

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING September 27, 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, and Public Works Superintendent Kluver.

3. APPROVAL OF AGENDA

Marceau moved to approve the agenda as amended: under Special Business, add Jan Callison, Hennepin County Commissioner. De La Vega 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 September 13, 2011 and Accounts Payable. De La Vega seconded the motion. Ayes 5. Motion carried.

5. MATTERS FROM THE FLOOR

None

6. SPECIAL BUSINESS

A. Jan Callison, Hennepin County Commissioner – Ms. Callison was present to discuss what is happening in Hennepin County. She distributed a Hennepin County fact sheet and Choose to Reuse coupon books. She discussed the changes in population in Tonka Bay noting a decrease in population in the city since the last census. She reported 1177 people used the hazardous waste collection in Shorewood this year. Another unwanted medicine collection will be held on October 8 in Orono from 10 a.m. to 2 p.m. at the Hennepin County Public Works facility. Callison discussed the Hennepin County budget which proposes a one percent increase. A zero percent increase in the property tax levy is also being proposed. She noted numerous budget hearings are scheduled before the final budget is approved. She stated there will be a number of cost saving measures considered. For example, the closing of the Eden Prairie Service Center is being considered. She stated ideas for the Excelsior Library design will be

brought to the City of Excelsior in 2012 with construction delayed until 2013. LaBelle asked how the County's budget compares to other similarly sized counties. Callison discussed similarities between Hennepin County and other counties. She encouraged the City to submit the basketball court grant application before submitting it for firm consideration.

7. PUBLIC HEARINGS

A. Variance Request – Hanish, 15 Woodlane Street – Kohlmann explained the public hearing process for those present in the audience and introduced the City Planner. **Ben Gozola, City Planner** reviewed the request from Steve and Laura Hanish for 15 Woodlane Street. He noted the location in the southern portion of the City just north of Brentwood Avenue. He reviewed aerial shots of the subject property. The applicants are seeking to replace the existing attached garage with a new detached garage. The proposed garage will be twenty feet from Woodlane where forty feet would be required. He noted the Comprehensive Plan guides this property for single family use, and the zoning is R-1B which allows for single family homes and detached structures. This application does not require a variance for height. He stated the structure is not within a flood plain, so a flood plain buffer is not required. In this case, the floor area ratio will comply with requirements. On this lot, the hardcover falls within the allowed percentages with review and approval by the City Engineer and City Administrator. Gozola noted applicable code definitions and applicable codes relating to this request are provided in the staff report. Gozola explained there are three applicable criteria under State statute that all variances must address: consistency with the ordinance, consistency with the Comprehensive Plan, and the establishment of "practical difficulties". Gozola stated the front yard setback is in place to ensure homes are sufficiently separated from the right-of-way and to bring consistency to where structures are located in relation to the road. He noted Woodlane Street is unique in that it acts as more of an alley than a street. Because the proposed setbacks are consistent with others in the area, the criterion is met. Gozola noted the Comprehensive Plan calls for this area to be used for single family dwellings, and for development to occur in an orderly fashion in a manner best for the community. It also recognizes that redevelopment of lots is anticipated. Construction of a detached garage is consistent with area development and the variance request will meet this criteria. Gozola reviewed whether the property in question meets the "practical difficulties" test. He stated the proposed use is consistent with how a majority of landowners are utilizing their properties, and this criterion will be met. He discussed whether there are unique circumstances to the property noting that all the adjacent properties have non-conforming detached garages at the proposed setback or less, and the criteria is met. He also noted the character of the locality will not change as there are several detached garages in the adjoining area, and the criterion is met. Gozola stated there were no concerns raised by any of the adjoining property owners. He noted the plans show a new water connection from the main line to the garage. Staff is

recommending the plans be revised to show how water will be provided to the garage via the existing home. He noted the sewer line is not within 3' of a load-bearing wall and will meet the sewer line requirement. Gozola noted Engineering has provided comments on their review. Engineering also finds that the proposed plan is in conformance with the requirements for such projects, but any approval should be conditioned upon the applicant accepting full responsibility for any construction over private utility lines. Gozola recommended approval of the request for a variance from the required 40-foot front yard setback for accessory structures based on the fact that the proposed setback will be consistent with all other detached accessory structures in the area, will not pose a danger to public safety, and will not impact the City's use of the right-of-way. He discussed Council's options. He noted the 60-day review period expires on October 23, 2011. He asked the City Council for their comments and questions. LaBelle noted the survey shows different hardcover percentages. Gozola noted the most up-to-date percentage shows 32.47%. LaBelle opened the hearing for public comments. **Steve Hanish, 15 Woodlane Street** discussed the water connection noting what is shown on the survey is not correct. He stated any water connection to the garage will come from the house. De La Vega asked if the outside walls are considered load-bearing. Gozola stated they would not be under consideration because of their location. LaBelle asked if the load-bearing issue is new. Gozola noted when it has been an issue before we have asked the applicants to change their plans. LaBelle closed the public hearing. Marceau stated the request seems very reasonable and keeps with the neighborhood. He supported the request. De La Vega asked if the breezeway is being eliminated and if it would change the character of the structure. Gozola noted it is being removed. He discussed the setback requirements for a lot fronting on two sides. LaBelle asked if the setback amount is identified. Gozola stated it was not in the report and can be identified. LaBelle supported the request based on review of new State statute requirements. Marceau moved to adopt:

RESOLUTION NO. 11-17

**A RESOLUTION APPROVING FRONT YARD SETBACK VARIANCE
STEVE AND LAURA HANISH
15 WOODLANE STREET**

Based on the following findings of fact:

- 1. All adjacent properties have non-conforming detached structures at the proposed setback or less is a very unique fact distinguishing Woodlane Street from other rights-of-way in the community.**
- 2. The two neighboring properties have detached garages at setbacks of 19.5 feet and 14.2 feet respectively, and the proposed garage will be consistent**

with these setbacks.

- 3. The character of the locality will not change as the proposal will be consistent with the character of the street.**
- 4. The Comprehensive Plan supports orderly development which fits the character of neighborhoods.**

And subject to the following conditions:

- 1. The applicants shall sign a save and hold harmless agreement in recordable form prepared by the City Attorney at the applicants' expense. The agreement shall then be recorded against the property.**
- 2. The applicants shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.**
- 3. Constructions 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 the future building permit for this lot:
 - a. Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer;**
 - b. Foundation Survey – a survey verifying the location and elevation of the slab prior to framing and construction of the garage;**
 - 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 final inspection for the garage.****
- 6. The City Engineer may inspect the property at the applicants' expense during the construction process to ensure on-going compliance with all engineering requirements.**
- 7. The house number shall be posted on the proposed detached garage so as to be visible from Woodlane Street.**
- 8. The variance shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.**

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

B. Variance Requests – Lund/Brenny, 75 West Point Drive – Kohlmann explained the public hearing process for those present in the audience and introduced the City Planner. **Ben Gozola, City Planner** reviewed the request from James Lund and Nancy Brenny for two variances for the property located at 75 West Point Drive. He noted it was a non-lakeshore property. He reviewed the site location. He discussed their plan to remove the existing deck and replace it with a new deck and three-season porch. He reviewed the outline of the existing and proposed deck. The new deck will require two variances. The first variance would require a 15-foot flood plain buffer around all new structures and a variance from the required 35-foot wetland buffer. He noted this area is guided for single family homes so there is not a Comprehensive Plan or zoning issue. He noted the top of the proposed deck and porch will not be more than five feet over the maximum height of 30-feet as measured from the average ground level elevation, and a variance for building height will not be required. He stated there will be a flood plain buffer issue. He noted floor area ratio and hardcover requirements will be met. He also noted the wetland edge is not being treated as lakeshore of Lake Minnetonka, so a required lakeshore setback is not required. Gozola reviewed the three criteria that all variances must address and reviewed them individually for each variance. He noted the flood plain buffer requirement is intended to ensure a property owner can access the structure in the event of a flood. He noted in this case, there is a property on a hill and there will be access to this home. The criterion is met. In regards to the wetland buffer request, he explained the home is already a legal non-conforming to the existing wetland buffer requirement. In a case like this it is important to ensure the legal non-conformity isn't expanding. He stated this criterion is met. Gozola discussed whether the variance is consistent with the Comprehensive Plan. He noted the Comprehensive Plan expects there to be redevelopment, and this criteria will be met. Gozola discussed whether the request meets the "practical difficulties" test. The first test is whether the owners propose to use the property in a reasonable manner. They are replacing an old deck with new improvements which will actually shrink the existing non-conformity. The criteria are met. Gozola discussed whether there are unique circumstances to the property not created by the landowner. He stated the location of the existing home was not by choice of the applicant and will be close to the wetland because of how the area was platted to begin with. The criterion is met. Gozola discussed whether the variance will maintain the essential character of the locality by noting the proposed addition will be in character with other homes in the neighborhood and will go largely unnoticed by neighboring properties. Gozola explained for flood plain variances there are two additional criteria for approval. He discussed whether the variance would result in increased flood levels, and it would not, which meets the criterion. Gozola reviewed whether the variance is the minimum necessary to afford relief, and it is found that it is and will meet the criterion. He noted one letter of support was received from a resident. He also stated that no follow-up survey will be required as is often the case because they are working within the existing footprint, will not be conducting grading, and the City does not need to verify a specific

setback. He noted there were no additional comments from the City Engineer. Gozola summarized the requested variances, recommendation to approve the request based on findings of fact and subject to conditions of approval. LaBelle stated the variance request should be quantified, consistent with past practice. Gozola agreed the figures would be provided for the resolution. LaBelle opened the hearing for public comments. Jim Lund noted he received excellent help from Mr. Kohlmann during the application process. Holscher discussed the history of the deck. LaBelle stated he supported the request as long as the actual amounts of the variance are provided. De La Vega stated he also supported the request. Marceau stated it is always a good thing to have a non-conformity decreased, and this is in the spirit of how he would like to see things happen. **Holscher moved to adopt:**

RESOLUTION 11-18

A RESOLUTION APPROVING THE VARIANCES FROM FLOODPLAIN BUFFER AND WETLAND BUFFER JAMES LUND AND NANCY BRENNY 75 WEST POINT DRIVE

Based on the following findings of fact:

- 1. Lots in Tonka Bay Woods Third Addition were all platted in a manner that requires home to be built directly adjacent to a wetland and the flood plain;**
- 2. Topography in the area provides that the home will always be accessible in the event of a flood;**
- 3. None of the proposed work will impact the already existing buffer;**
- 4. The size of the existing buffer will increase as a result of the proposed improvements;**
- 5. The applicants were not responsible for the location of the existing house which causes the need for the variance requests.**

And subject to the following conditions:

- 1. The applicants shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.**
- 2. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.**
- 3. Building of structures shall not occur within any existing or proposed easements on the property.**

4. **The variance shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.**

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

C. First Reading – Ordinance Amendment to Chapter 1040 – LaBelle noted this is a first reading for an ordinance amendment relating to flood plain overlays. Kohlmann noted this is a first reading, so no action is required. He introduced the City Planner who would comment on the main points of the proposed ordinance amendment. **Ben Gozola, City Planner** stated a deficiency has been identified in the current flood plain ordinance. He explained if a homeowner owns property that is a legal non-conforming to the required flood plain elevation of 933.5, the City must require that the garage elevation be raised when any revisions are proposed. He noted that this is often something the property owner does not want to do. He discussed ways this language can be amended so that this would not always be required. He discussed federal and state requirements. Gozola noted new copies of the proposed ordinance have been provided so there is distinction between the colors. He explained the existing numbering will be changed so that it is more in conformance with the existing ordinances. Gozola reviewed the proposed language. He noted most of the new language comes from the DNR template. He noted three flood plain districts are identified. He noted the uses are identified in each district, when permits are required, and how they would be approved. Gozola stated staff would like time to review the information in more detail.

8. OLD BUSINESS

A. LMCC Budget – Kohlmann stated a letter has been drafted which captures the City Council's comments at the last meeting. He stated staff is looking for direction to approve sending the letter to the LMCC. LaBelle stated it is a little vague under Item 2. Marceau stated it needs to be more of an LMCC issue rather than Mediacom. Kohlmann stated revisions will be made before the Mayor will sign the letter. **Marceau moved to approve sending a letter to LMCC relating to the 2012 budget. De La Vega seconded the motion. Ayes 5. Motion carried.**

B. Municipal Dock Dredging – Application for Permit Quote – Kohlmann stated staff has been working to prepare a dredging application for the municipal docks. He noted staff has found that one company will be able to dredge before November 10. There is a ban on dredging from April 1 to June 30, there was a consensus it be done in November or wait until it freezes up. He noted the use of a barge is the ideal way to complete the dredging. LaBelle asked how long the application would be good for if we have to wait. Kohlmann noted it is good for twelve months. Kohlmann stated he hoped the application could be sent out by September 30 so quotes could be brought back to the October 11 or October 25 meeting. **Marceau moved to approve the initial stage to**

apply for a dredging permit at a cost of \$1000. De La Vega seconded the motion. Council discussed setting the date of the permit after November 1 so boats would all be out of the docks for the season. Holscher suggested the work be done expeditiously and renters not be inconvenienced in any way. Penberthy asked whether there was any concern about the expertise of the dredging company. There was agreement that expertise and experience are factors. **Ayes 5. Motion carried.**

9. NEW BUSINESS

None

10. MATTERS FROM THE FLOOR

None

11. REPORTS

A. Administrator – no report

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 stated the EFD will hold their Open House on October 13, 2011.

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

F. Attorney's Report – no report

G. LaBelle - Public Works and SLMPD – no report

12. CLOSED SESSION

Mayor LaBelle announced:

WE WILL NOW CLOSE THIS MEETING BECAUSE THE MATTERS TO BE DISCUSSED CONSTITUTE AN ATTORNEY-CLIENT PRIVILEGE UNDER MINNESOTA STATUTES.

THE FOLLOWING PERSONS WILL BE IN ATTENDANCE AT THE CLOSED MEETING:

1. Bill LaBelle, Mayor
2. Anthony Marceau, Councilmember
3. Gerry De La Vega, Councilmember
4. Jeff Anderson, Councilmember
5. Loretta Holscher, Councilmember
6. Joe Kohlmann, City Administrator

7. Jim Penberthy, City Attorney

THE SUBJECT MATTER OF THE MEETING WILL BE: Teamster Contract
Negotiations

13. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 8:30 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk