

ML 2

~~ML 2~~ Cranbury twp

10-Apr-84

Consent order ordering Cranbury
to amend the Town's Zoning
Ordinance

pg. 16

ML 000839 J

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

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

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
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket No. L 070841-83

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

...ed I-LI Inc. rial Light Impact pursuant to Ar e 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 R. Farino
THOMAS FARINO, ESQ.
Attorney for Cranbury Development
Corporation

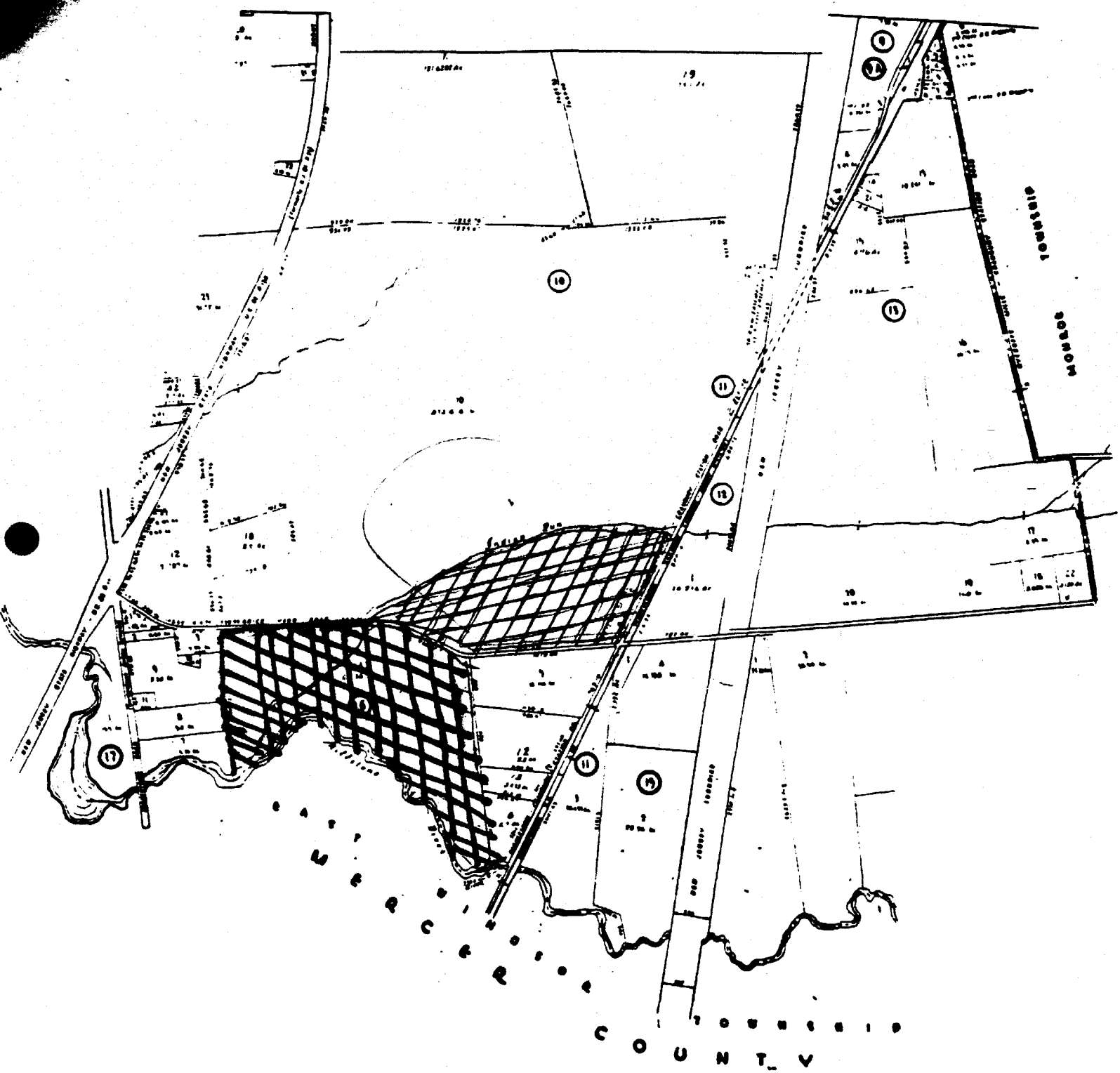


EXHIBIT A

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

HUFF, MORAN & BALINT, ESQS.
Cranbury-South River Road
Cranbury, New Jersey 08512
(609)655-3600

Attorneys for Defendant, Township
of Cranbury

LAWRENCE ZIRINSKY,
Plaintiff,

v.

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, a Municipal
Corporation of THE PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
MIDDLESEX COUNTY

Docket No. L 079309-83 P.W.

JOSEPH MORRIS and ROBERT MORRIS,

Plaintiffs,

v.

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

Defendants.

Docket No.L 054117-83

GARFIELD & COMPANY,

Plaintiff,

v.

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.

Docket No.L 055956-83 P.W.

AFFIDAVIT IN OPPOSITION TO MOTION TO ENFORCE SETTLEMENT

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

Plaintiff,

Docket No. L 59643-83

v.

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

Defendants.

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

Plaintiffs,

Docket No. L 058046-83 P.W.

v.

CRANBURY TOWNSHIP PLANNING BOARD and
the TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF CRANBURY,

Defendants.

URBAN LEAGUE OF GREATER NEW BRUNSWICK,

Plaintiff,

v.

THE MAYOR and COUNCIL OF THE BOROUGH
OF CARTERET, et al.,

Defendants.

CHANCERY DIVISION:
MIDDLESEX COUNTY

CRANBURY LAND COMPANY, a New Jersey
Limited Partnership,

Plaintiff,

Docket No. L 070841-83

v.

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

Defendant.

TOLL BROTHERS, INC., A Pennsylvania
Corporation,

Plaintiff,

Docket No. L 005652-84

v.

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.

AFFIDAVIT IN OPPOSITION TO MOTION TO ENFORCE
SETTLEMENT

STATE OF NEW JERSEY)

ss.:

COUNTY OF MIDDLESEX)

WILLIAM C. MORAN, JR., of full age, being
duly sworn according to law, upon his oath says:

1. I am an Attorney at Law of the State
of New Jersey, and a member of the law firm of Huff, Moran
and Balint, Cranbury, New Jersey, the attorneys for the
defendant, Township Committee of the Township of Cranbury.

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

3. I have reviewed the Affidavit of
Lawrence B. Litwin, dated April 9, 1984 in support of the
motion to enforce a settlement. The allegations contained

in that Affidavit are substantially correct with certain important exceptions:

A. From the outset, it was made clear to Mr. Litwin that any settlement arrived at was subject to the formal approval of the defendant, Planning Board of the Township of Cranbury and the defendant, Township Committee of the Township of Cranbury.

B. I was not present personally during some of the occurrences referred to in Mr. Litwin's affidavit, specifically, I was out of the Country on vacation from March 3rd to March 10, 1984 and due to a death in the family I was not able to attend the Pretrial Conference in this matter, which also was the return date of the Notice of Motion to Approve the Settlement.

C. At the Pretrial Conference, my partner, Michael P. Balint, represented the Township. Prior to his attending I instructed him to make it clear that the approval of the same had to be contingent upon its formal approval by the Township Planning Board and by the Township Committee.

D. One of the members of the Township Committee in a separate conversation with the Township Planner, George Raymond, was apparently told by Mr. Raymond that the Township should obtain some form of a quid pro quo for the concession


that the Township was making in the settlement on the zoning question. It was suggested that some resolution of the on-going problem that the Township had at the site of one of the plaintiff's operations would be appreciated. This member of the Township Committee indicated that he would only be satisfied if screening and lighting were brought into compliance with Township Ordinances as if a site plan had been presented to the Planning Board for them.

E. At the meeting on April 2, 1984, I presented Messrs. Litwin and Shore with suggested language for a modification to the Consent Order which is substantially the same language which would be acceptable to the Committee at this point. Mr. Litwin and Mr. Shore could not agree to that language and modified language was worked out. That language was presented to the Township Committee, who did not approve the same. Additionally, on April 5, 1984, Mr. Litwin made further modifications to the language which had never been agreed to by anyone other than himself.

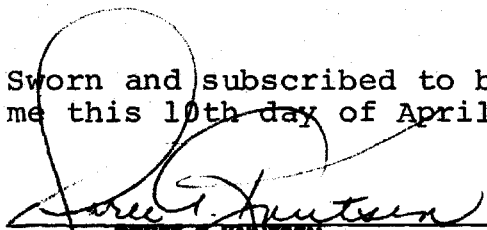
F. It is implicit in any settlement discussions with a Municipality that those discussions are contingent upon formal approval by the members of the governing body. That formal approval has not been obtained in this case and therefore, there is no settlement to enforce. In order for a Municipality to be guilty of breach of contract, there must be a contract in the first instance. One member of the

Township Committee cannot bind the Township Committee, nor can a majority of a Township Committee bind the Township Committee acting outside the confines of a properly called meeting. The Township Committee has not approved any settlement and therefore, there is nothing to enforce.

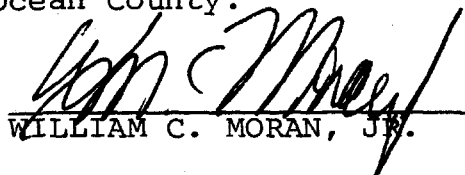
4. For the foregoing reasons, it is respectfully requested that plaintiff's motion to enforce settlement be denied.


WILLIAM C. MORAN, JR.

Sworn and subscribed to before me this 10th day of April, 1984.


DOREE A. KNUTSEN
A Notary Public of New Jersey
My Commission Expires March 17, 1987

I hereby certify that a copy of this Affidavit has been forwarded to the Clerk of the Superior Court, Trenton, New Jersey; and that a copy of same has been forwarded to the Clerk of Ocean County.


WILLIAM C. MORAN, JR.