I. SPECIAL 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 6:02 p.m. on Monday, July 9, 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 John F. Monday, Position No. 2;
Mayor Pro Tem Peggy Faulk, Position No. 3;
Councilwoman Debra Marz Davison, Position No. 4;
Councilman Pat McLaughlan, Position No. 5; and
Councilman John Jeffery, Position No. 6.

Councilman Will Hickman, Position No. 1, arrived at 6:06 p.m. and went directly into Executive Session. Other officials present were City Manager Bernard M. Satterwhite, 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 Pat McLaughlan and seconded by Mayor Pro Tem Peggy Faulk to 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.

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

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

FOR:     Siegel, Cindy
         Monday, John F.
         Faulk, Peggy
         Davison, Debra Marz
         McLaughlin, Pat
         Jeffery, John

OPPOSED:   None

ABSENT:   Hickman, Will*

*Councilman Will Hickman arrived shortly after City Council convened in Executive Session and went directly into said closed 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) at 7:02 p.m. on Monday, July 9, 2007. Mayor Cindy Siegel advised that the City Council had been meeting in an Executive Session (closed portion) to discuss a court case filed against the Zoning Board of Adjustment of the City of Bellaire, Texas. The case was identified as Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire.

Mayor Siegel advised that the attorney representing the City of Bellaire, John Hightower of Olson & Olson, had updated City Council regarding the status of the case. In summary, Mayor Siegel noted that the Board of Adjustment was given the authority to grant variances to the City’s Zoning Code under state law, as well as by Bellaire statute. Six of the seven members of the Board of Adjustment must vote in favor of a variance before such variance could be granted.

In this particular case, there was a request to build a swimming pool on a corner lot within what was designated as a setback under Bellaire statute. Two of the seven members of the Board of Adjustment voted
against the variance because the Bellaire statute was more restrictive than state law in that it required that the size, shape, or slope of the lot would restrict a property owner from developing the lot in order for a variance to be granted. The Board of Adjustment subsequently asked the Planning and Zoning Commission to review the statute as it related to the ordinance for pools and setbacks. City Council concurred with that request.

In response to the litigation, the Bellaire City Council hired Attorney John Hightower and his law firm to represent the Bellaire Board of Adjustment, as well as the City of Bellaire, in this matter before the District Court. Attorney Hightower advised City Council that the District Court Judge granted the variance and it was Attorney Hightower’s belief that the District Court Judge did not follow the correct process because she gave an early ruling to grant the variance versus hearing both sides. He advised that, although he did not feel that the District Court Judge followed the correct process, the City could appeal the decision, but would probably not win at the District Court level. At the very least, the City would have to appeal it or take it further to the Supreme Court.

Bellaire City Council’s discussion centered around the fact that the Board of Adjustment was doing what the statute of Bellaire required. However, in light of the fact that the Board had asked the Planning and Zoning Commission to look at changing the statute, and that the neighbors surrounding the applicant did not have a problem with the variance being granted, and based on cost of appealing the ruling and taking it to the Supreme Court with a likelihood that the City might not prevail, the Mayor wished to entertain a motion to not appeal the District Court Judge’s ruling based upon a representation of the plaintiff, the Vias, that they would withdraw their motion for costs.

**MOTION:**

A motion was made by Councilman Will Hickman and seconded by Mayor Pro Tem Peggy Faulk not to appeal the District Court Judge’s ruling in the matter of Robert Via and Esther Guy-Via v. The Zoning Board of Adjustment of the City of Bellaire based upon a representation of the plaintiff, Robert Via and Esther Guy-Via, that they would withdraw their motion for costs.

**DISCUSSION:**

Councilman John F. Monday stated that he could not support the motion. Although the motion would save the City some money, he felt the City was giving up something that was a little more important. It was clear from conversations with Attorney John Hightower that the City of Bellaire and its citizens were denied due process through a
procedural error. He was challenging that denial of a fundamental right. In other words, due process was more valuable than the money the City would save.

**VOTE ON MOTION:**

Motion carried on a majority vote of **5-2** as follows:

**FOR:** Siegel, Cindy  
Hickman, Will  
Faulk, Peggy  
Davison, Debra Marz  
Jeffery, John

**OPPOSED:** Monday, John F.  
McLaughlan, Pat

**ABSENT:** None

**D. ADJOURNMENT.**

**MOTION TO ADJOURN:**

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Pat McLaughlan to adjourn the **Special Session (Executive Session)** of the City Council of the City of Bellaire, Texas, at **7:07 p.m.** on **Monday, July 9, 2007**.

**VOTE ON MOTION TO ADJOURN:**

Motion carried unanimously on a **7-0** vote as follows:

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

**OPPOSED:** None

**ABSENT:** None
II. JOINT WORKSHOP SESSION – 7:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS – Mayor Cindy Siegel.

B. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM OF THE BELLAIRE ARTS COMMISSION OF THE CITY OF BELLAIRE, TEXAS – Chair Cindy Cozewith.

C. OVERVIEW OF CURRENT BELLAIRE ARTS COMMISSION PROJECTS – Chair Cindy Cozewith and Member Kathy Biddle.

D. PRESENTATION OF THE BELLAIRE ARTS COMMISSION MASTER PLAN – Member Jamie Allen.

E. ADJOURNMENT.

Written minutes for Workshop Sessions are not prepared. Workshop Sessions are recorded on videotape and maintained by the City Manager’s Office on a permanent basis. Copies of such videotapes are available upon request.

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