

RESOLUTION 2020-
RESOLUTION OF THE BERKELEY TOWNSHIP PLANNING BOARD REPORTING AND RECOMMENDING THAT THE PETITION FOR DE-ANNEXATION FROM THE RESIDENTS OF SOUTH SEASIDE PARK NOT BE APPROVED

WHEREAS, On or about October 6, 2014, Beverly Ann Carle, RMC, Township Clerk for the Township of Berkeley, forwarded to the Berkeley Township Planning Board a copy of Resolution No. 14-378-R of the Township Council of the Township of Berkeley, acknowledging receipt of a de-annexation petition from certain residents of South Seaside Park, and forwarding said petition to the Township Planning Board; and

WHEREAS, pursuant to N.J.S.A. 40A:7-12, the Berkeley Township Planning Board is required to adopt a report to the Township's Governing Body on the impact of de-annexation upon the Municipality; and

WHEREAS, the Board notes that a prior petition for de-annexation for South Seaside Park had been filed approximately 40 years prior to this petition and the proceedings held thereon were conducted under a statutory framework which has since been abandoned, i.e. N.J.S.A. 40:43-26 et seq.; and

WHEREAS, in 1982, the State Legislature amended the statute to reflect the legislative intent to preserve municipal boundaries and maintain municipal integrity. The revised statute shifted the burden onto the petitioners to show de-annexation will not cause a significant injury to the well being of the de-annexing municipality. Russell v. Stafford, 261 N.J. Super. 43, 48-50 (Law Div. 1992).

WHEREAS, the provisions of the de-annexation statute, N.J.S.A. 40A:7-12, et seq., do not provide any procedural process which a local Planning Board is required to follow with respect to their role when faced with a de-annexation petition; and

WHEREAS, in the absence of any procedural outline set forth in the statute, or by local Ordinance, the Planning Board is left to determine what process its review and recommendations should take; and

WHEREAS, the powers of a local Planning Board are set forth by statute in N.J.S.A. 40:55D-25 and nowhere within said statute is there any reference to the Municipal De-Annexation Law, however, pursuant to N.J.S.A. 40:55D-25(b)(3), the Board is authorized to perform such advisory duties as are assigned to it by Ordinance or Resolution of the Governing Body, with the aid and assistance of the Governing Body or other agencies or officers; and

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WHEREAS, in accordance with the Resolution of the Township’s Governing Body, the Board has attempted to perform its advisory duties as assigned to it; and

WHEREAS, the Board notes that, pursuant to N.J.S.A. 40:55D-10, a “hearing” is required for each application for development, adoption, revision or amendment of the Master Plan, each application for approval of an outdoor advertising sign submitted to the Municipal Agency, as required pursuant to an Ordinance adopted under N.J.S.A. 40:55D-39, or any review undertaken by a Planning Board pursuant to N.J.S.A. 40:55D-31; and

WHEREAS, N.J.S.A. 40:55D-31, in turn, refers to the review of Capital Projects, and is applicable to the proceedings set forth herein; and

WHEREAS, the Board views its role in this matter as advisory in nature and not as a quasi-judicial forum as it would normally sit with respect to applications for development submitted to it pursuant to the New Jersey Municipal Land Use Law; and

WHEREAS, the Board ultimately determined that the proceedings would be conducted in public with the petitioner through their counsel, being provided the opportunity to present such testimony and documentation they deemed necessary in support of their petition, and the Board hearing from Township Departments and Officials in response thereto; and

WHEREAS, initially, the Attorney for the petitioner and the Board determined that the statutory timeframe set forth in the de-annexation statute would be insufficient with the parties agreeing to proceed with a minimum of two (2) hours of each available meeting being devoted to this matter; and

WHEREAS, at the commencement of this proceeding, the Board determined it would be in its’ interest to utilize the services of a Professional Planner, Stuart B. Wisner, P.P., AICP, License No. LI005598, to assist the Board in processing the information which was to be presented, the preparation of a Report of Findings, which would analyze the testimony, evidence and information presented, address any additional issues or information not presented but deemed relevant, and offer a “recommendation” to assist the Board in its’ functions based on his involvement in de-annexation cases in at least two (2) other municipalities; and

WHEREAS, said report is dated May 2, 2019, and is incorporated herein by reference, and attached hereto as Exhibit A; and

WHEREAS, in accordance with N.J.S.A. 40A:7-12, a de-annexation petition must include, not only duly verified signatures of those individuals seeking to de-annex, but same must also have attached thereto an oath of an Assessor of the Municipality or some other

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person having access to the Assessor's books, setting forth the assessed value of the real estate contained within the boundaries of the preceding year, "and the amount of real estate assessed to any of the persons whose names are signed to such petition"; and

WHEREAS, the petitioners did, in fact, submit a certification as to the total assessed value of real estate contained within the boundaries of the area to be de-annexed for the preceding year, however, the petition itself was signed by 285 of the 435 registered voters of South Seaside Park; and

WHEREAS, the petitioners have failed to establish the value of the real estate assessed to the 285 registered voters who signed the petition, contrary to the statutory requirements; and

WHEREAS, the new statutory framework as identified previously switched the burden of proof from the Municipality to the petitioners, who now have the responsibility to establish each of the following:

1. That refusal to consent to de-annexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; and
2. De-annexation will not cause a significant injury to the well-being of Berkeley Township; and

WHEREAS, as the following individuals presented testimony in this proceeding, including the following signatories to the petition:

Donald Whiteman	Katherine Fulcomer	Robert Schwartz
Patricia Dolobacs	Judith Erdman	Janet Shalayda
Elaine Vitarello	Robert Nora	George Giovenco

WHEREAS, additional testimony was presented by Robert Cardwell, a non-signatory but supporter of de-annexation; and

WHEREAS, the petitioners further submitted the testimony of various professionals including Scott Bauman, P.P., AICP, Kenneth Moore, CPA, RMA, CMFO, CFP, and Barbara Allen Woolley-Dillon, P.P., AICP; and

WHEREAS, the following individuals also presented testimony before the Berkeley Township Planning Board on this matter:

Police Chief (and Emergency Management Coordinator) Karin DiMichele
Police Officer (and Deputy Emergency Management Coordinator) Ronald Bondulich

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Police Sargent George Dohn
Police Detective Michael Tier
Police Lieutenant Ryan Roth
Police Captain Kevin Santucci
Kevin Geoghegan, Supervisor of (Paid) Emergency Medical Services
Police Officer Walter Dudley
Police Officer Michael Poikans
Steven Seiler, Township Director of Public Works / Principal Public Works Manager
Mark Vannella, Township Director of Sanitation & Recycling
Timothy Yurcisin, Township Superintendent of Parks, Beaches & Recreation
James D. Sperber, Township Supervisor of Parks & Beaches
Ernest Peters, PE, PP, CME, Board Engineer
Stanley C. Slachetka, PP, AICP, Board Planner
Frederick C. Ebenau, CMFO, Township CFO/Treasurer (and Assistant Administrator)
John Camera, Township Administrator; and

WHEREAS, additional members of the general public testified during the hearings as follows:

James Fulcomer, Resident of South Seaside Park
Samuel Cammarato, Resident of Mainland Berkeley Township
Bobby Ring, Part Time Resident of South Seaside Park
Carol Luciano, Resident of South Seaside Park
Mary Ann Meneghin, Resident of South Seaside Park
Sharon Rusnak, Part Time Resident of South Seaside Park
John Budish, Resident of South Seaside Park
Alan Schoenwiesner, Part Time Resident of South Seaside Park
Lisa Musci, Part Time Resident of South Seaside Park
Alisanne Skeffington, Part Time Resident of South Seaside Park
Don Merker, Part Time Resident of South Seaside Park
Gail Leibowitz, Resident of South Seaside Park
Joanne Pacifico, Resident of South Seaside Park
Edward Lipman, Resident of South Seaside Park
Michael MacDermott, Annual Vacationer to South Seaside Park
Kathleen Price, Resident of South Seaside Park
David McKee, Resident of South Seaside Park; and

WHEREAS, the report of the Township's Planner retained specifically to coordinate the gathering of information and to assist the Board in processing such information, dated May 2, 2019, and authored by Stuart B. Wiser, P.P., and James Oris, P.E., P.P., outlines the testimony of the various individuals who testified throughout this proceeding and transcripts from each and every hearing are available for review; and

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WHEREAS, the Board has carefully reviewed the testimony and the exhibits presented by the petitioners, the testimony and/or exhibits presented by various Township employees and officials, as well as members of the general public; and

WHEREAS, the Board finds that the May 2, 2019, report of findings with respect to the de-annexation petition which was specifically prepared as a result of the Board determining to utilize the services of Mr. Wisner, accurately portrays the testimony and exhibits presented; and

