

**TOWN OF DEWEY-HUMBOLDT
TOWN COUNCIL
SPECIAL STUDY SESSION MINUTES
TUESDAY, JUNE 12, 2012, 2:00 P.M.**

A SPECIAL STUDY SESSION OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, JUNE 12, 2012, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 2:02PM.

2. **Roll Call.**

2.1. Town Council. Town Council Members David Hiles, Mark McBrady, Dennis Repan, Denise Rogers, Nancy Wright; Vice Mayor John Dibble; and Mayor Terry Nolan were present.

3. **Public Hearing.**

3.1. Budget Public Hearing #2. The public hearing was opened at 2:03PM.

Jerry Brady spoke on funding entitlements for the Town of Dewey-Humboldt that should be incorporated into the budget; a seminar in Prescott over the next three days providing information on sources of funding for historic preservation for Towns; and a recent newspaper article indicating Agua Fria River as an inland navigable waterway.

David Nystrom thanked the Council for the funding allotted for the Historical Society in the upcoming budget.

Jack Hamilton spoke on the public hearing being a formality and the line item for Kachina Place is underfunded in the budget therefore it is not a balanced budget.

Carl Marsee thanked the Council for the funding allotted for the Historical Society in the upcoming budget.

Andy Peters spoke on the newsletter budget of \$15,000 and suggested allowing people to indicate whether they want to receive it in printed form or electronically to save funds.

The public hearing was closed at 2:14PM.

4. **Special Session.**

4.1. Minutes. Councilmember Repan made a motion to approve the minutes from the May 15, 2012 Regular meeting and May 22, 2012 Special meeting, seconded by Vice Mayor Dibble. The motion passed unanimously.

4.2. Arizona Natural Resources Protection Act. Mayor Nolan spoke on being approached by several towns in the Verde Valley about this Act and it is coming up in the next election. It allows children to enter state parks for free and guarantees \$4 million to cities and towns, asking for an optional \$14 donation when renewing a license. He asked Council to approve having Staff develop a resolution to bring back for approval at the next meeting. The Town Attorney stated she was concerned about any action that the Council may take other than declaring support. She noted there is a prohibition against using Town resources to influence the outcome of an election which could pose a problem if asking staff to prepare a resolution. There was discussion about endorsing

the Act versus creating a resolution for it. Mayor Nolan stated the idea is to support this Act so it gets on the ballot and the public has an opportunity to cast their vote.

Public comment was taken on this item.

Jack Hamilton spoke against not taking the Attorney's advice.

Bart Brush spoke in favor of the Act and the Council endorsing it.

Vice Mayor Dibble spoke on it being a question of whether to ask staff to prepare a resolution or endorse it, the Council has been advised not to do it and suggested a verbal endorsement.

4.3. Considerations of Solicitation of Request for Qualification proposals for Engineering/Planning Services. Town Manager Kimball gave an overview about developing a list for on-call Engineering/Planning service firms so Council has a list of firms available so they have more of a choice depending on the work to be done. She spoke on receiving direction from Council whether they saw the need for doing this and then outlining the process which is no different from any other RFQ process. There was discussion about the selection committee, if the firms would submit a price list and selection based on qualifications. The Town Attorney referenced A.R.S. § 34-603(C)(3) regarding the selection committee which indicates the Town should initiate an appropriate qualified selection committee, leaving the decision to the Town to determine what would be an appropriate selection committee. She also spoke on a provision in the statute which does not allow the Town to look at the cost or consider the fees when selecting firms for the list, instead look at the criteria as set forth in the RFQ, when reviewing bids/awarding is when you can consider cost.

Councilmember Hiles spoke in favor of a list of Engineering/Planning services.

Councilmember Hiles made a motion to direct staff to proceed with the RFQ process for Engineering/Planning services, seconded by Councilmember Repan.

Mayor Nolan noted on page 23, paragraph 1.3.2 it states, "If at any time during the design of the Project it appears the cost of construction may exceed the construction budget, Consultant shall immediately notify the Town. If the construction budget is exceeded, Consultant shall value the Project at no additional cost to the Town", should be changed to "not to exceed the bid" as it is vague and it is not the intent. He noted a typo on page 27, paragraph 4.11.2 Professional Liability – "consultants shall maintain professional liability insurance covering errors and admissions", it should be "omissions". There was discussion about the repercussions of having/not having the O&E insurance. Mayor Nolan stated this would require an additional policy that would cover the cost of anything that went wrong and expressed concern that local contractors would not be able to bid due to cost.

Public comment was taken on this item.

Jack Hamilton spoke on the Council voting on that to see if the O&E should be taken out, seems like it is a protection for the Town and expressed concern over removing it.

David Nystrom spoke on the Town Manager presenting a reasonable plan while allowing Council to make final decision. He suggested in addition to Town staff for the selection committee there may be local engineers who would be interested in committee and have the Attorney advise you of any risks with removing the O&E.

Jerry Brady spoke on comprehensive liability insurance, the complexity of the law and suggested checking with the Arizona State Insurance Commission. He also spoke on contractors having a lot of ways to get government assistance with this bonding issue.

Vice Mayor Dibble spoke against not having this insurance in the RFQ and the possibility of modifying it at a later date if necessary. There was further discussion about this item. Town Manager Kimball noted the list would be good for two years and spoke in favor of keeping the insurance to protect the Town.

Public comment was taken on this item.

Bart Brush spoke on the feasibility of letting contractor's know that they will have to get this insurance if they are selected.

Councilmember Wright asked the Attorney if anybody else leaves O&E insurance out. The Town Attorney responded she would not recommend leaving this insurance out, it is an important provision to protect the interests of the Town.

Councilmember McBrady suggested taking a vote to see what happens. Town Manager Kimball stated it is Council's choice to use the list or go out for additional firms if necessary.

Jack Hamilton spoke on legal requirements to have an engineer on call.

Jerry Brady spoke on Yavapai County Contractor's Association's fund for startup businesses that have not established a relationship with an insurer. Yavapai College Small Business Development office provides training on these issues.

The motion to direct staff to proceed with the RFQ process for Engineering/Planning services passed by a unanimous vote.

Town Manager Kimball asked Council for direction on the selection committee, currently comprised of Town Manager Kimball, Ed Hanks, Public Work Supervisor and citizen Jack Hamilton. She explained her desire to keep Mr. Hanks on the selection committee, possibly adding someone with more Engineering experience and advertising for a volunteer to serve on the selection committee if the Council desires.

Public comment was taken on this item.

Jack Hamilton spoke on preferring the Town find someone who has engineering experience but he would serve on the committee. Town Manager Kimball spoke on selecting Mr. Hamilton and commended his involvement with the Town.

Councilmember Rogers spoke on putting an article in the newsletter if only local people. The Town Attorney indicated advertising in the newsletter would be appropriate.

Councilmember Repan made a motion to allow the Town Manager to proceed with the selection committee at her discretion, seconded by Councilmember Wright.

Councilmember McBrady spoke in favor of allowing local engineers to volunteer to sit on the selection committee.

Public comment was taken on this item.

Lydia Chapman spoke in favor of allowing the Town Manager to proceed with the selection committee at her discretion and spoke in favor of Mr. Hamilton sitting on the selection committee.

The motion to allow the Town Manager to proceed with the selection committee at her discretion passed unanimously.

4.4. Ordinances 12-91 Amend Town Code Provisions 10.05 Definitions, 10.15 Effective Date of Ordinances, and 30.018 Council Actions.

Town Manager Kimball gave an overview on this item. At the June 5th Council meeting, Councilmember Wright submitted a request to amend Town Code. Councilmember Wright inquired why Chapter 19 of the ARS was attached on page 46. The Town Attorney explained that in the request received there was a statement that the way the code is currently written, all ordinances become immediately effective which is in violation of this statute. Statute states that Town ordinance shall not become operative until 30 days after its passage unless it is passed over the Mayor's veto or except for emergency measures necessary for the immediate preservation for the peace, health or safety of the Town. Arizona law says your ordinances and resolutions cannot become effective until the passage of 30 days, reason is to refer the measure to the voters by referendum process which they have 30 days after approval of ordinance to obtain signatures to put it on the ballot for approval by the voters. Councilmember Wright stated Town Code says if it does not require publication it can become effective immediately. Town Attorney your code previously said ordinances that do not require publication would become immediately effective and that is what is being fixed.

Councilmember Wright stated some towns keep a separate list of ordinances and resolutions and inquired if that was appropriate. She also stated that sometimes resolutions become part of ordinances when it is not an ordinance and inquired if that needed to be changed. The Town Attorney stated generally, ordinances are used for laws, so if you are changing your code it would be an ordinance. Oftentimes Towns use resolutions to adopt policies, personnel policies, taxes and fees; zoning, annexation and code amendments are done by ordinance. If improperly done in the past the Town Attorney would have to research that. Councilmember Wright stated sometimes Council passes via motion to change the code and the code does not change because it was not done in the form of an ordinance, she inquired how to correct that. The Town Attorney suggested doing an ordinance to amend the code in the way it was intended to be amended.

Councilmember Wright made a motion to approve ordinance 12-91, seconded by Councilmember Repan. The motion passed unanimously.

5. Study Agenda.

5.1. Discussion of ARS 9-244 (Implementation of property taxes to support infrastructure), 9-471-02 (Deannexation), 9-102 (Disincorporation). Councilmember Repan explained during the last meeting he stated he was trying to come up with ideas in terms of being proactive in the Town's future. He also spoke on the Town being a hybrid department of transportation because there is heavy emphasis on roads and maintenance. We either cannot or do not consider some of the other aspects of becoming a full-fledged town. He questioned what the philosophy of the Town is and if we continually take money out of savings, there will come a point when the expenses and revenues do not match.

Vice Mayor Dibble spoke on creating a directory of businesses and putting together training classes to help businesses grow. He suggested people put forth any ideas due to having a small staff and an unpaid Council.

Public comment was taken on this item.

Danny Tomerlin spoke on his wife being rejected by the Town for a business license. The Town Manager stated it was likely a home occupation permit and noted if at any time the public feels something was handled incorrectly they can appeal staff decisions to the Council. She told Mr. Tomerlin if his wife is still interested, staff will review it.

Jerry Brady spoke on the Town's funding issue is due to the General Plan being an administrative document and does not have the legal status achieved by going through the proper agencies.

David Nystrom spoke in favor of the context of this discussion and encouraged Council and community to have patience to evolve over the next few years.

Jack Hamilton spoke on the philosophy of this town being rural, not dense housing. He also spoke on putting businesses near Mortimer Farms to attract more customers.

Councilmember Wright spoke in favor of doing a survey so the public can give feedback. She noted Town Hall has information from a grant class she attended in February and the need to provide for public safety, roads and the library. She explained the Town supports having businesses in the designated commercial areas and encouraged everyone to support local business. She spoke in favor of having another business summit and being more positive.

Councilmember McBrady spoke on the Town currently not being in debt and working with what it has. He encouraged public input on this item and spoke in favor of creating an economic development plan. He noted he planned to attend the Jerome Historical meeting to learn about their history.

Jerry Brady spoke on the Director of Research Division at ADOT being a presenter on history-based tourism at the three day Prescott conference; most Town roads are designated fire roads; the need for a General Plan; and Jerome's history-based tourism.

Councilmember Repan spoke on forming a grant committee to review issues and ideas that are brought forth.

Bart Brush spoke on the population not able to support businesses in Town and the possibility for niche stores similar to Jerome.

Mayor Nolan suggested bringing this topic to a study session in the future to discuss further.

5.2. Discussion and possible action to direct the Town Attorney to find out the legal status of Old Black Canyon from Edd's Sand Trail to Highway 169. Councilmember Wright stated the Town has spent a lot of time on whether to maintain Old Black Canyon Highway and she spoke in favor of resolving the issue, of finding out the status and whether to leave it status quo or move forward. The Town Attorney noted that it is currently at a standstill, but it appears to be similar to the Kachina Place as portions are owned by the Town, private property used as a road and Town property used as private property. There was discussion on cost comparison for maintenance on a dirt road versus a paved road, maintaining the shoulder and safety concerns.

Public comment was taken on this item.

Lydia Chapman spoke on being told by County and Town staff the road was originally a County road, therefore it became a Town road.

David Nystrom spoke on the Town making a decision whether they own the road and take care of it or not and he will ask for the documentation that the Town owns Old Black Canyon.

Jerry Brady spoke on mixed-land use, encroachment on the land that the Town owns, planning for it in the Budget and restoring the Town's fire access roads and fire reservoir. Councilmember Hiles left the meeting at 4:23PM.

Danny Tomerlin spoke on his family paying taxes on that property for the last 30 years and the previous owner paid before that. He noted the road is a shortcut and suggested the Town not do maintenance, cut the road off and make it local traffic only.

Jack Hamilton spoke against blocking the road off since it is public access. He also spoke on the history of the road and the assumed liability.

Walt Statler spoke on the history of the road and his family has owned that piece of property since the 1930's. He spoke in favor of the Town purchasing the road but he does not intend to walk away from it.

Andy Peters spoke in favor of getting a legal opinion considering the complexities of the issue.

Jerry Brady spoke on taking under consideration any prior decisions made by the Supreme Court. He spoke on Old Black Canyon Highway as a frontage road for Highway 69; once a permit is received for development within ½ mile of the boundary of the road, the frontage road must be back to legal status and suggested budgeting to rebuild it.

There was discussion about researching this issue, the Town's liability, whether the Town can abandon it. The Town Attorney stated she would research the issue and come back to Council in July with options, assessment of liabilities and costs.

6. Comments from the Public.

Jerry Brady spoke on National Defense Highways and abandoning a frontage road also abandons Town interests in it and will grossly impair ability to subdivide or issue permits within ½ mile of the highway.

Jack Hamilton spoke on Arizona Department of Water Resources Groundwater Users having a meeting on June 19th at 10AM at the Town of Prescott Valley Civic Center.

7. Adjourn. The meeting was adjourned at 4:50PM.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk