

**TOWN OF DEWEY-HUMBOLDT  
TOWN COUNCIL  
REGULAR MEETING MINUTES  
TUESDAY, APRIL 16, 2013, 6:30PM**

**A REGULAR SESSION OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, APRIL 16, 2013, 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 6:30 p.m.
2. **Opening Ceremonies.**
  - 2.1. **Pledge of Allegiance.** Made.
  - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.** Town Council Members Arlene Alen, Mark McBrady, Denise Rogers (arrived late at 6:34 p.m.), Nancy Wright; Vice Mayor Dennis Repan; 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.
  - 4.1. **Planning and Zoning Commission interview and possible appointment.** Applicant Barry Smylie to be interviewed and possibly appointed to the P&Z Commission.

Councilmember Rogers arrived at 6:34 p.m.

Barry Smylie was in attendance and spoke on his experience and reasons for applying for the P&Z Commission vacancy. He was asked a few questions regarding P&Z issues, which he answered.

Mayor Nolan made a motion to appoint Barry Smylie to the Planning and Zoning Commission, seconded by Councilmember McBrady. It was approved unanimously.
5. **Town Manager's Report.** Update on Current Events.
  - 5.1. **Lease Agreement(s) for Current Town Hall Offices Located at Humboldt Station Inc. Property (2735 S. Hwy 69).** Initiate discussion on future actions.

Town Manager Kimball gave an overview on the status of the lease of Town Hall offices. Town Attorney Phyllis Smiley spoke on the terms of the existing lease and notification to the landlord whether it intends to exercise its extension by July 1<sup>st</sup>, either way.
6. **Consent Agenda.**
  - 6.1. **Minutes.** Minutes from the April 2, 2013 Regular Council Meeting.

Councilmember Alen made a motion to approve the minutes as presented, seconded by Mayor Nolan. It was approved unanimously.
7. **Comments from the Public (on non-agendized items only).**

Jack Hamilton spoke on Old Black Canyon Highway title report and his research on ownership.

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

**8.1. “Development Fee” legislation and ordinance discussion and next steps.**

Discussion and possible action.

Town Manager Kimball gave an overview and her recommendation to the Council that it was not worthwhile to continue the Development Fees with the new law. There was discussion on having more information before making that decision and needing a work session to make a determination.

Councilmember Alen made a motion to continue this agenda item to a work session once additional information and the cost estimate to do a study is obtained, seconded by Vice Mayor Repan.

There were questions on the new law pertaining to developers’ reimbursement, which Ms. Smiley answered.

A vote was taken on the motion which passed unanimously.

Ms. Smiley asked if there was more information the Council was requesting from legal counsel. Councilmember Wright wanted to know if the ordinance could be simplified. Ms. Smiley explained it needed to contain all of the details due to the legislature requirements. Ms. Kimball will ask the company who did the earlier study for an estimate on a new study.

Public comment was taken on this item.

Jack Hamilton asked about the reinstatement of development fees.

Jerry Brady spoke on the Growing Smarter Act.

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

**9.1. Special Event Liquor License – Boys & Girls Club of Central Arizona/Mortimer Family Farms, Beef-n-Barbeque event May 4-5, 2013.** Discussion and possible action to approve.

Mortimer Family Farms owner, Sharla Mortimer spoke on behalf of the Special Event Liquor License application request. She gave an overview on the special event and their partnering with the Boys and Girls Club on fundraising by having a “Beer and Wine Garden”. There were questions on the minimum donations being in place; handling the drinking and driving issue; attendees expected; local vendor participation.

Vice Mayor Repan made a motion to approve the Special Event Liquor License – Boys & Girls Club of Central Arizona/Mortimer Family Farms, Beef-n-Barbeque event may 4-5, 2013, seconded by Councilmember Alen. It was approved unanimously.

**9.2. Enterprise Technical Support Services RFP Selection.** Discussion and possible action to select a provider and approve the contract for Enterprise Technical Support Services based upon the proposals submitted in the Town’s Request for Proposals or to reject all proposals and issue a new request for proposals.

Town Manager Kimball gave an overview on the process and the one RFP received for consideration. She reviewed the details of the RFP and per hour rates. There were questions about rolling over hours from month to month; whether the amount bid was high or fair; how the RFP was advertised; possible change in the level of service

requested; low number of proposal responses.

Public comment was taken on this item.

Don Lee spoke on the benefits of continuing with the current IT contractor.

Jerry Brady spoke on the Yavapai County System and upgrading to the National Standard.

There was discussion on having the owner of Four D, LLC give a presentation to Council.

Councilmember Rogers made a motion to reject all proposals as it is excessive in price, and put this out for re-bid, seconded by Councilmember McBrady. The motion failed by a 2-4 vote, Councilmembers Alen, McBrady, Vice Mayor Repan and Mayor Nolan voting against.

A motion was made by Vice Mayor Repan to accept the provider and authorize the Mayor to sign the contract, seconded by Mayor Nolan. It was approved by a 4-2 vote in favor, Councilmembers Rogers and Wright voting against.

Council directed Staff to invite Four D, LLC to come and speak to Council at a work session, on their services.

**9.3. “Open Books Web Posting” IGA with Arizona Department of Administration (ADOA).** Discussion and possible action to approve.

Town Manager Kimball gave an overview and explained this is a State requirement. Her recommendation is to accept the IGA. There was discussion on possible options besides this IGA.

Vice Mayor Repan made a motion to research this more and bring it back at the next meeting, seconded by Councilmember Wright. It was approved unanimously.

**9.4. Discussion and possible action regarding Councilmember Mark McBrady’s failure to sign the Council Code of Ethics as required by the Town Code Section 30.015 and for allegedly violating the Council’s Code of Ethics and/or the Councilmember’s Oath of Office.** 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.

Mayor Nolan explained Councilmember McBrady has signed the Code of Ethics. It was also noted that Councilmember McBrady signed his executive session notice requesting this discussion be held in Public Session.

Town Attorney Smiley explained this agenda item would then need to be held in public session.

There was discussion on whether the agenda item was complete enough to discuss any other possible violations without breaking Open Meeting Law. TA Smiley stated it was complete enough.

Public comment was taken on this item.

Jerry Brady spoke on the wording in OML relating to agendas and Executive Session.

Len Marinaccio spoke on Council’s rights to decide how far to take this agenda item and making a motion to move on if the issue was resolved.

Councilmember McBrady started to make a motion but Town Attorney Smiley stopped

him stating he could not make a motion as he had a conflict of loyalties.

Councilmember Wright made a motion to accept the attorney's counsel and have Councilmember McBrady step down and let Council discuss this issue, seconded by Vice Mayor Repan. The motion passed by a 4-1 vote in favor, Mayor Nolan voting against and Councilmember McBrady abstaining.

Councilmember McBrady recused himself and stepped down from the dais for this agenda item.

Mayor Nolan called a 15 minutes recess at 8:08 p.m. and stepped away from the dais.

Town Attorney Smiley explained according to Robert's Rules of Order a motion was necessary to recess a meeting.

Vice Mayor Repan asked the Council's pleasure, seated Council members agreed to continue the meeting.

Vice Mayor Repan explained his reasons for requesting this item upon finding CM McBrady had not signed the Code of Ethics and his wish to find a way to not have this happen in the future, and how to handle a code infraction in the future.

TA Smiley spoke on how a code infraction is handled through the code enforcement/legal procedure.

Mayor Nolan returned to the dais at 8:17 p.m.

TA Smiley continued to talk about how the process works.

Mayor Nolan called a point of information and read the old Code of Conduct procedure to the Council. Councilmember Alen explained to the Council and Attorney that she had requested that older version be sent out to all Council members recently as part of a request to go on a future agenda and therefore the Mayor might have misunderstood that this was no longer in effect.

Vice Mayor Repan spoke on CM McBrady signing the code of ethics and wanting to handle this in an executive session to avoid embarrassment but McBrady requested it be done in a public session.

TA Smiley explained the Town's Code of Ethics does not provide a procedure. Council's current option is to censure a Council Member only.

Public comment was taken on this item.

Mark McBrady spoke about his reasons for not signing the Code of Ethics until recently and about his Code Enforcement violation and judgment. He stated he does not think he did anything wrong.

Len Marinaccio suggested they work on a procedure at a work session and not in-fighting.

Jerry Brady spoke on swearing an oath of office and where to take this to verify if this is a serious infraction.

Vice Mayor Repan spoke on their ability to make a censure or statement if they don't like what a Council Member has done, but nothing more since the Code is hazy on enforcement.

There was discussion on the Hearing Officer judgment/fine and each Council Members obligation to abide by the Town laws.

Public comment was taken again on this item.

Heather Wright spoke in support of Mark McBrady and how he contributes to the community.

Len Marinaccio spoke again on having a work session to “fix” the Town Code regarding Code of Ethics.

TM Kimball spoke on McBrady’s criticism about Staff and stated she was aware of his receiving the Code of Ethics for signing many times. McBrady responded he didn’t remember if he was told about it.

**9.4.1. Recess into and hold executive session** pursuant to A.R.S. § 38-431.03(A)(1) for discussion or consideration of disciplining of Councilmember Mark McBrady for failing to sign the Council Code of Ethics as required by Town Code Section 30.015 and for allegedly violating the Council’s Code of Ethics and/or the Councilmember’s Oath of Office.

Council did not convene into Executive Session on this agenda item, but held the discussion in Open Session (as requested by Mark McBrady).

**9.4.2. Reconvene Regular Meeting.** n/a

At the conclusion of this agenda item, Councilmember McBrady returned to the dais.

**9.5. Discussion and possible action regarding acquisition of property for Town Hall purposes and possibly to approve Resolution No. 13-107**, authorizing and directing the Town Manager and Town Attorney to obtain appraisals and legal descriptions and take other necessary actions preparatory to acquisition of real property located in Dewey-Humboldt at 12899 East Main Street, 12901 East Main Street, 12922 East Main Street and/or 12847 East Main Street 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.

Councilmember McBrady recused himself from this agenda item and left the dais at 8:56 p.m.

Vice Mayor Repan made a motion to recess into and hold an executive session, seconded by Councilmember Wright. It was approved by a unanimous (5-0) vote, Councilmember McBrady recused from the vote.

Council recessed into Executive Session at 8:58 p.m.

**9.5.1 Recess into and hold an executive session** pursuant to A.R.S. § 38-431.03(A)(7) for discussions or consultations with designated representatives of the Town in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property located in Dewey-Humboldt, Arizona, at 12899 East Main Street, 12901 East Main Street, 12922 East Main Street and/or 12847 East Main Street.

**9.5.2. Reconvene Regular Meeting.**

Council reconvened into Regular Session at 9:39 p.m.

Vice Mayor Repan made a motion to continue this discussion at the next regular Council meeting, seconded by Councilmember Wright. The motion passed by a 3-2 vote in favor,

Councilmember Rogers and Mayor Nolan voting against and CM McBrady being recused from the vote.

**10. Public Hearing Agenda.** None.

**11. Comments from the Public.**

Jerry Brady spoke on the “most scandalous frauds in Arizona’s history”, land use, and Old Black Canyon Highway.

**12. Adjourn.**

The meeting was adjourned at 9:43 p.m.

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Terry Nolan, Mayor

ATTEST:

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Judy Morgan, Town Clerk