

AMG

Timber

4-23-80

Proposed K w/ Timber Properties & Attorneys

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LAW OFFICES OF
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AREA CODE 201

Re: 10304 R

April 23, 1980

MEMORANDUM TO HENRY W. EVANS and WALDO F. REIS:

Re Proposed Contract with Timber Properties

The contract calls for a deposit in escrow of \$1,000.00 and no further payment until closing at which time the purchaser would pay \$289,000.00 in cash and execute a five year mortgage for \$710,000.00 with interest only payable quarterly at 10% per annum. The mortgage would only cover 80% of the total "units" to be selected by the purchaser.

Between the contract date and closing the seller will pay all taxes as well as any assessments outstanding which would then be a lien against the property. This means that if Warren Township installed curbs or sewers between now and closing the seller would pay for them even though the purchaser would be getting more than they had bargained for.

Between now and the closing date the purchaser would have the option to terminate the contract if any of the property were threatened with condemnation.

The contract is contingent upon purchaser securing all required permits to build at least 300 house units (Paragraph 5(a)). It is also contingent upon:

- (b) purchaser limiting its development cost to an unnamed figure,
- (d) issuance of building permits,
- (e) purchaser's satisfaction with soil tests and borings,
- (g) approval of necessary subdivision or resubdivisions,
- (h) purchaser's acceptance of utilities services available to the property, and a warranty that no building or development moratorium is "in effect or contemplated as of the Closing Date",
- (i) no restrictions or easements
- (k) marketable title

The purchaser wants eighteen months to establish all these items plus two automatic six month extensions, and an option to appeal an adverse decision through the courts. The purchaser does agree to pay real estate taxes after eighteen months.

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In view of the mortgage market, inflation, Warren sewer problems and the propensity of Boards of Adjustments and Planning Boards in general to delay proceedings we would recommend that an attempt be made to either negotiate an option or an unconditional sale with closing to take place within four months. We would suggest that the option be written so that the purchaser would pay a sum equal to one year's taxes for the option to buy the property within a year at a \$1,000,000.00 figure. At the end of the year the purchaser would have an option to purchase another year's option for another year's taxes but the consideration would be \$1,150,000.00 for the property, and at the end of the second year the purchaser would have one more option to pay a years tax for the privilege of buying the property at \$1,322,500.00. In other words each year's payment of taxes on the land would give the purchaser the option to buy the property at \$1,000,000.00 plus ^{10%} 15% inflation factor.

The alternate proposed above would be the outright sale of the land within 90 or 120 days, putting the entire risk on the possibility of securing permission to build the development on the shoulders of the developer.

In the event that neither of the proposed alternatives mentioned above is feasible I would suggest that the agreement be reworked to provide for a series of cutoff dates. For example, the purchaser would be given four months to satisfy itself as to the marketability of title, matters of survey, soil tests or test borings, availability of water, sewer, electric and other utility services, restrictions or easements and development. In the event that the purchaser is not satisfied with any of these items the purchaser would have the right to terminate the contract by written notice to the seller prior to the last day of the fourth month but in the absence of such written notice the purchaser would be bound to accept the property regardless of any objections based on those items.

This would mean that at the end of four months the only outstanding contingency would be the securing of the applicable governmental permits and again we recommend that if that contingency period is to run more than one year the seller reserve the right to increase the purchase price. This could be done using the estimated inflation rate of 15% per year as set forth above or the purchase price could be tied to the published Consumer Price Index effective on the date of the contract with adjustments to the date of closing.

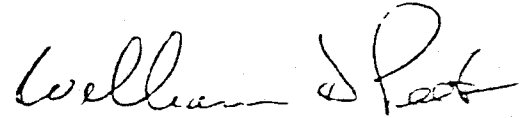
There are two other items in the contract which we question. Paragraph 5(d) sets up issuance of a building permit as a prerequisite to closing ~~it~~ and of course the purchaser could control that issuance by stalling his application or payment of fees. In our opinion the

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contingency requirements of subparagraph (a) are sufficient. Second, subparagraph (n) gives the purchaser the right to terminate on fifteen days notice if the governmental approval is for less than three hundred units. We would recommend a 5% waiver factor. In other words if the approval came in for 285 units the purchaser would not have the right to back out. Finally, if any adjustment is to be made with Elkins it should be specifically mentioned in this contract.



William D. Peek

WDP:hh