

MINUTES OF THE SECOND REGULAR MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, JANUARY 23, 2013

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

1. Personnel: Section 54957(b), City Manager Performance Evaluation

IV. RECONVENE TO OPEN SESSION

Mayor Fulkerson and Council thanked City Manager Suiker for doing a great job.

V. APPROVAL OF AGENDA

*Motion (Davies/Miller) to approve the agenda as written. **Passed 4-0***

VI. APPROVAL OF MINUTES – *No minutes to approve.*

VII. COMMISSIONERS REPORTS - *No reports given.*

VIII. ITEMS FROM THE FLOOR

Richard Johnson – Trinidad Area

Library building update. Reminded the Council of Resolution 2007-06. New Land Trust/City lease documents are almost complete.

Stan Binnie – Trinidad

Asked the Council to have the City website updated with new Councilmember info.

Pat Morales – Trinidad

Requested the Council consider naming the tennis court in memory of Donna Lin. Also stated hearing gunshots fired in the area recently. Contacted the sheriff department and urged others to do so as well.

IX. CONSENT AGENDA – *No consent items scheduled.*

X. AGENDA ITEMS

1. Discussion/Decision regarding Appeal Fee Ordinance 2013-01, LCP Zoning Amendment, and Resolution 2013-12.

City Planner Trever Parker explained that the primary purpose of this Zoning Ordinance amendment is to allow the City Council to set fees by resolution for appealing Planning Commission (or City staff) decisions. Currently, §17.72.100 (Appeals) states: *“There shall be no fee for filing an appeal.”* This is in contrast to §17.72.120 (Application Fees), which allows the City Council to set application fees, including for variances, conditional use permits, design review, coastal development permits and zoning ordinance amendments, by resolution. In 1990, the City Council adopted a resolution (90-4) establishing an initial \$120 fee for filing an appeal. This was based on §17.72.120, which allows the Council to set fees for various types of applications and other zoning ordinance related actions. However, the City has been informed by Coastal Commission staff that the fee and resolution are invalid due to the language of §17.72.100 quoted above, which is more specific than §17.72.120 regarding appeals, and therefore takes precedence.

Likely, the original rationale for not having an appeal fee was because the Coastal Commission does not charge a fee for appeals, unless they are deemed frivolous. And appeals are allowed to be filed directly with the Coastal Commission, without exhausting local appeal options, among other reasons, if there is a local appeal fee (14 CCR §13573(a)(4)). This means that someone could bypass the City Council and go directly to the Coastal Commission with an appeal. This could avoid some expense and difficult / controversial decisions for the City, but the City Council has expressed a desire to promote local decision-making. However, with no

appeal fee, there is a risk of frivolous or malicious appeals. The Council will have to carefully consider an appropriate appeal fee and resolution at a future public meeting if this amendment is approved.

A secondary purpose of this amendment is to clean up some of the language relating to the filing of an appeal. It is customary to require an appellant to have submitted comments or spoken against the project prior to filing an appeal. This is part of 'exhausting your administrative remedies,' just like you can't bring a lawsuit in court without trying other avenues first. The concern with the existing language is that the burden falls on the City Clerk to prove that comments were made and to determine if there was valid justification for not submitting comments. Therefore the amended language requires that the appellant submit proof of comments or justification for not commenting and puts the burden of determining if those reasons were valid on the appellate body.

Finally, Parker explained that this Zoning Ordinance amendment was initiated by the City. All zoning amendments must be heard by the Planning Commission. After holding an appropriately noticed public hearing on the proposed amendments, the Planning Commission made a recommendation for approval to the City Council. The amendment requires two readings of the ordinance, at a public hearing. If the City Council approves the ordinance amendment, then an application for an LCP amendment will have to be prepared and submitted to the Coastal Commission for consideration and certification. Therefore, the changes would not take effect until after the Coastal Commission decision. Also note that the City Council is not being asked to consider whether to set an appeal fee or to decide how much it should be at this time. That will be determined at a future meeting if the amendment is approved and certified by the Coastal Commission

Council questions included:

Fulkerson: In summary, the proposal is to clean up legislation and allow the Council to consider a fee resolution in the future.

Miller: Noted that the proposed process is common among other local cities and the county.

Public comment included:

Kim Tays – Trinidad

Submitted a 2-page statement objecting to unfair or unreasonable fees being adopted, and included various criticisms of the city planner and the appeal process. Requested that the policy be fair, and that any changes made be carefully considered.

Ralph Faust – Representing the Tsurai Ancestral Society

Argued that the requirement that there be no fee for appeals is embedded in the coastal act. If the goal is to avoid frivolous appeals, then maybe a screening process should be required.

Council comments included:

Davies: Requiring that the reasons for appeal be stated at the Planning Commission hearing seems reasonable. Most importantly, the city needs a clear and understandable appeal ordinance. The current ordinance has issues. I'm uncomfortable with subjectivity. Everyone should be required to pay the fee.

