

**THE PLANNING & ZONING ADVISORY COMMISSION
FOR THE TOWN OF DEWEY-HUMBOLDT
REGULAR MEETING NOTICE
Thursday, July 9, 2015 6:00 P.M.**

**P&Z MEETING
2735 S. HWY 69**

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

AGENDA

The issues that come before the Planning & Zoning Advisory Commission are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Commission believes that the meeting be a safe place for people to speak. With this in mind, the Commission 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 meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A quorum of Council may be present. 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 Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. **Call To Order.**
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.**
3. **Roll Call.** Commissioners Joe Garcia, Victor Hambrick, Jeff Siereveld, Ruth Szanto, Vice Chair Dee Parker and Chair Barry Smylie.
4. **Disclosure of Ex Parte Contacts.**
5. **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.
6. **Planner's Update on current events and activities.** No discussion, deliberation or legal action can occur.
 - 6.1. **Staff Report.** Pending topics under review by Staff and/or Town Council which may be of interest to Planning and Zoning.
7. **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.
 - 7.1. **Minutes.** Minutes from the May 7, 2015 Planning & Zoning Regular Meeting.
8. **Discussion Agenda –New Business.** Discussion and Possible Action on matters not previously presented to the Commission.
 - 8.1. **Open Meeting Law refresher.** Town Clerk, Judy Morgan to give informational presentation.

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8.2. Review and discussion of P&Z roles and the items of the agenda template. Possible removal, addition or modification of the agenda items to the extent allowed by State and local regulations.

8.3. Discussion on the possible impacts to the Town by operation of remote controlled unmanned aerial vehicles, commonly referred to as Drones, within residential areas, and whether to consider addressing this subject matter further. (Requested by Chair Smylie)

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

9.1. Discussion and possible recommendation to request a mid-year joint study session with Town Council to further refine the goals and objectives of the Commission and possibly update the task list for P&Z Commission, from the Council. (Requested by Chair Smylie)

10. Public Hearing Agenda.

THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.

11. Comments from the Public. 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. At the conclusion of Comments from the Public, Commissioners may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Commissioners are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is **20** minutes. A 3-minute time limit may be imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.

12. Adjourn.

For Your Information:

Next Town Council Work Session: Tuesday, July 14, 2015 at 2:00 p.m.

Next Town Council Meeting: Tuesday July 21, 2015 at 6:30 p.m.

Next Planning & Zoning Commission Meeting: Thursday, August 6, 2015 at 6:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the ____ day of _____, 2014, at ____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: _____, Town Clerk's Office.

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

**TOWN OF DEWEY-HUMBOLDT
PLANNING AND ZONING ADVISORY COMMISSION
REGULAR MEETING MINUTES
MAY 7, 2015, 6:00 PM**

A REGULAR MEETING OF THE DEWEY-HUMBOLDT PLANNING AND ZONING COMMISSION WAS HELD ON THURSDAY, MAY 7, 2015, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. VICE CHAIR SMYLIE PRESIDED.

1. **Call To Order.** Meeting was called to order at 6:00 PM. Vice Chair Barry Smylie presiding.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Done
3. **Roll Call.** Commissioners Joe Garcia, Dee Parker, Jeff Siereveld and Vice Chair Barry Smylie were present. Commissioner Victor Hambrick and Ruth Szanto were absent.
4. **Disclosure of Ex Parte Contacts.** None
5. **Informational Reports.** None
6. **Planner's Update on current events and activities.** None
7. **Consent Agenda.**
 - 7.1. **Minutes.** Minutes from the April 9, 2015 Planning & Zoning Regular Meeting.

Commissioner Dee Parker made a motion to approve the meeting minutes from the April 9, 2015, Planning and Zoning Regular Meeting as presented, seconded by Commissioner Joe Garcia. It was approved unanimously.
8. **Discussion Agenda –New Business.** Discussion and Possible Action on matters not previously presented to the Commission.
 - 8.1. **Report of 2009 Citizen Survey.** Discussion and possible action for determining possible questions to be placed on a future survey regarding animal and/or other issues pertaining to the Planning and Zoning Commission.

Vice Chair Smylie spoke about the 2009 Survey and requested direction from staff for ideas of survey questions.

Commissioner Dee Parker spoke about concerns regarding the request of personal information such as age and sex on the questionnaire. Does not feel this information should be on the survey. Would like to see this removed.

Commissioner Garcia spoke about the intent for the P&Z Commission input is to address the issues involving the animal codes. Get feedback from the community about their thoughts on the number of animals per lot.

Vice Chair Smylie spoke about recent issues involving controversy and recommendations made by the commission for the council. These are items which need to be looked at for the survey. Questioned about timeline of when the next survey may be done.

Commissioner Parker spoke about the Commission's responsibilities as an advisory board; Commission is responsible for representing the Town and the survey will help in determining how the Town wants to grow.

Vice Chair Smylie spoke about having relevant topics on the survey; adequate planning and zoning defines the texture and the culture of the town; good opportunity to develop frame work for a blue print; requested to re-visit item 8 on the next agenda and requested members of the

Planning and Zoning Commission Regular Meeting Minutes, May 7, 2015
commission to come up with ideas for questions to recommend for the survey, wanting items to be relevant to current issues. Mr. Smylie asked staff about the status of the animal code issues and what the next step is for the Commission.

Administrative Assistant Penney Bell spoke about that item not being agenzized for this meeting and suggested reviewing the minutes from the February 5th, P&Z meeting.

Vice Chair Smylie read aloud the minutes to provide a recollection of the meeting. He will send an outline to staff on proposed future agenda items related to the animal code, recommending it would be helpful to re-visit where P&Z is at and what the next step is.

9. Discussion Agenda – Unfinished Business.

9.1. Nomination and Appointment of Chairperson and Vice Chairperson of Commission for a 1-year term.

Vice Chair Smylie requested Commission members make nomination(s) for appointment or table the item due to the absence of Commissioners Hambrick and Szanto. Mr. Smylie provided the Commission with the verbal recommendations from Victor Hambrick and Ruth Szanto which were authorized to present by Vice Chair Smylie in their absence.

Commission Garcia requested to move forward with the nominations due to having the recommendations of the absent members.

Vice Chair Smylie asked members for their thoughts on nominations.

Commissioner Garcia and Siereveld declined nominations for either position. Commissioner Parker agreed to accept Vice Chair if nominated.

Commissioner Garcia made the motion to approve the nomination of Barry Smylie for Chair and Dee Parker for Vice Chair. Seconded by Jeff Siereveld. Motion passed unanimously.

10. Public Hearing Agenda. None.

11. Comments from the Public.

Victoria Wendt spoke on bringing the animal code issues to a close; questioned the commission about questions they might consider for the survey and suggested including a question about having an animal advisory committee to help the town deal with animal complaints, with the committee acting as a buffer to assist with animal related issues; bring the public in to see what they want from the town; thanked the commission for the work they do for the town.

Ulys Brooks spoke about the Commission’s need to attend the Council meetings; supported an animal advisory committee; Commission should consider questions for the survey they feel are necessary and not benchmark with other towns.

Chair Smylie spoke in support of an Animal Advisory Committee, but not sure where to start or how this would work, appreciates the courage and the desire to do this.

12. Adjourn. The meeting was adjourned at 6:59 PM.

Barry Smylie, Vice Chairman

ATTEST:

Penney Bell, Administrative Assistant

Arizona's Open Meeting Law

What is the open meeting law?

Set of laws that were intended to:

- Maximize public access to the governmental process.
- Open deliberations and proceedings to the public.
- Prevent public bodies from making decisions in secret.
 - Found at A.R.S. §§ 38-431 through -431.09.

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Enforcement Authority

- Arizona Attorney General's Open Meeting Law Enforcement Team (OMLET)
 - Investigate complaints
 - Enforcement authority
 - Arizona Agency Handbook, Chapter 7 (Revised July 2010)
 - Available online: www.azag.gov
- County Attorney's Office
- The Courts

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Who Must comply?

- “Public Bodies” – A.R.S. § 38-431(6)
 - All councils, boards, commissions of the state or political subdivisions
 - Multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions
 - Includes corporations or other instrumentalities whose boards of directors are appointed or elected by state or political subdivision

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The definition also includes...

- Standing committees
- Special committees
- Advisory committees
- Subcommittees
 - of or appointed by the public body

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What Must a Public Body Do?

- Provide notice
- Have an agenda
- Meet in public
- Permit public to attend
 - Exception: authorized executive sessions
- Take all action in public
- Prepare meeting minutes

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What is a Meeting?

- A.R.S. § 38-431(4)
- “Meeting” is a **gathering**, in person or through technological devices
- of a **quorum** of a public body
 - Discuss
 - Propose
 - Deliberate
 - Take legal action

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The Agenda

A.R.S. § 38-431.02(H)

- Must list the specific matters to be:
 - discussed,
 - considered or
 - decided
- Must include information reasonably necessary to inform the public
- All discussion must be reasonably related to an adequately described agenda item.

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Common Agenda Problems

- Using language a regular person would not understand
 - Legalese
 - Acronyms (without first spelling it out)
 - Agency slang
- Using general categories without details
 - “New Business”
 - “Old Business”
 - “Personnel”
 - “Reports”

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Current Events – A.R.S. § 38-431.02(K)

- Chief administrator, presiding officer or a member of a public body may present a **brief** summary of **current events** without listing in the agenda the specific matters to be summarized
- **provided that**
- “Current Events” is an **agenda item**
- & public body does not propose, discuss, deliberate or take legal action

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If it's not on the agenda...

- You cannot discuss it!
- New items must wait for a future meeting.



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Public's Rights

- Attend
- Listen
- Tape record
- Videotape



Note: Public body cannot require attendees to identify themselves or sign in (**unless they are making a presentation**)

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Public has NO Right to:

- Speak
- Disrupt



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Calls to the Public

A.R.S. § 38-431.01(H)

- Optional (unless required by other laws)
- Time, manner, place restrictions
 - Can limit time (egg timer)
 - Ban Repetition
 - May require speakers on the same side with no new comments to select spokesperson
 - prohibit disruptive behavior



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Common Pitfall of Calls to the Public

- Discussing matters not listed on the agenda.
- If it's not an agenda item, public body's response is limited to:
 - Direct staff to study the matter
 - Ask that a matter be placed on a future agenda
 - Respond to criticism

Note: These three responses must take place at the **conclusion** of the call to the public!

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Meeting Etiquette

- Asking for trouble:
 - Passing notes, texting, e-mailing (even if it's about when to order lunch)
 - Whispering to fellow board members
 - Quorum talking with individuals before the meeting officially starts or after the meeting officially ends.

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Content of Public Meeting Minutes

1. Date, time and place of meeting
2. Members present & absent
3. General description of matters considered
4. Accurate description of legal action
5. Names of members who propose each motion
6. Names of persons, as given, making statements or presenting material to the public body; and
7. A reference to the legal action about which they made statements or presented material

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Subcommittees and Advisory Committees

- A.R.S. §§ 38-431(6), 38-431.01(B) and (E)(3)
- Subcommittees and advisory committees must:
 - Take written minutes or record all meetings, including executive sessions
 - Within 10 working days of the meeting, **subcommittee or advisory committee of a city or town with a population of 2,500 or more** must:
 - Post a statement describing any legal action or
 - Post any recording of a public meeting

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Circumvention



- Cannot use any device to circumvent the law.
- “Splintering the quorum”:
 - Serial communications (verbal, written, electronic, etc.)
 - Meeting with individual members and then reporting what others said with enough to constitute a quorum
 - Polling the members

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Serial Communications - May Violate OML

- Going from one person to the next, sharing communications would violate OML
 - *Arizona Agency Handbook* § 7.5.2



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Non-verbal Serial Communications

