CITY OF TONKA BAY
ITEM NO. 4A

MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
September 23, 2014

1. **CALL TO ORDER**
The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:00 p.m.

2. **ROLL CALL**
Members present: Mayor De La Vega, Councilmembers Anderson, Ansari, Clapp and Grothe. Also present were City Administrator Kohlmann and City Attorney Penberthy.

3. **APPROVAL OF AGENDA**
Anderson moved to approve the agenda as submitted. Ansari seconded the motion. Ayes 5. Motion carried.

4. **CONSENT AGENDA**
Anderson asked about an expense on the Financial Report for a roller whacker. He asked what it is and why it costs $3,000. Kohlmann stated the roller on the patcher broke down and needed to be replaced. He indicated it is used for all the patching.

De La Vega stated since the meeting minutes are verbatim, he couldn't see any reason for corrections.

Anderson moved to approve the consent agenda as presented approving:
A. Regular Meeting Minutes of September 9, 2014
B. Financial Report
C. Resolution No. 14-28, 42 Woodpecker Ridge Road

Clapp seconded the motion. Ayes 5. Motion carried.

5. **MATTERS FROM THE FLOOR**
A. **Dean Pearson, 115 West Point Court** stated his main complaint is that we are being overrun by large animals, be it turkeys, deer, whatever. They are just destroying our gardens and landscaping. He asked if it is illegal to feedi wild animals. De La Vega stated this item is on the agenda. He stated there is an example ordinance that prohibits feeding wild animals, but that is

what will be discussed on tonight's agenda. He invited Pearson to stay to discuss the item.

Pearson asked if there has been any consideration to try and limit the numbers of turkeys or deer. De La Vega stated that is also on the agenda. He stated two of the sample ordinances received have ways to limit the numbers.

Pearson stated he is not an animal hater, but there are too many animals in such a confined space. He didn't know how the numbers can be limited. De La Vega stated there are guidelines that are going to be discussed.

6. SPECIAL BUSINESS

None

7. PUBLIC HEARINGS

A. Wellhead Protection Plan, Part II

Kohlmann stated Kelsey Johnson is here to briefly discuss the Wellhead Protection Plan, Part 2. He stated this is a public hearing, and public comments will be heard.

Kelsey Johnson, City Planner stated this is a public hearing for the City's Wellhead Protection Plan, Part 2. She stated the Council will recall that Minnesota Rules require the City to adopt such a plan. The City's Part 1 of the WPP was approved by the Department of Health in June of 2011. She explained that Part 1 delineates the Wellhead Protection Area (WHPA), drinking water source management area (DWSMA), identifies where the three municipal water supply wells are located, and completes a well and aquifer vulnerability assessment. The assessment looks at what times of geologic formations we have and what would happen if a contamination occurs and how long it would take to get into the wells and aquifer area. All of Tonka Bay's DWSMA is located in area of low vulnerability.

Johnson reviewed a drinking water management area map which outlines the DWSMA which identifies a majority of the area in the vicinity of Lake Minnetonka. When you take a look at all the criteria for the Part 2, it really zeroes in on land uses. The scope evaluates data elements such as physical environment which includes the types of land uses, what public utilities are available, and what type of water quantity/quality is available. The inventory of potential contaminants is based on MPCA data base and anything we have on file relating to underground tanks. The plan also

contains management goals and objectives and a plan of action and evaluation. She reviewed the action plan which states the City will do the following in the next ten years to educate the community about the importance of wellhead protection planning and potential contamination. She stated there is information available for newsletters and mailings. She stated there are grants through the DOH to help pay the costs of implementing the plan.

Johnson stated this plan was sent to the other cities within the DWSMA and Metropolitan Council and watershed districts. We received minor comments from the Metropolitan Council. She stated tonight is the public hearing and the plan will be sent to the Metropolitan Council. Following approval, the City will have 120 days to implement the plan. She asked the City Council if they had any questions.

Grothe stated over the years, the withdrawal of water has gone down substantially. Johnson stated she didn't have any indication why this was happening.

De La Vega stated residential sales have been going down, and there have been wet springs.

In response to a question from Grothe, Johnson stated the City will be required to implement all of the requirements in the plan. She discussed how WSB would help staff with the implementation.

De La Vega opened the hearing for public comments. There were none. De La Vega closed the public hearing.

De La Vega stated with every objective, there is a cost associated with the implementation. He asked if it has been calculated what the total cost will be to implement the plan and if there is anything in the budget. Johnson stated a lot of it can be part of the grant application.

Clapp asked if this would be fully implemented in 2015. Johnson stated it would. She stated there are many articles that can be implemented in the newsletter.

Anderson moved to adopt:

RESOLUTION NO. 14-30

A RESOLUTION ACCEPTING PART 2 OF THE CITY OF TONKA BAY'S WELLHEAD PROTECTION PLAN FOR SUBMISSION TO THE MINNESOTA DEPARTMENT OF HEALTH

Grothe seconded the motion. Ayes – De La Vega, Ansari, Anderson, Clapp and Grothe. Motion carried.

B. Variances – Heggedahl/Westby, 105 West Point Avenue

Johnson stated there is a request for two variances at 105 West Point Avenue. It is zoned R-1A with a shoreland overlay. She reviewed the aerial photograph which showed the location of the existing structure. She reviewed the request for lot area and lot width variances. A side yard setback is required for the accessory structure and a rear yard setback.

Johnson reviewed the site plan. A home is being proposed further to the south, and the detached garage will be shifted closer to West Point Avenue. She indicated there is a power pole on the site which is situated in such a way to guide the location of the driveway.

Johnson reviewed the building elevations. She also reviewed off-site parking spaces.

Johnson reviewed variance criteria for approval of the request. She stated there are circumstances unique to this property. She indicated the house will meet side yard setbacks. The applicants have done their best so the detached garage will not be on the property line.

Johnson stated staff is recommending approval of the request.

De La Vega opened the hearing for public comments. There were none. De La Vega closed the hearing.

Grothe stated the closeness to the road is less of an issue due to the way the road goes. It appears there is a large area there. He stated anything that would be done to move it would impact other setbacks. He believed it is a very attractive house.

De La Vega stated he liked that they are improving on the current property. We are dealing with many small lots in this area, and we are dealing with what is there. The proposal is consistent with the area.

Anderson moved to direct staff to prepare Resolution 14-31 approving the requested variances to allow the proposed construction of a new home and detached garage on 105 West Point Avenue, based on the findings of fact listed in the staff report and nine conditions. Grothe seconded the motion. Ayes – Ansari, Anderson, Clapp, De La Vega and Grothe. Motion carried.

C. **Variances and CUP – Jennings, 35 West Point Avenue**

Johnson reviewed the request for variances and a conditional use permit. She stated the property is zoned R-1A with a shoreland overlay and discussed the lot size. She reviewed the aerial photography showing the location of the lot and detached garage. She noted there is a lot of impervious surface for the driveway that will be reduced as part of the construction.

Johnson reviewed the variances required from lot area, lot width and rear yard setback. A conditional use permit is requested for impervious surface. She reviewed the home being proposed. The home will be larger, but the reduction to the driveway surface is quite significant. The garage will not meet the rear yard setback. The proposed attached garage will be moved back further from the lot line. She reviewed building elevations.

Johnson reviewed the statutory requirements for approval of variance requests. She stated there are circumstances unique to the property regarding lot area and lot width. She also reviewed the criteria necessary for approval of a conditional use permit.

She stated staff is recommending approval of the request.

Grothe asked if the property to the north is correct on the survey shown. Johnson indicated it is not. A new survey was requested.

Grothe also discussed his concerns about the chimney and building height.

Clapp asked what the current impervious surface on the site now. Johnson indicated it was 48.5%.

De La Vega opened the public hearing for comments. There were no comments, and the public hearing was closed.

Grothe noted in the elevations, a gate to the lake is shown. He asked the architect if that is something they intend to do. The architect indicated it is

something they would like to do. Grothe asked as a stone structure with a peak to it, when would it become a structure element. If it is stone, it is a substantial structure. Penberthy stated it is something to do. They don't have it in the plans now. If you approve the application and approve the resolution, it would not be permitted. We don't know what it is going to be, but it is not being done right now. If and when it was presented to you, you would have to decide whether it was a fence, structure or what it was. He stated if it is an issue, the plan as presented would be approved and nothing more. The owners could come back with an additional request.

De La Vega stated that is how we proceed with any requests – the plan is the plan.

Anderson moved to direct staff to prepare Resolution 14-32 approving the requested variances and conditional use permit to allow the construction of a new home on 35 West Point Avenue, based on the findings of fact listed in the staff report and eight conditions. Ansari seconded the motion. Penberthy asked if the additional option was going to be included. Councilmembers discussed the gate option. The architect indicated if it classified as a structure, they would most likely not proceed. The options on the plan were options for the owners and not for discussion with the City Council. Johnson stated we would evaluate any additional information when it is presented. Any modification to what is presented tonight would need to come back. Ayes – Ansari, Anderson, Clapp, De La Vega and Grothe. Motion carried.

8. OLD BUSINESS

None

9. NEW BUSINESS

A. LMCD Representative – Appoint

Kohlmann stated staff has brought back a recommendation for an appointment to the LMCD. He noted Gregg Thomas has interviewed with representatives of the City Council and staff. He is anxious to begin.

Clapp moved to adopt:

RESOLUTION NO. 14-33
A RESOLUTION AMENDING RESOLUTION 14-01
OFFICIAL CITY APPOINTMENTS

Anderson seconded the motion. Ayes – De La Vega, Ansari, Anderson, Clapp and Grothe. Motion carried.

B. Deer Management

Kohlmann stated staff has requested the process for developing a deer management plan. He stated typically, in the winter, the City would contract a company to fly over the City and count the number of deer. He indicated the DNR suggests 25 deer as the benchmark. He also reviewed three options from three cities which outlined various methods. He also discussed options which range from opening up a hunting season to not feeding the deer.

Grothe asked if the sharpshooters would be the bow hunters. Kohlmann believed there are different levels.

De La Vega stated Shorewood's ordinance is very comprehensive. He stated we currently prohibit any weapon in Tonka Bay. He asked how we would contract with someone to bring in a weapon. Penberthy stated we would look at the ordinance we have now to see if it needs to be amended to include the management of deer and turkeys.

De La Vega believed the population survey should be done as a first step. A snow cover is needed first.

Grothe stated just to have the record of it is a good step.

De La Vega stated some research into talking to bow hunters would also be needed. Another thought is whether or not we should take a survey of the community to gain a sense of the community. His gut feeling would be that they would be very open to this. He hated to get down the road and find that eighty-five percent of the community is opposed. He stated you do need to notify residents if this is going to be implemented.

Diane Pearson, 155 West Point Court asked about the issue of feeding animals. De La Vega stated if you are going to do a deer management ordinance, the feeding must also be addressed. He stated Golden Valley prohibits feeding without any other management program. He didn't know how effective this would be.

Pearson asked if feeding the animals would encourage them to come into yards. De La Vega believed it does as well as the spread of disease. He believed there are a number of deer that are very comfortable with human

contact. He stated there are second and third level issues with feeding wild animals which can be discussed.

Clapp asked how we would police the feeding ordinance, who would enforce it. Penberthy stated most penalties would be misdemeanors, there would be civil remedies. The criminal court frowns on having these brought to their court. If you see a neighbor feeding deer, what kind of proof is needed to bring it to court?

Grothe discussed his concerns about wild animals eating the seed from bird feeders on the ground. Penberthy discussed public education which is very effective. He stated it is very difficult to enforce in court. He stated peer pressure is also effective.

Deanna Erhart, 105 West Point Court stated the population has increased and appears to be concentrated in the area of five homes. She didn't know how it could be enforced.

De La Vega stated we currently don't have a regulation. If we did create an ordinance, it would be on the books. There is some potential for positive outcomes. He agreed it is difficult to enforce. He did believe that making a statement on the City level will go a long way to helping people deal with others. He stated this should be considered as a separate issue. He didn't know how turkeys would be added as sample ordinances do not address turkeys.

