

Truckee Donner Public Utility District

Reason for Investigation

The Nevada County Grand Jury (Jury) has the power to investigate special purpose assessment or taxing districts. On February 25, 2008, the Jury received a complaint concerning the Truckee Donner Public Utility District (District).

Background

The District, organized under California law in May 1927, serves most of the Town of Truckee and some adjacent areas. The District provides electric and water services. A five member Board of Directors (Board), each member serving a four-year term, governs it. Two members are in their first term, one in a third, one in a fifth and one in a seventh. A General Manager leads the District. The current General Manager started in January 2008. He oversees four divisions and is accountable to the Board.

The issues in the complaint involved the Board and staff's handling, in 2007, of the installation of service and reconciliation of costs for a multi-phase commercial development.

The following is a summary of the routine process currently in place for development projects requiring service from the District:

The developer files an application, including development plans, with the District. For water service, the developer is responsible for fully developing the plans and building the project. For electric service, the District develops the detail plans and is responsible for installation of the infrastructure including transformer(s). The District computes an estimate of costs it will experience in connection with these activities and requires a deposit sufficient to cover this estimate in full. Both parties following review, approval, and receipt of the deposit by the District enter into a development agreement.

For water service, the District provides conditional acceptance prior to construction because the construction process requires water and the Town of Truckee requires water to be available prior to issuing a building permit. After the construction is completed, the developer files "as-built" drawings and the District reconciles its actual costs against the estimate and deposit. The District then refunds the excess, if any, or invoices the Developer for the shortfall, if any.

Method of Investigation

The Jury interviewed the complaining developer (Developer), the District's current General Manager and Assistant General Manager who also serves as the Electric Division Manager, and the District's President. There were telephone conversations with Developer's legal counsel. Additionally, the Jury reviewed the District's Code, the terms of development agreements and extensive exchanges of correspondence and e-mails between the Developer and the District and between their legal counsel, as well as invoices and time cards.

Summary of Complaint Events

On June 21, 2002, the Developer entered into an electric development agreement with the District and paid the required construction deposit of \$176,351. Construction under this Agreement (Agreement) commenced on July 10, 2002, and was completed August 8, 2003. Separate development agreements were entered into for the water and electricity for additional buildings on November 11, 2006 and June 22, 2007 respectively. The money deposited on the latter agreements totaled more than \$125,000.

Upon completion of construction under the June 21, 2002 Agreement, as-built drawings were to be provided to the District by the Developer. These were not submitted until October 1, 2007, due to delays by the Developer and his agents.

On December 27, 2006, three years and four months after construction was completed under the June 21, 2002 Agreement, and before receipt of the as-built drawings, the District sent the Developer a invoice in the amount of \$33,268, for costs exceeding the deposits under the Agreement, along with an apology for the delay. In March 2007, the Developer questioned the costs and requested supporting materials.

On April 30, 2007, some supporting documents were supplied. The Developer requested additional information. The dispute over the invoice, marked by acrimony on both sides, went on for months.

In an e-mail to the Developer's staff on September 21, 2007, and despite having deposits for the District's work under the 2006 and 2007 agreements, the District refused to allow the Town of Truckee to issue a building permit for construction of a garage under the 2006 and 2007 agreements because of the outstanding bill on the 2002 Agreement. District staff stated that they had "been instructed to not participate with any of [the Developer's] projects," pending resolution of the dispute.

The District alleged that it reminded the Developer five times from June 2005 to August 2007 that the as-built drawings, under the 2002 Agreement, had not been filed per the requirements. The as-built drawings were delivered to District on October 7, 2007.

On October 9, 2007, in response to the second request from the Developer, the District delivered its time cards to the Developer. These time cards had been redacted to the point

that analysis was very difficult. The District acknowledged errors discovered by the Developer's accountant and reduced the invoice by \$1,122 to \$32,146.

On October 10, 2007, the District, after asserting that the Developer was a credit risk, ceased water service and construction of electric infrastructure for buildings under the 2006 and 2007 agreements.

On October 15, 2007, the Developer's attorney sent a letter to the Board complaining about the termination of service to Developer's projects and requesting discussion of the dispute between the Developer and the District at the October 17, 2007 Board meeting. As the matter was not added to the meeting's agenda, the Developer's attorney appeared in the public input portion of the meeting and was allowed to speak for three minutes. There were no comments or response from the Board, or direction to staff.

On October 23, 2007, the Board with knowledge of the termination of service to Developer's projects, met in closed session with staff and outside counsel in anticipation of litigation with Developer. Following that closed session, the termination of service continued.

On October 24, 2007, outside counsel, retained by the District, gave Developer's attorney a copy of a twelve year-old article referencing the Developer's past, citing it to support the view that the Developer was a credit risk despite having deposits on hand sufficient to cover the 2006 and 2007 agreements.

On November 13, 2007, a settlement between the Developer and the District was reached and work began on water and electric connections under the 2006 and 2007 agreements. The District made this settlement contingent on the Developer entering into a release of the District from all liability for its conduct in this matter, in addition to Developer's payment of \$32,146.

Findings

1. The District enjoys a virtual monopoly since, with a limited exception, there are no other entities that provide its services within its service territory.
2. There were egregious delays of more than three years in reconciling the deposit and costs and in billing the Developer under the 2002 Agreement.
3. This dispute, which took ten months to resolve, was marked by acrimony on both sides.
4. Developer was delinquent in promptly submitting as-built drawings under the 2002 Agreement.
5. The District treated the Developer as a credit risk in spite of having his significant deposits on hand.

6. The Board was aware of the decision to withhold services under the 2006 and 2007 agreements as a way of forcing payment under the 2002 Agreement.
7. The District currently has no published process for resolving disputes between the District and developers, although it does have such a process for resolving disputes between the District and customers.
8. The new General Manager has begun a thorough and complete review of the District Code. To date, only review of Title 1, General Provisions, has been completed.

Conclusions

1. This dispute, marked by acrimony and disrespect on both sides, took much too long to resolve.
2. The absence of an established process for resolving disputes between the District and developers contributed to this matter getting out of hand.
3. The Developer did not submit as-built drawings promptly upon completion of construction. Had the Developer done so and the District monitored the Developer's account, completing the reconciliation of costs on time, this dispute might have been avoided or minimized.
4. The District, a public utility special district, that makes its own rules and regulations, needs greater public oversight to assure that its customers and stakeholders are treated fairly and respectfully.
5. The three-year gap in reconciling costs with deposits and the five month delay in providing supporting materials which had been redacted to a point where they were difficult to analyze, represented egregious performances by the District staff.
6. The suggestion that Developer was a credit risk was fallacious considering the amount of deposits on hand and the Developer's previous credit history with the District.
7. Delivering the magazine article about the Developer's past to his attorney to support the suggestion of a credit risk was improper, as well as irrelevant.
8. It was immoral to hold the Developer hostage by denying services on a later project.
9. It was inappropriate to require the Developer to release the District from liability for its conduct as a condition for receiving service.
10. The Board's disengagement in this matter contributed to escalation of the dispute. The matter should have been put on the first available Board meeting agenda. A hearing

11. The Board of Directors' focus on the collection of the bill rather than the relationship between the District and a Developer who provides capital improvements for the District was shortsighted.

Recommendations

1. The Board should set up a clear dispute resolution process for development issues, culminating in access to the Board.
2. The Board should ensure that staff promptly completes its reconciliation of costs and deposits and promptly bills or refunds the balance to developers.
3. The Board should ensure that the practice of holding a developer hostage, by not serving a different project, does not occur again.
4. The Board should establish clear Board policy for resolution of any credit risk issues that may arise despite the existence of deposits.
5. The Board should enthusiastically support the complete review and revision of polices, rules, and procedures in the District Code being undertaken by the new General Manager. In light of the leverage that being the only game in town creates, the Board should make sure that the revisions address the matters set forth in this Report, as well as any other shortcomings that may be found during the review.

Response

Truckee Donner Public Utility District Board of Directors: October 1, 2008

NEVADA COUNTY SUPERIOR COURT
201 Church Street, Suite 6
Nevada City, CA 95959
(530) 265-1311

*accepted by SD
Committee
10/1/08*

ROBERT L. TAMIETTI

September 24, 2008

Larry Schwartz, Foreman
Nevada County Civil Grand Jury
950 Maidu Avenue
Nevada City CA 95959

Dear Larry:

I have reviewed the letter & material enclosed in response to the report on the Truckee Donner Public Utility District, submitted by Tim Taylor, Board President of Truckee Donner Public Utility District, and have asked the Deputy Jury Commissioner to forward the letter & accompanying documents on to you.

Thanks to you and the other members of the Grand Jury.

Sincerely,



ROBERT L. TAMIETTI
Presiding Judge of the
Civil Grand Jury

RLT:cjm

Enclosure



Truckee Donner Public Utility District

SEP 23 2008

September 17, 2008

The Honorable Robert L. Tamietti
Presiding Judge of the Grand Jury
201 Church Street
Nevada City, CA 95959

Directors
Joseph R. Aguera
J. Ron Hemig
Patricia S. Sutton
Tim Taylor
Bill Thomason

General Manager
Michael D. Holley

Subject: 2008 Grand Jury of Nevada County report on the Truckee Donner Public Utility District.

Dear Sir:

Please find the following formal response to the 2008 Grand Jury of Nevada County report on the Truckee Donner Public Utility District

Grand Jury Findings:

Note: **TDPUD Response in Bold**

1. *The District enjoys a virtual monopoly since, with a limited exception, there are no other entities that provide its services within its service territory. **Agree.***
2. *There were egregious delays of more than three years in reconciling the deposit and costs and in billing the Developer under the 2002 Agreement. **Agree.***
3. *This dispute, which took ten months to resolve, was marked by acrimony on both sides. **Agree.***
4. *Developer was delinquent in promptly submitting as-built drawings under the 2002 Agreement. **Agree.***
5. *The District treated the Developer as a credit risk in spite of having his significant deposits on hand. **Agree.***
6. *The Board was aware of the decision to withhold services under the 2006 and 2007 agreements as a way of forcing payment under the 2002 Agreement. **Agree.***
7. *The District currently has no published process for resolving disputes between the District and developers, although it does have such a process for resolving disputes between the District and customers. **Agree.***
8. *The new General Manager has begun a thorough and complete review of the District Code. To date, only review of Title 1, General Provisions, has been completed. **Agree.** The District has completed the revisions of Titles 1, 3, 4, and 5, are in the process of revising Title 2, and has plans to review all remaining Titles.*

Grand Jury Recommendations:

Note: **TDPUD Response in Bold**

1. *The Board should set up a clear dispute resolution process for development issues, culminating in access to the Board.* **The recommendation has been implemented. The TDPUD Board has taken action on this issue at the July 2, 2008 Board meeting. The revised Development Agreement template now includes a dispute resolution clause that includes formal access to the Board.**

2. *The Board should ensure that staff promptly completes its reconciliation of costs and deposits and promptly bills or refunds the balance to developers.* **The recommendation has been implemented. The District has reviewed the management of Development Agreements and now assigns a Project Administrator to each Development Agreement to ensure contractual compliance and timely billing.**

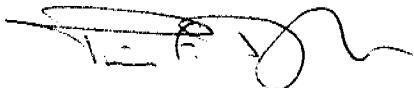
3. *The Board should ensure that the practice of holding a developer hostage, by not serving a different project, does not occur again.* **The District has implemented changes to the Development Agreement that will result in consistent and fair treatment of all developers.**

4. *The Board should establish clear Board policy for resolution of any credit risk issues that may arise despite the existence of deposits.* **This item has been implemented. The District will now break larger projects into phases and collects, up front, deposits to cover the costs of each phase. Given this structure, credit evaluations/risks are no longer a part of the process.**

5. *The Board should enthusiastically support the complete review and revision of polices, rules, and procedures in the District Code being undertaken by the new General Manager. In light of the leverage that being the only game in town creates, the Board should make sure that the revisions address the matters set forth in this Report, as well as any other shortcomings that may be found during the review.* **This recommendation has been implemented and the Board supports the on-going District Code revision process. This process should be completed by December, 2008.**

Feel free to contact me if I can be of any assistance.

Regards,



Tim Taylor
Board President
Truckee Donner Public Utility District