

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING August 12, 2008

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

3. APPROVAL OF AGENDA

Marceau moved to approve the agenda as amended: add Item 8F, 2009 SLMPD budget. Tessness seconded the motion. Ayes 5. Motion carried.

4. CONSENT AGENDA

Marceau moved to approve the consent agenda as presented approving the minutes of the worksession and regular meetings of July 22, 2008. De La Vega seconded the motion. Ayes 4-0-1. Folley abstained from voting. De La Vega moved to approve the Accounts Payable and adopt Resolution 08-17 appointing election judges for the Primary and General Elections. Marceau 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. League of Women Voters Rental Request – Loftus reviewed a request from the League of Women Voters to waive the room rental and deposit fee for a Candidates' Forum on October 13 at Tonka Bay City Hall. She noted the fee and deposit fees were established by the City Council in January of 2008. Kay Thompson, LWV

stated the LWV sponsors a number of Candidates' Forums every election year. She stated the forums are a wonderful opportunity for the residents to hear the candidates and ask them questions. It is a matter of public education. Because it is a benefit to the citizens of Tonka Bay, she asked the rental fee and deposit be waived. It is a non-partisan event. LaBelle stated he was in favor of not waiving the fee in January for the Republic Caucus, because it was a partisan event. He stated this is a valuable event, and he would be in favor of waiving the fees for this event. Marceau stated the fee is valid, because it is used for heating/cooling costs that coincide with the room use. De La Vega agreed, stating either we have a fee or not. He believed we should be consistent throughout the application of this type of fee and not let it appear that we are favoring one organization over another. He believed it would be a much cleaner process if we were consistent across the board. Tessness stated he would hate to see the event not being held because of the fee for the facility. Tessness stated he would support waiving the fee. Folley agreed we should also be consistent and charge the fee. **Marceau moved to reaffirm the rental fee and damage deposit and not waive the rental fee and deposit request for the League of Women Voters. De La Vega seconded the motion. Ayes 3-2. LaBelle and Tessness voted against the motion. Motion carried.**

B. Minnehaha Creek Watershed District Shoreline Restoration Proposal – Nat Kale, MWCD was present to give a brief overview of the general project and update the Council on additional information. He stated the MCWD is in the process of classifying the Lake Minnetonka shoreline as high, moderate or low erosion potential sites. Four demonstration sites will be created to show viable solutions for erosion stabilization. He noted the location in the Old Orchard Park area has been identified as one of these locations. He reviewed two separate concept designs for the area where rip rap exists and where it does not. He explained the kinds of vegetation that would be planted there. One concern brought up at the last meeting about whether a proposed dock extension would interfere with this project. Kale stated it didn't appear the dock expansion would interfere. If there was any encroachment, vegetation could be cut back. There was also a concern about interference with the trail. He stated the buffer area would not interfere with the trail. He stated another concern was maintenance. He discussed the level of maintenance at the site. He noted the consultants have indicated 18-20 hours per year would be required. Kale reviewed vegetation in the area. He stated the upland vegetation would be 2-3 feet in height and would be mowed annually to keep it back. Proposed vegetation would be something people could see over as they walked along the site. The goals for the site are to get people to visit the site by creating more of a park feel through flowering native plants. He asked the Council to adopt a resolution supporting this proposal. De La Vega asked if the trees on the site would remain. Kale answered the trees would remain. He asked if the live stake and roll-down fiber would be used in the construction or just one or the other. Kale replied both would be used. He stated as you move down the shoreline from the boat docks to the fishing pier, there is some older rip rap. The rip rap would remain in place, and the live stake installed.

LaBelle asked if there would be an agreement to execute between the City and the MCWD. Kale stated he could provide a sample agreement. It would outline what the MCWD would provide. He noted the MCWD would be providing the maintenance for a three-year period after which time it would be handed over to the city. LaBelle stated he would need to see a sample agreement before a resolution can be adopted approving the proposal. Tessness stated he sees this as a great opportunity. Tessness asked how far away the split rail fence would be from the water. Kale noted it would be close to the existing trail. The fence would be as far back from the water line as possible. Tessness asked if the fence location would be an issue if additional docks are added. Kluver stated he was unsure at this point. He would recommend a 3' setback from the trail. He noted the trail is kept open all winter long, and he was considered about damage to the fence when plowing occurs. Kale stated he would adjust the plan where the fence location is indicated. LaBelle stated we are going to tread very carefully as the lagoon and marina is a treasured asset in the community. Kale asked Kluver if he had any other concerns. Kluver stated the fence location was his main concern. Kluver stated the maintenance aspect would be new for the Public Works department and would be a learning experience for all. LaBelle asked when the process would begin. Kale noted they hope to get something in the ground by mid to late November.

C. Lake Minnetonka Association (LMA) – Dick Osgood, LMA stated the LMA supports any kind of shoreline restoration proposal, and he encouraged the city to participate in the MCWD proposal just discussed. LaBelle asked Osgood for a brief background on the LMCA and how they operate. He stated the LMA is a non-profit lakeshore owners' organization. Their areas of concentration are milfoil and zebra mussel eradication and lakeshore safety. He stated there has been milfoil in the lake for twenty years. They also advocate zebra mussel eradication. They also are working to educate the lakeshore-area residents on boat safety. De La Vega asked how long the organization has been in existence. Osgood stated it was created in 1989 as the Lake Minnetonka Lakeshore Owners and reorganized in 1998. Folley asked if there is any relationship with the LMCD. Osgood stated there isn't a formal or legal relationship. Sometimes the LMCD will contribute towards a project. Osgood discussed the Three Bay Program. Carmen's, Phelps, and Gray's Bays are part of a five year program to control milfoil. It aims to also restore native plants to these bays. Results have been mixed. He noted there is very little milfoil in Gray's Bay. Carmen's Bay has been the least affected of the three bays. He stated they have encouraged other bays to opt-in to the program. He stated residents around Gideon's Bay have requested opting in to treatment in future years. The first step is an inventory of the plants involved and then to raise the funds to pay for the treatment. The residents have personally guaranteed payment of the cost of \$6600 for the inventory. On behalf of the residents, he asked if the City would consider giving funds to offset the cost. He suggested at least \$500 – 1000 be given. He discussed the "Milfoil Free" program currently in progress. He stated it is an effort to remove milfoil from the lake and keep new exotic plants and viruses out of the lake. He

noted zebra mussels cannot be eradicated. There are viruses appearing in the lake that kill fish. He stated an investment in proportion to the size of the lake is needed to control exotic plants and viruses. We currently spend \$350,000 to \$400,000 annually. De La Vega asked what the investment would look like for Lake Minnetonka if we did spend in proportion to the size. Osgood stated we would need to spend 10-20 times what we are currently spending. He stated prevention and early detection are absolutely critical. Boats entering seventy-five percent of the lake are not monitored. Osgood stated it is important for the cities and agencies around the lake to fund this campaign. De La Vega stated he was concerned about the scope of the requirement versus the potential. He asked what efforts are available at the state level. Osgood stated he is working with legislators to increase fees for boat licenses, for example. He stated he is in favor of user fees. De La Vega stated he supports user fees on a state-wide level. Osgood also suggested there be fewer access points to the lakes in the state. De La Vega stated we are asking the residents to fund this program when they are not causing the problem. Osgood stated the residents still shoulder some of the responsibility and have always provided funding when asked. Marceau stated the real funding needs to be at the state level. Osgood stated he didn't see all the funding coming from one source. He believed that a user fee or surcharge on licenses is the best route for funding. De La Vega asked who would have the authority or responsibility to approve a user fee. Osgood was unsure; however, the accesses are mandated and controlled by the DNR which are implemented through local governments. He stated there needs to be a policy change at the state level.

D. Landscaping in Fire Lane at 15 Mound Avenue – Loftus stated Shawn Weinand at 15 Mound Avenue has submitted a request to allow landscape pavers in the fire lane adjacent to his property. The action requested is to have the Council approve the request which would require a license agreement. If the action is denied, the pavers will need to be removed. Folley asked when the pavers were installed. Loftus stated they were installed about three weeks ago. Tessness stated he would not be adverse to a license agreement. Marceau suggested stakes delineating the fire lane be installed. It looks like it is private property. Kluver stated there are four posts installed in other locations. Folley stated he would be upset if he were the neighbor and the pavers were on his property. He didn't think they should be there. Tessness stated he is in favor of the license agreement because of the fire lane location. De La Vega stated he didn't see any purpose for the pavers except for aesthetics. He stated we have denied residents in the past when they wanted to landscape in other fire lanes. He wanted to be consistent. Folley asked if a permit was required. Loftus stated they pulled a building permit for pavers on their property. LaBelle stated it is not unprecedented. They have required residents to remove landscaping in the fire lanes in the past. He was not in favor of allowing the pavers to stay. He stated the posts were put in place so residents would not use them as private property. Tessness stated he didn't see much of a difference between sod and wood chips and pavers. Loftus stated the pavers are more structural in

nature. **De La Vega moved to deny the proposed landscaping plan and direct staff to notify the residents. Folley seconded the motion. Ayes 3-2. Marceau and Tessness voted against the motion. Motion carried.**

E. 325 Lakeview Avenue – Recreational Facility – Adam Egan, attorney representing Jon Davis, 325 Lakeview Avenue was present to answer any questions. Loftus stated staff has been working on this issue administratively for close to a year now. This is the first time it is on the Council agenda. She noted the City Attorney has recommended the residents apply for a conditional use permit for the recreational facility, and the resident has responded in writing that their intent is not to apply for a CUP. The reason we are before the Council tonight is to get direction on how to proceed at this point. We did receive a letter today from the neighboring residents at 315 Lakeview Avenue with their comments. She asked for Council input. LaBelle stated we aren't getting any cooperation from the resident. There is a process in place. Egan stated the August 6 letter outlines several points of relevance. He stated the use of the area for playing basketball is not a dedicated use. It has been used for parking vehicles and other recreational uses. The post and background are removable. The majority of the cement is what was originally there when the house burned down. Egan stated there isn't any trenching to the slab. There are no plans to take electricity out there. There has never been any discussion of having any tournaments of any kind on the slab. LaBelle stated we don't know how we will respond to a CUP in the way of conditions when there isn't an application in front of us. He encouraged Egan to ask his client to reconsider and apply for a CUP. The City Council cannot allow blatant disregard for our ordinances. Egan stated he has very clear instructions from his client should the City Council require a CUP. Egan stated his client feels he has been singled out as there are several other properties where this is going on. Loftus stated the Council action requested is to make a determination on how to proceed and direct staff and legal counsel to come back with legal options. Marceau stated he has received information tonight that he hasn't had an opportunity to review. De La Vega urged consistency. He stated he met with Mr. Davis at the site. He stated the ordinance must be abided by in spite of all the other issues surrounding it. Egan stated he disagrees with the city's legal analysis. De La Vega stated we are elected to enforce the ordinances. He stated the CUP process is a very simple one. Tessness stated there seems to be a clear violation. He stated the hoop and backboard should be removed, and the resident should apply for a CUP. De La Vega stated it is quite obviously designed for use as a basketball court. Folley believed a violation exists. **Folley moved to affirm that violation of Section 1017.05 exists and direct staff and legal counsel to come back with legal options. De La Vega seconded the motion. Ayes 5-0. Motion carried.**

F. 2009 SLMPD Budget – Loftus stated the City Council heard the 2009 SLMPD budget presentation at its meeting on July 27. The City of Shorewood, however, did not approve the budget, and it has been revised. She stated there is a September 1 deadline to approve the proposed budget. The revised budget is smaller than what was

previously approved in July. **Tessness moved to adopt Resolution 08-18 approving the 2009 SLMPD budget with Tonka Bay's share of the operating budget of \$281,685 and debt service reduction share in the amount of \$86,330 for a total contribution of \$368,015. Marceau seconded the motion. Ayes – LaBelle, Folley, Tessness, Marceau and De La Vega. Motion carried.**

9. MATTERS FROM THE FLOOR

None

10. REPORTS

A. Loftus – Loftus stated the Council received a legal position for the dock at 245 Woodpecker Ridge Road. The city's attorney from the LMC, George Hoff, will be in attendance at the September 10 meeting. She stated the Haselows indicated removal of the dock will cause the road to become unstable. She asked for permission to have the City Engineer check this out. De La Vega believed that should be a second or third step in the process. LaBelle stated if we are going to make an informed decision, it will be needed. Loftus stated the City Engineer could provide a cost estimate of what it would cost for the engineering review. LaBelle suggested waiting until George Hoff attends the meeting. He would like to wait for the complete engineering review. Loftus stated she received a code violation letter from the attorney representing Jon Davis at 335 Lakeview Avenue. The violation regards the resident at 315 Lakeview Avenue. There are some legal issues raised in the letter. She asked for the Council's permission to have the City Attorney to research the issues. The Council agreed it was a logical next step. Loftus stated the mill and overlay should begin the week of August 18. A letter was delivered to all residents on Woodpecker Ridge Road. Loftus reported Wekota Beach had been closed due to E-coli contamination levels. It hasn't been closed for over 25 years. She believed it was due to the geese in the area. The beach reopened today. Loftus stated the swing set at Old Orchard Park is now functional.

B. Marceau – Finance, Marinas, - no report

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

D. Folley - Animal Control, LMCC, Technology – no report

E. De La Vega - EFD, Parks, Sanitation, and Southshore Senior/Community Center – The RFPs for the Southshore Senior/Community Center have been reviewed, and he will provide information at the next meeting. The Park Committee met, and they will be looking at equipment for Old Orchard Park once the mitigation and shoreline restoration have been completed.

F. Attorney's Report – no report

G. LaBelle - Public Works and SLMPD – LaBelle stated there was a lightning strike following the last City Council meeting which resulted in a fried electrical line to the water treatment plant. Kliver stated the plant was on a temporary generator for over 24

hours. One line break was repaired, and another line blew. The break was identified and repaired. Loftus noted a claim has been filed with Xcel Energy to recover some of the costs.

11. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 8:46 p.m. Tessness seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk