

**MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
June 26, 2007**

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

3. APPROVAL OF AGENDA

Marceau moved to approve the agenda as amended: Add the following under Consent Agenda: Item 5E, Ordinance Interpretation, and Item 5F, Ordinance Interpretation. Add the following under New Business: Item 9E, LMCD Budget Discussion. Move Item 9D under Item 6, Matters from the Floor. Tessness seconded the motion. Ayes 5. Motion carried.

4. APPROVAL OF MINUTES - Regular Meeting - June 12, 2007

Marceau moved to approve the minutes of the regular meeting of June 12, 2007 as amended: Page 1, start time should be changed to 7:00 p.m. Page 10, Item 11E, change sentence to read "four of the five City parks". De La Vega seconded the motion. Ayes 5. Motion carried.

5. CONSENT AGENDA

LaBelle explained the purpose of the insurance liability coverage waiver. He stated the City typically does not waive the statutory tort limits. Sandin discussed the two ordinance clarifications recommended for approval. **Marceau moved to approve the Consent Agenda as submitted approving Resolutions 07-23 through 07-25, insurance liability coverage waiver, and ordinance interpretations for the floodplain buffer and impervious surface regulations. Tessness seconded the motion. Ayes 5. Motion carried.**

6. MATTERS FROM THE FLOOR

A. Linda Murrell, Chamber of Commerce – Murrell was present to invite Tonka Bay to participate in the annual Fourth of July celebration and ask for an annual contribution. She gave a rundown of the day's activities. She also discussed the need for more contributions. LaBelle stated this is an event that a large number of residents attend. We have never budgeted for this and should start in 2008. Funds have typically come from the liquor fund in the past. Marceau suggested approval of an \$1100 contribution with funding from the liquor fund. **Marceau moved to approve an \$1100 contribution to the SLMPD for the police patrols at the Fourth of July fireworks**

celebration with funding from the liquor fund. Tessness seconded the motion. Ayes 5. Motion carried.

7. **PUBLIC HEARING**

A. **Variance Request - Jeff Heggedahl and Laura Westby, 115 West Point Avenue** - Sandin stated there are two variances requested; one is for a 28' variance from the front yard setback and the second is for a variance from the required 15-foot floodplain buffer around all new structures. **Ben Gozola, City Planner** reviewed the property location and showed aerial photographs of the site. The applicants are proposing to demolish the existing house and build a new structure. He reviewed the survey showing the existing and proposed structures. Hardcover will be removed from the site. The floor area ratio and building height are conforming to code requirements. They are just under the 30% requirement for FAR. He discussed the two variances requested as they relate to state statute requirements. He stated the unique configuration of the lot makes the setback request reasonable. They propose to bring the house further back from the lack and reduce the amount of non-conformities currently existing. With regards to the 15-foot buffer variance request, the proposed house will be 14' from the home to the south because the neighbor's house is extremely non-conforming. He stated the request is reasonable because of this. He stated the request would not alter the character of the neighborhood. He reviewed the variance requests as they relate to city code requirements. He noted the unique lot configuration and large amount of lakeshore results in a small area of buildable land which is substandard. He noted the applicants did not create the hardship. He recommended approval of the lakeshore setback and 15-foot buffer variances. LaBelle opened the hearing for public comments. There were none. Tessness stated the lot is definitely a hardship. He was in favor of the request. Folley asked for clarification of the elevation of the house. He was concerned about drainage. Gozola noted the elevation of the proposed house and that of the neighbor's which is non-conforming. Folley supported the request. Marceau was pleased that the non-conformities have been reduced and supported the request. De La Vega asked about the recommendation for a swale and where it should be located. Scott Harri stated there are two swales proposed, one running to the south and one to the lake. None of the runoff from the new home will flow to the south. De La Vega believed this is a vast improvement to what is currently on the site. He supported the request. LaBelle also supported the request. **Tessness moved to adopt Resolution 07-26 approving the front yard setback variance of 28 feet and a variance from the required 15-foot floodplain buffer for Jeff Heggedahl and Laura Westby, 115 West Point Avenue, based on the following findings of fact and conclusions:**

FINDINGS OF FACT

1. **The proposed new home is conforming to all primary structure setbacks, and the low floor elevation is conforming to floodplain requirements (933.5).**

- Proper drainage and protection of floodplain have been addressed.
2. The area of floodplain on this property and the relatively flat nature of this property make it difficult to conform to the buffer requirement without impacting the floodplain which would impact adjacent properties.
 3. The proposed home will be in character with the other newer homes within the neighborhood.
 4. The granting of the variance would not impair light or air to adjacent properties.
 5. Congestion and the possibility of fire would not increase as a result of this variance request.
 6. The proposed improvements will increase the home's value which, in turn, will support or boost the value of surrounding properties.
 7. The Comprehensive Plan calls for this are of the City to be used for single family dwellings and for development to occur in an orderly fashion in a manner best for the community.
 8. Access to the home during flooding is being met in the most convenient location (the front of the home).
 9. Difficulties could arise for adjacent lots if the full buffer were provided around the entire home.
 10. No special uses or privileges would be conferred by the granting of the requested variances.

CONCLUSIONS

1. The requested variance will satisfy all criteria outlined by code for the granting of such a request.
2. The amount of lakeshore on the property limits the overall building pad normally found on a lot of this size.
3. The location and elevation of the neighboring non-conforming home eliminate the possibility of conforming to the floodplain buffer requirement without moving the home closer to the lakeshore.
4. The proposed new home will be less non-conforming than the existing home.
5. The proposed new home will be conforming to height and bulk requirements of city code.
6. The proposed new home would lessen the overall hardcover within the lakeshore setback to the north of the home by 1176 square feet.
7. The proposed new stairway is encroaching into the front yard as little as possible given building code requirements.

and subject to the following conditions:

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 to follow the survey as submitted.
3. No construction shall occur within any existing easements on the property.
4. The proposed turnout/parking portion of the driveway that parallels West Point Avenue shall be constructed no closer to the existing street than the existing bituminous drive.
5. The applicants shall install a 10-foot wide vegetated buffer approximately twenty (20) feet in the southeast corner per the direction of the City Engineer.
6. To address drainage and floodplain concerns, 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 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 the issuance of a certificate of occupancy for the new home.
7. The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure ongoing compliance with all engineering requirements.
8. The variances 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, Marceau, Folley, De La Vega and Tessness. Motion carried.

8. **OLD BUSINESS**

None

9. **NEW BUSINESS**

A. **Request for "Watch for Children" Signs and Street Light** – Sandin stated Sonja Johnson has requested two watch for children signs and a street light on Tonka Bay Road. She has also submitted a petition signed by the residents supporting the request. **Sonja Johnson, 70 Tonka Bay Road** reviewed her request for two "watch for children" signs and a street light. She stated the Public Works Superintendent has indicated that there isn't enough money in the sign budget to pay for these signs. She indicated speed bumps and speed limit signs were suggested by others on the petition.

De La Vega stated there are a lot of possibilities to improve safety in that area. He indicated the street light is an ongoing cost to the city. He stated he would also like to see "watch for children" signs near Wekota Park. Marceau was also concerned about safety in the area. He didn't think people realize the speed limit is 20 miles per hour. He believed the cost is nominal. LaBelle agreed but was concerned about the ongoing cost of the street light. He was not ready to recommend approval of the street light at this point. He noted the residents have indicated they would pay for the signage. He suggested the city pay half the cost. Marceau stated since it will benefit the entire city, it wouldn't be fair to have the residents pay for the signage. De La Vega stated he would also be in favor of the city paying for the signs. **Marceau moved to approve the purchase of two "watch for children" signs with funding from the sign fund even though a deficit will show. De La Vega seconded the motion. De La Vega asked if another speed limit sign would be an option. Kluver noted there are two on the road at this point. Ayes 5. Motion carried.**

C. Gas Franchise Ordinance - Sandin stated the gas franchise will expire in August of 2007. The proposed ordinance has been reviewed by all those involved, and no concerns were raised. She asked for a motion to approve the ordinance granting CenterPoint a non-inclusive twenty year contract. Kluver noted that the necessary language pertaining to right-of-ways is included in the ordinance. **Marceau moved to approve the first reading and waive the second reading of the gas franchise ordinance. Folley seconded the motion.** Penberthy discussed the non-exclusivity nature of the ordinance and explained what would happen if the contract were transferred to another gas company. De La Vega asked the meaning behind the Minnesota Statute in the ordinance as it relates to location. He was concerned it would limit the city's ability to get federal funding for trails. Penberthy stated eliminating the second reading would not permit the review of items such as this. **Marceau amended his motion to not waive the second reading, and Folley seconded the amended motion. Ayes 5. Motion carried.**

D. Woodpecker Ridge Road Improvements - Sandin stated the City Council ordered plans for the Woodpecker Ridge Road improvements in December. Staff has reviewed the plans and finds them acceptable. **Scott Harri, City Engineer** reviewed the timeline for the improvement following approval of the plans. He expected that bids could be brought back to the August 14 meeting should plans be approved tonight. LaBelle asked for guidance on what the city should move forward with given the fact they might not own the street a year from now. Harri stated advertisement costs are minimal. It would cost under \$1,000 for the bid letting process. He noted that mitigation costs are included in the plans provided this evening. He reviewed the mitigation plan. He noted the mitigation process involves a 5-year monitoring program. It would cost \$30,250 for the total mitigation process. He discussed the availability of wetlands bank credit

purchase for the project. Penberthy asked whether there could be some assurance in the bidding process in case the city decides not to go through with the project. Harri stated there is general language in all the contracts that allows the city to change its mind. De La Vega asked if the road improvement and mitigation could be bid separately. Harri stated they could be separated, but there wouldn't be any cost savings to the city. He noted the current bid has the mitigation as a separate addendum. **Marceau moved to adopt Resolution 07-27 approving the plans and specifications for Woodpecker Ridge Road. De La Vega seconded the motion. Ayes - De La Vega, LaBelle, Marceau, Folley and Tessness. Motion carried. Marceau moved to adopt Resolution 07-28 authorizing advertisement for bids for the Woodpecker Ridge Road improvement project. De La Vega seconded the motion. Ayes - De La Vega, LaBelle, Marceau, Folley and Tessness. Motion carried.**

E. LMCD Budget – Doug Babcock, LMCD Representative stated the budget increased 5.8% for 2008. The majority of the increase is from citizen requests for additional enforcement on the lake. He discussed surveys done to evaluate the lake experience. He stated the DNR funds half the cost of the survey. Folley asked if the DNR helps fund the milfoil harvesting program. Babcock replied that they do help with funding. De La Vega asked if there is a job description for the new enforcement position proposed. Babcock stated they do not have job descriptions. There is, however, an ordinance that states duties to be performed. De La Vega asked if more violations are identified, how the procedure would change to enforce the violations. He stated it appeared to him the only recourse is court action. He asked why the legal amount is always under funded. It didn't appear that the suit approach is very effective. Babcock discussed the steps taken to achieve compliance prior to a suit being filed. De La Vega was concerned about the cost effectiveness of filing suits. He stated another issue he sees is that the LMCD has lost their focus. He asked what the unique things the LMCD does that no other agency can do. Babcock stated the LMCD is the "glue" that holds the fourteen lake communities together with a common set of regulations. The other focus is the conservation of the lake through milfoil regulation, etc. He believed the current leadership chooses not to focus on the regulatory side of the agency. De La Vega believed the missing part is the enforcement. He stated he still sees issues with the budget as being proposed. He wanted to find a way to work more closely with Babcock so that he would carry forward the city's recommendations on the budget. Babcock agreed. Babcock discussed video enforcement of lake access points and associated problems. He believed there would need to be a 35-40% budget increase in order for enforcement to be completely effective. De La Vega was concerned about the LMCD's major focus. Babcock was also concerned. De La Vega stated he would like Babcock to keep the city updated on what is going on with the LMCD. In response to a question, Babcock stated the LMCD is not obligated to send the budget to the cities until July 1. He explained that if the city chose, they could contact the LMCD to schedule a public hearing

to discuss their budget issues.

10. MATTERS FROM THE FLOOR

None

11. REPORTS

Sandin - Sandin invited residents to attend the July 10 community meeting at 6:00 p.m. to discuss the comprehensive plan 2010 through 2030.

Marceau - Finance, Marinas - Marceau stated he attended an Arctic Fever meeting which will be taken to the Parks & Trails meeting.

Tessness - Buildings, Building Inspections, LMCD, Municipal Docks, Fire Lanes - no report

Folley - Animal Control, LMCC, Technology - no report

De La Vega - Excelsior Fire District, Parks, Sanitation, and Southshore Senior/Community Center - De La Vega stated the EFD met to review the budget and will have another opportunity to review the budget. The Senior Center is exploring options for a long-term solution. The problem is getting bigger because of the loss of the Dial-a-Ride contract and some additional United Way funding. The Parks meeting scheduled for July 3 will be held on July 17.

Attorney's Report - no report

LaBelle - Public Works and SLMPD - LaBelle stated he and Sandin attended the SLMPD Coordinating Committee meeting to review their 2008 budget proposal. He stated 85% of the budget is personnel and personnel-related expenses and is dictated by the union contract. There is very little discretionary spending.

12. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 8:58 p.m. Folley seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk