

Multimillion-Dollar Street Fight

Developers Portman-Barry Investments Inc. and Homart Development Co., having battled in the political arena for three years over the rights to prime North Fulton real estate, are now thrusting and parrying in court.

At stake are hundreds of millions of dollars in land-carrying costs and lost development opportunities as the competing builders throw up legal and physical barriers, construct new public roads and make questionable campaign contributions in an attempt to gain the upper hand.

Central to the fray, Portman-Barry, the developer of Northpark on Mount Vernon Highway just east of Georgia 400, claims in a suit that Homart has violated Portman-Barry's private easement rights to two small parcels of land it owns amid a 44-acre Homart assemblage. Homart plans to build an office and hotel development on its property in direct competition with neighboring Northpark.

Homart responds that the suit is harassment and an attempt to stall Homart's competing project, thus raising its development costs. *Northpark Associates v., Homart Development Co.*, No. D-81169 (Fult. Super. filed Aug. 14, 1990).

"This is just a big, political power play," claims **Richard L. Robbins**, the Sutherland, Asbill & Brennan partner who represents Homart in the litigation. Homart filed an answer and counterclaim Sept. 17. "They are just trying to hold up Homart, plain and simple."

G. Douglas Dillard of Peterson Dillard Young Self & Asselin denies that charge and says client Portman-Barry, a partnership of architect-developer John C. Portman Jr. and developer Harold V. Barry, has a legitimate right to private access to its own property.

"Private developers and local governments should not be able to get together and take away people's property rights," says Dillard, referring to an agreement between Fulton County and Homart.

But Homart contends that Portman-Barry has equal or even better access to its parcels now on a new public road Homart built and dedicated to the county. Homart spent \$5 million on the road and sewer lines as a condition to beginning its multi-use development that would increase traffic congestion. The county abandoned the old, seldom-used roads and deeded that right-of-way to Homart upon the June 1990 completion and dedication of the parkway. The four-lane, median-divided Crestline Parkway loops four-tenths of a mile from Peachtree-Dunwoody Road to Mount Vernon Highway.

Dillard says the new road is not the issue, however, and Portman's dispute with Homart is "not a political fight," although his client hotly contested the county's action and asked the commission in May to reconsider its agreement with Homart.

On the same day as the May meeting, envelopes containing \$1,000 checks as campaign contributions from the Portman-Barry organization were delivered to the offices of six commissioners, five of whom returned them because of the appearance of impropriety. The commissioners were not aware of the contributions as they met on the roads' issue, according to *The Atlanta Journal* and *The Atlanta Constitution*.

The commission declined to reconsider its agreement after County Attorney Elizabeth E. Long told commissioners there was no legal reason to rescind it.

District Attorney Lewis R. Slaton said at the time he would investigate the contributions. No charges have been brought. Three calls to Slaton's office were not returned.

Homart, without mentioning the checks, refer to the incident in its answer and counterclaim, saying that Northpark's "unclean hands" bar its complaint.

"Northpark and the Additional Counterclaim Defendants attempted to improperly influence the vote of the Fulton County Board of Commission to reverse the county's agreements with Homart and its Resolutions regarding the relocation of the former Crestline roads," the answer alleges.

At issue in the Portman-Barry suit, filed three months after the commission meeting, are two short, abandoned roads in the old Crestline subdivision, which was the subject of a neighborhood buyout in the early 1980s. Houses in the subdivision, except for two on the half-acre or smaller "out-parcels" owned by Northpark, have been demolished by Homart in preparation for development. The property, save for the two pieces bought by Portman-Barry, was assembled by Atlanta developer Robert Holder in the early 1980s. Homart purchased it in 1984, according to Nathan V. "Pete" Hendricks, a principal in Cobb, Hyre, Hendricks & Ferguson.

The timing of Portman-Barry's purchase of the two parcels is in dispute. Portman-Barry says in its complaint that its purchases came before Homart's acquisition of the remaining lots. Homart, in its counterclaim, contends that Portman-Barry's acquisitions came after it had contracted for the Crestline property.

Hendricks, who represents Homart in zoning matters, believes Portman-Barry's legal action is another ploy in its long-running effort to keep out a competing development.

"I think that would be accurate," says Hendricks. "Perhaps the purchase of the lots was to keep at bay the development of that tract."

County Attorney Long doubts that Portman-Barry's complaint is about access and private easement rights. "They may be right," says Long of the accusations made by Homart's attorneys. "It does not look like it's about access. They have access. It's probably about money."

Hendricks, in the May commission meeting, told commissioners that they would be exposing the county to damages of from \$278 million to \$304 million if the agreement with Homart was unwound. That estimate was based on the cost to Homart of the new parkway, the interest and other expenses of carrying the undeveloped land, and its diminished value should the project be scuttled.

The existing Northpark development consists of two 18-story office buildings, and others are planned. But the soft commercial real estate market and economy on the brink of recession – as well as Portman's \$2 billion debt burden – mitigate against further building in the near future.

Frank Carter III, the senior developer with Homart, declined to discuss the litigation or his company's plans for the prime tract southeast of Northpark. But a letter of intent filed with the Atlanta Regional Commission shows that Homart has ambitious plans to build up to six buildings: one eight-story, one 14-story, two 30-story and two 36-story buildings. A 375-room hotel also is on the drawing board. But, even in the best economic conditions, the construction would not be completed before 2013.

Harold Barry declined to return telephone calls, and Sam A. Williams, executive vice president of the Portman Companies, refused to comment referring questions to attorneys Dillard and Richard W. Wilson Jr. Wilson, a partner with Peterson Dillard, says the dispute is simply about property rights.

"Northpark has a right to use and a desire to use those [now abandoned by the county and deeded to Homart] roadways," says Wilson. "That point was made clear to Homart from the inception."

Portman-Barry filed suit after the two short roads were closed and barricaded by Homart with wooden rails and barrels.

The two houses on the small tracts appear to have been abandoned for some time. But Wilson says one is being renovated and will be used by Northpark for storage.

"Homart has intentionally obstructed the plaintiff's easement rights and has deprived the Plaintiff of access to the Property over Crestline Road and Crestline Valley Circle, thereby trespassing upon and impairing Northpark's property right and causing Northpark irreparable harm," says the suit.

Portman-Barry has not pushed for a temporary restraining order to enjoin Homart from destroying the old roads, but Wilson says it will if Homart apprises Portman-Barry that such demolition is about to begin.

The dispute is pure business, says Homart counsel Hendricks. "It's not fair to couch this as animosity. There's just a basic business concern here."