

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 -----
9 Pinewald Keswick Road
10 Bayville, New Jersey
11 Thursday, December 5, 2019
12 6:35 p.m.

13 BEFORE:

- 14 Robert Winward, Chairman
- 15 Nick Mackres, Member
- 16 Richard Callahan, Member
- 17 Jack Wiegartner, Member
- 18 Brian Gingrich, Member
- 19 Frederick Bell, Member
- 20 Domenick Lorelli, Member

21 -----
22 LINDA SULLIVAN-HILL & ASSOCIATES
23 CERTIFIED COURT REPORTERS
24 46 SOUTH LAKEVIEW DRIVE
25 JACKSON, NEW JERSEY 08527
(732) 833-0001

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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: GREGORY P. MCGUCKIN, ESQ.
8 Attorneys for the Board

9 ALSO PRESENT:

- 10 Kelly Hugg, Secretary
- 11 James Oris, Planner

1 MR. WINWARD: The last order of
2 business is regarding the South Seaside Park
3 Homeowner --

4 MR. ORIS: One second.
5 (Off the record.)

6 MR. WINWARD: Getting back to the
7 South Seaside Park Homeowners and Voters
8 Association, de-annexation petition hearing. I just
9 wanted to go over real quick. Kelly, how are we
10 doing by who has to listen to what testimony? Do
11 you have an update for us on that?

12 MS. HUGG: I first want to find out
13 who exactly is going to vote on this. Mr.
14 Wiegartner, I believe, is retiring at the end of
15 December, so.

16 MR. WIEGARTNER: I talked with the
17 mayor about that, so.

18 MS. HUGG: Okay. So you just have to
19 read a few more transcripts.

20 MR. WIEGARTNER: Right.

21 MR. MCGUCKIN: Do you think you're --
22 if you're not going to be a township employee
23 though --

24 MR. WIEGARTNER: No, I'm not.

25 MR. MCGUCKIN: So you won't be a

1 class II member.

2 So he would not be eligible to vote
3 unless he's -- he would not be an eligible board
4 member to vote because he wouldn't be a member of
5 the board if he's no longer a class II member. So
6 if he's not a class II member -- unless he's
7 appointed to another position on the board -- then
8 in that case he would not be eligible to vote.

9 MS. HUGG: Mr. McGuckin, do you think
10 that if we only have six members vote for this --
11 Mr. Callahan I believe is going to be away in
12 January and I think that's when we had all decided
13 that maybe --

14 MR. MCGUCKIN: Well, the next
15 question is, and that is, at the next meeting, is
16 the reorg meeting, correct?

17 MS. HUGG: Yes.

18 MR. MCGUCKIN: So assuming everyone
19 here has been reappointed then we can take -- we can
20 probably at least have a discussion that night. And
21 whether or not a vote is taken or not is up to the
22 board.

23 Is there anything else on the agenda
24 that evening?

25 MS. HUGG: I don't believe so.

1 MR. McGUICKIN: I see the mayor
 2 approaching the podium, so.
 3 MR. AMATO: I have a question through
 4 the chair to our attorney. Mr. McGuckin, do you
 5 have any case law on that?
 6 MR. McGUICKIN: Well, if he's not a
 7 member of the board, he would not be eligible to
 8 vote. I'm concerned that if he casts a vote, and
 9 that could be suspect if he's not a member of the
 10 board, if his term is expired. This is not an MUA,
 11 which allows you to serve until your successor is
 12 appointed. Your term ends with your employment as a
 13 class II.
 14 MR. AMATO: Yeah, my only concern is,
 15 you guys know you were here, it was four, almost
 16 five years to hear, to get all the testimony on the
 17 record. And now to appoint a new planning board
 18 member and have them listen to five -- listen or
 19 read five years of transcripts is going to become an
 20 undue hardship on the new member.
 21 MR. McGUICKIN: I can certainly
 22 understand that the new member would not have to do
 23 that. I believe we'll have sufficient members to
 24 vote. We'll have a quorum and then some. But if
 25 he's not a member of the board, since he's no longer

1 exactly what your attorney was saying that he -- you
 2 know, if you don't do it by the law then there's --
 3 MR. AMATO: Yeah, I mean, what I can
 4 do is just appoint him as a class IV member.
 5 MR. McGUICKIN: Correct.
 6 MR. WINWARD: He's still a township
 7 resident.
 8 MR. AMATO: Correct.
 9 MR. WINWARD: So that would qualify.
 10 MR. McGUICKIN: Or as an alternate.
 11 Even as an alternate he can serve.
 12 MR. AMATO: Right. I think some of
 13 the alternates --
 14 MR. McGUICKIN: I don't know what
 15 positions are opening up this year.
 16 MR. AMATO: I don't think Mr. Hudak
 17 has been --
 18 MR. WINWARD: I ain't seen him in two
 19 years, I think, so.
 20 MR. AMATO: Okay. I'll talk to him.
 21 MR. McGUICKIN: I can discuss it with
 22 Mr. Michelini as well.
 23 MR. AMATO: Yeah, just let him know
 24 that's why I want -- I didn't mean to put you on the
 25 spot.

1 an employee, particularly a class II, I don't think
 2 he'd be eligible to vote.
 3 MR. AMATO: So I can appoint him as
 4 any other position?
 5 MR. McGUICKIN: Correct, he could be
 6 appointed as a class IV, if necessary.
 7 MR. AMATO: So, Jack, that's probably
 8 what I'll do then. Yeah, because I mean the more
 9 eligible members to vote on that, the better for the
 10 township.
 11 MR. WINWARD: And that's something we
 12 can handle at the reorg meeting.
 13 MS. HUGG: Yeah, I guess we can --
 14 MR. WINWARD: Have him sworn in as
 15 a --
 16 MS. HUGG: Right, because we will --
 17 I think there's a few people that their terms are
 18 going to have to come up anyway.
 19 MR. McGUICKIN: There's always a
 20 couple that need to be sworn in at the reorg.
 21 MR. AMATO: You don't have any
 22 objection to that do you, Don, to keep Jack?
 23 Because if I appoint a class II member, they're
 24 going to have to listen to five years --
 25 MR. WHITEMAN: I just think that

1 MR. WHITEMAN: You can appoint me.
 2 MR. AMATO: After de-annexation I
 3 might. This way I'd rather have somebody in the car
 4 pool.
 5 MR. WINWARD: You just have to
 6 abstain from that vote.
 7 Who else do we have, Kelly, that
 8 needs to catch up on their listening?
 9 MS. HUGG: Really it's just Jack has
 10 a few to do, and then I had already mailed to John
 11 Bacchione, there was one that I missed, and then I
 12 sent him the transcript on Monday and I also --
 13 there was a portion that he had to read for a
 14 meeting he left for maybe like about five minutes.
 15 So I sent him that portion of the transcript. So
 16 once he signs off, he's pretty much caught up. It's
 17 just really Jack, which I can give Jack the
 18 information tomorrow with the ones that he missed.
 19 I do have, you know, everybody who
 20 had missed, I made a chart that I did get a signed
 21 verification that they listened to the transcript,
 22 or read the transcripts. So I do have that
 23 available to whoever.
 24 MR. McGUICKIN: I think I'm going to
 25 need that. I'm going to send that to Mr. Michelini.

1 MS. HUGG: Sure.
 2 MR. McGUCKIN: Before the January
 3 meeting. So if he has objections or concerns about
 4 it, if he wishes to voice them, he can. If you get
 5 me those, I'll forward them to him.
 6 MS. HUGG: Okay. Thanks, Greg.
 7 MR. MACKRES: Ms. Hugg, can you tell
 8 us who's eligible and who's all caught up?
 9 MS. HUGG: Well, right now it's
 10 really Mr. Mackres, Mr. Gingrich, Mr. Lorelli, Mr.
 11 Bell and Chairman Winward. So it's really just, I
 12 believe John must have already -- he probably read
 13 it by now, so he just has to sign off. And, again,
 14 tomorrow I will go over with Jack what he needs and
 15 give him the transcript or give him, you know --
 16 MR. McGUCKIN: Once you do, and then
 17 send me the sheet so I can send it along with the
 18 certifications.
 19 MS. HUGG: All right.
 20 MR. McGUCKIN: So in that case then
 21 we would put this on the agenda for our reorg
 22 meeting, and the board should be prepared to discuss
 23 the issue that evening. Perhaps, we'll take a vote
 24 on whether or not -- what the board would recommend
 25 to the mayor and council. And the statute and the

1 MR. WHITEMAN: Public comment isn't
 2 there?
 3 MR. WINWARD: What's that?
 4 MR. WHITEMAN: Public comment.
 5 MR. McGUCKIN: Not yet.
 6 MR. WHITEMAN: Okay.
 7 MR. WINWARD: Well, we have nothing
 8 else on the agenda. Is there anything more to
 9 discuss about South Seaside Park?
 10 MR. McGUCKIN: None for me, unless
 11 anybody has any questions.
 12 MR. WINWARD: Okay. We can open it
 13 up to the public. State your name for the record.
 14 MR. WHITEMAN: Don Whiteman, 2000
 15 Barnegat Avenue, South Seaside Park.
 16 It's been a long, long time guys.
 17 You know it and I know it. It's been over five
 18 years that we've done this. I'm glad that we're
 19 through it. I don't think it had to take that long.
 20 But the way it went, there were 12 meetings that we
 21 missed over the five years, which I think was a big
 22 problem, which slowed things up. All right. I
 23 think, also, I would have liked to have had probably
 24 more time, probably four hour sessions would have
 25 helped out to get this moving quick. As some of the

1 case law has been repeatedly provided to you, it's
 2 also in Mr. Wiser's report as to the standards. And
 3 of course you heard it from Mr. Michelini and all
 4 the other exhibits.
 5 All the exhibits are in your office?
 6 MS. HUGG: Yes.
 7 MR. McGUCKIN: So if any board member
 8 wanted to review any of the exhibits or wanted her
 9 to send you any particular exhibit, please just let
 10 her know. But all the exhibits are in her office.
 11 And if you have any questions about it, you would
 12 want to do that before the reorg meeting.
 13 MR. WINWARD: Okay. Thank you, Greg.
 14 Seeing that there is nothing else on the agenda --
 15 MR. MACKRES: When's our first
 16 meeting?
 17 MR. WINWARD: Our next meeting is
 18 January 9, it's the second Thursday. I don't know
 19 the reason but it's --
 20 MS. HUGG: The reason was because
 21 last year I scheduled my planning board meeting
 22 before the council reorg. And the council has to
 23 reorganize before we can do anything. I've learned
 24 my lesson.
 25 MR. WINWARD: Did you have something?

1 other de-annexations allowed their people four
 2 hours, we were allowed two.
 3 At the end here with this, I guess,
 4 final meeting, there is a time limit of so many
 5 days, isn't it, from the closing, and wouldn't that
 6 bring it to this last meeting in January where a
 7 decision would have to be made. Isn't it 45 days
 8 from when we stopped?
 9 MR. McGUCKIN: No. No, it's not.
 10 That was for a land use application. An application
 11 before a board, once a vote has been taken, the
 12 resolution is supposed to be adopted within 45 days
 13 after the vote is taken and that is not what this
 14 is.
 15 MR. WHITEMAN: As I'm saying the land
 16 use because I -- from what I understand from reading
 17 that, Joe and I read that, from what we were told,
 18 basically, is the planning board has 45 days also to
 19 come up with a decision to give to council. So I'll
 20 say something to Joe about that then.
 21 MR. McGUCKIN: I'll be glad to
 22 discuss it with him if he has something that says
 23 differently, I'll be glad to. We'll be right
 24 around, little less than 45 days, actually, right
 25 around 45 days, I guess, because we're doing the

1 second meeting that night.
2 MS. HUGG: I don't want to speak for
3 the board. If we continue to have our meetings the
4 first Thursday of the month, then it won't be 45
5 days.
6 MR. WHITEMAN: Well, my concern was
7 the last time you had an reorganization meeting we
8 were on board and you basically called us up and
9 said no, it's reorganization, we're not covering
10 anything.
11 MR. McGUCKIN: We understand.
12 MR. WHITEMAN: And I don't want to
13 see that happen again. Thank you.
14 MR. McGUCKIN: I anticipate, and as I
15 just instructed the board, I think we're going to
16 have a healthy discussion that evening. Unless
17 there's some additional information that the board
18 wants to look at, I anticipate they'll have some
19 motions and so forth that night.
20 MR. WHITEMAN: All right. Thank you.
21 MR. McGUCKIN: Yes.
22 MR. WINWARD: Thank you, Mr.
23 Whiteman.
24 (Matter adjourned.)
25

1
2 CERTIFICATE
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.
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13 _____
14 Notary Public of the State of New Jersey
15 My Commission expires January 26, 2021
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17 Dated: December 31, 2019
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MR. AMATO: [12] 5/3 5/14 6/3 6/7 6/21 7/3 7/8 7/12 7/16 7/20 7/23 8/2 MR. MACKRES: [2] 9/7 10/15 MR. MCGUCKIN: [25] MR. ORIS: [1] 3/4 MR. WHITEMAN: [10] 6/25 8/1 11/1 11/4 11/6 11/14 12/15 13/6 13/12 13/20 MR. WIEGARTNER: [3] 3/16 3/20 3/24 MR. WINWARD: [15] MS. HUGG: [15]	10/8 10/9 10/11 11/11 anybody [1] 11/11 anything [4] 4/23 10/23 11/8 13/10 anyway [1] 6/18 APPEARANCES [1] 2/2 application [2] 12/10 12/10 appoint [5] 5/17 6/3 6/23 7/4 8/1 appointed [3] 4/7 5/12 6/6 approaching [1] 5/2 are [5] 3/9 6/17 7/15 10/5 10/10 around [2] 12/24 12/25 as [13] 5/12 6/3 6/6 6/14 7/4 7/10 7/11 7/22 10/2 11/25 12/15 13/14 14/7 ASSOCIATES [1] 1/23 ASSOCIATION [2] 1/5 3/8 assuming [1] 4/18 attorney [2] 5/4 7/1 Attorneys [1] 2/5 available [1] 8/23 Avenue [1] 11/15 away [1] 4/11	correct [4] 4/16 6/5 7/5 7/8 could [2] 5/9 6/5 council [4] 9/25 10/22 10/22 12/19 couple [1] 6/20 course [1] 10/3 COURT [2] 1/24 14/5 covering [1] 13/9
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J	Mackres [2] 1/12 9/10 made [2] 8/20 12/7 mailed [1] 8/10 many [1] 12/4 MATTER [2] 1/3 13/24 maybe [2] 4/13 8/14 mayor [3] 3/17 5/1 9/25 McGUCKIN [4] 2/3 2/5 4/9 5/4 me [5] 8/1 9/5 9/17 11/10 14/8 mean [3] 6/8 7/3 7/24 meeting [14] 4/15 4/16 6/12 8/14 9/3 9/22 10/12 10/16 10/17 10/21 12/4 12/6 13/1 13/7 meetings [2] 11/20 13/3 member [20] members [3] 4/10 5/23 6/9 Michelini [3] 7/22 8/25 10/3 might [1] 8/3 minutes [1] 8/14 missed [4] 8/11 8/18 8/20 11/21 Monday [1] 8/12 month [1] 13/4 more [4] 3/19 6/8 11/8 11/24 motions [1] 13/19 moving [1] 11/25 Mr [9] 3/13 4/11 8/25 9/10 9/10 9/10 10/2 10/3 13/22 Mr. [5] 4/9 5/4 7/16 7/22 9/10 Mr. Hudak [1] 7/16 Mr. Mackres [1] 9/10 Mr. McGuckin [2] 4/9 5/4 Mr. Michelini [1] 7/22 Ms [1] 9/7 MUA [1] 5/10 much [1] 8/16 MURPHY [1] 2/3 must [1] 9/12	p.m [1] 1/9 PARK [5] 1/4 3/2 3/7 11/9 11/15 particular [1] 10/9 particularly [1] 6/1 people [2] 6/17 12/1 Perhaps [1] 9/23 petition [2] 1/5 3/8 Pinewald [1] 1/7 place [1] 14/9 Planner [1] 2/11 planning [4] 1/1 5/17 10/21 12/18 please [1] 10/9 podium [1] 5/2 pool [1] 8/4 portion [2] 8/13 8/15 position [2] 4/7 6/4 positions [1] 7/15 prepared [1] 9/22 PRESENT [1] 2/10 pretty [1] 8/16 probably [5] 4/20 6/7 9/12 11/23 11/24 problem [1] 11/22 proceedings [1] 14/7 provided [1] 10/1 public [5] 11/1 11/4 11/13 14/5 14/13 put [2] 7/24 9/21
Jack [7] 1/13 6/7 6/22 8/9 8/17 8/17 9/14 JACKSON [1] 1/25 James [1] 2/11 January [5] 4/12 9/2 10/18 12/6 14/14 Jersey [5] 1/8 1/25 2/4 14/6 14/13 Joe [2] 12/17 12/20 John [2] 8/10 9/12 just [12] 3/8 3/18 6/25 7/4	Q	qualify [1] 7/9 question [2] 4/15 5/3 questions [2] 10/11 11/11

Q
quick [2] 3/9 11/25
quorum [1] 5/24
R
rather [1] 8/3
read [6] 3/19 5/19 8/13 8/22
9/12 12/17
reading [1] 12/16
real [1] 3/9
really [4] 8/9 8/17 9/10
9/11
reappointed [1] 4/19
reason [2] 10/19 10/20
recommend [1] 9/24
record [3] 3/5 5/17 11/13
regarding [1] 3/2
reorg [6] 4/16 6/12 6/20
9/21 10/12 10/22
reorganization [2] 13/7 13/9
reorganize [1] 10/23
repeatedly [1] 10/1
report [1] 10/2
Reporter [1] 14/5
REPORTERS [1] 1/24
resident [1] 7/7
resolution [1] 12/12
retiring [1] 3/14
review [1] 10/8
Richard [1] 1/13
right [9] 3/20 6/16 7/12 9/9
9/19 11/22 12/23 12/24 13/20
River [1] 2/4
Road [2] 1/7 2/4
Robert [1] 1/12

S
said [1] 13/9
say [1] 12/20
saying [2] 7/1 12/15
says [1] 12/22
scheduled [1] 10/21
SEASIDE [5] 1/4 3/2 3/7 11/9
11/15
second [3] 3/4 10/18 13/1
Secretary [1] 2/11
see [2] 5/1 13/13
Seeing [1] 10/14
seen [1] 7/18
send [4] 8/25 9/17 9/17 10/9
sent [2] 8/12 8/15
serve [2] 5/11 7/11
sessions [1] 11/24
set [1] 14/9
sheet [1] 9/17
should [1] 9/22
sign [1] 9/13
signed [1] 8/20
signs [1] 8/16
since [1] 5/25
six [1] 4/10
slowed [1] 11/22
so [25]
some [5] 5/24 7/12 11/25
13/17 13/18
somebody [1] 8/3
something [4] 6/11 10/25
12/20 12/22
SOUTH [6] 1/4 1/24 3/2 3/7
11/9 11/15
South Seaside [4] 3/2 3/7
11/9 11/15
speak [1] 13/2
spot [1] 7/25
standards [1] 10/2
State [3] 11/13 14/5 14/13
statute [1] 9/25
stenographically [1] 14/8
still [1] 7/6

stopped [1] 12/8
successor [1] 5/11
sufficient [1] 5/23
SULLIVAN [2] 1/23 14/4
SULLIVAN-HILL [2] 1/23 14/4
supposed [1] 12/12
Sure [1] 9/1
suspect [1] 5/9
sworn [2] 6/14 6/20
T
take [3] 4/19 9/23 11/19
taken [4] 4/21 12/11 12/13
14/8
talk [1] 7/20
talked [1] 3/16
tell [1] 9/7
term [2] 5/10 5/12
terms [1] 6/17
testimony [2] 3/10 5/16
than [1] 12/24
Thank [4] 10/13 13/13 13/20
13/22
Thanks [1] 9/6
that [53]
that's [4] 4/12 6/7 6/11
7/24
their [3] 6/17 8/8 12/1
them [3] 5/18 9/4 9/5
then [11] 4/7 4/19 5/24 6/8
7/2 8/10 8/11 9/16 9/20
12/20 13/4
there [8] 4/23 8/11 8/13
10/14 11/2 11/8 11/20 12/4
there's [4] 6/17 6/19 7/2
13/17
they [1] 8/21
they'll [1] 13/18
they're [1] 6/23
things [1] 11/22
think [14] 3/21 4/9 4/12 6/1
6/17 6/25 7/12 7/16 7/19
8/24 11/19 11/21 11/23 13/15
this [11] 3/13 4/10 5/10
7/15 8/3 9/21 11/18 11/25
12/3 12/6 12/13
those [1] 9/5
though [1] 3/23
through [2] 5/3 11/19
Thursday [3] 1/8 10/18 13/4
time [5] 11/16 11/24 12/4
13/7 14/8
told [1] 12/17
tomorrow [2] 8/18 9/14
township [4] 1/1 3/22 6/10
7/6
transcript [5] 8/12 8/15
8/21 9/15 14/7
transcripts [3] 3/19 5/19
8/22
true [1] 14/7
two [2] 7/18 12/2

U
ULAKY [1] 2/3
understand [3] 5/22 12/16
13/11
undue [1] 5/20
unless [4] 4/3 4/6 11/10
13/16
until [1] 5/11
up [10] 4/21 6/18 7/15 8/8
8/16 9/8 11/13 11/22 12/19
13/8
update [1] 3/11
us [3] 3/11 9/8 13/8
use [2] 12/10 12/16
V
verification [1] 8/21

voice [1] 9/4
vote [15]
VOTERS [2] 1/5 3/7
W
want [5] 3/12 7/24 10/12
13/2 13/12
wanted [3] 3/9 10/8 10/8
wants [1] 13/18
was [8] 5/15 7/1 8/11 8/13
10/20 11/21 12/10 13/6
way [2] 8/3 11/20
we [20]
we'll [4] 5/23 5/24 9/23
12/23
we're [4] 11/18 12/25 13/9
13/15
we've [1] 11/18
well [6] 4/14 5/6 7/22 9/9
11/7 13/6
went [1] 11/20
were [5] 5/15 11/20 12/2
12/17 13/8
what [10] 3/10 6/8 7/1 7/3
7/14 9/14 9/24 12/13 12/16
12/17
what's [1] 11/3
when [2] 4/12 12/8
when's [1] 10/15
where [1] 12/6
whether [2] 4/21 9/24
which [4] 5/11 8/17 11/21
11/22
Whiteman [2] 11/14 13/23
who [4] 3/10 3/13 8/7 8/19
who's [2] 9/8 9/8
whoever [1] 8/23
why [1] 7/24
Wiegartner [2] 1/13 3/14
will [2] 6/16 9/14
Winward [2] 1/12 9/11
wiser's [1] 10/2
wishes [1] 9/4
within [1] 12/12
won't [2] 3/25 13/4
would [12] 4/2 4/3 4/8 5/7
5/22 7/9 9/21 9/24 10/11
11/23 11/24 12/7
wouldn't [2] 4/4 12/5

Y
Yeah [5] 5/14 6/8 6/13 7/3
7/23
year [2] 7/15 10/21
years [6] 5/16 5/19 6/24
7/19 11/18 11/21
Yes [3] 4/17 10/6 13/21
yet [1] 11/5
you [34]
you're [2] 3/21 3/22
your [6] 5/11 5/12 5/12 7/1
10/5 11/13