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, November 3, 2008. The Bellaire City Council met at that time and on that date in Special Session for the purpose of holding a public hearing on 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. The Special Session was held in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401. Mayor Siegel announced that a quorum was present consisting of herself and the following members of City Council:

- Councilman James P. Avioli, Sr., Position No. 2;
- Councilman Phil Nauert, Position No. 4;
- Councilman Pat McLaughlan, Position No. 5; and
- Councilman John Jeffery, Position No. 6.

Councilman Will Hickman, Position No. 1, and Mayor Pro Tem Peggy Faulk, Position No. 3, arrived shortly after the Special Session (Public Hearing) began. Other officials present were City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, and City Clerk Tracy L. Dutton.

B. READING OF NOTICE OF PUBLIC HEARING – City Clerk Tracy L. Dutton.

City Clerk Tracy L. Dutton read the Notice of Public Hearing into the record as follows:

Notice is hereby given that the City Council of the City of Bellaire, Texas, has called and will hold a public hearing on Monday, November 3, 2008, at 6:00 p.m. in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401, at which time any and all persons desiring to be heard will 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 VII, Variances, Special Exceptions, Appeals and...
Nonconformities, Division 1, Variances, Section 24-704, Standards, for the purpose of addressing zoning variance standards, including policy considerations, unnecessary hardships resulting from a special condition, and the effects of a requested variance on other properties, as well as the subject property. All zoning districts located within the corporate limits of the City of Bellaire, Texas, may be affected by the proposed revisions.

City Clerk Dutton advised that in the interest of time the remainder of the Notice of Public Hearing would not be read. Copies were provided at the entrance to the Council Chamber. For purposes of the record, the remainder of the Notice of Public Hearing is included herein as follows:

Specifically, revisions have been proposed by the Planning and Zoning Commission of the City of Bellaire, Texas, to amend the Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning Regulations, Article VII, Variances, Special Exceptions, Appeals and Nonconformities, Division 1, Variances, Section 24-704, Standards, and shall read as follows (revisions appear in bold print and are underscored; deletions appear as strikethroughs):

Sec. 24-704. Standards.

The Board shall not grant a variance unless it shall, in each case, make specific written findings based directly upon the particular evidence presented to it which support written conclusions that:

(1) Such modifications of the height, yard, area, lot width, lot depth, off-street loading, screening wall, coverage, parking, and sign regulations are necessary to secure appropriate development of a parcel of land which materially differs from other parcels in the district by being of such because of a special condition unique to and inherent in the parcel itself, such as restricted area, shape or slope, such that the parcel cannot be appropriately developed without modification;

(2) A literal enforcement of the zoning ordinance from which the variance is requested would result in unnecessary hardship not self-created or personal, nor solely financial in nature;

(23) The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, or impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets,
increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood; and

(34) The variance desired will not be opposed to the general spirit and intent of this chapter.

The proposed revisions would be generally applicable to all properties within the City of Bellaire, Texas. Any persons requesting additional information regarding the subject of this hearing may contact the City of Bellaire, Texas, Department of Community Development, 7008 South Rice Avenue, Bellaire, Texas, during normal business hours prior to the hearing.

Dated at Bellaire, Texas, this 29th day of September, 2008.

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

City Clerk Dutton advised that the Notice of Public Hearing was published in the legal notices section of the Southwest News on Tuesday, October 7, 2008. The Notice of Public Hearing was posted on the City’s bulletin board and website on Thursday, October 16, 2008. Additionally, signs advertising the public hearing were posted by the Bellaire Public Works Department at the intersections of Bellaire Boulevard and South Rice Avenue and Bellaire Boulevard and Newcastle Drive.

C. SUMMARY OF PUBLIC HEARING PROCEDURE – City Manager Bernard M. Satterwhite, Jr.

City Manager Bernard M. Satterwhite, Jr., summarized the public hearing procedure for the audience and City Council as follows:

During this evening’s public hearing, a brief presentation will be given by Commissioner Andrew Friedberg regarding revisions proposed by the Planning and Zoning Commission of the City of Bellaire, Texas, to Chapter 24, Planning and Zoning Regulations, Article VII, Variances, Special Exceptions, Appeals and Nonconformities, Division 1, Variances, Section 24-704, Standards, of the Code of Ordinances of the City of Bellaire, Texas. The presentation will be limited to fifteen (15) minutes.

At the conclusion of the presentation, the Mayor and City Council will have an opportunity to ask questions of the Planning and Zoning Commission regarding the proposed revisions.
At the conclusion of the question and answer session, the Mayor will recognize citizens or other interested parties who have completed the sign-in sheet prior to commencement of the meeting. Comments will be limited to four (4) minutes for each individual.

Following comments from citizens or other interested parties, the Mayor will close the public hearing. Public comment will not be received following the close of the public hearing. Written comments may be submitted to the City Council in care of the City Clerk prior to final deliberation on the matter. Final deliberation is anticipated to occur on Monday, November 17, 2008. Written comments should, therefore, be submitted to the City Clerk by noon on Thursday, November 13, 2008, in order to be considered for the record.

The sign-in sheet and written comment sheets have been provided at the entrance to the Council Chamber.

D. PRESENTATION regarding 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 VII, Variances, Special Exceptions, Appeals and Nonconformities, Division 1, Variances, Section 24-704, Standards, for the purpose of addressing zoning variance standards, including policy considerations, unnecessary hardships resulting from a special condition, and the effects of a requested variance on other properties, as well as the subject property – Presentation by Commissioner Andrew Friedberg, Planning and Zoning Commission of the City of Bellaire, Texas.

Commissioner Andrew Friedberg, Planning and Zoning Commission of the City of Bellaire, Texas, began his presentation by noting that the City’s zoning variance standards could be found in the Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning Regulations, Section 24-704, Standards. That ordinance governed the standard to be applied by the Board of Adjustment of the City of Bellaire, Texas (“Board of Adjustment”).

The Planning and Zoning Commission of the City of Bellaire, Texas (“Planning and Zoning Commission”), was, from a legislative standpoint, proposing a change to the ordinances. The Board of Adjustment, in turn, would apply the proposed standards when reviewing applications for variances.

Overview

As an overview of the presentation, Commissioner Friedberg noted that he would start with a definition and purpose of zoning variances,
address the role of the Board of Adjustment, address the standards applicable to zoning variances (baseline state law standard, current Bellaire standard, and differences between the standards), followed by a presentation of the Planning and Zoning Commission's recommendation for amendments to the City's zoning variance standards.

**What is a Zoning Variance?**

A zoning variance was defined as a mechanism for relief, granted by the Board of Adjustment, where, because of special conditions, literal enforcement of zoning ordinances would result in unnecessary hardship provided that the variance would not be contrary to public interest and that the spirit of the zoning scheme would be preserved (Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning Regulations, Section 24-202, Definitions).

**Purpose of Zoning Variances**

In identifying the purpose of zoning variances, Commissioner Friedberg presented the following quotations for thought:

*The perfect zoning ordinance has never been written because a zoning ordinance cannot address every single land use issue that may arise.*

--Philip Thompson  
Director of Planning  
Bedford County, Virginia

*There is no such thing as a perfect ordinance . . . that’s why we have Zoning Boards of Adjustment.*

--Kimberly Mickelson, JD, AICP

**Role of Board of Adjustment**

In Bellaire, the Board of Adjustment has the power and the duty to authorize variances not contrary to the public interest where literal enforcement of the zoning ordinance would result in unnecessary hardship so that the spirit of the zoning scheme could be observed and substantial justice done.

In Texas, a zoning variance could be granted only with a supermajority vote in favor. A quorum of the Board of Adjustment was noted to be 75% or six out of seven members.

The City could not vary from the quorum requirement as the requirement was a state law, meaning that at a minimum for the
granting of a variance, six out of seven members must vote in favor of it.

**Standards Applicable to Zoning Variances**

**Baseline Standard**

Under Texas state law, the Board of Adjustment may authorize a variance from a zoning ordinance if not contrary to the public interest and literal enforcement of the ordinance would result in unnecessary hardship so that the spirit of the ordinance was observed and substantial justice was done.

**Current Standard in Bellaire**

The current standard in Bellaire for zoning variances was stated as follows:

The Board of Adjustment shall not grant a variance unless it shall, in each case, make specific written findings based directly upon the particular evidence presented to it which support written conclusions that:

1. Such modifications of the height, yard, area, lot width, lot depth, off-street loading, screening wall, coverage, parking and sign regulations are necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without modification;

2. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood; and

3. The variance desired will not be opposed to the general spirit and intent of this chapter.

**Essential Difference Between Bellaire and State Law Standards**

The essential difference between the Bellaire and state law standards was that the Bellaire standard went above and beyond the state law “floor” in providing that a variance might be granted only for a parcel of land that differed from other parcels in the district by being of such
restricted area, shape or slope such that the parcel could not be appropriately developed without the variance.

In looking at a topographical map of Bellaire, as well as by driving around, Commissioner Friedberg advised that it was the rare parcel that had a different area, shape or slope from others in the same district. Accordingly, the Board of Adjustment, with the power and duty to grant zoning variances in appropriate cases, had its hands tied by the City’s restrictive standard. Under Bellaire’s current standard, zoning variances were almost certainly unavailable except in the rarest of cases.

Commissioner Friedberg gave a recent example of the effect of Bellaire’s current standard where a homeowner requested a variance from the Board of Adjustment to permit construction of a noncompliant swimming pool and was denied. Two members of the Board of Adjustment voted against the variance, citing the “area, shape or slope” standard as their sole reason for denying the request. Otherwise, the members favored granting the variance, as did the other four members present at the Board of Adjustment meeting.

**Planning and Zoning Commission Recommendation**

Commissioner Friedberg advised that one option for addressing the City’s current zoning variance standard would be to keep the current standard in place. In other words, make no change to the standard at all. A second option would be to adopt the less restrictive state law standards. A third option would be to adopt a standard somewhere between the two extremes.

Arguments for adopting a less restrictive standard were presented by Commissioner Friedberg as follows:

- The Board of Adjustment was established under state law in recognition of the need for zoning variances, but under current standards its hands were tied.

- Zoning ordinances should not have to, and indeed could not, be changed across the board to accommodate appropriate circumstances in discrete cases. In fact, the purpose of zoning variances was to tailor the effect of the ordinances, which were laws of general applicability.

- Bellaire’s zoning ordinances were already well protected in the variance process in that City Council appointed citizens to the Board of Adjustment; proceedings were open to public comment; a supermajority must vote in favor to grant a variance; and the baseline state law standard still protected
zoning by requiring unnecessary hardship and that the variance could not be contrary to the public interest, the spirit of the ordinance, and substantial justice.

The Planning and Zoning Variance Standards Committee (“Committee”) within the Planning and Zoning Commission evaluated the standards adopted by several other cities in the State of Texas. The Committee and the Planning and Zoning Commission felt that the proposed revision incorporated the best features of the standards reviewed, with an eye toward staying consistent with Bellaire’s overall zoning scheme.

The Planning and Zoning Commission, therefore, recommended a slight loosening of the “area, shape or slope” requirement, by making those factors illustrative and not exclusive grounds for a variance. The proposal or recommendation would also tighten the standard somewhat by requiring that the special condition be “unique to and inherent in the parcel itself.” Additionally, the hardship must not be self-created or personal, nor solely financial in nature.

The recommendation of the Planning and Zoning Commission was stated as follows, with additions to the standard appearing in bold print and underscored. Deletions would appear as “strikethroughs.”

Sec. 24-704. Standards.

The Board shall not grant a variance unless it shall, in each case, make specific written findings based directly upon the particular evidence presented to it which support written conclusions that:

(1) Such modifications of the height, yard, area, lot width, lot depth, off-street loading, screening wall, coverage, parking and sign regulations are necessary to secure appropriate development of a parcel of land which materially differs from other parcels in the district by being of such because of a special condition unique to and inherent in the parcel itself, such as restricted area, shape or slope, such that it cannot be appropriately developed without modification;

(2) A literal enforcement of the zoning ordinance from which the variance is requested would result in unnecessary hardship not self-created or personal, nor solely financial in nature;

(23) The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property,
substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood; and

(34) The variance desired will not be opposed to the general spirit and intent of this chapter.

Effect of Commission Recommendation

The Planning and Zoning Commission submitted that their proposal did not open the door too wide to variances that could not be granted under current standards, while at the same time giving the Board of Adjustment a little more discretion by permitting consideration of factors inherent in the parcel other than “area, shape or slope,” while also clarifying the nature of a qualifying hardship.

E. QUESTIONS FROM THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS – Mayor Cindy Siegel.

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

Q: Councilman Pat McLaughlan stated that any time a change was made to the City’s Code he felt that the City should identify how that change would make Bellaire a better City and be beneficial to the citizens of Bellaire. He inquired of Commissioner Friedberg as to how the recommended Code change would make Bellaire better in the future.

A: Commissioner Friedberg advised that his best response would be that variance applications had come before the Board of Adjustment, many of which made a great deal of sense. As expressed by the two dissenting Board of Adjustment members on a recent swimming pool case, those members thought the variance application made a great deal of sense, however, they felt their hands were tied in a way that they could not observe the spirit of the ordinance and they could not observe what they collectively felt was best for the community with respect to the particular swimming pool application.

One of the features of the City’s zoning variance standard was that it permitted a Board of Adjustment member, in some cases, to adhere very strictly to the standard and, in some cases, perhaps to vary from it, as it was an all or nothing proposition.

By providing a little more leeway for Board of Adjustment members to make the decision that they deemed best for the
community, the recommended standards permitted them to do that while providing some guidance as to how much discretion they should be given.

Q: **Councilman Phil Nauert** inquired of City Attorney Alan P. Petrov whether a petitioner could come back to the Board of Adjustment and ask for consideration under the new standard if City Council embraced the recommendations suggested by the Planning and Zoning Commission and if a petition had come before the Board of Adjustment recently and been turned down.

A: **City Attorney Alan P. Petrov** advised that the rules provided for a two-year waiting period.

Q: **Councilman Nauert** advised that the two-year waiting period applied if the rules did not change. He inquired as to whether those rules would still apply if City Council changed the rules.

A: **City Attorney Petrov** indicated that there might be some leeway in the Board of Adjustment’s Rules of Procedure for the Board of Adjustment to allow an exception. Under the current written Rules of Procedure, an application could not come before the Board of Adjustment for a two-year period regardless of whether the standards had changed.

C: **Councilman Nauert** stated that he did not want people to not receive favorable consideration if they would have been received favorably at the time their request was submitted.

R: **City Attorney Petrov** advised that he could not remember the last time the Board of Adjustment had met.

**Commissioner Friedberg** indicated that he believed that the last time the Board of Adjustment met was five months ago and the request before them that evening was granted.

**City Attorney Petrov** advised that he would check the Board of Adjustment’s Rules of Procedure and let City Council know of his findings during the meeting in which this recommendation would be deliberated.

Q: **Mayor Cindy Siegel** referred to a comment made by Commissioner Friedberg in that the suggested recommendation, if in effect during the swimming pool variance application, would not have necessarily changed the outcome on that particular variance request. She asked for confirmation that the recommendation would still have provided flexibility for
A: **Commissioner Friedberg** advised that Mayor Siegel was correct. He indicated that he was present during the Board of Adjustment meeting on the swimming pool variance request and read the minutes of that meeting. If we could safely assume that the dissenting members meant that the only thing holding them back was the standard, then with this small change he believed that those members would have voted in favor of the variance request.

Q: **Mayor Siegel** asked the City Clerk to provide a copy of the minutes from the Planning and Zoning Commission wherein the recommendation proposed this evening was deliberated. She asked that the copy be placed in the City Council packet for November 17, 2008.

A: **City Clerk Dutton** advised that she would obtain a copy of those minutes.

C: **Councilman James P. Avioli, Sr.,** noted that he was involved in the swimming pool variance application as a member of the Board of Adjustment. He indicated that the language proposed by the Planning and Zoning Commission was certainly necessary and would be helpful to the Board of Adjustment. He indicated that this was a step in the right direction.

Q: **Councilman Will Hickman** advised that it sounded as if the current Bellaire standard was very restrictive and that there were state guidelines that were less restrictive. He inquired as to whether the proposed recommendation by the Planning and Zoning Commission was in the middle. In other words, was it less restrictive than Bellaire’s current standard, but more restrictive than the state standard?

A: **Commissioner Friedberg** advised that, in his opinion, the recommendation was more in the middle. He advised further that upon a review of the standard applied by many other cities in the State of Texas, Bellaire was not at the opposite end of the spectrum from state law. Some were equally, if not more, restrictive than Bellaire’s existing standard. The recommendation followed the somewhat more restrictive end of the spectrum.

Q: **Councilman Hickman** inquired as to why the City would not want to adopt the state standard.
A: **Commissioner Friedberg** advised that the citizens seemed to like their zoning in Bellaire.

C: **Councilman Hickman** indicated that Bellaire had a Board of Adjustment to police Bellaire’s zoning.

R: **Commissioner Friedberg** agreed. He advised that City Council controlled the standard that the Board of Adjustment applied. He advised further that it would be a decision of City Council as to how much discretion they wished to give the Board of Adjustment to indiscreet cases to authorize variances from the ordinances City Council passed. This was a broad philosophical question as to how to balance the powers in City government.

Q: **Councilman Hickman** inquired as to whether City Council could adopt the state standard or something less or more restrictive than the recommendation set forth by the Planning and Zoning Commission without triggering a new public hearing.

A: **City Attorney Petrov** stated that adopting the state standard would be a significant change from the recommendation of the Planning and Zoning Commission. He would want to have some additional notice and a public hearing if City Council wanted to go that far to the less restrictive standard.

Q: **Mayor Siegel** noted that through the years City Council had not necessarily adopted the recommendation of the Planning and Zoning Commission and given them new direction. She inquired as to whether that would open the door for a new notice and public hearing.

A: **City Attorney Petrov** indicated that City Council did not have to accept the recommendation from the Planning and Zoning Commission and could make changes. If changes were made, the question would be whether the public had been put on notice as to what kind of changes the City Council was going to make. In the given situation, going to the state law requirement was a big loosening of the standard and a pretty big change for Bellaire. It would be important to re-notice and hold a public hearing. He did not feel that City Council would have to go back to the Planning and Zoning Commission and ask them for another recommendation.

Q: **Councilman Hickman** asked Commissioner Friedberg if, when researching the recommendation, he had pulled up the record
of the Board of Adjustment for the last few years to determine the percentage of cases approved, for example.

A: **Commissioner Friedberg** indicated that he had looked over the Board of Adjustment’s records for the last few years, but did not have any specific statistics that he could report. Naturally, the focus was on the recent swimming pool variance application.

Q: **Councilman Hickman** inquired as to whether Commissioner Friedberg thought there were some cases wherein the proposed standard would allow a variance, while a previous standard would not allow a variance.

A: **Commissioner Friedberg** advised that he felt the proposed standard would give sufficient discretion to a Board of Adjustment member in applying the standard. In other words, it would give the member a little more leeway to grant a variance.

**F. RECOGNITION OF CITIZENS AND/OR OTHER INTERESTED PARTIES – Mayor Cindy Siegel.**

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council and advised that she had attended each of the Planning and Zoning Committee’s hearings on this subject, as well as the City Attorney’s prepared responses to their questions. The Committee had done an extremely thorough job and had debated the topic in-depth as to the appropriate level for the standard.

After 40 years of zoning classes, observations, and readings, it was Ms. McBee's understanding that the whole purpose of zoning in the community was to foresee and to forecast what the community standards were, with periodic revisions. Landowners in a zoned community usually wanted more than they could have and, thus, the reason for the Board of Adjustment to mediate between the community’s adopted standard and what the landowner wanted.

The City of West University Place, Texas, had responded precisely as Bellaire had to this subject. West University Place, Texas, stated that the law required special conditions and unnecessary hardship to support the granting of any variance. In 2006, the Texas Supreme Court ruled that “personal” or “self-created” conditions could not support the granting of a variance. In support of its ruling, the Texas Supreme Court quoted language from the affected zoning ordinance. West University Place, Texas, specifically tracked the court law in the revision of their zoning standard.
In Bellaire, the pattern had been varied over the last 10-20 years in that it was not really clear what the law meant and Boards of Adjustment would do what they thought individually was reasonable without the zoning standard being necessarily paramount in their minds. Once lawyers joined the Board of Adjustment, legal gamesmanship was made of interpreting the City’s zoning standard. For a long period of time, variances were given away. Once this came to City Council’s attention, some adjustments to the standards were made.

The change proposed by the Planning and Zoning Commission this evening was a slight change, and Ms. McBee supported it. The change conformed to the current state law, as set by the courts. To dicker around with any further changes would create chaos in Ms. McBee’s judgment. She noted further that there was no appeal by people upset with the Board of Adjustment’s ruling, except to go to District Court. For that reason it was important to have a set of equitable standards that matched the community’s selection of zoning standards.

{The speaker’s allotted time ended at this point}

G. CLOSE OF PUBLIC HEARING – Mayor Cindy Siegel.

Mayor Cindy Siegel closed the public hearing before the City Council of the City of Bellaire, Texas, at 6:34 p.m. on Monday, November 3, 2008. She advised that public comment would not be received following the public hearing, but written comments could be submitted to City Council prior to final deliberation on the matter in care of the City Clerk. It was anticipated that final deliberation would occur on Monday, November 17, 2008, therefore, written comments must be received by noon on Thursday, November 13, 2008, in order to be considered for the record.

H. ADJOURNMENT.

MOTION TO ADJOURN:

A joint motion was made by Councilman Pat McLaughlan and Councilman Phil Nauert and seconded by Councilman Will Hickman to adjourn the Special Session (Public Hearing) before the City Council of the City of Bellaire, Texas, at 6:35 p.m. on Monday, November 3, 2008.
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 7:01 p.m. on Monday, November 3, 2008. 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 77401. 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 James P. Avioli, Sr., Position No. 2;
Mayor Pro Tem Peggy Faulk, Position No. 3;
Councilman Phil Nauert, Position No. 4;
Councilman Pat McLaughlan, Position No. 5; and
Councilman John Jeffery, Position No. 6.

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 – Mayor Cindy Siegel.

Mayor Cindy Siegel referred to the report that would be given later in the evening regarding Hurricane Ike and passed out two of three hats that she had been given by Chevron, the City’s largest taxpayer, to City Manager Bernard M. Satterwhite, Jr., and Assistant City Manager Diane K. White. The front of the hat read, “I survived
Hurricane Ike.” Continuing in that vein, Mayor Siegel read an excerpt from an email that she had received from Chief Financial Officer Donna Todd entitled “You know you’re from the Gulf Coast when . . .” which she read as follows:

You know you’re from the Gulf Coast when . . .

Your pantry contains more than 20 cans of Spaghetti O’s.

You are thinking of repainting your house to match the plywood covering your windows.

When describing your gutted house to a prospective buyer, you say it has three bedrooms, two baths, and an open-air feel to it.

You are on a first-name basis with the cashier at Home Depot.

You are delighted to pay $3.50 for a gallon of regular unleaded.

You decide that your patio furniture looks better on the bottom of the pool.

You can wish that other people get hit by a hurricane and not feel the least bit guilty about it.

You rationalize helping a friend board up by thinking it’ll only take a gallon of gas to get there and back.

Three months ago you couldn’t hang a shower curtain; today you can assemble a portable generator by candlelight.

You can recite from memory whole portions of your homeowner’s insurance policy.

You consider a vacation to stunning Tupelo, Mississippi.

At cocktail parties, women are attracted to the guy with the biggest chainsaw.

You have had tuna fish more than 5 days in a row.

Someone comes to your door to tell you they found your roof.

Ice is a valid topic of conversation.

Your drive-thru meal consists of MREs and bottled water.

Relocating to South Dakota does not seem like such a crazy idea.
A battery powered TV is considered a home entertainment center.

You don’t worry about relatives wanting to visit during the summer.

Your child’s first words are hunker down!

Having a tree in your living room does not necessarily mean it’s Christmas.

Your kids start school in August and finish in July.

You go to work early and stay late just to enjoy the air conditioning.

You’re more concerned about someone stealing your generator than your car.

You get excited when you see a CenterPoint truck in your neighborhood.

You get really excited when you see the cable guy.

You can create memorable meals with a can of SPAM and one gas burner.

You are prepared to wait in line at Starbucks for 2 hours to get a cup of coffee.

“All power to the people” has a different meaning than it had during the 60s.

Mayor Siegel closed by sharing two quotations from former U.S. Presidents in honor of the historic election that America was about to go through as follows:

I am proud of America, and I am proud to be an American. Life will be a little better here for my children than for me. I believe this not because I am told to believe it, but because life has been better for me than it was for my father and my mother. I know it will be better for my children because my hands, my brains, my voice, and my vote can help make it happen.

--Gerald Ford
38th President of the United States

In all our rejoicings, let us neither express nor cherish any hard feelings toward any citizen who, by his vote, has differed with us. Let us at all times remember that all American citizens are brothers of
common country, and should do well together in the bonds of fraternal feeling.

--Abraham Lincoln
16th President of the United States

C. PLEDGES TO THE FLAGS – Mayor Cindy Siegel.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Mayor Cindy Siegel 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, October 20, 2008 – Item submitted by City Clerk Tracy L. Dutton.

MOTION TO APPROVE MINUTES:

A motion was made by Councilman Will Hickman and seconded by Mayor Pro Tem Peggy Faulk to approve the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday, October 20, 2008.

VOTE ON MOTION TO APPROVE MINUTES:

Motion carried on a 6-0-1 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Faulk, Peggy
McLaughlan, Pat
Jeffery, John

OPPOSED: None

ABSENT: None

ABSTAIN: Nauert, Phil*

*Councilman Phil Nauert abstained from voting on the approval of the minutes of the City Council Regular Session held on October 20, 2008, due to his absence from that meeting.
E. PERSONAL/AUDIENCE COMMENTS.

Robert Riquelmy, 506 Winslow Lane, Bellaire, Texas:

Mr. Riquelmy addressed City Council and stated that Bellaire was known for having “cheap and cheesy” municipal facilities. He advised that he wanted to speak this evening to an item on the agenda wherein City Council would be making a default decision.

As far as Mr. Riquelmy knew, City Council had made no decision with respect to where the new Fire Station would be located. To engage an architect to design a Fire Station without a formal City Council decision as to where the Fire Station would be located was getting the “cart before the horse.” He advised that the City Council was not doing a thorough job of holding public hearings and having public discussions on this important matter.

He continued and advised that there had been many proposals for different locations for the Fire Station in the dozens of meetings that he had attended. To make a default decision on this matter this evening was improper and led to all sorts of bad consequences. Mr. Riquelmy stated that he was tired of “cheap and cheesy” in Bellaire. He wanted everything to be first class or, as stated in the City’s mission statement, of “outstanding quality.”

Bill Garrett, 4902 Chestnut Street, Bellaire, Texas:

Mr. Garrett addressed City Council and advised that he was present to make a request related to the sidewalks that were to be installed during the reconstruction of Second Street between Beech Street and Chestnut Street. The current plans indicated that the sidewalk would be placed approximately 14-15 feet closer to his home than the current street was.

He referred to an open ditch that he had landscaped along his property line and to landscaping back on the block that bordered the Second Street and Beech Street intersection.

Mr. Garrett advised that his request was not to eliminate the sidewalk. His request was for the sidewalk to be moved adjacent to the curb on the street. He had noticed that the sidewalk was adjacent to the curb on Fifth Street in order to accommodate trees, landscaping, light posts, etc. Mr. Garrett had a tree that would be in jeopardy if the sidewalk were constructed as indicated during a recent Neighborhood Meeting.
The other issue Mr. Garrett had was an issue of privacy. If the sidewalk were constructed as indicated, it would be approximately 8-10 feet from his glass on the front façade of his home. Additionally, he advised that moving the sidewalk closer to the curb (adjacent to the street) would save the City money in that the City would not have to go back and re-landscape property.

Gary Husmann, 4901 Beech Street, Bellaire, Texas:

Mr. Husmann addressed City Council and stated that he was thrilled that the City was reconstructing Second Street. He echoed the comments made by his neighbor, Bill Garrett, with respect to the placement of sidewalks.

In the 30 years that Mr. Husmann had lived in Bellaire, he had never had a sidewalk, which was okay with him. If the City wanted to save some money, the little section of Second Street between Chestnut Street and Elm Street was a dead-end street at both ends, and there was not a lot of traffic in that area; therefore, a sidewalk was not necessary. If the City had to put a sidewalk in, he urged City Council to push the sidewalk against the curb. He noted that there was a great deal of existing vegetation and expressed concern that the construction crew might chop up the roots of his 50-year old crepe myrtles.

From a privacy standpoint, the front setbacks for homes were adequate and sidewalks did not pose a problem. However, on the side streets, the sidewalks would run right along residents’ living areas resulting in a privacy issue.

Mr. Husmann suggested that the City consider shifting the street over where the homes on one side would share the burden for the other homes having to have a sidewalk.

In closing, Mr. Husmann voted for no sidewalk. If the City had to install a sidewalk, he voted for the sidewalk to be constructed against the curb.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council and referred to the agenda for the evening’s meeting and noted that there were three reports listed. She
had submitted a public information request to obtain written copies of the reports, but none were provided to her. The reports she referred to were the Hurricane Ike Report, City Manager's Report, and Comprehensive Plan Project Update. Ms. McBee advised that if the City Council were going to have reports on their agenda, it would seem that it would be beneficial for the City Council and the public to ensure that what was said was said from a written statement of same.

It was much easier to misinterpret or misspeak when one did not have a written script in front of them. Ms. McBee lodged a complaint with respect to items on the agenda without written backup available to City Council and the community as well. When a consultant or City Staff person was required to give a report, written documentation was usually placed in the agenda packet.

Secondly, since this was the time of employment discussions, Ms. McBee advised that she wished to read a small segment of an article that she had written for the paper that was unpublished as yet. The article had to do with the tenth decade in Bellaire’s history. She read as follows:

Management in Bellaire changed in 2000 with the exit of City Manager John Pape (1996-2000) and the employment of Bernie Satterwhite (2000-current), who was provided a $150,000 interest-free loan to enable him to live in Bellaire, gradually being repaid monthly. After his first three years, a new reappointment employment agreement was presented by Mr. Satterwhite for City Council approval that guaranteed him a base salary of $120,880, a monthly 10% placed into an “accrued pay” fund, payable in lump sum at his departure if he does not resign before November 30, 2008, and 5% per month of gross pay to a designated, qualified deferred compensation fund, along with other customary benefits. We hired a Chief Executive Officer (CEO) for the first time, modeled along 21st Century corporate custom. Discussion of this reappointment agreement will likely be discussed before its termination—November 30, 2008.

Ms. McBee continued and advised that the employment of a City Manager and his compensation and terms has not been brought forward to the public before, during, or after those reassessments. In addition, the City Council had never issued a report card on the performance evaluation of the City Manager, which she thought was done by other large public entities.

She felt that both of those missing factors were a detriment to the intelligence of the community. It was not that people did not trust the City Council’s judgment--it was that people did not know what went into the judgment. The City Council had as much obligation to the community as did the City Manager. Ms. McBee hoped that this would
change within the next month as City Council reviewed the contract and either renewed it, modified it, or whatever else their choice might be. Ms. McBee advised that City Council did not communicate as well as they could to the people that they worked for. She felt that the City Manager should also communicate better with City Council and the citizens and with as much efficacy as she was asking the City Council to do.

F. REPORTS:

1. HURRICANE IKE REPORT – presentation and discussion regarding the preparations, response, and recovery efforts by City of Bellaire Emergency Operations Center personnel before, during, and after Hurricane Ike struck the City of Bellaire and surrounding areas – Presented by City Manager Bernard M. Satterwhite, Jr.

The Hurricane Ike Report was presented by City Manager Bernard M. Satterwhite, Jr., and has been appended hereto as Appendix “A.”

QUESTIONS/COMMENTS FROM CITY COUNCIL:

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

Q: Mayor Pro Tem Peggy Faulk inquired as to the maximum wind speed in Bellaire as a result of Hurricane Ike, as well as the category of storm.

A: City Manager Satterwhite advised that the City had a wind speed indicator, but he did not believe that it was working properly. He noted that at one point during the storm, the wind was howling, but the wind speed indicator only showed 10 miles per hour, which did not seem to be correct.

Mayor Cindy Siegel stated that the storm was a category 2, but in some places it was rated as a category 4.

City Manager Satterwhite agreed, noting that when the hurricane made landfall it was rated as a category 2. Bellaire did experience hurricane force winds for several hours. He noted that the City did have plans to get the wind speed indicator fixed.
Q: Councilman Will Hickman thanked City Staff for keeping the water and sewer services going. He thanked the Mayor for making house calls.

Councilman Hickman also advised that his family actually had to go to the Emergency Room on Saturday morning, but was unable to get down Bellaire Boulevard. He inquired as to whether one of the top priorities was the clearing of streets.

A: City Manager Satterwhite stated that the City had planned for the debris removal contractor to come out and clear the streets. Unfortunately, a disaster declaration had to be issued before the debris removal contractors could begin their work. During the next major storm, the City was going to plan to clear the major arteries itself.

Q: Councilman Hickman referred to the City’s water and sewer systems. He advised that he thought the water system had redundancies built into it in that one plant could service the whole City, if necessary. He inquired as to whether redundancies were built into the City’s lift stations (i.e., sewer systems).

A: City Manager Satterwhite advised that there was some interconnection. All three of the City’s lift stations did not have to be up in order to provide sewer services. He advised that wastewater would always be an issue. During Tropical Storm Allison, the plant got washed out.

With respect to the water plants, there was not a great deal of redundancies built in. If the power were lost, the only thing that would feed the City was the elevated storage tanks. That could only occur for 12 hours, possibly a bit longer.

C: Councilman Hickman referred to upcoming improvements to be made to the City’s water and wastewater systems and advised that he was still interested in looking at diesel or natural gas pumps to provide a backup.

With respect to communications and the current political season, he advised that he had made numerous robocalls. He inquired as to whether the City had robocall capabilities that could be used as a communication tool.
R: City Manager Satterwhite advised that the City had similar capabilities, however, the system was set up for emergencies (i.e., reverse 911). The things that the City wanted to communicate during the storm were not really "emergencies." The City was going to look into a "code red" system that would allow the City to transmit any type of messages it desired.

Mayor Siegel pointed out that there was an area on the City’s website where people could register (i.e., a list serve) and receive information from the City automatically. She noted that the Bellaire City Library was also open after the storm and helped the City disseminate information.

Q: Councilman Phil Nauert inquired as to the number of hours where the City was not running fire, ambulance, and police calls.

A: City Manager Satterwhite indicated that the City did not have any calls that evening, so it was difficult to say whether the City would have gone out or not.

Q: Councilman Nauert referred to the City’s capabilities. In other words, was there a point in time when the City would not have dispatched a police, fire, or emergency service vehicle?

A: Fire Chief Darryl Anderson stated that sustained winds of over 45 miles per hour would stop the police and fire from responding to an ordinary call. If the call were life threatening or involved a structural fire, the City would make a best attempt to respond. At a wind-speed of 60 miles per hour it was important to look at the risk that the emergency responders might become casualties themselves.

Comments from Mayor Cindy Siegel:

Mayor Siegel noted that in the last ten years, Bellaire had experienced two significant natural disasters—Tropical Storm Allison and Hurricane Ike. In addition, a few years ago Bellaire experienced the largest evacuation of people in the history in response to the approach of Hurricane Rita.

Mayor Siegel had the opportunity during all three of those events to have a front row seat—the first time as Mayor Pro Tem during Tropical Storm Allison and the second and third
times as Mayor during Hurricane Rita and Hurricane Ike. Each time the City of Bellaire had taken major steps to prepare for each approaching storm.

In terms of disaster response, the City was vastly improved from where it was during Tropical Storm Allison. There were always areas where the City could improve. From the Mayor’s perspective, the main area of improvement would be communication. In other words, how could the City communicate with the citizenry where the vast majority were without the communication tools relied upon daily—the television, radio, Internet, cellular phones?

The City could not have communicated as well without the assistance of the local news media—The Bellaire Examiner, the Southwest News, and the Bellaire Buzz. All three bent over backwards to get things up on their websites, extended normal deadlines, and extended space restrictions to help the City reach out to its residents.

During the next disaster that the City might face, an even better job would be done because of the lesson learned from Hurricane Ike. One area that the City did not have to improve on was the quality of the City Staff. In her front row seat as Mayor, she had seen daily the courage and excellence demonstrated by the City Staff through two major hurricane events. She could say with firm conviction and sincerity that the City of Bellaire had the finest staff of any city large or small.

The City Staff’s professionalism, commitment to residents and the City, and their willingness to put their own lives at risk and on hold in order to protect the lives and property of Bellaire’s residents during a disaster was exemplary. Mayor Siegel advised that City Staff even rescued her when she drove her rental car through some very high water. The City was really blessed to have the City Staff it had.

Mayor Siegel continued by mentioning a few of those staff members as follows: Diane White, Assistant City Manager—a cool, calm head and one who did a wonderful job; Fire Chief Darryl Anderson—a good guy to have in an emergency—one with a big heart and concern for all of Bellaire’s people; Mary Alford, Librarian, who ensured that the Bellaire Library was open for the residents immediately after the storm hit. The Library was a blessing for many people. Joe Keene, Director of Public Works, and his staff were working seven days a week to clean up the City. Donna Todd, Chief Financial Officer, was on
hand during the storm and spent many hours sifting through stacks of Federal Emergency Management Agency (FEMA) requirements so that the City could be taken care of. Lee Cabello, Building Official, along with Assistant Director of Community Development Chris Magisano, started inspecting construction sites and restaurants to ensure things were in order. Police Chief Randy Mack and his staff were unbelievable during the event. Director of Parks & Recreation Jane Dembski was the City’s cheerleader and took good care of City Staff during the event. Human Resources Director Roberta Murray and Communications Technology Services Director Larry Parks were both pitching in and making sure the City was going. City Clerk Tracy Dutton, Assistant to the City Manager Patte McGuire, Receptionist Tillie Wiedemann, and Administrative Secretary Shanna Ingram were taking very irate telephone calls from people and trying to answer their questions with a smile and caring feeling for those callers. On behalf of the citizens of Bellaire and the Bellaire City Council, Mayor Siegel thanked each member of the City Staff for all that was done for the citizens during Hurricane Ike. Mayor Siegel gave a special thanks to City Manager Bernie Satterwhite for all that he had done and continued to do as well.

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

A motion was made by Councilman Pat McLaughlan and seconded by Councilman Phil Nauert to accept the Hurricane Ike 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 7-0 vote as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Avioli, James P., Sr.
- Faulk, Peggy
- Nauert, Phil
- McLaughlan, Pat
- Jeffery, John

**OPPOSED:** None

**ABSENT:** None
2. CITY MANAGER’S REPORT – presentation and discussion regarding police activity for the month of September, update on the Rebuild Bellaire Program, Phase Two, Neighborhood Meeting held on October 23, 2008, summary of crime statistics for the period ended September 30, 2008, introduction of the City’s new Community Development Director, and summary of upcoming City Council meetings – Presented by City Manager Bernard M. Satterwhite, Jr.

The City Manager’s Report was presented by City Manager Bernard M. Satterwhite, Jr., and has been appended hereto as Appendix “B.”

QUESTIONS/COMMENTS FROM CITY COUNCIL:

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

There were no questions or comments from City Council regarding the City Manager’s Report.

MOTION TO ACCEPT REPORT INTO THE RECORD:

A motion was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., 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 7-0 vote as follows:

FOR:   Siegel, Cindy
        Hickman, Will
        Avioli, James P., Sr.
        Faulk, Peggy
        Nauert, Phil
        McLaughlan, Pat
        Jeffery, John

OPPOSED:  None

ABSENT:  None

3. COMPREHENSIVE PLAN PROJECT UPDATE – presentation and discussion of the status of the City of Bellaire’s Comprehensive Plan Project, to include the status of the
project timeline and deliverables, key planning issues, considerations addressed to date by the Comprehensive Plan Advisory Committee, and the next steps in the project update process – Item submitted by City Clerk Tracy L. Dutton on behalf of Gary Mitchell, Kendig Keast Collaborative; Presentation by Gary Mitchell of Kendig Keast Collaborative; Discussion among members of City Council, City Staff, City Boards, and Kendig Keast Collaborative.

Gary Mitchell of Kendig Keast Collaborative presented the Comprehensive Plan Project Update. Mr. Mitchell has prepared six written reports to date related to the status of the Comprehensive Plan Project. All six reports have been appended hereto as Appendix “C.”

QUESTIONS/COMMENTS FROM CITY COUNCIL:

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

Q: Councilman Pat McLaughlan advised that he had a question for City Attorney Alan P. Petrov or City Manager Bernard M. Satterwhite, Jr., related to the Comprehensive Plan Project. He inquired as to whether there was any method by which the Comprehensive Plan Advisory Committee meetings could be posted or announced differently that would allow some members of the Planning and Zoning Commission and some members of the City Council to sit in on the meetings as a non-participating observer. It was his understanding right now that there might be quorum limitations for the Planning and Zoning Commission and City Council.

A: City Attorney Alan P. Petrov indicated that any time a quorum of a governing body was present, the Texas Open Meetings Act would require that the notice of the meeting be posted at least 72 hours in advance. If the City wanted to do that, it could be done.

He would certainly advise against the idea that people should show up and sit in as a non-participant. If a quorum of one of the bodies was present, then the meeting needed to be posted. He expressed a concern that some of the “non-participants” could inadvertently join in the conversation, which would trigger a meeting that needed to be posted under the Texas Open Meetings Act.
C: Councilman McLaughlan advised that some members of the Planning and Zoning Commission had mentioned to him that they would like to at least sit in on the meetings of the Comprehensive Plan Advisory Committee in order to see the progress of the meeting. He, himself, was interested in seeing the progress of the meetings.

R: Mayor Cindy Siegel advised that the City Council specifically voted and directed the Mayor not to appoint more than three members from the Planning and Zoning Commission to the Comprehensive Plan Advisory Committee.

C/Q: Councilman McLaughlan stated that he was not talking about appointing more members, he was simply talking about members of the Planning and Zoning Commission or members of the City Council having the right as a citizen to sit in on a meeting. He understood that this was allowed if the meeting could be posted as such. He inquired as to whether this was possible.

A: City Attorney Petrov advised that the meeting would have to be posted if a quorum of one of those bodies were going to be present. He had not been a part of this process, so he was not sure which meetings Councilman McLaughlan was referring to. He understood that there were possibly different types of meetings, such as committee meetings or informational meetings or forums that would be held for public comment.

Gary Mitchell, Kendig Keast Collaborative, advised that the meetings that Councilman McLaughlan referred to were advisory committee meetings. The advisory committee was a city-appointed committee. He indicated that some cities he worked with posted all of those meetings so that members of City Council and the Planning and Zoning Commission could attend. He had worked with a few cities that worked out a schedule where members rotated which meetings they would attend in order to avoid a quorum issue.

On the public meetings or forums, those meetings tended to be posted so that all members of City Council and the Planning and Zoning Commission could attend.
Q: Councilman McLaughlan inquired as to the number of members of City Council that were appointed to the Comprehensive Plan Advisory Committee.

A: Mayor Siegel advised that Councilman Phil Nauert was the liaison to this committee because he was the liaison to the Planning and Zoning Commission. City Council specifically stated that they only wanted three Planning and Zoning Commission members on this committee. The purpose was to try to appoint as many members from the citizenry so that the City could get even more input.

Mayor Siegel noted that the committee was a citizen advisory committee and it would go through the process of the Planning and Zoning Commission and then City Council. Her only concern was that if it became too heavily weighted, based on the guidelines that City Council wanted, the input would end up not necessarily being from the citizens. There was a difference in sitting in as an observer and wanting to jump in as a participant.

C: Councilman Will Hickman made a point of order, noting that City Council was straying outside the agenda item.

C: Councilman McLaughlan advised that he did not believe City Council was straying outside of the agenda.

R/Q: Mayor Siegel suggested that if City Council wanted to post the meetings indicating a quorum of one or both bodies might attend the meetings of the Comprehensive Plan Advisory Committee that it be placed on the next agenda for consideration.

Mayor Siegel referred to a survey that was mentioned by Mr. Mitchell during his report and inquired as to the reason for the survey. In other words, did Kendig Keast Collaborative have a good feel as to the mix of the community?

A: Mr. Mitchell advised that some of the concern was related to the fact that the City was late into the decade—many years from the 2000 census and three-four years from the next census results. Many people wanted to see a census-type survey with respect to characteristics, as well as opinion.
Q: Mayor Siegel asked if this were something that Mr. Mitchell would request City Council authorization for in a future meeting?

A: Mr. Mitchell advised that a more formal request would be made at a later time.

Q: Mayor Siegel inquired as to whether the Comprehensive Plan Project was still on track even with Hurricane Ike.

A: Mr. Mitchell advised that the project was still on track.

MOTION TO ACCEPT REPORT INTO THE RECORD:

A motion was made by Councilman Will Hickman and seconded by Councilman Pat McLaughlan to accept the Comprehensive Plan Project Update as presented by Gary Mitchell of Kendig Keast Collaborative into the record.

VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:

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

FOR: Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Nauert, Phil
McLaughlan, Pat
Jeffery, John

OPPOSED: None

ABSENT: Faulk, Peggy*

*Mayor Pro Tem Peggy Faulk stepped away from the City Council table temporarily and did not participate in the vote to accept this report.

{Continued on next page}
G. NEW BUSINESS:

1. ADOPTION OF RESOLUTION:

Municipal Setting Designation

CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, in support of the application of the Union Pacific Railroad Company (UPRR) to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 10200 Westpark Drive, Houston, Texas, and adjacent to public rights-of-way in Houston, Texas – Item submitted by City Clerk Tracy L. Dutton on behalf of City Attorney Alan P. Petrov.

Note: This agenda item was postponed on September 15, 2008, in order to allow the applicant an opportunity to provide the City with a professional certification as to the impact of such designation to the City’s water well(s).

MOTION TO ADOPT RESOLUTION:

A motion was made by Councilman Phil Nauert and seconded by Councilman Pat McLaughlan to adopt a resolution of the City Council of the City of Bellaire, Texas, in support of the application of the Union Pacific Railroad Company (UPRR) to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation for property located at 10200 West Park Drive, Houston, Texas, and adjacent to public rights-of-way in Houston, Texas.

DISCUSSION:

Councilman Phil Nauert noted that this particular agenda item had been discussed at length during a previous City Council meeting. As he understood that action, the City requested to receive an unqualified statement from a professional engineer that would give the City some security on the City’s part with respect to the safety of its water wells. He next read a portion of the professional certification that the applicant submitted as follows: Based on such review, the constituents of concern from sources on the designated property or migrating from or through the MSD area could not reach and impair the City of Bellaire’s water well. A Texas Professional Engineer executed the certification under penalty.
of law. Councilman Nauert advised that he felt that this satisfied the previous lengthy discussion by City Council on this matter. He urged City Council to go ahead and approve the agenda item.

**Councilman Will Hickman** inquired as to whether the City of Houston had approved this municipal setting designation previously.

**City Attorney Alan P. Petrov** advised that the City of Houston had already approved this municipal setting designation.

**Councilman James P. Avioli, Sr.,** inquired as to whether there were any fees or licenses to be obtained from the City of Houston under their application process for a municipal setting designation.

**Debra Baker, Connelly Baker and Wotring Law Firm,** advised that she was the attorney acting on behalf of the Union Pacific Railroad Company. The City of Houston imposed to all applicants an application fee in the amount of either $1,000 or $2,000 (i.e., she was uncertain as to the exact amount of the fee). That fee covered the Public Works Department’s time and effort to review the application. In other words, the fee was meant to compensate them for their time.

**Councilman Avioli** inquired as to whether there was a fee paid to Bellaire.

**City Manager Bernard M. Satterwhite, Jr.,** advised that there was not a fee paid to Bellaire.

**Councilman Avioli** asked if there should be a fee.

**City Manager Satterwhite** indicated that there probably should be in the future. He noted that the City would have to set the fee structure ahead of time.

**Councilman Avioli** asked if the City was supposed to file its support document with any other entity and if there would be a fee for doing that.

**City Attorney Petrov** indicated that the City would provide Baker Connelly and Wotring with a resolution for them to file so that there would not be any cost to the City for filing.
City Manager Satterwhite advised that the fee that Bellaire might want to set in the future was the processing fee as there was some amount of paperwork and time involved.

Councilman Avioli indicated that he felt the City should look into that.

Mayor Cindy Siegel stated that she and the City Manager had discussed this during an agenda meeting. This was the first application of this type that the City had seen and this was a learning process. She agreed that City Council needed to set some processes in place for City Staff on this issue. City Staff could come forward with a fee arrangement for City Council to review. She asked if the City Manager could set those fees without City Council action.

City Attorney Petrov advised that the City Manager could probably establish the fee arrangement without City Council action. This had been a process of learning what documents City Council wanted to see so that City Staff knew what to have the applicants submit ahead of time. He believed that City Staff could now develop a procedure and that the City Manager could come up with an administrative fee to cover the City’s internal costs. He noted that Assistant City Manager White, City Clerk Dutton, and himself spent time gathering, preparing, and reviewing documents.

Mayor Siegel asked Debra Baker if this were something she had been seeing as she visited with other cities to request their support for municipal setting designations.

Ms. Baker advised that she had not seen this in the Houston area. She understood that some municipalities had adopted a processing fee in the Dallas area.

**VOTE ON MOTION TO ADOPT RESOLUTION:**

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

**FOR:** Siegel, Cindy  
Hickman, Will  
Avioli, James P., Sr.  
Faulk, Peggy  
Nauert, Phil  
McLaughlan, Pat  
Jeffery, John
OPPOSED:  None

ABSENT:  None

{Resolution was subsequently numbered:  08-08}

2.  ITEMS FOR INDIVIDUAL CONSIDERATION:

Authorization to Provide Matching Grant Funds for CMAQ Project

a.  CONSIDERATION of and possible action on a request received from the Texas Department of Transportation (TXDOT) for the balance due from the City of Bellaire, Texas, for its portion of the matching grant funds under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) in the amount of $446,023.99 – Item submitted by City Manager Bernard M. Satterwhite, Jr.

SUMMARY:

City Manager Bernard M. Satterwhite, Jr., advised that the request under consideration was for City Council approval for the City to make the payment for its portion of the CMAQ grant. The total cost of the program was $2,500,000, which was funded by the federal government at 80%, with 20% of the funding to come from the City. The program was previously approved by City Council.

The Texas Department of Transportation was the lead on this program and, as such, had gone out for bids on the project. In order to move forward, the City needed to pay its share in accordance with the payment agreement approved by City Council over one year ago.

The amount to be paid (based on the amount bid) was actually under budget. The amount budgeted was $500,000.

MOTION TO APPROVE REQUEST FOR BALANCE DUE:

A motion was made by Councilman John Jeffery and seconded by Councilman James P. Avioli, Sr., to approve a request received from the Texas
Department of Transportation (TXDOT) for the **balance due from** the City of Bellaire, Texas, for its **portion of the matching grant funds under the** Congestion Mitigation and Air Quality Improvement Program (CMAQ) in the amount of $446,023.99.

**DISCUSSION:**

Councilman Phil Nauert referred to the letter that the Texas Department of Transportation (TXDOT) had sent the City of Bellaire and advised that it was his understanding that for the project to press on, TXDOT needed the funds in hand. The letter also stated that the amount requested was an “estimate” of the portion that the City might end up paying. He asked if the City was protected by a “ceiling” with respect to this project.

City Manager Satterwhite stated that the City should not have to pay more than $500,000. If for some reason, the project came in over budget, then the City would have to go back to the table. The letter from TXDOT to the City was written prior to their receipt of the bids for this project. The bids were received and the “estimate” set forth in their letter was very close to the actual amount that the City would be required to pay.

Mayor Cindy Siegel asked for confirmation that this project included a new signal for Avenue B and Bellaire Boulevard.

City Manager Satterwhite advised that Mayor Siegel was correct. He noted that the project included improvements to 11 intersections, nine of which would be completely rebuilt and two of which would be rehabilitated. The project included left turn signals at Avenue B and Bellaire Boulevard. All signal poles would be new, and there would be fiber optic connectivity and LED signal heads. Also included were pedestrian countdown timers at crossings.

Mayor Siegel referred to decorative lighting and inquired as to whether the City could consider it.

City Manager Satterwhite stated that the project did not include upgraded light poles and streetlights. If the City wanted to consider that, there would be an extra cost. City Staff was working on getting pricing for those items and would return to City Council for action.
Council chose to go in that direction, a change order could be completed for the basic bid on this project.

