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Budget hit by soaring legal fees

by Andrew Jowers

From 1986 through 1993, litigation cost the city of Sebastopol on average less than \$13,000 a year, reaching a low of \$88 in 1990.

Litigation "was a non-item," said Larry McLaughlin, the city's attorney. "We never looked at it twice."

This year—with a city council reluctant to annex land and fully aware that rejecting a proposed development is as likely to result in a lawsuit as will approving it—suits filed against Sebastopol by disgruntled developers and a fired employee will cost more than those six years combined, soaring to at least \$130,000.

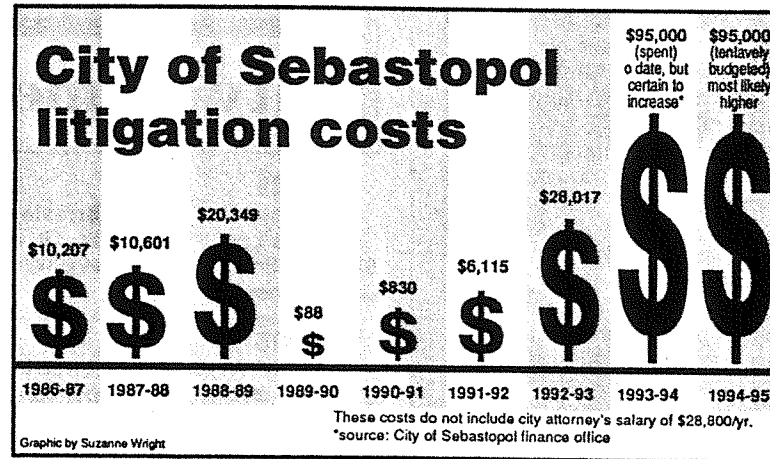
And next year will probably be worse.

Two investment groups on Fri-

day filed suit in Sonoma County Superior Court seeking \$2 million in damages over the city council's rejection of a 13-unit housing project bordering the Laguna de Santa Rosa; and other suits are anticipated.

The suits are a direct hit on the quality of life in Sebastopol, since the city's legal costs are paid from the city budget, and Sebastopol is facing its worst financial crisis in recent memory.

With reserve accounts almost depleted by a shortfall in sales and property tax revenues, and a sewer/water rate hike proposed, possible cutbacks in the 1994-95 fiscal year include layoffs in public works and the police departments, eliminating youth counseling services and some landscaping, street paving and park maintenance, and



cutting all subsidies to non-profit community groups, such as Little League, the Sebastopol Community Center and Center for the Arts and some senior services.

"Any developer, any interest group, that wants their way

ought to sue the city, because there is no money to defend the public interest," said Lynn Hamilton, city council member.

The city is facing the rash of suits now, said Councilman Howard Levy, in part because the (Please see *Legal* page A3)

City sued by developers

94.14.1

by John H.K. Riley

The city of Sebastopol, already in court defending itself over the council's denial of an annexation request for a proposed residential development, was sued Friday another charged developer.

Two investment partnerships filed their lawsuit in Sonoma County Superior Court, alleging the city acted in an arbitrary and capricious manner in denying a use permit for a 13-unit housing project on approximate-

ly 7.18 acres bordering the Laguna de Santa Rosa behind Palm Drive Hospital.

The plaintiffs, which include the current land owners and a developer who also was denied a use permit on the same site, also allege the city council denied them a fair hearing by engaging "... in substantial off-the-record communications with members of the public and citizen groups..."

In their suit, the plaintiffs ask for \$2 million in general (Please see *Sued* page A3)

94.14

Legal . . .

(Continued from front page)

city encourages in-fill development over annexation of new land," and that's very scary for developers and for realtors. It makes the land outside of town worthless."

Before casting votes, council members are advised by the city attorney whether their decisions are legally defensible, and discussions of legal consequences are common.

"I can't help but think about that, but it does not sway my decisions," Levy said. If votes are cast in light of possible legal action, "what's the use of making land-use decisions? Who is representing the city? Land-use decisions cannot be based on threats of a lawsuit."

Council members, "very well aware when a case can end up in litigation," must decide "which is more important to them: make the decision that is correct under the law and face a suit, or buckle under," McLaughlin said.

The city expects to spend at least \$130,000 in defending its rejection of the Orchard Park subdivision, a mix of low-income and market-cost homes; much of that pays for a San Leandro law firm that specializes in defending cities.

All but one of the developer's allegations have been thrown

out of court, and the suit could be decided soon. Even though some of the plaintiffs' tactics, such as attempting to force sworn depositions from city council members, were doomed to failure, said McLaughlin, "they still cost the city a lot of money."

Such legal manoeuvres—those with little hope of success and making no economic sense—support the widely held conviction that the Orchard Park case is financed by the building industry, particularly the Building Industry Association and the California Board of Realtors, sources said.

"Somebody is trying to make a point: We're going to keep after you until you're broke and you approve our project and think twice before you deny us again," said McLaughlin.

The fact cities are rarely awarded legal costs even when they win a case "is a basic, basic flaw in the protection of local control and good planning," Hamilton said. "I think that every city in the state of California is either going to have to negotiate or roll over."

Should Sebastopol ever be financially unable to defend its decisions, "I think the citizens are going to be disappointed that the development interests can thwart the will of the people," Levy said.

Developers, however, can recover legal costs when their

victory is deemed a protection of the public interest, a point claimed in almost all land-use cases, said McLaughlin.

The city does not face suits from developers alone, however. When it approves projects, opponents, often citizen or environmental groups, are also quick to file.

The \$2 million suit filed Friday protests the council's rejection of the 13-unit Palm Terrace project near Palm Drive Hospital, but, ironically, a former council approved that project in June, 1988, and was sued by an environmental group, Laguna Today and Tomorrow two months later. The city lost.

In another case, the Meadow Estates project, the council approved, a citizens' group sued, and the city won.

"If you turn somebody down, they can sue you," McLaughlin said. "If you approve somebody, a citizens' group sues. One way or the other, someone can sue you."

One possible solution is being considered by a group called the Sebastopol Urban Growth Committee, which has taken initial steps to place an initiative on the ballot that would set an "urban growth boundary."

The boundary, revocable only by a vote of the people, would limit development bordering the city, and make it impossible for an owner of property out-

settlement proposed by Gardner was how much money would the council be willing to accept in exchange for approving the annexation of his seven-plus acre site just outside the city's northern limit.

That case, which involves allegations of discrimination and the city operating without a state-approved Housing Element, was continued yesterday in Superior Court before Judge Rex Sater.

The judge cautioned both parties last week that a decision in this suit could take longer to render (read, also more expensive to defend) because there is no case history regarding the

side the city to request annexation. Now, the council makes annexation decisions on a case-by-case basis.

The city also faces a wrongful-termination suit by Richard Maddox, former city building inspector; that will likely cost the city at least \$75,000, based on lost salary, and perhaps much more.

In addition, a suit is possible from the California Rural Legal Assistance group, over the state's rejection of the housing element of the city's general plan. In a similar case, the CRLA claimed Healdsburg, like Sebastopol, was doing too little to promote low-income housing. Healdsburg incurred \$100,000 in legal costs, then, in a recent out-of-court settlement, revised its housing element to satisfy the CRLA, paid more than \$30,000 in CRLA's legal costs, resubmitted its plan to the state. Despite all that, the state rejected it.

In addition to litigation costs, the city also pays the city attorney \$28,500 a year, which may rise to \$31,7000 next year.

Also, the city buys liability insurance, which can vary by \$20,000 a year, and next year will cost \$103,000. That covers suits such as those brought by someone tripping on a city curb, said Ron Puccinelli, city finance director. Suits resulting from decisions of the city council are not covered.

Gardner's claim the city discriminated against families of low to moderate incomes by denying their project.

But, even were such a legal precedent existent, David Skinner, representing Sebastopol, maintains that a city can not be forced to annex property.

The city denied the annexation application because the existing infrastructure was inadequate to accommodate the new homes.

Plaintiffs in the newest suit include, Yoland, Dino, Richard and Linda Chliotti, Diane Ongaro and George and Marlene Young.

The city has 30 days in which to respond to the suit.

Sued . . .

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and compensatory damages, plus awarding of an assortment of legal fees, and that the city council be directed to rescind its denial of the use permit and reconsider the development.

Charles Evans, project consultant, said his clients had no choice but to file a lawsuit, given the city's publicly-stated reluctance to approve the housing development at any density.

Over the years, the project was reduced from 35 single-family homes to either 17 or 13 units.

Sebastopol's city attorney,

94.14.1

Larry McLaughlin, said it is still possible this lawsuit can be settled out of court, unlike the suit filed by Richard and Nancy Gardner.

"They (the plaintiffs) know we are ready to talk at any time," said McLaughlin.

Unlike the Gardner project, McLaughlin said there are several scenarios, all involving a further reduction in the number of permissible units, that could prove satisfactory to both the city council and citizens' groups now opposed to the project.

"I never could see any way to settle with the Gardeners," said McLaughlin. "It is a matter of principle."

McLaughlin said the only