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LEVENE GOULDIN & THOMPSON, LLP

A T T O R N E Y S   A T   L A W

E-mail:jrittinger@binghamtonlaw.com
Direct Dial: 607.768.5052

June 27, 2011

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II
2011 JUL -5 A 11:42
REGIONAL HEARING CLERK

Mr. Chris Saporita
Assistant Regional Counsel
United States Environmental
Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: Frank Farm Subdivision – Phase II
LaGrange, New York
Docket No. CWA-02-2011-3404

Dear Mr. Saporita:

Pursuant to our conference call with Judge Nissen on June 15, 2011, enclosed please find our Memorandum with respect to the financial condition as of June 1, 2011 of Henry G. Page, Jr. Development, Ltd. ("Development"), the owner of Frank Farm. The following documents are also attached as Exhibits to the Memorandum:

Exhibit 1	Income tax returns for Development for the year 2007, (Exhibit 1 a) 2008 (Exhibit 1 b), and 2009 (Exhibit 1 c), together with the request for extension for the 2010 tax return which was due in April 2011 (Exhibit 1 d).
Exhibit 2	The Loan Agreements for the original financing for the development of Frank Farm provided by Peoples Bank in 2007 (Exhibit 2 a) and the refinancing of that original loan by Peoples in 2010 (Exhibit 2 b).
Exhibit 3	Original contract with Toll Brothers, Inc. dated April 30, 2007 for the sale of 127 developed lots in Frank Farm, together with the subsequent First through Ninth Amendments to that original contract.
Exhibit 4	Summary of loans owed by Development to private parties.

450 Plaza Drive • Vestal, NY 13850 • Phone: 607.763.9200
Mailing Address: P.O. Box F-1706 • Binghamton, NY 13902-0106 • Fax: 607.763.9211

Exhibit 5	Summary of construction costs and fees which will be incurred for the development of Phases III - VI of Frank Farm.

If you so request, we can provide backup documentation both as to the amounts specified in the above exhibits and also the expenditures and liabilities elsewhere described in the Memorandum, such as the expense of constructing the sewage treatment plan and the water distribution system and a complete set of the loan documents with Peoples Bank.

I understand you will contact me after you have reviewed these materials and we can discuss where we are going to go from here with respect to this matter.

Very truly yours,

LEVENE GOULDIN & THOMPSON, LLP

John Rittinger

JR/jf
Enclosures

cc: Henry G. Page, Jr. (w/Memorandum and Exhibits)
Karen Maples (w/Memorandum w/o Exhibits)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

DOCKET # CWA-02-2011-3404

FRANK FARM SUBDIVISION – PHASE II

FINANCIAL CONDITION OF

HENRY G. PAGE, JR. DEVELOPMENT, LTD.

AS OF JUNE 1, 2011

Henry G. Page, Jr. Development, Ltd. ("Development") is a private New York State Chapter S Corporation. All of the stock of Development is owned by Henry G. Page, Jr. ("Mr. Page") and his three children. Development's Federal and New York State income tax returns for the years 2007, 2008 and 2009 are attached and marked Exhibit 1 a (2007), Exhibit 1 b (2008) and Exhibit 1 c (2009). An application for an extension for the 2010 return which was due in April of 2011 has been filed. A copy of the extension filing is attached as Exhibit 1 d.

The primary asset of Development is a parcel of real estate which originally consisted of a total of 268 acres of undeveloped farm land.[1] The plan for Development was to develop this land into single family home residential lots in a subdivision named Frank Farm, and then sell those developed lots to a national home builder such as Toll Brothers, Inc. ("Toll"). Development's only source of any material income is from the sale of those lots. [2]

Work on Frank Farm began in the early 2000's. Subdivision approval for a total of 157 lots in Frank Farm to be developed in six Phases was secured from the Town of LaGrange in 2007. In addition to the other expenses for securing this and the other

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[1] The only other asset owned by Development in addition to the parcel of real estate is a bulldozer which was purchased for use on the property. The bulldozer is now completely depreciated.

[2] As shown on the tax return attached as Exhibit 1, Development did earn approximately $10,000 in 2007 from the rental of the bulldozer. The bulldozer has not been rented since 2007.

required approvals, Development had to agree to pay approximately $1,100,000 for the construction of a sewage treatment plant and collection facility and approximately $720,000 for the construction of a water storage facility and distribution system as part of the approval process.

Financing to at least partially pay for the approval and the development expenses was secured from Peoples Bank in 2007, and then renewed in 2010. The terms of this financing are described in the Loan Agreements attached and marked Exhibits 2 a (2007 Loan Agreement) and 2 b (2010 Loan Modification Agreement). [3]

In 2007, Development entered into a contract (the "original contract") with Toll for the sale of 127 completely developed lots in Frank Farm. A copy of this original contract, dated April 30, 2007, together with copies of the nine Amendments to the original contract dated from June 7, 2007 to June 22, 2010 are attached and marked Exhibit 3.

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[3] The interest income in the approximate amount of $90,000 shown on the 2008 tax return was not derived from any separate investment asset owned by Development. Instead, and as provided in the 2007 Loan Agreement (Exhibit 2 a at paragraph 6 commencing on page 8), as part of the permanent loan in 2007, Peoples funded a $1.5 million Pledged Escrow Account loan to Development and charged Development interest at the rate of LIBOR plus 3.0% on this full amount. However, Development could not draw on this fund until it actually expended the money for the infrastructure expenses. Since the undrawn funds were in a Pledged Escrow Account to secure its other loan obligations to Peoples, Peoples paid Development interest at the rate of LIBOR plus 2.75% on the undrawn amount. Accordingly, even though Development had to record this LIBOR plus 2.75% interest as income on its tax return, the net result to Development was that it was paying .25% interest to Peoples on the undrawn amounts in the Pledged Escrow Account.

Essentially, the original contract provided for the sale of the 127 lots in seven "Groups" over an approximate five year period (Exhibit 3 at paragraph 4 commencing on page 6). The selling price for the 31 lots in Group I was $127,500 per lot, and the lots in Groups II - VII were priced at a minimum of $130,500 per lot (Exhibit 3 at paragraph 2 commencing on page 1). The original contract further provided that Development had to secure all required approvals and completely develop, with respect to sewer, water, roads and utilities, all of the lots in the Group before a closing could occur with respect to that Group. Finally, the original contract provided that Toll could cancel its obligation to purchase any of the Groups of lots at any time. If that occurred, Development's sole recourse against Toll would be to retain the $200,000 deposit which had been made by Toll when the original contract was initially signed (Exhibit 3 at paragraph 8 on page 8).

The closing on 30 of the 31 lots in Group I occurred on schedule in August of 2007. However, in 2008, before any of the remaining closings on the lots in Groups II - VII were held, the residential real estate market in the entire country collapsed. At that point, Toll had the option under paragraph 8 of the original contract of forfeiting its $200,000 deposit and walking away from the deal, or renegotiating the terms of the contract. Toll and Development agreed to renegotiate.

The terms of this renegotiation are set forth in the Fourth Amendment to the Contract dated September 18, 2009, which is part of Exhibit 3. Essentially, three major changes to the original contract were made in this Fourth Amendment. First, the purchase price for the 33 lots in Group 2 was reduced $40,500 per lot from $130,500 to $90,000 per lot. Second, Toll agreed to advance the monies necessary to develop the lots in Group II, and then be reimbursed for such advances from the proceeds of the Group II closing. Third, Toll would have no further obligation to purchase any of the remaining Groups of lots (Groups III - VII). Instead, the parties agreed to "negotiate in good faith" for the future sale of lots in the Subdivision.

Even though in effect the original contract was canceled with respect to Toll's obligation to purchase any additional Groups of lots after Group II, Toll did not have to pay the $200,000 penalty for such cancellation as provided in paragraph 8 of the original contract. Instead, as part of the renegotiation, it was agreed that Toll would receive a credit for this $200,000 against the purchase price of the lots in Group II.

Also in September of 2009, the term of the original loan from Peoples Bank in the amount of $4.5 million expired (see Exhibit 2 a). At the time the original loan was secured in 2007, it was anticipated that a number of Group closings under the original contract would have occurred between 2007 and 2009 so that the loan would have been substantially reduced. Because of the real estate market collapse, those closings had not occurred.

After administratively extending the loan for a number of months, the Peoples' loan was renegotiated in January of 2010. The terms of this renegotiation are set forth in Exhibit 2 b. Peoples only renewed the principal amount of the loan, which in January of

2010 was $2,100,000. It did not renew the $1.5 million revolving line of credit in the Pledged Escrow Account which was part of the original loan, and which was to be used to finance the cost of the improvements for the lots in Group II. It was only because Toll agreed in the Fourth Amendment to the original contract to finance those improvements and then be reimbursed from the proceeds at the closing that the closing on the Group II lots was finally able to occur in June 2010.

At the present time, Development has no binding legal contract in place for the sale of any of the remaining Groups of lots. Development and Toll have agreed to "negotiate in good faith" on the sale of additional lots, but such an "agreement to agree" is obviously not legally binding. Toll has expressed interest in purchasing at least some of the remaining lots, but no formal or even informal offer has been made. Each lot has already lost over $40,000 in value from the time of the original contract in 2007 to the Fourth Amendment in 2009, and there is no indication that the real estate market has bottomed out as yet.

In the meantime, the current amount of the principal balance due to Peoples Bank as of June 1, 2011 is $1,110,000, and there are also four Letters of Credit outstanding with Peoples in the amounts of $475,000, $137,000, $35,991 and $21,343 to secure various construction obligations. In addition, in order to pay development expenses for the lots which were incurred over and above the financing secured from Peoples Bank and Toll, and also the other carrying expenses for the land which is still owned, including real estate taxes and the monthly principal and interest payments on the Peoples' mortgage, Mr. Page has advanced to Development approximately $4,000,000 from his own funds, and Development has borrowed an additional $1,740,000 from Page family members and other family companies. A summary of the amounts owed by Development for these private loans is attached as Exhibit 4.

Finally, before Toll or anyone else agrees to purchase the remaining lots, the infrastructure for those lots is going to have to be constructed and completed. While the price of the lots has gone down, the cost of developing the lots, including the various fees charged by the Town of LaGrange, have gone up. Attached as Exhibit 5 is a letter dated June 16, 2011 from Jim Bedore, who is Development's engineering consultant, listing these development fees, costs and expenses.

In addition to not having any contract for the sale of the remaining lots, there is also no credit facility in place to finance the development costs. Accordingly, unless a bank comes forward (which is unlikely in the current market) or Toll agrees to advance the financing in exchange for concessions with respect to the purchase price per lot as with the Group II lots, future lots are not going to be able to be developed so as to be marketable.

Development's initial business plan for the development of Frank Farm would have worked well if the real estate market had not collapsed in 2008. However, that collapse did occur and Development's financial plight is certainly not unique in today's real estate market industry.

Because of these financial circumstances, in addition to the other considerations previously noted including the prompt remediation of all violations, it is respectfully submitted that a fine in the area of $20,000 would be sufficient to penalize the conduct involved in this case.

LEVENE GOULDIN & THOMPSON, LLP

Dated: June 27, 2011

By: ________________________

John Rittinger
Attorneys for Henry G. Page, Jr.
Office Address:
450 Plaza Drive
Vestal, NY 13850
Mailing Address:
P.O. Box F-1706
Binghamton, NY 13902-0106
Telephone: (607) 763-9200
Fax: (607) 763-9211