

CITY OF TONKA BAY ITEM NO. 5A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING December 9, 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

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

4. CONSENT AGENDA

Tessness moved to approve the consent agenda as presented approving the regular meeting minutes of November 25, 2008, the Truth in Taxation meeting minutes of December 2, 2008, and the accounts payable. De La Vega seconded the motion. Ayes 5. Motion carried.

5. MATTERS FROM THE FLOOR

None

6. PUBLIC HEARING

A. Continued Public Hearing – Griffin, 4240 Circle Road – Preliminary Plat Variances – LaBelle noted the request has been withdrawn. Loftus stated this request was heard by the City Council at the October 28th meeting, and the applicants are now requesting their application be withdrawn. Penberthy stated the action would be to accept the withdrawal request. Marceau moved to accept the withdrawal request from John and Gloria Griffin, 4240 Circle Road. Folley seconded the motion. Ayes 5. Motion carried.

B. Continued Public Hearing – Talley, 50 West Point Avenue – Variances and Conditional Use Permits – Loftus stated this is a continuation from October 28th. She noted the applicants have revised their request, and the City Planner has provided a revised report. She reminded those present to come to the podium when they wish to comment on the request. Ben Gozola, City Planner reviewed the property location and the layout of the homes on West Point Avenue. He reviewed the existing conditions on the lot. The applicants have gone back to the drawing board and have addressed many

of the issues discussed at the October meeting. The new request conforms to the height requirement, southwest side yard setback, and all eave setbacks are met. The new plan will require a variance from the finished fill elevation, a conditional use permit for a floor area ratio of 43.6%, and a shoreland impact plan CUP for total hardcover in the amount of 41.04%. He noted the hardcover figure is different than what is in the report. After questioning the percentage, the applicants' engineer recalculated the percentage. Gozola reviewed the floor area ratio requirement for this request. The existing floor area ratio is 32.2%, while the proposed home is at 43.6%. He stated the construction of a new home on this lot is consistent with the goals and policies of the comprehensive plan. He also noted if the Council finds other CUP criteria are met, construction of a new home on this lot will be compatible with present and future land uses. Gozola stated the most important question is the impact on the surrounding area. He showed an aerial photograph showing the surrounding homes are not particularly large. Lacking an approved neighborhood plan or specialized zoning district that says what is being proposed is appropriate, and staff cannot state this criterion is being met. He stated staff has come up with the following criteria to address concerns: 1) new construction should meet required setbacks; 2) new construction should meet the height requirement from the current average ground level; and 3) new construction should successfully meet all requirements for a shoreland impact plan CUP. He explained the reasons for these criteria. He stated Council must assess what is the best approach to ensure compatible and appropriate development for all the lots. He reviewed three options: 1) require all development to conform with existing City code; 2) conduct a neighborhood study to specifically define how each lot on the point could develop to ensure consensus for redevelopment and to establish a permanent set of rules to be followed by this lot and all future projects on the point; and 3) utilize the optional review criteria provided by staff to ensure compatibility with the character of the area for this and future redevelopment projects on the point. The third option is just an avenue to get this project moving if Council feels it does fit the character of the neighborhood. Gozola continued to review the criteria for approval of the floor area ratio request. He stated the demonstrated need for such a use is subjective and so staff does not take a stand on the criteria. He noted the applicants have indicated lack of a basement necessitates the need for additional floor space. He stated the proposed use will not depreciate the area nor will it impact the City's current service capacity. He stated the floor area recommendation will depend on how the Council decides to approach the criteria focusing on the impact to the character of the surrounding area. Gozola stated staff is recommending approval of the floodplain buffer contingent on approval of the shoreland impact plan. If an owner of this lot would comply with the floodplain buffer, the building envelope would be very narrow. Gozola reviewed the shoreland impact plan CUP request. He noted the engineer agrees the plan will work subject to some modifications. He noted there are two rain gardens proposed on each side of the driveway. There will be downspouts on the structure to control runoff, and there will be more overflow protection. He stated the lowest floor should also be

