

Behind the Scenes of An Epic Land-Use Fight

By Martin C. Daks

Opponents find evidence that Lucent worked both sides of the table for a big vote

A special April hearing of the Peapack-Gladstone Land Use Board tried to end a high-stakes dispute. It voided a lucrative development plan that had been approved in 1999 for Peapack DG Properties, or Peapack DGP. The plan called for construction of an office park and other facilities on the sprawling 5,000-acre spread the developer owned in the tony Somerset County borough.

Peapack-Gladstone is perhaps best known for its fox hunts and other equestrian activities. But like a John Grisham novel, where things are seldom

what they seem, this story has more than one layer. Far from ending the controversy, the latest board decision may spark another chapter that could take this drama to court. According to one of the individuals involved, this case is likely to be the first in a long line of disputes over attempts to build in the area.

To a casual observer, the conflict may have appeared to be a simple battle between an enterprising developer and a group of anti-development Peapack residents who call themselves the Save Our Soul (SOS) organization. Peapack DGP wants to put up office buildings and SOS is concerned about problems such as traffic and environmental issues. But based on filings submitted by attorneys for both sides, a more complex picture emerges—one that involves the grandiose golf dreams of a toppled Lucent Technologies CEO, alleged deceit and potential conflicts of interest. According to Stuart Lieberman, an attorney representing SOS, the original



Photo | Martin C. Daks

vote granting the developer permission to build was flawed by unreported conflicts of interest.

At issue is the status of the General Development Plan, which shields the developer from future zoning changes by grandfathering in its build-out rights for up to 20 years. This is valuable, especially in a soft real estate market where it may pay to wait before breaking ground.

In a 1998 filing, Peapack DGP sought—and received the next year with little controversy—approval to develop 376,184 sq. ft. of office space on about 69 acres. It also wanted to build a world-class corporate golf course with, according to a January 2001 *New York Times* article, “a helicopter-landing

Members of the borough's Land Use Board decided, but the matter may not stay closed.

pad, a guest home of 20,000 square feet with 10 suites, a wine cellar and tasting room and a full-time concierge.” Further, additional space was to be set aside for events sponsored by the U.S. Equestrian Team.

Only the construction of the golf course and the set-aside for the equestrian team through a perpetual easement were completed. A portion of the land known as Fowler Field was granted to the U.S. Equestrian Team Foundation, which uses the field for show jumping and other riding-related events. A soft commercial real estate market kept the office development plans confined to the drawing board and in July 2001, the golf course and

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“Lucent had a legally recognized ownership interest in this application and failed to come clean about it.”

Stuart Lieberman
Attorney, Lieberman & Blecher

other properties were sold to a third party, the Hamilton Farm Golf Club.

Before the special hearing, both the golf club and the equestrian foundation had reason to fear that their rights to the land—and their investments in the property—were in jeopardy.

Lieberman told the board that two crucial facts were not apparent when it approved the plan back in 1999. First, Murray Hill-based Lucent effectively controlled the developer through a wholly owned subsidiary. Second, two of the board members who voted in favor of the plan were Lucent employees.

The tangled paper trail from Peapack DGP to Lucent was laid out in an April 9 affidavit filed by Peapack DGP's President Vanessa Scaglione. According to it, her firm was formed as a limited liability company on October 23, 1997. That same day, a company named Daylar Properties was also created; it owned Peapack DGP from then until August 25, 2000.

October 23, 1997, also saw the creation a third company, Day Investment Corp. (DIC), with Lucent as its sole stockholder. DIC financed Peapack DGP's acquisition of the Peapack land, and through a promissory note had a security interest in the assets and property of Peapack DGP. DIC also held a call option that gave it the right to purchase all of Daylar's interest in Peapack DGP. Scaglione affirmed that "on or around August 25, 2000," Lucent-owned DIC exercised its call option and acquired, from Daylar, "all the membership interests in [Peapack DGP]."

Some observers—particularly Lucent stockholders who took a beating when the company's stock skidded from a high of more than \$80 to its current price of under \$4.00 a share—have wondered why the struggling company got in the business of developing a ritzy golf course. They can thank former CEO Richard A. McGinn, an avid player who, according to published reports, had planned to sell memberships in the \$40 million club to no more than 18 large corporations for \$1 million apiece, plus annual fees. Before he could launch the club, however, McGinn was sacked by the company's board of directors.

Meanwhile, "Lucent had a legally recognized ownership interest in this



Photo | Martin C. Daks

[development] application and failed to come clean about it," says Lieberman. "The 1999 board decision was tainted by this and could not stand—and the Land Use Board recognized this in its April 21 decision to void the [General Development Plan]."

Why didn't Lucent disclose its interest in the property? According to Peapack DGP's attorneys from the Morristown-based firm Riker Danzig, at the time of the 1998 application and 1999 Land Use Board approvals, Lucent simply held "an unexercised option to purchase the interests of" Daylar Properties, Peapack DGP's owner. Peapack DGP "fulfilled all applicable disclosure requirements."

In filings submitted to the Land Use Board, the developer's attorney, Gerald A. Liloia, had previously argued that there was no need for Lucent to disclose its relationship with PDG Properties, and denied that the "yes" vote by the pair of Lucent employees constitut-

Lieberman told the board that two facts were held back when it ruled in 1999.

ed a conflict of interest because "they were unaware" of the relationship.

That notwithstanding, the board appears to have been moved by a report from Michael P. Ambrosio, a Seton Hall University law professor retained by the town to render an expert opinion on the conflict issue plus several other technicalities. In the February 15 document, Ambrosio concluded that "a conflict of interest did exist when two former Board members while employed by

Lucent Technologies voted on Daylar's 1998 application that failed to disclose Lucent as an applicant and developer...as required by the (state's) Municipal Land Use Law and the borough's Land Use Ordinance."

The board's action to void the development plan doesn't affect the developer's underlying right to apply for permission to build on the property. It just limits the grandfathering period to three years, subject to extensions. And it specifically preserves the long-term rights of "innocent third parties" like the U.S. Equestrian Team Foundation and the Hamilton Farm Golf Club, both of which have poured money into the property. Hamilton claims to have spent more than \$300,000; the foundation says it has invested more than \$440,000.

Lucent spokesman John Skalko says his firm reserves the right to appeal the decision to the Superior Court of Somerset County, although it has not yet committed to a specific course of action.

Meanwhile, Peapack-Gladstone residents like Brooke Goode, a founding member of SOS, are happy with their victory, even if it may prove temporary. "We want to preserve the nature of our town," she says. "And I believe you're going to see many more cases like this one." ■

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