

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, November 18, 2014, at 7:00 p.m. in City Council Chambers at City Hall.

There were present:	Mayor	Reorda, presiding
	Councilmembers	Bolton, Bonato, Fletcher, Mattie, Miles, Torres
Also present:	Acting City Manager	Garrett
	City Attorney	Downs
	Asst. City Clerk	Valencich

The pledge of allegiance was recited.

**PROCLAMATION – Pancreatic Cancer Awareness Month – November, 2014.** Councilmember Miles read aloud the Proclamation declaring November, 2014, Pancreatic Cancer Awareness Month in Trinidad. Mayor Reorda signed the Proclamation and it was presented to Louis Rino.

Mayor Reorda asked for a motion to move the public hearings to the end of the meeting. Councilmember Bolton made a motion to move the public hearings as requested and Councilmember Bonato seconded the motion. Upon roll call vote the motion carried unanimously.

**APPROVAL OF THE MINUTES.** Regular Meeting of November 5, 2014 and Special Meeting of November 14, 2014. A motion to approve the minutes as presented was made by Councilmember Miles and seconded by Councilmember Torres. The motion carried unanimously with the exception of Councilmember Bolton who abstained from the vote on the November 5<sup>th</sup> minutes due to her absence from that meeting.

**UNFINISHED BUSINESS.** Retail liquor store license renewal request by Trinidad Plaza Liquors, Inc. d/b/a Main Street Liquors at 803 E. Main Street. A representative was present. Councilmember Mattie made a motion to approve the license renewal and the motion was seconded by Councilmember Bolton. Roll call was taken on the motion and it carried unanimously.

**MISCELLANEOUS BUSINESS.** Club liquor license renewal request by BPOE Elks Lodge #181 at 120 S. Maple Street. A representative was present on behalf of the applicant. Councilmember Bolton moved for the license approval and Councilmember Fletcher seconded the motion. Upon roll call vote the motion carried unanimously.

3.2% Beer – On Premises – license renewal request by Creative Sale, Inc. at 700 Smith Street. Kim Schultz was present to represent the licensee. A motion to approve the license renewal was made by Councilmember Bolton and seconded by Councilmember Bonato. The motion carried unanimously upon roll call vote.

Hotel and restaurant liquor license renewal request by Image Hospitality, Inc. d/b/a Quality Inn at 3125 Toupal Drive. Councilmember Bolton moved to table the renewal for appearance as no representative was present. Councilmember Bonato seconded the motion, which upon roll call vote carried unanimously.

Ratification of letter in support of Mt. Carmel Health, Wellness & Community Center's Rural Health Care Services Outreach grant application. Councilmember Bolton moved to ratify the letter of support and Councilmember Fletcher seconded the motion. Upon roll call the motion carried unanimously.

Notice of nonrenewal of lease agreement for the property at 132 E. Main Street (being used as the Library Computer Center). Acting City Manager Garrett told Council that since there hadn't been much prior discussion on this item, if they would rather act on it at a later date that would be fine. Councilmember Fletcher moved to approve the nonrenewal notice and Councilmember Torres seconded the motion. Roll call was taken on the motion which carried unanimously.

Consideration of Professional Services Agreement with SGM, Inc. for the Purgatoire River Pedestrian Bridge Project engineering services. A motion to approve the Agreement was made by Councilmember Bolton and seconded by Councilmember Fletcher. The motion carried by a unanimous roll call vote.

Consideration of submission of grant request to Department of Local Affairs for Water Treatment Plant Upgrades. Councilmember Fletcher made a motion to approve the submission of the grant request and Councilmember Bolton seconded the motion. Upon roll call vote the motion carried unanimously.

Consideration of Colorado Department of Transportation Way-Finding Signage Grant. A motion to approve the grant agreement was made by Councilmember Miles. The motion was seconded by Councilmember Fletcher and carried by a unanimous roll call vote.

Consideration of consulting services for the Urban Renewal Authority requirements with Ricker/Cunningham. Councilmember Bonato questioned the timing. Intern Tara Marshall stated that the agreement is for the three documents that will be completed by the firm, a Conditions Survey, an Urban Renewal Plan, and an Impact Study. A motion to engage the services of Ricker/Cunningham was made by Councilmember Fletcher and seconded by Councilmember Bolton. The motion carried unanimously upon roll call vote.

Urban Renewal Authority boundary survey determination. Intern Tara Marshall told Council that in their packet is the suggested motion within the Council Communication form. It has been crafted with the help of Anne Ricker. She said

the suggested motion is to set the survey boundary for the Conditions Survey as all land and property within the City limits of the City of Trinidad excluding privately owned and occupied residential property. Ms. Marshall told Council that the chosen methodology was contained in their packets as well and has been reviewed by City Attorney Downs. He agreed that we were meeting the State statute requirements. A property owner list was obtained from the Las Animas County Assessor's office on October 23<sup>rd</sup> which will be within 30 days of the survey. Based on the list, Ricker/Cunningham will sort out those properties that are privately owned and occupied residential properties and send a survey notice to the rest of those on the list. Councilmember Bonato asked if this will affect residential properties and if it comes to be, and something is done to a building, who will own the building, the owner or will the City take it over. Ms. Marshall answered that it will be owned still by the owner. The City is not talking about taking ownership of any private property with the Urban Renewal Authority; the City is not in the real estate business. Urban Renewal Authorities do have broad power to take property by eminent domain but that would have to be approved by City Council in the Urban Renewal Plan if that was an approach they wished to take. She further clarified that this will affect all privately and publicly owned properties in the City excluding residential privately-owned and occupied properties. Councilmember Bolton made a motion to set the survey boundary for the Conditions Survey (blight study) as the City limits of the City of Trinidad excluding privately owned and occupied residential property. The motion was seconded by Councilmember Fletcher. Upon roll call vote the motion carried unanimously. Ms. Marshall advised that the survey will begin tomorrow after the Mayor executes the Agreement with Ricker/Cunningham. The notices are anticipated to be mailed on November 24<sup>th</sup> and 25<sup>th</sup>. There will be four public meetings held the week of December 1<sup>st</sup> and a press release will be issued explaining what the notice means that will go to roughly 1,600 property owners. The meetings will be held at different times, 8:00 a.m., 10:00 a.m., 2:00 p.m., and 6:00 p.m. If that doesn't meet the public's needs, additional meetings will be held the following week.

**PUBLIC HEARING.** New Retail Marijuana Store license application filed by Peaceful Herbs, Ltd., LLC d/b/a Peaceful Herbs, Ltd. at 124 Santa Fe Trail. Mayor Reorda opened the hearing. Deepanshu Girdhar, applicant and representative for Peaceful Herbs, Ltd., LLC, addressed Council. Upon questioning from City Attorney Downs, Mr. Girdhar testified that the application is for one license, a retail store license. They will not be growing or manufacturing. It is not his intent at this time to apply for a cultivation license later. Peaceful Herbs, Ltd., LLC is the corporate name and Peaceful Herbs, Ltd. is the trade name. He is the only principal in the limited liability corporation. He has no other financial interest in any other marijuana business; this is his first marijuana business. He is the only investor in this business so far and is the only financial contributor to this business. He is leasing the premises at 124 Santa Fe Trail and his landlord is Michael Ryman. Mr. Girdhar testified that he has Mr. Ryman's permission to conduct a marijuana business at this location. Mr. Girdhar submitted all of the required documents in the application. With respect to the security agreement, he said he is waiting on the detail. He wants an analyst to come in and give the exact locations of the cameras. The corporation is in good standing with the Secretary of State. He has received conditional use approval by the Planning Commission. An application was filed with the Department of Revenue (Marijuana Division) and he received approval from them last week. He has approval and the State license is waiting on the City's approval. With respect to an anticipated opening date, Mr. Girdhar stated that he is working with Building Inspector Chris Kelley, but suggested it would be a few weeks out based on finding people to do the work and getting that work done, perhaps two to three weeks. There will be three employees in the beginning, himself, his wife, who already has her badge to work in the industry, and he didn't know who the third would be. Five to seven employees are anticipated later. Mr. Girdhar acknowledged his ongoing obligation to get approval from the City officials, including the Police and Fire Chiefs, Building Inspector, City Attorney and City Clerk. Mr. Girdhar said he has been working with the Police and Fire departments as well as the Building Inspector. He acknowledged that all employees have to be approved and names submitted in advance. He further acknowledged that he is responsible for complying with and familiarizing himself with the state laws and rules and regulations and City's ordinance with respect to the sale of marijuana. He said he has already tried to familiarize himself. He added that his wife has had her badge for over a year working as a manager at a dispensary in Denver and has moved through the process with the state law changes. The diagram is part of the application and it lays out the areas where marijuana will be. He has a security plan and everything else needed to undertake this business. Having reviewed his application he swore and affirmed that it was correct and that there were no material misrepresentations. He acknowledged that if there should be water issues or shortages in the City he may have his water supply discontinued. Mr. Girdhar told Council that he and his wife moved here from Denver in August and has tried to get some of his friends to move here. He also owns the Tower 64 Motel on Santa Fe Trail. He said he is here for the long run. Upon Mayor Reorda's inquiry, the location of the proposed premise was identified as the former Monte Cristo tavern. Councilmember Mattie noted that he testified that he will not be growing or manufacturing infused products. He asked Mr. Girdhar if he will be selling infused products. Mr. Girdhar responded affirmatively. Councilmember Mattie reminded Mr. Girdhar that he is authorized to proceed under municipal ordinance and state law, however marijuana is still a regulated substance under Federal law. The Federal government at any time may go a different direction with respect to marijuana. He asked if he is willing to take that risk. Mr. Girdhar answered that he is. Councilmember Miles asked his plans for parking, noting the limitations that exist. Mr. Girdhar said that there are a few spots outside of the property, six to eight in number. Councilmember Miles pointed out that those are shared by several neighboring merchants. Mr. Girdhar said there is additional parking available behind the business. Councilmember Bonato noted that Chief Glorioso indicated that the business is under renovation/construction and recalled his estimation in opening in about two weeks. He commented that if the building is under renovation it will be hard to get ready in two weeks. Mr. Girdhar said his opening will be contingent on getting the work and inspections done. He said he hasn't started any work yet; he was waiting on the City's approval. However, he said he completed the permit work today. Opening will depend on getting the permit passed and the compliance in. Mayor Reorda called for comments from the audience, for or against the application. Stephen Hamer stated that recently there was construction to the sidewalk there and a ramp was not installed. He asked if the business will be accessible to those with disabilities. They need ramps and need a designated parking area by law. Councilmember Bonato asked who did the work there. Mr. Hamer said the work was done in front of the liquor store (former). Public Works/Utilities Director Mike Valentine stated that the work had nothing to do with this address. A sewer line extension was done to the former liquor store property. Mr. Hamer said the access to wheelchairs in that area is constrained to say the least. He added that the applicants for all of these buildings, since they will be remodeling, must comport to the 2010 standards of the Americans with Disabilities Act. He asked the City to be cognizant of that and make sure people can access the buildings. Councilmember Miles asked Mr. Hamer if he is saying all businesses that open have to have handicap parking in front. Mr. Hamer said that area should. Councilmember Miles said that would take up all of the parking on Main Street. Mr. Hamer said they are researching that matter. He commented that there are serious issues with that intersection. People don't stop for anyone there, pedestrians or motorized chairs. City Attorney Downs said the

