

**MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
October 14, 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, Folley, and De La Vega. 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. CONSENT AGENDA

Marceau moved to approve the consent agenda as presented approving the minutes of the September 23, 2008 meeting, Accounts Payable and Resolution 08-23 incorporating legal conclusion at 15 Brentwood Avenue. De La Vega seconded the motion. Ayes 4-0-1. Folley abstained from voting. Motion carried.

5. MATTERS FROM THE FLOOR

None

6. PUBLIC HEARING

A. Variance Request – Zelickson, 120 Wildhurst Road – Loftus discussed the public hearing process for the benefit of those in the audience. **Ben Gozola, City Planner** reviewed the request from Brian and Alan Zelickson at 120 Wildhurst Road. He noted the property located on Lake Minnetonka. The current Zelickson residence is adjacent to this property. Through the use of photographs, he noted the property locations and existing structures. The property includes an existing single family structure and detached garage. The applicants are seeking permission to tear down the single family structure but retain the existing detached garage and dock. We are currently looking at two uses on the lot. First is the accessory use of the garage, and the second use is the dock. The dock is not linked to the garage use. In city code, removal of the home would require removal of the garage. Gozola stated that variances and a CUP were approved in 1996 for this garage. The problem that we've since discovered is that when the new garage was constructed, it was not constructed as approved, which technically, makes it an illegal, non-conforming structure. He also stated the garage has three doors on it, and the street-facing garage doors can create a safety hazard. There is road right-of-way very close to the garage. If the roadway were to be reconstructed, the right-of-way could move even closer to the garage.

Gozola reviewed the requirements for a variance. The first issue is whether the request is reasonable. In this particular request, it is found to be reasonable. The property owner owns the adjacent lot, and there is very little question the lot would be maintained if the house is removed. In response to the second requirement, there were not any unique circumstances to warrant this approval. There aren't any safety reasons why this request should be approved, and the criteria for unique circumstances have not been met. He stated the request will not impact the character of the neighborhood in any way, and the lot will look like an extension of the lot next door. The proposed request will not impact the supply of light and air to adjacent properties nor will it unreasonably increase the congestion in the public street. Trips to the garage would decrease with the removal of the existing home. Gozola stated the street-facing garage door could pose a public safety danger. He also pointed out the wide driveway apron is a concern. A 24' maximum is called for by code, and the existing driveway apron is 62' wide which creates a potential safety problem. These criteria were not met. The request was contrary to the intent of the ordinance in that the intent of the code calls for the orderly and compatible development of the city. Having an accessory structure without a principal structure is not an example of orderly development, and these criteria were not met. The request also does not meet the intent and purpose of the Comprehensive Plan. Gozola stated there is nothing on this lot that would necessitate removal of the existing home. Denial would not deprive the applicant of any rights commonly enjoyed by others in the city. There doesn't appear to be any land-based factors that play into the applicants' request. Because of the lack of hardship, approving the requests would confer a special privilege on the property owners. In summary, the applicants are seeking to tear down the existing house but keep the garage. He recommended denial of the request.

Tessness asked if the adjacent lot was combined with this lot, would only a demo permit be required. Gozola stated there would still be one more accessory structure than what is allowed. De La Vega asked how this is different than the property on Lakeview Avenue that requested a special dock permit. Loftus stated a special dock permit would also be in order for this address, but a public hearing would not be required. Gozola indicated two of the neighbors have submitted letters of support for this request. He also indicated staff is also recommending a ten-year time frame when a house would have to be built on the lot. The neighbors have suggested a five-year time frame. LaBelle opened the hearing for public comments. **Alvin Zelickson, applicant** gave a history of the property. He stated they don't plan to use the garage for cars. They will store boats over the winter. He stated a builder told them the house is not worth fixing. They do not plan to build a house on the lot. It made sense to him to retain the garage, because it is only twelve years old. He believed the neighborhood would be better without a house on the lot. He asked the Council to approve the request. **Brad Peterson, 150 Wildhurst Road** stated he didn't have a problem with the request. LaBelle closed the public hearing.

Tessness stated it would be an improvement to the neighborhood, because there would

