

AMG

6-26-81

CL re:

- w/ pretrial order of 6-12-81
- w/ factual & legal contentions

PSS. 7

AM000071Q

McDONOUGH, MURRAY & KORN

A PROFESSIONAL CORPORATION
COUNSELORS AT LAW
555 WESTFIELD AVENUE

WESTFIELD, NEW JERSEY 07090

(201) 233-9040

ROBERT P. McDONOUGH
JOSEPH E. MURRAY
PETER L. KORN
JAY SCOTT MACNEILL
STEPHEN J. TAFARO
SUSAN P. VANDEVENTER
ROBERT J. LOGAN
R. SCOTT EICHHORN

June 26, 1981

IN REPLY REFER TO FILE NO

5323

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JUN 29 1981

W.J. Wintermute, Sr.
Assignment Clerk
Somerset County
Somerville, NJ 08876

SOMERSET COUNTY
ASSIGNMENT CLERK

Re: A.M.G. Realty vs. Township of Warren
Docket No. L-23277-80
S-7598-PW

Attention: Jean

Dear Jean:

I am enclosing herewith copy of the Pretrial Order in connection with the above captioned case. This pretrial was heard before Judge Gaynor on Friday, June 12, 1981.

Very truly yours,

McDONOUGH, MURRAY & KORN

Joseph E. Murray
Joseph E. Murray

JEM/kmd
encl.

P 6

FILED

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SOMERSET COUNTY
L. R. OLSON, CLERKORIGINAL TO SUPERIOR COURT 6/23/81Entered V Indexed

SUPERIOR COURT, SOMERSET COUNTY, LAW DIVISION

PRETRIAL ORDER

A.M.G. REALTY COMPANY,

VS.

TOWNSHIP OF WARREN

Pretried by Judge

ROBERT E. GAYNOR, J. .C.

on Friday, June 12, 1981

Superior No. L— 23277-80

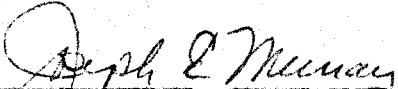
County No. C—

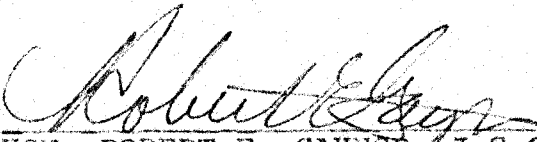
The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

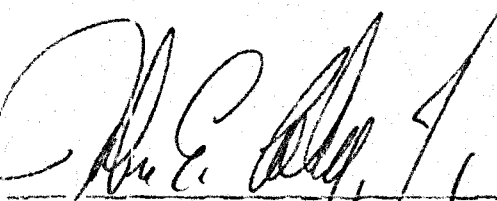
1. Prerogative Writ action to review validity of zoning ordinance.
2. None.
- 3.-4. See attached.
5. Not applicable
6. None.
7. Validity of ordinance, Exhaustion of administrative remedies, applicability of 45 day limitation period, estoppel, standing of plaintiffs.
8. None.
9. To be marked at trial
10. No limit.
11. All issues to be Briefed. Briefs to be filed by September 1 and reply briefs within 30 days thereafter.
12. Usual.
13. Defendant to answer interrogatories by June 30 and both parties to complete despositions of witnesses by August 15. Defendant to propound Inter. June 30 and Plaintiff to submit answers thereto by July 30.
14. Joseph E. Murray, for Plaintiffs. John E. Coley for Defendant.

15. Five days.

16. To be assigned.


JOSEPH E. MURRAY, ESQ.
Attorney for the Plaintiff


HON. ROBERT E. GAYNOR, J.S.C.


JOHN E. COLEY, JR., ESQ.
Attorney for the Defendant.

FACTUAL AND LEGAL CONTENTIONS
OF PLAINTIFFS, A.M.G. REALTY COMPANY AND
SKYTOP LAND CORP.

PLAINTIFF, A.M.G. Realty Company is a New Jersey Partnership owning lands known and designated as Lots 22 and 25 in Block 137 on the current tax map of Warren Township. Plaintiff, Skytop Land Corp. is the owner of lands and designated as Lot 10 in Block 125 as set forth on the said tax map. All of said lands are currently zoned as one and one half (1 1/2) acre residential lots.

The current zoning ordinance of the Township of Warren, ordinance no. 79-3 adopted on January 25, 1979, contains no provisions which permit other than single family residential construction on any of its residential land use areas in the municipality. It makes no provisions for a variety or choice of housing for various categories of people who may desire to live within the Township. Warren Township is a "developing community" as defined in the New Jersey Supreme Court Decision of South Berlington County, NAACP vs. The Township of Mount Laurel, 67 NJ 151 (1975), and, as such has an affirmative obligation to provide an opportunity to supply substantial amounts of least cost housing or new housing for lower and moderate income households now and prospectively needed in the Township of Warren and in the appropriate region of which it forms a part. As a developing community having a land use ordinance, which does not make provisions for the varied types of housing required under Mount Laurel, the presumption exists that the current zoning ordinance of the Township of Warren constitutes exclusionary zoning contrary to the provisions of Article I, Paragraph I of the Constitution of the State of New Jersey. This presumption requires the Township to come forward and establish by clear and convincing evidence that its ordinance is not in violation of the exclusionary zoning prescriptions of the Constitution of this state. It is the position of the plaintiffs that once the facts establish the presumption as herein stated, the Township will not be able to overcome or rebut that presumption by the required evidence. Accordingly, the current zoning ordinance of the Township of Warren, insofar as it relates to land used for residential purposes is illegal and unconstitutional. Once the residential land use portion of the ordinance has been determined to be illegal, the balance of the ordinance cannot stand by itself insofar as the same affects other land uses in the community in the entire ordinance is thus invalid.

The affirmative relief requested by the plaintiffs is a direction by the Court declaring the present zoning ordinance to be invalid for the reasons above stated and to further compel the Township of Warren to undertake the adoption of appropriate zoning legislation to comply with the mandate of the Mount Laurel and subsequent New Jersey Supreme Court decisions.

The plaintiffs further contend that, contrary to the defenses raised by the Township of Warren, the nature of this action does not require the exhaustion of administrative remedies before either the Warren Township Planning Board or the Warren Township Board of Adjustment. These municipal bodies not having the jurisdiction to decide the legal issue of the validity of the zoning ordinance, which issue is a substantial and meritorious issue in this case. It is further the plaintiffs' position that the defense of the so called statute of limitation (the 45-day time limit as set in Rule 4:69-6(a) is not applicable because of the substantial constitutional issue raised in this case. Other defenses of the Township, being the requirement that the Board of Adjustment and Planning Board be joined as indispensable parties, have previously been stricken on Motion.

Plaintiffs further contend that there has been no conduct undertaken by them or on their behalf, which is of a nature to constitute an estoppel or laches in respect to the presentation of the cause of action set forth in this matter.

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.