BOARD OF ADJUSTMENT OF
THE TOWN OF DEWEY-HUMBOLDT
REGULAR MEETING
Friday, April 15, 2011, 2:00 P.M.

BOA REGULAR MEETING **DEWEY-HUMBOLDT LIBRARY**
2735 Corral Street **DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Board of Adjustment are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Board believes that the meeting be a safe place for people to speak. With this in mind, the Board asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Please turn off all cell phones. The Board meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A majority/quorum of the Dewey-Humboldt Town Council may be in attendance at this meeting, but no Council deliberation will occur. During recess of a BOA Hearing, a BOA Member shall not communicate with any BOA Member or applicant, witness or the Planning Administrator. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. **Call To Order**
2. **Pledge of Allegiance**
3. **Roll Call.** Board Members Odis Brockman, Jack Hamilton, Doyle Wiste, Vice Chair Bob Bowman, and Chair Lydia Chapman.
4. **Consent Agenda.**

   4.1. Approval of minutes from the January 27, 2011 meeting.
5. **Study Session Agenda**

   5.1. Continuation of the discussion involving the Powers and Limitations of the Board of Adjustment from the previous meeting. Review of Video.

   5.2. Review of Key Points in Planning and Zoning Handbook.

   5.3. Brief discussion of Arizona Rules of Civil Procedure, the Arizona Rules of Evidence and the Arizona Rules of Civil Appellate Procedure as are referenced in Town Code Section 31.22 Board of Adjustment.

   5.4. Board of Adjustments: Conduct and Procedure of a Public Hearing. Discussion and handout.
6. **Comments and Recommendations for Future Meetings**

   6.1 Comments from Members. (At future hearings, the specific recommendation topic must be described on the agenda)

   6.2 Schedule date for next meeting.

THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.

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7. **Comments from the Public**. The Board wishes to hear from Citizens at each meeting. Those wishing to address the Board need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Board. Comments are accepted

regarding any services or individuals in Town government or about others doing business or who might do business with or for the Town. Topics can include all services the Town provides or could provide under State Law. At the conclusion of Comments from the Public, Board Members may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Board is forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is ***20*** minutes. No time limit is imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.

8. Planner's Report

9. Adjourn.

For Your Information:

Next Town Council Special Work Session: Tuesday, April 26, 2011 at 2:00 p.m.
Next Town Council Meeting: Tuesday, April 19, 2011 at 6:30 p.m.
Next Planning & Zoning Commission Meeting: Thursday, May 5, 2011 at 6:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the _____ day of _____, 2011, at _____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.
By: _____, Town Clerk's Office.

TOWN OF DEWEY-HUMBOLDT
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
JANUARY 27, 2011, 2:00 P.M.

A REGULAR MEETING OF THE DEWEY-HUMBOLDT BOARD OF ADJUSTMENT WAS HELD ON THURSDAY, JANUARY 27, 2011, AT TOWN HALL AT 2735 S. HIGHWAY 69, HUMBOLDT, ARIZONA. CHAIR LYDIA CHAPMAN PRESIDED.

1. Call To Order. The meeting was called to order at 2:02 p.m.

2. Opening Ceremonies

2.1. Pledge of Allegiance. Made.

2.2. Oath of Office. Swearing in of Board of Adjustment Members. Town Clerk Judy Morgan administered the Oath of Office to all Board Members.

3. Roll Call. Board Members Odis Brockman, Jack Hamilton, Doyle Wiste, Vice Chair Bob Bowman, and Chair Lydia Chapman were present.

4. Consent Agenda.

4.1. Approval of minutes from the December 16, 2010 meeting.

Doyle Wiste made a motion to approve 4.1. Minutes from the December 16, 2010 meeting. Vice Chair Bob Bowman seconded the motion. It was approved unanimously.

5. Study Session Agenda.

5.1. Introduction and Viewing of an informational video recording on Boards of Adjustment: Powers and Limitations (June 14, 2010) presented by Wayne J. Peck Esq., Senior General Council of the Maricopa County Office of General Litigation Services. Chair Chapman gave an introduction on the video and the materials. Each Board member was provided a copy of the video. The Board viewed the first 49 minutes of the video.

Vice Chair Bob Bowman left the meeting at 2:24p.m.

There was discussion on the processes and procedures of a BOA Hearing; hearing of evidence, weighing the evidence, writing the findings, and submitting the decision. There was a suggestion and discussion on having a “mock” hearing in March for practice.

