

01 August 2009

To: All Realtors<sup>®</sup> who conduct business in the NTPUD service area.

From: John R. Falk, Legislative Advocate.

Re: NTPUD's Sewer Lateral Testing At-Sale Ord. Revisions.

*Bottom-line at the top:* The North Tahoe Public Utility District has amended its residential sewer lateral testing ordinance; which now reads, in pertinent part, "The Manager may waive the cleaning and testing requirements if the sewer lateral has been successfully tested in accordance with the protocol set forth in Section 4.03 within the prior fifteen (15) year period and there is good reason to believe that such testing is not necessary." (ref. pp. 19-20, NTPUD Sewer Ordinance, Section 4, Subsection 4.04 'G') This revision to the code was approved by the Board of Directors on 06/09/2009, as Ordinance Number 377. NTPUD has had a point-of-sale (i.e., prior to the close of escrow) sewer lateral testing and remediation requirement for residential properties for well over two decades. The length of time between required retesting at sale has varied over the years, from five to eight and, on occasion, up to ten years between retest triggers. The NTPUD sewer lateral testing ordinance has been revised in a most positive way, which now recognizes a compliant sewer lateral test for a period of fifteen years. As such, unless there is readily apparent evidence that the lateral might have been compromised, a residential property's sewer lateral test, once passed (compliant), will be recognized (remain valid) for a period of fifteen years. Therefore, at-sale, a property that has demonstrated compliance within the fifteen-year window would only be subject to disclosing the date of the testing and providing proof of its passage (i.e., document of compliance). The revised Ordinance has been posted to TSBOR/TSMLS website. It can be found in the PDF library, within the LGR Committee's topics, under the category of "NTPUD Sewer Test Update", with two documents available: the complete "Sewer Ordinance as revised"; and, a much shorter document that only includes the relevant section, "Section 4 Subsection 4.04 G Lateral Testing revised". A copy of this e-mail broadcast is also posted as an "FYI".

Message- "and now, the rest of the story...": The North Tahoe Public Utility District (NTPUD) has been working with TSBOR for some time to establish a revised sewer lateral testing process/procedure. Specifically, we have been seeking an approach that is not so heavily dependent upon the point-of-sale (p-o-s) testing and remediation mandate. The Public Utility's goal, like ours, is to ensure that the sewer system has the integrity demanded to protect public health & safety, the environment, and to reduce the treatment load at our regional wastewater treatment plant, the Tahoe-Truckee Sanitation Agency (T-TSA). Concurrently, the PUD shares our desire to do whatever it reasonably can to avoid burdensome mandates which can delay sales of real property, or worse, cause the time-sensitive process of escrow to be adversely affected with

pending sales falling apart. Everyone loses in such instances, including the PUD. The p-o-s trigger, often referred to in NTPUD's jurisdiction as Ord. 100 testing (historically, Ord. 100 was the initial provision that put sewer lateral testing prior to transfer of title on their books), has been something of a "moving target" over the years. Once a given property had been tested and found to be compliant, the length of time this 'certificate of compliance' was to be considered valid (i.e., no need to re-test upon sale or resale) has varied, from a low of three-to-five years per testing, to a high of eight-to-ten years of test certification recognition.

TSBOR has long held that point-of-sale retrofit mandates are fatally flawed in that the means (at sale testing/inspection and correction), takes far too long (decades), with the provision's imposition being capricious (triggered by transfer to title), to achieve the desired end-state (area-wide compliance). While point-of-sale retrofits, being inefficient, ineffective, and inequitable, create considerable implementation liabilities, there are alternatives. The alternative we often propose, if the issue under consideration is indeed significant and pressing, is to call for universal compliance at a date-certain in the not-too-distant future. If the matter is less pressing, then TSBOR often suggests deploying an incentive driven public outreach and information campaign to bring about the desired change over time. Sewer later integrity is definitely an important matter, and if a line has been compromised, its repair or replacement is a pressing need. As such, TSBOR has called for a universal compliance approach to sewer lateral integrity, with a staggered or phased date-certain implementation timeline. Then, utilizing a "grid pattern" inspection and remediation approach, with a "worst-first" (i.e., oldest lines in well-established neighborhoods) ranking, the entire District could be "tight & right" in less than ten years. The process could then begin again. The challenges for local government under such a scenario are many: From insufficient personnel and equipment to perform large numbers of tests year in and year out, to inadequate resources to remediate problems when they are discovered. Point-of-sale retrofit mandates "lay off" much of this burden to relatively small group of folks in the private sector, namely those involved in real estate transactions. While TSBOR has made this case to our local Public Utility Districts, among others, the fiscal challenges facing all levels of government are immense, and it's easy to see why point-of-sale provisions remain attractive to them. To their credit, NTPUD has always been open and receptive to new approaches. They have accepted our comments, suggestions, and criticisms in the spirit with which they were delivered, namely to make the process and outcome the best it could be for all concerned. To that end, NTPUD has engaged TSBOR in an ongoing dialogue as to ways the sewer lateral testing provisions could be amended to better address our concerns, while understanding and working within their limited resources.

The jumping off point for both parties was to determine the useful life of a sewer lateral line. With factors such as date of initial installation, materials used, slope grade, site geology/soils, surface features (trees...), and intensity of use (or misuse via the introduction of materials that were never intended to be handled by the sewer system), we were able to establish that twenty-years was a reasonable baseline estimate of lateral integrity. Many laterals have demonstrated their ongoing functionality well

beyond the 20 yr. mark, with reports of 30 yr. old plus pipe remaining strong/whole. Nonetheless, because of the importance of sewer lateral line integrity to public health & safety, environmental protection, water quality protections, and costs associated with unnecessary treatment of “I & I” (water entering the sewer system through a breach in the line, then being transported and treated by T-TSA), it seemed prudent to buffer the anticipated lifespan of a sewer lateral line by some five years; adding another layer of safety against unanticipated but unacceptable loss of line integrity. The next issue to be taken up was the number of prior-to-sale tests that had been performed to-date, and if these same homes were being triggered repeatedly at present. It was believed that the p-o-s approach was at the end of its “useful” life, in that home resales were increasingly triggering retesting of “young lines”. With diminishing returns on p-o-s mandates, better long-term performance data for various lines, and an aggressive and effective program by NTPUD to test, repair, and/or replace their sewer mainlines, the time seemed ripe for revisions to the sewer ordinance. The PUD expressed its agreement in principle that jurisdiction-wide testing and remediation would be of value. TSBOR was informed that NTPUD has been, and will be continuing to take a closer look at the lines in a systematic area-by-area approach to sewer system-wide integrity. We applaud this “bigger picture” view of things, and their willingness to pursue a more efficient and effective program. While TSBOR had hoped this converging of information, experience, and policy flexibility might result in the casting off of the point-of-sale approach altogether, such was not the case. Members of the PUD Board and staff felt that it was important to retain some version of the p-o-s mandate, if only to provide a last-ditch opportunity to identify and correct a lateral line problem that could have otherwise been lost. Considering the jurisdiction-wide approach to sewer line review that was ramping up, the willingness to extend/expand the time between tests from the five-to-eight year timeframe to be revised and reflected in the code as a fifteen year window of test acceptability/validity, it seemed a reasonable compromise to support the proposed (and subsequently approved) ordinance amendments. Ordinance 377 is a real-world example of how a good faith dialogue between governmental officials and our organization can identify common ground, and build upon this mutual agreement to provide better customer care.

It is now hoped that as NTPUD’s revised policy and program matures, showing its overarching value to all, that other entities will reconsider their methods with an eye towards a program that does not depend upon the inefficient, ineffective, and inequitable point-of-sale retrofit mandate. There are alternatives to better address the need. NTPUD’s progressive approach is but one of many options we hope to promulgate throughout the region.

Policy Background: As you know, TSBOR believes that point-of-sale retrofit mandates are a suboptimal approach at best to achieve a stated objective. Our mantra has become... “if the issue’s important enough for government to impose a mandated inspection and fix, then it’s simply too important to rely upon the ‘hit and miss’ elongated timeframe of p-o-s to achieve compliance; conversely, if the matter’s not that pressing or important, then don’t add another burden to the already overburdened time-sensitive

escrow process, for it would be an inappropriate, costly, and economically unsound approach.” The inherent inefficiency of relying upon property sales to reveal and correct a substantive defect or deficiency on a given property is a great concern. It takes some twenty-plus years for the majority of an area’s housing stock to ‘turn-over’ (change title) one time. Some outliers in this turnover projection would be allowed to continue doing damage or posing a risk/threat for many decades. In fact, some residential properties have not been placed on the market (offered for sale) for a half-century or more. Whether the issue up for consideration is air pollutants from older woodstoves, the installation of BMP measures (Best Management Practices) to control stormwater runoff and soil erosion, changing out potentially dangerous LPG gas regulators, or other real property retrofits, TSBOR’s message is the same... Real problems demand a real solution, and point-of-sale mandates just don’t get you to your/our desired end-state (compliance) soon enough. Use a voluntary incentive-based change-out or upgrade when time permits. Use a universally required compliance mandate, with a date-certain provision requiring compliance no later than ‘x’, when the gravity of the matter compels government to impose its will in the form of a required retrofit.

Doing what’s right might not be easy, but doing what’s easy is rarely right! JRF