

# ***REPORT of FINDINGS***

## ***PETITION for DEANNEXATION***

### ***PORTION OF SOUTH SEASIDE PARK*** **BERKELEY TOWNSHIP, Ocean County, New Jersey**



Prepared by:



REMINGTON  
& VERNICK  
ENGINEERS



For the:



Berkeley Township  
Planning Board

May 2, 2019



**REPORT of FINDINGS  
PETITION for DEANNEXATION  
SOUTH SEASIDE PARK  
BERKELEY TOWNSHIP  
Ocean County, New Jersey**

**BERKELEY TOWNSHIP PLANNING BOARD**

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Robert Winward, Chairman <sup>B</sup>  
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Ernie Peters, P.E., P.P., C.M.E., Board Engineer

<sup>A</sup> Chairman for the February 2015 meeting. Resigned seat on Planning Board upon taking oath of office for Township Council. Returned to Planning Board March 2016 as Chairman. Passed away June 2016.

<sup>B</sup> Chairman March 2015 through February 2016 and July 2016 to present

The original of this document has been signed and sealed pursuant to N.J.S.A. 45:14A-12.

Respectfully Submitted:  
**ARH Associates**  
By:

**Remington & Vernick Engineers**

Handwritten signature of Stuart B. Wiser in blue ink.

**Stuart B. Wiser, P.P., AICP**  
NJ Professional Planners License # LI005598

Handwritten signature of James M. Oris in blue ink.  

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**James M. Oris P.E., P.P., C.M.E., C.P.W.M.**  
NJ Professional Engineers License # GE039927  
NJ Professional Planners License # LI006172



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**EXHIBITS, GRAPHICS & TABLES**

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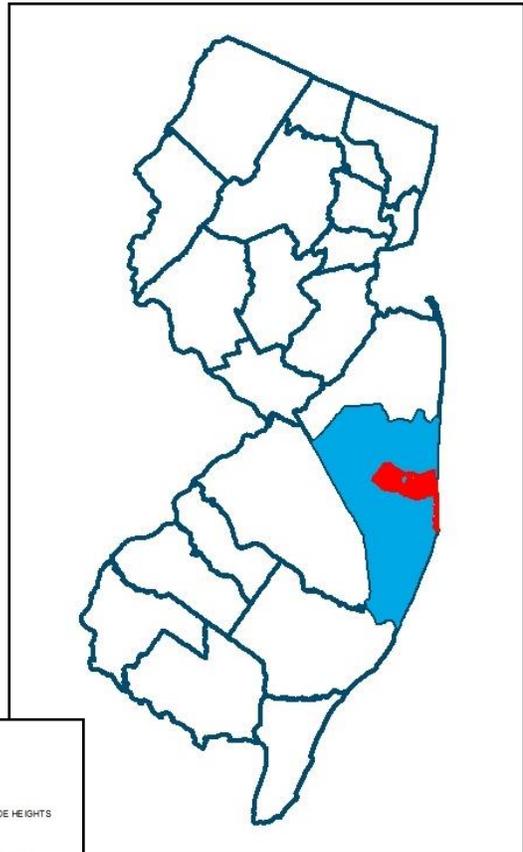


# 1.0 BACKGROUND & PROCEDURAL HISTORY

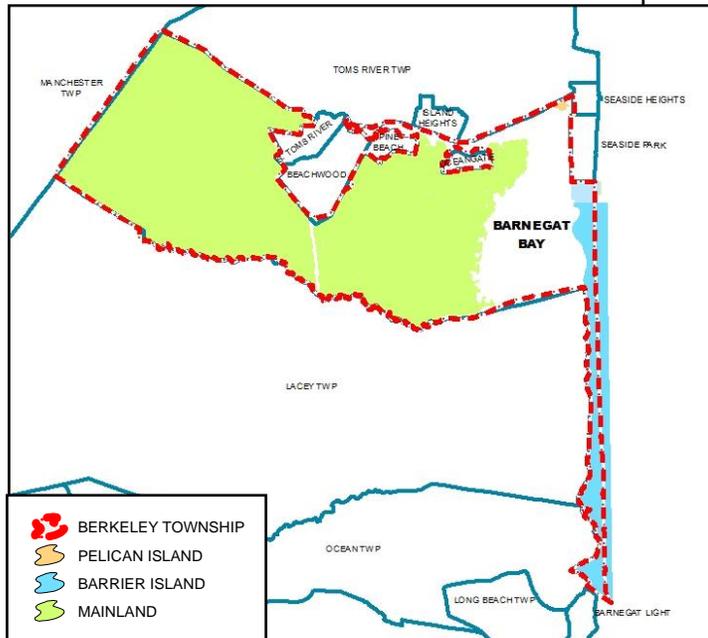
## 1.1 BERKELEY TOWNSHIP<sup>1</sup>

Berkeley Township, Ocean County, New Jersey ("Township") is an (approximately) 55.8 square mile municipality (42.9 square miles of land and 12.9 square miles of water) located in the eastern section of Ocean County, New Jersey (*Report Graphic 1*).

Geographically, the Township is divided into a "Mainland" section located west of Barnegat Bay and the non-contiguous Pelican Island and South Seaside Park sections located east of Barnegat Bay (*Report Graphic 2*).



*Report Graphic 1*



*Report Graphic 2*

The Township has 10 miles of Oceanfront, 18 miles of bay frontage and 7 miles of creeks, streams or rivers, for a total of 35 miles of shoreline.

<sup>1</sup> Testimony of Petitioners' Planner Scott Bauman. While the testimony of other witnesses cited slightly different geographic statistics, such differences are considered immaterial for the purposes of this Report of Findings.



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The Mainland section of the Township may generally be described as rural / trending to suburban, with commercial uses existing along U.S. Route 9 and pockets of residential and supportive commercial development scattered throughout. The Mainland contains the historic settlements of Barnegat Park, Barnegat Pier, Bayville, Crossley, Double Trouble, Dover Forge, Glen Cove, Good Luck Point, Holly Park, Manitou Park, Pinewald, River Bank, Stony Hill, Whispering Pine and Zebs Bridge, and the more recent developments of Holiday City, Holiday Heights, Silver Ridge, Silver Ridge Park and Silver Ridge Park West.

Pelican Island is a residential enclave with a mix of modest older<sup>2</sup> homes and larger, more modern dwellings located on N.J.S.H. 37 east of Barnegat Bay.

South Seaside Park<sup>3</sup> is an approximately 30 square mile, barrier island portion of the Township bound by the Atlantic Ocean (at White Sands Beach), Barnegat Inlet, Barnegat Bay and the municipal boundary between Berkeley Township and the Borough of Seaside Park at 14<sup>th</sup> Avenue (*Report Graphic 3*). This area includes the State-owned and managed Island Beach State Park.

The developed portion of South Seaside Park consists of (approximately) 150-acres of land located between Seaside Park and Island Beach State Park at 24<sup>th</sup> Avenue.<sup>4</sup> This community, representing (approximately) 1% of Berkeley Townships population, is host to (approximately) 1,400 housing units consisting of single-family homes, a number of multi-family (condominium) complexes, several hotels, restaurants and bars, a limited number of other commercial properties, and a population of approximately 490.



*Report Graphic 3*

<sup>2</sup> c. 1960s – 1980s

<sup>3</sup> Referred to herein as the “Island” section of Berkeley Township and, along with Seaside Park, as “the Island”.

<sup>4</sup> a distance of (approximately) 2,500± l.f.



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## 1.2 PETITION TO DEANNEX

On September 22, 2014, a private citizen organization calling itself the South Seaside Park Homeowners and Voters Association (“Petitioners”), representing 285 of the 435 registered voters of South Seaside Park (65.5%), through their retained attorney Joseph Michelini, Esq.,<sup>5</sup> filed a petition with the Berkeley Township Municipal Clerk seeking deannexation of the portion of South Seaside Park bound by the Atlantic Ocean, 24<sup>th</sup> Avenue, the Barnegat Bay and 14<sup>th</sup> Avenue from the Township.

This area is graphically depicted herein as *Report Graphic 4 and Report Graphic 5*, which are reproductions of the maps filed by Petitioners’ with their Petition.



*Report Graphic 4*

<sup>5</sup> Petitioners’ Counsel





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...and Report Graphic 7 (2012 aerial photography downloaded from the New Jersey Department of Environmental Protection ["NJDEP"] website).



*Report Graphic 7*

Upon successful deannexation, Petitioners will seek to annex the aforementioned portion of South Seaside Park to the contiguous Borough of Seaside Park.

The petition was filed pursuant to N.J.S.A. 40A:7-12 et seq., the controlling statute governing the municipal annexation/deannexation process in New Jersey ("*Deannexation Statute*"). Upon certification by the Berkeley Township Municipal Clerk, the petition was referred, on October 6, 2014, to the Berkeley Township Planning Board ("Planning Board" or "Board") for review and issuance of an Impact Report on the proposed deannexation from the municipality.

The *Deannexation Statute* does not set forth a procedural mechanism by which a Planning Board is to compile information for the Impact Report. The Berkeley Township Planning Board determined that, in the interest of fairness and justice, open public hearings would be held. Counsel for the Planning Board and Petitioners, noting the need for significantly more time for this process than what is provided in the *Deannexation Statute*, agreed to extend the period of time for the Board to conduct its hearings and issue its Impact Report.



### **1.3 PLANNING BOARD HEARING**

While municipal Planning Boards traditionally operate as quasi-judicial tribunals, a Board's role in the deannexation context is to function as an independent information-gatherer, fact-finder and advisor to the municipality's Governing Body, who makes the final decision as to whether or not to permit deannexation.

The first Planning Board meeting to address the Petition occurred on January 8, 2015. Subsequent meetings occurred on February 5, 2015, April 2, 2015, May 7, 2015, June 4, 2015, August 6, 2015, September 3, 2015, October 1, 2015, November 5, 2015, December 3, 2015, February 4, 2016, May 5, 2016 and June 2, 2016. During these meetings, Petitioners presented and completed its affirmative presentation to the Planning Board.

After completion of Petitioners' affirmative presentation, additional witnesses were called by the Township to supplement the record and provide additional information. Those witnesses appeared at meetings occurring 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.

A procedural hearing was held on August 2, 2018.

The Board heard from members of the general public who wished to testify on the deannexation petition at the Planning Board meeting held on September 6, 2018.

Rebuttal testimony was presented by Petitioners professionals on October 4, 2018, December 6, 2018 and February 7, 2019.

### **1.4 REPORT OF FINDINGS**

This Report of Findings consists of a review and analysis of the information gleaned from the testimony of those participating in the Planning Board's public hearing on this matter, the various exhibits submitted and marked into evidence, and data collected from various Township offices and other sources as indicated herein. The Report culminates in a final recommendation to the Planning Board.



## **2.0 LEGAL STANDARDS**

The New Jersey Legislature set forth the authority and mechanism upon which land in one municipality may be annexed to another municipality to which said land is contiguous in N.J.S.A. 40A:7-12, et seq. Procedurally, the owners of land in a municipality desiring to annex to another contiguous municipality must submit a petition in writing to the governing body of the municipality to which such annexation is sought. This petition must specifically set forth the boundaries of such land and be signed by at least 60% of the legal voters residing thereon. The petition is to be duly verified by one of the signers and have attached to it the oath of the assessor of the municipality where said land is located, or of some other person having access to the assessor's books, setting forth the assessed value of the real estate contained within the boundaries for the preceding year and the amount of real estate assessed to any of the persons whose names are signed to the petition.<sup>6</sup>

Prior to action on such petition, the governing body of the municipality in which the land is located shall, within 14 days of the receipt of the petition, refer the petition to its Planning Board which shall, within 45 days of its receipt, report to the governing body on the impact of the annexation upon the municipality.<sup>7</sup> Action on the resolution to accept or deny the annexation shall be taken within 30 days of the receipt of the Planning Board's report.

The *Deannexation Statute* also sets forth the standard for judicial review in the event that a municipality does not consent to a deannexation and an appeal is taken of that decision. N.J.S.A. 40A:7-12.1 states that, in any judicial review of the refusal of the governing body of the municipality in which the land is located or the governing body of the municipality to which annexation is sought to consent to the annexation, the Petitioner shall have the burden of establishing that the refusal to consent to the petition was arbitrary or unreasonable, that refusal to consent to annexation is detrimental to the economic and social well-being of the majority of the residents of the affected land, and that the annexation will not cause significant injury to the well-being of the municipality in which the land is located.

<sup>6</sup> The Statute also requires the petition to "have attached to it a certified copy of a resolution adopted by  $\frac{2}{3}$  of the governing body of the municipality in which said land is located consenting to such annexation". While required by the Statute, this step is applicable to a petition to annex to a contiguous municipality, which must procedurally occur *after* a successful petition to deannex.

<sup>7</sup> 45-day time period extended by agreement of Petitioners.



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## **2.1 STATUTORY CONSISTENCY**

With regard to the subject matter of this Report of Findings, the Petition submitted by the South Seaside Park Homeowners and Voters Association was received by the Berkeley Township Clerk on September 22, 2014 and was subsequently transmitted to the Planning Board for consideration as required by N.J.S.A. 40A:7-12.

Upon substantive review and analysis of the Petition for this Report of Findings, the following statutory flaw was discovered.

N.J.S.A. 40A:7-12 requires, in pertinent part, that a deannexation petition:

*The petition shall be duly verified by one of the signers, and shall have attached thereto the oath of an assessor of the municipality in which said land is located, or of some other person having access to the assessor's books, setting forth the assessed value of the real estate contained within the boundaries for the preceding year, **and the amount of real estate assessed to any of the persons whose names are signed to such petition.** [emphasis added]*

Included with the Deannexation Petition filed with the Township is a 2014 certification by Mr. Kenneth Moore, Petitioners' Financial Professional, testifying that he:

*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 [did] 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.*

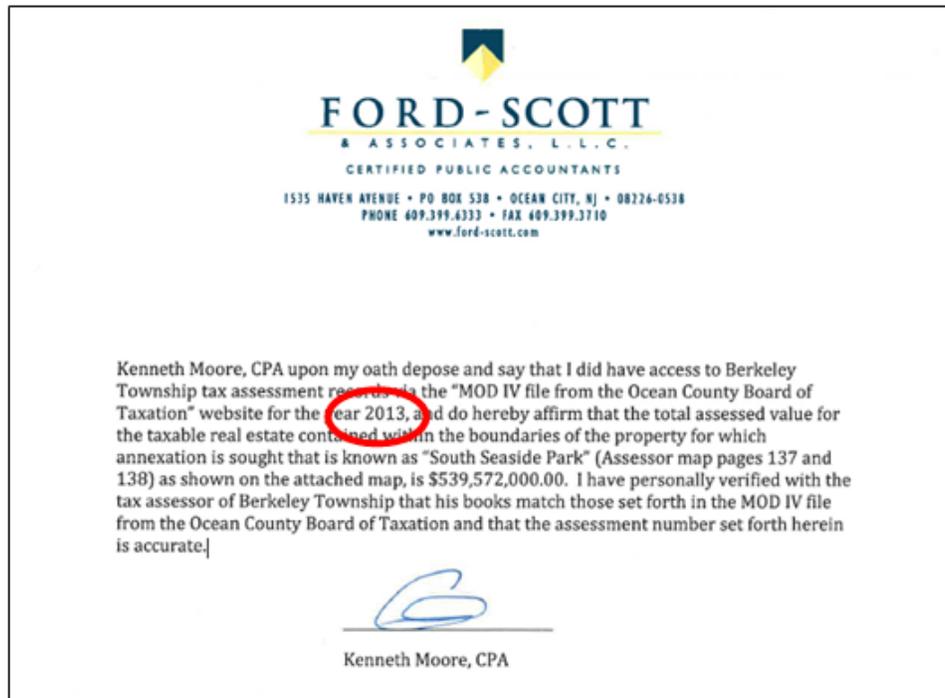
The certification further states that Mr. Moore:

*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.*

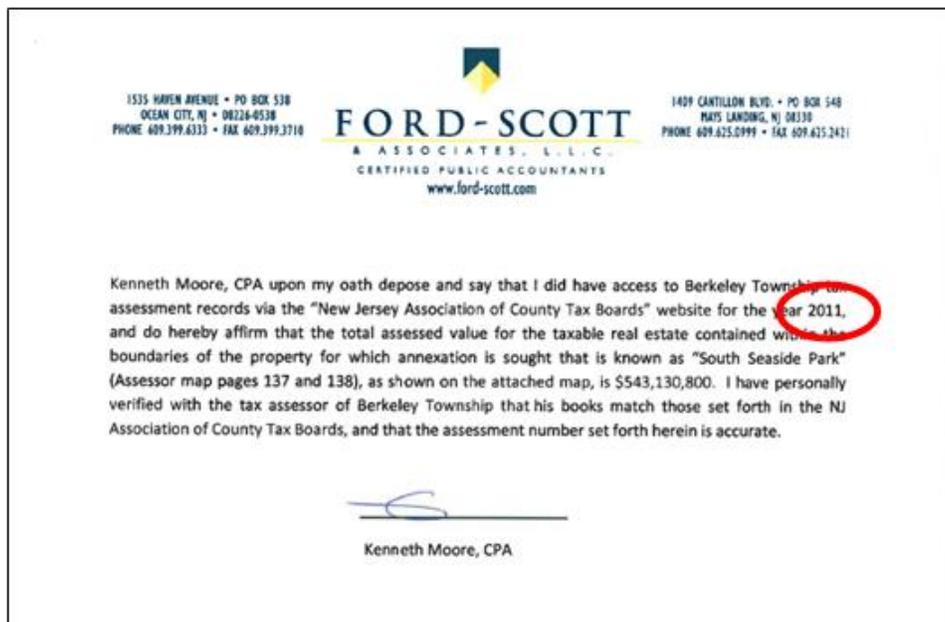


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A similar certification, dated 2012, was included for the tax year 2011.



Report Graphic 8



Report Graphic 9



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While the Petition includes a certification as to an aggregate assessed value for the area proposed for deannexation for 2013, it does not include “*the amount of real estate assessed to any of the persons whose names are signed to such petition*” as required by law. *It is therefore recommended that the petition does not conform to the requirements of the Deannexation Statute and may therefore be invalid.*

## **2.2 PROCEDURAL STANDARDS**

As set forth elsewhere herein, the *Deannexation Statute* provides no guidance as to the standards by which a Planning Board is to evaluate the impact of a deannexation petition or the procedures with which a Board is to prepare its Impact Report. As such, a review of relevant case law is offered to assist the Planning Board in its assigned duties.

### **2.2.1 STATUTORY LAW**

Prior to the 1982 adoption of N.J.S.A. 40A:7-12 et seq., municipal deannexation in the State of New Jersey was governed by N.J.S.A. 40:43-26 et seq. The significant differences between N.J.S.A. 40:43-26 and N.J.S.A. 40A:7-12 are:

- A. Under N.J.S.A. 40:43-26, the burden of proof to determine if the municipality from which the Petitioner wished to deannex would be injured by such deannexation resided with that municipality. Upon the adoption of N.J.S.A. 40A:7-12, the burden of proof in these matters shifted from the municipality to the Petitioner wishing to deannex from the municipality. *"The petitioners must show that annexation will not cause a significant injury to the well-being of the deannexing municipality rather than the initial burden being upon the deannexing municipality to provide that it will be injured"*<sup>8</sup>.
- B. Upon the adoption of N.J.S.A. 40A:7-12, the governing body is required to refer the deannexation petition to the Planning Board and the Planning Board is required to report upon the impact of the deannexation upon the parties.

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<sup>8</sup> Russell v. Stafford Twp., 261 N.J. Super, 43, 617 A2d 685. (1992)



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**2.2.2 CASE LAW**

The *Deannexation Statute* has, over the course of time, evolved by way of a number of Court decisions, including appeals that reached the New Jersey Supreme Court. The most significant of these decisions, based on their citations in subsequent litigation, are offered to the Planning Board for guidance in its deliberations.

A. *West Point Island Civic Association v. Township of Dover*<sup>9</sup>

1. West Point Island is an approximately ½ square mile area located along the Barnegat Bay. Prior to deannexation, it was a part of Dover (now Toms River) Township, Ocean County. It is separated from the mainland portion of Dover Township by the width of the bay, and is "practically contiguous" to the Borough of Lavallette. It is a 7½-mile trip from West Point Island to the business district of Dover Township.

In 1965, the West Point Island Civic Association filed a petition with Dover Township seeking to deannex from Dover and annex to Lavallette under what was then the controlling statute for municipal deannexation.<sup>10</sup> Unlike the current *Deannexation Statute*, Dover Township had the burden of proof to prove that it would be harmed by such deannexation.

After a public hearing, the Dover Township Committee rejected Petitioners' request, finding:

- a. The consent of the Township would set a precedent for future action in other areas of the municipality.
- b. Dover Township provides a fine school system as well as many recreational and communal activities, all of which are available to the residents of West Point Island as well as other residents of the Township.
- c. ...the services which are made available to the residents of West Point Island, such as police, fire, civil defense, disaster-aid, water and sewage, are quite adequate to cover any need that could be expected to arise.

<sup>9</sup> 97 N.J.Super. 549, 235 A.2d 507, 93 N.J.Super. 206, 225 A2d 579 & 54 N.J. 339, 255 A.2d 237(collectively: "West Point Island")

<sup>10</sup> N.J.S.A. 40:43-26



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- d. West Point Island is a socially desirable area and enhances the cultural value and attractiveness of Dover Township, and all planning done by the Township has encompassed West Point Island as part of the community.

The Civic Association filed suit to compel the Township Committee to adopt a resolution giving its consent to the deannexation.

2. Superior (Trial) Court

At trial, the Township presented reasons for its decision to deny deannexation and the Petitioners presented evidence in favor of detachment. The Court held that the Township's refusal of consent was "unwarranted"<sup>11</sup> and ordered the Township to adopt such resolution. The Township appealed.

3. Appellate Division

The Appellate Division, in an unreported opinion, affirmed the Trial Court's decision. The Township appealed to the New Jersey Supreme Court.

4. Supreme Court

At issue for the Court, in pertinent part, was whether the lower courts were correct in determining that the governing body of Dover Township unreasonably withheld consent to the deannexation of West Point Island. The Court did not rule on the merits of deannexation, although it did affirm the lower court rulings.

5. Relevance to South Seaside Park Petition

While certain facts in West Point Island may be similar to those of South Seaside Park, the litigation involved the sufficiency of the specific reasons (proofs) the Township relied upon to deny the petition request. In other words, did the governing body of Dover Township unreasonably withhold consent to the deannexation of West Point Island? The Trial Court, the Appellate Division and eventually the New Jersey Supreme Court held that it did.

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<sup>11</sup> In another phase of this same litigation the Appellate Division interpreted the language of N.J.S.A. 40:43-26 to mean that the governing body does not have an arbitrary right to withhold consent to the proposed annexation but that any exercise of that power must be made in a 'reasonable manner and not in a purely arbitrary way.'



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While interesting from historical and procedural perspectives, the material issue of the litigation ~ whether or not Dover Township unreasonably withheld consent to deannex ~ is not decided by a Planning Board, but by a municipal governing body. The Berkeley Township Planning Board may take from this case, however, the following:

- a. *Dover Township's refusal of consent to deannexation was unwarranted where, West Point Island was geographically more accessible to Lavallette than to Dover, where Dover would not be adversely affected by the detachment, and [where] municipal services for West Point Island could be satisfactorily supplied by Lavallette. In so ruling however, the Court did find that the concept that "the social and economic well-being of the municipality" is a valid factor when considering a petition for deannexation.*
- b. *Fear by Dover Township that a precedent for other areas would be set if it consented to deannexation was an inadequate ground for refusing consent; each petition is to be decided on its merits.*
- c. *Maintenance by Dover Township of a fine school system, recreational areas and communal facilities, which were available to residents of West Point Island, constituted inadequate grounds for Dover's refusal of consent to deannexation where these facilities would not be adversely affected by detachment of West Point Island.*
- d. *The alleged adequacy of municipal services [then] being provided by Dover Township to West Point Island constituted inadequate grounds for refusal of consent to deannexation, where fire protection and water were then being supplied by Lavallette and sewage was handled by a separate authority.*
- e. *Financial considerations constituted inadequate grounds for Dover Township's refusal of consent to deannexation where the difference of the tax rate without West Point Island's ratables would be four points, but where no allowance had been made for savings that would accrue to Dover Township from release from responsibility for providing West Point Island with various public services.*



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B. *Frank Ryan et al. v. Borough of Demarest*<sup>12</sup>

1. Beechwood Farms was a development of 30 "large estates" bisected by the borderline between the Borough of Demarest and the Borough of Alpine in Bergen County. Sixteen of the homes were in Demarest and 14 were in Alpine.

At the time, Demarest was approximately 2 square miles in area and had a population of approximately 6,262 while Alpine was about 5.3 square miles and had a population of 1,344. Demarest was 90% residential, with a shopping center but no industry. Alpine was almost entirely residential, with no stores other than an antique shop and a number of gasoline stations.

The tax rate was 4.70 per \$100 of assessed value in Demarest and 2.67 per \$100 in Alpine. Both Demarest and Alpine maintained grammar schools. Demarest students attended High School in Demarest. Alpine's students attended High School in Tenafly.

The Demarest section of Beechwood Farms was located on the eastern boundary of the Borough, and was separated from the rest of Demarest by a Country Club and a parochial school. In order to get to the business section of Demarest or other residential sections of the Borough, it was necessary to cross into Alpine, pass briefly through the Borough of Cresskill and return to Demarest. Beechwood Farms was about 2 miles from the center of the Borough.

In 1971, 14 of the Beechwood Farms homeowners from the Demarest side of the development filed a petition with Demarest requesting to deannex from that Borough and annex to Alpine. As with West Point Island, such petition was filed under N.J.S.A. 40:43-26, the then controlling statute for municipal deannexation. Unlike the current *Deannexation Statute*, Demarest had the burden of proof to prove that it would be harmed by such deannexation.

After receiving the petition, the Demarest Borough Council adopted a resolution refusing to grant its consent, declaring that deannexation "would be contrary to the best interest of the Borough and its general public and welfare". The Beechwood Farms homeowners from Demarest filed suit.

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<sup>12</sup> 64 N.J. 593, 319 A.2d 442 ("Ryan")



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2. Superior (Trial) Court

At issue was whether the refusal of Demarest to consent to deannexation was arbitrary and unreasonable under West Point Island.

Testimony revealed that the elimination of the 16 Beechwood Farms homes from Demarest would not produce any reduction in the municipality's operating costs ~ which would remain fairly constant. Likewise, there would be no substantial economy in the budget of the grammar schools, although Demarest would save \$9,600 to \$12,000 in costs for the high school students and there would be a saving in county taxes. Such savings would not offset the loss of revenue. In the final analysis, the tax rate for the remainder of Demarest would be increased as a result of the deannexation of Beechwood Farms.

Demarest's Mayor testified that in reaching its decision, the Council considered both the loss in revenue in the upcoming fiscal year and the total loss over the next 10 to 20 years and concluded that deannexation would result in an economic hardship. He asserted that the development figured prominently in the planning of the Borough, with Beechwood Farms roadways forming prospective thoroughfares for future residential development.

Further, residents of Beechwood Farms had been active in Demarest social and community activities and had participated in municipal and political activities.

The trial judge concluded that the effect of deannexation would be "insignificant" and "not of any injury" to Demarest and ordered Demarest to "adopt a resolution necessary to indicate its consent to the Petition for Annexation." Demarest appealed.

3. Appellate Division

The Appellate Division, in an unreported opinion, affirmed the Trial Court's decision, agreeing that deannexation would not "specifically injure [Demarest] or its social and economic well-being." The Borough appealed to the New Jersey Supreme Court.



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4. Supreme Court

- a. The Court ruled that both the trial judge and the Appellate Division misapplied the holding in West Point Island and went on to expand the interpretation of N.J.S.A. 40:43-26 as rendered in West Point Island as follows:

- (1) Under the specific circumstances of West Point Island, it was held that Dover Township would not suffer social or economic injury as a result of deannexation. West Point Island was isolated from Dover Township's schools, governmental, business and shopping areas. The residents looked to Lavallette "as the focus of community interest and activity", and there was no showing by the Township that it would be economically harmed.

Conversely, Beechwood Farms was not isolated from the remainder of Demarest. The geography and logistics of the situation did not compel the conclusion that the section of Beechwood Farms in question more naturally belongs to Alpine. The Court could not say that Alpine was the natural focus of social activity for the residents of Beechwood Farms in the same way that Lavallette was unquestionably the natural focus of West Point Island due to the geography in that case. While the Beechwood Farms residents may have preferred to live in Alpine, they did participate in Demarest's political, social and church activities.

Further, Beechwood Farms constitutes an affluent community whose presence adds prestige to Demarest. The Court found this not to be an inconsiderable factor in determining whether social detriment would result from deannexation, nor can it be lightly dismissed as mere "snob appeal" and thus unworthy of consideration.

- (2) The evidence presented made it clear that deannexation would have caused economic hardship to Demarest. While the testimony did not lend itself to a precise computation, it was certain that the owners of these exclusive and expensive (Beechwood Farms) homes contributed substantially more to the Borough than they cost in services.



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The Court ruled that the municipal fathers "quite properly" considered the amount of both the long term and short term loss of revenue in determining that the proposed deannexation would mean economic injury to the Borough.

- (3) Demarest met its burden of coming forward with reasons why deannexation would be injurious to it. It showed injury to both the social and economic well-being of the municipality. Its justifications for refusal to consent had much more substance than the mere "sentimental resistance" which was found in West Point Island. Nothing offered by the Beechwood Farms plaintiffs rebutted the proof of social and economic injury to Demarest, and consequently the plaintiffs did not prove any arbitrary or unreasonable color to Demarest's refusal to consent to deannexation.
- b. While the foregoing disposed of the matter in controversy, the Court thought it prudent to comment on additional issues not raised as part of the case, "with the thought that municipal attorneys, governing bodies, others interested in municipal law and... lower courts may achieve a greater sense of certainty as to how to proceed in a case where... deannexation is contested and consent withheld".
5. Relevance to South Seaside Park Petition
- a. *Proof of either economic or social injury, substantial in nature, to a non-consenting municipality in which land is located is sufficient to satisfy that municipality's burden of coming forward with evidence and there need not be a showing of both.*

*It is conceivable that there could be both economic and social detriment, neither of which standing alone would be considered "substantial", but the total of which, taken together, could work a substantial injury on the community were deannexation allowed.*

- b. *The affluence of the petitioning community is not an inconsiderable factor in determining whether social detriment would result from deannexation, nor can it be lightly dismissed as mere "snob appeal" and thus unworthy of consideration.*



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c. *It is "quite proper" for municipal fathers to consider the amount of both long term and short term loss of revenue in determining that proposed deannexation would mean economic injury to a municipality.*

d. *A municipality which presented evidence that...*

(1) *there would be no substantial economy in the budget of its grammar schools as a result of deannexation of a community consisting of expensive homes;*

(2) *elimination of the homes would not produce any reduction in the municipality's operating cost;*

(3) *the tax rate for remainder of municipality would be increased as result of the deannexation; and*

(4) *the presence of such a community added prestige to the municipality.*

*...has met its burden of producing reasons why deannexation would be injurious to it, and, absent evidence rebutting this proof of social and economic injury, a refusal to consent to deannexation is not arbitrary or unreasonable.*

e. *Some appropriate considerations in resolving the issue of social detriment to a municipality from deannexation are deprivation of:*

- *Petitioners' participation in religious, civic, cultural, charitable and intellectual activities of the municipality;*
- *their meaningful interaction with other members of the community;*
- *their contribution to the prestige and social standing of the municipality;*
- *the part they play in the general scheme of the municipality's social diversity; and, conceivably*
- *the wholesome effect their presence has on racial integration.*



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*In developing this list, the Court significantly cautioned that such factors:*

*are in no way intended to be all-inclusive, for in the final analysis the governing body and the trial judge will have to bring to bear their own knowledge, experience and perceptions in determining what, in the context of deannexation, would inflict social injury upon the well-being of a community.*

*The Court stressed that the foregoing:*

*are values which undergo change with the times and are accorded different weight depending in part on the composition of the community and its governing body. We repeat that in listing them, we are recognizing only some of the appropriate considerations.*

- f. *The Statute providing for annexation of land in one municipality to another contiguous municipality was not intended to encourage the adjustment of municipal boundaries "from time to time" dependent upon changing "community of interests" of residents, but rather was intended to give precedence to a more significant policy, that of preservation of municipality boundaries and maintenance of their integrity against challenge prompted by short-term or even frivolous considerations such as "tax shopping" or avoidance of assessments.*
- g. In an in-part-concurring and in-part-dissenting decision, the Court<sup>13</sup> added, in pertinent part:
- (1) *...it must always fall... to the potential secessionists to prove that in fact the economic or social consequences of deannexation will be de minimis.*
  - (2) *those seeking deannexation must "[negate] the proofs of actual injury" to the municipality by offering "compelling countervailing consideration, such as the alleviation of any existing oppressive condition resulting from their location in [a municipality]"; or to offer "significant relevant factors which generally bear on deannexation, such as isolation, availability of services, symmetry, unity of interests, etc."*

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<sup>13</sup> Justice Morris Pashman



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*C. J. Victor Carton et al. v. Borough of Tinton Falls*<sup>14</sup>

1. In 1979, 100% of the homeowners and property-owners in a section of the Borough of Tinton Falls filed a petition with the Borough requesting to deannex (and annex to neighboring Neptune Township).

As with West Point Island and Ryan, such petition was filed under the then controlling statute for municipal deannexation.<sup>15</sup> As such, Tinton Falls had the burden of proof to prove that it would be harmed by such deannexation.

At the public meeting on the matter, one of the Petitioners was asked to detail the reasons for which the deannexation was sought. He declined to respond, instead relying on N.J.S.A. 40:43-26, and further asserted that reciting reasons would be meaningless in light of comments by the Mayor that the request would not be granted. The municipality then adopted a resolution denying the petition because "no reasons whatsoever have been supplied by the Petitioners..."

Plaintiffs filed suit seeking rescission of the resolution and requesting adoption of a resolution consenting to the deannexation.

2. Superior (Trial) Court

At trial, the Borough claimed the petition was defective and "unsupported by any basis for relief." It also asserted that the granting of Petitioners' request would "cause a great hardship to the Borough and its Zone Plan, its Tax Base and the present and future development of the municipality."

The Borough moved for summary judgment.<sup>16</sup>

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<sup>14</sup> 177 N.J.Super. 404, 426 A.2d 1056 ("Carton")

<sup>15</sup> N.J.S.A. 40:43-26

<sup>16</sup> Appellants filed a cross-motion for summary judgment.



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The Borough's motion was accompanied by an affidavit of the Borough Clerk which confirmed the allegation that "(a)t the meeting, [Petitioners were] asked to detail the reasons [they] sought to be deannexed from the Borough... and annexed to ...Neptune, but [the Petitioners] declined to state any reasons."

After argument on the motions, the trial judge granted the municipality's motion to dismiss the complaint and denied Appellants' motion for the relief sought. Petitioner appealed.

3. Appellate Division

After defining the underlying issue as being is whether Petitioners are required to advance reasons to the municipality when requesting consent to deannexation, the Court ruled that they did not; thereby reversing the Trial Court's decision and remanding the matter back to the Trial Court for full consideration.

4. Relevance to South Seaside Park Petition

The facts of this case are not material to the issues under review by the Berkeley Township Planning Board. ***What the Board may take from this case, however, is that the Court reinforced the "social and economic well-being" of the deannexed municipality as a valid factor when considering a petition for deannexation, stating:***

*Under the circumstances of this case, we deem it appropriate that the trial judge remand the request and resolution to the municipality, retaining jurisdiction, in order that the municipality might consider the request **in the context of its social and economic well-being**. If it conceives it will not be injured, consent should be granted. In such an event the matter would be moot. On the other hand, if it objects to the deannexation, it must incorporate reasons in its resolution consistent with the mandate in Ryan. The matter can then be returned to the trial court and tried in accordance with the procedure outlined in Ryan. [emphasis added]*



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D. *Robert Russell et al. v. Stafford Township*<sup>17</sup>

In the first case of its kind, Russell involves the right of a municipality to deny a petition for annexation filed by property owners in an adjacent municipality, notwithstanding that the adjacent municipality had consented to deannexation.<sup>18</sup> Additionally, this is the first case under the revised *Deannexation Statute*.<sup>19</sup>

1. The dispute involved the 3½-mile Cedar Run Dock Road; 3 miles of which was in Stafford Township and ½ mile of which was in Eagleswood Township.

At the time of the case, Eagleswood Township was an approximately 16 square mile, rural community consisting primarily of wetlands and pinelands. There were approximately 1,500 year-round residents and 1,100 parcels of land, 460 to 500 of which were improved. There was a very small commercial area. Conversely, Stafford Township was a rapidly developing community with a population of approximately 13,000 within its 47 square miles. While much of Stafford was undeveloped, it had a prospering commercial town center located in the general vicinity of N.J.S.H. 72, US Route 9 and the Garden State Parkway.

Petitioners were owners of 23 properties who resided in the Eagleswood section of Cedar Run Dock Road. This land was [then] accessible from Eagleswood only by traveling approximately 3 miles through the Stafford Township section of Cedar Run Dock Road.

In 1991, Petitioners presented a petition to the Eagleswood Township Committee seeking to deannex the Eagleswood portion of Cedar Run Dock Road and to annex it to Stafford Township. Pursuant to the *Deannexation Statute*, the petition was referred to the Eagleswood Planning Board for its review of the impact upon the municipality. Following receipt of the Planning Board's report, the Eagleswood governing body adopted a resolution consenting to deannexation.

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<sup>17</sup> 261 N.J.Super. 43, 617 A.2d 685 ("Russell")

<sup>18</sup> All annexation cases reported heretofore involved municipal decisions refusing to consent to *deannexation* as opposed to refusals to consent to *annexation*.

<sup>19</sup> N.J.S.A. 40A:7-12



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Subsequently, the Stafford Township Council adopted an ordinance on first reading consenting to annexation. After heated public debate attendant to the second reading of the ordinance, the Council voted to deny the petition for annexation. Petitioners filed suit.

2. Superior (Trial) Court

a. After review of the case law concerning deannexation, the Court discussed:

(1) The changes in the *Deannexation Statute* made in 1982 by N.J.S.A. 40A:7-12 et seq., noting "...for the first time, the Legislature statutorily defined the burden of proof and consequently the scope of judicial review affecting the deannexing municipality, the annexing municipality and the affected land".

(2) The standards established by N.J.S.A. 40A:7-12.1 that must be met by a Petitioner if it is to be successful in overturning a denial of a petition for annexation or deannexation. For each, the Court provided what it interpreted to be concomitant proofs:

| Statutory Standard   | Plaintiff Must Demonstrate   |
|--|--|
| Refusal to consent to the petition to deannex or annex was arbitrary or unreasonable;  | A municipal abuse of discretion in refusing to consent to the petition.  |
| Refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land; | Deannexation will be beneficial to a majority of the residents of the land being deannexed / refusal to consent to annexation of the affected land is detrimental to them. |
| Annexation will not cause a significant injury to the well-being of the municipality in which the land is located.                             | There will be no significant injury to the well-being of the municipality in which the affected lands are located.   |

*Report Table A*

b. In its decision, the Court found that the Petitioners had proven that annexation would be beneficial to residents of the affected land and, since Eagleswood had consented to the deannexation, the municipality had acknowledged no significant injury. The remaining (what the Court termed "pivotal") issue was Stafford's reasonableness in declining to accept the secessionists. On this issue, the Court found for Stafford; thereby denying the Petition.



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3. Relevance to South Seaside Park Petition

a. The Court found that some of the factors used to analyze a denial of deannexation could be used to analyze a denial of annexation. Accordingly, while the cause of action in Russell is quite different from the Petition before the Berkeley Township Planning Board in South Seaside Park, the Court's opinion is instructive in that it reaffirmed key findings in West Point Island and Ryan. Specifically,

(1) *While the Court conceded that "the geography, logistics and availability of businesses and municipal services seemed to favor annexation...", it also acknowledged that "Stafford had the right to factor in other issues in deciding whether to consent to the petition,..."*

(2) *While deannexation would have benefitted the Petitioners,<sup>20</sup> Stafford had the right to project impacts into the future to determine whether annexation was in the long-term best interest of their community.*

(3) *The Stafford Township Committee had the right to determine whether there were any substantial advantages to Stafford in the annexation proposal,<sup>21</sup> and was therefore not limited to analysis of "significant injury" as detailed in N.J.S.A. 40A:7-12.1.*

(4) *Reiterating the legislative intent behind the Deannexation Statute was "to give precedence to the preservation of municipal boundaries and integrity against*

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<sup>20</sup> (a) Municipal services were either already provided by Stafford (Police) or could easily be supplied (garbage collection, school transportation, 1<sup>st</sup> aid, fire protection and additional government services at the Stafford municipal building).

(b) Petitioners had a greater nexus with the business and shopping areas of Stafford than with those in Eagleswood.<sup>20</sup> Access to these areas at the time, and in the [then] foreseeable future, were through Stafford. Thus, on balance, the geography, logistics and availability of businesses and municipal services, in the words of the Court, "*seem[ed] to favor [the Petitioners and] annexation*".

<sup>21</sup> (a) While additional sewer charges to Stafford residents was not, in-and-of-itself, very significant, it had to be measured in the context of anticipated future cost involved in the construction of additional sewer work in Stafford, as well as the future expansion costs of the sewer system to other outlying areas of the Township.

(b) There was a likelihood that the sewer rates would increase in the future and that the tax revenue increase resulting from annexation of the Petitioners offered no meaningful offsetting benefits.

(c) The Stafford governing body "*was cognizant of the increasing costs of municipal services and the likely need to increase taxes*". The Court found that the Committee could "*rationally have found the additional tax revenues to be insignificant, since net revenues of \$36,000 annually applied against the cost of doing business for a township of 13,000 people can hardly be deemed a major incentive*".



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*challenges 'prompted by ... 'tax shopping' or avoidance of [in this case sewer] assessments'", the Court interpreted Legislature's actions in adopting N.J.S.A. 40A:7-12.1 as to have "imposed a heavier burden on the Petitioners, thereby making deannexation more difficult or, perhaps, discouraging attempts to undertake the effort at all. [emphasis added]*

(5) *The Petitioner must prove that the potential harm to the parent municipality is insignificant or, alternatively, that actual harm to the municipality is so far outweighed by the beneficial results to the secessionist section, that refusal to consent was palatably unreasonable. This burden on the Petitioners is a heavy one.*

b. In addition to reaffirming West Point Island and Ryan, the Court issued a number of findings of interest to the Berkeley Township Planning Board:

(1) *There would be no benefit to Stafford residents by the transfer of certain Cedar Run Dock Road amenities from Eagleswood to Stafford, since those amenities were already available to Stafford residents absent any annexation.*

(2) *There were other mechanisms short of annexation to address the concerns of the Petitioners, including inter-municipal agreements whereby one community could provide needed services to a portion of another.*

E. *Avalon Manor Improvement Ass'n Inc. v. Township of Middle*<sup>22</sup>

1. In 2000, the Avalon Manor Improvement Association filed a petition for deannexation from the Township of Middle with the intention of annexing that portion of Middle Township to the Borough of Avalon. After the petition was submitted to the Township Committee, it was referred to the Middle Township Planning Board, which conducted a series of public meetings over the course of a year. At the end of the hearings, the Board issued a comprehensive report which included factual findings and recommendations to the governing body. Specifically, the Board concluded that the plaintiffs' petition should be denied.

<sup>22</sup> 370 N.J. Super, 73, 850, A2d 566 (2004), (App. Div. 2004) (collectively: "Avalon Manor")



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Thereafter, Middle Township's governing body voted to deny the petition. Petitioners filed suit.

2. Superior (Trial) Court

In January 2003, the Court issued its opinion affirming the decision of the Township Committee and finding that their decision was not arbitrary and unreasonable.

In reviewing the record, the Court considered the geographic size and isolation of Avalon Manor in relation to Middle Township, the tax ratables of Avalon Manor, the impact upon the Township's local, fire and school taxes should deannexation be permitted, Middle Township's Flood Plan, the effect of deannexation on municipal services and the potential savings to the Township.

The Court concluded that the Petitioners had, in fact, sustained their burden of proof in showing a detriment to the economic and social well-being of the residents of Avalon Manor, particularly with regard to the tax savings that would accrue to the residents of Avalon Manor from deannexation. However, the Court specifically held that the Petitioners **had not** sustained their burden of proof in showing that the deannexation would not cause significant injury to the well-being of the Township. Specifically, the Court held that Middle Township's determination that either a \$67.97 or a \$75.52 annual tax increase would occur if deannexation were permitted was sufficient to support a finding that the Township's refusal to consent to deannexation was not arbitrary or unreasonable. Petitioners appealed.

3. Appeal

After reviewing the record developed before the Planning Board in "precise detail", as well as the legal analysis performed by the Trial Court, the Appellate Division affirmed the "validity and appropriateness" of the Trial Court's decision.

4. Relevance to South Seaside Park Petition



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- a. *The record did not establish that Petitioners would suffer the kind of "long term, structural and inherently irremediable detriment" that the Legislature had in mind when it adopted the Deannexation Statute.*
- b. *While municipal boundaries may indeed be changed with or without a governing body's approval, the Legislature has directed that this should occur without consent "only in the most compelling circumstances".*
- c. *Petitioners' burden of proof includes a showing of detriment to the economic and social well-being of the residents of lands desiring to deannex AND that deannexation would not cause significant injury to the well-being of the municipality in which the land is located.*
- d. *It is appropriate for a municipality to consider the economic detriment it would suffer with the loss of ratables.*
- e. *It is not the Court's proper function to assess the relative "significance" of the amount of an annual tax increase. The Court's role is to assess whether the municipality's decision was founded in facts established in the record and whether that decision was "arbitrary or unreasonable". Put another way, the Court's role is not to substitute its own judgment for that of the municipal officials, but rather to evaluate the action of the municipality against the statutory standards. It is therefore not up to the Court to decide if an annual tax increase of a particular amount as a result of deannexation is "significant". The Court deferred to local decision-makers as to whether or not a \$7.55 annual tax increase was "significant", and appropriately left that decision to the Governing Body.*
- f. *Whatever revenues are generated by Township activities outside of the deannexation process<sup>23</sup> "already belong to all of the property owners of the Township. To suggest that these revenues could be considered as an 'offset' or 'amelioration' of the added taxes attendant to a deannexation is to suggest that the taxpayers of the Township*

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<sup>23</sup> i.e., Mainland (Centers) development - Testimony on March 1, 2018



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*should apply their own resources to the reduction of the increase in their taxes. Without deannexation, these revenue sources, if realized, would accrue to the benefit of the taxpayers of the Township and would reduce their tax payments below the current levels, or perhaps offset increases unrelated to a deannexation. There is no equitable basis to charge their interest in these revenues with the burden of 'offsetting' the increases that would result from deannexation".*

- g. *Appropriate considerations by a Planning Board in a deannexation matter include the social impact of deannexation and the fact that the municipality would be deprived of participation of residents in the religious, civic, cultural, charitable and intellectual activities of the municipality, their meaningful interaction with other members of the community and their contributions to the prestige and social standing, the part they play in the general scheme of their municipality's social diversity and conceivably the wholesome effect on racial integration.*

*Within this context, deannexation of properties that are of significantly higher value than the general profile of residential properties in the municipality would suggest implication for the Township's social diversity and prestige and social standing, and the loss of such a disproportionately highly valued sector of the municipality of necessity would inflict a significant social injury on the municipality and its ability to continue to attract the kinds of residents desirable to any community.*

- h. *...The loss of tax revenues, control over natural wetlands, and the intangible enhancements to the municipality of one of its nicest areas constituted a "significant injury" to the well-being of the Township.*

F. D'Anastasio Corp v. Pilesgrove Township<sup>24</sup>

1. Real estate developer D'Anastasio Corp. ("D'Anastasio") was the contract purchaser of 36.27 acres of vacant, agricultural land in Pilesgrove ("Pilesgrove Property") and a contiguous 81-acre tract in Woodstown. Under Pilesgrove zoning, the Pilesgrove Property could support between 8 and 12 residential units. If the Pilesgrove Property was

<sup>24</sup> 387 N.J.Super. 247, 903 A.2d 527 (2005), 387 N.J.Super. 241, 903 A.2d 524 (2006)( Collectively: "D'Anastasio")



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deannexed to Woodstown and rezoned in accordance with Woodstown's zoning, the property could support approximately 60 units.

In 2003, D'Anastasio filed a petition with Pilesgrove seeking to deannex the Pilesgrove Property from Pilesgrove, with an intent to annex to Woodstown. Pursuant to the *Deannexation Statute*, the Pilesgrove Township Committee referred the petition to the Pilesgrove Planning Board. The Board conducted a hearing, where it heard comments from Pilesgrove's Township Planner and Zoning Officer, and D'Anastasio's planner and architect. At the end of the hearing, the Board adopted a resolution recommending that the Township Committee deny the petition for deannexation.

Following receipt of the Planning Board's recommendation, the Township Committee denied the petition. D'Anastasio filed suit, contending that the Board's recommendation and the Township's denial were arbitrary, capricious and unreasonable because they failed to follow applicable statutes and case law in exercising their discretion.

2. Superior (Trial) Court

The Court ruled that the evidence contained in the Economic and Social Impact Analysis prepared by the Township's Planner was sufficient for the Township to determine that deannexation would result in economic and social injury.

a. Regarding Economic Impact, the Township Planner concluded that deannexation would "have a significant impact on Pilesgrove." Specifically:

(1) The Pilesgrove Property would support approximately 12 to 13 residential building lots under Pilesgrove zoning and 60 lots under Woodstown Zoning (assuming water and sewer were made available).

(2) The economic impacts if the Pilesgrove Property were not deannexed but developed under a possible rezoning ~ allowing for an increased density similar to that proposed by D'Anastasio for its proposed project ~ were significant, both in the first year and over a 20-year period.



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(3) Pilesgrove was in need of ratables to defer school costs (Pilesgrove had 65% ± of the total ratables of the shared school district with Woodstown but was responsible for 75% ± of the total school budget).

b. Regarding Social Impact, the Township's Planner found that, as vacant land, deannexation would not have an impact on the social fabric of Pilesgrove "in the sense that deannexation would not result in the loss of valuable members of the community". However, the Planner did find:

- Since many services and facilities were shared, the social impact was reduced [but not eliminated].
- There would be a subjective social impact on Pilesgrove's image if the Township were to be deprived of the "ability to control all of its potential growth areas."
- Deannexation was in direct conflict with the balanced community planning objective since Pilesgrove would have been deprived of the ability to control all of its potential growth areas.

Based largely on the Planner's report, the Court determined that Pilesgrove did not act arbitrarily or unreasonably in refusing to consent to deannexation and granted summary judgment to the Township. D'Anastasio appealed.

3. Appellate Division

After considering D'Anastasio's arguments against the record and legal principles, the Appellate Court found no reason to disturb the findings and conclusions reached at Trial and upheld the Trial Court's decision.

4. Relevance to South Seaside Park Petition

a. *In discussing the impact of interpreting the word "residents" in the Deannexation Statute broadly to include "absentee owners" and "contract purchasers of vacant land", the Court affirmed that "the statute is clear on its face that the detriment is that of residents, not owners, or contract purchasers".*



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- b. *Citing Ryan<sup>25</sup> and Avalon Manor,<sup>26</sup> it is permissible for a municipality to consider the future loss of tax revenues in determining economic injury. Within this context, a municipality may consider lost revenues under current zoning or rezoning if there is the prospect for and likelihood of change.*
- c. *A 20-year period is a reasonable time horizon for assessing economic injury related to the loss of future property taxes.*
- d. *The petition for deannexation "constitute[d] zoning and development density shopping, and as such, does not provide a valid reason for altering otherwise historical municipal boundaries".*

G. *Citizens for Strathmere & Whale Beach v. Upper Township*<sup>27</sup>

- 1. In a case that is factually similar to the subject of this Report of Findings, in 2007, a not-for-profit community organization named "Citizens for Strathmere & Whale Beach" ("Plaintiffs"), consisting of residents and property owners of the Strathmere and Whale Beach section(s) of Upper Township (collectively "Strathmere"), petitioned the Upper Township Committee for deannexation pursuant to the *Deannexation Statute*. Plaintiffs' objective was to deannex from Upper Township in order to annex to adjacent Sea Isle City.
- 2. Strathmere is a small, residential community consisting of 407.5 acres of land. While a portion of Upper Township, Strathmere is not geographically contiguous to the Mainland section of the Township. Rather, it is located on the barrier island known locally as Ludlam's island, which it shares with Sea Isle City.

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<sup>25</sup> *the municipal fathers quite properly considered the amount of both the long-term and short-term loss of revenue in determining that the proposed deannexation would mean economic injury to the Borough,*

<sup>26</sup> *a fair analysis of the residents' and municipalities' well-being necessarily involves consideration of economic and social factors over time, and the prospect for and likelihood of change.*

*... whatever the revenue loss from deannexation, that amount was not merely a one-time loss but would continue in subsequent years.*

<sup>27</sup> N.J. Super. App. Div. A-1528-10T4 (2012) ("Strathmere")



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Strathmere is bounded to the east by the Atlantic Ocean, to the north by Corson's Inlet, to the west by Strathmere Bay and to the south by Sea Isle City. Visitors traveling to Strathmere from the mainland must pass through at least one other municipality before arriving in the community.

Strathmere has one main arterial road which traverses the length of the island. Strathmere encompasses approximately 1.47 square miles, whereas Upper Township (excluding its roads and Strathmere/Whale Beach) consists of approximately 60.7 square miles. As such, Strathmere constitutes 2.42% of the total area of Upper Township.

Strathmere was [and still is] a seasonal destination community which, at time of Petition, consisted of approximately 175 year-round residents and between 3,000 to 4,000 summer residents. Strathmere's residential base consisted primarily of single-family detached homes, a number of mobile homes and several attached or multiple-family housing structures, none of which are larger than 4 units. There were several small businesses located in Strathmere, including restaurants, a marina and a motel.

At time of Petition, Strathmere sent a single student to Upper Township schools. Strathmere was serviced, as was all of Upper Township, by the New Jersey State Police operating out of the State Police Barracks in Woodbine, New Jersey. The Upper Township Public Works Department was responsible for servicing Strathmere's waste disposal and sanitation needs. Based upon the [then] most recent (2007) tax assessment, the total tax valuation of Upper Township was \$2,248,016,808, while the total tax valuation of Strathmere was \$393,461,300. As such, Strathmere constituted approximately 17.5% of the total tax ratable base for the Township.

3. After the deannexation Petition was certified and accepted by the Township Committee, it was referred to the Township Planning Board for its report on the impact of the proposed deannexation. During 14 months of public hearings, the Planning Board heard testimony that was remarkably similar to that heard by the Berkeley Township Planning Board in the South Seaside Park matter. In summary, Petitioners contended (in no particular order):



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- a. The Township had failed to properly plan for and manage Strathmere's beach.
- b. The Township was unacceptably slow in responding to extreme beach erosion.
- c. It was unfair for Strathmere to bear 17.5% of the Township's assessed property taxes to fund the Township's school district since only one student from Strathmere attended Township schools.
- d. State Police response times to Strathmere's complaints were unacceptable, both in-and-of themselves and as compared to complaint response times by mainland Township residents. Strathmere would be better served by Sea Isle City's Police Department.
- e. There was recurring illegal conduct, including speeding, drunken driving, vandalism and alcohol consumption, bonfires and other illegal activities on the beach that were not being addressed.
- f. The absence of a Township noise ordinance and once-per-week trash pickup by the Township's Department of Public Works had a substantial negative impact on Strathmere residents. Conversely, Sea Isle City had a noise ordinance that was enforced by local police and offered twice-per-week trash pickup during the summer months.
- g. The Township had, on more than one occasion, failed to provide for adequate snow removal and plowing of Strathmere's streets following heavy snowfall.
- h. Enforcement of a noise ordinance, coupled with more frequent trash pickup and allegedly better public works services in general, would reduce the quality of life disturbances that Strathmere residents experience under the Township's jurisdiction.
- i. Strathmere's residents identified on a social level much more with Sea Isle City than the Upper Township mainland.



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- j. Strathmere's senior citizens<sup>28</sup> socialized more with the seniors of Sea Isle City than with Upper Township's mainland seniors. Due to their proximity, Strathmere's seniors participated in far more recreational programs and social organizations within Sea Isle City than similar programs available on the Township's mainland.
  - k. Because Strathmere occupies a barrier island with Sea Isle City and because it is a coastal community, the interests and concerns of its residents were more aligned with Sea Isle City rather than Upper Township.
  - l. The Township would not suffer substantial economic detriment by deannexation.
4. After 18 public hearings during which the Planning Board weighed Strathmere's assertions against evidence and testimony submitted by the Township and members of the general public opposed to deannexation, the Board adopted an Impact Report which found, in pertinent part, that if deannexation were to occur and Strathmere were permitted to annex to Sea Isle City<sup>29</sup> (in no particular order):
- a. While the crime rate in Upper Township and Strathmere evidence that police enforcement was more than adequate, in all likelihood, Strathmere may receive faster police response times ~ although service quality may be reduced.
  - b. Property owners in Strathmere would pay 40% to 50% less in property taxes.
  - c. Strathmere would, in all likelihood, receive twice-per-week trash collection.
  - d. Strathmere would be annexed to a contiguous barrier island community.
  - e. The Upper Township Municipal budget could be reduced by an estimated \$400,000± per year.

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<sup>28</sup> which, according to the 2000 U.S. Census comprised approximately 30% of Strathmere's permanent residents at the time.

<sup>29</sup> Additionally, if Strathmere were to annex to Ocean City, two of Strathmere's ~ and therefore Upper Township's ~ commercial establishments would, in all likelihood, lose their liquor licenses.



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- f. The Upper Township Board of Education would save \$15,505 in tuition costs and \$4,400 in transportation costs.
- g. The Upper Township Board of Education would receive an estimated additional \$13,499 in State Aid under the [then] current formula.
- h. Sea Isle City's municipal government and development philosophy would, in all likelihood, result in the loss of Strathmere's free beaches, free parking and its unique single family residential development features.
- i. Upper Township would lose more than \$393,461,300 of tax ratable property.
- j. Property owners in the remaining mainland portion of the Township could expect to see a substantial increase in the school tax.<sup>30</sup> An average property assessed at \$350,000 was anticipated to pay an additional \$700<sup>±</sup> per year. The school tax was estimated to increase by 19.7%.
- k. The Township's bonding capacity would be significantly reduced.
- l. Upper Township would lose one of the most prestigious and upscale areas and its identification as a beachfront community.
- m. Upper Township would lose approximately 370 acres of precious beach and wetland areas and the natural resources associated therewith.
- n. Upper Township would lose its Junior Lifeguard Programs and surfing classes, which required the Strathmere waterfront.
- o. There would be a loss of social diversity associated with the connection of Strathmere with the mainland portion of the community.

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<sup>30</sup> At the time, Upper Township enjoyed sufficient revenues from the Fall Energy Receipts program attendant to the Beesley's Point electric generating station that no Local Purpose Tax was necessary to fund Township operations. Faced with increase municipal costs and declining Utility revenues, a Local Purpose Tax was instituted in 2011.



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- p. Each of the many different villages comprising Upper Township has provided a valuable benefit and resource to the community. The loss of Strathmere would result in a diminishment of the entire Upper Township community.

At the conclusion of its Impact Report, the Board made the following recommendation to the Township Committee:

*...Petitioners have not satisfied their burden of proof in evidencing that the refusal to consent to deannexation is detrimental to the economic and social well-being of a majority of the Citizens of Strathmere and Whale Beach **and** that the deannexation will not cause a significant social or economic injury to the well-being of the Township of Upper.*

*Accordingly, the Planning Board... does hereby submit this report to the Upper Township Committee and recommend that the Upper Township Committee **deny the Petitioners' request for deannexation. [emphasis added]***

Subsequently, the Township Committee held a public hearing on the deannexation petition, after which it, by unanimous vote, denied Plaintiffs petition. Strathmere filed suit.

5. Superior (Trial) Court

Plaintiffs contended, in pertinent part, that it had satisfied its burden of proof under N.J.S.A. 40A: 7-12.1, and that the Township Committee's denial of their petition for deannexation was arbitrary or unreasonable, thus warranting reversal.

In rendering its decision, the Court made note of the extensive record compiled by the Planning Board and concluded that denial of Plaintiffs petition was "more than amply supported by the record." Having failed to demonstrate otherwise, Strathmere's complaint was dismissed with prejudice. Strathmere appealed.

6. Appellate Division

The issues in the appeal were unique to the Strathmere case and are not relevant to the South Seaside Park matter. It is sufficient to report that, in light of the record and legal



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principles, the Appellate Division affirmed the Trial Court's decision ~ substantially for the reasons expressed by the Trial Judge in what the Appellate Division termed "a thorough and well-reasoned written opinion".

7. Relevance to South Seaside Park Petition

As with Avalon Manor, the issues in Strathmere are strikingly similar to those under review by the Berkeley Township Planning Board in this instant matter. As such, the following findings from Strathmere are instructive:

- a. *It was entirely proper and sensible for the Planning Board to look to the judicial review portion of the Deannexation Statute in order to guide its inquiry (i.e. to weigh the evidence and determine whether deannexation would be detrimental to the economic and social well-being of a majority of the residents of the affected land, and that deannexation would not cause a significant injury to the well-being of the municipality in which the land is located.*
- b. *Clearly the intent of the Legislature in enacting the laws governing deannexation and annexation of municipal lands was to require that the decision not be made in a vacuum or on narrow grounds, but after consideration of all relevant circumstances.*
- c. *The policy behind the Deannexation Statute ~ that "precedence should be given to the preservation of municipal boundaries and maintenance of their integrity against challenge prompted by short-term or even frivolous considerations such as tax-shopping or avoidance of assessments" ~ should "indeed be considered by municipal Planning Boards and governing bodies... [it] has been the presumed legislative intent behind the Deannexation Statute for the last 35 years" and "the 1982 amendments to the [Deannexation] Statute only bolster this presumption..."*
- d. *A thorough review of the record indicates that the Township Committee's ultimate decision to deny the deannexation petition was by no means arbitrary or unreasonable. There was ample evidence in the record to indicate that the loss of Strathmere would inflict significant social harm on Upper Township.*



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- e. *During the Planning Board process, Petitioners for deannexation must establish:*
- *That refusal to consent to the petition was arbitrary or unreasonable;*<sup>31</sup>
  - *That refusal to consent to the annexation is detrimental to the well-being of the majority of the residents of the affected area, AND*<sup>32</sup>;
  - *That the annexation will not cause a significant injury to the well-being of the municipality in which the land is located.*

*Since these standards are joined by the word "and", they are conjunctive. Accordingly, Petitioners must establish all three elements to prevail.*

- f. *As made "exquisitely clear" in the Avalon Manor decision, when evaluating a deannexation petition, a municipality may consider the impact on future taxes, including the potential increase in school taxes. Even prior to Avalon Manor, the New Jersey Supreme Court found that municipal decision-makers may "quite properly [consider] both the long term and the short term loss of revenue in determining that [a] proposed deannexation would mean economic injury" to a municipality.*
- g. *Arguments that "significant injury to the well-being of the municipality" within the meaning of the Deannexation Statute precludes consideration of an impairment to school funding resulting from a rise in property taxes, and thus the municipality is limited to consideration of future economic impairment on existing municipal services only, are not valid. "Only the most tortured and distorted reading of the Deannexation Statutes would lead to the conclusion that the economic impact upon schools within municipal boundaries is not a proper subject to be included in the deliberations".*
- h. *The Deannexation Statute has been held to provide that a Planning Board... has wide discretion and latitude to consider numerous relevant factors to determine if an injury, be it social or economic in nature, will be inflicted on the balance of the*

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<sup>31</sup> The "arbitrary or unreasonable" prong of the Deannexation test is limited to a decision of a governing body to deny deannexation. It is therefore of no moment to the Planning Board's deliberations. Only the second and third prong of the Deannexation test is therefore relevant in this matter.

<sup>32</sup> *Emphasis added by the Court*



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*municipality in the event that deannexation occurs, so long as there is enough evidence in the record to support conclusions as to those factors.*

- i. *The fact that Strathmere is not geographically contiguous to Upper Township, though relevant, was not a basis to overcome the Township's decision to deny deannexation. As with Avalon Manor, the Strathmere Court found that, while geographically non-contiguous with the balance of its host municipality, the upscale residential community of Strathmere nevertheless provided significant social and economic value to the Township.*
- j. *The inclusion of a coastal community in a municipality consisting of land that otherwise does not border the coast is of significant social prestige and pride. If Strathmere were to deannex, the Township would lose a unique upscale residential community, which provides free beaches, and free street parking adjacent to those beaches.*
- k. *Citing Ryan, the Court found that the negative social impact on the Township in losing an upscale, affluent community is "not an inconsiderable factor in determining whether social detriment would result from deannexation, nor can it be lightly dismissed as mere 'snob appeal' and thus unworthy of consideration".*
- l. *Significant injury to the well-being of a municipality is permitted to outweigh a detriment to the economic and social well-being of those seeking deannexation.*

H. *Bay Beach Way Realignment Committee, L.L.C. v. Toms River*<sup>33</sup>

1. In 2006, the Bay Beach Way Realignment Committee, consisting of 21 registered voters of Toms River Township owning 60 lots on Bay Beach Way ~ a dead-ended, private thoroughfare located in the barrier island section of that municipality ~ filed a petition for deannexation from Toms River with the intention of annexing to the Borough of Lavallette.

Bay Beach Way is located between two lagoons and is adjacent to the northwestern border of the Borough of Lavallette. At time of Petition, two Bay Beach Way tax lots

<sup>33</sup> Docket No. A-5733-07T1 (N.J. Super. 7/9/2009 (N.J. Super., 2009) ("Bay Beach Way")



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were vacant parcels owned by a private beach club for use by the residents of the area. The remaining 58 Bay Beach Way lots were developed with single family residential homes having a typical lot size of approximately 4,000 s.f., with 40' of lot frontage. There were no vacant residential lots available for additional development.

At time of Petition, the existing municipal boundary line separating Toms River from Lavallette was along the lagoon to the south of Bay Beach Way. The proposed deannexation petition sought to relocate the boundary line so that it was along the lagoon on the northerly side of Bay Beach Way.

2. After the deannexation petition was submitted to the Township Council, it was referred to the Toms River Planning Board, which conducted two public hearings on the matter. Petitioners testified (in no particular order):
  - a. Bay Beach Way is a private road consisting of 9 acres or approximately 0.0003% of the Township's 26,590.25 acres.
  - b. There was an approximately one block of separation between Bay Beach Way and neighboring Lavallette.
  - c. During a February 2003 snowstorm, Bay Beach Way was not plowed, the residents lost cable and power and were snowed in for 3 days. Conversely, the streets in Lavallette had been plowed and Petitioners could see cars traveling the streets from their homes. Lavallette eventually plowed Bay Beach Way.<sup>34</sup>
  - d. Because their mailing address is Lavallette, they often have difficulty using facilities in Toms River, including Toms River's recreation and recycling facilities.
  - e. Petitioners use the post office in Lavallette, and that is how they are identified on their driver's license and in the telephone directory.

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<sup>34</sup> Petitioners testified that it was this event which prompted the desire to deannex from the Township and annex to Lavallette.



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- f. There had been ongoing difficulties and irregularities as to Township garbage service to Bay Beach Way in the summer, including late pickups, missed collection days, spilled garbage cans, and attendant odors and bird problems.
  - g. The water and electric service providers for Bay Beach Way also service Lavallette, and are different from those servicing mainland Toms River.
  - h. The cable provider for Toms River is Comcast while Bay Beach Way and Lavallette have Cablevision. As a result, the local public access informational television station in Bay Beach Way broadcasts Lavallette's public meetings.
  - i. Generally, the residents of Bay Beach Way look to adjoining Lavallette as the focus of their community interests and activities rather than the mainland of Toms River. Although they utilize some mainland-based services, Petitioners routinely use facilities in Lavallette for everyday services, including barber shops, automobile servicing, banking, convenience stores and Places of Worship.
  - j. Petitioners indicated that they were "very involved" in Lavallette community activities because of their proximity to the Borough. Several attend Lavallette's Heritage Days and watch the fireworks on Fourth of July from that municipality. They do not play any meaningful part in the Toms River Little League, the CYO, Holy Name Society, or other comparable religious and social organizations that are based on the mainland.
  - k. Moving the municipal boundary line to the north side of the lagoon would be logical because Bay Beach Way residents can't leave their street without going through Lavallette.
3. The Toms River Tax Assessor indicated (in no particular order):
- a. If deannexation were granted, Toms River's tax loss for 2006 would have been \$302,885, representing taxes paid on the 60 Bay Beach Way properties.
  - b. If the Township were to elect to recoup such \$302,885 *solely* by increasing taxes, the 2006 tax rate would range from 3.158 to 3.160 per \$100 of assessed value; reflecting an increase of two-tenths of one cent.



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- c. If the \$302,885 revenue shortfall as a result of deannexation were to have been evenly divided among the remaining 41,133 Toms River properties, the resultant tax increase would be \$7.374 per property.
- d. The change in the tax rate of two-tenths of one cent when applied to the average assessed value of a single-family residence in Toms River for the year 2006 would result in an increase in taxes of \$2.78 per year on that home.
- e. In order to determine the tax implications for Bay Beach Way, it was necessary to equalize the values of the Toms River properties as if located in Lavallette. At the time, the Equalization Ratios for Toms River and Lavallette were 38% and 93% respectively. Applying these ratios to an example property:
  - A home assessed in Toms River at \$380,000 would have an equalization ratio of 38%. Thus, the home would have a true value of \$1 million and a tax payment of \$3.158 per \$100 of assessed value, resulting in a tax bill of \$12,000.
  - By comparison, the same \$1 million true value home assessed in accordance with the Lavallette equalized ratio of 93% would be assessed at \$930,000 and would be subject to the Lavallette tax of 75.4 cents per \$100, resulting in a tax bill of \$7,012. Thus the tax differential would be \$4,988.

By applying this formula to Bay Beach Way it was possible to determine that each resident would realize an annual tax savings of approximately \$2,600 to \$2,700 if annexation to Lavallette were permitted.

4. The Toms River Township Planner testified that:
  - a. The municipal tax revenue generated by Bay Beach Way (\$302,885) is relatively small in percentage (1.01%) when compared to the overall municipal tax revenue generated in the Township (\$29,902,971). He noted however, that "they are, nonetheless, significant amounts of money..."
  - b. The proposed new boundary line is no more appropriate than the existing boundary line.



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- c. The only perceived benefits of deannexation would be to the affected property owners through lower taxes and to Lavallette through increased revenue with little apparent cost impact.
  - d. Moving Bay Beach Way into Lavallette would not result in the reduction of expenses to any great degree in Toms River; there would be no fewer police and the same number of garbage trucks would be required. There would be no corresponding loss of expenses incurred by the Township to offset the loss of revenues.
  - e. Losing the 60 parcels of Bay Beach Way would not have a significant impact on the Toms River Master Plan or the ability of the Township to reach the goals and objectives of the Master Plan.
  - f. While the population of Toms River could potentially grow by 20% in the next 10 years, there was no growth potential for Bay Beach Way because it was fully developed.
5. In its Impact Report, the Planning Board made 23 determinations, all of which militated against deannexation. In summary:
- a. The Board's chief findings were that deannexation would cause "significant injury" to the Township due to:
    - the loss of taxes with little or no reduction in the cost of services;
    - the loss of over \$12,000,000 in ratables; and
    - the likelihood of losing increased ratables and increased tax revenues.
- The Board concluded that such economic losses "even when taken in consideration as a small percentage of the total tax revenues generated in Toms River Township," were not de minimis.
- b. The report noted that Petitioners would realize significant tax savings by becoming taxpayers of Lavallette, "a factor which raised the spectre of tax shopping and tax



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avoidance," and that Petitioners' testimony that they were pursuing the petition for their social well-being was "belied by the fact that the Petitioners already participate[d] in almost all of the social activities" to which they testified.

- c. The report concluded that the Township provided "adequate public services" including emergency public services to Bay Beach Way, and that the fire and first aid protection provided by Toms River were "sufficient to protect the public health, safety and welfare along Bay Beach Way."
- d. The report indicated that the community surveys utilized by Petitioners were "suggestive in nature by calling for the respondents to indicate establishment in Lavallette," and that "all the surveys show[ed was] that the residents of the barrier island frequented establishments without regard to the jurisdictional lines of the municipalities along the barrier island." The Board noted that the civic and social activities engaged by Petitioners:
  - were "closely tied with the community nature of the barrier island taken as a whole, not necessarily solely within Lavallette";
  - there was no measurable difference between Bay Beach Way and any of the other properties or areas to the north of Bay Beach Way; and
  - "there was nothing to distinguish Bay Beach Way from the other streets in the [barrier island section of Toms River]".
- e. The Board concluded that Petitioners had not satisfied their burden to establish that failure to consent to deannexation would be detrimental to the economic and social well-being of the majority of Bay Beach Way residents, and that deannexation would not cause significant injury to the Township's well-being. The Board concluded by recommending that Township Council refuse consent to Petitioners' request for deannexation.

Thereafter, the Toms River governing body held public hearings on the matter, at the conclusion of which it unanimously adopted a Resolution denying its consent to deannexation. In so doing, the governing body concluded that deannexation would result in a loss of revenue with no savings, and that Petitioners had not demonstrated that deannexation would be in the best interests of Toms River. Petitioners filed suit.



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6. Superior (Trial) Court

The issue before the Court was whether the refusal of the Township to consent to the deannexation, although an exercise of its discretion, was reasonable under the circumstances. Moreover, the Court was asked to determine whether Petitioners had established that Toms River's refusal to consent to the deannexation was detrimental to the economic and social well-being to a majority of the residents of Bay Beach Way, and that deannexation will not cause a significant injury to the well-being of Toms River Township. In rendering its decision, the Trial Court found:

- a. The geographic and demographic features of Bay Beach Way were legitimate considerations, and that it was "fair to conclude that Bay Beach Way is essentially isolated from the Township's mainland".
- b. There was no evidence that Bay Beach Way had any recreational, commercial or other social amenities available to or utilized by other residents of Toms River.
- c. Bay Beach Way residents more closely associated and identified with Lavallette than with Toms River.
- d. Bay Beach Way was fully developed and that the only access to it was through Lavallette.
- e. Toms River would not incur any loss of recreation areas, historic sites, open space or other amenities available or utilized by other Township residents.
- f. Bay Beach Way represents 0.00375% of the Toms River ratable base.
- g. Toms River would lose \$12 million in ratables, which translates to approximately \$300,000 in tax revenue with no reduction in the cost of municipal services.<sup>35</sup>

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<sup>35</sup> Although Toms River provides municipal services such as garbage collection, snow plowing and road maintenance to Bay Beach Way, it maintains that discontinuing services will not result in any savings to the municipality.



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- h. Based upon lack of interaction between the Township and the residents of Bay Beach Way and social identification which was addressed during the hearings, sufficient evidence had been presented for the Trial Judge to find that the petition was for reasons more than "tax shopping".

For those and other reasons set forth in its opinion, the Court found that the decision by the Township in its refusal to consent to the petition for deannexation was unreasonable. The Township appealed.

7. Appellate Division

The Appellate Division was satisfied that there was sufficient credible evidence in the record to support the Trial Court's decision and affirmed its rulings.

8. Supreme Court

The Township appealed to the New Jersey Supreme Court, which denied certiorari.

8. Relevance to South Seaside Park Petition

As with Strathmere, the issues in Bay Beach Way are similar ~ if not equivalent ~ to those under review by the Berkeley Township Planning Board in this instant matter. As such, the following findings from Bay Beach Way may be instructive:

- a. *The Court was cognizant of the Ryan finding that the Deannexation Statute advances a legislative policy in favor of the preservation of municipal boundaries and against such frivolous considerations as "tax shopping".*
- b. *Noting the geographic similarities between Bay Beach Way and West Point Island<sup>36</sup> and the testimony of Toms River's Planner, the Court could not find that deannexation will cause a significant injury to the well-being of the Township.*

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<sup>36</sup> West Point Island is on the other side of Barnegat Bay, isolated from the schools as well as the governmental, business and shopping areas of Dover [now Toms River] Township.



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- c. *While conceding that roughly \$300,000 in tax revenues constituted an economic loss to the Township, the Court focused on whether the Township's conclusion that the loss of this sum constituted "significant injury" and was "reasonable based upon facts established in the record". Within this context, the Court opined that the loss of approximately \$12 million of Plaintiff's ratables needed to be evaluated against the Township's total ratable base of approximately \$6.3 billion, and found it unreasonable for the Township to conclude the loss of Bay Beach Way revenues would cause significant injury to the well-being of Toms River, particularly in view of the Township Planner's projection of a 20% population growth in Toms River over the [then] next 10 years". Contrary to the decision in Avalon Manor, the Court apparently found that \$12 million was too small a percentage when compared to the overall tax revenue generated by the Township to be meaningful.*
- d. *In recognizing the need to insure that the Bay Beach Way Petition was "more than just 'tax shopping', which is a disfavored basis for deannexation under the current legislative scheme and case law", the Court looked to "several factors, unique to Bay Beach Way and its residents", that mitigated against the finding that this case was "motivated solely by 'tax shopping'." [emphasis added]*

*Specifically, the Court held that the geographic and social isolation of Bay Beach Way from Toms River, the physical and social connections of Bay Beach Way to Lavallette and the testimony that the daily routines of the Petitioners for social, business, recreational and religious activities were aligned with Lavallette, collectively supported the assertion that while Bay Beach Way residents would see a tax savings via deannexation, taxation was not the only basis for the Petition.<sup>37</sup>*

- e. *The fact that several other Toms River barrier island neighborhoods (e.g. Ortley Beach, Monterey Beach, etc.) faced similar conditions as Bay Beach Way did not move the Court. Conceding that this may be the case, the Court ~ without*

<sup>37</sup> The Court appeared moved by the fact that Bay Beach Way residents have a Lavallette mailing address and driver's license and share the same cable, water and electric providers as those who reside in Lavallette. Additionally, the Court seemed to find the fact that Bay Beach Way residents received broadcasts of Lavallette's public meetings rather than those of Toms River to be particularly compelling.



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*providing a detailed explanation for its findings ~ stated that the factors cited "demonstrate more than just a subjective sense of community and identification with Lavallette that was expressed during the testimony of petitioners".*

- f. *The Township's finding that its municipal services (police, sanitation, emergency personnel) adequately served Bay Beach Way was not recognized by the Court as "a valid reason to deny consent to a deannexation petition".*
  
- g. *The Township's finding that deannexation would not change the civic and social interactions of Bay Beach Way residents from those that existed absent deannexation was accepted by the Court. However, the Court tied Petitioners' interactions with Lavallette ~ and not Toms River ~ to whether or not such interactions were injurious to the Township or the Petitioners.*

*In assessing whether or not deannexation would injure the "meaningful interaction of Bay Beach Way with other members of the Toms River community, as well as Bay Beach Way's participation in the 'religious, civic, cultural, charitable and intellectual activities of Toms River', the Court Found "no evidence that the deannexation of Bay Beach Way would occasion such detriment which, in the context of the present statute, would cause a 'significant injury to the well-being of the municipality'".*

*Conversely, noting that Bay Beach Way residents could not join the Lavallette Heritage Committee or its auxiliary first-aid squad because they were not Lavallette residents, the Court found that Toms River's refusal to consent to deannexation was a detriment to Petitioners' social well-being.*

## **2.3 PLANNING BOARD'S RESPONSIBILITIES**

- 2.3.1 As required by the *Deannexation Statute* and relevant case law, the Planning Board must, in its evaluation of the impacts of deannexation, determine whether the Petitioners have sustained their burden of proof in evidencing that:



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- A. Refusal to consent to deannexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; **AND**
- B. Deannexation will not cause a significant injury to the well-being of Berkeley Township.

***A and B are conjunctive, meaning both must be met for deannexation to be affirmed.***<sup>38</sup>

The Planning Board need not consider the third prong of Petitioners' burden ~ whether any refusal to consent to deannexation was arbitrary and unreasonable. That decision will be made by the Township Council and is therefore not within the province of the Board.

Any assertions of arbitrary and unreasonable actions by the Board during the hearing process ~ to the extent any are made ~ will be addressed by a Court of competent jurisdiction should Petitioners elect to proceed with such an action.

2.3.2 In evaluating the impact of deannexation upon both South Seaside Park and the Township, case law points to the following factors as potentially relevant areas of investigation:

- A. Any substantial social injury or detriment that might be found in the community being deprived of Petitioners' participation in religious, civic, cultural, charitable and intellectual activities, their meaningful interaction with other members of the community, or their contribution to the Township's prestige and social standing and/or the part they play in the general scheme of social diversity; and conceivably, the wholesome effect their presence has on racial integration.
- B. Any long term or short term economic impacts, such as loss of ratables, impacts upon local, school or other taxes of the municipality and the deannexing areas, including the cost or savings in providing municipal services and what types of municipal services have been provided to date.
- C. The impact upon emergency services and equipment, including the cost of providing same and the need to provide same in the future.

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<sup>38</sup> D'Anastasio



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- D. The impact upon recreational and school facilities in both the municipality and deannexation area.
- E. An analysis of the tax assessments of the relevant land, including the total tax assessment of the municipality as it relates to the affected lands and the total area of the municipality as it relates to the affected lands.
- F. Zoning and planning implications for the municipality.
- G. Population, demographics and geographic matters.

Significantly, the Court recognized that the foregoing is not intended to be an exhaustive list, "*for in the final analysis the governing body... will have to bring to bear their own knowledge, experience and perceptions in determining what, in the context of deannexation, would inflict social injury upon the well-being of a community.*" The Court further recognized that the foregoing "*are, of course, values which undergo change with the times and are accorded different weight depending in part on the composition of the community and its governing body... [I]n listing them, we are recognizing only some of the appropriate considerations*".<sup>39</sup>

2.3.3 The Courts have held that the *Deannexation Statute* is intended to give precedence to the policy of preservation of municipal boundaries and the maintenance of their integrity against challenges prompted by short term or even frivolous considerations such as tax or zone shopping.

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<sup>39</sup> Ryan



## **3.0 SYNOPSIS OF PROCEEDINGS**

The following is a synopsis of the proceedings, testimony and exhibits presented to the Planning Board. Issues are organized by subject matter. Specific examples of notable testimony, data and exhibits are footnoted or otherwise cited. Transcripts and exhibits are on file with the Planning Board Secretary.

Where appropriate, information and testimony have been combined for brevity or separated to provide necessary detail. Issues are organized by subject matter and, as closely as possible, reflect the order in which they were introduced by Petitioners. Certain testimony or data may be repeated where relevant to multiple issues. *Readers should attach no importance on the order in which information is presented in this Report of Findings.*

After introducing the Petition and relating historical background to and geographic context of South Seaside Park, testimony was provided by:

### **3.0.1 PETITIONERS**

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

### **3.0.2 NON-PETITIONER SUPPORTER OF DEANNEXATION**

Robert Cardwell of Seaside Park, NJ

### **3.0.3 PETITIONERS' PROFESSIONALS**

Scott Bauman, P.P. AICP  
Kenneth Moore, CPA, RMA, CMFO, CFP  
Barbara Allen Woolley-Dillon, P.P., AICP<sup>40</sup>

### **3.0.4 TOWNSHIP STAFF AND PROFESSIONALS**

Police Chief (and Emergency Management Coordinator) Karin DiMichele

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<sup>40</sup> Due to health issues, Mr. Bauman was not available to address items raised in the Township's response to his testimony. Accordingly, Petitioners engaged Mrs. Barbara Allen Woolley-Dillon in his stead.

To the extent possible, this Report of Findings limits the discussion of Mrs. Woolley-Dillon's testimony to rebuttal comments that do not reiterate the testimony of Mr. Bauman.



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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 Yurcisin, 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  
Fredrick C. Ebenau, CMFO, Township Chief Financial Officer/Treasurer (and Assistant Administrator)  
John Camera, Township Administrator

**3.05 MEMBERS OF THE GENERAL PUBLIC**

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<sup>41</sup>  
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<sup>42</sup>  
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

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<sup>41</sup> Cannot recall if she signed the Petition.

<sup>42</sup> Signed the Petition



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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



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**3.1 HISTORICAL CONTEXT: SOUTH SEASIDE PARK AS PART OF SEASIDE PARK<sup>43</sup>**

Berkeley Township was incorporated in 1875 when it separated (deannexed) from [then] Dover Township [now Toms River Township]. Since that time, there have been 13 cases of deannexation from Berkeley, including the Borough of Seaside Park in 1898.

In the 1970s, South Seaside Park *successfully petitioned to deannex* from Berkeley Township, only to be *denied annexation* by neighboring Seaside Park (the municipality to which it wanted to join). South Seaside Park remains a part of Berkeley Township.

**3.1.1 PETITIONERS' TESTIMONY**

A. Lifelong South Seaside Park resident and Petitioner Donald Whiteman testified that South Seaside Park has historically been viewed as being part of Seaside Park and not Berkeley Township.

According to Mr. Whiteman, local lore holds that South Seaside Park was intended to be part of Seaside Park when it deannexed from the Township in 1898, but a boundary error on the official mapping resulted in South Seaside Park remaining in Berkeley. Mr. Whiteman submitted Exhibit A-3<sup>44</sup> as evidence that the area from North Avenue, “*which was first formed in... 1898, was supposed to continue all the way down to 24<sup>th</sup> Avenue*”, and that “*...a long time ago, the peninsula all the way from Manasquan Inlet to the end of what is today Island Beach State Park was known as the Island Beach Island*”.

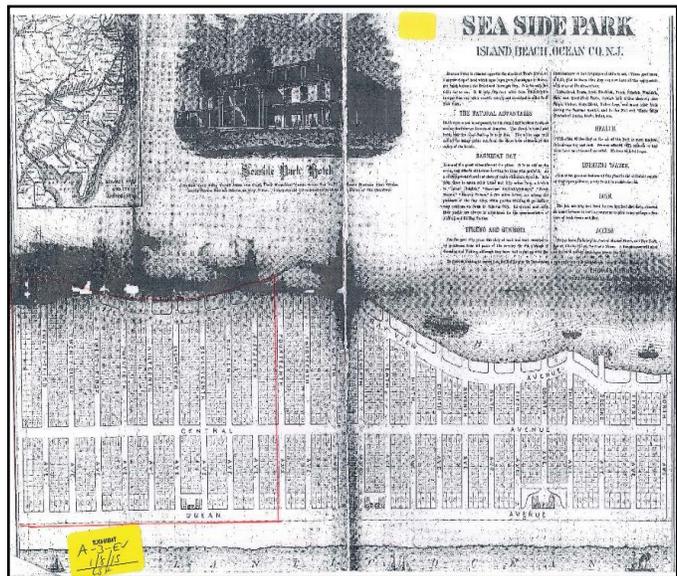


Exhibit A-3

<sup>43</sup> Testimony of Petitioner Donald Whiteman, Petitioners’ Planner Scott Bauman & Bauman (p. 6)

<sup>44</sup> Map purportedly from Rutgers University archives (c. 1916 or 1918) [Mapmaker.Rutgers.edu]. *The text on this Exhibit is unreadable.*



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**3.1.2 ISSUES RAISED DURING CROSS- EXAMINATION**

- A. It was revealed that Exhibit A-3 did not actually indicate that the area that is now South Seaside Park was *intended* to be part of Seaside Park, but rather supported stories told to Mr. Whiteman “*by the old timers who lived there back in the '30s*”.<sup>45</sup> In fact, Mr. Whiteman clarified that he “*made that supposition and thought [that South Seaside Park was supposed to be part of Seaside Park] based upon this map because it says Seaside Park on it*”. And while he thought that meant that the entire area depicted on Exhibit A-3 was supposed to be Seaside Park, the map was the only basis he had to support that theory.
- B. It was further revealed that Exhibit A-3 is actually a Real Estate marketing map.

**3.1.3 TOWNSHIP RESPONSE**

The Township did not address this testimony.

**3.1.4 ANALYSIS**

ARH has nothing to add to this issue.

**3.1.5 FINDINGS**

How Berkeley Township, South Seaside Park and Seaside Park evolved into their current geometry is of no moment to this deannexation analysis.

While this Report of Findings concedes that there is a considerable distance between South Seaside Park and Mainland Berkeley Township, and that Seaside Park is contiguous to South Seaside Park, neither the Deannexation Statute nor Case Law recognize distance, in-and-of-itself, as a valid reason to grant deannexation.

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<sup>45</sup> Testimony on January 8, 2015

*it was always told to us that it was a boundary mistake when it came to the drawing up of lines.*



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### **3.2 DISTANCE FROM MAINLAND BERKELEY TOWNSHIP / PROXIMITY TO SEASIDE PARK**

Petitioners contend that the distance between South Seaside Park and Mainland Berkeley Township has a direct bearing on the conditions that caused them to file the Petition. While individual conditions are addressed elsewhere in this Report of Findings, the following is presented as background to these analyses.

#### **3.2.1 PETITIONERS' TESTIMONY**

A. Petitioner Donald Whiteman submitted a number of photographs looking across Barnegat Bay from South Seaside Park to illustrate what Petitioners believe is the close (physical) proximity between Seaside Park and Mainland Berkeley Township. According to Mr. Whiteman, “...the distance that we travel by car is 16 miles. But the distance across the Bay is anywhere from 2.3, 2.4 miles up to 2.8 miles”.<sup>46</sup>



*Excerpts from Exhibit A-37*

<sup>46</sup> Mr. Whiteman testified on June 4, 2015 that he was able to determine this distance because, in 1977, he drove his pickup truck from South Seaside Park across the [then] frozen Barnegat Bay.



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Conversely, Mr. Whiteman testified to the proximity of Seaside Park, which, being contiguous, is clearly closer to South Seaside Park than is Mainland Berkeley Township.

- B. Related to distance, Mr. Whiteman testified that to travel from South Seaside Park to the Township’s Mainland facilities, one must travel through Seaside Park, Seaside Heights, Toms River, Island Heights, South Toms River, Beachwood and Pine Beach.<sup>47</sup> Depending on your destination, one must travel through other municipalities as well.
- C. Mr. Whiteman submitted Exhibit A-1, Exhibit A-2 and Exhibit A-4 to demonstrate relative distances and drive times from South Seaside Park to various locations on Mainland Berkeley Township vs. distances and times to (select) similar facilities in Seaside Park. Specifically:<sup>48</sup>
1. The distance from 23<sup>rd</sup> Avenue in South Seaside Park to the Berkeley Township Municipal Building / Police Headquarters was calculated at 16.2 miles. On a Sunday afternoon in March, this distance<sup>49</sup> translated to a 31-minute drive.

The time it takes to drive such a distance expands to 45 minutes in the tourist season. Accordingly, it may take an hour to 90 minutes of travel time (round-trip) to attend a Township meeting that may only last a half hour.

Conversely, South Seaside Park residents can ride their bicycles to a municipal meeting in Seaside Park.

When queried about the possibility of utilizing different (quicker) routes, testimony was provided that local traffic might make a 35-minute drive “*as much as 45, 50 minutes*”, especially in the tourist season.

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<sup>47</sup> Mr. Whiteman testified on January 8, 2015 that there is “*probably... 4 ways, 5 ways to get to this section of town*”, but he has found “*that this is probably the quickest way to go to the different areas where we go for... the places that we have to go to in Berkeley Township*”.

<sup>48</sup> While the Petitioners’ Planner cited slightly different distances and times (Bauman Amended Report: p. 14 of 15), such differences are considered immaterial for the purposes of this Report of Findings, which accepts the general premise that Mainland facilities are distant from South Seaside Park.

<sup>49</sup> 23<sup>rd</sup> Avenue to N.J.S.H. 37 to the Garden State Parkway to Double Trouble Road.



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2. Children from South Seaside Park attend Berkeley Township Public Schools. Distances and drive times from South Seaside Park to these schools were reported on Exhibit A-4 as:

- H & M Potter Elementary School (Kindergarten – 4<sup>th</sup> grade): 60 Veeder Lane, Bayville. 14.1 miles / 26½ minute drive.
- Bayville Elementary School (Pre-K – 4<sup>th</sup> grade): 356 Atlantic City Boulevard, Bayville. 13.8 miles / 25 minute drive from South Seaside Park.
- Clara B. Worth Elementary School (Pre-K – 4<sup>th</sup> grade): 57 Central Parkway, Bayville. 16.3 miles / just under 31½ minute drive.
- Berkeley Township Elementary School (5<sup>th</sup> & 6<sup>th</sup> grades): 10 Emory Road, Bayville. 15.7 miles / just over 28½ minute drive.
- Central Regional Middle School (7<sup>th</sup> & 8<sup>th</sup> grades): 509 Forrest Hills Parkway, Bayville. [15.7 miles / 27 minute drive.<sup>50</sup>]
- Central Regional High School: 509 Forest Hills Parkway, Bayville. [15.7 miles / 27 minute drive.<sup>50</sup>]
- The Ocean County Vocational Technical School: Facilities are located in Brick Township, Little Egg Harbor Township, Jackson Township, Lakehurst, Borough, Manahawkin (Stafford Township), Toms River Township and Waretown (Ocean Township), but not in South Seaside Park, the Barrier Island or Berkeley Township.

Alternatively, children from Seaside Park attend school at the Washington Street Elementary School in Toms River.<sup>51</sup> Students from Mainland Berkeley Township, South Seaside Park and Seaside Park attend the Central Regional Middle and High Schools.

Petitioners assert that if deannexation were granted, children who now ride the school bus for 55 minutes to attend Berkeley Schools, a time that Petitioner Donald Whiteman felt was too long, would only be required to travel 7.1 miles to the Washington Street Elementary School. Mr. Whiteman indicated this distance to be a 12 minute trip (point-to-point travel in a personally-owned vehicle).<sup>52</sup>

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<sup>50</sup> Not included in Exhibit A-4. Inserted by ARH Associates based on MapQuest search on August 6, 2018.

<sup>51</sup> While residents do have the option to send their children to school in Lavallette, such attendance would require the payment of tuition. For non-tuition purposes, Seaside Park children attend elementary school in Toms River.

<sup>52</sup> The school bus travel time from South Seaside Park to the Washington Street School, with all the stops required to pick up children, was not addressed.



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3. Mr. Whiteman reported distances and drive times from South Seaside Park to select other Township points of interest as:

- Berkeley Township Sewage Authority: 13.5 miles / just over 24½ minutes.
- Berkeley Township Public Works facility: 16.2 miles / 31 minutes.
- Berkeley Recreation Center: 14.8 miles / just over 28½ minutes.
- Berkeley Township Branch of the Ocean County Library System: 16.2 miles / just under 31½ minutes.
- Berkeley Soccer Fields: 14 miles / 26 minutes.
- Veterans Park and Golf Course: 15.2 miles / 30 minutes.

D. In addition to the distance-related Social Injury addressed in §3.5.1 of this Report of Findings, Petitioners assert that such distances contribute to a sense of isolation they feel from the Mainland section(s) of the Township. Petitioner Katherine Fulcomer Testified that South Seaside Park “*is very far away from Bayville*” [presumably meaning Mainland Berkeley Township] and that she “*just [doesn’t] go to Bayville*”.<sup>53</sup>

E. Impact of Distance

1. In addition to the impacts of distance discussed elsewhere in this Report of Findings:

- a. Mr. Whiteman testified that the distance from South Seaside Park to the various Berkeley Township schools resulted in a 55-minute school bus ride time ~ which was “too long”.
- b. Petitioners’ sense of isolation caused by the distance from South Seaside Park to Mainland Berkeley Township was given voice by Mrs. Fulcomer and Mrs. Janet Shalayda.

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<sup>53</sup> Testimony on April 2, 2015:

*I don't dine there. When I say I don't go, I don't go there to dine. I don't go to Bayville to recreate. I don't go to Bayville to shop. I don't go to Bayville to church either. Because it is a... distance. And my home, my orientation, my identity, my preference, is to be in South Seaside Park and the area of Seaside Park.*

*When I go to council meetings, sometimes it's said... oh, yeah, we're going to go over there. It's almost like a pilgrimage... It's a long way for many people to come to our side of the bay. And it's not... like your neighborhood. It's outside your neighborhood.*



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- (1) Mrs. Fulcomer testified that South Seaside Park “is very far away from Bayville”<sup>54</sup> and that she “just [doesn’t] go to Bayville”.<sup>55</sup>
- (2) Mrs. Shalayda testified<sup>56</sup> that she had been on the Board of Education in Franklin Township for many years and “really enjoyed the interaction”. Since retiring, she stated that she would like to participate in her community, but is unable to do so due to the distance from South Seaside Park to the Mainland.

**3.2.2 ISSUES RAISED DURING CROSS-EXAMINATION**

- A. When queried as to how long he has lived in South Seaside Park and how it was that the distances he described as being problematic are only now becoming a source of complaint, Mr. Whiteman was less than responsive.<sup>57</sup>
- B. When asked to quantify how often she ventures to Mainland Berkeley Township, Mrs. Fulcomer stated<sup>58</sup> that she comes “very frequently” to attend Township Council meetings. In fact, “up until these last 2 months, ... she attended Council meetings “almost on a monthly basis”.

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<sup>54</sup> presumably meaning Mainland Berkeley Township.

<sup>55</sup> Testimony on April 2, 2015

<sup>56</sup> Testimony on May 7, 2015

<sup>57</sup> Testimony on January 8, 2015:

*QUESTION: Didn't it take you the same time amount to travel when you decided to buy your house there?*

*RESPONSE: That's why I'm here today to say to you, it shouldn't have to be like that.*

*QUESTION: Well, then you can buy a house 2 miles down the road. Then you can come here on your bike. I mean, ... somebody else that lives on the far side of the Township over there, they have trouble getting over to your side of the bridge.*

*RESPONSE: Uh-hum. I just know that I do like going to the council meetings. And it is a very, very rough time... traveling...*

*BOARD COMMENT: Everybody can say that to all different parts of the county...*

*QUESTION: How long have you been doing this? I mean, did this just happen? How long have you been in South Seaside Park?*

*RESPONSE: My whole... just about my whole life.*

*QUESTION: Okay. And you just realized in 2015 that that was a long trip?*

*RESPONSE: No, I realized when my dad back in 1978 decided that this trip was too long.*

*QUESTION: But it's been 40 years since. And you've been doing this for 40 years. And now, why now you want to change?*

*RESPONSE: Great question. I look at my town. And the reason why I'm here, I look at my town and I see that my town roads are not cleaned. I see that in my town, we have snow removal that doesn't take place. I look at my town and I see a bay front that no one does and takes care of. I mean, when you...*

<sup>58</sup> Testimony on April 2, 2015



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C. Mrs. Fulcomer further testified that, as a member of the Berkeley Housing Authority, she attends Authority meetings on Frederick Street, which is on the Mainland.

Similarly, Mrs. Fulcomer’s husband James testified<sup>59</sup> that he was on the Berkeley Township Board of Education for (approximately) 4 years and that he served a term on the Township’s Zoning Board of Adjustment. Mr. Fulcomer’s testimony therefore confirmed that, as a resident of South Seaside Park, he was able to participate in the Township public life.

Upon redirected testimony, Mrs. Fulcomer testified that if she were active in politics in Seaside Park, attending governing body meetings in that municipality, whose facilities are “*a half a mile away*” from her home, would be more convenient.

**3.2.3 TESTIMONY FROM MEMBERS OF THE GENERAL PUBLIC<sup>60</sup>**

A. The distance / time factor to travel from South Seaside Park to Mainland Berkeley Township was reinforced via testimony by South Seaside Park Residents:

- Joann Pacifico, who testified that she too has “experienced all of the back and forth over the bridge after Sandy, trying to get things done with the engineering departments and see what I can do to make repairs to the home. It’s 40 minutes easy, plus tolls”;
- Carol Luciano, who testified that between 2013 and 2016, she “*spent a great deal of time making trips across the bridge, at a time of approximately 40 to 45 minutes each way... And, quite frankly, it’s too far when you have an issue that has to be dealt with*”, and
- Mary Ann Meneghin, who testified that “*...much of [her] activity is confined to the barrier island because [she has] difficulty getting around...*”

B. Mainland Berkeley Township resident Samuel Cammarato testified that “*towns that encompass a large land mass will always have sections that are remote geographically from other sections of that town*” and that “*this certainly is not unusual*”.

C. The Township did not address the “rebuttal” testimony of September 2018.

<sup>59</sup> Testimony on May 5, 2016 (Mr. Fulcomer testified that he did not sign the Petition)

<sup>60</sup> Testimony on September 6, 2018



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**3.2.4 TOWNSHIP RESPONSE**

- A. In addressing the issue of the distance (and time) required to travel from South Seaside Park to Mainland Berkeley, Mr. Stanley Slachetka, the Township's Planner recognized<sup>61</sup> that there is "a pretty significant distance" and "some travel time that is required" between South Seaside Park and the Mainland.

After noting that "other areas [of the Township] also have a reasonable travel distance", Mr. Slachetka commenced a discussion of what he termed "locational decision making" ~ i.e., why individuals make the choices they do ~ and specifically the tradeoffs that are made when deciding where to live. Factors such as access to community facilities, entertainment and amenities are weighed against cost of living, size and type of dwelling and travel times when making such decisions. Often, certain desires must be sacrificed to achieve other, more desirous goals.

- B. As relates to South Seaside Park, Mr. Slachetka referenced the testimony of several Petitioners regarding the importance they place on the quality of life they enjoy living in that setting and agreed that this location is unique in the Township.<sup>62</sup> But he also noted that living in South Seaside Park entails certain sacrifices<sup>63</sup> and requires a balancing of priorities.

*Travel distance, amenities, access to transit, these are all things that are part of the lexicon of our work as planners in terms of... understanding the locational decisions that people make. But fundamentally, the bottom line here is that it is a balance. And simply having that balance or needing to make that balance in of itself is a conscious... determination...*

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<sup>61</sup> Testimony on July 6, 2017

<sup>62</sup> Testimony on July 6, 2017:

*...there is no other place in Berkeley Township where you can live proximate to the Atlantic Ocean and that amenity. You certainly have opportunities... to live along the bayfront. But if I wanted to experience the ocean and be within walking distance and be also within walking distance of ... whatever amenities and shopping services that might be there, but have that kind of environment of being a New Jersey Shore environment, there is only one place and one place only in the Township of Berkeley that's available to you. And that is in South Seaside Park.*

<sup>63</sup> Testimony on July 6, 2017:

*...I'm getting the oceanfront housing or I'm living next to the ocean. I'm living in the place that I want to be living in and call home because of a variety of these different factors. But I'm making that sacrifice in terms of the travel time and access to other, physical access to other communities in the Township.*



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1. Mr. Slachetka additionally recognized<sup>61</sup> that other sections of the Township offer amenities that might lead people to make locational decisions (choices) that are different from Petitioners’:

*There's a very important locational determinant in Berkeley Township. And that is the senior communities. The senior communities themselves have amenities and a population and a culture and a physical environment that is very, very distinct and unique within Berkeley Township.*

*...And Berkeley, to its credit, within the confines of the community, has that, a substantial range of places in which, you know, people can live and work and socialize.*

and stated

*... there are other places in Berkeley Township and other places where people decide to live. And there are places where people want to be very close and proximate to community services and shopping and access to major highways. That's an important aspect of their decision making process, and they locate there.*

2. Mr. Slachetka concluded this portion of his testimony by noting:

*You cannot live in every place but you make a decision of those places, based on a variety of different factors.*

- C. Mainland Berkeley Township resident Samuel Cammarato further addressed the issue of “locational decision making” when he testified:<sup>64</sup>

*When the residents of South Seaside Park purchased their properties, they understood the amenities they would enjoy and the services our town would provide them are different than those offered on the Mainland. Also, due to the desirous location and remoteness of their properties afforded them, they still chose to purchase their properties in Berkeley Township. If the issues presented by those wishing secession was of such importance to them, my question is, why did these residents purchase their property in Berkeley Township?*

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<sup>64</sup> Testimony on September 6, 2018



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D. Township Administrator John Camera further recognized<sup>65</sup> that people have to travel distances to get to places and locational criteria makes sense for people to consider. “A lot” of Berkeley’s residents can’t walk or ride their bicycle to the Township building, and the fact that South Seaside Park residents are going to a park, playground, basketball court or tennis court in another municipality (i.e. Seaside park) “is... common practice”. “South Seaside Park residents could proudly come to Veterans Park and participate in things that are in their own municipality..., [although]... it's not right in South Seaside Park”.

*The truth of it is, almost everybody who participate[s] in our programs has to travel to them ... South Seaside Park happens to be the furthest travel distance.*

Additionally, Mr. Camera indicated that the Township website had been revamped and now allows various activities to be performed online. With the website updates, residents can now sign up for recreation programs and pay taxes online. “As the times have changed, there's a lot more you can do online now”. As a result, residents may be expected to travel to the Municipal Complex less often.

### **3.2.5 ANALYSIS**

#### **A. Distance**

1. During the course of the hearings, Planning Board members and Township officials recognized the distance and time required to travel from South Seaside Park to various locations on the Mainland ~ most notably the Township’s Municipal Complex on Pinewald-Keswick Road. While concurring that these issues exist, they noted that there are other sections of the Township that have similar issues. No statistics to support these comments were offered during the hearings.
2. Comparative MapQuest Route Planner searches conducted for this Report of Findings<sup>66</sup> measured the distance and time to travel from an address in the geographic center of

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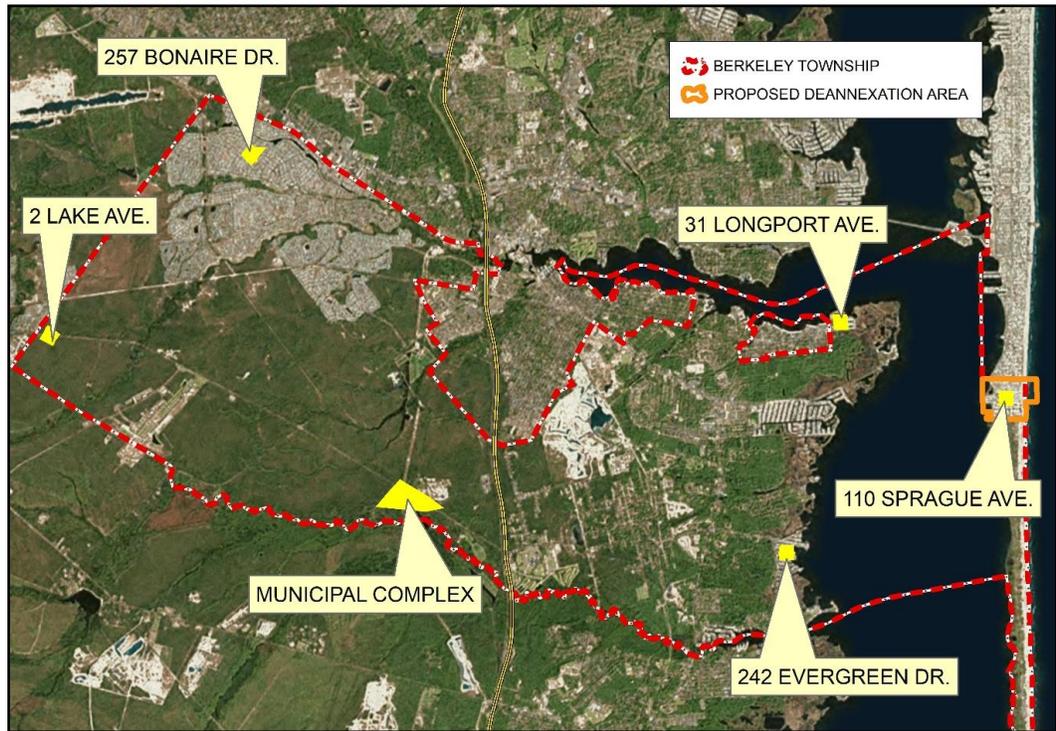
<sup>65</sup> Testimony on May 3, 2018

<sup>66</sup> Approximately 9:00 a.m. on August 1, 2017.

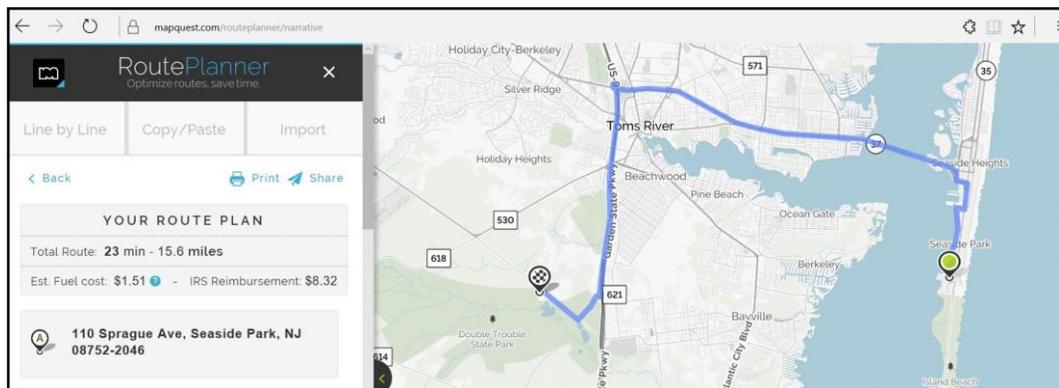


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South Seaside Park<sup>67</sup> to the Municipal Complex<sup>68</sup> against the distances and times to travel from random addresses in the northwest, southwest, northeast and southeast sections of the Township to the Township’s Municipal Complex.



*Report Graphic 10*



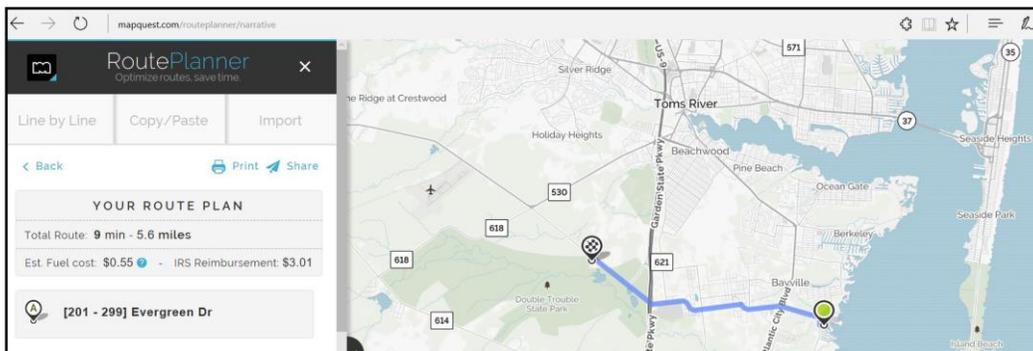
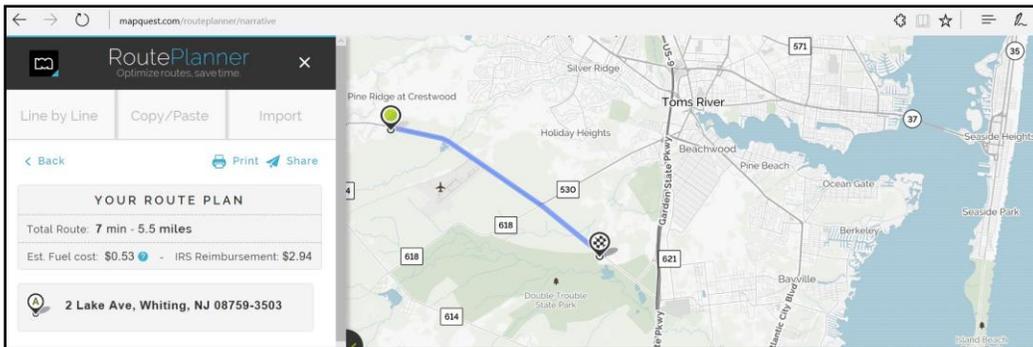
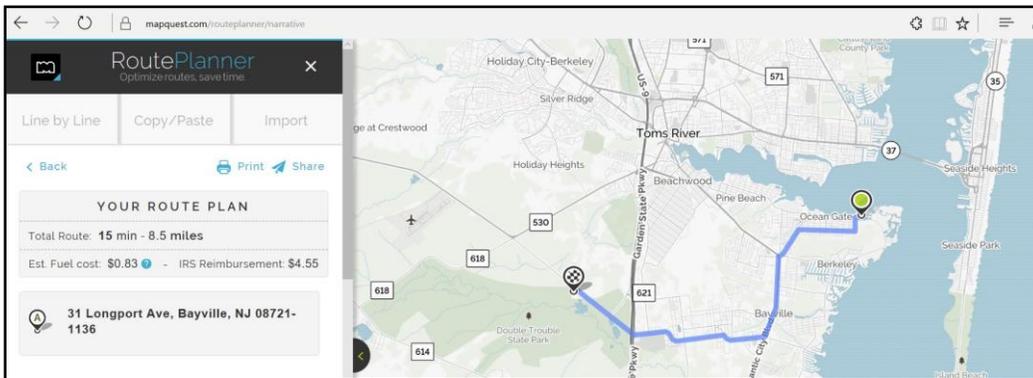
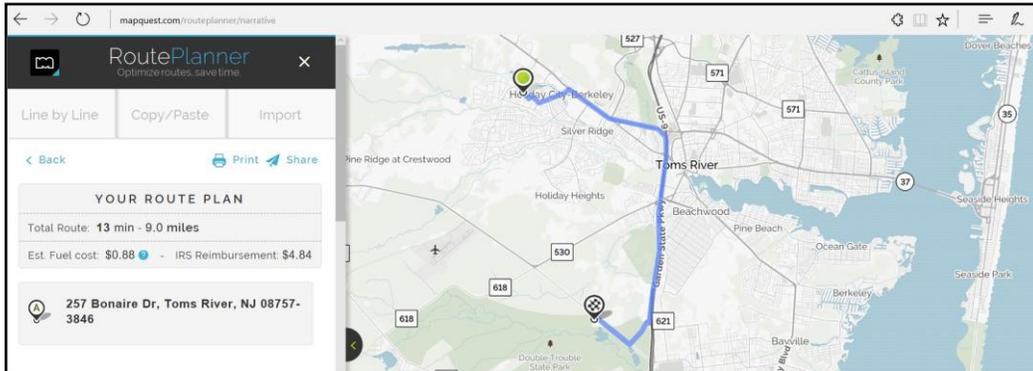
*Report Graphic 11*

<sup>67</sup> 110 Sprague Avenue.

<sup>68</sup> 627 Pinewald-Keswick Road, Bayville NJ 08721.



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| DISTANCE ANALYSIS                |                           |                    |
|----------------------------------|---------------------------|--------------------|
| Start                            | End                       | Miles              |
| 257 Bonaire Drive                | 627 Pinewald-Keswick Road | 9.0                |
| 31 Seaside Park Avenue           |                           | 8.5                |
| 2 Lake Avenue                    |                           | 5.5                |
| 242 Evergreen Drive              |                           | 5.6                |
| <b><i>110 Sprague Avenue</i></b> |                           | <b><i>15.6</i></b> |

| TIME ANALYSIS                    |                           |                  |
|----------------------------------|---------------------------|------------------|
| Start                            | End                       | Time             |
| 257 Bonaire Drive                | 627 Pinewald-Keswick Road | 13               |
| 31 Seaside Park Avenue           |                           | 15               |
| 2 Lake Avenue                    |                           | 7                |
| 242 Evergreen Drive              |                           | 9                |
| <b><i>110 Sprague Avenue</i></b> |                           | <b><i>23</i></b> |

*Report Table B*

Based on this analysis:

1. The ***distance*** from the Sprague Avenue address in South Seaside Park to the Township Municipal Complex is 6.6 miles (73.3%) further than from the next-further random address to the Municipal Complex.
  
2. The ***time*** from the Sprague Avenue address in South Seaside Park to the Township Municipal Complex is 8 minutes (53.3%) longer than from the next-further random address to the Municipal Complex.

B. Impact of Distance

1. Schools
  - a. The record contains no evidence to support Petitioners’ assertion that a 55-minute drive was indeed the case, and no evidence to indicate whether the 55 minutes was



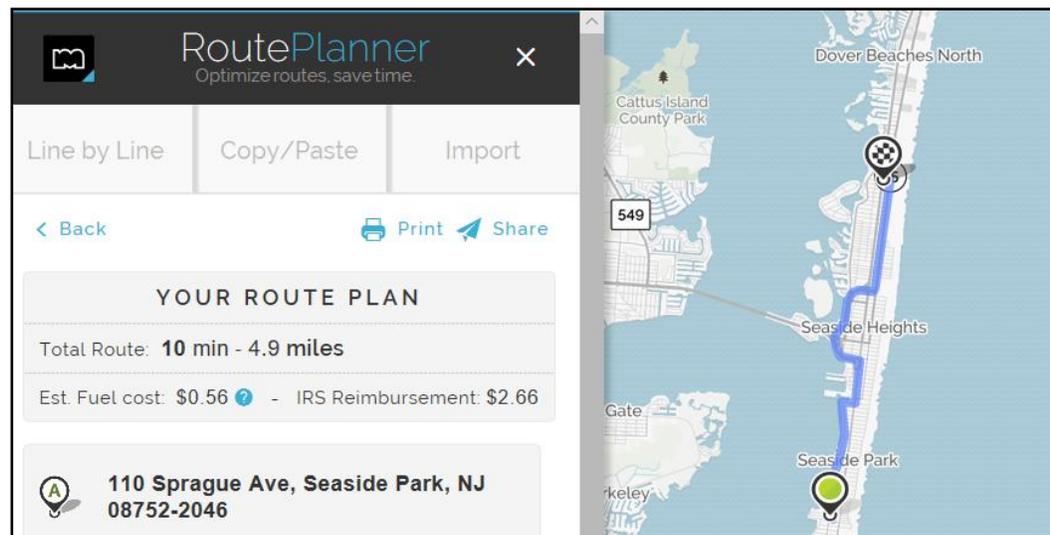
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the result of the distance between South Seaside Park and the various schools or the result of the stops the school buses make along the way.

- b. Should deannexation from Berkeley Township and annexation to Seaside Park occur, South Seaside Park will become part of the Seaside Park School System.

Seaside Park has no schools within the municipality. Since September 2016, Elementary grade students from Seaside Park have been able to attend, under a sending / receiving agreement with Lavallette and Toms River,<sup>69</sup> either the:

- 1. Lavallette Elementary School: 105 Brooklyn Avenue, Lavallette ~ 4.9 miles / 10 minutes from South Seaside Park.



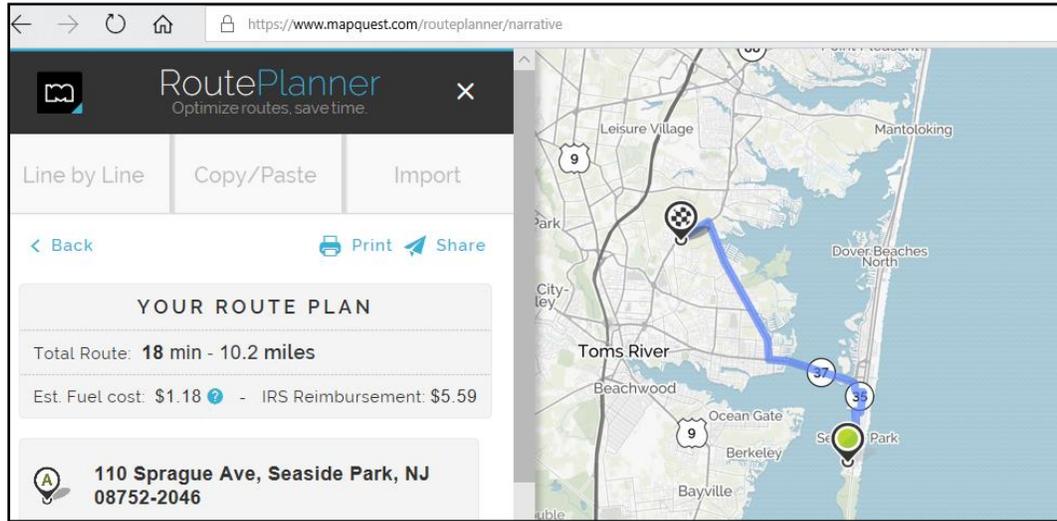
Report Graphic 13

- 2. Washington Street Elementary School (grades K-5): 1519 Hooper Avenue, Toms River ~ 10.2 miles / 18 minutes from South Seaside Park); and the

<sup>69</sup> <https://www.seasideparknj.org/seaside-park-elementary-school/>

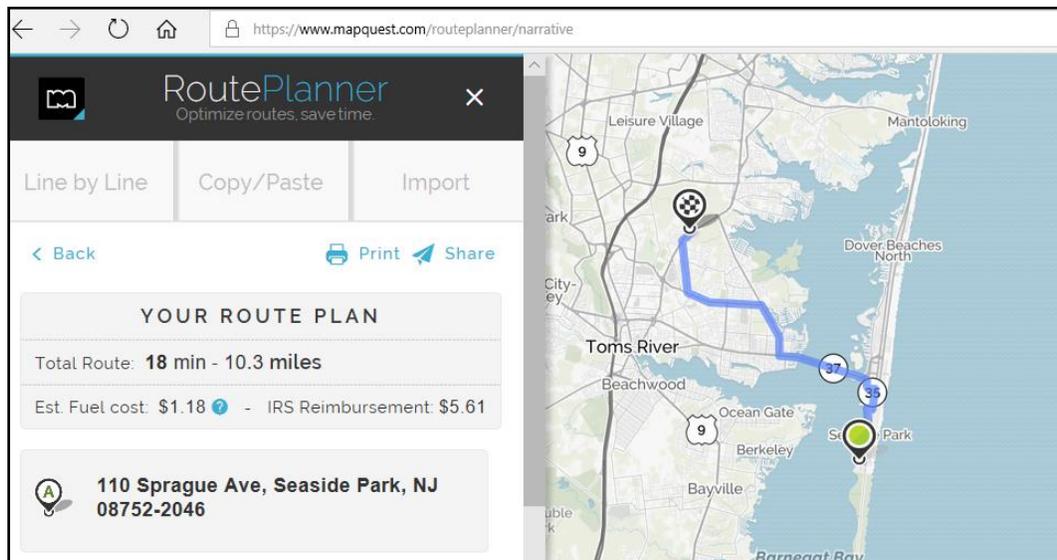


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3. Intermediate East School (grade 6): West Earl Court, Toms River ~ 10.3 miles / 18 minutes from South Seaside Park)



Report Graphic 15

Seaside Park’s Middle Schoolers attend Central Regional Middle School in Bayville (Berkeley Township) and its High Schoolers attend Central Regional High School, also in Bayville.<sup>70</sup>

<sup>70</sup> <https://www.seasideparknj.org/seaside-park-elementary-school/>



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Accordingly, while deannexation / annexation may result in less travel time for South Seaside Park students in the Elementary grades, it will have *no impact* on the students once they reach Middle School and High School.

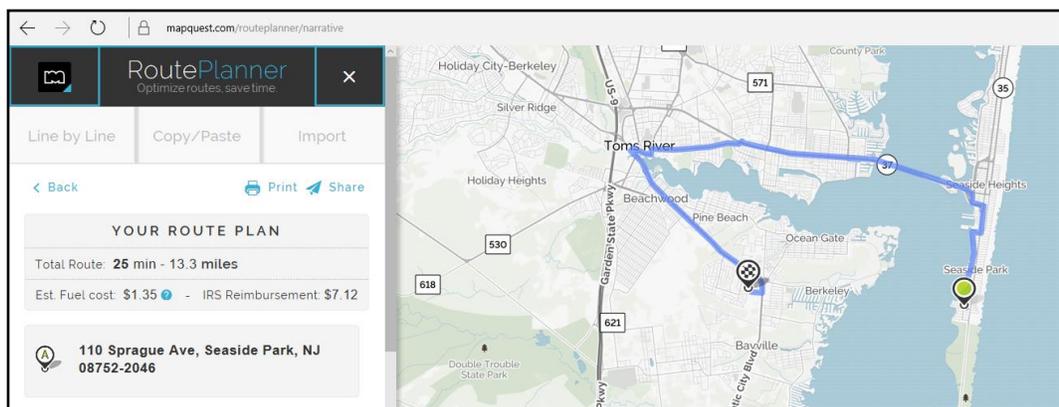
- c. *While interesting from a theoretical perspective, this Report of Findings recommends that the foregoing analyses (a. and b.) are, as a practical matter, of no moment to the Deannexation analysis. As was represented by Mr. Michelini,<sup>71</sup> a single student from South Seaside Park attends Berkeley Township Schools. The record contains no information as to how this child gets to/from school (school bus vs. private transportation), and his/her parents / guardians did not testify during the Planning Board hearings on this matter. One may therefore deduce that no actual school / distance-related detriment exists.*

2. Isolation

- a. The record does not support Petitioners' contention that the distance between South Seaside Park and the Mainland section of the Township has isolated them from the Township's civic life:

(1) Mr. Whiteman testified at length regarding his frequent attendance at Township public meetings at the Municipal Complex on the Mainland.

(2) As a member of the Berkeley Housing Authority, Mrs. Fulcomer must travel 13 miles / 25 minutes to reach the Authority's administrative office in Bayville.



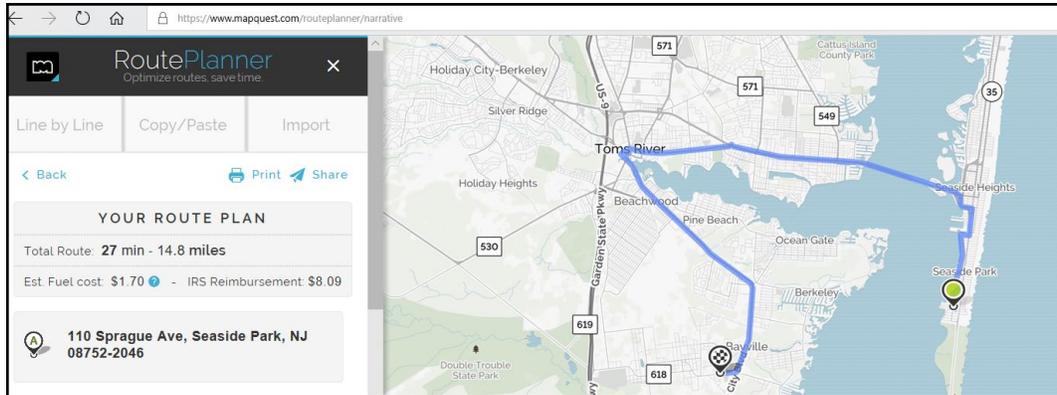
Report Graphic 16

<sup>71</sup> Testimony on June 7, 2018



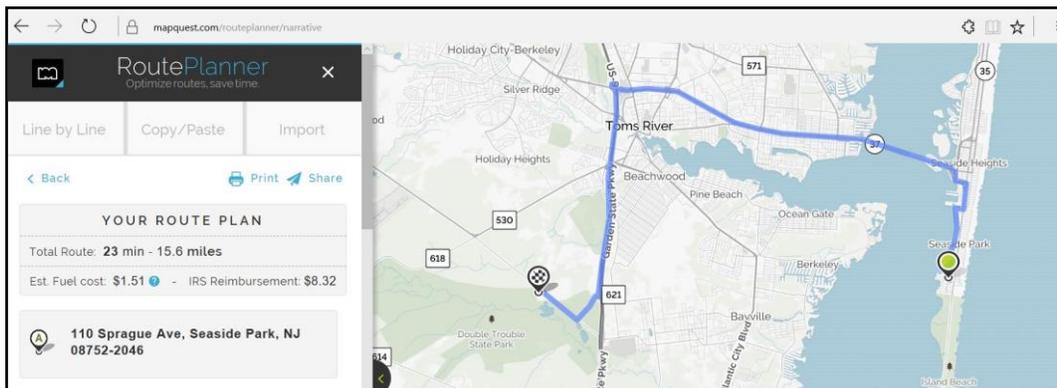
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(3) In seeking election to the Berkeley Township Board of Education, Mr. Fulcomer testified<sup>72</sup> that he campaigned “in as many parts [of the Township] as [he] could”, and traveled 14.8 miles / 27 minutes to attend meetings at the Board’s offices in Bayville.



Report Graphic 17

(4) As a member of the Township’s Zoning Board, Mr. Fulcomer would have attended Board meetings at the Township’s Municipal Complex.



Report Graphic 18

b. According to information provided for this Report of Findings by Township Historian Jim Fosbre, prior to moving to its current location, the Township’s Municipal Building was located at 630 Route 9,<sup>73</sup> and prior to that at 759 Atlantic

<sup>72</sup> Testimony on May 5, 2016

<sup>73</sup> The current home of the Township’s Recreation Department.



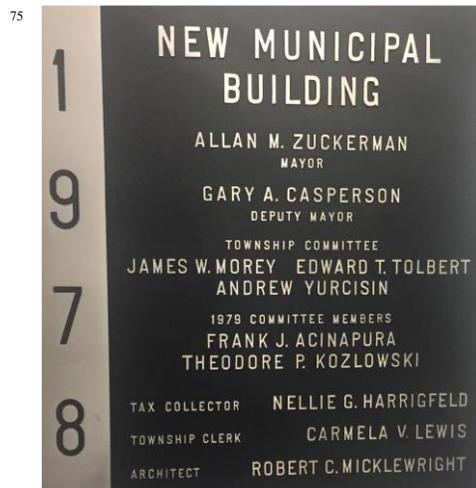
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City Boulevard (a.k.a. Route 9).<sup>74</sup> The Township’s current Municipal Complex has been in its Pinewalk-Keswic Road (Bayville) location since 1978.<sup>75</sup>

- (1) Mr. Whiteman testified that he was a life-long resident of South Seaside Park<sup>76</sup> and would have therefore traveled to the Mainland for public meetings his entire life. His testimony indicates that his South Seaside Park residence has not isolated him from participating in the Township’s civic life.
- (2) Mrs. Fulcomer testified<sup>77</sup> that she and her husband have lived in Berkeley Township for 43 years. This would date their residency in South Seaside Park to (approximately) 1972. As such, the Fulcomers have presumably been traveling to public meetings on the Mainland since they moved to the Township.

While perhaps an inconvenience, the time and distance have not been so significant as to override their desire to remain in South Seaside Park. Had traveling to the Mainland been too onerous, they would not have volunteered their services. As with Mr. Whiteman, their testimony indicates that their South Seaside Park residence has not isolated them from participating in the Township’s civic life.

<sup>74</sup> The current home of the Berkeley Township Historical Society and Museum.



Report Graphic 19

<sup>76</sup> Testimony on January 8, 2015

<sup>77</sup> Testimony on February 5, 2015



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(3) Conversely, Mrs. Shalayda did testify<sup>78</sup> as to her inability to participate in the Township's community / civic affairs due to the distance from South Seaside Park to Mainland Berkeley Township. It is likely that she is not the only Island resident that faces these limitations.

c. The record demonstrates that many of the Petitioners actively participated in community life when younger, but now, due to age and/or the ability/desire to drive in the evening, are less able to do so.

### **3.2.6 FINDINGS**

***At issue before the Planning Board is whether or not the distance between South Seaside Park and Mainland Berkeley Township is 'detrimental to the... wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.***

A. This Report of Findings finds that the distance between South Seaside Park and the Township's Mainland facilities may create an inconvenience for them, and that it would be more convenient if their municipal interactions were with neighboring Seaside Park. However:

1. Township facilities have historically been located on the Mainland. There is no suitable facility to hold public meetings in South Seaside Park and no Township-owned developable land to construct such a facility.<sup>79</sup> And even if there were, it would not be prudent to locate such a facility on a vulnerable barrier island.<sup>80</sup>

<sup>78</sup> Mrs. Shalayda testified (May 7, 2015) that her husband bought their South Seaside Park house in 1979 as an investment, began to use it themselves in 1983 and made it a year-round residence in 1994 – after the current Township Building was completed.

<sup>79</sup> Testimony of Nicholas Dickerson of March 2, 2017

<sup>80</sup> Testimony of Stan Slachetka on July 6, 2017 and Footnote 28 (p. 20) of Exhibit T-32:

*Seaside Park municipal offices... were opened for business on Monday, February 4, 2013, three months following Superstorm Sandy. During this time, a, "temporary", Seaside Park Borough Hall was located... in Toms River, Borough Council meetings were held at Toms River Municipal Complex, the Ocean County library, Toms River branch, and the Ocean County Administration building, Toms River; Planning Board meetings were held at the Toms River Municipal Complex and the Ocean County library, Toms River branch; municipal court was located at the Toms River Municipal Court building and Zoning Board of Adjustment meetings were held at the Ocean County library, Toms River branch.... Seaside Park is on the barrier island and it was significantly impacted by Superstorm Sandy.*  
[continued]



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2. Such distances are the result of locational decisions made by longtime Island residents who have chosen to trade distance from Township Hall, recreation fields and other Mainland-based facilities in order to live in a beachfront / island community.
3. People's conditions change over time, and, as we age, things that we may have previously been able to enjoy may no longer be available to us, or available at the same level as before.<sup>81</sup> However, the solution to this issue is not deannexation. If it were, deannexation would be an appropriate response each time a neighborhood ages or the interests of its residents change. As stated in Ryan:

*The Statute providing for annexation of land in one municipality to another contiguous municipality was not intended to encourage the adjustment of municipal boundaries "from time to time" dependent upon changing "community of interests" of residents, but rather was intended to give precedence to a more significant policy, that of preservation of municipality boundaries and maintenance of their integrity against challenge prompted by short-term or even frivolous considerations...*

- B. While it is not possible to shrink the distance between the Island and the Mainland or to add new facilities to the Island, Russell suggests that there are “*other mechanisms short of [de]annexation to address the concerns of the Petitioners*”. These may include, but not necessarily be limited to:

1. Berkeley Township could enter into an Inter-Local Agreement whereby South Seaside Park residents could take advantage of Seaside Park's recreational facilities, participate in its recreational programs and otherwise take advantage of facilities which are closer to their homes.

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[continued]

*And their municipal facilities were significantly impacted. Berkeley Township's municipal facilities are, in fact, in a relatively sustainable area of the Township in terms of the potential impacts to such storms. And whether by design or by accident due to the quirk of sort of long range planning, fundamentally, it's a good location. It's a good place for these facilities because of that.*

<sup>81</sup> Testimony of South Seaside Park resident and supporter of deannexation Mary Ann Meneghin on September 6, 2018:

*... Much of my activity is confined to the barrier island because I have difficulty getting around. I said, 20 years ago, I was not. I was quite active. And I'm still trying to maintain it. But, like I say, I am limited these days, but I'm slowed down but not knocked down.*



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2. The Township could hold occasional public / civic meetings in Seaside Park's municipal building or in the Tri-Borough First Aid Squad building. While not in Berkeley proper, such an effort would provide an added voice to South Seaside Park.
  
3. Given the advancement in technology, the Township could stream all public meetings on its website so that interested parties who could not attend in person would be able to view. A feedback mechanism could be implemented so that remote viewers could participate.

Additional issues related to distance are addressed elsewhere in this Report of Findings.



### **3.3 GENERAL UNRESPONSIVENESS / NEGLECT OF SOUTH SEASIDE PARK**

Petitioners assert that the Township is not responsive to the needs of South Seaside Park and, in effect, neglects these needs; leading to Petitioners' sense that they are second-class citizens<sup>82</sup> compared to residents of Mainland Berkeley Township.

#### **3.3.1 PETITIONERS' TESTIMONY**

A. Petitioner Donald Whiteman testified that municipal meeting times make attendance difficult because of the time and distance required to travel from South Seaside Park to the Township's Municipal Complex.<sup>83</sup>

B. Mr. Whiteman and Petitioner Patricia Dolobacs further testified that participation in municipal activities is more convenient and more readily accessible by residents of Mainland Berkeley Township than for those of South Seaside Park. Specifically:

1. Berkeley Township holds no public meetings in South Seaside Park. In fact, there is no suitable public facility for such purpose.<sup>84</sup>

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<sup>82</sup> Petitioner Robert Schwartz testified on April 2, 2015 regarding the provision of robo-cans (§3.7.1 herein)

*...it's just one other thing where we feel like we're second class citizens over there, that we have to beg for something that they thought we already had. I mean, I had to convince them that we didn't have them because they thought they were done...*

Petitioner Janet Shalayda testified on May 7, 2015:

*Like most residents of South Seaside Park, we feel like we're treated as second class citizens. We're left in the dark regarding services and activities available to us...*

<sup>83</sup> Testimony on June 4, 2015:

*You changed the [Township Committee meeting] times to 6:00, ... and I guess you feel that 6:00 was good. But it puts us in a position that when we come over here, we have to deal with the traffic on the Parkway coming home or going through Toms River. It doesn't help us out.*

*A 7:00 meeting helps us out because we bypass the traffic. So, when you make these decisions, you're making a decision based upon a community here on the mainland without thought of what we go through here to get to these meetings.*

*... it's all according what time you're going during the daytime, it's a long trip when I go to the council meetings. ...when I think you changed the council meetings to an earlier start, we over here on the beach understand that when you make it an earlier start, we get caught up in the traffic on the Parkway. So, when the council meetings were at 7:00, at least we missed the traffic. If you make them at 6:30 or 6:00, the traffic on the Parkway is still a big problem...*

<sup>84</sup> Petitioners' Planner Scott Bauman testified (August 6, 2015) to his understanding that there once was a meeting held on the Island but it was held in Seaside Park for South Seaside Park residents.



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2. The Township's Recreation Department sponsors bus trips to various points of interest. While such trips are open to any Township resident, the busses are not available from South Seaside Park. Island residents must travel to any one of 5 pickup points, all of which are located on the Mainland.<sup>85</sup>
3. Until the recent website update, residents of South Seaside Park had travel to the Township Recreation Building at 630 Atlantic City Blvd (Route 9), to register for Township Recreation Programs or otherwise participate in community activities. At the time of testimony, Petitioner Janet Shalayda added that this is especially concerning to the elderly residents of South Seaside Park, who find it difficult to drive to the Mainland, especially at night.<sup>86</sup>
4. The difficulty of getting to Township Recreation Programs was corroborated by South Seaside Park resident Mary Ann Meneghin, who testified:<sup>87</sup>

*...Much of my activity is confined to the barrier island because I have difficulty getting around. I said, 20 years ago, I was not. I was quite active. And I'm still trying to maintain it. But, like I say, I am limited these days, but I'm slowed down but not knocked down.*

- C. A lack of communication from the Township to the Island results in South Seaside Park residents being "disadvantaged" when it comes to learning of municipal programs, activities, meetings or announcements.<sup>88</sup>

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<sup>85</sup> Testimony on May 7, 2015

<sup>86</sup> Testimony on May 7, 2015:

*... as we get older, decline ~ and my husband is already to the point where he can't drive at night and soon will not be able to drive at all. And so, it's always up to me. And none of us knows how long. And I want to be more involved in the Township.*

*I was on the Board of Education in Franklin Township for many years and I really enjoyed the interaction. And now that I'm retired, I'd like to be part of my community and participate. And I can't do it this far away.*

*The trip to Mainland Berkeley is difficult and for some, like my husband, totally impossible. So, as time marches on, it's increasingly difficult to participate in the Mainland activities and meetings. And we find ourselves, you know, using Seaside Park for any of our social activities because it's there and convenient.*

<sup>87</sup> Testimony on September 6, 2018

<sup>88</sup> Testimony on May 7, 2015:

*When I went on the Berkeley website trying to gain more information for this testimony, ...I discovered that Berkeley had begun single stream recycling in May 2010. I had no*  
[continued]



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1. Petitioners<sup>89</sup> testified that South Seaside Park residents do not receive any municipal newsletters, such as the Berkeley Citizen or Berkeley Times. And while information, including “garbage and recycling schedules”, is available online, “a lot of seniors... [don't] use a computer” and are therefore “out of contact on things, some of these things that are important to us”.
2. Mr. Whiteman testified that South Seaside Park residents “don't even have access to the [Berkeley Township] Council meetings broadcast, because the Island doesn't have Comcast Service”. Requests for meetings to be broadcast on the Island have been unsuccessful.<sup>90</sup>
3. Petitioners Judith Erdman<sup>91</sup> and Mr. Whiteman<sup>92</sup> testified that systems designed to provide communication are not utilized or otherwise do not benefit South Seaside Park.

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[continued]

*idea. I didn't even know that they would pick recycling up at the curb... for us. Didn't know that until after Sandy, as a matter of fact. Well, I didn't know anyone did that.*

*...I discovered in my website looks, that there's a recreation, parks and beaches summer program that I didn't know existed... It was very informative and it detailed so many activities that I was totally unaware were offered to a Berkeley citizen. Had I known about a lot of these activities beforehand, I would have taken advantage of some of them, even if it meant driving 45 minutes. But I don't know why the communications is so bad, particularly, you know, since it is a beach community and you would think that we would get more notification of things that are going on over here, if you really want us to be part of your community.*

*I have been over to a concert here in Berkeley a couple of years back. But I didn't hear about it from Berkeley. I heard about it from a friend whose husband was performing in one of the groups that were singing. And I was stunned to hear. And then when... she told me about that, then I... started looking into it and saw all of these concerts and things that are offered over here that, unless you go on the computer, you're not going to know anything about it.*

<sup>89</sup> Testimony of Mrs. Shalayda, Mrs. Erdman and Mrs. Dolobacs on May 7, 2015, and Mr. Schwartz on April 2, 2015

<sup>90</sup> Testimony on February 5, 2015:

*We go to the council meetings and we say, could we have the cable provider show the council meetings? We don't get that. Because we are Optimum and over here is a different cable provider [Comcast]...[the broadcasts are] not in our town whatsoever... South Seaside Park... And so, again, I brought it up in the meetings, council meetings, can we do something about it? And it's been brought up many a time. And, you know, they look into it but nothing is ever done. And we don't know what's going on in Berkeley Township with the council meetings.*

<sup>91</sup> Testimony on May 7, 2015:

*...after Sandy, sometime in the winter of 2013, I signed up for the reverse 911 emergency notifications. I thought it would be a great idea to maybe get phone calls when things are going on. Since that time, I have received exactly one phone call from Berkeley Township. And that was in the winter of 2014. It was about a weather related issue concerning Route 9 and being closed or something that's going on. It had nothing to do with me,... That has been the only notification that I have ever received.*

[continued]



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4. Ms. Fulcomer testified<sup>93</sup> that in or around June 2014, the Township decided to resurface her street without any notice.
  5. Mr. Schwartz testified that there was an application for a variance at the end of his block and the meetings kept getting canceled. No one would tell him, so he made repeated trips to the Township building only to have to turn around and come again at a later date.<sup>94</sup>
- D. Mr. Whiteman testified<sup>95</sup> that Petitioners are required to conduct their municipal business on the Mainland, including “*something as simple as a dog licensee when you get a dog*”.
- E. Mr. Whiteman testified that requests to address these and other issues repeatedly go unanswered.<sup>95</sup>

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[continued]

*Seaside Park, on the other hand, I have gotten so many phone calls from them that I can't even count. They are weather related. They are related to road closures with the Route 35 project that's been going on for forever. If there's, for whatever reason, a change in a garbage schedule, you'll get that.*

*Today, coincidentally, just before I left, I got a phone call from Seaside Park again to let us know that they are now offering beach badges for sale online and that you can pick them up 7 days a week from 10 a.m. to 3 p.m. And great setup for people that don't want to go out and get in line, which would be great for us if we had something like that. Because we don't really know what goes on with beach badges. We get notifications sometimes by signs being put up in front of the beach entrances. There is no set rhyme or reason. We could come over here to get beach badges but that's really kind of tough again.*

<sup>92</sup> Testimony of Mr. Whiteman on June 4, 2017:

*We get calls from Seaside Park about events that are occurring in town, about flooding that may occur. And we're on Seaside Park's phone list, as opposed to being on Berkeley's phone list. Because I think, ... Seaside Park community is, basically, ... 400 meters from me. And I think what they have to tell me is very, very apropos to what's going on in my town, as well as their town.*

<sup>93</sup> Testimony on April 2, 2015:

*There was no notice given. And it was Roberts Avenue south where I live. And we were told, don't drive a car on it just yet, ... So, it was definitely restrictive. And the reaction, understandably, with some people is, ... if they do my road, that's great. However, ... in South Seaside Park, in the height of the summer season, with many residents and guests and people that want to be outside and not smell the blacktop, ... we were very critical. And we weren't given notice. And that was a big thing. ... So, sometimes I feel kind of neglected*

<sup>94</sup> Testimony on April 2, 2015:

*if there's a variance and I come here because it affects me. It's on the end of my block. We've had a couple meetings about that. Invariably, for reasons that I understand, it gets canceled. So, I'm getting out of work early. Making the long trip over here. It gets canceled. Nobody tells us. And then we have to come again and again and again. And it just, it's really, it's really tough....*

<sup>95</sup> Testimony on February 5, 2015



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F. Petitioners' Planner Scott Bauman testified<sup>96</sup> that there is no public transit service that connects South Seaside Park with Mainland Berkeley Township.

1. The Ocean County Bus Service, Ocean Ride, services Mainland Berkeley Township, including the senior communities on the Mainland.
2. During the summer, a New Jersey Transit bus leaves from Toms River for Island Beach State Park, but does not stop in South Seaside Park.

**3.3.2 ISSUES RAISED DURING CROSS-EXAMINATION**

Ms. Fulcomer testified<sup>97</sup> that in or around June 2014, the Township decided to resurface her street without any notice. When asked if she was unhappy about the Township upgrading and maintaining the road by resurfacing it, Mrs. Fulcomer stated that while she was happy with the improvements, *"it was a bit of an inconvenience not to be notified."*

**3.3.3 TESTIMONY FROM MEMBERS OF THE GENERAL PUBLIC<sup>98</sup>**

A. Mr. Whiteman's sentiment regarding municipal meeting times was reinforced by South Seaside Park residents:

1. Joann Pacifico, who testified that she had:

*...experienced when you're... at work and you're trying to make it to a Township meeting here, because it's important that as citizens, we show up. I mean, local government [is] the most important kind, I think. And so, it is hard and sometimes impossible to get your dog to your house over in South Seaside Park after work and then get here.*

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<sup>96</sup> Testimony on August 6, 2015

<sup>97</sup> Testimony on April 2, 2015:

*There was no notice given. And it was Roberts Avenue south where I live. And we were told, don't drive a car on it just yet,... So, it was definitely restrictive. And the reaction, understandably, with some people is,... if they do my road, that's great. However,... in South Seaside Park, in the height of the summer season, with many residents and guests and people that want to be outside and not smell the blacktop,...we were very critical. And we weren't given notice. And that was a big thing. ... So, sometimes I feel kind of neglected.*

<sup>98</sup> Testimony on September 6, 2018



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2. James Fulcomer, who testified:

*the times at which Berkeley Council meetings start are a serious barrier to the right of working South Seaside Park homeowners to participate fully in council meetings... the regular council meetings in Seaside Park are at 7:00. So, if I get out of work at 5, and I come from Elizabeth, for example, where I used to work, I can make those meetings...*

*And, of course, ... many of our people don't actually live in South Seaside Park year-round. They constitute the majority of the homeowners. So, you're pretty much kicking out these people from the proceedings on a regular basis, or making it very difficult for them, which shouldn't happen...*

3. Mr. Fulcomer further added a specific complaint regarding the times that municipal budget hearings are held, stating that “All these times are extremely inconvenient for people of South Seaside Park...”. To document this assertion, Mr. Fulcomer submitted Exhibit P-1:

| Berkeley Public Hearings on Budgets<br>and Amendments to the Budget |  |
|---|--|
| 2014  | 7:00 p.m.<br>10:00 p.m.<br>Friday, August 25   |
| 2015  | 6:00 p.m.<br>Friday, June 28<br>9:30 a.m.<br>Monday, August 22<br>10:00 a.m.<br>Tuesday, September 1 |
| 2016  | 6:00 p.m.<br>10:00 a.m.<br>Monday, July 11   |
| 2017  | 11:00 a.m.<br>Friday, March 17<br>6:00 p.m.<br>Regular Meeting of April 20                           |
| 2018  | 5:30 p.m.<br>Friday, August 3  |

*If a time has no date underneath it, the hearing is at a regular Council meeting.*

*Excerpt from Exhibit P-1*



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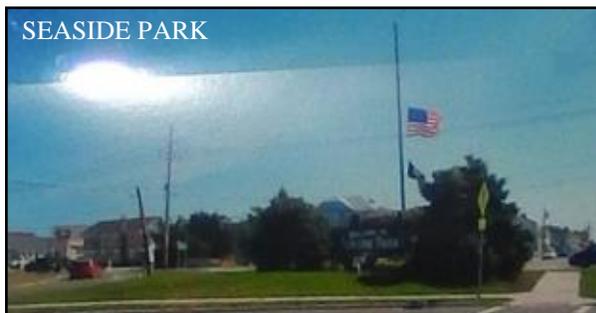
According to Mr. Fulcomer, “...in Seaside Park, their public hearings on the budget and on amendments to the budget are all at 7 p.m. So, just about everybody in South Seaside Park who works during the day can make those meetings...”.

B. With regard to Public Works services, Mr. Fulcomer testified that:

*...since the start of these [deannexation] meetings, over 4 years ago, there were ... a large number of eyesores in South Seaside Park that easily could be remedied. But still, over 4 years later, are not corrected. And they're not that expensive to correct. ... Maybe it's the distance and the... people who work for the administration find it relatively inconvenient to go to South Seaside Park and check these things out...*

In support of this assertion, Mr. Fulcomer presented photographs<sup>99</sup> depicting:

1. The entrance to Seaside Park that is “*much more impressive and really nice. The entrance to South Seaside Park really looks like a junkyard*”.



*Excerpt from Exhibit P-3*

2. Street signs on West Central Avenue “*that haven't been painted perhaps since the days that the railroad used to be in South Seaside Park, they're in such bad condition. And when you take a look at them, you wonder why they're still there... They're very rusty and falling apart...*”.

The following photographs, depict the street signs on West Central Avenue taken “*over four years ago*” and September 5, 2018.

<sup>99</sup> Marked as Exhibit P-3 for identification. Not all photographs on P-3 reproduce with sufficient clarity to depict Mr. Fulcomer’s testimony. The best-reproduced images are used herein.



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2018



*Excerpt from Exhibit P-3*



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3. Unpainted signs on Bayview Avenue “which can very easily be painted, were not painted as they should have been...?”



*Excerpt from Exhibit P-3*

- C. South Seaside Park resident Mary Ann Meneghin testified that she received a notice regarding a registry for transportation for Township recreation programs. In-person registration was purportedly August 16, but the notice arrived on August 20<sup>th</sup>.

Mrs. Meneghin stated that the notice indicated that bussing was provided “from all clubhouses”. Upon inquiring as to the clubhouse for South Seaside Park, a clerk in the Mayor’s office referred the question to the Recreation Department, which was to return the call. That exchange occurred approximately a week before Mrs. Meneghin’s testimony. As of her testimony, no return call was received.

- D. The Township did not address the “rebuttal” testimony of September 2018.

### **3.3.4 TOWNSHIP RESPONSE**

- A. Township Administrator John Camera denied that the Township has neglected South Seaside Park, pointing to its actions in support of the community as detailed throughout the hearing process.



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- B. Mr. Camera testified<sup>100</sup> that improvements to the Township’s website permit the municipality to be more responsive to resident needs. Specifically:
- Registration for Township recreation programs can be done online.<sup>101</sup>
  - (He believes) taxes can be paid online.
  - (He believes) The Police Department has several accessing reports online.
- C. Township Director of Public Works / Principal Public Works Manager Steven Seiler testified<sup>102</sup> that the Township’s snow plowing procedures are advertised on the Township’s Television Channel, the Berkeley Patch<sup>103</sup> and the Township’s website.
- D. Berkeley Police Chief Karin DiMichele testified<sup>104</sup> that the Police Department utilizes the Township’s website and maintains a Facebook page for dissemination of information to the public.
- E. Chief DiMichele provided testimony<sup>105</sup> indicating that Seaside Park contracts with Berkeley Township regarding animal control. Should deannexation occur, South Seaside Park residents would continue to obtain a dog licenses, either at the Berkeley Township municipal building or print online and mail the permit in.
- F. Township Superintendent of Parks, Beaches & Recreation Timothy Yurcisin testified<sup>106</sup> that the Township owns 2 recreation busses that are used for summer camp. The Township has in excess of 600 children that participate, with “various pickups throughout the town”. Pickup is provided for South Seaside Park “if any children are signed up”, although for the last two

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<sup>100</sup> Testimony on May 3, 2018

<sup>101</sup> In her testimony, Mrs. Meneghin conceded that point, but stated that she was not “used to” such a process.

<sup>102</sup> Testimony on April 6, 2017

<sup>103</sup> web-based news service.

<sup>104</sup> Testimony on September 9, 2016

<sup>105</sup> Testimony on September 1, 2016 and October 6, 2016

<sup>106</sup> Testimony on May 4, 2017



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years no children from South Seaside Park have attended.<sup>107</sup> Mr. Yurcisin further testified that these busses are also used for Senior Citizen bus trips.

*And we have various pickup spots throughout ~ right now, it's throughout the various clubhouses in Holiday City and 1 stop at the Mainland. If we did or would get a request from Senior Citizens, qualified Senior Citizens in South Seaside Park to join that program, we would provide bussing in that area also for the trips.*

### **3.3.5 ANALYSIS**

#### **A. Meeting Times & Locations**

1. The scheduling of Township Council meetings at a time when the public must fight traffic to attend represents an inconvenience to those residents. While the record contains nothing to suggest that residents of other parts of the Township are impacted, it is likely that a 6:00 start time might conflict with work schedules and similarly hamper the ability of non-South Seaside Park residents to attend.
2. The fact that there is no suitable facility to hold public meetings in South Seaside Park is more likely a result of historic development patterns on the Island and not evidence of neglect. As a practical matter, there is no room to construct such a facility. Further, the Township's Planner testified<sup>108</sup> to the imprudence of locating such a facility on a vulnerable barrier island.
3. Regarding Township Council meetings, Exhibit P-1 submitted by Mr. Fulcomer depicts meeting times at 7:00 p.m. in 2014 and at 6:00 p.m. in in 2015, 2016, 2017 and 2018.

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<sup>107</sup> Mr. Yurcisin testified that participation is limited to residents of Berkeley Township. When asked if a part-time resident would qualify, he stated:

*We would look at ~ we have looked at case to case basis. If a child is coming to stay with a grandmother for the summer and she's watching him for the summer, we take it case by case.*

<sup>108</sup> Testimony of Stan Slachetka on July 6, 2017 and Footnote 28 (p. 20) of Exhibit T-32:

*... Seaside Park is on the barrier island and it was significantly impacted by Superstorm Sandy. And their municipal facilities were significantly impacted. Berkeley Township's municipal facilities are, in fact, in a relatively sustainable area of the Township in terms of the potential impacts to such storms. And whether by design or by accident due to the quirk of sort of long range planning, fundamentally, it's a good location. It's a good place for these facilities because of that.*



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4. Exhibit P-2 submitted by Mr. Fulcomer clarifies that, for 2015, 2016, 2017 and 2018, Open Caucus Meetings begin at 6:00 p.m., with Executive Sessions and Regular Township Council Meetings immediately following. The Public is permitted to speak at the end of the Caucus meetings and at the Public Hearings attendant to the Regular meetings. It is therefore likely that the portion of the Council meeting where Public input is invited would occur at or after the 7:00 start time desired by Petitioners.
5. Regarding public hearings on the municipal budget, Exhibit P-1 submitted by Mr. Fulcomer reveals that the Township held:
  - 1 hearing at 7:00 p.m. and 1 hearing at 10:00 a.m.<sup>109</sup> in 2014.
  - 1 hearing at 6:00 p.m., 1 hearing at 9:30 a.m. and 1 hearing at 10:00 a.m. in 2015.
  - 1 hearing at 6:00 p.m. and 1 hearing at 10:00 a.m. in 2016.
  - 1 hearing at 11:00 a.m. and 1 hearing at 6:00 p.m. in 2017.
  - 1 hearing at 5:30 p.m. in 2018.

While no Township testimony was offered to address the varied meeting times for the Township's budget hearings, the times referenced by Mr. Fulcomer and Exhibits P-1 and P-2 demonstrate that meetings have been held in the a.m. and the p.m. So while the morning meetings might be, in Mr. Fulcomer's words, "*extremely inconvenient for people of South Seaside Park*", they may indeed be more convenient for residents who work during the late-afternoon or evening hours, or have childcare or other responsibilities in the evening hours.

**B. Recreation Department / Public Transportation**

1. The assertion that there is no bus pickup for South Seaside Park for the Township's Recreation Department bus trips and that Island residents must travel to the Mainland for pickup is belied by the Township's Superintendent of Parks, Beaches & Recreation, who testified<sup>110</sup> that bus pickup would be provided to South Seaside Park if requested, and that no such requests had been made.

<sup>109</sup> While Exhibit P-1 depicts a 10:00 p.m. meeting, P-2 indicates that the meeting was actually held at 10:00 a.m.

<sup>110</sup> Testimony on May 4, 2017.



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2. Public transit is not operated by the Township and cannot therefore evidence Township neglect of the community. Absent the addition of Island bus routes by Ocean County and/or New Jersey Transit, deannexation will have no impact on service.

**C. Requirement to Conduct Business on the Mainland**

1. The ability for residents to conduct business via the internet as opposed to in person provides convenience and enhances the ability of the Township to communicate with residents. Future improvements will increase this capability.
2. As with online commerce, online communication is increasingly becoming a way of life. And as with online commerce, this concern is not limited to the elderly of South Seaside Park but applies to all of the residents of the Township's senior communities.

**D. Lack of Government Communications with Residents**

1. The fact that South Seaside Park residents do not receive the televised Township Council meeting broadcasts is not a sign of neglect but is rather a function of different cable providers for the Island and the Mainland. Nonetheless, this situation does represent a detriment to the residents of South Seaside Park as there are other forms of municipal communication including the Berkeley Patch (web-based news service) and the Township's website.
2. Issues related to the Township's Emergency Communications are addressed in §3.9.3 herein.
3. A lack of notice regarding the paving of a street is a common complaint heard from residents of many municipalities during roadwork. Such lack of communication more likely represents an oversight by the contractor than neglect by the Township. While not acceptable, such an occurrence is more of an oversight than a form of neglect.
4. Repeated cancelations of hearings constitutes an inconvenience that could be addressed by a notice on the Township's website ~ assuming that the cancellation was known ahead of time. That being said, such situations occur from time to time and can be unavoidable.



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5. The record contains no information to indicate what municipal notices Mrs. Skeffington believes that she has not received. It is possible that the *only* mailing the Township makes is the tax bill ~ which she testified that she does receive.
  
- E. The Berkeley Citizen and Berkeley Times are non-municipal publications whose distribution is determined by their publishers and not Berkeley Township. As such, a lack of delivery to South Seaside Park is not an indication of neglect on behalf of the municipality.  
  
Conversely, such non-delivery likely does contribute to the lack of communication experienced by the Petitioners and their sense of neglect by the Township.
  
- F. The condition of the street signs depicted in Exhibit P-3 hardly rise to the level of “eyesores”.
  
- G. The entrance to Seaside Park that is indeed “*much more impressive and really nice*”. While not as impressive, the entrance to South Seaside Park hardly “*looks like a junkyard*”.

**3.3.6 FINDINGS**

*At issue before the Planning Board is whether or not Berkeley Township has been non-responsive to / neglectful of the needs of South Seaside Park. Petitioners contend that it has, and to support their contention have testified at length and/or submitted Exhibits.*

- A. This Report of Findings finds that:
  1. The scheduling of public meetings for times when traffic is heavy, thereby making it difficult for residents to attend, may work to inconvenience Petitioners but may also be beneficial to other members of the community.
  
  2. Township facilities have historically been located on the Mainland. There is no suitable facility to hold public meetings in South Seaside Park and no Township-owned developable land to construct such a facility. And even if there were, it would not be prudent to locate such a facility on a vulnerable barrier island.



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3. Pickup for the Township’s Recreation Department bus trips is available for South Seaside Park residents upon request.
  4. Absent the addition of Island bus routes by Ocean County and/or New Jersey Transit, deannexation will have no impact on service.
  5. The lack of communication between the Berkeley Township municipal government and the residents of South Seaside Park, most significantly the inability to view televised Township Council meetings, causes the residents of the Island to feel neglected.
  6. The record does not support Petitioners’ contention that Berkeley Township neglects South Seaside Park. While the inconveniences and annoyances cited by Petitioners are undoubtedly frustrating, they do not rise to the level of “*long term, structural and inherently irremediable detriment’ that the Legislature had in mind when it adopted the Deannexation Statute*”.<sup>111</sup>
- B. Russell suggests that there are “*other mechanisms short of [de]annexation to address the concerns of the Petitioners*”. These may include, but not necessarily be limited to:
1. The Township Council could alternate the start times of public meetings (as they do for the budget hearings) so that those who cannot attend a 6:30 meeting would be able to participate.
  2. The Township could stream all public meetings on the Township website so that interested parties who could not attend in person would be able to view. A feedback mechanism could be implemented so that remote viewers could participate.
  3. The Township could further improve its website and Facebook page to expand the ability of residents to conduct business via the internet as opposed to in person, and to enhance communications with the public.
  4. The Township could hold occasional public / civic meetings in Seaside Park’s municipal building or in the Tri-Borough First Aid Squad building. While not in Berkeley proper, such an effort would provide an added voice to South Seaside Park.

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<sup>111</sup> Avalon Manor



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5. The Township could petition Ocean County and/or New Jersey Transit to provide public transit to South Seaside Park.

Additional issues related to neglect are addressed elsewhere in this Report of Findings.



### **3.4 LACK OF INVESTMENT**

Related to unresponsiveness and neglect, Petitioners assert a lack of investment in South Seaside Park by Berkeley Township.

#### **3.4.1 PETITIONERS' TESTIMONY**

A. Other than White Sands Beach, the only Township park/recreation area in South Seaside Park is the Sergeant John A. Lyons Memorial Park, an 8,400 s.f. basketball court at the intersection of Barnegat and 24<sup>th</sup> Avenues.<sup>112</sup> Petitioners' Planner Scott Bauman and Petitioner Patricia Dolobacs testified that this facility offers a single picnic table but no other public amenities<sup>113</sup> and is not appropriate for the community's aging population.<sup>114</sup>

This sentiment was reiterated by Petitioner Janet Shalayda, who stated,<sup>115</sup> that while she was "happy" to see the Lyons basketball court listed as a park on the Township website,

*...using the word park for a basketball court when there's no drinking fountain, no rest rooms, anything, I just think it's a slap in the face to the people over there that it's called a park.*

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<sup>112</sup> Petitioner Patricia Dolobacs testified on May 7, 2015 that certain Berkeley sources include the Roberts Avenue Bulkhead as a park, but in reality the area is unimproved:

*There is gravel. ... the bulkhead was put in, and there are steps going down. So, I guess if you wanted to go into the water there, you could. But there is no lifeguard, no anything there. And as I said, it's just at the end of the street. (Exhibit A-19)*

Mrs. Dolobacs further testified that the Township cites Island Beach State Park as being located in Berkeley. While this is geographically the case, the Park is owned and operated by the State of New Jersey.

<sup>113</sup> No bathrooms, no water fountains, no bleachers, no shade, no trees, no lights, no off-street parking.

<sup>114</sup> Testimony of Petitioners' Planner Scott Bauman on August 6, 2015:

*...given the demographics, the basketball court, in my opinion, does not best serve South Seaside Park residents.*

Testimony of Mrs. Dolobacs on May 7, 2015:

*About the only time I've seen... people at the court is if my grandsons come down or somebody's grandsons or children visit, that kind of thing.*

<sup>115</sup> Testimony on May 7, 2015



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Conversely, Seaside Park offers their residents a number of recreational facilities, including a softball field, tennis courts and playground on 14<sup>th</sup> Street, just across the municipal boundary line from South Seaside Park.<sup>116</sup>

B. Mrs. Dolobacs testified<sup>117</sup> that, by her count, Mainland Berkeley Township has 14 parks, and “every one of them has some kind of a playground or some nice facility to use, which is what a park should have”.<sup>118</sup> Her comparison of recreation facilities on Mainland Berkeley Township and in South Seaside Park found:

| <b>TYPE OF FACILITY</b>  | <b>MAINLAND BERKELEY TOWNSHIP</b> | <b>SOUTH SEASIDE PARK</b> |
|--------------------------|-----------------------------------|---------------------------|
| <i>Playgrounds</i>       | <i>10</i>                         | <i>0</i>                  |
| <i>Ballfields</i>        | <i>11</i>                         | <i>0</i>                  |
| <i>Basketball Courts</i> | <i>6</i>                          | <i>1</i>                  |
| <i>Tennis Courts</i>     | <i>1</i>                          | <i>0</i>                  |
| <i>Skate Park</i>        | <i>1</i>                          | <i>0</i>                  |
| <i>Picnic Areas</i>      | <i>5</i>                          | <i>1</i>                  |
| <i>Fitness Area</i>      | <i>1</i>                          | <i>0</i>                  |
| <i>Roller Rink</i>       | <i>1</i>                          | <i>0</i>                  |
| <i>Swimming</i>          | <i>5</i>                          | <i>1</i>                  |

*Report Table C*

These figures were substantially confirmed by Petitioners’ Planner Scott Bauman, who testified that the Township’s 2012 Environmental Resource Inventory touts 13 developed parks, totaling approximately 496 acres<sup>119</sup>. These facilities have areas for playgrounds, ballfields, picnicking, tennis, biking, basketball, golf and roller skating.

C. In terms of sports programming, Mrs. Dolobacs testified<sup>115</sup> that the Township offers men’s softball, women’s softball, self-defense, wrestling, youth football, youth cheering, Little

<sup>116</sup> Exhibit A-10

<sup>117</sup> Testimony on May 7, 2015

<sup>118</sup> See Exhibit A-19 and relevant photographs contained in §3.7.1 herein.

<sup>119</sup> Testimony on August 6, 2015



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- League (baseball) and a summer swim team ~ in all, 17 programs listed for the Mainland. However, “*If we want to do any of that, we have to come to the Mainland*”. Mr. Bauman further testified<sup>119</sup> that the Township also offers summer camp for resident children, which are also held on the Mainland. Additionally, group trips for children depart from and return to the Mainland.
- D. Mrs. Dolobacs<sup>115</sup> and Mr. Bauman<sup>119</sup> testified that the Township offers a number of Special Events, including concerts, environmental education programs, a farmers market, a golf outing, cultural festivals and community events. With the exception of the beach party at White Sands Beach and the Sergeant Lyons 5k race, all events take place at Mainland locations, making it difficult for residents of South Seaside Park to attend.
- E. The Township’s senior programs, including exercise programs, are on the Mainland at Silver Ridge, Silver Park West and Whispering Pine. Bus trips originate for the various senior communities on the Mainland. Depending on the season and traffic, participation in these programs by South Seaside Park residents would necessitate a 20- to 40-minute drive (each way). Petitioner Dolobacs testified to a lack of Township programing as it relates to the residents of South Seaside Park.<sup>120</sup>

When ask if she takes advantage of any of these programs and, if not why, Mrs. Dolobacs indicated that participation would require travel to the Mainland. Additionally, she finds the scheduling of the women’s and men’s exercise programs to be problematic.<sup>121</sup>

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<sup>120</sup> Testimony on May 7, 2015:

*The senior programs are at Silver Ridge. They have an exercise program on Mondays and Thursdays.... I called about the bus trips. And the prompt said, leave your name and your number, pin number, card number. And I'm thinking, I don't have a card number. So, I called back and I left my name. And someone from the recreation department called me and said yes, indeed, we will send you out the new information. And I said to her, well, what are the trips like? And she said, oh, we go to the Jackson Outlets. You know, a little bit of everything. And I said great. And I said, do you pick up on the island? And there was dead silence. And she said no.*

<sup>121</sup> Testimony on May 7, 2015:

*There are 6 concerts during the year. Good people come. I love The Duprees. I've never come. Again, it's at night....*

*[Regarding Recreation programs] The men are from 9 to 10. The women are from 10 to 11. So, if my husband and I wanted to go, we either take 2 cars or one of us takes a book and waits for the other one....*



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F. Mr. Bauman testified<sup>119</sup> that there is no public or Township sponsored transportation to or from South Seaside Park which would assist island residents in participating in these programs. Conversely, the Township does provide a bus service for Mainland Seniors, with 9 bus stops on the Mainland. In his opinion, “*the Senior population [of South Seaside Park] is not being served*”.

G. Petitioner Donald Whiteman testified “*We don't have anything over in South Seaside Park, ...*”.

Specific requests included:

- A Police substation;<sup>122</sup>
- Construction of a Bayfront beach.
- A Township-owned satellite municipal garage to accommodate beach cleaning equipment.<sup>123</sup>
- Playgrounds / general recreation facilities;<sup>124</sup>
- A Community / Senior Center with Senior Citizen facilities;<sup>125,126</sup>
- Bathrooms at the beach; and
- Water fountains.

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<sup>122</sup> Testimony of Mr. Whiteman on January 8, 2015 & February 5, 2015:

*Toms River Township and Brick Township each have [a Police substation]. Berkeley Township looks at it and says, it's not important, we cannot put one [in South Seaside Park]. (Exhibit A-21).*

*We look at investment. Berkeley Township is not wanting to make the investment here to put a substation.*

*I've gone to meetings and asked for substations in South Seaside Park. I told you they had it back in... the '70s at Midway Beach Realty. They would have a police there and utilize that. They don't do that. So, I have to look at it and say, the investment from Berkeley Township is not occurring here in South Seaside Park.*

<sup>123</sup> Which is currently stored in Seaside Park's Public Works facilities.

<sup>124</sup> Testimony of Mr. Whiteman on January 8, 2015:

*Berkeley Township just doesn't have any type of facility for recreation for me playing tennis or indoor basketball down where we are.*

*[South Seaside Park residents that want to play baseball] would have to go into Seaside Park, ... or... travel to Berkeley again, which is the distance to the fields.*

<sup>125</sup> Testimony of Mr. Whiteman on February 5, 2015:

*...If I want senior facilities, I have to go to Holiday City... to be part of Berkeley Township. There's no senior citizen facility in South Seaside Park. In our area in South Seaside Park, now more and more are getting seniors. Majority of people living in South Seaside Park are seniors. I'll say it again, as I said in other council meetings, no investment.*

<sup>126</sup> Testimony of Petitioner Katherine Fulcomer on April 2, 2015:

*60% of our permanent residents... are senior citizens, are age 60 and over. ...And there's no senior activities, no buses, no specific things, either for children, seniors or even adults in the community. There's one beach party.*



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H. Petitioner Katherine Fulcomer showed the Board comparison photographs of the entrance to Seaside Park with holiday-themed decorative street treatments and seasonally-adjusting landscaping vs. the entrance to South Seaside Park with what she terms “a little bit of beautification” and which is not changed for the season.

According to Mrs. Fulcomer’s, this demonstrates “it’s possible to make your community look very, very attractive”.<sup>127</sup>

Mrs. Fulcomer asserts that she and her husband “went to a couple Council meetings talking about sprucing up the entrance to South Seaside Park” and this was the result.<sup>128</sup>

I. A number of Petitioners expressed an interest in the Township providing amenities for children and others to utilize during the summertime. According to Mrs. Dolobacs, requests for a playground, a bay beach and a boat ramp go unaddressed.<sup>129</sup>

127



Entrance to Seaside Park



Entrance to South Seaside Park

Exhibit A-6

Photographs were taken in December 2014. Mrs. Fulcomer testified (February 5, 2015) that the Seaside Park treatments change with the seasons.

<sup>128</sup> Testimony on February 5, 2015

<sup>129</sup> Testimony on May 7, 2015:

*I’ve never gotten an answer. I asked them when 24<sup>th</sup> Street, when the state purchased that, could they have gotten that or rented it.... I figured it was a place where we could go crabbing. We could put our boats in...*

*... the crabbing, taking the boat out, fishing, we have no place on the bay to do that. And that’s been my bane since we moved here.*

Seaside Park resident Robert Cardwell testified (April 2, 2015) that South Seaside Park at one time had a public boat ramp at 24<sup>th</sup> Avenue, which has been shut down. Accordingly, anyone living in South Seaside Park wishing to launch a boat at the nearest boat ramp would be required to go to 13<sup>th</sup> Avenue in Seaside Park.



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Upon it being suggested that South Seaside Park, being a small and generally built-out section of the Township, does not have the land to provide the type of parks and amenities requested, Mr. Dolobacs responded:

*But if... something had happened like the Amherst Beach project, if something like that were to happen on our bayfront, you'd make me happy. I don't know about anybody else. But we might be able to have a ramp. We might be able to have a pier. But it just... it's never been done.<sup>130</sup>*

J. Petitioners Donald Whiteman and Robert Schwartz testified that the roads in South Seaside Park do not get repaved.<sup>131</sup>

K. Petitioners assert that such lack of investment extends beyond monetary investment to include time, effort, services, equipment, and a general showing of concern. Specific issues include:<sup>132</sup>

- The Township not maintaining the outfall pipe / rocks that are used to keep the pipe in place.
- No lifeguards on South Seaside Park's Bay Beach, whereas the Township's Mainland beaches are guarded.
- No policing of litter and debris at the Bay Beach.
- Inadequate (once / week) cleaning of White Sands Beach during the tourist season, whereas Seaside Park cleans their beach at least 5 days per week.
- Inadequate street sweeping / roadway cleaning.
- Inadequate snow plowing.

Mr. Whiteman expressed the opinion of Petitioners that investment and services “*are not there from Berkeley Township*”, and that, should deannexation from Berkeley Township and annexation to Seaside Park be granted, they “*would expect*” Seaside Park to clean and maintain South Seaside Park's Bay Beach and provide the other services they feel they are not currently receiving.

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<sup>130</sup> Testimony on May 7, 2015

<sup>131</sup> See §3.7.1.

<sup>132</sup> Testimony on January 8, 2015, February 5, 2015, April 2, 2015, and May 7, 2015



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Mr. Whiteman summed up his feelings regarding what he sees as Berkeley Township’s lack of investment in South Seaside Park by stating:

*I invested in the town. The town's not investing in me and my family. I want a town such as Seaside Park to take hold of our town and say, okay, we'll give you what's needed for your town there.*

L. When asked for specifics to support his repeated assertions that the Township has not invested in South Seaside Park, Mr. Whiteman responded:<sup>133</sup>

1. Water improvements: *“They put nothing in water. Because it's a private water company”*. When pressed for dollar amounts, Mr. Whiteman responded *“I don't know...”*
2. Sewer improvements: *“We haven't had anything dug up in South Seaside Park”*. When pressed for dollar amounts, Mr. Whiteman responded *“I don't know...”*
3. Roadway improvements since Superstorm Sandy: *“I have no idea the cost”*.
4. Beach replenishment / repair: *“I have no idea”*.

M. Capital Expenditure / Bond Ordinances<sup>134</sup>

Petitioners’ Financial Expert Kenneth Moore reviewed the Capital Expenditure / Bond Ordinances adopted by Berkeley Township for the years 2010 – 2015<sup>135</sup> and opined that the \$30+ million authorized made *“minimal reference at best...”* to South Seaside Park. From this analysis, Mr. Moore concluded that *“very little was spent in South Seaside Park”*.

N. The lack of public recreation made available by the Township in the Bayfront area is a concern for Petitioners. While South Seaside Park does have a bayside beach between (approximately) 22<sup>nd</sup> and 24<sup>th</sup> Avenues that could potentially be improved, Petitioners contend that *“the investment is not there from Berkeley Township to do something like that”*.<sup>133</sup>

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<sup>133</sup> Testimony on February 5, 2015

<sup>134</sup> Testimony on December 3, 2015

<sup>135</sup> Exhibit A-49: Schedule 8 & Schedule 9



### **3.4.2 ISSUES RAISED DURING CROSS-EXAMINATION**

A. During discussion of the Township providing a satellite municipal garage in South Seaside Park to accommodate beach cleaning equipment,<sup>133</sup> Mr. Whiteman conceded that it made “*economic sense*” for the Township to share facilities with its neighboring municipality rather than constructing such a facility for its own use.

Despite such admission, Mr. Whiteman maintained that the Township had land<sup>136</sup> where it could store equipment and, “... *put facilities there that's going to benefit the town*” [i.e., South Seaside Park]. When queried as to the feasibility of constructing a municipal facility on such land, Mr. Whiteman returned to his assertion that the Township will not invest in South Seaside Park.<sup>137</sup>

When queried as to whether or not the Township’s governing body should make spending decisions based on the best interest of all the taxpayers, not just those of South Seaside Park, Mr. Whiteman responded:

*I just feel that by me coming over to the Council meeting... and bringing this up time and time again that I would hope that the town would at least see that there is a need in South Seaside Park for something like that.*

B. When asked to confirm if he had any idea how much monetary investment Berkeley Township makes in South Seaside Park on an annual basis, Mr. Whiteman responded: “*Money wise I don't...*”

C. While testifying about the “debris” along South Seaside Park’s Bay Beach, Mr. Whiteman informed the Board about rocks “*a little bit bigger than softballs*” on the beach and in the

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<sup>136</sup> Referring to a portion of municipally-owned land and/or right-of-way that had been subject of a vacation ordinance in or about November 2014. Such Ordinance was ultimately not adopted. A lengthy interchange between Mr. Whiteman, the Board Attorney, the Board Engineer and the Board Planner regarding such vacation, whether the land was indeed buildable and the use of the land for right-of-way, municipal or other purposes is omitted from this Report of Findings for brevity. Such discussions may be found in the hearing transcripts of February 5, 2015 and June 4, 2015. Mr. Whiteman also suggested that the land could be used for a Community Center or Police substation.

<sup>137</sup> Testimony on February 5, 2015:

*I can only tell you they don't want to invest and buy a piece of property in South Seaside Park. That's my whole contention. There's no investment to say, for the future, we should have land in South Seaside Park to put our machines, to put what we utilize in South Seaside Park.*



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water between 24<sup>th</sup> and 22<sup>nd</sup> Avenues. After lengthy discussion,<sup>133</sup> it was determined that these rocks were purposely placed by the Township over a culvert or outfall pipe as ballast to keep this infrastructure in place. As a result of tidal/wave action, these rocks shifted off of the utility to the beach and seabed.

Ultimately, Mr. Whiteman confirmed that what he was describing was an investment by the Township to maintain infrastructure at this location.

- D. When asked to comment about the fact that Seaside Park has no outdoor basketball facility ~ the implication being that deannexation would not resolve this issue ~ Mr. Whiteman testified that his solution would be to petition Seaside Park for such a facility.<sup>138</sup> When it was observed that, if he were a resident of Seaside Park he would still have to go to Seaside Heights to play in a men's recreational basketball league, Mr. Whiteman responded similarly.<sup>139</sup>
- E. When asked to opine as to whether he considers there to be a lack of public investment in South Seaside Park, Mr. Moore replied that “*it seems minimal based on the total dollars*”.<sup>140</sup> When asked to clarify if he thought such spending was “minimal” as compared to what the Township spends in other neighborhoods or in terms of total dollars, Mr. Moore replied that he was referring to the “*total dollars spent in the rest of the township versus [South] Seaside Park*”.

When asked if he had conducted an analysis to determine if there was a correlation between the size of the Mainland section of the Township and what is spent there as opposed to the size of South Seaside Park and what was invested there, Mr. Moore stated that he had not.

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<sup>138</sup> Testimony on January 8, 2015:

*...people from Seaside Park... will go to the town and request the town to open up the facility for them. Being a resident of South Seaside Park, I cannot do that, okay.*

*...if I become part of Seaside Park, ... you got a school there that's not open. Let's open it up for recreation. Let's open it up for residents of... if we become part of that, let's open it up for the residents there.*

<sup>139</sup> Testimony on January 8, 2015:

*No, I would go to Seaside Park and request that we have the school open. ...I would go petition and go to Seaside...*

<sup>140</sup> Testimony on May 5, 2016



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Similarly, when asked if he had performed any calculations as to the portions of the bond ordinances for capital improvements that might apply to South Seaside Park,<sup>141</sup> Mr. Moore responded that he “*did not allocate any cost related to those and put it against South Seaside Park*”. He further clarified<sup>142</sup> that he reviewed bond ordinances from 2016 through 2018, and while he was able to identify roads that were to be improved, he was unable to determine specific allocations for specific roadways.

When asked if, any roads mentioned in the Bond Ordinances he reviewed for 2016, 2017 and 2018 indicated repair of roads in South Seaside Park, Mr. Moore replied “*no*”.<sup>143</sup>

When further asked if he had reviewed any bonds that were canceled or where funds were transferred from one project to another subsequent to their adoption, Mr. Moore replied that he had not.

When asked if he had conducted any investigation as to non-road related improvements that were made without using bond money, i.e., that would not have been reflected in the Bond Ordinances, Mr. Moore testified<sup>144</sup> that such figures “*would be very, very difficult to ascertain*”. Accordingly, no such investigations were attempted.

### **3.4.3 TESTIMONY FROM MEMBERS OF THE GENERAL PUBLIC<sup>145</sup>**

A. Mainland Berkeley Township resident Samuel Cammarato testified that:

*The amenities and services provided to South Seaside Park... are not less than the Mainland, just different. For example, they have the ocean and the beaches.... And our town services and maintains*

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<sup>141</sup> i.e., police cars, fire services, public improvement projects, equipment, etc.

<sup>142</sup> Testimony on October 4, 2018:

*...in the bond ordinance, we have 15 different categories that they're going to spend money on, of which they're fairly specific... it lists the number of roads and what their names are... for instance, in 2010, there was \$1.4 million for roads. And they listed some roads, ... I never was able to obtain information that said, of the \$1.4 million, did it all relate to that or not?*

<sup>143</sup> Testimony on October 4, 2018

<sup>144</sup> Testimony of May 5, 2016

<sup>145</sup> Testimony of September 6, 2018



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*those beaches at considerable cost, even though those amenities are very convenient to South Seaside Park residents and not so for residents of the Mainland. Because of the influx of summer vacationers and visitors to South Seaside Park, more security and safety measures such as police, lifeguards and cleanup workers are required during those months than otherwise necessary on the Mainland, again, at considerable cost to our town....*

- B. The Township did not address the “rebuttal” testimony of September 2018.

**3.4.4 TOWNSHIP RESPONSE**

- A. In response to Petitioners’ assertions that the Township has made no investment in South Seaside Park, numerous Township professionals testified regarding the extent of support provide to the neighborhood. As testified by Township representatives, the Township spends in excess of \$100,000 annually on beach staff (lifeguards, badge checkers, ticket takers, etc.), 90% of which is for White Sands Beach.<sup>146</sup> Specific activities are addressed under Public Works (§3.7 herein).
- B. While no police substation exists in South Seaside Park, Berkeley Township Police Captain Kevin Santucci testified<sup>147</sup> that while no permanent substation exists,

*...We do actually have a substation that we can bring over to areas such as we did in Hurricane Sandy. It's a mobile substation. So, basically, our view in this agency or I should say Chief DiMichele, if I could speak for her, would be that a substation at this time is antiquated. It really served more of a purpose when not everybody in the world had a cell phone or had access to contact emergency services. And I think if you talk to Toms River or Brick Township, they would agree with you. They had it prior to all of that. That's why they have that.*

Being asked if she agreed “that community policing is enhanced by either having a substation or a headquarters, a place where you can physically go to”, Chief DiMichele testified:<sup>148</sup>

<sup>146</sup> Testimony of Timothy Yurcisin, Township Superintendent Director of Parks, Beaches & Recreation, on May 4, 2017

<sup>147</sup> Testimony on September 1, 2016

<sup>148</sup> Testimony on December 1, 2016



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*I don't know if I would agree with that. [I] spoke to [other municipalities with substations]... They said they don't really use it. They didn't say whether or not they were in favor of it. They said they don't use it for those ~ they said it's not really used. They don't have people come in there to make reports... They don't process prisoners. They don't do DWI arrests there.*

- C. As relates to Police presence, representatives of the Police Department testified<sup>148</sup> that Police presence in South Seaside Park has increased; due, in part, to resident requests / complaints.
- D. In response to Petitioners' testimony that there are no lifeguards on South Seaside Park's Bay Beach ~ whereas the Township's Mainland beaches are guarded, Township Superintendent of Parks, Beaches & Recreation Timothy Yurcisin testified that the only Mainland beach that is guarded is a small, shallow swimming area at Dudley Park, on Cedar Creek at the southern border of Berkeley Township.<sup>149</sup>

Further, the Township's Planner testified<sup>150</sup> that the Township does not own much of the bayfront lands that Petitioners suggest could be a Bay Beach, and that these lands are not intended to be used for recreation.

- E. While conceding that limited recreation facilities are provided on the island, the Township views this as due to a lack of land and not as neglect. Further, the view White Sands Beach is

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<sup>149</sup> Testimony on May 4, 2017

<sup>150</sup> Testimony on February 1, 2018

*...The township really doesn't have control... of that area for the purpose of open space and recreation. And that to the extent that it does have any control, it's an easement that's granted, which is identified as easement to Berkeley Township for road maintenance purposes and to be able to sustain the viability of the roadway at that location, Bayview Avenue.*

*A careful examination of the [crosshatched area on page 19 of the T&M Report] has revealed that it is neither listed in the Recreational and Open Space Inventory of the New Jersey Department of Environmental Protection, nor identified in the Township's Master Plan documents as a recreation or open space area. Thus, the area in question is not a recognized municipal beach or any other type of recreation or open space area.*

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



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one of the largest public areas within the Township. And while the Township recognizes that Lyons Memorial Park is small and contains only a basketball court, the size of the lot limits that will fit on the site.<sup>149</sup>

- F. When asked about additional amenities at Lyons Park, Mr. Yurcisin testified that *“There's a nice little memorial there that the residents have put together with the help of the Township and (Parks and Beach Supervisor) Jim Sperber and the Parks Department. They provided a lot of material and physical help for it... It's for Lyons, who was a soldier that was killed in action”*.<sup>149</sup>
- G. The Township has invested considerable time and resources into land use planning for South Seaside Park, including the 2017 *Neighborhood Plan for South Seaside Park* and subsequent Ordinance revisions.

Included in this *Neighborhood Plan* is a recommendation that the Township prepare a Recreation and Open Space Plan for South Seaside Park. Such a Plan would, among other initiatives, identify recreation needs based on resident population and community interest and verify riparian grants to identify potential sites for Bayfront recreation (and investigate whether the State would permit a lease option on riparian lands).<sup>151</sup>

Specific planning-related activities are addressed under §3.10.3 herein.

- H. While it is recognized that certain pieces of Township equipment are used Township-wide ~ and therefore South Seaside Park, the Township does not track the extent to which equipment is employed in any specific neighborhood. There is therefore no way to prorate equipment investment in South Seaside Park.<sup>152</sup>

### **3.4.5 ANALYSIS**

#### **A. Recreation & Programming**

- 1. Petitioners’ assertions that there is a lack of public recreation in South Seaside Park is not without merit. The Township points to the White Sands Beach and the Lyons Memorial

<sup>151</sup> Testimony of Stanley Slachetka on August 3, 2017

<sup>152</sup> Testimony of Frederick Ebenau on April 5, 2018



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(basketball) Park as recreation areas, and states that the size of South Seaside Park precludes the number and types of facilities as are located in Mainland Berkeley Township. While both of these statements are factual, the Island facilities lack amenities that are available at the Township’s Mainland parks and at facilities in neighboring Seaside Park.

2. While Petitioners’ acknowledge that the Township offers a host of programs and events, all ~ with the exception of the beach party at White Sands Beach and the Sergeant Lyons 5k race ~ take place on the Mainland, making it difficult for residents of South Seaside Park to attend.
3. With few facilities to host programs, it is not surprising that little programming is offered on the Island. Notably however, the Township does take advantage of the single facility in South Seaside Park that can accommodate an event ~ namely the White Sands Beach ~ for an annual Beach party / concert.
4. The proposed Recreation and Open Space Plan for South Seaside Park will likely address the feasibility of creating the facilities requested by the Petitioners; although it is possible that all of the Petitions’ desires may not prove achievable.

**B. Public Amenities**

As with public recreation, Petitioners’ assertions that there is a lack of investment in public amenities in South Seaside Park is not without merit. Petitioners’ requests for specific improvements range from relatively inexpensive items to capital projects. While, for a host of reasons,<sup>153</sup> certain of these requests are more realistic than others, the fact remains that South Seaside Park lacks amenities that are available on the Mainland and in neighboring Seaside Park.

**C. Monetary Investment**

1. When asked for specifics to support their assertion that the Township has not invested in South Seaside Park, Petitioners relied on what they view as deficiencies (i.e., items and services not provided) but did not address investments that have been made.

<sup>153</sup> Available space, operational practicality, financial realities.



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2. Issues related to Bond Ordinances for roadway improvements in South Seaside Park and the testimony of Petitioners' Financial Expert related thereto are addressed in §3.4.1 and §3.4.2 herein.
3. The conclusion drawn by Petitioners' Financial Expert that there is a lack of investment in South Seaside Park is belied by the testimony of the Township's Chief Financial Officer that the Township does not track the extent to which expenditures are tied to a specific neighborhood. It is therefore not possible to accurately calculate total investment in South Seaside Park.
4. While specific figures were not provided, the testimony of the Township Engineer and Township Public Works and Recreation officials do not support Petitioners' assertion that the Township has not invested in South Seaside Park.
5. Township Police believe that the concept of a dedicated Police substation is antiquated and prefer the use of a mobile substation that can respond to situations as they arise<sup>154</sup>, which is more cost effective for the taxpayers.

D. Non-Monetary Investment (time, effort, services, equipment, concern)

Issues related to purported deficiencies in Township services are addressed in sections of this Report of Findings dedicated to specific Township operational units (Public Works, Police, etc.).

**3.4.6 FINDINGS**

*At issue before the Planning Board is whether or not there has been a lack of investment in South Seaside Park by Berkeley Township so as to be 'detrimental to the... wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.*

- A. While South Seaside Park is constrained by factors that limit the number and types of facilities that can be provided, the recreation facilities in South Seaside Park lack amenities that are available at the Township's Mainland parks and in neighboring Seaside Park. And

<sup>154</sup> e.g., Superstorm Sandy.



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while certain of Petitioners' requests for additional facilities are not realistic, others appear appropriate and relatively inexpensive and easy to provide.

- B. While the Township does not provide regular transportation for South Seaside Park residents to its Mainland recreational facilities, it is unclear whether such transportation is available upon request.
- C. The Township commissioned and adopted a *Neighborhood Plan for South Seaside Park*, along with ordinances to implement such Plan. The *Neighborhood Plan* includes a recommendation for a Recreation and Open Space Plan designed to address many of the Petitioners' complaints. It is up to the Township to continue this investment in South Seaside Park by funding the Recreation and Open Space Plan and acting on its recommendations.
- D. The record does not support Petitioners' contention that Berkeley Township does not invest (capital or human resources) in South Seaside Park. Any deficiencies that are perceived by Petitioners as a lack of investment do not rise to the level of "*long term, structural and inherently irremediable detriment' that the Legislature had in mind when it adopted the Deannexation Statute*".<sup>155</sup>

This Report of Findings finds and recommends that the specific issues cited by the Petitioners to evidence a lack of investment by Berkeley Township in South Seaside Park do not establish the kind of "*long-term, structural, and inherently irremediable detriment the legislature had in mind when enacting the Deannexation Statute*".<sup>155</sup>

Additional issues related to investment are addressed elsewhere in this Report of Findings.

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<sup>155</sup> Avalon Manor



### **3.5 SOCIAL INJURY**

Petitioners contend that the distance from South Seaside Park to Mainland Berkeley Township (§3.2.1 herein) results in their being so isolated from the Mainland that they are not part of the Township's social fabric. They identify more with neighboring barrier island communities than what they termed the “*distant Mainland*”,<sup>156</sup> and cite an affinity with and connection to Seaside Park that they do not share with Berkeley Township as a reason for desiring to become part of neighboring Seaside Park.

#### **3.5.1 PETITIONERS’ TESTIMONY**

A. Petitioner Donald Whiteman testified at length about his background in South Seaside Park,<sup>157</sup> his affinity for the Island and his lack of affinity for Mainland Berkeley Township,<sup>158</sup> and summarized the feeling of the Petitioners by stating:<sup>159</sup>

*We are disjointed from the Mainland. We're not part of the Mainland. And that serves as one of the problems that we have, since we were not part of the Mainland, to become part and to enjoy what goes on...on the Mainland...*

*...you can understand that my feeling of a town here [Seaside Park], which is 400 meters from my house, how much easier*

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<sup>156</sup> Testimony on September 3, 2015

<sup>157</sup> On January 1, 2015 Mr. Whiteman testified that he has lived in South Seaside Park, except for his college years, “*probably for about 58 years, 59 years...*”. He is “*very familiar with the history of South Seaside Park, since [his] family had roots in South Seaside Park back during the 1930s...*”

On February 5, 2015 Mr. Whiteman testified that 4 generations of his family (his grandmother, parents, himself and his son and daughter) were raised in South Seaside Park. He currently lives in South Seaside Park with his wife and daughter, and his mother ~ “*one of the last... of the local Seaside girls... [is] still going strong at 94 living in South Seaside Park.*”

*...its almost like a town in itself on the Island.*

*So, when I say we are familiar with the beach [i.e., the Island] and what goes on at the beach, it's like its own community. The beach is like its own community. And that's why we would like to become part of that same community, like community of Seaside Park.*

<sup>158</sup> On February 5, 2015 Mr. Whiteman testified that South Seaside Park residents shop in Seaside Park, food shop in Ortley Beach and go to Lavallette for eateries, and that:

*... If you asked me who Ms. Potter is, I have no idea\*. If you ask me who Clara B. Worth\*\* is, I have no idea. But if you were to ask me... who Mr. Tunney was, I can tell you he was the owner of Funtown at one time. And my point of saying this is, we are familiarized yourself with the culture of the beach. We're not real familiar with something as simple as, who is Ms. Potter, or who is Clara B. Worth.*

\* Berkeley’s H & M Potter Elementary School, located in Bayville (Mainland Berkeley Township).

\*\* Clara B Worth Elementary School, located in Bayville (Mainland Berkeley Township).

<sup>159</sup> Testimony on June 4, 2015



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*would it [sic] be for me to be involved in the adjacent town.... I want to be part of a community that's adjacent to me.*

**B. Other Petitioners offered similar testimony.<sup>160</sup>**

<sup>160</sup> Mrs. Patricia Dolobacs testified (on May 7, 2015) that South Seaside Park residents consider the Seaside Park area as their community, and that their daily and social lives revolve around Seaside Park and the surrounding areas.

*I do everything in Seaside Park.... They have yoga classes. They have 2 book clubs, morning and... evening... There's a senior luncheon where you go and you pay and they have speakers. And it's a constant thing that is offered all year long...*

*When you're talking, me, personally, coming over [to the Mainland], and you tell me I have to get on the Parkway, I'm frazzled. If you tell me I have to go down [Route] 9 in the middle of the day or in the very early morning or when people are getting out of work, I'm frazzled. There is just no comfortable way that I, myself, or my husband can come over.*

*Other than coming [to the deannexation hearings], I swear, I would not know how to get to anything in Berkeley. We just, we have never done it. And since we've been here 11 years, we still haven't done it. ...I have friends in Seaside Park. I do yoga in Seaside Park. We paint on the beach in the summer. They have painting classes... this is my community. This is where I feel comfortable. This is where I have my friends. And... my bay and my playground and my boat ramp and my pier...*

Mrs. Dolobacs further testified that she:

- Attends church in Seaside Park.
- Goes to the bakery in Seaside Park
- Goes to the liquor store in Seaside Park
- Does food shopping at the A&P in Lavallette and the Shop Rite in Toms River
- Goes to the doctors in Toms River.
- Shops at Kohl's and goes to the mall "in the Mainland".
- Uses the Seaside Park auto repair shop.

Testimony of Mrs. Katherine Fulcomer on February 5, 2015:

*Well, even since 1972,... I thought back then, as I still do, that was illogical for us to be... a part of Berkeley. And I feel a great affinity for the town of Seaside Park... And the culture of that little community stays primarily the same. And that is why I would seek to join Seaside Park.*

Testimony of Mrs. Katherine Fulcomer on April 2, 2015:

*My feelings about Seaside Park, it's where I dine. Where I recreate. I do worship in Toms River, the Presbyterian Church, Toms River Presbyterian Church. But a lot of our residents worship at the Union Church in Seaside Park. And I support their functions and their fundraisers over there. I buy the beach badges. As I've said, I attended the programs. I use their recycling center.*

*The attitude of... Seaside Park to us is, they're a very good neighbor. They're a sister community. And they're really a lifeline for us. ... when I first became involved in this back in the 1970s where I just owned a home that I rented, I wasn't a full-time resident yet, I was interested in this deannexation movement. I thought... South Seaside Park being part of Berkeley then was illogical. I feel it's illogical now. The culture of South Seaside Park matches Seaside Park far more than it does Berkeley.*

*...ever since I was a little girl, we've been coming down to this area. And the idea of being walking distance to the ocean and living on the bay was a dream. ...And then when we purchased the home,... just as a part-time summer home at 309 Roberts, and then we moved permanently to 356. And my husband would even tell you that when we left Rahway,...*

[continued]



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- C. Mr. Whiteman testified<sup>161</sup> that South Seaside Park is assigned to the Seaside Park (08752) Zip Code and not the (08721 or 08757) Zip Codes assigned to the balance of Berkeley Township, and asserted that having what amounts to a Seaside Park Zip Code results in the driver's licenses of full-time South Seaside Park residents having a Seaside Park address. Petitioner Patricia Dolobacs testified that this situation has resulted in delayed delivery of mailed correspondence.<sup>162</sup>
- D. Petitioner Janet Shalayda testified that the disconnect between South Seaside Park and Mainland Berkeley Township is such that she and her husband didn't realize when they bought their house that they weren't part of Seaside Park.<sup>163</sup>

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[continued]

*....it was a dream come true....*

*.... So, that, for me, is a no brainer. It's the most wonderful place in the world to be where you can actually walk right down to the ocean. So, that's why I do live there. And I, I really enjoy the culture of that particular community...*

*...there is a certain culture in South Seaside Park.... Most people talk about the beach. How the fish are running, crabs. And it's just a wonderful jogging, walking, nature walks, island Beach State Park. And the weather. And it's just a wonderful, wonderful place to be...*

Testimony of Mrs. Janet Shalayda on May 7, 2015:

*Basically, we shop in Seaside Park. We attend church in Seaside Park. We eat out in Seaside Park. We use the Seaside Park post office. We just don't feel like we're part of this community and we want to be part of that community and be able to participate in all of the activities that we can get to on our bicycles or just by walking.*

Testimony of Petitioner Robert Schwartz of April 2, 2015:

*I don't come to Mainland Berkeley. I've never been here. I live on the island. That's where I live. I come to these meetings. That's the only time I come. And I come here if there's a variance.*

<sup>161</sup> Testimony on February 5, 2015

<sup>162</sup> Testimony on May 7, 2015:

*...I had a friend... she sent me 3 letters. ...She sent 1 to me. And she had 107 Beach Drive, South Seaside Park, 08752. Got it in 2 days. She sent them all out the same time. Second letter, my name, my address, south Seaside Park, no zip. Got it in 2 days. She sent me 1 that said my address, Berkeley Township, 08752, it was a week. They could not find me.*

<sup>163</sup> Testimony on May 7, 2015:

*...we didn't realize really that we weren't part of Seaside Park. We didn't really make that conclusion until we made it a year-round residence. ... We didn't know anything about Berkeley, even where it was. But when we moved there in, when we moved in year-round in 1994, we really began to discover the disadvantages, quickly, of being a very remote, unconnected and basically an unrepresented part of a township, Berkeley.*



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E. Petitioner Catherine Fulcomer testified that she lives in South Seaside Park because of the proximity to the ocean and that except for going to Housing Authority meetings, she rarely goes to Bayville.<sup>164</sup>

F. Petitioners' Planner Scott Bauman summed up these sentiments as follows:<sup>165</sup>

*South Seaside Park identifies with other barrier island communities that have similar characteristics. Its remoteness from Mainland Berkeley Township offices and the recreational facilities has contributed to the South Seaside Park residents relating more to its neighboring municipalities.*

When questioned, Mr. Bauman concurred with the statement that “*that sense of community is different than Mainland Berkeley Township*”.

G. Mr. Bauman reported<sup>166</sup> that the Berkeley Township branch of the Ocean County Library system is located on the Mainland at 30 Station Road in Bayville, a distance of approximately 14 miles and 26 minutes (drive time) from South Seaside Park.<sup>167</sup> Alternatively, the Upper Shores Branch of the County Library System, located at 112 Jersey City Avenue in Lavallette, is approximately 4 miles and 11 minutes from South Seaside Park.<sup>168</sup>

Petitioners' Counsel asserted that it is inconvenient for the residents of South Seaside Park to utilize the library in Berkeley Township, and that their use of a more convenient library ~ that

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<sup>164</sup> Testimony on April 2, 2015:

*....quite frankly, the only time I go to Bayville, I am on the Housing Authority -- oh, yeah, the Housing Authority... I'm on the Housing Authority. Most of you know that I go to city council meetings frequently because I am a resident of Berkeley. But I go to the council meetings and I do go for some political activity.... If there was fundraiser for an elementary school and my husband was on the Board of Ed., we would go to that...*

<sup>165</sup> Testimony on August 6, 2015

<sup>166</sup> Bauman Report: p. 36

<sup>167</sup> Mr. Bauman's testimony of August 6, 2015 reported a “30 or 40” minute drive time. A MapQuest search conducted for this Report of Findings at approximately 9:00 a.m. on August 1, 2017 reported a 13.8 mile / 31 minute drive from 1466 SE Central Avenue to 30 Station Road in “Heavy” traffic. It is assumed that the figures cited in Mr. Bauman's report were not taken during the tourist season.

<sup>168</sup> A MapQuest search conducted for this Report of Findings at approximately 9:00 a.m. on August 1, 2017 reported “Moderate” Traffic.



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Mainland Berkeley residents do not use ~ evidences the separate identity of South Seaside Park and Berkeley Township.<sup>169</sup>

- H. As citizens of Berkeley Township, South Seaside Park residents cannot vote in Seaside Park municipal elections. Petitioner Katherine Fulcomer testified<sup>170</sup> that there are 431 registered voters in South Seaside Park<sup>171</sup>. As a result, Mrs. Fulcomer believes that South Seaside Park is underrepresented in Township politics.

Should deannexation be permitted, Mrs. Fulcomer testified<sup>170</sup> that South Seaside Park would constitute 25% of the Seaside Park voting base.<sup>172</sup> As such, South Seaside Park residents would have “*a great deal of (political) weight*” and *more “(political) clout”* to have their concerns addressed.

- I. Petitioners Patricia Dolobacs and Robert Schwartz testified<sup>173</sup> that residents of South Seaside Park do not receive the Berkeley Citizen or Berkeley Times.
- J. Seaside Park resident Robert Cardwell testified<sup>170</sup> that in his 64 years of living in Seaside Park, Seaside Park and South Seaside Park, has functioned together as a single unit, with residents of both areas attending the same schools, residents of South Seaside Park using Seaside Park facilities (marinas, Bayfront, boat ramps, beaches).

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<sup>169</sup> Statement of Mr. Michelini on January 8, 2015:

*...if you wanted to go to the library in Berkeley, [you'd] have to go that great distance. They're not doing that. They're going to Northern Shores. Or if they can't get something in Northern Shores, they're going downtown Toms River, to the big branch. But they're not going all the way down to Berkeley. And the people in Berkeley aren't going over to Northern Shores.*

*...the point is is that the communities are separate and identified separately. Socially, they are different and ... that's important under the cases.*

<sup>170</sup> Testimony on April 2, 2015

<sup>171</sup> Translating to 1.3% of the 32,635 registered voters in Berkeley Township ~ as reported by the New Jersey Division of Elections: Number of Registered Voters and Ballots Cast: November 8, 2016 General Election Results: Ocean County.

<sup>172</sup> Actually 24.15% based on 1,354 registered voters in Seaside Park ~ as reported by the New Jersey Division of Elections: Number of Registered Voters and Ballots Cast: November 8, 2016 General Election Results: Ocean County ([www.nj.gov/state/elections/2016-results/2016-gen-elect-ballotscast-results-ocean.pdf](http://www.nj.gov/state/elections/2016-results/2016-gen-elect-ballotscast-results-ocean.pdf))

<sup>173</sup> Testimony on April 2, 2015 & May 7, 2015



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K. Petitioners' Planner Scott Bauman testified<sup>174</sup> that, from the point of view of the majority of South Seaside Park residents, a refusal to consent to deannexation would be detrimental to their social well-being in that:

- There are no municipal recreation facilities or programs for South Seaside Park residents to enjoy in South Seaside Park.
- Facilities and events are held on the Mainland.
- There are no public meetings held in South Seaside Park.
- There is no municipal sponsored bus service from South Seaside Park to the Mainland for events or programs.
- Quality of life issues important to South Seaside Park residents continually go unaddressed by Berkeley Township.

Mr. Bauman concluded:

*South Seaside Park's community identity is with Seaside Park and not Berkeley Township. Seaside Park functions more as a centerpiece in the everyday lives of the residents of South Seaside Park. The Mainland is not where South Seaside Park residents go to conduct their business or meet their daily needs, as well as go shopping, meet friends and relax.*

*For many of the South Seaside Park residents, their livelihoods are spent entirely in their immediate area, Seaside Park. Everything they think and do revolves around Seaside Park. And they cannot do the one basic freedom in this democracy, and that's to vote in the town where they spend their lives... Seaside Park.*

L. Conversely, Mr. Bauman testified that deannexation from Berkeley Township / annexation to Seaside Park would bring the following social benefits to the majority of the South Seaside Park residents:

1. Residents would gain an opportunity to participate in local government and social activities of Seaside Park and eliminate time spent driving back and forth to Mainland Berkeley Township municipal offices, which negatively affects their social well-being.

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<sup>174</sup> Testimony on August 6, 2015



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2. Deannexation would provide residents with the opportunity to merge with a municipality more in character with South Seaside Park.

M. Mr. Bauman summarized the social impact of the residents of South Seaside Park being part of Berkeley Township:<sup>175</sup>

*South Seaside Park is isolated from the remainder of Berkeley Township. The geography and logistics concludes that the area in question more naturally belongs to the municipality to which it's adjacent to. Withdraw of South Seaside Park will not disrupt the social or economic fabric of Berkeley Township and the economic or social consequences of deannexation are de minimis.*

### **3.5.2 ISSUES RAISED DURING CROSS-EXAMINATION**

- A. When asked to quantify how often she ventures to Mainland Berkeley Township, Mrs. Fulcomer testified<sup>176</sup> that she comes “*very frequently*” to attend Township Council meetings. In fact, “*up until these last 2 months,...*” she attended Council meetings “*almost on a monthly basis*”.

Mrs. Fulcomer further testified that, as a member of the Berkeley Housing Authority, she attends Authority meetings on Frederick Street, which is on the Mainland.

- B. Regarding South Seaside Park’s “*(political) weight / (political) clout*” if it were part of Seaside Park as opposed to its “*weight / clout*” as part of Berkeley Township, Mrs. Fulcomer was asked by the Board Attorney if “*one of the reasons that [she was] seeking to deannex to South Seaside Park is because the registered voters of South Seaside Park would then become a 25% voting block and have a bigger clout in Seaside Park...*”. Her response was that this was not the case, and that she was only concerned about voting where she lived.<sup>177</sup>

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<sup>175</sup> Testimony on November 5, 2015

<sup>176</sup> Testimony on April 2, 2015

<sup>177</sup> Testimony on April 2, 2015:

*No, the percentages don't concern me. What concerns me is, I would be a voter in the area where I live.*



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C. When asked by the Board Attorney how he reached his conclusion<sup>178</sup> that “*South Seaside Park residents identify more with neighboring barrier island communities than the distant Mainland*”, Mr. Bauman stated that 70% of the residents of South Seaside Park signed the petition (thereby indicating, in his mind, that they identify with their neighboring communities), that he attended meetings of the South Seaside Park Homeowners and Voters Association and that he reviewed the Berkeley NJPatch.com.

**3.5.3 TESTIMONY FROM MEMBERS OF THE GENERAL PUBLIC**<sup>179</sup>

A. Identification with / Affinity for South Seaside Park

1. Part-time South Seaside Park resident and supporter of deannexation Bobby Ring testified to “*the South Seaside Park community's identification and association with the people, culture and civic organizations of the other beach communities that make up the barrier peninsula*”.

2. South Seaside Park resident and supporter of deannexation Joann Pacifico testified:

*...even people who are arguing against deannexation are pointing out how different this community, Seaside Park, is from the mainland communities, in my opinion. It just seems to me that the culture differences are more aligned with what goes on in Seaside Park.*

3. South Seaside Park resident and supporter of deannexation Mary Ann Meneghin testified:

*...I go to church on the barrier island. I shop on the barrier island. Much of my activity is confined to the barrier island because I have difficulty getting around...*

B. South Seaside Park Residents and supporters of deannexation provided similar testimony to that of Mrs. Shalayda:

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<sup>178</sup> Bauman Report: p. 6

<sup>179</sup> Testimony on September 6, 2018



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- A. Carol Luciano testified that she “...personally did not know until the title search was done” and she spoke with her attorney that the home she was purchasing was not in Seaside Park but in Berkeley Township.
- B. Joann Pacifico testified that she “...didn't know my property when I bought was in Berkeley Township. But when I bought 25 years ago, it came up in the... reviews with the attorneys. So, I thought it was part of it [Seaside Park], because it seemed like it should be.
- C. Park-time South Seaside Park resident and supporter of deannexation Alisanne Skeffington testified that she lives in South Seaside Park “2 two months a year” and has her mail forwarded to her fulltime address, but aside from a single notification about a music festival, the only communications she receives from the Township are tax bills.
- D. While Mainland Berkeley Township resident Samuel Cammarato acknowledged “*the very small voice as to what happens in Berkeley Township*” that may be afforded the residents of South Seaside Park due to their proportion of the Township’s population, he added:

*There are various other sections in Berkeley Township such as Holly Park, Glen Cove, Sandpiper Beach and others. And when those sections are compared to the senior population of Holiday City, those less populated sections can also claim a small voice as to what happens in Berkeley Township...*

and asked “*should these other less populated sections of our town also request deannexation?*”

- E. The Township did not address the “rebuttal” testimony of September 2018.

**3.5.4 TOWNSHIP RESPONSE<sup>180</sup>**

Township Superintendent of Parks, Beaches & Recreation Timothy Yurcisin and Township Supervisor of Parks & Beaches James Sperber asserted:

- A. That Berkeley does not treat South Seaside Park any differently than other sections of the Township, and considering the size of the area, there is sufficient public space.

<sup>180</sup> Testimony on May 4, 2017



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- B. While Senior programming is located on the Mainland, Seniors from all over the Township are eligible to participate. And while the locations of such programming require residents of South Seaside Park to drive to the Mainland, the residents of other sections of the Township must also drive a distance to participate.
- C. Most events are held at Veterans Park because it is the Township's flagship park. It has a band shell, stage, and is designed to host large events and concerts, hosting upwards of 7,000 people. Conversely, White Sands Beach could not accommodate much more than "a small event like the beach party" and South Seaside Park could not accommodate the parking required for a large event.

**3.5.5 REBUTTAL TESTIMONY<sup>181</sup>**

- A. Based on her experience as Zoning Official for the Borough of Seaside Park, Mrs. Woolley-Dillon addressed the confusion asserted by Petitioners caused by South Seaside Park being part of Berkeley Township as opposed to Seaside Park:

*There's a lot of confusion about this.... I did an objection in front of both the Planning and Zoning board here. And as a planner that's worked in Ocean County, Monmouth County, I went to look up where I was going to attend my meeting initially about 5 years ago. Typing in South Seaside Park municipal building, there isn't one. It was at that point that I realized the application was not South Seaside Park, it was Berkeley Township. So, there's a lot of... confusion where this happens.*

*I also went to do an inspection within the last few months... A homeowner on 12<sup>th</sup> Avenue in Seaside Park... [was] not at the shore, they were home. Somebody called them in a panic and said... [s]omebody's at your property and they're ripping off the roof. Here, the contractor had delivered, instead of going to 12<sup>th</sup> [Lane], they dropped the materials off at... 12<sup>th</sup> Avenue. Since the materials were dropped off there, that's where the contractor showed up. They actually had taken off half her roof before it was stopped dead in its tracks. So, there's a lot of confusion, lot of overlap. And it wasn't just me, and I was relieved to know that.*

<sup>181</sup> Testimony on December 6, 2018 and February 7, 2019.



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When asked how often somebody comes to her office with a Berkeley Township / South Seaside Park matter, Mrs. Woolley-Dillon responded that it was “[f]rom the time that I'm there, sometimes I'm only there half the day, it's about every... week, week and a half we get somebody that's trying to drop something off”, and noted that these are both homeowners and contractors.

In summing up this line of questioning, Mrs. Woolley-Dillon stated:

*Currently, in my position with Seaside Park, we have ~ and I'm there part-time, so I only see part of the folks that come in. We have a handful of people that come in, every week or 2, trying to drop off a construction jacket. I get telephone calls. I've gotten so many calls I actually have on the sticky on my bulletin board the number for Berkeley Township so that I can direct residents from South Seaside Park to call Berkeley Township because I can't provide assistance.*

When asked if deannexation would solve the confusion, Mrs. Woolley-Dillon responded:

*It doesn't change the 12<sup>th</sup> Avenue versus 12<sup>th</sup> Lane. But what I believe I was indicating as part of the testimony is, there's an identity crisis. Most people assume that they were going to Seaside Park, and they went to Seaside Park instead of South Seaside Park. They commonly affiliate the 2 together.*

**B. Identify Crisis**

In addressing what she terms an Identity Crisis related to South Seaside Park being a part of Berkeley Township, Mrs. Woolley- Dillon testified:

What I was trying to give by way of example is there is an identity crisis. Most people believe that South Seaside Park is actually Seaside Park, and I believe that's the context that the testimony was given in.

In an attempt to clarify Mrs. Woolley- Dillon response, Petitioners' Attorney stated

*...she's not talking about confusion as much as she's talking about identity. She's talking about somebody who went to the wrong house thinking that they were in... Seaside Park or...*



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*South Seaside Park. ...because there is some confusion. She also talked in the same context about people coming to the building department in Seaside Park where she worked at the time looking for permits for South Seaside Park.*

*And so it was in the context of saying that created confusion. But also within the context of people identifying the area. It's not so much about confusion as people identifying the area in a certain way...*

### **3.5.6 ANALYSIS**

#### **A. Affinity for South Seaside Park / Seaside Park**

1. Testimony from long-time residents of South Seaside Park as to their feeling a part of Seaside Park is credible. Testimony from residents who moved to South Seaside Park more recently and who therefore could not have developed the same deep ties to Seaside Park, while credible, is less convincing.
2. Reasons for Petitioners' connection to South Seaside Park include proximity to the ocean and beach, bicycling opportunities, availability of recreational facilities<sup>182</sup> and other amenities documented in the record. Reasons for their desire to annex to Seaside Park include reduced distance to important facilities and a commonality of lifestyle with the Borough.
3. While Petitioners' desire to strengthen their ties to Seaside Park ~ a more localized community with individuals who share similar interests and have a common culture is understandable, the record does not support their claim to an exclusive connection to Seaside Park.
  - a. Mr. Whiteman testified that South Seaside Park residents food shop in Ortley Beach and go to Lavallette for eateries.<sup>183</sup>

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<sup>182</sup> Other than White Sands Beach and Lyons Park, there are no municipal recreation facilities or programs in South Seaside Park. Such facilities do exist in Seaside Park, but they are prioritized for Seaside Park residents and therefore not always available to residents of South Seaside Park.

<sup>183</sup> Testimony on February 5, 2015.



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- b. Mrs. Dolobacs testified<sup>184</sup> that she food shops in Lavallette and Toms River, goes to the doctor in Toms River, shops at Kohl's and goes to the mall, “*in the Mainland*”.
- c. Petitioners' assertions that attending Church in Seaside Park ~ or as stated by Mr. Michelini on January 8, 2015, “*in the Seaside Park area*” ~ somehow demonstrates their affinity for the Borough likely has less to do with any affinity for their neighboring municipality and more to do with the present religious makeup of South Seaside Park residents and the locations of their denominational Places of Worship.

There are no places of worship in South Seaside Park.<sup>185</sup> Seaside Park hosts the Saint Catharine of Siena Roman Catholic Church and the Seaside Park Union Church, both of which are attended by South Seaside Park residents.<sup>186</sup>

Petitioner Katherine Fulcomer testified<sup>187</sup> that she attends the Toms River Presbyterian Church, which is neither in Seaside Park or Berkeley Township.

A sampling of places of worship in (limited) proximity to South Seaside Park finds that individuals of other faiths would need to attend Places of Worship as follows:

| FAITH          | PLACE OF WORSHIP   |
|----------------|--|
| Jewish         | Depending on denomination, Toms River, Lakewood, Brick, Howell or Oakhurst         |
| Muslim         | Toms River   |
| Presbyterian   | Manasquan, Toms River, Brick, Point Pleasant Beach, Bayville, Barnegat or Lakewood |
| Baptist        | Toms River, Forked River, Beachwood, Brick or Barnegat.                            |
| Methodist      | Bayville, Island Heights, Toms River, Forked River or Whiting                      |
| Greek Orthodox | Toms River, Brick or Ocean Township  |
| Hindu          | Toms River   |

*Report Table D*

<sup>184</sup> Testimony on May 7, 2015.

<sup>185</sup> Statement of Mr. Michelini January 8, 2015 & Testimony of Petitioners’ Planner Scott Bauman of August 6, 2015.

<sup>186</sup> While Mr. Whiteman testified (on February 5, 2015) that the Seaside Park Union Church is a Protestant Church, the churches website ([www.theunionchurch.net](http://www.theunionchurch.net)) states they are a Christian “*nondenominational church with a multi-denominational heritage*”.

<sup>187</sup> Testimony on April 2, 2015.



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Accordingly, Petitioners' testimony does not demonstrate an affinity for worshiping in Seaside Park as much as it demonstrates that only Catholics and those seeking a non-denominational experience can worship in the Borough. For South Seaside Park residents of other faiths, travel is required.

- d. While identification with their barrier islands neighbor and not Mainland Berkeley Township could be a reason for some Petitioners to seek deannexation, other reasons may exist for other Petitioners. Without testimony from all Petitioners, Mr. Bauman's conclusion is only a supposition.

Not being a part of a municipality for which one has an affinity does not, in-and-of-itself, represent social injury. Residents of any community, are naturally more familiar and comfortable with their neighborhoods than they are with a more "distant elsewhere".

**B. Isolation from Mainland Berkeley Township**

1. Testimony from long-time residents of South Seaside Park as to their feelings of isolation is credible. Testimony from residents who moved to South Seaside Park more recently and who therefore could not have developed the same deep sense of isolation, while credible, is less convincing.
2. Reasons for Petitioners' feelings of isolation include distance and a related lack of ability to participate in Township life. While Mainland Berkeley Township can boast of many similar and different offerings, the distance from South Seaside Park to these amenities is inconvenient for residents of South Seaside Park.<sup>188</sup>
3. Petitioners complaints<sup>189</sup> that residents of South Seaside Park do not receive the Berkeley Citizen or Berkeley Times does evidence a disconnect between the Island and Mainland portions of the Township. However, these private publications are not the only source of local information. Any purported social injury is therefore limited.

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<sup>188</sup> Additional reasons for Petitioners seeking deannexation exist but enure to other factors, which are addressed elsewhere in this Report of Findings.

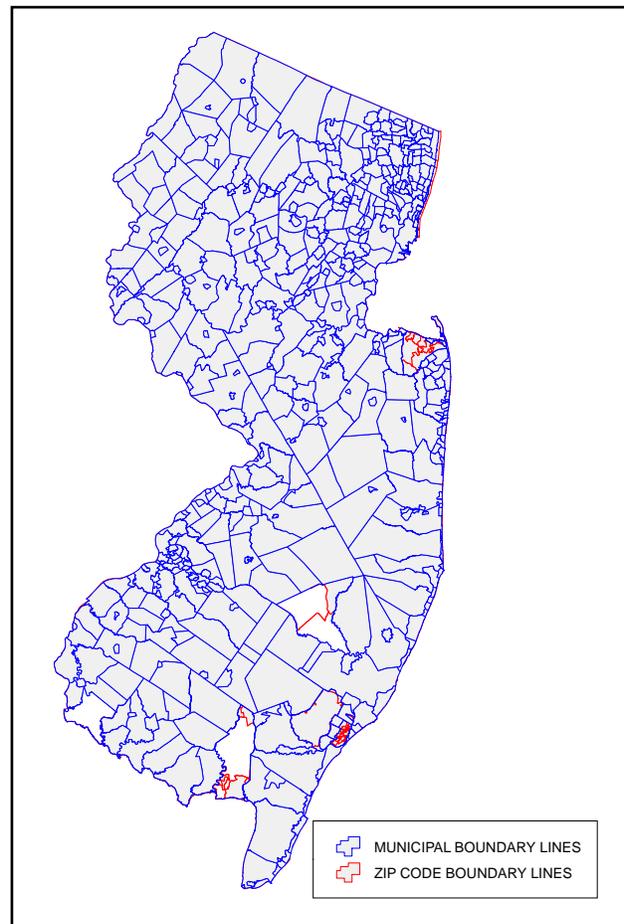
<sup>189</sup> Testimony on April 2, 2015 & May 7, 2015



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C. Zip Code

1. While Mr. Whiteman’s testimony<sup>190</sup> that South Seaside Park is assigned the Seaside Park Zip Code and not one of the Mainland Berkeley Township Zip Codes ~ and as a result the driver’s licenses of full-time South Seaside Park residents have a Seaside Park address ~ may be factually correct, the only testimony to support any negative impact of South Seaside Park’s Zip Code was that of Mrs. Patricia Dolobacs, who testified to delayed mail delivery.<sup>191</sup>
2. While a Seaside Park addresses on identification cards and delays in mail delivery are no-doubt annoying and inconvenient, the record contains no evidence to suggest that they have led to social injury.
3. Zip Codes that do not follow municipal boundaries are not uncommon. Single Zip Codes often encompass multiple municipalities and single municipalities often have multiple Zip Codes (as testified to by Mr. Whiteman for Berkeley Township). The extent of these situations in New Jersey is graphically depicted on Report Graphic 20.<sup>192</sup>



Report Graphic 20

<sup>190</sup> Testimony on February 5, 2015

<sup>191</sup> Testimony on May 7, 2015

<sup>192</sup> Municipal boundary mapping: NJGIN (<http://njogis-newjersey.opendata.arcgis.com/datasets/new-jersey-municipalities>).

Zip Code boundaries from ArcGIS (<https://www.arcgis.com/home/item.html?id=8d2012a2016e484dafaac0451f9aea24>) Updated: April 18, 2017.



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D. Address Confusion

1. Mrs. Woolley-Dillon’s unsuccessful attempt to locate the South Seaside Park municipal building by typing “South Seaside Park municipal building” into a search engine or Global Positioning System Application (GPS App) is not surprising since South Seaside Park is not a municipality. South Seaside Park is a neighborhood within a larger municipality.

This office had a similar lack of success searching for the Harlem Municipal Building in New York City or the Society Hill Municipal Building in Philadelphia.

2. The address confusion in Mrs. Woolley-Dillon’s 12<sup>th</sup> Lane vs. 12<sup>th</sup> Avenue anecdote would appear to have less to do with different municipalities than it does with similar street names. Deannexation would not relieve this confusion unless one of these street names is changed.

When asked if deannexation wouldn’t, in fact, “*actually increase the confusion between the avenue and the lane? Now it’s in the same town*”, Mrs. Woolley-Dillon stated:

*I don't think that it would increase the confusion... It's simply an event that happened, and they thought that they were going to ~ they went to Seaside Park instead of South Seaside Park.*

E. Identify Crisis

Despite testimony separating the issues, it appears that the concept of an Identity Crisis facing South Seaside Park is indeed related to purported confusion caused by the community being part of Berkeley Township. As stated by Petitioners’ Attorney:

*And so it was in the context of saying [the 12<sup>th</sup> Lane vs. the 12<sup>th</sup> Avenue address issue] created confusion. But also within the context of people identifying the area. It's not so much about confusion as people identifying the area in a certain way...*



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F. Library

1. Petitioners' assertion that they do not utilize the library in Bayville Berkeley Township but rather use the library in (closer) Lavallette demonstrates the impact of distance from Berkeley Township, and may evidence a separate identity between South Seaside Park and Berkeley Township. However, since both libraries are part of the Ocean County Library system, such distance would not be expected to impact the library services received by the residents of South Seaside Park. In fact, these usage patterns are exactly what a County-wide library network is designed to address. The record contains no evidence to suggest that the use of the County Library in Lavallette has led to social injury.
2. Library usage will not change should deannexation occur.

G. Representation

Without commenting on the merits of Mrs. Fulcomer's assertion<sup>193</sup> that South Seaside Park is underrepresented in Township politics, the statistics support her testimony that the residents of South Seaside Park would be a more influential voting block if they were part of Seaside Park than they are as part of Berkeley Township.

H. Social Diversity

The part that South Seaside Park plays in the social diversity of the Township may be seen by comparing certain population demographics for South Seaside Park and Berkeley Township.

Petitioners' Planner<sup>194</sup> and the Township / Planning Board Planner,<sup>195</sup> presented different statistics based on the Census information available at the times of their respective testimonies. Specifically, while both Planners used 2010 Census data, Petitioners' Planner augmented the Census information with American Community Survey data from 2008 to

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<sup>193</sup> Testimony on April 2, 2015

<sup>194</sup> Bauman Report: pp. 14 – 16 & Exhibits 5, 6 & 7D thereto

<sup>195</sup> T&M Report: pp. 11 – 13



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2012 while the Township / Planning Board Planner augmented the Census with American Community Survey data from 2011 to 2015.<sup>196</sup>

Additionally, both Planners presented differing categories of information. Specifically:

- While Petitioners’ Planner presented Population by Race and Age, the Township / Planning Board Planner only provided total population figures without demographic breakout.
- While Petitioners’ Planner presented employment in terms of job categories and did not comment on data related to unemployment, the Township / Planning Board Planner provided unemployment rates but not job category statistics.

In order to provide the most recent, apples-to-apples comparison available, this Report of Findings presents the following estimates from the 2016 American Community Survey:<sup>197</sup> Additional demographic comparisons of South Seaside Park and Mainland Berkeley Township are presented in §3.10 herein.

1. The population of Berkeley Township is 41,554 and the population of South Seaside Park is 674. Deannexation will result in the loss of these residents from the Township.
2. Age

|                | South Seaside Park | Berkeley Township |
|----------------|--------------------|-------------------|
| <b>TOTAL</b>   | <b>674</b>         | <b>41,554</b>     |
| Under 5 years  | 13                 | 829               |
| 5 to 9 years   | 0                  | 832               |
| 10 to 14 years | 28                 | 878               |
| 15 to 17 years | 0                  | 450               |

<sup>196</sup> According to the U.S. Census Bureau, the American Community Survey is used to estimate characteristic distributions of a population. Population totals are presented in the decennial Census. Further, ACS data are estimates collected from data sampling and not the whole population. To interpret the reliability of the estimates, the Census Bureau publishes a margin of error for every ACS estimate. (<https://www.census.gov/programs-surveys/acs/guidance/comparing-acs-data.html>)

<sup>197</sup> The data presented by the 2016 ACS assigned different statistical Margins of Error for various line items in the Survey. For example, the ACS reports the Total Sex By Age for Berkeley Township as 14,554 with a statistical Margin of Error of 44 while it reports the same statistic for South Seaside Park as 674, with a statistical Margin of Error of 187. Similarly, the Margins of Error assigned to each age cohort varies from 43 to 434 for Berkeley Township and 12 to 187 for South Seaside Park. As such, while it is possible to combine statistics for presentation purposes in this Report of Findings, it is not possible to combine Margins of Error. Neither the report / report amendment prepared by Mr. Bauman (Exhibits A-42 and A-43) nor the report prepared by T&M Associates (Exhibit T-32) mentioned Margin of Error in presenting their ACS data. One must however, assume that the statisticians at the Census Bureau appropriately applied Margin of Error protocols when publishing their information. While one might debate this methodology and the applicability of the ACS, the fact remains that this information represents the best available data for analysis purposes.



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|                   | South Seaside Park | Berkeley Township |
|-------------------|--------------------|-------------------|
| 18 and 19 years   | 0                  | 238               |
| 20 years          | 0                  | 200               |
| 21 years          | 0                  | 184               |
| 22 to 24 years    | 49                 | 532               |
| 25 to 29 years    | 17                 | 1011              |
| 30 to 34 years    | 0                  | 593               |
| 35 to 39 years    | 8                  | 946               |
| 40 to 44 years    | 27                 | 856               |
| 45 to 49 years    | 0                  | 908               |
| 50 to 54 years    | 31                 | 946               |
| 55 to 59 years    | 37                 | 1244              |
| 60 and 61 years   | 0                  | 548               |
| 62 to 64 years    | 57                 | 1119              |
| 65 and 66 years   | 0                  | 582               |
| 67 to 69 years    | 0                  | 953               |
| 70 to 74 years    | 29                 | 1656              |
| 75 to 79 years    | 55                 | 1133              |
| 80 to 84 years    | 28                 | 1125              |
| 85 years and over | 0                  | 1325              |

|                   |              |              |
|-------------------|--------------|--------------|
| <b>Median Age</b> | <b>59.9%</b> | <b>59.8%</b> |
|-------------------|--------------|--------------|

*Report Table E*

3. Educational Attainment for the Population 25 Years And Over

|                                | South Seaside Park |       | Berkeley Township |       |
|--------------------------------|--------------------|-------|-------------------|-------|
|                                | #                  | %     | #                 | %     |
| Total Relevant Population      | 568                |       | 34,330            |       |
| No Schooling Completed         | 0                  | 0.0%  | 316               | 0.9%  |
| High School, GED or equivalent | 146                | 25.7% | 15,656            | 45.6% |
| Some College, No Degree        | 139                | 24.5% | 6,483             | 18.9% |
| Associates Degree              | 8                  | 1.4%  | 2,257             | 6.6%  |
| Bachelor’s Degree              | 176                | 31.0% | 4,316             | 12.6% |
| Master’s Degree                | 99                 | 17.4% | 1,401             | 4.1%  |



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|                            | South Seaside Park |      | Berkeley Township |      |
|----------------------------|--------------------|------|-------------------|------|
|                            | #                  | %    | #                 | %    |
| Doctorate Degree           | 0                  | 0.0% | 87                | 0.3% |
| Professional School Degree | 0                  | 0.0% | 147               | 0.4% |

|                           |            |              |              |              |
|---------------------------|------------|--------------|--------------|--------------|
| <b>All College Degree</b> | <b>283</b> | <b>49.8%</b> | <b>8,061</b> | <b>23.5%</b> |
|---------------------------|------------|--------------|--------------|--------------|

*Report Table F*

4. Earnings<sup>198</sup> & Income<sup>199</sup>

- a. The Median Earnings for the 12 months prior to the 2016 ACS for South Seaside Park was \$43,767 as compared to \$35,765 for the Township as a whole ~ resulting in Median Earnings for South Seaside Park that were \$8,002 (22.4%) higher than Berkeley Township.
- b. The Median *Per Capita* Income for the 12 months prior to the 2016 ACS for South Seaside Park was \$41,158 as compared to \$31,025 for the Township as a whole ~ resulting in a Median Per Capita Income for South Seaside Park that was \$10,133 (32.7%) higher than Berkeley Township.

5. Employment & Unemployment<sup>200</sup>

- a. Of the 16,013 residents of Berkeley Township that participate in the Civilian Labor Force,<sup>201</sup> 14,486 were employed, resulting in a Township unemployment rate of 9.5%.

<sup>198</sup> Wages, salary, armed forces pay, commissions, tips, piece-rate payments, and cash bonuses earned, before deductions are made for items such as taxes, bonds, pensions, and union dues; net money income (gross receipts minus expenses) from one's own business, professional enterprise, or partnership; net money income (gross receipts minus operating expenses) from the operation of a farm by a person on their own account, as an owner, renter, or sharecropper. For the population 16 years and over with earnings in the past 12 months. In 2016 inflation-adjusted dollars.  
(<https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html>)

<sup>199</sup> Earnings, unemployment compensation, workers' compensation, social security, supplemental security income, public assistance, veterans' payments, survivor benefits, disability benefits, pension or retirement income, interest, dividends, rents, royalties, and estates and trusts, educational assistance, alimony, child support, financial assistance from outside of the household, other income. For the population including those under 16 years. In 2016 inflation-adjusted dollars.  
(<https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html>)

<sup>200</sup> For the population 16 years and over.

<sup>201</sup> 20,855 (56.5%) Township residents do not participate in the labor force while 325 (51.3%) South Seaside Park residents do not participate.



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All 308 residents of South Seaside Park that participate in the Civilian Labor Force were employed.

- b. Eliminating South Seaside Park from Berkeley Township will increase the Township's unemployment rate to 9.7%.

6. Race

Of the 41,554 residents of Berkeley Township, 2,672 are non-white, equating to a 6.4% minority population Township-wide. Of the 674 residents of South Seaside Park, 12 are non-white, equating to a 1.8% minority population for this section of the Township.

Should deannexation occur, 12 minority individuals would no longer live in Berkeley Township. Eliminating South Seaside Park from Berkeley Township will increase the Township's minority population to 6.5%.

**3.5.7 FINDINGS**

*At issue before the Planning Board is whether or not being part of Berkeley Township is 'detrimental to the... social wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.*

A. In Ryan, the Court considered the kind of evidence that may be relevant to the issue of 'social detriment' in the context of deannexation; suggesting that social detriment might be found in:

- A community's being deprived of the Petitioners' participation in the religious, civic, cultural, charitable and intellectual activities of the municipality;
- Their meaningful interaction with other members of the community;
- Their contribution to its [the host community's] prestige and social standing;
- The part they play in general scheme of their municipality's social diversity;
- The wholesome effect their presence has on racial integration.

B. This Report of Findings finds that:



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1. Petitioners' lives are more closely aligned with Seaside Park ~ and the surrounding areas ~ than with Berkeley Township but are not *limited* to South Seaside Park or Seaside Park.
2. While distance may make it inconvenient or difficult for Petitioners to participate in the religious, civic, cultural, charitable and intellectual activities of the Township or to meaningfully interact with other members of the community, they are not being *deprived* of the ability to participate or interact.
  - a. The fact that residents of South Seaside Park attend religious services in Seaside Park, Toms River or other neighboring communities appears to be attributable to the present religious makeup of the residents of South Seaside Park and not to their being residents of Berkeley Township.

While worshipping closer to home is understandable, the residents of South Seaside Park are not being *deprived* of participating in the religious activities of the Township. Further, deannexation will not change where Petitioners practice their religion.

- b. The record is replete with testimony that Petitioners attend Berkeley Township public meetings, hold (or previously held) elected and appointed office in the Township and otherwise actively participate in Township civic life. They are not being deprived of participating in the civic activities of the Township. Conversely, deannexation would deprive Berkeley Township of the civic participation of the residents of South Seaside Park.
    - c. Petitioners' Berkeley Township residency does prohibit them from voting in Seaside Park's elections and from participating in certain of the Borough's civic offerings. Other than the decision to limit the response by Seaside Park Police to South Seaside Park,<sup>202</sup> there is no record to suggest that municipal decisions made in Seaside Park negatively impact South Seaside Park.

As to the impact that their increased "clout" would have in curing the purported injuries suffered by the residents of South Seaside Park at the hands of Berkeley Township should deannexation occur, the record reflects that some of these

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<sup>202</sup> §3.8.1 herein.



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perceived injuries are not curable<sup>203</sup> while the response of Seaside Park to others is speculative at best.<sup>204</sup>

While the Township's efforts to address certain quality of life issues important to Petitioners may, or any number of reasons, be delayed or unaddressed, there is nothing in the record to suggest that ~ upon successful deannexation from Berkeley Township and subsequent annexation to Seaside Park ~ the Borough will, in Mr. Whiteman's words:

*..take hold of our town and say, okay, we'll give you what's needed for your town there.*<sup>205</sup>

While deannexation would permit Petitioners to participate in local government in Seaside Park, Petitioners made individual locational decisions regarding where they wished to live ~ and therefore vote. Had they wished to vote in Seaside Park, they could have moved to Seaside Park.

- d. Petitioners' testimony that they did not know they were purchasing homes in Berkeley Township and not Seaside Park is not credible given the volume of documentation required for such transactions, including financing commitments, Contracts of Sale, Property Surveys and Title Searches, all of which would have indicated that South Seaside Park is part of Berkeley Township.
- e. Other than White Sands Beach and Lyons Park, there are no municipal recreation facilities in South Seaside Park. Such facilities do exist in Seaside Park, but they are prioritized for Seaside Park residents and therefore not always available to residents of South Seaside Park.

Deannexation would make it easier and more convenient for the residents of South Seaside Park to participate recreational activities of Seaside Park, and would eliminate time spent driving between the Island and Mainland Berkeley Township.

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<sup>203</sup> Addressed throughout this Report of Findings

<sup>204</sup> §3.4.2 herein, FN<sup>138</sup> & FN<sup>139</sup>

<sup>205</sup> Testimony on February 5, 2015



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- f. To the extent that the Township’s recreational programs represent cultural, charitable or intellectual activities, Petitioners’ lack of participation may represent a social detriment. However, the record of Petitioners actively participating in Township civic life suggests that they would participate in Township programming if they were interested.
- g. There is no municipal sponsored bus service from South Seaside Park to the Mainland for events or programs, which serves to isolate residents of South Seaside Park from the balance of Berkeley Township. However, with the exception of recreational fields, no evidence has been presented to suggest that Seaside Park provides the scope of events or programs available to residents of Berkeley Township ~ albeit on the Mainland.
- h. While the record contains no evidence to suggest that Petitioners’ are being deprived of interactions with residents of Mainland Berkeley Township, one can infer from the testimony that such interaction, to the extent it exists, is limited.
- i. The record is replete with testimony regarding the uniqueness of South Seaside Park.<sup>206</sup>

While specifically addressing the monetary value of the petitioning community to its host municipality, the Avalon Manor Court held that deannexation of such a community would, in pertinent part, “*suggest implications for the Township’s... ‘prestige and social standing’ such that ‘the loss of such a... sector of the municipality of necessity would inflict a significant ‘social injury’ on the Township and its ability to continue to attract the kinds of residents - desirable in any community’.*”

The Court found that the loss of the “*intangible enhancements to the municipality of one of its nicest areas constituted a ‘significant injury’ to the well-being of the Township’.*”

Applying this ruling suggests that deannexation would be detrimental to the prestige and social standing of Berkeley Township and would negatively impact the Township’s social diversity.

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<sup>206</sup> Bauman Report: pp. 10 & 23 describes South Seaside Park as having a “*unique barrier island community character and identity’.* On August 6, 2015, Mr. Bauman characterized South Seaside Park as having a “*special community character’.*”



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j. An analysis of the 2016 ACS reveals that deannexation would have a de minimis impact on the age, racial composition and unemployment rate of the Township. However, deannexation would:

- Reduce the overall education level of Township residents;
- Remove a significantly higher income cohort from the Township and thereby reduce the overall income of Township residents;
- Remove high median value real estate; and
- Reduce the Township’s overall Civilian Labor Force.

As a result, deannexation would reduce the social diversity of the Township.

k. As with most people, Petitioners shop where the stores are, dine where the food is to their liking, visit their doctors at their offices,<sup>207</sup> worship where their religious institutions are located and associate with like-minded individuals without regard for municipal boundaries. These social habits will not change should deannexation occur.

C. Russell suggests that there are “*other mechanisms short of [de]annexation to address the concerns of the Petitioners*”. These may include, but not necessarily be limited to:

1. Berkeley Township could enter into an Inter-Local Agreement whereby South Seaside Park residents could take advantage of Seaside Park’s recreational facilities, participate in its recreation programs and otherwise take advantage of facilities which are closer to their homes.
2. The Township could hold occasional public / civic meetings in Seaside Park’s municipal building or in the Tri-Borough First Aid Squad building. While not in Berkeley proper, such an effort would provide an added voice to South Seaside Park.
3. Given the advancement in technology, the Township could stream all public meetings on its website so that interested parties who could not attend in person would be able to view. A feedback mechanism could be implemented so that remote viewers could participate.

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<sup>207</sup> The choice of a medical provider is not location-dependent, and people will travel great distances to see their doctors.



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Additional issues related to social injury are addressed elsewhere in this Report of Findings.



### **3.6 ECONOMIC INJURY**

Petitioners assert that they are harmed economically by South Seaside Park being part of Berkeley Township. Financial issues not related to Petitioners' economic injury are addressed in §3.11 herein.

#### **3.6.1 PETITIONERS' TESTIMONY**

- A. In addition to Social Injury resulting from having to conduct municipal business on the Mainland (§3.5.1 herein), Petitioners testified that the distance involved (§3.2.1 herein) results in economic injury in the form of time, gas and tolls (Garden State Parkway).
  
- B. As a result of the lack of amenities in South Seaside Park (§3.4.1 herein), Petitioners testified that they must go to Seaside Park if they wish to enjoy bay-beach recreation, as well as use the Seaside Park tennis courts.

Petitioner Katherine Fulcomer testified<sup>208</sup> that she has been purchasing beach badges for her family to enjoy “*the beautiful playground they have in Seaside Park*” since her children were young (the youngest is now 32 years old), and now she purchases badges for her grandchildren as well. Petitioner Patricia Dolobacs provided similar testimony.<sup>209</sup>

Petitioners further testified that they purchase beach badges for both South Seaside Park<sup>210</sup> and Seaside Park, thereby causing economic injury to South Seaside Park residents who purchase the Seaside Park badges.<sup>211</sup>

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<sup>208</sup> Testimony on April 2, 2015

<sup>209</sup> Testimony on May 7, 2015

<sup>210</sup> In addition to her testimony regarding beach badge purchases, Mrs. Fulcomer “*wanted to be absolutely correct*” that as a Senior Citizen, she gets her Berkeley / South Seaside park beach badges for free.

<sup>211</sup> Petitioner Donald Whiteman testified on January 1, 2015 that Berkeley Township beach badges cost \$35.00 for the entire season, but are free for Senior Citizens. As of 2018, Seaside Park charges \$60.00 for seasonal beach badges. Senior Citizens (65+) are charged \$20.00 with proof of age. (<https://www.seasideparknj.org/wp-content/uploads/2018/04/Beach-Badge-Information-2018-1.pdf>)

Mrs. Dolobacs testified on May 7, 2015:

*I go to Seaside Park. I use their bay beach when the kids were small, the grandkids. We use their pier to go out and we crab. We use their boat ramp to put our boats in the water.*

[continued]



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- C. Petitioners' Planner summarized the economic impact of South Seaside Park being part of Berkeley Township:<sup>212</sup>

*...From a planner's perspective, the economic benefit to South Seaside Park residents that walkability reduces auto trips...*

*As far as economic loss to South Seaside Park residents, the cost of travel of South Seaside Park residents from their homes to the Mainland should not be underestimated. It involves operating cost of the vehicle, as well as the opportunity costs lost by South Seaside Park residents when they engage in time-consuming activities of traveling back and forth to the Mainland...*

*I'm not an accountant, but it's not rocket science to know that the economic impact of gas, time and opportunity costs are part of this equation. No one can argue about those economics...*

### **3.6.2 ISSUES RAISED DURING CROSS-EXAMINATION**

- A. While discussing the necessity of purchasing beach badges in order to utilize the amenities in Seaside Park, Petitioner Donald Whiteman testified<sup>213</sup> that Berkeley residents are [then currently] able to purchase beach badges and utilize the beach and tennis courts in Seaside Park at the same cost whether they are residents of Seaside Park or of some other municipality. Accordingly, the need to purchase a Seaside Park beach badge to enjoy these amenities would not change upon successful deannexation.

During the course of the hearing, the future of the South Seaside Park Beach (a.k.a. White Sands Beach) was an ongoing debate, with Petitioners asserting that, upon deannexation from Berkeley Township and annexation to Seaside Park, the Beach would transfer to Seaside Park

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[continued]

*...I realize... that we have to pay. So, we're paying... Seaside Park for this amenity. And I know you're going to say to me, well, how would that change if we were in Seaside Park? Well, the biggest thing would be, I would save about \$385 a year because I would only have to buy one [Seaside Park beach] badge [per person]. I would not have to buy a [South Seaside Park] badge for the beach to go in the ocean, as well as pay Seaside Park the money for their badges [for their Bay Beach]. ...Now, we have 9 in the family, so it gets a little expensive. And I'm not going to say to my grandchildren, you can go but you have to pay yourself. That doesn't do it....*

<sup>212</sup> Testimony on November 5, 2015

<sup>213</sup> Testimony on January 8, 2015



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and the Planning Board’s professionals countering that while municipal jurisdiction may indeed transfer, fee ownership of the beach as real estate, would remain with the Township.

- B. When asked about the costs associated with going to the White Sands Beach vs. the adjacent Island Beach State Park, Petitioners’ Planner testified that while parking in South Seaside Park (proper) was free ~ when accessible and available, there is a charge to park at Island Beach State Park. When queried on this, Mr. Bauman pointed out that one could avoid the fee if they parking in South Seaside Park and walked or biked to the bathing beach ~ a distance of 3 miles.<sup>214</sup>

**3.6.3 TOWNSHIP RESPONSE**

Petitioners’ assertion that the need to conduct municipal business on the Mainland (§3.2.1 herein) results in economic injury in the form of time, fuel and tolls was addressed by several Township officials, who, while conceding the distance from South Seaside Park to the Township's Municipal Complex, noted that residents of other sections of the Township are required to travel some distances to the Municipal Complex.

**3.6.4 ANALYSIS**

- A. Petitioners’ assertion that their need to conduct municipal business on the Mainland results in economic injury, while not quantified, is credible.

The response from Township officials who noted that residents of other sections of the Township are required to travel some distances to the Municipal Complex is also credible,

<sup>214</sup> Testimony on September 3, 2015. A review of the Island Beach State Park website ([www.state.nj.us/dep/parksandforests/parks/island.html](http://www.state.nj.us/dep/parksandforests/parks/island.html)) on 9/5/18 finds:

**Fees:** Entrance fees are charged per vehicle from Memorial Day weekend to Labor Day

| NJ Resident | Non-Resident |                                       |
|-------------|--------------|---------------------------------------|
| \$ 6.00     | \$12.00      | weekdays                              |
| \$10.00     | \$20.00      | weekends/holidays                     |
| N/A         | N/A          | walk-in/bicycle                       |
| \$ 5.00     | \$ 7.00      | motorcycle                            |
| \$3.00      | \$3.00       | <b>Walk-in at Fisherman’s Walkway</b> |

\*Entrance fee the day after Labor Day to the Friday before Memorial Day is \$5/NJ Resident and \$10/Non-Resident.



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although this Report of Findings finds<sup>215</sup> that the distances and times from other sections of the Township to the Municipal Complex are longer for residents of South Seaside Park than for other sections of the Township.

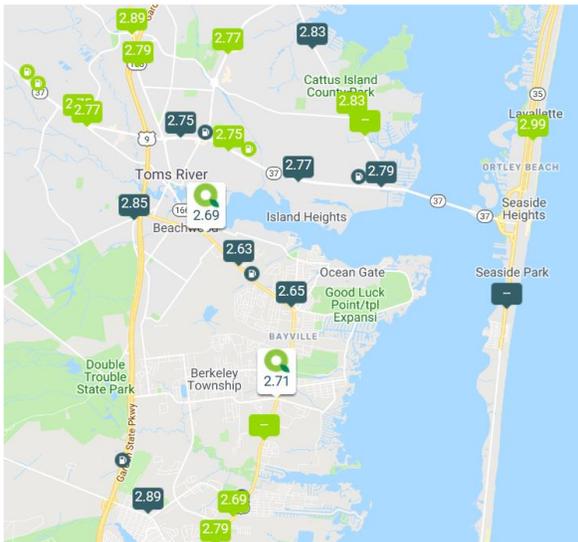
While the value of one’s time is an individualistic calculation that cannot be quantified, fuel and tolls, on the other hand, can be quantified.

1. At Publication of this Report of Findings, “regular” gas at stations in the vicinity of Berkeley Township ranged from \$2.63 per gallon to \$2.99 per gallon, with the average being \$2.79 per gallon.<sup>216</sup> Multiplying this average by the 16 miles from South Seaside Park to the Township’s Municipal Complex, and assuming a light-duty vehicles achieving 21.6<sup>217</sup> miles per gallon, a one-way trip costs the average drive \$2.07.

The Comparative MapQuest Route Planner search conducted for this Report of Findings<sup>218</sup> measured the distance to travel from an address in the geographic center of South Seaside

<sup>215</sup> §3.2.4 A herein.

<sup>216</sup>



Report Graphic 21

([www.gasbuddy.com](http://www.gasbuddy.com) ~ 9-5-18)

<sup>217</sup> Cars, Pickup Trucks, Vans & Sport Utility Vehicles Gas Mileage of Vehicles on the Road, Little Progress Since Early ‘90s; Bernie DeGroat, University of Michigan News. August 17, 2015, citing research conducted by Michael Sivak and Brandon Schoettle of the University of Michigan Transportation Research Institute. (<http://ns.umich.edu/new/releases/23068-gas-mileage-of-vehicles-on-the-road-little-progress-since-early-90s>)

<sup>218</sup> See FN<sup>231</sup>



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Park to the Municipal Complex against the distances to travel from random addresses in the northwest, southwest, northeast and southeast sections of the Township to the Township's Municipal Complex. After South Seaside Park, the most distant address from the Municipal Complex is 257 Bonaire Drive at 9 miles.

Multiplying the \$2.79 per gallon average fuel price by the 9 miles from 257 Bonaire Drive to the Township's Municipal Complex, and assuming the same light-duty vehicle achieving 21.6 miles per gallon, a one-way trip costs the average drive \$1.16.

2. The Federal mileage reimbursement rates<sup>219</sup> for 2018 are:
  - \$0.545 for every mile of business travel driven.
  - \$0.18 per mile driven for medical or moving purposes.
  - \$0.14 per mile driven in service of charitable organizations.

While no figure is provided for a drive to conduct personal / municipal business, the cost of operating an automobile for the 16 miles between South Seaside Park and the Township's Municipal Complex could range from \$2.88 to \$8.72 while the cost of operating between 257 Bonaire Drive and the Municipal Complex ranges from \$1.62 to \$4.90.

- B. Petitioners' assertion that the lack of recreational amenities in South Seaside Park causes them to purchase beach badges for neighboring Seaside Park in order to participate in that municipality's offerings is not without merit. Such lack of amenities is addressed at length in §3.3, §3.4 and §3.5 of this Report of Findings.

At publication of this Report of Findings, the issue of post-deannexation ownership of White Sands Beach remains unresolved. Should ownership indeed transfer to Seaside Park upon deannexation / annexation, one would assume that the Borough's beach badges would extend to the White Sands Beach and there would be no need for Petitioners to purchase badges from Berkeley Township. Should ownership not transfer, one would assume that Berkeley would continue to operate White Sands Beach, and anyone wishing to enjoy that amenity would need to purchase a beach badge from the Township.

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<sup>219</sup> Rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. ([www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017](http://www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017))



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While it is not possible to know, at this point in time, how residents of South Seaside Park would react should the Township retain ownership of the White Sands Beach and require beach badges for its use, it is plausible that some South Seaside Park residents would elect to purchase badges from the Township in order to use the beach that is close to their homes.

While extensive testimony was provided early in the proceedings regarding the comparative costs of beach badges in Berkeley Township and Seaside Park, that information is dated. A review of the municipal websites for this Report of Findings reveals costs as follows:

| <b>Badge Type</b>   | <b>Berkeley Township<sup>220</sup></b> | <b>Seaside Park<sup>221</sup></b>                               |
|---------------------|--|---|
| Daily               | \$8.00                                 | \$10.00   |
| Weekly              | \$25.00                                | \$35.00   |
| Seasonal            | \$50.00                                | \$60.00   |
| Children 12 & Under | Free                                   | No Information is provided on the Seaside Park Borough website. |
| Senior Lifetime     | \$10.00 (62+)                          |   |
| Senior Seasonal     | \$10.00 (62+)                          |   |

*Report Table H*

Accordingly, deannexation may actually increase badge fees for residents of South Seaside Park in certain circumstances.<sup>222</sup>

- C. Mr. Bauman’s comment that Island Beach State Park is free if one is willing to park in South Seaside Park and walk or bike the 3 miles to the bathing beach<sup>223</sup> is flippant and misguided. Expecting someone ~ especially seniors or families with small children ~ to walk or bike 3 miles with beach chairs and bags full of blankets, toys, food and other gear is unreasonable.

<sup>220</sup> [http://www.berkeleytownship.org/departments/recreation/beach\\_information.php](http://www.berkeleytownship.org/departments/recreation/beach_information.php)

<sup>221</sup> <https://www.seasideparknj.org/offices-departments/beach-control/beach-badge-sales/>

<sup>222</sup> Beach badges for Seaside Park provide access to bay and ocean beaches, as well as other amenities offered in the Borough. Badges in Berkeley Township are limited to White Sands Beach.

<sup>223</sup> Testimony on September 3, 2015



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**3.6.5 FINDINGS**

*At issue before the Planning Board is whether or not being part of Berkeley Township is 'detrimental to the... economic wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.*

A. This Report of Findings finds that:

1. Conducting personal business on the Mainland is more expensive for the residents of South Seaside Park than for residents of other sections of the Township.
2. There is an extra (travel) cost for residents of South Seaside Park to participate in recreational opportunities on the Mainland.
3. There is an extra cost for residents of South Seaside Park to participate in certain recreational opportunities in proximity to their homes (i.e., Seaside Park).
4. While the future of White Sands Beach remains unresolved, there are scenarios where deannexation may actually increase badge fees for residents of South Seaside Park.

B. Russell suggests that there are “*other mechanisms short of [de]annexation to address the concerns of the Petitioners*”. These may include, but not necessarily be limited to:

1. Berkeley Township could enter into one or more Inter-Local Agreement(s) with Seaside Park whereby:
  - a. South Seaside Park residents could take advantage of Seaside Park’s recreational facilities, participate in its recreational programs and otherwise take advantage of facilities that are closer to their homes.
  - b. Seaside Park’s municipal offices could handle routine matters for the residents of South Seaside Park. While it may not be realistic for the Borough to handle all Township business, such an arrangement could address a large number of issues.



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2. The Township could hold occasional public / civic meetings in Seaside Park's municipal building or in the Tri-Borough First Aid Squad building. While not in Berkeley proper, such an effort would provide an added voice to South Seaside Park.
3. The Township could further improve its website and Facebook page to expand the ability of residents to conduct business via the internet as opposed to in person.
4. Given the advancement in technology, the Township could stream all public meetings on its website so that interested parties who could not attend in person would be able to view. A feedback mechanism could be implemented so that remote viewers could participate.

Additional assertions related to economics are addressed elsewhere in this Report of Findings.



### **3.7 PUBLIC WORKS SERVICES**

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

#### **3.7.1 PETITIONERS' TESTIMONY**

A. Petitioners Donald Whiteman and Robert Schwartz testified that the roads in South Seaside Park are not cleaned or repaved.<sup>224</sup> As stated by Mr. Whiteman:<sup>225</sup>

*I have been at the Council meetings complaining about all these, probably from 2000 and before...*

*And all these things were things that I voiced my opinion about for years and years and years. So, it's not something that I'm just doing today. It's something that I have done over years and years.... There were so many things that weren't being done.*

B. Mr. Schwartz testified that the roads in South Seaside Park are not cleared of sand after a storm.<sup>226</sup>

<sup>224</sup> Testimony of Petitioner Robert Schwartz of April 2, 2015:

*...we just heard about how a street was paved. I think it was Roberts. ... And, actually, that was paved for the second time in 3 years.*

*...I live on 20<sup>th</sup> Avenue. 20<sup>th</sup> Avenue is the main street to the beach. And that's the street that all the emergency vehicles have to use. Because it's the only access over the dunes to get onto the beach from there. So, it's very, very highly used. It's a popular street. It hasn't been paved. According to my calculations, nobody alive knows the last time it was paved. I've checked with people. My neighbors. I can track it back to at least 1965. It wasn't paved since then. So, it's been a good 50 years or more. I do have pictures of that also.*

*The condition of the road is very questionable. I mean, it's just totally worn out. It's just a mess...*

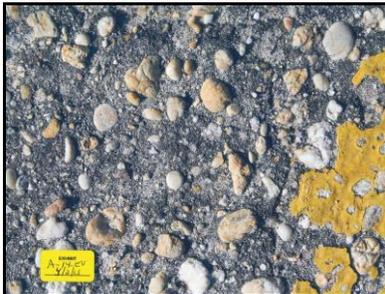


Exhibit A-14



Exhibit A-15



Exhibit A-16

<sup>225</sup> Testimony on January 8, 2015

<sup>226</sup> Testimony on April 2, 2015



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*...down at the beach, we do get Nor'easters. We get a lot of wind. We get a lot of sand. And... in the past, Berkeley has never really cleaned it up. In the last couple years, they've started to clean it up. Oftentimes, takes a month or more for us to get dug out from these big windstorms that we get down at the shore.*

When queried as to how much sand is deposited on the streets, Mr. Schwartz testified:

*It's a couple of inches of sand. It's just all over the place. And... sand is a part of the beach, so I understand that. And we... are willing to deal with that. That's part of the reason we put up with it at the beach. It's just the amount and the amount of time that it takes to get the sand out of there when we do have a really bad storm.*

C. Refuse & Recycling Collection

1. Petitioner Robert Schwartz testified<sup>226, 227</sup> that Mainland residents of Berkeley Township had received automatic 'robo-cans' for recycling. Upon making a request of the Township to receive such a can, a Township employee informed the witness that South Seaside Park would not be receiving such cans "until next year" (i.e. 2015). As of the April 2, 2015 date of his testimony, Mr. Schwartz had still not received his robo-can.

Mr. Schwartz further testified that the [then] current Berkeley Times newspaper included an article entitled "Township Completes Robo-Can Recycling Rollout". The article stated that the program is completed and quoted the Mayor as saying "the only neighborhoods who do not have a robo-can will be Holiday City and Silver Ridge Park, which still have single stream recycling but not the automatic containers".

This is important to Mr. Schwartz because "...where we live, it's quite windy. There's a lot of weather. And when you have [standard] recycling cans..., invariably, the tops get lost. The cans get knocked over. Recycling gets blown down the street. And they get filled up with water". The robo-cans are designed to address these issues.

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<sup>227</sup> Mr. Schwartz testimony was reinforced by Petitioner Janet Shalayda, who testified on May 7, 2015:

*...I don't know what Berkeley does on the mainland, but we don't get recycling containers over there.... no can was ever mentioned. ... But, like I say, perhaps they do it for the mainland, but nothing's ever been offered to us over there.*



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More importantly to Mr. Schwartz, however:

*...it's just one other thing where we feel like we're second-class citizens over there, that we have to beg for something that they thought we already had. I mean, I had to convince them that we didn't have them because they thought they were done...*

2. Mr. Schwartz further testified that the residents of South Seaside Park “*really don't use Berkeley's recycling facilities (except they pick up for us). But when we have paint, when we have batteries, when we... need soil, when we need compost, we go to Seaside Park<sup>228</sup>, because the facility's right there. It's very handy*”.
3. As relates to bulk refuse pickup, Mr. Schwartz testified<sup>226</sup> that South Seaside Park residents “*put stuff out... and they don't pick it up. If they do pick it up, they don't pick it up the day they say they're going to pick it up for bulk pickup*”.
  - a. Mr. Schwartz cited a March 2014 event where, despite multiple calls to determine when a pickup was to be scheduled, no pickup ever occurred and he had to have a contractor remove the items.<sup>229</sup>

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<sup>228</sup> While the transcript reads “South Seaside Park”, the context of the statement suggests the witness was referring to “Seaside Park”.

<sup>229</sup> Testimony on April 2, 2015:

*...I put the... stuff out for the next pickup, which was Tuesday, March 11. And when they didn't pick it up, which they usually don't pick it up on Tuesday for us, they usually pick it up, if they pick it up, on Wednesday.*

*[Its] Scheduled for Tuesday and they almost never pick it up on that. So, at the end of Tuesday, I called up and I talked to [a Township employee]. And I said,... they didn't pick up again for us. She said, oh, they do pick up today. Where do you live? Berkeley. They said, no, where do you live in Berkeley? Oh, South Seaside Park. Oh, you probably won't get picked up until tomorrow. I said okay. That's the usual. ...Well, they didn't pick us up on Wednesday. So, at the end of Wednesday, I called up and talked to [the employee]. I said,... they didn't pick it up for us again today. She said, I'll talk to my supervisor. She got back on and said, well, they'll pick up tomorrow, Thursday. So, when they didn't pick up Thursday, I called up again and I said,... what's going on?... She said, oh, they're going to pick it up on Friday. And so, ... they didn't come on Friday. ...I called up again and [asked] when are you going to pick up my bulk pickup? And they said, it was last Tuesday.*

*...They answer all the time and then tell me what they're going to do and then don't do it. And they actually said they'll come on Saturday. They didn't come. I called on Monday. They didn't come. ...I said, could I please talk to a supervisor? They said, they'll call you right back. And they never did. And they never picked up.*



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Exhibit A-17



Exhibit A-18

- b. Petitioner Katherine Fulcomer submitted Exhibit A-11, which contained a photograph depicting conditions in a December on what was termed<sup>226</sup> a “regular bulk day, ... the second Tuesday of the month... [when] things were not picked up...”. Mrs. Fulcomer testified that she called the Township to complain but it was not until she complained in person at a Council meeting that the issue was resolved ~ “...about a week later...”.



Excerpt from Exhibit A-11

Mrs. Fulcomer further testified<sup>226</sup> to an incident in 2014 when trash was not picked up on a normal pickup day. It was again not until she complained in person at a Council meeting that the issue was resolved ~ “...about a week after that...” which apparently was “...weeks after the pickup date...”.





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*Excerpt of Exhibit A-36<sup>231</sup>*

D. White Sands Beach

Mr. Whiteman testified, that Berkeley Township does not clean the beach as often or as well as Seaside Park<sup>232</sup>.

E. Bay Beach

1. Testimony<sup>233</sup> was offered that the bayfront in South Seaside Park<sup>234</sup> was unmaintained, with debris<sup>235</sup> from illegal dumping along the water's edge and in the bay itself so that one cannot walk barefoot. Reference was also made to "unkempt" vegetative areas on the land.

To demonstrate what he termed the "atrocious" condition of the Bay Beach, Mr. Whiteman referenced Exhibit A-37,<sup>236</sup> and testified that he had attended Township Council meetings to request that the conditions be addressed:

*And the Bayfront just doesn't get cleaned up.... the rocks are in the water all over the place, as well as the shoreline...*

*...our Bay Beach is something where you cannot walk in the water. For years, I have gone to the Council, I asked them to clean up the bay ...since we are a beach community, and it doesn't get done.*

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<sup>231</sup> Yellow = Scheduled Bulk Pickup Date. Pink = Date Pickup Occurred

<sup>232</sup> Testimony on February 5, 2015:

*We have beach cleaning of our beaches by our beach cleaner. I go to the council meeting. I'm told the beach will be cleaned 2 days a week, for Berkeley Township beaches, 1 day a week for Midway Beach. Our town does that. Past summers, I've had to go to the council meetings and say, you're only cleaning the beach 1 day a week. Seaside Park, our adjacent community, they clean their beach every day with their beach cleaner. Why isn't Berkeley Township doing that? People, if you clean 2 days a week on the beach and there's garbage on the beach, what happens the other 7 days? Doesn't anyone clean it? Again, it comes down to investment.....if the garbage people didn't come, once a week they decided we're not going to come 1 day, your garbage cans would be overflowed. Well, the same thing here at the beach. You expect it to be done and done right. And what's happening here is, the services are not there for a beach community. We are a beach community. And those beaches are to be cleaned. And those beaches are to be cleaned every day. Just like Seaside Park does. Just like Seaside Heights does.*

<sup>233</sup> Testimony of Petitioners Donald Whiteman, Katherine Fulcomer, Janet Shalayda and Patricia Dolobacs on February 5, 2015, April 2, 2015, May 7, 2015 and June 4, 2015

<sup>234</sup> Mr. Whiteman testified that this area extended from 24<sup>th</sup> to 22<sup>nd</sup> Avenues, Roberts Avenue and the Roberts Avenue bulkhead.

<sup>235</sup> Asphalt, wood, tar, cement / concrete, macadam, rusty pipes.

<sup>236</sup> the last pictures on the right-side corner.



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2. As detailed in §3.4.1. herein, Mr. Whiteman testified that the Township’s lack of maintenance of the Bay Beach has resulted in rocks “*about the size of softballs*” ~ intended to keep an outfall pipe in place ~ having washed away from the pipe and deposited themselves on the bay floor; thereby making it difficult to walk in the bay and contributing to the inability of the public to enjoy bathing in this section of the Township.



*Excerpt from Exhibit A-6<sup>237</sup>*



*Excerpt from Exhibit A-6<sup>237</sup>*

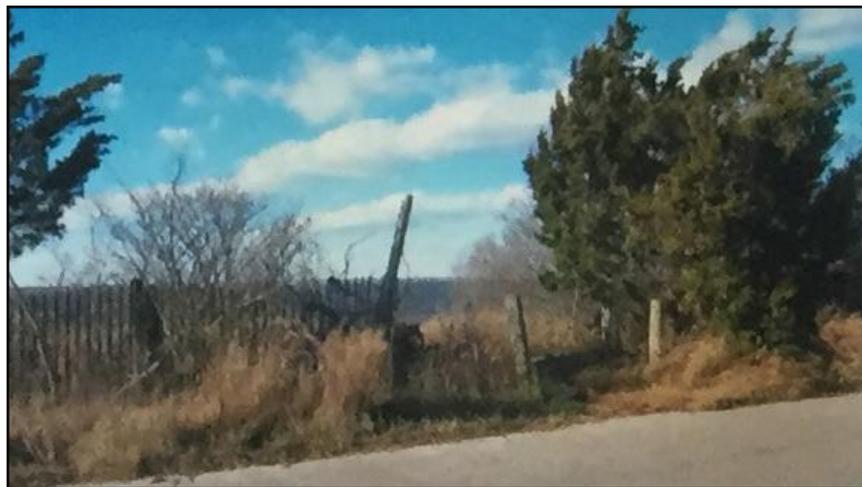
<sup>237</sup>Presented at testimony on the February 5, 2015. Similar photographs included in Exhibit A-7.



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*Excerpt from Exhibit A-6*



*Excerpt from Exhibit A-6*



*Excerpt from Exhibit A-6*



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*Excerpt from Exhibit A-6*



*Excerpt from Exhibit A-6*<sup>238</sup>

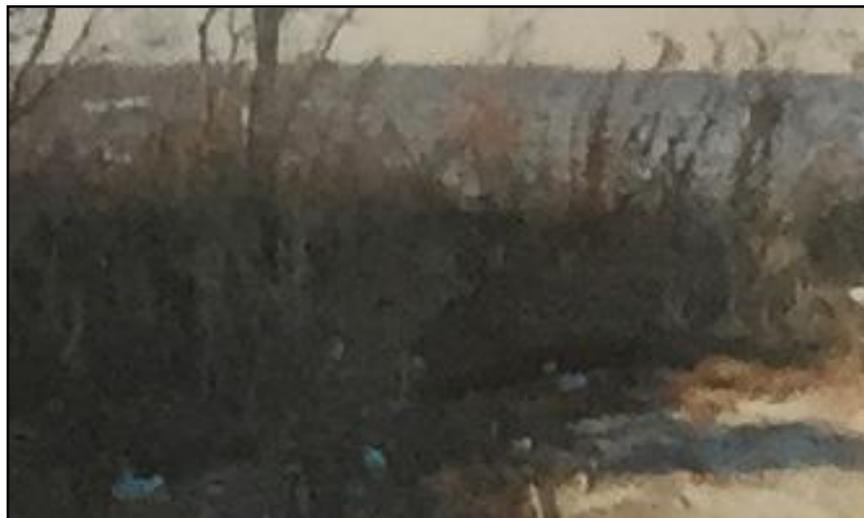
<sup>238</sup> Note obscured traffic signage.



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*Excerpt from Exhibit A-37*



*Excerpt from Exhibit A-19*



*Photograph of Exhibit A-39*



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3. Conversely, Seaside Park has a clean, well-maintained, sandy bayfront beach with docks, swings and other amenities that visitors can enjoy without fear of injury. Unlike the bayfront in South Seaside Park, the bay beach in Seaside Park is guarded. Petitioners contend that this is “*what could be done and what Seaside Park has done. And it's lovely*”.<sup>239</sup>



*Excerpt from Exhibit A-7*



*Excerpt from Exhibit A-7*

<sup>239</sup> Testimony of Mrs. Fulcomer on February 5, 2015



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*Excerpt from Exhibit A-7*



*Excerpt from Exhibit A-7*



*Excerpt from Exhibit A-38*



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*Excerpt from Exhibit A-38*

Mr. Whiteman testified:<sup>240</sup>

*I look at the beaches in Seaside Park on the bay side. They're white sand beaches. You can walk without shoes on. Yet, my beach, I have to have sneakers on. And I feel if I'm part of Seaside Park ... Being part of Seaside Park, I know that this would be cleaned up, ... to get pristine bay beaches. I mean, we have a responsibility to at least give our residents of South Seaside Park an area where they could go into the water and swim, go crabbing and enjoy the bay front, but we can't do it.*

4. Petitioners offered a comparison of the Bay Beach in South Seaside Park and the bay beaches on Mainland Berkeley Township. While the Mainland portion of Berkeley Township has a number of clean, safe, well-maintained bayside beach parks with (variously) benches, picnic tables, garbage cans, play equipment, athletic facilities, pavilions, fishing piers / boat docks, off-street parking and other amenities, this provides “quite a different contrast to our one little Bay Beach in South Seaside Park”, which has no benches, sitting areas, restrooms, boardwalk area or any kind of a ramp, or off-street parking.

*Additionally, the Bay Beach in South Seaside Park has only 2 garbage cans, “and access to the bay itself is difficult, at best. We have no piers for crabbing, fishing. No playgrounds for children and grandchildren. No public boat launch”.*

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<sup>240</sup> Testimony on June 4, 2015



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*Butler Boulevard Park (Excerpts from Exhibit A-8)*

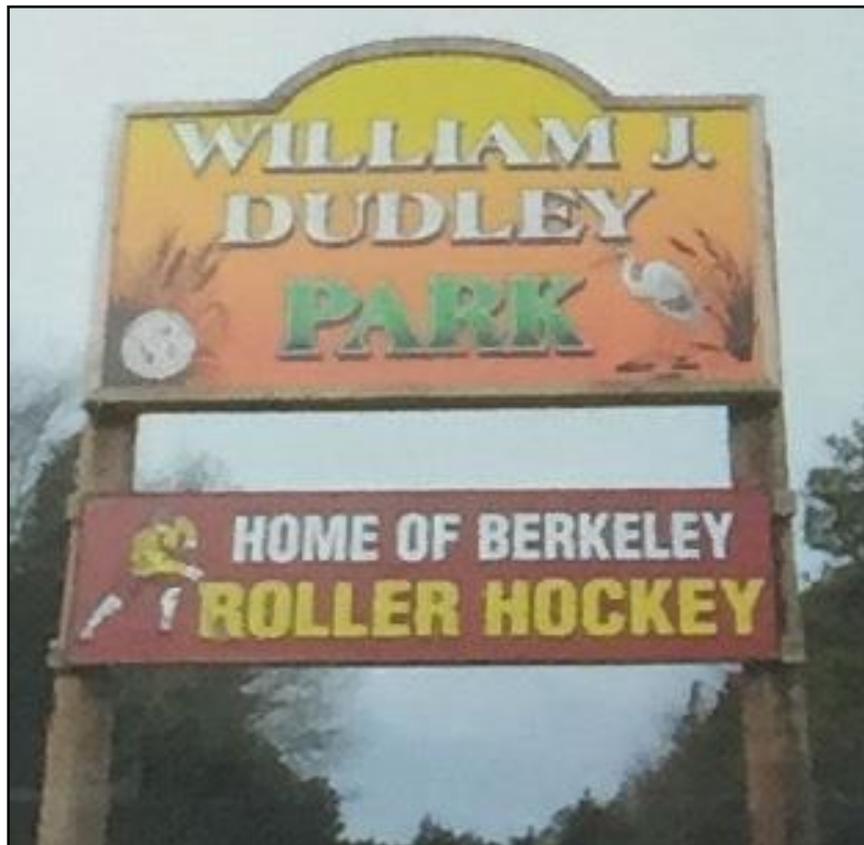




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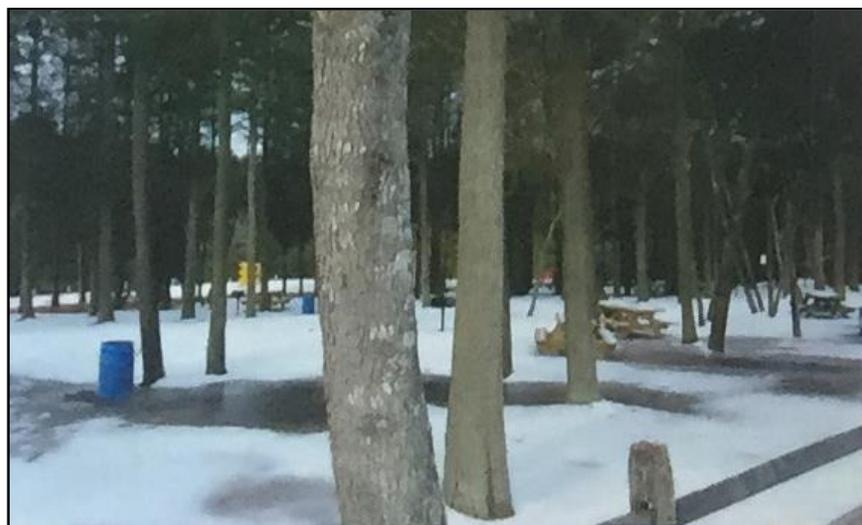


William J. Dudley Park (Excerpts from Exhibit A-8)





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*Allen Road Park (Excerpts from Exhibit A-9)*





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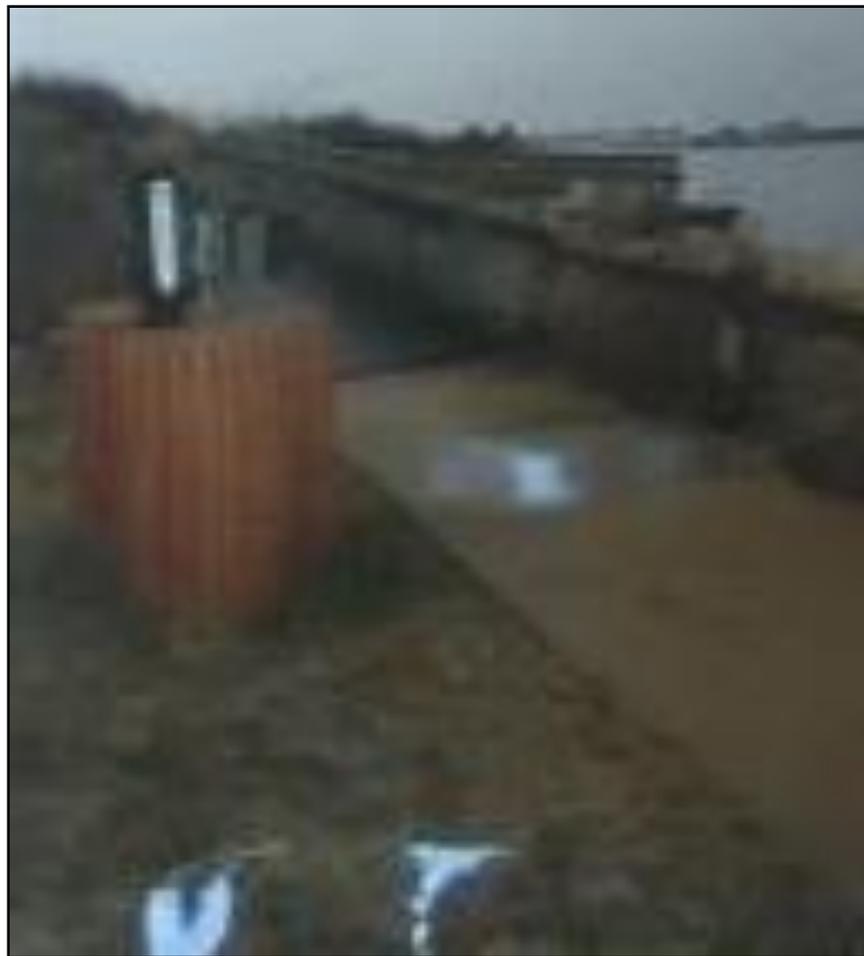


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Amherst Drive Beach (Excerpts from Exhibit A-19)





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**F. Snow Removal**

1. Petitioners testified that “snow removal... doesn't take place...”<sup>241</sup> and “we've had streets that have not been plowed for 3 or 5 days”.<sup>242</sup> In support of this assertion, Petitioners submitted photographs purporting to depict the aftermath of a snowstorm from the winter of 2012/2013 where streets in Seaside Park were “very well plowed and clean” while streets in South Seaside Park were “not well plowed”.<sup>243</sup>



*Excerpt from Exhibit A-11<sup>244</sup>*

<sup>241</sup> Testimony of Mr. Whiteman on January 8, 2015

<sup>242</sup> Testimony of Mrs. Fulcomer on February 5, 2015

<sup>243</sup> Testimony of Mr. Whiteman on January 8, 2015:

*...I look at... Seaside Park and I see when a snowstorm comes, their roads are clean and plowed. Our roads are not.*

Testimony of Mr. Whiteman on February 5, 2015:

*...when it comes to our streets, Roberts Avenue for 5 days were not plowed.... I look back and the storms that are most vivid in my mind were the storm of February 5 and 6, 2010, and again on December 26, 2000 and ~ 2010 and one was in 2009. And I remember looking at the streets. And I had a four-wheel drive. I was able to drive my vehicle through the streets on what was called Barnegat Avenue... And I could drive up to Seaside Park. And I looked and I saw Seaside Park roads were cleared and our roads were not.*

Mrs. Fulcomer testified on April 2, 2015 that the streets in Seaside Park were plowed “the next day” after the storm.

<sup>244</sup> Separate photographs on Exhibit A-11 appear to show same view at slightly different angles.



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Both Mr. Whiteman and Mrs. Fulcomer testified that they have brought this issue to the attention of the Township Council, to no avail.<sup>245</sup>

2. Petitioner Robert Schwartz testified about more recent storms, including a “big (2½’ to 3’) storm” in 2010/2011 when he was “trapped” in his house for 3 days. While Mr. Schwartz has a four-wheel drive vehicle, he could not get out because [the Township’s Public Works Department] “weren’t plowing the side streets”. Since then, Mr. Schwartz has made it a policy during storms to park on Central Avenue ~ “because they do plow Central Avenue” ~ and walk from his house to his car.<sup>246</sup>



Exhibit A-13

<sup>245</sup> Testimony of Mrs. Fulcomer on April 2, 2015:

*...I did bring [the photographs in Exhibit A-11] to a [Berkeley Township] Council meeting after that snowstorm, because it shows the very well plowed and clean portion... of Seaside Park. ...This is the 14<sup>th</sup> Avenue and Bayview. ...it shows that Bayview Avenue is very well plowed in the Seaside Park portion and not well plowed in the South Seaside Park portion.*

Testimony of Mr. Whiteman on February 2, 2015:

*And I did come over the council meetings and voice my opinion. But then we had the next storm and the same thing occurred. It did get so bad that the people on Bayview Avenue hired a contractor with a front-end loader to clear Bayview Avenue so they could get their vehicles out. That shouldn't happen. Yet, in Seaside Park, their roads were clear. And I realized the truck has to go 16 miles... over the bridge to us. But, again, the investment is not there from Berkeley Township. The services that we would expect are not there from Berkeley Township.*

<sup>246</sup> Testimony of Mr. Schwartz on April 2, 2015. When asked if [presumably the intent of the question was “when”] the streets in Seaside Park were cleared after that storm, Mr. Schwartz stated that he did not know. Exhibit A-13.



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- Petitioners' assertions were supported by Seaside Park resident Robert Cardwell, who testified about an incident in the winter of 1996:<sup>247</sup>

*We had probably about 2 to 3 feet of snow. Heavy drifts. And... they were just barely able to keep up with the snow, except Berkeley Township, they were inundated down there for 3 days. Their roads were not plowed...*

*...they had a plow over here... on the truck that looked like something out of the 1920s. It broke down prior to the snow. And that's where it remained for the entire snowstorm.*

*...Subsequently, the next snowstorm that we had, they had a brand new plow and a brand new truck over there, quite earlier than the initial snowstorm...*

### **3.7.2 ISSUES RAISED DURING CROSS-EXAMINATION**

#### **A. Robo-Cans**

In response to a question regarding his testimony<sup>247</sup> that someone in South Seaside Park had a robo-can, Mr. Schwartz testified that he did speak to a South Seaside Park resident who had received a robo-can.

#### **B. Bay Beach<sup>248</sup>**

- When asked how the conditions of the Bay Beach as described would be addressed should deannexation occur, Mr. Whiteman responded:

*Well, I'd be the first one to be at the Council meeting at Seaside Park to ask them to clean our beaches up.*

- After comparing the conditions of the Bay Beach in South Seaside Park with the bay beach in Seaside Park, Mr. Whiteman was asked if the Bay Beach in South Seaside Park was "intended [i.e. set up] to be a public beach", to which he responded:

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<sup>247</sup> Testimony on April 2, 2015

<sup>248</sup> Testimony on February 5, 2015



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*The Township has never set it up to be a public beach in a way of having people swimming, even though we've come over to the town and asked them to have a public bay beach”.*

*...there's no designated beach areas for usage in the way of lifeguards and paid beach in South Seaside Park on the bay side.*

Mr. Whiteman continued:

*The adjoining community of Seaside Park has a public beach for kids to utilize. The adjacent town of Seaside Heights has bay beach. Both of these beaches... have lifeguards and they can utilize it for kids to swim and enjoy it...*

3. When asked if there are portions of those communities where the bayfront does not have a beach or is not public access, Mr. Whiteman responded:

*There's all public access. It's just that there's area where lifeguards aren't there for you to be able to swim.*

*On the bay, you can go in the bay anywhere you want and swim,... in Seaside Park.*

4. Continuing along this line of questioning, Mr. Whiteman was asked if there were areas in Seaside Park which have waterfront access but which are not designated swimming areas because they are not guarded, to which Mr. Whiteman responded that there were, but:

*You can still swim there, though. The lifeguard is at 2 streets by the public dock. But [if] you're capable and able, you don't need a town to tell you you can't swim anyplace. You can go in and swim in the bay where you want.*

5. During follow-up questioning, Mr. Whiteman recognized the natural shoreline of the Bay Beach in South Seaside Park and reaffirmed that while there may be waterfront access points along this beach, they are not designated bathing beaches.
6. After lengthy discussion, it was determined that the ‘softball-sized rocks’ referred to by Mr. Whiteman were purposely placed by the Township over a culvert or outfall pipe as



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ballast to keep this infrastructure in place. As a result of tidal/wave action, these rocks shifted off of the utility to the beach and seabed.

C. Snow Removal<sup>249</sup>

1. When questioned regarding the 2000, 2009 and 2010 storms he referenced, Mr. Whiteman testified that he had “*no knowledge*” as to whether or not other sections of Berkeley Township had similar delays before their streets were plowed.
2. When asked if he recalled similar complaints from other barrier island communities, Mr. Whiteman stated that he “*can only look at Seaside Park, and their roads were clear...*”.

When asked if he remembered “*those same complaints from Ortley Beach and Normandy Beach and Mantoloking and so forth and so on*”, Mr. Whiteman testified that he “*would have to say Ortley Beach, from their history, would be complaining a lot about Toms River*” but that he knew nothing about how long it took for streets in those communities to be plowed.

3. In attempting to gain an understanding of who ~ Township or County ~ has responsibility for plowing specific roads in South Seaside Park, Mrs. Fulcomer testified<sup>250</sup> Bayview Avenue<sup>251</sup> “*...in Seaside Park, it's a County road where it's clear*” and “*where it's not clear it's a Township road in South Seaside Park...*”
4. When asked if plowing had improved since the 1996 storm referenced in his testimony, Mr. Cardwell testified<sup>250</sup> that (by “*the next snowstorm*”) the Township “*...had a brand new plow and a brand new truck...*”, and there has been better plowing in South Seaside Park.

When specifically asked about 2009, 2010 and 2011, when there were “*major snow storms*” with 2’ to 3’ accumulations, Mr. Cardwell testified that he imagined it was passable but was not able to observe conditions in South Seaside Park “*because [he] had [his own] situations to handle*”.

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<sup>249</sup> Testimony on February 5, 2015 unless otherwise noted.

<sup>250</sup> Testimony on April 2, 2015

<sup>251</sup> Testimony on June 1, 2017 indicates that within Berkeley Township, Bayview Avenue is a municipal street.



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After being reminded that his testimony regarding the 1996 storm reflected an event that occurred “*about 20 years ago*”, Mr. Cardwell was asked whether or not he could comment on conditions that he may have witnessed “*in the last 4 or 5 years*”, to which he replied that he could not, “*...because I don't make a point to go down there and check out their situation.... That's for the new administration to figure out*”.<sup>250</sup>

**3.7.3 TESTIMONY FROM MEMBERS OF THE GENERAL PUBLIC<sup>252</sup>**

**A. Refuse & Recycling Collection**

1. South Seaside Park resident and supporter of deannexation Lisa Musci testified that her cousin is a resident of Midway Beach and has been trying to contact the Township to inquire about getting garbage cans. Mrs. Musci inquired if they were entitled to them.
2. South Seaside Park resident and supporter of deannexation David McKee testified that his recycling can “*...was never emptied*”.

*So, that afternoon, I called the collection over here. And I was told, yes, somebody would pick up that can. By the end of Wednesday, it still hadn't been picked up. So, I called again and talked to the Department of Public Works manager, and was assured it would be picked up. And Thursday, it was not picked up again. I called the Mayor's office and got an assistant there who assured me that it would be picked up. And Friday, it was not picked up.*

*So, by Saturday, it had still not been touched. And it was the weekend. People would be coming. So, I took the thing and put it back on my property. And decided that I'd have to wait till the next regularly scheduled pickup. So, we don't get service.*

**B. Snow Removal**

South Seaside Park resident and supporter of deannexation David McKee testified:

*...after every big snowstorm ~ and I consider anything above 6” a big snowstorm ~ after lunch, I go out, look at my street, it's still not plowed. Then I go in my house, go to the 3<sup>rd</sup> floor and I can*

<sup>252</sup> Testimony on September 6, 2018



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*look north at Seaside Park. And doggone, all the side streets are all plowed. The main street's plowed. And that's like 2:00 in the afternoon. And maybe by the end of the day, my street will get plowed in Seaside Park south.*

C. White Sands Beach

- C. Part-time South Seaside Park resident Alan Schoenwiesner testified that, while he appreciated that the Township constructed a new walkway to the Beach:

*... it's about half the size of the walkway that we used to have. I'm 75, and I go to the beach with... senior citizens. And walking an extra 50', through the sand, gets to be a little difficult, because I have 2 bad knees. And we have some people that don't even go to the beach anymore...*

Mr. Schoenwiesner requested that the Township lengthen the walkway.

- D. South Seaside Park resident Gail Leibowitz reiterated the testified that the trex walkway from the street to the beach “*is steeply sloped and very slippery when covered with sand. A volunteer not associated with Berkeley Township sweeps it occasionally, out of the goodness of his heart. I have never seen anyone from Berkeley clean the ramp*”.
- E. Tangentially related to the Beach, Mrs. Leibowitz reiterated<sup>253</sup> the testimony of Mr. Schwartz<sup>254</sup>

*...that 20<sup>th</sup> Avenue ocean block has not been repaved, actually ever repaved, for at least 50 years. To give you an idea of its vintage, it is tar and stone, not macadam. And no one alive remembers it being refinished. My neighbor over there, cannot testify, has a terrible time pushing his wife in a wheelchair on the macadam -- I mean, on the rocks and the gravel and the sand...*

- D. The Township did not address the “rebuttal” testimony of September 2018.

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<sup>253</sup> Testimony on September 6, 2018

<sup>254</sup> §3.7.1 herein



### **3.7.4 TOWNSHIP RESPONSE**

#### **A. Road Cleaning<sup>255</sup>**

In response to Petitioners' assertions that the roads in South Seaside Park do not get cleaned, Township Director of Public Works / Principal Public Works Manager Steven Seiler testified:

*...I do have a street cleaning program here. Covers the whole town, shows it's all equal. It's every 2 months throughout the whole town...*

*...The street cleaner goes over and does a section of town. It's there for a week. Also checks the catch basins. And then every 2 months, we go back to the same area. Four times a year, throughout the whole town. This [Exhibit T-26] is the [2017] breakdown for the whole town for the first round.*

Mr. Seiler further testified that the established schedule is paused if there is a storm event necessitating that the street clearers address the sand that washes onto the streets.

#### **B. Road Repaving**

1. In response to Petitioners' assertions that the roads in South Seaside Park do not get repaved, the representative from the Township Engineers office<sup>256</sup> submitted Exhibit T-31 and testified that his office had reviewed the length of municipally owned streets in Berkeley Township that have been paved since 2012, available Capital Bond Ordinances from 2012 to 2017, payment vouchers and Department of Public Works records and found:

- Berkeley Township has approximately 251 miles of municipally owned (i.e., local) roads.
- The length of local roads represented by the Deannexation Petition is approximately 6.4 miles, equaling approximately 2.5% of the roads in Berkeley Township.<sup>257</sup>

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<sup>255</sup> Testimony on April 6, 2017

<sup>256</sup> Testimony of Ernest Peters, PP, PP, CME on June 1, 2017

<sup>257</sup> Includes the roadways in Midway Beach. Although these are not municipal rights-of-way, they are maintained via agreement between the Midway Beach Condominium Association and the Township as presented herein as Report Graphic 22.



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- The length of local roads not represented by the Deannexation Petition (i.e., roads on the Mainland and Pelican Island), is approximately 244.6 miles, equating to 97.5% of the streets in Berkeley Township.
- The length of local roads paved in Berkeley Township since 2012 is approximately 24.35 miles, equating to approximately 9.7% of the local roads in the Township.
- The length of local roads paved in South Seaside Park since 2012 is 1.73 miles, equating to approximately 27% of the local roads in South Seaside Park.<sup>258</sup>
- The length of local roads paved on the Mainland and Pelican Island since 2012 is approximately 22.62 miles, equating to approximately 9% of the local roads in these sections of the Township.

Accordingly, since 2012, the rate of municipal roads being repaved in South Seaside Park is 3 times the rate for the balance of the Township.

I. The Township funded the resurfacing of a larger proportion of roadways in South Seaside Park between 2012 and 2017 (approximately 27%) than it did for the remaining portions of the municipality (approximately 9%).<sup>259,260</sup> Additional Township investments in South Seaside Park include:<sup>261</sup>

- Bayside beach replenishment between 20<sup>th</sup> and 22<sup>nd</sup> Avenues, including the installation of “riprap” designed to limit erosion and act as storm surge protection.<sup>262</sup>
- Installation of 6” curbing on the bayside, between 20<sup>th</sup> and 22<sup>nd</sup> Avenues, to provide additional depth for the bay before it spills into the municipal street.

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<sup>258</sup> Pursuant to Exhibit T-31:

- 2012: 11 Road Projects (3.46 total miles). 1 Project (0.33 miles) in South Seaside Park = 9.1% Projects (9.5% miles) in South Seaside Park.
- 2013: 14 Road Projects (4.53 total miles). 2 Projects (0.52 miles) in South Seaside Park = 14.3% Projects (11.5% miles) in South Seaside Park.
- 2014: 19 Road Projects (8.21 total miles). 1 Project (0.37 miles) in South Seaside Park = 5.6% Projects (4.5% miles) in South Seaside Park.
- 2015: 19 Road Projects (3.55 total miles). 0 Projects (0 miles) in South Seaside Park = 0% Projects (0% miles) in South Seaside Park.
- 2016: 11 Road Projects (3.54 total miles). 2 Projects (0.51 miles) in South Seaside Park = 18.2% Projects (14.4% miles) in South Seaside Park.
- 2017: 9 Road Projects (1.06 total miles). 0 Projects (0 miles) in South Seaside Park = 0% Projects (0% miles) in South Seaside Park.

<sup>259</sup> Testimony of Ernest Peters, Township and Planning Board Engineer, on June 1, 2017 (§3.7.3 A. herein)

<sup>260</sup> The 27% figure does not take into consideration municipal roads in South Seaside park that were paved by other entities or were paved utilizing non-Township funds (§3.7.3 A. herein).

<sup>261</sup> Testimony on June 1, 2017

<sup>262</sup> The Township Planner advises that the Township applied to NJDEP for a beach nourishment project, which was denied.



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2. During cross-examination, Mr. Peters was asked if he did an analysis regarding the widths of the roadways that were improved, the implication being that length is only a part of the calculation required to compare improvements in South Seaside Park vs. improvements for the balance of the Township. Mr. Peters responded that he did not.

When asked if the fact that there are narrow lanes in South Seaside Park and wider roads on the Mainland resulted in an unfair comparison, Mr. Peters responded that the “*opposite comparison*” would similarly be unfair, and that his analysis only dealt with length.

3. An extended conversation ensued regarding whether or not the Township was responsible for maintaining the narrow roads (Lanes) in the Midway Beach condominium area. While these are private roads, Mr. Peters testified that these are “*roads that the municipality maintains.*”

This office requested confirmation of this responsibility from the Township Clerk. In response, the Clerk provided *Report Graphic 22*, a 2005 Agreement by and between the Township and the Midway Beach Condominium Association, which, in pertinent part, acknowledged the Township’s responsibility for maintaining the roads in Midway Beach as required by N.J.S.A. 40:67-23.1 (albeit such responsibility was suspended by the self-same Agreement between January 1, 2005 and December 1, 2005).



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**THIS AGREEMENT** made this 1st day of January 2005, **BY AND BETWEEN:**

BERKELEY TOWNSHIP, a municipal corporation of the State of New Jersey, with its municipal offices located at Pinewald-Keswick Road, P.O. Box B, Bayville, New Jersey 08721, hereinafter referred to as "TOWNSHIP;"

**AND**

MIDWAY BEACH CONDOMINIUM ASSOCIATION, a not for profit corporation of the State of New Jersey with its office located at 48 Ocean Avenue, South Seaside Park, New Jersey 08752, hereinafter referred to as "MBCA;"

**WHEREAS**, MIDWAY BEACH, a Condominium, hereinafter referred to as "MIDWAY" is a qualified private community as defined in N.J.S.A. 40:67-23.1.1. The residents of MIDWAY do not receive any tax abatement or tax exemption related to its construction and operation; and

**WHEREAS**, the cost of maintaining roads and streets and the lighting of the roads and streets and other essential services in MIDWAY are paid for by MBCA which is a not for profit entity consisting exclusively of unit owners within MIDWAY; AND

**WHEREAS**, N.J.S.A. 40:67-23.1, et seq. requires the governing body of a municipality to provide the same services along the roads and streets of a qualified private community as it provides to their residents along its public roads or streets or to reimburse the community for some or all of the municipal services that it does not provide to the residents of a qualified private community; and

**WHEREAS**, nothing shall prevent a municipality from providing additional services that primarily serve public purposes to the residents of a qualified private community (N.J.S.A. 40.67-23.8); and

**WHEREAS**, MIDWAY is within the political boundaries and jurisdiction of the TOWNSHIP; AND

**WHEREAS**, the TOWNSHIP and MBCA desire to enter into an agreement in which the TOWNSHIP shall provide certain services and MBCA shall accept certain services in lieu of reimbursement;

**NOW, THEREFORE, FOR THE MUTUAL COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

1. In lieu of providing maintenance of the roads and streets and lighting of the roads and streets or in lieu of reimbursement to MBCA in an amount not to exceed the cost that would be incurred by TOWNSHIP in providing those services directly, the TOWNSHIP shall provide nine (9) complete beach and dune cleaning and grooming services to the beach and dunes.



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- owned by MBCA commencing May 1, 2005 through October 15, 2005, MBCA does hereby agree to this in lieu of maintenance and lighting of the streets and roads in MIDWAY.
2. The beach and dune cleaning and maintenance services shall be identical to and shall be done at the same time these services are provided by TOWNSHIP to its own beaches and dunes.
  3. The TOWNSHIP shall notify MBCA in writing at the offices of MBCA when such services shall be provided.
  4. MBCA shall provide to TOWNSHIP any insurance riders required by TOWNSHIP to enable TOWNSHIP vehicles to operate on the beaches and dunes within the qualified private community of MIDWAY.
  5. This agreement shall terminate and become null and void in the event that any person or entity challenges the validity of the agreement. Then, and in that event, the parties of this agreement will deal with each other in accordance with the terms of the Municipal Services Act N.J.S.A. 40:67-23.2 to 23.8.
  6. This Agreement shall terminate on December 31, 2005.

**IN WHITNESS WHEREOF THE PARTIES HERETO DO HEREBY SET THEIR HANDS AND SEALS AS THEIR AGREEMENT HERETO TO BE EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WIRTTEN.**

ATTEST:

*Beverly M. Carle*  
Beverly Carle/Township Clerk

BERKELEY TOWNSHIP  
*Jason J. Varano*  
Jason J. Varano, Mayor

*Rosalie DiPietro*  
Rosalie DiPietro, Secretary

MIDWAY BEACH CONDOMINIUM ASSOCIATION  
*[Signature]*



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4. When asked if “*the only way to accurately compare the amount of pavement that would be utilized in South Seaside Park, versus the Mainland roads, would be to do some kind of an average of the Mainland roads and their width inland versus the average of the width and length of the South Seaside Park roads*”, Mr. Peters responded that “*that's not the only way, no*”.<sup>263</sup>
  
5. South Seaside Park contains municipal, County and State roads.
  - State Route 35 was completely reconstructed after Superstorm Sandy. Funding for the project was provided by the State and federal government.
  - 20<sup>th</sup> Avenue from Route 35 to the bay and Bayview Avenue from 20<sup>th</sup> to 22<sup>nd</sup> Avenues were similarly reconstructed by the State and federal government after Superstorm Sandy. The 20<sup>th</sup> Avenue project included a storm sewer pump station at the bay. These improvements took place in 2014. However, these municipal roads are not included in the approximately 27% of the local roads in South Seaside Park that were improved between 2012 and 2017.
  - Barnegat Avenue in South Seaside Park is a County Road. When queried as to when that road was scheduled to be repaved, which apparently had been promised for (in or about) 2011, Mr. Peters indicated that his office was told that the County was responsible for that work.
  
6. Mr. Seiler testified that roadway improvement projects in any given year is done by recommendation. He will make recommendations to the Township Engineer based on complaints and subsequent inspections. The Engineer, in turn, combines these recommendations with his and provides the full list of recommendations for Township Council consideration.<sup>264</sup> The Council makes the final decision on the roads to be addressed.

In response to Mr. Schwartz’s testimony that 20<sup>th</sup> Avenue had not been repaved in 50 years, Township Administer Camera testified<sup>265</sup> that the decision as to whether or not to repave a road is based on condition and traffic and not the amount of time since the last repaving.

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<sup>263</sup> Testimony on June 1, 2017

<sup>264</sup> Testimony on April 6, 2017

<sup>265</sup> Testimony on May 3, 2018



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Mr. Camera further testified that the Township budgets \$4-5 million yearly in the road program and that South Seaside Park, when compared to other areas within the Township, has received a substantially higher proportion of that budget.

**C. Refuse & Recycling Collection**

1. Township Director of Sanitation & Recycling Mark Vannella testified <sup>266</sup> the Township provides robo-cans for both garbage collection and recycling collection, and (as of the date of this testimony) all of South Seaside Park ~ except for The Lanes (i.e., Midway Beach) and Miller's Camp ~ have received both. The “*only reason*” that Midway Beach and Miller's Camp do not have robo-cans is that the width of the roadways and low-hanging utility lines servicing these areas precludes access by “*bigger trucks*” that are used for these cans. Otherwise:

*The rest of... South Seaside Park, which I consider 20<sup>th</sup> to 24<sup>th</sup>, and the other 6 streets, Roberts, Kathryn, Sprague, Beach, they all have robo-cans, both robo-cans, recycling and garbage.*

Mr. Vannella testified that the robo-cans for garbage were purchased and distributed throughout the Township at the same time but that the cans for recycling were purchased and distributed in phases in 2012 and 2014, with South Seaside Park being the last community to receive them. When asked why South Seaside Park was the last to receive the recycling cans, Mr. Vannella testified:

*We started in the Pinewald section, worked over to ~ we did the Mainland first. And then we worked over to South Seaside Park. No other reason.*

2. In regard to Petitioners’ testimony that trash is not picked up as per the Township’s published schedule,<sup>267</sup> Mr. Vannella testified<sup>264</sup> that the schedule:

*...[is] adhered to throughout the town... That's my scheduling throughout the town. When we pick up garbage, when we pick up trash, when we pick up bulk.*

<sup>266</sup> Testimony on April 6, 2017

<sup>267</sup> Exhibit A-36



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*...[And that] the only time it would not be picked up on a scheduled day is, if there's a storm, we push it off. If there's a holiday, it's picked up the next day. South Seaside Park<sup>268</sup> is picked up twice a week in the summer<sup>269</sup>. No other... part of the town does, garbage wise. Recycling is picked up every 2 weeks [regardless of the time of year]. If there's a holiday, falls on a holiday, now, South Seaside Park's picked up on Mondays. So, a lot of holidays are on Monday. Of course, other parts of town are Monday, too.*

*South Seaside Park gets picked up the next day, which is Tuesday. The rest of the town gets picked up, they have to be pushed off to a Saturday. So, they're actually getting their garbage picked up quicker than the other end of town if there's a holiday.*

*Now, the reason why [the Township does] that... is because of stuff laying over there. You don't want stuff laying over. ...they get influx of people that come in during the summer. That's why they get the twice a week. We pick them up Mondays and Fridays, twice a week, so the garbage just doesn't lay there... Because people come down from up in... the city and come down. They don't want to see garbage sitting there for a whole week. So, that's why the town decided to do 2 days over there.*

*[The]... rest of the town,... If your day falls on a holiday, it's moved ~ other than South Seaside Park and Pelican Island ~ it's moved to [the next] Saturday. So, you're waiting 6 days to get picked up. South Seaside Park and Pelican Island's waiting one day.*

3. Mr. Vannella further testified that bulk trash is scheduled 4 times a year and that there is also a call-in procedure. Other than the scheduled bulk pickup days, if a request is not made to his office, he will not know items need to be picked up (unless one of his staff observes it). However, Mr. Vannella added that a “regular” rear-loading garbage truck (assigned to pick up garbage for *The Lanes and the trailers*):

*...will go around with a list to pick up any bulk that's out there that's called in. Anything that's scheduled is picked up on the Tuesday,*

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<sup>268</sup> and Pelican Island

<sup>269</sup> Between July and August.



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*which is in... March, June, September and December, that's the days. That's the four months. That's scheduled every Tuesday.*

When asked, Mr. Vannella confirmed that a bulk item that was missed on a scheduled pickup day would get picked up within the week, but not the next day. But,

*[If somebody's pickup] day is Monday, and [they] happened to call in on a Wednesday, if they can't wait and if I can't get the truck over there, definitely that next Monday when that rear loader is over there doing The Lanes and trailers we'll get it.*

4. When asked if his office receives complaints that garbage, recycling or bulk items are not picked up on schedule, Mr. Vannella testified that such complaints do occur “on occasion”:

*I mean, you know, I'm sure my guys aren't ~ I'm sure they'll miss a stop here or there. And they will, you know, all over town, they'll call. I try to pride myself on my guys that they do a great job. But they may miss a stop here or there. It happens. And I will, within that week, they will get picked up. The truck will go over there and get them picked up.*

*And, also, if there's a storm coming up and I know there's a storm, I will make sure I get on the main line, the main side by all the water, bay side and the ocean side, any debris that's out there from people leaving it out there, we'll make sure we get it picked up so it doesn't cause any problems.*

5. Mr. Vannella further testified that:

- Refrigerators are classified not as bulk but as “white goods”, or heavy metal items (as well as, e.g. electronics and televisions) that are recycled. As such, “it's up to the resident to call that in. And that's picked up every Thursday throughout the town... throughout the year. Every Thursday”.
- Disposal of construction materials or debris is the responsibility of the property owner or contractor. The Township will not pick up such items.

6. Mr. Vannella confirmed that residents of South Seaside Park would have to travel to the Township’s Public Works building on the Mainland at 630 Pinewald Keswick Road in order to drop off recycling on a non-pickup day and that residents of South Seaside Park



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sometimes drop off recycling at Seaside Park’s recycling facilities located “probably feet away” from South Seaside Park.

7. Mr. Vannella noted that South Seaside Park residents’ use of Seaside Park’s recycling facility results in Berkeley Township losing grant monies that are based on tonnage recycled. When questioned, Mr. Vannella was unable to immediately quantify the grant loss. He was also unable to immediately quantify any savings in tipping fees<sup>270</sup> that would accrue to the Township should deannexation occur.

While the financial impact (loss and savings) was promised, it was never submitted. However, Township Administrator John Camera confirmed<sup>271</sup> that there would be a savings from “...*some specific amount of garbage that we pick up in South Seaside Park now that would not have to go to the landfill if we were not collecting from them...*”

8. Mr. Camera testified<sup>271</sup> that South Seaside Park has “*more collection times than any other part of the [Township]*”. Further, he is not aware of any other municipality that picks up “*bulk garbage and everything else that we pick up on a regular basis*” and believes that the Township has a “*very liberal*” trash collection program.

#### D. White Sands Beach

1. In response to Mr. Whiteman’s assertions that Berkeley Township does not clean the beach as often or as well as Seaside Park, Mr. Yurcisin and Mr. Sperber testified<sup>272</sup> that the beach is raked at least once a week, sometimes twice a week if needed throughout the summer season and that debris from major storms or otherwise is picked up throughout the year. Additionally, garbage cans at the beach are picked up every day during the summer and at least 3 times a week during the off season.
2. Garbage collection at both the Bay Beach and White Sands Beach is 3 times a week in the off-season and daily during the tourist season.

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<sup>270</sup> i.e., fees charged to the Township for unloading garbage at the landfill.

<sup>271</sup> Testimony on May 3, 2018

<sup>272</sup> Testimony on May 4, 2017



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3. The restrooms attached to the lifeguard station are cleaned daily during the tourist season.
4. Yearly beach maintenance includes annual fall dune grass planting and annual spring snow fence installation.

**E. Bay Beach**

In response to Petitioners' requests for a Bay Beach that more resembles the facility in Seaside Park:

1. Township Superintendent of Parks & Recreation Timothy Yurcisin testified:<sup>272</sup>

*I don't see how that's possible. Basically, that spit of land between the road and the waterway is approximately 10' wide. I simply say there's no room to do anything like that.*

*...[The] Bay Beach is more of like a natural type of beach. It's not really a beach to go hang out at. It's basically natural growth that's there. That kind of helps it erode or not erode... It's basically ~ it's not really much of a beach. It's just an area of the water line with some natural growth on it.*

2. Mr. Yurcisin's characterization of the bayfront was reinforced by Township Planner Stanley Slachetka, who, via Exhibit T-32<sup>273</sup> and testimony,<sup>274</sup> reported that:

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

<sup>273</sup> Resubmitted by Petitioners as Exhibit A-78

<sup>274</sup> Testimony on August 3, 2017, November 1, 2017, February 1, 2018



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*foregoing, this area is a better defined as a natural shoreline of the Barnegat Bay, within the Bayview Avenue Right of Way.*

Specifically addressing the Township-owned parcel, Mr. Slachetka testified

*...it's not on the ROSI. It's not open space. It's not recreation. It's not maintained as ~ or the intent is not to maintain that as recreation. Again, it's a structural issue with regards to the adjoining roadway.*

3. In response to Petitioners' assertions that the bayfront in South Seaside Park was unmaintained, with debris from illegal dumping along the water's edge and in the bay itself so that one cannot walk barefoot, Mr. Yurcisin testified:<sup>272</sup>

*It was cleaned a few years back. We got as much debris out of there as we could without really going into the water. We really don't have jurisdiction to go into the water to do much cleaning up... it's just a natural setting.*

and that the Township was responsible for the curb to the water; emptying garbage cans, removing debris and policing the area, which they do "on a regular basis".

4. When questioned about the debris along the Bayfront and in the bay water as depicted on Exhibit A-6 ~ asphalt, wood, tar, cement, concrete, rusty pipes ~ Mr. Yurcisin testified<sup>272</sup> that the Township has no jurisdiction to go into the water to clean. As for the material on the land, Mr. Yurcisin testified **Error! Bookmark not defined.** that the beaches in South Seaside Park are patrolled 3 times a week in the off-season and daily in the tourist season, and that:

*If somebody, a resident specifically asked us to check a specific area out on the on the sand for some debris that was there, we could certainly look at it. If it was something we can take out of there, we would.*

When asked if anyone had ever made such a request, Mr. Yurcisin deferred to Township Supervisor of Parks & Beaches James Sperber, who testified:<sup>272</sup>



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*As far as cleaning South Seaside Park in the off-season months, when it's not tourism season, we spend 2 to 3 days over there, not full days. But cleaning the refuse, checking the beaches, checking for erosion, checking the dune heights. Not specifically measuring anything but just visual inspections. We check the bayfront, North Roberts, the cans, empty anything. Answer any questions or comments or concerns that come in through the, via phone or through Town Hall.*

*You had asked about [Exhibit] 6-A, specifically, I believe. When we clean and we go over and we dump the garbage cans, we check the beaches on the bay side and the ocean side. The guys are instructed, my staff, to look for any kind of large debris or anything. If they see it, they pick it up when they spot it. We do our best to accommodate a request that comes in via phone from a resident. If they have a concern, we try to address it as quickly as possible.*

Mr. Sperber acknowledged that the debris depicted in Exhibit A-6 was unacceptable and that if he observed this condition he would direct his staff to clean it up.

*And we have cleaned up some of that stuff when it was brought to our attention. Because,... when we go over there, if it's high tide, we're not going to be able to see it. You can see sort of where the tide line is. A lot of that debris is in the tide line...*

*...It is cleaned, though, when large debris and stuff like this pipe and stuff would be removed if it was brought to our attention...*

5. With regard to the prevalence of the debris despite their testimony that they clean the bayfront, Mr. Yurcisin testified:

*You know, this is ~ there's tides every day. So, 2 tides every day. Four tides, to be honest with the you. So, in and out. So, sometimes you have stuff come in, sometimes you have stuff go out.*

And Mr. Sperber testified:

*I'm sure some of it washed back up in and out with the tide line.*



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6. With regard to what was referred to as “*unkempt*” vegetative areas on the uplands east of the bayfront, including signage that was obscured by the overgrowth, Mr. Sperber testified:

*If it was brought to our attention, we would trim it... It should be cleared and visible.*

When asked if these types of issues have been brought to his attention outside of the deannexation process, Mr. Sperber responded that they do, “*on occasion... get phone calls for tree trimming and things like that on the island, yes*”.

F. Snow Removal<sup>275</sup>

In response to Petitioners’ assertions that the roads in South Seaside Park do not get plowed, Mr. Seiler testified that the Township assigns (usually) 2 (Township-owned) dump trucks<sup>276</sup> fitted with plows and a (contracted) front-end loader to South Seaside Park and Pelican Island for the duration of a weather event.<sup>277</sup>

The loader is pre-positioned in South Seaside Park prior to the event. The dump trucks are assigned from the Township’s Public Works facility on the Mainland prior to dispatch.

As detailed in Exhibit T-30, the process is for the Township to wait until 4” to 5” of snow has accumulated and the snow has stopped before they commence plowing operations.

*And they plow that section until it's done, even if it's done 2 or 3 times. You get a 4” snowstorm, 12” snowstorm, 20” snowstorm, it's repetitious... You keep going back over the same run. That's why it's time consuming.*

Exhibit T-30 states that “*major roadways are usually done [plowed] first, followed by secondary roadways*”. When asked if there are priority streets within South Seaside Park that get plowed first, with others being plowed second, Mr. Seiler responded that this was not the case for South Seaside Park.

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<sup>275</sup> Testimony on May 4, 2017

<sup>276</sup> The dump trucks assigned to South Seaside Park / Pelican Island work to sand the streets in the neighborhood(s).

<sup>277</sup> The combination of Township and contracted forces is used throughout the Township.



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When asked to comment about Petitioners' Exhibit A-11 ~ depicting the border between Seaside Park and South Seaside Park where a street in Seaside Park is cleared of snow and the same street extending into South Seaside Park is not ~ Mr. Seiler responded:

*...the only thing I could see is [equipment] breakdowns... if we have a breakdown or 2, it slows the whole process down...*

G. As a generalized response to Petitioners' assertions:

1. Mr. Yurcisin testified<sup>278</sup> that the Township's Parks, Beaches & Recreation Department:

*...consider[s] South Seaside Park as part of the town. Anything we do anywhere else in the town as far as maintenance and parks,... South Seaside Park is part of all our efforts. We do all of our beach cleaning everything and cleanup just like ~ we consider it part of Berkeley Township. So, they are on our route for cleanup and garbage pickup, our daily routes. And just part of the town just like anywhere else.*

*And as far as beach maintenance, what we do, obviously, South Seaside Park is our biggest park..., the beach.... And, generally, what I'd like to say is, we consider South Seaside Park as part of the family. It's part of the town. Do everything that we do anywhere else from our aspect.*

2. Mr. Seiler testified<sup>279</sup>

*We provide numerous services for the whole town. And we treat everybody equally. There's no favoritism as far as street cleaning, snow plowing, taking care of the drainage systems. It's all equal.*

3. Mr. Camera testified<sup>280</sup>

*...I can tell you that, sadly, we do get complaints like that,<sup>281</sup> not just from South Seaside Park, but certainly some people are not*

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<sup>278</sup> Testimony on May 4, 2017

<sup>279</sup> Testimony on April 6, 2017

<sup>280</sup> Testimony on May 3, 2018

<sup>281</sup> Complaints by Mr. Schwartz about how he had to call every day for a week for garbage pickup and was told that Public Works would be there the next day, and the next and the next, with nobody ever showing up.



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*satisfied with their service and some people get missed in a process. So, if somebody truly called to the Township Public Works or Administration and ... was told,... they'll come get that tomorrow, and that didn't happen, I would certainly apologize and we would try to make it right. But it does happen. So, no, the fact that a person testified that they had an issue like that, it doesn't change my qualification of our employees doing a really good or excellent or exceptional job.*

### **3.7.5 ANALYSIS**

#### **A. Road Cleaning**

Petitioners' testimony that the Township does not clean the streets in South Seaside Park is in conflict with the testimony of the Township's Director of Public Works / Principal Public Works Manager that they do. To support his assertion, Mr. Seiler submitted Exhibit T-26, which is a schedule that depicts that the roads in each section of the Township are cleaned 4 times a year. Additionally, Mr. Seiler testified that the streets in South Seaside Park are cleaned after storms when necessary, and that South Seaside Park is treated no different from other sections of the Township. Without corroborating evidence, there is no way to determine the validity of Petitioners' assertion or the Township's response.

#### **B. Road Repaving**

1. The information provided by the Township Engineer states:

- There are 251 miles of local roads in Berkeley Township and 6.4 miles of local roads in South Seaside Park. Accordingly, the length of local roads in South Seaside Park is approximately 2.5% of the total local-road-miles in the Township.
- Between 2012 and 2017, the Township paved 24.35 miles of local roads, 1.73 miles of which were in South Seaside Park. Accordingly, 7.1% of the total local-road-miles paved in Berkeley Township during that period were in South Seaside Park.
- Petitioners are correct in asserting that road-length is only one measure of comparing road improvements in South Seaside Park vs. Mainland Berkeley Township, and that without road-width calculations, an incomplete picture of road repaving is presented. Similarly however, road-area comparisons are incomplete without knowing the scope of improvements required to make a road drivable, which range from patching to overlay paving to complete roadbed demolition and reconstruction.



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- While Petitioners challenged the information presented by the Township Engineer as being “*unfair*”<sup>282</sup> because it did not factor road width into the equation, they presented no data to suggest that factoring road widths would change the substance of Mr. Peters’ testimony.

The only testimony presented to challenge the Mr. Peters Report was Mr. Moore’s rebuttal<sup>283</sup> wherein, when asked if his review of Township Bond Ordinances for 2016, 2017 and 2018 reflected the repair of roads in South Seaside Park, he replied “*no*” ~ wherein Mr. Peters reported that, of the 11 Road Projects (3.54 total miles) undertaken in 2016, 2 (0.51 miles) were in South Seaside Park,<sup>284</sup>

The record remains that, between 2012 and 2017, the road-miles repaved in South Seaside Park was 2.84 times the road-miles repaved for the entire Township.

2. Photographs of the section of 20<sup>th</sup> Avenue referenced by Mr. Schwartz taken for this Report of Findings are included herein as Report Graphic 23 (believed to be February 12, 2016) and Report Graphic 24 (taken in October 2018).

The 2016 pictures reveal a [then-relatively] recent repaving of Central Avenue and its transition into 20<sup>th</sup>. The photographs show spot repairs for the remainder of the street as well as a top course which, while oil-and-stone<sup>285</sup>, appeared to be in acceptable condition.

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<sup>282</sup> Characterization by Petitioners’ Attorney on June 1, 2017.

<sup>283</sup> Testimony on October 4, 2018 (§3.4.2 herein)

<sup>284</sup> Equals 18.2% of the Projects and 14.4% of the road miles.

<sup>285</sup> a.k.a. “oil & chip”. A paving method that went out of practice in the 1970s (having been replaced by asphalt).



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Report Graphic 23

The 2018 pictures show relatively-recent utility work along this right-of-way.<sup>286</sup> While this work has left 20<sup>th</sup> Avenue in a deteriorated condition, the Township Engineer’s office reports that the pre-utility-work condition of the pavement was “*fair and serviceable*”, and that this condition remains where the utility work has not taken place.

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<sup>286</sup> The Township Planner reports that this work is replacement of the gas main by the **gas company**.



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*Report Graphic 24*





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Report Graphic 24

C. Refuse & Recycling Collection

1. Despite Mr. Vannella's testimony to the contrary, Petitioners' assertions that trash, recycling and bulk items are not picked up on-schedule is supported by Mr. Camera, who testified.<sup>287</sup>

*sadly, we do get complaints like that, not just from South Seaside Park, but certainly some people are not satisfied with their service and some people get missed in a process.*

At issue is not that these instances occur, but whether they occur often enough to evidence a pattern of neglect, lack of service or to otherwise support a basis for deannexation.

- a. While more than one Petitioner testified about missed pickups, the record reflects a number of isolated incidents ~ characterized by Mr. Camera as "*mistake[s] or inattentiveness*"<sup>287</sup> ~ and not wholesale neglect.
  - b. Garbage in South Seaside Park is picked up more frequently in July and August ~ twice a week (Mondays and Fridays) ~ than the balance of the Township, which has once per week collection.<sup>288</sup>
  - c. South Seaside Park's pickups are on Mondays. When holidays fall on a Monday, South Seaside Park has their garbage picked up the next day, whereas the balance of the Town has to wait to the next Saturday.
  - d. To the extent that Exhibit A-36 represents an accurate accounting of missed and rescheduled pickups, it demonstrates that South Seaside Park had 11 bulk actual pickups when only 6 were scheduled.
2. Citizens needing to place multiple calls to the Township to have their garbage, recycling or bulk items picked up is unacceptable. Citizens being promised a service that is then

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<sup>287</sup> Testimony on May 3, 2018

<sup>288</sup> The community receives once per week pickup (Mondays) the balance of the year.



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not provided and being told a supervisor will call back only to have no call returned is similarly unacceptable.

3. Petitioners' testimony regarding South Seaside Park not being provided 'robo-cans' by the Township was incomplete. Cans *were* provided in South Seaside Park ~ *except for the streets that are too narrow for the robo-can collection truck to access.*

While South Seaside Park may have received recycling robo-cans *after* an article in the Berkeley Times stated that the can program had been completed, the cans have been distributed to eligible South Seaside Park residents.<sup>289</sup>

4. Petitioners' use of the Seaside Park recycling facility on 14<sup>th</sup> Avenue as opposed to Berkeley Township's Mainland facility appears to be a function of location as opposed to an inherent dissatisfaction with the service provided by the Township. Issues related to the distance of the Township's municipal facilities from South Seaside Park are addressed in §3.2.4 A. herein.

- D. The record contains no evidence to support Mr. Whiteman's assertion that Berkeley Township does not clean the White Sands Beach "*as well as*" Seaside Park cleans its ocean beach.

Contrary to Mr. Whiteman's testimony, Mr. Sperber testified<sup>290</sup> that garbage collection at both the Bay Beach and White Sands Beach is 3 times a week in the off-season and daily during the tourist season.

- E. Bay Beach<sup>290</sup>

1. The Bay Beach in South Seaside Park is a natural shoreline that is not intended to be a beach for recreation purposes. Even if the Township desired to designate this area for recreation, it is not owned or controlled by the Township. Even if the above were not true, this narrow spit of land is simply too small to accommodate the facilities requested.

<sup>289</sup> Testimony of Mark Vannella on April 6, 2017

<sup>290</sup> Testimony on May 4, 2017



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2. The ‘softball-sized rocks’ referred to by Mr. Whiteman are actually ballasts purposely placed by the Township over a culvert or outfall pipe to keep this infrastructure in place. As a result of tidal / wave action, these rocks shifted off of the utility to the beach and seabed.
3. Despite testimony from Mr. Yurcisin and Mr. Sperber that the Bay Beach is patrolled regularly and that debris is removed when observed, Mr. Sperber did acknowledge that the condition of this area as depicted in Exhibit A-6 was unacceptable. Both Mr. Yurcisin and Mr. Sperber testified that Township personnel clean the area when issues are brought to their attention.

**F. Snow Removal**

The National Oceanic & Atmospheric Administration developed the Northeast Snowfall Impact Scale (NESIS) to characterize and rank high-impact Northeast snowstorms which have large areas of 10”+ snowfall accumulations. The index differs from other meteorological indices in that it uses population information in addition to meteorological measurements.<sup>291</sup>

While the NESIS was designed to analyze a storm's societal impacts, this Report of Findings offers the NESIS classifications as a means to compare the relative severity of storms and not to measure the impact of any particular storm on the residents of South Seaside Park.

NESIS categorizes storms as:

| CATEGORY | DESCRIPTION |
|----------|-------------|
| 1        | Notable     |
| 2        | Significant |
| 3        | Major       |
| 4        | Crippling   |
| 5        | Extreme     |

*Report Table I*

<sup>291</sup> NESIS scores are a function of the area affected by the snowstorm, the amount of snow, and the number of people living in the path of the storm. The largest NESIS values result from storms producing heavy snowfall over large areas that include major metropolitan centers. ([www.ncdc.noaa.gov/snow-and-ice/rsi/nesis](http://www.ncdc.noaa.gov/snow-and-ice/rsi/nesis))



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Pertinent to this Report of Findings, since 1996,<sup>292</sup> the storms cited by Petitioners rose to the level of NESIS classification as follows:

| RANK | START      | END        | NESIS | CATEGORY | DESCRIPTION |
|------|------------|------------|-------|----------|-------------|
| 2    | 1/6/1996   | 1/8/1996   | 11.78 | 5        | Extreme     |
| 24   | 12/24/2010 | 12/28/2010 | 4.92  | 3        | Major       |
| 28   | 2/4/2010   | 2/7/2010   | 4.38  | 3        | Major       |
| 29   | 2/7/2013   | 2/10/2013  | 4.35  | 3        | Major       |
| 35   | 12/18/2009 | 12/21/2009 | 3.99  | 2        | Significant |
| 44   | 3/4/2013   | 3/9/2013   | 3.05  | 2        | Significant |
| 45   | 12/13/2013 | 12/16/2013 | 2.95  | 2        | Significant |
| 49   | 12/30/2000 | 12/31/2000 | 2.37  | 1        | Notable     |
| 57   | 3/1/2009   | 3/3/2009   | 1.59  | 1        | Notable     |

*Report Table J*

1. 1996 Storm

- a. The 1996 Storm was one of only 2 snowstorms to receive the top rating of 5 ("Extreme") from the NESIS.<sup>293</sup>

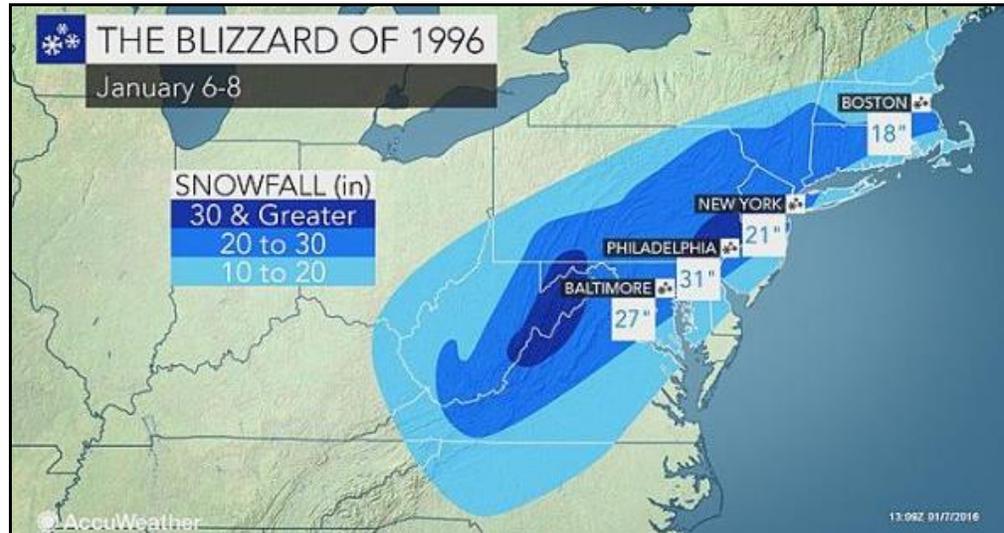
<sup>292</sup> The snowstorm referenced by Mr. Cardwell ~ in which he testified that:

*Berkeley Township [was] inundated down there for 3 days. Their roads were not plowed...*

<sup>293</sup> [www.ncdc.noaa.gov/snow-and-ice/rsi/nesis](http://www.ncdc.noaa.gov/snow-and-ice/rsi/nesis)



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Report Graphic 25

- b. The breakdown of the snow plow prior to the storm is consistent with Mr. Seiler’s testimony that breakdowns “*slows the whole [plowing] process down*”, and likely contributed to the delay in clearing the streets in South Seaside Park.
- c. Mr. Cardwell’s testimony<sup>294</sup> evidences the municipality’s investment in and provision of plowing services to South Seaside Park.

2. December 26, 2000 Storm

The NESIS analysis does not include a storm for December 26, 2000 but did classify a storm between December 30 and December 31, 2000 as “Notable”. An internet search for such an event revealed a storm that formed December 27, 2000 and dissipated December 31, 2000.<sup>295</sup> This Report of Findings assumes that this is the event to which Mr. Whiteman testified.

While the National Weather Service archive did not include a narrative for this storm, it did report 9” of accumulation in Bayville.<sup>296</sup>

<sup>294</sup> By the next storm the Township “...had a brand new plow and a brand new truck...”, and there has been better plowing in South Seaside Park.

<sup>295</sup> [https://en.wikipedia.org/wiki/December\\_2000\\_nor%27easter](https://en.wikipedia.org/wiki/December_2000_nor%27easter)

<sup>296</sup> <https://www.weather.gov/phi/archives#>



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3. 2009 Storms

Mr. Whiteman did not provide a date for the 2009 storm to which he testified. The NESIS analysis classified a storm between March 1 and March 3, 2009 as “Notable” and a storm between December 18 and December 21, 2009 as “Significant”.

- Limited information available from National Weather Service for the March 2009 storm reported 10.5” of accumulation in Bayville and 10” to 14” along the Atlantic Coast.<sup>297</sup>
- For the December 2009 storm, the National Weather Service<sup>298</sup> reported 20” of accumulation in Holiday City and 17.5” in Bayville, and described the event as “*a significant Nor’easter*”.

4. 2010 Storms

- The NESIS analysis classified storm between February 4 and February 7, 2010<sup>299</sup> as “Major”. The National Weather Service<sup>300</sup> reported 16.6” of accumulation in Bayville.
- Mr. Schwartz did not provide a date for the “2010/2011” storm to which he testified. For the December 2010 storm, the National Weather Service<sup>301</sup> reported accumulations of 26” in Bayville and described the event as “*a strong Nor’easter system [impacting] the Middle Atlantic region*”. This Report of Findings assumes that this was the “*big (2½’ to 3’) storm*” to which Mr. Schwartz was referring.

5. 2013 Storms

Other than stating that it was “*the winter of 2012 / 2013*”, Mrs. Fulcomer did not provide a date for the photographs depicting the border between Seaside Park and South Seaside Park where a street in Seaside Park is cleared of snow and the same street extending into South Seaside Park is not.<sup>302</sup>

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<sup>297</sup> <https://www.weather.gov/phi/archives#> & <https://www.weather.gov/phi/03022009wss>

<sup>298</sup> <https://www.weather.gov/phi/12192009wss> & <https://www.weather.gov/phi/archives#>

<sup>299</sup> Reported as February 5 – 6 by the National Weather Service.

<sup>300</sup> <https://www.weather.gov/phi/archives#>

<sup>301</sup> <https://www.weather.gov/phi/12262010wss> & <https://www.weather.gov/phi/archives#>

<sup>302</sup> Included on Exhibit A-11



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During an interchange designed to determine the date of the storm,<sup>303</sup> it was estimated that the photograph was taken sometime after December 2012.<sup>304</sup>

The NESIS analysis does not include a storm for 2012 but did classify a storm between February 7 and February 10, 2013 as “Major” and storms between March 4 and March 9, 2013 and December 13 and December 16, 2013 as “Significant”.

- For the February 7 – 10, 2013 storm, the National Weather Service<sup>305</sup> archive did not include accumulation figures for Berkeley Township, but did provide data for other Ocean County locations.<sup>306</sup>
- The National Weather Service archive did not include a storm for March 2013.<sup>305</sup> An internet search for relevant storms suggested that this was a wind / rain / flooding event for central / eastern New Jersey.
- For the December 13 – 16, 2013 storm,<sup>307</sup> the National Weather Service archive did not include snow accumulations for Ocean County and described the event as bringing “a variety of precipitation types to the region”. The narrative focused on areas north, west and south of Ocean County and did not address central / eastern New Jersey.

**3.7.6 FINDINGS**

*At issue before the Planning Board is whether or not the Public Works services provided to South Seaside Park ~ or the lack thereof ~ is 'detrimental to the... wellbeing of a majority of*

<sup>303</sup> Testimony on April 2, 2015

<sup>304</sup> When asked by Petitioners’ Attorney if she would be able to “go back and look in [her] records and nail down the dates so that we don’t have a lot of confusion about that?”, Mrs. Fulcomer responded that she would have to review the Township Council Meeting minutes (she had previously submitted the same photographs to the Council):

*RESPONSE: I would have to go through council minutes myself.*  
*QUESTION: Would you do that the next time?*  
*RESPONSE: I’d be willing to do that, certainly.*  
*QUESTION: All right. So, the next time we come back ~*  
*RESPONSE: Yeah.*  
*QUESTION: ~ we can clarify exactly when those photo were taken because ~*  
*RESPONSE: I’d have to go through all the council minutes, yeah.*  
*QUESTION: Okay. All right. I’d ask you to ~*  
*RESPONSE: Because I’m sure it would be recorded that I said something ~*  
*QUESTION: I would ask you to do that?*  
*RESPONSE: ~ and passed out.*

No response to this request was received by the Board.

<sup>305</sup> <https://www.weather.gov/phi/archives#>

<sup>306</sup> Jackson Twp.: 6.5”; Lanoka Harbor: 5.3”; Manchester Twp.: 5.2”; Lakehurst: 3.3”; Manahawkin: 3.0”.

<sup>307</sup> Reported as December 14 – 15 by the National Weather Service (<https://www.weather.gov/phi/archives#>)



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*the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.*

D. This Report of Findings finds that:

1. Road Cleaning

- a. It is likely that there are occasions when the Township does not clean the streets in South Seaside Park according to the publicized schedule.
- b. Other than 2 photographs related to a purported delay in bulk pickup and a photograph depicting sand along the sides of the 20<sup>th</sup> Avenue cartway,<sup>308</sup> the record contains no evidence to suggest that the streets in South Seaside Park are litter-strewn or otherwise suffer from lack of street sweeping.
- c. Conventional wisdom in municipal government holds that nobody thinks their streets are cleaned often enough. Without corroborating evidence, there is no way to determine the validity of Petitioners' assertion.

The record contains no evidence to suggest that Seaside Park would do a better job than the Township in cleaning the roads in South Seaside Park should deannexation occur.

- d. It is significant to note that Petitioners themselves acknowledge that blowing sand is one of the tradeoffs that one makes when living by the beach and further concede that the Township has done a better job in cleaning the streets "*in the [then] last couple years...*". They are unaware how well Seaside Park addresses sand in the Borough's streets.<sup>303</sup>

2. Road Repaving

- a. The record does not support Petitioners' assertions that the Township does not repave the roads in South Seaside Park.

While Petitioners assert that the roads in South Seaside Park are not repaved, the only specific road called into question was 20<sup>th</sup> Avenue between Central Avenue and the

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<sup>308</sup> Exhibit A-6, Exhibit A-17 and Exhibit A-18



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Beach. A site visit conducted relatively soon after the testimony on this issue revealed a roadway surface that had been patched in places but which otherwise appeared to be in acceptable condition. An October 2018 site visit to 20<sup>th</sup> Avenue revealed relatively recent subsurface utility work which left the cartway in need of repaving.

- b. The record contains no evidence to suggest that the road paving statistics provided by the Township Engineer were inaccurate.
- c. How long it has been since a particular road has been repaved is of no moment to this deannexation analysis. Similarly, the debate over what is a “fair” way to compare road improvement activity on the Island vs. that on the Mainland is of no moment to the discussion. At issue is whether or not the roads in South Seaside Park are safe, drivable and well-maintained.

With the arguable exception of 20<sup>th</sup> Avenue, the roadways in South Seaside Park appear safe, drivable and well-maintained.

- d. The records contains no evidence to suggest that Seaside Park would do a better job than the Township in paving the roads in South Seaside Park should deannexation occur.

3. Refuse & Recycling Collection

- a. It is likely that there are occasions when the Township does not pick up refuse or recycling according to the publicized schedule. Within this context, this Report of Findings sympathizes with Mrs. Erdman that this “...erratic schedule... is causing a lot of frustration [and] a lot of aggravation”.<sup>309</sup>

Despite this frustration and aggravation, the record reflects that the Township recognizes the special needs of South Seaside Park and has attempted to accommodate those needs by pickups that are more frequent (in the tourism season) and more timely (when holidays fall on pickup days) than for the balance of the Township.

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<sup>309</sup> Testimony on May 7, 2015



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- b. Rude or unresponsive interactions between residents of South Seaside Park and individual Township employees appears more likely the result of poor “customer service” training and not the community where the callers reside.<sup>310</sup>
- c. The fact that some residents of South Seaside Park have not received robo-cans appears to be the result of the particular streets where the residents live and is unrelated to the community where the callers reside.<sup>311</sup>
- d. Seaside Park’s recycling facility is undoubtedly more convenient for the residents of South Seaside Park than the Township’s facility, which is located on the Mainland. However, considering the size of Berkeley Township and the location of the facility along Pinewald-Keswick Road, other residents have to travel a distance as well (albeit not as far as the residents of South Seaside Park).<sup>312</sup> Berkeley Township is a large municipality and residents cannot possibly live near every amenity.
- e. The record contains no evidence to suggest that Seaside Park would do a better job than the Township in collecting refuse and recycling in South Seaside Park should deannexation occur.

4. White Sands Beach

- a. The assertion that Seaside Park cleans its ocean beach more often than Berkeley Township cleans the White Sands Beach is of no moment to the current Deannexation discussion. At issue is whether or not the Township’s beach cleaning efforts are sufficient to keep White Sands Beach clean.

Given the testimony and Exhibits offered to support their contention that the Township does not clean and/or maintain the Bay Beach in South Seaside Park, Petitioners would have undoubtedly submitted evidence to substantiate similar conditions at the White Sands Beach if those conditions existed.

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<sup>310</sup> During discussion of this issue at the hearing on April 2, 2015, Planning Board Chairman Winward commented that he has “*the same problem*”.

<sup>311</sup> During discussion of this issue at the hearing on April 2, 2015, Planning Board Chairman Winward, who lives on the mainland, commented that he does not have robo-cans.

<sup>312</sup> For a more in-depth discussion of distance, see §3.2.1 - §3.2.4 herein.



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- b. The record contains no evidence to suggest that White Sands Beach requires cleaning beyond that provided by the Township.
- c. The record contains no evidence to suggest that Seaside Park would do a better job than the Township in cleaning White Sands Beach should deannexation occur.

5. Bay Beach

- a. The Bay Beach in South Seaside Park is not a bathing beach and cannot accommodate the types of recreational facilities that have been created along the bay in Seaside Park, where the land is Borough-owned and much wider.
- b. Petitioners' suggestion that the public should be permitted to swim at an unprotected beach that is not designated for such a use<sup>313</sup> is reckless and detrimental to public safety.
- c. Petitioners' assertions that the bayfront in South Seaside Park is not cared for is not without merit. While this Report of Findings accepts as plausible the Township's testimony that the condition of the area is due to the tides and illegal dumping, it does not accept that these conditions would persist if the area was policed as often as was testified.

And while this Report of Findings recognizes that Township personnel may have difficulty going into the water to police the debris and that they may not have jurisdiction to clean in the water, such rationale does not extend to the items on the land.

- d. While Township personnel clean the bayfront when issues are brought to their attention, the residents of South Seaside Park would not have to rely on complaints if the area was policed as often as was testified.
- e. The record contains no evidence to suggest that Seaside Park would do a better job than the Township in policing the bayfront should deannexation occur.

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<sup>313</sup> Testimony on February 5, 2015:

*...[if] you're capable and able, you don't need a town to tell you you can't swim anyplace.  
You can go in and swim in the bay where you want.*



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6. Snow Removal

- a. Conventional wisdom in municipal government holds that nobody thinks their streets are plowed quickly enough. Given the testimony<sup>314</sup> that Township-wide plowing operations do not commence until 4” to 5” of snow has accumulated and that, depending on snow levels, it could take hours to do one pass through all of South Seaside Park, it is not surprising that Petitioners feel that their streets do not get cleared of snow in a timely manner.
- b. While the photograph presented by Petitioners as part of Exhibit A-11 shows a portion of Bayview Avenue in Seaside Park as being “*very well plowed and clean*”<sup>315</sup> and a portion of Bayview Avenue in South Seaside Park being “*not well plowed*”, Bayview Avenue in Seaside Park is a County Road plowed by Ocean County and the portion in South Seaside Park is a municipal road plowed by Berkeley Township.

The record contains no evidence to suggest that the municipal roads in Seaside Park are plowed any better or more timely than the municipal roads in South Seaside Park.

Absent Ocean County taking jurisdiction over the portion of Bayview Avenue in South Seaside Park, the record contains no evidence that Bayview Avenue ~ or any other road in South Seaside Park ~ would be plowed any better or more timely should deannexation occur.

- c. Of the 64 storms rated by the NESIS since 1956, the 9 storms cited by Petitioners are ranked 2<sup>nd</sup> through 57<sup>th</sup> on the impact scale. The record contains no evidence to suggest that the Township’s efforts in plowing snow from more pedestrian storms is lacking.

E. Russell suggests that there are “*other mechanisms short of [de]annexation to address the concerns of the Petitioners*”. These may include, but not necessarily be limited to:

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<sup>314</sup> Supported by Exhibit T-30

<sup>315</sup> Testimony of Mrs. Fulcomer on April 2, 2015



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1. Berkeley Township could enter into one or more Inter-Local Agreement(s) with Seaside Park whereby:
  - Seaside Park could clean the streets in South Seaside Park.
  - Seaside Park could pave the streets in South Seaside Park. Such a mechanism would have the added benefit of taking advantage of economies of scale when a South Seaside Park road repaving is done at the same time as a Seaside Park repaving.
  - Seaside Park could pick up refuse, recycling and/or bulk items in South Seaside Park. Such a mechanism could include regular pickup or could be an ‘on-call’ service used only when the Township misses a pickup.
  - The residents of South Seaside Park could use Seaside Park’s recycling facility.
  - Seaside Park could clean the White Sands Beach and police the bayfront in South Seaside Park.
  - South Seaside Park residents could take advantage of Seaside Park’s bayfront recreational facilities.
  - Seaside Park could plow the municipal streets in South Seaside Park.
2. Berkeley Township could enter into an Inter-Local Agreement with Ocean County whereby the County plows the municipal roads in South Seaside Park, or at least the roads that are part-County and part-Township.
3. The Township could further improve its website and Facebook page to expand the ability of residents to lodge complaints or request services via the internet as opposed to having to call a Township employee.
4. The Township could institute training for employees as to how to better interact with residents.

Additional issues related to public works are addressed elsewhere in this Report of Findings.



### **3.8 EMERGENCY SERVICES**

Petitioners assert that South Seaside Park is not well served by the Township's Police, Fire, (911) Dispatch and Emergency Management Services.

#### **3.8.1. PETITIONERS' TESTIMONY**

##### **A. Police**

3. Petitioner Donald Whiteman asserted that Berkeley Township does not provide the Police presence necessary to meet the needs of South Seaside Park. Specifically:

- a. There is a single police patrol covering South Seaside Park and Pelican Island<sup>316</sup> (plus 2 to 3 crossing guards for the summer) and “[t]here is less police presence now than it was back in the [19]70s”.<sup>317</sup>

In the winter, such manpower translates to 1 officer for 490 voters. While the total summer population in South Seaside Park is not known, such staffing translates to 1 officer for 1,400 houses.

- b. This lack of manpower results in delayed response times and reduced public safety.<sup>318</sup> Conversely, Mr. Whiteman believes that the Seaside Park Police Station, with more

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<sup>316</sup> The Pelican Island portion of Berkeley Township is not part of South Seaside Park and not subject to the deannexation Petition.

<sup>317</sup> Testimony on February 5, 2015:

*... [There were] 167 all year round residents in South Seaside Park back in the '70s. Today there are probably... 400 plus voters in South Seaside Park. ...permanent residents...*

<sup>318</sup> Testimony on January 1, 2015 & Testimony on February 5, 2015:

*...the [lack of] police presence affected me this past summer. ...there was an altercation. A girl and a guy were fighting out in the front of my house. This happened about 1:30 in the morning...*

*I believe it was August 2. We called for police to come. Waiting for the police. They did not arrive, so I ended up walking outside hoping that the guy would see me and... just calm things down. But there was pushing, shoving, yelling going on. And that occurred for about 15, 20 minutes.*

*At that point, no police showed. Now, I know we were told that there's backup with Seaside Park but we didn't get any backup from Seaside Park either. So, we had something occurring in front of my house that took 15, 20 minutes. And they continued to walk down the street towards Seaside Park yelling and screaming. And there was no involvement by any police.*



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available manpower located 2 to 3 minutes from South Seaside Park, is better able to address the needs of South Seaside Park and that a more-local police presence would benefit South Seaside Park:

*The point... is, if we were in Seaside Park, Seaside Park then takes the responsibility to control the area. They're the ones in charge. They're the ones [doing the] policing... And by being part of Seaside Park, we're part of a local community police force. And for me, that's... what I'm looking for... To send officers over here when you have a police force just a ½ mile from your town just does not seem like it's... something that should be done.*

- c. As a follow-up to his initial testimony regarding Police presence in South Seaside Park, Mr. Whiteman testified that there has been an increase in police presence in South Seaside Park since the Deannexation process commenced.<sup>319</sup> To support this testimony, Mr. Whiteman presented a calendar he maintained from February 2016 to May 2016, wherein he charted each time he observed a police patrol in South Seaside Park.<sup>320</sup>

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<sup>319</sup> Testimony on June 2, 2016:

*During July and August in 2015, there has been a big change in the amount of officers in South Seaside Park.*

*...Before we started the proceedings... we did not have officers but 1 car, not there on 24 hour.... We didn't know who our backups were going to be, whether it was going to be Island Beach State Park, whether it was going to be Seaside Park. I heard Seaside Heights. I heard everyone's going to be involved. That's... a reason why I did this.*

<sup>320</sup> Exhibit A-62 & Testimony on June 2, 2016:

*So in 2015 for that summer, we had the 3 crossing patrolmen at 5<sup>th</sup> and 6<sup>th</sup> Lane, 20<sup>th</sup>, 10 Ave, and 23<sup>rd</sup> Avenue. They were there most of the summer... Any time on weekends..., and 4<sup>th</sup> of July. And for the most part, even during the week in the height of the summer, they were there... This is not including those who are patrolling.*

*I also saw during that summer there were 2 and 3 police cars in South Seaside Park. 2 cars patrolling. I thought, wow, this is great...*

*From September through January, I stopped... And then... come February... [I picked it up again] ...I put down... the number on the cars, the time the cars were there, and I put it on a calendar... to show that we do have 2 cars now in South Seaside Park. For the most part, we definitely have 1 car, and now we do have 2 cars that I see.*

*That was different prior to the... start of the deannexation proceedings.*

*...Memorial Day [2016] ...Friday, Saturday, and Sunday we had the officers crossing the 3 streets. We had 2 police cars driving around at the same time, different parts of [South Seaside Park]. We had 2 officers in 1 car... when I looked at that, I thought there is definitely a change that took place.*

[continued]



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SOUTH SEASIDE PARK - POLICE COVERAGE

① HOW MANY CARS  
 ② TIME OF CARS  
 ③ NUMBER ON THE CARS  
 ④ OPERA'D INFO/NOT GIVEN

## February 2016

| SUNDAY  | MONDAY  | TUESDAY                                 | WEDNESDAY                                   | THURSDAY                                 | FRIDAY   | SATURDAY  |
|---|---|---|---|--|--|---|
|   | 1<br>2 CARS 4PM                                 | 2<br>2 CARS 4PM                         | 3<br>2 CARS 4PM                             | 4<br>2 CARS 3:30-7PM                     | 5<br>2 CARS 4PM  | 6<br>1 CAR 8AM                                  |
| 7<br>1 CAR 8AM<br>1 SUV 8PM                     | 8<br>1 CAR 4PM                                  | 9<br>2 CARS 7AM                         | 10<br>2 CARS 7AM<br>514 & 527<br>2 CARS 4PM | 11<br>2 CARS 7AM<br>522-575<br>1 CAR 3PM | 12<br>1 SUV 9AM<br>575                                 | 13<br>1 CAR 10AM<br>572                         |
| 14<br>1 CAR 9AM<br>2 CARS 3PM<br>571 & 525      | 15<br>2 CARS-11:30AM<br>2 CARS-3-5PM<br>575-527 | 16<br>7AM<br>2 CARS-PEL. IS.<br>515-554 | 17<br>1 CAR-7AM<br>2 CARS-5PM<br>527-554    | 18<br>2 CARS 7AM<br>SUV-CAR              | 19<br>2 CARS 9AM<br>SUV-CAR<br>1 CAR-10AM-5PM          | 20<br>1 CAR-2PM<br>554                          |
| 21<br>2 CARS 8AM<br>575 & 554<br>1 CAR-5:11-4PM | 22<br>1 CAR-10:30A<br>525                       | 23<br>1 CAR-7AM                         | 24<br>1 CAR-7AM<br>554                      | 25<br>1 CAR-7AM<br>554                   | 26<br>571-552<br>2 CARS-7AM<br>2 CARS-4PM<br>517 & 553 | 27<br>524<br>1 CAR-10AM<br>2 CAR-1PM<br>554-572 |
| 28<br>2 CARS 11AM<br>571-554                    | 29<br>2 CARS-7AM<br>PEL. IS.<br>1 CAR 8PM       |   |   |  |  |   |

## South Seaside Park Police Coverage

## March 2016

| SUNDAY                        | MONDAY                                   | TUESDAY  | WEDNESDAY                     | THURSDAY                      | FRIDAY   | SATURDAY  |
|-------------------------------|--|--|-------------------------------|-------------------------------|--|---|
|                               |  | 1<br>2 CARS-7AM<br>508-? 4AM<br>554-571        | 2<br>1 CAR 7AM                | 3<br>1 CAR 7AM                | 4<br>2 CARS 7AM<br>527-571                       | 5<br>2 CARS 10AM<br>554-572                     |
| 6<br>2 CARS 11AM<br>514 & 573 | 7<br>575<br>1 CAR-7AM                    | 8<br>2 CARS-7AM<br>571-527<br>PEL. IS.         | 9<br>1 CAR                    | 10<br>2 CARS 4PM<br>514 & 572 | 11<br>575<br>1 CAR-7AM<br>2 CARS-11AM<br>577-554 | 12<br>1 CAR 10AM<br>572                         |
| 13<br>1 CAR 7AM               | 14<br>2 CARS 5PM<br>514 & 572            | 15<br>2 CARS 7AM<br>553<br>SUV-PAVING          | 16<br>2 CARS 7AM<br>514 & 570 | 17<br>1 CAR-4PM               | 18<br>2 CARS-7AM<br>575-572<br>1 CAR-7AM-5PM     | 19<br>1 CAR 7AM<br>554                          |
| 20<br>2 CARS-11AM<br>522 & ?  | 21<br>1 CAR 7AM<br>2 CARS-4PM<br>557-575 | 22<br>2 CARS 7AM<br>514 & 554                  | 23<br>1 CAR 7AM               | 24<br>1 CAR 7AM               | 25<br>1 CAR-8PM                                  | 26<br>514<br>1 CAR-7AM<br>2 CARS-2PM<br>572-577 |
| 27<br>1 CAR 12V<br>514        | 28<br>1 CAR 7AM<br>1 CAR 3PM<br>520      | 29<br>2 CARS-8AM<br>571 & 554<br>1 CAR 4PM 553 | 30<br>533<br>1 CAR 4PM        | 31<br>1 CAR                   |  |   |

[continued]

I noticed on July 4<sup>th</sup>, we had the four-wheel drive vehicles up on the beach because we had complaints of fireworks. South Seaside Park had a great fireworks. As a matter of fact, it was even better than Seaside Heights... it was really good fireworks, but... it was a free-for-all. And so... which was very good... They brought two... of the small little jitneys up ...on the beach, and that helped to alleviate that problem.

Some days... I didn't see a police car.... Doesn't mean they're not there. It's just that I didn't... run into them.

[And on several weekdays] ...I saw 3 police cars... I saw 2 officers in a police car. I looked at it and thought to myself, well, there is definitely a change now, ...and I want to thank the Mayor and Council... and the Police Chief for seeing that we were lacking....

...much greater presence since deannexation has started...



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South Seaside Park Police Coverage

April 2016

| SUNDAY                    | MONDAY                              | TUESDAY                     | WEDNESDAY                             | THURSDAY                                    | FRIDAY                               | SATURDAY                            |
|---------------------------|-------------------------------------|-----------------------------|---------------------------------------|---|--------------------------------------|-------------------------------------|
|                           |                                     |                             |                                       |   | 1 CAR 9AM<br>514<br>1 CAR 2PM 588    | 2 CAR 9AM                           |
| 3 2 CARS<br>527-554       | 4 1 CAR - 7AM<br>554                | 5 1 CAR 7AM<br>554          | 6 2 CARS 4PM<br>514-527               | 7 1 CAR PM<br>517                           | 8 ?                                  | 9 1 CAR 11AM<br>517                 |
| 10 2 CARS 9AM<br>572-554  | 11 1 CAR - 7AM<br>1 CAR - 4PM       | 12 1 CAR 7AM<br>553-REL. 2L | 13 3 CARS 7-11M<br>506-517-572<br>1PM | 14 2 CARS - 7AM<br>575-577<br>REL. 2L       | 15 1 CAR 7AM                         | 16 2 CARS 10AM<br>572-55-           |
| 17 2 CARS 11AM<br>514+571 | 18 508-8AM<br>575-7AM<br>532 9:30PM | 19 1 CAR - 7AM              | 20 2 CARS 4AM<br>514-527              | 21 527<br>1 CAR - 4PM<br>1 CAR - 4PM<br>577 | 22 2 CARS 7AM<br>-572-577<br>12:45PM | 23 2 CARS 10AM<br>5-- 15--          |
| 24 1 CAR 10AM             | 25 2 CARS 3PM<br>554-527            | 26 1 CAR 7AM<br>544         | 27 2 CARS 7AM<br>514-522              | 28 2 CARS 7AM<br>REL. 2L<br>572-520         | 29 1 CAR 4:30PM<br>550               | 30 1 CAR 10AM<br>5--<br>572-550 4PM |

South Seaside Park Police Coverage

① How many cars  
 ② time of cars  
 ③ Number on cars  
 ④ OPR'd info/not given

May 2016

| SUNDAY                                   | MONDAY                      | TUESDAY                      | WEDNESDAY        | THURSDAY                         | FRIDAY   | SATURDAY  |
|--|-----------------------------|------------------------------|------------------|----------------------------------|--|---|
| 1 514<br>2 CARS 8AM<br>575-10AM          | 2 2 CARS 5PM<br>554-514 3PM | 3 ?                          | 4 CAR 2PM<br>572 | 5 2 CARS - 7AM<br>51-575         | 6 577 4PM  | 7 514-8AM<br>572-9AM                                |
| 8 ?                                      | 9 538 PM                    | 10 575-7AM<br>557-4PM<br>554 | 11 506-7AM       | 12 572-10AM<br>575 4PM           | 13 553-3:30PM<br>575-4PM                                   | 14 514-9AM<br>550-3:30PM<br>548-PM                  |
| 15 514<br>579<br>CAR-3PM                 | 16 527-11AM                 | 17 527-4PM<br>550            | 18 ?             | 19 572-7AM<br>575 1PM            | 20 553-3:30PM<br>575-4PM                                   | 21 513-9AM<br>577-4PM                               |
| 22 503AM<br>508-4:30<br>514-PM<br>526-PM | 23 527 AM                   | 24 1 CAR 7AM                 | 25 1-SUV         | 26 528-8AM<br>577<br>570-11:30AM | 27 crossing officer<br>577<br>503-2 police<br>514-2 police | 28 570-9:30AM<br>3 crossing officers<br>572-554-7PM |
| 29 3 crossing cars<br>CAR<br>SUV         | 30 572-AM<br>CAR-PM         | 31 1-CAR AM                  |                  |                                  |  |   |

Excerpts from Exhibit A-62

- d. Additionally, Mr. Whiteman testified that he noticed Class II Police Officers serving as crossing guards for most of the summer of 2015 at 3 intersections in South Seaside Park.



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2. The testimony of Petitioners Mr. Whiteman and Katherine Fulcomer was reinforced by Seaside Park resident and retired<sup>321</sup> Seaside Park Police Officer Robert Cardwell, who testified:<sup>322</sup>

1. With the exception of the summertime during the... *“height of the season.... maybe from Memorial Day through... Labor Day”*, there was not more than 1 Berkeley police officer assigned to South Seaside Park.

2. When he was a Seaside Park Police officer, the Department had *“13 sworn officers”*, of which a minimum of 2 officers per shift would be on patrol. Such staffing was augmented during the tourist season by 25 Class I and Class II seasonal officers.

In terms of deployment, *“at any given time”*, Seaside Park had *“3 two-man patrols on the boardwalk [and] ...at least... 3 regular officers, including a supervisor, on the street, as well as several seasonal officers in cars on patrol”*.

3. If deannexation were to occur, the Seaside Park police would become the primary responder for South Seaside Park, thereby resulting in *“... more officers on the road at any given time, especially during the... peak season. You would have a contingency of summer officers involved, as well as your full-time staff”*.

A Seaside Park Police officer could respond from the northern border of Seaside Park to 24<sup>th</sup> Avenue in South Seaside Park in *“probably less than a minute. Maybe a little bit more”*.

3. Petitioner George Giovenco testified<sup>323</sup> that, on August 3<sup>rd</sup>, 2011, he and his wife were awakened at approximately 3 a.m. by a *“large crash”* caused by a car hitting his (parked) vehicles. Upon calling 911, a Berkeley Township Police officer arrived, and witnesses informed the officer that the suspect had proceeded south towards Island Beach.

<sup>321</sup> Mr. Cardwell testified that he had served 20 years as a full-time police officer and 7 years as a seasonal officer. He retired in 2000.

<sup>322</sup> Testimony on April 2, 2015

<sup>323</sup> Testimony on June 2, 2016



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Since Ocean Avenue and Central Avenue are the “only 2 ways out of Seaside”, and since the damage to the suspect vehicle would have presumably been easily identifiable, Mr. Giovenco suggested to the officer that he “send a couple of more cars and block off” these streets as a means of apprehending the suspect; to which the officer was said to reply “you’re all I got...” which Mr. Giovenco understood to mean that “there was no one else that was on the Island at the time from Berkeley that could... come. Because he [the officer] didn’t call for anybody”.

Mr. Giovenco testified that he then suggested that the officer call the Seaside Park Police and inform them that “...there’s probably going to be a car coming down Central or Ocean Avenue or maybe Bay Avenue and would eventually wind up at the bridge or go down 35, and we can find this guy...”. This suggestion was not acted upon.

Mr. Giovenco took it upon himself to look for the suspects and eventually apprehended the individuals. While this was occurring, Mrs. Giovenco again called the police,<sup>324</sup> and 3 Seaside Park Police cars responded. While attempting to take charge of the situation, the Berkeley officer arrived and attempted to establish jurisdiction.<sup>325</sup>

Mr. Giovenco stated that the purpose of this testimony was to emphasize that “...it was 3:00 in the morning on August 3<sup>rd</sup>, and there was 1 [Berkeley] police officer that was assigned to [South Seaside Park]”.

#### 4. Police Backup / Mutual Aid

- a. Mr. Whiteman’s concern about what he perceives as inadequate police coverage in South Seaside Park led him to explore the issue in 2014, wherein he inquired of Seaside Park Police Chief Francis Larkin as to the frequency that the Borough’s Police were called to assist the Berkeley Township Police in South Seaside Park.

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<sup>324</sup> Mr. Giovenco did not know if she called Berkeley or Seaside Park Police.

<sup>325</sup> Testimony of Mr. Giovenco on June 2, 2016:

*And they took over and said, ‘look, we got this. We’ll take care of it’. Then the Berkeley Township cop, I guess he heard over the radio, he came down, and he said, ‘this is mine. You know, I have it. You know, I have the reports’. And at that point I walked away from it because they said, ‘just go home. We got it from here’.*



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Chief Larkin purportedly stated that Seaside Park Police responded to 320<sup>326</sup> calls to South Seaside Park in 2013, that “*they cannot continue to do this*” and that “*they would either like to be compensated for it or something has to change*”.<sup>327</sup>

Mr. Whiteman believes that Seaside Park is no longer responding to calls in South Seaside Park<sup>328</sup> and therefore the residents of Seaside Park are in jeopardy.

- b. Upon inquiring as to which Police Department(s) would provide backup if the Berkeley Township Police could not immediately respond to an incident in South Seaside Park, Mr. Whiteman testified<sup>329</sup> that Berkeley Police Chief DiMichele informed him that the Island Beach State Park police provide backup for the Berkeley Police Department for South Seaside Park.

Given the fact that the Park Police also patrol Double Trouble State Park and Barnegat Light State Park, and further given the limited hours the Park Police are on duty,<sup>330</sup> Mr. Whiteman continued to believe that South Seaside Park is not receiving “*the proper police presence*”.

## B. Fire Service

1. According to Petitioners’ Planner, “*...the [Township’s] 2008 Master Plan, the Seaside Park Volunteer Fire Department provides coverage to South Seaside Park through a contractual agreement of \$23,400 annually. Seaside Park Volunteer Fire Department*

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<sup>326</sup> Upon presenting this information at a Berkeley Township Council meeting, Mr. Whiteman testified (February 5, 2015) that Berkeley Police Chief DiMichele informed him that the number was actually (approximately) 434 calls, and that (approximately) 200 of these calls represented what Mr. Whiteman termed “*legit calls*” ~ i.e., actual calls for assistance (as opposed to instances where a Seaside Park officer initiates traffic enforcement in Seaside Park but where the actual stop ends up in South Seaside Park).

<sup>327</sup> Mr. Cardwell confirmed (testimony on April, 2015) that, while he could not provide statistics as to frequency, Seaside Park police provided backup to Berkeley Police in South Seaside Park “*quite regularly*”.

<sup>328</sup> Testimony on February 5, 2015:

*Seaside Park and Berkeley Township had some type of mutual agreement. But from what I understand now, that mutual agreement is somehow not there.*

<sup>329</sup> Testimony on February 5, 2015

<sup>330</sup> While the specific hours were not disclosed for security purposes, the testimony suggests that the Park Police do not patrol in the late-night / early-morning hours.



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*Station 45 is located at 1 Municipal Plaza in Seaside Park - only a half-mile from most South Seaside Park residents”.*<sup>331</sup>

2. Mr. Cardwell<sup>332</sup> stated<sup>333</sup> that the Seaside Park Volunteer Fire Company services South Seaside Park (as well as Island Beach State Park). As such, Mr. Cardwell testified that “*there would be no break in services if deannexation took place*”. The Seaside Park Volunteer Fire Company “*would still continue servicing South Seaside Park... as we have done for the last... however many years*”.

C. (911) Dispatch Service

1. Petitioner Elaine Vitarello testified:<sup>334</sup>

1. On August 5, 2009, her husband collapsed. Upon dialing 911, the dispatcher informed her that she had reached Seaside Park and that since she was part of Berkeley Township, the Township had to answer the call. The dispatcher then connected her with Berkeley Township.

According to Mrs. Vitarello, 20 minutes elapsed before the police reached her home. The Tri-Borough First Aid Squad arrived “*minutes after the police officer arrived*”, but her husband had already passed away.

Mrs. Vitarello believes that if she was part of Seaside Park, the Borough’s Police, which are stationed about 3 minutes from her home, “*could have gotten to me within 2 to 3 minutes. They are so close to the police station. It was tragic*”.

2. In the autumn of 2015, her elderly mother fell “*and the same thing repeated itself. Fifteen, 20 minutes, she was on the ground on the sidewalk*”. Mrs. Vitarello called 911 and was again connected with Berkeley Township, who dispatched the Berkeley Police, who arrived in “*the same amount of time*”.

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<sup>331</sup> Bauman Report: p. 32

<sup>332</sup> who in addition to being a Seaside Park Police Officer, served as an active member of the Seaside Park Volunteer Fire Company for 38 years (including 2 terms as Fire Chief). At the time of his appearance before the Board, he was still an active member,

<sup>333</sup> Testimony on April 2, 2015

<sup>334</sup> Testimony on May 5, 2016



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Mrs. Vitarello characterized these response times as “*ridiculous*”, and believes that Berkeley Township Police, with one Police car on the Island at any given time, is understaffed for the needs of South Seaside Park.

**D. Emergency Management Services**

1. Mr. Cardwell, whose responsibilities with the Seaside Park Police Department and Seaside Park Volunteer Fire Company included Emergency Management, testified<sup>335</sup> that Seaside Park’s emergency response planning “*took into consideration South Seaside Park*”, that Seaside Park “*work[s] with the Berkeley Township Emergency Management [office]*” to develop such plans, which “*don't get developed overnight*”.
2. Additional, Petitioner complaints regarding the provision of Emergency Management Services are documented as part of the discussion of the Township’s response to Superstorm Sandy in §3.9.1 herein.

**3.8.2 ISSUES RAISED DURING CROSS-EXAMINATION**

**A. Police Service**

1. When questioned as to how much longer it would take for a Berkeley Township Police officer to respond to the same location from Pelican Island, Mr. Cardwell testified<sup>335</sup> that “*closeness, [is] really not an issue because of the causeway setup there. There's a... higher speed, easier access.... it would only add a few...more seconds to the actual response time*”.
2. When asked his opinion about the adequacy of police manpower assigned by Berkeley Township to South Seaside Park, Mr. Cardwell stated:

*Well, it's not for me to say exactly how many [officers should be assigned]. Of course, every town would like to have a dozen officers,... on duty at any given location. But,... priorities dictate the situations. So, was there a need for more officers down there? Sure.... I'd be lying if I said I didn't agree with it.*

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<sup>335</sup> Testimony on April 2, 2015



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3. When asked if Seaside Park would have to increase police manpower to address the needs of South Seaside Park should deannexation occur, Mr. Cardwell opined:

*...there would probably have to be a minor increase in manpower for the year-round service if annexation took place. I'm presumably saying approximately... 1 full-time officer per... shift.... We'd go from 2 to 3. That would be my ideal situation, ... only because of... the added area of coverage.*

Later in the discussion, Mr. Cardwell added:

*If I had my way and the money and... the backing of Mayor and Council, I'd have a half a dozen guys walking, working full-time.*

4. When asked to comment on the adequacy of the Police response time to the incident to which he testified, Mr. Giovenco stated:<sup>336</sup>

*The response time was not a bad response time. I don't know exactly, ... Try to guess, but 5 minutes, maybe. ... it's a small area. We only have 10 blocks, whatever it is... So his response time, he was there. But then the follow-up to that was, ... there was nothing else that could be done.*

5. An extended exchange between the Board Attorney and Mr. Whiteman took place in an attempt to clarify when police presence in South Seaside Park improved. Despite repeated questioning, Mr. Whiteman could not provide a definitive answer as to the year.<sup>337</sup>

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<sup>336</sup> Testimony on June 2, 2016

<sup>337</sup> Testimony on June 2, 2016:

*QUESTION: ...you say there's been a change. 2013 was bad, so you didn't see police officers as much in 2013 as you saw in 2015; is that a fair...?*

*RESPONSE: No. What I said was, there's definitely a big change from 2015 to 2016. Or should I say, from... 2014 to 2015 and starting this year. So this past year, I have seen more policeman than I've... seen in prior years. Yes.*

*QUESTION: ...you specifically mentioned a couple times "2013." ...So what you meant by that was, you didn't believe there was a sufficient police presence...*

*RESPONSE: Right. I saw a change occur in 2014. ...Pardon me. Let me get it right here. ... I saw a change last year. Which is 2015.*

*QUESTION: ...So prior to 2015, you believe there was insufficient police presence in South Seaside Park.*

*RESPONSE: When did we file this? ...'14. So basically I talked about a year and a half ago about how Berkeley neglected South Seaside Park. So a year and a half ago, if we go back, that would be 2014.*

*MR. MICHELINI: I think it would be either late 2014 or early 2015...*

[continued]



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**B. Police Backup / Mutual Aid**

1. When asked about the practice of one police department backing up another, Mr. Cardwell testified<sup>338</sup>:

*...they would a lot of times come to our [Seaside Park] scene, not necessarily as a backup, unless we had... a major... fight or something like that... But,... one hand washes the other.*

*...the situation dictates manpower... I've seen Berkeley because I know a lot of them. They used to a lot of times show up at our calls.... Whether they were asked, whether they were not, I know there's many times that I called as a shift supervisor, I called for backup. But then, again, there's a lot of times I called for backup from Berkeley, Seaside Heights and maybe even Lavallette if the situation dictated. So, again, we all use the... backup, the emergency response, the Mutual Aid. It's done all over the world.*

Mr. Cardwell opined that the Berkeley Township Police would “probably not” be called to backup Seaside Park Police “on a very frequent basis” if deannexation were to occur. He concurred with the questioner that such backup would only be for “very significant police event[s], such as, a riot or a major fight with a lot of people involved”.

When asked what would constitute a “major fight”, Mr. Cardwell responded:

*...if there's more than... 5 people fighting, I'm not going in there with 2 officers to try to quell the situation.*

*And there's some times when I'm in a situation one-on-one with somebody that I want several people there.*

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[continued]

RESPONSE: Right. ... So if I said that we can assume now that it would have occurred from 2013 and prior where there was a problem, even somewhat in 2014.

QUESTION: So you say there's been a change. I'm trying to figure out what the change was and when it occurred. So you said 2013 was not a good year. That's what you said a couple times, and I just want to be clear.

RESPONSE: The police was not as present there as it is today.

QUESTION: Okay. So that 2013 is not as good as it is today. As far as police presence.

RESPONSE: The police presence was different. Yes. ... It is better today than it was prior in '13, '12, '11, '10. [FROM THE FLOOR: And '14.]

RESPONSE: And 2014.... You know,... I look back at it, and since we were here,... when that petition was filed, there was a change. I said that earlier to you, also.

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<sup>338</sup> Testimony on April 2, 2015



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C. The Township did not address the “rebuttal” testimony of September 2018.

**3.8.3 TOWNSHIP RESPONSE**

A. Police

1. In response to Petitioners’ assertions that Berkeley Township does not provide the Police presence necessary to meet the needs of South Seaside Park:

- a. Berkeley Township Police Lieutenant Ryan Roth<sup>339</sup> testified<sup>340</sup> that South Seaside Park “...is one of the most heavily traveled communities by bike or by walking... [with] ...heavy vehicle traffic and heavy pedestrian traffic and heavy bicycle traffic... sharing the exact same roads...”.

Despite this congestion, Lieutenant Roth testified that South Seaside Park, in 2015, had:

- Zero pedestrian or bicycle crashes;
- “Only” 26 crashes in all;
- 585 radar posts
- 387 motor vehicle stops; and
- 879 tickets issued.

According to Lieutenant Roth:

*Those numbers are excellent. And they are a result of proactive police enforcement and Berkeley responding to the traffic needs specific to South Seaside Park.*

2. Lieutenant Roth further testified:

*...[the] Berkeley Township Police Department is approximately 5 times the size of Seaside Park Police Department. When comparing manpower, vehicles, resources and equipment, it's going to be a multiple of about 5. Having more officers allows us*

<sup>339</sup> The Township’s Officer “in charge of day shift and traffic safety”.

<sup>340</sup> Testimony on September 1, 2016



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*to have more specialized units, traffic investigators, detectives, squad patrol and boat patrol. So, we have a larger pool of officers with more experience and more training to choose from when a need arise...*

*We can increase our manpower and respond to a need that a smaller department can't do.<sup>341</sup>... We give them equipment that other departments don't have.*

3. In response to Petitioners' assertions that such a lack of manpower results in delayed response times and reduced public safety, Lieutenant Roth testified:<sup>340</sup>

*The result for that holiday weekend [Fourth of July]... in South Seaside Park, was a response time to calls that averaged under 1 minute. The Chief already said that 5 minutes is good, and that is good. We responded so well that it was under a minute.*

*One of the big complaints was firework calls. Our response time to firework calls was 15 seconds. A smaller police department cannot scale up a response like that, because they don't have the officers or equipment. They don't have the same pool that we have.*

*A seasonal police department like... [the] Seaside Park Police Department can only scale up their response with special officers. That's all they have at their disposal. Special officers have limited training and very limited experience. We call out officers with years of experience, not months.*

4. Within the context of how Berkeley Township as a larger Police Department can offer its citizens more Police services than the smaller Seaside Park Police Department, Berkeley Police Captain Kevin Santucci testified<sup>342</sup> that Berkeley Police provide the following services which are not offered by Seaside Park:

<sup>341</sup>

*A perfect example would be [Superstorm] Sandy. I'll use a more recent example. Fourth of July weekend, one of the biggest barbecue, drinking party weekends of the year. We expect our call volume to increase throughout the township. And it does. Well, we increase our manpower. We add quad patrol. We use DWI grant money to put extra traffic enforcement on the road.*

<sup>342</sup> Testimony on December 1, 2016



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- A traffic safety unit;
  - A sally port, detention facility in the Police Department building;
  - An encrypted radio system; and
  - A firearms range.
5. In response to Petitioners' assertions that Berkeley Township has increased its Police presence in South Seaside Park after the deannexation process began, Chief DiMichele testified<sup>340</sup> that the numbers cited by Mr. Whiteman<sup>343</sup> were "*not an accurate statement*".

According to the Chief, improvements in Policing South Seaside Park came as a result of a neighborhood meeting held in the spring of 2012 with the residents of South Seaside Park. After getting "*bombarded*" with complaints, the Chief testified "*...we heard them, and we did something about it*". Changes included the Township starting its own Class I and Class II Officer program and instituting a Quads Patrol for the beach<sup>344</sup>

6. While Chief DiMichele, testified<sup>345</sup> that when compared to other areas within the Township, South Seaside Park has a greater police presence.

