

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING October 28, 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, Folley, and De La Vega. Councilmember Tessness was absent. Also present were City Administrator Loftus, City Attorney Penberthy, and City Planner Gozola.

3. APPROVAL OF AGENDA

Marceau moved to approve the agenda as presented. Folley seconded the motion. Ayes 4. Motion carried.

4. CONSENT AGENDA

De La Vega stated he would like to move Resolution 08-25 to Old Business. Marceau moved to amend his motion in Item 3. Folley seconded the amended motion. Ayes 4. Motion carried. De La Vega moved to approve the consent agenda as presented approving regular meeting minutes of October 14, 2008 and worksession minutes of October 14, 2008. Folley seconded the motion. Ayes 4. Motion carried.

5. MATTERS FROM THE FLOOR

A. Daniel Rusch, 60 Tonka Bay Road asked the Council to consider issuing a permit to discharge a firearm within the City limits. He stated he would like the Council to consider this as an emergency permit. He stated he had a new lawn installed in September, and the raccoons are seriously damaging the lawn on a regular basis. He believed the only way to alleviate the problem is to remove the animals. He stated he would only do the shooting between 2 and 4 a.m. using silent bullets. He stated he is an excellent marksman, trained police officer and weapons instructor. He presented documentation of his experience as well as the city ordinance and state statute. He stated he would like the Council to issue the permit this evening. LaBelle stated the Council has received this information for the first time this evening, and he stated he needs more time to gather additional information. He was concerned about gunshots in the evening. Rusch stated the ammunition is silent. Folley suggested the animals be trapped and then disposed of in some manner. Marceau thanked Rusch for asking the Council for permission rather than removing the raccoons illegally. He stated he would not feel comfortable without input from the City Attorney. Rusch stated he asked for similar permission years ago, and the request was denied. De La Vega stated he had a

similar issue with raccoons, and his neighbor suggested putting chicken wire on top of the sod for a short term to keep the raccoons away. LaBelle directed staff and the legal counsel to research this request, and it would be reconsidered at the next meeting on November 12.

7. SPECIAL BUSINESS

A. Quarterly Update – LMCD – Doug Babcock, City’s Representative to LMCD was present to give a quarterly update on LMCD activities. He reviewed dock license requests, annual boat count (10,200 – of which 2/3 is residential), painting of the Arcola and Seton Bridges, and a proposed new ordinance to allow increased charter boat sizes. He stated prosecution costs will be over budget this year. A movie night was held at Big Island for the first time, and it was a huge success. He stated they are waiting for the final report on the herbicide treatment in the three bays. Also, LMCD offices have been relocated to Smithtown Road in Shorewood. He stated he is available to serve another three-year term as the city’s representative to the LMCD. De La Vega asked how much more the prosecution costs would be for 2008. Babcock stated they would be \$7,000 - \$10,000 over budget. De La Vega asked when the herbicide report would be available. Babcock stated it should be available at the next LMCD meeting.

8. PUBLIC HEARINGS

A. Variance Requests – Griffin, 4240 Circle Road – Loftus explained the public hearing process for the benefit of those in attendance. **Ben Gozola, City Planner** reviewed the variance requests for a preliminary plat submitted by John and Gloria Griffin, 4240 Circle Road. He noted the location of the property and reviewed photos of the property from different views. He stated there are two PID numbers for the property, but only one of the lots is considered buildable by code. The applicants are proposing to take the two parcels and create two buildable lots. He stated this is the first request of this nature he has reviewed for the City Council and outlined the four areas he would discuss. In general, he noted the request conforms to the Comprehensive Plan. It does not, however, conform to the minimum lot size requirements for a lot in an R-1A zoning district. Minimum requirements for this district are 20,000 square feet with lot widths of 75 feet. He stated it is not possible to create two conforming lots. What the applicants are proposing is to create one lot that does conform to the area and width requirements and one lot that does not conform. He stated lot access onto Lot 2 is not an issue, but access onto Lot 1 would need to be reviewed to ensure proper placement with relation to the curve of Circle Road. He noted the parcel is not developable without variance approvals, and further development would not be likely. He noted drainage and utility easements are not shown and would need to be dedicated as part of this proposal and should be a condition of approval. He stated there are overhead utility lines which would also need to be a part of the drainage and utility easement. He stated there are three variances being requested: a 7,030 square foot lot area variance, a 14-foot lot width variance at the OHW

setback, and a 3-foot variance from the lot width requirement at the front property line. He stated a condition for approval would be that the properties be combined. Gozola reviewed the criteria for approval of any variance request. The first criteria are whether or not the request is reasonable. He stated the lots in terms of size are similar in size to the homes already there. The second criteria would be whether the application presents unique circumstances. He stated staff does not believe that it does, as most properties within the City cannot be developed due to a lack of acreage. He also stated staff does not believe the request would alter the character of the area should it be approved. Proposed pad sizes would be similar in size to those already in existence in the neighborhood. He stated there aren't any special or unique circumstances relating to this request. He stated the request would not be detrimental to the public health and welfare. He recommended denial of the request. He stated the property owner to the south has provided verbal opposition to the proposal, and a petition from surrounding neighbors has also been provided this evening. He reviewed fill proposed for the site. He stated there isn't a need for an environmental assessment. There aren't any wetlands identified, and a wetland delineation should be a condition of approval. He reviewed storm water and grading requirements for the site. He also discussed tree preservation on the site. Gozola stated the required park dedication would be \$1100.

De La Vega asked if the reason the setback is so far is because of the proximity to the Narrows. Gozola noted the Narrows is considered Lake Minnetonka, and there would be a 50-foot setback requirement. **Woody Love, representing the property owners** stated the property does represent unique circumstances. The property line dividing the two PID numbers existed before the Narrows was in existence. The placement of the Narrows actually changed municipal boundaries. When the current bridge was put in, a lot more fill was brought in which impacted this property. Hennepin County purchased what would have been a third lot. He believed the proposed plan would protect the character of the neighborhood. They have every intention of working with the Council and providing any additional information. LaBelle opened the hearing for public comments. **Elizabeth Burns, 4250 Circle Road** was present as spokesperson for the neighbors. She presented a petition signed by the majority of the property owners. She stated the majority of the homeowners are opposed to the proposal. **Chris Foster, 4260 Circle Road** stated he is horrified that a request of this sort would happen in his neighborhood. **Gloria Griffin, 4240 Circle Road** discussed the necessity for them to change their lifestyle. She stated they desire to sell their property in the easiest and most appealing way possible by offering two lots. LaBelle closed the public hearing.

Folley stated splitting the lot would be a great opportunity, but he believed large lots should remain where they are. He was not in favor of this request. De La Vega stated the lot being created fits quite nicely into the neighborhood. On the other hand, there is the issue of the 20,000 square foot minimum. He feared there will be situations where

owners are faced with the problem with what to do with property purchased 40-50 years ago. He stated the Council is very protective of what is being built on lots. There are very strict requirements which are considered very carefully. The Council does not want to have oversized houses on lots that will not contain them. He stated this is a reasonable request. At this stage, he didn't see an overwhelming reason why it should not be approved. Marceau stated the applicants are willing to work with us. He stated the lot with the house is the second largest in the neighborhood, so the neighborhood is not changing. He believed it is a reasonable request. De La Vega stated if we move it closer to the Narrows, we are only increasing the variance request. Gozola stated the other issue that would come into play is Lot 1 is 24,380 square feet. You basically have 4,380 square feet to play with before it becomes non-conforming to the lot size. De La Vega stated he is ready to accept the lot size non-conformity. What he is trying to determine is the proximity to Lot 39, bringing in fill, creating drainage issues. He asked if any thought was given into having Lot 1 closer to the Narrows. Love stated they would be delighted to entertain building sizes now. They would not like to have a "McMansion" at this location either. He asked the Council for a continuance in order to meet with neighbors to address their concerns and meet with staff to discuss building sizes. He stated he was not aware of the neighbors' concerns until he came to tonight's meeting. LaBelle thanked the applicants and their representation for their presence and tonight's presentation. He stated the request for a continuance is the best thing at this juncture. Love stated they would prefer the hearing be continued to the December meeting. **Marceau moved to continue the hearing to the December 9 meeting. De La Vega seconded the motion. Ayes 4. Motion carried.**

B. Variance Request – Hustad, 135 Crabapple Lane – Ben Gozola, City Planner reviewed the request from Beth Hustad, 135 Crabapple Lane by first reviewing the location and showing views from all directions of the existing conditions. The applicant is proposing to remove the existing detached garage and replace it with an attached garage. The new garage will require a 16-foot variance from the required 50-foot lakeshore setback from Lake Minnetonka, a variance from the requirement that fill around the structure for a distance of at least 15' be elevated to 932.5' or more, and a 4-foot side yard setback variance from the required 12-foot second floor side yard setback for additions to non-conforming structures. He noted since the proposed garage is being viewed as an addition to the principal structure, it will meet the height requirements for a principal structure. He noted the proposed garage will not exceed the allowed floor area ratio. He stated the hardcover totals between 25% and 35% and requires approval by the City Administrator and City Engineer. Gozola reviewed the variance criteria. He noted the requested lakeshore setback is reasonable because of the configuration of lakeshore and other setbacks render the small amount of buildable area on the site virtually unusable for a home or garage. He also stated the criteria is satisfied for the floodplain buffer request, because filling a full 15-feet of area north of the proposed garage would

result in loss of floodplain. He stated the second-floor setback variances is also reasonable, because the existing home is not non-conforming to the side yard setback, but it is non-conforming to the lakeshore setback. He stated the request does present unique circumstances supporting the approval of all variance requests. The lot configuration and surrounding lakeshore renders the parcel unbuildable. Granting the requested variances would not impact the character of the neighborhood. Gozola stated there are significant hardships to warrant approval of this request. He stated the City Engineer has provided commentary on the request, and a swale, silt fencing, and pervious paving materials are options suggested to control drainage on the site. Gozola noted the applicant withdrew an initial application that would have required many variances. He noted a proposed trellis is being interpreted as a "covered passageway" that would be sufficient enough to make the garage an integral part of the principal building. He stated the Council will need to determine whether they agree with staff's interpretation. He recommended approval based on findings.

Beth Hustad, applicant was present to answer any questions from the Council. She thanked the Council for their consideration. LaBelle opened the hearing for public comments. There were none, and LaBelle closed the hearing. De La Vega stated he found it very difficult to find reasons to not approve the request. He suggested there be a future discussion of the definition of "covered walkway". He noted the lot does not provide any opportunities to meet setbacks. Marceau agreed the setback to the lake for the garage is actually less than the setback for the existing structure. He agreed the walkway definition should be added to a future worksession. He supported the request. Folley asked if any thought was given to moving the garage to the left or right. Hustad stated she moved it as far from the lake as was possible. Folley asked if there would be water or electric in the garage. Hustad stated there will be electric and heat. No thought has been given to having water at this point. Penberthy noted since it is attached it is considered part of the principal structure. LaBelle stated he can support the request. He stated it is a reasonable use for the property. He stated the topography of the lot does present a hardship. **De La Vega moved to adopt Resolution 08-28 approving the variance request of Beth Hustad, 135 Crabapple Lane to construct an attached garage based on the following findings of fact:**

- 1. The request is reasonable as all property owners within Tonka Bay have an expectation of being able to make improvements to their property.**
- 2. The requested lakeshore and floodplain variances are the minimum needed in order to construct a replacement garage on this property.**
- 3. The configuration of setbacks on this lot results in a buildable area that is largely unusable for construction of a home or a garage.**

4. **The narrow configuration of this lot and the location of the lakeshore make it impossible to meet the floodplain buffer requirement without unnecessarily filling in the floodplain.**
5. **The applicant was not responsible for the configuration of the lot and the resulting setbacks which make up the hardship on this property.**
6. **The second floor setback variance is necessitated by an existing nonconformity (the lakeshore setback) which is unrelated to the side yard setback of the existing home and proposed garage.**

Based on the following conclusions:

