

MINUTES OF THE MONTHLY MEETING OF THE
TRINIDAD PLANNING COMMISSION
WEDNESDAY, June 15th, 2016

I. CALL TO ORDER/ROLL CALL (6:00pm)

Commissioners Present: Johnson, Pinske, Poulton, Scott, Stockness

Commissioners Absent: none

Staff: Dan Berman, City Manager; Andy Stunich, City Attorney; Parker; Caldwell

II. APPROVAL OF MINUTES

May 18, 2016

Motion (Poulton/Johnson) to approve the minutes as submitted. Commissioner Stockness was absent from that meeting and did not vote.

Passed unanimously (4-0).

III. APPROVAL OF AGENDA

Motion (Stockness/Johnson) to approve the agenda.

Passed unanimously (5-0).

IV. ITEMS FROM THE FLOOR

None.

V. AGENDA ITEMS

1. **Reinman Appeal of 'Significant Violation' Determination:** Appeal to the City Manager's determination that a significant violation occurred at a VDU at 461 Ocean Ave. on March 11 & 12, 2016.

Commissioner Comments & Questions

Commissioner Johnson gets further clarification from City Manager Berman about the history of this violation and whether there are further issues to resolve. City Manager Berman states that he and M. Reinman have talked a number of times to try to resolve this issue. The heart of the complaints have been late night arrivals and the number of people at the VDU. There hasn't been an agreement of a solution, but there should be a process for the property manager to prevent guests from showing up late en mass.

Public Comment

Portions of a letter from K. Lake (435 Ocean) are read into the record; portions of the letter that do not relate directly to the incident under appeal are not read, but are part of the record. The letter refers to the lack of a complaint system, her fearfulness of the situation, and neighbor issues being minimized. This incident has given her anxiety and affected her quality of life.

Commissioner Pinske reads a letter from Do. Cox (436 Ocean) regarding the significance of the violation, and what a disturbance this incident was to the neighborhood.

T. Davies (435 Ocean) emphasizes that the number of people at the VDU was too high, not just one night, but two. There were people walking around early in the morning as well as late at night,

and he saw them with bags. This was supposedly a senior veterans event but was actually a group called Warriors for Weed, which the manager knew about. His story is similar to D. Cox's though the property manager's story changes. He agrees with the City Manager's decision. This situation was mismanaged and there is no reason to not uphold it as a significant violation.

B. Brisker (Westhaven) reads a letter he is submitting for public comment. There have been repeated violations by the management company Redwood Coast Vacation Rentals (RCVR), and there needs to be consequences. He advocates for disincentivizing violations and suggests a schedule of fines. The City Staff's time should be paid for by the violator. There should be recourse for even two violations.

L. Farrar (433 Ewing) applauds B. Brisker's ideas. She also thinks that past incidences should be taken into account.

P. Morales (864 Edwards) agrees with T. Davies and the letters read into the record.

S. Rotwein (53 N. Westhaven) sympathizes with K. Lake because people near Hidden Creek RV Park also live in fear, but because of murders and assaults. The City is clearly struggling with law enforcement issues. There should also be some neighborhood mediation. Using the existing Ordinance, the City should offer mediation services for Ocean Street owners and manager so everyone can come together and move forward with real solutions.

A. Grau (433 Ewing) thinks that violations by owners or managers with multiple properties should be cumulative and not per individual VDU.

Statements from the parties to the Appeal

City Manager Berman recaps the events leading to the significant violation determination:

- He was not present, but had conversations with several involved parties. He spoke with R. Gale who booked the VDU and admitted he had underbooked for the number of guests; once he realized the mistake, he worked with RCVR to find additional spaces, but too many people stayed the night at the VDU.
- City Manager Berman sent a violation letter out based on the number of people R. Gale had originally stated had stayed the night at the VDU.
- Then R. Gale recanted his story, stating that more than the allowable number of occupants stayed overnight, so City Manager Berman revised his letter.
- However, as can be seen in the letter, there were several other factors that led him to still consider the violation "significant" including the late night noise, disturbance to the neighborhood and not providing a copy of the rental agreement when requested.