There was a suggestion and discussion to have Board members finish watching the remainder of video on their own.

There was discussion on Town Code Section 31.22 enabling the formation of Boards, Committees or Commissions.

There was discussion on swearing in the applicants and witnesses at all BOA Hearings.

6. Determination of date for next Study Session. There was discussion of having the BOA meetings on the third Friday of each month with the next meeting scheduled for February 18, 2011 at 2:00p.m.

7. Comments from the Public.

David Hiles suggested the Board members think of the BOA as the Superior Court of U.S.; it being quasi-judicial; and conducting the hearings in a similar manner.

Town Manager Castricone spoke on the mock cases being a good learning tool.

8. Planner's Report. Planner Price spoke on having the Board members watch the remainder of the video to obtain good information.

9. Adjourn. The meeting was adjourned at 3:46 p.m.

_____

Lydia Chapman, Chair

ATTEST:

_____

Linda M. Baker, Records Manager/Admin Assistant

Arizona Rules of Evidence

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The Arizona Rules of Evidence were promulgated on June 1, 1977, effective September 1, 1977. These rules govern the presenation of evidence in proceedings in Arizona state courts. The Arizona Rules of Evidence are modeled after the Federal Rules of Evidence. The language and substance of the Arizona Rules are substantially the same as the Federal Rules of Evidence.

These rules apply to all courts of the State and to magistrates, court commissioners and justices of the peace. These rules apply generally to the following:

- civil actions and proceedings;
- contempt proceedings except those in which the court may act summarily; and
- criminal cases and proceedings except as otherwise provided in the Arizona Rules of Criminal Procedure.

The rules (other than with respect to privileges) do not apply to proceedings before grand juries. However, the rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

Arizona Rules of Evidence are construed to secure fairness in administration and elimination of unjustifiable expense and delay. In addition, the rules aim at promotion of growth and development of the law of evidence for ascertaining truth and justly determining proceedings.

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Arizona Rules of Civil Procedure

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The Arizona Rules of Civil Procedure lay down the rules that should be followed by Arizona superior courts. The rules govern civil actions. The rules are promulgated for the smooth and efficient functioning of Arizona superior courts. In Arizona a civil action commences with the filing of a complaint with the court. A party who commences the action is called the plaintiff, and the opposite party is called the defendant. According to Rule 4, once a complaint is filed, the court clerk will endorse the summons and deliver it to the party who filed the complaint. The party who filed the complaint will cause the summons to the opposite party(s).

A civil action can be classified into various stages that include: pleading stage, discovery stage, trial stage, and judgment stage. Different types of pleadings in Arizona courts include : Complaint, Answer to Complaint, Counter claim, Reply to counterclaim, Cross claim, Answer to cross claim, Third party complaint and Third party answer. A complaint should be filed by the real party in interest. If the real party in interest is an infant or incompetent person, the person's representative should file the complaint. If an infant or incompetent person does not have a representative, s/he may file the action through a next friend or a guardian ad litem.

Parties my obtain discovery by:

- oral examination or written questions;
- written interrogatories;
- requests for admission;
- request for production of documents or other information;
- request for permission to enter into land or other property for inspection or other purpose; and/or
- physical and mental examinations.

Arizona provides for both trial by jury and trial by court. At the trial stage, a party may demand for trial by jury. Issues involved in a case not tried by jury will be tried by the court. A judgment is passed after trial. The judgment may include a decree or an order upon which an appeal is permissible. A party who intend to claim cost of litigation should file a statement of cost within ten days of passing the judgment and should serve a copy to the opposite party. The opposite party can

file an objection to the statement of cost. The court will allow reasonable costs based on the statement of cost and objection.

+ More In Civil Procedure

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ARIZONA ATTORNEY

STATE BAR of ARIZONA

February 1997

Supreme Court Practice

by John C. Rea and Carrie Brennan

We are used to seeing the pronouncements of the Arizona Supreme Court echoed in the headlines of newspapers and the lead-ins to television and radio news shows. Whether it is considering a stay of execution for a condemned prisoner or examining the constitutionality of the school financing structure, the Court frequently speaks with a loud and far-reaching voice. But, like the tip of an iceberg, the highly publicized cases are only the visible portion of a much larger, mostly unseen, body of work. This article explains the work of the Court that occurs below the surface — what the Court does, focusing on petitions for review, how it goes about its work, and the role of the Court's staff attorneys in the process. It concludes with some tips on effective presentation in petitions for review.

What the Supreme Court Does: Death, Supervision and Discretionary Review

The Arizona Constitution guarantees a defendant the right to appeal his case,1 but only in a capital case may a defendant appeal as of right to Arizona's highest court.2 A case in which the death penalty has been imposed is appealed automatically to the Supreme Court.3 All other criminal appeals are initially decided by the Court of Appeals.

Other types of mandatory matters on the Court's docket include judicial discipline cases4 and direct appeals of fast- track challenges to nominating petitions during election season.5

The Court is also required to review proposed rule changes. Rule 28 of the Supreme Court Rules is the mechanism through which the court exercises its constitutional rule-making authority.6 Any person or organization may petition the Supreme Court to adopt, amend or repeal a procedural rule.7 After consideration, the court may dismiss the petition for lack of merit or need, refer it to a committee for further study or circulate the petition for public comment.8 Following the comment period, the court weighs the proposed change and decides whether to implement it.9

The Court has authority over all state courts, including justice courts and municipal courts. Administrative issues arising from those limited jurisdiction courts sometimes consume a great deal of the Court's time and attention.

Another area of the Court's supervisory jurisdiction concerns certain State Bar matters. The Court oversees the Committee on Examinations and Committee on Character and Fitness. The Court also exercises general authority over the rules governing the lawyer discipline system.

The rest of what the Court does consists largely of deciding whether to decide a case. The Supreme Court may choose to hear and decide special actions.

Special actions may be brought in the Supreme Court, the Court of Appeals or the Superior Court,10 but if the special action is brought in the Supreme Court or the Court of Appeals, the petition must state why the cause of action should not have been brought in a lower court. The appellate court has discretion to dismiss the petition if it finds the reasons insufficient,11 and not many reasons suffice for the Supreme Court to undertake the first appellate review of a case by special action.

Likewise, the Supreme Court's decision whether to answer a certified question is discretionary.12 This is a procedure wherein a federal or tribal court may certify to the Supreme Court a question of state law upon which a cause of action may turn and there appears to be no controlling state law precedent.13

Recent amendments to the Supreme Court rules have made the Court's review of State Bar disciplinary cases discretionary. Attorneys previously could appeal as of right any Disciplinary Commission recommendation of censure, suspension or disbarment.14 Now a disciplinary respondent may challenge the Disciplinary Commission only by petition for review. If the respondent does not file a petition for review of a suspension or disbarment decision, the disciplinary clerk gives to the Court copies of the commission report and the Court, after reviewing the report, may then choose to docket the matter for review.15 If the Court declines sua sponte review, the Commission decision becomes final.

Finally, of course, the court has discretion to choose which criminal16 and civil17 petitions to accept for review. This task is simply stated, but it occupies a large percentage of the justices' time.

The Workload: Plain Statistics and Mountains of Paper

Over 1,080 petitions for review were filed in 1995, 429 of which were civil and 587 criminal.18 The Court granted review of only 29, or 4.95 percent, of the civil petitions and 19, 4.43 percent, of the criminal petitions. The total number of petitions for review filed in 1996 will probably exceed 1,200. Add to this death penalty appeals, rule change petitions, special actions, certified questions and the other matters the Court must consider, and the result is a deluge of paper in each justice's office. Earlier this year one justice took a tape measure to the stacks of paper wheeled into his office on all the different types of matters that had to be decided in one typical month. In dismay, the justice quit measuring when he reached the nine-foot mark. It is indeed daunting to imagine absorbing all the information from that mountain of paper while finding the time to perform what is theoretically the Court's primary function — writing opinions regarding the law in Arizona.

Since petitions for review consume the majority of the Court's time not spent in opinion drafting and are the primary avenue of contact between most attorneys and the Supreme Court, those pleadings deserve further discussion.

Petitions for Review

Rule 23, Arizona Rules of Civil Appellate Procedure

A party may file a petition for review with the clerk of the Court of Appeals within 30 days after that court's decision is filed, or within 15 days after the clerk has mailed notice of the outcome of a motion for reconsideration.19 A cross-petition for review may be filed within 15 days after service of the petition or the mailing of notice of the outcome of a motion for reconsideration.20 The cross-petition, formerly filed with the Court of Appeals clerk, is now to be filed with the clerk of the Supreme Court, along with any response.21 A response may be filed within

30 days from service of the petition or cross-petition.22

The petition, cross-petition or response may be no longer than 20 pages, not including the appendix, and must have a copy of the decision of the Court of Appeals attached.23 Any filing should consist of the original and 6 copies.24 The formal requirements of a petition are described in Rule 23.

