

**** CITY COUNCIL WORKSESSION ****
CITY HALL, CONFERENCE ROOM 12
MONDAY, OCTOBER 26, 2009
6:05 P.M.

PRESENT: Councilors Caldwell, Bushor, Davis, Keogh, Dober, Decelles, Adrian, Kaplan, Berezniak, Ellis (arrived at 6:07 p.m.), Shannon (arrived at 6:09 p.m.), Mulvaney-Stanak (arrived at 6:11 p.m.), Paul (arrived at 6:25 p.m.), City Attorney Schatz, John Briggs

ABSENT: Councilor Kehoe

1. AGENDA
2. COMMUNICATION: City Council President Bill Keogh, re: City Council Staffing (oral)
please note: packet of written material
3. ADJOURNMENT

The work session was adjourned at 7:03 p.m.

Attest:

Lori Olberg, Licensing, Voting and Records Coordinator and Sue Trainor, Assistant to the CAO

DELIBERATIVE AGENDA

LOCAL CONTROL COMMISSION
CONTOIS AUDITORIUM, CITY HALL
MONDAY, OCTOBER 26, 2009
7:19 P.M.

PRESENT: Commissioners Caldwell, Davis, Mulvaney-Stanak, Bushor, Kaplan, Adrian, Keogh, Shannon, Ellis, Paul, Berezniak, Dober, Decelles, Mayor Kiss

ABSENT: Commissioner Kehoe (arrived at 10:32 p.m.)

OFFICE OF THE CITY ATTORNEY: Ken Schatz, Richard Haesler, Nikki Fuller (departed at 8:35 p.m.)

OFFICE OF THE CLERK/TREASURER: Jonathan P.A. Leopold, Jr., Ben Pacy, Lori Olberg

PRESIDENT KEOGH PRESIDING

1. AGENDA

Commissioner Davis made a motion, seconded by Commissioners Berezniak, to accept the agenda. The motion passed unanimously.

2. CONSENT AGENDA

On a motion by Commissioners Davis and Dober, the Local Control Commission voted unanimously to adopt the consent action thus taking the following actions as indicated:

- 2.01. EXPANSION OF LIQUOR LICENSE SPACE (2009-2010):

Radio Bean Coffeehouse, 8 North Winooski Avenue

*waive the reading, accept the communication, place it on file, approve the expansion of the liquor license space for Radio Bean Coffeehouse with all standard conditions, monitoring of potential overcrowding and Fire Marshal approval

3. FIRST CLASS RESTAURANT LIQUOR LICENSE APPLICATION (2009-2010):

Hen Zen Inc., d/b/a Miguels on Main (formerly Callahan's Pub), 30 Main Street, Suite 100

Commissioner Davis made a motion, seconded by Commissioner Berezniak, to approve the First Class Restaurant Liquor License Application for Miguels on Main. Commissioner Davis noted several items that needed to be placed on the record. The establishment will have a cash bond equaling \$2,000 for a 2 year period, a payment plan in place by 12/1/09 and all standard conditions and Fire Marshal approval are required. He then requested that the Clerk/Treasurer's Office hold the license to ensure the several items were satisfied.

3.01. OUTSIDE CONSUMPTION PERMIT APPLICATION (2009-2010):

Hen Zen Inc., d/b/a Miguels on Main (formerly Callahan's Pub), 30 Main Street, Suite 100

The motion to approve both items passed unanimously.

4. FIRST CLASS RESTAURANT LIQUOR LICENSE APPLICATION (2009-2010):

Bocabella Inc., d/b/a Norm's Grill (formerly Avenue Bistro), 1127 North Avenue

Commissioner Davis made a motion, seconded by Commissioner Dober, to approve the First Class Restaurant Liquor License Application for Norm's Grill pending Fire Marshal approval and an out-of-state background check. Commissioner Decelles expressed concern about the hours of operation, with Commissioner Dober stating he did not believe there would be a problem with late night drinking issues. The motion then passed unanimously.

4.01. OUTSIDE CONSUMPTION PERMIT APPLICATION (2009-2010):

Bocabella Inc., d/b/a Norm's Grill (formerly Avenue Bistro), 1127 North Avenue

Commissioner Davis made a motion, seconded by Commissioner Berezniak, to approve the Outside Consumption Permit Application for Norm's Grill with landlord approval. The motion passed unanimously.

5. SECOND CLASS STORE LIQUOR LICENSE APPLICATION (2009-2010):

Balance Team, Burlington Bay Market and Café, 125 Battery Street

Commissioner Davis made a motion, seconded by Commissioner Dober, to approve the Second Class Store Liquor License Application for Burlington Bay Market and Cafe. The motion passed unanimously.

6. ADJOURNMENT

On a motion by Commissioners Davis and Kaplan, the Local Control Commission voted unanimously to adjourn at 7:28 p.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO

ADJOURNED MEETING, CITY COUNCIL
MONDAY, OCTOBER 26, 2009
7:28 P.M.

PRESENT: See above

PRESIDENT KEOGH PRESIDING

1. AGENDA

On a motion by Councilors Adrian with no second noted, the Council voted unanimously to amend the agenda as follows: note **updated** version of consent agenda item 6.01. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator, re: Accountability List (per Councilor Bushor); remove from the consent agenda item 6.15. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 5, 2009; remove from the consent agenda item 6.16. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 13, 2009; add to the consent agenda item 6.17. COMMUNICATION: Jeffery Kaufman, M.D., Course of Action for BT with the consent action to waive the reading, accept the communication and place it on file; note additional written material for item 11. COMMUNICATION: Bob Kiss, Mayor, re: Burlington Telecom; note **written** material and other sponsors for item 11.01. RESOLUTION: Burlington Telecom (Councilors Keogh, Adrian, Berezniak, Kaplan, Dober).

At this time, Councilor Adrian read into the record the following amendments: add to the agenda item 11.02 RESOLUTION: Temporary Removal of the Chief Financial Officer (Councilors Shannon, Kehoe, Dober); add to the agenda item 11.03 RESOLUTION: Authority Over Burlington Telecom (Decelles); add to the agenda item 11.04. RESOLUTION: Burlington Telecom Finances (Councilor Davis) and add Councilor Mulvaney-Stanak as a co-sponsor. Councilor Bushor asked for clarification as to why Councilor Davis' resolution, originally noted as 11.02 was now 11.04. Councilor Adrian felt that if item 11.01 passed, then Councilor Davis' resolution would be duplicative to which Councilor Bushor noted that was an assumption and not a fact and stated she felt the agenda should remain as proposed.

Remove from the agenda item 12. COMMUNICATION: Dan Bradley, Transportation/Special Projects Planner, DPW, re: FTA grant to support development of South End Park and Ride; remove from the agenda item 12.01. RESOLUTION: Authorization to Purchase Property from Burlington Community Development Corporation for the South End Transit Center (Board of Finance); add to the agenda item 12.5. COMMUNICATION: Ken Schatz, City Attorney, re: Litigation (oral)—expected executive session; remove from the consent agenda item 6.04. RESOLUTION: City Benefit Coverage of Domestic Partners (Councilor Dober) and place on the Deliberative Agenda as item 9.04.

The Council President then suggested that the Council vote on all the amendments except for those under item 11. The amended agenda passed unanimously.

At this time, Councilor Adrian then noted he would agree with placing Councilor Davis' resolution as item 11.02., thus changing the following resolutions in that series to: 11.03 RESOLUTION: Temporary Removal of the Chief Financial Officer (Councilors Shannon, Kehoe, Dober); add to the agenda item 11.04. RESOLUTION: Authority Over Burlington Telecom (Decelles). The motion then passed unanimously.

2. PUBLIC FORUM

President Keogh opened the public forum at 7:35 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Connie Krosney	6	Supported Burlington Telecom
Jane Sanders	7	Personal Attacks in Politics
Tim George	Telecommunications Advisory Committee (Ward 7)	Burlington Telecom Oversight needed
Mark Heyman	5	Supported Burlington Telecom
Sandy Baird	1	Supported Burlington Telecom Personal Attacks on CAO
David Grossnickle	4	New Management Needed
Kurt Wright	4	Read Charter Language re: Appropriation to BT
Michael Voity	7	Lighting on Route 127
Jane Kramer	6	Supported Burlington Telecom
Ted Miles	7	Burlington Telecom/Retirement
Lee Anderson	3	Burlington Culture and Sub-Culture – Support the Arts

There being no one further coming forward, President Keogh closed the public forum at 8:06 p.m.

3. COMMUNICATION: City Councilors, re: General City Affairs

Councilor Adrian stated he had requested 4 or 5 years of legal documents on pending litigation from the City Attorney and/or McNeil, Leddy and Sheahan. He had been told that it would take a good deal of time and that the Council should request it. City Attorney Schatz replied that it would, indeed, take some time, that there was concern about attorney client privilege and that decisions about disclosure of documents should be made by the full Council.

Councilor Adrian stated that if the Council is the client, how would the Council know if they want to see documents until they saw them. The City Attorney responded by saying that the office is glad to provide the documents, however their obligation and duty does not go to individual Councilors. With these matters, if the full Council wanted the information, the Council should speak as a whole.

Councilor Bushor noted there was a site visit by Planning and Zoning to review UVM's proposed housing site on Grove Street. The Planning Commission would review it tomorrow.

Councilor Paul explained her regret of a prior vote regarding oversight of Burlington Telecom which resulted in a tie vote. She regretted it immediately after voting and had asked the then-President of the

Council if she could ask for a reconsideration of the vote. She had been asked not to because there were a number of other items that needed to be dealt with. She believed her vote was a mistake and she would be working on making it right.

Councilor Mulvaney-Stanak stated her belief that accountability was important. It was clear to her that the Council learned in-depth in executive session at least on May 18th that the City was out of compliance; all Councilors were present at that meeting. At that time everyone was able to ask questions and learn the severity of the situation and discuss how to address the issue. The Council was advised at the time by legal counsel, the CAO and other staff that this was not a violation of state law, it was not a violation of City Charter and that the City was working diligently with the PSD to notify them of the financial situation. They were pursuing relief through the State system which included going through the quasi-judicial board. At this time Councilor Adrian called a point of order stating Councilors were not to speak of executive session information. Council President Keogh stated the point of order was not well taken, as much of the information provided by the executive session had been aired.

Councilor Mulvaney-Stanak continued, stating that all of this was being done while trying to keep Burlington Telecom viable and strong. She believed that putting the responsibility on one person or a small number of people now was not only unhelpful but was simply not the whole story. To now come out in October with objections on something that everyone knew and decided on together was very troubling and brought into question the integrity of the Council. She believed at a time when the Council clearly needed to work together, instead they were pulling apart at the seams with inappropriate accusations. She believed that CAO Leopold had strengthened the City's finances, built the City's reserves and tightened the budget allowing the City to have no tax increase in three years.

Councilor Decelles then called a point of order, stating that there would be discussion later about this and suggested others may want to speak as well. Council President Keogh stated the point of order was well taken and cautioned Councilor Mulvaney-Stanak to modify the remarks. Councilor Mulvaney-Stanak noted that trust needed to be rebuilt of both city government and the Council.

Councilor Caldwell expressed her sadness about the recent passing of Ms. Parker, a Ward 3 resident and offered her support to the family. She then moved to begin explaining when the Council knew about the financial issues related to Burlington Telecom. Councilor Decelles called a point of order, again asking the Council President to defer this conversation until later in the meeting. Council President Keogh agreed and asked Councilor Caldwell to modify her comments.

Councilor Caldwell explained that people leave the Council meetings early in the evening and she wanted to be sure to answer questions raised during the forum. She then stated that the 14 City Councilors were aware of the violation of Condition 60 and Condition 17 and that all share in the responsibility. She did not believe that it was any one person responsible for making the decisions as there were a number of individuals who knew, including the legal team that was hired to work on this. She explained that the CPG only related to the cable television service, not the internet or phone service and that the \$17 million may not be the actual number related to that one service. She believed that solutions should be found rather than accusations thrown.

Councilor Dober noted that the Air National Guard is starting their deployment this week. He asked for contractors to consider volunteering their time to help the family members at home who may be in need of assistance with repairs.

Councilor Davis expressed appreciation for Councilor Dober's remarks. He stated there were 3 current members of the Council who had been in the service and said his thoughts and prayers for their safe return were with the Guard members. He elaborated on Councilor Caldwell's remarks about Ms. Parker and her passing.

4. COMMUNICATION: Mayor Kiss, re: General City Affairs

Mayor Kiss informed the Council that the new Parks and Recreation Director had begun her position at the City as of this day. He also informed the Council that Peggy Ellis-Green had begun working as the Mayor's Executive Secretary.

He remarked on the collaboration of Three Tomatoes General Manager Jed Davis and American Flatbread owners Rob Downey and Paul Saylor taking place at the McDonald's site.

The Mayor then remarked on the comments by Councilor Paul, stating the vote defeating the creation of a commission on Burlington Telecom did not mean there would be an end to discussion on oversight of BT. The discussion was ongoing.

5. COMMITTEE REPORTS

6. CONSENT AGENDA

On a motion by Councilors Adrian and Berezniak, the Council voted unanimously to adopt the consent agenda thus taking the following actions as indicated:

6.01. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator, re:
Accountability List

*waive the reading, accept the communication and place it on file

6.02. TOBACCO LICENSE APPLICATION (2009-2010): Burlington Bay Market and Café, 125
Battery Street

*waive the reading, accept the communication, place it on file and approve the 2009-2010 Tobacco License Application for Burlington Bay Market and Café

6.03. RESOLUTION: Creation of the Public Works Department Utility Billing Coordinator
Position (Board of Finance)

*waive the reading and adopt the resolution

6.05. COMMUNICATION: Jennifer Green, Legacy Project, CEDO, re: Energy Efficiency
Conservation Block Grant (EECBG)

*waive the reading, accept the communication and place it on file

6.06. RESOLUTION: Authorization to Accept 2009 Energy Efficiency and Conservation
Block Grant (Board of Finance)

*waive the reading and adopt the resolution

6.07. RESOLUTION: License Agreement with KAS, Inc. to Install Ground Water Monitoring
Wells on Portions of the Public Rights-of-way on Center St., College St.,
and No. Winooski Ave. (Councilors Davis, Dober, Berezniak: License
Committee)

*waive the reading and adopt the resolution

6.08. PEDDLER LICENSE APPLICATION (2009-2010): Bri's Fries, University Place

*waive the reading, accept the communication, place it on file, approve the 2009-2010 peddler license application for Bri's Fries with all standard conditions for peddlers along with a national record check for Brian Billings

6.09. PEDDLER LICENSE APPLICATION (2009-2010): Elena Cucina LLC, City only
*waive the reading, accept the communication, place it on file and approve the 2009-2010 peddler license application for Elena Cucina LLC with all standard conditions for peddlers

6.10. INDOOR ENTERTAINMENT PERMIT RENEWAL (2009-2010): Radio Bean Coffeehouse
*waive the reading, accept the communication, place it on file and approve the 2009-2010 Indoor Entertainment Permit Application for Radio Bean Coffeehouse with all standard and added conditions as noted along with monitoring of potential overcrowding

6.11. COMMUNICATION: Lori Olberg, Licensing, Voting and Records Coordinator and Sue Trainor, Assistant to the CAO, re: Minutes, City Council, June 1, 2009
*waive the reading, accept the communication, place it on file and approve the minutes at the November 9, 2009 City Council Meeting

6.12. COMMUNICATION: Thomas M. Salmon, COA, State Auditor to Mr. Bill Keogh, President, City Council, re: Burlington's alternate telecommunication network
*waive the reading, accept the communication and place it on file

6.13. COMMUNICATION: Lenore Broughton, 52 Henry Street, re: Burlington Telecom
*waive the reading, accept the communication and place it on file

6.14. COMMUNICATION: Barbara Nolfi, 4 East Village Drive, re: Burlington Telecom
*waive the reading, accept the communication and place it on file

6.17. COMMUNICATION: Jeffrey Kaufman, M.D., re: Course of Action for BT
*waive the reading, accept the communication and place it on file

7. INDOOR ENTERTAINMENT PERMIT APPLICATION (2009-2010):

Bocabella Inc., d/b/a Norm's Grill (formerly Avenue Bistro), 1127 North Avenue

Councilor Davis made a motion, seconded by Councilor Berezniak, to approve the indoor entertainment permit application for Norm's Grill. The motion passed unanimously.

8. COMMUNICATION: Clerk/Treasurer's Office, re: Openings Burlington City Commissions/Boards

With no objection from the remaining Council, President Keogh made a motion to waive the reading, accept the communication and place it on file.

8.01. APPOINTMENT: Housing Board of Review (Term expires 6/30/13)

Councilor Adrian nominated Loyal Ploof.

Loyal Ploof was appointed by a vote of 8 to 5 to the Housing Board of Review.

8.02. APPOINTMENT: Housing Board of Review (Term expires 6/30/14)

Councilor Caldwell nominated Richard T. Jeroloman.

Richard T. Jeroloman was appointed to the Housing Board of Review by a majority vote.

8.03. APPOINTMENT: Telecommunications Advisory Comm. (Term expires 6/30/11)

Councilor Ellis nominated Peter Jewett.

Councilor Caldwell nominated Dean Corren.

Peter Jewett was appointed to the Telecommunications Advisory Committee by a vote of 9 to 4 with Councilors Bushor, Mulvaney-Stanak, Caldwell and Davis voting for Mr. Corren.

9. PUBLIC HEARING: Burlington Comprehensive Development Ordinance ZA-09-08 Parking Lot Shading Requirement and ZA-09-17 Street Facing Garage Wall Design Standards

Planning and Zoning Director David White explained these ordinances to the Council members. Councilor Shannon noted it would reduce the requirement for trees in parking areas, allowing for waivers of up to 15 cars. The Committee did not want to force people to build bigger parking lots and did move in the direction of requiring less trees.

President Keogh opened the public hearing at 8:43 p.m.

There being no one coming forward, President Keogh closed the public hearing at 8:43 p.m.

9.01. COMMUNICATION: Clerk/Treasurer's Office, re: Public Hearing Notice Burlington Comprehensive Development Ordinance ZA-09-08 Parking Lot Shading Requirement and ZA-09-17 Street Facing Garage Wall Design Standards

With no objection from the remaining Council, President Keogh made a motion to waive the reading, accept the communication and place it on file.

9.02. ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE – Parking Lot 30% Shading Requirement #ZA 09-08 (Planning Dept.)(2nd reading)

9.03. ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE – Street-Facing Garage Wall Design Standards #ZA 09-17 (Planning Dept.)(2nd reading)

Councilor Shannon made a motion to move the adoption of both 9.02 and 9.03 as a slate, seconded by Councilor Bushor. Councilor Bushor noted the difficulty of working through both of these ordinances but felt they both were steps in making Burlington neighborhoods more friendly. Councilor Dober expressed concern about the Parking Lot Shading Requirement and hoped that this ordinance would grandfather previously built lots. Councilor Shannon noted this was lessening the tree requirement and would not affect existing lots unless they chose to change the lot. The motion passed unanimously, with Councilors Paul and Kaplan not at the table to vote.

9.04. (was 6.04) RESOLUTION: City Benefit Coverage of Domestic Partners (Councilor Dober)

Councilor Dober made a motion to adopt the resolution, seconded by Councilor Decelles. Councilor Mulvaney-Stanak spoke to this issue expressing her support of continuing this coverage for City employees and hoped that the Human Resources Committee would not modify this program. Councilor Adrian agreed with Councilor Mulvaney-Stanak, noting that he had also used this policy in order to

obtain health insurance while working for the State. He believed that choices were important for individuals.

Councilor Decelles stated that with same-sex marriage now being allowed, it was time to review this policy. Councilor Caldwell spoke about the role of marriage in society and the ownership implied. She noted it was a political decision of hers not to marry and that due to the way health insurance was so tied to the employer, it was important for domestic partner coverage to be offered to employees. Additionally, she believed this was a union bargaining issue. Councilor Dober explained he wanted to evaluate the controls, to see if it was still sustainable or even needed as a program. Mayor Kiss expressed his support of the program and did not want to see it dismantled. Councilor Shannon thought this issue had not been looked at for a long time and that was the reason she would support sending it to the HR Committee.

Councilor Berezniak proposed an amendment to the resolution which was not considered friendly. Councilor Shannon seconded the proposal to amend. It was then determined to be friendly by Councilor Dober, but not Councilor Decelles. The motion to amend passed by a vote of 10 to 3 with Councilors Decelles, Davis and Caldwell voting against.

The amended resolution passed by a vote of 8 in favor and 5 opposed, with Councilors Decelles, Adrian, Mulvaney-Stanak, Davis and Caldwell voting against.

10. ORDINANCE: FIRE PROTECTION AND PREVENTION Chapter 13 Revisions
(Councilors Shannon, Bushor, Mulvaney-Stanak: Ordinance Committee)
(2nd reading)

Councilor Shannon made a motion, seconded by Councilor Bushor, to adopt this ordinance. Councilor Shannon noted that all the items that had gone further than the State statute had been removed. Battalion Chief Francis was asked to come forward to speak to the ordinance. Councilor Adrian noted he had concerns about this ordinance and moved to refer it to the Public Safety Committee for further discussion with a return date to the Council by the second meeting in November; Councilor Berezniak seconded the motion. Councilor Adrian questioned Battalion Chief Francis about specifics, to which Council President Keogh reminded him that he could deal with this at the Committee level. Following further discussion, Councilor Adrian withdrew his motion to refer, which the seconder agreed with. Councilor Davis expressed his appreciation to Battalion Chief Francis for the work that was done to adopt this ordinance. The motion then passed unanimously.

At this time, 9:30 p.m., the President called a five minute recess. The Council reconvened at 9:43 p.m.

Councilor Decelles made a motion to suspend the rules and continue the meeting past 10:30 p.m., seconded by Councilor Dober. The motion passed by a 2/3 majority, with Councilor Caldwell voting against..

11. COMMUNICATION: Bob Kiss, Mayor, re: Burlington Telecom

Councilor Bushor made a motion to accept the written communication, place it on file and give the Mayor the opportunity to speak to the material. The motion was seconded by Councilor Mulvaney-Stanak.

Mayor Kiss noted the information that was being put on file were actually items that were talked about several times already. The material included recommendations being provided to the Council on moving forward with the Burlington Telecom matter. In particular, the Administration was seeking the opportunity to go before the Public Service Board to address Condition 60. The Mayor supported an audit, similar to the type done at Burlington Electric, which he believed would be done quickly, as well as this type of audit being done in the future for BT.

The Mayor asked the CAO to bring to the City Council by November 16th a recommendation to refinance Burlington Telecom. The decision on Condition 17 by the Public Service Board or Department would have implications on how much money would be required to finance. The City would be making a request for expedited action by the Public Service on October 30th. He had also put protocol in place which would provide quarterly reporting on the use of pooled cash so that the Council knew the activity that was routinely done, with a special report being done on those departments that used over \$5 million or 25% of revenue.

The Mayor then stressed the importance of preserving and protecting Burlington Telecom as a resource for the City. BT was a great economic development tool and should continue within the City. In that spirit he believed it was critical that the Councilors and Administration work together.

The motion passed unanimously.

11.01. RESOLUTION: Burlington Telecom (Councilors Keogh, Adrian, Berezniak & Kaplan)

Councilor Adrian made a motion, seconded by Councilor Kaplan, to waive the reading and adopt the resolution. Councilor Davis explained that the resolution and the resolution that followed it, were almost identical except for the resolve clauses. Davis offered that this resolution be amended. Councilor Caldwell seconded the motion. Councilor Ellis noted the confusion over the different resolve clauses, to which Councilor Davis offered amendments. The amendments were considered friendly by the maker.

