

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
July 13, 2010**

**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 Kohlmann, City Attorney Penberthy, City Planner Gozola, and Public Works Superintendent Kluver.

**3. APPROVAL OF AGENDA**

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

**4. CONSENT AGENDA**

**Marceau moved to approve the regular meeting minutes of June 22, 2010 as amended: De la Vega stated on page 2, halfway down the page, the sentence should be changed to read: *De La Vega stated he didn't feel the sign location is in the right place given the new evidence.* De La Vega seconded the motion. Ayes 5. Motion carried. Marceau moved to approve the special meeting minutes of July 1, 2010. De La Vega seconded the motion. Ayes 5. Motion carried.**

**5. MATTERS FROM THE FLOOR**

None

**6. SPECIAL BUSINESS**

**A. Comprehensive Plan – Ben Gozola, City Planner stated by state statute, the City has nine months after approval of the Comprehensive Plan to update their zoning its local controls so they are in compliance with the Plan. This would include the zoning ordinance and zoning map. 41 properties have been identified that do not comply with the Plan. Most will be rezoned to Park District. Four parcels would transition to single family, and two parcels would be rezoned to multi-family. He stated he is giving the Council the option to initiate the rezoning process and schedule a public hearing or instruct staff when they would like this process to begin. He noted the process must be completed by January of 2011. LaBelle stated that although this is not a public hearing, he would like to give Mr. Malkerson an opportunity to speak unless the Council has any objections. There were no objections. Bruce Malkerson, attorney for Charles/Rae Maciosek, 70 West Point Place stated he represents the Macioseks who have an application in front of the Council. He stated that quite frankly, if they down zone the property prior to acting on their application, assuming the Council approves it and this is**

an assumption, it may or not make it moot. He asked the City Council to set the hearing at the end of August. Quite frankly, that would force us to sue the City to say that down zoning was illegal. Based upon the facts of this matter, he believed that down zoning of their property would be illegal. He believed it would constitute illegal spot zoning, and he also believed it would constitute what the courts have said is a manifest injustice. He stated he would not go through all the reasons tonight. He asked that since there is an extended period of time to make a decision on this and since there is plenty of time under the 120-day rule to review everything we have in front of you and if you need another extension we will be glad to give that to you too and as the planner just said most of the property is property owned by the City and the fact he is out of town until the end of August. He would ask that the hearing be scheduled for the end of August. He believed the Council would be better served by notifying all the citizens that will have their property down zoned actually gets individual notice. He stated in summary: 1) he thanked the Council for allowing him to speak; 2) he asked that any hearing on this matter be set for the end of August because he will not be here; 3) he didn't think it adversely impacts what you are trying to accomplish at all in the interim; and 4) we will grant any extension that you need under the 120-day rule to make a 60/120-day rule so that there won't be any problems related to that; and finally, he did believe the down zoning would be illegal and he will be glad to submit a memorandum on that subject. Penberthy asked for an extension past September 3 from the Macioseks. Gozola asked for an additional sixty days. Malkerson agreed to both requests. De La Vega stated he had no problem delaying the discussion on this item. **Marceau moved to continue this item to the August 24, 2010 meeting. De La Vega seconded the request. It was noted the Macioseks have agreed to extend their hearing past September 3 another sixty days beyond that. Ayes 5. Motion carried.**

## **7. PUBLIC HEARING**

**A. Continued Variance Request – Tonka Village Shopping Center, 5609 Manitou Road (Applicant requested continuance to July 27 for plan adjustment)** – LaBelle stated the applicants have requested a continuance to July 27. LaBelle opened the hearing for public comments. There were none. LaBelle closed the hearing. **Tessness moved to continue the public hearing to July 27, 2010. De La Vega seconded the motion. Ayes 5. Motion carried.**

**B. Continued Variance Requests – Charles/Rae Maciosek, 70 West Point Place** – **Ben Gozola, City Planner** reviewed the request for variances for the Macioseks for their property at 70 West Point Place. The request was continued from the June 22 meeting to allow staff to do additional research on the approved Comprehensive Plan and the legal arguments put forth by the applicants. We have a number of updates to provide to the Council this evening. First of all, the City has retained George Hoff as additional legal counsel for this application. We asked Mr. Hoff for his assessment of the facts

