

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 1, 2019
6:10 p.m.

10 B E F O R E:

- 11 Robert Winward, Chairman
- 12 Domenick Lopelli, Member
- 13 Brian Gindrich, Member
- 14 John A. Saccone, Councilman
- 15 Dick Mackles, Member
- 16 Richard Callaban, Member
- 17 Frederick Bell, Member
- 18 Jack Wiegartner, Member

19 -----
20 LINDA SULLIVAN-HILL & ASSOCIATES
21 CERTIFIED COURT REPORTERS
22 46 SOUTH CAREVIEW DRIVE
23 JACKSON, NEW JERSEY 08527
24 (732) 833-0001
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I N D E X

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3	NAME OF WITNESS	PAGE
4	STUART WISER	4
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1 APPEARANCES:

2 DASTI MURPHY, MCGUCKIN, ULAKY,
3 CHERKOS & CONNORS, ESQS.
4 620 W. Lacey Road
5 Forked River, New Jersey 08731
6 BY: MARTIN J. BUCKLEY, ESQ.
7 Attorneys for the Board

8 O'MALLEY, SURMAN & MICHELINI, ESQS.
9 17 Beaverson 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 Orts, Planner

1 MR. WINWARD: So, now the moment
2 we've all been waiting for. So, Mr. Stu Wiser, do
3 you want to continue your presentation from last
4 meeting for the South Seaside Park Homeowners and
5 Voters Association de-annexation petition hearing?
6 MR. WISER: Yes. Can everybody hear
7 with the mike? Is it on?
8 (Off the record.)
9 MR. WISER: If you can't hear me,
10 just let me know.
11 First of all, with apologies to those
12 of you who are wearing the jackets, I would ask, if
13 you don't mind, I'd like to go a little more casual
14 this evening, sort of warm.
15 And I also -- so, for the record, my
16 name is Stuart Wiser. I am the vice president of
17 planning and environmental services for
18 ARH Associates. I've been with you here since the
19 beginning. And, yes, I am still under oath.
20 What I would like to do, I want to
21 apologize. Last time, we had some technical
22 difficulties in terms of my presentation. We had --
23 I was doing it electronically. It got corrupted.
24 So, what I'd like to do is to go back and start
25 over. I went and tried to repair it and I could

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1 repair everything up to the public works issues.
 2 So, I'd like to go over the public works issues
 3 again, and then continue on. I have everything on
 4 hard copy now. So, we should not have those -- we
 5 won't have those issues again.

6 So, with respect to public works
 7 issues. Petitioners contend that South Seaside Park
 8 is not well served by the township's Department of
 9 Public Works. They state that the roads in
 10 South Seaside Park are not cleaned or repaved. The
 11 roads are not cleared of sand after a storm.
 12 South Seaside Park did not receive automatic
 13 robo cans for recycling, maybe also for garbage.
 14 Trash does not get picked up on the normal pickup
 15 day. Bulk refuse put out for pickup does not get
 16 picked up on the normal pickup day or doesn't get
 17 picked up the day it's supposed to be collected,
 18 despite multiple calls to schedule a pickup.

19 The township doesn't clean the beach
 20 as often or as well as Seaside Park. And according
 21 to petitioners, the beach is supposed to be cleaned
 22 two days a week but it only gets cleaned one day a
 23 week. Seaside Park, on the alternative, cleans
 24 their beach every day.

25 Another complaint is that the

1 bayfront in South Seaside Park is unmaintained with
 2 debris, asphalt, wood, tar, cement, concrete,
 3 macadam, rusty pipes from illegal dumping along the
 4 water's edge and in the bay itself so that you can't
 5 walk barefoot.

6 And what I'd like to do, we do have
 7 some pictures of what the petitioners submitted.
 8 Let me -- these are clipped from the board that the
 9 petitioners have submitted. So, you can see the
 10 conditions that they are asserting, there and there
 11 (indicating). There are unkept vegetative areas on
 12 the land, that's the pictures there. And despite
 13 numerous complaints, nothing gets done. While,
 14 conversely, Seaside Park has a clean,
 15 well-maintained sandy beachfront beach -- sandy
 16 bayfront beach with docks, swings and other
 17 amenities that visitors can enjoy without fear of
 18 injury. And these are some pictures that are part
 19 of the petitioners' exhibits. Petitioners contend
 20 that this is what can be done, what Seaside Park has
 21 done and what Berkeley Township should be doing.

22 Further, petitioners contend that,
 23 unlike the bayfront in South Seaside Park, the bay
 24 beach in Seaside Park is guarded with lifeguards.
 25 Petitioners offered a comparison of the bay beach in

1 South Seaside Park and the bay beaches on mainland
 2 Berkeley Township. While the mainland portion of
 3 the township has a number of clean, safe,
 4 well-maintained bayside beaches and parks with
 5 amenities, such as Butler Boulevard Park,
 6 William Dudley Park, Allen Road Park, Amherst Drive
 7 Park, and that was -- that's it, there are benches
 8 and picnic tables, play equipment and athletic
 9 facilities, pavilions, fishing piers, boat docks and
 10 off-street parking, the bay beach in South Seaside
 11 Park has none of these. And access to the bay
 12 itself is difficult, at best.

13 Finally, petitioners contend that
 14 snow removal doesn't take place, that there have
 15 been times when streets have not been plowed for
 16 three to five days. And while the streets in,
 17 South -- while the streets in South Seaside Park --
 18 in Seaside Park, pardon me, are very well plowed and
 19 cleaned. And they submitted this picture
 20 (indicating), which shows a road in South Seaside
 21 Park, and that's at the top of the photo, and the
 22 roads in Seaside Park at the bottom of the photos,
 23 which are clean.

24 Petitioners' testimony is that the
 25 township doesn't clean the streets in South Seaside

1 Park -- no. We find that petitioners' testimony
 2 that the township does not clean the streets in
 3 South Seaside Park is in conflict with the testimony
 4 of the township's director of public works/principal
 5 public works manager that they do. To support his
 6 assertion, the director submitted a schedule that
 7 depicts the roads in each section of the township
 8 and that they are cleaned four times a year. The
 9 director testified that the streets in South Seaside
 10 Park are cleaned after storms when necessary and
 11 that South Seaside Park is treated no differently
 12 than other sections of the township. Without
 13 corroborating evidence, however, there's no way to
 14 determine the validity of petitioners' assertion or
 15 the township's response. So, with that being said,
 16 we find that it is likely that there are times when
 17 the township does not clean its streets in
 18 South Seaside Park, according to the publicized
 19 schedule.

20 Other than two photos related to
 21 delay in bulk pickup and one picture depicting sand
 22 along the sides of 20th Avenue, the record contains
 23 no evidence to suggest that the streets in
 24 South Seaside Park are litter strewn or otherwise
 25 suffer from a lack of street sweeping.

1 Do we need to pause?
 2 MR. BACCHIONE: Mr. Chairman, I just
 3 have to excuse myself for a second.
 4 MR. WINWARD: Okay.
 5 MR. WISER: Conventional wisdom in
 6 municipal government hold that nobody thinks their
 7 streets are cleaned often enough. Without
 8 corroborating evidence, there really is no way for
 9 us to determine the validity of the petitioners'
 10 assertion. And, again, the record contains no
 11 evidence to suggest that -- I'm sorry -- the record
 12 also contains no evidence to suggest that
 13 Seaside Park would do a better job than
 14 Berkeley Township in cleaning the roads in
 15 South Seaside Park should de-annexation occur.
 16 In response to petitioners' assertion
 17 that the roads in South Seaside Park don't get
 18 repaved, the representative from the township
 19 engineer's office testified that the length of roads
 20 in South Seaside Park is about 2.5 percent of all
 21 the roads in the township. The length of local
 22 roads, township owned roads, that are paved in
 23 South Seaside Park since 2012 equates to
 24 approximately 27 percent of the local roads in
 25 South Seaside Park. The length of local roads paved

1 on the mainland and Pelican Island since 2012
 2 equates to approximately nine percent of the local
 3 roads in these two sections, in these sections of
 4 the township. So, between 2012 and 2017, the road
 5 miles repaved in South Seaside Park was 2.8 times,
 6 2.8 times the road miles paved for the balance of
 7 the township.
 8 The engineer also testified that
 9 between 2012 and 2017, the township funded the
 10 resurfacing of approximately 27 percent of the
 11 roadways in South Seaside Park and approximately
 12 nine percent of the roadways in the remaining
 13 portion of the township. And this 27 percent does
 14 not take into consideration local roads in
 15 South Seaside Park that were paved by other entities
 16 or were paved using non-township funds.
 17 In response to the complaint that
 18 20th Avenue has not been repaved in 50 years. These
 19 are pictures that we took in -- of 20th Avenue in
 20 February of 2016. These photographs reveal the
 21 repaving of Central Avenue and its transition into
 22 20th, which is here (indicating). The photos show
 23 spot repairs for the remainder of the street, as
 24 well as a top course, which while oil-and-stone,
 25 appears to be generally in acceptable condition.

1 MR. GINGRICH: Excuse me, everyone.
 2 MR. CALLAHAN: Good evening, sir.
 3 MR. WISER: Let the record reflect
 4 that Mr. Gingrich is now with us.
 5 MR. MICHELINI: Just one point,
 6 Joseph Michelini appearing on behalf of the petition
 7 signers. Is this already in evidence?
 8 MR. WISER: Yeah, it's in our report.
 9 MR. MICHELINI: It's in your report,
 10 but is -- the photo's have never been marked in
 11 evidence, correct?
 12 MR. WISER: Well, to the extent that
 13 the report's been -- they have not independently
 14 been marked.
 15 MR. MICHELINI: They have not been
 16 independently marked. So, you're referring to
 17 something in your report but none of them have been
 18 marked?
 19 MR. WISER: Yes.
 20 MR. MICHELINI: And who took the
 21 pictures?
 22 MR. WISER: I did.
 23 So, again, the photos show spot
 24 repairs for the remainder of the street, as well as
 25 a top course, which while oil-and-stone, is

1 generally in acceptable condition.
 2 The next two slides are photographs
 3 that were taken in October of 2018, of the section
 4 of 20th Avenue referenced by Mr. Schwartz. These, I
 5 believe, were taken by Mr. Oris; is that correct?
 6 MR. ORIS: That's correct.
 7 MR. WISER: And these were not --
 8 these similarly were in the report but were not
 9 in -- entered into evidence independently. They
 10 show relatively recent utility work, the replacement
 11 of gas mains by the gas company along this
 12 right-of-way. While this work has left 20th Avenue
 13 in a deteriorated condition, the township engineer's
 14 office reports that the pre-utility work condition
 15 of the pavement was fair and serviceable. And that
 16 this condition remains where the utility work has
 17 not taken place.
 18 The township administrator testified
 19 that the decision as to whether or not to repave a
 20 road is based on conditions and traffic and not the
 21 amount of time since the last repavement. The
 22 administrator further testified that the township's
 23 budgets -- that the township budgets four to
 24 five million dollars yearly for its road program,
 25 and that South Seaside Park, when compared to other

1 areas of the township, has received a substantially
2 higher proportion of that budget.

3 With regard to South Seaside Park not
4 receiving automatic robo cans for recycling. The
5 township director of sanitation and recycling
6 testified that the township provided robo cans for
7 both garbage and recycling and for all of
8 South Seaside Park, except for The Lanes, Midway
9 Beach and Miller's Camp. And he testified that the
10 only reason that these areas don't have robo cans is
11 that the width of the roadways and the low hanging
12 utility lines servicing these areas precludes access
13 by the bigger trucks that are used to collect and
14 empty these cans.

15 In regard to petitioners' testimony that the
16 trash is not picked up as per the township's public
17 schedule -- published schedule, the township's
18 sanitation and recycling director testified that the
19 only time it would not be picked up on schedule, is
20 if there's a storm when we push it off, when they
21 push it off. If there's a holiday, it's picked up
22 the next day. He testified that South Seaside Park
23 is picked up twice a week in the summer. And that
24 no other part of the township does that, has that
25 service for garbage. He testified that recycling is

1 picked up every two weeks, regardless of the time of
2 year. And that at the request of South Seaside
3 Park, this happens on Mondays. Apparently, before
4 that request, it happened on a different day. The
5 weather and, I guess, the seagulls caused a problem
6 there, so the township responded and moved the day
7 to Mondays.

8 Importantly, if a holiday falls on a Monday,
9 South Seaside Park gets picked up the next day,
10 which is a Tuesday. The rest of the township has to
11 wait for Saturday. So, they're actually --
12 South Seaside Park is actually getting their garbage
13 picked up quicker than other sections of the
14 township. The township's sanitation and recycling
15 director further testified that bulk trash pickup
16 is -- bulk trash is picked up four times a year.
17 There is also a call-in procedure whereby anything
18 that's scheduled is picked up on Tuesday in March,
19 June, September and December. If a bulk pickup item
20 was missed on a scheduled pickup day, it would get
21 picked up within the week, but not necessarily the
22 next day.

23 In response to assertions that Berkeley
24 Township does not clean the beach as often or as
25 well as Seaside Park, the township's officials in

1 charge of the beach testified that the beach is
2 raked at least once a week, sometimes twice a week,
3 if needed, throughout the summer or throughout the
4 tourist season, and that debris from major storms or
5 otherwise is picked up throughout the year.
6 Additionally, garbage cans at the beach are picked
7 up every day during the summer. And at least three
8 times a week during the off season.

9 In response to petitioners' request for a bay
10 beach that is more -- that more resembles the
11 facilities in Seaside Park, township superintendent
12 of parks and recreation testified that this area is
13 an area of the water line with natural growth. It's
14 about ten-foot wide spit of land, it is a -- an
15 about ten-foot wide spit of land between the road
16 and the water. It's not intended to be a
17 recreational beach. There's no room, in his words,
18 to do anything like that. This characterization was
19 reinforced by the township planner, who reported
20 that the area is comprised of privately owned
21 riparian lands -- or riparian grants, tidelands
22 areas of the Barnegat Bay that are owned by the
23 State of New Jersey, and the Bayview Avenue Street
24 end, which is a right-of-way reserved for accessing
25 utilities. The township has no control of the area

1 for use as a beach or for recreation. The area
2 isn't a beach, but it is a natural shoreline of the
3 Barnegat Bay. From a technical point of view, it's
4 not on the township's recreation and open space
5 inventory, which is filed with the DEP. It's not
6 open space, according to him. It's not recreation.
7 It's not maintained or intended to be maintained as
8 recreation. And that is why the beach isn't
9 guarded.

10 In response to petitioners' complaints about
11 debris from illegal dumping along the water's edge
12 and in the bay so that one can't walk in the bay
13 barefoot. The superintendent of parks and
14 recreation testified that the township is
15 responsible for the curb to the water, emptying
16 garbage cans, removing debris and policing the area,
17 which he claims they do on a regular basis, but he
18 does not have jurisdiction to go into the water to
19 do cleanup. When specifically asked about the
20 material on the land at the bay beach, the
21 superin -- and those were the pictures that we
22 showed earlier -- the superintendent testified that
23 the beaches in South Seaside Park are patrolled
24 three times a week in the off season and daily in
25 the tourist season. And that they, meaning the

1 Department of Public Works, would respond to
2 complaints if any were made.
3 The township's supervisor of parks and
4 beaches testified that in the off season months, his
5 department routinely cleans the refuse, checks the
6 beaches and the bayfront and empties the cans. And
7 that staff is instructed to police the debris. But
8 if it's high tide when they go over there, they may
9 not be able to see this debris, which is in the
10 water or the beach below the tide line. That being
11 said, the supervisor of parks and beaches
12 acknowledged that the debris depicted in those
13 pictures was unacceptable. And that if he observed
14 these conditions, he would direct his staff to clean
15 it up.

16 With regard to what was referred to as unkept
17 vegetation areas on the uplands east of the
18 bayfront, the supervisor of parks and beaches
19 testified that it would be trimmed if brought to his
20 attention.

21 In response to petitioners' assertions that
22 the roads in South Seaside Park do not get plowed,
23 the township supervisor of parks and beaches
24 testified that the township assigns two dump trucks
25 fitted with plows and a contracted front end loader

1 to South Seaside Park and Pelican Island for the
2 duration of the weather event. The loader is
3 pre-positioned in South Seaside Park prior to the
4 event, the dump trucks are assigned from the
5 township's public works facility on the mainland
6 prior to them being dispatched. The process is for
7 the township to wait until four to five inches of
8 snow has accumulated and the snow has stopped before
9 they commence plowing operations. And they plow a
10 section until it's done, even if it has to be plowed
11 two or three times. He testified that you get a
12 four-inch snowstorm, a 12-inch snowstorm, 20-inch
13 snowstorm, it's repetitious, you keep going back and
14 forth over the same area. That makes it time
15 consuming.

16 Township wide, major roadways are plowed
17 first, followed by secondary roadways. However,
18 this is not the case, according to him, for
19 South Seaside Park, all the streets get plowed at
20 once. When asked to comment about the petitioners'
21 photo, that we showed you before that showed the
22 streets in South Seaside Park filled with snow and
23 the streets in Seaside Park being cleared, the
24 township supervisor of parks and beaches testified
25 that the only thing he could see to cause that is

1 equipment breakdowns, which he says would slow the
2 process down.

3 So, all of that being said, the issue before
4 you as the planning board, is -- with respect to
5 public works -- is whether or not the township
6 provides adequate service to the residents of
7 South Seaside Park.

8 Based on all of the testimony we heard and
9 the exhibits, we find that the record does not
10 support petitioners' assertion that the township
11 does not repave the roads in South Seaside Park.
12 While petitioners assert -- excuse me -- that the
13 roads in the area are not repaved, the only specific
14 road called into question was 20th between Central
15 and the beach. The site visit conducted relatively
16 soon after that testimony, which were the pictures
17 that I took, revealed a roadway surface that had
18 been patched in places but otherwise appeared to be
19 in acceptable condition. The October 2018 site
20 visit to 20th Avenue revealed relatively recent
21 subsurface utility work, which left the cartway in
22 need of repaving.

23 The record contains no evidence to suggest
24 that road repaving statistics provided by the
25 township engineer were inaccurate. How long it has

1 been since a particular road has been repaved is of
2 no moment to this de-annexation analysis. At issue
3 is whether or not the roads in South Seaside Park
4 are safe, drivable and well maintained. The
5 roadways in South Seaside Park do appear safe,
6 drivable and well maintained. Also, the record
7 contains no evidence to suggest that Seaside Park
8 would do a better job than the township in paving
9 roads in South Seaside Park should de-annexation
10 occur.

11 With regard to refuse and recycling
12 collection. Despite the testimony from the township
13 to the contrary, it is likely that there are
14 occasions when the township does not pick up refuse
15 or recycling according to the published schedule,
16 and we understand that this would lead to
17 frustration and aggravation on the part of the
18 petitioners. At issue is not that these instances
19 occur, but whether they occur often enough to
20 evidence a pattern of neglect, lack of service or
21 otherwise support a basis for de-annexation. The
22 record reflects that the township recognizes the
23 special needs of South Seaside Park, and has
24 attempted to accommodate those needs by pickups that
25 are more frequent in the tourist season. And more

1 timely when holidays fall on pickup days, than for
2 the balance of the township.

3 Petitioners' testimony regarding
4 South Seaside Park not being provided with robo cans
5 was incomplete. According to the testimony, cans
6 were provided, except for the streets that were too
7 narrow for the robo can collection truck to access.
8 The fact that some residents of South Seaside Park
9 didn't get robo cans appears to be the result of the
10 particular streets where they live and is unrelated
11 to their South Seaside Park residency. The record
12 contains no evidence to suggest that Seaside Park
13 would do a better job than the township in
14 collecting refuse and recycling should -- in
15 South Seaside Park, should de-annexation occur.

16 The fact that Seaside Park may clean its
17 beach more often than the township cleans the White
18 Sands Beach is of no moment to the current
19 de-annexation discussion. At issue is whether or
20 not the township's beach cleaning efforts are
21 sufficient to keep White Sands Beach clean. Given
22 the testimony and exhibits offered by petitioners to
23 support their contention that the township doesn't
24 clean or maintain the bay beach in South Seaside
25 Park, petitioners would have undoubtedly submitted

1 evidence to substantiate similar conditions at White
2 Sands Beach if those conditions existed. The record
3 contains no evidence to suggest that White Sands
4 Beach requires cleaning beyond that provided to the
5 township, nor does it contain evidence to suggest
6 that Seaside Park would do a better job than
7 Berkeley Township in cleaning the beach, should
8 de-annexation occur.

9 The bay beach, as we just discussed, in
10 South Seaside Park, is a natural shoreline that is
11 not intended to be a beach for recreation purposes.
12 Even if the township desired to designate this area
13 for recreation, it is not owned or controlled by the
14 township. And it is too narrow to accommodate the
15 types of recreation facilities that have been
16 created along the bay in Seaside Park, where the
17 land is borough owned and much wider. Petitioners'
18 suggestion that the public should be permitted to
19 swim at an unprotected bay beach, we find really is
20 reckless and detrimental to public safety.

21 That being said, petitioners' assertion that
22 the bayfront in South Seaside Park is not cared for
23 is not without merit. While we accept the
24 township's testimony that the condition of the area
25 is due to the tides and maybe illegal dumping, we do

1 not accept -- we do not accept that these conditions
2 would persist if the area was policed as often as
3 they testified it was. And while we recognize that
4 the township personnel may have difficulty going
5 into the water to police the debris and that they
6 may not have jurisdiction to clean in the water,
7 this rationale doesn't -- does not extend to the
8 items on the land. While township personnel clean
9 the bayfront when issues are brought to their
10 attention, and that's their testimony, the residents
11 of South Seaside Park would not have to rely on
12 complaints if the area was policed as often as was
13 testified. The record, again, contains no evidence
14 to suggest that Seaside Park would do a better job
15 than the township in policing the bayfront, should
16 de-annexation occur.

17 With regard to snow removal.
18 Conventional wisdom in municipal government holds
19 that nobody thinks their streets are plowed quickly
20 enough. Given the testimony that the township wide
21 plowing operations don't start until four to five
22 inches of snow has accumulated, and that depending
23 on the snow level, it could take hours to do one
24 pass through all of South Seaside Park, it is not
25 surprising to us that petitioners feel that their

1 streets are not cleared of snow in a timely manner.
2 While the photo that we showed earlier presented by
3 the petitioners shows a portion of Bayview Avenue in
4 Seaside Park as being well plowed and clean, and the
5 portion in South Seaside Park not being plowed, the
6 portion of Bayview Avenue in Seaside Park is a
7 county road plowed by Ocean County, and the portion
8 in South Seaside Park is a municipal road plowed by
9 Berkeley Township.

10 The record contains no evidence to
11 suggest that the municipal roads in Seaside Park are
12 plowed any better or more timely than the municipal
13 roads in South Seaside Park. Absent Ocean County
14 taking jurisdiction over the portion of Bayview
15 Avenue in South Seaside Park, the record contains no
16 evidence that Bayview Avenue or any other road in
17 South Seaside Park would be plowed any better or
18 more timely, should de-annexation occur.

19 The nine storms cited by petitioners
20 where plowing has been an issue are ranked second
21 through 57th on the NOA's, the National Oceanic and
22 Atmospheric Administration's northeast snow plow --
23 snowfall, pardon me, impact scale, which is designed
24 to rank high impact snowstorms which have large
25 areas of ten plus inches of snow accumulation.

1 Given the more than ten inches of accumulation of
2 these storms, it should surprise nobody that the
3 storms were not cleaned as quickly as -- the streets
4 were not cleaned as quickly as petitioners would
5 have liked. The record contains no evidence to
6 suggest that the township efforts in plowing snow
7 for more pedestrian storms is lacking, from lesser
8 storms.

9 As we talked about for other aspects
10 of petitioners' complaints, the court -- there are
11 mechanisms short of de-annexation to address the
12 concerns of petitioners. The township could enter
13 into one or more interlocal agreements with
14 Seaside Park, whereby Seaside Park would clean the
15 streets in South Seaside Park. Seaside Park could
16 pave the streets as part of a joint road program.
17 Seaside Park could pick up refuse, recycling and/or
18 bulk items in South Seaside Park. Such a mechanism
19 could include regular pickup or could be an on call
20 service used only when the township misses a pickup.

21 The residents of South Seaside Park
22 could use Seaside Park's recreation -- recycling
23 facility. Seaside Park could clean White Sands
24 Beach and police the bayfront in South Seaside Park.
25 Seaside Park residents could take advantage of

1 Seaside Park's -- South Seaside Park's residents
2 could take advantage of Seaside Park's bayfront
3 recreation facilities. And Seaside Park could plow
4 the municipal streets in South Seaside Park. The
5 township could enter into an interlocal agreement
6 with Ocean County, whereby the county plows the
7 municipal roads in South Seaside Park, or at least
8 the roads that are part county and part township.
9 The township could further improve its website and
10 Facebook page to expand the ability of residents to
11 lodge complaints or request services via the
12 internet, as opposed to having to call a township
13 employee. And the township could institute training
14 for employees to how better interact with residents.

15 Moving on to emergency services. Petitioners
16 contend that South Seaside Park is not well served
17 by the township's police, 911 dispatch and emergency
18 management services. With respect to police,
19 petitioners assert that the township doesn't provide
20 police presence necessary to meet the needs of the
21 community. They testified that there's a single
22 police patrol covering South Seaside Park and
23 Pelican Island, and two to three crossing guards for
24 the summer, and there is less police presence now
25 than there was back in the 1970s.

1 In the winter, this manpower translates to
2 one officer for 490 voters. While the total summer
3 population in South Seaside Park is not known, that
4 staffing translates roughly to one officer for 1400
5 houses. Petitioners contend that this lack of
6 manpower results in delayed response times and
7 reduced public safety. Conversely, Seaside Park
8 police station, with more available manpower,
9 located two to three minutes from South Seaside
10 Park, they contend is better able to address the
11 needs of South Seaside Park. They believe that a
12 more local police presence would benefit
13 South Seaside Park.

14 To support their position, petitioners called
15 retired Seaside Park Police Officer Robert Cardwell,
16 who testified that with the exception of the height
17 of the tourist season, which is Memorial Day through
18 Labor Day, there was not more than one township
19 officer assigned to South Seaside Park. Yet, when
20 he was a police officer in Seaside Park, that
21 department had a minimum of two officers per shift
22 on patrol, augmented during the tourist season by 25
23 class one and class two seasonal officers. So that
24 at any given time, Seaside Park had three, two-man
25 patrols on the boardwalk and at least three regular

1 officers on the street, as well as several seasonal
2 officers in cars on patrol. He concluded that if
3 de-annexation would occur, Seaside Park Police would
4 become the primary responder for South Seaside Park,
5 thereby resulting in more officers on the road at
6 any given time, especially during the tourist
7 season.

8 In terms of response time, Mr. Cardwell
9 testified that Seaside Park police officer -- that a
10 Seaside Park police officer could respond from the
11 north border of Seaside Park to 24th Avenue in
12 South Seaside Park in probably less than a minute or
13 maybe a little more. A number of petitioners
14 testified as to their personal experiences with what
15 they felt was delayed or inadequate police response.

16 With regard to police backup, Mr. Whiteman
17 testified that in 2014, he discussed Seaside Park
18 police backup to South Seaside Park with Borough
19 Police Chief Larkin, who purportedly stated that
20 Seaside Park police responded to 320 calls to
21 South Seaside Park in 2013 and that they cannot
22 continue to do this and would either like to be
23 compensated for it or, as the testimony said,
24 something has to change. Mr. Whiteman believes that
25 Seaside Park is no longer responding to calls in

1 South Seaside Park, and, therefore, the residents of
2 Seaside Park are in jeopardy.

3 A lengthy discussion about police backup
4 ensued, where it was found that several of
5 Mr. Whiteman's beliefs were incorrect. In response
6 to petitioners' assertion that the township does not
7 provide the police presence necessary to meet the
8 needs of South Seaside Park, Berkeley Township
9 Police Lieutenant Ryan Roth testified that
10 South Seaside Park is one of the most heavily
11 traveled communities in the township, with heavy
12 pedestrian, bicycle and motor vehicle traffic
13 sharing the same roads. Yet, despite this
14 congestion, South Seaside Park in 2015 had zero
15 pedestrian or bicycle crashes and only 26 crashes in
16 all. Lieutenant Roth characterized these numbers as
17 excellent and testified that they are the result of
18 proactive police enforcement and the township
19 responding to the traffic needs that are specific to
20 South Seaside Park.

21 With respect to manpower, Lieutenant Roth
22 testified that Berkeley Township Police Department
23 is approximately five times the size of the
24 Seaside Park Police Department, and when comparing
25 manpower, vehicles, resources and equipment, it's

1 going to be a multiple of about five. Having more
2 officers allows the police department to have more
3 specialized units, traffic investigators, detective,
4 squad patrol and a boat patrol. He testified that
5 they have a larger pool of officers with more
6 experience and more training when a need arises.
7 They can increase manpower and respond to the needs
8 that a smaller department can't. And can provide
9 equipment that other police departments don't have.

10 In response to one of the petitioners'
11 complaints about a lack of manpower resulting in
12 delayed response time and reduced public safety,
13 Lieutenant Roth testified that he reviewed the
14 records of the police responses on that incident, it
15 was a 4th of July weekend, and found that response
16 times averaged one minute. Response times for
17 fireworks calls was 15 seconds. Lieutenant Roth
18 testified that a smaller police department like
19 Seaside Park can't scale up a response like that,
20 because they don't have the officers or equipment.
21 Specifically, Seaside Park can only scale up with
22 special officers, because that's all they have at
23 their disposal. Special officers have limited
24 training and very limited experience. Berkeley
25 officers, he testified, have years of experience.

1 Within the context of how Berkeley Township,
2 as a larger police department, can offer more police
3 services than a smaller police department such as
4 Seaside Park, Berkeley Police Captain Kevin Santucci
5 testified that Berkeley Police provide the following
6 services. They have a traffic safety unit, a sally
7 port detention facility in the police department
8 building, an encrypted radio system and a firearms
9 range. Seaside Park, according to him, has none of
10 these.

11 As a followup to his initial testimony
12 regarding police presence in South Seaside Park,
13 Mr. Whiteman testified that there has been -- there
14 has been an increase in police presence since the
15 de-annexation process began. In response to his
16 assertion, Police Chief DiMichele -- that's how you
17 pronounce it -- DiMichele testified that
18 Mr. Whiteman was not accurate and that Berkeley
19 police -- Berkeley increased its police presence in
20 South Seaside Park prior to the de-annexation
21 process. According to the Chief, improvements in
22 policing South Seaside Park came as a result of a
23 neighborhood meeting held in the spring of 2012,
24 with the residents of South Seaside Park. After
25 getting bombarded with complaints, she testified

1 that the concerns were heard and addressed. She
2 recognized that some of the petitioners' concerns
3 took time to put in place, but all of the actions
4 are in place now. She characterized the township's
5 police service to South Seaside Park as being
6 excellent. And that when compared to other areas
7 within the township, South Seaside Park had a
8 greater police presence. The change was so
9 significant that Mr. Whiteman thanked the mayor and
10 council and the police chief for addressing that
11 situation.

12 With respect to fire services. The
13 Seaside Park volunteer fire company services
14 South Seaside Park and would continue do so should
15 de-annexation occur. There would be no change in
16 service. With regard to first aid, as with fire,
17 ambulance services is provided by the Tri-Boro First
18 Aid Squad and independently -- an independent
19 emergency medical services organization consisting
20 of both paid and volunteer members. Tri-Borough
21 provides services to South Seaside Park through a
22 mutual aid agreement with Berkeley Township. So
23 de-annexation would have no impact on ambulance, EMT
24 or paramedic response.

25 With regard to 911 dispatch services, we

1 heard a number of stories about delayed response
 2 time attributed by petitioners to the township's
 3 inadequate police presence and 911 dispatch, with,
 4 frankly, several of these having very tragic
 5 endings. Chief DiMichele testified that she
 6 reviewed the records of these calls and found that
 7 the testimony related to these calls was not
 8 accurate. Petitioners' testimony was that in one
 9 instance, it took 20 minutes for the police to
 10 responds to a call. The township's computer
 11 dispatch system revealed that the police arrived in
 12 five minutes from receiving a call -- from receiving
 13 the call. First aid arrived in 11 minutes. And
 14 medics arrived in, I think it was 16 minutes. I
 15 have a typo here. I think it was 16 minutes.
 16 In another instance where 15 to 20 minute
 17 police presence times were indicated, the computer
 18 dispatch system revealed a four minute police
 19 response time. In a third instance where a
 20 petitioner testified that the police did not arrive,
 21 the computer system revealed that the caller would
 22 not provide a home address for the incident, and the
 23 incident was occurring in the middle of the
 24 intersection. The computer showed a three minute
 25 response time to the scene. But since the caller

1 didn't receive an address, there was no way for the
 2 police to respond directly to the caller's house.
 3 In response to petitioners' assertions that
 4 911 dispatch service to South Seaside Park would
 5 improve should de-annexation occur, the
 6 communications division of the Ocean County's
 7 sheriff's office operates the 911 public safety
 8 answering point, public safety dispatch system, for
 9 all 33 Ocean County municipalities. This is a
 10 coordinated -- or, I'm sorry -- a consolidated
 11 communication center, coordinating the sheriff's
 12 office, prosecutor's office, medical examiner's
 13 office, municipal police agencies, fire services,
 14 first aid squad, special response and tactical teams
 15 and paramedic and life services. It includes the
 16 Berkeley Township Police, the Seaside Park Police,
 17 the Seaside Park Volunteer Fire Company and the
 18 Tri-Borough First Aid Squad.
 19 Calls are received by the sheriff and then
 20 transmitted to individual agencies for appropriate
 21 dispatch. While there is potentially a difference
 22 between how the Berkeley Township and
 23 Seaside Park -- how Berkeley -- pardon me, let me
 24 take a step back. While there is potentially a
 25 difference between how Berkeley Township and

