

**PLANNING & ZONING ADVISORY COMMISSION OF DEWEY-HUMBOLDT  
REGULAR MEETING NOTICE**

**THURSDAY, AUGUST 5, 2021, 6:00 P.M.**

**DEWEY-HUMBOLDT TOWN HALL  
COUNCIL CHAMBERS  
2735 S. HWY 69, SUITE 10  
HUMBOLDT, ARIZONA 86329**

**NOTICE OF MEETING OF THE DEWEY-HUMBOLDT  
PLANNING & ZONING ADVISORY COMMISSION**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Dewey-Humboldt Planning & Zoning Advisory Commission and to the general public that the Planning & Zoning Advisory Commission will hold a meeting open to the public on **Thursday, August 5, 2021, at 6:00 p.m.**, at the **Dewey-Humboldt Town Hall Council Chambers, 2735 S. Highway 69, Suite 10, Humboldt, Arizona 86329.**

**DEWEY-HUMBOLDT PLANNING & ZONING ADVISORY COMMISSION AGENDA**

The issues that come before the Planning & Zoning Advisory Commission are often challenging and potentially divisive. To make sure we benefit from the diverse views to be presented, the Commission believes public meetings to be a safe place for people to speak, and asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Agenda items may be taken out of order. Please turn off all cell phones. The Commission meetings are broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Commission 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 Commission Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Commission Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate.

**1. Call To Order**

**2. Roll Call** Commissioners Mel Kuhnel, Nelle Carlsmith, Lance Dettmann, Judy Kerber, Sue Jakubec, Mario Manzo, Lon Ullmann, Vice Chair Jeff Siereveld and Chair Victor Hambrick.

**3. Informational Reports**

Individual members of the Commission and public may provide brief summaries of current events and activities. These summaries are strictly for the purpose of informing the Commission and public of such events, actions or activities. The Commission will take no discussion, consideration, or action on any such item except that an individual member of the Commission may request an item be placed on a future agenda.

**4. Planner's Update on Current Events and Activities**

Planner may provide brief summaries of current events and activities. These summaries are strictly for the purpose of informing the Commission and public of such events, actions or activities. The Commission may not discussion, consider or take action on any such item except that the Planner may request an item be placed on a future agenda.

**5. Consent Agenda**

All matters listed under the Consent Agenda are considered to be routine by the Commission and will be enacted by one motion. Any item may be removed from the Consent Agenda for separate consideration at a Commissioner's request. If a citizen desires separate consideration of an item, he or she should approach a Commissioner prior to the meeting and ask that the Commissioner request that the item be removed.

**A. Approval of Minutes of November 5, 2020 Regular Meeting**

**B. Approval of Minutes of December 3, 2020 Regular Meeting**

**C. Approval of Minutes of January 7, 2021 Regular Meeting**

## 6. Public Comment on Non-agendized Items

The Commission wishes to hear from Citizens at each meeting. Those wishing to address the Commission 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 Commission. Individuals may address the Commission on any issue within its jurisdiction. According to the Arizona Open Meeting Law, Commissioners may only (a) respond to criticism made by those who have addressed the public body, (b) ask Town staff to review a matter, or (c) ask that a matter be put on a future agenda. Commissioners are forbidden, by Arizona Open Meeting Law, from answering your questions, discussing issues raised or taking legal action on matters raised during Public Comment. A **3 minute** per speaker limit shall be imposed. Everyone is asked to please be courteous and silent while others are speaking.

## 7. Public Hearing Agenda

Discussion and Possible Action may be taken.

None

## 8. General Business

### A. Presentation on Authorities and Powers of Planning and Zoning Advisory Commission

### B. Presentation of Open Meeting Law provisions

## 9. Adjourn

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.

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, Shell Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the \_\_\_\_\_ of \_\_\_\_\_, 2021, at \_\_\_\_\_ a.m./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.

### For Your Information:

Next Town Council Study Session: Tuesday, August 10, 2021 at 6:30 p.m.

Next Town Council Meeting: Tuesday, August 17, 2021 at 6:30 p.m.

Next General Plan Steering Committee Meeting: August 18, 2021 at 6:30 a.m.

Next Board of Adjustment Meeting: August 24, 2021 at 9:00 a.m.

Next Planning & Zoning Meeting: Thursday, September 9, 2021 at 6:00 p.m.

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 Beth Evans, Town Clerk.

**TOWN OF DEWEY-HUMBOLDT  
PLANNING & ZONING ADVISORY COMMISSION  
REGULAR MEETING MINUTES  
NOVEMBER 5, 2020, 6:00 P.M.**

**A REGULAR MEETING OF THE DEWEY-HUMBOLDT PLANNING & ZONING ADVISORY COMMISSION WAS HELD ON THURSDAY, NOVEMBER 5, 2020, AT TOWN HALL AT 2735 S. STATE ROUTE 69, DEWEY-HUMBOLDT, ARIZONA.**

1. **Call To Order.** Chair Hambrick called the meeting to order at 6:00 p.m.
2. **Roll Call.** Commissioners Sue Jakubec, Ken Murphy, Darrell Wyatt, and Chair Victor Hambrick were present. Commissioner Mario Manzo, Lon Ullmann, and Vice Chair Jeff Siereveld were absent.
3. **Pledge of Allegiance** Commissioner Wyatt led the Pledge of Allegiance.
4. **Protocol for participating in the Council Meeting via Zoom** (Ed Hanks, Town Manager)  
No report.
5. **Informational Reports**  
No report.
6. **Planner's Update on Current Events and Activities**  
No report.
7. **Consent Agenda**
  - A. **Approval of Minutes of October 3, 2019 Regular Meeting**
  - B. **Approval of Minutes of December 5, 2019 Regular Meeting**
  - C. **Approval of Minutes of January 9, 2020 Regular Meeting**
  - D. **Approval of Minutes of February 6, 2020 Regular Meeting**
  - E. **Approval of Minutes of March 5, 2020 Regular Meeting**Commissioner Murphy moved to approve Items A, B, C, D, and E on the Consent Agenda, seconded by Commissioner Wyatt. Motion passed by a unanimous voice vote 4-0.
8. **Public Comment on Non-agendized Items**  
No public comments were made.
9. **Unfinished Business**
10. **New Business**
  - A. **Overview, Review and Discussion about the Town's Land Split Process.**

**Planning Consultant Steven Brown** stated that the Town was receiving a lot of land split applications. People were using the administrative land split process to divide their property for various reasons. PC Brown explained that many times the land split process led to minor subdivisions being created later. A land split could only be three lots or less; a fourth lot created a subdivision. People had been splitting their lots into three lots and those with large lots were coming back to further split a lot and creating a minor subdivision. He stated that minor subdivisions would come before the Planning Commission, and he thought it would be useful for the Commissioners to understand the land splitting process and how it could lead to minor subdivisions.

**Commissioner Wyatt** questioned if land splits violated the zoning requirements of certain lot sizes in different zones. PC Brown stated that the subdivisions did not violate those requirements because lot sizes had to start out being at least twice the minimum lot size for the zoning district.

**PC Brown** explained that since some Commissioners had not had the opportunity to review the lot split document he had provided, they would take it section by section and discuss it. PC Brown read the following sections:

Background:

The Land Split definition was the division of improved or unimproved land that had an area of 2.5 acres or less into two or three tracts or parcels of land for the purpose of sale or lease where no new street was involved.

**PC Brown explained** a land split was a simple administrative process, and a person could split their land into three parcels or less if they had the adequately sized lot. This type of split was much easier than a subdivision. He explained that staff had researched the history of land split regulations, and the Town's regulations were to help facilitate a simple process for small land divisions. The Town required documentation on a parent parcel's history to ensure that the lot had not already exceeded the allowed number of lots through the administrative land split process and to ensure the subdivisions land regulation process was not being circumvented. Those subdivision regulations existed to assure that the divided land complied with the Town's standards on roads, drainage, hillsides, and other design standards.

Land Split Procedure:

The process started with an application and filing fees. The application required additional documentation, including a legal description, a land split drawing with dimensions shown to scale that included the boundaries of the original parcel and the parcel lines of the proposed parcels, the existing and proposed right-of-way's, streets, and proposed utility and ingress/egress easements, the locations and dimensions of existing structures noting setbacks and distances from proposed property lines, and locations of septic and well systems. Documentation of the parcel's division history that could include assessor maps, records, deeds, title history, or other credible documents from the five-year period preceding the subdivision application. Documentation on legal agreements or shared facilities was also required.

**Chair Hambrick** questioned if the section highlighted in red was proposed new language and where the five-year period came from. PC Brown explained that all the language was part of the existing code and that the section was highlighted to bring attention to it. He had no knowledge of the history of the five-year period.

The submitted documents would be reviewed by the Department and could result in a denial of the land split for the following reasons: The proposed lots did not conform to the required size, width, depth or other required zoning regulations, the property or adjoining properties became deadlocked and had no legal access, or the division of land based on documentation and history would result in a subdivision as defined in code section 153.005. Those properties that created four or more parcels would need to go through the full subdivision process.

After Department review and determination and before final approval and recording of the land split, the applicant was required to submit a completed application with filing and recording fees, a signed and sealed record of survey of the proposed land split completed by a registered surveyor licensed in the State of Arizona, showing the original parcel boundaries, the proposed parcels dimensions, any existing or proposed rights-of-ways, streets, and utility and ingress/egress easements. The record of survey needed to contain the recording data, with book and page number, for the access easements for ingress/egress, both existing and proposed for the land split and needed to meet the standards specified in Subdivision and Street Design Standards, Section 152.09.

**Commissioner Wyatt** questioned to who the application needed to be submitted and who approved the application. PC Brown explained that applications were submitted to the Planning Department, who would review the application to ensure it met the required standards and then approve it, with final signature by the Town Manager for the final approval.

**PC Brown** explained that the basic purpose of the land split process was to provide an administrative process for minor land divisions of up to three lots within the Town, as provided by State Statutes. The division of four or more lots was defined as a subdivision and would be processed accordingly. The requirement of the five-year history of land splits of the parent parcel aided in restricting further splitting beyond the three allowed lot splits until after the five-year period had passed. The five-year period was not affected by the transfer of ownership of the split lots. New property owners were bound by the same five-year restrictions on lot splits.

**Commissioner Wyatt** questioned the logic of the five-year timeline. PC Brown explained that it was to encourage those doing more than three lots to go through the subdivision process so the Town could assure that all required standards were met, including access, drainage, and assured water supplies. He did not have the full history of the five-year period and it was possible it could change or be eliminated in the future.

**Commissioner Wyatt** questioned why people were splitting their lands. PC Brown explained that they were wanting to sell off some of their land for various reasons and rather than go through the full subdivision process, they were doing administrative lot splits. The subdivision process required Council approval and public hearing. The administrative lot split process only went through the Planning Department and took approximately a week for review and approval. A subdivision could take as long as 120-days.

**PC Brown** explained that as an initial step in the land split process, staff researched the land split history. Two example land splits were provided to the Commission. One in which a lot was split once, allowing for the split of two additional lots later. This would meet the allowed three administrative lot split regulation. The second example was a parent parcel land split that created three new lots. Those properties were not eligible for further administrative lot splits until five years had passed.

**Chair Hambrick** questioned why they were reviewing the information at a Commission level. He stated that he understood that there was a relatively small number of lots that could split beyond the three-parcel administrative lot split within the Town boundaries due to the acreage requirement. Chair Hambrick explained that he understood the five-year period was to prevent wildcatting within the Town boundaries, but the State law already covered it and tracked it based on ownership records. PC Brown explained that they were getting to a point that larger lots were being split. He also stated that to his knowledge, the State and the County did not track ownership, or lot splits. It was up to the Town to track the information. If a ten-lot split were submitted to the County, they would record it and pass it on to the assessor and the assessor would pass it on to cartography to affect the change without the Town ever knowing about it. PC Brown stated that there were many instances where that had happened, and the land split process put the responsibility on the Town to approve those splits. If they found where someone had avoided the process, there were ramifications. Chair Hambrick stated that if he were to sell his property to a relative and that relative attempted to split beyond the three lots, he would be required to get a subdivision report from the Arizona Department of Real Estate prior to being able to sell, or he would be violating state law. There would be no way for him to obtain a subdivision report if there were relationships tied that led to wildcatting. Chair Hambrick questioned if the Town's regulations were a doubling up on regulations. PC Brown explained that the Town's regulations gave them the ability to have local control.

**PC Brown** explained that the state defined a subdivision as six or more lots, which was for the assured water supply rules. The Town defined a subdivision as four or more lots. The County allowed for four lot splits before it became a subdivision.

**Chair Hambrick** explained that subdivisions required a lot more. Since the Town was located within an Active Management Area (AMA), there needed to be proof of assured water supply through physical and paper water. Outside an AMA, there only needed to be proof of physical water. Subdivision standards for things like road improvements were greater with subdivisions.

**PC Brown** explained what had been happening was that people were doing their three splits and then wanted to do more and coming back for a minor subdivision. Those people were learning that the process of acquiring a certificate of assured water supply was not simple. There had been at least two cases where instead of doing a six or eight lot minor subdivision, they were dropping down doing a minor lot subdivision instead. PC Brown stated that a section of the Town boundaries to the south was not within the AMA.

**PC Brown** stated that land splits can and had led to minor subdivisions. People were also learning that to do a six or more-lot subdivision led them afoul with ADWR and were dropping down to a five-lot minor subdivision to avoid the ADWR requirements. All those minor subdivisions would be coming to the Planning Commission for review and recommendation. He wanted the Commissioners to have a history about how they got there.

**Chair Hambrick** stated he was interested if subdivision requirements were tiered based on the number of lots in the Town or if they were not tiered. PC Brown explained a minor subdivision was for ten or fewer lots and no preliminary plat or public hearing was required. It went from a sketch plan with a great deal of information approved administratively, to a final plat which required a public hearing and Council approval.

**Chair Hambrick** questioned what the road requirements were for a minor subdivision. PC Brown explained a chip sealed, compacted 50-foot right-of-way with two 12-foot lanes was required. Six lots or more also required the assured water supply.

**Chair Hambrick** stated that the State allowed for a 40-acre subdivision without proof of individual water. This allowed people to drill individual wells without adequacy water approval. He stated that there were very few parcels within the Town boundaries that fit the minimum requirements or lot size for anything more than an administrative lot split. PC Brown agreed and pointed out that 75% of the Town was zoned R1-70, and only had a 70,000 square foot lot. To split those lots, a person would need 3.2 acres. Based on the regulations, 85% of the Town could not split their lots. He thought it may warrant further investigation to see how other towns were dealing with that limitation.

**Commissioner Wyatt** questioned the role of the Planning Commission. PC Brown stated it was both educational and preparatory for the minor subdivisions that would likely result from administrative lot splits. Chair Hambrick further explained that an administrative lot split would be handled at a staff level, but a minor subdivision would be heard by the Planning Commission for a recommendation to the Council.

**PC Brown** stated that a subsequent meeting could review the minor subdivision regulations and process. Chair Hambrick was interested in knowing if other surrounding Towns had a year restriction process other than the State's wildcatting rules. PC Brown had done some research and could not find the five-year period, or the 2.5 acres mentioned in Chino Valley, Prescott Valley or Yavapai County regulations. Chair Hambrick stated that the State only had penalties for after the splits happened.

**Commissioner Wyatt** questioned which staff reviewed the applications. PC Brown stated it was typically himself and the Town Manager. He stated there were also Town Staff that helped with the workload process. He worked as a consultant, not as a Town Staff member.

## 11. Adjourn

Chair Hambrick adjourned the meeting at 6:45 p.m.

\_\_\_\_\_  
Victor Hambrick, Chair

ATTEST: \_\_\_\_\_  
Beth Evans, Interim Town Clerk

**TOWN OF DEWEY-HUMBOLDT  
PLANNING & ZONING ADVISORY COMMISSION  
REGULAR MEETING MINUTES  
DECEMBER 3, 2020, 6:00 P.M.**

**A REGULAR MEETING OF THE DEWEY-HUMBOLDT PLANNING & ZONING ADVISORY COMMISSION WAS HELD ON THURSDAY, DECEMBER 3, 2020, AT TOWN HALL AT 2735 S. STATE ROUTE 69, DEWEY-HUMBOLDT, ARIZONA.**

1. **Call To Order.** Chair Hambrick called the meeting to order at 6:00 p.m.
2. **Roll Call.** Commissioners Sue Jakubec, Mario Manzo, Darrell Wyatt, Vice Chair Jeff Siereveld and Chair Victor Hambrick were present. Commissioner Lon Ullmann was absent.
3. **Pledge of Allegiance** Vice Chair Siereveld led the Pledge of Allegiance.

**4. Informational Reports**

No reports

**5. Planner's Update on Current Events and Activities**

**Planning Consultant (PC) Brown** reported the Council was still working on getting a permanent Town Manager. They hired Jim Thomas through Municipal Solutions as the Interim Town Manager while they continued working on hiring the permanent position.

**Judy Kerber** stated that they had not officially hired Mr. Thomas and the Council would be holding a special meeting to discuss it.

**Commissioner Wyatt** stated that it was his understanding that the Town had a contract with Mr. Thomas, and he had been hired for a three-month period of time.

**6. Consent Agenda**

**7. Public Comment on Non-agendized Items**

No public comment

**8. Unfinished Business**

**9. New Business**

**10. Public Hearing Agenda**

**A. Conduct Public Hearing and consider a proposal ZTC-20-001 to amend the text of the Town of Dewey-Humboldt Zoning Ordinance to amend the uses permitted in Section § 153.043, C2 (Commercial, General Sales and Services) District to add "Recreational Vehicle Parks" to the list.**

**1. Staff Report**

**PC Brown** reported Muffy Kutsick, the owner of the Wagon Wheel RV Park, wanted to expand the pre-existing non-conforming use of an RV Park onto 12864 E. Kloss that bordered the existing RV park to the North. There were currently no zoning districts in the Town where RV Parks were permitted uses. Staff considered the current RV Park to be a pre-existing, non-conforming use as it appeared to have been present on the property since a least 1992 based historical aerial photos and the county assessors' records show improvements on the parcels for a mobile home park dating back to 1975. Since the RV Park would be a Commercial Use, the applicant opted to request a change in the zoning uses through a text change for the referenced parcels to add recreational vehicles parks to the list of allowed uses and paving the way for a subsequent request to amend the zoning map for the above listed parcel from their current zoning designation of R1-10 to a zoning designation of C2. There was no direct financial impact expected, but it was anticipated collecting additional tax revenues from the expansion of the existing business. Staff was seeking a recommendation from the Commission to either approve with conditions or deny the requested change of text from the Town Zoning Code in Section § 153.043, C2 (Commercial, General Sales and Services) District to add recreational vehicle parks to the list.

## 2. Open Public Hearing and Receive Public Comments

**Commissioner Wyatt** stated that two letters had been received regarding the matter and he thought they should be read into the record. One letter received had been from John Chisholm and the other was a packet from Ms. Kutsick that contained several letters and would be addressed during the applicant's presentation.

**John Chisholm wrote a letter** stating that he owned property adjacent to the land that the applicant wanted to rezone. He stated that there were site-built homes that had been built in the area and questioned why he would want a rezone that would devalue his property. He was concerned he would look out his window and see a storage lot and that there were other empty lots in the Town that would work better for that type of use. His property was zoned R1-10, as were the surrounding properties. If the changes were approved there were concerns of lighting, hours of access, and excessive noise and disturbances. Access to the subject property was across properties zoned R1-10 and RS-10. He was a strong no to the request of rezoning.

**Jack Hamilton wrote a letter** regarding changing residential zoning to commercial zoning. He stated that the residential zoning came about during the General Plan implementation. The existing businesses had then become non-conforming and in order to make them conform to Town code, the zoning districts were changed, and the zoning areas were being expanded. The Council had recommended the Commission create a buffer zone between the Commercial and Residential properties. Creating a C-2 zone in the middle of a residential did just the opposite. The Council had also expressed a desire not to have dense housing. This would be the densest housing that the Town had because there were no setback requirements for RV's. Since the Town was starting the General Plan update, the Commissioner could wait for the General Plan to determine what the area should be zoned.

**Ms. Kerber** stated she was taken aback when this got to the point of a public hearing before it had any administrative review. She had been looking at Section 153.07 that addressed the administrative review process and the comment review period and questioned if it applied to this situation.

**PC Brown** stated that it was his understanding that Section 153.067 was waived for this type of use. The Commission could recommend that if it were approved, RV Parks be subject to a User Permit, which would be the same thing. Ms. Kerber stated she did not see exceptions listed to the administrative review and she was trying to understand the process better from beginning to end. Mr. Brown explained that there was not an RV Park use listed as a use anywhere in the Town code. It had been an encumbrance for people to develop RV Parks in the past because of the requirement of having to go through a zoning change to permit it in one of the districts. It was a lengthy process Staff had set the hearings up so that a decision could be made on adding the use to the C2 zoning and then consider changing the subject property to C2.

**Muffy Kutsick** thanked the Commission for allowing her to the opportunity to explain what they wanted to do. She addressed the letter from Mr. Chisholm, and thought he misunderstood their intentions for the property. There would not be any type of storage on the property, including RV storage. The RV's that would be on the property looked more like little cottages, not RV's. It would also not be transient people who were in and out of the park. They planned to have long term dwellings where people stayed. People would be retired, would spend money in Town, and utilized everything available in the Town. Most of the people living in the park would be veterans and most did not drive, so the traffic was limited. Since it was a 50-plus community, there would not be children and families coming and going and it would be quiet. There would also not be excessive light and the lighted areas used for safety issues. They would be asking to add 19-cottage type homes to the property.

**Ms. Kutsick** explained that they had overwhelming support through letters from the community, neighbors, Senator Sinema, veterans' associations, and local businesses. She explained the zoning on the surrounding parcels, except for the two parcels to the south of their property, were already zoned C-2, which were all adjacent to Highway 69. They owned one of the residential properties that was adjacent to the highway, and they were not opposed to changing the zoning on that property if necessary. This would make all but one residential property, the same zone and conforming.



**Ms. Kutsick** stated that the neighbors had seen and supported the improvements they had made and wanted to continue to see it beautified. Their property was one of the nicest on the street because it was clean, maintained, and landscaped. It would not de-value the land and most likely added value to those properties surrounding the subject property. With the changes that they already made, they had added to the community a higher property value by having a clean, quiet, and beautiful neighborhood setting, pride for the neighborhood, and revenue for the Town because residents use the surrounding businesses. They had given the park a sense of community and neighborhood by upgrading every unit and maintaining the area. They would be adding fencing and landscaping. She stated that at a neighborhood meeting they held in their office, Mr. Chisholm requested a buffer between the properties by the addition of landscaping and fencing and they were not opposed to doing that. Future improvements included the landscaping, fencing, community sidewalks, and beautification to the area to resemble a park-like setting.

**Ms. Kutsick** stated that their goal was to provide safe and affordable housing for both veterans and non-veterans and give the opportunity for people to own their own homes. She had received a certificate from the Veterans Association of Housing with Senator Sinema. She then read letters of support from the Department of Veterans Affairs, US Veterans Association, adjacent neighbors Brenda French and Marian Powell, Greg Mafnas, Kristen Munchinsky, Cyndi Kordell, Dustin Salmans, Anna Hunter, Daniel Wirt, Cherie Jones, Traci Ranic, Breanne Devine, Robin Martin, and local businesses including JT's Septic, Mamma's Kitchen Café, and Devine Diesel, commending the improvements completed on the property, the attention given to the residents, and for providing a clean, affordable, and beautiful place for veterans and non-veterans to live. Ms. Kutsick stated she would talk to the neighbor that was not in support to better explain their plans and she was available to meet with Commissioners that had questions. They had put in all new gravel roads, new paint and roofs on the buildings, additional landscaping, the addition of low lighting fixtures, and made the park an over 50 living area. If granted the expansion, Senator Sinema wanted to bring attention to the Town and their establishment.

**Chair Hambrick** explained there were two items on the agenda, and they heard both items together because they read the letters from the community. Item A dealt with the text amendment to the Town code. They did not currently have a process to do that, which was why staff had addressed it in the way they had through the Commission. They needed to add Recreational Vehicle Parks to the list under the zoning code. They needed to vote on that first.

**Commissioner Wyatt** stated he was not concerned about adding 19 additional spots but was concerned about amending the code to allow RV parks in the commercial zone. He had been RV'ing for forty years all over the country and into Canada and had seen the best and the worst parks. Some of the worst were not the in and out recreational people, but the long-term people. He commended the work that Ms. Kutsick had done, but he did not want to open the door in Town to a profusion of RV Parks. The RV Parks needed to be tightly controlled or they ended up as an eye sore with all types of unwanted activities going on within the park. The Town's General Plan was not designed to provide affordable low-income housing to anyone. The General Plan was designed to keep the Town low density with a high desirable property value. Adding low-end housing density of any kind, and in particular RV Parks that could develop from this was a dangerous idea. If the Wagon Wheel's expansion depended on the Town opening to any RV Park in the area, he said no, and it was too much to ask. He did not have any objections to another way to expand their business. The idea that having RV Parks in the R1 zoning district would increase property values was ridiculous, but there was the possibility of having some very undesirable developments. Unless the Town was to put in many regulations in the code on how the RV Parks were to be run, he did not support allowing them within the Town.

**Ms. Kerber** questioned the protocol and if the Town Attorney had looked at it. She was trying to learn the procedure because she was going to be on the General Plan Steering Committee. She thought it sounded like a wonderful idea, but that protocol needed to be figured out first.

**PC Brown** stated that the Town Attorney had reviewed the agenda and had made modifications to how the item was listed on the agenda. He stated that people had the right to request things and staff facilitated the process in getting the request before the Commission, who would make a recommendation to the Council of approval, approval with modifications, or a denial. The Council would make the final decision. The attorney had also reviewed the request. Mr. Brown explained that the Town Attorney ensured the forms were correct so that the application could be considered. The attorney had not raised any issues with the application being on the agenda. He explained that it was not the Attorney's job to review the application for anything other than legal standing and whether it violated the open meeting law.

**Chair Hambrick** clarified that Ms. Kerber was trying to determine if there was a procedural step missed by the Town to add Recreational Vehicle Park to the allowable uses in the code. PC Brown stated that Item A on the Agenda was the correct procedure to add an additional item to the code. This was why the Planning and Zoning Commission existed. Ms. Kerber asked that Chair Hambrick talk to her after the meeting because she did not think her questions had been fully answered.

**PC Brown** stated that the current list of C2 allowable uses included all the allowable and accessory uses listed in more restrictive zoning sections. Those zones included C1, R1, and R1L. Other uses included retail and wholesale sales, rentals, commercial parking facility, bars, tap rooms, nightclubs, theaters, auditoriums, banquet halls, dancing, art, museums, trade schools, commercial bath and massage, frozen food lockers, custom craft shops, bowling alleys, mortuaries, water distillation, vending, automobile repair shops, new and used auto sales, veterinary clinics and hospitals, and pet grooming.

**Chair Hambrick** wanted the commission to consider that other municipalities might have considered putting an RV park under a general use such as rental instead of specifically adding it to the list of allowable uses. In the Town, they were trying to create a system where they could manage, take care of, govern, guide, and make sure things were done responsibly by making sure everything was covered in the list of uses. There were a lot of things already allowed in the C2 zone when considering the what ifs and concerns. There was already the chance that the current uses could turn into a disaster, just as there had been a concern that allowing RV Parks could lead to undesirable conditions. By adding it to the code, specific regulations could be added to the code addressing RV Parks specifically. Staff was attempting to itemize the list instead of keeping it vague. He explained to the public waiting to comment that they should only be commenting on Item A because if it were denied, Item B would not move forward.

**Amy Lance** questioned if there was an RV Park in the Town. She was sure there was one in the Town. She did not understand why they needed to change the zoning if there were already RV Parks in the area. PC Brown explained that the existing Wagon Wheel Campground was a non-conforming use.

**Ms. Kutsick** stated that there was another RV Park called Soft Winds Mobile RV Park. They had nearly 70-spaces.

**Amy Lance** complimented Ms. Kutsick on the work they had completed at the Wagon Wheel RV Park.

**Shirley Anderson speaking for her father John Chisholm** stated she appreciated all the support Ms. Kutsick had for her proposed project, but the bottom line came down to adding RV Parks to the list and rezoning the property. Once that changed, it was changed for a long time. She stated, on behalf of her dad, she did not agree with adding RV Parks to the C2 list and that it was a detriment to the community. It was not something the Town was based on.

**Chair Hambrick** explained that it was not just the Kutsicks property that had operated as an RV Park and were a non-conforming use. This use was approved before the Town incorporated. This meant that they had received approval from the County for the current use prior to the Kutsicks owning the property. It was the same for the other RV Park as well. The reason it was non-conforming, according to the Town, was because the use was not specifically listed under C2 zoning. If the Town wanted to have any controls to specify and govern in any way, the RV Park use needed to be specifically listed. Once they were no longer a non-conforming use, the Town could place rules and regulations on them that would require maintenance and avoid any issues that could arise with the use. They currently did not have any regulations because it was non-conforming and not specifically listed in the code.

**Muffy Kutsick** stated that the list of items that were already specifically listed under the C2 Zone were not necessarily favorable items that the community may want to see in the area. But if there were rules and regulations in place, and those businesses did not follow them, then the Town could step in to ensure the regulations were followed. There was no reason that things needed to be brought to a point that it was an eye sore or devalued property. With guidelines in place, it did not need to be like that.

**PC Brown** stated that Ms. Kutsick brought up a good point and he apologized to Ms. Kerber. He reviewed Town Code Section 153.067 on Administrative Review and Comment, and he found that in the C2 district, the commercial uses adjacent to residential uses were subject to the section and would be reviewed by other agencies and Town staff when they were being proposed, but not at the point when they were asking for the zoning. When they were developing that use, they would be subject to that review.

**Amy Lance** questioned if Ms. Kutsick's use of the Term RV Park meant they would be allowing motorhomes or just the type of mobile homes currently at her business site. Ms. Kutsick explained that they would not have motorhomes or travel trailers. They would be allowing park models that looked like little cottages. They had shingle roofs. They would not be transient. They could be maintained and have cosmetic facelifts when it was necessary. Ms. Lance explained that these types of homes would be permanent fixtures even though they were technically mobile.

**Chair Hambrick** explained that the Commission was there to vote on something that would be impactful. Their job was to help, guide, and represent the citizens of the community trying to make Town a better place. It was the Commission's responsibility to educate, inform themselves, and understand what they were doing. He stated it was a fine line between the approval of Item B and the approval of Item A. Voting against Item A would not solve the Town's problem because there were two RV Parks that were currently non-conforming uses. If Item A were denied, they would not move on to Item B. If they approved Item A and Item B, Ms. Kutsick still had an additional process she needed to go through that included Town review with staff that would set in place regulations, protections, and restrictions to ensure it was governed in a manner that the development was done appropriately. If they walked away from the issue, they would still have non-conforming town uses under the Town's eyes. They needed to keep the current comments to Item A, regarding adding RV Parks to the list of approved uses.

**Ms. Lance** asked what the difference was between a mobile home park and a recreational vehicle park. She stated that she thought of RV Parks as motorhomes that were drivable, sustainable, and drive-in drive-out. Ms. Kutsick's use was more like stable affixed to the ground cottages.

**Chair Hambrick** explained that when someone was trying to rezone a piece of property for a commercial use that was not zoned for commercial, the regulations that specified what they could and could not do would be determined after public comment and staff review. In the current case, adding recreational vehicle parks to the list, would then require specific standards and regulations added during the Town review process. There would be different restrictions for a permanent RV park than for an RV park that was more transient and that would happen during the review process. He stated that Ms. Kutsick's mobile home park would be able to conform under the RV Park use is approved as an allowable use.

**PC Brown** explained that the C2 zone was picked in consultation with the property owner. A mobile home referred to a pre-1976 trailer that did not stand up to current codes. RV's were more inclusive and included all the types of housing they had been discussing. He stated that the passage or denial of Item A did not negate the necessity to consider Item B. Item B would change the zone of Ms. Kutsick's parcel to C2. A vote needed to be made to determine if they wanted to change the zoning. Ms. Lance stated that a modular home park would be more fitting for Ms. Kutsick than an RV Park because they were not mobile at all. She thought the verbiage needed to be changed.

**Commissioner Wyatt** expressed the desire to be heard and that the opinion from only one side was being heard and he objected to that.

**Ms. Kutsick** explained that park models were considered recreational vehicles by title. The State of Arizona did not consider them mobile homes because typically mobile homes come in two pieces. Park models also had a title and VIN number. Although they are normally stationary and skirted, they could be moved, but it was not an in and out transient move. They were considered personal property. Chair Hambrick added that anything that was not built onsite and was mobile would have a VIN number and would be considered mobile. Most of the definitions would follow the State guidelines. For the mobile homes to be considered real property, they would need to get an affidavit of affixture, otherwise they would remain personal property and a licensed vehicle.

**Commissioner Wyatt** stated that they were acting as if the passage of Item A would magically make a body of regulation appear that would control what the RV Parks would look like. None of that existed and it would be a big task writing such a code. He did not see why they should take it on, and it seemed like they were doing it to accommodate one existing site to make them legal. To do that they had to expand the code to include a general category called RV that included all the things they had discussed. He stated many RV Parks had both park model homes and RV sites. The trouble he had was that unless or until they made some type of plan to develop specifications, rules, and regulations on what would and would not be allowed under the title RV Park, they should not be adding to the list. They were not talking about closing Ms. Kutsick's park. He did not think they should be expanding the code just to accommodate one item. He stated they should be looking at other ways to deal with the issue. He stated that PC Brown had said that one item was not dependent on the other and he suggested that they table Item A and talk about Item B and not add the RV designation. They should not open that can of worms if they did not have to.

**PC Brown** explained that what he said was that if they denied Item A it did not mean that they do not have to deal with Item B. If they did not add RV Parks to the list, RV Parks would still not be permitted but every other use specifically listed would be allowed. Commissioner Wyatt stated that it was not acceptable to add one more bad thing to the list and they had the opportunity to decide if they wanted to have an RV Park in the community.

**Ms. Anderson** questioned how the RV Park use fit into any of the Town's plans under any zoning designation. She did not think the General Plan had this in it. Chair Hambrick explained that the General Plan did have commercial in it.

**Chair Hambrick** stated that there were two different concepts that municipal governments went by for commercial property. The first was that a person that owned an individual piece of property that was not zoned commercial, would come to the government body and request to be zoned commercial for a specific use, and since some municipalities don't specifically list every use, they would make their decisions on an individual basis. The other concept was that as each individual case came in, the item would be added to the list so that those types of zoning would be in place to guide or put in restrictions. That was what the Town was in the process of doing with Item A.

**Ms. Kutsick** stated she understood the need to have guidelines. She prided herself on maintaining and upkeeping property to help keep the value of people's property. She stated she would be more than willing to help and assist in creating standards and guidelines going forward.

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

### **4. Council Discussion and Possible Legal Action**

**Commissioner Wyatt** moved that they vote to advise the Council not add RV Parks to the code. **The motion was not seconded.**

**Ms. Kerber** wanted clarification on her understanding of the process. She understood that if Item A were approved, it would then move on to the 153.067 administrative review to be reviewed by several departments that included Planning and Zoning, Building, Fire, etc. She questioned if it were at that point the definition for RV Parks could be identified and then the Council became involved. PC Brown explained at that time they would have a better definition of what was being proposed. He said he had been trying to get a site plan review adopted by the Town for over five-years. That would give them the ability to regulate development on commercial properties and would go a long way in addressing some of the concerns that he was hearing. Ms. Kerber offered to help in any way that was needed and that the upcoming General Plan review process would help with some of the issues.

**Chair Hambrick made a motion that the Commission recommend to the Town Council, approval of the requested change to the text of the Town of Dewey-Humboldt Zoning code Section § 153.043, C2 (Commercial, General Sales and Services) District, to add “Recreational Vehicle Parks” to the list of uses permitted, seconded by Commissioner Manzo.**

**Roll call vote on motion**, moved by Chair Hambrick to recommend to the Town Council, approval of the requested change to the text of the Town of Dewey-Humboldt Zoning code Section § 153.043, C2 (Commercial, General Sales and Services) District, to add “Recreational Vehicle Parks” to the list of uses permitted, seconded by Commissioner Manzo.

**Commissioner Jakubec** left the meeting and did not vote.

Commissioners Mario Manzo - aye, Darrell Wyatt – No, Vice Chair Jeff Siereveld – aye, and Chair Victor Hambrick - aye. Motion passed 3-1.

**B. Conduct Public Hearing and consider a proposal ZMC 20-001 to amend the zoning map of the Town of Dewey-Humboldt to change the zoning designation of Assessor’s Parcel (APN) 402-08-059H located at 12864 E. Kloss Avenue, from R1- 10 (Residential; Single-Family) to C2 (Commercial, General Sales and Services).**

**1. Staff Report**

**PC Brown** stated that he covered this Item in his initial staff report. It would amend the zoning map for parcel 402-08-059H located at 12864 E. Kloss Avenue, from R1- 10 (Residential; Single-Family) to C2 (Commercial, General Sales and Services).

**2. Open Public Hearing and Receive Public Comments**

**Chair Hambrick** opened the public hearing.

**Commissioner Siereveld** questioned the ingress and egress access to the property, the provisions for septic services to the property, and water provisions.

**Chair Hambrick** stated that the property did have frontage to Highway 69. He questioned if the applicant had any discussions with Arizona Department of Transportation (ADOT), if there was a turn lane required, and what the ingress/egress situation was.

**Ms. Kutsick** stated that the parcel butted up to Highway 69, but it did not have a turnoff off the highway, and it would not have access from the highway. They currently had a double entrance into the park and the adjoining parcel would create a third ingress/egress access to the subject parcel. Everything was up to the fire safety code. The plans for the septic system had been submitted to the Yavapai County and the Department of Environmental Equality. It had been approved by the County’s septic division, who told them the exact type of system they needed. They would need to follow their guidelines, restrictions, and requirements. The new property water access could either be from Town water or an existing well already onsite. They had talked to the Humboldt Water Department to inquire about the feasibility of hooking to Town water and using the well water for irrigation, but no decision had been determined. They would abide by any decisions made for water.

**Commissioner Wyatt** explained that his comments about opening the code to include any future development of RV Parks in no way reflected on Ms. Kutsick's efforts at the existing park and he thought they were commendable. He supported free enterprise and if she wanted to expand her business, he had no objection to that. His objection was only about opening the Town to future development that they may not want.

**Jason Chisholm** stated he lived on property adjacent to the subject parcel. He wanted to correct Ms. Kutsick. 'The Town did not have a water company; it was a privately held business. It was Humboldt Water Systems, Inc. There was an existing Town Code that did not allow for a privately held existing well to be used for new development. The egress and ingress were across R1-10 property for the commercial property, and it was between several R1-10 residential properties. He questioned if the other parcels that Ms. Kutsick owned, 402-08-006 and 402-08-007 zoned RS-10, would have their zoning changed. He questioned why she wanted to rezone the subject parcel to commercial when the others were RS-10.

**Ms. Kutsick** explained that the front two parcels were considered a non-conforming use, so they were asking for the commercial usage be written into the code to allow for the usage. There was nothing in the code that allowed for this type of use. She stated she was aware it was a private water company and rules about the use of the existing well, which was why she suggested it be used for irrigation purposes.

**Jason Chisholm** stated that Ms. Kutsick had proposed to do the same thing years prior and it had been denied. She had stated it was going to cost too much money so she would not pursue it.

**Ms. Kutsick** stated that was not correct. They had sent out letters and had a meeting, but it had not been done officially through the Town. They had not decided they were not going to do the project but was instead put on hold. They decided to go through the process so that they could be in compliance with Town code.

**Jason Chisholm** stated that the setbacks for a site-built home near a wash was 24-feet as determined in the code by where the water flowed, which was on his grandfather's property. For the subject parcel, it would put it 28-feet back from the wash.

**PC Brown** stated that the setbacks Mr. Chisholm referred to were under the County Flood Control. They would need to review any plans and work on the property, and they would control flood plains and setbacks. The placement of the septic system was currently unknown. Chair Hambrick stated that the applicant would need to meet all requirements for development including flood control and septic.

**Jason Chisholm** stated that the Commission was trying to rezone a parcel to a commercial zone that sat between two residential properties.

**Ms. Kutsick** stated that the parcel directly in front of the subject parcel was owned by her. There was one more residential property in front of her property and then the remaining five parcels were zoned commercial and across the highway was all C2 zones. Mr. Chisholm said all the surrounding parcels were all R1-10 or RS-10 and none were commercial. Ms. Kutsick stated that across the street and one parcel up was commercial zoning.

**Ms. Anderson** stated that there had been a letter to the Council regarding this and she had not heard that letter read. The Commission clarified that the letter had been read. She had heard that there were a lot of positive feelings toward Ms. Kutsick for the work she had done, however it still went to the same picture. Everyone knew what the park and the area had looked like before. Allowing it to go forward, would devalue the property. Two years from now it could be sold and managed differently than how Ms. Kutsick had planned to run it. It was about profit. They had opposed this in the past because it would devalue their family's property. The biggest impact would be against her father's property. This was a business issue, not a personal issue. She thought it should be voted down.

**Jason Chisholm** questioned if the rezone were approved to allow for the RV Park, where the septic system would be placed and would it tie into the existing trailer park. Ms. Kutsick stated it would not be tied into the existing park and that they hired an engineer to work with the County on the regulations to determine the location and type of septic needed. They were aware of the regulations and restrictions, and they would not make any decisions themselves. Everything was determined by the County.

### 3. Close Public Hearing

**Chair Hambrick** closed the public hearing.

**4. Council Discussion and Possible Legal Action**

**Chair Hambrick** explained that typically people only had the opportunity to speak once and had a three-minute time limit. Because of the pandemic circumstances, he did not feel the need to limit the public comments. He stated that any recommendation for or against an item would be sent to the Council for consideration. The Council would make the final decision.

**Chair Hambrick** questioned how many parcels surrounding the subject property did she send letters to and how many comments did she receive. Ms. Kutsick explained that the Town had sent out multiple letters within a 300-foot radius with the planning information. PC Brown stated that approximately 30-letters had been sent out and some properties had the same ownership that was listed differently, and letters were sent to both listed owners. They received only the letters that had been read into the record. Ms. Kutsick stated that many of the responses had been given directly to her. She received four letters that were not residents or businesses, all positive.

**Chair Hambrick** made a motion that a recommendation be sent to the Council to approve the rezoning of Assessor’s Parcel (APN) 402-08-059H located at 12864 E. Kloss Avenue, from R1- 10 (Residential; Single-Family) to C2 (Commercial, General Sales and Services), seconded by Vice Chair Siereveld.

**Chair Hambrick** stated the Council could take a deeper look and take the General Plan into consideration as well. He stated that there seemed to be more people that supported the rezone than there were people who opposed it.

**Roll call vote on motion,** moved by Chair Hambrick that a recommendation be sent to the Council to approve the rezoning of Assessor’s Parcel (APN) 402-08-059H located at 12864 E. Kloss Avenue, from R1- 10 (Residential; Single-Family) to C2 (Commercial, General Sales and Services), seconded by Vice Chair Siereveld.

Commissioners Mario Manzo - aye, Darrell Wyatt – No, Vice Chair Jeff Siereveld – aye, and Chair Victor Hambrick - aye. Motion passed 3-1.

**11. Adjourn**

**Chair Hambrick** adjourned the meeting at 8:26 p.m.

\_\_\_\_\_  
Victor Hambrick, Chair

ATTEST: \_\_\_\_\_  
Beth Evans, Interim Town Clerk

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**TOWN OF DEWEY-HUMBOLDT  
PLANNING & ZONING ADVISORY COMMISSION  
REGULAR MEETING MINUTES  
JANUARY 7, 2021, 6:00 P.M.**

**A REGULAR MEETING OF THE DEWEY-HUMBOLDT PLANNING & ZONING ADVISORY COMMISSION WAS HELD ON THURSDAY, JANUARY 7, 2021, AT TOWN HALL AT 2735 S. STATE ROUTE 69, DEWEY-HUMBOLDT, ARIZONA.**

1. **Call To Order** Chair Hambrick called the meeting to order at 6:00 p.m.
2. **Roll Call** Commissioners Sue Jakubec, Mario Manzo, Lon Ullmann, Vice Chair Jeff Siereveld and Chair Victor Hambrick were present. Commissioner Darrell Wyatt was absent.
3. **Pledge of Allegiance** Vice Chair Siereveld led the Pledge of Allegiance.
4. **Informational Reports**  
No reports
5. **Planner's Update on Current Events and Activities**  
No reports
6. **Consent Agenda**
7. **Public Comment on Non-agendized Items**
8. **Public Hearing Agenda**

**A. Conduct Public Hearing and consider a proposal Ordinance 21-157 amending the Code of Dewey-Humboldt, Arizona by adopting a new Section 153.209 through 153.214 relating to the prohibiting of recreational marijuana; establishing a purpose; setting forth definitions; prohibiting marijuana on public property; prohibiting marijuana establishments and/or marijuana testing facilities; establishing regulations for personal use at an individual's primary residence; setting forth violations; and providing for enforcement and penalties.**

**1. Staff Report**

**Planning Consultant Brown** reported that State Measure 123-2020, The Smart and Safe Arizona Act or Proposition 207, passed on the November 3, 2020, General Election. It authorized the possession, consumption, purchase, processing, manufacturing, or transporting of marijuana by individuals at least 21-years or older. It authorized the possession, transport, and cultivation while processing marijuana in the primary residence by adults 21-years or older. It allowed non-profit medical marijuana dispensaries to apply with the State Department of Health to become a licensed marijuana establishment authorized to engage in retail sales and cultivation of marijuana and allowing the department or other designated agency to become a marijuana testing facility to test the marijuana potency and detect any harmful contaminants.

Proposition 207 authorized marijuana establishments to use chemical extraction or chemical synthesis to extract marijuana concentrate. This posed a threat to the health, safety, and security of the community and increased the law enforcement responsibilities and the increased the responsibilities of other Town departments who respond to violations, including building, electrical, and fire codes. Proposition 207 provided authority to Towns to either prohibit or regulate recreational marijuana within the Town.

The Town Council was seeking a review from the Planning Commission and a public hearing for Ordinance 21-157, adding a new section to the Town zoning code Section 153.209 through 153.214, which would prohibit marijuana on public property, prohibit marijuana establishments and testing facilities, established regulations for personal use at an individual's primary residence, set forth violations and provided for enforcement and penalties.

Staff had assessed that no direct financial impact was expected. Staff was seeking a recommendation from the Commission to the Council to either approve or deny Ordinance 21-157.

**2. Open Public Hearing and Receive Public Comments**

The public hearing was opened, and no public comment was made.

**3. Close Public Hearing**

The public comment period was closed.

**4. Commission Discussion and Possible Recommendation and other legal action**

**Commissioner Ullmann** thought it was a good ordinance and thought the Commission should support it.

**Commissioner Ullmann** made a motion to recommend approval to the Town Council to accept a proposal Ordinance 21-157 amending the Code of Dewey-Humboldt, Arizona by adopting a new Section 153.209 through 153.214 relating to the prohibiting of recreational marijuana; establishing a purpose; setting forth definitions; prohibiting marijuana on public property; prohibiting marijuana establishments and/or marijuana testing facilities; establishing regulations for personal use at an individual's primary residence; setting forth violations; and providing for enforcement and penalties, seconded by Commissioner Manzo.

Roll call vote on motion: Commissioner: Sue Jakubec - aye, Mario Manzo – aye; Lon Ullmann – aye; Vice Chair Jeff Siereveld- aye and Chair Victor Hambrick – aye. Motion passed 5-0.

**9. Adjourn**

Chair Hambrick adjourned the meeting at 6:17 p.m.

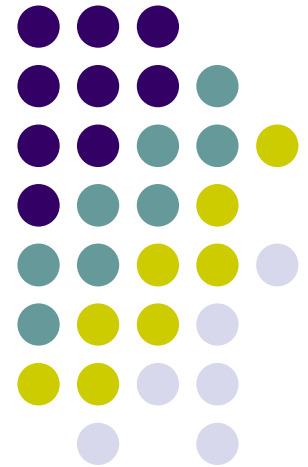
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Victor Hambrick, Chair

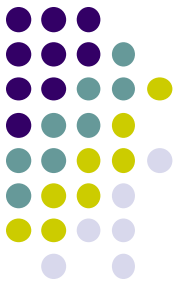
ATTEST: \_\_\_\_\_  
Beth Evans, Interim Town Clerk

# Town of Dewey- Humboldt

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## Planning and Zoning Advisory Commission Training

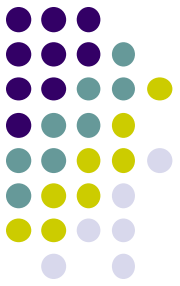




# Introduction

Town Code Section 31.21:

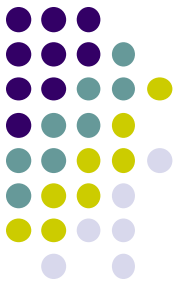
- Council appoints 9 members of the Commission.
- Must be residents of the Town.
- Must meet at least quarterly or at the request of Mayor, a Councilmember or an applicant.
- Robert's Rules of Order generally apply at meetings.



