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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DONALD WHITEMAN,
PATRICIA A. DOLOBACS, JUDITH A.
ERDMAN and 282 other PETITION
SIGNERS OF SOUTH SEASIDE
PARK HOMEOWNERS
& VOTERS ASSOCIATION,

DOCKET NO.: OCN-L-

Plaintiffs,

Civil Action

v.

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

TOWNSHIP COUNCIL OF
BERKELEY TOWNSHIP; TOWNSHIP
OF BERKELEY, JOHN DOES 1-10,
ABC CORPS. 1-10

Defendants.

Plaintiffs, all Petition signers, of full age, by way of Complaint against the
Defendants, hereby say as follows:

COUNT ONE – ARBITRARY, UNREASONABLE AND CAPRICIOUS

DENIAL OF PETITION FOR DE-ANNEXATION

1. Plaintiff, DONALD WHITEMAN, is an individual residing at 2000 Barnegat Avenue, Seaside Park, New Jersey. He is a member of the South Seaside Park Homeowners & Voters Association. He signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
2. Plaintiff, PATRICIA A. DOLOBACS, is an individual residing at 107 Beach Drive, Seaside Park, New Jersey. She is a member of the South Seaside Park Homeowners & Voters Association. She signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
3. Plaintiff, JUDITH A. ERDMAN, is an individual residing at 106 Sprague Avenue, Seaside Park, New Jersey. She is a member of the South Seaside Park Homeowners & Voters Association. She signed the Petition for the South Seaside Park section of Berkeley Township to deannex.
4. Plaintiffs, 282 other PETITION SIGNERS OF SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION, are members of a community organization (hereinafter “SSPHVA”) whose membership is comprised of taxpayer-residents of the South Seaside Park section of Berkeley Township. These 282 other PETITION SIGNERS, all reside in the South Seaside Park section of Berkeley Township and all signed the Petition for Deannexation. See Petition attached as **Exhibit A which contains the names of all 285 Petition SIGNERS including the three (3) individual named Plaintiffs herein.**
5. Of the total membership of the SOUTH SEASIDE PARK HOMEOWNERS & VOTERS ASSOCIATION, 351 members signed a Petition for Deannexation (hereinafter the “Petition”) pursuant to N.J.S.A. 40A:7-12 with the Township Council of Berkeley Township. Of those, 285 were valid signatures.

6. South Seaside Park is a barrier island shore community which is currently part of Berkeley Township but which is separated from the mainland portion of the Township by the Barnegat Bay and separated by land by several other municipalities including Pine Beach, South Toms River, Beachwood, Toms River, Island Heights, Seaside Heights and Seaside Park. The distance from South Seaside Park to the Berkeley municipal building is 16.5 miles.
7. The three (3) individual petitioners along with the other members/SIGNERS of the Petition, seek to de-annex the neighborhood of South Seaside Park from Berkeley Township and join the neighboring Borough of Seaside Park. See **Exhibit A**.
8. Defendant, Township of Berkeley (hereinafter “Township”), is a municipal corporation organized under the laws of the State of New Jersey and consisting of approximately 41.4 square miles.
9. The Parcel sought to be de-annexed is .24 square miles – approximately one-half of 1% (or 0.5%) of the total land area of the Township of Berkeley.
10. The Township of Berkeley’s governing body is organized and constituted under the optional Municipal Charter Law (Faulkner Act). It has a Township Council consisting of 7 members elected on a staggering basis for terms of 4 years. It is also governed by a Mayor who is elected for a 4 year term. The Township Council of Berkeley (hereinafter “Council”), as governing body for the co-defendant Township, is a named defendant in this action.
11. On September 22, 2014 the Plaintiffs filed a Petition seeking De-annexation with the Township seeking to deannex from the Township in order to join the geographically contiguous municipality of the Borough of Seaside Park. See **Exhibit A**.
12. The Township adopted Resolution No. 14-378-R, acknowledging receipt of the Petition and without any objection as to the form or content of the Petition forwarded it to the Berkeley

Township Planning Board, pursuant to N.J.S.A. 40A:7-12. In particular, there was no claim by the Township that the Petition was deficient or did not meet the statutory requirements for a petition for deannexation.

13. Pursuant to N.J.S.A. 40A:7-12 the Berkeley Township Planning Board is required to provide a report to the Township Council on the impact of the proposed de-annexation upon the Township.
14. In order to prepare its report the Berkeley Township Planning Board held approximately forty-four (44) monthly public hearings over the span of five (5) years – from January 8, 2015 to January 9, 2020.
15. The Berkeley Township Planning Board heard testimony from nine (9) Petition SIGNERS, one (1) non-signer but supporter of the Petition, seventeen (17) interested members of the public, almost all of who supported the Petition, three (3) experts for Plaintiffs, seventeen (17) witness on behalf of the Township of Berkeley, two (2) experts for Defendant Township, and considered voluminous exhibits produced by all parties, witnesses and experts.
16. The Berkeley Township Planning Board also considered the reports of the Planning Board experts Stan Slachetka, P.P., AICP and Stuart B. Wiser, P.P.
17. Testimony concluded, after five (5) years, on November 25, 2019 and the hearing was formally closed on December 5, 2019.
18. The Berkeley Township Planning Board took an oral vote on the de-annexation Petition at its January 9, 2020 meeting at which time they voted to deny the Petition.
19. Despite conducting an oral vote in January 2020 the Berkeley Township Planning Board did not adopt its Resolution 2020—PB20-011 until August 6, 2020 – seven (7) months after the oral vote and nine (9) months after testimony concluded.

20. Resolution 2020-PB-20-011 summarized the Berkeley Township Planning Board's findings and recommended the de-annexation Petition be denied. A copy is attached hereto as **Exhibit B**. (Note: A copy of Stuart B. Wiser's report dated May 2, 2019 referred to as Exhibit A to this Planning Board Resolution is NOT attached to this Complaint as it exceeds 600 pages.).
21. Berkeley Township Planning Board Resolution 2020-PB20-011 was forwarded to the Township Council for consideration.
22. At the Council meeting on September 21, 2020 the Council considered the Berkeley Township Planning Board Resolution 2020-PB20-011, without discussion or comment.
23. The Council voted to deny deannexation as follows: 5 aye, 0 nay, 1 absent and 1 abstention by Mr. Bacchione – who was also a member of the Berkeley Township Planning Board and was present and participated throughout the five (5) years of hearings.
24. Berkeley Township's Resolution #20-402-R denying the petition was adopted by the Township Council on September 21, 2020. A copy is annexed hereto as **Exhibit C**.
25. The Council's Resolution of denial relies specifically on the Berkeley Township Planning Board Resolution 2020-PB20-011 adopted August 6, 2020. See **Exhibits B and C**.
26. On October 2, 2020 the Township Clerk executed a letter mailing via regular mail a copy of the Township Council's Resolution #20-402-R to Plaintiff's counsel. It was received on October 8, 2020. A copy is annexed as **Exhibit D**.
27. Pursuant to N.J.S. 40A:7-12.1 Plaintiffs presented evidence and met their burden to prove the refusal to consent to the Petition was arbitrary, capricious or unreasonable, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park and that the annexation will not cause a significant injury to the well-being of the Township of Berkeley.

28. Plaintiffs met their burden that the refusal to consent is detrimental to the economic and social well-being of the majority of the residents of South Seaside Park. The lay and expert testimony demonstrated the following:

Economic and Social Well-Being of Plaintiffs

- A. This is not an exhaustive statement of all facts concerning economic and social well-being of the Plaintiffs, but rather a comprehensive list of examples in support of Plaintiffs' position that they have met their burden.
- B. South Seaside Park is geographically distant from the Township of Berkeley separated by the Barnegat Bay and by numerous municipalities. In order for a South Seaside Park resident to travel to mainland Berkeley Township one must drive a distance of 16.5 miles and travel through the municipalities of Seaside Park, Seaside Heights, Toms River, along the border of Island Heights, through Toms River again, South Toms River, Beachwood and Pine Beach depending on the route taken. Alternatively one could take the Garden State Parkway after traveling through the first four (4) municipalities listed above, but same would result in paying a toll, recently raised to \$1.00. It is undisputed that in the best of circumstances travel by car to mainland Berkeley Township takes 25 minutes and during the summer months and during rush hour can take 45 minutes or more often in heavy local traffic. By contrast the furthest a mainland Berkeley resident must travel to get to the municipal building is approximately half that distance or 8.5 miles from the Holiday City section of Berkeley on back roads with only a few traffic light and through no other municipalities.

- C. No other municipality in New Jersey contains a disconnected portion with a significant population that is as geographically distant as the Plaintiffs are from mainland Berkeley Township in this case.
- D. In 1898 Seaside Park was formed from Berkeley Township. In 1913, Seaside Heights was formed from Berkeley Township. Both of these separate municipalities, once comprising land belonging to Berkeley Township, are closer to mainland Berkeley Township than the South Seaside Park section is.
- E. The distance required for travel impacts the Plaintiffs in several ways, including but not limited to making it more difficult for residents of South Seaside Park to participate in and attend a number of municipal functions such as Council meetings, Planning Board meetings, Zoning Board meetings, Board of Education meetings, as well as many other municipal matters. Going to the Berkeley municipal building for individual purposes such as paying taxes, getting a marriage license, getting a pet license, etc., also requires this same significant degree of travel. The Defendants never hold any meetings in South Seaside Park nor was there a municipal annex for residents of South Seaside Park to take care of their municipal needs. Only after the hearings had been ongoing for years in this matter did the Township set up something of a summer municipal annex for residents of South Seaside Park. It remains to be seen if that annex will have any hours in the off season.
- F. Elementary school children residing in South Seaside Park must be bussed 45 minutes or longer to attend Berkeley schools on the mainland whereas if deannexation is granted they would only travel seven (7) miles to the Washington Street Elementary School in Toms River where Seaside Park students attend.

- G. Participation in local government affairs would be far easier for Plaintiffs in the event of deannexation as they could walk, bike or drive the $\frac{1}{4}$ to $\frac{1}{2}$ mile distance from their residences in Seaside Park to the municipal building in neighboring Seaside Park.
- H. The Township of Berkeley provides bussing to pick up seniors on the mainland but has never picked up any seniors in South Seaside Park to attend municipally sponsored mainland events notwithstanding it claiming it would do so.
- I. There is a significant economic cost for the residents of South Seaside Park in gasoline, wear and tear on vehicles, and the economic value of their time, in attending any mainland activity whether same is at the municipal building, the recreation center on Route 9, a municipal park or any other mainland public facility.
- J. There is only one small park in South Seaside Park, the John A. Lyons Memorial Park (basketball court) located on 24th Avenue, together with three (3) blocks of ocean beach known as White Sands Beach. Neither the park nor the ocean beach is particularly well maintained nor do they possess the amenities of the mainland parks or those parks and beaches within Seaside Park including but not limited to parking, restrooms, water fountains or changing facilities. Should deannexation occur the White Sands Beach would be cleaned daily instead of twice weekly and it is anticipated that Seaside Park would install showers there as they have for its own existing beaches. The Township's failure to maintain the White Sands Beach and the park shows a gross disregard for the Plaintiffs and a failure to invest in the residents there.
- K. The disregard of the Defendants for the South Seaside Park section of town where Plaintiffs reside is also evidenced by the testimony that the Defendants have no

formal long term or short term plans for the South Seaside Park section of town in any planning, Master Plan, study, or vision documents prepared for the Township in the past few decades until this point was brought forth by Plaintiffs in this action.

- L. The recycling center for Berkeley residents is located 16.5 miles from South Seaside Park across from the municipal building. Testimony demonstrated not only the inconvenience of same but that pickup for recycling is irregular and often neglected despite the persistent telephone calls from the residents of South Seaside Park. If deannexation were to occur, South Seaside Park residents would have access to and use of the recycling facilities in neighboring Seaside Park located no more than a 1/2 mile away. Only after the hearings in this matter had been ongoing for years did bins marked for “Berkeley Township residents only” appear in the Seaside Park Center.
- M. South Seaside Park residents currently must pay to use the White Sands Beach in Berkeley Township by purchasing a beach pass. The testimony adduced made it clear that many residents also purchase a Seaside Park beach pass due to the fact that the latter pass allow them access to two (2) crabbing piers, a boat launch, tennis courts, a baseball field, two (2) bay beaches with playgrounds, as well as one and half miles of ocean beach that is cleaned daily, has showers and water fountains at boardwalk entrances, and contains ample parking. Should deannexation occur the additional cost of a second beach pass would be eliminated and represents an economic savings to Plaintiffs.
- N. In the event of deannexation the registered voters of South Seaside Park would have a significantly greater voice in their local governmental affairs in Seaside Park due to the fact that they, as a whole, would represent a significantly larger percentage of the

total voting citizenry of Seaside Park than they currently hold within the Township of Berkeley.

