

AMG

5-3-84

CL re:

- w/ proposed order to show cause
- w/ Affidavit of Matt
- w/ Affidavit of Schindler
- w/ memo of Law

PS 35  
-----  
Pi # 3344

AM00013600

5-21

9:30

## McDONOUGH, MURRAY &amp; KORN

A PROFESSIONAL CORPORATION

COUNSELORS AT LAW

555 WESTFIELD AVENUE

POST OFFICE BOX 0

WESTFIELD, NEW JERSEY 07091

(201) 233-9040

IN REPLY REFER TO FILE NO

5323-02

ROBERT P. McDONOUGH  
 JOSEPH E. MURRAY  
 PETER L. KORN  
 JAY SCOTT MacNEILL  
 STEPHEN J. TAFARO  
 ROBERT J. LOGAN  
 R. SCOTT EICHHORN  
 SUSAN Mc CARTHY MORYAN  
 JAMES R. KORN  
 STEPHANIE JORDAN BRIODY

May 3, 1984

RECEIVED

MAY 6 1984

JUDGE SERPENTELLI'S CHAMBERS

Honorable Eugene D. Serpentelli  
 Judge, Superior Court of New Jersey  
 Ocean County Court House  
 Toms River, New Jersey 08753

Re: AMG Realty Company vs. Warren Township

Dear Judge Serpentelli:

On behalf of AMG Realty Company and Skytop Land Corp. we  
 enclose the following:

1. Original of proposed Order to Show Cause seeking restraints against the Warren Township Sewerage Authority;
2. Original of Affidavit of Richard B. Neff;
3. Original of Affidavit of Richard H. Schindelar;
4. Memorandum of Law.

A copy of each of the above is being served upon J. Albert Mastro, Esquire, as the Sewerage Authority Attorney as well as all other Counsel in this case.

Would you kindly review the same and advise when it would be appropriate to appear to argue for the requested relief.

Respectfully yours,

McDONOUGH, MURRAY & KORN  
 A Professional Corporation

*Joseph E. Murray*  
 Joseph E. Murray

JEM:bp  
 Enclosures

cc: J. Albert Mastro, Esquire  
 John E. Coley, Esquire  
 Eugene W. Jacobs, Esquire  
 Raymond R. Trombadore, Esquire  
 Robert H. Kraus, Esquire  
 John T. Lynch, Esquire

*set return  
 check*

McDONOUGH, MURRAY & KORN  
A Professional Corporation  
555 Westfield Avenue  
P. O. Box "O"  
Westfield, New Jersey 07091  
(201) 233-9040

Attorney for Plaintiffs AMG Realty Company and Skytop Land Corp.

FILED 5-8-84  
E. D. SERPENTELLI, J.S.C.

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

AMG REALTY COMPANY and :  
SKYTOP LAND CORP., :

Plaintiff :

JOAN H. FACEY, et als., :

Intervenors, :

vs. :

THE TOWNSHIP OF WARREN, :

Defendant, :

CONSOLIDATED WITH :

TIMBER PROPERTIES, :

Plaintiff, :

vs. :

THE TOWNSHIP OF WARREN, :

et als., :

Defendant. :

Civil Action

ORDER TO SHOW CAUSE  
AND TEMPORARY RESTRAINTS

This matter being opened to the Court by McDonough, Murray &  
Korn, P. A., Joseph E. Murray, Esquire, appearing on behalf of the  
Plaintiffs, AMG Realty Company and Skytop Land Corp., and it  
appearing to the Court from the certifications of Richard B. Neff and  
Richard Schindelar that substantial and irreparable injury would

probably result to the said Plaintiffs and their rights in this matter may be substantially interfered with unless the Court grants the relief set forth herein;

It is on this 8 day of May, 1984, ORDERED that the Defendant, Warren Township Sewerage Authority, show cause before the Superior Court, Law Division at the Ocean County Court House, Toms River, New Jersey on the 21 day of May, 1984, at 9:30 o'clock in the forenoon or as soon thereafter as counsel may be heard as to the following:

1. Why the Warren Township Sewerage Authority should not be ordered to permit AMG Realty Company and Skytop Land Corp., either or both of them, to enter into subscription contracts with the aforesaid Authority to participate in the Authority's proposed expansion of its Stage IV sewerage treatment facility for sewer connections.
2. Why the Warren Township Sewerage Authority should not be enjoined from further proceedings to expand the Stage IV treatment facilities until such time as this Court renders a decision as to the rights of AMG Realty Company and Skytop Land Corp., either or both of them, to participate in the Stage IV sewerage treatment facility expansion.
3. Why the Township of Warren Sewerage Authority should not be ordered to permit AMG Realty Company and Skytop Land Corp., either or both of them, to enter into subscription contracts to utilize the proposed Stage IV treatment facility expansion for sewer connections for

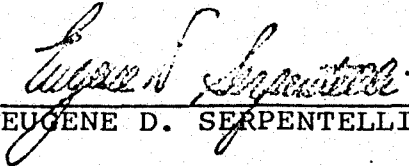
land use at a density greater than that currently permitted pursuant to the zoning regulations of the Township of Warren.

