

AMG

Timber

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by D
Letter requesting this action join
the ML list.

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KUNZMAN, COLEY, YOSPIN & BERNSTEIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW*M/C
F/pt*EDWIN D. KUNZMAN
JOHN E. COLEY, JR.
HARRY A. YOSPIN
STEPHEN J. BERNSTEIN
IRVING KUNZMAN (1914-1980)
IRA KUNZMAN (1924-1974)HAROLD DRUSE
STEVEN A. KUNZMAN
LINDA E. MALLOZZI15 MOUNTAIN BOULEVARD
WARREN, N.J. 07060
(201) 757-7800Please Refer to:
Our File No. W47

May 18th, 1983

RECEIVED

MAY 19 1983

SOMERSET COUNTY
ASSIGNMENT CLERKThe Hon. Wilfred P. Diana
Somerset County Court House
Somerville, New Jersey 08876Re: Timber Properties v. Warren Township
Docket No. L-67820-80 P.W.

Dear Judge Diana:

On May 11, 1983, Mr. Wintermute directed a letter to Mr. Trombadore, the plaintiff's attorney, requesting him to advise what Mt. Laurel issues were involved in the above case. I received a copy of that letter. By letter dated May 16, 1983, Mr. Trombadore wrote directly to you, with a copy to Mr. Wintermute, stating that he did not feel any Mt. Laurel issues were involved in the above litigation.

I represent the defendant, Warren Township, in this matter. As you may be aware, Warren Township is presently involved in a Mt. Laurel type litigation, AMG Realty Company v. Warren Township, Superior Court of New Jersey, Law Division, Somerset County, Docket #L-23277-80. In May of 1982, Judge Meredith decided that Warren Township zoning laws were in violation of Mt. Laurel directives. Attached hereto is a copy of Judge Meredith's judgment in the above case. You will note that Warren Township was ordered to rezone within nine months of May 18, 1982. The new zoning ordinance was to be provided to the Court for review and approval. Warren Township rezoned within the prescribed time and presented its revised ordinance to Judge Meredith for his review. You will note in Judge Meredith's judgment in Section D that the Court specifically retained jurisdiction of this case after the entry of the attached judgment.

After Warren Township presented its revised zoning ordinance to Judge Meredith for his review, the plaintiff, AMG Realty Company, filed a supplemental Complaint contesting the validity of the revised ordinance. That case is presently pending before the Superior Court and is awaiting assignment to one of the Judges to be appointed pursuant to Mt. Laurel II.

In March, two separate parties, whose property was changed from one and a half acre development designation under the former Warren Township zoning ordinance to more intense use under the new zoning ordinance were allowed to intervene in the existing AMG Realty Company litigation. Enclosed herewith is a copy of an unsigned Order which was entered by the Honorable Robert E. Gaynor.

*status per wj
6/6 trial adj
mt laurel
issue pw
summary*

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In the present case, Timber Properties owns a certain tract of land in Warren Township which was rezoned to allow attached townhouse development. This rezoning is set forth in the Warren Township revised ordinance presented to Judge Meredith. Timber Properties had sued Warren Township pursuant to a Mt. Laurel attack before the above rezoning took place.

The Honorable Arthur S. Meredith entered an Order dated July 7, 1982 dismissing the first two counts of Timber Properties' Complaint and placing the remaining counts on the inactive list. By Order dated April 11, 1983, Judge Meredith restored plaintiff's action to the active list. In the plaintiff's Motion to restore its case to the active list, plaintiff's attorney in paragraph ten of his certification in support of his motion stated:

"In the alternative, the plaintiff, Timber Properties, requests an Order permitting the plaintiff, Timber Properties, to intervene in the suit of AMG Realty Company v. The Township of Warren so that it may seek an early determination of the issues therein thereby permitting a resolution of the ultimate zoning to be applied to the lands of Timber Properties."

Even Mr. Trombadore recognized that it was logical for the AMG and Timber cases to be tried together. This would be in accordance with the Order of Judge Gaynor in related cases, the said Order being attached hereto. Attached hereto is a copy of plaintiff's Pretrial Memorandum which sets forth the plaintiff's attorney's opinion of the nature of the case along with the issues in the case. It appears from a reading of the Memorandum that the plaintiff's attorney viewed the case as an "exclusionary zoning" case. In the factual and legal contentions of the Memorandum, the attorney even has reference to the Mt. Laurel case. It is the position of Warren Township that the Timber Properties litigation is intricately involved with the present Court ordered rezoning of Warren Township. The property owned by the plaintiff has been rezoned for multiple family use, but that rezoning is being contested by the plaintiff in the AMG litigation which resulted in the said rezoning. /At the present time, Warren Township's former zoning ordinance is in effect (an Order in a Motion made during AMG litigation by Judge Meredith held the former Warren Township zoning law in effect until Judge Meredith approved any revision to the same). As a result of that position, the plaintiff's property is presently zoned for acre and a half development. For the plaintiff to obtain a multi-family use on its property, it must attack the former Warren Township zoning ordinance and it would appear that the attack would be based upon Mt. Laurel precedent.

As Judge Meredith has retained jurisdiction in the AMG case, it would appear that any piece-meal rezoning of Warren Township for multi-family use would interfere with the Court's prerogatives as established in the judgment in AMG attached hereto.

It would appear that the Timber Properties litigation should be consolidated with the AMG litigation. This office is presently in the process of preparing a Motion relative to that consolidation and also relative to certain other affirmative defenses which the Township has against the Timber Properties litigation. That Motion will be filed with the Court before the end of May, 1983.

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For the reasons set forth herein, Warren Township requests this matter be placed on the "Mt. Laurel" list. In the event the Court desires additional information, I would be happy to provide the same.

Very truly yours,

JOHN E. COLEY, JR.

JEC:g

enclosures

ccs: William J. Wintermute
Eugene W. Jacobs, Esq.
J. Albert Mastro, Esq.
Raymond Trombadore, Esq.