WHEREAS, the Planning Board held hearings on this matter on the following dates:

January 8, 2015
February 5, 2015
April 2, 2015
May 7, 2015
June 4, 2015
August 6, 2015
September 3, 2015
October 1, 2015
November 5, 2015
December 3, 2015
February 4, 2016
May 5, 2016
June 2, 2016

at which time the petitioners completed their affirmative presentation to the Board; and

WHEREAS, various Township witnesses then appeared before the Board at meetings held on September 1, 2016, October 6, 2016, November 3, 2016, December 1, 2016, January 5, 2017, February 2, 2017, April 6, 2017, May 4, 2017, June 1, 2017, July 6, 2017, August 3, 2017, September 7, 2017, November 2, 2017, December 7, 2017, February 1, 2018, March 1, 2018, April 5, 2018, May 3, 2018, June 7, 2018, and July 5, 2018; and

WHEREAS, thereafter, a procedural hearing was held on this matter on August 2, 2018, with members of the general public being permitted the opportunity to testify on the petition on September 6, 2018; and

WHEREAS, thereafter, the petitioners were granted three (3) additional hearings to present any rebuttal testimony they wished to provide, which hearings were held on October 4, 2018, December 6, 2018, and February 7, 2019; and

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WHEREAS, thereafter, the Board received the report of findings of Mr. Wisner, who coordinated the information and exhibits testified to before the Board in the preceding years, and submitted an impact report to the Board which analyzed the testimony, evidence and information presented; and

WHEREAS, the Board then provided the petitioners the opportunity to question the Board's Planner with respect to his report of findings and recommendations; and

WHEREAS, in general the Board notes that the petitioners supported their request for de-annexation with the following claims:

- 1. The distance from mainland Berkeley Township to South Seaside Park is considerable.**

RESPONSE: The Board agrees that the distance existing between South Seaside Park and mainland Berkeley Township by public roadway is considerable. The Board further agrees that this fact weighs in favor of the first prong in the two-prong test which must be applied herein. The Board notes, however, that that distance has never changed from the time the petitioners first purchased their properties in South Seaside Park to the present. Likewise, Township facilities have historically been located on the Township's mainland since the Township owns large acreage and parcels of land on the mainland as opposed to the barrier peninsula, which can accommodate such facilities for a town of Berkeley Township's size. The Board further notes that Berkeley Township contains a total of 55.8 square miles, with 42.9 square miles of same being land area and 12.9 square miles of water. While South Seaside Park requires a trip by automobile to the mainland area of the Municipality, vast portions of Berkeley Township require similar automobile travel to reach any other portion of the Municipality. For instance, the western portion of the Municipality to the bayfront would, likewise, require an extended automobile ride of a similar time and distance. In short, in a town of this square mileage there will always be areas which require a substantial automobile travel time to reach another portion of the Municipality.

With respect to schools, de-annexation will result in less travel time for students in elementary school but would have no impact on students for middle or high school since even if de-annexation were to occur, the students would attend the Central Regional School District on the mainland. Thus, any impact is limited to approximately seven (7) years for residents with younger children.

- 2. Berkeley Township has been unresponsive and has neglected South Seaside Park.**

RESPONSE: The Board does not agree with the petitioners' assertion in this regard based upon the testimony and exhibits presented. While the Board does agree that some petitioners believe that their needs have not been responded to or have been neglected by Berkeley Township, the Board finds that the Township has responded to those concerns. In this regard, the petition has succeeded in raising these issues with the Township and this is a benefit of the process utilized herein. Likewise, the petitioners' proposed remedy for this alleged unresponsiveness and neglect may certainly be achieved without the utilization of de-annexation. The testimony before this Board revealed that the Township has invested significant capital improvement funds of all tax payers of Berkeley Township in the South Seaside Park section of the Municipality, particularly subsequent to Super Storm Sandy. Many of the petitioners' concerns and requests in regard to this allegation are simply limited by the availability of land within South Seaside Park.

3. Petitioners claim the Township has failed to invest appropriate resources into South Seaside Park.

RESPONSE: The testimony before this Board reveals that the Township has, in fact, invested significant resources, both capital and employee related, in the South Seaside Park section of Berkeley Township. The Board recognizes that petitioners do not feel that this investment has been significant or large enough and would prefer to see even greater investment in their portion of the community. The Board believes many sections of Berkeley Township could make similar, though not identical, arguments in this regard. Most taxpayers would like to see their roads cleaned more often, plowed faster and township facilities being more convenient. The Board agrees, however, that within the South Seaside Park section of Berkeley Township there is very limited public recreation facilities available other than the Lyons Memorial Park, which contains a basketball court and picnic area, and White Sands Beach on the oceanfront. The Board acknowledges that the vast majority of Township program and events are located on the mainland portion of the Municipality, as there are a few facilities to host any such programs other than the beach which, is utilized for a beach party each year. In addition, the Township has invested considerable time and resources into additional land use planning for South Seaside Park, including the 2017 Neighborhood Plan for South Seaside Park, with subsequent Ordinance revisions which have since been adopted. The Neighborhood Plan includes a recommendation for the Township to develop a proposed Recreation and Open Space Plan for South Seaside Park to address the feasibility of creating additional facilities requested by the petitioners. The Board further notes that there are more amenities available on the mainland to

the residents of Berkeley Township than there are in South Seaside Park, however, there are also amenities which are provided by Berkeley Township for residents of South Seaside Park that Seaside Park does not provide, such as a public golf course. Likewise, petitioners have failed to establish sufficient evidence in support of such a claim.

With respect to monetary investment, the Township's Chief Financial Officer testified that the Township's expenditures are not tied to any specific neighborhood, and it is impossible to accurately calculate total investment in South Seaside Park. The testimony of the Township Engineer, Public Works and Recreational Officials do not appear to support the petitioners' assertion that the Township has not invested significant financial resources in South Seaside Park. The request for a dedicated police substation, according to the Township's Chief of Police, is antiquated, not cost effective and, in many other municipalities they have essentially become obsolete. Instead, the Township has the ability to provide a mobile police substation during any emergency, weather or otherwise, as the Township did, following Super Storm Sandy.

Once again, South Seaside Park is limited by the amount of available acreage and land area for additional recreational facilities, unlike the Township's mainland. In addition, the testimony revealed that the Township does, in fact, invest substantial capital and human resources in South Seaside Park, though it is difficult to obtain exact figures with respect to same. These difficulties can be overcome through proper planning in the future, and the Township should move forward with a new Recreation and Open Space Plan for South Seaside Park as recommended by this Board when it adopted its' Neighborhood Plan for South Seaside Park in 2017. Finally, the Board notes the Township provided extensive manpower, equipment and storage areas to allow for the removal of debris, garbage and other obstructions to the mainland. This greatly assisted the residents of south Seaside Park in their effort to recover from the damage wrought by Sandy in 2012. The tons of debris which the Township moved out of South Seaside Park to its' mainland facilities so as to allow for the reconstruction of South Seaside Park cannot be underestimated, nor can the cost thereof. Seaside Park, which has no mainland facilities, had no such capability.

4. Petitioners contend that they suffer from social injury by remaining part of Berkeley Township.

RESPONSE: Petitioners claim they are isolated from the mainland and not part of the Township's "social fabric". They assert an affinity with, and connection to, Seaside Park, which they do not share with the rest of Berkeley

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Township. Essentially, the residents of South Seaside Park identify with other barrier island communities which have similar characteristics. The basis for this social injury claim is that South Seaside Park functions more as a centerpiece of their lives, and the mainland is not where South Seaside Park residents go to conduct their business or meet their daily needs. Petitioners also point out that they would have the opportunity for greater participation in local government and social activities in Seaside Park if they were voting members of that community. Some residents of South Seaside Park feel isolated from the remainder of Berkeley Township, and argue their withdrawal would not disrupt the social and economic fabric of the rest of Berkeley Township. The testimony further reveals that residents of South Seaside Park attend religious services in Seaside Park, as well as other social events.

The Board notes that most recreation events that are Township sponsored are held in Veterans Park, which is geographically near the center of the Municipality, because it is the Township's flagship park. It contains a band shell, stage and is designed to host large events and concerts of over 7,000 people. Many residents, not just those of South Seaside Park, have a long distance to travel to Veterans Park from within the Municipality even if they live on the mainland.

While the Board acknowledges that many longtime residents of South Seaside Park feel they are closer to Seaside Park than they are to Berkeley Township, the Board believes this is due to their proximity to the ocean and beach, bicycling opportunities, religious services, etc. Seaside Park is clearly a more localized community of similarly situated individuals as those residents of South Seaside Park. However, both South Seaside Park and Seaside Park residents do most of their grocery shopping in the Ortleigh Beach section of Toms River. There are a number of municipalities which have both mainland and barrier island presence within Ocean County including Toms River Township and Brick Township, each with a vibrant beach community as well as a mainland community. Whether de-annexation was granted or not, the residents of South Seaside Park would continue to shop, attend church services, and eat at restaurants just as they do now and, consequently, the denial of a petition for de-annexation would have absolutely no bearing on these social events. The Board further notes that there are no houses of worship located within South Seaside Park and, regardless of their denomination, residents must travel outside of this portion of the Municipality to attend services.

With respect to social diversity, the Board notes that the median age of South Seaside Park is 59.9 years of age, and the median age of Berkeley Township

overall is 59.8 years of age. Census data further reveals that 31 percent of the residents of South Seaside Park hold a Bachelors Degree, while only 12.6 percent of the entire population of Berkeley Township has achieved same. Likewise, 17.4 percent of the residents of South Seaside Park have attained a Masters Degree, while only 4.1 percent of Berkeley Township has done so.

With respect to earnings and income, the residents of South Seaside Park have a median per capita income of \$41,158.00, as compared to \$31,025.00 for the Township as a whole, meaning the per capita income of South Seaside Park is 32.7 percent higher than Berkeley Township. Finally, Berkeley Township has a population of approximately 41,554 residents, of which 2,672 are non-white, equating to a 6.4 percent minority population township-wide. Of the 674 residents of South Seaside Park, 12 are non-white, equating to a 1.8 percent minority population within this section of the Township.

The Board finds that South Seaside Park is a unique portion of the Township as a whole. While there is some merit to petitioners claims that they identify more with a neighboring municipality, it is one of the nicest areas of the Municipality, containing the best educated and highest income residents of the town. Average income and property values far exceed that of the mainland portion of the Municipality. The loss of South Seaside Park would greatly reduce the social, economic and education level diversity of the Township and would provide for residents of South Seaside Park losing their ability to be part of more diverse community. While de-annexation may well make it easier and more convenient for residents of South Seaside Park to participate in some Seaside Park activities and the electoral process, other than these two (2) factors, from a social injury perspective, there would be no significant change. The residents of South Seaside Park will still shop, dine and worship in the same places they do today. On the other hand, the loss of the prestige and social standing of Berkeley Township in the event South Seaside Park is de-annexed would have a substantial negative impact upon the Township's social fabric.

5. Petitioners claim that failure to consent to de-annexation would impose an economic injury upon petitioners.

RESPONSE: The Board agrees with the petitioners that it may cost them more money to conduct personal business on the mainland than for residents of other sections of the Township, and there is an extra travel cost to participate in mainland recreational opportunities. Likewise, petitioners may incur additional costs to participate in recreational opportunities within the Borough

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of Seaside Park, since they are not residents thereof. However, very little evidence was presented on this issue by the petitioners.

The Board notes that many residents of the mainland portion of the Municipality have extensive travel costs to participate in Berkeley Township recreational opportunities, even for same conducted on the mainland. Likewise, residents of Berkeley Township may wish to utilize Township oceanfront beach facilities, such as the White Sand Beach, and incur the exact same type of additional travel cost, only in the opposite direction than the residents of South Seaside Park who can walk or bike to the Township beach. De-annexation could result in the loss of this township amenity if the beach follows the petitioners and sufficient evidence as to what would happen to same has not been presented. However, little information was provided to the Board as to what additional extra costs are incurred by South Seaside Park residents to participate in recreational opportunities within the Borough of Seaside Park, which is a summer community with numerous seasonal residents who do not live there year-round or are renters. For instance, no substantial evidence was presented that the residents of South Seaside Park must pay any significant extra fees or costs to participate in Seaside Park events because they are not residents of that community. In fact, many users of Seaside Park facilities are not residents of that municipality.

The Board further finds that there are methods to address this concern which would not necessarily require de-annexation, such as an interlocal agreement to participate in recreational facilities and programs, the utilization of Seaside Park Municipal Offices to handle certain permit matters for Berkeley Township, the potential for the Township to hold Municipal or other meetings at the Triboro First Aid Squad building and an increase in technology allowing the streaming of public meetings to interested parties no matter where they may reside.

6. Petitioners claim that South Seaside Park is not well served by the Township's Department of Public Works.

RESPONSE: The Board agrees with the petitioners that the South Seaside Park portion of the Municipality has a number of special needs that the rest of the Municipality does not require. However, the petitioners' assertions that the Township does not repave roads, etc., in South Seaside Park is not credible based upon the facts presented to the Board. Allegations that the beach is not properly cleaned are not supported by any complaints that existed prior to the petition being filed herein. Likewise, the Board finds the allegations that the "bay beach" in South Seaside Park is not properly cared for is without merit.

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Contrary to the residents' request and desire, the bay beach in South Seaside Park is not a bathing beach and cannot accommodate the types of recreation facilities they desire where land is wider such as in Seaside Park. As noted previously, no evidence was presented that petitioners cannot use Seaside Park facilities now so de-annexation would have no impact.

The Board further finds that testimony regarding snow plowing operations not being conducted in a timely manner were not credible. The Township of Berkeley, as noted, contains over forty-two (42) square miles. The Township must plow 251 miles of Township roads throughout the community and, for financial reasons, the Township does not institute township-wide plowing operations until 4-5 inches of snow have accumulated. The testimony on this issue established that petitioners could not assert whether any other sections of Berkeley Township had delays in the plowing of their streets during any particular storm. The Township has 251 miles of municipally-owned roadways and the length of roads represented by the area covered by the de-annexation petition is approximately 6.4 miles, equaling 2.5 percent of the total roads within Berkeley Township. The Township's Public Works Department provided testimony that the Township usually assigns two (2) township-owned dump trucks fitted with plows and a contracted front-end loader to South Seaside Park and Pelican Island for the duration of any weather event such as a snow storm. The Township has a road plowing program, clearing first major roadways, followed by secondary roadways, and the Township ultimately receives complaints from throughout the Municipality that individual's roads are not plowed soon enough, efficient enough or properly enough. Such complaints are certainly not unique to Berkeley Township, but are noted throughout Ocean County following any major snow event.

With respect to road cleaning and/or paving, between 2012 and 2017, the Township paved 24.35 miles of local roads, including 1.73 miles within South Seaside Park. Although they make up only 2.5 percent of the Township's road mileage, 7.1 percent of the total road miles paved in Berkeley Township occurred in South Seaside Park during this time frame. With respect to road projects conducted by the Municipality between 2016 through 2018, the Board notes that eleven (11) road projects totaling 3.54 miles were undertaken, for instance, in 2016, with two (2) of these projects constituting 0.51 miles were conducted in South Seaside Park. The testimony further reveals that between the years 2012 and 2017, the road miles re-paved in South Seaside Park was 2.84 times greater than the road miles re-paved for the entire Municipality.

With respect to refuse and recycling collection, the Board notes that the Township actually provides greater services in South Seaside Park than in the

rest of the Municipality including more pickups in the tourist season. Allegations of rude or unresponsive interactions between Public Works employees and residents of Berkeley Township are clearly not limited to South Seaside Park. Likewise, the use of the Township's recycling facility on the mainland portion of the Township requires most residents to travel a great distance, not just the residents of South Seaside Park if they wish to utilize same.

The Board believes that other remedies short of de-annexation could address the concerns raised by the petitioners.

7. Petitioners claim that they receive inadequate emergency services in South Seaside Park.

RESPONSE: Based upon the testimony presented by the Township's Police Department and its' officials, the Board finds there is no evidence to support the contention that South Seaside Park would receive better police services if it were part of Seaside Park than it currently receives. Both Seaside Park and the South Seaside Park section of Berkeley Township are serviced by the same 911 Dispatch Center, Volunteer Fire Company and Ambulance/EMT Squad. Such services will not change regardless of de-annexation. Likewise, police records submitted, particularly the Computer Aided Dispatch (CAD) documents, reveals that petitioners claims as to response times were, at best, exaggerated and, at worst, simply false.

South Seaside Park suffers from little crime, is generally a safe community and receives timely emergency services, either from Berkeley Township directly or backup from other jurisdictions when necessary. The Township can always point to individual tragedies where police or other emergency response does not happen fast enough to avoid such a tragedy. However, there has been no evidence that any long-term, structural defect exists in the services provided to South Seaside Park. Likewise, if de-annexation were to occur, other than police services, all other first responders would remain the same, such as fire or EMS.

The Board also notes that the impact of Super Storm Sandy, while still being felt within the Municipality, is an example of why the residents of South Seaside Park benefit from their affiliation with Berkeley Township. South Seaside Park, along with Seaside Park, faced mandatory evacuation orders and suffered substantial physical damage to public facilities, residences and businesses. It was because South Seaside Park was part of Berkeley Township that those residents had an opportunity to be evacuated to Township facilities

on the mainland portion of the town, while the mainland portion of the town was utilized for debris removal and collection from the South Seaside Park neighborhoods in order to assist in a the restoration thereof. While everyone wishes recovery efforts happened quicker, any such inconveniences were temporary at best in the wake of an unprecedented storm which made impact along the Atlantic Coast. The depth and breadth of the Township's resources available for South Seaside Park residents would be much different if the residents were part of Seaside Park.

