

**MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
August 14, 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: Mayor LaBelle, Councilmembers Marceau, Tessness, Folley, and De La Vega. Also present were City Administrator Sandin, City Attorney Penberthy, City Engineer Harri, and City Planner Gozola.

3. APPROVAL OF AGENDA

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

4. APPROVAL OF MINUTES – Worksession and Regular Meeting – July 24, 2007

Marceau moved to approve the minutes of the worksession of July 24, 2007 as written and regular meeting as amended: Item 7, Public Hearings, amend Condition #5 to add: “except the vegetative buffer.” Under Reports, page seven, amend to read: final details will be brought back to a future City Council meeting. De La Vega seconded the motion. Ayes 5. Motion carried.

5. CONSENT AGENDA – Accounts Payable, Resolution 07-32

De La Vega moved to approve the consent agenda as amended: Change Resolution 07-32, Condition 5, add “except the vegetative buffer”. Marceau seconded the motion. Ayes 5. Motion carried.

6. MATTERS FROM THE FLOOR

A. **Dennis Lappen, 180 Interlachen Lane** was present to address issues with dock rentals in Tonka Bay on Interlachen Lane. He stated it has been four years, and nothing has been done. The violations are occurring at the house next door. LaBelle stated the city is aware and correspondence is going back and forth between the concerned parties.

B. **John Lietzke, 15 Northrup Avenue** understood you could have one dock and two boats. LaBelle stated you are allowed more than two with permission from the city. LaBelle stated there are also other requirements such as proof of ownership.

7. SPECIAL BUSINESS

A. **2008 Excelsior Fire District Budget Review** – De La Vega introduced the Excelsior Fire Chief who was present to review the proposed 2008 EFD budget. **Scott Gerber, EFD Fire Chief** discussed the budget preparation process. Worksessions with the EFD Board and various City Councils were also held this year to foster better

communication. He noted critical technology needs have been added to the operating budget. The operating budget proposes an 11% increase. Folley asked if a proposed technology needs assessment would generate more costs. Gerber stated he has been asked by the other cities to create a fundamental plan for technology rather than just buy computers. **Marceau moved to adopt Resolution 07-35 approving the 2008 EFD Budget and CEP (Tonka Bay's share is \$196,306). De La Vega seconded the motion. Ayes – Marceau, De La Vega, Tessness, Folley and LaBelle. Motion carried.**

B. 2008 South Lake Minnetonka Police Department Budget Review – LaBelle introduced Chief Bryan Litsey who was present to discuss the 2008 SLMPD budget. **Bryan Litsey, SLMPD Police Chief** discussed the budget preparation process. He explained that an Operating Committee is now in place that gave their input on the proposed budget. He stated each city must approve the budget. He discussed the proposed budget which proposes no additional staff in 2008. He discussed the creation of a strategic initiative to look at future needs beginning in 2009. De La Vega noted that the majority of the budget is personnel. Litsey noted that over 80% of the budget is for personnel costs. De La Vega asked how the funding formula was determined. Litsey explained how the formula was calculated and noted that it will be revisited after five years. LaBelle asked for the current status on the SLMPD providing animal control services. Litsey stated some of the cities are looking into having Four Paws provide animal control services. Animal control would be a small part of what a CSO would do. He stated the other cities would like the Operating Committee to review this further. **De La Vega moved to adopt Resolution 07-36 approving the 2008 SLMPD Budget (Tonka Bay's share is \$344,613). Marceau seconded the motion. Ayes – De La Vega, Marceau, Folley, Tessness and LaBelle. Motion carried.**

