

Parking lawsuit slows Buckhead hotel deal

A dispute over parking has stalled plans for a five-star hotel in Buckhead.

Developers of a planned \$120 million luxury hotel on West Paces Ferry Road have sued the owners of One Buckhead Plaza, charging that the landlord reneged on a deal to share parking spaces at an existing parking deck, according to the lawsuit filed with the Fulton County Superior Court.

The dispute has already delayed potential deals with hotel operators, a source told Atlanta Business Chronicle. Developers are talking to several companies whose hotel brands are not represented in Atlanta, said Kent Levenson, president of Eastland Capital, the project manager on the hotel.

"We're nearing a final letter of intent with an operator," Levenson said. Local media has previously reported that one potential hotel operator could be St. Regis, the high-end hotel brand owned by Starwood Hotels & Resorts Worldwide Inc. (NYSE: HOT). Levenson said the developers are negotiating with two hotel operators, but declined to identify either one.

The developers and owners of the property (which they purchased in 2001), called Buckhead Plaza Land Trust (BPLT), include Atlanta developer Jim Cowart, George Berkow, who works with Jim Cowart Inc., and John Meshad, a Florida attorney and office developer. Plans call for a 240-room hotel that will include residential condominiums on the top, Levenson said.

The hotel site is adjacent to One Buckhead Plaza, a 444,800-square-foot office tower at the corner of Peachtree and West Paces Ferry roads. The office building, which sits on 13 acres, is owned by CB Richard Ellis Investors, under the title Sp One Buckhead Plaza LLC.

According to the lawsuit, the developer agreed to lease 250 parking spaces in an existing parking deck from CB Richard Ellis Investors for use by its hotel guests. In turn, the developer agreed to let famed Atlanta restaurant Chops continue to use another 180 parking spaces from a valet lot located on the developer's property. Chops is in Buckhead Plaza.

The hotel developer also agreed to drop plans for a restaurant at the hotel site that would have "posed a substantial threat to defendant's competitive interests," according to the lawsuit. Also under the agreement, the developer repositioned the hotel on the property so it backs up to the parking deck instead of Buckhead Plaza. CB Richard Ellis Investors agreed not to add additional stories to the parking deck, which could have obscured room views, according to the lawsuit.

"The above understandings were reached orally and in writing by the parties," it was stated in the lawsuit.

"The changes in the development plans were valued at several million dollars."

Robbins said no formal contract was signed with CB Richard Ellis Investors.

"We were OK doing [the agreement] for assurance that we could share the parking deck for a certain price," Robbins said.

The city approved the site plan in February. But at that point, CB Richard Ellis Investors reneged on the agreement, according to the lawsuit.

"While BPLT (the hotel developer) was acting in good faith in working with [the] defendant, it is now clear in retrospect that [the] defendant's goal was to frustrate BPLT's development for the benefit of its own competitive purposes and to dupe BPLT into taking actions in reliance on promises which defendant never intended to perform," it was stated in the lawsuit.

BPLT also said CB Richard Ellis Investors has "stonewalled" the developers' efforts in order to "obstruct BPLT's development."

"Defendant's promises and representations were false when made and were made knowingly, recklessly, intentionally and negligently," officials stated in the lawsuit.

Developer seeks damages

The hotel developer is seeking at least \$15 million in damages, and claims that the amount could increase if it loses the ability to develop the hotel for a five-star operator.

"There's no question that this [dispute] creates uncertainty. That's why we're claiming damages, because of the uncertainty," said **Richard Robbins**, an attorney for the developers. Robbins is a partner with Sutherland Asbill & Brennan LLP in Atlanta. "We were basically told to drop dead, and that's just not the way for this to be handled."

Robbins said the dispute with CB Richard Ellis Investors is a problem for the hotel deal, especially if there are further delays.

"Hotel companies don't sit around waiting. If they can't do a deal on your site, then they look around for other sites," Robbins said. "It clearly affects pricing and all certain terms of the deal. That is why we're looking at significant damages."

Officials with CB Richard Ellis Investors declined to comment on the lawsuit. The company had yet to file an answer as of press time.