

SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION

PROPOSED STIPULATED FACTS

1. Plaintiff, DONALD WHITEMAN, is an individual residing at _____ Seaside Park, New Jersey. He is a member of the South Seaside Park Homeowners & Voters Association. He signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
2. Plaintiff, PATRICIA A. DOLOBACS, is an individual residing at _____ Seaside Park, New Jersey. She is a member of the South Seaside Park Homeowners & Voters Association. She signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
3. Plaintiff, JUDITH A. ERDMAN, is an individual residing at _____ Seaside Park, New Jersey. She is a member of the South Seaside Park Homeowners & Voters Association. She signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
4. Plaintiffs, 282 other PETITION SIGNERS OF SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION, are members of a community organization (hereinafter "SSPHVA") whose membership is comprised of taxpayer-residents of the South Seaside Park section of Berkeley Township. These 282 other PETITION SIGNERS, all reside in the South Seaside Park section of Berkeley Township and all signed the Petition for Deannexation.
5. Of the total membership of the SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION, 351 members signed a Petition for Deannexation (hereinafter the "Petition") pursuant to N.J.S.A. 40A:7-12 with the Township Council of Berkeley Township. Of those, 285 were valid signatures.
6. South Seaside Park is a barrier island shore community which is currently part of Berkeley Township but which is separated from the mainland portion of the Township by the Barnegat Bay and separated by land by several other municipalities including Pine Beach, South Toms River, Beachwood, Toms River, Island Heights, Seaside Heights and Seaside Park. The distance from South Seaside Park to the Berkeley Township municipal building is 16.5 miles.
7. The three (3) individual petitioners along with the other members/SIGNERS of the Petition, seek to de-annex the neighborhood of South Seaside Park from Berkeley Township and join the neighboring Borough of Seaside Park.
8. Defendant, Township of Berkeley (hereinafter "Township"), is a municipal corporation organized under the laws of the State of New Jersey and consisting of approximately 41.4 square miles.
9. The Parcel sought to be de-annexed is .24 square miles – approximately one-half of 1% (or 0.5%) of the total land area of the Township of Berkeley.

10. The Township of Berkeley's governing body is organized and constituted under the optional Municipal Charter Law (Faulkner Act). It has a Township Council consisting of 7 members elected on a staggering basis for terms of 4 years. It is also governed by a Mayor who is elected for a 4 year term. The Township Council of Berkeley (hereinafter "Council"), as governing body for the co-defendant Township, is a named defendant in this action.
11. On September 22, 2014 the Plaintiffs filed a Petition seeking De-annexation with Berkeley Township seeking to deannex from Berkeley Township in order to join the geographically contiguous municipality of the Borough of Seaside Park.
12. The Township adopted Resolution No. 14-378-R, acknowledging receipt of the Petition and without any objection as to the form or content of the Petition forwarded it to the Berkeley Township Planning Board, pursuant to N.J.S.A. 40A:7-12. At that time there was no claim by the Township that the Petition was deficient or did not meet the statutory requirements for a petition for deannexation.
13. Pursuant to N.J.S.A. 40A:7-12 the Berkeley Township Planning Board is required to provide a report to the Township Council on the impact of the proposed de-annexation upon the Township.
14. In order to prepare its report the Berkeley Township Planning Board held approximately forty-four (44) monthly public hearings over the span of five (5) years – from January 8, 2015 to January 9, 2020.
15. The Berkeley Township Planning Board heard testimony from nine (9) Petition SIGNERS, one (1) non-signer but supporter of the Petition, seventeen (17) interested members of the public, three (3) experts for Plaintiffs, seventeen (17) witness on behalf of the Township of Berkeley, two (2) experts for the Township, and considered voluminous exhibits produced by all parties, witnesses and experts.
16. The Berkeley Township Planning Board also considered the reports of the Planning Board experts Stan Slachetka, P.P., AICP and Stuart B. Wiser, P.P.
17. Testimony concluded on November 25, 2019 and the hearing was formally closed on December 5, 2019.
18. The Berkeley Township Planning Board took an oral vote on the de-annexation Petition at its January 9, 2020 meeting at which time they voted to deny the Petition.
19. The Berkeley Township Planning Board adopted Resolution 2020-PB20-011 on August 6, 2020.
20. Resolution 2020-PB20-011 summarized the Berkeley Township Planning Board's findings and recommended the de-annexation Petition be denied.
21. Berkeley Township Planning Board Resolution 2020-PB20-011 was forwarded to the Township Council for consideration.
22. At the Council meeting on September 21, 2020 the Council considered the Berkeley Township Planning Board Resolution 2020-PB20-011, without discussion or comment.

23. On September 21, 2020 the Council voted to deny deannexation as follows: 5 aye, 0 nay, 1 absent and 1 abstention by Mr. Bacchione.
24. Berkeley Township's Resolution #20-402-R denying the petition was adopted by the Township Council on September 21, 2020.
25. The Council's Resolution of denial relies specifically on the Berkeley Township Planning Board Resolution 2020-PB20-011 adopted August 6, 2020.
26. On October 2, 2020 the Township Clerk executed a letter mailing via regular mail a copy of the Township Council's Resolution #20-402-R to Plaintiff's counsel. It was received on October 8, 2020.
27. There is a considerable distance between South Seaside Park and Mainland Berkeley Township.
28. South Seaside Park is contiguous to Seaside Park.
29. Township facilities have historically been located on the Mainland.
30. Many requests that Petitioners have made of the Township have not been fulfilled.
31. Many requests of the Petitioners have taken longer to fulfill that Petitioners think is reasonable.
32. The manner in which the Township has fulfilled certain requests of the Petitioners was not what Petitioners' envisioned.
33. Petitioners' lives are more closely aligned with Seaside Park and the surrounding areas than with Berkeley Township.
34. Distance makes it inconvenient or difficult for Petitioners to participate in the religious, civic, cultural, charitable and intellectual activities of the Township.
35. Distance makes it difficult for Petitioners to meaningfully associate with the other members of the Berkeley Township community.
36. Deannexation would have a *de minimus* impact on the age, racial composition and unemployment rate of the Township.
37. Berkeley Township will not incur any loss of any physical intellectual or cultural resources should deannexation occur.
38. Conducting personal business on the Mainland is more expensive for the residents of South Seaside Park than for residents of other sections of the Township.
39. There is an extra (travel) cost for residents of South Seaside Park to participate in the recreational opportunities on the Mainland.
40. There is an extra cost for residents of South Seaside Park to participate in certain recreational opportunities in proximity to their homes (i.e., Seaside Park).

41. There are scenarios where deannexation may actually increase badge fees for residents of South Seaside Park.
42. South Seaside Park being a part of Berkeley Township does work an economic injury to the residents of the community.
43. Deannexation may address many of the distance and participation issues raised by Petitioners.
44. Seaside Park's recycling facility is undoubtedly more convenient for the residents of South Seaside Park than the Township's facility which is located on the Mainland.
45. The South Seaside park Bay Beach is not a bathing beach and cannot accommodate the types of recreational facilities that have been created along the bay in Seaside Park where the land is Borough-owned and much wider.
46. The Bayfront in South Seaside Park is not cared for by the Township.
47. Township-wide plowing operations do not commence until 4" to 5" of snow has accumulated and depending on snow levels it can take hours to do one pass through all of South Seaside Park.
48. Both Seaside Park and South Seaside Park are serviced by the same 911 Dispatch Center, Volunteer Fire Company and Ambulance/EMT squad.
49. There has been an extended delay in the time taken by the Township to address Planning issues in South Seaside Park.
50. There is no public transportation in South Seaside Park.
51. There are no facilities large enough to hold Community Outreach meetings in South Seaside Park.
52. South Seaside Park's demographics reflect a shore community more than they do the balance of the Township.
53. Petitioners have testified that their motives in pursuing deannexation is not tax shopping.
55. South Seaside Park residents would see a financial benefit by deannexing from Berkeley Township and annexing to the Borough of Seaside Park.

ISSUES

Was the refusal to consent to de-annexation arbitrary, capricious and/or unreasonable?

- a. Was it error for the Township to preclude any evidence whatsoever of the similar deannexation Petition filed by South Seaside Park residents in the 1970s?
- b. Was it error for the Township to rely on Mr. Wiser's report in which his recitation of the relevant case law (reported and unreported decisions) was devoid of any discussion of the Petition filed by South Seaside Park residents in 1970s essentially ignoring the law of this case?
- c. Was it error for the Planning Board and Township to rely on Mr. Wiser's expert report , particularly his recitation in the case law section of the report, which was demonstrated to have been lifted from a prior report he prepared in another deannexation case?
- d. Did the Township erroneously rely on Mr. Wiser's expert report and apply the incorrect legal standard for deannexation?
- e. Did the Planning Board and Township wrongfully prejudice their deliberation and decision by allowing standards not established by statute or case law to influence their decision?
- f. Did the Planning Board and Township erroneously and arbitrarily apply an improper standard of review as set forth by Mr. Wiser multiple times in his report including in his findings?
- g. By citing to an "irremediable detriment" which he asserted the legislature had in mind when it adopted the deannexation statute did Mr. Wiser intentionally mislead the Planning Board and Township regarding the appropriate legal standard of review of a petition for deannexation?
- h. Did the Board ignore the weight of testimony of Petitioners' planners, financial expert and Petitioners themselves?
- i. Does the Township's Resolution contain findings of fact and conclusions of law that are reflective of the testimony and evidence adduced from the hearings?

Was the refusal to consent to de-annexation detrimental to the economic and social well-being of the majority of the residents of South Seaside Park?

- a. Is the distance from South Seaside Park to mainland Berkeley Township, 16.5 miles, detrimental to the social and/or economic interests of Petitioners?

- b. Does the fact that several other parcels of land (now known as Seaside Heights and Seaside Park) successfully deannexed from Berkeley Township, support the Petitioner's request for deannexation?
- c. Does the fact that residents of South Seaside Park filed a similar deannexation Petition in the 1970s, which was granted, support the Petitioner's request for deannexation?
- d. Are Petitioners disadvantaged in terms of their ability to participate in local government affairs as a result of the distance they reside from the Berkeley Township Municipal Complex?
- e. Would Petitioners' elementary school age children benefit from less bus travel if deannexation is granted?
- f. Are Petitioners denied the opportunity to participate in certain senior events that are held in Mainland Berkeley Township as a result of the failure of the Township to provide appropriate bussing from South Seaside Park?
- g. Would the Petitioners benefit from better, more diverse recreational facilities at a lower out of pocket cost if deannexation was granted?
- h. Has the Township disregarded the South Seaside Park section of the town to the detriment of the Petitioner's?
- i. Do the Petitioners share a social identity and culture with neighboring Seaside Park as well as other local shore communities located on the barrier island?
- j. Is there a failure by the Township to provide adequate and efficient timely services for the Petitioners such as snow removal, street cleanings, beach maintenance, clearing of sand, paving of roads, recycling and other municipal services?
- k. Have Petitioners demonstrated a lack of financial investment by Berkeley Township in the South Seaside Park section of the Township?
- l. Would Petitioners benefit from a significantly greater voice in local government if deannexation was granted that South Seaside Park annexed to Seaside Park?
- m. Would becoming part of the Borough of Seaside park enhance the quality of life of the Petitioners and other South Seaside Park residents?
- n. Will Petitioners benefit from the parks, beaches and other services such as recycling if they deannex from Berkeley Township and annex to the Borough of Seaside Park?

Will de-annexation cause a significant injury to the Township of Berkeley?

- a. Will there be a significant economic impact to the Township if the Petition is granted?
- b. Will Petitioners see a tax savings upon deannexation?
- c. Won't the Township be able to mitigate any perceived economic impact from deannexation within a short time, such as five years, through sound fiscal policy and financial management?
- d. Couldn't the elimination of overtime compensation to Township employees, over time, negate any economic impact from deannexation?

- e. Will deannexation negatively impact the Township's bonding capacity?
- f. Will the projected tax increase to Township homes post-deannexation be greater than historical tax increases or consistent with increased from 2014 to 2019?
- g. Even if deannexation is granted the Township will retain several other Township neighborhoods with similar demographics to South Seaside Park.
- h. Did the Township fail to provide any evidence of significant financial injury to the Township as the Planning Board elected not to rely upon the only financial expert presented by the Township?
- i. Should any opinion by Stuart Wiser, Planner, as to financial injury be ignored by the Court as he was not qualified nor was he introduced as a financial expert?
- j. Will the residents of Mainland Berkeley Township be denied any significant recreational facilities as a result of deannexation, such as beaches or parks?

Were the petitioners denied due process of law?

- a. Was the Township's active and continuous influence from the very beginning of the hearing process a violation of due process?
- b. Was the Planning Board biased against the Petitioners from early on in the hearing process as evidenced by an email from the Township Administrator to the Berkeley Township Planning Board professionals (including planners, engineers, and attorney) with copies to the Township Council members in order to schedule a meeting to strategize as to how to rebut the testimony of the Petitioners – even before Petitioners concluded their case?
- c. Does this email show that the Township was not independent and separate from the hearing process before the Planning Board such that the denial is tainted and must be overturned?
- d. Does this email show that the Township actively colluded with the Planning Board in violation of New Jersey law such that the denial is tainted and must be overturned?
- e. Does the pre-judgement of the petition by several Planning Board members taint the entirety of the proceedings such that the denial must be overturned?
- f. Does the fact that one member of the Planning Board who was seated through most of the 44 hearings had a South Seaside Park Homeowners & Voters Association sign at the edge of his property with a red circle and line through it (indicating NO to SSPHVA) so taint the proceedings such that the denial must be overturned?
- g. Does the fact that a Planning Board member attended a neighborhood meeting prior to the commencement of the hearings and advised that the seniors in that community needed to attend the hearings to oppose the application if they did not want their real property taxes to be increased justify reversal of the denial of the Petition?

- h. Does the adversarial nature of the proceedings and how the Township Planning Board insisted they be conducted justify reversal of the denial of the Petition?
- i. Was it unfair, unreasonable, and biased for the Planning Board to decide that the deannexation decision for the same parcel of real estate decided in the 1970s should not be considered in these hearings?
- j. Does evidence that the Planning Board members and Township witnesses unfairly characterized Petitioners personally demonstrate bias against Petitioners?
- k. Did the lengthy time (over 5 years) it took to complete the hearings in this matter violate the due process rights of the Petitioners?
- l. Did the Resolution adopted by the Planning Board violate N.J.S. 40A:7-12 which required a Resolution be adopted within 45 days
- m. Was it a denial of Petitioners' due process that it took 9 months from the close of the hearings for the Planning Board to adopt Resolution?
- n. Was it appropriate for Defendants to give its Planning Board and their professionals a blank check to spend whatever was needed to defeat the Petition in a war of financial attrition?
- o. Was it collusion and a violation of Petitioner's due process for Planning Board expert, Stuart Wisner, to personally annotate 9 transcripts of earlier hearings in this matter to specifically assist Township witnesses when they testified?
- p. Does it show bias against the Petitioners that Planning Board expert, Stuart Wisner, personally annotated 9 transcripts of earlier hearings in this matter to specifically assist Township witnesses when they testified against the Petitioners?
- q. Was it a violation of Petitioner's due process that the Planning Board attorney conducted numerous cross-examinations of witnesses and did not remain impartial and performed during the hearings as if he was representing the Defendants rather than an impartial advisory body?
- r. Did the participation of the Planning Board attorney in these hearings unfairly influence the Planning Board and violate Petitioner's due process rights?
- s. Was it a violation of due process for Defendants to provide its CFO with certain police schedule information which information was refused to Petitioners prejudicing their ability to cross examine the Township witnesses' testimony on this issue?
- t. Was it unfair, biased and a violation of Petitioner's due process rights that the Township permitted its sole economic expert to revise and resubmit his report in this matter twice after he admitted on cross examination to errors in his earlier reports?

- u. Does the finding of a violation of due process as to any or all of these issues warrant a ruling overturning the Resolution of the Township and granting the Petition?

What is the appropriate remedy?

- a. In the event the court finds Petitioners are entitled to a remedy in this matter, given the time and expenses incurred by both parties to date, isn't the most appropriate remedy reversal and not remand?
- b. Wouldn't remand of this matter unfairly and inequitably punish the Petitioners?