8. PUBLIC HEARING

A. Variance Request – The Danberry Company, 5413 Manitou Road

B. Conditional Use Permit Request – The Danberry Company, 5413 Manitou Road – Sandin reviewed the public hearing process and introduced Ben Gozola, City Planner. **Ben Gozola, City Planner** noted the location of the property, stating it has three front yards – on Northrup Avenue, Manitou Road, and Brentwood Avenue. He stated a 30' variance from Manitou Road and a 9' variance from Brentwood Avenue are required for a handicapped access ramp. Two additional variances are needed for a sign. One variance is a 6' variance from the required side yard setback and a variance for sign placement outside the required sight triangle. A shoreland impact plan conditional use permit is required for 42.2% hardcover. He stated Engineering found that the request met the majority of the requirements. To the south, there is an area of gravel surface that needs to be removed from the entire site. A rain garden is proposed, and a catch basin in the area needs to be 12" in diameter. A manhole is also required for future

access. He reviewed the reasonableness of the request. He noted that the handicapped access ramp is necessary. The proposed location for the ramp is the most reasonable location. He also noted the proposed sign location is also reasonable given the narrowness of the lot and the building location. The proposed location is the only visible location on the site. He noted the narrowness of the lot and building location present unique circumstances. The proposal will not impact the character of the neighborhood. The use will not unreasonably increase congestion on the streets. Any increase in traffic will be entering and exiting from an arterial street. The narrowness of the lot and existing building location present the hardships for the request. The applicants did not create the hardship. Staff recommends approval of the request. He recommended an additional condition that the sign location be re-examined if the county road is ever reconfigured. He stated a resident to the north of the site was concerned about screening the site. He stated that should be examined when the building permit is reviewed. He reviewed the sign materials and discussed size requirements. He stated Hennepin County is requesting a resolution be adopted prohibiting parking on the east side of Manitou Road between Brentwood Avenue and Northrup Avenue. LaBelle asked if other municipalities have other requirements for a CUP for a commercial use. Gozola stated hardcover requirements are different for commercial uses. De La Vega asked who would pay for the catch basin and manhole. Gozola stated it would be the developer's responsibility to pay for them. It is a condition for approval. LaBelle opened the hearing for public comments on the variance request. **Brian Hallblade, 20 Northrup Avenue** asked if any specific information has been provided on clearing on the site or any specifics on the replacement vegetation. Sandin stated any plantings would have to be warrantied, and the city's landscape ordinance is very strict. The developer will be working closely with staff and the City Engineer on landscaping on the site. She stated she would let Mr. Hallblade review a copy of the landscape plan when it is available. **Dennis Nelson, 135 Mound Avenue** asked how high the sign will be and how far will vehicles have to pull out in order to see around it. Gozola stated Code requires the sign to be at least eight feet from the property line. This sign will be ten feet from the bituminous surface. He believed the existing vegetation will block sight lines more than the proposed signage would. **John Lietzke, 15 Northrup Avenue** asked if the catch basin would cut into the existing culvert that drains into Manitou Park. **Scott Harri, City Engineer** explained how the culvert would drain from the site. Sandin noted it would drain to the catch basin across Manitou Road to Manitou Park. Lietzke asked how a rain garden works. Harri explained how a rain garden works on a site to control drainage. Lietzke asked how screening would be handled on the east side of the site. **Jeff Danberry, applicant** stated the landscaping plan is not complete at this point, but he does not intend to remove any significant trees at that location. LaBelle closed the public hearing. Tessness stated the proposal is an improvement to what currently exists on the site. He was in favor of the request. Marceau stated he did not oppose the request and believed it was an improvement to what exists on the site now. Folley had no concerns, and all his questions have been

answered. De La Vega stated he also supported the request. LaBelle stated there are demonstrated hardships based on existing conditions and not through the fault of the applicant. He supported the request. **Tessness moved to adopt Resolution 07-37 approving the 30 foot side yard setback from Manitou Road for the handicapped ramp, 9 foot variance from the required 30' front yard setback from Brentwood Avenue for the handicapped ramp, variance to allow the proposed sign to be within the required corner vision clearance triangle, and a 6' variance from the required 8' foot side yard setback variance for the proposed sign for The Danberry Company, 5413 Manitou Road based on the following findings of fact and conclusions and subject to the following conditions:**

FINDINGS OF FACT

1. The only alternative ramp location would result in a very long ramp due to topography and the maximum grade for ramps. This would place the ramp in an inconvenient location for a handicapped parking space.
2. The proposed sign location is the only available and visible site for a sign. View of oncoming traffic on Manitou Road will not be obstructed by the sign location.
3. The non-conforming lot width, location of the legally non-conforming structure, and parking requirements all present challenges. Transitioning this parcel to office use with the minor addition of a handicapped ramp will likely result in the least impact one would anticipate with redevelopment of this property.
4. Granting the requested variances would not impact public safety and would result in a rebirth of the unused structure on this parcel. Any impact to the neighborhood or the community would be positive.
5. The requested variances will have no impact on the light and air to adjacent properties.
6. The renovation of this lot for its intended use under zoning will not unreasonably increase the congestion in the area, increase fire danger, or create any public safety hazard.
7. The proposal will not violate the intent and purpose of the Comprehensive Plan.
8. The location of the structure and the required parking lot location eliminate alternatives to a visible sign location.
9. Granting any of the proposed variances would not be conferring any special privileges on the applicant.

CONCLUSIONS

1. The request is reasonable as the lot is non-conforming to width and the existing structure makes it difficult to locate a convenient ramp for

- handicapped access.
2. **Parking space requirements and location restrictions limit the area in which a visible on-premises sign can be located.**
 3. **The lot is guided for commercial use, and the proposed investment in the property will have a positive impact on the surrounding properties.**
 4. **Manitou Road is designed for high levels of traffic, and the proposed use will not interfere with safety on this public roadway.**
 5. **Refurbishing of the existing structure requires a sprinkler system be installed thereby increasing fire safety on the property.**
 6. **The applicant was not responsible for the creation of the narrow lot or the construction of the legally non-conforming building.**

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.**
3. **Construction to follow the submitted survey.**
4. **No construction shall occur within any existing easements on the property.**
5. **To ensure adherence to the shoreland impact plan, a final grading survey shall be submitted to verify that all grades conform to the designed plans and that all engineering recommendations were implemented. The survey shall be approved by the City prior to any offices opening for commercial use.**
6. **The applicant shall provide the City with a \$1000 deposit to ensure completion of all required stormwater and landscaping improvements.**
7. **The applicant shall provide the City with a drainage and utility easement over the proposed rain garden.**
8. **The area denoted as “remove gravel surface” to the south of the existing structure shall be expanded to include all gravel surfaces to the bituminous surface of Brentwood Avenue. Said area shall be graded to match the existing drainage patterns and be restored with topsoil and sod.**
9. **The rain garden shall be constructed per the direction of the city engineer.**
10. **Screening plantings to the north of the rain garden shall be approved by the City Engineer to ensure they will not conflict with the function of the rain garden and will not block any sight lines onto Manitou Road.**
11. **The proposed pipe leading from the rain garden to the public catch basin shall be a minimum 12-inch RCP.**
12. **Final plans shall include a new manhole structure on Northrup Avenue to allow access to the rain garden outlet pipe leading to the catch basin and will be funded by the property owner.**

13. The road frontage along Manitou Road shall be designated a no parking area via a request to Hennepin County through the City. Striping and signage shall be at the cost of the applicant.
14. The property owner shall work with the County to install any necessary safety improvements to Manitou Road including but not limited to turn lanes for Northrup Avenue and Brentwood Avenue.
15. The final design for the sign shall not exceed 24 square feet in area and shall be located as far east as possible so as to ensure no impact to sight lines on Manitou Road.
16. The City Engineer shall inspect the property at the applicant's expense during the construction process to ensure ongoing compliance with all engineering requirements.
17. The variances shall expire one year from the date of resolution if not acted upon. City Council approval will be required for any subsequent extension.
18. Review sign placement should Hennepin County reconfigure County Road 19 at some point in the future.

Marceau seconded the motion. Ayes – Marceau, LaBelle, Tessness, Folley and De La Vega. Motion carried.

Folley asked what the hardcover currently is. It was noted 23.5% is the current percentage. De La Vega asked if anything is being done on the southern side for runoff and asked if there are any issues foreseen. Harri stated the gravel area will be replaced with grass. No grade changes are proposed, and the current drainage plan will not impact the street or adjoining properties. LaBelle opened the hearing for comments on the conditional use permit request for 42.2% hardcover. Lietzke stated the proposed drainage plan is a great improvement. LaBelle closed the public hearing. Marceau stated the City should require an easement for the rain garden as they do with residential rain gardens. He asked if there is a plan in place for property owners to park should the parking lot be full. **Jeff Danberry, applicant** stated they aren't expecting a lot of commercial traffic and would use the parking lot. Marceau supported the request. De La Vega stated he didn't have any issues with the request. Folley stated he struggled with the high hardcover percentage. Tessness stated he supported the request. LaBelle also supported the request. He noted there is a very adequate drainage plan in place. Lietzke stated he is concerned about allowing parking on Brentwood Avenue. **Marceau moved to adopt Resolution 07-38 approving the conditional use permit for a 42.42% hardcover request from The Danberry Company, 5413 Manitou Road based on the following findings of fact and conclusions and subject to the following conditions:**

FINDINGS OF FACT

1. The city engineer has fully reviewed the proposed plans and has provided an

- analysis on all measures that must be addressed to offset the requested additional hardcover.
2. The rain garden conforms to City requirements for additional storm water treatment where hard surface coverage exceeds 25%.
 3. The city engineer has prepared a letter indicating all plan changes necessary to qualify for the requested shoreland impact plan CUP.
 4. All plans must be approved by the MCWD, and all watershed and city conditions adhered to.
 5. The proposed parking lot accesses directly onto Manitou Road in order to preserve trees and existing vegetation on the northerly property line. Two trees will need to be removed for the proposed parking lot and rain garden.

CONCLUSIONS

1. The City Engineer has fully reviewed the proposed plans and has provided an analysis on all measures that must be addressed to offset the requested additional hardcover.
2. The construction of the handicapped ramp and sign will have little or no impact on soils, nor will it require any substantial grading of the lot.
3. This existing structure will not be visible from a lake.
4. The requested amount of impervious surface does not require a variance and is within the threshold for a conditionally permitted use.

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.
3. Construction to follow the submitted survey.
4. No construction shall occur within any existing easements on the property.
5. To ensure adherence to the shoreland impact plan, a final grading survey shall be submitted to verify that all grades conform to the designed plans and that all engineering recommendations were implemented. The survey shall be approved by the City prior to any offices opening for commercial use.
6. The applicant shall provide the City with a \$1000 deposit to ensure completion of all required stormwater and landscaping improvements.
7. The applicant shall provide the City with a drainage and utility easement over the proposed rain garden.
8. The area denoted as "remove gravel surface" to the south of the existing structure shall be expanded to include all gravel surfaces to the bituminous surface of Brentwood Avenue. Said area shall be graded to match the

- existing drainage patterns and be restored with topsoil and sod.
9. The rain garden shall be constructed per the direction of the city engineer.
 10. Screening plantings to the north of the rain garden shall be approved by the City Engineer to ensure they will not conflict with the function of the rain garden and will not block any sight lines onto Manitou Road.
 11. The proposed pipe leading from the rain garden to the public catch basin shall be a minimum 12-inch RCP.
 12. Final plans shall include a new manhole structure on Northrup Avenue to allow access to the rain garden outlet pipe leading to the catch basin and will be funded by the property owner.
 13. The road frontage along Manitou Road shall be designated a no parking area via a request to Hennepin County through the City. Striping and signage shall be at the cost of the applicant.
 14. The property owner shall work with the County to install any necessary safety improvements to Manitou Road including but not limited to turn lanes for Northrup Avenue and Brentwood Avenue.
 15. The final design for the sign shall not exceed 24 square feet in area and shall be located as far east as possible so as to ensure no impact to sight lines on Manitou Road.
 16. The City Engineer shall inspect the property at the applicant's expense during the construction process to ensure ongoing compliance with all engineering requirements.
 17. The conditional use permit shall expire one year from the date of resolution if not acted upon. City Council approval will be required for any subsequent extension.

Folley seconded the motion. Ayes – LaBelle, Tessness, De La Vega, Folley and Marceau. Motion carried. Marceau moved to adopt Resolution 07-39 approving the request for no parking on Manitou Road between Brentwood Avenue and Northrup Avenue. De La Vega seconded the motion. Ayes – De La Vega, Marceau, Folley, Tessness and LaBelle. Motion carried. Marceau moved to approve the sign permit request. De La Vega seconded the motion. Ayes 5. Motion carried.

C. Continued Public Hearing – Ordinance 2007-4 – Survey Requirements, Building Permits, Certificate of Occupancy, and Variance Procedures – Folley moved to continue the public hearing to the September 11 meeting. Marceau seconded the motion. Ayes 5. Motion carried.

9. OLD BUSINESS

A. 145 Woodpecker Ridge Road – this item was removed from the agenda at the property owner's request.

B. Woodpecker Ridge Road Improvements – Sandin stated two bids were

received for the Woodpecker Ridge Road improvement project on Friday, August 3. No action is required at this time. They will be before the Council again on September 11 for acceptance. She reviewed a notice of hearing on the proposed assessment which sets September 11 as the date when the proposed assessment will be considered. A workshop will be held on August 28 to review detailed costs. De La Vega asked if the Council will review what amount will be assessed. Sandin stated the amount will be discussed at the workshop and again on September 11. She reviewed construction costs and previous costs expended on the project to date. **Marceau moved to adopt Resolution 07-40 ordering assessment hearing. De La Vega seconded the motion. Ayes – Marceau, De La Vega, Folley, Tessness, and LaBelle. Motion carried.** Penberthy stated the determination needs to be made prior to the 28th what the notice should say. He stated the interest rate can be listed in the notice, but it can be changed. Sandin suggested putting the maximum rate in the notice. Penberthy stated the city does not have an ordinance for assessment prepayment. He suggested it be rewritten to state that the ordinance is not available at this time. He noted an ordinance is not required. He suggested it say there is no ordinance stating whether or not a prepayment privilege is available.

10. NEW BUSINESS

A. Tree Donation – Sandin stated Dennis Nelson and Barb Franta have offered to make a generous donation of trees to the fire lane next to their home at 135 Mound Avenue. The Public Works Superintendent has reviewed the request and agrees that the existing trees are dying and need to be removed. He has also requested that the proposed location for the new trees be approved prior to planting. **Dennis Nelson, 135 Mound Avenue** discussed the need for new trees and was happy to meet with the Public Works Superintendent. **De La Vega moved to adopt Resolution 07-41 accepting the donation of trees. Marceau seconded the motion. Ayes – LaBelle, Folley, Tessness, Marceau and De La Vega. Motion carried.**

11. MATTERS FROM THE FLOOR

None

12. REPORTS

A. Sandin

- 1) Survey results – provided for City Council review
- 2) Code updates – provided for inserting in Code book

B. Marceau – Finance, Marinas, - no report

C. Tessness – Buildings, Building Inspection, LMCD, Fire Lanes and Municipal Docks – Tessness has reviewed fire lanes with Public Works Superintendent. The Woodlawn Avenue fire lane has been rip rapped at no cost to the City. A resident paid for the work.

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

E. **De La Vega - EFD, Parks, Sanitation, and Southshore Senior/Community Center** – De La Vega stated that all the cities have approved their Senior Center request; however, Deephaven has requested that the “Shorewood Option” be amended. Shorewood will determine whether they want to amend the option whereby after 25 years, they can buy the Center from the other cities at the original contribution. The Parks/Trails Committee made a determination on the proposed bench donation, and a recommendation will be coming to the City Council when final costs are available. They are also investigating funding for the trail through a non-profit organization. He would also like to summarize the survey results and publish them in the next newsletter. Short and long term goals for the parks will be provided to the Council at a future meeting.

F. **Attorney's Report** – no report

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

13. **ADJOURNMENT**

There being no further business, it was moved by Marceau to adjourn the meeting at 9:00 p.m. Folley seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk