

CA

L Cranbury

4-9-84

Notice of Motion to enforce the
Settlement between Cranbury and Browning
Ferris Industries
w/ Acknowledge of Cranbury's Motion to
Recess the Trial Judge and listed
Opposition thereto

pgs: 27

CA 002228 ~~AN~~

SCERBO, KOBIN, LITWIN & WOLFF

COUNSELLORS AT LAW
10 PARK PLACE
MORRISTOWN, N.J. 07960

538-4220
AREA CODE 201

ARTHUR R. KOBIN
JACK L. WOLFF
LAWRENCE B. LITWIN
MEMBER OF NEW YORK AND
NEW JERSEY BAR
HILARY B. ROSENBERG

FRANK C. SCERBO
LOUIS S. FREEMAN
OF COUNSEL

April 9, 1984

The Honorable Eugene D. Serpentelli
Ocean County Court House
CN-2191
Toms River, New Jersey 08754

Re: Browning Ferris Industries of South Jersey et al
vs. Cranbury Township Planning Board and the Township
Committee of the Township of Cranbury

Dear Judge Sperentelli:

On Friday, April 7, 1984, I received the Township of Cranbury's Motion to Recuse the Trial Judge. Please accept this letter memorandum in opposition thereto.

During the entire pretrial proceedings in this matter, neither the Township of Cranbury nor any other party ever placed any objections on the record with respect to the Court's procedure with respect to region, fair share and allocation. Mr. Moran's memorandum is entirely devoid of any reference to any objection being placed on the record to this procedure. Further, Mr. Moran's brief is not even in the form of affidavit. His brief amounts to an essay, and is devoid of any form of proof. Cranbury, as well as any other party defendant, could have objected to this procedure on the record, and if it felt constrained to do so.

The Township of Cranbury's moving papers make it appear that the Township Committee should pass a Resolution authorizing its attorney to take any step in the litigation, otherwise it intends not to be bound. The Township Committee members should be in the court room on a constant basis telling its counsel that they approve or disapprove of each step in the legal process. Clearly Cranbury was satisfied with the procedure utilized by the Court when the numbers were to its advantage.

SCERBO, KOBIN, LITWIN & WOLFF

It was content to sit back at that point and now when the process does not work to its satisfaction, it chooses to allege bias on the part of the Court.

With respect to the application to recuse, a Motion should be made to the New Jersey Supreme Court. In South Burlington County N.A.A.C.P. vs. Mt. Laurel Township 92 N.J. 158, 253, the Court indicated that the "Chief Justice, with approval of the Court will name three Judges that will thereafter handle all Mt. Laurel litigation. Each of these judges will be exclusively responsible for a particular area of the state;" clearly any modification of the order of the Supreme Court should be made by the Supreme Court, not the Trial Court. Clearly the Trial Court in this case has managed the case to this point in accordance with the Mt. Laurel mandate, See 92 N.J. at 292.

Nevertheless, if this Court should recuse itself, the recusal should be solely limited to the issues pointed out by Cranbury, i.e. region, fare share and allocation. The Court should retain jurisdiction with respect to compliance issues. Clearly nothing is alledged which pertains to the question of the Court's bias with respect to compliance. Therefore, the Court should retain jurisdiction with respect to compliance in any event.

I am also enclsing a Notice of Motion returnable of April 11, 1984 to enforce the Settlement between Cranbury and Browning Ferris Industries, et al. The Township Committee has reneged twice; the Planning Board has taken no steps to honor its obligations purusant to the Order to which it has consented. The Court should enforce the settlement for the reasons set forth in the Affidavit submitted in support of the Motion.

Respectfully Submitted,



LAWRENCE B. LITWIN

LBL:sbr
Enclosures
cc: All counsel

SCERBO, KOBIN, LITWIN & WOLFF

10 PARK PLACE
MORRISTOWN, N. J. 07960
(201) 538-4220
ATTORNEYS FOR

BROWING FERRIS INDUSTRIES
OF SOUTH JERSEY, INC., A
Corporation of the State of
New Jersey, RICHCRETE CONCRETE
CO., A corporation of the State
of New Jersey, and MID-STATE
FILIGREE SYSTEMS, INC., A
Corporation of the State of New
Jersey

Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83 P.W.

NOTICE OF MOTION

LAWRENCE ZIRINSKY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, A municipi-
pal Corporation and THE PLANNING
BOARD OF THE TOWNSHIP OF CRANBURY

Defendants

JOSEPH MORRIS AND ROBERT
MORRIS,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

vs.

Docket No. L 054117-83

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey,

Defendant

GARFIELD & COMPANY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L055956-83 P.W.

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY, A Municipal
Corporation and the Members
thereof; PLANNING BOARD OF THE
TOWNSHIP OF CRANBURY, and the
members thereof,

Defendants

CRANBURY DEVELOPMENT
CORPORATION, A Corporation
of the State of New Jersey,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L 59643-83

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY,

Defendant

URBAN LEAGUE OF GREATER
NEW BRUNSWICK,

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

Docket No. C 4122-73

THE MAYOR AND COUNCIL
OF THE BOROUGH OF
CARTERET, et al,

Defendant

CRANBURY LAND COMPANY, a
New Jersey Limited Partnership
Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 070841-83

CRANBURY TOWNSHIP, A
Municipal Corporation of the
State of New Jersey located in
Middlesex County, New Jersey,

Defendant

TOLL BROTHERS, INC., A
Pennsylvania Corporation,
Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 005652-84

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey, THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY AND THE PLANNING
BOARD OF THE TOWNSHIP OF
CRANBURY,

Defendants

TO: Richard Schatzman, Esq.
McCarthy and Schatzman, P.A.
P.O. Box 2329
Princeton, New Jersey 08540

Ronald Berman, Esq.
Warren, Goldberg and Berman
P.O. Box 645
Princeton, New Jersey 08540

Thomas R. Farino, Jr., Esq.
Corner Applegarth and Half Acre Roads
Cranbury, New Jersey 08512

Michael J. Herbert, Esq.
Sterns, Herbert and Weinroth
P.O. Box 1298
Trenton, New Jersey 08607

Bruce S. Gelber, Esq.
National Committee Against Discrimination in Housing
1425 H. Street
Washington, D.C. 20005

John M. Payne, Esq.
Constitutional Litigation Clinic
15 Washington Street
Newark, New Jersey 07102

Bertram Busch, Esq.
Busch and Busch
99 Bayard, Box 33
New Brunswick, New Jersey 08903

Patrick J. Diegnan, Jr., Esq.
P.O. Box 736
South Plainfield, New Jersey 07080

Joseph J. Benedict, Esq.
Benedict and Altman
247 Livingston Avenue
New Brunswick, New Jersey 08901

Phillip L. Paley, Esq.
Kirsten, Friedman & Cherin
17 Academy Street
Newark, New Jersey 07102

William C. Moran, Jr., Esq.
Huff, Moran and Balint
Cranbury-South River Road
Cranbury, New Jersey 08512

Stonaker and Stonaker
41 Leigh Avenue
Princeton, New Jersey 08540

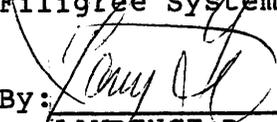
Bisgaier and Pancotti
510 Park Blvd.
Cherry Hill, New Jersey 08034

Henry Hill, Esq.
Brener, Wallack and Hill
2-4 Chambers
Princeton, New Jersey 08540

SIRS:

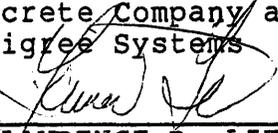
PLEASE TAKE NOTICE that on Wednesday, April 11, 1984 at 1:30 p.m. or as soon thereafter as counsel may be heard, the undersigned attorneys for Browning Ferris Industries of South Jersey, Richcrete Concrete Company Mid-State Filigree Company shall move before the Honorable Eugene Serpentelli, J.S.C., at the Ocean County Courthouse, Toms River, New Jersey for an Order enforcing the settlement between Browning Ferris Industries, Richcrete Concrete Company and Mid-State Filigree Systems, Inc., and the Cranbury Township Planning Board and the Township Committee of the Township of Cranbury.

SCERBO, KOBIN, LITWIN & WOLFF
Attorneys for Plaintiff,
Browning Ferris Industries of
South Jersey, Richcrete
Concrete Company and Mid-State
Filigree Systems

BY: 
LAWRENCE B. LITWIN, ESQ.

I hereby certify that a copy of this Notice of Motion has been filed with the Clerk of Superior Court, a copy with the Clerk of Ocean County and a copy served on all parties of record.

SCERBO, KOBIN, LITWIN & WOLFF
Attorneys for Plaintiff,
Browning Ferris Industries of
South Jersey, Richcrete
Concrete Company and Mid-State
Filigree Systems

By: 
LAWRENCE B. LITWIN, ESQ.

4/2/84

SCERBO, KOBIN, LITWIN & WOLFF

10 PARK PLACE
MORRISTOWN, N. J. 07960
(201) 538-4220
ATTORNEYS FOR

BROWING FERRIS INDUSTRIES
OF SOUTH JERSEY, INC., A
Corporation of the State of
New Jersey, RICHCRETE CONCRETE
CO., A corporation of the State
of New Jersey, and MID-STATE
FILIGREE SYSTEMS, INC., A
Corporation of the State of New
Jersey

Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY

Defendants

LAWRENCE ZIRINSKY,
Plaintiff

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, A municipi-
pal Corporation and THE PLANNING
BOARD OF THE TOWNSHIP OF CRANBURY

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83 P.W.

AFFIDAVIT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

JOSEPH MORRIS AND ROBERT
MORRIS,

Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

vs.

Docket No. L 054117-83

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey,

Defendant

GARFIELD & COMPANY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L055956-83 P.W.

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY, A Municipal
Corporation and the Members
thereof; PLANNING BOARD OF THE
TOWNSHIP OF CRANBURY, and the
members thereof,

Defendants

CRANBURY DEVELOPMENT
CORPORATION, A Corporation
of the State of New Jersey,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L 59643-83

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY,

Defendant

URBAN LEAGUE OF GREATER
NEW BRUNSWICK,

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

Docket No. C 4122-73

THE MAYOR AND COUNCIL
OF THE BOROUGH OF
CARTERET, et al,

Defendant

CRANBURY LAND COMPANY, a
New Jersey Limited Partnership
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L 070841-83

CRANBURY TOWNSHIP, A
Municipal Corporation of the
State of New Jersey located in
Middlesex County, New Jersey,

Defendant

TOLL BROTHERS, INC., A
Pennsylvania Corporation,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

vs.

Docket No. L 005652-84

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey, THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY AND THE PLANNING
BOARD OF THE TOWNSHIP OF
CRANBURY,

Defendants

LAWRENCE B. LITWIN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Scerbo, Kobin, Litwin and Wolff, attorneys for the plaintiffs, Browning-Ferris Industries of South Jersey, Richcrete Concrete Co., and Mid-State Filigree Systems, Inc.

2. This Affidavit is made in support of plaintiff's motion to enforce a settlement.

3. Prior to March 2, 1984, William Moran, Esq., of the firm of Huff, Moran and Balint, attorneys for the Township Committee of the Township of Cranbury, (hereinafter the Township Committee) called me to discuss a settlement proposal. These discussions resulted in a meeting in Mr. Moran's office in Cranbury on March 2, 1984. Paul Szymanski, P.P., one of the plaintiffs' experts, and I met with William Moran and George Raymond and others of Raymond, Parish and Pine, planners for the Township Committee.

4. As a result of that meeting, the following proposal was made by Mr. Moran on behalf of the Township Committee:

A. All lands west of plaintiffs' property and south of Brickyard Road up to the highway commercial zone would be zoned light impact industrial. The rezoned property is presently zoned light impact residential.

