

Opinion: Bad legal advice costing EDC taxpayers

By Larry Weitzman

As to where the county continues to bury its head, you can decide for yourself as the El Dorado Superior Court issued its final ruling on the \$33 million plus case of Austin v. El Dorado County, et al.

I previously wrote that a tentative ruling was issued by the court on Oct. 20 that denied the demurrer of El Dorado County, et al, claiming that the plaintiff's lawsuit was barred by the statute of limitations, saying that the Austin complaint wasn't timely filed. The court scheduled oral argument for Dec. 1, allowing the defendants, EDC, et al, another chance to make their case. The hearing lasted for about 1 hour and 40 minutes with the defendants monopolizing most of that time pleading their case, even giving the court 10 reasons why the SOL should apply and submitting new cases. Plaintiff said none of these arguments apply.



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On Dec. 11, the court issued its final ruling writing, "After careful review of the moving and opposing papers and further consideration of the arguments of the parties following oral argument, the court adopts its tentative ruling as the final ruling on the submitted matter."

In plain language the court said EDC, et al, lost and SOL is no defense. The court did sustain a minor part of the demurrer to join some developers in the suit, which is perfunctory matter.

The bottom line is that the county and the rest of the defendants have no defense. There is no such thing as substantial compliance, which you may hear about from county counsel. This case is based on the statutory requirement of the county, et al, filing five-year Nexus studies which among other items need to "demonstrate" a clear and continuing need for the subject fees charged builders. The law says if you don't file the studies timely, the county, et al., must issue immediate refunds of all unexpended MFA fees including TIM fees, park fees and fire fees. The county has already ceded to refund the sheriff's substation fees.

The amount of unexpended fees at the time of the lawsuit was about \$33 million and for an additional year EDC continued collecting fees illegally which could amount to an additional \$10 million to \$20 million. It could even be worse in that money spent after the five-year filing date which is approximately July 2011 must also be refunded as it was illegally spent as the county's obligation to refund occurred one day after the five-year Nexus study due date. The county could be on the hook for an amount far in excess of the \$33 million prayer of the original Austin complaint, perhaps an amount in excess of \$50 million. Making matters worse is EDC now has no defense as there are official county documents in which the county admits to the failure to follow the statutory provisions of the Mitigation Fee Act.

In February 2015, I stood in front of the entire Board of Supervisors and told them in plain language that this was going to happen and explained the MFA to them. I looked my own supervisor, Mike Ranalli, in the eye and told him he is sitting on a ticking time bomb. He obviously did nothing and made no inquiry or investigation, for if he did, the Austin

Case would have likely never happened. The board now, not liking being told things they don't want to hear or being placed in the public record decided to limit speakers' and the time they can talk by a new board edict against the First Amendment. Ranalli spoke in favor of limiting speech in front of the board and voted for the new edict.

In March 2015 I wrote a column on the MFA time bomb facing the county and again in October 2015, explaining the Walker decision which is now the law regarding the MFA, the failure to file Nexus studies, the mandatory requirement of making refunds to the owners of properties upon which those fees were paid and the impact it will have on the county. Supervisors who showed up at the Monday morning El Dorado County Taxpayers Association breakfast meeting also heard this from me repeatedly. It's not like that can plead ignorance. Maybe they can plead stupidity, incompetence and negligence, but not ignorance. The buck stops with them, only they won't be liable for the tens of millions of dollars, you and I will. And Ranalli wants you to rehire him with your vote? First Ranalli must make the decision to rehire or fire county counsel, Mike Ciccozzi. It will make your decision to rehire Ranalli even easier.

On Nov. 9, I sent a question to county counsel asking for comments on the tentative ruling issued (which became the final ruling) to which he stated: "We are pleased that the court sustained our demurrer, though we disagree with portions of the court's tentative ruling. We look forward to the oral argument on Dec. 1."

Notice no comment to the fatal loss on the SOL issue. In a second request for a comment on the loss on the SOL issue, Ciccozzi did not respond.

The county has incurred an estimated \$300,000 in outside legal fees alone (county legal time has yet to be determined) so far on a failed defense and plans to spend hundreds of thousand

dollars more in the briefing stage of the case of which they have no credible defense. With respect to the outside legal fees to date, I recently sent to following inquiry to the county's public information officer and received this response:

Carla, how much money has been spent (paid) to date on the Austin v. EDC litigation?

Sincerely, Larry

What's the angle of the column you're writing, and when might we expect to see it (in either the Lake Tahoe News or Mountain Democrat)?

Regards, Carla

What is EDC hiding? More important what is Ranalli and Novasel hiding? The response speaks for itself and considering the response, can you say, "no transparency in EDC." So much for the good governance manual on which EDC just spent tens of thousands of dollars. The county policy is "delayed justice is a victory" as when the final judgment comes down, neither the county counsel nor any of the board members will still be in office, leaving the mess for someone else to take the blame. County counsel, I am sure, keeps telling the board that they will win on appeal. One has to wonder about the amount of his lifetime retirement? Every outside lawyer who has looked at this case has said the county has no chance which makes the chance on appeal slim and none. County counsel must know this, yet he tells the board something else, something they want to hear, the board hoping against hope that it's not a lie. But it is.

So how does that help the county. It doesn't. It will cost the county millions of additional dollars, throwing good money after bad money in legal fees, while the legal rate of interest adds to the eventual full judgement and then there is no chance of a lesser settlement.

As I have written before, the county needs to get an independent legal opinion, not an opinion from someone who is buried so deep in his bad advice that another opinion could cause his immediate termination and certainly a non-renewal of his contract which is up for renewal in a few months. As you can clearly see, Ciccozzi can't let an independent opinion happen, the risk to him is too great, however the risk to the residents of this county for it not to happen (getting a truly independent case evaluation) and to who county counsel owes a fiduciary obligation is far greater. County counsel cares much more about himself, his paycheck and retirement than the people he works for.

The EDC Board of Supervisors has been advised of this clear conflict time and time again. Two members are up for re-election, Ranalli and Sue Novasel. If they fail to act in the best interests of the county, which at a minimum is the hiring of an independent counsel and an evaluation of this matter, they are not doing their job which is to represent the best interests of their respective constituents and not the interests of themselves.

Larry Weitzman is a resident of Rescue.