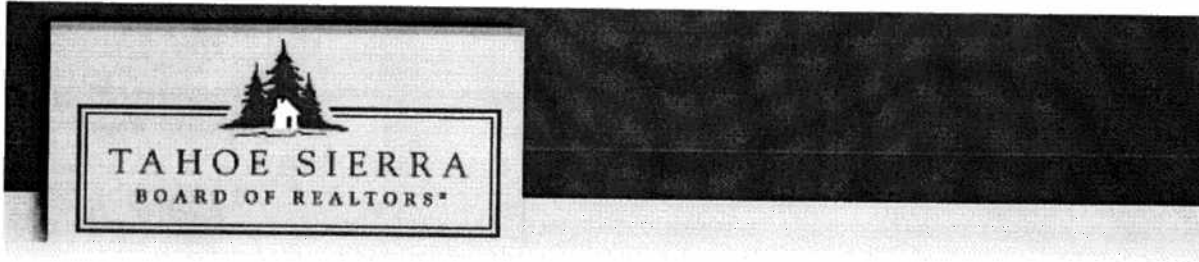


Pam Lefrancois

From: jrfintel@charter.net
Sent: Wednesday, January 02, 2008 2:21 PM
To:
Subject: Re: NTPUD Sewer Lateral Line Ord approved - must fight against its implementation!



02 January 2008

**IMPORTANT – IMMEDIATE ATTENTION
 ACTION REQUESTED**

To: All Realtors® & Affiliates doing business within NTPUD's jurisdiction.

From: John Falk, Legislative Advocate

Re: Sewer lateral expansion of private "ownership" and responsibility.

Happy Holidays to all. Perhaps you are one of many folks who are of the opinion that government never "gives" anything to individuals. Well, almost never. Be thankful for this fact, in light of the most recent actions of the North Tahoe Public Utility District's Board of Directors, rest assured these are "gifts" you would rather not receive. See below for the dreadful details.

Fact set: On Monday, 10 December 2007, the Board of Directors for the North Tahoe Public Utility District (NTPUD) held a Special Meeting. At this meeting they took up Ordinance 371, which amended the District's sewer ordinance (Ordinance 100 - Section 4.02), extending private property lateral ownership and associated maintenance responsibility from its previous stopping point at one's property line, to extend beyond one's property boundary all the way to the main line. TSBOR opposed the unilateral and unwanted "gift" of additional sewer line responsibility. The vote was recorded as 4-to-1 in favor of the ordinance's passage. As such, the ordinance will become effective 30 days after the date of adoption (by my calculations on 08 January 2008 it goes into effect).

Background: In 2006 the State Water Resources Control Board adopted a set of statewide general Waste Discharge Requirements for all sewage collection systems. As a result, public entities such as NTPUD are required to report electronically each and every sewer overflow experienced within their jurisdiction (i.e., under the PUD's ownership / control). To avoid having to file these sewage discharge reports to the state, the PUD proposed something of an "end-run" around a portion of the state law by transferring ownership of the entire sewer lateral pipe from partially private and partially District owned, to complete/full private ownership and responsibility. The net effect to local government, as noted in the NTPUD's staff report on the issue, is that "... the District is not required to report spills on private property from private laterals unless the spill results from a blockage in the sewer main." Prior to Ord. No. 371's passage, ownership and responsibility for structural defects and any associated discharge (spills, I & I...) from the property line to the sewer main was the District's. As of 08 January 2008, ownership and responsibility transfers in total to the individual property owner. The net effect to the NTPUD customer (i.e., property owner) is also articulated in the staff report; "The property owners will have an increase in testing costs based on the length of line tested." However, the increased testing burdens prior-to-sale are only a slice of the potential financial liability to be borne by the private property owner. Again, as mentioned in the staff report to the NTPUD Board of Directors, "Property owners may have a repair or replacement expense for the sewer lateral within easements or public rights of way which is highly dependant on the site location and conditions." The headaches associated with private work being done in the public right-of-way are many and significant: From dealing with the county and CalTrans regarding traffic flow and controls, to the increased liability exposure both during repairs and once the repairs have been completed in regard to road surface durability and safety, to note just a few. The

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increased costs to be borne by the individual are substantial and highly variable based upon situational (site) specifics.

Add to this the fact that the testing and repair trigger involves point-of-sale (Ord. 100) and the adverse impacts multiply. The time-sensitive escrow process is not one to be tampered with lightly, and yet this extraordinary added burden was imposed with unknown injury to future sales and the region's economy generally. With a course correction underway in the real estate market, a downturn in the regional, state, and national economic picture, and forecasts of more hardships to come before we see the economy and real property market trends regain their underlying strength, if nothing else this move by the NTPUD is poorly timed. In light of the recent water rate increases imposed by the NTPUD Board, and the most recently added sewer lateral burdens, questions arise as to just how much the public can or should be expected to bear.

Bottom line: Ordinance 371 needs to be reconsidered and rescinded; NTPUD should be urged to reconsider its point-of-sale approach (Ord 100).

- (1) TSBOR opposes the long-standing point-of-sale sewer lateral testing ordinance (i.e., Ord. 100). The p-o-s approach is inherently inefficient, ineffective, and inequitable. It takes too long to complete – decades – and thus does not address the underlying problem expeditiously; it also singles out one class of people for differential treatment – those who are selling their home – from all others who are out of compliance in the community. Not to mention the fact that p-o-s provisions place the real estate professional in an inappropriate position of having to act as the governmental entity's "police" to enforce their mandate – a function well outside the scope of training, certification, licensing, or knowledge of the RE professional. This situation is compounded by the fact that adding another duty to those involved in the transaction unnecessarily increases their legal liability exposure. Coming full circle, the imposition of a p-o-s burden can do damage to the time-sensitive escrow process, adding untold expenses, creating significant delays, and ultimately causing some transactions to simply fall through, which has an adverse ripple affect on the region's overall economy. Point-of-Sale testing, and especially retrofit mandates, are out-of-step with the public health and safety concerns they purport to address. This could not be more true than in the case of sewage system compromise. The deeply entrenched point-of-sale approach simply must be discarded in favor of a universal compliance ordinance, with phased-in and recurrent triggers for inspection and maintenance. We must guard against new p-o-s mandates taking hold, and we must begin to call for the removal of this approach where it presently exists. Perhaps NTPUD should be urged by all to reconsider its point-of-sale approach.
- (2) TSBOR opposes the unilateral imposition of additional sewer lateral line ownership and responsibility; especially when in doing so it extends this liability beyond one's property line. The public is better served when our local government embraces its responsibilities and obligations in the public right-of-way, as opposed to foisting such burdens upon the individual private property owner. It almost has the feel of something of a backdoor "tax", imposed without voter approval or the property owner's consent. The ordinance (371) needs to be reconsidered and rescinded. This will only happen if there is a massive call for such action, made by the people directly to the PUD Board.
- (3) NTPUD Ordinance 371 includes a statement that it is, "exempt from the provisions of the California Environmental Quality Act (CEQA)"; but given the underlying purported purpose of this ordinance, at least in large part, being the avoidance of a state water quality reporting mandate for sewage discharge, one might question the adequacy of the assertion that this local ordinance is "exempt" from CEQA review.
- (4) Important issues which broadly affect the region should not be placed on a "Special Meeting" agenda for final consideration; rather, matters such as Ordinance 371 should only be considered at a regularly scheduled meeting of the Board of Directors. Further, the District's 'outreach', or more accurately the lack thereof, to make this proposal known to its customer base and the public generally is cause for concern.

As for disclosure of this newly adopted ordinance, perhaps it would be prudent to discuss this matter with your company's legal advisor.

FYI: The complete ordinance and associated staff report are available as a PDF file on the TSBOR/TSMLS website. Look in the PDF library, within the LGR Committee category, under the heading "NTPUD Ord 371".

Below are the five NTPUD Board members by name and by vote on this issue. Only **Director Sue Daniels deserves our thanks**- for listening to our arguments in opposition, and upon due consideration she was the lone "no" vote which would have stopped this ill-conceived and ill-advised ordinance in its tracks.

- (a) Mr. S. Lane Lewis, President of the Board, Seat 1 – Term expires 2010
VOTED FOR ORD 371 546-7355
- (b) Mr. John Bergmann, Vice President, Seat 5 – Term expires 2008
VOTED FOR ORD 371 Not listed

- (c) Mr. Frank F. Mooney, Secretary, Seat 2 – ¶ Term expires 2008
VOTED FOR ORD 371 546-5912
- (d) Mr. Jeffrey P. Lanini, Seat 4 – ¶ Term expires 2008
VOTED FOR ORD 371 Not listed
- (e) : Ms. Susan Daniels, Seat 3 - ¶ VOTED AGAINST ORD 371

For further information, or to voice your displeasure with this decision, please contact:

The NTPUD Administrative Offices ¶

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