

MINUTES OF THE REGULAR MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, NOVEMBER 14, 2012

I. CALL TO ORDER/ROLL CALL

- Mayor Bhardwaj called the meeting to order at 7:00PM. Council members in attendance: Morgan, Miller, Bhardwaj, Fulkerson. ***Councilmember Davies was absent.***
- City Staff in attendance: City Manager Karen Suiker, City Planner Trever Parker, City Attorney Andy Stunich, City Clerk Gabriel Adams.

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

1. Government Code section 54956.9(b)(3): Pending Litigation
 - a. Tsurai Ancestral Society Liability Claims for Damages, etc. against the City of Trinidad

IV. RECONVENE TO OPEN SESSION

Mayor Bhardwaj stated that no action was taken in closed session.

V. APPROVAL OF AGENDA

Motion (Fulkerson/Miller) to approve the agenda as submitted. Passed 4-0.

VI. APPROVAL OF MINUTES – September 26, 2012 cc2 & October 10, 2012 cc

Motion (Fulkerson/Miller) to approve the minutes as corrected. Passed 4-0..

VII. COMMISSIONERS REPORTS

Miller: Report on Donna Lin's health.

Fulkerson: Report on the Prosperity Network, RREDC.

Bhardwaj: HCAOG Meeting report and update on Tribal Membership issue.

VIII. STAFF REPORTS

City Manager Suiker: Highlighted items listed in her Staff Report – Streetlight at the corner of Scenic & Main will be installed this week. Azalea & Pacific Street project funds approved.

IX. ITEMS FROM THE FLOOR – None.

X. CONSENT AGENDA

1. Staff Activities Report for October 2012
2. Financial Status Reports for September 2012.
3. Humboldt County Sheriff Activity Report, October 2012
4. Second Reading; Ordinance 2012-04, Building Permit Fee Schedule Update
5. Proclamation 2012-06; Great American Smokeout
6. Agreement for Accounting and Financial Services

Motion (Miller/Fulkerson) to approve the consent agenda as submitted. Passed 4-0.

XI. AGENDA ITEMS

1. Discussion/Decision regarding Request to Remove Existing Conditions and Place New Conditions on the Trinidad Bay Bed & Breakfast ***Councilmember Morgan excused himself from the discussion.***

City Manager Suiker explained that the matter of removing conditions on the Trinidad Bay Bed and Breakfast was considered and approved by the Planning Commission in July 2010 as a recommendation to the City Council. The matter was then considered by the City Council in August 2010 with a resulting action "to deny Morgan's request to have the conditions removed, and maintain the current requirements and conditions as placed on the B&B in 1985.

However, if future water quality testing on the bluff yields negative septic impacts then the city may reconsider the request. Conditions will be enforced based on trust and good faith that the owner will comply. “

Mr. Morgan is once again requesting a modification of the previously approved use permit to remove/alter the conditions of approval, and he will be prepared to express his opinions at the meeting.

City Planner Trevor Parker explained that with regard to the current two conditions, her July 2010 staff report advised as follows:

Condition (1): The condition to use a commercial linen service was not based on any real data or professional recommendation. The condition was intended to reduce the amount of water going into the system; however, there is no restriction to the property owner simply taking the laundry to his adjacent property and doing the wash there. This does not reduce the amount of water going into the ground in general.

Condition (2): The condition to cease business if the septic system fails is covered by other laws/regulations, and the Department of Health has no issue with removal of this condition.

The Planning Commission (with concurrence from the County Health Department), determined that there are other ways to protect the system than requiring a commercial linen service. For that reason, even though the two original conditions were recommended for removal, additional conditions were recommended to be put into place. Those three conditions were:

1. The property owner shall have the septic system inspected annually during the wet weather season and the results provided to Department of Health (DEH) each year. This inspection schedule may be modified under implementation of the City's On Site Wastewater Treatment System (OWTS) Management Program with written approval from DEH.
2. The owner recognizes that if the septic system fails, steps will be taken by the City and/or DEH to rectify the situation, which may include suspension of the Use Permit or temporary closure of the business until the system is repaired to the satisfaction of DEH.
3. The next annual inspection, to occur in the upcoming wet season, shall conform to the requirements for a performance inspection under the City's OWTS Management program verifying the function of the entire system, including the leachfield and confirming the presence or absence of an effluent filter. If an effluent filter is not already installed, one shall be installed at the time of inspection.

The proposed action tonight is to remove the current two conditions in favor of three new conditions as outlined in the July 8, 2010 staff report from Planner Parker and as restated above.

City Attorney Andy Stunich suggested that since there are only 3 Councilmembers seated, it may be more fair to Mr. Morgan to have the full Council present. Otherwise, a 3-0 vote will be required to take action.

Public comment included:

Ralph Faust – Attorney representing the Tsurai Ancestral Society

Read into the record a long statement prepared on behalf of the Tsurai Ancestral Society. The letter urged the Council to deny Mr. Morgan's request. He stated that the Bed & Breakfast is a threat to slope stability, it pollutes the groundwater, and there is no factual evidence that supports the activities at the business have no adverse effect on the bluff stability and health of the groundwater.

Tom Odom – Trinidad

The original cause of the controversy back when Paul Kirk applied to convert the residence to a Bed & Breakfast in the 1980's was not the septic system. The author of a town newsletter called Trinidad News & Views published his concerns that the business would become a house of drugs and prostitution, and stirred up the controversy. A well was drilled across the street on Edwards recently that didn't hit water. The existing springs on the bluff have been there long before the Bed & Breakfast existed. I appreciate the Tsurai's concerns, but the issues aren't consistent with the original intent of the conditions.

Jim Cuthbertson – Trinidad

If you don't repeal the conditions, then you should address all properties along the bluff to be fair. The proposed conditions are much better.

Ralph Faust - Attorney representing the Tsurai Ancestral Society

The basis for Morgan's request is economic hardship. The record is clear that the bluff is in danger. The point of the conditions is to protect public interest.

Pat Morales – Trinidad

Read a long letter into the record that stated, in summary, that 1) Morgan has not made a good faith effort to comply with the conditions, 2) the 2010 Staff report doesn't address erosion or bluff stability – which should be the highest priority, 3) the condition specifically states that a commercial linen service must be used, and 4) the health of the septic system has been compromised due to intense use.

Council comments included:

Fulkerson: Asked Morgan to explain the laundry process at the B&B. **Morgan** explained that he uses high-efficiency machines, has low-use statistics as compared with other residences in town, and has been unfairly singled out.

Miller: The proposed additional condition requires an annual inspection and performance test of the septic system. The current system is designed and performing better than required. It's an older system that's functioning at the level of modern standards. He's having it pumped and tested on his own accord.

Fulkerson: I believe Morgan is reasonable, and wants the best for the city, his business, and his property.

Miller: Water flow and bluff saturation is a major concern. However, that wasn't the city's primary concern back in 1985 when the conditions were placed on the B & B. Protecting the septic system from overuse was the primary concern. Staff has proposed additional conditions on the property that protects the system even more than they did before, and based on the statistics, the business's use does not seem excessive. Everyone should be encouraged to use less water, and proposing a 5 year low-flow appliance transition seems like the way to go.

Bhardwaj: This is a very difficult process. City representatives should be squeaky clean, and I'm hesitant to remove conditions. If we don't, however, it could create a separate set of problems. Less water into the bluff is our objective.

City Planner Parker explained that the current conditions are poorly written and hard to enforce. The proposed conditions are more black and white for septic protection and water quality concerns.

City Manager Suiker noted that the discussion should continue in January with low-flow appliance concerns addressed.

No decision was made. Discussion continued to January.

2. Discussion/Decision regarding General Plan Update, Housing Element and Proposed Cultural/Historical Resources Element.

City Planner Trevor Parker explained that from our June 2012 invoice (which was billed in July, so is part of this fiscal year) through October (not yet billed), Streamline time spent on the General Plan update is at a total of \$5,195 out of the \$20,000 budget allocated for this fiscal year. That means that we are actually under budget, though somewhat behind schedule. She also gave a brief update on the upcoming discussion items:

Circulation Element: The Planning Commission accepted the text of the Circulation Element in July, and recommended consideration by the City Council. However, the figures had not yet been finalized to their satisfaction. The Planning Commission and staff continued to work on those for the next month, and the figures were completed in August.

Noise and Public Safety Element: The text of this element is also complete and finalized, but the Planning Commission will continue to work on the figures over the next month or two. (Though there will not be a regular meeting in November, since it would fall the Wednesday before Thanksgiving.) When this is done, I will forward both the Circulation and Noise & Safety Elements to the Council for review.

Housing Element: This is the last of the seven State required elements. Staff recommended, and the Planning Commission concurred, that the City should not try to develop a housing element fully in compliance with the Department of Housing and Community Development (HCD) standards at this point in time. This is the one element that is required to be certified by a State agency, but the standards go well beyond what is really necessary for a City with only 200 housing units (see attached memo for more information).

Cultural & Historic Resources Element: Since the early stages of our general plan update, staff has proposed a separate Cultural & Historic Resources element. This is not a required element, but these issues would have to be addressed somewhere in the general plan anyway. With some of the issues that have resurfaced lately related to the Tsurai Study Area (TSA), staff felt this would be a good time to start developing this important element. This will be a crucial first step in codifying the policies and recommendations of the Tsurai Management Plan (TMP) and moving toward implementation. This process will also provide a basis for a holistic approach to management and impact analysis that has been requested by the Tsurai Ancestral Society (TAS) and others. It will also include cultural resources and issues outside of the TAS, including Trinidad Head and others. I also feel that it is important to address more recent historic resources, including homes and other structures that are important to the community.

Public comment included:

Brad Twoomey – Trinidad

The word “shall” means mandatory. Be careful of wording in your land use and zoning ordinances.

Councilmember Fulkerson read a letter submitted by the Tsurai Ancestral Society requesting they be included as a partner in drafting the Cultural & Historical Resources Element of the City’s General Plan. The Council agreed that collaboration is important, and that the TAS be included in the process.

Motion (Miller/Bhardwaj) to concur with staff’s proposed approach to both the Housing Element (option 2 to provide a Housing Element specific to the needs of the City that will cost approximately \$3500 and would show that the city made and effort at compliance) and the Cultural/Historic Resources Element. Passed 4-0.

3. Discussion/Decision regarding Request for City to Pay Costs for Tree Removal Permit, Land Trust Application #2012-08.

City Manager Suiker explained that the Trinidad Coastal Land Trust submitted an application for a use permit and Coastal Development Permit to remove a holly tree from their property and paid a \$750 deposit at the time of the request. This application was submitted to the City’s Planner, and a six (6) page staff report was produced to address the zoning ordinance/General Plan consistency, slope stability, sewage disposal, landscaping and fencing, design review/view protection findings, and use permit findings all of which led to the staff recommendation to conditionally approve the project. The Planning Commission approved the project, including the condition to reimburse the City for all costs associated with processing the application.

The costs incurred by the City’s Planner to date total \$895. There will be a bit more time from working on the minutes and copies, so the total project may come in at about \$950. The Land Trust has requested a refund of the \$750 deposit and presumably is requesting the City also absorb additional costs over and above that deposit.

As an outside consultant, the costs to the Planner need to be reimbursed in full, so simply waiving the fee is not an option. The question before the Council is whether to use City General Funds to refund costs already paid by the Land Trust and pay additional expenses beyond the deposit.

In view of the city’s financial situation, staff cannot recommend the City absorb 100% of the costs, particularly in light of the precedent this sets, but the Council may wish to consider a reduction such as a 50/50 cost share in consideration of the organization’s non-profit status.

Public comment included:

Ben Morehead – Trinidad Coastal Land Trust

The Land Trust is willing to accept any contribution. The Trinidad School benefited from the fee waiver when they built the greenhouse. We feel that the cost of processing the permit was higher than usual due to all the excess deliberation and debates on whether a private landowner has a right to remove a non-native, invasive tree on their property.

Jim Cuthbertson – Trinidad

I'm not in favor of giving the Land Trust a break.

Brad Twoomey – Trinidad

Did Marilyn Sterling file an appeal? What's the status? **Suiker** explained that the appeal was not filed in a timely manner.

Council comments included:

Morgan: Since the sales tax measure passed, I support giving them a refund.

Bhardwaj: In general, I like to support community groups. However, tree removal is so controversial and I worry about setting precedence. I will vote not to give them a reduction or refund, but will donate my personal money to the Land Trust to help them offset the permit fees they had to pay.

Miller: Either way we vote, we're passing judgement on the merits of the project. I support a giving the fee reduction.

Fulkerson: I support the Land Trust and Gallery, but can't support gifting public funds to this cause.

Motion (Miller/Morgan) to support a 50% fee reduction. Motion failed by the following vote:
2-Yes, Morgan/Miller. 2-No, Bhardwaj, Fulkerson.

XII. COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

XIII. ADJOURNMENT

- Meeting ended at 9:50pm.

Submitted by:

Approved by:

Gabriel Adams
City Clerk

Kathy Bhardwaj
Mayor