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<sup>343</sup> Testimony of June 2, 2016 (cited by Chief DiMichele as May 2, 2016):

*That was different prior to the... start of the de-annexation proceedings....Memorial Day [2016] ... Friday, Saturday, and Sunday we had the officers crossing the 3 streets. We had 2 police cars driving around at the same time, different parts of [South Seaside Park].*

<sup>344</sup> Testimony of Chief DiMichele on September 1, 2016

*Class I officers have been manning those posts over on [South Seaside Park], crossing beach goers since 2011. Berkeley Township contracted with Seaside Park and we paid Seaside Park for these Class I officers that man the same posts that are now. At that time, we did not have a Class I or a Class II program....*

*.....Now, one of their main concerns was Fourth of July and having people on the beach for the fireworks complaints. We addressed that immediately.*

*Some of their concerns were going to take time to create programs. And we needed time to do so. But we have completed all the programs. And I think the service as far as it relates to the police department is excellent over on South Seaside Park.*

*So, ... after that meeting, we started having discussions with the administration to start programs that would assist the beach community, meaning Class I and Class II officers. That program cannot be born overnight.*

*If somebody thinks that you can just start a program of that magnitude overnight, they are being naive. ...The end of 2012 we go into the hurricane. 2013, complete recovery process. This program was up and running in the winter of 2014 going -- yeah, it was winter 2014 going into the beginning of 2015 in which they started academy classes*

<sup>345</sup> Testimony on December 1, 2016



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**B. Police Backup / Mutual Aid**

1. While not a **Township** response to Petitioners' assertions, we note that Mr. Whiteman's belief that South Seaside Park is no longer responding to calls in South Seaside Park is belied by the testimony of Petitioner Katherine Fulcomer, who testified<sup>346</sup>:

*[South Seaside Park residents] ...are really dependent, our lives are quite dependent on the goodness of Seaside Park, mostly because... they're the closest people to take care of an emergency unless, of course, there's a patrol car right in the area from Berkeley. So, we are very dependent on Seaside Park for both fire and for police protection.*

*...it is a concern that we do depend or had in the past depended on Seaside Park police, who kindly would answer calls.... we do depend on Seaside Park. And that is a fact.*

*...there is backups [sic] from Seaside Park. And I think... we're going to have backup now from Seaside Heights. We were backed up by the ranger at Island Beach State Park. ...But the very fact that there are backups would, to me, illustrate that sometimes you need more help from other communities.*

2. In response to the purported position of [then] Seaside Park Police Chief Larkin that the Borough could no longer backup South Seaside Park at the level that was [then] providing, Lieutenant Roth testified<sup>347</sup> that his research into the Computer Aided Dispatch ("CAD") data of Seaside Park and Berkeley Township for July 2013 to July 2014 found:

a. Seaside Park's CAD System reported:

- Borough Police responded to 291 calls in Berkeley Township (including Pelican Island and South Seaside Park).
- 227 of those 291 calls (78%) were motor vehicle stops made by Seaside Park Police in Berkeley Township for offenses that occurred in Seaside Park.<sup>348,349</sup>

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<sup>346</sup> Testimony on April 2, 2015

<sup>347</sup> Testimony on September 1, 2016

<sup>348</sup> E.g., Seaside Park Police observing an offense in Seaside Park:

*but by the time the officer gets behind that car, follows them, calls in the plate, gets their feedback, turns on their lights, pulls the car over, now they're in Berkeley.*



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- Of the 64 remaining calls:
    - 2 were not in Berkeley but were reported as such due to a CAD error;
    - 3 were duplicate entries made by the Seaside Park dispatch;
    - 18 were Berkeley Township Police officers assisting Seaside Park police officers; and
    - 5 were for First Aid or Fire Department only. No Seaside Park officer was requested or responded.
  - The remaining 36 calls were calls where Seaside Park Police did indeed back up Berkeley Township Police in South Seaside Park.
- b. Berkeley Township’s CAD System reported that Seaside Park backed up Township Police 70 times.<sup>350</sup>

Lieutenant Roth surmised that the discrepancy between the 36 backup calls as reported by Seaside Park and the 70 backup calls as reported by the Township is “probably” a Seaside Park Officer observing a Berkeley Officer on a call and stopping to assist.<sup>351</sup>

C. Fire Services

1. Fire service is provided under contractual arrangement by Seaside Park Volunteer Fire Company.
2. Mr. Cardwell’s testified<sup>346</sup> that “*there would be no break in services if deannexation took place*” and that the Seaside Park Volunteer Fire Company “*would still continue servicing South Seaside Park...*”

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<sup>349</sup> While these numbers are taken directly from testimony, it is understood that the numbers do not completely add up.

<sup>350</sup> Lieutenant Roth father testified that Berkeley Township Police assisted Seaside Park Police 66 times during the same time period.

<sup>351</sup> Testimony of Lieutenant Roth on September 1, 2016:

*That's part of police culture. If I see another officer, their lights are on and they're by themselves, I'm obligated to see if he's okay. I may not radio that in. I may not make a CAD entry.*

*It's just what everyone does. That's something that I would say they teach you the first day at the Academy and every single day all the way through. And then every officer you meet does the exact same behavior. It's probably the most engrained thing in Police culture.*



D. First Aid

1. Ambulance service is provided by the Tri-Borough First Aid Squad, an independent emergency medical services organization consisting of both paid and volunteer members. Tri-Borough provides services to South Seaside Park through a Mutual Aid Agreement contribution with Berkeley Township.<sup>352</sup> As relates to the impact to South Seaside Park should deannexation occur, Chief DiMichele testified:<sup>353</sup>

*...when it comes to ambulance response and EMT... and medic response is that they're saying if they secede that they'll get better service. It's the same service for the entire island. It's the same first aid squad. It is the same paramedics. Nothing would change except for the police.<sup>354</sup>*

2. Kevin Geoghagen, Township Supervisor of Paid Emergency Medical Personnel, testified<sup>355</sup> that the Township's paid EMT units do not service South Seaside Park ~ instead relying on the Tri-Boro First Aid Squad (except in extreme circumstances). As such, deannexation would result in no savings as it relates to Township EMT staff.
3. The Township's response to Mrs. Viturello's testimony that 15-20 minutes elapsed from the time she called 911 to the time the Police arrived on the scene is addressed under (911) Dispatch Services (§3.8.3 E. herein),

E. (911) Dispatch Services

1. In response to Petitioners' assertions that (911) Dispatch Services to South Seaside Park would improve should deannexation occur, Chief DiMichele testified<sup>356</sup> that Berkeley Township and Seaside Park utilize the same (911) Dispatch system.

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<sup>352</sup> Tri-Boro services Seaside Park, Seaside Heights, South Seaside Park (Berkeley Township) and Island Beach State Park ~ and provides support to neighboring towns for mutual aid calls ~ from its headquarters on J. Street in Seaside Park (approximately 1.2 miles from South Seaside Park). (Bauman Report: p. 32 & <https://tri-borofirstaid.com/about.html>)

<sup>353</sup> Testimony on October 6, 2016, November 3, 2016 and December 1, 2016

<sup>354</sup> Testimony on October 6, 2016

<sup>355</sup> Testimony on April 6, 2017

<sup>356</sup> Testimony on September 1, 2016



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*[The calls] go to Ocean County radio room for fire and first aid. We have a full dispatch center that, once the calls are received by the County, it's transmitted to us. If you have a couple second lapse, that's about it....*

2. In response to the testimony by Mrs. Viturello<sup>357</sup> regarding her husband's incident in August 2009 that it was 20 minutes from the time she called 911 to the time the Police arrived on the scene, Chief DiMichele testified <sup>358</sup> that the records contained in the Township's Dispatch Computer System showed:

*...the officer was dispatched at 11:37 a.m. The officer arrived at 11:42 a.m. That's a total of 5 minutes' response time. If you check with any [Police Department], that is an excellent response time.*

Further, the CAD system showed:

*The First Aid was dispatched at 11:37 a.m. First Aid arrived at 11:48 a.m. That's a total of 11 minutes for First Aid to respond. Medics were dispatched at 11:40 a.m. Medics arrived at 11:56 a.m. The total time for the medics' arrival was 16 minutes.*

The Chief further testified that, should deannexation occur,

*...the First Aid response time stays the same. They're<sup>359</sup> the same medics and they're the same First Aid that will be responding. So, the only difference is, you're trying to say that it would be less of a arrival time for an officer for 5 minutes. I beg to differ on that one.*

3. In response to Mrs. Viturello's testimony regarding her mother's incident in May 2015 that it was 15-20 minutes from the time she called 911 to the time the Police arrived on the scene, Chief DiMichele testified:<sup>358</sup>

*...The call was received and dispatched at 4:59 p.m. The call was dispatched at 4:59. The officer arrived at 5:03. We're talking a 4-minute response time...*

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<sup>357</sup> Testimony on May 5, 2016

<sup>358</sup> Testimony on September 1, 2016

<sup>359</sup> The Tri-Boro First Aid Squad



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*...The EMS, Tri-Boro, Berkeley Township gives Tri-Boro a certain amount of money. And they respond to the calls in South Seaside Park and most of the island over there. All right. Paramedics, there's only one set of paramedics. They're the same paramedics that you're going to have. Nothing changes. So, you're saying that a 4-minute response time on a first aid call is not good enough. I say it is. And if you check with other police departments, you're going to find out a 4-minute response time is actually good.*

4. In response to Mr. Whiteman's testimony<sup>360</sup> regarding an altercation that occurred at 1:30 in the morning on what he believed was August 2 in which the Police were called but "did not arrive", Chief DiMichele testified:

*...The call was actually on July 26 at 3:06 a.m.... The caller provided her phone number but would not provide her address, which you're not required to do.... They were calling about an incident that was occurring in the middle of an intersection.*

*... the caller states that it was occurring at the corner of Barnegat and 20<sup>th</sup> Avenue, but they were walking down to the bay. The officers checked the bay area before going back to the intersection...*

*... The call was placed at 3:06 a.m. And the officer was on scene at 3:09 a.m. Now, there was no address provided [by the caller], so they wouldn't have gone to [the caller's] house....*

#### F. Emergency Management Services

1. In addition to serving as Chief of Police, Chief DiMichele is the Township's Emergency Management Coordinator. In that role, Chief DiMichele testified<sup>361</sup> that, as a result of the Berkeley Township Police Department being larger than many of the surrounding departments,

*[There is] depth within our organization. And depth is what's going to get you through an incident that's going to take days and days. Now, every Township has one person designated as the [Emergency Management] coordinator. But a lot of the other Townships don't have the depth behind them. I can't be up 24*

<sup>360</sup> Testimony on February 5, 2015

<sup>361</sup> Testimony on October 6, 2016



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*hours, 7 days a week for the months that this incident<sup>362</sup>. That's where... our depth came in.*

2. Captain Santucci testified<sup>363</sup> that all of the Township's free Emergency Management shelters are located on Mainland Berkeley Township<sup>364</sup> and that, in his opinion, it would not make sense to provide a shelter in South Seaside park due to flooding.

### **3.8.4 ANALYSIS**

#### **A. Police**

1. The record contains an acknowledgement by Mr. Whiteman and Police Chief DiMichele that police presence in South Seaside Park has improved.
2. Seaside Park is geographically closer to South Seaside Park than is the Mainland of Berkeley Township. However, the suggestion that the location of the Township's Police Department plays a role in Police response to South Seaside Park discounts the fact that Police affirmatively patrol the Township and, unlike Fire and Ambulance, are not based in their stations awaiting a call.
3. While the Seaside Park Police Station is only 2 to 3 minutes from South Seaside Park and is therefore located in close proximity to South Seaside Park, the level of service is a function of staffing, not location. Regardless of how big or small a municipality is, the number of police assigned to an area will determine the level of service provided.

#### **B. Police Backup / Mutual Aid**

1. The minutes of the Berkeley Township Council meeting of October 20, 2014 submitted by Petitioners<sup>365</sup> reveals that Chief DiMichele informed Mr. Whiteman that:

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<sup>362</sup> Referencing Superstorm Sandy.

<sup>363</sup> Testimony on December 1, 2016 & January 5, 2017

<sup>364</sup> The Township has utilized shelters located at Saint Maximilian's Church in Holiday City, Central Regional High School and the Volunteer Community Center, located near Leiter Field in the Bayville.

<sup>365</sup> Exhibit A-5



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- The Island Beach State Park Police, Seaside Park Police and police from “the Heights” [presumably Seaside Heights] provide backup for South Seaside Park;
  - The Township “*still [has] agreements with all the police departments, including Toms River” and that in an emergency, all could respond*”; and
  - A meeting was held between Township and Seaside Park officials “*to discuss the numbers*” and that “*...as a result of that meeting, that area is being covered better than it was*”.
2. Any meaningful discussion of emergency services to South Seaside Park must be predicated upon an understanding of the concept of Mutual Aid, a philosophy whereby municipalities will assist each other when emergency situations arise. Pursuant to N.J.S.A. 40A:14-156, 156.1, 156.2, and 156.3, Mutual Aid & Assistance Agreements (“Agreements”) have been established between<sup>366</sup>

|                                 |                                  |
|---------------------------------|----------------------------------|
| Township of Barnegat;           | Township of Manchester;          |
| Township of Barnegat Light;     | Borough of Mantoloking;          |
| Borough of Bay Head;            | Borough of Ocean Gate;           |
| Borough of Beach Haven;         | Township of Ocean;               |
| Borough of Beachwood;           | Borough of Pine Beach;           |
| Township of Berkeley;           | Township of Plumsted;            |
| Township of Brick;              | Borough of Point Pleasant;       |
| Township of Dover (Toms River); | Borough of Point Pleasant Beach; |
| Borough of Harvey Cedars;       | Borough of Seaside Heights;      |
| Borough of Island Heights;      | Borough of Seaside Park;         |
| Township of Jackson;            | Borough of Ship Bottom;          |
| Township of Lacey;              | Borough of South Toms River;     |
| Borough of Lakehurst;           | Township of Stafford;            |
| Township of Lakewood;           | Borough of Surf City;            |
| Borough of Lavallette;          | Borough of Tuckerton; and        |
| Township of Little Egg Harbor;  | Township of Eagleswood.          |
| Township of Long Beach;         |                                  |

in order to formalize and refine existing practices.

<sup>366</sup> §2-86 of the Berkeley Township Code



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The Agreements activate whenever any of the aforementioned municipalities has an emergency within its boundaries requiring additional police assistance to protect life and property. Under these Agreements (in pertinent part),

*the term “emergency” shall be defined to include situations in which the number of available police officers, in a participating municipality is insufficient to meet the public need in a particular situation and situations where police aid involving special expertise or training is required in order to protect life and property or to assist in suppressing a riot or disorder. No formal declaration of emergency is required to implement the provisions of the Mutual Aid Agreement.*

*The Chief or acting head of the Police Department or Mayor, or Chief Executive Officer of a participating municipality, is... authorized to request assistance from the Chief or other head of the Police Department of any other participating municipality to provide aid in accordance with [an Agreement].*

*A participating municipality shall provide police assistance when a valid request in accordance with [the] Agreement to supply personnel is made, to the extent possible without endangering persons or property within the confines of the providing municipality.*

*The members of the providing municipality’s Police Department supplying aid shall have the same powers, authority, rights and immunities as the members of the police force of the requesting municipality when aid is being rendered therein. The members shall also have, while so acting, such rights and immunities as they may otherwise enjoy in the performance of their normal duties in the municipality rendering such assistance.*

*These Mutual Aid Agreements established... by and between the aforementioned municipalities... shall further authorize mutual police aid and assistance under the County Critical Incident Management Plan... The Plan provides for a response by specially trained regional Emergency Response / Special Weapons and Tactics Team in the event of certain hostage, barricade, sniper, high risk armed apprehensions, terrorist or similar situations occurring within a municipality within the County of Ocean.*



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3. (911) Dispatch Services

1. The Communications Division of the Ocean County Sheriff's Office operates the 911 Public Safety Answering Point / Public Safety Dispatch system(s) for all 33 Ocean County municipalities. The operation is a consolidated communications center serving multiple jurisdictions and disciplines, including the Sheriff's Office, Prosecutor's Office, Medical Examiner's Office, Police Agencies, Fire Services, First Aid Squads, Special Response and Tactical Teams and Paramedic and Life Flight services.<sup>367</sup>
2. Berkeley Township Police, Seaside Park Police, the Seaside Park Volunteer Fire Company and the Tri-Boro First Aid Squad all utilize the Sheriff's dispatch system. Calls are received by the Sheriff and are then transmitted to the individual agency for unit dispatch. While there is potentially a difference between how Berkeley Township and Seaside Park internally process dispatch requests from the Sheriff's Office, the records of the Township's Computer Aided Dispatch systems evidence dispatch times substantially quicker than Petitioners anecdotal testimony indicated.

**3.8.5 FINDINGS**

*At issue before the Planning Board is whether or not Emergency Services provided to South Seaside Park ~ or the lack thereof ~ is 'detrimental to the... wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it is, and to support their contention have testified at length and/or submitted Exhibits.*

A. Police

1. Mr. Cardwell retired from the Seaside Park Police Department in 2000 ~ some 15+/- years before the deannexation Petition was submitted. It is therefore likely that his knowledge of current conditions, operating procedure and departmental capacities is dated.
2. Contrary to Petitioners anecdotal claims, the CAD records submitted into evidence indicates that Police response times are appropriate.

<sup>367</sup> <http://www.co.ocean.nj.us/OCsheriff/ContentPage.aspx?ID=8522db0a-e73c-440c-8f78-b94ad540f07a>



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3. In order to maintain the current level of police service provided in South Seaside Park should deannexation occur, Seaside Park would likely need to hire additional police. The record contains no information addressing this issue.
- B. Petitioners' uncertainty regarding what Police Department will provide backup to South Seaside Park should the need arise has been addressed.
- C. Both Seaside Park and South Seaside Park are serviced by the same 911 Dispatch Center. Dispatching will not change should deannexation occur.
- D. Both Seaside Park and South Seaside Park are serviced by the same Volunteer Fire Company. Fire services will not change should deannexation occur.
- E. Both Seaside Park and South Seaside Park are serviced by the same Ambulance / EMT service. First Aid services will not change should deannexation occur.
- F. The record contains no evidence to support the contention that South Seaside Park would receive better police services if it were part of Seaside Park. Conversely, the record does reflect that, should deannexation occur, the balance of Berkeley Township would likely receive improved service due to the patrol area reduction without a concomitant reduction in police personnel.

*Based on the totality of the foregoing, this Report of Findings finds and recommends that Petitioners' assertions that South Seaside Park is not adequately served by the Township's Police, 911 Dispatch, Fire and Ambulance / EMT services are not supported by the facts in evidence. The record reflects that the community has little crime, is generally safe, and receives timely emergency services, either from Berkeley Township directly or with backup from other jurisdictions.*

*While the record reflects that certain Petitioners have suffered individual tragedies, no evidence has been submitted to suggest that South Seaside Park experiences the type of long-term, structural, and inherently irremediable "detriment" of the type the legislature had in mind when enacting the Deannexation Statute.*



### **3.9 SUPERSTORM SANDY**

Petitioners assert that the Township's planning for and response during and after the October 2012 weather event was inadequate.

#### **3.9.1 PETITIONERS' TESTIMONY**

- A. Petitioner Judith Erdman asserted<sup>368</sup> that the Township did not appropriately plan for South Seaside Park prior to the storm. Mrs. Erdman's specific complaint was that the Township's Department of Public Works did not empty public garbage / recycling cans or remove items left out for bulk pickup prior to the storm.

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<sup>368</sup> Testimony on May 7, 2015:

*I do know for a fact that there was a plan in Seaside Park that was in place. The reason that I know there was a plan was that I was personally escorted by Seaside Park Police back to the Berkeley Township line when I went driving around just to see what was going on and to check on a couple of homes from friends of ours. And they told me that what was going on in Seaside Park was very simple, stay on your property, don't leave.*

*Berkeley Township made no effort to pick up any type of bulk items that were left in front of people's homes that would have been thrown out this time of the year... I personally saw a couch that... ended up floating up the street... That was just a piece of garbage that should have been picked up. But that had happened to a lot of other stuff that was left out.*

*[Exhibit A-20] shows a picture of a [municipal] garbage can that is filled to the top. This was taken by myself on October 27, which is 2 days before Sandy. As you can see, it is filled with garbage.*



*Exhibit A-20*

*And this is just an example of what was not done. In Seaside Park they went to every single corner, every garbage can that there was on the bay front, the oceanfront and Central Avenue, the recycling cans, they were all secured. Everything was taken down to put away. We all know that's one of the first things when you get a storm like this is, you put your stuff away. And this was just something that was a [sic] added addition to all the other garbage and everything else that ended up in the ocean and in the bay...*



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B. Mrs. Erdman further asserted<sup>369</sup> that the Township neglected to communicate storm-related warnings to the residents of South Seaside Park prior to Sandy making landfall, including notifications that a mandatory evacuation was to be instituted.

Mrs. Erdman and Mr. Whiteman asserted<sup>370</sup> that the Township neglected to communicate relevant news to the residents of South Seaside Park during the storm and that the Township did not provide the proper support for the community after the storm.<sup>371</sup>

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<sup>369</sup> Testimony of Mrs. Erdman of May 7, 2015:

*...prior to Sandy, my household was not notified that there was an evacuation order in place... we weren't informed, neither myself, my husband or our neighbors. No one made the effort to inform us...*

<sup>370</sup> Testimony of Mr. Whiteman of June 4, 2015:

*During Hurricane Sandy, and it was horrible. I was 1 of the ones that stayed around. We had 75 people that stayed in South Seaside Park. I knew all the first responders were gone, so people are going to stay, you want to have people at least who can help out. I feel I'm healthy enough to help people out if something happened and there were other people like that. ... Sunday, I went up to Central Avenue and there was a Berkeley Township bus there. I made it a point to go up and ask the bus driver, why do you have a bus here? We're picking up people. If they can't leave, we have a bus here. I said, well, none of us know about it. Well, I'm just told to drive over, wait here and if anybody needs a ride I can take them.*

*I understand the idea of a storm. This is a first round. But I look at it and I say to myself, in a situation like this, a notification should have been made to individuals who were still, and there was more than 75 that were still living there. Seaside Park has a phone notification. We really... didn't have anything like that....*

*I can honestly you tell that on Barnegat Avenue, the police came down with their horn to say... we want you to evacuate. They may not have gone down all the streets. I have no idea. But in front of my house, I did talk to the officer. And he...,did tell me that evacuation was something that was going to occur... and you should leave. And I said, well, we're opting to stay to help people out. Because I know, you know, the storm here, there'll be older people who may not have heard it or for some reason... I think some of us will be staying.*

Testimony of Mrs. Erdman of May 7, 2015:

*We also received no notification about the bridge being closed on October the 29<sup>th</sup>. It was shut down at 12:00 in the afternoon. We received no notification that the power was going to be shut off in order to try to avoid any potential problems that might have occurred. We found out all of that information from friends of ours that live in Seaside Park, because they were notified from the authorities in Seaside Park about what was going on. We were not.*

*...we weren't informed, neither myself, my husband or our neighbors. No one made the effort to inform us as they did the year prior.*

*[During Superstorm Sandy, the Seaside Park Police]... had no idea what was going on in Berkeley Township. And neither did we. And that gave me a very heavy feeling of being isolated. It was total isolation. That's where we were in South Seaside Park.*

*The other problem that we had was trying to get information about what was going on. I do understand the confusion. It went from local to state to the federal government. It was just all insane. But I was regularly checking websites, both Berkeley's and Seaside Park.*  
[continued]



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C. After complimenting the Township's protective sand dune system<sup>372</sup> and concurring that the dunes had been maintained correctly since Hurricane Irene<sup>373</sup> and before Superstorm Sandy, Mrs. Erdman and Mr. Whiteman testified, that unlike private property owners and Seaside Park, the Township did not restore the dunes, beaches and related amenities in a timely manner.<sup>374</sup> Specifically, Mrs. Erdman presented:

1. A pre-Sandy photograph<sup>375</sup> depicting what Mrs. Erdman described as “big,... deep,... long, high and heavy... fantastic” dunes at 20<sup>th</sup> Avenue and the Beach.

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[continued]

*What I found out was that the information on Seaside Park's website was more informative than anything that was on Berkeley Township website. The information that was on the Berkeley Township website was delayed by days to hours... Anything that I found out on the Seaside Park website I would later find out on the Berkeley Township website.*

*So, Seaside Park's website basically became my go to place to find out what was going on when it came to the electric, the gas, coming back to my home. Whatever was going on that's where we went....*

<sup>371</sup> Testimony of Mrs. Erdman of May 7, 2015:

*After Sandy, of course, it was all confusion. The Wednesday after the storm, which was the 31<sup>st</sup> of October, Pine Beach Fire Department came to our home. They were going door-to-door. They were checking to see what was going on... And then chaos just continued. It was absolutely horrible. The police, the Berkeley Police Department, when they finally got over, which was on that Wednesday [October 31<sup>st</sup>]*

and

*[The Berkeley Police Department was] driving around town up and down the streets. And they were making announcements and the announcements were coming out from the loudspeaker of the car... And the problem with that was that we really couldn't hear what was going on. This was October. It was freezing. We had no heat, no gas, no electric, no water. We had nothing. And trying to decipher what is being said as a car is moving down the street is a little difficult. So,...there was a lot of confusion with everyone. Some people heard one thing. Other people heard another thing.*

*It wasn't until about, I think it was Friday, which would have been the 2<sup>nd</sup> of November, where policemen were actually coming to the doors and speaking to people and trying to get a grip on what was going on. But at that time, nobody knew. There were rumors [that] we were going to be arrested. There was just nothing happening. Nobody telling us what was going on.*

<sup>372</sup> Testimony of Mrs. Erdman of May 7, 2015:

*...what these dunes did in order to save the people in our area and also help the people on the Mainland. Because if these guys broke through, there would be nothing left of South Seaside Park, just like what happened in Ortle. And the damage that happened here on the Mainland would have been significantly worse than what happened.*

*Thankfully, and thank God [the dunes] worked well, and that despite its age, ...it withstood. It really withstood. It was built correctly way back when.*

<sup>373</sup> August 2011

<sup>374</sup> Testimony of Mrs. Erdman of May 7, 2015

<sup>375</sup> c. 2011



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Exhibit A-21

2. Photographs depicting what Mrs. Erdman described as “almost identical [photographs] taken showing the dunes” post-Sandy, described as being “...stripped away. Totally stripped away down to the root system”,



Exhibit A-22



Exhibit A-23



Exhibit A-24

in order to demonstrate:



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*What was going on with the snow fencing. Snow fencing is used in the protection of the dunes. It's put down fresh every year because of the growth of the dunes, etc. This is a picture of Midway Beach, which is private condo community that is just north of White Sands Beach. They went to work on these on the snow fencing within a week's time after Sandy. They understood the importance of protecting these dunes. And as you can see from those pictures, they really needed protecting with the winter storms that were coming in, the nor'easters that would come in, these dunes needed protection. And Midway Beach really went out and did it.*

3. A post-Sandy photograph from the beach entrance of 20<sup>th</sup> Avenue depicting what Mrs. Erdman described as dunes and the former entranceways onto the beach that were destroyed by Sandy; and



Exhibit A-27

4. Photographs of the Seaside Park boardwalk and beach,<sup>376</sup>



Exhibit A-28

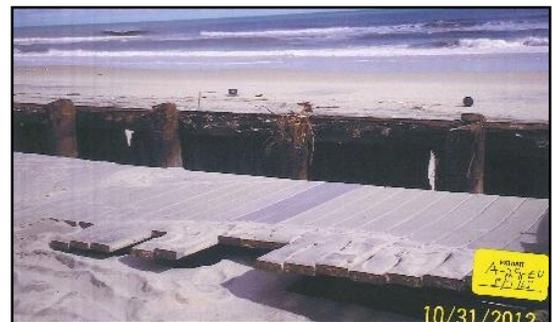


Exhibit A-29

<sup>376</sup> Taken October 31 & November 1, 2012



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Exhibit A-30

in order to demonstrate:

*The damage that they sustained in Seaside Park was really big. This is their boardwalk. Their boardwalk completely moved from where it was. It was ripped off of its piles. I'm just trying to show the difference between the damage that happened to the beach entrance areas in Seaside Park and South Seaside Park.*

*The reason that I brought [the photographs] along is that Seaside Park's beaches and boardwalk were open and ready for use for the season, the summer season in 2013. ... By June of 2013, the boardwalk was replaced, fixed. The entrances, the cutouts were made differently, correctly going into the southeast direction. Their beaches were ready to go.*

D. Related to the Township's efforts to reconstruct after Sandy,

1. Mrs. Erdman testified<sup>377</sup> that Seaside Park had restored their beach, including 8 - 10 beach entrance structures, by July 3, 2013, while the 4 entrances to the beach in South Seaside Park remained in disrepair until, at least, July 20, 2013.

In support of this testimony, Mrs. Erdman submitted photographs of the restoration work in South Seaside Park,<sup>378</sup> depicting:

- a. Heavy equipment remaining on the beach over the July 4<sup>th</sup> weekend. Mrs. Erdman testified that the Beach was not accessible for the holiday from 3 of the 4 beach

<sup>377</sup> Testimony on May 7, 2015

<sup>378</sup> July 3, 2013.



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entrances,<sup>379</sup> which is “a start for everybody for the summer and our first summer after the storm”.



Exhibit A-31



Exhibit A-32



Exhibit A-33

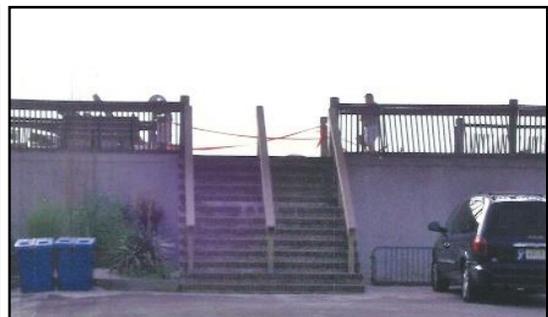


Exhibit A-34

- b. Restoration work, including noisy pile driving, continued on the beach during the July 4<sup>th</sup> holiday weekend. By such time, the Seaside Heights boardwalk had been rebuilt.



Exhibit A-35

<sup>379</sup> According to Mrs. Erdman, Exhibit A-31 is the South Seaside Park beach entrance to 20<sup>th</sup> Avenue, which she describes as “cones and pilings and no sort of walkway except for the sand to get through to this beach entrance”.



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2. Mr. Whiteman testified that, as of the July 4, 2013 weekend, a number of beach entrances had been reconstructed in Ortley Beach, which sustained considerably more damage than South Seaside Park, but the beach entrances in South Seaside Park were still under construction and largely impassible.<sup>380</sup>
3. In relating what could be described as a lack of urgency by the Township regarding beach reconstruction after Sandy, Mrs. Erdman stressed the importance of access to and use of the beach during the summer:

*Everything from Memorial Day on is very important. It's very important to the people that live there because we live on the beach and we enjoy the beach. We want to use the beach. It's very important to folks that have a vacation home there that come down on the weekends and they want to use the beach. That's why they have a beach home. It's extremely important to people that have properties that they rent. If I were a person that decided to rent a property and found out that I couldn't get to the beach, I would not be happy and I definitely would think twice about coming back to that area, Sandy or no Sandy.*

4. Finally, Mrs. Erdman testified that the restoration, when completed, was not done properly.<sup>381</sup>

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<sup>380</sup> Testimony on June 4, 2015:

*...the beach ends were not open except one. ...I had to walk over pilings. I had to walk over wood. ...In other words, coming to and from the beach, it was horrible, the entrances.*

*...I look at Seaside Park. I look at Seaside Heights. I look at Lavallette. ...and they're a beach community. They knew that they had to get their beaches in line and their beaches open and boardwalk. And by golly, they did it.*

*I feel... because Berkeley Township looks at... South Seaside Park, as something that we will get to in due time. Now, if 3 communities can have their beaches open, and Ortley Beach or Toms River Township also had the north end of their beaches open more than one street, why didn't we have more than one street open? Why did our people on July 4, as well as a week before and week after, have to tumble over, step over wood, pilings and everything that went on to just tractors on the beach? This should not have occurred then.*

*A beach community has to get this done prior to the opening season. Berkeley Township... is negligent on that, in getting it done.*

<sup>381</sup> Testimony on May 7, 2015:

*And this is the snow fencing that was eventually put in by Berkeley Township. Very sparing, compared to what Midway Beach did and also to what Seaside Park did. [Berkeley Township] really waited quite some time to get these fences up. And I personally even emailed the mayor about the situation because it was very disturbing and very scary. But this, again, is an example of what Berkeley did as opposed to what other areas were doing.*  
[continued]



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**3.9.2 ISSUES RAISED DURING CROSS-EXAMINATION**

A. The Board Attorney expressed skepticism as to Mrs. Erdman's claim that she did not know there was a mandatory evacuation order issued prior to Superstorm Sandy making landfall, stating:<sup>382</sup>

*I'll be honest with you. I fail to understand how [you could] not possibly know that there was a mandatory evacuation order when the entire State of New Jersey was aware of it. ...I find... that very incredible to believe, that you did not know that there was a mandatory evacuation order.*

Upon a question posed to Mrs. Erdman as to the likelihood that the evacuation was issued because the Township knew it couldn't provide the immediacy of service to people on the island, Petitioners' Counsel intervened to state that Mrs. Erdman was not in a position to answer such a question.<sup>383</sup>

[continued]



Exhibit A-25

*Another thing that was not done when all of the snow fencing was going on, trying to protect the dunes is, Seaside Park and also Midway Beach, they changed their cut-throughs on the beach, which is the entranceways to the beach. They directed their entranceways, instead of going straight out, they sent them all into a southeasterly direction, which gives added protection to the dunes and the beach from the storms that do rotate in the northeast direction. That did not occur in Berkeley. And, in my opinion, ...I'm not an engineer, but because of the damage that was done, that was something that they could have done to just give added protection, not only to us, but also to the folks on the mainland.*

<sup>382</sup> Testimony of Mr. McGuckin on May 7, 2015

<sup>383</sup> Statement of Mr. Michelini on May 7, 2015

*She couldn't possibly know what the township knows. All she knows is, from her experience, somebody came around the year before when there was a tropical storm and went door to door. And she would have expected that. But she can't... read the mind of the township. That's an impossible question to answer. I mean, that's not a question that's within her knowledge.*



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- B. Given the severity of the storm, the Board Attorney expressed skepticism as to complaints that the Berkeley Police did not return to South Seaside Park for a number of days after the event.
- C. In response to a comment from Board Member Mackres<sup>384</sup> that “...Berkeley Township was 2 months behind and working through holidays to get the construction done...”, Mrs. Erdman responded:

*Well, I mean, ... We are a beach community. And the summer season, official summer season, lasts for 10 weeks. It begins prior to July 4<sup>th</sup>. It's usually around the next to the last weekend in June is when the start of the season goes up until Labor Day. We had this construction and these closures going... well into July. That's half of the technical summer season. ...it's just unfathomable that that would happen. I mean, it's a beach community with 4 entrances to the beach, and they weren't accessible.*

- D. When asked to compare the protection efforts of Toms River (Ortley Beach) and Berkeley Township in the wake of Superstorm Sandy, Mrs. Erdman replied:<sup>384</sup>

*I wouldn't say [Toms River] did a poorer job. The area's the area. Nobody ever expected anything like this. No storm ever came up the coast and decided to make a left-hand turn the way this thing did.*

In responding to a comment that Sandy “was a very unique circumstance”, Mrs. Erdman added:

*And it was everything lined up in the wrong direction with the fronts coming through, the way everything happened. And that's why, ... yes, I followed the storms on The Weather Channel. And nobody thought it was going to do what it did.*

### **3.9.3 TOWNSHIP RESPONSE**

- A. Regarding pre-storm planning, Chief DiMichele testified<sup>385</sup>

*The prep work for this hurricane started a week prior to the hurricane. We had plans. We knew what would we do. But... no one knew and no one thought that this storm, until the storm was right on top of us, that it was going to be as massive as it was.*

<sup>384</sup> Testimony on May 7, 2015

<sup>385</sup> Testimony on September 1, 2016



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*We held meetings. We had representatives from Public Works, the Road Department, Parks and Beaches, Communications, Police, [Emergency Management], any entity within our Township where we were going to pull any resources from. ...We are the bigger Department within this area. We are the one people come to when they need assistance. We have more resources than the neighboring Departments have...*

*...Surrounding towns, knowing that we are the bigger Department, they started coming to our headquarters. We had South Toms River representative. We had Pine Beach, Ocean Gate. They built upon our plans. Myself and my staff had plans in place and were hoping for the best, but we were starting to prepare for the worst.*

(Since retired) Township Police Officer and Deputy Emergency Management Coordinator Ronald Bondulich added<sup>385</sup>

*Prior to the arrival of Super Storm Sandy, the Ocean County Sheriff's Department opened up shelters at Toms River North, Southern Regional and Pinelands Regional High Schools. We also opened up a shelter at Saint Maximilian Church in Holiday City on October 29, 2013. The distance from Toms River North from South Seaside Park is 10.5 miles. To Saint Maximilian is 13.5 miles. Only 3 miles more.*

- B. In response to testimony that the Township did not communicate storm-related warnings to the residents of South Seaside Park prior to Sandy making landfall, including notifications that a mandatory evacuation was to be instituted, Chief DiMichele testified<sup>386</sup>

*On October 28, 2012 [10:15 a.m.], Berkeley Township firemen, from all departments, and law enforcement went door-to-door in [South Seaside Park] notifying residents. The emergency personnel who were doing the notification had the residents sign a form stating that they were notified. The form stated, notice of evacuation from the Office of Chief of Police. This notice is to advise residents that there will be a mandatory evacuation at 4:00 p.m. on Sunday October 28, 2012. If the weather becomes severe enough and you opt to stay, this serves as a notice to you that emergency personnel may not be able to reach you in the event that you need assistance.*

<sup>386</sup> Composite of multiple statements from testimony on September 1, 2016



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*The residents were to print their names, address, sign and date, the signature of the official and the agency that they represent.*

[Referencing the testimony of Mrs. Erdman that her household was not notified there was an evacuation order in place,] *Here's a copy... of a form,<sup>387</sup> Erdman from 106 Sprague Avenue, with [a] signature and dated October 28, 2012. [Countersigned] by a member of the Pinewald Fire Company...*

Similar testimony was offered by Officer Bondulich:<sup>388</sup> Additionally, Officer Bondulich testified:

Chief DiMichele further testified<sup>386</sup> that additional information was disseminated through newspapers, radio stations, posted on Facebook under the Police Department Facebook page and posted on the Township website. It was additionally posted on the Township TV channel.

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<sup>387</sup> Exhibit T-1, evidencing the Township's notice to residents, and including a signature from the Erdman household at 106 Sprague Avenue.

<sup>388</sup> Testimony on September 1, 2016

*On 5/7/2015, Judith Erdman testified that her house was not notified that there was an evacuation in place.... She further stated that... she didn't know about the mandatory evacuation beforehand.*

*The Office of Emergency Management sent... all Berkeley Township Fire Departments, over to South Seaside Park to go door-to-door to notify residents of the evacuation order.*

*The fire companies went door-to-door with evacuation notices. Those notices state that there would be a mandatory evacuation as of 4:00 p.m. Sunday, October 28, 2012. And if the weather became severe enough and the residents opted to stay, that emergency personnel may not be able to reach them in the event they needed assistance.*

*Fire personnel were instructed to require a signature from residents that were home and to leave a copy at the door if no one was home.... There's also a list of homes that weren't there. There's several pages of firemen wrote down that they left the flyers.*

*The Office of Emergency Management has signed copies of evacuation orders to the residents of South Seaside Park that were notified by fire personnel. We have a copy of signature from Ms. Erdman's house at 106 Sprague Ave. I can't tell if it's her signature or her husband's.*

*Ms. Erdman has also claimed that her neighbors didn't know about the evacuation order either. We have signatures from 110, 112, 119, 209 Sprague Avenue.*

*Ms. Erdman referred to her neighbors as an elderly couple that were also unaware that an evacuation order was given. I believe the elderly company Ms. Erdman testified to were the Muse at 110 Sprague Ave. We have a copy of that notice with William Muse' signature on it.*

*On 6/4/2015, Don Whiteman testified that notification was never made about the evacuation. We do, however, have the proof that fire companies went door-to-door to notify the residents on 10/28/2012. The Office of Emergency Management does not have a signed copy for Mr. Whiteman, but he stated in his testimony, I did talk to the officer. He did tell me that the evacuation order was something that was going to occur and you should leave.*

*It should be noted that on October 31, when we first went over to [South Seaside Park], we did have a meeting, the Chief and I, with residents in the street, including Mr. Whiteman, in front of his house. And we advised him exactly what was going on and where we stood at that time. So, for them to say they were unaware of what was going on, that is not true.*



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C. Regarding Township activates during the storm, Chief DiMichele testified<sup>385</sup>

*...October 29, 2012. This is when the winds were reported at over 92 miles an hour on the island by 4:00 p.m. This is when the water started coming in. The bridge was to be closed at 4:35 p.m. It needs to be stated that we do not have any control over that bridge. That bridge is controlled by the State DOT. They say if it's open. They say if it's closed. And it's also manned by Toms River Police Department.*

*...officers were pulled off [the Island] October 29, prior to that storm, in the evening of October 29. And we need to all remember that when these officers were over on that Island, they signed a form and they were all notified that emergency services might not be available for them....*

*...October 30, 2012, 7:45 p.m., ...the roads are not even passable. There's over 4' of water on the beach, 8' of water on Pelican Island. No one can get in. No one can get out.*

*October 31, 2012, emergency services were finally allowed to start going back over the bridge at 7:30 a.m. Now, remember, with the winds of 92 miles an hour plus, the height of the bridge, cars crossing that bridge would have put people in danger.*

*...[The Island] was staffed with an abundant amount of law enforcement at that time. When we came over that bridge, we came in force....*

*[Petitions] testified that we were off the island for this period of time, you need to remember that we were lucky that the storm did not hit us as we expected.*

*[Regarding] pulling the officers off [the Island]. You know, it's just not a cop and a car... Would you leave that amount of equipment and liability on an island, knowing that you were going to be hit with a hundred year storm?*

*There were some that stayed. And there were some that stayed on Pelican Island that I don't think they're ever going to be the same again. They were traumatized by it. And many people over there were.*



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*Let's talk about the behind the scenes activity of the Police Department. By October 31, there were daily and sometimes even more than once a day meetings with the Chiefs that were affected of the beach communities. In those meetings, we had a head of State Police. ...at one point we had Governor Christie with us. We had representatives from the gas company. We had representatives from everywhere trying to assist us to see how we could make this work and get these people home.*

D. Regarding Petitioners' assertions that the Township did not provide the proper communication or other support for the community after the storm:

1. Berkeley Township Police Sergeant George Dohn, the Township's Deputy Emergency Management Coordinator, testified<sup>386</sup> that the Police were finally permitted to return to the island on October 31<sup>st</sup>, 2012. Sergeant Dohn states,

*On that morning of the 31<sup>st</sup>, I was one of the sergeants that met on Route 37 at the base of the bridge. I was accompanied by the Berkeley Township Detective Bureau, along with the Pinewald Fire Company Technical Rescue Team from Berkeley Township....*

*The New Jersey National Guard put us in their high water vehicles and drove us over the bridge to the island. Once we were on the island, the first thing we did with our lists and everything in hand, and I was one of the ones with the clipboards going around, we went to all the residents that we know were staying on the island and offered our assistance to them first. Then we went door-to-door checking every structure to see if anyone else was on the island.*

*We... went with yellow caution tape we tied to the front door of every structure we went to that we knocked on and checked to see if anyone was there. ... after we did that, we went back and all the major, all the destruction, went and tried to assess,... what kind of damage there was, and if there was anybody in those homes.*

*We [spoke] to the residents. We offered our assistance. We [escorted] people off the island that had stayed for the storm who wanted to leave. We did well-being checks for loved ones who couldn't contact a family or a friend. We answered abandoned 911 calls while we were there.*



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*We investigated suspicious vehicles and persons calls. Our detective bureau also arrested subjects that had used kayaks to come over to the island that were going to damaged homes, stealing stuff. They were arrested.*

*At no time was there any chaos. Everything was calm. And the people that were there all came together to help each other. I saw no... chaos. And from this date when we came over, our police presence was back on the island and has been there 24 hours a day, 7 days a week, 365 days a year, like it was prior and will be.*

2. Regarding planning for reentry to the island, Chief DiMichele testified<sup>389</sup>

*There was a meeting at the Ocean County Office of Emergency Management... either on November 3 or November 4, 2012. At that meeting, it was a Chiefs' meetings, along with Mayors... I announced my reentry plan, knowing that we did not have the catastrophic damage to the roadway or the infrastructure that the other towns did...*

*After the meeting, there were a couple of Chiefs that came to me and asked me about my Plan. Seaside Park PD and Seaside Park Mayor actually came back to our Police Department and [Office of Emergency Management]. And I provided them with a copy of my Plan. At which time, I contacted the superintendent of our schools, Central Regional High School,... asking if Seaside Park could use their school to execute the Reentry Plan and also at that time asked for, to secure buses for the 2<sup>nd</sup> phase of the Reentry Plan. Now keep in mind, this was all done for Seaside Park.*

*...there was nowhere in Seaside Park for residents to go, because their area was greatly affected. So, the neighboring towns assisted. ... we did not mind helping Seaside Park. They were good neighbors and they had helped us in the past. But this was the storm of the century and they needed us and we stood there with them.*

*Seaside Park was provided also with the forms that we chose to give out to our residents for the reentry. They also were provided the facts that we were giving our residents stickers. Their stickers were much more elaborate than ours... But that idea originated with Berkeley Township.*

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<sup>389</sup> Composite of multiple statements from testimony on September 1, 2016



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*...November 4, ...we posted our plan on Facebook and the outlets that we discussed before, the paper, WOBN, newspapers, other outlets picked up what we were planning to do. So, when people say they weren't advised, I don't know how they could say they weren't advised, because I had probably over 600 people on the front lawn of town hall when we rolled up before the sun was even up. So, I don't understand how they said that we did not put out information.*

3. Berkeley Police Detective Michael Tier, testified<sup>Error! Bookmark not defined.</sup> that he had been assigned to emergency management “since the storm” and spoke to the Police Department’s efforts in the aftermath of Sandy. Regarding reentry to the Island:

a. First Reentry (November 5):

*[The] plan consisted of a registration period that occurred... at Town[ship] Hall. ... there was, without a doubt, several hundred people here. If you stood on the road and you looked as far down as you could look both ways, there were cars parked on the sides of the road.*

*The residents were required to come in here with some means of identification that could show [that they were a South Seaside Park resident or property owner]...*

*After they came in and registered and filled out a form, they were issued the sticker... that [was] placed on the upper driver's side corner of the windshield. And the vehicles were then directed into a convoy. And the vehicles were then taken into Seaside Park down Route 37 and into South Seaside Park so they could get back to their houses.*

b. Second Reentry (No Date Provided)

*[was]... a little bit more coordinated. [We] had to utilize some outside resources. We were the first Township that went to the Ocean County Mall and [asked to] utilize [the] parking lot...*

*We brought our Ford command post, which is a large camper like trailer that can be towed by a truck. We set up our command post there...*



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*...Guidance... was coming from all kinds of different state agencies, [NJDOT, State Police], everybody who can restrict our movement back on that island. The situation [was] changing every day. We can let you go. We're not going to let you go. You can go this day. You can't go this day. [The residents did not] know when the next time they can get back over to that island [was] is going to be...*

*...along with the buses that were resourced from Central Regional School District and Berkeley Township, we got with local businesses. Asked who had box trucks available that we could utilize. And I think we had somewhere between 3 and 5 box trucks...*

*[Household repair items were loaded up on the box trucks. The residents got on the buses. And we made our movement over. They were given, ...probably between 6 and 8 hours to situate their homes. If they were... were able to pack things, they had a limited amount of bags they could bring, because we only had so much space. But once we arrived on the island, the buses dropped the residents off. And personnel from the Berkeley Township Department of Public Works in Department of Public Works trucks went around, and they delivered their... tools to them... And then once they were done, right around closing time, they went back up and down every street, they picked up their stuff. So these people didn't have to drag their stuff. They're having a hard enough time. We're not trying to make them carry 2 large suitcases from down by the bay up to Central Avenue. And there were several hundred residents, so this took some time.*

*Also during this time..., patrol operations had resumed... We also had New Jersey State Police there as well to assist with security. Obviously, with the great concern that you know, some people might go walking into other people's homes, unsafe structures, things of that nature.*

*...there was a period of time where movement was restricted on the barrier island. Chief was in and out of meetings every day, arguing [to let residents] back on the island, with the primary concern being infrastructure damage of the road.*

*We made arrangements for George [Cramer of the Shore Water Company ~ the person responsible for servicing and taking care of the water system there] to get over the island and begin the water shutoff for vacant houses.*



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c. Second Phase Reentry<sup>390</sup>

*November 8, November 9, we... put our 2<sup>nd</sup> phase into action. Now we're dealing with a nor'easter that hit on November 7. So, now we have added issues. Our 2<sup>nd</sup> phase was coordinated with buses which we secured from the schools for us, along with Seaside Park. And once again, Seaside Park and other neighboring towns, not just Seaside Park, Seaside Heights, there were quite a few Departments that followed in our footsteps and did exactly the same thing...*

*...the first thing we did was we set up the CP [command post] ... at 24<sup>th</sup> Avenue right before the entrance to Island Beach State Park. The CP was staffed daily from [7:00 a.m. to 5:00 p.m.] This was a registration point [where] residents that maybe are summer residents only and were not able to get down during the previous reentry phases, were able to come down, register with us, be issued their stickers, so they can begin their process.*

*Also, this gives all residents an opportunity to come down and tell us [if a contractor is scheduled to work on a property]. So, they're giving us this data daily [which was entered on a spreadsheet and updated daily]. ...[the updated] spreadsheet would be issued to the officer that would be working the checkpoint coming into South Seaside Park... to ensure that no unauthorized personnel came into Seaside Park. Because, obviously, while, you know, our primary concern is life, we also are there to protect your property.*

d. Security

*At this point in time, there was always at least 3 officers over there, 24-hour hours a day, with upwards of 5 to 7 during the day... The 3 officers consisted of the officer that would be at the checkpoint, the entrance. Because all the other entrances in the South Seaside Park closer towards the bay, they were barricaded, cars [couldn't] get through. [There was one officer] at that single point of entry and there's one officer staying at the point of entry into Pelican Island. Because that's part of our beach sector and we had the same responsibilities to them as we did South Seaside Park. And then there would be a 3<sup>rd</sup> Berkeley*

<sup>390</sup> Residents were permitted on the island to start cleanup and rebuilding of their homes.



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*Township officer that would be roving. He would be doing a mobile patrol throughout both portions of the beach sector.*

*...And we had assets from the New Jersey State Police, assets from the Louisiana State Police. Pennsylvania State Police were there. ...states from all over the country were sending people... And [the] Ocean County Prosecutor's Office also... sent personnel to assist.*

e. Building Safety

*Also during this time, the Berkeley Township Engineer's office and... a contracted outside agency... began going door-to-door checking every single structure for its suitability to be occupied... to ensure that if people are going to be going to these houses that... they're safe to be in there and working.*

f. Refuse Removal

*Also during this time on a daily basis, as the residents are rehabbing their homes, they're literally taking everything apart and bringing it to the curb, our sanitation department is there every single day with their trucks going up and down the streets picking up the bulk garbage, pieces of house, whatever they needed to discard.*

*They're there every single day, all day... When I say all day, that's at banker's hours. They are only allowed to be there from eight to four, just to clarify.*

g. Dunes

*... If the dunes didn't hold, South Seaside Park wouldn't be there. The closest breach was... in Seaside Park and then down into Island Beach State Park where there was like a 200-yard breach just south of the Governor's mansion...*

*On May 7, 2015, Mrs. Judith Erdman made several statements in reference to the dune systems in Berkeley Township. She did acknowledge that the dunes in Berkeley Township held... She did, in fact, say that they held and they saved South Seaside Park. But she criticized the... the Township's response to repairing the dunes.*



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*... the Berkeley Township Department of Parks and Beaches does biannual servicing and maintenance to the dunes... And they've been doing it for well over 30 years. So, those dunes held because those guys are there twice a year, and they're [maintaining] them...*

*Within the first 3 months [after the storm], over 100 ton of sand was put in to replace the missing portions of the dunes. Park and Beaches worked with the engineers,... to develop a snow fence pattern that returned the dunes to 100 % within two years.*

4. In addressing “how the town responded to the residents [of South Seaside Park] after Sandy”, Mr. Yurcisin, testified:<sup>391</sup>

*Three days after the storm, [he and Mr. James Sperber, Township Supervisor of Parks & Beaches]... took a truckload, ...with pallets of water and ice, we went over [to South Seaside Park]... there was some hold-out residents that were still over there. And, in fact, we met with Don Whiteman, ...and we dropped off some water and ice for him. And he basically took us around to all the residents who were still around to make sure that they at least had some water and ice. Because that's all, at that point, that's all anybody could provide. That's all anybody had. ...*

- E. With regard to how quickly the Township was able to repair the snow fencing (a.k.a. dune fencing) after Sandy, Mr. Yurcisin, testified<sup>391</sup> that the Township “got there as quickly as we [could] with the dune fencing that we were able to get, which was like gold at that time”.
- F. In addressing Petitioners’ assertion that the snow fence and dune restoration undertaken by Midway Beach was better designed than those of the Township, Mr. Yurcisin, testified<sup>391</sup> that the Township’s “zig-zag configuration”

*basically catches sand from... hard southeast / south winds, mostly in the summer, and hard northeast / east winds in the winter storms. And that has always worked for us for 30 plus years.*

Conversely, Mr. Yurcisin, testified:

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<sup>391</sup> Testimony on May 4, 2017



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*Midway Beach had a design where it looked like they had boxes of snow fence and diamonds. And, to be honest with you, couple months later, I looked at that, we had twice as much sand built up by our simple design compared to the designs that Midway Beach had. They had so much darn snow fence that the sand couldn't even get in there. So, I mean, I think personally that we did a better job.*

- G. In response to Petitioners' assertions that the beach entrances were not reconstructed in time for the July 4<sup>th</sup> holiday, Township Superintendent of Parks, Beaches & Recreation Timothy Yurcisin testified<sup>392</sup> that this was the case, but that all beach entrances were **open** during the 4<sup>th</sup> of July weekend following Sandy. While construction was taking place at many of the beach entrances throughout the summer, construction was staggered so not to happen all at once.

*...there was always access to the beach during the summer months. There might have been one road entrance that was inaccessible during certain times because they had to repair it. I mean, that's just when the contractor was available and that's when the work got done. If you couldn't go on one street, you might have had to go over a block. But there was always access to the beach during that summer months. During those summer months it was never closed.*

### **3.9.4 ANALYSIS**

- A. The Township provided no testimony addressing Mrs. Erdman's complaint that the Department of Public Works did not empty public garbage / recycling cans or remove items left out for bulk pickup prior to Superstorm Sandy.
- B. Snow fencing is utilized to trap blowing sand in order to build protective dune systems and not as a means of dune protection as Petitioners assert.
- C. Midway Beach is private condominium community that owns the lands where its snow fence was constructed. The Township has no authority over the design of snow fencing on private property. Further, it is an article of faith that private entities can act quicker and more nimbly than governmental agencies, even in emergency situations. Equating the Township's efforts to restore the snow fencing and dunes to those of Midway Beach is not a valid comparison.

<sup>392</sup> Testimony on May 4, 2017



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- D. No testimony was submitted to refute Petitioners assertions that Seaside Park restored their Boardwalk and beach entrances much quicker than the Township did for South Seaside Park.

**3.9.5 FINDINGS**

*At issue before the Planning Board is whether or not the Township's preparedness before Superstorm Sandy and its response during and after the storm were inadequate and 'detrimental to the... wellbeing of a majority of the residents' of South Seaside Park. Petitioners contend that it was, and to support their contention have testified at length and/or submitted Exhibits.*

- A. Whether or not the Township's Department of Public Works emptied public garbage / recycling cans or removed items left out for bulk pickup prior to the storm is an academic question. No testimony was offered to suggest that any damage from blowing trash or trash receptacles occurred during the storm or were an issue in the storm's aftermath.
- B. Petitioners' assertions that the Township did not properly prepare for the storm are not supported by the record. The testimony of Chief DiMichele and Officer Bondulich contain detailed information regarding the steps the Township took in the days leading up to the storm.
- C. Petitioners' assertion that the Township neglected to communicate storm-related warnings to the residents of South Seaside Park prior to Sandy making landfall ~ including notifications of a mandatory evacuation ~ and during the storm is not credible. In addition to the testimony of Chief DiMichele, Sergeant Dohn and Officer Bondulich regarding Township notification efforts, media coverage in the days leading to the storm was inescapable.

Significantly, Mrs. Erdman herself testified that she "*followed the storms on The Weather Channel*".

- D. Petitioners' assertions that the Township did not properly act during the storm are ill-considered. Public safety personnel were recalled for their own safety and the safety of their equipment. To suggest that personnel and equipment be subjected to the ravages of the weather that was anticipated displays a reckless lack of understanding of the severity of the event.



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- E. Petitioners criticism of the Township’s dune system in the aftermath of Superstorm Sandy lacks credibility when juxtaposed against their complements regarding the system after Hurricane Irene.
- F. Petitioners criticism of the Township’s response immediately prior to, during and after Sandy are ill-conceived at best. In their own words, they described the storm by stating:

*Nobody ever expected anything like this. No storm ever came up the coast and decided to make a left-hand turn the way this thing did.*

*And it was everything lined up in the wrong direction with the fronts coming through, the way everything happened... And nobody thought it was going to do what it did.*

The nature of Superstorm Sandy, both in its initial impact and in the public sector’s response, was an unprecedented and anomalous act of nature. Attempting to measure Berkeley Township’s reaction against those of any other municipality and whether or not Petitioners would have been better served as part of Seaside Park is supposition at best. Both Seaside Park and South Seaside Park faced mandatory evacuation and both suffered similar physical damage.

Similarly, attempting to ascribe any link between the storm, the Township’s response and South Seaside Park’s island location, and asserting that the Township was somehow ill-prepared or neglectful, is overreach.

The benefits of being part of Seaside Park during the storm appear to be limited to direct automated pre-storm warning calls and quicker post-storm beach and dune recovery. Conversely, the Borough’s municipal offices were dispersed throughout the County for 3-months while its island-based offices were reconstructed in the aftermath of the storm.

Berkeley Township’s municipal building remained open and operational during and after the storm, and served as the hub for regional Emergency Management efforts<sup>393</sup>. It did however, take longer for the Township to repair the dunes and beach entrances than did its neighbor.

<sup>393</sup> Testimony of Stan Slachetka on July 6, 2017 and Footnote 28 (p. 20) of Exhibit T-32:



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*Based on the totality of the foregoing, this Report of Findings finds and recommends that Petitioners' assertions that the Township's planning for and response during and after Superstorm Sandy was inadequate are not supported by the facts in evidence. The record reflects that the Township undertook steps to insure public safety prior to, during and in the immediate aftermath of the storm. While recovery efforts may not have occurred as quickly as Petitioners would have liked, such a temporary inconvenience in the wake of this unprecedented weather event is not recommended as a proper rationale for deannexation.*



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### 3.10 PLANNING

Petitioners engaged Mr. Scott Bauman, a Licensed Professional Planner in the State of New Jersey, “to prepare a report that proves a context and planning rationale for the deannexation of South Seaside Park from Berkeley Township” and:

*...to determine whether there's rationale to establish that the Township's refusal... to allow deannexation would be detrimental to the economic and social well-being of the Seaside Park residents. Also, a consent to deannexation would benefit the economic and social well-being of the South Seaside Park residents. ... The deannexation would not cause significant injury to the economic and social... well-being of Berkeley Township. And furthermore, that deannexation would not have a negative impact to the Township's Master Plan, Zone Plan, Affordable Housing Plan, TDR Program or 2020 Vision Statement.<sup>394</sup>*

Mr. Bauman’s findings were submitted in a document entitled *Planner's Report in Support of Deannexation of South Seaside Park from Berkeley Township, New Jersey*. Such report was supplemented by a document entitled *Amendment to Planner's Report in Support of Deannexation of South Seaside Park from Berkeley Township, New Jersey*.<sup>395</sup> Pertinent to this Report of Findings, the Bauman Report addressed South Seaside Park within the context of:

- Geography, Population, Income, Occupation, Housing
- Berkeley Township 2020 Vision Statement
- Berkeley Township 2008 Build-Out Summary
- Berkeley Township Master Plan
- Berkeley Township Fair Share Plan for Affordable Housing
- Berkeley Township Land Use Ordinance, South Seaside Park Zone Districts
- Preserved Open Space
- Park & Recreation Facilities / Recreation & Senior Citizen Programs
- Environmental Resources
- Historic & Cultural Resources

<sup>394</sup> Testimony on August 6, 2015

<sup>395</sup> Respectively Exhibit A-41 & Exhibit A-42 ~ referred to herein as the "Bauman Report" and "Bauman Report Amendment" or "Report Amendment".



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- Public Safety
- Public Transportation
- Public & Private Schools
- Public Libraries
- South Seaside Park Social Interaction & Commercial Activity
- Quality of Life Issues
- Public Utilities
- Solid Waste & Recycling
- Seaside Park Borough

**3.10.1 BAUMAN TESTIMONY**

A. Geography, Population, Income, Occupation, Housing

1. The Bauman Report described the location, size and distinguishing physical features of Berkeley Township in general and South Seaside Park in particular. Of specific note regarding this Deannexation process:
  - a. The Township contains approximately 35 miles of shoreline consisting of 10 miles of oceanfront, 18 miles of bay frontage and 7 miles of creek, stream and river frontage.
  - b. South Seaside Park is 0.24 square miles (150.75 acres) in size with approximately 1.5 miles of shoreline in the form of 2,900 l.f. of oceanfront and 5,000 l.f. of bay frontage.
  - c. South Seaside Park makes up 0.5% of the Township's waterfront and 2.2% of its preserved open space.

Mr. Bauman opined:

*the deannexation of 150.75 acres from Berkeley Township ~ 0.5% of the Township's total land area, and 1.5 miles of combined ocean and bay frontage will not cause significant economic or social injury to Berkeley Township residents”.*<sup>396</sup>

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<sup>396</sup> Bauman Report: p. 10



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2. The Bauman Report reviewed the population demographics for Berkeley Township and South Seaside Park compiled by the 2010 Census and the American Community Survey (“ACS”).<sup>397</sup> Among the statistics provided:

| <b>2010 U.S. CENSUS</b>                |                               | <b>South Seaside Park</b> | <b>Berkeley Township</b> |
|--|-------------------------------|---------------------------|--------------------------|
| <i>Total Population</i> <sup>398</sup> |                               | 490                       | 41,255                   |
| <i>Race</i>                            | <i>White</i>                  | 99%                       | 94.9%                    |
|  | <i>Hispanic</i>               | 1.6%                      | 4.9%                     |
|  | <i>Black</i>                  | 0                         | 1.8%                     |
|  | <i>Asian</i>                  | 0.4%                      | 1.1%                     |
|  | <i>Other</i>                  | 0.6%                      | 2.3%                     |
| <i>Age</i>                             | <i>Persons under 18 years</i> | 3.0%                      | 13.3%                    |
|  | <i>Ages 18 - 74</i>           | 81%                       | 62.5%                    |
|  | <i>75+</i>                    | 15.9%                     | 26.4%                    |
|  | <i>Median</i>                 | 61.9 years                | 61.1 years               |

| <b>AMERICAN COMMUNITY SURVEY<br/>(2008 to 2012)</b> |  | <b>South Seaside Park</b> | <b>Berkeley Township</b> |
|---|--|---------------------------|--------------------------|
| <i>Income</i>                                       | <i>Per Capita</i>  | \$53,657                  | \$29,591                 |
|   | <i>Median Household</i>  | \$68,194                  | \$43,565                 |
| <i>Employment<br/>16 Years &amp;<br/>Over</i>       | <i>Civilian</i>  | 62%                       | 34%                      |
|   | <i>Management, Professional</i>                                | 38%                       | 29%                      |
|   | <i>Service</i>   | 14%                       | 18%                      |
|   | <i>Sales &amp; Office</i>                                      | 34%                       | 30%                      |
|   | <i>Construction, Extraction,<br/>Maintenance &amp; Prepare</i> | 4%                        | 12%                      |
|   | <i>Production, Transportation &amp;<br/>Material Moving</i>    | 10%                       | 11%                      |

*Excerpt from Exhibit A-41*<sup>399</sup>

<sup>397</sup> While not addressed in the Bauman report: According to the Population Reference Bureau\*: The main function of the U.S. decennial census is to provide *counts* of people for the purpose of Congressional apportionment. The primary purpose of the ACS is to measure the changing social and economic *characteristics* of the U.S. population. While the decennial census has provided a snapshot of the U.S. population once every 10 years, the ACS has been described as a "moving video image, continually updated to provide much needed data about our nation in today's fast-moving world".

\* A Washington D.C.-based private non-profit organization that offers research and academic information on population and related topics. The PRB receives support from a number of foundations, non-governmental organizations and government agencies, including the Johns Hopkins Bloomberg School of Public Health, the U.S. Census Bureau and the World Health Organization. ([www.prb.org/Publications/Articles/2009/differences.aspx](http://www.prb.org/Publications/Articles/2009/differences.aspx))

<sup>398</sup> The Census does not track Seasonal Populations. However, taking into account the 1,103 Seasonal Housing Units reported by the Census (§3.10.1 herein), “we can assume that a seasonal swing is there”.

<sup>399</sup> Bauman Report: Exhibit 5 & Exhibit 6



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Based on existing population projections prepared by the US Census Bureau and the North Jersey Transportation Authority, Mr. Bauman indicated<sup>400</sup> that the Township could expect growth of 664 to 1,890 people by 2020, and another 1,330 to 3,867 by 2025. A Real Estate Market Analysis undertaken by the consulting firm Urban Partners estimates a 2025 population of 50,925.

Mr. Bauman opined<sup>401</sup> that *“the disparity in income and the percentage difference of those employed between South Seaside Park and Berkeley Township residents can be correlated to the number of residents under and over 75 years of age population ~ an age at which an individual presumably is not employed full time. While there may be a loss of income earning residents as a result of deannexation, this amount is neither substantial nor significant compared to the overall economic well-being of Berkeley Township”*.

Given that *“South Seaside Park has no future growth capacity”*<sup>402</sup>, Mr. Bauman concluded that the deannexation of 0.1% of the Township's population of similar ethnicity and age group or 0.02% of Berkeley Township's population of residents under 18, will result in *“...no loss or change of significant population diversities or income”* and *“will not cause significant injury to the economic and social well-being of Berkeley Township residents”*.

Additionally, Mr. Bauman concluded that, *“South Seaside Park residents are already a tiny percentage of residents in the Township, and that percentage will continue to shrink as the Mainland population grows”*.<sup>400</sup>

3. Mr. Bauman reviewed housing data for both South Seaside Park and Berkeley Township compiled by the 2010 Census and the ACS and found:

| <b>2010 U.S. CENSUS</b> | <b>South Seaside Park</b> | <b>Berkeley Township</b> |
|-------------------------|---------------------------|--------------------------|
| Total Housing Units     | 1,410                     | 23,818                   |
| Occupied Housing Units  | 19.5%                     | 85.4%                    |
| Vacant Housing Units    | 80.5%                     | 14.5%                    |
| Seasonal Use            | 78.2%                     | 9%                       |

<sup>400</sup> Testimony on August 6, 2015

<sup>401</sup> Bauman Report: p. 15

<sup>402</sup> Bauman Report: p. 10



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| <b>AMERICAN COMMUNITY SURVEY<br/>(2008 to 2012)</b> | <b>South Seaside Park</b> | <b>Berkeley Township</b> |
|---|---------------------------|--------------------------|
| <i>Total Housing Units</i>                          | 1,468                     | 24,094                   |
| <i>One Unit Detached</i>                            | 86.7%                     | 93.6%                    |
| <i>One Unit Attached</i>                            | 0                         | 1.8%                     |
| <i>2 Unit</i>                                       | 2.5%                      | 0.8%                     |
| <i>3 - 4 Units</i>                                  | 1.6%                      | 0.5%                     |
| <i>5 - 9 Units</i>                                  | 0                         | 1.0%                     |
| <i>10+ Units</i>                                    | 8.1%                      | 2.2%                     |
| <i>Mobile Home, Boat, RV, Van</i>                   | 1.0%                      | 0.2%                     |
| <i>0 Bedrooms</i>                                   | 2.4%                      | 0.3%                     |
| <i>1 - 2 Bedrooms</i>                               | 56.1%                     | 67.2%                    |
| <i>3+ Bedrooms</i>                                  | 41.4%                     | 32.5%                    |
| <i>Median Value of Occupied Housing Units</i>       | \$479,900                 | \$183,600                |
| <i>Housing Units with Mortgage</i>                  | 62.3%                     | 49.5%                    |
| <i>Cost of Home Ownership as % of Total Income</i>  | 33.8%                     | 31.4%                    |

*Excerpt from Exhibit A-41<sup>403</sup>*

4. As a result of deannexation, Mr. Bauman:<sup>404</sup>
  - a. Calculated that Berkeley Township would lose 6% of its housing stock, and opined that since the housing types and the housing unit ages are similar, there would be no loss or change of significant housing stock.
  - b. Calculated that vacant housing units would be reduced by 33%, resulting in a decrease of the Township's overall vacancy rate from 14.5% to 10.4%, and opined that *“while the initial reduction of housing units is an economic injury, it is one that is off-set by the reduction in services that no longer need to be provided”*.
  - c. Observed that the Township is making plans to accommodate new growth in the proposed Town Center on the eastern Mainland and concluded that *“the reduction in housing units is as a result of deannexation... will be negated by future growth in planned areas designated by Berkeley Township”*.

<sup>403</sup> Bauman Report: Exhibit 7A, Exhibit 7B, Exhibit 7C & Exhibit 7D

<sup>404</sup> Bauman Report: p. 16



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- d. Opined that the loss of seasonal units in South Seaside Park would “*not preclude Berkeley Township residents from renting or otherwise obtaining these units...*” Accordingly, “*...the loss of seasonal units does not cause significant economic or social injury to Berkeley Township residents*”.
- e. Concluded that “*deannexation will not result in the loss of a significant amount of housing units with varied number of bedrooms*”, and that “*the majority of housing units for Berkeley Township and South Seaside Park have two bedrooms which supports the fact that Berkeley Township will not lose significant or unique housing stock as a result of deannexation*”.

**B. Berkeley Township 2020 Vision Statement<sup>405</sup>**

1. Mr. Bauman reported that in 2002 - 2003, Berkeley Township conducted a public visioning process to identify long-range goals for the Township's physical, recreational, business, and community development particularly within the eastern Mainland section of the Township, and that the resultant 2020 Vision Statement “*which serves as a guide for the Township's long-term policy and planning initiatives ~ focuses entirely on the Mainland's physical, economic and environmental future*”.
2. Mr. Bauman contends that the Vision Statement “*establishes targets for future development of a Town Center and 3 commercial nodes on the eastern Mainland*”, but “*fails to include how South Seaside Park will be linked to the Town Center and commercial nodes*”.
3. Mr. Bauman further contends that the omission of South Seaside Park in the Vision Statement’s language that “*residents of the Eastern Mainland are secure in the knowledge that public safety ~ police, fire, first aid and emergency management ~ has always been a priority in the Township*” should be interpreted as meaning that South Seaside Park and its residents will not share in the “*security*” enjoyed by Berkeley’s Mainland residents.

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<sup>405</sup> Bauman Report: p. 17 & Testimony on August 6, 2015



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4. Based on the foregoing, Mr. Bauman concluded:

*Berkeley Township has no vision for South Seaside Park going forward. They see it as having no growth capacity. The planning goals of the Township are preoccupied for development of the eastern Mainland. And South Seaside Park is not mentioned in their 2020 Vision Plan...*

*South Seaside Park and its residents are not part of Berkeley Township's long-range policy and planning initiatives; the absence of South Seaside Park in the Vision Plan supports the notion that deannexation will not cause significant economic or social injury to Berkeley Township residents.*

*If deannexation is not approved, South Seaside Park residents will continue to be excluded from Berkeley Township's future plans which negatively impact their social and economic well-being.*

C. Berkeley Township 2008 Build-Out Analysis<sup>406</sup>

1. Mr. Bauman reported that in 2008, the Township commissioned a build-out analysis to estimate the jobs and population that would be generated if all available and developable land in Berkeley were to be developed to the maximum permitted density (residential zones) and gross floor area (non-residential zones), and that this analysis revealed that there are no developable acres or new dwelling units yielded in South Seaside Park.<sup>407</sup>

The analysis also revealed that there were 1,900 acres of residentially-zoned unconstrained vacant land and 308 acres of commercially-zoned and/or industrially-zoned unconstrained vacant land outside of the designated Mainland Town Center. Such acreage could potentially yield 2,800 additional dwelling units and 11 million s.f. of new nonresidential development.

Applying the Township-wide figure of 2.02 persons per occupied dwelling unit derived from the 2010 Census results in a potential for 5,656 additional residents at build-out, or a total population of 46,911.

<sup>406</sup> Bauman Report: p. 17 & p. 20 & Testimony on August 6, 2015

<sup>407</sup> A finding which supports the position articulated elsewhere in this Report of Findings that there is no available land in South Seaside Park for additional municipal facilities.



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2. Mr. Bauman further noted that the 2008 Master Plan Reexamination, the State Plan Endorsement and the Master Plan's Transfer of Development Rights ("TDR") Element encourage growth in the eastern Mainland, and that Berkeley Township is preparing for this growth through Ordinance changes and updates to its Master Plan. Significantly, no growth plan is proposed for South Seaside Park.
3. In support of the Township's focus on growth of the eastern Mainland, Mr. Bauman cited a 2012 Real Estate Market Analysis<sup>408</sup> for Berkeley Township which forecasted that housing and population were expected "to grow at a modest pace over the next 2 decades", resulting in a 2030 population forecast nearing 51,000, "which would support the development of 4,330 new housing units on the Eastern Mainland during that 20-year period".
4. Based on the foregoing, Mr. Bauman concluded that "Berkeley Township has already determined that South Seaside Park is an area built to capacity with no potential for future growth". And "while this determination does not cause significant social or economic injury to Berkeley Township residents, it has for those living in South Seaside Park".
5. Finally, Mr. Bauman applied various annual growth rates to determine the range of growth the Eastern Mainland of Berkeley Township may be expected to experience by 2020 (664 - 1,890 persons) and by 2025 (1,339 - 3,867 persons), and concluded that the 490 people lost to Berkeley Township upon successful deannexation "would be quickly compensated within a 5 year period".

Similarly, after reviewing the analyses attendant to the Township's Transfer of Development Rights Program, Mr. Bauman concluded that "an active TDR Program would compensate for the [490-person South Seaside Park] population loss within a 5 to 10 year period".<sup>409</sup>

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<sup>408</sup> Prepared by Urban Partners (referenced by Mr. Bauman but not submitted for review).

<sup>409</sup> Bauman Report Amendment: p. 9 of 15



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D. Berkeley Township Master Plan

1. Goals & Objectives<sup>410</sup>

- a. After describing a municipal Master Plan and reciting the history of Master Planning efforts in Berkeley Township, Mr. Bauman quotes the Township’s Master Plan as describing South Seaside Park as *“an older built-out seasonal community [whose] future is established for the foreseeable future,”* and notes that the Master Plan *“calls the area between the Parkway and the bay as the area of primary focus for future development and redevelopment”*.
- b. Mr. Bauman goes on to state that the Master Plan *“makes certain to recommend that Berkeley Township be proactive about the future of... the Eastern Mainland”*, but provides *“no focus initiatives or goals... that address South Seaside Park”*. According to Mr. Bauman, *“the 9 Master Plan objectives do not individually or collectively address the needs and concerns of the residents of South Seaside Park”*.<sup>411</sup>

Since *“South Seaside Park and its residents are not included in the Master Plan goals”*, Mr. Bauman opined that *“deannexation will not cause significant injury to the Berkeley Township Master Plan”*.

- c. When asked to expound on Berkeley’s Master Planning objectives for the Township as a whole, Mr. Bauman provided a summary of the Township’s goals and objectives since 1997 as detailed in the 2015 Master Plan Reexamination Report:

1. The goals of the 2003 Master Plan were to pursue the goals outlined in the 2020 Vision Statement are to focus new development in town centers; redevelop existing commercial centers; complete the plan build-out of existing residential neighborhoods; create recreation and open space plans; concentrate new

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<sup>410</sup> Bauman Report: pp. 18 - 20 & Testimony on August 6, 2015

<sup>411</sup> Bauman Report: p. 19:

*Completing the build-out of neighborhoods, encouraging development in Town Center and corridor nodes, and addressing the Route 9 corridor... are matters that are nowhere near South Seaside Park, nor do they affect the social and economic well-being of South Seaside Park residents.*



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community facilities in new town centers; foster economic development in the town center and commercial nodes. Mr. Bauman characterized these efforts and planning objectives as “*focused on the Mainland*”.

