

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING September 10, 2008

1. CALL TO ORDER

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:03 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, City Planner Gozola, and Public Works Superintendent Kluver.

3. APPROVAL OF AGENDA

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

4. CLOSED SESSION

LaBelle stated we will now close this meeting because the matters to be discussed constitute an attorney-client privilege under Minnesota Statutes and we will resume City Council business after the closed session.

The following persons will be in attendance:

Councilmember Anthony Marceau
Clayton Tessness
Gerry De La Vega
Ken Folley
Mayor Bill LaBelle
City Attorney Jim Penberthy
Legal Counsel George Hoff
City Administrator Jessica Loftus
Public Works Superintendent Greg Kluver

The subject matter of the meeting will be litigation involving Haselow vs. The City of Tonka Bay.

The meeting reconvened at 7:37 p.m.

5. **CONSENT AGENDA**

Marceau moved to approve the Accounts Payable. Folley seconded the motion. Ayes 5. Motion carried. Marceau moved to approve the minutes of the regular meeting of August 26, 2008. De La Vega seconded the motion. Ayes 4-0-1. LaBelle abstained from voting.

6. **MATTERS FROM THE FLOOR**

None

7. **PUBLIC HEARING**

A. **Variance Request – Feldmann, 4280 Circle Road** – Loftus stated the City Planner will review the request and explain the ordinance requirements. After that, the applicant will have an opportunity to add any additional information and answer questions. The Mayor will open the hearing for public comments. After that, the Mayor will close the hearing and bring it to the Council for their input. Public comments will no longer be taken after the hearing is closed. **Ben Gozola, City Planner** reviewed the variance requests from Julie Feldmann at 4280 Circle Road in the northerly portion of the city. The property is zoned R-1A. He noted the location of the property from the air and reviewed the survey showing what currently exists on the site. He noted there is an existing deck that wraps around the southerly side of the house. Ms. Feldmann is proposing to construct two separate screened-in porches which will not conform to lake and side setbacks. The northerly porch will require a 2.1-foot side yard setback, and both porches will need lake shore setbacks of 2 feet. Gozola reviewed the criteria for granting a variance. He noted building height, floodplain buffer and floor area ratio were reviewed, and the request conforms to those requirements. He noted the request is not reasonable as two conforming porches can be built. They would be slightly smaller than what is being requested. He stated unique circumstances could not be identified by staff; however, the request will not impact the city. The two porches would not impact light and air, create additional congestion in the city, or have an impact on fire danger or danger to public safety. The northerly porch could have an impact on the lake view of the property to the north thus impacting its property value. Gozola stated if all criteria are met, then the request would not violate the intent and purpose of the Comprehensive Plan. Gozola stated a hardship on this lot has not been identified by staff that would prevent the proposed porches from conforming to the required setbacks. He noted the property has ample buildable area. The applicant desires to construct porches that are larger than what would be allowed based on the setbacks. He noted granting the request would confer a special privilege on the property owner. He recommended denial of all three of the variance requests. He reviewed options for denial or approval of the request or tabling the item to request further information. Folley asked when the house was built. Gozola stated he was unsure of the exact date. LaBelle opened the hearing for public comments. **Julie Feldmann, 4280 Circle Road**

distributed photos of the house as it currently exists in relation to the neighbors on either side. She stated letters of support were received from both her neighbors, Mr. Penn and Mr. French. She noted a permit was approved in 1991 to construct the deck. She stated she would like to have the entire deck screened, but she would be happy with just the two screened-in porches. Tessness asked if the roof would drain properly. **Courtney Taylor, Catherine Taylor Homes** stated the roof would shed water. LaBelle stated an expansion of a legal, non-conforming use would still require a variance. Taylor stated they don't usually tell a property owner to apply for variances. They prefer to build within the setback requirements. What is being proposed would not increase the hardcover requirements. She stated footings would be removed if the porches were scaled down in size, and landscaping would have to be changed. She believed the proposal would be a great addition to the community. LaBelle closed the hearing as there were no further comments. Tessness stated the structure is being renovated rather than expanded. Initially, his only concern was blocking the view of the northern neighbor but he noted from the pictures the lot is completely covered with trees and so it is not a concern. He supported the variance requests. De La Vega asked if there is a functional need for two porches. Taylor stated the one on the north is off the kitchen, and the other one is off the den. De La Vega asked if they've discussed the option of possible doing just the one deck. Taylor stated it has not been discussed. In response to a question from Folley, Taylor reviewed the sizes of the porches and areas that would be screened. De La Vega stated regardless of where the screen comes down, they are still building on a non-conforming use. Marceau stated the deck was originally built in 1991 and asked if it had any bearing on what is being done now. Penberthy stated it does not. The Council has to decide whether it is an expansion of a non-conforming use, assuming it is a non-conforming use. He stated this is going to be an expansion of the existing structure, and whatever it is determined to be, variances will be required. He suggested to the Council the deck is a separate issue from tonight's proposal. Marceau stated the proposal is a reasonable request in his mind. Taylor asked if it would be more acceptable if the side yard setback was eliminated. De La Vega stated he was somewhat concerned about whether the deck is conforming to begin with. He wondered whether this request should be tabled for further research. Penberthy asked if the area for the two screened in porches are part of the deck approved in 1991. It was noted they are part of the original deck construction. LaBelle stated he supported the request. He didn't see the views as being obstructed. He believed the alternatives proposed are not acceptable. Marceau stated he supported the plan. He asked if eliminating the variance on the north side would change their plans. Taylor stated from a design standpoint, it would look crooked in the corner. Gozola suggested the Council differentiate this case from any future cases by noting a permit was issued for existing non-conforming deck approved and the applicant's comments about not being able to change the plan because of the location of footings. This should differentiate this request from any future request. De La Vega asked if

we're not expanding what exists if that would help in future cases. Marceau stated no matter what we do, each proposal stands on its own. Taylor suggested if they did have to remove those portions to create conforming space thus creating a "gap" in the structure, you have to build out to get to the structure. **Marceau moved to adopt Resolution 08-20 approving the variance requests of two 2-foot variances from the required 50' lakeshore setback and a 2.1-foot variance from the required 8' side yard setback from the northwestern property line for Julie Feldmann, 4280 Circle Road based on the following findings:**

