

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, August 5, 2014, at 7:00 p.m. in City Council Chambers at City Hall.

There were present:	Mayor Pro-Tem	Bolton, presiding (Mayor Reorda entered at 7:08 p.m.)
	Councilmembers	Bonato, Mattie, Miles, Torres
Also present:	Acting City Manager	Garrett
	City Attorney	Downs
	Asst. City Clerk	Valencich
Absent:	Councilmember	Fletcher
	Mayor	Reorda (entered at 7:08 p.m.)

Mayor Pro-Tem Bolton called the meeting to order at 7:05 p.m.

The pledge of allegiance was recited.

APPROVAL OF THE MINUTES. Regular Meeting of July 15, 2014 and Special Meetings of July 22 and 29, 2014. A motion to approve the minutes as presented was made by Councilmember Bonato and seconded by Councilmember Torres. The motion carried unanimously.

PUBLIC HEARING. Appeal of a decision of the Planning, Zoning and Variance Commission filed by Forever Green, LLC, Application #2014-MMC-16 and 2014-OPCO-16, Request for Conditional Use Permit to establish a Medical Marijuana Center and a Medical Marijuana Optional Premise Cultivation Operation at 3019 Toupal Drive. City Attorney Downs addressed Council. He advised that before them for consideration was the appeal of the July 8th Planning, Zoning and Variance Commission meeting. He pointed to documents at Council's seating places contained in a file folder. Mayor Reorda entered the meeting at 7:08 p.m. City Attorney Downs continued. He pointed to copies of two ordinances in the file, Section 14-139, Appeals from Planning, Zoning and Variance Commission; and 14-141, Conduct of Hearing. He also pointed to a hearing outline which discusses preliminary matters. Also contained in the file he noted was a list of Conditional Use Permit applications, all of which had been granted by the Planning, Zoning and Variance Commission, excepting one that was withdrawn and one that was tabled and acted on at a later date and eventually approved. All had been approved except the application for Forever Green, LLC. In review of the ordinances and relative law he explained that there are only two parties involved in this proceeding. The first party is the aggrieved party by a decision of the Planning, Zoning and Variance Commission, Terrance Sanchez, and Howard and Nancy Lackey, represented by Steven McConnell, who has brought this appeal before Council. The other party is the City of Trinidad. In that capacity, City Attorney Downs told Council that he was before them to represent the City in this proceeding. He added that this is not a hearing for Council to receive public comment from concerned citizens, neighboring property owners, etc., Concerned citizens and interested parties are able to speak at the Planning Commission meeting concerning the conditional use permit process and before City Council at the public hearing when the applicant is trying to obtain a license. This is an evidentiary hearing. He referred to Section 14-141 of the code of ordinances and told Council that the appropriate thing to do is have Mr. McConnell, as their attorney, call witnesses and let him outline his case and how his clients were the recipients of this decision. City Attorney Downs recognized that there has been a tremendous amount of speculation, talk, and conjecture about possible meetings, third-party involvement, etc. He told Council he was going to ask each of them by name for liability purposes to insure they have been able to keep themselves free from lobbying and external influences and are able to make a decision on this matter based on the hearing this evening. He asked Councilmembers Mattie, Bolton, Miles, Torres, Bonato and Mayor Reorda if each of them was able to base their decision this evening entirely on the evidence, to which each responded affirmatively. He suggested that Mr. McConnell be allowed to address Council and said that he and Mr. McConnell have agreed to waive opening statements but that there would be closing remarks. Steve McConnell addressed Council and identified himself for the record by name and said he is a lawyer with the law firm of Camm & McConnell in Raton, New Mexico, licensed by the Colorado Bar for the past 22 years to practice law in Colorado, license #21963. Mr. McConnell called Louis Fineberg to provide testimony and he was sworn in. He identified himself as Louis Michael Fineberg, Planning Director for the City of Trinidad. Upon questioning, Mr. Fineberg testified that his duties as Planning Director generally deal with most land use issues, processing of land use applications, he's involved with infrastructure development, obtaining grants, and things of that nature. In performing his duties he said he has become familiar with the planning and zoning regulations under the municipal code. He participated in the application for conditional use permit applications made by Forever Green, LLC by review of their application, preparing the staff memo and overseeing the Planning, Zoning and Variance Commission meeting. He was present at the meeting on July 8, 2014. He identified the staff report he prepared for this application. Mr. McConnell offered the staff report into the record. Planning Director Fineberg testified upon Mr. McConnell's questioning that he is aware that marijuana is legal in the state of Colorado, having been made legal by an amendment to the Colorado Constitution, Constitution Article 18, Section 16, and thereafter legalized in Colorado by the adoption of two acts by the Colorado Legislature, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code. He testified that he is more or less familiar with the regulatory schemes contained in those two acts, but not an expert. The reason he is familiar with those acts is because his job is to review conditional use permits for medical and retail marijuana establishments, and so he needs to be familiar with those things. Those acts and the Constitutional Amendment outline the state of Colorado licensing procedure for medical marijuana facilities. The acts and regulations promulgated in Denver set forth regulations for the regulation of the sale and cultivation of marijuana. They include restrictions and conditions imposed to achieve safety in that industry. Planning Director Fineberg further testified that Section 14, Article 12 of the Trinidad Municipal Code legalizes marijuana in the City of Trinidad and allows marijuana establishments to be established. He testified that it contains conditions for the safe operation of those establishments. Some of the conditions are that they must be in non-residential zones and not within 1,000 feet of a school. Those are the requirements of the ordinance adopted by the City. It requires the licensee to abide by all Colorado laws regarding the

