



Special City Council Meeting - Wednesday, December 27, 2017, 6:00 pm, Contois Auditorium, City Hall 12/27/2017

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF SPECIAL MEETING

December 27, 2017

MEMBERS PRESENT: Jane Knodell (Council President) – Central District

David Hartnett – North District

Joan Shannon – South District

Richard Deane – East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2 [via telephone]

Sara Moore – Ward 3

Kurt Wright – Ward 4

William "Chip" Mason – Ward 5

Karen Paul – Ward 6 [via telephone]

Ali Dieng – Ward 7

Adam Roof – Ward 8

ADMINISTRATION: Miro Weinberger, Mayor [via telephone]

Beth Anderson, Interim CAO

Rich Goodwin, DFO

Eileen Blackwood, City Attorney

Brian Lowe, Mayor's Office

Katie Vane, Mayor's Office

Lori Olberg, C/T



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Amy Bovee, C/T

OTHERS PRESENT: Raphine O'Rourke
David Lansky
Dean Carron
Soveig Overby
Paco DeFrancis
Charlotte Dennett

1.0 CALL TO ORDER and AGENDA

City Council President Knodell called the special meeting to order at 6:35 PM on December 27, 2017 and led the assemblage in the Pledge of Allegiance

1.01 Agenda

MOTION by Councilor Roof, SECOND by Councilor Hartnett, to approve the agenda with the following amendments:

- **Add information to Item 1.02 (Asset Purchase Agreement Presentation)**
- **Add Exhibit A (Reserve Rights of Use Agreement), Exhibit B (Church Street Lease Provisions), and Exhibit C (Memorial Auditorium Lease Provisions) to Item 3.01 (Asset Purchase Agreement)**

VOTING: unanimous; motion carried.

1.02 Presentation: Asset Purchase Agreement for Sale of BT

City Attorney Blackwood and attorney O'Rourke reviewed the redline copy of the agreement that includes additional changes negotiated on the limited rights agreement (reserves some fiber for the smart city initiatives), terms of the Church Street lease, and terms of the Memorial Auditorium lease. Disclosure schedules are being prepared. The Asset Purchase Agreement and exhibits need to be signed by 12/31/17 and if accepted by Blue Water then the city has directed the sale and is entitled to 50% of the proceeds to be shared with Citibank. There is still much work to do to complete the sale, sign, and transfer documents. In addition, Public Utility Commission approval is needed. The city, Blue Water, and Schurz will present an application to the Public Utility Commission.

Councilor Bushor referred to Item 1 in Exhibit A and asked if fiber to a department in the city can be done. Attorney Blackwood said the city will have a five year service agreement with BT for services provided to the city. The agreement recognizes fiber in support of smart cities. Councilor Bushor asked if a new department created under BT is covered by the agreement. Attorney Blackwood said no. Councilor Bushor asked about liability insurance. Attorney Blackwood said IP liability is limited to smart cities.



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Councilor Mason asked about due diligence and the ability for Schurz to walk away. Attorney O'Rourke said the agreement really does not allow Schurz to walk away. Councilor Mason asked about Article 8 highlighting purchase price, protections for the city, and any breaches. Attorney O'Rourke said Article 8 addresses BT employees offered employment, how the new BT is managed (seven member board of directors; city elects one member), capital improvements, access to buildings on school property, rent for Memorial Auditorium and Church Street, funding for BTV Ignite programs and high school programming (\$250,000 per year for 10 years), maintaining the Lifeline program, restriction on resale, city purchase of stock/assets from Schurz, purchase of up to 33% of voting interest of buyer, Rights of Use Agreement, support of ways to reduce digital divide, maintaining BT covenants of privacy, residential and commercial services as currently offered, maintaining broadband rates for five years, net neutrality provision, and doing business as "Burlington Telecom". If provisions of Article 8 are violated the city can go to court and have the judge order compliance. Councilor Mason confirmed Schurz and the new LLC guarantee the provisions of Article 8.

Councilor Wright asked the timeline for the city to increase its percent of share. Attorney O'Rourke said the city has a year or 60 days after the CPG whichever is the later to decide. Councilor Wright asked when the seven member board will be settled. Attorney O'Rourke said when the deal is closed. Councilor Wright asked how to get a second member on the board if the city has a 33% share and the board is already in place. Attorney O'Rourke said that will be covered in the operating agreement with the buyer.

Council President Knodell asked if the membership interest share can change over time. Attorney Blackwood said once the city elects what its share will be the Public Utility Commission controls who becomes the buyer. Whatever the city decides in the agreement is what the share will be for that time period. An operating agreement has not been negotiated with minority shareholder rights. Council President Knodell noted it is urgent to get the analysis done to know what is required for the city to get up to one third share since that must be decided within six to 12 months.

Councilor Bushor asked if the operating agreement is a standalone. Attorney Blackwood said the Public Utility Commission must approve anyone with greater than 10% ownership. If the city is a minority owner then the operating agreement is considered. If the city elects to have no carried interest or not be involved further than the operating agreement is not involved. Attorney O'Rourke added the operating agreement is the governing document for the buyer entity. Article 8 has the protections the city most wanted.

Councilor Moore asked the timeline if the city elects to retain ownership. Council President Knodell said as soon as possible is the timeline. Attorney O'Rourke said application will be filed with the Public Utility Commission within 60 days from the day the agreement is executed.

Councilor Deane asked if there is any language in the agreement that limits a decrease in rates. Attorney O'Rourke said there is a cap on rates, but no limit on reducing rates.



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Councilor Dieng asked if there is language to prevent the sale of BT by Schurz, and suggested there be a 10 year commitment not to sell. Attorney O'Rourke referred to Sections 8.07 and 8.08 in the agreement that say BT will not be sold to someone with a controlling interest of 75% market share. Schurz would not agree to language preventing a future sale, but the city has first right to buy back which is good protection.

Councilor Roof asked for an explanation of Section 8.05. Attorney Blackwood said the net neutrality language was reviewed by an attorney in Washington, DC. Added definitions include:

- paid prioritization
- end users
- edge providers
- broadband
- broadband internet access services

The city will have rights as a minority owner to look at what BT is doing in terms of net neutrality.

Councilor Shannon asked if ZRF is obligated to participate. Attorney O'Rourke said language was added with respect to ZRF in areas where ZRF has participatory interest. ZRF's financial investment is not known at this time.

2.0 PUBLIC FORUM

Public forum was opened at 7:30 PM.

COMMENTS

- David Lansky, KBTL board member, spoke of disparities and decision by City Council serving to increase disparity of wealth and income rather than reduce it. City Council should consider postponing the decision on BT to make a better one.
- Dean Carron asked City Council not to give away in a fire sale a \$60 million asset that will be a \$500 million asset. BT is a successful, local communications utility that thrived because the public loves it. Mr. Carron said he is stunned by the lack of adherence by City Council to process and destruction of a neighborhood. Businesses depend on BT. Future economics depend on BT. Creativity is intertwined with BT and City Council is giving it away for no reason. It is to be seen whether the Public Utility Commission can detect any shred of public interest in what City Council is about to do.
- Solveig Overby expressed concern City Council has not said more time is needed to review the documents and it is unconscionable City Council is asked to make a decision in this way. It is disturbing and heartbreaking that City Council let this go to this point without public process. The decision should be postponed to allow time to read the documents.
- Paco DeFrancis urged City Council to move forward with a great framework to preserve BT. It will be a game changer for Chittenden County if BT expands as is intended. The decision shows Schurz is the right choice for the taxpayers, for telecom subscribers, and for the businesses in Burlington.
- Charlotte Dennett expressed concern about the media and propaganda. The new owner should be asked if programming will change with new ownership.

There were no further comments. Public Forum was closed at 7:45 PM.



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3.0 DELIBERATIVE AGENDA

3.01 Asset Purchase Agreement for Sale of Burlington Telecom

MOTION by Councilor Wright, SECOND by Councilor Hartnett, to waive the reading and adopt the resolution on the Asset Purchase Agreement and exhibits for the sale of Burlington Telecom.

DISCUSSION:

- Councilor Wright said BT employees feel Schurz is a good company that will move BT forward. The KBTL bid did not work financially. Good customer service and programming will continue at BT under Schurz. Schurz has capital and experience in fiber to home buildout. Schurz is big on local economy. Hiawatha Broadcasting will be an advantage to Burlington as well. The city will learn best practices. Schurz will invest in the community and maintain broadband prices for five years.
- Councilor Hartnett said no one wanted to sell BT, but the city did not own BT. City Council worked hard and did the best that could be done with the KBTL bid, but it did not work out. Schurz Communications is committed to the values of Burlington and gives the best opportunity for local control. Schurz truly wants a partnership with Burlington. BT was to be sold either by the city or Blue Water. City Council did a tremendous amount of work to find the best partner for the City of Burlington.
- Councilor Bushor said past decisions were made with BT in hopes of turning the corner, but the payments on significant debt could not be made and help was needed before the entity was lost to Citibank. Blue Water helped, but with criteria. The city has tried to keep the entity alive and select the best buyer. How to maximize the investment in the entity and have as much control as possible needs to be determined in order to reap the benefits of the success of reinvesting in the community and how the entity will continue to make the city vibrant and creative.
- Councilor Bushor asked if the agreement addresses programming changes. Attorney O'Rourke said Section 8.11 speaks to offering programs to provide internet access and Section 8.13 says the same services will be offered including more advanced products and services. The list of existing program channels is attached to the agreement. Attorney Blackwood said it is doubtful Schurz will commit to providing the same programming because there are pricing changes on programs that Schurz does not control. It would be difficult to include a guarantee of programming in the agreement. There is some guarantee in programming with carrying public access channels.
- Councilor Moore observed there is not another option that City Council will support so it is important the city get the most proceeds back.
- Councilor Mason pointed out the city was facing federal court if a sale was not made. The city never owned the asset. The deal before City Council provides much good to the city, financially and with telecom service, and is a success, not a failure.
- Councilor Paul spoke of how far the city has come with the BT situation, from being on the verge of losing BT to a much better place now. BT employees are in support of Schurz ownership. KBTL board members are disappointed, but want to move forward and see BT thrive. City Council should be united in the vote.
- Councilor Shannon spoke of past decisions by City Council in figuring out the path forward. The company chosen got the city out of litigation and will provide benefit to the community. Nothing better will come with a vote against the agreement and other opportunities will open up with moving forward.
- Councilor Tracy said the deal leads to a loss of local control and is not in the long term best interest of the city.
- Mayor Weinberger said this is the last step on the long path to resolving the worst financial crisis in the city's



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history in a positive and forward looking manner. The agreement will bring much to the city. The city looks forward to working with Schurz.

- Councilor Dieng said a city cannot be run based on fear. All the agreements should be simple documents and City Council should have had time to look at the documents in order to make the decision. The best choice in protecting net neutrality is not giving the company to another entity. Voting "yes" is not being true to the people. To build a sustainable company starts with taking the asset in your own hands.
- Councilor Wright said Schurz is the most capitalized, most experienced, most likely to be a long term owner, and most likely to keep BT. Regarding political motivations by City Council, every city councilor has the best interest of the city at heart, and though there may be disagreements, there is confidence that all city councilors are working in the best way possible to get the best result.
- Councilor Hartnett recognized the work of the Mayor with Schurz to do the best for the taxpayers of Burlington. City Council was thanked for the leadership.
- Council President Knodell said going forward City Council will have to decide to reinvest and how much. The city should have continued ownership and the voice that brings. Schurz with the ZRF partnership represents real opportunity to create an inclusive local tech economy which is essential to the future as a city.

There were no further comments.

VOTING (by roll call): Councilor Hartnett – aye, Council President Knodell – aye, Councilor Deane – aye, Councilor Shannon – aye, Councilor Bushor – aye, Councilor Moore – aye, Councilor Wright – aye, Councilor Mason – aye, Councilor Paul – aye, Councilor Roof – aye, Councilor Tracy – nay, Councilor Dieng – nay (10 ayes, 2 nays); motion carried.

4.0 ADJOURNMENT

MOTION by Councilor Hartnett, SECOND by Councilor Roof, to adjourn the meeting. VOTING: unanimous; motion carried.

The meeting was adjourned at 8:45 PM.

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