surrounding the city's land use regulations. Mr. Hoff's memo is included in the record tonight and on page 2-3 of the staff report. In summary, he has determined that the approved Comprehensive Plan does guide the subject property to single family residential use so when the City does move forward with implementing the new Plan and going through the rezoning efforts, that property would be the guiding zoning district for this property. The second zoning-related issue Mr. Hoff addressed was giving us direction on the competing interpretations regarding the setbacks for this lot. In Mr. Hoff's memo he instructed to view all non-lakeshore lot lines as rear lot lines on this property. This is different with how staff has interpreted the site to date. Accordingly, staff has noticed a new public hearing for a rear setback variance for July 27. Staff did this because we didn't know where we were going to be with the 60-day rule or how the Council might direct us on the rezoning tonight. From what we've heard tonight, we would have to open the public hearing and continue it to the August 24 meeting. Mr. Hoff was unable to provide an interpretation of the applicant's comments on the wetland ordinance, but an update will be provided at the August meeting. Gozola stated a compromise option has been submitted by the applicants on July 12 for consideration this evening. Staff hasn't performed a zoning review of this compromise. He stated the applicants have suggesting shifting the home to the south. The MCWD has determined the buffers and rain gardens as noted will meet their requirements. De La Vega asked if the major change then is shifting the home to the south forty feet. Gozola stated it is as well as changing the configuration of the compromised wetland buffer and moving rain gardens. LaBelle asked if the compromise submission take into account the front/rear yard setback interpretation. Gozola stated to date we haven't had any variance request for the westerly lot line, but it would require one. LaBelle stated the compromise doesn't address the setback requirement changes. LaBelle invited the applicants to speak. **Bruce Malkerson, attorney representing Charles/Rae Maciosek** stated we had submitted this plan as something for the Council to consider, but they will go ahead to make a formal amendment so the variance application will be this plan and not the other plan. A lot of the analysis is still the same, but we will formally amend the application to be this plan which we think is far superior, hopefully, from the neighbors' perspective and from yours because it eliminates any of the view issues that I think were there before. He indicated they would be willing to amend the plan and get it in front of you so that the variances in front of you would apply solely to this plan and not to the one that otherwise is in front of you. He stated he would further address the Mayor and City Council at the meeting in August. **Rose Lorsung, Pulse Land Group, representing the applicants** stated she hasn't had time to sit down and fully review the amended plan, but they have spent every day reviewing the site with a fresh perspective to come up with possible ways to change the site plan. The house has been shifted forty feet to the south which will, hopefully, be a win-win situation for everyone. It preserves the views of the neighboring properties, and they believe it keeps the neighborhood integrity and allows for them to move the hardcover further back from the lake and moving buffer areas closer to the lake. We

have also added another rainwater garden to treat the hardcover. Kohlmann asked that all plans and materials be submitted by July 21. Lorsung agreed it would be done by then. LaBelle asked for additional comments from the audience. There were no comments, and LaBelle closed the hearing. Gozola asked for direction on whether this will be a continuation or a brand new public hearing. Malkerson asked that if the hearing is continued, some people might say this is such a dramatic change it should be re-noticed with a new application. Penberthy recommended it be continued and re-noticed. There is a change someone might not be aware of and they should have an opportunity to speak. **Folley moved to continue and re-notice the public hearing to August 24, 2010. Tessness seconded the motion. Ayes 5. Motion carried.**

**C. John Davis CUP and Variance Request (Applicant withdrew request)** – LaBelle stated this hearing has been withdrawn.

**8. OLD BUSINESS**

None

**9. NEW BUSINESS**

**A. Feldmann License Agreement** – Kohlmann stated Julie Feldmann of 4280 Circle Road would like to enter into a license agreement with the City. The current house and garage were built in 1990. The detached garage was issued a permit in 1991 for re-roofing and re-siding. Variances were issued in 2008. She needs a license agreement in order to refinance her house. Staff would like authorization to enter into an agreement with Feldmann. Penberthy stated the City will have the authority to tear down the garage if we determine we need the area for roadway in the future. Tessness asked if this is a common agreement. Penberthy stated that it is a common occurrence and is recordable at the County Recorder's office. **Marceau moved to authorize the Mayor and Administrator to enter into a license agreement with Julie Feldmann, 4280 Circle Road. De La Vega seconded the motion. Ayes 5. Motion carried.**

**B. Assessor Contract Renewal** – Kohlmann stated staff met with William Davy to discuss the assessing contract with the City which expires on July 31, 2010. Mr. Davy wishes to extend the contract to a 2-year agreement and increasing the rate from \$18,000 to \$20,000 annually. He noted there is no termination language in the contract, and something needs to be added. He reviewed quotes received in 2009 for assessing services. Marceau stated he would suggest counter offering a lower amount given our financial situation. LaBelle stated this contract worked out extremely well. He stated he received complaints once Mr. Davy retired from the County and no longer served our city. Since it has changed back to him, it has gotten better. LaBelle was pleased with this contract. Tessness stated he is also concerned there isn't a termination clause. De La Vega proposed to counter offer with a \$1000 increase the first year and then another \$1000 the second year. **De La Vega moved to authorize the Mayor and City**

**Administrator to enter into a contract with William Davy for assessing services for two years at \$19,000 the first year with an option for \$20,000 the second year. Tessness seconded the motion.** Councilmembers discussed the motion. Penberthy stated the termination language should be added so that termination can be mutual. LaBelle suggested instead that staff be directed to amend the agreement to blah blah blah. **No vote was taken on the motion on the table.** Staff was directed to come back with a revised agreement.

