

In November of 2006, the Fulper family filed suit against the Township. The suit includes claims challenging the Reserve Septic Field Ordinance adopted on September 27, 2006, alleges that the Township breached a Letter of Intent Regarding Development Agreement and GDP Approval dated September 17, 2003 and claims that the Township violated a General Development Plan approved by the Planning Board on December 2, 2003. The Township denies liability with respect to all of the Fulpers' alleged claims and asserts that they have no basis in fact or as a matter of law.

Shortly after the Fulpers institution of suit, they approached the Township and expressed a desire to pursue a resolution. From March of 2007 to March of 2008 the Township endeavored to resolve the matter with the Fulpers. All of the discussions were without prejudice to the rights of the Fulpers and the Township. The purpose of the discussions was to search for a resolution without regard to the merits of the litigation. During this one year period, the Fulpers and the Township, with the approval of the Court, agreed to put the litigation on hold.

Numerous meetings and negotiations occurred between the Fulpers and the Township and their respective attorneys. Unfortunately, despite significant efforts, as will be described, the Township was not able to resolve the matter and the litigation was reactivated in March of 2008 and has proceeded to date.

Some in the Township have appeared at meetings before the Township Committee and taken the position that the Township should be devoting its efforts to resolution rather than defending against the litigation. Having spent a year at resolution, without success, the Township Committee believes that the residents

should understand what was done to resolve the litigation and why it did not succeed. While the Township Committee anticipates that the Fulpers will take a different view of what occurred in relation to efforts to resolve the litigation, there are certain objective facts that cannot be disputed. They are as follows:

1. Under the Letter of Intent, the Township has the option to purchase any or all of the development rights on the Fulper Wargo/Simonye and Lenk Farms, otherwise known as Parcel E.
2. Prior to the litigation, the Township obtained real estate appraisals to aid in negotiations with respect to the purchase of these development rights.
3. The Fulpers were unhappy with these real estate appraisals and the parties were unable to agree on a mutually acceptable price for the purchase of development rights.
4. After the institution of suit, the Fulpers contacted the Township in March 2007 and expressed the desire to search for a resolution. The Township with the Agreement of the Fulpers engaged two (2) independent appraisers on the State Certified List of Appraisers for the Farmland Preservation Program to prepare new appraisals with respect to both Parcel E comprising the Lenk Farm, Simonye Farm North and Wargo Farm North located on Block 8, Lots 29.02, 32 and 33 and Parcel C comprising Simonye Farm South and Wargo Farm South located on Block 17 Lots 14 and 15. To ensure that these appraisals were prepared in accordance with Farmland Preservation Program criteria, the

independent appraisers met with representatives of the State Agriculture Development Committee which oversees the Farmland Preservation Program and also confirmed with the Fulpers the exception areas which would be applicable to Parcels C and E. An exception area is a portion of the parcel where the owner, in this case, the Fulper family, retains the right to construct a dwelling.

5. Appraisal reports with respect to Parcels C and E were then prepared by the independent appraisers. Parcels C and E were appraised as of April 20, 2007. The appraisal reports were completed in July 2007.
6. In the case of Parcel C, one of the appraisers concluded that it had a per acre easement value of \$13,400. The other concluded that it had a per acre easement value of \$14,500. Both of these appraisals excluded two non severable exception areas identified by the Fulpers.
7. A 20 acre portion of Parcel C, which is part of Simonye Farms South, located in the southern-most tip of Block 17 Lot 14, for a trail corridor, was also valued by the appraisers for sale in fee simple to New Jersey Green Acres. This was done consistent with Paragraph 5 of the Letter of Intent. One of the appraisers reported a value of \$21,500 per acre. The other appraiser reported a value of \$23,000 per acre.
8. In the case of Parcel E, which comprises Lenk Farm, Simonye Farm North and Wargo Farm North, on Block 8 Lots 29.02, 32 and 33, one appraiser concluded it had a per acre easement value was \$13,750. The

other appraiser concluded it had the per acre easement value was \$14,500. Both of these appraisals excluded (3) non-severable exceptions areas identified by the Fulpers.

9. The appraisal reports of the independent appraisers were furnished to the Fulpers and their attorneys by the Township in July 2007 with the expectation that the appraisals would form a basis for negotiations leading to a resolution.
10. Following a Closed Session of the Township Committee on August 21, 2007, a draft Agreement was sent to the Fulpers through their attorneys. In substance, the proposed Agreement offered to purchase the development rights on Parcels C and E and to have Green Acres purchase the 20 acre portion of Parcel C intended for trail corridor consistent with the results of the above described appraisals and subject to certified values fixed by State Agricultural Development Committee and Green Acres. The proposed Agreement committed the Township to purchase from the Fulpers their development rights in Parcel C and E based upon certified values; for the Fulpers to sell to New Jersey Green Acres the 20 acre piece of Parcel C for use as a trail corridor in accordance with certified value determined by Green Acres; for the Township to make application to the State Farmland Preservation Program to fund the development rights purchases and, if necessary, for the Township, through its governing body, to adopt a bonding ordinance

to facilitate the transactions and thereafter seek reimbursement through the State Farmland Preservation Program.

11. The Fulpers, through their attorneys, advised the Township that they were engaging an appraisal consultant to review the appraisals supplied by the Township.
12. The Fulpers appraisal consultant subsequently prepared reports dated September 17, 2007 amended September 28, 2007 commenting on the appraisal reports supplied by the Township. The Fulpers' appraisal consultant did not dispute that the appraisals obtained by the Township were prepared in accordance with Farmland Preservation Program criteria resulting in a per acre value. Those criteria require each appraiser to express values as a value per acre. Instead of adhering to those criteria, the Fulpers' appraisal consultant rendered opinions on value per lot versus value per acre, even though that approach does not conform to Farmland Preservation Program criteria. The end result was to dramatically, and as will be explained, artificially, increase the value of Parcels C and E. Under the Township's appraisals, the value of those parcels was approximately \$3.5 million. Under the Fulpers' appraisal consultant's approach the value was approximately \$6 million.
13. In a further effort to reach resolution, the Township Committee and the Fulpers again met in early October 2007. Attending that meeting were the Fulpers, their attorney and appraisal consultant, the Township's

Special Counsel and one of the two appraisers who prepared the appraisal reports for the Township. At that meeting, the Fulpers' appraisal consultant conceded that the Township's appraisal reports were prepared in accordance with Farmland Preservation Program criteria. He also acknowledged his reports analyzing value on a per lot versus per acre basis did not conform to Farmland Preservation Program criteria. Instead, he contended his per lot value more accurately reflected the true market value of the property and that his methodology conformed to the typical method of valuing property where developers are purchasing from an owner. In response to the Fulpers' appraisal consultant, the Township's Special Counsel stated that in the developer/owner scenario where a per lot value is used, it generally involves a contingent contract, one where the developer agrees to pay a specific price per lot contingent upon obtaining the requisite approvals. Special Counsel for the Township stated that scenario did not exist here as the Fulpers had not obtained any approvals to support a per lot value. Their appraisal consultant conceded this point. It is also worthwhile to point out that the Farmland Preservation Program Appraiser Handbook makes clear that an appraiser is to express value as a value per acre as opposed to a value per lot. While the Handbook permits, with approval of the State Agriculture Development Committee, a subdivision method of evaluation, meaning a value per lot, it lays out stringent criteria which must be followed in

order for that methodology to be considered. Among the criteria is a requirement that there be a full development report completed by a qualified Land Development Professional and that the report include plans, septic suitability tests, environmental analysis and detailed infrastructure costs as well as language indicating there is a reasonable probability of site plan approval. In the case of Parcel C and E, none of this was ever done and thus the approach taken by the Fulpers' appraisal consultant in coming up with values on a per lot basis was inherently speculative. The Fulpers' appraisal consultant conceded the absence of any documentation justifying a per lot value approach as required by the State Farmland Preservation Program Handbook. Instead, he stated he had prior experience with the State Agriculture Development Committee and was confident he would be able to demonstrate to the Committee that his per lot value approach was valid. While the Township was doubtful with respect to the position asserted by the Fulpers' appraisal consultant, it indicated that it was willing to have a meeting among representatives of the State Agriculture Development Committee, the Township appraisers, the Fulpers' appraisal consultant and the Township's and Fulpers' respective attorneys to determine if there was a basis to support the approach taken by the Fulpers' appraisal consultant.

14. On November 19, 2007 the above referenced meeting with the representatives of the State Agriculture Development Committee took

place. Present at that meeting were the Township's appraisers, the Fulpers' appraisal consultant, attorneys for the Fulpers and the Township, the Executive Director of the State Agriculture Development Committee and the State Agriculture Development Committee's Review Appraiser, among others. At that meeting, the Fulpers' appraisal consultant acknowledged that the Township's appraisals adhered to Farmland Preservation Program criteria and that his approach did not. Instead, he contended that his per lot value had validity. Representatives of the Farmland Preservation Program flatly rejected the approach taken by the Fulpers' appraisal consultant. This was owing to the fact that the per lot value was not predicated on any documentation that would support reasonable probability of site plan approval of a specific number of lots. For example, there were no fully engineered plans or tests demonstrating the reasonable probability of a specific number of lots. Additionally, the representatives of the Agriculture Development Committee made clear if the Township paid the Fulpers a sum predicated upon an appraisal approach that deviated from Farmland Preservation Program Criteria, it would invalidate the Township's ability to obtain reimbursement.

15. It bears emphasis that although the Fulpers contend that under the Letter of Intent they should be paid for purchase of development rights on Parcel E based upon a per lot value, that value is dependent upon

obtaining clustered major subdivision approval. The Fulpers have never pursued such approvals much less submitted fully engineered plans and septic suitability tests to demonstrate with reasonable probability the number of lots which could be developed on Parcel E. While they assert they have received offers from a developer, those offers, in fact, are contingent in nature and dependent upon actual approvals. The Fulpers never accepted those offers, and, as a result, no formal development applications were ever made by either the Fulpers or the developer, much less a determination through fully engineered plans and septic suitability tests, as to the number of lots which could be realistically developed on Parcel E. As a result, the per lot value approach taken by the Fulpers' appraisals consultant predicated upon 67 lots was inherently speculative and had no basis in fact.

16. The Fulpers subsequently communicated a without prejudice settlement offer which contemplated a payment of \$3.5 million for the purchase of development rights presumably tied to the Township's appraisals and an additional \$1.3 million in settlement of the Fulpers' alleged damage claims. The Township flatly rejected that offer because it was of the view then and remains of the view now that there is no basis to support the Fulpers' claims and alleged damages. Instead, the Township advised the Fulpers that its offer in the proposed Agreement, predicated on the Township's appraisals would remain open until March 1, 2008, and, if

not accepted, would be withdrawn.

17. The Fulpers did not accept the Township's offer in the proposed

Agreement and the Township withdrew its offer after March 1, 2008.

18. As a result, the litigation was reactivated in March 2008 and has proceeded.

The reason for this lengthy explanation of the without prejudice settlement negotiations is to ensure the Township's residents understand the significant efforts, time and expense incurred by the Township for over one year devoted to attempted resolution of this litigation. The ultimate impasse at resolution was essentially owing to the fact that the Fulpers were attempting to seek payment based upon a per lot value without any substantiating documentation testing or engineering whatsoever to support that value. They contended their approach would be accepted by the State Agriculture Development Committee. That turned out to be not true. When that failed the Fulpers attempted to craft a settlement position designed to dovetail with the Township's appraisals based upon a per acre value which would have resulted in a payment to them of approximately \$3.5 million, and demanded, in addition, \$1.3 million as alleged damages for claims that have no support in fact or in law and upon which this litigation is founded. The bottom line is that the Township, in August of 2007, was willing to purchase the development rights on Parcels C and E for approximately \$3.5 million with the Fulpers retaining title, the right to farm and the right to make application to construct two (2) dwellings on Parcel C and three (3) dwellings on Parcel E. The Fulpers refused the Township's offer. Instead, using the speculative

approach of their appraisal consultant, they sought \$6 million and when the SADC told them that approach was without basis, the Fulpers revised their settlement position to seek a total of \$4.8 million, of which \$1.3 million was the price the Fulpers demanded the Township to pay for dismissal of this meritless lawsuit.

The Township will continue to vigorously defend itself in the pending litigation since it remains committed to the position that there is nothing to support the Fulpers' claims. On the other hand, the Township remains willing to explore a resolution of this case with the Fulpers provided that they take a realistic and sound approach with respect to value for the purchase of development rights which was the very basis for the appraisals obtained by the Township in July 2007. Unfortunately, those appraisals value Parcels C and E as of April 20, 2007, close to two years ago, and, if there are to be informed discussions, new appraisals will have to be prepared. If the Fulpers want to pursue such discussions, the Township Committee remains willing to do so. If not, the Township is committed to defending itself with confidence it will prevail at trial.