Council President Keogh then called a recess at 10:05 p.m. in order to go over the changes that were being proposed. The Council reconvened at 10:55 p.m.

Upon reconvening, the Council President outlined a procedural issue that had arisen upon Councilor Kehoe's late arrival at the meeting. Councilor Adrian then made a motion to withdraw item 11.01, which the Council President honored. Councilor Davis then withdrew item 11.02, which the Council President honored. A single document, numbered 11.05, was then proposed.

11.02. RESOLUTION: Burlington Telecom Finances (Councilors Davis & Mulvaney-Stanak)

This item was withdrawn (see above).

11.03. RESOLUTION: Temporary Removal of the Chief Financial Officer (Councilors Shannon, Kehoe, Dober)

Councilor Shannon made a motion, seconded by Councilor Kehoe, to waive the reading and adopt the resolution. Councilor Shannon, explained that she had been asked to approve \$33.5 million for Burlington Telecom but otherwise no one had informed the Council of the additional money that was needed. She was not asked for permission to violate the CPG, although there had been discussion about Condition 17. She held CAO Leopold accountable for the fact that the Council was unaware and thought this was a breach of trust. She stated that no additional money should be used from the pooled cash, despite the fact this may mean no additional hookups would be allowed.

Councilor Shannon then requested that CAO Leopold step aside so an audit of Burlington Telecom could be done without any accusations that the audit had been influenced and that he not return until the audit was completed. She did not want to belittle the legitimate concerns about keeping the Clerk/Treasurer's Office functioning and noted it would be the role of the Mayor to determine how the office would continue to run.

Councilor Kehoe stated that she would not countenance the continued borrowing of money from the pooled cash to pay for Burlington Telecom in violation of the CPG and believed that if that meant no further hook-ups that would have to be done. Councilor Kehoe explained that the City's delay in remedying the violation was inexcusable.

Councilor Davis noted that accountability had been mentioned by Councilors. He recalled the most recent time that Councilors were given very clear information from both the Administration and the attorneys who were advising the Council. There was a work session on May 18th with all Councilors present. The question arose as to whether the City was in violation of Conditions 17 and 60. Quoting from a memo from outside legal counsel and the City Attorney, Councilor Davis read that Joe (McNeil) advised (Bill) Keogh who had asked if there were any issues of concern from a legal perspective with BT. Attorney McNeil advised Council President Keogh of Conditions 17 and 60. At a subsequent executive session meeting of the City Council on May 18th, Attorney Ellis informed the full Council about the violation of Condition 60 and Council's recommendation that that issue be raised with the PSB. The Council then agreed to file an amended petition to the PSB requesting temporary relief from Condition 60 which was filed on September 30th. Councilor Davis also brought up the fact that it had been suggested this information was not revealed because of the Mayoral race. The attorneys stated that was not the case. He agreed it was important to restore trust. However, he also felt it was time to take responsibility for the decisions that the Council made in May.

Councilor Bushor noted her hope that the Council would move forward with Burlington Telecom and not continue to place blame. She discussed how regulators and auditors do their job and wondered if the Council body was aware of how the job was done, noting that information was requested and taken elsewhere. She noted the taxpayers wanted the City to pay less for the services we received, that the fund balance was adequate and that the bonds were rated well. She believed that the CAO had worked diligently over the last 3 to 4 years to make this a financially sound community. Looking around at other communities, she stated that Burlington was doing well financially. She asked what was gained by blaming the CAO and stated her belief that it was mostly to place blame on someone.

Councilor Ellis stated the resolution expressed the frustration of many of the people in Burlington. However, he believed the problem with the resolution was that it seemed to be looking for a scapegoat. He thought the failure of the City Council over the course of a decade was in not providing an adequate form of management for Burlington Telecom. He stated that the voters wanted Burlington Telecom, someone had to oversee it and it had fallen to the CAO. The Council passed it off to an expert in the field of financing. He thought this resolution was a slippery slope and an unproductive way of working on the issue. He noted that the auditor and the CAO could be separated from each other and that this was instead a punitive action. He believed it was ridiculous to remove the one person who was capable of dealing with the financial issue.

Councilor Kaplan reminded everyone that every discussion on BT had been in executive session. She was given information in May during an executive session but was told not to talk about it. She believed that removing the CAO during the audit kept the CAO from looking as though he had influenced the audit. She also thought this allowed the taxpayers to find out what happened. She also believed it was a slippery slope to believe that one person was indispensable.

Councilor Dober stated when he first came on the Council he was surprised by how much information was given on BT. However, it was delivered in a nonchalant fashion. Further, he did not believe it was appropriate for \$17 million to be spent with no authority or authorization and a formal inquiry was in order.

Councilor Berezniak stated the information received in the worksession was largely prompted by a resolution that stated the information needed to be provided. Further, the Councilors could not take any

action on the information or speak to people about what they heard in executive session. He believed the secrecy was indicative of the problem.

Councilor Decelles said this was the most difficult decision he had to make on the Council. He noted that the Council is also running a business, which he had never approved of. He noted that because of the executive session he was not allowed to take notes or talk about the issues involved within the meetings. He had never questioned the CAO's integrity and had always thought that what he did was in the best interest of the City. He believed that the attorneys were also culpable in the BT matter.

Councilor Adrian apologized to the people of Burlington if he failed in his obligations to protect the City taxpayers. He stated the Administration still had not taken responsibility for this issue and he found it unacceptable. He commented on the attorney's memorandum that was discussed earlier, stating that the Administration illegally took money from the pooled cash. He stated that there was still a lack of information from between November of 2008 and May of 2009. He believed who knew what when was very important.

Councilor Mulvaney-Stanak stated this resolution was the emotional response to the fury that some people felt coming from residents but her opinion is that this was a City decision. She believed everyone was aware of this decision and to put the blame on one person was inappropriate and indeed a slippery slope. What she learned from all this was to ask questions in order to be the best informed Councilor possible. Her major question was what the resolution would achieve. She noted that the Council just passed a resolution with deadlines that would be very difficult to achieve without a CAO.

Councilor Caldwell believed this resolution was a form of political grandstanding. She noted it was a Councilor's duty to review the information that was provided and to be sure it was understood. She asked that people take responsibility for the decisions that were agreed to and were the same decisions made by the attorneys and the Administration. She suggested that during a quasi-judicial proceeding confidentiality was appropriate. Councilor Caldwell pointed out that if the CAO and others had ignored the advice and not intended to disclose information about Condition 60, counsel would have had a fiduciary and ethical obligation to discuss the matter with the Council and that was not the case. No one was operating in a vacuum. She stated she would not participate in a witchhunt. She then called the question, seconded by Councilor Mulvaney-Stanak. The motion failed by a vote of 11 to 3, with Councilors Mulvaney-Stanak, Davis and Caldwell voting in favor.

Councilor Kehoe stated she was not challenging anyone's integrity and believed that CAO Leopold was a man of integrity and had the best interests of the City at heart. She also believed he made a mistake, as he himself had stated. She explained that following the disclosure of additional information, it appeared that pooled cash had been used over a longer period of time than she initially thought. She felt that even after the City learned of the problem with Condition 60 they went ahead and continued the practice.

Councilor Adrian then read aloud the memo from the outside counsel, noting his own interpretation of what he thought the outside counsel could be saying. He read repeatedly a statement from Attorney Ellis recommending again that immediate action be taken with the Public Service Board. Councilor Adrian stated he wanted to know when the original request for action was initiated.

Councilor Paul believed that the bond of trust that the Council and the Administration had with the voters was broken. After speaking with auditors, she believed that it was best not to have the CAO or the General Manager of Burlington Telecom participate in the audit. She too agreed that she would not agree to money being taken from the cash pool unless the Public Service Board said the City could do so.

CAO Leopold then spoke about the resolution itself. He found some of the whereas clauses offensive and defamatory. He outlined one particular clause which stated he made an unsubstantiated accusation against a Board of Finance/City Council member to justify withholding information from the Council.

He passed around the cover page of the CPG application from Valley Net which was applying for telephone, video and internet throughout the State of Vermont, including Burlington, as a direct competitor. This competitor now had a contract with Montpelier and Rutland, both of which had been in discussion with the City of Burlington. A Board of Finance/City Council member was acting as the attorney for Valley Net, while on the Board that oversaw Burlington Telecom - a direct conflict of interest. Additionally, another clause alleged the CAO withheld information on the finances of Telecom and the issue with the CPG in order to affect the election. He asked where the proof was for these statements and noted that, in fact, there was proof to the contrary. At least a dozen people knew about the use of pooled cash and information on the finances of BT were on the website. Discussion of the use of pooled cash was in the FY 2008 audit report, as well as the potential risk if it were not paid back. The audit report received last week also noted this information. This was a public document and he suggested that the Councilors read it, noting that Comcast certainly did.

He stated that he was being accused of hiding information about the CPG despite the fact the attorneys are saying that was not the case. However, Councilors continued to look at ways to reinterpret what the attorneys have said. To the accusation that he spent money without the knowledge of VTAC or the Council, he distributed a transcript from a presentation he made to the Council in December of 2007 outlining the information that noted the overrun of the budget with revenues falling short and that financing would be required to bring Telecom to a cash-flow positive position. The CAO asked if anyone ever asked or wondered what happened as far as where the money was going to come from. He asked that the Council not pretend this was a secret. He had informed them of the situation.

In December of 2007 the CAO had a near fatal accident. Because there was no one in a backup position, he was required, against doctor's orders, to work from home. He attended Board of Finance meetings via Skype. On January 22, 2008 the Board of Finance meeting notes reflected that an executive session was held with a vote then taken authorizing additional financing for Burlington Telecom. Every Councilor knew he was authorized to go for additional financing. He did not want to be scapegoated because the Council did not understand the budgets they adopted. These budgets were reviewed by the Board of Finance in detail and were presented to the Council with the clarification that financing was required.

In August the CAO required additional medical attention and he was not able to go out for financing. The financial world collapsed; no one could be financed anywhere. Reading from Board of Finance minutes, on November 17th, the CAO spoke to the Board of Finance about the need to obtain a Letter of Credit or short term financing in order to carry the capital funding needs of Burlington Electric and Burlington Telecom. In December, a Bond Anticipation Note for \$14 million was issued to finance Burlington Electric which then retired the debit from the pooled cash for Burlington Electric.

The CAO noted that in November, due to the continuing collapse of the financial markets and the economy, he had a choice: close Burlington Telecom or continue to do what they had been doing until he could secure financing. Closing the doors would destroy Burlington Telecom and put the City at risk. The City could not walk away from a lease/purchase financing without affecting the credit rating of the City. He reiterated that he took full responsibility for using the pooled cash. That was his job, there was a clear record it had been done before with other departments.

Before they could cure the problem, they had to work with the Public Service Department issues around Condition 17. That was important because the City did not know how much it would cost and the Council had already voted on the fact that the City would not satisfy Condition 17 from the cash flow, therefore, the City was looking to do another audit to determine the updated cost of the build out. The CAO outlined what was provided to Commissioner O'Brien's staff which provided information on the negative cash position. PSD was informed that the money came out of the cash pool and that the City was waiting for the markets to offer financing again. The State was fully aware of the issue of Condition 17 and 60.

He reminded the Council of the executive session again in May wherein the Administration explained very specifically the financial situation, explained the use of pooled cash in this situation and the fact that the City was not in compliance with Condition 60. The Council received exactly the same advice that the CAO received. The Council was presented with information at that time from Attorney Joe McNeil who explained how that Condition came to be.

CAO Leopold then asked that the residents put the resolution in its proper perspective which was that of a partisan witch-hunt, and a situation wherein Councilors refused to acknowledge their own responsibility.

Councilor Paul offered the CAO an apology and made a motion to delete a number of whereas clauses. This was considered friendly by the maker and the seconder of the original resolution. Councilor Caldwell noted the resolution continued to remove the Council's culpability in this situation and she would not participate. Councilor Caldwell asked for a roll call.

Aye: Adrian, Berezniak, Kaplan, Shannon, Keogh, Kehoe, Decelles, Dober
Nay: Bushor, Mulvaney-Stanak, Caldwell, Davis, Ellis, Paul

The resolution passed by a vote of 8 to 6.

11.04. RESOLUTION: Authority Over Burlington Telecom (Councilor Decelles)

Councilor Decelles withdrew his resolution.

11.05. RESOLUTION: Burlington Telecom (Councilors Davis and Shannon)

Councilor Davis then made a motion to waive the reading and adopt the resolution. He outlined the suggested changes of items 11.01 and 11.02 which would create the new resolution. (see final resolution)

Councilor Adrian moved to amend the resolution such that a formal appraisal of Burlington Telecom be done. The motion was seconded by Councilor Decelles. Councilor Shannon asked if an appraisal could be harmful to the financing process. CAO Leopold noted it could be. He noted the value of the system was based primarily on its development potential. BT was a start up business with another two years of development before it would begin to realize its potential. Councilor Shannon then commented that she was willing to wait until November 16th to pursue the possibility for appraisal.

Councilor Adrian then asked CAO Leopold why the City should not be seeking a formal appraisal now. CAO Leopold noted it was based on the expertise of the consultant. Councilor Adrian then asked why the CAO was utilizing the numbers provided by the consultant. CAO Leopold stated that in terms of the immediate timing the City is redeveloping a business development plan and the value of the system would substantially reflect what that plan is. Councilor Adrian noted that eight of the Councilors had wanted to put the CAO on temporary leave and he wanted everyone to note where the current advice was coming from.

Councilor Adrian's amendment to the resolution asking for a formal appraisal failed by a vote of 10 to 4, with Councilors Kaplan, Adrian, Berezniak and Decelles voting in favor.

Councilor Bushor proposed two amendments asking that the CPG be reviewed by the City Attorneys and Burlington Telecom to ensure compliance with all conditions other than Conditions 17 and 60 and report back to the City Council by November 16th and that a protocol and policy be developed for the use of pooled cash by November 9th. Councilor Adrian seconded the motion. These changes were considered to be friendly by the maker.

Councilor Adrian proposed an amendment regarding confidentiality, stating that documents could not be released without the full vote of the Council. The motion was seconded by Councilor Kaplan. City Attorney Schatz noted it was meant as a majority vote.

Councilor Kehoe asked that an amendment be made to the disclosure deadline moving it from November 1, 2008 to August 1, 2008. The amendment was friendly to the maker and the seconder.

Councilor Caldwell asked the Administration what the cost would be to provide the documents that were being requested in this resolution. City Attorney Schatz noted the majority of the work would have to be done by McNeil, Leddy and Sheahan. Attorney McNeil stated that no estimate had been done on the new information being requested. However, estimates on the originally requested material would require a day of two secretaries and an attorney's time. Attorney McNeil was unable to give a dollar estimate, to which Councilor Caldwell replied she would be unable to vote on this resolution, as she anticipated significant money being spent on information that the Council may already have access to.

Councilor Adrian noted that he had already requested information from 2002 to 2009. He stated that request could be modified to this shorter time period of August 1, 2008 to the present. There followed a lengthy discussion between Councilor Kehoe and Attorney McNeil regarding the file request and costs associated with supplying the information to the Council.

The amendment was approved by a vote of 11 to 3, with Councilors Mulvaney-Stanak, Davis and Caldwell voting against.

Councilor Bushor then amended her previous amendment such that it read: "ensure compliance with all conditions other than the known non-compliance with Condition 17 and 60." Councilor Adrian found it friendly. Councilor Berezniak offered a rewording of the amendment; however, Councilor Bushor found it to be redundant.

The resolution passed unanimously.

12. COMMUNICATION: Dan Bradley, Transportation/Special Projects Planner, DPW, re:
FTA grant to support development of South End Park and Ride

12.01. RESOLUTION: Authorization to Purchase Property from Burlington Community
Development Corporation for the South End Transit Center
(Board of Finance)

Items 12 and 12.01 were removed from the agenda.

12.5. COMMUNICATION: Ken Schatz, City Attorney, re: Litigation (oral)

On a motion made by Councilors Shannon, seconded by Councilor Decelles the Council went into executive Session at 1:34 a.m. regarding litigation relating to retirement and bankruptcy pending litigation where premature disclosure could place the City at a substantial disadvantage. The motion passed by a vote of 13 to 1 with Councilor Adrian voting against. Also present were Mayor Kiss and Assistant CAO Pacy.

On a motion made by Councilors Kehoe and Davis, the Council went out of executive session at 1:57 a.m.

13. ADJOURNMENT

On a motion by Councilors Ellis and Shannon, the Council voted unanimously to adjourn at 1:59 a.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO

BOARD OF ABATEMENT OF TAXES
MONDAY, OCTOBER 26, 2009
9:04 P.M.

PRESENT: See above

1. AGENDA

Councilor Adrian made a motion to adopt the agenda, seconded by Councilor Decelles. The motion passed unanimously.

2. CONSENT AGENDA

On a motion by Councilors Adrian and Bushor, the Board of Abatement of Taxes voted unanimously to adopt the consent agenda thus taking the following actions as indicated.

Councilor Shannon then asked City Assessor Vickery to explain the general procedures relative to granting abatement of taxes. She asked specifically about the hardship clause. City Attorney Schatz explained the Charter provisions which allowed for abatement. Councilor Bushor concurred with Councilor Shannon stating it seemed to be a new procedure to allow for hardships. She believed that it was important to be very clear and consistent in order for the taxpayers to feel that fairness was being applied. Councilor Decelles was uncomfortable with the precedent that was being granted. Following a question by Councilor Ellis, City Attorney Schatz noted that City Charter was followed, rather than State law on the issue of abatement.

