

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
March 24, 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. ROLL CALL**

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

**3. APPROVAL OF AGENDA**

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

**4. CONSENT AGENDA**

De La Vega moved to approve the consent agenda as presented approving the regular meeting minutes of March 10, 2009. Tessness seconded the motion. Ayes 5. Motion carried.

**5. MATTERS FROM THE FLOOR**

None

**6. PUBLIC HEARING**

**A. Variance and Conditional Use Permit – Molldrem, 345 Lakeview Avenue** – Loftus gave a brief overview of the public hearing process for the benefit of those in the audience. **Ben Gozola, City Planner** reviewed the request from Kevin and Jeneen Molldrem at 345 Lakeview Avenue by first reviewing photos showing the neighborhood. He reviewed the 1994 survey to illustrate the location of two rock swales that were required when the home was originally constructed. He also pointed out the existence of Lakeview Avenue on this property. The setback for the property will be measured from the road and not the property line. He stated the property owners are requesting to construct a new home which will need a variance for the finished fill elevation and a conditional use permit for an increase to the floor area ratio. He stated the building will conform to the height requirement. He stated the hardcover comes in at 29.4% which conforms as long as the drainage and grading plans are approved. He reviewed the allowed and proposed floor area ratio calculations. He reviewed the CUP criteria for approving the request. The proposed site would be compatible with present and future uses as they are planning to build a single family home. The construction would not have an impact on the surrounding area. He compared the proposal with neighboring properties which had CUP approvals for floor area ratio in the past. He stated the criteria for demonstrated need is subjective. The proposed use would increase

property values. Gozola stated all runoff concerns have been addressed. He recommended approval of the request. He reviewed the purpose and intent of the floodplain buffer variance. The areas around the home conform to the required buffer elevations, and the driveway conforms to elevation requirements. The foundation requirement is also met for slab-on-grade construction. Gozola noted there is no velocity to address with this application which negates the need for a buffer distance. In this particular case, he doesn't see a need for foundation protection. He reviewed the criteria for approval of the variance request. He noted the areas on both sides of the house are meant to be non-conforming in order to protect the needed drainage swales. The application does present unique circumstances. The applicants will meet all setback requirements, and unique approaches are necessary on site to address storm water and drainage issues. He stated on the question of undue hardship, not increasing the variance request would increase the side yard setbacks from eight feet to fifteen or more feet in order to achieve compliance. Not approving this request would bring other properties out of compliance. Without the variance, construction would not be possible. He noted the hardship was not caused by the applicant. He stated the engineering review does show that this property requires a unique approach. He reviewed the three criteria specific to a floodplain buffer. The variance shall not be approved in a designated floodway which does not apply in this situation, because the property is on a lake. The applicant must show good and sufficient cause that they demonstrate an acceptable hardship, and granting of the variance will not result in additional flood heights or create public danger. These have all been satisfied. Gozola pointed out that the proposed plans indicate the intent to place a generator to the west of the home. It must be enclosed to mitigate noise when it is in use. Another condition would be to remove the proposed play structure. He recommended approval of the request. The 60-day review period will expire on 4/29/09. Folley asked if the swales are working currently. Gozola stated Jeff Roos, the City Engineer is present and would be able to answer that question. He understood there are definite issues with the drainage out there now, but the plan provided by the applicant will address any existing issues. Folley asked if the red line is the lot line. Gozola indicated that it is the lot line. Folley asked if the floodplain is fifteen feet all around. Gozola replied the fifteen foot floodplain buffer requirement is around the footprint of the house itself and does not relate to the lot lines. He noted setbacks are less than fifteen feet, the house conforms to code, but given that dynamic, they can't have a fifteen foot buffer all the way around the house, and deal with all the drainage issues and floodplain buffer requirements. Folley asked if it would make a difference if the house was vertical rather than horizontal. Gozola stated going back to his review of the height requirement; the house is close to the maximum height. They are utilizing the entire area possible. LaBelle opened the hearing for public comments. **Kevin Mouldrem, applicant** discussed his goal to build a house that is environmentally suitable and fits within the city's requirements. He stated he was told the electricity goes out all the time, and that concern necessitated the addition of a generator. He stated the generator will

only run in emergency situations. **Mike Sharratt, architect** stated the generator is becoming very common with any new home construction project now. He reviewed the proposal noting that hardcover and floor area ratio will be reduced from what currently exists on the site. Folley asked if the swale is considered hardcover now. Sharratt stated it was calculated both ways. **Chadd Larson, 355 Lakeview Avenue** asked if an easement is required over the drainage system. Gozola stated it is a condition of approval. Larson asked if it would be a 5' easement. Gozola stated the easement details have not been determined as of yet. Both parties will need to determine how the easement will be constructed. Larson stated it was unclear to him how the grading would occur and what construction requirements would entail. Sharratt stated it is their intent to work with the City Engineer on the easement. He also discussed grading in detail which would accommodate the direct flows from each property naturally to the lake. He stated there would be a slow easy drainage through perforated piping during rain events. LaBelle closed the public hearing. Tessness stated he sees this proposal as a benefit to 355 Lakeview Avenue. He supported the request. Folley was concerned about how often the drain tile would fill and if the city would need to clean it out. Kluver stated it would need to be monitored to see what kind of maintenance would need to be done. Based on the engineer's determination, it shouldn't be a problem. Marceau asked if the gutters and downspouts tie into the pipes that go to the lake. Molldrem stated they don't currently tie into each other. That is something they could be talked about. De La Vega asked if this is the first of this kind of drainage system. Kluver stated there are other culverts in side yards in Tonka Bay. De La Vega asked what kind of maintenance would be required. Kluver stated in a spring thaw situation, it is possible to have frozen water in the pipes. A high pressure jetter could blow out the water. De La Vega asked the homeowner if they are prepared to deal with that kind of situation. Molldrem discussed his concerns about drainage and suggested the street be repaved. LaBelle stated the City is not going to take any responsibility for drainage or discuss any financial ramifications at this meeting. De La Vega reminded the applicants of the need to remove the play structure. LaBelle invited the applicant to come back if they wanted to revisit their concerns about drainage. LaBelle stated the potential screening of the generator needs to be addressed, and he suggested leaving the screening to staff and the city engineer. He stated this is a wonderful plan. Folley asked what the hardship is for the floor area ratio. Gozola stated the CUP does not consider hardships. **Tessness moved to adopt Resolution 09-05 approving the variance and conditional use permit request of Kevin and Jeneen Molldrem, 345 Lakeview Avenue to construct a new home based on the following findings of fact:**

- 1. The proposal is consistent with the Comprehensive Plan.**
- 2. No impacts to adjacent properties have been identified.**
- 3. The increased home size will not burden City services.**
- 4. The proposed replacement home will be smaller than the existing home.**
- 5. The Engineering review has determined the purpose and intent of the**

- floodplain buffer regulations are met even with the reduced buffer.
6. The Engineering review has also determined that the floodplain buffer nonconformity is necessary to ensure proper stormwater drainage between this and the neighboring parcels.

And subject to the following conditions:

1. The applicant 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 approved by the City Engineer prior to any work being authorized. 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 and approved.
4. No construction shall occur within any easements on the property.
5. To address all drainage concerns and to ensure adherence to the required grading 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 and City Administrator;
  - b. Foundation Survey – a survey verifying the location and elevation of the slab 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 applicant shall adhere to all additional BMPs deemed necessary by the City Engineer (added as conditions on the building permit) to protect the site during the demolition and construction process.
7. The property owner shall draft and grant drainage and utility easements in a form acceptable to the City over all required storm water management facilities as directed by the City Engineer and City Attorney.
8. Maintenance of all proposed storm water management facilities shall be the responsibility of the property owner. If not maintained, the City will undertake the needed maintenance and assess all such costs back to the property owner.
9. The plans shall be updated to include an architectural feature enclosing the proposed generator in order to eliminate possible noise impacts to surrounding properties.

10. **The play structure within the front yard setback (lakeshore) shall be removed prior to issuance of a building permit for the new home.**
11. **Final design(s) of the construction plans shall be subject to review and approval of the City engineer prior to construction.**
12. **The City Engineer shall inspect the property at the applicant's expense during the construction process to ensure on-going compliance with all engineering requirements.**
13. **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 – LaBelle, De La Vega, Folley and Marceau. Motion carried.**

**7. OLD BUSINESS**

None

**8. NEW BUSINESS**

**A. Tour de Tonka Bike Ride** – Loftus stated Minnetonka Community Education has requested permission to travel through Tonka Bay on Manitou Road and Birch Bluff Road. This is the fourth annual ride. Marceau stated it is a very successful event. **Marceau moved to approve the Minnetonka Community Education request to allow the Tour de Tonka Bike Ride in Tonka Bay. Tessness seconded the motion. Ayes 5. Motion carried.**

**B. Southshore Center** – Loftus stated information was just received today that Shorewood City Council moved to exercise their option to purchase the Southshore Center. Essentially, the City Council will acquire the Center as per the Cooperative Agreement. They will then negotiate a sale to the Lake Minnetonka Communications Commission. In accordance with the Cooperative Agreement, Tonka Bay would be compensated \$55,000. Shorewood isn't asking for any specific action from the Tonka Bay City Council at this time. De La Vega noted the LMCC is under a deadline. The LMCC wanted to make sure Shorewood's action would not be derailed. He stated he would like to hear the Council's thoughts or concerns on Shorewood's motion. LaBelle stated based on his interpretation, Shorewood is well within its rights to exercise their option. De La Vega stated we should have some sense of whether the Council would object to this if Shorewood moved forward. Tessness stated he saw this as a straightforward matter, and Shorewood has the right to move forward. Marceau stated he did not contest Shorewood's right to move forward. De La Vega sensed that the Council does not have an issue with Shorewood's action. Folley asked if staff could be directed to write to Shorewood and acknowledge their action. Penberthy stated that the Council could so direct staff.

**9. MATTERS FROM THE FLOOR**

None

**10. REPORTS**

**A. Loftus** – Loftus stated the Minnehaha Creek Watershed District has awarded the bid for the shoreline restoration project and hope to begin the work in early April.

**B. Marceau – Finance, Marinas** – no report

**C. Tessness – Buildings, Building Inspection, Fire Lanes and Municipal Docks** – no report

**D. Folley - Animal Control, LMCC, Technology, and Southshore Senior/Community Center** – Folley thanked De La Vega for all his hard work with the Southshore Center.

**E. De La Vega - EFD, Parks, Sanitation, and LMCD** – De La Vega stated a Parks & Trails meeting was held earlier in the week. The group is looking at possible equipment additions for Old Orchard Park which would tie in with the shoreline restoration project. He stated there are some major budget issues arising at the Excelsior Fire District.

**F. Attorney's Report** – Penberthy proposed a worksession or two be held to discuss various zoning matters. He suggested an hour for the first meeting. LaBelle suggested 6:00 p.m. before a future meeting. **Folley moved to set April 14 at 6:00 p.m. for a Council worksession. Marceau seconded the motion. Ayes 5. Motion carried.**

**G. LaBelle - Public Works and SLMPD** – no report

**11. ADJOURNMENT**

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

Attest:

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Clerk