

AMG

11-17-83

Blenner's report on behalf of  
Facey & Bojczuk

pgs. 10

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November 17, 1983

Honorable Eugene D. Serpentelli  
Ocean County Court House  
CN 2191  
Toms River, New Jersey 08753**Re: AMG Realty Company, et als vs. Warren Township  
Docket No. L-23277-80 PW & L-67820-80 PW**

Dear Judge Serpentelli:

On behalf of the Intervenors, Joan H. Facey, et als. and the  
Intervenors, Bojczuk, we enclose the following:

1. Planner's Report dated November 15, 1983 by Elizabeth C. McKenzie, P.P..
2. Topographic boundary survey of Lots 34-40, 42 & 43, Block No. 619, prepared by Richard O. Luster & Assoc. Inc. dated November 9, 1983.

Respectfully yours,



Robert H. Kraus

RHK/dg  
encl.cc: John E. Coley, Jr., Esquire  
Joseph E. Murray, Esquire  
Raymond R. Trombadore, Esquire  
John T. Lynch, Esquire  
J. Albert Mastro, Esquire  
Miss Joan H. Facey

ELIZABETH C. MCKENZIE, P.P.  
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PLANNER'S REPORT  
for  
INTERVENORS, FACEY, et al.

AMG REALTY COMPANY, a Partnership  
organized under the laws of the State  
of New Jersey, and SKYTOP LAND CORP.,  
a New Jersey Corporation

Plaintiffs,

JOAN H. FACEY, REDVERS S. FACEY,  
JOHN W. KRAUS, and MARY HELEN TUCHEN,  
MYKOLA BOJCZUK and MAE BOJCZUK,  
his wife,

Intervenors,

vs.

THE TOWNSHIP OF WARREN, a Municipal  
Corporation of the State of New Jersey

Defendants.

Prepared November 15, 1983

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## INTRODUCTION

The purpose of this report is twofold: first, to comment on the extent to which the Township Committee of Warren Township has successfully addressed the Township's low and moderate income housing obligations pursuant to the dictates of the Mount Laurel II decision; and, second, to evaluate the reasonableness of the R-20 ECR zoning designation recently assigned to the northwest quadrant of the Route I-78 interchange with Hillcrest Road. The R-20 ECR designation is the result of the adoption of Ordinance #82-19, which implemented zoning changes recommended in the Land Use and Housing Element, 1982, a document adopted by the Planning Board as an amendment to Warren Township's 1977 Master Plan. The amended Land Use and Housing Element and Ordinance #82-19 were intended by the Township to address the directives of the Somerset County Superior Court as a result of litigation against the Township by AMG Realty.

This report was prepared at the request of Joan Facey, et al., intervenors in the current litigation. Facey, et al., are the owners of property designated on the Township Tax Map as Lots 34 through 38 and Lot 43 in Block 619. Other intervenors in the case are the owners of Lots 39, 40 and 42 in the same block. The intervenors' properties require simultaneous consideration since their development will be mutually affective, and since, from a planning perspective, they would best be developed as a single entity utilizing a common access point.

The properties in question are located at the northwest quadrant of the interchange of Route I-78 with Hillcrest Road. Prior to 1982, that area was zoned Rural Residential, permitting single family dwellings on 65,340 square foot lots. Following

Judge Meredith's decision in the AMG Realty case, the area was rezoned R-20 ECR. At the same time, an R-20(th) residential district and an R-20(tha) residential district were created in the Township and limited areas were rezoned R-10.

The R-20(th) and R-20(tha) districts permit townhouse and multi-family dwelling units on ten (10) acre minimum tracts at a density of four (4) dwelling units per acre with provisions for density bonuses for the creation of smaller dwelling units, more open space, energy efficient design and construction, and in the R-20(tha) district, senior citizens' occupancy. The R-10 district is a single-family residential zone allowing four (4) dwelling units per acre.

The R-20 ECR zone is a residential zone permitting construction of single-family dwellings on half-acre lots with provision for variable lot size subdivisions subject to the approval of the Planning Board. The variable lot size provision was included to: *R-20 ECR COVERS INTERVENORS*

- Allow for a minimum lot size of 10,000 square feet.
- Require a transition of lot size (larger lots) adjacent to I-78 and the Upper Warren Way residential areas.

(p. 14, Land Use and Housing Element)

It is the conclusion of this report that the adoption of Ordinance #82-19 is insufficient to address the mandate of the Mount Laurel II decision and is an arbitrary and unreasonable disposition of the intervenors' land.

MOUNT LAUREL II CONSIDERATIONS

The Township's 1982 Land Use and Housing Element states that *whose*

the thesis of the collective land use plan amendments is to provide for a range and variety of housing within locations that are readily developable and would require no unusual or inordinant on-site and off-site improvements.

(p. 14, Land Use and Housing Element)

In other words, the plan attempts to "fit in" the additional housing without changing the basic character of any portion of the Township as that character was perceived in the 1977 Master Plan. Moreover, the plan avoids commitments to major infrastructural improvements.

The problem with this approach is twofold. First of all, changes have occurred and will continue to occur throughout the Township which are outside of local control, notably the completion of Route I-78 and the increase in traffic and noise generated along the highway and along the collector and arterial streets which provide access to Route I-78. Second, if Warren Township is to successfully address its obligations to provide for low and moderate income housing as mandated by the Mount Laurel II decision, then it is almost certain that at least portions of the Township will have to undergo changes to accommodate the increased development.

Richard Thomas Coppola and Associates, in a report prepared for AMG Realty Company and Skytop Land Corporation, has assessed Warren Township's total obligation for low and moderate income housing as somewhere between 713 and 1427 dwelling units. *2*  
In the absence of subsidies, a need of this magnitude cannot *where*

be met by "fitting in" the units. Instead, it will be necessary to allow a sufficient number of market units to be created in the context of large projects so that developers can afford to internally subsidize the lower income units.

Certainly, counting the R-20 ECR zoned lands as part of the Township's Mount Laurel II remedy is unrealistic. There are no requirements and no incentives for units to be made available for households of lower income. Development of half-acre lots does not produce cheap housing, even with modular construction.

The Land Use and Housing Element also acknowledges

the impact of I-78 [on this area] in combination with the natural development constraints of the site.

(p. 14, Land Use and Housing Element)

The stated intent of the plan (and subsequent ordinance), to choose readily developable parcels requiring little on-site improvement as a means of meeting the Township's housing obligations, is thus contradicted.

#### REASONABLENESS OF R-20 ECR ZONING

The entire area owned by both intervenors consists of 35.39 acres, of which 24.59 acres are owned by Facey, et al. Although the sites have been designated by the Township as environmentally critical (the basis for the ECR designation), they are actually gently sloping with portions having slopes in excess twelve percent (12%). The tracts rise in a north-westerly direction from Route I-78 with elevations ranging



from 420 to 490 feet, and are highly visible from the highway. Because of their topography and location, these properties are strongly influenced by the existence of Route I-78 and its interchange with Hillcrest Road. As Route I-78 is completed through the Watchung Reservation, noise levels, due to increased truck traffic, can only be expected to increase.

High intensity flood lights have already been installed along the ramp leading from Hillcrest Road to Route I-78. These lights already affect the subject properties.

The Hillcrest Road interchange with Route I-78 is the only one of the three (3) interchanges with Route I-78 in the Township which is not zoned to permit some form of non-residential usage. The unsuitability of residential development adjacent to a major highway interchange has been acknowledged by the Township in its zoning of the King George Road and Liberty Corner Road interchanges. Both of those interchanges are zoned for ORL and HD development, allowing office and commercial uses.

Both water and sewer and sewage treatment capacity are available to the area, which would argue either for a much higher density of residential development or for non-residential development. Zoning the properties for half-acre residential development does not acknowledge either the positive or the negative characteristics of the area in terms of access, utilities, visibility, and physical characteristics.

#### SUMMARY

The R-20 ECR zoning of the intervenors' properties is therefore unreasonable in light of the Township's policies

with respect to other highway interchanges, the availability of utilities and the positive and negative influences of Route I-78. A sincere effort to meet the Township's Mount Laurel II obligations using the subject properties might have resulted in allowing for a higher density of residential development in combination with the provision of substantial buffering along Route I-78. In the alternative, non-residential zoning, consistent with the zone plan in effect elsewhere in the Township, is the only reasonable designation.

