COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON FINANCE

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, December 7, 2005
2:35 p.m.

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PRESENT:
COUNCILWOMAN JANNIE BLACKWELL
COUNCIL PRESIDENT ANNA C. VERNA
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JUAN RAMOS
COUNCILMAN FRANK DICICCO

COUNCILMAN MICHAEL A. NUTTER

BILLS 051136, 051137, 051138, 040470, 050303 and 050345

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V A R A L L O Incorporated
Litigation Support Services
Eleven Penn Center
1835 Market Street, Suite 600
Philadelphia, Pennsylvania 19103
215.561.2220 215.567.2670.

COUNCILWOMAN BLACKWELL: Good afternoon. Thank you all for attending.

We have a quorum. Present to begin our Finance hearing, to my left is Councilman W. Wilson Goode. To his left, our President, Anna Verna. To my right, Councilman Darrell Clarke, and to his right, Councilman Juan Ramos.

A quorum being present, we are happy to begin this Committee on Finance, and the Chair would call the Clerk to read the title of the first bill.

THE CLERK: Bill 040470, an ordinance amending Chapter 19-2500 of The Philadelphia Code, entitled "Real Estate Non-Utilization Tax," by clarifying and amending the tax on abandoned property and vacant lots; and by changing certain tax rates; all under certain terms and conditions.

COUNCILWOMAN BLACKWELL: Thank you.

The Chair will call on Councilman Darrell Clark to make an opening statement. I believe these three bills are his.

Am I correct, Councilman?

COUNCILMAN CLARKE: Yes, Madam Chair. Madam Chair, for the record, we're actually going to hold one bill, 050345.

THE CLERK: Madam Chair, should I read all three bills?

COUNCILWOMAN BLACKWELL: No. Let me ask the Chair.

Would you like the other two read at the same time, Councilman?

COUNCILMAN CLARKE: That's your prerogative, Madam Chair.

THE CLERK: I'll read all three.

COUNCILWOMAN BLACKWELL: The third one is being held, so we not need read it.

THE CLERK: The second bill is 050303, an ordinance amending Chapter 19-1300 of The Philadelphia Code, entitled "Real Estate Taxes," by providing for an Economic Opportunity Plan as a condition for the grant of certain tax abatements, under certain terms and conditions.

And the third bill and final bill, 050345, an ordinance authorizing designated City officials to file articles of incorporation for a new not-for-profit corporation for the purpose of providing tax relief to certain homeowners who experience burdensome real estate tax bills; authorizing the Director of Finance to enter into an agreement with such corporation for such purpose; and providing for the funding of such an agreement; all under certain terms and conditions.

COUNCILWOMAN BLACKWELL: Thank you very much.

Again, we want to thank everyone for your patience. We realize there was a hearing before that took quite some time.

The Chair calls on Councilman Clarke for opening statements.

COUNCILMAN CLARKE: Thank you, Madam Chair.

Madam Chair, as I earlier stated, Bill 050345 requests to be held at the request of the sponsor. I'll just give a statement on the two bills that we are hearing as it relates to the ones that I've sponsored.

First, the non-utilization tax bill. First, as always, I would like to give credit to former Councilman John Anderson, who initiated this particular bill some years ago, and Councilman Nutter will have an affinity for this bill -- he and I talked about some of this for quite some time. Councilman Nutter having been a former employee of Councilman John Anderson -- a bill that we think its time has come, and I hope and anticipate the support of the Administration on this one.

I think actually this bill is

probably even more appropriate in today's booming real estate market. We think it has been unfair over the course of the last two decades for property owners to essentially abandon vacant properties throughout the City of Philadelphia, not taking responsibility of adequately marketing properties, adequately trying to get properties online, simply sitting in neighborhoods, speculating as to when the neighborhood may come back.

Unfortunately, a lot of these neighborhoods have not experienced the level of support in this recent real estate boom. We think that these property owners need an incentive to actively market or dispose of these properties so they can be productive properties as it relates to the tax rolls, in addition to being an asset to the community. So hopefully this will be the last time that we have a hearing, and we will get support to get this bill through.

The second bill, the Equal Opportunity Plan for tax abatements, Bill No. 050303, we believe that there will be testimony put on the record that for a period of time over the last several years, a number of property owners and developers and business people have been taking advantage of a government subsidy -- and, yes, in fact, tax abatements are in fact a government subsidy -- but have not been required to have the appropriate minority, female or disadvantaged opportunities for construction.

We think that when we do TIF bills in the City Council of Philadelphia, we are required to have an attachment to that TIF bill, a full submission of the Equal Opportunity Plan in exchange for the developers to get a tax abatement or tax relief as it relates to the TIF process, and we think this is similar to that process.

Right now this is probably the

largest level of development taking place in the City of Philadelphia based on individuals taking advantage of the ten-year tax abatement, and we think it is time for us to look at structuring a program that will require that they submit an Equal Opportunity Plan to make sure that everybody takes advantage and realizes the fruits of all of this aggressive development in the City of Philadelphia, and we think that information will be put on the record to substantiate our claims and to hopefully put us in a position down the line implementing such a program.

Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: Again, we thank Councilman Clarke, the sponsor of these bills.

We'd like to call Nancy Kammerdeiner, Revenue Commissioner, to testify on both. Thank you.

And, Chairman Glancey, we'd like to call you as well. Thank you.

Please identify yourself for the record. Thank you for your patience and begin your testimony.

COMMISSIONER KAMMERDEINER: Good afternoon, Councilwoman Blackwell and members of the Committee on Finance. I am Nancy Kammerdeiner, Revenue Commissioner, and I'm pleased to be with you to present testimony regarding Bill No. 040470.

I believe you have copies of my written testimony on that particular bill and so I'll just hit some of the highlights.

Councilman Clarke already referenced some of the background that I was going to mention in terms of this bill and the tax itself, but I will mention that the first time this tax was levied back in 1982, there was a major problem in terms of the identification of the vacant or abandoned properties that were to be taxed. It created a great deal of human cry, and as a result, the property owner who had been billed for the tax filed a request with the Court of Common Pleas to enjoin the City from collecting the tax. The court agreed. That injunction was issued, and to this day, it hasn't been removed and no further tax has been collected. So that is one of the things that would have to be dealt with here. If Council does approve the amendment to the tax and wishes us to attempt to revive it, we would need to lift that injunction.

In previous hearings on this tax, the real estate non-utilization tax, I've indicated that Revenue did not have a reliable way to identify abandoned properties in order to levee the tax. That situation is changing. The NTI office and the Office of Housing and Neighborhood Preservation, with the assistance of the Mayor's Office of Information Services, is developing a Virtual Property Management Information System, VPMIS. This will provide a single point for realtime or near realtime access for all the City's property-specific information, including initially data from Records, Board of Revision of Taxes, Revenue and the Department of Licenses and Inspections.

An operation data store will be created that will be updated in near realtime from the various departmental operational databases, and they will use the Unified Land Record System address-matching capability in order to integrate the information from all these sources.

The basic framework and functionalities of the VPMIS will be available for use by City departments in a few months. A City property data warehouse that will provide historical information on properties for analysis and planning will be developed as part of the VPMIS over the next nine to 12 months.

That will be crucial here,

because this legislation requires that we look at the vacancy over a period of time to determine an abandoned property.

However, the availability of VPMIS will not automatically provide the vacant, abandoned property identification information that Revenue would need in order to effectively tax and levee the non-utilization tax. The consolidated database will need to have information about the characteristics of individual properties that can and will lead to the confirmation of vacancy. That is impossible with the information we have today.

For example, the L&I vacancy survey is a snapshot in time, and it was last done City-wide in 1999. The current BRT vacancy data, at best, relies on that previous L&I survey. So you can see from that that we don't have up-to-date information.

One way to determine vacancy is to look at other indicators of vacancy, particularly you look at utilities, water, gas, electric, and whether they're being used, whether they're shut off. The VPMIS will have the addition of utility information from Water/Water Revenue and the Gas Works and hopefully also from PECO within the next year. That will help to be able to identify whether or not a property is vacant.

However, the most direct way to determine vacancy is through fieldwork and then the validation of that data with indicators such as the utility information. The new Computer-Assisted Mass Appraisal System that the BRT is implementing calls for extensive data collection on the condition of properties in the City in order to establish the fair market value of the properties annually. BRT is in the process of inventorying, photographing and assessing every property. And so in the relative near future, their database that will feed into the VPMIS will have a lot of the characteristic information that would be needed to really determine whether a property is vacant or not.

As you know and as I'm sure David Glancey, who is here beside me, could give you a lot more information on, the intention is to have those new appraisals and the new assessed values identified for this entire City for tax year 2007.

Once that information is available and in the VPMIS and compared to other indicators of vacancy, we think there's a reasonable chance of identifying appropriate properties for this tax and avoiding the kind of confrontation or at least minimizing greatly the kind of confrontation that occurred in 1982.

With this in mind, I recommend that should you seek to revive this tax, that the definition for an abandoned property be amended to reference the identification of vacancy in the CAMA records of the BRT as confirmed by other indicators of vacancy, including, but not limited to, utility usage or shut-off data and L&I vacancy designation.

Since the CAMA records won't be available until tax year 2007, I would further suggest that the first billings for the tax or privilege year 2007 be for that year, with a due date of April 15, 2008.

You will recall, or maybe you won't if you haven't looked at it in a while, the way this tax is set up, it's for a privilege year and then the payment comes by April 15th of the year following the year in which you have the privilege of having a non-utilized property.

As part of the preparations for identifying and billing appropriate properties, Revenue proposes to develop a notice letter that would be sent to property owners during 2007 as we start to identify them using the VPMIS technology. We would want to test this out and see whether or not we are properly identifying properties that way, and to do that ahead of actually taxing people would give them the opportunity to come back to us and let us know that the information that we had was not accurate.

With that in mind, we think that the Court would agree to the lifting of the injunction since we would be identifying properties in a rational and reasonable way and we would be giving people an opportunity to appeal that designation before the tax was actually levied.

That concludes my testimony on this bill. I'd be happy to answer any questions.

COUNCILWOMAN BLACKWELL: Thank you.

Have you accessed records from the other housing agencies as well?

COMMISSIONER KAMMERDEINER: There are a number of agency databases that will feed into VPMIS. David

Baldinger from MOIS is here if you have detailed questions about that activity and where they're getting the information, but the answer is basically yes. There are a number of sources of property data that will feed into VPMIS.

COUNCILWOMAN BLACKWELL: Because we have various housing agencies. In the past, everybody's databanks are a little different.

COMMISSIONER KAMMERDEINER: Right. That's one of the advantages of creating this unified system.

I don't know if you want Mr. Baldinger to join us.

COUNCILWOMAN BLACKWELL: Yes, please.

MR. BALDINGER: Good afternoon. I'm David Baldinger, Director of Strategic Planning for MOIS.

The principal databases we're looking for first are the City's databases, the Board of Revision of Taxes, the Revenue Department, the basic databases that have business information about properties.

The other major housing database that we are going to be building is really the database that reflects the properties that are being acquired and disposed of through the Redevelopment Authority.

A big part of what we're doing in the Vacant Property Management -- or the Virtual Property Management Information System is developing business process automation at the Redevelopment Authority to assist them in going through the very complicated process of acquiring and disposing of properties. And one of the things we need to do is have a better way of keeping track of where properties are in that whole process, and that will be part of what we're building in VPMIS, so that both the Authority, housing agencies in the City, City Council and others will have a better sense of how the acquisition and disposition process is moving forward. That information will be helpful in identifying vacant properties certainly.

COUNCILWOMAN BLACKWELL: What I meant is more specifically RDA, OHCD, VPRC and PHDC.

MR. BALDINGER: Yes. We are getting that data as well.

COUNCILWOMAN BLACKWELL: Thank you.

Councilman Clarke.

COUNCILMAN CLARKE: Yes. Thank you, Madam Chair.

I just wanted to get some clarity on the timeline. Can you run through that timeline again?

COMMISSIONER KAMMERDEINER: Since we won't have the basic data from BRT CAMA until tax year 2007, that would be the first privilege year that I think you can effectively identify properties and possibly bill them.

As the existing code is established, you have a privilege year and then the tax is due by April 15th of the following year. So in this case, that would be April 15th of 2008 for properties that were identified as being abandoned or non-utilized or underutilized, whatever term you choose to use there, during 2007. And my proposal is that during 2007, if we're going forward with this, that Revenue start to work with MOIS on using VPMIS to identify these properties, and then instead of waiting and billing them in the winter of 2008 with a due date of April 15th, that we send them a notice letter, not a bill, but a notice letter indicating that this property has been identified as a potential.

COUNCILMAN CLARKE: What year would that go out?

COMMISSIONER KAMMERDEINER: That would be sometime in 2007.

COUNCILMAN CLARKE: The notice letter?

COMMISSIONER KAMMERDEINER: I

don't have a date because I don't know yet when the other vacancy indicator information would be available to us to use.

COUNCILMAN CLARKE: We would do the notice letter as opposed to the tax bill because of?

COMMISSIONER KAMMERDEINER: To do something in an initial way in order to advise people that this is coming, that they would be potentially subject to the tax, give them an opportunity to provide information that would show that this property is being utilized, something that would help to buffer the problem that occurred back in 1982 that led to the injunction. That would also --

COUNCILMAN CLARKE: So you're saying that the systems should be in place by '07?

COMMISSIONER KAMMERDEINER: Yes.

COUNCILMAN CLARKE: So why

can't we notify them that this is going to take effect prior to '07? Because in '07, we're effectively ready to roll. Why shouldn't we give them a notice prior to that, particularly given the fact these properties have been vacant for years?

COMMISSIONER KAMMERDEINER: I don't think we will know effectively until '07 what that universe looks like until we have all those pieces in VPMIS and can determine what the billing universe would look like. And since the tax goes for a privilege year and then is billed in the following year, we wouldn't know which ones were vacant in 2006. We would know more effectively which ones are vacant in 2007.

COUNCILMAN CLARKE: If we decide to send a notice in '07, why can't we give them a time period to respond to that notice, lengthen the time period? If the indicators are, based on their assessments, that the property is not vacant, why can't we just lengthen the time to allow them to respond?

COMMISSIONER KAMMERDEINER: That's essentially what I'm suggesting, that they would have time during 2007 to respond and then they would actually be billed.

COUNCILMAN CLARKE: But you're saying that you're going to give them notice that we're going to do this. Why can't we just do it and give them an opportunity to respond to the tax bill?

COMMISSIONER KAMMERDEINER: I think it's going to take us most of that time period to be ready to do it. We could look at doing it quicker. That was my suggestion based on how I think that the data will be available and when I think it will be available.

COUNCILMAN CLARKE: I'm just concerned that we've been talking about this for a lot of years and we're finally in a position where we have systems in place and then we give people additional time to remove blight from our communities, and it's like why are we treating these people with kid gloves?

COMMISSIONER KAMMERDEINER: I'm just concerned that we'll be going out to a lot of people we shouldn't unless we really have an opportunity to --

COUNCILMAN CLARKE: That's why people have an opportunity to appeal.

COMMISSIONER KAMMERDEINER: That's an administrative problem and a nightmare to try to administer, and I'm trying to avoid that for you and for us.

COUNCILMAN CLARKE: Now you're back to your old testimony, Commissioner.

COMMISSIONER KAMMERDEINER: But that is a real problem for those who are going to have to deal with it. And I think you will have to deal with it as well in Council if you have a lot of people who feel that they haven't had an opportunity to respond and to provide information that would counter what we have.

COUNCILMAN CLARKE: With all due respect, Commissioner, the calls that I get are from people that live in their properties that are upset about their tax bills. I don't get a whole lot of calls about vacant property. Matter of fact, those people tend not to want us to know where they are. So it's rare.

COMMISSIONER KAMMERDEINER: That is going to be one of our problems, because we'll probably get a lot of mail back when we try to send these out, and if we do it as a test, we'll have an opportunity to try to find better addresses in those instances where we get returned mail. That's another thing from an administrative standpoint to try and make this more effective and to do a better job with it.

If you decide it's earlier, we will have to do what we can, but I am concerned that it will not be as well-handled and will cause a lot of dislocation problems.

COUNCILMAN CLARKE: Okay. We have time to debate that part of the process, but my preference would be the initial notice would be the actual tax bill. If they want to respond to that, then so be it, but I'm glad that you're giving supportive testimony today.

COMMISSIONER KAMMERDEINER: This is the first opportunity we've had to do something where we can credibly identify properties. Up until now, I was foreseeing an exact replication of the problems that occurred when the tax was initially enacted.

COUNCILMAN CLARKE: Back in '82.

COMMISSIONER KAMMERDEINER: Right.

COUNCILMAN CLARKE: Thank you.

Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: Thank you very much.

Are there other questions on this bill?

(No response.)

COUNCILWOMAN BLACKWELL: Seeing none, we will now take testimony, Commissioner, on the next bill that has been read, Bill No. 050303.

COMMISSIONER KAMMERDEINER: Thank you very much. I apologize for not having written testimony to distribute on this one.

This bill would amend Section 19-303, Subsection 3 of The Philadelphia Code to require the filing of an Economic Opportunity Plan as a condition of receipt of a ten-year real estate tax abatement. The plan is to demonstrate the taxpayers' good-faith efforts to maximize the provision of jobs for low- or moderate-income youth by utilizing the services of certain training or apprenticeship programs to provide significant employment opportunities to minority, female and disabled business enterprises and individuals, and to develop a preliminary implementation plan for achieving the goals set forth in the plan.

As you know, the City of Philadelphia derives its right to tax from the Commonwealth of Pennsylvania. Under the Pennsylvania Constitution, taxes are generally required to be uniform, but the Constitution does give the General Assembly the authority to establish standards and qualifications that would permit local taxing authorities to encourage the improvement of deteriorating properties or areas.

Section 19-1303, Subsection 3 of The Philadelphia Code was established in accordance with one such action of the General Assembly, the Local Economic Revitalization Tax Assistance Act known LERTA. LERTA gives local governments the discretion to provide for tax abatements, to designate the areas in which abatements will be available and to set the length and value of the abatements -- the time period, I should say, and the value of the abatements that can be offered, although there are certain limits that have been established within LERTA for doing that.

LERTA did not anticipate that any local government or any situations where a local government would want to impose additional limitations or qualifications that would permit a local government to determine which properties within a designated area would be eligible for abatement. As a result, further state authorization may be required in order to implement the proposal that's before you today.

You might be interested in knowing that in 2005, there were 274 properties with ten-year abatements under this section of the Code. The market value of the improvements on these properties as determined by the Board of Revision of Taxes was $313,939,790. That gives you an idea of the amount of improvement construction that those abatements represented in that year, but that would be cumulative from all of the approvals of abatements over a period of time.

That provides a little bit of background information and a concern that you need to look at more closely as you look at this.

That concludes the testimony that I have today, and I know that Mr. Glancey has some additional facts and figures to help you through this process.

COUNCILWOMAN BLACKWELL: Mr. Glancey.

MR. GLANCEY: Yes. Good afternoon, Madam Chairman. My name is David Glancey. I'm the Chairman of the Board of Revision of Taxes, and members of the Finance Committee. Thank you for asking us to testify this afternoon.

I have supplied written testimony, and I believe everybody has a copy of that testimony, and let me just tell you what it is. It's a compilation of the current abatements, and that's current as of about November 15th, we'll say. It's very current of all of the abatements that we are administering that have been approved both by the BRT and the Department of Revenue and Licenses and Inspections.

The data describes five separate abatement programs administered by the BRT. Four of those programs were created by local ordinance, going back as far as 1978 and as current as April of 2003, I believe. And one of those was created by state statute.

Of the four created by local ordinance, one, the conversion bill, which is kind of the shorthand way that that is known, which was a bill passed in 1997, has sunset at this point. However, we still administer roughly 330-some abated properties that were filed under that ordinance.

In this document that I've used as our written testimony, I've rounded all of the exempt and taxable totals for simplicity's sake, and I guess maybe it would be good for me to explain what I mean by "exempt and taxable totals."

Probably each property that has an abatement also has a taxable portion to that particular abatement, and I guess hypothetically the best way to describe it would be if you purchased a piece of land for $100,000 and then put an improvement on that land, a building, that was worth $100,000, that building would be exempted to the tune of $100,000, but the land would continue to be taxable. So the exempt totals are basically the improvements, and the taxable totals are land, but it's a little bit more than that because sometimes there's shells on the land that have to be rehabilitated. But the taxable portion of that is that property which was there prior to any value was added due to the improvement.

So with that, if you want to

just take quickly, we'll go over the testimony.

On Page 1, you see Ordinance 961, which really goes to the residential rehabilitation abatements that we have. If you add those two numbers together, it's roughly 500 abatements that are applied to currently existing residential properties. The exempt totals there are about 8.2 million in market value and 215,000 in taxes and 38.2 million in market value and about a million in taxes.

The first one that says 270 accounts, that is a capped abatement that was passed sometime in the '80s or early '90s. I forget which. That was changed in the year 2000 to uncap that. As you can see, the M code was capped at 50,400 of value at that period of time. Today it's uncapped, as all of our abatements are today. They are uncapped.

On Page 2, we move along to --

COUNCILMAN CLARKE:

Mr. Glancey, excuse me. These numbers are based on how many years?

MR. GLANCEY: This is just one year. What you're looking at here is just -- this is a snapshot in time of what we're looking at right now.

COUNCILMAN CLARKE: I just want to clarify that.

MR. GLANCEY: So you can do the multiplication. Actually, you may not wish to -- the totals you can go ten times, but each individual --

COUNCILMAN CLARKE: It fluctuates.

MR. GLANCEY: -- one burns off from year to year.

I'm glad you asked that question, Councilman, because we produced for Council -- and I think your office received it -- kind of a mid-year report on what abatements we had outstanding. We intend to do that again after 12/31 of '05. We want to do a six-month report and share it with all the Council folks as to what exists, what that snapshot looks like. So you'll have that snapshot every six months and you can kind of see when these abatements are coming on and when they're burning off as well.

Should I continue?

COUNCILMAN CLARKE: Yes.

MR. GLANCEY: On Page 2, if we look at the 1456-A, and I'm going to call it by the name we use as opposed to going to The Philadelphia Code, but you see the reference to the Code there. That is a ten-year uncapped abatement for new residential construction. Currently, there are roughly 1,667 of those abatements outstanding, representing about 7.8 million in foregone real property taxes but are taxable to the tune of $1.2 million.

The third grouping you see there is the conversion bill, which has sunset, and as you can see, the foregone real property taxes there are 3.3 million. However, 1.5 is still taxable in that.

The fourth ordinance is the commercial, industrial and other business property ordinance, which is really for all of the commercial properties that we see in the City. We have currently 692 of those accounts, and that is an uncapped ten-year abatement for new or rehabilitated construction for those types of properties. The foregone real property taxes at this point at this snapshot is $14 million in taxes. However, it is taxable to the tune of $8.7 million.

I put in the state act so that you can see that. That really has nothing to do with the ten-year tax abatement. The state act allows for a 30-month abatement to the developer of residential properties until they sell the property. Basically, the state thought that would be a good idea for a developer not to be taxed on these improvements that, in a sense, add value but really have no cash flow to the developer. So upon transfer to the ultimate purchaser, that that abatement --

COUNCILMAN CLARKE: Then the purchaser gets --

MR. GLANCEY: The purchaser is then eligible for the ten-year tax abatement under the new residential construction abatement. And that only does go to residential properties, by the way. That is not for other commercial properties.

In any respect, the totals you'll see there, currently we have 3,293 active abatement accounts working. In July, we had about 2,600. So you can see there's been about an 800 increase since July. And the total -- the exempt totals in real property taxes there are 27.8 million in taxes, and the total taxable is about 12-1/2 million in taxes.

I might add, however, there's also revenue that would come in because of licenses that have to be paid in order to do this construction. I don't have those numbers. I don't know whether L&I could provide those to you, but you might wish to ask for that, where somebody has to pay obviously for a building permit. And what those permits -- what that cost is and what that income that comes to the City is, I really don't know the answer to that.

Finally, and I think this is a very interesting figure, that currently pending in our system, which means we have already taken in these applications and we are now awaiting either for Revenue approval or for whatever else might be outstanding, there's about 2,000 abatement applications, and that breaks down to 908 new residential construction applications; 518 commercial, industrial and other business property applications; and 579 existing residential rehab applications.

So that kind of gives you a

sense of where the numbers are today, and I'd be happy to answer any questions that you might have concerning any of this data.

COUNCILWOMAN BLACKWELL: Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair.

Thank you, Mr. Glancey and Ms. Kammerdeiner.

So essentially, we're talking about close to $28 million in government subsidies for new construction in one particular year?

MR. GLANCEY: It's roughly $28 million in foregone real property taxes for this year.

COUNCILMAN CLARKE: Which is a government subsidy?

MR. GLANCEY: Yes.

COUNCILMAN CLARKE: And as a result of that, we are not required or the developers are not required to have anything beyond the state statute that calls for a filing of an application at a particular time?

MR. GLANCEY: That's right.

COUNCILMAN CLARKE: No requirement to have any inclusion of Philadelphians, minority, women, anything? It's just essentially the state statute that says you can abate these properties, be it conversions or new construction or anything? That's the extent of it?

MR. GLANCEY: That is correct.

COUNCILMAN CLARKE: So unlike the TIF bills, which, to some degree, work in a similar fashion where we require a developer to attach an Equal Opportunity Plan that not only talks about opportunities for construction for minorities and females and disadvantaged, we also talk about job creation and things of the like. This is contrary to that in pretty much every respect. It is basically you get the government subsidy and you don't have to do anything.

There's essentially no give-back, other than if you move from outside the City, you're now paying wage tax.

MR. GLANCEY: Well, I think that was -- and, again, I'm not here to talk about the Economic Opportunity Plan, obviously. I'm here to give you the data. I do believe, however, that the point of the abatement program from the state and certainly from the ordinance was to keep it simple, and that's exactly what has happened.

As to the TIF program --

COUNCILMAN CLARKE: That's a discussion for another hearing.

MR. GLANCEY: You got it.

COUNCILMAN CLARKE: I understand.

MR. GLANCEY: Whatever Council decides to do, they do.

COMMISSIONER KAMMERDEINER: The only thing we require them to do is to be compliant with our existing tax laws, which is why Mr. Glancey referenced the

Revenue approval, because we do verify that those who get the abatement are not in a situation where they're non-compliant with our existing tax laws.

COUNCILMAN CLARKE: Right. Okay. Thank you. Thank you so much for this information.

COUNCILWOMAN BLACKWELL: Any other questions?

(No response.)

COUNCILWOMAN BLACKWELL: You will note, Mr. Glancey, that last week Council unanimously passed a resolution calling for no full valuation.

MR. GLANCEY: I haven't seen that, Councilwoman. Can you get that to me?

COUNCILWOMAN BLACKWELL: I'll make sure I get you a copy.

Any other questions from members of the Committee?

Councilman Goode.

COUNCILMAN GOODE: Mr. Glancey, in your conversation earlier with

Councilman Clarke, you mentioned that the total amount for one year is not necessarily able to be multiplied by the number of years in the program, but do you have an estimate in terms of total amount of taxes that have been forgiven under abatements?

MR. GLANCEY: Yes. I don't have it in the spreadsheet for these numbers. I have it current as of July, which I'd be happy to supply to you. I could actually e-mail that to your office, which would show you, Councilperson, when it came on year by year, when it should burn off year by year, and the number of accounts that we're talking about. And we'll have this for you in January.

COUNCILMAN GOODE: Please forward that to the Chair. You can forward it directly to my office, but I'm also interested right now just if you have an amount in terms of the total since the inception of the program.

MR. GLANCEY: I'm sorry. I didn't catch the last sentence.

COUNCILMAN GOODE: I'm just wondering if you have a total amount of taxes since the inception of the program. Just an estimate.

MR. GLANCEY: I think I could get it for you. I don't have that particularly done. Are you most interested just in the ten years, the ten-year programs? I mean, this goes back, as I said, to 1978, some of these abatement programs.

COUNCILMAN GOODE: I'm interested in the ten-year figures.

MR. GLANCEY: Okay. I think I can get that for you, Councilperson. Again, I don't have that with me today, but it would seem to me that I would be able to get what we had beginning in the year 2000 and working our way forward. I think I can get you those totals. And I will clearly get you what I indicated to you when I get back to the office.

COUNCILMAN GOODE: I'm interested in the total number since the inception of the ten-year abatements.

MR. GLANCEY: Yes.

COUNCILMAN GOODE: Okay. Thank you.

COUNCILMAN CLARKE: Actually, Councilman, you may want to include the three-year, because it initially was a three-year abatement.

MR. GLANCEY: There was a three-year and then it went to five and then it went back to three and then it went up to ten. But the ten-year abatement really started in 1997 with that conversion bill, but the first abatements weren't really brought to our office until 1999. So if we're just talking that ten-year piece, that makes some sense, I think, and I can get you data from that forward on all of the ten-year elements.

COUNCILMAN GOODE: Thank you.

MR. GLANCEY: You're welcome.

COUNCILWOMAN BLACKWELL: Thank you.

Councilman Nutter.

COUNCILMAN NUTTER: Just a quick question while we're in the data request portion of the meeting.

Mr. Glancey, can you begin to project out from, I guess, what you anticipate 2008 or 9 for another three to five years or so what you anticipate the revenues to be coming back from properties going off of abatement?

MR. GLANCEY: We can do more. I can tell you exactly what it is, because what you're going to see probably in the first year you're going to see revenues coming back would be at the -- if it was '99, probably the end of 2008 for '99. Not a lot, because that was the very beginning of the conversion bill, but as we move forward into 2000, 2001, 2002, we have the actual numbers that we will project out, again, using today's tax rate and today's valuations.

COUNCILMAN NUTTER: I understand.

MR. GLANCEY: Projecting those out. So we can give you that as best we can.

COUNCILMAN NUTTER: Great.

MR. GLANCEY: That actually is part of the spreadsheet that I was discussing with Councilman Goode, and I'll forward that to your office as well.

COUNCILMAN NUTTER: Okay. You'll send it to the Chair.

MR. GLANCEY: Yes.

COUNCILWOMAN BLACKWELL: We'll make sure all members of the Committee as well as Councilman Nutter have it.

Any other questions?

(No response.)

COUNCILWOMAN BLACKWELL: Thank you very much.

The Chair would like to call on Bruce Crawley, Chair of the African-American Chamber of Commerce; Anthony Fullard, African-American Chamber of Commerce. Thank you.

Welcome. Good afternoon. Please identify yourself to the record and begin your testimony.

MR. CRAWLEY: Good afternoon, Madam Chairman. My name is Bruce Crawley. I'm Chairman of the African-American Chamber of Commerce of Pennsylvania, New Jersey, Delaware.

MR. FULLARD: Good afternoon, Madam Chairman and also the Finance Committee. My name is Anthony Fullard, the Director of Economic Development for the African-American Chamber of Commerce.

COUNCILWOMAN BLACKWELL: Thank you. Feel free to begin your testimony.

MR. CRAWLEY: Thank you very much. I want to begin by going on the record as saying that on behalf of the Board of the African-American Chamber and its 750 members who, for the most part, are Philadelphia-based businesses, African-American businesses, we want to go on the record as saying that we are overwhelmingly supportive of the Equal Opportunity Plan for tax abatement, with one qualification. I want to make sure that the language stresses that the minority, female and disabled jobs and contracts that would be related to this would be Philadelphia County-based businesses. We didn't see that in the language, and I know that was a part of the concept, but we want to make sure that the language specifies that.

We believe that this is a very critical and a very sophisticated step towards where we need to be as a City to ensure that there is inclusion and minority job growth in Philadelphia County.

I read somewhere recently that said that 40 percent of all of the jobs that have been created in the United States of America since September 2001 and since September 11, 2001, 40 percent of all of those jobs were jobs related to the housing and construction industry.

As you know, many of the other jobs that we've enjoyed in this country for years, manufacturing-based jobs and even now the service-related jobs, technical-related jobs, IT-related jobs, are now being off-shored. I read in the paper recently where one of our major bank's CEO said that he was enjoying being able to off-shore some of the very high-level jobs that existed in his company.

So we're left, for the most part, with jobs that will be impacted by this tax abatement Equal Opportunity Plan, and if we're not vigilant, if we don't have this kind of innovative and creative legislation, then we won't have job creation, especially we won't have job creation that filters down to the level of people in low- and moderate-income, minority neighborhoods, to females and to the disabled. Those are the places where jobs will be created.

We want to go on record as

saying this is not a business-as-usual period and so we can't expect and we wouldn't want you to treat this in a business-as-usual way, and I really enjoy hearing the dialogue between Councilman Clarke and the previous testimony presenters, because it is clear that this legislation will take us away from business as usual as it relates to the provision of tax abatements. We've got to do things differently if we're going to have an inclusive economy and an economy that enhances job growth in this community.

We applaud Councilman Clarke, the members of this Committee and anybody who has anything to do with establishing this new approach to local business development. We also applaud you for finding ways to create jobs in areas of our total community that have all too frequently been overlooked. And we at the African-American Chamber of Commerce have taken great pains over the past few years, especially in this area of construction and construction-related business development, to ensure that there were no built-in historical impediments to job growth and to contract preparedness for minority businesses, and specifically African-American businesses.

And so we know that there is in place now a group of contractors who are ultimately qualified, because they've gone through training. In addition to their years of experience, they've been put through specific training that ensures that they do the work, that they are ultimately qualified for the technical aspects of the work, that they have their tax plans in place, that they have their credit ratings in place and that there are lines of credit available to them to do the work.

The big problem that we've had with that group of business owners is that they don't have the overflow. They can't get access to contracts. And if you look at the number of businesses that exist in our City, African-American businesses equate to about 9,285, and minority businesses in total, about 15,000 of businesses. Minority businesses constitute about 24-1/2 percent of all businesses in Philadelphia, and yet minority businesses in the region do about 2.2 percent of gross receipts.

So the problem is no longer that these businesses aren't prepared, no longer that they don't have the qualifications, that they don't have the preparedness, they don't have the financial infrastructure. They just can't get deal flow. They can't get people in the public or the private sector to send to them the business that they need to allow them to bid and to compete for the business that they ought to be able to compete for so that they can grow their staffs, contribute to the tax base and be contributors to the economy. So this kind of creative legislation in areas where it has been overlooked for so long is definitely appropriate.

The national data, as you know, is dismal as it relates to minority job growth. I just saw something that said -- the national unemployment data says that for the nation as a whole, mainstream workers have a five percent unemployment rate. The unemployment rate for African-Americans is more than ten percent, and that certainly doesn't include that portion of the population that has stopped looking for work, which is no longer counted in that number. When you get there, you start talking about numbers ranging to 40 to 50 percent unemployment, and those are certainly recipes for disaster. So we know that there are problems with that.

You may have also seen that General Motors is laying off 30,000 people in our area. Merck is laying off

7,000 people. The securities analysts are saying they're not sure that that's enough, that Merck has to come back and lay off more people.

We see in the financial services businesses, MBNA and their Bank of America merger, they're talking about 6,000 layoffs.

So there's going to be job contraction, and so the areas where there's an opportunity for job growth are going to be in these areas that are impacted again by this Equal Opportunity Tax Abatement Plan.

We want to ensure that we fully support this. We think this is an enlightened piece of legislation. It's economy-expanding legislation, and it's probably legislation that's long overdue, and we will do anything we can to help you to get to where we all need to be in regard to this Equal Opportunity Tax Abatement Plan.

COUNCILWOMAN BLACKWELL: Thank

you, Mr. Crawley.

Mr. Fullard, are you all right? Do you need to add anything?

MR. FULLARD: I'll just add that we'd just like to thank Councilman Clarke, who always calls on the Chamber to sit on some of the Oversight Committee in his district as the development projects do happen to ensure that not only do we just pass legislation, but there is teeth to ensure that these things happen. And we want to ensure again, as Mr. Crawley said, that it is local-based business that we are looking at Philadelphia first, because we see when these projects are happening and by just looking at this fact sheet that Mr. Glancey has produced for us, to see that it's probably going to be more construction than those two stadiums that were built down in South Philadelphia. So there's going to be a huge amount of opportunity, not only for our contractors but also for people to be employed, too.

But we want to make sure that it is Philadelphia first, not firms that are coming from Ohio, from New York, that will be looked at first just to fulfill some MBEC requirement, but to ensure that these are local people, local firms that have expressed that they want to be involved in these projects.

COUNCILWOMAN BLACKWELL: Thank you very much.

Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair.

First, I'd like to thank the Chamber and its members for providing support for me as a District Councilperson. Given the nature of the district and the aggressive development that's taking place in the neighborhood, it was becoming increasingly difficult for me to kind of monitor the level of activity as it relates to inclusion, and you've been extremely supportive in bringing qualified prime and subcontractors to the table. So I want to thank you all for the wonderful work that you've been providing the citizens of the Fifth Council District.

The other thing is, as you say, that it is extremely important that this particular aspect of the construction boom gets addressed, because it is clear to me in a number of cases, and I referenced to you earlier conversations, that a lot of developers are opting to go the tax abatement route as opposed to the tax increment finance route. The assumption was that they were doing that for financial purposes, but it is also a way to circumvent any requirement to provide an Equal Opportunity Plan and no oversight as it relates to construction activities for minorities and females and disadvantaged.

So I think even more so given the fact that at this particular time is the economic engine as it relates to construction, when you look at a billion dollars in market value in one particular calendar year, worst-case scenario, when you look at the 28 million in taxes that we have foregone, I think worst-case scenario, that would drop by two-thirds to $10 million, and we're still looking at a hundred million dollars over a ten-year period.

So I think that it's clear that we need to be aggressively seeking these other options and making sure that any government subsidy that goes into any development, that we ensure that there is participation from all the citizens of Philadelphia. So I want to thank you so much for your testimony and for your continued support.

MR. FULLARD: Thank you, Councilman.

COUNCILWOMAN BLACKWELL: Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam Chair.

Good afternoon, Mr. Crawley.

I'm asking this only because I can't resist. Has the Greater Philadelphia Chamber of Commerce made any recent contact with the African-American Chamber of Commerce with regard to expanding procurement opportunities to African-Americans, Latinos, Asians, women or other disadvantaged businesses?

MR. CRAWLEY: To the contrary. We have reached out to the Greater Philadelphia Chamber of Commerce starting most directly in February of 2004 when we prepared a report for the Administration having to do with some ideas for economic job growth by including the African-American and other minority communities. We presented that package to the Greater Philadelphia Chamber of Commerce and proposed that they try to harness some of the procurement muscle of the large business community, both within the City and within the region, and have them begin to pay some special attention to making that procurement within the region as a priority and within the minority community as a component of their total buy.

We made that proposal. We sat down with Mark Schweiker and talked to him at length about that, and they were reluctant to move forward on that. So we have not heard from them specifically in that regard for quite a while.

COUNCILMAN GOODE: Thank you.

Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: You're welcome.

Are there further questions?

(No response.)

COUNCILWOMAN BLACKWELL: Thank you, gentlemen.

We will now enter into the -- this part of our hearing will deal with PGW.

We will ask the Clerk to read the title of the PGW bills.

THE CLERK: Bill No. 051136, an ordinance authorizing an amendment of the

Philadelphia Facilities Management Corporation Agreement to extend the repayment period for temporary financing; and

Bill No. 051137, an ordinance constituting the Seventh Supplemental Ordinance to the General Gas Works Revenue Bond Ordinance of 1998; and

Bill No. 051138, an ordinance authorizing, generally, the continued issuance and sale by the City of Philadelphia of Gas Works Revenue Notes of the City.

COUNCILWOMAN BLACKWELL: Thank you.

We'll now call Mr. Vince Jannetti, Director of Finance, to come forward and anyone else; Joe Bogdonavage, Director of Finance for PGW; Black & Veatch consultants, feel free to come forward.

Again, we thank you for your patience and ask that you begin your testimony.

MR. JANNETTI: Good afternoon, Councilwoman Blackwell and members of the Finance Committee. I'm Vince Jannetti, Acting Director of Finance for the City of Philadelphia. With me this afternoon is Joe Bogdonavage of Philadelphia Gas Works and John Achenbach of Black & Veatch. I'm here to testify on behalf of Bill Nos. 051136, 051137 and 051138.

Council Bill 051136 will extend the term of the $45 million loan made by the City to the Gas Works on December 27th, 2000, as amended. The City wishes to extend the repayment period of the loan from August 31st, 2006 to August 31st, 2008.

The loan was necessitated by the Gas Works' cash flow difficulties and long-term financial uncertainty as a result of numerous internal and environmental challenges, including management instability and poor customer service, costly and inflexible labor agreements and failure to receive timely and adequate rate relief from the Pennsylvania Public Utility Commission. The loan enabled the Gas Works to have sufficient cash for operations until the PUC rate relief took effect.

In recent years, stable and effective management, enhancements to customer service and the billings and collection systems, as well as improved labor agreements have contributed to improved finances and cash flows at PGW. As a result of these improvements, we firmly believe that the Gas Works will be able to make a full repayment of the $45 million in fiscal '09 and, accordingly, request an extension of the repayment terms.

Council Bill 051137 will authorize the City to issue Gas Works Revenue Bonds, Sixth Series, from the 1998 General Ordinance in two or more subseries. The proceeds of the Sixth Series Bonds will be used to refinance a portion of the outstanding First Series

B, Second Series A, Third Series, Fourth Series and Fifth Series Bonds in an amount not to exceed 385 million in order to realize significant debt service savings.

Under current market conditions, the net present value of the debt service savings is approximately 14.4 million, or 4.9 percent. The City's policy is to refinance bonds if net present value savings of at least three percent can be achieved.

In connection with the issuance of the bonds, Gas Works is planning to utilize an interest rate swap to capture the savings and take advantage of the low interest rate environment.

In addition, Council Bill 051138 authorizes the extension of PGW's existing Tax-Exempt Commercial Paper Program in an aggregate principal amount not to exceed $150 million. The consortium of banks that provide the credit support have agreed to increase the existing level from the current $100 million to an aggregate principal amount not to exceed $150 million at the same terms and conditions as the existing agreement, which expires in May 2007. We will be offering an amendment to this ordinance.

Finally, as required by Section 8 of the First Class City Revenue Bond Act, Section 4.03(a) of the General Gas Works Revenue Bond Ordinance of 1998, as the Director of Finance of the City of Philadelphia, I am transmitting my financial report regarding the financial viability of the Gas Works system and its ability to repay this additional debt.

This concludes my testimony. I would like to request a suspension of the rules for Bill Nos. 051136, 051137 and 051138 to allow first reading at the next session of Council.

I'd be happy to answer any questions that you may have at this time.

(Pause.)

MR. BOGDONAVAGE: Councilwoman, if you please, I would go on with my testimony.

COUNCILWOMAN BLACKWELL: Thank you.

MR. BOGDONAVAGE: Good afternoon, Councilwoman Blackwell and members of the Finance Committee. I'm Joseph Bogdonavage, Senior Vice-President for Finance for PGW, and I'm here to present some testimony on behalf of the Bills 136, 137 and 138.

Importantly, on the Bill 136, which extends the repayment of the $45 million loan which was originally authorized by Council in 2000, one of the cornerstones of this ordinance is that at the moment, about 18 months ago, the rating agencies that rate PGW's credit were threatening a downgrade, below-investment grade. At that time, the City Administration, and also with the help of City Council, stepped forward with an extension of the $45 million loan so that it would be not repaid now in 2006 but in 2008, and also put on the table the deferring of the $18 million City payment for five years.

These two components, which were approved by the Administration and again addressed by City Council, were cornerstones to the improvement that the rating agencies were looking for to keep PGW's debt above the investment-grade level.

If we were precluded from going into the marketplace at investment grade, we would be greatly, substantially increasing the cost that we would need to borrow funds to provide for our capital improvement program.

We fully expect to repay the $45 million loan, as the Finance Director, Mr. Jannetti, had expressed in his opinion, and furthermore, we are anticipating that with continued improvement in PGW's operations and collections, that we would be able to make maybe an advanced payment somewhere in the vicinity of $2 to $3 million ahead of that as a good-faith effort to show that the company has appreciated the Council action to extend that loan and also that we are fully committed to repaying the loan as due.

In addition, on Council Bill 137, which authorizes the issuance of the Sixth Series Bonds, as you know, we've had unprecedented increases in the price of natural gas after the impact to the Gulf hurricanes. PGW currently has seen about a 75 percent increase in its working capital requirement.

The natural gas that we have purchased over the last three to four months, only 12 months prior to that was in the vicinity of $100 million. Currently, PGW has in an inventory almost $175 million of gas. So we've seen almost a 75 percent increase in our working capital requirements. As a result of that, we were looking to provide additional liquidity, which, again, is one of the cornerstones that the rating agencies have been looking at as a way of measuring PGW's performance.

The Sixth Series Bonds that were outstanding from the 1998 ordinance in totality of about $385 million, if we refund all of those at current market conditions, as Mr. Jannetti had pointed out, it would provide about $14.4 million or roughly 4.9 percent net present value savings, but, more importantly, it would also free up about $10 million of debt service payments to provide additional liquidity this year to help PGW weather the storm on purchasing of inventories and also in the running up of accounts receivable balances by its customers.

In addition to that, we expect to have about $3 million available in debt service savings in 2007. So the majority of the $14 million would be taken in the first two years to improve PGW's overall liquidity.

In addition to that, we will not be extending the life of the transaction beyond its original term, which I think runs out through about 2027.

In addition, one of the things that is required by the ordinance is that a feasibility study be prepared on the PGW system. We do have representatives from Black & Veatch here with us, but, in general, some of the things that the feasibility study is, what is the overall basis of the system, and according to the feasibility report prepared by Black & Veatch, they have recognized that the PGW system as it's organized, operated and maintained is at a level equal to or in excess of any regulatory requirements and generally accepted inventory practices, and, furthermore, that the PGW facilities are in good operating condition.

They also look at contracted gas supplies for customers, and in their opinion, contracted PGW gas supplies, plus the spot market purchases and additional contracted supplies and supplemental gas capabilities that PGW has, are adequate to meet PGW's projected demand on a day, maximum day, a design peak hour and also a design peak year.

In addition, the capital improvement of PGW's infrastructure was looked at, and during the period that they have looked at in the six-year forecast, which runs from 2005 through 2011, their recommendation, along with continued good operation and maintenance practices, will enable PGW's system to maintain in good operating condition, and a review of the present management practices and interviews conducted with senior PGW management indicate that that operation is likely to continue, and, furthermore, that the organization and management of the Gas Works is competently managed and operated as a gas distribution utility.

The second part of their

feasibility study looks at the financial feasibility of repaying the debt, and according to Black & Veatch, the general covenant compliance with our rate covenants, that in their evaluation of the operations through 2005 through 2011 on the basis of actual and estimated future operations of the facilities and assumptions, that it is reasonable to ascertain that the current and future project revenues generated will be sufficient and adequate to pay all the expenses of operation, maintenance, repair and replacement, and provide for fund deposits into the reserve accounts, debt service on these bonds under both the 1975 and 1998 General Ordinance.

If there are further questions involving the feasibility study, we do have, as I pointed out, Mr. Achenbach here from Black & Veatch to discuss that.

One of the things that they have looked at in the evaluation is any changes that have occurred since their last report, which was issued for the Fifth Series New Money Issue Revenue Bonds that were issued last October in 2004, and one of the things that they note is there's been significant improvement in overall liquidity of PGW, which was earmarked by an increase over a two-year period in the collection rate from about 87 percent to just short of 95 percent in 2005.

And just to give you an indication of what that eight percent increase is worth, at about $10 million per point, it means that over the past two years, that PGW has improved its collections by about $80 million. That's in spite of a substantial increase in a number of billings going out to our customers.

In addition to that, their projections are based on analysis that have been done prior to the effects of the hurricanes, and the current gas cost recovery rate that was approved on 2005 does reflect the unprecedented commodity prices that we're paying for natural gas as it's delivered to the Northeast region.

In addition, they have looked at the Phase 1 L&G liquefaction operation and they are satisfied that it is in good operating condition. PGW is currently negotiating final acceptance of that plant with the general contractor.

In addition, one of the other things that has happened since last October, the Gas Works does have a new three-year bargaining agreement with its unionized force. That will stay in effect through May of 2008, and includes wage increases of one percent this past September, three next September, and two and a half in May.

In addition, they also looked at capital improvement expenditures, and we see a reduction in our gas processing area of about $5 million, and as a result of that, the five-year projection of the capital spending has been about where it was in the 2004 report.

In addition, they have also looked at the improved collections that we've seen over the last two years, and it seems to be reasonable to expect that PGW will be able to maintain that over the course of the six-year feasibility study.

In addition, this transaction is also interest-rate sensitive. If this transaction does not close by the probable mid-January time frame, PGW would be at risk for market conditions, and some of the savings that we have identified here could be at risk. So it is interest-rate sensitive, and we expect that hopefully with the Council action timely that we would be able to close this transaction probably by mid-January of 2006, which would then, as I pointed out, free up about $10 million of debt service savings for us in the current year.

In addition, the more critical-mission ordinance that we're looking for is the increase in PGW's current commercial program. Currently, Council had in 2002 authorized that for a five-year period at the $100 million level. Again, as a result of just prudently looking at the liquidity needs of the company, PGW began negotiations with the consortium of banks that support the letter of credit, being JP Morgan, Wachovia Bank and the Bank of Nova Scotia, and as a result of the continued improvement in operations, the banks were willing to come forward and extend another $50 million of liquidity through the Commercial Paper Program after it was authorized by City Council.

One of the other things that we did with the improving condition of the Gas Works is also that the fee structure for the Commercial Paper Program has been reduced, and on an absolute basis, we've saved about 250,000 this year. Depending on the amount utilized of the 150 million, that number could increase to almost 750,000 on an annual basis. So we think it was prudent to go back to the consortium of banks, ask for additional liquidity. They have granted that. And we're also looking, with expedited approval of this ordinance, that we would be able to close on the Commercial Paper transaction sometime in mid-January.

The real critical nature of that is that PGW over the next three to four months has well in excess of $300 million in natural gas bills due. About 95 million will become due around the end of the holiday season this current December, and we think it's prudent that we go out there and try to get as much additional cash flow as possible to assist us in purchasing, as I pointed out, the inventories that will be required to supply our customers. And we think at this point in time, that the improved condition of the Gas Works is one of the reasons we were able to get into the marketplace and get this additional $50 million of liquidity.

Again, this, as I pointed out, is time sensitive, with our gas bills being due in the January time frame of about $100 million. Cash flow right now is very tight, and with the approval of this ordinance, it will give us some flexibility to prudently manage our cash flow over the next two to three months until most of the billings over the winter period have been received and receipts during the late winter and early spring time frame.

That concludes my testimony. If there's any questions, we'd be happy to answer them.

COUNCILWOMAN BLACKWELL: Thank you.

Further testimony?

MR. ACHENBACH: No, ma'am.

COUNCILWOMAN BLACKWELL: Thank you very much.

Are there questions from members of the Committee?

(No response.)

COUNCILWOMAN BLACKWELL: Are there any questions from any other Councilmembers present?

Councilman Nutter.

COUNCILMAN NUTTER: Yes, Madam Chair. Thank you. I'll be brief.

Mr. Jannetti, just a background question on this. When did these transactions start?

MR. JANNETTI: I believe, Councilman, that we got a proposal on this around June or July of this year.

COUNCILMAN NUTTER: When you say you received a proposal, what do you mean?

MR. JANNETTI: A proposal from the underwriter for this transaction.

COUNCILMAN NUTTER: So this was someone's idea to do a refinancing?

MR. JANNETTI: Yes, sir.

COUNCILMAN NUTTER: Is there

anything particularly special about this refinancing? I mean, is it unique, unusual, particularly creative?

MR. JANNETTI: It's a little creative. The Gas Works has a little bit of a difficult credit.

COUNCILMAN NUTTER: Mr. Jannetti, you're saying that PGW is a difficult credit?

MR. JANNETTI: I'm saying that it's a unique credit, I guess.

COUNCILMAN NUTTER: Nice try.

So the idea came in in June, July, and what's been going on since then?

MR. JANNETTI: We've had other proposals, Councilman. We looked into them, weighed them, and this is the one that we decided to move forward.

COUNCILMAN NUTTER: I understand. So you're just reacting to the different ideas that have come in to the shop. Was there an RFP for this or competitive-bid process?

MR. JANNETTI: No, there was no RFP for this.

COUNCILMAN NUTTER: So you got this idea, you got a number of other ideas, you looked at them all, weighed them, and you ended up with the first idea that came in?

MR. JANNETTI: No. We ended up with the idea we thought had the most merit.

COUNCILMAN NUTTER: Okay. Which could have been the first idea that came in.

MR. JANNETTI: Yeah. I'm not sure that it was.

COUNCILMAN NUTTER: All right. And the teams to work on this, when were they put together?

MR. JANNETTI: The team to work on this was put together sometime during the summer. I'd say maybe around the August time frame.

COUNCILMAN NUTTER: And how did you do that?

MR. JANNETTI: There were some recommendations, some requests from the Gas Works for some members, and we picked other members based on their experience with the Gas Works.

COUNCILMAN NUTTER: And, again, was there any advertising about this or an RFP or RFQ or anything like that for any of the team members?

MR. JANNETTI: No, sir.

COUNCILMAN NUTTER: You say the team was put together during the summer?

MR. JANNETTI: Yes, sir.

COUNCILMAN NUTTER: Do you know specifically when?

MR. JANNETTI: No, but I think I probably have something in my office that could tell me that.

COUNCILMAN NUTTER: Summer of '05. And who put the teams together?

MR. JANNETTI: I did.

COUNCILMAN NUTTER: You did?

MR. JANNETTI: Yes, sir.

COUNCILMAN NUTTER: By

yourself?

MR. JANNETTI: With my staff, yes.

COUNCILMAN NUTTER: And was there ever any discussion about either a competitive-bid process or an RFP for this?

MR. JANNETTI: No. Since we had chosen the underwriter based on their proposal, it didn't seem that we needed to do that.

COUNCILMAN NUTTER: And as some of us at least continue to learn more and more about this process, is there something with this transaction called a Bond Purchase Agreement?

MR. JANNETTI: I believe so.

COUNCILMAN NUTTER: Does it currently exist?

MR. JANNETTI: It does not yet exist. It will. It will come out, be formulated in the next couple of weeks.

COUNCILMAN NUTTER: So it doesn't exist presently?

MR. JANNETTI: No, sir.

COUNCILMAN NUTTER: Are there any contracts between the City or PGW and any of the people working on this transaction?

MR. JANNETTI: There is a contract between the Gas Works and Black & Veatch and there's a contract between the City and CDR Financial Products.

COUNCILMAN NUTTER: Who?

MR. JANNETTI: The swap advisor, CDR Financial Products. It's listed on the sheet on -- I don't know if you have the briefing materials. Its chamber is Dunhill & Rubin.

COUNCILMAN NUTTER: In the Frequently Asked Questions sheet or somewhere else?

MR. JANNETTI: There was a briefing book.

COUNCILMAN NUTTER: Oh, the big book?

MR. JANNETTI: Yes.

COUNCILMAN NUTTER: The one

with the nice pictures on it?

MR. JANNETTI: No.

COUNCILMAN NUTTER: Well, don't go searching around for it.

You're so kind. Okay. Thank you. So this is the team that's working on this transaction?

MR. JANNETTI: Yes, sir, except the trustee is not listed. It's Wachovia Bank, and trustee's counsel, which is Wolf Block.

COUNCILMAN NUTTER: Just one question. In terms of the relationship with any of the various team members here, and I know you indicated that the bond purchase contract will be forthcoming -- now, that's between the City and whom?

MR. JANNETTI: It's between the City and the underwriters.

COUNCILMAN NUTTER: And the underwriter is JP Morgan?

MR. JANNETTI: Yes, sir.

COUNCILMAN NUTTER: Now, is

there any agreement between the City and the various counsels related to the transaction?

MR. JANNETTI: No contract, sir.

COUNCILMAN NUTTER: No contract?

MR. JANNETTI: No.

COUNCILMAN NUTTER: Let me ask this question: If everyone does what they're supposed to do here and you don't have a contract with bond counsel, if for some reason they don't get paid, do they have no recourse? I mean, is there no enforceable contract?

MR. JANNETTI: When you say they don't get paid, is that because we didn't close the transaction?

COUNCILMAN NUTTER: No. Say you close the transaction, everybody performed their work, everyone did what they were supposed to do and for some reason they don't get paid. They don't have a contract, so they have no recourse?

MR. JANNETTI: I don't know if I can -- I think Mr. Dutchie would answer that for us.

MR. DUTCHIE: Good afternoon, Councilman. I'm Francois Dutchie, Divisional Deputy City Solicitor, Financing Contracts Division.

I believe the answer to your question is, the underwriters would have a claim in what's known as quantum meruit. Essentially it's an equitable action to receive payment for the services that they've provided.

COUNCILMAN NUTTER: You're talking about the underwriters?

MR. DUTCHIE: Your question was about bond counsel, I believe, or the other counsel on the transaction.

COUNCILMAN NUTTER: They would have a claim for what?

MR. DUTCHIE: Quantum meruit. It's --

COUNCILMAN NUTTER: I did not

go to class that day at law school, so you'll have to put that one in English.

MR. DUTCHIE: Again, it's an equitable claim where a party is claiming that they have provided services and that the party for whom they've provided the services would be unjustly enriched by those services if they are not paid.

COUNCILMAN NUTTER: You've had discussions with these firms about providing various services. Would this qualify in the context of an oral contract?

MR. DUTCHIE: That is an argument that you could certainly make, yes, that there is an oral contract.

COUNCILMAN NUTTER: So even without a document, you've agreed on a certain set of services, you've talked about money, services have been provided. At some level, you do have a contract?

MR. DUTCHIE: At some level, there may be a contractual relationship.

COUNCILMAN NUTTER: What's the

likelihood of success if someone performed all these services and we didn't pay and -- what was that term again?

MR. DUTCHIE: Quantum meruit.

COUNCILMAN NUTTER: Quantum meruit.

MR. DUTCHIE: Sorry. We're lawyers. We do that.

COUNCILMAN NUTTER: No. I understand that. I took Latin, but I didn't have that one.

So it's a form of a contract. And would they be successful in such a claim?

MR. DUTCHIE: It's not a contract claim. It's actually an equitable claim.

COUNCILMAN NUTTER: Would they be successful in that kind of action?

MR. DUTCHIE: I'm not a judge, but I think they would have a very strong claim.

COUNCILMAN NUTTER: Okay.

Thank you very much. I appreciate this. This has been quite enlightening. Thank you.

Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: Thank you. You're welcome.

Before we end this part of our hearing and enter our stated meeting, would you have a little discussion on the amendment so that people will understand what we'll be dealing with?

MR. DUTCHIE: Yes. Madam Chair, we've passed up to the Committee -- I believe everyone has a copy -- an amendment to Bill No. 051138, which is an amendment to Article 8, which essentially provides for an amendment to the management agreement between the City and PFMC. The management agreement currently has a ceiling of $100 million on temporary financing, which would include the Commercial Paper Program. We are seeking to amend the management agreement to make it consistent with the ordinance that's been presented so that the ceiling would be increased to $150 million.

COUNCILWOMAN BLACKWELL: Thank you.

Councilman Nutter, you had a question?

COUNCILMAN NUTTER: I'm just listening to the testimony. I saw the amendment. Thank you, Madam Chair, and I'll be brief again.

I'm only, I guess, raising the question that if there was a $100 million limit in the management agreement, as this bill came in, it seemed to be about a borrowing, and I would just ask if someone could answer the question: Can you amend the management agreement, which was approved by ordinance, in the middle of a financing bill, whose title on quick reading would seem to be more about a financing as opposed to making an amendment to the management agreement?