changed to 933.5. He recommended approval of the shoreland CUP request. Folley asked what the hardship was for the variance. Gozola stated the hardship is a suitably sized house cannot be built without the variance. Folley asked if a hardship is required for a CUP. Gozola noted a hardship is not required; however, the criteria for approving a CUP must be met. LaBelle opened the hearing for public comments. **John Talley, 50 West Point Avenue** discussed his request and appreciated working with the City Planner. He thanked the Council for letting them come back with a revised plan. There were no further comments, and LaBelle closed the hearing. Tessness stated the request is well thought out and fits the neighborhood. He supported the request. Folley stated he is still against the request. The hardcover and floor area ratio are too high. Marceau stated he was not concerned about the hardcover as this drainage plan would deal with the increase in the hardcover percentage. He was, however, concerned about the floor area ratio. He stated the Council will need to look at development more on future requests and find a way to put something in place to deal with this issue. De La Vega thanked the applicants for making the reductions they did. He stated the drainage plan is not a concern to him this time. He agreed we should set parameters as we are faced with other requests of this nature in the future. If we are really looking at volume, we are missing the third measurement, the height. He stated a lot of the floor area calculation is for non-livable space. He didn't think a one-size-fits-all standard can be placed. The reality is as the market redevelops and the land prices increase, we are going to be faced with a mismatch. Folley asked if there should then be different FAR requirements for different neighborhoods. De La Vega stated there should. LaBelle stated looking ahead is important, but the Talleys have an application before us that needs to be addressed now. He stated trying to craft a floor area ratio plan that will fit all requests is not possible. He stated he didn't want to lose sight of the fact the request meets many of the parameters such as setbacks. He supported the request. Tessness stated this is why we review requests on a case-by-case basis. Folley was concerned about there being a water problem in the future. LaBelle stated he was sure staff and engineering would take great care in monitoring this application. Marceau was sure the floor area ratio and mass of the structure are key to what will be happening in this neighborhood in the future. Penberthy stated each councilmember should state how this request is met and how it meets the criteria for approval. There must be a reasonable basis for the decision based upon staff's findings. Staff is stating there aren't any facts upon which a basis for approval exists. LaBelle noted it meets all required setback and height requirements. De La Vega stated it seems we need to provide some leeway because of the lack of a basement. LaBelle stated we typically do allow some latitude in cases such as this. De La Vega stated the mechanicals needed are creating the need for 1000 more square feet. Folley stated he didn't see the need for such a large structure on this lot. De La Vega stated he still didn't see the need to accept FAR as a measure of volume. **Tessness moved to adopt Resolution 08-32 approving the variance request and conditional use permit for John and Carol Talley, 50 West Point Avenue to construct a new**

home based on the following findings of fact:

- 1. The request can be approved based on the narrow width of the lot and the existing low elevations that must be raised in order to construct a new home outside of the floodplain.**
- 2. The Shoreland Impact Plan successfully details the stormwater management and grading, ensures that floodplain loss is appropriately mitigated, that stormwater is properly treated, and that adjacent properties will not be impacted.**
- 3. The proposed structure integrates with current and future structures in the neighborhood.**
- 4. The setbacks and height requirements are met.**

based on the following conclusions:

- 1. The construction of a new home on this lot is consistent with the goals and policies of the Comprehensive Plan.**
- 2. Construction of a new home will generally tend to increase property values in the surrounding area.**
- 3. The proposed plans have been fully reviewed by the City Engineer to address runoff concerns onto adjacent properties.**
- 4. The increased floor area ratio will not impact the City's service capacity.**
- 5. The requested floodplain buffer variance is reasonable as it is nearly impossible to fully comply with the requirement given the width of this lot.**
- 6. Granting the floodplain buffer variance would not impact the character of the neighborhood as most would need the same variance in order to build additions or construct new homes.**
- 7. The requested variance will have no impact on the availability of light or air to adjacent properties.**
- 8. The requested variance will have no impact on traffic, fire danger nor will it be a danger to public safety.**
- 9. The request will not diminish or impair property values within the neighborhood.**
- 10. Construction of a reasonable new home would not be possible without a variance.**
- 11. The applicants bear no responsibility for the narrowness of this lot and the difficulties that arise for meeting the floodplain buffer requirement.**
- 12. Approval would not confer any special privilege upon the applicants as other properties exhibiting the same facts would be supported in efforts to obtain a floodplain variance.**

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.**
- 2. The MCWD shall review and approve the final grading plans approved by the City Engineer prior to any work being authorized. Proof of MCWD approval shall be provided to the city prior to a building permit being authorized.**
- 3. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer including but not limited to:
 - a. Adjust the south to north rain garden outlet pipe to 8” or greater to reduce clogging potential. Pipe shall be designed to handle vehicular traffic loads.**
 - b. Place additional spots in the swale area to verify positive drainage within property along the southern side of the proposed residence.**
 - c. Provide final approvals from the MCWD for floodplain mitigation.**
 - d. Revise stormwater calculations to include all contributing area and show flood protection for both rain garden storage areas based on the 100-year 24-hour event.**
 - e. The driveway shall be changed from gravel to a solid surface such as bituminous or concrete.**
 - f. Permanent easements in favor of the City shall be granted over both rain gardens (to the 100-year HWL elevation) and extend easements to cover the north rain garden outlet, extending to the Lake Minnetonka outlet. Dimensions of the easements shall be approved by the City Engineer.****
- 4. The applicant shall secure an easement in favor of the City from the neighboring property to the north for the proposed northeastern rain garden if the design continues to extend onto the neighboring property. The easement shall be secured prior to issuance of a building permit.**
- 5. Building of structures shall not occur within any existing or proposed easements on the property.**

6. **To address all drainage concerns and to ensure adherence to the shoreland impact plan, 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 house;**
 - 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 the issuance of a certificate of occupancy for the new home.**
7. **The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure on-going compliance with all engineering requirements.**
8. **The City Engineer shall review and approve the final rainwater garden designs and designs for other necessary BMPs prior to any work being authorized.**
9. **The variance shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.**
10. **Set the elevation of the garage at 933.5.**

De La Vega seconded the motion. Gozola suggested finding that the home will fit with the character of the neighborhood. LaBelle stated he could not say what will be coming in the neighborhood in the future. Marceau stated it does not fit the character of the neighborhood now but would in the future. Penberthy stated if the Council believes it does not fit the character of the neighborhood now, it should be denied. LaBelle stated he believed it fits the character of the neighborhood now and anticipated it would in the future. De La Vega agreed. Ayes – LaBelle, De La Vega, Marceau, and Tessness. Motion carried 4-1. Folley voted against the motion.

7. **OLD BUSINESS**

None

8. **NEW BUSINESS**

- A. **2009 Liquor License Requests** – Loftus reviewed requests for license

renewals. She noted DVS clearance has been received, and license checks have been provided for all applicants. **Marceau moved to approve all license renewals for 2009. Tessness seconded the motion. Ayes 5. Motion carried.**

B. 2009 Fee Schedule – Loftus stated a copy of the 2009 fee schedule has been provided as well as the ordinance for the fees. The ordinance is changed each year to incorporate the new fee schedule. She noted the dock fees are proposed to increase from \$1200 to \$1460. Rates in the enterprise funds will be increased in order for them to break even. She stated the option is to hold a second reading on January 13 or waive the second reading. She stated there may be residents present who would like to comment on the fee proposed for the docks. **Dan Rusch, 60 Tonka Bay Road** believed the Council is raising the rates because they want to and not because they need to. He didn't think it was necessary to bring the rates up to market rates. We are not competing with marinas. If a resident cannot afford the dock, they have to leave. **Dave Jensen, 25 Lilah Lane** stated he was told two years ago the dock fee is not based on the cost of maintenance but used as a revenue enhancement. He stated the docks are a benefit to the community, but the cost is a hardship. He suggested looking at other ways to raise money. Folley stated the docks are a great revenue enhancer, but he was in not in favor of them being increased every year. De La Vega stated it is a benefit to those who have access to the docks. He believed they are under priced in comparison with other marinas. LaBelle stated we are trying to build up the fund to expand the number of docks available. Jensen stated the costs associated with rental are not equal to the maintenance costs. LaBelle stated the Council is sympathetic. None of the Council members live on the lake. He stated the residents should enjoy the fact that they have a dock space. The Council discussed whether to waive the second rating. Marceau stated he would like to hold the second reading on January 13.

C. 2009 Budget and Tax Levy – Folley moved to adopt Resolution 08-33 approving the 2009 budget and levy. De La Vega stated we need to come up with a plan to adjust the budget to make up for the proposed State shortfall. Marceau seconded the motion. Ayes – LaBelle, De La Vega, Marceau, Folley and Tessness. **Motion carried.**

D. Southshore Center – De La Vega stated there is a lease agreement between the cities and the Friends of the Southshore Center which has been clarified to make changes to insurance requirements and the role/responsibilities of the tenant. The main change is the Friends will now focus on programs and ongoing maintenance, and the cities will be responsible for the larger dollar items attached to the property itself. The cities going forward will establish a fund and create a group that will look at the fund and building requirements every year. The cities will be notified of needs on an annual basis. Tonka Bay would pay 9% of the cost. There has also been a change in how the sale of the asset would be handled. A city may, whenever it wants, remove itself from the agreement. If the building sells, they would not be able to receive any of the appreciated sale price, only the original investment amount. The tenant can now contract out for

services, such as programs. This will result in a better situation for the communities. If the building is sold for less than the original investment, the language is not clear how a city that divested itself would share in the cost. He noted the intent in the beginning was that a city would never have to invest any money in the center. He stated now the intent is to continually invest in the center as the landlord. Loftus stated it is also our responsibility to individually put away and maintain funds for any capital improvements for the building. The schedule has not been determined. De La Vega stated we know there will be financial requirements. A CIP would need to be created in order to budget for these. A base fund of \$15,000 would be set up. The tenant will pay utilities, taxes, and assessments in lieu of rent. He noted Excelsior has approved the agreement to date. Loftus asked that the Council's action be to approve the documents in substance and allow the Mayor and City Administrator to execute the final documents in case there are some minor changes. **Folley moved to approve the third amendment to the lease and the cooperative agreement allowing the Mayor and City Administrator to execute said agreements. Marceau seconded the motion. Ayes 5. Motion carried.**

E. Sewer Lining Proposals on Interlachen Court – Kluver reviewed proposals to line a section of sewer pipe on Interlachen Court. He explained each year projects are identified, and the work is authorized. West Point Road was earmarked to have the sewer lining work completed this year; however, Interlachen Court was suffering some significant root intrusion that resulted in the need to have this work done first. He recommended the low proposal from Visu-Sewer be approved. He noted we would still be under budget for "Inflow & Infiltration" in 2008. He stated the goal is to provide a long-term cure for the infiltration, and the sewer liner has a 50-year life. De La Vega asked if this kind of work will be in future CIPs. Kluver noted that it would be included. De La Vega asked if there were any cases where this solution would not be appropriate. Kluver stated if a pipe has become misaligned then sewer lining would not work. **Tessness moved to authorize the Mayor to enter into an agreement with Visu-Sewer, Inc. in the amount of \$12,500.00 following receipt of the necessary contract documents. Folley seconded the motion. Ayes 5. Motion carried.**

F. Cancel December 23 City Council Meeting – Marceau moved to cancel the December 23 City Council meeting. Tessness seconded the motion. Ayes 4-1. Motion carried. De La Vega voted against the motion.

9. MATTERS FROM THE FLOOR

None

10. REPORTS

A. Loftus – no report

B. Marceau – Finance, Marinas - no report

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

D. **Folley - Animal Control, LMCC, and Technology** – Folley stated the videographer will be leaving for college and will no longer be taping the meetings.

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 8:47 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk