

A special meeting of the Board of Aldermen was held Wednesday, July 11, 2007 at 7:00 p.m. in the Aldermanic Chamber.

President David Rootovich presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron; Alderman Plamondon led in the Pledge to the Flag.

The roll call was taken with 13 members of the Board of Aldermen present; Aldermen Richardson and Williams were recorded absent.

His Honor Mayor Bernard A. Streeeter and Corporation Counsel David R. Connell were also in attendance.

COMMUNICATIONS

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

From: David Rootovich, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

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

NON-PUBLIC SESSION

MOTION BY ALDERMAN TOLLNER THAT THE BOARD OF ALDERMEN GO INTO NON-PUBLIC SESSION BY ROLL CALL PURSUANT TO RSA 91-A:3,II(e) TO CONSIDER A PENDING CLAIM OR LITIGATION WHICH HAS BEEN THREATENED IN WRITING OR FILED AGAINST THE CITY

SECONDED BY ALDERMAN LAROSE

A Viva Voce Roll Call was taken, which resulted as follows:

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn, Alderman LaRose,
Alderman Dion, Alderman Bolton, Alderman MacLaughlin, Alderman Deane, Alderman Teeboom,
Alderman Cookson, Alderman Plamondon, Alderman Rootovich

13

Nay: 0

MOTION CARRIED

President Rootovich

This evening we have Attorney Alan Reisch and Attorney Robert Upton here. I would ask that they both come and join us. They are going to give us an update and a briefing on where we stand with respect to the Pennichuck negotiations.

Alan Reisch, Esq.

Good evening everybody. Nice to be here again. I would like to give you as brief a summary as I can of where we stand right now in the negotiations with Pennichuck. When I left the last meeting I indicated to you that the guidelines from the Board of Aldermen, which I understood were that whatever transaction was negotiated should not exceed \$30 a share in terms of what the city would pay for from the bond offering that the bond offering maximum the Aldermen would entertain would be a \$250 million aggregate bond offering, and that it was imperative that the total cost of the transaction be something the city could afford.

To make a long story short, as of this evening we have not been able to get to that point with Pennichuck. Let me fill in a few details. Approximately 3-4 weeks ago, one of the lawyers was Edwards, Angell the bond council for the city raised a tax issue which has been under discussion. It was something that had not been broached before. The bottom line is that by the time everybody got done looking at it, it was pretty clear that in order to complete the bond offering we would have to get what is called a private letter ruling from the Internal Revenue Service on some technical tax aspects. That became an additional aspect of the deal that would have to be put together.

We informed Pennichuck of that because it obviously would have to be addressed in the acquisition agreement if there ever was one. As it turned out, while there was a lot of discussion about it that was not a material factor in the way the negotiations have proceeded so far. We had another meeting with them today in anticipation of this evening's meeting. Where the city has been on price and other material firms is as follows: \$30 per share price; we have never moved off that price in terms of what the city would pay for from the bond proceeds, \$250 million maximum aggregate offering; that really doesn't directly affect Pennichuck, the freedom on their part to sell certain extraneous assets; that is what we mentioned to you at the last meeting, and to take the net proceeds from those after payment of any transaction expenses like revenue stamps, council fees, and things of that sort, and add that to the pile for their shareholders, but it would not be contributed by the city it would simply come out of liquidation of these extra assets that are not pertinent to what the city's interest was, which is the plant of course and the watershed property and some of the other properties as well.

But one other set of issues was equally important and it had significant economic impact in our view and I think in your view as well. This transaction if it ever went forward would be enormously complex. I don't want to understate it. There are a whole lot of reasons for that, but the bottom line is that even though Michael and I have done many many of these over the years even by the standards of having to do these things, this posed a lot of challenges; PUC approval, putting together a very complex bond financing package, meeting some very technical tax and bankruptcy requirements, things that lawyers love to talk about but nobody else does.

There were 2 or 3 major contingencies that could blow this thing up even after a contract was signed. One obviously would be if the PUC looked at it and said it is not in the public interest, you and Pennichuck may have thought you put together a great deal but we don't think as regulators that you have put together a great deal. The best judgment and Rob can speak to this is that probably was not a major risk but it had to be considered because there are other towns whose interests are implicated in this and they might or might not intervene. A possibly more significant risk was the financing risk, the ability to actually pull together the bond offering that you need to close the deal. There are a lot of things that could affect that, but a couple of significant ones just jump off the page. One is change in the cost of money. There have been some talk that inflation is at work and the economy we have all seen a lot of discussion about changes in the prime and the various other money rates that would eventually affect the cost of bonds. Putting that together with the fact that a deal like this could not be moved from a contract to a final closing in a matter of two weeks or a month, it might in fact stretch out beyond the beginning of 2008, there is always the possibility that the deal simply becomes unaffordable because any significant change in the rate would impact the water rates, which in turn would affect the public interest evaluation by the PUC.

Nobody is predicting that, but everybody is very much aware of it, and it is a variable that nobody can really control. There are certain financial products that you can buy in certain circumstances to collar or cap the interest rate variations, but they are very expensive and probably not something that would ever be very useful to the city to consider. That is out there as a risk. Getting a favorable letter of ruling from the I.R.S. on these complex tax issues that Edwards, Angell raised about 3 weeks ago is also a condition because without that you can't get bond purchasers to come in and buy this because they don't know for sure what the tax result will be of this transaction. That is the private letter ruling. That would have taken probably a total of 90 days between the time lawyers start to draft that until the time that it goes into the I.R.S. and you

have what is called the first preliminary conference, and that is where you get a pretty good idea as to whether or not you are going to get the answer that you need to get on these tax issues.

There are any number of other variables that could conceivably affect the financing, but those are the major ones. Having identified these two major what ifs, things that could happen that could blow the deal up even though the parties are very happy with where they have been. Inevitably at least in the minds of the lawyers, lead to the question well what happens then.

From the very outset Pennichuck has maintained quite a rigid line on two points; one is the payment of what is called a bust-up fee and that is that even though the city can't fully control the financing and obviously can't control the PUC, all you can do is do your best and go in and make your pitch and hope that they will see the world accordingly. Pennichuck took the position that if either of those two processes went south they wanted the city to pay a break-up fee of \$2 million. Before anybody reacts to that I can assure you that from the first time it was uttered to the last time the issue was raised, the answer has consistently been no the city will never entertain paying a fee in either of those events. While I am not sure that we got to closure with them on that issue, I have to read body language in these negotiations, they tended to fade in significance.

The issue that was more difficult and which they became more insistent on was that they wanted to know that if this deal collapsed because the city couldn't finance it or because the PUC said no, that the city would terminate the pending litigation and would agree not to recommence it unless and until the city had basically reimbursed Pennichuck for all of its sunk costs from 2001 forward, which they estimated to be in excess of \$6 million. We have gone back and forth with them over this. Our reaction to that is that financing is one thing, first of all it is more or less in the city's control and also if this deal can't be financed how would you ever really finance a condemnation for eminent domain proceedings if you went back to the PUC, but when it came to the PUC saying no that seemed to pose some additional considerations namely what happens if Pennichuck signs the agreement and then decides this isn't the greatest deal in the world. We need their active cooperation and I would underscore active cooperation, which Rob can speak to, to get the PUC approval. If they slack off at all because they think their best interests are served by having this deal go away and then go back and tend their knitting for a year or 18 months and then go sell the company to somebody else. That would leave the city and I respectfully suggest the Mayor and Board of Aldermen in an extremely awkward position. We have been quite vigorous in taking the position that they cannot have a free pass particularly in those circumstances.

This morning we spoke at length with the members of the water committee and the conclusion was reached that the only circumstance in which Pennichuck could be given any accommodation on this issue was if they agreed to the following, it is what I call a get out of jail free card if you are remembering your monopoly because that is basically what they wanted is the ability to walk away from the litigation and be unencumbered. The position we took with them was okay you can have it, but on the following conditions: 1) give the city back its \$250,000, you want to be relieved of the litigation the city wants its money back, this has turned into a dead end and we are not going to have you walk away with the money and with a pat on the back, 2) If within a certain period of time ranging from 305 years, we never got to the point of actually pinning down what it would be, you Pennichuck decide that you are going to go through a change of control event, the city is going to have a choice of doing one of two things, if the perspective buyer was a Chinese company that wanted to set up a mercury smelting plant right next to the watershed property the city could simply say all bets are off, number one the city is free to intervene in the PUC proceedings to say no this deal shouldn't go down and if it thought it was desirable it could go back and re-initiate eminent domain proceedings. Bear in mind that under the statute, which Rob can speak to there is I think a two year black out so by law you are not allowed to go back in once you discontinue for two years.

But if the city didn't feel all that strongly about it there still ought to be a toll charge that the company would pay for the ability to go sell it during this period when the city's interests are protected. That toll charge

would be \$6,250,000. The magic in that number are two things really, first of all when you take the first quarter of a million that you are getting back and add \$6,250,000 to that you come up with \$6.5 million, which is just about 5% of the total deal value of the deal that the city would do if Pennichuck would agree to these important terms. The other thing it is and this is a coincidence, but it kind of elicited a laugh, is that when Pennichuck was talking about its expenses that it expected to be reimbursed if the city wanted to start eminent domain proceedings, they were approximately the same amount. I think we were given the number of \$6,200,000. It really was a coincidence we weren't trying to match them, but the important thing was we felt that it was significant for the city to be able to say if and when a deal like this was signed and the details became known publicly that we have taken steps to protect the city's interest in what we hope is the remote event that Pennichuck changes its mind and simply doesn't cooperate the way it should in getting the PUC approval.

We went there this morning. I said to Mark Sousa today is my anniversary and I got to celebrate it with Duane Montopoli. My wife I invited her here this evening and said she could celebrate with us. He usually likes to operate from an agenda. It is a very interesting study, he is extremely structured and it is hard for him to deviate from the way he wants to proceed through the issues, but we decided after discussion that the wisest thing to do really was to take the bat out of his hands, not to be rude about it, but we had some things we had to say and we had to be utterly clear about it and we didn't want to get it confused with anything else so we began by talking about tax issue evaluating that and the private letter ruling and how long it would take and things like that that I can go into if anybody is interested. Then we said to him Duane I have to tell you we have just come from an hour long discussion and it was not an easy discussion and a lot of the interest and momentum in this is being tested now because we can't bring this process to fruition, and what I would like to do I want to tell you with as much finality as we can precisely the kind of deal that I would be comfortable in coming back and recommending to the Board of Aldermen and Mayor given our experience in these things, and I proceeded to lay out everything; price and these break-up term issues.

The break-up term we laid on the table in front of them was yeah the city will drop the litigation but you are going to give back the quarter of a million dollars and if you try to sell this company within that 3-5 year period and the city has a choice either it can basically terminate the agreement and challenge your acquisition if it feels strongly enough or doesn't want to challenge it then you are going to wind up paying it another \$6,250,000 if an when you close the deal and there will be no break-up fees whatsoever.

They have indicated to us that they do not think that will be acceptable. He has a special meeting of the board of directors called I believe for tomorrow afternoon. He has asked that I call him tomorrow morning to advise of the sentiment of the Board. What I said to him was that if they would agree to these essential terms then I would recommend it to the board I couldn't guarantee it that is a decision that is made in this room, but all I could do is say it is something that I could recommend. Without that I would not recommend any change in these basic terms. There are a lot of other things that would go into the deal, but these are core issues. These are core issues in structuring the deal that I wouldn't recommend any change from this particular pattern and that I was highly skeptical that the board on its own would be interested in modifying those terms or taking a more lenient I guess I would call it position to cut back on these protections that we are looking for from the city.

Apologies for going on at such length. That is where we have been, that is where we are right now. We are expecting to hear more tomorrow. He did call me back this afternoon after I returned from the meeting with him. He wanted clarity on a point. Basically what he wanted to ask me was whether these break-up conditions that I just recited, whether they were what he would call core issues. It is just his way of asking of they were negotiable and I said they are core issues. That is very clearly what I am hearing and those are the instructions I am acting under and those are my recommendations.

President Rootovich

Are there questions from members of the board?

Mayor Streeter

You might want to mention Alan that even today Montopoli wasn't happy with the price. He wanted us to revisit that issue as well.

Alan Reisch, Esq.

That's always fun in talking to Duane. At an indiscrete moment he said to me about two weeks ago, I never take any issues off the table until I have the whole deal in front of me. Most of us we have all negotiated at some level or another and at some point you would say to me look Alan I can consider doing A, but we really have to have some accommodation on the...you never get to that point with him. He did raise again, but I have to say it was in such a weak and innervated fashion that he made it pretty clear that price was not really an issue, he wanted to keep it in play until everything else was resolved, but every signal that we were getting was that the price was not going to be any kind of a consideration in this deal that what had been put on the table would be acceptable if the rest of the core issues were addressed.

Alderman Teeboom

My reaction is that we seem to go from a discussion about we are going to get together we are going to make a deal, we are going to go to the PUC and offer them a deal to talking about break-up fees and conditions. It seems to go from here to there. I don't quite understand first of all that. Let me tell you why I don't quite understand why we are talking about break-up fees now. I have lots of questions about that, but let me just drop that for a minute and just tell you why. The two major points, well there are basically three major points; the first major point that has been around every since we started at the PUC namely a negative ruling from the PUC that this may not be in the public interest and that was said by staff over a year ago and made very clear it is not in the public interest, forget the financial part, it is just not in the public interest. That was long before you came on board. That is nothing new and everybody knew that.

The second point you raised about cost of money. Cost of money is always an issue. In Sansoucy's estimates I think he has a 4 point something percent interest rate. That varies some, but there is some flexibility in this arrangement. You keep raising the amount of money that you are in debt with or you lay less pipe or something like that. So that has always been known. We always know that money cost is always an issue, 4% one day and 5% the next and maybe 3% the next day. That is nothing new.

The only thing to me that is new is something that I think should have been predicted by our attorneys and consultants and that is the stock purchase. Now I was against this whole operation from the start until someone came along and I think it was you that said stock purchase is a possibility. I said stay away from the PUC, negotiations are always better than litigation speaking from experience as well. Everybody agreed. So you know you are negotiating.

All of a sudden now you tell us well into this whole process that someone in bond council now says you need an I.R.S. ruling, apparently not the fact that we can buy the stock, apparently not unless you can clarify that that we don't have to pay taxes. That is the reason to buy stock not to pay taxes. But apparently to get bond council to agree, well in some sense that is also not new because we always have had bond council needs to have approval on the bonds we do. It just happens to be an unusually complex bond. We are not buying a school in this case. In a way that is not new either. If that takes 90 days so it takes 90 days.

There must be something more. My first round of questioning is I don't quite understand, after I have said all that I have said, why we go from talking about an acquisition all of a sudden to break-up. Could you explain that better please?

Alan Reisch, Esq.

Let me take a shot at it. First of all this tax issue and a private letter ruling did not play any kind of a significant role in the discussions today. That was never cited as being a problem. It is something that we would have to deal with, but the fact that we were talking about it reflects the reaction of Stephen Paul the tax lawyer at Edwards, Angell that there is a substantial shot at getting a favorable ruling on this particular issue. It happens Fred to be an extremely esoteric issue that is quite specific to the municipal bond area.

Where the discussions have foundered so far is on the insistence of Pennichuck that it be relieved of any threat of litigation if this process fails for any one of a number of reasons, and these contingencies have been on the table and in the deal and they are something everybody should have understood from the very early part of it. There are a million things that can go wrong with financing. If that were to occur my position has been and it was today very clearly the city will have invested an enormous amount of money in chasing a deal that it can't close because it can't afford it and there is no way the city is paying a red cent to Pennichuck no way that the city is paying a red cent to Pennichuck in those circumstances. That is number one.

Number two if they want to be relieved of litigation I don't want a situation where they can leverage that, that is that freedom from litigation, and use it as an asset if you think of it that way, in peddling this company on the open market to any one of a number of companies that may be interested in acquiring them if they are free of litigation because right now they have not only got their operational issues but they have the threat of litigation two years of appeal, whatever it may be, hanging over their heads and it would take a very adventuresome acquirer to step in and buy this company and pay them anything remotely like what the city could have paid them if they would come to the table and stop arguing over this issue.

This was not our issue this was their issue. They injected it, they insisted that if this project failed because the PUC said no or because the financing fell apart that they needed to be able to tell their shareholders they were free from litigation and what we said to them is if you want that freedom you will get it, but you will get it at a price, and that is all we would recommend to the city. They refused to do it. They are the ones who raised the issue.

Alderman Teeboom

They are the ones who raised the issue and these are I presume new issues that weren't clearly stated before we...

Alan Reisch, Esq.

They have been around and they have known what our position is and they have never resolved them.

Alderman Teeboom

The thing that I would have in my mind if I were Pennichuck is the following; you Nashua brought lawsuit against us, we did not start this fight you started it, we Pennichuck are \$6 million in the hole give or take whatever you can agree on, they are saying \$6 million roughly, and when you are in litigation and one of the parties that filed the suit walks away meaning the guy that brings the suit walks away, the defendant often wants to get whole so I don't understand even why they are asking for their \$6 million as a condition of walking away because the PUC if you go forward can award damages as you well know, it is written right in

RSA 38, which is that big sword that I have been talking about for a long time that everybody seems to have ignored. That is they can assign them, 38:12 I believe it is.

There are things here not even talked about. These may be conditions we have. I don't quite understand your break-up fee. I don't know where that quarter of a million dollars came from, I am not sure.

Alan Reisch, Esq.

The quarter of a million dollars that was paid initially at the outset of the stay period, we want that money back.

Alderman Teeboom

Well we are in the hole \$4 million at this point. If you don't spend a penny of the \$750,000 yet we are around \$3.25 million in the hole at this point.

Alan Reisch, Esq.

Is that a rational for my not asking for anything?

Alderman Teeboom

No I am just saying that we are heavily in the hole in this thing.

Alan Reisch, Esq.

I understand you are.

Alderman Teeboom

Pennichuck is even more heavily in a hole in this thing. Break-up of this litigation seems to create all kinds of other problems. My reaction is frankly in a situation like this it is very simple Attorney Reisch, my philosophy in these kinds of things is when the going gets tough the tough get going and keep right on going because pulling away from this thing is disastrous. Thank you. That is my first reaction.

Alderman Bolton

I'm somewhat bewildered by the previous comment, but in thinking about what would happen if for whatever reason the deal can't be consummated because apparently now we are running into roadblocks not as to what the deal should be if we can make the deal but what the fallback position is if for some reason the deal can't be consummated. It strikes me that we give up nothing to say that we drop the eminent domain proceedings because if the agreed purchase cannot happen because the PUC doesn't find it in the public interest, the chances that they would find an eminent domain acquisition in the public interest strikes me as so remote as to be not worth considering.

It is almost a similar situation with the financing aspect as I think you pointed out earlier on. If you can't finance the agreed upon scenario how could you finance an eminent domain situation. There may be some differences in these tax considerations may play into that, but for the most part I think the same situation probably stands that if we get all the way into trying to consummate the agreement and can't there probably is little loss to at that point say well the eminent domain process goes by the boards also.

If that were to happen I frankly don't see this city and the Board of Aldermen as currently constituted or as likely to change over the next decade having much stomach to start it up again regardless of whether we are bound by contract not to do so. I don't think we give up much in saying that for some period of time even beyond the two year blackout period that we won't institute eminent domain proceedings again, so we could extend that two year period to a five year period I think without any real cost to us.

I don't think we ought to be in a position where sight unseen we give up the city's right to intervene and protest some potential sale to some other outside party that for whatever reason the city doesn't think is in the best interest of the public, which we represent so the Nashua populous. Under no circumstances do I think we ought to give up that right.

The \$6.25 million that we get as a bonus if it gets sold to someone else, anything we can get I will take, but to say that there is some principle reason why we ought to get money in that situation I am not 100% sure that I would make that a deal breaker so core issue or non-negotiable, I wouldn't find that. I presume there would at least be language in the agreement that required Pennichuck to use its best efforts to make the best case to the PUC and to cooperate with us and all of that. As I think we know you can put all of that in the contract and what whispering or going on behind closed doors and we don't hear about is awfully difficult to control. But whatever can be done to prevent the scenario where Pennichuck thinks okay we have accomplished what we want to accomplish, we don't really want the deal so let's see where we can sabotage it, some protection there I think probably is helpful. I don't know exactly what we would do to get that, but that would be the only thing I would worry about and maybe that is the importance of the \$6.25 million down the road.

Alan Reisch, Esq.

It really is. I can now respond to one or two of the comments you made. First in terms of either the PUC saying no or the financing failing and the negotiated acquisition therefore it wouldn't support the condemnation, it is not necessarily true. The problem with the negotiated acquisition is that in order to avoid the tax the city has to buy shares. That means it is using taxable bonds, different cost of money. If you went all the way through and were Okayed on condemning the property and the value was determined, that is simply an asset acquisition. You could use non-taxables for that and I believe Carol Anderson who is here can confirm the significant difference in the cost of money so you might wind up in a situation where you couldn't afford the negotiated deal because it would drive the water rates too high, you could afford to take the property by eminent domain because you could then use non-taxables and the cost of money becomes quite affordable. Also all you are seeking to condemn at that point is the Nashua property; you have no interest in the other two regulated whereas what we are talking now about is a deal for the whole shooting match. That is point number one.

Point number two and perhaps I have been too vigorous and got too far to the right on this, but I was concerned about the kind of pressures that the Aldermen might be under unless there was some quit pro quo for giving up the litigation because if I wasn't to raise the question with them what do we do to protect ourselves if you decide that this isn't the greatest deal in the world and you flag a little bit in your enthusiasm, if I asked the question I could predict that some of your constituents might ask the question once the details of the agreement were laid out as a matter of public record, and I felt it was important to put something in there that would allow the Aldermen to be able to point to it to say we anticipated that and there is going to be a cost to them doing it, it is not a free pass that allows them to go off and leverage the fact that the litigation has disappeared and now they have a buyer's market because they don't have to worry about the city coming back. You may in fact never want to do it, but the fact that you have retained the right to do it seemed to me to be important, I will call it in terms of plausibility you know when you are dealing with the voters in Nashua who are looking at this and want to understand how these things happen. That is something that I injected into it. It is obviously a matter for group decision here as to how vigorously you want to pursue these various points, but that is why it was there in the first instance.

\$6,250,000 number I said it is just 5% and that ties into some legal doctrines that talk about how much of a fee you can charge in a circumstance like this and get away with it. That is where that came from.

Rob Upton, Esq.

I tended to adopt your approach when we first started thinking about this because I thought that shedding themselves of the litigation would be more important to them ultimately than a \$2 million break-up fee for any of these things, and I thought at some level the city could give up its right to proceed with the litigation. Where I really came back to the fold and back to where Alan was is I am going to have to go before the PUC and try to get a petition that this is in the public interest approved if we reach a deal with them. I think that is very achievable and I know that their attorney believes that. I think this is an issue that is really a non-issue because I think if we reach agreement the PUC is going to find this in the public interest.

It is very different from what Fred was talking about with the staff. The staff was focused on PWW alone. If we go through this transaction we are going to buy all three companies almost all of the concerns that the staff had related to the two that were not being acquired and the impact on those companies as a result of the purchase of PWW. I think getting approval of the public interest by the PUC is probably going to be pretty easy so I don't think it is a real issue, but if we're going to do that we have to have them incentivized to go forward and put their best foot forward. Just simply saying they have to act in good faith and all of that stuff and best interest you are right it doesn't get you there. If their pal Donald Correll came around and offered some kind of a great deal for them they might very well go in the tank at the PUC. I didn't think it was in your interest to allow that to happen. Alan and Michael came up with this idea of look if you do walk you pay us as a way of ensuring that we get their interest and keep their interest and their incentive up to get this deal done.

Alan Reisch, Esq.

They don't even really need Correll. You might envision a situation where the going gets a little tough in front of the PUC for reasons that can't be fully anticipated and process is going to drag out and they are now looking at a closing that is going to be 60 days later and they see some business opportunities even as a standalone, they don't even need a buyer in the wings, so let's just go back and tend to our knitting for a couple of years and we can build it up, we think we can bump the water rates as a standalone and then let's go back out to the market and see what we can get.

Even if they don't do that and of course they protest mightily that they will and have to act in good faith, and I guess I honestly don't think they would try to suborn the process because all that means is another round of litigation, but it becomes also a matter of perception. Were that to happen and were people at the city level and your constituency to look at it and say is Pennichuck really doing all they should be doing to support this process, it is not inconceivable that without this they might say exactly what we just supposed here, they decided they didn't like the deal and therefore they stopped giving the kind of vigorous support that is necessary. So that is why it was in there Steve.

Rob Upton, Esq.

What has really been sad about all of this is that they have never made any suggestions of other ways that we could capture their incentive. They have never ever ever come back with anything proactive in terms of trying to find a way to bridge this gap.

Alan Reisch, Esq.

It is a frustration. It is what it is. There is no point in my wasting your time wishing that someone on the other side of the table had a different negotiating style. We have actually got on as well as we can under

the circumstances, but it has been very frustrating because usually negotiation no matter how difficult it is is an exercise in joint creativity, you contribute some idea, I contribute an idea, we work together and try to shape a deal that will work, but they have been very passive reactive in this and it is only really within the last 2-3 weeks that we have experienced any real forthcoming behavior on their point and even then we haven't had any proactivity on this point.

Alderman Tollner

I just want to make sure I understand. I know you have said it a few times, but I will probably need to hear it about 4-5 times for it to sink in, that the offer was \$30 a share, roughly \$250 million to the maximum aggregate right? Okay. The concerns or some of the issues that popped were the approval of the PUC and if the city was able to finance this. You didn't think that the tax stamps or the private letter ruling would be a major factor, it is something we should be concerned about, but it wouldn't be a huge impediment. Is it reasonable to state it that way?

Alan Reisch, Esq.

Yes. Let me re-state it if I can Alderman Tollner. It is a unique issue. This is an area of law that has not been fully developed. It was raised by Edwards, Angell; it is a very obscure provision. Where Edwards, Angell's tax lawyer wound up in yesterday's discussion was saying he thought there was a substantial shot at getting a favorable letter of ruling. The way the process works effectively if we could get the letter ruling in and if we had anything to get a letter ruling in one, we probably could get in front of the I.R.S. within 90 days and from that first meeting you get a pretty good idea whether you are on foot or on horseback in terms of being able to get a yes or no.

That never really played a role in the negotiation deadlock we got into with Pennichuck today because of these other factors that we talked about.

Alderman Tollner

And the conditions that we would be asking for if the city was to walk away would be to get back our deposit, which was the \$250,000 that we started off with in this arrangement correct/

Alan Reisch, Esq.

Yeah. If I can re-phrase that if you don't mind, what we are dealing with is either the PUC saying no or the financing falling apart for some reason, it wouldn't be the city walking out.

Alderman Tollner

I am sorry yeah, if that didn't work out.

Alan Reisch, Esq.

Quarter of a million back right.

Alderman Tollner

And that we would drop the litigation and then there would be a period of 3-5 years.

Alan Reisch, Esq.

Yeah with the following but; but number one was that if they try to sell the company within that time period the city could either decide that just call off all bets and challenge it and reinstitute eminent domain or ask for some more money if the deal got closed.

Alderman Tollner

Okay. And I think it is a good idea to ask for that money for a couple of reasons as you stated to keep them incentivized as well as if they do go and they sell it, it allows the city to recoup some of the money if we decided to not intervene right if they were to sell it to a Philadelphia Suburban like company.

Alan Reisch, Esq.

Exactly.

Alderman Tollner

We have talked over the last few months that the financial condition of the company and I thought we were under the impression that the financial condition of the company wasn't that strong. In your opinion or in anybody else's opinion has it improved or is it still as shaky as we thought it was?

Alan Reisch, Esq.

It has probably improved a bit. My understanding is that they still are unable to sell commercial paper, during the period of negotiations. Michael Drooff or perhaps Carol Anderson can speak to that. The stock price has been in the neighborhood of \$25. Probably a number of you have been following it. I think it is fair to assume that a pretty good portion of that price is speculation over a takeover by the city. We don't know for sure obviously what would happen if there is an announcement that negotiations are terminated, but it is fair to speculate that could have a significant impact on share price.

Rob Upton, Esq.,

And just to make sure that everybody understands where today ended up, that is what is going to happen on Monday. Monday is the end of the stay and unless something is done to extend the stay, which it doesn't appear it is going to be, there is going to be an announcement by the company and probably something by the city also saying that negotiations are no longer ongoing, that we are going back to the PUC.

Alan Reisch, Esq.

And it is going to be interesting to see just what does happen to their stock. I can tell you what I think and hope will happen, I think and hope that it is going to drop probably 25%, it will go back down to \$20/\$21, I think there is going to be a human cry by their shareholders, and I don't think we have heard the last of them, but I think we are not going to be able to continue to negotiate with them except in the context that we are going back to the PUC.

Alderman Tollner

After listening to the first phase of the PUC hearings, I am only speaking for myself I really don't hold out much faith that the PUC would rule in the city's favor, I don't. It is just my gut feeling in all of this. Basically what we are saying is if that is the case we are looking at a totally different situation than we were before.

Alan Reisch, Esq.

I'm not a regulatory lawyer and I didn't participate in that phase of it Alderman so I think Rob can comment on that, but I really...

Rob Upton, Esq.

I have never tried to sugarcoat the PUC proceeding for you...

Alderman Tollner

No I am not saying...

Rob Upton, Esq.

...I think it has always been an uphill battle. Once the staff concluded that it thought it was not in the public interest for the city to own PWW alone, it has been an uphill battle. Now I will say there has been a lot of knowledge gained in the last 6 months and a lot has changed. I think that we can now fashion conditions that are going to satisfy many of those...that the city could easily live with that will satisfy some of those staff concerns and I hope will bring them or at least soften their position. But you are right it is an uphill battle.

Alderman Tollner

Thank you.

President Rootovich

Anybody else who hasn't spoken first before I call on Alderman Teeboom?

Alderman Teeboom

I said earlier, I thought there was something else and now I think I heard something else that I hadn't heard before and that something else is what are you going to say to the PUC? Now I pulled out the calendar on the 17th...

Alan Reisch, Esq.

We have a hearing.

Alderman Teeboom

Which is Tuesday.

Alan Reisch, Esq.

Yes Tuesday.

Alderman Teeboom

Is it DW0448 that is not the other one, it is this one, City of Nashua technical session. Are you going to go in there now to this technical session and say we no longer have a deal? Exactly what is going on now?

Alan Reisch, Esq.

I've got to talk to Camerino in the next few days, but he was drafting when we last talked a motion that would lift the stay.

Alderman Teeboom

And what is behind the motion?

Alan Reisch, Esq.

There is no agreement.

Alderman Teeboom

Ahhh so now I think the other shoe is falling here, which I haven't heard before. No one, Attorney Reisch didn't say he didn't have an agreement you said it was these sticking points.

Alan Reisch, Esq.

I'm sorry I beg to differ, I thought I made it very clear and if there was any confusion then let's make it very clear, as of right now there is no agreement based on the position that we have taken that we thought reflected the interests and the position of the city. If this Board of Aldermen wants to instruct me to go back and modify that position obviously I will do it.

Alderman Teeboom

Okay so then I understand it clearly, maybe confusion in my mind, I apologize, so it looks like on the 17th the two parties are going to walk in to a public meeting, the press is going to be there, it is open...

Rob Upton, Esq.

There will have been a public announcement...

Alderman Teeboom

The 17th is on the calendar I pulled it off this morning.

Rob Upton, Esq.

The 16th is the day that the stay lifts and our understanding is they intent to issue a press release saying that we weren't able to reach an agreement and they are going back to the PUC.

Alderman Teeboom

And that is the 17th you will make that open meeting...

Rob Upton, Esq.

And the 17th what will happen is there will be discussion about when the trial will recommence.

Alderman Teeboom

And we are back to the PWW business and all the rest is down the tubes.

Alan Reisch, Esq.

Yeah. I will say this, what we are talking about is what we predict will happen as a result of their board meeting tomorrow based on what they have said and taking their statements at face value that they will not accept the city's position on these issues. Who knows what phone calls will come in tonight or tomorrow morning. I am not predicting it I am simply telling you that the history of this has been that you can walk away at 3:00 p.m. thinking you are not getting anywhere and you get another call wanting to re-open conversations an hour or two later. I wish I could say that those resulted in some new ideas, but it is conceivable you might hear something different but right now what we think we are hearing is that board will not approve the terms and conditions that we have insisted on today.

Alderman Teeboom

Now the conditions that seem to be the deal breaker here I think that are the deal breaker here is we are asking for our quarter of a million dollars back in case we drop out...

Alderman Bolton

It is not us dropping out...

Rob Upton, Esq.

I will tell you what the deal breaker is, they want \$2 million and they want us absolutely to walk away from the litigation in the event either of those two conditions fail.

Alan Reisch, Esq.

If the PUC says no or if the financing fails. That is important.

Alderman Teeboom

They want a \$2 million...

Rob Upton, Esq.

A \$2 million bust up fee and they want us to walk away.

Alderman Teeboom

In addition to the quarter of a million dollars they already have.

Rob Upton, Esq.

Yup.

Alan Reisch, Esq.

We're not talking about a situation, let me underscore this, we are not talking about a situation where the city breaches its agreement, where it signs an agreement and then 3 months later walks away from the deal cold, just doesn't perform what it is supposed to do. That is not what we are talking about. That is an easy example.

We're talking about two contingencies that the city cannot control; what the PUC does and whether it will be able to complete the financing. Even though the city is relatively I will call it innocent of blame in those circumstances, they are looking for certain consequences; 1) they want the \$2 million, well you can tell me to offer it, but I would never do it on my own – that to me is a non-start and I have to believe that is not really the issue here. The issue is getting out of the litigation and what the toll charge would be for them to get out of the litigation if the PUC says no or the financing folds. That is really what it comes down to.

Alderman Teeboom

But that is at a \$2 million or is that more?

Alan Reisch, Esq.

No the \$2 million is off the table. That is the actual payment. I think they know we would never never authorize that.

Alderman Teeboom

What is the other part then?

Alan Reisch, Esq.

The other part is if we can't close the financing. Let's say the cost of money gets out of control, at that point the city has to agree to drop the litigation and say that it won't re-commence the litigation within a period of 3-5 years unless it first pays Pennichuck its sunk costs of the prior proceeding which they estimate at \$6.2 million. They have been insistent that they need to find a way to end the litigation if the deal can't be completed. In an attempt to bridge that gap what we said to them is okay we can recommend it, but two big buts; if you want to make the litigation go away because the financing collapses, then give us our quarter of a million dollars back and tell us that if you try to sell your company within that 3-5 year period if the city feels strongly enough about it the city can simply terminate this agreement and go in and challenge the change of control or start condemnation proceedings all over again, and if it doesn't want to do that and you manage to sell it to someone else during that time period then pay the city another \$6,250,000, just figure that into your share price.

Alderman Teeboom

I can see why that is a deal breaker. I can't imagine them accepting a deal like that. I just can't understand anyone accepting a deal like that.

Alan Reisch, Esq.

Well they have gotten a lot of other things Fred out of this deal in terms of price adjustments and they have the per share price they want, and...

Alderman Teeboom

The stock is right now at \$25. It was at \$19 at one point and now it is \$25 and rising. If you drop this litigation the chance of starting it up again is about zero in my opinion. There aren't going to be any Alderman out now or in the foreseeable future that will say let's start litigation all over again. I agree with Alderman Bolton on that. The \$6.25 million doesn't make any sense. They are in the hole \$6 million themselves themselves on this thing.

Rob Upton, Esq.

If they are going to sell the company in 3 years for \$55 a share they can find \$6,250,000 to make the city whole for its exposure.

Alderman Teeboom

And I think that would happen I think they probably would court Correll or someone else and sell the company. My opinion is I said if the going gets tough we ought to stick with where we are because going back before the PUC in litigation is terrible. I think we ought to stick with where we are, continue the negotiations, going into agreement...

Alderman Bolton

I don't know what that means...

Alderman Teeboom

...go into agreement that we are going to negotiate with them, not go to the PUC and say the negotiations are off.

Rob Upton, Esq.

Fred I am at least as strong a proponent of settling this with an agreement as you are, maybe not quite as much, but I am pretty close to being as strong a proponent of that, but it takes two to tango and you can't do a deal all by yourself, and right now we can't get a deal done. That doesn't leave us very many choices unless this board is going to tell us or tell Alan capitulate, give up on that issue of giving up the litigation.

Alderman Teeboom

Let me just make my final point on this that is give up the \$6.25 million thing, that doesn't make any sense to me. The litigation in the future unless someone comes in and says put a Dow Chemical plant up here it doesn't make any sense to me either. I think you are putting on deal breakers in place. Just my own opinion you are putting too big a deal breaker in place.

Alan Reisch, Esq.

It is funny Fred usually the problem for the lawyer is that he gets to the left of the client. In this case, I think I have gotten to the right of the client.

Alderman Teeboom

Well that is the way it goes sometimes.

Alderman Tabacsko

Is there any possibility to extend the negotiating period, the stay? Is that something that was discussed in the current deliberations?

Alan Reisch, Esq.

Well we never really got to that because we were so far apart on deal essentials that would have been the predicate to talking about the extension of the stay that it didn't go on the table. I am assuming although it has never been expressly discussed, that if we reached agreement on these essential principles that we would work out some agreement. I think he talked actually at one point today about extending it for another 6 months through the end of the year.

Rob Upton, Esq.

It wouldn't surprise me if when he starts to think about what is going to happen when the stay gets lifted, what is going to happen to his stock price, that he doesn't come back and suggest to Alan just that. But I think if there are future negotiations that are going to occur they are going to occur while we are headed back towards litigation, and I am not sure that is all bad.

Alderman McCarthy

I would love to find a negotiated solution to this. I was thrilled when we started and I don't think the \$6.5 million is the deal breaker it is the us not agreeing to the \$2 million in the break up fee that is the deal breaker. Basically where we are at is we have dangled the biggest carrot we can afford and they are not biting, it is time to go back to the stick.

Alan Reisch, Esq.

You may be right.

Alderman Cookson

Thank you. I know we went through a tremendous effort to work with our legislation up in Concord and we had a Senate Bill that was recently edited and what I have heard this evening is that if there is a negotiation that we would agree not to do anything between 3-5 years, I am curious how the language in state law now as it currently reads, how it impacts any negotiations because I believe as it currently reads it says that only Nashua is able to acquire Pennichuck. Could someone just help me understand how the current Senate Bill now that that is passed and it is state law, how that impacts the future 3-5 years as far as whether the city decides to continue or to pursue this in the future?

Rob Upton, Esq.

Well of course the bill was drafted in contemplation of a negotiation acquisition and it made possible what Edwards, Angell bond council said could not be done under state law before it was changed. If an agreement was signed and then the deal cratered and then we went into this 3-5 year holding period, I don't think the statute would have any direct impact on the city's ability to come back. For instance, if you take Dow Chemical or the Chine company with the mercury smelting plant wants to make an acquisition in three years and assuming that was the deal that the city could say well okay we are going to terminate this agreement because we have to challenge this one, the challenge would take the form of an eminent domain proceeding presumably. I don't think you would be doing an open market tender for the shares. You could

in theory, but you are much more likely to be starting an eminent domain proceeding and the new bill really doesn't have any bearing on that because you always could do that.

Alderman Cookson

Thank you.

Alderman Bolton

The idea that without getting any further progress that we just agree to extend the negotiation period my impression is we give up something in doing that. I think a lot of us have had the experience that most deals happen when the pressure is on and you take the pressure off and everyone relaxes and it doesn't happen. I think to some extent we have the whip hand if predictions of a drastic reduction in the share price occurs when the public announcement is made that negotiations have broken off. If they want to push us to that point we probably ought to let that happen and see what pressure gets brought to bear on them. While the litigation is pending nothing prevents them from coming back and say we would like to shoot something else by you based upon your last offer. The idea that we ought to just agree to 6 month, I think we are this close we ought to push.

Alderman Deane

That was the point I was going to bring up. I think that is a very good way to operate. If we extend this negotiation period for 6 months they are just going to sit on their laurels and play games like they have been doing. If the drop in value of the stock does come to fruition after the announcement I think Montopoli will be a little panic stricken and it won't be the pressure that you will be putting on them it will be his own people that will be pressuring him at that point because there is a reduction in value right there. As much as Alderman Teeboom doesn't like the litigation I guess it is nothing more than a game of chess and you have to go through with it. But if we were to go back to negotiations the timeframe placed on those?

Alan Reisch, Esq.

Let me put it this way, I don't think there would be any agreement to extend the stay period unless there was an agreement in principle on price and these break-up terms. I think it would be very unwise for example to ask me to call him tomorrow and say in the absence of an agreement on these kinds of gut level issues, let's just extend it another 6 months. I think it would be throwing a lot of city money away frankly because we wouldn't know where the hell we are. We're long past the point where I think the city needs to know either that it has the outlines of a deal or it has to make a choice about going back to the PUC. This has really taken an awful lot of time and more in my opinion than it should have, but that is neither here nor there. I am assuming that the only way you talk about extending the stay is if between now and Monday somehow we come to agreement on this set of basic terms; price and consequences of a break-up, PUC, financing, things that we have talked about this evening.

Now in looking at this complex a of break-up issues I can't remember whether it was Brian McCarthy or Mike Tabacsko said it is really the \$2 million it is not this other business. It may be although God knows they have been hammering the need to get out from under the litigation. They haven't spent a lot of time arguing with me over the fact that we are not going to pay the \$2 million in break-up fees. These people can turn on a dime. This is just the nature of negotiations. But so far the break-up fee has not been where most of the conversation has gone; it has been getting out from under the litigation. They are quite insistent on that.

Rob Upton, Esq.

And if you think about it, if they are out from under the litigation they get to operate their company without spending any money on the litigation and they get to shop their company and use our price as a stocking horse. Getting out from under the litigation I think really drives them. I don't think it is the \$2 million. I certainly hope it is not the \$2 million because that is the one area where we can't I think give anything. If there are imaginative ways of dealing with the litigation I encourage us to be open about them, but at this point I don't see any other than what we have suggested, and they haven't responded to any of them.

Alderman Deane

I wanted to continue with the Montopoli phone call.

Alan Reisch, Esq.

You mean the one he made to me today after the...

Alderman Deane

No no the one we believe is going to be made and he will want to extend the stay and your answer to him is going to be what?

Alan Reisch, Esq.

I don't know that I think he is actually going to make that phone call. The only thing we have really left open is that he asked me to call him tomorrow and communicate to him the sense of this meeting before his board meeting and I don't know that I read too much into that one way or the other that is just the way the man operates. In what I think is the unlikely event that he were to ask to extend the stay period then what I would say unless you instructed me otherwise is we will be more than happy to do it if we have agreement on the basic principles, but we can't keep going through the cycle of negotiations where nothing ever gets resolved. We have to start to move some issues off the table and if we can't move these issues off the table believe me when it gets down to negotiating the actual contract itself it will be nightmarish. That is what I would say, now obviously if you feel otherwise I would ...

Alderman Deane

I support your response.

Alderman LaRose

Thank you Mr. President. It seems to me that all the while that this has been going on we have always been on the defense. Pennichuck wants this okay we will try to do this, do that. I think it is time that we get on the offense and that they are on the defense. I think that what Allan is proposing is what will get them on the defense and put us on the offense.

Alan Reisch, Esq.

I will say again one of the frustrations in this, and you can't change what is, my instructions this morning were pretty firm and I wasn't going fishing for re-opening them on negotiation, but the normal response to what we said today would have been to say something like look I understand your need for something, but what you are asking for is excessive, are you absolutely married to that – just as an example. If it really was the number that was sticking in their throat. I might be able to do something so the conversation would go if

we could do something about the number here; it is a \$6,250,000 is too much money. You never get that. The problem with that kind of an environment is that you wind up negotiating against yourself either that or you have to say this is just the deal. These are grown men, they know how to negotiate, if there is any willingness to do anything other than what we laid out subject to approval here by this body, it is really up to them at some point to say can we talk about some of these issues, and it just doesn't happen. It is just a flat no and then they invite you to come in the death of a thousand cuts as you negotiate against yourself.

I think it is, well it is frustrating but that is my life, I deal with that. That is what I am trained to do, but...

President Rootovich

In the process of negotiating over the last several meetings and Mark has attended them, there is always something new on the table. I was the one in the room this morning that was bouncing off the walls when I heard that they wanted this break-up fee and I was opposed to it until the attorneys convinced me otherwise along with Alderman McCarthy, but my frustration level is just as high as everybody else. Every time they come to the table it is something else, it is something else.

Alan Reisch, Esq.

Just to deconstruct it for a moment, I think the ability to take a second look at this agreement if there is a takeover and if the city thinks it is important to step in and challenge that or even theoretically to start eminent domain proceedings, that to me is critical. That is critical because I think that if you didn't have that and there was a takeover attempt in 3 years and something that raised a real furor someone who was entirely inappropriate even if the PUC ultimately said no, but the city had no ability to do something to stop it, there would be enormous criticism. That to me seems to be terribly important. The rest of it I think Alderman Bolton may be right, Fred may be right, it is just numbers. I wanted to get the principle in front of them that if they are going to do this they ought to give us something to make us whole for having put them in a position where they can sell the company even if we don't object to it. Now whether the number is \$6,500,000, whether they pay \$250,000 up front, that is entirely up to your sound discretion, but that is why I put it on the table.

Alderman MacLaughlin

Thank you Mr. President. I think Attorney Reisch that tomorrow you ought not to make a phone call, you let him call you. When he does get a hold of you, you should just simply say we will see you in front of the PUC. If I remember right, prior to breaking off into negotiations, the city's case was very effectively presented that this was in the public interest. A staffer had made known that maybe they the staff thought that you know the towns that were the little pieces that we aren't interested in, if they were disowned that wouldn't be in their interest. I understand that, but it is in our interest, the city's interest. Alderman McCarthy and the Mayor and Carol had all elaborately made that case. The gentleman seated to my right is earning his keep making that case. I have every bit of confidence in his ability to deliver the knockout at the PUC based on the information he has and the backing and support of this board, which he enjoys.

I think the best strategy is to go back there full steam ahead. I would think that Mr. Montopoli and his team are probably going to see that for what it is and say now we have to do something, we have to move, because they probably expect that the city if we request a continuation of negotiations is probably getting software somewhere and that is what they are probably going to read, so let's not let them read that, let's do what Alderman LaRose has just suggested and what Alderman McCarthy has proposed. We do have the big stick and it is time to hit them with it.

President Rootovich

Are there any further questions/comments?

Alderman Cookson

Thank you. Just a question about your services Attorney Reisch. If there is no phone call, there is no continuation, the stay is lifted on Monday the 16th, and we are actually before the PUC on Tuesday the 17th, can you speak about the retention of your services and any additional items that you would be responsible for based on that press release on Monday?

Alan Reisch, Esq.

Unless and until negotiations about a negotiated transaction ever resume, we would simply stand back. We obviously would terminate. We have actually terminated our burn rate except for Michael and me trying to get through to the principles of negotiation on this and we pulled people off it, we told the environmental people not to do anything because we don't want to eat into the city appropriation on this. As you may recall going all the way back, our lobbying branch, Liz Murphy, does the work for Pennichuck and the waiver of the conflict under which we are operating requires us to stay out of any litigation, and we would because we are not regulatory counsel anyway and Mr. Upton and is far more competent than any of us ever would be in dealing with these issues.

Alderman Cookson

Thank you.

Alderman Teeboom

Back to the I.R.S. what ruling is the bond council looking for from the I.R.S.?

Alan Reisch, Esq.

The want confirmation that the acquisition of the shares by Pennichuck would not trigger the recognition of gain under two sections of the internal revenue code; Sections 115 and 337. They are very very focused, very complex provisions aimed at what happens when a non-taxable entity acquires the shares of a tax paying company because the I.R.S. policy concern is that in a situation like that somehow the taxpayers may find a way to shelter the otherwise taxable profit of the private company within the body of the non-taxable parent that owns it, in this case it would be Nashua. They have a series of requirements and provisions you have to go through and the ruling would seek to confirm that this transaction and the way the city would operate the company would not create any recognition of gain under those two provisions.

Alderman Teeboom

If the I.R.S. does not rule in favor what happens?

Alan Reisch, Esq.

The deal is not doable.

Alderman Teeboom

In that case, what do we own Pennichuck, anything?

Alan Reisch, Esq.

Well remember this is what the whole dialogue was about the \$2 million break-up fee and discontinuing the litigation. That is when these considerations would come into play.

Alderman Teeboom

No no, just go back to the PUC and tell them no more negotiations and we go forward. Is that whole stock deal then out of the picture?

Rob Upton, Esq.

If we can't get that ruling from the I.R.S., then we have to give up the litigation and we have to pay them \$2 million. That is what they want. That is why our negotiations with them have fallen apart.

Alderman Teeboom

At the same time, the PUC still has to make a ruling and if the I.R.S. rules against us we have to go to the PUC and say we can't continue this litigation.

Alan Reisch, Esq.

No actually the way it would work, it is a little bit different. We wouldn't even think about getting the private letter ruling unless we had a signed definitive agreement with Pennichuck. At that point, the current PUC proceedings would probably be stayed. I will leave it up to Rob to figure out exactly how he would deal with it. You then go and you try to get the private letter ruling. Nothing is going on at the PUC, you are getting ready to go in to seek their approval once you know you can get the favorable letter ruling, you don't get a favorable letter ruling, that is the point at which these break-up issues come into play.

You are not going to go back to the PUC litigation, you have now found you can't do the deal because you can't get the favorable tax ruling, so now what is being proposed or discussed at least 1) they want a \$2 million break-up fee because the deal can't close they want the city to pay them, you obviously can tell me what to do, I think that is insane and I would never recommend it and 2) they want to get out from under the litigation. That is where we said to them okay we will give you that get out of jail free card, but we want some things from you. First of all we want the \$250,000 back, if during the next 3-5 years instead of running your own company you find someone else to buy you we want a right to come back in to take a look at it, if it is something really bad all bets are off we are going to have the right to challenge it.

Alderman Teeboom

I understand that. My question is we go back on Tuesday and tell the PUC negotiations are finished. So we are not back to litigation, where we were in January, is the stock deal off? Is the I.R.S. letter off? Is all of that out the doors? Is all of that stopped?

Alan Reisch, Esq.

Absolutely. We are not doing anything.

Alderman Teeboom

And we are back into a regular purchase no long stock purchase just PWW and that whole argument...

Alan Reisch, Esq.

Eminent domain yeah we are right back where you were...

Alderman Teeboom

So nothing else happens. The other thing is if somewhere, now the pressure builds and now they are saying gee our stock has gone down and is not going back up again, and I am not sure I agree with that scenario, is it at \$25, we want to re-negotiate again, the PUC has to agree to all of these terms as well, what is the likelihood of the PUC saying well you guys we are back into 6 months of more litigation you guys want to negotiate, will the PUC require us to...

Rob Upton, Esq.

I believe that the PUC if we signal that once again we need time from the litigation to engage in negotiations they are going to do that. I believe there is nothing that the PUC wants less in this world than to have to make a decision in our case.

Alan Reisch, Esq.

If we got into that scenario it would be probably unproductive for me to get into what ifs, but it seems to me there would have to be a very stiff message coming back to Pennichuck as to what the city expects before it gets into another round of negotiation. The last thing in the world I would endorse for the city is to spend another 6 months talking about these things and running up legal bills. If that were to re-open, in my view only okay, it would have to be accompanied by express commitment to the basic elements of the deal. I don't want to recycle the whole process of negotiation over price, over break-up fees, over all of these things that we have been living with for the last 90-180 days.

Alderman Teeboom

You want principles in place before negotiations would pick up again/

Alan Reisch, Esq.

Yeah because I am serious about the fact that I don't want to see the bill run up for the city in negotiation that doesn't go anywhere.

Alderman Teeboom

Thank you.

President Rootovich

Are there any further questions/comments?

Alderman Tabacsko

Thank you. Do we have a press release or at least an idea of what we are going to say in a press release on Tuesday, and if so who is doing that?

President Rootovich

We do not have one constructed yet.

Rob Upton, Esq.

We have talked about the need to get something in place and we will work at that.

Alderman Tabacsko

Do we have an idea of what tone we would take in such a statement?

Mayor Streeter

I certainly will tell them to go to hell. I have been instructed not to.

Rob Upton, Esq.

We have envisioned the Mayor on the front steps of City Hall talking about greedy SOBs and that sort of thing.

Mayor Streeter

You are right I would, but I think that if someone from your firm would help us with the statement.

Alan Reisch, Esq.

Michael Drooff who is sitting back there I think...

Alderman Tabacsko

If during the next couple of days you are approached and the principles of the negotiation they indicate their willing to nail those down are the mechanisms in place to continue this or do we have to go through that phase of press releases and back to the PUC because this thing is going to expire?

Alan Reisch, Esq.

Well if they are going to issue a press release to the market by the close of business on Friday that is going to put the fat in the fire. I can almost write the script in my head as to how difficult it is going to be for them to climb back if they want to...so I would say between now and say 4:00 p.m. arbitrarily on Friday is the window of opportunity for anything more to happen on this assuming that we follow the course suggested by Alderman MacLaughlin and others, which is radio silence and leave it up to them to come back to the table.

Alderman Tabacsko

Okay. And I agree with that by the way. I am just curious about various contingencies here, what might happen if the pressure that we are talking about actually is recognized and they start scrambling.

Alderman Tollner

I think that if we do have some sort of statement or press release I think the board would appreciate seeing it a day ahead of time and maybe some talking points that go along with it. Not that we would speak to it,

but just so we understand the city's position. The press release and the statement and some information to clarify between now and when the statement is released so we have a good understanding of it.

If the stock price goes down I think Duane and others are going to tell people to hold on, we will go through this and we will clean up act and we will be a very lucrative water company in two years and we will get you your price. Personally I don't think they are going to scramble and say oh my God we're going down \$5 a share and we are going to the PUC. I think they have no problem with waiting and going to the PUC. As soon as that is done and they are free and clear someone will find them very attractive given the circumstances.

Can you and President Rootovich tell me how often over the last three months have you met or had conference calls with Pennichuck and how often has the water committee met?

Mayor Streeter

I think we ought to clarify the internal water committee consists of the President of the Board, Alderman McCarthy, and Alderman LaRose. It is different from the Aldermanic water committee. This is the internal committee. It also consists of Carol Anderson, myself, David Connell, and Mark Sousa.

Alderman Tollner

How many times has that committee met?

President Rootovich

Sometimes we met weekly sometimes it was 3 weeks before we had a conference call. We left it up to the attorneys when they felt it was time to give us an updated and seek some feedback and council.

Alderman Tollner

So over the last three months would it be a dozen times?

Mayor Streeter

At a minimum.

Alderman McCarthy

I don't think it has been that much.

Mayor Street

Mark you have been in communication with Pennichuck people almost on a daily basis over the last few months haven't you?

Mark Sousa

On the record or off?

Mayor Streeter

Okay. Well let's just say that he has had any number of meetings and communications with the Pennichuck people.

President Rootovich

I don't think it has been a dozen times, I think maybe 7 or 8 times, at least the ones I have participated in.

Alderman McCarthy

I think the meetings of the internal committee have pretty much mapped onto these updates 1 or 2 to 1. Sometimes we would have a meeting, discuss the need for an update to the board, and then have another meeting just before meeting with the board. It was mostly we would get updates from Attorney Reisch and then that would precipitate an update to the board.

Alderman Tollner

Alan how often would you think that you have met with Pennichuck over the ...

Alan Reisch, Esq.

For the last 90 days say?

Alderman Tollner

Yes.

Alan Reisch, Esq.

I want to say somewhere between 6 and 8 times maybe more, but the telephone communications were much more frequent.

Alderman Tollner

The recommendations that we are looking at right now from the city's perspective, and you have met with the water committee to discuss this before this meeting I am sure, you stated you did, those recommendations are they your recommendations, the firms recommendations? Did any of those recommendations come from any members of the water committee or was it your recommendation and they just more or less approved it or went along with it?

Alan Reisch, Esq.

It is really a combination. It was a very in depth dialogue this morning. As a matter of fact I had to really break it off and kind of move the previous question around for 10:10 a.m. because I was due at Pennichuck at 10:30 a.m. and I had already had my secretary call to say I would be running a little bit late. As I said, Carol may have been the first one to mention today the need to make sure the city was protected against a second takeover attempt after the city's bid failed. I, as you can gather, feel strongly about that. I think really we would be remiss if we didn't have that kind of protection. That is important.

The money was actually something that we had been talking about as a tiebreaker to try to break this impasse feeling that if the city had to give up the litigation and there was a takeover within the next time

period whatever that was, that it would be much more palatable for the city and the Nashua voters to know there would be some money coming back, maybe even more than enough to cover the actual sunk cost in moving through this. We put that on the table today and it kind of tied in with the notion of trying to claw back that \$250,000 right at the outset on the theory that hey you are getting a free pass just give us our money back. It flowed back and forth, but I think that is how it evolved.

Alderman Tollner

And the meeting that you had at Pennichuck today, who was at that meeting?

Alan Reisch, Esq.

Michael Drooff, Mark Sousa, Duane Montopoli, and Bill Patterson the CFO. A total of 5 of us, and it was not a long meeting.

Alderman Tollner

How long was it?

Alan Reisch, Esq.

We were probably there about an hour or a little longer, but some of it was just chit chat. As I told you, we decided to take the bat out of their hands, moved on our agenda, told them exactly what our positions were, and that we were pretty firm in them.

Alderman Tollner

Thank you.

Alderman McCarthy

I assume that we are still bound, even if we go back to the PUC proceedings, by confidentiality to not discuss the terms of the negotiation.

Alan Reisch, Esq.

That is accurate.

Alderman McCarthy

I disagree with Alderman Tollner's assessment on the stock. Following where this stuff has worked, most of their stock is institutionally held now and those guys don't actually give a dam about anything except the value that their programs tell them the stuff is worth and if there is another stock that is worth more than the difference in the trade price they are gone. I think that will happen. It went up when we entered the negotiations, it went up \$4 the day we offered them \$111 million. It is going to go back down because there is no expectation of a deal.

If we were the sort of guys that really wanted to play hardball, is there any way that someone on the outside could figure out what the basis of the negotiation was from information that is available or able to be disclosed?

Alan Reisch, Esq.

That would be kind of tough. We speculated that someone is already talking out of school, but we don't know that for sure. Just because of some movement in the share prices.

Alderman McCarthy

Based on where all of their previous dealings have been, I suspect if the shareholders knew that the price that was on the table was \$30 a share they would be screaming for Montopoli's head already.

Alan Reisch, Esq.

It is more than \$30 a share. By the time they get done liquidating the extraneous assets they are pretty close to \$32 a share is what it amounts to because remember they can claw out that extra money. When you add it all up it would be tantamount to close to \$32 a year.

Alderman Plamondon

I agree with a lot of the points that you made sir. We talked about the \$6.5 million back and we say 3-5 years, which has not been a firm date as there is still discussion. Then we also talk about a 2 year blackout period. Are you looking at the 2 year blackout period in addition to a 3-5 of inclusive of that 2 year blackout and what is your thought on that?

Alan Reisch, Esq.

There are actually two different time periods there and it is easy to run them together. The 2 year time period was something they originally said to us. They said we want out freedom from litigation. We are not going to tell you you can't resume eminent domain proceedings, but we are going to tell you that if you decide to do it within the two year period that you first have to give us back the \$6,200,000 we have invested in this prior litigation. That is where the 2 years came from.

The 3-5 years and honestly if they came back and said to me they would do everything that we have talked about and they wanted 3 years and not 5 I would probably recommend it to you. I think it is the principle that is almost more important than the actual time period. The 3-5 was something that we really cooked up because we said okay if you want that commitment from us then we want another commitment from you. That is where the 3-5 comes in; give us the \$250,000 back and then during the next 3-5 years if you are going to sell the company to anybody else we have this dealer's choice arrangement.

Alderman Plamondon

Thank you. I wasn't clear on that point. Not to reiterate all of the comments because a lot of good comments have been made this evening, but just looking back at this whole process and this game that Pennichuck has played since day 1. It has been more than cat and mouse. They have avoided and done everything possible to drag things along, not negotiate, their ad campaigns in the paper, etc. From my perspective, this board would continue to dangle larger and larger carrots and I concur with a point Alderman McCarthy made that now is the time to take out the stick. The point that Alderman MacLaughlin had made I think is alluding to how big a stick can we take. Some other points made on the press release, I would like to see it as well, but is there a way that possibly in the press release we could say something to the affect of it is doubtful that any future negotiations be had based on what has transpired and it looks like it will end up in court? I do believe as Alderman McCarthy believes, the stocks will drop. They have shown to be very volatile to the decisions made here. I think \$4-\$5 drop is substantial, but if the city takes a big stick

on this and that we are going to go to legal process, which I don't want to do either. I think negotiation is the way to go but they don't like talking, they never have.

If there is even a larger drop in stocks I think it may force them into action. That is just my take on it. I don't want to reiterate everything, but there were a lot of good points made. That is my viewpoint.

Alderman Deane

I just wanted to make a comment from the way I see it from the constituency. I don't hear anything from anybody. The only time I hear anything about Pennichuck is from the unions when they are complaining that they are not getting raises. It has gone on for so long and I don't know about my other colleagues, do you get scathing e-mails or letters in the mail or people stopping you on the street? I haven't heard anything from anybody in quite some time.

Alderman Plamondon

To that point, I was just stopped by a little lady at work who lives in Nashua. I told her I didn't have time to talk and she grabbed me and said you have to talk to me, you have to buy Pennichuck. She was one that at first did not agree with what we were doing. This is just one constituent, but to your point Alderman Deane this is one example I can give of someone who when we first started this process wasn't in favor and now is adamant.

Alan Reisch, Esq.

They ought to be concerned because they just got a 3% rate increase related solely to Sarbane's Oxley.

President Rootovich

Are there any further questions?

MOTION BY ALDERMAN BOLTON TO COME OUT OF THE NON-PUBLIC SESSION, RETURN TO THE SPECIAL MEETING OF THE BOARD OF ALDERMEN, AND THAT THE BOARD OF ALDERMEN SEAL THE MINUTES OF THE NON-PUBLIC SESSION BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED

A Viva Voce Roll Call was taken, which resulted as follows:

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn, Alderman LaRose, Alderman Dion, Alderman Bolton, Alderman MacLaughlin, Alderman Deane, Alderman Teeboom, Alderman Cookson, Alderman Plamondon, Alderman Rootovich

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Nay:

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MOTION CARRIED

ADJOURNMENT

**MOTION BY ALDERMAN BOLTON THAT THE JULY 11, 2007 SPECIAL MEETING OF THE BOARD OF
ALDERMEN BE ADJOURNED
MOTION CARRIED**

The meeting was declared adjourned at 8:42 p.m.

Attest:

Paul R. Bergeron, City Clerk