CITY OF BELLAIRE
CITY COUNCIL

Minutes of Meeting
Monday, May 3, 2010

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 7:03 p.m. on Monday, May 3, 2010. 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 Corbett Daniel Parker, Position No. 3;
- Mayor Pro Tem Phil Nauert, Position No. 4;
- Councilman Andrew Friedberg, Position No. 5; and
- Councilwoman Mandy Nathan, Position No. 6.

Councilman Will Hickman, Position No. 1, arrived at 7:05 p.m. Councilman James P. Avioli, Sr., Position No. 2, 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 – Mayor Pro Tem Phil Nauert.

Mayor Pro Tem Phil Nauert provided the inspirational reading for the evening.

C. PLEDGES TO THE FLAGS – Mayor Pro Tem Phil Nauert.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Mayor Pro Tem Phil Nauert led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

D. PERSONAL/AUDIENCE COMMENTS.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council regarding two items on the evening’s agenda. The first was item H. 3., which dealt with the possibility of issuing a
specific use permit for the First Street Hospital. She used that situation as an example of the classic case of governmental omission. Omissions were generally considered by some to be lies. In this case, her assumption was that when someone amended a specific use permit application, there would have been a specific use permit to amend.

In this instance, at neither of the public hearings nor in agenda packets, staff reports, and/or testimony was it ever officially mentioned that the City never issued a specific use permit for the First Street Hospital when it first appeared on the scene and when the City gave away the aerial right-of-way.

Ms. McBee advised that not to disclose a nonoccurrence, for whatever reason, was unacceptable to her. She was not angry that a permit was not originally issued, she was very angry that it was omitted entirely from all of the documentation. She did not forgive that very easily, because she would like to think of all of the City officials and staff as people of integrity and honesty.

The second agenda item that Ms. McBee wished to discuss was item I. This item was a draft scope of work submitted by the Planning and Zoning Commission to City Council to order a consultant to be selected by City Staff to write the specific regulations that would govern the City’s new district, UV-T, emanating from the Comprehensive Plan. Her problem with the item was the fact that when the City went through the last Comprehensive Plan, the City erred in not addressing all of the regulations for all of the zones in that Plan. The City subsequently paid the price by going to court.

It appeared in the item before City Council this evening that the City would be doing exactly the same thing—ordering a consultant to draw up regulations just for one small portion of the City off of the West Loop and south of Westpark Drive because it was new and transit-oriented (even though the City had interim regulations in place). The fact that City Council was ignoring the entire City that would require regulations for landscaping, mobility, higher density homes, etc., was another sin of omission.

Ms. McBee advised that the Planning and Zoning Commission’s explanation for recommending that one portion of the City be addressed was because they did not feel that City Council would agree to address anything more. She asked why the City Council would not address more of the City and why the City Council would consider committing the error made the last go round.

E. REPORT:

PRESENTATION regarding the installation, process, and benefits of Smart Meters (digital system with two-way communications capability for sending and receiving information to and from consumers and CenterPoint Energy, as well as giving consumers more control over their electricity use) in Bellaire, Texas – Presented by William J. Scott, CenterPoint Energy.
Representatives present on behalf of CenterPoint Energy introduced themselves as follows:

William J. Scott, Service Consultant for the Bellaire Service Center, CenterPoint Energy, 5119 Stillbrooke Drive, Houston, Texas 77035, and Cornelius Fisher, Service Area Manager for the Bellaire Service Center, CenterPoint Energy, 16023 Snowny Hills Drive, Cypress, Texas 77429.

Mr. Scott advised that he was present this evening to talk about the Automated Metering System (AMS) or as what many had come to regard as the Smart Meter System. CenterPoint Energy called the project “Energy InSight.” Energy InSight was noted to be CenterPoint Energy’s system of integrated technologies designed to transform the way energy was bought, delivered, and used. Smart meters were a large part of the Energy InSight system.

Mr. Scott next provided some background information with respect to CenterPoint Energy. He advised that CenterPoint Energy sold and delivered natural gas to more than three million customers (residential, commercial, and industrial) in the states of Texas, Arkansas, Oklahoma, Louisiana, Mississippi, and Minnesota. CenterPoint Energy also provided natural gas services to commercial and industrial wholesale customers east of the Rocky Mountains.

It was noted further that CenterPoint Energy owned two natural gas pipeline systems in the mid-continent area, as well as field service businesses that gathered and processed natural gas.

Finally, CenterPoint Energy also delivered electricity. CenterPoint Energy did not generate or sell electricity, but did own, operate, and maintain all of the poles and wires that brought electricity to the homes in Bellaire and more than two million other customers.

Although customers in Bellaire did not receive an electric bill from CenterPoint Energy, CenterPoint Energy did read the meters in Bellaire and restored power when it went out.

The new smart meter, coupled with an in-home monitoring device that could be purchased, would show a customer how much electricity was being used as it was used. Customers could then adjust their usage before their next electric bill arrived. The new meter and monitoring device would, therefore, help customers conserve energy. In the very near future, customers could manage their electricity usage over the Internet at a site called www.SmartMeterTexas.com.
Additionally, retail electric providers would be able to offer pre-paid service and “time of use” rates which might be lower at off-peak times to their customers. CenterPoint Energy planned to install the meters for all of their electric customers over the next three years for the following reasons: to help customers use energy more efficiently, to conserve resources, and to protect the environment.

The long-term benefits of smart meters were noted as follows:

- Remote meter reading (eliminated need for service representatives to go from home to home in order to read customers’ meters);
- Smoother transactions (i.e., ability to remotely connect/disconnect service, thereby reducing the number of trucks on the road);
- Automatic outage notification (new meters automatically reported power outages and helped CenterPoint Energy more quickly pinpoint and respond to individual or group outages);
- Energy efficiency and savings:
  - Ability to monitor electricity usage history at 15-minute intervals at [www.SmartMeterTexas.com](http://www.SmartMeterTexas.com); and
  - Less usage would save consumers money and less power generation was good for the environment.
- New retail products and services:
  - Pre-paid service;
  - Time-of-use rates (i.e., would encourage off-peak energy use); and
  - Energy analysis and cost comparison tools.
- “Smart Homes:”

Smart meters would make it easier and cheaper to create “home area networks” (HAN) to enable customers to remotely control appliances and thermostats.

Mr. Scott advised that the ZigBee alliance of companies was working to enable reliable cost-effective, low-power, wirelessly networked monitoring and control products for appliances and other devices based on an open global standard to make sure that such products worked in all 50 states. With the smart meter as the hub, consumers with a home area network (HAN) could remotely monitor and control over the Internet up to five electrical devices, such as thermostats, washers and dryers, electric heaters,
electric water heaters, fans, or pool pumps. Eventually, gas meters and water meters could be added to the advanced network as could so-called micro-grids through which homes or businesses produced their own power from solar panels, wind turbines, micro-turbines, fuel cells, etc.

Mr. Scott indicated that CenterPoint Energy started installing the smart meters last year. It would take several years to get over two million meters installed.

Based on pilot programs across the country, consumers with smart meters could significantly reduce their power consumption during peak periods. Reduced peak demand lowered electricity costs for all consumers. For example, if a consumer had a 2,000 square foot home with a 4-ton air conditioner and a maximum power consumption of four kilowatts, that consumer might be able to save one kilowatt during summer peak conditions. Even if as few as 250,000 consumers with a smart meter were able to save one kilowatt demand during peak summer conditions, that would equate to 250 megawatts reduction on demand. This was equivalent to avoiding power generation for up to 175,000 homes or 50,000 homes on a hot summer day in Houston.

Furthermore, society would benefit from building two to four fewer power plants avoiding construction costs and alleviating environmental concerns. Annual market savings in reduced power costs could reach $90-120 million, depending on the actual amount of energy conservation.

Mr. Scott provided a map that depicted CenterPoint Energy’s smart meter deployment project from 2009 through 2012. It was noted that approximately 99% of the homes in Bellaire already had their smart meters. CenterPoint Energy was awarded a grant from the U.S. Department of Energy (DOE), which would accelerate the project to 2012.

CenterPoint Energy started installing smart meters in March of 2009. Over 150,000 meters were installed during 2009. The DOE grant would pick up in 2010, allowing CenterPoint Energy to install 750,000 meters during the year. In 2011, CenterPoint Energy expected to install one million more meters. Finally, in 2012, CenterPoint Energy would complete the project with downtown Houston to the south and west and then Galveston.

Mr. Scott noted that many of Bellaire’s customers probably already knew what to expect and had seen the door hangers that CenterPoint Energy had distributed advising customers about the smart meter project. He described the process for those that might not have seen the door hanger as follows:

**Before installation** – approximately one-two months before installation, the CenterPoint Energy contractors would follow the meter reading route in a neighborhood to make certain that they had access to the customer’s meter, that it was working properly, and that it could be changed without damage to
a customer’s home. When a customer saw the door hanger announcing their upcoming installation, CenterPoint Energy asked customers to make certain that their meter was accessible to the installation crews.

**During installation** - the installation process was noted to take roughly ten minutes during which the customer would experience a brief power outage. A second door hanger would then be placed on the customer’s door once the smart meter installation was completed.

**After installation** – a customer’s meter would continue to be read by meter readers for eight to ten weeks while the smart meter was being tested. After that, the meter would be read remotely. Also at that point, the customer could register online ([www.SmartMeterTexas.com](http://www.SmartMeterTexas.com)) to view his or her specific electrical usage history.

Mr. Scott indicated that CenterPoint Energy had used billboards, web banners, television, and cinema ads to continue to further educate everyone on the smart meter process. CenterPoint Energy did not do the project alone and recognized some of the other players in the project as follows:

- IBM – provided project management and system integration;
- Itron – maker of the open-way meter and cell relays;
- eMeter – provided meter data management;
- GE Digital Energy – provided wireless communications; and
- North Houston Pole Line, a Quanta Services company – provided testing services and installation of the smart meters.

CenterPoint Energy had also been working, consulting, and cooperating with entities, such as the U.S. Department of Energy (DOE), the Public Utility Commission of Texas, all cities in the CenterPoint Energy service area, and the Edison Electric Institute.

CenterPoint Energy’s grant from the DOE would also include funds to help them begin one of the world’s first electric grids in Houston, Texas, over the next three years, which should provide even more benefit than those already described by Mr. Scott during his presentation—including more reliable electricity and improved power restoration.

**QUESTIONS FROM CITY COUNCIL:**

Councilman Will Hickman inquired as to the monthly cost of the smart meter for a residential customer.

Mr. Scott indicated that the monthly cost of the smart meter would be $3.24 per month for the first two years and $3.05 per month for the remainder of the program. It was likely that the numbers would be reduced since CenterPoint Energy was able to accelerate the program as a result of the receipt of their grant.
Councilman Hickman inquired as to whether Mr. Scott was aware of any retail providers that were currently offering a time-of-day usage plan.

Mr. Scott suggested that Councilman Hickman look on the Internet at “www.powertochoose.org” and ask the question.

Councilman Hickman asked for confirmation that Mr. Scott did not have knowledge regarding wholesale rates on day or evening usage.

Mr. Scott advised that Councilman Hickman was correct.

Councilman Andrew Friedberg referred to the statement by Mr. Scott that the smart meter system was a two-way system that could report savings to the extent that a homeowner had installed an energy-creating device. He assumed that current analog meters could not do so and asked for confirmation of that.

Mr. Scott advised that Councilman Friedberg was correct. Analog devices did not have that capability.

Councilman Friedberg referred to some discussions in the City about green home initiatives and assumed that the smart meter system could help facilitate those initiatives.

Mr. Scott advised that the smart meter system could definitely help facilitate those initiatives. He also referred to customers that might actually generate their own electricity (i.e., solar panels, etc.). In that instance, the provider had to buy back a certain amount of the electricity generated by such a customer.

MOTION TO ACCEPT REPORT/PRESENTATION INTO THE RECORD:

A motion was made by Councilman Will Hickman and seconded by Councilman Andrew Friedberg to accept the report/presentation from CenterPoint Energy related to their Smart Meter System (Energy InSight Program) as presented by William J. Scott, Service Consultant, Bellaire Service Center, CenterPoint Energy, into the record.

VOTE ON MOTION TO ACCEPT REPORT/PRESENTATION INTO THE RECORD:

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

FOR: Siegel, Cindy
     Hickman, Will
     Parker, Corbett Daniel
     Nauert, Phil
FOR (CONT.): Friedberg, Andrew
                Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

F. PROCLAMATION:

PROCLAMATION issued by Mayor Cynthia Siegel proclaiming the month of May 2010 as “Older Americans Month” in the City of Bellaire, Texas, and urging every citizen to take time this month to honor our older adults and the professionals, family members, and volunteers who care for many of them – Item submitted by City Clerk Tracy L. Dutton on behalf of Valerie Langdon, BLIFE Coordinator, Bellaire L.I.F.E. Program.

Mayor Cindy Siegel read the proclamation she issued on behalf of the Bellaire L.I.F.E. Program proclaiming the month of May 2010 as “Older Americans Month” in the City of Bellaire, Texas, as follows:

Whereas, the City of Bellaire, Texas (“Bellaire”), is a community that includes approximately 2,500 citizens aged 60 and older; and

Whereas, the older adults in Bellaire are among our most “treasured resources,” united by historical experiences, strengthened by diversity, and interpreting events through varied perspectives and background to bring wisdom and insight to our community; and

Whereas, increasing numbers of adults are reaching retirement age and remaining strong and active for longer than ever before; and

Whereas, the older adults in Bellaire deserve recognition for the contributions they have made and will continue to make to the culture, economy, and character of our community and our nation; and

Whereas, our community can provide that recognition and respect by improving the quality of life for older Americans by:

- Increasing their opportunities to remain active and engaged in community life;
- Providing individualized services and support systems to maintain the dignity, independence, and self-determination of older Americans as they age; and
- Combating the ageist attitudes by honoring their past, present, and future contributions.
Now, Therefore, I, Cynthia Siegel, Mayor of the City of Bellaire, Texas, do hereby proclaim the month of May 2010 as Older Americans Month in the City of Bellaire and urge every citizen to take time this month to honor our older adults and the professionals, family members, and volunteers who care for many of them. Our recognition and involvement of older Americans can enrich our entire community’s quality of life.

In Witness Whereof, I have hereunto set my hand and caused the seal of the City of Bellaire, Texas, to be affixed this 3rd day of May, 2010.

Cynthia Siegel, Mayor
City of Bellaire, Texas

Mayor Siegel presented the proclamation to the President of the Bellaire L.I.F.E. Advisory Board, Carolyn Bouldin.

G. APPROVAL/CORRECTION OF MINUTES:

APPROVAL of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, April 5, 2010 – Item submitted by City Clerk Tracy L. Dutton.

MOTION TO APPROVE MINUTES:

A motion was made by Mayor Pro Tem Phil Nauert and seconded by Councilwoman Mandy Nathan to approve the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, April 5, 2010.

VOTE ON MOTION TO APPROVE MINUTES:

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

FOR: Siegel, Cindy
      Hickman, Will
      Parker, Corbett Daniel
      Nauert, Phil
      Friedberg, Andrew
      Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.
H. ADOPTION OF ORDINANCES:

Mayor Cindy Siegel advised City Council that the City's appraiser, Waldo S. Luedemann, was present this evening to answer questions regarding his appraisal of the existing sixty-foot (60') right-of-way of Chestnut Street that was requested to be abandoned by the City of Bellaire and subsequently sold to the Varon Family and Lenox Hill Holdings Ltd. (the "Petitioners") for the expansion of the First Street Hospital. Mr. Luedemann had another engagement this evening, so she asked City Council to consider asking their questions of Mr. Luedemann on that particular agenda item, then tabling or postponing the item until later in the evening so that the Paul W. Horn Elementary School application for a specific use permit could be addressed. After noting no objections from City Council, agenda item H. 2. was considered at this time.

Abandonment/Sale of City Right-of-Way and Specific Use Permit – Hospital

2. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60') right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60') right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed – Item submitted by City Clerk Tracy L. Dutton at the direction of City Council.

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilwoman Mandy Nathan and seconded by Councilman Will Hickman to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed.
DISCUSSION ON MOTION TO ADOPT ORDINANCE:

Waldo S. Luedemann, 5555 West Loop South, Suite 615, Bellaire, Texas 77401, introduced himself to City Council and advised that he owned an appraisal company, Luedemann & Associates, and had been in business for 52 years.

Mayor Siegel asked Mr. Luedemann if he could go through the process he followed when appraising a property, such as the City’s street right-of-way.

Mr. Luedemann stated that Chestnut Street was a difficult assignment due to the fact that it had been used by a shopping center and hospital and provided most of the parking for both facilities. Without Chestnut Street, the shopping center and hospital properties would be useless. He stated that the buyers requesting to purchase the right-of-way were captive buyers, and the City could almost demand any price or the shopping center and hospital would lose property value.

The normal process that appraisers used was to check comparable sales. His firm did that. The problem with appraising commercial properties in Bellaire was the fact that there was very little vacant property left. He only found two properties of vacant land for sale in Bellaire. He reviewed a total of four sales and two listings. One of the listings, which he felt was most significant in determining the value, was a one-acre tract located at the northeast corner of Bellaire Boulevard and Rampart Street. This tract had a pad in front of a new shopping center. Although the tract was not in the City of Bellaire, it was a few blocks out and was similar in environment and characteristics.

He noted further that appraisers used different sales services. After searching several services, his firm only found the four sales previously mentioned. Over the last two years, banks were not making development loans. The lack of credit and the overall economy had depressed property values all over the Houston area, the State of Texas, and the whole country.

Using their best judgment, Mr. Luedemann’s firm determined that value of the Chestnut Street right-of-way was $25.00 per square foot. The firm applied a discount of 25% of that amount. The discount was based partially on policies of the City of Houston when selling abandoned street right-of-ways. Houston offered a discount of 50% when abandoning right-of-ways to adjacent property owners. Mr. Luedemann personally felt that a 50% discount was too much, so he had recommended 25%.
Mr. Luedemann added that he was not certain that any discount was warranted. Since the buyers desperately needed the property, the City should charge the appraised value of $25.00, which was justified by the listings and few sales that Mr. Luedemann had.

**Mayor Pro Tem Phil Nauert** indicated that he had served on City Council through a number of appraisals and sales in the past, so he was familiar with Mr. Luedemann’s process. He asked if Mr. Luedemann had included the relatively recent sale of commercial property at 4548 Bissonnet Street, which sold at $35.00 per square foot, in making a determination as to the value of the Chestnut Street right-of-way.

**Mr. Luedemann** stated that he had included the property that Mayor Pro Tem Nauert referred to. The property was a Trevino’s Restaurant and was improved property. The purchaser would not tell Mr. Luedemann the exact price, but the Deed of Trust was in the amount of $900,000.00 and the land was assessed at $35.00 per square foot. The improvements that had been made contributed substantially to the sales price. He indicated that it was not easy to extract the value of the improvements from the total sales price without being able to look at the quality of construction.

It was noted further that the land adjacent to Chestnut Street assessed at $20.00 per square foot. Without the Chestnut Street right-of-way, the shopping center and hospital properties would not be worth much.

**Councilman Will Hickman** referred to the statement made by Mr. Luedemann that the adjacent properties would not have much value without the Chestnut Street right-of-way. If the City were trying to sell the right-of-way to someone other than the owner of the adjacent properties, then it would not be useable either.

**Mr. Luedemann** indicated that the only other investor that might be interested in purchasing the right-of-way would be someone who was interested in leasing it to the adjacent property owners.

**Councilman Hickman** asked for confirmation that there was not really a market for the parcel other than the adjacent landowners.

**Mr. Luedemann** advised that Councilman Hickman was correct. The City might find an investor that would purchase the property and lease it back to the adjacent property owners for a 10% annual return. This was not likely to happen. He did not know how long the shopping center and the hospital had been using the right-of-way for parking, but those properties would not be worth what they were without the right-of-way.
Councilman Hickman asked for confirmation that the right-of-way was not developable on a standalone basis.

Mr. Luedemann advised that Councilman Hickman was correct—the right-of-way was definitely not developable on a standalone basis.

Councilman Hickman inquired as to the reason that Mr. Luedemann had appraised at $25.00 and included a 25% discount. In other words, why would Mr. Luedemann not appraise the property at $18.75?

Mr. Luedemann indicated that he felt the property was worth $25.00.

Councilman Hickman inquired as to what the discount was for.

Mr. Luedemann stated that the discount was applied because the City had no other buyers for the property. If the adjacent landowner knew that if he purchased the property for $18.75 and the value would immediately rise to $25.00, then he had incentive to purchase the property. In this particular case, the incentive was there because the landowners had to have it. The City could ask $50.00 per square foot and the landowners would probably have to pay it.

Councilman Hickman asked for confirmation that the property was worth $18.75 per square foot, but if bundled with the adjacent properties, the value would rise to $25.00 per square foot.

Mr. Luedemann advised that Councilman Hickman was correct. He really felt that all three tracts as a package had a value of $25.00 per square foot. The south side of Chestnut Street (the shopping center) had no street frontage.

Councilwoman Mandy Nathan inquired as to whether Mr. Luedemann had performed the appraisal of the 5000 block of Laurel Street a few years ago.

Mr. Luedemann indicated that he did not recall for certain.

Mayor Siegel stated that City Clerk Dutton advised that Mr. Luedemann had done the appraisal of the 5000 block of Laurel Street.

Councilwoman Nathan noted that the appraised value of the 5000 block of Laurel Street was $23.00 per square foot in 2003. She was curious as to whether that appraisal was equivalent to a commercial appraisal.
Mr. Luedemann stated that he could go back to his records, but could not recall off of the top of his head. He indicated that residential lot sales in Bellaire were almost as high as commercial sales, as Bellaire was a desirable residential community.

Councilman Andrew Friedberg stated that when he read the written report Mr. Luedemann had provided, Councilman Friedberg thought that the recommendation included the 25% discount. Basically, the objective for City Council was to come up with a fair value.

Mr. Luedemann indicated that if the City wanted to charge the market value for the property, then the price would be set at $25.00 per square foot. The discount was purely because the City did not have two or more buyers. In looking at the entire package, the street with the adjacent land was worth $25.00 per square foot. He noted that the City of Houston also had a policy of giving a discount when selling rights-of-way.

He was not certain that he explained his determination sufficiently in his report, but he felt the land was worth $25.00 per square foot. If City Council did not feel that a discount was warranted, then the City should sell the right-of-way for $25.00 per square foot.

Councilman Friedberg asked if Mr. Luedemann was recommending that the City sell the property for $25.00 per square foot.

Mr. Luedemann advised that he was recommending that the City sell the property for $25.00 per square foot.

Councilman Friedberg asked for confirmation that the economic benefit to the purchaser was $25.00 per square foot.

Mr. Luedemann indicated that the purchaser would have to pay whatever the City asked.

Councilman Friedberg indicated that he was not interested in “holding someone up.” He was interested in obtaining a fair value and was relying on Mr. Luedemann’s expertise.

Mr. Luedemann reiterated that in his opinion, the property was worth $25.00 per square foot.

Councilwoman Nathan asked if City Council was supposed to base the sale on the fair market value of the property.

City Manager Bernard M. Satterwhite, Jr., advised that City Council could base the sale on whatever they wished to base it on. Mr. Luedemann had given City Council a wide range of information and
had done so in the past for all of the City’s right-of-way abandonments. Mr. Luedemann had suggested a discount of 50% in some cases. The ordinance gave City Council the latitude to take any value from 0% to 100%.

Mr. Luedemann had indicated that the value of the property was $25.00 per square foot. There was a value to the City, although the City had not been using the property, and there was a value to the property owner (although they had been using the property without paying taxes on it).

Mayor Siegel referred to a history of sales that City Clerk Dutton had prepared. The recommended assessment and assessment actually made by City Council had been all over the place from 0% to 50% to 100%. The recent sale on Fournace Place was at 75% of the appraised value.

City Attorney Alan P. Petrov indicated that the general rule of state law was that the City could not sell property without going through a public bid process. Essentially, meaning the highest and best bid. There was an exception to that general rule, however, for streets and alleyways that were not really good to anyone other than the adjacent property owners. In those cases, City Council had the discretion to determine what the fair value was for the City and the potential purchaser(s).

Mayor Siegel noted that prior to the last several years, the City used to abandon and give away its rights-of-way without charging anything.

City Manager Satterwhite noted that there were a few other rights-of-way in town that were being used as parking lots. For whatever reason, it was allowed to create an economic interest for particular property owners.

Councilman Corbett Daniel Parker advised that Mr. Luedemann had indicated in his report that appraisals were not absolute, but were a basis for negotiation. In looking at the comparables and in listening to Mr. Luedemann this evening, Councilman Parker concluded that the $25.00 per square foot was based on a gut feeling and not on a comparable. He asked if Mr. Luedemann felt confident as to the $25.00 per square foot appraised value.

Mr. Luedemann stated that as he testified earlier, the listing for the one-acre tract at a major intersection in front of a new shopping center at $25.00 per square foot was a significant indicator for him. Another significant sale was a sale on First Street at Lehigh Street, which was adjacent to the hospital complex that fronted on the West Loop. That property sold for $13.71 per square foot in 2008 (a two
and one-half acre tract). This particular property did not have heavy traffic or much potential for office space. Those two sales were the primary market data that Mr. Luedemann relied on. He believed it supported the $25.00 per square foot appraisal.

**Councilman Parker** referred to a letter from the potential purchaser stated that they had improved the property in the amount of $122,000. He asked if the City should consider the improvements.

**Mr. Luedemann** advised that he was not presented any information as to who owned what. He was merely asked to appraise the land value. If the tenant put paving on the right-of-way, then the tenant was “selling” the pavement back to the City.

**Councilman Parker** asked if Mr. Luedemann had ever seen cities factor in a purchaser’s use of the right-of-way. Clearly, the City could have required the purchaser to pay some fee for use of the easement.

**Mr. Luedemann** advised that he had not seen that, but it could certainly be an alternative. The City could lease the property to the adjacent owners for an adequate return—nine to ten percent on the value of the property per year. The lease could be renewable every five-ten years at market value.

**Mayor Siegel** called for a motion to postpone further consideration of the agenda item until later in the evening.

**MOTION TO POSTPONE:**

A motion was made by Mayor Pro Tem **Phil Nauert** and seconded by Councilman **Andrew Friedberg** to postpone further consideration of a motion to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed.

**VOTE ON MOTION TO POSTPONE:**

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

**FOR:** **Siegel, Cindy**
FOR (CONT.): Hickman, Will
Parker, Corbett Daniel
Nauert, Phil
Friedberg, Andrew
Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

Specific Use Permit – Elementary School

1. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, granting Specific Use Permit S-74 to the Houston Independent School District (HISD) to construct and operate an 85,000 square foot replacement school for Paul W. Horn Elementary on the northeast corner of Avenue B and Holly Street on a tract of land owned by HISD and legally described as Block 1, Reserve A of the Resubdivision of Block 6 and 7 of the First Subdivision of Westmoreland Farms, Amending Plat No. 1 (a.k.a. Horn Elementary School), being a subdivision of 8.903 acres out of the John Beldin Survey, A-166, and also being an amending plat of “Resubdivision of Block 6 and 7 of the First Subdivision of Westmoreland Farms” as recorded in Volume 268, Page 14, of the H.C.D.R. (specifically Lots 6 through 15, Block 5) in the City of Bellaire, in Harris County, Texas, and more commonly known as 4530 Holly Street, Bellaire, Texas, in the R-3 Zoning District – Item submitted by City Clerk Tracy L. Dutton at the direction of City Council.

Mayor Cindy Siegel advised that two public hearings had been held on the application and request submitted by HISD for a specific use permit to construct and operate an 85,000 square foot replacement school for Paul W. Horn Elementary. One hearing was held before the Bellaire Planning and Zoning Commission (“Planning and Zoning Commission”), and the second hearing was held before the City Council. The Planning and Zoning Commission had recommended that a specific use permit be granted with three conditions. Mayor Siegel noted that the public hearing was closed for oral comment, but City Council had received a number of written comments, which were included in their agenda packet, including one letter from Meredith Smith of HISD.

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilman Will Hickman and seconded by Councilwoman Mandy Nathan to adopt an ordinance of the City
Council of the City of Bellaire, Texas, granting Specific Use Permit S-74 to the Houston Independent School District (HISD) to construct and operate an 85,000 square foot replacement school for Paul W. Horn Elementary on the northeast corner of Avenue B and Holly Street on a tract of land owned by HISD and legally described as Block 1, Reserve A of the Resubdivision of Block 6 and 7 of the First Subdivision of Westmoreland Farms, Amending Plat No. 1 (a.k.a. Horn Elementary School), being a subdivision of 8.903 acres out of the John Beldin Survey, A-166, and also being an amending plat of “Resubdivision of Block 6 and 7 of the First Subdivision of Westmoreland Farms” as recorded in Volume 268, Page 14, of the H.C.D.R. (specifically Lots 6 through 15, Block 5) in the City of Bellaire, in Harris County, Texas, and more commonly known as 4530 Holly Street, Bellaire, Texas, in the R-3 Zoning District.

DISCUSSION ON MOTION TO ADOPT ORDINANCE:

Mayor Siegel read an excerpt from the City Code regarding the purpose and reason that a church or school was required to obtain a specific use permit prior to construction (Section 24-615 of the Code of Ordinances of the City of Bellaire, Texas) as follows: A specific use amendment may be granted and may be allowed to continue if it meets the following criteria and standards and is otherwise in accord with this Code.

(1) A planned development amendment or specific use amendment is consistent with the purposes, goals, objectives and standards of the Comprehensive Plan of the City of Bellaire;

(2) The design of the proposed development, considered as part of the planned development amendment or specific use amendment, minimizes adverse effects, including visual impacts of the proposed use on adjacent properties;

(3) The proposed development will not have an adverse effect on the value of the adjacent property;

Mayor Siegel indicated further that City Council could approve a specific use or planned development permit within parameters subject to such conditions, safeguards, and restrictions as the City Council deemed appropriate and necessary. City Council had heard from the City Attorney that City Council could not be arbitrary and capricious. The City basically wanted to make sure that whatever construction was approved was compatible with the adjacent neighborhood.
She advised that the proposed new elementary school would be a great addition to the City and was needed. If there were any issues, Mayor Siegel hoped those would be worked out this evening.

One question that Mayor Siegel had pertained to the use of the ball field. She understood that HISD owned the field space; however, the Bellaire Little League (“Little League”) was named as a party to any agreement that the City entered into with HISD. She asked a representative from the Little League to come forward and share their plans with the City.

Elise Neal, 4515 Elm Street, Bellaire, Texas, addressed City Council and advised that she was the current President of the Little League. She noted further that the Little League was very appreciative of the City and HISD for permitting them in the past, and hopefully going forward, to use the fields. They hoped to continue to be a good neighbor. Many of the students at Paul W. Horn Elementary School were also members of the Little League. The Little League was confident that they could make everyone happy and Bellaire a better place.

