

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING January 13, 2009

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. **OATH OF OFFICE**

The Oaths of Office were administered to Mayor LaBelle and Councilmembers Marceau and De La Vega for their new terms of office.

3. **ROLL CALL**

Members present: Mayor LaBelle, Councilmembers Marceau, Tessness, Folley, and De La Vega. Also present were City Administrator Loftus, City Attorney Penberthy, and Public Works Superintendent Kluver.

3. **APPROVAL OF AGENDA**

Tessness moved to approve the agenda as submitted. Folley seconded the motion. Ayes 5. Motion carried.

4. **CONSENT AGENDA**

Folley moved to approve the consent agenda as presented approving the regular meeting minutes of December 9, 2008, accounts payable, and Resolution 08-32, 50 West Point Avenue. Tessness seconded the motion. Ayes 5. Motion carried.

5. **MATTERS FROM THE FLOOR**

None

6. **PUBLIC HEARING**

None

7. **OLD BUSINESS**

None

8. **NEW BUSINESS**

A. **Appointments for 2009** – De La Vega moved to adopt Resolution 09-01 approving 2009 appointments. Tessness seconded the motion. Ayes – LaBelle, De

La Vega, Marceau, Tessness and Folley. Motion carried.

B. 2009 License Renewal – Caribbean – Loftus stated the requested background checks have been completed for the Caribbean's request for license renewals. **Marceau moved to approve the 2009 license renewals for the Caribbean. De La Vega seconded the motion. Ayes 5. Motion carried.**

C. 380 Lakeview Avenue - Hardcover – Loftus reported in January of 2007, the City Council approved a conditional use permit for hardcover of 36%. The applicants constructed a garage addition, and the site plan included the removal of two sheds and a concrete patio. She stated a complaint was received that they have not been removed. In November, Administrator Loftus requested the property owners remove the structures, and they have not been removed. The residents are here this evening. If they request the structures remain, a new conditional use permit would be required. **Shari Fahey, 380 Lakeview Avenue** stated the stepping stones will be removed in the spring. They have been unable to remove them now because of financial problems. One shed has a dirt floor and the roof has been removed so it is not a hardcover problem, and the other shed is actually an ice house and has been registered as such. Loftus stated it is hardcover and needs a new conditional use permit. LaBelle asked if there was some misunderstanding that the shed does not have to be removed. Fahey stated it wasn't made clear the ice house was considered a shed. LaBelle stated the fact it has been registered as an ice house has no bearing on the application at all. It was our expectation that it be removed, and we are asking for compliance. Fahey stated it is not something that can be easily removed without being disassembled. **Jason Dudek, 380 Lakeview Avenue** stated they had to sell their ice house trailer. LaBelle stated he didn't think there was any confusion on how the Council stands. He stated something has to happen here, and the Council has to uphold the ordinances. Fahey asked what the other options might be as they cannot afford to remove it. LaBelle suggested they give a suitable time frame when the structure could be removed. Marceau asked if we should give them some time to consider whether they may want to apply for a new conditional use permit. Penberthy suggested they be given one time line for the conditional use permit application and a longer period of time for the removal. The problem the owners face is that if they apply for a CUP, it could be denied. LaBelle asked if a spring deadline would be agreeable. He stated the structure has to be removed or they have to apply for a conditional use permit. Fahey stated they will need to wait for the weather to warm up and figure out how they are going to pay for it. Dudek asked if the city would haul the wood away if they chopped up the structure. Kluver stated the city would not dispose of the wood for them. Loftus suggested a deadline of April first or May first. **De La Vega moved to require removal of the non-compliant structures (two sheds and patio) by June 1, 2009. Tessness seconded the motion. Ayes 5. Motion carried.**

D. 2009 Fee Schedule Ordinance (2nd Reading) – LaBelle announced this is the second reading of the 2009 fee schedule ordinance. **Marceau moved to adopt Resolution 09-02 approving publication of amended Ordinance 2009-1. Tessness seconded the motion.** De La Vega suggested taking a moment to consider any changes to fees given the LGA cut. Marceau stated he would be more comfortable cutting expenses. **Ayes – LaBelle, Marceau, De La Vega, Tessness and Folley. Motion carried.**

E. Water and Sewer Connection Charges – Annual Resolution – De La Vega moved to adopt Resolution 09-03 setting the water and sewer connection charges for 2009. **Folley seconded the motion. Ayes – LaBelle, Marceau, De La Vega, Tessness and Folley. Motion carried.**

F. Pay Equity Report – LaBelle stated the city complies with this reporting requirement every three years. **Folley moved to approve the pay equity report. De La Vega seconded the motion. Ayes 5. Motion carried.**

G. Local Government Aid (LGA) Revenue Cut – LaBelle stated the local government aid revenue cut is approximately one percent. He stated options include raising fees, cutting expenses, or bringing this item back to a future agenda for consideration. Folley stated he preferred it be brought back in May for future consideration. De La Vega suggested approaching other agencies and cutting what we pay them. He believed it would be a more equitable approach. LaBelle believed a more prudent approach would be to prioritize and cut what we can live without. He didn't want to compromise public safety. Folley suggested items such as new uniforms could be postponed for a year. Marceau suggested looking at fire and police wage increases. De La Vega stated we have some time and don't need to rush a decision right now. Staff was directed to bring this item back to the Council in May.

9. MATTERS FROM THE FLOOR

None

10. REPORTS

A. Loftus – Loftus stated a report has been prepared showing the website activity for 2008. LaBelle stated he would love to get more residents signed up for automatic e-mail notifications. Loftus reviewed the building permit activity report for 2008. We are equal to the activity in 2005.

B. Marceau – Finance, Marinas, - Marceau reported Arctic Fever would be held on Saturday, January 17. He stated events in Tonka Bay will begin at 1:00 p.m.

C. Tessness – Buildings, Building Inspection, Fire Lanes and Municipal

Docks – no report

D. Folley - Animal Control, LMCC, Southshore Senior/Community Center, and Technology – Folley stated the LMCC has preliminary agreement to purchase the building they are renting. They will need approval of the majority of the cities, and they will be coming to a future meeting.

E. De La Vega - EFD, Parks, LMCD and Sanitation – De La Vega reported the Parks & Trails Committee held their quarterly meeting recently. They are looking at equipment for Old Orchard Park and are discussing selling articles to raise funds for various pieces of equipment. They also talked about replacing the warming house. The EFD will hold their first meeting of the year on the 21st of January. The Southshore Center group has not met since the last meeting.

F. Attorney's Report – Penberthy thanked the City Council for the annual appointment. He reviewed a copy of an article from the LMC magazine regarding suggested procedures he would like the City Council to follow. He asked the City Council for any questions they might have. He asked for permission to bring back procedures that could be put in place regarding variance approval procedures. Penberthy stated the Council's job is to evaluate the facts presented and apply standards. LaBelle stated he is all for the proposed procedures. De La Vega understood the article to state we have an ordinance and must meet certain conditions. If the request meets those conditions, we can grant it. If it does not meet the conditions, then we have to find additional facts and state them clearly in order to justify the approval. Penberthy replied the Council is presented with the facts and given additional facts at the meeting. The Council is required to evaluate those facts and then apply the standards. De La Vega stated over the last couple years, there have not been very many staff recommendations to approve and asked if the issue is the Council is going against staff's recommended denials. Penberthy stated the purpose wasn't to change the procedure based on past decisions. He stated this is the first meeting of the year, and it is a good time to review procedures. The next step is to take the standards in the ordinance and if they support the criteria, the Council must grant the application. If they do not meet the criteria, he didn't think the Council had the authority to grant the application. Penberthy stated just because staff recommends approval or denial of a request doesn't bind the Council if the facts support the criteria. LaBelle stated this is a gentle reminder that this is the procedure that must be followed. Penberthy stated it was not his intention to tell the Council they were doing everything wrong. LaBelle stated the applicants need to know before the meeting what the process is, and getting this information to the applicants is important. Penberthy agreed. De La Vega stated the Council has not really explored their legislative role. He stated he was concerned whether ordinance language is still appropriate. Penberthy stated ordinances can be changed. Until that ordinance is changed, you have to go with what currently exists. De La Vega stated the application of judgment is part of the fairness of the decision and whether or not it is logical given the circumstances we are

given. We apply judgment on individual cases given what is presented and, hopefully, we make good decisions. There is the letter of the law, and there is the interpretation of the law. LaBelle stated judgment is based on facts. Penberthy stated the more the applicant understands this role, they will be given an opportunity to be heard, and they will know what to expect. LaBelle pointed out it didn't used to be in the guidelines that the Council had to determine whether the request was "reasonable". De La Vega stated he was just trying to get his arms around whether the Council is doing what they are supposed to be doing. He was having trouble with the inconsistency of some of the ordinances. He would like to spend some time on bringing these ordinances up to current conditions. Some of the ordinances have been around for a long time, and new markets and conditions may impact these ordinances. De La Vega stated we don't have ordinances based on location such as homes on the lake with or without a basement. Folley stated we want to treat everyone the same. He believed it might be a slippery slope to not do so. De La Vega stated if you live on the lake, you can't have a basement. Folley stated that would be a hardship where the request could be approved. De La Vega stated when we have a variance, we're being asked to give applicants latitude. LaBelle stated it is up to the applicant to prove hardship. Penberthy stated it is important to keep in mind that the applicants are given the responsibility to prove hardship. We must constantly keep this in mind for variance approvals. If the applicant does not prove hardship, the application must be denied. He stated staff needs to work harder at how the reports are presented. Folley stated he would be in favor of having the applicants present their side of the application first. LaBelle stated the presentation process we use currently is much more organized. He believed the current process is working very well. Penberthy stated if the information is given to the applicants, it makes for a much better hearing. Our objectives are to avoid controversy, make people as comfortable as possible before the City Council, and to give them an opportunity to be heard.

G. LaBelle - Public Works and SLMPD – LaBelle stated the SLMPD meeting is later in the month.

11. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 8:10 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk