AMG

8-19-85

Letter re:

- Brief of AMG & Skytop in opposition to motion to transfer to COAH

. w/Exhibits A - Complaint in Lieu of Prerogative writ

B Consent order

C order denying Stay/Appeal

D Judgment

E Consent order & Supplemental Complaint

F Jan. 10, 84 letter

G Summons & Complaint

H Pretrial order & memo

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pgs. ~~[illegible]~~

pi # 3305

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hs 17/92

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IN REPLY REFER TO FILE NO 5323-02

August 19, 1985

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

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

Dear Judge Serpentelli:

With respect to the above we enclose two copies of a brief on behalf of AMG Realty Company and Skytop Land Corp. in opposition to the Township's transfer motion returnable on August 30, 1985.

The certification of Mr. Richard Neff, referred to in the brief as Exhibit I, will be submitted by separate letter.

Respectfully yours,

McDONOUGH, MURRAY & KORN
A Professional Corporation

Joseph E. Murray

JEM:bp
Enclosures

cc: Mr. Richard Neff
John E. Coley, Jr., Esquire
Eugene Jacobs, Esquire
Albert Mastro, Esquire
Raymond Trombadore, Esquire
Mr. Philip Caton
Mr. Richard Coppola
Robert Kraus, Esquire
John Lynch, Esquire

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., Plaintiffs, v. JOHN H. FACEY, et als., Intervenors, v. THE TOWNSHIP OF WARREN, Defendant. CONSOLIDATED WITH TIMBER PROPERTIES, Plaintiff, v. THE TOWNSHIP OF WARREN, ET ALS., Defendants.	(Mt. Laurel II) CIVIL ACTION

BRIEF OF AMG REALTY & SKYTOP IN OPPOSITION TO MOTION FOR TRANSFER TO THE FAIR HOUSING COUNCIL

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On the Brief:

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

This is an action in lieu of prerogative writ challenging the zoning ordinances of Warren Township, Somerset County, New Jersey, as being exclusionary under the principles of South Burlington County NAACP v. Mt. Laurel, 67 N.J. 151 (1975), herein referred to as Mt. Laurel I, and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983), herein referred to as Mt. Laurel II.

The litigation was initiated by the complaint of AMG Realty Company filed on December 31, 1980 (Docket No. L-23277-80) Mt. Laurel I. (Copy attached as Exhibit A). By order dated May 19, 1981, the plaintiff, Skytop Land Corp., was permitted to intervene as if it had been an original party plaintiff. (Copy of Order attached as Exhibit B). Both plaintiffs were then and are presently the fee simple owners of large tracts of vacant, developable lands within Warren Township. This action, with vicinage in Somerset County, proceeded to pretrial on June 12, 1981, with the Township of Warren steadfastly maintaining the position that it had no duty to rezone under Mt. Laurel I. Subsequent to the pretrial, the Township sought a stay of the trial pending the receipt of the then awaited decision of the N.J. Supreme Court with respect to the cases pending before it on the Mt. Laurel issues. This stay was denied by order dated February 17, 1982. (Copy attached as Exhibit C).

The matter then proceeded to trial in Somerset County before Honorable Arthur S. Meredith, J.S.C. on the dates of May 10, May 11, May 12, May 13, May 17 and May 18, 1982 with Judgment being entered in favor of the plaintiffs on May 27, 1982. This Judgment (a copy of which is attached as Exhibit D) set aside the then existing zoning ordinance (ordinance 79-3) as being exclusionary and directed the Township to rezone in accordance with Mt. Laurel I within 9 months. The trial court also retained jurisdiction of the case and withheld granting specific zoning relief as to the plaintiff's lands "at this time".

No appeal was taken from this Judgment. Subsequently, the Township undertook public hearings, commencing in June of 1982, for the purpose of effecting the mandated rezoning. On December 2, 1982, the Township adopted Ordinance 82-19 which purported to satisfy the Judgment entered in May of 1982, and by court order dated January 17, 1983, the plaintiffs, AMG and Skytop, were granted leave to file a supplemental complaint challenging the validity of Ordinance 82-19. (Copy of order and supplemental complaint attached thereto annexed as Exhibit E.) Included in the supplemental complaint was a demand for directed rezoning of the plaintiff's lands. With respect to the supplemental complaint the Township Attorney, by letter of January 10, 1983, acknowledged his "consent" to the entry of the order and further stated that the Township's intent to "proceed as far as required to vindicate its rights." (Copy attached as Exhibit F).

The New Jersey Supreme Court decision in Mt. Laurel II was rendered on January 20, 1983.

Subsequent to the filing of the supplemental complaint on January 17, 1983, and prior to the appointment of the three Judges as contemplated by Mt. Laurel II, there were applications for intervention by various proposed plaintiffs in the AMG and Skytop case. These included Mr. and Mrs. Bojczuk (by motion filed February 7, 1983) and Joan Facey. These parties sought relief to remove their respective lands from the residential category that they were placed in by virtue of ORdinance 82-19 and also sought affirmative rezoning for commercial use. These motions were granted by a Somerset County Judge (Judge Gaynor) prior to assignment of this case to Judge Serpentelli.

After AMG and Skytop commenced litigation against Warren Township, Timber PRoperties, Inc., by complaint dated July 30, 1981 (copy attached as Exhibit G) sued Warren Township, its Planning Board and Sewer Authority as a claimed contract purchaser of vacant lands seeking Mt. Laurel relief as to those lands. When judgment in the AMG and Skytop suit against Warren Township was entered in May of 1982, the substantive issues in The Timber matter became moot. However, when Warren Township, through Ordinance 82-19 proposed a rezoning of a portion of the Timber property under contract for an increased residential density of 4 units per acre Timber Properties, Inc., amended its complaint to challenge the partial exclusion

of its lands from the higher density use. This amended complaint being permitted by the Court (Judge Serpentelli) after putting Timber to the test of either defending Ordinance 82-19 which granted certain density increases or attacking the aforesaid Ordinance as being totally exclusionary. (At this point Timber was not a proposed builder of lower income housing since Ordinance 82-19 did not require such housing in conjunction with the increased density provisions--see factual contention of Timber annexed to the pretrial order dated October 25, 1983 as Exhibit H and Timber had not previously proposed low income housing.

All matters were then consolidated for trial under Mt. Laurel II and were pretried on October 25, 1983, and trial was scheduled for January 10, 1984, and a case management conference was scheduled December 20, 1983. Trial briefs were filed in December 1984, together with numerous expert reports. In January a proposed settlement of the zoning issues was intensely discussed and upon lengthy consideration by Warren Township, it rejected a settlement. Trial was conducted over a period of approximately 21 days, with judgment reserved by the Court.

On July 16, 1984, the trial court rendered a written opinion in favor of the plaintiffs invalidating Ordinance 82-19 as again being exclusionary. A written "Interim Judgment" was thereafter entered on August 1, 1984, setting a fair share figure of 946 for Warren Township, mandating a rezoning within 90 days, appointing a Master and granting a

"builder's" remedy to plaintiffs, AMG, Skytop and Timber. Upon application to the Court, the 90 day time limit was extended to November 30, 1984 and a third attempt at compliance with Mt. Laurel was put into ordinance form in early December of 1984, which ordinance is still under review by the Court appointed Master, Mr. Philip Caton.

Pending review of this new ordinance (which plaintiffs contend is still woefully lacking in compliance) the Fair Housing Act was adopted on July 3, 1985. Pursuant to Section 16 of that Statute, the Township of Warren now seeks to transfer this case to the Council on Affordable Housing to administratively process its entire Mt. Laurel obligations.

ARGUMENT OF LAW

UNDER THE CIRCUMSTANCES OF THIS CASE, A TRANSFER TO THE COUNCIL WOULD RESULT IN A MANIFEST INJUSTICE TO THE PLAINTIFFS, AMG REALTY CO. AND SKYTOP LAND CORP.

The key to the Township's request is, of course, the language of section 16 of the Fair Housing Act, which provides as follows:

> For those exclusionary zoning cases instituted more than 60 days before the effective date of this act any party to the litigation may file a motion with the court to seek a transfer of the case to the council. In determining whether or not to transfer, the court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation.

In considering the application of this section, several issues are presented:

1. What is "Manifest Injustice"?

The statute does not define this term and, absent such statutory definition, the term should be given a common ordinary meaning. N.J.S.A. 1:1-1; Reliable Volkswagon Sales & Service Co. v. World Wide Auto Corp., 216 F. Supp. 141 (D.C.N.J. 1963). Such meaning is impliedly known by the Legislature and the Courts have a duty, if possible, to construe a statute consistent with that meaning. Inhabitants of Montclair Twp v. Ramsdell, 2 S. Ct. 391, 107 U.S. 147 27 L. Ed. 431 (1882).

Blacks Law Dictionary (Rev. 4 Th Ed. 1968) defines "manifest as follows:

> Evident to the senses, especially to the sight, obvious to the understanding, evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident, and self-evident.
>
> In evidence, that which is clear requires no proof; that which is notorious.

Webster's dictionary also defines manifest as to make evident or certain...easily understood", and "injustice" as unfairness". See also, State v. Fischer, 38 N.J. 40 at 45 (1962) wherein "manifest injustice", in the context of a criminal case was defined synonymously with Webster's definition.

"Injustice" is defined by Black as "The withholding or denial of justice".

Thus, in applying the dictionary and judicial interpretations a "manifest injustice" could be "a clear withholding of fairness".

2. Upon Whom is the Burden of Proving or Disproving Manifest Injustice.

The transfer provision of the statute directs the Court to consider "whether or not the transfer would result in a manifest injustice to any party to the litigation". In seeking removal does the moving party have to establish the absence of such result or does the other party have to

affirmatively defend the application by showing the existence of such result?

It is the position of AMG and Skytop that the affirmative burden to prove the absence of a "manifest injustice" is upon the moving party whether such party be a developer, a public interest group or a municipality. The stated purpose of the Act gives Legislative approval of the entire Mt. Laurel concept which includes a hope for expeditious construction of lower income housing. Notwithstanding the fact that the Supreme Court has deemed that these objectives may be better left to the Legislature, it does not always follow that the implementation of the Act shifts the responsibility of deciding which matters are to be transferred in favor of those who oppose Mt. Laurel housing and if it seeks to transfer this matter, it should show that a "manifest injustice" will not occur to the plaintiffs. The Act has not attempted to create a presumption that such "manifest injustice" does not exist and thereby cause the opponent of a transfer of motion to rebut this presumption. If the burden of proof as to the issue is placed upon AMG and Skytop, such a presumption will be created without legislative sanction. These objectives of the Act include removal of the Mt. Laurel zoning issues from the Courts. This objective must be conceded, but a limit with respect to such removal is imposed by the "manifest injustice" standard. Thus, it would appear that the burden as to this "manifest unjust" issue would be upon the party seeking the transfer.

3. Elements Causing Manifest Injustice As to AMG and Skytop.

Whether the burden of proof is not upon the opponent to the motion, there are a number of factors which AMG and Skytop herein rely upon to show that a transfer would result in a fundamental unfairness or "manifest injustice" as to them. These are as follows:

(a) Time.

There is no doubt that the Township of Warren seeks to delay the final actuality of providing Mt. Laurel housing within its borders. This is exemplified by its intransigent position throughout this case and can be aptly exampled by its monetary contribution to the fund to initiate Federal litigation to "Undo Mt. Laurel II", as well as public statements that Mt. Laurel is unconstitutional and that Warren Township, if it can, will not comply with its obligation.

