CITY OF BELLAIRE
CITY COUNCIL

Minutes of Meeting
Monday, April 2, 2007

REGULAR SESSION – 7:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Cindy Siegel.

Mayor Cindy Siegel called the City Council of the City of Bellaire, Texas, to order at 7:02 p.m. on Monday, April 2, 2007. The Bellaire City Council met at that time and on that date in Regular Session in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas. Mayor Siegel announced that a quorum was present consisting of herself and the following members of City Council:

- Councilman Will Hickman, Position No. 1;
- Councilman John F. Monday, Position No. 2;
- Councilwoman Debra Marz Davison, Position No. 4; and
- Councilman Pat McLaughlan, Position No. 5.

Mayor Pro Tem Peggy Faulk, Position No. 3, and Councilman John Jeffery, Position No. 6, were absent. Other officials present were City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, and City Clerk Tracy L. Dutton.

B. INSPIRATIONAL READING AND/OR INVOCATION – Councilman John F. Monday.

In tribute to former Chief Financial Officer Louise T. Richman, Councilman John F. Monday thanked “each and every one of you” for attending the meeting this evening. He noted this was an unusual week for many people. It was a week of beginnings and endings. In sports, it was the beginning of baseball season. From a spiritual perspective, it was Passover, Good Friday, and Easter Sunday. He hoped that everyone would take their inspiration this evening from one or more of those three events.

Councilman Monday concluded his inspirational reading with a few interesting quotations as follows:

The path to our destination is not always a straight one. We go down the wrong road, we get lost, we turn back. Maybe it doesn’t matter which road we embark on. Maybe what matters is that we embark.

---Barbara Hall
Actress
The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man.

--George Bernard Shaw
Irish Dramatist and Socialist

I can think of nothing more boring for the American people than to have to sit in their living rooms for a whole half hour looking at my face on their television screen.

--Dwight D. Eisenhower
34th President of the United States

C. PLEDGES TO THE FLAGS – Councilman John F. Monday.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Councilman John F. Monday led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

D. APPROVAL OR CORRECTION OF MINUTES:

APPROVAL of minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday, March 19, 2007 – Members of City Council (Item submitted by City Clerk Tracy L. Dutton).

MOTION TO APPROVE MINUTES:

A motion was made by Councilman Pat McLaughlan and seconded by Councilwoman Debra Marz Davison to approve the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday March 19, 2007.

VOTE ON MOTION TO APPROVE MINUTES:

Motion carried on a 4-0-1 vote as follows:

FOR: Siegel, Cindy
      Hickman, Will
      Davison, Debra Marz
      McLaughlan, Pat

OPPOSED: None

ABSTAIN: Monday, John F.*
ABSENT: Faulk, Peggy
     Jeffery, John

*Councilman John F. Monday abstained from voting on the minutes of the
Regular Session of the Bellaire City Council held Monday, March 19, 2007,
due to his absence from that meeting.

E. PERSONAL/AUDIENCE COMMENTS.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council and noted that she had attended the
Audit/Finance Committee Meeting, which was held the previous week, and
wished to thank Facilitator and Councilman John Jeffery for assisting her in
getting a copy of the Auditor’s Management Letter. This year the
Management Letter seemed to be longer. She was interested to see the
Auditor’s comment on year-end balances after she had spent many years
raising questions to all of the governing bodies about what appeared to her to
be obscene and excessive year-end balances. This year, the Auditor
addressed these balances under enumerated item 3. as follows:

Fund Balance Designations

Finding

The City’s undesignated fund balance is in excess of its policy. Management
had designated portions of the fund balance for capital projects and sick leave
buyback.

Recommendation

The City should consider designating additional portions of the fund balance in
the general fund for specific purposes as determined by City Council.

Ms. McBee referred back to the previous October when the Patrons for
Bellaire Parks, Inc., advised City Council that they had not as yet raised the
$3 million that they had hoped to raise. The governing body then pulled $1
million out of the unallocated fund balance to amend the budget to cover
potential costs of the City’s new Aquatic Facility with swimming pools. This
was an example of doing what was wanted, when it was wanted, with no prior
planning. As a minor taxpayer in the City, Ms. McBee advised that she had an
extreme amount of concern and unhappiness about the way in which the
governing body managed public monies. She suggested that Bellaire might
need an Enron crackdown to point out that these things could not be done.

With a new budget year coming on, Ms. McBee hoped that citizens would see
allocations for purposes of every dollar the City collected. The citizens should
be given back what the City knew it did not need.
Secondly, Ms. McBee expressed concern with Condit Elementary School. She noted that Condit Elementary School had come to City Council a few years ago and were given the Laurel Street right-of-way free of charge to conduct their expansion for both a parking lot and recreational facility. This right-of-way was given in exchange for the City’s share in the use of the parking lot and recreational facility when not in use by the school.

For the last few months, there had been dual-sided parking along Jessamine Street clearly by employees of Condit Elementary School. While at the same time there had been a number of vacant spots in the parking lot at the other end of the property. As Ms. McBee walked around on Third Street she encountered yet another shocking addition by Condit Elementary School. There was what appeared to be a Public Works Department sign (although she doubted very much that the City of Bellaire Public Works Department installed or owned the sign) that indicated a reserved parking spot in front of the school on the City right-of-way for Principal Bower. Principal Bower not only did not ban parking on Jessamine Street, but also staked out his own private spot on Third Street.

Ms. McBee advised that she had spoken with the City Manager about this reserved piece of City right-of-way. She felt certain that he had addressed it, although the sign had not been cured. In closing, Ms. McBee inquired as to what it would take to get enforcement of this situation.

F. REPORT:

CITY MANAGER’S REPORT – City Manager Bernard M. Satterwhite, Jr.

City Manager Bernard M. Satterwhite, Jr., presented the City Manager’s Report to City Council. The report consisted of the following Mission Areas: Residential Mobility, Residential Quality of Life, Communications/Technology, and Employees, as well as Current Issues/Information and Upcoming City Council Meetings/Events.

MISSION AREAS:

Residential Mobility

With respect to residential mobility, City Manager Satterwhite advised that improvements to Jessamine Street, Fournace Place, and Avenue B were essentially complete.

Additionally, improvements had been made to the barricades on the southbound service road of Interstate Highway 610 north of Chevron. The existing barricades were constructed of wood. The barricades were upgraded and updated. Other barricades in town would be reviewed and improved as well in the future.
City Manager Satterwhite next reported on a water leak that had occurred in Bellaire. He referred to the fact that one lane on South Rice Avenue north of Locust Street had been closed for several weeks for a fairly major repair. The leak occurred in the City’s surface water line, which was installed several years ago. Even though the water line was no longer under warranty, the Director of Public Works was able to get the contractor that installed the line to fix it for the City.

**Residential Quality of Life**

It was reported that the 12th Annual Bellaire Trolley Run “went off without a hitch” on the previous Saturday. Inclement weather resulted in fewer runners this year than in previous years. The Parks & Recreation Department moved the festivities to occur after the run in the gymnasium. He concluded by noting that the event was very successful in spite of the weather.

Spring Cleanup was scheduled on April 21, 2007, for those residents outside Loop 610 and on April 28, 2007, for those residents inside Loop 610. The City’s Annual Spring Cleanup event allowed residents to place an extra load of trash out on a non-trash day in the City. Additional details related to this event were posted on the City’s website and cable television channel. A notice would also be sent out with the next garbage bag delivery.

**Communications/Technology**

It was stated that Director of Communications Technology Services Larry Parks gave City Staff a demonstration of the City’s Geographic Information System (GIS) this past week. The City’s web-based GIS would be rolled out to the public and accessible to anyone with access to the Internet in approximately one month. City Manager Satterwhite advised that he planned to demonstrate the GIS to City Council in an upcoming meeting.

**Employees**

The City was progressing with the hiring process for a Chief Financial Officer and a Facilities Director. City Manager Satterwhite advised that he hoped to finish the process this week.

**CURRENT ISSUES/INFORMATION:**

With respect to the Aquatic Facility, City Manager Satterwhite indicated that the construction was progressing. The diving well and lap pool were almost completed; the bathhouse was starting to take shape; and the infrastructure for the leisure pool was completed.

Secondly, it was noted that the mid-year budget review would be presented to City Council during the next regular meeting. This review would give City
Council an idea as to where the City stood with respect to its fiscal year 2007 budget.

Finally, the City had contacted some of the people originally involved in both the design and construction of the Trolley Pavilion. The City knew what was wrong with the Trolley Pavilion from a foundation standpoint, but was trying to investigate the possibilities for repair, etc., of the facility.

UPCOMING CITY COUNCIL MEETINGS/EVENTS:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Type of Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 16, 2007</td>
<td>7:00 p.m.</td>
<td>Regular Session</td>
</tr>
<tr>
<td>May 7, 2007</td>
<td>7:00 p.m.</td>
<td>Regular Session</td>
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City Manager Satterwhite stated that the Facilities Committee would have a meeting sometime prior to May 7, 2007.

Mayor Cindy Siegel added that the Centennial Planning Committee would also meet sometime prior to May 7, 2007.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend:  A – Answer; C – Comment; R – Response; Q – Question}

Councilman Pat McLaughlan

Q: Councilman McLaughlan referred to the fairly significant surface water line leak previously mentioned by City Manager Satterwhite. He inquired as to whether this leak was a generic problem that could repeat itself in the future or whether it was a one-time situation.

A: City Manager Satterwhite advised that he really did not know for sure. The City was hopeful that a leak would not reoccur. He did not believe it was a flaw in the design or construction.

C: Councilman McLaughlan noted that a rather unusual method was used to join the pipes. He expressed concern that if this were a problem that might repeat itself, that the City could get assistance from the installer.

R: City Manager Satterwhite indicated that this was the first problem the City had with this particular line. A leak had occurred in front of City Hall some months ago that was fairly major. At first, City Staff thought it was the surface water line. As it turned out, the leak occurred in an old eight-inch water line. The City also had a very slow leak at South Rice Avenue and Bellaire Boulevard, which would be tackled in the near future. It was believed that this leak was also from an eight-inch water line.
Q: Councilman McLaughlan referred to a major office building fire on the east side of Houston (six-story atrium design office building). The fire was very tragic in that three people lost their lives and approximately five-six other people were injured (i.e., firefighters and others utilizing the office building). The building was currently closed down. He noted that Bellaire had a building on Loop 610, which was very similar in design to the one that caught on fire in Houston. He stated that he wished to get the City Manager and Mayor’s thoughts as to whether or not this was something Bellaire should address in terms of a fire protection review for all buildings along Loop 610. He asked if there were any recommendations as to whether such a review would be a staff function or a Safety Committee function, etc.

Councilman McLaughlan concluded and advised that he personally felt that such a fire review was needed.

A: City Manager Satterwhite stated that he felt the City did need to be cognizant of what happened to the building mentioned by Councilman McLaughlan. From what City Manager Satterwhite had read and heard, there was a great deal of talk going around Houston as to the safety or lack thereof of some of the Houston office buildings.

In the past, the City had expressed concerns with respect to commercial and residential structures not being sprinkled. He noted that the City of Houston's Public Safety Committee seemed to be willing to attack the recent fire from an investigative standpoint as well.

At this time, City Manager Satterwhite did not have any specific recommendations, but agreed that it was something the City could take a look at.

Mayor Siegel suggested that City Manager Satterwhite and Fire Chief Darryl Anderson could meet and discuss the issue, as more information was forthcoming about this particular fire.

City Manager Satterwhite noted that it was difficult to discuss this issue tonight as it was not a subject of debate on the agenda and he was not prepared to make any recommendations.

He advised that in 2005, the City of Houston identified 200 older buildings that were over 75 feet tall. These buildings were required to upgrade their fire safety systems over a ten-year period. The atrium buildings, which were six stories in height or less had not, as yet, been added to the 200 buildings that were grandfathered. It was not cheap to go back and retrofit these buildings with sprinkler systems.
Mayor Cindy Siegel

Q: **Mayor Siegel** referred to a citizen comment made at the last meeting that there was a fence on Fournace Place that extended into the City’s right-of-way. She inquired as to the status of that situation.

A: **City Manager Satterwhite** stated that the fence was still in the City’s right-of-way. The homeowner had been contacted and understood that the fence needed to be moved. The homeowner was currently working with their fence contractor to have this taken care of.

He was very confident that the fence would be moved, but was not certain as to the exact timeframe.

Q: **Mayor Siegel** asked if the Texas Department of Transportation (TXDOT) would be continuing with landscaping along the service road of Interstate 610 North.

A: **City Manager Satterwhite** indicated that TXDOT would be continuing with landscaping along Interstate 610 North. Wildflowers would be planted in the fall this year.

Q: **Mayor Siegel** inquired as to what process citizens needed to follow if things needed to be added to a punch list. For example, driveway, trim, or sod issues at the conclusion of a City project.

A: **City Manager Satterwhite** indicated that citizens should contact the City and their concerns would be added to a punch list.

**MOTION TO ACCEPT REPORT INTO THE RECORD:**

A motion was made by Councilman Pat McLaughlan and seconded by Councilman Will Hickman to accept the City Manager’s Report as presented by City Manager Bernard M. Satterwhite, Jr., into the record.

**VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:**

Motion carried unanimously on a 5-0 vote as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Monday, John F.
- Davison, Debra Marz
- McLaughlan, Pat

**OPPOSED:** None
G.  NEW BUSINESS:

1.  PROCLAMATION:

PROCLAMATION issued by Mayor Cynthia Siegel in recognition of Commander Debra Schmidt, Volunteer Bellaire Firefighter, for over eighteen years of dedicated service to the citizens and the Fire Department of the City of Bellaire, Texas – Mayor Cindy Siegel.

Mayor Cindy Siegel read a proclamation she issued in recognition of Commander Debra Schmidt’s dedicated service to the citizens and Fire Department of the City of Bellaire, Texas, as follows:

Whereas, volunteerism is a cornerstone to the community spirit of Bellaire, Texas; and

Whereas, emergencies occur at all hours of the day and night; and

Whereas, volunteer firefighters respond to assist the citizens of Bellaire, Texas, in all emergencies requiring the volunteers’ assistance; and

Whereas, Commander Debra Schmidt has served the citizens and Fire Department of the City of Bellaire, Texas, for over eighteen (18) years; and

Whereas, on March 14, 2007, Commander Debra Schmidt tendered her resignation as Commander of the Bellaire Volunteer Firefighters, said resignation of which will become effective on April 30, 2007;

Now, Therefore, I, Cynthia Siegel, Mayor, of the City of Bellaire, Texas, do hereby issue this proclamation on behalf of the City of Bellaire, Texas, as a form of public recognition and sincere thanks to

Volunteer Commander Debra Schmidt

for her many years of dedicated service to the citizens and the City of Bellaire, Texas.
Mayor Siegel presented the proclamation to Volunteer Commander Schmidt and thanked her for her service to Bellaire.

Councilman Pat McLaughlan also spoke to the dedicated service provided by Volunteer Commander Debra Schmidt to Bellaire. He noted that he, too, had spent time serving with the Bellaire Volunteer Fire Department. During that time, Debra Schmidt was an officer. He attested to the fact that Ms. Schmidt was a truly dedicated, professional person, as well as a great firefighter and leader. He advised that Bellaire was lucky to have had Ms. Schmidt and thanked her for her service.

2. PRESENTATIONS:

a. PRESENTATION of the 2006 Annual Audit and Comprehensive Annual Financial Report (CAFR) for the City of Bellaire, Texas, by Sandersen Knox & Belt, L.L.P., Certified Public Accountants, and consideration of and possible action on a recommendation from the Bellaire Audit/Finance Committee to accept said Annual Audit and Comprehensive Annual Report (CAFR) for the City of Bellaire, Texas, for the fiscal year ended September 30, 2006 – Action by Members of City Council (Item submitted by the Bellaire Audit/Finance Committee).

Robert Belt, CPA, Sandersen Knox & Belt, L.L.P., presented the annual Audit and Comprehensive Annual Financial Report (CAFR) for the City of Bellaire, Texas, for the fiscal year 2006 to City Council.

Mr. Belt noted that he was pleased to announce that Bellaire received a clean, unqualified opinion, which was the highest level of assurance his firm could provide that all of the disclosures required by Generally Accepted Accounting Principles (GAAP) had been included and the financial statements were materially correct. He referred City Council to page 13 of the Comprehensive Annual Financial Report (CAFR) to see a copy of the referenced opinion letter.

Mr. Belt next referred to page 8 of the CAFR, which was a Certificate of Achievement of Excellence in Financial Reporting
presented by the Government Finance Officers’ Association (GFOA) of the United States. He advised that this was a very prestigious award and that Bellaire had received the award for its CAFR for fiscal year 2005. Mr. Belt believed that the CAFR for fiscal year 2006 conformed to all of the GFOA’s program criteria. He noted further that only a fraction of governments across the nation received the award, so it was very honorable that Bellaire received the award.

The City of Bellaire was noted to be in good financial health. The basic financial statements were presented beginning on page 27 of the CAFR. Mr. Belt briefly summarized those financial statements as follows:

**Statement of Net Assets**

It was noted that the *Statement of Net Assets* ("Statement") presented a snapshot of the financial condition of the City as of September 30, 2006. The far right-hand column of the Statement represented the totals of governmental activities and business-type activities. The City had total assets as of September 30, 2006, of $111,036,667; total liabilities of $60,149,337; resulting in total net assets of $50,887,330.

**Statement of Revenues, Expenditures, and Changes in Fund Balances**

It was noted that the *Statement of Revenues, Expenditures, and Changes in Fund Balances* ("Statement") was presented on the modified accrual basis of accounting (i.e., the same basis of accounting used to adopt the City’s budget). The far left-hand column of the Statement was the General Fund (or primary operating fund of the City). Total revenues for the City in its General Fund for the year ended September 30, 2006, were $14,497,255; total expenditures were $12,316,234; other financial sources and uses were a reduction of $1,076,411; resulting in a net positive increase in the fund balance in the General Fund of $1,104,610. The City began the year with a beginning fund balance in the General Fund of $10,051,393 and ended the year with a fund balance in the General Fund of $11,156,003. Mr. Belt advised that this was a very healthy fund balance for a city the size of Bellaire.

**Statement of Revenues, Expenses, and Changes in Fund Net Assets**

Mr. Belt referred City Council to page 37 of the CAFR for the *Statement of Revenues, Expenses, and Changes in Fund Net*
Assets for the Proprietary Fund (i.e., water and sewer fund). It was noted that total operating revenues for the Proprietary Fund for the year ended September 30, 2006, were $5,569,241 and operating expenses were $6,515,724. When taking into account other operating transfers, the change in net assets was a reduction of $827,816 for the year. Bellaire ended the year with ending net assets of $54,944,768.

In closing, Mr. Belt noted that there was a great deal of information presented in the financial report, and that the report was reviewed in detail with the City’s Audit/Finance Committee. He ended his presentation and advised that he was available to answer any questions City Council might have.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

**Mayor Cindy Siegel**

**Q:** Mayor Siegel referred to page 85 (i.e., Statistical Section of the CAFR), which contained a comparison of the last four years and showed a ratio of the City’s bonded debt to assessed value as an increase from 2.04% in 2005 to 2.42% in 2006. She inquired as to whether the City was still within acceptable parameters with respect to its bond indebtedness.

**A:** Mr. Belt advised that Bellaire was still within normal limits.

**Q:** Mayor Siegel referred to operating reserves and inquired as to whether Bellaire was in good shape with respect to its reserves.

**A:** Mr. Belt advised that the City had a very healthy fund balance.

**Q:** Mayor Siegel referred to the Management Letter and noted that City Council did not receive copies of it. She inquired as to whether Mr. Belt could present an overview of the Management Letter.

**A:** Mr. Belt advised that there were four bullet points within the Management Letter. The first bullet point related to the City’s Permit Department. Some records were apparently missing and could not be located during the course of the audit.
The second bullet point related to insurance proceeds. Sandersen Knox & Belt, L.L.P., found that, in some instances, insurance proceeds had not been recorded at gross. The proceeds had been recorded at net by netting the expenses against the replacement cost of the item. In the governmental process, insurance proceeds should be recorded as revenues and any outlay of money should be recorded as an expenditure.

Q: Mayor Siegel inquired as to whether there would be a year-end adjustment associated with the insurance proceeds. She also asked for confirmation that from an accounting standpoint going forward, the City would report insurance proceeds at gross.

A: Mr. Belt advised that Mayor Siegel was correct and noted that there were some budgeting issues that needed to be taken into account as well.

The third bullet point related to fund balance designations. Sandersen Knox & Belt, L.L.P., was suggesting that anything over the City’s normal operating reserve be designated or earmarked for specific purposes as determined by City Council.

The fourth bullet point related to fund balance reservations. In some instances, donated money being given to the City was set up as a liability account rather than as a reserved fund balance. This finding was related to accounting treatment rather than a control issue. Sandersen Knox & Belt, L.L.P., was recommending that the process be changed.