City Manager Berman used the Ordinance for guidance in making his determination, and the purpose of the Ordinance is to provide for and ensure vacation rentals are compatible with surrounding uses and do not harm or alter the neighboring properties. He evaluated the situation to the best of his ability. Noise reported from complainants, the existence of an organized event/large gathering and over-occupancy are all avoidable occurrences that disturbed the neighborhood. In addition, he requested a copy of the rental agreement, per the City's VDU ordinance after the incident, and it was never provided. He therefore considered this a significant violation. The process is that consequences, including permit revocation, can only occur after three significant violations. This was the first so M. Reinman (manager) G. Covney (owner) received a letter notifying them of the significant violation determination and the possible consequences if more violations occur. City Manager Berman asks the Planning Commission to uphold City Staff's determination and deny the appeal.

- M. Reinman (owner of RCVR) states his basis for the appeal of the City Manager's determination:
- Only two households complained, and both of those have a history and pattern of these types of complaints.
 - Two other households, just as close, did not hear any noise, and submitted statements as such; there was little actual investigation into this matter.
 - Cars arriving after 9pm, 5 cars onsite and talking is not a significant violation; that is normal residential use.
 - The event was held at Moonstone which does not mean that all participants were staying at the VDU.
 - He was concerned about the renter's rights and their personal information becoming public record if their contact information was given to the City through the rental contract that the City Manager requested. He gave the City Manager everything else he asked for. The Ordinance does not state that a copy of the rental agreement and contact of renters must be provided.
 - 15 people are allowed at a VDU, including visitors, and the ordinance has no time limits to determine what is overnight.
 - There is also no clear definition of what a significant violation is.
 - The neighbor complaints were responded to in a timely manner. There is only so much a property manager can do. The renters need to be held responsible. Don't disincentivize timely manager responses by calling this a significant violation.

He continues and states his concerns over future conflict and the divide in the community. He asks that the Planning Commission give clear guidelines to the City Manager, so ambiguous and vague language is not used as measures of a significant violation.

W. McNeil (attorney & representative for M. Reinman and other VDU owners) asks that City Manager Berman read an email into the record from other neighbors that were not bothered by this event.

He continues, stating that there are legal problems with the City Manager's determination. There is no definition of a "significant violation" in the ordinance, and the City Manager is relying on the general purpose of the Ordinance rather than specific standards or criteria to make his determination. A court will hold a regulation to be unconstitutionally vague if a reasonable person can't be sure of the standards. The ordinance does not even designate who makes the determination; this is not the City Manager's role, nor does he have the authority. He suggests: first mediation, and then correcting this deficiency in the new ordinance.

City Manager Berman reads the email from the long-term tenant at 495 Ocean as requested. R. Carney stated that a loud party was reported to him by a neighbor, but he didn't hear anything and has never had issues with the VDU next door.

City Manager Berman continues, explaining that it is not unusual for City Staff to make determinations and it is part of his job as City Manager to interpret the ordinance; ordinances can not be written to cover every situation. The VDU Ordinance may not have a clear definition of a significant violation, but does contain a variety of clear standards such as traffic and noise parameters that must be adhered to. The ordinance protects the quiet use and enjoyment of nearby homes. There are thousands of visitors in Trinidad every year, and most of them don't generate complaints. The fact that multiple neighbors were so disturbed was enough to come to the conclusion that their quiet use and enjoyment were affected and the standards of the ordinance violated.

City Attorney Stunich notes that nuisance law is one of his specialties. Nuisance law, both State and local, is vague, but have held up in court numerous times. The laws are vague because every possible nuisance can not be addressed in an ordinance. He points out that the Ordinance does require that noise be contained inside after 10pm and that neither the appellant nor his attorney were present during the incident. Significance can be determined if the violation violates the major purpose of the Ordinance: protecting the quiet use and enjoyment of neighboring properties. IN addition, the after 10 quite hours were likely violated. Those that complained were significantly disturbed, so this was significant if the complaints are true.

The Commission gets further clarification from M. Reinman. The renter of the property tells him that he never stated that everyone stayed the night; hotels were booked for the extra guests. Commissioner Pinske suggests that 5 cars indicates that 10 people were there. M. Reinman denies that assumption, noting that there is not a limit on the number of cars in the VDU Ordinance; he also adds that he understands some people returned in the morning.

Commissioner Scott and City Attorney Stunich discuss privacy laws regarding the rental agreement. Stunich does not think it is unreasonable for the City to request a copy of the rental agreement. He noted that it may depend on the rental agreement language though, and he would have to research the issue further. There was nothing to prevent M. Reinman from asking the renter if the City Manager could have a copy of the agreement so that Dan could contact him and other guests. M. Reinman states that that the person that booked the house contacted Berman.

Commissioner Stockness asks if renters' names and contact info have to be given as part of submitting TOT. City Manager Berman responds that just rental amounts are submitted.

The Planning Commission, Staff and M. Reinman discuss how VDU complaints are called in to the 24-hour contact. Commission Johnson points out that one of the problems was that the neighbors did not have the correct contact information for the manager of the VDU. City Manager Berman admits that this was a mistake on the part of the City, but has since been corrected. M. Reinman notes that each property has a specific number to call, which is also provided on the VDU property. He also states that the first RCVR employee that was contacted tried to help, but the complainants were rude, so he referred them to the individual manager for that VDU. The neighbor notification process is further discussed.

Commissioner Comments

Commissioner Poulton notes that the peaceful enjoyment of residents is the purpose of the VDU regulations and a critical part of the Ordinance. He thinks VDU managers need to go out of their way and do more to ensure there aren't impacts to the neighborhood. He also thinks that using the excuse of not being there in person is an indication of mismanagement. He doesn't believe that people from the party left at night and returned at 7am; it's not reasonable.

Commissioner Scott believes there is reliable evidence that more people spent the night than should have. She also states that the manager admitted she was aware it was overbooked. There are too many unknowns. She thinks City Manager Berman cited the evidence appropriately and agrees with his determination.

Commissioner Pinske states that after 10pm neighbors are entitled to quiet. Regardless of what happened, there was a disturbance on the street and it is the responsibility of managers to respond appropriately, which was lacking in this case. He agrees with City Manager Berman's determination.

Commissioner Stockness has seen Trinidad change over the last 40 years with regard to noise and traffic. She appreciates that a complaint system exists and thinks violations should be kept in check through formal action. She also agrees with Berman's determination.

Commissioner Johnson is disappointed that the Commission is having to review this issue tonight; it is not good for the community. Some of this is a matter of he said/she said, but there is evidence of multiple violations without appropriate and aggressive action on the part of RCVR to resolve the issues. He thinks this was a great opportunity to discuss solutions and corrective action, but M. Reinman has not shown much interest in that. He likes the idea of mediation, but there needs to be more. He agrees with the City Manager's determination.

Motion (Scott/Poulton) that based on based on the application materials and information and findings included in the Staff Report, and based on public testimony, I vote to uphold the City Manager's determination.

Passed (5-0). Passed unanimously.

- 2. VDU Ordinance Amendment:** Continued consideration of an amendment to the existing VDU Ordinance (§ 17.56.190 of the Trinidad Zoning Ordinance) and development of additional regulations to cap the number and/or density of VDUs in Trinidad. Specific topics may include, but are not limited to: cap, distance buffer, license transferability and enforcement.

City Manager Berman asks the Commission if they have any legal questions before City Attorney Stunich leaves.

Commissioner Questions

Commissioner Stockness asks about the legality of limiting transferability. City Attorney Stunich believes that any reasonable and rational limitations justified by City needs will be upheld. He will review the final, proposed language. He suggests considering the question of why does the Commission want to limit transferability to ensure the basis is justified.