- Letters - series of **letters** from one member to the next would violate OML
- E-mail – occurring at different times will still constitute a “meeting” in violation of the OML
 - Simultaneity is not required for there to be a “meeting”

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Attorney General Opinion I05-004: E-mail

- Attorney General's website www.azag.gov
- Board members cannot use e-mail to circumvent the OML
- Cannot use e-mail among a quorum to:
 - Propose legal action
 - Discuss legal action
 - Deliberate on legal action
 - Take legal action

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E-mail Communications

- E-mail communications are treated the same as any other form of communication between board members.
- E-mails exchanged among a quorum of the Board that involve discussion, deliberations, or taking legal action on matters that may come before the Board constitute a meeting and thus violate the open meeting law.

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For example:

- You have a 5 member board
- One member sends an e-mail to 2 members and there's a response shared among all 3
- You now have a discussion among three members = a quorum
- Violation

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Facts vs. Opinion?

- There is **no distinction** between discussing facts vs. discussing opinions among a quorum
- Deliberation = “collective acquisition and exchange of facts preliminary to a final decision”
- Therefore, 2-way discussion of facts (among quorum) regarding potential board business = violation

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Staff E-mail

- Staff may send e-mail to board members.
- Passive receipt of information from staff, without more, does not violate the open meeting law.
Example: board packets
- Staff may NOT send opinion or substantive communication about board business from a board member to enough other members to constitute a quorum.

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Prohibited 1-Way Communication

- A single board member may violate the OML if they propose legal action among a quorum outside a properly noticed meeting
- “Propose” – means “to put forward for consideration, discussion, or adoption.”
- It only takes 1 person to propose legal action
- CANNOT propose legal actions outside of a noticed meeting

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Proposing an Agenda Item?

- Proposing an item for the agenda does not propose legal action
- **“without more”**
- Be cautious:
 - communicate the TOPIC only
 - NOT the legal action you want the board to take

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“Propose” – EXAMPLES in the Opinion

- “Councilperson Smith was admitted to the hospital last night”
 - Does NOT propose legal action
- “We should install a crosswalk at First and Main”
 - Does propose legal action
 - It's more than a topic for the agenda because it urges or suggests an outcome

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Staff & Other Persons

- Cannot direct staff to communicate in violation of the open meeting law – A.R.S. § 38-431.01(I)
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid or attempts to aid another person in violating this article – A.R.S. § 38-431.07(A).

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Communications with the Public

- Members may express opinions and discuss issues with the public at a venue other than a public meeting, personally, through the media or other public broadcast so long as it is not intended to circumvent the open meeting law

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What does that mean?

- Discussion or opinion must not be principally directed at or directly given to other board members
- There is no plan to engage in collective deliberation to take legal action.
- Review these resources:
 - A.R.S. § 38-431.09(B) added by 2008 Session Laws, Ch. 135, § 1 (effective 9/26/08)
 - Attorney General Opinion I07-013

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When in Doubt?



- RESOLVE ALL DOUBTS IN FAVOR OF OPENNESS.
- Remember: legal action taken during a meeting held in violation of any provision of the open meeting law is null and void unless ratified.

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Penalties - A.R.S. § 38-431.07(A)

- Members and any persons who aid, attempt, or agree to aid -
 - Civil penalty up to \$500 for each violation
 - Such equitable relief as the court deems appropriate
 - Reasonable attorneys' fees
- If intent to deprive the public of information –
 - Court may remove public officer from office and
 - Charge officer and any person that aided, agreed to aid, or attempted to aid, all the costs and attorney's fees

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Key Resources

- Arizona Agency Handbook, Chapter 7, www.azag.gov
- Ombudsman Publications
- Ombudsman website www.azoca.gov
- Department of Library, Archives, and Public Records www.lib.az.us
- Case law
- Attorney General Opinions www.azag.gov or <http://azmemory.lib.az.us/>

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PLANNING AND ZONING COMMISSION REGULAR SESSION

July 9, 2015, 6:00 p.m., Town Council Meeting Chambers

Agenda Item: #8.2. Review and discussion of P&Z roles and the items of the agenda template. Possible removal, addition or modification of the agenda items to the extent allowed by State and local regulations.

To: Mayor and Town Council Members

From: Yvonne Kimball, Town Manager

Date submitted: March 31, 2015

Summary:

I recently met with P&Z Chair Smiley and Vice Chair Parker. During our meeting, we went over the agenda template and expectations of the respective roles of P&Z, Council and staff. At this meeting, I want to go over these points with the P&Z:

1. Town code section: § 31.19 BOARD, COMMISSION, AND CITIZEN COMMITTEE DUTY OF LOYALTY TO THE TOWN COUNCIL.

(A) Boards, commissions, and Citizen Committees serve as advisory agencies to Council, and have no independent authority (except as provided by State law or town ordinance). Such agencies of the town may perform the duties outlined herein, have projects assigned by Council, may initiate independent activities (so long as such activities do not involve tasking of other governmental agencies in the name of the town, out of state travel, or retention of consultants), and may report on a regular basis to Council on the activities of the agency.

(B) When acting in their appointed roles, these agencies should act in accordance with the *Planning and Zoning Handbook* published by the Arizona Department of Commerce (Third Edition, October 2004), with reasonable accommodation to apply the principles contained therein to agencies other than the Planning and Zoning Commission and the Board of Adjustment.

(Ord. 09-49, passed 4-7-2009; Am. Ord. 10-71, passed 7-8-2010)

2. A.R.S. 9-461.02 provides the authority for a municipality to create a P&Z commission. The Planning the Zoning handbook provides valuable information for the Commission. A copy of the book has been printed for the Commission and staff hopes that you can keep it as a valuable reference. In short, P&Z is the advisory committee to the Town Council concerning planning and zoning matters.

Staff is committed to assist P&Z to perform your duties. We understand that your effectiveness depends on staff resource to a certain degree. In this regard, please be mindful of the limitation of staff resource.

In order to effectively perform your advisory roles, staff recommends the commission becomes familiar with these town documents (in addition to the Planning and Zoning Handbook): **a. General Plan.** State law requires municipalities adopts a general plan which contains a community's goals and policies on development, its aspirations for the future, strategies for implementation to achieve future goals and a proposed map of the jurisdiction that typically includes lands use, transportation, public faculties, and open space. State law requires the G.P. be updated at least every 10 years. The Town's 2009 G.P. is posted on Town website.

b. Town Code of Ordinances. The Code provides for specific application items that are in need of P&Z approval. When Town staff processes these planning and zoning applications, we will put forth applications that requires P&Z approval on the agenda. Most of the applications are included in Town Code Sections: 152 subdivisions, 153 zoning codes. Chapter 50 Public Works also refers to P&Z approval when the application is pertaining to road design in a subdivision. Staff encourages Commission to familiar yourself with these town code sections. They are posted on the Town website.

3. "Ex Parte Contacts" on the agenda template. There was a concern about the agenda item 4. "Disclosure of Ex Parte Contacts" in the agenda template. Town code provisions are as follows:

§ 30.086 QUASI-JUDICIAL ROLE; EX PARTE CONTACTS.

(A) *Quasi-judicial role.* The Town Council has a number of roles. It legislates and makes administrative and executive decisions. The Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses and land use entitlements. In this last capacity, quasi-judicial, the Council holds a hearing, takes evidence, determines what the evidence shows and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to ex parte contacts applies.

(B) *Ex parte contacts/fair hearings.* The Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the Town Council or any agency, board or commission thereof, except at the public hearing. Note: ordinary lobbying on non-quasi-judicial matters is legal and not a violation of these rules.

(1) As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from his or her contacts, which is not otherwise included in the written or oral staff report, during the public hearing and before the public comments period is opened.

(2) Matters are **PENDING** when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards, commissions, and committees are not subject to this rule.

(Ord. 09-49, passed 4-7-2009)

4. Your general questions regarding P&Z functions and the meeting proceeding.