

TONOPAHA TOWN BOARD

MEETING MINUTES

FEBRUARY 9, 2011

Town Board Chairman Jon Zane called the meeting to order at 7:00 p.m. Also present were Glenn Hatch, Horace Carlyle and Duane Downing. Javier Gonzalez was absent. There were five other people in attendance.

1. Review and Approval of Minutes from Regular Meeting held on January 26, 2011.

Horace Carlyle noted that corrections were made to the minutes prior to the meeting.

Duane Downing made a motion to approve the minutes, in context, from regular meeting held on January 26, 2011. Glenn Hatch seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

2. Discussion and possible decision regarding approval to amend the Aptus Architecture Agreement to include the new scope of work for pre-design of Tab E and increase contract price not to exceed \$15,000 increasing total contract to \$97,500 with the increased amount to come from administration contracts.

Susan Dudley presented information regarding the proposed amendment to the Aptus Architecture Agreement. The Town entered into an agreement on February 23, 2010 with Aptus Architecture to conduct a preliminary architecture report and then complete a pre-design. The PAR presented in October 2010 was for \$45,000.00. At the December 8, 2010 Town Board meeting it was decided that they would look at a new tab, TAB E, which combined previous tabs. This included the Convention Center, the Belvada, and the Union Plaza. At the December 22, 2010 meeting, the Board approved an amount of \$5,000.00 to increase the cost to the PAR bringing it to \$50,000.00. At the January 26, 2011 meeting, the Board approved to move forward with Tab E looking at the feasibility in more detail and doing a pre-design of the Convention Center, the Belvada, and the Union Plaza. It was discussed in previous meetings that the cost to complete those pre-designs would be \$15,000.00. The amendment presented to the Board is to approve an increase in contract price. The final contract cost would be \$97,500.00. The costs would come from the Professional Fees and Contracts Fund under Town Administration.

Susan Dudley noted that mechanical and structural engineers and plumbers would arrive the following week to look at the Convention Center and the Belvada. They will determine if the buildings are structurally sound and determine how they will design both buildings to go forward with the funding received from USDA. She noted that the actual costs would be more than the \$15,000.00 stated in the amendment because of the additional individuals arriving the following week. She noted that an item will be on the next agenda to cover the additional \$8,750.00 for the structural engineer.

James Eason mentioned that the first structural cost presented was just for one property. He noted that the Union Plaza also has structural issues and felt that the additional costs were justified. He extended the invitation to two Board members to come in and speak with Aptus when they are in town the following week. Susan Dudley noted that funding for this project comes from USDA Loans and Grants and CDBG Grants.

Horace Carlyle made a motion to amend the Aptus Architectural Agreement to include the new scope of work for pre-design of Tab E, and increase contract price not to exceed \$15,000.00 increasing total contract to \$97,500.00 with the increased amount to come from administration contracts. Glenn Hatch seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

3. Consideration and possible adoption of Resolution of the Tonopah Town Board authorizing to submit application for right of way amendment to the U.S. Department of Interior Bureau of Land Management.

Susan Dudley explained that Shaw Engineering was hired to go down two roads at once to mitigate the arsenic issue. The first route consisted of reviewing the PER and looking at the arsenic treatment plant issue then determine if the costs and the actual process were in line with what is needed. This route has been finished. The second route consists of exploring other ways to mitigate arsenic rather than putting in a treatment plant. If an absorptive media without ph control is done, it will still be about a \$50,000.00 increase in cost for operations and maintenance for the treatment plant. She noted that the Town is looking at other ways of mitigating the arsenic without putting in a treatment plant. A hydrogeologist was hired and they have determined that there is a possibility of exploring other situations, such as additional wells to reduce the arsenic level. They also identified the need for drill holes.

Susan Dudley mentioned that Phase I of this project is complete and Phase II is starting. They first want to look at drill holes between wells 5 through 8. These are north of wells 1 through 4. She noted that they want to put the first drill hole between wells 7 and 8. She explained that wells 5 through 8 are already subject to a BLM Right of Way. BLM has suggested that a new right of way be done over top of the previous one rather than amending the previous one.

Susan Dudley explained that the hole would be just a drill hole right now. It could become a monitoring well. It will be a four inch hole giving the hydrogeologist and engineer a better idea of what is below the ground. She explained that the state standard for arsenic was 10 parts per billion and the Town's water is 10.2 parts per billion. This needs to be fixed. She pointed out that Shaw Engineering's first priority is the well capacity. It is coming to the end of its life. Something needs to be done to increase the well capacity and the current wells need to be either rehabbed or replaced. If arsenic cannot be mitigated through wells, then information would be available on where to drill wells to lower the arsenic level further.

Susan Dudley explained that the right of way would be temporary unless the well remained as a monitoring well. In that case, the right of way would extend for the span of 20 years for monitoring. James Eason mentioned that currently the Town is just looking for a temporary right

of way for the test hole. He noted that the lithography below ground needs to be examined to help rule out some assumptions about the source of the high arsenic levels.

James Eason explained the concern over quantity in the wells. Wherever the new wells are placed, there needs to be sufficient quantity for the future. He explained that Joe Westerlund has been working on a well rotation. Some wells can be taken offline at this time of year and conduct pump draw-downs to see which wells are impacted and pump them longer than what has been historically done. To date, not impacts to other wells has occurred. James Eason noted that wells 1 through 4 are higher in arsenic and wells 5 through 8 are historically lower. Susan Dudley noted that during the summer, arsenic levels decrease. She explained that the blended levels of all eight wells never drops below ten during the summer but the overall level does decrease.

The resolution presented is for a drill hole and monitoring well at wells 5 through 8 which requires the BLM right of way and wells 1 through 4 which does not require the BLM right of way. Susan Dudley explained that the Town would stay within the parameters of the Shaw Engineering agreement which incorporates the hydrogeologist's report and the cost of the drilling. Susan Dudley mentioned that she contacted the State Revolving Loan Fund and convinced them to grant the Town more time to find a solution to the arsenic problem.

Horace Carlyle made a motion to approve Resolution 2011-03, Resolution of the Town Board authorizing to submit application for the new right of way to the U.S. Department of the Interior Bureau of Land Management. Duane Downing seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

4. Discussion and possible approval of Memorandum of Understanding between MGC Resources, LTD and Town of Tonopah.

Susan Dudley explained the packet presented to the Board containing the original MOU presented, the different versions, and the process by which those versions came to be. She explained the on December 14, 2010, the Town met with the President of Midway, the Vice-President of Operations, and their lawyer. They decided there would be a short agreement stating that information will be shared between the two entities. Midway's lawyer put together a Letter of Intent which was then sent to the Nye County District Attorney's office. They sent back a Memorandum of Understanding.

The Board was presented with a set of documents detailing the various changes to the MOU since the agenda was posted. Susan Dudley explained the three different versions of the MOU. The Letter of Intent presented to the Board was not up for consideration but was simply to show the Board how the MOU started. The Letter of Intent arrived at the beginning of January. James Eason explained that Midway sent the Letter of Intent which he and Susan Dudley reviewed. They passed it on to the Nye County District Attorney. The District Attorney sent back a recommendation. Susan Dudley made some corrections which was sent back to the DA who sent back a simpler version. Mariah Rivero further explained the packets presented to the Board detailing the changes made to the MOU.

Horace Carlyle noted the additions he suggested in the MOU. He was present at the December 14, 2010 meeting with Midway Gold. He explained that he had trouble with past MOUs based on the concept of compensation or monetary rewards. He was interested in the use and preservation of the Town's water rights. He explained that he supported the basic concept of the mine. At the time of the meeting, neither party was ready for a definitive MOU. The issue he was concerned about is beneficial use of water. He felt that the preservation and use of water was the key to all future working relationships and the section designating the specific water permits is beneficial, not binding, and gives a marker. He felt it helps avoid litigation.

Susan Dudley explained the changes to the MOU with the context of the agenda. There is a time period in which the agenda has to be posted and the changes to the MOU occurred after the agenda was posted.

James Eason explained that the Town does have the right to put in the section regarding the water permits. The Town received the permits from Nye County which they had at the airport. The previous organizational structure of Midway was informed that the Town would work toward obtaining those water rights and transferring them to Midway for the purpose of dewatering. Susan Dudley explained that the goal for the water rights Midway applied for, which are under protest from the Town of Tonopah, is to transfer them to Midway's dewatering wells. They have to stay in the name of the Town and they have to still be Tonopah's water rights.

James Eason noted that the District Attorney's recommendation was to leave the water rights out. They did not feel that it was pertinent at this time. Susan Dudley mentioned that it was not the concept they had an issue with. They felt it needed to be a different agreement. Duane Downing noted that the DA's office has several civil attorneys who look over things like this. Susan Dudley noted that the Town has an attorney on staff who deals with water rights, Karen Peterson. Susan Dudley explained that the MOU was just to start sharing information.

Horace Carlyle felt that what Kenneth Brunk is really looking at is the attitude of the board and staff. He felt that going back and proposing a more complicated agreement regarding the water rights defeats the purpose of a new dialogue with Midway.

James Eason noted that the first MOU attempted in July was horrid. Both the Town and Kenneth Brunk agreed that the agreement was offbase. He noted that the DA felt it was alright to mention the specific permit numbers but that a separate agreement should be set up. He explained that they were okay with everything except the statement with the water rights.

Horace Carlyle made a motion to approve the Memorandum of Understanding "WHEREAS Midway Gold Corp. (hereinafter "MGC") plans to develop and operate the Midway Project Mine located in Ralston Valley, Nye County, near the well fields of the Town of Tonopah, Nye County, Nevada (hereinafter "Town")" subject to the changes of "dewater if necessary" and adding water permit number 69156, 69157, 69158 for the Midway Project. Glenn Hatch seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

5. Set date, time and place for budget workshop(s) for the Town of Tonopah and Tonopah Public Utilities Fiscal Year 2012.

Chris Mulkerns explained the process for setting the budget workshops. There were two workshops the previous year, one in March and one in April. The Town received preliminary revenue numbers from the Department of Taxation on February 15, 2011. She explained that the first budget workshop was usually most of a day. The Board agreed to hold the first budget workshop on Friday March 11, 2011 at 9:00 am in the Convention Center. Chris Mulkerns explained that the final revenue packet containing the motor vehicle tax revenue and the consolidated tax revenue and the final abated revenue packet containing the property taxes arrives at the end of March. The Board agreed to hold the second budget workshop on Friday April 1, 2011 at 9:00 am in the Convention Center. The Board agreed to hold the final Public Budget Hearing on Thursday May 19, 2011 at 9:00 am at the Town Office.

Horace Carlyle made a motion to set the time and place for the budget workshops and the public hearing as follows: First Workshop scheduled for March 11th at 9:00 am, at the Convention Center, Second Workshop scheduled for April 1st at 9:00 am at the Convention Center, the Public Hearing scheduled for May 19th at 9:00 am at the Town Office. Duane Downing seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

6. Appointment of independent auditor for Fiscal Year 2010/2011.

James Eason explained the proposal from Dan McArthur to act as an independent auditor for the Town. Dan McArthur has been the Town auditor for many years and he also acts as the auditor for Nye County. He explained that the Town does have to report to the Department of Taxation regarding who the auditor is. Susan Dudley explained that Dan McArthur does not provide a contract price but rather audits by hourly basis. The more prepared the Town is for the audit the cheaper the contract is. There are certain requirements that have to be completed. Per USDA, a single audit has to be done if there is more than \$500,000.00 in federal funding. A governmental OBM Circular 133 has to be done. The audit must be done per GASB requirements. Because the Town has received more than \$500,000.00 in federal funds, a single audit will occur. A single audit usually runs between \$2,800.00 to \$3,000.00. The remainder of the audit bill is usually around \$11,000.00 depending on how ready the Town is for the audit.

James Eason noted that Nye County was switching to a different billing system. They are moving from HTE to Tyler and this will allow the audit process to be simpler.

Horace Carlyle made a motion to appoint Daniel C. McArthur LTD, Certified Public Accountant independent auditor for fiscal year 2010/2011. Glenn Hatch seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

7. Tonopah Department Budget Reports

Horace Carlyle felt there are some external factors that may affect the budget, such as electrical and fuel costs.

Jon Zane mentioned the continued lack of room tax for the National 9 Motel. James Eason noted National 9 would be the ones paying for an audit.

8. Tonopah Development Corporation Report

No action taken by the Board.

9. Public Comment

No action taken by the Board.

10. Town Board Member's/Department Manager's/Nye County Commissioner's Comments

Jon Zane mentioned that there were no lights on the signs at the new firehouse. It is difficult to see at night. Duane Downing mentioned that the lights were all on over the bay doors but there were no lights on the front or pointed to the sign. James Eason noted that the front lights may not be all hooked up yet. He explained that reader board was off as well and the power would run through the building. All the utilities are hooked up.

Horace Carlyle noted the corrosion and blistering on the Cody 2 tank mentioned in the TPU report. He wondered if any sort of remediation needed to be done. James Eason noted that the tank will be put into the rotation. It has been put into the budget. The flappers for some tanks have been replaced. Susan Dudley has asked for a quote from Shaw Engineering regarding the price for the flappers on the new tanks.

James Eason noted that Hardy construction will be completing work at the Mining Park. He explained that the Board would sign a voucher for a bill to be paid directly to Bryan Brown. He is a volunteer fireman. A fire truck hit his vehicle on January 14, 2011 responding to a fire. The damage was less than \$5,000.00 and the insurance deductible is \$5,000.00. The Town is paying for this out of pocket rather than going to the insurance. The budget includes two funds designed to pay for these issues should they arise. It has to be paid directly to Bryan Brown. The money can then be passed on to the insurance company. The amount paid is based on a quote from Doug's Auto Body.

11. Closure of Meeting, Pursuant to NRS 288.220 for purposes of conferring with Town's Management Representative regarding labor negotiation issues, and other personnel issues.

This item was tabled.

12. Closed meeting, pursuant to NRS 288.220 for purposes of conferring with Town's Management Representative regarding labor negotiation issues, and other personnel issues

This item was tabled.

13. Discussion deliberation, and possible decision on labor negotiations, issues and other personnel matters presented in the closed meeting

This item was tabled.

14. Closure of meeting pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation

This item was tabled.

15. Closed meeting, pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation

This item was tabled.

16. Discussion, deliberation and possible decision on conference with legal counsel regarding potential or current litigation presented in the closed meeting

This item was tabled.

17. Correspondence

Recovery Act Means Cleanup at Nevada Military Test Area – 01/27/2011

BEC Economic Development Meeting Agenda – 01/28/2011

New RCRA Disposal Cell is Up and Running – 01/31/2011

Nye County Commissioners Meeting Agenda – 02/01/2011

Beatty Town Advisory Board Workshop Agenda – 02/03/2011

Beatty Town Advisory Board Meeting Agenda – 02/07/2011

Nye County Commissioners Teleconference Meeting Agenda – 02/09/2011

Beatty Town Advisory Board Meeting – 02/09/2011

Round Mountain Town Board Meeting Agenda – 02/08/2011

James Eason explained that he received a notice from Susan Dudley regarding President Obama's proposed cut to the CDBG program.

18. Approval of Vouchers for Payment

The vouchers were reviewed and all were signed by Board members. Horace Carlyle made a motion to approve the vouchers as presented for payment. Glenn Hatch seconded. Motion passed 4-0-1 (Javier Gonzalez was absent).

19. Adjourn

Meeting was adjourned at 8:52.

Minutes transcribed by:

Approved:

Mariah Rivero
Mariah Rivero

Jon Zane, Chairman

Horace Carlyle
Horace Carlyle, Vice Chairman

Javier Gonzalez, Clerk

Glenn Hatch
Glenn Hatch, Member

Duane Downing
Duane Downing, Member