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Planning Report in
the Matter of the
Petitioned
Deannexation of
South Seaside Park

T&M PROJECT NO. CBTO-G1701
July 3, 2017



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The original of this document has been signed and sealed in accordance with New Jersey Law

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Introduction and Overview

This planning report has been prepared on behalf of the Township of Berkeley in response to a Petition of Deannexation filed by the South Seaside Park Homeowners and Voters Association (“Petitioners”) against the Township of Berkeley (“Township”). The Petitioners request the deannexation from the Township in order to seek annexation from the Borough of Seaside Park (“Borough”).

The deannexation process is controlled in New Jersey by N.J.S.A. 40A:7-12, et seq., Annexation of Land—Municipalities. The statute requires that when a petition to effect a deannexation is submitted to the municipal governing body, the governing body shall refer the request to the planning board. The planning board reports to the governing body on the impact of the proposed deannexation upon the municipality. The governing body, upon receipt of the planning board report, is then required to act on the petition by adopting a resolution consenting to or denying the deannexation. Petitioners have the burden of demonstrating that refusal to consent to deannexation by the governing body is arbitrary or unreasonable, refusal to consent to deannexation by the governing body is detrimental to the social and economic well-being of a majority of the residents of the affected land, and that the annexation would not cause significant injury to the well-being of the municipality in which the land is located.

The Petition of deannexation was signed by 351 individuals, 285 of which were verified as valid, representing 65.5% of the 435 registered voters in the South Seaside Park neighborhood of Berkeley Township. The petition was presented to the Berkeley Township Council (“Governing Body”) on September 22, 2014, and referred to the Township’s Planning Board (“Board”) on October 6, 2014. The Petitioners’ case was introduced by Joseph Micheline, Esq., of O’Malley, Surman and Micheline at the Board’s meeting in January 2015. The testimony presented by the Petitioners included neighborhood and Borough residents (“Lay Testimony”), as well as expert analysis. The Lay Testimony was heard by the Board over the course of several meetings and included the following residents (*in alphabetical order*):

- 1) Patricia Dolobacs
- 2) Judith Erdman
- 3) James Fulcomer
- 4) Katherine Fulcomer
- 5) George Giovenco
- 6) Robert Nora
- 7) Robert Schwartz
- 8) Janet Shalayda
- 9) Elaine Vitarello
- 10) Don Whiteman

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Robert Cardwell, a resident of Seaside Park and retired police officer with that Borough, also provided testimony of his perspective on public safety. The Petitioners' experts included a Professional Planner, Scott Bauman, AICP, PP, and a financial expert, Kenneth Moore, CPA, RMA. Both experts prepared reports on the impacts of deannexation.¹ Mr. Bauman's report utilized information collected from meetings and informal interviews with neighborhood residents of South Seaside Park, as well as available Township plans and reports.²

Consequently, this Planning Report will examine the arguments and evidence introduced during Lay Testimony, the report prepared by Mr. Bauman and his subsequent testimony to the Board, and how the Petitioners' arguments and information relate to the Township's comprehensive planning goals and objectives. A separate Financial Report to evaluate the information presented by Mr. Moore is being prepared concurrently by the Township's financial expert.

This Planning Report has been prepared to assist the Berkeley Township Planning Board in evaluating the impacts of the proposed deannexation of South Seaside Park in the context of the statutorily required analysis. The analysis identifies the impacts and considers whether they are beneficial or detrimental to the Township and South Seaside Park. The analysis further considers whether the consequences of those impacts, either singly or in any combination, are substantial in nature.³

TABLE 1 identifies the plans, reports and other data reviewed in the preparation of this report.

¹ Mr. Bauman's report consisted of two parts: the first, prepared and sealed on August 15, 2014; and a subsequent report amendment, signed and sealed on February 19, 2015. Mr. Moore's report was shared with the Board in December 2015, with additional information provided during his return testimony in February 2016 and May 2016.

² Unless mentioned otherwise, Mr. Bauman's August 15, 2014 report and subsequent February 19, 2015 report amendment are collectively referred to as the Bauman Report.

³ Several arguments raised by the Petitioners are beyond the control of the Township. While some of these arguments may have been raised to demonstrate that there would be no impact to the Township, we note that there is no impact from a municipal level to the Petitioners and are not addressed specifically in this report:

- Transportation
 - OceanRide bus service is under the jurisdiction of Ocean County. Neither Berkeley Township, nor Seaside Park Borough have control over their routes.
 - New Jersey Transit bus service is also outside of the jurisdiction of Berkeley Township and Seaside Park.
- State and County Parkland
 - County Parkland (County jurisdiction)
 - State Parkland (State jurisdiction)
- The Berkeley Times newspaper is a private publication that is published by Micromedia Publications, Inc.
- Libraries (County Jurisdiction)

Table 1: References

<i>Plans</i>	<i>Data</i>	
Township Master Plan (1997)		US Census Bureau
Berkeley Township Pinelands Area Master Plan Amendment (2001)		Land Use (MOD IV Property Tax Records)
Vision Statement for the Year 2020 (2003)	<i>Petitioners Reports</i>	Petitioners Planning Report by Scott Bauman, AICP, PP (2014)
2003 Township Master Plan Re-examination Report		2015 Petitioners Planning Report Amendment by Scott Bauman, AICP, PP (2015)
2008 Township Master Plan Re-examination Report	<i>Hearing Transcripts (Lay Testimony)</i>	January 2015
Township Housing Element & Fair Share Plan (2008)		February 2015
2008 Land Use and Circulation Element (2009)		April 2015
Town Center Redevelopment Plan (2009)		May 2015
Manitou Park Neighborhood Redevelopment Plan (2009)		June 2015
Environmental Resource Inventory (2012)		May 2016
TDR Development Transfer Plan Element (2012)		June 2016
Utility Services Element & Capital Improvement Plan (2012)	<i>Hearing Transcripts (Planners Testimony)</i>	August 2015
Plan Endorsement Report (2012)		September 2015
Strategic Recovery Planning Report (2014)		October 2015
2015 Township Master Plan Re-examination Report and Master Plan Amendments		November 2015
Township Floodplain Management Plan (2015)	<i>Hearing Transcripts (Township Testimony)</i>	September 2016
Hazard Mitigation Plan (2015)		October 2016
Permit Software Assessment (2015)		November 2016
GIS Report (2015)		December 2016
Coastal Neighborhood Resiliency Plan (2017)		January 2017
Neighborhood Plan for South Seaside Park (2017)		February 2017
Township Housing Element & Fair Share Plan (2017)		April 2017
		May 2017

The Planning Report has been organized into four sections. The first section provides an overview of Berkeley Township, and how its character is defined by its diverse constituent neighborhoods, South Seaside Park included. In evaluating this relationship between the Township as a whole and South Seaside Park, this section describes such characteristics as geography, history, population and housing, as well as the variety of services and amenities that are provided by the Township for the benefit of its residents.

The second section reviews the plans that have been prepared by the Township to address future growth and redevelopment. This section examines the Township's Master Plans, Master Plan Elements, Master Plan Reexamination Reports, Redevelopment Plans, Technical Reports, and other documents to evaluate its responses to land use and development concerns within the community. To address the arguments presented by the Petitioners during Lay Testimony and by their Professional Planner Mr. Bauman, this section also reviews how the Township's planning efforts have impacted South Seaside Park.

The third section evaluates the impacts of deannexation based upon the statutory criteria (N.J.S.A. 40A:7-12, et seq.):

- 1) Whether the refusal to consent to deannexation by the governing body is arbitrary or unreasonable,
- 2) Whether the refusal to consent to deannexation by the governing body is detrimental to the social and economic well-being of a majority of the residents of the affected land; and,
- 3) Whether annexation would cause significant injury to the well-being of the municipality.

This section considers the impact that the secession of South Seaside Park would have on existing or future interaction among members of the greater Berkeley Township community. It reviews the contributions made by South Seaside Park and its residents to the benefit of the Township as a whole. In the same manner, this section also reviews the contributions of Berkeley Township to the benefit of South Seaside Park.

Finally, the report concludes with an assessment of whether or not deannexation will have a detrimental impact to the Township.

Municipal and Community Overview

Located in Ocean County, Berkeley Township covers approximately 43 square miles of land area, stretching from the New Jersey Pinelands to the Atlantic Ocean (**Appendix D.1: Reference Overview Map of Berkeley Township**), and contains a mosaic of different neighborhoods that have established over the years,⁴ from the settlements that arrived with the development of the railroads, US Route 9, or the Garden State Parkway; to the communities that were master planned around resorts (South Seaside Park and Pinewald), lifestyles (Silver Ridge and Holiday Heights), or ethnic enclaves (Manitou Park and portions of South Seaside Park⁵); as well as the physical development patterns that were the result of state regulations (Pinelands Protection Act, Coastal Area Facility Review Act (CAFRA)) or natural constraints. Exclusive of neighborhood divisions, the Township's legal boundaries include three (3) noncontiguous areas: the mainland, Pelican Island in Barnegat Bay,⁶ and the barrier island (**Appendix D.2: South Seaside Park Reference and Neighborhood Boundary Map**).⁷

Municipal Boundaries

Lay Testimony and the Bauman Report referred to the Township's noncontiguous land boundaries as an unintended artifact caused from a century of municipal boundary changes as an argument to justify deannexation.⁸ Indeed, the Township's geographic boundaries

⁴ For the purposes of this report, the terms "neighborhood" and "community" refers to an unincorporated area of a municipality that shares certain specific characteristics that define it from another area, this will be discussed in further depth later in the report. This report will interchange the terms "community" and "neighborhood," and will not refer to an entire municipality, unless specifically noted (e.g. Berkeley Township is a community of neighborhoods, or the greater Berkeley Township community). Any reference to the Township or any municipality as a whole will be noted by the use of appropriate terminology (e.g. the Township, Berkeley Township, the municipality.)

⁵ The September 20, 1912 afternoon edition of the New Jersey Courier (Volume 62, Number 51) reported on a fire in an area known as "Little Italy," which the article describes as the area "...just below the borough line of Sea Side Park on the beach." The article continues its description of the area in the following paragraph by explaining, "Years ago an Italian colony were located there while working at grading on the beach, and the locality was then christened "Little Italy", a name it retains to this day." (**APPENDIX A**)

⁶ Jurisdiction of Pelican Island is split between Berkeley Township and the Township of Toms River. Unless specifically noted otherwise, any mention of Pelican Island in this report will refer to the area located within Berkeley Township.

⁷ Berkeley Township's jurisdictional boundaries on the barrier island encompass three (3) distinct areas, two of which are managed by the State of New Jersey (Island Beach State Park and the Route 37/Route 35 interchange adjacent to Seaside Heights), and the third is the neighborhood of South Seaside Park, bounded to the south by Island Beach State Park and to the north by the Borough of Seaside Park. For the purposes of this report, unless otherwise noted, reference to the "Barrier Island" portion of Berkeley Township will refer to the neighborhood of South Seaside Park.

⁸ As part of his January 2015 testimony, Mr. Whiteman introduced an historic map from the Rutgers archives (Exhibit A-3; found online for this report at: http://mapmaker.rutgers.edu/Ocean/Sea_Side_1860.jpg). The map, prepared for the purposes of selling waterfront real estate, is titled the "Plan of Sea Side Park, Island Beach, Ocean Co. NJ." There is some discrepancy as to the date of this map's production, as the Rutgers

have changed significantly over the past century, yet this is also true for many other municipalities across the state. Municipal boundaries throughout New Jersey have noncontiguous boundaries that are split by natural features, such as water or wetlands, and others are split by constructed barriers, such as highways. In other instances, natural, regulatory or constructed barriers led to the establishment of multiple communities within a single municipality. Examples include:

Mainland/Island Jurisdiction

Berkeley Township is not the only New Jersey municipality with a presence on both the mainland and barrier island, as evident in the Townships of Toms River and Brick in Ocean County, Upper and Lower Townships in Cape May County, and Egg Harbor Township in Atlantic County. Noncontiguous and other disjointed municipal boundaries exist in other New Jersey settings beyond the Atlantic shoreline, such as the islands located in the Delaware River, including Montague Township's Mashipacong Island or Pennsauken Township's Petty Island (**Figure 1**).

Cartography Lab dates it to 1860, while Mr. Whiteman's testimony suggests it to be 1918 or 1916. During this historical discussion, Mr. Whiteman made several claims to suggest that South Seaside Park's failure to originally deannex from Berkeley Township in 1898 was a geographic error. According to Mr. Whiteman, "A-3 is a map that I got from the Rutgers archives, Rutgers University archives that shows that South Seaside Park was set up with Seaside Park and, as I was always told growing up, that there was a boundary error." He reiterates this point when questioned by the Board's Attorney, "It was told to me by the old timers who lived there back in the '30s, okay...Okay. What we have who are now deceased, was my dad, Don Whiteman, Senior. My uncle, who was an Enderson, the well driller, who basically, when they lived in the area, it was always told to us that it was a boundary mistake when it came to the drawing up of lines." Mr. Whiteman revisited the topic when he provided additional testimony in June 2015, "I found this map. And what had happened, if you look at this map, you'll notice, you'll see North Avenue. And then if you look all the way to the left, you'll see 24th Avenue. And what this says is the Seaside Park at the top. And then it says Island Beach, which was the name of the beach area. It wasn't Island Beach State Park. That part of the peninsula was known as Island Beach. And what happens—in Ocean County. And this is the map of the said setup that was supposed to be occurring for Seaside Park. I had mentioned that there was a boundary mistake at one time. And looking through this, I'm saying to myself bingo. This at least gives an idea of what I said prior to the board here about there was a boundary error, because Seaside Park was supposed to extend all the way to 24th avenue."

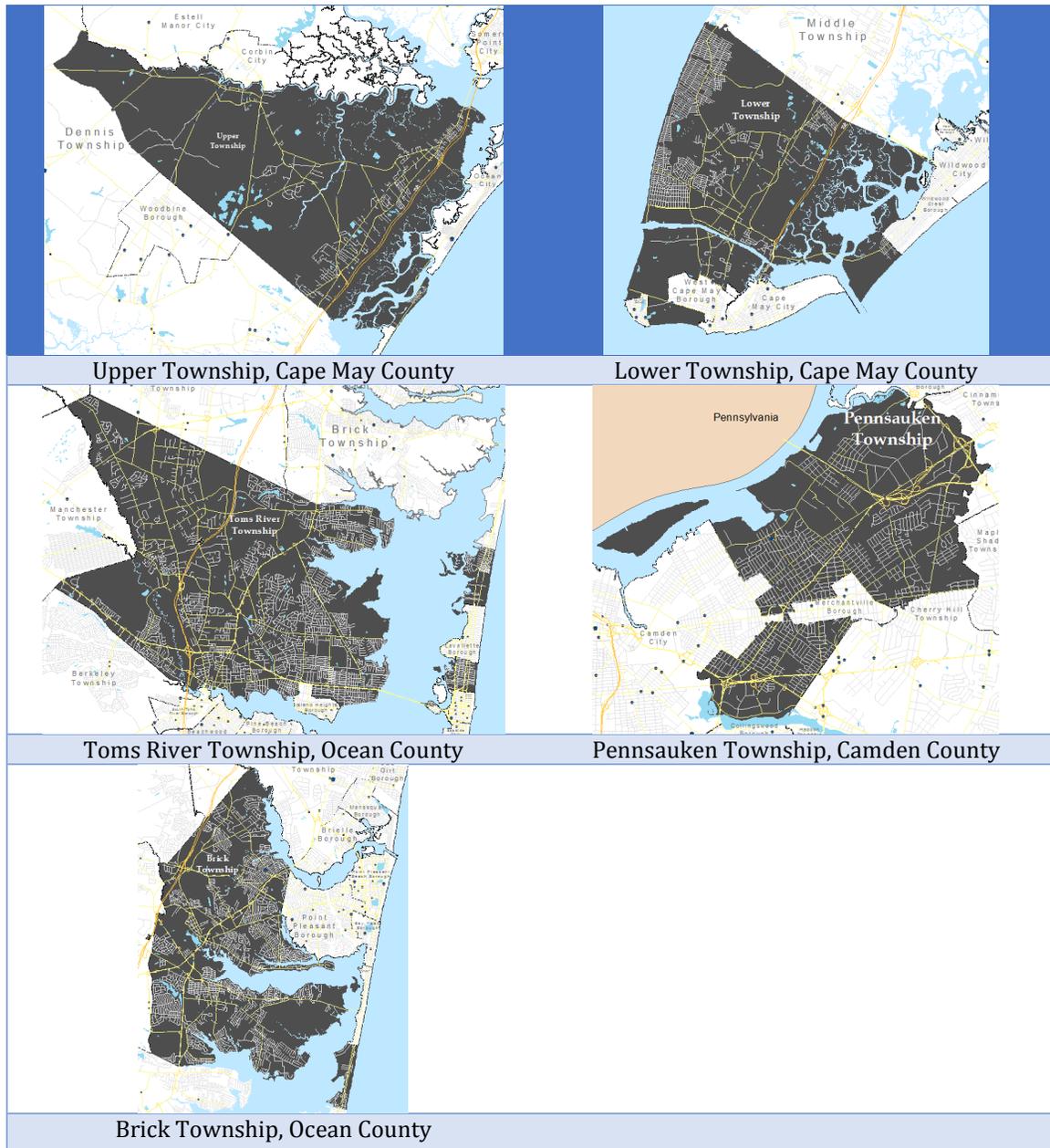


Figure 1: Examples of Mainland/Island Municipalities in New Jersey

Historic Products of Prior Municipal Boundary Changes

Some New Jersey municipalities with noncontiguous boundaries are artifacts of prior municipal deannexation such as Long Beach Township in Ocean County, Byram Township in Sussex County, South Hackensack Township in Bergen County, and Aberdeen Township in Monmouth County (**Figure 2**).

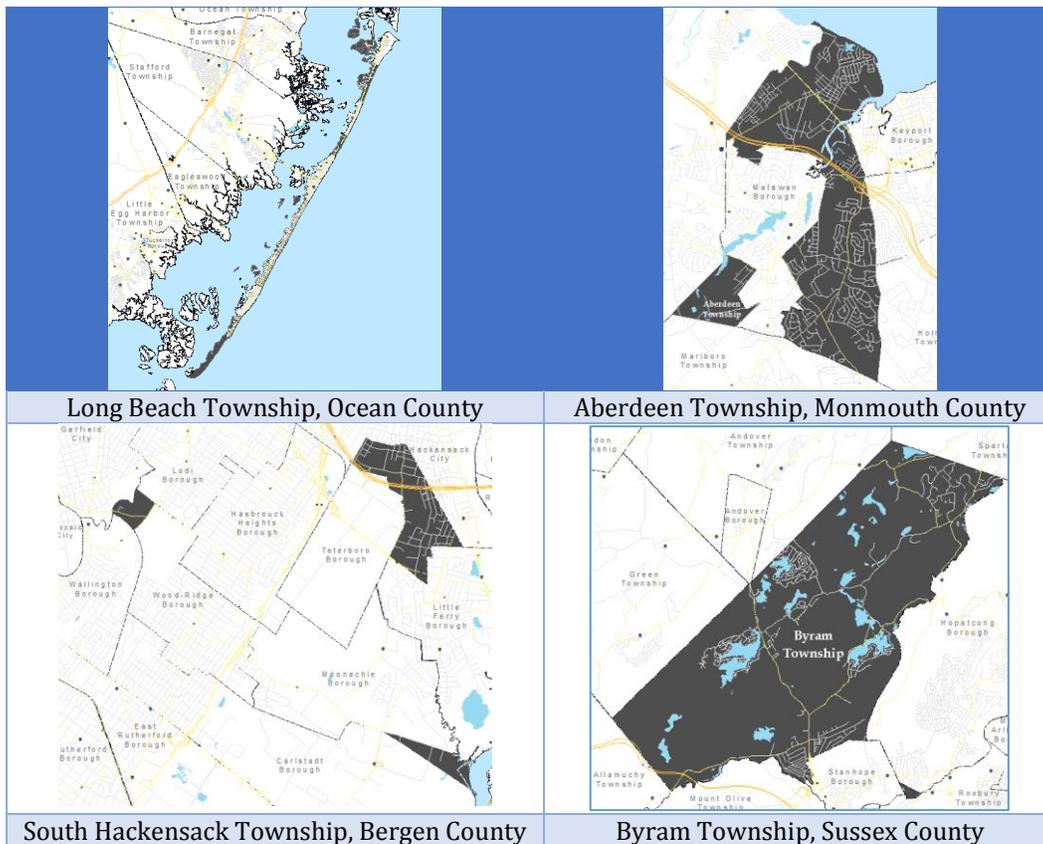


Figure 2: Examples of Municipalities Affected by Prior Municipal Boundary Changes

Unincorporated Communities within a Single Municipality

Geographically larger municipalities often include smaller, unincorporated communities or neighborhoods, providing a more localized identity.

Maurice River Township, containing over 93 square miles of land area⁹ in Cumberland County is one such example of multiple unique settlements (incl. Delmont, Heislerville, Leesburg, Dorchester, Bricksboro, Port Elizabeth, Cumberland, and Milmay)¹⁰ within a single municipality resulting from natural barriers, and to a degree, regulatory barriers established by the Pinelands Comprehensive Management Plan area which have limited the physical expansion of individual communities. Geographic and community identity in the Township can also be delineated by boundaries established by the United States Postal Service for sorting and distributing mail, otherwise known as ZIP Code boundaries. It should be noted that none of the ZIP Codes in Maurice River, and thus none of the corresponding place names for each zip code, utilize the name “Maurice River,” but

⁹ In comparison, Berkeley Township has nearly 43 square miles of land area.

¹⁰ Source: Maurice River Township, *The History of “Maurice River Township.”* URL: <http://www.mauricrivertpw.org/history.html>, last accessed June 28, 2017.

instead use the settlements of Heislerville, Leesburg, Delmont, and Milmay, as well as the neighboring municipalities of Millville and Vineland.

Middletown Township in Monmouth County contains almost 41 square miles of land area, includes numerous neighborhoods that provide an additional “layer” of local identity, many of which correspond to historic settlements, including Port Monmouth, New Monmouth, Belford, Nut Swamp, Navesink, Leonardo, River Plaza, Lincroft, Middletown Village, North Middletown, and Sandy Hook.

Mount Olive Township in Morris County contains over 29 square miles of land area, and is comprised of two sections, Budd Lake and Flanders.¹¹ Based on ZIP Code boundaries, place names in Mount Olive are further differentiated, with several sections of the Township sharing ZIP Codes with neighboring municipalities, such as Chester, Stanhope and Hackettstown, in addition to the Budd Lake and Flanders sections.

Old Bridge Township in Middlesex County contains approximately 38 square miles in land area and includes the local place names of Browntown, Cheesequake, Cheesequake State Park, Laurence Harbor, Matchaponix, Moerle Corner, Moorestown, Morristown, Redshaw Corner, Runyon, Sayrewood, Sayrewood South, and Texas.¹² In addition, Old Bridge Township also includes the Census Designated Places of Laurence Harbor, Madison Park, Brownsville, and Old Bridge. Based on ZIP Codes, Old Bridge Township is divided between the place names of Englishtown, Matawan, Monroe Township, Old Bridge, Cliffwood, Keyport, Parlin, and South Amboy. With the exception of the Old Bridge ZIP Code place name, the rest of the ZIP Code place boundaries extend beyond the municipal boundaries of the Township.

In the case of Neptune Township in Monmouth County, distinct communities are separated by a mix of geographic, constructed (e.g. roads) and municipal boundaries, including Shark River Hills and Ocean Grove.

Similar to other municipalities, Berkeley Township’s individual neighborhood communities have been shaped over the years by different factors, such as those described above.

Neighborhoods

The examples in the previous section illustrate that delineation of a distinctive neighborhood or community in New Jersey is entirely more subjective than municipal political boundaries. Moskowitz and Lindbloom (2004) define a neighborhood as “An area of a community with characteristics that distinguish it from other areas and that may

¹¹ Source: Mount Olive Township, *The History of Mt. Olive*. URL: http://www.mountolivetownship.com/town_history2.html, last accessed June 28, 2017.

¹² Source: New Jersey Department of Transportation, October 2004, *Local Names*. URL: <http://www.newjersey.gov/transportation/publicat/localnames2004.pdf>, last accessed June 28, 2017.

include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as major highways and railroads, or natural features, such as water bodies or topography.”¹³ In geographically large municipalities, such as Berkeley Township, neighborhoods can take on added significance as a way to identify a respective part of the whole, with each exemplifying different defining characteristics. As such, a community can be defined by a common institution, such as a church or school, it may be defined as a section of a municipality where a residential subdivision or similar development patterns have created a common sense of place, or it may be defined by a common interest such as age-restricted communities or ethnic enclaves. In other cases, certain “regions” are carved, sometimes across municipal lines, to establish an overarching jurisdictional district. These districts might be used for state regulatory jurisdiction, such as State Planning Areas, or the Pinelands Comprehensive Management Plan area. Federal districts include Census boundaries, USGS place names, and zip codes.¹⁴ Other boundaries include fire districts, water franchise areas, and cable service providers. These delineated “regions,” may be named for a specific locale, but that does not always imply that they are one and the same. For example, the Manitou Park Volunteer Fire Company’s service area extends beyond the neighborhood of Manitou Park to also include the age-restricted communities of Holiday City, Holiday Heights, and Silver Ridge, as well as the Robert J. Miller Airpark, and the Borough of South Toms River.

Despite the different ways to define a “community” or delineate neighborhood boundaries, common place names are used to refer to certain areas of the Township. On the broadest level, Township planning documents will often refer to three (3) distinct regions of the township: the Pinelands and senior communities located west of the Garden State Parkway; the “Eastern Mainland” which consists of the mainland portion of the Township east of the Garden State Parkway; and the barrier island. Zooming in closer, township planning documents often refer to the neighborhoods of Bayville, Holiday Heights, Holiday City, Manitou Park, Pelican Island, Pinewald, Silver Ridge, and South Seaside Park. Ward and election districts are often divided by these neighborhoods. Some of these neighborhoods are easily delineated, such as Manitou Park, Pelican Island, South Seaside Park and the

¹³ Harvey S. Moskowitz and Carl G. Lindbloom, 2004. *The Latest Illustrated Book of Development Definitions*. Center for Urban Policy Research: Edward J. Bloustein School of Planning and Public Policy, Rutgers, the State University of New Jersey, page 256.

¹⁴ Lay Testimony discussed that South Seaside Park’s mailing address and ZIP Code were already shared with Seaside Park, and that the Post Office did not recognize mail sent to South Seaside Park if it was addressed to “Berkeley Township.” It should be clarified that zip code boundaries are determined by the United States Postal Service for their system of sorting and distributing mail across the country. **APPENDIX D.3 Post Office/Zip Code Boundaries in Berkeley Township** shows how ZIP Code boundary lines do not sync perfectly with municipal borders. Pelican Island has a Seaside Heights ZIP Code, several of the senior communities in the western part of the Township have a Toms River ZIP Code, and most of the mainland has a Bayville ZIP Code, although some areas are covered by Pine Beach and Beachwood.

senior communities. In other cases, neighborhood boundaries may be more nebulous, as in the cases of Bayville or Pinewald.¹⁵

The interposition of the different cultural, regulatory, and economic layers help to define Berkeley Township's neighborhoods and communities. The age-restricted senior communities of Holiday Heights, Holiday City and Silver Ridge define the northwestern corner of the Township. Bayville refers to an area of the Township along the Barnegat Bay, largely characterized by suburban-style development, which itself contains several identified communities such as Glen Cove, Goodluck Point, Berkeley Shores, Holly Park, Cedar Beach, and Mill Creek. The rehabilitation center near Crystal Lake was originally the Royal Pines Hotel, part of a master planned high density community that was to be developed in the Pinewald section of the Township. Today, the former hotel still exists as a rehabilitation center and most of Pinewald is developed at low density, designated for preservation under the Township's Transfer of Development Rights (TDR) plan. The historic African American settlement of Manitou Park is bounded by Toms River, South Toms River and the Township's senior communities. South Seaside Park is the Township's only neighborhood presence on the Atlantic Ocean, bounded by Island Beach State Park and the Borough of Seaside Park. Beachwood Plaza, an abandoned mall on Route 9, will eventually be redeveloped into a mixed-use community center that adds a new layer of character to Bayville. Berkeley Township's identity is collectively defined by this assemblage of distinct neighborhoods, each with their own unique demographic, geographic and cultural characteristics.

Demographics Overview

At the time of the 2010 US Census, Berkeley Township had a total resident population of 41,255, of which 490, or 1.2 percent, lived in South Seaside Park. In the period since the 2010 US Census, however, the proportion of Berkeley Township residents that resided in South Seaside Park increased. Based on the most recent American Community Survey estimates prepared by the US Census Bureau for the five-year period from 2011 through 2015, Berkeley Township's total resident population had grown to 41,480, while the resident population of South Seaside Park had grown to 824. Thus, the percentage of total township population that is comprised by South Seaside Park is approximately 2.0 percent, according to the latest American Community Survey of the US Census Bureau. This is summarized in **Table 2**.

¹⁵ The US Geologic Survey (USGS) maintains a listing of place names, which includes some of the names mentioned above, but also others that are less common. The USGS names include Wrangell Brook Park, Silver Ridge Park, Holiday Heights, Dover Forge, Double Trouble, Barnegat Pines, Crystal Lake, Pinewald, Cedar Beach, Glen Cove, Holly Park, Bayville, Berkeley Shores, River Bank, and South Seaside Park. Notably absent are Pelican Island and Manitou Park. On the other hand, New Jersey's place name database includes a listing of 18 names in Berkeley Township, including Barnegat Park, Barnegat Pier, Bayville, Berkeley Township, Crossley, Double Trouble, Dover Forge, Glen Cove, Good Luck Point, Holiday City and Berkeley, Holly Park, Island Beach State Park, Pelican Island, Pinewald, River Bank, Silver Ridge Park West, and Zebs Bridge. Notably absent here are South Seaside Park and Manitou Park.

Table 2: Total Resident Population

	Berkeley Township		South Seaside Park	
	Population	Percent of Township Population	Population	Percent of Township Population
2010 US Census	41,255	100%	490	1.2%
2011-2015 American Community Survey	41,480	100%	824	2.0%
Source: US Census Bureau				

Based on the above American Community Survey data, Berkeley Township would lose 824 residents, or almost 2.0 percent of its total resident population, if the petition for deannexation were granted. While at first glance this may seem insignificant, we note that the grant of deannexation would, indeed, be significant and have multiple consequences for the township.

Educational Attainment

South Seaside Park’s residents are among the township’s most educated. This is demonstrated by the fact that, as indicated in the most recent American Community Survey estimates for the five-year period from 2011 through 2015, approximately 42.3 percent of the neighborhood’s residents aged 25 and older earned a college degree (incl., associate, bachelor, master, doctorate, and professional school degrees). By contrast, only 22.7 percent of Berkeley Township residents as a whole, aged 25 and older earned a college degree, and only 34.2 percent of Ocean County’s residents aged 25 and older achieved the same level of educational attainment. Deannexation would result in the removal of this highly-educated population from Berkeley Township.

Household Income

The median household income in the South Seaside Park neighborhood is higher than in the township overall. Indeed, according to the American Community Survey estimates for the five-year period from 2011 through 2015, the median household income, as measured in 2015 inflation-adjusted dollars, was \$52,639 in South Seaside Park and \$43,942 in Berkeley Township as a whole. Thus, the median household income of South Seaside Park is nearly 20 percent higher than that of the township as a whole, but less than the median household income of \$61,994 in Ocean County. If South Seaside Park were to be deannexed, we estimate that median household income in the remaining parts of Berkeley Township would drop below the current level of \$43,942, which would further widen the gap between the township and Ocean County.

Employment Status

A greater percentage of South Seaside Park residents participate in the workforce than in the rest of the township. This is demonstrated by the fact that, according to

the aforementioned American Community Survey estimates, for the five-year period from 2011 through 2015, none of the 402 South Seaside Park residents aged 16 or older that normally participate in the labor force were unemployed. By contrast, approximately 11.5 percent of the rest of the 15,987 Berkeley Township residents aged 16 or older that normally participate in the labor force were unemployed. Deannexation would result in a higher level of unemployment in Berkeley Township as a whole, and the shrinkage of its labor force by 402.

Housing Stock

According to the American Community Survey estimates for the five-year period from 2011 through 2015, there are 1,671 dwelling units that would be lost if South Seaside Park were to be deannexed from Berkeley Township. This would be a total loss of 6.9 percent of the township's current total of 24,169 dwelling units.

In addition to the loss of 6.9 percent of the township's housing stock, deannexation would result in the complete loss of an established neighborhood and an overall reduction in the diversity of the township's housing stock. The reduction in the diversity of the township's housing stock is demonstrated by the facts that: dwelling units tend to be smaller in South Seaside Park than in the Berkeley Township overall; and, South Seaside Park has a high concentration and significant portion of the township's housing stock that is not characterized by the US Census Bureau as single-family detached housing (e.g., attached and multifamily housing, as well as mobile homes).

To illustrate, the aforementioned American Community Survey estimates indicate that the median number of rooms in South Seaside Park dwelling units is 4.4, whereas the median number of rooms in dwelling units in Berkeley Township overall is 5.3. Over 19.4 percent, or 247 of 1,671 units in South Seaside Park is not characterized as single-family detached housing. This is greater than the percentage for township as a whole, where 7.2 percent, or 1,742 of 24,169 housing units are not characterized as single-family detached housing. Of the total number of housing units in the township not characterized as single-family housing, the 247 units in South Seaside Park of the 1,742 units township-wide constitute nearly 14.2 percent of the township's housing stock that is not characterized as single-family detached housing, which is quite significant when one considers that South Seaside Park comprises only about 0.6 percent of the township's total land area.¹⁶

¹⁶ It should be noted that the 2017 Neighborhood Plan for South Seaside Park (included with this report as **Appendix B**) recommends zone changes to the neighborhood that would eliminate multi-family residential (including 2-4 family and townhouses) from all residential districts. This recommendation was developed following an extensive public engagement process, which is described further in the plan summary in the following section of this report. Further information can be found in the attached Neighborhood Plan, as well as the transcripts from the two public hearings, which are included with this report as **Appendix C**. While the Neighborhood Plan recommends the removal of multifamily from the residential districts, it also recommends the addition of "mixed-use" multifamily (residential above commercial) in the Neighborhood Business zone,

If the petition for deannexation were granted, the loss of the entire South Seaside Park neighborhood would represent the loss of a highly-educated, well-compensated and employed population, residing in a diversity of housing types. Deannexation would result in the loss of a majority of its seasonal housing and with it, another distinct subset of the greater Berkeley Township community, the seasonal residents and tourists who are associated with such housing. The Township would lose nearly 2.0 percent of its total resident population, and nearly 7.0 percent of its housing stock.

Locational Decision Making

The Petitioners have claimed that most trips from the South Seaside Park neighborhood to municipal facilities and amenities in mainland Berkeley Township require a longer drive than experienced by residents in most other areas of the Township. This is not in dispute. It is intuitive to understand, even without the aid of a traffic study, that the Barrier Island section of Berkeley Township is located at some distance away from the mainland, necessitating longer travel times to reach certain services.

Decisions of where to live, work or invest are based on different factors that are used to prioritize the suitability of each site. Residential and commercial locational determinations are based on these cost-benefit decisions; a given locational decision comes at the expense of certain sacrifices, but is justified by expressed preferences. Using New York City as an example, one can choose to live in the Borough of Manhattan and be close to its many amenities and businesses but pay more for a smaller housing space. Alternatively, one can enjoy a single-family suburban-style lifestyle in the Borough of Staten Island but spend more time commuting to access goods and services.

This cost/benefit analysis also applies to the decision to live in one of the communities and environs in Berkeley Township. Preferences for certain factors may require a sacrifice of others. For example, the decision to live on the beach comes with many benefits, including proximity to the ocean and the recreational benefits it affords.¹⁷ Likewise, choosing to live within close proximity to the Township's administrative building offers the benefits of larger lots and greater privacy. Housing located near the Township's shopping centers

and also recommends the development of design standards to protect the existing residential modular "cottage" developments. That said, many of the existing multifamily unit developments in the neighborhood were nonconforming with the existing zone regulations; the changes proposed by the Neighborhood Plan would not change their status.

¹⁷ This is addressed by Mrs. Fulcomer as part of her Lay Testimony in April 2015: *"There was an inquiry, too, in the past as to why we don't live closer. Why we live over there as opposed to living, perhaps, closer to here, if we're stating that, gee, it's an awfully long drive or, you know, it's -- the distance is -- makes things difficult and inconvenient for us. Now, to me, ever since I was a little girl, we've been coming down to this area. And the idea of being walking distance to the ocean and living on the bay was a dream. We used to stay in Sullivan's Cabins on the barrier island up in Normandy. But the idea. And then when we purchased the home, you know, just as a part-time summer home at 309 Roberts, and then we moved permanently to 356. And my husband would even tell you that when we left Rahway, it was a dream come true. So, that, for me, is a no brainer. It's the most wonderful place in the world to be where you can actually walk right down to the ocean. So, that's why I do live there."*

offers a suburban-living experience and access to major highways. The senior communities offer amenities and services specifically targeted to their resident populations. The offerings found in each community are evaluated against the costs, both the financial costs and the willingness to sacrifice certain amenities in exchange for others.¹⁸

Senior Recreation Services

Petitioners, through Lay Testimony and their Professional Planner, made several arguments to suggest a disparity in the access to, and availability of, Township-sponsored senior recreation services between residents of South Seaside Park and the rest of the Township. Mr. Bauman's report alleges that there is injury to seniors in South Seaside Park, because Berkeley Township's senior-specific recreational activities are held on the mainland, and the Township's bus service for senior programs does not include a bus stop in South Seaside Park, meaning that residents would need to arrange their own transportation to access these activities.¹⁹ Each of these arguments require clarification. First, Berkeley Township's senior programs are open to all residents, age 62 and over, regardless of their geographic location. Second, the Township's Senior Programs bus service stops at Holiday Heights, Holiday City South, Holiday City at Berkeley, Holiday City West, Silver Park North, Silver Ridge Park East, Silver Ridge Park West, Silver Ridge Park Westerly, the Township's recreation center, and the Bay Ridge Apartments (affordable senior housing run by the Township's Housing Authority). With the exception of the Township's recreation center, each bus stop is located in an age-restricted community, providing service to a clearly-defined eligible audience. South Seaside

¹⁸ Despite the Petitioners arguments as part of Lay Testimony and as part of Mr. Bauman's report that residents suffer "economic and social injury" as a result of their travel to the mainland to access goods and services, Lay Testimony acknowledged that Toms River is a destination for certain doctors (Ms. Dolobacs, May 2015), elementary school (Mr. Whiteman, January 2015) and churches (Ms. Fulcomer, April 2015). Ms. Dolobacs also explained that she will go to the Shop Rite in Toms River if the A&P in [Lavallette] (Ed. The A&P that Ms. Dolobacs referenced is located in the Ortlely Beach neighborhood of Toms River, not the Borough of Lavallette).

¹⁹ Mr. Bauman's report contends "*The loss of one location site to host one recreation program each year in South Seaside Park will not cause significant economic or social injury to Berkeley Township residents. If deannexation is not approved, it will result in continued economic and time related inconvenience of South Seaside Park residents having to drive in a vehicle for one hour round trip to participate in any Berkeley Township sponsored programs. The Berkeley senior programs do not take into consideration that senior citizens reside in South Seaside Park; there are no bus stops for seniors living in South Seaside Park, nor do any senior programs take place in South Seaside Park. There is no loss of senior citizen programs in South Seaside Park, thus deannexation will not cause significant economic or social injury to Berkeley Township residents.*" (Bauman 2014, 28) In addition, Mr. Bauman's introductory summary, he argues that "*Berkeley Township does not host municipal sponsored recreation, senior citizen or children programs in South Seaside Park. All recreation facilities are on the mainland except for two, and all programs take place on the mainland except for one beach party each summer at White Sands Beach.*" As part of his testimony in August 2015, he explains "*No senior programs are held in South Seaside Park. I feel the senior population's not being served. No events, no arranged transportation to the mainland for the township events.*" Based on these arguments, it is not clear how senior services for residents of South Seaside Park would improve through deannexation, as Exhibit 18 ("Senior Services in Berkeley Township & Surrounding Area") of Mr. Bauman's report illustrates senior services in Berkeley Township, Brick Township, Pt. Pleasant, Beachwood, Toms River, and Point Pleasant Beach, but not Seaside Park.

Park is not an age-restricted community. No senior service bus stops are located in South Seaside Park, nor are they located in other age-inclusive neighborhoods of Berkeley Township where seniors constitute a partial segment of the population. That said, based on testimony from the Township's Superintendent of Recreation, Tim Yurcisin,²⁰ additional bus stops could be added if there was regular demand from residents.

Instead, Township-sponsored activities and amenities in South Seaside Park are open to all ages. This includes the annual beach party, as well as the park facilities in the neighborhood that include White Sands Beach, Roberts Avenue recreation facility, and the Sgt. Lyons Memorial Basketball Courts.²¹ In addition, the Township's summer youth recreation program provides bus service for all children, regardless of where they live within Berkeley Township.²²

Beach Access

As mentioned above, Berkeley Township maintains three (3) recreational facilities located in South Seaside Park (**Appendix D.4: Existing Open Space and Recreation Areas in South Seaside Park**), exclusive of those maintained by Ocean County and the State of New Jersey: the oceanfront White Sands Beach, the Sgt. Lyons Memorial Basketball Courts, and the Roberts Avenue recreation facility.

Berkeley Township may not sponsor any senior-specific activities in South Seaside Park, however, the Township's ocean beach badge pricing schedule offers complementary beach badges for seniors over age 62 to White Sands Beach, the Township's only oceanfront beach.²³ While state law prohibits municipalities from

²⁰ The May 2017 testimony of Mr. Yurcisin, the Township's Superintendent of Recreation, further clarified the availability of bus stops for the senior citizen programs, "And we also have, use those busses for our senior citizen program which we, during the winter months, when—winter, fall, spring months, we have like once a week trip for seniors available. And we have various pickup spots throughout—right now, it's throughout the various clubhouses in Holiday City and one stop at the mainland. If we did or would get a request from senior citizens, qualified senior citizens in South Seaside Park to join that program, we would provide bussing in that area also for the trips." Mr. Stuart Wiser asked Mr. Yurcisin for further information, suggesting that if someone called from South Seaside Park to request a pickup for one of these trips, Mr. Yurcisin answered "Yes, we would. If we got regular attendees for that program, we would do that, yes."

²¹ During Lay Testimony, Ms. Fulcomer and Ms. Dolobacs both stressed the need to entertain their grandchildren when they come to visit (April-May 2015).

²² Based on the May 2017 testimony of Mr. Yurcisin, the Township's Superintendent of Recreation, "As far as recreation programs for South Seaside Park, we—they're—all our programs that we have for the township is provided, it's available to South Seaside Park residents. We have a program for kids. We have over 600 kids a year in that program. We—the last couple years, we have not had—we have bussing for the kids in various areas of town. We always provide bussing for South Seaside Park and Pelican Island for any children that sign up for that program."

²³ Ms. Fulcomer's testimony from April 2015 explained how she has to buy beach badges for her and her grandchildren to use the facilities in Seaside Park, in addition to the badges she would have to buy in South Seaside Park. She acknowledged that there is no charge for her beach badge in Berkeley Township, however,

charging residents and non-residents different rates to use the beach, municipalities have the authority to determine the beach badge pricing schedule for their beaches. A comparison between beach badge pricing²⁴ in Berkeley Township and Seaside Park Borough for the year 2017 is included in **TABLE 3**.

Table 3: 2017 Beach Badge Pricing Comparison

Length of Use	Pricing Rate*	Berkeley Township	Seaside Park Borough
Daily	Standard***	\$8	\$10
	Seniors	No Charge**	\$10
	Children	No Charge	No Charge
Weekend (Daily)	Standard***	\$8	\$10
	Seniors	No Charge**	\$10
	Children	No Charge	No Charge
Holiday (Daily)	Standard***	\$8	\$10
	Seniors	No Charge**	\$10
	Children	No Charge	No Charge
Weekly	Standard***	\$25	\$35
	Seniors	No Charge**	\$35
	Children	No Charge	No Charge
Season	Standard***	\$50	\$60
	Seniors	No Charge**	\$20
	Children	No Charge	No Charge
Preseason	Standard***	\$30	\$55
	Seniors	No Charge**	\$20
	Children	No Charge	No Charge
<i>*Berkeley Township and Seaside Park Borough use slightly different ages to define seniors and children. The senior rate applies to adults age 65 and over in Seaside Park and in Berkeley Township it applies to adults age 62 and over. The children discount applies to those age 11 and under in Seaside Park, while it is 12 and under in Berkeley Township.</i>			
<i>**Seniors are permitted free upon providing proof of age. A lifetime senior beach pass is also available for \$10.</i>			
<i>***Seaside Park Borough provides complementary access to the beach to military personnel and their families with proof of identification.</i>			

she still has to purchase badges for her grandchildren, “I mean, I would have to purchase them, being Grandma has to buy, do all the buying. You all know that.” (April 2015 Transcript)

²⁴ An additional point of comparison is Island Beach State Park, which is within the municipal boundary of Berkeley Township, but under the ownership and jurisdiction of the State of New Jersey. Unlike Seaside Park Borough and Berkeley Township’s beaches, entrance fees for Island Beach State Park are charged by the vehicle, not the individual. During the summer season (Memorial Day weekend through Labor Day), New Jersey residents pay \$6.00 per vehicle (non-residents \$12.00), per day, on weekdays, \$10.00 per vehicle, per day on weekends and holidays (non-residents \$20.00), \$5.00 per motorcycle per day (non-residents \$7.00), and no charge (resident and non-resident) for those entering the park via bicycle or walk-in. An annual State Park Pass is available for \$50.00 for New Jersey residents (non-residents \$75.00). New Jersey Residents age 62 or older, or who are disabled, are eligible for a complementary access pass. Comparing the cost of beach access between the municipally-owned ocean beaches and the State Park is not possible without making certain assumptions, given the different pricing structures (vehicle access vs. individual beach badges).

One of the ongoing points of contention during the deannexation hearings to date has been the ultimate ownership of White Sands Beach (and possibly the other two Township-owned recreational facilities, Roberts Avenue recreation facility and the Sgt. Lyons Memorial Basketball Courts), if the petition for deannexation is granted. Of these facilities, White Sands Beach and the Roberts Avenue recreation facility are both listed on the New Jersey Department of Environmental Protection's ROSI (Recreation and Open Space Inventory) Green Acres Database (Note: The Township-owned portion of the Roberts Avenue facility is referred to in the ROSI as "Barnegat Pier").

Based on the 2017 rates, beach badges are less expensive for the use of Berkeley Township's White Sands Beach than for access to Seaside Park Borough's beaches. Berkeley Township also provides a complementary beach access for children through age 12, while in Seaside Park complementary beach access is only provided through age 11. In addition, Berkeley offers complementary senior privileges, while Seaside Park only offers seniors a seasonal discount. If deannexation were successful and included White Sands Beach, beach badge pricing would be controlled by the Borough of Seaside Park. Assuming that the Borough's existing price schedule would remain similar, seniors in South Seaside Park and Berkeley Township would no longer receive complementary access to White Sands Beach, and rates will increase for daily, weekly, and seasonal badges.

Alternatively, if deannexation is granted and Berkeley Township retained ownership of its parks in South Seaside Park, residents from both municipalities could still access the Township's parks at the rate schedule established by Berkeley Township. Berkeley Township could continue to host events and activities at these facilities for residents and non-residents alike, however, it would not be necessary for the Township to seek or consider input as to the programming of such events from residents of South Seaside Park.

The Petitioners also commented on the condition of the Barnegat Bay shoreline in the area located between Twentieth Street and Twenty-Fourth Street, and to the west of the Bay View Avenue.²⁵ Local residents are under the impression that the

²⁵ This was an issue that was discussed during Lay Testimony:

- Mr. Whiteman (February 2015): *"My grandmother, my mom and dad, myself and now my son and daughter live in South Seaside Park. And we always utilized the Seaside Park areas. We also used the bay beaches up there. Because in South Seaside Park, our bay beaches are atrocious. There's no other way to say it."*
- Mrs. Fulcomer (February 2015), submitted photo boards (Exhibits A-6 and A-7), and compared this right of way area to the mainland's bay beach parks in April 2015 (Exhibits A-8 and A-9). Per Mrs. Fulcomer's April 2015 testimony, *"Again, to contrast that care is given here. There are benches for peoples' enjoyment. And it is—it is a clean beach, which—and cleanliness means [safety]. Because at my previous testimony, all those, the debris and the rusty pipes are not safe for either adults or children. So this was a nice park."*

area is a municipal beach, and contend that it is not properly maintained as such. The area in question is identified on **Appendix D.5: Property Ownership**.

A careful examination of the area in question has revealed that it is neither listed in the Recreational and Open Space Inventory of the New Jersey Department of Environmental Protection, nor identified in the Township's master plan documents as a recreation or open space area. Thus, the area in question is not a recognized municipal beach or any other type of recreation or open space area.

Additionally, New Jersey's MOD-IV property tax assessment database indicates that the area in question is comprised of: privately-owned riparian grants, which are tideland areas that are deeded to a buyer by the State of New Jersey; and, tideland areas of Barnegat Bay that are not located within a riparian grant and, as such, are claimed by the State of New Jersey. Any remaining area is comprised of the Bayview Avenue right-of-way, which is reserved for access and utilities. Thus, Berkeley Township has no claim or control over the area in question for use as a beach or recreation area. As a result, and in the absence of a riparian grant to the Township, it has no obligation or right maintain the area in question as a municipal recreation facility.²⁶ Based on the foregoing, this area is better defined as a natural shoreline of the Barnegat Bay, within the Bayview Avenue Right of Way.

However, the township recently undertook a shoreline stabilization project in this area to protect Bayview Avenue from erosion and flooding. As a part of the project, the contractor awarded the work removed debris from the area commonly known as Bay Beach between 24th and 23rd Streets. Despite the fact that the area is not township-owned land, the township is maintaining the area to protect the adjoining road and infrastructure and make the area more resilient to erosion and flooding.

Based on the above, it is clear that: the area in question is not a municipal recreation or open space area; no part of the area in question is claimed or controlled by Berkeley Township; and, the township has no authority to maintain the area in question for recreation purposes, despite the fact that improvements have been undertaken to stabilize and protect the adjoin roadway. Deannexation to the Borough of Seaside Park would have no impact on the maintenance of this site as a

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- Mrs. Dolobacs (May 2015) submitted photos (Exhibit A-19) to compare mainland park beaches with the bayside right-of-way in South Seaside Park.

²⁶ It should be noted that the May 2017 testimony from the Township's Superintendent of Recreation, Tim Yurcisin, indicated that while the Township does take efforts to maintain the bay beach area, it is not intended for use as a recreational park, *"Then, just quickly, the Bay Beach, if—Bay Beach is more of like a natural type of beach. It's not really a beach to go hang out at. It's basically natural growth that's there. That kind of helps it erode or not erode. It was cleaned a few years back. We got as much debris out of there as we could without really going into the water. We really don't have jurisdiction to go into the water to do much cleaning up. So, I don't know if that answers any questions for that area of the town. But that's—it's just a natural setting. It's basically—it's not really much of a beach. It's just an area of the water line with some natural growth on it."*

recreation area as the Borough would be subject to the same limitations as the Township.²⁷

Municipal Facilities

The geographically-central location of the Township's administration building, police headquarters and public works facilities in the Pinelands may appear impractical from the perspective of the present day, as few residents are located within close proximity of these buildings. The construction of the Township's current administration building in 1978 predated the Pinelands Protection Act (1979) and the adoption of the Pinelands Comprehensive Management Plan (1980), when state land use regulations curbed future development potential of the Township's western end. As a result, the Township's geographic center will not correspond to the Township's population center upon its eventual buildout.

Observed from a present-day perspective, it is clear that the Township's facilities are located far from most residents. From the perspective of storm resilience in a coastal municipality, however, the location of these facilities far from the most recently delineated FEMA flood hazard areas, the storm surge extent of Superstorm Sandy, as well as projected hurricane storm surges using the SLOSH (Sea, Lake and Overland Surges from Hurricanes) model helps ensure Berkeley Township's resiliency from flood events. The maps in **APPENDIX D.6: Flood Risk Mapping** show these different flood risks in relation to municipal amenities. Protecting the Township's critical facilities is important in order to not only continue providing services, but also have an area to which emergency operations can be mobilized. This is in contrast to the experience of Seaside Park Borough following Superstorm Sandy, when the Borough was unable to host its municipal meetings in the Borough. Instead, meetings were held in Toms River until February 2013.²⁸

²⁷ In response to residents' feedback, the 2017 Neighborhood Plan for South Seaside Park includes a Strategic Action Plan, where Action No. 6: Enhance Recreational Facilities, recommends the Township to verify the riparian grants to identify potential sites for bayfront recreation and investigate whether the State of New Jersey would permit a lease option.

²⁸ Per the Borough's website, Seaside Park Municipal offices, located at 1701 North Ocean Avenue in Seaside Park were opened for business on Monday, February 4, 2013, three months following Superstorm Sandy. Source: <https://www.seasideparknj.org/2013/02/>. During this time: a "temporary" Seaside Park Borough Hall was located at 10 Allen Street in Toms River, Borough Council meetings were held at the Toms River Municipal Complex, the Ocean County Library (Toms River Branch), and the Ocean County Administration Building (Toms River); Planning Board meetings were held at the Toms River Municipal Complex and the Ocean County Library (Toms River Branch); Municipal Court was located at the Toms River Municipal Court Building; and Zoning Board of Adjustment meetings were held at the Ocean County Library (Toms River Branch). A "Senior Luncheon/Town Hall Post Sandy Rebuilding Meeting" was held on the barrier island in Seaside Park on January 16, 2013, however, this meeting took place at St. Catherine of Siena church.

Planning Efforts in Berkeley Township

Berkeley Township has a lengthy history of comprehensive planning since the adoption of its Master Plan in 1997. In the 19 years that have followed, Berkeley Township has undertaken three (3) master plan reexamination processes, two (2) redevelopment plans, initiated a Transfer of Development Rights (TDR) program, prepared multiple housing elements and fair share plans, adopted revisions to its Circulation and Land Use Plan Elements, as well as numerous recent initiatives and plans to promote post-Superstorm Sandy recovery and long-term storm resilience. The Township's comprehensive approach to planning was recognized by the State of New Jersey when it received State Plan endorsement and CAFRA coastal consistency. In the subsections that follow, this report will review these planning-related efforts.

Recent Planning History Overview (1997-Present)

The 1997 Berkeley Township Comprehensive Master Plan (hereinafter identified as the Master Plan), set forth specific goals, objectives and policies for the future development of the Township of Berkeley. Six years later in 2003, the Township adopted the *2020 Vision Statement and Municipal Profile* for Berkeley's "Eastern Mainland," the largely undeveloped area of the municipality located to the east of the Garden State Parkway and west of Barnegat Bay. The visioning process was a response to the Township's dramatic growth, and served to identify the long-range goals that would guide future land use and development in the undeveloped sections of the Township. Berkeley Township subsequently reexamined its Master Plan in 2003 and 2008, leading to revisions to its Land Use and Circulation Plan elements in 2009. A Development Transfer Plan element (TDR) was adopted by the Board in 2012. After Superstorm Sandy, the Board prepared another reexamination report and adopted amendments to its Land Use, Community Facilities and Circulation Plan Elements in 2015.

Berkeley Township Master Plan (1997)

Berkeley Township's Comprehensive Master Plan was adopted by the Berkeley Township Planning Board on December 4, 1997.²⁹ The Plan assesses existing land use in the Township and its future development potential in the context of zoning, environmental constraints and existing infrastructure capacity. The Plan also identifies areas east of the Garden State Parkway as most likely to be developed despite CAFRA regulations. The Plan outlined goals and objectives that would improve property maintenance regulations, extend township utilities into areas not presently served to reduce the use of septic systems and private water wells, rehabilitate older housing stock, promote affordable housing opportunities, ensure attractive retail and office development along the Routes 166 and 9 Corridors, as

²⁹ The Township subsequently amended the plan in 2001 to address the areas of the Township under the jurisdiction of the New Jersey Pinelands Commission in order to bring the Master Plan into conformance with the Pinelands Comprehensive Management Plan.

well as the development of a new Town Center at the former Beachwood Plaza shopping center.

Overall, the goals and objectives outlined in the 1997 Master Plan were intended to address issues in Berkeley Township that would help make it both visually attractive and welcoming to new and existing residents. These goals were informed by the use of a Visual Resource Analysis to assess the visual experience that landscapes present to residents, visitors, businesses and customers, and whether they contribute to a pleasing visual experience or leave a negative impression as a measure of community livability. This survey included an extensive photographic survey of the Township's developed neighborhoods, including South Seaside Park, to evaluate such elements as streets, yards, building faces, and backgrounds. In fact, of the neighborhoods reviewed, South Seaside Park scored the lowest. The findings from this study were then incorporated into the 1997 Master Plan in order to remedy these issues and improve the visual character of the Township. In this instance, while other neighborhoods did not have some of the same observed visual problems as South Seaside Park, the Township still included actions to address these issues in the Master Plan in order to improve the entire municipality.

2020 Vision Statement and the 2003 Berkeley Township Master Plan Reexamination

The first reexamination report in 2003 reaffirmed the original goals and objectives of the 1997 Master Plan. The reexamination process offered the planning board the opportunity to adopt the 2020 Vision Statement and Municipal Profile, completed in 2003, as an amendment to the Master Plan. At the time, the Township was experiencing rapid new growth in in the remaining undeveloped area with development potential³⁰ of the Township known as the "Eastern Mainland." The intent of the 2020 Vision Statement was to address future new development proactively in order to limit suburban sprawl and promote desirable community design, and was also a prerequisite action for the Township as part of its application for Plan Endorsement.³¹

This 2020 Vision Statement focused on a future Berkeley where future growth would be directed away from undisturbed natural areas and toward areas where development already existed, as a way to reduce congestion, sprawl and the costly expansion of infrastructure. The Vision Statement included 21 additional goals and objectives that served to refine the original goals of the Master Plan. The goals of the 2020 Vision Statement included the provision of different land uses, direct new

³⁰ West of the Garden State Parkway, a significant portion of the Township is located under the jurisdiction of the Pinelands Comprehensive Management Plan's Forest and Preservation areas, where land use regulations severely curb future development.

³¹ We acknowledge the Petitioners' claim that this document "focuses" on the Eastern Mainland section of the township, however it is important to note that the benefits of addressing unchecked sprawl development benefit the township as a whole.

development toward the town center, redevelop existing commercial centers with linkages to surrounding neighborhoods, complete the development of existing neighborhoods, a comprehensive open space and recreation system, increased road connectivity and congestion reduction, efficient delivery of public services, strategic extension of water and sewer, creation of design standards, promotion of a balanced housing stock and housing maintenance.

Furthermore, the 2003 Reexamination recommended changes to the zoning code that would reduce the impact of development and protect natural areas along the Barnegat Bay through the adoption of the Public Preservation Conservation and Conservation Residential Zones. This measure was accompanied by a movement to encourage redevelopment in areas around Berkeley Township that were already suited for development while protecting the water quality of Barnegat Bay.

Berkeley Township Master Plan Reexamination (2008)

The second reexamination to the 1997 Master Plan took place in 2008. The 2008 Reexamination Report reiterated the goals from the 2020 Vision Statement and placed special emphasis on: development of a Town Center through redevelopment; preserve and maintain open space for the purposes of preservation, conservation and recreation; and implementation of the Route 9 Corridor Master Plan principles as a way to improve connections throughout town and optimize capacity. In addition, the reexamination report recommended the adoption of a redevelopment plan for the Berkeley Town Center, the need for a redevelopment plan for the Manitou Park section of the township following its designation as an area in need of rehabilitation, improve the clarity of the existing zoning, and a land use study for South Seaside Park.

2008 Land Use Plan and Circulation Plan Elements

Berkeley Township prepared and adopted new land use and circulation elements to its Master Plan shortly after the 2008 Reexamination Report. The combined 2008 Land Use and Circulation Elements incorporated the 2020 Vision Statement, but also included a list of 10 goals designed to focus the Vision Statement through the implementation of 9 objectives, which echoed the goals and objectives described in the 2008 Reexamination Report, such as the development of a Town Center through redevelopment; preserve and maintain open space for the purposes of preservation, conservation and recreation; and implementation of the Route 9 Corridor Master Plan principles as a way to improve connections throughout town and optimize capacity. The Plan reviewed existing land uses throughout the Township, and examined future development potential through the use of a buildout analysis. The updates to the land use plan sought to avoid sprawl development on the mainland through the establishment of low-density conservation zones and encouraged higher density centers, a prerequisite to the adoption of the Township's TDR plans. The Circulation Plan element was also revised to reflect the proposed changes in land use. In addition, these plan elements directly addressed land use and

circulation in South Seaside Park through the implementation of a Master Plan Reexamination recommendation to study the neighborhood's land uses in relation to zoning and develop recommendations that would improve the Central Avenue streetscape.

State Plan Endorsement and Related Plans

Development of the Township's remaining undeveloped areas led to concerns in the community that the Township was vulnerable to over development when congestion along the Route 9 corridor was already burdensome, especially during the summer tourist season. Furthermore, there was concern over the environmental health of the Barnegat Bay, found to be in decline due to elevated levels of nutrients caused by development-induced stormwater runoff. As a result, the Township has pursued the creation of a Transfer of Development Rights (TDR) mechanism, made available by the enactment of the State Transfer of Development Rights Act on March 29, 2004, as a way of shifting development away from the remaining forested areas of Pinewald to the underutilized properties along the Route 9 corridor. The process to establish a TDR program has included the preparation of a TDR Transfer Element in 2011 (Revised through 2012) and a Utility Service and Capital Improvement Plan in 2011 (Revised through 2012), along with other supporting studies and reports.

In 2012 Berkeley Township received Plan Endorsement from the New Jersey State Planning Commission and approval for its proposed Transfer of Development Rights Program. The process of obtaining Plan Endorsement from the State Planning Commission involved an extensive review of Berkeley Township's plans and development regulations for consistency with New Jersey's State Development and Redevelopment Plan (SDRP or State Plan). The purpose of Plan Endorsement, according to the State Plan, is to increase the degree of consistency among, and facilitate the implementation of, municipal, county, regional and state agency plans and the State Plan. The State Plan outlines six objectives that derive from this purpose:

- 1) To encourage municipal, county, regional and state agency plans to be coordinated and support each other to achieve the goals of the State Plan;
- 2) To encourage counties and municipalities to plan on a regional basis while recognizing the fundamental role of the municipal master plan and development regulations;
- 3) To consider the entire municipality, including Centers, Cores, Nodes and Environs, within the context of regional systems;
- 4) To provide an opportunity for all government entities and the public to discuss and resolve common planning issues;
- 5) To provide a frame work to guide and support state investment programs and permitting assistance in the implementation of municipal, county and regional plans that meet statewide objectives; and,

- 6) To learn new planning approaches and techniques from municipal, county and regional governments for dissemination throughout the state and possible incorporation into the State Plan.

Plan Endorsement permitted the designation of a town center (Town Center 1), a highway core (Town Center 2) and a light industrial node. Upon completion of the requisite steps needed to implement TDR, these three sites in addition to another corridor node, have been designated as receiving areas where additional development would be permitted in exchange for the preservation of lands elsewhere in the township to reduce sprawl and protect water quality. It is important to reiterate that the Plan Endorsement process involved the external review by the State of New Jersey of Berkeley Township's comprehensive planning and zoning framework as a whole, and not simply the areas identified for TDR.

Township Housing Element and Fair Share Plan (2017)

The Township has made a continuous effort to provide opportunities for affordable housing in Berkeley, despite the uncertainty and changing requirements resulting from recent court decisions concerning the COAH and its regulations.

The Township's most recently adopted Housing Element and Fair Share Plan (2017)³² is the result of a settlement agreement with the Fair Share Housing Center (FSHC), which was approved by the court. The new housing plan documents the projects and compliance mechanisms that address Berkeley's affordable housing obligation as established as part to the settlement with FSHC.

The Township's housing plan includes an ongoing program to provide affordable housing in Berkeley. Developers building multifamily housing anywhere in the Township must provide affordable housing as part of their project. The required affordable housing setaside for such projects is either 15 percent of the total number of units in the project for rental units, or 20 percent if the units are to be for sale. Depending on the location of the project, the affordable housing will be provided entirely on-site or a portion provided on-site, with the remainder addressed through a payment in lieu of construction into the Township's affordable housing trust fund. The determination of how much affordable housing is required to be located on site, versus the payment-in-lieu of construction is based on the Township's housing ordinances.

³² As of the date this report was prepared, the Township endorsed a revised Housing Element and Fair Share Plan in March 2017, and had received a Route 3 Judgement of Compliance and Repose from the Superior Court of New Jersey on May 22, 2017.

Mr. Bauman's report and subsequent testimony³³ contended that Berkeley Township has not provided any affordable housing in South Seaside Park, to the social and economic injury of neighborhood residents.³⁴ Under the court's Mount Laurel doctrine, Berkeley Township is not mandated to construct affordable housing itself or to provide affordable housing in any specific location but through its zoning to provide a reasonable opportunity for the construction of affordable housing consistent with sound planning principles.

Under COAH regulations, which have been accepted by the courts, municipalities may exclude properties in flood hazard areas from consideration as sites for affordable housing. From a planning perspective, this makes sense as it is more prudent to direct affordable housing to areas where there is less risk of flooding and storm surge. Berkeley Township extensive geographical footprint ensures that affordable housing opportunities can be located away from areas of high flood risk, which would not be possible on a barrier island. Furthermore, during recent hearings on the South Seaside Park Neighborhood Plan, residents effectively argued against future multifamily residential development in their community, which would have been the primary mechanism by which affordable housing could have been provided in this part of the township.

Mr. Bauman also focuses on Berkeley Township's rehabilitation obligation, and argues that no units have been rehabilitated in South Seaside Park. It is worth noting that access to housing rehabilitation funding from Ocean County is available to eligible homeowners in the Township, contingent on income (low and moderate-income households) and the condition of their house, who apply for the funding. If residents of South Seaside Park do not qualify and apply for rehabilitation funding, then the Township is unable to assist these residents as part of this program. Deannexation would not improve the eligibility requirements for residents of South Seaside Park.

Resiliency Planning Efforts by Berkeley Township (2014-Present)

Superstorm Sandy caused extensive damage throughout Berkeley Township when it struck the New Jersey coast on October 29, 2012. The winds, flooding and storm surge from Sandy

³³ It is important to clarify that Mr. Bauman's report and subsequent testimony preceded the Township's most recent (2017) Housing Element and Fair Share Plan. As a result, Mr. Bauman's report and testimony addressed what was then the Township's most-recently adopted Housing Element and Fair Share Plan (2008).

³⁴ Mr. Bauman's Report (2014) argues that Berkeley Township's reluctance to provide affordable housing in South Seaside Park has caused injury to residents of the neighborhood, "*South Seaside Park is not part of Berkeley Township's fair share plan for affordable housing; no housing units in South Seaside Park were part of Berkeley Township's 610-unit prior round affordable housing obligation. No South Seaside Park housing units were rehabilitated by Berkeley Township. Deannexation of South Seaside Park will not cause significant injury to Berkeley Township's fair share plan for affordable housing. If deannexation is not approved, Berkeley Township's fair share plan will not achieve any new affordable units or any rehabilitated units-this is a significant injury to the social and economic well being of South Seaside Park residents.*" (Page 22)

disrupted everyday life for many in the Township, damaging critical infrastructure, community facilities, public and private property, as well as extensive beach and soil erosion. Falling trees, branches and power lines resulted in over 32,000 reported power outages throughout the township, sometimes also causing damage to nearby buildings. Many properties experienced some degree of minor damage and 252 properties were substantially damaged. Critical infrastructure went offline, including seven of the township's sewage pump stations, permitting the backflow of raw sewage into streets and Barnegat Bay.

This rebuilding and recovery process provided the municipality with the opportunity to reexamine what is needed to improve the Township's resiliency to future storm events. It is important to note, however, that the Township had already undertaken numerous actions that incidentally improved its storm resilience. Most of the Township's municipal facilities are located away from the floodplain. Furthermore, the maps in **APPENDIX D.6** demonstrate that these facilities are not only sheltered from the recognized flood hazard areas, they are also located far from the hurricane storm surge projections released by the National Weather Service. The Petitioners correctly assert that the distance between the Township's municipal facilities and South Seaside Park results in longer travel times than from other areas in the Township, but it is important to recognize that the location of these facilities far from flood hazard areas helps to ensure that the Township can quickly mobilize after a storm or flood event and provide a continuity of services to all residents.³⁵

In response to the storm, the State of New Jersey initiated the Post-Sandy Planning Assistance Grant Program to support long range planning in the municipalities and counties affected by the storm. The program provided funding to county and local municipalities who sustained a ratable loss of at least 1% or \$1 million to undertake plans that would strategically address the issues of recovery and resiliency. The damage that Berkeley Township sustained from Sandy was significant enough to qualify for this grant program. The Township initially received funding to prepare:

- Strategic Recovery Planning Report;
- Master Plan Reexamination Report and Master Plan Amendments;
- Update to Floodplain Management Plan and Ordinance;
- Automating and updating the Zoning and Construction Permit Process;
- Updating the Township Hazards Mitigation Plan;
- Updating the Township Emergency Operating Plan;
- Capital Improvement Plan;
- GIS System Development; and,
- Debris Management Plan.

³⁵ It is worth reiterating that Seaside Park was unable to host its municipal meetings within the Borough following Sandy until February 2013. During this period of time, meetings were held on the mainland, in Toms River.

Subsequently, Berkeley Township's Governing Body applied for additional funding from the Post Sandy Planning Assistance Grant Program in order to implement the recommendations described in the Township's Master Plan Amendments, Strategic Recovery Planning Report, Floodplain Management Plan, and Capital Improvement Plan. In May 2016, the New Jersey Department of Community Affairs awarded the Township funding to prepare an additional five (5) projects:

- Neighborhood Plan for South Seaside Park;
- Coastal Neighborhoods Resiliency Plan;
- Master Plan Ordinance Development;
- CRS Program Recertification; and,
- Floodplain Management Capital Improvement Plan Ordinance Development.

Taken together, the Township was awarded a total of \$497,000 in Post Sandy Planning Assistance Grants to undertake fourteen different projects. Selected summaries of the projects that relate to the Township's planning efforts are included in the sections below.

2014 Strategic Recovery Planning Report (SRPR)

As a response to Hurricane Sandy, Berkeley Township adopted a Strategic Recovery Planning Report (SRPR) in June 2014. The SRPR outlined a recommended set of implementable actions to guide the Township in promoting recovery from the impacts of Hurricane Sandy and future storm resilience. These actions included the reexamination and amendment to the Township's master plan, preparation of a plan to automate and update the Township's system for processing zoning and construction permits, creation of a Township-wide Geographic Information System (GIS) to increase resiliency and improve operations efficiency, an update of the Township's Emergency Operating Plan, increase Township participation in FEMA's Community Rating System, and the preparation a Debris Management Plan, Capital Improvement Plan and Floodplain Management Plan.

2015 Master Plan Reexamination Report and Plan Element Amendments

Despite the vulnerabilities exposed by Sandy, a reexamination of the Berkeley's existing planning framework in 2015 concluded that the township had the foundation necessary to support its resiliency and recovery objectives. Rather than a dramatic overhaul of the township's planning policies, the 2015 Reexamination Report recommended changes in the Township's existing plans that would synthesize and coordinate its planning policies in support of resiliency and storm recovery. The 2015 Master Plan Reexamination Report and Master Plan Amendments compiled, consolidated and revised the Township's goals and objectives to incorporate storm resiliency into future land use planning. The new resiliency objectives focus on minimizing risk from natural hazards, promoting public awareness of hazard mitigation and resiliency, strategically focusing long-term capital projects outside of flood hazard areas, encouraging renovations and modifications that are resilient to flood and storm impacts, encouraging continued

participation in FEMA's Community Rating System (CRS) program, and encouraging regional solutions to flooding and storm impacts. The 2015 Master Plan Reexamination Report also recommended that the township consider programs and funding opportunities like Sustainable Jersey, CRS, and Complete Streets to achieve Township goals.

Neighborhood Plan for South Seaside Park

The Township's 2015 Master Plan Reexamination Report recommended the need for additional study of the Land Use Plan for the South Seaside Park neighborhood, which had been revised as part of the 2008 Land Use and Circulation Element to provide context sensitive residential and commercial standards for the neighborhood. Following the devastation of Superstorm Sandy, however, the 2015 Master Plan Reexamination Report recommended the Township conduct a thorough review of the neighborhood so that any changes to land use regulations not only incorporate storm resilience, but would also be designed in a manner that is context-sensitive to south Seaside Park's community character.

Preparation of the Neighborhood Plan for South Seaside Park included an extensive public outreach effort. Preliminary findings were shared with the Township's Planning Board at their December 2016 meeting, this meeting also announced the dates and location of the first community meeting where residents could review the findings and provide their local input and expertise. This first advertised community meeting was held at the Tri-Boro First Aid building in Seaside Park on Thursday, December 15, 2016. This information was then used to prepare draft recommendations that would form the basis of the Neighborhood Plan, and were presented at the second advertised public input session, held on January 12, 2017 at Tri-Boro First Aid building. Those residents who attended the December meeting were emailed about this meeting, which was also advertised on the Township's website, and were encouraged to provide feedback, regardless if they could attend. Residents had an opportunity to ask questions and provide additional feedback.

The feedback from this meeting was then used to develop the goals, objections, recommendations and actions listed in this Neighborhood Plan for South Seaside Park that would be presented to the Township's Planning Board on March 2, 2017, this time an advertised public hearing, where the Board voted to adopt the Neighborhood Plan and the Coastal Neighborhood as an addendum to the Township's Master Plan, with the condition that additional modifications be made to the plan to establish greater protections for single family residential development. The Township's Planner and planning staff provided the public with an update on the status of the Neighborhood Plan and an initial discussion of proposed changes to address the modifications requested by the Planning Board at the Township's March 27, 2017 meeting of the governing.

Before these modifications were to be adopted, the Township sought additional input from neighborhood residents and property owners at a third advertised public information session, on Tuesday April 18th at the Tri-Boro First Aid building. In addition to the general public advertisement, residents and property owners of South Seaside Park were each notified, via mail, about this meeting to ensure that anyone interested in asking questions or providing constructive input would have the opportunity to do so, before the amended plan would be introduced for a second public hearing at the Planning Board's June 1, 2017 meeting.

In addition to the public notice required for the public hearing, neighborhood residents and property owners were again individually notified for the June 1, 2017 Berkeley Township Planning Board's public hearing on the revised Neighborhood Plan. Based on the feedback from residents at the public hearing, the Board voted to adopt the Neighborhood Plan revisions with the condition that townhome and multifamily (two (2)-four (4) family) residential development be removed from residential districts in the land use plan to further protect the existing character of the neighborhood. The transcripts from the two public hearings, March 2, 2017 and June 1, 2017 are included with this report as **APPENDIX C**.

The Neighborhood Plan for South Seaside Park, as adopted by the Planning Board on March 2, 2017 and as amended per the recommendations of the Planning Board at its June 1, 2017 public hearing, is included with this report as **APPENDIX B**. As of the date of this report, the revised neighborhood plan is set to be considered for resolution adoption at the July 6, 2017 Planning Board meeting, pending review by the Planning Board to confirm that the changes made to the document meet the conditions promulgated by the June 1, 2017 approval.

The Neighborhood Plan for South Seaside Park included an evaluation of flood and storm risks, with recommendations for solutions and strategies that would help mitigate future impacts. In addition, the plan included a review of the existing land use plan and zoning for the neighborhood, with goals, objectives and recommendations to the zoning and land use plan that would incorporate storm resilience, while protecting the existing community character of the area. The plan also included a resiliency guide that identifies green infrastructure techniques to mitigate flooding caused by stormwater, and a Strategic Action Plan, providing a list of recommended next steps to implement the plan and its recommendations.

The South Seaside Park Neighborhood Plan addresses the issues of promoting community resiliency and protecting community character around five (5) different goals, which were prepared with the assistance and input of the Township and neighborhood residents. These goals sought to mitigate the impacts from future storms, identify areas where increased clarity of development requirements would promote uniform enforcement for property owners looking to make improvements following Sandy, recognize and promote the aesthetic, recreational and resiliency

benefits offered by natural resources, and fine tune the land use plan for the neighborhood to reflect the existing character of the community.

- 1) Promote Stormwater Management;
- 2) Ensure the Safety of Buildings and Structures;
- 3) Protect Natural Resources and Promote Shoreline Management;
- 4) Facilitate Faster Recovery from Future Storm Events; and,
- 5) Recognize and Protect the Coastal Island's Neighborhood Character.

These goals and objectives were further realized in following sections of the Neighborhood Plan: a "Building Resiliency" chapter which identifies potential green infrastructure techniques that property owners and the Township could consider to reduce and treat stormwater; a Land Use Plan which revised the Land Use Plan established by the 2008 Land Use and Circulation Elements in 2009; and a Strategic Action Plan which identified next steps to help implement the recommendations of the Neighborhood Plan.

The Land Use Plan for South Seaside Park reflected the extensive feedback provided by residents and property owners. A detailed description of these recommendations can be found in the plan document, which is included with this report as **APPENDIX B**, however, a summary of the Land Use Plan and proposed zone changes is included below:

- Promote single family development in the residentially zoned areas of South Seaside Park. This includes the recommended removal of townhouse and multifamily residential (2 family and greater) as permitted uses, as well as the recommended removal of conditional uses that are inappropriate to the scale of the neighborhood, such as mining operations and hospitals.
- Permit residential and mixed-use (residential over commercial) in the neighborhood business zone to accommodate existing residences and assist local businesses to remain viable during off-season months.
- Clarify land use regulations in the "cottage" communities, such as Midway Beach.

Incorporating the recommendations from the Land Use Plan as well as other inputs from the public, the Strategic Action Plan identified recommendations and next steps to implement the Neighborhood Plan for South Seaside Park. These actions include the following:

- 1) Adopt the South Seaside Park Neighborhood Plan as a Subcomponent of the Township Master Plan. Adoption of the Neighborhood Plan as a Master Plan subcomponent enables the Township to recommend and prepare ordinances that would implement the Neighborhood Plan.

- 2) Revise the Township's Zoning Map to Clearly Define Extent of Zone Boundaries. This action would address technical errors in the labeling and extents of zone boundary lines on the current zoning map to improve uniform enforcement of zoning regulations.
- 3) Revise the Land Use Plan for the South Seaside Park Neighborhood to Provide Consistency Between Existing Uses and Zoning. This recommends revisions to the Land Use Plan and zoning ordinance to reflect the existing development character of the neighborhood.
- 4) Establish New Zone Districts, Where Applicable, to Protect Unique Character of Cottage Communities. This recommends revisions to land use and zoning in the cottage communities, such as Midway Beach, to reflect existing scale and character.
- 5) Revise Zoning Bulk Standards to Reflect Existing Conditions of Established Communities and Promote Storm Resiliency. This recommendation seeks to protect existing development, but not hamper efforts to rebuild with flood protection, such as setback requirements that are representative of the existing development pattern.
- 6) Enhance Recreational Facilities. This recommendation responds to resident concerns regarding recreation opportunities in the area, despite several existing publicly-owned parks and open spaces, and include: the preparation of a Neighborhood Recreation and Opens Space Plan to identify needs based on resident population and community interest; investigate opportunities for the State of New Jersey to permit cross-honoring of local beach badge for boat launch and non-dockage facilities at the 24th Avenue Marina; consider establishing a local bike share program or participating in a regional network with neighboring shore communities; and verify riparian grants to identify potential sites for bayfront recreation, as well as investigate whether the State of New Jersey would permit a lease option.
- 7) Identify Opportunities to Cooperate with Federal, State, County and Local Entities to Promote Resilience. These recommendations include: pursuing grants to fund permitting and construction of a living shoreline; following up with the State to ensure that the stormwater outfall construction has been properly stabilized and complete; encourage continuing efforts to work with the Army Corps of Engineers to implement proper dune construction and enhancement; and encourage the creation of a liaison between the neighborhood, Township and Island Beach State Park to promote better communication and coordination with respect to State park activities.

Following the Board's adoption of the amendments to the Neighborhood Plan at the June 1, 2017 meeting, it is anticipated that the Planning Board will memorialize this vote, via resolution, at the July 6, 2017 meeting.

Coastal Neighborhood Resiliency Plan

The damage caused by Superstorm Sandy also caused significant damage to numerous waterfront communities of the Township along the Toms River and Barnegat Bay. The Coastal Neighborhood Resiliency Plan evaluated and quantified the risks and associated impacts from flooding within seven (7) selected neighborhoods of the Township of Berkeley along the Barnegat Bay and Toms River shorelines: Berkeley Shores; Cedar Beach; Holly Park; Mill Creek; Glen Cove; Good Luck Point; and, Pelican Island.

This Plan identified many of the Township's environmental resources in the Study Area, including wetlands, waterways, floodplains and critical habitats, all of which play a role in the development, maintenance, and long-term resilience of the existing built community. In addition, community facilities as they are related to natural resources are also identified; as the inextricable linkages between land use, open space, hazard mitigation, and capital planning are critical to promoting long-term sustainability and resiliency.

The Coastal Neighborhood Resiliency Plan examined the existing conditions of seven of Berkeley Township's coastal neighborhoods, understand the degree to which individual properties are vulnerable to potential environmental hazards, and presented a strategy and toolkit of solutions to mitigate them. The overarching goals were to enable the township to mitigate potential environmental hazards and increase the resiliency of the coastal neighborhoods to future storms. The goals and objectives are intended to preserve and reinforce the existing characteristics of each neighborhood, while making the neighborhood more resilient to future storm events and ensuring the health, safety, and general welfare of residents and businesses. In addition, this plan includes a set of recommended techniques and strategies designed to mitigate, reduce or prevent impacts from natural disasters and increase resiliency via sustainable design, green infrastructure and engineering controls, and enhancement or restoration of natural systems. Given the established nature of these coastal neighborhoods, the Township's goal for resilient design is to permit residents and businesses the ability to rebuild in a way that is consistent with the existing character of their communities. The preparation of the Coastal Neighborhood Resiliency Plan is intended to complement other Post-Sandy planning projects being undertaken by the Township.

The Township hosted one (1) advertised public input session for residents to assist in the planning process. This meeting was held on December 14, 2016 at the Berkeley Township Recreation Center. At this meeting, planning staff reviewed the initial findings and existing conditions analysis with neighborhood residents. The input received at this public forum was then reviewed with Township officials to clarify any questions that were raised. The feedback from this meeting was then used to develop the goals, objections, recommendations and actions listed in this Coastal Neighborhood Resiliency Plan. The findings and subsequent

recommendations that came from this meeting and the meeting with community members were incorporated into the text of the plan.

Community Rating System (CRS) Update and Floodplain Ordinances

The National Flood Insurance Program's (NFIP) Community Rating System (CRS) was implemented in 1990 as a voluntary program for recognizing and encouraging community floodplain management activities exceeding the NFIP's minimum standards. Any community that is in full compliance with the NFIP's minimum floodplain management requirements may apply to join CRS. Berkeley Township has been an active community since 2001.

Under the CRS, flood insurance premium rates are discounted to reward community actions that meet three goals of CRS; reduce flood damage to insurable property; strengthen and support the insurance aspects of the NFIP and encourage a comprehensive approach to floodplain management.

A community accrues points to improve its CRS Class rating and can receive increasingly higher discounts. Points are awarded for engaging in certain creditable activities. Formulas and adjustment factors are used to calculate credit points for each activity. The points earned from these activities increases the municipalities CRS rating, allowing for increased discounts on flood insurance premiums of its residents and businesses.

These grants helped fund additional CRS activities, such as public education and preparation of revised bulkhead and floodplain ordinances, as part of the Township's yearly CRS Recertification in 2016 but also to improve their points for the CRS Cycling that will occur in 2018. Berkeley Township is currently at a CRS rating of "6," which awards residents in the flood hazard area a 20 percent discount in flood insurance; by comparison, Seaside Park Borough is currently at a CRS rating of "7," which awards residents in the flood hazard area with a 15 percent discount in flood insurance. In conjunction with the Township's existing activities to limit flood losses, the goal with the activities funded by this grant is that after the 2018 Cycling, the Township will receive an increased CRS rating of "5," with a 25 percent discount to residents.

Geographic Information Systems (GIS) Program and Notre Dame Pilot Project

As previously mentioned, Berkeley Township received funding as part of the State's Post-Sandy Planning Assistance Grant Program to develop a Geographic Information Systems (GIS) program that provides the township's planning, public works, and emergency management departments with essential information to plan for and respond to future coastal storm events such as Superstorm Sandy. The data in the GIS has been compiled from various local, state, and national sources and will help the township understand the extent and nature of the risk of future storms and help to promote sustainability and resiliency throughout the township.

Because Berkeley has a post-Sandy GIS, was significantly impacted by Superstorm Sandy, and has both a barrier beach and bayfront coastal areas, the township was selected by the New Jersey Department of Community Affairs as one of only two New Jersey municipalities (the other being the Borough of Keansburg, in Monmouth County) to participate in a DCA-funded pilot program, currently being undertaken by the University of Notre Dame, with the assistance of the State University of New York-University at Buffalo, to enhance the GIS capabilities of both municipalities by incorporating real-time and dynamic storm projections to predict the impact of such storm events and aid in emergency management and resiliency planning. The program, which kicked off in May 2017, is anticipated to be completed in mid-2018. Upon its completion, Berkeley Township, including South Seaside Park, will have the most sophisticated analytical mapping tool available throughout coastal New Jersey, which will put it at the forefront of storm preparedness and resiliency planning.

Given their location on a vulnerable barrier island, this enhanced storm tracking capability is a unique benefit to the residents of South Seaside Park as a result of being part of Berkeley Township. In turn, it is likely that Berkeley Township would not have been chosen to be a pilot project if a developed portion of the township was not on barrier island.

Resiliency Summary

Superstorm Sandy caused extensive damage in Berkeley Township and exposed many vulnerabilities. The Township's planning efforts prior, and in response to Sandy build resiliency to future storms and other potential natural disasters. The Township's active participation in FEMA's National Flood Insurance Program Community Rating System (CRS), has entitled residents to a 20% discount on their flood insurance premiums. In comparison, the Borough of Seaside Park's involvement in the CRS program has resulted in a 15% discount for their residents. Berkeley Township has benefitted from the large percentage of preserved lands on the mainland and barrier island within the floodplain to boost its CRS rating, something that becomes more difficult for other municipalities located entirely within a floodplain to achieve.³⁶ Additional CRS credits are available to

³⁶ The 2015 amendment to Mr. Bauman's Report reviewed the Township's 2014 Strategic Recovery Planning Report, and how it would impact the residents of South Seaside Park. This review describes the ten (10) recommended actions to recovering from sandy and reducing vulnerabilities to future storms. Mr. Bauman's report suggests that only one (1) action, the preparation of a beach-dune system directly addresses the bay beach dune systems on the barrier island that sustained damage, while claiming that the remaining proposed actions do not directly relate to South Seaside Park and are instead geared towards serving the township as a whole. Mr. Bauman's assertion that only (1) action directly relates to South Seaside Park, while the others serve the Township as a whole, overlooks the fact that the Strategic Recovery Planning Report is largely geared toward assisting those areas of the Township that were impacted directly by Hurricane Sandy. Furthermore, actions such as continuing to increase Township participation in the CRS program, directly benefit residents of South Seaside Park, along with the Township's other coastal neighborhoods, with discounted flood insurance premiums. The Township's GIS System, especially as enhanced with real-time storm tracking capabilities, will

municipalities when municipal facilities are located outside of the floodplain, which is another benefit of Berkeley Township's placement of municipal facilities far from the flood zone.

In addition to the above planning projects, the Township also received funding to prepare ordinance amendments. These amendments, recommended in the 2015 Master Plan Reexamination Report, and 2014 Strategic Recovery Planning Report will address post-Sandy strategies and policies designed to mitigate risks and vulnerabilities, protect properties and reduce repetitive losses, and promote resiliency and sustainability through upgraded design standards and clarity for existing regulations and standards.

Berkeley Township's large size and varied environs (mainland and barrier island) give it increased flexibility when planning for resilience. Unlike Seaside Park Borough, the Township is able to provide affordable housing and municipal facilities in areas where the threat of coastal flooding is limited. This geographic arrangement enables Berkeley Township to protect the established barrier island neighborhood character of South Seaside Park, while providing residents and businesses access to discounted flood insurance and increased resiliency with services.

Planning in South Seaside Park

The Bauman Report contended that Berkeley Township has been "pre-occupied" with the planning of the Township's Eastern Mainland.³⁷ It is important to emphasize that a plan,

improve the Township's ability to plan for future storms as well as react and respond to storms, further improving its resilience.

³⁷ Bauman 2014, Page 8. Mr. Bauman's review of the Township's plans, studies and reports in both his 2014 Report and 2015 Report Amendment repeatedly quantifies the number of goals, objectives, recommendations and other actions in each document, in what appears to be a way to measure the importance of one area of the Township over another:

- *"There are no focus initiatives or goals in the master plan that address South Seaside Park. The ten master plan goals 'set the stage for more pointed objectives and recommendations,' encourage guidelines for new development, and support the preservation of residential character of neighborhoods." (Bauman 2014, Page 18)*
- *"South Seaside Park and its residents are not included in the master plan goals. Deannexation will not cause significant injury to the Berkeley Township master plan." (Bauman 2014, Page 18)*
- *"The nine master plan objectives do not individually or collectively address the needs and concerns of the residents of South Seaside Park. Completing the build-out of neighborhoods, encouraging development in Town Center and corridor nodes, and addressing the Route 9 corridor are addressed in master plan objectives but these are matters that are nowhere near South Seaside Park, nor do they affect the social and economic well-being of South Seaside Park residents." (Bauman 2014, Page 19)*

This analysis technique overlooks the majority of goals, objectives, recommendations and other actions that do not explicitly mention a specific area, yet are still intended to benefit the area. One example of this is Goal #2 of the Township's 2008 Land Use & Circulation Elements: *"Provide a healthy balance of land uses that preserves the residential character of the neighborhoods; maintains a balanced stock of quality housing that accommodates*

goal, or objective does not need to explicitly mention one neighborhood or another in order for it to apply to, or benefit, the residents of that particular neighborhood. As reviewed above, numerous Township planning goals, objectives and recommendations target the Township as a whole, South Seaside Park included, to improve connectivity, aesthetics, services, recreational opportunities, and other quality of life enhancements. Berkeley Township's many neighborhoods do not need to be specifically mentioned in a goal, objective or recommendation in order to benefit.

Mr. Bauman's argument that the Township's planning documents chose to focus on TDR, the Beachwood Plaza redevelopment, and the Township's identified Centers and Nodes, overlooks several key elements. First, many of the "location-specific" recommendations are intended to achieve a Township-wide goal. In the case of TDR, the goal of concentrating development in Town Centers along Route 9 is paired with curbing sprawl development, improving circulation and protecting the quality of water that enters the Barnegat Bay. Second, the Township has taken advantage of available grants and funding opportunities to achieve its planning goals when there was access to certain funding streams. The Township was able to progress with the development of its TDR program due to funding from the State Transfer of Development Rights Bank and the Office of Smart Growth. The Township's 2012 Environmental Resource Inventory was prepared with funding assistance from Sustainable Jersey. Berkeley Township's post-Sandy resilience planning utilized New Jersey Department of Community Affairs grant funding, which required a focus toward immediate storm recovery and long-term resilience, including at-risk coastal neighborhoods like South Seaside Park.³⁸ That stated, this section will review the Township's planning efforts in South Seaside Park.

Berkeley Township's 1997 Master Plan described the character of the South Seaside Park neighborhood as a year-round resort community which included some smaller bungalow type housing used primarily for summer rentals.³⁹ The plan acknowledged that the area's

diverse lifestyles and age groups; and provides convenient opportunities to acquire essential goods and services." (Page 8). This goal is not exclusive to a single neighborhood of Berkeley Township.

³⁸ It should be noted that the Township's involvement in this DCA grant program enabled it to be eligible for, and receive, subsequent grant funding to prepare a neighborhood plan specifically for South Seaside Park.

³⁹ 1997 Master Plan, page 10. The Bauman Report critiques this statement in the 1997 Master Plan, claiming "While this housing pattern may be prevalent on the mainland South Seaside Park can hardly be described as becoming a maturing, year-round residential suburb." (Bauman 2014, Page 19) As reviewed previously in the section of this report on demographics, South Seaside Park has a larger proportion of seasonal housing than the mainland. That said, Mr. Bauman's demographic analysis utilized 2010 Census Data in his analysis of seasonal units, which found that 1,103 of the 1,410 housing units in South Seaside Park, or over 78 percent, were seasonal units. (Bauman 2014, Page 15) The most recent five-year American Survey data from the US Census Bureau for the 2011-2015 period indicates that South Seaside Park contains a total of 1,671 housing units, 1,141 of which are seasonal, or 68 percent. While the majority of dwellings in the South Seaside Park neighborhood are still seasonal in character, the proportion of year-round housing in the neighborhood has increased gradually over time. It should also be noted that Mr. Bauman's above statement appears to contradict another of his arguments, that "From a demographic and housing perspective, Berkeley Township and South Seaside Park are essentially homogenous communities divided by geographic barriers, and deannexation will

commercial district, originally developed to serve vacationers, appeared to be transitioning to meet the needs of a year-round population.⁴⁰ This commercial area, along with the mainland's Route 9 corridor, are considered to be the largest concentrations of commercial activity in Berkeley Township. The 1997 plan anticipated a stable to minor increase in population as seasonal rentals transition to year-round use.

The Township's 2003 Reexamination report recognized the need to study the use of land in South Seaside Park and review the area's zoning regulations. The 2008 Land Use and Circulation Plan Element, adopted by the Planning Board in 2009, included a review of existing conditions in South Seaside Park with corresponding revisions to the Township's Land Use Plan Map. These revisions included five new land use districts to provide context-sensitive residential and commercial standards for the area and reflect established land use patterns. While the Township did not revise South Seaside Park's zoning to the districts recommended by the 2008 Land Use Plan prior to Sandy, the issue was revisited as part of the 2015 Master Plan Reexamination Report. Due to the susceptibility of the barrier island to flooding, storm surge and extreme weather, the Township recommended the need for further study and public input to craft recommendations that would protect residents and promote resiliency. Following the Township's preparation of municipal-wide resiliency plans, including its Master Plan Reexamination Report and Master Plan Amendments, updates to the Floodplain Management Plan, Hazard Mitigation Plan, and Emergency Operating Plan, updating and automation of the zoning and construction permit process, preparation of a Capital Improvement Plan, Debris Management Plan, and a Geographic Information Systems (GIS) mapping tool, the Township received additional funding from the State Department of Community Affairs to prepare a plan specifically for South Seaside Park to address the recommendation in the 2015 Master Plan Reexamination Report. As reviewed previously, the Township also received grant funding at this time to prepare a coastal neighborhood resiliency plan for the Township's Bayfront communities, continued participation in the CRS program, and the preparation of ordinances that implement the recommendations of the Township's completed plans.

With regard to the Neighborhood Plan for South Seaside Park, the Township engaged in an extensive public outreach effort to work with neighborhood residents and property owners to develop a plan that will promote context-sensitive land use and long-term resilience in South Seaside Park from future storm events. Details of this planning process and the recommendations found in the Neighborhood Plan are described in the above section.

Mr. Bauman's report and subsequent testimony predated the adoption of the 2017 Neighborhood Plan for South Seaside Park by the Berkeley Township Planning Board. That

not cause significant or substantial social or economic injury to Berkeley Township's demographic, economic, social, and cultural characteristics- there is no significant or substantial loss of social, cultural, and economic diversity to the residents of Berkeley Township." (Bauman 2014, 7)

⁴⁰ 1997 Master Plan, page 10.

said, it is important to address Mr. Bauman's arguments regarding land use and zoning in South Seaside Park.⁴¹

- *"Berkeley Township has already determined that South Seaside Park is an area built to capacity with no potential for future growth-while this determination does not cause significant social or economic injury to Berkeley Township residents, it has for those living in South Seaside Park."* (Bauman 2014, Page 17)
- *"The 2008 Master Plan Reexamination Report, the State Plan Endorsement, and the TDR Element all encourage growth in the Eastern Mainland and Berkeley Township is preparing itself for what it has planned for through ordinance changes and updating their master plan. No growth plan is proposed for South Seaside Park."* (Bauman 2015, Page 4)

A buildout analysis is a tool used to estimate future building capacity of undeveloped lands under existing zoning regulations in order to anticipate and plan for future development. Locations where a buildout analysis reveals little, or no future capacity does not mean that the area is no longer in need of planning; rather, it identifies areas where instead of anticipating new growth, existing development can be examined for future management and improvement through rehabilitation, redevelopment, and community development. This is important to understand as Berkeley Township is establishing new town centers in parts of the mainland where vacant or otherwise developable lands exist. There is limited vacant and/or public lands in South Seaside Park suitable for redevelopment, nor is it likely that the community would meet the criteria under the Local Redevelopment and Housing Law to undertake a redevelopment plan, neither of which would change if South Seaside Park were annexed to Seaside Park Borough.

- *"The zone districts recommended for replacement by the master plan are currently in use in South Seaside Park. Implementation of the new master plan recommended Island zone districts would significantly change the one-unit detached residential character of South Seaside Park and will cause significant social and economic injury to South Seaside Park residents."* (Bauman 2014, Page 21)
- *"South Seaside Park's present zoning designations and proposed master plan Island District zones are not consistent with the character of adjoining barrier island communities. Should the capacities of the current zoning ever be fully exercised, or if the Island District zones were ever adopted into law, the residents of South Seaside Park would experience significant injury to their economic and social well being."* (Bauman 2014, Page 46)

⁴¹ It should be noted that as part of Mr. Bauman's September 2015 testimony, when asked if he was suggesting that zoning, or rezoning, was an important reason for deannexation, he replied, *"It's not the first thing that comes to the resident's mind. But from a professional planner's standpoint, zoning helps, rezoning helps, addressing these items in the master plan helps."* In a later section of his testimony on zoning, he reiterated this point, *"But in this case, there are other issues at hand that has stirred the need for de-annexation. It's not just zoning there. When I did my informal interviews, I didn't hear anybody say, the zoning in Seaside Park is different than here, that inconsistency we can't stand, we're not going to deal with it. I didn't hear any of that. I heard a lot about people's traveling. I heard a lot about our communities, the way the folks relate."*

- *“Outside of the Central Avenue corridor, the zone districts are not consistent along the shared boundary of Berkeley Township and Seaside Park Borough. Berkeley Township’s master plan recommended Island Zone districts for the shared boundary area is not consistent with the adjacent zoning of Seaside Park Borough. Land with common physical characteristics and a shared infrastructure that is zoned inconsistently due to different municipal jurisdictions is a blueprint for poor and insensitive development resulting in reduced property values, degraded vernacular character of the barrier island communities, and decreased quality of life and enjoyment of one’s property. Inconsistent zoning between Berkeley Township and Seaside Park Borough is detrimental to the economic and social well being of South Seaside Park Residents.” (Bauman 2014, Page 10)*

For each of the above arguments, it is important to understand the planning rationale behind the update to the Land Use Plan and the recommendation to revise the zoning for this neighborhood. The Township’s 2008 Master Plan Reexamination Report recommended “A land use study should be prepared for the Barrier Island section of the Township (south Seaside Park section of Berkeley) to analyze and review existing zoning in this area. The existing zone plan in this area does not adequately reflect established land use patterns to the extent that there are areas zoned for multi-family (two, three and four family units) and townhouses where single-family dwelling units and/or commercial and retail uses currently exist.” (Berkeley Township 2008 Reexamination Report, Page 14) The changes to the Land Use Plan, along with the proposed zones in 2009, were made to address the existing conditions in the neighborhood at the time. This Land Use Plan was revisited in greater detail as part of the 2017 Neighborhood Plan for South Seaside Park in light of any changes that may have occurred since the previous plan, as well as any improvements that could be made to improve storm resilience. The recommendations that came from the 2017 Neighborhood Plan to revise the Land Use Plan for South Seaside Park with proposed zone changes were prepared following an extensive public outreach effort with neighborhood residents and property owners, which is detailed in the Neighborhood Plan **Appendix B**, and is also observed as part of the public hearing transcripts in **Appendix C**. Contrary to Mr. Bauman’s above arguments, these amendments are intended to benefit the residents of South Seaside Park by reducing the potential costs from development applications on non-conforming lots that would subsequently require Zoning Board of Adjustment approval and protect the existing character of the community. Furthermore, if the zoning were revised to reduce density in order to become “consistent with the character of adjoining barrier island communities,” this would cause economic hardship to residents and property owners who would be required to seek Zoning Board of Adjustment Approval for any future development application on a subsequently nonconforming lot. Due to the limited amount of vacant land available in South Seaside Park, the only other alternative to reduce density would be through the condemnation and acquisition of private property via eminent domain, which would also be an injury to residents.

- *“Berkeley Township’s current zone plan is silent about South Seaside Park’s unique barrier island community characteristic which adversely impacts the economic and social well-being of South Seaside Park residents” (Bauman 2014, Page 23)*
- *“The permitted use and lot requirements in the zone districts of the South Seaside Park are no different than those throughout Berkeley Township; deannexation will not cause significant economic or social injury to Berkeley Township’s diversity of permitted uses.” (Bauman 2014, Page 23)*
- *“Continued association with Berkeley Township under its current master plan, build-out projections, vision study, and affordable housing is detrimental to the economic and social well being of the residents of South Seaside Park because South Seaside Park is a remote part of Berkeley Township that lacks planning, zoning, and land use regulations that adequately address South Seaside Park’s barrier island community character. Continuing to be legally bound by Berkeley Township’s land development regulations and growth projection/management plans, South Seaside Park residents economic and quality of life concerns specific to their barrier island surroundings will not be adequately addressed by Berkeley Township, damaging their economic and social well being.” (Bauman 2014, Pages 8-9)*

Mr. Bauman’s report does not address the Township’s BR (Beachfront Residential Zone), the purpose of which was to establish site-specific standards for the area governed by the Midway Beach Condominium Association in South Seaside Park. Furthermore, the Township has responded to this concern through the amendments to the Land Use Plan and proposed zone changes in 2009, the recommendation as part of the 2015 Master Plan Reexamination to pursue a neighborhood-specific, in-depth study of land use and zoning in South Seaside Park to ensure that any changes incorporate storm resilience, and the 2017 Neighborhood Plan that followed, which included both an in-depth study of land use and zoning in the neighborhood and an extensive public engagement process to ensure that residents had numerous opportunities to communicate their interests and concerns with the Township to create a plan that meets the needs of the community.

Conclusions

Berkeley Township has demonstrated a firm commitment to comprehensive planning, which has allowed it to continue to adapt to changing conditions. The Township has continued to pursue grant and other funding opportunities to prepare plans that respond to these changes. The suggestion in the Bauman Report that the Township’s planning efforts are geared toward certain areas over others overlooks the basic rationale for municipalities to develop a comprehensive master plan. The Municipal Land Use Law (MLUL) grants municipal planning boards the authority to prepare a master plan, or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare. The township may prepare additional planning studies, reports, or local plans, however, these documents are guided by the goals, objectives and recommendations of the municipal-wide master plan.

The fact that Berkeley Township prepared a redevelopment plan for Manitou Park does not suggest that the township is only concerned with the general welfare of the Manitou Park neighborhood or that it favors that neighborhood over other areas of the Township, nor does a post-Sandy resilience plan favor the Township's waterfront communities over the Pinelands communities. Similarly, a TDR plan that directs new development away from natural lands and towards the Township's Town Centers and Nodes may not directly address a neighborhood like South Seaside Park, however, the neighborhood and its residents benefit from the development of new tax ratables to these centers and the water quality improvements to Barnegat Bay from the protection of natural lands. It is important to emphasize that these component parts are intended to achieve municipal objectives and the larger goals to improve the Township as a whole.

In other instances, planning goals and objectives that do not refer to one specific area or another are directly tied to the benefit of the Township as a whole. In Berkeley Township, this includes goals to improve viewsheds throughout the Township, whether this is billboard regulations, property maintenance, or streetscape improvements. It includes a comprehensive recreation system that targets all ages and ability levels, or land use and open space preservation strategies intended to improve the water quality of Barnegat Bay. The Township's focus on improving existing commercial centers and their integration with surrounding residential neighborhoods is something that is applicable to many of its distinct neighborhoods, including South Seaside Park.

To further address the concerns of neighborhood residents and property owners, specifically in South Seaside Park, Berkeley Township made the recommendation in its 2015 Master Plan Reexamination of the need to undertake an in-depth review of the land use plan in South Seaside Park. Acknowledging this recommendation in the Township's Reexamination Report enhanced its ability to seek and obtain grant funding through the Post Sandy Planning Assistance Grant Program to undertake this review and prepare a neighborhood-specific plan for South Seaside Park. As part of this planning process, the Township created numerous opportunities for public participation and input, through community meetings on the barrier island, advertised public hearings, status updates before the Township's Governing Body and Planning Board, individual mailings, as well as making its planning staff available for questions and comments.

It is important to note that public participation in the planning process can address many of the objections raised by the petitioners, such as the number of bicycle racks available, piers for crabbing, playgrounds for children and grandchildren, or a public boat launch. Rather than participate in the Township's planning process to raise these issues directly, the Petitioners have opted to seek deannexation, presumably to then participate in the Borough of Seaside Park's planning process in order to pursue these needs.

Review of Statutory Criteria

As per by N.J.S.A. 40A:7-12, et seq., the Petitioners have the burden of demonstrating:

1. Refusal to consent to deannexation by the governing body is arbitrary or unreasonable;
2. Refusal to consent to deannexation by the governing body is detrimental to the social and economic well-being of a majority of the residents of the affected land; and
3. Annexation would not cause significant injury to the well-being of the municipality in which the land is located.

Each of the criteria is addressed in the sections below.

1. Refusal to consent to deannexation by the governing body is arbitrary or unreasonable.

The loss of South Seaside Park would represent a tremendous loss to Berkeley Township and the greater Berkeley Township community. South Seaside Park is an irreplaceable component of the Township. Berkeley Township may have numerous neighborhoods within its jurisdictional boundaries, however each neighborhood offers a unique contribution to the Township's collective character; basically, the whole is greater than the sum of its parts. The Township benefits from its connection to South Seaside Park, and South Seaside Park benefits from its connection to Berkeley Township. This is demonstrated by the following:

Socioeconomic and Cultural Diversity

Deannexation would separate two demographically distinct communities and reduce the Township's overall diversity. These differences include:

- Educational Attainment;
- Housing Diversity;
- Workforce Participation;
- Household Income; and,
- An established neighborhood characterized by a large seasonal population, versus a mainland with a large year-round population.

Storm and Flood Resilience

The Township's geographic diversity makes it more resilient to coastal storms and flooding, and provides residents in the floodplain, both on the barrier island and bayfront with benefits and protections.

- Critical and municipal facilities are located out of the floodplain, which helps to limit exposure to coastal storms and flood risk to ensure continuity of essential and non-essential services.
- More preserved lands on the mainland, and more facilities located outside of the floodplain means more points that can be credited as part of the Community Rating System (CRS), which reduces the costs of flood insurance for all residents.
- The Township has received nearly a half million dollars in Post Sandy Planning Assistance Grant Funding as part of a comprehensive planning effort to improve its resilience to coastal storms and flooding. In addition, the Township is participating in an additional New Jersey DCA-funded program where the University of Notre Dame will be using the Township's existing Geographic Information Systems (GIS) to develop a program that will allow the Township to plan for, react and respond to coastal storms and flooding. Given their location on a vulnerable barrier island, this enhanced storm tracking capability is a unique benefit to the residents of South Seaside Park resulting from their inclusion in Berkeley Township.

Variety of Services Provided

The Township's size and geographic diversity permit it to provide a variety of different opportunities for the benefit of all residents.

- South Seaside Park residents have access to mainland parks and recreation programs and Mainland Residents have access to the parks and activities in South Seaside Park.

Planning Initiatives

The Township's different planning initiatives have been predicated upon the Township's varied geographies and neighborhoods to benefit all residents.

- A new Town Center on Route 9 results in a greater ratable base that benefits all residents.
- Resiliency plans that improve the quality of life in coastal communities.
- Participating in the community rating system, and seeking a higher rating reduces the costs of flood insurance for all residents, especially those in the floodplain.
- Participation in the Notre Dame pilot to enhance its GIS and storm tracking capabilities would likely not have been possible without having a barrier island neighborhood as part the township.

Furthermore, the Township has made an ongoing commitment to address the concerns of residents and improve the overall quality of life. The Township sought grant funding to prepare a Neighborhood Plan. As part of the planning process, the Township created numerous opportunities to gather public feedback and present findings before adopting a final Neighborhood Plan.

2. Refusal to consent to deannexation by the governing body is detrimental to the social and economic well-being of a majority of the residents of the affected land.

This analysis finds that the deannexation from Berkeley Township would cause significant injury to residents of South Seaside Park, based on the following:

Increase in the cost of flood insurance

- Berkeley Township's participation in the Community Rating System (CRS) program entitles all residents to receive a 20% reduction to the cost of their flood insurance. Seaside Park Borough residents only receive a 15% reduction. Deannexation would increase the cost of flood insurance for South Seaside Park residents. This cost increase would directly affect property owners with flood insurance. Additionally, the cost increase in flood insurance, may affect property values.
- Furthermore, annexation of South Seaside Park to Seaside Park Borough would increase the amount of unpreserved floodplain area in the municipality, causing Seaside Park Borough to lose CRS Credit Points necessary for the flood insurance discount.

Diminished Storm Resiliency

- Berkeley Township's municipal and other critical facilities are located on the mainland and outside of the flood hazard area. This enables them to mobilize and respond more quickly to resident needs following a storm in order to provide continuity of services. Unlike Seaside Park Borough, Berkeley Township was not forced to host its municipal meetings after Superstorm Sandy in another municipality as it was shielded from the worst of the storm.
- Berkeley Township was selected by the New Jersey Department of Community Affairs to participate in a program managed by the University of Notre Dame and the State University of New York-University at Buffalo to enhance its existing Geographic Information Systems (GIS) program to aid and assist planning, public works, and emergency management in planning for resilience as well as to better understand and respond to projected and real-time storm, wind and flood risks. Besides Berkeley Township, there is only one (1) other New Jersey municipality (the Borough of Keansburg, in Monmouth County) that is participating in this program. This pilot project specifically benefits the residents of South Seaside Park.

Loss of Community Diversity

- South Seaside Park residents would lose the collective socioeconomic, cultural, and geographic diversity that is found in the individual neighborhoods of Berkeley Township. South Seaside Park residents benefit from being part of a larger community where year-round and seasonal residents have the opportunity to interact.

Loss of Services

- South Seaside Park residents would lose access to a variety of services that are provided by a larger and geographically diverse municipality. Seniors in South Seaside Park would lose access to Berkeley Township's senior services. If deannexation is to include White Sands Beach, seniors in South Seaside Park would lose their complementary access privileges and season passes for non-seniors would rise significantly. South Seaside Park residents interested in using the Berkeley Township Golf Course would need to pay an increased non-resident rate.

Loss of Comprehensive Planning

- Over the past 20 years, Berkeley Township has engaged in a proactive and ongoing comprehensive planning process, aligned with state and regional planning policies. This planning process has even included a neighborhood-specific land use plan, designed to enhance resiliency while protecting the neighborhood's unique community character. These plans and reports that have been prepared by the Township will allow the entire Township community to benefit in terms of long-term storm resiliency, economic and community development.

3. That the annexation would not cause significant injury to the well-being of the municipality in which the land is located.

Deannexation of South Seaside Park would cause significant injury to Berkeley Township and its residents. Berkeley Township's local prestige would be harmed by the loss of its only oceanfront Jersey Shore community. The distinctive and unique beach culture, as noted by Lay Testimony,⁴² is an integral component of the Township's diverse mosaic of neighborhoods. The Petitioners have claimed that this

⁴² The idea of this distinctive culture was discussed by the following residents:

- Mr. Whiteman (February 2015): "And, basically, it's almost like a town in itself on the island. I just happened to be talking to my wife and I said, we're familiar what goes on [on] the beach. If you asked me who Ms. Potter is, I have no idea. If you ask me who Clara B. Worth is, I have no idea. But if you were to ask me, you know, who Mr. Tunney was, I can tell you he was the owner of Funtown at one time. And my point of saying this is, we are familiarized [ourselves] with the culture of the beach."
- Mrs. Fulcomer (April 2015) described the culture of South Seaside Park as follows: "*Most people talk about the beach. How the fish are running, crabs. And it's just a wonderful jogging, walking, nature walks, island Beach State Park. And the weather. And it's just a wonderful, wonderful place to be.*" Later during her April 2015 testimony, Mrs. Fulcomer also explained, "*The attitude of South—excuse me—Seaside Park to us is, they're a very good neighbor. They're a sister community. And they're really a lifeline for us. And as I said before, I'm not going to repeat, but when I first became involved in this back in the 1970s where I just owned a home that I rented, I wasn't a full-time resident yet, I was interested in this de-annexation movement. I thought Berkeley, Seaside—South Seaside Park being part of Berkeley then was illogical. I feel it's illogical now. The culture of South Seaside Park matches Seaside Park more than it does Berkeley.*"

loss would be mitigated by Island Beach State Park, as the park is located within the Township, but under the jurisdiction of the state. This claim assumes that shore access is the sole component of what would be lost by the Township as a result of deannexation, yet it fails to consider the cultural, demographic, and economic⁴³ contributions of this neighborhood on the greater Berkeley Township community. Deannexation of South Seaside Park from Berkeley Township would represent a significant loss of a distinctive seasonal community not found on the mainland.

Loss of Cultural and Community Asset

The loss of South Seaside Park would cause significant social injury to Berkeley Township. The Township's South Seaside Park neighborhood represents an integral component of the Township's collective community character that is the product of its neighborhood diversity. In addition to the loss of the Township's only oceanfront recreational asset, White Sands Beach, Berkeley Township would lose the distinct culture found on the Jersey Shore. While it is difficult to quantify "culture," the distinctiveness of this neighborhood was an argument made by the Petitioners and can be discerned, in part, by the demographic differences between South Seaside Park and the rest of the Township. The Township would lose an established neighborhood that is better educated, better compensated, and more likely to be employed in the workforce than the rest of the Township. The Township would lose the diverse housing stock found on the island, an asset that is critical to retaining existing and attracting new residents from a variety of economic and social backgrounds. South Seaside Park differs from the rest of Berkeley Township in the character of its housing; the demand to live or vacation along the ocean has led to the development of a high-density seasonal community.⁴⁴ The loss of an entire neighborhood with a demonstrably unique character⁴⁵ is not something that could

⁴³ For the purposes of this statement, "economic" refers to the typology of businesses that are located in South Seaside Park, and are geared toward a seasonal, shore town community.

⁴⁴ Mr. Bauman's 2014 report notes "As a result of deannexation, Berkeley Township would lose 6% of its housing stock, but vacant housing units would be reduced by 33%, resulting in a decrease of Berkeley Township's overall vacancy rate from 14.5% to 10.4%." (Page 16) We agree that deannexation would lead to a reduction in vacant units, however, Mr. Bauman's argument should have differentiated between vacant units and units that are seasonally vacant. This is an important distinction in illustrating the seasonal community that characterizes South Seaside Park from other neighborhoods in Berkeley Township, and one that appears to be somewhat acknowledged by Mr. Bauman's report, "The loss of seasonal units in South Seaside Park does not preclude Berkeley Township residents from renting or otherwise obtaining these units- they are not owned by Berkeley Township. The loss of seasonal units does not cause significant economic or social injury to Berkeley Township residents." (2014, Page 16)

⁴⁵ In addition to the Lay Testimony described in a previous footnote, the distinct character of the South Seaside Park neighborhood was acknowledged in different ways by Mr. Bauman in his report and testimony:

- "The permitted use and lot requirements in the zone districts of the South Seaside Park are no different than those throughout Berkeley Township; deannexation will not cause significant economic or social injury to Berkeley Township's diversity of permitted uses. Berkeley Township's current zone plan is silent

be easily replaced, as Mr. Bauman's report contends that the buildout of the Township's proposed Town Center could quantitatively make up for the loss of population.⁴⁶ Berkeley Township's loss of its only oceanfront neighborhood would be nearly impossible to substitute, and would alter the composition of the Township and collective sense of place that characterizes the municipality.

Loss of Recreational Opportunities

The loss of White Sands Beach would cause significant injury to all Township residents, both inside and outside of South Seaside Park, when the cost of beach badges are adjusted to the rates set by the Borough of Seaside Park. Currently, the Borough of Seaside Park does not provide free access to the beaches for seniors age

about South Seaside Park's unique barrier island community characteristic which adversely impacts the economic and social well-being of South Seaside Park residents." (Bauman 2014, Page 23)

- *"Besides on Central Avenue, most zoning is not consistent between the shared boundaries of Berkeley Township and Seaside Park Borough. Should South Seaside Park be annexed by Seaside Park Borough, inconsistent zoning could be handled with more flexibility and ease. Consistent zoning of land within close proximities of each other is beneficial to the economic and social well-being to the South Seaside Park residents by protecting property values and preserving the unique barrier island community character and identity." (Bauman 2014, Page 10)*
- *"Since the number of eating and drinking establishments, lodging facilities, and retail supply stores are minimal, and their characteristics are vernacular to the barrier island, deannexation will not result in substantial social or cultural injury or detriment in Berkeley Township. No Berkeley Township residents will be deprived of patronizing any of the establishments in South Seaside Park should it become part of a different municipality. Deannexation will not deprive Berkeley Township of any prestige and social standing and/or the part they play in the region's restaurant, lodging, and retail diversities." (Bauman 2014, Page 37)*
- *"South Seaside Park will have the opportunity to request annexation from adjacent Seaside Park Borough. South Seaside Park and Seaside Park Borough share the same character as many of the small barrier island communities. The incorporation of these two entities makes physical and fiscal sense." (Bauman 2014, Page 45)*
- *"Seaside Park Borough facilities and services are in close proximity to South Seaside Park and their common shore community characteristics will benefit South Seaside Park residents with convenience, financial savings, closer municipal services, and the ability to formally unite with people democratically and address the issues directly that affect their shore community." (Bauman 2014, Page 10)*
- During his October 2015 testimony, Mr. Bauman was asked if he characterized South Seaside Park as a unique barrier island community in the text of his report, which he acknowledged in the affirmative. Mr. Bauman was asked a follow up question that as a unique barrier island community and part of the fabric of the New Jersey Shore, it has certain unique characteristics, not only in the Township but also statewide and regionally, which he also responded in the affirmative.

⁴⁶ Mr. Bauman's 2014 report claims *"Berkeley Township is making plans to accommodate new growth in the proposed Town Center on the eastern mainland. Whatever the reduction in housing units is as a result of deannexation, that loss will be negated by future growth in planned areas designated by Berkeley Township."* (Bauman 2014, Page 16) Mr. Bauman raised a similar point as part of his analysis of Berkeley Township Population Projections in his 2015 report amendment, *"Given that the [the] 2010 U.S. Census Tract population of South Seaside Park is 490 persons, should Berkeley Township grant de-annexation of South Seaside Park, the population loss would be quickly compensated within a five year period."* (Bauman 2015, Page 6)

62 and over. Seniors in Berkeley Township and South Seaside Park seeking to use White Sands Beach would presumably lose complementary access privileges to White Sands Beach.⁴⁷ Furthermore, South Seaside Park residents would lose access to Berkeley Township's recreation programs and discounted access to the Township's golf course.

Conclusion

As has been demonstrated above, the deannexation of South Seaside Park from Berkeley Township would have numerous consequences for the township. Indeed, deannexation would not only result in the loss of an established neighborhood, but also a highly educated, prosperous, and productive part of the township's population, as well as increased residential vacancy and reduced diversity in the township's population and housing stock. Likewise, the departure from Berkeley Township would have numerous consequences for South Seaside Park residents.

- The proposed deannexation would have a detrimental social and economic impact upon the Township.
 - The proposed deannexation would deprive Berkeley Township of its prestigious oceanfront neighborhood, which is historically linked to the Township's development as a coastal community.
 - South Seaside Park contains a significant portion of the Township's seasonal and year-round housing diversity relative to its size, and the demographics of neighborhood residents suggest that South Seaside Park is more affluent than the Township as a whole. The dwellings, and their residents, contribute significantly to the diversity and the income mix of the Township.
 - The loss of White Sands Beach would result in increased costs for ocean access for Township residents. Seniors would lose their complementary access privileges.
- The proposed deannexation would have detrimental social and economic impacts upon the neighborhood of South Seaside Park.
 - Berkeley Township's efforts to promote storm resiliency and its participation in the Community Rating System (CRS) entitle all property owners to a 20% discount on their flood insurance. Currently, Seaside Park Borough property owners only receive a 15% discount.
 - Property owners in South Seaside Park would not be protected by the Berkeley Township enhanced-Geographic Information Systems program,

⁴⁷ Mr. Bauman's September 2015 testimony acknowledged that the Island Beach State Park entrance fee applies only to vehicles. Seniors can apply for a free admission and parking pass from the state, however, all other visitors entering the park via automobile must pay to access the park. Non-senior visitors can enjoy complementary access if entering by foot or bicycle, however the distance to the bathing beach from the entrance gate is approximately 3.5 miles.

designed to promote long-term storm resiliency planning, as well as emergency operations.

- Seniors in South Seaside Park would lose their complementary access to White Sands Beach, in addition to the loss of discounted or complementary recreational amenities on the mainland.
- The location of Berkeley Township's critical facilities on the mainland are protected from flooding and hurricane storm surge projections, ensuring continuity of services following extreme weather.

Berkeley Township has been engaged in a long-term comprehensive planning process that includes not only South Seaside Park, but also the other neighborhoods and communities throughout the Township which collectively distinguish and define its character. The different planning imperatives and objectives from each of these plans seek to address problems as they arise, and improve the quality of life for all residents, property owners and businesses of Berkeley Township. These plans are continuously evolving through new inputs and will continue to improve.

Being part of Berkeley Township puts South Seaside Park in a very unique, beneficial position, with access to resources, opportunities, and benefits that will be completely eliminated if deannexation were to occur. Likewise, Berkeley Township would suffer irreparable damage to its identity, which is distinguished, defined and comprised by the character of its diverse neighborhoods and communities, of which South Seaside Park is an integral component.

Based on the above, we conclude that deannexation would have a detrimental impact to both Berkeley Township and the neighborhood of South Seaside Park.

**APPENDIX A: ARTICLE FROM THE SEPTEMBER 20, 1912 AFTERNOON
EDITION (VOLUME 62, NUMBER 51) OF THE *NEW JERSEY COURIER***

**Three Houses and Freight Car
Burned Sunday at Seaside Park**

Three houses and a freight car were burned Sunday night at what is called "Little Italy", just below the borough line of Sea Side Park on the beach. The fire started about ten o'clock, and it is supposed to have been caused by mice or rats chewing matches, as it first broke out in the unoccupied house of Joseph Hitchcock. From this it went to the Baer cottage, and also to a third building, a two story laundry and store house, connected with one of the cottages. A box car, standing on the siding, was also half burned.

The fire was near the Spring Lake Fishery Company's pound, and at the south end of the P. R. R. siding, south of Sea Side Park. Years ago an Italian colony were located there while working at grading on the beach, and the locality was then christened "Little Italy", a name it retains to this day. Both the Baer cottage and the Hitchcock cottage were said to have been worth about \$3500 each, which would make the loss about \$8000. There are no water mains on this part of the beach, as it is outside the borough line. Cinders "as big as your hand" fell all over Sea Side Park, with the south wind, but no damage was done by them.

**APPENDIX B: 2017 NEIGHBORHOOD PLAN FOR SOUTH SEASIDE PARK
(AS PREPARED FOR JULY 1, 2017 BOARD REVIEW)**

APPENDIX C: NEIGHBORHOOD PLAN TRANSCRIPTS

APPENDIX D: MAPSET

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