

**TOWN COUNCIL OF DEWEY-HUMBOLDT
REGULAR MEETING NOTICE**

Tuesday, May 20, 2014, 6:30 P.M.

**COUNCIL REGULAR MEETING
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL
DEWEY-HUMBOLDT, ARIZONA**

AGENDA SUMMARY

1. **Call To Order.** The meeting was called to order at 6:33 p.m. Mayor Nolan presided.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Made.
 - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.** Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan were present.
4. **Announcements Regarding Current Events, Guests, Appointments, and Proclamations.**

Announcements of items brought to the attention of the Mayor not requiring legal action by the Council. Guest Presentations, Appointments, and Proclamations may require Council discussion and action.

Mayor Nolan presented Administrative Assistant, Mandi Garfield with a plaque of appreciation and wished her well in her future endeavors.

Mayor Nolan asked Mr. Piper (Variance applicant) if he wanted to wait for the Attorney to arrive or if he preferred the Council open the Board of Adjustment meeting. Mr. Piper agreed to wait for the Attorney's arrival.

Council proceeded on with Agenda item 10. Discussion Agenda – Unfinished Business, to return to 5. Board of Adjustment Public Hearing Agenda once the Town Attorney arrived at the meeting.

10. Discussion Agenda – Unfinished Business. Discussion and Possible Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.

10.1. Spring 2014 Chip Overlay Project Bid Selection and Approval of a Contract with the Selected Contractor. Discussion and possible action to select a contractor for the Spring 2014 Chip Overlay Project based upon the bids submitted in the Town's Notice and Invitation for Bids or to reject all proposals and issues a new invitation for bids.

Town Manager Kimball gave an overview explaining one bid was received and it qualified as the lowest responsible bidder. Staff recommended to Council to approve the bid.

Public Works Supervisor, Ed Hanks spoke on the increase in materials costs due to petroleum product increases, but explained they have the funds to cover the bid due to savings on the drainage work.

Councilmember Hamilton made a motion to approve the selection of Earth Resources Corp. for the Spring 2014 Chip Overlay Project contractor, seconded by Councilmember Repan. It was approved unanimously.

10.2. Foothill Drive Drainage Project Bid Selection and Approval of a Contract with the Selected Contractor. Discussion and possible action to select a contractor for the Foothill Dr. Drainage project based on the bids submitted in the Town's Notice and Invitation for Bids or to reject all proposals and issues a new invitation for bids.

Public Works Supervisor, Ed Hanks gave an overview on the first and second lowest bidders for this project. Town Manager Kimball explained the award would be for the base bid with the alternate option to be considered and awarded at the end of the project, which would probably need to be funded by the Town's money. There was discussion on the alternate work.

Councilmember Hamilton made a motion to award the contract to the lowest responsible bidder and the alternates to the same. The motion failed for lack of a second.

Councilmember McBrady made a motion to take staff's recommendations of awarding the base bid to Redpoint Contractor with the alternates decided for later, seconded by Councilmember Hamilton. There was discussion on when the determination of the alternate work would be done; variables for needing guardrails; working with a new contractor from out of Phoenix and possible concerns. A vote on the motion was taken which passed by a 6-1 vote in favor, Mayor Nolan voting against.

Mayor Nolan spoke on going back to the Board of adjustment hearing at 7:00 p.m. The Regular meeting was recessed at 7:00 p.m.

5. Board of Adjustment Public Hearing Agenda Hearing and judgment.

The Board of Adjustment meeting was called to order at 7:00 p.m. Mayor Nolan presided.

Mayor Nolan asked the Board if anyone wished to share an ex-parte issue. Councilmember Hamilton explained he had filed an ex-parte report having had a conversation with Paul Manganella. He explained this conversation had to do with the location of the property and Mr. Manganella filing a protest to the variance. When Mr. Manganella called CM Hamilton it was to talk about other town concerns and at the time CM Hamilton didn't think it applied to the hearing (as a neighbor) since what the neighbor thinks doesn't have any bearing on the variance. Once CM Hamilton heard it did have a bearing on this case he filed the ex-parte report to the town.

5.1. Public Hearing – Variance Request from the side yard setback requirements (property address: 9520 E. Newtown Ave., Dewey).