FINDINGS OF FACT

1. **A deck permit was approved in 1991 which allowed construction within the side yard and lakeshore setbacks.**
2. **In order to conform to the setback requirements, existing footings and landscaping would have to be removed, thereby disturbing a greater area than would be required if building above the existing structure.**
3. **The Comprehensive Plan calls for this area 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.**

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. **Construction to follow the survey as submitted over the existing deck structure.**

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

8. **OLD BUSINESS**

A. Woodpecker Ridge Road Construction – Jeff Roos, MFRA – stated the contractor has indicated he will return to the project the week of September 15. He discussed the change order request and the \$1620 cost. He stated work needs to be done on two of the driveways to correct the cross grades. This will help get the water to drain from the east to the west. LaBelle assumed the engineer would take responsibility for paying for the change order. He was concerned about the city having to pay for something that was engineered by them to begin with and should have been included. Roos stated they have put in significant time to address the changes which they have

agreed internally will not be charged to the city and they will write off. It is up to the city whether they want to pay for the change order, but he did not think the city would be happy with the project if the change is not made. LaBelle stated MFRA is responsible for the cost. Roos disagreed. LaBelle stated he didn't see it as the city's responsible as MFRA is the one who designed it to begin with. Roos explained the procedure would be when an issue arises, they go to the city and tell them a small expenditure can be of benefit to the city. Folley asked if there would be more costs involved in the future. Roos stated when milling begins, if there is something under the road and it gets hit, that unknown can bring additional cost. He stated if you want better drainage, the road should be raised as indicated in the change order. LaBelle stated this is something that should have been known at the very beginning. Roos stated when there is a situation that is a new item and not identified on the unit price list, a change order is required. Marceau asked if the replacement driveway would be the same material. Roos stated they want the project to be done right. It would be a real concern of his for the concrete to match what is already there. **Judd Brackett, 125 Woodpecker Ridge Road** discussed the driveway construction. Roos stated the intent is the upper elevation would not change, and the road edge would not change. Brackett asked if the grass and parking strip will match. Roos stated the elevations will match. On the landscaped areas, the contractor will fill those in, and there will be very little disturbance. LaBelle stated the city is every bit as anxious as MFRA to get the work completed. Roos noted the contractor wants to schedule the prep work and paving work as close as possible. Kluver stated Public Works would like the mill and overlay done earlier in the week rather than later based on possible rain events. Roos indicated he would pass that information on to the contractor. Roos stated they still need the city's approval to add the \$1620 to the contract, and then they'll figure out how to handle paying for it. **Marceau made a motion to direct the City Engineer to move forward with the Change Order #2 in the amount of \$1620 with payment to be determined. Tessness seconded the motion.** Penberthy asked if there are amended grades in the construction plan. He asked if they are incorporated into the change order. Roos stated they are allowed some flexibility, and it isn't a significant change in the plan. Folley asked if specific areas should be identified. Loftus stated the minor changes made to the grade were done by the field surveyors and are in the best interest of the project. Penberthy noted they would be reflected in the final plans.

Ayes 5. Motion carried.

9. NEW BUSINESS

A. 2009 Proposed Budget Levy Certification – Loftus stated the Council has reviewed the budget during two worksessions. The proposed budget will increase 3.87% over 2008. The proposed levy will increase 5-1/2% due to revenue decreases. De La Vega stated there are funds set aside to support the Southshore Center. He stated it looks like we might not need the funds to do that as negotiations continue. **Tessness moved to adopt Resolution 08-21 approving the 2008 tax levy collectible in 2009.**

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

B. Truth-in-Taxation Meeting Date – Loftus reviewed possible dates for the Truth-in-Taxation hearing. In the past, we've been able to adjust the second meeting in November but that cannot be done this year. She noted the city is exempt from the requirement since we are below the inflation adjustment and does not have to hold the hearing if they so desire. Marceau stated he believed we should still hold the meeting. LaBelle suggested the meeting be held on December 2nd. **Folley moved to set Tuesday, December 2, 2008 at 7:00 p.m. as the Truth-in-Taxation meeting date with a continuation date of December 9, 2008 at 6:00 p.m. Tessness seconded the motion. Ayes 5. Motion carried.**

10. MATTERS FROM THE FLOOR

None

11. REPORTS

A. Loftus – Loftus stated a memo was received from the EFD Fire Chief noting a public hearing will be held regarding sprinklers in residential homes. A counterpoint letter was received from the Builders Association. The Fire Chief is looking for the Council's input on the issue by the 12th of September. LaBelle preferred the Council not take a collective stand on this issue. Loftus stated the results of the Primary Election are included in the packet this evening. Candidates for the November election are Mayor LaBelle and Councilmembers Marceau and De La Vega.

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 – De La Vega stated the negotiations continue for the Southshore Center. We have also received a donation for a water fountain in Wekota Park.

F. Attorney's Report – Penberthy stated he would like Council's authorization to research options on an unresolved issue at 145 Woodpecker Ridge Road and bring them back to the Council at a future meeting. The Council concurred.

G. LaBelle - Public Works and SLMPD – no report

12. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 9:10 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk