AMG

10-11-84

letter re:

- Reply Cert by Ps

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AM000200V

Russ for tomorrow mail

AM000200V

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IN REPLY REFER TO FILE NO 5323-02

October 11, 1984

Honorable Eugene D. Serpentelli
Judge, Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: AMG Realty Company and Skytop Land Corp. vs.
Township of Warren, et als.
Docket No. L-23277-80 P. W.; L-67820-80 P. W.

Dear Judge Serpentelli:

With respect to the notice of motion to extend time for compliance submitted on behalf of the defendant, Township of Warren, enclosed is a reply certification on behalf of AMG Realty Company and Skytop Land Corp.

Respectfully submitted,

McDONOUGH, MURRAY & KORN
A Professional Corporation

Joseph E. Murray

Joseph E. Murray

JEM:bp
Enclosure

cc: Mr. Richard B. Neff
Raymond R. Trombadore, Esquire
Eugene W. Jacobs, Esquire
John E. Coley, Jr., Esquire
Lieb, Krause and Grispin, Esquires
J. Albert Mastro, Esquire

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OCT 15 1984
JUDGE SERPENTELLI'S CHAMBERS

McDONOUGH, MURRAY & KORN
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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.,	:	REPLY CERTIFICATION OF JOSEPH E. MURRAY
Intervenors,	:	
vs.	:	
THE TOWNSHIP OF WARREN,	:	
Defendant,	:	
CONSOLIDATED WITH	:	
TIMBER PROPERTIES,	:	
Plaintiff,	:	
vs.	:	
THE TOWNSHIP OF WARREN, et als.,	:	
Defendant.	:	

JOSEPH E. MURRAY, of full age, in lieu of affidavit hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm of McDonough, Murray & Korn, P. A., attorneys for the plaintiffs, AMG Realty Company and Skytop Land Corp.

2. This certification is being submitted in opposition to the Township's request for an extension of time limits to November 30, 1984. The purpose of this submission is not to oppose any extension request but to oppose the extension to the date sought by the Township of Warren.

3. Contrary to the representations made by Mr. Coley in his certification it is respectfully submitted that the Township of Warren is dragging its feet concerning the compliance hearings. The first meeting after the July 16, 1984, order of the Court was not held until thirty days later, on August 16, 1984. At that time there was an attempt to schedule some procedure for the compliance hearings. A second meeting was not scheduled until almost thirty days after that on September 12, 1984. Thus, there was an initial passage of sixty days when nothing was effectively done by the Township of Warren.

4. On September 12, 1984, the Township of Warren submitted site proposals together with a conceptual approach to the rezoning, which approach was candidly ineffectual in that it mandated a 30 percent set-aside for low- and moderate-income housing which was acknowledged to be a figure in excess of that which would be judicially approved. Mr. Caton advised the Township planner of this and our office opposed the 30 percent mandatory set-aside approach as

not being a good faith attempt to comply. Additionally, as of the September meeting the Warren Township Sewer Authority was to submit a conceptual approach for the sewer management of the builder's remedy properties. Attached hereto is a copy of the Sewer Authority report that was hand delivered at the September meeting. Also attached hereto is a copy of this office's response to that report as submitted to Mr. Caton which is self-explanatory. The point with respect to the Sewer Authority report is that it is an example of the Township's manner of delaying this matter.

5. Between the date of the September meeting and the proposed October 3 meeting the Township of Warren adopted a resolution authorizing the Township to contribute $3,000 to the fund now being organized to take the Mt. Laurel matter to the Federal courts. (See copy of local newspaper article appearing in the September 13, 1984, edition of the Echoes-Sentinal.) The Township's adoption of this resolution is a further example of an apparent lack of good faith in the processing of the zoning matter.

6. The October 3 meeting presented further problems clearly evidencing the Township's intent to delay. At the October 3 meeting John Chadwick, the Township Planner, indicated that it was the Township's position to establish before Mr. Caton that the AMG and Skytop sites were not appropriate for builder's remedy relief in toto. Mr. Chadwick further indicated that they would be obtaining traffic reports, environmental studies, economic reports and engineering studies to prove this particular point. Notwithstanding the fact that these studied had previously been prepared for usage in the underlying trial, both before Judge Meredith in the first case

and before this Court in the current case, Mr. Chadwick indicated that these reports were not yet available and that additional time would be needed to prepare them. It was at this point that Mr. Caton, in his professional manner, set time tables as reflected in Mr. Coley's certification. Absent Mr. Caton's firm hand with respect to the setting of times concerning the Township's position, it is respectfully submitted that the Township of Warren would seek to prolong this matter for six months or more for the purpose of obtaining such reports. The Township is also being bolstered by newspaper releases indicating that the Township is gaining an upper hand through delays. Attached is a copy of an article appearing in the October 4, 1984, edition of the local newspaper, the Echoes-Sentinal.

7. There is another concern that has arisen with respect to the Township's responsiveness to the existing mandate for rezoning. The participation of the Warren Township Planning Board in the rezoning process is virtually nonexistent. The Mayor of the Township, Mr. Robert Mick, has been the chairman of the various meetings and another Township committee member, Mr. Lou Wagner, has also participated in the hearings. These participants, as members of the Township Committee, are also on the Township Planning Board. However, there has been no other representation of the Planning Board on the dias with respect to these meetings and I have been advised that the first meeting held in August of 1984 was not even made known to the membership of the Planning Board until late in the afternoon of that date. The September meeting was also not noticed to the Planning Board and the Planning Board membership was not invited to

participate in the hearings. This was also the situation for the October meeting even though the Planning Board attorney at the October meeting did sit in the audience for the purpose of hearing what was going on. The appointment of a Master is for the purpose of having that individual work closely with the governing body and the Planning Board as directed in Mt. Laurel II at page 284. The Planning Board has substantial contact with the land uses in the community together with the ongoing obligation of managing land development through the Planning Board processes in the future. Notwithstanding the Planning Board's primary contact with land uses and planning in the municipality, the governing body is treating this matter as a political problem and not a zoning or land-use problem since it has not involved the Planning Board to the extent that is, in my opinion, obligatory. This further evidences the Township's intent to pay surface attention to its rezoning obligation.

8. For these reasons it is respectfully requested that the Court limit the requested extension in a manner that is consistent with the obligations presently imposed upon the Township.

9. I hereby certify that the within statements made by me are true to the best of my knowledge, information and belief. I am aware that if the within statements made by me are wilfully false, I am subject to punishment.

Joseph E. Murray

JOSEPH E. MURRAY

Dated: October 10, 1984

Delay Has Allowed Warren To Make Progress Fighting Mount Laurel II

Analysis

By ROSANNE CORBACHO
Staff Writer

WARREN — In the months since the Township Committee turned down a proposed settlement of its Mount Laurel II type zoning suit, a number of developments have occurred, both in the individual case and in the state-wide climate surrounding the Mount Laurel II issue.

And because the township turned down that settlement, it will be able to take advantage of those developments.

True, the township was ordered to rezone for 946 low and moderate-cost units, a rezoning process that is underway now as a compliance hearing was scheduled for last night.

But while with one hand the township is rezoning according to the court mandate, with the other it is formulating ways of continuing the fight against the dictates of Mount Laurel II.

The most recent and probably the most significant development is the decision by 28 municipalities to join together on a federal appeal of the Mount Laurel II decision.

Most of the towns faced with similar zoning suits had undoubtedly eyed such a federal appeal themselves. After it, it was the New Jersey Supreme Court that originally handed down the Mount Laurel II decision, and the chances of the court reversing itself on appeal are somewhere between slim and nonexistent.

Local officials have thought that if only they could raise a substantive issue in federal court they might stand a chance, but the enormous cost of such an appeal certainly worried them, as they deal with rather limited budgets.

In combining their efforts and their money, local leaders may stand a much better chance of first getting their case to the courts and then fighting it properly.

Some developments on the local level have also been significant, such as the suggestion that the township build some of the mandated low and moderate cost housing itself.

At first glance it might not seem that the township could gain much by entering the construction business, but if the township is eventually forced to allow the construction, township-built housing could hold some advantages.

The main advantage is that township-built housing could cut down on the number of market-priced high-density units that would be built to subsidize the low-cost units. The general guideline in the Mount Laurel II decision is that for every one low cost unit developers built, they be allowed four market-priced units to make up the difference.

With a mandated low and moderate figure of 946, that could bring more than 4,700 new units here. But if the township were to build some of the low-cost housing, there would be no need for the extra four expensive units, cutting down on the total number of new units.