- O. The testimony demonstrated that there has been a significant failure to provide adequate, efficient and timely services to the residents of South Seaside Park for snow removal, street cleaning, ocean and bay beach maintenance, clearing of sand from roads, paving of roads, recycling, and other municipal services. The police presence was admittedly increased over the five years of hearings, and a beach substation added, but only in response and as a result of this deannexation effort by Plaintiffs. Anecdotal testimony provided evidence that such police presence was significantly lacking prior thereto.
- P. The testimony was clear that South Seaside Park shares a social identity with neighboring Seaside Park as like beach communities. Testimony demonstrated that the residents of South Seaside Park conduct many of their daily activities on the barrier peninsula including but not limited to dining out, grocery shopping, attending church services and social activities, using the recreation fields and amenities in neighboring Seaside Park, attending the municipal concerts in neighboring Seaside Park and the like. The residents of South Seaside Park share the same culture as a beach community, like Seaside Park, and do not associate in the same way with residents of mainland Berkeley.
- Q. Testimony demonstrated a lack of significant investment by Berkeley Township in South Seaside Park such as a failure to maintain and regularly clean bay and ocean beaches, poor signage, lack of a public boat ramp, lack of a public pier, lack of a public bay bathing beach, inadequate parking, failure to provide senior bussing,

inadequate recycling pick up, inconsistent garbage and bulk pick up, failure to provide adequate snowplowing or services/amenities at the John A. Lyons Memorial Park (basketball court), failure to provide senior recreational activities in South Seaside Park, and failure to improve the limited recreational facilities available in South Seaside Park.

No significant injury to the Defendant, Township of Berkeley

29. This is not an exhaustive statement of all facts concerning Plaintiffs' position there will be no significant injury to the Township if deannexation is granted, but rather below is a comprehensive list of examples in support of Plaintiffs' position that they have met their burden.
30. In every deannexation case there will be a loss of tax ratables if the petition is granted. The Planning Board's Resolution (**Exhibit B**) predictably highlights this despite the fact that it is not in any way dispositive.
31. The Planning Board's Resolution (**Exhibit B**) claims Plaintiffs are "tax shopping". The record does not support this claim. The Planning Board's Resolution even acknowledges that not one of the Plaintiffs or their lay witnesses testified at all about any property tax savings in the event deannexation is granted. This issue was not "avoided" as the Resolution suggests. It was not an issue simply because it was not an issue.
32. The topic of tax savings first arose on cross examination of Plaintiff's municipal economist, Kenneth Moore CPA, RMA, CMFO, CFP, who is eminently more qualified and had far greater experience than the Township's CFO who acted as Defendants' sole financial expert. Mr. Moore admitted Plaintiffs would see a tax savings upon deannexation. However, when he

was specifically asked on cross examination whether he discussed this with the Plaintiffs his answer was “no” that he never discussed his findings with them.

33. It is clear from the complete record encompassing forty-four (44) hearings over five (5) years that there are many, many, many other reasons for this Petition to be granted, none of which is “tax shopping”.
34. The only financial expert witness to testify for the Defendants at the hearing was the Township CFO, Frederick C. Ebenau. Mr. Ebenau testified that any economic effects of deannexation would be mitigated in less than five (5) years through his sound fiscal policy and financial management as he demonstrated in distressed municipalities where he has previously worked.
35. Mr. Ebenau testified that under his leadership it would take probably less than five (5) years to mitigate any economic impact of deannexation by raising taxes and utilizing more surplus. He also testified that he expected ratables to increase over the next few years which would offset, in part, any economic loss.
36. Lastly, Mr. Ebenau testified that if the Defendants simply eliminated over time compensation (together with associated saved expenses) the entire economic impact of deannexation would be offset and in such case there would be little, to no, economic impact whatsoever.
37. Plaintiff’s expert adequately demonstrated there would be little or no negative impact to the bonding capacity of the Township, refuting the rationale made by the Planning Board in its Resolution (**Exhibit B**).
38. Testimony was adduced that any real property tax increase to homes in the Township upon deannexation was consistent with the historical tax raises between 2014 and 2019. The tax

raise could be 3.1% if deannexation is granted which is not an overwhelming tax increase and is similar to other increases that Berkeley homeowners have absorbed in the past.

39. Plaintiff's financial expert went to great lengths to demonstrate that the economic impact was, consistent with the town's own CFO, virtually non-existent.
40. The Planning Board's Resolution (**Exhibit B**) concludes that if deannexation occurs the Defendant's will lose the most wealthy, most educated, nicest neighborhood of the community. Testimony proved this was not true. Plaintiff's demonstrated through more than one expert planner that several areas of Berkeley Township have similar demographics as South Seaside Park and are on or near the waterfront including Pelican Island, Berkeley Shores, Glen Cove, and the area along the Toms River in Berkeley.
41. There was no significant, credible expert opinion that the Defendants would suffer a significant financial injury. Defendants only presented one financial expert – its own CFO, Frederick Ebenau. Despite this fact, the Resolution of the Planning Board indicates that it elected not to rely on its own economic witness – CFO Ebenau. In fact, Stuart B. Wiser, Defendant's planner, admitted in testimony that he did not rely at all on CFO Ebenau because his reports were fraught with errors.
42. The lay and expert testimony clearly established that the Township's refusal to consent to deannexation would be detrimental to the economic and social well-being of South Seaside Park residents; from a planning standpoint there are significant benefits to the residents of South Seaside Park if deannexation is granted; deannexation would not result in significant economic injury to the Township; and deannexation would not have a negative impact to the Township's planning documents.

43. Defendant, Council, as governing body and agent of Defendant, Township, palpably abused its discretionary authority by denying the Petition for deannexation which denial was in all regards arbitrary, capricious, unreasonable and otherwise, wrongful.

44. Plaintiffs' interests have been adversely affected and manifest injustice has been created by the Defendants' arbitrary, capricious and unreasonable denial of Plaintiffs' deannexation Petition.

WHEREFORE, Plaintiffs demands judgment against the Defendants as follows:

- A. Declaring and adjudging Defendants' refusal to consent to the Petition presented to it by Plaintiffs is arbitrary or unreasonable; and null and void and without force and effect;
- B. Declaring and adjudging that Plaintiffs' proofs before the Defendants and its Planning Board met the standard of N.J.S.A. 40A:7-12.1 and that therefore the Petition should be granted by Resolution of the Defendants;
- C. Granting judgment to the Plaintiffs requiring the Defendant, TOWNSHIP COUNCIL FOR THE TOWNSHIP OF BERKELEY, to approve the Petition and present it to the Borough of Seaside Park;
- D. Attorney's fees and costs of suit;
- E. Such other relief as the Court may deem equitable and just.

COUNT TWO – DUE PROCESS VIOLATIONS

- 1. Plaintiffs repeat all allegations contained in Count One above as if set forth at length herein.
- 2. As a matter of due process, the Berkeley Township Planning Board, in its advisory role, had a legal obligation to provide the Plaintiffs with a fair and impartial hearing, without prejudgment or bias, and independent of the influence of the Township itself.

3. The requirement that the Berkeley Township Planning Board act separate and independent from the Township was acknowledged by several of the Township witnesses as well as the Planning Board's own expert witnesses.
4. Despite this acknowledged legal requirement to act independently from the Defendants, it is apparent from a review of the record that due process was denied to Plaintiffs in many respects including but not limited to but rather by way of example only:
 - A. The Township's influence was active and continuous from the very beginning of the hearing process and not independent or separate as required by law. Even before the Plaintiffs' case was completed and only after a few of the 44 hearings, the Township Administrator circulated an email to the Berkeley Township Planning Board professionals (including planners, engineers, and attorney) with copies to the Township Council members in order to schedule a meeting to strategize as to how to rebut the testimony of the Petitioners. Several witnesses including the Berkeley Township CFO and the Planning Board's expert, Stuart Wiser, acknowledged that on its face the email appeared to confirm that the process was biased and that the Planning Board was not acting independent and separate from the Township as required by law; and
 - B. Various Planning Board members pre-judged the petition, tainting the entirety of the proceedings. One member of the Planning Board who was seated through most of the 44 hearings had a South Seaside Park Homeowners & Voters Association sign at the edge of his property with a red circle and line through it (indicating NO to SSPHVA). The sign remained on his property even after attorney for the Plaintiffs revealed its existence and objected to it at one of the meetings. Another Planning Board member attended a neighborhood meeting prior to the commencement of the hearings and advised that the

seniors in that community needed to attend the hearings to oppose the application if they did not want their real property taxes to be increased; and

- C. The hearings went beyond fact-finding for advisory purposes and were overly adversarial; and;
- D. The Planning Board and its expert planner, Stuart Wiser, purposely and conspicuously ignored the prior written decision of former Ocean County Superior Court Judge Addison in the very same case between the same parties decided approximately forty (40) years ago. The Planning Board also prevented Plaintiffs or their witnesses from testifying about this earlier relevant decision. Despite this, Mr. Wiser's report provided a detailed history of *every other* de-annexation case ever brought in New Jersey, reported and unreported. Such conduct was unfair, unreasonable, and evidence of bias by Defendants; and
- E. The Planning Board members and Township witnesses unfairly characterized Plaintiffs personally demonstrating obvious bias; and
- F. Planning Board meetings were often adjourned without sufficient reason stretching the matter out for months, if not years, longer than necessary and denying due process to the Plaintiffs; and
- G. The Resolution adopted by the Planning Board violated N.J.S. 40A:7-12. Hearings concluded in December 2019 however a Resolution was not adopted within 45 days. The parties agreed hearings would very likely exceed the 45 days the Planning Board has by law to provide a report. That it took more than 45 days from referral is not Plaintiffs' issue. However, the Planning Board Resolution recommending against annexation was not adopted until August 6, 2020, nine (9) months after testimony was concluded and the

hearings closed – well more than 45 days from when the matter was concluded. Plaintiffs allege this extraordinary delay was a violation of the statute and a denial of due process; and

- H. Defendants gave its Planning Board and their professionals a blank check to spend whatever was needed to defeat the Petition. The Planning Board expert's, Stuart Wiser's, fees alone cost taxpayers in excess of \$350,000.00. Added to that was the cost of Planning Board expert, Stan Slachetka, another licensed planner whose invoices were also significant in the tens of thousands of dollars. It is reasonably estimated that the Defendants spent well in excess of \$500,000.00 in a "spare no expense" effort to defeat the Plaintiffs' Petition by conducting a war of financial attrition; and
- I. Nine (9) annotated transcripts were prepared by the Planning Board's expert, Stuart Wiser, some with his editorial comments about the witnesses' testimony, in order to specifically assist the upcoming Township witnesses when they testified. Copies of the annotated transcripts were only provided to Plaintiffs' counsel inadvertently and were discovered during the Township witnesses' testimony. This is evidence of clear collusion between the Planning Board and the other Defendants during this process which collusion was specifically aimed at defeating Plaintiffs' Petition; and
- J. The Planning Board attorney improperly conducted numerous cross-examinations of witnesses and did not remain impartial and performed during the hearings as if he was representing the Defendants rather than an impartial advisory body; and
- K. Defendants provided its own CFO with certain police schedule information which was refused to Plaintiffs due to alleged "safety" concerns. This withholding of relevant

evidence from one party and not the other created an unfair and unlevel playing field and violated Plaintiffs' due process rights.

L. The Township's sole economic witness was permitted to revise and resubmit a new report in this matter after his cross examination on his original report was complete. Thereafter, the witness' second report was also revised since it contained significant errors illustrated by Plaintiff's counsel. This demonstrates the extreme favoritism provided to the Township's witnesses throughout these hearings.

5. The foregoing examples show clear bias, an effort to unfairly control the proceedings in favor of the Defendants, and collusion between the Planning Board and Defendants in this action.
6. Plaintiffs suffered the loss of due process over and over again throughout the forty-four (44) hearings, and afterwards, due to the manner in which the Planning Board conducted the hearings from the very start and due to its failure to provide a Resolution until nine (9) months after testimony concluded.

WHEREFORE, Plaintiffs seeks judgment against the Defendants declaring and adjudging that:

- A. The actions of the Council in its refusal to consent to the petition for de-annexation abridged Plaintiffs' right to petition guaranteed by the N.J. Const., ART 1 §18;
- B. The actions of the Township Planning Board, Council and Township in their failure to provide a fair and impartial hearing by their conduct as set forth herein denied Plaintiffs right of constitutional due process guaranteed under the New Jersey Constitution;
- C. Granting judgement to the Plaintiffs allowing de-annexation and directing that said Petition granting de-annexation be executed and delivered to the Borough of Seaside Park;
- D. Compensatory and punitive damages;

- E. Attorney's and costs of suit;
- F. Such other relief as the Court may deem equitable and just.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that, in accordance with R.4:5-1, at this time, the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration proceeding, nor is there any such action or proceeding contemplated.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Joseph Michelini, Esq., is hereby designated as Trial Counsel in the above captioned litigation on behalf of the firm of O'Malley, Surman & Michelini.

CERTIFICATION PURSUANT TO RULE 4:69-4

All necessary transcripts of local agency proceedings in the cause have been ordered.

I HEREBY CERTIFY that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

O'MALLEY, SURMAN & MICHELINI
Attorneys for Plaintiffs

BY: _____

Joseph Michelini

Dated: 11-6-2020

EXHIBIT "A"

**O'MALLEY, SURMAN & MICHELINI
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GREGORY A. SURMAN*
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*Also admitted in Pennsylvania
*National Academy of Elder
Law Attorneys

September 22, 2014

7457G

VIA HAND DELIVERY

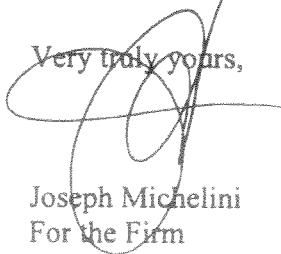
Beverly M. Carle
Berkeley Township Clerk
627 Pinewald Keswick Road
Bayville, NJ 08721

Re: South Seaside Park Homeowners and Voters Association

Dear Ms. Carle:

Enclosed please find original petition signed by more than 60% of the registered voters of the South Seaside Park section of Berkeley Township seeking annexation by Seaside Park Borough and deannexation from Berkeley Township. Kindly refer the petition to the governing body for its immediate consideration.

Very truly yours,



Joseph Michelini
For the Firm

JM:rg
Enclosures

I hereby acknowledge receipt of original documents enclosed with this letter on this 22nd day of September 2014.

By: 

Title: 

RECEIVED
SEP 22 2014
BERKELEY TWP
CLERK

**VERIFIED PETITION OF REGISTERED VOTERS
OF SOUTH SEASIDE PARK
BERKELEY TOWNSHIP
OCEAN COUNTY, NEW JERSEY**

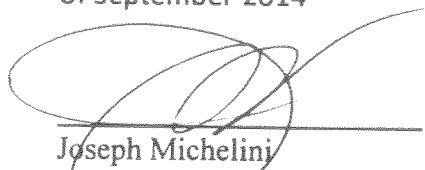
The attached petition contains 351 original signatures. Of that total, 66 signatures have been deemed not countable for reasons set forth on the attached three page list, leaving a net number of valid signatures of 285. There are 435 registered voters in the area for which deannexation is sought, that is, the South Seaside Park section of Berkeley Township (see attached map). The valid signatures of 285 represent 65.5% of the registered voters of South Seaside Park.

The assessed valuation certification has been updated from 2011, as stated in the petition, to the "preceding year", or 2013, as required by Statute. (See certifications of Ken Moore, CPA, dated 2011 and 2013 annexed).

I am a signer of the attached petition. I hereby swear upon my oath that the foregoing statements made by me are correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Arlene N. Nora

Sworn and Subscribed to
before me this 22nd day
of September 2014


Joseph Michelini
Attorney at Law
State of New Jersey

The following persons signed the petition and have since moved, passed away or do not appear on the list of registered voters dated 9/9/14

LAST NAME	FIRST NAME	MOVED	DECEASED	NOT REGISTERED	PAGE
APPLEBY	MARK	X			28
BOSSOW	GEORGE		X		19
BOVE	SUSAN	X			2
BOVE	ROBERT	X			2
BOYER	FRANCIS			X	10
BOYER	CATHERINE			X	10
BROWN	DEBBIE	X			2
BROWN	DAVID	X			2
BYCSEK	DAWN	X			6
CLARK	JOHN		X		2
COFFEY	DOROTHEA	X			16
CREWS	WILLIAM		X		15
DAVOLOUS	ANDREW		X		19
FECAK	MICHAEL		X		19
GLENN	KATHERINE	X			18
HEUER	THOMAS			X	29
HUBBS	LORRAINE		X		1
JACKOWSKI	STEPHEN	X			18
KEENAN	MICHAEL		X		22
LAIACONA	JAMES	X			1
LUPPINO	ANTONIO		X		2
MANNARINO	JENNIFER			X	21
MARTINO	DAVE			X	14
MCGIVNEY	DEBRA	X			16
MCKEE	DAVID			X	21 & 29
MCLAUGHLIN	DIANE	X			15
MILLER	RICHARD	X			15
NAPOLITANO	SCOTT	X			17
OCHANAS	WILLIAM	X			20
OCHANAS	SANDRA	X			20
PANETTA	RAYMOND		X		1
PORROVECCHIO	SALVATORE	X			18
PORROVECCHIO	LORRAINE	X			18
REARDON	LAUREN			X	27
REARDON	JOSEPH			X	27
REYMANN	CHRIS			X	24
REYMANN	KIM			X	24
SMITH	BETTY		X		17
SONNTAG	SHEILA	X			17
SOSNOWSKI	JEAN		X		4
STRAFACI	ROSE		X		15

LAST NAME	FIRST NAME	MOVED	DECEASED	NOT REGISTERED	PAGE
SWARCTZ	MARIE	X			8
SWARCTZ	WAYNE	X			8
TAGLIAFERRO	THOMAS	X			11
UGARO	TAMARA	X			17
URBANOWICZ	PAUL	X			3
VACARELLI	MATTHEW	X			20
VARACALLI	NICHOLAS	X			13
VARACALLI	CHRISTA	X			13
VERDUGO	BARBARA	X			18
WILBER	CHRISTINE	X			1
WOLF	KATELYNNE	X			17

The following persons signed the petition twice in error

LAST NAME	FIRST NAME	PAGE
MILLER	CHRISTINE	8 & 15
MILLER	MICHELLE	8 & 15
PERRY	MARY	9 & 10
PERRY	WALTER	9 & 10
ROBINSON	DEBORAH	15 & 26
SCHOENWIESNER	ALAN	11 & 14
VITURELLO	ELAINE	9 & 19

The following persons signed the petition and have since requested to have their names removed

LAST NAME	FIRST NAME	PAGE
CLARKIN	ANN	30
HALLGREEN	ALTON	1
HALLGREEN	LAURAN	1
HALLGREEN	PATRICIA	2
HALLGREEN	RAYMOND	2
PFEIFFER	CAROLANN	4
PFEIFFER	JOANNE	4

The following persons appear on the list of registered voters under different surnames than their signatures on the petition

LAST NAME	FIRST NAME	PAGE
KREIDBERG-ORTENZIO	SARA BETH	SIGNED AS ORTENZIO 16
PREVITE	ANGELA	SIGNED AS TUZZOLINO (MAIDEN NAME) 13

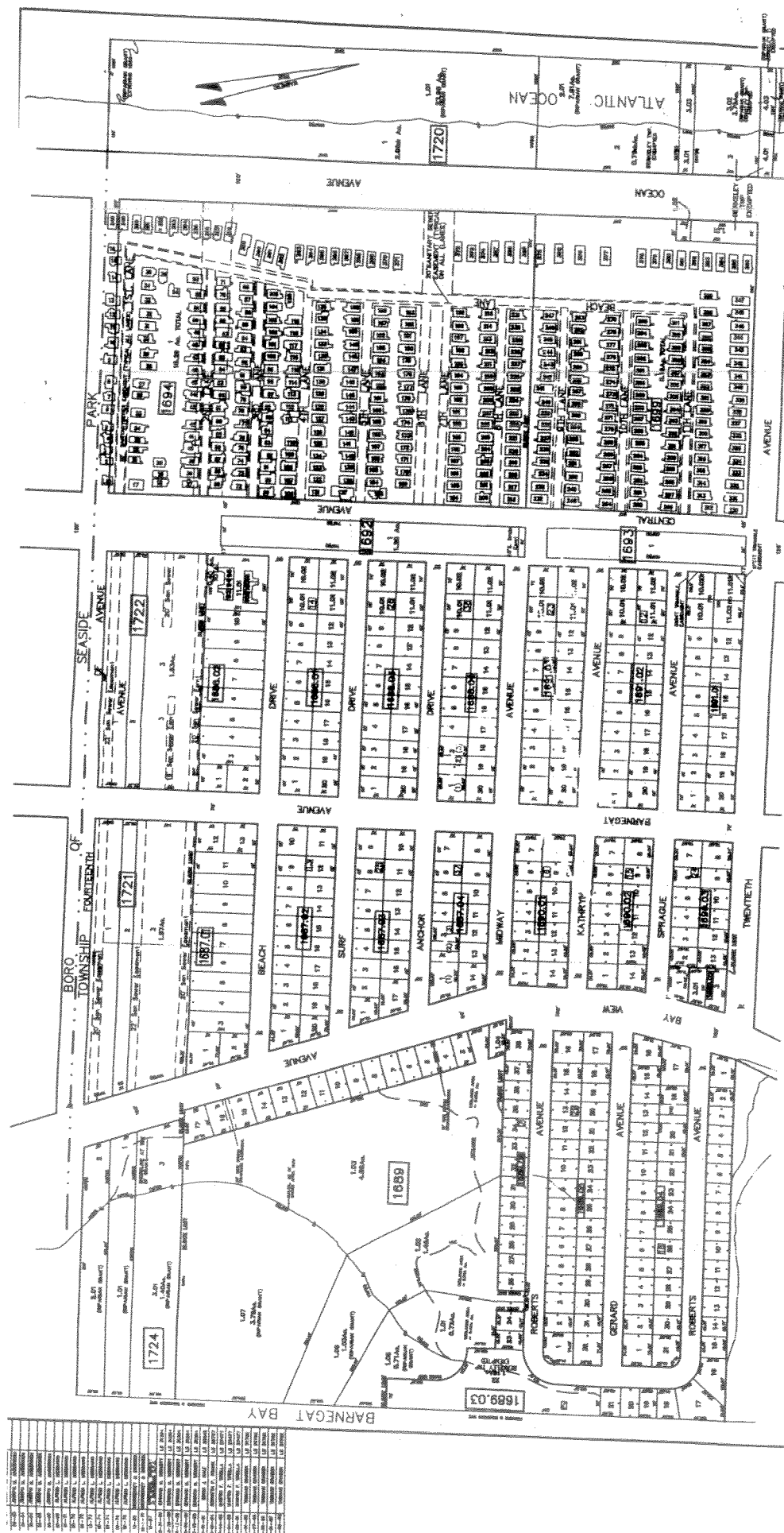
**The following person appears on the list of registered voters twice under both her maiden and married surnames

LAST NAME	FIRST NAME	
AMATRUDI	LAUREN	MARRIAGE SURNAME
IRIZARRY	LAUREN	MAIDEN SURNAME

**The following persons appear on the list of registered voters and have since moved or passed away

LAST NAME	FIRST NAME	
ADAMS	ANDREW	RETURNED MAIL**
BABIAK	JOHN	RETURNED MAIL**
BRENDLER	TIMOTHY, A	ADVISED BY FAMILY
BROUILLETTE	BONNIE	RETURNED MAIL**
BYCSEK	RONALD	MOVED-SIGNED STATEMENT**
CADWALLADER	KRISTIN	ADVISED BY FAMILY
DEMOSS	STEPHANIE	RETURNED MAIL**
FEORINO	DANIEL	RETURNED MAIL**
FOTIADIS	WILLIAM	MOVED-SIGNED STATEMENT**
HERDMAN	KEVIN, J	ADVISED BY FAMILY
KENNY	DONALD	RETURNED MAIL**
KILEY	KATHLEEN	RETURNED MAIL**
LICHTENBERG	DIANE	RETURNED MAIL**
LICHTENBERG	JOHN	RETURNED MAIL**
LICHTENBERG	JOHN	RETURNED MAIL**
MARTIN	DEMETRIOS	RETURNED MAIL**
MASTROCOLA	LORRAINE	RETURNED MAIL**
MASTROCOLA	LOUIS	RETURNED MAIL**
MAYBERRY	AMELIA	DECEASED 8/4/14**
MCCALLUM	LINDSEY, A	ADVISED BY FAMILY
MCGIVNEY	MICHAEL	RETURNED MAIL**
MILLER	BLAIR, H	ADVISED BY FAMILY
QUINN	BRIAN	RETURNED MAIL**
SALOOM	RICHARD, H	ADVISED BY FAMILY
STANZIONE	NICOLE, M	ADVISED BY FAMILY
TIRELLA	PETER	RETURNED MAIL**
URIE	AYLSSA	RETURNED MAIL**
VOLKER	MARY	RETURNED MAIL**

**This information and supporting documentation has been submitted to the Ocean County Board Elections. Copies of submitted documentation are attached.



NOTE: THIS PAGE HAS BEEN RE-ORGANIZED INTO COMPLETELY NEW SECTIONS (CAND)
FROM ORIGINAL FAX MAPS PREPARED BY SGT. C. FELLERS A FOR A ONE HOUR PERIOD ON NOVEMBER 1994



134

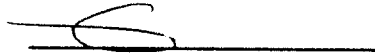
BERKELEY TOWNSHIP TAX MAP
OCEAN COUNTY NEW JERSEY
SCALE 1"=100' DECEMBER 1945
JENN C. FELLOWS & SON - CIVIL ENGINEERS
210 MARK STREET
TEANECK, N.J.

1535 HAVEN AVENUE • PO BOX 538
OCEAN CITY, NJ • 08226-0538
PHONE 609.399.6333 • FAX 609.399.3710

FORD - SCOTT
& ASSOCIATES, L.L.C.
CERTIFIED PUBLIC ACCOUNTANTS
www.ford-scott.com

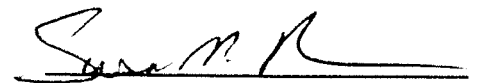
1409 CANTILLON BLVD. • PO BOX 548
MAYS LANDING, NJ 08330
PHONE 609.625.0999 • FAX 609.625.2421

Kenneth Moore, CPA upon my oath depose and say that I did have access to Berkeley Township tax assessment records via the "New Jersey Association of County Tax Boards" website for the year 2011, and do hereby affirm that the total assessed value for the taxable real estate contained within the boundaries of the property for which annexation is sought that is known as "South Seaside Park" (Assessor map pages 137 and 138), as shown on the attached map, is \$543,130,800. I have personally verified with the tax assessor of Berkeley Township that his books match those set forth in the NJ Association of County Tax Boards, and that the assessment number set forth herein is accurate.



Kenneth Moore, CPA

Subscribed and sworn before me this 24 day of May, 2012.
(Notary Public)



SUSAN M. RUBBA
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/22/2017



FORD-SCOTT

& ASSOCIATES, L.L.C.

CERTIFIED PUBLIC ACCOUNTANTS

1535 HAVEN AVENUE • PO BOX 538 • OCEAN CITY, NJ • 08226-0538

PHONE 609.399.6333 • FAX 609.399.3710

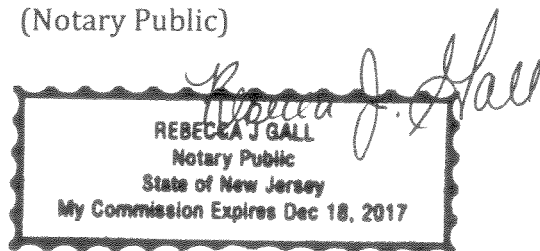
www.ford-scott.com

Kenneth Moore, CPA upon my oath depose and say that I did have access to Berkeley Township tax assessment records via the "MOD IV file from the Ocean County Board of Taxation" website for the year 2013, and do hereby affirm that the total assessed value for the taxable real estate contained within the boundaries of the property for which annexation is sought that is known as "South Seaside Park" (Assessor map pages 137 and 138) as shown on the attached map, is \$539,572,000.00. I have personally verified with the tax assessor of Berkeley Township that his books match those set forth in the MOD IV file from the Ocean County Board of Taxation and that the assessment number set forth herein is accurate.

Kenneth Moore, CPA

Subscribed to and sworn before me this 9th day of Sept. 2014

(Notary Public)



**VERIFIED PETITION OF REGISTERED VOTERS
OF SOUTH SEASIDE PARK
BERKELEY TOWNSHIP
OCEAN COUNTY, NEW JERSEY**

The attached petition contains 351 original signatures. Of that total, 66 signatures have been deemed not countable for reasons set forth on the attached three page list, leaving a net number of valid signatures of 285. There are 435 registered voters in the area for which deannexation is sought, that is, the South Seaside Park section of Berkeley Township (see attached map). The valid signatures of 285 represent 65.5% of the registered voters of South Seaside Park.

The assessed valuation certification has been updated from 2011, as stated in the petition, to the "preceding year", or 2013, as required by Statute. (See certifications of Ken Moore, CPA, dated 2011 and 2013 annexed).

I am a signer of the attached petition. I hereby swear upon my oath that the foregoing statements made by me are correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.























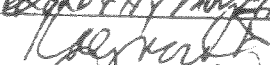










Arlene N. Nora

Sworn and Subscribed to
before me this 22nd day
of September 2014


Joseph Micheline
Attorney at Law
State of New Jersey

PETITION

The undersigned does present this petition to the governing body of the Borough of Seaside Park, New Jersey pursuant to N.J.S.A. 40A:7-12. The undersigned, being at least 60% of the legal voters residing within the boundaries of land presently located in the Township of Berkeley for which annexation is sought commonly known as "South Seaside Park", do request of the Borough of Seaside Park to annex such described land. This petition does have attached to it the oath of a person having access to the Assessor's books setting forth in the within schedule the assessed value of the real estate contained within the boundaries of the property for which annexation is sought for the year 2011 and the amount of real estate assessed to the persons whose names are signed to this petition.

<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Chris Brady		210 20th Ave	
Mac Barry		210 20th Ave	
PELEGRINO VITALE		1071 1st Ave	
CHRISTIN WILSON		28 21st Ave.	
Alton Hallgren		212 21st Ave	
Lorraine Hobbs		230 23rd Ave	
Joseph Rosch		29-21 Ave.	
James Lindsay		125 20th Ave	
Margaret Kennedy		27 21st Ave	
Lauren Hallgren		212 21st Ave	
KEITH DAINE		29-21st Ave	
JOAN DAINE		" " "	
Grace Panetta		12 Island Avenue	
RAY PANETTA		" " "	
John Kargatz		96 Ocean Front	
Patricia Kargatz		96 Ocean Front	

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
James J. Merritt	<i>[Signature]</i>	208 20th Ave SSP	<i>[Signature]</i>
Judy J. Merritt	<i>[Signature]</i>	208 20th Ave. SSP	<i>[Signature]</i>
SUSAN BOVE	<i>[Signature]</i>	206 21st Ave, SSP	<i>[Signature]</i>
ROBERT BOVE	<i>[Signature]</i>	206 21st AVE SSP	<i>[Signature]</i>
Patricia Hallgren	<i>[Signature]</i>	212 21st Ave SSP	<i>[Signature]</i>
RAYMOND HALLGREN	<i>[Signature]</i>	212 21st AVE SSP	<i>[Signature]</i>
Karen Vitella	<i>[Signature]</i>	222-22nd Ave SSP	<i>[Signature]</i>
JAMES M. Vitella	<i>[Signature]</i>	222-22nd ave	<i>[Signature]</i>
Doris M. Schipani	<i>[Signature]</i>	279-830-0969	<i>[Signature]</i>
DAVID BROWN	<i>[Signature]</i>	103 20th AVE	<i>[Signature]</i>
DEBRA BROWN	<i>[Signature]</i>	103 20th AVE.	<i>[Signature]</i>
John Clark	<i>[Signature]</i>	119 20th Ave	<i>[Signature]</i>
PETER W. SULICH	<i>[Signature]</i>	116 - 20th Ave	<i>[Signature]</i>
EVELYN SULICH	<i>[Signature]</i>	116-20th Ave	<i>[Signature]</i>
Clifford Brendler	<i>[Signature]</i>	202 20th Ave SSP	<i>[Signature]</i>
Katie Brendler	<i>[Signature]</i>	202 20th Ave SSP	<i>[Signature]</i>
BETHEL LOT	<i>[Signature]</i>	202 20th Ave SSP	<i>[Signature]</i>
DEBORAH BRENDLER	<i>[Signature]</i>	202 20th Ave	<i>[Signature]</i>

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Annette Crossan	Annette Crossan	317 Roberts Ave	Judy Edman
KEVIN CROSSAN	Kevin Crossan	317 ROBERTS AVE	Judy Edman
JUDITH A. EDMAN	Judith A. Edman	106 SPRUE AVE	Judy Edman
Cathy DeMoss	Cathy DeMoss	2200 Bayview	Judy Edman
JOHN DEMOSS	John DeMoss	2200 BAYVIEW	Judy Edman
RAY DANDRELL	R. Dandrell	234 24TH AVE	Judy Edman
SOPHIE CREWS	Sophie Crews	322 Gerard Ave	Judy Edman
Paul Urbanowicz	Paul Urbanowicz	125-20TH AVE.	Judy Edman
Don Whitman	Don Whitman	2000 Barnegut Ave	Judy Edman
JAMES HERDMAN	James Herdman	114 24TH AVE	Judy Edman
MARIE HERDMAN	Marie Herdman	114 24TH AVE	Judy Edman
John W DeMoss	John W DeMoss	2200 SO. Bay View Dr	Judy Edman
Donna J. Hanna	Donna J. Hanna	106 Beach Dr.	Judy Edman
John H. Hanna	John H. Hanna	106 Beach Dr	Judy Edman
Jean M Haldane	Jean M Haldane	316 Roberts Ave	Judy Edman
William D Haldane	William D Haldane	316 Roberts Ave	Judy Edman
GERALDINE BAKER	Geraldine Baker	253 24th AVE.	Judy Edman
Judyth Anne Conrad	Judyth Anne Conrad	210 Kathryn Ave	Judy Edman
Angela Wagner	Angela Wagner	242 24TH AVE.	Judy Edman

PETITION

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Don Delle-Molle	[Signature]	302 Robert B Ave	Judy Edman
Jean E. Sosnowski	Jean E. Sosnowski	1452 BARNEGAT AVE.	Judy Edman
Evelyn B. Hagen	Evelyn B. Hagen	205 Surf Dr.	Judy Edman
Geraldine Vigorito	Geraldine Vigorito	209 Surf Dr.	Judy Edman
Rose Lane COCCA	Rose Lane COCCA	117 Kathryn Ave	Judy Edman
ROBERT COCCA	Robert COCCA	117 KATHRYN AVE	Judy Edman
Carolann Pfeiffer	Carolann Pfeiffer	313 Roberts Ave	Judy Edman
DANIEL PFEIFFER	Daniel Pfeiffer	313 ROBERTS AVE	Judy Edman
RONALD W. PILER	Ronald W. Piler	216 23 rd	Judy Edman
SUSAN K. LOVRIN	Susan K. Lovrin	29 21 st Ave APT 4	Judy Edman
ROGER M. LOVRIN	Roger M. Lovrin	29 21 st AVE. APT. 4	Judy Edman
George Weekes Jr	George Weekes Jr	106 Kathryn Ave.	Judy Edman
ROBERT E. SCHWARTZ	Robert E. Schwartz	1120th AVE	Judy Edman
DENISE HENRY	Denise Henry	304 GERARD AVE.	Judy Edman
CRAIG HENRY	Craig Henry	304 GERARD AVE	Judy Edman
GAIL WHITEMAN	Gail Whiteman	2000 Barnegat Ave.	Judy Edman
WILLIAM I. SOWTE	William I. Sowte	251 24 th Ave	Judy Edman
BENJAMIN T. FOUGHT	Benjamin T. Fought	114 BEACH DRIVE	Judy Edman
ROSALIE B. FOUGHT	Rosalie B. Fought	114 Beach Dr.	Judy Edman

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
JARBARA H. BORDEN	Barbara G. Borden	329 Herald Ave	July Edman
John J. Borden	John J. Borden	329 Herald Ave	July Edman
James E. Anderson	James E. Anderson	13 Second Lane SSP	July Edman
Patricia A. Dolobas	Patricia A. Dolobas	107 Beach Dr. SSP	July Edman
ARLENE N. NORA	Arlene N. Nora	201 Midway Ave SSP	July Edman
Joseph J. Dolobas	Joseph J. Dolobas	107 Beach Drive SSP	July Edman
Robert A. Nora	Robert A. Nora	201 Midway Ave	July Edman
Don WHITEMAN	Don Whiteman	2000 Barnegat Ave	July Edman
George G. Gusev	George G. Gusev	203 Midway Ave	July Edman
VIVIAN M. BURNS	Vivian M. Burns	116 Beach Dr. SSP	July Edman
JOSEPH M. BURNS	Joseph M. Burns	116 BEACH DR	July Edman
Dominick Solazzo	Dominick Solazzo	172 - 1st Lane	July Edman
Louise deFonteny	Louise deFonteny	380 Roberts Ave.	July Edman
LOUIS DE FONTENY	Louis de Fonteny	380 ROBERTS	July Edman
Katherine E. Fulcomer	Katherine E. Fulcomer	356 Roberts Ave.	July Edman
Sophie M. Kauchak	Sophie M. Kauchak	17-1st Lane	July Edman
PATRICIA TRILO	Patricia Trilo	381 ROBERTS AVE	July Edman
Dominick Trilo	Dominick Trilo	381 ROBERTS AVE	July Edman
MARY ANN CARPINELLO	Mary Ann Carpinello	304 ROBERTS AVE	July Edman

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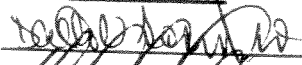
[illegible]

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NAME (PLEASE PRINT)SIGNATUREADDRESSWITNESS

Daniellen N. Sosnowski



304 Gerrard Ave SSPark

Sophie Kauchak

DONNA KAUCHAK

132nd Lane Seaside Park

Daf Amdt

ELAINE VITARELLO



217 Beach Drive

Sophie Kauchak

~~DORON PANKA~~~~Doron Panka~~

218 BEACH DR.

Sophie Kauchak

Domenick Letinski



115 Surf Dr. SSP

Sophie Kauchak

Daniel J. Letinski



115 Surf Dr. SSP

Sophie Kauchak

MARY LOU PERRY

248 23rd AVE

Sophie Kauchak

WALTER A PERRY



" "

Sophie Kauchak

MARJORIE BATISTA

330 33rd AVE.

Sophie Kauchak

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[illegible]

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[illegible]

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NAME (PLEASE PRINT)SIGNATUREADDRESSWITNESSKaren Cadwallader *Karen Cadwallader* 31 1st Ave*James Anderson* BNFrank Cadwallader *Frank Cadwallader* 31 1st Ave*James Anderson* BNAnne Walker *ANNE WALKER* 20-7th*James Anderson* BN~~ANTHONY BLANK~~*Blank*

26 7TH LANE

James Anderson BN

MICHAEL OBOYLE

M Oyle

26 7TH LANE

James Anderson BN

Bethanne Volz

B Volz

101 Beach Dr.

PAD

Margaret Anne Conley Pitchell

*M Conley Pitchell*PO Box 592
Island Beach STRK*Feldman*

T. Mark Pitchell

*T Pitchell*PO Box 592
Island Beach Strk Park*Feldman*

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Robert Prete	<i>[Signature]</i>	127 24th Ave	Judy Edman
Angela m. Tuzzolino	<i>[Signature]</i>	127 24th Ave.	Judy Edman
RICHARD WAGNER	<i>[Signature]</i>	242 24th Ave	Judy Edman
CARMEN Schipani	<i>[Signature]</i>	111 20th Ave	Judy Edman
MILDRED PELLAS	<i>[Signature]</i>	315 6th Ave	Judy Edman
JAMES DE LUAS	<i>[Signature]</i>	315 6th Ave	Judy Edman
ELTON RIFE	<i>[Signature]</i>	107 BEACH ST	Judy Edman
JOYCE RIFE	<i>[Signature]</i>	105 BEACH ST	Judy Edman
FRANK Jankowski	<i>[Signature]</i>	24A 23rd Ave	Judy Edman
Pamela Jankowski	<i>[Signature]</i>	24A 23rd Ave.	Judy Edman
Regina Mooney	<i>[Signature]</i>	204-20th	Judy Edman
THOMAS J. Mooney	<i>[Signature]</i>	204-20th	Judy Edman
Nicholas Varacalli	<i>[Signature]</i>	31 22nd Ave	Judy Edman
Christa Varacalli	<i>[Signature]</i>	31 22nd Ave	Judy Edman
Maryann D. Meneghin	<i>[Signature]</i>	1493 Barrett Ave	Judy Edman
CLARENCE PLACE	<i>[Signature]</i>	121-21st Ave	Judy Edman
ROBERTA PLACE	<i>[Signature]</i>	121 21st Ave	Judy Edman
Debbie Myers	<i>[Signature]</i>	1535 2nd Ave	Judy Edman
Angela DelleMotte	<i>[Signature]</i>	302 Roberts Ave	Judy Edman

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Richard Miller	[Signature]	301 Gerard Ave. Seaside Pk.	Katherine Fulcomer
DEBORAH ROBINSON	[Signature]	311 GERARD AVE SEB	Katherine Fulcomer
ALISON GARTH	[Signature]	324 Gerard Ave.	Katherine Fulcomer
VINCENT DEFURE	[Signature]	345 ROBERTS AVE	Katherine Fulcomer
Rose Strupac	Rose Strupac	325 Robert Ave	Katherine Fulcomer
William Crews	WILLIAM CREWS	322 GERARD AVE	Katherine Fulcomer
Richard Sawyers	[Signature]	1420 South Bayview Ave	Katherine Fulcomer
Richard Handschul	[Signature]	1460 Bayview Ave.	Katherine Fulcomer
Lynda McLain	[Signature]	1467 S. Bayview Ave.	Katherine Fulcomer
Samuel McLain	[Signature]	1467 S. Bayview Ave.	Katherine Fulcomer
Jason Fulcomer	[Signature]	356 Roberts Ave	Katherine Fulcomer
Michelle Miller	Michelle Miller	301 Gerard Ave	Katherine Fulcomer
Raymond D. Negele	[Signature]	2312 Bayview Ave	Katherine Fulcomer
Lauren Gabriel	[Signature]	209 Sprague Ave.	Katherine Fulcomer
Jason McLaughlin	[Signature]	205 Sprague Ave	Katherine Fulcomer
Courtney Chubb	Courtney Chubb	314 Roberts Ave	Katherine Fulcomer
Christine Miller	Christine Miller	301 Gerard Ave	Katherine Fulcomer
Lorraine Negele	Lorraine Negele	2312 Bayview Ave	Katherine Fulcomer
Diane McLaughlin	Diane McLaughlin	205 Sprague Ave	Katherine Fulcomer

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
JANET M. SHALAYDA	<i>Janet M. Shalayda</i>	116-24 th Ave.	Ek
EUGENE SHALAYDA	<i>Eugene Shalayda</i>	116 24 th Ave	JS
DOROTHEA COFFEY	<i>Dorothea Coffey</i>	120 24 th Ave.	JS
JOAN SCHULTZ	<i>Joan Schultz</i>	251 24 th AVE	JS
Gail Tamasy	<i>Gail Tamasy</i>	123 24 th AVE.	JS
George Tamasy	<i>George Tamasy</i>	123 24 th AVE.	JS
Paul L. Ortenzio	<i>Paul L. Ortenzio</i>	131 24 th Ave	JS
Sarah Mortenzio	<i>Sarah Mortenzio</i>	131 24 th Ave	JS
BILL LEASE	<i>Bill Lease</i>	126 24 th AVE.	JS
David Brunette	<i>David Brunette</i>	116 24 th Ave	JS
Debra L. McGivney	<i>Debra L. McGivney</i>	135 24 th Ave.	JS
Michael Colombo	<i>Michael Colombo</i>	110 24 th AVE.	JS
Shirley Colombo	<i>Shirley Colombo</i>	110 24 th Ave	JS
Dominick Mancini	<i>Dominick Mancini</i>	924 th Ave	JS
Angela Mancini	<i>Angela Mancini</i>	924 th Ave	JS

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CAROL BARULIC	<i>Carol Barulic</i>	101 24 th Ave SPK.	<i>Jo</i>
MARK GUARINO	<i>Mark Guarino</i>	285 24 th Ave SSP	<i>Jo</i>
Betty Smith	<i>Betty Smith</i>	213 24 th Ave SSP	<i>Jo</i>
Jeanette Clark	<i>Jeanette Clark</i>	119 26 th Ave SSP	<i>Jo</i>
Chris Napolitano	<i>Chris Napolitano</i>	99 21 st Ave SSP	<i>Jo</i>
Gloria Napolitano	<i>Gloria Napolitano</i>	79 21 st Avenue SSP	<i>Jo</i>
Shula Sonntag	<i>Shula Sonntag</i>	2112 Bayview Ave SSP	<i>Jo</i>
Eric Noble	<i>Eric Noble</i>	230 21 st Ave SSP	<i>Jo</i>
Scott Napolitano	<i>Scott Napolitano</i>	99 21 st Ave SSP	<i>Jo</i>
LOUISA NARCONO	<i>Louisa Narcono</i>	99 21 st Ave SSP	<i>Jo</i>
Timothy L. Lugo	<i>Timothy L. Lugo</i>	240 22nd Ave Apt A	<i>Jo</i>
WILLIAM APPELBY	<i>William Appelby</i>	2009 Bayview Ave	<i>Jo</i>
Linda Appelby	<i>Linda Appelby</i>	5009 Bayview Ave	<i>Jo</i>
Victor A. Fresta	<i>Victor A. Fresta</i>	203 23rd Ave	<i>Jo</i>
Gregory Judd	<i>Gregory Judd</i>	2304 Barnagat Ave	<i>Jo</i>
Dennis Guedde	<i>Dennis Guedde</i>	2306 Barnagat Ave	<i>Jo</i>
JOHN D. BROWN	<i>John D. Brown</i>	211 23rd Ave Seaside	<i>Jo</i>
HOWARD SALOON	<i>Howard Saloon</i>	114 23rd St Seaside	<i>Jo</i>
Katelynne Wolf	<i>Katelynne Wolf</i>	242 24 th Avenue SSP	<i>Jo</i>

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Susan Butler	<i>Susan Butler</i>	23 So. Miller's Ln SSP	<i>James Anderson</i>
Stephan J Jackowski	<i>Stephan Jackowski</i>	14 - 2nd Lane SSP	<i>James Anderson</i>
Christine Kisher	<i>Christine Kisher</i>	18 2nd Ln SSP	<i>James Anderson</i>
WILLIAM M. LAZZI	<i>William M. Lazzi</i>	20 11 th Lane SSP	<i>James Anderson</i>
Joseph Marra	<i>Joseph Marra</i>	35 11 th Lane SSP	<i>James Anderson</i>
Virginia Marra	<i>Virginia A. Marra</i>	35 11 th Lane SSP	<i>James Anderson</i>
William Buffalino	<i>William Buffalino</i>	21 8 th Lane SSP	<i>James Anderson</i>
Michael Terrizzi	<i>Michael Terrizzi</i>	11 3 rd Lane SSP	<i>James Anderson</i>
SALVATORE SPORROVECCHIO	<i>Salvatore Sporrovecchio</i>	1408 CENTRAL AVE	<i>James Anderson</i>
LORRAINE SPORROVECCHIO	<i>Lorraine Sporrovecchio</i>	1408 Central Ave	<i>James Anderson</i>
Keith Reilly	<i>Keith Reilly</i>	#4 7 th Lane	<i>James Anderson</i>
KATHRYN	<i>Kathryn</i>	2009 CENTRAL AVE	<i>James Anderson</i>
Roxanne Brestetti	<i>Roxanne Brestetti</i>	24 4 th Lane	<i>James Anderson</i>
Kathleen Flacco	<i>Kathleen Flacco</i>	15 14 th Ave	<i>James Anderson</i>
Barbara Verdugo	<i>Barbara Verdugo</i>	187 W Central Ave	<i>Barbara Verdugo</i>

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Doris Ciggetakis	Doris Ciggetakis	110-22nd Ave.	[Signature]
Marie A. Carlon	Marie Carlon	110-22nd Ave	[Signature]
ANNE VOLZ	Anne Volz	303 Curran Ave	[Signature]
LAURENCE S. VOLZ	Laurence S. Volz	101 Beach Dr.	[Signature]
MARGARETH CALVES	Margareth Calves	101 Beach Dr.	[Signature]
GERGE CALVES	Gerge Calves	1495 Bayview Ave	[Signature]
WILLIAM OCHANAS	William Ochanas	1495 Bayview Ave	[Signature]
SANDRA OCHANAS	Sandra J. Ochanas	135 24th Ave	[Signature]
John A. Porter	John A. Porter	135 24th Ave	[Signature]
SCOTT A. ERDMAN	Scott A. Erdman	215-22nd Ave.	[Signature]
WILLIAM MUTH	William Muth	106 SPRAGUE	[Signature]
DOROTHY MUTH	Dorothy Muth	110 Sprague Ave	[Signature]
LINDA N. JENKINS	Linda Jenkins	110 Sprague Ave	[Signature]
LUCY CONTEGIAICOM	Lucy Contegiaicom	113 Sprague Ave.	[Signature]
Matt Varacalli	Matt Varacalli	119 SPRAGUE AVE	[Signature]
Doug Varacalli	Doug Varacalli	31 22nd Ave	[Signature]
RENE ANDREWS	Rene Andrews	31 22nd Ave	[Signature]
Katie Whiteman	Katie White	2125 Barnegat Ave	[Signature]
		2000 Barnegat Ave	[Signature]

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Jillian Reichardt	Jillian Reichardt	206 22 nd Avenue	Jillian Reichardt
JAMES T. McTERAN	[Signature]	130 21 st Ave.	[Signature]
Roseann D. McTernan	[Signature]	130 21 st Ave	[Signature]
Jessica Favire	Jessica Favire	202 20 th Ave	[Signature]
Beatrice Degnan	Beatrice Degnan	224 24 th Ave	[Signature]
PAUL PENTO	[Signature]	258 24 th Ave	[Signature]
Leslie Martens	Leslie Martens	309 Gerrard Ave	[Signature]
Kylee Martens	Kylee Martens	309 Gerrard Ave	[Signature]
Elizabeth Mackie	Elizabeth Mackie	332 23 rd Ave	[Signature]
Katy Nelson	[Signature]	210 20 th Ave SSP	[Signature]
Bernard Riccardello	[Signature]	219 20 th Ave SSP	[Signature]
Carol Favire	[Signature]	202 20 th Ave SSP	[Signature]
Lynne Peterson	Lynne Peterson	327 Gerrard Ave	[Signature]
Mary Faith Savanough	Mary Faith Savanough	2108 SW Central Ave	[Signature]
JUSTIN KOBAYASHI	[Signature]	311 Gerrard Ave	[Signature]
Justin Martens	Justin Martens	309 Gerrard Ave	[Signature]

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<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>WITNESS</u>
Sharon Ott	<i>Sharon Ott</i>	121 21 st Ave.	<i>Robert E. Schuch</i>
PETER OTT	<i>PH OTT</i>	121 21 st Ave	<i>Robert E. Schuch</i>
CAROL GOMEZ	<i>Carol Gomez</i>	29 21 st Ave #7	<i>Robert E. Schuch</i>
ALEXANDER E GOMEZ	<i>Alexander E Gomez</i>	29-21 st Ave #7	<i>Robert E. Schuch</i>
Heather Ott	<i>Heather Ott</i>	121 21 st Ave.	<i>Robert E. Schuch</i>
William Buffalino	<i>William Buffalino</i>	21 8 th Lane	<i>Robert E. Schuch</i>
Sarah Merritt	<i>Sarah Merritt</i>	208 20 th Ave	<i>Robert E. Schuch</i>
Tim Ferguson	<i>Tim Ferguson</i>	29 4 th Lane	<i>Robert E. Schuch</i>
Carmelle Wyckoff	<i>Carmelle Wyckoff</i>	2 Island Dunes Dr	<i>Robert E. Schuch</i>
Michael P. Wyckoff	<i>Michael P. Wyckoff</i>	2 Island Dunes Dr	<i>Robert E. Schuch</i>
Lauren Reardon	<i>Lauren Reardon</i>	6 Island Dunes Dr.	<i>Robert E. Schuch</i>
Joseph Reardon	<i>Joseph Reardon</i>	6 Island Dunes Dr	<i>Robert E. Schuch</i>
Michael Wyckoff	<i>Michael Wyckoff</i>	2 Island Dunes Dr.	<i>Robert E. Schuch</i>
Judith Landis	<i>Judith Landis</i>	8 Island Dunes Dr	<i>Robert E. Schuch</i>
EDWARD LANDIS	<i>Edward Landis</i>	8 Island Dunes Dr	<i>Robert E. Schuch</i>
Michael Mottler	<i>Michael Mottler</i>	7 20 th Ave	<i>Robert E. Schuch</i>

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NAME (PLEASE PRINT)	SIGNATURE	ADDRESS	WITNESS
Carol Bies	<i>[Signature]</i>	2103 Queen Meade N	<i>[Signature]</i>
Mark W. Carson	<i>[Signature]</i>	2029 So Bayview Ave	<i>[Signature]</i>
Betty Saloom	<i>[Signature]</i>	114-23 RD Ave	<i>[Signature]</i>
Anna Suriano	<i>[Signature]</i>	245 24 th Ave	<i>[Signature]</i>
Jean Butler	<i>[Signature]</i>	100 24 th Ave Apt	<i>[Signature]</i>
Kristin Asay	<i>[Signature]</i>	238 23 rd Ave	<i>[Signature]</i>
FRANK MERLO	<i>[Signature]</i>	105 24 th Ave	<i>[Signature]</i>
Diana Spurr	<i>[Signature]</i>	11024 Ave	<i>[Signature]</i>
TERRY CHASER	<i>[Signature]</i>	205 24 th Ave	<i>[Signature]</i>

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[illegible]

EXHIBIT "B"

RESOLUTION 2020- PB20-011

**RESOLUTION OF THE BERKELEY TOWNSHIP
PLANNING BOARD REPORTING AND RECOMMENDING
THAT THE PETITION FOR DE-ANNEXATION FROM THE
RESIDENTS OF SOUTH SEASIDE PARK NOT BE
APPROVED**

WHEREAS, On or about October 6, 2014, Beverly Ann Carle, RMC, Township Clerk for the Township of Berkeley, forwarded to the Berkeley Township Planning Board a copy of Resolution No. 14-378-R of the Township Council of the Township of Berkeley, acknowledging receipt of a de-annexation petition from certain residents of South Seaside Park, and forwarding said petition to the Township Planning Board; and

WHEREAS, pursuant to N.J.S.A. 40A:7-12, the Berkeley Township Planning Board is required to adopt a report to the Township's Governing Body on the impact of de-annexation upon the Municipality; and

WHEREAS, the Board notes that a prior petition for de-annexation for South Seaside Park had been filed approximately 40 years prior to this petition and the proceedings held thereon were conducted under a statutory framework which has since been abandoned, i.e. N.J.S.A. 40:43-26 et seq.; and

WHEREAS, in 1982, the State Legislature amended the statute to reflect the legislative intent to preserve municipal boundaries and maintain municipal integrity. The revised statute shifted the burden onto the petitioners to show de-annexation will not cause a significant injury to the well being of the de-annexing municipality. Russell v. Stafford, 261 N.J. Super. 43, 48-50 (Law Div. 1992).

WHEREAS, the provisions of the de-annexation statute, N.J.S.A. 40A:7-12, et seq., do not provide any procedural process which a local Planning Board is required to follow with respect to their role when faced with a de-annexation petition; and

WHEREAS, in the absence of any procedural outline set forth in the statute, or by local Ordinance, the Planning Board is left to determine what process its review and recommendations should take; and

WHEREAS, the powers of a local Planning Board are set forth by statute in N.J.S.A. 40:55D-25 and nowhere within said statute is there any reference to the Municipal De-Annexation Law, however, pursuant to N.J.S.A. 40:55D-25(b)(3), the Board is authorized to perform such advisory duties as are assigned to it by Ordinance or Resolution of the Governing Body, with the aid and assistance of the Governing Body or other agencies or officers; and

WHEREAS, in accordance with the Resolution of the Township's Governing Body, the Board has attempted to perform its advisory duties as assigned to it; and

DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS
COUNSELLORS AT LAW
620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, the Board notes that, pursuant to N.J.S.A. 40:55D-10, a "hearing" is required for each application for development, adoption, revision or amendment of the Master Plan, each application for approval of an outdoor advertising sign submitted to the Municipal Agency, as required pursuant to an Ordinance adopted under N.J.S.A. 40:55D-39, or any review undertaken by a Planning Board pursuant to N.J.S.A. 40:55D-31; and

WHEREAS, N.J.S.A. 40:55D-31, in turn, refers to the review of Capital Projects, and is applicable to the proceedings set forth herein; and

WHEREAS, the Board views its role in this matter as advisory in nature and not as a quasi-judicial forum as it would normally sit with respect to applications for development submitted to it pursuant to the New Jersey Municipal Land Use Law; and

WHEREAS, the Board ultimately determined that the proceedings would be conducted in public with the petitioner through their counsel, being provided the opportunity to present such testimony and documentation they deemed necessary in support of their petition, and the Board hearing from Township Departments and Officials in response thereto; and

WHEREAS, initially, the Attorney for the petitioner and the Board determined that the statutory timeframe set forth in the de-annexation statute would be insufficient with the parties agreeing to proceed with a minimum of two (2) hours of each available meeting being devoted to this matter; and

WHEREAS, at the commencement of this proceeding, the Board determined it would be in its' interest to utilize the services of a Professional Planner, Stuart B. Wiser, P.P., AICP, License No. LI005598, to assist the Board in processing the information which was to be presented, the preparation of a Report of Findings, which would analyze the testimony, evidence and information presented, address any additional issues or information not presented but deemed relevant, and offer a "recommendation" to assist the Board in its' functions based on his involvement in de-annexation cases in at least two (2) other municipalities; and

WHEREAS, said report is dated May 2, 2019, and is incorporated herein by reference, and attached hereto as Exhibit A; and

WHEREAS, in accordance with N.J.S.A. 40A:7-12, a de-annexation petition must include, not only duly verified signatures of those individuals seeking to de-annex, but same must also have attached thereto an oath of an Assessor of the Municipality or some other person having access to the Assessor's books, setting forth the assessed value of the real estate contained within the boundaries of the preceding year, "and the amount of real estate assessed to any of the persons whose names are signed to such petition"; and

WHEREAS, the petitioners did, in fact, submit a certification as to the total assessed value of real estate contained within the boundaries of the area to be de-annexed for the preceding year, however, the petition itself was signed by 285 of the 435 registered voters of South Seaside Park; and

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WHEREAS, the petitioners have failed to establish the value of the real estate assessed to the 285 registered voters who signed the petition, contrary to the statutory requirements; and

WHEREAS, the new statutory framework as identified previously switched the burden of proof from the Municipality to the petitioners, who now have the responsibility to establish each of the following:

1. That refusal to consent to de-annexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; and
2. De-annexation will not cause a significant injury to the well-being of Berkeley Township; and

WHEREAS, as the following individuals presented testimony in this proceeding, including the following signatories to the petition:

Donald Whiteman	Katherine Fulcomer	Robert Schwartz
Patricia Dolobacs	Judith Erdman	Janet Shalayda
Elaine Vitarello	Robert Nora	George Giovenco

WHEREAS, additional testimony was presented by Robert Cardwell, a non-signatory but supporter of de-annexation; and

WHEREAS, the petitioners further submitted the testimony of various professionals including Scott Bauman, P.P., AICP, Kenneth Moore, CPA, RMA, CMFO, CFP, and Barbara Allen Woolley-Dillon, P.P., AICP; and

WHEREAS, the following individuals also presented testimony before the Berkeley Township Planning Board on this matter:

Police Chief (and Emergency Management Coordinator) Karin DiMichele
 Police Officer (and Deputy Emergency Management Coordinator) Ronald Bondulich
 Police Sargent George Dohn
 Police Detective Michael Tier
 Police Lieutenant Ryan Roth
 Police Captain Kevin Santucci
 Kevin Geoghegan, Supervisor of (Paid) Emergency Medical Services
 Police Officer Walter Dudley
 Police Officer Michael Poikans
 Steven Seiler, Township Director of Public Works / Principal Public Works Manager
 Mark Vannella, Township Director of Sanitation & Recycling
 Timothy Yurcin, Township Superintendent of Parks, Beaches & Recreation
 James D. Sperber, Township Supervisor of Parks & Beaches
 Ernest Peters, PE, PP, CME, Board Engineer
 Stanley C. Slachetka, PP, AICP, Board Planner

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Frederick C. Ebenau, CMFO, Township CFO/Treasurer (and Assistant Administrator)
John Camera, Township Administrator; and

WHEREAS, additional members of the general public testified during the hearings as follows:

James Fulcomer, Resident of South Seaside Park
Samuel Cammarato, Resident of Mainland Berkeley Township
Bobby Ring, Part Time Resident of South Seaside Park
Carol Luciano, Resident of South Seaside Park
Mary Ann Meneghin, Resident of South Seaside Park
Sharon Rusnak, Part Time Resident of South Seaside Park
John Budish, Resident of South Seaside Park
Alan Schoenwiesner, Part Time Resident of South Seaside Park
Lisa Musci, Part Time Resident of South Seaside Park
Alisanne Skeffington, Part Time Resident of South Seaside Park
Don Merker, Part Time Resident of South Seaside Park
Gail Leibowitz, Resident of South Seaside Park
Joanne Pacifico, Resident of South Seaside Park
Edward Lipman, Resident of South Seaside Park
Michael MacDermott, Annual Vacationer to South Seaside Park
Kathleen Price, Resident of South Seaside Park
David McKee, Resident of South Seaside Park; and

WHEREAS, the report of the Township's Planner retained specifically to coordinate the gathering of information and to assist the Board in processing such information, dated May 2, 2019, and authored by Stuart B. Wiser, P.P., and James Oris, P.E., P.P., outlines the testimony of the various individuals who testified throughout this proceeding and transcripts from each and every hearing are available for review; and

WHEREAS, the Board has carefully reviewed the testimony and the exhibits presented by the petitioners, the testimony and/or exhibits presented by various Township employees and officials, as well as members of the general public; and

WHEREAS, the Board finds that the May 2, 2019, report of findings with respect to the de-annexation petition which was specifically prepared as a result of the Board determining to utilize the services of Mr. Wiser, accurately portrays the testimony and exhibits presented; and

WHEREAS, the Planning Board held hearings on this matter on the following dates:

January 8, 2015
February 5, 2015
April 2, 2015
May 7, 2015
June 4, 2015
August 6, 2015

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September 3, 2015
 October 1, 2015
 November 5, 2015
 December 3, 2015
 February 4, 2016
 May 5, 2016
 June 2, 2016

at which time the petitioners completed their affirmative presentation to the Board; and

WHEREAS, various Township witnesses then appeared before the Board at meetings held on September 1, 2016, October 6, 2016, November 3, 2016, December 1, 2016, January 5, 2017, February 2, 2017, April 6, 2017, May 4, 2017, June 1, 2017, July 6, 2017, August 3, 2017, September 7, 2017, November 2, 2017, December 7, 2017, February 1, 2018, March 1, 2018, April 5, 2018, May 3, 2018, June 7, 2018, and July 5, 2018; and

WHEREAS, thereafter, a procedural hearing was held on this matter on August 2, 2018, with members of the general public being permitted the opportunity to testify on the petition on September 6, 2018; and

WHEREAS, thereafter, the petitioners were granted three (3) additional hearings to present any rebuttal testimony they wished to provide, which hearings were held on October 4, 2018, December 6, 2018, and February 7, 2019; and

WHEREAS, thereafter, the Board received the report of findings of Mr. Wiser, who coordinated the information and exhibits testified to before the Board in the preceding years, and submitted an impact report to the Board which analyzed the testimony, evidence and information presented; and

WHEREAS, the Board then provided the petitioners the opportunity to question the Board's Planner with respect to his report of findings and recommendations; and

WHEREAS, in general the Board notes that the petitioners supported their request for de-annexation with the following claims:

1. **The distance from mainland Berkeley Township to South Seaside Park is considerable.**

RESPONSE: The Board agrees that the distance existing between South Seaside Park and mainland Berkeley Township by public roadway is considerable. The Board further agrees that this fact weighs in favor of the first prong in the two-prong test which must be applied herein. The Board notes, however, that that distance has never changed from the time the petitioners first purchased their properties in South Seaside Park to the present. Likewise, Township facilities have historically been located on the Township's mainland since the Township owns large acreage and parcels of land on the mainland as opposed to the barrier peninsula, which can accommodate such

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facilities for a town of Berkeley Township's size. The Board further notes that Berkeley Township contains a total of 55.8 square miles, with 42.9 square miles of same being land area and 12.9 square miles of water. While South Seaside Park requires a trip by automobile to the mainland area of the Municipality, vast portions of Berkeley Township require similar automobile travel to reach any other portion of the Municipality. For instance, the western portion of the Municipality to the bayfront would, likewise, require an extended automobile ride of a similar time and distance. In short, in a town of this square mileage there will always be areas which require a substantial automobile travel time to reach another portion of the Municipality.

With respect to schools, de-annexation will result in less travel time for students in elementary school but would have no impact on students for middle or high school since even if de-annexation were to occur, the students would attend the Central Regional School District on the mainland. Thus, any impact is limited to approximately seven (7) years for residents with younger children.

2. Berkeley Township has been unresponsive and has neglected South Seaside Park.

RESPONSE: The Board does not agree with the petitioners' assertion in this regard based upon the testimony and exhibits presented. While the Board does agree that some petitioners believe that their needs have not been responded to or have been neglected by Berkeley Township, the Board finds that the Township has responded to those concerns. In this regard, the petition has succeeded in raising these issues with the Township and this is a benefit of the process utilized herein. Likewise, the petitioners' proposed remedy for this alleged unresponsiveness and neglect may certainly be achieved without the utilization of de-annexation. The testimony before this Board revealed that the Township has invested significant capital improvement funds of all tax payers of Berkeley Township in the South Seaside Park section of the Municipality, particularly subsequent to Super Storm Sandy. Many of the petitioners' concerns and requests in regard to this allegation are simply limited by the availability of land within South Seaside Park.

3. Petitioners claim the Township has failed to invest appropriate resources into South Seaside Park.

RESPONSE: The testimony before this Board reveals that the Township has, in fact, invested significant resources, both capital and employee related, in the South Seaside Park section of Berkeley Township. The Board recognizes that petitioners do not feel that this investment has been significant or large enough and would prefer to see even greater investment in their portion of the community. The Board believes many sections of Berkeley Township could make similar, though not identical, arguments in this regard. Most taxpayers would like to see their roads cleaned more often, plowed faster and township facilities being more convenient. The Board agrees, however, that within the

South Seaside Park section of Berkeley Township there is very limited public recreation facilities available other than the Lyons Memorial Park, which contains a basketball court and picnic area, and White Sands Beach on the oceanfront. The Board acknowledges that the vast majority of Township program and events are located on the mainland portion of the Municipality, as there are a few facilities to host any such programs other than the beach which, is utilized for a beach party each year. In addition, the Township has invested considerable time and resources into additional land use planning for South Seaside Park, including the 2017 Neighborhood Plan for South Seaside Park, with subsequent Ordinance revisions which have since been adopted. The Neighborhood Plan includes a recommendation for the Township to develop a proposed Recreation and Open Space Plan for South Seaside Park to address the feasibility of creating additional facilities requested by the petitioners. The Board further notes that there are more amenities available on the mainland to the residents of Berkeley Township than there are in South Seaside Park, however, there are also amenities which are provided by Berkeley Township for residents of South Seaside Park that Seaside Park does not provide, such as a public golf course. Likewise, petitioners have failed to establish sufficient evidence in support of such a claim.

With respect to monetary investment, the Township's Chief Financial Officer testified that the Township's expenditures are not tied to any specific neighborhood, and it is impossible to accurately calculate total investment in South Seaside Park. The testimony of the Township Engineer, Public Works and Recreational Officials do not appear to support the petitioners' assertion that the Township has not invested significant financial resources in South Seaside Park. The request for a dedicated police substation, according to the Township's Chief of Police, is antiquated, not cost effective and, in many other municipalities they have essentially become obsolete. Instead, the Township has the ability to provide a mobile police substation during any emergency, weather or otherwise, as the Township did, following Super Storm Sandy.

Once again, South Seaside Park is limited by the amount of available acreage and land area for additional recreational facilities, unlike the Township's mainland. In addition, the testimony revealed that the Township does, in fact, invest substantial capital and human resources in South Seaside Park, though it is difficult to obtain exact figures with respect to same. These difficulties can be overcome through proper planning in the future, and the Township should move forward with a new Recreation and Open Space Plan for South Seaside Park as recommended by this Board when it adopted its' Neighborhood Plan for South Seaside Park in 2017. Finally, the Board notes the Township provided extensive manpower, equipment and storage areas to allow for the removal of debris, garbage and other obstructions to the mainland. This greatly assisted the residents of south Seaside Park in their effort to recover from the damage wrought by Sandy in 2012. The tons of debris which the Township moved out of South Seaside Park to its' mainland facilities so as to allow for the reconstruction of South Seaside Park cannot be underestimated,

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nor can the cost thereof. Seaside Park, which has no mainland facilities, had no such capability.

4. **Petitioners contend that they suffer from social injury by remaining part of Berkeley Township.**

RESPONSE: Petitioners claim they are isolated from the mainland and not part of the Township's "social fabric". They assert an affinity with, and connection to, Seaside Park, which they do not share with the rest of Berkeley Township. Essentially, the residents of South Seaside Park identify with other barrier island communities which have similar characteristics. The basis for this social injury claim is that South Seaside Park functions more as a centerpiece of their lives, and the mainland is not where South Seaside Park residents go to conduct their business or meet their daily needs. Petitioners also point out that they would have the opportunity for greater participation in local government and social activities in Seaside Park if they were voting members of that community. Some residents of South Seaside Park feel isolated from the remainder of Berkeley Township, and argue their withdrawal would not disrupt the social and economic fabric of the rest of Berkeley Township. The testimony further reveals that residents of South Seaside Park attend religious services in Seaside Park, as well as other social events.

The Board notes that most recreation events that are Township sponsored are held in Veterans Park, which is geographically near the center of the Municipality, because it is the Township's flagship park. It contains a band shell, stage and is designed to host large events and concerts of over 7,000 people. Many residents, not just those of South Seaside Park, have a long distance to travel to Veterans Park from within the Municipality even if they live on the mainland.

While the Board acknowledges that many longtime residents of South Seaside Park feel they are closer to Seaside Park than they are to Berkeley Township, the Board believes this is due to their proximity to the ocean and beach, bicycling opportunities, religious services, etc. Seaside Park is clearly a more localized community of similarly situated individuals as those residents of South Seaside Park. However, both South Seaside Park and Seaside Park residents do most of their grocery shopping in the Ortley Beach section of Toms River. There are a number of municipalities which have both mainland and barrier island presence within Ocean County including Toms River Township and Brick Township, each with a vibrant beach community as well as a mainland community. Whether de-annexation was granted or not, the residents of South Seaside Park would continue to shop, attend church services, and eat at restaurants just as they do now and, consequently, the denial of a petition for de-annexation would have absolutely no bearing on these social events. The Board further notes that there are no houses of worship located within South Seaside Park and, regardless of their

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denomination, residents must travel outside of this portion of the Municipality to attend services.

With respect to social diversity, the Board notes that the median age of South Seaside Park is 59.9 years of age, and the median age of Berkeley Township overall is 59.8 years of age. Census data further reveals that 31 percent of the residents of South Seaside Park hold a Bachelors Degree, while only 12.6 percent of the entire population of Berkeley Township has achieved same. Likewise, 17.4 percent of the residents of South Seaside Park have attained a Masters Degree, while only 4.1 percent of Berkeley Township has done so.

With respect to earnings and income, the residents of South Seaside Park have a median per capita income of \$41,158.00, as compared to \$31,025.00 for the Township as a whole, meaning the per capita income of South Seaside Park is 32.7 percent higher than Berkeley Township. Finally, Berkeley Township has a population of approximately 41,554 residents, of which 2,672 are non-white, equating to a 6.4 percent minority population township-wide. Of the 674 residents of South Seaside Park, 12 are non-white, equating to a 1.8 percent minority population within this section of the Township.

The Board finds that South Seaside Park is a unique portion of the Township as a whole. While there is some merit to petitioners claims that they identify more with a neighboring municipality, it is one of the nicest areas of the Municipality, containing the best educated and highest income residents of the town. Average income and property values far exceed that of the mainland portion of the Municipality. The loss of South Seaside Park would greatly reduce the social, economic and education level diversity of the Township and would provide for residents of South Seaside Park losing their ability to be part of more diverse community. While de-annexation may well make it easier and more convenient for residents of South Seaside Park to participate in some Seaside Park activities and the electoral process, other than these two (2) factors, from a social injury perspective, there would be no significant change. The residents of South Seaside Park will still shop, dine and worship in the same places they do today. On the other hand, the loss of the prestige and social standing of Berkeley Township in the event South Seaside Park is de-annexed would have a substantial negative impact upon the Township's social fabric.

5. Petitioners claim that failure to consent to de-annexation would impose an economic injury upon petitioners.

RESPONSE: The Board agrees with the petitioners that it may cost them more money to conduct personal business on the mainland than for residents of other sections of the Township, and there is an extra travel cost to participate in mainland recreational opportunities. Likewise, petitioners may incur additional costs to participate in recreational opportunities within the Borough

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of Seaside Park, since they are not residents thereof. However, very little evidence was presented on this issue by the petitioners.

The Board notes that many residents of the mainland portion of the Municipality have extensive travel costs to participate in Berkeley Township recreational opportunities, even for same conducted on the mainland. Likewise, residents of Berkeley Township may wish to utilize Township oceanfront beach facilities, such as the White Sand Beach, and incur the exact same type of additional travel cost, only in the opposite direction than the residents of South Seaside Park who can walk or bike to the Township beach. De-annexation could result in the loss of this township amenity if the beach follows the petitioners and sufficient evidence as to what would happen to same has not been presented. However, little information was provided to the Board as to what additional extra costs are incurred by South Seaside Park residents to participate in recreational opportunities within the Borough of Seaside Park, which is a summer community with numerous seasonal residents who do not live there year-round or are renters. For instance, no substantial evidence was presented that the residents of South Seaside Park must pay any significant extra fees or costs to participate in Seaside Park events because they are not residents of that community. In fact, many users of Seaside Park facilities are not residents of that municipality.

The Board further finds that there are methods to address this concern which would not necessarily require de-annexation, such as an interlocal agreement to participate in recreational facilities and programs, the utilization of Seaside Park Municipal Offices to handle certain permit matters for Berkeley Township, the potential for the Township to hold Municipal or other meetings at the Triboro First Aid Squad building and an increase in technology allowing the streaming of public meetings to interested parties no matter where they may reside.

6. Petitioners claim that South Seaside Park is not well served by the Township's Department of Public Works.

RESPONSE: The Board agrees with the petitioners that the South Seaside Park portion of the Municipality has a number of special needs that the rest of the Municipality does not require. However, the petitioners' assertions that the Township does not repave roads, etc., in South Seaside Park is not credible based upon the facts presented to the Board. Allegations that the beach is not properly cleaned are not supported by any complaints that existed prior to the petition being filed herein. Likewise, the Board finds the allegations that the "bay beach" in South Seaside Park is not properly cared for is without merit. Contrary to the residents' request and desire, the bay beach in South Seaside Park is not a bathing beach and cannot accommodate the types of recreation facilities they desire where land is wider such as in Seaside Park. As noted previously, no evidence was presented that petitioners cannot use Seaside Park facilities now so de-annexation would have no impact.

The Board further finds that testimony regarding snow plowing operations not being conducted in a timely manner were not credible. The Township of Berkeley, as noted, contains over forty-two (42) square miles. The Township must plow 251 miles of Township roads throughout the community and, for financial reasons, the Township does not institute township-wide plowing operations until 4-5 inches of snow have accumulated. The testimony on this issue established that petitioners could not assert whether any other sections of Berkeley Township had delays in the plowing of their streets during any particular storm. The Township has 251 miles of municipally-owned roadways and the length of roads represented by the area covered by the de-annexation petition is approximately 6.4 miles, equaling 2.5 percent of the total roads within Berkeley Township. The Township's Public Works Department provided testimony that the Township usually assigns two (2) township-owned dump trucks fitted with plows and a contracted front-end loader to South Seaside Park and Pelican Island for the duration of any weather event such as a snow storm. The Township has a road plowing program, clearing first major roadways, followed by secondary roadways, and the Township ultimately receives complaints from throughout the Municipality that individual's roads are not plowed soon enough, efficient enough or properly enough. Such complaints are certainly not unique to Berkeley Township, but are noted throughout Ocean County following any major snow event.

With respect to road cleaning and/or paving, between 2012 and 2017, the Township paved 24.35 miles of local roads, including 1.73 miles within South Seaside Park. Although they make up only 2.5 percent of the Township's road mileage, 7.1 percent of the total road miles paved in Berkeley Township occurred in South Seaside Park during this time frame. With respect to road projects conducted by the Municipality between 2016 through 2018, the Board notes that eleven (11) road projects totaling 3.54 miles were undertaken, for instance, in 2016, with two (2) of these projects constituting 0.51 miles were conducted in South Seaside Park. The testimony further reveals that between the years 2012 and 2017, the road miles re-paved in South Seaside Park was 2.84 times greater than the road miles re-paved for the entire Municipality.

With respect to refuse and recycling collection, the Board notes that the Township actually provides greater services in South Seaside Park than in the rest of the Municipality including more pickups in the tourist season. Allegations of rude or unresponsive interactions between Public Works employees and residents of Berkeley Township are clearly not limited to South Seaside Park. Likewise, the use of the Township's recycling facility on the mainland portion of the Township requires most residents to travel a great distance, not just the residents of South Seaside Park if they wish to utilize same.

The Board believes that other remedies short of de-annexation could address the concerns raised by the petitioners.

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7. Petitioners claim that they receive inadequate emergency services in South Seaside Park.

RESPONSE: Based upon the testimony presented by the Township's Police Department and its' officials, the Board finds there is no evidence to support the contention that South Seaside Park would receive better police services if it were part of Seaside Park than it currently receives. Both Seaside Park and the South Seaside Park section of Berkeley Township are serviced by the same 911 Dispatch Center, Volunteer Fire Company and Ambulance/EMT Squad. Such services will not change regardless of de-annexation. Likewise, police records submitted, particularly the Computer Aided Dispatch (CAD) documents, reveals that petitioners claims as to response times were, at best, exaggerated and, at worst, simply false.

South Seaside Park suffers from little crime, is generally a safe community and receives timely emergency services, either from Berkeley Township directly or backup from other jurisdictions when necessary. The Township can always point to individual tragedies where police or other emergency response does not happen fast enough to avoid such a tragedy. However, there has been no evidence that any long-term, structural defect exists in the services provided to South Seaside Park. Likewise, if de-annexation were to occur, other than police services, all other first responders would remain the same, such as fire or EMS.

The Board also notes that the impact of Super Storm Sandy, while still being felt within the Municipality, is an example of why the residents of South Seaside Park benefit from their affiliation with Berkeley Township. South Seaside Park, along with Seaside Park, faced mandatory evacuation orders and suffered substantial physical damage to public facilities, residences and businesses. It was because South Seaside Park was part of Berkeley Township that those residents had an opportunity to be evacuated to Township facilities on the mainland portion of the town, while the mainland portion of the town was utilized for debris removal and collection from the South Seaside Park neighborhoods in order to assist in a the restoration thereof. While everyone wishes recovery efforts happened quicker, any such inconveniences were temporary at best in the wake of an unprecedented storm which made impact along the Atlantic Coast. The depth and breadth of the Township's resources available for South Seaside Park residents would be much different if the residents were part of Seaside Park.

8. Petitioners assert that the Township has not conducted proper Planning for the South Seaside Park portion of the Municipality.

RESPONSE: The record reveals that the Township's Planning documents do, in fact, address South Seaside Park, whether they specifically and individually reference it or not. Township Planning documents are not strictly limited to

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neighborhoods, but more to land use issues affecting the entire Municipality and individual areas thereof. The Township's adoption of the South Seaside Park Neighborhood Plan represents the blue print for which future Planning shall be conducted along the barrier island and, while petitioners may be frustrated with the time it has taken for these issues to come to the forefront, the Board finds no evidence that the residents of South Seaside Park have been harmed in any way as a result thereof. In fact, permitted uses which were removed from the Zoning Ordinance as part of the Neighborhood Plan had never been constructed and were not likely to be constructed in the future.

Testimony further reveals that, with respect to Affordable Housing, no one in South Seaside Park is actually suggesting that the Township should develop Affordable Housing along the barrier island between the Atlantic Ocean and Barnegat Bay, but rather this argument is made simply to further buttress their arguments for de-annexation. The Planner presented by the petitioners themselves recognized that Affordable Housing is not recommended on barrier islands when there is no public transportation and where land prices are extremely high.

With respect to Recreational Planning, the Board found the Midway Beach is eligible for inclusion in the National & State Registers of Historic Places and the Township has adopted a new Recreation & Open Space Plan which was recommended in the South Seaside Park Neighborhood Plan to identify recreation needs along the barrier island. The petitioners' argument that the loss of White Sands Beach, assuming it goes with the petitioners, which is not necessarily correct, is somehow compensated by Island Beach State Park being located within Berkeley Township, fails to recognize the fact that the Township has no control of this recreational and cultural resource. In fact, during these hearings, the Island Beach State Park was closed to the public during a July 4th weekend due to the 2017 state-wide government shutdown. White Sands Beach was not.

In short, the Township has undertaken a number of Planning efforts which address South Seaside Park, and the uniqueness of this portion of the Municipality being an oceanfront community is of critical importance for the overall recreation plan of the Township. The loss of this neighborhood via de-annexation would be detrimental to the entire municipality.

9. **Petitioners assert that de-annexation will not cause a significant injury to the wellbeing of the remaining residents of Berkeley Township.**

RESPONSE: The Board finds that it is not possible to underestimate the impact of the loss of 10.68 percent of the property tax base of the municipality in the event de-annexation occurs. This impact, contrary to the opinions expressed by the petitioners, is not for only "one (1) year", but rather is compounded over each and every year into the future. Likewise, based upon the testimony throughout these proceedings, the Board believes that a

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substantial rationale and purpose of this petition is to conduct "tax shopping". In this regard, the petitioners' own expert projected a first-year post annexation tax reduction for residents of South Seaside Park of approximately 40 percent. While petitioners have testified that their motives are not necessarily as a result thereof, the Board finds such testimony to be unpersuasive. Notably, the petitioners made every attempt to avoid any discussion of the tax savings they would reap as a result of de-annexation but the Board finds this effort to "tax shop" is a substantial motivating factor in this petition.

In short, the Board concludes that the loss of 10.68 percent of the total tax base of the municipality will have a significant, long-term detrimental effect upon the remaining residents of Berkeley Township. The de-annexation of one of the nicest areas of the municipality, containing the best educated and highest income earners will, likewise, represent a significant and irreparable loss to the municipality. While various percentages were testified to as to potential savings from de-annexation, the only way to achieve any tax savings is to eliminate police officers and police equipment, since same represents such a large portion of the municipal budget. As the Township remains responsible to patrol the Pelican Island portion of the Municipality, the Board believes any such savings is circumspect at best. The only way for the Municipality to offset the loss of 10.68 percent of its' property tax revenue would be through a combination of increasing taxes and the cutting of programs and services, which the residents of Berkeley Township rely upon, particularly as a result of its' demographic makeup. The Municipality and its' local school district are subject to a 2 percent cap in potential tax increases, a cap which did not exist under the prior statute or, under most prior cases decided even under the new statute. The Board further notes that, with respect to its' reserve for uncollected taxes, the South Seaside Park section of the Municipality provides a much better collection rate than the remainder thereof. As a result, de-annexation will require the Township to increase its' reserve for uncollected taxes to compensate for the loss of the compliant taxpayers, thereby increasing taxes on the remaining property owners.

The Board is also struck by the petitioners' assertions that the Township will attain future ratable growth on the mainland portion of the Township based upon planning efforts it has undertaken over the last 20 years. Petitioners argue that this should have an impact on their request for de-annexation. The Board finds, however, that as with the case of Avalon Manor v. Township of Middle, 370 N.J. Super. 73 (App. Div. 2004), any such future revenues generated already belong to the property owners of the township. Such revenues will accrue to the benefit of the taxpayers of the township and will help offset increases completely unrelated to de-annexation. This Board does not consider future, ratable growth as a relevant factor based upon the Court's decision in Avalon Manor.

Utilizing solely the petitioners' own experts' information, the petitioners' best case scenario, assuming de-annexation were to occur, every other remaining

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property owner of Berkeley Township would face a 3.1 percent tax increase in the first year. This, of course, does not include any other potential reasons for a tax increase in the municipality, such as increased costs, etc., which the Township is sure to face as it has historically. These annual tax increases of \$19.00 for a home assessed at \$100,000.00, \$35.00 for the average home assessed at \$183,600.00, and \$94.00 for a home assessed at \$500,000.00 will compound each and every year in perpetuity as a result of de-annexation. Furthermore, de-annexation will result in the Township's bonding capacity being reduced by over \$19 million and, while same from a percentage basis is not significant, this loss of bonding capacity could have implications in the future.

The loss of tax ratables, a built-in future tax increase in perpetuity, the potential loss or cut-back of jobs and services, potential negative effect upon the Township's bond rating and debt service, clearly and substantially outweighs any potential financial benefit from the de-annexation of South Seaside Park.

CONCLUSION

Having carefully considered the petition for de-annexation, the hundreds of pages of exhibits, dozens of transcripts of public hearings, and having listened to the testimony of the various witnesses, the Berkeley Township Planning Board recommends to the Township Council of the Township of Berkeley, that the petitioners' request for de-annexation be denied. In reaching its' determination in this matter, the Board has considered whether refusal to consent to de-annexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; and if de-annexation will not cause a significant injury to the well-being of Berkeley Township.

While there are certainly social and economic benefits to the residents of South Seaside Park if they were to become residents of Seaside Park, it is clear to the Board that the greatest benefit would be an approximate 40 percent reduction in their property taxes. As a result, clearly refusal to consent could detrimentally affect this potential cost savings to South Seaside Park residents. Likewise, the ability of South Seaside Park residents to participate in a greater degree in local government affairs in Seaside Park, if they are members of that community, would be increased if de-annexation were to occur and, consequently, it can certainly be argued that refusal to consent to such de-annexation would be to their detriment. However, the Board finds that, while there is certainly an economic benefit, the social well-being prong of this analysis is much more speculative and, ultimately, unclear. Is it a benefit for the richest, most homogenous, most well-educated residents of South Seaside Park to become part of a very similar municipality, or is their social well-being advanced through their participation in Berkeley Township matters, which contains a more diverse population, economic class and geographic area. As a result, whether the petitioners have established this element is unclear.

However, there can be no question that, if de-annexation were to occur, a significant injury would be imposed upon the remaining residents of Berkeley Township. These injuries

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cover economic, financial, social and more ephemeral losses. The loss of more than 10 percent of the Township's tax base cannot be underestimated and, in fact, would be catastrophic to the rest of the municipality. The loss of the most wealthy, most educated, nicest neighborhood of the community would, likewise, be irreparable. The potential loss of an ocean beach, when so few municipalities have the opportunity to own and control such a facility for its' residents, would, likewise, be irreplaceable. The loss of the Township's oceanfront neighborhood, the only oceanfront beach it controls, a tax impact in perpetuity compounded every year, clearly represents the type of significant injury recognized by the statute. For these reasons and the reasons set forth herein in the attached Exhibit A, the Berkeley Township Planning Board reports to the Township Council of the Township of Berkeley that it is its' recommendation that the petition for de-annexation be denied.

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Berkeley Township Planning Board at its regular meeting on the 16 day of August, 2020 in the Berkeley Township Municipal Building.

Alexis M. Awallone
Secretary

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EXHIBIT "C"

RESOLUTION #20-402-R**RESOLUTION OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN, STATE OF NEW JERSEY,
DENYING THE PETITION OF SOUTH SEASIDE PARK TO DEANNEX FROM THE TOWNSHIP**

September 21, 2020

WHEREAS, on or about September 22, 2014, the Township of Berkeley received a de-annexation petition from certain residents of South Seaside Park; and

WHEREAS, the Township Council adopted Resolution No. 14-378-R, acknowledging the de-annexation petition and forwarding the petition to the Berkeley Township Planning Board, pursuant to N.J.S.A. 40A:7-12; and

WHEREAS, on or about October 7, 2014, the Township Clerk for the Township of Berkeley forwarded Resolution No. 14-378-R to the Berkeley Township Planning Board; and

WHEREAS, pursuant to N.J.S.A. 40A:7-12, the Berkeley Township Planning Board is required to adopt a report to the Township's Governing Body on the impact of the de-annexation upon the Municipality; and

WHEREAS, in order to fulfill its duties required by the statute by gathering enough information to issue such report, the Berkeley Township Planning Board began holding public hearings on the de-annexation petition in January 2015; and

WHEREAS, following years of hearings, wherein the Berkeley Township Planning Board and its professionals heard countless hours of testimony, read numerous reports and poured over hundreds of exhibits regarding the impact of the proposed de-annexation, the Berkeley Township Planning Board considered the May 2, 2019 report by the Township Planner, James Oris, P.E., P.P. and Planning Board's expert, Stuart B. Wiser, P.P. ("Report"); and

WHEREAS, the Berkeley Township Planning Board carefully considered the Report and all exhibits, evidence and information presented; and

WHEREAS, pursuant to Berkeley Township Planning Board Resolution 2020-011, adopted August 6, 2020, the Planning Board summarized its findings and recommended the de-annexation petition be denied, namely due to the potentially catastrophic loss of 10% of the Township's ratables, as well as the impact to the Township's socio-economic make up and the loss of the Township's precious beachfront properties; and

WHEREAS, the Township Council has received and considered Berkeley Township Planning Board Resolution 2020-011 from the Berkeley Township Planning Board, as well as the information and exhibits referenced therein; and

WHEREAS, following careful consideration of the documentation and information provided, the Township Council hereby denies the petition for de-annexation filed by residents of South Seaside Park.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of the Township of Berkeley, County of Ocean, State of New Jersey as follows:

1. That the Governing Body hereby denies the de-annexation petition filed by residents of South Seaside Park, relying on the well-supported findings detailed within Berkeley Township Planning Board Resolution 2020-011. adopted by the Planning Board on August 6, 2020.
2. That a certified copy of this resolution shall be forwarded to:
 - A. Berkeley Township Planning Board
 - B. Township Planner
 - C. De-annexation Petitioners



Keith A. Buscio, Council President
Angelo Guadagno, Council Vice President

CERTIFICATION

I, **BEVERLY M. CARLE, RMC**, Municipal Clerk of the Township of Berkeley do hereby certify that the foregoing resolution was duly adopted by the Township of Berkeley Township Council at a meeting held on the 21st day of September 2020.



BEVERLY M. CARLE, Township Clerk
Berkeley Township

EXHIBIT "D"

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-002667-20

Case Caption: WHITEMAN DONALD VS TWP. COUNCIL OF BERK ELEY TWP

Case Initiation Date: 11/10/2020

Attorney Name: JOSEPH MICHELINI

Firm Name: O'MALLEY SURMAN & MICHELINI

Address: 17 BEAVERSON BOULEVARD P.O. BOX 220
BRICK NJ 08723

Phone: 7324774200

Name of Party: PLAINTIFF : Whiteman, Donald

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: Donald Whiteman? NO

Are sexual abuse claims alleged by: Patricia A Dolobacs? NO

Are sexual abuse claims alleged by: Judith A Erdman? NO

Are sexual abuse claims alleged by: 282 Other Pet. Signers-SSPHVA? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Other(explain) Resdents/municipality

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

11/10/2020
Dated

/s/ JOSEPH MICHELINI
Signed