

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, April 5, 2011 at 7:00 p.m. in City Council Chambers at City Hall.

There were present:	Mayor	Garduno, presiding
	Councilmembers	Aragon, Rino, Shew, Velasquez
Also present:	City Manager	Gil de Rubio
	City Attorney	Beatty
	City Clerk	Garrett
Absent:	Councilmembers	Pando, Toupal

The pledge of allegiance was recited.

READING OF THE MINUTES. A motion to approve the minutes of the regular meeting of March 15, 2011, as submitted was made by Councilmember Shew and seconded by Councilmember Velasquez. The motion carried unanimously.

PUBLIC HEARING. New tavern liquor license request by Lumber Jacks Bar & Grill, LLC at 1133 N. Linden Avenue. Mayor Garduno called the hearing to order and announced that she would be presiding over the hearing. She stated the purpose, an application for the issuance of a new tavern liquor license filed by Lumber Jacks Bar & Grill, LLC at 1133 N. Linden Avenue, Trinidad, Colorado. Mayor Garduno then instructed those present on the order in which evidence and testimony would be heard as follows: Opening statements or remarks from the applicant followed by the same by the City Attorney, then applicant's evidence and testimony of witnesses, allowing questions of the witnesses from the City Council as the licensing authority, and interested parties qualified by residency and/or ownership of a business within City limits. Next she advised that she would call for the City's evidence and testimony of witnesses, allowing questions from the applicant or his/her attorney, the authority members, and then any party in interest. She then advised that she would thereafter call for a presentation of evidence and any testimony of witnesses by any party in interest who would answer questions posed first by the applicant or their attorney, the city and then the authority members. Rebuttal evidence would then be called for and finally closing arguments by the applicant, the City and any party in interest. Mayor Garduno said that the hearing would then be closed and she would call for a motion and discussion. She additionally advised that an executive session may follow the hearing, or the authority may choose to postpone its decision on the matter for a period of up to 30 days. She asked anyone who was going to testify to come forward and be administered the oath and said she reserved the right to limit testimony or questioning that was repetitive, cumulative, or argumentative and to set a limit on the duration of testimony if necessary. Also, formal rules of evidence would not be followed and the testimony and exhibits will be liberally admitted. She told those present that if they had an objection they should raise their hand and she would call upon them. She advised that she would rule on the objection and it would stand unless a councilmember requests a vote on that ruling, in which case admissibility of the testimony would be decided by a majority vote of Council present. Mayor Garduno announced that the neighborhood boundary set by the Liquor Licensing Authority is the corporate City limits and that the application packet constitutes the exhibits for this hearing in addition to any other documents offered by the applicant. Mayor Garduno asked the applicant if they were present, if they were representing themselves and if they were satisfied with the rules, to which Mr. Michael Tyler responded affirmatively. She called for opening statements, first from the applicant and then from the City, pointing out that they are not evidence but rather an opportunity to briefly summarize their respective positions. She further advised that opening statements could be waived and asked the applicant if they wished to make an opening statement. Joyce Paine, who identified herself as a co-owner of Lumber Jacks Bar & Grill, (LLC), said that she along with Mike Tyler are interested in obtaining a liquor license for the premises located at 1133 N. Linden Avenue, which can be seen very clearly from the southbound lane of Interstate 25 into the City of Trinidad. The purpose for them being before Council is to seek their approval for their liquor license. The facility was rapidly deteriorating and was to be just another empty building in Trinidad. She said they are currently in the process of revitalizing the facility to make it more attractive and appealing, rather than an eyesore. Their goal if granted the license is to provide a well-maintained, clean, comfortable and secure premise for their guests and staff. Additionally, she said they are committed to upholding State liquor laws and the current City of Trinidad regulations, while implementing staff policies and practices which will also promote a fair and positive working environment. As good citizens they will undertake meaningful involvement of Lumber Jacks Bar & Grill, LLC in selecting activities in the community and region to participate with and in. Their goals also include establishing beneficial relationships with diverse suppliers who will share their commitment to customer service, quality and competitive pricing. She continued that their pledge is to make Lumber Jacks Bar & Grill, LLC, the best place to entertain friends, family and business associates. City Attorney Beatty, for the public's benefit, clarified that the proposed location of the premise is the former Hollywood Sports Bar & Grill location, visible from I-25, on North Linden Avenue. Mayor Garduno called for witnesses and other evidence from the applicant. Joyce Paine said the petition provided is all they had to provide as such. City Attorney Beatty pointed out that Ms. Paine was referring to a collection of signatures in the Council packet containing six pages with what Mr. Tyler stated was 130 signatures. He asked if all of them were in support. Mr. Tyler said they were and upon questioning said they were obtained by going door to door primarily in the vicinity of the bar. City Attorney Beatty asked if there was any opposition. Mr. Tyler said there were a few, but not very many. Most were concerned about bikers and the bikes being too loud, a couple of whom were right close to the location. Joyce Paine offered that she had been at the proposed premises on a regular basis, although they've not been open except for operating an impromptu small business. She stated that she's heard the bikes going up and down Linden Avenue, but that they cannot control that. She said she thought the neighbors are concerned about having them at the bar partying and carrying on. She said they want a different type of customer/clientele; nothing that is going to be rowdy and out of control. City Attorney Beatty asked Mr. Tyler if he is a 98% owner of the LLC and if he is at least 21 years of age, to which Mr. Tyler responded affirmatively. He was asked if he ever operated a liquor license business or any other type of business and if he received formal education to do so. Mr. Tyler said he had not. When asked to explain his background, Mr. Tyler indicated by the name of the business, he used to be a logger in Idaho. He moved to Trinidad and for the past

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nine years he has been employed by Pioneer Natural Resources. City Attorney Beatty asked him what prompted his interest in running a bar. Mr. Tyler answered that he always wanted to run one and almost bought one about four years ago. He answered City Attorney Beatty's next question that he has not had any special training or experience. However, he said that Joyce has experience as a bar tender for quite a few years. The day to day operations will be handled by both himself and Joyce Paine. Mr. Tyler answered that he is familiar with State and local liquor laws. City Attorney Beatty reminded that a tavern license requires the availability of sandwiches and light snacks and asked their plan to provide such. Mr. Tyler said they'll mostly have snack food, but eventually would like to serve a lot more food, like hot dogs and hamburgers. They'll have chips and peanuts, and pre-packaged items. Joyce Paine said they are still in the process of dealing with the Health Department so initially they'll have anything pre-packaged that is able to be microwaved. City Attorney Beatty asked their current plans for security. Mr. Tyler said they'll have a bouncer on the weekends and will be obtaining a metal detector wand so their patrons cannot pack any guns or knives. He showed an illustration of the wand. He added that they will also have eight cameras that can be monitored from their house and the bar, although they are not yet ordered nor installed. They are working with Brian Falsetto locally on the camera system. City Attorney Beatty reminded that as applicants for a new license they bear the initial burden of showing that the reasonable requirements of the neighborhood and the desire of its adult inhabitants are not being satisfied by existing outlets. He asked if the need was established. Mr. Tyler said he believes it was, through petitions. City Attorney Beatty asked if there's any other evidence that would lead them to that conclusion. Ms. Paine said in general people have been asking how soon they'll be open and that she has seen quite a bit of interest. City Attorney Beatty advised that the liquor authority board must determine if the granting of this license will result in an undue concentration of taverns in the neighborhood, and the possible need for increased law enforcement resources in the area. He asked if there are existing taverns in proximity to the proposed premise. Mr. Tyler said there isn't any real close, and upon inquiry said he believed Gino's or the Royal to be the closest, although the Royal is out of City limits. He answered to inquiry that they are at least 500 feet from any school and that he has not been convicted of any crimes. City Attorney Beatty asked City Council to take judicial notice of the character reference letters provided for the applicant. He asked Mr. Tyler about compliance with building and fire codes, specifically if exit signs have been repaired and fire extinguishers certified as well as repairs made to the hand rail at the entrance to the bar. Mr. Tyler answered that all of those issues were addressed already. When asked about making the restrooms ADA compliant, Mr. Tyler said they haven't started on them yet, but it is in the plans. Regarding progress on the electrical work, plumbing, and heating, Mr. Tyler said the electrical work was being done today and the heating was fixed, except for insulating around the heat ducts. The plumbing has also been fixed. City Attorney Beatty asked if they understood that if the license is granted it cannot be issued until they are in substantial compliance with the requirements of the code. Mr. Tyler said they understand. Councilmember Rino asked if the lease agreement is contingent on them securing a license. Mr. Tyler answered that if the license is granted he will buy the building and then lease it to Lumber Jacks Bar & Grill, LLC. Councilmember Rino asked if the water damage to the building is being taken care of. Mr. Tyler said it has been taken care of. Councilmember Rino asked when they plan on opening if the license is granted. Mr. Tyler said it will be as soon as they can get everything fixed and the bathrooms done. City Attorney Beatty asked if the bar name signage, Hollywood, will be maintained. Mr. Tyler said they'll be taking that sign down and they are still working on plans for their sign but will probably include painting over the sign with their name and having lights shine on it. Mayor Garduno asked if any parties of interest were present. There were none. Mayor Garduno asked for the City's evidence and testimony of witnesses. City Attorney Beatty said there's not a great deal to present. He showed Council a radius map depicting the location of the proposed premise. He noted that there are not very many licensed premises within a one-half mile radius. The only tavern within the one-half mile radius is the Park Café and possibly some in the County on Linden Avenue. The neighborhood was set as corporate City limits. City Attorney Beatty asked if the Authority cared for additional evidence. Council declined. Mayor Garduno asked if the applicant had questions of City Attorney Beatty and if the Authority did. Both declined. Mayor Garduno acknowledged the lack of parties of interest being present to present evidence, and asked if there was any rebuttal evidence to be offered. There was none. She called for applicant's closing arguments and those of the City, which neither party offered. Mayor Garduno declared the hearing closed and called for discussion or a motion. A motion to approve the new tavern liquor license requested by Lumber Jacks Bar & Grill, LLC at 1133 N. Linden Avenue was made by Councilmember Rino. The motion was seconded by Councilmember Aragon and carried by a unanimous roll call vote of Council members present.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. None.

REPORT BY CITY MANAGER. Senior Center. City Manager Gil de Rubio updated Council regarding the Senior Center with respect to their utility bills. He advised that both lease agreements, that with the Senior Center and with SCCOG, identify the City as the responsible party for payment of the utility bills for the Senior Center. He concluded that he has instructed the Finance Director to start paying that bill.

Grant applications. City Manager Gil de Rubio advised Council that Planning Director Louis Fineberg submitted two grant applications last week, one for an historic structure assessment for the golf course clubhouse in the amount of \$14,526 with no match requirement, and the second for a survey and planning grant for the fish hatchery at Monument Lake in the amount of \$30,075.

Clubhouse. Council was told by City Manager Gil de Rubio that the clubhouse roof project is on schedule and is going smoothly. He said he'll be meeting with the Golf Association the week after next. He reminded Council that Councilmember Rino has been participating as a one-person subcommittee and asked for another Council member to volunteer to sit on that committee to help him along with this project, which he said would be beneficial at this time. Councilmember Velasquez volunteered. City Manager Gil de Rubio said in addition he will investigate the fees charged by the Golf Association and will recommend a special fee attached to the current green fees to go toward capital improvements to the clubhouse. The additional fees will be exempted from students and seniors as well as handicapped individuals. He said he'll run his recommendations before Councilmember Velasquez and Rino and then back before the entire Council regarding this idea.

ARPA. City Manager Gil de Rubio called to Council's attention at their seating places the February, 2011, ARPA bill. He pointed out that the mills are down to 7.74, and even though the energy rate continues at just under \$.10, \$0.09350, the bill has leveled off to around \$500,000. He said it is a big improvement from January's \$600,000 bill.

Financial reports. City Manager Gil de Rubio reviewed with Council the February, 2011, closing General Fund

financial report. He said expenditures should be at roughly 16%, whereas overall they are at about 13.3%, crediting staff for remaining frugal with spending. However, he said that revenues are down by about 3%, which creates a negative fund balance of \$80,144. He said he hopes sales tax will pick up. Council's attention was drawn to the Power & Light Fund summary as of the end of February. City Manager Gil de Rubio said they finished February with a negative \$46,630 fund balance. The credit due to be repaid to customers for January had been done, and the cash balance should start to increase in the next few months. The Water Fund has a positive fund balance at the end of February of \$128,921 and net balance with the cash reserve at just under \$6 million dollars. The Gas Fund yielded a reserve of \$398,381. At the end of 2010 there was a deferred expense of approximately \$600,000 for gas cost allowance. He said that number has risen to \$800,000. If they subtract the almost \$400,000 it results in a negative balance. He said the City is losing money and it is starting to get away from us and it is a substantial amount of money. He told Council that he and Finance Director Blatnik and Utilities Supt. Fernandez will be coming back to them in the next month. Finally, he pointed to the Sewer Fund which ended February with a negative \$188,594 fund balance (revenues under expenses), and a negative \$372,426 net balance. Councilmember Rino asked what the City's sales tax is looking like compared to this same time last year. Finance Director Blatnik said the City only has one month, January, because it is always two months in arrears, but that it was down 3% from last January, which City Manager Gil de Rubio pointed out had been down 2-3% from 2009. She said the February report should be received next week. Councilmember Rino asked how the City ended 2010. Finance Director Blatnik said the City ended the year 5% lower than 2009, which equated to a little over one-half million dollars. Councilmember Rino asked what that does to the CIP programs. City Manager Gil de Rubio said that fund is good as far as revenues are concerned. It is not being affected.

REPORT BY CITY ATTORNEY. 2009 ICC Codes. City Attorney Beatty informed Council with respect to their upcoming consideration of the adoption of the 2009 editions of the International Codes, the building codes, that a question and answer orientation session has been scheduled for Tuesday, April 26th, from 8:00 a.m. to 5:00 p.m. in the Leone Room at the college. Gill Rossmiller from Colorado Code Consultants will be leading that orientation session. He will provide an overview of the codes and compare them with the current 2003 editions.

ARPA. City Attorney Beatty pointed out to Council that he placed at their seating places a memo to keep them apprised of a few matters relative to ARPA, with the intent of foregoing an executive session. However, he said if they'd like an executive session for legal advice they can move to add one to the agenda.

Liquor. City Attorney Beatty told Council that there are two legislative bills at the State House pending. The first is 11-1284 which would seek to change the definition of fermented malt beverage license and would permit convenience and grocery stores to sell full strength beer. They are currently restricted to 3.2% beer. That bill is before the full House on second reading. The second bill only applies to convenience stores, 11-194, and would create a new license in the Colorado Beer Code called malt liquor retailers license and would allow the sale of full strength beer in convenience stores. This bill is before the Senate on second reading. He concluded that it is possible that one or both bills could pass.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Permit Application and Report of Changes – Manager's Registration – filed by Alfred L. Mantelli d/b/a Trinidad Lounge at 421 N. Commercial Street. Mayor Garduno asked Mr. Mantelli if he wished to offer any comments on the application. Mr. Mantelli said he did not other than they are a very nice Council and thanked them. He offered to answer questions. City Attorney Beatty asked Mr. Mantelli if through this application it is his intent to designate Toni Mantelli as manager. Mr. Mantelli said he thought the law says he should have a manager or owner on the floor at all times when open for business. Therefore, his wife will be there if he is not and registered as manager. He noted that the last time he had a registered manager was in 1991 when he went to Desert Storm. A motion to approve the Manager's Registration of Toni Mantelli was made by Councilmember Rino and seconded by Councilmember Shew. The motion carried unanimously upon roll call vote.

Hotel and restaurant liquor license renewal request by Bella Luna, LLC d/b/a Bella Luna Pizzeria at 121 W. Main Street. Councilmember Rino moved for the approval of the license renewal. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote of Council members present.

Special Events Permit request by Trinidad State Junior College Educational Foundation (Malt, Vinous and Spirituous) at the gymnasium at 600 Prospect Street on April 16, 2011. A motion to approve the permit was made by Councilmember Shew and seconded by Councilmember Velasquez. The motion carried by a unanimous roll call vote.

Consideration of request to revise Tastings Permit by Opera House Wine & Spirits d/b/a Tire Shop Wine & Spirits (rather than from 4 to 6:00 p.m., applicant seeks tastings from 3 to 7:00 p.m.). Michelle Miles addressed Council and said as she understands it the ordinance allows tastings up to four hours per day and she originally applied for two hours per day. She said she doesn't plan to expand her hours, however she's encountered people showing up early and showing up late, and wants to be in compliance if someone comes in at five minutes before 6:00 p.m. Ms. Miles said the response has been great. It has been a good first impression of Trinidad for people coming off of I-25. On the issue of sales tax her experience has been that during the warm weather months about 40% of her business is right off of the interstate. On the matter discussed by City Attorney Beatty, Ms. Miles said you would expect her to not want full strength beer sales in convenience stores, but will accept whatever the legislature decides. However, she said she really wanted to call to Council's attention something that she thought they may be concerned about. Previously this type of a change would have required a full hearing. The lobbyists and Municipal League have changed the bill to rubber stamp it on renewal. That means they would not have a full public hearing process. She said that Budweiser is 11% and that she has beers that are stronger than wines. She suggested that Council might want to talk to CML and let them know that they want the bill as originally proposed so there would be a public hearing process. Councilmember Rino confirmed that the revision being sought tonight is to allow tastings from 3:00 p.m. to 7:00 p.m. rather than from 4:00 p.m. to 6:00 p.m. He asked if there are any other liquor stores doing the same thing or if this is just for this store. Ms. Miles said any liquor store is allowed to apply for a tastings permit, but no one has to her knowledge. City Attorney Beatty said that was correct. This is the only one right now. Councilmember Rino moved to

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approve the revision to allow tastings at Tire Shop Wine & Spirits from 3:00 p.m. to 7:00 p.m. on Fridays and Saturdays. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote of Council.

Final plat request by Viaero Wireless on behalf of Moltrtr Brothers, LLC of 38.4 acres located west of Oak Street, approximately south of East 10th Street, and approximately north of Alamo Street. Planning Director Louis Fineberg addressed Council and explained that this is a final plat request to subdivide 38.4 acres into two lots, one that is approximately three acres and a second that is approximately 35 ½ acres. A conditional use permit for a wireless communication facility was approved by the Planning Commission on September 14, 2010 along with the preliminary plat application. The preliminary plat was subsequently approved by City Council on October 14, 2010. He said this is a request for final plat approval. Its approval was recommended by the Planning Commission with the conditions set forth in the staff report. He invited Ed Gonzales on behalf of Viaero Wireless to share plans with Council and show them a prototype of the facilities, per Council's request at the previous work session. He concluded that most of the issues in the staff report are technical in nature. Councilmember Rino said he understands this is for a communications tower and asked how they will get up to the site and who will build and maintain the road to the top of the hill. Planning Director Fineberg said there is an easement to the property, but said it is a rough road. When the road is developed at the time of site development, it will have to be upgraded. Any alignment changes will need to be made at that time because right now as depicted in the plan there are some issues of the bisecting of parcels. It is called out to be addressed at the time of the building permit. The road is the responsibility of the property owner to maintain. The City will have the right of access and right to maintain it if necessary, but is not obligated. He confirmed with Supt. Fernandez that the City still owns the water tank and the reservoir. Councilmember Shew asked about fencing around the City's property. Mr. Fineberg said there's no existing fence as it has been torn down. Councilmember Rino asked for a plat showing the City-owned property. Councilmember Shew asked the tower's location. Ed Gonzales, Viaero Wireless, handed out photos and other information to help Council visualize their facilities. He said that Viaero will improve the road to the point whereby they can bring in construction traffic and traffic necessary for the maintenance of the tower. He added that he met with Public Works Director Mike Valentine about the need to improve drainage and erosion control to the road. Their immediate improvements will be to get the trucks up to the site, but will not be to City street standards until ultimate development actually occurs. He further explained that Moltrtr Brothers own the rest of the property and at some point they contemplate possible residential use, but are not decided. At that point the road will be brought up to City standards, with slope and grade, street improvements and utilities, etc. The only utility Viaero will need is power. It will be an un-manned facility with one trip per month being made to the site for maintenance. Councilmember Rino expressed concern about security of the facility with the hill not being fenced because of the number of four-wheelers that traverse it. Mr. Gonzales said their facilities will be fenced. They will have an approximate 60'x60' chain-linked area with barbed wire across the top, and protection of the guy wires as necessary. He added that the owner would like to put up a gate at the hair-pin turn on the road, because there's an adjacent property owner that uses the road almost to that point. He said his understanding is that PWD Valentine is okay with that so long as the City is provided a key for access whenever needed. Obviously, Mr. Gonzales said that it wouldn't keep the ATVs out because they've got trails coming in from all different directions. He reiterated that they will protect their facility as best they can and will maintain their tower should there be vandalism, etc. A motion to approve the final plat was made by Councilmember Shew and was seconded by Councilmember Velasquez. The motion carried by a unanimous roll call vote.

BILLS. A motion to approve the bills was made by Councilmember Velasquez. The motion was seconded by Councilmember Aragon. Roll call was taken on the motion. The motion carried unanimously.

PAYROLL, March 19, 2011 through April 1, 2011. A motion to approve the payroll was made by Councilmember Rino and seconded by Councilmember Shew. The motion carried unanimously.

ADJOURNMENT. There being no further business to come before Council, a motion to adjourn the regular meeting was made by Councilmember Velasquez and seconded by Councilmember Aragon. The meeting was adjourned by unanimous vote of Council.

ATTEST:

JENNIE GARDUNO, Mayor

AUDRA GARRETT, City Clerk