

**TOWN OF DEWEY-HUMBOLDT
TOWN COUNCIL
SPECIAL TRAINING SESSION MINUTES
WEDNESDAY, MAY 14, 2014 AT 4:00 P.M.**

A SPECIAL TRAINING SESSION OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON WEDNESDAY, MAY 14, 2014 AT TOWN HALL AT 2735 SOUTH HIGHWAY 89, DEWEY-HUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.

1. **Call to Order.** The meeting was called to order at 4:00 p.m. Mayor Nolan presided.

2. **Roll Call.**

2.1 Town Council. Town Councilmembers Mayor Terry Nolan, Jack Hamilton, Mark McBrady (arrived late at 4:30 pm), Dennis Repan, Nancy Wright and Sonya Williams-Rowe. Vice Mayor Arlene Alen was absent.

3. **Special Training Meeting Agenda.** No legal action to be taken.

3.1 Training for Council as Board of Adjustment (BOA).

Town Attorney Goodwin conducted the training regarding the Council's role when it is serving as a Board of Adjustment. She said the Board of Adjustment is a quasi-judicial board that is required to be established by law. It provides for due process to individuals who may not be able to meet the strict requirements of the Zoning Code. She said that the Zoning Code is a comprehensive document that is prepared over many months by Town staff, the Planning and Zoning Commission and the Town Council, with input from the public. It is adopted after public hearings and after much deliberations. The Zoning Code should reflect what the community and the Town Council want in terms of land use. She said that a variance is a departure from the requirements of the Zoning Code and, because of the importance of the Zoning Code to the Town, variances should be very carefully considered before they are granted.

Ms. Goodwin said that the Board of Adjustment is a quasi-judicial board and is therefore different from the advisory committees of the Town. It serves as a "judge" and arbiter of facts. Records of the Board are public records. She said that most cases that are heard before the Board are variances but that the Board also has jurisdiction over appeals of interpretations of the Zoning Code. As a quasi-judicial body, ex parte communications are prohibited. She said that an ex parte communication is a communication related to a matter to be heard by members of the Board from one side of an issue and not the other. She said the prohibition against ex parte communications is not applied between Board Members and Town staff. It also does not prohibit visits to the site of an application, receipt of expert opinions or review of correspondence related to the proceedings. She recommended that if a Board Member inadvertently engages in an ex parte communication, that communication

must be disclosed by placing it in the public records. In answer to a question from Councilmember Hamilton, she said that the disclosure could be attached to the minutes of the meeting.

Ms. Goodwin described the Board of Adjustments duties. Under the Dewey-Humboldt Zoning Code, the Board of Adjustment hears applications for variances, hears appeals from decisions of the Zoning Administrator on applications for minor adjustments, hears appeals from decision or interpretation made by the Zoning Administrator of the Zoning Code and hears appeals from a hearing officer's decision regarding a complaint.

Ms. Goodwin said that a variance is permission to depart from the literal requirements of the Zoning Code by virtue of a unique hardship due to special circumstances regarding the person's property. It provides relief from the strict application of the Zoning Code where the strict application would deprive the owner of privileges enjoyed by similar properties. She said a variance may not be granted for change of use. She said that most importantly a variance may not be granted if the special circumstances applicable to the property are self-imposed. In answer to questions from the Council, Ms. Goodwin said that hardships that require a variance are hardships related to the topography and geography of the parcel and does not include financial hardships. Councilmember Hamilton said that at a seminar he went to there was a discussion of having to grant variances for certain medical reasons. Ms. Goodwin explained the requirements of the Americans with Disabilities Act and the requirement that reasonable accommodation be made in the application of the Zoning Code for persons with disabilities. She said that it is not a variance but it is a reasonable accommodation requirement.

Ms. Goodwin described the findings that are required in order to grant a variance as set forth in the Zoning Code. She described how those findings might be made. If it is clear from the discussions that the application meets the requirements of the law, one motion to approve the variance may be made referencing each of the required findings and including facts supporting those findings. On the other hand, if it appears the Councilmembers may disagree as to the findings, it is common to vote on each of the findings and then have one vote at the end approving the variance. If all of the required findings cannot be made, the variance cannot be approved. Ms. Goodwin emphasized that each finding should be supported by facts. In answer to questions from the Council, she said that an appeal to the Superior Court is based on the record and is not a trial de novo.

Ms. Goodwin briefly reviewed the handout that sets forth a suggested order of proceedings of the Board of Adjustment hearing. The Council recesses the Council Meeting and convenes the Board of Adjustment. The Mayor introduces the case and opens the public hearing. Staff presents its report and responds to questions from

Board Members and then the applicant presents its case. Then the Mayor opens the public hearing and the public presents its comments. It is appropriate to let the applicant rebut comments made from the public or staff. Staff is available to answer any questions and then the public hearing is closed. The Board then deliberates and decides the case. Councilmember Hamilton asked whether the decision has to be made at that time or can it be made at a later date. Ms. Goodwin said that the Board may continue the hearing to a later date but that a decision must be made within thirty days. Ms. Goodwin answered questions from the Board regarding procedures.

4. **Adjourn.** The meeting was adjourned at 5:05 p.m.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk