

TONOPAH TOWN BOARD

SPECIAL MEETING MINUTES

OCTOBER 21, 2011

Town Board Chairman Jon Zane called the workshop to order at 9:00 a.m. Also present were Horace Carlyle and Glenn Hatch. Javier Gonzalez and Duane Downing were absent. There were three other people in attendance.

1. Discussion and Possible Decision to Approve Memorandum of Understanding with Tonopah Solar Energy, LLC.

Jon Zane asked if anyone from the DA's office had looked at it. James Eason explained that last night he and Chris Mulkerns met with Daniel McArthur to discuss the MOU. The MOU came about through the development agreement with Solar Reserve. This is one of the conditions Solar Reserve needs to meet through that development agreement. He noted that Daniel McArthur is going to get notes back to the Town on Monday. He has reviewed the document and Horace Carlyle has review the document and provided notes that were discussed with Dan McArthur. He will provide a complete breakdown. Mr. Eason requested that this item be tabled until the next meeting.

James Eason explained that the Nye County District Attorney has already issued a letter to Solar Reserve so they can meet the conditions of the development agreement. Brian Kunzi is aware of this. It is an agreement between the Town of Tonopah and Solar Reserve. He explained that the Town is taking its time with this because what happens here sets it in stone. The way the agreement is structured, there will always be a principle of \$300,000. There are two different ways to structure this. One is for this to go directly to a third party and be handled by a trust. The Town will then go and apply for the use of that money. The other way is to put it directly into Nye County where the Treasurer is responsible from an investment standpoint. It will be restricted based on the MOU. If the Town of Tonopah was ever dissolved, the money would always stay in the account and would be restricted to the uses specified by the MOU. The Town is protected from another entity trying to come in and sweep it. He explained that the Town will add language to specify the third party.

Horace Carlyle feels the goal should be to acquire other sources. James Eason explained that Dan McArthur is going to answer those questions. He explained that Mr. McArthur noted that the Town can set up a separate MOU with other entities and the money would go into the same account. The Town will have to set up a new fund with Nye County. All the money would go into the fund but all funds in it would be dictated by MOU. The funds would not be able to be lumped together unless the MOU allows it. He explained that there are no limitations and the Town can add to the fund. He explained that technically, the Town could direct where it wanted the money invested in. He feels that making sure all of the Town's investments are technically secure is the best bet. He noted that Mr. McArthur agreed with Mr. Carlyle's recommendation that whatever money is taken out against the fund is secure. He explained that there will always be a minimum of \$300,000 in the fund and it will be up to the Board to dictate how the Town

will spend the funds. The Board will have to set up a committee for the scholarships to figure out how the funding will be structured.

Chris Mulkerns explained that the town would not be able to set aside a capital projects amount to put into that account. It is taxpayer dollars and the Town cannot do that with Taxpayer dollars. The Town cannot put directly into the fund but it could set aside funds to use as a match. The Town could set up a Special Capital Projects fund to use as a match for infrastructure projects.

James Eason explained that he will talk to Solar Reserve but it is up to their discretion. If they choose, they can go to a third party trust department and deposit money right now. It would then be a simple letter to the Board asking if they accept the gift. Chris Mulkerns explained that there will be fees associated if a trust company is used for this as opposed to Nye County.

James Eason explained that the Mining Park Foundation is working on setting up an endowment. He explained that Mr. Carlyle asked about setting up some kind of endowment fund for the Mining Park to start working towards the goal of making the Mining Park self-sufficient. He explained that once the money comes into the Town's coffers, the Town has to follow every NRS. He explained that the MOU protects the funds from sweeping. It is a contract between the Town and Solar Reserve.

James Eason explained that the Town, with Solar Reserve's help, can start educating its own more effectively and giving kids the incentive to return. He noted that Mr. McArthur explained that there is another scholarship out there under Nye County that he may make the recommendation of transferring to the Town of Tonopah for management.

James Eason explained that this document is all about helping the Town in one form or another. Horace Carlyle feels the long-term benefit could be tremendous if the Town can structure it so it can grow. James Eason explained that the District Attorney is aware that the Town is entering into an MOU. He sent another letter to make sure the DOE was satisfied with the progress. James Eason explained that when he was working with Solar Reserve with the development agreement, he was the one trying to slow this down. He wanted more time to establish this. With the way the funding is coming down, Solar Reserve had to have this done right away. Solar Reserve is secured and this agreement will be fine. He explained that when he meets with Solar Reserve on Monday, he will have the changes from Dan McArthur that can be incorporated into the document. He is also going to let Solar Reserve know that if they want to go ahead and deposit right into a third party they can do that. In that case, the Town will just receive a gift. It will just be referred to as outside income on future balance sheets. If the Town goes with a third party administrator, that administrator would be the trustee, auditor, investigator, and internal controls. If the Town goes with the MOU, Daniel McArthur will be the investigator and internal controls. The Nye County Treasurer will be the financial advisor. He explained that the agreement will not sunset. It goes into perpetuity. The fund will continue to grow and will always have a base of \$300,000. As far as the 10% interest, by statute 5% is the maximum.

James Eason explained that the Town can dedicate funds and the Board can pass a resolution to fund a certain amount of money into a fund to be used in conjunction to match for infrastructure

projects. However, that money cannot go into this fund. The Town can use the money from the new fund in two ways. It can be used to secure against the \$300,000 or it can be taken out and used as a match. Horace Carlyle explained that over a period of time, if the Town contributed to a Special Capital Projects fund, the Town would not have to obligate current revenue but obligate other funds.

James Eason explained that Section 7 of the Development agreement is one paragraph that says there will be an MOU between the Town of Tonopah and Solar Reserve. Chris Mulkerns read Section 12.1 and 12.2.

Section 12.1 is Expiration of agreement which states that: "Acceptance provided here in this agreement shall expire at the earlier of (a) the permanent ceasing of operation by the developer of the proposed development or (b) the termination of the lease with the Bureau of Land Management unless developer request an extension thereof during the term of the lease in such extension as pending by BLM. Expiration of this agreement or any extension thereof shall not in any manner affect developer's right to operate the proposed development. It shall not rescind, modify or terminate any vested right in favor of developer as determined by Nevada law to the extent that the developer has performed its obligations under this agreement. At permanent cessation of operations and decommissioning of the proposed development agreement shall be done in compliance with all applicable state and federal permits and regulations."

Section 12.2 is Termination of Agreement: "Developer may terminate this agreement at any time prior to commencement of construction by delivering written notice to county that developer was unable to obtain any required state or federal approval of the proposed development."

Jon Zane noted that the second part has been taken care of and the first part is really tied to the land. Even when they do cease operations, the Town would already be funded if they ceased operations after three years. James Eason explained that their obligation to the Town ceases after the third payment. They have given notice that they will be in the Town for the life of the right-of-way, which is currently 25 years.

This item was tabled until the next meeting.

James Eason explained that if Solar Reserve decides to go to a third party, this will become a moot point and will just become a matter of going forward from there. For the MOU, the Nye County Treasurer will be the administrator. The Town will have to set up a separate fund. The fund will be dedicated and the rules and guidelines will be the MOU document. At a later date, under the scholarship side and whatever other project the Town takes out of it, the Town will have to set up its own internal guidelines and bylaws for those funds.

James Eason explained that the Development Agreement stated that there was supposed to be an agreement established by September 30, 2011 for the transfer of the funds. The Town has pushed it back because it was not yet ready to receive the funds. When the Town receives the first funds, it will technically be for the date of September 30, 2011.

