

AMG

10-18-83

letter re:

~~re: pretrial memo~~

- w/ letter re: pretrial memo

- w/ pretrial memo

- w/ factual & legal conclusions

pg. 8

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## KUNZMAN, COLEY, YOSPIN &amp; BERNSTEIN

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAWEDWIN D. KUNZMAN  
JOHN E. COLEY, JR.  
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WARREN, N.J. 07060  
(201) 757-7800TOWNSHIP OF WARREN

October 18, 1983

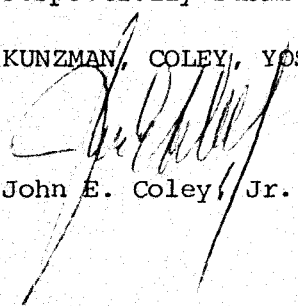
The Honorable Eugene D. Serpentelli  
Ocean County Court House  
C.N. 2191  
Toms River, New Jersey 08753Re: AMG Realty Company vs. Township of Warren  
consolidated with:  
Timber Properties, etc. vs. Township of Warren  
Docket Nos. L-23277-80 P.W.  
L-67820-80 P.W.  
Our File No. W-47*Hold for  
attest  
minutes*

Dear Judge Serpentelli:

Enclosed herewith is the original and one copy of Pretrial Memorandum in the above entitled case. Also enclosed is the original and seven copies of Factual and Legal Contentions.

Respectfully submitted,

KUNZMAN, COLEY, YOSPIN &amp; BERNSTEIN

  
John E. Coley, Jr.JEC/ga  
Enclosure  
ccs: J Lynch  
R Kraus  
J Murray  
E Jacobs  
A Mastro  
R Trombadore

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JUDGE SERPENTELLI'S CHAMBERS

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other P. Trombador

TIMBER PROPERTIES

RAYMOND R. & ANN W. TROMBADORE

A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW  
33 EAST HIGH STREET  
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RAYMOND R. TROMBADORE

ANN WILKIN TROMBADORE  
OF COUNSEL

MARILYN RHYNE HERR

October 19, 1983

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JUDGE SERPENTELLI'S CHAMBERS

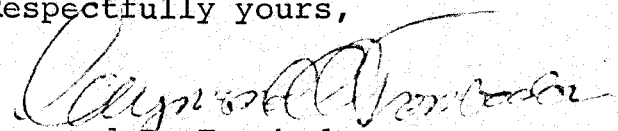
Honorable Eugene D. Serpentelli  
Ocean County Court House  
Washington Street  
Court Room 1  
Toms River, New Jersey 08754

Re: AMG Realty Company v. Warren Township  
Timber Properties v. Warren Township  
Docket Nos. L-23277-80 P.W.  
L-67820-80 P.W.

Dear Judge Serpentelli:

Enclosed please find a Pretrial Memorandum submitted on behalf of Timber Properties.

Respectfully yours,

  
Raymond R. Trombador

RRT/ljk

Enclosure

- cc: J. Albert Mastro, Esq.
- Eugene W. Jacobs, Esq.
- John E. Coley, Jr., Esq.
- John T. Lynch, Esq.
- Leib, Kraus & Grispin, Esqs.
- Joseph E. Murray, Esq.
- Clerk of Superior Court
- Somerset County Clerk

Attorney(s): RAYMOND R. & ANN W. TROMBADORE, A Professional Corporation  
Office Address & Tel. No.: 33 East High Street, Somerville, New Jersey 08876  
Attorney(s) for Timber Properties (201) 722 - 7555

AMG REALTY COMPANY, et als,  
Plaintiff

SUPERIOR COURT OF NEW JERSEY

vs.  
THE TOWNSHIP OF WARREN

LAW DIVISION  
SOMERSET COUNTY

CONSOLIDATED WITH: Defendant Plaintiff(s)

L-23277-80 P.W.  
Docket No. L-67820-80 P.W.

vs.  
TIMBER PROPERTIES, etc., Plaintiff

CIVIL ACTION

vs.  
THE TOWNSHIP OF WARREN, et als.  
Defendant(s)

PRETRIAL MEMORANDUM OF

Timber Properties

- 1. NATURE OF ACTION: Prerogative Writ Suit challenging the zoning and land use regulations of Warren Township and seeking a judgment ordering the rezoning of the plaintiff's lands and further challenging the arbitrary limitation placed upon sewage treatment services required by plaintiff for the use of its land.
- 2. ADMISSIONS AND STIPULATIONS: See admissions by defendant Warren Township Sewerage Authority.

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

5. DAMAGE AND INJURY CLAIMS: As set forth in the complaint, as amended.

6. AMENDMENTS: None.

7. ISSUES AND EVIDENCE PROBLEMS: See attached.

8. LEGAL ISSUES ABANDONED: None.

9. EXHIBITS:

To be marked prior to trial.

10. EXPERT WITNESSES:

Unlimited.

11. BRIEFS:

As requested by the Court.

12. ORDER OF OPENING AND CLOSING:

Usual.

13. ANY OTHER MATTERS AGREED UPON:

None.

14. TRIAL COUNSEL:

Raymond R. Trombadore, Esq.

15. ESTIMATED LENGTH OF TRIAL:

10 days.

16. WEEKLY CALL OR TRIAL DATE:

17. ATTORNEYS FOR PARTIES CONFERRED ON  
MATTERS THEN AGREED UPON:

19


18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED,  
*except*

Discovery to continue up to 10 days prior to trial.

19. PARTIES WHO HAVE NOT BEEN SERVED: None.

PARTIES WHO HAVE DEFAULTED: None.

RAYMOND R. & ANN W. TROMBADORE  
A Professional Corporation  
Attorneys for Timber Properties

By   
RAYMOND R. TROMBADORE  
A Member of the Firm

Dated: October 18, 19 83 .

PRETRIAL MEMORANDUM OF TIMBER PROPERTIES

7. ISSUES AND EVIDENCE PROBLEMS: Exclusionary zoning; violation of dictates of Municipal Land Use Act; unreasonable, arbitrary and capricious denial of request for rezoning of land; unlawful exercise of police power; unlawful taking of property; arbitrary and unreasonable limitation on sewage treatment facilities; illegal agreement to limit the availability of sewage treatment as an unlawful means of growth control in the community; validity of amended zoning ordinance; validity on limitation placed upon effective date of amended zoning ordinance; determination of "region;" determination of "fair share;" builder's remedy; obligation of Township to provide subsidy for low-income and least-cost housing; obligation of Sewerage Authority to provide sewer service without cost to subsidize low-income and least-cost housing.

## PRETRIAL MEMORANDUM OF TIMBER PROPERTIES

### 3-4. FACTUAL AND LEGAL CONTENTIONS:

The plaintiff Timber Properties, a New Jersey Corporation, is the contract purchaser and equitable owner of approximately 68 acres of facant land in Warren Township. The property is located on Mountain View Boulevard and in an area which is presently zoned for residential use. Immediately North of the property and slightly to the West of the property there is being constructed an office complex for Chubb and Sons, Inc. Warren Township is a rural community and a developing community comprised largely of open space. Warren Township is in a growth area as that term is used in Mount Laurel II. Until December of 1982, no provision was made under the Land Use Regulations of Warren Township for other than single-family houses on large lots. In December of 1982 Warren Township, following the institution of this suit, rezoned limited portions of the Township to permit the construction of Planned Residential Developments in limited numbers and in limited density. Said ordinance did not take effect because by its terms it provided that it would take effect only upon approval of its terms by the trial court which mandated rezoning in the AMG v. Warren Township suit. The present zoning ordinance does not meet the standards of the decision of the Supreme Court of New Jersey in the Mount Laurel Case, South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), nor does it meet the dictates of the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II). The Township has had numerous requests for either variance or rezoning of property to permit either multi-family housing, small lot housing or planned residential development. All of these have been rejected by the Township. The present zoning, likewise, violates the spirit and intent and specific requirements of the Municipal Land Use Act, N.J.S. 40:55D-1, et seq. Adjoining communities have been required by court decisions to rezone to permit appropriate development of housing and such development is occurring in the adjoining communities. The present zoning of the plaintiff's land would require a minimum lot area for a single-family residence of 50,000 square feet. This lot area requirement of the zoning ordinance bears no relationship to a reasonable exercise of the police power and is arbitrary, capricious and unreasonable. It is especially unreasonable in light of the fact that the defendant Township has rezoned substantial portions of land in the area of the plaintiff's land for intense office use. The present development of the site of Chubb and Sons, Inc. involves the construction of a major headquarters office facility almost directly opposite the land of the plaintiff. The traffic which will be generated by that development renders the present zoning of the plaintiff's lands arbitrary and unreasonable and constitutes an inverse condemnation of the property without just compensation. In December,

1980 the plaintiff submitted a request to the defendant Township for rezoning of its lands in said Township to permit the development of said lands for townhouses at a density of approximately 3.7 units per acre. The governing body of the defendant Township referred said request to its Planning Board and a hearing was conducted before the Planning Board at which time the plaintiff submitted evidence clearly establishing the feasibility of the development of the plaintiff's lands for townhouses at the density proposed. Notwithstanding that evidence, which was uncontradicted, the Planning Board arbitrarily and unreasonably refused to recommend to the Township Committee the rezoning of the plaintiff's lands. In addition, the plaintiff has asked the Warren Township Sewerage Authority to provide adequate sewage treatment for the sewage which would be generated by the development of the plaintiff's lands. The Sewerage Authority arbitrarily limited the capacity of treatment available to the plaintiff to the gallonage which would be generated by the development of the plaintiff's lands under the present zoning. In effect, the Sewerage Authority arbitrarily and capriciously refused to design its treatment plant, which is about to be constructed, so that it would have adequate capacity to handle all of the gallonage which would be generated from the plaintiff's lands if the plaintiff were granted permission to develop its land for townhouses. The refusal of the defendant Warren Township Sewerage Authority to provide adequate sewage treatment capacity to the plaintiff was based upon an illegal agreement between the Sewerage Authority and the defendant Township of Warren which limits the capacity required to service said lands pursuant to present zoning limitation existing upon the lands. Plaintiff seeks a judgment from this Court ordering the Township of Warren to rezone its lands to permit townhouse development of the lands and ordering the Sewerage Authority of Warren Township to provide adequate facilities to treat the sewage which would be generated from the plaintiff's lands.

This plaintiff also seeks a determination of the Court as to the validity and effectiveness of the rezoning ordained by the Township of Warren in December of 1982. Because of the decision of the New Jersey Supreme Court in Mount Laurel II, supra, the plaintiff requires the guidance and the direction of this Court in determining a proper course of action to be taken in the further development of its plans for the construction of housing on lands which it has contracted to purchase. It is the contention of the plaintiff that the Township of Warren has an obligation to assist in meeting the demands of the Supreme Court for providing both low-income and least-cost housing in the Township of Warren. The plaintiff contends that the Township of Warren can discharge this responsibility in part by providing infrastructure in and around the lands of the plaintiff which would permit the plaintiff to meet any Mount Laurel II obligation which might be imposed upon it by this Court. Specifically, the plaintiff contends that the Sewerage Authority has an obligation



under Mount Laurel II to provide sewage capacity without sewage tie-in fees. By requiring the Sewerage Authority to allocate gallonage to this plaintiff without tie-in fees, this plaintiff would then be in a position to provide like subsidies for the construction of low-income and least-cost housing. The plaintiff will demonstrate at trial that the Sewerage Authority does have adequate capacity for this purpose which it is holding in reserve for non-residential uses which are not presently demanding said capacity. The plaintiff further contends that the limitations placed upon the rezoning which was adopted in December of 1982 with respect to the plaintiff's lands are likewise illegal. The ordinance as adopted and as now held in abeyance would rezone only a portion of the plaintiff's lands. This plaintiff contends that the limitations in terms of the boundary of the zone were arbitrary and unreasonable and that the zone should be expanded to include all of the plaintiff's contiguous lands.