

TOWN OF DAVIS COUNCIL MEETING AGENDA

MEETING: REGULAR COUNCIL MEETING
DATE: SEPTEMBER 22nd, 2021
PLACE: DAVIS TOWN HALL

RECORDER CALL TO ORDER @ 6:30 P.M.

ROLL CALL BY RECORDER JENNIE HELMICK

ATTENDING: COUNCILPERSONS; JOHN FELTON, CHARLOTTE WALES, JEANNETTE TEKAVEC WARE, KEVIN FLANAGAN, RON HOLLIS AND RECORDER JENNIE HELMICK

ABSENT: MAYOR ALAN TOMSON (EXCUSED)

PLEDGE OF ALLEGIANCE

GUESTS: MANDY DELSIGNORE, EFFIE MCCAULEY

***MOTION TO APPROVE THE MINUTES OF REGULAR MEETING OF AUGUST 25TH, 2021 AND EMERGENCY MEETING OF SEPTEMBER 1ST, 2021.**

***MOTION TO DISPENSE WITH THE REGULAR ORDER OF BUSINESS TO HEAR FROM GUESTS**

HEAR FROM GUESTS ON AGENDA

GUESTS NOT ON AGENDA WILL HAVE ONLY 5 MINUTES IF THEY WISH TO SPEAK

***MOTION TO RETURN TO THE REGULAR ORDER OF BUSINESS**

COMMITTEE REPORTS

FINANCE: *RECORDER PRESENTS ACCOUNTS PAYABLE
*MOTION TO PAY THE BILLS

STREETS, ALLEYS, WATER WORKS:

PERSONNEL: *EMPLOYEE VACATION REQUEST- DEREK HUFFMAN DECEMBER 27TH - 31ST

ORDINANCE/RESOLUTIONS:

CEMETERY:

PARKS & RECREATION:

PLANNING COMMISSION:

OLD BUSINESS: *MORATORIUM FOR SHORT TERM RENTAL BUSINESSES- ATTORNEYS RESPONSE TO SB4 QUESTION (RECORDER HELMICK)
*SEWER PROJECT- SMOKE TESTING STARTING WEEK OF SEPTEMBER 13TH THRU FIRST WEEK OF OCTOBER
*EMPLOYEE EVALUATIONS (COUNCILMAN FELTON)
*SHOP FOREMAN- REPORTING (COUNCILMAN FELTON)
*MONEY FROM AMERICAN RESCUE/CARE ACT (COUNCILMAN FELTON)
*GARAGE/SHOP LEADER DEADLINE (RECORDER HELMICK)
*WATER OPERATORS (RECORDER HELMICK)

NEW BUSINESS: *COUNTY ANIMAL CRUELTY ORDINANCE- REVIEW & ADOPT
*IMAX REQUEST FOR DTEMS
*KENT AVENUE/BEAVER CREEK DITCH (COUNCILMAN FLANAGAN)
*SET DATE FOR PUBLIC MEETING FOR SHORT-TERM RENTAL REGULATIONS
*SET DATE FOR TRICK OR TREAT

BUILDING PERMITS: *ROGER HOLMES, 250 THOMAS AVENUE, PATIO & PRIVACY FENCE
*NANETTE SELIGMAN, 533 FAIRFAX AVENUE, REPAIRS TO GARAGE, DECK
*FERMAN WHITEHAIR, 631 KENT AVENUE, ROOF ON GARAGE

BUSINESS LICENSE: *EFFIE MCCAULEY

CORRESPONDENCE:

MOTION TO ADJOURN:

MINUTES

Meeting: Regular Council Meeting

Date: September 22, 2021

Place: Davis Town Hall

Acting Mayor Jennie Helmick called the meeting to order at 6:30pm.

Roll Call: Acting Mayor Jennie Helmick, Council: John Felton, Charlotte Wales, Jeannette Ware, Kevin Flanagan and Ron Hollis.

Absent: Mayor Alan Tomson (Excused)

Pledge of Allegiance

Guests on Agenda: Mandy Delsignore, Effie McCauley

Guests not on Agenda: Roger Holmes, Doug Martin, Betsy Whitehair, Bob Quattro, Nancy Luscombe, Danielle Luscombe, Effie McCauley, Bob Peterson

Motion to approve the Minutes from Regular Council Meeting of August 25, 2021 and Emergency Meeting September 1st, 2021 made by *Councilman Ron Hollis*, Second by *Councilman John Felton*, all in favor. Motion carried.

Motion to dispense with the Regular Order of Business to hear from guests made by *Councilman Kevin Flanagan*, Second by *Councilwoman Jeannette Ware*, all in favor. Motion carried.