8. Petitioners assert that the Township has not conducted proper Planning for the South Seaside Park portion of the Municipality.

RESPONSE: The record reveals that the Township's Planning documents do, in fact, address South Seaside Park, whether they specifically and individually reference it or not. Township Planning documents are not strictly limited to neighborhoods, but more to land use issues affecting the entire Municipality and individual areas thereof. The Township's adoption of the South Seaside Park Neighborhood Plan represents the blue print for which future Planning shall be conducted along the barrier island and, while petitioners may be frustrated with the time it has taken for these issues to come to the forefront, the Board finds no evidence that the residents of South Seaside Park have been harmed in any way as a result thereof. In fact, permitted uses which were removed from the Zoning Ordinance as part of the Neighborhood Plan had never been constructed and were not likely to be constructed in the future.

Testimony further reveals that, with respect to Affordable Housing, no one in South Seaside Park is actually suggesting that the Township should develop Affordable Housing along the barrier island between the Atlantic Ocean and Barnegat Bay, but rather this argument is made simply to further buttress their arguments for de-annexation. The Planner presented by the petitioners themselves recognized that Affordable Housing is not recommended on barrier islands when there is no public transportation and where land prices are extremely high.

With respect to Recreational Planning, the Board found the Midway Beach is eligible for inclusion in the National & State Registers of Historic Places and the Township has adopted a new Recreation & Open Space Plan which was recommended in the South Seaside Park Neighborhood Plan to identify recreation needs along the barrier island. The petitioners' argument that the loss of White Sands Beach, assuming it goes with the petitioners, which is not necessarily correct, is somehow compensated by Island Beach State Park being located within Berkeley Township, fails to recognize the fact that the Township

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has no control of this recreational and cultural resource. In fact, during these hearings, the Island Beach State Park was closed to the public during a July 4th weekend due to the 2017 state-wide government shutdown. White Sands Beach was not.

In short, the Township has undertaken a number of Planning efforts which address South Seaside Park, and the uniqueness of this portion of the Municipality being an oceanfront community is of critical importance for the overall recreation plan of the Township. The loss of this neighborhood via de-annexation would be detrimental to the entire municipality.

9. Petitioners assert that de-annexation will not cause a significant injury to the wellbeing of the remaining residents of Berkeley Township.

RESONSE: The Board finds that it is not possible to underestimate the impact of the loss of 10.68 percent of the property tax base of the municipality in the event de-annexation occurs. This impact, contrary to the opinions expressed by the petitioners, is not for only “one (1) year”, but rather is compounded over each and every year into the future. Likewise, based upon the testimony throughout these proceedings, the Board believes that a substantial rationale and purpose of this petition is to conduct “tax shopping”. In this regard, the petitioners’ own expert projected a first-year post annexation tax reduction for residents of South Seaside Park of approximately 40 percent. While petitioners have testified that their motives are not necessarily as a result thereof, the Board finds such testimony to be unpersuasive. Notably, the petitioners made every attempt to avoid any discussion of the tax savings they would reap as a result of de-annexation but the Board finds this effort to “tax shop” is a substantial motivating factor in this petition.

In short, the Board concludes that the loss of 10.68 percent of the total tax base of the municipality will have a significant, long-term detrimental effect upon the remaining residents of Berkeley Township. The de-annexation of one of the nicest areas of the municipality, containing the best educated and highest income earners will, likewise, represent a significant and irreparable loss to the municipality. While various percentages were testified to as to potential savings from de-annexation, the only way to achieve any tax savings is to eliminate police officers and police equipment, since same represents such a large portion of the municipal budget. As the Township remains responsible to patrol the Pelican Island portion of the Municipality, the Board believes any such savings is circumspect at best. The only way for the Municipality to offset the loss of 10.68 percent of its’ property tax revenue would be through a combination of increasing taxes and the cutting of programs and services,

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which the residents of Berkeley Township rely upon, particularly as a result of its' demographic makeup. The Municipality and its' local school district are subject to a 2 percent cap in potential tax increases, a cap which did not exist under the prior statute or, under most prior cases decided even under the new statute. The Board further notes that, with respect to its' reserve for uncollected taxes, the South Seaside Park section of the Municipality provides a much better collection rate than the remainder thereof. As a result, de-annexation will require the Township to increase its' reserve for uncollected taxes to compensate for the loss of the compliant taxpayers, thereby increasing taxes on the remaining property owners.

The Board is also struck by the petitioners' assertions that the Township will attain future ratable growth on the mainland portion of the Township based upon planning efforts it has undertaken over the last 20 years. Petitioners argue that this should have an impact on their request for de-annexation. The Board finds, however, that as with the case of Avalon Manor v. Township of Middle, 370 N.J. Super. 73 (App. Div. 2004), any such future revenues generated already belong to the property owners of the township. Such revenues will accrue to the benefit of the taxpayers of the township and will help offset increases completely unrelated to de-annexation. This Board does not consider future, ratable growth as a relevant factor based upon the Court's decision in Avalon Manor.

Utilizing solely the petitioners' own experts' information, the petitioners' best case scenario, assuming de-annexation were to occur, every other remaining property owner of Berkeley Township would face a 3.1 percent tax increase in the first year. This, of course, does not include any other potential reasons for a tax increase in the municipality, such as increased costs, etc., which the Township is sure to face as it has historically. These annual tax increases of \$19.00 for a home assessed at \$100,000.00, \$35.00 for the average home assessed at \$183,600.00, and \$94.00 for a home assessed at \$500,000.00 will compound each and every year in perpetuity as a result of de-annexation. Furthermore, de-annexation will result in the Township's bonding capacity being reduced by over \$19 million and, while same from a percentage basis is not significant, this loss of bonding capacity could have implications in the future.

The loss of tax ratables, a built-in future tax increase in perpetuity, the potential loss or cut-back of jobs and services, potential negative effect upon the Township's bond rating and debt service, clearly and substantially outweighs any potential financial benefit from the de-annexation of South Seaside Park.

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CONCLUSION

Having carefully considered the petition for de-annexation, the hundreds of pages of exhibits, dozens of transcripts of public hearings, and having listened to the testimony of the various witnesses, the Berkeley Township Planning Board recommends to the Township Council of the Township of Berkeley, that the petitioners' request for de-annexation be denied. In reaching its' determination in this matter, the Board has considered whether refusal to consent to de-annexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; and if de-annexation will not cause a significant injury to the well-being of Berkeley Township.

While there are certainly social and economic benefits to the residents of South Seaside Park if they were to become residents of Seaside Park, it is clear to the Board that the greatest benefit would be an approximate 40 percent reduction in their property taxes. As a result, clearly refusal to consent could detrimentally affect this potential cost savings to South Seaside Park residents. Likewise, the ability of South Seaside Park residents to participate in a greater degree in local government affairs in Seaside Park, if they are members of that community, would be increased if de-annexation were to occur and, consequently, it can certainly be argued that refusal to consent to such de-annexation would be to their detriment. However, the Board finds that, while there is certainly an economic benefit, the social well-being prong of this analysis is much more speculative and, ultimately, unclear. Is it a benefit for the richest, most homogenous, most well-educated residents of South Seaside Park to become part of a very similar municipality, or is their social well-being advanced through their participation in Berkeley Township matters, which contains a more diverse population, economic class and geographic area. As a result, whether the petitioners have established this element is unclear.

However, there can be no question that, if de-annexation were to occur, a significant injury would be imposed upon the remaining residents of Berkeley Township. These injuries cover economic, financial, social and more ephemeral losses. The loss of more than 10 percent of the Township's tax base cannot be underestimated and, in fact, would be catastrophic to the rest of the municipality. The loss of the most wealthy, most educated, nicest neighborhood of the community would, likewise, be irreparable. The potential loss of an ocean beach, when so few municipalities have the opportunity to own and control such a facility for its' residents, would, likewise, be irreplaceable. The loss of the Township's oceanfront neighborhood, the only oceanfront beach it controls, a tax impact in perpetuity compounded every year, clearly represents the type of significant injury recognized by the statute. For these reasons and the reasons set forth herein in the attached Exhibit A, the Berkeley Township Planning Board reports to the Township Council of the Township of Berkeley that it is its' recommendation that the petition for de-annexation be denied.

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CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Berkeley Township Planning Board at its regular meeting on the ____ day of _____, 2020 in the Berkeley Township Municipal Building.

Secretary

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