

**MINUTES OF THE MONTHLY MEETING OF THE**  
**TRINIDAD PLANNING COMMISSION**  
**THURSDAY, August 31, 2016**

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

Commissioners Present: Johnson, Pinske, Scott, Stockness, and Poulton (via conference call)  
Commissioners Absent: None  
Staff: City Manager Berman, Parker, Gunderson

**II. APPROVAL OF MINUTES – July 20, 2016**

Commissioner Stockness clarified that she did not necessarily want to incentivize homestays in the ordinance, but she did want them defined (p. 2). Commissioner Scott takes exception to the use of “demand” (p. 3), stating that she asked, not demanded.

***Motion (Johnson/Stockwell) to approve the minutes as corrected.***

***Passed (4-0-1) with Johnson abstaining because he was absent for this meeting.***

**III. APPROVAL OF AGENDA**

***Motion (Johnson/Stockwell) to approve the agenda.***

***Passed unanimously (5-0).***

**IV. ITEMS FROM THE FLOOR**

None

**V. AGENDA ITEMS**

1. **Sebring 2016-05:** Grading Permit and Coastal Development Permit to replace a failed 24”/30” (inlet is 24 in. and outlet is 30 in.), approximately 180 ft. long corrugated metal culvert with a new 36 in., 180 ft. HDPE culvert in the same location along the base of Parker Creek. The culvert failed in January of 2016, and the new culvert is sized to accommodate 100-year storm flow. Located at 20 Scenic Drive; APN: 042-131-07.

Planner Parker summarized the staff report. She explained that the culvert failed this past January, and the resulting erosion created sinkholes necessitating the closure of the Parker Creek Trail. She stated that the culvert will be replaced with a larger one to accommodate a 100-year flood flow. She notes that the existing culvert is on private property and will be replaced before the rainy season. She added that daylighting the creek was considered. However due to a number of factors, including the septic system, trail, and bluff stability, that was not feasible. The geologic report has been done, and the Tsurai Management Team has been noticed; no comments have been received. Staff recommends approval of the grading permit as conditioned.

*Commissioner Comments/Questions*

Commissioner Johnson noted that he is on the Land Trust Board (which holds the trail easement). He asked who would be responsible for future maintenance, including ensure the inlet is not blocked. City Manager Berman stated that the culvert is on private property and it would be the property owner’s responsibility to maintain it. He added that the City staff check and maintain the trails, and would notify the owner if there were a problem with the culvert.

Parker adds that the City Engineer requested additional details regarding the inlet, and will review the design. Commissioner Poulton wanted clarification on the length of the culvert, where the leach field is located and further discussed restoring the creek. Planner Parker admits that this repair will likely be permanent.

*Public Comment*

J. Kitchen (56 Berry) encouraged the Planning Commission to approve the project. She stated that the alternate trails to Parker Creek Trail were dangerous and she was desirous of having the trail reopened.

*Applicant Comment*

RJ Smith (Owner of Solid Rock Construction and representative for the Applicant) explained that the entire bottom of the existing culvert is rusted out, and the trail has sunk as a result. The culvert will be replaced with an HDPE plastic pipe, which will stand up to anything but fire. After installation, the trail will be leveled and access improved. He clarified that once all the permits are obtained, culvert installation will take about two weeks, but there would be some additional work after that including repairing the driveway and fencing, and debris clean-up and restoration.

*Commissioner Discussion*

Commissioner Scott asked if there would be any upstream efforts to eliminate the source and prevent clogging of the culvert inlet in the future. Smith responded that the pipe will be bigger and smooth on the inside, which will allow for any debris to slide through, and that the area will be regarded to prevent erosion and clogging. Parker notes that property upstream is not owned by the applicants.

Commissioner Poulton asked about the status of other permits. Planner Parker stated that she had spoken with staff from CDFW, RWQCB and ACE; the CDFW 1600 (LSA) Permit should be forthcoming the next week or so, and that the Water Board permit process had been started. She added that the Army Corps determined that do not have jurisdiction over the creek and the project will not require a 404 Permit. Planner Parker suggested that submission of the approved permits/determinations to the City should be an additional Condition of Approval.

The Commissioners were also concerned about the erosion at the end of the culvert. Smith explained that the end of the culvert will be stabilized with rock and that the City Engineer will review the plan and installation. Commissioner Stockness is concerned about vegetation maintenance. Commissioner Scott find it odd that the staff report for this project includes a General Plan consistency analysis, yet that was never done for the VDU ordinance. Parker clarifies that a detailed analysis was done for the VDU ordinance.

Commissioner Poulton commented that he thought the City was being pushed into replacing the culvert rather than pursuing daylighting the creek due to the timing. Planner Parker explained that the applicant originally wanted to restore the creek. City staff and other agencies have reviewed the possibility and concluded that what would be required to daylight even a portion of the creek is beyond what should be expected of the applicant in terms of cost, logistics and time.

There was discussion regarding the trail easement. Planner Parker explained that a portion of the trail is actually on the Sebring property, rather than the dedicated easement on the adjacent property. She suggested that an easement for the existing trail location could be required for the house remodel currently being pursued by the Sebrings, but not really through this project since

it is essentially a repair. Commissioner Pinske feels that it is important to get the culver repaired prior to the next rainy season to stabilize the trail and prevent more erosion into the ASBS.

**A motion (Johnson/Stockton) to make the required findings and approve the project, amending the Conditions of Approval to add that the permits are to be submitted to the City. Motion passed (4-1) with Commissioner Poulton opposed.**

2. **Lake/Davies Appeal of Staff Determinations / Decisions:** Appeal of staff decisions to issue VDU licenses to properties with alleged second unit and / or building code violations. *Continued from the April 20, 2016 meeting.*

Planner Parker began her presentation by explaining that the appeal was continued to allow staff time to prepare a detailed response. All seven properties identified in the appeal were researched and all related City files were reviewed. It was her determination that the City did their due diligence prior to issuing the VDU licenses. She summarized additional information from the staff report to illustrate that the City has resolved all the alleged violations and that the decision regarding issuance of licensing was appropriate. One issue that came up during the investigation was how to determine what qualifies as a second unit. A policy from the Planning Commission would be a good topic for discussion at a future Planning Commission meeting. City Manager Berman adds that the appeal referred to FY15/16 licenses, which are no longer valid, but the Commission's decision will guide staff review of current and future license renewals. Staff's recommendation is to deny the appeal.

*Commissioner Comments/Questions*

Commissioner Stockness asked City Manager Berman if VDUs are always inspected prior to issuing licenses. He replied that the existing Ordinance does not require an inspection. However for 2016, an inspection process was added to application review; he clarified that the Ordinance states that the City has the option to inspect VDUs. Planner Parker added that the new Ordinance has a stronger statement that requires an inspection for a new license with an option for inspection for renewals. Stockness adds that it appears staff has made good progress in gaining compliance.

The Commissioners asked if there were any current outstanding legal issues / noncompliance with any VDUs. City Manager Berman replied that there are two or three units with their license on hold due to required septic work. He explained that the focus of the limited City Staff's time over the last year and a half has been to resolve septic, parking, and occupancy issues. The goal was to get VDUs into compliance. Commissioner Scott argued that this shouldn't be the City's problem; applications either meet the requirements or they don't. City Manager Berman replied that the City wants to work with its citizens and businesses owners. He feels that staff have acted appropriately and there is currently no basis to deny permits.

The Commissioners had questions about several of the properties identified in the Appeal. Berman emphasizes that the only violation found, 88 Van Wycke, has since made all the required corrections to the property and signed off by the City Building Inspector.

Commissioner Stockness feels that good progress has been made. Commissioner Poulton agrees with Scott; helping applicants costs the taxpayers money. Parker counters that it is standard practice in all jurisdictions that she knows of to tell applicants what is wrong with their application and how to get it right rather than just reject an incomplete application. With many types of applications, the cost of that is borne by the applicant. Similarly, when violations are

found, agencies work with property owners to gain compliance before taking more drastic measures, and often extra fees are charged. Berman adds that these VDU licenses involved a new set of rules being applied to existing operations, and so the applicants were given some leeway. Commissioner Scott counters that those operations were illegal in the first place according to the City's regulations. Planner Parker responded that VDUs have been unregulated in the past by the City, however still legal under the Single Family zoning regulations; these same discussions have been taking place since 2005.

Commissioner Pinske reminded the Commissioners that the Appeal is for Staff's decisions made on permits for the 2015/2016 year. The issues of the properties of concern have all been addressed. The 2016/2017 process is an improvement over the previous year. The Staff has been working on these improvements for the past eight to nine months and will continue to look at VDU renewals and licenses. The conversation should not be a personal one and needs to be kept civil. Commissioner Scott reiterated that the Applicants should be disqualified if the standards are not met. Her contention was that Staff should not be working with the Applicants. Commissioners Johnson and Stockness were appreciative of the efforts put forth by Staff to work fairly with the Applicants.

Commissioner Johnson noted that the Appeal has two parts: 1) specific properties have been questioned, and 2) allegations of illegal staff activity. Commissioner Pinske pointed out that the City Attorney should be present to discuss the illegal question. City Manager Berman clarified that staff's response focused on the issuance of VDU licenses; complaints of illegal staff activity is not something that is appealable, and any complaints about staff should go to the City Council.

#### *Public Comment*

Do. Cox (436 Ocean) asked for clarification regarding the one VDU per parcel requirement. Planner Parker responded that one VDU per parcel is correct. Cox also asked about defining second units and kitchens. The current situation at 88 Van Wycke is discussed where there is a long-term tenant upstairs and the VDU (with no kitchen) is downstairs. This is a Policy issue and no license has been issued yet. The issue raised in the Appeal regarding this property has been dealt with. Ms. Cox thanked Staff.

J. Kitchen (56 Berry) asked the Planning Commission to deny the Appeal. She said that the Staff did their due diligence and appreciates their efforts. She wants to stop seeing the City's resources being wasted over unfounded allegations such as these. She stated that this is an upsetting process and Staff should be treated with more respect.

Sterling (381 Ocean) stated she has been accused publicly of being out of compliance regarding her VDU and wishes that the concerned parties had first come to her personally about it. She added that her property is in compliance.

K. Lake (435 Ocean) stated that the Appeal was initiated due to lack of process and transparency. She wanted information about the VDUs in her neighborhood, some of which she stated had multiple VDUs on one property. This Appeal was not about specific properties, but about the process. She could not get the information she requested from Staff. She wants transparency in the process and is frustrated over the lack of it. She requested that the Appeal be upheld and to additionally direct staff to submit all license applications that are out of compliance or which are given exceptions be submitted to the Planning Commission for review.

T. Davies (435 Ocean) stated that the process should be fair for everyone. He believes the residents don't feel like fairness is extended to all. He added that exceptions are being made

through negotiations between staff and applicants. The group behind the Appeal feels that Staff is not being transparent. This should be a public process, not Staff interpretations, not emails or private meetings, and not under the radar; a public records act request should not have been necessary. Permits have been given to VDUs which have issues, are illegal and condoned by the City; many signs are still out of compliance for example. The appeal has not been a waste of time or money. He said that thanks to the moratorium, families are moving back to Trinidad. All exceptions need to have public oversight.

#### *Commissioner Comments*

Chair Pinske explained that the Appeal stated that seven properties should not have been issued VDU licenses. He agrees that transparency on exceptions is important, and that they should come before the Planning Commission.

Commissioner Johnson thanked the Appellants for their detailed packet; it shows citizens that care about their community. He appreciates Staff's efforts in responding as well. Regarding the specifics in the Appeal, he has no doubt that Staff attempted to resolve issues and didn't just accept permits. Being fair is subjective. He notes his own experience with helpful County staff. City Staff are obligated to resolve issues and correct non-compliance. The Appeal improved compliance. However, the Appeal is after the fact. Hindsight is 20x20; things could have been done differently, there were lessons learned. In the next two or three more years more changes will be made to the rules and process. Positive outcomes have come out of the Appeal. He wants to see a more robust Ordinance and a clear complaint process. He stated that the issues have been resolved, and improvements have been made. He understands the Appellants frustrations, but feels that the Appeal should be denied.

Commissioner Scott stated that Staff has too much power. She also agrees that the exceptions need to come to the Planning Commission. Emails between Staff and VDU property owners and managers show that they have relationships that the residents don't have. She wants incomplete applications thrown out. The Applicant should meet the requirements or have to reapply. This is not the City's problem. Staff shouldn't work for free and they have limited time. The Appeal should be upheld.

Commissioner Stockness stated that the Appeal brought attention to several issues. The City Clerk, City Manager, and Planning Commission need to be fair and transparent. The Ordinance exceptions are hard to enforce and the new Ordinance needs to be less complicated and more fair. VDUs need strict oversight. The neighborhood group brought this out and the appeal resulted in improved compliance and communication, and all the outstanding issues have been addressed. She would deny the Appeal.

Commissioner Poulton had no comment.

#### ***Motion (Johnson/Pinske) to deny the Appeal. Motion passed (4-0-1) with Commissioner Scott abstaining.***

Commissioner Pinske advised the Appellants that the Planning Commission decision can be appealed to the City Council within 10 working days.

## **VI. COUNCIL REPORT**

City Manager Berman reports that the City Council has met twice to discuss VDUs. The direction the Council has given has been posted to the City's website. There will be a meeting on the 14<sup>th</sup> at 6:00. Commissioner Scott requested a copy of the table posted to the City's

website. City Manager Berman asked the Commissioners if they would like a status update on the VDU licenses, they responded affirmatively.

## **VII. STAFF REPORT**

Several complaints and compliance issues are being addressed by the Building Inspector, mostly in the Westhaven / lower Berry Rd. area.

The next Planning Commission meeting is scheduled for September 21. Commissioners Johnson and Pinske will be out of town. Commissioner Poulton is unsure of his ability to attend, however will be available by phone in order for there to be a quorum. Parker notes that there will be at least one permit application on the agenda.

Commissioner Pinske asked about the status of the General Plan update. Planner Parker explained that she has been spending most of her time on VDUs. The Clean Beaches grant is moving forward; five owners will possibly receive money for their septic improvements. Continued work on the LCP Grant and General Plan update is on the horizon once the application for the VDU ordinance amendment is submitted to the Coastal Commission for certification. The General Plan Update will be on a future Planning Commission agenda. The Grant will expire in April, 2017 but there is a possibility for extension.

Planner Parker explained that the applicant's geologist is working with the Coastal Commission geologist on the Sebring remodel, but that the Commission probably won't see that project for a few months.

## **VIII. ADJOURNMENT**

Meeting adjourned at 8:40 p.m.

**Submitted by:**

**Cheryl Gunderson**

Interim Secretary to Planning Commission

**Approved by:**

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**Mike Pinske**

Planning Commission Chair