The Role of the Staff Attorneys

The Court has seven full-time and five half-time staff attorneys. These lawyers are from a variety of backgrounds and practiced at least five years before coming to the Court. More than half of them have been with the Court for more than 10 years. The first stop for a petition for review after the Clerk's office is the staff attorneys' office.

After the petition and response have been filed, one set of the six copies is sent to the staff sttorneys' office. The Chief Staff Attorney assigns the petition to a staff attorney, who reviews the decision of the Court of Appeals, the petition, the response, the appendices, the pertinent authority, and sometimes the briefs filed in the Court of Appeals. The staff attorney prepares a memorandum for the Court describing the case and the arguments, concluding with the staff attorney's analysis. The memorandum is usually three to seven pages long, depending on the complexity of the case and the arguments, and ends with a recommendation that the Court grant or deny review.

About once a week the Chief Staff Attorney prepares a bundle of 15 to 20 cases and the Clerk's office circulates the staff memos, together with the corresponding petitions, responses and appendices to the Court. Once a month the entire Court meets in conference to rule on the petitions in the four weekly bundles distributed that month. At the same time, the Court has a separate agenda composed of various motions, special actions, rules petitions and administrative matters.

In addition to these "regular" petition for review agendas, the staff attorneys' office prepares a weekly "summary" agenda for the Court. These are petitions involving few issues and little merit. The summary agendas are considered by a panel of three justices. Summary agenda petitions for review are denied unless at least one justice calls for the case to be put on a regular petition for review agenda for lengthier discussion. On any petition, the vote of three justices is necessary for the Court to grant review.

How to Maximize Your Chances

Given that the Court grants review of only about five percent of the petitions for review, the chief question is how to overcome the odds. Rule 23(c)(4) of the Civil Appellate Rules lists some general reasons why the Court will grant review — no Arizona decision controls the point of law in question; a decision of the Supreme Court should be overruled or qualified; there are conflicting decisions by the Court of Appeals; or, the catch-all provision, important issues of law have been incorrectly decided. Only a small number of cases will involve a challenge to a previous Supreme Court case or a conflict between opinions of the Court of Appeals.

The bulk of petitions for review fall into two categories: those seeking to raise "cert-worthy" issues, that is, general legal issues of statewide importance; and those requesting the Court to correct errors in the lower courts' decisions on the choice of law or the application of law to the facts. Examples of the former might be whether a willful and wanton defendant can compare its fault with a negligent third party or the admissibility of various types of DNA evidence. Petitions urging

the Court to correct lower court errors take many forms and usually turn on the facts of the case.

"Cert-worthy" issues are more likely to catch the attention of at least three justices, although the Court continues to be diligent in the exercise of its limited error-correcting function. In any event, there are some practices that will help in making the best possible argument for granting review.

Give the Court everything it needs (but no more). Two sentences in Rule 23 engender more confusion that anything else relating to petitions for review. "All references to the record on appeal shall be supported by an appendix, with appropriate copies of the portions of the record which support the petition. The petition shall not incorporate any document by reference, except the appendices." Litigants' interpretation of these requirements have resulted in both too much and too little being filed. Some petitions are accompanied by appendices that are a foot high, but unnecessary, while possibly meritorious petitions may be denied because there were inadequate records in the appendix to support statements made in the petition.

The first step in giving the Court enough, but not too much, is realizing what the Court has available to it when it rules on a petition for review. Only the appellate briefs are transmitted to the Supreme Court from the Court of Appeals, and those are filed in the Supreme Court Clerk's office. The remainder of the record on appeal stays with the Clerk of the Court of Appeals. As a result, the only items from the trial court record available for the Court to review are those included in the appendices to the petition and the response.

It is essential to have the material items from the trial court record that will enable the Court to be confident that the case is worthy of review. For example, if the case is about the propriety of the trial court's grant of summary judgment and the trial judge explained his ruling in a minute entry, that minute entry should be part of an appendix. A petition involving a dispute over the terms of a contract should include the contract. It does not inspire certainty for a crucial contract clause to be simply quoted in the petition with some language omitted and represented only by an ellipsis. The full text of the contract provision, together with its place in the contract — the clauses that precede and follow it — are usually important in reaching a full understanding of the sense of the transition. If the petition gives the Court only the language that the petitioner likes, the Court cannot be certain that the petitioner's version is complete and correct.

On the other hand, a too-literal interpretation of the rule's requirement can lead to filing a mountain of paper when a molehill would be appropriate and more persuasive. A petition in a tort case may begin by declaring that the plaintiff filed a complaint with five causes of action and seeking various forms of relief. Unless there is a significant dispute involving the allegations in the complaint or their sufficiency, it is probably not necessary to include a copy of the complaint in the appendix. A petition is not a Rule 56 motion for summary judgment, where every fact must be supported. By the time the case is presented to the Supreme Court, the areas of contention should be well defined. Use the appendix for those matters and save the paper on the others.

Perhaps the best rule of thumb is to place yourself in the seat of the justice reading your petition. Faced with a mountain of pleadings and a seemingly endless number of petitions for review, what would you want to see from the trial court record to be certain that this case is one of the five percent to which you can devote more time in order to correct error, clarify the law and achieve justice?

Be honest and candid about the record. This is a corollary to the first rule. Few things so quickly dampen the power of an argument and reduce an advocate's credibility than to learn that the advocate has not presented a complete and accurate version of the trial court record. We all learn in law school to present the facts most favorable to the client and in the light most advantageous. That advice may be true in arguing inferences to a jury or a trial judge, but the atmosphere in the Supreme Court is more rarefied. The justices want to know the full story. It may be true that the trial court gave the worst reasonable doubt instruction in the history of Anglo-American jurisprudence, but before the Court decides to take the case the justices want to know that the defendant was apprehended standing over the body, holding a knife, and splattered with the victim's blood. If they learn these facts from the response, the reliability of the petition becomes suspect and the eloquence of the petitioner's argument is obscured.

Define the issues to engage the Court's interest. The first section of the staff attorney's memorandum on a petition for review introduces the parties and their attorneys. This is for recusal purposes. The second section is a verbatim repetition of the statement of issues presented for review from the petition. The first matter of substance that the justices want to see in the staff memorandum is the petitioner's own view of the issues presented in the petitioner's words. A petition can move a long distance toward grant or denial in that one section. In an appeal, where the tribunal must continue wading through the material until it reaches a decision, an advocate might redeem a sloppy or unfathomable statement of issues by later dazzling disputation. With discretionary review, one may not recover from an initial stumble.

Just as with the preparation of appendices, the statement of issues presented can offer too much or too little information. Again, the best guide is to place yourself in the justice's robes. Sitting at your desk, you pick up a petition for review from a stack that would overfill a large wheelbarrow. Your eyes are drawn to the statement of issues, where you read: "Did the trial court err in granting summary judgment?" Does this raise your level of interest? Pique your curiosity? You pick up the next petition. The statement of issues takes up three-quarters of the page and is one sentence made up of 15 clauses with more twists than a plate of spaghetti. Just reading it makes your head swim and understanding it will take five minutes of devoted concentration. Neither sort of statement is effective.

The best statement of issues presented is concise, fair, objective and readable. This is not the place to persuade the justices of the righteousness of your cause by offering a conclusory, slanted, argumentative snapshot of what you want the Court to decide. Throw off the barrister's wig for a moment and don an academician's hood.

Find and explain the "error plus." In deciding whether to grant review, the Court's consideration is necessarily broader than the particular case before it. The first question the Court addresses will usually involve the merit of the lower court decision. There is usually little chance of persuading the Court to take review of an issue not raised, preserved or argued below. The Court must conclude that the legal issue raised or the case itself is sufficiently important for the Court to allocate to it some of its finite and strained resources. The trial court record strictly circumscribes the boundary of argument on the merits of the case. However, convincing the Court of the importance of the issue or case is another matter. Amicus curiae briefs may inform the Court of the statewide significance of the legal issues involved. Factual information from court records or other sources may aid in establishing the need for the Court to decide the issues presented.

An argument that simply parrots a party's jury summation or appellate brief occasionally is successful in a petition for review, but a litigant has a far better chance of attracting the Court's attention by showing the "error plus."

John Rea is a staff attorney for the Arizona Supreme Court. ***Carrie Brennan*** is a third-year law student at the University of Arizona where she is managing editor of Arizona Law Review.

Endnotes

1. Const. art II, Sec. 24: "In criminal prosecutions, the accused shall have the right... to appeal in all cases..."

2. A.R.S. Sec. 12-120.21(A)(1). *State v. Shattuck,* 140 Ariz. 582, 584, 684 P.2d 154, 156 (1984).

3. A.R.S. Sec. 13-4031. Rule of Crim. Proc. 31.2(b).

4. Rule 15, Rules of Procedure for the Commission on Judicial Qualifications, 17B A.R.S.

5. A.R.S. § 16-351(A).

6. 17A A.R.S. Ann. Sup. Ct. Rules, Rule 28. A.R.S.; Const. Art. 6, Sec. 5(5).

7. 17A A.R.S. Ann. Sup. Ct. Rules, Rule 28(a)(1). The court may also elect to introduce its own proposed change. Rule 28(B).

8. Rule 28(f)(1).

9. Rule 28(F)(1).

10. Rule 4(a). Rule 4© sets up two tracks for special actions: 1) a speedier "show cause" procedure, 2) and one adhering to the usual time periods under the Rules of Civil Procedure.

11. Rule 7(b).

12. A.R.S. Sec. 12-1861; 17A A.R.S. Sup. Ct. Rules Rule 27. Section 12-1861-1867 is implemented through Rule 27 of the Rules of the Supreme Court.

13. A.R.S. Sec. 12-1861.

14. 17A A.R.S. Sup. Ct. Rules, Rule 53(e).

15. Rule 53(e)(1).

16. 17 A.R.S. Rules of Crim. Proc., Rule 31.19.

17. 17B A.R.S. Rules of Civil Appellate Proc., Rule 23.

18. The total number includes 37 Industrial Commission cases, 10 tax cases and 21 juvenile petitions for review.

19. Rule 23(a).

20. *Id.*

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BOARD OF ADJUSTMENT MEETING PROCEDURE

Order of Business: The order of business for regular meetings shall be as follows:

i. Call to order by chairman
ii. Roll call
iii. Minutes of previous meeting
iv. Unfinished business
v. New business – Public Hearing – Swearing-in
vi. Communications and miscellaneous
vii. Other business
viii. Adjournment

New Business – Public Hearing

i. The Chairman shall call the hearing in session.
ii. The Chairman shall read the application. The Chairman may have staff read the application and report.
iii. Members of the Board may ask questions at any point during testimony.
iv. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case. Swearing-in
v. Any member of the Board, through the Chairman, may request any party to the case to speak a second time.
vi. Any party to the case who wants to ask a question of another party to the case must do so through the Chairman.
vii. The applicant shall be called to present his case.
viii. Those in favor of the case shall be allowed to speak.
ix. Those in opposition to the case shall be allowed to speak.
x. The applicant and those in favor shall be allowed to speak in rebuttal.
xi. The opposition to the case shall be allowed to speak in rebuttal.
xii. The Board will hear and record any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Zoning Regulations and the Arizona Revised Statutes. Any member of the Board may ask for clarification of any evidence or testimony or present any other known information..
xiii. The Chairman shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor. Staff may offer verification of facts or additional information and whether or not there will be recommendations for stipulations.
xiv. The Chairman shall call for a Decision. The Chairman shall Poll all Members as to Yes or No. A Yes decision by three members equals a Positive Decision. Each member will state his/her reason for vote which shall be recorded verbatim. The

Chairman may Announce Action Taken (with Findings of Fact) if Positive Decision was not Conditional or if vote was negative. If the Positive Decision was Conditional then continue to xv.

xv. The Board will then discuss Stipulations if a Positive Decision was Conditional.
xvi. Call for a Motion to Approve Stipulations.
xvii. Call for Discussion of Motion.
xviii. Call the Question.
xix. Announce Action Taken (with Findings of Fact).
xx. Motion to approve findings: Recorder reads Findings.
xxi. Adjourn.

Findings for Variances: TC Section 153.021
(2)(a) There are special circumstances or conditions applicable to the property of application, or to the adjacent property, or to the neighborhood, that justify variance from the requirements so that strict application thereof would work an unnecessary hardship (land use) and that the granting of the request is necessary for the preservation and enjoyment of substantial property rights; and/or
(2)(b) The granting will not materially affect the health or safety of the neighborhood residents or be injurious to property or improvements.

(If the hearing is tabled or otherwise continued) The Board of Adjustment shall render a decision within 30 days following the initial hearing, unless an extension is agreed to by the Board and the Applicant.

In approving an application, all or in part, the Board of Adjustment may designate such conditions in conjunction therewith that will, in its opinion secure substantially the objectives of this chapter (Town Code - Zoning Regulations) and may require guarantees in such form as it deems proper under the circumstances to ensure that the condition be complied with. Where any such conditions are violated or not complied with the approval will cease and the Zoning Administrator will act accordingly.