

MINUTES OF THE SPECIAL MEETING OF THE
TRINIDAD PLANNING COMMISSION
Thursday June 30th, 2016

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

Commissioners Present: Johnson, Pinske, Stockness,

Commissioners Absent: Poulton, Scott

Staff: City Manager Berman, City Attorney Stunich, City Planner Parker

II. APPROVAL OF MINUTES – May 31, 2016

Commissioner Stockness notes a correction of “in” to “is” in the last sentence of page 7.

Commissioner Johnson asked about the status of the VDU inspections, which is referenced in the minutes. City Manager Berman responds that they have all been inspected, but staff is still reviewing the results and following up on any discrepancies.

Motion (Johnson/Pinske) to approve the minutes as amended.

Passed unanimously (3-0).

III. APPROVAL OF AGENDA

Motion (Stockness/Johnson) to approve the agenda.

Passed unanimously (3-0).

IV. ITEMS FROM THE FLOOR

A. Grau (433 Ewing) would like an update on the Lake-Davies appeal. City Manager Berman responded that staff is currently reviewing the results of the inspections and license renewal applications. A report will be provided to the Planning Commission as soon as that is done.

K. Lake (435 Ocean) stated that her understanding was that the appeal would be addressed prior to the license renewals. The appeal was in February, and she is concerned about the lack of progress.

S. Rotwein (53 N. Westhaven) expresses appreciation for how Chair Pinkse has been running the meetings lately and keeping them on track. She continues to advocate for mediation between Ocean Ave. property owners. She also takes issue with a comment Commissioner Scott made at the last meeting that she didn't want VDU owners to be able to transfer / move assets around; Rotwein believes that is outside of the Planning Commission's business.

T. Davies (435 Ocean) is tired about hearing a push for mediation. It is a narrow-minded suggestion, because the problem goes beyond a neighborhood spat; it is a philosophical difference of opinion.

L. Farrar (433 Ewing) suggests that notifications for meetings need to be more timely. The agenda was only posted the day before, the email notice and packet materials did not go out until today. Scheduling and reviewing the materials take time.

J. Kitchen (56 Berry) seconds what L. Farrar just said. She noted that many VDU owners live out of town, and the lack of notice makes it hard for them to participate. She also stated that the meetings are stressful, and the process needs to be fair.

V. AGENDA ITEMS

- 1. 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.

Planner Parker summarizes her memo and highlights a few things in the documents provided. She points out that she thinks that the ordinance is becoming too complicated, which makes it harder to understand, implement and enforce. She suggests that a discretionary permit process, such as what St. Helena has, would not be any more complex, but more fair than a lottery.

Commissioner Questions

Commissioner Stockness reads a brief excerpt from the St. Helena staff report provided in the packet, noting that the City of Napa has a Code Enforcement staff position. She thinks that if Trinidad had a dedicated code enforcement person, that would solve a lot of VDU issues.

Commissioner Johnson asks Planner Parker why she suggested discretionary permits for VDUs. Parker explains that with the proposed buffer, time limits, staggered permits, etc., a lottery will not actually be random and likely difficult and contentious to implement. It may eliminate VDUs that aren't causing problems in favor of ones that do, and may give an incentive to maximize the use of a VDU during the limited license term. Trinidad has a history of requiring discretionary review for a number of things (Design Review, View Restoration), so it is consistent with current permit processes. City Attorney Stunich agrees that a discretionary permit process would likely be more fair and defensible. Commissioner Johnson still doesn't see how it would be easier, since a VDU would still have to meet all the same criteria. Stunich responds that first a VDU would have to meet the minimum standards in order to qualify to apply for a discretionary permit. Johnson doesn't think a discretionary process makes sense for existing VDUs.

City Attorney Stunich explains that the courts give broad immunity for decisions on discretionary permits unless those decisions can be shown to be 'arbitrary and capricious.' Therefore, appeals and lawsuits are much less likely for reasonable decision making. Commissioner Pinske asks whether the City could deny a discretionary permit application on the basis that there are already too many VDUs nearby if there isn't a required minimum buffer in place. City Attorney Stunich responds that yes, the City would have broad discretion, and crowding would be a reasonable basis for denial; to protect public health and safety is always a good fallback.

Commissioner Johnson asks for the City Attorney's suggestion on how to get existing VDUs to within a cap and buffer given the fact that so many would not meet those criteria. Stunich responds that he does not think it is a big dilemma; just because someone currently has a VDU license now, there is no guarantee that they get to keep it. The City should provide some grace period (amortization period), and after that, everyone has to come into compliance. He thinks it would have to be 5 years or so, but will research that further.

Public Comment

A. Grau (433 Ewing) recounts an incident from the previous weekend wherein he was awoken at 11:30 p.m. by guests at a neighboring VDU. He stated that he texted the manager and the noise stopped soon after, but he was still woken up. He added that without a better complaint process and enforcement mechanism, this kind of thing could happen nightly without recourse. Mr. Grau suggests making noise violations a ticketable offence with the fine split between the complainant and the City. He noted that he enjoys hearing children playing at the STR and suggests that

Trinidad should be marketed as a family destination. He thinks that the new ordinance should get rid of the idea of incentivizing hosted STRs in favor of owner-occupied STRs. He suggests that the Planning Commission revisit the proposal submitted by Saving Trinidad's Neighborhoods. He doesn't think license transfers should be allowed, and advocates that licenses should be revoked after only two significant violations. He also notes that the City of Anaheim recently adopted an ordinance that phases out STRs over 18 months.

K. Lake (435 Ocean) is concerned about the term 'discretionary,' and is not sure what that means. She reiterates that the new Anaheim ordinance only gives 18 months for existing STRs to continue; 5 years is way too long. She states that the General Plan benefits residents, but STRs do not. She refers to an email from Coastal Commission staff stating that any more than 4 separate guests (rooms) is a change of use. She does not think licenses should be transferable.

L. Farrar (433 Ewing) would be more comfortable with the idea of a lottery if more communities used them. She feels that buffers are very important, and thinks that St. Helena is a good model. She states that 'discretionary' sounds like staff making back room deals though; she thinks that the neighborhood should get to approved STRs. She also opines that a 30% water use allowance (above the septic system design flow) is unwarranted and that STRs should have to abide by the same drought measures as everyone else.

J. Kitchen (56 Berry) understands Commissioner Johnson's dilemma of how to get existing VDUs into compliance with the new standards. After clarifying that the lottery would be some kind of random drawing, she states that that would make things very difficult for her business. She notes that Trinidad Retreats has been in business for around 20 years, and some of her clients have had VDUs for as long. She wants to stay in business and be able to stay in town. She doesn't think a lottery is fair for those that haven't been causing problems, so she is more in favor of a discretionary permit process. Mr. Grau's call was first she has had this season out of 20 homes; if VDUs are managed well, they can blend in with the community.

S. Rotwein (53 N. Westhaven) states that a lottery isn't fair, it's gambling. She feels the City needs to plan for land use, not gamble. Visitors add interest and diversity to the community, and most are respectful; this is supported by the low number of complaints relative to the number of nights VDUs are occupied. She points out that the trailer parks, which are the only areas designated visitor services in town, are now mostly providing long-term, low-income housing rather than overnight accommodations. Ms. Rotwein thinks that 5 years is not an unreasonable grace period and that the cap will be reached in a reasonable amount of time through attrition if permits aren't transferable, noting that there are fewer VDUs already than there were a year ago. Ms. Rotwein thinks that the City needs a noise ordinance that applies City-wide, not just to VDUs. She also feels that VDUs that are owner-occupied at least 9 months of the year should be in their own category with fewer restrictions. In addition, owners who live locally should be given preference on a waiting list or in a lottery. She is in support of a cap, but not the lottery; discretion would be better. Existing VDUs should be grandfathered into the new rules.

City Attorney Stunich suggests including language similar to the following: "If a VDU has been in existence, but does not meet current standards, they shall be allowed to apply for an exception." One of the criteria in granting that exception should be how well managed the VDU has been.

City Manager Berman clarifies that a "discretionary permit," as is being discussed, would be similar to a use permit, with notification to the neighbors and a public hearing before the Planning Commission with findings required for issuance. This is in contrast to the administrative / ministerial process used for the existing licenses. City Attorney Stunich adds that realistically, the City

wouldn't have to review that many discretionary permits / exceptions. Another advantage of that process is that findings for approval or denial are individual and adaptable to changing attitudes.

Do. Cox (436 Ocean) is concerned that existing VDUs will be granted an exception just because "they have always been there." She wonders if discretion only happens once, or would there be other chances to review. Commissioner Pinske notes that licenses must be reviewed and renewed annually.