MR. DUTCHIE: Well, Council

would be amending the management agreement by ordinance, by this particular ordinance.

COUNCILMAN NUTTER: I understand that.

MR. DUTCHIE: And the title of the ordinance does include the provision for amendments and modifications to the ordinance.

COUNCILMAN NUTTER: Right. Well, I guess you're right on the edge of a wonderful technicality.

Is there anything in the title that would seem to indicate that the management agreement, which has a name and is often referred to by ordinance, is also proposed to be amended in this bill? I mean, we've amended the management agreement before in a legitimate bill that was for the purpose of amending the management agreement.

MR. DUTCHIE: Well, Councilman, first, there is actually not a requirement that the management agreement be amended in order for this particular ordinance to pass. It's essentially an accommodation that we're making here by doing this.

COUNCILMAN NUTTER: I thought your comment earlier was that there was something in the management agreement that only allowed for a certain level of note to be outstanding at any point in time.

MR. DUTCHIE: The current version of the management agreement states that the temporary financing is to be up to $100 million.

COUNCILMAN NUTTER: Right. And this bill is for 150, correct?

MR. DUTCHIE: That's correct.

COUNCILMAN NUTTER: And the purpose of this proposed amendment is to make an adjustment?

MR. DUTCHIE: Is to make an adjustment to the management agreement.

COUNCILMAN NUTTER: And the only --

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MR. DUTCHIE: And to the ordinance authorizing the Commercial Paper.

COUNCILMAN NUTTER: But the only way you can amend the management agreement --

MR. DUTCHIE: Is by ordinance.

COUNCILMAN NUTTER: -- is by ordinance.

MR. DUTCHIE: That's correct.

COUNCILMAN NUTTER: I'm only suggesting to you that the quick reading of this title and what appeared to be the initial purpose of this bill coming in was about debt, and now we have an amendment coming in that seeks to amend the management agreement, with nothing in the title indicating that that's the purpose of the bill.

I mean, if you could tell me that there was something in the title that said that --

COUNCILMAN GOODE: Point of information.

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COUNCILMAN NUTTER: -- other than the catchall phrase, which we know is virtually --

COUNCILWOMAN BLACKWELL: Excuse me, Councilman. We have a point of information on the table.

Councilman Goode.

COUNCILMAN GOODE: I actually understand your point. I think that the original purpose of it was not necessarily to amend the agreement, but I do think this is very broad language at the end which probably covers it. It's extremely broad.

COUNCILMAN NUTTER: It's about as broad as you can get.

COUNCILMAN GOODE: For it to say "and providing for amendments and modifications" I think probably does cover it.

COUNCILMAN NUTTER: Yes. Yes.

COUNCILWOMAN BLACKWELL: And we have had agreements, am I correct, gentlemen and ladies, we have agreement by PGW, the Commission, all the lawyers from all sides?

MR. DUTCHIE: That's correct.

COUNCILWOMAN BLACKWELL: That's correct. Thank you.

COUNCILMAN NUTTER: No. I understand. I'm only raising the issue in the context that generally when we have amendments to the management agreement between the City and PFMC, they usually come in that way, and there would be the full notice that that's what the case is.

I understand the issue and the purpose and there's a timing issue, and Councilman Goode is absolutely correct, generally what we see is either this language or "all under certain terms and conditions," which is another wonderful way of getting some things done.

It's a question. I just raised the question. You gave us an answer. Thank you.

Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: Thank you, Councilman.

Any other questions?

(No response.)

COUNCILWOMAN BLACKWELL: This will end our hearing, and we will enter the stated meeting.

The Chair recognizes Councilman Ramos, who is also a co-sponsor of this bill, to report out Bill No. 040470.

Councilman Clarke, do you want a suspension of the rules on your bill?

COUNCILMAN CLARKE: No.

COUNCILWOMAN BLACKWELL: The Chair recognizes Councilman Ramos for the purpose of reporting out of Committee Bill No. 040470 with a favorable recommendation.

(Councilman DiCicco entered Council Chambers.)

COUNCILMAN RAMOS: The Chair thanks Councilman DiCicco for being here as well.

COUNCILMAN DICICCO: You're

welcome.

COUNCILMAN RAMOS: Thank you, Madam Chair. I move that Bill No. 040470 be reported out of Committee with a favorable recommendation. I further move that the rules --

COUNCILWOMAN BLACKWELL: No suspension is required I think the Councilman said.

COUNCILMAN RAMOS: No suspension, okay.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: It has been properly moved and seconded that Bill No. 040470 be reported out of Committee with a favorable recommendation.

All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Opposed?

(No response.)

COUNCILWOMAN BLACKWELL: The ayes have it and so the bill passes.

Councilman Clarke, would you like to report out your other bill that is co-signed by Councilman DiCicco, Councilman Ramos, Councilman Goode on both and others?

COUNCILMAN CLARKE: Yes.

COUNCILWOMAN BLACKWELL: The Chair recognizes Councilman Clarke with regard to reporting out Bill 050303 with a favorable recommendation.

COUNCILMAN CLARKE: Thank you, Madam President. I move to report Bill 050 --

COUNCILMAN GOODE: There's an amendment.

COUNCILWOMAN BLACKWELL: I'm sorry. Thank you, Councilman Goode.

We will now ask Councilman Clarke for the adoption of an amendment to Bill No. 050303.

COUNCILMAN CLARKE: Madam Chair, actually, what I would like to do, because we anticipate that there will be probably two other amendments, I'm just going to ask that it be reported out of Committee, and then we will amend it on the second reading.

COUNCILWOMAN BLACKWELL: Thank you.

COUNCILMAN CLARKE: Given the nature of the bill, it's not something that we can enact immediately, and I want to make sure that the amendments are the appropriate amendments based on the conversations that we had today. There are a couple of things that we need to massage. So I'll just wait and we'll do them all.

COUNCILWOMAN BLACKWELL: All right. Then we will call on you for purposes of reporting the bill out.

COUNCILMAN CLARKE: Madam Chair, I make a motion that Bill 050303 be reported out of Committee with a favorable recommendation, no request for rules suspension.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: It has

been moved and seconded that Bill No. 050303 be reported out of Committee with a favorable recommendation.

All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Opposed?

(No response.)

COUNCILWOMAN BLACKWELL: The ayes have it and so the bill passes.

The Chair recognizes Councilman Goode with regard to Bill No. 051136.

COUNCILMAN GOODE: Thank you, Madam Chair. I move that Bill 051136 be reported out of Committee with a favorable recommendation and the rules of Council be suspended so as to permit first reading at our next Council session.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: It has been moved and seconded that Bill No. 051136 be reported out of Committee with a favorable recommendation and, furthermore, that the rules of Council be suspended so as to permit first reading at our next session of Council.

All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Opposed?

(No response.)

COUNCILWOMAN BLACKWELL: The ayes have it and so the bill passes.

The Chair recognizes Councilman DiCicco with regard to Bill No. 051137.

COUNCILMAN DICICCO: Thank you, Madam Chair. I move that Bill No. 051137 be reported out of Committee with a favorable recommendation and a further recommendation that the rules of Council be suspended.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: Thank you. It has been moved and seconded that Bill No. 051137 be reported out of Committee and that the rules of Council be suspended so as to permit first reading at our next session.

All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Opposed?

(No response.)

COUNCILWOMAN BLACKWELL: The ayes have it and so the bill passes.

The Chair recognizes Councilman Goode with regard to Bill No. 051138.

COUNCILMAN GOODE: Thank you, Madam Chair. I move the amendment to Bill 501338 be approved.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: It has been moved and seconded that the amendment to Bill No. 051138 be adopted.

All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Opposed?

(No response.)

COUNCILWOMAN BLACKWELL: The amendment is adopted.

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The Chair now recognizes Councilman Goode for a motion with regard to the bill as amended.

COUNCILMAN GOODE: Thank you, Madam Chair. I move that Bill 051138 as amended be reported out of Committee with a favorable recommendation, that the rules of Council be suspended so as to permit first reading at our next Council session.

(Duly seconded.)

COUNCILWOMAN BLACKWELL: All in favor will say aye.

(Aye.)

COUNCILWOMAN BLACKWELL: Therefore, Bill No. 051138 will be reported out of Committee with a favorable recommendation and, furthermore, the rules of Council will be suspended so as to permit first consideration at our next session of Council.

That ends our session. I would like to say thank you to all who are here. Thank you to Committee members. Thank you, Councilman Nutter, and all else who are in the audience.

Thank you, Mr. Spearman. We see you there. Thank you for coming.

(Committee on Finance adjourned at 4:10 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on December 7, 2005, and that this is a true and correct transcript of same.

____

MICHELE L. MURPHY
RPR-Notary Public

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