Councilman Will Hickman

C: Councilman Hickman advised that the Audit/Finance Committee reviewed the Audit and CAFR in much more detail and had an opportunity to ask questions and discuss the Audit and CAFR. He did not have anything other than that to report to City Council.

City Manager Bernard M. Satterwhite, Jr.

C: City Manager Satterwhite stated that the missing records had all been stored in one box and that box was missing. City Staff was working on ways to alleviate that problem in the future. Electronic technology was available and City Staff would be taking advantage of
that process. The City did have a daily reconciliation
record stored electronically in the City’s financial
system, known as INCODE. The City would also be
working to duplicate the hard copy of the records in an
electronic format.

With respect to the fund balance issue, the City needed
to better identify capital projects in the financial
statements. These projects were identified in the
budget, but not necessarily in the financial statements.
In other words, the budget terminology needed to be
reconciled with the financial statements.

**Councilman John F. Monday**

**Q:** Councilman Monday referred to page 63 of the CAFR
and noted that he was trying to reconcile the difference
in two numbers. He noted that the report indicated that
no net pension obligation existed for the City. From an
actuarial perspective, it would appear that the pension
obligation of the City was not fully funded. He asked
Mr. Belt if that was still a good thing in light of the fact
that Bellaire funded its pension obligation annually.

**A:** Mr. Belt stated that an entity’s pension obligation was
based on a projection of lives, how long an employee
would be in retirement, how old an entity’s workforce
was, etc.

Using those projections, an actuarial accountant would
determine how much would need to be set aside today
to cover the cost if everyone retired. If an entity had
set aside the entire amount that an actuarial determined
was needed in a given year, then the entity had no net
pension obligation for that particular year.

If the entity did not make its current obligation, then a
net pension obligation would start building and this
would not be a good thing.

There was a total liability out there that was as yet to be
funded over everyone’s career in order to pay for the
benefits for their retirement.

**Q:** Councilman Monday asked for confirmation that an
entity would never reach an endpoint with respect to
pension obligation. In other words, an actuarial could
determine that an entity was not 100% funded for a given year.

A: **Mr. Belt** advised that an entity could have a situation wherein it was actually over-funded. If, for example, a number of employees suddenly left the City without taking retirement, then Bellaire could be over-funded on its pension plan.

Q: **Councilman Monday** asked if he could be comfortable with the percentage stated for 2006.

A: **Mr. Belt** advised that as long as the City was making its required annual contribution, then the City was in good shape.

C: **Mayor Siegel** advised that the City’s retirement fund was through the Texas Municipal Retirement System (TMRS), which was conservatively managed and protected.

C: **City Manager Satterwhite** stated that he could not predict the future, but agreed with Mayor Siegel that TMRS had an incredible track record with not only funding, but paying a dividend over and above that back to its owners. The City’s obligation to TMRS was what had been agreed by policy to pay on behalf of the employees into that fund.

C: **Mr. Belt** added that Governmental Accounting Standards Board Statement 44 (GASB 44) was implemented this year. GASB 44 was noted to relate to statistical sections of a state or local government’s CAFR. He also wished to recognize the efforts of Interim Chief Financial Officer Vickey O’Donnell, noting that she did a great job in getting the records together for Sandersen Knox & Belt, L.L.P.

**MOTION TO ACCEPT REPORT INTO THE RECORD:**

A joint motion was made by Councilwoman Debra Marz Davison and Councilman Will Hickman and seconded jointly by Councilman Pat McLaughlan and Councilman John F. Monday to accept the 2006 Annual Audit and Comprehensive Annual Financial Report for the City of Bellaire, Texas, for the fiscal year ended September 30, 2006, as presented by Robert Belt, CPA, Sandersen Knox & Belt, L.L.P., into the record.
VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:

Motion carried unanimously on a 5-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Monday, John F.
     Davison, Debra Marz
     McLaughlan, Pat

OPPOSED: None

ABSENT: Faulk, Peggy
        Jeffery, John

b. PRESENTATION of a response from the Planning and Zoning Commission of the City of Bellaire, Texas, to City Council Directive No. 2004-002, Item 2, related to nuisance easements in the City of Bellaire, Texas, and consideration of and possible action on a recommendation from the Planning and Zoning Commission of the City of Bellaire, Texas, that nuisance easements be addressed on an individual basis as issues related to such easements arise – Action by Members of City Council (Item submitted by Administrative Secretary Rebecca Eppler on behalf of Chair Bruce Volkert, Planning and Zoning Commission).

Chair Bruce Volkert, Planning and Zoning Commission of the City of Bellaire, Texas, presented a response on behalf of the Planning and Zoning Commission of the City of Bellaire, Texas, to City Council Directive No. 2004-002, Item 2, to City Council.

Directive

Chair Volkert noted that in 2004, the Bellaire City Council ("City Council") directed the Bellaire Planning and Zoning Commission ("Commission") to review any and all City easements considered to be “nuisance easements” and to present a recommendation to the City Council as to any remedies for said nuisance easements.

Definition of a Nuisance Easement

The Commission identified the following definition for a “nuisance easement:”
• An easement held by the City of Bellaire retaining a right of access or use to property not owned by the City (below, on, or above the surface), that is not currently being exercised, and is of no conceivable current or future value to the City.

In other words, a nuisance easement was “on the books,” but the City was not getting any benefit from it. Such an easement gave the City the right to do something, but the City was not really using it.

Observations

The Commission made several observations in working through City Council’s directive. For example, taking an inventory of nuisance easements would take considerable effort on the part of City Staff. It was reasonable to assume that if such an inventory were conducted, a wide variety of situations would probably be identified and considered significant to the City.

Additionally, developing a comprehensive recommendation with respect to such easements would be very difficult. Such a comprehensive recommendation would have to be fair to the City, fair to the parties adjacent to each of the individual nuisance easements, and appropriate to a wide variety of varying situations.

On balance, the Commission felt that they had been assigned tasks that were of a higher priority than this particular task.

Recommendation

Chair Volkert advised that the Commission’s final recommendation with respect to nuisance easements was to do nothing. It was suggested that nuisance easements be addressed on an individual basis as issues related to such easements arose.

Next Steps

In closing, Chair Volkert outlined the recommended “next steps” for consideration as follows:

• Commission response to any questions City Council might have this evening;
• Vote by City Council to accept the Commission’s recommendation; and

• Use of existing City processes for property owners to request that the City vacate any “nuisance easements” found or identified by a property owner.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend:  A – Answer; C – Comment; Q – Question; R – Response}

Councilman Will Hickman

Q: Councilman Hickman inquired of City Council as to what happened in 2004 to lead to the referenced directive to the Commission.

A: Mayor Cindy Siegel advised that the directive was derived as a result of a request from the First Street Surgical Center to construct a sky bridge over a City easement in order to join or connect their professional building to their proposed surgical center. This particular easement was one that the City had not used for 30 or more years.

A: Chair Volkert advised that the easement referred to was a street with utilities installed below it.

A: City Manager Bernard M. Satterwhite, Jr., agreed and advised that the City did not want to abandon the right-of-way because there were utilities below the street. Relocation of those utilities was costly and not desired. The entire parking lot at First and Cedar Streets was actually a City right-of-way.

A: Chair Volkert stated that in the case mentioned, there were utilities in place. He believed that the directive related to nuisance easements followed on the heels of some other easements that were not in use.

Mayor Cindy Siegel

Q: Mayor Siegel asked City Manager Satterwhite to respond to the Commission recommendation from a City Staff perspective.

A: City Manager Satterwhite agreed with Chair Volkert in that such easements would need to be addressed on a
case-by-case basis. He noted that there was a process in place whereby a property owner could come to City Council and request access.

On the other hand, if the City needed to reclaim its rights-of-way or easements, those easements would need to be identified. To go out and inventory those easements would be next to impossible as the records were very old and not indexed. For example, the City quitclaimed all of its east-west alleys years ago. Even within that quitclaim, there were certain rights retained by abutting property owners within those alleys, such as access for ingress and egress.

There were other issues with regards to rights-of-way, such as an old right-of-way that existed through the middle of the Randall’s store parking lot.

Q: Mayor Siegel inquired as to whether City Staff felt comfortable with the processes that were already in place to deal with requests related to easements.

A: City Manager Satterwhite stated that there were processes in place.

Councilman Will Hickman

Q: Councilman Hickman inquired as to the process that he would follow if he wished to build a garage on a “nuisance easement” owned by the City. In other words, would he need to negotiate a price? Would his price be communicated to City Council for consideration and City Council have to approve the sale of the easement?

A: City Attorney Alan P. Petrov advised that the City had an ordinance in place for a person to follow for the purchase of an easement.

Councilman Pat McLaughlan

Q: Councilman McLaughlan referred to the east-west alleys, many of which were abandoned to the adjoining property owners.

He next referred to the north-south alleys or easements that were 25’ in width in the Town of Bellaire and noted
that, in recent years, the City had sold many of those to the adjoining property owners. He asked if the acceptance of the recommendation of the Commission would in any way diminish City Council’s ability to charge for those 25’-wide easements.

A: City Manager Satterwhite advised that City Council’s ability to charge for easements would not be diminished as the City had a process in place that allowed City Council to sell its easements.

Councilman Hickman brought up a point of procedure wherein he indicated that since the Commission recommendation was to do nothing, then City Council did not need to vote.

Chair Volkert advised that he was hoping City Council would accept the recommendation so that the directive could be laid to rest.

Mayor Siegel noted that City Council did charge the Commission to review nuisance easements and report back to City Council with a recommendation.

MOTION TO ACCEPT A RECOMMENDATION FROM THE PLANNING AND ZONING COMMISSION OF THE CITY OF BELLAIRE, TEXAS, REGARDING NUISANCE EASEMENTS:

A motion was made by Councilman John F. Monday and seconded by Councilman Pat McLaughlan to accept a recommendation from the Planning and Zoning Commission of the City of Bellaire, Texas, to address easements identified as “nuisance” easements on an individual basis as issues related to such easements arise.

VOTE ON MOTION TO ACCEPT A RECOMMENDATION FROM THE PLANNING AND ZONING COMMISSION OF THE CITY OF BELLAIRE, TEXAS, REGARDING NUISANCE EASEMENTS:

Motion carried unanimously on a 5-0 vote as follows:

FOR: Siegel, Cindy
      Hickman, Will
      Monday, John F.
      Davison, Debra Marz
      McLaughlan, Pat
c. PRESENTATION of a response from the Planning and Zoning Commission of the City of Bellaire, Texas, to City Council Directive 2004-002, Item 3, related to the viability of and value from the City allowing the use, lease, purchase, abandonment, etc., of aerial easements in the City of Bellaire, Texas, and consideration of and possible action on a recommendation from the Planning and Zoning Commission of the City of Bellaire, Texas, to direct the City Attorney and City Staff to prepare an ordinance for future Bellaire City Council consideration for the purpose of adding a reference to aerial easements to Chapter 27, Streets, Sidewalks and Public Places, Article VI, Sale and Abandonment of Public Property, of the Code of Ordinances of the City of Bellaire, Texas – Action by Members of City Council (Item submitted by Administrative Secretary Rebecca Eppler on behalf of Chair Bruce Volkert, Planning and Zoning Commission.

Chair Bruce Volkert, Planning and Zoning Commission of the City of Bellaire, Texas, presented a response on behalf of the Planning and Zoning Commission of the City of Bellaire, Texas, to City Council Directive No. 2004-002, Item 3, to City Council.

Directive

Chair Volkert noted that City Council Directive 2004-002 consisted of three items or tasks. The first item was to direct the Bellaire Building Official to grant a building permit to First Street Surgical Center. The second item was related to nuisance easements, and the third item was related to aerial easements. Basically, the Planning and Zoning Commission of the City of Bellaire, Texas (“Commission”), was asked to look at the viability of allowing aerial easements and to identify any appropriate revenue that would be due the City in exchange for granting an aerial easement, as well as how to determine the appropriate revenue for such an easement.

Findings

The Commission’s findings were as follows:
• Aerial easements did warrant consideration;
• Some, but not all, aerial easements represented potential revenue; and
• The sale or abandonment of aerial easements (public property) resulted in an appropriate process (i.e., alluded to earlier by City Manager Bernard M. Satterwhite, Jr., as followed for other easements).

**Definition of Aerial Easement**

The Commission developed a definition for an aerial easement as follows:

<table>
<thead>
<tr>
<th>Space Not Granted by an Aerial Easement (upper limit of normal surface rights may be several thousand feet above the surface)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Space Granted by an Aerial Easement (upper limit of space granted by an aerial easement)</td>
</tr>
<tr>
<td>Space Granted by an Aerial Easement (lower limit of space granted by an aerial easement)</td>
</tr>
<tr>
<td>Space Not Granted by an Aerial Easement (affected area defined by normal property lines at the surface)</td>
</tr>
</tbody>
</table>
**Types of Aerial Easements**

- **Type 1** – access for a transient event, such as a crane boom during construction on adjacent property or aviation-related use.

- **Type 2** – occupation of the easement by something physical, but temporary or easily removed, such as utilities, overhead wires, scaffolding, or temporary signage.

- **Type 3** – occupation of the easement by something relatively permanent or difficult to remove, such as structures.

**Potential Revenue from Aerial Easements**

With respect to Type 1 aerial easements, Chair Volkert advised that revenues would be negligible and suggested that none be assessed for these types of easements.

Revenues for Type 2 aerial easements should be limited to $500 to $2,000 to cover the costs of administration of an application and/or other paperwork associated with the granting of such an easement, including legal costs. The suggested dollar amount was found to be the typical fee charged by other communities for such easements.

Type 3 aerial easements had inherent value to the grantee (or applicant) and potential implications to the grantor (or City). In other words, what if abnormal costs to the City resulted as a consequence of granting such an easement? For example, if there were a need to dig up the utilities under the First Street Surgical Center sky bridge, the City could not go in with the usual backhoe, as it would interfere with the structure. The City would have to go in with smaller equipment or, perhaps, dig out the utilities by hand.

Other implications could be increased revenue from the enhance tax base, as was the case with First Street Surgical Center.

In summary, the compensation to the City for the granting of an aerial easement should reflect the value to the applicant and the implications or cost to the City.
Considerations for Granting Type 3 Aerial Easements

The Commission stated that there were several things to consider in granting Type 3 aerial easements as follows:

- Benefit to the community;

- Duration of the aerial easement. Such an easement should not be granted in perpetuity as times could change and the City could decide that such a granting was a mistake. The City could always agree to extend such an easement, if appropriate;

- Compliance with existing City ordinances;

- Public and City access to the space above and below the aerial easement;

- Assignment of liabilities. In particular, what would happen if a structure fell on someone standing on the City property below the structure? What would happen if the structure needed to be removed at the end of its life and the owner of the structure did not have the financial wherewithal to remove it; and

- Maintenance of the structure.

Determination of Appropriate Revenue for Type 3 Aerial Easements

Chair Volkert noted that the first item to consider in the determination of appropriate revenue for a Type 3 aerial easement was the **value of the easement to the applicant**. For example, the fair market value of alternative surface rights. If the applicant were a commercial enterprise, a determination of the worth of such an easement to the applicant would be an important consideration.

Another item to consider would be the **increased operating costs to the City** for the granting of such an easement. He referred to his statement earlier that an applicant’s use of the easement could result in or produce some abnormal costs to the City that would not otherwise be incurred.

Finally, the **cost to remove the object or structure** in an aerial easement should be considered. For example, the owners of such an object or structure might be unwilling or
unable to remove it when the term of the aerial easement expired.

**Process for Consideration of Aerial Easements**

Chair Volkert advised that the Commission felt that the process to be followed in considering the grant of an aerial easement be fair to both the applicant(s) and the City. To assure fairness, it would be necessary to get the appropriate input from the applicant(s), City Staff, the Planning and Zoning Commission, the Building and Standards Commission, and the public. Each of the referenced parties had a valuable perspective that could be brought to bear. It was also noted that the Commission felt that there were currently processes in place for applicants, as well as a procedure for gathering input from appropriate parties.

**Time Limits Significant to Aerial Easements**

Chair Volkert indicated that the Commission felt that time limits were particularly significant to the granting of aerial easements.

An unlimited easement was, effectively, an abandonment. An unlimited easement would trigger the existing City policy and procedures under the *Code of Ordinances of the City of Bellaire, Texas, Chapter 27, Streets, Sidewalks and Public Places, Article VI, Sale and Abandonment of Public Property*.

Time-limited easements represented a semi-abandonment. In a sense, such an easement would be a semi-sale, which the City Code did not really cover. The clause set forth in the ordinance was “sale or abandonment.” This ambiguity warranted further clarification by ordinance.

**Findings and Recommendations**

- **Type 1 Aerial Easements** - not worth the trouble, as there was no significant opportunity to recover value.

- **Type 2 Aerial Easements** – administrative costs should be recovered through user fees.

- **Type 3 Aerial Easements** – presented the opportunity and obligation for the City to recover revenue in direct relation to the value of the easement to the applicant and the associated net costs of the easement to the City.
Findings

Additionally, the Commission determined that the existing City processes were adequate to accommodate aerial easements. Such processes required an application, review and input by City Staff, and public hearings. This was only to the extent that the process was triggered.

Aerial easements were not listed explicitly in City ordinances governing the sale and abandonment of public property. In this case, the opportunity to recover revenues might be overlooked. The Commission recommended that the City Code be amended to assure triggering of the existing process.

Specific Recommendation

The Commission’s specific recommendation with respect to aerial easements was to revise Article VI, Sale and Abandonment of Public Property, Chapter 27, Streets, Sidewalks, and Public Places, Section 27-101, Policy, of the Code of Ordinances of the City of Bellaire, Texas, specifically the clause which appeared several times throughout the section and read: “street, easement, alley, or other public way, or portion thereof, shall ever by closed, narrowed, vacated, or sold,” read as follows: “street, easement (including aerial easements), alley, or other public way, or portion thereof, shall ever be closed, narrowed, vacated, sold, or otherwise conveyed.”

Next Steps

In closing, Chair Volkert outlined the recommended “next steps” for consideration as follows:

- Workshop Session, if needed;
- Vote by the Bellaire City Council to accept the recommendation of the Commission;
- Direction to City Attorney to prepare specified language;
- Public hearing(s) would be held;
- Revisions made to ordinance, as warranted; and
- Vote by the Bellaire City Council to revise the Code of Ordinances of the City of Bellaire, Texas.
QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Councilman Pat McLaughlan

Q: Councilman McLaughlan thanked Chair Volkert and the Commission for a very good report. He inquired from a nationwide perspective whether there was any consistent policy for the granting of aerial easements. He realized that there were many aerial easements in the City of Houston over some major streets, but asked if Chair Volkert were aware of any universal approach that might be taken statewide or nationwide with respect to such easements.

A: Chair Volkert stated that the Commission did not perform such research; however, the Commission understood that getting remuneration for aerial easements was fairly common. He referred to one of the Commission’s new members, Jim Avioli, and noted that he was shocked that the City did not have such a policy in place. Chair Volkert did not know if Mr. Avioli were an authority on the issue. The Commission’s findings were that obtaining revenue for the granting of easements should not be particularly uncommon.

He noted further that searches of the Internet did not result in a large amount of references, as the Commission might not have been using the “correct terminology.” Chair Volkert cited an example wherein a “nuisance easement” was retaining the right to be one. An airport would retain a nuisance easement so that such facility had the right to make noise and be a nuisance.

Councilman Will Hickman

Q: Councilman Hickman inquired of City Attorney Alan P. Petrov if a lease for a year was a conveyance.

A: City Attorney Petrov advised that it would certainly convey a form of a property interest.

Q: Councilman Hickman inquired of Chair Volkert as to the problem City Council would be fixing if the Commission’s recommendation were accepted.
A: **Chair Volkert** advised that the Commission was asked by the City Council to produce a recommendation. This was done after City Council had deliberated on the First Street Surgical Center aerial easement.

In the case of the First Street Surgical Center aerial easement, the request was for a sky bridge. It contained a ladies locker room, a men’s locker room, two operating rooms, two hallways, and a coffee bar. It consisted of several thousand square feet. This was not a sky bridge to allow people to get from a parking lot to a building—it was real estate. On balance, it might have been a good thing for the City to allow this easement without compensation. This request and granting led to the question as to whether the City should have a policy on aerial easements and the resulting directive to the Commission.

Q: **Councilman Hickman** asked for confirmation that the City received nothing for the aerial easement that was granted to First Street Surgical Center.

A: **Mayor Siegel** advised, from a legal standpoint, that there was no policy at that time regarding aerial easements. The application filed by the First Street Surgical Center had been delayed for a period of time as a consequence.

A: **City Attorney Alan P. Petrov** stated that he believed that initially the application was denied by City Council.

Q: **Councilman Hickman** asked why an aerial easement was different from a nuisance easement. In other words, could aerial easements be addressed on a case-by-case basis as well?

A: **Chair Volkert** advised that City Council would be dealing with such easements on a case-by-case basis. The applicant would apply and City Council would consider it. The point to be made here was that for one reason or another granting the aerial easement was not considered a sale or abandonment of a public asset and, therefore, it did not trigger the entire easement sale or abandonment process.

Had the process been triggered, the request might have gotten different treatment. The City could have used a
process that brought in City Staff, the City boards and commissions, and the public.

A: City Attorney Petrov indicated that he agreed with the recommendation presented by the Commission as it would be nice to clean up the City’s Code and make it clear that if a request for an aerial easement were brought to City Council again, the City would have a standard policy in place.

A: Chair Volkert noted that, by extension, the same logic would apply to underground easements, water rights, etc. He believed that this was part of the language that the City Attorney needed to think about—from a broad perspective rather than just surface rights.

A: Mayor Siegel noted that the First Street Surgical Center’s application had been delayed for many months. The First Street Surgical Center had been willing to purchase the surface rights and agreed to move the utilities, but the City did not wish to have those utilities moved.

Based on the recommendation by City Staff and the City Attorney regarding the fact that there was no process in place, the City Council decided to go ahead and grant the easement.

The question before City Council this evening was how to address such an issue from a going forward perspective. To Mayor Siegel’s knowledge, the First Street Surgical Center application was the only one that had been filed with the City.

A: Chair Volkert noted that Bellaire was in the center of the one of the world’s largest cities. There was pressure from the outside to the inside. The natural course would be to go up and under. Chair Volkert encouraged City Council to be thinking about that.

Q: Councilman Hickman asked for confirmation that an aerial easement was granted to First Street Surgical Center and the process the City normally used for surface rights was not followed.

A: Chair Volkert advised that Councilman Hickman was correct.
Q: Councilman Hickman then asked for confirmation that the Commission was recommending a tightening of the City Code so that if anyone wanted to buy, lease, or convey an easement, the same process would be followed as if that person wanted to buy the real estate in fee.

A: Chair Volkert advised that Councilman Hickman was essentially correct. The danger in making such an ordinance more explicit was that things that were not on the list would become more critical.

Mayor Cindy Siegel

Q: Mayor Siegel inquired as to whether City Staff or the City Attorney had any feedback with respect to this recommendation.

A: City Attorney Petrov advised that he believed that the Commission’s recommendation was a good one.

Q: Mayor Siegel asked for confirmation that the City Attorney would have to craft and bring forward language for City Council consideration.

A: City Attorney Petrov advised that Mayor Siegel was correct.

Q: Mayor Siegel asked for confirmation that City Council could still deny an easement even if there were a process in place. In other words, could decisions to grant an aerial easement be made on a case-by-case basis?

A: City Attorney Petrov advised that Mayor Siegel was correct—it would always be on a case-by-case basis.

A: City Manager Bernard M. Satterwhite, Jr., advised that even the 25-foot alley abandonment was done on a case-by-case basis.

Q: Mayor Siegel referred to the City’s current process for the sale and abandonment of an easement and asked for confirmation that the applicant was required to hire an appraiser to value the easement.
City of Bellaire  
City Council  
Minutes of Meeting  
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A: City Attorney Petrov advised that the City hired the appraiser and the applicant was required to pay for the appraisal.

A: City Manager Satterwhite advised that one of the problems with the aerial easement was the appraisal. In other words, was the dirt appraised to determine the value of an aerial easement? This was one of the reasons for the delay on the First Street Surgical Center request. The appraiser did not want to touch this issue.

The First Street Surgical Center actually wanted to build a two-story building on the easement. The City was unable to allow that due to the existing utilities. So, a second floor was built without a first floor.

Councilman John F. Monday

Q: Councilman Monday asked of the City Clerk how all of the work that the Commission had done could be connected. For example, ten or 20 years from now, an aerial easement could pop up and he hoped the City would not have to “reinvent the wheel.” Additionally, he inquired as to how the City Council could connect their goals and objectives to changes made in ordinances.

A: City Clerk Tracy L. Dutton noted that with this particular report, the City Attorney would craft language that would be codified and included in the City Code. The City maintained previous Codes as well so that changes could be tracked.

C: Chair Volkert noted that the other part of the deliverable from the Commission was how the easement would be valued once an application was presented. This was in the report that the Commission attached to the agenda statement for this item and included in the City Council packet.

R: Mayor Siegel advised that it would become part of the public record.

R: Councilman Hickman noted that someone could review the minutes for the legislative history related to the ordinance.

R: Mayor Siegel referred to a request that a member of the Commission had made regarding the proposed
Westbound Bank boundaries, and the fact that the City Clerk was able to research and retrieve several documents related to City Council’s actions with respect to the right-of-way in the area. It was a function of how good the City’s records were.

C: Chair Volkert stated that he had attached the Commission’s report to City Council’s agenda packet. It was important that the report be a part of the record.

R: City Clerk Dutton advised that she would ensure that the report was a part of the permanent record.

MOTION TO ACCEPT A RECOMMENDATION FROM THE PLANNING AND ZONING COMMISSION OF THE CITY OF BELLAIRE, TEXAS, REGARDING AERIAL EASEMENTS:

A motion was made by Councilwoman Debra Marz Davison and seconded by Councilman John F. Monday to accept a recommendation from the Planning and Zoning Commission of the City of Bellaire, Texas, to direct the City Attorney and City Staff to prepare an ordinance for future Bellaire City Council consideration for the purpose of adding a reference to aerial easements to Chapter 27, Streets, Sidewalks and Public Places, Article VI, Sale and Abandonment of Public Property, of the Code of Ordinances of the City of Bellaire, Texas.

DISCUSSION:

Councilman Hickman stated that the only difference he saw between the three types of aerial easements outlined by the Commission was one of “time.” The first type was something very temporary in time whereas the second type was something less temporary in time, and the third type was something more permanent in time.

He thought City Council might want to attach a “time” reference to the types of easements. For example, the first type would be less than one week; the second type less than one year; and the third type greater than one year. In other words, would City Council want to look at the easements in terms of the permanence of the structure (as alluded to by Chair Volkert) or the time the easement was granted?

Mayor Siegel asked if Councilman Hickman would concur with letting the City Attorney craft some language that City Council could debate at a future meeting. City Attorney Petrov could
give thought to Councilman Hickman’s suggestion while crafting the necessary language.

Councilman Hickman agreed that it did not need to be decided this evening and could wait for City Attorney Petrov to craft the necessary language.

**VOTE ON MOTION TO ACCEPT A RECOMMENDATION FROM THE PLANNING AND ZONING COMMISSION OF THE CITY OF BELLAIRE, TEXAS, REGARDING AERIAL EASEMENTS:**

Motion carried unanimously on a 5-0 vote as follows:

**FOR:** Siegel, Cindy  
Hickman, Will  
Monday, John F.  
Davison, Debra Marz  
McLaughlan, Pat

**OPPOSED:** None

**ABSENT:** Faulk, Peggy  
Jeffery, John

For the record, a report regarding aerial easements that was previously issued by the Planning and Zoning Commission of the City of Bellaire, Texas, dated November 11, 2004, has been attached hereto and marked “Appendix A.”

