire remain accountable to the community and its citizens. Ms. Surman said they should advertise the public meeting, although it's not a town event. Ms. Corson suggested having it scroll on the town website, and also passing it on to the newspaper.

Ms. Gilman asked if there would be a periodic review of whether the plan is being followed. Mr. Donovan said that the hospital may be required every year to provide a satisfactory report.

Mr. Papakonstantis asked if there were any tax implications for a nonprofit to nonprofit transfer. Mr. Dean said he was not aware of any but will double check with the assessors.

3. Adjournment

MOTION: Ms. Gilman moved to adjourn. Mr. Papakonstantis seconded. All were in favor and the meeting adjourned at 6:59 PM.

Respectfully Submitted,
Joanna Bartell
Recording Secretary

