June 11, 2002

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting - 6:00 p.m.

An adjourned meeting of the Council of the City of Fort Collins was held on Tuesday, June 11, 2002, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll Call was answered by the following Councilmembers: Bertschy, Hamrick, Kastein, Martinez, Tharp and Weitkunat.

Staff Members Present: Fischbach, Krajicek, Roy.

Resolution 2002-063
Making an Appointment to Fill a Vacancy for
<u>Councilmember for District 6 on the Fort Collins City Council, Adopted.</u>

The following is staff's memorandum on this item.

<u>"Executive Summary</u>

A vacancy exists on the City Council due to the resignation of District 6 Councilmember Chuck Wanner. Applications were solicited, and ten individuals applied for the District 6 Council vacancy prior to the May 31 deadline. The applicants are: William M. Benton, David L. Edwards, Remi Frazier, Lance L. Freeman, Gerry Horak, Eric Levine, William H. Miller, David Roy, William P. Walters, and Nancy York.

At this meeting, the City Council will follow the selection process outlined on Attachment 1. After completion of the interview process, Council will decide which applicant should be appointed and then adopt this Resolution to formalize the appointment to fill the vacancy created by the May 31 resignation of Councilmember Charles Wanner. The person appointed will serve until the District 6 voters elect a representative at the April 8, 2003 election, and the elected individual has taken office.

The City Charter requires Council to make the appointment within 45 days of the effective date of resignation. An appointment must be made on or before July 15, 2002."

The ten candidates were each allowed a two-minute timed introductory statement in the following random order determined by lot:

1. Nancy York
2. William P. Walters

3. Eric Levine
4. Lance L. Freeman
5. Gerry Horak
6. David Roy
7. William M. Benton
8. Remi Frazier
9. David L. Edwards
10. William H. Miller

Mayor Martinez stated that public input would have a two-minute time limit to speak per individual. The citizens who commented with regard to candidates were as follows:

Jan Harrison, District 6 resident, spoke in support of William Walters.

Jim Ringenberg, attorney, encouraged the Council to appoint someone who would exhibit the character of civility.

Ana Idios-Terry, 2820 West Elizabeth, supported William Walters.

Lucinda Carr, a Fort Collins resident, spoke in support of David Roy.

Flora Seinz, 1713 Concord Drive, supported David Roy.

Howard Alden, 800 East County Road 58, spoke in support of David Roy.

Allison Mason, 918 Wild Cherry Lane, supported William Walters.

Rita Bavaco, 426 Laporte Avenue, spoke in support of William Walters.

Steven Church, 721 West Myrtle, supported David Roy.

Don Flick, 520 North Sherwood, spoke in support of William Walters.

Nancy Duteau, 520 North Sherwood, supported William Walters.

Kate Forgach, 322 North Loomis, spoke in support of Gerry Horak.

Kathryn Hollady, 604 Duke Lane, supported Remi Frazier.

William Dan Terry, 2820 W. Elizabeth Street, spoke in support of William Walters.

Andrew Stewart, CSU student, supported Remi Frazier.

John Gascoyne, 718 West Mountain Avenue, spoke in support of David Roy.

Ed Caffrey, County resident, supported David Roy.

Victor Seinz, 1713 Concord Drive, spoke in support of Eric Levine and David Roy.

Dr. Bill Black, 520 North Sherwood, supported William Walters.

Jack Gellt, 520 North Sherwood, spoke in support of William Walters.

Darrell Frank, 1526 Whedbee, supported David Roy.

Dr. Judy Menshall, CSU, spoke in support of Lance Freeman.

Al Baccili, 520 Galaxy Court, supported Gerry Horak.

Gina Janett, 730 West Oak Street, spoke regarding the character and political values of District 6.

Council conducted a written ballot to determine the five finalists.

Mayor Martinez stated that the Council would select five finalists by written ballot and that the public would see how each Councilmember voted. After the written ballots were tabulated, City Clerk Krajicek summarized the results:

Bill Benton - 3 votes
Dave Edwards - 3 votes
Remi Frazier - 3 votes
Lance Freeman - 3 votes
Gerry Horak - 3 votes
Eric Levine - 2 votes
Bill Miller - 3 votes
David Roy - 4 votes
William Walters - 4 votes
Nancy York - 2 votes

Mayor Martinez stated that the options were to vote to break the tie among the candidates receiving three votes to narrow the field, or to expand the number of finalists to accommodate the tie vote. City Attorney Roy stated that other options would be to proceed with the field of two candidates that received four votes, proceed with a field of eight candidates, or select five finalists by narrowing the field of six candidates that each received three votes to three candidates.

The consensus of the Council was to conduct another written ballot to break the tie among the candidates that each received three votes. After the written ballots were tabulated, City Clerk

Krajicek summarized the results:

Bill Benton - 4 votes
Dave Edwards - 3 votes
Lance Freeman - 5 votes
Gerry Horak - 3 votes
Bill Miller - 3 votes

The consensus of the Council was to conduct another written ballot to break the tie among the candidates that each received three votes. After the written ballots were tabulated, City Clerk Krajicek announced a tie between Dave Edwards and Gerry Horak with 3 votes each.

The consensus of the Council was to expand the field of finalists to six. City Clerk Krajicek stated that the six finalists would be Benton, Edwards, Freeman, Horak, Roy, and Walters.

Mayor Martinez stated that the candidates would be sequestered and that Council would conduct separate interviews of each of the six finalists in random order. He thanked all of the candidates for their willingness to serve.

(**Secretary's Note: The Council took a brief recess before proceeding with the interviews.)

Council conducted interviews of the six finalists. Each candidate had a limit of one minute for each answer to six separate questions. Interviews were conducted in the following order:

1. Bill Benton
2. David Roy
3. David Edwards
4. William Walters
5. Gerry Horak
6. Lance Freeman

Mayor Martinez stated that he would entertain a motion to appoint one of the six finalists.

Councilmember Kastein requested time for the Councilmembers to review their notes.

Councilmember Weitkunat made a motion, seconded by Councilmember Kastein, to appoint Dave Edwards.

Councilmembers Weitkunat, Kastein and Martinez spoke in support of appointing Dave Edwards.

Councilmember Tharp commented that there were 10 outstanding candidates and that this would be a tough decision.

The vote on the motion was as follows: Yeas: Councilmembers Kastein, Martinez and Weitkunat. Nays: Councilmembers Bertschy, Hamrick and Tharp.

THE MOTION FAILED TO PASS

Councilmember Hamrick made a motion, seconded by Councilmember Tharp, to appoint Gerry Horak.

Councilmembers Hamrick, Tharp and Bertschy spoke in support of appointing Gerry Horak.

Councilmembers Kastein and Weitkunat spoke against appointing Gerry Horak.

The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick and Tharp. Nays: Councilmembers Kastein, Martinez and Weitkunat.

THE MOTION FAILED TO PASS

Councilmember Bertschy made a motion, seconded by Councilmember Hamrick, to appoint David Roy.

Councilmembers Bertschy, Hamrick and Tharp spoke in support of appointing David Roy.

The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick and Tharp. Nays: Councilmembers Kastein, Martinez and Weitkunat.

THE MOTION FAILED TO PASS

Councilmember Tharp made a motion, seconded by Councilmember Hamrick, to appoint Will Walters.

Councilmembers Tharp, Hamrick and Bertschy spoke in support of appointing Will Walters.

The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick and Tharp. Nays: Councilmembers Kastein, Martinez and Weitkunat.

THE MOTION FAILED TO PASS

Councilmember Weitkunat made a motion, seconded by Councilmember Kastein, to appoint Lance Freeman.

Councilmembers Weitkunat, Kastein and Martinez spoke in support of appointing Lance Freeman.

The vote on the motion was as follows: Yeas: Councilmembers Kastein, Martinez and Weitkunat.

Nays: Councilmembers Bertschy, Hamrick and Tharp.

THE MOTION FAILED TO PASS

Councilmember Kastein made a motion, seconded by Councilmember Weitkunat, to appoint Bill Benton.

Councilmembers Kastein, Weitkunat and Martinez spoke in support of appointing Bill Benton.

The vote on the motion was as follows: Yeas: Councilmembers Kastein, Martinez and Weitkunat. Nays: Councilmembers Bertschy, Hamrick and Tharp.

THE MOTION FAILED TO PASS

Mayor Martinez encouraged compromise to allow a decision to be made.

Councilmember Bertschy asked that Council reconsider appointing David Roy.

City Attorney Roy stated that a motion to reconsider should be made by one who voted against the motion previously.

Mayor Martinez asked that Council reconsider appointing David Edwards.

City Attorney Roy stated that four affirmative votes are needed to authorize the appointment.

Mayor Martinez asked if there was a motion from a Councilmember who previously voted against one of the candidates to reconsider.

Councilmember Bertschy asked that a Councilmember on the opposing side make a motion to reconsider the appointment of David Roy.

Councilmember Weitkunat noted that this would be a ten-month appointment and spoke regarding the importance of appointing someone who would be knowledgeable and experienced. She spoke in support of appointing David Edwards.

Councilmember Kastein made a motion, seconded by Councilmember Weitkunat, to alter the process to narrow by motion the number of candidates to a field of two.

Councilmember Hamrick stated that he would not support the motion.

The vote on the motion was as follows: Yeas: Councilmembers Kastein and Martinez. Nays: Councilmembers Bertschy, Hamrick, Tharp and Weitkunat.

THE MOTION FAILED TO PASS

Mayor Martinez suggested a process for each Councilmember to vote for two candidates.

Councilmember Weitkunat made a motion, seconded by Councilmember Bertschy, to vote for two candidates by written ballot to narrow the field. The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Kastein, Martinez, Tharp and Weitkunat. Nays: Councilmember Hamrick.

THE MOTION CARRIED

Councilmember Tharp asked if it would be possible to have a special election for District 6 if the Council does not come to an agreement on the appointment. City Attorney Roy stated that this could be discussed in an Executive Session if it becomes necessary.

After the written ballots were tabulated, City Clerk Krajicek summarized the results:

Edwards - 3 votes
Freeman - 3 votes
Roy - 3 votes
Walters - 3 votes

Councilmember Hamrick asked that Council reconsider appointing Will Walters.

Councilmember Weitkunat spoke in support of appointing David Edwards.

Mayor Martinez spoke in support of appointing David Edwards.

Councilmember Hamrick spoke in support of reconsidering Gerry Horak.

Mayor Martinez stated that this reconsideration would depart from the approved process.

Councilmember Tharp spoke in favor of appointing David Roy.

Councilmember Kastein spoke against appointing David Roy.

Councilmember Bertschy spoke in support of appointing David Roy.

Councilmember Tharp stated that she could support either David Roy or Will Walters.

Councilmember Weitkunat spoke in favor of appointing David Edwards or Lance Freeman.

Councilmember Kastein spoke in favor of appointing David Edwards or Lance Freeman.

(**Secretary's Note: The Council took a five-minute recess at this point.)

Councilmember Weitkunat stated that she would like to hear from the four remaining applicants.

Councilmember Weitkunat made a motion, seconded by Councilmember Tharp, to allow a two-minute statement from each of the remaining four candidates on anything they would like to discuss. The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick, Kastein, Martinez, Tharp and Weitkunat. Nays: None.

THE MOTION CARRIED

The remaining four candidates gave two-minute statements in the following order:

David Edwards
David Roy
Lance Freeman
William Walters

Councilmember Weitkunat spoke in favor of appointing Lance Freeman.

Councilmember Hamrick spoke in favor of appointing David Roy or Will Walters.

Councilmember Tharp stated that her first choice would be David Roy.

Councilmember Weitkunat spoke in favor of Lance Freeman.

Councilmember Kastein spoke in favor of Lance Freeman.

Councilmember Tharp spoke in support of appointing David Roy.

Councilmember Weitkunat suggested focusing on which candidate would be the best to deal with the issues that will be coming before Council in the next ten months.

Councilmember Tharp suggested that the choice should be made on the basis of the ability to think and sort out the information that comes to the Council.

Councilmember Hamrick asked if it would be an option to look at candidates that have been previously eliminated.

Councilmember Bertschy spoke regarding the option of a weighted vote.

Councilmember Weitkunat made a motion, seconded by Councilmember Kastein, to narrow the field of candidates to David Edwards and David Roy. The vote on the motion was as follows: Yeas: Councilmembers Kastein, Martinez, Tharp and Weitkunat. Nays: Councilmembers Bertschy and Hamrick.

THE MOTION CARRIED

(**Secretary's Note: The Council took a brief recess and reconvened at 11:25 p.m.)

Mayor Martinez spoke in support of appointing David Edwards.

After a discussion regarding the procedures for placing a motion on the table, the consensus was to allow any Councilmember to make a motion regarding the appointment regardless of whether or not they were on the prevailing side.

Councilmember Weitkunat made a motion, seconded by Councilmember Kastein, to appoint Dave Edwards.

Councilmember Weitkunat spoke in favor of appointing Dave Edwards.

The vote on the motion was as follows: Yeas: Councilmembers Kastein, Martinez and Weitkunat. Nays: Councilmembers Bertschy, Hamrick and Tharp.

THE MOTION FAILED TO PASS

Councilmember Bertschy made a motion, seconded by Councilmember Tharp, to appoint David Roy. The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick, Martinez and Tharp. Nays: Councilmembers Kastein and Weitkunat.

THE MOTION CARRIED

Councilmember Bertschy made a motion, seconded by Councilmember Hamrick, to adopt Resolution 2002-063 with the insertion of the name David Roy. The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick, Kastein, Martinez and Tharp. Nays: Councilmember Weitkunat.

THE MOTION CARRIED

Other Business

Resolution 2002-064
Consenting to the Transfer of Control of the City's Cable Television System Franchisee to AT&T Comcast Corporation, Adopted.

The following is staff's memorandum on this item.

"Executive Summary

Heritage Cablevision of Delaware, Inc., now known as AT&T Broadband HC of Delaware, LLC and doing business as AT&T Broadband, is the City's cable television franchisee, and is a subsidiary of and is controlled by AT&T Corporation ("AT&T"). On March 6, 2002, the City of Fort Collins received formal notification of the proposed merger between AT&T and Comcast Corporation. The proposed merger is governed by the 1992 Cable Act, which requires that the City approve or reject the merger request within 120 days of receipt of notice. Under Federal Communications Commission regulations and the City's cable television Franchise Agreement, if no action is taken, the merger is deemed accepted.

Generally there are two kinds of cable system transfers that cities are asked to approve. The first is when the company holding the franchise is sold to a completely separate entity. The second is when the corporate entity holding the franchise remains the same, but the parent company of the franchisee is either sold or merges with another entity, amounting to a "change in control" of the parent entity. The AT&T and Comcast merger falls within this second category.

During a transfer consideration, cities have limited jurisdiction. In this "change of control" transaction, the review is limited to whether the new entity has the legal, technical and financial ability to manage its subsidiary in such a way that the subsidiary will comply with the terms of the franchise agreements. Evaluation of "financial ability" can include the transaction's impacts on rates and programming. In addition, a transfer can be denied if the proposed transaction will negatively impact competition in the delivery of cable services.

The City hired the firm of Kissinger and Fellman, P.C., to assist with the review process. Within 30 days of receipt of notice from AT&T, a letter was sent by the City to AT&T Broadband identifying areas of concern related to current service under the Franchise Agreement, and requesting additional information needed to determine the legal, financial and technical qualifications of the new company.

In connection with his work for other cities in the Denver area, Ken Fellman of Kissinger and Fellman worked with Dr. Ron Rizzuto, an expert in evaluating cable franchise finances, to review the requested information. Based on the review of that information, and the information that has been provided in that regard, staff believes that the new company, AT&T Comcast Corporation, is capable of meeting the terms of the current franchise. The Telecommunications Board has been *polled and has no concerns regarding approval of the resolution. The City has received assurance from AT&T Broadband that the areas of concern that the City has raised will be addressed by the franchisee in the coming months (see attached letter from AT&T Broadband). The 120-day deadline occurs on July 8, 2002.*

The Franchise Agreement was originally entered into with Columbine Cablevision in November 1993. The length of the Agreement was 15 years, to be reduced to 12 years if the franchise were sold. In December 1995, the City Council approved the sale of the Columbine Cablevision Franchise to TCI Communications, Inc. In 1999, TCI became a subsidiary of AT&T, changed its name to AT&T Broadband HC of Delaware, LLC, and began doing business as AT&T Broadband."

Darrin Atteberry, Assistant City Manager, presented background information regarding this Other Business item.

Councilmember Bertschy made a motion, seconded by Councilmember Weitkunat, to adopt Resolution 2002-064. The vote on the motion was as follows: Yeas: Councilmembers Bertschy, Hamrick, Kastein, Martinez, Tharp and Weitkunat.

THE MOTION CARRIED

Adjournment

The meeting adjourned at 11:55 p.m.

Mayor

ATTEST:

City Clerk