

1 TOWNSHIP OF BERKELEY
2 PLANNING BOARD

3 IN THE MATTER OF:
4 SOUTH SEASIDE PARK HOMEOWNERS
5 AND VOTERS ASSOCIATION
6 DE-ANNEXATION PETITION HEARING

7 Pinewald Keswick Road
8 Bayville, New Jersey
9 Thursday, August 2, 2018
10 6:15 p.m.

11 B E F O R E:

- 12 Robert Winward, Chairman
- 13 John A. Bacchione, Councilman
- 14 Domenick Lorelli, Member
- 15 Nick Mackres, Member
- 16 Richard Callahan, Member
- 17 Brian Giorico, Member
- 18 Frederick Bell, Member

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 21 CERTIFIED COURT REPORTERS
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1 APPEARANCES:

- 2 DASTI MURPHY MCGUCKIN, ULAKY,
- 3 CHERROS & CONNORS, ESQS.
- 4 620 W Lacey Road
- 5 Forked River, New Jersey 08731
- 6 BY: GREGORY P. MCGUCKIN, ESQ.
- 7 Attorneys for the Board
- 8 O'MALLEY, SURMAN & MICHELINI, ESQS.
- 9 17 Beaveron Blvd.
- 10 Brick, New Jersey 08723
- 11 BY: JOSEPH MICHELINI, ESQ.
- 12 Attorneys for the Petitioners

13 ALSO PRESENT:

- 14 Kelly Hugg, Secretary
- 15 James Oris, Planner
- 16 Stuart Wiser, Planner

1 MR. WINWARD: Okay. Next up, we have
2 the South Seaside Park Homeowner and Voters
3 Association de-annexation petition hearing.
4 Attorney Joseph Michelini. And you may proceed.
5 (Off the record.)

6 MR. MICHELINI: Good evening,
7 everyone. Joseph Michelini on behalf of the
8 petition signers for the South Seaside Park
9 Homeowner and Voters Association.

10 Tonight it was agreed among myself
11 and Mr. McGuckin, your attorney, that we would
12 discuss procedure. We tried to come to an agreement
13 regarding procedure. We were unable to do that, so,
14 therefore, you know, we need to place it on the
15 record and then whatever the board decides the board
16 decides.

17 (Off the record.)

18 MR. MICHELINI: So we're here tonight
19 to discuss the procedure going forward. As I
20 understand where we are, the township -- well, we
21 presented our witnesses, the township presented its
22 witnesses. The board, as I understand it, decided
23 not to proceed with any witnesses, with the
24 exception of Mr. Wiser, who is in the process of
25 preparing a report. And at some point he would

1 present that report and, as he had previously
2 indicated, be subject to cross-examination. So, I
3 have requested and I believe the board is inclined
4 to hear rebuttal witnesses. I would like those
5 rebuttal witnesses to go on after Mr. Wiser because
6 part of the point of having them go on after is to
7 rebut his report, assuming that that report is not
8 favorable to our position. If the report is
9 favorable to our position, then I would not need to
10 put on rebuttal witnesses, but if it is not
11 favorable to our position, we would want to put on
12 those rebuttal witnesses after Mr. Wiser's report.
13 And the reason that we say that is because we have
14 the burden of proof. And even though this is not a
15 court of law, we have been handling it in some
16 respects very much like a court of law, where
17 witnesses are sworn in, where there is examination,
18 there's direct examination, cross examination,
19 redirect and recross. And in a situation where we
20 have the burden under the statute, just like in a
21 court case where the plaintiff has the burden, they
22 get the first word and they get the last word. As
23 matter of fairness and procedure that's how it's
24 done. So I'm only requesting that by analogy the
25 same procedure be followed in this case. I

1 understand that Mr. McGuckin may have a different
 2 view and I will allow him to place, of course, his
 3 position on the record. My position, is what's the
 4 harm? I think we had Mr. Ebenau here, he testified
 5 what, four or five times, I don't know how many
 6 times, but the idea was, well, the board needs to
 7 get all the information possible so that they can
 8 make a good decision, or at least provide a report
 9 and possibly a recommendation. Well, the same logic
 10 then applies, why wouldn't we allow our experts to
 11 come in after your engineer and planner, who's been
 12 specially retained in this case, for this matter,
 13 provides a report, which I understand is going to be
 14 hundreds of pages long. And all I'm asking is the
 15 opportunity to take that report, of course, conduct
 16 cross-examination of Mr. Wiser, and then have my own
 17 experts comment on it, which I think would be the
 18 appropriate and the fair way to proceed.

19 Mr. McGuckin?

20 MR. MCGUCKIN: Well, Mr. Chairman, I
 21 did have a discussion with Mr. Michelini. We
 22 discussed where we are at this stage. Before we get
 23 to that issue I think there's going to be, and I
 24 understand the board wanted to at least have an
 25 opportunity for the public, any other members of the

1 public who have not had a chance to speak, to have
 2 an opportunity to present any positions, comments,
 3 testimony they wish to have. So I think that's the
 4 first thing we need to address.

5 The second thing would then be
 6 whether or not the applicant gets a rebuttal shot to
 7 present additional evidence in response to all the
 8 other witnesses. Mr. Michelini has indicated he
 9 thinks it's appropriate. I don't necessarily think
 10 it's inappropriate and as Mr. Michelini indicated,
 11 and the board has said previously, it's about
 12 getting all of the information. So if they wish to
 13 present rebuttal testimony I think that's
 14 appropriate. But let's remember Mr. Wiser was
 15 retained by the board here for purposes of assisting
 16 the board in preparing a final recommendation to the
 17 governing body.

18 I know this has been done in some
 19 other municipalities, although there is no, quote,
 20 statutory procedure, rule or regulation as to how it
 21 would go. But, quite frankly, I believe Mr. Wiser's
 22 response and obligation to the board is to present
 23 all the sides and present all of the testimony,
 24 including any rebuttal testimony that Mr. Michelini
 25 may have. It may be if, for instance, Mr. Wiser's

1 report provides something new that has not been
 2 addressed, something new that has not yet been
 3 testified to, I think I would agree with
 4 Mr. Michelini that that would be appropriate to
 5 allow him to address that issue as a result of the
 6 that after the fact. But I think we need to bring
 7 this thing in for a landing and have a final
 8 procedure to get this thing done. And I don't think
 9 it's inappropriate to provide the public comment. I
 10 don't think -- I think at that point if
 11 Mr. Michelini wants to provide rebuttal testimony, I
 12 think that's appropriate. I think Mr. Wiser should
 13 be go last. That's my opinion.

14 MR. MICHELINI: If I might just
 15 comment briefly. I certainly agree that the public
 16 should comment. My approach would be to have the
 17 public comment probably be heard last, but --
 18 because that's how it's normally done in any
 19 hearing. But, you know, the only issue with the
 20 public comment is, Chairman Winward indicated that
 21 it probably should be announced because these
 22 hearings have been going on and I agree with that.
 23 So whether that occurs first or last I'm less
 24 concerned about that. I do believe that providing a
 25 recommendation is in the nature of an expert's

1 opinion and report. And in the normal course of
 2 events, we should have the opportunity to hear what
 3 that recommendation is, to hear what that report is,
 4 and then to rebut it if it doesn't agree with us.
 5 It's not a matter -- it's not as if Mr. Wiser, with
 6 all due respect, will be acting independently. He's
 7 going to have an opinion. He's going to make a
 8 recommendation. He's going to have a position, so
 9 to speak. Otherwise, if he doesn't have an opinion,
 10 then he's simply a scrivener, he's simply writing
 11 things down. And, quite frankly, the board can read
 12 the transcript and write things down for themselves.
 13 So he is going to be making some kind of a report
 14 with a recommendation. And I think we should have
 15 the opportunity to rebut that report, as we would in
 16 a court of law, in that type of proceeding. He's
 17 not the judge in this matter, who's going to gather
 18 all the testimony and then come up with a decision.
 19 He is going to be putting together some kind of a
 20 recommendation. So, that is an opinion, that's an
 21 expert's opinion. Clearly he's an expert, otherwise
 22 you wouldn't have retained him. You didn't retain
 23 him as a layperson. And I think for the reasons
 24 I've stated, I think I should have the last word and
 25 have the opportunity to rebut that opinion, assuming

1 it is not favorable.

2 Now, I understand the board will make
3 a ruling. I just want to make my objection clear on
4 the record with regard to the matter. And then the
5 next thing is for the board to -- after that perhaps
6 we can decide that issue, whether Mr. Wiser goes
7 last or not, and then we can talk about where the
8 public goes and the other witnesses, rebuttal
9 witnesses.

10 MR. MCGUCKIN: Just a response to
11 Mr. Michelini. He's going to have every opportunity
12 to cross-examine him. He's going to have the
13 report. It's not going to be a surprise to him.
14 This is not going to be one of those reports that's
15 handed out at the beginning of the meeting, like
16 we've had in some other witnesses. And I'm sure
17 we're going to have a month in between, between his
18 testimony and cross examination. And Mr. Michelini
19 is going to have a full and fair opportunity to
20 cross-examine him if that's the case. And it's
21 possible his recommendation will be in favor of him.
22 But in that case, there would be no cross of
23 Mr. Wiser, and nothing in the record as to that.

24 MR. MICHELINI: So if Mr. Wiser wants
25 to keep it short, he needs to rule in my favor.

10

1 MR. MCGUCKIN: Well, there could be
2 other parties who may -- let's, for instance, let's
3 assume Mr. Wiser recommends in favor of your
4 clients. There may be others who dispute that
5 opinion. And there'll be no record then of rebuttal
6 of that witness. So I think it is appropriate for
7 the board to have all the testimony, all the
8 rebuttal, before he presents his recommendation to
9 the board. And he's going to be subject to cross.
10 And as I said, and I think it would be appropriate,
11 Mr. Chairman, if something in that report is
12 something that has not yet already been testified
13 to, I would agree with Mr. Michelini. I think that
14 would be fine. And give him a limited opportunity
15 to address something that comes out. And he'll be
16 able to tell us after his cross-examination, which
17 he will have had a month at least to review the
18 report. And after that if he feels he needs to
19 present something because something's new, the board
20 can then decide that is new and yes, you can have
21 another shot. But let's get everything here. Let's
22 get the information in the record. Let's get this
23 thing moving and get it, like I said, bring it in
24 for a landing.

25 MR. MICHELINI: Just a final

1 statement. I think that that's prejudicial to my
2 position not to be able to put on the expert
3 testimony after Mr. Wiser, given that I have the
4 burden of proof in this case to rebut his opinion,
5 should it come out that he is not in favor of the
6 de-annexation or his report reflects that position.

7 MR. MCGUCKIN: And just on that issue
8 to remind, we don't make the decision. All we do
9 are make recommendations. The actual decision is
10 made by the governing body, not this board. So,
11 while counsel points about burden of proofs and
12 whose responsibility and so forth, and the decision
13 making, this not a final decision, this is simply a
14 recommendation of the planning board.

15 MR. MICHELINI: But this is the
16 record.

17 MR. MCGUCKIN: That's correct.

18 MR. WISER: I would also just add
19 that -- excuse me.

20 (Off the record.)

21 MR. WISER: I would also add that in
22 planning board applications, typically, and I really
23 haven't done an application before this board, but,
24 typically, the board's professionals go after the
25 applicant has presented their case. And there's --

12

1 unless there is some drastic reason, the applicants
2 are limited in having an interplay after they have
3 presented their case. The board asks the
4 professionals what their opinions are. And that's
5 then typically the last thing before the board
6 votes.

7 MR. WINWARD: Okay. Then I have a
8 question. When you give your report, is he allowed
9 to cross-examine you on the record?

10 MR. WISER: I think as Mr. McGuckin
11 said, he would be able to cross-examine, and I will
12 defer to the attorneys on this, but on new items.
13 But on items where I'm commenting as to what the
14 testimony was from the various witnesses, I think
15 that the cross-examination would have already
16 occurred at the time of those witnesses.

17 MR. MICHELINI: I think my cross
18 should not be limited of Mr. Wiser in any respect
19 whatsoever. I believe Mr. McGuckin would agree with
20 that. The issue is whether or not I am allowed to
21 prepare or provide rebuttal witnesses before or
22 after Mr. Wiser's testimony and cross-examination,
23 so --

24 MR. MCGUCKIN: Before we get to the
25 next legal argument, let's stick to this one as to

1 the timing, and then we'll address how that --
 2 MR. MICHELINI: I just want to
 3 respond to one thing Mr. Wiser said. There's
 4 nothing typical about this. This isn't typical,
 5 okay, as one would have an application for a
 6 subdivision or something like that. And I'm fully
 7 expecting that Mr. Wiser, based upon the hundreds of
 8 thousands of dollars that his firm has spent, much
 9 of it preparing a report over the last couple years
 10 when you look at the invoices, I fully expect that's
 11 going to be hundreds of pages long. And, with all
 12 due respect, I should have the opportunity to have
 13 my experts look at that report and provide testimony
 14 and rebut it, should they not agree with it, in the
 15 interest of having all the information before the
 16 board. How can I have experts rebut a report that I
 17 don't have. Okay. So once I have the report, then
 18 I can go to my experts, then I can get more
 19 information before the board that I can't possibly
 20 present before the board until such time as I have
 21 that report.
 22 MR. MCGUCKIN: We can go back and
 23 forth with surrebuttal and rebuttal and everything
 24 else. There's come a point where it has to be
 25 ended.

1 MR. MICHELINI: Absolutely, I agree.
 2 MR. MCGUCKIN: And in this case what
 3 you're talking about is, and as I think Mr. Wiser
 4 just indicated and as I indicated previously, if
 5 there's something new, I would certainly agree. But
 6 anything that's already been done, you know, I don't
 7 know why we would have another round of questioning
 8 and comments about something that's already been
 9 testified to. You'll have the chance on
 10 cross-examination to say that's not what they said.
 11 You have the transcripts. You can say that's not
 12 correct. I don't see the reason to have another
 13 round of rebuttal based on stuff that's already been
 14 direct testimony, cross-examination, more direct
 15 testimony, more cross-examination --
 16 MR. MICHELINI: So what's the point
 17 of --
 18 MR. MCGUCKIN: -- then we'll have
 19 rebuttal and surrebuttal. It could go on forever.
 20 And I think that's not appropriate.
 21 MR. MICHELINI: So what's the point
 22 of Mr. Wiser providing a report? Presumably he's
 23 going to provide some kind of the expert opinion
 24 when he's analyzing that testimony. And I'm
 25 entitled to provide my experts and have them testify

1 about the analysis of that testimony in rebuttal to
 2 his report.
 3 MR. MCGUCKIN: And anything new that
 4 he testifies to you will have the opportunity to do
 5 so.
 6 MR. MICHELINI: Well, he's not going
 7 to be looking at anything new typically. He's going
 8 to be looking at the testimony that was given.
 9 MR. MCGUCKIN: We would expect -- I
 10 would expect that to be the case.
 11 MR. MICHELINI: That's right. And,
 12 therefore, I should have the same opportunity with
 13 my experts after I have the report. But we've
 14 argued it. I understand.
 15 MR. MCGUCKIN: Yes, we have.
 16 MR. WINWARD: I have one question
 17 too. As far as I know in the past we've been doing
 18 is the expert would make his report and then you
 19 would do your, or the township, depending who did
 20 the report, would then have the -- after the fact,
 21 do the cross-examination. Now are we going to
 22 follow that procedure now or will he be able to
 23 cross-examine Mr. Wiser as he's doing this report.
 24 MR. MCGUCKIN: Let's be clear,
 25 nobody -- the township has not provided any cross

1 examination of Mr. Michelini's witnesses.
 2 Mr. Michelini has had the opportunity to
 3 cross-examine any witness presented by the township.
 4 There's no lawyer here opposite Mr. Michelini
 5 cross-examining his witnesses. The testimony that
 6 has been presented and the questioning that's been
 7 done has been done by the board and board's
 8 professionals. And that's a little bit different.
 9 So, I think your question relating to Mr. Wiser's
 10 testimony, and I think that's to be decided once it
 11 is going to be heard, how much cross examination you
 12 will permit or authorize --
 13 MR. WINWARD: Correct. But do we
 14 wait until the end?
 15 MR. WISER: I would only request that
 16 I be allowed to present my full report, rather than
 17 getting interrupted.
 18 MR. MICHELINI: I have no objection
 19 to that.
 20 MR. WINWARD: Okay. That's how we've
 21 done it. We'll stick with that procedure.
 22 MR. MICHELINI: For keeping the
 23 hearings as cohesive and short as possible, I have
 24 no objection to waiting until his testimony is done
 25 before I cross-examine him. I will note, however,

1 that in the testimony provided by my experts, they
2 were continuously interrupted especially in the
3 first year of these hearings by Mr. Wiser, sometimes
4 by Mr. McGuckin. And that the nature of the
5 questions that were asked were in the nature of
6 cross-examination. So maybe Mr. McGuckin would say
7 that my witnesses haven't been cross-examined. I
8 take exception to that. You can read the record.
9 There were lots of times when they were trying to
10 present the report and they were interrupted and
11 cross-examined in the middle.

12 Now, I don't think that that's the
13 most efficient way to go. And I also don't think it
14 was appropriate in those circumstances for that to
15 occur. And certainly objected to it then and object
16 to it now, but for the ease of making these
17 proceedings go forward with the least amount of
18 interruption, in terms of Mr. Wiser presenting his
19 report, I think he should present it and then I
20 should cross-examine. I agree with everyone on
21 that. I don't think there's a dispute on that. The
22 issue is whether my rebuttal witnesses come
23 afterwards.

24 MR. MCGUCKIN: Just to be clear for
25 the record. The difference was your expert's

1 reports were handed out after their testimony or as
2 they were beginning testifying, as opposed to the
3 procedure which Mr. Wiser's indicated, and which the
4 township had done as well, with respect to the
5 financial planning, the planner's report and so
6 forth. But that's just a comment for the record.
7 That's it.

8 MR. WINWARD: I say let's deal with
9 the easy issue first. Let's decide when the public
10 should -- when we should hear from the public. Do
11 we want to do that at the very end or do we want to
12 do that at the next meeting? And how much time are
13 we required to advertise? I assume we should put
14 out some kind of notice so the public does know.
15 And is the public South Seaside Park or the
16 entire --

17 MR. MCGUCKIN: This is a public --
18 the public would be any member of the public who
19 wants to comment. I would urge you to have township
20 residents first. There could be people from outside
21 of town that may wish to comment. But you certainly
22 can first have township residents, wherever they may
23 live. And as to notice, I think that's appropriate.
24 There's no requirement for it, but I think we've
25 been doing this for an awful long time, and there's

1 been a lot of issues addressed, and it would be
2 appropriate, I think, for the board to invite public
3 comment from any residents who wish to comment and
4 even, you know, like I said, nonresidents may show
5 up, for all we know.

6 MR. WINWARD: So then we should
7 decide when the timing of that meeting. If it's the
8 next meeting we can decide that now. If it's not,
9 then we don't know how many meetings Mr. Wiser's
10 testimony will take, or cross-examination will take.
11 So, then we would have to --

12 MR. WISER: I would just argue based
13 on the past practice that I've been involved in,
14 that the last testimony, as it were, be from the
15 general public, then -- the last outside testimony
16 be from the general public. So that would be next
17 meeting. Then depending on what the board decides
18 whether I go next or Mr. Michelini's rebuttal
19 witnesses go next. Again, based on previous
20 practice that I've been involved in, I have been the
21 last speaker.

22 MR. WINWARD: How does the board feel
23 about -- Nick, do you have a comment?

24 MR. MACKRES: Go ahead, Mr. Chairman,
25 finish asking your question.

1 MR. WINWARD: No, that is -- my
2 question is, how's the board members feel about when
3 the timing of public notice and when we should have
4 the public speak.

5 MR. MACKRES: Well, for me, I'm
6 requesting that when the public does speak we have
7 for and against the applicant alternating back and
8 forth. And then only new topics or new items coming
9 afterwards, because it could be the same matter, the
10 same issue for 20, 30 people all one side lined up,
11 or the other side.

12 MR. WINWARD: That's a good point
13 because we have had that issue. It hasn't happened
14 much lately in the last few years, but we have had
15 it, like I remember like with the Little League and
16 then there was apartments on Route Nine that got
17 shot down. But to have -- make it clear that after
18 a topic is brought up, then only bring up new topics
19 after that. I think that sounds fair. Although we
20 may give an opportunity for people to voice their --
21 a short, maybe a short opinion, we don't want to
22 like gag anybody or say, hey, you can't speak, but I
23 think it is a good idea if you don't want to beat
24 something, the same topic over and over again.

25 MR. MACKRES: I think that's your

1 purview. Because we've had that before Route 9
 2 traffic and it's the same like six times in a row.
 3 But I am requesting --
 4 MR. WINWARD: That's how we handled
 5 it the last time.
 6 MR. MACKRES: Then it was just
 7 alternating back and forth. If there's no person on
 8 the other side in line, then the other side keeps on
 9 going until somebody shows up. So we'll have to
 10 delineate that.
 11 MR. ORIS: Through the chair.
 12 MR. WINWARD: Yes.
 13 MR. ORIS: I agree with you it might
 14 provide a better balance for the board, but it's
 15 somewhat problematic to decipher who's pro, against,
 16 or neutral in what their comments might be. I would
 17 just suggest to the board, don't try and segregate
 18 it out. I mean, it's going to be people are going
 19 to have an opportunity to speak. They'll sign in
 20 and they'll speak. And so, how that -- the mixture
 21 and how that's presented to the board is based on
 22 when they get here and when they -- and how they
 23 want to speak. And some people may choose not to
 24 speak. They may sign up and everybody else voices
 25 are heard or they have similar thoughts that have

1 been stated and they may not get up to speak anyway
 2 or some people may come up five times. You just
 3 don't know. You won't be able to really gauge that,
 4 so to speak.
 5 MR. WINWARD: That's a good idea.
 6 You're saying have like a sign-in sheet and then
 7 maybe next to their name they can put like a topic.
 8 MR. ORIS: I wouldn't even ask for a
 9 topic. I would just sign in and anybody that would
 10 like to speak on the matter of de-annexation and
 11 that would be the extent of it.
 12 MR. MACKRES: We usually ask, you
 13 know, normally -- this is not normal -- for or
 14 against the applicant. I mean, people kind of know
 15 in a regular application.
 16 MR. ORIS: On a regular application I
 17 doubt -- I don't mean to disagree with you, but I
 18 think that normally the application when the public
 19 is asked to come to the podium, it's just simply to
 20 provide comment, not to provide for or against.
 21 That's what I'm trying to say. They're coming to
 22 the podium to provide comment. I think it kind of
 23 borders I don't -- I don't think you want to
 24 encourage them to take a position. You want to hear
 25 their comment is all.

1 MR. WINWARD: Okay. Brian.
 2 MR. GINGRICH: I think -- I don't see
 3 why we can't use the same format that we use for
 4 everything else. And as far as the people coming to
 5 the mike, put a time limit on it. But this time
 6 mean it, whatever the time limit is and mean it, or
 7 else be here for three years getting through what
 8 people want to say.
 9 MR. WINWARD: We have -- just for the
 10 record we have been here three years.
 11 MR. GINGRICH: I mean three more. I
 12 mean three more. I'm not talking about the past.
 13 I'm talking about if we don't establish some kind of
 14 a time, we'll be here for who knows how long. But,
 15 I mean, everybody says, yeah, okay, we'll do that,
 16 but this time I'm talking about meaning it.
 17 MR. MICHELINI: Well, let's -- I
 18 don't know that we need to go through all that
 19 tonight. You can be guided by your attorney and
 20 have that discussion and announce. I think the
 21 issue is when is the public going to be heard right
 22 now.
 23 MR. WINWARD: I think that's the
 24 issue we need to decide is when they're going to be
 25 heard, not necessarily the procedure.

1 MR. GINGRICH: That's what I'm saying
 2 that should be heard in the same -- at the same
 3 time.
 4 MR. WINWARD: No, I mean, is it going
 5 to be next meeting or last meeting?
 6 MR. GINGRICH: Oh, well.
 7 MR. WINWARD: That's kind of what
 8 we're trying to decide, if we should have them go
 9 next and then Joe.
 10 MR. GINGRICH: Well, you haven't
 11 advertised it enough for them to be next; is that
 12 correct?
 13 MR. WINWARD: We haven't advertised
 14 at all, but --
 15 MR. GINGRICH: Right. But don't you
 16 have to put it in the paper.
 17 MR. WINWARD: He just addressed that.
 18 MR. MCGUCKIN: We don't have to. I
 19 think it's appropriate to advertise it, however.
 20 But we have a month, I mean there's plenty --
 21 MR. MICHELINI: He can announce it
 22 tonight and then put a notice out.
 23 MR. WINWARD: Would we be able to get
 24 like the local paper, I guess the Berkeley times --
 25 MR. MCGUCKIN: Sure.

1 MR. WINWARD: -- to print that out?
 2 Is that appropriate?
 3 MR. MCGUCKIN: The web page, all
 4 that.
 5 MR. WINWARD: Maybe they can have a
 6 neutral article, not influencing, but just state the
 7 facts.
 8 MR. MCGUCKIN: The board will do a
 9 notice saying that anyone wishing to comment on the
 10 issue of de-annexation --
 11 MR. MICHELINI: I would stay away
 12 from articles. I think a notice would be
 13 appropriate.
 14 MR. WINWARD: A notice. Okay.
 15 MR. MICHELINI: As Mr. McGuckin says.
 16 So is that the next meeting or some
 17 other meeting?
 18 MR. MCGUCKIN: Still polling the
 19 board.
 20 MR. WINWARD: I wanted to get some
 21 opinion from each member. Domenick, how do you
 22 feel?
 23 MR. LORELLI: I'm asking, the
 24 question is, should it be the last meeting --
 25 MR. WINWARD: Or the next meeting.

1 MR. LORELLI: -- or the next meeting?
 2 MR. WINWARD: Next month.
 3 MR. LORELLI: I think it should be
 4 the last meeting.
 5 MR. MICHELINI: So it will be the
 6 next meeting? Did I hear that?
 7 (Off the record.)
 8 MR. WINWARD: What did you guys --
 9 how do you feel?
 10 MR. GINGRICH: Last.
 11 MR. WINWARD: Last. Nick?
 12 MR. MACKRES: I'd rather just stick
 13 with -- just what we previously do with the other --
 14 in the past with other cases, other applications.
 15 MR. WINWARD: See, that's a different
 16 story because they're all usually resolved in that
 17 one evening at that one meeting. This has been
 18 ongoing.
 19 MR. MCGUCKIN: Just if I could, in
 20 most planning board applications the -- I think
 21 Mr. Wisser's correct. The applicant goes, the board
 22 professionals make comments, the board asks
 23 questions, the public then is permitted to make
 24 comments, after the comments are done the board and
 25 their professionals usually have a further

1 discussion and make a decision. Sometimes the
 2 applicant gets another chance to say something.
 3 But, realistically, the last decision is the board
 4 and its professionals. That's the last discussion,
 5 after everything else is done, that's the usual
 6 procedure.
 7 MR. WINWARD: So what you're saying
 8 is your position is you think it should be the next
 9 meeting.
 10 MR. MCGUCKIN: I think the public
 11 should go the next meeting. I think Mr. Michelini
 12 should then be given the opportunity to rebut and I
 13 think then the board should hear the matter with
 14 their professionals and make your recommendation.
 15 MR. MACKRES: As we normally do.
 16 MR. GINGRICH: That sounds good.
 17 MR. WINWARD: Next meeting. Okay.
 18 So that's two next. Domenick last. John.
 19 MR. BACCHIONE: I wanted to say
 20 something else before I got to that --
 21 MR. WINWARD: Okay.
 22 MR. BACCHIONE: -- decision.
 23 I want to say that I feel
 24 Mr. Michelini did a thorough professional job
 25 presenting this application to this board. On the

1 note with Mr. Wisser going on and giving his summary
 2 of this whole case, I think it's problematic,
 3 because Mr. Wisser, with all due respect to him, is
 4 not -- doesn't carry all the credentials of all the
 5 people that you may bring in to rebut him, such as,
 6 the accountant you brought in, the -- or the
 7 planner, whomever he was. Mr. Wisser I believe
 8 doesn't carry those credentials. So to be rebutted
 9 by those people, he may not -- and I don't want to
 10 put him at a disadvantage because it wouldn't be
 11 fair to his case. But as far as rebutting Mr. Wisser
 12 with your professionals, I think it's going to be a
 13 problem. You on the other hand can rebut him,
 14 Mr. Michelini. I don't have a problem with that.
 15 But I do think that it's not fair to Mr. Wisser to
 16 have professionals that he's not part of with that
 17 certificate to rebut him.
 18 MR. WISSER: For the record, I am a
 19 licensed planner. And so --
 20 MR. BACCHIONE: Okay. My apologies
 21 then.
 22 MR. WISSER: That's quite all right.
 23 (Off the record.)
 24 MR. BACCHIONE: In regard to the
 25 public speaking, I think the public should go next

1 and then Mr. Wisner should have the last word.
 2 MR. MICHELINI: I understand Mr.
 3 Wisner is a licensed engineer and licensed planner.
 4 MR. WISER: No, just a planner, not
 5 an engineer.
 6 MR. MICHELINI: Okay. Just a
 7 licensed planner. But my answer to that --
 8 MR. MCGUCKIN: Well, Joe, I don't --
 9 the board's kind of making a decision.
 10 MR. MICHELINI: Okay, that's fine.
 11 If you don't want me to respond, you know, but I
 12 have a response to Mr. Bacchione, if you want to
 13 hear it.
 14 MR. MCGUCKIN: Well, that's up to the
 15 board.
 16 MR. MICHELINI: It's a very short
 17 response.
 18 MR. WINWARD: Like I said, we get the
 19 easy issue done first and then we'll address that
 20 because I want to get all the comments from all the
 21 board members.
 22 MR. MICHELINI: The short response is
 23 if Mr. Wisner's not an expert, then he shouldn't be
 24 commenting about those areas in the first place.
 25 That would be my response. But if he goes ahead and

1 comments, then he's subject to not only
 2 cross-examination but rebuttal witnesses.
 3 Thank you.
 4 MR. BACCHIONE: Wait. Then I have a
 5 response to that response. So then we should bring
 6 back our professionals in those regards to rebut?
 7 MR. MICHELINI: If you want to.
 8 MR. BACCHIONE: Your professionals
 9 rebut of Mr. Wisner. I mean, this is what
 10 Mr. McGuckin's been trying to say. We can go on and
 11 on, you know, for a while.
 12 MR. MICHELINI: No, you cut it off
 13 after surrebuttal, which is normally what's done.
 14 MR. BACCHIONE: I mean, I guess
 15 you're looking for the edge. And I understand why.
 16 I get it.
 17 MR. MICHELINI: It's because I have
 18 the burden of proof, and that's the way things are
 19 by analogy set up in a court, that's exactly how
 20 they're set up in a court.
 21 MR. BACCHIONE: I understand. But I
 22 think we've heard a lot of the testimony. I think
 23 you put it on in a professional way, as I said.
 24 MR. MICHELINI: Thank you.
 25 MR. BACCHIONE: And I think it's

1 something that we all on this board we had enough
 2 of. I don't know what else we can listen to about
 3 the reason why South Seaside Park should de-annex or
 4 why it's a benefit to them. Unless there's
 5 something new, like Mr. McGuckin has mentioned, I
 6 feel that Mr. Wisner shouldn't be rebutted, that's my
 7 case.
 8 MR. WINWARD: Okay.
 9 MR. MICHELINI: My objection stands
 10 and I'm not going to comment anymore.
 11 MR. WINWARD: We have all this on the
 12 record now. Fred.
 13 MR. BELL: Next meeting.
 14 MR. WINWARD: Fred. And then Red.
 15 MR. CALLAHAN: Next meeting.
 16 MR. WINWARD: Next meeting. Okay. I
 17 was kind of in favor of that myself, so looks like
 18 we'll do that. So, Kelly, to confer with management
 19 and see what -- how the best way to proceed with
 20 that is, I guess, like Greg had suggested, public
 21 notice, just to make sure, you know, that it's out
 22 there. I would suggest maybe Berkeley times. I
 23 don't know about any other periodicals.
 24 MR. MCGUCKIN: We'll have to think
 25 about the township official newspapers or we'll

1 discuss where it could be done.
 2 MR. WISER: I would also recommend,
 3 just because of some of the testimony we heard, the
 4 Berkeley Times does not get delivered over to the
 5 island that whatever periodicals or newspapers or
 6 newsletters, or whatever you want to call them, that
 7 you do, that the folks on the island do get receipt
 8 of the notice.
 9 MR. MICHELINI: And then thereafter,
 10 after the public, the next meeting would be whom?
 11 MR. MCGUCKIN: Rebuttal.
 12 MR. MICHELINI: Rebuttal witnesses.
 13 So whatever rebuttal witnesses I have, bring them at
 14 the next meeting.
 15 MR. MCGUCKIN: Yeah, and we'll
 16 know -- I assume the public will be done in one
 17 night, but we never know.
 18 MR. MICHELINI: I would assume so
 19 too.
 20 MR. MCGUCKIN: It may be a half hour.
 21 Maybe we'll be surprised and nobody shows up.
 22 MR. MICHELINI: And then after my
 23 rebuttal witnesses, then Mr. Wisner and
 24 cross-examination?
 25 MR. MCGUCKIN: That's correct.

1 MR. MICHELINI: Thank you.
 2 MR. WINWARD: Is that what we're
 3 deciding then, public, Mr. Michelini, then
 4 Mr. Wiser?
 5 MR. MCGUCKIN: That's my
 6 understanding from the discussions of the board.
 7 MR. WINWARD: Then if there is
 8 anything new or earth shattering, then you would
 9 have the opportunity. Is that speculation or is
 10 your report probably going to be in the length of
 11 it? Are we looking at a phone book? Manhattan
 12 phone book?
 13 MR. WISER: We're looking at a phone
 14 book.
 15 I did actually have one question.
 16 And maybe it's just something to think about as
 17 opposed to having an answer tonight. But in terms
 18 of how my presentation goes, do you want -- does the
 19 board wish a PowerPoint presentation or me -- I
 20 certainly wouldn't sit there and read the whole
 21 report, but me just providing a verbal summary? How
 22 do you want that presentation to go?
 23 MR. WINWARD: I will say if you do
 24 read every word you're going to have to bring an
 25 adequate supply of No Dose.

1 MR. WISER: In any event.
 2 MR. WINWARD: I think the PowerPoint
 3 actually sounds good because that is the same as a
 4 summary, just that you'd have to have some keep type
 5 of media, a screen or I don't know, do we have a
 6 screen?
 7 MR. WISER: I don't know how you
 8 typically do it in this room.
 9 MR. WINWARD: Usually we don't. We
 10 haven't. Applications usually we bring the board
 11 out -- no, they bring their own board, easel and
 12 their own large --
 13 MR. MCGUCKIN: If you want to do a
 14 PowerPoint it's on you.
 15 MR. WISER: I want to do what the
 16 board wants me to do.
 17 MR. WINWARD: The PowerPoint might be
 18 a great idea, but you'd have to have something that
 19 could be visible, not just a laptop screen.
 20 MR. WISER: Oh, no, obviously.
 21 MR. WINWARD: It would have to be
 22 some sort of --
 23 MR. WISER: Why don't we -- not we.
 24 Why doesn't the board think about it. We'll revisit
 25 it maybe next week or next month or, you know, when

1 it's --
 2 MR. WINWARD: The most appropriate
 3 thing would be have a copy of the report.
 4 MR. WISER: You will all have.
 5 MR. WINWARD: That would be nice.
 6 And then the summary, PowerPoint and a summary kind
 7 of go hand-in-hand and a PowerPoint's nice because
 8 its visual, but, like I said, there is some
 9 logistics of how to effectively present it here.
 10 You have to have a screen and a way of projecting
 11 it, otherwise -- unless you did print it out
 12 PowerPoints by hand, you know, like 20 pages and
 13 handed them out to, that's another idea. So, that's
 14 something you have to kind of decide which is going
 15 to be --
 16 MR. WISER: That's fine.
 17 MR. WINWARD: -- the most effective
 18 way for you to present it.
 19 MR. WISER: That's fine then.
 20 MR. WINWARD: And you've probably
 21 done more of this, where none of us have any
 22 experience with this previously.
 23 MR. WISER: Thank you.
 24 MR. WINWARD: Anybody else have any
 25 comments from the board?

1 MR. CALLAHAN: Yeah. Mr. Wiser is
 2 offering his opinion, right, in his report?
 3 MR. MCGUCKIN: He's -- my
 4 understanding is he's going to give a summary of all
 5 the witnesses, a summary of all the testimony, the
 6 exhibits and a recommendation to the board as well.
 7 MR. CALLAHAN: His opinion of what
 8 happened, that's all I'm saying. Then Mr. Michelini
 9 should have a chance to rebut a particular point or
 10 two if he doesn't believe --
 11 MR. MCGUCKIN: If he presents
 12 anything new that's not already been subject of
 13 testimony and cross-examination, something new, he
 14 comes up in his report and brings up something
 15 that's not been discussed yet, Mr. Michelini would
 16 have another opportunity to present evidence on that
 17 issue. But before that he would have a chance to
 18 review the report, cross-examination Mr. Wiser. And
 19 if there's nothing new in there, then he would not.
 20 MR. CALLAHAN: The only thing that
 21 I'm saying is who knows what's new? After three
 22 years we probably forget an awful lot.
 23 MR. MCGUCKIN: I'm sure Mr. Michelini
 24 will know and I know Mr. Wiser will and I'm pretty
 25 sure I will. But, yes, I'm sure if Mr. Michelini

1 thinks there's something new in there, he'll be glad
2 to tell us.

3 MR. WINWARD: I think he would be the
4 first to let us know.

5 MR. MICHELINI: My position is if he
6 expresses an opinion, that would be new, and
7 everything based on it would be fair game for
8 rebuttal witness, but the board has already ruled on
9 that.

10 MR. CALLAHAN: Another thing, how
11 about this, as Brian suggested, five minutes on
12 clock there, when the public comes in there.

13 MR. MCGUCKIN: The concern I have on
14 that, to be quite frank, is we've given everybody
15 and any person who's testified as much time as they
16 want to present their points and to limit the
17 public, while not limiting everybody else, to me is
18 problematic. I agree on repetition. I agree on
19 asking them to keep it short and recommend five
20 minutes, but if you require it, I think that's a
21 little bit unfair when we've had people testify for
22 two, three, four meetings.

23 MR. CALLAHAN: Okay.

24 MR. MCGUCKIN: And I just think it
25 might not be right.

1 MR. CALLAHAN: Okay.

2 MR. WINWARD: We'll just handle it
3 like we did previously, that apartments on
4 Route Nine, you know, we had 42 people wanted to say
5 the same thing about traffic on Route Nine. I said
6 we get it, you know, it's not necessary to, you
7 know. And I think all of us were in agreement about
8 the traffic on Route Nine, nobody likes it.

9 And so, we'll just have to handle
10 that as the time comes if there's -- like, for
11 example, the drive from South Seaside Park to town
12 hall, you know, we know it is what it is and -- but
13 I don't think we should put a time limit on how
14 people speak or have a Scrabble egg timer or
15 whatever, because, you know, there's going to be --
16 there could be -- I don't know what to anticipate,
17 but there could be some passionate testimony. On
18 the other hand, we might be worrying about nothing.
19 Maybe nobody will come. But you got to give the
20 public the opportunity.

21 MR. MCGUCKIN: I have one question of
22 Mr. Michelini to hopefully avoid a problem later.
23 You represent the petitioners.

24 MR. MICHELINI: Correct.

25 MR. MCGUCKIN: So, if members who are

1 petitioners appear to testify, I'm not so sure the
2 board should permit that to occur, since you've
3 represented the petitioners and presented your case
4 and I don't want to have a problem that night. So I
5 don't know your thoughts on that. We can talk about
6 it later.

7 MR. MICHELINI: We'll talk about
8 that. I think we can probably work that out.

9 MR. MCGUCKIN: All right.

10 MR. BELL: Through the chair. My
11 question is for Mr. Wiser. Then your report is more
12 of a review versus an opinion?

13 MR. WISER: I think it's probably
14 both. What I'm going to attempt to do is to present
15 the issues that were testified to over the course of
16 this time. And then provide my opinion thoughts on
17 the matter.

18 MR. BELL: Thank you.

19 MR. WINWARD: Anybody else have any
20 questions, comments, observations?

21 MR. BELL: Will it be done by
22 Christmas?

23 MR. WINWARD: Be a nice Christmas
24 present. You didn't say Christmas of what year
25 though. I remember making that joke back in 2015.

1 MR. CALLAHAN: It's not that
2 farfetched.

3 MR. WINWARD: So --

4 MR. MCGUCKIN: I think that's it.

5 MR. WINWARD: -- have we discussed
6 all the matters? So in that case. Do we need to do
7 any public opinion tonight?

8 MR. MCGUCKIN: You don't, but -- I
9 wouldn't take any testimony on this issue, on the
10 board, on this application, but if you want to open
11 to the public for anything else.

12 MR. WINWARD: Is anybody here for
13 anything else other than South Seaside Park? Seeing
14 there is none --

15 MR. MACKRES: Mr. Chairman, I have a
16 question on the advertisement and the notice. I'm
17 sorry. The applicant -- we advertise and we bill
18 the applicant as we normally would? Because we said
19 a lot of we's.

20 MR. MCGUCKIN: No, we do not. This
21 is not an application where there is an escrow
22 posted. The township pays the freight on the
23 township side. The applicant pays their attorney
24 and that's it. So any discussion of where we're
25 advertising, so forth, is on Berkeley Township. And

1 actually -- but I think it's appropriate for the
2 board to spend that money to advise the public that
3 this is their chance after all these hearings.

4 MR. MICHELINI: All right. Thank
5 you.

6 MR. WINWARD: Okay. Thank you.

7 MR. MICHELINI: See you next month.

8 MR. WINWARD: Yes. Seeing there is
9 nothing else.

10 MR. CALLAHAN: I so move.

11 MR. WINWARD: Okay. All in favor of
12 adjournment.

13 ALL: Aye.

14 (Whereupon, the meeting was
15 adjourned.)

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C E R T I F I C A T E

I, LINDA SULLIVAN-HILL, a Notary
Public and Certified Court Reporter of the State of
New Jersey, do hereby certify that the foregoing is
a true and accurate transcript of the proceedings as
taken stenographically by and before me at the time,
place and on the date hereinbefore set forth.

~~Notary Public of the State of New Jersey~~
My Commission expires January 26, 2021

Dated: August 23, 2018

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