

---

---

DELIBERATIVE AGENDA  
LOCAL CONTROL COMMISSION  
CONTOIS AUDITORIUM, CITY HALL  
MONDAY, NOVEMBER 9, 2009  
7:07 P.M.

---

---

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

ABSENT: None

CITY ATTORNEY'S OFFICE: Ken Schatz, Richard Haesler, Jr.

CLERK/TREASURER'S OFFICE: Jonathan P.A. Leopold, Jr., Ben Pacy, Sue Trainor

PRESIDENT KEOGH PRESIDING

1. AGENDA

On motion by Commissioners Davis and Dober, the Local Control Commission Agenda was adopted, as amended: add a consent agenda as item 1.5.; add to the consent agenda item 1.5.01. APPLICATION FOR SPECIAL EVENT PERMIT (**one day only**): East Shore Vineyard, LLC, at Perrywinkle's Fine Jewelry, 227 Main Street, Friday, November 20, 2009, 7:00 p.m. – 10:00 p.m., Fundraiser for Vermont Symphony Orchestra with the consent action to "waive the reading, accept the communication, place it on file and approve the one day only special event permit application for East Shore Vineyard, LLC, at Perrywinkle's, 227 Main Street, Friday, November 20, 2009, 7:00 p.m. – 10:00 p.m., Fundraiser for Vermont Symphony Orchestra."

1.5. CONSENT AGENDA

1.5.01. APPLICATION FOR SPECIAL EVENT PERMIT (**one day only**):

East Shore Vineyard, LLC, at Perrywinkle's Fine Jewelry, 227 Main Street, Friday, November 20, 2009, 7:00 p.m. – 10:00 p.m., Fundraiser for Vermont Symphony Orchestra

\*waive the reading, accept the communication, place it on file and approve the one day only special event permit application for East Shore Vineyard, LLC, at Perrywinkle's, 227 Main Street, Friday, November 20, 2009, 7:00 p.m. – 10:00 p.m., Fundraiser for Vermont Symphony Orchestra

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

Bueno Burlington Inc., d/b/a Bueno Y Sano, 213 College Street

Commissioner Davis made a motion, seconded by Commissioner Dober, to approve the 2009-2010 First Class Restaurant Liquor License Application for Bueno Y Sano. The motion passed unanimously.

3. ADJOURNMENT

On a motion by Commissioners Davis and Dober, the Local Control Commission voted unanimously to adjourn at 7:11 p.m.

Attest:

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

REGULAR MEETING, CITY COUNCIL  
MONDAY, NOVEMBER 9, 2009  
7:12 P.M.

PRESENT: See above

PRESIDENT KEOGH PRESIDING

1. AGENDA

Councilor Adrian made a motion to approve the agenda, with no second. The agenda passed unanimously.

2. PUBLIC FORUM

President Keogh opened the public forum at 7:30 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Wayne Senville	1	Supported Laptop Computer Resolution
Zandy Wheeler		Supported Continuing Moran
Mike Glynne	UVM Student Govt.	Vandalism in Ward 1
Bea Bookchin		Supported BT/Opposed Politics in the Matter
Mark Heyman		BT – Release Documents
Dave Maher		Transparency
Tim George	Chair, TEC	Burlington Telecom
Eli Lesser-Goldsmith	7	Burlington Telecom

There being no one further coming forward, President Keogh closed the public forum at 7:45 p.m.

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

Councilor Decelles spoke about the upcoming Veterans’ Day and hoped that people would thank the veterans in Burlington. He then asked for a moment of silence for the events that occurred in Texas.

Councilor Berezniak spoke about the upcoming Ward 2/3 NPA meeting. A presentation would be made about the Route 127 bike path entrance.

Councilor Mulvaney-Stanak spoke about attending a memorial for John Tucker, a resident who recently passed away. He was the Director of the Racial Justice and Equity Project for ten years and developed

critical curriculum on addressing racism. She hoped that people would continue to address issues related to racism throughout the City.

Councilor Davis spoke about Veterans' Day. He noted that prior to this meeting the Board of Finance members had approved the purchase of flags for cemeteries throughout the City. Additionally, an appropriation was approved for funds for the National Guard. He then spoke about the passing of Larry McCrory as well as John Tucker. He believed that Vermont was a much better place because of their presence in the state.

Councilor Bushor informed the Council that the Community Coalition would be holding their second Moving Off workshop. This was for students moving off campus which provided information on being responsible neighbors. She also noted there was information from the Fire Department about smoke and CO alarms. She found it informative and asked the Clerk's Office to find out how the material was being disseminated.

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

Mayor Kiss spoke about the resolution (11.03) from the last meeting which dealt with the temporary removal of the CAO, stating that he had until November 16<sup>th</sup> to return the resolution to the Clerk's Office. He believed it would be imprudent to act on the resolution as the implementation may have serious consequences unintended by those who voted in favor of the resolution. He will be bringing recommendations on Burlington Telecom to the next meeting.

The Mayor then informed the Council that the Children's Museum had decided, with regret, to withdraw from the Moran Project. Representatives from the Ice Factor would be in town shortly and were still committed to the project as was the Sailing Center. He reminded the Council that the Moran Project not only would provide construction jobs but 80 full time positions when it was completed and not only would it provide an economic ripple effect but it would anchor the north part of the waterfront.

#### 5. COMMITTEE REPORTS

Councilor Shannon spoke about the Ordinance Committee items being worked on: the Noise Ordinance, the Vacant Building Ordinance, the Livable Wage issues, the proposed changes to the Employees' Retirement Plan.

Councilor Paul spoke about the Parks, Arts and Culture Committee meeting in which the Farmers' Market Expansion, the Moran Project – Sailing Center, and the Smoking Ordinance would be discussed. She also noted that the Ad Hoc Committee on the Audit RFP for Telecom would be meeting on November 11<sup>th</sup>, 17<sup>th</sup> and 23<sup>rd</sup>.

Councilor Shannon noted that the Ad Hoc Committee on Burlington Telecom Governance would be meeting immediately following the Ad Hoc Committee on the Audit RFP for Telecom. Their first step would be to become more informed on governance structures; panelists with a variety of experience in telecommunications would be participating in the discussion as well.

Councilor Caldwell asked that all materials being provided to Council members on the Ad Hoc Committees also be sent to the other Council members so they might be kept in the loop which Council President Keogh agreed with.

#### 6. CONSENT AGENDA

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

- 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. COMMUNICATION: Lise E. Veronneau, Business Manager, Burlington Fire & Police Departments to Board of Finance and City Council, re: Ambulance Fee Increase  
\*waive the reading, accept the communication and place it on file
- 6.03. RESOLUTION: Ambulance Service Fees (Board of Finance)  
\*waive the reading and adopt the resolution
- 6.04. COMMUNICATION: Colin K. McNeil, Interim Assistant City Attorney to City of Burlington City Council and City of Burlington City Council Finance Committee, re: Motion of Escheat/Motion for Final Decree of Escheat Estate of Margaret Chestnut Buell  
\*waive the reading, accept the communication and place it on file
- 6.05. RESOLUTION: Authorization for Mayor to Consent to Filing of Motions of Escheat and Motion for Final Decree of Escheat Re Estate of Margaret Chestnut Buell (Board of Finance)  
\*waive the reading and adopt the resolution
- 6.06. 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 as received at the October 26, 2009 City Council Meeting
- 6.07. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 5, 2009  
\*waive the reading, accept the communication and place it on file
- 6.08. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 13, 2009  
\*waive the reading, accept the communication and place it on file
- 6.09. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 26, 2009  
\*waive the reading, accept the communication and place it on file
- 6.10. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Burlington Community Development Corporation (BCDC) Minutes for October 13, 2009  
\*waive the reading, accept the communication and place it on file
- 6.11. COMMUNICATION: Mandy Davis, Agricultural Development Services Associate, Intervale Center, re: Update on the activities on the Burlington Food Council  
\*waive the reading, accept the communication and place it on file
- 6.12. COMMUNICATION: Margaret C. Poirier, Clerk for the Board for Registration of Voters, re: Resignations of Two Board Members: Lori Preston and Beth McDermott  
\*waive the reading, accept the communication, place it on file, advertise the vacancies and send Lori Preston and Beth McDermott letters of appreciation thanking them for their time served on the Board for Registration of Voters

6.13. COMMUNICATION: Bill Keogh, City Council President, re: Ad Hoc Committees  
\*waive the reading, accept the communication and place it on file

6.14. COMMUNICATION: Patricia J. Crowley, Clerk, Board of Electric Commissioners, re: Electric  
Commission Attendance Record  
\*waive the reading, accept the communication and place it on file

7. PRESENTATION: Charlie Baker, CCRPC Executive Director and Garret Mott, Chair of  
the Regional Plan Update Committee, re: 2011 Regional Plan (oral)

Mr. Baker and Mr. William Aswad provided information to the Council on the 2011 Regional Plan.

8. RESOLUTION: A Laptop in Every House (Councilors Adrian, Berezniak, Kaplan, Ellis,  
Kehoe, Paul)

Councilor Adrian first made modifications to the resolution. He then made a motion to waive the reading and adopt the resolution as amended with Councilor Shannon seconding the motion. Councilor Adrian noted that his intent was not to take money away from standing programs to provide this service. However, he noted that broadband internet access had recently been designated as a human right by France and one that the City should look into providing.

Councilor Dober supported the idea of putting WiFi in the Marketplace and made several amendments to the resolution. Councilor Decelles seconded the amendments. Councilor Berezniak noted his support of providing hardware to individuals and did not support the amendments offered by Councilor Dober. Councilor Shannon outlined her opinion that there was an economic injustice for those who did not have a computer in their home. Councilor Decelles stated oxygen was a human right not a laptop. He was disappointed this was something the Council was spending time talking about. The motion to amend the resolution failed by a vote of 12 to 2 with Councilors Dober and Decelles voting for the amendment.

Councilor Bushor outlined her support of increasing the services at the Fletcher Free Library for public access to computers but did not support this particular resolution. Councilor Caldwell outlined what the School Board had been researching in order to provide internet access to students which, to date, had been determined not to be financially feasible. She also stated that the School District was looking into creating a wireless district. Councilor Caldwell stated she would not support this resolution but would support resolutions that would provide livable wages to more people in the City, universal health care, and access to food. She felt it was inappropriate to call this an economic injustice.

Councilor Mulvaney-Stanak explained why she would not support the resolution, noting that livable wages were still far from being achieved. A laptop was still several steps down the road if the Council was looking for a healthy and engaged community. She encouraged the Council to provide more resources to the Library so they might be able to provide more internet access to residents. Councilor Davis thought the resolution was well intentioned but the basic needs of City residents were of a much different variety. Food, clothing, shelter and heat were unmet needs of many of the City's residents.

Councilor Kaplan noted that Burlington was the type of place where initiatives like this could happen. She believed the conversation should occur and that having WiFi on Church Street was important. Councilor Ellis stated if the hope was to deal with improving social conditions prior to initiating ideas such as this, the Council might as well stop meeting. He was willing to be imaginative at this point and he supported the resolution.

Councilor Dober called for a roll call:

Ayes: Councilors Kaplan, Adrian, Keogh, Shannon, Ellis, Kehoe, Berezniak, Paul

Nays: Councilors Caldwell, Davis, Mulvaney-Stanak, Bushor, Dober, Decelles

The resolution passed by a vote of 8 in favor, with 6 opposed.

9. RESOLUTION: Attorney-Client Communications Release (Councilors Adrian, Kehoe, Decelles, Ellis, Dober)

Councilor Adrian amended the resolution and then made a motion to adopt the resolution, seconded by Councilor Kehoe. Councilor Caldwell then amended the resolution so as to make public the November 9, 2009 memo from Attorney Daniel Richardson to the Burlington City Council Democratic Caucus regarding Burlington Telecom.

Following discussion of the amendment, City Attorney Schatz stated it was inappropriate to apply attorney client privilege to Mr. Richardson. In his opinion it was inappropriate to share the binder with Mr. Richardson. Mr. Richardson's relationship was with the Democratic Caucus, but that was not the "City of Burlington." The attorney client privilege was not to be waived until voted for by the majority of the City Council and until that time the material should not have been disclosed to outside parties and it appeared from his view that had happened.

Further, City Attorney Schatz stated that the Council knew that during discussions in executive session no one was allowed into those meetings unless approved by the majority of the City Council. The same principle applied here as these documents were for City Council members only. He believed it was inappropriate to have shared this information with anyone outside of the Council.

Councilor Adrian then stated that Councilor Caldwell's amendment was not considered friendly. Councilor Mulvaney-Stanak then seconded the amendment proposed by Councilor Caldwell. Councilor Bushor then added the same amendment as the third item of a Be It Resolved Clause. Again, City Attorney Schatz spoke to the fact that because confidential information was provided to outside Democratic counsel, confidentiality had been breached.

Councilor Adrian stated he had asked Attorney Richardson if it was legally appropriate to provide him with the information and was told that Mr. Richardson was within the envelope of attorney client privilege. Further he noted that he took great offense in the Council not being able to seek outside counsel.

