

Opinion: Daly's bumbling may cost EDC millions

By Larry Weitzman

On Feb. 10, a rather innocuous item was on the El Dorado County Board of Supervisors consent calendar agenda. It was item No. 5 and its purpose was to receive and file a development impact mitigation fee report for the fiscal year ended June 30, 2014, and authorize reimbursement to the El Dorado Hills County Water (Fire) District in the amount of \$95,479.12. It doesn't seem like a big deal, it wasn't a general fund item, but it turns out it may be the biggest problem facing EDC in years and potentially costing tens of millions of dollars.

Sections 66000-66008 of the California Government Code are the enabling and governing provisions which allow local agencies like counties, cities, school districts or other types of political subdivisions to extract from home builders, individual or otherwise, fees to defray costs of public facilities related to their development project like schools, parks and other necessary public improvements as it relates to the development. TIM fees, school fees and fire fees are included here.



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This section of the law further requires that the local agency make certain findings on the reasonable relationship between

the development and the fee's use and the need for the specific public facility created by the development. Also the cost of the public facility has to be reasonably related to the development as well. In collecting and depositing these fees, the law also provides that these funds be accounted for. So far, so good.

But the law also has specific requirements on the local agency to perform certain functions, findings and accountings with respect to these developer fees; otherwise they stand in violation of the very law under which they are extracting these fees from the home builder(s). There are two specific code sections which spell out these requirements, section 66001 (d) (1) (A-D) and section 66006 (b) (1) (A-H).

The former section (66001, et seq), says that every five years following the first deposit of a fee into a developer/home builder fund for public facilities, the local agency (in this case the county acting in place of the water-fire district) shall make certain findings which must do four things. First, is the identification of the purpose of the fee or fund money. Second, is that the county must demonstrate a relationship between the developer fee and the purpose for extracting it from the developer. Third, is that the county must identify all sources and amounts of funding anticipated to complete the financing of incomplete improvements and fourth is the designation by the county of the approximate dates the funding is expected to be deposited into the account. Doesn't seem too hard to do, right? That may be so, but not for this county and more specifically Terri Daly and her 18 newly hired analysts.

The county has collected tens of millions of dollars from developers/home builders and within that same government code at 66001 (d) (2) it says with respect to these five year reports that: "If the findings are not made as required by this subdivision, the County SHALL REFUND (emphasis added) the moneys in the account or fund..."

Section 66006 (b) (1) puts an annual requirement on the county with respect to each individual developer fund created by the fees extracted from the developer that says at the end of the year, the county will within 180 days make available to the public a report that contains certain information with respect to each fund that includes A) a description of the fund, B) the amount of the fee, C) the beginning and ending balance of the account or fund, D) the amount of fees collected plus interest, E) identifying each improvement on which fees were expended and the amount plus a percentage of the cost funded with the developers fees, F) the approximate date the public improvement will commence if the county has determined they have sufficient funding collected or complete financing on an incomplete improvement, and G) a description of interfund transfer or loan and in the case of a loan, when will it be repaid and the interest charged.

About 20 years ago the Board of Supervisors chose to make an ordinance that would also require the county administration to do the five-year study of Section 66001 (d) (1-2) every year as with the requirement 66006 (b) (1) above. It is EDC ordinance Sec. 13.20.020 which requires on an annual basis that the BOS shall review developer fee amounts are reasonably related to the impacts of development and whether the described public facilities are still needed.

The problem is the county hasn't done many of the developer fund studies as required by law since Feb. 3, 2009, the date of the last EDH Water (Fire) District study. EDC has collected tens of millions of dollars in TIM fees, schools fees, fire district fees, rec fees and more without following the law. The TIM fee study is two years delinquent and who knows about the annual reports and compliance with the county ordinance.

Remember who ran the county since about 2010 when the next annual reports would be due, that's right Terri Daly. In fact during her tenure as CAO, not one special district annual report or five-year report was done and there was little, if

any, compliance with county ordinance 13.20.020.

But it gets worse. Guess which CAO analyst was charged with doing this job for the fire and rec districts? You guessed it, the sniveling and political campaigning Mike Applegarth as he was assigned to the job of special district liaison. Maybe he was too busy participating in the recent political campaigns to complete the vital task that are mostly done by the districts themselves. What are the consequences of this malfeasance? An examination of the law says specifically that the county has to pay the fees back to the developer/home builder. One hopes the county still has the money in the various accounts as the law requires. But it gets worse, much worse. On the morning of March 12, 2013, Joe Harn, the county auditor, wrote a memo to Daly and others members on the county staff that EDC has violated state and county law with respect to the administration of developers' fees that are collected by the county for the county's special districts and that as auditor, he cannot release any of these funds until the county is in compliance.

Two and a half hours later Daly replied saying, "Perhaps we could write a memo explaining what the problems are with the Nexus studies (the code section reporting requirements above) then put it on the board agenda for direction. I think we might already have such a memo already."

Harn, the auditor responded, "The law requires that the BOS review the CIP's once a year. Further, the law requires that a report of the financial transactions related to these fees be reviewed by the BOS once a year. If the nexus studies are inadequate, we need to quit collecting the fees."

This was one of several communications from the auditor regarding this problem.

And now you know why the now ex-CAO dislikes the auditor and is still trying to ruin him. It appears Daly was incompetent,

especially considering these reports as required by law were actually easy to do. But neither Daly nor her minions could accomplish these perfunctory tasks, even after hiring 18 new staff employees in her office at almost \$2 million a year. And what did the BOS do, give her \$150,000 on her termination, while this failure on her part could leave EDC liable for tens of millions of dollars.

What brought these fees to the surface again was a request from the El Dorado Hills Fire District for \$95,479.12 of these fees. It was placed on the consent (sneak it through) calendar on Feb. 10, but the day before the hearing, Harn sent emails requesting this matter be continued for obvious reasons; that there hasn't been a study done as required by law since Feb. 3, 2009. Harn said he would not pay this request even if ordered by the BOS as it would be illegal. The matter trailed until the end of the day at which time it was continued to Feb. 24.

It has already been continued again as the law requires 15 days notice be given for such a public hearing. But there is still the underlying problem of the failure of EDC to follow the law by failing to file reports and the nexus studies since 2010. Since that time the county has collected \$3,984,000 in developer/home builders' fees for El Dorado Hills fire district alone. Without the reports, the county may not be entitled to keep the fees. And there are more than a dozen other special fee districts. How many others are out of compliance? And you thought Daly, who left Amador County holding the bag on a \$20 million lease, or the Climate of Fear study was a big deal.

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