

Development In Dispute

Planned Community Lags As Parties Battle In Court

DOUG MANNERS, Daily News-Record, March 2, 2010

HARRISONBURG - Three years after breaking ground on the Preston Lake project, the developer of the master-planned community that aims to blend housing, retail and office space is locked in a legal battle of lawsuits and countersuits with its lender, Wachovia Bank.

Preston Lake Homes and its developer, the Hine Group, filed claims against Wachovia in Rockingham County Circuit Court on Dec. 11 for breaking its loan contracts, according to the lawsuit. Preston Lake is seeking \$32.4 million in damages for lost profit.

Wachovia filed a counterclaim in U.S. District Court in Harrisonburg on Dec. 29. The Charlotte, N.C.-based bank is suing Preston Lake for \$15.6 million in outstanding debt.

Preston Lake broke ground on the community at the intersection of U.S. 33 and Massanetta Springs Road in eastern Rockingham County in December 2006. The first residents moved into the "Charleston-style" row houses by August 2008.

Although construction has continued on several standalone houses, the entire 125-acre project is about a year to 18 months behind schedule.

"We are naturally very disappointed that, despite our dedication and best efforts, our project has encountered such rough waters," said Richard Hine, president of the Hine Group, in a prepared statement.

"Fully realizing our special vision for this community will undoubtedly take more time and determination than we could have imagined when we broke ground. But we hold confidence and faith that we will ultimately weather the storm."

Wachovia said in an e-mail message that it is the company's policy not to comment on pending litigation matters.

'Being Destroyed'

According to Preston Lake's lawsuit, Wachovia became unstable in its business dealings after posting a first-quarter loss of \$350 million in April 2008 and a second-quarter loss of \$9.1 billion in July 2008.

The claim says that Wachovia breached its funding agreement and, following its merger with Wells Fargo on Dec. 31, 2008, the bank began to exercise greater control and direction of the Preston Lake project.

In a February 2009 memo to a Wachovia loan agent, Hine said that "my credit and reputation are being destroyed" and that the project had become "tainted by its association with Wachovia," whose name was required to appear on all signs relating to Preston Lake.

Preston Lake says it made 19 closing payments on homes to Wachovia in 2009 totaling \$3.8 million, but was not allowed to collect on any of the proceeds or given an overhead allowance in order to operate.

The lawsuit argues that Wachovia misled Preston Lake so that it could "continue to develop and market real estate for the exclusive benefit of the bank."

Another Lawsuit

Making matters worse for Hine, Mount Crawford-based A&J Development & Excavation filed a mechanics lien for damages totaling more than \$600,000 against Preston Lake and Wachovia on March 2, 2009.

Hine believed that a deal had been made with the bank in November, according to Preston Lake's lawsuit against Wachovia. The lawsuit alleges that Wachovia had agreed to pay \$350,000 and attorneys' fees to settle the litigation with A&J, which provided contract work.

On Nov. 7, Wachovia reneged on its agreement, the lawsuit claims, and forwarded a new version requiring that Preston Lake and Hine "waive all their rights, remedies and defenses against Wachovia."

The demand was deemed "unacceptable" to Preston Lake and Hine, and the settlement was called off.

No Retail Stores Yet

The front 20 acres of the Preston Lake community - which faces U.S. 33 - has yet to be developed, but Hine said that has nothing to do with Wachovia's financial situation or the lawsuits.

Hine said he's waiting for Harrisonburg and Rockingham County to finalize plans for the Erickson Avenue and Stone Spring Road project, which would include a connection with U.S. 33 east at Preston Lake.

The project hit a detour last week when the city and county learned that their application for stimulus funds had been rejected. The localities are now applying for a congressional earmark to pay for it, a process that could take two years.

Retail stores along Preston Lake's commercial "Main Street" originally were scheduled to open in fall 2009, with clothing stores Talbots, Coldwater Creek and Joseph A. Bank having signed on.

Hine said it's not a good time for retailers to borrow money - retail sales plunged 11.8 percent in Rockingham County in 2009 - and, he added, stores are reluctant to open while major construction is going on nearby.

About 20 percent of the entire Preston Lake project has been completed, Hine said.

On the housing side, he said all but six of the 36 row houses have been sold.

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