Guest Mandy Delsignore not present.

Guest Effie McCauley introduced herself and her family by providing her background and connections to **Davis**. She has lived in the area most of the past 20 years. She purchased a home in **Town** with the help of her father. Has been working the past few years to figure out how she can afford to continue to live here. When she left for a couple years it was to go to North Carolina to get a post-Master's degree in School Counseling. She hoped with that degree she would be able to be employed here in **Tucker County** because she loves it here. She is also a single mother. Her son is about to turn 20 and is attending Eastern Technical School and is a graduate of Tucker High School. Her daughter Flora just turned six. She gave up a really good job in North Carolina to move back here. She has been employed at multiple **Town** businesses, the last of which was Hellbender Burritos. She knew if she couldn't find a job as a counselor in the County, she would have to find a job outside, but she still wanted to keep their home in **Davis**. Prior to the pandemic, and part of the reason her father helped her buy the home, was so they would **Airbnb** the house to subsidize her income so they could continue to live here. They have been working on those plans for several years and have put several thousands of dollars into making the home ready and actually made the shed into a tiny home that they can live in while the house is being rented out. She started AirB&B'ing it in May, and has a rental upcoming in October. She has friends who rent out rooms in their home, and never heard about a business license, and admitted fault in not realizing she needed a business license. She found out recently about the **Moratorium** and spoke to **Town** staff about it. She was informed about the business license deadline. She is at the Council Meeting to ask for forgiveness about her ignorance and requested the **Council** to allow her to get a business license so she could continue to rent her home. She needs it to recover the money she put into the **Airbnb**, as she put a lot of her savings into it while she was unemployed. She recently started a job as a school counselor in Buckhannon Upshur schools which she is excited about, but it leaves her and her daughter staying in Upshur county on school nights in a pop-up camper. Her mom is in the process of buying a home in Buckhannon, so they will be able to stay there on school nights. But it's critical to her that they continue to live in **Tucker County** as she loves it. Her son stays here full-time, and her and Flora stay here on weekends. The only way she will be able to continue to live here is by continuing to be able to offer the **Airbnb**. Her understanding is the reason for the **Moratorium** was to help people from **Tucker County** to be able to live here, and that out-of-towners are buying up homes to turn to rentals taking long-term rentals from locals. She can't rent her home as long-term rental because it is their residence. She doesn't know what she'll do if she can't get the business license. Her hope is to get a license to do private practice, and be able to provide private practice and therapy services in the **Tucker County** area. If she can't get the license, she may end up having to sell the

house for as much as she can get, likely to someone from out of **Town**, pushing out another local. She apologized for not getting the business license and claimed ignorance to the requirement. She asked for an exception to be grandfathered in.

Guest Roger Holmes is putting a patio and a garage in his backyard and didn't know about the setbacks required from the property line. He wanted to get a cement truck in to pour the concrete, so he moved everything so that it meets the requirements. He's attending to make sure the building permit he submitted gets approved. **Acting Mayor Helmick** stated that she and **Councilwoman Ware** had looked at the property and everything looked ok.

Guest Nancy Luscombe inquired about the changes to the garbage rate as that has changed to the business rate for homeowners with short-term rental licenses. She wanted to know if the rate was per building or per room being rented. **Acting Mayor Helmick** stated that she didn't know, and advised Nancy to check with **Joni Felton** at **Town Hall**. There was some discussion about trash collection. **Councilman Flanagan** stated that it was most likely per building. So, if you only have one water bill, you should only have one trash bill. But if your building was set up like apartments with separate bills, it might be multiple trash bills. Nancy introduced her daughter Danielle.

Motion to return to Regular Order of Business made by Councilman Ron Hollis, Second by Councilman John Felton, all in favor, **Motion** carried.

Committee Reports:

Finance: The Recorder presented the accounts payable for review.

Motion to pay the bills made by Councilwoman Wales, Second by Councilman Kevin Flanagan, all in favor, **Motion** carried.

Streets, Alleys, Water Works: **Councilman Flanagan** stated that the smoke testing was going on. It appears to be quite the undertaking from what he's seen. That's the big ongoing project. All other routine tasks like lawn mowing and trash pickup are being done. **Doug Martin** provided an update on the street paving. He stated that about 50% of the paving is done. 7th street extension has also been paved. With regard to the sewer project, smoke testing is almost done. There was discussion about how the smoke testing went. They are doing manhole inspection and dye testing and then run cameras. They plan to put about 80-90 flow meters in too and then we'll need rain to complete that testing.

Acting Mayor Helmick asked if anyone had heard from Dave Smigal about checking the CSO's, as he was supposed to do that. **Doug Martin** stated that he had talked to Dave and showed him the CSO's to check. They looked at them they are fine.

Personnel: Employee vacation request. Derek Huffman\ requested December 27 to 31 off. **Motion to approve made by Councilwoman Jeannette Ware, Second by Councilman Ron Hollis**, all in favor, **Motion** carried.

Ordinances: **Tucker County Commission** adopted an animal cruelty ordinance. This ordinance details what the County Humane Officer can enforce. If the **Town of Davis** decides to adopt the ordinance as well, the Humane Officer would be able to enforce the ordinance within the **Town** too. If the **Town** wants to adopt it, it would have to be read at the regular Council Meetings on October 13 and 27. **Motion to present the ordinance at the next Council Meeting made by Councilman Kevin Flanagan, second by Councilman John Felton**, all in favor, **Motion** carried.

Cemetery: **Councilwoman Ware** stated that there have been some requests for fill dirt to level the land above some of the graves. The **Town** has dirt available, so it will be coordinated to get it to the Cemetery. Discussion followed on what causes the ground to sink above graves and whether it's only occurring with new graves or older graves. Generally, there is settling of the ground and it then needs to be filled and leveled.

Parks and Recreation: **Councilwoman Ware** stated that the playground equipment should be installed by 5pm. They started the installation on Monday and have been working through all the weather to get it set up.

Planning Commission: **Councilwoman Wales** stated that a meeting was held the week prior. A contract for the mapping that **Council** had previously approved was presented for the

Acting Mayors signature. The Planning Commission continues to work towards completing the **Comprehensive Plan**.

Old Business: Moratorium for Short Term Rental Businesses- Attorney response to SB4

Question: *Acting Mayor Jennie Helmick* read the **Town** attorney's response which stated that in light of the moratorium, someone raised a question about the effect of **Senate Bill 4** which makes substantial revisions to **WV Code Section 815A** entitled **Municipal Home Rule Program**. The **Town of Davis** does not participate in the **Home Rule Program** therefore any regulation made pursuant to that code pertains only to Municipalities that participate in the program, and not to the **Town of Davis**.

Acting Mayor Helmick also read from an emailed response from the attorney about a question asked about a property who had been running a short-term rental out of her property who had not obtained a state or town business license prior to the moratorium. The response stated that the property owner could be denied a **Town** business license after applying for the business license and would therefore be subject to any regulations implemented by the **Council**. However, if the property owner can produce other legally acceptable evidence of the same to demonstrate she was operating a business then there would be no legally justifiable reason not to grant a license going forward. The offered proof would also be evidence of operating a business in **Town** without a license which would allow the **Town** to collect all past due fees owed to the town under its existing ordinances. *Acting Mayor Helmick* clarified that the language of the **Moratorium** on Short Term Rentals was more specific than just providing evidence of the existence of a business, and read which types of evidence would be acceptable.

Sewer Project: Smoke testing started the week of September 13 and will run through the first week of October. As updated previously, the smoke testing is almost complete already.

Employee Evaluations: *Councilman John Felton* asked if **Council** would be doing them and how they would be done. *Councilman Kevin Flanagan* stated that he supported conducting them, but groundwork and expectations would have to be put in place first. Discussion followed, and it was decided to discuss further during the **Executive Session**. The **Shop Foreman** discussion would be held during the **Executive Session** as well.

Money from the American Rescue Plan/CARE Act: *Councilman John Felton* confirmed that part of the money was being used for the smoke testing, and that part of it was used to pay for sick leave for **Town Employees** with **COVID**. He cautioned that we need to watch what we do with the rest of the money. Discussion moved to whether the pump truck had been purchased with the 1% sales tax funds. *Mayor Al Tomson* will need to update the **Council** of the status upon his return.

Garage/Shop Leader: *Acting Mayor Jennie Helmick* stated this would be discussed during the **Executive Session**. **Water Operators** will also be discussed then.

New Business: County Animal Cruelty Ordinance: *Acting Mayor Jennie Helmick* stated that this was previously discussed.

iMac Request for DTEMS: *Acting Mayor Jennie Helmick* stated that the information had been provided to the **Council** via a website link. The purchase will provide the students with editing software, and will help students with social anxiety develop skills to overcome that. The **City of Thomas** had agreed to match the amount that the **Town of Davis** donates. The remaining amount required is approximately \$1,200. Discussion followed on the **iMac** and donation. **Motion made to donate up to \$500** made by *Councilman John Felton*, Second by *Councilman Ron Hollis*, all in favor. **Motion carried.**

Kent Avenue/Beaver Creek Ditch: *Councilman Kevin Flanagan* explained that there was a storm drain that was a little higher than the ditch, so it's restricting the flow of the ditch. Once that ditch becomes full and spills over into the spillway it is moving at such a velocity that it's washing the bank out on **Town Resident Jason Cyr's** side of **Beaver Creek** which is threatening his driveway and eventually could threaten his foundation. Discussion followed. **Motion to collect quotes for getting this fixed** made by *Councilman Ron Hollis*, Second by *Councilwoman Jeanette Ware*, all in favor. **Motion carried.**

Set Date for Public Meeting for Short-Term Rental Regulations: *Acting Mayor Jennie Helmick* stated that *Councilman John Felton* checked and the **Davis Fire Hall** was booked three of the weekends in October. The **Davis Community Center** was discussed as an option, but because it is used as an emergency shelter it is closed due to **COVID** restrictions. If it was

used the entire facility would have to be sanitized after, but getting approval to use it was unlikely. After discussion about wanting to have it on a weekend day in a large venue, it was noted that the **Davis Fire Hall** was available on Saturday, October 9. **Motion to hold the public meeting on Saturday, October 9 at 6pm at the Davis Fire Hall** made by **Councilman Ron Hollis**, second by **Councilman Kevin Flanagan**, all in favor. **Motion** carried.

Set Date for Trick or Treating: **Acting Mayor Jennie Helmick** stated that Halloween is on Sunday this year, the only day we don't hold Trick or Treating, so another date would have to be picked. **Motion to set the date for Trick or Treating in the Town of Davis on Saturday, October 30** made by **Councilman Kevin Flanagan**, second by **Councilwoman Charlotte Wales**, all in favor. **Motion** carried.

Building Permits: ***Motion to approve a building permit for Roger Holmes for a patio and privacy fence** made by **Councilwoman Jeannette Ware**, second by **Councilman John Felton**, all in favor. **Motion** carried.

***Motion to approve a building permit for Nanette Seligman for a deck** made by **Councilman Kevin Flanagan**, second by **Councilman Ron Hollis**, all in favor. **Motion** carried.

***Motion to approve a building permit for Ferman Whitehair for a metal roof on the garage** made by **Councilman John Felton**, second by **Councilwoman Jeannette Ware**, all in favor. **Motion** carried.

Business License: **Guest Effie McCauley** applied to have an exception made approving her business license for a short-term rental she had been operating without a license prior to the **Moratorium** on short-term rentals. **Acting Mayor Jennie Helmick** stated that a copy of the **State Business License** would have to be provided in order to approve a **Town Business License** and it would have to be dated prior to the start of the **Moratorium**. Discussion followed. **Guest Effie McCauley** was advised that if she can get the **State** to issue a business license, dated prior to the **Moratorium** going into effect, based on the fact that **Airbnb** had been paying the state taxes on rentals, then the **Town** would also approve a business license and the short-term rental would be grandfathered in with other existing rentals. **Town** taxes for previous rentals would have to be paid at the time of license approval. **Motion to table the license until the requesting documentation is provided** made by **Councilman Kevin Flanagan**, second by **Councilman John Felton**, all in favor. **Motion** carried.

Blackwater Bikes Kiosk: It was brought to **Council's** attention that **Blackwater Bikes** is building a kiosk on their property without a building permit. It does not appear to comply with the required setbacks as it is close to the road. It was recommended that **Councilman Kevin Flanagan** follow up on this.

Motion to go into Executive Session at 8:05pm made by **Councilman Kevin Flanagan**, second by **Councilwoman Jeannette Ware**, all in favor. **Motion** carried.

Motion to leave Executive Session at 8:49pm made by **Councilman Kevin Flanagan**, second by **Councilwoman Jeannette Ware**, all in favor. **Motion** carried.

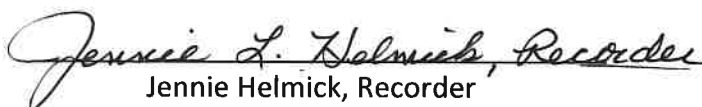
Motion made to require a yes or no acceptance of the Shop Foreman job offer by October 1, 2021 and to void the offer if the answer is no made by **Councilman Kevin Flanagan**, second by **Councilman John Felton**, all in favor. **Motion** carried.

Motion to adjourn at 8:53pm made by **Councilman Kevin Flanagan**, second by **Councilwoman Charlotte Wales**, all in favor. **Motion** carried.

Date of approval October 13th, 2021
As read ✓
As corrected _____



Alan Tomson, Mayor



Jennie L. Helmick, Recorder