The new statute clearly gives the Township more time to seek to avoid a responsibility imposed by an unappealed final judgment entered against it on May 27, 1982. Through the procedures set forth in the statute the first affirmative act required of the municipality is to submit a "resolution of participation" within four months of July 3, 1985. Next it is given five months after the Council's adoption of guidelines to file a housing element. Since the Council has until January 1, 1986 to adopt these guidelines, this five month period does not expire until June 1, 1986. At that time, the

statute anticipates a time period of uncertain duration for the processing of the new zoning before the Council. At the conclusion of that process, as defined in section 14 of the Act, and notice to the public of a municipality's petition for substantive certification, the mediation process only begins. If mediation, under section 15 of the Act, is not successful, the entire matter then goes to the Office of Administrative Law with appeal therefrom presumably to the Appellate Division of the Superior Court. As to the factor of time, a prior and unadopted portion of section 16 of the Act contained the following language:

> [no exhaustion of the review and mediation procedures established in sections 14 and 15 of this act shall be required unless the court determines that a transfer of the case to the council is likely to facilitate and expedite the provision of a realistic opportunity for low and moderate income housing]

This language expressed a legislative intent to expedite pending exclusionary zoning cases by deleting the review and mediation procedures unless the court determined that such process would be faster than continued court proceedings. This language; although deleted in the adopted version and replaced with the "manifest injustice" standard, is still a reflection of the Legislative intent to expedite to satisfaction of the housing obligation since the new "manifest injustice" language creates a broader standard which encompasses the same concept as the deleted language but does

not limit the Court to the Time factor alone.

AMG and Skytop have been seeking Mt. Laurel relief since 1980 and have been successful litigants to date at the expenditure of substantial funds (as outlined in the certification of Richard Neff filed herewith as Exhibit I). Time alone is a game playing device with the municipality and is a potential devastator of bona fide litigants who have established the right to a "builders remedy" under the standards of both Mt. Laurel I and Mt. Laurel II.

The object of Mt. Laurel is to provide housing not to delay lower income housing as long as logistically and legally possible. Time is a factor of utmost importance to those who need housing and those who seek to supply housing anticipated by Mt. Laurel and the Act. It is submitted that for those municipalities who have not dug in their heels the time factor may not be so important. However as to municipalities which have refused to act or have consistently acted slowly, begrudgingly and under protest the continued grant of time is patently unfair to the seekers of satisfaction of the Mt. Laurel obligation.

(b) Loss of Builder's Remedy Relief

If this matter is retained by the Court it can grant a final judgment awarding a builders remedy to AMG and Skytop. Although the Act specifies that no builders remedy can be granted to any plaintiff in exclusionary zoning cases, it

specifically limits this prohibition to such cases which were filed "on or after January 20, 1983" and in which a final judgment for such relief has not yet been granted. Since the AMG and Skytop case was initially filed on December 31, 1980 under Mt. Laurel I and on January 17, 1983, through a supplemental complaint also under Mt. Laurel I, the first of the two elements required for a legislative restriction upon the judicial remedy is absent. Accordingly, the Act does not impose any moratorium or restriction upon the Court's right to grant the builder's remedy relief to AMG and Skytop.

Absent the Act's restriction upon the remedy that can be awarded in this matter, the only way the Township can avoid this bullet is to have the case transferred to the Council. Upon this event, AMG and Skytop are most likely permanently barred from such a remedy despite being entitled thereto under the standards of Mt. Laurel I and Mt. Laurel II since the Court would have lost jurisdiction to impose such relief. (The termination of the judicial restriction as set forth in the last sentence of the first paragraph of section 29 may only apply to those municipalities which have not sought

Council certification.)

An objective of Mt. Laurel is to enable low income housing to actually be built. As stated in Mt. Laurel II at page 199:

> The obligation is to provide a realistic opportunity for housing, not litigation. We have learned from experience, however, that unless a strong judicial hand is used, Mt. Laurel will not result in housing, but in paper, process, witnesses, trials and appeals.

A transfer of this matter and loss of the existent opportunity to curtail "paper" and "process" is not consistent with either Mt. Laurel or the Act. The Act is primarily available for those municipalities not yet in litigation or those who have entered litigation after Mt. Laurel II. The plaintiffs in this case, by litigating two cases successfully against Warren Township and in the first obtaining a final, unappealed judgment and in the second a builders remedy should not be left empty at this point. To do so would clearly enable the Township to do what it did in the past, i.e. attempt compliance without rezoning plaintiffs' lands. Winning battles but not the war as to the builders' remedy is, at this point, the potential utmost in frustration to be faced by AMG and Skytop.

This case, as to the builders remedy status is unique if not one of limited application. It may be fair to assume that this matter is one of the few pre-January 20, 1983, cases still pending before the Courts of this State. Being in this

position is not luck but the result of plaintiffs who genuinely sought to provide low income housing in a community which has had exclusionary zoning since its first zoning ordinance in 1948. AMG and Skytop have met all Mt. Laurel I and II standards to enable the Court to presently grant the builders remedy. The Act has not taken this away and plaintiffs request that the Court not permit Warren to take it away.

It is through the efforts of AMG and Skytop that the Court has been able to provide major analysis and reason to the concepts of "region" and "fair share" as expressed in the written decision issued in July of 1984. This decision and the extensive work behind it, by the Court, the parties and the planning experts, has enabled the Legislature to more fully understand the zoning and planning concepts which are now part of the Act. The efforts of these litigants substantially added to the ability of all municipalities to apply a known standard to their respective situations and, in turn, settle their Mt. Laurel obligations without either continuing litigation or the administrative process of the Act. The benefit to the public through these efforts can be recognized by a judicial follow through as to the builders remedy in this case. A refusal to continue the builders remedy as to these plaintiffs, under these circumstances, would be a punishment to them and a continuing discouragement to other developers who have to take the forefront in this type of public interest litigation.

4. Lack of Participation in the Council Process.

If Warren Township proceeds to comply with the Act it will prepare and submit its "housing element" and have the same considered by the Council through private meetings as permitted in section 14 of the Act. Despite years of data gathering and in-depth knowledge of the municipality, its infrastructure and lands neither AMG nor Skytop would be permitted to provide any input to the Council during this process. It is not until public notice of a petition for substantive certification is sought that these parties are allowed input. AT this time, it has lost the continuum of knowledge and is put into a position of attempting to undo that which has been unopposed in numerous conferences and submissions over the preceding months or even years between the Township and the Council.

During the judicial process of ordered rezoning or even without court ordered rezoning these plaintiffs have the right and opportunity to actively participate in each stage of fact gathering and input to effect the rezoning. Warren Township has expressed its intent to do as little as possible to satisfy its Mt. Laurel duty and it may be presumed to continue to act with this intent. Without the continued ability to constantly participate in the rezoning process the Township will be in a position to do "as little as possible" and get away with it.

In the past, the Township has fostered arguments against

is ability to rezone which have been clearly fallacious. Among them is the attempt to utilize the 201 and 208 sewer studies as Federally imposed housing limits. If left alone before the Council there is no doubt that the absence of the adversary system will lead to further attempts to utilize improper positions to mitigate the housing requirements and result in advantages to the detriment of the plaintiffs, AMG and Skytop.

5. Shifting of the Burden of Proof and Presumptions.

At the present time, there is a final judgment entered on May 27, 1982, pursuant to which the Township of Warren was ordered to rezone "to comply with the principles and obligations of Mt Laurel...and...to present such rezoning to this Court for review and approval." By virtue of this judgment, Warren Township's zoning ordinance previously clothed with a presumption of validity, was declared invalid. The burden was then upon the Township to rezone and to prove to the Court that such rezoning complied with Mt. Laurel the aforesaid 1982 Judgment was "final".

This burden has not changed in the present case and Ordinance 82-19 having been found invalid continues the Township's obligation to adopt and prove the existence of a complying ordinance. These proofs being submitted to the Court subject to the rights of the plaintiffs to hear such proofs and due process of law.

Once a zoning ordinance is even deemed prima facie invalid the municipality "shall then have a heavy burden of demonstrating, by a preponderance of the evidence, its fair share and its satisfaction of that share, or any justification of its failure." Where such invalidity exists there is a definite requirement of a presentation of facts by the defendant-municipality that shows it has satisfied its fair share obligation. Mt. Laurel II at 222-223. See also, Mt. Laurel I at pages 180-181 wherein it is stated:

> Procedurally, we think the basic importance of appropriate housing for all dictates that, when it is shown that a developing municipality in its land use regulations has not made realistically possible a variety and choice of housing, including adequate provision to afford the opportunity for low and moderate income housing or has expressly prescribed requirements or restrictions which preclude or substantially hinder it, a facial showing of violation of substantive due process or equal protection under the state constitution has been made out and the burden, and it is a heavy one, shifts to the municipality to establish a valid basis for its action or non-action. (emphasis supplied).

This same burden and degree of proof continues upon entry of judgment until released by satisfaction of that judgment.

If this matter is presently transferred to the Council and the Township, without any participation by the plaintiffs, obtains substantive certification of its rezoning proposals and objections thereto are not successfully mediated the matter is then submitted to an administrative law--evidentiary

hearing. Section 17(a) of the Act provides that during the mediation process:

> "there shall be a presumption of validity attaching to the housing element and ordinance implementing the housing element. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the housing element and ordinances implementing the housing element do not provide a realistic opportunity for the provision of the municipality's fair share of low and moderate income housing after allowing for the implementation of any regional contribution agreement approved by the council.

Although the Act does not appear to mention it the same presumption and burden of proof would also apply at the Administrative Law level.

Thus, the "heavy burden" of proof that is presently upon the Township and the absence of any presumption of validity are major factors which are affected by the Act. The slate is wiped clean and the Township is given another opportunity to wear a white hat with the plaintiffs being put back over five years in time to again rebut the statutory presumptions by "clear and convincing evidence". This is another example of unfairness of the Act to litigants who have strenuously fought for housing that Warren will not give.

It is recognized that the Legislature may establish presumptions and burdens of proof. It is competent for a legislative body to provide by statute that certain facts shall be presumptive evidence. Adler v. Board of Education,

342 U.S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952). Similarly, it is within the power of a legislative body to shift the burden of proof in civil cases. Hawkins v. Bleakly, 243 U.S. 210, 61 L. Ed. 678, 37 S. Ct. 255 (1916). However, the Legislature may not enact laws which cause a shift in the burden of proof and creates presumptions dramatically opposed to those to which the plaintiffs are presently entitled by virtue of the May, 1982 Judgment.

Article 4, Section 7, paragraph 3 of the New Jersey Constitution provides that:

> The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving any party of any remedy of enforcing a contract which existed when the contract was made.

As stated in Shade v. Colgate, 3 N.J. 91 (1949):

> A Judgment is a contract and when the time within which an appeal may be brought has expired, it ripens into an unchangeable contract, and becomes property, which can be disposed of affected only by the act of the owner, or through the power of eminent domain. It is therefore beyond the reach of legislation affecting the remedy, because it has become an absolute right, which cannot be impaired by statute.

See also, Article 1, paragraph 1 of the New Jersey Constitution provides that "All persons...have certain natural and unalienable rights, among which are those of...acquiring, possessing, and protecting property...."

The Fourteenth Amendment to the United States Constitution provides, in Section 1 thereof, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...."

Based upon these constitutional rights, the general rule is that the legislature may not destroy, annul, set aside, vacate, reverse, modify or impair the final judgment of a court of competent jurisdiction so as to take away any private rights which have become vested by that judgment. McCullough v. Virginia, 172 U.S. 102, 43 L. Ed. 382, 19 S. Ct. 134 (1898). Rights acquired by a judgment are property rights which cannot be taken without due process of law. Collins v. Welsh, 75 F. 2d 894 (1934), cert. denied, 295 U.S. 762, 79 L. Ed. 1704, 55 S. Ct. 921, 99 ALR 1319 (1935). Shade v. Colgate, supra. Statutes which attempt to do so have been held unconstitutional as an attempt on the part of the legislature to exercise judicial power and as a violation of the constitutional guaranty of due process of law. See also Pennsylvania Greyhound Lines, Inc., v. Rosenthal, 14 N.J. 372 at 380 (1954) wherein it is stated that a vested right under existing law is protected against retroactive legislative interference under Article 1, paragraph 1 of the New Jersey Constitution and the Fourteenth Amendment to the Federal Constitution.

The legislature is not only prohibited from reopening

cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment. City of Memphis v. United States, 97 U.S. 293, 296, 24 L. Ed. 920 (1878). As stated in Pensylvania Co. v. Scott, 346 Pa. 13, 29 A 2d 328 at 329 (Sup. Ct. Pa. 1942) there are two reasons for this limitation of legislative power:

> one, that a judgment is property of which, under state and federal constitutional prohibitions the judgment [holder] cannot be deprived without due process of law; the other, that under our system of the division of governmental powers the legislature cannot invade the province of the judiciary by interfering with judgments or decrees previously rendered.

The May 27, 1982 Judgment was a final judgment which is defined as "the official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination." It is "final" when it "disposes of the subject matter of the controversy or determines the litigation as to all parties on its merits." Clark v. Brown, 101 N.J. Super 404 at 411-412 (Law Div. 1968). See also, 47 Am. Jur. 2d, Judgments, Sec. 1053.

In the 1982 litigation, the "subject matter" of the case was Warren's zoning ordinance 79-3. This ordinance was challenged as to its validity and that was the sole issue pleaded and tried. It was the sole issue decided and the May 27, 1982 judgment disposed of Ordinance 79-3 and determined

its efficacy as to all parties. The fact that the trial court retained jurisdiction to review subsequent ordinances required to be adopted by Warren Township did not impair the status of the judgment as to the effect thereof on Ordinance 79-3. As to it the judgment was final and no appeal was taken. The fact that the trial court retained jurisdiction in the first matter to review the mandated new zoning does not alter the final judgment status. A judgment on the merits defining and settling the rights of parties is not rendered interlocutory by the fact that further orders may be necessary to carry into effect the rights determined by the judgment. In such a case, the subsequent action of the court is regarded as a subsequent proceeding and only auxiliary to or in execution of the final judgment. 47 Am. Jur 2d, Judgments, sec. 1056; 49 C.J.S. Judgments, see 11.

Since Warren Township is bound by the 1982 Judgment and the burdens affirmatively imposed thereby this "heavy" burden of proof has become an "inherent attribute" to which AMG and Skytop are entitled to retain as a matter of right. The utilization of the Act by transfer of this matter to the Council clearly shifts this burden to the substantial detriment of AMG and Skytop. Even without the constitutional violations of the rights acquired by these plaintiffs to the 1982 Judgment, it is obvious that this result would be unfair and manifestly unjust.

CONCLUSION

Contrary to the argument of the Township of Warren that the "only possible injustice to the developer is the expenditure of money" if this matter is transferred to the Council it is respectfully submitted that because of the reasons set forth herein such a transfer would result in a manifest injustice to the plaintiffs, AMG Realty Co and Skytop Land Corp. The prejudice to the interests of those parties is not minimal but of constitutional dimension and it would therefore be fundamentally unfair to remove this case from the Court at this time.

Additionally, Warren Township has not considered what it deems to be "third party beneficiaries" of this litigation, i.e., the public in need of housing, other than to frustrate and openly oppose that need. The legislative attempt to remove Warren Township from the judicial control of its known constitutional obligation has come too late to benefit this municipality.

Warren Township cannot carry its burden of proving the absence of "manifest injustice" by merely urging that the builder plaintiffs will "only" suffer a loss of money. It misses the point in attempting to do so.

Respectfully submitted,

McDONOUGH, MURRAY & KORN
A Professional Corporation

Joseph E. Murray

DATED: August 15, 1985

McDONOUGH, MURRAY & KORN
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WESTFIELD, N. J. 07090
(201) 233-9040
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

Plaintiff

AMG REALTY COMPANY, a Partnership organized under the laws of the State of New Jersey,

vs.

Defendant

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

L 23277 80

Docket No.

CIVIL ACTION

COMPLAINT IN LIEU OF PREROGATIVE WRIT

Plaintiff, a partnership organized under the laws of the State of New Jersey, having its principal office at 130 Davidson Avenue, Somerset, Somerset County, New Jersey, by way of complaint against the defendant, says:

1. Plaintiff is the owner of approximately 90 acres of vacant land in Warren Township, Somerset County, New Jersey, known and designated as Lots 22 and 25 in Block 137 as set forth on the current tax map of the Township of Warren.

2. The defendant, Township of Warren, is a "developing community" as defined by the New Jersey Supreme Court in So. Burlington County, N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975).

3. On January 25, 1979, the Township of Warren adopted a comprehensive zoning ordinance, being Ordinance 79-3.

4. The lands of the plaintiff are capable of being developed for residential use and plaintiff proposes to utilize said lands for the construction and sale of approximately 450 townhouse units, which land use is contrary to the applicable zoning laws of the defendant.

5. The present zoning ordinance of the Township of Warren (Ordinance 79-3) contains no provision or regulations which make possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live within the Township.

6. The present zoning ordinance of the Township of Warren (Ordinance 79-3) operates in fact to preclude the opportunity to supply any substantial amounts of least cost housing or new housing for low and moderate income households now and prospectively needed in the Township of Warren and in the appropriate region of which it forms a part.

7. As a direct and proximate result of the aforesaid deficiencies in the current zoning ordinance of the Township of Warren, insofar as it relates to land use for residential purposes, the said ordinance is illegal and invalid as being exclusionary zoning and contrary to the provisions of Article I, paragraph 1 of the Constitution of the State of New Jersey.

WHEREFORE, plaintiff demands judgment:

A. Setting aside the current zoning ordinance of Warren Township, Somerset County, New Jersey, insofar as the same seeks to regulate land usage for residential development.

B. Compelling the defendant, Warren Township, to determine and provide

its fair share of housing distribution for the region of which it is a part and to implement the same by appropriate amendments to its zoning ordinance.

McDONOUGH, MURRAY & KORN
Attorneys for Plaintiff

By: Joseph E. Murray
JOSEPH E. MURRAY

JEM:md
12/29/80
#5323

EXHIBIT B

McDONOUGH, MURRAY & KORN
A Professional Corporation
555 Westfield Avenue
Westfield, New Jersey 07090
(201) 233-9040
Attorneys for Plaintiff

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

A.M.G. REALTY COMPANY, A partnership organized under the Laws of the State of New Jersey, Plaintiff, -vs- THE TOWNSHIP OF WARREN, A Municipal Corporation of the State of New Jersey, Defendant.	CIVIL ACTION CONSENT ORDER FOR INTERVENTION

This matter having been heard by the Court upon the application of McDonough, Murray & Korn, P.A. attorneys for Skytop Land Corp., for leave to intervene in this action as a plaintiff, and the consent of John E. Coley, Esq., attorney for the defendant being annexed hereto, and it appearing to the Court that Skytop Land Corp. should be permitted to intervene as a plaintiff:

It is on this 19th day of May, 1981,

ORDERED that Skytop Land Corp. be given leave to intervene in this action and to serve and file its complaint immediately upon the entry of this order, with like effect as if Skytop Land Corp. had been named an original party plaintiff.

It is further

ORDERED that the Township of Warren shall have 20 days from the date hereof in which to serve an answer or otherwise move with respect to the complaint of Skytop Land Corp., in default whereof judgment will be entered against it.

Michael R. Imbriani
J.S.C.

The undersigned hereby consents to the substance and form of the within Order.

KUNZMAN, COLEY, YOSPIN & BERNSTEIN, P.A.

BY: John E. Coley, Jr.
John E. Coley, Jr.
Attorney for Defendant,
Warren Township

EXHIBIT
C

McDONOUGH, MURRAY & KORN, P.A.
555 Westfield Avenue, P. O. Box "O"
Westfield, New Jersey 07090
(201) 233-9040

AMG REALTY COMPANY, A Partnership: organized under the laws of the State of New Jersey, and SKYTOP : LAND CORP., a New Jersey Corporation, :	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. ~~L-23227-80~~ L-23277-80
Plaintiffs, :	Civil Action
vs. :	ORDER DENYING ~~STAY~~ appl.
THE TOWNSHIP OF WARREN, a Municipal Corporation of the State of New Jersey, :	
Defendant :	

THIS MATTER having been presented to the Court on the application of John E. Coley, Esquire, appearing on behalf of the defendant, Township of Warren, and McDonough, Murray and Korn, P.A. (Joseph E. Murray, Esquire) appearing on behalf of the plaintiffs, and the Court having considered the Memoranda of Law submitted on behalf of each of the parties as well as the argument of counsel thereon and for good cause shown,

IT IS on this 17th day of February, 1982, ORDERED that the application of the defendant, Township of Warren,

to stay the trial of this matter is hereby denied.

ROBERT E. GAYNOR, J.S.C.

✓ Notice of Motion of Defendant Township of Warren Dated January 6, 1982

✓ Memorandum of Law on behalf of Defendant Township of Warren

✓ Memorandum of Law on behalf of Plaintiffs

_____ Certifications (None)

EXHIBIT
D

S-7578

JEM

FILED

ORIGINAL TO SUPERIOR COURT 5-27-82

Entered

Indexed

McDONOUGH, MURRAY & KORN, P.A.
555 Westfield Avenue
P. O. Box "O"
Westfield, New Jersey 07090
(201) 233-9040
Attorneys for Plaintiffs

AMG REALTY COMPANY, A Partnership organized under the laws of the State of New Jersey, and SKYTOP LAND CORP., a New Jersey Corporation,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY
	DOCKET NO. L-23277-80
Plaintiffs,	
vs.	Civil Action
THE TOWNSHIP OF WARREN, a Municipal Corporation of the State of New Jersey,	JUDGMENT
Defendant	

This action coming on to be heard before this Court in the presence of Joseph E. Murray, Esquire, (McDonough, Murray & Korn, P.A.), attorneys for the Plaintiffs and John E. Coley, Esquire, (Kunzman, Coley, Yospin & Bernstein, P.A.), attorneys for the Defendant, and the Court being of the opinion, as expressed in an oral opinion stated on May 18, 1982, that the Plaintiffs are entitled to the relief demanded in the complaint;

IT IS on this 27th day of May, 1982, adjudged as follows:

(a) The current zoning ordinance of the Township

of Warren (Ordinance 79-3) is illegal and invalid as being exclusionary in violation of the principles set forth in N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1975);

(b) The defendant, Township of Warren, shall, within nine months from May 18, 1982, undertake a rezoning to comply with the principles and obligations of Mt. Laurel (N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1975) and, within such time, present such rezoning to this Court for review and approval;

(c) Specific zoning relief as to the lands of the respective Plaintiffs as described in the complaint filed in this matter is not granted nor denied at this time;

(d) This Court retains jurisdiction of the subject matter of this case.

ARTHUR S. MEREDITH, J.S.C.

EXHIBIT
E

Filed

McDONOUGH, MURRAY & KORN
A PROFESSIONAL CORPORATION
555 WESTFIELD AVENUE
WESTFIELD, N. J. 07090
(201) 233-9040
ATTORNEYS FOR Plaintiffs

Plaintiff

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

vs.

Defendant

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-23277-80

CIVIL ACTION

CONSENT ORDER TO FILE SUPPLEMENTAL COMPLAINT

THIS MATTER having been presented to the Court upon the application of McDonough, Murray & Korn, P.A., attorneys for the Plaintiffs, and John E. Coley, Jr., Esquire, attorney for the Defendant, and the Court having reserved jurisdiction pursuant to a prior judgment entered in this matter on May 27, 1982, to review any revised zoning ordinance adopted by the Defendant, and the Court having been advised that such revised zoning ordinance has recently been adopted and the Plaintiffs herein challenge the validity of the same,

IT IS on this 17th day of January, 1983, pursuant to Rule 4:9-4, ORDERED that the Plaintiffs have leave

to file a supplemental complaint in the form annexed hereto and that the same shall be served by regular mail upon the Defendant, through its attorney, together with a copy of this Order within 5 days from the date hereof and the Defendant shall file a responsive pleading thereto within 10 days of the receipt of service as herein provided, and

IT IS further ORDERED that the parties hereto shall have such discovery as is permitted by Court Rule, which discovery shall be completed within 120 days from the date hereof.

Arthur S. Meredith

HON. ARTHUR S. MEREDITH, J.S.C.

We do hereby consent to the within Order as to substance and form:

McDONOUGH, MURRAY & KORN, P.A.
Attorneys for Plaintiffs

By: Joseph E. Murray
JOSEPH E. MURRAY

John E. Coley, Jr.
JOHN E. COLEY, JR.
Attorney for Defendant

McDONOUGH, MURRAY & KORN
A PROFESSIONAL CORPORATION
555 WESTFIELD AVENUE
WESTFIELD, N. J. 07090
(201) 233-9040
ATTORNEYS FOR Plaintiffs

Plaintiff

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

vs.

Defendant

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-23277-80

CIVIL ACTION

SUPPLEMENTAL COMPLAINT IN LIEU OF PREROGATIVE WRIT

Plaintiffs, a partnership and corporation, respectively, organized under the laws of the State of New Jersey, having their principal office at 130 Davidson Avenue, Somerset, Somerset County, New Jersey, by way of supplemental complaint against the Defendant, say:

FIRST COUNT

1. Plaintiff, AMG Realty Company, repeats each of the allegations set forth in the original complaint filed in this matter on December 31, 1980, as if the same were herein designated at length.

2. Plaintiff, Skytop Land Corp., repeats each of the allegations set forth in the original complaint filed in this matter, as intervenor, as if the same were herein designated at length.

3. By judgment of the Superior Court entered in the above docketed case on May 27, 1982, the zoning ordinance of the Defendant, Township of Warren, (Ordinance 79-13) was declared illegal and invalid as being exclusionary in violation of the principles set forth in N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1975) (hereinafter referred to as "Mt. Laurel).

4. Pursuant to the aforesaid judgment dated May 27, 1982, the Defendant, Township of Warren, was directed to undertake a rezoning to comply with the principles and obligations of the Mt. Laurel decision above referred to.

5. On or about December 2, 1982, the Township of Warren adopted Ordinance 82-19 for the purpose of rezoning its municipality to comply with the principles and obligations of the aforesaid Mt. Laurel decision. (A copy of said ordinance is attached hereto.)

6. The aforesaid Ordinance 82-19 specifically provides, in Section XII thereof, that it shall take effect after the review and approval of the same by the Court pursuant to reserved jurisdiction of this matter as set forth in the judgment herein entered on May 27, 1982.

7. The newly adopted zoning Ordinance 82-19 fails to comply with the principles and obligations of Mt. Laurel in that:

(a) The Defendant failed to study, consider and determine the relevant housing region which it is to serve in

compliance with the principles and obligations of Mt. Laurel.

(b) The Defendant failed to study, consider or determine its "fair share" of the present and prospective regional need for low-income, moderate-income or least-cost housing requirements.

(c) The Defendant has failed to study, consider or determine the existence and location of substantial land areas within its borders that presently can be developed at costs consistent with Mt. Laurel objectives so that immediate satisfaction of these objectives and obligations can be achieved.

(d) The Defendant has failed to provide an appropriate variety and choice of housing for all categories of people who may desire to live within the community and Ordinance 82-19 operates in fact to continue to preclude the opportunity to supply any substantial amounts of least-cost housing or new housing for low or moderate income households now and prospectively needed with the Defendant Township and in the appropriate region of which it forms a part.

(e) The Defendant has excluded from rezoning consideration all lands within its borders that are not currently available for immediate construction because the same are not presently serviced by a municipal sewer system, said exclusion being predicated upon the same invalid reasoning urged at the first trial of this matter by the Defendant in support of its position that it had no affirmative Mt. Laurel obligations due to the absence of sewer capacity and usage.

15. As a direct and proximate result of the aforesaid deficiencies in Ordinance 82-19 the aforesaid ordinance is

illegal and invalid as being exclusionary and contrary to the provisions of Article I, Paragraph 1, of the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs demand judgment:

(a) Setting aside zoning Ordinance 82-19;

(b) For the appointment of a planner to prepare an appropriate rezoning study of the Township of Warren, at the expense of the Township, to provide a zoning scheme consistent with the Mt. Laurel obligations.

SECOND COUNT

1. Plaintiffs herein repeat the allegations of the First Count as if the same were set forth at length.

2. The lands owned by the Plaintiffs, AMG Realty Company and Skytop Land Corp., are presently zoned for one and one-half acre single-family residential development.

3. The lands owned by the Plaintiffs are appropriately suited in all respects for increased density zoning to permit least cost housing thereon at a density of four units to twelve units per acre in satisfaction of Mt. Laurel objectives.

4. The Plaintiffs have offered to develop their respective lands so as to provide immediate least-cost housing in accordance with the obligations of Mt. Laurel but the Defendant, Township of Warren, has refused to even discuss such a proposal with the Plaintiffs despite Plaintiffs' past public offer to provide such housing.

5. Despite the fact that Plaintiffs' lands are peculiarly suited and situated, both physically, environmentally and

economically, to afford least-cost housing facilities pursuant to the Defendant's affirmative obligations to provide the same, Defendant has also failed to consider or recognize the lands of the Plaintiffs, or either of them, for inclusion in its rezoning process as set forth in Ordinance 82-19.

6. The lands that have been included by the Defendant in its rezoning process, as set forth in Ordinance 82-19, include, in substantial part, land areas that are not suited physically, environmentally or economically for present or reasonably foreseeable future use, to satisfy the Defendant's Mt. Laurel obligation.

7. As a direct result of the aforesaid the lands of the Plaintiffs have been arbitrarily, capriciously and unlawfully excluded from the rezoning obligations imposed upon the Defendant for satisfaction of its Mt. Laurel obligations.

8. Plaintiffs, at their effort and cost, have also borne the stress of the prior and current litigation which will produce a public benefit, but if their lands are excluded from rezoning relief despite being suitable therefor, the public incentive for the institution of socially beneficial but costly litigation of this nature will be frustrated.

WHEREFORE, Plaintiffs demand judgment directing the rezoning of their lands, in substantial part at least, for the construction of least-cost housing at a density of 4-12 units per acre.

McDONOUGH, MURRAY & KORN, P.A.
Attorneys for Plaintiffs

By: Joseph E. Murray
JOSEPH E. MURRAY

Dated: December 29, 1982

EXHIBIT
C

KUNZMAN, COLEY, YOSPIN & BERNSTEIN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EDWIN D. KUNZMAN
JOHN E. COLEY, JR.
HARRY A. YOSPIN
STEPHEN J. BERNSTEIN
IRVING KUNZMAN (1914-1980)
IRA KUNZMAN (1924-1974)

HAROLD DRUSE
STEVEN A. KUNZMAN

15 MOUNTAIN BOULEVARD
WARREN, N.J. 07060
(201) 757-7800

Our File No. W-32

January 10, 1983

McDonough, Murray & Korn, Esqs.
555 Westfield Avenue
P. O. Box 0
Westfield, New Jersey 07091

Attention: Joseph E. Murray, Esq.

Re: AMG Realty Co. vs. Warren Township

Dear Joe:

Enclosed herewith is the executed consent order and three (3) copies. I would request that when you forward this order to Judge Meredith for execution, that we have at least six months to complete discovery as I will want to depose all your experts in detail and I am sure you will want to depose mine and I'm sure interrogatories, etc. will be in order. At this point, Warren Township feels that it has adopted a fair and equitable ordinance and one that is in conformity with Judge Meredith's opinion. The committee desires that this case be handled as thoroughly as possible and in the event the trial court renders a decision adverse to the township's interests, the township has authorized me to proceed as far as required to vindicate its rights. Thus, I do not want too limited a discovery period to be imposed upon us.

If you have any problems relative to a discovery period of six month duration, please contact me so that we can discuss the same.

Very truly yours,

JOHN E. COLEY, JR.

JEC/ga
Enclosure

cc: Township Committee

EXHIBIT
A

Served 8-4-81

SHERIFF'S OFFICE
SOMERSET COUNTY, N.J.
RECEIVED
1981 AUG -3 AM 9:28
PROCESSED

Attorney(s): RAYMOND R. & ANN W. TROMBADORE, A Professional Corporation
Office Address & Tel. No.: 33 East High Street, Somerville, New Jersey 08876
Attorney(s) for Plaintiff(s) (201) 722 - 7555

Plaintiff(s)

TIMBER PROPERTIES, a Corporation of the State of New Jersey

vs.

Defendant(s)

THE TOWNSHIP OF WARREN, a Municipal Corporation of the State of New Jersey, THE PLANNING BOARD OF THE TOWNSHIP OF WARREN and THE WARREN TOWNSHIP SEWERAGE AUTHORITY

SUPERIOR COURT OF NEW JERSEY

LAW *DIVISION*

SOMERSET *COUNTY*

Docket No. L-67820-80 P.W

CIVIL ACTION

Summons

The State of New Jersey, to the Above Named Defendant(s):

THE TOWNSHIP OF WARREN

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by the above named plaintiff(s), and required to serve upon the attorney(s) for the plaintiff(s), whose name and office address appears above, an answer to the annexed complaint within 20 days after the service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer or appear in accordance with Rule 4:4-6, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file your answer or appearance and proof of service thereof in duplicate with the Clerk of the Superior Court, State House Annex, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.

Dated: July 30, *19* 81 .

W. Lewis Bambrick

W. LEWIS BAMBRICK
Clerk of the Superior Court

Name of defendant to be served: Township of Warren
Address for service: c/o Clerk of Warren Township
46 Mountain Boulevard
Warren, New Jersey

RECEIVED
WARREN TOWNSHIP
AUG 4 1981
CLERK'S OFFICE

RAYMOND R. & ANN W. TROMBADORE
A Professional Corporation
33 East High Street
Somerville, New Jersey 08876
(201) 722 - 7555
Attorneys for Plaintiff

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

TIMBER PROPERTIES, a Corporation of the State of New Jersey,	:	Civil Action P.W.
Plaintiff,	:	COMPLAINT IN LIEU OF PREROGATIVE WRIT
- vs -	:	
THE TOWNSHIP OF WARREN, a Municipal Corporation of the State of New Jersey, THE PLANNING BOARD OF THE TOWNSHIP OF WARREN, and THE WARREN TOWNSHIP SEWERAGE AUTHORITY,	:	
Defendants.	:	

The plaintiff, a corporation of the State of New Jersey, having its principal office at 310 Park Avenue in the Township of Scotch Plains, Union County, New Jersey, by way of complaint against the defendants, says:

FIRST COUNT

1. The plaintiff is the contract purchaser and equitable owner of approximately 68 acres of vacant land in Warren Township Somerset County, New Jersey, known and designated as Lots 12, 13, 19, 19C, 36, 37, and 38 in Block 111, Lot 4 in Block 121, Lot 1 in Block 122, and Lot 1 in Block 123, all as shown and set forth on the current tax map of said Township of Warren.

2. The defendant Township of Warren is a "developing community" as defined by the New Jersey Supreme Court in South Burlington County, N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975).

3. On January 25, 1979, the Township of Warren adopted a zoning ordinance, Ordinance 79-3.

4. The lands of the plaintiff are capable of being develope for residential use and plaintiff proposes to utilize said lands for the construction and sale of approximately 252 townhouse unit which land use is contrary to the applicable zoning laws of the defendant Township of Warren.

5. The present zoning ordinance of the Township of Warren (Ordinance 79-3) contains no provision or regulations which make available an appropriate variety and choice of housing for all categories of people who may desire to live within the Township.

6. The present zoning ordinance of the Township of Warren (Ordinance 79-3) operates in fact to preclude the opportunity to supply any substantial amount of least cost housing or new housi

for low and moderate income households now and prospectively needed in the Township of Warren and in the appropriate region of which it forms a part.

7. As a direct and proximate result of the aforesaid deficiencies in the current zoning ordinance of the Township of Warren, insofar as it relates to land use for residential purpos the said ordinance is illegal and invalid as being exclusionary zoning and contrary to the provisions of Article I, Paragraph 1 of the Constitution of the State of New Jersey and further contrary to the provisions of the Constitution of the United States.

WHEREFORE, plaintiff demands judgment:

A. Compelling the defendant Township of Warren to determine and provide its fair share of housing distribution for the regior of which it is a part and to implement the same by appropriate amendments to its zoning ordinance.

B. Declaring the zoning ordinance of the Township of Warren (Ordinance 79-3) to be illegal, unconstitutional, void and of no effect.

C. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

D. Enjoining any further applications, approvals or development pursuant to the zoning ordinance.

E. Declaring the zoning ordinance to be of no effect as to plaintiff's property and the plaintiff be permitted to develop their property in accordance with the plans submitted by the plaintiff to the defendant Township for approval.

F. For counsel fees and costs.

G. For such other relief as the Court may deem just and proper under the circumstances.

SECOND COUNT

1. The plaintiff repeats the allegations of the First Coun and incorporates them in this Count.

2. The Municipal Land Use Act, N.J.S. 40:55D-1 et seq. pro vides, amongst other things, that the intent and purpose of the Act is to "ensure that the development of individual municipalit does not conflict with the development and general welfare of neighboring municipalities, the County and the State as a whole. N.J.S. 40:55D-2(d).

3. The master plan currently in effect in the defendant Township of Warren, together with the zoning regulations now in effect in said Township, do conflict with the development and general welfare of neighboring municipalities within the County of Somerset in that said master plan and zoning regulations do not permit the planned unit development of residential housing a provided for in adjacent municipalities which have assumed or have been required to assume a fair share of their burden of pro viding such housing.

WHEREFORE, plaintiff demands judgment against the Township of Warren:

A. Declaring the zoning ordinance of the Township of Warre (Ordinance 79-3) to be illegal, unconstitutional, void and of nc effect.

B. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

C. Enjoining any further applications, approvals or deve[l]opment pursuant to the zoning ordinance.

D. Declaring the zoning ordinance to be of no effect as t[o] plaintiff's property and the plaintiff be permitted to develop their property in accordance with the plans submitted by the pl[a]intiff to the defendant Township for approval.

E. For counsel fees and costs.

F. For such other relief as the Court may deem just and proper under the circumstances.

THIRD COUNT

1. The plaintiff repeats the allegations of the First and Second Counts and incorporates them in this Count.

2. The Municipal Land Use Act of the State of New Jersey, supra., also provides, as stated purposes of the Act:

i. To promote a desirable visual environment through creative development techinques and good civic design and arrangements;

j. To promote the conservation of open space and valuable natural resources to prevent urban sprawl and degradation of the environment through improper use of land;

k. To encourage planned unit development which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;

l. To encourage senior citizen community housing construction;

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land; and

n. To promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources. N.J.S. 40:55D-2.

3. The zoning ordinance of the defendant Township of Warre violates the stated purposes of the Municipal Land Use Act in th it fails to satisfy the stated purposes of the Municipal Land Us Act and, as such, is arbitrary, unreasonable and capricious.

WHEREFORE, plaintiff demands judgment against the Township of Warren:

A. Declaring the zoning ordinance of the Township of Warre (Ordinance 79-3) to be illegal, unconstitutional, void and of no effect.

B. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

C. Enjoining any further applications, approvals or develop ment pursuant to the zoning ordinance.

D. Declaring the zoning ordinance to be of no effect as to plaintiff's property and the plaintiff be permitted to develop its property in accordance with the plans submitted by the plain tiff to the defendant Township for approval.

E. For counsel fees and costs.

F. For such other relief as the Court may deem just and proper under the circumstances.

FOURTH COUNT

1. The plaintiff repeats the allegations of the First, Second and Third Counts and incorporates them in this Count.

2. The bulk of the plaintiff's lands are located in the RR zone of the defendant Township permitting the construction of single-family homes on lots having a minimum area of 65,340 square feet (variable lot sizes are permitted provided, however, that the maximum gross density is maintained and the minimum lot area is 50,000 square feet).

3. The current lot area requirement of the zoning ordinance of the defendant Township of Warren bears no relationship to a reasonable exercise of the police power and is arbitrary, capricious and unreasonable.

WHEREFORE, plaintiff demands judgment against the Township of Warren:

A. Declaring the zoning ordinance of the Township of Warren (Ordinance 79-3) to be illegal, unconstitutional, void and of no effect.

B. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

C. Enjoining any further applications, approvals or development pursuant to the zoning ordinance.

D. Declaring the zoning ordinance to be of no effect as to plaintiff's property and the plaintiff be permitted to develop their property in accordance with the plans submitted by the plaintiff to the defendant Township for approval.

E. For counsel fees and costs.

F. For such other relief as the Court may deem just and proper under the circumstances.

FIFTH COUNT

1. The plaintiff repeats the allegations of the First, Second, Third and Fourth Counts and incorporates them in this Count.

2. The defendant Township of Warren has rezoned substantial portions of land in the vicinity of the plaintiff's lands for intense office use.

3. Recently the defendant Township has granted to Chubb and Sons, Inc. permission to construct a major headquarters office facility almost directly opposite the land of the plaintiff.

4. The large lot requirement of Ordinance 79-3 of the defendant Township of Warren is inconsistent and incompatible with the intensity of use permitted by said Township of Warren on lands in the immediate vicinity of the plaintiff's lands.

5. Ordinance 79-3 of the defendant Township of Warren and the land use regulations adopted pursuant thereto do not comply with the mandates of the New Jersey Municipal Land Use Act, supra. in that they are not predicated upon a zone plan which gives reasonable consideration to the character of each district and its peculiar suitability for particular uses, nor do said regulations encourage the most appropriate use of land.

WHEREFORE, plaintiff demands judgment against the Township of Warren:

A. Declaring the zoning ordinance of the Township of Warren (Ordinance 79-3) to be illegal, unconstitutional, void and of no effect.

B. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

C. Enjoining any further applications, approvals or development pursuant to the zoning ordinance.

D. Declaring the zoning ordinance to be of no effect as to plaintiff's property and the plaintiff be permitted to develop their property in accordance with the plans submitted by the plaintiff to the defendant Township for approval.

E. For counsel fees and costs.

F. For such other relief as the Court may deem just and proper under the circumstances.

SIXTH COUNT

1. The plaintiff repeats the allegations of the First through Fifth Counts and incorporates them in this Count.

2. The limitations imposed upon the lands of the plaintiff by Ordinance 79-3 constitute an inverse condemnation of the plaintiff's property and are arbitrary, capricious and confiscatory and constitute an unlawful taking of the plaintiff's property without just compensation in violation of the New Jersey Constitution of 1947, Article I, Section 20 and of the United States Constitution, the Fourteenth Amendment.

WHEREFORE, plaintiff demands judgment against the Township Warren:

A. Declaring the zoning ordinance of the Township of Warren (Ordinance 79-3) to be illegal, unconstitutional, void and of no effect.

B. Directing the Township of Warren to cease and desist from enforcement of its zoning ordinance.

C. Enjoining any further applications, approvals or development pursuant to the zoning ordinance.

D. Declaring the zoning ordinance to be of no effect as to plaintiff's property and the plaintiff be permitted to develop their property in accordance with the plans submitted by the plaintiff to the defendant Township for approval.

E. For counsel fees and costs.

F. For such other relief as the Court may deem just and proper under the circumstances.

SEVENTH COUNT

1. The plaintiff repeats the allegations of the First through Sixth Counts and incorporates them in this Count.

2. In December of 1980 the plaintiff submitted a request to the defendant Township of Warren for rezoning of its lands in said Township to permit the development of said lands for townhouses at a density of approximately 3.7 units per acre.

3. The defendant Township of Warren referred said request for rezoning to the defendant Planning Board of the Township of Warren.

4. Hearings were conducted before the defendant Planning Board of the Township of Warren at which the plaintiff submitted

evidence clearly establishing the feasibility of the development of the plaintiff's lands for townhouses at the density proposed.

5. Notwithstanding such evidence, the Planning Board has failed to recommend to the Township Committee the rezoning of the plaintiff's lands.

6. Said failure on the part of the Planning Board constitut an arbitrary, unreasonable and capricious act on the part of the defendant Planning Board and the failure of the defendant Townshi to rezone said lands constitutes an arbitrary, capricious and unreasonable refusal to act on the part of the defendant Township of Warren.

WHEREFORE, plaintiff demands judgment against the defendant Planning Board of the Township of Warren and the defendant Township of Warren:

A. Compelling the defendant Planning Board to recommend the rezoning of the plaintiff's lands and compelling the defendant Township to rezone the plaintiff's lands to permit the development of said lands for the purpose of constructing 252 townhouses as proposed by the plaintiff.

B. Declaring that the function of a Planning Board and a Township Comittee pursuant to a request for rezoning is a quasi-judicial function and not purely an administrative function and, as such, subject to the requirements of the Law that the response to such requests be made within a reasonable period of time and be subject to judicial reversal when determined to be unreasonable arbitrary or capricious.

C. For counsel fees and costs of this suit.

D. For such other relief as might be deemed appropriate under the circumstances.

EIGHTH COUNT

1. The plaintiff repeats the allegations of the First through Seventh Counts and incorporates them in this Count.

2. The Warren Township Sewerage Authority is a public body politic and a political subdivision of the State of New Jersey organized pursuant to the authority granted by N.J.S. 40:14A-1 et seq.

3. In 1979 said Sewerage Authority undertook planning for the expansion of the Stage I and II Treatment Plant and the construction of a new Stage V Sewage Treatment Plant to service the northwest area of Warren Township in which the lands of the plaintiff are located.

4. All necessary approvals have been granted to the Warren Township Sewerage Authority for the construction of a new Stage V Sewage Treatment Plant to service the northwest area of Warren Township.

5. In July of 1979 the Township of Warren Sewerage Authority notified the record owners of plaintiff's lands, H. W. Evans and W. F. Reis, t/a Evans and Reis, a partnership, of its intention to construct said Stage V Treatment Plant and tendered a contract to said owners of the land for participation in said treatment plant.

6. In September of 1979 a contract was entered into by said owners of the land with the Warren Township Sewerage Authority

reserving to said owners of land a capacity of 18,000 gallons per day in said Stage V Sewage Treatment Plant.

7. In January of 1981 the owners of the property notified the defendant Sewerage Authority of their requirement for an additional sewage treatment capacity in the amount of 60,000 gallons over and above the 18,000 gallons previously allocated to the property of the plaintiff.

8. The defendant Warren Township Sewerage Authority has arbitrarily and unreasonably and capriciously refused to provide the plaintiff with the additional sewage treatment capacity requested of the Authority and required for the proper development of the plaintiff's lands.

9. The original design of the Stage V Treatment Plant which the defendant Authority proposes to construct called for a treatment plant with a capacity of treating 450,000 gallons of sewage per day. The defendant Sewerage Authority has arbitrarily revised its plans for said Stage V Treatment Plant to 380,000 gallons per day and has arbitrarily allocated the entirety of that gallonage to 13 owners of property within said northwest section of the Township.

10. The refusal of the defendant Warren Township Sewerage Authority to provide adequate sewage treatment capacity to the plaintiff is based upon an illegal agreement between the Sewerage Authority and the defendant Township of Warren which limits the allocation of sewage capacity on residential lands to the capacity required to service said lands pursuant to present zoning limitations existing upon the lands.

11. The arbitrary limitations placed upon gallonage capaci by the defendant Authority together with the arbitrary zoning limitations imposed upon the lands by the defendant Township of Warren constitute an illegal and unconstitutional attempt on the part of the defendant Township and the defendant Sewerage Author to regulate growth in said Township of Warren.

WHEREFORE, plaintiff demands judgment against the defendant Township of Warren Sewerage Authority:

A. Declaring void the limitation announced in its policies with respect to gallonage capacity which may be assigned to the plaintiff based upon the present zoning of the plaintiff's lands;

B. Directing and ordering said defendant Warren Township Sewerage Authority to provide adequate sewage treatment capacity to the plaintiff pursuant to its requests for such capacity;

C. For counsel fees and costs of this suit;

D. For such other relief as might be deemed appropriate under the circumstances.

RAYMOND R. & ANN W. TROMBADORE
A Professional Corporation
Attorneys for Plaintiff

By: /s/ Raymond R. Trombadore
RAYMOND R. TROMBADORE
A Member of the Firm

Dated: July 22, 1981

Cover for defense

EXHIBIT
H

P R E T R I A L O R D E R

Pretried by Judge Eugene D. Serpentelli,JSC

on (date) October 25, 1983

Reporter Dayette J. Zampolin,CSR

Superior COURT Somerset COUNTY Law DIVISION

DOCKET NOS. L-23277-80PW, L-67820-80-PW

AMG REALTY COMPANY, et als,
Plaintiff.,

-v---

THE TOWNSHIP OF WARREN,
DEFENDANT.,

Consolidated with:

TIMBER PROPERTIES, etc.,
Plaintiff.

-v-

THE TOWNSHIP OF WARREN, et als,
Defendants.

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. This is an action in lieu of prerogative writ to challenge Zoning Ordinance 82-19, adopted on Dec. 2, 1982 as being in violation of Mount Laurel IIprinciples. The action of Timber Properties also challenges the failure of the Sewerage Authority to provide adequate capacity to Timber's property based on an alleged illegal agreement between the Authority and the Township. A.M.G. seeks a builder's remedy for the construction of lower income housing. (Any reference to A.M.G. hereafter shall include Skytop.) Timber seeks to construct townhouses at a density which would permit it to comply with Mt. L. requirements , and in that connection seeks a builder's remedy.

1. (cont'd) Both intervenors seek to have the Zoning Ordinance declared invalid as it applies to the property on the grounds that the properties are not suitable for residential use. No builder's remedy is sought by either individual.

2. (a) Ownership by A.M.G. and/or Skytop of lots 22 and 25 in block 137 and lot ten in block 125. (b) Ownership by Facey, et al of lots 34-38 and 43 in block 619. (c) Invalidation of Zoning Ord. 79-3 by judgment of the Sup. Ct., Somerset County, Docket L-23277-80. (d) Proper procedural adoption of Ord. 82-19. (e) Proper procedural adoption of land development ordinance . (f) The entire Twp. of Warren is designated as a "Growth" area under the S.D.G.P..

3. -4. See attached.

5. Damages, none.

6. Plaintiff A.M.G. is granted leave to amend the second count of the supplemental complaint to change the words, "least cost housing" as appearing in Pargs. 3, 4, and 5 thereof, and to replace those words with "low and moderate income housing".

7. (a) Whether Ord. 82-19 violated violates Mt. Laurel II principles; (b) what constitutes the region, regional need and fair share as it relates to Warren Twp.; (c) what is the definition of low and moderate income housing as it relates to Warren Twp. (d) whether Ord. 82-19 violates the Munc. Land Use Act or is otherwise arbitrary, unreasonable and capricious either as a whole or as applied to the intervenors' property; (e) Whether the land dev. ordinances of the Twp. result in an unlawful taking of the property of Timber and the intervenors; (f) Whether the Sewage Auth. Auth has acted unreasonably, caprisiously or arbitratily in placing limitations on availability of sewerage capacity as to Timber; (g) Whether a builder's remedy is appropriate as to A.M.G. and Timber , and if so, what would be appropriate; (h) Whether the Twp. and/ or the Sew. Auth. has an obligation to provide subsidies for lower income housing or least cost housing as to A.M.G. and Timber; (i) Whether the Twp. has provided in its land dev. Ord's. for all other appropriate affirmative devices within Mt. L. principles; (j) Whether it is feasible to provide sewerage facilities to the Timber property; (k) Whether the Constitutional rights of the Sew. Auth are violated, including: (1) Article 1, Section 1, N.J. Constitution- Deprivation of Property Rights ; (2) Article 1, Section 18, N.J. Const., Deprivation of Right of Petition (3) Article 3, N.J. Const. Separation of Powers; (4) Article 14 of the U.S. Const.- Due Process and Legal Protection; (l) Whether the Land Dev. Regulations are arbitrary, capricious or unreasonable in the designation of the intervenors' property as enviornmentally critical/steep slope; (m) Whether giving A.M.G. and Timber preference with respect to connection fee and capacity rate would violate N.J.S.A.40:14A-8;

8. Estoppel, Exhaustion and ; the issue of standing as to Timber shall not be an issue in this trial as a result of the Court's denial of a motion to dismiss for lack of standing.

9. All Land Use Dev. Regs. of the Twp. of Warren; all experts' reports which will be supported by expert testimony of that expert;

9. (cont'd) Official records of the Deft. Sew. Auth. related to Stage 4 Stage 5 Treatment Plant construction and operation; a copy of all applicable land dev. regs. will be supplied to the Court within 30 days of the date hereof. Each Party shall also supply to the Court a copy of any written expert report for any expert who will testify at the time of trial, within 20 days of the date hereof.

10. No limit.

11. Briefs. Nov. 30, 1983 by all parties on all issues.

12. Plaintiff. A.M.G. shall present the first witness and shall continue with his case,except that Timber may present at any appropriate time wits. who would testify as to the issues already presented by A.M.G.; at the completion of A.M.G.'s case, Timber shall complete its case if any testimony remains to be presented. Thereafter, the Twp. and Sew. Auth. and the Plan. Bd. shall present their case. If necessary, at the completion of the deft's case the intervenors shall present their case and the defts. shall have an opportunity to present any testimony specifically addressed to the intervenors' case.

13. None.

14. Trial counsel: Joseph Murray for A.M.G.; Raymond Trombadore for Timber; Robert Kraus for Facey, et al; John Lynch for Bozz Bojczuk; John Coley for Twp.; J. Albert Mastro for Sew. Auth.; Eugene Jacobs for Plan. Bd.

15. Two weeks.

16. Trial shall commence on Dec. 5, 1983, 9:00 A.M.

17. All discovery , including the answers to all outstanding interrogs will be completed by Nov. 21, 1983.

3-4. FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFFS, AMG REALTY COMPANY AND SKYTOP LAND CORP.

Plaintiff AMG Realty Company is a New Jersey partnership owning lands known and designated as Lots 22 and 25 in Block 137 on the current tax map of Warren Township, Somerset County, New Jersey, and plaintiff, Skytop Land Corp., is a New Jersey corporation of the State of New Jersey, owning lands known and designated as Lot 10 in Block 125 on said tax map. All of the lands involved are situated in the westerly end of the Township of Warren with the AMG lots constituting 89 acres of vacant land and the Skytop property consisting of 214 acres of vacant land. Both AMG and Skytop appear in this case as joint developers of both parcels.

Pursuant to a judgment entered in the Superior Court of New Jersey, Law Division, Somerset County (Docket No. L-23277-80) on May 27, 1982, AMG and Skytop obtained an adjudication that the then-existing ordinance of the Township of Warren (Ordinance No. 79-3) was illegal and invalid as being exculsionary in violation of the principles set forth in Mt. Laurel I. Pursuant to this judgment the defendant, Township of Warren, was directed to undertake a rezoning within nine months from May 18, 1982, to comply with the obligations of Mt. Laurel I. Also, pursuant to that judgment, the plaintiffs' request for specific zoning relief as to their respective lands was neither granted nor denied. The Superior Court retained jurisdiction of the subject matter of the case.

Subsequent to the entry of the judgment of May 27, 1982, the Township of Warren, through its Planning Board and Township Committee, undertook public hearings and a limited number of studies for the purpose of undertaking a rezoning to comply with the obligations of the aforesaid judgment. These public hearings commenced in approximately June of 1982 and terminated on December 2, 1982, with the adoption of Ordinance No. 82-19 which is the subject matter of this litigation.

By supplemental complaint filed in the Superior Court of New Jersey under Docket No. L-23277-80 the within action has been filed to challenge the validity of Ordinance 82-19 on the basis that it fails to comply with the principles and obligations of Mt. Laurel, both Mt. Laurel I and Mt. Laurel II. Specifically, the plaintiffs allege that the current zoning ordinance, although it purports to establish certain zone districts within the Township of Warren wherein low and moderate income housing may be constructed, it in reality fails to do so and that the Township of Warren failed to undertake the appropriate underlying studies and determinations upon which it could have reasonably adopted an ordinance purporting to satisfy the Mt. Laurel obligations. The Township of Warren failed to determine the relevant housing region of which it is a part; the Township of Warren failed to determine its fair share of the present and prospective regional

PRETRIAL MEMORANDUM OF TIMBER PROPERTIES

3-4. FACTUAL AND LEGAL CONTENTIONS:

The plaintiff Timber Properties, a New Jersey Corporation, is the contract purchaser and equitable owner of approximately 68 acres of facant land in Warren Township. The property is located on Mountain View Boulevard and in an area which is presently zoned for residential use. Immediately North of the property and slightly to the West of the property there is being constructed an office complex for Chubb and Sons, Inc. Warren Township is a rural community and a developing community comprised largely of open space. Warren Township is in a growth area as that term is used in Mount Laurel II. Until December of 1982, no provision was made under the Land Use Regulations of Warren Township for other than single-family houses on large lots. In December of 1982 Warren Township, following the institution of this suit, rezoned limited portions of the Township to permit the construction of Planned Residential Developments in limited numbers and in limited density. Said ordinance did not take effect because by its terms it provided that it would take effect only upon approval of its terms by the trial court which mandated rezoning in the AMG v. Warren Township suit. The present zoning ordinance does not meet the standards of the decision of the Supreme Court of New Jersey in the Mount Laurel Case, South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), nor does it meet the dictates of the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II). The Township has had numerous requests for either variance or rezoning of property to permit either multi-family housing, small lot housing or planned residential development. All of these have been rejected by the Township. The present zoning, likewise, violates the spirit and intent and specific requirements of the Municipal Land Use Act, N.J.S. 40:55D-1, et seq. Adjoining communities have been required by court decisions tc rezone to permit appropriate development of housing and such development is occuring in the adjoining communities. The present zoning of the plaintiff's land would require a minimum lot area for a single-family residence of 50,000 square feet. This lot area requirement of the zoning ordinance bears no relationship to a reasonable exercise of the police power and is arbitrary, capricious and unreasonable. It is especially unreasonable in light of the fact that the defendant Township has rezoned substantial portions of land in the area of the plaintiff's land for intense office use. The present development of the site of Chubb and Sons, Inc. involves the construction of a major headquarters office facility almost directly opposite the land of the plaintiff. The traffic which will be generated by that development renders the present zoning of the plaintiff's lands arbitrary and unreasonable and constitutes an inverse condemnation of the property without just compensation. In December,

need for low income and moderate income housing requirements. The Township has further attempted to rezone properties to satisfy the purported Mt. Laurel needs, which properties cannot be suitably or economically developed for such purpose either at the present or within any reasonably foreseeable future time. Plaintiffs contend that Ordinance 82-19 operates in fact to continue to preclude the opportunity to supply the Township's fair share of low, moderate or least cost housing as is its current constitutional obligation. With respect to this claim the plaintiff is seeking relief directing the appointment of a planner to prepare an appropriate rezoning study of the Township of Warren, at the expense of the Township, for the purpose of providing a zoning scheme consistent with its Mt. Laurel obligations.

Plaintiffs in the present case additionally seek a builder's remedy for the purpose of permitting them to construct low and moderate income housing units within their respective tracts. This claim for builder's relief is based upon their status as successful litigants in the first Mt. Laurel litigation against the Township of Warren resulting in the judgment of May 27, 1982, and their current litigation in the present matter. In addition to their status as successful litigants in the prior litigation and litigants in the present litigation, each plaintiff contends that its respective lands are suitably situated for the construction and present development of low and moderate income housing units and, in fact, the plaintiffs offer to construct at the present time what it deems to be Warren Township's total fair share obligation of low and moderate income housing units. This proposal to construct the present fair share is predicated upon the plaintiffs receiving an internal subsidy by the economy of scale development of their respective tracts to permit 450 low and moderate income housing units as part of an overall 1,850 unit townhouse development project. The builder's remedy to permit utilization of the economy of scale in the development of the respective lands would constitute an affirmative device by the Township of Warren to permit the feasible construction of low and moderate income housing on the sites. In addition to such internal affirmative devices or, in the alternative, the plaintiffs are seeking financial assistance from the Township of Warren through appropriate tax abatement, removal of unnecessary cost generating on and off site improvement costs, removal of unnecessary inspection fees and the allocation of certain sewer facilities without cost.

With respect to the defenses filed on behalf of the defendant, Township of Warren, the plaintiff allege that there is no obligation on their part to exhaust administrative remedies and they are not otherwise estopped from maintaining the present litigation.

1980 the plaintiff submitted a request to the defendant Township for rezoning of its lands in said Township to permit the development of said lands for townhouses at a density of approximately 3.7 units per acre. The governing body of the defendant Township referred said request to its Planning Board and a hearing was cnducted before the Planning Board at which time the plaintiff submitted evidence clearly establishing the feasibility of the development of the plaintiff's lands for townhouses at the density proposed. Notwithstanding that evidence, which was uncontradicted, the Planning Board arbitrarily and unreasonably refused to recommend to the Township Committee the rezoning of the plaintiff's lands. In addition, the plaintiff has asked the Warren Township Sewerage Authority to provide adequate sewage treatment for the sewage which would be generated by the development of the plaintiff's lands. The Sewerage Authority arbitrarily limited the capacity of treatment available to the plaintiff to the gallonage which would be generated by the development of the plaintiff's lands under the present zoning. In effect, the Sewerage Authority arbitrarily and capriciously refused to design its treatment plant, which is about to be constructed, so that it would have adequate capacity to handle all of the gallonage which would be generated from the plaintiff's lands if the plaintiff were granted permission to develop its land for townhouses. The refusal of the defendant Warren Township Sewerage Authority to provide adequate sewage treatment capacity to the plaintiff was based upon an illegal agreement between the Sewerage Authority and the defendant Township of Warren which limits the capacity required to service said lands pursuant to present zoning limitation existing upon the lands. Plaintiff seeks a judgment from this Court ordering the Township of Warren to rezone its lands to permit townhouse development of the lands and ordering the Sewerage Authority of Warren Township to provide adequate facilities to treat the sewage which would be generated from the plaintiff's lands.

This plaintiff also seeks a determination of the Court as to the validity and effectiveness of the rezoning ordained by the Township of Warren in December of 1982. Because of the decision of the New Jersey Supreme Court in Mount Laurel II, supra. the plaintiff requires the guidance and the direction of this Court in determining a proper course of action to be taken in the further development of its plans for the construction of housing on lands which it has contracted to purchase. It is the contention of the plaintiff that the Township of Warren has an obligation to assist in meeting the demands of the Supreme Court for providing both low-income and least-cost housing in the Township of Warren. The plaintiff contends that the Township of Warren can discharge this responsibility in part by providing infrastructure in and around the lands of the plaintiff which would permit the plaintiff to meet any Mount Laurel II obligation which might be imposed upon it by this Court. Specifically, the plaintiff contends that the Sewerage Authority has an obligation

under Mount Laurel II to provide sewage capacity without sewage tie-in fees. By requiring the Sewerage Authority to allocate gallonage to this plaintiff without tie-in fees, this plaintiff would then be in a position to provide like subsidies for the construction of low-income and least-cost housing. The plaintiff will demonstrate at trial that the Sewerage Authority does have adequate capacity for this purpose which it is holding in reserve for non-residential uses which are not presently demanding said capacity. The plaintiff further contends that the limitations placed upon the rezoning which was adopted in December of 1982 with respect to the plaintiff's lands are likewise illegal. The ordinance as adopted and as now held in abeyance would rezone only a portion of the plaintiff's lands. This plaintiff contends that the limitations in terms of the boundary of the zone were arbitrary and unreasonable and that the zone should be expanded to include all of the plaintiff's contiguous lands.

3-4. FACTUAL AND LEGAL CONTENTIONS OF THE DEFENDENT, TOWNSHIP OF WARREN:

Defendant, Warren Township, is a municipal corporation of the State of New Jersey. The plaintiffs, AMG Realty Company and Skytop Land Corporation, are owners of certain large tracts of land in the Township of Warren known as lots 22 and 25 in block 137 and lot 10 in block 125 as the same are set forth on the currently official tax assessment map for the said municipality. The plaintiffs, AMG Realty Company and Skytop Land Corporation originally filed a Complaint in Lieu of Perogative Writ in the Superior Court of New Jersey seeking review of the Warren Township zoning ordinance alleging that the same violated the principles set forth in Mt. Laurel I. That case was heard before the Honorable Arthur S. Meredith, J.S.C. and Judge Meredith entered a Judgment dated May 27, 1982 which held that the then current Warren Township zoning ordinance (Ordinance 79-3) was illegal and invalid as being exclusionary in violation of the principles set forth in N.A.A.C.P. vs. Township of Mt. Laurel, 67 N.J.151(1975) and gave the defendant, Township of Warren nine months from May 18, 1982 to undertake a rezoning of the Township to comply with the principles set forth in the said Mt. Laurel I case. Upon completion of an ordinance to comply with Mt. Laurel I principles, the court reserved the jurisdiction to review and approve the same. The court granted no specific zoning relief to the plaintiffs, AMG Realty Company and Skytop Land Corporation at the time the Judgment was entered.

Based upon the aforesaid Judgment by Judge Meredith, the Township of Warren conducted an extensive review of its zoning ordinance and the Township in general. This review was conducted through the Warren Township Planning Consultant, E. Eugene Oross Associates. The revisions to the zoning ordinance were debated at numerous public meetings and alternately Warren Township Ordinanc No. 82-19 was introduced and passed by the Warren Township Committee on December 2, 1982. Ordinance No. 82-19 was in compliance with all standards established in the Mt. Laurel I case.

Warren Township Ordinance No. 82-19 was presented to Judge Meredith for his review in accordance with the Judgement entered in the original perogative writ case. Judge Meredith decided to have an additional hearing on the ordinance. Before the hearing could be held on the said ordinance before Judge Meredith, Mt. Laurel II was decided by the New Jersey Supreme Court and this case was removed from Judge Meredith's jurisdiction and transferred to the Mt. Laurel judge assigned to the section of the state in which Warren Township was located, the Honorable Eugene D. Serpentelli.

During the pendancy of the above litigation, Timber Properties filed a Mt. Laurel I case against the Township of Warren. That litigation was placed on the inactive list pending the action taken by the defendant, Warren Township, in rezoning its lands pursuant to the Judgement entered by Judge Meredith referred to above. After Warren Township rezoned in accordance with Judge Meredith's Judgment, the plaintiff, Timber Properties, sought to reactivate its zoning case. The case was placed on the active trial list and was moving towards trial when Mt. Laurel II was decided. The Township of Warren moved to consolidate the Timber Properties case with the existing AMG Realty Company and Skytop Land Corporation litigation and that motion was granted by Judge Serpentelli and the cases were consolidated.

3-4. FACTUAL AND LEGAL CONTENTIONS continued

The Township of Warren has a pending motion before the court for the dismissal of the Timber Properties' Complaint for lack of standing and it is the Township's contention that Timber Properties is, in fact, not a contract purchaser of the properties alleged in this Complaint and that the court must dismiss Timber Properties' Complaint.

Warren Township Ordinance No. 82-19 is in compliance with the standards established by the New Jersey Supreme Court in both Mt. Laurel I and II. Warren Township has removed all cost producing requirements from its ordinance (to the extent allowable taking into consideration health and safety standards). A builder, on the property designated for multi-family use within the Township's borders, can and will build low-cost housing. The ordinance, taking into consideration the region in which Warren Township is located, has allocated more than its fair share of low-cost housing.

The plaintiffs, AMG Realty Company and Skytop Land Corporation, are not entitled to a builder's remedy in the present litigation. The said plaintiff property is ecologically and environmentally unsuited for the development of housing which would conform to Mt. Laurel low cost standards. In addition, the said plaintiffs' property is not serviced by sewer and the building of any substantial housing upon the same is not possible.

Before the present case was transferred to the Honorable Eugene D. Serpentelli, the Honorable Robert E. Gaynor executed an Order allowing Joan H. Facey, et als and Mykola Bojczuk and Mae Bojczuk to intervene in this case. The intervention was allowed with the following caveat which was a part of Judge Gaynor's Order:

> Intervenors shall not have the right to seek relief by "directing the rezoning of their property for a use appropriate to a major highway interchange (ORL or HD)."

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Need 8 copies Twp

KUNZMAN, COLEY, YOSPIN & BERNSTEIN, P.A.
15 Mountain Boulevard, Warren, NJ 07060
(201) 757-7800
Attorneys for Defendant, Township of Warren

AMG REALTY COMPANY, et als, Plaintiff, vs THE TOWNSHIP OF WARREN, Defendant, CONSOLIDATED WITH: TIMBER PROPERTIES, etc. Plaintiff, vs THE TOWNSHIP OF WARREN, et als, Defendant.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. L-23277-80 P.W. L-67820-80 P.W. CIVIL ACTION AMENDMENT TO PRE-TRIAL MEMORANDUM OF DEFENDANT, WARREN TOWNSHIP

Defendant, The Township of Warren, hereby amends its pre-trial memorandum, dated October 18, 1983, to add the following:

3-4 Factual and Legal Contentions: Add the factual and legal contentions set forth in the eight Separate Defenses indicated in its amended answer.

7. Issues and Evidence Problems: Add - Deprivation of property rights under Art. I, Sec. 1 of N.J. Const. (1947); deprivation of due process of law and equal protection under Fourteenth Amendment of the U.S. Const.;

separation of powers under Art. III of N.J. Const. (1947); deprivation of right to petition redress of grievance under Art. I, Sec. 18 N.J. Const. (1947); discrimination.

Dated: October 25, 1983

JOHN E. COLEY, JR., Attorney for
Defendant, The Township of Warren

STATEMENT OF DEFENDANT, WARREN TOWNSHIP SEWERAGE AUTHORITY

3-4. Factual and Legal Contentions

Defendant Warren Township Sewerage Authority is currently in the process of constructing a new sewage treatment plant in the Northwest portion of Warren Township commonly known as Stage V of the municipal sanitary sewerage system. All parties in the area were notified of proposed construction and after several meetings, interested parties owning land in the area entered into standard forms of contract with defendant Sewerage Authority providing for the allocation of sewage capacity for each parcel of property and a pro-rata contribution for the cost of constructing same. The standards utilized for allocation of sewage capacity considered the highest and best use of the respective properties affected under applicable zoning. Plant construction was in accordance with currently applicable Department of Environmental Protection standards and within limitations outlined in a 208 Water Quality Management Plan and the Upper Passaic Environmental Impact Statement adopted in accordance with the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, as amended and supplemented.

At the time plaintiff allegedly requested additional sewage capacity in the Stage V treatment plant, this defendant had completed planning of said facility in conformity with applicable state and

federal standards and proceeded to implement said plans toward construction of a treatment plant having a capacity of 380,000 gallons per day. In addition, at the time of plaintiff's filing its complaint, this defendant had entered into contracts with participants for construction of Stage V treatment plant having a capacity of 380,000 gallons per day. Construction of said project was advertised for bid and a bid was awarded at a public meeting on October 6, 1981. In view of the above, plaintiff is barred from seeking relief from this defendant as alleged in its complaint because of latches, waiver and estoppel.

Defendant, Township of Warren, entered into a Service Agreement with defendant, Warren Township Sewerage Authority, on May 7, 1981. Said Service Agreement was authorized by Ordinance No. 81-6 adopted by defendant Township of Warren on May 7, 1981. Notice of adoption of Ordinance 81-6 was published in the Echoes-Sentinel, a newspaper printed and published in the Township of Warren on May 14, 1981. Plaintiff's complaint alleging illegality or improprieties in said Service Agreement was not brought within the time period permitted by Rule 4:69-6 and accordingly relief from any of the provisions of said Agreement is thereby barred.

ANSWER

FIRST THROUGH EIGHTH COUNTS

Defendant, Warren Township Sewerage Authority, repeats its Answers to the First through Eighth Counts of the complaint and incorporates them as though fully set forth herein.

ANSWER TO NINETH COUNT

None of the allegations of the Nineth Count are directed to defendant, Warren Township Sewerage Authority, and accordingly said defendant makes no response thereto.

ANSWER TO TENTH COUNT

1. This defendant admits the allegations of paragraph 1.

2. This defendant denies the allegations of paragraphs 2 and 3.

FIRST SEPARATE DEFENSE

The remedial approach in Mount Laurel II deprives this defendant as fuduciary and holder of the public trust and its customers of property rights contrary to Article I, Sec. I of the New Jersey Constitution (1947), Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

SECOND SEPARATE DEFENSE

The remedial approach in Mount Laurel II encroaches upon powers that are administrative and legislative in nature contrary to Article III of the Constitution of the State of New Jersey (1947), and deprives this defendant as fiduciary and holder of the public trust and its customers of their right to petition for redress of grievances contrary to Article I, Sec. 18 of the Constitution of the State of New Jersey (1947).

THIRD SEPARATE DEFENSE

The utilization of density bonuses, mandatory set-asides, "builder's remedy", economic incentives within zoning ordinances, extension of sewer lines and active participation by the judiciary in the municipal zoning process (or appointing a special master to do so) as articulated in Mount Laurel II and incorporated in the complaint as amended deprive this defendant as fiduciary and holder of the public trust and its customers of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

FOURTH SEPARATE DEFENSE

Preferential treatment in regard to sewers as alleged by

plaintiff in its Amended Complaint constitutes a violation of N.J.S.A. 40:14A-8, et seq.

FIFTH SEPARATE DEFENSE

Preferential treatment in regard to sewers as alleged by plaintiff in its Amended Complaint constitutes discrimination against other customers of this defendant and deprives them of Due Process of Law and Equal Protection of the Laws under the Fourteenth Amendment of the United States Constitution.

WHEREFORE, this defendant demands judgment dismissing the complaint.

Dated: Aug 9, 1983

J. ALBERT MASTRO, Attorney for Defendant, Warren Township Sewerage Authority

CERTIFICATION

I hereby certify that the within pleading was served within the time period provided by Rule 4:9-1.

J. ALBERT MASTRO, Attorney for Defendant, Warren Township Sewerage Authority

Dated: Aug 9, 1983

8 copies

J. ALBERT MASTRO
7 MORRISTOWN ROAD
BERNARDSVILLE, N. J. 07924
(201) 766-2720
ATTORNEY FOR Defendant, Warren Township Sewerage Authority

Plaintiff

AMG REALTY COMPANY, et als,
vs. Plaintiff
THE TOWNSHIP OF WARREN
vs. Defendant

Defendant

TIMBER PROPERTIES, etc., Plaintiff
vs.
THE TOWNSHIP OF WARREN, et als.
Defendant

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

CIVIL ACTION

Mt. Laurel II

AMENDMENT TO PRETRIAL MEMORANDUM OF WARREN TOWNSHIP SEWERAGE AUTHORITY

Defendant Warren Township Sewerage Authority amends it's pretrial memorandum dated October 9, 1981 to add the following:

...3-4 FACTUAL AND LEGAL CONTENTIONS: Defendant Warren Township Sewerage Authority incorporates the factual and legal contentions, more particularly set forth in it's five separate defenses indicated in it's answer to amended complaint.

AMENDMENT TO PRETRIAL MEMORANDUM OF WARREN TOWNSHIP SEWERAGE AUTHORITY

...7 ISSUES AND EVIDENCE PROBLEMS: Deprivation of property rights under Art. I, Sec. 1 of N.J. Const. (1947); deprivation of due process of law and equal protection under Fourteenth Amendment of the U.S. Const.; separation of powers under Art. III of N.J. Const.(1947); deprivation of right to petition redress of grievance under Art. I, Sec. 18 N.J. Const.(1947); preferential treatment in sewer allocation violating N.J.S.A. 40:14A-8, et.seq.; discrimination.

Dated: October 19, 1983

J. ALBERT MASTRO, Attorney for Defendant, Warren Township Sewerage Authority

3-4 FACTUAL AND LEGAL CONTENTIONS OF INVERVENTORS, MYKOLA BOJCZUK AND MAE BOJCZUK, HIS WIFE:

Intervenors, Mykola Bojczuk and Mae Bojczuk, his wife, are theowners of parcels known as Block 619, Lots 39, 40 and 42, comprising a total of approximately 14 acres of land. Their property is located on the ramp leading from Hillcrest Road, southbound to Interstate Route #78 westbound. Their property has a commanding view of and is totally visible from Route #78. The general area is undeveloped land with a few small older residences north of Plaintiff's property on Hillcrest Road. Although the property is designated as being "environmentally sensitive" under the Warren Township Zoning Ordinance, it has only moderate slope which would not prevent development in a non-residential mode. The slope constraints, however, impose cost factors in development which are contra-indidicative for residential development, especially for development of moderate income and low cost income housing to meet the dictates on Mt. Laurel II.

The re-zoning of the Interventors' property for half-acre, single family development is a transparent attempt to create the appearance of provision for moderate and low cost income housing in circumstances which are functionally, aesthetically and economically unsuitable for the development of such housing. These factors include the traffic, noise and visibility impacts of Interstate #78, the lack of public sewer facilities, and the additional costs of developing on sloped land which would be an impediment to residential development, but not to non-residential development.

In connection with its general Mt. Laurel II burden, the Township of Warren has a duty to provide sewer facilities, at reasonable cost to be shared by all developers and Intervenors demand that the Township undertake the necessary action to make sewers available to all property owners upon fair and equitable cost sharing basis.

Corrected 10/24/83

5. **Damage and Injury Claims:** As set forth in the Complaint of Intervenors in Lieu of Prerogative Writ.

6. **Amendments:** None.

7. **Legal Issues and Evidence Problems:**
The propriety of The Township of Warren's designation of some or all of Intervenors property on the official map as "environmentally critical/steep slope."

The propriety under Ordinance 82-19 of rezoning Intervenors property from rural residential to R-20ECR (environmentally critical) in order to satisfy its Mt. Laurel obligation.

Unlawful exercise of police power.

Unlawful taking of property.

Arbitrary and unreasonable governmental action.

8. **Legal Issues Abandoned:** None.

9. **Exhibits:**

10. **Expert Witnesses:** No limit.

11. **Briefs:** As the Court directs.

12. **Order of Opening and Closing:** Usual.

13. **Any Other Matters Agreed Upon:**

14. **Trial Counsel:** Robert H. Kraus, Esquire, for Intervenors, Joan H. Facey, et als

15. **Estimated Length of Trial:** Two weeks.

16. **Weekly Call or Trial Date:** To be set by the Court.

17. **Attorneys for Parties Conferred on Matters Then Agreed Upon:** Various dates 1983.

18. **It is hereby certified that all pretrial discovery has been completed, except** defendant, The Township of Warren, to provide answers to interrogatories.
Intervenors to provide to The Township of Warren, answers to interrogatories.

Int. & copies
Facey

LEIB, KRAUS & GRISPIN
A Professional Corporation
328 Park Avenue, P. O. Box 310
Scotch Plains, New Jersey 07076
Attorneys for Intervenors, Joan H. Facey, et als

AMG REALTY COMPANY, et als,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY
Plaintiffs,	
JOAN H. FACEY, et als,	
Intervenors,	
vs. THE TOWNSHIP OF WARREN,	
Defendant.	
	Docket No. L-23277-80 P.W.
Consolidated with	
	Docket No. L-67820-80 P.W.
TIMBER PROPERTIES, ETC.	
Plaintiffs.	
vs.	
THE TOWNSHIP OF WARREN, et als.	Civil Action
Defendants.	Pretrial Memorandum of Intervenors, Joan H. Facey et als

1. **Nature of Action:** Action in lieu of prerogative writ to challenge zoning ordinance 82-19 of the Township of Warren.

2. **Admissions and Stipulations:** Ownership of lots 34 through 38, and lot 43 in block 619 on the current tax map of Warren Township by Intervenors, Joan H. Facey, Redvers S. Facey, John W. Kraus, Mary Helen Tuchin.

   The admissions contained in the factual and legal contentions of defendant, The Township of Warren.

3-4. **Factual and Legal Contentions:** Attached hereto.

19. **Parties who have not been served:** None.

Parties who have defaulted: None.

LEIB, KRAUS & GRISPIN

Robert H. Kraus

Dated: October 25, 1983.

3-4 Factual and Legal Contentions of Intervenors, Joan H. Facey, et als

Intervenors, Joan H. Facey, et als, own approximately 24.65 acres of land in Warren Township. Their property is known and designated as Lots 34-38, 43, Block 619 on the Tax Map. It is located in the northwest quadrant of the intersection formed by Hillcrest Road and Interstate 78.

The Interstate 78 corridor through Warren Township has just begun to feel the impact of the campus style office development which is evident throughout northern New Jersey along the Interstate routes. Its development was delayed, in part, by the fact that Interstate 78 has never been completed through the Watchung Reservation in Union County. That construction is now underway and should be completed within the next few years. When Interstate 78 is opened to the public it will bring a change to the Township of Warren that its residents may not desire.

Intervenors, Facey, et als, entered into a contract to sell their property to a developer in 1981. The developer proposed to use the property for an office complex. While in the process of making an informal presentation to the Warren Township Planning Board in May 1982, the Superior Court struck down the Warren Township zoning ordinance with the entry of a judgment on May 27, 1982. This put a halt on the developer's informal presentation and ultimately led to the termination of the contract.

During the summer and fall of 1982 the Warren Township Planning Board and the governing body allegedly sought to comply with the requirements of Mt. Laurel by rezoning certain tracts within the township. One of the tracts is the property of Intervenors, Facey, et als. Under the prior ordinance it was zoned rural residential with a minimum lot area of 65,340 square feet and a lot width of not less than 150 linier feet. Under the new ordinance (82-19) it is to be rezoned into an R-20 ECR (environmentally critical) residential district.

The rezoning is arbitrary, capricious and unreasonable. As alleged in the complaint of Intervenors, Facey, et als, the tie-in with Mt. Laurel is a sham effort at satisfying the Township of Warren's Mt. Laurel obligation. Invervenors allege that it is impractical to use their property for any purpose permitted within the R-20, ECR zone because the property is not suited for residential use. Consequently, the Township of Warren has zoned Intervenors' property into a state of inutility.

Some of the specific reasons why Intervenors' property is not suitable for residential use are as follows:

a. Since Intervenors' land is in the northwest quadrant of the intersection formed by Hillcrest Road and Interstate 78, the east/west alignment of Route 78 has changed Hillcrest Road into a north/south arterial road feeding other roads in the Township of Warren and in Somerset County.

b. Intervenors' property is heavily influenced by Interstate 78 and is more peculiarly suited to commercial development.

c. Noise and other externalities of Interstate 78 make Intervenors' property unsuitable for residential development.

d. With the anticipated completion of Interstate 78 in 1985, the impact of the highway will be substantially compounded.

e. The predicated noise levels of Interstate 78 will exceed the noise levels acceptable for residential use.

f. Extensive flood lighting was recently installed on the approach ramps from Hillcrest Road to Interstate 78.

g. Of the three interchanges to Interstate 78 located in the Township of Warren, the interchange at Hillcrest Road is the only one which has not been zoned for H-D (Highway Development) or ORL (Office Research Laboratory).

h. Intervenors' property is uniquely suited and situated, physically and environmentally, for the H-D and ORL zones.

i. Intervenors' property is serviced by the Warren Township Sewer Authority. A sewer capacity adequate for the ORL zone has been reserved (at great expense) for plaintiffs and is available for use at this time.

Intervenors adopt the factual and legal contentions not otherwise set forth in this pretrial memorandum of:

Intervenors Bojczuk, plaintiff, AMG Realty Company, et als, and plaintiff, Timber Properties, etc.

Eugene D. Serpentelli
HON. EUGENE D. SERPENTELLI, J.S.C.

B0155
8-18-85

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Plaintiff, Twp. of Warren.

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for JOHN T. LYNCH, ESQ.,
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~~For Boyczuk.~~

Eugene Jacobs By: EEC
Eugene Jacobs, Esq.
For Plan. Bd., Warren Twp.