

AMG

6-9-81

- letter re: pretrial memo
- w/ pretrial memo of D
  - w/ additional legal & factual contentions

pgs. 5

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REC'D AT CHAMBER

KUNZMAN, COLEY, YOSPIN & BERNSTEIN

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

JUN 10 1981

Robert E. Cole

EDWIN D. KUNZMAN  
JOHN E. COLEY, JR.  
HARRY A. YOSPIN  
STEPHEN J. BERNSTEIN

HAROLD DRUSE

IRVING KUNZMAN  
OF COUNSEL

15 MOUNTAIN BOULEVARD  
WARREN, N. J. 07060  
(201) 754-3157

9 WATCHUNG AVENUE  
PLAINFIELD, N. J. 07060  
(201) 756-9260

RECEIVED

June 9, 1981

JUN 10 1981

REPLY TO: Warren

SOMERSET COUNTY  
ASSIGNMENT CLERK

William Wintermute  
Assignment Clerk  
Administration Bldg.  
Somerville, N.J. 08876

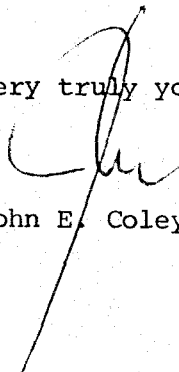
RE: AMG Realty and Skytop Land Corp. vs. Township of Warren  
Docket No. L-23277-80  
Our file W-32

Dear Bill:

Enclosed herewith is the original and two copies of pretrial memorandum in the above matter, along with an extra three copies of factual and legal contentions of the defendant, Township of Warren. This matter is scheduled for pretrial conference before Judge Gaynor on Friday, June 12, 1981, and I would appreciate your providing him with copies of the enclosures.

Thank you.

Very truly yours,

  
John E. Coley, Jr.

JEC:kl  
encls.

6/1/81

Cal. No.

Attorney(s): KUNZMAN, COLEY, YOSPIN & BERNSTEIN, P.A.  
Office Address & Tel. No.: 15 Mountain Blvd., Warren, N.J. 07060  
Attorney(s) for Defendant

SUPERIOR COURT OF NEW JERSEY

A.M.G. REALTY COMPANY, a partnership  
organized under the Laws of the State of  
New Jersey,

LAW DIVISION  
SOMERSET COUNTY

Plaintiff(s)

vs.

Docket No. L-23277-80

THE TOWNSHIP OF WARREN, a municipal  
corporation of the State of New Jersey,

Defendant(s)

CIVIL ACTION

PRETRIAL MEMORANDUM OF

DEFENDANT

1. NATURE OF ACTION:

Action in lieu of prerogative writ to review the validity of the Warren Township, Somerset County, New Jersey zoning ordinance.

2. ADMISSIONS AND STIPULATIONS:

None.

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto).

See attached.

5. DAMAGE AND INJURY CLAIMS:

None.

6. AMENDMENTS:

None.

7. LEGAL ISSUES AND EVIDENCE PROBLEMS:

Exhaustion of administrative remedies, barring of plaintiff's actions by the statute of limitations (45 days), estoppel, laches, designation of "region", whether Warren Township is a "developing community", whether Warren's zoning ordinance complies with the Court mandates of Mount Laurel, and the cases subsequent thereto, the reasonableness \*

8. LEGAL ISSUES ABANDONED:

None.

\* of Warren Township's zoning ordinance in light of ecological and environmental aspects of development within the Township borders, the feasibility of sanitary sewerage disposal, plaintiff's standing, plaintiff's proof of individuals desiring to live in Warren Township and being excluded by Warren Township's zoning laws, definition of low cost and least cost housing to Warren Township. In the event Warren Township is found by the Court to be required to change its zoning ordinance, then proof of "fair share" of least cost housing applicable to Warren

9. EXHIBITS:

As produced during the course of trial and/or agreed to prior to trial.

10. EXPERT WITNESSES:

No limit.

11. BRIEFS:

As the Court directs.

12. ORDER OF OPENING AND CLOSING:

Usual.

13. ANY OTHER MATTERS AGREED UPON:

None.

14. TRIAL COUNSEL:

John E. Coley, Jr. on behalf of the Township of Warren.

15. ESTIMATED LENGTH OF TRIAL:

Three weeks.

16. WEEKLY CALL OR TRIAL DATE:

To be set.

17. ATTORNEYS FOR PARTIES CONFERRED ON numerous and various dates. 19

MATTERS THEN AGREED UPON: None.

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED, except plaintiffs answering defendant's interrogatories and depositions of plaintiff's experts.

19. PARTIES WHO HAVE NOT BEEN SERVED:

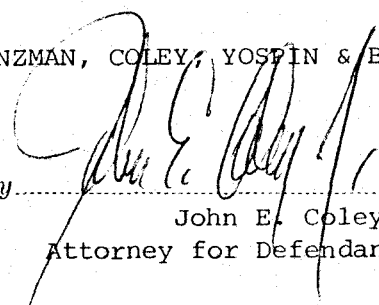
None.

PARTIES WHO HAVE DEFAULTED:

None.

KUNZMAN, COLEY, YOSPIN & BERNSTEIN, P.A.

By



John E. Coley, Jr.

Attorney for Defendant

Dated: June 9, 19 81 .

FACTUAL AND LEGAL CONTENTIONS OF DEFENDANT,  
WARREN TOWNSHIP.

Defendant, Warren Township, is a municipal corporation of the State of New Jersey. The plaintiffs, A.M.G. Realty Company and Skytop Land Corporation, are owners of certain large tracts of land in the Township of Warren known as Lots 22 and 25 in Block 137 and Lot 10 in Block 125 as the same are set forth on the currently official tax assessment map for the said municipality. Both of the plaintiffs are seeking relief from the Warren Township zoning ordinance primarily as to the particular property owned by each plaintiff. No application has been made by either of the plaintiffs to the Warren Township Zoning Board of Adjustment. One of the plaintiffs, A.M.G. Realty Company has made a specific presentation to the Warren Township Planning Board for the construction of approximately 450 townhouse units on its property (approximately 90 acres). The present attack upon the Warren Township zoning ordinance made by plaintiffs in their present complaint is merely a subterfuge, the real purpose of the present litigation is to grant relief from the existing zoning ordinance of the Township of Warren to allow construction of proposed townhouses by plaintiff on the specific property owned by plaintiff. The plaintiff is not seeking the betterment of the house-buying public in the area of Warren Township, but rather is only seeking pecuniary profit to be derived through a maximization of land development on their property.

The existing Warren Township zoning ordinance No. 79-3 adopted on January 25, 1979, offers a wide range of land development choice within the Township borders, to include residential development on 65,340 square foot lots, 20,000 square foot lots and 10,000 square foot lots. The square footage of a lot can be modified by "variable lot size provisions" as set forth in the ordinance

and also as to "modified density" provisions. The ordinance also has zoning provisions for neighborhood business zones, commercial business zones, office service zones, highway development zones and certain other industrial and research zones. Warren Township's zoning ordinance is not violative of any Court mandates.

Based upon certain ecological and environmental aspects of Warren Township which is comprised of a mountainous (steep slope) terrain and also certain very wet marshy areas and the limited sewer capacity for the Township and also limited service of Township properties by public water, the Warren Township zoning ordinance is reasonable.

Warren Township is not a developing community as defined in the relevant Court decisions and is not located in a region which requires any further multi-family development. The Warren Township zoning ordinance is not exclusionary and thus is not proscribed by the New Jersey Constitution.

The plaintiffs are required to exhaust their variance procedures before the Warren Township Zoning Board of Adjustment and have not complied with that requirement. Thus, the plaintiffs are not entitled to proceed with the present action. The Warren Township zoning ordinance 79-3 was adopted on January 25, 1979. It is the belief of the defendant that the plaintiffs have owned the properties in question in excess of 35 days before the filing of their complaint with the Clerk of the Superior Court of New Jersey on December 31, 1980. Thus, the plaintiffs are barred by Rule 4:69-6(a) from maintaining the within action. The plaintiffs are also estopped from maintaining the within action.

Warren Township's zoning law is the result of extensive studies and master plan work by the Township's professional engineers and complies with all mandates of the New Jersey Courts, New Jersey Constitution and all fair and equitable considerations.