B. Plaintiffs' land and premises would be a conditional permitted use. This would permit expansion of the plaintiffs' properties provided the use complies with certain conditions. Conditional use designation would avoid the necessity for use variances. Subsequent to the meeting of March 2, 1984 the exact language of such a zoning provision was agreed upon by the planners for plaintiffs and the Township Committee.

C. The land and premises, north of Brickyard Road and South of Indian Run Stream, would be zoned industrial light impact. This land is also presently zoned light impact residential. Cranbury Development Corp., a co-plaintiff, is the owner of the aforesaid lands and premises; Cranbury Development Corp. was required to consent to this rezoning and to abandon a portion of its action.

5. Upon completion of the March 2, 1984 meeting, Mr. Szymanski and I met with Thomas Farino, Esq., the attorney for Cranbury Development Corp. Shortly thereafter, Mr. Farino advised that Cranbury Development Corp. would approve the rezoning referred to in Paragraph 4C hereof as a partial settlement of its case.

6. On or about March 12, 1984, at the time plaintiffs were to take depositions of the defendants, I was advised by Mr. Moran that the settlement had been approved by the Mayor and one member of the Township Committee. Mr. Moran also

indicated that the settlement had been discussed with the defendant Cranbury Township Planning Board (hereinafter Planning Board).

7. Subsequent thereto, on March 14, 1984, I forwarded a proposed form of Consent Order (See Exhibit 1 annexed hereto) to William C. Moran, Esq., Joseph Stonaker, Esq., of Stonaker and Stonaker, attorneys for the Planning Board of the Township of Cranbury and Thomas Farino. In addition, at great cost and expense, plaintiffs filed and served a Notice of Motion to approve said settlement at the pretrial before the Honorable Eugene Serpentelli on March 15, 1984.

8. Simultaneously, on March 14, 1984 I attended a meeting of the Planning Board. At that meeting the Planning Board approved the settlement.

9. On March 15, 1984, at the pretrial, Mr. Farino attorney for Cranbury Development, Corp. and Mr. Stonaker, attorney for the defendant Planning Board, affixed their signatures to the Consent Order.

10. At the pretrial conference on March 15, 1984, all parties found the proposed form of Consent Order to be satisfactory except the Urban League. The Township Committee noted not objection on the record nor did any other party object thereto. By letter dated March 21, 1984 to the Court the Urban League indicated that they had no objection to the settlement.

11. On Monday evening, March 19, 1984, I appeared at the Township Committee meeting. At the executive session I was advised that the matter would be considered. The Township Committee wished to review the plaintiffs' experts reports.

12. Subsequently on Wednesday, March 21, 1984, I was contacted by William Moran who advised that the settlement could be made if plaintiff Mid-State Filigree Systems, Inc., (hereinafter Mid-State) put additional shrubs along Brickyard Road and if Mid-State had three lights, which were recently installed, brought into conformity with municipal ordinance.

13. Thereafter I spoke with plaintiff Mid-State who advised that approximately one (1) year ago, Mid-State put several shrubs along Brickyard Road. These shrubs are having difficulty growing due to percolation. In addition, I was advised that the lights had cleared an electrical inspection required by the Township of Cranbury and no other objection thereto was previously noted by the Township.

14. Shortly thereafter, I advised Mr. Moran of these facts and he responded that he viewed the Mid-State premises and in his opinion Mid-State was proceeding in good faith to comply with the Township Committee's request. Nevertheless, Mr. Moran advised that the Township Committee required additional consideration as a result of a matter entitled Dillon vs. Mid-State, Superior Court of New Jersey, Middlesex

County, Docket No. C 2653-83. Although the Township Committee had not filed a cross claim in that action, it was clear that the Township Committee would require Mid-State to submit a site plan review with respect to the shrubs on Brickyard Road and additional lighting. In order to attempt to accommodate the Township Committee, on April 2, 1984, I met with Philip Shore, Esq., attorney for Mid-State in the Dillon vs. Mid-State, and Mr. Moran. Mr. Shore, Mr. Moran and I spent two hours agreeing upon additional language to be added to the Consent Order. Attached hereto as Exhibit 2 is the additional language. Mr. Moran indicated that the Planning Board would abide his determination.