Mayor Siegel asked if the Little League’s plans were to develop the new fields or some other fields.

Ms. Neal indicated that the League’s understanding was that once the construction for the new replacement school started in mid-May, the Little League would lose three fields for a year or two. The Little League was looking for temporary space to use in the interim. The Little League hoped that the Horn fields would be a good option for permanent space. There was a provision in the lease that gave the Little League a little bit of concern, but hopefully that could be worked through. She understood that there might be some other field space available in the City of Bellaire. The Little League had not moved forward in their capital campaign because they were waiting to see what happened with the lease for the Horn fields.

Mayor Siegel asked for confirmation that the City’s lease of the fields was separate from the specific use permit. In other words, the City would work on a joint lease agreement with HISD and the Little League would be a third-party to that agreement.

City Manager Bernard M. Satterwhite, Jr., stated that there would be a joint use agreement between the City and HISD. The City would then enter into another agreement with the Little League to develop those fields in accordance with any limitations placed on the use by HISD through the joint use agreement. The Little League did not deal with HISD directly.
Councilman Corbett Daniel Parker noted that he had learned during the public hearing on this matter that HISD did not have any funds in their budget for the fields. He later heard conflicting statements from others related to what was promised with respect to those fields. He inquired of Ms. Neal as to what her understanding was as to what HISD had told the Little League that they were willing to do when it came to helping with the finances of a build out.

Ms. Neal stated that she had only been President for the last six months and had not had any meetings with HISD or been present for any meetings with HISD. Her current understanding was that the Little League should not anticipate any funds from HISD for the rebuild of the fields.

Councilman Will Hickman inquired as to whether City Attorney Alan Petrov was familiar with the current agreement between the City and HISD. Would that agreement continue in the new location or if it would become null and void when a school was built on top of the existing fields? In other words, how would the agreement work in the transition phase?

City Manager Satterwhite stated that the agreement the City had with HISD for the Horn fields had already been terminated.

Ms. Neal advised that the termination was effective as of May 15, 2010.

City Manager Satterwhite indicated that the agreement was set to terminate last year and, due to a delay in the construction timeline for the school, HISD extended the agreement twice for the City.

Councilman Hickman asked if the City would then be starting from scratch on a new piece of land—a new lease agreement.

City Manager Satterwhite and City Attorney Alan P. Petrov advised that Councilman Hickman was correct.

Councilwoman Mandy Nathan noted that one of the concerns the City Council had heard a great deal about during the public hearing was the issue of parking over by the Little League fields. Obviously people hoped that the City at some point could address the issue. She asked Ms. Neal if she could let the City know what the Little League’s thoughts were on addressing parking issues in the new location.

Ms. Neal stated that the good news was that those fields were used by younger players, so if the Little League was not there for two years, the new people coming into the Little League would not have old habits that were hard to break. These would be the new parents of
the younger children. The Little League would work with the City to enforce any restrictions the City had—whether it was a one-way street or no parking or encouraging the members to park in the school parking lot. Members were communicated with on a very frequent basis and those members would be informed as to what they needed to abide by when using the fields.

**Mayor Siegel** inquired as to how long the games lasted. In other words, what would be the latest hour that the field would be used?

**Ms. Neal** stated that Horn currently had three fields. One field was used for four- and five-year old players and they did not even practice during the week at night. On Saturday, the field would have a one-half hour practice and a one-half hour game. She believed that 9:00 p.m. was the latest that one of the Horn fields would be used.

**Councilman Andrew Friedberg** referred to the lease agreement in place and negotiation of a new one in the future. To give as many of the stakeholders involved as much time as possible, was there any reason why the City and HISD could not begin the process while construction was underway?

**City Manager Satterwhite** indicated that he would imagine that the City could start the process. The City would not wait until the school was ready to start the negotiations.

**Mayor Siegel** advised that the reason she wanted the Little League to be present this evening was because it was important for the City to be clear as to what related to the specific use permit and what related to a joint use agreement with HISD for use of the fields. In other words, there was a school and then there were the fields. HISD was the owner of both parcels. There was also an issue with parking on streets that were owned by the City. Since the school would be constructed to last 40-50 years, it was important to make sure that if there were any conditions that needed to be addressed, then those conditions needed to be addressed this evening.

**Councilman Hickman** inquired as to who had the responsibility of installing lighting and speakers for the fields.

**Ms. Neal** indicated that the Little League did not currently have any speakers at Horn Field. They did not have any plans drafted for the new fields, so she was unable to advise if that would even be an option. At this point in time, she did not believe the Little League would install speakers, but she could not say that it would never happen.
With respect to the lighting, she was uncertain as that predated her membership with the Little League.

City Manager Satterwhite advised that the City owned the lighting.

Councilman Hickman asked if the City of Bellaire would put in the lighting.

City Manager Satterwhite indicated that the City did not have to. He believed that the Little League paid for some of the facilities at Pin Oak. He thought the plan was for the City to replace the lighting at the new fields. He stated that the plan for lighting needed to be worked through.

Councilman Corbett Daniel Parker advised that he had a procedural question for the City Attorney before discussion on the specific use permit was underway. He stated that one of the citizens in a letter to City Council asked City Council to come back post construction and review the specific use permit. He inquired of City Attorney Petrov as to whether City Council had any rights to come back post construction and review or revise the specific use permit.

City Attorney Petrov indicated that in the past the City had issued permits for a one-year term initially to be reviewed and extended later. It was usually not something that applicants appreciated, because they were spending millions of dollars, depending on the size of the project. Basically, a subsequent review could be done.

Councilman Parker inquired as to whether City Council could limit its subsequent review to a specific provision in the specific use permit.

City Attorney Petrov advised that Councilman Parker was correct.

Mayor Siegel referred to a case wherein the City scheduled a subsequent review six months after the initial granting of the permit. That specific use permit was granted to Sterling Bank for a drive-through window.

Councilman Hickman asked if HISD had any plans to install speakers or lighting for the Horn fields at the north end of the parcel.

Meredith Smith, Senior Manager, HISD, 3500 Tampa, Houston, Texas, advised that there was no specific budget set aside to do the field improvements comparable to what currently existed. What HISD would normally do was grade, grass, and seed. There were lights on the existing field. HISD had obtained pricing from their contractors to take the lights down, store them, and deliver them back to the site. There was no budget or plans to have the lights reinstalled.
would be a cost or detail to be worked out in the joint use agreement. HISD did not need lights and would not be putting lights on a field at an elementary school. If someone felt that they needed speakers, that would have to be included in the joint use agreement and everyone would need to be on board with that.

Councilman Hickman asked if concerns regarding lighting or speakers would need to be discussed in the future.

Mayor Siegel indicated that she had some thoughts and concerns regarding lighting and speakers as well. She suggested getting everyone’s questions answered first.

Councilman Friedberg referred to enrollment figures for schools. He noted that in the past enrollment figures were cited and years later when an amendment was needed, the City discovered that the enrollment figures were much higher than those cited by an applicant. He asked if HISD had any objection to the City tying the specific use permit to the 750-enrollment figure HISD listed in their application as a condition for the permit.

Ms. Smith indicated that HISD had obligations to provide education through the state’s requirements. Hisd would be concerned about another layer of responsibility. She did not believe HISD would be excited about a limit coming from City Council.

Councilman Friedberg stated that he recalled from HISD’s application that the plans, as presented and as reviewed against the City’s zoning regulations, were based on an enrollment of 750 students. He asked if HISD was not confident with respect to that number for the future.

Ms. Smith stated that Councilman Friedberg’s question was what HISD’s response would be with regard to placing a limit on the number of students. HISD was building a school with a capacity for 750 students. The permit was related to building that facility. If, for example, there were twice as many kindergarten students in one year versus the previous year, HISD had the ability to move those students around. In order to receive the necessary funding for a magnet school, which was the quality that Bellaire wanted, Paul W. Horn Elementary School had to allow a 20% enrollment outside of Bellaire.

Councilman Friedberg asked the City Attorney what the result would be if a cap were put in place and the 751st student arrived.

City Attorney Petrov indicated that hypothetically the City would have the discretion to issue a municipal citation for violation of the specific use permit.
Councilman Friedberg asked if the school could come back for an amendment at that point.

City Attorney Petrov indicated that Councilman Friedberg was correct.

Councilman Parker stated that one of the citizens that had written to City Council suggested a cap on the number of buses that were allowed access to the school. He asked Ms. Smith her feelings on that type of cap.

Ms. Smith advised that the majority of bus traffic at the school could be attributed to private buses taking Bellaire community students to after-school programs. The number of buses related to the 20% enrollment outside of Bellaire was not a large number. It was noted that the school had 4-7 buses.

Councilman Parker stated that another resident raised a concern that Paul W. Horn Elementary School could be used as a substation for HISD busing. He asked if HISD had any intentions of bringing children that did not go to Horn to Horn to catch a second bus to their ultimate school destination.

Ms. Smith advised that such a program already existed in HISD, and the program reduced the amount of bus traffic overall. The students changing buses would be same siblings of the students at Paul W. Horn Elementary School coming from somewhere else and riding the same buses. This program had come into play a few years ago. In some communities, the students were safer standing on the corner of the school site than on a street somewhere.

Councilman Parker inquired as to whether HISD had received many complaints regarding the number of buses or amount of traffic created by HISD at some of their recently constructed schools.

Ms. Smith stated that when taking an old school to a replacement school, HISD could greatly improve the drop-off, pick-up, and number of access points through the design.

Councilman Parker noted that the permit application indicated an enrollment of 750, yet there did not seem to be a strong commitment to that enrollment number. Other schools had been constructed with a similar enrollment, which HISD had exceeded resulting in more buses and additional traffic. The traffic study related to this permit was based on an enrollment of 750, not on a 20-30% increase.

Ms. Smith advised that when she answered the question regarding the 750-student enrollment, she thought she was answering what
HISD’s response was to putting a cap in the permit. She was not saying that the City did not have control over the enrollment figure.

**Councilman Parker** indicated that he thought Ms. Smith had indicated that education was first and if HISD had to exceed the 750-student enrollment cap, then HISD had no problem with that.

**Ms. Smith** stated that she was trying to say that HISD had an obligation to teach the students and that there could be a situation where either temporarily or for a short period of time, a school might have to exceed the enrollment cap in order to serve the students. Certainly, if a school were designed for an enrollment of 750 students, yet 1,000 students attended, then there would be more traffic.

**Councilman Parker** asked if that had been an issue and if there had been public outcry regarding traffic.

**Ms. Smith** advised that those issues sometimes occurred in older schools.

**Councilman Parker** indicated that he understood that certain efficiencies could be built into a new facility. He was not sure that those efficiencies would be enough to mitigate traffic concerns if the student enrollment were exceeded.

**Ms. Smith** noted that the traffic study was based on an enrollment of 750 students. HISD did look at how traffic would be impacted using the current enrollment versus the planned enrollment of 750 students.

**Jennifer Peek, Walter P. Moore, 1301 McKinney, Houston, Texas,** advised that her firm had prepared the traffic study. The planned enrollment of 750 students was already a 30% increase in the current student population. An additional study might be required if an additional 30% increase in population were expected.

Currently, even with a 30% growth, the traffic conditions around the new facility would be better than existed now.

**Councilman Hickman** referred to Ms. Smith’s letter of April 29, 2010, related to the three conditions recommended by the City’s Planning and Zoning Commission.

The first condition on the table was that the parking lots be open for public use outside of the normal school hours. Ms. Smith had some concerns about that. He asked if her main concern was that it was available any time or if it would it be okay if the condition were that parking lots be open when there was a community event being held.
Ms. Smith stated the concern was related more to who was controlling the parking lot at 10:00 p.m. if the language stated that the parking lot had to be open. There was no problem with HISD leaving the whole parking lot open. If the school were not using the parking lot, then it would be available to the community.

Councilman Hickman asked if Ms. Smith’s concerns would be alleviated if public access were limited to when there was a community event.

Ms. Smith advised that HISD had no concern about use of the lot. If the fields were not in use, other people could be there as well.

Mayor Siegel noted that in other agreements the City had with HISD, the parking lots and fields were available to the public unless those lots were being used during school hours or for school events. The lots and fields were not used just for organized sports, but for the neighborhoods as well.

City Manager Satterwhite indicated that he felt that such a stipulation would be more conducive if included in a joint use agreement rather than in a specific use permit. The specific use permit would become fairly rigid.

Ms. Smith agreed with City Manager Satterwhite. The use of the fields and lot should be separate from the specific use permit.

Councilman Hickman stated that if a condition were not placed in the specific use permit, the City would have no assurance that the lots would be open.

Ms. Smith advised that until both entities signed a joint use agreement, HISD only had their intent to share it.

Councilman Hickman agreed and felt that it was important to include it in the specific use permit.

Ms. Smith indicated that it would not get the City joint use of the fields.

Councilman Hickman agreed, but advised that it would get the City joint use of the parking lots. The concerns that City Council heard were related to on-street parking, admittedly during non-school activities. The concern was addressed by making the parking lot available to the public during non-school activities. He inquired as to whether Ms. Smith could propose alternate language or if she was stating that she did not want the condition included in the specific use permit at all.
Ms. Smith indicated that HISD would prefer not to have conditions associated with the permit and just keep the permit for the school.

Councilman Hickman inquired as to what assurances the City had that the parking lots would be available during community events.

Ms. Smith stated that the long-term goodwill that both entities had and the public pressure to make the most use of the land would provide the assurance. HISD attorneys advised that they preferred to keep the school as the "school" and then the lease agreement as a separate transaction. The lease agreement might be a five-year, renewable agreement. One-half of the land was being conserved in the plan for fields. HISD had decided to construct a two-story building, which was not their first choice, so that there would be more land available for the fields.

HISD was asking to separate the two issues. It was suggested that all issues related to the field be placed in the joint use agreement.

Councilman Hickman referred to the third condition--that the approval of this permit placed no limitation on the City of Bellaire in the re-estabishment of facilities or restriction on the use of Horn Field. He noted that Ms. Smith did not particularly comment on this condition, but indicated that the permit should be issued with none of the conditions.

Ms. Smith advised that there had to be a separate agreement related to the field. The condition restricted HISD to the use of the property as a park. HISD’s attorney agreed that HISD was going to provide the property under lease for five years, renewable for another five years. It did not wish to restrict the property for 50 years. HISD did not know in the future what would happen.

Councilman Hickman asked for confirmation that Ms. Smith’s issue with the third condition was that it was too open-ended and allowed the City to do anything for any time.

Ms. Smith stated that Councilman Hickman was correct.

Councilwoman Nathan referred to the limit on the enrollment of 750 students. She asked for confirmation that HISD had to come back to City Council if they wanted to put in any temporary buildings.

Ms. Smith advised that HISD would have to come back to City Council. She noted further that there would not be room for temporary buildings. HISD would have to use the fields and that would not work out very well. The site was being used to its full capacity.
Councilwoman Nathan noted that she had children using the bus program HISD had and that it was a benefit to the residents of Bellaire. She indicated that her son walked to Condit Elementary School and caught a bus to Lanier Middle School. She noted further that currently the buses were timed such that the middle school students and high school students did not arrive at the same time as the elementary students.

Ms. Smith agreed with Councilwoman Nathan and indicated that she did not know how the program would work in the future.

Mayor Siegel stated that she had a question as to the location of the gates.

{At this point in time, a brief presentation was shown to City Council regarding the location of the proposed gates.}

Mayor Siegel inquired as to the location of the gate that would allow maintenance vehicles to enter.

Stan Winter, AICP, Director of Planning, TBG Partners, Representative for HISD, indicated that the gate from the interior parking would be the larger gate. The gate locations and size would be worked out over the next two years and could change based on negotiations related to the joint use agreement for the fields.

Mayor Siegel asked for confirmation that there was no opening or gate from Valerie Street to the HISD parking lot.

Mr. Winter advised that Mayor Siegel was correct.

Ms. Smith indicated that there would be a landscape buffer between the HISD property and Valerie Street.

Mayor Pro Tem Phil Nauert referred to a diagram he had showing an offset in the street near Avenue B. He inquired as to whether that was a queuing lane.

Mr. Winter indicated that the offset was a designated loading ramp or slip ramp so that the buses queuing up to pick-up or drop-off children were not blocking any of the travel lanes on Avenue B.

Mayor Pro Tem Nauert stated that Avenue B was a relatively new street and that the City had expended a great deal of money on it. He asked how the offset would be added to the City’s street without affecting the structural integrity of the street.
Mr. Winter advised that the particular portion of the street would be reconstructed and feathered in.

Mayor Pro Tem Nauert indicated that he hoped it was not an asphalt patch and that it had anchored rebar in it.

Terry Maher, HDR Engineering, Inc., advised that the offset was similar to a driveway cut. The contractor would cut 18” out into the street and put the driveway in through the bus drop-off. The drainage would be put back as well.

Mayor Pro Tem Nauert asked if the offset would affect any of the subsurface utilities that the City had in the area.

Mr. Maher advised that no subsurface utilities would be affected. The driveway cut would miss the existing inlets so that those would not be impacted. If a manhole did exist, that manhole would be adjusted to grade.

Mayor Pro Tem Nauert asked for confirmation that the street had been reconstructed with concrete.

Mr. Maher advised that Mayor Pro Tem Nauert was correct. The driveway would be constructed of concrete as well and would be tied to the street with steel.

Mayor Pro Tem Nauert inquired as to who was looking out for HISD’s interests.

Mr. Maher indicated that HISD’s interests and the City of Bellaire’s interests were the same.

Mayor Pro Tem Nauert wanted to make sure that HDR Engineering, Inc., looked at the driveway cut with even eyes and did a good job for HISD, as well as for the City of Bellaire.

Mr. Maher advised that HISD knew whom they were hiring when they selected an engineer.

Mayor Siegel, after noting that several members of City Council had questions for HISD Trustee Mike Lunsford, asked him if he would come forward.

Mike Lunceford, HISD Trustee for District 5, introduced himself to City Council.

Councilman Hickman thanked Trustee Lunceford for attending the meeting this evening. He noted that he had asked Ms. Smith about
the three conditions and she had explained her reasoning for all three. He asked Trustee Lunceford if he agreed with the answers or if he had different answers.

**Trustee Lunceford** advised that he was in agreement with Ms. Smith.

**Councilman Parker** asked if Trustee Lunceford could tell City Council about his involvement in the design of the new school. It was his understanding that Trustee Lunceford was very involved in that design.

**Trustee Lunceford** stated that he attended the meetings, but the design was done by HISD's architect. There were specific guidelines that HISD had for schools, such as sizes of classrooms. It was then up to the architect to make the facility aesthetically pleasing to the neighborhood.

He asked City Council to be cautious about the 750-student enrollment figure. It was not like HISD had plans to load the school with 750 students. HISD was trying to build capacity. Right now, Paul W. Horn Elementary School was maxed out—there was no room for any more children. Across the board, if HISD agreed to build a new elementary school, the capacity of that elementary school would be 750 students.

**Councilman Parker** inquired as to whether Trustee Lunceford was present for any discussions and/or promises made to the Little League.

**Mayor Siegel** advised that Ms. Neal had already indicated that the Little League had not had any meetings with HISD.

**Councilman Parker** stated that it was his understanding that Trustee Lunceford might have been present for discussions related to the rebuilding of the fields. He asked if Trustee Lunceford was part of those discussions.

**Trustee Lunceford** did not believe he was at the meeting that Councilman Parker referred to. He would do everything he could as a Trustee to make sure that HISD held up their end of the bargain, but there was only so much in the budget.

As City Manager Satterwhite had already stated, Bellaire supplied the lighting to begin with, not HISD. He was not sure exactly how much capital the Little League had invested in those fields. He did not know if that was ever discussed.

**Councilman Parker** asked for confirmation that Trustee Lunceford knew of no promises from HISD to help in any way with the finances with respect to rebuilding the fields.
Trustee Lunceford reiterated that he was not present. It could have been said, but he was not present.

Councilman Parker thanked Trustee Lunceford for the great job that he did in representing the Bellaire schools and HISD.

Mayor Siegel suggested that City Council address the conditions to Specific Use Permit S-74 that were recommended by the Planning and Zoning Commission. Those conditions could be changed, deleted, modified, or added to.

Mayor Siegel noted that HISD and Bellaire had a great reputation and a great partnership. With that said, City Council had to balance the needs of the property owner (HISD) and the adjacent property owners (the residential community adjacent to HISD).

Mayor Siegel noted further that putting conditions in a specific use permit was not unusual. There were many instances in the past wherein specific use permits were granted with conditions.

**Condition No. 1:** That the parking lots be open to use by the public outside of normal school hours.

Councilwoman Mandy Nathan stated that she would like to leave Condition No. 1 as stated, subject to an additional phrase at the end. She indicated that for many years the City had the use of the Paul W. Horn Elementary School parking lot. Approximately 4-5 years ago, the parking lot was closed. That closure shifted an additional 40 or more cars onto Pine Street during Little League games.

**AMENDMENT (NO. 1) TO CONDITION NO. 1:**

A motion was made by Councilwoman Mandy Nathan to amend Condition No. 1 to read as follows:

*That the parking lots be open to use by the public outside of normal school hours, though HISD will have priority for school-related functions outside of those hours.*

Councilman Andrew Friedberg seconded the motion.

Councilman Will Hickman suggested adding the phrase “when a community event is being held in a school building or on school land” within the verbiage of Condition No. 1.

Mayor Siegel indicated that she had mixed feelings about the use of the parking lots. She felt that there were things that went on at the school that were not just field related and she assumed that the
parking lots would be open. She also had concerns from a safety issue as to whether or not the City’s emergency vehicles could provide a quicker response if the parking lots were open. She asked City Attorney Petrov if the City, in conjunction with HISD, could work out some specific hours that the parking lot would be available.

**City Attorney Petrov** stated that he would suppose that if the school left the parking lots open from 6:00 p.m. to 7:00 p.m. that one could say the parking lots were open outside of normal school hours and that the school had complied with the terms of the condition. If the City wanted to limit the availability in terms of time, then perhaps the condition could match to the hours that other Bellaire parks would normally be open.

**Mayor Siegel** asked if it hurt to keep the provision in and amend it such that it was clear that HISD had priority. In other words, could the hours be worked out in the joint use agreement?

**City Attorney Petrov** advised that it could be. Perhaps, the City wanted to state that the parking lots would be available for use by the public as opposed to “open.”

**Councilwoman Nathan** noted that if the condition required the parking lots to be open only for community events, then who at the City would be in charge of running over to the school every day and keeping track of events and locking the gate? That seemed a little impractical to her. She assumed that HISD ultimately wanted the gates to be locked at the end of the evening. The City could ask the Little League if they were willing to do that. Obviously they took care of the lights.

Her thought had been that the hours of the fields and parking lots would be consistent with Horn Park, which was 11:00 p.m.

**Councilman Friedberg** stated that his understanding of the interplay of this language and what might be in a joint use agreement was that any restriction in the specific use permit had to also be observed in the joint use agreement. The joint use agreement could go even further as long as it was not inconsistent with the specific use permit. If the City wanted to set up a curfew later, that could be addressed in the joint use agreement even if it were left open in the specific use permit.

**City Attorney Petrov** indicated that the condition in the specific use permit would be a minimum.

**City Manager Satterwhite** suggested that the language might include the following: “outside of normal school hours, subject to the
terms and conditions of a joint use agreement to be negotiated at a later date.”

Councilman Parker asked what safety concerns Councilman Hickman had with respect to keeping the fields and parking lots open.

Councilman Hickman indicated that he did not have a particular safety concern. He felt that it was important that the parking lots be open at a minimum when community events were going on. If HISD or the City or Little League wanted to leave the fields and lots open 24-7, then he felt that satisfied the condition. He would assume that HISD would want to lock up the fields and parking lots at some point in the evening. He would leave that up to them.

Councilman Parker agreed that HISD might have concerns related to access to their facilities. He asked if anyone knew whether neighbors had expressed a concern with regard to safety at the existing field.

Councilwoman Nathan stated that she did not know of any specific safety concerns, but liked the general language subject to the idea that it would be specifically negotiated.

Councilman Hickman advised that from his plain look at the language, if he wanted to use the parking lots at 3:00 a.m., then it was open to him as a member of the public. He did not know if this was the City’s intent.

Councilwoman Nathan indicated that her thought was that the parking lots and fields would be subject to the same curfew that Horn Park had—from 11:00 p.m. to 5:00 am.

Councilman Hickman asked if Councilwoman Nathan wanted to add that language to the condition.

Councilwoman Nathan advised that she was trying not to cram too much detail into the condition. She could not imagine that anyone would disagree with or object to following the park curfew.

**AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 1:**

An Amendment to the Amendment (No. 1) to Condition No. 1 was made by Councilman Will Hickman to add the phrase “when a community event is being held in a school building or on school land” within the verbiage of Condition No. 1 as follows:

*That the parking lots be open to use by the public outside of normal school hours when a community event is being held in a*
school building or on school land, though HISD will have priority for school-related functions outside of those hours.

Councilman Corbett Daniel Parker seconded the Amendment to the Amendment (No. 1) to Condition No. 1.

Councilman Friedberg indicated that he had concerns with the City being able to enforce the condition. He felt that making the parking lots available to the public was still a good idea.

Councilman Parker asked if this would preclude a dad and son who wanted to park as close as possible to the field and hit baseballs at 10:00 p.m.

Councilman Hickman indicated that he believed the condition was merely setting a minimum. In other words, the fields and parking lots would have to be open at least at the times indicated in the condition. His point was to address the neighbors concerns about shifting some of the parking from the streets to the parking lots.

Councilman Parker asked Councilman Hickman if he viewed the amendment as an expansion of the minimum access HISD would have to allow.

Councilman Hickman referred to City Attorney Petrov’s statement that the requirement could theoretically be met by opening the fields and lots from 6:00 p.m. to 7:00 p.m. Another reading of the condition might be that the parking lots and fields had to be open 24-7. Councilman Hickman felt that the amendment spelled out explicitly that the fields and lots needed to be open at least during community events.

Councilwoman Nathan indicated that HISD seemed to be willing to have the parking lots and fields open and that she would like as many cars as possible off of the streets whether it was a community event or anyone else coming to Horn Park.

Mayor Siegel stated that she believed everyone was saying the same thing. Everyone wanted people in the parking lots—it was merely a function of how that condition was stated.

**VOTE ON AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 1:**

The Amendment to the Amendment (No. 1) to Condition No. 1 failed on a 3-3 vote as follows:

**FOR:** Siegel, Cindy
FOR (CONT.): Hickman, Will
  Nauert, Phil

OPPOSED: Parker, Corbett Daniel
  Friedberg, Andrew
  Nathan, Mandy

ABSENT: Avioli, James P., Sr.

VOTE ON AMENDMENT (NO. 1) TO CONDITION NO. 1:

The Amendment (No. 1) to Condition No. 1 carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
  Hickman, Will
  Parker, Corbett Daniel
  Nauert, Phil
  Friedberg, Andrew
  Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

Condition No. 2:

That the location is prohibited from being leased or used for the holding of religious services (outside of occasional religious services) unless an amendment to the Specific Use Permit permitting such use is approved by the City Council.

Mayor Siegel indicated that she believed that the possibility existed (perhaps in a number of years) for the school to enter into an agreement with a church. Even though it might fall under the City’s Code as far as a requirement that a church use be permitted with a specific use permit, she did not believe that restating it as a condition was overly restrictive. She offered an amendment to the condition as set forth below.

AMENDMENT (NO. 1) TO CONDITION NO. 2:

Mayor Cindy Siegel made an Amendment (No. 1) to Condition No. 2 to restate Condition No. 2 as follows:

That the location is prohibited from being leased or used for the holding of religious services (outside of occasional religious services)
meetings or uses by religious organizations) unless an amendment to the Specific Use Permit permitting such use is approved by the City Council.

Councilman Corbett Daniel Parker seconded the Amendment (No. 1) to Condition No. 2.

Councilman Parker advised that HISD quoted the City Attorney as saying that Condition No. 2 did not really matter because they would have to come back to the City for a specific use permit. He asked the City Attorney if HISD correctly characterized his comments with respect to Condition No. 2.

City Attorney Petrov indicated that if HISD were to use the facility as a church, his comment was correctly characterized. For regular services held on a weekly or monthly basis, HISD would be required to come back and get a specific use permit or amendment from the City.

Councilman Parker inquired as to how organized the church services would have to be.

City Attorney Petrov stated that the City’s Code defined a church as a regular assembly of organized religious worship. There was some wiggle room there, but it basically related to a regular, weekly-type of organizational meeting for religious purposes. The intent of requiring a specific use permit for that use was to control traffic congestion that related to that organized meeting.

Mayor Siegel inquired as to whether it would hurt the City to include Condition No. 2 in the specific use permit.

City Attorney Petrov advised that he liked the amendment proposed by the Mayor. He thought the language originally proposed was a little overly broad. The City would be hard pressed to call an occasional service with some organization at the facility a “church.” In other words, he felt that Mayor Siegel’s clarification was a good one.

Councilman Hickman advised that he was trying to understand Mayor Siegel’s concern. He asked if the Mayor was okay with a weekly meeting of the Coin Club, but not okay with a church having a regular Saturday meeting.

Mayor Siegel indicated that she was trying to amend the condition that was already recommended by the Planning and Zoning Commission. The issue that the City had seen in the past was traffic related to church services. Cars parking along the streets often impacted the residential streets in the area of a church. She would
think that the Code would prohibit the leasing of the facility that was not a permitted use or specific use.

Councilman Hickman inquired as to whether a weekly meeting of a coin club with 100 members could meet at the facility on a Saturday.

City Attorney Petrov indicated that such a meeting would violate HISD’s permit, which was a permit to use their facility as a school. If they got into other uses, regardless of whether or not those uses were religious, commercial or political, they could violate their permit.

AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 2:

Councilman Will Hickman made an Amendment to the Amendment (No. 1) to Condition No. 2 to restate Condition No. 2 as follows:

*That the location is prohibited from being leased or used for the holding of regularly scheduled meetings unless an amendment to the Specific Use Permit permitting such use is approved by the City Council.*

Councilman Corbett Daniel Parker seconded the Amendment to the Amendment (No. 1) to Condition No. 2.

Councilman Friedberg indicated that based on a comment made by Director McDonald at the public hearing, he thought that Condition No. 2 applied only to weekend use, whether ongoing or otherwise. He suggested an amendment that would refer to weekend use only.

Director McDonald advised that the original idea for the condition was based on the fact that in some school districts, churches were utilizing their facilities typically on weekends. Many new churches start out using schools until they could save enough for a capital campaign. Currently there was a requirement for a specific use permit for churches so that if the school were to enter into an agreement today with a religious group for a weekly service, then technically they would need to come to the City and request a specific use permit. The idea was to highlight that in the agreement so that going forward, it would be known. Schools were typically used for group meetings, both regular and irregular. As a community facility, the City accepted that as part of the use. If the Boy Scouts met at the school every week, then that would become, under the amendment, a prohibited use. The idea was to highlight something the City’s Code already called for because there was a tendency in the industry of education to lease their facilities for religious services as a way to increase revenue.
Mayor Pro Tem Nauert indicated that disregarding the amendment, he did not think it was wise to remove the term “religious” because it would change the intent. The example of the Boy Scouts was a good one. He felt that the City should stick with the language as it was with the Mayor’s modifications and leave it that.

Councilman Nathan inquired as to whether the City could legally state that every other group in the world was okay, but a religious group was not if, in fact, other groups were using the facilities.

City Attorney Petrov advised that the condition required the school to come back and get a specific use permit, which was what was allowed under the City’s Code. The City’s ordinances did not ban churches from residential neighborhoods. The City could say that the facilities could not be used as a church unless HISD applied for a specific use permit just like any other piece of property in the City’s residential neighborhoods.

Councilman Friedberg thanked Director McDonald for his explanation and advised that he now better understood HISD’s suggestion just to remove the whole thing. This condition did not say anything that was not already stated in law. Yes, it was a way of serving as a reminder at the time of the application. However, whatever form the document ultimately took, it would just get filed away in a filing cabinet just as the City’s ordinances were filed away in a filing cabinet. The City had the same authority to enforce an existing ordinance that was already on the books just as the City would to enforce the condition.

City Attorney Petrov indicated that he would agree with Councilman Friedberg.

Councilman Parker advised that HISD stated in a letter that their policy and constitutional rights required that HISD public facilities be available to the public. He asked if the City was constitutionally barred from restricting public access to their facilities.

City Attorney Petrov indicated that the City was not restricted. HISD was probably getting at the idea that a governmental entity could not discriminate between religion and non-religion. Likewise, the City could not prohibit the use of property in residential zones for religious purposes, but the City could restrict the way the property was used and how it was used with reasonable zoning, such as the City’s specific use permit process. If a religious organization were to come to HISD and state that they wanted to lease the facility for church services, HISD might not be able to tell the church that they could not do so due to their inability to restrict who they leased to. The City, on the other hand, could restrict that because the City’s zoning regulations gave the City the authority to allow religious uses within
the residential neighborhoods, yet restrict the location of such uses based on the burden it would place on the neighborhood.

**Councilman Parker** advised that the City could really only address critical issues that a church might bring, such as traffic. He asked for confirmation that the City could not actually address whether the lessee was a coin club or church constitutionally.

**City Attorney Petrov** stated that he did not agree with Councilman Parker. The City could state that no commercial entities were allowed within a neighborhood.

**Councilman Parker** noted that Condition No. 2 specifically singled out “religion,” not based on the fact that religious uses created a certain amount of traffic. In other words, it was not based on any factor except for religion versus non-religion. The City could legislate the effects of having a church there, just like the effects of having the Coin Club using the facility. It seemed to him that the City was on a slippery slope of endorsing non-religion over religion. He asked City Attorney Petrov if he was correct in his thinking.

**City Attorney Petrov** disagreed with Councilman Parker’s premise that the City was placed on a slippery slope because the condition just restated where the City’s regulations currently were. He went back to Councilman Friedberg’s position that it was simply a reiteration of the City’s current regulation.

**Councilman Friedberg** recommended an amendment to remove the second condition in its entirety and avoid any first amendment issue.

**AMENDMENT TO THE AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 2:**

Councilman Andrew **Friedberg** made an Amendment to the Amendment to the Amendment (No. 1) to Condition No. 2 to eliminate Condition No. 2 altogether. Councilman Corbett Daniel **Parker** seconded the Amendment to the Amendment to the Amendment (No. 1) to Condition No. 2.

**Councilman Friedberg** reiterated what Director McDonald had just stated that the intention was to serve as a reminder. He believed that plenty of “reminders” had been made this evening and that HISD now knew the state of the law in Bellaire on churches.

**Mayor Siegel** advised that she was not going to vote in favor of the amendment. The City was trying to highlight in the specific use permit for those who might be reviewing this permit 40 years down the road. It did not hurt to add this condition to the specific use permit. What
was hurting the City was the language that did not allow HISD to let a religious organization have an occasional meeting at their facility. The reminder was important because some school districts had allowed the leasing of their facilities by churches on the weekends to supplement their revenues. A church brought the issues that a school brought during the week on the weekend as the City had recently seen.

**Councilman Hickman** indicated that he did not discriminate with respect to the parking issue on his street (Cedar Street). He did not care if the cars were from the synagogue, church, or retirement home. If there was a car blocking his driveway, he could not get out. So, if the issue was cars parked on Pine Street during the weekend, then his amendment was intended to cover any group that was having regularly scheduled meetings on a Saturday or a Sunday, then the City should prohibit the leasing of the facility. He did not like discriminating between religious and non-religious uses as the City had done with Condition No. 2. For that reason, he would support Councilman Friedberg’s amendment.

**VOTE ON AMENDMENT TO THE AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 2:**

The **Amendment to the Amendment to the Amendment (No. 1) to Condition No. 2** carried on a 4-2 vote as follows:

**FOR:** Hickman, Will  
Parker, Corbett Daniel  
Friedberg, Andrew  
Nathan, Mandy  

**OPPOSED:** Siegel, Cindy  
Nauert, Phil  

**ABSENT:** Avioli, James P., Sr.

**VOTE ON AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 2, AS AMENDED:**

**FOR:** Hickman, Will  
Parker, Corbett Daniel  
Friedberg, Andrew  
Nathan, Mandy  

**OPPOSED:** Siegel, Cindy  
Nauert, Phil  

**ABSENT:** Avioli, James P., Sr.
{Note: the result of this vote was still to eliminate Condition No. 2 altogether}

VOTE ON AMENDMENT (NO. 1) TO CONDITION NO. 2, AS AMENDED:

FOR: Hickman, Will
     Parker, Corbett Daniel
     Friedberg, Andrew
     Nathan, Mandy

OPPOSED: Siegel, Cindy
         Nauert, Phil

ABSENT: Avioli, James P., Sr.

{Note: the result of this vote was still to eliminate Condition No. 2 altogether}

Condition No. 3: That the approval of this permit places no limitation on the City of Bellaire in the reestablishment of facilities or restriction on the use of Horn Field.

Councilwoman Nathan indicated that she was pretty comfortable, given the relationship that the City had with HISD in the past, that the City would work out a joint use agreement on this property.

She asked if the City’s existing light and sound ordinances were sufficient to give the neighboring residents protections the City would like for them to have in the event that HISD leased the fields to someone other than the City.

City Attorney Petrov advised that he believed the City’s existing ordinances were sufficient. The way he read this provision was that the approval of this specific use permit placed no limitation on the City in reestablishing those facilities. This was not to say that there would not be limitations through the negotiation with HISD in a joint use agreement. It was merely saying that the permit City Council was considering this evening was not imposing anything on the City.

Councilwoman Nathan asked if City Attorney’s comment was directed to the point that this really did not impose any additional burdens on HISD.
City Attorney Petrov advised that Councilwoman Nathan was correct. He indicated that he did not understand HISD’s objection to this condition.

Councilman Friedberg indicated that the concern he had was that the condition took a position of the City requiring a landowner to lease something to the City.

City Attorney Petrov did not read that requirement into the condition.

Councilman Friedberg stated that earlier he was given some comfort by comments made by City Attorney Petrov and City Manager Satterwhite that there was no reason the City had to wait for the school to be completed and the old school demolished before a joint use agreement could be negotiated. He hesitated to have language that made it appear that when a specific use permit came forward, the City could call a landowner and state that the landowner could have their permit, but only if they allowed the City to do “X” on the property. If it really were not related to the question of whether or not HISD could operate a school, then legally he wished to get City Attorney Petrov’s counsel as to whether the City could tell a landowner anything in this regard.

City Attorney Petrov noted that oftentimes a number of conditions were included in specific use permits that restricted a landowner’s use of a property in the permitting of a specific use.

Councilman Friedberg suggested that this was different from restricting them when the City was actually telling the landowner to give the City a benefit.

City Attorney Petrov advised that there were legal limitations on exacting a benefit back to oneself that could fall into the categories of some municipal pact or some municipal assessment. The City could cross the line depending on exactly what the City would get.

Councilman Will Hickman asked if the condition would allow the City to, for example, build a sewage treatment plant on Horn Field.

City Attorney Petrov advised that it would not allow the City to build a sewage treatment plant on Horn Field.

Councilman Hickman referred to language in Condition No. 3 as follows: “no limitation . . . in the reestablishment of facilities or restriction on the use . . . .”
City Attorney Petrov advised that the approval of the permit placed “no limitation . . . .” City Attorney Petrov indicated that “the approval of the permit” was a key phrase.

Councilman Hickman stated that the City of Bellaire was not the landowner that was getting a specific use permit—so would the condition have any effect?

City Attorney Petrov advised that he did not believe it had any effect.

Councilman Hickman indicated that the statement could be read two ways. One, the City could build a sewage treatment plant or two, it would not give the City any additional rights.

City Attorney Petrov advised that to read it the first way indicated by Councilman Hickman would mean that the condition would have to be stated more in the affirmative such that the approval of the permit allowed the property to be leased.”

Councilman Friedberg suggested an amendment to the Condition as set forth below.

**AMENDMENT (NO. 1) TO CONDITION NO. 3:**

An Amendment (No. 1) to Condition No. 3 was made by Councilman Andrew Friedberg to restate Condition No. 3 as follows:

*That the approval of this permit places no limitation on the City of Bellaire in the reestablishment of facilities or restriction on the use of Horn Field, pursuant to an agreement to be negotiated between HISD and the City.*

Mayor Pro Tem Phil Nauert seconded the Amendment (No. 1) to Condition No. 3.

Councilman Parker noted that it had been stated that the condition did not really have any effect. With that in mind, what would the amendment to the condition accomplish?

Mayor Pro Tem Nauert advised that the amendment set forth intent for the City and HISD to work together in the future.

Councilman Parker asked about HISD’s track record of goodwill. In other words, the City was stating it appreciated the goodwill, but would hold them to their word expressly. Was this what the vote was going to be?
Councilman Friedberg stated that he would suggest getting rid of the condition altogether.

Councilman Parker advised that Condition No. 3 did not actually state anything, but the amendment further stated the intent, and HISD had previously stated that the City should take them at their word, as they had been a good community partner. By keeping the condition in, the City was indicating it appreciated the past goodwill, but the City would not take them at their word. He asked if he were characterizing the effect correctly?

Councilman Friedberg advised that HISD’s intent was consistent with Condition No. 3.

Councilman Hickman agreed with Councilman Friedberg. The amendment to Condition No. 3 merely set forth what the City of Bellaire’s intent was and what HISD’s intent was. Both would sit down and negotiate an agreement for the future use of the Horn Fields.

Councilwoman Nathan stated that she felt City Council was trying to shoehorn wanting to negotiate the agreement into some awkward language. She suggested an amendment as set forth below.

**AMENDMENT TO THE AMENDMENT (NO. 1) TO CONDITION NO. 3:**

An Amendment to the Amendment (No. 1) to Condition No. 3 was made by Councilwoman Mandy Nathan to restate Condition No. 3 as follows:

*That HISD and the City will in good faith seek to renegotiate the joint use agreement governing Horn Field.*

Councilman Corbett Daniel Parker seconded the Amendment to the Amendment (No. 1) to Condition No. 3.

Councilman Friedberg withdrew his Amendment (No. 1) to Condition No. 3 in favor of the amendment introduced by Councilwoman Nathan. Mayor Pro Tem Nauert agreed to withdraw his second to Councilman Friedberg’s amendment.

**AMENDMENT (NO. 1) TO CONDITION NO. 3, RESTATEDED:**

*That HISD and the City will in good faith seek to renegotiate the joint use agreement governing Horn Field.*

Mayor Siegel asked if discussion of gate openings would fall within the joint use agreement.
Councilwoman Nathan indicated that she was actually going to suggest discussions related to gate openings as its own sub-condition that the City and HISD would agree prior to construction of the fences to discuss where the best location of the pedestrian fences would be best facilitate parking on the streets and parking lots.

City Attorney Petrov agreed with Councilwoman Nathan that it would work best as a separate condition. It could be worked out as part the joint use agreement.

VOTE ON AMENDMENT (NO. 1) TO CONDITION NO. 3, RESTATED:

The Amendment (No. 1) to Condition No. 3 carried on a 5-1 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Nauert, Phil
     Friedberg, Andrew
     Nathan, Mandy

OPPOSED: Parker, Corbett Daniel

ABSENT: Avioli, James P., Sr.

MOTION TO ADD A CONDITION NO. 4:

Councilwoman Mandy Nathan made a motion to add a Condition No. 4 to Specific Use Permit S-74 as follows:

That the City and HISD will agree prior to construction of the fences around Horn Field on the location of the pedestrian gates providing access to Horn Field from Avenue B, Pine Street, and the campus parking lots such that their location will encourage parking by visitors to Horn Field in the parking lots and along adjacent streets in conformity with any parking restrictions adopted by the City and with the intent to minimize congested streets and inconvenience to residents.

Councilman Corbett Daniel Parker seconded the motion to add a Condition No. 4 to Specific Use Permit S-74.
FRIENDLY AMENDMENT TO MOTION TO ADD A CONDITION NO. 4:

Councilman Will Hickman made a friendly amendment to restate the motion to add a Condition No. 4 as follows:

That the City and HISD will agree to negotiate in good faith prior to construction of the fences around Horn Field on the location of the pedestrian gates providing access to Horn Field from Avenue B, Pine Street, and the campus parking lots.

Councilwoman Nathan and Councilman Parker accepted Councilman Hickman's friendly amendment.

Councilman Parker asked if it would be a ticketable offense if the condition were approved and HISD refused to negotiate with the City in good faith when it came to the placement of gates.

City Attorney Petrov advised that it would be a ticketable offense for violating the specific use permit.

Councilman Parker asked for confirmation that this condition stated intent and an actual responsibility for HISD during the negotiations for the joint use agreement.

City Attorney Petrov advised that HISD would have to negotiate in good faith.

Councilman Friedberg stated that he had concerns about the proposal. In other words, who was the “City?” Was the “City” staff or City Council? Secondly, in preparing for tonight’s meeting, the City had heard two proposals for addressing the concern—which was the access gates or parking on the street. The first of those was a specific permit issue and he believed that would be handled by City Council at the specific use permit stage. The second concern was really not HISD’s problem at all—it was the City’s parking and traffic enforcement issue.

Councilman Friedberg personally felt that City Council needed to agree on one of those alternative paths or another one that someone might come up with rather than simply deferring to a later date. He would rather address the concern this evening than in an agreement to be worked out.

Councilwoman Nathan advised that her thought was that City Staff would work out the access gates, as it would be in conjunction with the negotiation of the joint use agreement. At least having an agreement to negotiate in good faith over the gate access issue was
necessary for City Council to come back later and address the parking regulations. By way of example, Councilwoman Nathan stated that right now HISD showed a gate on Avenue B all the way down toward Pine Street. People who parked on Avenue B would have to walk all the way down Avenue B to come in the gate at the corner. Ultimately, the City might conclude that it was better to have the access gate in the middle of the block so that people would be encouraged to park around in front of the school. She did not believe City Council wanted to get into that much detail this evening, so she was willing to take the leap of faith that City Staff and HISD could arrive at the right decision as to where the gates needed to go based on decisions City Council made with respect to parking.

Mayor Siegel indicated that she agreed with Councilwoman Nathan. She understood where Councilman Friedberg was coming from as well. Everyone wanted the school to move forward. City Staff was going to have to do some work to figure out parking issues. The City had 18 months to work out the issues.

What she heard this evening from HISD was that they were willing to work with the City as far as the gate locations were concerned.

City Manager Satterwhite reminded City Council that the joint use agreement would come back before City Council for some possible amending and approval. The City was “City Staff” and “City Council” in his mind.

Councilman Friedberg advised that his concern was making sure that City Council worked through the issues, as City Council was directly answerable to the citizens. He had not intended any offense to City Staff.

Councilwoman Nathan indicated that she expected that before City Staff met with HISD that City Council would get extensive input from the residents on Pine Street and probably Valerie Street and Avenue B as to what solution they wanted.

Mayor Siegel noted that sometimes the issues were not solved on the first try. She did not want City Council to think that there was only one “shot” to get this right. After the school had been opened, City Council might have to come back and do some more tweaking with respect to parking.

Councilman Hickman indicated that City Council did not have to consider which two routes to take this evening. The condition before City Council gave the City the option to address the gate route. Once the school was constructed, City Council could start looking at what
needed to be done around the school with respect to parking. He did not think it should be started this evening.

**Mayor Siegel** stated that all the condition did was put something on the City’s “to do” list.

**Councilman Friedberg** advised that he hoped his comments were not misunderstood. The gates were a specific use permit issue to be addressed this evening. Everything else discussed this evening would happen anyway in the future. He felt like the gate access was something that City Council would be held accountable to.

**Councilman Parker** indicated that he felt there was a correlation between the decision on gates and on what City Council did to mitigate traffic concerns. While he understood where Councilman Friedberg was going, how could City Council decide this evening what they wanted to do with gates without having a comprehensive discussion related to traffic issues?

**Councilman Friedberg** advised that this was the very same procedural question that Councilman Parker raised earlier in the meeting—how could the City put in a condition before the fence might be installed? They could come back to City Council sometime within the next 18 months.

**VOTE ON MOTION TO ADD A CONDITION NO. 4:**

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

**FOR:** Siegel, Cindy
Hickman, Will
Parker, Corbett Daniel
Nauert, Phil
Friedberg, Andrew
Nathan, Mandy

**OPPOSED:** None

**ABSENT:** Avioli, James P., Sr.

**MOTION TO ADD A CONDITION NO. 5:**

A motion was made by Councilman Corbett Daniel Parker to add a Condition No. 5 to Specific Use Permit S-74 as follows:
That the location is prohibited from being leased for the holding of regularly scheduled weekend meetings unless an amendment to the Specific Use Permit permitting such use is approved by the City Council.

Councilman Will Hickman seconded the motion.

Councilman Friedberg, as a point of order, asked City Attorney Petrov for confirmation that this condition had already been voted on.

City Attorney Petrov indicated that it had not been specifically voted on. It was “proposed” before, but later amended. Actually, it was a removal.

Councilman Parker stated that his vote on whether or not the condition was taken out completely was highly contingent upon whether or not the City Council was willing to amend “religious” for “regularly scheduled” meetings as Councilman Hickman brought up.

Councilwoman Nathan asked if this meant that Horn Elementary School would appear before City Council next month asking for a permit to let the Boy Scouts use their facility if their meetings were held on a Sunday. She asked if this was the intent—for them to come before the Planning and Zoning Commission and City Council to get a specific use permit?

Councilman Parker asked City Attorney Petrov if that was the effect of his amendment.

City Attorney Petrov advised that it could be.

Councilman Hickman asked if the Boy Scouts had a lease.

Councilman Parker agreed that he was referring to the leasing of the facility.

VOTE ON MOTION TO ADD A CONDITION NO. 5:

Motion failed on a 2-4 vote as follows:

FOR:            Hickman, Will
                Parker, Corbett Daniel

OPPOSED:       Siegel, Cindy
                Nauert, Phil
                Friedberg, Andrew
                Nathan, Mandy
ABSENT: Avioli, James P., Sr.

MOTION TO ADD A CONDITION NO. 5:

A motion was made by Councilman Andrew Friedberg to add a Condition No. 5 to Specific Use Permit S-74 as follows:

That the approval of this permit is valid for a school with an enrollment not exceeding 750 students on a permanent basis.

Councilman Corbett Daniel Parker seconded the motion to add a Condition No. 5 to Specific Use Permit S-74.

Councilman Friedberg noted that the City had such a cap in place for other specific use permits, such as Episcopal High School. In fact, the school had exceeded that cap.

Mayor Siegel and Mayor Pro Tem Nauert stated that they did not believe that the City had placed a cap on enrollment at Episcopal High School.

Councilman Friedberg advised that it was his intent that the enrollment be capped at Horn Elementary School.

Councilwoman Nathan indicated that she was comfortable that the City could accomplish that goal through the fact that HISD had to come back to the City for a temporary building subject to the warning that the City understood that HISD had snuck some buildings on campuses without coming back to the City. She would hope that Horn Elementary School would come back if a temporary building were needed.

Councilman Friedberg asked if a front hallway or a stage was a temporary building.

Councilwoman Nathan advised that she understood Councilman Friedberg’s point.

Councilman Parker asked if an amendment to the amendment could be made whereby Councilwoman Nathan’s concerns could be alleviated with respect to a temporary building popping up in the middle of the night.

Mayor Siegel noted that City Council could add a condition restricting temporary buildings.
Councilman Hickman advised that he did not think Horn was planning on bumping the magnet program to 50%. Their main concern was that they wanted to serve the neighborhood and if it took an 800-student enrollment in Bellaire, then they would enroll 800 students. He did not want students in the neighborhood to be turned away. He knew how slowly City Council moved. He was concerned that school would start and kids would not have anywhere to go before City Council amended the permit for an 800-student enrollment.

Councilman Friedberg noted that the plans for the school and traffic study were all predicated on a student enrollment of 750. At some point, the validity of those studies went out the window and the community was left with students having class on a stage with the lunchroom just beyond a curtain. For the protection of those very same students, he would like to see that the City plan in advance and hold HISD to their stated intention to provide capacity at 750.

Councilman Parker advised that HISD would not allow the students not to go to school somewhere. In the situation where the City moved to slow in not amending the specific use permit, it was not like the kids were left out of the education system.

**VOTE ON MOTION TO ADD A CONDITION NO. 5:**

Motion failed on a 2-4 vote as follows:

**FOR:** Parker, Corbett Daniel  
Friedberg, Andrew

**OPPOSED:** Siegel, Cindy  
Hickman, Will  
Nauert, Phil  
Nathan, Mandy

**ABSENT:** Avioli, James P., Sr.

**MOTION TO ADD A CONDITION NO. 5:**

A motion was made by Mayor Cindy Siegel to add a Condition No. 5 to Specific Use Permit S-74 as follows:

*If HISD develops the fields for their sole use, the following additional requirements will be met: 1) all field lights will be canopied and directed away from the adjacent residential neighborhood, and 2) any sound system utilized in conjunction*
with the fields would be directed away from the adjacent residential neighborhood.

Councilman Corbett Daniel Parker seconded the motion to add a Condition No. 5 to Specific Use Permit S-74.

Councilman Hickman asked if there would have to be another specific use permit process if the Little League leased Horn Fields from HISD directly.

City Attorney Petrov agreed that Councilman Hickman was correct.

Mayor Siegel asked if the condition were a moot point.

City Attorney Petrov stated that if HISD were to push baseball at the elementary school level, then conceivably the lighting and speakers might be an issue if HISD were to develop the fields. He was not sure how likely that was, but it was possible.

Councilman Friedberg asked if it would be the same thing if HISD leased the property.

Mayor Siegel noted that City Attorney Petrov indicated that HISD would have to come back to City Council for the lease and the requirements could be added at that time.

Councilman Friedberg noted that the language referred to HISD using the fields for their “sole use.” If “sole use” came to be defined as including such activities as running a baseball league, then they would have a permit to operate a school, which would include baseball. Absent the definition of permitted use = school, then he did not believe the concern was valid.

Mayor Siegel understood that if HISD leased the fields to a different party other than the City, then HISD would have to come back to City Council for a specific use permit. However, if HISD developed the field for their own use and wanted to install lights and speakers, then HISD would not have to come back to the City.

Councilman Friedberg indicated that he now understood the point the Mayor was trying to make.

Councilman Hickman stated that he would vote against this condition as HISD could do any number of things they wanted to do. He did not believe that the City should go through every one of the possible contingencies that HISD could do. This was where the City relied on the long-standing relationship and reputation HISD had of being a good neighbor.
Mayor Pro Tem Nauert stated that he understood Councilman Hickman’s point. He noted that there were certain things that were “extreme and not likely”; however, light and noise were a little more on the end of the continuum of conceivable. He did not think there was any harm in considering the condition this evening.

Mayor Siegel agreed that the condition would be a moot point if HISD did not develop the fields, but if they did, then the City would have addressed the concern and protected the neighborhood to the best of its ability.

Councilman Parker referred to an earlier discussion regarding placing a restriction on HISD versus stating a shared intent. He asked why the City would add a restriction in this situation versus a shared intent.

Mayor Siegel indicated that if HISD did not have an agreement with the City, then what would protect the neighborhood if HISD decided to add lights and a great sound system? This condition was in case the joint use agreement with the City did not go forward. If the property were leased to a different party, then the City would have control in the form of a specific use permit.

She noted that such things had happened before. Trees were cut down at Pin Oak Middle School that were not supposed to have been cut down. Those trees were intended to provide a buffer for the adjacent neighborhood. She believed that it was important to state the City’s intent.

Councilman Hickman indicated that what the Mayor had pointed out were problems with the City’s sound and light ordinances, not a problem with the specific use permit. What would keep HISD from doing that was the same thing that kept First Street Surgical from having “Disco Night.” The sound ordinances on the surrounding neighborhood kept the sound and spillover light to a certain level. If there was a problem, then it should be resolved on a citywide basis and not just for Horn Elementary School’s construction project.

Mayor Siegel advised that she believed that a specific use permit allowed the City Council to address concerns. This was merely a step to try to buffer the neighborhood.

Councilwoman Nathan indicated that she would vote in favor of the condition. She felt that the likelihood of this happening at Horn Elementary was very unlikely. Given that what accompanied just about every park and sports facility in the City were issues with lights and sound, this condition was worth addressing.
VOTE ON MOTION TO ADD A CONDITION NO. 5:

Motion carried on a 5-1 vote as follows:

FOR:  
Siegell, Cindy  
Parker, Corbett Daniel  
Nauert, Phil  
Friedberg, Andrew  
Nathan, Mandy

OPPOSED:  
Hickman, Will

ABSENT:  
Avioli, James P., Sr.

MOTION TO ADD A CONDITION NO. 6:

A motion was made by Mayor Cindy Siegel to add a Condition No. 6 to Specific Use Permit S-74 as follows:

That any portable building(s) intended to be used or in place for eighteen (18) months or more, HISD would be required to apply for a Specific Use Permit.

Councilman Corbett Daniel Parker seconded the motion to add a Condition No. 6 to Specific Use Permit S-74.

Mayor Siegel stated that temporary buildings had been installed at Bellaire High School and had been in place for 30 years. Mayor Siegel researched the records and could not find an instance whereby Bellaire High School had requested a specific use permit for their temporary buildings. She felt that it was important to include a statement that a specific use permit was required for any portable building intended to be used or in place for eighteen (18) months or more. This same situation had also occurred at Condit Elementary School (i.e., installation of a portable building without obtaining a specific use permit.

Councilman Hickman asked City Attorney Petrov to describe the process for placing a temporary building on a school site.

City Attorney Petrov indicated that since his tenure as City Attorney for Bellaire, the City no longer considered any building to be “temporary” except for a construction building or office onsite during the construction process only. Other than that, a building was a building.
Councilman Hickman asked for confirmation that to install a trailer or manufactured building, a school would need a specific use permit.

City Attorney Petrov advised that Councilman Hickman was correct.

Councilman Parker asked what the City’s options were if a school installed a manufactured building onsite in the dead of night as HISD had been accused of doing before.

City Attorney Petrov advised that he did not believe HISD had installed the buildings in the dead of night. He thought in years past the City considered there to be a difference between buildings and temporary buildings. The temporary buildings were allowed because the thought was that “temporary” meant “temporary.” After about ten years or so, the City came to realize that “temporary” did not mean “temporary” to everyone. City Staff’s policy became one of considering a building to be a building.

Mayor Siegel asked if this were policy or part of the City’s Code.

City Attorney Petrov stated that this was an interpretation of the City’s Code.

Mayor Siegel asked if someone else might have a different interpretation in 10-15 years and go back to “temporary.”

City Attorney Petrov indicated that Mayor Siegel was correct, as that was the way the Code was interpreted prior to his tenure.

Mayor Siegel asked for confirmation that the City Council should address the concern in the specific use permit or address the concern in the City’s Code.

City Attorney Petrov advised that he would agree with Mayor Siegel.

Councilwoman Nathan stated that her thought was, given that Horn Elementary School would not be building any temporary buildings in the next few years, the best way to address the concern would be to ask the Planning and Zoning Commission to amend the ordinance to address this globally for all schools.

Councilman Friedberg suggested it be addressed globally for all institutions, not just schools.

Mayor Siegel stated that she did not have a problem with asking the Planning and Zoning Commission to address the concern with an amendment to the ordinance.
Councilman Parker asked if the City was barred from bringing this up with respect to other schools or institutions that were in violation of their specific use permit.

City Attorney Petrov stated that there was a possibility that nonconforming structures existed in Bellaire.

Councilman Parker asked if some would be grandfathered if installed prior to the City’s adoption of the specific use permit process.

City Attorney Petrov advised that Councilman Parker was correct.

Councilman Parker asked if any put in place after a specific use permit were granted could be cited for a violation.

City Manager Satterwhite advised that Councilman Parker was correct.

Mayor Pro Tem Nauert asked what the City would do if HISD were allowed to install a portable building and did not abide by the timeframe as stated in the condition.

City Manager Satterwhite advised that if there were a concern about addressing this issue, then he would suggest addressing it through the City’s ordinances and call a building a building. He felt that it was important for the City to define what a “building” was.

Mayor Siegel and Councilman Parker withdrew the motion and second to add a Condition No. 6 to Specific Use Permit S-74.

VOTE ON MOTION TO ADOPT ORDINANCE, AS AMENDED:

The motion to adopt an ordinance, as amended, to grant a Specific Use Permit S-74 to HISD carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Parker, Corbett Daniel
Nauert, Phil
Friedberg, Andrew
Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

{Ordinance was subsequently numbered: 10-027}
Abandonment/Sale of City Right-of-Way and Specific Use Permit – Hospital

2. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed – Item submitted by City Clerk Tracy L. Dutton at the direction of City Council.

Note: This agenda item was tabled earlier in the evening after City Council questioned the City’s appraiser, Waldo S. Luedemann, regarding his appraisal of the existing sixty-foot (60’) right-of-way of Chestnut Street that was requested to be abandoned by the City of Bellaire and subsequently sold to the Varon Family and Lenox Hill Holdings Ltd. (the “Petitioners”) for the expansion of the First Street Hospital.

MOTION TO LAY AGENDA ITEM ON THE TABLE:

A motion was made by Councilman Will Hickman and seconded by Councilman Phil Nauert to lay the agenda item, adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed, on the table.

[Note: The original motion to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in
the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed, was made by Councilwoman Mandy Nathan and seconded by Councilman Will Hickman.]

Councilman Corbett Daniel Parker asked Dr. Varon, Partner with Lenox Hill Holdings Ltd., if he was willing to purchase the street right-of-way at any price. He referenced a statement by the appraiser that the City could basically set any price it wanted to for the property.

Dr. Varon advised that he definitely disagreed with the appraiser. The appraiser did not consider, think, or made a mistake—Lenox Hill Holdings Ltd. did not need the street right-of-way for parking. The shopping center had a space between the end of the center on the west side and what was now his office with a certain number of parking spaces. The area where the hospital was expanding now, could continue be used as parking if the facility was not expanded.

Secondly, Dr. Varon stated that he thought it would be very hard to believe that someone would come and buy the property with the intention of leasing it and get a cut rate of 8% for parking.

Thirdly and most importantly, Dr. Varon was basically buying a strip of land. The strip would continue being a street. Additionally, the appraiser indicated that the strip of land was 60 feet wide. If one were to consider the easement that would have to be retained, then Dr. Varon would only be getting a fifteen-foot wide strip.

At this time, the City was not collecting taxes on a 20,000+ square foot facility that they would collect if the hospital were allowed to expand. He respectfully recommended that he should get some kind of a discount for the property.

Councilman Parker noted that Dr. Varon had indicated in a letter that he had spent $122,500 in improvements to the right-of-way. He asked if Dr. Varon thought City Council should factor in those improvements in the sales price of the property.

Dr. Varon advised that he would have expended that money on the improvements regardless of whether he purchased the property or not. If the City decided not to sell the right-of-way, he and his partners would continue to maintain the right-of-way (i.e., cleaning, lighting, etc.). In his humble opinion, he would think that City Council should take the improvements made into consideration in determining the cost of the property.
Councilman Parker referred to the fact that Dr. Varon had use of the easement without paying any lease fee to the City. He asked if Dr. Varon thought that should also be considered in determining the sales price for the property.

Dr. Varon stated that as a citizen he thought that all of the streets were public and the public was allowed to park on a city street. He did not see anyone that paid a fee to park along any of the other streets in Bellaire. He did not agree with Councilman Parker’s particular point.

Councilman Parker asked for confirmation that since Dr. Varon provided value to the City, that value should be considered in determining the price of the property. The fact that the City provided value to Dr. Varon should not be considered.

Dr. Varon stated that the City was providing a great deal of value to Lenox Hill Holdings Ltd. by letting them provide better medical services and expand the hospital as he said before. He did not know of anyone in the United States that paid a city for the right to park in the street.

Councilman Will Hickman referred to Chestnut Street and asked if the street ran from the sky bridge and dead-ended into Bissonnet Street or dead-ended into Dr. Varon’s office.

Dr. Varon advised that the street dead-ended into his office.

Mayor Cindy Siegel referred to a schedule provided by the City Clerk that set forth a history of sales that had occurred in the past. She noted that City Council had sold property in amounts that ranged from 0% to 100% of the appraised value, although the amounts were predominantly in the 50% range. The last sale was the Fournace Place abandonment, which was sold in the 75% range.

Councilman Friedberg indicated that he was glad that the City’s appraiser, Mr. Luedemann, had been present this evening. He prefaced his comment by acknowledging that certainly he did not wish to be unfair to the applicant, but City Council collectively had a fiduciary obligation to the City to make sure that a fair price was set for all involved and capture the appropriate value reflective of what the appraisal had shown. He understood that the $25.00 value was the actual economic benefit to the applicant. He made a motion regarding the price as set forth below.

**MOTION TO SET PRICE OF RIGHT-OF-WAY TO BE ABANDONED:**

A motion was made by Councilman Andrew Friedberg and seconded by Councilman Corbett Daniel Parker to set the price of the existing sixty-foot right-of-way of Chestnut Street situated
between Bissonnet Street and First Street at $25.00 per square foot or a total of $549,650.00.

Councilman Hickman offered an amendment as set forth below.

**AMENDMENT TO MOTION TO SET PRICE OF RIGHT-OF-WAY TO BE ABANDONED:**

An amendment to the motion to set the price of the right-of-way to be abandoned was made by Councilman Will Hickman to add the 25% discount to the price set for the abandonment of the existing sixty-foot right-of-way of Chestnut Street situated between Bissonnet Street and First Street. Councilwoman Mandy Nathan seconded the amendment.

Councilman Hickman advised that he felt this was a unique situation. As he understood it, the abutting landowner was Lenox Hill Holdings Ltd. It might be more valuable to them than the City could sell the property for, so there was no one other than the abutting landowners that the City could sell the property to. He did not believe the City could sell to anyone for more than $18.75 per square foot. The value was hampered by an aerial easement and an existing sky bridge and was a landlocked property. As a parcel that someone would want to come in and buy, other than the suggestion that someone could buy it and lease it for parking, it did not seem to be a viable option when there was ample parking that Dr. Varon was leasing across the street.

Councilwoman Mandy Nathan added that the City was also asking for a sizable easement as part of the transaction.

Councilman Friedberg inquired as to where the easement was, noting he had been looking for it earlier and was unable to find it in the documentation.

City Manager Bernard M. Satterwhite, Jr., inquired of Director of Community Development John McDonald if the City was asking for an easement.

Director of Community Development John McDonald stated that the City was asking for a temporary easement, as the hope was to move the existing line to Bissonnet Street. That movement hinged upon approval by the Texas Commission on Environmental Quality (TCEQ). The temporary easement would go away if the line were moved to Bissonnet Street. Otherwise, the City would use the easement for the existing line.
Councilman Friedberg made the point that the ordinance did not mention the easement at all.

Mayor Siegel inquired as to whether the easement needed to be included in the ordinance, noting that she assumed it was part of the abandonment process.

City Attorney Alan P. Petrov agreed that the City needed to know where the easement needed to be.

Councilman Friedberg added that if the City did not reserve the easement at the time of conveyance, then it would not exist.

City Attorney Petrov agreed with Councilman Friedberg.

Mayor Siegel asked if there were language that could be inserted in the ordinance.

Director McDonald advised that there was not.

Mayor Siegel inquired as to what he meant.

Director McDonald stated that he did not know how specific the language needed to be. It could start where the line was today and move 20 feet to the south (directly across the street).

Mayor Siegel asked City Attorney Petrov if the legal description could be put in at a later time.

City Attorney Petrov advised that it could. He asked Director McDonald when he thought the City could know if the line could be moved.

Director McDonald indicated that the City was working on the engineering specifics now that were part of the application to the TCEQ. It could be several months before the City knew anything.

Mayor Siegel asked if City Staff could build the language into the ordinance in such a way that Dr. Varon would not be held up in his expansion project.

City Attorney Petrov stated that the City could reserve an easement to be abandoned if the line was subsequently moved to the Bissonnet Street right-of-way.

Mayor Siegel asked if City Attorney Petrov could offer some language.
City Attorney Petrov indicated that, in essence, there were really two temporary easements and one of the temporary easements might be permanent.

Mayor Siegel asked if City Council could address the price first and then make a modification for the easements.

Councilman Parker advised that he had a question as to how fast the City needed to act on this issue. He was uncertain as to the necessity. He noted that Mayor Pro Tem Nauert asked previously for information related to the expediency of the construction. He inquired as to whether the City had gotten any information related to President Barack Obama’s healthcare bill.

Mayor Siegel stated that the City Council had a motion and an amendment before it related to the price to be set for the right-of-way. This was what was on the floor. City Council could come back and work on the other issues.

Councilman Friedberg indicated that he would like to respond to Councilman Hickman and Councilwoman Nathan’s comments. He appreciated and understood the counter argument, but he felt that it could cut both ways. He believed that the City’s appraiser alluded to that—that the City could justify an increase based on them being the sole game in town or provide a discount as an incentive to buy the property. For that reason, he preferred the 100% of value as appraised as a middle ground when the City could have justified a variance from that. His understanding was that the procedure for this evening was that City Council would agree on a price, that was ultimately just an option or offer to sell that was valid for six months. Dr. Varon could let it expire if he did not like the price.

Mayor Pro Tem Nauert stated that his question went back to why the City was moving a sewer line.

Director McDonald stated that the current line was only five feet off of private property. If the City needed to repair it, the City would be digging a hole that would actually go onto private property.

Mayor Pro Tem Nauert asked if the City would still be moving the line if Dr. Varon was not doing the proposed expansion.

Director McDonald indicated that the City had planned to move it because the City knew now that it was an issue. The City would like to have all of its lines located on its own property so that the lines could be repaired without affecting private property. If tomorrow there were a water break, the City would have to get permission from the owner
to dig up his property to repair the line. He felt that the City still needed to plan to move the line.

**Councilman Parker** asked if the $200,000 cost to the City to move the line was irrelevant for purposes of setting a price for the easement.

**Director McDonald** advised that this would be a question for the City Manager.

**City Manager Satterwhite** indicated that he believed it was a separate issue—the City needed to move the line. If City Council desired to do so, they could make it a part of the issue.

**Councilman Parker** asked if the abandonment was forcing the City to speed up the expenditure of $200,000 to move the line. In other words, would the City have made the cash outlay at a different point of time in the future?

**City Manager Satterwhite** stated it might, but he really did not think so.

**Mayor Siegel** advised that she agreed with the discounted value for the property. She agreed with Councilman Hickman in that there was no other buyer for the property except Lenox Hill Holdings Ltd. In looking at what the City had done in the past, a 50% discount was often given. She did think it was appropriate to offer some sort of discount and she believed that 25% made sense.

**VOTE ON AMENDMENT TO MOTION TO SET PRICE OF RIGHT-OF-WAY TO BE ABANDONED:**

The **amendment to the motion to set the price of the right-of-way to be abandoned** carried on a 5-1 vote as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Parker, Corbett Daniel
- Nauert, Phil
- Nathan, Mandy

**OPPOSED:**
- Friedberg, Andrew

**ABSENT:**
- Avioli, James P., Sr.
**VOTE ON MOTION TO SET PRICE OF RIGHT-OF-WAY TO BE ABANDONED, AS AMENDED:**

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

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Parker, Corbett Daniel
- Nauert, Phil
- Friedberg, Andrew
- Nathan, Mandy

**OPPOSED:**
- None

**ABSENT:**
- Avioli, James P., Sr.

**Mayor Siegel** referred to the issue that Councilman Friedberg brought to the table and asked if there were language that City Council could add to the ordinance that would meet the criteria as it related to the easement.

**Councilman Parker** stated that he was still interested in why the City needed to act so quickly. He was also interested in what information the City had received for purposes of acting so quickly.

**Dr. Varon** passed some documentation to City Council consisting of articles related to decisions of the United States Senate and United States House of Representatives with respect to the healthcare legislation. He highlighted the most important issues, which were the ones that addressed the need to finish hospital construction by December 31, 2010.

**Councilman Parker** indicated that he would have appreciated being able to review the documentation prior to the City Council meeting this evening. He understood that Mayor Pro Tem Nauert had asked for it.

**Councilman Hickman** asked what Dr. Varon had to go through to get a “number.”

**Dr. Varon** advised that he had to be completed with his construction by December 31, 2010. The original bill was signed in August of 2010. The United States Senate postponed that requirement to December 31, 2010. The hope by the government was that construction would be completed by October of 2010 in order to give the Medicare/Medicaid office enough time to inspect and issue a license. Dr. Varon had a license already with the Medicare/Medicaid office, so the only thing that they would need to do would be to give the hospital an extension or grant and license for the new beds.
Councilman Hickman asked if the construction were not completed until February of 2011, what would happen.

Dr. Varon advised that he would not be able to pass. He had a commitment from the construction company that they would finish by then.

Mayor Siegel asked why Dr. Varon felt like this restriction applied to him. He was not building a new hospital, but rather expanding an existing hospital.

Dr. Varon stated that the restriction on existing hospitals was even worse. Since he and his partners had received a permit from the State of Texas to move forward with the construction pending the approval from the City of Bellaire, he would be able to construct until December 31, 2010.

Councilman Parker indicated that it was his understanding that an exact date had not been set as to when and how much of the existing commercial property was going to be torn down. Once the new parking lot was completed, then it would more than meet Bellaire’s parking requirements. He inquired as to what would occur if the hospital expansion were completed in order to meet the healthcare restrictions, but the current tenants were allowed to remain in the center. In other words, how long did Dr. Varon have to get the parking in place in order to meet the requirements of the specific use permit?

Director McDonald stated that the City would not issue the Certificate of Occupancy on the hospital unless the parking met the City’s Code.

MOTION ADD ANOTHER PARAGRAPH TO ORDINANCE BASED ON THE CITY ATTORNEY’S SUGGESTED LANGUAGE:

A motion was made by Councilman Andrew Friedberg and seconded by Councilman Corbett Daniel Parker to add another paragraph to the ordinance to be numbered 6. as follows:

6. That the abandonment authorized herein is subject to the reservation of two twenty-five (25) foot wide utility easements at locations approved by the City’s Public Works Department, the first being a temporary easement for an existing wastewater line to be abandoned at such time said line is relocated and the second being a twenty-five (25) foot easement, twelve and one-half (12-½) feet on either side of the existing Chestnut Street
right-of-way, to be abandoned if the existing wastewater line is relocated to the Bissonnet Street right-of-way.

FRIENDLY AMENDMENT TO MOTION TO ADD ANOTHER PARAGRAPH TO ORDINANCE:

A friendly amendment to the motion to add another paragraph to the ordinance was made by Councilman Will Hickman to restate the paragraph as follows:

6. That the abandonment authorized herein is subject to the reservation of two twenty-five (25) foot wide utility easements at locations approved by the City’s Public Works Department, the first being a temporary easement for an existing wastewater line to be abandoned at such time said line is relocated and the second being a twenty-five (25) foot easement, twelve and one-half (12-½) feet on either side of the centerline of the existing Chestnut Street right-of-way to be abandoned if the existing wastewater line is relocated to the Bissonnet Street right-of-way.

Councilmen Friedberg and Parker accepted the friendly amendment.

Councilman Parker asked if Dr. Varon had a problem with the City adding the easements to the transaction.

Councilman Hickman advised that Dr. Varon could chose not to purchase the property.

Dr. Varon stated that the only comment he had was now his strip of land was only eight to nine feet wide. He understood that the price had already been set and he did not know how much could be reconsidered, but if City Council really thought about the easement situation, he would only end up with a very small strip of land.

Mayor Siegel asked how much of an easement the City really needed. She added that the temporary easement would go away if the City were allowed to move the line to Bissonnet Street by the TCEQ.

Director McDonald advised that the Mayor was correct. The City’s plan was to move the line to Bissonnet Street. The documents were under preparation for the TCEQ now. He indicated that the width went to the depth. Deeper holes required wider areas to work in. This was the reason the City needed to ask for the 25-foot easement. It was based on the depth of the line existing in that easement.
Councilman Friedberg stated that he thought the plan as presented would not involve the construction of any structures over that easement.

Director McDonald advised that there would not be any structures built upon that area.

Councilman Friedberg indicated that the economic value would be unchanged if the line could be moved.

Director McDonald advised that Councilman Friedberg was correct.

Craig Grassle, AIA, President, Neo Architects, LLC, 7026 Old Katy Road, Suite 307, Houston, Texas 77024, asked if Dr. Varon developed the strip over the easement based on their development standards if the City of Bellaire would replace that when they made the repairs.

City Manager Satterwhite inquired as to what Mr. Grassle meant by “develop it.”

Mr. Grassle mentioned developing the easement as a concrete driveway rather than an asphalt driveway. Would the City replace the driveway in the same manner in which it was developed?

City Manager Satterwhite advised that the City would replace the driveway in the same manner in which it was developed.

Councilman Friedberg asked if that extended to marble and gold plating.

City Manager Satterwhite stated that it did. The City did so all over town.

Mayor Siegel noted that her neighbor across the street had pavers that the City had to replace. It took nine months to find the exact pavers, but the City did so.

Councilman Hickman advised Dr. Varon that hopefully the TCEQ would approve the City’s application and Dr. Varon would end up with a sixty-foot wide strip of land that would be all his.

**VOTE ON MOTION TO ADD ANOTHER PARAGRAPH TO ORDINANCE:**

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

FOR: Siegel, Cindy
FOR (CONT.): Hickman, Will
Parker, Corbett Daniel
Nauert, Phil
Friedberg, Andrew
Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

VOTE ON MOTION TO ADOPT ORDINANCE WITH PRICE INSERTED AND THE INSERTION OF AN ADDITIONAL PARAGRAPH ADDRESSING EASEMENTS:

The motion to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the abandonment of an interest in the sixty-foot (60’) right-of-way of Chestnut Street situated between Bissonnet Street and First Street (approximately 21,986 square feet) out of the James Blessing Survey, Abstract 162, in the City of Bellaire, Harris County, Texas; authorizing the Varon Family and Lenox Hill Holdings Ltd. to purchase the interest in said sixty-foot (60’) right-of-way from the City of Bellaire, Texas, at a price of $18.75 per square foot; adding provisions for easements; and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an Abandonment of Right-of-Way and a Deed carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Parker, Corbett Daniel
Nauert, Phil
Friedberg, Andrew
Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

{Ordinance was subsequently numbered 10-028}

3. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, granting Specific Use Permit S-75 to Lenox Hill Holdings Ltd. to construct and operate a hospital at the corner of Bissonnet Street and First Street in Bellaire, Harris County, Texas, in the R-M.2 Residential-Commercial Mixed-Use Zoning District – Item
MOTION TO ADOPT ORDINANCE:

A motion was made by Councilman Corbett Daniel Parker and seconded by Councilman Will Hickman to adopt an ordinance of the City Council of the City of Bellaire, Texas, granting Specific Use Permit S-75 to Lenox Hill Holdings Ltd. to construct and operate a hospital at the corner of Bissonnet Street and First Street in Bellaire, Harris County, Texas, in the R-M.2 Residential-Commercial Mixed-Use Zoning District.

DISCUSSION REGARDING MOTION TO ADOPT ORDINANCE:

Mayor Cindy Siegel advised that this agenda item had been the subject of a Joint Public Hearing before the Bellaire City Council and the Bellaire Planning and Zoning Commission. The Bellaire Planning and Zoning Commission subsequently met and discussed the application and request for a specific use permit submitted by Lenox Hill Holdings Ltd. and voted to approve the request subject to two conditions. The first condition was approval by City Council of the sale of the existing sixty-foot right-of-way of Chestnut Street. The second condition was the purchase of the Chestnut Street right-of-way by the applicant (Lenox Hill Holdings Ltd.).

Mayor Siegel continued and asked whether there were any restrictions related to the turnarounds on the site.

Director of Community Development John McDonald indicated that there was a change to the site plan to remove one of the valet parking spaces, leaving only one parking space. There were also some modifications to the entryway off of Bissonnet Street that limited it.

Councilman Andrew Friedberg referred to a parking requirement chart that City Council had been given by Director McDonald. He referred to eleven parking spaces that would be constructed using grass pavers and mentioned by Commissioner Peter Boecher during the joint public hearing as not allowable for purposes of meeting ground coverage requirements. He inquired as to the status of those pavers.

Director McDonald advised that all pavers had been removed. The City’s ordinance specifically prohibited the use of such pavers to gain lot coverage credit. Other changes were made to the site plan so that lot coverage would remain at the 75% requirement.
Councilman Friedberg referred to previous discussions held regarding the onsite parking requirement for Charlie’s Bar-B-Que wherein it was mentioned that the restaurant needed 88 parking spaces. He now understood that the City had revised that figure and asked for confirmation.

Director McDonald advised that the City had utilized an initial number provided for the size of the building that was incorrect. City Staff checked with the Harris County Appraisal District on the actual square footage for the restaurant and made a site visit to measure the facility. It was City Staff’s opinion that under the City’s current Code, 37 parking places were needed. That requirement would still be met with future construction.

Councilman Friedberg asked if it were fair to state that the specific use permit for the hospital parcel ultimately solved the existing nonconformity on the adjacent parcel.

Director McDonald advised that Councilman Friedberg was correct.

Councilman Will Hickman inquired as to the City’s current ordinance with respect to lighting. In other words, was lighting spillage onto the residential neighborhood a type of condition that Councilman Hickman could suggest for the specific use permit?

City Attorney Alan P. Petrov stated that he could not remember the wording of the City’s existing lighting restrictions without looking them up. The City did have a requirement or prohibition against light spilling onto a neighbor’s property.

Councilman Hickman asked for confirmation that City Council would not need to address lighting in the specific use permit.

City Attorney Petrov indicated that City Council could add a condition that lighting be directed down or shielded. He noted that the City did have regulations prohibiting light spillage off of a property.

**AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE:**

An Amendment (No. 1) to the motion to adopt an ordinance granting Specific Use Permit S-75 to Lenox Hill Holdings Ltd. to construct and operate a hospital was made by Councilman Will Hickman to add a new bullet point to paragraph three of the ordinance to be stated as follows:

*That the owners of the property install shielding on outdoor lighting to prevent direct transmission of light to adjacent residents.*
Mayor Cindy Siegel seconded Amendment (No. 1) to the motion to adopt the ordinance granting a Specific Use Permit S-75.

**VOTE ON AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE:**

Amendment (No. 1) to the motion to adopt an ordinance granting Specific Use Permit S-75 to Lenox Hill Holdings Ltd. carried unanimously on a 6-0 vote as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Parker, Corbett Daniel
- Nauert, Phil
- Friedberg, Andrew
- Nathan, Mandy

**OPPOSED:** None

**ABSENT:** Avioli, James P., Sr.

Councilman Hickman indicated that the Bellaire Planning and Zoning Commission had not yet approved a replat for the hospital property. He inquired as to the effect that had on the granting of a specific use permit. In other words, could Dr. Varon start construction?

City Attorney Petrov advised that Dr. Varon could not start construction until the replat was approved. He could probably get his permits to move forward, but could not actually break ground.

Director McDonald stated that Dr. Varon would not meet his floor to area ratios until the property was actually replatted into one lot with the street. City Staff had discussed a timetable with Dr. Varon that would allow him to start certain things that he would not necessarily need a building permit for. The Planning and Zoning Commission would consider the replat at their meeting on the next Tuesday.

Councilman Corbett Daniel Parker asked what Dr. Varon had to complete with respect to his project to meet federal requirements. In other words, did he need the specific use permit and building permit or did he need to actually have the construction of the facility completed. In other words, would the hospital have to be operational by December 31, 2010?

Dr. Varon stated that he had to be operational by December 31, 2010. The government suggested completion in October so that the hospital could make application to the Medicare/Medicaid Office for
certification. The hospital not only needed to be operational, but the hospital needed to be admitting patients before December 31, 2010.

**Councilman Parker** asked for confirmation that demolition of a portion of the facility (or shopping center) and construction of the parking lot would occur sooner rather than later.

**Dr. Varon** stated that the demolition of a portion of the facility (or shopping center) was planned as one of the initial stages. As a matter of courtesy, he and his partners had given the Radio Shack store a little extra time to move (although their lease had already expired).

**Councilman Parker** asked for confirmation that some of the comments he had heard about tenants being able to remain in the center through the summer were incorrect.

**Dr. Varon** indicated that the tenants that were staying through the end of the summer were the tenants that wished to remain in the portion of the facility that was not scheduled for demolition.

**Councilman Parker** asked for confirmation that Dr. Varon was referring to Charlie’s Bar-B-Que and the nail salon.

**Dr. Varon** stated that Charlie’s Bar-B-Que and the nail salon would remain until the expiration of their lease and probably longer. The business remaining through the end of the summer was the pool supply company.

**VOTE ON MOTION TO ADOPT ORDINANCE, AS AMENDED:**

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

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Parker, Corbett Daniel
- Nauert, Phil
- Friedberg, Andrew
- Nathan, Mandy

**OPPOSED:** None

**ABSENT:** Avioli, James P., Sr.

{Ordinance was subsequently numbered 10-029}
CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Ordinance No. 09-023 by repealing Exhibit A, evidencing the City of Bellaire’s intent to participate in the Harris County Consolidated Region (HCCR) Application for the Hurricane Ike Disaster Community Development Block Grant (CDBG) funding and replacing it with a new Exhibit A, Amended Agreement Between Harris County and the City of Bellaire for the Participation in the Application and Distribution of Hurricane Ike Disaster Community Development Block Grant Funds, which allows the City of Bellaire to contract directly with the Texas Department of Rural Affairs, which will act as Grant Administrator and disburse funding for the City’s projects – Item submitted by Chief Financial Officer Donna Todd.

MOTION TO ADOPT ORDINANCE AMENDING ORDINANCE NO. 09-023:

A motion was made by Councilman Corbett Daniel Parker and seconded by Councilman Will Hickman to adopt an ordinance of the City Council of the City of Bellaire, Texas, amending Ordinance No. 09-023 by repealing Exhibit A, evidencing the City of Bellaire’s intent to participate in the Harris County Consolidated Region (HCCR) Application for the Hurricane Ike Disaster Community Development Block Grant (CDBG) funding and replacing it with a new Exhibit A, Amended Agreement Between Harris County and the City of Bellaire for the Participation in the Application and Distribution of Hurricane Ike Disaster Community Development Block Grant Funds, which allows the City of Bellaire to contract directly with the Texas Department of Rural Affairs, which will act as Grant Administrator and disburse funding for the City’s projects.

Chief Financial Officer Donna Todd stated that in December of 2008, Harris County coordinated efforts to compile a comprehensive damage assessment report to obtain funding available to the Harris County Consolidated Region (HCCR) for disaster recovery through the State of Texas for entitlement communities (i.e., Houston, Galveston, and the HCCR). If Bellaire did not participate in HCCR, Bellaire would have had to compete individually for funding, which would have been very difficult.

In February of 2009, Bellaire met with Harris County in a group meeting and Bellaire presented a “Letter of Intent” to participate in the HCCR process. Bellaire was required to submit a Memorandum of Understanding (MOU) to Harris County by March 7, 2009. At the
March 2, 2009, meeting, the Bellaire City Council voted to do an MOU. The MOU was then presented to Harris County.

Subsequently, Harris County asked for more specific information, as required by the State of Texas, and Bellaire was required to revise its MOU. This was done on April 20, 2009.

Since that time, Bellaire had been working Ralph Cox of Klotz Associates, Inc., and with Harris County to complete the grant application process for two projects—a generator for the Wastewater Treatment Plant and a generator for the Central Water Plant. The total amount of both projects was a little over $2 million. The City’s share for the grant was noted to be $320,000.

In April of 2010, Harris County sent Mayor Siegel a letter indicating that they would step back and allow the cities to contract directly with the State of Texas (through the Texas Department of Rural Affairs or TDRA) on the construction phase. In order to allow the cities to contract with the TDRA, Harris County was requesting another MOU to terminate any clauses that had them participating as a grant administrator. This particular MOU was before City Council this evening for consideration. Harris County indicated that they would like to receive the MOU by their May 11, 2010, Harris County Commissioners’ meeting.

Chief Financial Officer Todd noted that she and Director of Public Works Joe Keene had met with some TDRA representatives during the previous week. TDRA, in the near future, would provide City Council with a contract allowing them to provide project management services through the construction phase of the referenced projects.

Councilman Andrew Friedberg inquired as to whether the City should have something in place with TDRA before revising its agreement with Harris County on the hope of having something.

Chief Financial Officer Todd indicated that Harris County has stated that they would not continue serving as administrator through the construction phase.

Councilman Friedberg stated that Harris County had contracted with the City to perform certain services.

City Manager Bernard M. Satterwhite, Jr., advised that the City needed to work with the TDRA from this point forward.

Councilman Friedberg asked for confirmation that Chief Financial Officer Todd was satisfied that TDRA would enter into a contract with
the City to provide the necessary services to carry the City through the construction phase of the projects.

Chief Financial Officer Todd and City Manager Satterwhite, Jr., advised that Councilman Friedberg was correct.

Councilman Will Hickman advised that $2.3 million would provide a lot of generator. He asked if the generator was large enough to run the City in the event the electricity went out as far as wastewater and water services were concerned.

City Manager Satterwhite stated that the generators would supply water to the entire City and handle wastewater for the entire City as well.

VOTE ON MOTION TO ADOPT ORDINANCE AMENDING ORDINANCE NO. 09-023:

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

FOR: Siegel, Cindy
      Hickman, Will
      Parker, Corbett Daniel
      Nauert, Phil
      Friedberg, Andrew
      Nathan, Mandy

OPPOSED: None

ABSENT: Avioli, James P., Sr.

{Ordinance was subsequently numbered 10-030}

Code Amendment

5. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 13, Fire Protection and Prevention, Article I, In General, of the Code of Ordinances of the City of Bellaire, Texas, by adding new Sections 13-4 through 13-7 for the purpose of authorizing the Bellaire Fire Department to charge and collect fees for certain emergency response services – Item submitted by Fire Chief Darryl Anderson.

Note: Due to the lateness of the hour, this agenda item was delayed until the next Regular Session of the Bellaire City Council.
I. ITEM FOR INDIVIDUAL CONSIDERATION:

CONSIDERATION of and possible action on a recommendation from the Planning and Zoning Commission of the City of Bellaire, Texas, regarding a scope of work for the development of revisions to the Code of Ordinances of the City of Bellaire, Texas, Chapter 24, Planning and Zoning, Article V, Zoning Regulations, Division 2, Zoning District Regulations, to include specific revisions to Section 24-547, Urban Village (TOD) District (UV-T), and on possible direction to City Staff regarding such recommendation – Item submitted by Director of Community Development John McDonald.

Note: Due to the lateness of the hour, this agenda item was delayed until the next Regular Session of the Bellaire City Council.

J. COMMUNITY INTEREST ITEMS FROM THE MAYOR AND CITY COUNCIL.

Mayor Cindy Siegel referred to City boards, commissions, and committees and advised that applications were due by May 14, 2010, at 5:00 p.m. She noted that applications could be obtained from either Receptionist Tillie Wiedemann or Assistant to the City Manager Patte McGuire or from the City’s website.

Councilman Corbett Daniel Parker indicated that he had heard that the Tents in Town event was “amazingly good” and noted what a great job the Patrons for Bellaire Parks, Inc., and the City’s Parks & Recreation Department had done.

Councilman Will Hickman advised that he had no items of community interest this evening.

Councilwoman Mandy Nathan advised that the Bellaire Home Tour would be held on the second and third weekends in May and proceeds would benefit the Patrons for Bellaire Parks, Inc.

Councilman Andrew Friedberg advised that he had no items of community interest this evening.

K. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Mayor Pro Tem Phil Nauert and seconded by Councilman Corbett Daniel Parker to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 11:18 p.m. on Monday, May 3, 2010.
VOTE ON MOTION TO ADJOURN:

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

FOR:        Siegel, Cindy
            Hickman, Will
            Parker, Corbett Daniel
            Nauert, Phil
            Friedberg, Andrew
            Nathan, Mandy

OPPOSED:    None

ABSENT:     Avioli, James P., Sr.

Respectfully submitted,

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

Approved:

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Cynthia Siegel, Mayor
City of Bellaire, Texas