be more of a view. The safety issue was a concern, but he is not concerned now that the garage will be used for boat storage. He suggested blocking off the door facing the street. He supported the request. Folley stated he is opposed to a situation where there is not a house. He was also concerned about the safety of the garage. Marceau stated it is a reasonable request. He would like to figure a way to get it done, but he was concerned about the lack of a hardship. De La Vega was in agreement. He understood the common sense issue of destroying a structure that could still be used. He would be ok with it if he had some sense there would be a permanent structure in the future. The applicant's comments that a permanent structure would not be built have him concerned. If it is their decision not to ever build, he will have a difficult time approving the request. Alvin Zelickson stated if a new structure is built, the detached garage will be demolished. It seemed a shame to tear down a good structure. Folley asked if there is a problem with leaving the house vacant. Tessness stated neighbors don't want a vacant house. LaBelle stated some day the lot will be built on whether it's by the current owner or a future owner. When it does, the setbacks will change dramatically. To that end, he will support the current request with a sunset provision attached. De La Vega agreed. LaBelle stated the garage needs to be removed within ten years. He stated he can support the request with the provision a new house will be built or the garage will be removed within ten years. Penberthy stated the variance will run with the land, and any conditions will run with the land. If the variance is denied, there won't be any conditions. A future Council could amend the zoning code, but this condition would remain. LaBelle stated there could be a hardship relative to the condition of the existing structure. The house does not meet the standards of today's market in any way, shape, or form. Councilmembers discussed the conditions for approval of the request. De La Vega stated he would not need the driveway condition, but he would like to include a condition for the garage door. Alvin Zelickson stated that the way the garage was constructed, you are only able to get into half of it from the street. Brian Zelickson explained how the boats are removed from the garage. Alvin Zelickson stated if it is up to him, the property will not be sold. He stated he would be willing to demo the garage if a house is constructed or the property is sold. LaBelle asked the applicants if a condition could be included the garage will only be used for storage. **Tessness moved to adopt Resolution 08-25 approving the variance request based on the following findings of fact:**

- 1. The existing home is in poor condition which necessitates its removal at this time.**
- 2. Maintenance of the property would not be an issue because it is adjacent to the applicant's main residence.**

Based on the following conclusions:

- 1. Retention of the garage would not essentially change the character of the area.**

2. **The requested variance will not have any impact on light and air that was not previously approved by past variances for the detached garage.**
3. **Trips to this garage would seemingly decrease with the removal of the existing home.**

With the following conditions:

1. **The applicants acknowledge the following:**
 - a. **The future home shall be constructed within ten years of the removal date of the existing home;**
 - b. **Failure of the property owner to construct a new home within ten years will require removal of the detached garage and driveway apron at the property owners expense if requested by the City;**
 - c. **The property owner shall grant the City permission to enter the property, remove the garage, and assess the costs for garage removal against the property in the event the property owner does not comply with a request to remove the garage and is unwilling to pay for the garage removal;**
 - d. **The property owner shall waive all appeal rights regarding assessments for the cost to remove the garage.**
2. **The future home to be constructed on the property will be conforming to floor area ratio requirements. If any variances or CUPs for floor area ratio are requested for the future home, the detached garage shall be removed.**
3. **In the event the subject property is sold to a new party that does not own one of the neighboring parcels, a building permit for the future home shall be acquired within one-year of the sale date. The new owner shall bound to the same garage removal conditions if this timeline is not met.**
4. **The garage will not be used for day-to-day vehicles but only for boat or other storage.**

De La Vega seconded the motion. Ayes – LaBelle, De La Vega, Tessness and Marceau. Councilmembers discussed adding a condition to require the apron removal when the garage is removed. All concurred, and the motion was amended by Tessness and De La Vega to include the condition. **Folley voted against the motion. Motion carried.**

7. OLD BUSINESS

A. 355 Lakeview Avenue Drainage – Loftus stated this request has been before the City Council on two previous occasions. At the last meeting on July 22nd, the

resident was directed to come back with a plan that ties the fire lane and trench issues together into one package for a decision by the City Council. There are two alternatives – to approve the drainage swale (incorporating the Public Works recommendation and an agreement with the resident) or to deny the drainage swale. De La Vega asked Kluver about his concern about the drip line. Kluver discussed his concern about disturbing the tree's drip line area which could kill the tree in the fire lane. LaBelle asked if staff had a recommendation of how to proceed. Loftus stated the engineer has pointed out this is a low maintenance solution. She did not have a recommendation. LaBelle stated his feelings on this have not changed. We do not have an obligation, and we should not make a habit of handling every private issue that comes before us. He believed we've made progress with the curb installation. De La Vega asked what became of the option of extending the curb further west. Kluver stated we were directed by Council to proceed with what was installed. De La Vega stated we need to do something about the existing open trench. He asked if a swale should be created when the trench is being filled. Tessness asked how Public Works feels about the work that has been done and what needs to be done. Kluver stated we would need a swale designed by the city engineer. De La Vega stated the decision is whether it should happen in the fire lane or not. He didn't see this as the city's responsibility. Tessness concurred. He stated the city should not put out any money for this. De La Vega stated the issue is whether the curb would make more sense than the swale. **Chadd Larson** stated they are trying to find some sort of compromise with the construction of the swale. He did discuss the issue with the city engineer. Larson stated he would be willing to enter into a license agreement with the city. He asked what the potential negatives would be. Marceau stated he would be in favor of tying in with the fire lane. It seems reasonable as a solution to this problem. De La Vega stated he didn't have a problem with using city equipment and staff to improve the livability of our residents. He believed in some instances it would make sense to use the fire lanes. LaBelle called for a motion. Marceau stated he would not be comfortable making a motion until he sees something from the city engineer. Loftus stated she had an e-mail from the city engineer stating Larson's recommendation is an appropriate solution to the drainage issue. Councilmembers and staff discussed funding and costs the property owner would be responsible for. Penberthy suggested the city pay all costs incurred to date. The property owner would be responsible for all costs from this point forward. Larson stated he would be willing to spend up to \$1000. Folley suggested installing drain tile along the property to alleviate the problem. Larson stated he hadn't considered the option. LaBelle stated the project cannot be completed for less than \$1000. Penberthy stated a decision needs to be made at some point in time. **Tessness moved to deny the request for a drainage swale at 355 Lakeview Avenue. Folley seconded the motion.** Penberthy stated the request could be reconsidered at a later date as this is not a formal application. **Ayes 5. Motion carried.** LaBelle asked Kluver how he would like to proceed with the trench. Kluver stated it could be filled in and seeded. **Folley moved to direct staff to fill in the trench. Marceau seconded the motion. Ayes 5. Motion carried.**

B. Comprehensive Plan Extension – Loftus stated she has received a letter from Met Council which allows extensions for Comprehensive Plan updates from December 31, 2008 to May 29, 2009. She believed staff should request an extension in order to complete some substantial work on the Plan. She asked Council to adopt the attached resolution requesting the extension. **Marceau moved to adopt Resolution 08-26 requesting a Comprehensive Plan extension from December 31, 2008 to May 29, 2009. Folley seconded the motion. Ayes – LaBelle, De La Vega, Marceau, Folley and Tessness. Motion carried.**

8. NEW BUSINESS

A. Woodpecker Ridge Road – Weight Limit and Parking Restrictions – Kluver stated the Woodpecker Ridge Road project is almost completed. As a result, curb has been constructed between the berm and the street on the west side between 125 and 255 Woodpecker Ridge Road. In an effort to add continued protection, he recommended placing 4-ton per axle weight restrictions year-round on the entire street and no parking on the west side from 125 to 255 Woodpecker Ridge Road. Kluver noted garbage trucks would also have to conform to weight restrictions. De La Vega was concerned about how the restrictions would impact the residents on Woodpecker where the road was not improved. Kluver noted it would help the street long-term especially when an improvement project is taking place. **Judd Brackett, 125 Woodpecker Ridge Road** thanked the staff and Council for everything they've done to complete the road project. He agreed there would be a little inconvenience, but it will be worth it in the long run. They have quite an investment in the new street. He was concerned about the number of fishermen who continue to park along Woodpecker Ridge Road and access the fire lane. Kluver suggested installing weight restriction signage, but he thought it might confuse people rather than help. Councilmembers discussed posting signage and whether there is a need to post the entire road. De La Vega felt the weight restriction should begin at 125 Woodpecker Ridge Road and not include the entire road to County Road 19. Brackett suggested there be no parking on both sides of the street. **Folley moved to adopt Resolution 08-27. Tessness seconded the motion.** LaBelle stated he is willing to go along with this to see how it works out. There's nothing that says the restriction cannot be lifted if it doesn't work out. **Ayes – LaBelle, Marceau, Tessness, and Folley. De La Vega voted against the motion. Motion carried.**

B. Well #2 Maintenance and Repair – Kluver stated a proposal was approved in April of 2008 to remove and inspect Well #2. As a result of the inspection, a list of needed repairs was presented earlier this month. The contractor, E.H. Renner, indicated at the time they were increasing their unit prices 24% over their original proposal in April. After staff review, the E.H. Renner was asked to honor their original price, or we would be looking for another contractor. He stated he contacted Bergerson-Caswell who submitted a quote for the needed work. He recommended the stainless steel replacement. De La Vega asked if there were any parts recommended for replacement that we are not replacing. Kluver stated he agreed with E.H. Renner's recommendations.

De La Vega discussed his concerns about not budgeting for the replacement cost. Kluver suggested budgeting in the future for half the cost just to be safe. **Folley moved to approve the cost to replace Well #2 at \$12,766,50 for Bergerson-Caswell. Marceau seconded the motion. Ayes – 5. Motion carried.**

C. Driver and Vehicle Services (DVS) Agreement – Loftus stated the SLMPD has informed the city that the Driver and Vehicle Services will no longer allow police departments to run non-criminal background checks. For this reason, we are asking approval of an agreement for staff members to run the necessary checks. **Marceau moved to authorize the Mayor to enter into the DVS Agreement. De La Vega seconded the motion. Ayes – 5. Motion carried.**

9. MATTERS FROM THE FLOOR

None

10. REPORTS

A. Loftus – Loftus presented a Fall Clean-up comparison for the past six years.

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 – no report

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 9:30 p.m. Tessness seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk