

DRAFT

February 18, 2016

Regular Meeting

Members: David Provost, Clem Nilan, Jane Knodell, Joan Shannon, Theresa Alberghini, Tim Halvorson

Member's Absent: Karen Paul

Others Present: Stephen Barraclough, Abbie Tykocki, Dawn Monahan, and Terry Dorman (via phone)

Public Members: Steve Goodkind, Pat Robins, Alan Matson, Lauren Glenn Davitian

Meeting commenced at 5:32 p.m.

1. Agenda

Barraclough requests a discussion of a personnel issues to be added to the agenda. Provost accepts the request.

2. Approval of Minutes from February 10, 2016 BTAB meeting

MOTION to approve the minutes from the February 10, 2016 Burlington Telecom Advisory Board ("BTAB") meeting, made by *Shannon*, seconded by *Alberghini*. *Unanimous*.

Public Forum

Goodkind – Asks whether the three conditions of sale outlined in a letter by Trey Pecor from June 9, 2015 will be addressed in the Criteria for sale of BT for recommendation to City Council.

Public forum closed

3. BT Personnel Issues and BT Full Year Forecast Capex

Barraclough – Informs the BTAB of a personnel issue to be brought before the Board of Finance and City Council for approval. The request will be for the creation of a full time Network Planning and Construction Engineer position. Proposed to fill the role with BT's current Outside Plant foreman who has many years of institutional knowledge of the fiber lay across the City. The funds to create the position are already in the FY16 budget. The vacant foreman role will be filled internally and a new junior installer will be hired.

The near term priorities of the new position will be the reexamine the potential to increase the build out of the Downtown Core and New North End in the hopes that advances in technology/construction practice/cost will allow BT to cost effectively build out more of those areas. Also to plan to work in

conjunction with BED when they replace the conduit in Red Rocks in spring of 2016. The hope is that this arrangement with BED will allow BT an opportunity to move into areas we haven't been able to reach before in a financially responsible way.

Barraclough - Early stages of seeking approval from the Board of Finance, City Council, and Bluewater Holdings to increase BT's capital spend budget for 2016 from \$1.2M to \$1.5M - an increase of \$293,000. BT is ahead of budgeted revenues for the first time in Barraclough's tenure. Seven months into the fiscal year, forecasts show revenue of between \$8.4M and \$8.5M. The original budget was for \$8.3M. It also projects an increase in EBITA from \$2M to \$2.3M, covering both the cost and the cash requested for the additional capital expenditures out of BT's earnings. The money will be used for four things: 1. To complete the number of GPON swap outs that were budgeted – higher than budgeted new installs have reduced the capital available for swaps. 2. Cover the projected costs of the Red Rocks project, not anticipated when budgeting for FY16. 3. A smaller trial project with BED in anticipation of large and complicated Red Rocks project. 4. Two new vehicles, a van and small car - BT is currently constrained by the number of site visits that can be done in a day due to lack of vehicle.

MOTION to accept recommendation of increasing the Capex and personnel addition, made by *Shannon*, seconded by *Nilan*. *Unanimous*.

Public Forum is re-opened.

Lauren Glenn-Davitian representing CCTV –Requests an additional criterion for the sale of BT to include a corporate structure with public benefit to protect the city's interests in subsequent sales.

Public forum is closed.

4. Criteria for sale of BT for recommendation to City Council

Provost opens the floor to further discussion surrounding the definition and PSB requirements of the "sufficient financial capacity" of a new buyer and well as the two issues raised in Public Forum.

Provost invites Dorman to speak to whether the conditions outlined in the Pecor letter need to be specifically addressed in the criteria recommendation. *Dorman*: The intent of the letter is to state the various scenarios of where buyer approval rests and it is Dorman & Fawcett's desired outcome that the decision should rest in the hands of the City.

Nilan asks Dorman to recall a previous discussion had to prevent someone from flipping the company. *Dorman* – I think there are a number of features that could be put into an agreement like holding periods or another type of "poison pill" without issue. There might be an issue if there is a long-term restriction that causes a potential buyer to conclude they don't have any flexibility. But, I think we could add a provision to prevent the asset from being flipped.

Councilor Knodell asks if criteria could be added to give the City Right of First Refusal of any subsequent buyer. *Dorman* –A right of first refusal is hard because it kills anyone else's ability to sell something. Certain requirements could be added to make sure a subsequent acquirer of the system would have to

address. *Knodell* - But strictly speaking, the Citibank settlement doesn't preclude it? *Shannon* - maybe a broad statement saying the contract will have provisions giving consideration to the next sale of BT. *Dorman*- said that way, it could concern a buyer because they could feel that the restrictions would be too extreme. *Shannon*- We all share general concern over the next sale. We don't want to do a lot of work now to have it undone later. Could you draft something that we could add to the criteria? *Dorman* - Yes, I think it's a legitimate concern.

Provost states that he and Terry Dorman will draft additional criteria around this topic.

Councilor Shannon asks whether the City Attorney is looking into what the BTAB can legally share publically regarding the threshold sale amount. *Provost*- Yes, I'm that is my understanding that the City Attorney is reviewing that and I'm hesitant to send this recommendation to the Council before we have an answer. *Dorman* - At the Bluewater level, it was my understanding that the number was to be kept confidential in terms of strategic value of doing so. Secondly there was a significant discussion and subsequent filing at the PSB level to ensure the threshold remains confidential. It would be fine as part of a discussion with a potential buyer protected by a Non-Disclosure Agreement, but should not be publically disclosed outside of negotiation. *Shannon* – You're saying that even if it's legal, it's a bad idea. *Dorman* – Yes. It's not about finding the highest price, but about finding the best buyer. That said, we don't want to miss an opportunity to maximize the recovery for the City so long as the other key criteria are met.

Councilor Shannon requests that the criteria note the existence of the threshold price.

Dorman notes that if BT does very well over the next months to a year and exceeds everyone's expectations, at some point the performance level would indicate that a transaction at the threshold amount would not be a fiscally responsible decision.

Councilor Shannon requests that the criteria recommendation note that at the time of the sale of BT any additional share of profit/financial benefit for the City above that contemplated in the original settlement agreement would have to be shared with Citibank.

Halvorson raises the issue as to whether the timeframe of the sale opens BT to vulnerability in regards to advances in technology and whether that should be noted in the criterion. *Barraclough*- There is nothing that we've become aware of that is going to render fiber obsolete in the next 20 - 30 years. The industry is moving to everything being wireless and there will be markets then that we can't imagine now, but everything leads back to density of fiber and points connected to fiber. *Dorman* - I think within the time horizon where the City maximizes the return, we don't need to be particularly concerned about technology bypassing BT in the asset. We have to be mindful that the PSB process is going to be a significant undertaking by whoever the acquirer is, so making sure we're highly confident in whoever the buyer is will prevail in the PSB process is critical.

Nilan raises the issue around further defining the buyer's ability to reinvest profits into the system.

Provost – Is there any advantage to further defining what we mean by "sufficient financial capacity"?

Dorman – I think there is. Putting dimensions around the multiple requirements for capital, like opening

day one capital, emergency fund, general working capital, and expansion capital that are helpful to a buyer.

Councilor Shannon suggests separating the criteria of experienced management team from financial capacity and expanded on the definition of financial capacity as suggested by Dorman.

Provost recaps the requested next steps.

1. Provost and Dorman will draft a separation of the management experience and financial capacity into two bullets, including further definition around financial capacity.
2. Provost and Dorman will confirm the clarification regarding the threshold amount with the City Attorney.
3. Provost and Dorman will propose criterion that address concerns with regards to subsequent buyers.

Alberghini requests further understanding about what the process and timeline will be from here on out both on attracting buyers and negotiating contracts. Provost suggests this to be a specific agenda item or executive session at a future meeting.

Provost states that the City has hired Dorman & Fawcett to find potential buyers to bring forth to the BTAB for consideration. *Knodell* – The criteria will be the guide to Dorman & Fawcett to explore potential buyers? *Provost* – Yes.

Public Forum is re-opened.

Goodkind submits a copy of the Pecor letter from June 9, 2014. It is accepted by Barraclough (subsequently circulated to the BTAB by Monahan).

Public Forum is closed.

Councilor Shannon requests clarification that the highest continued interest the City could retain is 25%. *Dorman* – The city has an opportunity to convert its share of the proceeds from a sale of BT into a carried interest. It is possible that the City could retain more than 25% but it would require a conversation with Citibank to explore.

Barraclough notes that from now until September, the BT Management Team will be involved in the complex process of renewing BT's Certificate of Public Good from the Public Service Board.

Provost notes that the next regularly scheduled BTAB meeting which will take place on March 9, will again be devoted to the Criteria for the sale of BT.

MOTION to adjourn made by *Shannon*, seconded by *Alberghini* at 7:04 p.m. *Unanimous*.