

L. Weitzman #7 BOS 11/13/14

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99 CENTS

The balancing act: Arrogance, incompetence and abuse of power

By Larry Weitzman

From page A4 | November 03, 2014 |

This column's theme for the last several months has been about mismanagement within the Chief Administrator's Office and it goes right to the top. It all started with the climate of fear and the unfounded claims made by the county's Chief Administrative Officer. Then it went into the CAO's hiring practices in recruiting people who, by their past history, were clearly incompetent and perhaps with a little spoils system thrown in. Next it has gone to the huge budget deficits (\$25 million or more annually) that are becoming apparent because of an excess of hiring new employees, massive spending on outside consultants and recommending huge raises for county employees including the CAO and the Assistant Chief Administrative Officer. Now those deficits look to be even larger because of potentially overstated revenue projections, but that will be for a later column.

If you thought it couldn't get any worse, it has and it goes to the actions of the then-acting head of the Community Development Agency and now Assistant CAO, Kim Kerr, at the time they occurred. What could she have done that was so bad? How about authorizing contract change orders well beyond her authority and spending money without the required procedures and approval of the Board of Supervisors. And it just didn't happen once. According to county documents it happened on at least seven Capital Improvement Programs, including projects like the U.S 50/Missouri Flat Road Interchange and several Green Valley Road improvements.

Pursuant to Section 20142 of the California Public Contract Code and conforming Board Of Supervisors Resolution 102-2012 passed on July 24, 2012, (it superseded BOS resolution 106-93), change orders subsequent to the award of a contract are limited in their amount to 10 percent of the original contract amount except when the original contract is in excess of \$250,000 which in that case the limit of total change orders is \$25,000 plus 5 percent of the original contract amount not to exceed \$210,000, no matter the original amount of the contract. Any contract less than \$50,000 has a \$5,000 change order cumulative limit. Actually, it is an easy concept to understand, except for our current Assistant CAO Kim Kerr, who either intentionally or negligently ignored the law. Either way there is no excuse.

These violations became public when a County of El Dorado Document Master Report, File No. 11-1196 enumerated the various violations of the Public Contract Code. In that Master Report, it lays out that these illegal Contract Change Orders totaled 48, as much as 48 times that the head of the CDA at the time issued 48 change orders that exceeded her statutory authority. Payments have been made on 36 of these illegally issued CCOs, but 12 are still outstanding and unpaid.

Those 48 illegal CCOs that were illegally authorized total \$1,295,559. Records show that most were signed by Kim Kerr as acting CDA Director but other county staff are involved, as each CCO requires at least four signatures starting with the Resident Engineer, Assistant Director, Director of Transportation and the (Acting) CDA Director.

Someone within the CAO's office (the CDA operates within the CAO's office) discovered these mistakes and without BOS retroactive approval, not only will these CCOs remain illegal, but the 12 remaining unpaid CCOs will remain unpaid without BOS ratification of the prior acts. But that doesn't excuse the actions of certain county official(s) who approved these CCOs without BOS approval.

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126

6

1 of 2

There are two people upon which these illegal actions fall upon. The "buck" stops with ACAO, Kim Kerr, who headed the CDA during this period and the CAO herself, Terri Daly. They should know the rules as Resolution 102-2012 was passed on July 24, 2012, in open session by a 5-0 vote of the BOS and Terri Daly's name appears on the document attesting to the resolution. Daly and Kerr were well aware of the rules and laws governing change orders. But it looks like they didn't think these rules were very important as one or both of them violated the California Public Contract Code and BOS resolution 48 times.

Zebras don't lose their stripes and the modus operandi of ACAO Kim Kerr hasn't changed. Her slipshod management style as the recent city manager of the City of Ione is obviously apparent in her actions as EDC's ACAO. Kerr as Ione city manager failed to reconcile Ione's bank accounts for over two years and Amador County Grand Jury reports called her incompetent, saying that "the City Manager for the fiscal period 2007-2011 (Kim Kerr's tenure) did not demonstrate she possessed the proper qualifications and expertise to perform the duties required for that position." (See Balancing Act June 16, 2014, and Amador County Grand Jury Report 2012.)

Now comes the cover-up. It appears that the CAO plans to place an item on the next BOS calendar attempting to get retroactive approval for the acts of the ACAO by simply ratifying her actions. It will be interesting if this item shows up under the consent calendar with Daly trying to slip it through and hiding it from the BOS and the public, just like Daly did during her tenure as Amador County CAO, sticking Amador County with a \$20 million lease they didn't need (see Balancing Act July 7, 2014). You see, Terri Daly is responsible for hiring Kim Kerr and giving her a raise in salary while knowing of her past "indiscretions" as city manager of Ione. Daly is responsible for Kim Kerr's actions as an employee of EDC.

Then there is the issue if these potential violations of the California Public Contract Code rise to the seriousness to cause an investigation by the district attorney. Public Officials are given the public trust and need to be held to a higher standard just as former District 2 Supervisor Ray Nutting was. His misdemeanor violations of the law cost him his job and a whole lot more.

In another twist of fate, it appears that Municipal Resources Group, a company that was hired for the sum of \$250,000 to eliminate the "climate of fear" and create a "Climate Action Plan" in EDC, hasn't been paid.

In a letter to the BOS it seems that CAO Terri Daly signed, pursuant to BOS approval and at her request, a contract of which she has neglected to pay invoices totaling \$63,356 for the months of July, August and September. The purpose of the contract was to address the alleged problems supposedly enumerated in the "Climate of Fear" study created by the law firm of Van Dermyden Maddux, a study which cost \$140,000.

The Balancing Act analysis of the Van Dermyden Maddux study said if there is a climate of fear in EDC government it starts and ends at the top, in the CAO's Office (see Balancing Act May 19 and June 2, 2014). The question becomes why wouldn't the CAO submit these invoices to the County Auditor for payment? Could the reason be that the CAO didn't like the preliminary information received from MRG. Perhaps they are pointing the finger in a direction Daly doesn't like, proving prior Balancing Act columns correct.

Thank you Terri Daly for flushing \$390,000 down the toilet looking for answers which you already knew by looking in the mirror.

Larry Weitzman is a resident of Rescue.

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3 comments

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2 of 2