

**TONOPAH TOWN BOARD
MEETING MINUTES
SEPTEMBER 10, 2014**

Tonopah Town Board Chairman Horace Carlyle called the meeting to order September 10, 2014 at 7:00 p.m. Also present were Duane Downing, Ron Kipp, Janet Hatch and Tom Seley. Six others were present. Chairman Carlyle led in the Pledge of Allegiance.

The Town Board recessed to the Library Board of Trustees at 8:16 p.m. and reconvened as the Town Board at 8:22 p.m.

1. Public Comment.

Dan Tarnowski from Nevada Rural Water Association was present. He stated he helps train Tonopah Public Utilities staff on water and waste water and to work with boards on water and waste water issues. Mr. Tarnowski stated he just wanted to say congratulations on a lengthy water project. Mr. Tarnowski noted they use what has happened here as a model for other people on the administration and utilizing the staff and the extra specs that the Town of Tonopah put in. He stated they have been watching what has been going on here and they want to congratulate the Town on an outstanding job.

2. Review and approval of minutes, in context, from the regular meeting held on August 27, 2014.

Janet Hatch motioned to approve the minutes, in context, from the regular meeting held on August 27, 2014 as presented. Duane Downing seconded. No further discussion. Motion carried 5-0.

3. Deliberation, discussion and possible action to determine the correct ERU usage calculation for the North Tonopah Development Housing Facility Located at 1160 N. Highway 95.

Michael Lach and Bruce Jabbour from North Tonopah Development were present. Mr. Lach stated they are trying to determine the correct ERU (equivalent residential unit) usage for their facility. Mr. Lach noted he has furnished quite a bit of back up showing how the ERU's are calculated using the Uniform Plumbing Code; which is in the Town of Tonopah Water and Sewer Regulations Ordinance. Mr. Lach quoted the ordinance, "The utilities shall use the table of equivalent residential units to calculate the number of newer additional ERU's since the use is not listed on the table. This shall determine the total of fixture units required for water or sewer service as per Uniform Plumbing Code and determine the number of new ERU's for the premises dividing the total fixture units by 15." Mr. Lach asked the Board for questions they may have.

Tom Seley asked Mr. Lach that with the Solar Reserve tapering down, what will the uses of the duplexes be? Will they become single family dwellings? Mr. Lach replied they will never be single family dwellings. He stated while things are slowing down, between Silver Peak and Round Mountain they still have several units occupied. Mr. Lach explained that he's always known over the long term there will be slow periods and periods of high occupancy depending on what is going on in Tonopah, and it was built with the understanding there would be down times. He stated whatever the use is, the numbers they gave the Board were full for a long period of time. Mr. Lach stated even at their maximum usage is back up for saying they are using

117 gallons on the highest usage per ERU versus the 893 that it is supposed to cover. He noted that is only 13% on the max usage. He explained that right now with occupancy being down they probably only use about 90 gallons. Mr. Lach stated the max usage will never change because he cannot increase that. He stated they do not have landscaping and if he does plant some trees out there it would not be one tree for every unit, he is going to put some along the road. He may use reuse water to water the trees but has not figured that out yet. Mr. Lach stated they do not have the typical landscaping and they do not have washers and dryers in the units. He said they do not have any of the stuff that is high water usage.

Duane Downing asked Mr. Lach if right now he was being charged for 80 ERUs? Mr. Lach replied he has 63 ERUs that were there and as they were developing, Mr. Eason and Mr. Westerlund came by and said we think you are going beyond your ERUs with what you have. Mr. Lach stated he didn't think so based on the Tonopah ordinance. Mr. Lach stated he is utilizing all of his ERUs right now. Mr. Lach noted he just put in another modular which will be one more ERU which would bring it to 59 ERUs currently being used.

Duane Downing clarified the only dispute is on the doublewide housing. Michael Lach stated that is correct. Mr. Downing explained Tonopah Public Utilities believes each one is 2 ERUs and Mr. Lach thinks each one is one ERU.

Chairman Carlyle stated he is trying to account for the ERUs being used. He explained his computation as the RV spaces are 18.75, Laundromat as 5, the doublewide office as one which adds up to 24.75 ERUs. That does not include the 16 room building. Mr. Carlyle added in 1 ERUs based on Mr. Lach's comment for possible use of an administrative building. Mr. Carlyle stated this is on the East side of the Highway. Rounded off is about 26 ERUs without dealing with the doublewide housing. Mr. Carlyle stated that 20.5 of Mr. Lach's ERUs were transferred to the West side of the Highway in 2011. Mr. Lach stated he would be transferring 19.5 of those ERUs back to the east side of the Highway and leave one on the west side. Mr. Carlyle stated that in the Lambertucci estate there were 63 sewer ERUs.

Ron Kipp asked Mr. Lach to clarify the number of ERUs he has on each side of the highway. Mr. Lach explained he has 20.5 ERUs on the west side and 43 ERUs on the east side. Mr. Kipp asked so the 58 ERUs Mr. Lach is currently using isn't enough as he only has 43 ERUs on the east side. Mr. Lach stated that is correct as he had forgotten he had moved 20.5 ERUs to the west side so he will put it on the next agenda to have 19.5 ERUs moved back.

Horace Carlyle clarified that in the settlement in 1983 the Lambertucci estate had purchased 63.5 sewer ERUs. Tom Seley explained that is because Lambertucci was using his RS2339 water system to provide water for everything else. Mr. Carlyle asked Mr. Seley to explain that comment. Mr. Seley explained that revised statute RS2339 is one of two that survived from the 1866 mining law that is for ditches. Lambertucci's had a fairly extensive ditch system which included pipe and windmills. The storage tanks were part of his water system so his water would flow down and he could store it in there, it was a pretty weak water system. Mr. Carlyle asked if he could assume, based on what Mr. Seley stated that the Lambertucci estate at that time had not purchased any ERU water rights from the Tonopah Public Utility. Mr. Seley stated that is what it appears to be without looking at any documents, but that is what Mr. Lach had to go through when he was working on the purchase. Mr. Lach stated he thought they did because it was all

hooked up before he had to fix the leak there. Mr. Lach explained the Lambertucci's were still able to bring their water down because it was on a separate line. Mr. Seley stated with his background he can see the evidence that the water system is on the surface and after that he can't tell exactly where it went. Mr. Lach stated a lot of people built their houses on top of that; there is an easement through there that was there before the subdivision went in.

Mr. Carlyle asked Joe Westerlund to give the staff's opinion on the matter. Mr. Westerlund stated that in 1983 there were 63.5 sewer ERUs on the property, 5.5 on the west side and 58 on the east side. Tonopah North Development on November 9, 2011 went to the Town Board and asked for 15 of the ERUs to be moved from the east side to the west side of the Highway, which was approved. The ERUs then went to 20.5 on the west side and 43 on the east side. With the current usage of the ERUs in Tonopah Public Utilities opinion they consider the doublewides a multi-family dwelling which is one unit. It is one unit per dwelling unit and there are two dwelling units in each doublewide because they are separated by a wall. This ERU assignment is the way it is across town, a duplex is two ERUs. Mr. Westerlund stated the doublewides at North Tonopah Development would and could house a family. The fixture units they have counted comes up to be about 5.5 to 7 on each side and how TPU calculates them if it is under 15 or from 2 to 12 it is one ERU for a house. TPU sees it as 22 multi-family dwellings (doublewides) which is 44 ERUs and Tonopah North Development only have 43 ERUs on that side of the highway right now. 5 are at the laundromat, and there are 25 RV spaces which is 18.75 ERUs, the office unit is 1 ERU. Not in use is a doublewide trailer which is 1 ERU, not in use is the sixteen unit motel which is 12 ERUs, and based on Mr. Lach's statement of the workout room which is not in use at this time but will have a toilet, is 1 ERU for that building also. This means there are 14 ERUs on the property not being used at this time. TPU's count is that 68.75 ERUs are being used so if you figure in the 14 that are not currently being used, that equals 82.75 ERUs. Mr. Westerlund stated he understands the Development is not currently at full capacity right now but the water system has to scale their system at the possibility of max.

Michael Lach stated November 2013 through April 2014 North Tonopah Development was at full capacity. Every single room was full and everything was at max. When they were at max they were only at 13 percent of what an ERU is supposed to be calculating for water usage. Mr. Lach asked how do you foresee that max going to even 20 or 25 percent? This is based on 1 ERU, if it goes to 2 ERUs that number goes down to about 8 percent. Mr. Lach stated his question is when you bring up max, what max are you worried about when they are not even at 13 percent when they are at max capacity, they couldn't have been more maxed then they were during those months. Mr. Westerlund asked Mr. Lach where he reached the 13 percent number. Mr. Lach stated North Tonopah Development used (on the high side) approximately 252,000 gallons of water in June 2014. He stated he based this on 58 ERUs (1 per doublewide). Mr. Lach was concerned about what TPU considers max due to the fact their units have so few fixture counts, no washers and no landscaping. The percentage of water they use is extremely lower than what the ERUs are.

Chris Mulkerns stated the town ordinance doesn't measure ERUs in gallons, it measures ERUs in fixtures. Mr. Lach stated he was getting to that next. Mrs. Mulkerns stated that Mr. Lach is suggesting the development is not getting to that max gallon amount. Mr. Lach stated the equivalent unit is really based off of an acre foot and that is what the Uniform Plumbing Code uses it for and what everyone else uses it for. He stated if you are going to talk about max water

usage, you have to go back to what they actually use for the termination of fixture counts and stuff for ERUs. Mrs. Mulkerns stated she didn't disagree with that but the ordinance is written one way and they are interpreting it another way. Mr. Lach reiterated that TPU is concerned about the max water usage and has to be prepared for that so it does not exceed that and have problems down the road. He stated he has data showing North Tonopah Development at max capacity and that gives you a pretty good idea of the max amounts they are going to use. Mr. Lach stated that makes their water usage extremely low based on what an ERU allows for. Mrs. Mulkerns stated TPU bases it on what the worst possible case scenario could be for every customer in town. Mr. Lach stated you have the worst case scenario from me and it is sitting right here (max capacity).

Mr. Westerlund explained to Mr. Lach that his calculations were incorrect because he based it on 58 ERUs, 12 of which (for the motel) are not being used at this time. So based on 46 ERUs they are using 5,100 gallons per ERU per month. Mr. Westerlund stated 1 ERU averages 10,000 gallons per month. He explained that puts North Tonopah Development at half of that number, so the 13 percent Mr. Lach stated they were using would actually go to 50 percent. Mr. Lach stated that Mr. Westerlund is only using 1/3 of that acre foot and they are still at only 50 percent at their maximum so how could they possibly go 50 percent more.

Mr. Westerlund asked Mr. Lach who regulates whether they put in landscaping or if the place were to be sold or if someone else managed it or if they came in and started planting a bunch of trees. He asked what if a family with children moved in and they were there constantly because that would drive the numbers way up. Mrs. Mulkerns explained that Mr. Westerlund's point is that right now they have a certain situation down there and right now Mr. Lach is basing his figures on that certain situation but 5 or 10 years down the road that situation could change. Mr. Lach stated that is fine and if the situation were to change they could treat it as such but right now that is not what it is. Mr. Lach stated the town ordinance states that if it doesn't fit in your definition and they do not fit in the definition you have to go to ERUs. Mr. Westerlund stated that is where the disagreement is. TPU believes these are multi-family units with 2 dwellings per unit.

Duane Downing stated he has a very simple solution to this, the town has attorneys. He stated they should submit this to the Nye County District Attorney's office for their interpretation and they go with what he says. Mr. Westerlund stated this is a Board decision but if that's what they choose to do, that is fine. Mr. Downing explained this is difficult to understand and he can see the Town's interpretation of it but thinks Mr. Lach has a point also as the development is a special situation. For an interpretation of a town ordinance, this is what they have attorneys for.

Mr. Carlyle brought to their attention ordinance 22.28.210 section C, the last line which reads "The utility reserves the right to modify ERU equivalents based on actual capacities required or used." He explained that theoretically they could agree to the doublewide housing being one ERU each. With the condition that if the water usage changed or if the usage of the development changed they could go back and modify the ERU equivalents that are required on the 22 housing units. He thought maybe they should go back and revisit the ordinance and make some revisions. Mr. Carlyle stated Mr. Lach has an argument and Mr. Westerlund has a concern also.

Mr. Westerlund stated he wanted them to be aware that there are a lot of other people in town with similar situations and if the Board does this for the development; they will also be addressing the same thing with people who have had 2 ERUs on a duplex for years and similar water usage. He also stated if you have older people in a house that don't tend to use as much water, or a duplex that only uses a 1,000 or 2,000 gallons of water per month, that could be something that could be complained in the future.

Chris Mulkerns explained that because of the funding they have received over the years they have to treat everybody equally. Mr. Carlyle stated they have a past practice based on duplexes, multi-family use they have charged 1 ERU per unit which a duplex would be 2 ERUs.

Mr. Lach asked what their definition is of multi-family dwelling. Mr. Westerlund explained that a multi-family dwelling would have abilities to have families on both sides with no connection between the two sides. Mr. Lach stated so if there is a door between the two sides it is no longer a multi-family dwelling. He explained he is just asking for a definition because if it is not based on size or fixtures using the Uniform Plumbing Code and residential fixtures which is to determine usage, this is why you have it in there, this is how everyone does it everywhere in the nation. Mr. Lach stated that definition is probably pretty important to figure out what exactly that is.

Duane Downing stated they are unique trailers because they are very specific. There is no living room, three bedrooms with one common kitchen and one common bathroom. Mr. Lach stated they do not have all the water things most homes have. You don't have a family of five because you don't have the room for that. He has a laundromat which has ERUs and he is not going to put washers & dryers in the units at any time. Mr. Lach asked is this about water usage or terminology. If it is about water usage he has the evidence which is clear that they don't use that much. Duane Downing stated that Mrs. Mulkerns brought up a very valid point that they have to treat everyone the same and be uniform across the board. Mr. Lach stated that the ordinance gives you the right to modify the ERUs or if something doesn't fall into one of the charts which they don't because it is a unique situation. The utility shall (not could or possibly or may), the utility shall use the table of ERU equivalents; and when you use that, we don't have the fixtures.

Horace Carlyle stated as the Board of Directors of the utility they have the discretionary power based on circumstances. Mr. Carlyle stated that earlier he thought it would be easier to go with tradition and say 2 ERUs per each building. After talking to different people about water usage he felt they need to revisit the ordinance due to different situations coming into play such as waterless toilets. Mr. Carlyle stated they would be safe if the Board wanted to base their discretion upon 22.28.210 on section C if there is a change in circumstance or if somebody comes in and petitions the Board based on if they have been discriminated against then they can address it for each situation. Mr. Carlyle stated the District Attorney is not going to make this decision for them. They have the power to exercise discretion. He explained he is not advocating either way. The easiest way is to tell Mr. Lach it is 2 ERUs per unit, but is that equitable or pragmatic based on the fact that they want to encourage planned growth. If he does something different or sells the property and changes the use, they have the option to go back and change it.

Janet Hatch stated that Mr. Downing did have a point to get a legal decision on this. Mr. Downing stated they could approve a temporary allowance to go with the 22 ERUs rather than 44 for the doublewides contingent upon water usage. However, he would really like for the District Attorney to review it so they can get a feel for what they believe is correct. Ron Kipp asked what the point was of making a temporary decision rather than a permanent decision in a week or two since it is not affecting his daily business and he is not over his usage. Mr. Westerlund stated that North Tonopah Development is currently over their usage. Mr. Lach stated when he comes before the Board in two weeks to have 19.5 ERUs moved across the highway he will not be over his usage.

Mr. Westerlund asked if it was to change ownership or if something were to change there that would create higher water usage, who is going to monitor that. Mr. Carlyle stated the trigger is going to be water usage or change of ownership.

Duane Downing motioned to submit this issue to the Nye County District Attorney's office for legal review. The legal review is to be specific to ask for legal interpretation of what these units are, whether or not that TPU is correct in classifying the doublewides as multi-family units therefore requiring one ERU per unit or if the property owner's interpretation is that it does not fit under the guidelines listed under Tonopah's Town Ordinance and therefore falls back to fixture count for determination of ERU's.

Michael Lach stated to please ask the District Attorney to give a very clear definition of multi-family so that if a door is put in the middle of the unit, does that make it multi-family?

Duane Downing continued his motion that they also request from the District Attorney's office a detailed description of what a multi-family unit includes. Tom Seley seconded. No further discussion. Motion carried 5-0.

4. **Department Budget Reports** No comments.
5. **Tonopah Development Corporation Report** None.
6. **Town Board Member's/Department Manager's/Nye County Commissioner's Comments**

Horace Carlyle stated he had been looking at the documentation on the Lambertucci property and the settlement of 1983 with the BOCC and Anaconda and he saw no evidence of the Lambertucci's or the subsequent purchasers ever paying water privilege fees. The only receipt he could find is for sewer connects. He would like to put it on the agenda or direct staff to send a letter to North Tonopah Development and ask them if they have any documentation on water privilege fee payments either by the Lambertucci estate or Anaconda Copper. Duane Downing noted that maybe staff could research it a little. Chris Mulkerns stated they have started to.

Janet Hatch asked about the Beautification of Downtown stating there is no theme or consistency and there are trees in planters that are not designed for trees. Chris Mulkerns stated that she

would need to contact Suzie Lieski. Horace Carlyle stated the Board cannot control the volunteers.

Duane Downing stated the OHV ordinance will be on the agenda in two weeks as the Town never adopted the ordinance. It was tabled and submitted it to Nye County for their consideration for adoption and never brought it back to be adopted by the Town. This was due to a misunderstanding with the District Attorney and the Town. Bills TTO13-03 and TTO13-04 need to be assigned town ordinance numbers. A letter has been drafted for the OHV ordinance and will go the newspaper once it has been adopted.

Duane Downing stated the town ordinance that was passed adopting chapter 484 of the NRS, Justice Court has been dividing up the fines as if they had a town ordinance already.

7. 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.

No action taken by the Board.

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

No action taken by the Board

9. Deliberation, discussion and possible decision on labor negotiations, issues and other personnel matters presented in the closed meeting

No action taken by the Board.

10. Correspondence

Nye County Community Coalition, Mental Health First Aid Training, September 2, 2014
Doing Business With Nye County Purchasing Department, August 7, 2014
Tonopah Room Tax Report for July 2014
Nye County Airports Status Report, August 2014
Tentative 2014 BOCC Meeting Schedule, September 2, 2014
California Sets Stage for First Groundwater Regulations, September 2, 2014
Rural Hospitals Pressured to Close as Healthcare System Changes, September 3, 2014
Tonopah Convention Center Report to the Town Board, September 8, 2014
Nye County BOCC Meeting Summary, September 2, 2014
Pahrump Town Board Agenda, September 9, 2014
Beatty Town Advisory Board Meeting Agenda, September 8, 2014
Round Mountain Town Board Meeting Minutes, July 22, 2014
Round Mountain Town Board Meeting Agenda, September 9, 2014

Horace Carlyle discussed the rural hospital article and due to the fact the Affordable Care Act is cutting funding for rural hospitals, one out of five rural hospitals in the next five years will close.

Mr. Carlyle also discussed the groundwater law that was passed in California. He stated that if an aquifer is over pumped you can change the chemistry and collapse the aquifer.

Chris Mulkerns stated the thank you letters the Board requested to be sent to Senator Reid and District Attorney Brian Kunzi had been typed and passed them around.

11. Public Comment


Dan Tarnowski from Nevada Rural Water said he could appreciate what Mr. Lach was saying but would have liked to ask him what would prohibit him from putting in a koi pond or what is your prevention from putting in a landscaped area at North Tonopah Development. The water department has to be able to meet these needs at the maximum level. Mr. Tarnowski stated he has worked with many Boards and he has seen Boards make exceptions for all churches and civic organizations, but you have to treat everybody the same and the ripple effect can come back and bite you.

12. Approval of vouchers for payment

The Board reviewed and signed the vouchers. Duane Downing motioned to approve the vouchers as presented for payment. Janet Hatch seconded. No further discussion. Motion carried 5-0.

13. Adjourn The meeting adjourned at 8:51 p.m.


Minutes transcribed by:


Arlene Neiderman, Deputy Town Clerk

Approved:


Horace Carlyle, Chairman

Duane Downing, Vice Chairman



Ron Kipp, Clerk



Tom Seley, Member



Janet Hatch, Member