CITY OF BELLAIRE
CITY COUNCIL

Minutes of Meeting
Monday, July 2, 2007

I. SPECIAL SESSION (EXECUTIVE SESSION) – 6:00 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 6:01 p.m. on Monday, July 2, 2007. The Bellaire City Council met at that time and on that date in Special Session (Executive Session) regarding litigation in the matter of Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire. The Special Session (Executive Session) was held in the Council Chamber (open portions) and Council Conference Room (closed portions), 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;
Mayor Pro Tem Peggy Faulk, Position No. 3; and
Councilman Pat McLaughlan, Position No. 5.

Councilwoman Debra Marz Davison, Position No. 4, arrived shortly after the Special Session (Executive Session) started and went directly into Executive Session. Councilman John Jeffery, Position No. 6, was absent. Other officials present were City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, Attorney John Hightower of Olson & Olson, and City Clerk Tracy L. Dutton. City Clerk Tracy L. Dutton did not participate in the closed portion of the Special Session (Executive Session).

B. CONVENE in Executive Session (Closed Session) in the Council Conference Room, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas, under Chapter 551, Texas Government Code, Section 551.071, Consultation with Attorney, regarding litigation in the matter of Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire.

MOTION TO CONVENE IN EXECUTIVE SESSION (CLOSED SESSION):

A motion was made by Councilman Will Hickman and seconded by Mayor Pro Tem Peggy Faulk to convene in Executive Session (Closed Session) under Chapter 551, Texas Government Code,
Section 551.071, Consultation with Attorney, regarding litigation in the matter of Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire.

VOTE ON MOTION TO CONVENE IN EXECUTIVE SESSION (CLOSED SESSION):

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

FOR: Siegel, Cindy
     Hickman, Will
     Monday, John F.
     Faulk, Peggy
     McLaughlan, Pat

OPPOSED: None

ABSENT: Davison, Debra Marz*
         Jeffery, John

*Councilwoman Debra Marz Davison arrived shortly after City Council convened in Executive Session and participated in the remainder of said session.

C. RECONVENE (Open Session) in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas and take action, if any, on item(s) discussed in Executive Session.

The Bellaire City Council reconvened in Special Session (open portion) in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas, at 7:06 p.m. on Monday, July 2, 2007.

Mayor Cindy Siegel advised that the Bellaire City Council had met in Executive Session (closed portion) for the purpose of consulting with attorneys representing the City of Bellaire, Texas, in litigation in the matter of Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire. She advised that no action would be taken this evening.

D. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Councilman John F. Monday and seconded by Councilman Will Hickman to adjourn the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, at 7:06 p.m. on Monday, July 2, 2007.
VOTE ON MOTION TO ADJOURN:

Motion carried unanimously on a 6-0 vote as follows:

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

OPPOSED:   None

ABSENT:    Jeffery, John

II. 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 7:07 p.m. on Monday, July 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;
Mayor Pro Tem Peggy Faulk, Position No. 3;
Councilwoman Debra Marz Davison, Position No. 4; and
Councilman Pat McLaughlan, Position No. 5.

Councilman John Jeffery, Position No. 6, was 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 Will Hickman.

Councilman Will Hickman advised that we lived in the greatest country in the world. In watching the newscasts related to the immigration bill, he noted that there were over 12-15 million people who had come to this country illegally just to have some of the opportunities that we had. Also, the weekend events in Great Britain reminded him of the war that the United States was in and he was very thankful for all of those who had served in the past and were
serving in the present to provide citizens of the United States with the freedoms and protection that we had.

On the eve of the nation’s birthday, Councilman Hickman advised that he wished to look back at the Declaration of Independence, July 4, 1776, in terms of what was happening.

The Declaration of Independence, approved by the Continental Congress on July 4, 1776, was a statement of the principles that two days earlier led Congress to vote for the independence of the American colonies from Great Britain. It was designed to influence public opinion both at home and abroad, especially in France to which the United States looked for military support.

The drafting of the document was entrusted to a committee consisting of John Adams, Benjamin Franklin, Thomas Jefferson, Robert Sherman, and Robert Livingston. Because of Jefferson’s reputation as a literary craftsman, the committee assigned the task to him and, with minor exceptions, it was his work.

Jefferson drew upon a long opposition of tradition in Great Britain, as well as the English and French enlightenments as sources for his ideas. His language and the structure of his argument, however, most closely paralleled the natural rights theories of John Locke. In justifying England’s glorious revolution of 1688, Locke had advanced the contract theory of government arguing that all just governments were founded on consent and designed solely to protect people and their inherent rights to life, liberty, and property.

Councilman Hickman read an excerpt from The Declaration of Independence as follows:

IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold those truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the
governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.

[All of the wrongs that the King had done were listed at this point in the document]

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other and our Lives, our Fortunes and our sacred Honor.

Councilman Hickman read the names of several of the signers of the Declaration as follows: John Hancock, Samuel Adams, John Adams, Thomas Jefferson, and Benjamin Franklin.

C. PLEDGES TO THE FLAGS – Councilman Will Hickman.

1. U.S. PLEDGE OF ALLEGIANCE.
2. **PLEDGE TO THE TEXAS FLAG.**

Councilman Will Hickman led the audience and members of the 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 Special Session (Interviews) and Regular Session of the City Council of the City of Bellaire, Texas, held Monday, June 18, 2007 – Action by Members of City Council (Item submitted by City Clerk Tracy L. Dutton).

**MOTION TO APPROVE MINUTES:**

A motion was made by Councilwoman Debra Marz Davison and seconded by Mayor Pro Tem Peggy Faulk to approve the minutes of the **Special Session (Executive Session)** and **Regular Session** of the City Council of the City of Bellaire, Texas, held **Monday, June 18, 2007**.

**VOTE ON MOTION TO APPROVE MINUTES:**

Motion carried unanimously on a 6-0 vote as follows:

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

OPPOSED: None

ABSENT: Jeffery, John

E. **PERSONAL/AUDIENCE COMMENTS.**

Bill Borden, 4406 Basswood Lane, Bellaire, Texas:

Mr. Borden addressed City Council and advised that Councilman Will Hickman’s inspirational reading this evening was highly appropriate. He reminded City Council that the intent of the unalienable rights in the Declaration of Independence included property rights as a very high priority. The issue that City Council dealt with in Executive Session had to do with those property rights and he had hoped that City Council would have come out of that session with a decision on the issue. He certainly hoped in future meetings that City Council
would come forth with a decision in the direction of property rights and in favor of the protection of private property rights.

Secondly, Mr. Borden noted that he was the Past President of the Bellaire Historical Society and that he wished to read a letter that he had placed at the City Council table this evening related to the Bellaire Trolley Pavilion. He read the letter in its entirety as follows:

This letter is written with reference to the recently revealed physical condition of the Bellaire Trolley Pavilion in Paseo Park. As the immediate Past President of the Bellaire Historical Society, the organization responsible for building the Trolley Pavilion, I would offer some observations that are my own and I have reason to believe they are shared by others. I want it clear that I am writing this as an individual since I presently have no official capacity to represent the Bellaire Historical Society.

I share the concern of many that the current condition of the Pavilion is a tragedy. My observation of the facility revealed concerns that were substantially worse than I even imagined. I offer the following information:

- It was the intent of the Bellaire Historical Society, responsible for the planning, fund raising and construction of the Trolley Pavilion, to replicate the original Trolley Pavilion to the greatest extent possible, including the use of the same or similar materials as in the original Pavilion before donating it to the City; and

- It is unfortunate that the quality of many of the materials available at the time of construction were inferior to those used in the original Pavilion because such material no longer exists and contemporary building practices reveal that most materials common in current structures are more durable and have a longer useful life.

The fact remains that it was the intent of the Bellaire Historical Society, with the blessings of the City of Bellaire, to replace the old scout house with the Trolley Pavilion to serve the City with a more functional facility than its predecessor and to more accurately reflect a significant part of the City’s history. Based on this information, I suggest:

- That the Trolley Pavilion be maintained at its present location, at an expense of not more than $100,000, and that the City repair the Trolley Pavilion utilizing reasonable efforts to find materials that will extend its useful life.
It may bear repeating that it was the intent of the Bellaire Historical Society to create a facility that would reflect the history of the City. Any relocation of the Trolley Pavilion or any significant alteration of its appearance would reflect negatively on its historical significance.

Mr. Borden asked the Mayor and City Council to consider the statements he had made while considering options for the Bellaire Trolley Pavilion this evening. Mr. Borden recognized that there was some fiscal issues involved and thanked City Council for the opportunity to present his letter to them.

John James, 5212 Pine Street, Bellaire, Texas:

Mr. James addressed City Council regarding a situation that he felt needed to be handled. He advised that he had corresponded with City Manager Bernie Satterwhite and Code Enforcement Officer Linda Barbour about the situation. He described the situation as a commercial vehicle parked at 110 Berkshire Street. The vehicle had been “stored,” rather than “parked,” at that location for more than 90 days. It seemed that since the vehicle in question was less than ¾ of a ton, it was not in violation of the residential parking regulations. That being said, Mr. James did not feel that commercial vehicles needed to be parked or stored in a residential area. If it were a boat, a trailer, or a bus, it would not be there.

Bellaire was a City of Homes, and the residential areas needed to be protected. Mr. James asked that City Council bring the issue forward to the Planning and Zoning Commission so that they might see if there was a remedy that would be agreeable to all parties.

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 Quality of Life and Internal Operations/Productivity, as well as Current Issues/Information and Upcoming City Council Meetings/Events.
MISSION AREAS:

Residential Quality of Life

City Manager Satterwhite reminded everyone that the City would hold its Annual Fourth of July Parade and Festival on Wednesday, July 4, 2007, commencing at 9:30 a.m. The Parade would begin at the Triangle Shopping Center on Bellaire Boulevard. Although the weather had been questionable, there were plans to move forward. The Festival would be held in the Condit Elementary School parking lot.

Internal Operations/Productivity

It was noted that City offices would be closed on the Fourth of July and that there would be no curbside recycling that day.

CURRENT ISSUES/INFORMATION:

Aquatic Facility Progress

With respect to the Aquatics Facility, City Manager Satterwhite advised that it would probably not be ready until September due to inclement weather. There were 19 rain days in May and 18 rain days in June. The anticipated Grand Opening date had, therefore, been moved to September 8. The Community Center was coming along very nicely and was noted to hold 75+ patrons comfortably for a dinner or other event.

Additionally, there were plans to close the Evergreen Pool in the middle of August. Since the new pool would not be open, City Staff planned to keep the Evergreen Pool open through the swimming season (traditionally until the end of September). Those plans might be altered slightly if the new pool became available sooner.

Questions by City Council from Previous Session

City Manager Satterwhite advised that he wished to address questions that had been raised by City Council during the previous session.

- Reserved Parking on the City Right-of-Way

With respect to reserved parking on the City right-of-way, such “reserved” parking was not enforceable and no one would be towed if parked in one of those spots. City Manager Satterwhite indicated that he was concerned with spot enforcement and felt that the City would be doing that if these issues were dealt with on a case-by-case basis. There were
similar situations in other areas of town that would need to be addressed as well. City Staff had not had the time to pursue this situation in-depth, but would continue to look into it.

- **Lightning Rods**

  City Manager Satterwhite noted that he had not had an opportunity to spend a great deal of time with the Fire Chief on the issue of lightning rods. He had done some research on his own and had seen many mixed reviews. The homes of today were built quite differently from the days when lightning rods were most effective on homes, especially rural homes. With the increase of electrical connections spread throughout homes, there were some down sides to having lightning rods in those types of homes. Another school of thought indicated that lightning rods were the way to go.

  In summary, City Manager Satterwhite felt that more research was needed with respect to this issue and might, perhaps, be directed to one of the City’s boards.

- **Commercial Vehicle Parked in Residential District**

  With respect to commercial vehicles in residential districts, if those commercial vehicles were being used for commercial purposes in the residential districts, then parking such a vehicle for an extended period of time would be prohibited. The commercial vehicle referred to by Mr. James was not being used for commercial purposes. There was an issue of “storage,” and City Staff would continue to take a look at that.

  Junked vehicles were prohibited; however, the definition of a junked or stored vehicle was a vehicle that was not capable of being driven away nor had current registration and/or inspection. The vehicle under discussion was capable of being driven away and had current registration and inspection.

  Boats, trailers, recreational vehicles, etc., could be parked as long as those vehicles were parked behind the front building line of a property. Unfortunately in the situation under discussion, the front building line faced Berkshire, but the vehicle itself was parked on Pine Street as the home had a side-load garage.

  In closing, City Manager Satterwhite indicated that City Staff intended to take the issue to the Planning and Zoning Commission.
• **Public Works Expenditure Variances from FY 2006 to FY 2007**

The expenditure variances in the Public Works Department from fiscal year 2006 to fiscal year 2007 were due to adjustments of line items from one year to the next. For example, the electrical costs for traffic and streetlights were in the “building maintenance” line item the previous year and were in the “public works” line item in 2007. Those costs represented $215,000. There were other minor increases in ground maintenance for Loop 610 and storm sewer maintenance.

**UPCOMING CITY COUNCIL MEETINGS/EVENTS:**

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<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Type of Meeting</th>
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<tr>
<td>07/09/2007</td>
<td>7:00 p.m.</td>
<td>Joint Workshop Session with the Bellaire Arts Commission (Presentation of Bellaire Arts Commission Master Plan)</td>
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<tr>
<td>07/16/2007</td>
<td>7:00 p.m.</td>
<td>Regular Session (including Presentation of Budget for FY 2008)</td>
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<tr>
<td>07/17/2007</td>
<td>7:00 p.m.</td>
<td>Workshop Session (Continuation of Budget Presentation, if needed)</td>
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<tr>
<td>07/30/2007</td>
<td>6:30 p.m.</td>
<td>Centennial Planning Committee Meeting</td>
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City Manager Satterwhite advised that meetings during the month of July for the Facilities Committee and Strategic Planning and Development Committee were still in the works.

**QUESTIONS/COMMENTS FROM CITY COUNCIL:**

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

**Mayor Cindy Siegel**

**Q:** Mayor Siegel inquired as to whether the City’s cable television channel (Channel 16) and website could be updated if the City’s Fourth of July Parade and Festival had to be canceled due to inclement weather.

**A:** City Manager Satterwhite stated that he would look into it.

**Q:** Mayor Siegel inquired as to whether the Planning and Zoning Commission was the right body to address parking of commercial vehicles in residential districts. And, if so, what action City Council needed to take to get them started on it.

**A:** City Manager Satterwhite stated that the Planning and Zoning Commission was the proper body to look into the issue
of commercial vehicles in residential districts. He advised that he felt that City Staff could talk with the Chair of the Planning and Zoning Commission and request that the issue be addressed.

**Councilman John F. Monday**

**Q:** Councilman Monday inquired as to the probability of the Facilities Committee scheduling a meeting during the month of July.

**A:** City Manager Satterwhite noted that the July calendar was very full, but he would like to schedule a meeting of the Facilities Committee during the month.

**Q:** Councilman Monday inquired as to the date that the City executed a contract with PGAL to conduct a Facilities Study. In other words, was the City 45 or 60 days deep into the contract? He noted further that PGAL had planned to come back to the City within 90 days from the date of the contract.

**A:** City Manager Satterwhite indicated that the contract was dated May 7, 2007, and that the City was almost two months into the contract.

**C:** Councilman Monday expressed his desire for the City to move expeditiously in setting up a meeting of the Facilities Committee.

**R:** City Manager Satterwhite indicated that he would try to schedule a meeting during July.

**Councilman Pat McLaughlan**

**Q:** Councilman McLaughlan referred to the commercial vehicle situation addressed by Mr. James during Personal/Audience Comments. He noted that the vehicle carried some significant signage on the sides of it. He inquired as to whether this might be a violation of the City’s sign ordinance.

**A:** City Manager Satterwhite stated that he would look into it, but did not think so as “sign” vehicles were allowed in residential districts.

**Q:** Councilman McLaughlan asked for confirmation that the “plan of attack” with respect to the issue consisted of City Staff exploring the issue further and then to bring it forward to the Planning and Zoning Commission, if need be.
A: **City Manager Satterwhite** advised that Councilman McLaughlan was correct.

Q: **Councilman McLaughlan** referred to a survey that was in a City water bill regarding trees in Bellaire. He did not recall the survey being discussed in a City Council meeting.

A: **City Manager Satterwhite** stated that he did not believe it was discussed and noted that he had authorized the survey to be inserted into the City’s water bill. He advised that the survey was a part of the City’s Tree Management Program and grant.

C/Q: **Councilman McLaughlan** indicated that he mentioned the survey as a result of an excellent letter that City Council had received from a citizen in response. The citizen brought up a valid point in that everyone in Bellaire loved and applauded their trees. Unfortunately, trees were rough on streets and sidewalks. He saw some situations wherein people were inappropriately planting trees within several inches of the curb line of the City’s public streets. The thrust of the citizen letter was to ask if there might be some future consideration toward establishing some type of standards as to where trees could or could not be planted, particularly in the City’s right-of-way, that would in the future damage streets that the City was spending millions of dollars to rebuild.

He inquired as to whether the grant could help the City establish standards with respect to tree planting in the street right-of-way.

R/A: **City Manager Satterwhite** advised that the purpose of the grant was to develop a Tree Management Program. Tree management was not necessarily planting trees. Tree management was planting trees in the right place, at the right time, and for the right reason. Historically, the City had not necessarily done that. Many trees had been planted, but not necessarily in the right places.

He agreed with Councilman McLaughlan and would love to regulate the planting of trees in the City’s right-of-way. However, the City had not been too successful in that endeavor. Many of the City’s older streets had very, very large trees that were planted in the right-of-way many years ago.

City Manager Satterwhite indicated that it was his goal to come up with a Tree Management Program so that the City could better understand the pros and cons. The survey was
supposed to help the City get a better feel for the community’s perception of trees.

Q: **Councilman McLaughlan** noted that he understood that the City had plans to rebuild the 4500 block of Evergreen Street (i.e., the block near Evergreen Pool and Evergreen Park). There was also a long-term plan to rebuild Newcastle Drive in the same area. He advised that parking was at a premium in that particular area of the City.

If the City were willing to take some additional street right-of-way, the City could establish some additional parking adjacent to Evergreen Pool at the south end of Russ Pitman Park to give the citizens some more relief in terms of parking. He suggested expanding the width of the proposed Evergreen Street reconstruction at the south end of Russ Pitman Park that would allow some parallel parking in that area.

Previously, there had been mention of expanding Newcastle Drive along the jogging trail addition adjacent to Evergreen Park and Russ Pitman Park to allow diagonal parking.

Councilman McLaughlan inquired as to the method by which the engineers could be directed to look at the potential of expanding the street construction to include the suggested parking.

A: **City Manager Satterwhite** stated that he could place an item on City Council’s agenda to expand the project to include the suggested parking.

C\Q: **Councilman McLaughlan** stated that it would be very desirable to try to provide parking relief in the area, especially as projects were on the books for street reconstruction in the area.

Councilman McLaughlan referred to the Ferris Street reconstruction project and noted that the City had all of the streets between Beechnut Street to north of Evergreen Street closed off. He was under the impression that all of the streets would not be closed at one time, and inquired as to whether there was the possibility of intensifying the work effort so that Valerie and Maple Streets could be opened.

A: **City Manager Satterwhite** indicated that Maple Street should be opened very soon. Valerie Street would also be open within a few weeks (i.e., three weeks). He also noted that it was possible to open some of the streets on a temporary basis.
C: Councilman McLaughlan stated that if some of the streets could be opened on a temporary basis, he thought it would be very helpful.

Councilman Will Hickman

Q: Councilman Hickman referred to the Aquatic Facility and inquired as to whether it was possible to work nights and weekends to expedite the construction, noting that he did not wish to cut any corners on the construction.

A: City Manager Satterwhite advised that he did not know if there were enough crews available to work nights, but the crews had been working through some weekends. He advised that he would look into it further.

Q: Councilman Hickman inquired as to whether the City’s residential construction rules would apply to this facility. In other words, would the City need to grant a variance in order to construct at night?

A: City Manager Satterwhite stated that Councilman Hickman was correct. The City had gotten some complaints when the hours had been stretched. He did not believe that there would be many opportunities for the crews to work nights anyway.

MOTION TO ACCEPT THE CITY MANAGER’S REPORT INTO THE RECORD:

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

VOTE ON MOTION TO ACCEPT THE CITY MANAGER’S REPORT INTO THE RECORD:

Motion carried unanimously on a 6-0 vote as follows:

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

OPPOSED:
- None

ABSENT:
- Jeffery, John
G. NEW BUSINESS:

1. ITEMS FOR INDIVIDUAL CONSIDERATION:

   a. DISCUSSION of possible options related to the disposition of the Bellaire Trolley Pavilion located in Paseo Park near the intersection of South Rice Avenue and Bellaire Boulevard, Bellaire, Texas, and possible action and/or direction to City Staff related to said disposition – Action by Members of City Council (Item submitted by City Manager Bernard M. Satterwhite, Jr.).

SUMMARY:

City Manager Bernard M. Satterwhite, Jr., began by noting that City Staff had looked at the Trolley Pavilion from many directions and had spoken with many different people, including the original architect, the original engineer, and the original builder of the Trolley Pavilion. City Staff had a good understanding as to what the problem was; however, there were several options that could be taken to address the problem.

History

City Manager Satterwhite presented a slide of the “Bellaire Trolley Station” as it appeared from 1910 to 1929. In 1949-1950, the Bellaire Lions Club remodeled the Bellaire Trolley Station and turned it into a one-room multi-purpose building with a kitchen and restrooms. It was later dedicated and used by the local Girl and Boy Scouts for many years.

In 1998, the Bellaire Historical Society led a community effort to reconstruct the building to replicate the old “Bellaire Trolley Station.” Remnants of the old building were integrated into the existing structure. In 1999, the Trolley Pavilion (as it was called) was dedicated and turned over to the City of Bellaire by the Bellaire Historical Society.

City Manager Satterwhite noted that it was his understanding that the Trolley Pavilion was turned over to the City after completion and that the City did not have any involvement in the actual construction.
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Current Condition

Two slides depicting the current condition of the Trolley Pavilion were presented to City Council at this point. City Manager Satterwhite indicated that the Trolley Pavilion was on a crawl space on a foundation supported by piers that were placed on 4” X 4” platforms. The platforms were sunk approximately 14-18” into the ground.

He believed that the idea was to construct the Trolley Pavilion on 8’ piers sunk into the subsoil. As the construction was underway, it was noted that there were very large telephone trunk lines underneath the area where the Trolley Pavilion was to be constructed. The plans were subsequently modified and instead of sitting on piers, the beams and joists were sitting on 4” X 4” platforms. This, however, was not the major cause of the problem today.

The major cause of the problem today was the fact that there were no gutters around the roofline and all of the rainwater flowed down onto the deck. The deck was a slat deck, therefore, water was able to seep underneath. The beams and joists were made of untreated wood so, over time, the beams and joists were susceptible to rot. This rotting of the beams and joists had caused the roof columns to shift and the roof to lean.

City Staff subsequently put up braces around the structure in an attempt to stop further shifting until the problem could be rectified.

In addition, there had been some shifting of the piers at the bottom, probably due to the shifting of the roof, and there was some subsidence in the rear of the structure. The structure was not compliant with the Americans with Disabilities Act and some modifications would have to be made to ensure compliance.

Options

City Staff presented five options for City Council consideration. Estimates (very rough estimates) were presented to City Council for each option as well.
Option 1

Option 1 consisted of demolishing the current Bellaire Trolley Pavilion and replacing it with a Commemorative Plaza. The estimated cost of Option 1 was $50,000+, would require routine maintenance, and would last for many years.

The pros associated with Option 1 were noted to be 1) safety; 2) the creation of an aesthetically pleasing gateway, which could include plaques, historical markers, sculptures, mosaics, and landscaping; 3) creation of historical interpretation or significance, such as “New Look for a New Century”; 4) low maintenance associated with a plaza; and 5) minimization or elimination of vagrant utilization.

The cons associated with Option 1 included 1) the loss of the structure and historical significance; 2) the emotional attachment due to the loss of the structure; and 3) the loss of a capital asset or capital improvement.

Option 2

Option 2 consisted of restoring/repairing the foundation and floor by shoring up the rotted beams and joists with treated wood and installing gutters, as well as creating a moisture barrier between the deck and beams. The estimated cost of Option 2 ranged from $80,000 to $100,000. The longevity was estimated to range from one to 20 years, depending on the scope of repair undertaken.

The pros associated with Option 2 were the preservation of the structure, as well as its historical value, whereas the cons associated with Option 2 were an uncertain life and moderate to extensive maintenance with respect to the floor, roof, painting, and gutters.

Option 3

Option 3 consisted of raising the Bellaire Trolley Pavilion roof and rebuilding the area underneath with a new foundation and floor. The estimated cost of Option 3 ranged from $135,000 to $150,000, and the estimated longevity ranged from 15 to 20 years.
The pros associated with Option 3 were the same as with Option 2—preservation of the structure, as well as its historical value. The cons associated with Option 3 were unguaranteed longevity and continuous future maintenance.

**Option 4**

Option 4 consisted of demolishing the existing Bellaire Trolley Pavilion and building a new one at the existing site. The estimated cost of Option 4 was $200,000+. Depending on the foundation, the longevity was estimated to range from 20-30 years.

The pros associated with Option 4 were a new building, as well as maintaining the historical value and visual image. The cons associated with Option 4 were noted as existing obstacles to a proper foundation, moderate to extensive maintenance requirements, pedestrian safety issues, parking issues, and utilization versus cost.

**Option 5**

Option 5 consisted of demolishing the existing Bellaire Trolley Pavilion, creating a Commemorative Plaza on the current site, and replicating the existing Bellaire Trolley Pavilion in Bellaire Town Square. The estimated cost of Option 5 ranged from $200,000 to $250,000, with an estimated longevity of 20-30 years.

The pros associated with Option 5 were noted as follows: 1) the Pavilion in Bellaire Town Square was already a “planned project”; 2) the “architectural style” of existing buildings would be maintained in Bellaire Town Square or the existing Bellaire Trolley Pavilion would be replicated; 3) more efficient utilization of the facility could occur in Bellaire Town Square; 4) Bellaire Town Square was a safer location with respect to pedestrian access; 5) better parking availability in Bellaire Town Square; 6) availability of more vegetation and landscaping; 7) facility could be constructed on a better foundation base; and 8) Bellaire Town Square was a family-friendly location.

The primary con associated with Option 5 was the loss of a highly visible historical perspective on a main thoroughfare of the City.
Conclusion

City Manager Satterwhite presented a slide of the proposed Pavilion for Bellaire Town Square for the purpose of providing an idea of the scope and perspective of the Pavilion that was proposed for the Great Lawn in Bellaire Town Square.

In closing, City Manager Satterwhite advised that City Staff was looking for direction from City Council through the choice of an option that could be implemented into the Bellaire Town Square Master Plan. It was suggested that direction be given to the Parks & Recreation Advisory Board to research the data and make a recommendation to City Council or, perhaps, workshop additional alternatives.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

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

Councilman John F. Monday

Q: Councilman Monday referred to the problem or inability to identify the location of the buried utilities (i.e., telephone cables) beneath the site of the Bellaire Trolley Pavilion. He expressed concern that the utility companies could not identify where their lines were located precisely.

A: City Manager Satterwhite advised that he did not believe the utility companies could identify the location of their lines precisely. He noted that the City could not precisely identify the location of many of its water and sewer lines.

The other problem related to the lines was the fact that there were many lines in that area. This would make it very difficult to sink the number of piers that would be needed for a better foundation for the structure without hitting one or more of those lines.

When the City installed the surface water line down South Rice Avenue, the City bored underneath everything (20’ down with a
horizontal drill). The utility companies could tell the City how deep the lines were.

Q: Councilman Monday inquired as to the City’s liability if one of the options presented by City Staff were chosen. For example, if the City raised the roof and rebuilt everything beneath the roof, what liability would the City have if it hit one of the lines?

A: City Manager Satterwhite stated that if the utility companies marked an area where their lines were and a person dug in an unmarked area and hit something, that person would have no liability. If a person did not have a utility company mark their lines and then hit something, that person would be liable for the repair.

It was City Manager Satterwhite’s understanding that the utility companies would not mark their lines due to the uncertainty as to what might occur. He referred to a project on Bellaire Boulevard wherein a contractor hit a 32-pair cable causing a large portion of Bellaire to be without telephone service for some time. He stated that the repair costs were very, very expensive to the contractor. The cable beneath the Bellaire Trolley Pavilion was estimated to be a 100,000-pair cable.

Q: Councilman Monday asked for confirmation that anything done to the existing site to extend the life and correct some of the deficiencies of the Bellaire Trolley Pavilion would require a proper foundation and digging deeper than the City was capable of doing. In other words, why make the same decision?

A: City Manager Satterwhite stated that he did not believe there was a high probability of constructing the proper foundation on the existing site. He did not wish to go as far to say it could not be done, as there was additional research that needed to be done.

He noted further that City Staff had discussed moving the Bellaire Trolley Pavilion to Bellaire
Boulevard or Second Street; however, the same problem existed all the way down the esplanade.

**Mayor Pro Tem Peggy Faulk**

**Q:** Mayor Pro Tem Faulk inquired as to whether there had been any discussions related to companies wanting to offer funds or services in kind to help restore the structure.

**A:** City Manager Satterwhite advised that there had not been any such discussions to his knowledge.

**Councilman Pat McLaughlan**

**C:** Councilman McLaughlan stated that, from his observations and engineering background, he did not believe a great deal could be done to save the Bellaire Trolley Pavilion. He advised that this was a tragedy and that it was very discouraging, noting that the Bellaire Historical Society had worked hard, had wonderful intentions, raised money, and made a major contribution to the quality of the City. Within seven years that construction was dead and gone. It was probably the poorest example of construction that he had seen in his lifetime—poor practice in design, poor practice in construction, and poor practice in inspection.

