

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

**Tuesday, February 7, 2017, 6:30 P.M.**

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

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

**AGENDA**

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **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. Opening Ceremonies.**

**2.1. Pledge of Allegiance.**

**2.2. Invocation.**

**3. Roll Call.** Town Council Members Jack Hamilton, John Hughes, Amy Timmons, Doug Treadway Victoria Wendt; Vice Mayor Mark McBrady; and Mayor Terry Nolan.

**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. Humboldt Water Company presentation.** [As directed at the January 3<sup>rd</sup> meeting]

**4.2. Acme Water Company Council presentations.** [As directed at the January 3<sup>rd</sup> meeting]

**5. Town Manager's Report.** Update on Current Events. No legal actions can be taken. Council may ask town staff to review an operational matter at this time, or may ask that a matter be put on a future agenda for actions or further discussion. Possible matters and projects are related to Town general administration, Finance, Public Works, Community Development.

**5.1. Private Road Transition Policy Research Report.** (Public Works Director, Ed Hanks and Town Manager, Yvonne Kimball to report)

**6. Consent Agenda.**

**6.1. Minutes.** Minutes from the November 1, 2016 Regular Council Meeting and Board of Adjustment Hearing and January 3, 2017 Regular Council Meeting.

17 **7. 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.

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**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. Council Advisability and introduction of a proposed Nuisance Abatement Ordinance.** (As directed at the January 10, 2017 Study Session; Attorney Susan Goodwin to present)

**8.2. Discussion on the aspects of forming and financing a Road Improvement District as it relates to the transition of private roads to public ownership for maintenance purposes.** (Following previous discussions regarding requests for the Town to maintain private roads; Attorney Susan Goodwin to present)

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

55 **9.1. Request for permission to talk with Food Store Management to develop a shopping center along Highway 69.** [CARRF requested by Mayor Nolan]

57 **9.2. Request for permission to talk with State Park Dept. about turning Smelter area into State Park.** [CARRF requested by Mayor Nolan]

**10. Public Hearing Agenda.**

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**THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.**

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**11. Adjourn.**

**For Your Information:**

Next Town Council Meeting: Tuesday, February 21, 2017, at 6:30 p.m.

Next Planning & Zoning Meeting: Thursday, February 9, 2017, at 6:00 p.m.

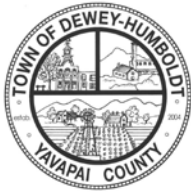
Next Town Council Work Session: Tuesday, February 14, 2017, at 6:30 p.m. (NOTE: change in time)

If you would like to receive Town Council agendas via email, please sign up at [AgendaList@dhaz.gov](mailto: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 \_\_\_\_\_, 2017, 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.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.



**TOWN OF DEWEY-HUMBOLDT**  
**P.O. BOX 69**  
**HUMBOLDT, AZ 86329**  
**Phone 928-632-7362 ▪ Fax 928-632-7365**

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**TOWN COUNCIL REGULAR MEETING**

**February 7, 2017 – 6:30 p.m. Town Council Meeting Chambers**

**Agenda Item # 5.1. Road Improvement District, Research of Yavapai County practice**

**To: Mayor and Town Council Members**

**From: Yvonne Kimball, Town Manager; Ed Hanks, Public Works Director**

**Date Submitted: January 25, 2017**

**Summary:**

At the October 4, 2016 meeting, Council directed staff to look into the option of a Road Improvement District in light of Mayor Nolan’s request of contacting home owners concerning transitioning Prescott Dells Road, Rocky Hill Road, and Dewey Road from private to public roads. At the meeting, Council members recalled that Yavapai County seemed to have some effective practices of taking care of private roads.

Public Works Director, Ed Hanks, and I spoke to Yavapai County Public Works Director Byron Jaspers. Mr. Jaspers has been with the County for many years and did recall the County grading some unpaved private roads at some time. However, that practice ceased many years ago when the budget was in a pinch, and the County found out it was illegal to maintain private roads due to the “gift clause” state law provision. In another word, Yavapai County does not maintain private roads.

County approaches residents’ requests on private roads through the following ways:

- a. Road Improvement Districts - The residents who live in the “district boundary” need to be agreeable to forming the district. Once it is formed, residents pay for the cost of the initial maintenance to bring the roads up to County standards. The payment can be made over 20 years. County will take over the ownership and maintenance responsibilities of the private roads once the roads can meet the County’s standards. Mr. Jasper told us that to his knowledge, the County does not lower their road standards. Their standards are very similar to ours as they are derived from the same set of guiding manuals. This practice is similar to the Town’s current road transition policy where the property owners drive the process and are held accountable to make the roads meet Town standards before Town can take over ownership and maintenance. We also have attached the town’s current policy on private to public road transition.
- b. Road Maintenance Districts - In this approach, the residents essentially form a taxing district to maintain the roads on their own. The residents are likely to maintain the roads at a level they can afford and not necessarily at the County’s standards. The County’s Public Works Department has no involvement with this approach.

We have attached Yavapai County’s policy on Road Improvement Districts and Road Maintenance Districts. There are some regulatory differences for counties and municipalities. The Town Attorney will explain the process of forming an Improvement District in a municipality.

Staff does not believe a “Road Improvement District” is the solution for Council’s desire of maintaining private roads despite our best intention of considering safety issues of some privately-owned roads. For information purpose, there are about 50 miles of privately-owned roads in town comparing to 60 miles of Town-owned roads. We have attached the Town’s road map for your convenience.

Attachments: Yavapai County Policy on Road Improvement District; Maintenance District; D-H Road Map, DH Resolution 07-49 Private Road Transition Policy and Application Form

# YAVAPAI COUNTY BOARD OF SUPERVISORS



## ROAD IMPROVEMENT DISTRICTS

### County Road Improvement Districts (CRID)

### Road Improvement & Maintenance Districts (RIMD)

A **County Road Improvement District (CRID)** is an improvement district that is formed for the purpose of improving roads in the district to County standard with the expectation that upon completion of the improvements the County will assume maintenance responsibility for the road or roads as public roads. Specifications for County standard are set forth in Board of Supervisors' Resolution No. 1036 (available on the County website or through the Public Works Department). The Board of Supervisors sits as the Board of Directors for this type of district and is responsible for administration of the district, including the work involved with the improvement process.

A **Road Improvement & Maintenance District (RIMD)** is an improvement district that is formed for the purpose of improving roads or easements to a standard that is less than the county standard. Roads improved under this type of district will not be accepted by the County for maintenance. Instead, the district is responsible for maintenance and any other matters that may arise as a result of the road improvement, including liability. This type of district has a local elected governing board comprised of at least three people who reside in the district and are registered to vote. The district's local board of directors is responsible for administration of the district, including the work involved with the improvement process. **A RIMD cannot be used to improve and maintain private roads as private roads.**

### Forming a Road Improvement District

CRIDs and RIMDs are both formed in the same manner:

- Petitions containing the signatures of a majority of the persons owning real property in the proposed district or by the owners of 51% or more of the real property in the proposed district are filed with the Board of Supervisors (through Public Works if for a CRID and through Special Districts if for a RIMD) along with a check or bond to cover the County's expenses in the event the district is not formed. If the petitions are for a CRID, the Board of Supervisors will expect to see 60% signatures per Resolution No. 1317 (available on the County website). The petitions include information such as statements that establishment of the district will benefit property owners in the district and serve the public convenience, necessity, and welfare; the boundaries of the proposed district, along with a map of the same; and a general description of the proposed improvements. A petition to incur expense is included with the petition to establish, and it must contain the signatures of a majority of the property owners whose property fronts on the actual improvements to be made. (Petition forms are available through the County.)
- Upon receipt of the petitions, the Board of Supervisors sets a hearing on establishment of the proposed district and mails notice of the hearing to each property owner of record within the proposed district. Persons wishing to object to establishment of the district file written objections with the Clerk of the Board of Supervisors prior to the hearing date.

- The Board of Supervisors holds the hearing on establishment, at which time it hears comments from the public, determines if the petition has been signed by the requisite number of property owners, determines if there is any property within the proposed boundaries of the district that would not benefit from establishment that should be excluded from the boundaries, and if the Board determines that establishment of the district will promote the public convenience, necessity and welfare it orders the establishment.

### **Making the Improvements**

The legal process for making the improvements is the same for CRIDs and RIMDs and is set forth in Title 48, Chapter 6 of the Arizona Revised Statutes. In a CRID, once the district is established, an engineer is hired to determine the specific improvements to be made and to provide a cost estimate. A bond attorney and financial consultant for the district are also hired. In a RIMD, similar requirements may be necessary depending on the level of improvements anticipated.

Upon receiving the final cost estimate from the engineer, the Board of Directors (whether this is the Board of Supervisors or a local board) passes a Resolution of Intention to Order Improvements and sets a hearing to consider protests against the proposed work. If the owners of a majority of the frontage of property fronting on the proposed improvement, or the owners of a majority of the acreage of property contained within the district protest the improvements, further proceedings may be stopped. If this occurs, a tax is levied on all properties in the district to pay for the engineering work that was done.

If there are not sufficient protests against the proposed work to halt proceedings, the Board of Directors proceeds with the process of going to bid for the improvements and going to bond to pay for the improvements.

Once the improvements are done, the road or roads in a CRID are accepted by the County for future maintenance. In the case of a RIMD, the road or roads are accepted by the district for future maintenance. The funding mechanism for maintenance in a RIMD is a property tax levy.

### **What Does it Cost?**

The cost to district property owners in a **CRID** will be higher initially because of the cost to build a road to county standard. However, the long term cost may be less because in the end the road is accepted by the County for future maintenance. The cost to district property owners in a **RIMD** will be lower initially because it will cost less to build a road to less than county standard, but the long term cost may be more because the district is responsible for ongoing maintenance of the road.

There are a number of costs involved regardless of which type of district is used. Costs may include engineering, bond attorney and financial consultant, administration costs associated with the debt authorization process and sale of bonds, construction management and so on. The more topographical concerns there are the more expensive engineering and improvements may be. Unless all of the property owners in a district are willing to donate right-of-way the cost of right-of-way acquisition can become an expensive matter. Condemnation for right-of-way may be required which involves not only the cost of the right-of-way itself but also attorneys' fees.

### **Who Pays for the Road Improvements?**

Regardless of which type of district is used, the property owners in the district are responsible for all costs related to the district. Assessments are made against each property in the district to pay for the improvements.

A cash demand period is allowed, during which property owners may pay their assessment in full and avoid interest charges on the bonds. Assessments that are not paid in full during the cash demand period are paid off through semi-annual payments for the period of the bond. The level of road improvement

may determine the period of the bond. Property owners who wish to pay off their assessment after the cash demand period has ended may have to pay not only the principal due, but all of the interest as well. An assessment does not need to be paid off in order for a person to sell his property because the assessment is a lien against the property, not against the person.

### **How are Assessments Determined?**

The district's bond attorney will advise the district Board of Directors as to how assessments should be made. Assessments are made on the basis of benefit. Persons forming a CRID or RIMD should not assume that each parcel in the district will be assessed the same amount for the improvements.

This is particularly true in cases where parcel size in the district varies, or where the benefit for some property owners is greater than for other property owners.

### **Are there Other Options?**

Several communities have formed road associations which collect money from property owners on a voluntary basis and then use the funds to obtain private road grading services or to otherwise improve the road. This method may work well in areas where there is a strong sense of community and a willingness among property owners to work together for the benefit of all. Where a strong sense of community and willingness to work together is lacking, an improvement district may be the most appropriate method to use for road improvement.

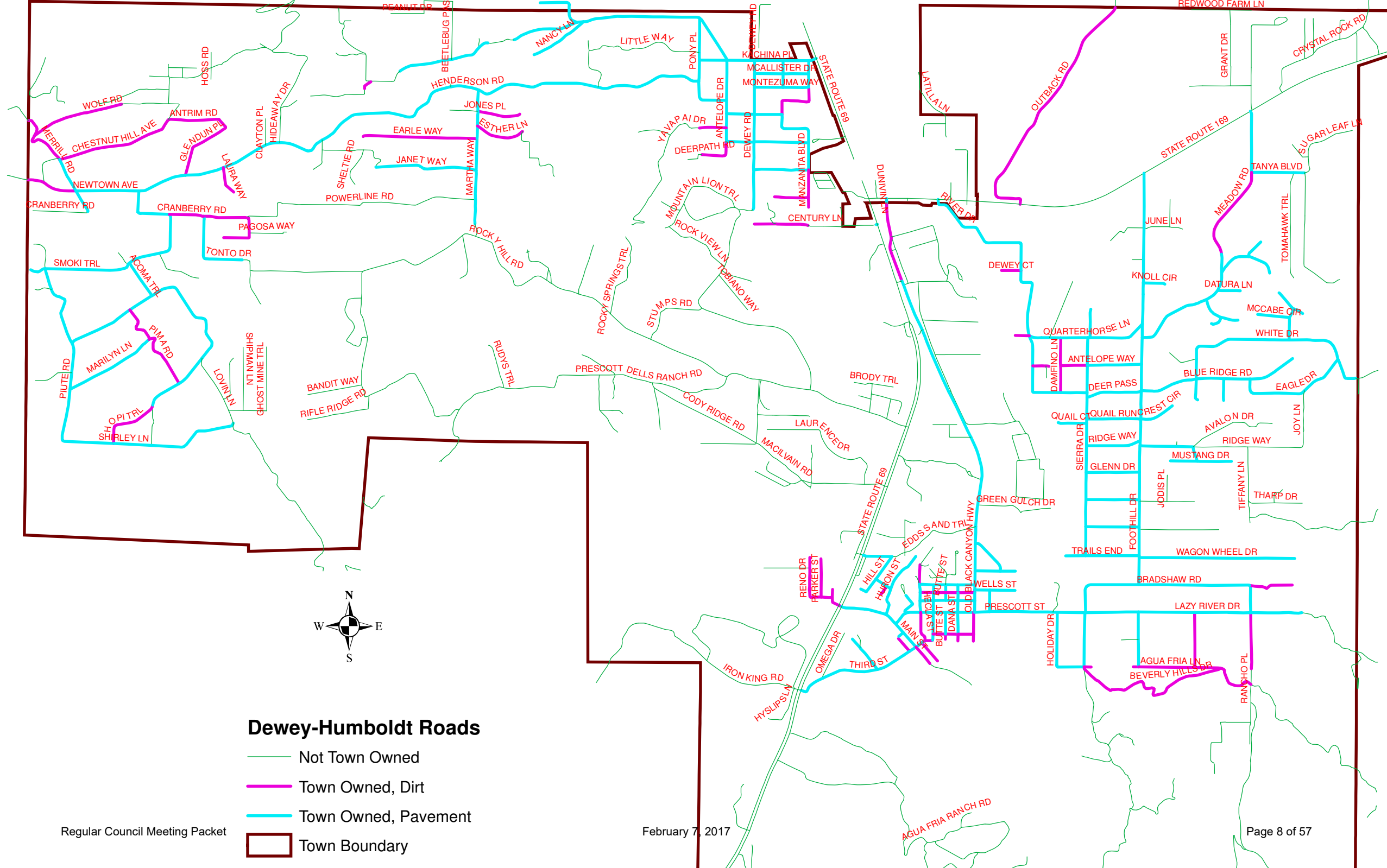
7/31/07

For information regarding the establishment of improvement districts, please visit the Special Districts page of the Yavapai County website at <http://www.yavapai.us/sd> or contact:

Laura Bunn (for CRID)  
Administrative Aide  
Yavapai County Public Works Department  
1100 Commerce Drive, Prescott, AZ 86305  
(928) 771-3183  
[laura.bunn@co.yavapai.az.us](mailto:laura.bunn@co.yavapai.az.us)

Ana Wayman-Trujillo (for RIMD)  
Special Districts Coordinator  
1015 Fair Street, Prescott, AZ 86305  
(928) 771-3200  
[Ana.wayman-trujillo@yavapai.us](mailto:Ana.wayman-trujillo@yavapai.us)

**SPECIAL NOTE: THE LAW AUTHORIZING THE ESTABLISHMENT OF ROAD IMPROVEMENT & MAINTENANCE DISTRICTS (RIMD) WILL BE EFFECTIVE SEPTEMBER 19, 2007.**



**Dewey-Humboldt Roads**

- Not Town Owned
- Town Owned, Dirt
- Town Owned, Pavement
- Town Boundary

RESOLUTION NO. 07-49

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA, ADOPTING A POLICY AND PROCEDURE FOR THE IDENTIFICATION, TRANSFER AND MAINTENANCE OF PRIVATE RIGHT OF WAY FOR PURPOSES OF DEVELOPING THE TOWN ROAD SYSTEM.

WHEREAS, within the Town limits there are significant sections of roadway that are privately owned and maintained, and,

WHEREAS, circulation and transportation within the Town would benefit in some instances if portions of private roads became owned by the Town, and,

WHEREAS, a policy and procedure for incorporating private roads into the Town's system would assist property owners and the Town in considering requests for transfer of ownership maintenance responsibility:

NOW THEREFORE BE IT RESOLVED that the Town of Dewey-Humboldt hereby adopts the Private Road Transition Policy as follows,

**Private Road Transition Policy**

1. Any neighborhood or group of property owners wishing to transfer ownership and maintenance of a private road to the Town will provide a written request to the Town identifying the portion of roadway to be transferred, the names and parcel numbers of property owners adjacent to the roadway and signatures of those property owners that are indicating support of the transfer.
2. Upon receipt of the request, Town Staff will review the request and prepare a report identifying the condition, the required width, drainage considerations, connection of the proposed roadway to existing Town owned roads and other factors that may be deemed relevant to the maintenance and ownership of the roadway by the Town. The report will also identify any improvements to the roadway that may require resolution prior to being accepted for transfer of ownership.
3. Upon recommendation of the Town Staff for transition to Town ownership of the proposed roadway, each property owner will provide a survey of the proposed roadway by a registered surveyor for their parcel.
4. The proposed transfer will be placed on the next available Town Council Agenda for Public Hearing and consideration for acceptance of ownership and maintenance by the Town.

5. Upon approval by the Town Council, property owners will transfer ownership of the designated right of way to the Town and the Town will arrange for recording of modifications to each portion of parcels and property and designation of the transferred right of way as Town owned property.

6. As of the effective date of the creation of the right of way, the Town will add the right of way to its assets and begin providing standard maintenance of the roadway.

7. Future paving of the roadway may be proposed by the Town or the property owners and may be financed by formation of a Local Improvement District and/or Town resources.

**EFFECTIVE DATE:** This Resolution shall be effective upon passage.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Yavapai County, Arizona, this 20th day of November, 2007.

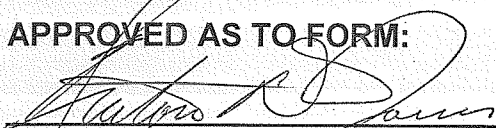


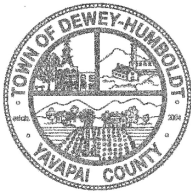
\_\_\_\_\_  
Earl Goodwin, Mayor

**ATTEST:**

\_\_\_\_\_  
Debbie Gifford, MMC, Town Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kenton Jones, Town Attorney



**TOWN OF DEWEY-HUMBOLDT**  
**P.O. BOX 69**  
**HUMBOLDT, AZ 86329**  
**Phone 928-632-7362 ▪ Fax 928-632-7365**

**TRANSITION REQUEST FORM**


Date:	Parcel #
Owner Name:	Phone #:
Mailing Address:	
Site Address:	
Road(s) submitted for Town ownership:	
Road(s) located:	

I/We the undersigned do hereby request the Town of Dewey-Humboldt, accept this letter of intent in accordance with the Town of Dewey-Humboldt Resolution No. 07-49. Private Road Transition Policy:

Our intent is as follows:

1. To work with our neighbors and gain agreement to see this process through.
2. Make application by the property owners for consideration by the Town for the transfer of ownership and maintenance responsibility, of our roads listed herein.
3. Work with the Town Staff and aid in the review of the application and identification of issues concerning the proposed roads.
4. Upon acceptance and agreement by the Town staff to submit a favorable recommendation to the Mayor and Town Council, I/we will join with our neighbors to secure and pay for a survey as required by the Town.
5. I/We will work with the Mayor and Town Council in seeking consideration and approval of our application.
6. Upon the Mayor, Town Council and all property owners, agreement: I/We will transfer ownership, responsibility of maintenance, and future improvements of all roads listed herein to the Town so as to become part of the Towns road system in accordance with Resolution No. 07-49.

Signed: \_\_\_\_\_

 <b>TOWN OF DEWEY-HUMBOLDT</b> <b>DEPARTMENTAL REGULATION</b>	<b>DR № ENG10-04</b>
	<b>Effective Date: April 5, 2010</b>
<b>Department: Engineering</b>	
<b>Subject: <i>Private-to-Public Procedures</i></b>	

1. **Purpose.** The purpose of this Regulation is to implement Town Code § 92.01.
2. **Scope.** Town Code § 92.01 establishes a policy and minimum criteria relating to the acquisition and maintenance of private streets. Any private street proposed for acquisition and maintenance by the Town shall be in accordance with the policy and criteria as set forth in Town Code § 92.01.
3. **Procedures for Acceptance of Existing Private Streets for Public Ownership.**
  - 3.1. In order to be considered, a street owner or property owner’s association shall make an application to the Town Engineer on an application form provided by the Engineering Department.
  - 3.2. The Town Engineer shall review any complete application submitted by the street owners or property owner’s association. The Town Engineer shall prepare a written inspection report of the street and Rights-of-Way proposed for dedication and the accompanying map. He shall determine if any design, construction or maintenance deficiencies exist that would result in an unacceptable assumption of liability or cost on the part of the Town. This report may recommend corrective action items to be accomplished by the existing owners as a condition of acceptance. This may include removal of all buildings, steps, walls or other structures not functionally part of the traveled way or of drainage facilities. The Town Engineer shall make a written recommendation to the Council regarding the offer of dedication and acceptance by the Town.
  - 3.3. The Council shall consider the Town Engineer’s recommendation and determine to accept or reject the offer of dedication. The Council may attach any additional conditions they deem necessary to their acceptance.
  - 3.4. Subsequent to an acceptable and favorable application as determined by the Mayor and Town Council, the applicant shall submit the following items:
    - 3.4.1. An ALTA/ACSM Land Title Survey and legal description of the proposed Rights-of-Way prepared shall be stamped by a registered land surveyor licensed by the State of Arizona. The ALTA/ACSM shall conform to 2005 Minimum Standards Detail Requirements For ALTA/ACSM Land Title Survey Land Title Surveys, as adopted by American Land Title Association and National Society of Professional Surveyors, and all subsequent revisions. The map shall include the street, Rights-of-Way and all adjacent lots or parcels and shall also include the following:
      - 3.4.1.1. A scale (written and bar graph), north point and date of preparation, including dates of any subsequent revision;
      - 3.4.1.2. Boundary lines and vicinity map;
      - 3.4.1.3. Names, locations and widths of adjacent streets, roads, highways and ways;

3.4.1.4. The width and location of all existing or proposed easements for special purposes which are contained within or adjacent to the proposed Rights-of-Way to be dedicated, such easements for the purposes of drainage, sewers, utilities, flood control or access;

3.4.1.5. Locations, elevations and size of culverts and storm drains and detention facilities;

3.4.1.6. Location of all existing or proposed structures, walls, fences, irrigation ditches, water wells, pipelines and other physical features within or adjacent to proposed Rights-of-Way. The map shall indicate which improvements are to remain, be altered or removed.

3.4.2. A fee simple title to the entire Rights-of-Way for the street conveyed by the street owner or property owner's association. The Rights-of-Way shall be of sufficient width to accommodate requirements set forth by the Town.

3.4.3. Documentation acceptable to the Town Attorney that the street owners or property owner's association have legal authority to convey the Rights-of-Way to the Town.

3.5. If directed by the Council, the Town Engineer shall sign the map indicating Town acceptance of the dedication. The Town Clerk shall record the accepted new street with the necessary documentation with the appropriate county recorder's office.

<b>TOWN MANAGER APPROVAL</b>	Initial: _____
Notes: _____	
_____	
_____	

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**RESOLUTION NO. 07-49**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA, ADOPTING A POLICY AND PROCEDURE FOR THE IDENTIFICATION, TRANSFER AND MAINTENANCE OF PRIVATE RIGHT OF WAY FOR PURPOSES OF DEVELOPING THE TOWN ROAD SYSTEM.**

**WHEREAS, within the Town limits there are significant sections of roadway that are privately owned and maintained, and,**

**WHEREAS, circulation and transportation within the Town would benefit in some instances if portions of private roads became owned by the Town, and,**

**WHEREAS, a policy and procedure for incorporating private roads into the Town's system would assist property owners and the Town in considering requests for transfer of ownership maintenance responsibility:**

**NOW THEREFORE BE IT RESOLVED that the Town of Dewey-Humboldt hereby adopts the Private Road Transition Policy as follows,**

**Private Road Transition Policy**

1. Any neighborhood or group of property owners wishing to transfer ownership and maintenance of a private road to the Town will provide a written request to the Town identifying the portion of roadway to be transferred, the names and parcel numbers of property owners adjacent to the roadway and signatures of those property owners that are indicating support of the transfer.
2. Upon receipt of the request, Town Staff will review the request and prepare a report identifying the condition, the required width, drainage considerations, connection of the proposed roadway to existing Town owned roads and other factors that may be deemed relevant to the maintenance and ownership of the roadway by the Town. The report will also identify any improvements to the roadway that may require resolution prior to being accepted for transfer of ownership.
3. Upon recommendation of the Town Staff for transition to Town ownership of the proposed roadway, each property owner will provide a survey of the proposed roadway by a registered surveyor for their parcel.
4. The proposed transfer will be placed on the next available Town Council Agenda for Public Hearing and consideration for acceptance of ownership and maintenance by the Town.

5. Upon approval by the Town Council, property owners will transfer ownership of the designated right of way to the Town and the Town will arrange for recording of modifications to each portion of parcels and property and designation of the transferred right of way as Town owned property.

6. As of the effective date of the creation of the right of way, the Town will add the right of way to its assets and begin providing standard maintenance of the roadway.

7. Future paving of the roadway may be proposed by the Town or the property owners and may be financed by formation of a Local Improvement District and/or Town resources.

**EFFECTIVE DATE:** This Resolution shall be effective upon passage.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Yavapai County, Arizona, this 20th day of November, 2007.




\_\_\_\_\_  
Earl Goodwin, Mayor

**ATTEST:**

\_\_\_\_\_  
Debbie Gifford, MMC, Town Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kenton Jones, Town Attorney

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**TOWN OF DEWEY-HUMBOLDT  
TOWN COUNCIL  
REGULAR MEETING MINUTES  
NOVEMBER 1, 2016, 6:30 P.M.**

**A REGULAR MEETING OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, NOVEMBER 1, 2016, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEYHUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.**

1. **Call To Order.** The meeting was called to order at 6:34 p.m. Mayor Nolan presided.
2. **Opening Ceremonies.**
  - 2.1. **Pledge of Allegiance.** Done.
  - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.** Town Council Members Arlene Alen, Jack Hamilton, Mark McBrady, Dennis Repan, Nancy Wright; Vice Mayor Doug Treadway; 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. University of Arizona Superfund Research Program, 2<sup>nd</sup> Annual Update in 2016.**

Dr. Raina Maier spoke on the steps to bring the Superfund site to closure. She explained the University program's intent to provide information to agencies and communities regarding contaminated sites, providing better solutions, closure and defining issues; for information only. She reviewed their findings regarding containment of contamination through re-vegetation, citing 6 years of data. The most expensive part of this process is reconstruction of blow-out area through grading. She recommended the Town can have an opinion for remediation and make those recommendations to help EPA make the choice.

There was discussion on slope stabilization and less expensive remediation options.

Public comment was taken on this item.

Amy Timmons asked if they can do something immediately to remediate like placing compost and seeds. Dr. Maier responded council could suggest to EPA they would like it covered sooner than later. Mayor Nolan spoke on the likelihood that EPA would act quicker, if Council requested it.

Dr. Maier continued to the second half of her presentation regarding inhalation impacts and testing they are doing with mice to evaluate health impacts. Results should be released within 6-12 months.

There was further discussion on the percentage of compost to grow plants in the tailings and the requirement to include irrigation for success of growing plants.

Public comment was taken.

Ulys Brooks offered compost for the remediation and stated he would talk with the Dr. afterwards.

Monica Ramirez-Andreotta spoke on establishing a Community Advisory Board and welcomed the community's involvement in it. Town Manager Kimball stated the University of Arizona has committed to giving a report to Council twice a year.

Mayor Nolan asked Council if they were in agreement to move the hearing (Agenda Item #10) up on the agenda to follow comments from the public (Agenda Item #7). The Council reached consensus to do so.

**4.2. Big Brother Big Sister Prescott presentation and Tax Giving proclamation.** (As authorized at the October 4<sup>th</sup> meeting)

Mayor Nolan read the Big Brothers Big Sisters (BBBS) Tax Giving Credit Proclamation.

Representatives from BBBS, Arizona Public Service Electric Company (APS) and Humboldt Unified School District (HUSD) were present and came up to receive the proclamation (Juliana Goswick, President and CEO of BBBS; Nancy Hamerly, Events & Community Outreach Coordinator of BBBS, HUSD Superintendent Dan Streeter and Darla Deville with APS). Dan Streeter spoke on the opportunity to keep tax dollars local, putting them directly to a charitable organization and BBBS matching young children with mentors in the community. Mayor Nolan asked about the George Lucas film done on Humboldt Elementary School. Mr. Streeter stated he would provide the link to the film. Juliana Goswick spoke on the proclamation being an education piece to the community to let them know the donation amount has increased to \$400-single, \$800-married. She spoke on BBBS serving over 11k children and looking for people to donate their time and provide their tax credit to the BBBS.

**4.3. Veteran's Day Proclamation.**

Mayor Nolan read the Veterans' Day Proclamation.

Mayor Nolan announced it is National Diabetes Month in November and would be bringing a proclamation on it November 15<sup>th</sup>.

**5. Town Manager's Report.** Update on Current Events. No legal actions can be taken. Council may ask town staff to review an operational matter at this time, or may ask that a matter be put on a future agenda for actions or further discussion. Possible matters and projects are related to Town general administration, Finance, Public Works, Community Development.

None.

**6. Consent Agenda.**

**6.1. Minutes.** Minutes from the September 13, 2016 Work Session, September 20, 2016 Regular Council Meeting, October 4, 2016 Regular Council Meeting, and October 11, 2016 Work Session.

Councilmember Alen made a motion to approve the minutes from the September 13, 2016 Work Session, September 20, 2016 Regular Council Meeting, October 4, 2016 Regular Council Meeting, and October 11, 2016 Work Session, as presented. It was seconded by Councilmember Hamilton and approved unanimously.

**7. Comments from the Public (on non-agendized items only).**

No comments received.

**10. Board of Adjustment Public Hearing Agenda.**

**10.1. Convene the Board of Adjustment Meeting**

Councilmember Repan made a motion to convene the Board of Adjustment Meeting, seconded by Councilmember Alen. It was approved unanimously. Council convened into the BOA meeting at 7:26 p.m.

Appellant's Representative, Attorney Adams, submitted to the Town Clerk 3 letters of support and an aerial GIS photo of the property.

**10.2. Appeal of an Administrative Determination of the Zoning Administrator to require compliance with 50-foot rear setback in construction of a barn as an accessory structure (property located at 1925 S. Sierra Drive, Dewey, AZ 86327).**

**10.2.1. Open Public Hearing**

Mayor Nolan opened the Public Hearing at 7:32 p.m.

**10.2.1.1. Staff Report**

Community Planner Steven Brown gave his report explaining the steps taken in the process so far and staff fulfilling requirements, to date. He stated the hearing is to determine whether to affirm or overturn the Zoning Administrator's decision to uphold the setbacks as required for the zoning. He gave the details of the case: Barn construction 20x24 foot barn permitted by Yavapai County in 1982 along with other accessory structures. It was a non-conforming structure as it encroached on rear setback. Staff offered to allow a replacement on the same footprint, which was the original request of the current owner, allowing the reconstruction of the pre-existing, non-conforming structure. The proposal submitted was a barn four times the original size. At that time, Staff explained the need to adhere to the setbacks and rejected the building permit and plot plan due to setback requirements. Keenan's appealed to the Zoning Administrator. The Zoning Administrator upheld Staff's decision. Mayor Nolan asked if a letter was provided to the owners regarding this decision. Zoning Administrator Kimball explained it had. An aerial of the property was put up on the overhead for the Council and public reference.

**10.2.1.2. Presentation**

Keenan's representative, Attorney Jeff Adams, introduced himself and spoke on the issue, explaining this is a common problem that happens when county land gets annexed into a municipality. Owners purchased in 2012 with improvements (home and barn). Attached to the barn were horse stalls on the outside. They now wish to fully enclose the barn. He referred to a rendering of what the barn will look like when constructed and concluded it will be a new barn that will look nice for the neighborhood. Previous owners submitted for a permit to Yavapai County (YC) and it was evaluated based on what was allowed in 1982. The front and rear of home was established at that time. Front of property is on Quail Run and Sierra Drive is western boundary. He stated the County established rules that applied to that property forever, and when the Town incorporated they accepted the rules established in 1982 and were required to honor what YC established before incorporation. When property owner looked at what was established as properties front, rear, etc. it was justifiably relied on those rules to determine if the property would work for them. A map was handed out to Council with the explanation it was prepared based on the property description. Mr. Adams explained Dave Williams from YC was in attendance to talk on annexation issues. He spoke on the map, stating the shorter of the property line is 301', which is the frontage. Most people have private portion to the rear with the public portion to the front. The house faces to Quail Run rather than Sierra Drive.

Mayor Nolan asked why the driveway is not off Quail Run. Attorney Adams responded it was due to the topography, and addressing is for the convenience of the postal service, and when platting a subdivision this can sometimes happen for best lot use. Mayor Nolan commented that when subdividing the entrance to the property is usually at the front of property.

Councilmember Wright asked what the problem was with maintaining the 50-foot setback from the front of the property.

Attorney Adams spoke on challenges with the property's topography.

Vice Mayor Treadway asked if the area to the west was being used for the septic system. Mr. Keenan responded the septic system is to the front of the house.

Attorney Adams stated the building is in the best place it can go on the lot.

Councilmember Wright corrected Attorney Adams' statement regarding annexation stating the Town incorporated the property, they didn't annex it.

Attorney Adams spoke on the Town inheriting the Yavapai County zoning.

Town Attorney (TA) Phyllis Smiley explained when incorporated and the code is adopted it applies. Legal non-conforming uses are fine, if they stay the way they are, but once changing then they need to conform to the Town's rules.

Councilmember Hamilton stated the key is the house not the barn, and asked if the house conformed to the front or side when it was built. If the rear of the house was less than 50-foot off the property line, then it was established as a side not a rear.

Attorney Adams spoke on it meeting YC setbacks when built; don't think you can change that now; dimensions of lot define boundaries of lot, sides, rear, front, etc.

Councilmember Hamilton asked if setbacks were met or not when approved by the County. Attorney Adams stated the setbacks were approved, though there were no inspections at that time. There is a proper setback for the rear setback in 1982, he directed them to page 94 in the packet for the construction permit. The rear is the south side and there is a 60-foot setback from building to property line.

Councilmember Repan spoke on simplifying it so that where the front door faces is front of lot. He thought there was access coming off of Quail Run originally, and the layout would match the Quail Run addressing. Attorney Adams guessed if the barn was on fire the Fire Department would access it off Quail Run.

Councilmember McBrady stated he thinks the Post Office made it as easy as they could, and he doesn't think this would be a problem.

TA Smiley spoke on this being the Appellant's presentation, not deliberation at this step. The Board can ask questions only, right now.

Vice Mayor Treadway asked the Appellants if the property to the east was supportive of this project. Attorney Adams explained that owner is at the hearing tonight. Mr. Keenan stated the only neighbor who didn't send a letter of support was the owner to the south, but it was due to a death in the family.

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Attorney Adams reiterated using zoning language and applying it to the dimension of the lot lines, it meets the setback requirements. He asked the Board to overturn the Zoning Administrator's decision.

Councilmember McBrady asked if they were notified by the Town that the frontage road would be Sierra rather than Quail Run.

Mr. Keenan explained he took the original county permits and used it to design the new barn.

Councilmember Wright asked if the mailing address was always Sierra Drive. Attorney Adams responded he didn't know. He spoke on the owner's hardship as he purchased \$54k of materials to build the barn.

### **10.2.1.3. Zoning Administrator's Response**

Town Manager/Zoning Administrator Yvonne Kimball notified the board the Appellant's Attorney has provided additional information: a drawing showing property dimensions, which they submitted at the start of this meeting, but it cannot be verified at this time. She explained it appears it is the same as Exhibit C, page 48 and Exhibit 4, page 92. She believes it is the same drawing as what the previous owner's plot plan submittal in 1982 which shows 300' side dimensions as well as on page 50, Exhibit H and page 67. The Quail Run dimensions of 300' show as equal to the dimensions on Sierra Drive. Quail Run was not considered as the front when they considered the request. Argument is over the 1982 hand drawn plot plan, and this is being debated. Also, look at addressing changes - Page 94 and 47 address was assigned by Yavapai County in 1982 as Sierra Drive. Understands the address has always been Sierra Drive since 1982. In response to the Appellate Attorney's statement that the County determination has been set in stone, Dewey-Humboldt as a municipality is not subject to County's interpretation. Town Staff addressed the existing non-conforming code with the Keenans. The new barn proposal is so much larger than original proposal. There is no way to verify the original barn setbacks as it was already demolished, and no stalls are showing on the original permit. Horse barns would have required permits and none were located. Original consideration could not be considered for adding to the original square footage.

Councilmember McBrady asked if page 48 Exhibit G was original drawing as it shows Quail Run as the front, and he stated the County determined it was the front of the building. Steven Brown responded Exhibit G, page 48, the drawing quality is consistent with what the County would have required in 1982. County would have determined the front should have been Sierra due to topography. Permit shows Sierra as the front and addressing off Sierra.

Councilmember McBrady stated the addressing does not determine the legal front. He spoke on having more than one access to his property.

Councilmember Repan asked TA Smiley what impact the address has as the consideration for legal front. TA Smiley is not aware of any legal principles that says it is or is not the legal front, if the subdivision is platted and addressed on plat. Thinks the county addressing it on Sierra would be evidence of the frontage.

Councilmember Repan thinks it is a factor.

Attorney Adams responded no to Councilmember Repan's assumption. There is nothing in ordinance that says mailing address of property has anything to do with zoning determination.

Councilmember Wright thought she read something that states the front is where addressing is assigned off of.

CP/CO Steven Brown explained the policy of addressing division determines where to assign addresses where driveway is developed. It is developed where the use fits. Most expedient. Two other sources that show equal distance. Where that is true you would take the one usage adjacent to adjoining properties. Impractical to develop address off Quail Run. Some determination happened between what was submitted (plot plan) and what was permitted that determined Sierra as front.

Councilmember McBrady spoke on being able to have a driveway anywhere, and standards or typical analogies do not mean they are always the case.

CP/CO Brown said when addresses are assigned agencies are notified, and if the front is Quail Run it would be hard to find off of Sierra. He spoke on Yavapai County being understaffed at that time, and they couldn't and didn't verify what was approved, therefore it wasn't done right. This is one of these problems the Town inherited that Dewey-Humboldt is trying to resolve.

Attorney Adams spoke that there is no existing language in the Yavapai County or Dewey-Humboldt Zoning Ordinances to base frontage of property off of addressing.

#### **10.2.1.4. Public Comments/Testimony**

Dave Williams, Planning Manager for Yavapai County, stated he is appointed to act as the Zoning Administrator, as the interpretive person for the County's Zoning Code all the way back to its creation in 1968. He stated Yavapai County did identify Quail Run to be the front of the lot, clearly denoted on the plot plan. At that time only a site plan was needed as no building reviews were done at that time. He stated identifying the front of the lot is vested and travels with the life of the lot. A legal barn was built. A legal non-conforming use would stay with the property for one year after demolition. Addressing has nothing to do with the front of the lot, it was for emergency purposes only. Mr. Williams identifies this home as having a side-loading garage, not front-loading. Addressing has absolutely nothing to do with county zoning. Believes there was a compelling reason for the county to identify Quail Run as the front of this particular property.

Councilmember Hamilton asked if the non-conforming use replaces only what is existing, not giving the right to quadruple the space. Mr. Hamilton spoke of the Council not having a problem with the property owners replacing the non-conforming building space with an equal space building, but that the owners want to build a much larger building, which is a different story.

Mr. Williams spoke of the building size not being the issue, rather identifying what is the front of the lot. Mr. Williams provided a map from the GIS system of the property.

Councilmember McBrady inquired if as far as the County is concerned the buildings were originally legal buildings. Mr. Williams confirmed this. Mr.

McBrady spoke of the only reason they are non-conforming buildings now because the Town took it upon themselves to change the front of the property to Sierra, without due notification. Councilmember McBrady spoke against something being legal when it was under County control, now being illegal under the Town.

TA Smiley spoke of Councilmember McBrady being out of order. This phase of the meeting was for Public Comment, not Council argument.

Councilmember Wright asked Mr. Williams for the proof that Quail Run was the original property front.

Mr. Williams spoke of not having the entire file in front of him, but did refer to a site plan submitted, page 48 of the packet, and Quail Run being noted as "front".

Councilmember Wright spoke of the site plan being drawn by the property owner, not the County.

Mr. Williams cited this as being part of the permit packet.

Councilmember Wright noted that the building drawn on the site plan is far different from what was built.

Mr. Williams noted that once the front of the property is established, the designated front continues with that property in perpetuity.

Councilmember McBrady spoke of his history building in this town and the requirement of having "front" noted on plans and that there were no permit inspections at that time, only septic inspections.

Councilmember Repan asked for clarification on information shared on the demolition of the existing barn and the non-conforming use.

Mr. Williams referred this inquiry back to Town Staff.

Community Planner Brown confirmed that if a building is demolished and the use is discontinued, it can retain the non-conforming status for a year. In this case, the building was demolished before there was any permit to do so and it was corrected after the fact.

Councilmember Repan inquired when the demolition occurred.

Community Planner Brown was unable to provide the actual date of demolition, but assumed it was a couple weeks before the permit was actually applied for. CP Brown spoke of the Town having been agreeable to the reconstruction of a building on the existing footprint. The extra horse stalls that were added on would have required permitting and could not be considered as part of the pre-existing, non-conforming.

Vice Mayor Treadway asked Mr. Williams if, as far as the County is concerned, he is sure that Quail Run is the front of the lot.

Mr. Williams replied affirmatively and that he would take that position in Court, as well.

Councilmember McBrady inquired if there has ever been a situation where the County changed the official front of the property from one road to another road.

Mr. Williams replied that there have been situations like this traditionally in mining claim areas such as Walker, Groom Creek, etc...where there are historic buildings and when properties are being completely revitalized. These are rare circumstances and would be initiated by the property owners, not something the County goes out and seeks to do.

Mayor Nolan questioned that the County surely did not look at every property's ingress/egress to determine what was easier to access.

Mr. Williams agreed they did not look at every lot; however, they would have looked where the driveway was located. The address does not have any legal bearing on what the actual legal definition of the front of the property is under the Yavapai County property codes.

Tammy Dewitt spoke of being the most affected property owner to this request and the drainage issues regarding this property and the neighboring properties which prevents the proposed outbuilding from being located other than the proposed site. In summary, Ms. Dewitt outlined many reasons why the proposed site for the barn makes the most sense, due to various obstructions from elevation, trees, leech field, a swale and drainage issues. Ms. Dewitt feels it is a great spot for the barn and as the most affected property owner, she supports the proposed site.

Amy Timmons inquired about the driveway location depicted on the map and why she would not relocate it. Ms. Timmons spoke to the advantage of having an expanded barn with enclosed stalls that would prevent anyone having to smell or see the manure or, even the horses, if they chose not to.

Pat Rudolph owns the property across Quail Run Road from the Keenan's property. Mr. Rudolph's property has two driveways, one on Quail Run and one on Sierra Drive. Mr. Rudolph spoke of the property drainage issues; the dilapidated condition of the previous barn; and the improved aesthetics of the proposed building and that this request needs to be approved.

Paul Gomant spoke of being a 29-year Dewey resident on the property west of the Keenan's property, as well as the incorporation of the town to avoid being controlled by Prescott Valley. Mr. Gomant pointed out on the map the drainage and steep elevation issues of the property and that the proposed site is the only practical site for the new building. Mr. Gomant spoke of eventually being in a similar situation due to topography limitations.

Mayor Nolan closed the Public Comment portion of the hearing at 9:02 p.m.

#### **10.2.1.5. Response**

Attorney Adams spoke of the public comments resonating with him and having been good comments. Attorney Adams cited his clients as wanting to improve their property and in doing so will make the whole neighborhood better. A quality barn will add value to the Keenan property and the neighbor's properties. Attorney Adams believes the frontage of the property is Quail Run and considering what had been presented in this hearing, the decision to deny his client's permit application needs to be reversed.

#### **10.2.1.6. Staff and Zoning Administrator Response**

Town Manager (TM) Kimball concurred with Attorney Adams that the public comments resonated with her as well in terms of common sense. TM Kimball reminded that they are not here to determine whether the Zoning Administrator made a correct or incorrect decision regarding compliance with the setback. The other arguments regarding drainage and hardship would be considered in a variance application. The Town is very sympathetic with the Keenan's situation, but as Staff, they have the responsibility to uphold the code. TM Kimball spoke of the County employees coming in to D-H to tell them how to do this. The Town wants their independence and the zoning codes allow each jurisdiction to make their own interpretations. Ms. Kimball pointed out that, if in 1982 Quail Run was considered the front, then the setback should not have been 18'6", it would have been 50'. If Quail Run was the legal front then everything else should have met the requirements. In summary, TM Kimball spoke of everyone focusing on and speaking of the topographical hardships involved. The purpose of the meeting was to discuss whether it met setback requirements. TM Kimball spoke of not appreciating County employees implying that the Town should do as the County does, like Big Brother. TM Kimball pointed out that the Town does not have a contract for the County GIS. The Town does appreciate the help interagencies lend to each other; however, TM Kimball spoke of not appreciating the implication that if the Town makes a decision that does not hold well with the County employees than the relationship with GIS or some other County department could be damaged.

Councilmember McBrady started to state his shock and disagreement with TM Kimball's comments.

Mayor Nolan reminded Councilmember McBrady that this was the portion for the Zoning Administrator's Response and they need to close the hearing and move on to deliberation.

Councilmember McBrady then spoke of having a question and went on to ask if there was a public document wherein the Town made Sierra Drive the front of this property, or if it was just Staff's determination made from looking at it? CM McBrady spoke of feeling that the property owner believed the frontage was Quail Run and the document submitted, Page 50 of the packet, proves by the setbacks that the Appellant believed this to be accurate.

TM Kimball agreed with Mr. McBrady's comment about Page 50 and that the Appellant assumed Quail Run was the front.

Councilmember McBrady spoke again about the Town assuming the front is the addressing access; but that this is not always the case and the driveway does not have to come off the front. CM McBrady disagrees with the Town in this instance in their determination that Sierra is the front of the property.

TM Kimball clarified that she is playing a difficult role here, as the Town Manager, and it was her duty to provide information to the Council as her boss. As Zoning Administrator, it is her duty to uphold what the Code says, and the Board and Audience may not agree with what she says as Zoning Administrator.

Councilmember McBrady spoke of the Appellant's attorney bringing up that the shorter side of property is considered the front of the property.

TM Kimball informed that this information was just presented to the Town, this is the first time they have seen this document. Staff will make a site visit to research this information.

Councilmember McBrady asked the origin of the document that provided these dimensions.

Attorney Adams stated that this was from a previous map drawn from the previous County records. The Appellant, Mr. Keenan, stated it was the first he had heard there was a difference in the lot size dimensions.

Councilmember McBrady asked if the Appellant came in and showed that it was a shorter piece of property on Quail Run rather than Sierra than his permit would be okay.

TM Kimball was unsure of this based on the address.

Councilmember McBrady said that TM Kimball was going back to the idea that the address has to be the front of the property.

TM Kimball cited that it is common that the front and the address happen to be the same.

Councilmember McBrady disputed this saying this is not always the case referring to the terrain of the area.

Mayor Nolan asked the audience to quiet down for clarity of recording purposes.

Attorney Adams spoke to the Town Attorney's comment about the Board being quasi-judicial in this proceeding and operating much like a jury and that the Board will evaluate the evidence presented and how much weight they give to this evidence. Attorney Adams referred to the Zoning Administrator as challenging the accuracy of the map and the calculation of the linear feet of the north, south, east, west boundaries. Attorney Adams referred to presenting two forms of evidence, the actual map and the person who calculated them based upon documentation of the public record. This corner lot has a specific definition when dealing with a corner lot in the zoning ordinance. The Zoning Administrator knew this was a corner lot and had a specific definition. Did the Zoning Administrator bother to go out and take the measurements from corner pin to corner pin to corner pin to take the measurements? Attorney Adams summarized that there is definitive evidence that this establishes that this corner lot uses Quail Run as its frontage.

Councilmember Wright pointed out that Attorney Adams already had his opportunity to present his side and should not have been allowed to present again.

Mayor Nolan spoke that he'd (Attorney Adams) already done it now, the public comment is closed, and they are getting ready for the public hearing.

Councilmember Wright said the Appellant presented that anything the County did was established in perpetuity. Ms. Wright gave an example that she could change the footprint of her property anytime she wants if she goes through the permitting process just because the County originally did it.

TA Smiley said this is not true, as once the property comes under the jurisdiction of the Town, any improvements to that property must be in conformance with the

Town's regulations, the building code, the fire code, all of those things are applicable. There is a provision in your zoning code and state laws that allows legal non-conforming uses to continue in perpetuity if there are no substantial changes. The barn that was there could have stayed there and could have been repaired in place, but once it came down, the Town was willing to permit it improved and rebuilt on that same footprint, but once that footprint expanded, then they needed to comply with the Town Code.

Councilmember Wright spoke on the hardship they keep hearing about. Hardship comes into play through the variance process. Today the board is only dealing with whether the board agrees with the Zoning Administrator on the zoning.

TA Smiley confirmed this.

Councilmember McBrady said he had a question - that as a Town they can't change willy nilly things that they want to have happen on a piece of property because it can affect property values. We just can't make changes and do that to people.

TA Smiley replied you are not doing that to people. You have your code.

Councilmember McBrady spoke that none of the current codes effect this and said the Town is changing the front of the property and they shouldn't do this.

TA Smiley replied that the Town is not changing the front of the property. The plan submitted by the Appellant showed 300-foot dimensions bordering Quail Run and Sierra Drive. Based on that plan submitted the Community Planner determined that the front of the property is Sierra Drive, probably based on the address. The Appellant appealed that, the matter goes to the Zoning Administrator to interpret, and said interpretation was that the front of the property is on Sierra Drive. That decision was appealed and the board now looks at the facts and determines if the Zoning Administrator was correct. If a Board Member disagrees, they can vote to overturn the Zoning Administrator's ruling.

Councilmember McBrady spoke of new information showing the code person was wrong and the dimensions are not 300 by 300 feet.

TA Smiley spoke of the only way to verify would be a legal description or a survey and pointed out that the Appellant has submitted conflicting information.

Councilmember McBrady spoke that if the dimensions submitted by the Appellant on documents at this hearing are accurate, than he should win.

### **10.2.2. Close Public Hearing**

Mayor Nolan closed the public hearing at 9:25 p.m.

Councilmember Repan made a motion to go into deliberations, seconded by Councilmember Alen, the motion passed unanimously.

### **10.2.3. Discussion and deliberation by Board**

Councilmember Alen spoke of the reason the board is here is to make a decision to affirm or deny the decision made by Staff. Councilmember Alen spoke of knowing the property and topography and that the proposed barn would be an improvement. The challenge is that the cases made by the public would be

amazing if this were a zoning variance hearing, but looking at the decision made by staff in accordance with the current code and information provided, Councilmember Alen does not see a discrepancy.

Councilmember Hamilton spoke of being surprised that the exhibit provided did not provide a legal description. The GIS map provided is not a legal document and cannot be used for legal situations. There is no legal description on the deed. Councilmember Hamilton indicated if the Appellant had come before the board for a variance, there would not have been an issue, and he probably would have granted a variance but that is not what is before the board. Councilmember Hamilton, based on the conflicting information provided, supports the Town Staff in their decision; however, he would probably grant a variance if the Appellant filed for one.

Councilmember McBrady interjected that he understands that the Appellants can't ask for a variance in this situation.

TM Kimball and CP Brown negated this idea as untrue and that they originally gave the Appellant an application for a variance and suggested that may be appropriate.

Councilmember Treadway spoke of both parties acting in good faith, but spoke of the confusion involving the property lines and the legal front of the property. Councilmember Treadway said he would grant a variance in a heartbeat, if requested.

Councilmember Repan spoke of the focal point of the property and he determines this to be how the property is laid out with the front door facing Quail Run. This determined the situation for him. He does not believe that address determines frontage. He referred to this being a learning experience, and this is how it has been in the County for many years. This is clear-cut to him that when it was originally given to the County that Quail Run was determined to be the frontage of the property. He would agree to grant a variance, if that is what they need to do.

Councilmember McBrady indicated that he hopes the people are able to prove the property dimensions have a shorter side and longer side. Councilmember McBrady asked Town Staff if they were able to do this, come back and show one side shorter than another, is the Town going to honor their codes and say that Quail Run will be the front.

Councilmember Wright spoke of believing that no other information can be considered other than what was provided.

TA Smiley clarified that the question before the board tonight is whether the Zoning Administrator's decision is correct.

Councilmember Wright inquired if the board makes the decision to uphold the Zoning Administrator's decision where does it go from there.

TA Smiley clarified that the Appellants have an appeal process. However, they could come in, and apply for a variance, but submitting new information and reapplying is not appropriate.

Councilmember McBrady questioned this, asking if the Appellants come in and meet Town Codes but because of this meeting tonight, they have to apply for a variance.

TA Smiley said this was not what was said. Based on the information and evidence presented at this hearing the board has to determine whether the Zoning Administrator correctly determined that the property front is on Sierra Drive. That is the board's decision tonight.

Councilmember McBrady inquired if at any time did the Building Inspector say that if one side was shorter than the other?

TA Smiley did not believe this was part of the Zoning Administrator's decision-making process and pointed out this was not presented to the Zoning Administrator, and the Building Inspector is not involved in zoning matters.

CP Brown explained the application and zoning process. This application did not make it past zoning review.

Councilmember McBrady inquired about the cost of this process for the Appellant.

CP Brown was not sure, however, the deposit paid was returned to the Appellant.

Councilmember McBrady spoke of not receiving an answer to his question, if the shorter side of the property is determined to be Quailwood, is the Town going to honor that as the frontage road.

TA Smiley stated that the Appellants would have to resubmit an application and start over. As to what has been submitted, the Zoning Administrator has made a decision based on the Community Planner's determination.

Councilmember McBrady directed his question directly to Planning, that if it is determined that Quailwood is determined to be the shorter of the two sides, would Quailwood be determined to be the frontage.

CP Brown informed that the Appellant would have to resubmit. The Building Permit process first step is zoning clearance, the application would come to his desk, and he would have to make a determination.

Councilmember McBrady asked if CP Brown would share his determination.

CP Brown replied that he has not seen an application. CP Brown indicated that he does not have any confidence in the accuracy of the drawing that was submitted tonight, brought in after the fact, after the submission of the application.

Councilmember McBrady spoke again about the determination of the lot dimensions and spoke of the Town leaving Prescott Valley and being rural. Mr. McBrady informed that he came from an area in California and loved that there weren't any building inspectors running around forcing things down your throat in this area. Councilmember McBrady spoke of his extensive history with building in this area. Councilmember McBrady spoke of these things backfiring and the people getting upset. Councilmember McBrady spoke of reputable people coming and talking to the board, that didn't have to, and then inferred that this person was reprimanded, and again referenced these things backfiring.

Councilmember Alen spoke of defending the Community in that all the Board Members appreciate the case that was made for a variance but that is not what they are here to decide, however, they really have to look at the evidence that was presented to staff when they made the decision, which was a technical decision. If this were a different hearing the Council would probably be almost unanimous in saying...

Councilmember McBrady interjected and asked Councilmember Alen if she had no problem that the person from the County got reprimanded for coming here and speaking.

Councilmember Alen said that was not what the board was here to discuss despite how she may feel.

Councilmember Repan asked for further clarification on if the setback decision was made by physical address.

CP Brown replied that it was both address and access.

Councilmember McBrady interjected that this is not in the code.

Mayor Nolan admonished Councilmember McBrady for speaking out of order.

Councilmember Repan asked if this was a judgment call rather than black and white as in the code.

CP Brown said that sometimes happens and went on to cite his 30-year history as an American Institute Certified Planner, that he used that breadth of experience on making that decision, that day, based on the Town's addressing policy and the access that is developed in response to those. This method is accepted universally across the United States to determine the front of a property. This practice has been followed everywhere CP Brown has worked and his determination on this day was based on the fore-mentioned policy and practice.

Councilmember Repan spoke of a similar situation on property near him that is representative of many lots in which it is not clear why they use the address to determine frontage.

VM Treadway spoke that the decision tonight was to be based on the evidence presented and believed that Town Staff acted in good faith on what they perceived to be the front; however, based upon the evidence presented tonight he could not go along with that decision, as he has a similar situation.

Mayor Nolan cited the drawing submitted that did not show one road being longer than the other and cited that was the drawing that the property owner submitted. Mayor Nolan spoke of staff making a good decision and that they used the documents submitted to make their decision but noted that the legal description would have been helpful at the time of submission.

Councilmember McBrady spoke of Town Council being able to make this decision on a number of different criteria, one being the hardship basis. This group can make a determination on that and vote in favor of this feeling that there was enough evidence and that this could actually be won a number of basis.

Councilmember Hamilton asked about calling the question and taking a vote.

Councilmember Wright reminded Town Council that they did not have to make a decision tonight.

Councilmember Hamilton recommended a vote, not leaving the Appellant in limbo.

Councilmember McBrady recommended waiting and allowing the Appellant to provide further documentation and show the true property dimensions are of such, that would make this a legal structure on this property, and the Council could allow this to go through.

Councilmember Wright spoke of the decision having to be made on the evidence the Town Council has tonight, not new evidence.

Councilmember McBrady began to speak again of the hardship.

Councilmember Hamilton spoke that the hardship is irrelevant and not the issue.

Councilmember McBrady spoke again of allowing the Appellant the opportunity to prove the property dimensions are such that would allow this structure, at the next meeting in two weeks.

Councilmember Repan recommended making a decision tonight giving the Appellant the opportunity to submit for a variance in a timely manner.

Councilmember Repan made a motion to proceed forward with making a decision on the topic that has been presented before us, seconded by VM Treadway.

Councilmember Repan revised his motion to proceed forward with making a decision on the topic before us, supporting the decision of Staff. VM Treadway withdrew his second to the motion. Councilmember Alen then seconded the motion.

Councilmember Repan spoke in support of the job that Town Staff did on this subject.

Mayor Nolan cited that the additional documentation submitted late would have been helpful in the packet.

Attorney Adams apologized saying that he only received the information this evening.

Mayor Nolan spoke that a postponement could have been requested.

Mayor Nolan requested a roll call vote. The motion passed on a 4-3 vote with Councilmember McBrady, Councilmember Repan, and Vice Mayor Treadway voting against.

### **10.3. Adjourn the Board of Adjustment agenda**

Mayor Nolan adjourned the Board of Adjustment at 9:59 p.m.

Councilmember Repan made a motion to extend the Council Meeting past 10 p.m., seconded by Councilmember Alen.

Mayor Nolan called a recess of the meeting at 9:59 p.m.

### **10.4. Reconvene Council Regular Meeting**

Mayor Nolan reconvened the meeting at 10:06 p.m. Mayor Nolan called for a vote on the motion to extend the Council Meeting past 10 p.m., the motion passed by a 6-1 vote, with Mayor Nolan voting against.

### **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.**

None.

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

**9.1. [Request for a] Presentation by APS of their Focused Future program that they have facilitated for many AZ communities. [CAARF requested by Councilmember Alen]**

Councilmember Alen gave an overview of her CAARF speaking of the need for this program, as the Town Council does not have a plan for the upcoming general plan. This program designed by Kelley Patton who is APS/ED. This is a step-by-step program to help community leaders in less populated areas to prepare their communities for the future. This would provide a road map for the future. Councilmember Alen recommended a program like this with structures and goals to be presented to the Town Council and asked for approval of this proposal.

Councilmember Alen made a motion to allow APS to come in and make a presentation under Focused Future in the near future, seconded by Councilmember McBrady.

Councilmember Hamilton inquired as to how long the presentation would be.

Councilmember Alen replied that it would fit within the guidelines.

Mayor Nolan called for a vote, the motion passed unanimously.

**9.2. Notice to Council of sufficiency of signatures for Referendum REF 16-01 “Referring Resolution 16-125 which authorizes and directs the Town Manager and Town Attorney to take necessary actions to acquire title to a certain parcel of real property on behalf of the Town for municipal purposes”; and next steps.**

Councilmember Wright inquired as to why and where in the ARS the Town Council has to acknowledge the sufficiency.

Town Clerk (TC) Morgan stated that the acknowledgement is not required; it is just what the Staff is asking that there is a sufficiency and asking Town Council to look at the next steps.

Councilmember McBrady spoke to reading the referendum language and having a problem with the wording saying that it sounds like the Town Council voted to purchase the bank building for the Historical Society and that was not the case. Councilmember McBrady felt the wording was misleading and was not what the Town Council voted for.

Councilmember Wright spoke of Councilmember McBrady’s concern not being the issue.

Mayor Nolan spoke of this being an agenda item to read and discuss.

Councilmember Repan spoke that it is not the Town Council’s job to change the wording.

Mayor Nolan agreed Town Council would not be changing the wording.

TA Smiley clarified that the petition was pulled, signatures were gathered, and staff is telling Council they have a sufficient number of signatures on that petition to move forward to a new election. Your decision is whether to allow that go to an election on the next regular scheduled election or to call a special election or repeal what Council did.

Councilmember McBrady spoke of something being written that is prejudicial and this was not what was happening here.

TA Smiley informed Councilmember McBrady that is not the question here.

Councilmember McBrady spoke of people signing petitions being under the understanding this is true and it is not.

Councilmember Wright explained that the resolution and all the back-up was attached to the petitions.

There was Council discussion with the Town Clerk subsequently clarifying the wording of the petition and explaining what documents were actually circulated with the petition for signatures, as required by state law.

VM Treadway spoke of voting for the purchase of the old bank building for the benefit of the whole town, not just for the use of the museum. VM Treadway feels that the wording of the petition is biased and is almost of the mind that Council should repeal the resolution and pass the issue on to another Council down the road. I did not support purchasing the museum simply for the Historical Society.

Councilmember Wright spoke of not supporting the purchase for the historical society. However, the historical society posted a sign saying "Yeah, we are getting a museum permanently", that was their interpretation. Ms. Wright spoke on the likelihood of moving out of the museum from this property and including wording on the resolution for time certain occupancy.

Councilmember Alen spoke of not voting for this for the Historical Society but that she finds it highly offensive with people misstating facts in the referendum. She inquired what could be done about this referendum.

TA Smiley was not sure but believed that it would require a special action to challenge the referendum. She does not think there is a requirement as to the wording of the referendum.

Councilmember Repan spoke of the discussions on this purchase, the Council asked a specific question as the Historical Society President was present, if there could be an agreement to share that building on a shared or partial basis, and the answer was no. Council made a decision on the information available at that time. All the ideas presented be it court, sheriff, records-keeping, a gym for staff...there was no agreement that the Town was buying that building for a municipal purpose other than to preserve the historic aspect of the building. There was a vote to go forward based on that information. When talking about referendums, right or wrong, it is not the Council's responsibility to correct somebody's freedom of speech and their constitutional ability.

Councilmember McBrady interjected with comment. Councilmember Repan informed Councilmember McBrady he was not done speaking yet.

Councilmember Repan noted his second point, thinking of the options presented here, an election in 2018 is out there too far; he would rather see an election in March and get it over with. Councilmember Repan referred to the previous community survey and that the building purchase was a low priority on the survey and the Council decided to ignore that. So, now the Council is going to ignore other signatures? People have expressed the idea that we should bring this to a vote of the populace to make the determination.

Councilmember McBrady said it is a disservice to the Town and population to put this biased stuff on the referendum, because that is what they will read first, and by the time they read that, they won't get to the other. The Council should not allow this to be put on a vote. Councilmember McBrady inquired why this was brought here, how it has to go to an election and he didn't want a vote the way it was written as it was biased and wrong. To use this false wording and let the Town vote was ridiculous.

Mayor Nolan spoke that is not the Council's choice.

Councilmember McBrady spoke of not having an election at all. I think we need to talk to the higher attorneys here and find out.

TA Smiley spoke that the Arizona Constitution reserves to the people the right to a referendum of initiative. This was a legislative decision so there is the right of the people to issue a referendum. If they get the required number of signatures, state law requires it be put on the ballot, the next regularly scheduled in August 2018 or on a special election on another date. That is the Council's decision.

Councilmember McBrady spoke that the referendum language was not true.

TA Smiley informed that this refers the decision of the resolution to the people. The people get to decide if that resolution stays. There will be publicity pamphlet that goes out with the ballot. The resolution will be in there and there can be arguments for and against, and there may be an argument against saying that this misrepresents what the resolution did.

Councilmember McBrady asked who could write that and how it is written.

TA Smiley replied that anyone could write it, and the filing fee is \$80. Councilmember McBrady, as a Council Member, would need to write it as an individual; not representing the Council as there is a statute preventing Council Members from influencing with town resources. Your name may be on it, but as an individual.

Councilmember Wright spoke that when she was getting signatures, she had people tell her that the Council bought it for the Museum, and they would not hear of that not being the purpose.

Councilmember Alen spoke of wanting to correct the record stating that just because you say something, doesn't make it true. She recommended others go back and listen to the record, you will hear what she heard, the famous phrase, "we will leave that to the next Council to discuss" and make the determination." Councilmember Alen then spoke of the previous survey that was disavowed, but some (people) go back and pick and choose information from the survey and three quotes regarding information from the survey in newspaper articles. She feels the survey input on this matter was a toss-up, so she wanted to correct the record.

VM Treadway spoke of the special election costing 10% of the bank building cost. What would the Town have to show for it? The folks could make their decision one way or the other, and the Town would be out \$12,000. At some point in time, the Town is going to build a modest Town Hall on that half acre across from the bank building and the buildings would go nicely hand in hand. That is VM Treadway's vision for the Town. VM Treadway feels the referendum is biased and does not portray a true picture. With no reflection on Councilmember McBrady, the Town could continue to pay rent for years to come and he does not think that is the best way to go either.

Councilmember Alen asked if TA Smiley could look at the situation and determine if they have to make a decision based on what is on the agenda or if there is a way to remedy the situation.

Mayor Nolan spoke of voting to put it on as an initiative.

VM Treadway spoke of the referendum as a freedom of the state. It will cost some money but the Town will then have an answer from the voters in this community. This needs to be taken care of quickly. An Argument can be filed speaking against the wording. Keep the community involved, have an election sooner than later.

Councilmember Wright spoke of the estimate being high for the election cost.

Councilmember McBrady spoke that he is against creating an election in March that will cost \$12,000. If there is an election, which would cost less, put it there.

TC Morgan spoke that the next regular tentative election is August 2018.

Public Comment:

Ted Brooks asked what if someone else buys the bank building before the election; what happens to the money that was put down on the purchase. Possibly, this will resolve itself before the election.

Victoria Wendt spoke of there having been two years that a referendum could have been pulled. The referendum was misleading, poorly worded and it should have been on usage. She referred to the bank building being a wise investment for the Town, providing a badly needed tax base. Ms. Wendt spoke on the citizen survey and wasting money. She is concerned the Town would go into debt to build a multimillion dollar Town Hall. She stated the current Town Hall is adequate and not too crowded.

Mayor Nolan called for any further Public Comment. None was forthcoming.

Councilmember Wright made a motion that we set a special election for March 14, 2017, for the referendum. Seconded by Councilmember Repan. Mayor Nolan asked for a roll call vote. (This motion failed due to the passing of a subsequent, conflicting motion.)

Councilmember McBrady interjected and asked if discussion was over. Councilmember McBrady asked to go back to the point of having the next Council having input, let them decide if they want to spend money to have an election. I think it is a waste to have it. Let it be something the next Council needs to live with it, deal with it, and if they want to put it to election, go ahead.

Mayor Nolan asked if there is a cut-off date.

TC Morgan replied that the County Elections Office has to know by the 14<sup>th</sup> of this month to get it on the March 14<sup>th</sup> election.

Councilmember McBrady asked again about a May election.

TC Morgan said that would be a later date and will have to confer with Town Counsel. She believes there is the option of calling a special election and picking a date or doing nothing, which then defaults to the next General Election. TC Morgan was not sure if there were deadlines to call a special election and Town Counsel was not sure on that either.

Mayor Nolan asked if the Council could rescind the resolution, which would take the referendum off the ballot.

Councilmember Repan inquired of the Town Attorney if the next Council comes in and wants to go forward with the resolution, would that be subject to referendum.

TA Smiley said the resolution would be subject to referendum just as all resolutions and legislative acts of the Council are subject to referendum.

Councilmember Repan spoke of changing the wording of the referendum, but if the intent is just to pass the process, the resolution being approved in a different manner, does that go against the intent of the state law?

TA Smiley said she is not sure she understood the question, but if the Council were to repeal the resolution, in order to avoid the referendum, then at the very next meeting approve the same purchase, of the same building, with the same circumstances, there would be a good argument that the Town acted in bad faith repealing the resolution in order to circumvent the citizens of the town from being able to refer the matter. TA Smiley said this would not be a good practice. If the Council repeals the measure because the Council does not want to purchase the building that is another matter.

Councilmember Repan inquired if the intent wasn't clear in the purchase of the building as to what it was to be used for, is it the fact that it would be based on the fact of a purchase of the same physical building again without the intent of usage.

TA Smiley said she was not sure because of the wording of the referendum, which uses the wording referring that resolution that directed the Town Manager and Town Attorney to take the necessary actions to acquire title to a certain parcel of real property. That is actually, what is being referred to the voters. The wording of the referendum language is a problem. A "Yes" vote would be to affirm; a "No" vote would be to repeal the resolution. The Town Attorney will be looking at legal sufficiency for the wording.

Councilmember Repan again said his question is if this is to circumvent the people having a voice in this matter. His gut feeling is that constitutionally the Council can't do that and once they withdraw the resolution, it's a dead horse.

Councilmember McBrady spoke of his question being, if they did nothing the referendum would be up for vote August 2018, but say the new Council comes in January and wants to bring it up for vote sooner, can they still meet the May 16<sup>th</sup>, is it still within the timeframe?

TA Smiley was not sure on this timeframe.

Councilmember McBrady spoke of not having all the answers and information and it being ill advised to proceed at this point.

Mayor Nolan referred to the deadline for the March special election.

Councilmember McBrady said if Council allows it go to the August 2018, if they don't do anything, or maybe the new Council will vote something different, but advised that it was premature to do anything at this time.

#### Public Comment

Ted Brooks advised Council against consideration of rescinding the purchase of the bank building. There is no good outcome in that for anybody and indicated that it appeared Council's hands were tied on the motions.

Councilmember McBrady was in support of Council not taking any action, leaving open options, as well as leaving this for new Council to look at.

Mayor Nolan inquired of Town Clerk if they could call for a special election at any time.

TC Morgan has not seen that addressed in the A.R.S. and indicated she could research it with the election experts.

Mayor Nolan spoke of Councilmember McBrady's wish to do nothing and the next Council could call for a special election in May or something rather than March.

Councilmember Alen is not recommending doing nothing and waiting for somebody else to do something and make the decision for you, but with the questions that were asked

Town Council Regular Meeting Minutes, November 1, 2016  
of the Town Attorney and Town Clerk, that require research, that it is not possible to make a decision without their research.

Councilmember Repan spoke of feeling this needs to be done quickly and offered to make a motion.

Mayor Nolan reminded him there was a motion on the floor and asked Town Clerk Morgan to restate the motion, "To set a special election of March 14, 2017, for the referendum".

Mayor Nolan asked for a roll call vote.

TC Morgan began the roll call vote with Councilmember Alen who replied that she is unable to vote. She is not abstaining, but she is not saying yes or no. I can't say yes or no, I know I can't explain my vote, but I am not voting so I can explain my vote. Until you tell me that I can't call an election in May, which would give us time to get answers back, I can't vote, so you've left me with, my hands tied. I can't vote and I am not allowed to abstain by code.

TA Smiley spoke that Ms. Alen could make a substitute motion to continue this to the next meeting or she could vote "no".

Councilmember Alen replied that she would make a substitute motion to continue this to the next study session to allow Legal Counsel and the Town Clerk to answer the questions Council have asked.

Mayor Nolan spoke that there was a motion to defer this to the next meeting next Tuesday for legal action.

Councilmember McBrady spoke to move it two weeks to Regular Council Meeting.

Mayor Nolan reminded that the County Elections Clerk needs an answer before that to get the special election scheduled.

Mayor Nolan seconded Councilmember Alen's motion.

Councilmember Hamilton asked Councilmember Alen what questions needed to be clarified.

Councilmember Alen asked if they could call for a special election in some other month, such as May, does it have to be by the deadline this month, if it is going to be in March; for the attorney what can be done about some action to be taken regarding the referendum, maybe not to change it, but in response because it is not in alignment with the decisions actually made by Council.

Councilmember McBrady mentioned that if they do nothing it goes to August 2018 or can the Council vote to have the election on a sooner date, such as May, if it is in the timeframe needed by the election board to be put together.

Councilmember Hamilton spoke that it does not appear there is anything to be gained between March and May. If the referendum were deficient, that would involve a court case that could take years.

TA Smiley denied this saying it is an expedited matter because it relates to an election and it goes before a judge.

Councilmember Hamilton asked what the Judge uses for a basis.

TA Smiley replied she did not have this answer.

Councilmember Hamilton spoke of not seeing how a Judge could change anything, as the law does not prescribe what a referendum has to say or not say. Councilmember Hamilton spoke of no one addressing the Sellers, and after a while, they will withdraw from this situation. They need to have information as soon as possible. Let the people decide this as soon as possible, so, if there is any chance of buying it, they need to know as soon as possible.

Councilmember Alen spoke of the offer expiring in December and any proposed election would take place after that.

Councilmember Wright asked about deadlines regarding the referendum and the call of election. She recommended getting A.R.S. 19 on the wall and looking at it.

TA Smiley spoke of the Town Code language being in the packet and read it for the Council. She referred to A.R.S. 16.204. The first option is the next regularly scheduled Town primary, which is August 2018 or March 16, 2017; May 16, 2017; August 29, 2017, and November 7, 2017.

TC Morgan spoke of her deadlines regarding the referendum, which are provided by state statute, and putting it on for the Town Council to decide the date. The March election is a tight deadline but can be accomplished, therefore, the later dates are doable as well.

Councilmember Repan spoke that regardless of anything; the Council still has to pick a date, as the requirements for the referendum has been met. The question is logistical, either we are not going to approve it going forward or we are, and then we have to set a date. What difference will it make?

Mayor Nolan spoke of being able to have the necessary information this week and being able to decide in a week.

Councilmember Alen recommended giving it a week for answers.

Councilmember Wright said, if it makes no difference, vote to do it in March, and if you find out something different, it can be dealt with later.

Councilmember Alen said she wants answers to the questions before she votes. Councilmember Alen felt she was being forced to breach code. She cited everyone having expressed questions, and if it takes a week to get answers back, and everyone could feel good about the decision they make, she recommended this.

Councilmember Hamilton asked about setting a date of March 14, and if a new Council comes along and wants to change to a later date, can they do that.

TA Smiley was not sure of this. Once the election is called, she does not feel it can be retracted.

Mayor Nolan called for a vote on the latest motion, which was Councilmember Alen's, and asked TC Morgan to restate the motion.

TC Morgan read the third motion, "To extend this to the next scheduled work session meeting to allow for further answers to questions".

Mayor Nolan asked for a roll call vote on the motion. The motion passed by a 4-3 vote with Councilmember Hamilton; Councilmember Wright; and Vice Mayor Treadway voting against.

Mayor Nolan called the previous motions null and void.

**9.3. Recess the Regular Council Meeting**

Not applicable as this occurred before agenda item 10.1.

**10. Adjourn.**

Mayor Nolan adjourned the meeting at 11:22 p.m.

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Terry Nolan, Mayor

ATTEST:

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Judy Morgan, Town Clerk

**TOWN OF DEWEY-HUMBOLDT  
TOWN COUNCIL  
REGULAR MEETING MINUTES  
JANUARY 3, 2017, 6:30 P.M.**

**A REGULAR MEETING OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, JANUARY 3, 2017, 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 6:33 p.m. Mayor Nolan presided.
2. **Opening Ceremonies.**
  - 2.1. **Pledge of Allegiance. Done.**
  - 2.2. **Invocation.** Councilmember Amy Timmons gave the invocation.
3. **Roll Call.** Town Council Members Jack Hamilton, John Hughes, Amy Timmons, Doug Treadway, Victoria Wendt; Vice Mayor Mark McBrady; 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.

Councilmember Wendt reported on the Firewise Chipper event and its success. She stated she would request a chipper for the town's use.

5. **Town Manager's Report.** Update on Current Events. No legal actions can be taken. Council may ask town staff to review an operational matter at this time, or may ask that a matter be put on a future agenda for actions or further discussion. Possible matters and projects are related to Town general administration, Finance, Public Works, Community Development.

**5.1. Public Works Department Report – half year (July to December 2016)** budgeted projects update, routine projects per maintenance plans.

Public Works Director Ed Hanks was present and gave an overview on his department and the Town's roadways status. He reviewed the annual contracts and their status of completion (Pavement preservation; con-call contract work; fog-coating on high volume roads; CDBG projects; Old Black Canyon highway drainage and repairs. In the spring, he expects more work on OBC Hwy., relocation of cattle guard at Corley St. and Highway 69 (working with ADOT since in their ROW).

There was discussion on various elements to the modifications at the location of Highway 69 and Main St./Corley St.; not receiving any millings for town's use recently.

Mr. Hanks continued to report on Flood Control funded projects (OBC Hwy. Bridge, Cathy Lane widening and added shoulders; Kachina Road ditch repairs) and stated there is still approximately \$20,000 left to use before the end of the fiscal year. He reviewed the CDBG projects, which are complete.

There were questions from Council with response from Mr. Hanks. They were as follows: What is the status of work on Tonto Street? - Pothole work was completed over the holidays with more repairs scheduled over the next 60-90 days; What is being done about the poor conditions on Powerline Road? - It is a private road; What is the dirt road grading progress? - Most town-owned dirt roads are graded twice a year with a few only once a year. A couple small, narrow roads are done by town staff; What if the Town were to consider purchasing a grader? - More staff would be needed with more equipment; Are skills necessary to grade roads? - Experience is necessary; How much money is spent on

on-call contractor work? – 24k is budgeted for dirt road grading this year. Town staff grading would require a water truck, roller and a couple more men. It would balance out after a few year.

## **5.2. Council Retreat arrangement follow-up.**

Town Manager Kimball gave an overview. Lance Decker has been contracted but is not available for a retreat, only a training/team building exercise for ½ day at \$2500. There are other facilitators that have been recommended.

Council discussed whether a team building or a visioning session was preferable.

TM Kimball will continue to pursue a facilitator for a retreat. She offered Mr. Decker could do a team building session as a prelude to another facilitator's retreat. CM Timmons recommended council read Mr. Decker's book in preparation for the retreat.

## **6. Consent Agenda.**

### **6.1. Minutes.** Minutes from the December 13, 2016 Work Session.

Councilmember Timmons made a motion to approve the December 13, 2016 Work Session Minutes, as presented. It was seconded by CM Hughes and approved unanimously.

## **7. Comments from the Public (on non-agendized items only).**

None.

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

Mayor Nolan recommended moving 9.1. ahead of 8.1. Executive Session. There was Council consensus to do so.

### **9.1. [Request of] Presentation by Mr. Stuart McLean of the Humboldt Water District [CAARF requested by CM Wendt]**

Councilmember Wendt gave an overview on her request. She would Mr. McLean to speak to the Council and public regarding infrastructure put into the water system and discuss a partnership with the Town for wholesale water provisions.

Mayor Nolan spoke in support of this presentation and inviting the owners of ACME Water Systems as well to give a presentation.

CM Hamilton spoke on wanting legal advice on private/public partnerships and spoke on being careful with these. CM Wendt spoke on wanting to hear what will be presented and recognizes water is important. CM Hamilton spoke on Arizona Department of Water Resources (ADWR) having jurisdiction over water rights, not the town. Mayor Nolan spoke on hearing the presentation on their upgrades to equipment.

CM Wendt made a motion to approve the presentation from Mr. McLean (Humboldt Water Systems) as well as inviting ACME Water's owner/manager to provide details on services and infrastructure. The motion was seconded by CM Hughes and approved unanimously.

### **8.1. Executive session** pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation in the matter of Keenan v. Town of Dewey-Humboldt.

Mayor Nolan read the Executive Session recommendation.

Councilmember Wendt made a motion to “go into Executive Session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation in the matter of Keenan v. Town of Dewey-Humboldt”. The motion was seconded by CM Timmons and approved unanimously.

**8.1.1. Recess into and hold the Executive Session.**

Council recessed into Executive Session at 7:08 p.m.

**8.1.2. Reconvene into Open Session.**

Council reconvened into Open Session at 7:53 p.m. Mayor Nolan announced the Attorney has been provided direction on this item.

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

**9.1. [Request of] Presentation by Mr. Stuart McLean of the Humboldt Water District**  
[CARRF requested by CM Wendt]

This agenda item was moved by Council consensus ahead of 8.1. (See above).

**10. Public Hearing Agenda.**

None.

**11. Adjourn.**

The meeting was adjourned at 7:54 p.m.

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Terry Nolan, Mayor

ATTEST:

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Judy Morgan, Town Clerk



**TOWN OF DEWEY-HUMBOLDT**  
**P.O. BOX 69**  
**HUMBOLDT, AZ 86329**  
**Phone 928-632-7362 ▪ Fax 928-632-7365**

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## **TOWN COUNCIL STUDY SESSION**

**February 7, 2017 – 6:30 p.m. Town Council Meeting Chambers**

### **Agenda Item #8.1. Advisability/Reintroduction of a proposed Nuisance Abatement Ordinance.**

**To:** Mayor and Town Council Members

**From:** Yvonne Kimball, Town Manager

**Date submitted:** January 30, 2017

**Purpose: Council to discuss the proposed ordinance and its implications**

#### **Summary:**

At the January 10th meeting, upon listening to a biannual Code Enforcement Report, Council directed Staff to bring back to the discussion a proposed “Nuisance Abatement Ordinance”. The following memo was prepared for the October 11, 2016, meeting when Staff brought this very item before the Council:

It has been determined that the Town currently does not have a clear mechanism to abate nuisances. Arizona Revised Statutes 9-499 authorized municipalities to adopt its nuisance abatement procedures through an ordinance. For the purpose of enabling town to abate identified nuisances, including blighted conditions, dilapidated buildings and rubbish or debris, the enclosed is proposed. We propose to create a new section in the Town Code – Chapter 92 Nuisance Abatement.

The Town Attorney can go over the abatement ordinance. We realize that the Council and the Public are likely to debate and/or revise some of the language. The purpose of this discussion is to introduce the proposed to Council so that Staff can make revisions, if necessary.

An abatement ordinance (which may be a revised version of the proposed) would strengthen the Town’s code enforcement process. Currently, the end of an enforcement process is a judgment of a fine by the Hearing Officer for civil violations or a judgment by the Magistrate for criminal violations. Town code has provided for adequate means to impose penalties (in the form of fine or even jail time); yet abatement of violations still relies on the property owners. In another words, a code violation would continue to exist unless the property owner took actions to fix the problem. Although our code enforcement approach, at large, is able to bring about voluntary compliance, needs for the Town to abate a violation exist.

In my five-year tenure with the Town, there were two or three cases where Staff could not locate a responsible party and Town abatement was desired. Notably, the pending violation located on Phoenix Street, next to the park, illustrates the need for an abatement ordinance - The owner has been reported deceased, and no responsible party can be located. The property is in a dilapidated condition. Council discussed the matter and decided to abate the violation instead of condemning the property. The proposed ordinance when adopted would enable Town to abate the nuisance on this property.

Although Staff recommends adoption of an abatement ordinance, an abatement procedure is not intended for frequent uses. It would be only used when existing means have been exhausted without achieving compliance with the code. The abatement-lien process outlined in the proposed ordinance would be desirable when we cannot locate a responsible owner for a code violation.

## Chapter 92 NUISANCE ABATEMENT

### Sections:

- 92.01 Definitions
- 92.02 Duty to Maintain Premises; Declaration of Public Nuisance.
- 92.03 Authority to Inspect
- 92.04 Interference with Inspection; False Information; Failure to Provide Evidence of Identity.
- 92.05 Emergency Abatement
- 92.06 Abatement in Lieu of or Addition to civil or Criminal Complaint
- 92.07 Abatement Procedures
- 92.08 Appeal of Abatement
- 92.09 Abatement by Town; Cost
- 92.10 Assessment; Notice of Assessment
- 92.11 Appeal of Assessment
- 92.12 Hearing on Appeal of Assessment
- 92.13 Assessment Lien; Recordation; Foreclosure
- 92.14 Annual Installments of Assessment Liens
- 92.15 Subsequent Assessments

### **92.01 Definitions.**

The following words, terms, and phrases, when used in this chapter shall have the meanings set forth below, unless the context clearly indicates a different meaning.

**BLIGHT, BLIGHTED OR BLIGHTING:** Any unsightly, deteriorated, dilapidated, withered or decayed condition of a building, structure, fence, landscaping, or property characterized by neglect, lack of maintenance, damage, or similar condition. Examples include, but are not limited to, accumulation of debris, wood, scrap iron or other metal, boxes, paper, vehicle parts, tires, abandoned or inoperable equipment or vehicles; discarded appliances; or any items that may harbor insect or vermin infestation or create a fire hazard; landscaping that is overgrown, dead or damaged; fences that are broken, rotted, damaged or leaning.

**BUILDING:** Any real property structure, movable or immovable, permanent or temporary, vacant or occupied, used (or of a type customarily used) for human occupancy or business purposes, or where livestock, produce, or personal or business property is located, stored or used.

**DILAPIDATED BUILDING:** Any building in such disrepair, or damaged to such an extent, that its strength or stability is substantially compromised rendering it unsafe or likely to burn or collapse, and the condition of which endangers the life, health, safety, or property of the public as determined by the town.

**LESSEE:** A person who has the right to possess real property pursuant to a lease, rental agreement, or similar instrument.

**LOT:** A plot or quantity of land, vacant or improved, private or public, as surveyed, platted or apportioned for sale or any other purpose.

**OWNER:** A person or legal entity who is shown as owner of real property in the official records of the Yavapai County recorder, and includes a person holding equitable title under a recorded installments sales contract, contract for deed or similar instrument.

**PERSON IN CONTROL:** A person who has responsibility for the care and maintenance of the private property, whether or not the person has possession or the use and enjoyment of said property. "Person in Control" includes, but is not limited to, the owner, occupant, property manager, or designated agent of the owner.

**PREMISES:** Any real property and buildings and structures thereon.

**PUBLIC NUISANCE:** Dilapidated buildings, blighted conditions and accumulations of rubbish, trash, weeds, or other filth, or debris.

**STRUCTURES:** Improvements and other facilities that are constructed or placed on land.

#### **92.02 Duty to Maintain Premises; Declaration of Public Nuisance.**

- A. It shall be unlawful and a public nuisance for any person in control to maintain any public nuisance on property located in the town.
- B. A building shall be considered unsafe if any one of the following conditions is present:
  - 1. Inadequate means of egress facilities;
  - 2. Constitutes a fire hazard or is otherwise dangerous to human life or the public welfare;
  - 3. Is vacant for an extended period of time and is not secured to prevent entry.
- C. Any person found in violation of this chapter shall be responsible for a civil offense subject to the penalties and habitual offender provisions set forth in § 10.99 of this Code. Each and every day that the violation continues shall constitute a separate offense.
- D. In addition to and separate from actions for civil or criminal offenses, violations of this chapter may be abated by injunctive or other equitable relief, pursuant to state and common law and the procedures set forth in this chapter. Imposition of a penalty or civil sanction does not prevent abatement or other equitable relief.

#### **92.03 Authority to Inspect.**

- A. Town enforcement agents are hereby authorized to inspect property for violations of this chapter in the normal course of job duties, in response to a citizen complaint that an alleged violation of this chapter may exist; or when the enforcement agent has a reasonable belief that a violation has been or is being committed.
- B. In order to determine compliance with this chapter, private property may be entered with the consent of the person in control or as authorized by a court of competent jurisdiction.

C. This section shall not be construed to require regular inspections of private premises by the town, nor shall the town have an obligation to abate any public nuisance, reported or unreported within a specific time period. Neither the town nor any of its officers or officials shall be liable in any manner for injuries or damages which result or are alleged to have resulted from any delay or failure to enforce the provisions of this chapter.

**92.04 Interference with Inspection; False Information; Failure to Provide Evidence of Identity.**

A. Any person who interferes, prevents, or attempts to interfere or prevent an individual employed or contracted for by the town from investigating an alleged violation of this chapter, or from correcting or abating a violation of this chapter is guilty of a class one misdemeanor.

B. Any person who knowingly makes a false or fraudulent statement, or knowingly misrepresents a fact, or misleads an individual employed or contracted for by the town when that individual is investigating, correcting or abating a violation of this chapter is guilty of a class one misdemeanor.

C. Any person who fails or refuses to provide evidence of his identity to an individual employed or contracted for by the town when that individual is investigating an alleged violation of this chapter and has reasonable cause to believe that person has committed a violation of this chapter, is guilty of a class one misdemeanor. Evidence of identity under this section shall consist of a person's full name, residence address and date of birth.

**92.05 Emergency Abatement.**

A. If a situation presents an imminent hazard to life or public safety, the town may do one or more of the following:

1. Issue a notice to abate the nuisance, directing the person in control to immediately take such action as is appropriate to correct or abate the emergency upon notice by the enforcement official to the person in control.
2. Act to correct or abate the emergency, whether or not the town is able to contact the owner, occupant, or person in control.

B. The person in control may appeal an order to abate to the Town Council. Upon notice and request by the owner, occupant or person in control, a hearing before the Town Council shall be scheduled as soon as practicable. Such appeal shall in no case stay the abatement or correction of such emergency.

C. The town may recover its costs incurred in abating an imminent hazard under this section in the same manner as provided for in this chapter to the extent practicable under the circumstances.

**92.06 Abatement in Lieu of or in Addition to Civil or Criminal Complaint.**

In addition to or in lieu of filing a civil or criminal complaint, the town may file notice to abate any nuisance as defined in this Code. Such abatement shall proceed independently of any civil or

criminal violation filed. The town enforcement officer, town prosecutor and town attorney are authorized to file civil or criminal complaints to abate a public nuisance.

## **92.07 Abatement Procedures.**

### **A. Notice to Abate.**

1. If, after an inspection, the town finds one or more violations of this chapter, and the town elects to use the abatement process, the town shall, in writing, notify the person in control of the property.
2. The notice to abate shall set forth the following information:
  - a. The street address, legal description, or location by book, map and parcel number if street address is unknown, sufficient for identification of the property on which the alleged violation occurred;
  - b. A statement that the town has determined that there is a reasonable belief that a violation of this chapter has occurred on the property identified in the notice to abate;
  - c. Notice that the person in control has thirty (30) days from the date of mailing or personal service of the notice to abate or correct the violation;
  - d. A statement of the violation(s) in sufficient detail to allow a reasonable person to identify and correct the violation(s);
  - e. A statement that all materials removed from the premises must be disposed of at an approved waste collection facility or by other appropriate legal means and that a tipping fee receipt or other evidence of legal disposal is to be submitted to the town prior to a determination of compliance with the notice to abate;
  - f. A warning statement that if the violation is not corrected within 30 days of the date of the Notice, the town may abate the nuisance and assess the owner, occupant, or person in control the cost of such abatement and record a lien against the property for payment of the assessment;
  - g. An estimate of the cost of removal or abatement by the town, plus ten percent (10%) for the incidental costs associated with abating the nuisance;
  - h. Re-inspection date and time.
  - i. Name, address, telephone number, and email address of the town enforcement officer who sent the notice to abate;

- j. A statement that the person in control may appeal the abatement order in writing to the Town Council within fifteen days from the date of the notice and that failure to appeal will constitute waiver of all rights to an administrative hearing and determination of the matter.
- k. The 15-calendar day notice set forth in this section shall not apply to emergency abatements.

3. The Town Manager may extend the time limits set forth in this section if the person in control demonstrates to the satisfaction of the Town Manager that complying with the notice of violation or notice to abate is a hardship and if the person in control agrees in writing to a schedule for correcting the violation bringing the property into compliance with the requirements of this title and complies with the schedule.

4. The notice requirements set forth in this subsection do not apply in an emergency abatement situation.

**B. *Service of Notices.***

1. Any notice required to be given for any purpose under this section shall be accomplished by an enforcement agent of the town delivering the notice to the person in control of the property, or by mailing the notice to the person in control by certified mail, return receipt requested. If the property owner is not the occupant or person in control, a duplicate notice shall be mailed to him by certified return receipt requested mail at his last known address.

2. Notice is deemed effective on the date it is hand-delivered or deposited in the United States mail.

3. Nothing herein shall preclude the town from giving additional oral or written notice at its discretion. If the town does elect to give additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situation.

C. The notice to abate shall run with the land. The town, at its sole option, may record a notice to abate with the Yavapai County recorder and thereby cause compliance by an entity thereafter acquiring such property. The non-filing of a notice to abate shall in no way affect the validity of such notice as to entities so notified. If the notice to abate is recorded and compliance with the notice to abate is subsequently satisfied, the town shall record a satisfaction and release of the notice to abate with the County Recorder.

**92.08 Appeal of Abatement.**

Any person receiving a notice to abate may appeal to the Town Council as follows:

A. *Notice of Appeal.* A written notice of appeal shall be filed with the Town Clerk within fifteen days after the notice to abate was mailed or personally served. The date of receipt by the Town Clerk shall be the date of filing.

B. *Contents of Notice of Appeal.* The notice of appeal shall state in reasonable detail why the appellant should not be required to comply with the notice to abate.

C. *Hearing on Appeal.* Upon receipt of the notice of appeal, the Town Council shall place the matter on the agenda for its next available regular meeting. The town shall appear and present evidence of the existence of the public nuisance. The person in control may present evidence controverting the existence of the public nuisance. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Town Council shall decide the appeal, and its decision shall be final.

D. *Extension for Compliance.* If the Town Council's decision is adverse to the appellant, the date for compliance set forth in the notice to abate shall be extended by the number of days elapsing between the filing of the notice of appeal and the rendering of the Town Council's decision.

#### **92.09 Abatement by Town; Cost.**

A. *Abatement Time Limitation.* If the person in control fails to remove or otherwise abate the public nuisance within thirty (30) calendar days of mailing or personal service of the notice to abate (or such extension thereof as may be granted in writing by the Town Council), the Town Council may, at the expense of the person in control, remove or abate the public nuisance or cause it to be removed or abated; provided, however, that if such removal or abatement is not undertaken within one hundred eighty (180) days after the right to do so first accrues to the Town, a new notice of abatement shall be served as provided in § 92.03.

B. *Determination of Cost of Removal.* The costs assessed for removal or abatement shall not exceed the actual costs plus ten percent (10%) for the incidental costs associated therewith, including associated legal costs. Before undertaking the actual removal or abatement, the Town shall attempt to obtain at least three written estimates from qualified contractors (if available locally) and shall accept the lowest such estimate that is otherwise satisfactory to the Town. In the alternative, the removal or abatement may be performed by Town personnel, and the cost shall be deemed to be the same as the lowest estimate obtained from a qualified contractor as determined by the Town.

C. *Removal from Tax Rolls.* Upon removing or demolishing a dilapidated building, the Town shall give notice to the county assessor to adjust the valuation of the real property on the property assessment tax roll from the date of removal.

#### **92.10 Assessment; Notice of assessment.**

A. *Assessment.* Upon the removal or abatement of public nuisances, as provided in § 92.06, the actual cost of removal or abatement, together with the actual costs of any additional inspections and other incidental costs, including any legal fees, determined as set forth in § 92.09(B), shall be an assessment against the real property on which the public nuisance was located.

B. *Notice of Assessment.* A written notice of assessment shall be served in the same manner as the notice to abate. The notice of assessment shall provide the following information:

1. The street address, legal description, location by book, map, or tax parcel number of the property;
2. The facts supporting the assessment;
3. An itemized listing of the actual cost of removal or abatement;
4. The actual costs of any additional inspections and other incidental costs, including legal fees.
5. State that the entire cost is due and payable in full no later than thirty (30) days from the date of issuance of the notice of assessment and that the assessment will become delinquent as of that date.
6. Be signed by the Town official authorized to issue such notices.
7. Contain the following statement in bold face print:

NOTICE: PURSUANT TO A.R.S. § 9-499, THIS NOTICE OF ASSESSMENT SHALL CONSTITUTE A LIEN UPON THE PROPERTY DESCRIBED IN THIS NOTICE OF ASSESSMENT IN FAVOR OF THE TOWN OF DEWEY-HUMBOLDT. THE TOWN MAY TAKE LEGAL ACTION TO FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS STATED IN THIS NOTICE OF ASSESSMENT.

8. State that the person in control shall have fifteen (15) days from the date of the mailing or personal service of the notice of assessment to appeal the amount of the assessment imposed by the town.

**92.11 Appeal of assessment.**

A. *Appeal of Assessment.* A party wishing to appeal an assessment shall file a written notice of appeal with the Town Clerk within fifteen (15) days after the date of the notice of assessment was mailed or personally served. The appeal shall clearly specify the grounds for the appeal. The date of receipt of the notice of appeal by the Town Clerk shall be the date of filing. No appeals of violations shall be heard at the hearing on an appeal of an assessment.

B. *Grounds for Appeal.* The following shall constitute reasonable grounds for appeal of an assessment:

1. A claim that the true intent of the section or standards described in the section have been incorrectly interpreted; or
3. A claim that the statement of costs for correcting or abating the violation is excessive.

C. *Report of Assessment.* If an appeal of the assessment is not timely filed, the Town shall prepare a report of assessment for consideration by the Town Council. The report shall list the address, legal

description and/or tax parcel number of the property. The report of assessment shall set forth the facts supporting the assessment and an itemized list of the actual cost of removal or abatement, the actual costs of any additional inspections and other incidental costs, including legal fees. Upon acceptance of the report by the Council, it shall be signed by the Mayor.

#### **92.12 Hearing on appeal of assessment.**

A. *Hearing on Appeal.* Upon receipt of the notice of appeal, the Town Council shall place the matter on the agenda for its next available regular meeting. Written notice of the hearing shall be provided to all appropriate Town departments and to the appellant. The appropriate representative of the Town shall appear and present the facts supporting the assessment and an itemized listing of the actual cost of removal or abatement, the costs of any additional inspections and other incidental costs, including legal fees. The appellant may present evidence controverting the imposition of the assessment. The Town Council shall determine whether the assessment was made in accordance with the provisions of this chapter and applicable state statutes and whether the amount of the assessment is sufficient to cover the actual costs of abatement and related activities. The Town Council shall issue its findings in writing, upholding or modifying the amount of the assessment, or overturning the assessment. The decision of the Town Council shall be final.

B. *Extension of Compliance.* If the Town Council's decision is adverse to the appellant, the date for compliance set forth in the notice of assessment shall be extended by the number of days elapsing between the filing of the notice of appeal and the rendering of the Town Council's decision.

#### **92.13 Assessment Lien; Recordation; Foreclosure.**

A. *Recordation.* If the person in control fails to pay the assessment within thirty (30) calendar days after receipt of the notice of assessment (or any extension as may be granted in writing by the Town Council), the assessment shall be delinquent and may be recorded in the office of the Yavapai County recorder as a lien. The assessment lien shall include the date, amount of assessment, legal description, tax parcel number and name of Town.

B. *Assessment Lien.* The assessment shall be a lien against the real property from and after the date of recordation and shall accrue interest at the statutory judgment rate, pursuant to A.R.S. § 44-1201, until paid. The assessment lien is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.

C. *Foreclosure.* The Town Council may, but shall not be obligated to, bring an action to enforce the assessment lien in the Yavapai County Superior Court through a judgment of foreclosure and order of sale, at any time after the recordation of the assessment. Failure to enforce the assessment lien by such an action shall not affect its validity. The recorded assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.

#### **92.14 Annual installments of assessment liens.**

A. Assessments that are imposed pursuant to § 92.10 shall run against the property until paid and are due and payable in equal annual installments as follows:

1. Assessments of less than five hundred dollars shall be paid within one year after the assessment is recorded.
2. Assessments of five hundred dollars or more but less than one thousand dollars shall be paid within two years after the assessment is recorded.
3. Assessment of one thousand dollars or more but less than five thousand dollars shall be paid within three years after the assessment is recorded.
4. Assessment of five thousand dollars or more but less than ten thousand dollars shall be paid within six years after the assessment is recorded.
5. Assessments of ten thousand dollars or more shall be paid within ten years after the assessment is recorded.

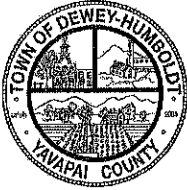
**92.15 Subsequent assessments.**

A prior assessment shall not constitute a bar to a subsequent assessment or assessments for violations of this chapter and any number of liens on the same lot, tract of land or premises and may be recorded and enforced in the same or separate actions by the Town.

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Reviewed 1/30/2017

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P.O. BOX 69  
HUMBOLDT, AZ 86329  
Phone 928-632-8562 • Fax 928-632-7365

**COUNCIL AGENDA ACTION REQUEST FORM**

Meeting Type:  Regular     Special     Work Session

Meeting Date: Feb 7<sup>th</sup>

Date of Request: Jan 30<sup>th</sup>

Requesting:  Action     Discussion or Report Only

Type of Action:  Routine/Consent Agenda     Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

Request for Permission

Purpose and Background Information (Detail of requested action).

To talk with food store management to develop a shopping center along Hwy 69

Staff Recommendation(s):

Budgeted Amount:

List All Attachments:

Type of Presentation: oral

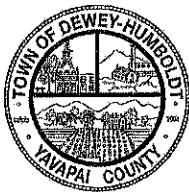
Special Equipment needed:  Laptop     Remote Microphone  
 Overhead Projector     Other:

Contact Person: Mayor Nolan

**Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.**

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Requesting:  Action       Discussion or Report Only

Type of Action:  Routine/Consent Agenda       Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

Request for permission

Purpose and Background Information (Detail of requested action).

To talk with state park dept about turning smelter area into state park

Staff Recommendation(s): \_\_\_\_\_

Budgeted Amount: \_\_\_\_\_

List All Attachments: \_\_\_\_\_

Type of Presentation: \_\_\_\_\_

Special Equipment needed:  Laptop     Remote Microphone  
 Overhead Projector     Other: \_\_\_\_\_

Contact Person: Mayor Nolan

**Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.**