1 Seaside Park internally process dispatch requests
 2 from the sheriff's office, the records of the
 3 township's computer dispatch systems evidence
 4 dispatch times substantially quicker than
 5 petitioners' testimony indicated.
 6 With regard to emergency management,
 7 Mr. Cardwell testified that Seaside Park's emergency
 8 response planning took into consideration
 9 South Seaside Park. And that Seaside Park works
 10 with Berkeley Township's emergency management office
 11 to develop such plans. We'll talk more about
 12 emergency management as part of our discussion in
 13 response to Superstorm Sandy in a few minutes.
 14 So, with regard to emergency services. At
 15 issue before the planning board is whether or not
 16 emergency services provided to South Seaside Park,
 17 or a lack thereof, is detrimental to the well-being
 18 of the majority of residents of South Seaside Park.
 19 Based on all of the testimony and exhibits, we find,
 20 with regard to police, while the Seaside Park police
 21 station is only two to three minutes from
 22 Seaside Park, the level of service is a function of
 23 staffing, not location. Regardless of how big or
 24 small a municipality is, the number of police
 25 assigned to an area will determine that level of

1 response. The record contains an acknowledgment by
 2 Mr. Whiteman and Police Chief DiMichele that police
 3 presence in South Seaside Park has improved to the
 4 extent that Mr. Whiteman even complimented the
 5 township. Contrary to petitioners' anecdotal
 6 claims, the township's computer dispatch records
 7 submitted into evidence indicates that the police
 8 response times are appropriate. In order to
 9 maintain the current level of police service
 10 provided in South Seaside Park, should de-annexation
 11 occur, Seaside Park would likely need to hire
 12 additional police officers. The record contains no
 13 information regarding this issue.
 14 With regard to police backup, the record
 15 shows that prior to these de-annexation proceedings,
 16 Police Chief DiMichele informed petitioners that the
 17 Island Beach State Park Police, Seaside Park Police
 18 and police from Seaside Heights provide backup for
 19 South Seaside Park. There was a meeting that was
 20 held between the township and Seaside Park officials
 21 to discuss the police assistance. And as a result,
 22 South Seaside Park is being covered better than it
 23 was. And the township has arrangements with all of
 24 the police departments in the county to respond if
 25 needed.

1 With regard to 911 dispatch, both
 2 Seaside Park and South Seaside Park are served by
 3 the same 911 dispatch center, volunteer fire company
 4 and ambulance and EMT service. So, dispatching,
 5 fire service and first aid services will not change
 6 should de-annexation occur. The record contains no
 7 evidence to support petitioners' contention that
 8 South Seaside Park will receive better police
 9 services if it were part of Seaside Park.
 10 Conversely, the record does reflect that should
 11 de-annexation occur, the balance of Berkeley
 12 Township would likely receive improved services due
 13 to the patrol area being reduced if -- assuming
 14 there was no reduction in police personnel.
 15 While the record reflects that certain
 16 petitioners have suffered individual tragedy, the
 17 record does not support petitioners' assertion that
 18 South Seaside Park is not adequately served by the
 19 police, 911 dispatch, fire and ambulance service and
 20 EMT services. Again, despite these individual
 21 tragedies, and we in no way minimize them, the
 22 record reflects that the community has little crime,
 23 is generally safe and receives timely emergency
 24 services, either from Berkeley Township directly or
 25 with backup from other jurisdictions.

1 I'd like to move on now to Superstorm --
 2 testimony regarding Superstorm Sandy.
 3 (off the record.)
 4 MR. WISER: Related to emergency
 5 services, petitioners assert that the township's
 6 planning for, response during and reaction after
 7 Superstorm Sandy were inadequate. Regarding the
 8 assertion that the township did not appropriately
 9 plan for South Seaside Park prior to the storm,
 10 petitioners contend that there was no effort to pick
 11 up any type of bulk items that were left out for DPW
 12 pickup and that these items ended up floating down
 13 the street. Municipal garbage cans were not emptied
 14 prior to the storm. And, conversely, petitioners
 15 testified that Seaside Park went into every single
 16 corner and secured every garbage and recycle can.
 17 Public items were taken down and stored.
 18 Petitioners contend that the township
 19 neglected to communicate storm related warnings to
 20 the residents of South Seaside Park prior to Sandy
 21 making landfall and neglected to communicate
 22 relevant news to the residents of South Seaside Park
 23 during the storm, including notifications that a
 24 mandatory evacuation was being instituted.
 25 Petitioners contend that the township did not

1 provide proper support for the community immediately
 2 after the storm.
 3 Finally, they assert that the
 4 township did not provide the proper support for the
 5 community during the recovery from the storm.
 6 Specifically, the township did not restore the
 7 dunes, beaches and related amenities properly or in
 8 a timely manner. Specific complaints address snow
 9 fencing and dune fencing, dune restoration, dune
 10 design, beach entrances.
 11 Regarding planning prior to the
 12 storm, Chief DiMichele testified that preparedness
 13 for the storm began a week before the event.
 14 Meetings were held with representatives of the
 15 public works department, the road department, parks
 16 and beaches, communications, police and emergency
 17 management. Further, as the largest department in
 18 the area, or as the larger department in the area,
 19 Berkeley has resources that neighboring communities
 20 don't. As such, other communities approached
 21 Berkeley Township for assistance. These included
 22 South Toms River, Pine Beach and Ocean Gate. They
 23 built upon Berkeley's plans.
 24 Township police officer and deputy
 25 emergency management coordinator Ron,

1 Ronald Bondulich added that the township opened up a
 2 shelter at Saint Maximilian Church in Holiday City,
 3 which is only three miles further from South Seaside
 4 Park than the county shelter in Toms River North.
 5 In sum, the Chief testified that the township had
 6 plans in place and were hoping for the best but were
 7 prepared for the worst. But, in her words, no one
 8 knew and no one thought that this storm, until the
 9 storm was right on top of us, that it was going to
 10 be as massive as it was.
 11 The township provided no testimony
 12 regarding complaints that the town's DPW did not
 13 empty public garbage and recycling cans or remove
 14 items left out for bulk pickup prior to the storm.
 15 Assertions that the township made no pre-storm
 16 notifications to South Seaside Park, including
 17 notifications of a mandatory evacuation, are
 18 contradicted by the testimony of Mr. Whiteman, who
 19 stated, I can honestly tell you that on Barnegat
 20 Avenue, the police came down with their horn to say,
 21 we want you to evacuate. They may not have gone
 22 down all the streets, I have no idea. But in front
 23 of my house, I did talk to the officer and he did
 24 tell me that the evacuation was something that was
 25 going to occur and that you should leave.

1 Regarding pre-storm notifications.
 2 Chief DiMichele testified that beginning on the
 3 morning of October 28, township firemen and law
 4 enforcement went door-to-door in South Seaside Park
 5 notifying residents and had residents sign forms
 6 that they were -- that they were notified.
 7 Responding to the testimony of Mrs. Erdman, that her
 8 household was not notified of the evacuation and
 9 that she didn't know about the mandatory evacuation
 10 beforehand, Chief DiMichele and Officer Bondulich
 11 submitted a signed form for the communication made
 12 at Mrs. Erdman's home. Addressing Mrs. Erdman's
 13 claim that her neighbors didn't know about the
 14 evacuation order either, Officer Bondulich produced
 15 signed forms from four of her neighboring
 16 households.

17 Finally, Officer Bondulich testified
 18 that on October 31, when the Chief and the officer
 19 first went over to South Seaside Park, they met with
 20 residents in the street, including Mr. Whiteman in
 21 front of his house. Officer Bondulich testified
 22 that they advised the residents of exactly what was
 23 going on and the status at that time. He concluded
 24 that for them to say they were unaware of what was
 25 going on, in his words, is not true.

1 Chief DiMichele further testified
 2 that additional information was disseminated through
 3 newspapers, radio stations, Facebook, the township
 4 website and on the township's TV channel. While we
 5 are sympathetic to the petitioners' testimony that
 6 some elderly residents aren't on the computer and
 7 that South Seaside Park does not get the Berkeley
 8 Township TV feed, we fail to understand how they
 9 could not know that there was a mandatory
 10 evacuation, given the media attention for this
 11 storm.

12 Regarding petitioners' complaints as
 13 to the township's perceived shortcomings during the
 14 storm. Chief DiMichele walked the board through
 15 conditions and activities that occurred during the
 16 storm. On October 29, winds were reported at over
 17 92 miles an hour on the island. The water started
 18 coming in. Officers were pulled off the island and
 19 the bridge was closed. Regarding pulling officers
 20 off the island, the Chief testified that it's not
 21 just a cop and a car. It wouldn't be prudent to
 22 leave police equipment on the island during a
 23 hundred year storm. While the police did not
 24 specifically testify to this, we note that the
 25 township has a responsibility to the officers on the

1 force. Leaving them on the island during this
 2 historic event, we believe, would be reckless and
 3 irresponsible.

4 Regarding the bridge closing. The
 5 Chief testified that with the winds at 92 plus miles
 6 an hour, the height of the bridge, cars -- and the
 7 height of the bridge, cars crossing that bridge
 8 would have put people in danger, but more
 9 importantly regarding de-annexation, the bridge is
 10 not controlled by DOT or staffed by the Tom -- I'm
 11 sorry. The bridge is controlled by NJ DOT and it is
 12 staffed by the Toms River Police Department. The
 13 township does not have control over the bridge.

14 Returning to the Chief's testimony
 15 regarding the events as they occurred. On October
 16 30, the roads were not passable. There was over
 17 four feet of water in South Seaside Park, eight feet
 18 of water on Pelican Island and nobody could get in
 19 and nobody could get out. On October 31, emergency
 20 services were finally allowed back over the bridge.
 21 This was a directive from the State. It was not a
 22 local decision. So, criticism of the police
 23 department for time spent off island, we believe, is
 24 unfounded.

25 According to the Chief, when they

1 came back, they came in force. We'll get more to
 2 that later. Behind the scenes, the various
 3 municipal police departments in this region were
 4 meeting daily and sometimes even more than daily
 5 with State Police, representatives from the gas
 6 company, representatives, according to
 7 Chief DiMichele, from everywhere. And, at one
 8 point, they met with the Governor, trying to assist
 9 getting residents back into their homes.
 10 Petitioners complained that the township provided no
 11 communication to South Seaside Park during the
 12 storm, including no notification that the bridge was
 13 being closed and that power was being shut off.
 14 Petitioners were only able to find out from friends
 15 that live in Seaside Park, who were notified by that
 16 borough. This left Mrs. Erdman with a very heavy
 17 feeling of being isolated. It was total isolation,
 18 she said, that's where we were in South Seaside
 19 Park.

20 The township provided no testimony
 21 regarding this issue. While we do sympathize with
 22 Mrs. Erdman's feelings, anyone who has lived on a
 23 barrier island for any length of time knows that the
 24 power goes out during a storm, and whether the
 25 outage is manmade or due to natural causes is

1 irrelevant. As for the bridge being closed, if the
2 roads were impassable, how do you even get to the
3 bridge. We think that's a nonissue.

4 We also note that petitioners defy --
5 many of the petitioners defied a mandatory
6 evacuation order after a pre-storm notice where they
7 were advised that if you stay, emergency personnel
8 may not be able to reach you in the event that
9 you -- in the event that you need assistance. The
10 record contains no information regarding how and how
11 often Seaside Park communicated with their
12 residents. That being said, real time communication
13 during the storm, if it was even possible, would
14 likely not have provided petitioners with any useful
15 information. There was no public safety personnel
16 on the island to view conditions or report any news.
17 So, it's not clear to us what the complaint really
18 is on that matter.

19 Responding to petitioners' assertion
20 that the township didn't provide proper support for
21 the community immediately after the storm and that
22 there was confusion and chaos, Police Sergeant
23 George Dohn, the township's deputy emergency
24 management coordinator, testified that the police
25 were finally permitted to return to the island on

1 October 31. At that time, a number of police
2 sergeants, the township's detective bureau and the
3 Pinewald Fire Company Technical Rescue Team were put
4 into high water vehicles by the New Jersey National
5 Guard and driven over the bridge onto the island.
6 The first thing they did was to go to the residents
7 where they knew people had stayed and to offer
8 assistance. They then went door-to-door, checking
9 structures to see if anyone else was on the island.
10 And then they went back to assess specific damage at
11 the individual homes, if there was -- to see if
12 there was anybody in those homes. They escorted
13 people off the island that had stayed for the storm
14 who wanted to leave. They did well-being checks for
15 loved ones who couldn't contact family or friends.
16 And they answered abandoned 911 calls while they
17 were there. They investigated suspicious vehicles
18 and suspicious persons calls. And they arrested
19 subjects that had kayaked over to the island that
20 were going to do damage and loot homes.

21 The township's superintendent of
22 parks, beaches and recreation testified that three
23 days after the storm, he and supervisor of parks and
24 beaches delivered a truckload of water and ice to
25 South Seaside Park for the residents that had not

1 evacuated. But according to Sergeant Dohn, at no
2 time was there any chaos. According to
3 Sergeant Dohn, at no time was there any chaos.
4 Everything was calm. And from that date when they
5 reentered the island, there was a police presence
6 24/7.

7 Regarding planning for re-entry on
8 the island, Chief DiMichele described a meeting at
9 the Ocean County Office of Emergency Management, it
10 was either November 3rd or 4th, where she announced
11 her re-entry plan for South Seaside Park. Regarding
12 re-entry to the island, Berkeley Township Police
13 Detective Michael Tier testified the first re-entry
14 was November 5. Residents were required to register
15 with the township at township hall. Proof that they
16 were South Seaside Park residents or property owners
17 was required. Several hundred people apparently
18 registered and were issued a windshield sticker
19 indicating that registration. Vehicles were
20 directed into a convoy and escorted to Seaside Park
21 and back to their houses -- I'm sorry -- and were
22 escorted into South Seaside Park and back to their
23 houses.

24 The second re-entry, and we don't
25 have a date for that, Detective Tier testified that

1 this was a little more coordinated. The township
2 employed outside resources and was the first to use
3 the Ocean County Mall parking lot for staging. They
4 brought in their mobile command post. They arranged
5 for township buses and for buses from the Central
6 Regional School District to transport residents in.
7 They arranged for box trucks from local businesses
8 to transport support and repair items, and DPW
9 personnel who delivered tools.

10 MR. WINWARD: At this time, we're
11 going to take a quick break for the court reporter
12 and whoever else may need one.

13 (Recess was taken.)

14 MR. WISER: So, we were talking about
15 the second re-entry. Buses brought people in. Box
16 trucks brought in tools and other repair items.
17 Residents were given six to eight hours to secure
18 their homes, pack things they needed and return to
19 the buses. Township staff picked up their packed
20 items for return to the mainland. At this time, the
21 police department resumed patrol operations, along
22 with the State Police, in South Seaside Park. And
23 emergency management made arrangements for the Shore
24 Water Company to get to the island and begin
25 shutting off water service for the vacant houses.

1 There was a re-entry period on
 2 November 8 and 9. Detective Tier testified that
 3 what they termed phase two was coordinated with
 4 buses secured from the schools. They set up a
 5 mobile command post at 24th Avenue at the entrance
 6 to Island Beach State Park, which was staffed daily
 7 from seven a.m. to five p.m. And it was used as a
 8 reservation point where residents not able to get
 9 back during the previous re-entry phases were able
 10 to register, get stickers and return to the island.
 11 Information was collected as to contractors
 12 authorized to perform work in the area.
 13 Detective Tier testified that from this point, there
 14 was always at least three officers on the island,
 15 twenty-four hours a day, seven days a week, with
 16 upwards of five to seven officers during the day.
 17 One officer at the checkpoint entrance. One officer
 18 staying at the point of entry into Pelican Island.
 19 And a third officer on patrol, who patrolled
 20 Pelican Island and South Seaside Park.
 21 There were assets from the Ocean
 22 County Prosecutor's Office, New Jersey State Police,
 23 Louisiana State Police, Pennsylvania State Police.
 24 And, according to Detective Tier, states from all
 25 over the country sent assets. Also during this

1 time, Detective Tier testified that the township
 2 engineer's office and a contracted agency went
 3 door-to-door to check every structure in
 4 South Seaside Park for its suitability to be safely
 5 occupied. And that the sanitation department
 6 provided daily pickup of debris that residents were
 7 discarding. Finally, with respect to re-entry,
 8 Detective Tier noted that this phase was complicated
 9 by a nor'easter that hit the area on November 7.
 10 Regarding petitioners' contention that after
 11 Sandy the township did not restore the dunes,
 12 beaches and amenities properly or in a timely
 13 manner, specifically that South Seaside Park
 14 restored their beach, including eight to ten beach
 15 entrance structures by July 3, 2013, while the four
 16 entrances to the beach in South Seaside Park
 17 remained in disrepair until at least July 20, 2013,
 18 and as such, the beach was not accessible for the
 19 4th of July holiday from three of the four beach
 20 entrances. They testified that restoration work,
 21 including noisy pile driving, continued during the
 22 4th of July holiday weekend. By such time, the
 23 Seaside Heights boardwalk had been rebuilt, and a
 24 number of beach entrances had been reconstructed in
 25 Ortleigh Beach, which sustained considerably more

1 damage than South Seaside Park.
 2 In relating what could be described as a lack
 3 of urgency by the township regarding beach
 4 reconstruction after Sandy, petitioners stressed the
 5 importance of the beach during the summer, stating,
 6 everybody from -- stating, everything from Memorial
 7 Day on is very important. It's very important to
 8 the people that live here, because we live on the
 9 beach, and we enjoy the beach. It's very important
 10 to folks who have a vacation home there, that come
 11 down on the weekends and want to use the beach.
 12 It's extremely important to people that have
 13 properties that they rent.
 14 Finally, petitioners testified that the
 15 restoration, when completed, was not done properly
 16 or in a timely fashion. They testified that the
 17 private Midway Beach Condominium Community restored
 18 the snow -- their snow fencing within a week after
 19 Sandy, while it took the township much longer, and
 20 that the township employed an inferior design.
 21 With regard to how quickly the township was
 22 able to repair the snow fencing after Sandy, the
 23 township's superintendent of parks, beaches and
 24 recreation testified that the township got there as
 25 quickly as they could with the dune fencing that

1 they were able to get. Within that three months
 2 after the storm, over 100 tons of sand were put
 3 into -- were put in to replace the missing portions
 4 of the dunes and that the township and its engineers
 5 developed a snow fence pattern that returned the
 6 dunes to 100 percent within two years.
 7 In addressing petitioners' assertion that the
 8 snow fence and dune restoration undertaken by
 9 Midway Beach was better designed than those in the
 10 township, the township superintendent of parks,
 11 beaches and recreation testified that the township's
 12 design catches sand from the prevailing winds. And
 13 it's the design that has worked for over 30 years.
 14 Conversely, he testified that Midway Beach's design,
 15 which differed from the township's, had so much snow
 16 fence that the sand couldn't accumulate. As a
 17 result, within a few months, the township had twice
 18 as much sand built up compared to Midway Beach.
 19 With respect to the township's designs, we
 20 note Mrs. Erdman's testimony complimenting the
 21 township's protected dunes and note that her
 22 criticism of the township's design is not based on
 23 any knowledge of engineering or beach practices, but
 24 apparently on a comparison to the design at
 25 Midway Beach. She's not an engineer or she's -- or

1 a coastal design expert. I don't know that she
2 really has the expertise to evaluate the design of
3 the snow fence. Now, logically, there may be any
4 number of ways to design a dune and place snow
5 fence, but the fact remains that the township's
6 design work -- the fact remains that the township's
7 design worked. There was no breach in South Seaside
8 Park.

9 In response to petitioners' assertion that
10 the breach -- that the beach entrances were not
11 reconstructed in time for the 4th of July, township
12 superintendent of parks and beaches conceded that
13 this was the case, but that all beaches -- all beach
14 entrances were open during the holiday. While
15 construction was taking place at many of the beach
16 entrances throughout the summer, work was staggered
17 so as not to happen all at once. There might have
18 been a road entrance that was inaccessible during a
19 certain period of time so you might have to use an
20 entrance a block over, but there was always access
21 to the beach. It was never closed.

22 So, at issue before the planning board is
23 whether or not the township's preparedness before
24 Superstorm Sandy and its response during and after
25 the storm were adequate or were they inadequate and

1 detrimental to the well-being and the majority of
2 the residents of South Seaside Park. Based on all
3 the testimony and exhibits, we find, whether or not
4 the township's public works department emptied
5 garbage or recycling cans or removed items left out
6 for bulk pickup prior to the storm is an academic
7 question. There was no testimony to suggest that
8 any damage from blowing trash or trash receptacles
9 occurred during the storm or were an issue in the
10 storm's aftermath.

11 Petitioners' assertion that the township did
12 not properly prepare for the storm are not supported
13 by the record. The testimony of Chief DiMichele and
14 Officer Bondulich contained detailed information
15 regarding the steps the township took in the days
16 leading up to the storm.

17 Petitioners' assertion that the township
18 neglected to communicate storm-related warnings to
19 the residents of South Seaside Park prior to Sandy
20 making landfall, including notification of a
21 mandatory evacuation, we do not believe is credible.
22 In addition to the testimony of Chief DiMichele and
23 her staff regarding township notification efforts,
24 media coverage in the days leading to the storm was
25 inescapable. And the township's -- typically, a

1 township's emergency management office will rely on
2 mass media communications to get the message out.
3 Significantly, Mrs. Erdman herself testified that
4 she followed the storms on the Weather Channel.

5 Petitioners' assertion that the township
6 neglected to communicate storm related warnings to
7 the residents of the storm is credible, but
8 real-time communication during the storm, even if
9 possible, would likely not have, once again,
10 provided petitioners with any useful information.
11 There was nobody on the -- no public safety
12 personnel on the island to make an accurate
13 reporting of events.

14 Petitioners' assertion that the township did
15 not properly act during the storm, we believe, is
16 ill-considered. Public safety personnel were
17 recalled for their own safety and the safety of
18 their equipment. To suggest that personnel and
19 equipment be subjected to the ravages of the weather
20 that was -- to the weather that was anticipated,
21 displays a reckless lack of understanding of the
22 severity of the event.

23 Petitioners' criticism of the township's dune
24 system in the aftermath of the storm lacks
25 credibility when juxtaposed against their

1 compliments of the system elsewhere in their
2 testimony. Petitioners' criticism of the township's
3 response during and after Sandy are ill-conceived at
4 best. In their words, they described the storm by
5 stating, nobody ever expected anything like this.
6 No storm ever came up the coast and decided to make
7 a left-hand turn the way this one did. And it was
8 everything lined up in the wrong direction with the
9 fronts coming through, the way everything happened,
10 and nobody thought it was going to do what it did.

11 The nature of Superstorm Sandy, both in its
12 initial impact and in the public sector's response,
13 was an unprecedented and anomalous act of nature.
14 Attempting to measure Berkeley Township's reaction
15 against those of other -- of any other municipality,
16 and whether or not petitioners would have been
17 better served if they were part of Seaside Park is
18 supposition at best. Both Seaside Park and
19 South Seaside Park faced mandatory evacuation and
20 both suffered similar damage. So, attempting to
21 ascribe any link between the storm, the township's
22 response and South Seaside Park being located on the
23 island, and asserting that the township was somehow
24 ill-prepared or neglectful, we believe is overreach.

25 The benefits of being part of Seaside Park

1 during the storm appear to be limited to an
 2 automated pre-storm warning calls and quicker post
 3 storm beach and dune recovery. Conversely, it
 4 appears that Seaside Park employed Chief DiMichele's
 5 emergency management plan. Berkeley Township made
 6 arrangements for Seaside Park to use the township's
 7 schools and school buses for their re-entry plan.
 8 The borough's offices were disbursed throughout
 9 the -- the Borough of Seaside Park's offices,
 10 municipal offices, were disbursed throughout the
 11 county for three months while its island based
 12 facilities were being reconstructed after the storm.
 13 And all this happened while Berkeley's Municipal
 14 Building remained open and operational during and
 15 after the storm. And this building served as the
 16 hub for regional emergency management efforts.
 17 From petitioners' perspective -- from the
 18 petitioners' perspective, we have no doubt that
 19 there was chaos and confusion after the storm. It
 20 was some time until emergency personnel were
 21 permitted back on the island after the storm
 22 cleared. There was a period of time where movement
 23 was restricted on the island. Directives from the
 24 State were changing daily. And access was
 25 alternately either permitted or restricted. This is

1 all the testimony of Detective Tier. And
 2 Detective Tier acknowledged that the residents did
 3 not know when the next time they would be able to
 4 get back to the Island would be. Conversely,
 5 testimony regarding Chief DiMichele's active and
 6 apparently heated negotiations to permit residents
 7 back on the island should not be ignored.
 8 So, with all that being said, the record
 9 supports the fact that petitioners were -- the
 10 petitioners' lives were disrupted and turned upside
 11 down by the storm. It does not support their
 12 assertions that the township's planning for and
 13 response during and after the storm was inadequate.
 14 The record reflects that the township understood --
 15 undertook steps to ensure public safety prior to,
 16 during and in the immediate aftermath of the storm.
 17 While recovery may not have occurred as quickly as
 18 petitioners would have liked, the temporary
 19 inconveniences that they faced in the wake of this
 20 unprecedented weather event is not recommended as a
 21 proper rationale for de-annexation.
 22 We now move on to planning. The petitioners
 23 engaged a professional planner to prepare a report
 24 that, in his words, proves a context and planning
 25 rationale for the de-annexation of South Seaside

1 Park from Berkeley Township. To determine whether
 2 there's a rationale to establish that refusal to
 3 allow de-annexation -- and to determine whether
 4 there's a rationale to establish that refusal to
 5 allow de-annexation would be detrimental to the
 6 economic and social well-being of South Seaside Park
 7 residents. And to determine if consent to
 8 de-annexation would benefit the economic and social
 9 well-being of South Seaside Park residents. And to
 10 determine whether or not de-annexation would cause
 11 significant injury to the economic, social --
 12 economic and social well-being of Berkeley Township,
 13 and determine whether or not de-annexation would
 14 have a negative impact on the township's master
 15 plan, zone plan, affordable housing plan, TDR
 16 program or 2020 vision plan.
 17 The planners -- the planner addressed
 18 South Seaside Park within the context of:
 19 Geography, population, income, housing, occupation,
 20 the 2020 vision statement, the 2008 build out
 21 summary, Berkeley Township Master Plan, fair share
 22 plan for affordable housing, land use ordinance,
 23 south Seaside Park zoning, preserved open space
 24 parks and recreation facilities, recreation and
 25 senior programs, environmental resources, historic

1 and cultural resources, public safety, public
 2 transportation, public and private schools, public
 3 libraries, south Seaside Park's social interaction
 4 and commercial activity, quality of life issues.
 5 Public utilities, solid waste and recycling and
 6 Seaside Park Borough.
 7 The township's planner was then called to
 8 address these issues. I'm sorry. So, stop. Then,
 9 the township's planner, Mr. Slachetka, was then
 10 called up to discuss the issues.
 11 And then petitioners engaged a second planner
 12 when the first planner was not able to participate
 13 in rebuttal testimony. 591 addressed demographics,
 14 unique housing, affordable housing, community rating
 15 system, and post -- that should say Sandy Grants.
 16 Now, by our calculations, these planners
 17 testified for ten evenings and the related testimony
 18 takes somewhere upwards of 80 pages in our report.
 19 Rather than sifting through all this testimony, I'm
 20 going to skip right to their respective conclusions.
 21 Mr. Bauman, he was the first planner that the
 22 petitioners brought in, opined that if de-annexation
 23 were to occur, South Seaside Park residents will
 24 benefit by not having to travel to the mainland to
 25 attend public meetings, conduct township business or

1 participate in community activities. They would
 2 benefit by their ability to access municipal
 3 facilities and amenities of Seaside Park. They will
 4 benefit from being included in Seaside Park's Master
 5 Plan and Land Use Ordinance, such that their zoning
 6 would be consistent with the borough, which would
 7 protect property values and preserve South Seaside
 8 Park's unique barrier island character and identity.
 9 Mr. Bauman believes that the residents of
 10 South Seaside Park will benefit from de-annexation
 11 of Seaside Park, where they share the same
 12 character. They will not lose any social, cultural,
 13 religious diversities associated with being part of
 14 Berkeley Township, and de-annexation will cure their
 15 underlying feeling of disconnect with the mainland,
 16 caused by their lack of identity and association
 17 with mainland Berkeley Township.

18 Conversely, if de-annexation were not
 19 permitted, South Seaside Park residents will
 20 continue to experience the following economic and
 21 social injuries, the township's current master plan
 22 and land use ordinance and other planning documents,
 23 which he believes neglects South Seaside Park, will
 24 continue to govern the community. South Seaside
 25 Park residents will still be faced with a lack of

1 township facilities, services and amenities, and a
 2 lack of investment in the community. They will
 3 still have to travel a significant distance, spend
 4 significant time to conduct municipal business,
 5 attend public meetings or participate in township
 6 programs.

7 As for the impact of de-annexation on the
 8 remaining portion of the township, should
 9 de-annexation occur, Mr. Bauman opined that the
 10 township would lose 150 acres of barrier island
 11 land, which is .5 percent of its total land area.
 12 The township would lose 490 persons, which is .1
 13 percent of its total population. He opined that the
 14 racial composition and median ages of South Seaside
 15 Park and the township are similar. And that
 16 residents of South Seaside Park and the township are
 17 similarly employed. So, in his opinion,
 18 de-annexation would not result in significant injury
 19 to Berkeley Township's racial composition, median
 20 age or workforce population.

21 The township would lose 1410 housing units,
 22 which is six percent of its total housing inventory.
 23 He opined that the ratio of one and two person
 24 households are similar for the mainland and
 25 South Seaside Park and that the majority of housing

1 types are similar in both locations, one unit
 2 detached. With that, de-annexation will not result
 3 in a significant injury to the township's household
 4 composition, housing diversity or inventory.

5 He opined that the township would lose 7.1
 6 acres of dedicated open space, which is .5 percent
 7 of its total waterfront and 2.2 percent of its total
 8 preserved open space. He opined that the loss of
 9 White Sands Beach and the Sergeant Lyons basketball
 10 courts would not result in a significant loss of the
 11 township's open space or recreational areas.

12 He noted that de-annexation would result in
 13 the loss of the annual summer beach party at the
 14 White Sands Beach and the loss of Midway Beach, and
 15 that the loss of properties that are eligible
 16 listing -- and the loss of properties that are
 17 eligible for listing, but are not currently on the
 18 National and State Register of Historic Places. The
 19 township would lose three liquor licenses, which are
 20 the Atlantic Bar and Grill, the Berkeley Restaurant
 21 and Fish Company -- and somehow or another -- and
 22 Bum Rogers.

23 He concluded that, given the township's
 24 geography, demographics, development potential,
 25 commercial activity, biological and historic

1 resources and social and cultural diversities, the
 2 losses, those losses, are not significant enough, in
 3 his opinion, to deny de-annexation.

4 Conversely, he opined that de-annexation will
 5 result in financial savings or economic benefits for
 6 the remaining residents of the township, since the
 7 township would no longer have to deal with land that
 8 is zoned an area of high flood risk by FEMA, and
 9 since the township would not have to care for roads,
 10 solid waste and recyclable collection, snow removal,
 11 police service, animal control and park and
 12 maintenance in South Seaside Park.

13 In terms of social injury, since most of
 14 mainland Berkeley Township residents are unaware
 15 that South Seaside Park is part of the township,
 16 there will be no loss of prestige should
 17 de-annexation occur. Since Island Beach State Park
 18 is part of Berkeley Township, the loss of
 19 White Sands Beachfront is easily compensated. Since
 20 Berkeley Township does not host any recreation
 21 programs in South Seaside Park, de-annexation will
 22 not simply -- significantly impact township
 23 recreation. Since mainland Berkeley Township and
 24 South Seaside Park are in the same Barnegat Bay
 25 watershed management area and both have NJDEP

1 approved shellfish harvest areas, de-annexation will
2 not result in the loss of a shellfish harvesting
3 area.

4 He testified that South Seaside Park has no
5 properties listed on the state or historic registers
6 of historic places -- state or national registers of
7 historic places, no farms or prime farmland soils,
8 no statewide important soils or unique important
9 soils. There are no public or non-public community
10 wells or streams. So, de-annexation will not
11 significantly impact any cultural sites or
12 environmental resources currently available to or
13 utilized by Berkeley Township residents.

14 With only eight restaurants, two hotels or
15 motels, and a small number of retail stores in
16 South Seaside Park, he opined that Berkeley Township
17 will not lose any significant commercial resources
18 should de-annexation occur. Since there are no
19 houses of worship in South Seaside Park,
20 Berkeley Township residents will not lose
21 participation in any religious activities should
22 de-annexation occur. Since there are no schools or
23 libraries in South Seaside Park, Berkeley Township
24 residents will not lose any intellectual or cultural
25 resources should de-annexation occur.

1 In sum, Mr. Bauman opined that de-annexation
2 would cause no significant change for the remaining
3 residents of South Seaside Park -- I'm sorry -- of
4 Berkeley Township. No significant change for the
5 remaining residents of Berkeley Township. Finally,
6 Mr. Bauman states that de-annexation would be
7 consistent with statewide public policies that
8 encourage sensible municipal governing of adjacent
9 and contiguous areas.

10 There were a number of assertions and
11 opinions that were made by Mr. Bauman that were
12 refuted by township planner, Stan Slachetka, who
13 testified, the noncontiguous nature of South Seaside
14 Park is not unique. And he ticked off a number of
15 municipalities in Ocean County, Cape May County,
16 Atlantic County and elsewhere that had noncontiguous
17 communities. He testified that the way Berkeley
18 Township was presented to his firm when they became
19 the municipal planner was that Berkeley is a
20 collection of neighborhoods, with South Seaside Park
21 being one of those neighborhoods. And that none of
22 those neighborhoods is any more or less important or
23 distinct than another. These neighborhoods, in his
24 opinion, bind the community together in a sense of
25 diversity. He says that's how the township defines

1 itself, and that's how they and the planning
2 board -- that's how they, meaning his firm, and the
3 planning board, approach township planning.

4 As with Mr. Bauman, Mr. Slachetka presented
5 population, income and occupational data based on
6 the Census and the American Community Survey data.
7 His data differed slightly than what was presented
8 by Mr. Bauman. But we think that is largely due to
9 different data years when their respective analyses
10 were done. And we do not think that the differences
11 in the data are material. And while petitioners'
12 second planner, Ms. Woolley-Dillon, may have
13 presented evidence that called Mr. Slachetka's data
14 into question, we do not think this changes his
15 overall conclusions, which were: In his opinion,
16 de-annexation would result in the loss of
17 two percent of the township's population. And that
18 two percent is better educated, more fully employed,
19 and have higher income than the residents of the
20 township as a whole.

21 With respect to housing, Mr. Slachetka opined
22 that de-annexation would result in the loss of
23 seven percent of the township's housing stock, which
24 he viewed as being very unique and, in his opinion,
25 distinct from other areas of the township. They're

1 smaller in terms of bedroom count, and the percent
2 of non single-family units is higher than the
3 percent on the mainland. So, there's more
4 nonsingle-family units in terms of percentage on the
5 island than there is on the mainland. And there are
6 more seasonal units in South Seaside Park than on
7 the mainland.

8 As to Mr. Bauman's assertion regarding what
9 he characterized as the township's lack of master
10 planning and related efforts for South Seaside Park.
11 Frankly, we debated whether or not we really needed
12 to address the contention that township wide
13 policies, efforts or activities don't apply to
14 South Seaside Park, if the text specifically doesn't
15 say South Seaside Park. We decided that the best
16 way to address this is to say that it isn't worthy
17 of being addressed, so we're not addressing it.

18 The record is full of testimony by
19 Mr. Slachetka as to master planning, post Sandy
20 planning, capital improvement planning and other
21 planning that applies to South Seaside Park, despite
22 the fact these plans may not have stated in bold
23 flashing neons, neon, hey, guys, this section
24 applies to South Seaside Park.

25 Mr. Slachetka disagreed with Mr. Bauman's

1 assertion that the township has focused its planning
2 efforts on the mainland to the detriment of
3 South Seaside Park. And pointed to a 20-year record
4 of planning board actions that, in his words, belies
5 and contradicts that very, very, very clearly.

6 Regarding Mr. Bauman's sentiment that the
7 planners -- that the planning for South Seaside Park
8 has taken too long or that the township has kicked
9 the can down the street by recommending further
10 studies, Mr. Slachetka stated that planning occurs
11 on a continuum, and one plan builds upon the other
12 in terms of addressing important community needs in
13 a very, very comprehensive manner. And that plans
14 and processes are evolutionary and ongoing. In his
15 opinion -- it is his opinion that South Seaside Park
16 has been recognized and continues to be recognized
17 in the comprehensive planning documents of the
18 township.

19 We again debated how to address Mr. Bauman's
20 comments related to zoning inconsistencies between
21 South Seaside Park and Seaside Park, and whether or
22 not zoning inconsistencies are relevant in the
23 context of de-annexation, especially given the fact
24 that, from a planning perspective, zoning
25 inconsistencies between neighborhoods are not

1 uncommon. Mr. Bauman noted himself that the issues
2 were not among the concerns raised by the
3 petitioners and that the issue has been resolved
4 with the adoption of the recent South Seaside Park
5 neighborhood plan and related ordinances which
6 was -- which were prepared with significant input
7 from the community. Finally, we note that the
8 New Jersey Supreme Court has ruled that zone
9 shopping is not a valid consideration for
10 de-annexation.

11 Moving on to the Community Rating System.
12 This is -- it's called CRS or the Community Rating
13 System, is a federal program designed to incent
14 municipalities to address flooding and resiliency.
15 Towns get points for doing certain things, and these
16 points translate into reductions in the federal
17 insurance -- federal flood insurance rates.

18 Now, Mrs. Woolley-Dillon took issue with
19 Mr. Slachetka's -- and try to say that three times
20 fast -- Mrs. Woolley-Dillon took issue with
21 Mr. Slachetka's assertion that the CRS rating system
22 is going to benefit from the areas of the township
23 on the mainland that are not able to absorb
24 flooding. Basically, that they're going to absorb
25 the overflow from flooding. She stated that this

1 was not an accurate statement and submitted a number
2 of exhibits, but did not explain where Mr. Slachetka
3 was wrong. We think Mr. Slachetka was trying to say
4 that the CRS program is based -- is based on a
5 municipality's totality of flood issues. Let me
6 take a step back. We think he was trying to say
7 that the CRS -- a municipality's CRS score, or CRS
8 rating, is based on a municipality's totality of
9 flood issues. So, if a town has a large mainland
10 area that does not flood or can absorb flood waters,
11 the flood prone areas of that town will benefit from
12 the mainland's higher score. Put in another way and
13 to oversimplify things, if the mainland scores 100
14 because it's able to absorb floods, and the island
15 scores a zero because it floods, the town scores a
16 50. So, the island benefits from being in the same
17 municipality as the mainland. It's baseball
18 analogy. You got hitters hitting 300, you got
19 hitters hitting 200. The team's overall batting
20 average is somewhere in the middle. That's the
21 point we're trying to make.

22 Mrs. Woolley-Dillon goes on to take issue
23 with Mr. Slachetka's characterization of
24 Seaside Park's CRS rating. The transcript is not
25 clear as to what Mrs. Woolley-Dillon was attempting

1 to state. But Mr. Slachetka testified that
2 Berkeley's then current rating was a six. And that
3 provides a 20 percent discount on flood insurance
4 premiums. At the same time, or at that time,
5 Seaside Park's rating was a seven, which provides a
6 15 percent discount. So, Seaside Park --
7 South Seaside Park, being part of Berkeley Township,
8 has a better CRS rating and flood insurance premium
9 discount than if it were a part of South Seaside
10 Park -- of Seaside Park. Pardon me.

11 Mrs. Woolley-Dillon then testified that
12 Mr. Slachetka stated that Berkeley Township expected
13 a CRS rate improvement from a six to a five by the
14 end of 2018. But as of October 1, 2018, the
15 township was still a six. And that that made
16 Mr. Slachetka's projection incorrect. Well it's
17 true. He said by a certain date it would be a five,
18 and it wasn't. Well, we contacted the township
19 engineer's office and we spoke to a Mrs. Jamie
20 Zimmerman, who is the township's certified
21 floodplain manager, works for Remington & Vernick.
22 She reported that FEMA had delayed the CRS updating
23 process for the township from October 2018 to August
24 2019. So, the fact that -- the fact is correct,
25 Mr. Slachetka's projection was wrong, but that was

1 FEMA delaying their process.

2 Mrs. Woolley-Dillon then took issue with Mr.
3 Slachetka's testimony regarding the post Sandy
4 grants that he said funded a lot of planning work
5 for the township. She seemed to take objection to
6 Mr. Slachetka's statement that there was a lot of
7 grant money that was obtained because South Seaside
8 Park is a coastal community, stating that was --
9 this was somehow a mixed message. Regardless of her
10 interpretation of what Mr. Slachetka said, or was
11 trying to say, these grants were incredibly
12 competitive and had strict reporting guidelines.
13 The fact remains that the grants were submitted for,
14 used for and benefited South Seaside Park as part of
15 the grant process. I'm not saying that they were
16 designed specifically for South Seaside Park, but
17 that portion of the township did benefit.

18 At issue before the planning board, then, is
19 whether or not there's a planning rationale to
20 support de-annexation within the context of the
21 proofs required by the court. We do not believe
22 that the record supports such a conclusion. The
23 data supports the observation that the residents of
24 South Seaside Park, as a whole, are equivalent in
25 age, less racially diverse, better educated, more

1 employed, and have a higher median and per capita
2 income than their township counterparts.

3 While Mr. Bauman's conclusion that
4 de-annexation will not result in a significant
5 injury to Berkeley Township's racial composition and
6 median age appears to be correct, given that the
7 unemployment rate in South Seaside Park is
8 zero percent, de-annexation will, in fact, impact
9 the township's work force population. While
10 Mr. Bauman's conclusion that a loss of higher income
11 earning residents as a result of de-annexation would
12 not be substantial, while that may be correct from a
13 statistical standpoint, his opinion that the loss
14 would not be significant compared to the overall
15 economic well-being of the township does not follow.
16 The higher education, employment and median and per
17 capita income of South Seaside Park brings a
18 diversity to the tax base and to the residents of
19 the township. Beyond mere revenue, the
20 socioeconomic differences that South Seaside Park
21 represents, vis-a-vis the balance of the township,
22 adds economic diversity and stability to the
23 municipality.

24 The education, employment and income
25 characteristics of South Seaside Park make its

1 residents less likely to be impacted by economic
2 downturns than those of lower income and lower
3 educational attainment. These differences, we
4 believe, are a strength for Berkeley Township. In
5 much the same way that financial planners encourage
6 diversification in a personal financial portfolio,
7 it's advantageous to have a tax base -- it's
8 advantageous for a municipality to have a tax base
9 that is as diversified as possible. Such diversity
10 in times of economic stress serves to improve the
11 current overall situation of the township and may
12 form the basis for a quicker and sounder recovery.

13 We note that the high seasonal use percentage
14 of the housing stock in South Seaside Park suggests
15 wealth that is not captured by the Census reporting
16 of income. South Seaside Park has more seasonal
17 residents than it does -- than does the mainland of
18 Berkeley Township. We think that represents or
19 suggests a wealth beyond income.

20 Mr. Bauman and Mr. Slachetka disagreed as to
21 whether or not de-annexation would result in
22 Berkeley losing significant or unique housing stock.
23 We are not of the opinion that the small size of the
24 units in South Seaside Park or the number of
25 bedrooms in its housing stock renders South Seaside

1 Park unique. And that was Mr. Slachetka's opinion.
2 We are, however, of the opinion that the uniqueness
3 of housing in South Seaside Park is found in its
4 percentage of units not characterized as
5 single-family detached and the high percentage of
6 seasonal housing in South Seaside Park, as compared
7 to the balance of the township, which adds a
8 uniqueness to the housing stock in the community.

9 Finally, the housing units in Midway Beach
10 and the location of housing between the ocean and
11 the bay are quite unique for the township.
12 Accordingly, the loss of South Seaside Park -- the
13 loss of South Seaside Park, should de-annexation
14 occur, would result in a loss of unique and diverse
15 housing stock that is distinct from other areas of
16 the township.

17 with respect to master planning and related
18 efforts. The conclusion that the township's master
19 planning efforts do not address South Seaside Park
20 are not supported by the facts in evidence. The
21 record demonstrates that the various plans do,
22 indeed, address South Seaside Park. Whether or not
23 the island zoning introduced in 2008 was appropriate
24 for South Seaside Park is a matter of debate, but
25 the issue was rendered moot by the recently adopted

1 South Seaside Park neighborhood plan, which was
 2 crafted with input from the community. The extended
 3 time it has taken for the township to specifically
 4 address planning issues in South Seaside Park is
 5 understandably frustrating for petitioners. But
 6 there is no evidence that the residents of South
 7 Seaside Park have been harmed by the delay. None of
 8 the permitted uses removed from the zoning ordinance
 9 as part of the South Seaside Park neighborhood plan
 10 had actually been constructed, and none of them were
 11 likely to be constructed.

12 The township received plan endorsement from
 13 the State Planning Commission. This is a process
 14 that intensely scrutinizes a municipality's planning
 15 documents. A plan -- the plan endorsement
 16 designation would not have occurred unless the
 17 documents were comprehensive and acceptable.

18 The conclusions that the reduction in housing
 19 units as a result of de-annexation would be negated
 20 by future growth on the mainland, would be
 21 compensated within five-year period and that the
 22 population loss via de-annexation would be
 23 compensated by an active transfer of development
 24 rights program within a five to ten year period,
 25 which is Mr. Bauman's assertion, must be viewed

1 within the context of the court's decision in the
 2 Avalon Manor case.

3 MR. MICHELINI: Just for the record,
 4 I know he's, again, quoting from, or trying to
 5 quote, and I would say cherrypicking case law. I
 6 have a continuing objection. I put it on the record
 7 last time. I'll just put it on this one time to
 8 Mr. Wisner quoting any case law, not being an
 9 attorney, not being a judge, not being trained in
 10 the law, not having gone to law school, et cetera.
 11 Thank you.

12 MR. WINWARD: Thank you. Duly noted
 13 for the record.

14 MR. WISER: So, must be viewed in the
 15 context of the court's decision in the Avalon Manor
 16 case, which basically said that this growth that was
 17 purportedly -- this mainland growth that was
 18 purported to compensate for the loss that would
 19 occur via de-annexation, that agreement already
 20 belongs to the township. To suggest that -- and I'm
 21 quoting now, or I'm paraphrasing, but -- to suggest
 22 that it be considered as an offset or amelioration
 23 of the impacts of de-annexation is to suggest that
 24 the taxpayers of the township should apply their own
 25 resources to the reduction of the impact. Without

1 de-annexation, this growth would accrue to the
 2 benefit of the taxpayers of the township and would
 3 reduce their taxes below the current levels, or
 4 perhaps offset increased taxes unrelated to
 5 de-annexation. There is no equitable basis to
 6 charge the remaining residents of the township with
 7 the burden of offsetting the increases that would
 8 result from de-annexation.

9 We concur with Mr. Bauman's
 10 conclusion that since the number of eating and
 11 drinking establishments, lodging facilities and
 12 retail stores in South Seaside Park are minimal and
 13 their characteristics are vernacular to the barrier
 14 island, de-annexation would not result in
 15 substantial injury or detriment to the township.
 16 And no Berkeley Township residents will be deprived
 17 of patronizing any of these establishments, should
 18 they become part of a different municipality.
 19 De-annexation will not deprive Berkeley Township of
 20 any prestige and social standing and the part they
 21 play in the region's restaurant, lodging and retail
 22 diversities.

23 However, based on our analysis, we do
 24 say that these observations made by Mr. Bauman can
 25 be -- have two sides of the same coin. Being part

1 of Berkeley Township does not result in substantial
 2 social or cultural injury or detriment to the
 3 residents of South Seaside Park. No South Seaside
 4 Park residents are deprived of patronizing any
 5 establishment outside of South Seaside Park.
 6 South Seaside Park residents are not deprived of any
 7 prestige and social standing and/or the part they
 8 play in the region's restaurant, lodging and retail
 9 diversities by being part of the township. And
 10 de-annexation will not change the way residents of
 11 South Seaside Park eat, lodge or shop.

12 Since there are no schools or
 13 libraries in South Seaside Park, Berkeley residents
 14 will not incur any loss in the physical or
 15 intellectual or cultural resources should
 16 de-annexation occur. However, the township would
 17 lose the active participation of South Seaside Park
 18 residents in the civic life of the municipality.

19 Mr. Bauman's contention that the lone
 20 open space property in South Seaside Park is the
 21 Roberts Avenue Marsh, does not account for the
 22 township's own -- the township owned White Sands
 23 Beach. A basketball court may not be appropriate as
 24 the lone active recreational amenity for the
 25 seniors -- for the senior citizens residents of

1 South Seaside Park. Understanding the constraints
2 placed on the creation of recreation and open space
3 given the built-out nature of South Seaside Park,
4 the recreation and open space plan, which is part of
5 the South Seaside Park neighborhood plan,
6 recommended that the Seaside -- that South -- the
7 South Seaside Park -- that the South Seaside Park
8 neighborhood plan includes tasks to identify
9 recreation needs based on resident population and
10 community interest.

11 Let me say that again, because I'm
12 tripping over my tongue. The recreation and open
13 space plan includes tasks to identify recreation
14 needs based on resident population and community
15 interest and to verify riparian grants to identify
16 potential sites for bayfront recreation designed to
17 increase open space and recreation for South Seaside
18 Park.

19 The debate over the cost of beach
20 badges in South Seaside Park versus Seaside Park
21 contains too many variables to determine how
22 de-annexation might impact township residents, and
23 any such determinations would likely be temporary
24 since beach badge pricing is subject to change
25 annually. This issue may best be resolved by a

1 combined beach badge program for the two island
2 communities.

3 We cannot concur with Mr. Bauman's
4 conclusion that de-annexation of one property deemed
5 eligible to be listed on the National and State
6 Register of Historic Places, and that's
7 Midway Beach, does not cause a significant injury to
8 Berkeley Township residents. The fact that the
9 property is eligible for these residents -- for
10 these registers, makes it significant, unique and
11 worthy of retention.

12 We cannot concur with Mr. Bauman's
13 conclusion that the loss of White Sands Beach is
14 easily compensated by Island Beach State Park.
15 While the ultimate disposition of White Sands Beach
16 has been the subject of debate, the fact that the
17 township has control over this recreational and
18 cultural resource is underscored by the fact that
19 Island Beach State Park was closed for the 4th of
20 July weekend in 2017 due to the statewide government
21 shutdown.

22 Mr. Bauman's opinion that utility
23 arrangements in South Seaside Park would not change
24 should de-annexation occur may not be the case. The
25 disposition of the sanitary sewer service owned and

1 operated by the Berkeley Township Municipal
2 Utilities Authority has not been determined.

3 Finally, Mr. Bauman's statement that
4 de-annexation is consistent with statewide public
5 policies that encouraged sensible municipal
6 governing of adjacent and contiguous areas may
7 reflect a public policy to consolidate
8 municipalities and services, but it doesn't speak to
9 de-annexation. Conversely, the New Jersey Supreme
10 Court in the Ryan case states, the statute providing
11 for de-annexation was intended to give precedence to
12 a more significant policy, that of preservation of
13 municipal boundaries and maintenance of their
14 integrity against challenges prompted by short-term
15 or even frivolous considerations, such as tax
16 shopping or avoidance of assessments.

17 That ends -- that's a natural break
18 point. The next piece I have goes into financial
19 impact. This would be a good place to stop.

20 MR. WINWARD: I concur. I was just
21 going to suggest that, because then you just have
22 financial impact and your summary.

23 MR. WISER: And closing.

24 MR. WINWARD: Hopefully, we can get
25 that done next meeting.

1 MR. MICHELINI: I prefer we go
2 tonight and finish, but that's up on the board.
3 There's not much left.

4 MR. WINWARD: Well, I think the
5 financial impact would fit in really well with the
6 summary. There's a little repetitiveness to it.

7 MR. MICHELINI: Well, the fact is,
8 everything that he says has been a summary of
9 somebody else's testimony. There's been little, if
10 any, new testimony. This is essentially --

11 MR. WINWARD: That's true.

12 MR. MICHELINI: -- essentially a
13 closing statement of four hours. I trust that
14 you'll give me at least four hours to do my closing
15 statement.

16 MR. WINWARD: Well, I think we'll
17 finish him next month.

18 MR. WISER: This was my role here.

19 MR. WINWARD: Finish him next month.
20 And then, after that, however long you take.

21 MR. MICHELINI: Thank you, Mr.

22 Chairman.

23 MS. HUGG: Excuse me, Chairman

24 Winward.

25 MR. WINWARD: Yes.

1 MS. HUGG: I just want to go over
 2 what is scheduled for next --
 3 MR. WINWARD: Okay.
 4 MS. HUGG: -- next month. We have a
 5 minor site plan. And then we also have a pretty big
 6 major -- preliminary final major subdivision site
 7 plan combined together. So, I would ask that you
 8 are going to tell me how to set the agenda, because
 9 we have quite a bit on that evening.
 10 MR. MICHELINI: If I may be heard?
 11 Maybe it makes sense to have Mr. Wisser finish first
 12 the next time and I'll hold my cross-examination
 13 till the following meeting. And that way, you can
 14 get to the subdivision or site plan application.
 15 MR. WINWARD: If you complete the
 16 financial impact, the last section summary, what do
 17 you estimate time wise?
 18 MR. WISER: That's up to this guy.
 19 MR. MICHELINI: I'm not --
 20 MR. WINWARD: No, because you're
 21 going to --
 22 MR. BUCKLEY: Just on your part.
 23 MR. WINWARD: You're going to -- just
 24 on your part.
 25 MR. ORIS: On your presentation.

1 MR. WINWARD: On this report here.
 2 Before he does his cross-examination, how long is it
 3 going to take you?
 4 MR. MICHELINI: It's about 60 pages,
 5 Stan.
 6 MR. WISER: Yeah, I think --
 7 MR. WINWARD: I mean, you went
 8 through 100 pages tonight. You were close to 100
 9 pages tonight.
 10 MR. WISER: Frankly, I've been going
 11 faster tonight than I think I did the last time.
 12 So, I --
 13 MR. MICHELINI: 45 minutes?
 14 MR. WISER: Maybe. I mean, it's hard
 15 to say, maybe an hour.
 16 MR. WINWARD: Okay. Maybe we'll have
 17 him go first them.
 18 MR. MICHELINI: Yeah, have him
 19 finish, and then I'll hold my cross until the next
 20 meeting. That way we can get it done and you can
 21 still have time to get to the other applications. I
 22 think that makes the most sense.
 23 MR. WINWARD: Sounds good to me.
 24 MR. MICHELINI: I would only ask, on
 25 the record again, you were going to get me a copy

1 of --
 2 MR. WISER: I was going to wait
 3 till --
 4 (Off the record.)
 5 MR. WISER: I was going to wait till
 6 I had totally completed the PowerPoint. It is now
 7 completed. How about we do this: Let me get it to
 8 Kelly, Kelly can get it to you.
 9 MR. MICHELINI: That's fine. Maybe
 10 we can do it this week.
 11 MR. WISER: I can do it tomorrow.
 12 MR. MICHELINI: Very good. Thank
 13 you.
 14 MR. WISER: I will e-mail it to you.
 15 I may have to Dropbox it, but I will e-mail it to
 16 you. I will -- you know what, I will convert it to
 17 a PDF, I'll send it to her, she can send it to you.
 18 MR. MICHELINI: Very good. Thank
 19 you.
 20 MR. WINWARD: Kelly, what you could
 21 do is, the application, tell them to come in like
 22 around 7:15.
 23 MR. MICHELINI: Thank you very much
 24 for hearing that request and accommodating it.
 25 MR. WISER: So, the next meeting,

1 just so I'm clear, is the 5th, September 5, am I
 2 correct?
 3 (Off the record.)
 4 MS. HUGG: September 5.
 5 MR. WISER: Okay.
 6 MR. WINWARD: 4th of July was --
 7 because 4th of July was on a Thursday this year.
 8 MR. WISER: I just want to be sure.
 9 (Matter adjourned.)

C E R T I F I C A T E

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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.

Linda Sullivan Hill

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

Dated: August 19, 2019

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