

A special meeting of the Board of Aldermen was held Tuesday, June 23, 2009 at 6:45 p.m. in the Aldermanic Chamber.

President Steven A. Bolton presided; City Clerk Paul R. Bergeron recorded.

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

The roll call was taken with 13 members of the Board of Aldermen present; Alderman MacLaughlin and Alderman Wilshire were not in attendance. Alderman Deane and Alderman Cookson arrived after roll call.

Her Honor Mayor Donnalee Lozeau and Corporation Counsel James M. McNamee were also in attendance.

COMMUNICATIONS

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

From: Steven A. Bolton, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

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

NON-PUBLIC SESSION

MOTION BY ALDERMAN MCCARTHY 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 McCarthy, Alderman Chasse, Alderman Clemons, Alderman LaRose,
Alderman Tamposi, Alderman Cox, Alderman Tabacsko, Alderman Teeboom,
Alderman Flynn, Alderman Plamondon, Alderman Bolton

11

Nay: 0

MOTION CARRIED

President Bolton

The purpose of the special meeting, as indicated, is to discuss the Pennichuck ongoing situation.

Mayor Lozeau

Thank you. Again, remembering that our voices carry I would like to begin tonight by making some remarks that I would call a summary of progress on the Pennichuck case so far. I was particularly concerned that you may all be wondering what the status was especially after that last editorial and I thought it would be a good idea to get you up to speed. When I am done you will probably see why I had planned to wait until the end of the month, but I thought it might be timely.

As you know, from the beginning of my term I spoke with you about pursuing a path to resolve the city's dispute with Pennichuck outside of the eminent domain process. You agreed that this was a path that you wanted to explore as well. Following the PUC ruling approving eminent domain, we agreed to hire a team to purchase a negotiated acquisition of Pennichuck as an alternate to the eminent domain litigation. From

the outset I directed that our team negotiate only on the basis of fair market value of Pennichuck. Because Pennichuck stock is traded on the stock market we defined fair market value as a reasonable premium over the stock price. That is why the city hired C.W. Downer an investment bank experienced in determining the fair market value of companies like Pennichuck.

Over the last 7 months, we have signed a confidentiality agreement, conducted due-diligence on Pennichuck's assets and operations, prepared a fair market valuation of Pennichuck, made an offer at \$25 per share, and negotiated with Pennichuck's advisors, CEO, and even the chairman of the board. I have handed out a summary from C.W. Downer that will provide a timeline of these efforts to date. You have to be asking why have we not yet reach an agreement with Pennichuck although it may come as less of a surprise to you than others. Because Pennichuck's management disagrees that the city should only pay fair market value. Instead they believe that the city should pay the highest amount it can afford even if that amount would give shareholders a windfall profit well above the market price.

The city believes it should only pay a reasonable fair market premium over the current stock price. That is why the city offered to pay \$25 per share, which as you know and we have discussed before is a 40% premium over the recent trading range for other water companies like Pennichuck. Pennichuck on the other hand believes Nashua should pay shareholders the PUC determined amount of \$203 million. They question that since the city would pay \$203 million for those assets in an eminent domain why shouldn't it be willing to pay the same amount for the stock and own even more assets. The answer is simple, because that amount is above fair market value.

Our investment advisors appraised Pennichuck based on stock price, earnings, and how other water companies are trading, and they believe the fair market value is around \$25 per share. The \$203 million equates to \$31 per share, way above fair market value. C.W. Downer's analysis is supported by a recent public investment bank report Janney Montgomery Scott that concludes that Pennichuck stock should trade at between \$16 and \$17 per share. The report says the stock is only trading higher, this is very important, because stockholders are betting that the city will acquire the company and because Pennichuck's largest shareholder, Gabelli is buying more shares and keeping the price higher.

It is important to remember that the shareholders in an eminent domain taking would not receive \$31 per share but instead would only receive around \$23 after all of the taxes and transaction costs are paid. Our offer of \$25 is even better for the shareholders than the eminent domain case. I continue to believe that both parties are better off with a negotiated deal and I have encouraged Pennichuck and the city's advisors to explore various deal structures that might bridge that gap. However, the city cannot afford to carry on these explorations in an open ended manner in these very challenging budget times and accordingly I have set a deadline of June 30th for Pennichuck to provide a realistic workable proposal that would justify continuing the negotiations.