3. **CONSENT AGENDA:**

CONSIDERATION of and possible action on a request from the Community Development Department, Bellaire City Library, and Organizational Services to dispose of surplus property – *Action by Members of City Council (Item submitted by Director of Community Development Derhyl Hebert, Director of Library Mary A. Alford, and Assistant City Manager Diane K. White).*

**MOTION TO APPROVE CONSENT AGENDA:**

A *motion* was made by Councilman Pat McLaughlan and *seconded* by Councilman Will Hickman to *approve* the Consent Agenda dated April 2, 2007, consisting of a request from the Community Development Department, Bellaire City Library, and Organizational Services to dispose of surplus property.
VOTE ON MOTION TO APPROVE CONSENT AGENDA:

Motion carried unanimously on a 5-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Monday, John F.
     Davison, Debra Marz
     McLaughlan, Pat

OPPOSED: None

ABSENT: Faulk, Peggy
         Jeffery, John

For the record, schedules of property requested for disposal by the Community Development Department, Bellaire City Library, and Organizational Services have been attached hereto and marked “Appendix B.”

4. ADOPTION OF RESOLUTION:

Appointment

CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, recommending the appointment of Nancy R. Edmonson to Position 8 of the Freight Rail District for Harris and Fort Bend Counties – Action by Members of City Council (Item submitted by City Clerk Tracy L. Dutton on behalf of Mayor Cindy Siegel).

SUMMARY:

Mayor Cindy Siegel advised that the appointment of a member to serve in Position 8 of the Board of Directors of the Freight Rail District for Harris and Fort Bend Counties would be voted on at the April 19th meeting of the Harris County Mayors’ & Councils’ Association. The City received a request from Mayor Robin Riley of the City of Seabrook, Texas, as well as from other cities who were members of the Harris County Mayors’ & Councils’ Association to adopt a resolution recommending Nancy R. Edmonson to Position 8. Mayor Siegel noted that City Council had been provided with a copy of Ms. Edmonson’s resume.

MOTION TO ADOPT RESOLUTION:

A motion was made by Councilwoman Debra Marz Davison and seconded by Mayor Cindy Siegel to adopt a resolution of the City
Council of the City of Bellaire, Texas, **recommending the appointment of Nancy R. Edmonson to Position 8 of the Freight Rail District for Harris and Fort Bend Counties.**

**DISCUSSION:**

**Councilman Will Hickman** inquired as to whether the City knew if anyone else was up for consideration of this appointment.

**Mayor Siegel** advised that the City was not aware of anyone else at this time.

**Councilman Hickman** asked if the City of Bellaire had an individual vote.

**City Clerk Tracy L. Dutton** advised that it was her understanding that each Mayor in Harris County would cast a vote and those votes would be tallied or combined into one vote.

**City Attorney Alan P. Petrov** stated that each city would get one vote through their mayor.

**Mayor Siegel** asked for confirmation that passage of this resolution would mean that Bellaire was requesting that Mayor Siegel cast a vote for Ms. Edmonson.

**City Attorney Petrov** advised that Mayor Siegel was correct.

**Mayor Siegel** noted further that Ms. Edmonson had contacted her via email requesting her support. Ms. Edmonson had also forwarded her resume to Mayor Siegel with that email. Mayor Siegel had not received correspondence from anyone else desiring to be appointed to that position.

**Councilman Pat McLaughlan** advised that he would abstain from voting on this resolution and wished to explain his reason to City Council. His reason related to the past history in the cities of Seabrook, Shoreacres, and Taylor Lake Village. Obviously from the resume presented, Ms. Edmonson was extremely well-qualified in transportation and in leadership.

Councilman McLaughlan felt that it was important for Bellaire to consider the past relationship that the City of Shoreacres, which was Ms. Edmonson’s residence and in which she served as their Mayor, as well as Seabrook and Taylor Lake Village, had held with respect to transportation. These cities very strongly opposed the Bayport Terminal and funded a long legal battle with the State of Texas to keep
Bayport Terminal out—specifically, infrastructure. The infrastructure consisted of transportation methods.

Councilman McLaughlan was not certain what Ms. Edmonson’s role was in opposing the Bayport Terminal, but she was Mayor of Shoreacres at the time. He did know that the mayors of most of the communities actively and strongly opposed the Bayport Terminal and any supporting infrastructure that would go with the terminal.

In summary, Councilman McLaughlan was concerned that there might be a conflict since transportation was a key element in the success of the Bayport Terminal. Since he did not know her position on this, he wished to abstain from voting on the proposed resolution.

**Councilman Hickman** stated that he would be voting against the resolution. The reason he would do so was that he agreed with Councilman McLaughlan that Ms. Edmonson seemed qualified, but he did not wish to tie Mayor Siegel’s hands if she got to the meeting and found that there was a more qualified person running for the position that Bellaire did not know about at this point. He wished to leave it up to the Mayor’s discretion.

**Councilman John F. Monday** noted that Councilman McLaughlan and Councilman Hickman had some real good ideas. He could not support the resolution because he felt that the process was flawed. While the Texas Legislature might have enabled this particular body, it enabled a body that had the power for the issuance of bonds to create public debt and the power of eminent domain.

Councilman Monday advised that he was so far distant from a participant in that process, that he felt uncomfortable. While he was able to read the resume, he had some questions regarding it, as well as the Freight Rail District as a whole.

**Councilwoman Debra Marz Davison** asked to withdraw her motion.

**Mayor Siegel** advised that she did not believe, based on the discussion thus far, that the City Council was not necessarily opposed to Ms. Edmonson, but felt that the Mayor might have an opportunity to gather more information and might find that there were other candidates up for the position before making a final vote.

**City Attorney Alan P. Petrov** advised that if the motion and second were withdrawn, the consideration would “go away.”
MOTION/SECOND TO ADOPT RESOLUTION WITHDRAWN:

The motion and second to adopt a resolution recommending the appointment of Nancy R. Edmonson to Position 8 of the Freight Rail District of Harris and Fort Bend Counties were withdrawn at the request of Councilwoman Debra Marz Davison and Mayor Cindy Siegel, respectively.

City Attorney Petrov indicated that the Mayor did not need City Council’s authorization to vote based on the legislation and could cast a vote on behalf of Bellaire at the Harris County Mayors’ & Councils’ Association meeting.

H. COUNCIL CORRESPONDENCE AND COMMENTS.

Discussion only.

I. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Councilman Pat McLaughlan and seconded by Councilwoman Debra Marz Davison to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 8:34 p.m. on Monday, April 2, 2007.

VOTE ON MOTION TO ADJOURN:

Motion carried unanimously on a 5-0 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Monday, John F.
Davison, Debra Marz
McLaughlan, Pat

OPPOSED: None

ABSENT: Faulk, Peggy
Jeffery, John

Respectfully submitted,

Tracy L. Dutton, TRMC, City Clerk
City of Bellaire, Texas
Approved:

________________________________________
Cynthia Siegel, Mayor
City of Bellaire, Texas