

## TONOPAH TOWN BOARD

### MEETING MINUTES

MAY 11, 2011

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

1. Review and Approval of Minutes from Regular Meeting held on April 27, 2011.

Duane Downing made a motion to approve the minutes, in context, from regular meeting held on April 27, 2011. Glenn Hatch seconded. Motion passed 3-0-2 (Jon Zane and Javier Gonzalez were absent).

Review and Approval of Minutes from Special Meeting held on May 3, 2011.

Duane Downing made a motion to approve the minutes, in context, from special meeting held on May 3, 2011. Glenn Hatch seconded. Motion passed 3-0-2 (Jon Zane and Javier Gonzalez were absent).

The Tonopah Town Board recessed to the Tonopah Library Board of Trustees at 7:03 pm.

The Tonopah Town Board reconvened at 7:13 pm.

The Board agreed to move item three up.

3. Discussion and Action Regarding Aptus Architecture Inspection Reports on the TAB E Project that Pertain to Public Health, Safety, and Seismic Performance, Including all Supporting Correspondence Directed to the Town of Tonopah by Aptus Relating to Tab E – Horace Carlyle.

James Eason explained that the Board packets contained a letter drafted by Horace Carlyle. It is a request to send the backup for this item to the Nye County District Attorney.

Horace Carlyle explained that he went back and reviewed the documents supplied to the Board. He noted that each document contained something that should be looked at based on liability or the individual or firm gave a minor disclaimer. He explained that Aptus raised questions in one document about the Town's duties to discuss and notify all parties to this project about issues that are not under the purview of Aptus. He noted that Aptus had said they are only responsible for their scope of work. If there is something that is outside their scope of work, he feels the Town is responsible for it. He feels that the Town has a liability that it represents and that each Board member has a liability if the Board does not perform due diligence. He noted that under the Nevada Revised Statute, if the Town has legal counsel and it is not doing anything illegal, the Town is protected. He explained that he did not want to be homeless due to a failure to ask for a legal opinion.

Duane Downing clarified that Mr. Carlyle wants to send these documents to the DA's Office for a legal opinion on liability. Horace Carlyle explained that the DA's Office will look at what the Town has done for due diligence and let the Town know if it needs to do something more.

Susan Dudley asked for clarification regarding what was meant by secure written agreement from the Nevada Historic Society. She questioned if the historic society mentioned in number five of the letter written by Horace Carlyle meant the State Historic Preservation Office (SHPO). James Eason confirmed. Susan Dudley explained that the Town has information from SHPO through USDA. James Eason explained that this is part of the environmental review process that USDA did. Susan Dudley explained that she completed the same process for CDBG and they informed that Town that all it had to do is follow the Secretary of the Interior's Standards for Rehabilitation, which is included in the agreement with Aptus. James Eason explained that this will be included in the packet to be sent to the DA's Office. Horace Carlyle explained that he brought this up because George A. Bernath explained that the Town needs to make sure that it has done this.

Al Nye explained that he understands that the Town will have access to the title of the Belvada. Horace Carlyle noted that this is his understanding as well. James Eason clarified that the Town does not have title to the building until the Board accepts title to the building. He noted that if the Board accepts title to the building, it means that there is funding attached. He noted that the Town does not have title to the building. Al Nye explained that in a roundabout way, it appears as though this will come about. He noted that the way the Town is talking about doing the expansion it is figuring on getting the title. James Eason explained that it is up to the Board to decide what it will do. Al Nye explained that from what he has gathered someone wants the building and he questioned who would want it. He explained that if the Town has access to the title, it should put the building up for bid for someone else to buy so that individual can create jobs and revenue rather than a liability for the Town. He felt it would not help the Town to "put a brick their back that is going to raise taxes." He felt the Town could not do it any other way. He noted that the Town is not a business partner. It provides services to the residents. He felt the Town will not get a vote that will pass from the residents. He explained that only a few people want this. He explained that the Town is not in a financial position to throw money away on the building and that the Town has a Convention Center that he feels is not being utilized completely. He explained that the Town is losing money on the Convention Center and that the Board members should be looking out for the taxpayers. He feels that taking on the Belvada is not looking out for the taxpayers. He noted that he sees two ways to go on this: if someone wants to persist in this project, it needs to go on a ballot; if this does not work, he may get a cease and desist order against the Board.

Robin Rivero felt everyone should be more informed. She felt that Al Nye does not know the whole story and has not heard the whole story. She felt that he has been hearing one person giving one side of the story. She sees the Town's vision on this project. She explained that at this point, there have been no funds expended. The Board is taking a wait-and-see attitude. After the Town gets more information, it will see how it progresses. She noted that the Town has not expended money yet and is just doing a study to see the feasibility. She feels it is a great project.

Al Nye explained that he talked to three people this day who are in the business of running businesses. He noted that all three of them felt the project is a joke. Robin Rivero noted that the Town needs a chance to finish. Al Nye explained that it was the same when NDOT was here. It is always a study but there is always someone pushing it. He explained that he wants to put a stop to this before it goes too far. He feels that if it gets too far the Town cannot stop it.

Duane Downing clarified that as of the special meeting on May 3, 2011, there will be no funds going into any building that the Town does not already have. He explained that the Board approved to pay-as-we go on the existing building. He explained that for the rest of Tab E, it is on hold pending other funding sources and other legal opinions. He noted that at this point, the rest of the project is on hold and the Town will not accept title to the Belvada unless a lot of things are in place. He explained that the Town is sending all the information to the District Attorney's Office to get a legal opinion regarding the liability and the legality of what has happened up to this point.

James Eason explained that the process under Tab E, which includes the Union Plaza Parking Lot, the Belvada, the existing Convention Center, and the parking lot between the two buildings, is for the entire package; that everything the Town has done to date passes the test from all the other federal and state agencies that have a right to weigh in.

Duane Downing made a motion to go ahead and send this item, the action regarding Aptus Architecture inspection reports on Tab E to the District Attorney's Office for legal review. Glenn Hatch seconded. Motion passed 3-0-2 (Jon Zane and Javier Gonzalez were absent).

2. Discussion and Possible Decision Regarding Abatement of Late Fees on Three TPU Bills on Grounds of Non-Receipt – Michael Schaefer.

The Board contacted Michael Schaefer via telephone.

Michael Schaefer explained that he has always felt that the TPU bills were all in good order and sent out and delivered. He noted that this month he received bills for four different accounts instead of the usual three. He had been sent the bill for UPS in Columbus, OH. When he called the office, he was informed that the post office must have misdelivered. He explained that when he informed the office that the bill was in with his three he was informed that somehow the other bill was sent to him and it was a TPU error. He made sure the Board knew that TPU staff does make errors. He explained that he did not receive a bill for March otherwise he would have paid it. He feels he would not have let a bill go for more than a week. He noted that TPU shows his bill as being thirty days late and has added a ten percent fee. He noted that he has someone who has been going into his mail box if he gets mail there they have both been accusing each other of stealing mail. He feels that the late fees are illegal because it is a punitive damage and it is a very large amount. He feels it is inconsistent with other utilities.

Horace Carlyle asked for Mr. Schaefer's payment history. Chris Mulkerns explained that it happens about once a year where he is assed a late fee and TPU gets a letter.

Horace Carlyle reiterated what Chris Mulkerns stated. Michael Schaefer explained that when he gets a bill he pays it. He noted that he received a bill for \$5,000 and that the amount on the bill has increased. He explained that he is not asking for postponement. He noted that he feels the fee is excessive and he feels it is inappropriate because there is no proof that TPU sent the bills to him. Chris Mulkerns explained the reason for the higher bill. At the request of Michael Schaefer, TPU put new meters in so the bills were separate. In the past the bill was split. She explained that he always felt he was getting the bad end of the deal. She noted that they paid to have the meters put in to get a more accurate billing. It turns out he was getting a deal. The bills are higher but they are being metered accurately. Horace Carlyle asked what Mr. Schaefer's current average bill is. Chris Mulkerns explained that the \$5,000 Mr. Schaefer was referring to is for two months worth of bills. She noted that the bills are around \$2,500 per month. James Eason reiterated that it was their request to put in the new meters. Old meters slow down so they were receiving a great deal on water.

Chris Mulkerns explained that bills go out the last day of the month and customers have eighteen days to pay. If TPU does not receive the bill by the eighteenth day, penalties are posted on the nineteenth day. She explained that the ten percent penalty is by ordinance and was approved by Nye County. She noted that every water system in Nye County has the ten percent penalty. James Eason noted it was every enterprise utility in Nye County.

Horace Carlyle suggested sending Mr. Schaefer a recommendation that if he does not receive his bill by a certain date that he should call TPU. Chris Mulkerns noted that she did make that recommendation in the letter she sent in response to Mr. Schaefer's initial letter. Horace Carlyle explained that he would like for staff to refer Mr. Schaefer to the letter of recommendation TPU sent him.

Duane Downing made a motion that we deny the abatement of late fees based on past problems with the same issue. Glenn Hatch seconded. Horace Carlyle noted that if the motion passes he would like the approval of the Board to refer Mr. Schaefer back to the April 8, 2011 letter from TPU setting up the procedure. Motion passed 3-0-2 (Jon Zane and Javier Gonzalez were absent).

Horace Carlyle informed Michael Schaefer that the Board has followed the recommendation of TPU staff. He noted that TPU sent Mr. Schaefer a letter dated April 8, 2011. Michael Schaefer noted that he is not sure. He noted he recalls receiving a bill for two months. He noted that when he complained, TPU informed him that he had to make an application to the Town Board. Horace Carlyle explained that if the Board agrees, it will send him a letter via certified mail with a recommendation on how to avoid future problems.

Horace Carlyle requested that Chris Mulkerns send Mr. Schaefer a letter. Chris Mulkerns explained that she would send a letter explaining what the Board decided.

#### 4. Tonopah Department Budget Reports

Horace Carlyle feels that the staff is doing a great job at moderating the cost increases and maintaining the budget projections.

Duane Downing noted that the Town is still on track for year-end projections. Chris Mulkerns explained that the property tax is a little low but given what the Town has leaned it is understandable.

No action taken by the Board.

5. Tonopah Development Corporation Report

Horace Carlyle asked if something else is going to be put in the window. James Eason explained that something will be put in the window.

No action taken by the Board.

6. Public Comment

No action taken by the Board.

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

James Eason explained that he, Susan Dudley and Chris Mulkerns will be going to sit with USDA and CDBG to inform them of the decisions the Board has made, the steps, and how the Town will proceed into the future. He noted that they will ask CDBG if they will still allow the Town to proceed with the funding without the USDA funds.

James Eason explained that next week there will be people in Tonopah filming a commercial. They will be interviewing local businesses. It is in tandem with a reality television show. He explained that the Town will get a free commercial out of it. He noted that they did ask to meet with the Board. The Board agreed to schedule a workshop at 7:00 pm on Tuesday May 17, 2011 at the Convention Center.

Duane Downing explained that he is trying to get a Town Ordinance put before the Board in the next month or so banning public urination/defecation. He noted that Tonopah is one of the few places in the country that does not have an ordinance against that.

Horace Carlyle wondered if the Town had anything positive to tell Silver Trails on Friday about their building. James Eason explained that the Town is following Mr. Carlyle's recommendations and the building is closed. Horace Carlyle wanted to know if Mr. Eason and Clair Blackburn have agreed on a project or presentation so the Board can consider it. James Eason noted that Clair Blackburn is working on it and has been working with the previous owners of the gas station and the individuals who installed the sea-hawk. He reiterated that the building is closed per Mr. Carlyle's recommendations.

James Eason explained that meeting on Tuesday May 17, 2011 is being changed from a workshop to just a Notice of Quorum. He also noted that the next time the Town has a Conservation Crew the area around the Visitor's Center will be weeded and cleaned.

8. 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.

9. 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.

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

This item was tabled.

11. 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.

12. 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.

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

This item was tabled.

14. Correspondence

NWTRB to Hold Workshop on Evaluating Waste Streams – 04/22/2011

Nye County Board of Commissioner Meeting Agenda – 05/03/2011

Nye County Board of Commissioners Teleconference Agenda – 05/06/2011

Round Mountain Town Board Meeting Agenda – 05/10/2011

Pahrump Town Board Agenda – 05/10/2011

Beatty Town Advisory Board Meeting Agenda – 05/11/2011

Nevada Silver Trails Meeting – 05/13/2011

15. Approval of Vouchers for Payment

The vouchers were reviewed and all were signed by Board members. Duane Downing made a motion to approve the vouchers as presented for payment. Glenn Hatch seconded. Motion passed 3-0-2 (Jon Zane and Javier Gonzalez were absent).

The Board returned to item seven.

16. Adjourn

Meeting was adjourned at 8:18 pm.

Minutes transcribed by:

Approved:

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Mariah Rivero

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Jon Zane, Chairman

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Horace Carlyle, Vice Chairman

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Javier Gonzalez, Clerk

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Glenn Hatch, Member

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Duane Downing, Member