

MINUTES OF THE SECOND REGULAR MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, AUGUST 26, 2009

I. CALL TO ORDER/ROLL CALL

- Mayor Binnie called the meeting to order at 2:00PM. Council members in attendance: Binnie, Fulkerson, Morgan, Ratzlaff. **Bhardwaj – Absent.**
- City Staff in attendance: City Manager Steve Albright, City Clerk Gabriel Adams, and City Attorney Paul Hagen, City Planner Trever Parker, Police Chief Ken Thrailkill

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

Real Property Negotiations: Section 54956.8, Status of the Lease/Sale of 12.5 Acres of City Property.
Parties: City of Trinidad and the Yurok Tribal Council

IV. RECONVENE TO OPEN SESSION

No report from closed session.

V. APPROVAL OF AGENDA

Motion (Fulkerson/Ratzlaff) to approve the agenda as amended. Passed unanimously.

VI. APPROVAL OF MINUTES

No minutes to approve.

VII. COMMISSIONERS REPORTS

Fulkerson:

- **Wave Energy:** Toured the proposed project site 3 miles offshore on HSU research vessel.

VIII. STAFF REPORTS

No staff reports were given.

IX. ITEMS FROM THE FLOOR - (Three (3) minute limit per Speaker unless Council approves request for extended time.)

There were no items from the floor.

X. CONSENT AGENDA – No consent items.

XI. AGENDA ITEMS

1. Staff Report on Chevron Signs Issue.

City Manager Albright explained that at the July 8, 2009 meeting of the City Council, staff was directed to return with a summary of possible options to attain compliance with Planning Commission conditions required of the Redwood Oil Company for its Chevron gas station in Trinidad. For clarity, options were offered both for the issues relating to compliance with the conditions and for the collection of the fees associated with the application and consideration by the Planning Commission. His staff report provided the following information:

A. OPTIONS FOR COMPLIANCE WITH THE CONDITIONS

- **Require Full Compliance:** It is certainly within the police authority of the City to require compliance with all of the conditions placed by the Planning Commission, even though such actions may be challenged by the applicant. The City Attorney is providing a summary of actions that would be taken to accomplish this, and his report will be forwarded for review when it is completed.
- **Request the Planning Commission to Reconsider its Conditions:** This is an option that would not be routinely done in the relationship between the City Council and the Planning Commission. However, there is nothing in the ordinances that would prohibit this option, and in fact it is not difficult to imagine situations where a Planning Commission's action would fall contrary to the perspective of the City

Council. This could be the case either with the approval, denial, or the conditions placed on a proposal by the Planning Commission.

- **Consider the Applicant's Withdrawal of the Original Application:** There is no requirement for an applicant to undertake and complete a project after action is taken by a Planning Commission. Again, in this case, the difficulty is that some of the work items addressed by the Planning Commission have been undertaken and completed. Since the determination was made that all of the different actions needed to be considered in their totality, then it would only seem appropriate at this time for the applicant to do either all or none of the project parts. Allowing the applicant to pick and choose after action by the Commission seems to invalidate the entire planning review process. Therefore, the applicants should always be able to withdraw an application, but not after part of the work has been completed.
- **Ignore the Conditions and Allow the Owner to Proceed:** This option is not being recommended. However, there are a number of clear code violations accompanied by written citizen complaints that have gone unchecked in Trinidad for a number of years. While it should be the City's clear policy to correct violations (such as those pertaining to land use, signage, illegal activities, or projects generally completed without any local approval or permits), this is a difficult task for ALL cities. Assuring compliance with City ordinances and Planning Commission approval conditions should still be the overall goal and should be done on a consistent basis. Past inactions should no longer be an excuse, and it is important for the City to not only adopt reasonable rules and regulations, but also enforce those rules and regulations.

B. OPTIONS FOR COLLECTION OF THE FEES

- **Collect the Full Amount of Fees Charged to Date:** Fees charged to date are a direct result of time spent by the planner on this project. Those fees exceed \$7,000. Streamline Planning has been paid in full despite collecting only \$400 from the applicant, and costs continue to be incurred as work is requested. The City could choose to attempt to collect the entire amount billed to date, and that could be done either through some process of collection, an effort to place a lien on the property (similar to an unpaid tax lien), or any other legal means available to the City.
- **Collect a Lesser Amount of the Fees Tracked to Date:** The applicant acknowledges that fees are due on this project. The applicant challenges the amount of fees due. He has further stated that much of the work performed was at the request of the Planning Commission and the public and not directly related to his original application or the second application. If the Council were to agree all or in part with the applicant, it could choose to pursue a negotiated settlement of the fees owed.

City Attorney Hagen explained that despite his report arriving just hours before the start of tonight's meeting, he was doubtful that the Council would reach a conclusion after just one meeting. He explained that his memo was late because it was thorough. He also suggested that the Council hear the item, take notes, and continue the discussion at a future meeting. In a nutshell, the only way to achieve compliance with Chevron is to sue them. He went on to explain his memo, reasoning, timeline, etc. The City's options, he suggested, were to either a) Settle, b) Drop it, or c) Go to court.

Hagen also criticized the City's application process by arguing that – based on his understanding – there was no official application form. The staff report, he argued, serves as a) the application, b) the staff report, and c) the permit. Without an application and a clear description of the project, a case may be difficult to argue in court.

City Planner Trevor Parker presented the following report and conclusions:

- It is clear that demolition of the tall freeway sign was not exempt from Coastal Development Permit requirements because it falls under the definition of 'development' (§17.08.200) and does not fall under any CDP exemptions due to its size (§17.72.070.C.2).
- Addition of the new lit logo sign on the canopy is a significant deviation from the existing condition or appearance and required Design Review approval.
- There were several existing, unpermitted signs that received after-the-fact design review approved as part of 2008-04. All new signs require Design Review in accordance with §17.56.160.

- The new valances altered the external profile and appearance of the pumps and also required design review. The valances could not fall under the accessory structure exemption (§17.72.070.B or C.2) because there was more than one and because they should really be considered primary structures.
- When taken all together, the various project components, even those ones that might be considered individually exempt, add up to a change in the appearance of the entire station requiring Design Review per §17.60.030.
- The project can not be separated into its various pieces for the purposes of using exemptions. This has clearly been defined by the courts in CEQA cases where multiple exemptions were used to try to exempt a larger project.

Public comment included:

Brad Twoomey – Trinidad

Most of the important research done regarding Chevron’s non-compliance was submitted over 2 years ago. The City should send personnel over to perform the outstanding work, remove the visual nuisances, and bill the applicant for the work. **City Attorney Hagen** argued that the “nuisances” Twoomey described do not fit the City’s definition of nuisance. They were not a threat to public health or safety. Furthermore, the City does not have the authority to conclude unfinished, conditioned work and bill for it.

Mareva Russo – Trinidad

I’m not ready to give up on the abatement ordinance as a mechanism to achieve compliance.

Kim Tays – Trinidad

I would like to avoid litigation, but hope – at least – the City will pursue all possible official actions to achieve compliance and recover all the fees instead of simply dropping the issue.

Council comment included:

Fulkerson: Trinidad has basically practiced wild-west behaviors for years. We’re now caught in the middle of community values vs. do-as-you-want-to mentality. The question is, how do we balance the two and find justice for all?

Binnie: This is a defining moment for the city – an opportunity to show the public that everyone is treated fairly.

No decision was made. The item will be continued to a future meeting to allow time for the Council to review information presented by staff at tonight’s meeting.

2. Update Report on Trinidad Planning.

- General Plan
- Onsite Wastewater Treatment Ordinance
- Accessory Dwelling Unit Ordinance
- Vacation Unit Ordinance

City Planner Trever Parker provided a brief presentation on the current planning issues and projects under review. No decision was made.

XII. COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

XIII. ADJOURNMENT

- Meeting ended at 6:25pm.

Submitted by:

Gabriel Adams
 City Clerk

Approved by:

Stan Binnie
 Mayor