conversation was getting far afield from the hearing and suggested this particular conversation should continue under public comments. Mayor Reorda asked if anyone else wished to speak for or against the application. Mr. Hamer commented that he didn't know how he could be dismissed like that. He said he thought inclusion in any application is important. Mayor Reorda advised that the comments were not relevant to the approval of a marijuana business. City Attorney Downs added that no one was trying to exclude him. There being no further comment, the hearing was closed.

A motion to approve the license applications of Peaceful Herbs, Ltd., LLC d/b/a Peaceful Herbs, Ltd. at 124 Santa Fe Trail in Trinidad, Colorado, for a Retail Marijuana Store License, was made by Councilmember Mattie and seconded by Councilmember Bolton. The motion carried with all Council members voting aye except Councilmember Bonato who cast a dissenting vote. Mayor Reorda read the following findings into the record:

This matter came on for hearing on the application of Peaceful Herbs, Ltd., LLC d/b/a Peaceful Herbs, Ltd. at 124 Santa Fe Trail in Trinidad, Colorado, for a Retail Marijuana Store License before the City Council of the City of Trinidad, Colorado, acting in its capacity as the local licensing authority on November 18, 2014, in City Council Chambers in City Hall. The City Council having reviewed the application and supporting documents, reports of the City Clerk and other City staff, evidence at the hearing and testimony taken during the hearing, makes the following **FINDINGS**:

1. The application is complete and signed by the applicant, and the applicant has paid the appropriate application and license fees.
2. The application appears to be in substantial compliance with all the requirements of Article 11, of Chapter 14 of the Trinidad Municipal Code. The applicant has testified to their willingness to comply with any and all areas of said Article whereby compliance at this time cannot be fully attained or substantiated.
3. According to the testimony of the applicant, the application does not contain any material misrepresentations.
4. The proposed marijuana business complies with applicable zoning regulations. The City Council hereby finds that based upon the testimony of the applicant, the building in which the proposed marijuana business will be located will conform to the Trinidad City Codes, including the zoning code and all International Codes adopted by the City.
5. Deepanshu Girdhar testified in favor of granting the license. No one testified in opposition. Stephen Hamer testified as to concerns with ADA compliance with respect to this and other businesses.
6. The applicant through the facts and evidence adduced as a result of the City's investigation and testimony provided, made a prima facie showing the member of the limited liability corporation is of good moral character and any employees of the entity will likewise be of good moral character.
7. The City Clerk's report showed that there are currently ten medical and retail marijuana licenses overall approved within the City of Trinidad, with three ownerships, at three addresses.
8. Based on the evidence presented at the hearing and the investigative materials provided for the hearing, the City Council finds that the location of the business is appropriate, and that the applicant officer is of satisfactory moral character and there is a willingness by the applicant to fully cooperate with the officials of the City in the operation of this business.

THEREFORE, the City Council of the City of Trinidad, Colorado, as the local marijuana licensing authority, hereby approves and grants a Retail Marijuana Store License to Peaceful Herbs, Ltd., LLC d/b/a Peaceful Herbs, Ltd. at 124 Santa Fe Trail in Trinidad, Colorado. The issuance of said licenses shall be withheld until a certificate of occupancy is issued by the Chief Building Official and upon his absolute confirmation of compliance with all codes adopted by the City of Trinidad.

Appeal of a decision of the Planning, Zoning and Variance Commission filed by CannaCo, Application #2014-RMS-24, #2014-RPMF-24, and #2014-RMCF-24, Request for Conditional Use Permit to establish a Retail Marijuana Store, Retail Product Manufacturing Facility, and a Retail Marijuana Cultivation Facility at 3019 Toupal Drive. Mayor Reorda declared the public hearing open. City Attorney Downs called to Council's attention at their seating places some additional information, including a couple of memorandums, most of which he had provided to them before but wanted them to be sure to have for consideration this evening. He said he is proposing for the hearing that there are three groups of people that he can identify to testify - 1) the applicant/aggrieved party, Josh Bleem of CannaCo being the primary individual; and Howard Lackey as the trustee for the Lackey Trust who owns the premise in question; 2) the concerned citizens or the opposition group. There are a number of people who oppose this application and were in front of the Planning Commission and are here this evening. They are made up of three groups of people - residents in the area, business owners in the area, and people who represent the Phil Long Toyota dealership, the premises in question. He pointed out that he didn't believe any of the residents are in the City limits and technically wouldn't then have standing. That area borders the County and some are in close proximity. The recommendation however is to let them speak. He further pointed out that the retail marijuana ordinance Council adopted provides that in marijuana hearings for the license application, Council can require one member from a citizens' group to address them. They will have only 20 minutes to speak, so he asked that they designate one person to speak on their behalf for the three constituent groups. He noted that Chris Furia spoke in the past and suggested he may be the one to speak for the people who reside in the area. He also suggested Lisa Camarillo may be the speaker for Phil Long Toyota and Bill Phillips for businesses. He asked that they divide it up and said one from each group can speak for them for 20 minutes. The last group to address Council will be him, representing the City. He will say what he has to say when it is his time to go. City Attorney Downs explained that part of the reason for the suggested procedure as compared to the conduct of the previous hearing is to avoid another lawsuit. He said although he can support the way the previous hearing went, if done that way again it would likely result in another lawsuit, meritorious or not, and he wanted to avoid another lawsuit being filed. Councilmember Miles asked if there is any objection from the Plaintiff. City Attorney Downs said that all of those groups are represented by Attorney Dennis Malone in the Forever Green/Terry Sanchez lawsuit. He said he contacted Mr. Malone at the middle to end of last week to advise him of this process. Councilmember Bonato asked City Attorney Downs why Howard Lackey would have to testify about this. He is the landlord and as the landlord he shouldn't have the ability to speak since we are talking about CUPs for marijuana at the location. City Attorney Downs answered that he believed that Mr. Lackey wants to say that with respect to the Conditional Use Permits held by Terry Sanchez on that property, he is no longer doing business with him. He pointed out that concerns about those CUPs have been raised. He said he didn't necessarily want to dictate who was going to speak for those groups. Bill Phillips, owner of Big O Tires and Grease Monkey, advised that they are aware of the situation and have identified Chris Furia to speak for the residents, he will speak for the businesses, and Gary Fentiman will speak for Phil Long Toyota. They were told they had about seven minutes each to speak. City Attorney Downs said it was great that Dennis Malone conveyed his message to them and suggested Josh Bleem from CannaCo go forward with his testimony. Josh Bleem addressed Council and thanked them for allowing him to speak with them at this appeal hearing. He said he has a written statement he would like to read and would thereafter be able to answer any questions Council may have. First he said he'd

like to tell them about himself. He said he is the President of CannaCo and the spokesperson for this corporation. He grew up in northern Colorado in the Ft. Collins area. He has a bachelor's degree in business management. He served in the United States Air Force as a military police officer stationed in Colorado Springs. He owns and operates a property maintenance business, owned and operated out of Denver, Colorado. He has spent the last ten years in the retail industry working for a Fortune 500 company as a senior manager. He has supervised over 1300 employees, controlled all aspects of sales, operations, HR, environmental, and theft and fraud of a multi-unit business with over \$400 million in annual sales. Mr. Bleem said he is a professional businessman and was approached by the shareholders of CannaCo to start up and run a retail cultivation and recreational store in Trinidad, as a result of his proven track record in business. He said his response to the CUP denial, because he feels as the representative of CannaCo that he needs to address the CUP denial as well as the individuals who got up here and spoke during the last hearing, is that it is his belief that CannaCo has been singled out and discriminated against by the Planning and Zoning Commission of the City of Trinidad based on biased opinion and consideration of information that was not relevant to this CUP. He said he provided all required information in the CUP application, completed 100% and in on time. He came to Trinidad in good faith that his company would be treated fairly and consistently. He has been professional, respectful and patient with this entire process, while he does not agree with the actions taken by the Planning and Zoning Commission. The negligent actions and abuse of authority by the Planning and Zoning Commission have cost him time and money that was not even necessary to begin with and has significantly delayed his project. When asked why those members of the Commission denied their CUP application, the first gentleman, Mr. George stated "I'm not explaining anything." Mr. Leone stated he was concerned with the traffic, referencing a CDOT access permit as a requirement. Nowhere in the application process did a CDOT access permit address a condition for denial for the CUP, but more a provision for approval. Mr. Bleem said he told the Commission several times that he would comply with all reasonable provisions set forth in the approval of the CUP. The Chairman, Mr. Davis, denied the application due to his opinion that multiple CUPs could not be held on the same property, after being told repeatedly by Mr. Downs and Mr. Fineberg that a recreational CUP and medical CUP at the same location were not conflicting. Mr. Bleem said he sat in this room and watched four other recreational CUPs get approved in October, and 21 total CUP approvals in Trinidad. There have been two denials, both at 3019 Toupal Drive. To him, that's discrimination he said. In response to public comment, Mr. Chris Furia, Ms. Carol Dillow Phillips, and the Phil Long Toyota group all got up in front of the Commission and presented information not relevant to the CUP hearing. He offered to address each one - for Mrs. Dillow Phillips he said she's been slandering both new business and the City Council of the City of Trinidad via social media. She calls the City Council bullies and their new business dangerous and illegitimate. Vagrancy is an issue everywhere and it is not solely isolated to marijuana facilities. As set forth in Colorado state regulations, they will provide round the clock security and surveillance of their property. Why is this issue being brought up for 3019 Toupal Drive? Why didn't it come up for all of the other 21 CUP applications? Mrs. Dillow Phillips has made repeated threats via social media outlets of closing her businesses if the CUP is approved. That is her prerogative and as a business and property owner she has the right to do so, just as the Lackey Trust has the right to lease their land and property to whomever the wish. Mr. Bleem urged Council to review the transcripts from the last meeting in October and he said he was confident that they would see that Mrs. Phillips' issue is with the legalization of marijuana which has already been voted on and approved. As for Mr. Furia, he has also publicly voiced his opinion on the legalization of marijuana via social media and letters to the editor. He states that marijuana was not voted on in Trinidad and is illegal. That's just not true. He also uses, with no disrespect whatsoever he said to Mr. Furia, his two daughters in one of those publications as a case for pushing denial on this commission and the Planning and Zoning Commission. The decisions he and his family make have no bearing on the suitability of 3019 Toupal Drive for a CUP for recreational marijuana. Mr. Bleem told Council that he has three children himself under the age of eight years old and he said he focuses on teaching them to do the right thing and make responsible, informed decisions. Mr. Furia also brings up the septic system and leach field, repeatedly saying 'how do we know it's up to code, not contaminated?' Mr. Bleem said what he thinks they are failing to understand here is that currently a full-service automotive dealership occupies this property. If we are going to discuss the disposal of hazardous waste, what about the oils, fuels, solvents, degreasers and other chemicals used by the current occupant? They are going to water plants. That argument is actually in their favor. So again, like Mrs. Phillips, this issue is with the legalization of marijuana and not the suitability of 3019 Toupal Drive. As for the Phil Long Toyota group, he said Mr. Cimino has indicated in a letter to the editor published in the Trinidad Chronicle on August 28<sup>th</sup>, that their proposed business is illegitimate and further discusses his contributions to the tax and employment base in Trinidad. CannaCo is a legitimate business in accordance with state and local regulations, ordinances and laws. In addition he said their tax contributions and employment base will far exceed Phil Long's contributions from a tax perspective. Mr. Bleem said he has nothing against Phil Long Ford or Mr. Cimino and the things that he has done for this community, but he does, and hoped everyone else should, respect the decision of the property owner to do what he pleases with his land. That's an inalienable right of all U. S. citizens. Mr. Bleem concluded that he didn't wake up this morning and look in the mirror and say 'I'm going to half-heartedly start a business in Trinidad and fail miserably.' He reiterated that he has a proven track record as a successful business operation. His money and time are valuable to him as he is sure it is to everyone else. He said he has no intention of wasting his resources and Council's time in a failing endeavor. This is not a hobby for him. He said he has a wife and three children that look to him for financial and emotional security. He respectfully requested that Council reverse the decision made by the Planning and Zoning Commission and approve the CannaCo CUP at tonight's hearing so they are able to move forward with their project. Mr. Bleem thanked them for their time and said he looked forward to working with the City of Trinidad on this project and projects in the future.

Howard Lackey addressed Council. He said he was before them to visit again about what they are doing but Mr. Bleem has taken everything he was going to say right out of his script. He said the Lackey Trust, which he is a representative of, is leasing to CannaCo and is the only company that he will be leasing to, so there are no issues with anything else. They are a very stellar group. They've got their investment in place. They have good management in place and a great business plan in place which is going to do nothing but benefit everybody in Trinidad. It is a different path that they are taking, but sometimes with progress you have to take a different path. He said he wanted to let everyone know that if it wasn't a good thing they would not do it. He reiterated that he thinks Trinidad will benefit from it. He said they will find that CannaCo will be an extremely good business neighbor and a great supporter of the City and everything we are trying to do. He concluded that he is looking forward to a long-term relationship with them. City Attorney Downs asked Mr. Lackey if it is his desire, to the extent that Forever Green/Terry Sanchez has two medical marijuana Condition Use Permits on his property at 3019 Toupal Drive, those be essentially withdrawn to the extent he can. Are those off the table now? Mr. Lackey answered that they are off the table as far as the Trust is concerned because they will not be leasing anything to Forever Green. It is not a possibility. Councilmember Miles asked if there had ever been a lease to Forever Green. Mr. Lackey answered that there had not been. In the application process you have to have a facility to apply for the

CUP, and that's as far as it went. There was never a written lease. Councilmember Miles noted that you don't need actual possession until you seeking licensing. She asked when the lease was signed by CannaCo. Mr. Lackey said it was signed one to one and one-half months ago or better. There was an intent originally and then they followed through with the intent and CannaCo signed it. Upon inquiry he clarified that there is a formal lease in place. He offered to provide copies of the lease if Council so desired. Councilmember Bonato asked with respect to the leach lines, septic tanks and contamination of soil that was brought up by Mr. Bleem, if there was a study done or did anyone contact Mr. Martinez at the Health Department for a percolation test. Mr. Lackey responded affirmatively, one had been done five years ago when they upgraded the system. He said he is in contact with the County Health Department now to continue with it. He added that he spoke with the plumber who installed the system, a well-respected local plumber, and the capacity there is much greater than what will be needed for the next use of that building. He said he is still going to do all of the percolation tests and checks to make sure everything is okay. Councilmember Bonato asked if there was ever a study on the soil for contaminants. Mr. Lackey said when the system was put in they checked all of that and it passed the County Health and State. That's a big deal. Councilmember Bonato noted the Phil Long dealership has been there a number of years now. Mr. Lackey said they have to do that test. Councilmember Bonato asked the last time it was performed. Mr. Lackey answered that they (Phil Long) has not done one so he will. Councilmember Bonato surmised that the soil contamination is unknown. Mr. Lackey answered that he's assuming they are okay because there are rules and regulations about disposal of those kinds of things. He added that Phil Long, as good tenants, he hoped would adhere to that, but they will double check. Councilmember Bonato confirmed with City Attorney Downs that there has been no study as far as the City knows about leach lines, the septic, etc. He said these are questions he has that he still doesn't have the answers for. He said he has nothing against Mr. Bleem or marijuana, medical marijuana, they are just questions that need to be answered. Mr. Lackey said he'd be more than happy to do that because they are in the process of making sure those are okay. Some of the folks that live behind them were worried about the buffer zone, which will be kept in place, the trees, about two and one-half acres. Regarding the traffic study he said they are in touch with CDOT. Everything will be clean and ready to go so we don't have any issues. Councilmember Bonato suggested those kinds of issues should have been taken care of before it came to Council. Mr. Lackey said that's true, but at the same time they have had to fight the Planning and Zoning issue twice. He assured that it will be taken care of.

Chris Furia addressed Council. He thanked Council for allowing them to voice their opinions and that he appreciated the time. He said he is speaking for home owners, residents that are not in City limits, but is not just speaking for himself but for those others. Whether they want to speak tonight or not, it doesn't sound like that's going to be allowed. He said he has a question for Council and for Mr. Downs who doesn't need to address it until it is his time to speak. He asked why they are getting to do this now. Three months ago when the other appeal for Forever Green was here, nobody was allowed to speak in opposition. He said they appreciate what they are doing but questioned what has changed as far as the City laws or regulations that they are allowed to do this now but were not allowed to do it basically three months ago. He said they have a packet of documents that they've been wanting to submit for the record for some time and as they can see it's very lengthy, many pages, numerous documents, and it basically states their arguments and their evidence of why they feel the application should not be overturned. He asked to submit those to Council at this time and they were tendered to City Attorney Downs. Mr. Furia reiterated that they are arguments and evidence that they have as the opposition. It disputes many of the things that Mr. Lackey and Mr. Bleem said about what they feel is correct. There are also many more relevant things that aren't contained in that packet that they haven't been able to completely uncover. He said the things he'd like to speak about tonight, which were some of the things of why the Planning and Zoning Board denied them, was the safety and health issues that go with that location up there. We are residents back there; there's businesses back there. There's one intersection coming off of the interstate. That makes that an extremely unique situation. We are not picking on anybody and nobody is being singled out. It's a unique situation that needs to be addressed. The traffic, the CDOT approval - CDOT has required the City or any applicants up there to do studies. It has to be approved by them. He said they have that in their documents. There have been no traffic counts. The only way in and out for emergency vehicles is on that exit - fire, police. Mr. Sanchez, when he was applying for his CUP said one to two percent of I-25 traffic may enter that intersection. Those are safety issues which have not been addressed fully yet. Another safety issue is the vagrancy problem. He said he's sure every one of them spends numerous trips to go to Walmart, to the hotels to eat, and hopefully to Big O Tires to do service with them. They should see what goes on with the vagrancy back there. It's an ongoing problem and statistics show that it is only going to get worse according to what marijuana industry brings to a certain location. The police and fire have long response times; they are not in City limits as far as the residents go. Minimum response time for the Sheriff's Office is six to eight minutes and he didn't know about the response time for their fire district. There is still some uncertainty as far as they are concerned about CUPs that are still in effect by Forever Green, LLC. Is it clear that there can be two different entities at the same location? He said he has yet to hear the exact or the correct response to that. In closing he said there are numerous regulations that they don't have, but he urged Council to be responsible and look into them on their behalf before making any decisions. He asked them to deny the appeal because they don't have all of the information needed to approve it and it lacks the jurisdiction possibly to even consider the appeal, or delay their decision until all of the information in the packet they provided to Council is reviewed because it is very relevant, along with any other information Council needs to make their final decision. They need specific conditions that address these important questions. If they decide to approve the appeal tonight he asked that they do so only with specific conditions so that all of their questions can be answered and Council knows the conditions meet what they want before approval - the traffic study and all of the health and safety issues he brought forth. He thanked Council for taking time to listen to him tonight and stated that Bill Phillips will speak next concerning the businesses and other conditions he wants to address. Councilmember Miles asked if she is correct that the packet was not submitted to Planning and Zoning. Mr. Furia said many of the items were. Councilmember Miles said that when she reviewed the transcript and the audio she heard a lot of conjecture. She didn't see hard evidence and that is one of her concerns. She asked if it will be new information that will be presented. Mr. Furia said that some of the stuff is new information. Councilmember Miles said for instance that saying vagrancy is a problem can be countered by a response that we have vagrancy problems all over the City and they existed before marijuana. She asked if they have hard statistics. Mr. Furia answered that there are hard statistics from articles that have come out throughout the state. A few of those articles are included in the packet. He said that's a good question because his response is as the responsible parties for making decisions for the people and the City they have to find out those things to make sure their decision is correct. Councilmember Miles explained that Council needs to be presented with evidence and they rule on evidence. One of the problems she said she had was that there wasn't any statistics. They are good questions, but the question in her mind is there are three choices - 1) if questions are being asked but there's not enough time to present the evidence, you table; 2) if you think it is likely based on the good faith of the applicant, all of the things they are saying, that they are going to comply with CDOT and the septic

inspections, and so forth, you grant subject to that condition. That's not what Planning and Zoning did. They said no and she said she is worried that might be the one wrong answer because there may not be evidence here sufficient for a no vote. She asked Mr. Furia if he wished there were things he would have presented to the Planning Commission. Mr. Furia said that it seems like to him that she is taking the side that says unless they show evidence to the contrary Council is going to grant it. He asked why she was not taking the side that says until the applicant shows that they have met these conditions that Council is not going to grant it. Councilmember Miles answered it is because there are problems and then there are imagined problems. How do you prove that I didn't beat my husband? How do you prove the negative? One can come up with any litany of things and say 'I'm asking this question and you have to prove to my satisfaction as a citizen that you have uncovered every single stone.' That's not the way the law works often. Councilmember Miles added she thought the burden was upon him to show hard evidence as to why this is a concern because otherwise there could be any litany of possible bats in the belfry. She added that she understands his concern and the need to answer these questions, but the question is does that warrant a no vote. She said she is thinking that you need hard evidence to vote no and to deprive someone of wanting the highest and best use of their property. Mr. Furia said they feel they have arguments and evidence in that packet. Councilmember Miles pointed out that it wasn't presented to the Planning Commission. Mr. Furia said it was. There was evidence presented. Councilmember Miles said she did not see one statistic in the transcript and asked Mr. Furia to point it out to her. Mr. Furia said there was a very specific one as far as they are concerned which was the CDOT correspondence through e-mails that said specifically CDOT needed to be involved in the process. Councilmember Miles asked if that is a basis upon which to vote no or to put a condition on the CUP and say let's move forward based on the best information CDOT can uncover. She said as far as she heard, the Lackey Trust and Mr. Bleem were more than willing to go along with that. The other alternative was that Planning Commission could have said they were going to table it until they heard from CDOT. That would be within their purview. But, neither of those two things happened. Instead this new enterprise in Trinidad was shot dead in its tracks. Mr. Furia corrected that there was a motion to approve the CUP and it never passed by the Planning Commission. He said he didn't know that there was an option to table it after that. He concluded that as a spokesman for his group they are challenging Council to be the responsible parties and make the correct decision for everybody, whether that decision is to deny it or to approve it with specific conditions. He reiterated that they are asking Council to be responsible. Councilmember Miles asked City Attorney Downs if she is correct that this is to be an up or down vote and that no additional conditions can be imposed by Council. However if the decision was to reverse the Commission's decision, this could be raised again at the licensing hearing with specific evidence, perhaps what is in the packet of information the group provided. City Attorney Downs advised that she was absolutely correct. He suggested that Mr. Bleem and Lackey understand and know they will have to provide Council with information concerning the questions raised at the licensing hearing. Councilmember Miles said she thought they were legitimate concerns but the question is whether there is sufficient evidence to warrant the no vote. City Attorney Downs noted that there is only one copy of the packet information. He identified in the packet an outline talking about Council lacking jurisdiction concerning this appeal; there being a case presently before the District Court, Case 14CV030098, the lawsuit that is pending; a medical marijuana CUP already exists on the same property; what are the official rules for Council acting as an appeals board for a CUP appeal; a CDOT e-mail regarding Exit 11 traffic; a letter from Big O Tires authored by Mr. Phillips; a Colorado Department of Public Health and Environment Water Control Commission copy of water regulations; and then there is a lot of stuff regarding this particular application for appeal. He said if he wanted to tender this, copies could be made for Council but he didn't think there was anything that would cause them to not be able to act on this hearing tonight. He opined that there wasn't anything contained in the packet that was new information. Councilmember Miles reiterated that the packet was not presented to the Planning Commission so it may be subject for a licensing hearing. City Attorney Downs accepted it as part of the record.

Bill Phillips addressed Council and identified himself as the owner of Big O Tire and Grease Monkey in Trinidad. He thanked Council for allowing them to speak and for representing them, noting that it is not an easy job and it can be difficult. He reminded Council that not all residents of Trinidad or businesses of Trinidad are in favor of marijuana or facilities being located close to their residences or businesses. He apologized if the residents or businesses haven't submitted substantial information, but they worked hard because they don't approve of this facility being a marijuana facility. He asked that they look at all of the information they presented because they worked hard, and make an informed decision from what they've presented, be it good or bad. He also asked them to uphold the decision of the Planning Commission. They are the checks and balances system that Council put into place. They denied the CUP and he requested they uphold that decision. Mr. Phillips said from a business perspective, he said he is personally opposed to this type of a conditional use permit that CannaCo is requesting for 3019 Toupal Drive. It is nothing personal against the business owner, he just didn't feel that he would like a marijuana facility at that location. He said he is an engineer and a business person, so he said he is very logical. He believes 3019 Toupal Drive is zoned commercially and should be reserved for "like businesses" that are in concert with the residents and the rest of the surrounding businesses. He continued that he believes the consideration of like businesses is well within the responsibility of the Planning and Zoning Commission. If it weren't there wouldn't be an Industrial Park or motor cities. That's part of the Planning and Zoning decisions. Mr. Phillips commended City Council for their choice of Planning Commission members. They have done a wonderful job. He reiterated that they are part of the checks and balances for the people. He thanked each of them by name, recent past, and present. He reiterated that they have done a great job for Council and the people. They have years of experience in construction, general contracting, residential, commercial, one is a past fire chief with extensive experience with health and safety issues. He also thanked Council for taking off of the agenda consideration of removal of members of the Planning Commission. He said he believes it upset the community. Mr. Phillips told Council that he read the Charter. As he reads it the Planning and Zoning Commission is responsible for the physical development of the City of Trinidad while looking out for the safety, health and well being of the community. He stated that he believes that the Planning and Zoning Commission did the right thing in considering the CannaCo CUPs. They considered physical development, health, safety and well being. They considered all of the pros and cons from the community and they gave them unlimited time. They considered the legal ramifications of multiple CUPs at that location. This is still a very litigious issue and will continue to be as he understands that CannaCo has applied for CUPs that Sanchez and Forever Green holds. They considered living near marijuana facilities with children. They considered traffic, CDOT requirements, no sidewalks, no street lights, one way in, one way out, vagrancy, like businesses, and septic systems. They did their job and they made the right decision. He said the septic issue is meaningful to him at his business because they have very similar septic systems. More importantly, it has to do with the safety and health of the surrounding residents and businesses due to ground water contamination. He passed around a copy of State Regulation 43 governing wastewater systems. Mr. Phillips stated that the septic system at 3019 Toupal Drive is considered a residential septic system governed by State Regulation 43. If this facility is approved as a marijuana grow facility, the system transitions into a

commercial system. If the commercial grow facility uses this septic system in any way, because of its effect on ground water the system needs approval by the EPA. Once the EPA gets involved, noting he has had conversations with the local health department, state health department and the EPA in order to get this information for Council, they will require from the business an operational plan prepared by a certified environmental engineering firm with hydroponic experience. The approval process for all of this starts with the Las Animas County Health Department, and this has not been done by the current applicant. He said his understanding from communicating with Kerry Taube is that the City has requested health department approval for 3019 Toupal Drive but it was denied. Why the City made such a request and not the applicant is not known. There was a reason it was denied - the health department has no process to deal with marijuana facilities and wastewater systems or septic systems. He concluded that if these conditional use permits are granted, conditions must be met for the safety, health and well being of the community. The use of a residential wastewater system at 3019 Toupal Drive needs to be approved as a commercial wastewater system through the Las Animas/Huerfano County District Health Department, the Colorado Department of Public Health and by the United States Environmental Protection Agency per their requirements. City Attorney Downs stated that he received the packet from Mr. Phillips containing a letter from him and a copy of the regulation. He opined that it did constitute new information but said Council would receive a copy.

Gary Fentiman clarified that while they are empathetic to the lawsuit that's been filed by Mr. Malone, Phil Long Toyota is not party to it. Mr. Fentiman introduced himself as the Chief Operating Officer of Phil Long Dealerships and Phil Long Toyota. He stated that eight years ago United Toyota was on its way out of Raton and was being relocated to Alamosa. Jay Cimino and Phil Long Dealerships stepped in with Howard Lackey and negotiated a sale and relocated United Toyota to Trinidad. Establishing Toyota in Trinidad was driven by Jay Cimino's love and commitment to the Trinidad community. Obviously, as a market it is small. Our stores generally tend to be in a Denver-Colorado Springs type market. But, it was really for the community that Jay made the investment here, Mr. Fentiman said. Here we are again at the same crossroads. Do we stay or do we go? He said he wanted to be clear that Phil Long Toyota wants to stay in Trinidad and on Toupal Drive. He stated that he had with him an unexecuted letter of intent to purchase the Toyota building from the Lackey Trust. There was a verbal agreement between Jay Cimino and Howard Lackey to purchase the building for \$1.5 million, which was a fair price as it was appraised for \$1.081 million at the time of their discussion. Due to the death of their CFO, Greg Nelson, who handled their real estate transactions, the signing of the letter of intent fell through the cracks. Mr. Fentiman said upon Mr. Nelson's death the responsibility of the real estate purchases fell to him and he wasn't aware that the document had not been executed. Mr. Fentiman said he would see Howard Lackey on a monthly basis; he was their partner. He worked in their Toyota facility and was there every day. Mr. Lackey never brought up the purchase or lease documents to him once, not a call, not a letter, not a word. In fact they were notified of Mr. Lackey's intent to convert the dealership to a marijuana facility through a public notice posting in the Chronicle News newspaper. Mr. Lackey was unavailable for comment for days when they called to ask what was going on. He said he understands that it is not City Council's responsibility to intervene in real estate transactions between two parties. He asked that Council not override again the Planning Commission's decision to deny the CUP for marijuana sales on Toupal Drive, based upon the health and well being of the surrounding neighborhood. By overriding the Planning Commission's decision, he suggested Council would be encouraging Howard Lackey to act in bad faith relative to their agreement and fuel actions that may lead to Phil Long Toyota leaving Trinidad. He said if they didn't want to stay they wouldn't have committed over \$1 million in improvements to Toyota Motor USA on Toupal Drive. As a result of the looming loss of the building, Toyota Motor USA has notified them that they will terminate their franchise on December 31, 2014, if 1) they don't have a lease or purchase executed on Toupal Drive; 2) they have the option to sell the franchise to Mike Goodhart or relocate it to the City of Alamosa; 3) build a new facility meeting Toyota's design requirements for a budget of about \$3 million. He said their desire is to stay on Toupal Drive. Their back up plan is to build on Commercial Street, but the Commercial Street option is problematic because the construction estimate is \$4.5 million and Toyota Motor USA's target budget is \$3 million. So, to bridge the gap, Jay Cimino has already told Toyota that he will donate the land on Commercial Street to Toyota for the facility. Mr. Fentiman said they are working with Louis Fineberg (Planning Director) to develop a Department of Local Affairs grant proposal which they request City Council review with them next Tuesday at their meeting. It would be to develop Cedar Street from Commercial Street to Chestnut Street as the design from Toyota requires. They are also working with local subcontractors to try to bring that cost down. If they are unable to bridge the gap, their only choice is to sell or relocate the Toyota store to Alamosa. Mr. Fentiman said it would be a shame for Jay Cimino and the 28 families who work and live here in Trinidad, 28 employees whose average income is over \$43,000 who patronize local restaurants, small businesses, own homes and whose children attend our schools. It is a shame for the City and Las Animas County whose charge is to create jobs and provide opportunity to the residents of Trinidad. In 2014 alone, Phil Long Toyota will generate over \$531,000 in tax revenues to support the City, County and State government. It is a shame for the youth of Trinidad, who after graduating from high school or Trinidad State, leave town because there's not enough jobs. It is a shame for their neighbors on Toupal Drive who are here tonight asking for support, who are asking to keep marijuana out and are supporting Phil Long's fight to keep Toyota at its current location. Going forward he said they will add four or five new jobs if they wind up on Commercial Street or do the remodel. But, if they are forced to leave they will lose 28 to 33 good paying jobs. The people who are relocated currently live here in the community. Relative to Council's consideration to the second CUP on Toupal Drive, he said he believed Council is putting themselves in jeopardy should they issue the second CUP. First the Planning and Zoning Commission denied the CUP application. According to the City Charter, acting as zoning Board of Appeals, he said Council is limited to considering appeals for variance decisions and they are not permitted to consider CUP decisions. The argument is presently before District Court. He suggested that Council should not act until the present lawsuit is completed and the law is made clear. Secondly, if the CUP is determined to be valid, then a medical CUP already exists on the property. It has not been formally abandoned by Forever Green, nor rescinded by the Council, so it still exists. Without clearing the property of the prior CUP, the appeal for a new conflicting CUP cannot be approved and should be denied. In closing he thanked Council for the opportunity to speak and asked that they do what is right by law, the neighborhood and surrounding businesses who oppose the approval of a second CUP, and by Phil Long Toyota who is committed to its employees and customers, keeping the store in Trinidad. Councilmember Miles said she's been thinking about one of the points raised, that being the layering of CUPs. She said she's been told they run with the property. That's advice of counsel. Mr. Fentiman is saying that there's some significance to the CUP although there's no lease and no possibility of bringing a business to fruition. She asked if it also cuts the same way that if Mr. Sanchez never vacates the CUP that Phil Long can't operate on Toupal Drive? You can't have a car dealership and a marijuana facility in the same place. She said if he is claiming that you can't layer a marijuana CUP on a marijuana CUP, you can't have a car dealership layered on a marijuana CUP. She asked Mr. Fentiman if he thought that through. He answered that he has and doesn't believe Council has the authority to override Planning Commission. Councilmember Miles surmised he is saying that the CUP is in place and that it conveys some rights. Mr.

Fentiman said he is saying that should it be determined by the court that Council had the authority to have overridden Planning Commission, then they believe there's a second CUP that first needs to be vacated before they can vote. Councilmember Miles said by that logic if Mr. Sanchez never vacates that CUP, then Phil Long will have to move. Mr. Fentiman agreed. He added that regardless of that, Mr. Lackey has the decision of whether Phil Long can stay or go, relative to the CUP. Phil Long doesn't have a lease with Mr. Lackey. It ends December 31<sup>st</sup>, and he has no legal requirement to do it; he has a moral involvement and commitment. Councilmember Miles asked if he thinks Mr. Sanchez has a veto right over whether Phil Long operates that location. Mr. Fentiman answered that he just doesn't think the right actions have taken place to relinquish that CUP at this point to be able to vote on it tonight. He said that was a question from Mr. Malone.

City Attorney Downs addressed Council and answered why he recommended the hearing be conducted this way tonight. He reminded that he explained in his preliminary remarks that he, as City Attorney, is supposed to avoid lawsuits for the City, most fundamentally. He said whatever his opinion is on the Malone lawsuit, the Furia, Big O and Grease Monkey lawsuit, he needs to try to avoid having any more filed. The lawsuit alleges that these people, the opposition group, was deprived due process in the last hearing by not being able to meaningfully participate. He reminded that Attorney Steven McConnell from the firm of Camm and McConnell represented the applicant/appellant and Mr. McConnell called his witnesses and conducted his portion of the hearing. City Attorney Downs reminded Council that he then got up and said that he agreed. That was how the hearing went and it resulted in the Malone lawsuit. Thereafter he was told by Andy Nathan, one of our CIRSA lawyers, that he was supposed to conduct the hearing the way it was conducted tonight to help minimize the likelihood of another lawsuit. He said he didn't like being told that. He said he wanted to stick with what he had done before because he thought the way it was previously conducted was the correct way an appeal hearing was supposed to be conducted. But deferring to Mr. Nathan's experience, he was persuaded because he doesn't want another lawsuit. That was why he told Mr. Malone as soon as he knew that was going to be his suggestion for the conduct of this hearing. City Attorney Downs continued that he wasn't going to stand before them and tell them that he thinks a majority of Planning and Zoning was right or wrong. Council has the evidence in front of them. They also have the record, everything done as part of that hearing. He added that while he has done everything possible to avoid further litigation, by far the greatest risk of further litigation would be if Council continues the denial of the CUP by Planning and Zoning rendered on October 14, 2014. He clarified that is not a personal opinion, but that they have had legal advice from a number of lawyers. He further stated the absolute authority Council has to hear the appeal from a denial of a Conditional Use Permit from the Planning Commission. It is as fundamental as the law gets. The Charter and ordinances provide for it and he has spent a lot of time telling people that Council is the jurisdictional entity for someone who is denied a Conditional Use Permit. Council absolutely has that jurisdiction. He advised that overlapping CUPs is not a problem, factually and legally. What has happened and continues to happen is that people want Council to go down various avenues to be distracted and overwhelmed to make them not sure what they are supposed to do. City Attorney Downs said he knows what to do and that is why they are here and considering this. He pointed out that Planning Director Louis Fineberg was present and Council may have questions of him or Planning Director Fineberg. He reiterated that the record is clear and is properly in front of Council. The issues are framed and the case is ready for Council to rule on. Mayor Reorda asked City Attorney Downs if it is correct that he and Planning Director Fineberg were at each CUP hearing and if Planning Commission ever considered all of these other things they are considering with the Phil Long Toyota location. Did they worry about the traffic, sewer line, etc.? He asked why they just picked on this one to consider all of these things. City Attorney Downs answered that they did consider it and raised it. It was discussed on a number of occasions. Mayor Reorda asked if it was for every one of them. City Attorney Downs said it wasn't on each of them and he and Planning Director Fineberg discussed that fact. He said it seemed as though there was a heightened sense of concern and more issues raised for these applications for CUPs than others. He pointed out that to Councilmember Miles' question, Mr. Fentiman stated he wouldn't want Council to overturn the decision of Planning and Zoning regarding the prior Conditional Use Permits. City Attorney Downs emphasized that it wasn't the Planning Commission that put the conditions on. If the Planning Commission's decision had been upheld by Council, those conditional use permits would still not be on the property. He opined that it was an apt line of questioning because you can't have your cake and eat it too. If Howard Lackey and the Lackey Trust now decide to walk away from marijuana, if any other business comes in that has a requirement to obtain a Conditional Use Permit, for example a daycare facility, and the Lackeys agreed to move forward, there wouldn't be all of these concerns, but it is folly to think that a Conditional Use Permit for a daycare facility couldn't be issued because there are two to five Conditional Use Permits there for marijuana. There is absolutely no prohibition, no limitation, no restriction, no inability by Planning and Zoning or Council to say they could have a daycare Conditional Use Permit for 3019 Toupal Drive. There's nothing legally that exists that says that. To answer his question he said it was discussed but rather than possibly saying they wanted to add more conditions, that wasn't done and Council knows what the outcome was. Mayor Reorda asked why the Planning Commission treated one different than all of the rest of the CUPs. It looks like they made a bigger issue out of the location. Any location we pick there will be families and all kind of things there. They didn't question them on the other CUPs. City Attorney Downs stated that from a legal perspective that was a very great concern of his. He raised that at the hearings, on Forever Green/Terry Sanchez when he was here for a two-hour hearing before the Planning and Zoning Commission before getting his denial, and the CannaCo hearing for close to two hours. It seemed like there was a heightened sense of scrutiny that Planning and Zoning had for this CUP and this application. All the more reason why he said he was more concerned from a legal standpoint if Council were to say no to the proposed reversal of the CUP and uphold Planning and Zoning and continue the denial. Councilmember Bonato said that it seems to him that the Planning and Zoning Commission made a decision and the questions that were asked by Planning and Zoning were legitimate questions. They asked to have a traffic study done up there. He said he understood that it had been e-mailed to one of our City staff from CDOT saying this has to be done. We don't own that highway. The State of Colorado owns it and it is up to them if they want to have a traffic control study. Then it's up to Council to find out what is going in. He said he respects what City Attorney Downs is saying and the people involved in the lawsuits, but Council is damned if they do and damned if they don't because we already have one lawsuit and there may be one forthcoming if Council denies this one. City Attorney Downs answered that he didn't believe they were damned if they do because as Councilmember Miles said, the options are to table or to say we are absolutely adding this condition to an approval of the CUP. He said it is absolutely legitimate and it has arisen on other CUP hearings. Commissioner Davis schooled him once when he said he hadn't thought it to have come up before and Commissioner Davis corrected that it had on the Fabec application on Hainlen Street. He suggested the appropriate course of action would be to table or approve with conditions. Councilmember Mattie asked City Attorney Downs to speak to the concept of layering Conditional Use Permits and how they run with the land for clarification. City Attorney Downs explained that layering is a term that has come up. He said he didn't really think there was a layering. A Conditional Use Permit stays with the land. What exists right now are two medical marijuana CUPs for Forever Green/Terry Sanchez, and retail CUPs for CannaCo.

