Jeffco Schools' Out of Control $705 Million Capital Program: A Case Study in Poor Management, Weak Governance, and Dysfunctional Culture

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Jefferson County, Colorado, is located to the west of Denver. It is the United States' 36th largest school district, serving about

84,000 students with more than 150 schools and a billion dollars in annual tax revenue.

In November 2018, by a margin of just 1,417 votes (0.24% of the total votes cast), Jeffco passed proposition 5B, authorizing the school district to issue $567 million in bonds and incur up to $998 million in total cost (repayment of principal and interest), to fund a six-year capital improvement program. Including planned transfers from Jeffco's General Fund to its Capital Fund, the estimated total cost of the Capital Program was $705 million, as shown in the following table that the district provided to voters during the 2018 bond campaign.

PROPOSED CAPITAL IMPROVEMENT PROGRAM

JEFFCO PUBLIC SCHOOLS

FUNDING	
2018 Bond (Question 5B)	$567 Million
Annual Capital Transfer (6 years)	$138 Million
Available Funds	$705 Million

OUTLAY	
Efficiency & Future Ready	$250 Million
Parity	$125 Million
Programmatic Needs	$50 Million
Growth Areas	$56 Million
Replacements	$56 Million
Safety, Security & Technology	$26 Million
Charters	$56 Million
Contingency	$86 Million
TOTAL	$705 Million

Note that per its 8 October 2018 Resolution, the Jeffco Board of Education also committed to allocating "a percentage of the bond proceeds equal to the percentage of full-time district students enrolled in district-authorized charter schools to the district-authorized charter schools for construction and capital improvements."

Opponents of Prop 5B raised questions about the district's ability to efficiently manage the largest capital program in its history. They claimed that a previous capital program, funded with $324 million in bonds in 2004, had incurred significant cost overruns and failed to deliver the full scope of improvements the district had promised to voters.

Perhaps because of this experience, Jeffco voters subsequently rejected a proposed bond issue in 2008, passed a much smaller $99 million bond issue in 2012, and then defeated another bond issue in 2016.

To reassure voters who feared that cost overruns would once again cause promised school projects to be cancelled, in the 2018 campaign district management stressed that in addition to each individual project having a 10% contingency to cover cost overruns, the overall capital program would also include an additional $86 million "Program Contingency" fund to cover cost overruns that exceeded any project's 10% contingency.

Moreover, the Prop 5B ballot language also promised that the "spending of the proceeds of such debt [will] be monitored by the Citizens' Capital Asset Advisory Committee and be subject to an annual independent audit."

Given the extremely thin margin by which Prop 5B passed, Gordon Calahan, the longest serving member of the Citizen's Capital Asset Advisory Committee, reiterated to Jeffco's senior management team and members of the Board of Education that, "This committee was formed to oversee the financial situation of bond issues…that is our primary mission…After the bond has been approved it is very important for us to make sure that each facility gets what it is promised. We cannot make changes to what was promised. Those items that are on the bond have to be followed exactly the way they are, and come in under budget."

Unfortunately, less than two years into the six-year capital program, that is not the way things have turned out.

The district has already incurred over $100 million in extra costs, due to a combination of cost overruns and spending on projects (like athletic facilities) that were never disclosed to Jeffco voters during the 5B campaign.

The emergence of this disaster in less than two years is a case study of how Jeffco's poor management, weak governance, and dysfunctional culture continue to undermine its ability to deliver the academic and financial results the county's educated, affluent citizens expect in exchange for the billion dollars they spend every year on their schools.

Background

As Professor Philip Tetlock described in his book "*Superforecasting*", predictive accuracy is maximized when a forecaster starts with "base rate" or "reference case" outcomes, and then as new evidence arrives, use it to constantly update their prior forecast.

Let's start with the base rate data.

Nobody with any knowledge of the outcomes of many other large school district capital programs should be surprised by what has transpired in Jeffco.

There is ample evidence available from multiple performance audits of different school district's capital programs. Three of these are included in Appendix 2 (links to Appendix 1 and 2 are at the end of this article).

- In 2015, the District of Columbia's City Auditor found that, "The District's School Modernization Program has failed to comply with DC Code and lacks accountability, transparency and basic financial management."
- In 2017, an independent performance audit of Portland (OR) Public Schools' Capital Program concluded that, "Given the complexity of capital construction projects, accurate cost estimates built on sound methodologies are critical to reduce risks of cost overruns, minimize potential gaps in funding, prevent scope reduction, and keep promises made to voters. At Portland Public Schools (PPS), cost estimate figures presented to the Board of Education (Board) were based on assumptions that were too low, and a formal documented methodology did not exist to substantiate cost factors."
- A 2016 performance audit by KPMG of Houston's 2012 bond program found that, "HISD is lacking a number of core controls for delivering a program of its size and complexity… Its policies and procedures for capital projects are not sufficiently developed… We found incomplete project assumptions, weak or nonexistent policies and procedures regarding budget development, lack of conceptual planning, and inconsistent bid evaluations…The program is not providing sufficient oversight into subcontractor bidding activities…The program is not conducting sufficient project cost estimating, variance analysis, contingency management, or reporting activities… In order for the HISD bond program

to better achieve its scope, schedule, and budget objectives, the personnel tasked with delivering the program should implement additional processes or controls, enhance existing controls, and improve their program delivery tools and the overall program organizational structure."

In "*Audits of Public School Construction Programs: A Literature Review*", Washington's City Auditor reviewed a broad sample of performance audits of public school district capital programs. The auditor identified these key lessons from this analysis:

- "The importance of the "tone at the top" when it comes to accountability. Every aspect of a program's control environment depends on leaders demanding accountability."
- "The importance of planning and adhering to planning guidelines. One common theme in many reviews was change orders. A change order is a change in the contract that is agreed to by the architect and/or engineer, contractor, construction manager, and the owner. They result from a change in the contract time, price, and scope of work and can be due to unforeseen circumstances or owner requests."
- "Lack of controls and/or failure to adhere to controls outlined in policies and contracts also drive costs and limit accountability."
- "Over-customization can drive costs as well. Audits from Texas

and California suggest that major cost-savings are available when prototypes are used instead of customizing each school. If customization is necessary, efforts should be made not to over-customize. School facility needs are largely the same from school to school and district to district."

- "The importance of avoiding conflicts of interest with regard to procuring goods and services. Generally defined, a conflict of interest occurs when an individual finds him or herself involved in a situation where loyalties are divided between professional and personal obligations and/or interests."

For me, a critical warning sign about what lay ahead for Jeffco's capital program was the response I received to a CORA request I made for a copy of the program's risk management plan (see Appendix 2).

In the past I was the CEO of an engineering company that performed engineering, procurement, and construction management work on large LNG projects around the world. We would never bid on a project without having prepared such a plan, nor would any client's lenders finance a project prior to their approval of both the overall project risk management plan and individual plans from every project subcontractor.

The absence of a detailed risk management plan for a $705 million dollar multi-project capital program left me stunned.

The December 2018 Bond Issue

Following the approval of Proposition 5B, Jeffco decided to issue bonds in two tranches — one in 2018 and another in 2020 or early 2021.

In December 2018 the district issued bonds with a face value of about $326 million. In order to induce investors to purchase Jeffco's bonds, the district set a coupon interest rate on them that was above prevailing market rates. Investors were willing to pay a higher price for these bonds because the higher coupon rate provided them with some protection against future declines in market interest rates.

The additional amount they paid above the face value of the bonds that were issues is known as "Bond Premium." In December 2018, Jeffco received over $50 million in Bond Premium. Essentially, this is a windfall gain.

Treatment of bond premium varies across jurisdictions. In some places, the law requires that it be contributed to the issuer's debt service fund to reduce the risk of non-payment. Other jurisdictions allow bond premium to be used for other purposes.

In Colorado, the use of bond premium is usually approved by the district's board. For example, in 2019 the boards of both Denver

Public Schools and Thompson School District voted on the use of the use of their respective bond premiums. The boards of both the Poudre and Englewood school districts did the same in 2018. The Denver Board asked its Bond Oversight Committee to recommend uses for the bond premium funds.

What Happened in 2019?

Based on information presented by the district to the Citizens' Capital Asset Advisory Committee (CAAC) at its 9 January 2020 meeting, it appears that $75 million of the $86 million in Program Contingency was spent or committed in 2019 (the first year of the six year program), either to cover cost overruns (after the 10% contingency on a given project was used up) and/or for projects that were never disclosed to Jeffco voters during the 5B bond campaign.

- *(The original campaign "flipbook", including projects and their budgeted costs, is included in the Appendix 2. Materials from all meetings of Jeffco's Citizens' Capital Asset Advisory Committee and Financial Oversight Committee, both of which are committees formed to advise the Board of Education, are available in Appendix 1).*

Up to CAAC's 7 November 2019 meeting, the district had presented its members with an estimate of unused contingency that was far higher than the $86 million program contingency. Clearly it included other funds. Strangely, the meeting notes do not reflect any members of the CAAC questioning this discrepancy.

On the agenda for the 7 November meeting for the first time there appeared a separate breakout of Program Contingency, which showed that only $11m of the $86m remained.

CAAC members were also presented with a separate total of $72 million for "Unallocated H Bond", which logically included Bond Premium and Accumulated Interest Earnings (respectively, $50 million plus $11 million) which were disclosed in other financial reports. The source of the remaining $11 million was not disclosed, and remains a mystery.

The discussion notes for CAAC's 7 November 2019 meeting (available here) show that CAAC did not discuss these new numbers.

Those notes also mention that one of the "main objectives" that the CAAC wanted to get out of their meetings with district management was "things that effect 'on time and on budget'". There was also a question: "Are we delivering the committed scope, on time and on-budget?"

There is also a note to "bring forward significant changes in cost". It isn't clear whether that is a directive to district staff or something that CAAC wanted to bring forward to the Board. Finally, there was also a note to "Get the community involved."

On 13 November 2019, the Jeffco Board (then composed of Susan Harmon, Ron Mitchell, Brad Rupert, Ali Lasell and Amanda Stevens) held a "Listening Session" with district principals who are members of the Jefferson County Administrators Association (JCAA). The principals complained to the board that the projects their schools had been promised in the Prop 5B flipbook were getting cut back (video of all board meetings is available on Jeffco Board Docs).

This is a critical point: Not even one year into the six year Capital Improvement Program, it appears that scope reductions were already being made. Then again, that's what you would expect to happen when only $11 million of the $86 million in Program Contingency remained unspent.

At their 5 December 2019 meeting, CAAC was again informed that at the end of November 2019, $75 million in Program Contingency had been used.

However, the agenda for the meeting also noted that a further charge of $6.3 million had been made against "Unallocated H

Bond". Again, the meeting notes indicate that neither the low level of remaining Program Contingency nor the charges against "Unallocated H Bond" were discussed by the CAAC.

However the notes do mention that "8 sites have been identified for track and field updates." Subsequent investigation found that some of these (e.g., West Jefferson Middle School) were never disclosed to the public in the 5B campaign flipbook (available in Appendix 2).

Following their election, in December, Susan Miller and Stephanie Schooley were sworn in as new members of the Jeffco Board of Education, replacing directors Amanda Stevens and Ali Lasell

Prelude to the Events of 2020: Background on the CAAC and FOC

In order to understand the events that have transpired in 2020, it is necessary to take a closer look at Jeffco's Citizens' Capital Asset Advisory Committee (CAAC) and its Financial Oversight Committee (FOC).

Both committees are advisory committees to the Board. Yet in complete disregard for board governance principles, they report to the Board *through management* — in this case, the

Superintendent (e.g., the CEO) because Jeffco uses "policy governance."

I have written elsewhere about how the use of policy governance limits board directors' ability to exercise their fiduciary duty of care (which is why no public company uses it, much less a billion dollar public company). Having critical governance committees report to the board through management is a classic example of this.

Jeffco's website describes the CAAC as follows:

"In 2010, the Board of Education authorized the establishment of the Capital Asset Advisory Committee in accordance with Policies EL-8 and FB, both of which deal with facility condition and long range facility planning. The Committee was formed from members of the 2005 Capital Improvement Program Oversight Committee and the 2009 Facilities Usage Committee. The purpose of the Committee is to monitor the planning of capital needs and the implementation of capital programs, which may include future bond programs."

"Members have a working familiarity with facility design and/or construction practices; business management expertise with organization(s) of comparable size to the district, and are independent and free from any relationship that would interfere with independent judgment. Preference is given to Jefferson County residents."

THE WORK OF THE COMMITTEE

"The committee meets monthly throughout the year. Its primary functions are to:

- Establish a transparent set of criteria for evaluation of district facilities. Elements may include facility condition index (FCI), educational adequacy index (EAI), utilization based on enrollment to capacity ratio, demographic predictions, financial stewardship, etc.
- Assist in the development of an annual District Wide Facility Master Plan that may include school replacements, school consolidations, school closures, grade level reconfigurations, and boundary and transportation changes.
- Monitor the planning of capital needs and the implementation of capital programs, which may include future bond programs (*Note that this does not specifically utilize the language used in the 5B bond proposal passed by Jeffco voters, that was also included in the district's Official Statement to bond investors*).
- Assist in the development of a potential future bond program.
- Ensure that sound, long-term decisions are consistent with the needs of the district and in support of the district's strategic

plan.

- Ensure that decisions are made through active involvement in communications with the community.
- Provide an annual written report to the Board of Education on the ongoing responsibilities of the committee.
- Consistent with the above functions, the Capital Asset Advisory Committee encourages continuous process improvement and implementation of sound decision-making based on data which adheres to the district policies, procedures, and practices."

Members of the CAAC include:

- Gordon Calahan, *President, Callahan Construction*
- Megan Castle, *Communications Officer at Colorado Oil & Gas Conservation Commission*
- Kathy Hodgson, *City Manager, City of La*kewood
- George Latuda, *Director of Design and Construction at Denver Public Schools, and Former Director of Construction Management for Jeffco*
- Tom Murray, *President, Summit Brick & T*ile
- Bret Poole, *Commercial Real Estate Appraiser, Alpine Ban*k
- M.L. Richardson, *Regional Manager, Asphalt Paving Company*

- Brittany Warga, *Project Manager, Adolfson and Peterson Construction*
- Jeff Wilhite, *Management Consultant*

Jeffco's website also lists these employees as members of the CAAC:

- Kristopher Schuh, *Interim Superintendent*
- Nicole Stewart, *Interim Chief Financial Officer*
- Steve Bell, *Chief Operating Officer*
- Tim Reed, *Executive Director, Facilities & Construction Management*
- Bruce Huxley, *Director, Planning & Property*
- Berry Jones, *Director, Construction Management*
- Heather Frizzell, *Supervisor, Construction Acctg*.
- Jason Hendricks, *Budget Analyst*
- Maureen Wolsborn, *Communications Specialist*
- Robin Acree, *Executive Administrative Assistant, Facilities Management*

Language in the 5B bond measure passed by the voters, and repeated in Jeffco's Official Statement for potential bond investors, states that the "spending of the proceeds of such debt [will] be monitored by the Citizens' Capital Asset Advisory Committee and be subject to an annual independent audit."

This implies that "citizens" and not district employees, will provide independent oversight of the use of bond proceeds.

Yet the "Citizens' Capital Asset Advisory Committee" is not chaired by a citizen. Instead, it is led by Steve Bell, Jeffco's Chief Operating Officer, and Tim Reed, its Director of Facilities, who direct the spending of the bond proceeds. Moreover, it reports to the Board through the Superintendent, with Bell and Reed preparing (and often delivering) the CAAC's presentations to the Board.

In sum, conflicts of interest are rampant in the CAAC's structure and operations.

Jeffco's website describes the FOC as follows:

"The Financial Oversight Committee was established in December 1999. The committee typically meets monthly throughout the school year with the primary function to assist the Board of Education in fulfilling its fiduciary oversight responsibilities per district policy DIEE and DIEE-R by reviewing:

- Financial reports and other financial information used internally and provided by the district to any governmental body or the public;
- *The district's system of internal controls regarding finance, accounting, legal compliance and ethics that management and the Board have established*;
- The business risk of the district; and
- *The district's accounting and financial reporting processes generally*."

"Consistent with this function, the Financial Oversight Committee should encourage continuous improvement of, and should foster adherence to the district's policies, procedures and practices at all levels.

"This group meets at least 10 times a year and has seven business community members. They are:

- Brian Ballard (Chair), *President, FirstBank, West*
- Gordon Calahan (also a member of the CAAC), *President, Calahan Construction*
- Leanne Emm, *Former Chief Financial Officer, Colorado Department of Education; previously, Jeffco Schools Finance Department*

- Mary Everson, *Certified Public Accountant*
- Charlotte Franson, *Vice President, Capstone Headwarters (investment bank*)
- Kyla Jones, *Certified Public Accountant*
- Scott Tarbox, *Attorney, Rumler Tarbox Lyden Law Corp.*

2020 Developments Up to the End of April

At their 6 February 2020 meeting, CAAC member were informed of very large cost overruns on the Alameda HS and Columbine HS, as well as cost overruns on multiple artificial turf and all-weather track projects, not all of which had been disclosed to voters in the original 5B flipbook.

Yet at the same meeting CAAC members were told by district management that, "*We are noticing bids coming in under budget for the majority of the projects.*" This theme comes up again and again in the 2020 CAAC meeting notes.

In the case of Alameda, the Board was not informed about the large cost overruns until its 7 May meeting, when its consent agenda contained new project contracts for them to approve *at that night's meeting — without any discussion.*

At their 5 March 2020 meeting, CAAC members were informed (on the agenda they were sent) of $25 million in new anticipated charges against the "Unallocated H Bond" funds, which would leave unspent only $35 million out of the original $72 million balance that had been reported to the CAAC at the 7 November 2019 meeting. Based on the meeting notes, there was — yet again — no discussion by CAAC about this charge, or about the "Unallocated H Bond" balance.

Due to COVID, the CAAC's 2 April 2020 meeting was not held, though materials were sent out. Members of CAAC were informed on the agenda they were sent that only $10m (of the original $86m) remained in Program Contingency, due to its use to cover cost overruns and fund projects that were not included in the original 5B flipbook shown to voters during the 2018 campaign. They were also informed that $52m of "Unallocated H Bond" remained unspent, before additional charges.

The Smoking Guns: CAAC's and the Board's 7 May 2020 Meetings

Materials distributed to CAAC members and district staff along with the Agenda for its 7 May meeting show that only $37.5 million of "Unallocated H Bond" funds remained.

Consider what this meant. When it was first disclosed to CAAC members at their 7 November 2019 meeting, "The Unallocated H

Bond" fund had a balance of $72 million. Logically, $50 million of this came from Bond Premium, a further $11 million came from interest earnings, and the final $11 million came from an undisclosed source.

The remaining balance reported to CAAC on 7 May 2020 was just $37.5 million, which mathematically implies that $34.5 million had been spent. If the first $11 million of this came from the mysterious source, and the next $11 million came from the accumulated interest earnings, then **$12.5 million of Bond Premium had been spent without Board Approval — even though under Board Policy the Superintendent could, on his own authority, spend no more than $500,000 without a Board resolution authorizing the expenditure.**

This represents not only a major violation of Board Policy, but also a dangerous failure of Jeffco's governance processes and financial controls.

Notes from the 7 May meeting (see Appendix 1) show that the CAAC also discussed an email received from Robert Greenawalt (see next section for a longer discussion of who he is and the contents of his emails, which are also available in Appendix 2).

According to the CAAC meeting notes, Greenawalt's email "expressed concerns with how we are running the bond program, and contends that the [remaining program] contingency is only $7m". In fact, according to the information presented on the meeting agenda, the remaining program contingency was actually $9.9 million.

The meeting notes also record that Mr. Greenawalt "is concerned that the projects slated for the end of the six-year program will not be completed due to lack of funds."

The notes continue: "The [facilities] department believes there is adequate current and projected funding, including contingency, to complete the Program." There is no mention of the evidence and logic that supported this claim, not any indication that members of the CAAC asked district management for it.

Later on in the meeting notes there appears THIS CRITIAL STATEMENT: [Greenawalt's] "email questioned the distribution of bond premium."

And then this bombshell:

THE USE OF PREMIUM AND ANY DISTRIBUTION IS A BOE DECISION NOT THIS DEPARTMENT'S. TIM WILL BE FORWARDING MR. GREENAWALT'S CONCERNS TO THE BOE."

The following chart shows the members of Jeffco district staff who were, according to the notes (see Appendix 1) present at this CAAC meeting (and others):

As you can see, the senior leaders of Jeffco's Finance Department — Kathleen Askelson (Jeffco's CFO), Stephanie Corbo (Director of Finance), Nicole Stewart (Currently Interim CFO and on 7 May 2020 Director of Budget and Treasury) — were all present at the 7 May CAAC meeting. So too was Steve Bell, Jeffco's Chief Operating Officer.

THE JEFFCO BOARD OF EDUCATION MET LATER ON 7 MAY 2020.

CONTRARY TO WHAT THE CAAC NOTES INDICATE, TIM REED DID NOT RAISE THE BOND PREMIUM ISSUE WITH THE

BOARD.

NOR DID THE DISTRICT'S CHIEF FINANCIAL OFFICER (ASKELSON), CHIEF OPERATING OFFICER (BELL), DIRECTOR OF FINANCE (CORBO), OR DIRECTOR OF BUDGET AND TREASURY (STEWART).

THE ENTIRE SENIOR LEADERSHIP OF JEFFCO'S FINANCE DEPARTMENT HAD BEEN MADE AWARE OF A POTENTIAL BREACH OF BOTH DISTRICT POLICY AND A DANGEROUS BREAKDOWN OF DISTRICT FINANCIAL CONTROLS, INVOLVING $12.5 IN BOND PREMIUM FUNDS.

THEY WERE ALSO AWARE THAT TIM REED WAS GOING TO RAISE THIS ISSUE WITH THE BOARD THAT EVENING.

WHEN HE DID NOT, THEY SAID NOTHING.

AND SINCE THAT MEETING THEY HAVE CONTINUED TO SAY NOTHING, TO THE CAAC, THE FOC, OR THE BOARD, EVEN AS ADDITIONAL AMOUNTS OF BOND PREMIUM HAVE BEEN SPENT WITHOUT BOARD AUTHORIZATION.

Later on 7 May 2020, the Jeffco Board of Education held its monthly meeting.

Board member Susan Miller took off the Board's Consent Agenda a resolution to approve additional funds to cover a very large ($10m plus) cost overrun on the Alameda HS project. This overrun was presented as 77% over the originally budgeted cost. However, under questioning by Miller, Tim Reed admitted that this was only for construction costs, and that there would be additional overruns related to soft costs that were not included in the resolution. In short, the full amount of the cost overrun at Alameda HS was not disclosed to to the Board.

MILLER ALSO ASKED REED, "SO IF I'M LOOKING AT YOUR CAPITAL PLAN PAGE THAT YOU HAVE UP…WE'VE ALREADY USED SOME OF THE BOND PREMIUM, IS THAT CORRECT?"

REED REPLIED: "NO WE HAVE NOT. WE HAVE NOT USED THE PREMIUM." THEN AFTER A PREGNANT PAUSE, REED ADDED, "IN IT'S ENTIRETY." (Video of this exchange is available on Jeffco Board Docs).

During this exchange, Jason Glass (the Superintendent) remained silent.

So did the senior leadership of Jeffco's Finance Department (Askelson, Corbo, and Stewart), all of whom had been present earlier in the day at the CAAC meeting.

After the 7 May meetings, none of these senior officials ever again mentioned the use of Bond Premium funds without Board Authorlzation at either: (1) any subsequent 2020 CAAC meetings; (2) any subsequent FOC meetings; and (3) any subsequent Jeffco Board meetings.

They knew what had happened, but, according to the notes and minutes from all these meetings, they continued to remain silent.

Whether any of them privately raised the Bond Premium issue with Clifton Larson Allen, the district's auditor, or with the district's legal counsel, remains unknown.

An Aside: What is Board Director Susan Millers' Background?

Miller began her career as a municipal Ratings Officer at Standard and Poor's. She was later a public finance investment banker at Kidder, Peabody, and then a management consultant specializing in large project development. Currently, Miller's firm advises school districts around the country on enrollment, strategy, facilities planning, financing, and project management. She also holds an SEC/Municipal Securities Rulemaking Board Series 50 Municipal Financial Advisor License.

A Closer Look at Robert Greenawalt's Whistleblower Complaints and the District's Response

Who is Robert Greenawalt?

He is a retired United States Army Colonel. He graduated from West Point with a degree in electrical engineering. He received two graduate degrees from the University of Pennsylvania: an MSE in Computer and Information Science, and an MBA from the Wharton School. He has a Project Management Professional (PMP) Certification from the Project Management Institute. After leaving the Army, he served as the Chief Technology Officer for a number of technology companies. And he is the father of two Jeffco graduates.

Robert Greenawalt is a heavy hitter. But district staff, CAAC, and perhaps the FOC repeatedly treated him like a lightweight and dismissed his well-documented whistleblower complaints.

Let's look at the emails Greenawalt sent to CAAC (all of which are available in the Appendix).

On 5 May 2020, Greenawalt emailed the CAAC. His comments included the following:

- "As a taxpayer, I am concerned about the continued and unsustainable use of 5B Program Contingency funds. Another $10M+ of Program Contingency is on the agenda for May 7th. Less than 2 years into the Capital Improvement Program, by my calculations (see below), there remains less than $7M, out of an original $86M in Program Contingency, and this is only from what I can gather from Board documents or publicly available information. The real amount of remaining contingency is most likely even less."

- "Bids for project after project are coming in not only above the original estimates, but above the revised estimates. There is no reason to expect that will change. At this rate it appears that later starting projects will require scope cuts in order to stay within the stated Program funding. In addition, it appears that the $23M annual Capital Transfer [from the district's General Fund] needed to partially fund the program is not sustainable in future years, adding even more pressure on contingency. I would think that it is time to start asking some hard questions about the Program's sustainability."
- "Finally, as a taxpayer, I don't think the $50M in bond premium should be used as additional contingency to cover up for poor estimates, mismanagement, over promises, or 'Nice to Have' scope changes for the first projects. That money should be used for new projects, completely outside of the original 2018 Capital Improvement Program which the Superintendent and Board of Education should discuss and approve. As far as I am aware there has not been a discussion at the Board table regarding uses for the $50M. And shouldn't Charters get their prorated share of that $50M?"

On 1 June 2020, Greenawalt sent a second email to the CAAC. Key points included:

- "The $100M in cost overruns and revised estimates is already over the $86M in contingency taxpayers were told was in the project, only 18 months into the program. As a project manager myself, that is just appalling".
- "Where is this additional money coming from? It appears that Jeffco is using the Bond Premium. Is the Board of Education aware of that? The minutes from the May 7th CAAC meeting state "The use of premium and any distribution is a BOE decision not this department". I have not seen the Board discuss, or approve the use of the Bond Premium for contingency."
- "When there are other possible uses for the Bond Premium such as replacing older schools, ensuring equity throughout the District by putting more money into high FCI schools such as Vivian, Stober, Colorow, Lumberg or Mulholland or even cutting back on the Capital Transfer for a few years to free up General Fund money during the budget crisis, the creation and use of an unmonitored $146M+ contingency slush fund is completely beyond belief. How do you expect voters to ever approve another bond package when the proceeds from this one are being so poorly managed?"
- "At the rate of use of contingency funds, will there be enough

money to complete all projects promised to taxpayers? Merely hearing Tim Reed say that everything would be completed wouldn't be enough for me. As I said, you don't have to take my word for this. You should ask Tim Reed some very pointed questions. Here are some suggestions:

- (1) Were the project estimates that were originally presented to voters raised by approximately $30M? Are these new estimates now used as a baseline when calculating the amount of contingency used?
- (2) Has nearly $70M in contingency already been spent or encumbered
- (3) What was the approval process for using the Bond Premium for contingency purposes? At what meeting did the Board discuss and approve its use for contingency?
- (4) At the current rate of contingency expenditure, how can the CAAC be absolute certain that Jeffco will be able to complete all projects in the stated scope?"
- "It seems that Tim Reed likes to tell the Board of Education that the CAAC is briefed and up-to-date on the Capital Improvement Program. Is that truly the case? Or, are you only seeing what Tim wants you to see?"
- "If/when this train wreck of a program implodes, will you as the CAAC be left holding the bag?"
- "The Bond language includes two interesting sentences: (1)

Spending of the proceeds of such debt to be monitored by the Citizens' Capital Asset Advisory Committee, and (2) Subject to an annual independent audit. I would think it's time to subject the Capital Improvement Program to the prescribed annual independent audit outlined in the ballot language. It's time to determine what is really going on with the proceeds and expenditures as the Program seems to be totally out of control."

Greenawalt ended his email with this: "I'm available to discuss this or provide more detail relating to the source of any of the numbers in this email."

The notes from the 4 June 20 CAAC meeting indicate that the CAAC discussed Greenawalt's emails.

These notes state:

- "Mr. Greenwalt suggests that the CAAC should have questions around the way funds are being allocated. Tim Reed asked the committee if there were any questions or comments. Jeff Wilhite stated, 'We need to keep an eye on the contingency funds. Please keep us updated on how you are reloading the slush fund'. Tim Reed said, 'We will continue to look at the contingency and financial information that is presented each month and address any contingency issues. In the market that we are in and the additions being big projects, recently we have seen pretty good numbers and contractors are eager to do work for us and we want to get them out to bid as soon as we can'".

- "M.L. Richardson stated, 'I recommend a response being prepared by going line by line to answer each question.' Tim Reed responded that he will do that and will attach it to the meeting notes."

These meeting notes suggest that CAAC failed to discuss many, indeed most of the substantive points Greenawalt raised in his emails.

On 8 June, Tim Reed sent an email to Robert Greenawalt.

Think about that.

In the 2018 ballot language for Proposition 5B, as well as Jeffco's Official Statement for investors in its bonds, the district promised that the "spending of the proceeds of such debt [will] be monitored by the Citizens' Capital Asset Advisory Committee and be subject to an annual independent audit."

Yet here we have Tim Reed, a member of district management, sending a response to a whistleblower who has raised serious issues about Reed's (and others')

mismanagement of the Capital Improvement Program, including misuse of Bond Premium funds, on behalf of the very board advisory committee (CAAC) charged with monitoring (on behalf of Jeffco citizens and bond investors) the actions and performance of Reed and the other district managers responsible for the Capital Improvement Program.

Conflicts of interest don't get any starker than this.

You can find Tim Reed's response to Greenawalt in Appendix 2.

Unsurprisingly, it essentially evaded all the issues that Greenawalt raised.

It may well be that at least some members of the CAAC were disappointed (to put it mildly) with Reed's email to Greenawalt, because the issues raised by the latter came up again in the CAAC's next meeting on 2 July 2020.

Those meeting notes include the following:

- "Greenawalt Email/Responses-forwarded and presented to CAAC as requested."
- "The committee discussed whether Mr. Greenawalt's concerns are viable. Tim Reed states that every question presented has been answered."

- "It is believed [by who?] that if the response doesn'tconform to Mr. Greenawalt's theory then it is wrong."
- "Tim believes that Mr. Greenawalt does not understand the full scope of the bond."
- "The Board is aware and well informed on how the Capital improvement program is funded."
- "This is not a new model and many school districts use it."
- "The committee asked if an independent audit has been completed for the first year and if there will be another for the second year?"
- "Kathleen Askelson stated that there are audits annually. However, external auditors do not look at the scope of the work being done and what is being delivered, they are looking at expenses, allocations and conforming to accounting practices."
- **NOTE: This begs the question of whether Askelson's description of what the "independent audit" covered is what people who voted for Prop 5B and invested in Jeffco's bonds understood "independent audit" to mean. I very strongly suspect that in contrast to the limited scope described by Askelson, what voters and bond investors had in mind was a true "performance audit", of the kind other large districts have conducted on their capital programs. Examples of these audits can be found in**

Appendix 2.

- To return to the meeting, notes, the committee asked if anyone had sat down with Mr. Greenawalt and gave a more simplistic answer? Capital Improvement staff have not met with him."
- "It was stated that he [Greenawalt] has met with multiple people in the district, and attended several Board meetings. Mr. Greenawalt has had disagreements with other district departments. Mr. Greenawalt has met with the superintendent and other leadership members.
- "Steve Bell stated that he would discuss options with Dr. Glass for responding to Mr. Greenawalt's email."
- "The consensus of the committee is that a great deal of time and staff resources has gone into providing Mr. Greenawalt with responses when his questions are repetitive even though they've been answered."
- "The committee will wait to see how Dr. Glass would like to proceed." Later, this was added to the meeting notes: "During the 7/6 Cabinet meeting the Cabinet recommendation is to take no further action regarding Mr. Greenawalt requests."

These meeting notes speak for themselves about CAAC's reaction to Greenawalt's whistleblower warnings, which described not only a Capital Improvement Program that was out of control, but also potential unauthorized use of millions of dollars in Bond

Premium funds.

A billion dollar public company would take Greenawalt's allegations extremely seriously, in light of both the credentials of the person making them and the evidence he provided. In my experience, a public company board would not hesitate to retain outside counsel to conduct a thorough independent investigation of Greenawalt's allegations. To not do so would invite shareholder litigation, hostile media coverage, reputational damage, and non-renewal of Directors and Officers liability insurance coverage.

Yet Jeffco's senior management and the CAAC both dismissed Greenawalt and his claims.

That speaks volumes.

The Financial Oversight Committee's Possible Failure to Act on Greenawalt's Email to Them

According to their meeting agendas, the FOC received regular updates on the Capital Improvement Program from Steve Bell and Tim Reed. Their meeting notes show that they never raised any issues regarding program spending or financial controls.

Robert Greenawalt also reports that he sent an email in late July to Brian Ballard, Chair of the FOC, in which he laid out his concerns about the Capital Improvement Program. Unlike the CAAC, the FOC's meeting agendas and notes make no mention that they ever received or discussed Greenawalt's email

This seems curious, considering the seriousness of Greenawalt's claims about multiple failures in Jeffco's internal controls and governance processes, his credentials, and the substantial professional experience of the members of the FOC.

This is even more concerning given that Gordon Calahan is a member of both the CAAC and the FOC.

A final question is whether, assuming the FOC received Greenawalt's email, they passed it on to Clifton Larson Allen (CLA), the district's auditor.

CLA is the nation's 8th largest accounting firm, and therefore likely has public company audit clients. That makes it subject to the regulations of the Public Company Accounting Oversight Board, which has very strict rules for how audit firms must respond when they become aware of client whistleblower complaints. And presumably their audit engagement letters require clients to share whistleblower complaints with CLA.

At this point, the response of the FOC and CLA to Greenawalt's email (assuming they received it) remains a unknown — but it is a very important mystery, given auditors' potential liability if they ignore whistleblower complaints about which they have become aware.

By May, Spending on Jeffco's Capital Improvement Program was More than $100 Million Above Its Original Budget

The following table summarizes the information that was presented by district management to the CAAC (in writing, on meeting agendas) between January and August 2020.

Note that this table was never presented. All the CAAC members received on their meeting agendas (see Appendix 1) was how much of Program Contingency and Unallocated H Bond funds remained unspent. I created this table from the information on the CAAC agendas to show how the use of Program Contingency and Uallocated H Bond funds evolved over time.

Note also, that the publicly available materials on the CAAC's website show that, through September, district management had never provided a comprehensive table showing the projects on which $110 million was spent, what it was spent on, and why (e.g., a detailed variance analysis). Nor does it appear that any member of CAAC has asked for this information.

In fact, the only person who has asked for it is Board director Susan Miller.

But the district hasn't provided it to her either.

The Curious Financing of the Aviation Wing at the New Warren Tech South CTE High School

Following the passage of Proposition 5B, on 9 December 2020 Superintendent Jason Glass wrote a long post on his "Advance Jeffco" blog titled "*What Happens Now With 5A and 5B Funds?*" (included in Appendix 2).

Glass told the public that, "We will use 10% of 5A [mill levy override] funds [about $3 million/year] for career/technical education… We are currently planning the expansion of Warren Tech programming into existing schools and on a new site in south Jeffco that will be constructed using 5B funds."

At their 3 September 2020 meeting, the CAAC was told that a bid for $9.2 million was received to construct the new Warren Tech South school. The bid came in $212,301 under budget.

At the Jeffco Board meeting later that same day, Director Susan Miller pulled the proposed contract for Warren Tech South off the Consent Agenda, to ask additional questions about the project's curious funding.

Rather than being paid for with 5B Capital Program funds as Jason Glass had promised the public, the Aviation Wing of Warren Tech South was to be financed via the transfer of $1.35 million in Proposition 5A mill levy operating funds.

Miller asked why the district was taking this unusual approach when, presumably, Bond Premium and Program Contingency funds could be used for that purpose.

District staff (Steve Bell and Nicole Stewart) replied that the use of these funds had been authorized by Marner Messer, the district's head of Career and Technical Education, and Matt Flores, the district's Chief Academic Officer.

Miller expressed her astonishment at this, and pointedly noted that since the Superintendent's maximum approval authority was just $500,000 this expenditure should have come to the Board for approval.

Miller also noted that the Jeffco Board had never passed a resolution on how the $50 million in Bond Premium should be spent.

Board president Susan Harmon, and directors Ron Mitchell, Brad Rupert, and Stephanie Schooley remained silent during this discussion, until Harmon cut it off and called for a vote. The contract was approved, despite its curious financing, with only Miller voting against it.

Consider what happened here.

Through the end of June 2020, Jeffco had received $6 million (in annual payments of $3 million) of Prop 5A mill levy override funds that were specifically earmarked for improving the district's CTE and STEM programming. Yet at the end of June, 2020, $4.7 million of that $6.0 million in Prop 5A funds remained unspent, despite promises made to parents, employers, and other Jeffco voters in 2018 during the Prop 5A mill Levy override campaign.

At the same time, the STEM program at Wheat Ridge High School (where 50% of students are eligible for free and reduced lunch) that has won many national awards (e.g., winning the international Shell Eco Marathon multiple times with the fuel cell vehicles they designed and built) was closing down because its budget has been cut.

In spite of this situation, district management claimed to the Board that it made sense to transfer $1.35 million of these General Account funds to the Capital Account, and then approve their use to construct part of a building at the new Warren Tech South schools, contradicting what Superintendent Jason Glass had told the public after Prop 5B passed.

When Miller pointed this out, Interim CFO Nicole Stewart claimed the funds had been earmarked for "a one time use." She neglected to mention that this "one time use" was very likely the purchase of equipment to be used in programs that would be delivered once the Aviation Wing of the new Warren Tech South building was constructed.

And once again, the details of this strange Warren Tech South financing did not appear on the CAAC's agenda, nor were they discussed at its meeting earlier in the day.

Finally, the 3 September meeting raised another extremely troubling point, when Director Susan Miller asked Tim Reed if the CAAC regularly received the same information about proposed projects and contracts that was given to the Board. He said they did not.

How Has Jeffco Been Managing the Project Bidding Process?

Director Miller later pulled another contract off 3 September Board meeting's Consent Agenda, and asked Tim Reed how it came to pass that the contractor's bid amount was exactly equal to the project's budget. Reed's answer left her speechless: "We tell the contractor this is how much we've got to spend. Work to this number. Which they do. The number is what we told them it needed to be" (again, this can be seen on video of the meeting on the Jeffco Board Docs site).

Miller's Challenge to Other Jeffco Board Members at the 1 October 2020 Meeting

At the 1 October Jeffco Board meeting, Director Miller confronted her four fellow directors with the elephant in the room that since the May 7th board meeting they had all been trying hard to ignore.

"We have extra dollars that came in from the Bond Premium and interest earnings. And we have not talked about how to allocate that money or where that money has gone, and we have spent about $77 million dollars of our Program Contingency. We have only about $9 million left in contingency for [the remainder of the Capital Improvement Program]…

"As a Board, we're supposed to understand where $61million dollars goes… it could have gone to a new school for Molholm [an old school with a high percentage of minority and free and reduced lunch eligible students] or other projects that are important for our community. That's the conversation we haven't had…

"We've went and invested in fields we said we weren't going to do. West Jeff Middle School was not on the list [the 2018 5B campaign flipbook], Golden [HS] was not on the list, and there were other ones that weren't on the list…

"We should have had a discussion about where we are going to spend that Bond Premium… We could have used $50 million dollars to build two new elementary schools… Those are the conversations we're supposed to be having at the Board. I don't know who made the decision to direct those dollars somewhere else…

"$61 million dollars went somewhere else without the Board talking about it. We didn't get anything from CAAC. And CAAC doesn't sign off on any of the spreadsheets that [district staff] gives us. My concern is how are we honoring what we said to our bondholders. We were going to have a committee that oversaw this bond program, aligned with what we told the taxpayers they were going to receive…

"There was no conversation about how the Bond Premium was going to be spent."

At that point, Jeffco Board president Susan Harmon cut off further discussion.

The CAAC's 7 October 2020 Presentation to the Board

On 7 October, the CAAC has a scheduled meeting with the Jeffco Board to review the Capital Improvement Program.

Except only one member of the CAAC will be there — Gordon Calahan (*note: he didn't show up*). The CAAC's presentation was prepared by district staff, and will be given by Steve Bell and Tim Reed.

Based on what has been posted on the district's website (which is included in Appendix 2), that presentation is deeply deceptive.

It presents only the relatively small number of projects that have been completed and closed out during the Capital Improvement Plan's first two years. And it notes that cost overruns on them total only $20 million dollars.

It makes no mention of far greater use of Program Contingency to cover cost-overruns projects that have not been completed and closed out. Nor does it mention the use of Program Contingency to pay for projects that were never disclosed to Jeffco voters during the 2018 campaign. Unsurprisingly, it is also completely silent on the unauthorized use of Bond Premium funds.

In short, it appears to be a brazen whitewash of the true condition of Jeffco's Capital Improvement Program. A skeptic might even say it is an attempt to deceive the Board, Jeffco voters, the media, and bondholders.

This behavior would be inconceivable if Jeffco was a billion dollar public company instead of a billion dollar school district.

Steve Bell is Likely to Raise Two Objections to this Analysis

The first is that when Board members approve Capital Improvement Program contracts and associated cost overruns (almost all of which appear on the Board's Consent Agenda, unless Director Miller had pulled them off for discussion), they are authorizing the use of Bond Premium.

However, the information about those contracts that has been presented to the Board has repeatedly stated that cost overruns would be paid for out of the Program Contingency. Board Members were never told that, nor did they ever approve any increase in the size of Program Contingency beyond the $86 million that had originally been presented in 2018 to the Board, the public, and potential investors in Jeffco's bonds.

Bell's second objection is that Bond Proceeds, the Bond Premium, and Accumulated Interest Earnings are indistinguishable amounts of money that can be spent on projects not disclosed to the voters in the 5B flipbook and on cost overruns.

This objection is contradicted by multiple pieces of evidence. First, there are the notes from the 7 May CAAC meeting, which state: "THE USE OF PREMIUM AND ANY DISTRIBUTION IS A BOE DECISION NOT THIS DEPARTMENT. TIM WILL BE FORWARDING MR. GREENAWALT'S CONCERNS TO THE BOE."

Second, at the 7 May Board meeting, there is Reed's initial denial (in response to a question by Director Miller) that any of the Bond Premium had been spent: "NO WE HAVE NOT. WE HAVE NOT USED THE PREMIUM". Then, after a painful pause, Reed said, "IN IT'S ENTIRETY"

Third, in the information provided to CAAC (but not the Board), since November 2019 district management has been separately reporting unused Program Contingency and unused H-Bond funds.

Fourth, if the Bond Premium and Accumulated Interest Earnings were in fact just part of Bond Proceeds" then per the Jeffco Board's 8 October 2018 resolution, 10% of this pot of money should have been shared with the district's charter schools. But it was not.

Finally, the fact that boards in the Denver, Thompson, Poudre, and Englewood school districts have all in the past three years separately voted on how to use the Bond Premium they received suggests that Bond Premium is not, in fact, part of Bond Proceeds.

Conclusions

What is the probability that Jeffco's Capital Improvement Program is going to either end up over budget, behind schedule, and/or fail to deliver all the projects it promised to the people who voted for Prop 5B in 2018?

The reference case/base rate data for the results of other large school district capital improvement programs indicated that there is a high probability that one or more of these fates would befall Jeffco.

Updating that probability with the evidence presented in this analysis leads me to conclude that the probability that Jeffco's Capital Improvement Program will fail to deliver its promised scope, on time, and on budget is almost certainly higher than the base rate suggests.

There is also a broader set of conclusions that are even more important to the future of nation's 36th largest school district.

The case of the Capital Improvement Program provides further painful evidence of the persistent, insidious effects of three deeply rooted causes of Jeffco's many performance problems.

Poor Management

This case study has highlighted multiple instances of weak or absent management processes and systems in Jeffco. Undoubtedly, if and when a performance audit is conducted, many more will be found.

Project costs were systematically underestimated (see Appendix 2 for a detailed project by project analysis). Contrary to good project management and project accounting practices, the original project cost baseline was adjusted upward, which hid the full extent of these underestimates.

Management of the project bidding process appears to be questionable. While numerous cost overruns have occurred,systematic variance analyses have not been provided to the Citizens' Capital Asset Advisory Committee, the Financial

Oversight Committee, or the Board.

More broadly, different and at times inconsistent information has been provided by district management to all three of these governance groups. For example, none of them have received a regularly updated report on how much of the Program Contingency has been used.

It is not clear that the CAAC and FOC realized that projects that were not disclosed to voters in the 5B flipbook were undertaken and paid for with Program Contingency and/or Unallocated H-Bond funds.

The fact that Bond Premium has been spent, and on what it has been spent, has never been clearly reported to or authorized by the Board.

And this is just a partial list of poor management practices in Jeffco's Capital Improvement Program…

Weak Governance

In light of this evidence, it is hard to avoid the conclusion that Jeffco has experienced a widespread breakdown of multiple internal controls, decisionmaking, and governance processes. Many of these breakdowns appear to have resulted from intentional behavior by different parties, including both what they did and what they failed to do.

It is hard to believe that Jeffco citizens and Jeffco's bond investors would agree that CAAC has carried out its responsibilities as stated in the 5B ballot language and the district's Official Statement.

CAAC's agendas and meeting notes paint a picture of a group that is largely passive and spent most of its time listening to Steve Bell and Tim Reeds' presentations and assurances that all was well.

CAAC rarely dug deeply into issues that were clearly indicated by the rapid depletion of Program Contingency, the use of cryptically described "Unallocated H-Bond Funds" (which included Bond Premium), and the absence of clear and regularly updated reports showing how these funds were used.

To his great credit, Robert Greenawalt's whistleblower communications to the CAAC temporarily aroused their interest. However, Bell and Reed appear to have quickly damped down the CAAC's curiosity. To be blunt, the CAAC's treatment of an evidence-based whistleblower complaint from a highly credible source was nothing short of scandalous.

The fact that the Citizens' Capital Asset Advisory Committee, which was created by the Board to provide advice to the Board, had no citizen chair and was in fact run by management, and reported to the Board through management, is particularly damning.

Moreover, as indicated by the upcoming CAAC "report" to the Board on 7 October, which will be delivered by Bell and Reed, with Calahan as the only CAAC member present, these manifest weaknesses in the governance of Jeffco's $705 million dollar capital program have not yet been addressed — or even acknowledged by the Board.

The Financial Oversight Committee has apparently remained unaware of these problems. It would be deeply troubling if the FOC in fact received Greenawalt's whistleblower email and chose not to act on it, because the members of the FOC, like the members of CAAC, do not lack for professional expertise.

What the CAAC, and perhaps the FOC, did appear to lack was the skepticism required to use their expertise to challenge district staff — as you would expect a board committee to do. This is deeply troubling.

With respect to the governance performance of Jeffco's Board of Directors, the top finding of the DC City Auditor's review of performance audits of school district capital programs seems painfully appropriate:

- *"The importance of the "tone at the top" when it comes to accountability. Every aspect of a program's control environment depends on leaders demanding accountability."*

The evidence shows that Board Director Susan Miller repeatedly attempted to carry out the fiduciary duty of care she owes to both Jeffco's citizens, taxpayers, and bond investors. She removed contracts from the consent agenda, questioned Tim Reed and Steve Bell about their contents, and raised concerns about apparent violations of Board Policy in the case of the financing of the Aviation Wing at Warren Tech South and the unauthorized use $12 million (or more) in Bond Premium funds.

Yet on multiple occasions, Directors Mitchell, Rupert, and Schooley remained silent, and Board president Susan Harmon cut off Miller's line of questioning.

This is curious because both Rupert and Harmon are attorneys — members of the bar and officers of the court — with professional obligations to ensure that laws are upheld.

It is also galling, because that Directors Harmon, Mitchell, and Rupert were elected in 2015, calling themselves the "Clean Slate" candidates who would bring a new era of transparency to Jeffco.

A cynic might argue that the "Clean Slate" has seemed far more interested in protecting the district's (and perhaps their own) reputation than in carrying out their fiduciary duty of care.

In light of the accumulated evidence, it is very hard not to conclude that there has been a dangerous breakdown of many critical governance processes in the billion-dollar organization that is the United States' 36th largest school district.

Dysfunctional Culture

This case also provides many examples of Jeffco's dysfunctional and deeply rooted culture. This is not the first such case, nor will it be the last (for example, see the recent investigation of Jeffco's dysfunctional approach to reading instruction, by Chalkbeat's Ann Schimke).

The DC Auditor's warning about the importance of "tone at the top" applies to Jeffco's senior management as much as it does to its Board directors.

In this case, a pattern of behavior is observed, in which the information provided to governance committees — the CAAC, the Board, and perhaps the FOC — has been restricted and, in some cases, arguably materially distorted. Recall too that when confronted on the use of Bond Premium, Director Miller effectively caught Tim Reed lying to the Board.

As I have written elsewhere, this is one of the dangers that can arise from the Board's decision to use of policy governance (which vests extreme power in the Superintendent) rather than the administrative approach to governance used by public companies. What this case suggests is that these dangers increase non-linearly with the size of a school district.

As a former CEO and CFO of public and private companies, I am particularly horrified by the dysfunctional behavior of Jeffco's Finance Department staff.

An organization's CFO holds a unique position, reporting to both the CEO and to the Audit Committee of the Board of Directors. CFOs are responsible for the quality and performance of an organization's internal control systems and decision and governance processes. They are also responsible for the accuracy and completeness of information flows, both internally (to the Board of Directors) and externally to multiple outside parties, including regulators, auditors, lenders, investors, and other users of the organization's financial statements.

As many CFOs can tell you, there are times when the dual nature of their responsibility lands them at cross-purposes with their CEO. I know CFOs who lost their jobs because they refused to compromise on what they knew was right, and told audit committees and boards what they needed to know. But I have also seen CFOs who went to prison because they played along with the games their CEO, and in some cases, other members of the management team were playing.

It therefore came as a shock to see that CFO Askelson, Director of Finance Carbo, and Budget and Treasury Director Stewart (who is now Jeffco's acting CFO after the departure of the other two) were all present at the 7 May CAAC meeting. As you recall, the notes from that meeting stated that, "THE USE OF [BOND] PREMIUM AND ANY DISTRIBUTION IS A BOE DECISION NOT THIS DEPARTMENT. TIM WILL BE FORWARDING MR. GREENAWALT'S CONCERNS TO THE BOE."

Yet at that evening's Board meeting, neither Tim Reed nor Steve Bell raised the use of Bond Premium with the Board of Directors. But neither did Askelson, Corbo, or Stewart (all of whom are CPAs), even when Director Miller forced Tim Reed to admit (after he at first denied it) that Bond Premium funds had been spent.

Even more disturbing, Askelson, Carbo, and Stewart continued to attend CAAC meetings where it was clear (as it should be to a billion dollar organization's finance department leaders) that millions of dollars of Bond Premium funds continued to be used without the Board's approval.

They also continued to attend FOC and Board meetings, and, based on the meeting notes (included in Appendix 1), never brought it up there either.

This represents far more than additional evidence of Jeffco's dysfunctional culture. It suggests that professional ethics have been dangerously undermined at the very top of a billion dollar organization's Finance Department.

A Final Question: Have Any Laws Been Broken?

While the ultimate determination must be made by appropriate law enforcement authorities, it could be the case that laws have been violated. Sadly, this would not be shocking news to people familiar with other large school districts' capital improvement programs.

The critical issue appears to be district employees' possible use of $12 million dollars or more of Bond Premium funds without the Board's authorization, and without disclosure of this to the Board, when any district employee's maximum expense approval authority (at the Superintendent level) is only $500,000.

At the state level violations could have occurred under the following statutes:

CRS 18–8–405 Second Degree Official Misconduct:

"(1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously: (a) Refrains from performing a duty imposed upon him by law; or (b) Violates any statute or lawfully adopted rule or regulation relating to his office."

CRS 18–8–404 First Degree Official Misconduct:

"(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly: (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or (b) Refrains from performing a duty imposed upon him by law; or [c] Violates any statute or lawfully adopted rule or regulation relating to his office."

CRS 6–4–106 Bid Rigging:

(1) It is illegal for any person to contract, combine, or conspire with any person to rig any bid, or any aspect of the bidding process, in any way related to the provision of any commodity or service.

At the federal level, there could be a violation of USC Title 18, Section 1346, Honest Services Fraud (and possibly a related conspiracy).

Honest Service Fraud is defined as "a scheme or artifice to deprive another of the intangible right of honest services." Note that, "No money or property needs to change hands, and the attempt to deprive someone of honest services does not need to be successful. A breach of fiduciary duty, or a failure to disclose a conflict of interest, can now be charged as wire or mail fraud…In general, one can only be charged with honest services fraud where a fiduciary duty exists to another."

How Do You Clean Up a Mess This Big?

In Jeffco's case, the glib answer is that it depends on which mess you are talking about.

Jeffco's Capital Improvement Program still has more than four years left to run. At this point, the Board should take two initial steps that other district boards have also taken under similar circumstances.

First, retain independent outside legal counsel to conduct a thorough investigation of the apparent failure of multiple critical governance processes. This should also include a recommendation as to whether referral to law enforcement is warranted.

Second, retain an independent firm to conduct a performance audit of the Capital Improvement Program (see the Appendix 2 for examples from other districts).

Depending on the results of these initial steps (the reports from which should be made public), the Board may choose to contract with an outside engineering, procurement, and construction management firm to take control of Jeffco's Capital Improvement Program.

With respect to how to clean up the larger mess — the deeply rooted problems of Jeffco's poor management, weak governance, and dysfunctional culture — my recommendations for that are set out in this article: "A Long Overdue 12 Step Plan to Improve Jeffco's Performance".

One thing however, is crystal clear.

Culture eats managment and governance processes for breakfast, as they say. And a deeply dysfunctional culture will never change unless and until the senior leaders who perpetuate it either leave or are fired.

Post Script: At the 7 October Board meeting with the CAAC (none of whose members showed up), Board Director Miller read a statement expressing her deep concerns about a number of issues, and called for the appointment of an independent outside firm to conduct a performance audit of Jeffco's Capital Program. You can download her statement here.

Tom Coyne is a business executive and former member of the Jeffco District Accountability Committee. His wife, Susan Miller, was elected to the Jeffco Board of Education last November. These are solely his views.

Download Appendix #1

Download Appendix #2

Download the Houston Capital Program Performance Audit

Project Management Education Reform Colorado K12 Education Scandal