

Court uphold deal on Klockner Woods

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HAMILTON -- A Superior Court judge upheld yesterday the township's agreement to purchase the 50-acre plot known as Klockner Woods and ordered township officials to pay for the land within 30 days, capping more than three years of dispute over the tract.

In her complicated 80-page ruling, Feinberg also ordered that some \$327,000 in interest the township has already paid will not be credited toward the purchase price as the township had requested. The ruling means the township's final price tag for the land will be nearly \$4.6 million.

Judge Linda R. Feinberg also shot down claims by the township council that the purchase agreement was illegal because the council never voted to appropriate the funds and ordered the township to abide by all terms of the consent order she issued in June 2005, which set the terms of the purchase.

"The Town Council and Township shall take whatever steps are necessary to pay all funds due under the Consent Judgment," the ruling said.

The ruling effectively puts to rest the dispute over the value of the 50-acre property that has raged since 2003, when owner Fieldstone Associates floated plans to build more than 200 age-restricted condominiums on the land. The township administration was glowing over the opinion upholding the purchase, which has been delayed while questions over the value of the land were answered.

"Simply put, the court held that we got the best deal for valuable land and all the second guessing by the purchase's opponents and their attempts to falsely portray the parcel and swampland do not alter that most basic truth," said Democratic Mayor Glen D. Gilmore.

But Republican Councilman Dave Kenny, who raised issues about the land before he was elected to the council and later led the effort to nullify the purchase, said the opinion represented "a sad day for Hamilton taxpayers" and promised to appeal.

"The court has ignored 100 years of case law and clear language in the statutes and in effect has allowed the taxpayers of Hamilton to be ripped off," he said. "I don't know how the mayor intends to pay for this."

The ruling represents a home run for Fieldstone Associates, which had contended all along that the township should pay for the land, with interest. The developer's attorney argued that Fieldstone had entered into the agreement to sell the land in good faith after the township threatened to take it by eminent domain. The township should not be allowed to renege on the deal or renegotiate the price, the attorney said.

"We are pleased with the court's determination that the township successfully preserved open space at a fair price for the benefit of its residents almost two years ago," said Fieldstone attorney Jack Buonocore. "The court ruled that the time has come for the township to honor its constitutional obligation to pay for the property it took, and without further litigation expenses to the taxpayers."

Feinberg gave the township until March 1 to pay for the property, saying in the ruling that interest charged after September 2006 would be credited to the purchase price if the sale closed by then. The interest paid from September 2005 until September 2006 must be paid to Fieldstone, she said.

The battle over Klockner Woods has raged for more than three years and began when the township attempted to take the land from Fieldstone using eminent domain. After several discussions over the land's value, the township agreed to pay \$100,000 for each of 41 homes that officials agreed could be built on the land, effectively settling the eminent domain case.

But critics, which included the son of a former owner of the land and a Realtor who had tried to broker a sale, said the property was far too wet to hold the 41 lots as township and Fieldstone officials claimed.

The \$4.1 million the township was going to pay was far too high, they said. Fieldstone purchased the property for \$375,000 in 2001 and the local Realtor claimed owners were happy to get the price because several potential buyers had spurned the land as too wet.

Last year, the township hired a consultant to study the wetlands to determine the number of homes the land can hold. That study, completed late last year, said as many as 40 lots would fit on the property.

In making her ruling, Feinberg gave great weight to the report, saying "... there is absolutely no doubt, the subject property can support 41 single-family homes."

But in preparing the report, consultant Van Note Harvey Associates made clear that the yield was contingent on several factors including wetlands encroachment permits from the state and "significant" fill that would be needed to raise the land above the floodplain.

"The development shown hereon requires a significant volume of fill to raise the proposed dwellings and improvements above the 100-year flood plain elevation, per (New Jersey Department of Environmental Protection) requirements," the report said.

In the strongly worded opinion, Feinberg took a chastising tone with the township and the council, going as far as to say she regretted a decision made last year to postpone the purchase while the township investigated the land's value. The judge seemed to blame politics for the strife over the purchase.

"Looking back, the court regrets that decision (to postpone the ruling,)" the opinion said. "Now, several years later, clearly the allegations by the township were wrong. Furthermore, at this juncture, the action by the township appears to have been motivated purely as a result of outcry from members of the public, who while urging the township to preserve the property, objected to the price."

In rejecting the council's assertion that no money had ever been appropriated to pay for the purchase, Feinberg said the clear intent of the former council and township officials was to preserve the land. Records show that more than 85 percent of the \$4.1 million was already on hand in the form of the township's open space bond ordinance, making the absence of the appropriation irrelevant, she said.

The disputed purchase has added to the already wide rift between the mayor and the council and was a factor in the Republican victory in the 2005 council race that saw the GOP pick up three seats on the five-member board. The defeated Democrats each pointed to the public's perception of the contested purchase as a factor in the election. Kenny said the Republican-controlled council would likely vote next week to appeal Feinberg's ruling and will not vote to appropriate money for the land.