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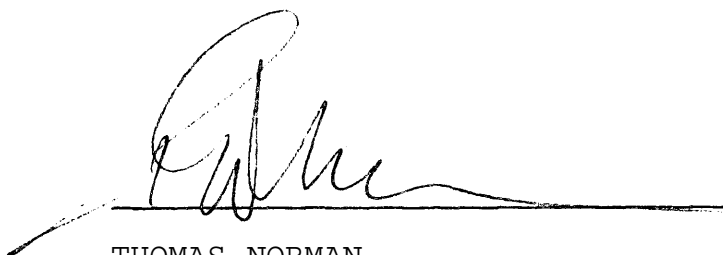
- Notice of motion for partial summary judgment
- Brief in support of motion for summary judgment on behalf of the Planning Board of the Township of Old Bridge
- Cover letter to clerk

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PLEASE TAKE NOTICE that on July 2, 1981, Thomas Norman, Esq., attorney for defendant, Planning Board of the Township of Old Bridge, will make application before the Honorable J. Norris Harding, for an Order granting partial summary judgment in favor of the aforesaid defendant on Count Ten of the Complaint for failure to state a claim upon which specific relief may be granted. Defendant will rely upon the attached Brief in support of this Motion.

Dated: June 22, 1981

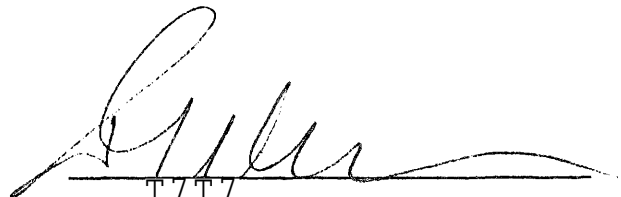
A handwritten signature in black ink, appearing to read 'T. Norman', is written over a horizontal line. The signature is fluid and cursive.

THOMAS NORMAN
Attorney for Defendant,
Planning Board
Township of Old Bridge

CERTIFICATION

I hereby certify that the original of the within Notice of Motion has been filed with the Clerk of the Superior Court of New Jersey, State House Annex, P.O. Box 1300, Trenton, New Jersey 08625: a hand delivered copy to Brener, Wallack and Hill, Islqs., attorneys for plaintiff, 15 Chambers Street, Princeton, New Jersey 08540; a copy sent to Louis Alfonso, Esq. 325 County Highway 516, Old Bridge, New Jersey 08857; a copy sent to William E. Flynn, Esq., P.O. Box 515-550, Highway 9, Old Bridge, New Jersey 08857; a copy sent to Louis E. Granata, Esq. 210 Main Street, P.O. Box 389, Matawan, New Jersey, 07747; a copy to Honorable J. Norris Harding, Middlesex County Court House, New Brunswick, New Jersey 08903 and a copy to the Middlesex County Clerk, Administration Building, Kennedy Square, New Brunswick, New Jersey 08903

DATED: June 22, 1981


Thomas Norman, Esq.

THOMAS NORMAN, ESQ.
Suite 101, Olde Buttonwood Building
414 Stokes Road
Medford, New Jersey 08055
(609) 654-5220
Attorney for Defendant, Planning Board of the Township of
Old Bridge

O & Y OLD BRIDGE DEVELOPMENT CORP., a Delaware Corporation,	:	SUPERIOR COUR OF NEW JERSEY LAW DIVISION
	:	MIDDLESEX COUNTY
Plaintiff,	:	DOCKET NO. L-32516-8-
	:	
vs.	:	
	:	
THE TOWNSHIP OF OLD BRIDGE in the County of Middlesex, et als.,	:	CIVIL ACTION
	:	
Defendants.	:	
	:	
	:	
	:	

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF THE PLANNING BOARD OF THE TOWNSHIP
OF OLD BRIDGE

On the Brief: Thomas Norman, Esq.

ARGUMENT

POINT I

I. THE TENTH COUNT OF THE COMPLAINT
CHARGING CONSPIRACY FAILS TO STATE
A CAUSE OF ACTION FOR WHICH RELIEF
MAY BE GRANTED.

In the Tenth Count of the Complaint, the plaintiff alleges that a conspiracy exists among the Township Council of Old Bridge Township, the Planning Board of Old Bridge Township, the Old Bridge Municipal Water Authority and the Old Bridge Municipal Utility Authority. The conspiracy allegedly has as its goal the maintenance of an "exclusionary" community by means of restrictive land use ordinance regulations and excessive fee schedules.

The legal issue raised by the conspiracy allegation is whether a governmental entity that is directed by statutory law to coordinate the plans and programs of its own agencies can be guilty of conspiracy to commit an illegal act by virtue of following mandatory statutory requirements to coordinate the various agencies within the municipal family. This defendant being one of those sub-agencies contends that a governmental entity can not be guilty of conspiracy as demanded by the plaintiff within the context of this matter.

The statutory framework referred to is contained in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (M.L.U.L.)

The M.L.U.L. mandates cooperation between the governing body and the planning board by requiring that any ordinance

regulating land use must be referred by the governing body to the planning board for comment before final adoption by the governing body. See N.J.S.A. 40:55D-26 and 64. The act further insures coordination between the planning board and the governing body by requiring that the mayor and one member of the governing body must be members of the planning board. See N.J.S.A. 40:55D-23.

The M.L.U.L. ties the official planning actions of the governing body and the planning board in Section 62 which requires that before the Old Bridge Township Council (governing body) may adopt any zoning regulation, the Old Bridge Township Planning Board must first adopt a Land Use Element of the Master Plan. The relationship is then tied by Section 62(a) which mandates that the zoning regulation proposed for adoption by the governing body must be substantially consistent with the Master Plan or designated to effectuate the Master Plan and, if not, the governing body must explain the deviation with reasons on the record. See N.J.S.A. 40:55D-62(a).

The Municipal Land Use Law further ties the land use activities of the planning board and the governing body to the Municipal Utility Authority and Sewerage Authority in two sections requiring the planning board to prepare a utility service plan and land use element plan with the aid of other municipal agencies. See N.J.S.A. 40:55D-28(b)(2) and (5).

This same law also provides that the planning board shall confer with the mayor, the chief fiscal officers, other

municipal officials and agencies and the school board in preparing a capital improvement program. See N.J.S.A. 40:55D-29.

If a conspiracy count is viable in the land use field any property owner, dissatisfied with existing zoning regulations, could challenge not only the governing body but all boards and agencies in the municipality on a conspiracy doctrine since virtually every municipal agency is required by the Municipal Land Use Law to cooperate with the planning board in preparation of the Master Plan which forms the basis for the zoning regulations. This will lead clearly to complex and costly litigation on the part of the municipality and ultimately to the financial detriment of the tax paying residents.

Plaintiff does not lose any of the remedies it seeks under the Tenth Count because the same remedies, i.e.

- (1) 1978 ordinance be declared invalid;
- (2) a planning master be appointed;
- (3) specific relief by way of rezoning of the subject property for high density development by order;
- (4) the sewer authority expeditiously process plaintiff's application;
- (5) the utility authority expeditiously process plaintiff's application; ;
- (6) legal fees be paid; and
- (7) other just and proper relief be granted,

are demanded in the first nine counts.

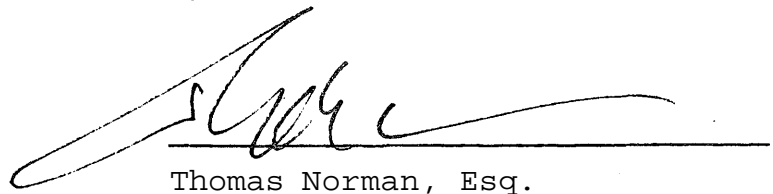
If plaintiff is unsuccessful in its challenge in the first nine counts, i.e., the Land Development Ordinance and utility authority rates are found reasonable and valid, the Tenth Count

must of necessity fail since the regulations are valid. Conversely, if the plaintiff is successful in its attack contained in the first nine counts, the conspiracy theory is unnecessary.

Governmental entities should not have to defend themselves and the actions of agencies of the entity against conspiracy charges when the various agencies are statutorially directed to cooperate. Clearly, the M.L..U.L. attempts to foster cooperation and coordination among municipal agencies for sound planning in the best interests of the residents of the municipality. To permit this cooperation to be converted into a conspiracy challenge will., have a chilling effect and defeat the laudatory, . statutory goals contained in the Municipal Land Use Law.

For the foregoing reasons, it is respectfully submitted that the Tenth Count of the Complaint should be dismissed for failure to state a cause of action for which relief may be granted.

Respectfully, submitted,



Thomas Norman, Esq.

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THOMAS J. HOLYNEUX
COUNTY CLERK

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June 22, 1981

Clerk of Superior Court
State House Annex
Trenton; N.J. 08625

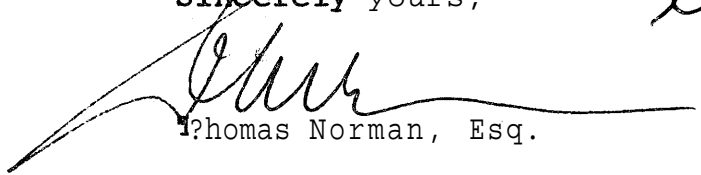
Re: O & Y Old Bridge Development
Corp., v. The Township of
Old Bridge, et als
Docket No* L-32516-8J0

Dear i Sirs

Enclosed please find original and two copies of
Notice of Motion for Partial Summary Judgment and Brief for
filing in the above captioned matter. Please return marked fi
copy to this office.

Sincerely yours,

on the copying
issue


Thomas Norman, Esq.

TN:mk
CCs Louis J. Alfonso, Esq.
Brener, Wallack & Hill, Esqs.
William E. Flynn, Esq.
Louis E. Granata, Esq.
Honorable J. Norris Harding
Middlesex County Clerk ^

