

Article Last Updated: 2/02/2006 10:04 PM

## County, Colonies go back to table today

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San Bernardino County Sun

Now, it's all about the money and politics, with taxpayers possibly footing a bill that could hit \$250 million.

San Bernardino County officials and The Colonies Partners LP meet today for the first time since June in an attempt to settle a four-year legal battle over 67 acres cutting through the Colonies property in northeast Upland.

Several settlement proposals have been put on the table and rejected since the dispute erupted in litigation in 2002 over who has financial responsibility for the land, which is used to capture water runoff coming from an area north of the Interstate 210 extension.

The question is not if a deal can be hammered out, but if the county Board of Supervisors will approve any settlement proposal or simply let the courts decide.

"The political gain (in settling) is showing resolve and leadership; the downside is the criticism," said Ralph Rossum, director of Claremont McKenna College's Rose Institute of State and Local Government. "It's harder to do something proactive than defer the cost and hope if the county loses, they can shift any blame to the judicial system for having ruled as it did."

Rossum, who is familiar with the Colonies situation, warned that the county is "playing with vast future resources, playing the roulette wheel and hoping to win."

Several county supervisors either declined to comment or didn't return phone calls.

Jeff Burum, Colonies co-managing partner, remained skeptical about the fate of any settlement negotiations.

"Politics has more to do with their inability to make a settlement offer than the law," Burum said. "If these were two private-sector companies, they would have settled this. They know that they are wrong."

Colonies developers knew when they bought the more than 400-acre property in 1997 that a dilapidated basin on their land would cost millions of dollars to bring up to state and county regulations.

But the construction of the I-210 extension and a redesign in channeling the water runoff doubled the original amount of land needed for flood control.

According to Colonies officials, they were amenable to giving up the additional land if the county paid the then-estimated \$22 million to refurbish the basin.

Amiable negotiations turned sour after the county refused to cough up the money, which led the Colonies to file several lawsuits.

In that original case, an appellate court in August ruled that while the county retained limited rights on the Colonies property for flood control, more land may now be needed than the county is allowed. The appellate court sent the case back to a lower court to decide how much additional land was taken.

Colonies also has filed a suit seeking damages for the land taken, costs for delayed construction and reimbursement of basin renovations. Officials have said the Colonies could seek damages of up to \$254 million if the case goes to trial.

The financial burden for a large monetary award would fall primarily on the county's Flood Zone 1, which oversees and funds flood-control construction on the West End. The prospect of a large award against the county prompted county Supervisor Paul Biane to push for settling the litigation.

"If we lose, and there is a cash (award), this money would have to come out of the general fund and then projects would grind to a halt until it's paid back by Zone 1," Biane said last year. "It will put in jeopardy the entire county's finances. That's the reason I have been pushing for a settlement. The public doesn't realize how high the stakes are."

In March 2004, Biane and Supervisor Bill Postmus reached a tentative accord that came close to ending the costly court battle.

According to an internal memo, the county intended to reimburse the Colonies about \$22 million for basin renovations, completing the upgrade and compensating the developers at \$1.5 million an acre for "taking" 37 acres for flood control with a portion of that

paid in county-owned land.

The revelations of a land-swap component to the proposed settlement, which was later scuttled by the full board, and that the land being considered was hundreds of acres north of Rancho Cucamonga sparked another controversy.

Though undeveloped land in the area can be worth up to \$600,000 an acre, the 1,137 acres of flood-control land lies within special flood hazard zones that cannot be developed without costly protective measures, according to federal maps.

The county has already appraised the land, but it's unclear whether federal, state and county flood and erosion records have been included in the review of the land. County officials have refused to disclose results of two completed appraisals.

Patrick Mead, county public works director, has said the land is no longer needed for flood control because of improvements to debris basins and channels protecting residents, homes, schools and businesses below.

According to Rancho Cucamonga officials, no one with the county or the Colonies has contacted them about the land.

Concerns about public safety, water quality and open space limitations mean any change in land use north of the city should include input from the densely populated city's residents, Rancho Cucamonga Mayor Bill Alexander has said.

Complicating the county's efforts to value the land and dispose of it, a rock-and-gravel company's executives have rejected county legal claims that their lease on the land has expired.

Burum, Colonies co-managing partner, contacted the land use services director for Hanson Aggregates West and expressed an interest in the land for a housing development, Hanson officials stated in claims filed with the county last year.

Hanson Aggregates' land lease overlaps with the 1,137 acres of flood control land below Deer and Day canyons.

But Burum said the interest came from one of his holding companies, Diversified Pacific Development Group LLC, and had nothing to do with the Colonies. The company was completely unaware of the county's legal entanglement with Hanson except for what they read in the papers, he said.

As the original case heads to a trial scheduled for April 24, the irony is that the cause of that litigation and that which spawned other lawsuits has already been tacitly conceded by the county.

The county last year prepared an application to the state for completion of basin renovations estimated at \$21.2 million on the Colonies property. Part of that funding would include securing a \$10 million grant tailored to the Colonies project. The application states that the county would pay \$11.2 million from its own flood-control district funds.

The reason why the Colonies filed its 2002 lawsuit was because the county balked at the approximately \$22 million estimate given by the developers and refused to pay the amount.