AMG

7-15-86

Letter in opposition to motion
by Sewage Authority (dissolution)
— Cert in support

BSS. 86
P. # 3316

AM000263V

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July 15, 1986

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

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

Dear Judge Serpentelli:

This letter is being submitted to the Court in opposition to the motion filed on behalf of the Warren Township Sewerage Authority to dissolve the restraining order previously entered by the Court on June 6, 1986.

It appears to be the Authority's position that the restraints previously entered by the Court should be dissolved because of the following reasons:

1. The estimated fair share obligation of the Township of Warren has been reduced from 946 units to 386, which fair-share figure will be most likely further reduced upon appropriate application by Warren Township for such credits and readjustments as may be permitted under the proposed guidelines to be promulgated by the Council on Affordable Housing. With the fair-share figure thus reduced the Skytop and/or AMG parcels, through appropriate allocation of sewer capacity in the Stage V plant, could substantially satisfy the remaining fair share obligation taking into further account the probability of a regional contribution agreement between Warren and another municipality.

2. The Hills decision authorized the trial courts to impose conditions which were "appropriate" and it is inappropriate to hamstring the Sewerage Authority which has substantial financial burdens which is to be met solely through connection fees and user charges.

The Court order of June 6, 1986, specifically authorized the plaintiffs to pursue discovery through July 20, 1986, subsequent to which date the Court would order a plenary hearing for the purpose of attempting to resolve the factual issues that were evidenced through the various certifications and arguments of counsel at the conditions hearing. The deposition discovery has been completed and we are awaiting the transcripts with respect to the testimony given upon deposition by the Sewerage Authority Chairman, Mr. Ronald Willens, and the engineer for the Authority, Mr. Stanley Kaltnecher. The arguments presented by the Sewer Authority as noted above are no different now than they were at the time the Court entered the restraining order of June 6.

In addition, the Sewer Authority assumes that the AMG and/or Skytop sites will be utilized by the Township of Warren through a rezoning process for the satisfaction of whatever Mt. Laurel obligation it deems that it will be required to satisfy. Neither of these sites has received favorable rezoning consideration to achieve Mt. Laurel objectives in the past and it is unlikely, based upon the history of the treatment of these sites by the Township, that such rezoning will be voluntarily provided in the future. There is no present capacity in the Stage V plant and the Court previously acknowledged that the only real potential for capacity was through the expansion of the Stage IV plant, the geographic area of which has also been excluded from consideration for Mt. Laurel housing. Since the plaintiffs realistically recognize that the Township of Warren is not going to voluntarily provide the rezoning for their respective sites, it seems absurd to have the Sewer Authority allege as was stated in paragraph 7 of the certification of J. Albert Mastro, Esquire, dated July 9, 1986. That paragraph again incorrectly assumes that the Skytop and AMG sites will receive appropriate zoning which is not the case. The Stage IV expansion was not intended for Mt. Laurel housing and until Mt. Laurel housing users are placed within the Stage IV service area that expansion, if permitted to proceed, will not be used for Mt.

Laurel purposes. It thus remains a scarce resource which the Court should protect by a continuance of the restraints, at least until such time as the plenary hearing ordered by this Court is conducted.

The offering of 49,000 gallons per day to the plaintiffs in the Stage IV treatment plant expansion, as asserted in paragraph 6 of Mr. Mastro's certification, is a useless gesture in relation to the ability to use that capacity for Mt. Laurel objectives. If the AMG and/or Skytop properties take advantage of that offer and their lands are not rezoned for Mt. Laurel purposes, there would be an additional shortfall of 49,000 gallons per day otherwise available for Mt. Laurel housing in the Stage IV service area.

With respect to the allegations that AMG and Skytop are not acting in good faith, attached hereto is a certification submitted with respect to the efforts previously undertaken by this office on behalf of our clients to attempt to effectuate a settlement of the Mt. Laurel issues with the Township. As of this date there has been no response from the Township with respect to such proposals and it appears that it is not the plaintiffs who are acting in bad faith, but the Township of Warren which continues to take the position that it will not voluntarily comply with the satisfaction of its Mt. Laurel obligation. If AMG and Skytop utilize or attempt to utilize the conditions approach as a "bargaining position," such position is being utilized for the purpose of producing Mt. Laurel housing and, hopefully, such a position should be judicially recognized as acceptable and meritorious.

As to the Sewer Authority's financial concerns, there has not been presented to the Court any factual data upon which it can be discerned that the Sewerage Authority is facing any realistic economic burdens. It is recognized that the Sewerage Authority pays its bills through the collection of connection fees and use charges but it is assumed that these fees are being collected now with respect to the actual users and there is no economic obligation presently existing with respect to the expansion of the Stage IV plant which has not yet commenced. Once that expansion is put into place there will be new connection fees and new charges assessed against the new users of that expanded facility. There are no restraints against the Sewer Authority's continued ability to collect connection fees and user fees for the present users of the Stage IV facility which is being presumably totally supported by the present Stage IV users.

It is thus respectfully submitted that the Court does not have sufficient factual data before it to warrant the dissolution of the restraints based upon economic factors nor should the restraint be dissolved for any other reason at the present time.

Respectfully yours,

McDONOUGH, MURRAY & KORN
A Professional Corporation

Joseph E. Murray

JEM:bp

cc: J. Albert Mastro, Esquire
John E. Coley, Jr., Esquire
Eugene W. Jacobs, Esquire
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-23277-80 P.W.
L-67820-80 P.W.

AMG REALTY COMPANY and SKYTOP LAND CORP., Plaintiff	Civil Action
JOAN H. FACEY, et als., Intervenors,	CERTIFICATION OF JOSEPH E. MURRAY
vs.	
THE TOWNSHIP OF WARREN, Defendant,	
CONSOLIDATED WITH	
TIMBER PROPERTIES, Plaintiff,	
vs.	
THE TOWNSHIP OF WARREN, et als., Defendant.	

JOSEPH E. MURRAY, of full age, certifies as follows:

1. I am an attorney at law and a member of the firm of McDonough, Murray & Korn, P. A., 555 Westfield Avenue, Westfield, New Jersey.

2. On behalf of the plaintiffs in the above matter I have personally contacted the attorney for the Township of Warren for the purpose of attempting to settle the Mt. Laurel litigation on various occasions, both prior to and subsequent to The Hills decision in January of 1986. The most recent attempt at resolving the matter was undertaken after the receipt of the fair share estimate through the utilization of the proposed guidelines of the Council on Affordable Housing. That specific proposal of settlement consisted of a suggested rezoning of the AMG and Skytop sites for single-family housing on lot sizes of three quarters of an acre coupled with a monetary contribution by AMG and Skytop to the Township of Warren to enable it to either underwrite the contribution agreement that it indicated it would seek or the construction of the Mt. Laurel units on Township-owned property. This latest submission being confirmed by letter to the Township Attorney dated June 19, 1986, a copy of which is attached.

3. At the present time there has been no formal or informal response on behalf of the Township of Warren as to this latest offer although Mr. Coley advised this office that the Township officials would discuss it. Mr. Coley did indicate, however, that he felt that the proposal to utilize three quarter acre lots would not be acceptable and that the Township would want at least one acre lots. The suggestion made to the Township of Warren as outlined above has been submitted to the Township without prejudice and has not yet been withdrawn.

I hereby certify that the foregoing statements are true. I am aware that if the foregoing statements are wilfully false, I am subject to punishment.

Dated: July 15, 1986

Joseph E. Murray

JOSEPH E. MURRAY