The vote to include the amendment passed unanimously.

Councilor Caldwell then spoke to the concern she had about releasing the information to the public. She believed that this Council had provided Comcast with enough information to handicap Burlington Telecom by underselling BT for as long as necessary. She believed that much of the information should be made public but that there was sensitive financial information that should remain confidential. She had not agreed to release any information to an outside party and was upset it had occurred.

Councilor Kehoe stated there were two separate issues involved: viability of Burlington Telecom and transparency and accountability. She believed that Comcast already had financial information and that, rather, the City residents should know what their \$17 million was spent on. She believed accountability was vital and did not see providing this information to the public as being an attack against Burlington Telecom. Councilor Decelles stated he could find no documents within the binder provided that should be redacted or could benefit Comcast.

Councilor Bushor asked City Attorney Schatz and Attorneys McNeil and Ellis if there was information that, if released, could damage Burlington Telecom. City Attorney Schatz noted an item that should be redacted which included the name, address and phone number of an individual who contacted the Public Service Department. This information was protected by State law. He then stated that he did not believe there was a likelihood of substantial harm to the City's position in litigation by the disclosure. However, he reiterated that attorney client privilege was extremely important and must be voted on by the Council.

Attorney McNeil stated that there continued to be no waiver of privilege for anything other than the three ring binder provided for tonight's meeting. He noted there were items that were not included in the binder which they felt were proprietary in nature. He also stated that the attorneys did not believe the resolution waived any other information.

Councilor Kaplan noted that it was now time to make information public. Councilor Paul stated the public trust had been broken and this information should be made public. Councilor Adrian then accepted City Attorney Schatz's redaction request as a friendly amendment, which was also considered friendly by Councilor Kehoe.

The resolution, as amended, then passed unanimously.

10. RESOLUTION: Governance Consideration Regarding Burlington Telecom (Councilors Decelles, Dober)

Councilor Decelles made a motion to waive the reading and adopt the resolution, seconded by Councilor Dober. Councilor Decelles noted that Section 138 of the City Charter required the CAO be assigned the responsibility over things not assigned to other City entities. Therefore, he would like the newly formed sub-committees reviewing Burlington Telecom to consider adding the responsibility of BT to another department.

Councilor Shannon did not believe this resolution was necessary as there would be a complete and open discussion during the sub-committee meeting. Councilor Paul agreed with Councilor Shannon's statements. She stated that she had also spoken with the General Managers of the Airport and Burlington Electric and both of those departments were busy with their own departments.

The resolution failed by a vote of 12 opposed and 2 in favor, with Councilors Dober and Decelles voting in favor of the resolution.

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

Dan Bradley made a presentation to the Council about the following three resolutions. He explained that 20% of the funding would be provided by CATMA. Improvements to Sears Lane and the sidewalks on that street would also occur as a result of these resolutions. With no objection from the remaining Council, President Keogh made a motion to waive the reading, accept the communication and place it on file. Following a question from Councilor Shannon, Mr. Bradley stated it was the intention to include a parking structure if demand required one.

- 11.01. RESOLUTION: Authorization to Accept FTA Grant for the Burlington Transit Facilities (Board of Finance)

Councilor Davis made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. The motion passed by a vote of 13 to 0, with Councilor Decelles absent from the vote.

- 11.02. RESOLUTION: Authorization to Execute Memorandum of Understanding with CATMA (Board of Finance)

Councilor Davis made a motion, seconded by Councilor Bushor, to waive the reading and adopt the resolution. The motion passed by a vote of 13 to 0, with Councilor Decelles absent from the vote.

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

Councilor Davis made a motion, seconded by Councilor Bushor, to waive the reading and adopt the resolution. The motion passed by a vote of 13 to 0, with Councilor Decelles absent from the vote.

12. COMMUNICATION: Joseph E. McNeil, Esq., re: Collective Bargaining Update (oral)

On a motion by Councilors Dober and Shannon, the Council voted unanimously to go into executive session to discuss a matter of collective bargaining, premature disclosure of which could place the City at a substantial disadvantage at 9:36 p.m.

On a motion by Councilors Ellis and Shannon, the Council voted unanimously to go out of executive session at 10:30 p.m.

13. ADJOURNMENT

On a motion by Councilors Ellis and Shannon, the Council voted unanimously to adjourn at 10:30 p.m.

Attest:

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