# Introduction

Subject to:

- Open Meeting Law
- Conflict of Interest Laws
- Public Records Laws



# General Plan

- Required for every municipality in the State.
- Comprehensive, long-range plan for development of the Town.
- Must be updated or re-adopted every 10 years.
- No election required for Dewey-Humboldt.

# General Plan



Citizen Participation – Prior to formal public hearing

- Opportunity for public to provide comments prior to the public hearing.
- Staff conducts public meeting and prepares report.  
Must include:
  1. Results of citizen participation effort prior to the notice of public hearing.

# General Plan



2. Details of techniques used to involve the public (date/locations of meetings, mailings, dates/numbers of mailings, to whom sent, number of people who participated).
3. Summary of concerns, issues, problems expressed (description of issues, how they might be addressed, why they cannot be addressed).





# General Plan

- Commission must hold one public hearing.
- Notice of time and place of hearing and availability of studies/summaries must be published at least 15 days and not more than 30 calendar days before the hearing.
- Publication at least once in a newspaper of general circulation published or circulated in the Town.
- Such other manner in addition to publication as the Town may deem necessary or desirable. For example, on the Town's website.

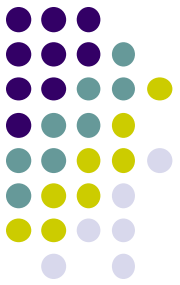
# General Plan



At public hearing:

- Staff report (including Citizen Participation report)
- Consideration of recommendations from:
  - Yavapai County Planning Agency
  - Contiguous municipalities
  - The regional planning agency
  - State agencies responsible for general planning for the State.

# General Plan



At public hearing (cont):

- Consideration of Citizen Participation report.
- Open public hearing
- Public comment
- Close public hearing
- Commission discussion
- Commission adopts written recommendation and forwards to Council

# Zoning Code Amendment

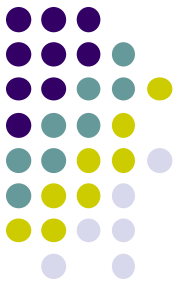


- Proposed changes must first be initiated by Commission, the Town Council or by petition and application of property owners.
- Citizen Participation Process – same as for General Plan.
- Public hearing - Commission must hold one public hearing.

# Zoning Code Amendment

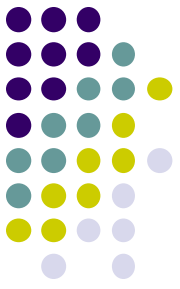


- Notice of public hearing: Include time and place of hearing and a general description of the proposed amendment.
- Publish at least 15 days before the hearing.
  - Publication at least once in a newspaper of general circulation published or circulated in the Town.
  - Such other manner in addition to publication as the Town may deem necessary or desirable. For example, on the Town's website.



# Zoning Code Amendment

- Special notice requirements if amendment would result in:
  - 10% or more increase/decrease in number of square feet or units that may be developed.
  - An increase or reduction in the allowable number of stories of buildings.
  - A 10% or more increase or decrease in setback or open space requirements.
  - An increase or reduction in permitted uses.
- Notice must be published by “display ad” covering not less than 1/8 of a page.



# Zoning Code Amendment

At public hearing:

- Staff report (including Citizen Participation report)
- Consideration of Citizen Participation report
- Open public hearing
- Public comment
- Close public hearing
- Commission discussion
- Commission adopts written recommendation and forwards to Council within 60 days. Must include reasons for the recommendation.

# Rezoning Property



- Citizen Participation process applies, except that applicant submits Citizen Participation plan, conducts the Citizen Review meeting and prepares the report.
- Notice of public hearing is the same as for a Zoning Code text amendment, except:
  - There must be a notice of the public hearing posted on the property being rezoned at least 15 days prior to public hearing.
  - Notice must be posted in at least 2 places, with 1 notice for each ¼ mile of frontage.
  - Notice mailed to owners within 300 feet. Mailed notice must include how the owners may file approvals or protests of the proposed rezoning, and notice of legal protest rights.





# Rezoning Property

- In rezonings that abut another municipality or the county, notice must be sent to that municipality or county.
- In rezonings not initiated by the property owner, notice by first class mail to each real property owner is required and all property owners within 300 feet of the property to be rezoned. Ownership is based on last assessor's list.
- If application is denied, Commission may refuse similar application for 12 months.

# Conditional Use Permits



- Applications for conditional use permits follow the same process as rezoning applications.
- Commission holds public hearing and forwards written recommendation to Council.

# Questions?



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Agenda Item 8.B.

# Arizona Open Meeting Law

## **Town of Dewey-Humboldt**

**August 5, 2021**

**Kay Bigelow  
Bigelow Law Offices, PLC**

GUST  
ROSENFELD P.L.C.  
SERVING ARIZONA SINCE 1921



# Updates Required Because ...

- 2018 legislation – “meetings” and minutes
- Updated Arizona Attorney General Handbook released

# Important Definitions

**"Public body"** includes:

- City and town councils
- Boards and commissions of the city or town
- All corporations and other instrumentalities whose boards of directors are appointed or elected by the city or town council
- All quasi-judicial bodies of the city or town
- Standing, special or advisory committees or subcommittees of the city or town



# Important Definitions

## **Advisory committee or subcommittee:**

Any entity that is **officially established, on motion and order of the city or town council** or by the **mayor**, and whose members have been appointed for the specific purpose of making a **recommendation** concerning a decision to be made or considered or a course of conduct to be taken or considered by the council.

# Important Definitions

**“Meeting”** means the **gathering**, in person or through technological devices, of a **quorum** of members of a **public body** at which they **discuss, propose or take legal action**, including any deliberations by a quorum with respect to such action.

# Important Definitions

Under a 2018 amendment, “**meeting**” includes:

- A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action.
- An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action.

# Important Definitions

**"Legal action"** means a **collective decision, commitment or promise** made by the council pursuant to the constitution, or specified scope of appointment and the laws of this state.

# Training Materials

- Town clerk must conspicuously post open meeting law materials prepared and approved by the attorney general on the website.
- A person elected or appointed to a public body shall review the open meeting law materials **at least one day before the day that person takes office.**

# Avoiding Open Meeting Law Violations

## *Attending by Telephone*

Participation by technological devices is acceptable if the public is able to hear the person and the person on telephone is able to hear everyone at the meeting.

# Avoiding Open Meeting Law Violations

## *Agendas and Notices*

- “Conspicuously post” on the Town website or on the website of an association of cities and towns a statement indicating the physical and electronic locations where meeting notices will be posted.
- Post all meeting notices on the Town website or on a website of an association of cities and towns.
- Provide additional notice as is “reasonable and practicable”.

# Avoiding Open Meeting Law Violations

## *Agendas and Notices*

- Post notice of the meeting at least 24 hours before the meeting, including Saturdays if the public has access to the notice. It excludes Sundays and holidays.
- Exception: Emergency meetings – rare. Usually not justified under the Open Meeting Law.



# Avoiding Open Meeting Law Violations

## *Agendas and Notices*

- Date, time and place of meeting.
- Agendas must list the specific matters to be discussed, considered or decided at the meeting.
- Action may only be taken, discussed or considered on listed items.

# Avoiding Open Meeting Law Violations

## *Council/Town Manager Reports on Current Events*

The Council and Town Manager may present a brief **summary of current events** without listing on the agenda the specific matters to be summarized, if:

1. The agenda includes that there will be a summary (report) of current events. Not necessary to list items reported on.
2. The Council does not **propose, discuss, deliberate or take legal action** at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

# Avoiding Open Meeting Law Violations

## *Council/Town Manager Reports on Current Events*

- May only be given by members of the Council and Town Manager.
- Town Manager may not delegate to a staff member
- Reports on current events must truly be about current events – no proposals or department reports.

# Avoiding Open Meeting Law Violations

## *Council/Town Manager Reports other than Current Events*

- May include department head reports on agenda.
- Must list the items department head will report on.
- No generic “Sheriff’s Department Report” or “Public Works Department Report” without listing items to be reported on.

# Avoiding Open Meeting Law Violations

## *Call to the Public*

A.R.S. § 38-431.01 H permits a “**call to the public**” on the agenda on matters within the public body’s jurisdiction. Councilmembers are limited to:

- Responding to criticism.
- Asking staff to review a matter.
- Asking that a matter be put on a future agenda.

The Council “**shall not discuss or take legal action** on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.”

# Avoiding Open Meeting Law Violations

## *Meeting Minutes*

Cities/towns with a population of more than 2,500 shall:

- Post legal actions of the Council and boards/commissions taken or any recording on its website within **three** working days.
- Post approved meeting minutes of the Council on its website within **two** working days following approval.

# Avoiding Open Meeting Law Violations

- The OML now requires that minutes of the public body include the following:
  1. An accurate description of all legal actions proposed, discussed or taken.
  2. **A record of how each member voted.**
  3. The names of the members who propose each motion.
  4. The names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.
- Minutes must remain on website one year.

# Avoiding Open Meeting Law Violations

## *Subcommittee/Advisory Committee Minutes*

Subcommittees/advisory committees of cities/towns with a population of more than 2,500 shall take written minutes or record meetings and within **ten** working days post a statement describing any legal action or post any recording of the meeting.



# Special Traps

## *Circumventing the Open Meeting Law*

The open meeting law specifically states that a member of a public body may not knowingly instruct staff to communicate in violation of the law.

# Special Traps

## *Proposing “Legal Action”*

- Attorney General position – Carefree case
- “Discussion” is not necessary to create a violation
- If a quorum is present, a member may not “propose” legal action, even if there is no discussion with the other Councilmembers

# Special Traps

## *Serial Meetings*

It is not necessary for a public body to communicate simultaneously in order for a meeting to occur. A **series** of gatherings of less than a quorum **MAY** constitute a meeting if city/town business is discussed.

This means that if a councilmember talks to two other councilmembers about Town business and then one of those talks to another Councilmember about the same thing, a meeting has taken place.

# Special Traps

## *E-Mail*

When you use e-mails to discuss town business, care must be taken not to violate the Open Meeting Law. E-mails can easily create a meeting.

- An e-mail to a quorum of the Council proposing legal action.
- An e-mail exchange of facts and/or opinions if it is foreseeable that the topic may come before the Council for action.
- Forwarding or responding to e-mails involving a majority of the Council — *be careful of chain e-mails.*

# Special Traps

## *E-Mail*

EXAMPLE: E-mail discussions about Town business between less than a quorum of the members that are forwarded to a quorum by a Councilmember would violate the Open Meeting Law.

# Special Traps

## *E-Mails*

**EXAMPLE:** If a staff member or a member of the public e-mails a quorum of members and there are no further e-mails among the members, there is no Open Meeting Law violation.

# Special Traps

## *E-Mails*

**EXAMPLE:** A Councilmember may e-mail staff and a quorum of the Council proposing that a matter be placed on a future agenda. Proposing that the Council have the opportunity to consider a subject at a future public meeting, without more, does not violate the Open Meeting Law:

**Caution: Do not propose legal action or discuss the merits of the topic!**

# Special Traps

## *E-Mails*

EXAMPLE: A Councilmember may copy other members on an e-mailed response to a constituent inquiry without violating the Open Meeting Law because this unilateral communication would not constitute discussions, deliberations, or taking legal action by a quorum.



# Special Traps

## *E-Mails*

EXAMPLE: An e-mail request by a Councilmember to staff for specific information does not violate the Open Meeting Law, even if the other members are copied on the e-mail. **Staff** may reply to all as long as that response does not communicate **opinions** of other Councilmembers. However, if **members** reply in a communication that includes a quorum, that would violate the Open Meeting Law.

# Special Traps

## *E-Mails*

**EXAMPLE:** A Councilmember may send an article, report or other factual information to the other members or staff with a request to include this in the Council's agenda packet. The agenda packet may be distributed by e-mail. Councilmembers may not discuss the factual information with a quorum through e-mail.

# Special Traps

## *Social Media*

- Facebook
- Twitter
- Nixle
- YouTube
- LinkedIn
- Flickr



# Special Traps

## *Social Media*

- A.R.S. Section 38-431.09B: Not a violation if a councilmember expresses an opinion/discusses an issue with the public at a council meeting, personally, through the media or other form of public broadcast communication or through technological means if:
  1. The opinion or discussion is not principally directed at or directly given to another councilmember.
  2. There is no concerted plan to engage in collective deliberation to take legal action.

# Special Traps

## *Social Media*

NEVERTHELESS: Councilmembers should not post/comment on each other's website or the Town website where those comments could be interpreted as proposing legal action or discussion or deliberation/decisions on Council issues. These types of postings would violate the Open Meeting Law because they would be "meetings".

# Special Traps

## *Quorum Not Discussing Business*

It is **not** a violation of the Open Meeting Law when there is a gathering of a quorum of the Council to discuss matters not related to Town business:

- A son's wedding.
- Your vacation.
- A birthday party or social dinner.
- Last night's Diamondback's game.

**BUT DON'T TALK ABOUT TOWN BUSINESS!**

# Executive Sessions

- The Open Meeting Law allows some discussions about Town business to take place outside a public meeting.
- The agenda for an executive session must state the specific provision of law authorizing the executive session and a general description of the matter.

# Executive Sessions

- Majority of the quorum must vote in a public meeting.
- Admonition that the business conducted in executive sessions is confidential.
- Just because an executive session discussion is authorized does not mean it is required to be in executive session.



# Executive Sessions

## *Who May Attend?*

- Members of the Council.
- Persons subject to a personnel discussion.
- Individuals whose presence is reasonably necessary for the public body to carry out its executive session responsibilities.
- Auditor general.

# Executive Sessions

## *Purposes*

**Employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee.**

# Executive Sessions

- Must give 24 hours' written notice to the person being discussed.
- The person may demand that the discussion be held in public meeting (except for salary discussions).
- The person does not have a right to be in executive session, but may be invited to attend.

# Executive Sessions

- Permits a discussion concerning specific officers, appointees and employees.
- Does not permit discussions of process. For example, a discussion of the process for selecting a town manager (unless there is a legal issue and legal advice is needed – rare).

# Executive Sessions

## *Purposes*

### **Discussion for legal advice with the Town Attorney.**

- Must be attorneys for the Town, not lawyers for someone else.
- May not discuss the merits of a decision the Council may make.

# Executive Sessions

- The mere presence of the attorney is not sufficient. The discussion must be for the purpose of obtaining legal advice.
- Discussion by the Council about what action should be taken is beyond the realm of legal advice.

# Executive Sessions

## *Purposes*

**Discussion with the attorneys to consider and instruct regarding contract negotiations, pending or contemplated litigation, or settlement discussions to avoid or resolve litigation.**

# Executive Sessions

## *Purposes*

**Discussion to consider and instruct on negotiations for purchase, sale or lease of real property.**



# Executive Sessions

- Does not authorize the Council to invite a property owner into executive session.
- May reach a consensus on what instruction is to be given to the Town's representative.
- May not choose a specific site in executive session.

# Executive Sessions

Minutes and discussions are confidential except from:

- Members of the public body.
- Officers, appointees, employees who were the subject of discussion.
- Auditor general in connection with an audit.

# Executive Sessions

- County attorney or attorney general investigating a violation of the open meeting law.
- City Auditor.

# Violations of the Open Meeting Law – Ratification?

- Must take place at a public meeting within 30 days after violation is discovered or should have been discovered.
- Notice must include description of the action to be ratified, a clear statement that the Council proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action.

# Violations of the Open Meeting Law – Ratification?

- Must make available to the public detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the Council that preceded and related to such action.
- Must make available to the public the notice and detailed written description required by this section at least 72 hours before the public meeting.

# Violations of the Open Meeting Law – Ratification?

- Ratification is effective as of the date the original action was taken.
- The March 21, 2017 “ratification” of the February 21 action did not follow the statutory requirements; therefore, the action was effective on March 21.

# Violations of the Open Meeting Law

What happens if there is a violation of the Open Meeting Law?

- Any actions taken are NULL and VOID.
- The Attorney General's Open Meeting Law Enforcement Team or the County Attorney launches an investigation upon receipt of a complaint.

# Violations of the Open Meeting Law

- If a violation is found, possible penalties are:  
(i) \$500/day civil penalty; (ii) removal of the officer who violated the law; (iii) officer assessed with all costs awarded to the plaintiff.
- The Town may **not** spend public monies for legal counsel to defend the officer.



# Questions?

