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El Dorado Hills incorporation still has a pulse

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If El Dorado Hills incorporation comes back for another ballot try, proposal language could include protection for developers' entitlements granted by El Dorado County.

Campaign records show big money opposing the November 2005 ballot Measure P came largely from entities linked to big builders. At least one of them, the AKT Development Corp. owned by well-known builder Angelo Tsakopoulos, has substantial entitlements from El Dorado County to build within the once-proposed incorporation area. Known as development agreements, such entitlements prevent the county from changing its mind and revoking any of the existing permissions to build in El Dorado Hills. However, a new city legally could modify them if it chose.

An opponent of incorporation, Bob Dorr, said he'd "never heard" the idea that risk to entitlements moved local developers into bankrolling opposition in 2005. Dorr is a former county supervisor from El Dorado Hills who has said he'll run again.

One-time proponents have said the current status of continued push for incorporation is "little more than ongoing conversation," but that the idea is far from dead. No money is being raised right now to fund a push, but former proponents said they know where money could be found.

Under state law, an incorporating city gains some limited ability to modify county-granted entitlements, said Ed Knapp, chief assistant county counsel. Although limited, the ability was enough to annoy developers in 2005, said several former proponents.

"According to law, an incorporating city is subject to a development agreement 'with certain exceptions,'" Knapp said. "There's a time period during which a new city can change it. It doesn't happen all that often."

A new city has ability to shrink the time frame during which a builder is entitled to build, Knapp said. Typically, developers prefer to avoid being forced to build on or sell land during slumps in the housing market.

Tsakopoulos never said publicly that his money opposition to incorporation stemmed from risk to entitlements. Nor did he deny it publicly. He could not be reached for comment.

One-time proponent Greg Jones said if a push for a new vote were to be mounted, it would seek to safeguard developers' entitlements, possibly with formal language to be approved by Local Agency Formation Commission officials.

"There remains interest in incorporation," Jones said. "I'm a firm believer that the next round is where it has to be inclusive. We would work with developers and other stakeholders who opposed it."

Jones said a tough part might be finding a way to convince developers that a new city would not exercise its power to modify entitlements.

"I agree a deal's a deal," Jones said. "But with a new government, its rules supersede the old. So, it might be a matter of asking, 'Can we have language baked into a ballot measure, and into LAFCO documents, to protect those entitlements?' Some people say you can."

More than 90 percent of the incorporation territory is under development agreements, said Mike McDougall, president of MJM Properties, which handles much of El Dorado County affairs for Tsakopoulos' AKT Development. McDougall said he was skeptical of the notion that any local ballot language could preserve developer entitlements against city prerogative to modify allowed by state law.

"I haven't seen any language, but there are clear-cut rules from the state on what is included for a city in

entitlements," McDougall said.

Usually, a county grants a developer's entitlement to build within 20 years, but a new city can honor the agreement legally while allowing just eight years to build, McDougall said.

"The contract doesn't change - the only thing is the term," he said.

Nearby Rancho Cordova incorporated on a first try in 2003. There, with comparatively little territory under entitlement, proponents went to builders anyway, said Curt Haven, currently city economic development director and once an incorporation proponent while he was CEO of an area chamber of commerce.

"You want to make sure nobody can hurt you," Haven said. "We talked to developers. In Rancho, we had leadership (of an incorporation push) with the chamber, the developers and other decision makers. We all had a history together, a history of making deals. There was trust there. That was to our advantage. My job was to move to the Harry Elliots and the Angelos, and say, 'You don't have to support us, just don't hurt us.'

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