I want to be, while I am speaking, very careful about what we put in our minutes of today's meeting because I think it is important that we have a record of what our thought process was and why we have taken the careful steps we have taken. Attorney McNamee is going to bring around the C.W. Downer timeline and then they are here to walk through that timeline a little bit more specifically. While some would argue about our strategy and what we are doing as they do in the editorial, I think our responsibility here is to, even in the face of some of that, maintain the plan that we have put in place and that we have asked our advisors to give us and work toward that goal. Mr. President if I could I would turn it over to the Downer folks.

Arthur Gottlieb

This is obviously not a comprehensive timeline if it were it would run to at least 10-15 pages. But it does point out some of the high points. Essentially we have been engaged in a direct discussion principally with Pennichuck management and to a lesser degree with their own advisors with the company Benning &

Scattergood who they have hired as their investment bankers. Our view and we have presented this on numerous occasions, is that fair market value for the company is in the range of \$25 per share. It is not a science, there is a little bit of art that goes into those numbers, but that is our very strong belief. Our approach has been as directed by the Mayor and how we would do this in any normal circumstance to try to negotiate a transaction at fair market value and that our discussions with Pennichuck have been difficult for a number of reasons not the least of which is that they are negotiating from the perspective of the eminent domain taking. They are using that number of their definition of where the pricing should be and our view is that in fact that number is not related to fair market value and also believe strongly that their use of that number is incorrect. We can talk about that if you would like.

Our perspective on the situation really has been born out, I think one of the good things that has happened over the last month and a half has been that we have had a chance to look at how Pennichuck is operating today and the short answer is that their first quarter of this calendar year was less good than their first quarter of the last calendar year and so in fact their performance is slightly down, and that does affect, clearly as you might expect, fair market value. The other thing which is important and got a fairly large paragraph here is that our perspective sort of the point of view that we have brought to this negotiation that in fact the city should offer a fair premium to what the market currently values the company at, was born out by the Janney Montgomery Scott report, which says in their view, if Mario Gabelli were not continually buying shares of Pennichuck, if the eminent domain process were not in the air there by causing people to buy the shares based on takeover speculation, it would be trading much more naturally at around \$16-\$17 per share again meaning that our offer is truly a fair public takeout premium for a company like Pennichuck.

Finally, the most recent large event was a meeting with all of the parties on June 2nd where we exchanged competing views on valuation, and it was at that meeting that Mayor Lozeau made it clear that we really needed to make substantial progress by June 30th. Our sense of the last couple of weeks is that has galvanized the company to work harder to figure out if there is a potential deal here. We are happy to answer questions about where we are or how we have gotten here.

President Bolton

Before we get to that, let me note for the record that Alderman Cookson arrived while the Mayor was making her remarks.

Alderman Clemons

Thank you. Can you tell me what \$25 a share, what dollar amount does that equal out to be?

Arthur Gottlieb

The \$25 a share translates into roughly \$175 million or \$176 million. It is an equivalent because of the number of shares outstanding, the amount of date, translates roughly to \$176 million.

President Bolton

Let's note for the record Alderman Deane has just arrived.

Alderman Clemons

One other question, which is probably the obvious one that everyone is thinking; do we expect to have answer on June 30th or is this a game that is going to be played back and forth throughout the summer?

Arthur Gottlieb

I think that we will have some material additional information by June 30th and I do think that it is really at the city's discretion as to whether or not that additional information justifies continued discussions.

Alderman Clemons

Thank you.

Alderman Plamondon

Thank you. What is the number of shares that we are talking about as far as what is being traded or...

Arthur Gottlieb

There are roughly 4.3 million shares outstanding on a fully diluted basis.

Alderman Plamondon

Have we or can we leverage the quarter of a million dollars we have already paid them to discuss in good faith and then they walked away, can we use that as leveraging as well?

Arthur Gottlieb

I think the short answer is that our view is that past expenses, and I will give a counter explain, they have raised on numerous occasions that Pennichuck has spent roughly \$7 million on litigation costs. From our perspective that is their problem, and I think from their perspective the quarter of a million dollars is ours. There isn't a clear tactic that lets us take advantage of that fact although certainly the Mayor has indicated she would like to recover that.

Alderman Plamondon

Okay that is good. I also like the deadline. The whole history is cat and mouse and I am sure that would continue without digging our heels in and saying okay this is the line. I would love to see if we could recover that \$250,000. Thank you.

Alderman Teeboom

I attended the meeting because I own one share of stock so I can go to the stockholders meeting and at the stockholders' meeting Mr. Montopoli unfolded the presentation sheets that we all got a copy of through Barbara Pressly who also attended. He was talking about \$32 a share. I'm just trying to calculate out if I multiply \$32 a share times 4.3 million shares it is about \$137.6 million so you said the debt is around \$68.5 million?

Arthur Gottlieb

Correct.

Alderman Teeboom

So that would amount to \$206 million. Now if they were paid \$32 dollars what would the shareholders get because isn't there a tax issue? That has always been very unclear to me just exactly what the tax issue is. Can you explain that a little bit better?

Arthur Gottlieb

If the city were to buy the shares, this is the number you are thinking of, in any transaction where the city acquires the company by buying the shares, what the shareholders get literally is that share price so they would get, if we were to buy the shares for \$25 a share the shareholders would get \$25 and then they would have to pay their personal taxes on that \$25 and it would depend on what they paid for their shares, etc.

The important number is if the city pays \$25 per share that is what the shareholders get, if the city paid \$32 per share that is what the shareholders would get. The very important analysis, the comparison is that if the city were to buy just Pennichuck Water Works, just one of the utilities, the main one, the one that we can buy through eminent domain for \$203 million then we believe the shareholders would end up getting about \$23 per share at the end of the day because the Pennichuck Corporation would have to pay a very large tax to the federal government for the gain that it would have to recognize on that \$203 million.

The way to think about it is that there are two ways to buy this company for \$203 million. One way is to buy all of the shares at let's pretend \$31 per share. The other way is to buy just the waterworks asset for \$203 million. In the first case, the shareholders would get \$31 per share, in the second case they would end up getting about \$23 per share.

Alderman Teeboom

Okay. So we are we now? If they came out say \$32 that is what he said...

Mayor Lozeau

Excuse me Mr. President.

President Bolton

Do you have a question Alderman Teeboom?

Alderman Teeboom

Yeah, he said \$32 and we're saying \$25 so we are off by \$28 million here. Where are we exactly in these negotiations?

President Bolton

I think you heard Alderman Teeboom the Mayor say that we have not gotten any appropriate response to our \$25 per share offer and if we do not get an appropriate response by June 30th we are going to have to decide whether to continue to expend money to evaluate the situation.

Mayor Lozeau

If I could...

President Bolton

Please.

Mayor Lozeau

Also Duane did not put a \$32 number out there saying we're for sale for \$32. What he actually said was we have been offered basically the discussion was if the city was willing to give us something like this before I don't know why they are not willing to give it to us again. That is a little bit different than we would take \$32, which has skewed some of the discussion.

Alderman Teeboom

So we offered \$25. Have they come back with \$32 or have they come back with anything?

Mayor Lozeau

Well one could argue that they came back with a \$36 price, but it was kind of buried in this whole long letter that really didn't lend itself to being a credible response. I don't think it serves us well to get into a position, and I have had this conversation with Mr. Montopoli and the chairman of the board as well as our team, to be working from well they said \$32 we said \$25 okay now they are going to say \$31 and we are going to say \$26. I don't want to do that positional bargaining negotiation. What I want to do is be able to have us be in a position where we can justify that we actually purchased this as any business would based on its actual value. They insist on a couple of things; 1) what we offered before in different times and 2) that it really shouldn't be about what the company's value is it really should be about how much can we afford without raising the rates too high.

I will tell you that I had a call from a Telegraph reporter today who has been given an assignment, Tom West, who as all of you know has not reported on Pennichuck at all, and his question was the story he is writing is about the rates in Manchester versus the water rates in Nashua and that Manchester's rates are half the cost of Nashua's and based on that do I think Nashua is getting a fair deal. Clearly there is some kind of public push about hey you know anything is a good deal if it is \$203 million or less and you get the whole company, and I think that is the wrong way to think about it.

Alderman Teeboom

Just on that point alone, we went through a long series of meetings here with Sansoucy who kept saying if you make a deal, I am not in favor of the guy believe me, but he kept saying if the rates are lower if you buy it then we are paying now and we get control that is an attractive deal so all of the spreadsheets always showed, and I questioned the spreadsheets, but they always showed the rates at which we would buy it would be less than we are paying now. Alderman McCarthy and I used to argue a little bit about the spreadsheets, but that was the argument. The cost was almost secondary it floated all the way from \$250 million at one point all the way down to \$130 million. Those are the numbers that have been floating up and down for several years now.

I am a little bit perplexed what the strategy is. If the strategy is, and I am not totally clear I understand the strategy, if the strategy is June 30th, which is only 8 days from today and that is it and then we wind up in the Supreme Court because that is what Montopoli said during his presentation to the stockholders and \$32 that was my understanding he pretty much came out with \$32, and he said if that doesn't fly then we are going to go to the Supreme Court. I think he would. I don't think there is a question in my mind. So this is not the end of it. The deadline is nice and sounds good, but it is not the end of it because you wind up in the Supreme Court.

I think winding up in the Supreme Court is not to our advantage, and believe me I fought the eminent domain business. I am the only guy who took the city to court actually as Attorney McNamee knows. But I don't think that is a good strategy because the Supreme Court is very likely to decide with the PUC. They are all state agencies. You know the state better than any of us here you worked for the state for many years as a representative in a high leadership position you were second to the Speaker if I recall. Please answer that is this a smart strategy?

President Bolton

I think the Mayor has been as clear as she can be that a price has been offered to the company that will pay the shareholders \$2 more per share than what they would get if the Supreme Court upholds the decision of the PUC so you are taking \$2 per share away from the shareholders if they insist on doing that. Will it work, won't it work we don't know, but we have certainly given them incentive to be more realistic than just being willing to take what the PUC has already determined.

Alderman Teeboom

I can tell you Mr. President that having talked to shareholders, having been at these board meetings now for several years, I go every year, I don't think the shareholders understand the \$23.

President Bolton

I think that may well be true and we are not in any position to tell them these things. We have to negotiate with the people that they choose not that we choose.

Alderman Teeboom

I would like to go back to the Mayor and ask the question in light of the Supreme Court, which you didn't really touch on, is this a smart strategy?

President Bolton

I think that is an insulting question Alderman Teeboom and I don't...

Alderman Teeboom

Why is that an insulting question?

President Bolton

Because obviously the Mayor is doing it because she thinks it is an intelligent strategy...

Alderman Teeboom

Well can I ask her...

President Bolton

...and she has already explained...

Alderman Teeboom

...the question?

President Bolton

No.

Alderman Teeboom

I can't ask her the question?

President Bolton

I'm telling you asking her if she thinks she is being smart is an insulting question and I am not allowing it. She is being smart in her mind at least. If you disagree you are entitled to disagree, but asking a question like that is not respectful, and I am not going to allow it.

Alderman Teeboom

I totally disagree with you sir ...

President Bolton

Well that's...

Alderman Teeboom

...and we are back again at this whole nonsense where you are trying to dictate what we can say and I resent it sir.

President Bolton

I will not allow people to be insulting so resent away.

Alderman McCarthy

In the scenario where we go to the Supreme Court, do the shareholders even get as high as \$23 a share after taxes?

Arthur Gottlieb

It is a complicated answer. I am happy to try to give it.

Alderman McCarthy

If I could just present my simple logic and you can correct it.

Arthur Gottlieb

Sure.

Alderman McCarthy

The number we looked at for the \$203 million is approximately \$31 a share, which is what Gabelli has been throwing around. The tax liability on the depreciation runs to \$60 million, which is about \$15 a share, so it would seem that after you are done with that the shareholder gets \$16 and the IRS get \$15 on every one of the shares. They start out in a pretty poor position.

Arthur Gottlieb

You are almost correct. The thing that you have to add back in is the value of the additional assets that Pennichuck will be able to sell as part of a liquidation of the company. You are very close, but there is an additional \$6 or \$7 per share between the land and the other utilities that would flow to the shareholders, which is very consistent so \$31 minus \$15 plus \$6 to \$7 gets you back to \$23.

Alderman McCarthy

Okay.

Alderman Tamposi

Thank you. But the \$31 is just for the one asset it is not for the whole kit and caboodle that we are actually after. They could be calculating a different number there.

Alderman McCarthy

By the analysis we just heard, it is \$31 a share for us to get that set of assets, but the shareholder return of \$23 out of that is based on liquidating the whole company at that point. We would only wind up with a piece of it, but the shareholders only get \$23 in value per share out of all of the assets of the company after that is over. If they just liquidated the piece that is Pennichuck Water Works they get \$16 a share after taxes.

President Bolton

And of course they may analyze it differently, but to the extent they do they apparently have not shared that analysis with us so that we could compare what is true and what is not true.

Alderman Tamposi

Thank you. Now with Gabelli buying up shares to push it up to \$21 a share, are they at all familiar with where we are coming from? Are there any implications with them using that to their advantage?

Arthur Gottlieb

Wade and I actually met with Mario Gabelli just about a month ago. We did not talk at all about what we had heard from Pennichuck, but we did present our view of value based on public data so he understands our view of value is significantly less than \$31 per share. He clearly is trying to do whatever he can to get the highest possible price when the company is sold because that is to his advantage, and it is very easy to demonstrate that when he buys shares on the open market, that is how he buys them he buys in the same way that you or I would if we were allowed to, when he buys shares on the open market the price goes up and when he sells shares on the open market the price goes down. He has roughly 150,000 shares left to buy before he hits his ceiling again. The last time he hit his ceiling and he turned from a buyer to a seller, that is when the share price hit \$17.50, was exactly during the time period when Mario Gabelli was a seller rather than a buyer.

Bill Ardinger, Esq.

Another way to look at your question is Mr. Gabelli's firm came out with an estimate of what shareholders would receive from the eminent domain case. His first estimate was \$31 a share. C.W. Downer through a number of methods that they have available demonstrated that they made significant mistakes in that. The company responded to it and said we don't think that is 100% right. Gabelli subsequently changed their analysis down to \$26 a share out of the eminent domain proceeding. That analysis is still flawed. C.W. Downer's analysis has been that if you pay the \$203 million price for those assets and then liquidate Pennichuck so the shareholders turn their stock in and get final cash back after paying taxes and debt and take our money, they would get about \$23 per share.

It is important to note that while Gabelli publicly said hey we think this stock is a buy, we think it is worth \$31 a share, his company owns stock. The other investment analysts out there independent investment analysis that was done by a separate independent company said we think the price of the stock is actually \$16 or \$17 a share, the only reason it is trading higher is because Gabelli is buying up shares and people expect that the city is probably going to acquire the company so that speculation is there. Remember as the Mayor has said to us so clearly, I want to approach this like a business transaction I don't want taxpayers paying above fair market value for this company, and that has been our instruction and we have not made a bogus offer, we have not made a game offer, \$25 we have heard from our appraiser, they are an appraisal firm but for these companies, we made the fair offer at that price. We think they are holding out they think they can get the taxpayers' money in their pocket. I think the Mayor's strategy has been to hold out, be firm, be clear, and we think if they really think about it we have offered them more money than they get if they win the case at the Supreme Court and they get eminent domain, couple dollars more, but that is still something and it is a fair price.

I just wanted to, I am sorry thank you sir, just to follow up a little bit with the way Gabelli, I don't know that you can trust his judgment in the market of being completely clear of self interest.

President Bolton

Are there further questions?

Alderman Teeboom

There is something I don't understand. Gabelli is a smart guy otherwise he wouldn't be a multi-millionaire maybe a billionaire. If all he is going to get is \$23 and he is buying the stuff at \$32, why is he doing it, and even...

President Bolton

He is not buying the stock for \$32 he is buying it for what it is trading at, which has been between \$17 and \$21.

Alderman Teeboom

Good point appreciate that.

President Bolton

Are there further questions?

Alderman Plamondon

Just for clarification, should we go past the June 30th deadline and our line in the sand and we look at going through the eminent domain process and we are looking at that ballpark magic dollar to the stockholders of about \$23 a share, does that also include Pennichuck's litigation costs and everything else rolled in to continue dragging this on through the Supreme Court? That is also another large expense. I don't know if it is a big chunk of that or it is probably miniscule compared to the grand theme of things.

Arthur Gottlieb

It is not miniscule. Our view and part of why we believe that in fact Duane Montopoli and some of his other managers have been very motivated by this deadline, our view is that Pennichuck's shareholders will be very unhappy over the next 1-2 years if they are sitting around waiting for the Supreme Court to make a decision or if it gets remanded back to the PUC. In at least one view of the world, time is actually the enemy of Pennichuck not their ally. Again, the simple examples are that they had a very bad first quarter relative to last year, given what the rain has been like for the last few weeks, their second quarter will not be good, they have these litigation costs coming up, and they no longer have real estate to sell to fund the litigation.

If you look at Pennichuck over the last 4 or 5 years, a large percentage of their profits have been generated from sales of developed real estate. They no longer have any developed real estate left to sell. I actually believe that their financial situation over the next 12 months will be unpleasant and that increases the probability that they will come to terms with us. The litigation costs, you are looking at a company whose dividends per year are roughly \$3 million so \$1 million of litigation costs is a pretty big burden and it could easily be more than \$1 million.

Mayor Lozeau

Mr. President if I could just add, when the June 30th deadline hits we have to make a judgment call based on where everything stands. As Downer has explained, they have been very motivated. As a matter of fact they have been here, Arthur and Wade and Bill have been here all day. They started meeting with Pennichuck this morning, they met with Duane after that meeting. There is consistent meetings that have been taking place, at least ½ dozen over the last couple of weeks since I gave that deadline, which is probably equal to what we have had since we started in this compressed window. Based on whatever might be on the table then, we will make a judgment call over whether it is smart to give some more time based on where we are or whether it is smart to go we are done.

When we get to that decision point if we are done, we will look toward what is the information we can say publicly, carefully but smartly so that we, as you know I have been very careful repeating the same phrase over and over and over again almost feeling like it is memorized until that very last time after that PowerPoint where I had to at least give a legitimate tweak that had to go through everybody's eyes and legal counsel to make sure I could say it, of what we will do next are we going to talk to shareholders, are we going to talk to their board, what are we going to do. Those decisions haven't been made yet because we feel like there at least is some momentum there.

Alderman Plamondon

I'm trying to also understand should this still go to the Supreme Court and they are not going to come to the table and play, which is their history, we still have our pending countersuit I guess it is for we think the cost is too high that was set by the PUC. I am just trying to get an understanding; when all of this goes to the Supreme Court and we start making these arguments in all likelihood wouldn't the stock values begin to drop and the value drop so that maybe we would be able to have a from a PUC perspective a lower price as well? What are our chances with that suit I guess is what I am looking for.

President Bolton

Has anyone who is present done that analysis?

James McNamee, Esq.

I could perhaps give some response Mr. President.

President Bolton

Please.

James McNamee, Esq.

The appeal will be heard both sides and you are right the city's major contention is that the PUC, two of the commissioners on the PUC, got the wrong value the third commissioner got it closer to right. The PUC's value was based on the way the courts and administrative bodies value property. It is not the same sort of value that in a business transaction you would value, it is not based on the stock price it is based on three things that you look at; income, comparable sales, and the actual depreciated cost of replacing the asset. In the utility context that has even a more complicated way of looking at it. But because they arrived at the value in a different fashion from the way that we are valuing it here, which is the way a business would value it, which is the way these gentlemen do it every time they represent a buyer or a seller, the stock price will not have any direct affect legally on the decision of the Supreme Court.

Alderman Plamondon

Okay.

James McNamee, Esq.

There may be a number that gets stuck in a Judge's mind, but it is not something that is going to find its way into an opinion.

Alderman Plamondon

So should we win that and the PUC comes in with a lowered value amount we don't think the stocks would start trailing down?

James McNamee, Esq.

The stock may start trailing down as a result of the ongoing litigation, and I think that is what Downer is saying, but the fact that it is going down will not actually find its way into the opinion and they won't say well the stock is now worthless so therefore we think it should be less.

Alderman Plamondon

Thank you.

Alderman Deane

Attorney McNamee so if I understand you, I found it interesting that they have pretty much come to terms with the fact that they have liquidated all of their assets. Their revenue stream now is being damaged by Mother Nature and the financial stranglehold on return to their shareholders is evident. I can't see them running in for another rate increase. Now you stated that even with whatever the value of the share is what the PUC set as a value is what we have to deal with. Am I understanding that correctly?

James McNamee, Esq.

The method that the PUC uses is the usual method that you would find in a court case and that is to look at the income, sales, and the cost of rebuilding the asset and then depreciating it. Those are the three approaches to value that courts use and the PUC uses. That is what I was saying. When it goes to the Supreme Court if we are successful, the most successful we could be, and this is extremely unlikely, is that the Supreme Court will actually say yes Commissioner Below was right and the other two commissioners got it wrong we are going to re-adjust the value as computer by the PUC and come out with another indication of value.

Alderman Deane

But the stock value would play no role in that at all?

James McNamee, Esq.

Stock value wouldn't. The more likely thing that will happen and we think should happen at the very least is that the Supreme Court will say yes Nashua you have good points, the PUC didn't look at this, that, and the other thing in the valuation of the assets, and, therefore, they send it back to the PUC for a re-hearing on some of those issues.

Alderman Deane

So sitting back and doing nothing and waiting obviously while their revenues drop, their earnings drop, really is no benefit to Nashua in the end game of a price on the...

James McNamee, Esq.

Only to the extent that it will create a significant amount of pressure on the board of directors and the management of Pennichuck to approach Nashua again for a deal. If we say on June 30th that is not a credible offer and there is no other options and we have to go forward with the Supreme Court hearing and a year or two years down the road we are still involved in that or it has gone back to the PUC, at any time Pennichuck can come back and say we would like to re-open talks. The more their stock price suffers I think the general feeling is the more likely it is that that would happen that they would come back.

You mentioned I think you mentioned liquidating. I don't know if they have come to terms with liquidating the other assets, but if it goes through the eminent domain process we only get that core asset of Pennichuck Water Works and the other assets really aren't worth that much on their own. Therefore, they would wind up liquidating them.

Alderman Deane

Thank you.

Alderman LaRose

I think the Corporation Counsel answered my question, but I will ask it anyway. My understanding is if it goes in front of the Supreme Court what we are really talking about is Pennichuck Water Works only and not all of the other stuff. Okay. Thank you.

President Bolton

We are approaching the 7:30 p.m. timeframe when our regular meeting is scheduled to start. Is there further discussion?

MOTION BY ALDERMAN MCCARTHY THAT THE BOARD OF ALDERMEN SEAL THE MINUTES OF THE NON-PUBLI SESSION BY ROLL CALL UNTIL SUCH TIME AS THE MAJORITY OF THE BOARD VOTES THE PURPOSE OF CONFIDENTIALITY WOULD NO LONGER BE SERVED

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

Yea: Alderman McCarthy, Alderman Chasse, Alderman Deane, Alderman Clemons,
Alderman LaRose, Alderman Tamposi, Alderman Cookson, Alderman Cox,
Alderman Tabacsko, Alderman Teeboom, Alderman Flynn, Alderman Plamondon,
Alderman Bolton

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Nay:

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MOTION CARRIED

MOTION BY ALDERMAN MCCARTHY TO COME OUT OF NON-PUBLIC SESSION AND RETURN TO THE SPECIAL MEETING OF THE BOARD OF ALDERMEN

ON THE QUESTION

Alderman Deane

The information we were given is this being collected?

Mayor Lozeau

Yes.

MOTION CARRIED

ADJOURNMENT

MOTION BY ALDERMAN LAROSE THAT THE JUNE 23, 2009 SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED

MOTION CARRIED

The meeting was declared adjourned at 7:34 p.m.

Attest:

Paul R. Bergeron, City Clerk