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Cent. in opposition to motion
for more specific answers

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SOMERSET COUNTY
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KUNZMAN, COLEY, YOSPIN & BERNSTEIN, P.A.
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Warren, N.J. 07060
(201) 757-7800
Attorneys for Defendant

A.M.G. REALTY COMPANY, a partnership
organized under the laws of the State
of New Jersey, and SKY TOP LAND CORPORA-
TION, a New Jersey corporation,

Plaintiffs,

vs.

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

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
DOCKET NO. L 23277-80

Civil Action

CERTIFICATION IN OPPOSITION TO
MOTION FOR MORE SPECIFIC ANSWERS

CERTIFICATION

1. I am an attorney at law of the State of New Jersey and a member of the firm of Kunzman, Coley, Yospin & Bernstein, P.A. I am the Warren Township attorney and entrusted with handling the above captioned matter on behalf of that Township. This certification is made in opposition to the motion made by plaintiff for more specific answers, etc. which is returnable on Friday, August 14, 1981.

2. The Township has set forth the names of all expert witnesses to be utilized in the defense of this matter in answer No. 1 of the interrogatories. The only experts not specifically set forth are the real estate expert and traffic expert. The Township is in the process of retaining those experts and

it is believed that Marvin Davidson will be the real estate expert and John Christ will be the traffic expert. Those names will be verified before August 21, 1981. Relative to answer No. 1, there will be no additional engineering experts as set forth in answer f. The delay in retaining the real estate expert and the traffic expert was caused by the summer schedule of the governing body of Warren Township and vacations of the members of that governing body.

3. The Township has been rendered no written reports by any of the experts presently working on the case (set forth in answer to interrogatory No. 1). Attached hereto is a copy of the contract for professional planning services which the Township let to E. Eugene Cross Associates which governs the work being performed by the planning expert. Also enclosed is a copy of letter dated July 22, 1981, from Stanley Kaltnecker of the engineering firm of Elson T. Killam Associates, Inc. setting forth the engineers to be utilized in the defense of the defendant's case and their area of expertise. I would expect reports, at least preliminary drafts, to be available towards the end of August 1981. Those will be provided to Joseph E. Murray immediately upon receipt.

4. It is the plaintiffs' obligation to prove that Warren Township is a "developing community" and that is the answer set forth in interrogatory No. 3. The defendant does not understand what the attorney for plaintiff is seeking by his question.

5. Relative to interrogatory answers No. 4 and 5, the Township alleges that a variety of housing is offered to parties desiring to reside within the Township and that the entire zoning ordinance must be read in its entirety as to those varieties. The answers to interrogatories 4 and 5 are as complete as can be provided by the defendant.

6. Again, the defendant has answered interrogatory No. 6 as completely as possible. Paragraph No. 6 of plaintiffs' complaint alleges that least cost housing or new housing for low and moderate income households is precluded by the Township. The Township's zoning ordinance has to be read in its entirety for a total picture of the various types of all classes of housing allowed within the Township borders. This answer is answered as fully as possible.

7. Relative to interrogatory question No. 7, by viewing the municipality, it is obvious as to the inventory of housing within its borders. In the event the plaintiff desires a copy of the Township Master Plan, it will be provided to him upon his request. In addition, the Township conducted certain studies in 1977, which set forth all of the multiple family housing located within the Township borders as of that date. That study is available for review by plaintiff.

8. Relative to interrogatory question No. 8, the plaintiff is seeking a definition of "least cost housing". That wording is derived from Court decisions and is defined by the Court, not the Township of Warren.

9. Relative to interrogatory question No. 12, the defendant's answer can be expanded to clarify the estoppel argument by stating that plaintiff's action is barred as a result of failure to exhaust administrative remedies, by the existing statute of limitations (45 days) and by laches for failure to bring the action in a timely manner.

10. The answer to interrogatory question No. 13 can be expanded to show that the plaintiff's action is barred as a result of the long delay in bringing the same since the Warren Township zoning ordinance was passed on January 25, 1979, and it is believed that the plaintiff purchased the property thereafter, although the specific date is not known by the Township as the Township's interrogatories have not been answered by plaintiff. It is believed that the plain-

tiff purchased the property in question approximately 1-1/2 years before instituting the present litigation. That delay of 1-1/2 years is the laches alleged by the Township.

11. Interrogatory question No. 14 can be expanded to specifically state that the plaintiff is required to process its requests, which are the subject matter of the within litigation, before the Warren Township Zoning Board of Adjustment, or in the alternative, to petition the Warren Township Planning Board to recommend a zone change for the property in question or directly petition the Township Committee to make that change.

12. Relative to interrogatory question No. 19, the list of five individuals set forth therein can be expanded to show the areas of testimony which will be provided by the non-expert witnesses as follows:

1. John Lloyd, planning and prior land use studies.
2. Annabelle Kriegel, prior land use studies.
3. Agnes Wimmer, prior applications before the Planning Board and existing planning.
4. Rosalie Ginda, prior applications before the Zoning Board of Adjustment.
5. Ronald Willens, Sewer Authority matters.
6. Morrison Shuster, Jr., Township Administrator.
7. Doris Lortie, Township Clerk, general Township affairs, etc.

13. Relative to interrogatory question No. 20, the Township has retained the services of John Chadwick of E. Eugene Cross Planners and is awaiting the results of studies being conducted. Those studies should be completed in the near future and approximately one-third complete at this time.

14. Relative to interrogatory question No. 21, this question has been answered the same as interrogatory question No. 20 as set forth above.

At the present time, to include the additional information set forth herein

and attached hereto, the defendant has provided all discoverable materials to the plaintiffs in accordance with Court rules. The plaintiff is entitled to depose all of the experts set forth herein and to conduct further discovery.

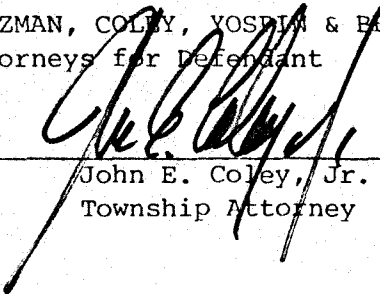
15. The defendant desires to comply with the spirit of the discovery rules of the Superior Court, and has felt that it has provided all discoverable materials.

16. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: August 6, 1981

KUNZMAN, COLEY, YOSPIA & BERNSTEIN, P.A.
Attorneys for Defendant

BY:



John E. Coley, Jr.
Township Attorney

W. 32

Elson T. Killam Associates, Inc.

27 Bleeker Street, Millburn, New Jersey 07041

Environmental and Hydraulic Engineers

• Telephone: (201) 379-3400 • Telex: 642-057 ETK ASSOC MIBN



Stanley P. Kaltnecker, Jr., P.E.
Vice President

July 22, 1981

Kunzman, Coley, Yospin & Bernstein
Attorneys at Law
15 Mountain Boulevard
Warren, New Jersey 07060

Attention: John Coley
Counsel - Warren Township

Re: AMG Reality
Your File No. W-32

Dear John:

In accordance with your requests please find below a list of expert witnesses that could be prepared to present testimony at the trial of the above referenced matter. Please be advised that all witnesses are employed by Elson T. Killam Associates, 27 Bleeker Street, Millburn, New Jersey.

1. Stanley P. Kaltnecker, Jr., P.E. - Warren Township Engineer
 - a. Wastewater Facilities
 - b. Stormwater Facilities
2. Eugene DeStefano, P.E. & L.S.
 - a. Stormwater Facilities
 - b. Municipal Engineering
3. Dale S. McDonald, P.E.
 - a. Wastewater - 201 Facilities Plan
4. James G. Coe, P.E.
 - a. Wastewater Facilities
 - b. Stormwater Facilities



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5. Joseph Skupien, P.E.

a. Stormwater Facilities

Please keep me advised of progress in the aboved matter so that we may properly prepare for any testimony that may be necessary.

Respectfully,

ELSON T. KILLAM ASSOCIATES, INC.

Stanley P. Kaltnecker, Jr.

SPK:kas

AMC.

CONTRACT FOR PROFESSIONAL PLANNING SERVICES

by and between

PLANNING BOARD OF THE TOWNSHIP OF WARREN

and

E. EUGENE OROSS ASSOCIATES

THIS AGREEMENT, entered into as of this _____ day of _____ 1981, by and between the PLANNING BOARD OF THE TOWNSHIP OF WARREN, New Jersey (hereinafter called the "Board") and E. EUGENE OROSS ASSOCIATES professional planning consultants incorporated in the State of New Jersey exempt from the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq (hereinafter called the "Consultant");

WITNESSETH THAT:

WHEREAS, the Board desires to engage the Consultant to provide professional study, evaluation and assistance in the preparation of updating the factual studies forming the basis for the Land Use Plan prepared in accordance with the Municipal Land Use Law; and

WHEREAS, the Board desires to engage the Consultant to conduct comprehensive planning studies as more fully outlined under II. SCOPE OF SERVICES; and

WHEREAS, Chapter 291 of the Laws of New Jersey, 1975, specifically permits the Planning Board of the Township of Warren to engage a professional planning consultant to assist the Planning Board in the development of a master plan;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. EMPLOYMENT OF CONSULTANT

The Board hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the professional planning services hereinafter set forth.

II. SCOPE OF SERVICES

The comprehensive program has a two-fold purpose: Part A, prepare an updated factual findings of the potential and of the limitation of development; and Part B, prepare a detailed analysis of the support systems inherent to development.

PART A SURVEYS AND ANALYSIS OF THE POTENTIAL AND OF THE LIMITATIONS TO DEVELOPMENT

The Consultant shall prepare an updated factual finding survey of the potential limitations of development. The report shall be prepared by using the following data sources and survey work:

1. The Consultant shall update the existing base map.
2. The Consultant shall conduct a lot by lot land use survey and plot said information on a display board. All publically-owned land shall be identified.
3. The Consultant shall also use the following data sources:
 - a. County Land Use Plan.
 - b. Available Township aerial photographs.
 - c. County and local existing land use data as available from County and local studies, reports and maps.
 - d. Township assessment records.
 - e. Development plans pending before the Board or approval but not yet constructed.
4. The Consultant shall also prepare an acetate overlay of the delineated flood hazard areas established by Township ordinances.
5. The Consultant, after completion of survey work, shall compute the amounts of available privately-owned land for the Township at large, by zone district and sewer service area as set forth in the comprehensive sewer service plan of the Township.

PART B ANALYSIS OF SUPPORT SYSTEMS

The Consultant, subsequent to preparation of the above factual data base, shall prepare a matrix development model of the Township utilizing the following sequential controls:

1. Sewer facility capacity.
2. E.P.A. and D.E.P. Passaic River effluent limitations.
3. Flood hazard ordinance regulations.
4. Steeply sloped land (15% or greater).
5. Present zoning standards.
6. Soil conditions (septic suitability).

The Consultant shall prepare the matrix development profile for all zones as well as sewer service districts set forth in the Township's comprehensive Sewer Service Plan.

Subsequent to preparation of the above, the Consultant shall prepare written report of all findings and conclusions. The Consultant shall further compare said findings and conclusions to findings of fact and assumptions set forth in the adopted Master Plan of Warren Township.

PART C PUBLICATION OF REPORTS

The Consultant shall provide the Board with twenty-five (25) copies of the preliminary draft report and mpas. The Consultant shall print fifty (50) copies of the final plan report, the cost of which is included in the total professional service charge.

III. QUALIFICATIONS OF THE CONSULTANT

The Consultant represents that he has or will secure at his own cost and expense all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the Consultant under his supervision and all personnel engaged in the work shall be fully qualified to perform same.

IV. TIME OF PERFORMANCE

The services of the Consultant shall commence upon the execution of this contract and all work shall be completed within twelve (12) months from the date of the execution of this document.

V. MEETING ATTENDANCE

The Consultant shall attend regularly scheduled meetings of the Board to present findings and conclusions and discuss same with the Board.

VI. MATERIAL TO BE FURNISHED THE CONSULTANT

The Board will solicit the aid of the Township of Warren, its various departments, bureaus, boards, agencies and personnel to cooperate with the Consultant at no cost to the Consultant, such information and data that it has available such as prints, maps, air photos, atlases and reports in connection with the necessary completion of the work.

VII. COMPENSATION

The total professional service fee shall be \$7,200.00. Payment of charges will be made on a monthly basis, on invoices presented by the Consultant in the amount of \$600.00 per month for a twelve (12) month period, and in proportion to progress made under this Agreement.

VIII. OWNERSHIP OF DOCUMENTS

All survey notes, reports, plans, exhibits, special studies, records and other data prepared under this Agreement shall become the property of the Township upon completion of the program.

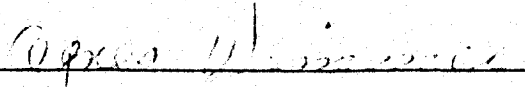
IX. TERMINATION OF AGREEMENT

The Board may terminate this Agreement at any time by a notice in writing from the Board to the Consultant. If the Agreement is terminated by the Board, the Consultant shall be paid for all work performed up to the date of the termination.

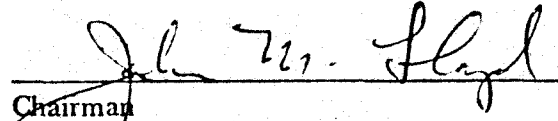
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, their seals affixed and attested by their duly authorized officers.

ATTEST:

PLANNING BOARD OF THE
TOWNSHIP OF WARREN



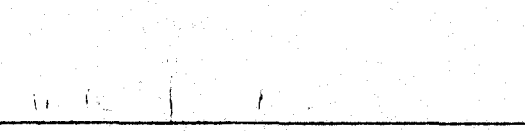
Secretary



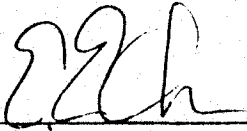
Chairman

ATTEST:

E. EUGENE OROSS ASSOCIATES



Administrative Secretary



President