4. Why the Warren Township Sewerage Authority should not be enjoined from further proceedings to expand the Stage IV sewerage treatment facilities until such time as this Court decides all issues in the Mt. Laurel litigation pending before this Court upon reserved decision in this matter.

And, it appearing that due notice of this application has been given to the Defendant, Warren Township Sewerage Authority, by oral notice thereof to its attorney, Albert J. Mastro, Esquire,

It is also this date above written ORDERED that the Warren Township Sewerage Authority, its agent, servants and employees be and they are hereby commanded and enjoined to desist and refrain from undertaking any steps in furtherance of the expansion of its Stage IV sewerage treatment facilities until the further order of this Court.

And it is further ORDERED that a copy of this order and of the complaint upon which it is based, certified to be true copies by the attorney for the plaintiff, be served upon the said persons in interest, by mailing copies of the same to them at their last known address, certified mail, return receipt requested, at least 7 days before the return day hereof.

  
EUGENE D. SERPENTELLI, J.S.C.

FILED 5-8-84  
E. D. SERPENTELLI, JAC.

McDONOUGH, MURRAY & KORN  
A Professional Corporation  
555 Westfield Avenue  
P. O. Box "O"  
Westfield, New Jersey 07091  
(201) 233-9040  
Attorney 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 and :  
SKYTOP LAND CORP., :  
 :  
Plaintiff : Civil Action  
 :  
JOAN H. FACEY, et als., : AFFIDAVIT OF RICHARD B. NEFF  
 :  
Intervenors, :  
 :  
vs. :  
 :  
THE TOWNSHIP OF WARREN, :  
 :  
Defendant, :  
 :  
CONSOLIDATED WITH :  
 :  
TIMBER PROPERTIES, :  
 :  
Plaintiff, :  
 :  
vs. :  
 :  
THE TOWNSHIP OF WARREN, :  
et als., :  
 :  
Defendant. :

STATE OF NEW JERSEY :  
 : ss.  
COUNTY OF SOMERSET :

Richard B. Neff, of full age, being duly sworn, upon his oath,  
deposes and says:

1. I am a principal of AMG Realty Company and Skytop Land  
Corp., each of which are plaintiffs in the above captioned matter.

2. Both of the business entities, AMG and Skytop, as indicated in detailed proofs previously submitted to this Court, presently desire, as a single building project, to construct a substantial number of low- and moderate-income housing units on the lands respectively owned by each party. Since the presentation of such evidence there has been no change in the intention or the financial ability of such plaintiffs to undertake and complete its proposed construction.

3. It is necessary, for the purpose of undertaking and completing such construction, that all lands owned by AMG and Skytop, as detailed in evidence before this Court, receive sewer facilities and adequate use capacity for the residential units proposed.

4. Richard Schindelar, an engineer and expert in sanitary sewer design, use and construction, was retained by me as an expert in this case and for the purpose of advising me as to the methods of obtaining adequate sewerage for the development of the project. It is my understanding, based upon such advice, that the lands of Skytop Land Corp. (Lot 10 in Block 125 on the Warren Township Tax Map) can be sewerred through public sewerage facilities located within three so-called sewer service areas within the jurisdiction of the Warren Township Sewerage Authority as follows:

(a) Part within the Stage V treatment facility at the intersection of Liberty Corner/Martinsville Road and Route 78 interchange;

(b) Part within the Stage IV treatment facility at the intersection of Mt. Bethel, Warrenville, King George Roads and Route 78 interchange; and

(c) Part within the Middlebrook sewer facilities with its treatment plant in Bridgewater, New Jersey.

5. The specific details as to how the Skytop lands were accessible to each of these plants were given through testimony of Richard Schindelar during the trial of this matter.

6. During the course of the testimony of the sewer expert for the Township of Warren (Mr. Stanley Kaltnecher) it was admitted by him that a substantial portion of the Skytop property could be sewered by gravity to the Stage IV treatment plant. For two reasons, however, it was indicated by Mr. Kaltnecher that the Stage IV plant could not be used by Skytop. First, the Skytop lands were not geographically within the Stage IV service area as defined by the Authority. Secondly, the 208 and 201 studies utilized by the Township in the planning and development of its sewer plants prohibited connections at a density of land use greater than the current zoning which is one living unit for each one and one-half acres of the Skytop lands.

7. The whole of the Skytop lands were previously located in the Stage IV service area when the Stage IV plant was initially constructed and these lands were not placed into the Stage V service area until the Stage V plant was later built. The Stage V plant, as well as all sewer treatment plants serving Warren Township lands, are claimed by the Sewerage Authority to be limited as to use by the so-called 208 and 201 studies.

8. During the course of Mr. Kaltnecher's testimony he also stated that the Warren Township Sewerage Authority was presently in the process of expanding the Stage IV treatment plant and that the extent of the expansion would depend upon the number of land owners who subscribed to the expansion program. Attached hereto is a copy



of a letter from the Sewer Authority to a landowner within the Stage IV service area which is typical of the subscription request sent by the Authority to such landowners. (Exhibit A)

9. Skytop Land Corp. did not receive such a letter but notwithstanding the fact that its lands are not currently within the Stage IV service area I personally submitted a letter to the Authority requesting participation in the Stage IV expansion. (Copy of letter dated April 20, 1984, attached hereto as Exhibit B)

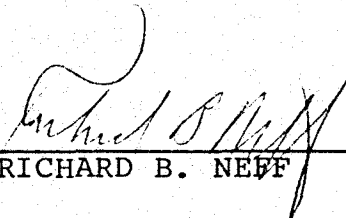
10. By letter dated April 25, 1984, (Copy attached as Exhibit C) I was advised by the Warren Township Sewerage Authority that it would not permit Skytop Land Corp. to participate in the Stage IV expansion because such participation, to the extent requested was in violation of the limits set by current zoning and the so-called 208 and 201 studies.

11. The Warren Township Sewerage Authority has received subscription commitments to expand the Stage IV facility to an additional 350,000 gallons of capacity per day and that subscription commitment is exclusive of the additional capacity requested by Skytop. (Attached hereto is a copy of the present form of subscription contract as Exhibit D.)

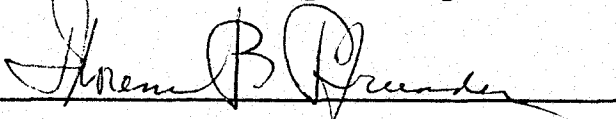
12. As of this date the Warren Township Sewerage Authority is scheduling a meeting for on or about May 15, 1984, for the purpose of authorizing its engineer, Mr. Kaltnecher, to prepare such construction plans as are necessary for the proposed 350,000 gallon per day expansion fo the Stage IV plant. Upon preparation of these plans the Authority will be submitting the proposed expansion for competitive bidding and subsequent construction of the expansion.

13. It is essential to the overall development proposal of AMG and Skytop that all available methods of sewerage for their respective sites be kept viable. If the Stage IV expansion process is presently continued without consideration of its potential obligation to provide sewerage to the Skytop site as desired, it is not known when a further expansion can or will be available on a cost-sharing basis. It is not the desire nor should it be the obligation of Skytop and AMG to seek a second expansion at some unknown future date with cost factors duplicating many of which are about to be experienced by the Authority and its current subscribers. Cost generating features abound if the whole process is to be duplicated rather than consolidated.

14. In the event that the Warren Township Sewerage Authority is not lawfully entitled to exclude Skytop from participation in the Stage IV expansion as requested its activities in continuance of the present expansion plans will be a waste of taxpayer money as well as a blatant affront to its obligations to carry out its duty to provide reasonable means of furthering the public health of this State.

  
\_\_\_\_\_  
RICHARD B. NEFF

Sworn to and subscribed before  
me this 3 day of May, 1984.

  
\_\_\_\_\_

\_\_\_\_\_  
RICHARD B. NEFF  
\_\_\_\_\_  
COMMISSION EXPIRES MAY 10, 1984

*Township of Warren*

SEWERAGE AUTHORITY

46 Mountain Boulevard  
Warren, New Jersey 07060

February 24, 1984

(201) 753-8000

Mr. Eric Haskin  
c/o John Coley, Esq.  
15 Mountain Blvd.  
Warren, N. J. 07060

Dear Property Owner:

*Step IV*

The Township of Warren Sewerage Authority is considering providing a sewage treatment facility to service the northern portion of Warren Township. The expansion will be financed by those parties in proportion to their requested capacity. The Authority is not planning to construct any trunk or collector lines to the sewage treatment facility.

Enclosed you will find a copy of the contract which would enable you to become a participant in the expansion for your review. The deadline for receipt of the signed contract with the required deposit is due on or before March 15, 1984.

Very truly yours,



Ronald H. Willens,  
Authority Chairman

RHW:es  
enclosure

EXHIBIT A

SKYTOP LAND CORP.

TWO EXECUTIVE DRIVE (4th FLOOR)  
SOMERSET, N.J. 08873

TEL: 201-356-6100

April 20, 1984

Mr. Ronald H. Willens, Chairman  
Township of Warren Sewerage Authority  
46 Mountain Boulevard  
Warren, New Jersey 07060

RE: Block 125 - Lot 10

Dear Mr. Willens:

It has come to our attention that your Authority is currently accepting subscriptions for capacity in the Stage IV sewerage plant expansion. We are aware that our lands are currently included in the Stage V district; however, these lands were included in the Stage IV district prior to the Stage V district being created and pipeline leading to the Stage IV plant currently abuts our property. Therefore, we are herewith requesting to be included in the subscription to the extent of 250,000 gallons per day capacity.

I would appreciate a response at your earliest convenience.

Very truly yours,

SKYTOP LAND CORP.

Richard B. Neff  
Exec. Vice President

RBN:vg

cc: Joseph E. Murray, Esq.

EXHIBIT B

J. ALBERT MASTRO

ATTORNEY AT LAW  
7 MORRISTOWN ROAD  
BERNARDSVILLE, N. J. 07924  
(201) 766-2720

April 25, 1984

Mr. Richard B. Neff  
Skytop Land Corporation  
Two Executive Drive  
Somerset, New Jersey 08873

Re: Block 125 - Lot 10

Dear Mr. Neff:

I have been requested by the Township of Warren Sewerage Authority to respond to your letter of April 20. As you know, the 208 and 201 regional waste water studies placed a maximum limitation upon sewer capacity resulting from population projections developed through those studies. Your request for 250,000 gallons per day capacity to service one parcel would deprive other land owners of their respective rights to develop in accordance with sound planning principles.

I am sure you recall the testimony presented by defendants indicating that population projections developed through the above studies and disaggregated to Warren Township compared favorably with existing zoning patterns. A significant departure at this time would generate obvious sewer planning problems.

I trust that the above will express the position of the Authority in regard to your request.

Very truly yours,

  
J. Albert Mastro

JAM/jc

EXHIBIT C

RESERVE CAPACITY AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 1984,

BETWEEN

THE TOWNSHIP OF WARREN SEWERAGE AUTHORITY,  
a statutory body of the State of New Jersey,  
hereinafter referred to as "Authority,"

AND

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
hereinafter referred to as "Applicant."

WHEREAS, pursuant to the authority of N.J.S.A. 40:14A-1, et. seq., the Authority is the agent established by ordinance of the Township Committee of the Township of Warren having full charge of all matters pertaining to sewerage facilities and sewage disposal in the Township of Warren; and

WHEREAS, the Authority currently operates a sewage treatment plant upon premises known as Lot 28A, Block 202 on the Tax Map of the Township of Warren and commonly referred to as Stage IV sewage treatment plant; and

WHEREAS, said Stage IV sewage treatment plant is approaching or at capacity and not capable of accomodating additional amounts

of sewage effluent from property developments in the area thereof; and

WHEREAS, applicant is the owner (contract purchaser) of premises known as Lot \_\_\_\_\_, Block \_\_\_\_\_, on the Tax Map of the Township of Warren and which premises are capable of discharging sewage effluent into the Stage IV sewage treatment plant; and

WHEREAS, the Authority is agreeable to expanding the Stage IV treatment plant to allow for a maximum additional capacity of \_\_\_\_\_ gallons per day provided sufficient users are available and agree to share in a proportionate amount of expansion costs thereof, which sewer expansion shall be in accordance with plans and specifications to be prepared by Elson T. Killam Associates, Inc., entitled "State IV Service Area Wastewater Treatment Facilities"; and

WHEREAS, the undersigned Applicant desires to participate in the expansion of said Stage IV of the municipal sanitary sewage treatment plant, subject to limitations as may be imposed by the Department of Environment Protection of the State of New Jersey (hereinafter "DEP"); and

WHEREAS, said Applicant desires to reserve capacity to the maximum extent of \_\_\_\_\_ gallons per day in the project expansion of the Stage IV sewage treatment plant and agrees to pay a proportionate amount of the expansion costs thereof as more particularly outlined herein.

NOW, THEREFORE, this Agreement

WITNESSETH:

For and in consideration of the premises hereinabove contained and the terms, covenants and conditions hereinafter contained, then in consideration of the sum of One Dollar (\$1.00) each to the other in hand paid, the parties hereto agree as follows:

1. It is understood and agreed that the within Agreement is subject to and contingent upon similar agreements being entered into between the Authority and a sufficient number of Applicants to the extent that the total number of Applicants entering into said Agreements shall bear the full and complete cost of expanding the Stage IV sewage treatment plant as more particularly hereinafter outlined together with engineering, legal, financial and all other costs incidental thereto (hereinafter designated as total project cost).

2. It is understood and agreed that the Authority will reserve a maximum capacity of \_\_\_\_\_ gallons per day for the benefit of the Applicant in the plant expansion contemplated herein in consideration of the Applicant's paying a proportionate cost for same as follows:

a. Upon execution of the within Agreement, the Applicant shall pay a nonrefundable sum equivalent to \$1.00 per gallon of reserved capacity per day, which sum shall be applied toward the total project proportionate cost to be borne by Applicant.

b. Applicant shall pay \_\_\_\_\_ percent of



the total project cost (the proportion its allotted reserve capacity bears to \_\_\_\_\_ gallons per day). "Total project cost" as used herein shall mean the ultimate total cost of completing the Stage IV municipal sanitary sewer treatment plant expansion as provided herein by the Authority, including engineering, legal, financial and all other costs incidental thereto. "Estimated total project cost" as used herein shall mean the Authority engineer's pre-bidding estimate.

c. Applicant will make payment of its proportionate share of the "Estimated total project cost" to the Authority within 45 days after written notice by the Authority, which time shall be considered as the essence of this Agreement. The estimated total amount of the project shall be based upon the Authority engineer's pre-bidding estimate. The Authority shall give the 45 day notice that funds are due when the DEP has given approval for construction. If payment is not received at the office of the Warren Township Sewerage Authority on or before the 45 day notice of funds due, the Applicant shall be deemed to have withdrawn from the within Agreement, and the rights of the Applicant hereunder shall be deemed to be terminated thereafter.

d. If bids received in response to the advertisement therefor exceed the Authority engineer's pre-bidding estimate by 25%, either the Authority or the Applicant may within a period of 20 days from the receipt of said bids elect upon written notice to the other party, to terminate the within Agreement or terminate the project contemplated

hereunder without any further rights or obligations accruing to either party. If bids received in response to the advertisement therefor shall exceed the Engineer's pre-bidding estimate by a sum less than 25 percent of the project cost, or in the event the Authority elects to proceed with the within project together with Applicants who have not elected to terminate the within Agreement, the Engineer shall then re-estimate the total project cost in order to determine a post-bidding final estimate and thereupon the Applicant agrees to contribute a pro rata amount in the same proportion as indicated in paragraph 2(b) above, said payment to be made within 15 days of notice thereof. Failure to make additional payment within the time limitation as aforesaid to the Authority will release the Authority from reserving the allocated capacity to the Applicant. Refundable moneys will be returned without interest, if and when the assigned capacity is allotted to another party, upon election to terminate by the Applicant as provided herein or upon cancellation of the project by the Authority.

e. In the event the total project cost is less than the amount appropriated, refund will be made to the Applicant, without interest, in proportion to the contribution made.

3. Upon receipt of payment of the estimated proportionate share as specified in paragraph 2(c) from all Applicants participating in the project, the Authority will advertise for bids for construction of the project.

4. In the event the Authority shall incur expenses toward

construction of the project improvement contemplated herein and shall because of default of any other Applicants in making payment or for any other reason beyond its control be unable to proceed with construction of the Stage IV sewage treatment plant expansion contemplated herein, the improvement project may thereupon be terminated by the Authority and the proportionate amount contributed by the Applicant shall be returned, without interest, less a pro rata amount of the total expenses incurred by the Authority in the same proportion as the amount contributed by the Applicant.

5. Upon completion of the Stage IV sewage treatment plant expansion contemplated herein, the Authority shall cause an audit to be prepared in order to determine the actual total project cost and shall supply Applicant with a copy thereof. Additional pro rata contributions or refunds shall be made promptly in proportion to the original contribution made by Applicant. In the event that payment of additional contributions is required, payment must be made by the Applicant within 15 days of notice thereof (Saturdays, Sundays and holidays included); otherwise, he shall be in default, and the Authority may assign his total capacity allotment to another user.

6. Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that use of capacity allocated herein is subject to prior approval by the DEP and in the event the DEP should approve less than \_\_\_\_\_ gallons per day usable capacity, the Applicant agrees

to share in the Stage IV municipal sanitary sewer treatment plant capacity by accepting its percentage of reduced capacity to the extent provided above. It is understood and agreed that in the event the DEP should approve use of the expanded sewage treatment plant capacity up to \_\_\_\_\_ gallons per day or greater, within the time period provided in Paragraph 9, the Applicant shall be entitled to a maximum of its percentage as reflected above times \_\_\_\_\_ gallons per day without any additional cost or expense. It is further understood and agreed that Applicant's rights to sewer capacity hereunder shall not exceed its maximum allotted reserve capacity (its percentage times \_\_\_\_\_ gallons per day), notwithstanding the total expanded capacity that may result from the treatment plant expansion contemplated herein.

7. The improvement contemplated herein shall be in accordance with plans and specifications prepared by Elson T. Killman Associates, Inc. entitled "Stage IV Service Area Wastewater Treatment Facilities", including technical design, which plans and specifications and all documents related thereto are hereby made a part of this Agreement and incorporated herein by reference.

8. It is understood and agreed that the Applicant will utilize the full sewage capacity reserved herein within a period of ten years from completion of the project improvement contemplated herein; all unused capacity thereafter shall revert to the Authority without any cost or obligation therefor.

*Proposed  
11/2/81  
11/2/81  
11/2/81  
11/2/81*

9. Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that the maximum liability of the Authority for any and all claims and demands of any and every nature whatsoever shall be limited to a return of the Applicant's contribution hereunder, with interest.

10. This Agreement shall be binding upon the parties hereto, their Executors, Administrators, Successors and Assigns; however, assignment of Applicant's rights hereunder shall be subject to the following:

a. Assignment of rights accruing hereunder to the Applicant for premises other than those identified herein shall be subject to written approval of the Authority.

b. Assignment related to premises other than those identified herein shall be made only to a party or parties designated and approved by the Authority. In the event the parties so designated are unwilling to accept said assignment, Applicant may assign to parties other than those designated by the Authority subject to approval by the Authority.

c. Consideration for the assignment shall be equivalent to and in no event to exceed the actual amount contributed or owed by Applicant to the Authority with interest as calculated pursuant to paragraph 12.

11. Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that the Applicant shall be obligated to pay the Authority all tap-in fees and other fees and charges applicable at the time of actual connection to the sanitary sewer system in accordance with

the duly adopted Township of Warren Sewerage Authority Schedule of Charges in effect at that time subject to credits as indicated therein. No credits shall be allowed for contributions made under the within Agreement except against the capacity rate charge of the Authority. Contributions toward the project shall be credited only towards, and not to exceed, the capacity rate charge of the Authority in effect at the time of connection by the Applicant to the Warren Township Sanitary Sewerage System according to the following Schedule. From the date of notification as to when partial or total capacity is available by the Authority:

<u>More Than but Less Than</u>		<u>Credit</u>
0 years	3 years	100%
3 "	4 "	86%
4 "	5 "	71%
5 "	6 "	57%
6 "	7 "	43%
7 "	8 "	29%
8 "	9 "	14%
9 "	10 "	0%

12. The Authority will deposit the Applicant's funds into interest bearing accounts to be held by it and to be applied toward construction expenses in accordance with the following procedure:

a. On the first day of each month, each Applicant will be credited his proportionate share of interest earned for the previous

month on funds on deposit with the Authority.

b. Each Applicant's interest account will be proportionately charged an administrative fee of two percent (2%) of the Project cost representing direct and indirect costs of construction incurred by the Authority.

c. Additional charges against the Applicant's interest account will be made by the Authority for improvements that it undertakes to the sewage system to enable the Applicant to utilize additional capacity in the plant.

d. Charge made by the Authority against the interest earned for administrative fees and improvements will be calculated and charged only against accrued interest. Excess costs will not be charged to the Applicant.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals, or caused these presents to be signed by their proper corporate officers and caused their proper corporate seals to be hereto affixed, the day and year first above mentioned.

THE TOWNSHIP OF WARREN  
SEWERAGE AUTHORITY

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

Witness (Attest)

\_\_\_\_\_

\_\_\_\_\_

McDONOUGH, MURRAY & KORN  
 A Professional Corporation  
 555 Westfield Avenue  
 P. O. Box "O"  
 Westfield, New Jersey 07091  
 (201) 233-9040

Attorney for Plaintiffs AMG Realty Company and Skytop Land Corp.

FILED 5-8-84  
 R. B. SERPENTELLI, J.S.C.

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

AMG REALTY COMPANY and  
 SKYTOP LAND CORP., :

Plaintiff :

Civil Action

JOAN H. FACEY, et als., :

Intervenors, :

AFFIDAVIT OF  
 RICHARD H. SCHINDELAR

vs. :

THE TOWNSHIP OF WARREN, :

Defendant, :

CONSOLIDATED WITH :

TIMBER PROPERTIES, :

Plaintiff, :

vs. :

THE TOWNSHIP OF WARREN, :

et als., :

Defendant. :

STATE OF NEW JERSEY :  
 : ss.  
 COUNTY OF SOMERSET :

Richard H. Schindelar, of full age, being duly sworn upon his  
 oath, deposes and says:

1. I am a licensed engineer of the State of New Jersey with  
 specific qualifications and experience as set forth on the Schedule A  
 attached hereto.



2. During the course of the trial of the above-captioned matter as well as prior to the trial and during the first case of AMG and Sktyop vs. Warren Township in 1982 I have become fully familiar with the Skytop property known as Lot 10 in Block 125 on the Warren Township tax map. I am also thoroughly familiar with the workings and machinations of the Warren Township Sewerage Authority.

3. As I testified during the trial of this case I was involved in the original Stage IV treatment plant in Warren Township. This plant was initially financed through subscriber funds contributed by developers and built for the prospective purpose of providing sewer capacity for a large portion of the westerly part of the Township including the Skytop site. In fact, sewer lines to this plant presently exist from two locations at the easterly line of the Skytop site to the plant. The topography of the Skytop site is such that a major <sup>portion</sup> position of this tract can be sewerred, by gravity, into the Stage IV plant. But for present capacity limits in the Stage IV plant there is no physical impediment impairing such use.

4. The Stage IV plant is being expanded and the Authority has solicited capacity commitments only from landowners within a "service area" designated by the Authority to be for Stage IV alone. The geographic boundaries of a service area, within a single municipality such as Warren Township, are purely discretionary and created by the Authority in a potentially arbitrary manner. Such areas have no real relationship to a treatment plant in all instances and specifically in the situation involving the Skytop site. Although Mr. Mastro's letter of April 25, 1984, (attached to Mr. Neff's affidavit) does not express a refusal of capacity because the Skytop site is not within

the Stage IV "service area" I point out that the absence of such a basis for refusal in his letter confirms my understanding that service areas, within municipal boundaries, have no real merit.

5. The purported real reason for excluding participation by Skytop as set forth in Mr. Mastro's letter is wholly without foundation. He has merely reiterated an excuse based upon a wrongful application of the 208 and 201 studies. These studies, as testified by myself in this case and in the prior AMG v. Warren Township case, do not and never did place "a maximum limitation upon sewer capacity resulting from population projections". It is the local agencies that have improperly applied these studies to justify limitations upon population growth. In fact, a portion of these studies, as noted by the trial court in this case, specifically states that it is not their purpose to limit growth. It is only through such a twisting of the intent and purpose of these studies that a municipality (or sewerage authority) attempts to justify denials of sewer capacity as being consistent with "sound planning principles".

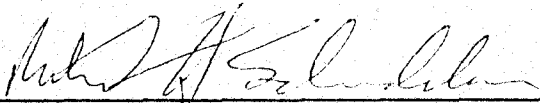
6. It is my opinion that the current practice of the Warren Township Sewerage Authority to limit capacity allocations to current zoning is not authorized, condoned or in any manner permitted by the 208 and 201 studies.

7. In the event that the Stage IV plant is expanded to encompass the 250,000 gallon capacity request of Skytop and such capacity or a part of it is not needed in the future there is not potential harm to the Authority or the people of Warren Township. There exists within the Authority a method of repurchase and reallocation of unneeded capacity. Throughout my knowledge of Warren Township there has always been a demand for sewer capacity and this

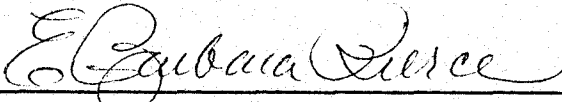
demand, at present and in the foreseeable future, far exceeds the 250,000 gallons sought by Skytop and the 350,000 presently subscribed for as to the Stage IV expansion.

8. Nor does the proposal of Skytop to avail itself of a 250,000 gallon per day capacity "deprive other land owners of their prospective rights". This concept is predicated upon an assumption that there is some basic law created by the 208 and 201 studies that requires one connection for each one and one-half acre lots. As stated previously, this is not the case. There is no prohibition, when the Authority undertakes to build or expand a plant with private funds, to even consider such a concept. Even when public funds are used such a limitation is not created as the final law or rule via the 208, 201 or any other study.

9. What is being proposed by the Authority, as set forth in Mr. Mastro's letter of April 25, 1984, is, unfortunately, the way many Sewer Authorities play their game and attempt to exercise powers which they do not have.

  
RICHARD H. SCHINDELAR

Sworn to and subscribed before me  
this 3rd day of May, 1984.

  
\_\_\_\_\_

E. BARBARA PIERCE  
Notary Public of New Jersey  
My Commission Expires Dec. 6, 1985

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

AMG REALTY COMPANY, et als., :  
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 Plaintiff, :  
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 -v- :  
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 THE TOWNSHIP OF WARREN, :  
 :  
 Defendant, :  
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 CONSOLIDATED WITH :  
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 TIMBER PROPERTIES, :  
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 Plaintiff, :  
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 -v- :  
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 THE TOWNSHIP OF WARREN, et als, :  
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 Defendant. :  
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Civil Action

FILED 5-8-84  
C. D. SERPENTELLI, J.S.C.

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR RESTRAINT

McDonough, Murray & Korn  
A Professional Corporation  
555 Westfield Avenue  
Post Office Box "O"  
Westfield, New Jersey 07091  
(201) 233-9040  
Attorneys for Plaintiffs,  
AMG Realty and Skytop Land Corp.

On the Brief:

Joseph E. Murray, Esq.

## STATEMENT OF FACTS

Plaintiffs, AMG and Skytop Land Corp. are presently before the Court as Mt. Laurel litigants seeking a "builders remedy". The Court has reserved decision at the conclusion of a lengthy and complex trial wherein the Warren Township Sewerage Authority was a defendant.

As the trial came to a conclusion it was made known to the plaintiffs that a sewerage treatment plant in Warren Township (the Stage IV plant) was in the first stages of expansion and that a large portion of the Skytop tract was capable of a gravity feed to this plant through sewer lines abutting the site.

Although the Skytop site was in the service area of the Stage V plant, which had a limited remaining capacity, the plaintiff, Skytop, submitted a letter application to the Sewerage Authority of Warren Township on April 20, 1984 for participation in the Stage IV expansion. (Exhibit B). Such expansion is being privately funded with subsequent agreements tendered only to land owners within the Stage IV service area.

In response to the participation request the plaintiff received a letter dated April 25, 1984, from the attorney for the Sewerage Authority denying the same because the request was for a gallonage capacity greater than that permitted for the currently zoned use of the Skytop lands. (Exhibit C).

The Sewerage Authority has scheduled a meeting for on or about May 15, 1984 at which time it proposes to authorize its engineer to prepare construction details for the Stage IV plant expansion to the extent needed for currently received capacity agreements. This gallonage is approximately 350,000 per day and does not include the gallonage requested by Skytop. Design standards are about to be prepared for submission promptly thereafter for public bidding and construction.

Skytop and AMG presently seek to restrain the Sewerage Authority from proceeding with the expansion of the Stage IV facility until such time as the right of Skytop to participate in that expansion is determined.

POINT I

THE WARREN TOWNSHIP SEWERAGE AUTHORITY HAS NO POWER TO RESTRICT CAPACITY ALLOCATIONS BASED UPON CURRENT ZONING.

The Warren Township Sewerage Authority exists pursuant to N.J.S.A.40:14A-1 et seq. It is a public body, authorized by state statute to exist if the governing body of a municipality authorizes its existence by ordinance. It is an "agency and instrumentality" of said municipality. N.J.S.A.40:14A-4(G) and a political subdivision of the State. N.J.S.A.40:14-7. The function of a sewer authority is "to foster and promote by all reasonable means the relief of waters...from pollution and... reduce and ultimately abate the menace to the public health resulting from such pollution." N.J.S.A.40:14A-2, N.J.S.A.40:14A-7. It is created to perform a public duty, namely to provide disposal services for sewerage and other waste. Kohler v. Cobb, 31 N.J. 369 (1960). The exercise of this duty is undertaken as an agency or instrumentality for local administration in the vital field of sanitation and health, an area of government that is a primary responsibility of the municipality itself. Camden County v. Pennsauken Sewerage Authority, 15 N.J. 456, 465 (1954).

In the carrying out of this function <sup>it</sup> has various powers as set forth in N.J.S.A.40:14A-7 including the authority to charge rates for use of sewer systems put into operation under its auspices, N.J.S.A.40:14-8, and to appropriate funds for the

construction or acquisition of such systems. N.J.S.A.40:14A-9, and 23, including the issuance of bonds. N.J.S.A.40:14A-10.

As an "agency or instrumentality" of a municipality or a "political subdivision" of the State a municipal sewerage authority cannot exercise its powers and authorities contrary to the constitutional limitations imposed upon a municipality or the State. The Authority is the alter ego of the municipality. Thus, a municipality, in the exercise of its zoning powers, cannot exhibit economic discrimination so as to deprive the poor of adequate housing and the opportunity to secure the construction of subsidized housing. So. Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel, 67 N.J. 151 at 170 (1975). In order to meet this obligation every municipality, at the very least, must put into place land use regulations and take other steps affirmatively to provide a realistic opportunity for the construction of its fair share of lower income housing. So. Burlington Cty. N.A.A.C.P. v. Twp. of Mt. Laurel, 92 N.J. 158 at 259-260 (1983).

In taking the position that sewer capacity is to be allocated in a manner to be "compared favorably with existing zoning patterns" the Warren Township Sewerage Authority must assume that the Mt. Laurel doctrine either does not exist or that it does not apply to it. It is difficult, in the light of the extensive trial of this matter that the Sewer Authority does not know of the existence of the doctrine and it must be assumed that the Authority feels that the doctrine does not apply to it. The Mt. Laurel doctrine has its genesis in Article



O      *afternoon of 11/10/84*      O      *to the Director*

I, paragraph 1 of the New Jersey Constitution and, as stated in Mt. Laurel I, at page 174:

It is elementary theory that all police power enactments, no matter at what level of government, must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws. (emphasis supplied).

Thus, the Sewerage Authority, as a municipal agency and political subdivision of the State is subject to the State Constitutional obligations of Article I, paragraph 1 and cannot utilize its powers to deny the people of this State or the people of Warren Township the benefits of its assets in a manner which does not meet substantive due process and equal protection of the laws. To deny sewer capacity on the zoning argument proposed by Mr. Katlnecher at trial and by Mr. Mastro in his letter of April 25, 1984 is the same as denying housing capacity by a municipality because of large lot zoning. It is no different and no less a blatant attempt to illegally limit housing "solely for the betterment of middle and upper income persons." Mt. Laurel I, at 170.

This across the board exclusionary practice of the sewer authority has no lawful foundation and the attempted reliance upon the 208 and 201 studies is misplaced. The studies themselves state that they do not intend or desire to limit growth and yet the use of these studies by the Authority clearly does just that. The intentional or unintentional use of these studies for that purpose is not to be tolerated.

It would also appear that the Sewerage Authority attempts to limit sewer capacity by applying present zoning standards so that it would not "deprive other land owners of their respective rights to develop in accordance with sound planning principles" (Exhibit C). Does the Sewerage Authority have, as a function or power, the right to deny sewer facilities to a landowner because of zoning and land use principles? If so, where in the enabling act is this power? It is submitted that the Authority's power and functions, as previously noted, relate solely to water pollution and the public health resulting from such pollution. Land development "in accordance with sound planning principles" is the function of other municipal, county or State bodies, not the Sewer Authority.

POINT II

PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW.

The relief presently sought, as an interim restraint, is the enjoining of the Sewer Authority from taking further steps to process the expansion of the Stage IV facility until the legal issues concerning the right of Skytop to participate in the expansion are determined. The capacity needs of Skytop cannot presently be determined until the Court renders its ruling on the main issues in the case, namely, the validity of the Warren zoning ordinances and builders remedy.

If the builders remedy relief is granted to Skytop and AMG, it is probable that access to Stage IV will be required and that these parties will voluntarily contribute to the expansion costs. The Sewerage Authority is denying access to capacity allotments beyond that which is permitted by current large lot zoning. It has not indicated that if the zoning is changed that its capacity allocation formula will change.

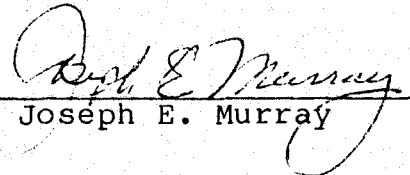
It is respectfully submitted that the odds are that the self imposed capacity limits via current zoning standards will not be upheld. If this is so the Authority may find itself far into the process of the plant expansion and be in need of double that expansion. It would then be the possible burden of Skytop to underwrite duplicative costs which can be avoided if the entire expansion is planned as a single concept. The avoidance of costs generated land development is a goal that can be partly achieved if this is done.

CONCLUSION

For the reasons herein stated, it is submitted that the Warren Township Sewerage Authority should be enjoined from further processing of the Stage IV plant expansion until the participation rights of the plaintiffs herein are determined. Alternatively, it is urged that the Authority has no present right to prevent participation and, if it is to proceed, it do so upon the assumption that Skytop will be allocated an additional 250,000 gallon capacity.

Respectfully submitted,

McDONOUGH, MURRAY & KORN

By   
Joseph E. Murray

Dated: May 3, 1984