

MINUTES OF THE MONTHLY MEETING OF THE
TRINIDAD PLANNING COMMISSION
WEDNESDAY, April 19, 2017

I. CALL TO ORDER/ROLL CALL (6:02pm)

Commissioners Present: Braziel, Hedrick, Johnson, Scott, Stockness

Commissioners Absent: none

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

II. APPROVAL OF MINUTES

February 28, 2017

Motion (Hedrick/Johnson) to approve the minutes as submitted.

Passed unanimously (5-0).

March 15, 2017

Motion (Hedrick/Stockness) to approve the minutes as submitted.

Passed (4-0). Commissioner Johnson abstains due to not being present at the meeting.

III. APPROVAL OF AGENDA

Motion (Stockness/Johnson) to approve the agenda.

Passed (5-0).

IV. ITEMS FROM THE FLOOR

Do. Cox (436 Ocean) speaks again about encroachments on Ocean Ave. There is an additional problem now. Parking at the 2-story blue house is occurring at an angle and jutting out into the street, because they have so many cars; they also park in front of other houses. She would also like a copy of the minutes from the March 15 meeting.

S. Ruth (777 Edwards) updates the Commission on the Views and Vegetation Permit process. He finally got a hold of the arborist, Merlin Sabo at Trinidad Tree Service. Mr. Savo will provide more details on the recommended work. The bad news is that he is backed up until June/July. There's also been a lack of feedback from the City Council on his request to remove the alders on City property. The Planning Commission has not responded to the allegation that public views have been unreasonably obstructed. There was also no response regarding the reconsideration of the allocation of costs; it is not fair that as the number of applicants increases, the owners' costs go down. Finally, he is aware that at least a couple of Commissioners have visited and vegetation owner's property, and it is biased if the Commissioners communicate with the property owner and not the applicants.

A. Grau (433 Ewing) asked the City Clerk to forward pictures of the billboards on the bluff by Edwards to the Commission. He doesn't see why Katie's Smokehouse needs two billboards, and the Seascape billboard is not being maintained. They are out of character for the City, do not comply with City code and block views. He asks the Commission to review the situation and take action.

L. Farrar (433 Ewing) has confidence that the Planning Commission will exercise independent judgment, ensure Trinidad remains a community protected by the rules, and preserve the quality of life for residents. She expects honesty, independent analysis, separation from special interests, future thinking, etc. Sometimes only a few community members come forth outside their comfort zone to speak for the good of the community.

V. AGENDA ITEMS

1. **407 Ocean Avenue Violation and Enforcement Issues:** Update from Staff on the current situation and discussion of possible next steps.

Commissioner Comments

Chair Scott notes that Do. Cox has requested 10 minutes for a presentation. She wants concurrence from the Commission on allowing the extra time and asks when their preference is for hearing it. It is generally agreed that the extended time is reasonable, and that the presentation should be given at the beginning of the public comment period.

Planner Parker goes over the Agenda Item Report in detail. She notes that she received the letter from Dan and Dorothy Cox that was included in the packet too late for a detailed response. She responded in writing this afternoon and emailed it to the Planning Commission. The Cox document included some misinformation and misrepresentation, though she acknowledged that there is a significant history of violations. However, Parker emphasized that with this latest violation, the owner was fully cooperative and the sink and stove were immediately removed.

Commissioner Stockness asks about the State's second unit law parking requirements for a second unit. Planner Parker doesn't have that information in front of her, but the structure is not a second unit and the project meets the parking requirements for a single-family residence.

Commissioner Scott thought the structure was an ADU, but Planner Parker clarifies that an ADU is a separate, stand-alone living space, but this was approved as an addition to the living space of the main residence.

Commissioner Stockness thinks the City Council should be involved. She's still concerned about parking, the sequence of events and how many chances the owner has had.

Commissioner Johnson gets clarification regarding the rejection of the ADU application that was filed for this property and why it did not come before the Planning Commission. Planner Parker explained that under State law, ADUs have to be approved (or denied) ministerially as long as they meet certain standards. She refers to her 2013 letter to the property owner, which explains a number of reasons the application was rejected; the primary reason was that the owner had moved off the property, and the City's ADU ordinance requires the owner to live on the property. In addition, the City's was no longer pursuing Coastal Commission certification of the ADU Ordinance in favor of working on the VDU Ordinance(s).

Commissioner Johnson asks whether the property has a valid OWTS permit. Planner Parker relays that the existing permit is due for renewal, but the applicant has submitted the

information required to renew it. Parker did verify that the system is functioning normally, but she has not had a chance to issue a new OWTS permit.

Commissioner Scott gets confirmation that the winter OWTS inspection was completed. It is also confirmed that, based on a report from Steve's Septic Service, the pump in the back living space is now fixed and the leachfield is functioning normally.

Parker clarifies that the Design Review permit is referenced as Reinman 2013-11A. The VDU license for this property has not been active, but is valid and transferable under the current regulations.

Commissioner Braziel notes that condition of approval #2 states that the Planning Commission approval is only for a year unless building permits are obtained within that time. Planner Parker confirms that the issued Building Permits are on file with the City.

Commissioner Stockness gets confirmation that ministerial approval is done by the City Manager and Clerk. Planner Parker adds that building permits are ministerially approved by John Roberts and, under the second unit law, it would be herself. She has rejected at least a couple so far.

City-wide protocol and standards for detached living space could be in the form of an ordinance or policy; the example provided from Sonoma is policy. They discuss the enforcement implications.

Parker clarifies that a definition of "Dwelling unit" exists in the Municipal code, but not "kitchen."

The property has a recorded deed restriction that limits it to a single unit and 3 bedrooms as required as a condition of approval of 2013-11A. Planner Parker notes that deed restrictions are more of a noticing tool than an enforcement mechanism.

Public Comment

Do. Cox (436 Ocean) gives a presentation regarding her frustration with the property and owner. She provides a lot of history and wants retribution. The owner has not complied with conditions, has received many chances, but only minor chastising. Cox questions the inspection paperwork timelines. She feels the permit should be revoked. She believes the City Planner will argue with this solution, because the Planner worries about the time and expense as well as Staff time taken away from the General Plan update. Enforcement is a complaint-driven process, and the community has done their part and should be recognized; set an example and show that citizens matter.

She continues: the suggested warning letter is not adequate. The VDU inspection was performed by the City Manager and not the Building Official. It is questionable that "he didn't see a kitchen," and she states that the parking on the site plan is inaccurate. The site has also never generated TOT. She speaks about City-wide protocol. She believes her documents are accurate and can be found in City files. She suggests the Planning Commission take action. She feels belittled and thinks that the owner is only complying now, because he is selling the property. She doesn't want this situation to set precedent and asks the Commission follow the Zoning Ordinance and revoke the approval. There is an

expectation / attitude in Trinidad that the City won't enforce anything, and that needs to change.

City Manager Berman refers to his inspection last summer as part of the VDU renewal process. He walked through both the front and back units knowing there was an issue with a kitchen, and he's confident that he did not see a stove or a sink, but admits he could have missed something. There was not a kitchen listed on the description for the VDU permit.

Commissioner Johnson asks if the neighbors followed through with the mediation process encouraged in the VDU Ordinance. Do. Cox states that they did not. Reinman never asked them personally; he had a company call them who didn't even have the right names; the offer was not made in good faith.

S. Ruth (777 Edwards) is in awe of the history of this. The VDU inspection should have been done by the Building Inspector as directed by the Planning Commission. There are repeated violations with only a slap on the wrist to show for it. Just because a permit has never been revoked doesn't mean there is not a good reason to this time.

J. Cuthbertson (840 Van Wyke) wants people to speak into the microphone, because he cannot hear them and it's not fair. He lives next to two well-managed VDUs and has no problems with them. The owner of 407 Ocean is the problem, and his transgressions have overlooked too many times. J. Cuthbertson questions who is paying for this. He believes something should be done. The owner needs to be fined; stop ignoring violations.

A. Grau (433 Ewing) points out that the same owner has had two significant VDU violations at other properties and continuously disrupts the community. He doesn't believe the tenants put in the gas line or electric meter. The City has done little to help the adversely affected neighbors. He believes the back unit should be turned back into a garage, the STR license revoked, and this property/owner should not be allowed to set precedent. The residents and regulations of Trinidad should be protected. He thinks the danger lies in Staff providing over direction, bias and opinions, not the Planning Commission. He gives examples where he feels City Staff overstepped their bounds. He questions why the City rewards bad behavior and is penalizing abiding citizens.

Da. Cox (436 Ocean) thanks Mr. Cuthbertson for his comments. The house at 407 supposedly only has three bedrooms, but the current use exceeds that. He says there have been 10-14 cars parked in front of the house for years. He believes more people live there than should. He doesn't believe the tenants put the kitchen in without the owner's knowledge or that the City Manager didn't see the kitchen. The building inspector should do inspections. The back bedroom needs to be converted back into a garage; it is too close to being a second unit.

L. Farrar (433 Ewing) gives history about the property owner/manager and his past violations; this is the third time he has been before the Commission for violation. She notes that Planning Commissioners have recognized his dishonest representations in the past, and denied his appeal of significant violations. She sees a pattern. The Staff recommendations are weak and she lists reasons why they are ineffective. City ordinances and code have not been enforced, which equates to arbitrary application. The residents deserve respect and relief.

Commissioner Comments

Commissioner Johnson reviews the Planning Commission's options and asks the City Attorney for his opinion and advice.

City Attorney Stunich states that the permit in question is for a use that is allowed as a matter of right by the zoning. The additional living space at this property is still considered a single-family use. A Use Permit is a grant of special privileges and would give more leeway for revocation. The City has lots of tools and options for enforcement, but revoking the permit isn't the answer in his opinion. He could find no precedent revoking this type of a permit based on a violation. People have a vested right in principally permitted uses.

Stunich suggests that the best tactic would be a nuisance action, get an injunction barring the nuisance-causing activities and get damages. The neighbors could do this privately and get a court order barring the owner from doing this in the future and get monetary damages. He also suggests that the City adopt an administrative fine ordinance that would impose maximum fines until the violation is rectified. The City needs to make violations unprofitable. Revoking the permit would probably be considered "economic waste" by the courts, because improvements would have to be taken out. He doesn't know that revoking the permit would be upheld in court; he's never seen an example of a building permit taken away. He firmly thinks an abatement action and administrative fines are the best tactic.

City Manager Berman adds that from his perspective, the 2014 approval "restarted the clock" in terms of violations. There was a history of violations, but the permit was granted anyway with special conditions due to that history. When the Planning Commission issued the after-the-fact DR permit, they legitimized and authorized the living space. It seems that previous violations would no longer count toward any current enforcement action. He understands that this is frustrating but it is also a learning point for the City. In hindsight, maybe the City should have a policy to not issue after-the-fact permits, at least if there is proof that the owner knew that it was a violation, as in this case. But at this point, there are no outstanding violations, and so he doesn't see a judge holding up a revocation based on past violations that have already been rectified.

Commissioner Stockness asks about the STR status. It's explained that the permit is valid but inactive; the house has had long-term renters for several years. The City Council can revoke a VDU license if there are more than two significant violations of the VDU Ordinance in a year. Staff emphasizes that this is a building/zoning code issue--*not* a VDU issue, so there is no basis for revoking that license. The Commission is still interested in reconsidering the VDU license, and City Manager Berman explains that they can ask/recommend the City Council to put it on their agenda. The City was recently informed about a violation, the City inspected it, and the owner fixed the problems, so it cannot be considered a violation now.

City Attorney Stunich again recommends the nuisance abatement action by the City but thinks that if all the affected neighbors file in small claims court, they will be more successful.

Commissioner Brazier asks if the sale of the property affects anything regarding the permit. City Attorney Stunich explains that permits "run with the land" but a court injunction would be against the present owner and not applicable to new owners, though it would

stand as a warning. Courts may be sympathetic to a residential neighborhood being impacted by a commercial (VDU) use of a residence and may issue an injunction attached to the land. VDUs are currently lawful in accordance with City rules, partly because the property is in the Coastal Zone, but that wouldn't restrict a State court from imposing an injunction based upon a nuisance.

Commissioner Scott states that it appears that the permit revocation would be against the property, and nuisance abatement would be against the owner. She is interested in enforcement and administrative fine provisions. City Attorney Stunich states that the amount of those fines are limited by law. Fines don't take away the need for abatement action for a nuisance, but it is another tool. Commissioner Scott asks if the City can place a lien on the property and City Attorney Stunich states that it may be possible, but he would have to review the City's code.

It is noted that VDU/STR license transferability has strict limitations under the new rules that may go into effect in June. Planner Parker also supports the idea of administrative fines, but notes that the City does not currently have a mechanism for that. City Manager Berman states that the City Council is already considering the development of an ordinance to add administrative fines to the City Code.

Commissioner Scott feels that the suggestion that the neighbors file a complaint in small claims court may not be realistic and asks what other options are available. City Attorney Stunich describes the process of residents pursuing the nuisance abatement in small claims court, noting that it only costs \$35 to file, and no lawyers are necessary. But the City can also pursue a nuisance action concurrently or independently. The small claims process is discussed further, including the statute of limitations and maximum awards. Commissioner Hedrick opines that integrity is important; the Planning Commission should find that the property owner has no integrity and hold him accountable.

Do. Cox requests and is granted permission to speak again. She gives more history of the property and City actions, noting that the back unit was rented as a VDU when the owner lived there. She doesn't want to go to court – she wants the City to enforce its own ordinances.

The Commission discusses possible next steps. Commissioner Stockness wants to send this to the City Council. She relays what she's observed at the property over the years. She wants strict laws that take care of the neighborhoods. Inspections should be performed by the same person. The City needs enforcement. If the City has to go to court, they should do so to set an example. Violators should not have permits and the Design Review approval and VDU license should be revoked.

Commissioner Braziel wants to pursue the revocation of the after-the-fact permit for allowing this to become a quasi-ADU. The Commission should show that they care about the community. She thinks the City needs to construct a strong ordinance with definitive fines to address this and future issues and show that violations will not be acceptable or profitable. Commissioner Hedrick agrees with this.

Commissioner Johnson laments about the history and work this has taken on both sides of the issue but feels a solution is near. His short-term solution would be to amend the

previous DR approval. A lot of effort went into that approval, and the property is now in compliance, so it should not be thrown out. Revoking the permit will not prevent a new owner from violating City codes, but amending the existing approval to require periodic and frequent (6 months or less) will minimize the future potential for violations. He notes that if the permit is revoked, all the conditions go away, and the City loses substantial oversight of the property.

Commissioner Johnson and Hedrick recognize that enforcement responsibility falls on the City and discuss the property owners' integrity. Commissioner Johnson continues, stating that in the long term, the City needs administrative fine provisions and better policies and standards for permitting detached living spaces. This, combined with clearly-outlined abatement and fine criteria conditions, will help avoid future problems.

Commissioner Stockness likes the inspection proposal and would like to see it completed with multiple Staff members inspecting their areas of expertise. The Commission discusses the impact these extra inspections may have on the Building Inspector. City Manager Berman does not see an issue, since his enforcement activities area already part of the budget. He acknowledges the Building Inspector will do the walk-throughs for all VDUs in the future.

Commissioner Scott goes back to Mrs. Cox's comments, Staff comments and the history of the project. She is interested in considering the revocation of the project but is not sure it will actually solve the problems. She does agree that how the Commission responds will set precedent for the future and wants to send a strong message. But the City can only operate under the facts and evidence at hand, and she is not sure there is sufficient proof of who was responsible for the violation that has now been corrected.

Commissioner Braziel points out that the owner has had to pay some substantial costs related to this project and past violations. Planner Parker reviews the old invoice of City costs included in the packet. City Manager Berman adds that the City Planner, Building Inspector and City Manager's time should all be billed to the violator. Planner Parker believes that some of the time is billed at double time (she thinks that's standard for an after-the-fact permit). However, now that the violation(s) are corrected, the owner is not responsible for the costs of any revocation process.

Commissioner Scott acknowledges the years of problems and emotional toil on the neighbors. She wonders what the short-term and long-term relief options are.

City Attorney Stunich states that revocation is not generally legal without an existing violation. However, the long-term, on-going nuisance could possibly be a basis for revoking the permit. He again reviews a permit vs. a CUP and just suggests passing an ordinance that would require inspections for all detached living spaces as a long-term solution.

Commissioner Scott asks about the enforcement tools that the after-the-fact DR permit allows them. Planner Parker states that there is no remedial action—just a variety of conditions. Those are enforceable under existing City code. She reiterates that there are no current violations on the property. But Commissioner Scott wonders how many times they should be allowed to get away with fixing violations.

Planner Parker is curious if the City were to declare the property an ongoing nuisance if they can use the Nuisance Abatement Ordinance, because there are fines written in there. City Attorney Stunich wants to read it before agreeing, but supposes that that would be the case if the situation meets the definition of a nuisance.

Commissioner Scott brings it back to the current condition of the property and the permit violation. Commissioner Johnson states that they should take the current nuisance abatement route or work on the new policy and fines. He notes that if someone has enough money, it probably won't stop them if they want to violate the permit, but it would probably discourage the action. If the property remains with the current owner, it should be inspected for compliance.

Commissioner Braziel discusses options for results in relation to speed and risk with City Attorney Stunich. Stunich suggests a nuisance action leading to an injunction as the quickest and safest action. Planner Parker notes that the nuisance abatement action needs City Council authorization, but there is no violation now on which to base that. City Attorney Stunich adds that they always have the authority to file suit under general nuisance law in California. Extra traffic is a public nuisance and that may be grounds to further limit occupancy. Commissioner Johnson thinks that is why the existing permit should be kept in place and amended to require inspections. If it is revoked, all the conditions attached to it are invalidated.

Commissioner Stockness questions if revoking the permit would stand up in court. City Manager Berman add the questions if the City could reverse the revocation if there was a lawsuit. City Attorney Stunich states again that there are no other examples of a case like this and it would be a risk. He doesn't know. He again states that to sue under nuisance law to get a court injunction is the safest strategy. If the owner violates an injunction, he goes to jail.

Commissioner Braziel asks about the legality of the current installations at the property and City Manager Berman reminds her that all violations have been fixed, so there are no current violations.

Commissioner Scott wants to limit occupancy at the property to six people and recognizes that revocation punishes the new owner if the property sells. City Attorney Stunich reminds her that conditions cannot be imposed on a regular permit. Planner Parker notes that this is the DR permit and was not ministerially approved. The Zoning Ordinance does allow conditions on Design Review and Coastal Development Permits. City Attorney Stunich agrees, but this needs to be handled as a nuisance issue and not a permit issue so as not to address a vested right. To revoke a permit on the grounds of a nuisance is risky. Commissioner Johnson gets clarification as to what would be the current nuisance. Stunich responds that drawing people to a narrow street and commercial use of the property could be nuisances.

City Manager Berman responds that there is no commercial use at the property; the VDU is inactive, and the house is vacant. He summarizes the situation, stating that over the last 2.5 years, there have been frequent complaints regarding things like noise, traffic and animals. These are no longer occurring. The neighbors can sue in small claims court based on ongoing nuisances. There was a violation of the conditions, but that is now fixed as well. He

agrees with the Staff Report and they need to establish policy on how to avoid this in the future. He is not defending Mike Reinman, but he does not see an easy path backward to inflict punishment for past actions. He is in favor of a long-term solution for the future.

Commissioner Stockness thinks they should set standards and protocol with the City Council, send a warning letter and give a copy to the next owner.

Commissioner Scott wants to know why the Building Inspector did not report the violations to the Planning Commission immediately to give the Commission a chance to revoke the permit before the owner fixed the violation. Planner Parker responds that that is not how enforcement works and would not be fair; enforcement is not a Planning Commission issue.

Commissioner Johnson and Braziel agree that specifics for a future ordinance or protocol should be discussed at a later date.

Motion (Johnson/Braziel) to work with staff to develop City-wide protocol and standards for permitting detached living spaces. Passed unanimously (5-0).

City Manager Berman clarifies that Staff will present examples and suggestions to the Planning Commission for discussion and edit, and then the Commission will recommend it for approval to the City Council when done.

The Planning Commission discusses the permit revocation process and whether to move forward with it. City Attorney Stunich reminds the Commission that the Commission can vote to hold a revocation hearing, but still decide not to revoke it. Commissioner Scott adds that having the hearing would give the owner a chance to present his side of the story. Planner Parker voices concerns about the City's liability, if this delays of the sale of the property and affects the transfer of the STR license. Commissioner Stockness expresses similar concerns. City Attorney Stunich states that the City can't be held liable for going through a legitimate process like this.

City Manager Berman is concerned about the time already spent on this issue re-hashing history while the General Plan and other issues have been ignored – though he does acknowledge a revocation hearing will send a message that the City is serious. Planner Parker also expresses concern over the delay to the General Plan update. Commissioner Braziel is in support of a hearing. Commissioner Johnson questions the value of holding a hearing and what it will actually accomplish, if anything; he recommends their time be spent developing protocol and standards to prevent this from becoming an issue in the future. Commissioner Scott thinks not pursuing it sends the wrong message; this property owner keeps taking up the Commission's time and they need to take a stand.

Motion (Braziel/Hedrick) to direct staff to start the revocation process for Design Review permit 2015-11A and to hold a hearing on the issue at the next meeting that the property owner is available. Passed (3-2). Commissioners Johnson and Stockness dissenting.

2. **General Plan Update:** Discussion regarding the current draft (December 2009) of the Conservation and Open Space Element.

Commissioners discuss their schedules for the next couple of weeks in order to hold a special meeting to continue this discussion.

Motion (Brazier/Hedrick) to continue this item to a special meeting tentatively scheduled for April 25 pending room availability.
Passed unanimously (5-0).

VI. COUNCIL REPORT

The Council directed the Planning Commission to consider and develop policies for how to regulate proposals for residential living space within detached structures.

The landslide near the Memorial Lighthouse requires an emergency permit for remedial action to repair and minimize some of the damage by removing the walkway, a portion of the parking lot and other compromised improvements. The full permit application will come back to the Planning Commission for an after-the-fact approval. The City is also pursuing installation of borings and monitoring devices for the slide to help inform future actions that may be needed. They discuss the potential need to relocate the lighthouse, landslide causes, bluff composition, stormwater, information needs and science. Conversations with a geologist confirm that it will likely continue to slide.

City Manager Berman adds more to the Council update and stresses that they want to know about the General Plan timeline and request that it is prioritized.

VII. STAFF REPORT

There is nothing much new to report. The CAL FIRE water extension application is proceeding.

There is a stop work order at the church for building code issues. Too many people are living there, which impacts the septic system.

The Hidden Creek RV Park is for sale and will need to upgrade the septic systems.

VIII. ADJOURNMENT

Meeting adjourned at 10:01 p.m.

Submitted by:

Sarah Caldwell

Secretary to Planning Commission

Approved by:

Laura Scott

Planning Commission Chair