2.01. COMMUNICATION: Clerk/Treasurer's Office, re: Notice City of Burlington Board of Abatement of Taxes (**published in 10/21/09 Seven Days**)

*waive the reading, accept the communication and place it on file

2.02. REQUEST FOR ABATEMENT OF TAXES: Kathryn Silliman
Susan Schomody
26 Edgemoor Drive
028-3-067-000

*waive the reading and grant the request for abatement of taxes

2.03. REQUEST FOR ABATEMENT OF TAXES: Susan Schomody
10 Curtis Avenue
027-1-007-000

*waive the reading and grant the request for abatement of taxes

2.04. REQUEST FOR ABATEMENT OF TAXES: Steer and Stein
Jeff Herwood
147 North Winooski Avenue
PPP19777

*waive the reading and grant the request for abatement of taxes

2.05. REQUEST FOR ABATEMENT OF TAXES: Ernest Dorey
205-207 North Winooski Avenue

044-3-129-000

*waive the reading and grant the request for abatement of taxes

2.06. REQUEST FOR ABATEMENT OF TAXES: Laura Schned
26 Clymer Street
058-1-027-001

*waive the reading and deny the request for abatement of taxes

2.07. REQUEST FOR ABATEMENT OF TAXES: Stuart & Sarah Wichert
6 Summit Ridge
050-2-046-000

*waive the reading and deny the request for abatement of taxes

2.08. REQUEST FOR ABATEMENT OF TAXES: Ann Crane
905 South Prospect Street
058-4-013-000

*waive the reading and grant the request for abatement of taxes

2.09. REQUEST FOR ABATEMENT OF TAXES: Brian Lansbury
35 Bayview Street
054-1-038-000

*waive the reading and deny the request for abatement of taxes

2.10. REQUEST FOR ABATEMENT OF TAXES: Barbara Arnold
28 Farrington Parkway
029-1-105-000

*waive the reading and grant the request for abatement of taxes

2.11. REQUEST FOR ABATEMENT OF TAXES: Barbara Arnold
140 Howard Street
053-3-021-000

*waive the reading and grant the request for abatement of taxes

2.12. REQUEST FOR ABATEMENT OF TAXES: Ruth Latshaw
175-177 South Union Street
049-3-202-000

*waive the reading and deny the request for abatement of taxes

2.13. REQUEST FOR ABATEMENT OF TAXES: Burlington CoHousing Dev LLC
Anke Tremback
22 East Village Drive
051-1-020-022

*waive the reading and deny the request for abatement of taxes

2.14. REQUEST FOR ABATEMENT OF TAXES: Burlington CoHousing Dev LLC
Anke Tremback
26 East Village Drive
051-1-020-026

*waive the reading and deny the request for abatement of taxes

2.15. REQUEST FOR ABATEMENT OF TAXES: Francis & Renee Deligio
161 Austin Drive #222
059-3-006-022

*waive the reading and deny the request for abatement of taxes

- 2.16. REQUEST FOR ABATEMENT OF TAXES: 28-30 Conger Avenue LLC
Doug Goodman
28 Conger Avenue
053-2-021-000
*waive the reading and deny the request for abatement of taxes
- 2.17. REQUEST FOR ABATEMENT OF TAXES: Maplehurst Florist
(Vermont Floral)
62 Church Street
Various Accounts
*waive the reading and grant the request for abatement of taxes
- 2.18. REQUEST FOR ABATEMENT OF TAXES: Richard Yeaw
Linda Cooper
24 East Village Drive
051-1-020-024
*waive the reading and grant the request for abatement of taxes
- 2.19. REQUEST FOR ABATEMENT OF TAXES: Pearl Street Apartments LLC
234 Pearl Street
044-4-104-000
*waive the reading and deny the request for abatement of taxes
- 2.20. REQUEST FOR ABATEMENT OF TAXES: Barbara Gay, Trustee
154 Birchcliff Parkway
057-3-081-000
*waive the reading and deny the request for abatement of taxes
- 2.21. REQUEST FOR ABATEMENT OF TAXES: Barbara Collins
166 Ferguson Avenue
057-4-085-000
*waive the reading and grant the request for abatement of taxes
3. REQUEST FOR ABATEMENT OF TAXES: Summit Financial Center
112 Lake Street
PPP198955

City Assessor Vickery explained that Summit Financial Center moved out of Burlington in July of 2008 and did not pay their tax bill. They were seeking abatement of taxes of the portion of the year that they were not in Burlington. He suggested that 1/12th of the bill be paid and the rest abated. Councilor Ellis made a motion to approve the recommendation, seconded by Councilor Kaplan. Councilor Caldwell expressed her opinion that this was a business, that individuals would not be allowed to waive portions of their tax bill, and this did not seem to be a hardship under the technical term.

The motion to abate the taxes of Summit Financial Center to 1/12th of the amount due passed by a vote of 9 to 5 with Councilors Caldwell, Bushor, Mulvaney-Stanak, Adrian and Paul voting against. The Mayor was included in this vote and Councilor Davis recused himself from this vote.

4. REQUEST FOR ABATEMENT OF TAXES: Chase-Huxtable and Assoc LLC
139 Maple Street #1
049-4-056-001

Councilor Ellis made a motion to grant the abatement of taxes, seconded by Councilor Shannon. The motion was approved unanimously.

5. ADJOURNMENT

The Board of Abatement of Taxes ended at 9:26 p.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO

CITY COUNCIL WITH MAYOR PRESIDING
MONDAY, OCTOBER 26, 2009
1:30 A.M.

PRESENT: See above.

MAYOR KISS PRESIDING

1. AGENDA

There were no changes to the agenda.

2. APPOINTMENT: Design Advisory Board (Term expires 6/30/10)

Councilor Davis nominated Cheryl McDonough.

Cheryl McDonough was appointed to the Design Advisory Board.

3. ADJOURNMENT

On a motion by Councilors Bushor and Mulvaney-Stanak, the City Council With Mayor Presiding voted unanimously to adjourn at 1:31 a.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO