

AMG

2-18-82

Letter re: replacement pages for brief
- w/ Amendments to Trial Brief by Ds

pgs. 10

p: #3266

AM000045-B

KUNZMAN, COLEY, YOSPIN & BERNSTEIN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

15 MOUNTAIN BOULEVARD
 WARREN, N.J. 07060
 (201) 757-7800

RECEIVED

FEB 22 1982

Please Refer to:
 Our File No. W-32

February 18, 1982

SOMERSET COUNTY
 ASSIGNMENT CLERK

Somerset County Assignment Clerk
 William Wintermute
 Court House
 Somerville, New Jersey 08876

Re: AMG Reality Company et.al. vs. Township of Warren
 Docket No. L-23227-80

Dear Bill:

Enclosed herewith is the original and copy of replacement pages for the brief previously filed with you. These changes have been forwarded to Mr. Murray. I would appreciate your attaching these replacement pages and the cover sheet attached to them to the front of the brief previously filed with you. Thank you.

In addition, I had previously mentioned to you that I was entering Muhlenberg Hospital on February 22, 1982 for an operation. My doctor informs me that I will be out of work for two weeks and on a limited work schedule for two weeks thereafter. Thus, I would appreciate your not scheduling this matter for trial until the first of April. Thank you.

Very truly yours,

JOHN E. COLEY, JR.

JEC/ga
 Enclosure

cc: J. Murray, Esq.
 Township Committee

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-23227-80

AMG REALTY COMPANY, A Partnership :
Organized under the Laws of the :
State of New Jersey, and SKYTOP :
LAND CORPORATION, A New Jersey Corporation, :

Plaintiffs, :

-vs- :

Civil Action

THE TOWNSHIP OF WARREN, A :
Municipal Corporation of the :
State of New Jersey, :
Defendant. :

AMENDMENTS TO TRIAL BRIEF ON BEHALF OF DEFENDANTS

KUNZMAN, COLEY, YOSPIN & BERNSTEIN
15 Mountain Boulevard
Warren, New Jersey 07060
(201) 757-7800
Attorneys for Defendants

On the Brief:

John E. Coley, Jr., Esq.

THE FOLLOWING ARE AMENDED OR ADDITIONAL PAGES:

Replacement Page 4

Replacement Page 16

Replacement Page 18

New Page 18A

New Page 18B

Replacement Page 21

New Page 21A

in the past two summers.

Warren Township's growth is also governed by its capacity for waste disposal. The Township has obtained Federal funding to construct a sewer project in the Upper Raritan water shed area which encompasses a portion of the Township. The project is governed by the Upper Raritan Water Control Management Plan prepared by the New Jersey Department of Environmental Protection dated May, 1979, and is commonly known as the 208 Facilities Plan. The project is also governed by the 201 Facilities Plan which is the Upper Raritan Waste Water Facilities Plan, prepared for the Somerset County Board of Chosen Freeholders by Malcolm Pirnie, Inc., consulting environmental engineers. This plan was prepared December, 1980 and revised in June, 1981. The northern section of the Township lies within the Upper Passaic River Basin for which a federally funded 201 Facilities Plan has been prepared and will govern the construction of waste water facilities in that portion of the Township. Within the Upper Passaic Basin, there is also the interim expansion of existing treatment facilities. These, too, have already been funded with private funds.

The capacities of the expansions as well as the new project have been fully allocated. Such allocations have to be altered to service new high density areas, other property owners who have built expectations upon the present allocation would be adversely effected and they would be unable to develop in accordance with the existing zoning plan.

Due to the nature of Warren Township, rezoning for high density development would not only be environmentally unfeasible, it would not be socially beneficial and may be socially damaging.

would be of a size and slope which would provide no more capacity than necessary to convey the actual design flow as established by the 201/208 population studies. This requirement was met by the Township and no extra capacity (in excess of the 201/208 studies) existed in the interceptor pipes in the state and federal "minimum expense" guidelines were satisfied.

The Township submitted the design of the Middlebrook Sewer Project to the appropriate state and federal agencies for approval and to obtain the awarding of a federal grant. The Township also has submitted plans relative to the upgrading of certain other waste water treatment facilities solely within the Township borders. None of those other projects approach the magnitude of the Middlebrook Project referred to above.

The federal government has approved Warren Township's participation in the Middlebrook Sewer Project and has finalized a seventy-five percent (75%) federal grant to enable that project to proceed. Warren Township is now ready to construct that project and is in the process of letting contracts for the same.

The 201/208 studies set population limits which govern the size of the sewer project. In the Middlebrook sewer service area, a population density has been established and the same acts as a limit on the size of the sewer system. Any development at densities greater than presently zoned cannot be accommodated by the sewer system without denying other landowners the rightful use of their properties in accordance with the zone plan. Further, any change in pipeline capacity which is not in accordance with the 201/208 planning studies will not be funded by the state and federal agencies having control of the same. The plaintiff, AMG, owns approximately ninety (90) acres located in the service area of the Middlebrook Sewer Project. That property is zoned for residential use, single family one and one-half acre development. The specific

treatment facilities not in compliance with the 201 Facilities Plan. Since the 201 Plan does not provide for any treatment plants within the service area in question, other than the Somerset-Raritan Sewage Authority Plant, it would appear that the plaintiff, AMG's property, could not be sewered by its own individual plant.

According to the Somerset County Soil Conservation Service data, the vast majority of the soils underlying the AMG property have severe limitations for the construction of septic-tank absorption fields.

Relative to the second tract involved in this litigation, the Sky Top property, the second is located in the Upper Passaic River Basin. For this basin, a 208 Water Quality Management Plan (NJDEP, 1979), a 201 Facilities Plan (1977), and an Environmental Impact Statement (EIS) have been undertaken. These regional planning studies have not yet been certified or adopted by the regulatory agencies concerned therewith. The planning studies provide for the disposal of waste water from the Warren Township portion of the Upper Passaic River Basin by several regional plants. At the present time, portions of the Upper Passaic Basin within Warren Township are served by interim plants. The NJDEP has deemed these plants to be interim and to be abandoned when regional facilities become available. At the present time, the area of Warren Township in the Upper Passaic Basin are serviced by two plants in the Stage I and II areas and the Stage IV plant. A third plant, a Stage V plant, is presently under construction. The Sky Top properties are part of the Stage V drainage area and as such have an allocation in accordance with the present zoning of that land.

The population projection and waste water flows for the Warren Township portion of the Upper Passaic River Basin were determined in the same manner

as those for the Upper Raritan Basin. The 201/208 population projections for the Warren Township portion of the Upper Passaic River Basin are approximately in accordance with existing zoning.

The existing Stage IV interim treatment plant was recently expanded and upgraded to provide additional capacity for potential users which signed up for flow allocation and also paid for that expansion. The plant expansion was funded by those utilizing the plant in an amount directly proportional to the flow allocation received. Therefore, the additional capacity of the plant is fully allocated to those who signed up and paid for their allocation - the flow allocation being in accordance with present zoning.

The existing interim Stage I and II treatment plants are presently under construction and being expanded and upgraded. Here again, the expanding capacity is to meet the needs of the participants in those expansions who funded the said expansion to their flow allocation. Flow allocations were in accordance with the present zoning requirements.

The interim Stage V treatment plant is presently under construction. The project is being funded by users who signed up for a particular allocation. That allocation is also in accordance with present zoning.

To determine the interim plant sizes and waste water flows, it was necessary to demonstrate to the NJDEP that the flow projections and populations were in accordance with the 201/208 planning figures and the EIS population figures.

To allow a particular tract of land to be more densely populated and developed than presently zoned for and to be sewerred to any of these interim plants, would deny other participants the right to their allocation in the interim plants which has in fact been paid by those parties.

In addition to the waste water treatment constraints outlined above, the property in question is traversed by at least two significant water courses. Construction on the site would have to be in accordance with the Water Course Protection Ordinance of the Township of Warren which provides for certain buffer areas around a water course as well as limitations as to building elevations with regard to flood levels. In order to control runoff, storm water retention facilities would be required which would further encroach upon the usable area of the AMG property.

Both plaintiff's tracts (see attached portion of the Warren Township Zoning Map - "Map 1") features soil types (see attached Somerset County Soil Maps - "Map 2 & 3") and (Somerset County Soil Surveys - "Tables 1-4") which suggest severe development limitations. Both sides exhibit varying topographic conditions; the AMG tract, located south of Mt. Horeb Road slopes from west to east and is criss-crossed by the water courses referred to in the preceding paragraphs; the Sky Top tract, located north of Mt. Horeb Road, has severe topographic conditions.

the densities at which that sub-area can support development. Installation of a public water system and distribution system, for example, does not create more water resources for the region as a whole, but rather allows for more flexibility in the distribution of this valuable resource. Therefore, if there are areas developed beyond their natural carrying capacities because of the installation of water and sewage facilities (the municipalities south of Warren) they must be offset by other areas developed below their natural carrying capacities (Warren) if the integrity of the regional water resource is to be guaranteed. This "offset principle" is fundamental to regional planning for the protection of limited natural resources. The New Jersey Department of Environmental Protection addresses natural carry capacity limits by recommending minimum lot sizes for areas served by individual wells and septic tanks. These recommendations range in the area of two acre lots.

The majority of Warren Township's water supply is provided by individual wells for each home. The more densely populated and commercial areas are served by Elizabethtown Water Company. High density development of the two tracts in question will result in more impervious ground cover than presently zoned for and this will reduce the amount of rainwater that can percolate into the ground to the groundwater from which individual wells obtain their water.

Steep slopes also limit the suitability of an area for high density development. In hillside areas, generally accepted planning practice calls for a reduction in development densities with increased slope. Development of hillsides at high densities can effect the equilibrium of vegetation, geology, slope, soil and precipitation, often resulting in the loss of slope and soil stability and increasing erosion potential. The removal of vegetation deprives

the soil of the stabliizing function of roots as well as the moderating effects on wind and water erosion. Loss of soil stability increases erosion and thus, degrades local surface water quality as a result of increased sitlation. Steep slopes account for a substantial portion of the undeveloped lands in Warren Township.

Flood plains and wetlands are not generally considered desirable locations for high density development. While some limited development can be supported in these areas, the extent of that development must be limited to prevent an unacceptable increase in flooding impacts. Such limitations generally exclude