He referred to the City’s Inspection Department who was supposed to follow construction in the City. He felt that some real mistakes were made in this respect, and he hoped that the City had a learning process to move forward on.

With the underground utilities in the area, he did not see much hope for the existing structure.

**Councilman Will Hickman**

**Q:** Councilman Hickman referred to Option 1 and the estimated cost of $50,000+. He inquired as to whether the cost included demolition and the construction of a Commemorative Plaza.
A: City Manager Satterwhite noted that the demolition costs were approximately $10,000, and the remainder would be used to construct the Commemorative Plaza.

Q: Councilman Hickman next referred to Option 2 and inquired as to whether the City Engineer had looked at the options. In other words, who had proposed the alternatives?

A: City Manager Satterwhite advised that the City did not have any structural engineers on staff. The City had contacted and discussed the alternatives with two structural engineers. One of those engineers did not believe that the structure could be remediated cost-effectively. The second engineer felt that some of the alternatives could be done.

City Staff also talked outside the engineering community to foundation companies. One foundation company provided an estimate of $45,000 to shore up the rotted beams. A second foundation company would not work on the structure at any price.

Q: Councilman Hickman inquired as to the depth of the utility lines in the area.

A: City Manager Satterwhite did not specifically recall the depth, but remembered looking at the plans that were drawn for 8’ piers, but later revised as 8’ was of concern.

Q: Councilman Hickman inquired as to whether the digging could be done by hand to avoid damaging the lines and whether the lines were in conduit.

A: City Manager Satterwhite advised that it might be possible to hand dig and advised that the lines were in conduit.

Councilman John F. Monday

Q: Councilman Monday noted that there was a historical perspective to the structure that would get lost if transplanted somewhere else. He
inquired as to whether the roof could be raised without reconstructing the remainder of the structure. In other words, the City would be left with a shade structure.

A: City Manager Satterwhite noted that the roof was very heavy and the column supports were bolted directly to the joists. He believed that the entire bottom portion needed to be reconstructed based on conversations he had with an engineer.

Mayor Cindy Siegel

Q: Mayor Siegel inquired as to whether there was a possibility of moving the entire structure to Bellaire Town Square.

A: City Manager Satterwhite advised that it was too large for Bellaire Town Square. It could be moved, but the bottom portion would still have to be repaired and a proper foundation built.

Q: Mayor Siegel inquired as to how the original structure had lasted so long.

A: Councilwoman Debra Marz Davison noted that the original structure was on a slab.

City Manager Satterwhite concurred and advised that the existing structure was sitting on an open wooden beam supported by cement piers sitting on cement platforms. The original structure was sitting on raised earth, which was not to say there were not problems with it over the years.

C: Mayor Siegel stated that she was not certain what to do. She was sick to think that the City had a facility that was falling down less than ten years after it was constructed. She knew that people had worked so hard to bring this structure about.

On the one hand, she wanted to see a facility that citizens could use. The Bellaire Trolley Pavilion did have historical significance. Option 2 appeared to be the cheapest even if it had to be redone every ten years.
Councilwoman Debra Marz Davison

C: Councilwoman Davison stated that she would hate to see the Bellaire Trolley Pavilion relocated due to its historical significance. She noted that the Bellaire Arts Commission had recommended an historical walk in the area where the Bellaire Trolley and Trolley Pavilion were located. She thought that the station could be commemorated with a replica (much smaller in size) that did not serve a function other than commemorating the fact that there was once a Bellaire Trolley Station on that site, along with an historical walk. She noted concerns with vagrancy as mentioned earlier.

Mayor Pro Tem Peggy Faulk

C: Mayor Pro Tem Faulk agreed that the Bellaire Trolley Pavilion needed to stay in its current location. She asked if there had been any communications with the Bellaire Historical Society to see if they could help raise funds or would be in favor of a more scaled down version that would look more like the original “Train Station.” She suggested making it smaller and building it better.

She noted that many different entities were culpable in this matter. To the extent that some might want to do the right thing and contribute along with some of the other companies doing well in Bellaire, she noted that it would nice if the Bellaire Historical Society could be in touch with some of those entities.

R: City Manager Satterwhite stated that the City could work out the financing. If the City were going to rebuild what it had or a smaller one, then the City could demolish the existing structure.

If the City were going to rebuild the foundation, then portions of the existing structure needed to remain.

C: Mayor Pro Tem Faulk advised that she was in favor of a smaller structure on the same location.
She suggested that the City find a way to locate the cables so that the correct foundation could be constructed.

**R:** City Manager Satterwhite stated that the foundation was not the only culprit in this situation. He advised that if a moisture barrier should have been installed between the floor and the beams. If someone had paid attention to that when the structure was accepted, some of these issues would have been corrected.

[Mayor Pro Tem Peggy Faulk left the City Council table at this point in the meeting and did not return. The time was 8:25 p.m.]

**Councilman Will Hickman**

**C:** Councilman Hickman agreed that the structure should not be relocated. He did not believe that a Commemorative Plaza served the same purpose as the Pavilion. He suggested Option 2, 3, or 4, which involved some type of Trolley Pavilion in the same location. Any one of those would have the same issues with respect to the foundation.

He suggested that a City structural engineer review the options as to placement of piers and type of foundation structure.

**R:** City Manager Satterwhite stated that it was not up to the City as to the location of the wires. It was up to the owner of the wires. It was his understanding that the utility companies would not mark the lines in 1998.

**C:** Councilman Hickman stated that if the utility company would not locate the wires for the City, then the City should hire someone to locate them and then work around the lines.

**R:** City Manager Satterwhite stated that he doubted this could be done.

**C:** Councilman Hickman noted that he understood wanting to stick with history and using the same materials, but inquired as to whether there were
newer and better construction methods. For instance, replacing wood beams with steel I-beams that might not be subject to the rotting that the current materials were.

If forced, he would lean toward Option 2, but not do anything until some professional opinions were obtained with respect to the best way to move forward, the cost, longevity, etc.

Councilman John F. Monday

C: Councilman Monday agreed with most of his fellow Council Members. He did not believe that relocating the Bellaire Trolley Pavilion made sense. He could not believe that the utility companies would refuse to locate lines for the City. He wanted to see what it would take to do Option 2. He could also go with Option 3 or 4. He was not certain that a smaller structure was the way to go—a restoration or repair was preferable in his opinion.

He also noted that if the Bellaire Historical Society would participate in the funding, it would lessen some of the pain associated with the project.

C: City Manager Satterwhite stated that he was not sure that he had made himself clear. He advised that Option 2 did not involve putting in piers. Option 2 involved shoring up the beams and the joists. With the existing limited crawl space, a new foundation could not be dug. Option 3 consisted of suspending the roof and rebuilding the bottom portion.

Q: Councilman Monday asked for confirmation that Option 2 involved working from the "dirt up." In other words, nothing would be done below grade.

A: City Manager Satterwhite advised that Councilman Monday was correct. Option 2 basically involved the replacement of rotted wood. One group the City Manager consulted with said that Option 2 could be done and another group said that it could not be done.
Q: **Councilman Monday** asked if the consensus were that if treated lumber had been used, the City would not be in its current position.

A: **City Manager Satterwhite** stated that the consensus was that if treated lumber was used, a moisture barrier installed beneath the floor, and gutters had been installed along the roofline, then the City would probably not be in its current position.

One company recommended that ventilation fans be installed underneath the floor (as the crawl space was too low for natural ventilation).

**Councilman Pat McLaughlan**

C: **Councilman McLaughlan** advised that, with a heavy heart, he would have to recommend Option 1, which involved demolishing the Bellaire Trolley Pavilion and replacing it with a Commemorative Plaza. He noted that he was not sure that many people driving past knew what the Bellaire Trolley Pavilion was.

In terms of historical significance, the City still had the Bellaire Trolley. In terms of honoring the role that the trolley played in establishing the City of Bellaire, the City was better off maintaining the Bellaire Trolley, which was also in need of maintenance. He advised that the protective structure around the Bellaire Trolley was in continual need of maintenance.

In terms of utilization, the Bellaire Trolley Pavilion was tremendously underutilized. It did not lend itself to support of the functions the City held in Paseo Park. Parking was a problem. It was a hazard for children trying to cross the street.

The City could honor the role of the Bellaire Trolley with a Commemorative Plaza that would show a transition from the Bellaire of a century ago to the Bellaire of today. The City could involve the Bellaire Arts Commission, the Bellaire Historical Society, and the Centennial Planning Committee. Councilman McLaughlan thought
personally that a great deal could be done with a Commemorative Plaza that would honor the history of the City and the Bellaire Historical Society. It could also do a better job of showing passersby what the Trolley was all about.

In addition, the cost of a Commemorative Plaza would be less than reconstructing the Trolley Pavilion and would better serve the community.

**MOTION:**

A **motion** was made by Councilman John F. Monday and **seconded** by Councilman Will Hickman to **direct** the City Manager to **seek architectural design assistance**, bid the project based on said design, and return to City Council with true costs for Option 2 (restore/repair foundation and floor of the existing Bellaire Trolley Pavilion).

**AMENDMENT:**

An **amendment** was suggested by Councilman Will Hickman to **include addressing concerns with the Trolley Pavilion below the dirt**. Councilman John F. Monday agreed to the **amendment**.

**MOTION RESTATATED:**

A **motion** was made by Councilman John F. Monday and **seconded** by Councilman Will Hickman to **direct** the City Manager to **seek architectural design assistance**, bid the project based on said design, and return to City Council with true costs to restore/repair the foundation and floor of the existing Bellaire Trolley Pavilion, with an **add alternate to address concerns with the Bellaire Trolley Pavilion below the dirt**.

City Manager Satterwhite asked for clarification with respect to the meaning of architectural design assistance.

Councilman Monday stated that the project would need to be designed and/or engineered and he was trying to identify the appropriate type of assistance that the City Manager might need in order to bid the project.
The intent was so that City Council could make a more informed decision with respect to this issue.

**VOTE ON MOTION:**

Motion **failed** on a **3-2** vote as follows:

**FOR:**  
Siegel, Cindy  
Hickman, Will  
Monday, John F.

**OPPOSED:**  
Davison, Debra Marz  
McLaughlan, Pat

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

Councilwoman Debra Marz Davison advised that she had voted against the motion because she felt that City Council might not consider the rest of the options.

Mayor Siegel stated that it was her understanding that there was a consensus of City Council to keep a “Trolley Pavilion” of some sort on the existing site. She believed that City Council wanted to go with a cheaper option; however, with additional technical information, the City Council might be able to make a better decision regarding the portions of the structure that were beneath the dirt.

Councilman Monday stated that it was his intent to get better information for City Council with which a more informed decision could be made. It was not to say that all City Council would do was Option 2.

**RECONSIDERATION OF MOTION:**

A **motion** was made by Councilwoman Debra Marz Davison to **reconsider the previous motion**. Councilman Will Hickman seconded the motion to reconsider.

**VOTE ON RECONSIDERATION OF MOTION:**

Motion to reconsider **carried** on a majority vote of **4-1** as follows:

**FOR:**  
Siegel, Cindy
FOR (CONT.): Hickman, Will  
Monday, John F.  
Davison, Debra Marz

OPPOSED: McLaughlan, Pat

ABSENT: Faulk, Peggy  
Jeffery, John

DISCUSSION

Discussion ensued prior to voting on the motion a second time. Councilman Hickman indicated that it was his understanding that City Council felt that Option 2 was the best one at this point, but more information was needed before making that decision. Once the information was obtained, City Council could decide to go forward with Option 2 or to consider one of the other decisions.

Councilman Monday agreed that Councilman Hickman’s understanding was the same as his and was fair to other members that were not present this evening.

VOTE ON MOTION (SECOND VOTE):

Motion carried on a majority vote of 4-1 as follows:

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

OPPOSED: McLaughlan, Pat

ABSENT: Faulk, Peggy  
Jeffery, John

City Manager Satterwhite advised that he was still unclear. He felt that he needed to hire an engineer to perform an assessment and provide City Council with a report. He indicated that City Staff was trying to avoid doing that due to extra costs and the fact that this expenditure and the repairs were not budgeted. He did not believe it was possible to consider Option 2 below ground. He felt that City Council was leaning more toward Option 3.
Councilman Hickman indicated that the below ground portion was to be an “add alternate.” The response might be that it was not possible to do.

Mayor Siegel stated that she believed that an engineer’s assessment would be needed in order to provide the City Council with the information needed to make a decision.

City Manager Satterwhite indicated that he was concerned that he might not be able to find an engineer to address the issue below ground.

Mayor Siegel advised that she believed then that City Council would be stuck addressing the issue above ground or considering another option.

City Manager Satterwhite stated that he was not certain he could get an engineer to address Option 2 above ground. He would work on it and get back to City Council.

Councilman McLaughlan noted that there many unknowns and engineering risks associated with a project such as this. The big risk that the City had was with the roof, noting that the roof support columns were tilted. The force vector from the roof to the ground was not in alignment with the support of the bottom of the column. In order to bring it back to a safe and functional structure, the columns would have to be lined up so that the forces were parallel and perpendicular to each other. This was no small task.

He continued and noted that it was worth a try, but he was not sure a professional engineering firm would want to tackle this structure.

Mayor Siegel stated that she believed that City Council realized that. She saw this situation as similar to the situation that the City went through with the City Hall foundation. The answer might be that there was nothing that could be done.

Councilman Monday stated the intent of his motion was to explore the issue further. If the City hit greater improbabilities or difficulties, then some of those would be fleshed out. He suggested that the City do the best it could.
b. PRESENTATION and DISCUSSION regarding the process for appealing a water rate increase and possible action to direct the City Attorney to file said appeal on behalf of the City of Bellaire, Texas.

Mayor Cindy Siegel advised that City Staff had reported to City Council that the City of Houston intended to raise the rates charged for water by as much as 20%. City Council subsequently asked the City Attorney to come forward and present a report with respect to an appeal of the water rate in terms of the process and the potential cost of the process.

City Attorney Alan P. Petrov advised that Houston had already voted to raise the water rates by approximately 20%, and the increase would be effective on September 1, 2007.

This increase came on the heels of another increase Houston instituted earlier this year of approximately 2.8%. Houston had built an annual Consumer Price Index (CPI) adjustment into their rates and that increase reflected that adjustment.

The City of Bellaire purchased water under contract with the City of Houston based on a requirement that the State of Texas, through the Harris-Galveston Subsidence District, had in order to move this area to surface water to address the subsidence issues experienced in the greater Harris-Galveston region.

Bellaire did a good job with respect to minimizing the amount of water that had to be purchased with the use of options, such as water credits. Bellaire still had to purchase 50% of its water from Houston, and obviously the rate increase significantly impacted the City and its citizens.

The contract with Houston was silent with respect to the appeal of the water rates. It basically stated that the rates paid under contract would be those rates that Houston charged to other customers in the same class as Bellaire. Bellaire was in a class identified as wholesale treated water customers, and Houston had the right to adjust the rates for that customer class by ordinance.
State law provided an avenue for appeal through the Texas Commission on Environmental Quality (TCEQ). Specifically, the *Texas Water Code* allowed a city, such as Bellaire, to appeal the rate charged to it by another city to the TCEQ for review.

City Attorney Petrov noted that this was not necessarily an easy process. There was a time period in which a governing body had to make a decision to appeal. The appeal had to be filed with the TCEQ within 90 days of the date that the customer received notice of the rate increase. The City of Houston sent out a letter to its wholesale customers in early May, which put the 90-day period roughly in the first week of August.

Under the rules of the TCEQ, the TCEQ had to first find that the proposed rates adversely affected the public interest. This process would determine whether or not it was in the public interest for TCEQ to review the rates. This would involve a contested case hearing before the State Office of Administrative Hearings on that issue and that issue alone before the City could even get into what the rates were or whether or not the rates were reasonable.

It was the burden of the petitioner (or Bellaire, in this case) to show that the public interest was adversely affected by the increase in Houston’s water rates. After showing that the public interest was adversely affected, there would be a second hearing. During the second hearing, the TCEQ would review and determine whether or not the rate increase was reasonable and related to cost of service.

The administrative process was, in a way, a type of litigation with administrative hearings held essentially following the same rules of court used in litigation, same rules of evidence, discovery process, etc. When talking about this process, the City would be talking about going through litigation. This was the reason that the process would be very costly as litigation was simply a costly procedure.

Part of the fundamental problem of the whole process was that there was a window in which a decision had to be made regarding appeal and the City did not really have an opportunity to determine without appealing it whether or not the rates were, in fact, reasonable.
The information received from the City of Houston thus far indicated that as of 2004, Houston was grossly undercharging. The rates were raised 20% at that time, however, that increase still did not bring the rates up to what they should have been. This additional 20% to be incurred in September of 2007 still would not bring the rates up to the appropriate amount. Houston was planning to do another study in 2008 and, perhaps, make a third adjustment at that time.

Without delving into it with a rate expert to analyze the data, there was really no way for Bellaire to know whether or not the information provided was accurate. This was the argument that Bellaire would be faced with going in.

City Attorney Petrov indicated that the options available to City Council were 1) do nothing and accept the increase; 2) file an appeal; or 3) continue to find out additional information from Houston and look into what other cities were doing with respect to the increase.

In closing, City Attorney Petrov estimated that the deadline for appealing would be August 6, 2007.

**Mayor Siegel** asked for confirmation that City Council needed to make a decision by the next Regular Session (i.e., July 16, 2007).

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

**Mayor Siegel** noted that there was a possibility that other cities were interested in joining together to appeal the rate increase. She knew that the City of West University Place was considering this issue next Monday. She sent out an email to the small city METRO Mayors to see if there was some interest in joining together to share costs.

Mayor Siegel asked if the appeal could be withdrawn once filed.

**City Attorney Petrov** advised that there would be a point after which costs could be assessed against the City. As long as the City withdrew its appeal before that point, no costs would be assessed.
Councilman John F. Monday referred to a situation wherein a group of cities might file an appeal simultaneously against the same entity. He asked if each appeal would be reviewed independently.

City Attorney Petrov stated that the TCEQ would combine the appeals into one proceeding.

Councilman Pat McLaughlan asked if the City felt that Houston was attempting to take advantage of it. He noted that many cities and local water authorities contracted with Houston for water, such as League City, Webster, Clear Lake City Water Authority, etc. He asked if Houston had singled Bellaire out in relationship to what other entities were paying.

City Manager Satterwhite advised that the treated water wholesale customers would all pay the same rate. In other words, Bellaire was not being singled out with respect to the increase. He noted that there were also raw water customers, and he did not know if those customers would pay the same increase.

Councilman McLaughlan asked how the rate Bellaire was being asked to pay compared to the rate that the citizens in Houston were asked to pay. In other words, was Bellaire being treated significantly differently than other citizens in Houston?

City Manager Satterwhite stated that Bellaire citizens were getting Houston water much cheaper than citizens of Houston were getting Houston water. The lowest rate in Houston was $3.23 per 1,000 gallons. Bellaire’s customers paid $1.50 per 1,000 gallons.

Councilman McLaughlan asked for confirmation that Bellaire was buying water from Houston at $1.50 per 1,000 gallons.

City Manager Satterwhite stated that Bellaire was buying water at $1.47 per 1,000 gallons from Houston right now. That rate would increase to $1.76 per 1,000 gallons in September.

Councilman McLaughlan referred to the fact that Bellaire had additional distribution charges on top of the rate it paid to Houston, such as water well maintenance, etc.
City Manager Satterwhite advised that Councilman McLaughlan was correct.

Councilman McLaughlan inquired as to the rate that Bellaire currently charged residents for water.

City Manager Satterwhite stated that for the first 2,000 gallons, Bellaire residents paid $1.50. The City would be taking a loss on the first 2,000 gallons when the increase came through.

There was a large differential or markup between the wholesale rate and the retail rate in Houston. The wholesale rate would be $1.76 and the retail rate would be $3.23 for the first 1,000 gallons. The rates went up after 1,000 gallons. So, there was a much bigger markup in Houston than in the City of Bellaire.

It was City Manager Satterwhite’s understanding that the rate hike represented the gap between the wholesale and retail customer rates.

Councilman McLaughlan advised that it did not appear that Bellaire was being taken advantage of. He had a concern with getting involved in an extensive courthouse battle.

Councilman Hickman inquired as to a ballpark figure for the cost of an appeal.

City Attorney Petrov stated that an appeal would cost at least $100,000.

Councilman Hickman asked if the cost would be the same if it were Bellaire on its own versus Bellaire appealing with other entities.

City Attorney Petrov advised that the cost would be the same.

Councilman Hickman referred to Houston’s statement that rates were not where they should be. He asked if Houston was talking about costs or what the market could or should bear.

City Attorney Petrov advised that Houston was talking about cost of service. Houston had stated that they
were not generating rates sufficient to cover their cost of service.

**Councilman Hickman** stated that Councilman McLaughlan’s comparison of a retail customer to a wholesale customer would not really fly because Houston’s cost of servicing the City of Bellaire was significantly cheaper than their cost of servicing a retail customer.

**City Attorney Petrov** advised that Councilman Hickman’s statement would be generally true.

**City Manager Satterwhite** stated that there would still be a large gap between the wholesale and retail rate even after the increase.

**Councilman Hickman** noted that Houston was servicing Bellaire with a single large pipe versus thousands of smaller pipes.

**City Manager Satterwhite** indicated that the water was still treated, which was a big cost.

**Councilman Hickman** asked the City Attorney if the City Council could ask him to go forward with an appeal and to see if other cities wanted to join in on some sort of cost-sharing basis. In other words, Bellaire would go forward as the leader and ask other cities to join in.

**City Attorney Petrov** advised that Councilman Hickman’s suggestion could be done.

**Mayor Siegel** advised that she believed that the City of West University Place was trying to put together a meeting with interested parties.

**City Attorney Petrov** advised that Mayor Siegel was correct. The City of West University Place was having the same discussions that Bellaire was having. The issue had not come before their City Council yet. It was his understanding that the issue would come before City Council next Monday at their Council Meeting. The City of West University Place had invited area city and water district representatives who were contract customers of Houston to come to a meeting and talk about whether there was interest in forming some sort of group.
He had no information yet as to what type of response the City of West University Place had gotten with respect to their invitation.

**Councilman Hickman** asked for confirmation that the only way for Bellaire to join with them was to do so at a City Council Meeting.

**City Attorney Petrov** advised that the Bellaire City Council would have to authorize an appeal at a City Council Meeting.

**Mayor Siegel** inquired as to what the 20% increase meant for the City of Bellaire in terms of dollars.

**City Manager Satterwhite** advised that the increase represented $15,000 per month or $2.15 per account per month or $180,000 per year.

**Mayor Siegel** noted that the rate could be increased again and that there had already been several increases per year.

**City Manager Satterwhite** stated that their ordinance increased the rate by a factor of the CPI every year automatically.

**Mayor Siegel** advised that she understood that particular agreement, but noted that it was possible for them to increase the rate in addition to the factor of the CPI.

**City Manager Satterwhite** agreed with Mayor Siegel, if the City of Houston’s rate study justified an increase.

**Mayor Siegel** noted that this was an unfunded mandate. The City of Bellaire was required by the State of Texas to buy a certain amount of surface water. Until Bellaire actually saw the information the City of Houston had to justify such an increase, Mayor Siegel could not buy into agreeing to this 20% increase, especially since Bellaire was forced to buy a certain amount water from Houston.

Unless the City was willing to take the initial steps of filing an appeal or at least seeing if other cities were interested, she believed these increases would continue. She felt that an appeal would send a message to
Houston and the State Legislature that there had to be some controls in place. She felt that City Council should take the next step and believed that there was interest from other cities to join in an appeal.

Councilman Monday stated that Houston was protecting an asset that had been granted to them by the State Legislature (through Senate Bill 1) and the Subsidence District. He suggested that if the State Legislature has “stacked the deck” in favor of the City of Houston, Bellaire would probably be better off hiring a lobbyist to talk with every Legislator and tell them this was unfair and impractical and denied the City’s access to water rights. Bellaire would probably get further in that regard.

He did not feel that Bellaire would prevail in the appeal process. He suggested further that every member of City Council write a letter to every State Representative and Senator.

Mayor Siegel suggested tabling this item until the meeting that the City of West University had called to see if there were other interested entities. Action could then be taken by City Council on July 16th.

City Attorney Petrov and City Manager Satterwhite indicated that more information might not be known by Bellaire’s next meeting.

Mayor Siegel suggested that Bellaire could still see what the response was at that meeting.

Councilman Hickman inquired as to the cost of Bellaire producing its own water and teaming up with local sister cities as compared to buying water from the City of Houston.

City Manager Satterwhite advised that there had to be a source of water initially. This was where Houston had everyone over a barrel because they owned all of the surface water rights except for Brays Bayou. Bellaire did have a permit to take water from Brays Bayou. The cost to build and operate a water plant would be a very expensive proposition. The cost of the plant itself would be between $5-8 million.
Councilman Hickman suggested that Bellaire, Southside Place, and West University Place could team together to build one plant with shared costs.

City Manager Satterwhite indicated that the problem would be the capacity that Brays Bayou had and how much could be taken out on a daily basis. The permit Bellaire had was for a set amount of 1,000,000 gallons per day.

Councilman McLaughlan referred to the fact that the Cities of Texas City and Dickinson bought water from the American Canal Company (the source of which was noted to be the Brazos River through Oyster Canal and other irrigation systems). He was not sure how far the closest source of Brazos water was, but felt it might be around Missouri City. If Bellaire ever progressed to the point of an alternate source, there were probably some other areas that Bellaire could look at.

**MOTION TO POSTPONE:**

A motion was made by Councilman Debra Marz Davison and seconded by Councilman Will Hickman to postpone action to possibly direct the City Attorney to file an appeal of a water rate increase until the next Regular Session of City Council in the hope that additional information would be available regarding interest from other cities or entities.

**VOTE ON MOTION TO POSTPONE:**

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
2. ADOPTION OF ORDINANCES:

Appointments

a. CONSIDERATION of and possible action on the adoption of an ordinance amending Ordinance No. 07-036 for the purpose of appointing one (1) member to the Parks & Recreation Advisory Board of the City of Bellaire, Texas, for a two-year term commencing on July 1, 2007, and expiring on June 30, 2009, in place of a member who declined the appointment for personal reasons.

Each member of the Bellaire City Council presented his or her choices for one (1) member to serve a two-year term on the Parks & Recreation Advisory Board of the City of Bellaire, Texas, in place of a member who declined the appointment for personal reasons, as follows:

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Nominee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cindy Siegel</td>
<td>Bill Stone</td>
</tr>
<tr>
<td>Will Hickman</td>
<td>Bill Stone</td>
</tr>
<tr>
<td>John F. Monday</td>
<td>Bill Stone</td>
</tr>
<tr>
<td>Debra Marz Davison</td>
<td>Bill Stone</td>
</tr>
<tr>
<td>Pat McLaughlan</td>
<td>Bill Stone</td>
</tr>
</tbody>
</table>

The votes were tallied as follows:

Bill Stone 5

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilwoman Debra Marz Davison and seconded by Councilman John F. Monday to adopt an ordinance amending Ordinance No. 07-036 for the purpose of appointing Bill Stone to the Parks & Recreation Advisory Board of the City of Bellaire, Texas, for a two-year term commencing on July 1, 2007, and expiring on June 30, 2009, in place of a member who declined the appointment for personal reasons.
VOTE ON MOTION TO ADOPT ORDINANCE:

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

{Ordinance was subsequently numbered: 07-040}

b. CONSIDERATION of and possible action on the adoption of an ordinance appointing one (1) member to the Recycling Committee of the City of Bellaire, Texas, to fill an unexpired term commencing on July 1, 2007, and expiring on June 30, 2008.

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilman Will Hickman and seconded by Councilman John F. Monday to adopt an ordinance appointing Robert E. Johnson to the Recycling Committee of the City of Bellaire, Texas, to fill an unexpired term commencing on July 1, 2007, and expiring June 30, 2008.

VOTE ON MOTION TO ADOPT ORDINANCE:

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
Public Hearing

c. CONSIDERATION of and possible action on the adoption of an ordinance calling a public hearing before the City Council of the City of Bellaire, Texas, on Monday, August 6, 2007, at 6:00 p.m. in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas, for the purpose of hearing any and all persons desiring to be heard on or in connection with revisions proposed by the Planning and Zoning Commission of the City of Bellaire, Texas, to the Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning Regulations, Article II, Definitions and Interpretations, Section 24-202, Definitions, for the purpose of deleting and replacing certain definitions therein as such definitions relate to surface and lot coverage.

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilman Pat McLaughlan and seconded by Councilwoman Debra Marz Davison to adopt an ordinance calling a public hearing before the City Council of the City of Bellaire, Texas, on Monday, August 6, 2007, at 6:00 p.m. in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas, for the purpose of hearing any and all persons desiring to be heard on or in connection with revisions proposed by the Planning and Zoning Commission of the City of Bellaire, Texas, to the Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning Regulations, Article II, Definitions and Interpretations, Section 24-202, Definitions, for the purpose of deleting and replacing certain definitions therein as such definitions relate to surface and lot coverage.

DISCUSSION:

Councilman Will Hickman advised that he would vote against the ordinance to call a public hearing on the proposed revisions. He believed that the revisions were addressing backyard setbacks. It seemed inconsistent to him that a swimming pool was not counted, but a
pervious ground structure was covered in terms of lot coverage. The main concern in lot coverage should be how much natural infiltration of water was able to go into the ground. The paving systems that allowed water to seep into the ground were okay with him. In contrast, a swimming pool that would not allow infiltration into the ground should be included. For that reason, he was voting against the ordinance.

**VOTE ON MOTION TO ADOPT ORDINANCE:**

Motion **carried** on a majority vote of **4-1** as follows:

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

**OPPOSED:** Hickman, Will

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

{Ordinance was subsequently numbered: 07-042}

**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 9:30 p.m. on Monday, July 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,

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

Approved:

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Cynthia Siegel, Mayor
City of Bellaire, Texas