**C. Liquor Licenses – Caribbean** – Kohlmann stated there have been changes to the corporate officers at Caribbean and new applications must be filed with the staff. Penberthy noted the license runs in favor of the corporation. The City wants to be assured that there are responsible people on record. **Tessness moved to approve the licenses for Caribbean through 12/31/10. Marceau seconded the motion. Ayes 5. Motion carried.**

**D. New 2010 Dump Truck** – Kluver stated the capital equipment schedule has budgeted for the purchase of a new dump truck. He reviewed the purchase under the state purchasing bid which eliminates the need for the City to go through the bidding process. He noted the 1984 truck will be traded in or sold, and the 1995 truck will be used as a secondary hauling truck until the new truck is replaced in twelve years. He recommended the 1984 truck be put in an auction or sold by sealed bid because he felt it would get more than \$500. Kluver noted the cost of the cab and chassis from IState Truck Center will be \$74,734.20. This amount includes \$4,560.02 in sales tax that is paid to the State of Minnesota directly when the title is issued. The dump body and plow equipment from Aspen Equipment will cost \$68,219.71. Kluver stated there is some confusion about how much sales tax will be charged. LaBelle asked if any of the other trucks have non-resettable hour meters. Kluver noted they do not, and it is a good thing to have in order to schedule maintenance, etc. He stated the cab and chassis will be delivered in September at which time the equipment will be installed within the following 45 days in time for the plowing season. The logos on the side run about \$150 each. Folley asked if there was any reason to wait for 2011 trucks. Kluver stated they aren't available now. **Marceau moved to approve the purchase of one new 2010 Freightliner M2 106 Cab and Chassis from IState Truck Center in the amount of \$70,174.18 plus tax of \$4,560.02 (or an additional \$243.08 depending on amount of tax). Folley seconded the motion.** In response to a question from Penberthy, Kohlmann discussed fund transfers needed to pay for this vehicle. **Ayes 5. Motion carried. Tessness moved to approve the purchase of one new Henderson 10-foot box, plow, wing and sander from Aspen Equipment in the amount of \$68,219.71. De La Vega seconded the motion. Ayes 5. Motion carried.**

**E. Rental Housing Task Force Proposed Timeline** – Kohlmann stated staff has begun to gather preliminary information on the rental housing stock in Tonka Bay. Letters went out with minimal response to date. Staff will set a date for the first rental housing staff meeting. There are challenges due to the number of budget workshops scheduled in August and September. Kohlmann suggested September as a possible date which would allow more time to gather information and invite participation in the task force. Tessness asked if staff would have time to work on this before September. Kohlmann stated he could have information ready. Tessness stated he would be in favor of September. Marceau stated it would make sense to wait as people are traveling this time of year. Kohlmann suggested September 21 as a possible meeting date. No meeting was scheduled.

**10. MATTERS FROM THE FLOOR**

None

**11. REPORTS**

**A. Administrator** – Kohlmann stated he did a follow-up on the code enforcement letter he received. He stated he continues to investigate the 95 Sunrise Avenue property which appears to be under foreclosure. He would prefer to talk to the other property owners and send a certified letter following that. Marceau suggested additional properties be added to the list as long as we are looking into them all now. De La Vega stated he would prefer if we react when we are notified rather than pursue them.

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

**C. Tessness – Buildings, Building Inspection, Fire Lanes and Municipal Docks** – Tessness asked if the 1984 dump truck trade-in would be discussed in more detail. Kluver noted the auction is open to the public, and anyone can bid. Kluver was directed to keep the Council informed of the truck disposition. Kluver noted it wouldn't be going to an auction for some time. It can also be posted on the League website.

**D. Folley - Animal Control, LMCC, Technology, and Southshore Senior/Community Center** – no report

**E. De La Vega - EFD, Parks, Sanitation, and LMCD** – De La Vega stated during the last Legislative session, there was a bill to eliminate the White Bear and Lake Minnetonka Conservation District. It was not passed, but there is movement afoot to bring it back. The LMCD is looking for input on July 21.

**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 8:18 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.**

Attest:

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Clerk