1. **The requested lakeshore setback variance is reasonable as the configuration of lakeshore and other setbacks renders the small amount of buildable area on this lot virtually unusable for a home or garage.**
2. **The requested floodplain buffer variance is also reasonable as it is impossible to fully comply with the requirement.**
3. **The requested second floor setback variance is reasonable as the existing home is not non-conforming to the side yard setback requirement but instead is non-conforming to the lakeshore setback.**
4. **The configuration of the lot and the surrounding lakeshore renders the parcel largely unbuildable and does not provide enough room to fully comply with the 15' floodplain buffer without filling in floodplain.**
5. **Granting of the requested variances would not impact the character of the neighborhood.**
6. **The required variances will have little if any impact on the availability of light and air to adjacent properties, no impact on traffic, fire danger in the neighborhood, nor will it be a danger to public safety.**
7. **Improvements will improve property values in the neighborhood.**
8. **This request will not violate the intent and purpose of the Comprehensive Plan.**
9. **Denial of the request would deprive the applicant of rights commonly enjoyed by other properties.**
10. **The undue hardship is not a result of the applicant's actions.**

And subject to the following conditions:

1. **The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction. Evidence of MCWD approvals shall be provided to the City prior to issuance of a building permit.**

2. **Removal of the existing garage, sidewalk, and driveway as well as the proposed new construction shall follow the survey and plans as submitted.**
3. **The applicant shall relocate existing underground water and sewer lines serving the home to ensure said lines meet all required building codes and do not pass under the proposed garage.**
4. **The applicant shall incorporate all Best Management Practices (BMPs) into the plan as required by the City Engineer to ensure proper drainage and to address the water quality of runoff into Lake Minnetonka.**
5. **The applicant shall be required to demonstrate no net loss of floodplain as a result of the proposed construction prior to obtaining a building permit.**
6. **To address all drainage concerns and to ensure adherence to the approved variances, three surveys shall be submitted as part of the future building permit for this lot:**
 - a. **Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer;**
 - b. **Foundation Survey – a survey verifying the location and elevation of the slab prior to framing and construction of the garage;**
 - c. **Final Grading Survey – a survey verifying that all grades conform to the designed plans and that all engineering recommendations were implemented shall be approved by the City prior to final inspection of the garage to allow its use.**
7. **The applicant shall adhere to additional recommendations by the City Engineer resulting from the final review of the building permit application.**
8. **The variance shall expire one year from the date of resolution, and City Council approval will be required for any subsequent extensions.**

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

C. Variance and Conditional Use Permit Requests – Talley, 50 West Point Avenue – Ben Gozola, City Engineer stated this is a series of variance and conditional use permit requests from John and Carol Talley, 50 West Point Avenue. He reviewed all views of the property as well as the existing conditions on the lot. He stated the following variances are needed: 1) a floodplain buffer variance; 2) a building height variance; 3) a second-floor side yard setback variance; and 4) three eave setback variances. Identified conditional use permits required would be: 1) floor area ratio; and 2) shoreland impact

plan CUP for hardcover of 43.39%. He stated the determination of the appropriateness of the home for this particular lot will impact the findings for all the other variances and conditional use permits being requested. He recommended it be reviewed as a "package deal" – if any one of the requests is denied, it should all be denied. Gozola stated the keystone issue is the floor area ratio. He noted the floor area ratio allowed is 30%. The existing home is at 21.3%, and the proposed home is 47.2%. He reviewed the criteria for approval of the floor area ratio. He stated the first issue to consider is whether it is consistent with the Comprehensive Plan. He stated that provided the Council finds the other CUP criteria are met, the construction of a new home on this lot is consistent with the goals and policies of the Comprehensive Plan. He discussed whether the proposed site would be compatible with land uses in the area. He stated the criteria would only be met if the Council finds the requested height variance is justified and all other CUP criteria are satisfied. Gozola reviewed the impact on the character of the surrounding area. He stated he examined the size of current homes in the general vicinity and other approvals for FAR in the neighborhood. He stated there were none. He stated it can be concluded that the size of the home would be too large for the lot, and this criteria is not met. He noted the demonstrated need for such a use is up to the Council to determine. He did note the proposal would not depreciate the area in which it is proposed nor would not impact the City's service capacity. Gozola recommended denial of the floor area ratio request. He recommended approval of the floodplain buffer variance contingent on approval of the shoreland impact plan. Because the lot is so narrow, the house would be 20-foot wide to meet the floodplain buffer variance request. Gozola stated the applicants are requesting a 2-foot variance to the height requirement of 30-feet. He stated there is a physical hardship on this lot as fill is required to elevate the house, and the height variance is reasonable. He stated it would not alter the essential character of the locality. The height variance would not impair light and air to adjacent property. The request also meets the other criteria requirements for the height variance. Gozola stated a 1-1/2 times side yard setback is required for the second story. The determinations on floor area ratio and height will have an impact on whether the second floor setback variance should be approved. If either is denied, then this request should also be denied. Gozola stated the applicants have not completed the required shoreland impact plan. He stated the applicants are requesting three eave variances. They would also be linked to findings for the other issues reviewed here tonight. The FAR, height, and shoreland impact plan would need to be approved in order for the eave variances to be approved. Gozola reviewed options for approval, denial, or tabling the request.

Folley asked if most of the homes are below flood level now on this street. Gozola stated that they are except for 115 West Point Avenue. Folley asked if raising this particular house would lower the others. Gozola stated by putting fill on this property, the shoreland impact plan has to address how they will mitigate the loss of floodplain. De La Vega asked if there is an option to build on stilts. He didn't know if there was enough property

left to mitigate. Gozola stated the mitigation does not have to occur on this lot. It can be anywhere on Lake Minnetonka. He agreed other methods could be used to bring the house out of the floodplain which the applicants can explore. De La Vega stated as we bring in more fill, more high points will be created that will shed water to other properties.

John Talley, 50 West Point Avenue, applicant stated they are just at the beginning of renovations on their street. He stated he didn't think the square footage proposed is unusual. He stated he wants to build a house that he can get a return on when he retires. He hoped the Council would give their request consideration. LaBelle opened the hearing for public comments. **Jay Piersol, 70 West Point Avenue** stated none of the houses on his street are conforming. He discussed his concerns about taxes as they relate to the zoning district they are in. He stated you have to take in consideration what the residents want to do when they are being taxed. He stated a 30% FAR cannot be applied to every site. He stated the uniqueness of the point must also be taken into consideration. **Bernie Hanson, 60 West Point Avenue** asked Council to assure that the drainage plan would work as proposed. Talley stated they do have a water problem which will be addressed as part of their plans. He stated they don't want to overbuild on the site. A member of the audience noted that the houses don't have basements. **Pat McGowan, 85 West Point Avenue** stated what is being proposed is far removed from what a McMansion would be considered. Mr. Talley has the neighbors' approval, so now he needs the Council's approval. Talley stated his contractor is present tonight to answer any questions for the City Council. **Duane Meyers, contractor** stated they aren't planning to fill this lot, and the home will be built on a pier system. He reviewed photos of the houses in the neighborhood. LaBelle closed the public hearing.

De La Vega stated the area is unique. As a City Council, we are faced with what exists today into what is coming in the future as the homes change over. The Council needs to manage the process so there isn't a hodgepodge of homes. The Council is reasonable and deals with situations on an individual case. He understood what the applicants are proposing, but there are issues that give him concern. He stated there isn't a lot of room to put in the kind of home we would all like, and we need to be aware of the impact on our neighbors. He stated there are still many unanswered questions. Marceau stated FAR is definitely an issue that the Council will be addressing. He stated the property owners have the right to develop their property, but he was concerned about the impact on the neighborhood. Folley stated there could be potentially eleven properties coming to us with similar requests. He had a problem with the floor area ratio, hardcover, drainage and proposed eaves. LaBelle stated so much of what the Council does is based on ordinances and state statutes. Each application is handled on a case-by-case basis. Each application will be treated respectfully and analyzed on its own merits, and a decision will be rendered based on what the Council feels is in the best interests of the community. He stated this application raises a couple issues. One is the lack of a

basement. He noted you need space for mechanicals, etc. Another issue is the floor area ratio and an exceptionally high hardcover percentage which requires a shoreland impact plan. He stated the Council is not ready to make a decision this evening. He recommended the request be continued. He asked each Councilmember to weigh in with their thoughts on what they think needs to be changed. Talley stated he won't have a height problem with their proposal. He was willing to bring in the eaves. He stated he just wants to maximize his real estate value. Folley stated he would prefer not to say what he would like to see changed. LaBelle stated we typically try to refrain from designing your home. He stated we are dealing with an application that is too large for the lot. The house comprises almost half the lot. He wasn't aware of any use like this that was approved. He believed it is an encroachment on the properties on either side. The neighbors now may support the request, but they may not always be the neighbors. De La Vega stated he has a problem with the FAR. He had a problem with the hardcover percentage and would like to see a reduction. He also suggested the shoreland impact plan be completed. **Folley moved to continue the hearing to the December 9th meeting. Marceau seconded the motion. Ayes 4. Motion carried.**

8. OLD BUSINESS

A. Minnehaha Creek Watershed District Shoreline Restoration Proposal – Loftus stated there have been a couple changes in the shoreline restoration plan. We visited the site with the MCWD engineer. The decision has been made to replace the split rail fence with boulders. In an attempt to protect the proposed dock expansion, language has been added to the agreement. They will also maintain the area from years one through three. They will train city staff to identify native species, and the city will take over maintenance after that point. The parties have also agreed to binding arbitration should any disputes arise. LaBelle stated all his concerns have been addressed. De La Vega asked whether Items 6 and 7 become our responsibility after the first three years. Penberthy stated it would be the city's responsibility. De La Vega stated the change from the fence was a good change. Penberthy discussed Council authority to regulate activities at the docks should they be expanded and removing the fishing access points on Exhibit A if needed. **De La Vega moved to approve the attached declaration and agreement with Minnehaha Creek Watershed District for the shoreline restoration project at Old Orchard Park. Folley seconded the motion. Ayes 4. Motion carried.**

B. Resolution 08-25, Zelickson Variance – De La Vega stated he asked for this to be discussed, because it occurred to him under 1B, the wording "if requested by the City" creates a potential issue if a new home is not built. He suggested the phrase be removed. Folley asked if 4/5 votes were needed to approve the change. He also stated under 1C, the wording "there will not be a formal request" should also be removed. Folley suggested it be changed and brought back to the next meeting. Penberthy stated it is not a substantive change, and only three votes would be required. **De La Vega moved to**

amend the wording of the resolution to remove the phrase in 1B – “if requested by the City” and 1C, “comply with a request to”. Marceau seconded the motion. Ayes 3-1. Folley voted against the motion. Motion carried.

9. **NEW BUSINESS**

A. **De-icing Permits** – Folley moved to approve the de-icing permits for the 2008-2009 season. De La Vega seconded the motion. Ayes 4. Motion carried.

B. **Schedule Canvassing Board** – LaBelle stated three councilmembers are needed to convene for the Canvassing Board. He suggested a morning meeting. Folley moved to set Thursday, November 6 at 7:30 a.m. for the General Election Canvassing Board. Marceau seconded the motion. Ayes 4. Motion carried.

10. **MATTERS FROM THE FLOOR**

None

11. **REPORTS**

A. **Loftus** – Loftus stated the mitigation project will begin this week and take one week for completion. The next Council meeting is on Wednesday, November 12 due to the Veterans’ Day holiday.

B. **Marceau – Finance and Marinas** – no report

C. **Tessness – Buildings, Building Inspection, LMCD, Fire Lanes and Municipal Docks** - absent

D. **Folley - Animal Control, LMCC, Technology** – Folley stated the LMCC is considering moving to a new building, and he will have further details at the next meeting.

E. **De La Vega - EFD, Parks, Sanitation, and Southshore Senior/Community Center** – De La Vega stated a meeting is scheduled for the Southshore Center committee to review a lease agreement.

F. **Attorney's Report** – no report

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 10:20 p.m. Folley seconded the motion. Ayes 4. Motion carried.

Attest:

Clerk