There's no layering; you can have 10 CUPs. One way to remove a CUP is to have the person who holds those CUPs who is never going to use them come in and remove them from the property. Mr. Sanchez was going to do that and then for whatever reason decided to not take them off. They stay. If you are going to be the new medical marijuana person there you are going to take over those medical marijuana CUPs. You are not going to do new ones. You have to adhere to the same conditions placed earlier. A person can't take their CUP and go elsewhere. It stays on that property. The Sanchez CUPs are abandoned unless and until CannaCo decides they want to be in the medical marijuana field. Councilmember Miles surmised that if one concludes that you can't layer CUPs, that would then give Mr. Sanchez a property interest in Mr. Lackey's property because unless he were willing to vacate it you could never put anything there, because there is no business that is compatible with marijuana. Marijuana has to be standalone. He could prevent a daycare center or a church or a yarn shop from opening. It seems illogical that a one hour hearing process in Planning and Zoning could basically result in confiscating the Lackey Trust property, because he could hold out and say now we are 50/50 partners if you want to do anything with the property. City Attorney Downs agreed with her assessment. Councilmember Miles added that it is illogical that the law would work that way, that Mr. Sanchez would have these rights. Councilmember Torres asked if Mr. Sanchez wants a CUP in another location, can he do it, or because he has one already would it preclude him. City Attorney Downs reminded that Mr. Sanchez had a CUP on Cedar Street and he was allowed to move it to 3019 Toupal Drive. He corrected that he didn't move a CUP, rather he got a new CUP. There is still one on Cedar Street. Councilmember Torres asked if he should have to cancel the one he has before he applies for a new one. City Attorney Downs said you would think so, but he doesn't especially now that there's no limit on the number of Conditional Use Permits that the City will issue, adding that he was very glad that is the rule now. Councilmember Bolton commented that regarding the overlapping CUP issue, even though Terry Sanchez still has CUPs on Toupal Drive, he has absolutely no lease agreement to enable him to inhabit the property on Toupal Drive. Without a lease agreement with the landowner they are totally worthless and without any impact or affect. He can never move forward with them. City Attorney Downs agreed. He added that it would give Mr. Sanchez a property interest in a property he has never leased, purchased or otherwise had an interest in if it was true that a Condition Use Permit gave you that kind of authority over a property. Mayor Reorda asked Planning Director Fineberg if he wished to comment. Planning Director Fineberg offered to answer questions. Councilmember Mattie asked Planning Director Fineberg if his assessment was accurate in that marijuana is a whole new foreign area for us to be involved in. When an entrepreneur approaches Planning and Zoning, and they are seeking a Conditional Use Permit, it is a two-prong situation. One is the moral character of the applicant – does he have felony convictions, ties with drug cartels? The second prong is the facility where he is going to house that business proposition. Is it in an area zoned for that kind of enterprise? Is it 1000 feet away from a school? Does it comply with the things that state law and City ordinance regulate? Then based on information provided by the applicant about himself and the location he is choosing, a Conditional Use Permit is granted to that individual, as would be the case with Mr. Sanchez when he went first to Cedar Street and then to Toupal Drive. He compared it to applying for a loan with a temporary approval of the location and the applicant fitting the bill. Since there has been a separation of Mr. Sanchez at the 3019 Toupal Drive address, all that remains up there is not a legal attachment that belongs to Mr. Sanchez for that facility, but a pre-approval, if you will, for that facility to be used as that kind of a business. Planning Director Fineberg corrected that the moral character of the applicant is something Council deals with at the licensing stage; it is not a consideration of the Planning Commission. He confirmed that CUPs run with the land. There can be two scenarios – a property owner who applies for a CUP, whereby the property owner would also be the applicant; and the second, such as the one at 3019 Toupal Drive, where you have a property owner and a different applicant. In order to make the second scenario work with that CUP he said you need both of those people to want it to move forward. As Councilmember Bolton referenced, there's no lease agreement and no interest in the property owner wanting to move forward with the medical CUP with Mr. Sanchez. Without the concurrence of the property owner they really can't move anywhere. So, he said there is no property interest held by the applicant. He added that it is not a layering of CUPs. The CUP still remains with the land even though Mr. Sanchez was the applicant. If CannaCo wanted to get into the medical marijuana business, all they would need to do is agree to the conditions placed on Mr. Sanchez. Councilmember Mattie concluded that CannaCo would accept the prequalification conditions. Planning Director Fineberg explained that CannaCo would need to give the City a letter that says they agree to those conditions. There being no further comments, the hearing was closed.

Councilmember Miles asked for clarification that Council can only vote yes or no. Any additional conditions or questions that need to be answered would be the subject of a resubmission at Planning and Zoning. Mayor Reorda asked what the motions would be. City Attorney Downs said it would either be to reverse Planning and Zoning and thereby approve the CUP; or uphold and affirm the decision thereby denying the CUP. Councilmember Bolton stated that since Council has 30 days to render a decision and since they have been given new information from the opposing parties, and since there's a possibility that Council's decision may be appealed to a higher tribunal, she moved to take the appeal under advisement for a very brief period of time and establish a deadline for each Councilmember to submit to the City Attorney written findings in support of their yes or no vote, and then City Attorney Downs could prepared findings of fact based on what each of the Council Members have provided. Councilmember Miles agreed, except said she didn't think they should consider any new information. That information would become subject to licensing or reapplication. Council is ruling on what happened that night. If information wasn't submitted that night, it is not a basis for approving or disapproving. Councilmember Bolton withdrew that portion of her motion about reviewing new evidence. She restated the motion for clarity that Council take this appeal under advisement for a brief time period and that there be a deadline established for each Councilmember to submit to the City Attorney written findings in support of their yes or no vote who would then prepare the official findings of fact similar to those used when approving liquor or marijuana licenses. Councilmember Miles seconded the motion which carried unanimously. Council agreed that the deadline for Council to submit their written findings to City Attorney Downs would be noon on Monday, November 24, 2014. Councilmember Torres asked if Council would be copied with the information submitted this evening. City Attorney Downs said the information is not germane to their consideration. Councilmember Miles commented that it could be provided at the licensing hearing or a reapplication to Planning and Zoning. She reiterated that they have to rule on what the thinking was that night. Councilmember Bonato confirmed that Council's ruling could be appealed to a higher court. Councilmember Miles commented that the new information could come into effect at the time of licensing. Howard Lackey asked how they would be informed of the decision. City Attorney Downs said the decision will be rendered in a public meeting pursuant to Council's vote. Mr. Bleem asked about the conditions Council will place. Planning Director Fineberg clarified that if the decision of the Planning Commission is reversed, the only conditions would be those contained in the staff report, no additional ones. Howard Lackey commented that Council has information that wasn't presented before and he suggested they could have a second motion to require them to adhere to additional conditions. Councilmember Miles disagreed and said that should they

have to reapply to Planning Commission that information could come to bear. Also, if Council rules against the Planning Commission's decision, then when this comes before Council for licensing those questions will be raised. Councilmember Bolton pointed out that the motion by Planning Commissioner Pritchard included requirements for a CDOT access permit and a review of the septic system accessibility. A representative clarified that they were denied. City Attorney Downs said if the decision from the Planning Commission is reversed there will be standard conditions going forward initially. Any additional conditions can be imposed at the licensing hearing before Council. He suggested they will want to comply with the previous conditions. Councilmember Bonato asked who commented from the audience about them being denied. City Attorney Downs identified him as Mr. Genova, who is in a lot of the dealings with Mr. Bleem and Mr. Lackey. Councilmember Mattie said during the hearing Councilmember Bonato suggested there exists e-mails between CDOT and staff. He asked if they exist and if we have access to them. Public Works/Utilities Director Valentine said they do. Mr. Fentiman said that he knows there is a concern about entering new evidence. He pointed out part of the reason it is new is because they didn't have an opportunity to present it at the last meeting. The e-mail is contained in the new evidence. Councilmember Mattie stated that it wasn't necessarily his concern that it was new evidence but rather that it was a communication directly to the City which means it should be allowable for Council as representatives to the City to consider. After brief discussion, it was determined that the vote and presentation of the findings and decision will be done at the next regular meeting on December 2, 2014.

**PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN.** Stephen Hamer, ADA. Mr. Hamer thanked Council for the opportunity to address them, but said Council doesn't address the disabled. He stated that six months ago he objected to the lack of an accessible restroom at City Hall and was met with contempt. He said he went to former City Manager Tom Acre and agreed with him on putting a port-a-potty at City Hall until the City could install one unisex toilet. He said he told him that if it goes into the winter months he would object. People can use the restroom inside in relative comfort and the handicap cannot. He asked where their compassion was. They have a right to use the restroom in warmth, with light and be able to maneuver. None of them have to go outside. He asked that they consider putting in one handicap accessible toilet in the building. It can be unisex under the law. Mr. Hamer added that it is degrading and demeaning and illegal. He said he will not allow this City to continue to do this and will file a lawsuit against the City. He said if the City want to avoid a lawsuit, show some compassion. He asked that they please consider one toilet in this building.

Daryl Shoupe addressed Council concerning thoughts on security and vagrancy. He said he has worked around marijuana facilities and suggested that he has found that they make the area more secure. Regarding the nice people who have the former Budweiser building and water issues, it was said we have plenty of water. People are quick to rush to judgment. As it pertains to this issue he said he thought as things settle down they will take care of themselves. Mr. Shoupe said he has a family, a ten year old son and a daughter. His son attends Holy Trinity Academy. He said he hopes people commit to putting back into the community. He added that he feels they are all acting in good faith. Life is not simple. Steady hand always prevails. Let's look at the facts.

**COUNCIL REPORTS.** Councilmember Bolton reported that today she attended the community meeting at the Trinidad History Museum, having received rather short notice of the meeting on Friday evening. It was a brainstorming meeting with members of the community and people from History Colorado to talk about how to enhance and retain our history museum. There will be several more meetings in the upcoming months. She encouraged all people to participate. It is important to us and we don't want to see it closed down.

**REPORTS BY CITY MANAGER.** Meetings. Acting City Manager Garrett called to Council's attention in their information items the invitation to the Economic Development Planning follow-up meeting from the September 18<sup>th</sup> meeting hosted by Action 22 to be held on November 24<sup>th</sup> at 11:30 a.m. at Mt. Carmel. She asked Council to RSVP to her so arrangements could be made for the luncheon. Councilmember Miles asked that Economic Development Director Walt Boulden be invited. Councilmembers Bolton, Bonato, Fletcher and Mayor Reorda advised that they will attend.

Town of Cokedale request. Acting City Manager Garrett pointed to a letter received today from the Town of Cokedale at Council's seating places relative to work they are undertaking on their lagoon system. She explained that the Town of Cokedale is asking for a reduction in the costs being assessed by the City for disposal of sludge at the Wastewater Treatment Plant and biosolids at the City's landfill. She advised that unless Council had some concerns, an offer to waive the fees at the landfill will be offered because the material can be used as cover at the landfill and it is consistent with past practice, however the fees associated with the disposal at the Wastewater Treatment Plant will be assessed due to the impact on the City's system. Mayor Reorda asked what former City Manager Acre promised. Acting City Clerk Garrett said their letter does not say. Councilmember Bonato stated that he received a call regarding this from a number of people from Cokedale who asked him to check into it. He was told they had an agreement with former City Manager Tom Acre about disposing the solids at the landfill but that they had to pay for disposal at the Wastewater Treatment Plant. He said Acting City Manager Garrett and Public Works Director/Utilities Director Valentine made the decision already. Acting City Manager Garrett said that was correct, but the letter was addressed to Council and she wanted to be sure Council had no issues with that approach to answering the request. Council voiced no objections.

Schedule. Acting City Manager Garrett asked for and received Council's concurrence to hold an executive session following their work session on November 25<sup>th</sup> for an executive session for Union negotiations.

City Manager applications. Council was advised that copies of the City Manager application will be provided to Council on Wednesday, November 19<sup>th</sup> at their work session rather than tonight as there wasn't enough time to compile them by this evening's meeting. She reminded of their Work Session with Steve Thomas of Colorado Code Consulting at 1:30 p.m. tomorrow. Intern Tara Marshall also reminded that the public meeting is tomorrow and upon inquiry from Councilmember Miles said she didn't recommend Council attend the public meeting but they are welcome to.

Power at Industrial Park. Councilmember Miles asked if staff has thoughts about providing power at Industrial Park. Public Works/Utilities Director Mike Valentine said staff has done a map of the one and one-half miles from the nearest point where the City has power available. Currently they are looking into easements. There is option is to run it along the railroad or up the old highway on the other side of the interstate past Linden Avenue. They are looking at the cost. Staff

will be speaking with facility owners who are locating in the Industrial Park to figure out their expected power usage to see if it is feasible. Councilmember Miles asked if he thought it was worth taking the next step. PWD/Utilities Director Valentine said he doesn't know yet. Councilmember Miles asked if permitting will be a lengthy process. PWD/Utilities Director Valentine said it will depend on if we need easements or if we can go up the County road.

Dog Park. Councilmember Fletcher asked Planning Director Fineberg the timing on the dog park. Have the papers been signed? City Attorney Downs stated that Planning Director Fineberg has the deed. Planning Director Fineberg said he is waiting on it to be signed.

Cedar Street. Councilmember Mattie asked about Mr. Fentiman's suggestion that Cedar Street may be extended. Planning Director Fineberg said the concept will be presented at the next work session.

**REPORTS BY CITY ATTORNEY.** City Attorney Downs had nothing to report.

**UNFINISHED BUSINESS.** Public hearing for consideration of an ordinance regarding the provision of natural gas service by the Trinidad Municipal Natural Gas Department, and increasing the gas supply charge applicable to all customer service classifications. Mayor Reorda opened the hearing and called for comments. Ed Griego asked what prompts the increase. PWD/Utilities Director Valentine stated that our gas consultant, Mike McFadden, presented to Council on the gas supply cost recently. There is a straight pass-through on the City's gas purchase to the customers. What gas is purchased for is what the City sells it for. Because gas isn't the same price throughout the year, the cost is projected. The City is currently charging \$0.4295 per cubic foot. It is projected to go to \$0.4490 per cubic foot. It is a difference of \$0.195 per cubic foot to strictly cover the gas supply cost. Councilmember Miles noted that this rate is only one component of the gas charge. She asked the percentage change, recalling it to be very minimal. PWD/Utilities Director Valentine said that of \$1.00 for total gas charges, the gas cost is \$.607; Operation & Maintenance is \$.295; \$.034 is assessed for payment in lieu of taxes and transfers; and capital is \$.064. The increase in the overall gas cost is 1.51%. Councilmember Miles said she sees it all the time at ARPA because the electricity purchases are based upon the marginal cost of gas, and 2014 has not been as happy a year as 2013. This is actually fairly modest given some of the fluctuations we've seen in the gas markets. There being no further comments, the hearing was closed.

Second reading of an ordinance regarding the provision of natural gas service by the Trinidad Municipal Natural Gas Department, and increasing the gas supply charge applicable to all customer service classifications. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Bolton and seconded by Councilmember Fletcher. Upon roll call vote the motion carried unanimously. The ordinance was adopted and will become effective on November 28, 2014.

ORDINANCE NO. 1970

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, REGARDING THE  
PROVISION OF NATURAL GAS SERVICE BY THE TRINIDAD MUNICIPAL  
NATURAL GAS DEPARTMENT, AND INCREASING THE GAS SUPPLY CHARGE  
APPLICABLE TO ALL CUSTOMER SERVICE CLASSIFICATIONS

ANNEXATION - Triple D Family Limited Partnership LLLP and Jose Manuel Garcia and Maria Nelly Garcia – Southside Annexation. Public hearing for consideration of an ordinance annexing certain territory to the City. Mayor Reorda declared the public hearing open and called for comments for or against the annexation. There being none, the hearing was closed.

Second reading of an ordinance annexing certain territory to the City. The ordinance title was read aloud. City Attorney Downs asked that Council move to amend the ordinance on second reading to remove reference to an annexation agreement as there was not one done as part of this. Upon inquiry he explained that the City has landowner permission to annex. Annexation is usually part of a development project and then you have an annexation agreement. It is not part of a development in this instance. In terms of the Garcias, he reminded Council that the City agreed to provide them with natural gas service as part of them signing the annexation petition. That was the carrot. He explained that they didn't have to sign the annexation petition but we wanted them to for the sales tax revenue. The City agreed to run a gas line to Tequilla's Restaurant and to the residence to the east of the restaurant as the Garcias requested. They own that residence. The Garcias will pay however for the cost of the pipe and the City's crew will do the work. Councilmember Bonato asked if it is allowable to run gas to the house because it is in the County. City Attorney Downs advised that it is legal to do that and in fact the City has a number of gas customers in the County that are City gas customers. A motion to approve the ordinance on second reading with a modification in the fourth whereas clause to end the sentence with the word required was made by Councilmember Miles. She clarified that they are striking the language that reads "and this ordinance is contingent on the execution of an annexation agreement". The motion was seconded by Councilmember Mattie. The motion carried unanimously upon roll call vote.

ORDINANCE NO. 1971

AN ORDINANCE ANNEXING CERTAIN TERRITORY TO THE CITY OF TRINIDAD,  
COLORADO

Public hearing for consideration of an ordinance amending the zone map by establishing the zone class of certain land annexed into the City of Trinidad to Established-Community Commercial. Mayor Reorda declared the public hearing open and called for comment for or against the ordinance. Ed Griego, operator and franchisee of Wendy's, asked when this annexation becomes official. Acting City Manager Garrett answered that the annexation will be effective in ten days, on November 28<sup>th</sup>, except for purposes of property taxes which will become effective next year. Mr. Griego said he just wanted to know the timing because it means he will become a tax collector for the City of Trinidad. There being no further

comment, the hearing was closed.

NOVEMBER 18, 20

Second reading of an ordinance amending the zone map by establishing the zone class of certain land annexed into the City of Trinidad to Established-Community Commercial. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Bolton and seconded by Councilmember Fletcher. The motion carried unanimously upon roll call vote.

ORDINANCE NO. 1972

AN ORDINANCE AMENDING THE ZONE MAP OF THE CITY OF TRINIDAD,  
COLORADO, BY ESTABLISHING THE ZONE CLASSIFICATIONS OF CERTAIN  
LAND ANNEXED INTO THE CORPORATE LIMITS OF THE CITY OF TRINIDAD,  
COLORADO

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**BILLS.** Councilmember Fletcher moved to approve the bills and Councilmember Torres seconded the motion. The motion carried unanimously upon roll call vote.

**PAYROLL,** November 8, 2014 through November 21, 2014. A motion to approve the payroll was made by Councilmember Fletcher and seconded by Councilmember Bolton. 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 Fletcher. The meeting was adjourned by unanimous roll call vote of Council.

ATTEST:

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JOSEPH A. REORDA, Mayor

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DONA VALENCICH, Asst. City Clerk