

Community Development Block Grant Loans Final Report

COR2015-2016-001

MONEY, MONEY NOWHERE.... THE BUCKS STOP HERE!!

Approved 06/02/2016

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SUMMARY

An essential part of any Grand Jury is the Continuity Committee. This group is tasked with following up on the responses made to previous Grand Jury findings. The Committee views recommendations that were made and verifies whether the entities did, in fact, follow through on their commitment to correct the issue(s) in question. The committee can choose to follow up on an investigation from the prior year's Grand Jury report, or can address issues that have remained unresolved over the course of several years. This year's Continuity Committee has chosen to look into an issue spanning almost a decade that has cost our county hundreds of thousands of dollars, as well as brought into question the credibility and ethics of our appointed and elected officials.

The 2015-2016 Continuity Committee selected the 2013/2014 final report "FAR2013-2014-0185 Trinity County Business Enterprise Loans". The report was focused on three CDBG Business Assistance Loans; the Jaktri Market, the Johnsons Steak House, and the Red Barn Mercantile. The Committee decided to check the status of these loans since that report and also the activities of any grant or loan program currently in effect.

Between the suspension of new programs in the Grant Department in 2010 and the departure of the CAO in 2015, many decisions have been made that have a serious fiscal impact on our county.

On the Trinity County Website, the Grand Jury page states " The Grand Jury is totally independent of all other government bodies. Answering only to the judicial branch, which oversees the organizational functions, the Grand Jury is permitted exclusive access to all areas of county government." That being said, when the current Continuity Committee began an inquiry of the County's administration of grant and loan programs, it took approximately three (3) months and repeated requests to get basic public information from the CAO's office to begin the investigation.

During our first interviews, the Committee learned that there is no servicing of either the CDBG (Community Development Block Grant) loans or the EDBG (Economic Development Block Grant) loans. Our Committee requested copies of the excel spreadsheet accounting for all the loans in the CDBG & EDBG portfolios. We found the accounting to be inconsistent, poorly documented, unaudited, and outdated. Consequently, the scope of the investigation was widened to include a review of all loans made with grant funding, as well as the suspension of the Grant Department programs and its future.

GLOSSARY

BOS – Board of Supervisors

CAO – County Administrative Officer

CDBG – Community Development Block Grant
DCAO – Deputy County Administrative Office
DRI – Disaster Recovery Initiative Grant
EDBG – Enterprise Development Business Grant
FORM 700 – Statement of Economic Interests
GRANTEE – Trinity County
HRLC – Housing Rehabilitation Loan Committee
HUD – A Federal Housing Program administered by State agencies
UCC1 – Uniform Commercial Code 1

BACKGROUND

With the focus on community and economic development, CDBG grant funding offers assistance with housing rehabilitation loans, as well as loans for small businesses within the community. Income ceilings gear these loans for low-income individuals and provide lower interest rates. According to the 2014 Census, Trinity County has 19.9% of its residents living below poverty level.

The Housing Rehabilitation Loan Committee (HRLC) has been in place for more than ten (10) years. The Committee is comprised of six (6) members, including the County Auditor, a member of the Board of Supervisors (BOS), and four (4) private citizens. The Committee reviews loan applications and has authority to grant both home rehab and enterprise business loans. The Continuity Committee attempted to understand the HRLC hierarchy for approval of past loans. Other than the names of members, our Committee was unable to obtain information on the HRLC itself, eg criteria for selection, who appointed the members, the length of term, scope of responsibility, number of members required to reach a quorum, etc.

In 2010, the County suspended all new loan programs in its Grant Department after finding a deficit of approximately \$700k. The inactivity of the Grant Department has taken away a needed resource for the citizens of Trinity County. These loans have helped low-income people purchase homes and others to repair homes that the owners had previously been unable to afford on their own. Businesses have closed throughout the county, which perhaps could have been prevented with the help of a loan. New businesses adding much needed jobs could also have been started.

METHODOLOGY

The investigation included reviewing previous reports of the Grand Jury including:

- FAR2013-2014 Committee Investigation Business Enterprise Loans
- FAR2010-2011-02 Grants Department Imperils County Finances
- FAR2010-2011-03 Trinity County Grants Deficit
- 2008-2009 Finance & Administration Report -The Grants Department
- CAO Staff Reports to BOS 2010 and 2015
- Extensive research was done of the various CDBG programs
- Accounting of existing loans in the portfolio
- Correspondence between the County and Borrower(s)
- Review of the minutes and agendas of the HRLC
- Interviews were conducted with members of the CAO's office, HRLC & and officials in key County departments

DISCUSSION

Of the three (3) loans mentioned in the 2013-2014 Report, the Jaktri Market Loan granted in 2009 in the amount of \$105,000 was written off in its entirety due to loan guarantee foreclosures by the time that report was written. No payments were ever made on the loan, nor was there any attempt made by the County for collection prior to the business closure. Subsequently, the County wrote off \$114,608.00.

Currently, two (2) Small Business Loans remain in the CDBG portfolio. The first loan addressed is the JOHNSONS STEAK HOUSE Loan.

BORROWERS: Charles and Elizabeth Johnson

DATE OF ORIGINAL LOAN: 2/23/07

AMOUNT: \$185,000

INTEREST AND TERMS: 7%, 120 months, Monthly payment: \$2,148.01

COLLATERAL: Promissory Note with subordinate position lien on property. Also, a Deed of Trust on a home with Trinity County as beneficiary.

In 2007, total payments of \$17,184.08 were received from the Borrowers. No further payments were received until March, 2013. A total of \$8,870.01 was paid in 2013. The business was closed in mid-2013 and the property was foreclosed upon by the primary lien holder. No assets remained for Trinity County. (No explanation of disposition of the Deed of Trust is included in the file.) The 2013/2014 Grand Jury made several recommendations to the County in an attempt to collect on the debt, including wage garnishment. However, no action was ever undertaken.

A response from the CAO to the 2013/2014 report stated that due to the lack of a UCC1 filing and the Borrowers personal guarantee, the County was unable to collect. However, there is a personal guarantee in the file. Also, it should be noted that the County repeatedly requested from the Borrowers proof of fire insurance listing the County as loss payee; none was ever produced, nor was insurance ever force placed on the loan.

In early 2015, the Borrowers submitted a letter to the CAO regarding the restructuring of their loan. A meeting was called with the HRLC in February to discuss options for the collection of the loan. The agenda for this meeting does not mention "Public Comment", nor was the non-voting "staff" that attended every meeting for the past 10 years invited. In its place were non-voting attendees County Counsel, CAO, and an Administrative Coordinator. Also in attendance were four (4) members of the HRLC. The minutes from that meeting reflect a committee member stated he had worked on Elizabeth Johnson's campaign for judge.

A second meeting was held in June for the sole purpose of a final decision regarding the Johnson Steakhouse proposal for a loan amendment. The minutes from this meeting indicate the same attendees as the February meeting. The vote approving the amended loan was 4-0 with no abstentions, indicating the HRLC member with a possible conflict of interest chose not to recuse. The loan was amended as follows:

- The remaining principal of the loan was \$175,452.01
- All accrued interest through 7/31/15 was waived (\$83,246.26)
- Effective 8/1/15, the interest rate was lowered to 3.5%

- The term of the loan was extended to coincide with the end of Judge Johnson's term in office, which is December, 2018
- The Borrowers will make a balloon payment of \$70,454.92
- Borrower agrees to have payments made through payroll deductions via the state

This amendment approval was contingent upon the Borrowers meeting two (2) stipulations:

1. Provide Form 700
2. Provide collateral securing the amended loan

While terms of the loan amendment proceeded immediately, to date the Borrowers have not provided the stipulated information, nor have payments been initiated through payroll deductions. The loan is current at the writing of this report with payments made via personal check.

The second Business Loan in the portfolio is the RED BARN MERCANTILE

BORROWERS: Jimmie Rogers and Marlee Wild-Rogers

DATE OF LOAN: 6/21/12

AMOUNT: \$35,000

INTEREST AND TERMS: 3.00%, 60 months, Monthly payment: \$150.00

To date three (3) payments totaling \$600.00 have been received on the loan, the last one in March, 2013. There is no correspondence on file between the County and the Borrower. Though the contract clearly states the County can initiate financial penalties and possible foreclosure fifteen (15) days after a payment due date is not met, no effort has ever been expended to collect this debt. While there is nothing in the file to show Borrowers have requested permission, as required in the loan contract, to sell the business, the property has been for sale by Borrowers for many months.

According to a Staff Report presented by the CAO to the BOS in November, 2010, the County Grants Department had consisted of three (3) employees: a Grants Analyst II, an Administrative Coordinator II, and a position from the Building Department partially allocated for housing activities. In September 2010, the County Auditor, along with a contracted consulting auditor, discovered the Grant Department was operating under a significant deficit. Subsequently, the CAO and the DCAO extended the agreement of an existing contractor with "a high degree of grants administration knowledge" to analyze the deficit situation.

The consultant uncovered several deficiencies with both the current and previous grant projects:

- Incorrect billings, including multiple grants in which the County received more funds than were actually expended under grant guidelines
- Budgeting of anticipated grant revenues and expenses the County could no longer expect to receive due to unsuccessful grant procurement
- Grants management organization lacked any strategic management; no cost allocation system, grant work plan was not followed, and no strategy for program implementation existed

- Department was deemed “severely deficient in its ability to manage the full grants program from a service delivery and fiscal prospective”

On October 22, 2010, the County received notice that its submitted \$1,000,000 grant application was denied. Consequently, all staff of the Grants Department was laid off on October 25, 2010. Future programs were suspended and all Departmental Oversight/Authority continues to remain with the CAO/DCAO.

In 2011, the BOS gave approval to the Grant Department to proceed with an application for a Disaster Recovery Initiative Grant (DRI). Some of the Grants staff was restored, ostensibly to complete the application and recommence servicing of existing housing rehabilitation loan accounts. The County was awarded a DRI grant for \$5,000,000 and a consultant was added to the office staff to assist in administering projects under that grant. The County has applied for no other CDBG/HOME type grants since 2010. (The HRLC did grant a business loan for \$35,000 in 2012, which is now in default.)

Since 2010, the County has stopped servicing these loans, except for mailing out the annual owner occupancy certifications, payment booklets and posting of payments when received. They do not mail out late notices, make phone calls or expend any efforts for collection. However, the CAO’s summary in the 2015-2016 Budget under Grants states:

“Following the closeout of our last active grant, staff will continue to service approximately 80 housing rehabilitation loans and prepare for annual monitoring of closed out grants. The servicing and monitoring activities are quite extensive and include verifying occupancy and income levels and that insurance and property taxes are current.”

The Grants Department page on the current Trinity County website lists a staff of two (2): a Rehabilitation Specialist/Project Manager and a Project Specialist.

While the above referenced CAO Budget summary specifies the Grant staff services approximately 80 loans, our Committee was given access to spreadsheets and backup for only 42 loans.

Of the loans the Committee reviewed:

- Seven (7) have been paid off
- Eight (8) are current
- Four (4) are over 30 days past due
- Four (4) are over 60 days past due
- Ten (10) are over **one (1) year** past due

As of 12/2015, the total amount past due: **\$759,757**

Additionally, there were three (3) loans that were written off as losses to the County totaling: \$288,222

It should be noted that the more past due an account is, the more likely the loan will become a loss to the County.

There were also loans granted where all payments are deferred from between ten (10) and thirty (30) years, when one (1) balloon payment is due. These loans are still open.

Total amount of CDBG Activity outstanding: **\$1,531,712**

For a complete breakdown of past due and deferred loans **SEE APPENDIX A**

The current overall delinquency status of the loans is unacceptable at 43%. The normal acceptable delinquency from most other recognized lending programs is between 2% and 5%. A responsible lender would be expected to immediately take severe ongoing corrective action to address the delinquent accounts. (It is at the discretion of the County whether to report delinquent loans to credit bureaus.) Since at least 2010, nothing has been done by the BOS or CAO's office to improve these statistics. Hence, the deficit in the County coffers continues to worsen.

The Continuity Committee reviewed the minutes and agendas of the HRLC from the past ten (10) years. With the exception of one (1) meeting, neither the meeting agendas nor minutes mention public comments. It is apparent the HRLC violated the Brown Act by having email/phone call meetings, also referred to as serial meetings, and conference call meetings rather than public meetings as required. These meetings were held:

Tues June 8th, 2010, Thur Nov. 3rd, 2011, Tues April 10th, 2012, Wed June 13th, 2012 and Fri March 15th, 2013

Reviewing the minutes over several years, there is no mention of the number constituting a quorum. Therefore, the presence of a quorum for many meetings is questionable, as the members present varied from three (3) to six (6). Our Committee was not given all the minutes, as some agendas list approval of minutes from meeting dates that are not in the package received from the County. Also, there are motions to approve minutes reflecting unanimous approval; however, voting members had not attended the meeting upon which the minutes were being voted.

The Continuity Committee was also unable to locate any mention of "public meetings" regarding CDBG grants in the minutes or agendas of the Board of Supervisors, which is again a violation of the Brown Act.

It should be noted that violations of the Brown Act can be prosecuted by the District Attorney and, if proven true, any business done at a meeting becomes null and void. However, there is a one (1) year statute of limitations for prosecution. Therefore, citizens must take responsibility and initiative to participate in public forums and keep informed of government actions.

The State HUD/CDBG website clearly states:

-- Grantees are also required to hold public meetings to solicit input from the community, ensuring that proposed projects are aligned with the community's most urgent needs.

In order to be eligible for funding, CDBG program recipients are required to hold three (3) public hearings explaining the CDBG application process and discussing project ideas. The Housing and Community Development Act state the responsibilities of the CDBG Grantees are as follows:

1) Provide citizens with reasonable advance notice of and opportunity to comment on proposed activities in an application to the state.

2) For grants already made, the same opportunities must be provided for activities proposed to be added, deleted or substantially changed from the local government's application to the state.

3) The primary goal is to provide citizens, especially low and moderate income citizens of the community where CDBG-funded activities will take place, an opportunity to participate in an advisory role in the planning, implementation, and assessment of the programs and projects.

Additionally, Federal law Title 24: Housing and Urban Development, Section 570.486 clearly defines Local Government Requirements regarding citizen's rights.

See Appendix B

ADDRESSING THE FUTURE

Trinity County government has failed the people of this county by mismanaging the Loan Grant Department to the extent that the Grant Loan program is no longer available to its needy citizens. The same issues and concerns this Continuity Committee brings forth in the 2015-2016 Report has been addressed to the BOS by past Grand Juries for several years, yet clearly misfeasance continues to exist.

Going forward, it is incumbent upon our civic leaders to ensure the prosperity of the County and enrich the lives of its citizens. Transparency by the BOS and all county departments is vital, as is open communication with the public.

FINDINGS AND RECOMMENDATIONS

F1: The Loan Grants accounting spreadsheet is unorganized, poorly documented and in great need of management oversight.

R1: The County should do an immediate audit of the CDBG portfolio accounting, as well as the Housing Rehab loan portfolios. The Grant Department should take advantage of online accounting spreadsheets.

F2: There is NO servicing of the loans in the CDBG portfolio other than the posting of payments, mailing out Certificates of Occupancy and Payment Coupon Books. There are no default notifications or collection efforts on the part of the County, resulting in the write off of much needed money for support services.

R2: The County must immediately begin servicing these loans and bringing them up to date by sending out notices of late payments due, opening up communication with borrowers and, if need be, beginning foreclosure as stipulated in loan agreements. Income received would more than cover administrative costs. It should be mandatory to report the status of these loans monthly to the BOS.

F3: The HRLC has no clear method to make loan decisions.

R3: A check list or risk assessment policy should be created to ensure the equitable decision making for future loans or amendments. Both HUD and CDBG websites, as well as written procedure manuals, must be used as required by the programs.

F4: The HRLC has violated the Brown Act by holding email/phone call meetings as well as conference call meetings.

R4: Both the BOS and general public should review the documentation and refer violations to the District Attorney for prosecution, if warranted.

F5: The BOS and the HRLC failed to provide the required special "Public Meetings" regarding grant funds.

R5: Going forward, the BOS shall ensure transparency of all County business and adhere to Federal and State laws to avoid possible prosecution.

F6: The HRLC meeting minutes indicate new Committee members should be installed with each new open Grant. Current members have been in place for at least the past ten (10) years.

R6: With the exception of the County Auditor and a rotating member of the BOS, current committee members should be removed immediately and replacements found among private citizens sought via an advertisement in the Trinity Journal.

F7: Due to its inability to properly service the outstanding loans, the Grant Department has suspended applications for new housing/business programs since 2010.

R7: The BOS should make re-establishment and reorganization of the Grant Department a priority. They must budget appropriately to attract and retain qualified employees with lending, collections and grant writing experience. Additionally, in order to encourage local citizens to apply, if otherwise qualified applicants lack a particular skill, training should be provided to ensure the Department complies with state and federal lending laws, as well as HUD requirements.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the grand jury requests responses as follows:

Required Responses from the following governing bodies:

- Board of Supervisors: F1-F7 & R1-R7
- County Auditor: F1-F7 & R1-R7
- Acting CAO: F1-F7 & R1-R7

APPENDIX A

A current breakdown of the 42 CDBG loans totaling **\$1,530,712.00** that Trinity County has on the books:

- 7 loans paid in full
- 8 loans are current or less than 30 days past due \$377,514 outstanding
- 4 loans are 30 or more days past due \$191,394 outstanding
- 4 loans are 60 or more days past due \$222,308 outstanding
- 10 loans are one year or more past due \$342,861 outstanding

Loans written off (losses to the County) total: **\$288,222**

- 1 sold in a tax sale Loss: \$54,505
- 1 short sale Loss: \$119,109
- 1 foreclosure Loss: \$114,608

Additional open loans:

- 1 house destroyed in fire
 - Loan opened March, 2010. No money received since July, 2015 (where was forced fire insurance?)
 - Amount outstanding: \$56,619
- 2 Borrowers deceased
 - No money received for over 1 year
 - One loan opened August, 1994. Amount outstanding: \$17,538
 - One loan opened September, 2001. Amount outstanding: \$4,349
 - When a Borrower dies, the loan is due immediately unless the heirs occupy the home. In that case, they must re-qualify for a loan grant. There is no paperwork to indicate that action was initiated
- 1 loan 10 year deferred
 - No payments due for 10 years, then balloon payment
 - Amount outstanding: \$62,081
- 1 loan 30 year deferred
 - No payments due for 30 years, then balloon payment
 - Amount outstanding: \$90,769
- 1 loan has been on books since 2006
 - No payments due until August, 2016
 - Loan is not labeled as “deferred” on accounting spreadsheet

- Amount outstanding: \$173,182

APPENDIX B

Federal Law Title 24: Housing And Urban Development, Section 570.486

((1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;

((2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

((3) Furnish citizens information, including but not limited to:

- The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);
- The range of activities that may be undertaken with the CDBG funds;
- The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under Section 570.488.

((4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups.

((5) Provide for a minimum of two public hearings each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearing to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate.

((6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state, and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.

(7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.