

1 TOWNSHIP OF BERKELEY
 2 PLANNING BOARD
 3 -----
 4 IN THE MATTER OF:
 5 SOUTH SEASIDE PARK HOMEOWNERS
 6 AND VOTERS ASSOCIATION
 7 DE-ANNEXATION PETITION HEARING
 8 -----

Pinewald Keswick Road
 Bayville, New Jersey
 Thursday, September 5, 2019
 6:10 p.m.

11 B E F O R E:
 12 Robert Winward, Chairman
 13 Domenick Lorelli, Member
 14 Brian Gingrich, Member
 15 Nick Mackres, Member
 16 Richard Callahan, Member

23 -----
 24 LINDA SULLIVAN-HILL & ASSOCIATES
 25 CERTIFIED COURT REPORTERS
 46 SOUTH LAKEVIEW DRIVE
 JACKSON, NEW JERSEY 08527
 (732) 835-0001

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 2 I N D E X
 3 NAME OF WITNESS PAGE
 4 STUART WISER 4
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 2 APPEARANCES:
 3 DASTI, MURPHY, MCGUCKIN, ULAKY,
 4 CHERKOS & CONNORS, ESQS.
 5 620 W. Lacey Road
 6 Forked River, New Jersey 08731
 7 BY: MARTIN J. BUCKLEY, ESQ.
 8 Attorneys for the Board
 9 O'MALLEY, SURMAN & MICHELINI, ESQS.
 10 17 Beaverson Blvd.
 11 Brick, New Jersey 08723
 12 BY: JOSEPH MICHELINI, ESQ.
 13 Attorneys for the Petitioners

14 ALSO PRESENT:
 15 Kelly Hugg, Secretary
 16 James Orfs, Planner

1 MR. WINWARD: Our first application
 2 is the South Seaside Park Homeowners and Voters
 3 Association De-annexation Petitioners hearing. And
 4 up is Mr. Stuart Wiser. We'll continue where we
 5 left off last month.
 6 STUART WISER, previously sworn.
 7 MR. WISER: Good evening,
 8 Mr. Chairman, board members, members of the public.
 9 For the record, once again, Stuart Wiser, ARH
 10 Associates, licensed planner in the State of New
 11 Jersey. And I am under oath.
 12 where we left off last time was, we
 13 finished up with the planning section of our report.
 14 And we're now going to go into the financial impact
 15 section. So, what that means is, if I didn't bore
 16 you before, I will be boring you tonight. So, let's
 17 see if we can get this going.
 18 In addition to their assertion that
 19 refusal to consent to de-annexation would be
 20 detrimental to their economic well-being, which
 21 we've addressed in the past, petitioners assert that
 22 de-annexation will not cause a significant financial
 23 injury to the well-being of the township. And they
 24 engaged a financial expert or an expert in municipal
 25 finance to make this case.

1 Based on his analysis, this was
 2 Mr. Moore, if you'll remember, based on his analysis
 3 of township tax assessments and tax rates, Mr. Moore
 4 calculated that eliminating the municipal revenue
 5 associated with South Seaside Park would reduce the
 6 township revenues from 31 million, and I'm going to
 7 just round off here, from 31 million to 27 million,
 8 which is a reduction of \$3,318,173. Eliminating the
 9 school district revenue associated with
 10 South Seaside Park would reduce the district
 11 revenues from a little over 28 million to a little
 12 over 25 million, which is a reduction of \$3,018,994.
 13 County and regional school taxes
 14 follow the property, so there would be no impact to
 15 Berkeley Township, should de-annexation occur.
 16 Assuming no change in township or school district
 17 services or increase in nontax revenues, the
 18 township and the school district will be required to
 19 increase taxes to reduce the amounts that we talked
 20 about in yellow up on the slide. After identifying
 21 direct revenues and making assumption where revenue
 22 figures were not identifiable, Mr. Moore calculated
 23 the impact of de-annexation to the township's
 24 operational revenues based on 2014 figures. And he
 25 calculated the impact of 1.6 million with no

1 reduction of manpower, which is a loss of
 2 5.2 percent. 865,000, again, rounded, with the
 3 elimination of one police car and the manpower
 4 associated with that car, which is a reduction of
 5 2.8 percent. And almost \$3,000 with the
 6 reduction -- with the elimination of two police cars
 7 and the manpower associated with that, which is,
 8 effectively, a break even point.
 9 With respect to expenses, Mr. Moore
 10 calculated that Berkeley spent 42,750,000 and change
 11 in 2014. That represents 10.68 percent of the
 12 township's total tax assessment. And by his
 13 calculation, he offers that South Seaside Park
 14 should represent 10.68 percent of township
 15 expenditures. That would come out to a little over
 16 46 -- \$4.6 million, in his opinion, should have been
 17 spent in South Seaside Park.
 18 Now, we think this is a rather
 19 simplistic assumption on Mr. Moore's part. We don't
 20 necessarily agree with it. But let's go with this
 21 figure for now. After identifying cost and making a
 22 whole lot of assumptions, Mr. Moore calculated 2014
 23 expenditures attributed to South Seaside Park to
 24 be -- I'm sorry, bear with me a second -- I think I
 25 missed a slide. Yes. I just want to make sure I'm

1 on the right slide -- to be -- okay. So, after
 2 identifying and making a number of assumptions,
 3 Mr. Moore calculated the 2014 expenditures
 4 attributed to South Seaside Park as 1.6 million.
 5 Mr. Moore then postulated that 4.6 million is the
 6 amount that should have been in his, in his words,
 7 spent for services in South Seaside Park.
 8 With regards to the assumptions that
 9 Mr. Moore made, he testified that it was not
 10 possible to determine the municipal cost or revenues
 11 specific to South Seaside Park in every category.
 12 So, certain assumptions had to be made. Certain
 13 municipal positions have costs associated with
 14 South Seaside Park, that would not be, but -- that
 15 would not be eliminated should de-annexation occur.
 16 For example, he used the administrator. So, there
 17 would be no cost savings for those, those positions.
 18 Other positions have costs based on
 19 population. He indicated, in this opinion, the
 20 township clerk's job is dependent on population or
 21 the amount of work that that slot does is based on
 22 that population. So, he calculated a budget
 23 reduction for those types of positions. Certain
 24 functions he says have costs attributed to the
 25 number of houses and the number of lots, such as the

1 planning board. So, there would be a budget
 2 reduction for those positions. Other functions,
 3 like the tax assessor and tax collector, have costs
 4 attributed to the number of line items in the tax
 5 assessor's database. So, with the elimination of
 6 South Seaside Park from Berkeley Township, there
 7 would be a budget reduction for those positions.
 8 Certain administrative expenses, workers' comp.,
 9 general liability insurances, social security and
 10 things of that nature, are based on dollars of
 11 salaries, employees -- number of employees and job
 12 titles. So, there would be, in his opinion, a
 13 budget reduction there.
 14 With respect to the police
 15 department, Mr. Moore calculated the impact that the
 16 elimination of one and two police cars would have on
 17 the township's budget. We note that this assumption
 18 does not take into consideration the fact that the
 19 police and the public works services would still
 20 have to service Pelican Island.
 21 After making all of these assumptions
 22 and taking into consideration a number of other
 23 municipal counting requirements, Mr. Moore
 24 calculated that the financial impact of
 25 de-annexation to South Seaside Park as a whole would

1 be 1.7 million dollar reduction if there were no
2 changes in manpower. So, that would be a savings to
3 the township of 3.82 percent. 2.4 million dollar
4 reduction if you assume the elimination of one
5 police car and its attendant manpower, which would
6 be a savings of 5.55 percent. And a 3.3 million
7 dollar reduction if you eliminated two police cars
8 and manpower, which would be a savings of
9 7.52 percent.

10 Mr. Moore then reviewed what he
11 believed to be the post annexation tax -- post
12 de-annexation tax rates and what they would be for
13 the local purpose tax, the township's open space tax
14 and the township's school district tax. He
15 projected the municipal tax increase on the
16 residents of Berkeley Township, the remaining
17 residents of Berkeley Township, for a range of
18 property assessments should de-annexation occur.
19 So, based on 2014 figures, with no changes in
20 manpower, the average remaining assessed valued
21 home, which is \$183,600, would see a total tax
22 increase of \$187 or 5.12 percent -- thank you, I'm
23 sorry -- 5.21 percent. There was a listing of
24 different values, homes of 100,000, 183, 200, 250,
25 350, but let's just go with the -- stick with the

1 average for now.

2 For -- under the assumption that
3 there would be one police car and manpower, related
4 manpower eliminated, that same \$183,000 house would
5 see a tax increase of \$156 annually, or
6 4.35 percent. And assuming the elimination of two
7 police cars and their officers, that same house
8 would see a tax increase of \$121 or 3.37 percent.

9 Mr. Moore then did a similar
10 calculation for the tax impact of de-annexation on
11 the residents of Seaside Park. And what he showed
12 is that the average assessed value in Seaside Park,
13 which is \$479,900, would see a tax reduction in --
14 I'm sorry -- the 400 -- a house of four -- assessed
15 at \$479,900, which is the median assessed value of
16 owner occupied housing in South Seaside Park, would
17 see a reduction in their taxes of \$636 or
18 10.21 percent. And the median assessed valued home
19 in Seaside Park, which is at 767,200, would see a
20 tax reduction of 10.93 percent.

21 So, based on the totality of his
22 analysis and given the information that he was able
23 to review, and recognizing that he did not undertake
24 a full analysis of South Seaside Park's budget,
25 Mr. Moore opined that there would be a property tax

1 benefit to the residents of both South Seaside Park
2 and Seaside Park should de-annexation occur.

3 Regarding municipal debt. The
4 de-annexation statute says that the receiving
5 municipality, in this case, Seaside Park, shall be
6 liable to pay a proper proportion of the bonded and
7 other indebtedness of the sending municipality, in
8 this case, Berkeley Township. With no statutory or
9 case law to govern how debt is to be treated,
10 Mr. Moore opined that South Seaside Park represented
11 10.68 percent of Berkeley Township's ratables and,
12 therefore, should represent 10.68 or that same
13 number percent of the township's debt. So,
14 10.68 percent of the township's debt would be
15 assumed by Seaside Park under his analysis.

16 There was an extended debate over
17 this issue and how the debt should be calculated,
18 and what amount would be ported over to Seaside Park
19 should de-annexation occur. All of which proved
20 inconclusive. We believe that the debt issue would
21 be subject to negotiations between the township and
22 Seaside Park should de-annexation occur.

23 Regarding impacts to local school
24 districts and school taxes, Mr. Moore calculated
25 that de-annexation would result in an economic

1 benefit to the township's residents regarding the
2 regional school taxes, but an economic detriment as
3 relates to the local school taxes. He calculated
4 that de-annexation would result in a net school tax
5 increase for the remaining properties in
6 Berkeley Township, should de-annexation occur, of
7 approximately seven cents per \$100 of assessed
8 value. And that the average home in remaining
9 Berkeley Township, and that was the home assessed at
10 \$183,600, would see a first year post de-annexation
11 school tax increase of \$121.18.

12 Another extended discussion took place
13 regarding the impact that de-annexation might have
14 on the amount of state aid received by the township
15 school district. While the amount that a municipal
16 school district is to receive under the state school
17 funding program is established by formula, the
18 historic inability of the New Jersey legislature to
19 provide sufficient funding for that formula is well
20 documented. When asked if it would be mere
21 speculation to attempt to calculate changes in state
22 aid due to de-annexation, because the legislation
23 doesn't follow the formula year to year, Mr. Moore
24 replied that he couldn't agree more. And commented
25 on several occasions that we have no idea how to

1 calculate state aid. So, with all due respect to
2 board members and petitioners who testified as to
3 how they thought state aid would work should
4 de-annexation take place, we simply can't know. We
5 do note that Mr. Moore made no calculations
6 regarding the impact that de-annexation might have
7 with respect to the Berkeley Township Sewage
8 Authority.

9 We then heard from the township's chief
10 financial officer, treasurer and assistant
11 administrator, Mr. Fred Ebenau. As with the census
12 data used by the planners the timing of their
13 testimonies resulted in Mr. Moore using 2014 data
14 and Mr. Ebenau using 2017 data. Additionally,
15 Mr. Moore and Mr. Ebenau used different
16 methodologies to do -- to calculate cost and
17 savings. So, rather than presenting Mr. Ebenau's
18 analysis and attempting to normalize it with
19 Mr. Moore's, we utilized Mr. Moore's base data and
20 we augmented it with Mr. Ebenau's information where
21 applicable. And that will become apparent as we
22 move forward.

23 MR. MICHELINI: Just, Joseph
24 Micheline appearing on behalf of the petitioners.
25 Mr. Wisner, with all due respect, is not a financial

1 expert, he's not a municipal accountant, he's not a
2 CPA. And the fact that he's taking numbers from one
3 expert and then applying them to a methodology of
4 another expert, I think, is well beyond his
5 expertise. If the board wants to hear it, that's
6 fine. I won't continue to stand up, but I have a
7 continuing objection to that testimony.

8 MR. WISER: Well, and that is why we
9 did not do that. And we are using Mr. Moore's
10 numbers. And when -- if and when it becomes
11 apparent that there's a comparison to be made with
12 Mr. Ebenau's numbers, we will advise the board of
13 that and they can take notice of it and do what they
14 wish.

15 MR. MICHELINI: Based upon what he
16 said before his other -- the statement that he just
17 made, it seems to me that he's mixing apples and
18 oranges. And I have a continuing objection. I want
19 that to be clear on the record. I don't want to be
20 bouncing up and down every five seconds.

21 MR. WINWARD: We have that noted for
22 the record. Thank you.

23 MR. MICHELINI: Thank you.

24 MR. WISER: And a review of the
25 testimony that I'm about to give and the

1 testimony -- the contents of our report, against the
2 record that Mr. Moore created with his testimony
3 should answer that question.

4 So, with regard to the impact that
5 de-annexation would have on the township's bonding
6 capacity. In New Jersey, the maximum amount a
7 municipality may bond for improvements is, with
8 certain statutory exemptions, 3.5 percent of the tax
9 base. Mr. Ebenau testified that the loss of
10 South Seaside Park ratables would place the
11 township's valuation at, and this is a big number,
12 but I'm going to round it off and just say
13 4.5 billion. 3.5 percent of that is \$159 million.
14 De-annexation would, therefore, reduce the
15 township's bonding capacity by \$19 million.

16 Finally, township administrator
17 John Camera testified that many of the savings to
18 which Mr. Moore testified to would not actually
19 happen. According to Mr. Camera, the township does
20 not anticipate reductions in its labor force as a
21 result of de-annexation. Public works, police,
22 sanitation and other departments will still need to
23 service Pelican Island. And along these lines,
24 numerous other township officials testified that
25 they would reassign the existing work force to other

1 areas of the municipality should de-annexation
2 occur.

3 So, with all that as background, the
4 issue before the planning board is whether or not
5 de-annexation will cause a significant financial
6 injury to the well-being of the remaining residents
7 of Berkeley Township should de-annexation occur.
8 Based on Mr. Moore's calculation, de-annexation
9 would result in the following for the remaining
10 residents of Berkeley Township. Now, these are
11 Mr. Moore's numbers. These are not adjusted based
12 on Mr. Ebenau's calculations. So, assuming no
13 change in manpower, that same \$183,600 average
14 assessed home in remaining South Seaside Park would
15 see a tax increase of \$187 annually or 5.21 percent.
16 Elimination of one police car would see a tax
17 increase of \$156 or 4.35 percent. And the
18 elimination of two police cars and the attendant
19 manpower, would see a tax increase of \$121 or
20 3.37 percent.

21 I have here in my notes what
22 Mr. Moore calculated -- I'm sorry -- what Mr. Ebenau
23 calculated, but so as not to confuse the issue, I'm
24 not going to go into that.

25 Conversely, Mr. Moore calculated that

1 de-annexation to -- or that annexation to Seaside
 2 Park of South Seaside Park, would result in a tax
 3 savings for South Seaside Park residents of
 4 40 percent. And a tax savings for Seaside Park
 5 residents of 10.21 percent. Mr. Moore's numbers.
 6 These do not include, however, any additional
 7 services that may be required to address the needs
 8 of South Seaside Park, such as, potentially,
 9 increase police coverage, expanding daily beach
 10 cleaning to South Seaside Park, expanding water
 11 fountains and restrooms to service South Seaside
 12 Park, the creation and maintenance of a bay beach,
 13 the creation and maintenance of additional parks and
 14 amenities for South Seaside Park. Debt service to
 15 the extent that any are, would occur. Debt service
 16 to be transferred to Seaside Park. And other items
 17 to address the issues raised by petitioners during
 18 these hearings.

19 Our office cannot concur with
 20 petitioners' assertions that de-annexation will not
 21 cause a significant injury to the well being of the
 22 residents of Berkeley Township. While South Seaside
 23 Park may represent a small land area, it represents
 24 10.8 -- 10.68 percent of the property tax revenue
 25 stream for the township and its school district.

1 This loss to the public sector are not one time
 2 shortfalls, but impacts that will be felt annually.
 3 Now, logically, tax shortfalls can
 4 only be addressed by some combination of increasing
 5 taxes and cutting programs and services. There is a
 6 third component in there, which could be seeking
 7 more grant funding. But for our purposes, let's
 8 stick with tax increases and cutting programs and
 9 services.

10 Under state law, municipalities and
 11 school districts operate under a two percent cap on
 12 tax increases. Given the nondiscretionary cost
 13 increases built into the system, inflation,
 14 contracted commitments, pensions and insurances, the
 15 township's governing body and board of education
 16 have found it increasingly difficult to adopt
 17 budgets that can achieve this two percent cap.
 18 De-annexation will only compound this difficulty.
 19 So, it is likely that, along with a tax increase,
 20 Berkeley Township residents would see a reduction in
 21 services should de-annexation occur.

22 An analysis of the relative tax
 23 implications of de-annexation must be viewed, in our
 24 opinion, in the context of Courts' decisions in two
 25 specific cases. In Avalon Manor --

1 MR. MICHELINI: I have a continuing
 2 objection to our good friend, Judge Wiser, here,
 3 commenting on the law. Take that as a joke. To
 4 Mr. Wiser commenting about the law, incorporating
 5 into his testimony anything about the law. He's not
 6 a judge. He's not an attorney. He's not trained in
 7 the law. That objection has been made at the last
 8 hearing and it continues.

9 MR. BUCKLEY: Your continued
 10 objection is noted.

11 MR. MICHELINI: Thank you.

12 MR. WISER: So, in Avalon Manor
 13 Improvement Association versus Middle Township, part
 14 of the court's decision held that it's not the
 15 Court's proper function to assess the relative
 16 significance of an annual tax increase of a specific
 17 number. In that case, they were debating \$68
 18 annually or \$75 annually of a tax increase. Those
 19 numbers are rounded, but for our purposes the change
 20 isn't relevant. The Court also said that it was not
 21 reasonable for the township to have considered
 22 lower -- the lower financial impact or the \$67 as
 23 significant, especially in view of the tax savings
 24 that would have accrued to the residents of Avalon
 25 Manor from de-annexation. So, if we take the middle

1 ground that Mr. Moore proposed to us, and assume
 2 that if de-annexation would occur, the township
 3 would eliminate one police car and its attendant
 4 manpower, Mr. Moore projected a first year post
 5 de-annexation tax increase for the remaining
 6 residents of Berkeley Township of -- I'm sorry, bear
 7 with me a second -- of \$100,000 home would see a tax
 8 increase of \$85 or 4.35 percent. The average
 9 assessed valued home, as we had said, \$156 increase
 10 or 4.35 percent. And a home valued at \$500,000
 11 would see a \$425 increase or an increase of, again,
 12 4.35 percent. These increases will be subject to a
 13 compounding effect as the impact of the
 14 de-annexation extends in perpetuity.

15 There is a second case, Frank Ryan
 16 versus the Borough of Demarest, in which the court
 17 condemned tax shopping as a rationale for
 18 de-annexation. And we talked a lot about tax
 19 shopping, and there was testimony from the
 20 petitioners that they are not engaged in tax
 21 shopping as part of this petition. But another
 22 portion of that ruling found that the legislature's
 23 intention in adopting the de-annexation statute was
 24 to give precedence to the preservation of municipal
 25 boundaries and the maintenance of their integrity

1 against challenge prompted by short-term or even
2 frivolous considerations, such as tax shopping or
3 avoidance of assessments.

4 MR. MICHELINI: I'm just going to
5 object to any suggestion that it's tax shopping,
6 because we had numerous petitioners testify. None
7 of them testified about taxes. And Mr. Moore, when
8 he was specifically asked by Mr. McGuckin whether or
9 not he had disclosed the amount of savings that
10 would exist or would accrue to the members of
11 South Seaside Park, should de-annexation occur,
12 which he said, I think, was a high percentage, maybe
13 40, he said he hadn't even discussed it with them,
14 which he hadn't. And it wasn't in any of his
15 reports. So, the idea that Mr. Wiser is putting out
16 there that this is tax shopping is not in the record
17 in terms of the petitioners' case.

18 We acknowledge that there are tax
19 advantages. I'm not going to ignore that. But they
20 talked about services. They talked about all kinds
21 of things, distance. They talked about being
22 ignored and neglected. They didn't talk about tax
23 shopping. So, with that on the record, I'm sure
24 you'll let Mr. Wiser continue.

25 MR. WINWARD: Okay. Thank you.

1 That's duly noted.

2 MR. WISER: So, I'm going to move on
3 from that issue. And note that the assertions that
4 the township's financial losses from de-annexation
5 could be offset by projected growth on the mainland.
6 And we heard that from, at the very least,
7 Mr. Bauman. I'm not sure whether we heard -- I
8 think we heard that from Mr. Moore as well. But
9 that concept, that any losses from de-annexation
10 could be offset by projected growth on the mainland,
11 must be viewed in the context of the Avalon Manor
12 decision, where the plaintiff argued that
13 economic -- the economic consequences of
14 de-annexation could be softened by the application
15 of the tax rate proceeds from added assessments, due
16 to growth elsewhere in the township.

17 In reaction to that assertion, the
18 judge held that he did not believe that these
19 techniques may properly be considered as an
20 amelioration of the increase in the proportion of
21 taxes that would be borne by the remaining taxpayers
22 of the township in the event of de-annexation. He
23 ruled that whatever revenues are generated by these
24 activities already belong to all of the property
25 owners in the township, and to suggest that these

1 revenues could be considered as an offset or
2 amelioration of the added taxes attendant to
3 de-annexation is to suggest that the taxpayers of
4 the township should apply their own resources to the
5 reduction of the increase in their taxes. Without
6 de-annexation, these revenue sources, if realized,
7 would accrue to the benefits of the taxpayers of the
8 township in order to reduce their tax payments below
9 current levels, or perhaps offset increases
10 unrelated to de-annexation.

11 So, beyond revenue, we present what
12 we think is a compelling comparison that likens
13 South Seaside Park's contribution to the township's
14 social and economic stability to a personal
15 financial portfolio.

16 We've already talked about the
17 residents of South Seaside Park being better
18 educated, more fully employed, and having higher
19 incomes than the residents of the township as a
20 whole. We also noted that the higher rate of
21 seasonal homeownership in South Seaside Park
22 suggests that wealth -- suggests there is wealth
23 there that is not captured by the Census reporting
24 of income. Also, their location along the
25 waterfront adds dimension to this section of the

1 township that is more likely to keep that
2 neighborhood and the housing stock stable in a
3 financial downturn.

4 So, based on all of the financial
5 information we heard, the record shows that while
6 the residents of South Seaside Park would see a
7 financial benefit by de-annexation from
8 Berkeley Township and annexing to Seaside Park, the
9 remaining residents of Berkeley Township will be
10 burdened by additional taxes. Petitioners'
11 assertions that the township will experience savings
12 related to municipal services are inconclusive and
13 speculative. Absent a two car reduction in the
14 police force with their attendant manpower, the
15 petitioners' financial expert calculates a tax
16 increase.

17 So, in conclusion -- there was
18 supposed to be cheering behind that slide.

19 MR. MICHELINI: The conclusion will
20 be when I finish cross-examining you, then you can
21 show that slide.

22 MR. WISER: Well, I will attempt to
23 do that, we'll all cheer.

24 So, in conclusion, let me just --
25 Okay.

1 Once again, and we've gone through
 2 this a couple of times, as required by the
 3 de-annexation statute and case law, you, as the
 4 planning board, must, as part of your evaluation of
 5 the impacts of de-annexation, determine whether the
 6 petitioners have sustained their burden of proof in
 7 proving that refusal to consent to de-annexation
 8 would be detrimental to the economic and social
 9 well-being of the majority of the residents of
 10 South Seaside Park and de-annexation will not cause
 11 a significant injury to the well-being of
 12 Berkeley Township or the remaining residents of
 13 Berkeley Township. Both conditions must be present
 14 for de-annexation to be granted.

15 In evaluating the impact of
 16 de-annexation upon both South Seaside Park and the
 17 township, we previously spoke about the factors case
 18 law points to as potentially relevant areas of
 19 investigation. We noted that these are not intended
 20 to be an exhaustive list, and that local decision
 21 makers, you and the governing body, are expected to
 22 bring to bear your own knowledge and experience and
 23 perceptions in determining what, in the context of
 24 de-annexation, would it inflict social injury upon
 25 the well being of the community. Additionally, we

1 note that these -- or the court noted that these
 2 values undergo change over time and may be accorded
 3 different weight upon -- depending upon the
 4 composition of the community.

5 So, based on the totality of the
 6 testimony and exhibits comprising the record, we
 7 find that with respect to distance between
 8 South Seaside Park and mainland Berkeley Township
 9 and proximity to Seaside Park, we recognize that
 10 there is a considerable distance between South
 11 Seaside Park and mainland Berkeley Township and that
 12 Seaside Park is contiguous to South Seaside Park,
 13 but neither the de-annexation statute nor case law
 14 recognizes distance in and of itself as a valid
 15 reason to grant de-annexation.

16 We also note that the distance
 17 between South Seaside Park, Seaside Park and
 18 mainland Berkeley Township have not changed since
 19 these communities were formed and the petitioners
 20 elected to purchase their homes on the island.
 21 Further, township facilities have historically been
 22 located on the mainland. We believe that the fact
 23 that petitioners no longer find it acceptable to
 24 travel to the mainland, as they once did, while
 25 understandable, is a short-term consideration of the

1 type the Ryan Court characterized as invalid reasons
 2 for de-annexation.

3 Regarding assertions of general
 4 unresponsiveness and neglect of South Seaside Park
 5 by the township, we recognize that many of the
 6 requests that petitioners have made of the township
 7 over time have not been fulfilled, have taken longer
 8 than petitioners may think is reasonable, or have
 9 not been fulfilled in a manner that petitioners may
 10 have envisioned. The record does not reflect that
 11 the township has been unresponsive or neglectful of
 12 South Seaside Park, sufficient to warrant
 13 de-annexation. We note that the size, geometry and
 14 availability of land in South Seaside Park is a
 15 limiting factor in many of the petitioners'
 16 requests, and that will not change should
 17 de-annexation occur. We also note that there are
 18 other mechanisms other than -- there are mechanisms,
 19 other than de-annexation, that could address many of
 20 the petitioners' concerns.

21 Regarding lack of investment, as with
 22 unresponsiveness and neglect, we recognize that many
 23 of the requests that petitioners have made to the
 24 township, again, have not been fulfilled, have taken
 25 longer than petitioners may think is reasonable or

1 have not been fulfilled in a manner the petitioners
 2 would have envisioned. However, the record does not
 3 reflect that the township has not invested either
 4 capital or human resources in South Seaside Park.
 5 Neither the de-annexation, nor case law -- neither
 6 the de-annexation statute, nor case law provides
 7 guidance as to what would constitute a lack of
 8 investment in the context of de-annexation. A
 9 reasonable extrapolation would suggest that lack of
 10 investment -- lack of investment must result in some
 11 type of economic or social injury.

12 We find and recommend that specific
 13 issues cited by petitioners to evidence the lack of
 14 investment by Berkeley Township do not establish the
 15 kind of long-term structural and inherently
 16 irremediable detriment that the legislature had in
 17 mind when enacting the de-annexation statute.
 18 Again, we note that the size, geometry and
 19 availability of land is a limiting factor in many of
 20 the petitioners' requests, and we also note once
 21 again that there are mechanisms other than
 22 de-annexation that could address many of the
 23 petitioners' concerns.

24 As to social injury, we recognize the
 25 petitioners' lives are more closely aligned with

1 Seaside Park and the surrounding areas than they are
 2 with mainland Berkeley Township, but they are not
 3 limited to those areas. And while distance may be
 4 an inconvenience or cause difficulty for petitioners
 5 to participate in the religious, civic, cultural,
 6 charitable and intellectual activities of the
 7 township, or to meaningfully interact with other
 8 members of the community, the petitioners are not
 9 being deprived of the ability to participate or
 10 interact.

11 The record is replete with testimony
 12 that the petitioners enjoy activities beyond
 13 Seaside Park and South Seaside Park. As with most
 14 people, they shop where the stores are. They dine
 15 where the food is to their liking. They visit
 16 doctor at their offices. They worship where their
 17 religious institutions are located. And they
 18 associate with like minded individuals without
 19 regard to municipal boundaries. These social habits
 20 will not change should de-annexation occur.

21 The record is replete with testimony
 22 regarding the uniqueness of South Seaside Park. The
 23 court in the Avalon Manor case held that
 24 de-annexation of such community would suggest
 25 implications for the township's prestige and social

1 standing, such that the loss of such a sector of the
 2 municipality of necessity would inflict a
 3 significant social injury on the township and its
 4 ability to continue to attract the kinds of
 5 residents desirable in any community. The court
 6 found that the loss of the intangible enhancements
 7 to the municipality of one of its nicest areas,
 8 constituted a significant injury to the well-being
 9 of the township. Applying this ruling to
 10 South Seaside Park suggests that de-annexation would
 11 be detrimental to the prestige and social standing
 12 of Berkeley Township.

13 The demographic information in the
 14 record reveals that de-annexation would have a
 15 de minimis impact on the age, racial composition and
 16 unemployment rate of the township. However,
 17 de-annexation would reduce the overall level of
 18 education of township residents, remove a
 19 significantly higher income cohort from the township
 20 and reduce the overall income of township residents,
 21 remove high median value real estate from the
 22 township and reduce the township's overall civilian
 23 labor force.

24 As a result, de-annexation would
 25 reduce the social diversity of the township. Since

1 there are no schools or libraries in South Seaside
 2 Park, Berkeley Township will not incur any loss of
 3 any physical, intellectual or cultural resources
 4 should de-annexation occur. However, the township
 5 would lose the active participation of South Seaside
 6 Park residents in the civic life of the
 7 municipality.

8 Regarding economic injury,
 9 South Seaside Park being a part of Berkeley Township
 10 does work an economic injury to the residents of
 11 South Seaside Park. And de-annexation may address
 12 many of the issues cited by the petitioners.
 13 However, once again, there are other mechanisms --
 14 there are mechanisms other than de-annexation that
 15 could address many of these concerns.

16 Regarding public works services, the
 17 record reflects that the township recognizes the
 18 special needs of South Seaside Park and has
 19 attempted to accommodate those needs. The record
 20 does not support petitioners' assertions that the
 21 township does not repave the roads in South Seaside
 22 Park, that Seaside Park's recycle -- the record does
 23 not support petitioners' assertion that the township
 24 does not repave the roads in South Seaside Park.
 25 Seaside Park's recycling facility, we find, is

1 undoubtedly more convenient for the residents of
 2 South Seaside Park than the township facility which
 3 is located on the mainland. The record contains no
 4 evidence to support a contention that the
 5 White Sands Beach requires cleaning -- requires
 6 cleaning beyond that provided by the township.

7 We note that the bay beach in
 8 South Seaside Park is not a bathing beach and cannot
 9 accommodate the types of recreation facilities that
 10 have been created along the bay in Seaside Park,
 11 where the land is borough owned and much wider.
 12 However, petitioners' assertions that the bayfront
 13 in South Seaside Park is not cared for, is not
 14 without merit.

15 Given the testimony that snow plowing
 16 operations do not begin until four or five inches of
 17 snow has accumulated, and that depending on snow
 18 levels, it could take hours to do one pass through
 19 all of South Seaside Park, it is not surprising that
 20 petitioners feel their streets do not get cleared of
 21 snow in a timely manner. However, the record
 22 contains no evidence to suggest that, should
 23 de-annexation occur, Seaside Park would do a better
 24 job than the township in collecting refuse and
 25 recycling for South Seaside Park, cleaning the roads

1 in South Seaside Park, paving the roads in
2 South Seaside Park, cleaning White Sands Beach or
3 policing the bayfront.

4 Regarding emergency services, the
5 record contains no evidence to support petitioners'
6 contention that South Seaside Park would receive
7 better police services if it were part of
8 Seaside Park. Conversely, the record does reflect
9 that should de-annexation occur, the balance of
10 Berkeley Township would likely receive improved
11 police service due to the patrol area reduction,
12 without a reduction in police personnel, assuming no
13 reduction in police personnel. However, if
14 personnel is reduced, then the service is likely to
15 remain the same or it could conceivably become
16 worse.

17 Both Seaside Park and South Seaside
18 Park are serviced by the same 911 dispatch center,
19 the same volunteer fire company and ambulance squad
20 and the same EMT squad. These services would not
21 change should de-annexation occur.

22 The record reflects that South
23 Seaside Park has little crime, is generally safe and
24 receives timely emergency services, either from
25 Berkeley Township directly or with backup from other

1 jurisdictions. While certain petitioners have
2 suffered individual tragedies, and we absolutely by
3 no means underestimate them or take them lightly,
4 there is no evidence to suggest that South Seaside
5 Park experiences the type of long-term structural
6 and inherently irremediable detriment of the type
7 the legislature had in mind when enacting the
8 de-annexation statute.

9 Regarding Superstorm Sandy, the nature of
10 Sandy, both in its initial impact and in the public
11 sector's response, was an unprecedented act of
12 nature. Attempting to measure Berkeley Township's
13 reaction against those of any other municipality,
14 and whether or not petitioners would have been
15 better served if they were part of Seaside Park, is
16 supposition at best. Both Seaside Park and
17 South Seaside Park faced mandatory evacuations and
18 both suffered similar damage.

19 Similarly, we believe that attempting to
20 ascribe any link between the storm, the township's
21 response and South Seaside Park's island location,
22 while asserting that the township was somehow
23 ill-prepared or neglectful, we believe is overreach.
24 Petitioners' assertions that the township's planning
25 for and response during and after the storm was

1 inadequate, we do not believe are supported by the
2 facts in evidence.

3 The record reflects that the township
4 undertook steps to ensure public safety prior to,
5 during and in the immediate aftermath of the storm.
6 While recovery efforts may not have occurred as
7 quickly as petitioners would have liked, temporary
8 inconveniences in the wake of this unprecedented
9 weather event we do not believe is a proper
10 rationale for de-annexation.

11 Regarding planning issues, the loss of
12 South Seaside Park, should de-annexation occur,
13 would result in the loss of unique and diverse
14 housing stock that is distinct from other areas of
15 the township. The conclusion that the township's
16 master planning efforts do not address South Seaside
17 Park, are not supported by the facts in evidence.
18 The record demonstrates that the various plans do,
19 indeed, address South Seaside Park.

20 The conclusion that if plans do not
21 specifically and individually reference
22 South Seaside Park, that they do not apply to
23 South Seaside Park, we think, frankly, is unworthy
24 of comment.

25 Assertions that the township lacks a

1 comprehensive planning strategy for South Seaside
2 Park are not supported by the facts in evidence.
3 The record reflects that the township has undertaken
4 numerous planning efforts that specifically address
5 South Seaside Park, as well as township wide
6 planning efforts that do include South Seaside Park.

7 We concur with petitioners' assertion that
8 South Seaside Park's demographics reflect a shore
9 community more than they do the balance of the
10 township. While petitioners cite this as why the
11 community should be a part of Seaside Park, we
12 believe that such diversity and uniqueness brings
13 considerable value to the township as a whole. In
14 this respect, the township would experience
15 socioeconomic injury if de-annexation were to occur.

16 Regarding financial impact, we cannot concur
17 with petitioners' assertion that de-annexation will
18 not cause a significant injury to the well-being of
19 the residents of Berkeley Township. Petitioners'
20 financial expert projected a first year post
21 de-annexation tax increase for the remaining
22 residents of Berkeley Township of -- and we had --
23 this a redo of the slide from before -- of anywhere
24 between 3.37 percent and 5.21 percent, based on
25 whether police cars are eliminated and the

1 associated manpower is eliminated. These increases
2 will be subject to a compounding effect as the
3 impact of de-annexation extends in perpetuity.

4 De-annexation would reduce the township's
5 bonding capacity by a little over \$19 million. The
6 tax levy for the school districts is divided among
7 the property taxpayers in the district. Since the
8 Berkeley Township school budget will not change
9 should de-annexation occur, the same budgetary
10 figure would be divided by a lesser number of
11 taxpayers should de-annexation occur.

12 MR. MICHELINI: Objection. You know,
13 we heard all this testimony tonight. Everything he
14 said in the last 15 minutes he's said at least once,
15 if not twice, in the last two meetings. So, with
16 all due respect to Mr. Wiser, can we just get to the
17 end, because you just went through all the --

18 MR. WISER: I got four pages.

19 MR. MICHELINI: Well, I understand
20 you got four pages. Four pages of stuff that -- you
21 just went through ten pages of stuff that you've
22 said twice already. And you've said all the
23 financial stuff tonight already, so there's no point
24 in saying it again or going through what you believe
25 the legal standards are. Let's just wrap it up.

1 We're wasting time.

2 MR. BUCKLEY: I believe he was
3 summarizing.

4 MR. WISER: It's the board's time to
5 waste. Whatever you want me to do, I will do.

6 MR. WINWARD: Well, it looks like,
7 according to this book here, you're on the next to
8 the last page, so.

9 MR. WISER: Would you like me
10 continue?

11 MR. WINWARD: Yes. It looks like
12 you're really close to the end.

13 MR. WISER: I think so.

14 The tax levy -- so I'm trying to
15 figure out where -- okay.

16 So regarding the schools. Since the
17 Berkeley Township school budget will not change
18 should de-annexation occur, that same budgetary
19 figure would be divided by a lesser number of
20 taxpayers, thereby increasing the share for each
21 remaining taxpayer. Given the historic inability of
22 the New Jersey legislature to fund the state aid
23 program, there's no way to determine the impact that
24 de-annexation would have on state aid. Again,
25 assertions that any financial loss attributable to

1 de-annexation would be offset by projected growth on
2 the mainland must be viewed in the context of the
3 court's decision in Avalon Manor.

4 MR. MICHELINI: And I have a
5 continuing objection to his misrepresenting or only,
6 only, citing part of the law. So, I just want to
7 make that very clear. He's done it over and over
8 and over again. According to him, there's only one
9 case, Avalon Manor. I mean, it's just ridiculous.
10 Thank you.

11 MR. WINWARD: Actually, I think there
12 are more, but --

13 MR. MICHELINI: There's a couple
14 more, but he cited Avalon Manor many more times than
15 the others.

16 MR. WINWARD: Okay. Thank you. For
17 the record --

18 MR. MICHELINI: Leaving aside the
19 Supreme Court case that deals with de-annexation.

20 MR. WISER: So, based on the totality
21 of the record, we believe that while petitioners may
22 experience some injury, and certainly inconvenience
23 and frustration, in being part of Berkeley Township,
24 they do not suffer the kind of long term, structural
25 and inherently irremediable detriment that the

1 legislature had in mind when it adopted the
2 de-annexation statute.

3 MR. MICHELINI: I'm going to object
4 to that, too, because there's nothing in the statute
5 that talks about irremediable. He's pulling that
6 from the case and basically telling you that's what
7 the legis -- that's what the statute says. But
8 that's not what the statute says.

9 MR. WISER: No, it's what the case
10 says.

11 MR. MICHELINI: That's what the case
12 says. That's correct.

13 MR. WISER: That's what I've said all
14 along.

15 MR. MICHELINI: No, you said what the
16 legislature intended. What the legislature intended
17 is in a statute. It's not in the case. What the
18 court intended is in the case.

19 MR. WINWARD: Do we have a comment
20 from our board attorney?

21 MR. BUCKLEY: I mean, all this would
22 be for cross-examination. But your objection is
23 noted.

24 MR. MICHELINI: Thank you.

25 MR. BUCKLEY: Continue.

1 MR. WISER: So, conversely, we do
2 believe that de-annexation will work a long-term,
3 structural and inherently irremediable detriment --
4 MR. MICHELINI: Same objection.
5 MR. WISER: -- to the residents of
6 Berkeley Township. And with that, I am done.
7 MR. WINWARD: I have a couple
8 questions. Are we allowed to ask questions?
9 MR. BUCKLEY: Yes, you can ask a
10 question.
11 MR. WINWARD: Okay. I just need a
12 couple things clarified. You keep mentioning Avalon
13 Manor. Mr. Moore, wasn't he on the other side of
14 that case? Just basically yes or no.
15 MR. WISER: I do not know whether he
16 was on the other side of the Avalon Manor case. I
17 do believe he was on the other side of the Seaview
18 Harbor case.
19 MR. WINWARD: Oh, okay. I know it
20 was one of them, because he stated that when he was
21 here.
22 My second question is:
23 Pelican Island, you mentioned that a couple times,
24 that will be still part of Berkeley. Are they
25 serviced by Tri-Boro?

1 MR. WISER: I believe, yes.
2 MR. WINWARD: So, if de-annexation
3 occurs, would we still be contributing the same
4 amount to Tri-Boro or would it be reduced? Does it
5 go by population?
6 MR. WISER: It's my understanding
7 that there is a \$40,000 payment that's made
8 annually. And that is a negotiated number. Whether
9 that number would change, we have heard testimony
10 from certain township officials that it would not,
11 but I don't know that we could know that right now.
12 MR. WINWARD: Okay. Then, I had
13 another question. Right near the end there, you
14 mentioned about school debt of Central Regional.
15 This is where I'm confused. Seaside Park attends
16 Central Regional, right?
17 MR. WISER: Did I mention -- I don't
18 think I mentioned Central Regional.
19 MR. WINWARD: All right. The
20 Regional School District, though, it's the same
21 school district for South Seaside Park and
22 Seaside Park. So I don't think there would be --
23 how much change there would be.
24 MR. WISER: I don't remember --
25 MR. WINWARD: I was curious about it.

1 I know at least -- I'm not sure about elementary,
2 but their high school, I think if there was a high
3 school student in South Seaside Park --
4 MR. MICHELINI: High school, you're
5 correct, Mr. Chairman, for high school, it would
6 still be Central Regional for high school and middle
7 school. For elementary school, the kids from
8 South Seaside Park, who currently get bussed all the
9 way over or would get bussed if there's kids, get
10 bussed all the way over here to the mainland, a 55
11 minute trip, I think, is the testimony.
12 MR. WINWARD: That stays the same?
13 MR. MICHELINI: No, they would go to
14 Washington Street in Toms River.
15 MR. WINWARD: No, I mean the high
16 school.
17 MR. MICHELINI: The high school stays
18 the same but not the elementary school. The
19 elementary school kids would go to Toms River, which
20 is much closer. The high school kids would still
21 come over here --
22 MR. WINWARD: Right. Okay. Then,
23 there's an area of South Seaside Park --
24 MR. MICHELINI: -- or Lavallette.
25 MR. WINWARD: -- I was a little

1 confused about, too, if they were part of the -- I
2 have a two part question. Part one is, are they
3 part of the de-annexation, the Midway Beach section?
4 And also, are their house values included in the
5 overall figures that you had for real estate
6 assessment?
7 MR. WISER: They are included in the
8 de-annexation. And whether those proper -- I would
9 assume that those property values are included, but
10 Mr. Moore did that calculation. So, I believe they
11 are included, but I couldn't conclusively state
12 that.
13 MR. WINWARD: Okay. Those are all I
14 had. Any other board members have any questions?
15 You have the opportunity next week, too, for
16 Mr. Michelini when he's up here. Do you have
17 something, Brian?
18 MR. GINGRICH: Well, through the
19 Chair. Just want to tell Mr. Michelini his tie is
20 right on tonight.
21 MR. MICHELINI: Thank you very much,
22 Mr. Gingrich. I wore it for you and Mr. Callahan
23 tonight. I know you like it very much.
24 (Off the record.)
25 MR. WINWARD: Any more questions --

1 MR. GINGRICH: That's all.
 2 MR. WINWARD: -- or statements or
 3 comments?
 4 All right. Well, with that, we thank
 5 you so much for your summarization, and we'll look
 6 forward to Mr. Michellini's cross-examination next
 7 meeting.
 8 MR. MICHELINI: Just as a
 9 housekeeping matter. Would we be going first next
 10 time, so we get the full two hours? That would
 11 be --
 12 MR. BUCKLEY: I think that's what we
 13 discussed the last time, if that's okay with the
 14 Chair.
 15 MR. WINWARD: It's okay with me. I
 16 could be advised either way.
 17 MR. MICHELINI: I promise to try to
 18 do my best to wrap it up. We'll see.
 19 MR. WINWARD: It's the same lump of
 20 time no matter how you slice it, I guess, whether
 21 it's before or after.
 22 MR. MICHELINI: Well, except that we
 23 could get pushed to where I wouldn't have the full
 24 two hours. So, I prefer to go first so we can get
 25 that done.

1 MR. WINWARD: Is there a lot of
 2 applications next month?
 3 MS. HUGG: Yes. Yes. We have, I
 4 believe we're going to have that large subdivision
 5 and site plan. And then I have another, just a
 6 minor subdivision, which that one shouldn't be too
 7 difficult.
 8 MR. WINWARD: Whatever you determine
 9 with the board attorney and professionals, just let
 10 everybody know as soon as possible whether --
 11 positioning on the agenda.
 12 MR. MICHELINI: We would prefer to
 13 have the full two hours. If the minor site plan is
 14 going to be short, we wouldn't have any objection to
 15 that being heard before us. But after that, we
 16 would want the full two hours before the big
 17 application goes. Because, otherwise, this could
 18 end up dragging on for two meetings. And we really
 19 prefer to get it done.
 20 MR. WINWARD: Okay. All right.
 21 MR. WISER: Can I just ask to confirm
 22 the meeting is on October 3?
 23 MR. MICHELINI: The first Thursday,
 24 whatever that is.
 25 MR. WISER: But it floats sometimes

1 when there's holidays. I just want to confirm.
 2 MS. HUGG: Yes, it's October 3.
 3 MR. WISER: Okay. Thank you.
 4 MR. MICHELINI: Thank you very much.
 5 MR. WINWARD: Okay. Thank you.
 6 (Matter adjourned.)
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 2 C E R T I F I C A T E
 3
 4 I, LINDA SULLIVAN-HILL, a Notary
 5 Public and Certified Court Reporter of the State of
 6 New Jersey, do hereby certify that the foregoing is
 7 a true and accurate transcript of the proceedings as
 8 taken stenographically by and before me at the time,
 9 place and on the date hereinbefore set forth.
 10
 11
 12
 13 ~~Notary Public of the State of New Jersey~~
 14 My Commission expires January 26, 2021
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 16 Dated: September 9, 2019
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MR. BUCKLEY: [6] 19/8 38/1 40/20 40/24 41/8 45/11
MR. GINGRICH: [2] 44/17 44/25
MR. MICHELINI: [28] 13/22 14/14 14/22 18/25 19/10 21/3 24/18 37/11 37/18 39/3 39/12 39/17 40/2 40/10 40/14 40/23 41/3 43/3 43/12 43/16 43/23 44/20 45/7 45/16 45/21 46/11 46/22 47/3
MR. WINWARD: [28] 3/4 14/20 21/24 38/5 38/10 39/10 39/15 40/18 41/6 41/10 41/18 42/1 42/11 42/18 42/24 43/11 43/14 43/21 43/24 44/12 44/24 45/1 45/14 45/18 45/25 46/7 46/19 47/4
MR. WISER: [24] 4/6 14/7 14/23 19/11 22/1 24/21 37/17 38/3 38/8 38/12 39/19 40/8 40/12 40/25 41/4 41/14 41/25 42/5 42/16 42/23 44/6 46/20 46/24 47/2
MS. HUGG: [2] 46/2 47/1

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3.37 percent [2] 10/8 16/20
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5.21 percent [3] 9/23 16/15 36/24
5.55 percent [1] 9/6
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7.52 percent [1] 9/9
732 [1] 1/25
767,200 [1] 10/19

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865,000 [1] 6/2

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