

3-29-86

AMG

Memo by Ds in opposition
to imposition of Conditions
upon transfer

PSS. 6

AM000256D

AMG REALTY COMPANY and SKYTOP
LAND CORP.,

Plaintiffs,

vs.

JOHN H. FACEY, et als.,

Intervenors,

-vs-

THE TOWNSHIP OF WARREN,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

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

(Mt. Laurel II)

Civil Action

MEMORANDUM OF LAW ON BEHALF OF DEFENDANTS, TOWNSHIP OF WARREN
AND TOWNSHIP OF WARREN SEWERAGE AUTHORITY IN OPPOSITION TO
IMPOSITION OF CONDITIONS UPON TRANSFER

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3/24/80
BCEP

I. STATEMENT OF FACTS AND PROCEDURAL STATUS

The Supreme Court of New Jersey has ordered that the within matter be transferred from the trial court to the Council on Affordable Housing. In that decision, The Hills Development Co. v. The Township of Bernards, et al., _____ N.J. _____ (1986) (decided February 20, 1986) the Court provided that transfers shall be subject to such conditions as the trial courts may find necessary to preserve the ability of the municipalities to satisfy their Mount Laurel obligation. Id. at 30 and 86-89. This matter now comes before this Court on the motion by plaintiff to impose certain conditions upon transfer.

Plaintiff presents its factual contentions through its certification. In response, defendants here present Certification of counsel along with Certification of Stanley P. Kaltnecker, Jr., Engineer for the Warren Township Sewerage Authority; Ronald H. Willens, Chairman of the Warren Township Sewerage Authority; and John Chadwick, Planner for the Township of Warren. The Court is respectfully referred to those Certifications for a more detailed presentation of the factual position of the Township. To summarize, however, it is the position of the Township that there is sufficient developable land available and that the stock of such land shall not be so decreased by allowing continuing development such that Mount Laurel development will be made impossible. With respect to sewerage capacity, the Court is directed to certification of Mr. Kaltnecker wherein he indicates that ability of the sewerage plans to accept the necessary flow and for the plants to be expanded to accept Mount Laurel developments. It is important to note that the development will be phased in over a period of time pursuant to the Fair Housing Act, and, therefore, time will be available to obtain the necessary expansions to satisfy the needs of

the higher density developments. As is demonstrated in the Certification of Mr. Willens, the placing of restraints on the sewers will also have a significant negative economic impact on the Township and its bonding obligations. Finally, the Fair Housing Act will allow the Township to transfer a portion of its fair share, and it is reasonably believed that the actual fair share shall be reduced by the Council. Further, the Township intends to construct substantial Mount Laurel housing through a public housing project. This project will further reduce the overall development which would result from private development since that may require the development of four market units for each low cost unit. The public project would, therefore, reduce the total number of units which would be tied to Mount Laurel development by a private builder and would, therefore, reduce the overall infrastructure needs to support the development which would satisfy Warren's fair share.

The facts, it is submitted, reasonably support the position of the Township that no conditions need to be imposed upon the transfer and that the infrastructure and facilities of the Township will not be depleted prior to the Council taking control such that Warren would be able to prevent development of Mount Laurel housing within its borders.

II. LEGAL ARGUMENT

IT IS NOT NECESSARY FOR THE COURT TO IMPOSE CONDITIONS
TO PRESERVE THE RESOURCES OF WARREN TOWNSHIP PENDING
THE DETERMINATION OF THE COUNCIL ON AFFORDABLE HOUSING.

The New Jersey Supreme Court in The Hills Development Co. v. Township of Bernards, et al., _____ N.J. _____ (1986) (decided February 28, 1986), [hereinafter Mount Laurel III] provided the authority for a trial court to impose certain conditions upon the transfer of matters to the Council on Affordable Housing. The purpose of the conditions is to preserve certain resources including available land, and infrastructures such as sewers prior to the Council taking control of the process so that such resources would not be depleted and thus prevent the development of Mount Laurel housing. Mount Laurel III does not require conditions in all circumstances, only in those circumstances in which facts bear out the need for such conditions. Essentially, the conditions are only those which the Council may be able to impose if it were fully in operation. The conditions, therefore, are only temporary pending the commencement of full operation of the Council.

As has been demonstrated in the certifications submitted herewith, there are numerous factors which indicate that such conditions are not necessary. The facts, it is submitted, demonstrate that there is no possibility that the sewerage capacity or available developable land will be depleted prior to the Council exercising its powers. Furthermore, the cost of imposing the conditions requested as to sewerage treatment plants could be economically disastrous to the Township and the Sewerage Authority and would negatively effect the interest

of the bond holders for the Warren Township sewerage developments. [See, Affidavit of Ronald H. Willens] That economics is a factor to be considered in deciding whether conditions should be imposed, or the extent thereof, cannot be questioned. As Plaintiff notes in its brief [Pb at 4]:

In determining what conditions are to be imposed the trial court is to determine whether the conditions sought or imposed are "appropriate". The term "appropriate" refers not simply to the desirability of preserving a particular resource, but to the practicality of doing so, the power to do so, the cost to do so, and the ability to enforce the condition. [Mt. Laurel III], at 87-88. [Emphasis added]

This factor, it is submitted, demonstrates that the restrictions should not be imposed; or if they are, that they should be extremely limited.

Finally, while some testimony with respect to the sewerage has been presented to this Court, as well as before Judge Meredith, it is respectfully submitted that additional testimony may be required in order to clarify the various matters. The import of the 208 and 201 plans as well as the interworkings of the various sewerage plants in the Township, and the Middle Brook Trunk, requires a more in depth analysis in order to determine the necessity for any conditions, or the limitations of same. It is, therefore, respectfully submitted that if the Court does deem that limitations should be imposed further fact finding will be necessary to determine the limits and extent of such conditions.

III. CONCLUSION

For the reasons herein set forth and as set forth in the certifications submitted herewith, it is respectfully urged that no conditions are required to be imposed upon the transfer of this matter to the Council on Affordable Housing. In the alternative, if conditions are to be imposed, the Court should conduct a hearing for further fact finding in order to determine the limits and extent of any conditions to be imposed.

Respectfully submitted,

KUNZMAN, COLEY, YOSPIN & BERNSTEIN

By: 

John E. Coley, Jr.