

**MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
September 23, 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 Marceau, Tessness, and De La Vega. Councilmember Folley was absent. Also present were City Administrator Loftus and City Attorney Penberthy.

3. APPROVAL OF AGENDA

Tessness moved to approve the agenda as submitted. De La Vega seconded the motion. Ayes 4. Motion carried.

4. CONSENT AGENDA

Loftus stated the garbage and recycling contract will expire in April of 2009. Their service manager would like to present and discuss a proposal for a new contract. De La Vega asked if we would make the opportunity available to any other contractors. Loftus stated it could be discussed at the worksession. **Tessness moved to approve the consent agenda approving the minutes of the regular meeting of September 10, 2008, Resolution 08-20 approving the variance at 4280 Circle Road, and setting a worksession with Allied Waste on Tuesday, October 14 at 6:00 p.m. Marceau seconded the motion. Ayes 4. Motion carried.**

5. MATTERS FROM THE FLOOR

None

6. PUBLIC HEARING

None

7. OLD BUSINESS

None

8. NEW BUSINESS

A. Donation – Loftus stated we have received a monetary donation to purchase a drinking fountain at Wekota Park from the Van Camp family. She discussed the proposed location in the park and the plaque inscription. Marceau moved to adopt Resolution 08-22 approving the water fountain donation for Wekota Park from the Joseph and Joan Van Camp family, 225 West Point Road. De La Vega seconded the motion. Ayes – LaBelle, Marceau, De La Vega and Tessness. Motion carried.

B. 15 Brentwood Avenue – Penberthy reviewed his memorandum regarding the commercial use of a residential lot on Brentwood Avenue. He noted ordinances were adopted in 1958 and 1978 permitting plant nurseries, greenhouses, and tree services. The issue before the Council is whether landscaping, design, construction and owning and operating an off-site tree farm used in conjunction with the owner's business is similar enough to plant nurseries, greenhouses and tree services so as to be included by city staff or the City Council as a use permitted under the existing special use permit. He noted the memo applies case law and statutory construction principles to these facts and concludes that operating a landscaping, design, and construction business and owning an off-site tree farm is similar enough to plant nurseries, greenhouses and tree services so as to be included by city staff or the City Council as a use permitted under the existing special use permit. He stated he sent the memo to Mr. Schafer (neighbor) and Lan-de-Con who are present tonight. LaBelle noted this is not a public hearing, but he welcomed any comments. **Duane Anderson, 55 Florence Drive** stated Lan-de-Con has been a good neighbor, and he didn't have any problem with them. Lan-de-Con hasn't done anything to disrupt the neighbors from what he could see. They have done a lot to fix up the area including the installation of a fence. He supported granting them whatever they need to continue their operation. **Al Schafer, 60 Brentwood Avenue** stated Lan-de-Con abuts his property. He agreed with the attorney's memo, and he didn't want Lan-de-Con to change or cease business. However, he had some concerns. He didn't think the city knew what they were approving when they approved the use. He stated there are trucks on the site, and he didn't think the trucks belonged to Lan-de-Con. The city had an obligation to review and inspect this use, and this was not done. They are now using 200' of the property when 40' was the approved use in 1978. He was concerned about property values in the area. He noted this concern didn't surface until Xcel cut down trees along Brentwood Avenue. Trees were clear cut all the way to the ground rather than being trimmed, and what remains is a mess. The contractor performing the work informed him it was the property owner's idea. He asked if there wasn't some way the property owner could plant some more trees or arborvitaes to clean up the area. Going forward, he would like the city to be more diligent in their review and inspection of the site. **Bob Doerr, 40 Bay Street** stated the usage of the site has slowly been escalating over the last eighteen years. He asked that Lan-de-Con be a good neighbor and pay attention to the use of the property. He believed since Lan-de-Con is a landscaper, they should be able to fix their fence. **Mark Labree, Lan-de-Con** stated it was a shock to them when the trees were cut all the way to the ground. The fence will be repaired. They held off pending the outcome of tonight's meeting. They are aware they are on a residential street and want to be shielded from the neighbors. He questioned the zoning on the property and was concerned about paying the County taxes at commercial rates. Penberthy stated the special use permit allows a commercial use on the residential property. Whatever the zoning, it has been granted a commercial use. He stated Labree can certainly talk to the County Assessor about the commercial designation. Labree

stated he will be talking to Fisher Construction about the number of vehicles they have on the site. He noted many of the trees removed were elm trees and had Dutch elm disease. Penberthy stated the use of the parcel by Fisher Construction is not permitted. Labree stated some of the Fisher vehicles can be moved to another location. LaBelle appreciated the spirit of cooperation this evening. It is clear a special use permit was granted for this use. Loftus stated Penberthy is recommending the City Council adopt a resolution incorporating his conclusion. The resolution would come back on the next consent agenda. Council motion would be to direct staff to prepare the resolution. Marceau asked if any conditions should be included in the resolution. Penberthy stated the fence and parking could be addressed as separate matters. De La Vega asked if a special use is similar to a conditional use in such a way conditions can be placed. Penberthy stated a special use is a conditional use under Minnesota law. What you have to do is stay true to the special use passed in 1958. De La Vega asked if we need to address the Fisher Construction issue. Penberthy stated it is technically a violation of the special use permit, but the Council has not made that finding. De La Vega stated a second motion could be made to address that issue. De La Vega stated he didn't think the terms accurately capture the use on the site. He suggested looking at the possibility of incorporating different language that would not be as specific. We are approving the landscape contracting operation, and it is a broader activity that occurs there. De La Vega stated it would have to be considered if it is a new owner as the special use permit applies to the current owners. Penberthy stated it could be described differently. LaBelle agreed with Penberthy's definition, and the subject of whether there is a violation is a separate issue. Labree stated they have no plans to change any operations on the site. **Marceau moved to direct staff to prepare Resolution 08-23 to incorporate the City Attorney's findings, look into the current uses on the site, and encouraged Lan-de-Con to work with the neighbors to include more trees on the site. Tessness seconded the motion. Ayes 4. Motion carried.** Loftus stated she is working with Lan-de-Con to assure the fence will be repaired.

C. New Hire – Loftus recommended Carol Spoerner be offered the bookkeeper/utility billing clerk position effective October 8, 2008. **De La Vega moved to approve the hiring of Carol Spoerner as bookkeeper/utility billing clerk effective October 8, 2008. Tessness seconded the motion. Ayes 4. Motion carried.**

D. Lake Minnetonka Communications Commission (LMCC) Budget – Loftus stated the LMCC has provided a copy of the 2009 budget for the Council's review. It is not funded through tax dollars but through cable subscribers' fees. She noted they provide local programming including the broadcasting of City Council meetings. **Marceau moved to adopt Resolution 08-24 approving the 2009 LMCC budget as presented. Tessness seconded the motion. De La Vega stated the materials presented are sorely lacking needed information. He believed they are overstating their contingency. Ayes – LaBelle, Marceau and Tessness. Motion carried 3-1. De La Vega voted against the motion.**

9. MATTERS FROM THE FLOOR

None

10. REPORTS

A. Loftus – Loftus stated a newsletter was sent to the Woodpecker Ridge Road residents regarding the road construction. The mill and overlay has been completed, and the curb is in, but some punch list items remain. She stated the Excelsior Fire District will hold an open house on Thursday, October 9.

B. Marceau – Finance, Marinas, - Marceau stated a Trail meeting was recently held, and it marked the beginning of the feasibility study.

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

D. Folley - Animal Control, LMCC, Technology - absent

E. De La Vega - EFD, Parks, Sanitation, and Southshore Senior/Community Center – De La Vega stated has been progress among the cities on how to move forward which should result in an agreement by year end. There is an EFD meeting on September 24 he will be unable to attend.

F. Attorney's Report – no report

G. LaBelle - Public Works and SLMPD – no report

11. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 8:00 p.m. Tessness seconded the motion. Ayes 4. Motion carried.

Attest:

Clerk