

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).