**Councilman McLaughlan** stated that as he recalled rather than using TXDOT’s traffic engineers, the City opted to use its own traffic engineers. He noted that there had been a fee for that in the amount of approximately $200,000. He inquired as to whether this was a part of the cost for this particular project.

**City Manager Satterwhite** indicated that the traffic-engineering fee was over and above this project and had already been paid.

**Councilman John Jeffery** inquired as to the timeline for the program.

**City Manager Satterwhite** advised that a decision would have to be made fairly quickly on the poles before the end of the year. He did not have a phasing or exact construction plan right now. He imagined that if the City elected to install decorative poles, those poles would probably be installed along South Rice Avenue. The standard poles were black powder-coated rather than galvanized and would be better looking to start with. He believed that he would have the pricing for those decorative poles in the next week or so.

**Councilman Will Hickman** inquired as to whether the new traffic signals would give the City the ability to program the lights to take into account traffic patterns at different times of the day.

**City Manager Satterwhite** advised that the City should have the ability to do so.

**VOTE ON MOTION TO APPROVE REQUEST FOR BALANCE DUE:**

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

**FOR:**  
Siegel, Cindy  
Hickman, Will  
Avioli, James P., Sr.  
Faulk, Peggy  
Nauert, Phil  
McLaughlan, Pat  
Jeffery, John
Architectural Services for New Fire Station

b. CONSIDERATION of and possible action on a recommendation from the City Manager of the City of Bellaire, Texas, to select Pierce Goodwin Alexander & Linville (PGAL) to provide architectural services for the design of a new fire station and to direct the City Manager to take the appropriate steps to finalize a formal engagement agreement with PGAL for future City Council approval – Item submitted by City Manager Bernard M. Satterwhite, Jr.

SUMMARY:

City Manager Bernard M. Satterwhite, Jr., noted that the City received thirteen proposals in response to the Request for Qualifications issued for architectural firms. A team of three, Assistant City Manager Diane White, Facilities Management Director Karl Miller, and Fire Chief Darryl Anderson, analyzed the proposals and, through a weighted-matrix process, came up with three finalists. Those three finalists were noted to be Pierce Goodwin Alexander & Linville (PGAL), Hermes Architects, and BRW. He advised that he was not involved in the initial rankings, but was involved in the interview process. All three finalists were interviewed and were very reputable.

PGAL was most favorable because of the team they put together (a team the City had worked with in the past). The team was knowledgeable about the City. PGAL also discussed the possibility of getting a LEED certification for the Fire Station without going through a great deal of cost, which was deemed favorable by the City team.

If this agenda item were approved this evening, City Staff would still have to go back and negotiate an agreement with PGAL. That agreement would be brought back to City Council for final approval.

MOTION TO APPROVE RECOMMENDATION AND DIRECTION TO CITY MANAGER:

A motion was made by Councilman Phil Nauert and seconded by Councilman John Jeffery to approve a recommendation from the City Manager of the City of Bellaire, Texas, to
select Pierce Goodwin Alexander & Linville (PGAL) to provide architectural services for the design of a new fire station and to direct the City Manager to take the appropriate steps to finalize a formal engagement agreement with PGAL for future City Council approval.

DISCUSSION:

Councilman Pat McLaughlan asked for a point of clarification. The agenda statement indicated that the City would start with a baseline square footage for the new fire station of 16,219. Based on other discussions, he understood that staff might reassess certain design aspects.

City Manager Satterwhite advised that the City had gone through a conceptual design process for the facility, and that conceptual design process was brought back to City Council. An agreement was made to move forward based on that conceptual design. As he had said before, the design was “conceptual,” and there might be changes that City Staff and/or City Council would like to make before the City reached the “final design” phase. He felt there would be ample opportunity to make changes if those changes were so desired.

Councilman McLaughlan inquired as to whether there would be an opportunity on some timely basis that members of City Council might be able to reassess some of the requirements. He noted that he had a concern in that the City’s existing fire station was approximately 10,000 square feet and seemed to function well.

Councilman Phil Nauert raised a point of order, indicating that the discussion was related to authorizing the City Manager to negotiate an engagement letter rather than the design of a fire station.

Mayor Siegel asked if Councilman McLaughlan could address his question in terms of engaging PGAL as design consultants.

Councilman McLaughlan asked if City Council would have an opportunity to discuss aspects of the fire station that relate to cost, etc.

City Manager Satterwhite advised that within the negotiated agreement there would be ample opportunity for City Council to discuss design long before the City got to the final design stage. There would be specific meetings with City Council to discuss aspects of the design.
Councilman McLaughlan asked for confirmation that the City was not specifically requiring 16,219 square feet for the fire station as stated in the agenda item.

City Manager Satterwhite advised that the City had come out of the conceptual design process with a fire station that was 16,219 square feet.

Mayor Siegel advised that the agenda item was to authorize the City Manager to enter into a formal engagement agreement with PGAL. The item summary on the agenda statement gave a history of the various things that were discussed by City Council previously.

City Manager Satterwhite noted that the agenda statement did say that on May 5th, City Council directed staff to proceed with the process based on Option B1D, Alt. 1. That was voted on by City Council. Through the process, City Council would have ample opportunity to create the fire station it so desired, whether it followed the “conceptual” design or not.

Councilman Will Hickman inquired as to the process. In other words, once the agreement was negotiated, what was next?

City Manager Satterwhite advised that an engagement agreement would occur next. That agreement would be brought back to the City Council table for action.

Councilman Hickman inquired as to what would occur after the agreement was approved. Would a meeting follow for City Council to give the architects an idea as to size, etc.?

City Manager Satterwhite indicated that he was not exactly sure what the process would be, but meetings would be held internally with City Staff and the results of those meetings and recommendations would be brought back to City Council before a fire station was designed.

Councilman James P. Avioli, Sr., referred to Assistant City Manager White’s recommendation to the City Manager. He indicated that on the point matrix, PGAL was the middle contender, so to speak, yet PGAL was the firm recommended. He asked what the recommendation for selection of a firm was based on.

Assistant City Manager Diane K. White indicated that the scoring in the one letter related to one portion of the overall
“test.” An interview was also conducted. Through the interview process, additional scoring was derived and added to get an overall total.

Councilman Avioli asked for confirmation that PGAL was ultimately chosen based on the interview process.

Assistant City Manager White advised that Councilman Avioli was correct.

Councilman McLaughlan asked for a point of clarification. The process indicated in Assistant City Manager White’s letter resulted in another organization being the top scorer, but the interview process later modified that score. He inquired as to how many points were assigned to the interview process and how those points were phased in relation to the overall score.

Assistant City Manager White stated that the team took the Request for Qualifications from all thirteen respondents and scored them based on an initial matrix that was not included in the packet. That score was derived without talking to the firms or meeting with them. Interviews were set up based on the initial score. Twelve questions were asked of each finalist. The team went back and rescoring the finalists on a post-interview matrix. Through the post-interview matrix, PGAL scored the highest. The letter included in the packet indicated how the team came up with the three finalists.

Councilman McLaughlan noted that the pre-interview scoring was included in the packet, but there was no indication of the post-interview scoring.

VOTE ON MOTION TO APPROVE RECOMMENDATION AND DIRECTION TO CITY MANAGER:

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

FOR: Siegel, Cindy
    Hickman, Will
    Avioli, James P., Sr.
    Faulk, Peggy
    Nauert, Phil
    McLaughlan, Pat
    Jeffery, John

OPPOSED: None
G. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Councilman Will Hickman and seconded by Councilman Pat McLaughlan to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 9:20 p.m. on Monday, November 3, 2008.

VOTE ON MOTION TO ADJOURN:

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

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat
     Jeffery, John

OPPOSED: None

ABSENT: None

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