facilities. Section 14-102 which he cited in his staff report states conditional use permits are allowed in various zones and districts but are subject to basic considerations and other considerations as may be deemed necessary by the Commission to protect the general health, safety, welfare and morals of the area in which the conditional use may be located. The ordinance speaks to general health and general safety. Mr. McConnell asked if it was his view that the planning and zoning policy of the City of Trinidad should balance or weigh if the marijuana industry is a safety risk. Planning Director Fineberg answered not in and of itself, no. It should be treated like any other use requiring a conditional use permit, because of its legalization. Any danger that the law should seek to protect the public from concerning the sale and use of marijuana is addressed elsewhere in the law such as the medical marijuana code rather than the zoning ordinances. The staff report states that Section 14-63 of the municipal code requires a site plan and the applicant did submit that plan. The plan is contained in the packet provided to City Council. Mr. McConnell moved the introduction of the site plan. Planning Director Fineberg testified that he remembered his review of the site plan and that it was adequate and adequate with the regard to the recommendations made on the staff report. He testified that he is familiar with Section 14-27 of the municipal code which defines what a conditional use is. It states conditional uses are uses specifically allowed within a zone district provided certain conditions are met as set forth in writing by the Planning, Zoning and Variance Commission. The staff report set out conditions to be met by this applicant as a part of his recommendation. The applicant did not disagree or refuse to meet those conditions. The Planning, Zoning and Variance Commission did not set additional conditions other than those in the staff report. He opined that he felt the public welfare and safety will be met by the conditions he imposed on this applicant. Other applicants have been granted conditional use permits under the City zoning ordinances for medical marijuana establishments and optional cultivation operations. He counted from the list that 13 applicants have been approved, each having multiple applications. He estimated the number to be closer to 26 or 27. All were approved by the Planning Commission without appeal to the City Council. The only applicant denied a conditional use permit was Forever Green, LLC. Mr. McConnell asked if there was anything factually different about this application that would warrant its denial. Planning Director Fineberg said every application is always unique and thought that it is the Planning Commission's job to evaluate the circumstances on a case by case basis. He opined that he didn't feel the denial was warranted. When asked if the traffic volume was different, Planning Director Fineberg stated that he didn't have enough information to make that point. He stated he felt there to be sufficient parking and lighting and that ventilation would be addressed with the building permit. A filtration system is recommended to minimize odors associated with the sale and cultivation of marijuana. Upon further questioning, Planning Director Fineberg testified that at the July 8, 2014, Planning, Zoning and Variance Commission meeting, after the Forever Green, LLC conditional use permits were denied the Planning Commission granted a retail marijuana application for a location on Commercial Street. The Toupal Drive location has at least as good of parking and access by public roads as the Commercial Street location. The location at 3019 Toupal Drive is zoned Community Commercial and a marijuana facility is an allowable use. Mr. McConnell asked if he would be overstating if he said Community Commercial zoning is the most liberal zoning so far as commercial uses are concerned. Planning Director Fineberg agreed and added that Industrial zoning is also as liberal as it allows for everything except residential use. Mr. McConnell read Section 14-62 of the Trinidad Municipal Code which defines permitted uses by right within the Community Commercial district, all businesses of a retail or service nature, wholesaling of products, fabrication or assembling incidental to retail sales, mortuary or embalming establishment or school, accessory building or use (not involving open storage), when located at the same lot, all permitted uses in the High Density Residential District, Neighborhood Service District, and churches and schools or other semi-public uses. He also read Section 14-63 of the code which defines conditional uses in the Community Commercial district, enterprises or businesses of the same nature, electric substations and gas regulator stations, fire stations, police stations and telephone exchanges, and water reservoirs, water storage tanks, water pumping stations and sewer lift stations. Planning Director Fineberg agreed with his reading of the definitions. He testified that medical marijuana establishments, selling and cultivating, would be permitted as conditional uses in this zoning district as established by the ordinance adopting marijuana regulations passed by the City. Mr. McConnell offered the Planning, Zoning and Variance Commission minutes of July 8, 2014 into the record. Planning Director Fineberg testified that he attended that meeting. He said he recommended in his staff report and before the Planning, Zoning and Variance Commission that the conditional use permits be granted. He testified that it is no different now that the matter is on appeal. He recommended to City Council that the conditional use permit applications be approved. City Attorney Downs cross-examined Planning Director Fineberg. Planning Director Fineberg testified that he was seated as a member of staff at the Planning Commission meeting on July 8, 2014. He and City Attorney Downs advised the Planning, Zoning and Variance Commission about the proceedings and legal standards with respect to what they were to do as they have done throughout the course of implementation of marijuana throughout the City. City Attorney Downs asked if he would agree that there were a number of extraneous considerations made by the Commission that didn't seem germane for conditional use permit granting or denial. Planning Director Fineberg said he didn't think they were extraneous, per se. The conversation was about things that the Commission shouldn't be discussing. There was more discussion with respect to that application than others. City Attorney Downs asked if there were unusual concerns for that location. Planning Director Fineberg answered that there was an over emphasis on some concerns. There was a very strong concern with respect to traffic volume on for that location on Toupal Drive. Traffic hadn't been a very large concern with other applications. It had been discussed on several applications but not at this length. When asked what some things are that a location would be eliminated from consideration for, Planning Director Fineberg stated that it was decided by City Council by ordinance, being within 1,000 feet from a school and they are not allowed in a residential district. There are other parts of the ordinance that deal with safety and it is a concern in any location. All considerations made by the Planning Department were recommended to the Planning, Zoning and Variance Commission. City Attorney Downs asked if it is his consideration to City Council to reverse the denial of the Planning, Zoning and Variance Commission. Planning Director Fineberg stated that he believes the proposed use to be an appropriate use at this location. Attorney Steve McConnell asked Planning Director Fineberg if it is correct that it isn't the province of the Planning, Zoning and Variance Commission to make a choice between businesses, picking one over another based on which is subjectively a better business. Planning Director Fineberg agreed and added that it is the business of the property owner. He agreed that it is not a function of Planning and Zoning or zoning ordinances to make a determination of what is a better business, a medical marijuana outfit or a car dealing outfit. Mr. McConnell pointed to the Planning Commission minutes whereby one Planning Commissioner stated that he voted this way because of this type of business and the other businesses that would be affected in the immediate area. He asked if that is a proper Planning and Zoning consideration. Planning Director Fineberg responded that he believed it to be outside of the purview of the Planning Commission. Planning Director Fineberg was dismissed. Terrance Xavier Sanchez was called upon to testify and was sworn in. He testified to Mr. McConnell's questioning that Forever Green, LLC, is a limited liability company in the State of Colorado, of which he is the sole manager/member. Regarding the land on Toupal Drive, John H. and Marsha M. Lackey

Trust is the owner, and Howard Lackey is the Trustee. They are aware of the application he has made. The land owner has agreed to allow him to use that land as proposed if the application is granted. The agreement is in writing and filed with the City. A site plan has been provided in support of the application. He testified that he was not told by the Planning Commission or any City official that the site plan was inadequate. In fact he was told by former Asst. Planner (Karen) Wolf that the site plan looked good and he would be notified if there was an issue otherwise. He was not notified. He said he was made aware of the conditions on the use of this property. The conditions were listed on the conditional use permit application. Mr. Sanchez was handed a document to identify. He identified it as a document from the Planning Department concerning the conditional use permit on Toupal Drive containing background information and conditions that must be met. It was the report from Planning Director Louis Fineberg. Mr. McConnell asked Mr. Sanchez if the City imposed other conditions, to which Mr. Sanchez advised that they did not. He testified that he is willing to meet the conditions he has been made aware of. Mr. McConnell advised that he had a video recording of the July 8, 2014, Planning, Zoning and Variance Commission meeting to provide Council with a true and accurate representation of those proceedings. City Attorney Downs said he had no objection to its admission, however advised that he provided Council with a copy of it already. He clarified that he was not asking that it be played now. Mr. McConnell asked Mr. Sanchez why he appealed the Planning, Zoning and Variance Commission's decision. Mr. Sanchez answered that he appealed the decision to deny his conditional use permit application because he felt he was treated with personal bias, extreme prejudice against this location and that the location was discriminated against by the Commission as compared to every other application for the same use. He further testified that he had applied for a conditional use permit at a different location previously on Cedar Street and it was approved rather quickly. He was asked if there's a difference between Cedar Street and the Toupal Drive location in his view. Mr. Sanchez answered not at all. City Attorney Downs cross-examined Mr. Sanchez. He asked Mr. Sanchez if he thinks a medical marijuana facility could be safely operated at the Toupal Drive location. Mr. Sanchez responded affirmatively. He opined that it provides greater safety, buffering, parking, and ease of access from security standpoint. From a security standpoint he said he'd be better able to manage the property compared to other application locations. He concluded that he thinks this is a great location, in his opinion the best in Trinidad. When compared to other applicants those were approved and granted conditional use permits. He said he wasn't aware of any that had been denied. City Attorney Downs had not questions. Howard Matt Lackey was called upon to testify and was sworn in. He testified that the subject land is owned by John H. and Marsha M. Lackey Trust and that he is the manager of the Trust and properties. He has power of attorney and is the Trustee. There is no one else to speak for the land owner trust. To questioning, Mr. Lackey testified that his family had car dealerships in Trinidad and Raton for quite some time. The one on Toupal Drive he recalled to have been built in 1986 and opened April 1, 1986. He and his father were partners in the business. Circle (Chevrolet) stopped operating in 2008, he believed. General Motors went belly up and there was general malaise within the economy and in Trinidad. At that time they entered into an agreement with Phil Long to move the Toyota franchise from Raton, New Mexico, to Toupal Drive in Trinidad. The Trust leased the property to Phil Long. A lease was set up for two-year intervals while they were working with Toyota on obtaining the franchise granted permanently. They are not currently under a two-year lease. Phil Long let the lease lapse at the end of December, 2013. They have continued at the Toupal Drive location on a month-to-month basis. He continued in response to questioning that he is willing to lease the property to Forever Green, LLC. It is his business decision and the Lackey's Trust business decision to not have the car dealership on this premise at this time. The financial consideration for the new business is more substantial than what is presently available. Phil Long was given an opportunity to continue at the Toupal Drive location at the new rates. They could enter either continue the lease or they could purchase the property. Mr. McConnell asked Mr. Lackey who in his view should decide what legal business he chooses to operate at that location. Mr. Lackey answered that it is a private property owner right so the Trust should make that decision. City Attorney Downs asked Mr. Lackey if he is the only decision maker for the Trust. Mr. Lackey explained that his mother is still alive so he consults with her. She helps with the decision making process for the Lackey Trust to a certain extent. He said it is her desire to go forward with this business plan as well. He further testified that it was not his intent at the end of 2013/beginning of 2014 to conclude the business relationship with Phil Long Toyota. After the expiration of the lease he said he had no contact from Phil Long organization. This opportunity came forward with much better financial opportunity for use of the property. He said it is the highest and best use of the property. The non-renewal by Phil Long and this business opportunity, was what caused him to move forward with the course of action he is pursuing. Mr. McConnell provided closing remarks. He said this is a hearing on conditional use permits. When considering an appeal for conditional use permits he urged that it needs to be taken up under the direction of the City of Trinidad municipal code. He said he is asking simply for the fair application of the zoning ordinances and that they be considered consistently across the board with regard to all applicants. He reminded Council that they heard Planning Director Louis Fineberg testify that 13 were granted and this one was singled out and denied. He said they are asking for equal consideration with all of the other applicants. This is a zoning matter not a policy matter where the Commission should take up the public policy concerns of what is best or better or right or wrong. Marijuana is legal as Planning Director Fineberg testified from the Colorado Constitution to the Municipal ordinances. They are not here in a zoning matter to weigh the evils or benefits of marijuana. This is a zoning where the use is permitted. He reminded that they were given the ordinances on conditional uses. If the use is permitted and conditions are properly imposed the ordinance directs that the conditional use permit should be granted. There is no evidence that the conditional use permit application should not be granted. Planning Director Fineberg made that recommendation. It is in the record on the staff report and they have heard his testimony. He did consider the safety issues. The safety issues can be met by the reasonable conditions recommended to be imposed. The reasons some of the Planning Commission members gave for denying the application was safety or a balance between this and another business. Those are pre-textual. They are made up. They are non-issues under the zoning code. He continued that what was made of that last hearing were extraneous matters. They were extraneous matters in his view because of the perception of those Commissioners and of the public that this was somehow an eviction of the Phil Long dealership. The thought process that can be seen in the minutes and the video was that it was a balance, what is better on I-25 - car dealership or medical marijuana dispensary. It is a nice philosophic quandary but not zoning ordinance or zoning law. Mr. McConnell told Council that if the actions of any City body, the Planning Commission or this body, are not based in law, the law holds them to be arbitrary and capricious. If the action of a decision maker is arbitrary and capricious, it is reversed on appeal, either here or at District Court later. Mr. McConnell brought with him one case opinion of the Colorado Supreme Court, *Western Paving v. Board of County Commissioners, Boulder County*. All Justices sat in listening to the argument and rendering the opinion. It was a case where application was made for a conditional use permit to have a sand and gravel quarry. It was in a permitted zoning district. The reason Boulder required a conditional use permit was because it was in more of the flood plain. When the City Commission denied the permit they took the appeal to the Colorado Supreme Court who reversed the denial saying the conditional use permit must under the law be granted because of the words and application of the zoning

ordinances. The court explains: "We do not interpret the zoning resolution permitting the Commission to impose conditions and safeguards as intending to serve as a grounds for the denial of lawful use. We consider the denial of a special use permit on that basis, that the use would not be consistent or in harmony with the character of the surrounding neighborhood, to be inherently arbitrary and capricious. It is apparent from the record that the board abandoned the proper issues and struck the application on considerations totally outside the scope of proper inquiry." He continued that the ordinances were shown to Council, and this is a proper use of the property with proper conditions on uses. The Planning, Zoning and Variance Commission considered a balance between which business is subjectively better and that is not the legal standard and doesn't protect the rights of applicant or the property owners. He asked that the conditional use permits be granted. City Attorney Downs provided closing remarks. He told Council that from the moment the decision came down on July 8, 2014, he had an overriding feeling and notion that a legal liability had been created for the City that did not exist previously. He said he is sworn to avoid and prevent that legal liability and minimize it. This legal liability did not need to be created. If there was something for him to fight, he said he would fight it. If there were some kind of reason for which the Planning, Zoning and Variance Commission was able to say this is not a permissible location or in compliance with the zoning code, he said he would fight that battle. He told Council that he has spent time telling the Commission along with the Planning Director what is a valid consideration and what is not. He said he sat there that night and this didn't need to occur. He continued that at the conclusion of that meeting Planning Director Fineberg leaned over to him and said "don't you think we need reasons why they said no?" So, he said he asked them for their reasons. Two of those voting no opted not to say; Commissioner Frank Leone cited a safety issue and Commissioner Bill Winter cited the type of business and other businesses that would be affected in the immediate area. Those were invalid considerations and criteria. Because we are in the marijuana game and it is a permissible use, he said he is in agreement with Mr. McConnell. It is a permissible use. He concluded that for him to say otherwise would be disingenuous and would perpetuate and prolong a legal liability that arose for the City on July 8, 2014. Councilmember Miles moved to override the decision / reverse the denial of the Planning, Zoning and Variance Commission for the application filed by Forever Green, LLC, Application #2014-MMC-16 and 2014-OPCO-16, Request for Conditional Use Permit to establish a Medical Marijuana Center and a Medical Marijuana Optional Premise Cultivation Operation at 3019 Toupal Drive. Councilmember Bolton seconded the motion. Councilmember Miles said she watched the video and listened to the public testimony and made notes while watching the DVD of the proceedings. She said she agreed with City Attorney Downs. Safety, traffic and type of business and its affect on others were the reasons cited and two Commission members didn't provide reasons. We are talking about a possible infringement on property rights. It is not in the purview of the Planning and Zoning Commission to decide what Mr. Lackey decides is the highest and best use of his property. She provided an analogy exemplifying a liquor store business and also a gun store. She said regarding the issue on traffic she listened closely to and there was no evidence that it would be a problem. There was only loose conjecture that it might be. The loose conjecture was based upon a retail use. We are considering medical use where concerns about interstate traffic are much lower than they are for retail. There may be a traffic concern but one can't vote no based on scant evidence. She said her reasons for overturning the decision is because there was not enough evidence on the traffic issue and she didn't think a decision can be based upon reasons that are not in the purview and potentially violate property rights. Also, two members didn't express a reason at all. She said she is concerned about liability for the City and that the decision was arbitrary and capricious. A member of the audience attempted to address Council. When she was denied the opportunity to comment she told Council they were violating their public hearing notice by not allowing public comment. City Attorney Downs advised that the posting stated interested persons would be able to address Council and speak. He said that language was included incorrectly and that he asked Mr. McConnell if he would like to have it reposted and the hearing continued. Mr. McConnell said he did not. City Attorney Downs said his legal opinion is that the ordinance is clear. In this kind of hearing it is not appropriate to have public comment. He reiterated that it was posted incorrectly, however the appellant waived the requirement of reposting. Mayor Reorda commented that it is difficult for some people to understand that this is a state law that was supported by 54% of the voters. Roll call was taken on the motion to reverse the denial and carried by majority with all Council members present voting aye, excepting Councilmember Bonato who cast a dissenting vote.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. Thomas Murphy addressed Council. He said he was going to borrow the title "I Have A Dream" from Martin Luther King. He said his dream is that someday soon we'll have a City government that is transparent and with honest enough people. Right now we have none of that. Trinidad briefly had a glimpse of that type of government when Ed Gil de Rubio was here. The town rallied for him and so did most of the City staff. So what did the City Council do? They hired Tom Acre, much to the counter advice that they had given some of the Council members that he wasn't going to work out, and here we are three years later with nothing having been done. He said there are three problems he was going to address. First he named ARPA. Mr. Murphy stated the City didn't do anything and he didn't understand why Council is patting themselves on the back when all they did was get \$600,000 out of over \$700,000 that was spent in legal fees. They also reaffirmed a \$175 million over 30 years and they are happy about that. Solution? He suggested all of the pot money we make should go to the ARPA debt. He said he wanted on his utility bill from now on a part of the bill that explains what is being paid towards the ARPA's debt and what he is paying for electricity. He named Mr. Reorda as the second problem. Mr. Murphy explained that on the night that Ed Gil de Rubio was fired, Mr. Reorda admitted that he conspired with Jarod Beaty to deceive the citizens of this community and fellow Council members to lie about Jarod's qualifications. He said he has it on tape. Mr. Murphy stated that Mr. Reorda said the Constitution gave him that power. He said he would stay here afterwards and gladly film him as he gives that lecture where he claims he is a Constitutional expert that taught for over 30 years. He said he'd like to hear that lecture "I was Mayor of Trinidad in a time of crisis - you have that power." He continued that he oversaw the overcharging of utility customers for many years and ARPA's rise from \$40 million to \$175 million. The Mayor told him at one time that he wanted to fire Tom Acre, get appointed the City Manager at half the salary and now he's moved into the City Manager's office. The mayor does not have day to day obligations at the City. Mr. Murphy continued. He said problem number three is the City Clerk. In the fall of 2012, he and his wife Paula paid \$907.25 for a Freedom of Information request. He said he found out this last week after speaking to Louis Fineberg that request was not fulfilled. He said he was not going to make any accusations at this time, but told Council they know as most of the community does that there was a question of whether or not five-year contracts were given out. He said he finds out now that there is. Mayor Reorda interjected that they can't discuss this because it is regarding personnel. Mr. Murphy told Council that if they hire Audra Garrett tonight he would call the Attorney General and Secretary of State if they don't begin their own internal investigation then he would do like he did with the cemetery and will use whatever legal avenues he needs to pursue the truth. He told them to make a choice tonight, specifically naming Mr. Reorda. He told Mayor Reorda that he's already lied before and it's on tape. He said let's have a

