

A special meeting of the Board of Aldermen was held Tuesday, September 4, 2007 at 6:02 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 Williams leading in the Pledge to the Flag.

The roll call was taken with 10 members of the Board of Aldermen present; Aldermen LaRose, Richardson, MacLaughlin, Teeboom, and Plamondon were not in attendance. Alderman Tollner arrived at 6:05 p.m. immediately after roll call.

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

COMMUNICATIONS

**MOTION BY ALDERMAN TABACSKO THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY
MOTION CARRIED**

From: Mayor Bernard A. Streeter
Re: Special Board of Aldermen Meeting

**MOTION BY ALDERMAN TABACSKO TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

REPORTS OF COMMITTEE

Human Affairs Committee Action Report 08/16/07

There being no objection, President Rootovich declared the action report of the August 16, 2007 Human Affairs Committee accepted and placed on file.

UNFINISHED BUSINESS – RESOLUTIONS

R-07-254

Endorsers: Mayor Bernard A. Streeter
Alderman-at-Large James R. Tollner
Alderman Marc Plamondon
Alderman Michael J. Tabacsko

**RELATIVE TO THE TRANSFER OF OWNERSHIP OF A 2000 DODGE RAMWAGON VAN, VIN #
2B5WB35Z1YK17947, TO THE FEMINIST HEALTH CENTER OF PORTSMOUTH**

Given its second reading;

MOTION BY ALDERMAN WILLIAMS FOR FINAL PASSAGE OF R-07-254

ON THE QUESTION

Alderman Dion

To whoever can answer the question Mr. Chairman, I would like to know why we are giving away a 2000 vehicle to the Feminist Health Center of Portsmouth. Can anyone tell me what the Feminist Health Center is, and how come we have agencies here in the city that we could have possibly given that vehicle to? I would like those two questions answered.

Alderman Tabacsko

It is my understanding that we took this vehicle for \$1 transaction fee from the State, and part of the condition was that when we were done with it, which is now after our van got fixed, that we would then transfer it again for that same \$1. That is what this is. It is something that we didn't have any choice in as a city.

Alderman Dion

If I may go a little further – so in other words, we procured this vehicle from the State for \$1 with the understanding that once we got our repaired vehicle back that we would return that vehicle to this agency?

Alderman Tabacsko

To the State, to wherever they wanted to assign it, whatever agency.

Alderman Dion

Okay that answers my question. Thank you.

President Rootovich

Are there any further comments?

MOTION CARRIED

Resolution R-07-254 declared duly adopted.

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 TABACSKO

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

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn,
Alderman Dion, Alderman Bolton, Alderman Deane, Alderman Cookson,
Alderman Williams, Alderman Rootovich

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Nay:

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MOTION CARRIED

Alan Reisch, Esq.

Thank you Mr. Rootovich. Good evening everybody. Approximately 4 weeks ago I was non vacation in Seattle. I received a phone call from George Bald the Commissioner of DRED. He asked whether I and other city representatives would be willing to attend a meeting at the DRED offices along with Pennichuck officials whom he had spoken to. I said yes obviously as a matter of courtesy. As a result of that discussion and some ensuing discussions, it has become clear that the Pennichuck Board of Directors is prepared to support a proposal for the City to acquire Pennichuck Corporation at the \$30 a share level set by the

Aldermen with a proviso, as you recall we talked about the sale of the extraneous assets during some of the prior discussions, that if the sale of the extraneous assets cannot produce sufficient additional net proceeds to generate an additional \$2 a share that Veolia will step in with a backup guarantee to provide the difference between the net proceeds that are generated from the sale and that additional \$2 a share bogie, but the City's commitment will remain at \$30 a share as you have stipulated to me and instructed me previously.

After what I will characterize as being strenuous discussions with Duane Montopoli, he went back to his board of directors and while there is a lot of code language in all of these things, the bottom line is it is quite clear this board of directors supports and is prepared to go forward with the transaction on that basis.

The way the transaction is proposed to be structured, and what I am putting before you tonight for instructions as to whether or not to proceed is that the city basically will have what in my view amounts to a 12 month option to acquire the company at that fixed price level. If the city cannot do it because the PUC disapproves and I think Mr. Upton thinks the possibilities of the PUC disapproving are really quite slight, or because the financing cannot be put together and that is a much more complex picture of course, the downside for the city would be at the end of the day if the city could not close the deal within 12 months or 18 months if the parties agree to a 6 month extension beyond that, that the city would terminate the eminent domain litigation and would not resume eminent domain litigation for the ensuing 6 years unless it first reimbursed Pennichuck for what it claims are its prior litigation costs, which frankly I don't think the city would ever be willing to do.

This would not prevent the city from participating in any regulatory hearing in the normal course to challenge rates, to challenge any attempts to recoup Pennichuck's legal fees in their rate base, it wouldn't in any way prevent the city from challenging any other proposed acquisition of Pennichuck if the city can't complete its deal. The only proviso would be that the city would terminate the eminent domain proceedings and would not start eminent domain proceedings again within the ensuing 6 years.

I told Mr. Montopoli that I had no authority whatsoever to make any commitment on behalf of the city that all I could do is to go back as I am doing this evening to report to the Board of Aldermen and Mayor on what we perceive is happening and what their willingness is to go forward and to seek your approval or disapproval as the case may be of going forward with the transaction. One thing I have told him and it is absolutely cast in concrete as far as we are concerned is this; bearing in mind that the eminent domain proceedings have started again and the city is accruing costs and expense every day that goes by this week, every hour that we have to spend on the deal side is duplicative in terms of fees and that we would not allow the process, even if the city were to approve this and unless you instructed me otherwise, we would not allow this process to go beyond the end of this week, that by end of this week we had to have pretty much a definitive agreement, not one signed as yet but with all of the material terms basically addressed and hammered out and any concerns, which Pennichuck professes to have about the operating model the city would use have to be addressed to Pennichuck's satisfaction and if those conditions were not met, at the end of this week our recommendation to the city would be stop spending money on two processes, go ahead with the litigation because we have been in prolonged open-ended negotiations with Pennichuck, and it is our strong feeling Mr. Drooff and I that we have to draw a line in the sand and say we have invested enough time in this process and either it gets done or it does not get done.

Now I can report and Michael who is here and who has done a great deal of work over the last few days, all indications are from body language, attitude toward what is in the agreement every indication is that they in fact want to do this deal and do what they can do to meet the deadline of the end of the week to have a definitive agreement ready to be presented for further review by the city and by the Pennichuck board.

Mr. Montopoli under the best of circumstances is not always the easiest person in the world to deal with and he has a rather hierarchical way of looking at how things have to be structured. He is still insistent on

getting some feel for whether the city's operating model is as he puts it viable. What I have told him is this is a win/win in my view for both parties. The city has 12 months to put together the deal; to get the financing lined up, to deal with all of the complexities at a guaranteed price that would be set forth in the agreement. From Pennichuck's perspective, if the city can do that they have their deal at a price point that seems to satisfy their shareholders. If the city cannot put it together then the eminent domain proceedings end.

There is obviously a great deal more detail I could add, but essentially that is what it is \$30 a share from the city, whatever the extraneous assets can generate with a backup guarantee from Veolia to cover the gap between those proceeds and an additional \$2 a share, and a deadline of getting a definitive agreement substantially in shape to be presented to both boards by the end of this week, which I have to apologize to my partner Michael Drouf for the weekend he had pulling all of this together. In order to avoid getting caught in a time bind, we did begin to work on this before we presented it to you this evening so that we wouldn't have to start from a standing position if you approve this. If it is something that the city does not want to pursue obviously we can terminate the work immediately. That is where we stand. All indications are for the first time that we have what I would call a commitment in principle if not in words from Pennichuck to proceed with the transaction.

President Rootovich

Questions from members of the board?

Alderman Tollner

Why would Veolia, understanding that they will get the city contract, but what are some of the reasons down the road that we can explain why Veolia would be willing to kick in \$2 per share? Is there anything that we have promised them or committed to them?

Alan Reisch, Esq.

They are probably going to want a longer term to their agreement. I am just guessing now because we have not gotten into extensive discussions on that point, but as we see it from here Alderman looking at what they hope to accomplish by participating in this, it is a very high profile project for them. It is tremendously meaningful in the industry if they can participate in a deal like this, which is in many ways the first of its kind. I suspect that is going to add an awful lot to their reputation and luster in the professional community.

Alderman Tollner

Roughly what does that \$2 per share equate to? Do you have any idea?

Alan Reisch, Esq.

You mean in total dollars?

Alderman Tollner

Yes.

Alan Reisch, Esq.

We have been working with between 4.3 million and 4.4 million shares fully diluted. That number is a little misleading, but basically you can work with it so you are talking about \$8.5 million to maybe \$9 million based on the numbers.

Alderman Tollner

Maybe this isn't a question for you, but has the city made any commitment to Veolia?

Alan Reisch, Esq.

In what sense Alderman? You mean in connection with this proposal?

Alderman Tollner

Right I mean for them to kick in say \$8 million, maybe someone from the water committee or the Mayor, have we made any commitments to extend the contract to these people?

Mayor Streeter

We discussed the potential participation of Veolia and they said they would be willing to do it. We haven't come to any decision. I think Attorney Reisch indicated I think they probably would like a longer contract and I don't blame them for that.

Alderman Tollner

I guess is it safe to say that for them to kick in the additional \$2 what if we say we are not going to extend the contract, what would Veolia's response be?

Alan Reisch, Esq.

Well first of all I am not sure they are going to kick in anything remotely like the additional \$2. You have to remember what is happening here is that all of these extraneous assets are being sold off and the proceeds are going to be generated, and based on the numbers we have been given, the very substantial part if not all of that was anticipated at least to be realized from that. What they are providing here is a backup guarantee it is kind of gap filler guarantee.

Alderman Tollner

Okay.

Alan Reisch, Esq.

It is a much lower number of dollars. Now from their point of view, negotiations being what they are I am sure they are going to pull their chin and say our exposure might be much higher, but that is part of the back and forth that would have to be hammered out, and again the symmetry if you want to call it of this agreement is that it gives the city sufficient room to negotiate all of the specifics with the multiple parties that it has to deal with to get the financing package put together.

Alderman Tollner

Is it safe to say that when Pennichuck has the ability to sell off that, that dollar amount should come in around \$8 million let's say?

Alan Reisch, Esq.

Yeah. We are working on their projections mind you, we haven't gone in there and tried to do any independent analysis, but they have expressed a great deal of confidence. There are other parcels involved that they wanted originally to work into the formula. For instance, what is called HUCOP 4, which I understand Stabile may also want to sell and we have always refused to include that in counting the dollars that could be generated, but that is potentially another source of cash flow without jeopardizing the operations, and there is also the, I am going to call it the Slattery parcel, which is under option and there may be some opportunities there to accelerate the timing of the sale of that that would bring cash in all of which may reduce or go a long ways toward eliminating what the Veolia commitment would have to be.

Alderman Tollner

So if this came in above the \$8 million or \$9 million, let's just say for discussion purposes it came in at \$11 million, that additional money would go against what the city would have to pay per share?

Alan Reisch, Esq.

Let me put it to you this way; if it came in above the bogie so that Veolia never had to put any dollars on the table, the extra dollars would remain with the city in effect with the company the city is acquiring.

Alderman Tollner

How many meetings have you had with Pennichuck and in those discussions since we last met, who participated in those meetings?

Alan Reisch, Esq.

Let me try to do this from memory. The first meeting was at George Bald's office. Mark Sousa was there, Michael Drouf was there, I was there. I don't believe the Mayor was at that meeting.

Mayor Streeter

I was there.

Alan Reisch, Esq.

You were there. My apologies.

Mayor Streeter

I have been accused of not attending these meetings. I have attended more meetings with Mr. Montopoli than I care to admit.

Alan Reisch, Esq.

It only seems that way Mr. Mayor. On the other side there was Bill Patterson, there was George Bald, and there was Steve Camerino who is the regulatory counsel and Camerino was there at everybody's insistence.

Mayor Streeter

It was our insistence that Attorney Camerino be present. Mr. Montopoli did not want his presence.

Alan Reisch, Esq.

The one thing that characterizes Duane Montopoli's negotiating style is he keeps his lawyers rolled off in a separate room and feeds them a little bread and water from time to time. Some people may think that is the best way to treat lawyers, but there are times when a creative lawyer and Steve Camerino is a pretty creative lawyer can step in and say hey wait a minute, stop and think about what you are doing and where this all is going. To get ahead of the game if I may Alderman, he was enormously helpful, we got into a breakout session with him and basically said look these 5 things can't happen, there are a couple of things here that maybe we can get creative and work with. So that was the first meeting.

Subsequent to that we had 1 or 2 face to face meetings with Montopoli and enumerable phone calls. I say enumerable, if I went back into my records I could tell you what they were, but it wasn't 1 or 2 there were a lot of them.

Alderman Tollner

And that was it?

Alan Reisch, Esq.

That was it.

Alderman Tollner

Thank you.

Alderman Teeboom

Thank you. I spent a good part of the day at the PUC hearings. They have 11 days scheduled and this was the first day. It is the same old same old it is like a three ring circus frankly. It is very tiring. Pennichuck's side goes into questioning Sansoucy at length first about his qualifications and then endlessly about his estimating. I know that the commissioners are listening and from the questions they are somewhat agitated at this point. They are also facing a much bigger problem, which is the upcoming telephone hearings, which is billions of dollars.

Anyway back to this question here, what is the Pennichuck stock right now trading for? I tried to look it up and I forgot all about it.

Alan Reisch, Esq.

I haven't looked at it in the last couple of days. It has been bobbing around between \$23.75 and \$24.25 in that range.

Alderman Teeboom

So it is still down from the original price a few years ago when it was \$27. When I bought my share it was \$27.

Alan Reisch, Esq.

I think it peaked somewhere in the \$26 range at one point before the termination of the stay period.

Alderman Teeboom

So they are looking at an \$8 premium.

Alan Reisch, Esq.

Yes.

Alderman Teeboom

For the sale, it is a 30% premium so they would have to be foolish not to take this kind of a premium. I am sure that is incentive. The second question I have what happened to the conditions, the one in particular I remember from the last time we met and it was all gone, finished, seemed like hopeless \$2 million, what ever happened to that \$2 million condition and some of the other conditions that Pennichuck had?

Alan Reisch, Esq.

All of the breakup fees went away.

Alderman Teeboom

Everything went away. All of the foolishness went away?

Alan Reisch, Esq.

Yeah. To answer your question, if the city were to pursue this course of action and invest 12 months in trying to put a very very complex deal together and incurring a lot of fees, it makes absolutely no sense to look at the city and say the city is going to pay a red cent to Pennichuck if this deal fails.

Alderman Teeboom

So the only thing they want is they want this done in 12 months. You mentioned a 12 month extension briefly.

Alan Reisch, Esq.

Twelve months.

Alderman Teeboom

There is 12 months with maybe a 12 month extension?

Alan Reisch, Esq.

No 12 months with a possibility if the parties mutually agree for another 6 months on top of that if the time is needed to put some complexity together.

Alderman Teeboom

Can we do this in 12 months? A lot has to be done; inventory, the bad lands all of that stuff that you said you didn't even begin to begin the last time we met.

Alan Reisch, Esq.

It can be done, but it is going to have to start fairly quickly. We couldn't sit here and take the next 60-90 days just to think about matters and then start toward the end of 2007. That would be very difficult.

Alderman Teeboom

The finances have to be put in motion all of that stuff. There is a lot of valuation on your part.

Alan Reisch, Esq.

We don't do valuation, but...

Alderman Teeboom

Who is going to do that Sansoucy going to contribute to this whole affair?

Alan Reisch, Esq.

Sansoucy does the financial analysis yes and it is his financial analysis that has to support ultimately the placement of the bonds in the market.

Alderman Teeboom

The final piece I have a question on is the Veolia piece. Veolia is a very large company, billions of dollars, but they didn't get that way by giving away money. They are not known as a charitable organization they are known as a water company. To the \$30 that we pay and the \$9 million that is left over, when you told us about these I think they call them Hiccup

Alan Reisch, Esq.

HUCOPS is an acronym for Heron Co Property I think.

Alderman Teeboom

You said it was around \$8 million, \$6 million to \$8 million.

Alan Reisch, Esq.

Those were higher than that. I think \$8.5 million was the number.

Alderman Teeboom

So you think they are going to be close to that number still?

Alan Reisch, Esq.

Lawyer answer okay. The Pennichuck people tell us they think it is going to be very close to that number.

Alderman Teeboom

Okay let's say they are off by a million dollars, now I am not quite sure I understand this Veolia thing now maybe it hasn't been worked out yet, just extending that contract doesn't give them a million dollars. Any extension gives them nothing more but the contract. It doesn't give them cash. Can you tell us a little bit more what you have in mind because I don't quite see them paying cash unless they get something other than a contract.

Alan Reisch, Esq.

Let me go back to the original analogy. I look at this very much as an option. The city gets an option, usually when you take an option on real estate you pay some money for it. In this case the city isn't paying any money directly. Its option price is that if it can't put the deal together it drops the litigation. That is the tradeoff here. That gives it 12 months to negotiate with Veolia as tough and as hard as it can to try to minimize the amount that Veolia might have to provide to cover the gap and to get the most city favorable terms I will put it that way. So to answer your question what do I have in mind, I have in mind very tough negotiations to keep the cost to the city down. I hate to put it this way, the beauty of it because beauty is not quite the word that comes to mind in this difficult negotiation, but what makes this work from my perspective is that it locks things in place and locks down a price while giving the city the flexibility if it wants to pursue it to find any one of a myriad number of ways to make this deal work whether it is with Veolia on the best terms available where the money can be generated out of the sale of the extraneous assets, which it may well be with any luck, to put together the financing package that makes sense if the markets are right, to get some tax issues cleared up, to go through a very intricate negotiation with the union because they have a union over there as everybody knows, and that union contract is going to have to be wound down in some fashion and there is going to have to be a so-called termination payment, which is common when you are walking away from a union agreement. So there are a million things that need to be done.

The challenge that we faced before is trying to do them and trying to justify the cost of doing them at a time when couldn't even get a yes or no out of Pennichuck as to whether we were talking about a price they would ever be responsive to.

Alderman Teeboom

My question was really not that, my question is this; this \$32, we offer \$30 from the city we okay \$30 here, they sell off the HUCOP assets and there is a million dollars left. If Veolia I think the words you used would cover some, I don't have the right words, but there is a million dollars left over and...

Alan Reisch, Esq.

Fill the gap I think is the term.

Alderman Teeboom

Fill the gap okay so let's talk about that. No matter what you do, no matter how you slice it and dice it and all of the other stuff, you are off a million dollars. How does Veolia cover that?

Alan Reisch, Esq.

How does Veolia cover that?

Alderman Teeboom

How are they going to cover that?

Alan Reisch, Esq.

They cover it by writing a check for a million dollars that goes into the pot at the time of the final closing.

Alderman Teeboom

So that is what they have agreed to do?

Alan Reisch, Esq.

That is in principle exactly what they have agreed to do.

Alderman Teeboom

You are going to get it in writing from them or is that just a handshake or...

Alan Reisch, Esq.

It is going to be in writing. Now let me be clear about this. I am not telling you that we can work out all of the details of what the Veolia deal will be before we force Pennichuck to sign an agreement to fish or cut bait. That meaning getting Pennichuck to fish or cut bait has to happen by the end of this week otherwise you are into another week of trial with a lot of expense, another week of negotiating with us, which is a lot of money and it goes on and on. There has got to be an end to this some time.

Alderman Teeboom

Okay so you will work it out...

Alan Reisch, Esq.

Yes.

Alderman Teeboom

But you won't work it out by next week.

Alan Reisch, Esq.

No. I would like to think we could, but no I can't promise you that we will work it out by next week.

Alderman Teeboom

Let me just finish up by saying after the negotiations failed I sent an e-mail out to you and I said we have to keep negotiating because we can't go to the PUC, the PUC is not your friend and just going now today is a nightmare. I said keep going and of course you didn't keep going, well apparently you did keep going. We have to keep negotiating. If you can pull this off you have my 100% support.

Alan Reisch, Esq.

Thank you.

Alderman Teeboom

Because under the conditions you outlined, if the dollars make sense, frankly I can look at the Sansoucy equations and analysis and I can cut them 50 different ways. You can slice and dice these spreadsheets in fact Mark and I have done some of that. You can slice and dice them many ways. In fact, in discussion today that came out really too how come you sliced it this way and how come you sliced it that way, and this is all a nightmare. In the end, the whole thing has to make some sense that is it has to make sense to our ratepayers and if in the process we save some money, equalize the money, even pay a couple bucks more and we own the property and everybody is happy, I am okay with that.

What I am not okay with and I will not support is to go to the PUC and look at the fiasco that is going on over there and just hanging out to whatever they decide in terms of damages, hanging out to whatever they decide in terms of price. It is such a crapshoot and I think everybody is to that opinion. Probably Camerino at this point as well if he was able to convince Montopoli. Montopoli was there today all day long. Mayor when you were there right Montopoli was there. He was there when I left. I fell asleep and...

President Rootovich

Alderman Teeboom any further questions?

Alderman Teeboom

No. There is just a comment I want to make. I think you are doing an outstanding job. I don't know how you pulled this back together again, but apparently you did.

Alan Reisch, Esq.

Thank you. I don't either.

MOTION BY ALDERMAN BOLTON THAT THE BOARD INSTRUCT ATTORNEY REISCH TO CONTINUE NEGOTIATING WITH AN AIM TO REACH AN AGREEMENT ALONG THE TERMS OUTLINED TO US THIS EVENING

ON THE QUESTION

Alderman Cookson

Thank you. In order to move forward and give Attorney Reisch this recommendation, Attorney Reisch you mentioned something on July 11th, which had to deal with a private letter of ruling by the IRS.

Alan Reisch, Esq.

Yes.

Alderman Cookson

Can you speak to that and how that is going to impact the discussions?

Alan Reisch, Esq.

This really ties Alderman into the financing contingency. I simplify this in my mind simply because the team potentially is so complex that if you start to break it down too fine you lose sight of where you are going. It is an essential step toward getting the financing from the bond market that is necessary to underwrite this. I had a further discussion with our tax partner today. He had spent time on the phone with Allan Paul the consultant from Boston and Steven Paul who is the tax counsel for bond council, Edwards, Angell, Palmer & Dodge, what they viewed as being a very productive discussion the other day. I can't quantify this for you because things like this are slippery, but they seem to feel better to a significant degree about the possible outcome from that private letter ruling than they did when they first looked at it. There are two issues there that are of substantial complexity. I would be happy to go through it to the extent I understand them if anybody would like me to do so.

On one of them they feel quite confident on another they feel pretty good, but they recognize that it is a relatively new issue for the IRS. That is really about as far as I can go in giving you a sense of where the experts think they are right now on that issue. But that is essential to the financing as it is contemplated right now. There are indications that there may be other forms of financing that would not depend upon the private letter ruling that could be examined if we ran into trouble on that issue.

Alderman Cookson

As the PUC proceedings continue if the PUC comes up with this is not favorable for the citizens of Nashua the sale could still take place if Pennichuck is willing to make the sale. Is that correct?

Alan Reisch, Esq.

No. My understanding of the regulatory scheme is that if we enter into a definitive agreement with Pennichuck the current PUC proceedings would be stayed, they won't go away until we know what happens at the end of the line, and then a new parallel PUC proceeding would be initiated to seek the approval of the PUC for the transfer from Pennichuck and its shareholders to the City of Nashua.

Alderman Cookson

Okay.

Alan Reisch, Esq.

And if that hearing produced an unfavorable result then we couldn't go forward with the transaction we would be at the end of the road.

Alderman Cookson

Thank you very much.

President Rootovich

Are there further questions?

Alderman Deane

My question is and sorry it doesn't pertain to the motion, but if you would allow me a little latitude, if we support Alderman Bolton's motion and I do agree with Alderman Teeboom I want to get away from the PUC hearings, what is to say Montopoli doesn't flip on what he had discussed with you or say that his \$30 doesn't stand to what his word was through the negotiation process? What do we do then?

Alan Reisch, Esq.

One thing that can happen any time you have a public company, you have to put in what is called a fiduciary. What that means is the board of directors can't turn around to one buyer and say we will lock this company up forever and promise you that you are going to get it 6 months from now even if a better unsolicited offer comes in. So that is one scenario someone comes in and makes an unsolicited better offer the board of directors of Pennichuck has a fiduciary duty is what it is called to examine that other offer and to pursue it if it is in fact a better offer, but in those circumstances then they pay a bust-up fee is what it is called to the city and there are other consequences as well. That is one possibility.

The contract will have substantial commitments of good faith on the part of Pennichuck in cooperating, making information available, and supporting the proposal before the PUC all the way through. That will be a contractual obligation of Pennichuck.

Alderman Deane

You talked about the 12 month timeframe and the possibility of an extension. What do you see I mean I know there is a lot involved in it and there are a lot of unknowns, but what do you see as a total cost to your firm for going through the process?

Alan Reisch, Esq.

That is a tough one.

Alderman Deane

We are going to add all of this up at the end. Basically if we took the 4.4 million shares and multiplied it times \$30 and then added the balance on the \$8.5 million or \$9 million we are up roughly around \$150 million. Is that safe to assume? And then we have all of those other little items that we have to back out the union contract that you talked about, your fees, other fees, our time. We have already put in a substantial amount of taxpayers money for this process that has to be factored in as a payback to I think what we had initially agreed upon was reimbursing all of the different accounts that we had drawn the money out of whether it be contingency or whatever. When would we have a rough figure on that number do you know? I know there are a lot of little things, but just a real rough figure on the total amount of dollars.

Alan Reisch, Esq.

That is a fair question. I would prefer not to shoot from the hip. Can I get it back to you as quickly as I can through the Mayor or through Mark Sousa? I just want a chance to sit and think about this before coming up with a number on the fly.

Alderman Deane

Yes. As you had stated earlier, there are a lot of items involved, but I would just like a round figure of probably worst case scenario. That would be appreciated. Thank you.

Alan Reisch, Esq.

It is a fair question. Thank you.

President Rootovich

Are there any further questions?

Alderman Dion

What kind of money are we talking about assuming an agreement can be reached at \$30 a share?

Alan Reisch, Esq.

Well the \$30 a share, again we are working with let's call it 4.4 million shares outstanding, \$132 million doing it in my head.

Alderman Dion

It is \$132 million?

Alan Reisch, Esq.

4.4 million shares times \$30 I think it is \$132 million. Plus the additional \$2 that would be rung out of the proceeds with a backup guarantee from Veolia.

Alderman Dion

How come back some months ago the figure of \$240 million seems to stick in my mind?

Alan Reisch, Esq.

I think Alderman it was an aggregate of \$250 million and that represented the maximum amount the city would ever be willing to bond, but that includes not just what gets paid to Pennichuck shareholders, but their whole variety of ancillary costs that got thrown into that too. That is where the \$250 million came from. That is not the money that goes to Pennichuck shareholders.

Alderman Dion

Assuming a deal can be reached at \$30 a share you are talking bonding \$132 million? Have I got that straight?

Alan Reisch, Esq.

No.

Alderman Bolton

The \$132 million is what goes to Pennichuck. There is another over \$100 million made up of operating capital, retiring the debt the existing company has that we would bond in and we would have that debt, and additional capital that we would want at our disposal for the capital improvement plan over the first three years I think is how George Sansoucy structured it. And then he has an extra \$10 million just in case and an extra \$12 million over here just in case so his sort of worst case scenario added up to about \$250 million.

Alderman Dion

That we have to bond?

Alderman Bolton

Right.

Alan Reisch, Esq.

I think that was the maximum amount that everybody had discussed here.

President Rootovich

Are you all set Alderman Dion?

Alderman Dion

Yeah. I thought I heard that \$250 million and when I heard the \$132 million I said something is wrong here.

Alderman McCarthy

I think it is safe to look at what we are talking about tonight as that same proposal with the uncertainty of what the real estate was worth that was going to offset some additional costs being covered by Veolia guaranteeing a certain minimum amount for that value, which is what gets us from \$30 to \$32 a share to the shareholders. I think the numbers you saw several months ago are essentially correct for what will wind up happening.

President Rootovich

Are there any further questions?

MOTION CARRIED

Division Taken

Mayor Streeter

May I address the board Mr. President?

President Rootovich

You may Mr. Mayor.

Mayor Streeter

It has come to my attention and the attention of the citizenry of our city that a member of the Board of Aldermen has been in discussions with the president of Pennichuck in violation of the confidentiality agreement that we all signed. I'm asking the board to take whatever action they feel necessary. Clearly even the existence of discussions and any information exchanged during them be treated with the utmost confidentiality. The parties understand and agree that the common stock of Pennichuck is publicly traded. Because of the nature of the eminent domain case, any disclosure relating to the discussions may cause substantial harm to the parties. In the case of Pennichuck to its shareholders. The parties agree to maintain the confidentiality of the existence and substance of discussions, any communications whether written or oral between the parties, parties being the Mayor and Board of Aldermen and staff and Pennichuck, regarding the matters that are subject of this agreement or the discussion shall be kept in strict confidence and shall not be disclosed to any individual who is not identified on Exhibit A, which is the Aldermen and the Mayor and Pennichuck officials. Communications shall include but not be limited to the fact that discussions are occurring, the substance of any communications whether conveyed orally or in writing that are part of or in furtherance of the discussions or any other information that was conveyed or would inform another person that the discussions are occurring. Finally, all communications between the parties shall be deemed privileged and protected from disclosure to anyone.

It is my contention Mr. President that a member of your board met for 2.5 hours with the president of Pennichuck to discuss the discussions that were being held in strictest confidence between the Board of Aldermen and the officials at Pennichuck. This was reported in three different occasions, publicly reported.

Alderman Tollner

Let me avoid the suspense for everybody, it was me, and I did say that to the Telegraph, and at no time did we discuss any information whatsoever that we have been privy to around this horseshoe. None. I stated publicly to the Telegraph and at the debate last week that the whole idea and the whole premise behind it was to introduce myself to Mr. Montopoli just to get to know him a little better. Quite frankly I have not made any statements about how much money the citizens of Nashua would save if this deal went through. Those statements were made at the debate last week. I categorically did not discuss any stock, any price, anything that we discussed in this chamber. As I stated in the paper, my conversation with him was as a Mayoral candidate. I understand the contract that we signed and I honored it. I really don't need to say anything else. I would like to know if anybody in this room ever ran into Mr. Montopoli at a Chamber meeting or anywhere and had a conversation. I will leave it at that.

President Rootovich

I will let the board ask questions and make some sort of decision Alderman Tollner, but what you said at the Mayoral forum was that you made an appointment you met with Montopoli to see if you could resolve the issue between the City of Nashua and Pennichuck. Those comments were heard by many individuals there and also played on television. The perception of you doing that is probably more of an issue than the dialogue that you had. That is probably what sparked the particular comments by the Mayor.

Alderman Tollner

Well Mr. President I guess what is good for the goose is good for the gander because at that same event you said the difference between Nashua buying it and Pennichuck charging it, and I forget the figure that you used, but you quoted an exact dollar figure. Again, if anybody wants to ask questions that is fine, but I did not have any discussions about price or anything like that. The only comment I have made publicly is that this is taking too long and I think everybody would agree with that.

MOTION BY ALDERMAN BOLTON THAT THE BOARD COME OUT OF NON-PUBLIC SESSION AND SEAL THE MINUTES UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THAT THE PURPOSE OF THE CONFIDENTIALITY WOULD NO LONGER BE SERVED

ON THE QUESTION

Alderman Teeboom

Are we still under discussion on the subject?

President Rootovich

Alderman Bolton has made a motion, I accepted the motion, and you can vote for it or vote against it.

Alderman Teeboom

I want to discuss the subject that Mayor Streeter just brought up.

President Rootovich

Again, there is a motion on the floor. I would suggest you vote against it at that point. There is a motion on the floor.

Alderman Teeboom

There is a motion on the floor to go out of non-public session.

President Rootovich

To come out of non-public session and seal the minutes until such time as the confidentiality would...

Alderman Teeboom

Well let me address this motion.

President Rootovich

Please.

Alderman Teeboom

I recommend we vote against this motion for now to pursue this further. A charge has been made against a member of this board. This is not to play games with some parliamentary trick to try to get out of this thing. We are discussing it...

Alderman Bolton

I take exception to that...

Alderman Teeboom

In fact Mr. President you should have not accepted, in fact you should reject this motion because you didn't ask if any members of the board were asked to comment. It is up to you to accept a motion or not accept a motion. This motion, this is a charge...

President Rootovich

Alderman Teeboom...

Alderman Teeboom

...being made, I am ...

President Rootovich

Alderman Teeboom you are being ...

Alderman Teeboom

...addressing though...

President Rootovich

Alderman Teeboom you are being repetitive. A member of the board made a motion. I can either accept the motion or not accept it. I accepted it. The board now in its wisdom can either vote for it or not vote for it.

Alderman Teeboom

And I am not addressing the motion. I am telling every member not to vote for that because you should have never accepted this motion, you should have never accepted this motion because a charge has been made in this chamber and we should not just move on the charge. I would like to address that, and I would like to have the opportunity to...let me address this motion. I would like the opportunity to ask some questions of Mr. Tollner and make this cloud disappear. Because I want to ask a couple of questions of Mr. Tollner I am going to ask every member not to address this motion that you should have not even accepted.

Alderman Cookson

Thank you. Question through you to Corporation Counsel?

President Rootovich

Please.

Alderman Cookson

Thank you. Attorney Connell we entered into non-public under the premise that we were discussing litigation that was brought against the city. I am curious whether the current vein of discussion is appropriate to stay in non-public.

David Connell, Esq.

That is a good point. Probably should have stated this as a reason to go into non-public.

Alderman Cookson

So we would have to go out of non-public and then re-enter into non-public to further this discussion?

David Connell, Esq.

To further this discussion.

Alderman Cookson

Thank you.

Alderman McCarthy

If I might ask a follow up to Alderman Cookson's question, but on the other hand the discussion that we are having now hinges around possible violations of the confidentiality agreement, which is in fact a part of the litigation that was the subject of entering non-public. From that perspective does it make sense to be able to discuss it now?

David Connell, Esq.

If you are moving in the direction of charges against somebody that is a different topic.

President Rootovich

Is there any further discussion?

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

Yea: Alderman Tollner, Alderman Tabacsko, Alderman McCarthy, Alderman Flynn,
Alderman Bolton, Alderman Deane, Alderman Cookson, Alderman Williams,
Alderman Plamondon, Alderman Rootovich

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Nay: Alderman Dion, Alderman Teeboom

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MOTION CARRIED

ADJOURNMENT

MOTION BY ALDERMAN DEANE THAT THE SEPTEMBER 4, 2007 SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED

MOTION CARRIED

Division Taken

The meeting was declared adjourned at 6:55 p.m.

Attest:

Paul R. Bergeron, City Clerk