Commissioner Stockness asks whether a buffer limitation is legal. City Attorney Stunich responds absolutely as long as it is reasonable. Restrictions can't be based on not liking VDUs, but limiting their impacts. He reminds the Commission that they have less leeway to restrict VDUs than most cities because Trinidad is in the Coastal Zone.

Commissioner Scott discusses VDU as a commercial entity with City Attorney Stunich. He defines a commercial use for Commissioner Scott, and notes that VDUs qualify as such. But he also explains that they cannot be prohibited, because Trinidad is in the Coastal Commission's jurisdiction and subject to their regulations, which preserve coastal access and overnight accommodations for a broad range of economic statuses. Stunich adds though, that because VDUs are commercial, it is very important to regulate them to protect neighborhoods. He suggests beefing up the enforcement section(s) to put pressure on the VDU owners and managers to be responsible.

Commissioner Scott suggests that VDUs negatively impact sensitive coastal resources and affordable housing, both of which are protected by State law. Stunich acknowledges that they are competing interests. He responds that VDUs may reduce the housing stock, and that justifies limits such as a cap, but those issues must be balanced with coastal access and Coastal Commission regulations. .

In response to a question from Commissioner Scott about lack of enforcement on the part of the City, City Attorney Stunich responds that citizens cannot require cities to enforce codes; the City has discretion based on budget, staff time, threats to public safety etc.

Commissioner Scott states that the zoning ordinance is specific in its definition of and standards for home occupations; she reads excerpts of the code. City Attorney Stunich explains that VDUs are not a conflict because the more specific VDU Ordinance allowing them overrides the more general home occupation standards.

Commissioner Johnson asks if the City Attorney has any other recommendations. Stunich responds with several suggestions including beefing up enforcement and requiring mandatory rental agreement language, looking closely at occupancy and possibly restricting vehicles.

Commissioner Stockness asks if a fee could be charged for extra vehicles. Stunich responds that due to Prop 13, that is probably not allowed. He suggests increasing the VDU application permit fees and fines for violations.

Commissioner Johnson asks City Attorney Stunich for his suggestions for adding better enforcement options to the ordinance. Stunich states that he needs to do more research on the specifics, but suggests that when a VDU property reaches a certain number of complaints that the City Manager be able to recommend that the VDU license be reviewed by the Planning Commission or City Council to determine if it is meeting the City's interests and intent of the ordinance. City Manager Berman adds that is essentially what is in there now with the 3-strikes system. Planner Parker adds that a number of ordinances have a revocation process after a certain number of violations and the ability to issue administrative fines. Palm Springs enacted a "watch list" system managed by the City Manager. Stunich suggests adding that a clause be added that the City Council has discretion to review a license at any time if it is not contributing to the City's interest, which puts the owners and managers on notice. Exercise discretion for legitimate interests.

Commissioner Scott asks whether property owners without a license can sue the City for decreased property values if a cap is adopted. City Attorney Stunich responds that the standard for impermissible takings is very high; there would have to be a larger loss of value. The direction the Commission is going, considering permit expirations and other limitations, should mostly avoid this issue.

Commissioner Scott asks if violations and complaints on multiple properties can be held against one owner or manager (e.g. the three strikes provision). City Attorney Stunich responds that that sounds unfair because it would disproportionately punish owners and managers of multiple properties. suggests that complaints should be tied to the property since property managers can come and go and putting a limit of 1 VDU / person.

They discuss charging for parking and / or extra vehicles. City Attorney Stunich states that it can't be a tax, but there are options for limiting the number of vehicles allowed and where they park (on private property). He notes that the City can legally enforce anything within State law and if there are limitations, they must be rational and reasonable. The City Attorney will review the Planning Commission's draft final language to make sure it's legal.

Public Comment

A. Grau (433 Ewing) thanks the Commission for standing up for resident's rights, because the VDU managers don't. He thinks a cap is arbitrary and won't solve the problems. He states that Trinidad is unique and special and that the Coastal Commission would take that into consideration in any proposed restrictions.

Do. Cox (436 Ocean) speaks to enforcement and explains that it seems like the same few people are always complaining, but its because they are the only residents left to complain. She notes that Wagner Street is also impacted and thinks enforcement is key.

T. Davies (435 Ocean) stated that Attorney W. McNeil stated at a Council meeting that houses with VDU licenses sell for \$200,000 more. So he thinks it is important to allow only one VDU per owner. He also thinks that if there is a cap, he, as a resident, be entitled to rent his home for up to 90 days a year while on vacation. The City needs more enforcement. Parking is a major issue.

L. Farrar (433 Ewing) thought that on May 31 it was stated that there are 27 licenses, now it is 34. (Planner Parker responds that there are 27 in the UR Zone.) She says that the neighbors are told to complain to property managers, so there isn't a City record of all complaints. Parking should only be allowed onsite. There should not be any variance allowed for noncompliance.

Commission discussion

Commissioner Scott discusses and then reads John Frame's email sent just before the previous meeting. It is on file, but not read at the meeting due to its length. His letter includes, among other points, VDUs impacting neighborhoods, a lack of resources for enforcement, adding to a lack of neighbors, decreasing property values, increasing nuisances and commercial/business conflicts with residential use.

Chair Pinske brings the Commission back to the specific issues of caps and buffers. The Commission discusses some specifics, methods to implement and the possible impacts of a cap and a buffer. Commissioner Johnson worries that buffers will unnecessarily impact VDUs that are not causing problems; he suggests that there be stricter standards for VDUs that don't meet buffers, such as for occupancy and parking to limit congestion. Commissioner Poulton feels that buffers will solve congestion problems over time.

The Commission discusses license expirations and renewals and how that would interact with a buffer limitation. Several Commissioners like the idea of a lottery. Several also support the idea of using complaints and violations as a way to limit or deny renewals. It is recognized that almost any solution will be considered unfair by someone.

City Manager Berman adds that the City has been inspecting VDUs and working with available evidence. He has talked to many residents about VDUs. He thinks a buffer may put good VDU owners out of business and provides an example of a cluster between Edwards and Van Wycke that don't cause problems. He is not sure that a buffer will even solve existing problems; there are only two active VDUs on Ocean, and all the problems have been with one of them. Density by itself is not a problem, but it causes problems. He thinks that the cap addresses specific issues such as housing availability. Berman wants to make sure that the regulations are able to address specific problems, but not overcomplicate the process.

Commissioner Pinske notes that the Coastal Commission has approved buffers. Trinidad is unique. He is concerned that if the moratorium ends, the City will have problems controlling the number of VDUs. He wants to get a recommendation to the City Council by their July meeting.

Planner Parker suggests that there could be an exception to the buffer standard through issuance of a use permit. It would allow VDUs that aren't problems to continue, and neighbors can be involved in the process. Commissioner Scott suggests that VDU density also impacts coastal resources. Commissioner Poulton points out that not having neighbors is an impact directly related to density.

The Commission discusses the importance of a cap in regard to density and their decision-making timeframe in addition to the review process. Planner Parker could ask Jim Baskin to attend a meeting at some point. She notes that the more changes that are made to the ordinance, likely the longer it will take to get certification from the Coastal Commission. City Manager Berman notes that the Council will need some time to discuss this as well. The Planning Commission agrees to have special meetings to move the process along as quickly as possible.

Motion (Poulton/Johnson) to recommend a cap of 19 on unhosted VDUs in the UR Zone and 6 unhosted VDUs in the SR Zone.

Passed unanimously (4-1). Commissioner Scott is opposed.

There will be a Special Meeting at 6pm on Monday the 20th depending on room availability.

VI. CITY COUNCIL REPORT

The City Council extended the moratorium. Council Member Baker, was present to report the events.

VII. STAFF REPORT

None.

VIII. ADJOURNMENT

Meeting adjourned at 9:53 p.m.

Submitted by:

Sarah Caldwell

Secretary to Planning Commission

Approved by:

Mike Pinske

Planning Commission Chair