little confidence in the City administration and City Council. He concluded that Louis Fineberg went on record admitting he has a contract and it was not revealed in the Freedom of Information request. Mr. Murphy said he was telling Council about it.

Stephen Hamer addressed Council regarding the ADA requirements. He said the City appointed Chris Kelley, the building inspector, as the ADA Coordinator. He encouraged Council to take a break and walk over to the annex building. He said it is not ADA accessible to wheelchairs, walkers and mobility scooters because the threshold is too high. He said he has already asked for concrete to be poured to make it accessible. This is a slap in the face to the disabled community to have an ADA Coordinator who is not accessible, and it is fitting with the type of discrimination they have to endure in this City. He asked Council to look at it. Stephen's List will donate the expenses associated with ramping that door. It is required under the ADA, and under Section 504 of the Rehabilitation Act. If the City can't come up with the \$50 for concrete, Stephen's List pay for the concrete to ramp that door. He said he doesn't understand why there is so much foot-dragging, reminding that he brought this issue up in April and again thereafter, this being the third time. The annex has a police substation. He can't even get into his local police department because he can't get through the front door. Also he said he can't benefit from other services, programs and activities because he can't get in the building. He asked Council to please tour that building and they'll see the lip. Having measured it he said the ramp would have to extend out no less than 24 inches by 36 inches wide. The City can't have an ADA Coordinator who can't be accessed. The City will argue that a person can get with him by appointment. He suggested people without disabilities can meet with him without an appointment. The City can't keep foot-dragging. A number has been assigned to his complaint with the U. S. Department of Justice against the City. He reiterated that he wants a ramp to get into the building. He called on the City Council to please ensure it gets done and if the City doesn't have the money Stephen's List will put the ramp in. Mayor Reorda commented that the City is trying to catch up with items that were on the back burner. He also pointed out that the building is about 100 years old and the City has to be very careful because it is an historic building. Councilmember Bonato asked Acting City Manager Garrett to please have Chris Kelley look at it again.

Daryl Shoupe addressed Council. He told Council he has four things he'd like to discuss. He reminded Council that he is from northern Michigan, new to the community and is keeping his eye on the ball. First there are a lot of senior citizens and he'd like to donate his time to 'meals on wheels' and the like. He met with Laura Valdez from Pueblo with the SRDA, Seniors Resource Development Agency. They do really cool stuff but don't have any resources down here, so it is on his hit list. Mr. Shoupe said his mom is pushing 70 and is thinking about moving here. She will be visiting Trinidad in a couple of weeks. He also told Council there is a public safety issue with trees in the power lines and bears. It would be good to have public notices regarding seasonal issues. He recalled that Councilmember Miles brought up the topic of geothermal resources and she commented that it is long-term, 20 or 30 years. He said he thinks outside of the box and has actually looked at some commercial properties to buy. Mr. Shoupe said he's interested in the community. A really brilliant idea, Councilmember Miles having mentioned a professor who is involved, to help bring the City around, there is a building at Animas and Main Street that is residential. Hearsay is there are some issues with it; someone started building apartments and stopped for whatever reason. He suggested the City could buy that building, take every one of the apartments and give each one for academic use to a university around the country and then every five years change it, it would bring academic excellence, professors, etc. He revisited the senior citizens topic and said there's a lot of federal money involved with that. Mayor Reorda encouraged Mr. Shoupe to visit the senior center and said tree limbs in the power lines are put on a list and asked that he provide addresses.

COUNCIL REPORTS. Councilmembers Mattie, Bonato and Torres had nothing to report.

Councilmember Bolton reported that most City Council members visited City departments and with the employees on Monday. She thanked the City employees for spending time with them.

Councilmember Miles stated that she spent the better part of the last two weeks bringing home the ARPA settlement. She responded to Mr. Murphy's comments. This case has been going on for the past 3 1/2 years. During the original mediation she wasn't even on Council. It was when Ed Gil de Rubio was the City Manager. At that time an offer was made to dismiss the lawsuit in return for the closing of the Lamar Power Plant. The City got stiff-armed. At the next mediation it was reiterated but the City wanted some transaction expenses back. We got that because of the work that was done to bring a 10-2 vote away from Trinidad to a 10-2 vote in favor of Trinidad's position. A lot of work went into that. We got some transaction expenses back. We were not in it to make money for the City. We were in it for the long-term viability and rate stabilization at ARPA. We came to a mediated settlement that got us not only the closing of the plant or otherwise prompt disposal of it, because it may be better to sell it rather than yank the iron out of the ground, we got Syncora to the table. Syncora is the bond insurer. To ice the deal they got Syncora to put up \$2.035 million which will go into a rate stabilization fund at ARPA. No one objected to any of those mediations. There had been public information distributed, articles in the paper, public statements made at this Council, and presentations by ARPA which nobody came to. As the settlement was falling apart because of various delays and various issues raised by the myriad of parties involved in this transaction, she said she likened it to a game of four-dimensional whack a mole, she said she went into salvage mode on this negotiation. In the end she got the City got a better deal than the settlement offered in January. She got the money to come directly to the member municipalities, the \$2.035 million. Councilmember Miles said regarding Mr. Murphy making an issue about affirmation, all the City is saying is that they signed these contracts in 1983. We haven't waived any rights going forward – not a single one. Councilmember Torres commended Councilmember Miles on the numerous hours she put in just in the past two weeks on this issue. Mayor Reorda noted that she dedicated 14 hours straight on the phone with lawyers and both sides. He added that he really thinks an ex-newspaper man would get the facts before he comes in and screams. Mr. Murphy offered to make further comment. Councilmember Miles said that he is free to call her any time he'd like. She said she'd entertain a debate with him on this topic at any time of his choosing.

Mayor Reorda reminded Council that tomorrow the Army is coming down to Pinon Canyon Maneuver Site to discuss whatever they do on a monthly basis, such as the ecology, repairs they've made, etc. It will start between 9:30 a.m. and 10:00 a.m. and then they will have lunch at the country club.

REPORTS BY CITY ATTORNEY. City Attorney Downs added to Councilmember Miles' account of the ARPA

litigation. He said the City was judicially ordered some time ago to elect our remedies. Rescission was no longer an option. The only thing the City could do was pursue money damages. Thanks to Councilmember Miles, that is what the City got. That was the only thing we could obtain. If the City had elected rescission, it would have been an all or nothing kind of battle. Councilmember Miles added that the City was specifically advised unanimously by the City Attorney and outside counsel, Stelzner & Warburton, and local counsel, Dixie Newnam, that the City should elect money damages. It was unequivocal advice. City Attorney Downs reiterated that the City was required to have an election of remedies by the presiding judge. Mayor Reorda commented that the City couldn't have gotten it done without Councilmember Miles' knowledge. He said she is an asset to this Council.

REPORTS BY CITY MANAGER. (Heard prior to the City Attorney report.) Updates and information. Acting City Manager Garrett pointed to the report from the City's Chief Building Official in their information items identifying properties he has issued Notice and Orders on. She also pointed out that the audit for fiscal year ending December 31, 2013 had been provided to Council in their packets and a memo regarding the North Lake Dam project is at their seating places.

Positions. Acting City Manager Garrett advised Council that three City positions have been posted – Assistant Power & Light Line Crew Supervisor, Wastewater Treatment Plant Foreman/Chief Operator (due to the impending retirement of Dan Shea mid-August), and Power Plant Operator due to another upcoming retirement.

UNFINISHED BUSINESS. Modification of premises request by Image Hospitality, LLC d/b/a Quality Inn at 3125 Toupal Drive. Harry Patel was present on behalf of the request. A motion to approve the modification of premises was made by Councilmember Bolton and seconded by Councilmember Mattie. The motion carried unanimously upon roll call vote.

MISCELLANEOUS BUSINESS. Beer and Wine liquor license renewal request by Mattorano Enterprise, Inc. d/b/a Lee's Bar B-Q at 825 San Pedro Avenue. Frank Mattorano was present on behalf of Mattorano Enterprise, Inc. Councilmember Bonato moved to approve the license renewal and Councilmember Bolton seconded the motion. Upon roll call, the motion carried unanimously.

Hotel and restaurant liquor license renewal request by David J. Liu d/b/a Chef Liu's Chinese Restaurant at 1423 Santa Fe Trail. David Liu was present. A motion to approve the license renewal was made by Councilmember Bolton. Councilmember Torres seconded the motion. Upon roll call, the motion carried unanimously.

Resolution supporting an increase in the member contribution rate for City participants in the Fire and Police Pension Association Statewide Defined Benefit Plan. A motion to adopt the resolution was made by Councilmember Mattie. Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

RESOLUTION NO. 1433

RESOLUTION SUPPORTING AN INCREASE IN THE MEMBER CONTRIBUTION RATE FOR CITY PARTICIPANTS IN THE FIRE AND POLICE PENSION ASSOCIATION STATEWIDE DEFINED BENEFIT PLAN

Consent and confirmation of Council of Acting City Manager designation pursuant to Section 6.3 of the Home Rule Charter for the City of Trinidad. Councilmember Bolton moved to consent and confirm the designation of Mike Valentine as Acting City Manager pursuant to Section 6.3 of the Home Rule Charter for the City of Trinidad. Councilmember Mattie seconded the motion. Roll call was taken and the motion carried by a unanimous vote.

Ratify amended letter of support for CNG fueling project. Mayor Reorda asked what the amendment was. Councilmember Mattie answered that the location changed. A motion to ratify the letter was made by Councilmember Mattie and Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

Consideration of Planning, Zoning and Variance Commission's recommendation regarding the request to name the North Lake Dam in honor of James A. Fernandez. Acting City Manager Garrett reminded Council that the Planning Commission recommended denial of the request because it did not meet the specific criteria in the policy. She reminded that their discussion at the July 22nd work session included accepting the Planning Commission's recommendation and referring the policy back to the Planning Commission to amend Section 4-4(1) as recommended by Councilmember Miles to stipulate considerations to be considered to include: a) that a person was a life-long City or County resident in good standing/with good moral character; and b) that the person faces a condition of eminently declining health. Councilmember Mattie moved to accept the Planning Commission's recommendation to deny the request and refer the policy back to the Commission with the suggestions made by Councilmember Miles. The motion was seconded by Councilmember Bolton and carried unanimously upon roll call vote.

Approval of temporary contract with Audra Garrett to serve as the Acting City Manager. A motion to approve the temporary contract was made by Councilmember Mattie and seconded by Councilmember Bonato. Councilmember Miles noted that the approval should be with the amendment at their seating places. Roll call was taken and the motion carried unanimously excepting Councilmember Bolton who cast a dissenting vote citing that she felt the salary to be excessive.

Approval of grant application for Commercial Street Phase III. A motion to approve the Commercial Street Phase III grant application was made by Councilmember Bolton. Councilmember Torres seconded the motion which carried unanimously upon roll call vote.

Letter of commitment in support of a grant application to be submitted to the Colorado Division of Homeland Security and Emergency Management for generators for the Trinidad Fire Department and committing the 12.5% local grant match; and adopting the resolution designating Fire Chief Tim Howard as the agent for the grant. Councilmember

Bolton made a motion to approve the letter of commitment in support of a grant application to be submitted to the Colorado Division of Homeland Security and Emergency Management for generators for the Trinidad Fire Department and committing the 12.5% local grant match; and adopting the resolution designating Fire Chief Tim Howard as the agent for the grant. The motion was seconded by Councilmember Torres and carried by a unanimous roll call vote.

First reading of an ordinance to extend the one percent sales tax originally authorized by vote of the people on November 4, 1980 and extended by vote of the people on July 23, 1991, November 5, 1996, November 5, 2002, and November 4, 2008 and to provide for dedication of the revenue from such tax to capital projects, and setting a hearing date for consideration of said ordinance. The ordinance was introduced by Councilmember Bolton and read aloud in its entirety. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on Tuesday, August 19, 2014, was made by Councilmember Bolton. The motion was seconded by Councilmember Mattie and carried by a unanimous roll call vote.

ORDINANCE NO.

AN ORDINANCE TO EXTEND THE ONE PERCENT SALES TAX ORIGINALLY AUTHORIZED BY VOTE OF THE PEOPLE ON NOVEMBER 4, 1980 AND EXTENDED BY VOTE OF THE PEOPLE ON JULY 23, 1991, NOVEMBER 5, 1996, NOVEMBER 5, 2002, AND NOVEMBER 4, 2008 AND TO PROVIDE FOR DEDICATION OF THE REVENUE FROM SUCH TAX TO CAPITAL PROJECTS

First reading of an ordinance submitting to the voters of the City of Trinidad at the General Election to be held on Tuesday, November 4, 2014, a measure which would extend the one percent sales tax authorized by vote of the people on November 4, 1980 and extended by vote of the people on July 23, 1991, November 5, 1996, November 5, 2002, and November 4, 2008 and to provide for dedication of the revenue from such tax to capital projects, and setting a hearing date for consideration of said ordinance. The ordinance was co-introduced by Councilmembers Bolton and Miles and read aloud in its entirety. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on Tuesday, August 19, 2014, was made by Councilmember Bolton. The motion was seconded by Councilmember Bonato and carried by a unanimous roll call vote.

ORDINANCE NO.

AN ORDINANCE SUBMITTING TO THE VOTERS OF THE CITY OF TRINIDAD AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, A MEASURE WHICH WOULD EXTEND THE ONE PERCENT SALES TAX AUTHORIZED BY VOTE OF THE PEOPLE ON NOVEMBER 4, 1980 AND EXTENDED BY VOTE OF THE PEOPLE ON JULY 23, 1991, NOVEMBER 5, 1996, NOVEMBER 5, 2002, AND NOVEMBER 4, 2008 AND TO PROVIDE FOR DEDICATION OF THE REVENUE FROM SUCH TAX TO CAPITAL PROJECTS

First reading of an ordinance imposing a sales tax of five percent (5%), commencing January 1, 2015, in the City of Trinidad, Colorado, on the retail sale of marijuana, marijuana products and marijuana accessories by licensed marijuana establishments as a new tax pursuant to Section 20 of Article X of the Colorado Constitution, and setting a hearing date for consideration of said ordinance. The ordinance was introduced by Councilmember Miles and read aloud in its entirety. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on Tuesday, August 19, 2014, was made by Councilmember Miles. The motion was seconded by Councilmember Mattie and carried by a unanimous roll call vote.

ORDINANCE NO.

AN ORDINANCE IMPOSING A SALES TAX OF FIVE PERCENT (5%), COMMENCING JANUARY 1, 2015, IN THE CITY OF TRINIDAD, COLORADO, ON THE RETAIL SALE OF MARIJUANA, MARIJUANA PRODUCTS AND MARIJUANA ACCESSORIES BY LICENSED MARIJUANA ESTABLISHMENTS AS A NEW TAX PURSUANT TO SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION

First reading of an ordinance submitting to the registered electors of the City of Trinidad at the General Election to be held on November 4, 2014 the question of whether, commencing January 1, 2015, the City of Trinidad should impose a sales tax of five percent (5%) on the retail sale of marijuana, marijuana products and marijuana accessories by licensed marijuana establishments as a new tax pursuant to Section 20 of Article X of the Colorado Constitution, and setting a hearing date for consideration of said ordinance. The ordinance was introduced by Councilmember Mattie and read aloud in its entirety. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on Tuesday, August 19, 2014, was made by Councilmember Mattie. The motion was seconded by Councilmember Bolton and carried by a unanimous roll call vote.

ORDINANCE NO.

OF AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF TRINIDAD AT THE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 THE QUESTION OF WHETHER, COMMENCING JANUARY 1, 2015, THE CITY OF TRINIDAD SHOULD IMPOSE A SALES TAX OF FIVE PERCENT (5%) ON THE RETAIL SALE OF MARIJUANA, MARIJUANA PRODUCTS AND MARIJUANA

ACCESSORIES BY LICENSED MARIJUANA ESTABLISHMENTS AS A NEW TAX
PURSUANT TO SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION

Consideration of bid results for the Water Treatment Plant Improvements Phase I Project. Mayor Reorda read aloud Public Works/Utilities Director Mike Valentine's recommendation: "Based on discussion at the last work session meeting, my recommendation is to accept the low bid from Velocity Construction, Inc. in the amount of \$2,682,182.00 and enter into agreement with the contractor." Councilmember Mattie moved to accept the low bid as recommended and Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

Mayor Reorda asked if there is anything in the Charter that says the Mayor can't have an office in City Hall. City Attorney Downs advised that there is not.

BILLS. Councilmember Bolton moved to approve the bills and Councilmember Bonato seconded the motion. The motion carried unanimously upon roll call vote.

PAYROLL, July 19, 2014 through August 1, 2014. A motion to approve the payroll was made by Councilmember Bolton and seconded by Councilmember Miles. Roll call was taken and 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 Bolton and seconded by Councilmember Bonato. The meeting was adjourned by unanimous voice vote of Council.

ATTEST:

JOSEPH A. REORDA, Mayor

DONA VALENCICH, Asst. City Clerk