

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING November 10, 2015

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 Crawford and City Attorney Penberthy.

3. **APPROVAL OF AGENDA**

Anderson moved to approve the agenda as submitted. Clapp seconded the motion. Ayes 5. Motion carried.

4. **CONSENT AGENDA**

Anderson moved to approve the consent agenda as presented approving:

A. Regular Meeting Minutes of October 27, 2015 as amended: Page 2, delete the phrase: "as well as a floodplain buffer variance"; Page 5, change first two sentences to read: "De La Vega stated he would like to see Hazellewood as an option as well as Heartbreaker..." and "Clapp suggested the new business coming in"; under 11A, change sentence to read "De La Vega stated he would be willing to consider such an agreement"; page 6, delete sentence "De La Vega asked if there are any issues with the police".

B. Res. 15-26, Variance/CUP – Uhl, 4348 Manitou Road

C. 2015 Beach Report – Clapp stated he liked the report. De La Vega indicated we don't have a procedure to provide information of parties. He was concerned about the number of beach days closed as a result of e-coli events.

Ansari seconded the motion. Ayes 5. Motion carried.

5. **MATTERS FROM THE FLOOR**

None

6. **SPECIAL BUSINESS**

None

7. **PUBLIC HEARINGS**

- A. **Continued Variance and CUP Request – Steele, 160 Sunrise Avenue**
Crawford stated there is a variance request for 160 Sunrise Avenue. She introduced Brianne Rothstein, a planner from WSB & Associates who is covering for our regular City Planner, Erin Perdu.

Rothstein reviewed the request for a variance for 160 Sunrise Avenue which is zoned for single family residential. She reviewed an aerial photograph of the property showing surrounding uses. Street views of the property were also shown. She noted there were a variety of styles, setbacks, and new and old houses in the area.

Rothstein discussed the variances required for a large addition to the home. Variances are required from lot size, lot width, front yard setback, side yard setback, and the minimum fill elevation. She stated there are also two conditional use permit requests for floor area ratio and shoreland impact plan for impervious surface coverage. Rothstein reviewed the proposed addition to the property on a survey view of the property. She stated the lot is only 4600 square feet.

Rothstein reviewed the criteria for approval of variances and conditional use permits. She also noted there is a plan for a mechanical room which will be located in the floodplain area. The finished floor elevation is 930.4 feet which is 3.1 feet lower than the required minimum finished floor elevation. She stated the floor must be raised, or the applicants must apply for a conditional use permit for alternative flood proofing. She stated a condition has been added to this effect. She stated staff is recommending approval of the request. Another option is to continue this request until the applicants apply for the additional CUP.

Grothe asked why the fireplace bump out area is not being considered in the setback calculations. Rothstein stated it is a cantilever. She indicated the City Code allows for encroachment into the setback for bump outs. Grothe stated he believed this should have to meet the setback requirement.

De La Vega stated this is a continued hearing and requires a motion to open the public hearing.

Anderson moved to reopen the public hearing. Clapp seconded the motion. Ayes 5. Motion carried.

Preston Fox, Four square Builders indicated this is a very small lot. The applicants have a challenge because of this. Grothe stated he did not want to approve a variance and have it exceed that after the fact. Clapp asked if the stairway is being removed. Fox indicated it will be removed.

De La Vega asked if the mechanical room should be part of our consideration tonight. Rothstein stated one of the conditions is that this be remedied through another conditional use permit. It was brought up in the original pre-application process and was not remedied. Crawford stated they have applied for a conditional use permit since that time, and it will be considered at the meeting on December 8.

Grothe stated he would like to see the information on the mechanical room.
Anderson moved to continue the request to the December 8 meeting. Clapp seconded the motion. Ayes 5. Motion carried.

B. Variance and CUP Request – McMahon, 60 Wildhurst Road

Crawford stated this is a variance and CUP request for the property at 60 Wildhurst Road. She introduced the City Planner, Breanne Rothstein.

Rothstein reviewed the request through aerial photography which showed surrounding uses. She indicated there is currently a detached garage on the property.

Rothstein reviewed the two requests for a variance from the maximum area for an accessory structure. The proposal will exceed the required by 218 square feet. The CUP request is for the height. Where 15' is allowed, the applicants are proposing 21'4". She reviewed a survey of the existing property and what is being proposed. She reviewed building elevations.

Rothstein reviewed the criteria for approval of a variance as well as what is required in order to approve a conditional use permit. She indicated the applicants are proposing a full bathroom in the garage which is prohibited by City Code. She stated the Council may want to consider how this could be constricted as a future dwelling unit.

Rothstein stated the request for the height CUP is reasonable as it is consistent with the current dwelling. Staff recommended denial of the

variance to increase the size of the structure and stated it could be reasonably reduced to meet City Code. If the CUP is approved, a restrictive covenant should be in place to prohibit a dwelling.

Clapp asked what the increase in the proposed structure will be. Rothstein stated it is actually a decrease but exceeds what is permitted.

Grothe asked if this would be in front of the City Council if it were an attached structure. Rothstein indicated it would not.

De La Vega opened the hearing for public comments.

Dan Murphy, representing the applicant stated the owners are deliberately making the structure smaller. They combined the lots. The existing structure is falling down, and there isn't any storage area available. They are willing to put any conditions that are required. They are trying to decrease the hardcover on the entire property. They tried to make it meet the required square footage. He indicated the neighbors have been included in all the designs to help them find something that will work for everyone.

Grothe asked what the purpose of the little fenced area in the back will be. Murphy indicated it is for a dog. Grothe asked what the future paint and dog wash will involve. Murphy stated it will not be for paint and will be hooked up to the City sewer. He stated the reference to paint will be removed.

Clapp stated this is a gorgeous lot, and the existing garage is closer to the street. It currently does not fit in with the house. He didn't see any problem with the proposal, and you won't see the proposed garage from the road.

De La Vega stated this is a large property, and it can accommodate the use. He stated he didn't like to make exceptions unless there is a need. He stated this could never be a rental property or apartment, and this would not be approved as that. Murphy stated they are willing to comply with all requirements imposed by the City. De La Vega stated it is very close to being livable space. The 1,000 square foot size limit was discussed.

Grothe stated the proposal is smaller than what currently exists on the property. He didn't want to see it become a guest house.

Anderson asked if it would be heated. Murphy indicated it would be a heated garage.

De La Vega stated he would be more comfortable if the garage did not include a bathroom. Murphy stated the owners will sign whatever the City wants to ensure that this will not be used for livable space.

Penberthy stated the Council should state for the record what is unique about the property that would allow the variance.

Murphy asked if the large lot is the unique feature. Penberthy stated it is not, and there is plenty of room to attach the garage. In the legal sense, it is not unique.

Murphy stated the width of this matches the width of the existing attached garage. If you start narrowing the garage, you will need to change the gable and it will fundamentally change the architectural appearance. De La Vega asked Murphy to provide proof.

In response to a question from Clapp, Penberthy defined a covered walkway and indicated it would become part of the structure.

Council discussed attaching the garage to the main structure. De La Vega stated it is tough getting beyond what makes this property unique to allow this request. He stated options should be considered.

Murphy asked for clarification of what additional information would be required. Council discussed a motion.

Penberthy stated the CUP has to come first and then the use has to be drawn up. De La Vega stated a covenant is not needed until a CUP is approved. Penberthy stated in order to approve the CUP, we need to determine the use. The first issue is on the variance, and the request is to allow for an excess in square footage. The question is what about the property allows us to approve this. Penberthy stated the City Council needs to come up with specific evidence to approve it.

Clapp stated he didn't believe we could approve this. Grothe stated it sounds like we should deny the variance and continue the CUP.

Rothstein reviewed recommended motions for approval and denial of the request.

Penberthy recommended the motion to deny the variance and continue the CUP to allow for plan revisions.

Grothe moved to direct staff to prepare a resolution to deny the request for a variance due to the lack of criteria for an increase in the square footage of the accessory building and continue the CUP request. Ansari seconded the motion. Ayes – Anderson, Ansari, Clapp, De La Vega and Grothe. Motion carried.

8. **OLD BUSINESS**

None

9. **NEW BUSINESS**

A. **Sign Ordinance Interpretation**

Penberthy stated there is a sign request to install an electronic sign on the pier above the former MGM site on the north end of Tonka Village Shopping Center. He stated the request can be granted with the condition that the criteria in the sign ordinance be met. He stated the biggest issue is the sign itself which creates an interpretation issue. The ordinance states you can have a sign but must run parallel with the face of the building. He stated face is singular in the ordinance which raises the question of where the singular face is on the building. The sign would run parallel to the Caribou Coffee face at the south end. He stated if you have an interpretation that can be interpreted in two ways, either way is reasonable but would also create an ambiguity. Ambiguities are granted in favor of the owner. He asked for the Council's comments.

Grothe stated he would assume it would be the face that it is next to which would not be viewed from the road.

Crawford stated we don't have the application to review at this point.

De La Vega stated if it is attached to a wall, it is attached to the face. Penberthy stated then there are four faces. De La Vega stated the problem is it should say "surface" rather than "face". It is not one side or another, it is all sides. Council discussed the interpretation of "face" as it pertains to a sign.

Penberthy stated the only issue is what is considered the “face” of the building. He suggested the sign be approved subject to an application.

Crawford stated we aren’t talking about the application at this time.

The Council and Penberthy continued their discussion of the interpretation of “face”.

Grothe stated the problem he has is this is not a wall, it is a pylon. He asked if the pylon needs height restrictions for the building. Penberthy stated that would come later. All that is being asked tonight is whether they can move forward with their plan to install the sign at that location. It was the Council’s consensus that the application should continue.

B. Variance Fee Waiver Request

Crawford stated the Chamber of Commerce asked that the variance fee be waived for banners on poles in front of Tonka Village Shopping Center. Laura Hotvet was present to answer any questions. A map of where the signs would be located was included. A sample banner was also provided.

De La Vega stated in his opinion the placing of these banners during the holiday season is exempt from a variance under our current ordinance. Anderson read Section 330.04 of the sign ordinance.

Penberthy stated that he had no comments because he didn’t know what was being proposed. De La Vega explained the request. Penberthy questioned whether the proposed sign refers to a holiday. Penberthy stated it is up to the Council what they will decide. De La Vega believed it fits under the terms of conditions of Section 330.04, subdivision 2. Penberthy stated the other issue is the expenditure of public funds.

De La Vega asked how many of the Tonka Village businesses are Chamber members? He asked where the signs would be located. Would they be attached to structures that would need approval from anyone else? De La Vega stated we don’t know if the Tonka Village owners have approved this request. He would also like to know if there are any costs involved. Crawford stated there would just be the cost of labor. Penberthy stated there is a question of whether the exemption would apply to a banner in the public right-of-way or attached to a utility pole. He indicated there is a prohibition to this. Penberthy suggested a specific

proposal be provided in order to determine whether a variance would be required.

Anderson stated looking at the banner, everyone knows these are holiday banners. Penberthy stated there is a concern about separation of church and state.

De La Vega and Grothe both liked the idea of the banners.

Laura Hotvet, Chamber of Commerce stated many of the Tonka Village businesses are Chamber members. She explained the banners are meant to promote local businesses during the holiday season. The Chamber covers the cost of the bucket truck to install the banners. She indicated there are eight poles that would be used for the banners. Hennepin County has indicated the Chamber would need the City's approval. Dave Wisdorf from the City of Excelsior would work closely with Tonka Bay's city staff to install the banners. She stated the sample banner is an example of the size of the banner proposed.

De La Vega asked if the owners of the shopping center have been contacted for their approval. Hotvet stated the poles are not located on the shopping center property.

Clapp stated a motion to approve is not needed if a permit is not required. De La Vega suggested a motion be made to support the request.

Penberthy stated nothing is allowed in the right-of-way. It doesn't matter if it is a County road or an interior street. He stated the City Council needs to consider this carefully. Anderson asked what paragraph that would be in the sign ordinance. Penberthy replied he did not know and was not going to take the time to look it up right now. He was concerned it would be illegal if approved. De La Vega asked what the premise of that would be in what respect. Penberthy stated he wasn't going to get into specifics. He stated if the Council wanted to approve it, then they should go ahead and approve it. It would be approved without full knowledge of all the facts and without an analysis of all the consequences. Anderson stated according to the ordinance, non-advertising signs are allowed in the right-of-way.

Clapp asked if they are approved, would they be taken down at that point.

Penberthy stated they have already been approved, and it would be too late. Clapp asked what the problem would be then. Penberthy stated he

didn't know who would complain or if the NAACP would come out. He stated trying to figure out who is going to complain to justify the action is no justification at all.

Grothe stated it isn't the City putting up the signs. Penberthy stated it is, and the question remained if the public expense is allowed. He stated we can't rush into anything just because we're running out of time.

Grothe suggested this be continued to the next meeting. Penberthy stated if they want to do it, we can find a way to do it. Crawford stated the next meeting is the same day as the proposed installation. Clapp suggested our staff donate their time. Crawford stated there are many logistical issues involved with this, and she felt it would be silly to debate over this.

Grothe again stated he would like to have this brought back to be prepared for next year.

De La Vega stated he believed there was no enthusiasm to make the decision tonight.

Penberthy explained why Excelsior has more freedom than Tonka Bay to hang signs.

De La Vega stated a staff update of what the issues are, why we cannot do this, and how the sign ordinance section would allow or not allow this should be provided for the next meeting. He stated he would be in favor of this, but he didn't think the votes to approve this would be there for tonight.

C. Special Event Permit Request

Crawford reviewed a special event permit from the Chamber of Commerce for the Tonka Bay Beer and BBQ event on August 13, 2016.

De La Vega asked if the name has been decided as he would prefer it to read Tonka Bay BBQ and Brew. Hotvet reviewed the proposed graphic stating that BBQ is first in the name.

Ansari asked if there are costs involved with security. Hotvet stated the Chamber will pay for the costs. De La Vega stated it is a Chamber event held at Manitou Park.

De La Vega stated this seems to go beyond our park hours and if this would need to be changed. Hotvet stated this is a professional event with some very serious setups. They are used to setting up in parks and parking lots. She stated the participants would be located inside the park. Crawford stated it is chained off with one access road into the park. De La Vega was also concerned about driving on the turf. Hotvet stated they wouldn't set up on the ball fields or the sport court. Crawford stated they are proposing to be on the soccer field. De La Vega stated we should also coordinate with the Little Leagues schedules.

De La Vega asked if neighbors would be notified. Hotvet stated they would be notified.

Ansari asked if there is a parking plan. Hotvet stated it is hard to determine how the flow will be here. They plan to reach out to Tonka Village, the bus garage, and other pockets of parking. A shuttle van is also proposed.

De La Vega stated signage will be very important given the location of the park. Hotvet stated they would work very closely with SLMPD to make sure this is a safe event.

Council members reviewed application fees.

Anderson moved to approve the special event permit. Ansari seconded the motion. Ayes 5. Motion carried.

D. Sign Permit Request

Crawford stated this sign permit request is in conjunction with the temporary/seasonal sales permit approved at the last City Council meeting.

Grothe asked if the height can be changed so the drawing shown matches the application so it is up to 30 inches.

Anderson moved to approve the sign permit request for a sign up to 30" high. Clapp seconded the motion. Ayes 5. Motion carried.

E. Establishing Operating Principles

Crawford stated staff has been working at creating operating principles. Responses were combined into one document, and then six principles were created.

De La Vega applauded the staff for going through the process. He shared examples of what he uses in his organization. He stated he would like the City's principles to be short and sweet. He offered to help edit them and bring them back to staff for review.

Clapp asked if other cities were asked for their principles. Crawford stated these principles are unique to our staff, but we did review other cities.

Grothe stated he liked the idea of keeping things simple, but never simpler (Albert Einstein).

10. MATTERS FROM THE FLOOR

None

11. REPORTS

- A. **Administrator** – Crawford stated a letter was received from Nextel stating they would like to terminate their antenna lease. A letter is provided is the same letter provided for a similar request in the past. **Anderson moved to authorize staff to mail the letter to terminate the lease. Grothe seconded the motion. Ayes 5. Motion carried.** Crawford updated the Council on meetings which will be held the following week.
- B. **Anderson – Finance, Fire Lanes and Public Access, Technology** – no report
- C. **Ansari – EFD, Sanitation and Recycling, Southshore Community Center** – no report
- 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** – no report

12. CLOSED SESSION

At 9:48 p.m., De La Vega stated the City Council would now go into closed session as the discussion constitutes a matter involving litigation. The following persons were in attendance:

1. Gerry De La Vega, Mayor
2. Elli Ansari, Councilmember
3. Jeff Clapp, Councilmember
4. Jonathan Grothe, Councilmember
5. Jeff Anderson, Councilmember
6. Lindy Crawford, City Administrator
7. Jim Penberthy, City Attorney

The subject matter of the meeting was: Pending Litigation.

Anderson moved the City Council enter into closed session pursuant to Minn. Stat. 13D.05 Subd. 3(b) to discuss pending litigation. Grothe seconded the motion. Ayes 5. Motion carried.

Anderson moved to end the closed session at 10:10 p.m. Grothe seconded the motion. Ayes 5. Motion carried.

13. ADJOURNMENT

There being no further business, it was moved by Anderson to adjourn the meeting at 10:11 p.m. Grothe seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk