

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

**Tuesday, September 18, 2018, 6:30 P.M.**

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

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

**AGENDA SUMMARY**

- 1. Call To Order** Mayor Nolan called the meeting to order at 6:30 p.m.
- 2. Pledge of Allegiance** Led by Veteran Luis Pena
- 3. Invocation** Given by Council Member Timmons
- 4. Roll Call** Town Council Members: Jack Hamilton, Mark McBrady, Amy Timmons, Doug Treadway, Victoria Wendt, Vice Mayor John Hughes and Mayor Terry Nolan were present.
- 5. Announcements regarding Current Events; Guests; Appointments; and Proclamations**

Mayor Nolan advised that the Public Hearing was moved forward in the meeting. He also advised of the protocol of Council input and Public Comment input guidelines.

  - A. Art Week Proclamation** Mayor Nolan read and presented the proclamation to Cindi Shaffer of the Prescott Area Artist Studio Week Tour organization.
  - B. Domestic Violence Prevention Proclamation** Mayor Nolan read the proclamation.

Councilmember Treadway reported that the 2020 Census is beginning in January. Anyone looking for part-time or full-time positions, applications are being accepted online to [2020census.gov](http://2020census.gov) and full time positions are at [usajobs.gov](http://usajobs.gov).

Councilmember Wendt reminded the community that there is a Firewise meeting in the Council Chambers tomorrow night, 9/19/18, and she encouraged attendance.

Vice Mayor Hughes reminded the Community of the Agua Fria Festival events this weekend on Saturday, September 22, 2018.
- 6. Town Manager's Report** None
- 7. Consent Agenda**
  - A. Approval of Meeting Minutes**
    - 1. Special Meeting of May 29, 2018**
    - 2. Regular Meeting of June 19, 2018**
    - 3. Regular Meeting of July 17, 2018**
    - 4. Study Session of August 14, 2018**

Councilmember Hamilton noted a revision to be made on the May 29, 2018, minutes on Page 9 of 63, the title for Councilmember Hamilton needed to be changed from Vice Mayor to Councilmember. Councilmember Treadway noted a revision on the July 17, 2018, Page 27, the figure for the HURF fund figure should be changed to a decrease from \$75,000 to \$70,000.
  - B. Approval of Second Amendment to Accountability Contract between the Town of Dewey-Humboldt, Arizona and the Dewey-Humboldt Historical Society**
  - C. Approval of Contract for Legal Services (Town Prosecutor)**

Councilmember Hamilton made a motion to approve the Consent Agenda as amended, seconded by Vice Mayor Hughes. Mayor Nolan called for a vote. CM Hamilton – aye; CM McBrady – aye; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; VM Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.
- 8. Public Comment on Non-agendized Items**

David Nystrom – Stated he is the President and Board Chair of the Dewey-Humboldt Historical Society thanked the Council for the approval of the Accountability Contract. He spoke of the upcoming Agua Fria Festival being the largest ever. There are more vendors and the parade will be the largest since 1907. He thanked the Town for their financial support as a sponsor. The festivities begin at 9 a.m. and run until 3 p.m. on Saturday, September 22, 2018.

Phillip Bagwell – Recommended that with the new traffic light the installation of a sign limiting the use of Jake brakes would be a good idea.

Karen Brooks – Encouraged the purchase of Agua Fria Festival buttons.

## 9. Public Hearing Agenda

Discussion and Possible Legal Action may be taken.

**A. Request for a Use Permit UP 17-003 for approximately 2.99 acres of real property, applied for by Luis Pena, representing Heli Swift Aviation, located at 2845 S. State Route 69, also known as Yavapai County Assessor's Parcel Number 402-08-069W in the C3-35 (Commercial and Minor Industrial) zoning district to allow the operation of a helicopter training facility, which utilizes flightless helicopter trainers on concrete pad, and with the trainer being stored inside a building when not in use**

### 1. Staff Report

Town Manager Wilson described the process that occurred subsequent to the above application. The zoning baseline is appropriate for the proposed use in the C33-35 (Commercial and Minor Industrial) by matter of right. He described the circumstances that brought the Town to the Use Permit because it is contiguous with property on Omega Drive, which required evaluation of the potential activity and what the impact may be. Mr. Pena requests the Use Permit and proposes that he will comply with any conditions the Council believes are appropriate in order to make the interface between his commercial activity and the residential zoning is compatible and comfortable as possible. The Council's determination has to be based on significant legal findings. They cannot arbitrarily say "it doesn't feel good" decision. They have to give due consideration to the applicant, when the applicant says they will take measures to mitigate or control the interface which is disruptive or a problem. TM Wilson noted that Council could include specific conditions, criteria by which it can be managed. There can be time limits and constraints laid out that Mr. Pena is prepared to accept. The conditions can be adjusted. There was a demonstration provided of the static operation of the trainer to determine noise values, which were provided in the packet to Council and Public. Staff recommends that this Use Permit be approved, if Council finds appropriate conditions it is believed that Mr. Pena would faithfully execute those conditions.

Luis Pena the owner of Heli Swift Aviation thanked the Council for their time and consideration of his project. He stated that he moved to Yuma, Arizona, in 2010 to join his wife and family after his military service. He described a situation where his life and twelve other U.S. Marine's lives were saved by a helicopter pilot. When he returned home from five years in the Marine Corps in 2012, he pursued training as an aviation student while attending Yavapai College. He loves aviation and wants to extend the gift of aviation to the community and can do this at an affordable price, in a safe manner. He will commit to road maintenance and beautification of the site. He displayed a drawing of his elevation site plan. He stated that he will take the committee's comments into consideration and will work diligently to make his business a success and win the hearts and minds of the community.

Councilmember Wendt said she was at the demonstration and was concerned that the trainer did not lift off the pad. Mr. Pena said there was lift although it could not leave the ground due to the straps citing safety reasons. CM Wendt inquired of his experience and Mr. Pena said he has been trained since 2012 and he is a commercial helicopter pilot and certified flight instructor, which are the required licenses. CM Wendt asked about safety measures on site. Mr. Pena noted that the unit has limited lift and he has control from an I-Pad and a kill switch. CM Wendt had inquires about fuel. Mr. Pena said they use normal gas and will have a 200 gallon above ground fuel tank.

Councilmember Timmons inquired if the unit in the demonstration is the same unit to be used in training. Mr. Pena confirmed this. CM Timmons asked why the demo date was changed. Mr. Pena stated he changed the date due to a scheduling conflict.

### 2. Open Public Hearing

Mayor Nolan opened the Public Hearing at 7:08 p.m. Town Manager Wilson noted that Council received copies of all communications from the community in written form, as well as a legal protest received. Town Attorney Goodwin noted that she had not seen the petition, but it was probably what is known as a "legal protest". She cited that Statute 9462.04 only applies to zoning, not Use Permits.

CM McBrady questioned the information provided by Attorney Goodwin and referred to a regulation that referred to zoning changes. Council moved on while Attorney Goodwin researched this further.

Jackie Mathis – spoke in disfavor of the Use Permit citing the intolerable noise and dust. She sees no logic in putting the helicopter school in this neighborhood.

Myron King – spoke in disfavor of the Use Permit citing the private, one-lane road and traffic issues, as well as potential damage to his landscaping. He noted that Council needs to take into consideration eventual legal issues.

Kirk Brawner – spoke in support of the Use Permit citing the advantages of the school and two scholarship opportunities to become a helicopter pilot. He noted that Mr. Pena has met all the requirements and will be providing improvement to the road, as well as 5,000 gallons of water on site, that could benefit the neighborhood in fire situations. It is time to make the right decision and allow the school to happen.

Carmen King – spoke in disfavor of the Use Permit citing that Mr. Pena did not come and talk to her in advance about his plans. She spoke in appreciation of the water tanks. She cited the narrow roads.

Barton Lee McLain – spoke in disfavor of the Use Permit. She spoke of having unanimous support of every person with a residential lot contiguous with the site. Ms. McLain spoke of the Pena's finances. She stated if this passes, the community is prepared to file a referendum.

Diana Pena – stated that she is the wife of Luis Pena. She noted that the previous woman's statement was false regarding their finances. She stated that she had overheard a statement the Pena's were not wanted because they are Hispanic. She said they have good intentions for their business but does not understand why people came to lie about things without knowing.

Leigh Cluff – spoke in disfavor of the Use Permit noting concerns for safety and noise. She did not feel the demonstration was conducted accurately. She disagreed that the Fire Department will use the Pena's water for emergencies.

Phillip Bagwell – stated that if Council approves the Use Permit they might consider asking them to no open the facility on Saturdays for the sake of tranquility.

Kenneth Coulter – spoke of having made an inquiry of an Embry-Riddle Flight Instructor for information on the training aircraft and the requirements surrounding licensing and qualifications. He has yet to receive a response.

Steven Burton – inquired about the parking and noted that it is a one-lane street, not a two-lane street.

Gary Neese – spoke in disfavor of the Use Permit citing Dewey-Humboldt fighting to maintain its "Country Town" motto. The U.S. Military gets their trainings by simulator. He noted this is commercial and all about money. He also spoke of drones coming and how will this be controlled, if you let this one (Mr. Pena) do what he wants to.

Lynn Collins – spoke of reading in the Staff Recommendations that this complies with the Town's General Plan. She read in the GP that zoning decisions are supposed to protect property owner's views. She believed this should be considered.

Karen Brooks – Inquired how wide the road is and does the Town maintain the road? Is the road maintained to the south end of Mr. Pena's property, if he made a longer driveway? There is an existing slab at the south end of the property, was it there when they bought and do they intend to build a home on the south end of the property. She would like to see a new site fence, maybe 10 feet, to block the view from the roads.

Gary Mortimer – not here to speak for or against, just wants to bring up points. The contention he hears is not good for the community and thinks it may not be the right location. He recommended a possible land exchange for other commercial property. He spoke of future commercial planning and growth . Mr. Mortimer said that he was at the demonstration and it seemed quiet, but then spoke of actual helicopters in flight being noisier.

### **3. Close Public Hearing**

The Public Hearing was closed at 7:44 p.m.

### **4. Commission Discussion and Possible Action**

Louis Pena came forward to respond to the Public Comment. He noted that comments regarding his finances were completely incorrect. The comment that the simulator creates 15-knot winds was incorrect. The reason that he chose this spot was obviously for visibility and it was zoned correctly. He came to Town and they said go ahead. He bought the land and the simulator. He wants to contribute to this community. He again denied the remarks regarding his finances. Any business would create traffic. He will do his best to accommodate everybody and wants the community to be okay with it.

There was extensive Council discussion and questions for Mr. Pena regarding the landscaping; fencing; water tanks; the training requirements and certifications; street improvements; alternate traffic routing; training facility hours;

CM McBrady asked that a citizen that spoke once be allowed to speak again. Attorney Goodwin explained that the Public Hearing was closed unless they voted to start over again.

Kirk Brawner spoke for Mr. Pena in regard to road maintenance and explained that Mr. Pena is willing to put down repurposed asphalt at first and he would take care of the majority, but would like to see the community members who would benefit from this contribute, as well.

There was discussion on Use Permit time lengths. Town Manager Wilson said that the normal time period is five years but that you can sequence reviews throughout the five years and explained some of the conditions that were being recommended. Attorney Goodwin added that in recent years the Courts are saying that if the Use Permit holder is in compliance and has made a substantial capital investment, unless they fall out of compliance, the Use Permit would remain in place. She feels Arizona courts would fall in line with this. Town Manager Wilson explained to the Council that Town Staff is charged with making sure the applicant complies with the conditions or the matter would be brought back to Council for evaluation and potential revocation.

Councilmember McBrady asked if the Attorney Goodwin had an answer for his previous inquiry. Attorney Goodwin replied that the statute does not apply to Conditional Use Permits. It applies to zoning ordinances that imposes conditions or changes on property. The issuance of a Use Permit is carrying out the provisions of an already adopted land use regulations. CM McBrady disagreed and read further language. Attorney Goodwin clarified this further and reiterated that she does not think it applies.

Councilmember Wendt spoke of visibility and traffic safety issues, as well as possible downgrading of other property values and that she thought Mr. Pena would have consulted with neighbors. She spoke of the initial belief that this was going to be accomplished in a building but when he came in with a plan, it was a real helicopter and the Town Staff said it would need a Use Permit. If the Town had known this in the beginning, it could have been resolved. She has concerns that the school is incompatible with the surrounding area. TM Wilson noted that there was a misunderstanding on Mr. Brown's (former Community Development Director) part of what was actually proposed. It was unclear communication and Mr. Brown accepted responsibility for not understanding, but ultimately Town Manager Wilson is responsible.

Councilmember Treadway spoke of giving this a lot of thought and having attended the demonstration. He researched the OSHA website and shared some of his findings and was surprised that barking dogs are louder than the trainer. If the permit were approved, the Council can put enough safeguards in place to revoke the permit if there was non-compliance.

CM McBrady spoke of concern about the road. Mr. Brawner said they intended to use repurposed asphalt, but that Mr. Pena should not bear the entire burden. CM McBrady said this is not an individual, it is a business. Mr. Brawner noted there is another business on the road. CM McBrady spoke of the dust and traffic and that the business should be responsible for dust control all the way to 3<sup>rd</sup> Street and would like this included in the conditions.

CM McBrady said he wanted to make a motion to ask them to do something about putting some type of surface on the road to keep the dust down. The motion failed due to lack of a second to the motion.

CM Timmons spoke of Council considering the impact of the trade school. She spoke of traffic increased and conditions in the code that were not addressed, as well as the downgrading of property that cannot be rectified. As a resident, if she had to live by that, she would want more stringent enforcement of the noise levels. She told Ms. Pena this matter had nothing to do with race. She does not feel it is the appropriate place for a helicopter school.

CM Hamilton spoke of someone saying this was a country town and should be maintained without growth. He said you cannot sustain the Town without growth and there is need for more business. He spoke of the benefit of the water tanks and that the traffic concerns were ADOT's responsibility. He spoke of the commercial corridor along 69 and 169 being bordered by residential. Businesses will not come here, if they have to get a Use Permit. The Town needs to grow and needs more commercial. He agreed with the man who recommended no Saturday trainer operation. He is in agreement with the Use Permit with the modifications noted.

CM McBrady made a motion to have the business put in some type of approved town road surface that keeps the dust down and go from the business all the way to Old Black Canyon because of the amount

of traffic increase it will have, it will also help his business, I am sure, that is my motion. CM Timmons seconded the motion. Attorney Goodwin clarified that the nature of the motion would be an additional condition to the Use Permit.

CM Hamilton noted that you are then asking someone to do something over someone else's private property. He does not know how you can mandate something that you do not have control over. Town Manager Wilson said that they should make a condition on this - if they are able to obtain the private property owner's consent to that.

CM McBrady said he wanted to change his motion to include this.

Vice Mayor Hughes disagreed and said that you are going to try to bribe or persuade a business owner to pave someone else's driveway, as a condition of granting their special use permit. You aren't going to give you a permit unless they pave the road up front. If you are making this a condition to someone to have to do something other than their own property, it's against the law, it's unconstitutional. Attorney Goodwin said that generally as a condition of the Use Permit the Town can impose conditions such as road dedication or road paving that are reasonably related to the Use Permit, if the amount of traffic increases, but they would need other property owner's permissions. She further noted that there has been a lot of discussion about compliance with conditions and it can be revoked, if they don't comply with dust mitigation and landscaping plans. Once they submit the plan, they have met the condition. You need to determine who approves the plan and failure to comply with the plan is a violation of the Use Permit. TM Wilson said this would be an excellent addition to the plan.

Mayor called for the vote on Councilmember McBrady's motion. CM Hamilton – nay; CM McBrady – aye; CM Timmons – aye; CM Treadway – nay; CM Wendt – aye; VM Hughes – nay; Mayor Nolan – nay. The vote failed by a 4 – 3 margin.

CM Timmons began to make a motion but rescinded as she indicated it would be voted down.

Councilmember Hamilton spoke of making a motion to include the modifications to the permit to what the attorney told us about the plans, not being a plan but being more than that, I would also like to limit to not using the trainer on Saturday. Attorney Goodwin clarified that to have the plan approved by the Community Development Department and that any failure to comply constitutes a violation of the Use Permit. Town Manager Wilson clarified the language: The plans in Items 4. and 5. must be approved by the Community Development Department and any failure to comply with the approved plan constitutes a violation of the conditions of the Use Permit. The motion was seconded by Vice Mayor Hughes. Town Manager Wilson added clarification that there is a prohibition for trainer prototype use on Saturdays in this motion.

CM Timmons inquired if the Saturday use prohibition would increase the Monday through Friday use of the trainer. TM Wilson said that, unmodified, there is a restriction on the hours of the trainer during the normal workweek of 9-5 and no Saturdays.

Mayor Nolan asked for a roll call vote. CM Hamilton – aye; CM McBrady – abstained; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.

Mayor Nolan asked to make a stipulation that they increase the height of the fence with screening another two feet above the height of the current fence. TM Wilson asked if this was a motion. Mayor Nolan confirmed this. Attorney Goodwin asked if it was one or two feet. Mayor Nolan confirmed two feet on the north and west side, seconded by CM Hamilton.

Mayor Nolan asked for a roll call vote. CM Hamilton – aye; CM McBrady – aye; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.

Councilmember Hamilton made a motion to approve the Use Permit as amended. Attorney Goodwin said that the Council has to state in the motion that the Council makes the findings that are required by Section 153.91 (A). She read the findings to approve the Use Permit are that: it is compatible with permitted uses in the underlying zoning districts; it is in compliance with the Town's General Plan and applicable Town applications; and meets or exceeds the criteria described in this Use Permit section, which was what had been discussed.

Councilmember Hamilton revised his motion to approve the Use Permit UP 17-003 and incorporate the findings, seconded by Vice Mayor Hughes.

Mayor Nolan called for the vote. CM Hamilton – aye; CM McBrady – nay; CM Timmons – nay; Councilmember Treadway – aye; CM Wendt – nay; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed by a 4–3 margin.

Mayor Nolan called for a five-minute recess at 8:50 p.m. and reconvened the meeting at 8:55 p.m.

#### **10. Unfinished Business - None**

Discussion and Possible Legal Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.

#### **11. New Business**

Discussion and Possible Legal Action on matters not previously presented to the Council.

##### **A. Approval of 2018-19 Greater Prescott Regional Economic Partnership (GPREP) Agreement**

Councilmember Hamilton noted that there was no money involved and supported belonging but pointed out that, as shown during this meeting, the Town's commercial property will not be developed. There was Council discussion regarding the GPREP membership and possible benefits.

Councilmember Hamilton made a motion to approve the 2018-19 Greater Prescott Regional Economic Partnership Agreement, seconded by Vice Mayor Hughes. Mayor Nolan called for the vote. CM Hamilton – aye; CM McBrady – aye; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.

Public Comment

Karen Brooks spoke of being a Town Council-elect. She took great offense to Councilmember Hamilton's comment about how the new Council may possibly vote, as he has no idea how she will vote.

##### **B. Requesting Council perform a performance evaluation review for the Town Manager (CM Treadway CAARF)**

##### **C. Executive Session**

Council may vote to hold an Executive Session for the purpose of obtaining legal advice from the Town's attorney on any matter listed on the agenda pursuant to A.R.S. § 38.431.03(A)(3).

Council may vote to recess the Regular Meeting to hold an Executive Session, which will not be open to the public, for the following purposes:

##### **Vote to recess to Executive Session**

Councilmember Hamilton made a motion that Council go into Executive Session to discuss the performance of the Town Manager and for discussion and consultation for legal advice regarding the contract, seconded by Councilmember Treadway. Mayor Nolan called for the vote. CM Hamilton – aye; CM McBrady – aye; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.

The meeting was recessed at 9:02 p.m. Town Manager Wilson left the meeting.

**1. An executive session pursuant to A.R.S. § 38-431.03(A) (1) for discussion or consideration of employment and assignments of the Town Manager, including a performance evaluation, and pursuant to A.R.S. § 38-431.03(A) (3) for discussion or consultation for legal advice with the Town Attorney regarding the employment contract with the Town Manager.**

Council opened the Executive Session at 9:07 p.m.

Mayor Nolan left the Executive Session at 9:19 p.m. and returned at 9:22 p.m.

Councilmember Timmons made a motion to extend the meeting to 10:30 p.m., seconded by Vice Mayor Hughes. The Mayor called for the vote. CM Hamilton – aye; CM McBrady – aye; CM Timmons – aye; CM Treadway – aye; CM Wendt – aye; Vice Mayor Hughes – aye; Mayor Nolan – aye. The motion passed unanimously.

**Close Executive Session** The Executive Session was closed at 10:32 p.m.

#### **12. Adjourn** The meeting was reconvened and adjourned at 10:34 p.m.