CITY COUNCIL MEETING MINUTES
MONDAY, DECEMBER 5, 2011

The City Council of the City of Bellaire, Texas, met in Special Session (Public Hearing) on Monday, December 5, 2011, in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401, for the following purpose(s):

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

Mayor Cindy Siegel called the City Council of the City of Bellaire, Texas, to order at 6:02 p.m. on Monday, December 5, 2011.

Also present were Mayor Pro Tem Phil Nauert, Councilmen Roman F. Reed, James P. Avioli, Sr., Corbett Daniel Parker, and Andrew S. Friedberg, Councilwoman Mandy Nathan, City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, City Clerk Tracy L. Dutton, Director of Community Development John McDonald, and Consultant Gary Mitchell, AICP, Vice President, Kendig Keast Collaborative.

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

City Clerk Tracy L. Dutton read the “Notice of Public Hearing” into the record. It was stated that the “Notice of Public Hearing” was posted on the City of Bellaire’s website and bulletin board on Tuesday, November 15, 2011, at 11:58 a.m. The “Notice of Public Hearing” was also published in the legal notices section of the Southwest News on Tuesday, November 15, 2011.

Notices were mailed to real property owners of record within the UV-T District and within 200’ outside of the UV-T District. There were 39 parcels of real property within the UV-T District, three of which were owned by the City of Bellaire. Five parcels of real property were owned by CenterPoint Energy and one notice was sent to them. Twenty-nine other notices were mailed. If the property description included land and a structure, notices were sent to the owner of record and tenant if the mailing address was different from the property address. There were 11 assumed tenants. Three notices were returned with the following notation: “Return to Sender - Unable to Forward.” The assumed tenants of the three parcels for which notices were returned were as follows: 1301 North First Street, 1321 North First Street, and 4950 Lehigh Street.
There were 38 parcels of real property outside the UV-T District within 200’. Thirty-seven notices were mailed to those properties, as two of the properties were owned by the same property owner. There were ten assumed renters and two notices were returned. One of the returned notices had the following notation: “Return to Sender – Attempted Not Known – Unable to Forward,” which was addressed as follows: William S. Victory, Jr., 4807 Saxon Street. The second returned notice, an assumed renter, had the following notation: “Return to Sender – Vacant – Unable to Forward,” which was addressed as follows: 4805 Saxon Street.

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

City Manager Satterwhite summarized the public hearing procedure for the evening.

D. PRESENTATION regarding proposed revisions and/or additions to various articles, divisions, and sections within Chapter 24, Planning and Zoning, of the Code of Ordinances of the City of Bellaire, Texas (“Code”), as follows: Article II, Definitions and Interpretations, Section 24-202, Definitions; Article V, Zoning Regulations, Division 1, Zoning Districts and Regulations of General Applicability, Section 24-524, Site Plan Review; Article V, Zoning Regulations, Division 2, Zoning District Regulations, Section 24-547, Urban Village (TOD) District (UV-T); Article VI, Amendatory Procedure, Section 24-604, Application for Planned Development Amendment; and Article VI, Amendatory Procedure, Section 24-619, Final Plan for Planned Development Districts – Presentation by Gary Mitchell, AICP, Vice President, Kendig Keast Collaborative.

Gary Mitchell, AICP, Vice President, Kendig Keast Collaborative, provided a brief presentation of the proposed revisions and/or additions to various articles, divisions, and sections of Chapter 24, Planning and Zoning, of the Code of Ordinances of the City of Bellaire, Texas (“Code”), which consisted primarily of revisions and/or additions to Section 24-547, Urban Village (TOD) District (UV-T) (“UV-T District”).

Mr. Mitchell noted that the UV-T District consisted of a little less than 30 acres; however, when the CenterPoint Energy properties and street rights-of-way were removed, the UV-T District really had only 18 developable or re-developable acres.

The assignment given to Mr. Mitchell’s firm by the City Council was to work with the Planning and Zoning Commission (“Commission”) directly through a series of workshops. The main concern expressed by residents during the workshop sessions held was traffic. Residents were intrigued by the potential for restaurants and amenities in the UV-T District. Throughout the Commission discussions, the adjacent or abutting neighborhood to the south
of the UV-T District was in the forefront of the minds of the Commissioners with respect to ensuring that the neighborhood was buffered.

As a starting point, the main two priorities for the UV-T District were to provide flexibility for the types of development or re-development that could occur in an area near a transit station, but to keep in mind the residential neighborhood to the south.

The proposed UV-T District provisions, as recommended unanimously by the Commission after its public hearing on November 8, 2011, included the key elements set forth below.

- An in-depth **purpose statement** that linked back to the 2009 Comprehensive Plan Update by emphasizing the transit-oriented development (TOD) potential in the UV-T District; the desire for a mixed-use pedestrian-focused setting that would provide amenities to Bellaire residents and visitors; and the need to buffer the established residential neighborhood to the south.

- A focus on **land uses** that both generated and benefited from foot traffic and were conducive to a mixed-use pedestrian-focused environment. An example of a “**mixed use**” was noted to be a building that had an office use, as well as a street-level restaurant, drug store, or dry cleaner. A commercial garage, which could be a principal use in the UV-T District, would also be required to have street-level activity.

**Accessory uses** were also discussed. Mr. Mitchell noted that a bar was not allowed as a stand-alone use—a bar could only be accessory to a structure, such as a hotel or restaurant. **Temporary uses**, such as a farmer's market activity or a weekend festival activity, were also discussed in the ordinance.

In addition, there was a specific list of **incompatible activities** that were not welcome in the UV-T District, as proposed. Many of the activities that were not welcome were auto-oriented rather than pedestrian-oriented.

- Incorporation of **development and design standards** that helped to establish and maintain an urban development character were included in the proposed ordinance. The establishment of a grid-block pattern for the UV-T District was also included. The maximum block size was noted to be 400’ per the ordinance. The streets that currently existed in the UV-T District were noted to have a 60’ right-of-way. Such a right-of-way would allow for one lane of traffic traveling in each direction, parallel parking on the sides, and wide, open sidewalks (10’ in width) to encourage foot traffic in the area.
With the CenterPoint Energy property at the south end of the UV-T District, there was a built in buffer of 180’. When the UV-T District changed from its previous zoning designation of Research, Development and Distribution Zoning District (RDD), there was a new requirement that any future parking that might occur on the CenterPoint Energy property had to be 50’ from the south property line (i.e., from the residential properties). Taking into account the 180’ of the CenterPoint Energy property and the 60’ right-of-way of Lehigh Street, there would be a 240’ buffer between the UV-T District and the residential properties to the south.

- The City’s ordinances contained a minimum parking requirement for the purpose of ensuring that a development could park the cars that would come with commercial office activity, etc. In the case of the UV-T District, a **maximum parking requirement** was proposed to ensure that the area would remain pedestrian-oriented and would not be dominated by parking. There was a process to get credits for on-street or public lot parking and automatic reductions for mixed uses that shared parking.

- The potential intensity of development was another frequent topic of discussion among Commissioners. The size of the site, surface parking limits, and economics would dictate the type of development potential. From a zoning standpoint, more utilization of a property was encouraged, in some cases, through a minimum building height, building setbacks, maximum block size, and intensity bonuses. In addition, the district used the floor area-to-site area (FAR) ratio to determine the minimum floor area. The minimum FAR ratio was noted to be 0.75, which would hold down the development intensity. Mr. Mitchell referred to a minimum height requirement of two-story buildings and noted that a height limit was not set.

With respect to a planned development, it was noted that the minimum site area would be two acres. There was an option in that if someone wanted to propose a smaller development than the two-acre minimum, that person could complete a planned development application. There were properties currently within the UV-T District that were just above the two-acre minimum and others that were smaller than the minimum. The blocks within the UV-T District that were near to the planned transit station, were proposed to be the properties with the most intensive density (north end of the UV-T District away from the residential district to the south). The City could entertain proposals to abandon the street rights-of-way in the north end of the UV-T District since those streets did dead-end near the proposed station at Westpark Drive or, conversely, to allow buildings above the streets.
• With respect to landscaping, there was a 10% landscape coverage requirement (thereby allowing 90% coverage by a structure and parking). Setbacks would be allowed if a development provided some public area, such as a plaza or a pocket park. A higher standard for street tree plantings was proposed for the UV-T District (i.e., 30-foot versus 40-foot spacing, as required in the City’s tree ordinance for other areas).

• Inclusion of architectural design standards were also proposed to promote quality, durable construction, and pedestrian-friendliness, as well as types of building materials, appropriate lighting, and underground local utility wires.

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

Mayor Siegel recognized citizens and/or other interested parties to address City Council at this time.

Leo Berger, 5315 Grand Lake Street, Bellaire, Texas, addressed City Council and advised that he owned a business at 1331 North First Street, which was located in the UV-T District. He indicated that as a resident and business owner in Bellaire, he was for development and wanted Bellaire to be a better place in which to live and to work.

Mr. Berger advised that he had a few concerns with respect to the proposed ordinance. He noted that the ordinance was based on the assumption that the Metropolitan Transit Authority of Harris County (METRO) would build a rail and rail station along Westpark Drive. As far as Mr. Berger knew, there was no funding for the rail at this point in time. He assumed that if the rail station was ultimately built nearby, it might be 8-10 years before construction was started.

The proposed uses for the UV-T District had changed. Prohibited uses were noted to be industrial and manufacturing, warehousing, wholesaling, and distribution facilities. If anyone had visited the UV-T District recently, the prohibited uses were the only uses currently in existence. At one time (approximately 15-20 years ago), a developer approached the City and wanted to construct a multi-family development in the area; however, his application was denied.

Mr. Berger’s building was constructed 20 years ago to comply with the permitted use at that time of “industrial facility.” If the proposed ordinance passed, the property owners and business owners in the area would be placed at a disadvantage. He inquired as to what would stop the City from making him move out of the UV-T District because he no longer met the City’s Code. He inquired as to how long he had and what his rights were with respect to
remaining in the UV-T District. To relocate now, would cost him 4-5 times more than it cost him in 1992.

Mr. Berger advised that he understood that the value of his property had increased since he purchased it in the late 1970s; however, he did not own a minimum of two acres, so a developer would likely not be interested in purchasing his property. He understood that the Commission had considered reducing the minimum planned development requirement to one acre versus two acres, but Mr. Berger was unsure if that had passed.

If Bellaire was really interested in developing the area, the City would leave the UV-T District zoned as it had been and add whatever was needed to ensure that the rest of the UV-T District could be an urban village.

If the rail did come through, he urged City Council to let growth dictate the development of the area and not the City. He concluded by noting that he was concerned about the rights of the current business and property owners in the UV-T District.

Greg Thompson (address not given) addressed City Council and noted that he owned property next to Mr. Berger on the Houston side of the UV-T District, which was a wholesale nursery, and also owned two acres on the Bellaire side of the UV-T District on the corner of Lehigh and First Street (a vacant piece of property), which he purchased approximately three years ago.

As a small business owner, he could certainly appreciate the concern for the evolution of what happened in the District. He stated that he liked the proposed ordinance for a variety of reasons. He believed it was a unique area in the Cities of Houston and Bellaire—a stone’s throw from the Galleria and close to the Medical Center and West University Place.

If the rail did come through (and he thought it would), it would profoundly change the whole area in a positive way for the property owners and ideally for the small business owners and for those persons who chose to redevelop it. It would take someone with a good vision to come in and develop the area. He had seen a few developments around transit stations in Austin and San Antonio recently, and it was amazing what could be done with small areas from a tax base perspective, from a pedestrian-friendly perspective, from a transit perspective, and from a small business perspective.

Mr. Thompson applauded the time that the City had put into the proposed ordinance, as well as the City’s vision for the UV-T District. Many things did have to fall in place with METRO and the property owners to make it happen. If it evolved the way it was presented, it would be wonderful for the City of Bellaire, the City of Houston, and METRO.

Bill Thorogood, 4507 Merrie Lane Drive, Bellaire, Texas, addressed City Council and stated that when the Comprehensive Plan started in the 1990s
(before the one currently proposed), nothing was happening in the RDD Zoning District. An attempt was made at that time to try to put in some artist’s lofts or housing into the area, but nothing at all happened. Unfortunately, the City of Houston had grown around Bellaire substantially and Bellaire had grown substantially. Bellaire needed some help in the residential sections of the community, as the cost of a home in Bellaire was quite expensive. The approach with the proposed ordinance was to try to provide housing as a starting point. Density was what Houston had become and Bellaire had to work with that a little bit or developers would go someplace else.

In the 1990s when the ordinance was modified, artist’s lofts were being constructed all over Houston, but nothing happened in Bellaire. Many asked what the problem was. The problem Mr. Thorogood believed was that the restrictions written in the Code to leave the UV-T District as it was, but make some minor adjustments, would not attract a developer. Developers made things happen. The City could only carve rules to meet what the citizens of Bellaire wanted to see within their community.

The UV-T District could be a cornerstone for Bellaire—a beautiful place. What the Commission had done and what Kendig Keast Collaborative had done with the UV-T District, was an outstanding approach. Mr. Thorogood expected that there would be grandfathering rules for those that were currently there.

Mr. Thorogood stated that he believed that there was a one-acre allowance for a planned development—so smaller property owners had some choices. The proposal answered questions from the height restriction side—with enough limitations with respect to setbacks or floor area ratios or street lengths that no one would build anything higher than a seven- or eight-story building.

He concluded by expressing his support of the proposed ordinance.

**Lynn McBee, 5314 Evergreen Street, Bellaire, Texas,** addressed City Council and noted that she had sat through every workshop, public hearing, and joint meeting that the Commission had on this matter. She wholly endorsed the conversion of the UV-T District area to a new use. She did believe that it was a “roulette wheel,” as no one really knew what would happen in the UV-T District.

Ms. McBee advised that Kendig Keast Collaborative had done an outstanding job on the proposed ordinance. If not for them, the proposed ordinance would not be before City Council, as the product could not have been produced by lay-folk. She commended everyone involved and noted that the patience of the Commission had been extensive, as had been the patience of the City Council.
In the proposed ordinance, letter of recommendation from the Chairman of the Commission, and the notice of the public hearing, there were several citations to changes. She commented that Director of Community Development John McDonald produced the plan via the Commission and Kendig Keast Collaborative. In the cover letter to City Council, a statement was made that the proposed amendments to the Code, Chapter 24, included five areas: definitions, site plan review, Urban Village regulations, the application for a planned development, and the final plan. Only one of the areas related to the Urban Village. The letter of recommendation from the Commission simply recommended changes to the Urban Village. It made no reference to all of the other sections within Chapter 24 that were proposed to change.

Ms. McBee advised that the members of the property owner group that appeared this evening for the public hearing were just a few. There were 28 residential lot owners present and throughout the process, great attention had been paid to protecting the residential quadrant south of the proposal. There were 15 or more commercial tracts and great attention had been paid to potential uses of those tracts. What was not discussed was the legal definition of nonconforming uses and structures and what options the City had to alter those legal requirements on nonconforming uses. This was the core of concern by the existing property owners in the commercial areas. No one provided the commercial owners with any memoranda as to what their rights and restrictions were under the proposed ordinance. They had come to the public hearings and had asked, but were told not to worry about it.

Ms. McBee urged City Council to get the City Attorney to address the topic of nonconformities (currently in the existing Chapter 24, Section 24-732) in order to protect the owners of property in the UV-T District now.

The answer related to the letter from the Commission and the adequacy of recommending all that was before City Council was certainly a legal question that Ms. McBee would not pretend to answer. In her opinion, it was insufficient to assert that all of the other sections included in the notice were recommended to City Council by the Commission.

As far as the overall concept, Ms. McBee stated that she supported the proposal, but the City needed to protect all property owners in and near the UV-T District.

[The speaker’s allotted time ended at this point]

**Mayor Siegel** read two written comments received by the City Council in care of the City Clerk into the record as follows:
Richard Franke, 1104 Howard Lane, Bellaire, Texas:

1. Condominiums require a mortgage just as single family homes do and do represent a meaningful alternative to Bellaire’s housing. City Staff does not seem to understand that.

2. My neighbors and I do not want any high density housing on the UV-T much less on the CenterPoint light industrial area should that property be sold.

3. If Bellaire can spend $100,000 on a park it should spend a comparable amount for a competent enterprise risk assessment to supplement the UV-T proposed study. That study is too narrowly focused on developments with no risk assessment, financial risk assessment or study of alternative uses.

Mr. Franke provided written comments to the Bellaire Planning and Zoning Commission during a public hearing held on November 8, 2011. He requested that those same comments be read into City Council’s record this evening:

1. This taxpayer is addressing a highly qualified group of Commissioners who have dedicated substantial personal time to the proposed Urban Village and TOD zoning provisions and the Comprehensive Plan that stimulated this effort. Tonight I would like to express some consideration by the Commission. I agree that the concept of an Urban Village is well worth exploring but the project has advanced to the point that it requires more in-depth risk assessment to ensure that it is in the best long-term interest of the City of Bellaire.

2. First question for the Planning and Zoning Commission: Do the Commission’s earnest efforts to attract developers through the proposed changes to Chapter 24 represent an unnecessary dilution of Bellaire’s zoning through indirect emulation of Houston’s unrestrained development practices? There is mention of quality and security but no details on how it would be accomplished. How will the long-term interests of Bellaire taxpayers be protected?

3. How does the Commission propose to vet and control developers to ensure that projects and construction practices are the high quality noted in the proposal and conformance to City Codes?

4. How does the Commission propose that the City of Bellaire fund the staff necessary to control these projects?

5. How does the Commission plan to evaluate proposed projects to ensure that incremental tax revenues are sufficient to make the
6. Comment: Proposed changes to Chapter 24 appear to be focused on internal risks and benefits without adequate consideration of external risks to the City of Bellaire presented by Metro’s light-rail (including the proposed Park and Ride at Newcastle and Westpark) and restricting residential development to condominiums.

7. Why does the City of Bellaire need “mixed-use development” rather than fee simple detached housing that has been so successful in areas such as Mid-Lane in Houston? Patio homes in secure gated projects and “brownstones” are quite popular. The owners are motivated to maintain their property and the community.

8. Has the Commission thoroughly evaluated the risks and benefits of condominiums? Does the State of Texas permit a chartered city to control the financial terms of condominium homeowner associations? What are the risks to the City of Bellaire if a condominium association fails to meet its financial obligations? What if it reverts to an apartment project or low-income housing?

9. Page 3 of 22, Item B. (4) a): Including single family dwellings (attached or detached) is unacceptable. Bellaire should continue to permit such dwellings to offer a market alternative to the growing number of high-rise condominiums and so-called luxury apartments. Previous boom and bust cycles in Houston area housing clearly favor the detached residential housing for which Bellaire is noted as a long-term investment. Alleyways should be prohibited. All detached and attached fee simple structures should have front loading garages.

10. How does the Commission expect to control parking by Metro riders who live outside the Urban Village?

11. Concerning structure height, the FAR concept is fine but the Commission should impose a firm height restriction of five stories (60 feet) including mechanical equipment on the roof and first floor parking.

12. The requirement for trees is commendable but the Commission should ensure that the tree wells effectively serve as root barriers to protect underground utilities and streets and sidewalks. Also, underground irrigation of the trees should be required. Question: Who is responsible for tree maintenance, interference with utilities and paving and irrigation costs?

13. It is recommended that much more detail be provided about proposed security measures.
Margaret Belmontes, 406 Heidrich Street, Houston, Texas:

My name is Margaret Belmontes. I reside at 406 Heidrich Street, Houston, Texas, and am a Community Planner for the Texas Masonry Council.

I understand that the City Council will hear public comment on proposed changes to the City’s Code of Ordinances, Chapter 24, and wish to express my support.

I have had the opportunity to look over the Urban Village TOD Ordinance, and believe it to be EXCELLENT, providing a framework to encourage higher-density, walkable and sustainable development in an area which has not been as quick to develop or redevelop as the rest of Bellaire. In my opinion, this ordinance was drafted in such a way that it not only provides a place for higher-density development, but it ensures that the development will NOT be at the expense of current residents, but rather a benefit, creating a potential destination for Bellaire residents to gather, shop, live and work.

Through careful consideration of architectural elements, this ordinance could not only shape development into something like Houston’s City Centre or Sugar Land’s Town Square, but also remove the threat of urban decay by requiring such development to be constructed of high quality, durable materials that will hold up, require little maintenance, and contribute to the long-term sustainability of the community.

I strongly encourage you to vote for the adoption of these changes.

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

Mayor Siegel recognized members of City Council who were interested in asking questions of Consultant Gary Mitchell of Kendig Keast Collaborative and/or Director of Community Development John McDonald at this point in the meeting.

G. CLOSE OF PUBLIC HEARING – Mayor Cindy Siegel.

Mayor Siegel advised that oral comments would not be received following the close of the public hearing. Written comments could be submitted to the City Council of the City of Bellaire, Texas, in care of the City Clerk prior to final deliberation on the matter. Since the matter was slated for deliberation on Monday, December 12, 2011, Mayor Siegel asked City Council if anyone would mind if the written comment deadline was extended from noon on Thursday, December 8, 2011, to 1:00 p.m. on Monday, December 12, 2011. After noting no objections from City Council regarding the extension of the written comment deadline, Mayor Siegel closed the public hearing before the City Council of the City of Bellaire, Texas, at 7:35 p.m. on Monday, December 5, 2011.
H. ADJOURNMENT.

Councilman Roman F. Reed moved to adjourn the Special Session (Public Hearing) of the City Council of the City of Bellaire, Texas, at 7:35 p.m. on Monday, December 5, 2011. Councilwoman Mandy Nathan seconded the motion. The motion carried unanimously on a 7-0 vote as follows:

FOR: Mayor Cindy Siegel, Mayor Pro Tem Phil Nauert, Councilmen Roman F. Reed, James P. Avioli, Sr., Corbett Daniel Parker, and Andrew S. Friedberg and Councilwoman Mandy Nathan

OPPOSED: None

ABSENT: None

Respectfully submitted,

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

Approved:

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Cynthia Siegel, Mayor
City of Bellaire, Texas