*Motion (Davies/Miller) to approve the first reading of Ordinance 2013-01, and schedule the second reading for February 13, 2013. **Passed 4-0.***

*Motion (Davies/Bauman) to approve Resolution 2013-02 authorizing submittal of an LCP amendment to the Coastal Commission. **Passed 4-0.***

2. Discussion/Decision regarding proposal to place Tsunami Warning Signs in Trinidad.

The City has received a proposal to place tsunami warning signs in various locations on both City and Rancheria property. These are the standard warning signs that you have seen in other locations along the coast that state 'leaving' and 'entering' tsunami zone as well as those warning people that they are within a tsunami hazard zone. The signs have been developed by Caltrans in order to standardize them throughout the State. The sign locations, five within City property (two signs at each location), and six sites (eight signs total) on Rancheria property, have been determined through a collaborative effort between the Humboldt County Sheriff's Office of Emergency Services (OES), Trinidad Rancheria, Cal-Trans, HSU and City staff. The project actually originated when Ken Thrailkill was still the Trinidad Police Chief, and he represented the City at local OES meetings. These same signs are being placed all up and down the California Coast, and the signs

have been paid for by the State OES.

The intent of this item is not for the Council to pass judgment on these tsunami signs. The proposed action for the Council tonight is to approve the processing of an application that will generate an expense to the City as well as potentially place tsunami warning signs in appropriate locations on City property. If the Council does approve the application, a budget appropriation of \$1,500 is recommended to be established, and then Planning Staff will work the Rancheria, OES and Public Works to prepare the application and bring it to the Planning Commission for review in either February or March.

Public comment included:

Ralph Faust – Representing the TAS

Requested that the Tsurai Ancestral Society be consulted.

Brad Twoomey – Trinidad

Criticized the quality of the photos in the packet materials online, and accused the Planner of trying to make money off this application by allowing it to be proposed to the council.

Council comments included:

Bauman: I support signage that improves public safety.

Miller: I enjoy unobstructed views of our natural surroundings, but it is government's responsibility to educate the public.

Davies: Is this mandated? We did have a Tsunami event a few years ago, and I believe that signs may have prevented some of the issues we experienced from occurring. OES Director Dan Larkin stated that they were not mandated.

Fulkerson: People should be reminded that this is a Tsunami Zone.

*Motion (Davies/Miller) to approve to proceed with the planning application process with a budget limit of \$1000, and to hold a preliminary meeting to identify issues with the signage and proposed locations. **Passed 4-0.***

3. Presentation/Discussion regarding General Plan Update, Circulation Element, and Noise and Public Safety. City Planner Trevor Parker explained that the Planning Commission approved the text of the Circulation Element of the General Plan in May 2012 and the figures were finalized in June. The Planning Commission has recommended the current version for consideration by the Council. The Introduction chapter of the general plan update is the most informative document, explaining what a general plan is and how it is organized. In addition, the introduction of each Chapter provides a brief background.

The circulation element is not simply a transportation plan. It is an infrastructure plan addressing the circulation of people, goods, energy, water, sewage, storm drainage, and communications. By statute, the circulation element must correlate directly with the land use element. The circulation element also has direct relationships with the housing, open-space, noise and safety elements. Mandatory circulation element issues as defined in statute include: major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities. Additionally, the statute requires the circulation element be modified to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways.

Transportation networks should additionally consider pedestrian, bicycle, and transit routes, which may not always be located on or along streets, roads, and highways. Circulation elements shall also take into consideration the provision of safe and convenient travel that is suitable to the rural, suburban, or urban context of a local jurisdictions general plan. The circulation element seeks to provide adequate facilities and services which are easily accessible to all of society not simple those who can gain access to a vehicle. All new policies must adhere to the regional air quality and transportation plans.

Council comments included:

Bauman: Our main artery streets need a "road diet". Active transportation policies should include child safety surveys with comments from parents that address concerns they have with kids walking or biking to school.

Public comments included:

Pat Morales – Trinidad

HSU students speed all the time. Marine Lab generators and equipment runs all the time and is annoying.

Brad Twoomey – Trinidad

Something about additional covered parking in residential yards.

Kim Tays – Trinidad

Complaint about local bus transit options and Crescent City options. Also complained about Murphy's generators and the sound vibrations they produce.

Ralph Faust

Consult the Tsurai on policies that affect the Tsurai Management Area.

Mayor Fulkerson thanked Trever Parker and the Planning Commission for their work so far on the project. No decision was made.

4. Continued Consideration of Request to Remove Existing Conditions and Place New Conditions on the Trinidad Bay Bed and Breakfast.

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 based on the fact that the proposed conditions would provide a better protection against the failure of the septic system than the existing conditions. 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 has requested reconsideration of the modification of the previously approved use permit to remove / alter the conditions of approval. This issue was discussed at the November Council meeting at a noticed public hearing. At that meeting, limitations on water use were being considered, including limiting monthly use and / or requiring installation of low-flow fixtures. It appears that most agree that the proposed conditions provide better protection and oversight of the septic system than the existing conditions, but that water use (and its relationship to bluff stability) has not been adequately addressed in the proposed conditions. Though it does not appear that this was an issue that was of concern in 1985 when the use permit was originally granted, it is of concern today.

With regard to the current two conditions, Planner Parker's 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 in order to reduce the workload on the system; however, there is no restriction to the property owner simply taking the laundry to his adjacent property and doing the wash there or somewhere else nearby. This does not reduce the amount of water going into the ground in general. As worded, this condition is difficult to enforce. It also does not reduce the amount or type of water or other waste going into the system from other discharges in the bed and breakfast; therefore minimal protection of the system is provided by this condition.

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 better 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 proved 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 will 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.

Staff feels, with concurrence from DEH, that the above three conditions provide better protection and assurance against failure of the septic system than the existing conditions. The above three conditions are also easier to enforce. However, they do not address actual water use. Groundwater saturation has been identified by various geologic reports and studies as a major factor in bluff stability around the City. That concern has been brought up as an issue for this business in relation to its water use. The relationship and patterns between the importation of water through septic systems and the lack of infiltration of rainwater and runoff from impervious surfaces are not fully understood. Domestic water use, particularly by any one business, has not been shown to be a direct threat to slope stability, but could be a consideration in this case. At the last meeting, the Council asked staff to work with the applicant to develop a mutually agreeable solution to limit water use at the bed and breakfast in order to address this issue.

One basis for limiting water use would be to consider the design of the septic system. Septic systems are sized and designed based on soil conditions and the type of use or number of bedrooms for residences. When sizing a residential system, DEH relies on an assumed daily water use of 150 gallons per day per bedroom. A 5-bedroom system would have to be designed to accommodate an average of 22,813 gallons per month, or 3,062 cubic feet. However, even though the system was approved for a 5-bedroom residence and for use as a bed and breakfast, it does not meet current standards for new construction, and the leach lines in particular may not long enough to provide adequate treatment for that volume of water. Therefore, that number should be considered too high.

Between July 2011 and June 2012, the bed and breakfast utilized an average of 1,915 cubic feet of water per month. This equates to approximately 2/3 of the design capacity of the septic system, which seems reasonable given its age. This is also comparable to other nearby structures: Eatery – 3,295 cu. ft.; apartments – 1,660 cu. ft.; 570 Trinity – 3,040 cu. ft.; 475 Wagner – 1,423 cu. ft.; 584 Ocean – 589 cu. ft.; 565 Trinity – 1,524 cu. ft.; 730 Edwards – 1,133 cu. ft.; 586 Hector – 291 cu. ft. Note many of the nearby residences and business have relatively high water use. Overall, the average residential water use in the City is approximately 530 cu. ft. per month.

Public comment included:

Ralph Faust – Tsurai Ancestral Society representative

Read a letter dated January 23, 2013 from the Tsurai Ancestral Society, requesting that the proposed request be denied. The Tsurai appealed the decision in 1985 to allow the B&B to exist. They were concerned with stormwater and septic system run-off onto the ancient village site. He referred to the letter he submitted back in November. He argued that the B&B has continually been in violation of the original conditions. Recommended that the proposal not be considered until the impacts to the study area be reviewed.

Pat Morales – Trinidad

Read from a letter submitted to the clerk and entered into the record that included numerous criticisms, allegations, etc. against Mr. Morgan and the B&B. Concerned with enforcement, and argued that low-flow appliances be installed and receipts be kept at city hall.

Mike Morgan – Owner, Trinidad Bay Bed & Breakfast

It will cost me over \$10,000 a year if I'm forced to use a commercial linen service. The new conditions are much better than previous conditions, and we agree that they are in the best interest of the long-term health of our property AND the environment.

Council comments included:

Bauman: How enforceable is the 2000cuft limit? My unfamiliarity with the people involved may help. I support the staff recommendations. These conditions are enforceable any time, as opposed to the original conditions that are much more difficult to manage. **City Manager Suiker** explained that it may be enforced diligently for a few years, then after that, probably not as much.

Miller: The annual consumption limit should be enforced. The DEH should be involved, as well as the city. As policy makers, we need to have the same standards set for everyone. Having a different set of rules to govern with makes enforcement difficult. I'm in favor of the conditions as recommended by staff.

Davies: I agree with Miller. I'm not in favor of singling out one property owner. The city needs to show good faith enforcement efforts.

Motion (Miller/Davies) to accept the following amended conditions:

1. The property owner shall have the septic system inspected annually during the wet weather season and the results proved 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 will 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.
4. Limit water use on the property to an annual average of 2000 cuft per month.
5. All inspection records and consumption data be available for public inspection in the City Clerk's office.

Motion passed 4-0.

XIII. ADJOURNMENT

- Meeting ended at 9:50pm.

Submitted by:

Gabriel Adams
City Clerk

Approved by:

Julie Fulkerson
Mayor