Grothe stated no matter what, there needs to be a flyover this winter. He suggested something be put in the newsletter to note we will be doing this and indicate we are looking at a no feeding ordinance. De La Vega stated that would be done after the survey is done. He stated we are looking at least a year before the endpoint is reached. In the meantime, we should do something to move forward including involving the community. He asked the City Council if it is something that should be pursued.

Clapp stated his yard is full of deer. He loved the idea of surveying the residents and surveying the deer by helicopter after the written survey is completed.

De La Vega stated it is important to take into account what the sense of the community is. He stated there is also a large contingency in the area of Birch Bluff Road.

Clapp believed the deer population has exploded.

De La Vega stated we want to move this forward and take a look at how to get on the schedule to get the count done and put something in the newsletter.

Ansari asked if it is new that the deer have been feeding due to the harsh winter. Erhart stated the deer of aware of when feeders are filled.

A member of the audience stated the people who are feeding the deer have fencing and can control their yard. He suggested if a survey is done, you don't want to mention sharpshooters. He believed there are too many deer in the City.

De La Vega stated the concept at this point is data gathering. Clapp believed the survey of residents needs to be very specific. Penberthy suggested a draft survey be brought back for review.

10. MATTERS FROM THE FLOOR

None

11. REPORTS

A. Administrator – Kohlmann stated the minutes were 28 pages long for the September 9 meeting. He suggested voice-activated software be purchased. De La Vega asked if hard copy minutes are required. Penberthy stated historically, yes, but that was before audio. If we are going to be sued, the judge will want to look at the video. The Council must be presented with minutes to approve. The format would change which would be a verbatim transcript. He stated it is important to get people to the podium when speaking. He stated the end product would be absolutely accurate. Also, the discussion about the Birch Bluff Road traffic, for example, would all be on the record.

Grothe asked if it would be specific that it would identify each person talking. Penberthy stated it would have to be reviewed and the person speaking would be inserted. Grothe stated he likes the accuracy of the minutes but questioned how much is really needed.

De La Vega stated the assumption is it is verbatim. With Dragon, with minor editing, it will be thorough. He stated we have to start incorporating more technology in how we are doing business. Penberthy stated it is very important, and franchise moneys would be used for laptops, for example.

The packets would be on the laptop rather than paper. De La Vega encouraged keeping on that track. Penberthy stated it would be better to have everything here that would be transmitted to a dedicated laptop. If we had to, we could encrypt it with passwords. Grothe stated the majority of the packet is on the City's website. De La Vega asked when the "whiteboard" would be available. Kohlmann stated they won't bring one out as a demo, but we can go to their office to look at it.

B. **Anderson - Finance, Fire Lanes and Public Access, Technology** – no report

C. **Ansari – EFD, Sanitation and Recycling, Southshore Community Center** – Ansari stated it isn't necessary for everyone to have a complete set of plans with applications. Anderson stated they are also very expensive. Penberthy stated the Council makes a lot of corrections. Grothe stated there are times you just cannot read the smaller plans. Clapp stated electronic versions can be made bigger. Penberthy stated there is technology that would make the plans bigger and keep the correct scale. He stated it is very expensive for a resident to apply for a variance or CUP. We want to be sensitive to that. De La Vega stated a lot of what we approved tonight had to deal with the size of the lot. Ansari stated there is an EFD Board meeting on the 24th.

D. **Grothe – Building Inspection, Municipal Buildings and Grounds, LMCC** – no report

E. **Clapp - Parks and Playgrounds, LMCD, Commercial Marinas, Municipal Docks** – no report

F. **Attorney's Report** – no report

G. **De La Vega - Public Works, SLMPD, Administration** – De La Vega stated he represented the City at the new library opening. On October 3, he will race through the aisles of Cub for the Race for Hunger.

12. ADJOURNMENT

There being no further business, it was moved by Anderson to adjourn the meeting at 8:28 p.m. Grothe seconded the motion. Ayes 5. Motion carried.

Attest:

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Clerk