15. Three days later on April 5, 1984 Mr. Moran advised that the agreed language was not satisfactory. Mr. Moran's client required further refinement to the language which in essence amounted to a renege upon the part of the Township Committee. Mr. Moran advised that even if Mid-State was successful in the Dillon vs. Mid-State, a limited site plan review would still be required.

16. On April 6, 1984, I met with Mr. Moran and we viewed the site. Subsequently I advised Mr. Moran that I could not in good conscience negotiate with him unless the entire Township Committee was present; clearly Mr. Moran has no authority to speak for his client in any meaningful fashion. Mr. Moran advised that the next meeting of the Township Committee was on April 16, 1984, a religious holiday.

17. Mid-State, however, as a sign of good faith hereby advises the Court that if the Township Committee and the Planning Board agree forthwith, Mid-State will consent to provisions being added to the existing Consent Order which require Mid-State to: 1. Remove the recently installed lighting; 2. Install an additional row of 5-6' white pines on Brickyard Road behind the resently installed plants; alternatively Mid-State is willing to put a 5-6' solid concrete fence behind the existing shrubs. This fence would act as a true buffer since it is possible that shrubs will not grow in the area due to percolation. Mid-State wishes to resolve the matter.

18. The Township Committee has reneged twice; Mid-State has been unable to require the Township Committee to come to the bargaining table. Therefore, Mid-State requests that the Court require the Township Committee to agree to the Consent Order with the revisions referred to in Paragraph 17 hereof. Such revisions comply with the Township's requirements. However, I have not been able to determine from Mr. Moran if this is satisfactory. If the Township Committee is now unwilling to agree, it is clear that the Township Committee is clearly guilty of bad faith and breach of contract.

19. Agreements to settle law suits are contracts. Oral agreements to settle law suits are enforceable absent the presence of fraud or other compelling circumstances. The Court should honor and enforce this settlement as it does other

contracts, See Pascarella vs. Bruck 190 N.J. Super 118 (App. Div. 1983), See also Tabaas vs. Atlantic City 174 N.J. Super. 519, 534 (Law Div. 1980).

Sworn to and Subscribed
before me this *9th*
day of *April*, 1984



attorney at law of New Jersey
A Notary Public of the
State of New Jersey
My Commission Expires



LAWRENCE B. LITWIN, ESQ.

SCERBO, KOBIN, LITWIN & WOLFF

10 PARK PLACE
MORRISTOWN, N. J. 07960
(201) 538-4220
ATTORNEYS FOR

BROWNING FERRIS INDUSTRIES
OF SOUTH JERSEY, INC., A
Corporation of the State of
New Jersey, RICHCRETE CONCRETE
CO., A corporation of the State
of New Jersey, and MID-STATE
FILIGREE SYSTEMS, INC., A
Corporation of the State of New
Jersey

Plaintiffs

vs.

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY,
Defendants

LAWRENCE ZIRINSKY
Plaintiff

vs.

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, A municipal
Corporation and THE PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY,
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 058046-83 P.W.

CONSENT ORDER

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 079309-83 P.W.

JOSEPH MORRIS AND ROBERT
MORRIS,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 054117-83

vs.

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey,
Defendant

GARFIELD & COMPANY,
Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 055956-83 P.W.

vs.

MAYOR AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP
OF CRANBURY, A Municipal
Corporation and the Members thereof;
PLANNING BOARD OF THE TOWNSHIP
OF CRANBURY, and the members
thereof,
Defendants

CRANBURY DEVELOPMENT
CORPORATION, A Corporation
of the State of New Jersey,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 59643-83

vs.

CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY,
Defendant

URBAN LEAGUE OF GREATER
NEW BRUNSWICK,
Plaintiff

vs.

THE MAYOR AND COUNCIL
OF THE BOROUGH OF
CARTERET, et al,
Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

CRANBURY LAND COMPANY, a
New Jersey Limited Partnership,
Plaintiff

vs.

CRANBURY TOWNSHIP, A
Municipal Corporation of the State
of New Jersey located in Middlesex
County, New Jersey,
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 070841-83

TOLL BROTHERS, INC., A
Pennsylvania Corporation,
Plaintiff

vs.

THE TOWNSHIP OF CRANBURY
IN THE COUNTY OF MIDDLESEX,
A Municipal Corporation of the
State of New Jersey, THE TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY AND THE PLANNING
BOARD OF THE TOWNSHIP OF
CRANBURY,
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 005652-84

This matter having been opened to the court by Scerbo, Kobin, Litwin and Wolff (Lawrence B. Litwin, Esq., appearing) attorneys for plaintiffs, Browning Ferris Industries of South Jersey, Richcrete Concrete Company and Mid-State Filigree Systems, Inc., and the consent of Huff, Moran and Balint, (William Moran, Esq., appearing) attorneys for the Township Committee of the Township of Cranbury, Stonaker and Stonaker, (Joseph Stonaker, Esq., appearing) attorneys for the Cranbury Township Planning Board and Thomas Farino, Esq., attorney for Cranbury Development Corporation having been affixed hereto; and

Whereas, plaintiff, Browning-Ferris Industries of South Jersey, is the owner of lands and premises known as lot 6, block 16, as shown on the tax map of the Township Cranbury; and

Whereas, plaintiff, Mid-State Filigree Systems, Inc., is the owner of lands and premises known as lot 5, block 16, as shown on the tax map of the Township of Cranbury; and

Whereas, plaintiff, Richcrete Concrete Company, is the owner of lands and premises known as lot 13, block 16, as shown on the tax map of the Township of Cranbury; and

Whereas, the aforesaid plaintiffs are industrial users located in the I-LI, Industrial Light Impact Zone in the Township of Cranbury as described in Article XIII of the Cranbury Township Zoning Ordinance adopted July 25, 1983; and

Whereas, plaintiffs, industrial users, should be conditional permitted uses pursuant to N.J.S.A. 40:55D-67 so that said industrial uses would be permitted to expand and rebuild if certain enumerated conditions are complied with; and

Whereas, John Mansville is the owner of lands and premises known as lot 4 block 16 as shown on the tax map of the Township of Cranbury, and

said lands and premises are located in the R-LI Residence Light Impact Zone in the Township of Cranbury as described in Article V of the Cranbury Township Zoning Ordinance; and

Whereas lands and premises south of Indian Run and north of Brickyard Road in the Township of Cranbury (including a portion of lands and premises owned by Cranbury Development Corporation known as lot 10 block 10 as shown on the tax map of the Township of Cranbury) are located in the R-LI Residence Light Impact Zone in the Township of Cranbury as described in Article V of the Cranbury Township Zoning Ordinance; and

Whereas, plaintiffs have submitted the reports of Paul Szymanski, P.P., Elizabeth McKenzie, P.P., William Ard, M.A.I., and Garmen Associates consulting engineers, which indicate that said lands and premises shall be zoned I-LI Industrial Light Impact pursuant to Article XIII of the Cranbury Township Zoning Ordinance.

NOW, THEREFORE, it is on this day of , 1984,

ORDERED AND ADJUDGED:

1. Forthwith, but no later than May 31, 1984, the Township Committee of the Township of Cranbury and the Cranbury Township Planning Board shall, in accordance with law, amend the Zoning Ordinance of the Township of Cranbury as follows:

A. Article XIII - I-LI, Industrial Light Impact Zone of the Cranbury Township Zoning Ordinance shall be amended as follows:

1. "Section 150-41 Permitted Uses. In the I-LI, Industrial-Light Impact Zone, no land shall be used and no structure shall be erected, altered or occupied for any purposes except the following:

A. Except as provided in Section 150-42C hereof, Light Industry, provided that any manufacturing of fabricating activities shall be

contained within enclosed structures."

2. "Section 150-42C. Any industrial use in the I-LI Industrial Light Impact zone in existence on July 25, 1983 may be continued as a permitted conditional use subject to the area and bulk regulations contained in Section 150-43 hereof and the following additional conditions:

(a) Such use shall not be changed to any use which in the opinion of the Planning Board could be expected to have a more deleterious impact on the adjoining properties.

(b) Any outdoor manufacturing or storage which on the said date was carried on for any such use shall be permitted to expand in conformity with the performance standards contained in Article XVI."

3. "Section 150-43A

(3) Frontage: Minimum street frontage shall be three hundred (300) feet...

(9) Building Height: Maximum building height shall be 65 feet."

B. The lands and premises owned by Johns Mansville known as lot 4 block 16 as shown on the tax map of the Township of Cranbury, and as shown in red on Exhibit A annexed hereto, shall be zoned I-LI Industrial Light Impact pursuant to Article XIII of the Cranbury Township Zoning Ordinance.

C. The lands and premises south of Indian Run and north of Brickyard Road, (including a portion of lands and premises owned by Cranbury Development Corporation known as lot 10 block 10 and 12 as shown on the tax map of the Township of Cranbury) and as shown in blue on Exhibit A annexed hereto, shall

be zoned I-LI Industrial Light Impact pursuant to Article XIII of the Cranbury Township Zoning Ordinance; however, the provisions of this paragraph shall not affect the remainder of the Cranbury Development Corporation's lands and premises. Cranbury Development Corporation shall be permitted to continue to pursue its action entitled Cranbury Development Corporation, a Corporation of the State of New Jersey vs. Cranbury Township Planning Board and the Township Committee of the Township of Cranbury, Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L 59643-83, with respect to the remainder of its lands and premises.

2. In the event that other plaintiffs in the above captioned matter shall successfully challenge the Cranbury Township Zoning Ordinance and the Court refers the Zoning Ordinance to a Master, this Consent Order shall be provided to said Master. The Master and/or the Court shall not further rezone the lands and premises described in paragraphs 1 A, B, and C hereof, without adequate notice to Lawrence B. Litwin, Esq., of Scerbo, Kobin, Litwin and Wolff, attorneys for plaintiffs Browning Ferris Industries of South Jersey, Richcrete Concrete Company and Mid-State Filigree Systems, so that plaintiffs may appear and present proofs before said Master and/or the Court with respect thereto.

EUGENE SERPENTELLI, J.S.C.

We hereby consent to the form, substance, and entry of the within Consent Order.

HUFF, MORAN & BALINT
Attorneys for Township Committee
of the Township of Cranbury

BY:

WILLIAM MORAN, ESQ.

STONAKER AND STONAKER
Attorneys for Cranbury Township
Planning Board

BY:

JOSEPH STONAKER, ESQ.

SCERBO, KOBIN, LITWIN & WOLFF
Attorneys for Browning Ferris Industries
of South Jersey, et al

BY:

LAWRENCE B. LITWIN, ESQ.

THOMAS FARINO, ESQ.
Attorney for Cranbury Development
Corporation

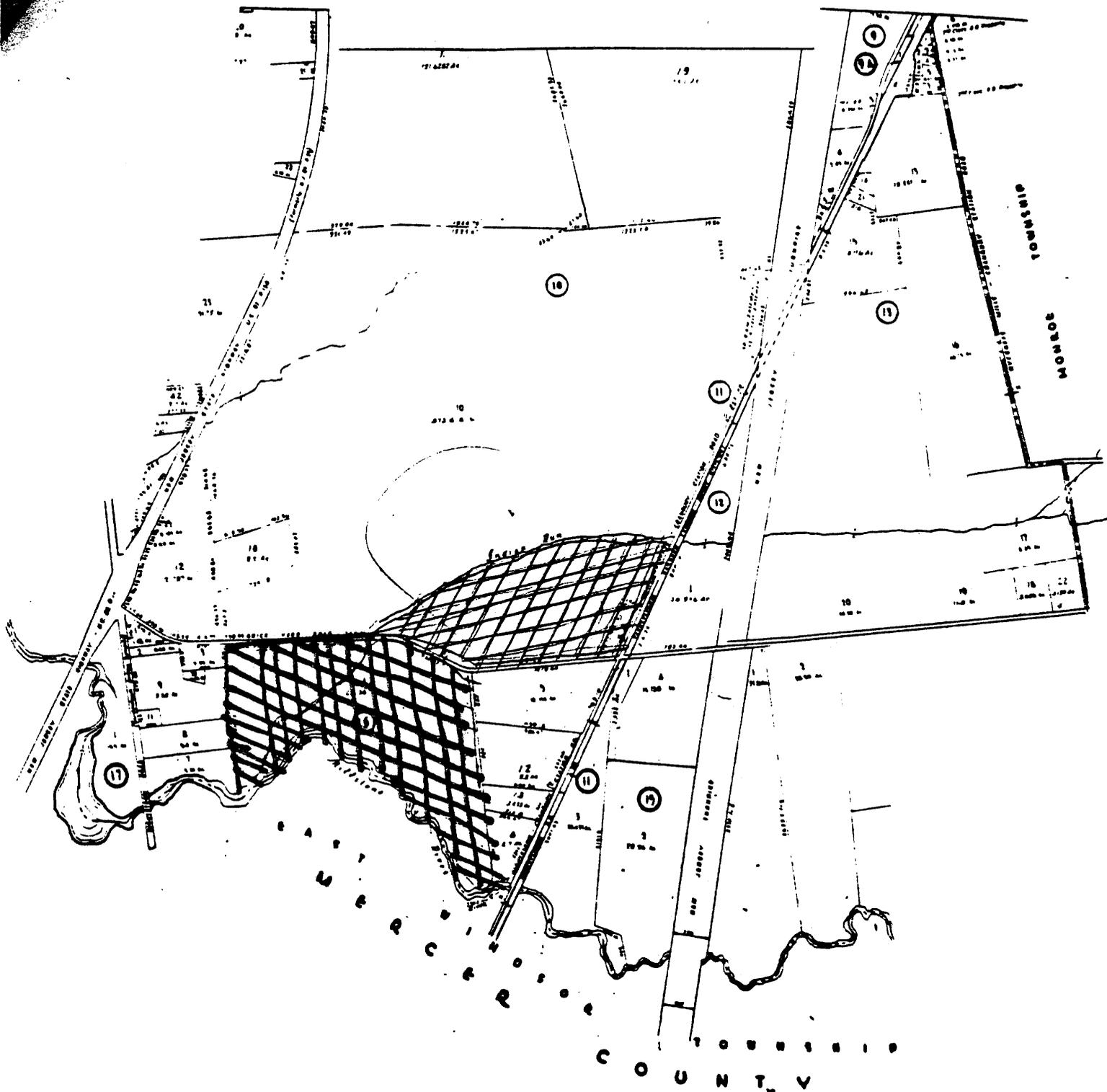


EXHIBIT A

ADDITIONAL WHEREAS CLAUSES:

WHEREAS, there is presently pending in the Superior Court, Law Division, Middlesex County, an action entitled Barbara and Robert Dillon v. Mid-State Filigree Systems, Inc. and Township of Cranbury, Docket No. C 2653-83, and

WHEREAS, among other things, that case involves the issue of whether or not Mid-State Filigree is required to file a site plan application to the Cranbury Township Planning Board,

If the Court in Dillon v. Mid-State Filigree et als. enters a final, non-appealed order that:

1. Mid-State Filigree is required to submit to site plan review by the Cranbury Township Planning Board, Mid-State Filigree shall comply with that order.

2. Mid-State Filigree is not required to submit a site plan application to the Cranbury Township Planning Board, Mid-State shall be required to do nothing.

3. Makes any determination other than that set forth in 1 or 2 above, Mid-State shall submit to the Cranbury Township Planning Board within 90 days of the date on which the time for appeal of the judgment ^{EXPIRES} ~~runs out~~, an application for site plan review

limited to screen planting on Brick Yard Road and ~~and~~ ^{installed after July 1, 1982} existing outdoor lighting. Nothing contained herein

shall be deemed to limit the relief which may be granted by the Court in Dillon v. Mid-State Filigree, et als.