

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
July 28, 2009**

**1. CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:02 p.m.

**2. ROLL CALL**

Members present: Mayor LaBelle, Councilmembers Marceau, Tessness, Folley, and De La Vega. Also present were Administrative Assistant Link and City Attorney Penberthy.

**3. APPROVAL OF AGENDA**

Folley moved to approve the agenda as submitted. Tessness 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 July 14, 2009 and the Accounts Payable. Tessness seconded the motion. Ayes 5. Motion carried.

**5. MATTERS FROM THE FLOOR**

None

**6. PUBLIC HEARING**

None

**7. OLD BUSINESS**

None

**9. NEW BUSINESS**

**A. Assessor Agreement – John Davis, 55 Willow Woods Drive** supported the change in assessors in order to save a sizable amount of money. He was, however, concerned about the level of service the new assessor would be able to provide. He wondered if Mr. Davy would be able to provide the same kind of information on property sales and information pertinent to property taxes that the County has always provided. LaBelle assured Mr. Davis the same level of service would be provided. He noted the information he was interested in is public information. LaBelle stated he understood from City Administrator Loftus that the first payment would take place in 2010. He asked if there should be some sort of documentation. Penberthy stated there should be an

addendum to the contract. He understood the first payment would be in January 2010, and the second payment would be in July 2010. The original contract called for monthly payments to begin in August. This created a problem because the final payment to the County is in August. The monthly payment language was stricken from the original contract. He suggested this agreement be approved subject to the additional language in an addendum. LaBelle suggested Section 4 be amended to read payments would be ½ in January 2010 and the remaining half in July 2010. He asked if the contract could be amended with that change. Penberthy agreed that would be possible. De La Vega suggested that a termination clause is not included in the agreement. Penberthy noted the proposed agreement is a duplicate of one used by another city with its independent assessor. He stated he looked at it from the standpoint that this is a 1-year contract with an experienced assessor. Payment will not be made if the work is not performed. If there is a death or disability, the successor must provide what is in the terms of the contract. Ideally, there should be a termination clause which would include a list of reasons to terminate the contract. Penberthy believed if the contract works well this year, we could be talking about a longer contract. He stated if you want a termination clause in the contract, it could be added. De La Vega stated he would be okay with not having a termination clause this year but would like it to be added next year. De La Vega stated there should also be a "blue sky" statement with the standard language that it supersedes all previous agreements. Penberthy agreed that blue sky language is usually in a contract so it is clear that any prior verbal discussions are not given any weight. All the terms are included in the contract. LaBelle asked Penberthy if he was comfortable with the contract being approved without the addition of a termination clause and blue sky statement. Penberthy stated the probability is it will not be a problem given the city's history with Mr. Davy. Folley asked if the City could work without an assessor for a couple weeks. Penberthy stated from a legal standpoint, he didn't like to see any gaps in performance. Marceau suggested approving the change to Section 4, Compensation and to make a note to make the other changes with the next contract. **Folley moved to authorize the Mayor and City Administrator to enter into an amended agreement with William Davy for assessing services for a one-year period to begin August 1, 2009 through July 31, 2010 at a cost of \$18,000.00. The following amendment will be made to the agreement to replace the existing language under Section 4. Compensation: "Section 4. Compensation - The City agrees to pay the Assessor for such services the sum of \$9,000.00 on January 10, 2010 and the sum of \$9,000.00 on July 10, 2010."** Tessness seconded the motion. Ayes 5. Motion carried unanimously.

**B. Liability Waiver** – LaBelle stated this is an annual event to not waive tort liability limits. Staff is asking for authorization to allow the City Administrator to sign the waiver form checking that the City not waive the monetary limits. **Folley moved to authorize the City Administrator to sign the waiver form checking "The City Does**

**Not Waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04". Marceau seconded the motion.** Penberthy noted the statutory limits have been raised to \$500,000 and \$1,500,000 which are the current limits. **Ayes 5. Motion carried unanimously.**

**C. Accident Insurance Policy** – LaBelle stated he had asked City Administrator Loftus if this is even necessary to have this insurance coverage to cover the City Council. He understood this pays us our Council salaries if we are injured and not at the meeting. He didn't think the Council should be paid if they are not at meetings. De La Vega stated he understood if the Council is injured while on official City business that the Council would be insured. Tessness stated he understood that this would be traditional worker's compensation. LaBelle felt the premium was quite low for the five of them at \$35. He suggested staff provide additional clarification on the need for the policy and what it would involve. City staff was directed to provide more information.

**10. MATTERS FROM THE FLOOR**

**A. Tim McCarthy, 25 Willow Woods Drive** – McCarthy stated he wants to redo his driveway. It came to his attention that the road restrictions on Woodpecker Ridge Road were 4-ton per axle year round. He understood the Council changed it recently to protect Woodpecker Ridge Road out on the peninsula because of the new road. He stated he would like to have a road waiver to allow his cement contractor to travel on Woodpecker Ridge Road to his home on Willow Woods Drive to complete the work. He asked the Council if they intend for the road restrictions to be permanent. LaBelle suggested McCarthy call the City Administrator to see if he can get a special dispensation. Tessness stated it was his original thought that the road restriction was for the new road. He was informed by staff that the Council needed to give permission for any kind of road waiver. He suggested this be on a future agenda. He would like to have input from the Public Works Superintendent before any change could be made to the current policy. De La Vega stated we don't have a provision for road waivers, and Greg cannot approve something the Council instructed him not to approve. He recalls the Council approving the road restrictions but didn't think it needed to be for the entire length of Woodpecker Ridge Road. LaBelle asked McCarthy if he had a work schedule in mind. McCarthy stated they had planned to do it the previous work but were unable to due to the road restrictions. He asked if there was any way to change the sign to indicate the restriction begins at the east side of Woodpecker Ridge Road. Marceau stated at this point the Council needs to deal with McCarthy's request on a one-time basis and to further research this matter. Penberthy stated the City Council could state they want to give permission for a road waiver and it will be an exception to the policy previously approved if there was a policy approved. **Marceau moved to grant special permission to Tim McCarthy, 25 Willow Woods Drive, for a one-time temporary road waiver to**

**allow construction of a driveway. De La Vega seconded the motion. Ayes 5. Motion carried.**

**B. Dan Freier, Minneapolis, owner of dock lot at 10 Brentwood Avenue –** Freier stated he has a problem with the landscaping and driveway improvements at the dock lot at RLS 715 (fifth lot from Brentwood Avenue) adjacent to his property. The original driveway has caused some drainage problems. He indicated he has asked the City Administrator to look into the 25% hardcover violation. The property owner has also installed pavement on city property. It appears he has 90% hardcover. The property owner has also performed rip rapping on the lot without a permit. He submitted photos showing where the problems exist. He believed the property owner should have to get a conditional use permit. Folley asked what the address of the property is. Freier stated it is the fifth lot in from Brentwood and is RLS 715. He asked that proper surveys be done and a permit taken out. Council directed staff to investigate the issue and report back to the City Council.

**C. John Davis, 55 Willow Woods Drive –** Davis stated with the approval of the McCarthy temporary road waiver, there will be more requests for additional waivers in the future.

**11. REPORTS**

**A. Loftus – absent**

**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 – no report**

**E. De La Vega - EFD, Parks, Sanitation, and LMCD – no report**

**F. Attorney's Report – no report**

**G. LaBelle - Public Works and SLMPD –** LaBelle stated the next SLMPD Coordinating Committee meeting will be held on Wednesday, July 29 at 5:30 p.m.

**12. ADJOURNMENT**

**There being no further business, it was moved by Marceau to adjourn the meeting at 7:40 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.**

Attest:

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Clerk