

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING November 8, 2011

1. CALL TO ORDER

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 8:00 p.m.

2. ROLL CALL

Members present: Mayor LaBelle, Councilmembers Marceau, De La Vega, Anderson and Holscher. Also present were City Administrator Kohlmann, and City Attorney Penberthy.

3. APPROVAL OF AGENDA

Holscher moved to approve the agenda as submitted. De La Vega seconded the motion. Ayes 5. Motion carried.

4. CONSENT AGENDA

De La Vega, stated on the regular minutes of October 25, 2011, page 5 of 7, change sentence to read \$125 per year. Marceau moved to approve the consent agenda as presented approving the worksession and regular meeting minutes of October 25, 2011, and Resolution 11-21 approving variances and conditional use permit for 305 Lakeview Avenue. De La Vega seconded the motion. Ayes 5. Motion carried.

5. MATTERS FROM THE FLOOR

None

6. SPECIAL BUSINESS

None

7. PUBLIC HEARINGS

A. Variance Request – Bloss, 210 Birch Bluff Road – Kohlmann reviewed the public hearing process for the benefit of those in the audience. Ben Gozola, City Planner reviewed the request for a variance for Brad and Penny Bloss and noted the location on an aerial review. The applicants propose to tear down the existing home and construct a new home and new deck. He stated the home conforms to all zoning requirements except for the 15-foot buffer around the proposed structure. The applicant

can do nothing about the buffer going onto neighboring property. He noted as part of the pre-application, the home has been moved back, hardcover was reduced to under 35% from 42%, and grading was reviewed and all engineering requirements were incorporated into the current plan. Gozola reviewed the variance criteria: A. Is the request in harmony with the general purposes and intent of this ordinance? Gozola noted that this criterion is met. He noted there will be access to the structure in the event of a flood. B. Is the variance consistent with the Comprehensive Plan? Gozola noted the Comprehensive Plan calls for this area to be used for single family dwellings and for orderly development to occur. He also noted the Plan also recognizes that existing homes will be redeveloped, and this criterion is met. C. Does the property in question meet the "practical difficulties" test:

- The property owner proposes to use the property in a reasonable manner. Gozola noted the applicants are not changing the use of the property, and this criterion is met.
- There are unique circumstances to the property not created by the landowner. Gozola stated the unique circumstance is the fact they do not own all the property within 15-feet of the structure, so this criterion is met.
- The variance will maintain the essential character of the locality. Gozola noted the request will fit with the homes surrounding it and will meet all setbacks. Gozola stated there are two additional criteria when a flood plan is an issue which he reviewed.
- Will the variance result in increased flood levels or threats to public safety? Gozola stated flood levels will not be impacted, and this criterion is met.
- Is the variance the minimum necessary to afford relief? Gozola noted the lot dimensions dictate the structure location, and this criterion is met. Gozola stated there were no comments from any residents before this evening relating to this request. He stated the DNR has no objections to this request. The main focus at the DRC meeting centered around the easements the City typically requires for rain gardens. He stated two are proposed on the lakeshore side and one near the roadway. Given the tight nature of this lot, the major discussion was whether the City wants to require easements. The City doesn't have equipment to gain access to such an easement should it be required. He recommended that easements not be required. Gozola stated there is a potential for an erosion control permit from the MCWD, and this should be a condition for approval. He noted the 60-day review expires on December 12. He recommended approval subject to conditions and findings of fact. LaBelle opened the hearing for public comments. There were none, and the hearing was closed. Marceau asked if there was any other option to access the rain gardens. LaBelle asked if we are doing a disservice to the applicants to require easements. Gozola stated an easement would be required along the entirety of the rear of the lot and the side. It was thought that access could be made from the lake, but staff does not have the equipment to access it from the lake. Gozola stated other options were discussed, such as an agreement for an annual fee for the City to inspect the BMP. The DRC felt it would be too restrictive to require an easement. LaBelle stated he was unaware of any situation where rain gardens were being inspected. He stated we could certainly make arrangements to access from the lake on a rare occasion. Councilmembers discussed options. Penberthy stated if there is an easement over either

side or both, it would need to be a pedestrian easement. Staff cannot get in there from the road or the lake. The other question is why an easement would be required if you cannot get in there. Another option would be to create a recordable document where staff could go on the site by foot to access the rain gardens. He noted if we are to require easements and the property owners wanted to put in a bay window, they would be in violation for building into an easement. Penberthy stated if the rain garden is not maintained, and the City does not inspect, what would the result be. Penberthy stated if we are bound and determined to gain access, we can figure out a way to do that. Councilmembers discussed an easement requirement and lake access. **Brad Bloss, 210 Birch Bluff Road** stated he wasn't sure if an easement would impact his property value in the future. He stated he was caught off guard about an easement being required. LaBelle stated it would be purely for an inspection of a rain garden and should not be a problem. Penberthy stated if there is an easement, future construction would be an issue. Gozola noted there is a wall on the site, and equipment would have to go over the wall. Holscher stated her only concern was accessibility should there be a fire. Gozola stated he didn't have any issues from a planning standpoint. De La Vega asked what would be required to maintain a rain garden. LaBelle stated it would depend on the state of the rain garden. Marceau asked if an approval could be made and staff write an agreement of some sort. LaBelle suggested a 5-foot easement be approved on just one side. Penberthy stated the question is who would raise an issue twenty years from now, and that would be the City if a bay window is constructed. He suggested a permanent pedestrian access easement. LaBelle stated it could leave out the 2-foot for a bay window. Penberthy stated it could be a 3-foot easement which would not create any future build-out problems. Bloss noted there are trees that would come out more than 3-feet along the fence line and more on the other side. He noted their location on the aerial map for the benefit of the City Council. LaBelle stated we are trying to be consistent with what we have done with other rain gardens in the past. We have typically insisted on requiring rain gardens. Bloss stated he didn't know how practical an easement would be in his case. LaBelle noted it is environmentally sensitive legislation rather than rule breakers that is driving the easement requirement. Anderson asked how future property owners would know it is a rain garden. Penberthy stated state statutes require that it be recorded against the property. It would be identified as part of a closing if the title is examined. LaBelle stated we need to be consistent with access if we are going to continue to require rain gardens. De La Vega stated he agreed noting we need to achieve access or why even require a rain garden. Council discussed a motion for approval and the kind of easement to be required. Bloss stated his biggest fear is that his property would be de-valued. LaBelle stated the City already has an easement on his property, and it shouldn't de-value the property. Penberthy asked what would happen if there aren't any rain gardens. Gozola stated that would be a question for the engineer. He explained when a rain garden is required. Penberthy asked if there might be an alternative to a rain garden. Gozola stated there are a number of alternatives, but they all

need inspections and to be maintained. The City will still end up with issues. LaBelle asked when the project will get underway. Bloss stated they intend to begin work before the weather gets cold. LaBelle suggested the engineer should revisit this request to come up with other BMP recommendations. Bloss discussed the timeliness of the project. Penberthy stated the demo could be allowed to begin. The certificate of occupancy could not be issued until this is resolved. Kohlmann noted they are ready to go on this request pending the resolution of this variance request. Penberthy stated he didn't think the BMP issue should impact work beginning. Bloss stated a rain garden will look a lot nicer than a rain barrel. De La Vega stated another option would be to reduce the hardcover where the rain gardens would not be required. **Marceau moved to adopt:**

RESOLUTION NO. 11-22

**A RESOLUTION APPROVING VARIANCE REQUEST
FOR FLOOD PLAIN BUFFER
BRAD BLOSS AND PENNY BLOSS
210 BIRCH BLUFF ROAD**

Based on the following findings of fact and conclusions:

- 1. The proposed replacement home will be conforming to the anticipated use of the property and will meet all required setbacks, and therefore will fit the character of the existing neighborhood;**
- 2. Topography in the area provides that the home will always be accessible in the event of a flood;**
- 3. The landowner does not own all property within 15-feet of the proposed home, and the non-conforming elevations are on adjacent private property;**
- 4. Engineering has reviewed the proposed improvements and does not find reason to believe the proposed improvements would increase flood levels or represent a threat to public safety.**

And subject to the following conditions of approval:

- 1. The Applicants shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction**
- 2. The MCWD shall review and approve the final grading plans prior to any work being authorized (which may require an erosion control permit). Proof of MCWD approval shall be provided to the City prior to a building permit being authorized.**
- 3. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.**

4. **Building of structures shall not occur within any existing or proposed easements on the property.**
5. **To address all drainage concerns and to ensure adherence to the submitted plan, three surveys shall be submitted as part of any application for a building permit for the Property:**
 - a. **Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer, and consistent with the revised Survey;**
 - b. **Foundation Survey – a survey verifying the location and low floor elevation prior to framing and construction of the house.**
 - c. **Final Grading Survey – a survey verifying that all grades conform to the designed plans and that all engineering recommendations were implemented shall be approved by the City prior to the issuance of a Certificate of Occupancy for the new home.**
6. **The Applicants agree that the City Engineer may inspect the property at the Applicants' expense during the construction process to ensure ongoing compliance with all requirements and the Applicant shall deposit with the City the sum of \$5,000 to defray that expense. If the amount deposited is not used by the time of final inspection, the balance shall be refunded to the Applicant. If the amount deposited is not deemed to be sufficient, the City may request and the Applicant shall deposit additional requested amounts within 7 days of the request. The City shall not issue a certificate of occupancy for any structure on the Property, until all amounts owed hereunder have been paid to the City.**
7. **The City Engineer shall review and approve a revised grading and drainage plan agreeable to the Applicants and accepted by the City prior to the issuance of a Certificate of Occupancy.**
8. **The variance shall expire one year from the date of this resolution without substantial completion of construction. City Council approval will be required for any subsequent extension.**

De La Vega seconded the motion. Ayes – Holscher, Anderson, Marceau, LaBelle and De La Vega. Motion carried.

8. OLD BUSINESS

None

9. **NEW BUSINESS**

A. **Municipal Dock Policy Revisions** – Kohlmann stated staff is recommending revision to the municipal dock policy to be consistent with the as-built survey with the exception of slips 1-3. He noted slips 11-15 were previously restricted to under 27-feet. Council discussed the proper numbering which should be shown on the as-built. **De La Vega moved to adopt:**

**RESOLUTION NO. 11-23
A RESOLUTION AMENDING MUNICIPAL DOCK POLICY**

Holscher seconded the motion. Ayes – Holscher, Anderson, Marceau, De La Vega, and LaBelle. Motion carried.

10. **MATTERS FROM THE FLOOR**

None

11. **REPORTS**

A. **Administrator** – Kohlmann stated the municipal dock dredging project should be completed by Friday, November 11.

B. **Holscher – Buildings, Building Inspections, Fire Lanes** - no report

C. **Anderson - Animal Control, LMCC, Technology, Southshore Center** – no report

D. **De La Vega – EFD, Parks, Sanitation, and LMCD** – De La Vega stated the EFD Board is having discussions about pension funding.

E. **Marceau – Finance, Marinas, Municipal Docks** – no report

F. **Attorney's Report** – no report

G. **LaBelle - Public Works and SLMPD** – LaBelle stated Greenwood has agreed not to look elsewhere for police services.

12. **ADJOURNMENT**

There being no further business, it was moved by Marceau to adjourn the meeting at 8:57 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk