

CITY OF TONKA BAY ITEM NO. 4B

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING October 25, 2011

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 LaBelle, Councilmembers Marceau, De La Vega, Anderson and Holscher. Also present were City Administrator Kohlmann, City Attorney Penberthy (excused from the Council table), Special Counsel George Hoff, and Public Works Superintendent Kluver.

3. APPROVAL OF AGENDA

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

4. CONSENT AGENDA

Marceau moved to approve the consent agenda as presented approving the regular meeting minutes of October 11, 2011 and Accounts Payable. 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 – Scherber, 305 Lakeview Avenue – Kohlmann discussed the public hearing process for this request. Ben Gozola, City Planner reviewed the request from Craig Scherber for variances and a conditional use permit at 305 Lakeview Avenue. The property is located in the easterly portion of the City. The applicant is seeking to tear down and rebuild the existing home. In order to do so, he will need three variances and one conditional use permit. He reviewed the variances required: 1) a 17-foot variance from the required 25-foot rear yard setback requirement; 2) an 8.4 foot variance from the required 50-foot front yard setback requirement; and 3) a variance from the required 15-foot flood plain buffer around all new structures. Gozola also noted a conditional use permit to authorize a 7.1% increase to the allowed floor area

ratio is also being requested. He noted building height and hardcover do not need to be addressed. Gozola reviewed a MN State Statute which discusses nonconformities on properties that have been vacant for more than one year. He noted Special Counsel George Hoff is present tonight to address this or any other issues. Gozola reviewed the history of this request. He noted the applicant initially proposed to build a second story atop the existing home. During the review process, it was discovered that the existing home's foundation was not sufficient to support such an addition. Gozola noted the applicant was left with two options which were to either tear down and rebuild from scratch or apply for a permit to replace the foundation. Following the foundation improvement, he could then submit variance requests to add the desired second story. He stated there are risks involved with the second option. There would be no guarantee the variances would be approved. He noted the applicant did want to pursue the variance requests. The footprint tonight has been shifted to a more conforming location. Gozola reviewed the variance criteria for approval of the request beginning with **A. Statutory Criteria:** Criterion #1: The request is in harmony with the general purposes and intent of this ordinance. Gozola stated the home is still will still be accessible and meets the criteria. With respect to the front and rear yard setback requests, Gozola noted there is no plan to extend the addition any closer to the roadway or OHW than the legal, non-conforming home, and is in line with the intent of the ordinance; therefore, the criteria is met. Criterion #2: The variance is consistent with the Comprehensive Plan. Gozola stated the Comp Plan supports housing rehabilitation, and this criterion is met. Criterion #3: The property in question meets the "practical difficulties" test: a) The property owner proposes to use the property in a reasonable manner. Gozola stated the property owner is seeking to make reasonable improvements and keeping the same footprint as much as possible. b) There are unique circumstances to the property not created by the landowner. Gozola stated the slightly amended home location benefits all parties, and the applicant is not seeking to change the existing footprint thereby meeting the criteria. c) The variance will maintain the essential character of the locality. Gozola stated the home will be in character with the other homes within the neighborhood. He noted the L-shaped house meets the character for this lot as it has been here for over sixty years. Gozola reviewed: **B. City Tests:** 1) Will the variance impair an adequate supply of light and air to adjacent property? Gozola explained that this will not be an issue, and the criterion is met. 2) Will the variance unreasonably increase the congestion in the public street? And 3) Will the variance increase the danger of fire or endanger the public safety? Gozola stated the use is not proposed to change which means there will not be an increase in the number of daily trips. There will be no increase in the danger of fire or endangerment to public safety. The criterion is met. 4) Will the variance unreasonably diminish or impair established property values within the neighborhood? Gozola noted property value would increase as a result of this proposal. Drainage and storm issues will be resolved, and the criterion is met. Gozola reviewed: **C. Criteria Specific to flood plain variances:** 1) Will the variance result in increased flood levels or threats to public

safety? And 2) Is the variance the minimum necessary to afford relief? Gozola explained flood levels will not be impacted, and it is the minimum necessary to proceed. Both criteria have been met. Gozola reviewed the conditional use permit request for a 7.1% increase to the allowed floor area ratio by reviewing the following factors: 1) The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the Comprehensive Plan. Gozola stated this request is consistent with the goals and policies of the Comprehensive Plan. 2) The proposed site is or will be compatible with present and future land uses of the area. Gozola noted an analysis was done of Lakeview Avenue showing the size of the homes and lots as well as CUP approvals. Because so many homes have been built and had FAR approved above 30%, this property will conform to what is already in place. This request, he noted, is less than what was sought in 2006 by the previous property owner, and the criterion is met. 3) The proposed use conforms to all performance standards contained herein. Gozola noted this criterion does not apply to this request. 4) The impact on character of the surrounding area. Gozola stated allowing the L-shaped house will not have an impact on the character, and the criterion is met. 5) The demonstrated need for such use. Gozola explained the applicant cannot have a basement as it is a lakeshore home, and basements are not part of a FAR calculation. 6) The proposed use will not tend to or actually depreciate the area in which it is proposed. Gozola stated the improvements to the property will increase property values in the surrounding area, and the criterion is met. 7) The proposed use can be accommodated with existing public services and will not overburden the City's service capacity. Gozola noted there will be no change to the impact to City services. He stated the proposal does meet the CUP requirements. He stated the main issue is whether or not the ability of the applicant to build the foundation and then come forward with a follow-up application is a reasonable option available to the applicant. He explained it would allow them to build this L-shaped house and put the home in a more conforming location to address issues. He asked the City Council to open the public hearing, take comments, and continue with additional comments. George Hoff, Special Counsel stated the issue about the reasonable use was changed by the Legislature and has been adopted by the City in its City Code. The determination to make is whether the proposal is a reasonable manner in the judgment of the City Council based on criteria being looked at. LaBelle opened the hearing for public comments. There were no public comments, and LaBelle closed the hearing. Gozola stated Special Counsel Hoff described what is before you tonight accurately. The first matter for discussion is whether or not this is a reasonable use of the property. Hoff stated in terms of the staff report is that because there is reference to easements, rain gardens, is that the staff recommendation that it be directed back to staff for the draft resolution to be brought back to the next meeting for review. De La Vega stated the structure will be moved one foot west which will remove the side yard setback. The location of the front or back is not changing as he understood. Gozola stated the access to the home will be tilted slightly so the lakeside addition will be slightly closer to the lake.

The existing footprint will remain the same. De La Vega asked if there were any drainage concerns. Gozola stated easements over the rain garden and swale would be conditions of approval. LaBelle stated his analysis gave no credence to what was approved in 2006. He believed the criteria that must be met has been and supported the application. Holscher stated the plans for the house are an extreme improvement over what is currently there and sees no problem with the request. Hoff stated based on Council input, an appropriate motion would be to direct staff to prepare resolutions of approval for the three variances listed in the staff report and the conditional use permit generally consistent with the staff report including the conditions of approval that are mentioned, and further direct they be brought back to the next City Council meeting for approval. **Marceau moved to direct staff to prepare resolutions of approval for the three variances listed in the staff report and the conditional use permit generally consistent with the staff report including the conditions of approval that are mentioned, and further direct they be brought back to the next City Council meeting for approval. Holscher seconded the motion. Ayes – Holscher, Anderson, Marceau, LaBelle and De La Vega. Motion carried.**

City Attorney Penberthy rejoined the City Council at the table.

B. Second Reading – Ordinance Amendment to Chapter 1040 – Kohlmann stated this is the second reading of the ordinance amendment. **Ben Gozola** stated this was to be the second reading, but we are recommending it be tabled to the January 10, 2012 meeting. He asked for direction on how to proceed on similar issues. He stated there is an issue in the Code that indicates every level of a home must be raised above the flood plain elevation. He stated there are other issues in the ordinance that need to be addressed relating to flood plain buffer requests. He stated the DNR has been asked to review this ordinance amendment and provide their input. He stated another issue is the ability to give the City the ability to grant approval of a CUP when it makes sense. He also asked for input on whether unusual requests should be brought to the Council for direction rather than have them wait for an ordinance amendment. De La Vega stated he wanted to assure that we would not be in violation of any flood insurance requirements. Gozola stated we would be looking into that in January. De La Vega suggested unusual cases be brought to the City Council before rushing into writing a new ordinance. **De La Vega moved to table this item to the January 10, 2012 meeting. Holscher seconded the motion. Ayes 5. Motion carried.**

8. OLD BUSINESS

None

9. **NEW BUSINESS**

A. **Water Meter Appeal – Kathy Ottum** – Kohlmann stated this is an appeal request. He discussed the policy in place for cases such as this. He noted a reduced rate is offered or an option to appear before the City Council for a reduction in a bill dispute. Holscher asked for a brief explanation of the process for appealing a bill. Kluver discussed problems that have been found where the outside and inside meters were not synchronized. If there is a significant difference, this must be analyzed. In doing so, we have developed a process to bill for the difference in the water usage. He discussed the standard process and what a resident is told. He noted there has not been a request from the property owner to have the meter tested. LaBelle stated this is a compromise as it is the City's position that the water was used. **Kathy Ottum, 30 Lilah Lane** asked for relief on the overage due to the meter malfunction. She stated she had asked for the regular rate for one year to pay it with late charges. Her water usage has been an average of 10,000 gallons per quarter. She believed the current ordinance is very questionable. She stated her neighbor read both meters and it continued being off for years. He brought it to the attention of Public Works, and the inside meter was adjusted. She stated she would like the same courtesy. Kluver stated that isn't accurate, and he explained what happened. LaBelle brought the discussion back to the matter at hand. Ottum discussed her concerns about the billing. LaBelle stated he would like to come to a reasonable compromise. De La Vega stated there is a bill due. He stated he would be willing to consider increasing the length of time to make the payments as a compromise. Penberthy stated there is a six year statute of limitation. If there is an assessment, there is a right to appeal. If it is pursued beyond six years, the City would not be successful collecting. Councilmembers and staff discussed the billing process. LaBelle asked if it would be possible to pay \$42 per month for the next ten months. Ottum stated she would pay \$125 for three years of overage. She felt three years is more than fair. De La Vega suggested it be paid over a longer period of time given her personal situation. Marceau believed \$78 a year for ten years would be very reasonable. Holscher suggested \$25 a month. Ottum stated she still hasn't been told what the overage is. Councilmembers continued discussion of an equitable payment plan. Ottum stated she hasn't given her word that she can pay the bill. She stated she understood that she was to try the appeal system before anything else. Penberthy asked Council to firm up some of the elements and determine whether they are willing to offer payments for ten years without interest. **De La Vega moved to offer Kathleen Ottum, 30 Lilah Lane to offer payment plan of \$788.00 at a rate of \$78.80 per year for ten years at no interest in quarterly payments with the regular utility bill. Marceau seconded the motion. Ayes 5. Motion carried.**

B. **Water Meter Appeal – Nancy Youngdahl** – Kohlmann stated this is a similar request. LaBelle stated he suggested the same terms. **Marceau moved to offer payment plan of \$903.00 payable in annual payments of \$90.30 over a ten year term**

on quarterly bills interest free. Holscher seconded the motion. Ayes 5. Motion carried.

C. Municipal Dock Dredging – Kohlmann stated two quotes were received to perform municipal dock dredging. One bid was for \$85,750 and another was for \$20,000 from Minnetonka Portable Dredging aka THN Enterprises, Inc. Kohlmann reviewed the time frame to have the work completed. **Marceau moved to approve the quote from Minnetonka Portable Dredging aka THN Enterprises, Inc. and authorize the City Administrator to enter into said contract. De La Vega seconded the motion. Ayes 5. Motion carried.**

D. De-icing Permit Approval – LaBelle noted this is an annual renewal. De La Vega asked if we will need a de-icing permit. Kohlmann stated he was unsure that we would need a permit but would come back for approval if necessary. **Holscher moved to approve the 2011-2012 de-icing permits. Marceau seconded the motion. Ayes 5. Motion carried.**

E. Reschedule November 8 Meeting – Kohlmann stated the school board election is November 8, and no meetings can be held until 8 p.m. on that date. Councilmembers and staff discussed publication of a public hearing notice time at 7 p.m. Penberthy stated if the hearing notice says 7 p.m., it needs to be republished. **Anderson moved to reschedule the meeting from 7 p.m. to 8 p.m. Holscher seconded the motion. Ayes 5. Motion carried.**

10. MATTERS FROM THE FLOOR

None

11. REPORTS

A. Administrator – Kohlmann reviewed the third quarter revenues and expenditures report. We are under the 75% mark for the year. Revenues are at 52%. He projected being right on target or slightly dipping into reserve funds.

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, LMCD – De La Vega reported Chief Gerber was recognized as Fire Officer of the Year.

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

F. Attorney's Report – no report

G. LaBelle - Public Works and SLMPD – no report

12. **ADJOURNMENT**

There being no further business, it was moved by Marceau to adjourn the meeting at 8:38 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk