

AMG

5-16-84

Letter memo is Support of DS  
 position to dissolve temporary restraints  
 - w/ Cert of Steitz & Exhibits  
 - w/ Cert of ~~Steitz~~ Kaltreuter

Pgs. ~~14~~ 14

pi # 3349

AM000140D

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

RECEIVED

MAY 18 1984

JUDGE SERPENTELLI'S CHAMBERS

May 16, 1984

Hon. Eugene D. Serpentelli  
Ocean County Court House  
CN-2191  
Toms River, New Jersey 08753

Re: AMG Realty Company vs Township of Warren, et. als.

Dear Judge Serpentelli:

Please accept this as a letter memorandum in support of defendant's position to dissolve temporary restraints and deny injunctive relief. First of all, the scenerio of events as detailed in the certifications of Stanley P. Kaltnecker, Jr. and Eileen Steitz reveals a long process through which defendant Warren Township Sewerage Authority (WTSA) sought and obtained approval for expansion of the Stage IV sewerage treatment plant. It is quite obvious from the proofs that the process received substantial publication and notoriety designed to come to the attention of all interested parties. In addition, both AMG and Timber Properties were participants in the recently constructed Stage V treatment plant and were familiar with the process required for such improvements. These facts strongly suggest application of the principles of laches and estoppel. The very purpose of estoppel is to accomplish equity. Thus, plaintiff Skytop should not now be permitted to assert any right for sewer capacity in Stage IV in view of its previous conduct through AMG in which 60,000 gallons per day capacity was purchased in the Stage V treatment plant. Skytop's initial request for capacity in the Stage IV proposed expansion was by letter dated April 20, 1984, literally on the eve of WTSA executing reserve capacity agreements with interested parties who had already paid initial deposits toward acquisition of capacity. WTSA, as any other governmental agency, acts in a representative capacity for the interests of those whom it serves. In this respect, the prospective participants in the porposed Stage IV expansion plant who have invested time and money in said project should not be deprived of timely completion of same because of Skytop's change in position. Highway Trailer Co. v Donna Motor Lines Inc., 46 N.J. 442 (1966). Again, laches bars Skytop's cause of action as far as any injunctive relief is concerned since the claim which it makes for use of the proposed Stage IV expansion comes much too late to be processed. Although Skytop may argue that Mount Laurel II relief was not readily available till recently, plaintiff should have

been aware of its needs shortly after the decision was rendered in January 1983. When balancing the interests of the various participants in the proposed Stage IV expansion process, one cannot ignore the obvious prejudice that would result to those parties who have been part of the expansion program for the past two years. Flammia vs Maller, 66 N.J. Super. 440 (Appl. Div. 1961).

Procedurally, plaintiff's approach is somewhat disoriented. Sound planning dictates that the issue of appropriate zoning and population density be resolved initially; thereafter sewer capacity can then be more appropriately addressed. Indeed, the establishment of sewer districts has been the subject of studies not the least of which are the 208 and 201 area wide studies utilized by higher levels of government. Applications for modification as the result of changes in zoning or construction of residential and non residential intensity should not be formulated until the needed legislation is in place.

Within the past few years, two feasibility studies have been undertaken encompassing both the Stage IV service area and the Stage V service area. Such studies evaluate the various alternative to sewerage existing or prospective service areas. This approach is the very essence of sound planning and a process required by NJDEP which has had impressive experience in water quality management. The feasibility study undertaken for the Stage V service area evaluated potential merging with the Stage IV service area with treatment provided at the present location of the Stage IV treatment plant. Results of that feasibility indicated that such an approach would not be cost effective and the Stage V service area should be established. This approach was pursued and both Skytop (through AMG) and Timber Properties currently have capacity in that plant. The capacity currently available is more than adequate to provide both Skytop and Timber Properties with sewer facilities to carry them through initial stages of construction should they be successful in the present litigation. It should also be appreciated that should both Skytop and Timber Properties prevail in said litigation, some period of time would be required to obtain the necessary governmental approvals prior to actual construction.

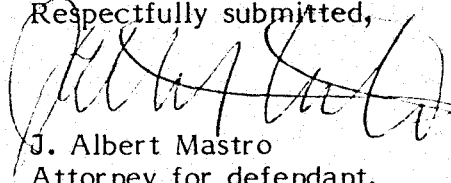
There is nothing to suggest that a judicial direction that the interests of Skytop be accommodated in the present proposed Stage IV expansion would produce any benefit to that party. The delays that would be required as well as the cost of treating sewage from the Skytop in the proposed Stage IV plant expansion more than offset any benefits that may accrue because of economy of scale. Skytop is in as good, if not better, position to pursue sewer capacity through the existing or potential expansion of the Stage V treatment plant to which it can flow by gravity with minimal construction of sewer lines.

Hon. Eugene D. Serpentelli

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Finally, it should be further emphasized that judicial participation in the remedial Mount Laurel process at best leaves much to be desired. Many authorities have raised significant objections to the judiciary participating in a process that is substantially legislative and administrative in nature. This point is much more significant when applied to providing sewer service. The judiciary would be better advised to limit its authority to a determination as to whether or not Mount Laurel II relief should be provided and if so direct the Authority to accomodate those interests. How WTSA ultimately determines to accomplish providing sewer capacity should remain as its sole decision.

Respectfully submitted,



J. Albert Mastro  
Attorney for defendant,  
Township of Warren Sewerage  
Authority

JAM/jc

enclosures

cc: All Counsel

**J. ALBERT MASTRO**  
**7 MORRISTOWN ROAD**  
**BERNARDSVILLE, N. J. 07924**  
**(201) 766-2720**

**ATTORNEY FOR** Defendant, Township of Warren Sewerage Authority

**Plaintiff** AMG REALTY COMPANY and  
SKYTOP LAND CORP.,  
**Intervenors** JOAN H. FACEY, et als.,  
**Defendant** TOWNSHIP OF WARREN,  
CONSOLIDATED WITH ~~XXXX~~  
~~XXXXXX~~  
**Plaintiff** TIMBER PROPERTIES,  
**Defendant** TOWNSHIP OF WARREN, et als.

vs.

vs.

SUPERIOR COURT  
OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

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

**CIVIL ACTION**  
(Mount Laurel II)  
CERTIFICATION OF  
EILEEN STEITZ

EILEEN STEITZ certifies as follows:

1. I am secretary to the Warren Township Sewerage Authority (WTSA) and am familiar with its proceedings and the records of said agency.
2. By Resolution No. 82-10 adopted February 16, 1982, WTSA was authorized to enter into a contract with Elson T. Killam Associates, Inc. for the preparation of a feasibility study for expansion of the Stage IV sanitary sewer plant. The consideration for said contract was the sum of \$12,000.00 contributed by one of the participants in the expansion program.
3. On February 10, 1982, a notice was published in the Echoes-Sentinel, a newspaper circulating in Warren Township, announcing that WTSA was considering

expansion of the Stage IV sewage treatment plant and that anyone interested in obtaining capacity should communicate with the Authority.

4. At a public meeting of WTSA on March 16, 1982, property owners potentially to be serviced by the proposed Stage IV plant expansion attended to explore the process required for a plant expansion as well as problems incidental thereto.

5. On October 5, 1983, WTSA communicated with the Township of Passaic forwarding a copy of the supplemental feasibility report which concluded that it was more cost effective to expand the respective interim treatment plants of both Passaic and WTSA rather than abandon those facilities and construct a regional plant. A joint resolution was forwarded endorsing that approach to be executed on behalf of Passaic Township, Warren Township and Bernards Township Sewerage Authority.

6. On October 12, 1983, a notice was forwarded to all prospective participants in the Stage IV plant expansion announcing a public meeting to be held on October 26, 1983 to discuss the project. Notice of said meeting was also published in the Courier-News, a newspaper circulating in the Warren Township area on October 26, 1983 to consider a proposed expansion of the Stage IV treatment plant at 8:00 p.m. that evening. On said date WTSA held a public meeting during which Stanley P. Kaltnecker, Jr. reviewed the supplemental feasibility study and the most viable approach toward the plant expansion.

7. On April 16, 1984, a notice of proposed amendment to the Northeast Water Quality Management Plan was published in the Star-Ledger attached hereto as exhibit A and on April 17, 1984 a notice of the proposed amendment to the Northeast Water Quality Management Plan was published in the Courier-News attached hereto as exhibit B.

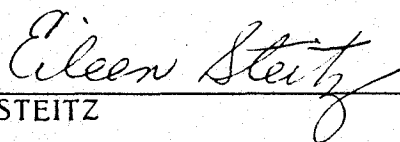
8. On April 4, 1984, WTSA was notified by NJDEP that the amendment to the Northeast Water Quality Management Plan would be considered "an interim amendment" until finally adopted by the Commissioner provided that no significant comments were received by May 16, 1984.

9. To my knowledge, the first request by Skytop Land Corp. for capacity in the Stage IV expansion was by letter dated April 20, 1984 seeking 250,000 gallons per day capacity.

10. WTSA has received executed reserve capacity agreements by land owners wishing to participate in the proposed Stage IV Plant expansion together with a total of \$342,500.00 from said participants which is on deposit with the Authority in accordance with the terms of the proposed agreements.

11. AMG has subscribed to 60,000 gallons per day of capacity in the Stage V treatment plant which capacity is currently available for use and Timber Property's contract seller has reserved 18,000 gallons per day capacity in said system currently available for use.

I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
EILEEN STEITZ

DATED: May 16, 1984

DIVISION OF WATER RESOURCES  
Amendment to the Northeast Water Quality Management Plan  
Public Notice

Warren Township Sewerage Authority (WTSA) has applied to the New Jersey Department of Environmental Protection for an amendment to the Northeast Water Quality Management (WQM) Plan. WTSA has requested permission to expand the Warren State IV sewage treatment plant (STP) from the current design capacity of 0.45 million gallons per day (MGD) with better than secondary wastewater treatment to design capacity of 0.80 MGD with treatment Level 4. (Treatment Level 4 is defined on page V-104 of the Northeast WQM Plan). Based on a report evaluating the cost of implementing Level 4 treatment, expansion of Warren Stage IV plant was found to be most cost-effective than constructing a regional facility as proposed in the Northeast WQM Plan. This regional facility would have been located at the site of the Passaic (Stirling) STP and would have served Passaic Township and that part of Warren Township that is in the Upper Passaic River drainage area.

This notice is being given to inform the public that NJDEP has prepared an amendment to the northeast WQM Plan. This plan was adopted pursuant to the "Water Quality Planning Act" N.J.S.A. 58:11A-1 et seq. and the Federal Water Pollution Control Act, as Amended. This amendment for expansion of the Warren Stage IV STP from 0.45 MGD with better than secondary treatment to 0.80 MGD with Level 4 treatment. It also eliminates the plans for a regional wastewater treatment facility to serve Passaic Township and part of Warren Township.

All information dealing with the aforesaid water quality management plans and the "Water Quality Planning Act" is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards located at 75 Artie Park in the Township of Ewing, Mercer County. It is available for inspection between 8:30 a.m. and 4 p.m., Monday through Friday. Interested persons may submit written comments on the amendment to Mr. George Horzempa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limits, will be considered by NJDEP with respect to the amendment request. Any interested person may request in writing that NJDEP hold an adversarial public hearing on the amendment. This request must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

ROBERTE HUGHEY,  
Commissioner  
1-31-84 \$107.00

STATE OF NEW JERSEY }  
COUNTY OF ESSEX } ss

[Signature]

Being duly sworn, according to law, on his oath sayeth that he is Clerk of the Star-Ledger, in said County of Essex, and that the notice, of which the attached is a copy, was published in said paper on the 14 day of April 1984 and continued therein for \_\_\_\_\_ successively, at least once in each \_\_\_\_\_ for [Signature]

Sworn to and subscribed before me this 14 day of April, 19 84

[Signature]  
NOTARY PUBLIC of NEW JERSEY

MARGARET ROBINSON  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Dec. 1, 1985

DI-10



DIVISION OF WATER RESOURCES  
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Any interested person may require in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

ROBERT E. HUGHEY,  
Commissioner

Dated: March 20, 1984  
Fees: \$4028 4/16-1T

MARY DeCARLO, of full age, being duly sworn, saith: That she is the BILLING MANAGER of THE COURIER-NEWS, a newspaper published daily except Sunday, in the TOWNSHIP OF BRIDGE-WATER, in the County, and State aforesaid; and that a Notice, of which the annexed is a true copy, was published in said newspaper in the following issues: \_\_\_\_\_

4/16

before me this

17th  
*Robert E. Hughey*  
*Robert E. Hughey*

A.D. 19

84

*Mary DeCarlo*

Notary Public of N.J.

Commission Expires March 20, 1985

**J. ALBERT MASTRO**  
7 MORRISTOWN ROAD  
BERNARDSVILLE, N. J. 07924  
(201) 766-2720

**ATTORNEY FOR** Defendant, Township of Warren Sewerage Authority

**Plaintiff** AMG REALTY COMPANY and  
SKYTOP LAND CORP.,  
**Intervenors** JOAN H. FACEY, et als.,  
**Defendant** TOWNSHIP OF WARREN,  
CONSOLIDATED WITH ~~XXXX~~  
~~XXXXXX~~  
**Plaintiff** · TIMBER PROPERTIES,  
**Defendant** TOWNSHIP OF WARREN, et als.

vs.

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SUPERIOR COURT  
OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

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

**CIVIL ACTION**  
(Mount Laurel II)  
CERTIFICATION OF  
STANLEY P. KALTNECKER, JR.

STANLEY P. KALTNECKER, JR. certifies as follows:

1. I am a professional engineer and vice president of Elson T. Killam Associates, Inc., with offices at 27 Bleeker Street, Millburn, New Jersey. The majority of my employment relates to waste water management and my credentials relative to the same have been outlined during my testimony in the above matter on behalf of defendants.

2. I am the regularly retained engineer for defendant Warren Township Sewerage Authority and am familiar with the municipal sanitary sewer system in Warren Township. I am familiar with and have been actively engaged in the

proposed expansion for the Stage IV treatment plant located with the Upper Passaic River basin. The chronology of events relative to expansion of the Stage IV treatment plant is as follows:

- a. On February 16, 1982, a contract was entered into between the Warren Township Sewerage Authority and Elson T. Killam Associates, Inc. for the preparation of a feasibility study related to the proposed expansion of the Stage IV treatment plant. Generally such a study is conceptual in nature, however, it must incorporate an analysis of zoning, population projections and waste water flows compared to areawide 208 and 201 studies. These are minimum requirements in order to obtain approval from the Department of Environmental Protection of the State of New Jersey (NJDEP). During the feasibility preparation process, I met with representatives of NJDEP on April 15, 1982 at which time concerns regarding potential nitrification and evaluation of a joint venture with Passaic Township were discussed. At about the same time, a formal written request was made to NJDEP for Stream Load Allocation. By letter dated August 12, 1982 from NJDEP, a wasteload allocation for the proposed expansion of Stage IV treatment plant was calculated and with direction that the 208 Water Quality Management Plan be amended to reflect the increase in capacity anticipated since the proposed expansion was inconsistent with that plan.
- b. In August 1982 a fifty-two page feasibility study was completed by Elson T. Killam Associates, Inc. together with an appendices which addressed the various alternatives of providing additional treatment facilities to service the Stage IV service area. Out of nine basic alternatives, four were the subject matter of a detailed analysis which evaluated and compared them: 1. expansion and upgrading of the existing Stage IV plant, 2. expansion of the Stage V plant, 3. expansion of the Stage I and II plant, and 4. construction of treatment facilities at the Passaic Township plant. The most cost-effective and environmentally acceptable alternative was found to be expansion of the existing Stage IV plant. The projected cost for the expansion was estimated to be 3.9 million dollars (\$11.14 per gallon). The initial Stage IV treatment plant was constructed in 1965 with a capacity of 300,000 gallons per day which was expanded in 1978 to provided a capacity of 450,000 gal/day. The proposed expansion explored by the feasibility study would increase the current capacity of the Stage IV plant from 450,000 gallons per day to 800,000 gallons per day.

- c. On or about December 14, 1982, the Warren Township Sewerage Authority formally submitted the feasibility study to NJDEP together with resolutions from the Bernards Township Sewerage Authority (lead agency for Upper Passaic River Basin Committee) and Passaic Township both indicating that there were no objections to the proposed Stage IV and expansion and endorsing same (communication with and approval by said agencies previously required by NJDEP). At that time WTSA requested modification of the 208 Water Quality Management Plan to allow the proposed interim expansion of the Stage IV treatment plant.
- d. On June 1, 1983 a meeting was held between representatives of WTSA and NJDEP and commonly designated a "conflict resolution conference." The substance of the conference related to the extent of modification of the 208 Water Quality Management Plan which projects a regional facility located on the Passaic accomodating both Warren and Passaic townships. The fact that Passaic Township also had applied to NJDEP for increase of a plant capacity from 650,000 gallons per day to 850,000 gallons per day generated concern that both the Passaic and Warren Township interim plants would tend to become permanent in nature. The conclusion reached at the meeting was that WTSA explore alternatives of comparing a regional plan approach with a proposed Stage IV expansion that would be upgraded to a level 4 treatment capacity. It was anticipated that the same approach would be proposed by NJDEP to Passaic Township. By letter of June 20, 1983, NJDEP cautioned that any proposal to expand Warren's Stage IV treatment plant to a capacity of 800,000 gallons per day at level 4 treatment would require resolutions of endorsement from Warren Township, WTSA, Passaic Township, Passaic Township Sewerage Authority and Bernards Township Sewerage Authority.
- e. Elson T. Killam Associates, Inc. prepared a supplemental report for expansion of the Stage IV plant which concluded that a Stage IV plant expansion by 350,000 gallons per day to a total of 800,000 gallons per day level 4 treatment would cost approximately 4.7 million dollars (October 1983 dollars) or \$13.42 per gallon. The supplemental report was forwarded to NJDEP as well as the agencies whose endorsement would be required.
- f. Again on December 6, 1983, WTSA communicated with NJDEP requesting modification of 208 Water Quality Management Plan to allow expansion of the Stage IV treatment plant.

as proposed and forwarded a joint resolution of the Township of Passaic, the Township Committee of the Township of Warren and the Township of Bernards Sewerage Authority endorsing the proposal to upgrade the respective plants of WTSA and Passaic Township to level 4 rather than construct a regional plant.

- g. By letter of April 4, 1984, NJDEP communicated with WTSA informing it that the 208 Water Quality Management Plan allowing for the expansion of the Stage IV treatment plant as proposed would be amended and be published in the Register on April 16, 1984. The proposed amendment was also required to be published on April 16, 1984 in two newspapers in the Warren Township area providing for a thirty day comment period.

3. I have reviewed the affidavit of Richard H. Schindelar on behalf of AMG and Skytop and disagree with his conclusion that the establishment of service areas are arbitrary designations by WTSA. Service areas are designed to provide for the treatment of sewage within a particular area of Warren Township not only to accomodate servicing of properties in that area but to do so in such a manner as to accomplish that objective as economically as reasonably possible and protect the integrity of receiving rivers and streams. Service areas are designed to accomodate existing natural drainage features and eliminate pumping stations which are costly to construct and costly to maintain. This process can hardly be characterized as "arbitrary" and indeed to the contrary is the very essence of sewer planning.

4. Assuming the Court were to order accomodation of both Timber Properties and that portion of Skytop in the Upper Passaic River basin within the municipal sanitary sewer system, it is highly unlikely that any portion of Skytop would be accomodated in the Stage IV proposed expansion. I say this for several reasons:

- (a) Accomodating a portion of Skytop in the Stage IV expansion may

very well require additional sewer line capacity and certainly expansion of pumping station facilities - both of these factors extremely costly at best.

- (b) It would seem undesirable to pipe sewerage from Skytop over a ridge line into the Stage IV service area when Skytop could flow by gravity to the Stage V treatment plant which is much more accessible.
- (c) The procedure to accommodate both Skytop and Timber properties in a proposed Stage V expansion would be identical to that required to increase the present Stage IV proposed expansion from 800,000 gallons per day to the additional capacity requested by Skytop.

5. In my opinion, any potential savings as a result of increasing the proposed Stage IV expansion by the amount requested by Skytop would be lost as a result of increased expenses in transporting sewage from the Skytop location to the Stage IV treatment plant site and the increased cost of the project that would take place as the result of a significant delay occasioned by the approval process.

6. In my opinion, a change in capacity requested at this late date would require an amended feasibility study, an additional modification to the 208 Water Quality Management Plan, approval endorsements from Warren Township, Passaic Township and Bernards Township Sewerage Authority, a reapplication for wasteload allocation from NJDEP - all of which would consume a considerable amount of time and prejudicing other property owners who have been part of the Stage IV expansion approval process for the past two years.

7. In my opinion, neither Skytop nor Timber Properties would be prejudiced by permitting the Stage IV plant expansion to proceed as proposed since either or both are free at the present time to make application to WWSA for a proposed expansion of the Stage V treatment plant as the Court may direct at some future time.

8. A feasibility study was performed by Elson T. Killam Associates, Inc., in November 1979 to evaluate alternatives to sewerage the Northwestern portion of Warren Township (later established as Stage V sewer district). One of the alternatives evaluated was expansion of the Stage IV plant to accommodate the Northwestern portion of the Township. This latter alternative was found to be not cost effective and a new Stage V service area was accordingly established.

I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
STANLEY P. KALTNECKER, JR.

DATED: May 16, 1984