

Present: President Craig; President Pro-Tem Lison; Members: Buterbaugh, Kennedy, Stearn and Walsh

Absent: Downey

Also Present: Village Manager, Hanlin  
Public Services Director, Spallasso  
Assistant to the Manager, Pasieka  
Village Attorney, Ryan

President Craig called the meeting to order at 7:45 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

### **APPROVE MINUTES**

Buterbaugh indicated that the first two paragraphs on page 11 do not reflect that he was the person talking about the cable related item.

MOTION by Walsh, supported by Kennedy, that the minutes of a regular Council meeting held on Monday, November 15, 1999 be approved as amended.

Motion passes unanimously.

Buterbaugh welcomed and introduced members of Boy Scout Troop 1024 who were attending the meeting to earn a "Citizenship in the Community" merit badge.

### **PUBLIC COMMENTS ON ITEMS NOT ON THE PUBLISHED AGENDA**

Gloria Knotts of 31282 W. Rutland has been an election official in the Village for several years. She commented that electors often question whether the Village election can be combined with the presidential primary to save money. Combining the elections this year would save the Village \$3,000-\$5,000. The recent Villager newsletter indicated that this is not going to happen. Knotts thinks that combining the elections would demonstrate fiscal responsibility and help pass the millage cap increase.

Craig responded that the Southfield Township Clerk brought the possibility of combining the elections to Council's attention a couple of months ago, and Council has communicated this request to its representatives in Lansing. The Legislature has yet to act on this matter. The newsletter informed residents that the Council election will be held in March because that is still the approved date.

Ryan stated that, until and unless the State Legislature changes the law, the Village has to proceed with its regular Village election date. The Legislature would have to act on this before its winter recess on December 9.

### **REVIEW AND POSSIBLE ACTION ON THE MEDIAONE/AT&T TRANSFER**

Buterbaugh referred to a memo dated November 18, 1999 from Cablecasting Board Administrator Kathryn Hagaman. At the November Cablecasting Board meeting, the members discussed a revised resolution for transferring control of the cable franchise from MediaOne to AT&T. The Board unanimously voted to recommend to the communities to grant the request for transfer of control with conditions.

Buterbaugh remarked that the Board agreed to include a provision in the resolution that says there will be a renewal franchise agreement or an agreement to extend negotiations between the operator and franchise authority on or before December 31, 1999. This provision is meant to encourage a time line for concluding negotiations and present a proposed franchise agreement to the municipalities. Buterbaugh emphasized that the proposed resolution for transfer of control does not limit the time needed for municipal review and action on a revised ordinance and recommended franchise agreement.

RESOLVED by Buterbaugh, supported by Walsh, to adopt the following resolution.

**RESOLUTION OF THE VILLAGE OF BEVERLY HILLS  
APPROVING THE CHANGE OF CONTROL  
OF THE CABLE COMMUNICATIONS FRANCHISE**

**WHEREAS**, MediaOne of Michigan, Inc. (Operator) is duly authorized to operate and maintain a cable communications system in the Village of Beverly by the Village of Beverly Hills (Franchise Authority); and

**WHEREAS**, pursuant to the Agreement and Plan of Merger among AT&T Corp. (AT&T), a newly formed wholly owned subsidiary of AT&T (Merger Sub), and MediaOne Group, Inc., the parent of Operator (MediaOne), dated as of May 6, 1999 (the Merger Agreement), MediaOne will merge with and into Merger Sub, with Merger Sub as the surviving corporation in the merger, and as a result of the transaction contemplated by the Merger Agreement, AT&T will take control and be the ultimate parent of Operator (the Transactions); and

**WHEREAS**, Operator will continue to be the cable operator in the Village of Beverly Hills after consummation of the Transactions; and

**WHEREAS**, FCC Form 394 with respect to the Transactions has been filed with the Franchise Authority; and

**WHEREAS**, the parties to the Merger Agreement have requested consent by the Franchise Authority to the Transactions.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

Section 1. The Franchise Authority hereby consents to and approves the Transactions, subject to the following conditions:

(a) The automatic revocation of the Franchise Authority's consent if the Merger Agreement is not consummated by December 31, 2000 (provided that if there is a material change in the material information provided to the Franchise Authority in the FCC Form 394 prior to December 31, 2000, the Franchisee shall notify the Franchise Authority of such change and the Franchise Authority shall have the right to determine whether or not such change warrants revocation of its consent to the Transactions), or if such Merger Agreement is terminated prior to that time without the same having been consummated; and

(b) A written affirmation by AT&T that the payment of the purchase price of the Transactions itself will not cause or result in any increase in subscriber cable rates; and

(c) The agreement by Operator that this approval of the change of control does not constitute a waiver by Franchise Authority of any existing defaults of the Operator or any right to pursue any remedies available with respect to such defaults, whether or not acted upon by Franchise Authority at the time of this approval; and a written representation by Operator of the existence of any known defaults or a written representation by Operator that it has no knowledge of any such defaults; and

(d) The full and binding effectiveness of a renewal franchise agreement or an agreement to extend negotiations between Operator and Franchise Authority on or before December 31, 1999, and Operator's agreement that this approval does not constitute a waiver of any right of Franchise Authority to enforce compliance with all applicable requirements of such renewal agreement, the prior franchise agreement, and Franchise Authority's cable regulatory ordinance regarding transfer, ownership, and control of Franchise Authority's cable system and its cable franchise and Franchisee; and

(e) Operator's written acknowledgment that the approval and consent provided in this Resolution shall not constitute a waiver of any lawful authority of Franchise Authority to require Operator to furnish non-discriminatory access to its cable system for providers of Internet access service, subject to applicable law. Franchise Authority and Operator have not waived any rights, obligations, claims, defenses or remedies regarding the authority of Franchise Authority to impose such conditions. Prior to the enactment of any such requirement, Franchisee shall be provided with reasonable notice and an opportunity to be heard, including the right to present evidence on the findings, if any, to be made by the Franchise Authority with respect to such a requirement; and

(f) AT&T's written acknowledgment that the Franchising Authority's conditional approval of the Transactions has been made in reliance on AT&T's financial qualifications as reflected in Exhibit 8 to the FCC Form 394; and

(g) AT&T's written acknowledgment that it is aware of the ongoing negotiations between the Birmingham Area Cable Board (of which Franchise Authority is a member, on behalf of

Franchise Authority and other member communities of the Board) and Operator for a renewed cable franchise and does not object to the current informal proposals of Operator regarding such renewal.

Section 2. This Resolution shall be deemed effective in accordance with applicable law.

Passed, Adopted and Approved this 6th day of December 1999.

Buterbaugh commented that representatives are present tonight from MediaOne, AT&T and the Cablecasting Board.

Stearn maintains that the issues incorporated in letters from MediaOne and AT&T received with the proposed resolution are important and should be referenced in the resolution approving the transfer. He suggested that the resolution refer to the letters as an addendum.

Brian Janks of 18281 Riverside Drive, member of the Cablecasting Board, stated that the Board's legal counsel Don Gillis assured the members that the letters signed by MediaOne officials are completely binding. It was agreed by all parties that those representations would be removed from the resolution and included in side letters.

Michael DiMaria, Manager of Corporate Affairs for MediaOne, stated that the document before the Council for approval is a resolution for transfer of control and not a contract. MediaOne and AT&T preferred that certain provisions be removed from the resolution and stated in a side letter for precedential reasons. The cable company did not want to create precedential standings based on what was done in this consortium. DiMaria asserted that the letters are completely binding on what MediaOne has warranted that it will do.

Stearn contends that the letters are acknowledgments and do not represent binding language in a contract.

DiMaria stated that the scope of review by a municipality after receiving FCC Form 394 from the Cable Company involves determining whether the transferee has the legal, technical, and financial capabilities to be able to run the system. The attorney for the Cablecasting Board has recognized that AT&T does have those capabilities to be able to continue to run the system in Beverly Hills. The Cablecasting Board asked for additional conditions that are outside the scope of review but are based on what the Board considered the needs of the consortium communities. The conditions included in the resolution and the side letters have been accepted by MediaOne and AT&T. These were negotiated terms between the Cablecasting Boards attorney and counsel representing MediaOne and AT&T. DiMaria stated that it is not uncommon to acknowledge and affirm those issues in a letter. He noted that Bingham Farms, Franklin and Birmingham have passed the resolution approving the transfer as recommended by the Cablecasting Board.

Craig reviewed the history of transfers of this cable franchise beginning with Booth Communications. He commented that this consortium has been in the process of renewing its franchise agreement with the cable operator for about two years. The recent acquisition of MediaOne

by AT&T has caused further delay in the negotiations for franchise renewal. The proposal before Council tonight is a resolution approving that acquisition. The franchise agreement is still pending and will be completed by some time next year. Craig remarked that the affirmations stated in the letters attached to the proposed resolution will hopefully be incorporated into the franchise agreement or cable ordinance.

Janks concurred that the resolution allows the cable company to transfer control of the cable franchise from MediaOne to AT&T. The Cablecasting Board continues its negotiations with MediaOne. Janks related that the final draft is almost complete and may be acted on by the Cablecasting Board at its meeting next week.

Dorothy Pfeifer of 160 Charrington Court asked questions about the franchise renewal and transfer of the cable franchise which were addressed by DiMaria.

Deborah Lowmaster of 16301 Amherst, Cablecasting Board member, urged the Council to adopt the resolution recommended by the Board.

Stearn commented on the importance of the issues addressed in the accompanying letters. One of the letters includes an affirmation from AT&T that payments of the purchase price of the transaction will not cause or result in any increase in subscriber cable rates. Another letter contains an agreement by MediaOne to reimburse the member communities for attorney fees incurred as a result of the BACB and member communities' consideration of the application for consent to a transfer.

Craig believes that the issue of rate increase is covered under item (b) in the resolution, which is a condition requiring a written affirmation by AT&T that the payment of the purchase price of the transaction will not cause or result in any increase in subscriber cable rates.

Roll Call Vote:

Kennedy	- yes
Lison	- yes
Stearn	- no
Walsh	- yes
Buterbaugh	- yes
Craig	- yes

Resolution passes (5 - 1).

**RECOMMENDATION FROM PERSONNEL COMMITTEE TO ADJUST VILLAGE MANAGER'S SALARY BASED ON EVALUATION**

The Personnel Committee of Council met on October 20, 1999 and conducted a performance evaluation of the Village Manager. Lison stated that the Committee agreed to an excellent rating

based on the manager's performance. Council members are in receipt of a draft copy of those meeting minutes.

RESOLVED by Lison, supported by Kennedy. Whereas the Village of Beverly Hills Council Personnel Committee has met, studied, and recommended a salary increase for Tamara Hanlin, Village Manager, in the amount of \$3,000 for the calendar year of 2000 commencing January 1, 2000, it is resolved that the Village of Beverly Hills Council approves this salary increase.

Buterbaugh commented on the goals prepared by the Manager for the upcoming year, which are listed on page 2 of the Personnel Committee meeting minutes. He presented reasons why he disagreed with some of the goals.

Lison remarked that the Personnel Committee worked with the Manager on modifying the proposed goals while allowing her latitude in setting the goals. As a result of that discussion, Hanlin submitted a list of revised goals which has been distributed to Council.

Kennedy clarified that the goals are peripheral to Hanlin's overall job description, which is running the Village.

It was suggested that the Personnel Committee meet again prior to the March election to review the Manager's revised goals. Council members may submit their input on these goals to Lison or Hanlin before this meeting.

Roll Call Vote:  
Resolution passes unanimously.

Craig congratulated Hanlin on doing a great job.

**RESOLUTION TO APPLY TO INFRASTRUCTURE REIMBURSEMENT FROM OAKLAND COUNTY**

RESOLVED by Walsh, supported by Kennedy, to adopt the following Resolution:

**RESOLUTION  
VILLAGE OF BEVERLY HILLS  
INFRASTRUCTURE FUND EXPENSE REIMBURSEMENT REQUEST**

WHEREAS, upon the recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established an Environmental Infrastructure Fund Program to assist Oakland County cities, villages and townships in addressing clean water and storm water needs; and

WHEREAS, Oakland County's Environmental Infrastructure Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with environmental remediations or improvements relating to ground and/or surface

water, water supply, sewer and/or drainage systems and/or water pollution control efforts incurred as part of a city, village or township road project; and

WHEREAS, the Village of Beverly Hills, Oakland County, Michigan has incurred expenses in connection with environmental remediation or improvement project(s) believed to be eligible for reimbursement under Oakland County's Environmental Infrastructure Fund Program.

NOW, THEREFORE BE IT RESOLVED, that the Village of Beverly Hills Council authorizes and directs its DPS Director, as agent for the Village of Beverly Hills, in the manner and to the extent provided for under Oakland County Board of Commissioner Miscellaneous Resolution 99093, to request reimbursement of eligible environmental remediation or improvement project expenses under Oakland County's Environmental Infrastructure Fund Program.

Roll Call Vote:  
Resolution passes unanimously.

**APPROVE FINAL PAYMENT TO SCODELLER FOR CONTRACT #R-98-5**

Director of Public Services Spallasso has recommended that Council authorize final payment to Scodeller Construction, Inc. for the joint sealing program.

RESOLVED by Walsh, supported by Stearn, to authorize final payment in the amount of \$1,515.00 to Scodeller Construction Inc. to close contract #R-98-5.

Roll Call Vote:  
Resolution passes unanimously.

**APPROVAL OF BILLS**

MOTION by Stearn, supported by Lison, that the bills for a period from 11/16/99 through 12/06/99 be approved for payment in the following amounts.

\$274,522.50	General Fund
12,846.49	Major Road Fund
23,824.67	Local Road Fund
2,490.42	Sick Pay Fund
468.91	Capital Projects Fund
4,729.07	Dedicated Millage
16,314.49	Water/Sewer Operation Fund
11,319.16	Trust & Agency Fund

Questions from Council and the audience were addressed by Stearn and administration.

Motion passes unanimously.

**LIAISON'S REPORTS**

Stearn thanked Parks and Recreation Board member Jim O'Reilly for writing an article for the Villager newsletter regarding Beverly Park.

### **MANAGER'S REPORT**

Hanlin thanked Council for its vote of confidence tonight. She reported that she has been in contact with Linden Nelson, owner of the former HaLo building on Southfield Road. Hanlin was informed that there would be activity on the site the week of November 22 or November 29. There has been no movement to begin site plan work. Hanlin asked Ryan to follow up with Mr. Nelson.

Ryan stated that Nelson advised him that activity will start on the site within the next two weeks. He understands that negotiations between the property owner and the Bed Bath & Beyond organization have concluded, and construction should start shortly.

In answer to an inquiry, Ryan stated that the demolition permit is valid for six months, and the applicant must start construction on the approved site plan within a year.

Spallasso stated that he was contacted last week by the firm handling the construction project. They are preparing to extend the water main and the tap to the storm sewer lines. He expects to be advised of a firm date when work will start within the next week.

### **PUBLIC COMMENTS**

There were no comments from the public.

### **COUNCIL COMMENTS**

Stearn wished a Happy Hanukkah to those celebrating Hanukkah.

Stearn commented that the courts sometime sentence offenders to a community work program. He asked if Beverly Hills has such a program.

Ryan stated that the 46th District Court has approximately 200 agencies involved in the community work program. Beverly Hills is not among them because of the expense to the community of supervising the program. It would involve overtime for a public safety officer or another employee.

Kennedy stated that SEMCOG is preparing its 25-year regional long range transportation plan. The plan includes improvement of 14 Mile Road from Southfield to Greenfield Roads in the first five years. The plan addresses Southfield Road from 12 Mile to 14 Mile Road after the fifth year. She noted that the schedule is subject to change.

Walsh congratulated two athletic teams at Detroit Country Day School. The boy's football team recently won the District Five State Championship. The girl's basketball team won the State Class B Championship.

Buterbaugh remarked on the attractive appearance of the Detroit Country Day School campus that is a result of their ongoing renovations.

Buterbaugh referred to a letter from David Birchler regarding fee increases from Birchler Arroyo Associates effective January 1, 2000. He hopes that administration will examine the six percent increase in the Village's monthly retainer for planning consultant services.

Buterbaugh questioned whether the Finance Committee has reviewed and commented on the most recent Revenue and Expense report. Questions from Buterbaugh on the November 30, 1999 memo regarding the Acacia Park Retention Treatment Basin status were addressed by Spallasso.

Craig wished everyone a happy holiday season. He thanked the boy scouts for attending tonight's meeting.

MOTION by Lison, supported by Walsh, to adjourn the meeting at 8:53 p.m.

Motion passes unanimously.

**Andrew Craig**  
**Council President**

**Ellen E. Marshall**  
**Village Clerk**