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TOWNSHIP OF BERKELEY
PLANNING BOARD

IN THE MATTER OF:

SOUTH SEASIDE PARK HOMEOWNERS
AND VOTERS ASSOCIATION
DE-ANNEXATION PETITION HEARING

Pinewald Keswick Road
Bayville, New Jersey
Thursday, July 5, 2018
7:10 p.m.

BEFORE:

Robert Winward, Chairman
John Bacchione, Councilman
Richard Callahan, Member
Brian Gingrich, Member
Frederick Bell, Member
Domenick Lorelli, Member
Nick Mackres, Member

LINDA SULLIVAN-HILL & ASSOCIATES
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APPEARANCES:

DASTI, MURPHY, MCGUCKIN, ULAKY,
CHERKOS & CONNORS, ESQS.
620 W. LACEY ROAD
FORKED RIVER, NEW JERSEY 08731
BY: CHRISTOPHER DASTI, ESQ.
Attorneys for the Board

O'MALLEY, SURMAN & MICHELINI, ESQS.
17 BEAVERSON BLVD.
BRICK, NEW JERSEY 08723
BY: JOSEPH MICHELINI, ESQ.
Attorneys for the Petitioners

ALSO PRESENT:

Kelly Hugg, Secretary
Nick Dickerson, Planner
Stuart Wiser, Planner
Ernie Peters, Engineer
James Oris, Planner

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I N D E X

NAME OF WITNESS	PAGE
FREDERICK EBENAU	5

EXHIBITS

NUMBER	DESCRIPTION	PAGE
	(None.)	

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CHAIRMAN WINWARD: Last up we have the
South Seaside Park Voters Association De-Annexation
Petition Hearing. Attorney Joseph Michelini.
MR. MICHELINI: Good evening. Joseph
Michelini appearing on behalf of the petition signers
in South Seaside Park seeking de-annexation. You
recall, we left off that there was going to be -- I
objected to the report of -- the revised report of
Mr. Ebenau and put a lengthy objection on the record
as to who was testifying and certainly we continue
that objection tonight, although I'm not going to
restate it because it was stated at length previously.
And my recollection from reading the transcript, I
read it today, is that Mr. Ebenau was going to answer
board questions and/or questions by the professionals.
The only thing I would say is given the fact that this
would be his fifth time testifying, because he
testified in December, March, April and June, so this
would be the fifth month, that so as not to repeat and
go back, that his testimony tonight should be limited
to the differences between the initial report that he
testified to for about three or four hours and the new
report that was submitted. Otherwise, we're just
going backwards. So in terms of questions from the
board or questions from the board professionals, I

1 think it would be appropriate to limit the testimony ⁵
2 to basically the additional three pages that exist in
3 this report that didn't exist in the prior report and
4 any changes in the numbers, but, otherwise, we would
5 simply be going over old territory. So that would be
6 my request with regard to how we proceed. And I would
7 reserve to re-cross after the board members and/or any
8 professionals ask him questions limited to those
9 issues.

10 Does that sound right, Mr. Winward?

11 CHAIRMAN WINWARD: Agreed.

12 MR. MICHELINI: Thank you. And I would
13 just remind Mr. Ebenau he is still under oath and
14 allow the board and the board professionals to ask him
15 questions.

16 FREDERICK EBENAU, previously sworn.

17 CHAIRMAN WINWARD: Okay, Mr. Ebenau.
18 Please proceed.

19 MR. EBENAU: Does anybody have any
20 questions?

21 MR. DASTI: Mr. Chairman, I would
22 suggest that maybe the best way to do this is to ask
23 the planning board engineer if they have questions
24 first and then you can ask the board members if
25 there's any items that aren't touched upon.

1 MS. WISER: I do have a limited number ⁶
2 of questions, Mr. Chairman.

3 Good evening, Mr. Ebenau. I'm looking
4 at your report. This is the revised report T-44. Do
5 you have a copy in front of you?

6 MR. EBENAU: If I was to say -- no, I
7 don't have the original. Can I just borrow the
8 exhibit?

9 MR. WISER: On page five, the second
10 text paragraph, the one that starts "This along with
11 no anticipated savings."

12 MR. EBENAU: Yes.

13 MR. WISER: This is just a question.
14 You say here "Based on the tax levy with all things
15 being equal and no increase or decrease in anticipated
16 revenue for the uncollected taxes." My recollection
17 was that when you had your interchange with
18 Mr. Michelini last time or maybe the time just before,
19 that the err in your previous report did then result
20 in a change for the anticipated reserve for
21 uncollected taxes, is that correct?

22 MR. EBENAU: That's correct.

23 MR. WISER: So is this language here in
24 the middle of the sentence, "no increase or decrease,"
25 is this adjusted somewhere else in the report?

1 MR. EBENAU: It's addressed in the back ⁷
2 in the summary.

3 I stand corrected. No, it is not
4 addressed directly.

5 MR. WISER: Okay. So can you refresh my
6 memory? There was a change in the anticipated reserve
7 for uncollected taxes. You are collecting less in
8 that reserve line item, is that correct?

9 MR. EBENAU: As a whole the amount would
10 be, but the proportion to South Seaside Park would be
11 less, yes. It would go from the 11.79 to the
12 10.66 percent.

13 MR. WISER: So how does that then, when
14 you go to the summary of your report and you begin to
15 address the impacts on the various -- well, the
16 impacts to the tax rate and then the amount to be
17 raised by taxes, how is that -- what is the impact of
18 that change?

19 MR. EBENAU: The impact of the change is
20 like the rest of the change would be, that would be
21 going from the 11.27 to the 10.66 percent. Or in the
22 summary portion, when it comes to dollars and cents,
23 it would come down to a 12.7 cent tax increase to the
24 rest of the residents of Berkeley Township. Or if you
25 want to break that down further to a single-family

1 home average assessed valuation, it would be a \$253.37 ⁸
2 increase. And to the senior community, \$161.29. That
3 also takes into consideration the reduction in debt
4 service, which was not addressed in the initial
5 report.

6 MR. WISER: Okay. I understand the
7 reduction of debt service. So you're telling me that
8 on page five where it says "all things being equal and
9 no increase or decrease to the anticipated reserve for
10 uncollected taxes," that whatever the change in the
11 reserve for uncollected taxes is already incorporated
12 on your analysis on page 16?

13 MR. EBENAU: That's correct.

14 MR. WISER: Okay. Thank you. Just
15 below that where you say tax levy -- this is just a
16 question about your formatting -- what is the bold?
17 This would be on page five and it occurs elsewhere.

18 MR. EBENAU: What is the bold?

19 MR. WISER: Yes. You have on your tax
20 levy, you have first number is 31 million and then you
21 have the 56,000, et cetera, et cetera.

22 MR. EBENAU: I see. The bold numbers
23 are definite reductions in taxes. Because the
24 percentages have changed, the first bold number is
25 municipal open space tax levy, so you would have less

9
1 ratables that you could assess open space land to and
2 open space land can be assessed up to one percent of
3 the assessed valuation, so that number would be
4 reduced. And the same thing with the other bold
5 numbers, the county tax levy, that portion of the
6 assessed valuation, because that's how the county
7 assesses each municipality, would be reduced in our
8 budget and would be passed on to another budget.

9 MR. WISER: Okay.

10 MR. EBENAU: Another municipality.

11 MR. WISER: I'm assuming that convention
12 follows through the rest of the report?

13 MR. EBENAU: Right.

14 MR. WISER: Okay. On your next page, we
15 had asked back, I think, in your first section of
16 testimony to clarify for us -- and I'm not sure we
17 ever got the clarification, so I'm going to ask it
18 again. You have the average assessment single-family
19 home section and you have township at the 199,500
20 figure?

21 MR. EBENAU: Yes.

22 MR. WISER: Then you have South Seaside
23 Park at 408 and senior communities at 127, right?

24 MR. EBENAU: Correct.

25 MR. WISER: The question I have is --

10
1 and I think you answered the last time, the South
2 Seaside Park number, the 408, is a discrete number
3 that's just South Seaside Park single-family homes?

4 MR. EBENAU: Average.

5 MR. WISER: Average. The question is
6 does that 408 figure, is that 408 figure included in
7 the calculation that resulted in the 199,000? In
8 other words, is the 199,000 the single-family homes
9 less the South Seaside Park homes?

10 MR. EBENAU: No. It would be a total.

11 MR. WISER: It's the total. So if you
12 were to remove -- just math theory, if you were to
13 remove the 408 figure, the 199 figure actually comes
14 down a little further?

15 MR. EBENAU: That's correct. Yes.

16 MR. WISER: Similarly -- and I'm
17 assuming this also filters through all of the
18 calculations?

19 MR. EBENAU: Except for the senior
20 communities. That stands alone. Just like the South
21 Seaside Park stands alone.

22 MR. WISER: So the 199 is everything in
23 the township less the senior communities?

24 MR. EBENAU: Everything in the township
25 period, inclusive of the senior communities.

11
1 MR. WISER: Inclusive of the senior
2 communities?

3 MR. EBENAU: Yes.

4 MR. WISER: So there would be then, if
5 you wanted to get single-family homes for the mainland
6 portion of the township -- and I guess we would
7 include Pelican Island there, but for the non-Seaside
8 Park portion of the township, the factor would be 199,
9 there would be some reduction because you lose the
10 408, but then some addition because you have to pick
11 up the 127?

12 MR. EBENAU: Correct.

13 MR. WISER: Okay. And you didn't --

14 MR. EBENAU: I did not.

15 MR. WISER: You did not do that. Okay.

16 The next page, under police services,
17 the first paragraph but the last sentence, the
18 overtime for 2016 for the Police Department as a whole
19 was 350,000 and change. As part of your calculations,
20 I know we talked about there would not be a, in your
21 opinion, layoffs to the Police Department. What would
22 happen to the overtime assuming de-annexation occurs?

23 MR. MICHELINI: I'm going to object.

24 We've gone over this. This is going back. This isn't
25 pointing out the differences between the two reports.

12
1 Whether or not you want to allow him to answer, but I
2 fear that we're going to start going down roads that
3 will take us --

4 MR. WISER: I really don't have that
5 much.

6 MR. MICHELINI: It doesn't matter. It's
7 simply going back over. If you're going to go back
8 over, then I'm going to go back over if that's where
9 you want to go. We've already been down this road.
10 Let's just focus on the differences between the two
11 reports. This is the fifth time the man has
12 testified.

13 MR. DASTI: Mr. Ebenau, I think the
14 appropriate question is has the overtime calculation
15 changed at all between the original report and revised
16 report?

17 MR. EBENAU: It has not.

18 MR. WISER: Okay. On page eight under
19 Public Works services, you have labor costs,
20 supervisory costs, those items. Then you have the
21 snow removal and the street sweeping. The 14 and the
22 four, is that reflected in the 92,000?

23 MR. MICHELINI: Same objection. We're
24 going back over things that we've already covered.

25 MR. DASTI: He can clarify it because

1 I -- I think I understand the question. Is the 14 and ¹³
2 the four the bottom?
3 MR. EBENAU: It is not. If you read the
4 header there, it's estimated cost breakdown for South
5 Seaside Park for solid waste, recycling, bulk and leaf
6 pickup. The street sweeping and snow removal are
7 separate, so it is not included in the 92.
8 MR. WISER: Thank you. The capital and
9 debt service, that's new to the report, right?
10 MR. EBENAU: Yes, it is.
11 MR. WISER: Okay.
12 MR. EBENAU: Well, to a degree. There
13 was in the original --
14 CHAIRMAN WINWARD: Page 12.
15 MR. WISER: Page 12.
16 MR. EBENAU: It was originally in there.
17 What wasn't in the original report was the relief of
18 the debt service, meaning that should South Seaside
19 Park de-annex away from the municipality, they would
20 owe their portion of it. That doesn't mean our debt
21 service goes away. We still have to pay the debt
22 service. However, with the funds that would be
23 received back to the borough -- to the township, a
24 reserve has to be set up. And then from that reserve
25 the South Seaside portion would be used to offset a

1 portion of the debt service, so the net effect would ¹⁴
2 be less the debt service and that's what's taken into
3 consideration in this report.
4 MR. WISER: Are you referencing, just so
5 I understand what you just said, are you referencing a
6 negotiated amount of money that would be paid by
7 Seaside Park to Berkeley Township that would represent
8 some function of the debt service attributable to
9 South Seaside Park?
10 MR. EBENAU: Yes.
11 MR. WISER: In my language.
12 MR. EBENAU: In your language, yes.
13 MR. WISER: And there were some things
14 as I recall that you were able to mathematically or --
15 that you were able to categorically attribute to South
16 Seaside Park in terms of bonding and things like that
17 but some that you couldn't. And the ones you
18 couldn't, you calculated the 10.66 percent?
19 MR. EBENAU: I did.
20 MR. WISER: That's correct?
21 MR. EBENAU: That's correct. Yes.
22 MR. WISER: Next page, 13, just to be
23 clear, you have the 4 million -- this is the first
24 text paragraph, the bold section, the \$4 million. Is
25 that --

1 MR. MICHELINI: Excuse me. Are you ¹⁵
2 referring to the 4,986,000?
3 MR. WISER: Yes.
4 MR. MICHELINI: That's, like, 5 million.
5 Not four. I just don't want any confusion on the
6 record.
7 MR. WISER: I did not mean to --
8 MR. MICHELINI: That's fine. I just
9 want to make sure you're referring to the same thing.
10 MR. WISER: That is the number I'm
11 referring to.
12 In reading through this language here I
13 was confused. Does that number and the 531,000, is
14 that reflective or does that include the Sandy
15 emergency bonding figure or is that inclusive or
16 exclusive of that?
17 MR. EBENAU: The 4,986,000?
18 MR. WISER: Yes.
19 MR. EBENAU: That would be exclusive.
20 No. I'm sorry. Inclusive. Because the 5,222,000 on
21 top includes the \$1.2 million.
22 MR. WISER: So this is inclusive?
23 MR. EBENAU: Yes. Which, for the
24 record, is no longer on the books.
25 MR. WISER: Paid it off already?

1 MR. EBENAU: Yes. ¹⁶
2 MR. WISER: Elsewhere I recall you said
3 it would be done by the end of the year. You paid it
4 off -- is it early?
5 MR. EBENAU: Five years. 2017 was the
6 fifth year.
7 MR. WISER: That's all I have,
8 Mr. Chairman.
9 CHAIRMAN WINWARD: All right. Thank
10 you.
11 Nick, did you have some questions for
12 Fred on any -- just any differences in the revision?
13 MR. DICKERSON: I do not have any on the
14 differences. I believe the one question I had on that
15 I asked at the last hearing.
16 CHAIRMAN WINWARD: Thank you.
17 Any board members have any questions
18 here of Mr. Ebenau?
19 Seeing there is none, did you want to do
20 some cross-examination again?
21 MR. MICHELINI: Throughout these
22 hearings, Mr. Ebenau, I have been saying Mr. Ebenau
23 with a long U on the end and everybody else is calling
24 you something else, Ebenau, Ebenow.
25 MR. EBENAU: It's Ebenau.

1 MR. MICHELINI: It's Ebenau. So I'm 17
2 correct and they're all wrong?
3 MR. EBENAU: Yes.
4 MR. MICHELINI: Thank you. I don't have
5 any questions.
6 MR. DASTI: That was not pertinent to
7 de-annexation. It is relevant because that's the
8 first time he has been right.
9 MR. MICHELINI: Thank you.
10 MR. DASTI: I believe that is all we
11 have for tonight.
12 MR. MICHELINI: I believe that's all the
13 township has. I don't know if the board is calling
14 any witnesses. I assume they are not based upon the
15 discussion about education. And so the next thing is
16 whether Mr. Wisner is going to go and then we have
17 rebuttal witnesses and the public or what order all
18 that goes in. Basically we have Mr. Wisner and his
19 report and testimony and cross-examination is
20 anticipated. I have rebuttal witnesses at some point
21 and the public, which, Mr. Winward, I think you agree
22 that that should be announced at least one meeting
23 ahead of time given the length of these hearings. So
24 given the fact that we're not really, I don't think,
25 ready to announce that, the issue is at the next

1 meeting do we have Mr. Wisner testify? 18
2 CHAIRMAN WINWARD: I think that would be
3 appropriate, if that's all that's left.
4 MR. DASTI: I was going to say,
5 Mr. Michelini, our office coordinate in terms of what
6 the next step is. I don't know if Mr. Wisner's report
7 is almost ready or will be done in three weeks? I
8 don't want to catch him off-guard either.
9 MR. WISNER: I worked with the rest of
10 our staff -- coordinated with the rest of our staff.
11 We were under the assumption that the public was going
12 to speak first and that our report would be inclusive
13 of the entirety of the testimony. That's the way we
14 had done it in the past. That was our assumption
15 moving forward. Under that assumption and assuming
16 then the public would get one night of testimony, it
17 was our schedule that we would prepare our report, and
18 in order to give it time for the board and
19 Mr. Michelini and whoever else wants to read it, we
20 were shooting at an October presentation.
21 MR. MICHELINI: We'll have to talk about
22 it.
23 MR. DASTI: Well, we'll have to talk
24 about it.
25 MR. MICHELINI: Our position is, as

1 having the burden of proof, we should be able to go 19
2 first and go last as you would in a courtroom, so that
3 would mean our rebuttal testimony at the end after
4 Mr. Wisner has given his report and testimony. It's up
5 to the board in terms of what you want to do at the
6 next meeting. I'll be in touch with Mr. Dasti's
7 office to discuss that. If it is your inclination to
8 have the public here for the next meeting before the
9 testimony is complete, I mean, it seems to me you
10 would have them last or pretty close to last, but
11 after testimony is in by everyone. You know, it's
12 really up to the board how you want to handle that.
13 MR. DASTI: We can address that. I'll
14 talk to Mr. Michelini between now and the beginning of
15 next week and then we'll advise as to the best way to
16 handle that.
17 CHAIRMAN WINWARD: Is your office doing
18 any reports?
19 MR. DASTI: I don't believe so. I
20 didn't anticipate that. I'll talk to Greg.
21 MR. WISNER: The way, just in terms of
22 what has happened in the two that I have been involved
23 in before, is that our report became the report that
24 was voted on by the board. The board was encouraged
25 to make any changes in that report that they deemed

1 appropriate. With those changes the attorney wrote an 20
2 appropriate resolution but did not do a separate
3 report, and that resolution and the report then went
4 to the governing body.
5 MR. DASTI: Okay.
6 MR. MICHELINI: Well, I think there's a
7 better process, but with all due respect, this has
8 only been done a couple of times, so I don't know that
9 there's a lot of guidance as to how it should be done,
10 but I think from our perspective the appropriate
11 process would be to have the opportunity to say the
12 last word, as we have the burden of proof. As you
13 would in a courtroom, you open first and then you
14 close last. If we didn't have the burden of proof, it
15 would be different. But that's our preference. We'll
16 talk about it.
17 Thank you. Have a good night everybody.
18 CHAIRMAN WINWARD: Okay. Do we have a
19 motion to adjourn?
20 MR. MACKRES: So moved.
21 CHAIRMAN WINWARD: All in favor, say
22 aye.
23 ALL: Aye.
24 (Meeting adjourned.)
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CERTIFICATE

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I, **KELLY A. MC ARDLE**, a Notary Public, Registered Professional Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony that was taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

I DO FURTHER CERTIFY that this transcript complies with all standards cited in NJ ADC 13:43-5.9

Kelly A. McArdle, CCR
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