And it seems as if the township is seriously intending to follow through with that plan, as a preliminary rezoning report by Township Planner John Chadwick included several hundred township-built units as part of the construction to meet the court mandate.

Of course, the continued delay is not making the developers happy. One who is not a party to the suit but whose land may get rezoned anyway tried to speed the process up recently but met with no success.

Esposito Enterprises had been turned down for a variance to build multi-family housing and is appealing that denial to the committee. Recently the developer wrote to the committee, saying that it would be happy to comply with the Mount Laurel guidelines on the percentage of low and moderate cost housingif only it could get the variance it wants.

The committee's answer: an unequivocal "no," in light of the township's appeal of the case.

ECHOES-SENTINEL 9/13/81

Warren Looks For More Support For Federal Mount Laurel Appeal

By ROSANNE CORBACHO
Staff Writer

WARREN — Township officials are hoping to enlist the support of other municipalities in planning a federal appeal of the Mount Laurel II zoning decision.

Officials from the township will be meeting on Monday, Sept. 17 with officials from across the state, incuding State Sen. S. Thomas Gagliano of Holmdel in Monmouth County, to discuss a combined appeal.

According to Township Attorney John Coley, he expects that other municipalities will join the township in trying to have the landmark zoning decision overturned.

"We've got about half a dozen really ready to go, and we may get 30 or 40," Coley said.

Mayor Robert Mick said local officials are hoping to get other towns to join the fight to cut down on costs and to improve the township's position in court.

"It would be easier to litigate," Mick said. "With more support, it would look better when we went to court to have 25 to 50 towns, instead of just Warren Township."

According to Mick, there may also be some movement in the state legislature to limit the effects of the Mount Laurel decisions.

In Mount Laurel cases, municipalities are sued by developers and accused of failing to meet their responsibilities to provide low and moderate-cost housing.

Successful developers may not only win a court order that the township rezone to allow higher-density housing but a builder's remedy as well. A builder's remedy allows the developer to build a portion of the mandated multi-family housing.

A recent Superior Court decision set the township's "fair share" of low and moderate-cost housing units at 946, which could result in more than 4,700 additional multi-family housing units in the township.

Although township officials plan to appeal the decision to the state courts, it cannot be filed until the court-ordered rezoning is completed.

Township officials have been considering an appeal to the federal court system, which would question the constitutionality of the decision itself.

Also considering a federal appeal is the citizens group Concerned Citizens of Warren (CCW) which was formed earlier this year to fight the case.

The CCW has started a legal fund to pay for the appeal, with costs estimated at $50,000 just to reach the first level of the federal courts.

The township had been offered a settlement of the case in January, but if the case had been settled, the township would not have been able to file any appeals.

5323-02

September 21, 1984

Mr. Philip B. Caton
Clarke and Caton
342 West State Street
Trenton, New Jersey 08618

Re: Warren Township Compliance Hearings

Dear Mr. Caton:

At the last Warren Township compliance hearing held on September 12, 1984, this office received a copy of the Warren Township Sewerage Authority "Procedures to Comply with the Mt. Laurel II Court Mandate." The purpose of this letter is to express our total dissatisfaction with the report of the Sewerage Authority.

It was my understanding that your direction to the Warren Township Sewerage Authority was to have it provide to you a detailed methodology for the sewering of the Timber, AMG and Skytop tracts as part of the builder's remedy process. Based upon this direction it would be my further understanding that the Sewer Authority should be as detailed in its presentation as a developer would be if the Sewer Authority demanded the developer to produce a sewerage concept plan for the sites.

The report submitted by the Sewerage Authority makes no attempt to enlighten the builders in this matter and, presumably, makes no attempt to enlighten yourself or any other interested party as to the details. The report merely indicates that the Sewerage Authority will undertake a feasibility study and then talk to the parties involved as to the results of that study, which is to be paid for by the parties, and then attempt to obtain approval of that report or approach from the Department of Environmental Protection. If a developer submitted a report of that nature to the Sewerage Authority, his application would be summarily rejected.

During the course of the trial of this matter when the Sewerage Authority and Township took the position that the sewerage facilities in the municipality could not service the proposed projects there was a great deal of detail and historical data as well as analysis attempted to be brought forth in support of its position. The trial court rejected these positions almost as a matter of law and it is disappointing that the Sewerage Authority cannot use the same effort to move affirmatively in this area.

We also find substantial concern with the claim by the Sewerage Authority of so-called "possible sources causing delay." The first of such claimed delays is a statement by the Authority that previous attempts to obtain increased discharge into the Passaic Basin have been rejected by the N. J. DEP for environmental reasons. In fact, the Township Sewerage Authority has recently obtained approval from the New Jersey Department of Environmental Protection for the expansion of the Stage IV plant. This expansion is now the subject matter of an injunction obtained by AMG and Skytop from Judge Serpentelli. The expansion process was facilitated when the Township sought to add additional industrial, commercial and/or single-family residential users into the treatment plant but now becomes a so-called problem if multi-family housing is part of the concept for development. Additionally, the Stage V treatment plant was put into place because of large commercial establishments such as Chubb with the supplemental upgrading of the treatment effluent to permit larger gallonage access through that plant. It makes no sense for the Authority to simply say that past applications have been rejected for environmental reasons when, in fact, recent applications have been pursued by the Township and granted in favor of increased sewage treatment facilities.

We do not feel that our clients nor the Court are interested in possible sources causing delay. We are interested in affirmative devices together with a good faith compliance with the directions by your office as standing master to provide adequate factual input with respect to the sewerage availabilities. It is now almost ninety days since the issuance of Judge Serpentelli's ruling and the Warren Township Sewerage Authority has essentially provided us with no data whatsoever and appears to take the position that it will sit back and do nothing until "feasibility" studies are prepared and submitted for approval. This appears to be nothing further than a foundation for additional delay both in the compliance aspect and in the overall satisfaction of the Township's affirmative housing obligation.

We respectfully suggest that more stern measures will have to be applied against the Warren Township Sewerage Authority before we can obtain a realistic analysis from that Township agency. Hopefully, your position will be utilized for this objective.

Very truly yours,

McDONOUGH, MURRAY & KORN
A Professional Corporation

Joseph E. Murray

JEM:bp

cc: Mr. Richard B. Neff
Raymond R. Trombadore, Esquire
John E. Coley, Jr., Esquire
J. Albert Mastro, Esquire
Eugene W. Jacobs, Esquire
Robert H. Kraus, Esquire

9/13/84

WARREN TOWNSHIP SEWERAGE AUTHORITY PROCEDURES TO COMPLY WITH THE MT. LAUREL II COURT MANDATE

1. On completion of zoning ordinance all Mt. Laurel II tract owners shall be brought together to initiate a feasibility study to be submitted to NJDEP for approval and amendment to the federal study. The cost for the study would be borne by Mt. Laurel II properties, since the Authority has no funding for such studies. The study would encompass study of use of existing facilities, the ability of the transmission facilities to transport sewerage and construction of new facilities at same levels of sewerage treatment presently used. Time estimates for study - 3 months

   Cost of study - $20,000

   Study to be performed by E. T. Killam Associates

2. On completion of feasibility study, with or without comment, the Authority will review and submit to the NJDEP requesting amendment to the 201-208 facility plans within one month.

3. Upon approval of the feasibility study by NJDEP the Authority will bring all Mt. Laurel property owners together and enter into contracts with owners bearing their proportionate share for construction of new facilities where needed.

   Estimated time for construction of new treatment facilities - 2½ y

   Estimated time for construction of new transmission facilities 1½ y

Possible sources causing delay:

1. For properties in the Passaic Basin, there are environmental concerns which could delay required approval for amendment to 201-208 plans. Previous attempts by the Authority to obtain increased discharge into the Passaic Basin has been rejected by the NJDEP for environmental reasons.

2. For properties in Middlebrook Basin sewerage must be transmitted through Bridgewater Township to theSomerset Raritan Valley Sewerage Authority for treatment. The facilities in Bridgewater for transmission, depending upon volume of sewerage generated, could be inadequate causing additional delays.
   The Township of Bridgewater has delayed providing sewer transmission facilities, signed by contract dated 1971. The section required for connection of property (AMG) as designated as receiving builders remedy has not been prepared, of scheduled for bidding.
   The Somerset Raritan Valley Sewerage Authority has instituted by resolution dated August 27, 1984 banning all additional connections to the sewerage treatment facilities. This ban shall stay in effect until additional treatment facilities are provided and approved by NJDEP.

It is requested that any subsidies related to sewer installations which the Court may direct, be paid from public funds, should be imposed upon the municipality at large, and not from the small segment of present sewer users.