



Regular City Council Meeting - Monday, November 27, 2017, 5:30 pm, Contois Auditorium, City Hall 11/27/2017

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

November 27, 2017

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

David Hartnett – North District [arrived 6:52 PM]

Joan Shannon – South District

Richard Deane – East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2

Sara Moore – Ward 3

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5

Karen Paul – Ward 6

Ali Dieng – Ward 7

Adam Roof – Ward 8

ADMINISTRATION: Miro Weinberger, Mayor

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

Amy Bovee, C/T

Scott Gustin, Planning & Zoning





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OTHERS PRESENT:

Raphine O'Rourke

Representative(s) from Ting

Representative(s) from KBTL

Representative(s) from ZRF

Representative(s) from Schurz

Gary Evans, HBC

Al Matson

Russ Scully

John Callow

Kelly Devine

Jeff Boussus

Ann Barton

Abby Tycauki

Barbara Wynroth

Carolyn Bates

Drew Baker

Richard Bragg

Alan Turnbull

Charles Simpson

Robert Backus

Lynn Martin

Dean Carren

Eric Mayer

Alexander Friend

Michael Long

Caryn Long

Steve Goodkind





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Brian Pine
Chris Trombley
Lauren Glenn Davitian
Donna Powell
July Sanders
Paco DiFrances
Stephanie Sequino
Kit Andrews
Brian Wates
Char Dennett
Molly Fleming

[Note: Minutes reflect the order of the published agenda.]

1.0 CALL TO ORDER and AGENDA

City Council President Knodell called the meeting to order at 5:45 PM on November 27, 2017 and led the assemblage in the Pledge of Allegiance

1.01 Agenda

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

- **Add information to Item 4.12 (Solveig Overby Sale of Burlington Telecom)**
- **Add information to Item 4.13 (Solveig Overby Summary of Proposals)**
- **Add information to Item 5.11 (Adoption of Official Flag)**
- **Revision to Item 5.09 (Voting Process)**

VOTING: unanimous; motion carried.

2.0 WORK SESSION: City Council Q&A on BT Bidders

The following was discussed during the work session with City Council, Schurz, ZRF, and HBC;

- Explain the merger proposal between Schurz and ZRF and the role of Hiawatha Broadband Communications (HBC).
- Todd Schurz explained when the companies were invited back into the bid process Gary Evans formerly with HBC



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suggested a possible joint venture between Schurz and ZRF that would take the best of the two offers and address the issues raised. Schurz expects to acquire HBC and it is expected there to be equal sharing between the entities. Faisal Nisar, ZRF, said ZRF heard what was liked and not liked about the proposals and there was discussion with Schurz on how to combine solutions to offer the best of options and more options to Burlington. ZRF will work with HBC and Schurz. The management teams of both companies will decide how to work together. The companies have the same vision as BT and will be collaborating in terms of technology, economy of scale, products and services. There will be access to HBC knowledge and resources through Gary Evans and Schurz. Gary Evans, HBC, said it has been a long standing dream to have collaboration between HBC and Schurz. Schurz and ZRF will work well together and the synergy will be beneficial to all.

- What are the views on maintaining net neutrality given the FCC decision?
- Faisal Nisar said there is a supplement to the Letter of Intent that outlines the commitment to net neutrality. The internet should be open, privacy respected, and all traffic treated the same. These are the principles agreed to and committed to be in the contract.
- Explain the valuation offer price of \$25 million.
- Faisal Nisar said ZRF is the financial investor investing in the company in a stand-alone basis. There is only the Burlington plan, and there is more than just money involved in the bid. There is also the tech innovation fund and job training program.
- Explain the Schurz/ZRF offer of \$250,000 per year for seven years to invest in the community plus \$50,000 for tech ed making up the difference in the Ting offer which is \$7.2 million greater plus \$250,000 per year indefinitely.
- Faisal Nisar said the proposal has merit for startups and tech redevelopment. ZRF plays a catalyst role to have a vehicle where money can be raised and invested.
- How long does the Right of First Refusal remain?
- Faisal Nisar said 30 days, but the city processes will be accommodated as long as commercially reasonable.
- What are the upper limits of the length of time for Right of First Refusal?
- Faisal Nisar said up to 90 days. Beyond that more discussion would be needed. To clarify, the Right of First Refusal decreases the value of the business in which BT will be a partner.
- Was KBTL contacted for a joint proposal?
- Todd Schurz said no one reached out to Schurz and Schurz did not reach out to anyone else. Faisal Nisar said this is an appropriate question for KBTL. ZRF is open minded. There have been discussions in the past.
- Is the investment of \$1.75 million into the community for seven years it?
- Faisal Nisar said this is the start of a partnership. The strength of community relations will drive network penetration. Network penetration will drive business performance. The more the business does better the more the business will put money into the community. Fundamental assumption of the proposal is this is a good business and if done right by the customers that drives business. There may be a huge startup, but this will not be known without trying. Any investor must share Burlington's values.
- If the value of the company decreases after seven years will the investment of \$1.75 million go down and will the name "Burlington Telecom" remain?
- Faisal Nisar said the name will remain. Todd Schurz added the local brand has great will in the community. Faisal Nisar stressed there is only one plan, one investment: BT and the people of Burlington. If a good job is done then BT will take care of itself. With the partnership if in five or 10 years Schurz wants to buy the company that will be through a competitive process and at a market value price. There will be years of diligence on Schurz to see if values are shared.
- What else is in the offer besides cash without equity share, and if residents had the desire for an equity share could that be exercised and is there a limit to how long the offer stands?
- Faisal Nisar assured they will stand behind the value for shareholders at closing so the ability for the city to retain equity goes up. The laws for qualified local investors will be followed.
- Does the opportunity for equity share exist for the city for a period of time after the partnership is formed?



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- Faisal Nisar said they are open minded to that provided the city is allowed by law. The city can invest and buy equity.
- Speak to experience laying fiber to home and running BT.
- HBC and Schurz have experience. Gary Evans will be on the BT board of directors. Gary Evans said Hiawatha Broadband is recognized as the first and one of the best over-builders in the country. The legacy is based on doing the right thing. Customer service is the mindset. The team is fully committed to providing the best service that can be offered. HBC roots were sown in 1990. The internet was a military device at that time. HBC was the first small town internet provider in the country. The honors and accolades speak for themselves. Whatever has been learned in the past 27 years will be at BT's disposal. Schurz has been in business for 145 years. There is a lot of experience at the table and proof of knowing how to run a telecom company and architect fiber to home infrastructure. The skills, experience, network, and contacts are being brought to BT. These are valuable and more important than the dollars. The location of BT makes it a valuable instrument. Laying fiber is one part of the equation. Finding resources is another part of the puzzle and Faisal Nisar is best at finding resources.
- Community investors must be qualified equity investors with a minimum net worth.
- Faisal Nisar said they are not looking for investors, but are open-minded to this. If there are local investors they must meet the financial requirements per the law.
- What protects BT from sale to a charter or Time Warner?
- Faisal Nisar said there is control by a private company that is in private hands. The judgement has to be of whether there is alignment of interests. Any buyer of BT at any point must be a buyer of the values and how the city chooses to work with its telecom provider. The city has the Right of First Refusal. If the city wants to partner then there has to be reasonable common ground.
- The city will have one board seat if there is carried interest and no board seat if there is no carried interest. The protection against a sale is the Right of First Refusal for 90 days.
- Faisal Nisar said anyone who is an investor does not have a seat on the board. Schurz will not have a vote on a sale. If the community does not want the buyer then the buyer will not buy BT. No one will be here if not welcomed. ZRF is a general partner and will make a decision on the sale. The city has a decision at the board level and as a shareholder. The city has shares to vote. ZRF is the voting bloc, Schurz is not and does not get a vote. The city votes at the board level and shareholder level. The city has 20% share.
- Who are the other shareholders with a vote?
- Limited partners in the GP/LP structure do not get a vote. ZRF is the general partner (GP) and will vote on behalf of its investment. The GP controls the vote. The city controls its vote. If Citibank wants to convert it will vote its shares. If Blue Water wants to convert it will vote its shares.
- What is dividend recapitalization and is there a commitment to the city recapping some of its investment without taking principal?
- Todd Schurz said there are other ways the city can get liquidity in a shorter window. The offer from ZRF and Schurz is an all equity offer. There is no debt on BT with the offer. If BT continues its growth the business will generate sufficient cash and be attractive to lenders. BT could go into the debt markets and put some debt on the entity with distribution to all the shareholders, but this is not the right time. Best use of the funds right now is to reinvest in the business. Also there is not sufficient cash flow right now to be a competitive process with a lot of lenders. One of the benefits of an all equity deal and maintaining ownership is to take on debt and share across shareholders. The company should not be burdened with too much debt right now and starve the business and growth opportunities to take money off the table. A three to seven year timeframe is reasonable, but cannot be said definitively because businesses change, debt markets change. There may be great growth opportunity. The company will be run conservatively and grow at some point to take debt. The right thing will be done by the business first.
- The model as an equity investor is to sell shares of the company within five to seven years seems to be at odds with running the business conservatively.
- Faisal Nisar said the company will not take financial risks and will spend the money that is there, live within the budget, grow, build to the plan, be fiscally responsible outside Burlington (if there is demand then build). Gary Evans



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said HBC had 60% penetration in a community before putting a shovel in the ground. The company will go where wanted in the greater Burlington area by pre-selling to ensure success before spending dollar one.

MOTION by Councilor Bushor, SECOND by Councilor Hartnett, to amend the agenda to advance Item 5.07 (Public Hearing on Roadway Acceptance Request) and Item 5.08 (Staniford Farms Conveyance). VOTING: unanimous; motion carried.

3.0 PUBLIC FORUM

Public forum was opened at 7:38 PM.

COMMENTS

- John Callow commended City Council and the community on the BT process. There was robust debate among the passionate electorate because the community cares. Burlington needs to look for a partner that shares the city's long term view and brings a variety of tools to the table. Ting/Tucows rises to the top and is well capitalized with lots of experience and a long term strategy for Burlington. Ting wants to grow the asset and is focused on promoting Burlington as a future hub for economic activity in a digital economy. Ting has the support of BT staff and is the highest cash offer.
- Jeff Boussus spoke in support of Ting because the KBTL bid and co-op has too much uncertainty. The decision must be of the head, not the heart.
- Ann Barton, Ward 4, urged City Council to do the fiscally responsible choice and support Ting with the best offer to the city and to protect the city from further legal action. Make a decision with your head, not your heart.
- Abby Tycauki delivered comments on behalf of Sean Kyo, BT employee, and the valuable services provided by BT employees. The vote should not be made solely on numerical recovery of funds.
- Barbara Wynroth, BT member, urged keeping BT in Burlington. The community is behind keeping BT in Burlington.
- Carolyn Bates, Ward 5, said KBTL has lots of support and will be transparent. KBTL will not let BT fail. Conservative projected long term monetary return of BT under KBTL in 10 years is \$11.1 million profit and \$180 million in 50 years. The present BT forecast says \$26.1 million in 10 years and \$283.9 in 50 years. The schools need millions of dollars. Memorial Auditorium should not be left unattended. Profit from BT should stay local and put back into city hall.
- Kelly Devine, BBA, said Burlington business customers have concern with the low rating of Schurz customer service and the pricing is not as competitive. The solution needs to help set up Burlington to be a leading edge technology city in the future. Support Ting.
- Drew Baker, UVM student, Ward 3, spoke in support of keeping BT local. Students have concern with rolling back net neutrality. KBTL will protect the residents and keep net neutrality.
- Richard Bragg said net neutrality is over and the state will not have the right to set up its own rules. Commercial ISPs must set up slow lanes. The only voice is through a cooperative. Support KBTL.
- Alan Turnbull spoke in support of KBTL, keeping BT local, and husbanding the resources the city invested in BT for the benefit of Burlingtonians into the future.
- Charles Simpson urged maintaining local control and access to the internet in light of the loss of net neutrality. Vote to maintain the Burlington difference.
- Robert Backus urged voting for KBTL in the changing landscape with net neutrality. Keeping BT local will protect the residents. The city cannot have a fear of litigation attitude.



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- Lynn Martin urged considering the political climate and loss of net neutrality. BT will become more valuable for those who want to sell it off. Dollars should be kept local. Stem the corporate rot.
- Dean Carren urged innovating and planning for the future, not selling off the asset. Support the vast majority of Burlingtonians and members who have invested in the KBTL co-op. Keep BT local.
- Eric Mayer, Ward 5, said he is disturbed by City Council's reticence to govern with moral principle and vision. The planet is dying. Bold action rooted in moral vision is needed, not technocratic tinkering. Keep BT local and engage with the world outside city hall when making decisions.
- Alexander Friend, Henry Street, Ward 1, spoke of vision in government and the vision to do the waterfront park, closing Church Street to cars, leasing prime land on South Winooski Avenue, building a co-op grocery store. A big telecom will buy BT. There is a buyer that embodies Burlington values and that is KBTL. Keep BT local.
- Michael Long said the choice is a rational values decision. KBTL is the only choice. There has been \$50 million invested so the entity is worth that or more. The choice is between a co-op where everyone is a neighbor or a co-op member. KBTL is an opportunity that should not be lost.
- Caryn Long said the city needs to come together. Schurz said at the work session that they will build up the company and sell it. Keeping BT local will help the city in the long run and KBTL does this. Support the community.
- Steve Goodkind stated City Council is in a divisive situation that was totally avoidable. The city is giving away and liquidating an asset. A deal needs to be made to buyout Blue Water. BT should not be sold.
- Brian Pine stated the priorities in order with the sale of BT were local ownership, affordability of services, commitment to net neutrality. Over 1,000 Burlington citizens signed a petition in support of local ownership. The three bids have excellent people, but two of the bids are diametrically opposed to local control. There are hundreds of communities trying to create a locally owned municipal network which Burlington already has and should not let slip away. This is a legacy vote.
- Chris Trombley said more time is needed to evaluate the ZRF offer and urged moving forward with Ting and KBTL.
- Lauren Glenn Davitian spoke of the lack of stability of net neutrality rules and the undermining of the ability for the states to set protections. At this moment Burlington is looking at not owning its own internet infrastructure and that seems shortsighted especially when one proposal, Ting, creates a regional hub which means positioning to be resold. The other proposal expressed plans to flip. The concern that Citibank will sue with the KBTL proposal not being an arm's length transaction should have legal counsel ready to defend the proposal and the work that went into establishing the criteria of which the top three are represented by the KBTL bid.
- Donna Powell, Ward 7 and business owner working with plants for medicinal use, urged thinking of health and all working together as a whole. There is passion and that builds a company. BT provides good quality service. City Council is urged to think of the citizens, the community, and all working together.
- July Sanders said seeing half of the councilors not paying attention unless there is talk about Ting is bothersome. It is hard to feel all are coming together. The public is saying what they want and what is important. Not listening and focusing on what the Mayor is saying to focus on is not representing the people. All are encouraged to listen and hear what the people have to say. Keep BT local.
- Paco DiFrances spoke of the gas distributor who challenged Costco gas sales which will be less than what is charged in Chittenden County. When healthy competition is not included for goods and services then consumers do not benefit and get lower quality services. KBTL will have the same effect by not allowing for healthy competition and increasing the Comcast market share and profits while not allowing consumers to have good service for low cost.
- Stephanie Sequino stated local entrepreneurial talent promotes economic growth. The city has the opportunity with keeping BT local to benefit from that model.

Public investment and public infrastructure unequivocally stimulate economic growth. KBTL will have a spillover effect to the rest of the community that a privately owned firm does not have. Privatization has failed in many countries around the world. Regarding the threat from Citibank to sue, the city did not state it would sell to the highest bidder. Ms. Sequino listed examples of people who stood up to big banks (Iceland, Malaysia) and who emerged stronger. City Council is urged to be courageous and think of what was learned from other countries that promotes community growth and economic



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growth.

- Kit Andrews said KBTL answered concerns about the financials. There is no comparison between the KBTL co-op bid and the other two bids. Those who vote against the KBTL bid have been deceived by the anti-co-op argument.
- Brian Waters, Ward 2, spoke in support of the co-op. Privacy and data ISPs are valuable if sold. City Council should talk about holding whomever buys BT accountable with what is done with the data they have on customers.
- Char Dennett spoke from the heart and as a journalist saying there is a right wing conglomerate buying up local radio stations and imposing right wing content on local communities. People are fighting for democracy. City Council needs to make the right decision so people have accurate information and can make informed choices.
- Molly Fleming stated only BT gives discounts to people in school. Many of the people would not have internet otherwise.
- Russ Scully spoke in support of Ting and encouraged City Council to put the decision to rest and move on.

There were no further comments. Public Forum was closed at 8:48 PM.

4.0 CONSENT AGENDA

- 4.01 PROCEDURAL: Amend/Adopt Consent Agenda and Take Action(s) as Indicated
- 4.02 COMMUNICATION: Accountability List
- 4.03 COMMUNICATION: App-Reduced Holiday
- 4.04 COMMUNICATION: Step Placement, David Booska
- 4.05 COMMUNICATION: Step Placement, Laura Cheney
- 4.06 COMMUNICATION: Contracts for Cured in Place Pipe Lining
- 4.07 COMMUNICATION: Revised Restorative Justice Liaison Job Description
- 4.08 COMMUNICATION: FY18 Budget Amendment/Contract Contingency Allocation - Wayfinding
- 4.09 COMMUNICATION: FIO Document(s)
- 4.10 RESOLUTION: License Agreement, Investors Corporation of Vermont
- 4.11 RESOLUTION: BED Revenue Refunding Bonds
- 4.12 COMMUNICATION: Solveig Overby, Sale of BT Net Neutrality
- 4.13 COMMUNICATION: Solveig Overby, Summary of Proposals

MOTION by Councilor Roof, SECOND by Councilor Bushor, to adopt the Consent Agenda and take the action indicated for Items 4.01 through Item 4.13. VOTING: unanimous; motion carried.

5.0 DELIBERATIVE AGENDA

- 5.01 Public Hearing: ZA#17-10 (Green Roof & Lot Coverage), ZA#17-11 (Emergency Shelters), ZA#17-14 (Preschool





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technical amendments), ZA#17-15 (Article 4 Development Bonuses), ZA#17-16 (Replacement Mobile Homes)

The public hearing was opened at 8:49 PM. There were no comments. The public hearing was closed at 8:49 PM.

5.02 Ordinance: ZA#17-10 – Green Roofs & Lot Coverage

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt ZA#17-10 – Green Roofs.

DISCUSSION:

- Councilor Mason explained the ordinance covers how lot coverage is calculated with a green roof. Credit is given for the green roof.
- Scott Gustin, Planning & Zoning, explained the green roof at grade is calculated as intensive green roof and partial credit is given.

VOTING: unanimous; motion carried.

5.03 Ordinance: ZA#17-11 – Emergency Shelters

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt ZA#17-11 – Emergency Shelters.

DISCUSSION:

- Councilor Mason explained the ordinance creates a new definition for shelters and is a permitted use in the downtown core and a conditional use in other districts (form districts 5 & 6).
- Councilor Bushor said there is a need for emergency shelters. The Ordinance Committee had questions on staffing and parking.

VOTING: unanimous; motion carried.

5.04 Ordinance: ZA#17-14 – Preschool Technical Corrections

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt ZA#17-14 – Preschool technical corrections.

DISCUSSION:

- Scott Gustin, Planning & Zoning, explained the ordinance establishes a parking requirement and plugs into the Cambrian Rise zone.
- Councilor Bushor said the Ordinance Committee asked that the off street parking requirement for larger preschools (over 20 children) be reviewed (five spaces required) compared to parking for small preschools (20 children or less where only one parking space is required).

VOTING: unanimous; motion carried.





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5.05 Ordinance: ZA#17-15 – Article 4 Development Bonuses

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt ZA#17-15 – Article 4 Development Bonuses.

DISCUSSION:

- **Scott Gustin, Planning & Zoning, explained the ordinance lines up bonus provisions in Article 4 and Article 9, and eliminates contradictory language.**

VOTING: unanimous; motion carried.

5.06 Ordinance: ZA#17-16 – Replacement Mobile Home

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt ZA#17-16 – Replacement Mobile Home.

DISCUSSION:

- **Scott Gustin, Planning & Zoning, explained the ordinance clarifies that only new mobile home parks or extension of existing mobile home parks are conditional uses.**

VOTING: unanimous; motion carried.

5.07 Public Hearing: Roadway Acceptance Request – Staniford Farms Road

The public hearing was opened at 7:43 PM. There were no comments. The public hearing was closed at 7:43 PM.

5.08 Staniford Farms Conveyance to City of Burlington

MOTION by Councilor Bushor, SECOND by Councilor Deane, to waive the reading and adopt the resolution for conveyance of Staniford Farms Road to the City of Burlington.

DISCUSSION:

- **Councilor Deane noted the conveyance addresses development in the New North End. Water and sewer easements allowed the road to be put in place. The license committee saw no issues.**

VOTING: unanimous; motion carried.

Council President Knodell recessed the City Council meeting at 9:20 PM. The meeting reconvened at 9:58 PM. Councilor Hartnett announced John Ewing passed away. Sympathy and condolences were expressed for the family. There was mention of John Ewing's remarkable contributions to the community and the state (smart growth, bike path, waterfront



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development) and the great loss with his passing.

5.09 City Council Voting Process for Selection of BT Buyer

MOTION by Councilor Roof, SECOND by Councilor Dieng, to waive the reading and adopt the resolution on the voting process for final selection of a buyer for Burlington Telecom (BT).

DISCUSSION:

- **Council President Knodell reviewed the voting process (essentially vote for two in the first round then vote for one in the final round).**
- **Councilor Shannon announced she may propose an amendment to cast one vote in the elimination round and move two bidders to the final round of voting.**

Council President Knodell recessed the City Council meeting at 10:13 PM. The meeting reconvened at 11:12 PM.

MOTION by Councilor Paul, SECOND by Councilor Roof, to suspend the rules at 11:13 PM to continue work on Item 5.09 (voting process) and Item 5.10 (selection of a BT buyer). VOTING: unanimous; motion carried.

5.09 Voting Process (continued)

DISCUSSION ON VOTING PROCESS (continued):

- **There was discussion of not being able to compel someone to vote.**

VOTING: 11 ayes, one nay (Councilor Tracy); motion carried.

5.10 Final Selection of BT Buyer

Acting CAO Anderson is Council President Pro Tem for Item 5.10 (select BT buyer). City Attorney Blackwood mentioned the presentation on a change in bid by ZRF/Schurz. The same opportunity was offered to the other bidders to make adjustments to their bid.

Council President Pro Tem Anderson said the action is to authorize the Mayor to sign a Letter of Intent for purchase of Burlington Telecom with KBTL/Ting-Tucows or ZRF/Schurz.

Todd Schurz (Schurz) and Faisal Nisar (ZRF) reported in their revised proposal Schurz will be the owner and ZRF will be the minority partner. The bid price is \$30.8 million, community investment and job retraining remain, all elements of the ZRF bid are incorporated, the city retains the right to rollover equity, the commitment to net neutrality will be honored, overlap



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items will be honored, there is no GP/LP structure, and no second sale.

Councilor Dieng took issue with presenting essentially a new Letter of Intent and the new bid not being in writing. Attorney Raphine O'Rourke explained the Letter of Intent is based on the ZRF/Schurz proposal with the Schurz price and Schurz as owner and ZRF as minority owner. The elements of the ZRF bid are retained. The revised Letter of Intent will be available in writing in the morning. Mayor Weinberger assured he will not sign anything without documentation of a tight Letter of Intent. The bid before City Council is now stronger. Both companies have lengthy track records.

Councilor Bushor asked about the following:

- Role of Gary Evans (HBC) - Todd Schurz said Gary Evans will have a role though not yet defined.
- Decision making ability for the city - Todd Schurz stressed Schurz believes in strong local management and also proposes a strong local board and local audit similar to what was in the ZRF proposal.
- Equity share potentially being up to one third and a sunset date – Todd Schurz said the city having the right to rollover equity is wanted. Having the city as a partner is not a problem.
- Having the criteria and opportunity for equity rollover in writing – Todd Schurz agreed to do this.

Councilor Roof asked if the Letter of Intent is nonbinding. Attorney O'Rourke said the Letter of Intent is nonbinding. The distinction with the letter from Schurz/ZRF is it is verbal and will be followed up with a written letter. The idea is to get the principal terms agreed to that will be in the document. Councilor Roof asked if the guarantee of the cost of service for five years will remain. Todd Schurz said the commitment will remain.

Councilor Hartnett commented the change in proposal is like an amendment to the original Schurz Letter of Intent and is a win-win that answers all the questions. BTAB recommended Schurz originally. The city needs to have the right partner.

Councilor Tracy objected to the new Letter of Intent being negotiated in the hallway and without review by City Council, other bidders, and the citizens of Burlington. The other bidders should have opportunity to make a counteroffer. Todd Schurz said Schurz and ZRF are not trying to be unfair, but simply were trying to provide an alternative after being invited back into the process. The first alternative did not solve issues City Council was having. Faisal Nisar added the ZRF proposal was always an equity proposal with the second aspect being community development. The deal on the table was not crafted by ZRF. The situation was presented and in order to do the right thing ZRF did not stand in the middle.

Councilor Wright recognized the spirit of the proposal to move the city forward. The change in proposal gives the city the best of both worlds and it is hoped a majority of City Council can get behind the offer and move forward.

Faisal Nisar thanked Gary Evans for getting ZRF and Schurz together.



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Councilor Knodell spoke in support of the revised Letter of Intent for Schurz/ZRF due to all the positive implications such as keeping BT as an independent Burlington based and embedded business, 33 ½ % potential ownership, representation on the five member board, and competent partners. City Council is urged to vote for the Letter of Intent.

Councilor Mason said his struggle is his constituents have not indicated support of Schurz and there was no public input on the bid.

Councilor Shannon said the bidders have been straight shooters with their proposal, but Schurz or ZRF apparently met with some city councilors at the airport. Faisal Nisar said there has been no discussion of the deal prior to the meeting tonight. Input was received from many people about what should be done. Councilor Wright stressed there were no meetings other than what any councilors could attend. The process of contacting Terry Dorman to set up a meeting to ask questions of the process was followed with the meeting with Schurz and ZRF. Councilor Paul was also in attendance so there was more than one city councilor present.

Councilor Shannon asked the following:

- Operator of BT under the Schurz/ZRF proposal – Todd Schurz said that is to be determined and not known at this point in time. Gary Evans will have a role, but that role is not defined at this time.
- Board approval is needed to go forward with the deal – Todd Schurz said the previous outline was approved by the company's acquisition committee. The current proposal will be covered at the next board meeting.
- Who are the investors – Todd Schurz said Schurz will own 60%. The city can roll over its share. ZRF will have a minority stake. Faisal Nisar said percent of ownership has not yet been decided. There is no GP/LP structure.
- Who are the other investors in the ZRF partnership – Faisal Nisar said this has not been determined. The deal is Schurz's. ZRF will have its structure with its investors. Todd Schurz said Schurz could have 60%, 95% or 100% ownership. ZRF is offering the entrepreneurship job training. Faisal Nisar said ZRF supports Schurz to do all the items in the proposal.

Councilor Paul stated the Schurz offer with ZRF value add is better for Burlington and is the de-centralized model like BT. The city will benefit from the synergies with Hiawatha Broadband. Councilor Paul said she did ask Terry Dorman to set up a meeting with Todd Schurz to discuss Schurz's audited financials. Schurz is a strong and sound company, not a get-rich-quick company, and has patient return on investment as a long term holder. Schurz will be good for Burlington. City Council should ask Ting questions as well. Ting has done what was asked of them and that needs to be acknowledged. Ting would be a good partner as well.

Councilor Dieng asked for a recess to allow Schurz to produce a written Letter of Intent. Attorney O'Rourke said the changes have been penciled in on the joint Letter of Intent and can be reviewed. There was brief discussion of continuing to get questions answered and getting to the vote.

Councilor Shannon asked the following:



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- Is Schurz buying other municipal telecoms - Todd Schurz said this one will be digested and learned from first. There are opportunities throughout the state.
- Was the telecom sale in 2016 a fiber to home business – Todd Schurz said the sale was a traditional cable business in Coral Springs, Florida. Schurz could not compete in the market and effectively serve the customers.
- Plan to build up and eventually sell BT – Todd Schurz said the intention is long term ownership.
- Strength of the bid compared to Ting – Todd Schurz said Schurz will operate BT and is in four communities with tens of thousands of fiber customers so there is a track record. Sale of BT as an entity is not envisioned. City ownership could grow, but that mechanism must be determined.
- Sticking to the previous offer of equity – Todd Schurz said Schurz is happy to have the city rollover its equity and increase its share of up to one-third of BT.
- Will Schurz buyout the city if the city wants to liquidate its equity – Todd Schurz said a mechanism to do this must be set up. The buyback rate is not known at this time.

Councilor Knodell noted the Schurz 11-year plan lays out the business plan and answers many of the questions that have been asked.

Councilor Dieng asked the representative from Ting if Ting's community investment can increase beyond the \$250,000 per year. Ting answered the \$250,000 per year is in perpetuity. In addition Ting sponsors local events and offers free service to select nonprofits such as the initiative to bridge the divide with the Lifeline Program. The Ting bid which was higher than the others and the Letter of Intent stand. Councilor Dieng asked the chances of the KBTL Co-op not being successful if the bid is chosen. KBTL representatives said the KBTL Co-op will not be put in a position to fail.

Councilor Deane mentioned the capital investment plan to expand BT. Ting answered the investment is \$57 million.

Councilor Knodell asked if the New North End will be served and then the neighboring areas if that makes sense to do. Ting confirmed this. Councilor Knodell asked about the upper bid from KBTL. A representative from KBTL explained the \$18 million bid assumes carried interest by the city of \$6.5 million. At \$18 million the city's available carried interest is larger. Councilor Knodell asked how cash flow is affected. The representative from KBTL said there are other elements that improve cash flow such as member buy-in. The debt coverage ratio has a larger role in the \$18 million bid at five years, but there is a substantial amount of available cash in the year prior so if cash flow is managed it does work.

Councilor Dieng asked about KBTL doing a joint bid with ZRF. KBTL said the approach taken with the asset would not work with ZRF.

Councilor Shannon referred to a Mother Jones list of companies lobbying against net neutrality in 2012. Todd Schurz said Schurz has not lobbied on net neutrality and the commitment to Burlington will be honored. Councilor Shannon asked about subsidiaries of Schurz lobbying against net neutrality. Todd Schurz said they own eight newspapers and have not had a year where they have endorsed the same candidate.



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The meeting was recessed to allow the attorneys to update the Letter of Intent. At the conclusion of the recess Attorney O'Rourke reviewed the components of the joint proposal with Schurz and ZRF highlighting the changes from the former individual proposals.

Councilor Bushor asked if there is opportunity for the city to retain ownership up to 20% or 33%. Attorney O'Rourke said 20% ownership is if the city rolls over all the sale proceeds, and 33% is if the city has additional funds to roll in. Schurz has no problem with this arrangement. Councilor Bushor mentioned 200 Church Street and a long term lease or option to buy or to get more equity in the company as food for thought.

Councilor Mason noted there are three material items to be settled: the move at over \$1 million, the right of purchase to be negotiated in good faith, and the Right of First Refusal to be negotiated. There was discussion of the timeline for the transaction. Attorney O'Rourke said the final purchase documents must be signed by 12/31/17. Answers to questions can be received up until then. The bidder must be chosen first.

Mayor Weinberger said the vote is very challenging. Much hard work has been done. All have the best interest of Burlington in mind. The bids are substantially better. Ting would be a good partner for Burlington and has an extraordinary record and believes in Burlington's values. The city can also work with Schurz if that is the choice. Mayor Weinberger read a letter from Christopher Mitchell from the Institute for Local Self-Reliance on localism and a positive history with Ting.

Councilor Hartnett said the concept of KBTL is good, but because of mistakes in the past that put the city in a financial meltdown the city cannot retain BT. It is hoped to find a partner, but to say Ting is the only bidder to make Burlington happy is not a true statement.

Councilor Tracy spoke in support of KBTL and of the community, adding it is a loss for the city not to go with KBTL. Any semblance of process has been abandoned with the Schurz/ZRF bid which was not vetted as was done with the other bids and the public did not have the opportunity to comment.

Councilor Shannon said without a vote for local ownership (KBTL) then the choice is between the non-local offers. The following was highlighted:

- Schurz management could not say who will operate BT, but the Ting offer indicates who will operate BT.
- Board approval is still required from Schurz or the deal falls through.
- The investors with ZRF are not known. Private companies are not transparent. Public companies are transparent.
- The buyback of Burlington's shares by Ting will be at the same multiplier, but Schurz does not know the buyback rate.
- City Council must approve the document before the end of the year during the holidays.
- Half of the BT employees get retirement benefits now, but Schurz does not know what percentage will get



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retirement benefits. Ting said 100% of the employees will get retirement benefits.

- There is no Right of First Refusal with the Schurz offer. [Attorney O'Rourke noted the terms of the Right of First Refusal by Schurz need to be clarified.]
- Ting is providing \$250,000 annually for community investment with no end date. Schurz commitment is for seven years for investment in the community.
- Schurz is committed to net neutrality with BT, but their other companies are not committed to net neutrality.
- There has been no input from the public on the new joint offer by Schurz/ZRF. The process has not been transparent.

MOTION by Councilor Hartnett to call the question (end debate and move to a vote). VOTING: majority of ayes; motion carried.

Debate ceased. The results of the voting were as follows:

ROUND 1: First Choice Second Choice

Councilor Hartnett	Schurz	KBTL
Councilor Knodell	Schurz	KBTL
Councilor Deane	Ting	abstain
Councilor Shannon	Ting	abstain
Councilor Bushor	KBTL	Schurz
Councilor Tracy	KBTL	abstain
Councilor Moore	KBTL	Schurz
Councilor Wright	Schurz	KBTL
Councilor Mason	Ting	Schurz
Councilor Paul	Ting	Schurz
Councilor Dieng	KBTL	abstain
Councilor Roof	Ting	Schurz

RESULTS OF ROUND 1: Schurz – 8 votes, KBTL - 7 votes, Ting - 5 votes.

ROUND 2: (choose between Schurz or KBTL)



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Councilor Hartnett	Schurz
Councilor Knodell	Schurz
Councilor Deane	abstain
Councilor Shannon	abstain
Councilor Bushor	Schurz
Councilor Tracy	KBTL
Councilor Moore	Schurz
Councilor Wright	Schurz
Councilor Mason	Schurz
Councilor Paul	Schurz
Councilor Dieng	KBTL
Councilor Roof	Schurz

RESULTS OF ROUND 2: Schurz – 8 votes, KBTL – 2 votes, Abstain – 2 votes.

5.11 Adopt Official Flag of City of Burlington

Councilor Paul read the resolution on adoption of the official flag of the City of Burlington.

MOTION by Councilor Paul, SECOND by Councilor Shannon, to adopt the resolution on the flag design competition, selection, and statement of inauguration for the new official flag for the City of Burlington designed by two brothers in the 7th Grade at Edmunds Middle School, Lucas and Owen Marchessault.

DISCUSSION:

- Mayor Weinberger congratulated the winners for the design and hard work. There were dozens of entries. BCA ran a well-organized and well-promoted process.

VOTING: unanimous; motion carried.

6.0 COMMITTEE REPORTS

No report.





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7.0 CITY COUNCIL – GENERAL AFFAIRS

No report.

8.0 CITY COUNCIL PRESIDENT – COUNCIL UPDATES

No report.

9.0 MAYOR – GENERAL AFFAIRS

No report.

10.0 ADJOURNMENT

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

The meeting was adjourned at 1:45 AM on November 28, 2017.

RScty: MERiordan