Commission discussion

Chair Pinske would like to revisit the different possible definitions and ways to categorize VDUs, such as hosted and owner-occupied. He thinks that it would be a good idea to not subject owner-occupied/hosted rentals to the cap or minimum activity requirements. Parker explains the various, commonly used definitions. Owner-occupied is usually used to mean that the owner lives at the residence most of the year, but not necessarily while it is being rented. A hosted STR is one in which the owner or a manager lives onsite, in the STR or another unit, while the house is being rented. A homestay is the typical AirBnB rental, where the owner or tenant rents out a bedroom or two in their home. There is a discussion about the terminology. Commissioner Stockness wants to wait until all Commissioners are in attendance before deciding on this issue. Parker stated that in addition to the definitions, the Commission also needs to decide how the various standards apply, or not, to the different types of STRs.

The discussion moves on to transferability. Commissioner Pinske prefers that licenses not be transferable except between spouses and to children. He suggests that the ordinance could allow a new owner to apply to transfer a license, and the City could deny the transfer if the STR did not meet the new standards; however, he would prefer a strict limit on transfers. Commissioner Stockness agrees, but asks the City Attorney for his opinion. Stunich responds that anything reasonable, with a rational basis, would be okay; he has seen some very narrow language. He suggests that a good option may be to restrict transferability if the cap is met, but allow it if under the cap (which is unlikely). Commissioner Johnson suggests that in addition to spouse and children, transfers to a family trust should also be allowed.

Commissioner Pinske moves the discussion to enforcement. He notes that, by its nature, enforcement is complaint driven, but he thinks it is important for the City to be able to issue fines and other consequences to deter violations. Currently, the VDU ordinance just has a process for significant violations and license revocation. City Manager Berman summarizes the enforcement tools that the City currently has outside of the VDU ordinance. City Attorney Stunich adds that nuisance abatement can be a powerful tool, but can take significant resources, so it's generally only used for severe and ongoing violations. He clarifies that the City always has prosecutorial discretion when it comes to enforcement; the City is not obligated to enforce every violation. Parker suggests that the City should adopt some provisions for issuing administrative fines, which would be separate from the VDU ordinance.

City Attorney Stunich notes that, under the labor code, if someone appeals a decision of the Labor Board and loses, they are responsible for all the expenses of the appeal. He suggests that the City put something like that in place, which would discourage frivolous appeals, avoiding prolonging the enforcement process. Stunich reiterates that it is important for the City to have strong enforcement tools for STR violations, since it is harder for neighbors to bring a civic nuisance suite against revolving tenants. Commissioner Pinske asks whether that needs to be in the STR ordinance, or elsewhere in the City code. City Attorney Stunich responds that it could be addressed in several places, and the STR ordinance should be crafted to punish occupants and hold owners accountable.

Commissioner Stockness notes that crime and enforcement is a bigger problem than just VDUs. She notes the recent problems with crime in the Murphy's Market parking lot, and thinks the City should work more closely with the Sherriff's office and hire an enforcement staff person. City Attorney Stunich states that police don't generally get involved with civil disputes. He notes that the STR ordinance currently only contains civil remedies, and criminal remedies would have to be added in order to get the Sherriff involved, but that the City does not have an officer on duty at night when STR problems tend to occur. He adds that it could be a good threat to discourage violations. City Manager Berman likes the idea of administrative fines and would like City Attorney Stunich to provide his input and suggestions.

Commissioner Johnson points out that if the occupants, or owner, get fined, the owner can withhold the renters' deposit, which benefits the owner. He asks if it would be possible for the City to require a deposit from STR owners to be used to cover fines. City Attorney Stunich thinks not, but language could be included that the owner can be held financially liable for the City's costs to investigate complaints found to be valid. Stunich adds that he would strongly suggest such language. Commissioner Johnson agrees.

Commissioner Stockness has another obligation and leaves the meeting. There is no longer a quorum of Commissioners in attendance, but since no action will be taken, the remaining Commissioners follow-up with a few more questions for the City Attorney.

There is a brief discussion about including mandatory language in STR contracts that occupants must sign and acknowledge. City Attorney Stunich suggests that the City require a guest registry that includes the contact information of the responsible person so that neighbors can find out who to sue if there was a problem. The contract language should also include a disclosure that the information is not private.

There is a brief discussion of the process to get the Planning Commission recommendation to the Council. Chair Pinske requests staff to incorporate elements of tonight's discussion into the amendment. Planner Parker will work on arranging another meeting the following week.

VI. CITY COUNCIL REPORT

Nothing to report.

VII. STAFF REPORT

Nothing to report.

VIII. ADJOURNMENT

Meeting adjourned at 7:20 p.m.

Submitted by:

Trever Parker

Acting Secretary to Planning Commission

Approved by:

Mike Pinske

Planning Commission Chair