Town Manager Kimball gave an overview of the variance request: Application by Jerry Piper, located at 9520 E. Newtown Ave. Town's code required side setback is 25'. Mr. Piper is requesting a 20' relief from that setback requirement, to place a carport 5' from the side setback.

The Town Attorney was present.

Jerry Piper, Applicant, was asked to come forward and give his report. He spoke on a setback variance he was granted years earlier to build a structure with a 10' setback from the side of his property. He recently purchased a new and larger motorhome and is having difficulty getting it in and out of the existing motorhome structure. He wants to build the carport closer to the fence where it is out of sight and out of the way. The extra 15' means a lot moving the motorhome within his property boundaries. He asked if any of the board members had been out to his property to see it. He also stated that the neighbor most affected by the proposed carport structure does not have a problem with it.

Councilmember Hamilton asked Mr. Piper the size of his motorhome when he built the first RV building. Mr. Piper responded it was 30 feet.

CM Hamilton asked whether there was another location on his property that he could build the carport. Mr. Piper explained the location he would like to place it currently has all the utilities for RV hookup.

CM Hamilton asked how the land is creating a hardship. Mr. Piper explained he wants to location where he wants it and needs to encroach on the setback requirements by 15'.

CM Hamilton spoke on the criteria for approving a variance: based on a hardship by the land. He spoke on Mr. Piper having other locations he could store the RV and this being a financial consideration to protect the RV from sun and hail. Mr. Piper has flat land he could use, but prefers this location so his actions are causing the need for a variance.

Mr. Piper explained he came to the Board of Adjustments to put the carport where he wants to put it.

Mayor Nolan spoke on the shape and topography of Mr. Piper's property making it difficult to use.

Mr. Piper explained he wasn't a novice and knew how variances work.

The Public Hearing was opened at 7:16 p.m.

Paul Manganella spoke on being Mr. Piper's neighbor across the road. The application for the building is for placement 5' not 10' from the property line. He suggested Mr. Piper buy and use an RV cover instead, or if the RV was sold he wouldn't need the carport.

Jerry Brady spoke on the reasons for the 25' setback being for a fire-lane. He asked if this application had been run past the fire department for offsets for fire clearance.

Glenda Piper spoke on her property being a narrow and thin lot and having to move out the carport would block all access to the existing shop. They want to utilize the property they bought.

The Hearing was closed at 7:21 p.m.

Jerry Piper returned to the lectern to answer questions.

Councilmember Repan asked Mr. Piper if he had a 24' RV if he would need a variance. He spoke on the rules for looking at a variance. Mr. Piper responded a variance would not be necessary if he had a smaller RV.

CM Repan the Town's guidelines being the same as the County's.

Mr. Piper restated there is no other place that is feasible for placement of parking the RV. He wants it tucked back in, out of sight where all utilities are located. The existing electrical outlet was there when he bought the property.

Councilmember Wright asked about parking the RV parallel to the length of the carport and still being able to meet the setbacks. Mr. Piper explained he has tried different locations but this is the only one that works. If it is parked straight in then it blocks the driveway to his shop.

An aerial shot of the property was brought up on the screen for Council to have a better idea of the layout of the property.

Councilmember McBrady spoke on the request being the most maneuverable for getting in and out and the neighbor it would affect does not have a problem with it. He spoke on the training the board received for hearing variances and needing to meet four conditions for approval.

Town Attorney Susan Goodwin read those conditions: Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other land, building or structures in the district; and the literal interpretation of the Code would deprive the applicant of right commonly enjoyed by other properties in the same district under the terms of the Code; and the alleged hardships caused by interpretation of the Code include

more than personal inconvenience and financial hardship and do not result from actions of the applicant; and granting the variance will not confer upon the applicant any special privilege that is denied by the Code to other lands, structures or buildings in the district; and the granting of the variance requested will not interfere or injure the rights of other properties in the same district. Ms. Goodwin explained the Board would need to find that all these conditions are met.

There was discussion on whether the desire to park the RV in a certain way and location was convenience or a hardship. CM McBrady spoke on the workshop being granted through a variance process and being 10' to the property line.

Council had no other questions for Mr. Piper.

Council asked the Town Attorney questions.

CM Repan asked about going through all four findings. Ms. Goodwin explained if they choose to approve then they need to answer the 4 findings but not if they choose to deny the variance.

Councilmember Hamilton made a motion to Deny the Variance (he explained why: self-imposed by choosing to purchase a much larger motorhome, land did not force him to do that; RV can be stored offsite; Owner is worried about depreciation of motorhome (financial consideration); could build carport in the back but inconvenient so self-imposed as well, not land caused but inconvenience only). Councilmember Wright seconded the motion. The motion passed by a 4-3 vote in favor, Councilmembers McBrady, Williams-Rowe and Mayor Nolan voting against.

5.2. Adjourn the Board of Adjustment agenda

The Board of Adjustment hearing was adjourned at 7:43 p.m. Council reconvened in to the regular Council meeting.

6. Reconvene in to the Regular Council Meeting.

The Regular Council Meeting was reconvened at 7:44 p.m.

7. Town Manager's Report. Update on Current Events.

Nothing to report.

8. Consent Agenda.

8.1. Minutes. Minutes from the April 15, 2014 Regular Council meeting.

Councilmember Repan made a motion to approve the Minutes from the April 15, 2014 Regular Council meeting as presented, seconded by Vice Mayor Alen. It was approved unanimously.

9. Comments from the Public (on non-agendized items only). The Council wishes to hear from Citizens at each meeting. Those wishing to address the Council 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 Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council 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, Council members are 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. A **3** minute per speaker limit may be imposed. The audience is asked to please be courteous and silent while others are speaking.

Skipped.

10.3. Outback Road situation and next steps. Council discussion with the town attorney following prior discussions and new discoveries; direction on how to proceed. [Continued from the February 18, 2014 meeting and the February 4, 2014 meeting discussions; original CAARF requested by CM Repan]

Councilmember Repan made a motion to waive the client/counsel privilege on any recent memorandum from the Town Attorney regarding Outback Road, seconded by Councilmember Hamilton. It was approved unanimously.

Susan Goodwin, Town Attorney, gave an overview of the situation with Outback Road. Prior memo was based on Outback Road being a part of the town. Once it was found out the road is an easement granted by the State Land Department to Yavapai County it was determined it is a different type of easement and requires the State consent to be turned over to the town. State Land Department confirmed there was no approval of that assignment. The Town should not be maintaining the road and no authority to maintain it. The next steps are to notify the County that the town does not wish to have the road conveyed to the town.

Councilmember Hamilton made a motion to approve following through on the Attorney's recommendation to send notification to both the State Land Department and Yavapai County that the town does not want Outback Road conveyed to the Town, seconded by Councilmember Wright.

Public comment was taken on this item.

Jerry Brady spoke on other roads within town that are similar with rights not conveyed. County gave intent through an ordinance but not voted on and no order of publication posted. The town needed to approve the ordinance.

Town Attorney Goodwin explained that acceptance can be done through maintaining the roadway. She believes this one is unique.

There was discussion on the residents that live off this road and their opinions on what the Council is considering. Mayor Nolan spoke on the County's response to this situation and how it might affect future projects. There was discussion on whether to act now or later on this. Ms Goodwin reiterated the town has no authority to maintain it and notification to the State and County that the town does not wish to have assignment of it in the future is best done as soon as the determination is made.

Public comment was taken on this item.

Jerry Brady spoke on the conveyance of federal land/easement claims and annual reports to state or federal for fuel gas funds.

A vote was taken on the motion which was approved by a 6-1 vote in favor, Mayor Nolan voting against.

11. Discussion Agenda – New Business. Discussion and Possible Action on matters not previously presented to the Council.

11.1. Fiscal Year 2014-2015 Tentative Budget acknowledgement and adoption, review of future budget meeting and final adoption dates.

Town Manager Kimball explained the need to approve the expenditure limitations in order to move forward with the tentative budget. After adopting this posting will occur with the final

budget adoption scheduled in June prior to the start of the fiscal year. Further discussion and decisions on some pending issues can still occur.

Councilmember Hamilton made a motion to adopt the tentative budget, seconded by Vice Mayor Alen.

Public comment was taken on this item.

Jerry Brady spoke on approving the tentative budget but looking at federal law developments and additional planning to be accountable for funds for pass-through from state.

Town Manager Kimball explained that adopting the tentative budget it sets the 4 million dollar cap with 1.7 million of that for grant funds even though they are not anticipating they will receive that much activity in grants. Council can adjust that cap as long as they don't exceed the \$4mil. There was discussion of public input.

A vote was taken on the motion which passed by a unanimous vote in favor.

Ms. Kimball suggested scheduling the next budget meeting. Council agreed to have an additional special budget meeting on June 3rd at 3:30 p.m. The regular Council meeting will follow at 6:30 p.m. The public hearing for the budget will be held on June 17th with possible adoption of the final budget.

11.2. To accept an offer from the Arizona Office of Tourism to do a short Presentation and Q&A session for Council and public at a work study session. [CAARF requested by VM Alen]

Vice Mayor Alen gave a follow-up to a tourism conference she attended. Arizona Office of Tourism has offered to do a short presentation for the Council on what is available and stats of the area. There was discussion on an earlier workshop on visioning and wanting more concrete information; whether this should be community initiated (businesses, historical society, etc.).

Public comment was taken on this item.

Jerry Brady spoke on rural economic development; working with Prescott Valley and coordinating with the public's interest on this.

Vice Mayor Alen made a motion to accept the offer from the Arizona Office of Tourism to do a short presentation and Q&A session for Council and the public at a work study session, inviting the historic society and other interested groups and plan it far enough out to plan for this, seconded by Councilmember McBrady. The motion passed by a 5-2 vote in favor, Councilmembers Hamilton and Wright voting against.

11.3. Whether to acquire certain railroad property remaining in Dewey-Humboldt which is located in Section 23 T 13 N R1E totaling 2.85 acres through dedication. [Research generated by CM Hamilton CAARF and council direction given at December 17, 2013 meeting]

council discussion and consultation with town attorney regarding finding, acquisition process and direct the next steps.

Councilmember Hamilton introduced this item explaining he raised this question and the attorney did the research.

Town Attorney Goodwin spoke on this issue – a letter was sent to the railroad asking for the records and a packet was received back. One parcel in town is eligible for acquisition by the town. Councilmember Hamilton asked if the property was on the superfund site if the town would incur liability if they acquired the property. Ms. Goodwin responded affirmatively. Mayor Nolan pointed out that the property is surrounded by private property with no access.

Vice Mayor Alen made a motion to not proceed any further on any action, but bring it back once the EPA is done with their action with the Superfund site, seconded by Councilmember Repan.

Public comment was taken on this item.

Jerry Brady spoke on Jerome acquiring some railroad land which is now being used for parking and a shuttle stop. The Re-utilization of the Iron King Mine Site needs to be addressed for the EPA to move forward. Additional properties are available through rails to trails revitalization act.

A vote was taken on the motion which passed unanimously.

- 11.4. Discussion and possible action regarding acquisition of property through donation for town park purposes and possibly to approve Resolution No. 14-110**, authorizing and directing the Town Manager and Town Attorney to obtain a legal description, preliminary title report and phase I environmental site assessment and take other necessary actions preparatory to acquisition of real property located in Dewey-Humboldt at 925 S. Wicklow Pl. on behalf of the Town and directing the Town Manager to present the above information to the Council for possible approval to proceed with the acquisition. The Council may, by majority vote, recess the regular meeting, hold an executive session, and then reconvene the regular meeting for discussion and possible action on this item.

Town Manager Kimball spoke on Paul Manganella approaching the town about donating a piece of property and Council can go into Executive Session if they desire.

- 11.4.1. Recess into and hold an executive session** pursuant to A.R.S. § 38-431.03(A)(7) Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

Vice Mayor Alen made a motion to recess into and hold an executive session pursuant to A.R.S. § 38-431.03(A)(7) Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, seconded by Councilmember McBrady. It was approved by a 5-2 vote in favor, Councilmembers Hamilton and Williams-Rowe voting against.

Council recessed into Executive Session at 8:51 p.m.

- 11.4.2. Reconvene into Regular Meeting.**

Council reconvened into Regular Session at 9:15 p.m.

Councilmember Wright made a motion to adopt Resolution 14-110, seconded by Councilmember Williams-Rowe. Mayor Nolan read the resolution. Councilmember Repan asked Ms. Goodwin about the terms of acceptance. Ms. Goodwin explained the preparatory work would bring any conditions or problems to light. CM Repan explained there might be a conflict of town's vision and donor's stipulations. This can be brought back to council if that comes to light during the preparatory work.

A vote was taken on the motion which passed unanimously.

- 12. Comments from the Public.** None.
- 13. Adjourn.** The meeting was adjourned at 9:20 p.m.