

MINUTES OF THE REGULARLY SCHEDULED MONTHLY MEETING OF THE
TRINIDAD PLANNING COMMISSION
WEDNESDAY August 15th, 2012

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

Commissioners Present: Johnson, Pinske, Vanderpool, Becker, Rotwein

Commissioners Absent: none

Staff: City Attorney Andrew Stunich, Planner Parker, Caldwell

II. APPROVAL OF MINUTES

July 18, 2012

Motion (Becker/Pinske) to approve the minutes as written.

Passed unanimously.

III. APPROVAL OF AGENDA

Motion (Pinske/Becker) to approve the minutes.

Passed unanimously.

IV. ITEMS FROM THE FLOOR

None.

V. AGENDA ITEMS

- 1. Civic Club 2012-04:** After-the-fact Design Review and Coastal Development Permit (CDP) to remove fencing, conduct landscaping (removal of sod and invasive blackberries) and terrace an existing slope to provide access to the Axel Lindgren Memorial Trail through the Memorial Lighthouse Civic Club property. Most of the work has already taken place. Located at the Trinidad Memorial Lighthouse; APN: 042-091-04 *This item was continued from the July meeting to allow Staff to review and respond to the submitted comments.*

Commissioner Johnson asks what the City's consultation obligations are if easements are held over the project area by the Coastal Conservancy. City Attorney, A. Stunich, replies that this project does not conflict with the easement and is not in Open Space (OS), it is in Public and Religious (PR), so he doesn't believe there is a need to consult the Coastal Conservancy in terms of Policy 69. He adds that even if there was a need for a consult, as signatories on the Tsurai Management Plan (TMP), they have concurred with the project's tasks of removing non-native plants and opening access. Johnson clarifies that the City is responsible for issuing the CDP for this project.

Planner Parker reviews the 3-tiered CEQA process at Commissioner Johnson's request, noting that, if a project is not exempt, before an EIR is prepared, an initial study is conducted to see if there are potential impacts. She also noted that Su Corbaley, representative from the Coastal Commission on the Tsurai Management Team, has been notified. City Attorney Stunich reviews the legal status of the TMP stating that the

Plan is ambiguous, hinges on group consent, was drafted with the intention to give the land to the Yuroks, and is an agreement to agree on future actions, but not legally binding.

Commissioner Johnson asks if it is legal for the City to ask the Civic Club to combine past development with this application and evaluate it all under one CEQA document, even if they do not own the land the other projects were on. Attorney Stunich replies that the requirement for an EIR is not clear cut either way. It is his opinion that there is not sufficient impact from this project to require an Environmental Impact Report (EIR). However, he noted that requiring an EIR (or initial study) is within the discretion of the Planning Commission, and that if those past projects, combined with the current one, have cumulative impacts, those impacts should be evaluated. It was also suggested that if such an analysis is done, the City take on some of the responsibility.

Planner Parker responds to Commissioner Pinske's question regarding where the traditional Axel Lindgren Memorial Trail is, stating that based on comments, she guesses it goes straight up from the top of the stairs into the Civic Club property. The possibility of having C. Netzow move the rip rap that was placed towards the east to open up the top of the trail, along with removal of the proposed bench was discussed. The Civic Club was receptive to this suggestion.

Public Comments

B. Subkis (416 Roundhouse; Civic Club representative) offers to move proposed riprap, a rail and a bench to open up the traditional entrance.

P. Fleschner (103 Oke-Ga Ln.; co-secretary of the Civic Club) would be pleased to work with the heritage of the TAS. She would like to see coordination and collaboration between the Civic Club and TAS, and looks forward to putting this issue behind her.

R. Faust (Bayside, attorney on behalf of Tsurai Ancestral Society (TAS) reads a letter that was just submitted from Axel Lindgren. He then comments, stating that this dispute comes from the failure to discuss things in advance. He highlights two issues: (1) the assumption that the project description is the same as what occurred; and (2) that the project is on historical TAS land, sold to the City with an easement retained not for development, but the protection of cultural resources. He continues, stating that Staff did not address the scattered and disturbed soil with cultural resources. He disagrees with Staff's suggestion that this is not the project to exercise the City's fiduciary responsibility. He asks, if not now, when? If the City or Civic Club is anxious to finish the project before the winter, then impacts must exist. He thinks that the right thing to do is deny the project and require a full EIR.

City Attorney Stunich addresses R. Faust's statements, noting that his argument had strong emotional appeal. But he countered that the real issue is whether the project falls within the land use zoning. The Civic Club owns the property, and the project has met the zoning requirements. The land is not owned by the TAS. The TAS signed the TMP which delineates TAS land. The project also furthers the TMP policy to remove the

fence at the top of the ALMT, increase public access, and remove invasive vegetation, all of which the TAS has agreed to as signatories of the TMP. This isn't a significant project unless it is left half done.

Commissioner Comments

Commissioner Becker requests clarification as to the artifacts found in the ground. Per her understanding, the contractor stated that it was previously disturbed fill with old nails and scrap metal. S. Lindgren-Akana responds that there were cultural resources dating back to prehistoric and historic times. They were found throughout the soil. She states that the contractor didn't know what to look for. She noted the importance of these artifacts to the TAS.

A. Lindgren, III (TAS representative), says that when he worked for the Park, CEQA was required for all projects and they had to address whether the project was near known Native American sites. The City Attorney responds that CEQA guidelines do not require an EIR if the project does not have significant impacts. Based on the geologist's report, an EIR was not required, so CEQA is not an issue. He accepts the history of the site, but has to refer to "Tsurai land" as it pertains to California law.

A. Lindgren states that one can own property, but not what's buried there. The steps are 30 feet wide, but the traditional path was 4 feet wide. City Attorney Stunich responds that he's all for a negotiated agreement, and recognizes that the land has strong emotional appeal. But he notes that the Civic Club is only required to do what the zoning ordinance and state law require, not more.

A. Lindgren states that the appropriate communication and consultation was lacking for this project. The efforts and policies of the TMP were ignored, even though it took 5 years to finish the TMP. The City Attorney responded that he understands that the people that signed the TMP got as close as they could to an agreement. But the document, which was drafted with conflicting interested, lacks clarity and direction, leaving room for interpretation.

Commissioner Becker refers to the letter requesting a study and evaluation of past impacts, asking if it's feasible. Attorney Stunich says "no." Planner Parker states that the request to require the Civic Club to combine unpermitted past projects that were not on their property into this application is not legal. Planner Parker continues, stating that the certified Trinidad Local Coastal Plan / Zoning Ordinance exempts the proposed activities from a permit. However, the Coastal Act regulations exclude exemptions closer than 50 ft. to a bluff. The City does not have a CDP process separate from other permits, so Design Review findings seemed the most appropriate for issuing a Coastal Development Permit in this case. Denial or approval should be based on the required findings. The project would be appealable to the City Council and thereafter the Coastal Commission.

Commissioner Johnson addresses the TAS and asks if there is a possibility that the 3 parties involved (Civic Club, TAS and Yurok Tribe) could meet and discuss things

further so as to increase communications and come to an agreement about proceeding with this project. P. Fleschner responds that the Civic Club invited the TAS and Yurok tribe to a meeting on July 6th, 2012 and though the TAS did not show, it was very productive and had positive results. She noted that the doors of communication are open.

B. Lindgren (TAS representative) states that this mess wouldn't have occurred if they had just discussed it with the TAS before work began. S. Lindgren-Akana states that they appreciate the invite, but this is a bigger issue that can no longer be handled informally.

Commissioner Vanderpool muses about the lack of formal consultation policy. It was restated that Policy 69 did not come into play under the zoning requirements, because the property is zoned PR rather than OS.

Planner Parker responds to some of the comments in the letter submitted from the TAS at tonight's meeting. She stated that she didn't know about the retaining wall when she wrote the first staff report; she was under the impression that it was just a ground drop off at the base of the fence. Retaining walls less than 36 in. tall are exempt from permits in the City's LCP in the PR zone. An 18" drop off that was turned into steps is prudent for public safety. On June 12th, Staff received the site plan, and did not have it when the March inquiry was made. The geologist did address drainage and runoff in the report. Further, the handicapped ramp is not the Civic Club's responsibility--it is a City issue, on City property, and should be addressed separately.

Commissioner Johnson finds it exasperating that this kind of situation exists again due to the lack of communication. A decision has to be made and not everyone is going to be happy. It isn't feasible to put the area back to its original condition. Drainage and erosion have to be addressed for this unfinished project, as do other necessary and possibly remedial actions. He also expressed a desire to consider long-term actions, a clear set of "lessons learned" and policy changes.

Planner Parker discusses project review procedures and options with the Planning Commission. They discuss options such as project denial, restoration, moving the bench and boulders, narrowing of the trail and others. Planner Parker notes that the site plan shows the project to be within the property boundaries, and that no evidence has been submitted otherwise, but probably a survey would be needed to be sure. There is discrepancy between the amount of soil the TAS (5 cubic yards) verses the contractor (2 cubic yards) say was disturbed.

Commissioner Becker wonders how the Commission could cumulative impacts of other projects when they're only deciding on this project. Attorney Stunich responds that the Planning Commission can require a CEQA analysis due to cumulative impacts, but that evidence to contradict staff and the geologist's assessment has not been provided. Whether past projects had permits and met the conditions 15 years ago or not is not

germane to this project. So, the project is within its zoning rights and there is no evidence compelling an EIR.

Commissioner Johnson requests that the fact that the Planning Commission expressed a need to the City Council that the City develop a policy for when cultural monitors should be required for projects be included in the record.

Motion (Pinske/Becker) to approve the project based on application materials, information and findings included in this Staff Report, based on public testimony, and with the added condition of removing the bench and rearranging the boulders to make access to the AMLT closer to the traditional path.

Vote 3-1-1; Commissioner Johnson opposed (due to wanting additional time to consider the issues) and Commissioner Vaderpool abstaining (due to feeling that he did not have enough information to make a decision, but other options were lacking).

Commissioner Rotwein is called back in to work and leaves the meeting.

2. Trinidad 2012-05: Grading Permit and Coastal Development Permit to widen and pave Azalea Way and portions of Pacific Street to bring the roadways up to minimum State standard width required for emergency vehicle access and improve roadway drainage conditions. Improvements may include the replacement of a water line and addition of a fire hydrant. Located within City rights-of-way on Azalea Way and Pacific Street.

City Engineer & GHD representative, S. Allen, is in attendance.

Planner Parker introduces the project.

Commissioner Pinske questions whether the project improves existing drainage since it is so close to the bluffs and ASBS. S. Allen responds that the City is trying to meet safety requirements and improve drainage as a component of this project. This project is designed to meet ASBS requirements and includes grassy swales and infiltration to slow down and treat stormwater. He noted that the City explored the possibility of permeable pavement to reduce the amount of runoff. But by the Engineer's calculations, there was not much difference in runoff between the existing compacted gravel and pavement except cost. He further responds to Commissioner Johnson's question about replacing the water line, stating that the lines are old and may be found to be damaged upon excavation. The 6" line will feed fire hydrant at the intersection, and will not be extended further than that.

Commissioner Johnson asks about having a cultural monitor as a condition of approval. Planner Parker states that a notice was sent to the TAS and they requested one. The City Manager approved of it, and one will be employed by the City during construction.

Public Comments
None.

Motion (Becker/Pinske) Based on the information submitted in the application, included in the staff report, and public testimony, I move to adopt the information and findings in this staff report and approve the project as submitted and conditioned in the staff report.

VI. CITY COUNCIL REPORT

It was a quiet meeting without much of an audience. The City Council approved the fee schedule for the septic program implementation and arranged a subcommittee to work with staff in editing the public education materials. The Septic Ordinance will be implemented in the next 6 months or so. All septic systems will have to pass an inspection to City standard for an operating permit.

VII. STAFF REPORT

The Commission tentatively agrees to a rescheduled September 5 meeting to go over the General Plan and possibly a permit application. The meeting must be rescheduled because Commissioner Pinske is out of town September 6-11, 13-30 and Commissioner Johnson is out of town from September 9-30 and therefore can not attend the regular meeting.

VIII. ADJOURNMENT

Submitted by:

Sarah Caldwell

Secretary to Planning Commission

Approved by:

Richard Johnson

Planning Commission Chair