

AMG

1-27-84

Letter re:

-w/ proposed Stipulation of Judgment

~~w/ Stipulation of Judgment~~

Ass. 11

AM0001202

## McDONOUGH, MURRAY &amp; KORN

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IN REPLY REFER TO FILE NO 5323-02

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January 27, 1984

Honorable Eugene D. Serpentelli  
 Judge, Superior Court  
 Court House  
 CN 2191  
 Toms River, New Jersey 08754

Re: AMG Realty vs. Township of Warren

Dear Judge Serpentelli:

Enclosed is a copy of the draft of the proposed Stipulation of Judgment for discussion at our Tuesday meeting.

Very truly yours,

McDONOUGH, MURRAY & KORN  
 A Professional Corporation

*Joseph E. Murray*  
 Joseph E. Murray

Enclosure  
 JEM/ema

cc.: John E. Coley, Esq.  
 J. Albert Mastro, Esq.  
 Raymond T. Trombadore, Esq.  
 Eugene Jacobs, Esq.  
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JAN 30 1984

JUDGE SERPENTELLI'S CHAMBERS

*File*

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Attorneys for Plaintiffs AMG Realty Company and  
Skytop Land Corp.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-23277-80 P.W.  
L-67820-80 P.W.

AMG REALTY COMPANY, SKYTOP LAND, :  
CORP., :

Plaintiff, :

Civil Action

JOAN H. FACEY, et als., :

Intervenors, :

-v- :

STIPULATION OF JUDGMENT

THE TOWNSHIP OF WARREN, :

Defendant, :

CONSOLIDATED WITH :

TIMBER PROPERTIES, :

Plaintiff, :

-v- :

THE TOWNSHIP OF WARREN, et als, :

Defendant. :

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This matter having been presented to the Court for trial on  
January 3, 1984 and the Court together with all parties hereto then  
consenting to and actively participating in a settlement conference  
which was undertaken over a period of several days during which the

issues through the attorneys for the respective parties, real estate and planning experts on behalf of the parties as well as planning experts independently utilized by the Court with the consent of the parties, and

The Court having further received sworn testimony, in Court, from the planning experts on behalf of the plaintiffs and defendants in this matter together with various exhibits and written reports from planning, real estate, traffic and engineering experts submitted on behalf of the parties, and

The Court having directed that such testimony together with the written reports of the planning experts as well as other exhibits be submitted to a Court appointed planning expert, for the purpose of review thereof and subsequent advisory report to this Court that the uniform conclusions of the planning experts as to the issues of "region", "fair share" and fair share allocation of present and prospective low and moderate income housing needs as defined in Mount Laurel II, So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, (1983) and as applicable to the defendant municipality, the Township of Warren, were reasonable, and

The Court having received such advisory report confirming the reasonableness of the uniform conclusion of such planning experts. and

The Township of Warren having stipulated in open Court in this matter that its zoning ordinances 82-19 and 83-20 are invalid. (These being amendatory ordinances to its general zoning ordinance 79-3 which

ordinance was also previously declared invalid as being exclusionary by prior judgment of the Superior Court of New Jersey dated May, 1982), and

The Court having considered all of the above and based thereon has reached its own independent findings and conclusions (as set forth in a separate written opinion to be filed in this matter) that the proposed terms of this Stipulation of Judgment are fair and reasonable and will satisfy and promote the intent and spirit of the Mount Laurel obligations of the Township of Warren, Somerset County, New Jersey.

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 1984 ordered and adjudged as follows:

A. Current Zoning Invalidity

1. Warren Township zoning ordinance 82-19 (adopted on December 2, 1982) is hereby declared null and void.

2. Warren Township zoning ordinance 83-20 (adopted on December 1, 1983) is hereby declared null and void.

B. Re-Zoning Obligation

1. Within 90 days from the date hereof the Township of Warren shall undertake and complete a revision of its zoning ordinances for the purpose of having such ordinance in fact comply with and satisfy its current Mount Laurel obligation. Such revised zoning ordinance shall contain therein such affirmative devices as set forth in Mount Laurel II as will most likely lead to the construction of lower income housing.

2. The Township of Warren has a present affirmative obligation to provide a realistic opportunity for the construction of 900 low and moderate income housing units. This number of low and moderate income units is Warren Township's fair share of the present and prospective low and moderate income housing needed for the region within which Warren Township is situated.

3. Such region constitutes, for present need purposes, the nine (9) counties of Bergen, Hudson, Essex, Passaic, Union, Middlesex, Hunterdon, Somerset and Morris and for prospective need purposes a forty-five (45) minute commutershed. (Such "region" being more particularly described in the written opinion of this Court).

4. The number of lower income housing units provided for in the "Builders' Relief" portion of this Judgment shall constitute a credit against the total of the 900 housing units provided in sub-section (a) above. The ordinance required to be completed pursuant to this Judgment may treat this credit in such manner as it deems reasonable and in the spirit of compliance with this Judgment.

5. Upon completion of the adoption of the revised zoning ordinance as required herein the Township of Warren, upon notice to all parties herein, shall submit the same to the Court for review and determination of compliance. If such determination is made this Court shall then issue a judgment of compliance. If the revised ordinance does not meet the constitutional requirements of Mount Laurel, or if no revised ordinance is submitted within the aforesaid 90 day period this Court reserves jurisdiction to enter such supplemental order as may be appropriate.

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C. Builders Remedy

1. Plaintiff AMG Realty Co., Skytop Land Corp. and Timber Properties, Inc. are granted a "builders remedy" as referred to in Mount Laurel II (92 N.J. 158 at 279). Such remedy is not dependent upon the rezoning required hereunder and is to be effective as of this date as follows:

(a) AMG and Skytop (Herein being one builder-party for the purposes of this Judgment) AMG shall be permitted to construct a total of 450 multiple family housing units on its lands known and designated as Lots 22 and 25 in Block 137 as set forth on the current tax map of Warren Township, Somerset County, New Jersey. None of such units need constitute low or moderate income units.

(b) Skytop Land Corp. shall be permitted to construct a total of 1400 multiple family housing units on its lands known and designated as Lot 10 Block 125 as set forth on the current tax map of Warren Township. Twenty (20%) percent of all of the AMG and Skytop units (being 1850) or 370 units shall consist of appropriately sized low and moderate income housing units with fifty (50%) percent of the same being affordable by low income persons and fifty (50%) percent thereof being affordable by moderate income persons. All of said low and moderate income units shall be constructed in the Skytop property.

(c) Timber Properties, Inc. shall be permitted to construct a total of 578 multiple family housing units on lands known and designated as Lots\_ Block \_\_\_ as set forth on the current tax map of Warren Township.

affordability  
referred  
page

Twenty (20%) percent of these units (115 units) shall consist of appropriately sized low and moderate income housing units with fifty (50%) percent of the same being affordable by low income persons and fifty (50%) percent thereof being affordable by moderate income persons.

(d) For the purposes of the Builders Remedy granted hereunder key terms are defined as follows:

1. "Low Income" is defined as 50% of the median income of the area which includes Warren Township using the median income data for household size prepared by the United States Department of Housing and Urban Development ("HUD").

2. "Moderate Income" is defined as between 50% to 80% of the median income of the area which includes Warren Township using the median income data for household size prepared by HUD.

3. "Affordable Income" means that at the ceiling income for each income group, for each household size, no household will be required to pay in excess of 30% of gross household income for the total of principal, interest, property taxes, and homeowner's association(s) assessments for each unit, calculated on the basis of a twenty (20%) percent down payment.

4. "Appropriately sized units" are described as follows:

<u>Household Size</u>	
1 Bedroom	2 persons
2 Bedroom <sup>(or 1 B.R. + Loft)</sup> & Loft	3-4 persons
2 Bedroom	3-4 persons
3 Bedroom	5 persons

*What was this  
this may need  
completion  
significant*

*26-  
NO-  
10-*

*38 FT.  
SPELL OUT  
INCOMES +  
UNIT PRICES  
+ AMOUNT FOR  
TUSHING*



(e) Staging of Construction

Lower income housing shall be phased in accordance with the following schedule:

<u>Percentage of Total Dwelling Units</u>	<u>Minimum Percentage of Lower Income Dwelling Units</u>
25	0
50	25
75	50
100	100

The above percentages shall refer to the percentage of total dwelling units having final site plan or subdivision approval and the percentage of lower income dwelling units completed and certificates of occupancy issued. In addition, not more than 1/3 of the market units (other than low and moderate income units) shall receive certificates of occupancy in any consecutive 12-month period.

(a) Each builder-party shall submit its development plans to the Planning Board and Sewer Authority of the Township of Warren. The Planning Board shall not impose any cost generating obligations and shall provide such guidance and regulation of the development as may be reasonably necessary to carry out the objective of this ~~document~~ <sup>ORDER</sup>, i.e., that the lower income housing be actually built. The Sewer Authority (subject to sub-section g below) shall not impose any cost generating obligations and shall provide sewers and sewer capacity for the construction of all housing units herein.

(b) Sewer facilities, capacity and tie-in fees for each site shall be paid for by each builder-party as to its respective site. Sewer tie-in fees as to the lower income units shall be paid on the basis of cost of gallonage actually allocated and used.

(H) The Township of Warren, any agency thereof or the Sewer Authority of Warren Township shall not impose, as to the lower income housing units, any fees or charges for the processing or approval of any development plans, building permits, inspections, engineer reviews or Other charges normally assessed in the processing of plans before a local agency or for construction and occupancy of any structure within the municipality. All of such fees or charges as to the non-lower income units may be charged only in an amount equal to the actual costs incurred by the Township or the agency assessing the same.

All subsequently imposed real estate taxes on low income or moderate income units shall be based upon the values thereof as restricted by the terms of this Judgment.

(I) Nothing herein shall permit the Township or any agency or body therein to require a concurrent processing of development plans or concurrent construction by AMG and Skytop with Timber Properties.

(K) The defendant, Township of Warren shall, in conjunction with AMG, Skytop and Timber Properties:

(1) Establish a mechanism to regulate the purchase or rental process and sales or rental price upon re-sale or re-rental so that, to the extent possible, the units continue for a fixed time period, to remain affordable to, and occupied by lower income persons.

(2) Establish a procedure for creating a non-profit corporation which will oversee the screening and selection process for lower income purchasers and the above controls and to resolve other questions concerning the administration of the lower income units.

and  
subject  
to  
approval

(3) Establish a recapture mechanism to provide a partial repayment of the differential between the purchase price of the units and the subsequent sales price of the units, of a resale thereof at any time.

(K) The builders remedy awarded to Timber Properties, Inc. shall inure to the benefit of Timber Properties, Inc., its successors and assigns and shall not run with the land. In the event Timber Properties loses its contract rights to the property, its remedy shall terminate.

D. Appointment of a Master

1. The Court hereby appoints \_\_\_\_\_ as a special master both to assist the Township of Warren in carrying out its obligation as herein set forth and to assist the Court in the performance of its continuing obligations in carrying out the provisions of this Judgment.

2. The special master herein appointed shall participate in the rezoning process to be undertaken by the Township of Warren in such manner and at such time or times as reasonably requested by the Township or as may be hereinafter specifically directed by this Court.

3. The special master shall also participate in the furtherance of the builders' remedy herein provided in such manner and at such time or times as may be reasonably requested by an party to this action exclusive of those parties mentioned in section E hereof.

4. The Township of Warren shall pay all compensation due to the master which compensation shall be fixed by this Court prior to the

commencement of any service to be performed by the master and shall be paid upon the entry of judgment of compliance or as otherwise directed by this Court.

E. Non-Builder Intervenor

The claims of the Plaintiff Intervenor, \_\_\_\_\_,

\_\_\_\_\_ and \_\_\_\_\_ challenging the zoning of their respective properties as being unreasonable are specifically not ruled upon by this Court. *Pending the* Such claims are hereby remanded to the Superior Court of Somerville, New Jersey for placement on the trial calendar and final disposition.

F. Reserved Jurisdiction

The Court reserves jurisdiction over all matters except that as set forth in section E above.

\_\_\_\_\_  
Judge Serpentelli  
*2/2/82 D.*

The undersigned hereby consent to the entry of the above Stipulation of Judgment both as to form and substance.

Party

\_\_\_\_\_

By

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