2. The 2008 Master Plan reiterated the goals from the 2020 Vision Statement and placed special emphasis on town center development; implementation of the Open Space and Recreation Plan; and implementation of the Route 9 Corridor Master Plan. Additionally, the 2008 Master Plan introduces Island Zoning for South Seaside Park. Mr. Bauman testified that “*this is the first time that South Seaside Park was mentioned*”<sup>412</sup> in a Township Master Plan.
3. Mr. Bauman testified that the long-term goals for Berkeley Township as expressed in the 2015 Master Plan:

*The 2015 reexamination report calls [them] objectives. Recommends implementing green building techniques and storm-resilient infrastructure; and encourages locating future capital projects and affordable housing outside of flood hazard areas; recommends amending the stormwater management plan. The goals/objectives address evacuation routes and bicycle circulation. It recommends adopting green buildings and environmental sustainability master plan elements.*

*Also considers the preparation of an Economic Plan / Master Plan Element, in addition to implementing the Township's TDR program and town center plans. It's very, every 5 years, I have to compliment you, you come back and you really look at your town on that. I say that that's good. I see a lot of towns where they don't touch the master plan for another 10 years and then they just do a quick reexamination. But this is a good evolvement of planning on the Mainland.*

And reiterated that the Master Plan

*...continue to be focused ... on directing future growth in town centers and commercial nodes on the eastern Mainland. Through the Transfer Development Rights*

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<sup>412</sup> Testimony on August 6, 2015



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*program for TDR, the Township wants to preserve open space and introduce planned development in designated areas on the Mainland. The Township wants to develop new zoning districts for mixed use nodes identified in their 2020 Vision Plan. And they want to focus on Route 9 corridor improvements. All these long-term goals are related to the Mainland, not South Seaside Park.*

4. In summary, Mr. Bauman opines that:

*The Master Plan calls the area between the [Garden State] Parkway and the bay on the eastern Mainland as the area of primary focus for Berkeley's future development and redevelopment. The Master Plan objectives address completing the build out of neighborhoods; encouraging new development in town center and corridor nodes; and addressing the opportunities and challenges of the Route 9 corridor... The focus is really 95% Mainland and 5% South Seaside Park.*

2. Existing Land Use<sup>413</sup>

- a. Mr. Bauman cites the Township's 2012 Environmental Resource Inventory, which indicated that land uses in Berkeley Township are 48% residential, 38% vacant, 7% industrial and 7% commercial. A breakdown of these uses are cited as:

|   | <i>South Seaside Park<br/>(acres)</i>       | <i>Berkeley Township<br/>(acres)</i>  |
|---|---|---|
| <i>Residential Land</i>                 | 89.14                                       | 4,621.68  |
| <i>Public &amp; Private Vacant Land</i> | 8.15  | 3,683.69  |
| <i>Commercial Land</i>                  | 4.35  | 665.9   |
| <i>Industrial Land</i>                  | 0 <sup>414</sup>                            | 721.17  |
| <i>Apartments</i>                       | 4.21  | 52.13   |
| <i>Remaining Land:</i>                  | <i>Parks &amp; Preserved<br/>Open Space</i> | <i>Public Property, Vacant, School,<br/>Church, Farm, Cemetery, Or<br/>Unknown.</i> |

*Excerpt from Exhibit A-41<sup>415</sup>*

<sup>413</sup> Bauman Report: pp. 19 - 20 & Testimony on August 6, 2017

<sup>414</sup> No statistic was provided. Assumption is 0 acres.

<sup>415</sup> Bauman Report: pp. 19



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Therefore, Bauman concludes that South Seaside Park has 0.08% of the Township's commercial land uses and 4.5% of its apartment land uses<sup>416</sup>.

- b. When asked to compare land uses in Berkeley Township as a whole against those in South Seaside Park, Mr. Bauman commented that uses in Berkeley “[run] the gamut, restaurants, hotels, commercial nodes, retail shopping, strip malls, mixed use commercial and residential” and that commercial uses in South Seaside Park are limited to “3 restaurants, 2 bars with restaurants, 1 hotel and 1 motel and a retail marine supply store”.

Mr. Bauman characterized the commercial establishments in South Seaside Park as being “limited in diversity and quantity”, and that there would be “no loss to Berkeley Township should South Seaside Park be deannexed”.

- c. Mr. Bauman concluded<sup>417</sup> that:

*...deannexation of 1.9% of Berkeley Township's... residential land and 0.08% of Berkeley Township's commercial use land will not cause significant or substantial economic or social injury to the residents of Berkeley Township. The 2008 build-out analysis revealed 1,898 acres of residentially zoned unconstrained vacant land on the Mainland outside the designated Town Center, yielding 2,800 additional dwelling units; and 308 acres of commercial / industrial zoned unconstrained vacant land outside the designated Town Center yielding 11 million sf of new nonresidential floor area.*

- d. Significantly, Mr. Bauman criticizes the Existing Land Use section of the Master Plan for not clearly explaining what is meant by the statement that South Seaside Park has “the unique character of a year-round resort community”.<sup>417</sup>

3. Proposed Land Use Plan<sup>418</sup>

- a. The Bauman Report reviewed the Master Plan's recommendations for Township zoning changes and noted that the Plan recommends:

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<sup>416</sup> Upon double checking calculations it would appear as though South Seaside Park in fact has 8.1% of apartment land and .65% of commercial land.

<sup>417</sup> Bauman Report: p. 19

<sup>418</sup> Bauman Report: p. 20



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- Creating 2 Town Centers and 3 Growth Corridor Nodes;
- Establishing a Transfer of Development Rights program; and
- Replacing existing zoning with new Island-specific Zoning Districts.<sup>419</sup>

b. Mr. Bauman quoted the Land Use Plan as calling for "*context sensitive residential and commercial standards for the unique island neighborhood*", but opined that such initiative "*is not supported by any of the goals or objectives of the Master Plan*" and that "*if the zone districts recommended in the 2008 Master Plan were achieved through codification, the changes to residential character and density would affect South Seaside Park*".<sup>420</sup>

c. Addressing the fact that the proposed Island Zones have not been adopted into law, Mr. Bauman testified<sup>420</sup> that the Township's 2015 Master Plan Reexamination "*recommends additional study to ensure that any zone changes, including approaches to storm resiliency, be designed in a manner that is context sensitive to South Seaside Park's community character*", and noted that "*preparing a study about the recommended Island District zoning would not further fulfill any overall Township-wide Master Plan goals or objectives, but it is a small step*".

4. Mr. Bauman's review of the Master Plan led him to conclude:<sup>421</sup>

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<sup>419</sup> Island Residential A zone would eliminate four-family zoning on Beach Drive (R-4F), and attached single-family homes and four-family zoning on 24th Avenue (R-TH), and would permit only single family homes at nine units per acre.

Island Residential B zone would eliminate four-family zoning between Beach Drive and 20th Avenue (R-4F) and would permit only single family homes at fourteen units per acre.

Island Townhouse zone would eliminate detached single-family zoning in the Central Avenue median (R-31.5), eliminate attached single family, and four-family zoning south of 14th Avenue between South Bayview Avenue and Central Avenue, and would permit only townhomes at fifteen units per acre.

Island Cottage Community zone covers the Midway Beach community using the current Beachfront Residential Zone standards, and also permits a five-acre minimum planned unit residential development to include single-family detached and townhouse units, and four-unit manor homes not to exceed fifteen units per acre.

Island Mixed-Use zone replaces the Resort Commercial and Neighborhood Business zones. The Island Mixed-Use zone permits retail, restaurant, and recreation uses on Central Avenue, attached single family homes, detached single family homes, and multi-family condominiums in the balance of the district which is the Resort Commercial zone.

<sup>420</sup> Testimony on August 6, 2015

<sup>421</sup> Bauman Report: p. 21



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*Implementation of the new Master Plan recommended Island zone districts would significantly change the one-unit detached residential character of South Seaside Park and will cause significant social and economic injury to South Seaside Park residents.*

E. Berkeley Township Land Use Ordinance, South Seaside Park Zone Districts

Pertinent to this deannexation analysis, Mr. Bauman found:<sup>422</sup>

1. South Seaside Park is zoned 85% solely-residential and 15% commercial.
2. Excluding lands within the Pinelands National Reserve, South Seaside Park represents 1.5% of the solely-residentially-zoned<sup>423</sup> land and 3.4% of the solely-commercially-zoned land in Berkeley Township.
3. Township-wide, the ratio of solely-residentially-zoned lands to solely-commercially-zoned lands is 93% residential to 7% commercial. This ratio remains unchanged under a post-deannexation scenario.

Based on these analyses, Mr. Bauman concluded:

*The deannexation of 1.5% of the residential and 3.4% of the commercial zoned lands of Berkeley Township will not cause significant economic or social injury to Berkeley Township residents.*

*Berkeley Township's 93% to 7% residential-to-commercially zoned land ratio remains unchanged as a result of deannexation and thus will not cause significant injury to Berkeley Township's Zone Plan.*

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

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<sup>422</sup> Bauman Report: p. 23

<sup>423</sup> i.e., not Mixed-Use.



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*Berkeley Township's current zone plan is silent about South Seaside Park's unique barrier island community characteristic which adversely impacts the economic and social well-being of South Seaside Park residents.*

F. Berkeley Township Fair Share Plan for Affordable Housing<sup>424</sup>

After reviewing the Township's history and its current status regarding its "fair share" Affordable Housing obligations, Mr. Bauman reported:

*South Seaside Park is not part of Berkeley Township's Fair Share Plan for Affordable Housing; no housing units in South Seaside Park were part of Berkeley Township's 610 unit prior round affordable housing obligation. No South Seaside Park housing units were rehabilitated by Berkeley Township. Deannexation of South Seaside Park will not cause significant injury to Berkeley Township's Fair Share Plan for Affordable Housing. If deannexation is not approved, Berkeley Township's Fair Share Plan will not achieve any new affordable units or any rehabilitated units ~ this is a significant injury to the social and economic well-being of South Seaside Park residents.<sup>425</sup>*

and

*...since South Seaside Park is not mentioned in the Township's Affordable Housing Plan, South Seaside Park residents are unable to benefit from the Township's Affordable Housing and Housing Rehabilitation Programs.*

Mr. Bauman concluded:

*Since South Seaside Park has not been included in any Affordable Housing Plans, the Township's compliance would not be affected [if deannexation was to occur]. [The Township] has never relied on South Seaside Park to meet its obligation.*

and

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<sup>424</sup> Bauman Report: pp. 13 & 22, and Testimony on August 6, 2015

<sup>425</sup> Presumably, the last sentence is meant to convey that the Fair Share Plan will not result in new or rehabilitated affordable units *in South Seaside Park*.



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*Berkeley Township's Fair Share Plan for Affordable Housing... does not include South Seaside Park housing units; deannexation will not negatively impact Berkeley Township's Fair Share Plan.*

G. Preserved Open Space<sup>426</sup>

1. Mr. Bauman reported:

- a. Berkeley Township owns 10 open space properties and holds a conservation easement for an 11<sup>th</sup> property for a total of 316 acres of preserved open space. None of which are located in South Seaside Park.
- b. Two Ocean County entities own 14 open space properties in Berkeley Township totaling 1,800 acres, and 2 non-profit entities own and preserve 2,500 acres of open space in the Township ~ none of which is located in South Seaside Park.
- c. Approximately 157 acres of the 47,000-acre Edwin B. Forsythe National Wildlife Refuge and the State-owned Double Trouble State Park and the Greenwood Forest Wildlife Management Area are located on Mainland Berkeley Township. No similar open space is located in South Seaside Park.<sup>427</sup>
- d. The lone open space property in South Seaside Park is the 7.1-acre Roberts Avenue Marsh located at the corner of Roberts and South Bayview Avenues. This land is owned by the Ocean County Natural Lands Trust Fund and has been dedicated open space since 1999.

2. Mr. Bauman concludes:

*Deannexation of 2.2% of preserved open space in South Seaside Park will not cause significant economic or social injury to the residents of Berkeley Township and it will not thwart any local or regional preservation efforts. There is ample supply of national, state, and county owned open space on the Mainland for use by Berkeley Township residents.*

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<sup>426</sup> Bauman Report: p. 24

<sup>427</sup> While Island Beach State Park is located adjacent to ~ just south of ~ South Seaside Park, Petitioners have crafted the Petition to exclude this land from deannexation (§1.2.1 herein).



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H. Park & Recreation Facilities<sup>428</sup>

1. After reviewing the Township's Master Planning documents as relates to Parks and Recreational facilities, Mr. Bauman cited the Township's 2012 Environmental Resource Inventory, which states that the Township has 15 developed parks<sup>429</sup> totaling 503 acres ~ all but 2 of which are on the Mainland. The parks in South Seaside Park are:

- a. Sargent John A. Lyons Memorial Park: 8,400 s.f. park at the intersection of Barnegat and 24<sup>th</sup> Avenues (bordering Island Beach State Park to the south). This park is paved with asphalt to accommodate the full size basketball court at this location. Petitioners' opinions regarding Lyons Park are detailed in §3.4.1 herein.
- b. White Sands Beach: a 6.76-acre park located between 20<sup>th</sup> and 23<sup>rd</sup> Avenues. With approximately 1,000 linear feet of oceanfront, White Sands Beach has been called the "best-kept secret" in the Township. Amenities are limited to restrooms and an outside shower. Township lifeguards protect bathers when the beach is open, and Beach Buggy passes are available for off-season use.

2. Beach & Beach Badges

- a. Issues regarding the status of White Sands Beach should deannexation occur arose at several points during the hearings, with Petitioners taking the position that the Beach is part of the deannexation Petition and therefore transfers to Seaside Park upon successful annexation to the Borough. This issue is further addressed in §3.10.5 herein.
- b. Beach Badges are required for White Sands Beach June through Labor Day. Costs per badge are:<sup>430</sup>
  - Daily Badges: \$5 / \$6 weekends and holidays;
  - Weekly Badges: \$20;

<sup>428</sup> Bauman Report: pp. 25 – 26

<sup>429</sup> Mr. Bauman notes that the Berkeley Township's website lists 16 parks.

<sup>430</sup> 2014 figures. 2018 prices are: Daily: \$8, Weekly: \$25, Seasonal: \$50, Children under 12: Free, Senior:\$10 (for a seasonal or lifetime badge. ([http://www.berkeleystownship.org/departments/recreation/beach\\_information.php](http://www.berkeleystownship.org/departments/recreation/beach_information.php))



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- Seasonal Badges: \$30 through June 15 / \$35 thereafter;
- Seniors age 62+ and children 12 and younger: free.

Costs are the same for Township residents and non-residents.

c. Beach Badges are available for purchase during the pre-season from:

- the Berkeley Recreation Center on Route 9 on the Mainland;<sup>431</sup> and
- 23<sup>rd</sup> Avenue in South Seaside Park on the 1<sup>st</sup> two Saturdays in June between 9:00 a.m. - 1:00 p.m.

Leading Mr. Bauman to opine:

- the Mainland location “*presents an added inconvenience for South Seaside Park residents who would have to travel to the municipal building in order to receive the pre-season discount*”; and
  - There is a total of 8 hours of pre-season availability for South Seaside Park residents to purchase beach badges in their community. If a South Seaside Park resident misses either of these days, s/he must either travel to the Mainland or pay full price for Beach Badges.
- d. When queried regarding control over the White Sands Beach and whether or not Seaside Park would continue the Beach Buggy program should deannexation occur, Mr. Whiteman opined<sup>Error! Bookmark not defined.</sup> “*The beach buggy permit will always be opened up to the White Sands Beach. Whether it's... now... with Berkeley, or whether it be with Seaside Park*”.
- e. Although Mr. Bauman included in his report<sup>432</sup> and repeatedly testified<sup>433</sup> that his analysis does not include analyses of the financial, accounting or budgetary impacts

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<sup>431</sup> Beginning mid-June, badges are available at the beach.

<sup>432</sup> Bauman Report: p. 5

<sup>433</sup> Testimony on August 6, 2015, September 3, 2015, October 1, 2015



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of deannexation (such issues are to be addressed by Petitioner' Municipal Accountant), he opined<sup>434</sup> that, should deannexation occur:

*While Berkeley Township stands to lose the revenue generated by the sale of beach badges, being relieved of funding the personnel and capital expenses for maintaining and operating White Sands Beach will result in no economic loss to Berkeley Township residents.*

- f. Mr. Bauman reported<sup>435</sup> that the Berkeley Township Recreation Commission holds one event each year at White Sands Beach, and that “*the beach is not used with respect to senior citizens or children from the Mainland being bused by the Township to the beach as part of a Township sponsored program*”.
- g. Finally, Mr. Bauman asserts<sup>436</sup> that “*White Sands Beach is mainly a facility that serves the residents of South Seaside Park, those who live in the area. The toilet and changing facilities are minimal, and there are no parking areas for people coming to the area to use the beach*”.
- h. Additional issues related to White Sands Beach are addressed in §3.4.1, §3.5.1, §3.6.1, §3.9.1 and §3.10.1 herein.

3. Mr. Bauman reported:

*Excluding Sargent A. Lyons Memorial Park and White Sands Beach, on average<sup>437</sup> the next closest Berkeley Township owned and operated park is 14 miles away ~ a 25 minute drive, or over an hour by bicycle while there are 3 parks in Seaside Park Borough that are less than 2 miles away, or a 10 minute bicycle ride from South Seaside Park.*

and

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<sup>434</sup> Testimony on October 1, 2015

<sup>435</sup> Bauman Report: p. 26

<sup>436</sup> Testimony on September 3, 2015

<sup>437</sup> It is not clear what Mr. Bauman means by the term “on average”. Exhibit 17A of the Bauman Report cites 5 parks ranging from 12.1 to 13.6 miles from South Seaside Park and 4 parks ranging from 14.9 to 17.4 miles from South Seaside Park.



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*Parks and amenities available to Mainland residents [of Berkeley Township] outnumber what is locally available to the residents of South Seaside Park. All but 98.5% of the Township's developed parks are located on the Mainland.<sup>438</sup>*

and concludes:<sup>439</sup>

- a. *"The loss of the [Sargent] John A. Lyons Memorial Park ~ one outdoor basketball court will not cause significant economic or social injury to Berkeley Township residents."*
- b. *"White Sands Beach is underutilized by Berkeley Township and mainly serves those who live in the area. The loss of White Sands Beach will not cause significant economic or social injury to Berkeley Township residents."*
- c. *"If deannexation is not approved, South Seaside Park residents will have to continue to travel unreasonable distances to utilize Berkeley Township recreation facilities which significantly injures the economic and social wellbeing of South Seaside Park residents."*
- d. With the Edwin B. Forsythe National Wildlife Refuge, Double Trouble State Park, the Ocean County Barnegat Branch Trail, Berkeley Island County Park, Mill Creek County Park and Robert J. Miller Airpark, there is "ample supply of national, state, and county owned park and recreational facilities on the Mainland for use by Berkeley Township residents".

I. Recreation & Senior Citizen Programs<sup>440</sup>

1. Mr. Bauman reported:

- a. The Berkeley Township Recreation Center, which serves all Township residents, is located at 630 Route 9 in Bayville and is a 13.6 mile/25 minute drive from South Seaside Park.

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<sup>438</sup> Presumably, Mr. Bauman intended to say that "All but 98.5% of the Township's developed parks are located **on the Island.**"

<sup>439</sup> Bauman Report: p. 26 & Testimony on August 6, 2015

<sup>440</sup> Bauman Report: p. 28



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- b. Traditionally, a twice-monthly summer concert series and an Irish Festival are held at Veteran's Park on the Mainland, and Family Unity Day events have been held at Manitou Park on the Mainland. *“The only recreation or recreation/social event held at South Seaside Park is the Summer Beach Party at White Sands Beach”*.
- c. The Township offers summer camp for Berkeley Township children. A temporary bus stop for this camp was provided at Lyons Memorial Park in 2013.
- d. The Township offers an adult wellness walk around Veteran's Park.
- e. Weeknight basketball programs were offered to children in 2013 at the Recreation Center on Route 9, but no transportation was offered from South Seaside Park.
- f. Registration is required to participate in the Township’s Senior Citizen programs. The 2013 - 2014 registration form requests that the participant select a bus stop from among 9 choices<sup>441</sup>, none of which are located in South Seaside Park.
- g. No youth programs were offered in South Seaside Park, and there are no senior citizen programs or providers in South Seaside Park.

2. Mr. Bauman concluded that:

*The loss [due to deannexation] of 1 location site to host 1 recreation program each year in South Seaside Park will not cause significant economic or social injury to Berkeley Township residents. If deannexation is not approved, it will result in continued economic and time related inconvenience of South Seaside Park residents having to drive in a vehicle for 1 hour round trip to participate in any Berkeley Township sponsored programs.*

*The Berkeley Senior programs do not take into consideration that Senior Citizens reside in South Seaside Park; there are no bus stops for Seniors living in South Seaside Park, nor do any Senior programs take place in South Seaside Park. There is no*

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<sup>441</sup> Bay Ridge Apartments, Holiday City at Berkeley, Holiday City South, Holiday Heights, the Recreation Center, Silver Ridge Park East, Silver Ridge Park North, Silver Ridge Park West, and Silver Ridge Park Westerly.



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*loss of Senior Citizen programs in South Seaside Park, thus deannexation will not cause significant economic or social injury to Berkeley Township residents.*

J. Environmental Resources<sup>442</sup>

1. Mr. Bauman opined that environmental resources are pertinent to deannexation because environmental conditions affect the quality of life and economic and social well-being of Township residents. His review of Berkeley's 2012 Environmental Resource Inventory found and concluded:

*There are no public community wells, non-public community wells or streams in South Seaside Park. Both South Seaside Park and Berkeley Township share the same watershed concerns under the Barnegat Bay Watershed Management Area. Deannexation will not cause significant damage to water resources in Berkeley Township or South Seaside Park.*

*South Seaside Park and Mainland Berkeley Township both have approved Shellfish Harvest Areas. Deannexation will not cause significant economic or social injury to Berkeley Township residents as a result of any loss of Shellfish Harvest Areas...*

*South Seaside Park has no farms, Prime Farmland Soils, Statewide Important Soils or Unique Importance Soils. Deannexation will not cause significant economic or social injury to the farming community of Berkeley Township.*

*South Seaside Park is in an area of high flood risk; deannexation will result in Berkeley Township relieving themselves of the responsibility of having high flood risk properties in their jurisdiction ~ reducing economic injury to Berkeley Township residents.*

2. The Bauman Report included the topic of Sand Dunes in the discussion of Environmental Resources, observing that “when Superstorm Sandy hit in October 2012, damage to Midway Beach property was minimal” and suggesting that this was because “the area is protected by 25’ high dunes that the Midway Beach community started passively building in the 1980s”.

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<sup>442</sup> Bauman Report: pp. 29 - 30



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Before Superstorm Sandy, Mr. Bauman asserted that the dunes were “120’ to 150’ wide”, but that Sandy “eroded about 50’ of sand from that width”. As a result, in November 2012, “the Midway Beach Condominium Association spent \$7,000 of their own funds on plants and fencing to start replacing the sand without using heavy equipment and without the assistance of Berkeley Township”, leading Mr. Bauman to observe that “residents of South Seaside Park have invested their own money and time into building sand dunes to combat beach erosion and supplement natural habitats”.

K. Historic & Cultural Resources<sup>443</sup>

1. Mr. Bauman observed that there are 3 properties in Berkeley Township that are listed in the National and State Registers of Historic Places, none of which are located in South Seaside Park.

Additionally, there are 5 properties in Berkeley Township that are certified eligible to be listed on the State and National Registers of Historic Places, with only 1 of these eligible properties, the Midway Camps Historic District,<sup>444</sup> being located in South Seaside Park.<sup>445</sup> Mr. Bauman observed that “generations of central New Jersey families have made vacationing at Midway Beach part of their summer tradition”.

2. Mr. Bauman opined:

*Deannexation does not result in the loss of any properties listed on the National and State Registers of Historic Places. Midway Camps Historic District is deemed only eligible to be listed on the state and national registers ~ it is not [actually] listed on the National and State Registers of Historic Places. The deannexation of 1 property deemed eligible to be listed on the National and State Registers of Historic Places does not cause significant economic or social injury to Berkeley*

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<sup>443</sup> Bauman Report: p. 31

<sup>444</sup> ...bounded by Central Avenue to the west, 13<sup>th</sup> Avenue to the north, Ocean Avenue to the east and 20<sup>th</sup> Avenue to the south ~ a community of about 400 one-story houses on average 20’ wide x 40’ deep lots.

<sup>445</sup> The 4 remaining certified eligible properties (Dover Forge, Double Trouble Historic Village, Pinewald and Manitou Park) are located on the Mainland.



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*Township residents. Historic and cultural places are not being moved or destroyed.*

**L. Public Safety<sup>446</sup>**

1. Issues related to Public Safety are addressed in §3.8.1 herein. Based on his findings regarding these topics, Mr. Bauman concluded:

*Contractual agreements and Mutual Aid Agreement contributions cover fire and first aid services for South Seaside Park residents; the longevity of these relationships help contribute to their stability and predictability; there is no reason why police coverage could [presumably “not”] follow precedent through an Inter-Local Services Agreement between Berkeley Township and Seaside Park Borough (if annexation were accepted) if they were absorbed entirely by Seaside Park Borough.*

2. Although Mr. Bauman included in his report<sup>447</sup> and repeatedly testified<sup>448</sup> that his analysis does not include analyses of the financial or budgetary impacts of deannexation, he does opine that, should deannexation occur:

*Berkeley Township would be relieved of the financial and administrative responsibilities of providing public safety for South Seaside Park and will result in economic benefit and not injury to Berkeley Township residents.*

**M. Public Transportation<sup>449</sup>**

1. Mr. Bauman reports that:
  - a. There is no public transit service connecting South Seaside Park with Mainland Berkeley Township. While the Ocean County *Ocean Ride* bus provides service to County residents, the routes<sup>450</sup> benefit only Township residents who live on the Mainland<sup>451</sup>.

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<sup>446</sup> Bauman Report: p. 32

<sup>447</sup> Bauman Report: p. 5

<sup>448</sup> Testimony on August 6, 2015, September 3, 2015, October 1, 2015.

<sup>449</sup> Bauman Report: p. 33



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- b. New Jersey Transit provides a seasonal bus route from New York to Brick Township, Toms River, the Ocean County Mall, Seaside Heights, Seaside Park and Island Beach State Park. The bus passes through, but does not stop in, South Seaside Park.
- c. While Ocean County is developing a 15-mile rail-to-trail multi-purpose (non-vehicular) trail on the Mainland, there are no such proposed or dedicated trails in South Seaside Park.

2. Based on the foregoing, Mr. Bauman concludes:

*South Seaside Park is not easily accessible via public transit by Mainland Berkeley Township residents; deannexation of South Seaside Park ~ an area not easily accessible by public transit ~ will not cause significant economic or social injury to Berkeley Township residents.*

*The time consuming and segmented public transit route that South Seaside Park residents are forced to take if they wish to access Mainland Berkeley Township's public buildings and facilities is a[n] economic and social burden; Berkeley Township's refusal to consent to deannexation will continue the economic and social injury burdened by South Seaside Park residents.*

N. Public & Private Schools<sup>452</sup>

1. Distances related to schools are addressed in §3.2.1 herein.
2. After detailing enrollment statistics, private school placements and sending and receiving relationships, Mr. Bauman concluded:

*There are no public or private schools in South Seaside Park; deannexation of South Seaside Park will not cause significant*

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<sup>450</sup> Ocean Ride Route #1: Whiting, Manchester, Berkeley, to Toms River, operates Monday, Wednesday and Friday, and makes stops at Davenport Road / Route 530, Holiday Heights Clubhouse, Davenport Road / Mule Road, and Holiday City Mini Mall.

Ocean Ride Route #2: Manchester, Lakehurst, Berkeley to Toms River, operates Tuesdays and Thursdays, and makes stops at Holiday City Mini Mall.

<sup>451</sup> In order for a South Seaside Park resident to access Mainland Berkeley Township via Ocean Ride, that person must take the Toms River Connection located in Lavallette (4.6 miles north of South Seaside Park ~ a 12 minute drive, ½ hour bicycle ride or 1½ hour walk). Similarly, Mainland Berkeley Township residents wishing to visit South Seaside Park must take the same Toms River Connection and then travel 4.6 miles south.

<sup>452</sup> Bauman Report: pp. 34 – 35



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*economic or social injury to Berkeley Township residents. Berkeley Township residents will not be denied access to any school facilities that would enhance their social and cultural enlightenment.*

3. Although Mr. Bauman included in his report<sup>453</sup> and repeatedly testified<sup>454</sup> that his analysis does not include analyses of the financial or budgetary impacts of deannexation, he does opine that, should deannexation occur:

*Based on 2010 U.S. Census data and discussions with South Seaside Park residents, there are very few school age children living in South Seaside Park. Any withdrawal of South Seaside Park pupils from the K-6 local [Berkeley] School District, or the... Regional School Districts would result in a financial savings to the Berkeley Township School District and this savings is a direct economic benefit to Berkeley Township residents.*

**O. Public Libraries<sup>455</sup>**

Berkeley Township participates in the Ocean County Library System. The closest of the 4 County Library branches to South Seaside Park is the Upper Shores Branch in Lavallette, a 4 mile /11-minute drive, 21-minute bicycle ride or 1.25 hour walk.

Mr. Bauman concluded:

*Since there is no local library system and no other public libraries in South Seaside Park, deannexation will not result in substantial social, economic, or cultural injury or detriment in Berkeley Township. No Berkeley Township residents will be deprived of participating in intellectual activities, and deannexation will not deprive Berkeley Township of prestige and social standing and/or the part they play in the region's general scheme of intellectual and social diversity.*

**P. South Seaside Park Social Interaction & Commercial Activity<sup>456</sup>**

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<sup>453</sup> Bauman Report: p. 5

<sup>454</sup> Testimony on August 6, 2015, September 3, 2015, October 1, 2015

<sup>455</sup> Bauman Report: p. 36

<sup>456</sup> Bauman Report: p. 37



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After a review of the eating and drinking establishments, lodging and retail stores in South Seaside Park, Mr. Bauman concluded:

*Since the number of eating and drinking establishments, lodging facilities, and retail... stores are minimal, and their characteristics are vernacular to the Barrier Island, deannexation will not result in substantial social or cultural injury or detriment in Berkeley Township. No Berkeley Township residents will be deprived of patronizing any of the establishments in South Seaside Park should it become part of a different municipality. Deannexation will not deprive Berkeley Township of any prestige and social standing and/or the part they play in the region's restaurant, lodging, and retail diversities.*

**Q. Houses of Worship<sup>457</sup>**

There are no Houses of Worship in South Seaside Park.<sup>458</sup> After reviewing the proximity of Houses of Worship in Seaside Park, Seaside Heights, Lavallette, Ortley Beach and Toms River to South Seaside Park, Mr. Bauman concluded:

*Since there are no houses of worship in South Seaside Park, deannexation will not result in substantial social injury or detriment to Berkeley Township residents. No Berkeley Township residents will be deprived of participating in religious activities, and deannexation will not deprive Berkeley Township of prestige and social standing and/or the part they play in the region's general scheme of religious and social diversities.*

**R. Quality of Life Issues<sup>459</sup>**

Mr. Bauman cited a number of Petitioners' assertions regarding the impacts that being part of Berkeley Township have on quality of life, but deferred to their testimony for specific complaints.

**S. Public Utilities<sup>460</sup>**

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<sup>457</sup> Bauman Report: p. 38

<sup>458</sup> Mr. Whiteman testified that there are 2 Churches in Seaside Park that are utilized by the residents of South Seaside Park. One being Saint Catharine's Roman Catholic Church and the other being the Seaside Park Union (Protestant) Church.

<sup>459</sup> Bauman Report: p. 39

<sup>460</sup> Bauman Report: p. 40



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After review of potable water service, sanitary sewer service and wastewater collection, and electric and natural gas service to South Seaside Park, Mr. Bauman concluded that “...utility arrangements will not change” and deannexation would cause “no significant social or economic impact to the residents of Berkeley Township”.

**T. Solid Waste & Recycling<sup>460</sup>**

Mr. Bauman reported that the Berkeley Township Division of Sanitation performs solid waste and recycling collection for South Seaside Park, with once per week *scheduled* garbage pickup (twice-weekly in July and August) and every-other-week *scheduled* recycling pickup. Bulk pickups are *scheduled* 4 times a year.

Petitioners have testified (§3.7.1 herein) that collection does not occur as scheduled. Accordingly, Mr. Bauman concluded that the experience of South Seaside Park residents:

*...conflicts with Berkeley Township solid waste and recycling collection performances, and Berkeley Township's refusal to consent to deannexation will continue in the social and economic impact to South Seaside Park residents by requiring them to frequently monitor the frequency and consistency of Berkeley Township's solid waste and recycling removal services in South Seaside Park.*

**U. Seaside Park Borough<sup>461</sup>**

1. Mr. Bauman included in his report an analysis of Seaside Park:
  - a. Seaside Park Borough is 0.768 square miles in size and has a population 1,579 according to the 2010 U.S. Census.
  - b. The Borough’s Municipal Building is located at Sixth and Central Avenues: a ½-mile, 5-minute bike ride or 10-minute walk for most South Seaside Park residents.

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<sup>461</sup> Bauman Report: pp. 41 - 42



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- c. The Borough's Recycling Center on 14<sup>th</sup> / Barnegat Avenue is across the street from South Seaside Park residences.
- d. The Borough's Recreation Center is located at 37 J. Street ~ 2 miles from South Seaside Park. The Recreation Office is located at 1701 North Ocean Avenue.

The Recreation Department provides year-round programs that include family-oriented activities and events, with many focusing on improving health, fostering family values, and continuing-education for adults and senior citizens. Adult fitness classes are held at the Seaside Park Elementary School.

- e. Seaside Park maintains public parks / playgrounds at:
  - 13<sup>th</sup> and Barnegat Playground and Ball Field;
  - 5<sup>th</sup> and Bayview Avenue Playground and Pier;
  - O. Street and Lake Avenue at the Bay; and
  - The Moe Levine Field and Park (located on 14<sup>th</sup> Avenue ~ directly north of the northwest section of South Seaside Park).

As with other Seaside Park facilities, the Borough's parks are a short travel time from South Seaside Park.

2. Zoning<sup>462</sup>

- a. After review of existing land uses in the area where South Seaside Park abuts Seaside Park, Mr. Bauman described the existing Zoning in both municipalities and opined:

*Berkeley Township's existing zoning is not consistent with the adjacent zoning of Seaside Park Borough. North of 14<sup>th</sup> Avenue, Seaside Park Borough permits detached single family dwellings at 8.7 units per acre. South of 14<sup>th</sup> Avenue between South Bayview and Central Avenues Berkeley Township permits townhouse development at 10 units per acre. The zoning along Central*

<sup>462</sup> Bauman Report: pp. 42 – 43 & Exhibit 24 and Testimony on August 6, 2015.



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*Avenue between Berkeley Township and Seaside Park is relatively consistent ...So, the existing South Seaside Park zoning is more intense than what the... zoning is in adjacent Seaside Park.*

- b. After describing new “Island Zoning”<sup>463</sup> recommended for South Seaside Park by the 2008 Master Plan, Mr. Bauman concluded that such Zoning:

*...is not consistent with the adjacent zoning of Seaside Park Borough. North of 14<sup>th</sup> Avenue, Seaside Park Borough permits detached single-family dwellings at 8.7 units per acre, while Berkeley's Master Plan recommended zoning would permit residential development at 15 units per acre and higher.*

and

*...Outside the Central Avenue corridor, the zoning between South Seaside Park and Seaside Park Borough are not consistent...*

- c. In characterizing the inconsistent zoning between Seaside Park and South Seaside Park, Mr. Bauman testified:<sup>464</sup>

*...South Seaside Park is remote from the Mainland but it's bound by its zoning regulations which are out of character with its own community...*

*...Those type of inconsistencies, you got 2 different governing bodies. Sometimes all the mistakes are swept into the boundary areas. They're not always cared for as much, in my experience...*

*If something is all the way at the end, if it's out of sight, out of mind, that there's inconsistent zoning if it's... not an area that a municipality is concerned about or has plans for, it tends to go unabated or shelved for further study, which is what's happening now with the island district zoning.*

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<sup>463</sup> Permitting:

- Attached single-family units only along 14<sup>th</sup> Avenue between South Bayview and Central Avenues; and
- Detached single-family units at the prevailing density of Midway Beach, or a Planned Unit Residential Development of single-family detached, townhouse units, and four-unit manor homes along 14<sup>th</sup> Avenue between Central and Ocean Avenues.

<sup>464</sup> Testimony on August 6, 2015 and September 3, 2015



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- d. When asked to be more specific as to why he views inconsistent zoning as a negative, Mr. Bauman testified:

*It's more intense. The existing zoning is more intense than the adjacent zoning.*

*Incompatible uses or inconsistencies are bad and competing densities or densities that aren't consistent... could be bad. If you had a single family detached house and now somebody comes in to build 4 family units, at 17.4 units an acre, that may decrease your property values if you own a single family detached.*

*...Quality of life would decrease. Parking spaces could be now at a premium even more so... Property values. Quality of life... Could become more of an issue. Quality of life issues.*

and

*Implementation of the Islands Zoned Districts would not improve their consistency either. Inconsistent zoning in an area with common characteristics and shared infrastructure is a blueprint for insensitive development, reduced property values, degraded vernacular character, and a decreased quality of life.*

## V. Berkeley Township Strategic Recovery Planning Report

1. Mr. Bauman included in his Report Amendment<sup>465</sup> references to the Township's June 2014 Strategic Recovery Planning Report ("SRPR"),<sup>466</sup> which was prepared in response to the damage caused by Superstorm Sandy. The SRPR recommends specific municipal actions to promote recovery from Sandy and to reduce impacts from future storms and other emergencies / natural disasters.
2. In terms of "Severe" or "Major" property damage, the SRPR focused on 3 Mainland Census Tracts. Mr. Bauman observed that properties in South Seaside Park are "not featured" in this section. Similarly, Mr. Bauman observed that South Seaside Park is not shown on a SRPR map depicting key community facilities and their relation to flood hazard areas.

<sup>465</sup> Report Amendment: pp. 11 of 15 to 13 of 15

<sup>466</sup> Prepared by T&M Associates (Stanley C. Slachetka, AICP/PP) adopted June 9, 2014.



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3. In terms of oceanfront damage, Mr. Bauman observed that the SRPR addresses South Seaside Park beaches, stating that this area sustained significant beach erosion, damage to beach access facilities, beach personnel facilities and dune fencing, and identifying the following projects as being implemented in order to restore the area:
  - Beach replenishment at the breach between 21<sup>st</sup> and 22<sup>nd</sup> Avenues;
  - Repair of lifeguard headquarters at 23<sup>rd</sup> Avenue;
  - Repair of replacement of damaged / destroyed wooden beach entrance ramps at 20<sup>th</sup> Avenue (complete rebuild; area of emergency vehicle and equipment access); 21<sup>st</sup> Avenue (complete rebuild); 22<sup>nd</sup> Avenue (ramp lifted, repaired and reset); and 23<sup>rd</sup> Avenue (ramp cleared of sand, 12 l.f. of ramp to beach reconstructed); and
  - Snow fence replacement along dunes.
4. The Bay Beach on the Barrier Island is reported to have sustained a damaged snow fence, bulkhead damage, and loss of rip-rap and Living Shoreline<sup>467</sup> features. The SRPR states that as of June 2014, the Township completed the replacement of damaged bulkhead and that replacement of Living Shoreline features and the installation of rip-rap will be completed in 2016.<sup>468</sup>
5. The SRPR identified the degradation of a previously existing dune systems along South Seaside Park as a significant Community Vulnerability exacerbated by Superstorm Sandy.

Prior to the storm, South Seaside Park had a system of dunes that provided protection for the neighborhood from high velocity wave action and flooding. Superstorm Sandy caused the dunes to erode, reducing their ability to protect structures relying on them for protection from flooding and storm surge.

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<sup>467</sup> A natural stabilization technique using a variety of structural and organic materials (wetland plants, submerged aquatic vegetation, oyster reefs, coir fiber logs, sand fill and stone) instead of hardened structures (bulkheads, revetments and concrete seawalls) to provide shoreline protection and maintain valuable habitat. The benefits of living shorelines include stabilization of the shoreline, protection of surrounding riparian and intertidal environment, improvement of water quality via filtration of upland run-off and creation of habitat for aquatic and terrestrial species. ([www.habitat.noaa.gov/restoration/techniques/livingshorelines.html](http://www.habitat.noaa.gov/restoration/techniques/livingshorelines.html)).

<sup>468</sup> The record contains no information as to whether the rip-rap portion of the project has been completed.



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6. Under Current Status of Post-Sandy Recovery Efforts, the SRPR addressed the adoption ordinances, CDBG Disaster Recovery Programs, FEMA Public Assistance Grants, Small Business Administration Disaster Loans and numerous State, County and municipal programs. However, Mr. Bauman states that *“this section of the report does not specify what areas of the Township these grant and loan funds were utilized”*.
7. Despite holding 4 Community Outreach meetings to answer questions from residents of affected areas, Mr. Bauman reports that none of the listed meetings were held in South Seaside Park.
8. Mr. Bauman reported that the SRPR’s *“Recommended Actions to Recover from Superstorm Sandy and to Improve Response and Increase Resiliency to Future Storms”* prioritized the following 10 actions:
  - Reexamine the Master Plan to address post-Sandy strategies and policies;
  - Adopt a Floodplain Management Plan as part of the Master Plan Reexamination;
  - Update, automate and expedite the Township's system for processing Construction Permits;
  - Install a Town-wide Supervisory Control and Data Acquisition system to communicate critical alarms to a centralized location or operational personnel;
  - Update the Township’s Hazards Mitigation Plan and Emergency Operating Plan;
  - Create a Township Debris Management Plan;
  - Prepare a Beach-Dune System Susceptibility Assessment to identify weaknesses in the dune system;
  - Prepare a Capital Improvement Plan;
  - Update the Township's GIS database to catalog and inventory all infrastructure owned by the Township; and
  - Continue to increase Township participation in FEMA's Community Rating System.
9. Mr. Bauman took issue with the SRPR for its lack of attention to South Seaside Park. Specifically, aside from Recommended Action g. (above), *“the remaining proposed*



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*actions do not directly relate to South Seaside Park [and] are geared towards serving the Township as a whole*<sup>469</sup> and concluding that the “*infrastructure needs for South Seaside Park are not included in the Report; nor does it cite cooperative efforts with neighboring municipalities on the barrier island*”.<sup>470</sup>

**G. Conclusion**

In both the *Evaluation Process & Summary of Findings* and the *Conclusion* sections of his Report,<sup>471</sup> Mr. Bauman opined:

**1. *If Berkeley Township consents to the deannexation of South Seaside Park, Township residents will experience the following losses:***

- The loss of 150.75 acres (0.24 acres) of Barrier Island land ~ 0.5% of the total land area of Berkeley Township. The Township has determined that South Seaside Park has no future growth capacity. There is therefore no loss of any benefits from future development.
- The loss of 490 persons ~ 0.1 % of the total population of Berkeley Township. The racial composition and median ages of South Seaside Park and Berkeley Township are similar. Residents of South Seaside Park and Berkeley Township both are similarly employed in areas of management, sales and office work. Deannexation will not result in a significant injury to Berkeley Township's racial composition, median age or workforce population.
- The loss of 1,410 housing units ~ 0.1%<sup>472</sup> of the total housing inventory of Berkeley Township. The ratio of household types in Berkeley Township and South Seaside Park are similar (40% one-person households and 60% are two-or-more person households). The majority of housing types are similar (one-unit, detached), and the median age of a South Seaside Park housing unit is 44 years vs. 33 years for the average home in Berkeley Township. Deannexation will not result in a significant injury to Berkeley Township's household composition, housing diversity or inventory.
- The loss of 7.1 acres of dedicated open space property. South Seaside Park makes up only 0.5% of the total waterfront of Berkeley Township, and only 2.2%<sup>473</sup> of the total preserved open space.

<sup>469</sup> Testimony on November 5, 2015

<sup>470</sup> Bauman Report Amendment: p. 3

<sup>471</sup> Bauman Report: pp. 8 – 13, 44 – 47

<sup>472</sup> 1,410 housing units is 6% not .1% of 23,818 housing units.

<sup>473</sup> See Township response below, §3.1.3 herein.



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- The loss of White Sands Beach and Sargent John A Lyons Memorial Park. Deannexation will not result in a significant loss of Berkeley Township's open space or recreational areas.
- The loss of the annual summer beach party at White Sands Beach.
- The loss of the Midway Beach Camps ~ a site eligible for listing on the National and State Registers of Historic Places.
- The loss of 3 liquor licenses presently utilized by the Atlantic Bar and Grill, the Berkeley Restaurant and Fish Company and the Bum Rogers Tavern and Crab House.
- The loss of the opportunity to implement the Master Plan recommended Island Zone Districts in South Seaside Park.
- The loss of the opportunity to include South Seaside Park in future Fair Share Plans for Affordable Housing.

*Mr. Bauman concluded that, “given the geography, demographics, development potential, commercial activity, biological and historic resources, and social and cultural diversities of Berkeley Township, the above-cited losses are not significant enough to deny deannexation”.*

**2. If Berkeley Township consents to the deannexation of South Seaside Park, Township residents will experience the following economic and social benefits:**

- Land that is zoned an area of high flood risk by FEMA will no longer be under the jurisdiction of Berkeley Township.
- Deannexation will result in financial savings involved with the withdrawal of South Seaside Park students from the Berkeley Township school district.
- Deannexation will result in financial savings related to the municipal obligations of providing roadway resurfacing, solid waste and recyclable collection, snow removal, police service, animal control and park maintenance.
- Most Berkeley Township residents are unaware that South Seaside Park is part of Berkeley Township ~ except for those residing in South Seaside Park. Deannexation of South Seaside Park will not cause any loss in prestige of having Barrier Island land within one's municipal jurisdiction.



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- Island Beach State Park is also part of Berkeley Township, so the loss of the White Sands beachfront is easily compensated.

**3. *If Berkeley Township consents to the deannexation of South Seaside Park, Township residents will NOT experience significant change:***

- Berkeley Township does not host any senior citizen or children's programs in South Seaside Park. Since only one Township event is held at South Seaside Park annually, deannexation of South Seaside Park will not significantly impact the Township's ability to plan and accommodate for recreation, children's, and senior citizen's programs and similar amenities for residents.
- Deannexation would not result in the withdrawal of significant numbers of South Seaside Park students from the Berkeley Township School District or the subsequent savings involved with such departures. South Seaside Park would remain in the Central Regional School District.
- Mainland Berkeley Township and South Seaside Park are both in the Barnegat Bay Watershed Management Area, and both have NJDEP approved Shellfish Harvest Areas. Deannexation will not result in Berkeley Township losing their only Shellfish Harvest Area.
- South Seaside Park has no properties officially listed on the State or National Registers of Historic Places, has no farms, no Prime Farmland Soils, no Statewide Important Soils and no Unique Importance Soils. There are no public community wells, non-public community wells or streams. Deannexation will not significantly impact any cultural sites or environmental resources currently available to or utilized by Berkeley Township residents.
- With only 8 restaurants (5 without a bar, 3 with bar), 2 hotel / motels and a small number of retail stores in South Seaside Park, Berkeley Township will not incur the loss of any significant commercial resources available to or utilized by Berkeley Township residents should deannexation occur.<sup>474</sup>
- Since there are no Houses of Worship in South Seaside Park, Berkeley Township residents will not incur any loss of participating in any religious activities should deannexation occur.

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<sup>474</sup> More broadly, Mr. Bauman testified (August 6, 2015) that, from a zoning and planning perspective, Berkeley Township would not lose any special uses that in South Seaside Park if deannexation is granted, stating that he "...did not see any special zones in South Seaside Park that would be unique or special if they were lost through deannexation" and that the uses are there are not so unique or special because they all exist on the Mainland, and in much greater quantity.



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- Since there are no schools or libraries in South Seaside Park, Berkeley Township residents will not incur any loss of any intellectual or cultural resources should deannexation occur.

**4. *If Berkeley Township consents to deannexation of South Seaside Park, South Seaside Park residents will experience the following economic and social benefits:***

- South Seaside Park will have the opportunity to request annexation from adjacent Seaside Park. South Seaside Park and Seaside Park share the same character as many of the small barrier island communities. The incorporation of these entities makes physical and fiscal sense.
- South Seaside Park residents will benefit from the nearby municipal facilities and amenities of Seaside Park. South Seaside Park residents will no longer need to travel by car 1 hour round trip to the Mainland to attend a public meeting, pay a tax bill or participate in a community activity.
- South Seaside Park residents will benefit from becoming included in Seaside Park's Master Plan and Land Use Ordinance. There is an opportunity to ensure consistent zoning in a broader area than if South Seaside Park continued to be part of Berkeley Township; thereby protecting property values in South Seaside Park and preserving the unique Barrier Island community character and identity.
- South Seaside Park residents will not lose any social, cultural, religious diversities associated with Mainland Berkeley Township since both populations are homogeneous and the underlying feeling of disconnect with the Mainland contributes to the lack of identity and association with Mainland Berkeley Township residents.

**5. *If Berkeley Township denies deannexation of South Seaside Park, South Seaside Park residents will continue to experience the following economic and social injuries:***

- Berkeley Township's Master Plan, Land Use Ordinance, Build-Out Analysis, Vision Plan and Affordable Housing Plan are pre-occupied with the creation of a town center, commercial nodes, and corridors on the eastern Mainland. If South Seaside Park were to continue to be part of Berkeley Township, the current studies, plans, and land use legislation neglects the conditions and needs of Barrier Island South Seaside Park residents.
- The only recommendation made in the Master Plan that involves South Seaside Park, the recommendation for Island Districts in South Seaside Park, has not advanced since its inception and is not part of the Land Use Ordinance.



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- South Seaside Park is a remote part of Berkeley Township. The lack of Township facilities and amenities on the Barrier Island results in significant travel and time commitments by South Seaside Park residents when they wish to conduct municipal business, attend a public meeting, or participate in a program.
- The lack of Berkeley Township's provision of services to South Seaside Park residents is a social and economic injury that is multi-faceted:
- Capital investment in South Seaside Park and municipal services provided to the residents are haphazard and not trouble-free.
- South Seaside Park's present zoning designations and proposed Master Plan Island District zones are not consistent with the character of adjoining Barrier Island communities.

*Land with common physical characteristics and a shared infrastructure that is zoned inconsistently due to different municipal jurisdictions is a blueprint for poor and insensitive development resulting in reduced property values, degraded vernacular character of the Barrier Island communities and decreased quality of life and enjoyment of one's property. Inconsistent zoning between Berkeley Township and Seaside Park Borough is detrimental to the economic and social well-being of South Seaside Park residents.*

*Should the capacities of the current zoning ever be fully exercised, or if the Island District zones were ever adopted into law, the residents of South Seaside Park would experience significant injury to their economic and social well-being.*

**6. If Berkeley Township consents to deannexation of South Seaside Park, Berkeley Township planning and zoning will not be negatively impacted:**

- The single Master Plan recommendation for South Seaside Park, the proposed Island District zoning, has not been implemented. Such recommendation would no longer be valid and could be removed from the Master Plan without any loss should deannexation occur. The absence of South Seaside Park would go relatively unnoticed given the number of planning initiatives on the Mainland.
- Use and bulk requirements found in current South Seaside Park zone designations are not unique and are present on the Mainland. Should deannexation occur, the South Seaside Park zone requirements can be removed from the Land Use Ordinance without any loss to the diversity or quantity of permitted uses.



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- Deannexation will not impact Berkeley Township's Fair Share for Affordable Housing Plan since South Seaside Park is not included in the plan.
- Deannexation does not have any impact on Berkeley Township's 2020 Vision Statement since South Seaside Park is not included in the document.

H. Consistency with Statewide Public Policies

Concerning deannexation in general, Mr. Bauman states<sup>475</sup> that "*the proposed deannexation is consistent with statewide public policies that encourage sensible municipal governing of adjacent and contiguous areas*".

I. Mr. Bauman ended his testimony<sup>476</sup> by summarizing the conclusions of his Report and stating that the evidence supports

*Petitioner's cause to satisfy their burden of proof that the negative impacts of deannexation will not cause significant social or economic injury to the well-being of the Berkeley Township residents...*

**3.10.2 ISSUES RAISED DURING CROSS-EXAMINATION**

A. When asked if the long-term goals for the Township as expressed in the 2015 Master Plan have any impact for South Seaside Park, Mr. Bauman stated:<sup>476</sup>

*The only long-term goal cited in the 2015 reexamination report is to prepare a land use study for South Seaside Park<sup>477</sup> to analyze and review existing zoning in the area. The 2015 Reexamination Report continues by stating that the existing zone plan for South Seaside*

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<sup>475</sup> Bauman Report: p. 6

<sup>476</sup> Testimony on August 6, 2015

<sup>477</sup> Mr. Bauman testified on September 3, 2015 that, to his knowledge, such a study has not been undertaken, and further opined:

*To kick the can down the street and recommend further study, no on that. I would have liked to see more progressive results from that rather than the study. It was in 2015. It was in the previous plan documents all the way through 2008 about this Island District zoning. And not much has been done on it, so I would expect more from a reexamination report at this time if there was more effort given to the South Seaside Park area.*



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*Park does not adequately reflect established land use patterns, i.e., certain areas are zoned multi-family residential, where single-family and/or commercial or retail uses currently exist.*

This and similar statements precipitated a discussion between Mr. Bauman and the Board's Professionals<sup>478</sup> as to whether or not actions, policies, recommendations, etc. contained in a Master Plan, Capital Improvement Plan or other document apply or relate to South Seaside Park if they are "not specific to South Seaside Park" but are "geared towards the Township as a whole".

1. Responding to the question:

*Although that South Seaside Park is not specifically mentioned in any of these actions, why would not any of the actions that are recommended, specifically the creation of or the preparation of a Capital Improvement Program that would identify infrastructure investments needed by the Township as a whole? How would any of those not really apply to South Seaside Park?*

Mr. Bauman responded:

*They didn't specifically say they would apply. So I could not take into account that they would apply.*

and

*Just because you're proposing a Capital Improvement Plan does not mean that that plan is going to focus on South Seaside Park. Just because you're proposing, you know, the GIS data base, there may be characteristics of South Seaside Park that aren't covered in this updated GIS data base... So while you're serving the Township as a whole, we're looking for services for ~ geared towards South Seaside Park residents over the geographic area, such as a dune system or...*

2. When pressed on this issue, Mr. Bauman, alternately:

- Responded that Township-wide efforts could apply to South Seaside Park;<sup>479</sup>

<sup>478</sup> Testimony on November 5, 2015.

<sup>479</sup> Testimony on November 5, 2015:



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- Responded that he did not have enough information to answer the question;<sup>478</sup> or
  - Demurred.<sup>480</sup>
3. When asked if he had “any evidence to suggest that any actions that the Township has taken in terms of its post-Sandy recovery efforts has, in fact, not benefited the residents of South Seaside Park”, Mr. Bauman responded:

*Well, I think in... your report you cite beach replenishment between 21<sup>st</sup> and 22<sup>nd</sup> Avenue, repair, replacement and damages of benches. ...there is a citation of 4 items that have been projects that have been implemented in the area...*

*So when you address South Seaside Park beaches... of the report, with specifics such as repairing destroyed benches at 20<sup>th</sup> Avenue, completely rebuild areas of emergency vehicles and equipment access, complete rebuilt areas of ramps, lifeguard headquarters, snow fence replacement... When you cite specifics likes this, and then when you go to priority of actions and ~ you kind of lose it. South Seaside Park is lost in the rest, where certain goals – certain accomplishments are cited,..*

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*QUESTION: So a Township-wide Flood Plain Management Plan, even though South Seaside Park was not mentioned, wouldn't that be a general benefit to South Seaside Park residents as well as the Township as a whole?*

*RESPONSE: If it increases their insurance rates, I'm not so sure about that.*

*QUESTION: Well, more specifically, if the Floodplain Management Plan was used to improve the Community Rating System point schedule that would, in fact, reduce insurance rates, wouldn't that benefit residents of South Seaside Park?*

*RESPONSE: That would, yes.*

<sup>480</sup> Testimony on November 5, 2015:

*QUESTION: For updating the permit automation, streamline permit automation or streamline the permitting process in the Township, to make it more efficient and cost effective and more responsive to Township residents, would that benefit South Seaside Park residents as well?*

*RESPONSE: I can't say on that...*

*QUESTION: Well, being a municipal employee for as long as you have been and an official, do you suggest that every neighborhood has to be specifically called out on a city-wide effort, or a full, municipal-wide effort for it to be relevant to a particular neighborhood?*

*RESPONSE: I think it depends on the town. Smaller towns may include or section out neighborhoods or areas. Larger towns or cities may not have that capabilities, or may not be functional to do that.*

*QUESTION: ...do you have any evidence that the residents of South Seaside Park are not benefited by the various and substantial planning activities that have been taking place as a result of the recommendations of the Strategic Recovery Planning Report and the substantial grant funding that the Township has received for the purposes of undertaking a comprehensive post-Sandy planning analysis for the community as a whole?*

*RESPONSE: That may be better answered by the residents themselves and whether or not they felt the impact of these plans and processes that are now in place.*



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When pressed on this question, Mr. Bauman demurred,<sup>481</sup> at which time Petitioners' Attorney ended this line of questioning.

4. When asked, based on his review of the Township's Master Planning documents, to describe the kind of development Berkeley Township is anticipating in the near future, Mr. Bauman testified:<sup>482</sup>

*They intend to shift growth away from environmentally sensitive areas and redirect it to areas zoned and prepared for growth. The kind of growth they expect is that, what would be generated from residential, retail and industrial development....*

*There's not much development potential west of the Garden State Parkway or on the Barrier Island, so this eastern Mainland is the area for future growth for Berkeley Township.*

When asked to describe the kind of development potential the Township envisions for South Seaside Park, Mr. Bauman testified:<sup>482</sup>

*No significant development potential. It's already built out. The 2008 Build-Out Analysis from the Township revealed that there's no developable land in South Seaside Park.*

*[South Seaside Park is] not a maturing community that can grow. It's a remote part of Berkeley Township that lacks*

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<sup>481</sup>

*QUESTION: But, again, you don't have any evidence that supports that in all the planning activities that the Township has undertaken, that benefits the Township township-wide, that there's anything that does not benefit South Seaside Park?*

*[continued]*

*[continued]*

*RESPONSE: When I look at your prioritized or the actions that have been made, and I look at... what you're proposing to do, I only see one, the beach dune system. While the rest address the Township as a whole, that was the one thing that addresses South Seaside Park in particular. And that's exactly what my sentence says: "The remaining proposed actions besides action number 7, repairing the beach dun system, the remaining actions do not directly relate to South Seaside Park. They're geared towards serving the Township as a whole". ... They serve it as a whole. Creating a debris Management Plan, that's a township-wide priority. That is not specific.*

*QUESTION: And that would not benefit residents of South Seaside Park?*

*RESPONSE: I don't know. I don't know if it will or not. I need to see it. I need to read it. I need to study it.*

<sup>482</sup> Testimony on August 6, 2015



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*planning and zone regulations that address its special community character. It's pretty much built out.*

5. When asked to clarify his conclusions regarding the Township's post-Sandy Strategic Recovery Planning Report, Mr. Bauman asserted<sup>483</sup> that the SRPR:

*...prioritizes 10 actions and the length of time it would take to complete each action. These actions were not specific to South Seaside Park... When I reviewed the Strategic Plan, I couldn't find any specifics relating to South Seaside Park. ...Except for the preparation of the dune system.*

6. When pressed about individual SRPR recommendations, Mr. Bauman either conceded applicability or stated that he was unable to answer the question.<sup>484</sup>

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<sup>483</sup> Testimony on November 5, 2015

<sup>484</sup> Testimony on November 5, 2015

QUESTION: *So a Township-wide Flood Plain Management Plan, even though South Seaside Park was not mentioned, wouldn't that be a general benefit to South Seaside Park residents as well as the Township as a whole?*

RESPONSE: *If it increases their insurance rates, I'm not so sure about that.*

QUESTION: *Well...if the Floodplain Management Plan was used to improve the Community Rating System point schedule that would, in fact, reduce insurance rates, wouldn't that benefit residents of South Seaside Park?*

RESPONSE: *That would, yes.*

QUESTION: *...For updating the permit automation, ... streamline the permitting process in the Township, to make it more efficient and cost effective and more responsive to Township residents, would that benefit South Seaside Park residents as well?*

RESPONSE: *I can't say on that... I can tell you that the preparation of the dune system was a direct impact on how that would positively improve conditions there. That's the only one that I saw that would have direct impact.*

QUESTION: *But the other action and activities that are part of the Post-Sandy Planning Assistance Program, although South Seaside Park is not specifically mentioned, if it's benefiting or addressing issue regarding resiliency and recovery for the Township, how could that not benefit South Seaside Park?*

RESPONSE: *Without knowing how these action items have progressed, I can't tell you whether or not it's significant or not...I reviewed this in February, and the Hazard Mitigation Plan, Emergency Operating Plan, I couldn't find those on your website, I couldn't find them in documents. So I wasn't able to review those. So I can't tell you whether or not they had a positive impact or any impact at all on South Seaside Park.*

QUESTION: *So... you didn't review the Re-Management Plan that was adopted by the Township as part of the SRPR?*

RESPONSE: *When was that adopted?*

QUESTION: *This is just recently was completed.*

RESPONSE: *Then no, I have not.*

QUESTION: *What about the geographic information system ["GIS"], that is intended to improve response and recovery township-wide..., which the data and information about South Seaside Park is also part of that GIS system.*

RESPONSE: *I had not had the opportunity to review the GIS system that the municipality has*



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7. When asked if he had “*any evidence that the residents of South Seaside Park are not benefited by the various and substantial planning activities that have been taking place as a result of the recommendations of the [SRPR] and the substantial grant funding that the Township has received for the purposes of undertaking a comprehensive post-Sandy planning analysis for the community as a whole*”, Mr. Bauman demurred.<sup>485</sup>

When asked again if he had “*any evidence to suggest that any actions that the Township has taken in terms of its post-Sandy recovery efforts has, in fact, not benefited the residents of South Seaside Park?*”, Mr. Bauman reiterated:

- Beach replenishment at the breach between 21<sup>st</sup> and 22<sup>nd</sup> Avenues;
- Repair of lifeguard headquarters at 23<sup>rd</sup> Avenue;
- Repair of replacement of damaged / destroyed wooden beach entrance ramps at 20<sup>th</sup> Avenue (complete rebuild; area of emergency vehicle and equipment access); 21<sup>st</sup> Avenue (complete rebuild); 22<sup>nd</sup> Avenue (ramp lifted, repaired and reset); and 23<sup>rd</sup> Avenue (ramp cleared of sand, 12 l.f. of ramp to beach reconstructed); and
- Snow fence replacement along dunes.

and referenced page 11 of his Amended Report.

8. When asked<sup>486</sup> if he made “*any room*” in his opinion for the possibility that the demolition and redevelopment process occurring on other barrier island communities in the State could lead to growth in South Seaside Park, Mr. Bauman replied that he “*did not*”.

When asked if such redevelopment was “*not a relevant factor*” to consider vis-à-vis his opinion that there is no growth potential in South Seaside Park, Mr. Bauman deferred to the Township’s Build-Out Analysis,<sup>487</sup> which did not include such process.

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<sup>485</sup> Testimony on November 5, 2015

*That may be better answered by the residents themselves and whether or not they felt the impact of these plans and processes that are now in place.*

<sup>486</sup> Testimony on November 5, 2015

<sup>487</sup> When asked if he agreed with the findings of the Build-Out Analysis, Petitioners’ Attorney objected. After lengthy discussion regarding the merits of the question and Mr. Bauman’s ability, as a Professional Planner, to agree or disagree with the assessment of the Analysis and put his own interpretation on it as applied to deannexation, Mr. Bauman stated that he agreed with the Build-Out Analysis.



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When specifically asked what he thought of the potential for growth due to the redevelopment process, Mr. Bauman responded:

*I think that there's no ability for potential future growth in South Seaside Park. And I base that on the 2008 growth capacity study endorsed by the Township.*

*And if you're going to tell me that there's tear downs, I need to know the zone. I need to know the lot sizes. I need to know variances. Those are specific, individual cases. And if you're going to tell me that they're tearing down a building up in Atlantic City or in Deal, which are all on the Jersey shore, I'm going to... ask you to show me it on that.*

*You're making a very broad, generalized statement about the growth of the Jersey shore, and I can't go along with that.*

9. When asked if the zoning issues inconsistencies between South Seaside Park and Seaside Park would better be addressed by Berkeley Township via the traditional Master Planning process as opposed to deannexation, Mr. Bauman appeared unable to answer.<sup>488</sup>

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<sup>488</sup> Testimony on September 3, 2015

*QUESTION: ... How does... the process improve through deannexation and is it a deannexation question? ...if there's a zoning question or issue or concern in any part or neighborhood of a community, regardless of whether it's on the barrier island or not, [why not address] zoning questions or the land use questions through the appropriate process, by addressing it through the Master Plan and the zoning ordinance?*

*RESPONSE: There are other ... issues at stake. There are other means of why the residents want deannexation. It's not just zoning. And I'm only here to comment about the zoning part on that. There's the easy way and the hard way. The easy way would be to get [the rezoning of the] Island districts out of the study phase. Get into the implementation phase. Include it in the Vision Statements of the Township. Include it in the Plan Endorsement process. That's the easy way.*

*The hard way is what the residents have chosen to do through deannexation, to have a voice of their own and to work with other like-minded folks in Seaside Park.*

*QUESTION: ...would it be a faster process with the understanding the Master Plan was just adopted in 2015 and now the next step in the process is the... implementation of the various recommendations and the adoption of the new zoning districts.*

*RESPONSE: Is there a timetable for that?*

*QUESTION: No, there's no timetable. But... the Master Plan has just been adopted.... How could ... a deannexation process where then you [i.e., Seaside Park] then need to go in and adopt the brand new Master Plan for this new quasi community [i.e., South Seaside Park being a part of Seaside Park] and adopt the zoning ordinances that would take time, how could that be faster and more effective than the existing processes already in place and underway?*

*RESPONSE: I can't answer that. There's too many variables. There's a lot of speculation on that. I can't make those speculations.*



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During this discussion, it was discovered that the zoning issues asserted by Mr. Bauman were not among the concerns raised by the Petitioners.<sup>489</sup>

10. Mr. Bauman was asked if the statement in his report regarding funds spent by the Midway Beach Condominium Association for beach/dune restoration in the aftermath of Superstorm Sandy<sup>490</sup> was intended to suggest that Township funds be used to restore dunes on private property, to which he replied that he “*did not make that assumption in that paragraph*”. When asked to clarify his intent in including this statement in his report, Mr. Bauman demurred.<sup>491</sup>

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<sup>489</sup> Testimony on September 3, 2015

*QUESTION: ... one of your key points here in terms of why deannexation is appropriate is because there's a disconnect in zoning ... and now you're suggesting that, well, maybe it's not as important, that issue is not as important as maybe some other issues... Well, let me ask it, maybe a little more direct on that. Are you suggesting ... that ... rezoning is an important reason for deannexation or not?*

*RESPONSE: It's not the first thing that comes to the resident's mind. But from a professional planner's standpoint, zoning helps, rezoning helps, addressing these items in the Master Plan helps.*

*QUESTION: Would you recommend to any of the towns that you represent ...if there was a neighborhood in which the zoning in that neighborhood, there was a disconnect in the*

*[continued]*

*[continued]*

*zoning of the neighborhood, this maybe not quite match up to what existing characteristics, and the adjoining municipality had zoning that was completely compatible with that existing neighborhood, would you recommend, from a land use planning perspective, that it would be preferable to deannex that neighborhood to join the adjoining community or address, through the appropriate Master Plan and zoning process within the community, to address that zoning disconnect?*

*RESPONSE: All other factors constant and it was only zoning, then yes. But in this case, there are other issues at hand that has stirred the need for deannexation. It's not just zoning there. When I did my informal interviews, I didn't hear anybody say, the zoning in Seaside Park is different than here, that inconsistency we can't stand, we're not going to deal with it. I didn't hear any of that. I heard a lot about people's traveling. I heard a lot of about our communities, the way the folks relate.*

*QUESTION: So, then, the zoning is really not an issue of concern to the petitioners?*

*RESPONSE: It is to me. And it is to this board. It should be. Zoning is something that should be of concern. Not just all the other, the testimony provided by the residents, but also from the Master Plan and zoning perspective.*

*QUESTION: So, are the residents there happy with the zoning?*

*RESPONSE: You'd have to ask the residents.*

*QUESTION: Well, you did the interviews. You put the report together.*

*RESPONSE: I said informal. Six to 12 people. That's not a wide enough spectrum to get an opinion of the residents about the zoning implications.*

<sup>490</sup> Bauman Report: p. 30

*...the Midway Beach Condominium Association spent \$7,000 of their own funds on plants and fencing to start replacing the sand without using heavy equipment and without the assistance of Berkeley Township. Residents of South Seaside Park have invested their own money and time into building sand dunes to combat beach erosion and supplement natural habitats.*

<sup>491</sup> Testimony on November 5, 2015

*QUESTION: Well, then, what are you trying to say? Other than a recitation of facts, what are you intimating? Or what are you suggesting? Or what are you trying to say?*



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11. Regarding his statement<sup>492</sup> that:

*The proposed deannexation is consistent with statewide public policies that encourage sensible municipal governing of adjacent and contiguous areas. Berkeley Township local services can be made more efficient without the burden of maintaining South Seaside Park on the barrier island. Consolidation of municipalities sharing similar geographic features is encouraged by the State of New Jersey.*

Mr. Bauman was asked to specify policies to which he was referring and if he was aware of any state policies that might address deannexation issues, to which he responded that he could not recall the studies, but:

*...there have been municipal consolidation studies. They always want to consolidate smaller towns into bigger towns and get less. We have 564 municipalities, ... this was a governor's initiative, if I recall, even going back to [Governor Christie Todd] Whitman. But just for the sake of being in the present, with Governor [Chris] Christie and trying to get towns to consolidate, to cap their property taxes in ways that they could be creative and ways include, while not specifically mentioned, I would need to re-read the studies. But annexing or consolidating municipalities that are close together would... make economic sense.*

*...I can't cite the specifics, but I know Scotch Plains and Fanwood is one case. And then the Princeton Township and Princeton Borough.*

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*RESPONSE: Well, the dunes fell into the Environmental Resources Inventory, and I felt the report would not be complete without addressing it, and that's what I found.*

*QUESTION: So the statement that the Township didn't do anything to assist in this effort may or may not be relevant to a sense that the Township is not living up to its responsibilities for South Seaside Park?...*

*INTERJECTION BY PETITIONERS' ATTORNEY CLARIFYING THAT WHILE THE MIDWAY BEACH AREA IS PRIVATE, A PORTION OF THE DUNES IN QUESTION ARE LOCATED ON A PAPER STREET.*

*QUESTION REPHRASED: So to the extent that any work on private property was not assisted by the Township, is that included here to suggest that it should have been?*

*RESPONSE: No. No, it's just saying how they reacted to the hurricane ... The Superstorm.*

<sup>492</sup> Bauman Report: p. 6



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Upon being reminded that the examples he cited were consolidations to reduce the number of municipalities in the state and not deannexations or boundary adjustments, Mr. Bauman responded:

*For what purpose? For economic sense? ...These are ways to have municipalities work better and more efficiently from economics in the geographic standpoint. And when there are situations where municipal boundaries stretch 6 miles, 5 miles over water onto a barrier island. And while there are healthy municipalities just to the north, Seaside Park, I believe that there are some state policies that would encourage those type of municipal boundary changes.*

When pressed to provide concrete examples of public policy statements supporting deannexation, Mr. Bauman demurred, stating “*I don't have that in front of me now*”.

12. Regarding his previous statements which indicated that he did not perceive Berkeley to be losing a unique area of the Township, should deannexation occur, Mr. Bauman stated:<sup>493</sup>

*It's my opinion that there would be no loss of diversity should deannexation be granted. In the previous testimony and cross-examination I compared demographic housing and economic data between South Seaside Park and the Mainland...*

Mr. Bauman supplemented his testimony by reviewing the Census Block Groups for what he called Bayside South (south of Potters Creek to the municipal boundary line) and North (below Ocean Gate all the way south to Potters Creek) ~ both on the Mainland. Mr. Bauman found that while the ages between South Seaside Park and the bay areas vary greatly, median ages in South Seaside Park and Berkeley are similar. Additionally, Mr. Bauman found that income and median housing values for these areas were both higher than the Township’s average and generally in line with those indicated for South Seaside Park.

13. White Sands Beach vs. Island Beach State Park<sup>494</sup>

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<sup>493</sup> Testimony on November 5, 2015



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Regarding his opinion that Berkeley Township would not be negatively impacted by the loss of White Sands Beach should deannexation occur because the Township would still retain Island Beach State Park, Mr. Bauman was asked if there was a difference between a municipality owning, maintaining and receiving revenue from a beach as opposed to having a State-run beach in the municipality over which it has no jurisdiction.

Mr. Bauman agreed that “*it’s a unique resource for any municipality that, an oceanfront beach that they own and control, maintain, provide access to for their residents*”.

**3.10.3 TOWNSHIP RESPONSE**

**A. Geography, Population, Income, Occupation, Housing**

1. Township Planner Stanley Slachetka testified<sup>495</sup> that the noncontiguous nature of South Seaside Park is not unique. In Ocean County alone, Toms River and Brick Townships both have noncontiguous barrier island portions. Other locations in New Jersey with similar geometries are Upper and Lower Townships in Cape May County, Egg Harbor Township in Atlantic County and Montague and Pennsauken Townships along the Delaware River.

In his opinion,<sup>495496</sup> Berkeley Township is thought of as a “mosaic of neighborhoods” and South Seaside Park is one of those neighborhoods.

*These [neighborhoods] are all pieces of the fabric of Berkeley Township. And not any one of those is any more or less important or distinct or important of your consideration than the other. And they bind the community together in that sense of diversity and that sense of the collection of neighborhoods. And it’s a valid planning concern.*

*...you’ve got a number [of] places... defined by ethnic characteristics sometimes. They’re sometimes cultural. There’s*

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<sup>494</sup> Testimony on August 6, 2015

<sup>495</sup> Testimony on July 6, 2017.

<sup>496</sup> Testimony on August 3, 2017



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*socioeconomic aspects to that definition. And there's physical characteristics. So, you're going to have these differences. But in Berkeley Township and the way that Berkeley Township defines itself, Berkeley Township defines itself... and the way that we've looked at it in the time that we've worked with [the] Planning Board and how you presented it to us, is that Berkeley Township is a collection of neighborhoods. And that your planning work has recognized, recognized those differences and addressed those differences in certain ways, whether it's a redevelopment plan or whether it's certain types of zoning or whatever, to support and enhance communities to support them in their growth. To support them in sustaining themselves and their character.*

2. Mr. Slachetka presented population, income and occupation data based on the 2010 Census and the 2011 to 2015 American Community Survey. After review of this data, Mr. Slachetka, concluded:
  - a. The 2010 Census calculated South Seaside Park as 1.2% of the Township's population. The 2011 – 2015 American Community Survey (“ACS”) placed the number at 2%.
  - b. With regard to employment, the ACS calculated that zero South Seaside Park residents over the working age of 16 were unemployed as opposed to 11.5% for the Township overall.<sup>497</sup>
  - c. With regard to education, 42.3% of the residents in South Seaside Park had earned a college degree as compared with 22.7% for the Township as a whole.
  - d. The ACS calculated the median income in South Seaside Park as \$52,639 as opposed to \$43,942 for the Township as a whole. As such, the median income of South Seaside Park is 20% higher than the Township as a whole.

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<sup>497</sup> When asked if he would expect the unemployment rate for the Mainland be higher than South Seaside Park given the number of retirement communities on the Mainland, Mr. Slachetka responded that “...unemployment is measured in relationship to the workforce. So, to the extent that any individuals might be retired and no longer in the workforce or seeking employment, that would be factored into the respective unemployment rates. So... individuals that are not in the work force are not going to be factored into the unemployment rate”.



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In sum, deannexation would result in the loss of 2% of the Township's population. And that lost population is better educated, more fully employed and have higher incomes than the residents of the Township as a whole.

3. With respect to Housing, Mr. Slachetka similar data from the 2010 Census and the 2011 to 2015 ACS, and concluded:

a. South Seaside Park contains 6.9% of the Township's housing stock. Mr. Slachetka characterized this figure as "*a pretty substantial percentage*".

b. Mr. Slachetka characterized the housing in South Seaside Park as:

*...relatively very unique types of dwelling units and housing stock... in comparison to the Township as a whole. They're smaller, if you look at the number of rooms per unit, as in comparison to the Township as a whole.*

*...the rooms are smaller...*

*The median numbers of rooms in South Seaside Park dwelling units is 4.4, whereas, the median number of rooms in dwelling units in Berkeley Township overall is 5.3.*

*And over 19.4%... of the... units in South Seaside Park are not characterized as single family detached housing... this is greater than the percentage for the Township as a whole (7.2%).*

c. Mr. Slachetka further characterized the seasonal nature of the housing in South Seaside park as being a "*different type of housing*" than on the Mainland.

In sum, Mr. Slachetka opined that deannexation would result in the loss of 7% of the Township's housing stock, which is a very unique housing stock and which is, in his opinion, distinct from other areas of the Township.

Deannexation would also result in the loss of seasonal housing that is occupied by tourists during the resort season.



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**B. Master Planning & Related Efforts**

1. On March 2, 2017, the Planning Board heard a presentation on and adopted a *Neighborhood Plan for South Seaside Park*. This document focuses generally on vulnerability to climate change and resiliency, and included direct and implementable recommendations related to zoning.

During its preparation, public meetings were held with the residents of South Seaside Park to obtain their input. Additionally, a draft of the *Neighborhood Plan* was presented to the public at a hearing prior to adoption. During this process, the residents of South Seaside Park recommended changes to the document, the most significant of which was the elimination of provisions that would multi-family housing in the neighborhood. The *Neighborhood Plan* was adopted with these recommendations.

As testified by Mr. Slachetka,<sup>498</sup> “one of the things that came out of our discussions and review from... members of the community, from the public, was that the need for a further assessment and evaluation and understanding the opportunities for recreation within the South Seaside Park neighborhood”.<sup>499</sup> Accordingly, the *Neighborhood Plan* included a recommendation that the Township prepare a *Recreation and Open Space Plan* for South Seaside Park. Such a Plan would, among other initiatives, identify recreation needs based on resident population and community interest and verify riparian grants to identify potential sites for Bayfront recreation (and investigate whether the State would permit a lease option on riparian lands).

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<sup>498</sup> Testimony on August 3, 2017

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*This recommendation responds to resident concerns regarding recreation opportunities in the area,... and it includes, ... the preparation of a Neighborhood Recreation and Open Space Plan to identify needs based on resident population and community interest; investigate opportunities for the State of New Jersey to permit cross-honoring of local beach badge for boat launch and non-dockage facilities at the 24<sup>th</sup> Avenue Marina; consider establishing a local bike share program or participating in a regional network with neighboring... shore communities; and verify riparian grants to identify potential sites for bayfront recreation, as well as investigate whether the State of New Jersey would permit a lease option.*

*Now, these are recommending some general ideas and thoughts. And, ultimately, ... a new Neighborhood Recreation Plan will be much more specific in terms of the kinds of things that it promotes. But, again, it's another example of the way that the community input basically affected the outcome of the plan to address the important, important concern of the community.*



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2. In 2003, the Township adopted a 2020 Vision Plan, which was undertaken as a foundation and a requirement of the Plan Endorsement for the Township pursuant to the State Planning Commission requirements.<sup>500</sup>

Consistent with the Plan Endorsement process and the State Development & Redevelopment Plan, the Vision Statement included goals that, in the words of Mr. Slachetka:<sup>500</sup>

*...is not defining just for Manitou, or just for South Seaside Park, or just for Pinewald section. This is [for the] community as a whole.*

*And these goals and objectives are community wide goals and objectives.*

When asked to respond statements made by Mr. Bauman that:

- The Township has no vision for South Seaside Park;
- The planning goals of the Township are preoccupied for development on the eastern Mainland; and that
- South Seaside Park is not mentioned in the 2020 Vision Plan...

Mr. Slachetka responded:

*No, it's my opinion that South Seaside Park has been recognized and continues to be recognized in the comprehensive planning documents of the community.*

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<sup>500</sup> Testimony on July 6, 2017 & February 1, 2018

Mr. Slachetka describes Plan Endorsement as a process whereby the State Planning Commission certifies “that your comprehensive planning documents and your zoning was consistent with sound, statewide policies”. It is a

*a very, very comprehensive process, engaging a number of state agencies, including the Department of Community Affairs and... DEP. ... I can tell you, as a professional working in that process, it is a very thorough and comprehensive review of the municipality's planning documents and ordinances...*

and

*Probably the most significant aspect of all [the Township's] comprehensive planning efforts and what kind of intertwines them all together and kind of creates a sort of framework for planning and moving forward, including planning for the South Seaside Park neighborhood as part of that, is [the Township's] Plan Endorsement.*



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3. Mr. Slachetka disagreed<sup>500</sup> with Mr. Bauman's assertions that the Township has focused its Planning efforts on the Mainland to the detriment of South Seaside Park, stating<sup>500</sup>:

*The record of [the Planning Boards] actions and the record of the Planning Boards] activities as embodied and embedded in the land use planning documents that [it has] prepared, belies that and contradicts that very, very, very clearly.*

*Berkeley Township is doing a substantial amount, and has done over the last 20 years, a substantial amount of planning work in the community. That planning work, that comprehensive planning includes a significant amount of planning for the South Seaside Park neighborhood, as well as other neighborhoods all throughout the Township.*

*...the Township is doing comprehensive planning. And every place where it plans and every part of the community that it's planning for is all integrated and linked into the overall comprehensive planning goals and objectives that you've established.*

Regarding these ongoing efforts, Mr. Slachetka stated that “*planning occurs on a continuum*”, and

*...there's been a series of Master Plans, specific plans addressing specific neighborhoods, Redevelopment Plans. Planning initiatives like the State Plan Endorsement that the Township received from the State Planning Commission. And various related planning activities that have occurred over the course of the last decade or so within the Township. One building upon the other in terms of addressing important community needs in a very, very comprehensive manner.*

*...the process for the South Seaside Park Neighborhood Plan is sort of a microcosm of the kind of broader theme... that these plans and processes are evolutionary and ongoing... So, these plans and the planning process is ongoing and continues to be ongoing and will be ongoing in the future, just as the nature of the planning process and goals and objectives and policies change based on the new challenges that they're faced. But at the same time, these issues and these concerns have been continually*



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*recognized as part of your planning process and what you do as the Planning Board here.*

*And, specifically, these issues that we discussed in the neighborhood in Seaside Park are, in their foundation, the germination of these [Neighborhood Plan and Recreation and Open Space Plan] recommendations come from the more general recommendations in the [Master Plan] Reexamination report on a need for the community to address concerns in South Seaside Park.*

4. In addressing Mr. Bauman’s comment that “*there are no focus initiatives or goals in the Master Plan that address South Seaside Park*”, Mr. Slachetka states “*the 10 Master Plan goals... set the stage for more pointed objectives and recommendations, encourage guidelines for new development, and support the preservation of residential character of neighborhoods*”.
5. In addressing Mr. Bauman’s comments that:
  - “*South Seaside Park and its residents are not included in the Master Plan goals...*”
  - “*The 9 Master Plan objectives do not individually or collectively address the needs and concerns of the residents of South Seaside Park...*”
  - “*Completing the build-out of neighborhoods, encouraging development in Town Center and corridor nodes, and addressing the Route Nine corridor are addressed in the Master Plan objectives, but these are matters that are nowhere near South Seaside Park, nor do they affect the social and economic well-being of South Seaside Park residents.*”
  - “*The township is preoccupied with planning on the Mainland*”

Mr. Slachetka points out<sup>500</sup> that the Planning Board:

*just went through a fairly extensive review of the Township's planning efforts in South Seaside Park, but also as they related to recommendations and approaches that were recommended in the Township's various planning documents. It's clear that the Township and clear that this [Planning] Board has been*



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*attentive to all the neighborhoods within the Township, including South Seaside Park...*

*And you've focused as needed on those specific areas. And it's important to note, and I think this... undergirds the whole... planning process here, is that... planning in one neighborhood does not necessarily mean that benefits don't accrue to all the neighborhoods in the community.*

*The idea here, and the idea that you've effectuated constantly as part of your planning efforts, has been that the benefit to one area of the community benefits the community as a whole. The Manitou Redevelopment Plan, ... clearly is targeted and benefits the Manitou Park, but it benefits the community as a whole and provides... a diversity of housing types... it provides improvements to the community's tax base. Every taxpayer, every resident of the Township benefits when the Township addresses a planning effort.*

*The redevelopment of the Township's Town Center, the designation of the Town Center benefits the community by providing new tax ratables in the community and provides for an opportunity for a vibrant mixed use center and also provides an opportunity for areas within the Township, environmentally sensitive areas within the Township to be protected through the use of a Transfer Development Rights program..*

*Even though.. those TDR... sending districts and receiving districts are not on South Seaside Park, they still benefit the residents of South Seaside Park, as residents of the greater Berkeley Township community, by protecting important environmental resources, directing growth where it's appropriate in terms of the availability for infrastructure and opportunities for redevelopment.*

*But by protecting those environmental resources,... those benefit not only Berkeley Township, but it benefits the region and it specifically benefits South Seaside Park because of its protection of the water quality, the Barnegat Bay Estuary and advances other environmental resources.*

6. More generally, Mr. Slachetka testified:



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*...You cannot, from a comprehensive planning perspective, parse out and simply peel away and look at the community's planning efforts or any community's planning efforts in piecemeal. It has to be seen within an integrated whole,... holistic approach that the Township has taken.*

*And the efforts that it's taken on the South Seaside Park neighborhood and their planning efforts has been pretty significant.*

*And, as I mentioned before, and I think what's really important and critical for all of us to understand... is that planning is an ongoing process. ...it's an evolving process. It's going to continue. It's going to continue in South Seaside Park from the Township...*

*And given its level of resources, given its size, given its variety of neighborhoods and given its resources in the sense of having the support staff and the structures in place to respond in a comprehensive way,... the Township has been able to respond to these challenges from a planning perspective, from a resiliency perspective, in a manner that benefits the Township as a whole and also very specifically South Seaside Park and other affected neighborhoods.*

C. Mr. Bauman's comments about the Township's 2015 Master Plan's proposed Island Zoning were not addressed by Mr. Slachetka.

D. Affordable Housing

1. Mr. Slachetka characterized Mr. Bauman's criticism of the Township's Affordable Housing Plan "*fundamentally, ... miss[ing] the point*".<sup>501</sup>

*...despite Mr. Bauman's contention that there was not an intent to provide affordable housing, that has to be taken in the place of the context. And, again,... this occurred after he made this testimony and prepared his report of all the planning that was*

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<sup>501</sup> Testimony on July 6, 2017, stating that Mr. Bauman

*...was very critical of the Township's affordable housing planning efforts and specifically very critical in connection with what the Township may or may not have done in terms of trying to locate affordable housing in South Seaside Park...*



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*taking place in South Seaside Park in terms of the creation of the Neighborhood Plan.*

*And we heard a very clear message from the community, that they wanted to... limit very substantially any opportunities for multi-family residential development within the confines of their neighborhood. And that the plan itself establishes dominant development form within that area is, as being single family detached, with the exception of a couple small areas like where... mixed use is provided in the business zone... in South Seaside Park.*

*So, essentially, really, you can't have it both ways. ... if you want affordable housing,... is through a multi-family residential housing form. So, we provide those opportunities. And if, at any point in time, a multi-family development occurs in South Seaside Park or anywhere else in the Township,... there's going to be a commensurate requirement for affordable housing. And that's consistent... everybody gets... treated the same way. And those opportunities are there if, in fact, the community determines that multi-family residential is an appropriate vehicle to provide that.*

When asked about the decision-making process that led South Seaside Park not to be included in the Township's Affordable Housing Plan, Mr. Slachetka testified:<sup>502</sup>

*The Township's current Affordable Housing Plan doesn't make any distinctions, other than from a planning perspective, doesn't call out specific areas for Affordable Housing or not Affordable Housing. But where any new multi-family residential development is to occur, there is to be a commensurate set aside for that Affordable Housing.<sup>503</sup>*

<sup>502</sup> Testimony on February 1, 2018.

<sup>503</sup> On July 6, 2017, Mr. Slachetka testified that the Township had been in litigation regarding its Affordable Housing obligations under State Law. Under a settlement agreement between the Township and the Fair Share Housing Center, which was approved by the Court:

*...part of the responsibility the Township had [as part of the Settlement] ...was to... put in place an ordinance which establishes a requirement that any multi-family residential housing that was provided for in Berkeley Township, would be required to have a set aside for Affordable Housing or a percentage of those units. And by multi-family, we're saying any Multi-family housing that is 5 units or more and has a density of 6... dwelling units [per acre], or more. And that if it's rental, you'd have a 15% set aside requirement. And if they were for sale units, [the set aside would] be at 20%. And [the Planning Board] adopted [a] Housing Element which implements and basically encapsulates that settlement agreement.*

*And so... now, there is [an] ordinance... which establishes that requirement. So, if there's a Zoning Board action that creates multi-family housing, if it's currently zoned for multi-family housing,... or if there's a redevelopment plan that creates multi-family housing or mixed use development, whatever that might be [with]... a multi-family development as*



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- E. Mr. Slachetka’s comments about recreation and open space in South Seaside Park are generally addressed as part of the discussion related to the *Seaside Park Neighborhood Plan* and the proposed Recreation and Open Space Plan for South Seaside Park (§3.10.3 B. herein).
- F. An extended discussion took place<sup>504</sup> regarding a comparison made by Mr. Slachetka between beach badge rates in South Seaside Park vs. those in Seaside Park, and how the costs may “[affect] residents as a whole, but also more specifically affects the senior community”.
1. After reviewing the different types of badges offered and their pricing,<sup>505</sup> Mr. Slachetka stated that Badges are generally more expensive in Seaside Park than in South Seaside Park. Additionally:
- Mr. In Seaside Park, children are defined as 11 years old and under, vs. Berkeley Township, where its 12 years and under. Similarly, Berkeley Township defines Seniors as 62 years old and over, whereas Seaside Park defines them as 65 years and over.
  - Conversely, military personnel and their families are exempt from paying for beach access in Seaside Park, which is not the case for South Seaside Park.
  - Lifetime badges are offered for Senior Citizens in Berkeley Township for \$10.00. This does not appear to be available in Seaside Park.

Accordingly, if deannexation were to occur ~ and the White Sands Beach transfers to Seaside Park as Petitioners request ~ it would be more expensive for Berkeley Township residents (except for military personnel and their families) to go to the White Sands Beach.

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*component of that, there is the Affordable Housing obligation. That is Township wide. It's everywhere. It's in South Seaside Park. It's everywhere.*

*...depending upon the location of the development and its proximity to community facilities and transportation network and some other factors that we've developed,... there is an opportunity for that portion of that housing to be provided on-site or through a... payment in lieu of construction, which means... the Township gets a payment, and... we create that... that affordable housing in an appropriate location based on... planning criteria.*

*...And that is consistent. And that applies to all multi-family residential development within the Township.*

<sup>504</sup> Testimony on July 6, 2017

<sup>505</sup> Daily, weekly, seasonal, standard pricing, preseason pricing, senior citizen pricing, child pricing, holiday pricing.



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2. On cross-examination, Mr. Slachetka was questioned<sup>506</sup> regarding the cumulative effect of the beach badge price differential and the amenities available to Seaside Park beach badge holders (albeit for a higher price) vs. those available to South Seaside Park badge holders. Specifically, Mr. Slachetka was asked if he was aware that:

- The beaches in Seaside Park are 1.5 miles longer than the White Sands Beach, “so, you get at least a mile and a half of beach...”).
- The beaches in Seaside Park are cleaned on a daily basis as opposed to weekly in South Seaside Park.
- In Seaside Park, the additional beach badge fee permits access to:
  - 2 bay beaches;
  - 2 fishing piers;
  - Tennis courts;
  - Beach showers every block;
  - 2 playgrounds at the beach for children;
  - Water fountains every couple blocks; and
  - A public boat ramp

None of which are available, or available in the same quantities, in South Seaside Park.

3. Also on cross examination, Mr. Slachetka agreed that “...there is no guarantee that the beach prices are going to stay the same in Berkeley Township”.

G. Historic & Cultural Resources

When asked if he thought it would be a loss to the Township if White Sands Beach and Midway Beach moved from Berkeley to Seaside Park should deannexation occur, Mr. Slachetka opined that he did, stating<sup>507</sup>

*...there's been a lot of discussion about White Sands Beach, in particular, and the resource that it would be. And I know there's some question as to whether, during deannexation, it would go... along with the South Seaside Park neighborhood or be retained within Berkeley Township.*

<sup>506</sup> Testimony on November 17, 2017.

<sup>507</sup> Testimony on September 17, 2017 and February 1, 2018.



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*But I think what's important to understand is that the cultural resources and the resource that the South Seaside Park neighborhood represents, it's more than just the White Sands Beach. It's, ... and we heard a lot about [this from the] lay testimony that we heard earlier, about the shore, the culture of the shore, and why the residents of South Seaside Park were, in fact, attracted to this location and this neighborhood.*

*And, frankly, you know, we saw what happened over the Fourth of July weekend when Island Beach State Park closed down. Even though... we heard a lot of testimony saying that... it's not so bad if you lost White Sands Beach, you still retain Island Beach State Park. It is a State Park. And it is... controlled by the State. And the Township does not control its use. It doesn't control its fees. It doesn't control... when it's open and when it's not open. There'd be other times, hopefully not, in the future, that that resource would not be available to us for a short-term or long-term.*

*...those facilities are, essentially, unique in the Township.... I think the general thematic approach that I took is that there are elements here in terms of the loss of the South Seaside Park that are irreplaceable.... But I think you can't recreate... those unique facilities and those unique places elsewhere in the Township. ... it's not possible. You would not be able to. There would be a completely irreplaceable loss for the Township...*

#### H. Berkeley Township Strategic Recovery Planning Report

1. Mr. Slachetka<sup>508</sup> responded to Mr. Bauman's criticism of Township's 2014 Strategic Recovery Planning Report ("SRPR")<sup>509</sup> by noting the various benefits that resulted from the effort and the planning grant monies that were obtained. However, he did not address Mr. Bauman's criticisms individually.
2. Specific projects noted by Mr. Slachetka that were the direct result of post-SRPR funding included, but are not necessarily limited to:

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<sup>508</sup> Testimony on September 7, 2017

<sup>509</sup> which was prepared in response to the damage caused by Superstorm Sandy and recommended specific municipal actions to promote recovery and reduce impacts from future storms and other emergencies / natural disasters.



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- The South Seaside Park Neighborhood Plan;
- Recertification for the Community Ratings System (CRS) Program;<sup>510</sup>
- Update to the Township's Floodplain Management Plan;
- Update to the Township's Hazard Mitigation Plan;
- Update to the Township's Emergency Operating Plan;
- Preparation of a Debris Management Plan;
- Preparation of a new Capital Improvement Plan that address resiliency issues;
- Automation of the Construction Permit process; and
- Ordinance Development.

Additionally, due to the Township having both ocean and bayfront areas, Berkeley was selected as one of two pilot communities in a University of Notre Dame project to enhance GIS capabilities to include storm modeling and real time tracking of storm events.<sup>511</sup>

While South Seaside Park may not be specifically named under each SRPR recommendation or program, Township-wide goals and objectives apply to this community.

### **3.10.4 REBUTTAL TESTIMONY<sup>512</sup>**

#### **A. Data Analysis**

1. Ms. Woolley-Dillon testified that there were inaccuracies in Mr. Slachetka's testimony. Specifically:

*One of the things that Mr. Slachetka used in talking about the demographics, population, housing, was the... ACS or American Community Survey... In his report and testimony, he's indicated that... there has been an increase of... 334 persons [in South Seaside Park] ... indicating that the doubling of population...*

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<sup>510</sup> Community Rating System (CRS) is a rating system that allows participating municipalities to achieve a reduced rate regarding the National Flood Insurance Program (NFIP). Residents of a municipality enrolled in the program get a rate discount on flood insurance. As the municipality implements additional measures above and beyond those required by the NFIP there is the possibility of increasing the rate discount achieved by residents. Currently Berkeley Township has a rating of 6 which results in a 20% rate saving for residents.

<sup>511</sup> Testimony on July 6, 2017

<sup>512</sup> Testimony on December 6, 2018 and February 7, 2019.



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*Originally there was... 490 documented [residents] in 2010. And according to Mr. Slachetka's testimony and report, that it's now 2% of the entire Berkeley Township population, 824 residents.*

2. Ms. Woolley-Dillon took issue with this figure and investigated the ACS and its footnotes, which indicated that the ACS was conducted as a telephone survey and was unverified.

*This was happening during the time when we had a federal government shutdown. So, this, the projections that were put out based on the telephone survey went unconfirmed...*

3. Ms. Woolley-Dillon then reviewed the population estimates published by Ocean County between April 1, 2010 and 2017. The April 1, 2010 census estimate for Berkeley was 41,255 persons. The 2017 figure was 41,747, an increase of 492 residents ***in the entire municipality.***

To corroborate these figures, Mrs. Woolley-Dillon reviewed the building permits that were issued for South Seaside Park. According to Mrs. Woolley-Dillon:

*Mr. Slachetka testified in July of 2017 that the number of dwellings in South Seaside Park had increased from 1,400 dwelling units in... 2000... to... 1,671 dwelling units in 2017...*

*... I took a look... to see how many new building permits we had and how many demolitions occurred. ...there were 21 new building permits issued and 17 demolition permits. The demolition permits are clearly going to offset. It was almost a one-on-one where they had to take the dwelling down and put up a new one. Seventeen take away from 21 is **4 new buildings.** ***That's it.****

## B. Unique Housing

Within the context of Mr. Slachetka testimony regarding the “*very unique type of housing that is located in South Seaside Park*” Mrs. Woolley-Dillon testified to her comparison of average assessed property values for single-family residential properties for the Berkeley Township neighborhoods of South Seaside Park, Pelican Island, Glen Cove and Berkeley Shores.

Details related to this testimony are addressed in §3.10.5 herein.



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C. Affordable Housing

1. Mrs. Woolley-Dillon expressed a concern over Mr. Slachetka’s testimony regarding appropriate locations for Affordable Housing. After confirming that South Seaside Park is on the barrier island and that it is an PA-5B Planning Area under the State Development and Redevelopment Plan, Mrs. Woolley-Dillon testified that “*it’s not recommended that you encourage building new affordable housing*” in such areas. And cited as her reasons:

*...there isn't any public transportation that goes all the way down to South Seaside Park. And for Affordable Housing ~ we also now call it Workforce Housing... some of the population that requires Workforce Housing also requires public transportation. So, if there isn't any way for them to get to a job from where they live, it doesn't really make sense to put the Affordable Housing in an area.*

*The other issue that kind of makes determination that perhaps Affordable Housing is not going to happen in this area is, has to do with the price of land. Basically, purchasing a parcel, maybe two, and then putting up construction, it's going to bankrupt whatever funds you have in your Affordable Housing Trust Fund. And the purpose of Affordable Housing is to... put as many units in the municipality as possible. So, simply because the basic cost of an average parcel of land, it's not really realistic to buy a parcel of land and put Affordable Housing down there.*

2. What Mrs. Woolley-Dillon “*found very interesting in Mr. Slachetka's testimony is that he stated that affordable housing can't be located in a floodplain. That's not entirely accurate*”.

*Other communities that are located entirely in a floodplain, Bay Head, ... Point Pleasant Beach, Point Pleasant Borough, Ocean City, they have Affordable Housing obligations. They are entirely coastal communities. So, it's not really that Affordable Housing can't build in a floodplain. If you don't have a choice, you're going to have to develop it. So, I, with all due respect, I do not necessarily agree with the statement that he posited.*



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3. Finally with respect to Affordable Housing, Mrs. Woolley-Dillon offered, “*in this case, to perhaps meet some of the affordable obligations*”

*... there are programs and funding that are set aside for rehabilitation of units in need of rehabilitation, deed restrictions are attached to that.... funding could have been taken from the Affordable Housing Fair Share Trust Fund and put towards rehabilitation of units in South Seaside Park.*

**D. Community Rating System (“CRS”)**

1. Mrs. Woolley-Dillon<sup>513</sup> took issue with Mr. Slachetka's understanding of the CRS program and his “*repeated reference to the fact that the CRS rating system ~ and I'm paraphrasing this, perhaps ~ is going to benefit from the areas of the Township on the Mainland that are able to absorb floodplains... basically... that they're going to absorb the overflow from flooding*”.

*...he was saying that because you have all the ability to absorb additional floodwaters here in the Mainland, that that's going to help reduce your CRS rating and your insurance premiums for the... municipality. **That's not an accurate statement.***

Mrs. Woolley-Dillon submitted Exhibits A-106 and A-107, which are FEMA documents dealing with the CRS program.

2. Without explaining why Mr. Slachetka’s testimony was not accurate, Mrs. Woolley-Dillon goes on to state that “*...Mr. Slachetka testified that Seaside Park was a 6, or a 7 rather, and Seaside Heights was a Class 6, resulting in a 5% discount. But he also indicated that... the discount would be, by the end of 2018, that they would likely be a 5...*”

[The transcript is not clear as to what Mrs. Woolley-Dillon was attempting to state. Mr. Slachetka testified on September 7, 2017, that Berkeley Township's [then] current CRS rating was a 6. “*And that provides a 20% discount on flood insurance...flood insurance rates, for property owners that need to take out flood insurance because of the location of*

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<sup>513</sup> Who testified that she has taken the course offered by NJDEP and was preparing to sit for the Certified Floodplain Manager examination. She also testified that she served as the Floodplain Manager in Seaside Park and the Borough of Lavallette. She also testified that she “*pre-screened*” [presumably interviewed] Flood Plane Manager candidates for the Borough of Mantoloking.



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*their properties in the flood hazard areas.”*

Conversely, Seaside Park had a CRS rating of 7, which provides a 15% discount. “So, by *South Seaside Park taking advantage of being within Berkeley Township, ... it, in fact, has the opportunity and has the ability to take advantage of a better CRS rating*”.]

3. Mrs. Woolley-Dillon then testified that, as of October 1, 2018, Berkeley Township was still a Class 6 and Seaside Park was still a Class 7, rendering Mr. Slachetka’s projection of a change to a Class 5 by the end of 2018 incorrect.
4. Mrs. Woolley-Dillon then testified that she had occasion to testify in Sea Isle City, which is located entirely on a barrier island in Cape May County. “*They, however, have a rating of 3 which is phenomenal... So, it's entirely possible for a coastal community located entirely on the barrier island not relying on anything on the mainland to have a very high rating.*”

E. Post-Sandy Grants

Mrs. Woolley-Dillon took issue with Mr. Slachetka’s testimony that she characterized as suggesting “*that there was a lot of grant money that was obtained simply because of South Seaside Park being a coastal community*”.

While she understood that coastal communities received grants, “*only 3 of the dwelling units that were located in South Seaside Park had sustained moderate damage from Super Storm Sandy. The bulk of the damage to the rest of the homes was on the Mainland, particularly in the Bayville area*”<sup>514</sup>.

While Mrs. Woolley-Dillon understood that South Seaside Park is a coastal community

*But putting that as the forefront to look for grant funding, it's kind of a mixed signal or a mixed message.... I... think that Mr. Slachetka's characterization of the grant funding process... was an unfair representation, because most of the communities that*

<sup>514</sup> This is likely the reason why South Seaside Park was “not featured” in the SRPR as having sustained “Severe” or “Major” property damage, which was one of Mr. Bauman’s criticisms of the SRPR (§3.10.1 V. herein)



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*got planning grants and zoning administration grants, all you had to demonstrate was that you were showing an increase of 50% of your zoning permits from pre-Super Storm Sandy to what was either coming through or anticipated to come through to repair as a result of the storm damage.*

*...I believe his opinion was that it was going to be substantially detrimental should South Seaside Park be deannexed. And I don't think that that's necessarily appropriate, because, again, most of the damage occurred here to the Mainland. That's really where the bulk of the planning grant assistance went and the planning funds went.*

- F. Mrs. Woolley-Dillon then comments on Mr. Slachetka's claim that if South Seaside Park is deannexed, they're going to lose the benefit of Notre Dame GIS Project.<sup>515</sup>

A Mr. Keith Henderson at the New Jersey Department of Community Affairs advised Mrs. Woolley-Dillon “that this Notre Dame study was funded through the New Jersey Department of Community Affairs”, which is “planning on going public very soon with that... They're going to make this available to local communities”.

*They're going to allow the local communities to add layers, their own individual layers of GIS. They can work with the county. They'll certainly work with the state planning offices,... to incorporate this. And this is going public. It's coming online. Regardless of what happens with the deannexation procedure, it's not going to impact either Berkeley Township, the mainland or South Seaside Park, one way or the other.*

### **3.10.5 ANALYSIS**

#### **A. Data**

1. Differences in the data reported by Mr. Bauman and Mr. Slachetka are attributable to the Census information available at the times of their respective testimonies. While both used 2010 Census data, Mr. Bauman augmented the Census with American Community Survey

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<sup>515</sup> §3.10.3 H. herein)



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data from 2008 to 2012, while Mr. Slachetka augmented the Census with ACS data from 2011 to 2015. Both present the data accurately for their respective time periods.

2. The data reported by Mrs. Woolley-Dillon incorporates building permit information, which was not reviewed by Mr. Slachetka.

While there may indeed be a correlation between building permits and population, the population numbers provided by Mrs. Woolley-Dillon are *her* projections which have not been corroborated. Mr. Slachetka's data is taken from the U.S. Census Bureau. Further, even if Mrs. Woolley-Dillon's figures are accurate, they represent total population for South Seaside Park and do not address any demographic subsets for this population.

**B. Housing**

1. While the Township has a higher percentage of One Unit Detached housing than does South Seaside Park, the data supports the observation that South Seaside Park has a higher percentage of 2 Unit Attached, 3-4 Unit Attached And 10+ Unit Attached housing. Further, the community's Mobile Home / Boat / RV / Van sector has a higher percentage of 0 Bedroom and 3+ Bedroom units.
2. While South Seaside Park has an overwhelmingly higher percentage of Vacant Housing Units than does the balance of Berkeley Township, it also has an overwhelmingly higher percentage of Seasonal Units. While no data has been submitted to suggest a difference between Vacant and Seasonal Units, this Analysis wonders if there is a correlation.

**C. Sand Dunes**

Mr. Bauman's testimony regarding expenditures by the Midway Beach Condominium Association to replace the sand dunes destroyed by Superstorm Sandy "*without the assistance of Berkeley Township*" and that "*residents of South Seaside Park have invested their own money and time into building sand dunes to combat beach erosion and supplement natural habitats*" appears to imply that such action represents Township neglect of or lack of investment in South Seaside Park. Subsequent testimony revealed that the lands where Association made this investment were Association-owned.



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D. Community Rating System (“CRS”)

Regarding Mr. Slachetka’s testimony that, due to the Township’s activities “*as part of its Post Sandy Planning Program*”, Berkeley was anticipating a CRS rating of 5 (translating to a 25% discount) by October 2018, Jamison Zimmerman, C.F.M., Project Engineer for Remington & Vernick Engineers and the Township’s Certified Floodplain Manager, reports that the October 2018 “Cycling” was delayed by FEMA until late-April 2019.<sup>516</sup> This was apparently due to too many municipalities “Cycling” at the same time.

Ms. Zimmerman further reported an April 24, 2019 conversation with the Township’s FEMA CRS Coordinator, who indicated that a Preliminary Report regarding the Township’s CRS status will be completed by August 2019. The report will then be submitted FEMA for review and approval.

**3.10.6 FINDINGS**

A. Demographics

The data supports the observation that the residents of South Seaside Park are, as a whole, equivalent in age, less racially diverse, better educated, more employed and have a higher median and per capita income than their Township counterparts.

1. While Mr. Bauman’s conclusion that deannexation will not result in a significant injury to Berkeley Township's racial composition, median age appears to be correct. Given that the unemployment rate in South Seaside Park is 0%, deannexation will impact the Township’s workforce population.
2. While Mr. Bauman’s conclusion that a loss of higher income earning residents as a result of deannexation would not be “*substantial*” may be correct from a statistical standpoint, his opinion that the loss would not be “*significant compared to the overall economic well-being of Berkeley Township*” does not follow.

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<sup>516</sup> No updated information was available at the time of this Report of Findings.



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The higher education, employment and median and per capita income of South Seaside Park brings a diversity to the tax base and residents of the Township. Beyond mere revenue, the socioeconomic differences that South Seaside Park residents represent vis-à-vis residents in the balance of the Township adds economic diversity and stability to the municipality. The education, employment and income characteristics of South Seaside Park make its residents less likely to be as impacted by economic downturns than those of lower incomes and lower educational attainment.

These differences are a strength for Berkeley Township.

In much the same way that financial planners encourage diversification in a personal financial portfolio, it is advantageous to have a tax base that is as diversified as possible. Such diversity in times of economic stress serves to improve the current overall situation of the Township and may form the basis for a quicker and sounder recovery.

3. The high seasonal-use percentage of the community's housing stock suggests wealth in South Seaside Park that is not captured by the Census, which is directed to primary residences.

**B. Housing**

1. Mr. Bauman and Mr. Slachetka disagreed as to whether or not Berkeley Township would lose significant or unique housing stock as a result of deannexation and whether or not deannexation would result in a significant injury to Berkeley Township's household composition, housing diversity or inventory.
2. We are not of the opinion that the small size of the units in South Seaside Park or the number of bedrooms per unit in South Seaside Park ~ when compared to housing elsewhere in the Township ~ renders housing in South Seaside Park unique.



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3. We are of the opinion however, that the uniqueness of housing in South Seaside Park is found in the percentage of units not characterized as single-family detached housing ~ 19.4% in South Seaside Park vs. 7.2% for the balance of the Township.<sup>517</sup>
4. Further, the very high percentage of seasonal housing in South Seaside Park (78.2%) as compared to the balance of the Township (9%) adds to the ‘uniqueness’ of the housing stock in the community.
5. Finally, the housing units in Midway Beach and the location of housing between the Ocean and the Bay are quite unique for the Township.

Accordingly, the loss of South Seaside Park should deannexation occur would result in a loss of a unique and diverse housing stock that is distinct from other areas of the Township.

6. Mr. Bauman’s conclusions that “*while the initial reduction of housing units [should deannexation occur] is an economic injury, it is one that is off-set by the reduction in services that no longer need to be provided*” is negated by the fact that a number of services<sup>518</sup> will still need to be provided to Pelican Island.

C. Master Planning & Related Efforts

1. Master Planning & Zoning

- a. The conclusion that the Township’s Master Planning efforts do not address South Seaside Park are not supported by the facts in evidence. The record demonstrates that the various Plans do indeed address South Seaside Park.
- b. The various Master Plan documents contain objectives that are designed to apply Township-wide. The conclusion that they do not *specifically and individually reference* South Seaside Park and therefore do not apply to South Seaside Park is unworthy of comment.

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<sup>517</sup> While the Township has numerous zoning districts that permit multi-family housing (R-MF, Residential One to Four Family, TC Zone and TC- 2) Zone, these areas do not contain the number of actual multi-family units needed to offset South Seaside Park’s percentage.

<sup>518</sup> Solid waste and recyclable collection, snow removal, police service, animal control, etc.



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- c. Whether or not the Island Zoning introduced in 2008 was appropriate for South Seaside Park is a matter of debate, but the issue was rendered moot by the recently-adopted South Seaside Park Neighborhood Plan, which was crafted with input from that community.
- d. The extended time it has taken for the Township to specifically address Planning issues in South Seaside Park is understandably frustrating for Petitioners. Nothing in the record points to the reasons for this delay, other than Mr. Slachetka's comments that "*planning occurs on a continuum*", that the planning activities have occurred over time "*one building upon the other in terms of addressing important community needs in a very, very comprehensive manner*", and that "*...the process for the South Seaside Park Neighborhood Plan is sort of a microcosm of the kind of broader theme... that these plans and processes are evolutionary and ongoing...*"

That being said, there is no evidence that the residents of South Seaside Park have been harmed by the delay. None of the permitted uses removed from the Zoning Ordinance as part of the Seaside Park Neighborhood Plan<sup>519</sup> had actually been constructed or were likely to have been constructed.

- e. The Township received Plan Endorsement from the State Planning Commission, a process that intensely scrutinizes a municipality's planning documents and a designation that would not have occurred unless such documents were comprehensive and acceptable.

2. Growth

- a. While a Township consultant may, in 2008, have determined that South Seaside Park had no future growth capacity, such a determination did not factor the redevelopment process whereby smaller, existing buildings are demolished and replaced by larger, modern structures. Accordingly, the conclusion that "*South Seaside Park has no future growth capacity*" is incorrect, and the related conclusion that there would be

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<sup>519</sup> e.g., hospitals and mining.



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no loss of any benefits to the Township from future development should deannexation occur is similarly incorrect.

b. The conclusions that “*the reduction in housing units is as a result of deannexation...*”

- Would be negated by future growth on the Mainland;
- Would be quickly compensated within a 5 year period; and that
- An active TDR Program would compensate for the [490-person South Seaside Park] population loss within a 5 to 10 year period

must be viewed in the context of the Court’s decision in Avalon Manor which held, in pertinent part:

*The plaintiff argued... that the economic consequence of deannexation could be "softened" by the application to the tax rate of proceeds... from added assessments;... I do not believe that... these techniques may properly be considered as an "amelioration" of the increase in the proportion of... taxes that would be borne by the remaining taxpayers of the Township in the event of deannexation... [W]hatever revenues are generated by... these activities **already belong to all of the property owners of the Township.** To suggest that these revenues could be considered as an "offset" or "amelioration" of the added taxes attendant to a deannexation is to suggest that the taxpayers of the Township should apply their own resources to the reduction of the increase in their taxes. **Without deannexation, these revenue sources, if realized, would accrue to the benefit of the taxpayers of the Township and would reduce their tax payments below the current levels, or perhaps offset increases unrelated to a deannexation. There is no equitable basis to charge their interest in these revenues with the burden of "offsetting" the increases that would result from deannexation.** [emphasis added]*

c. Berkeley Township 2020 Vision Statement

The characterization of the Township’s 2020 Vision Statement, which “*focuses entirely on the Mainland's physical, economic and environmental future*”, as



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evidence that “Berkeley Township has no vision for South Seaside Park” misrepresents the intent of the Statement.

As detailed by Mr. Bauman, this document, adopted in 2003, focused on growth in the Township. Mr. Bauman testified at length that there is no growth potential in South Seaside Park. Accordingly, it is not surprising that the Vision Statement does not reference this community.

**D. Affordable Housing**

1. The characterization that the Township ignored South Seaside Park because its Affordable Housing Plan did not include this community is belied by the testimony of Mrs. Woolley-Dillon, who opined that “it’s not recommended that you encourage building new affordable housing” on barrier islands in a PA~5B Planning Area where there is no public transportation and where land prices are high.
2. The Township’s Affordable Housing Plan was approved by the Court after litigation with the Fair Share Housing Center. This would not have occurred unless the Plan was comprehensive and appropriate.

**E. South Seaside Park Social Interaction & Commercial Activity<sup>520</sup>**

We concur with Mr. Bauman’s conclusion that:

*Since the number of eating and drinking establishments, lodging facilities, and retail... stores [in South Seaside Park] are minimal, and their characteristics are vernacular to the Barrier Island, deannexation will not result in substantial social or cultural injury or detriment in Berkeley Township. No Berkeley Township residents will be deprived of patronizing any of the establishments in South Seaside Park should it become part of a different municipality. Deannexation will not deprive Berkeley Township of any prestige and social standing and/or the part they play in the region's restaurant, lodging, and retail diversities.*

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<sup>520</sup> Bauman Report: p. 37



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and offer that, similarly:

Since the number of eating and drinking establishments, lodging facilities, and retail... stores in South Seaside Park are minimal, and their characteristics are vernacular to the Barrier Island, being part of Berkeley Township does not result in substantial social or cultural injury or detriment to the residents of South Seaside Park. No South Seaside Park residents are deprived of patronizing any establishment outside of South Seaside Park. South Seaside Park residents are not deprived of any prestige and social standing and/or the part they play in the region's restaurant, lodging, and retail diversities by being part of Berkeley Township.

Further, deannexation will not change the way the residents of South Seaside Park eat, lodge or shop.

- F. Issues related to a lack of public transportation to South Seaside Park, schools, libraries, houses of worship and solid waste and recycling are addressed elsewhere in this Report of Findings.
- G. Since there are no schools or libraries in South Seaside Park, Berkeley Township residents will not incur any loss of any physical intellectual or cultural resources should deannexation occur. However, the Township would lose the active participation of South Seaside Park residents in the civic life of the municipality.
- H. Open Space & Recreation
  - 1. The presence of County-owned open space properties in Mainland Berkeley Township while there are none in South Seaside Park is of no moment to this deannexation analysis. The Township has no control over where the County elects to purchase property for open space.
  - 2. The presence of a portion of the Edwin B. Forsythe National Wildlife Refuge and the State-owned Double Trouble State Park and Greenwood Forest Wildlife Management Area in Mainland Berkeley Township while there are no such facilities in South Seaside Park is similarly of no moment to this deannexation analysis. The Township has no control over where the Federal and State governments elect to purchase property for open space.



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3. Mr. Bauman’s contention that the lone open space property in South Seaside Park is the Roberts Avenue Marsh does not account for the Township-owned White Sands Beach.
4. A basketball court may not be appropriate as the long active recreational amenity for the senior citizen residents of South Seaside Park.

Understanding the constraints placed on the creation of recreation and open space given the built-out nature of South Seaside Park, the Recreation and Open Space Plan recommended in the South Seaside Park Neighborhood Plan includes tasks to identify recreation needs based on resident population and community interest and to verify riparian grants to identify potential sites for Bayfront recreation (and investigate whether the State would permit a lease option on riparian lands), all designed to increase open space and recreation for South Seaside Park.

3. The debate over the cost of beach badges in South Seaside Park vs. the cost in Seaside Park contains too many variables to conclusively determine how deannexation might impact Berkeley Township residents. Further, any such determinations are likely to be temporary since beach badge pricing is subject to change annually.

This issue may best be resolved by a combined beach badge for the 2 Island communities.<sup>521</sup>

4. Mr. Bauman assertions that “*White Sands Beach is mainly a facility that serves the residents of South Seaside Park, those who live in the area*” and that “*White Sands Beach is underutilized by Berkeley Township....*” is not supported by any facts in evidence.

I. Historic & Cultural Resources

1. We cannot concur with Mr. Bauman’s conclusion that “*the deannexation of one property deemed eligible to be listed [but not actually listed] on the National and State Registers of Historic Places (i.e., Midway Beach) does not cause significant... injury to Berkeley Township residents.*” The fact that the property is eligible to be on these Registers makes them significant, unique and worthy of retention.

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<sup>521</sup> Similar to the combined program for Ventnor and Margate in Atlantic County.



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2. We cannot concur with Mr. Bauman’s conclusion that the loss of White Sands Beach is “*easily compensated*” by Island Beach State Park. While the ultimate disposition of White Sands Beach has been the subject of debate,<sup>522</sup> the fact that the Township has control of this recreational and cultural resource is underscored by the fact that Island Beach State Park was closed on the July 4<sup>th</sup> weekend due to the 2017 Statewide government shutdown.

J. Public Utilities

Mr. Bauman’s opinion that “*...utility arrangements will not change*” should deannexation occur may not be the case. The disposition of the sanitary sewer service owned and operated by the Berkeley Township Municipal Utilities Authority has not been determined.

K. Consistency with Statewide Public Policies

Mr. Bauman’s statement that “*the proposed deannexation is consistent with statewide public policies that encourage sensible municipal governing of adjacent and contiguous areas*” may reflect a public policy to consolidate municipalities and therefore services, but it does not address deannexation. Conversely, the New Jersey Supreme Court in Ryan, states:

*The Statute providing for annexation of land in one municipality to another contiguous municipality was not intended to encourage the adjustment of municipal boundaries "from time to time" dependent upon changing "community of interests" of residents, but rather was intended to give precedence to a more significant policy, that of preservation of municipality boundaries and maintenance of their integrity against challenge prompted by short-term or even frivolous considerations such as "tax shopping" or avoidance of assessments.*

L. Berkeley Township Strategic Recovery Planning Report

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<sup>522</sup> §3.6.2 herein



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1. The SRPR contains recommendations that are designed to apply Township-wide. Testimony that they “*were not specific to South Seaside Park*” and therefore do not apply to South Seaside Park is unworthy of comment.
2. The fact that none of the 4 Community Outreach meetings related to the SRPR were held in South Seaside Park is understandable since there are no facilities in that community large enough to hold such a meeting.
3. Testimony that Mr. Slachetka unfairly represented the Post-Sandy grant process ~ suggesting that he somehow overstated the Township’s reliance on being a coastal community since “*most of the damage occurred here to the Mainland*”, disregards the fact that the Township did indeed receive Post-Sandy grant monies to undertake planning projects, and that several of these projects were either directly tied to planning for South Seaside Park or contained components that benefited (or will benefit) South Seaside Park.<sup>523</sup>

And suggesting that the Township “...[put] that as the forefront to look for grant funding, it's kind of a mixed signal or a mixed message” ignores the competitive applications process, the strict reporting requirements and the stringent controls that NJDCA placed on the grant payment process.

Put simply, the grant would not have been awarded and the funds would not have been released had there been a “*mixed signal or a mixed message*”.

#### L. Community Rating System (“CRS”)

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<sup>523</sup>

- The South Seaside Park Neighborhood Plan;
- Recertification for the Community Ratings System (CRS) Program;
- Update to the Township’s Floodplain Management Plan;
- Update to the Township’s Hazard Mitigation Plan;
- Update to the Township’s Emergency Operating Plan;
- Preparation of a Debris Management Plan;
- Preparation of a new Capital Improvement Plan that address resiliency issues;
- Automation of the Construction Permit process; and
- Ordinance Development.



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1. Regardless of what issues Mrs. Woolley-Dillon has with Mr. Slachetka's understanding of the CRS program, and regardless of whether or not it is possible for a community located 100% on a barrier island to have a CRS rating of 3 (or better), the fact remains that Berkeley Township, including South Seaside Park, has a CRS rating of 6, which translates into a 20% discount on flood insurance premiums.

Conversely, Seaside Park has a CRS rating of 7, which provides a 15% discount.

And while Mr. Michelini is correct when he asked (rhetorically) “*in a year, Seaside Park could be a 6 or a 5 and Berkeley could be a 7 or an 8, theoretically, at least?*”, it is also true that Berkeley could advance to a 3 or better and Seaside Park could fall to a 7 or 8.

***Based on the totality of the foregoing, this Report of Findings finds and recommends that Petitioners’ assertions that the Township lacks a comprehensive planning strategy regarding South Seaside Park are not supported by the facts in evidence. The record reflects that the Township has under taken numerous Planning efforts that specifically address South Seaside Park, as well as Township-wide Planning efforts that include South Seaside Park.***

***South Seaside Park the only oceanfront community within Berkeley Township, and it contains many unique components. The loss of this neighborhood via deannexation would be detrimental to the Township as a whole.***



### **3.11 FINANCIAL IMPACT**

In addition to their assertion that refusal to consent to deannexation would be detrimental to the economic well-being of the majority of the residents of South Seaside Park (§3.6.1 herein), Petitioners assert that deannexation will not cause a significant financial injury to the well-being of the Township.

#### **3.11.1 PETITIONERS' TESTIMONY**

##### **A. Revenue & Expense Analysis: Berkeley Township & South Seaside Park**

1. Although Petitioners' Planner included in his report<sup>524</sup> and repeatedly testified<sup>525</sup> that his analysis does not include the financial, accounting or budgetary impacts of deannexation (such issues are to be addressed by Petitioner' Municipal Accountant), he does opine that:

a. *Seaside Park Borough facilities and services are in close proximity to South Seaside Park and their common shore community characteristics will benefit South Seaside Park residents with convenience and financial savings...*

*[Should deannexation occur], Berkeley Township would be relieved of financial administrative responsibility for services and capital improvements for South Seaside Park, including roadway resurfacing, solid waste and recyclable collection, snow removal, animal control and park maintenance.*

b. *[Should deannexation occur], elimination of services to noncontiguous Barrier Island could result in financial savings to the Township.*

c. *Any withdrawal of South Seaside Park pupils from the K to 6 Local School District or the Middle / Regional School Districts would result in a financial savings to the Berkeley Township School District, and this savings is a direct economic benefit to Berkeley Township residents.*

d. *Deannexation of South Seaside Park from Berkeley Township would not result in significant economic or injury to Berkeley Township residents.*

<sup>524</sup> Bauman Report: pp. 5, 6, 10, 35

<sup>525</sup> Testimony on August 6, 2015, September 3, 2015, October 1, 2015



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2. Petitioners engaged Mr. Kenneth Moore, CPA, RMA of Ford-Scott & Associates L.L.C. (since retired) to undertake a Financial Impact analysis of the proposed deannexation. His findings were submitted in an undated report entitled *South Seaside Park Financial Impact in Compliance with the Matter of Deannexation from Berkeley Township*.<sup>526</sup>

During testimony, the Board and its Professionals questioned a number of assumptions that Mr. Moore used to support his findings. These questions led Mr. Moore to revise his report utilizing various scenarios.<sup>527</sup>

Mr. Moore's revisions summarized the impact of deannexation on the residents of South Seaside Park and Berkeley Township and the subsequent impact of annexation on the residents of Seaside Park as:<sup>528</sup>

- a. Assessed Values<sup>529</sup>

- The Total Net Assessed Value of property in Berkeley Township in 2014 was \$5,094,011,422.
- The Total Net Assessed Value of property in South Seaside Park in 2014 was \$543,926,800 (10.68% of the Township's Total Net Assessed Value).
- Should deannexation occur, the Total Net Valuation (Taxable) for Berkeley Township would be reduced to \$4,550,048,622.

- b. Tax Revenues<sup>530</sup>

1. The various Tax Rates/Tax Levies applicable to properties in Berkeley Township (and South Seaside Park) in 2014 were:

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<sup>526</sup> Exhibit A-49

<sup>527</sup> Exhibit A-50, Exhibit A-53 & Exhibit A-54. Collectively, Exhibit A-49, Exhibit A-50, Exhibit A-53 & Exhibit A-54 are referred to herein as the "Moore Report".

<sup>528</sup> In general, the analyses utilized 2014 figures. Select updates for 2015 were provided via testimony. For the purposes of this Report of Findings, and unless otherwise indicated, 2014 figures were employed.

<sup>529</sup> Moore Report: p. 1 & Exhibit 1 (exclusive of Tax Exempt Property)

<sup>530</sup> Moore Report: Exhibit 2



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| TAXING ENTITY               | TAX RATE <sup>531</sup> | TAX LEVY <sup>532</sup> |                     |
|-----------------------------|-------------------------|-------------------------|---------------------|
|                             |                         | BERKELEY TOWNSHIP       | SOUTH SEASIDE PARK  |
| County Tax                  | 0.343                   | \$17,472,611            | \$1,865,792         |
| County Library Tax          | 0.038                   | \$1,947,436             | \$206,706           |
| County Health Service Tax   | 0.014                   | \$700,321               | \$76,155            |
| County Open Space Tax       | 0.012                   | \$613,860               | \$65,276            |
| Regional School Tax         | 0.383                   | \$19,516,604            | \$2,083,378         |
| School District Tax         | 0.555                   | \$28,252,361            | \$3,018,994         |
| Municipal Local Purpose Tax | 0.600                   | \$30,557,735            | \$3,263,777         |
| Municipal Open Space Tax    | 0.010                   | \$509,401               | \$54,396            |
| <b>TOTAL</b>                | <b>1.955</b>            | <b>\$99,570,329</b>     | <b>\$10,634,473</b> |

*Excerpt from Exhibit A-49*

2. Based on these figures:

- Eliminating the \$3,318,173<sup>533</sup> in municipal revenue associated with South Seaside Park would reduce Township revenues from \$31,067,136 to \$27,748,963.
- Eliminating the \$3,018,994 in School District revenue associated with South Seaside Park would reduce District revenues from \$28,252,361 to \$25,233,367.
- County taxes and Regional School Taxes follow the property. As such, the County and Regional School Taxes would be assessed through Seaside Park should deannexation occur. There would therefore be no impact to Berkeley Township or the residents of South Seaside Park.

3. **Assuming no change** in Township or Berkeley School District services or increases in non-tax revenue, the Township and School District will be required to increase taxes to recoup these amounts.<sup>534</sup>

<sup>531</sup> Per \$100 of assessed value. Tax rates are calculated by dividing the actual amount to be raised by taxes for each taxing entity by each municipality's Assessed Valuation (Net Valuation Taxable).

<sup>532</sup> Individual tax bills are formulated by multiplying a property's Assessed Value by the sum of the various individual tax rates applicable to each taxing entity and dividing by 100.

<sup>533</sup> Combined Local Purpose Tax and Open Space Tax results in a Municipal Tax Levy of \$31,067,136. South Seaside Park represented \$3,318,173, or 10.68% of this Levy.

<sup>534</sup> Moore Report: Exhibit 3



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c. Operational Revenues<sup>535</sup>

After identifying direct revenues where possible and presenting a number of expense assumptions where direct revenues were not identifiable,<sup>536</sup> Mr. Moore calculated the impact to the Township's<sup>537</sup> Operational Revenues should deannexation occur:

- \$1,628,785 reduction based on 2014 figures and no change in manpower ~ a loss of 5.2%.
- \$865,541 reduction based on 2014 figures and the elimination of 1 police car and attendant manpower ~ a loss of 2.8%.
- \$ 2,939 reduction based on 2014 figures and the elimination of 2 police cars and attendant manpower ~ a loss of 0.0%.

d. Expenses<sup>538</sup>

- The 2014 Total Municipal Budget for Berkeley Township was \$44,134,484.
- Total (actual) Net Expenditures for Berkeley Township were \$42,750,617.

Mr. Moore testified that South Seaside Park represents 10.68% of the Township's Total Assessment. As such, he opined that South Seaside Park *should* therefore represent 10.68% of Township expenditures. Mr. Moore calculated that \$4,645,207 is "*the amount that should have been spent for services in South Seaside Park*".

Mr. Moore observed that municipalities do not classify expenditures as to the portion of the municipality they are intended to serve. As such, it was not possible for him to present actual Township expenses attributable to South Seaside Park.<sup>539</sup> Nonetheless,

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<sup>535</sup> Moore Report: Schedules 1, 2, 3 & 4

<sup>536</sup> Fees, Licenses, etc. based on assumptions regarding the proportion of Berkeley Township attributed to South Seaside Park. Including, but not limited to: Beach Badges, Alcoholic Beverages and other Licensing Fees, Water and cable Franchise Fees, revenues associated with Inter-local Agreements and other revenues.

<sup>537</sup> Similar figures for the Berkeley School District were not presented.

<sup>538</sup> Moore Report: p. 1

<sup>539</sup> Testimony on December 3, 2015

*...We looked at the revenue of the beach. We looked at the direct cost of the beach, not indirect cost, which are almost impossible to determine.*

[continued]



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after identifying direct costs where possible and presenting a number of assumptions where direct costs were not identifiable, he was able to calculate 2014 expenditures attributable to South Seaside Park to be \$1,660,458.<sup>540</sup>

Within the context of such assumptions, Mr. Moore testified that it was not possible to determine municipal costs (or revenues) specific to South Seaside Park for every category,<sup>541</sup> that certain assumptions were necessary to arrive at a “rational basis” for assigning certain costs (and revenues) impacted by deannexation,<sup>542</sup> and that not every budget line has an impact.

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[continued]

*The one problem you have... is where we got these costs from. There are no cost studies done in these municipalities that says, I spend X dollars for South Seaside Park and I spend X dollars for some other portion of Berkeley Township, Bayville, or ... Holiday City. No one tracks that. ...How do you quantify it? Don't know if you can. How do you say what does it cost me to do a road here versus over there? Don't know if you can. How much time does the clerk spend to derive the costs spent for South Seaside Park? ... there are no reports that are generated by anybody that determines this amount...*

*Also, there's no quantification for effort and time that employees spend in any direction. I can't determine that...*

<sup>540</sup> Moore Report: p. 2

<sup>541</sup> Testimony on December 3, 2015

*The one problem you have, and I'm sure we're all aware of that... is where we got these costs from. There are no cost studies done in these municipalities that says, "I spend X dollars for South Seaside Park and I spend X dollars for some other portion of Berkeley Township, Bayville, or ... Holiday City..."*

*...No one tracks that. To some extent, there might be some tracking. We obtained police call records. That's a tracking. How do you quantify it? Don't know if you can. How do you say what does*

*it cost me to do a road here versus over there? Don't know if you can. How much time does the clerk spend to derive the costs spent for South Seaside Park? Does she maintain a ~ if you come in from South Seaside Park, write your name down, spend 10 minutes, South Seaside Park 14 minute ~ it's not done. So, how do we determine what the costs are? That's what we're going to get into. But just to know, there are no reports that are generated by anybody that determines this amount. If there are, we should use them.*

<sup>542</sup> Testimony on December 3, 2015

*Remember we talked about how are we going to determine the cost savings and that there's no studies. There's no indirect cost reports. There's none of that. So, we had to determine some calculation that would give some, you know, give us the credibility to say these things can be saved [by Berkeley Township].*

Mr. Moore (based in part on Mr. Bauman's data) calculated:

- Tax Assessments: South Seaside Park accounts for 10.68% of Berkeley Township's total assessments.
- Number of Tax Lines in the Tax Duplicate. South Seaside Park accounts for 4.85% of Berkeley Township's total tax line items.
- Miles of Improved Roads: South Seaside Park accounts for 4.31% of the Township's improved [municipally-owned] roads.
- Population: Including assumptions to account for seasonal residents, South Seaside Park accounts for 4.62% of the Township's total population.
- Houses: South Seaside Park accounts for 5.92% of the Township's total housing base.

and then applied these percentage criteria against Township expenditures.



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Accordingly:<sup>543</sup>

- Certain municipal positions (e.g., the Township Administrator) have costs attributable to activities associated with South Seaside Park. However, Mr. Moore believes that certain positions would not be eliminated should deannexation occur. As such, no cost savings would be realized.<sup>544</sup>
- Other municipal positions (e.g., the Township Clerk) have costs ~ in Mr. Moore's opinion ~ based on population. As such, deannexation would lead to a reduction of 4.62%<sup>542</sup> of the budget for these positions.
- Certain municipal functions (e.g., Planning Board) have costs attributable to the number of houses and lots. As such, Mr. Moore calculated that deannexation would lead to a reduction of 5.92%<sup>542</sup> of the budget for these functions.
- Other municipal functions (e.g., Tax Assessor & Tax Collector) have costs attributable to the number of line items in the Tax Assessor's Tax Duplicate. As such, Mr. Moore calculated that deannexation would lead to a 4.85%<sup>542</sup> budget reduction for these functions.
- Administrative expenses (e.g., workers' compensation and general liability insurances, social security) are based on dollars of salaries, employees and job titles. As such, Mr. Moore was able to calculate the impact of deannexation on these costs based on the totality of reductions under his assumptions.
- Police Department expenses attributed by Mr. Moore to South Seaside Park were (initially) based on the proportion of Township residents who live in South Seaside Park, and not the number of police calls actually directed to this portion of the municipality.<sup>545</sup> As such, Mr. Moore calculated that deannexation would lead to a reduction of 4.62% of the Police budget.

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<sup>543</sup> Moore Report: Schedules 4, 5, 6 & 7

<sup>544</sup> Testimony of Mr. Moore's of December 3, 2015:

*How do we have cost savings **without eliminating people**, because even though it might be worthwhile for the Township if there was a deannexation to look at all of the employees and say maybe there is an opportunity to have cost savings, **I could not do that. I could not say, I'm going to eliminate anybody.** I tried to take a very conservative approach in this and **not overstep any bounds to arrive at what we think the savings are going to be....***

<sup>545</sup> Mr. Moore testified (December 3, 2015) that while a record of each call is made, he was not able to determine how many times officers actually went to South Seaside Park or how much time was involved.

Additionally, Mr. Moore testified that he did not analyze the police records to the extent required to determine response locations and times because:

*...I'm basing every other number on a percentage. I cannot then, am I going to change the method for the police? If I had detailed records and the police could say, here's what it cost me and here's the overtime, here's the Class II officers that were over there, I think... if we could get that information, once again, that would be valuable to give to the Board... But I did not do that.*



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- Subsequently, Mr. Moore's calculated<sup>546</sup> the impact that the elimination of 1 and 2 police cars would have on the Township's budget.
  - Assuming that deannexation would result in the elimination of 1 police car and attendant manpower no longer necessary to patrol South Seaside Park, Mr. Moore calculated the savings to be \$2,399,582.
  - Assuming that deannexation would result in the elimination of 2 police cars and attendant manpower no longer necessary to patrol South Seaside Park, Mr. Moore calculated the savings to be \$3,240,618.

The impact of deannexation on the continued responsibility of Township Police regarding Pelican Island was not calculated.

e. Reserve for Uncollected Taxes<sup>547</sup>

Under New Jersey law, a municipality must include in its annual budget a Reserve for Uncollected Taxes,<sup>548</sup> which is the difference between the portion of the municipal local purpose (real estate) tax required to fully fund the municipal budget and the amount of tax that the municipality assumes it will not collect during the year.

Upon deannexation, the Township would no longer be required to budget for the portion of the Reserve associated with South Seaside Park. As such Mr. Moore calculated these savings to be:<sup>549</sup>

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<sup>546</sup> Exhibit A-50: Schedule 1 & Testimony on February 4, 2016. Such calculations assume that, upon deannexation, instead of reassigning officers and vehicles no longer required to patrol South Seaside Park to Mainland Berkeley Township, they would be eliminated.

<sup>547</sup> Moore Report: Schedule 1 & Schedule 2

<sup>548</sup> N.J.S.A. 40A:4-40. Reserve for Uncollected Taxes; Appropriation

*There shall be included in each budget an appropriation for "reserve for uncollected taxes" sufficient in amount so that the anticipated cash receipts for the fiscal year shall at least equal the sum of the following items, each of which is hereinafter referred to as a "lawful yearly expenditure":*

- a. The total of all current budget appropriations (except for reserve for uncollected taxes);*
- b. The amounts due or to become due for school, county, State, local and special district taxes prior to the end of the fiscal year; and*
- c. The amounts of any other anticipated current expenditures for the fiscal year.*

([www.law.justia.com/codes/new-jersey/2013/title-40a/section-40a-4-40/](http://www.law.justia.com/codes/new-jersey/2013/title-40a/section-40a-4-40/))

<sup>549</sup> Similar figures for the Berkeley School District were not presented.



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- \$190,898 based on 2014 figures.
- \$215,017 based on 2014 figures and assuming that deannexation would result in the elimination of 1 police car and attendant manpower which would no longer be necessary to patrol South Seaside Park.
- \$242,461 based on 2014 figures and assuming that deannexation would result in the elimination of 2 police cars and attendant manpower which would no longer be necessary to patrol South Seaside Park.

f. Total Cost Savings<sup>550</sup>

Mr. Moore calculated the Total Cost Savings<sup>551</sup> for Berkeley Township<sup>549</sup> should deannexation occur to be:

- \$1,851,356 based on 2014 figures and no change in manpower ~ a reduction of 4.19%.
- \$2,614,599 based on 2014 figures and the elimination of 1 police car and attendant manpower ~ a reduction of 5.92%.
- \$3,483,079 based on 2014 figures and the elimination of 2 police cars and attendant manpower ~ a reduction of 7.89%.

g. Mr. Moore reported<sup>552</sup> additional adjustments as follows:

- The Regional School Tax, will be recalculated based on the new equalized valuations should deannexation occur. Mr. Moore calculated that Berkeley Township's payment of Regional High School Tax will decrease by \$2,083,378.
- All County taxes will be recalculated based on the new equalized valuations should deannexation occur. The County tax ratio will remain the same after deannexation, but Berkeley Township's payment of the Total County Taxes will decrease by \$2,213,929.

h. Net Impact of Deannexation on Berkeley Township<sup>553</sup>

Mr. Moore calculated the financial impact to the Township should deannexation occur as:

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<sup>550</sup> Moore Report: Schedule 1

<sup>551</sup> i.e., savings from expenditures no longer required for South Seaside Park plus peroration of Reserve for Uncollected Taxes.

<sup>552</sup> Moore Report: p. 4

<sup>553</sup> Moore Report: Exhibit 2 & Exhibit 3



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- \$1,689,388 reduction based on 2014 figures and no changes in manpower ~ a saving of 3.82%.
- \$2,452,632 reduction based on 2014 figures and the elimination of 1 police car and attendant manpower ~ a savings of 5.55%.
- \$3,321,112 reduction on 2014 figures and the elimination of 2 police cars and attendant manpower ~ a saving of 7.52%.

i. Tax Impact of Deannexation on the Township’s Property Owners <sup>554</sup>

1. The Total Local Purpose and Local School Tax Rate for Berkeley Township in 2014 was 1.165 per \$100 of assessed value. This includes:

| TAX                          | TAX RATE / \$100 OF ASSESSED VALUATION |
|------------------------------|--|
| Municipal Local Purpose Tax  | 0.600                                  |
| Municipal Open Space Tax     | 0.010                                  |
| Berkeley School District Tax | 0.555                                  |

*Report Table K*

Mr. Moore calculated that, should deannexation occur, the [first-year-post-deannexation] combined Municipal Local Purpose Tax Rate, Municipal Open Space Tax Rate and Berkeley School District Tax Rate would be:

- 2.057 per \$100 of assessed value based on 2014 figures and no changes in manpower ~ an *increase* in the tax rate of 0.102 (5.2%), reflecting an *increase* of 0.0357 per \$100 for the Municipal Local Purpose Tax and no change in the Municipal Open Space Tax.
- 2.040 per \$100 of assessed value based on 2014 figures and the elimination of 1 police car and attendant manpower ~ an *increase* in the tax rate of 0.085 (4.3%), reflecting an *increase* of 0.0189 per \$100 for the Municipal Local Purpose Tax and no change in the Municipal Open Space Tax.
- 2.021 per \$100 of assessed value based on 2014 figures and the elimination of 2 police cars and attendant manpower ~ an *increase* in the tax rate of 0.066 (3.4%), reflecting no change in the Municipal Local Purpose Tax or the Municipal Open Space Tax.

<sup>554</sup> Moore Report: Exhibit 2 & Exhibit 3



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2. Mr. Moore projected the Municipal Tax Increase on the residents of Berkeley Township for a range of property assessments should deannexation occur.<sup>555</sup>

- Based on 2014 tax rates and no changes in manpower, including projected revenue loss and cost savings, but without elimination of police cars:

| ASSESSED VALUE     | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                                  |             |
|--------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|----------------------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX <sup>556</sup> |             |
| \$100,000          | \$1,955             | \$610             | \$2,057                          | \$646             | \$102        | 5.21%        | \$36                             | 5.9%        |
| <b>\$183,600*</b>  | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,776</b>                   | <b>\$1,185</b>    | <b>\$187</b> | <b>5.21%</b> | <b>\$65<sup>557</sup></b>        | <b>5.8%</b> |
| \$200,000          | \$3,910             | \$1,220           | \$4,114                          | \$1,291           | \$204        | 5.21%        | \$71                             | 5.8%        |
| \$250,000          | \$4,888             | \$1,525           | \$5,142                          | \$1,614           | \$254        | 5.21%        | \$89                             | 5.8%        |
| \$350,000          | \$6,843             | \$2,135           | \$7,199                          | \$2,260           | \$356        | 5.21%        | \$125                            | 5.9%        |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <i>n.a.</i>                      | <i>n.a.</i>       | <i>n.a.</i>  | <i>n.a.</i>  | <i>n.a.</i>                      | <i>n.a.</i> |
| \$500,000          | \$9,775             | \$3,050           | \$10,284                         | \$3,228           | \$509        | 5.21%        | \$178                            | 5.8%        |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,568                         | \$6,457           | \$1,018      | 5.21%        | \$357                            | 5.9%        |

*Excerpt from Exhibit A-49*

\* Median Assessed Value of Owner-Occupied Housing Units in Berkeley Township.<sup>558</sup>

\*\* Median Assessed Value of Owner-Occupied Housing Units in South Seaside Park.<sup>559</sup>

- Based on 2014 tax rates, including projected revenue loss and cost savings, and the Elimination of 1 Police Car and attendant manpower:

<sup>555</sup> Moore Report: Exhibit 3. Local Purpose Tax figures include municipal Local Purpose Tax and municipal Open Space Tax, but do not Berkeley School District Tax.

<sup>556</sup> Not included in the Moore Report. Calculated for this Report of Findings based on information contained in Moore Report: Exhibit 3.

<sup>557</sup> The figures cited on p. 1 of the Moore Report (Local Purpose Tax rate for Berkeley Township after Deannexation: 0.646, resulting in a Local Purpose tax increase of \$58 and translating to \$5 / month or \$0.18 / day) include the Local Purpose AND Local Open Space Tax rates and are inconsistent with the figures calculated by Moore Exhibit 3. Subtracting the pre-deannexation Municipal Tax bill of \$1,120 from the post deannexation tax bill of \$1,185 results in an increase of \$65 (\$5.42 / month or \$0.18 / day).

<sup>558</sup> Mr. Moore testified (February 4, 2016) that this statistic was provided by Mr. Bauman. While Mr. Moore referenced that data as being the "Average" Assessed Value, the statistic cited in the Bauman Report (p. 15) is the "Median" Value. The data source used by Mr. Bauman is the 2008-2012 American Community Survey. The Tax Year used by Mr. Moore is 2014. While Mr. Moore's calculation may be used for comparison purposes, the actual values derived may not be accurate.

<sup>559</sup> Not included in the Moore Report. Calculated for this Report of Findings based on information contained in the Moore Report: Exhibit 2.



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| ASSESSED VALUE     | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                                  |             |
|--------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|----------------------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX <sup>559</sup> |             |
| \$100,000          | \$1,955             | \$610             | \$2,040                          | \$629             | \$85         | 4.35%        | \$19                             | 3.1%        |
| <b>\$183,600*</b>  | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,745</b>                   | <b>\$1,155</b>    | <b>\$156</b> | <b>4.35%</b> | <b>\$35</b>                      | <b>3.1%</b> |
| \$200,000          | \$3,910             | \$1,220           | \$4,080                          | \$1,258           | \$170        | 4.35%        | \$38                             | 3.1%        |
| \$250,000          | \$4,888             | \$1,525           | \$5,100                          | \$1,572           | \$212        | 4.35%        | \$47                             | 3.1%        |
| \$350,000          | \$6,843             | \$2,135           | \$7,140                          | \$2,201           | \$297        | 4.35%        | \$66                             | 3.1%        |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <i>n.a.</i>                      | <i>n.a.</i>       | <i>n.a.</i>  | <i>n.a.</i>  | <i>n.a.</i>                      | <i>n.a.</i> |
| \$500,000          | \$9,775             | \$3,050           | \$10,200                         | \$3,144           | \$425        | 4.35%        | \$94                             | 3.1%        |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,400                         | \$6,289           | \$850        | 4.35%        | \$189                            | 3.1%        |

*Excerpt from Exhibit A-50*

\* Median Value of residential property in Berkeley Township.  
\*\* Median Value of residential property in South Seaside Park.

- Based on 2014 tax rates, including projected revenue loss and cost savings, and the Elimination of 2 Police Cars:

| ASSESSED VALUE     | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                                  |             |
|--------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|----------------------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX <sup>559</sup> |             |
| \$100,000          | \$1,955             | \$610             | \$2,021                          | \$610             | \$66         | 3.37%        | \$0.00                           | 0.0%        |
| <b>\$183,600*</b>  | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,710</b>                   | <b>\$1,120</b>    | <b>\$121</b> | <b>3.37%</b> | <b>\$0.00</b>                    | <b>0.0%</b> |
| \$200,000          | \$3,910             | \$1,220           | \$4,042                          | \$1,220           | \$132        | 3.37%        | \$0.00                           | 0.0%        |
| \$250,000          | \$4,888             | \$1,525           | \$5,052                          | \$1,524           | \$165        | 3.37%        | -\$1.00                          | -0.07%      |
| \$350,000          | \$6,843             | \$2,135           | \$7,073                          | \$2,134           | \$231        | 3.37%        | -\$1.00                          | -0.05%      |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <i>n.a.</i>                      | <i>n.a.</i>       | <i>n.a.</i>  | <i>n.a.</i>  | <i>n.a.</i>                      | <i>n.a.</i> |
| \$500,000          | \$9,775             | \$3,050           | \$10,104                         | \$3,049           | \$329        | 3.37%        | -\$1.00                          | 0.03%       |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,209                         | \$6,098           | \$659        | 3.37%        | -\$2.00                          | 0.03%       |

*Excerpt from Exhibit A-50*

\* Median Value of Owner-Occupied Housing Units in Berkeley Township.  
\*\* Median Value of Owner-Occupied Housing Units in South Seaside Park.



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**B. Impact of Annexation on Seaside Park**

Should deannexation be successful, South Seaside Park will be required to petition Seaside Park for permission to annex to the Borough. As with deannexation, the *Deannexation Statute* provides no guidance regarding how the governing body of the municipality to which annexation is sought (in this case, Seaside Park) is to review such a petition. Prior practice has been a Planning Board hearing process similar to that being undertaken for deannexation. Financial information pertinent to Seaside Park was presented by Mr. Moore:

1. Assessed Values<sup>560</sup>

The 2014, Total Net Assessed Value of property in Seaside Park was \$1,118,987,352. Should annexation occur, South Seaside Park’s assessments of \$543,962,800 will be added to that figure for a new total value of \$1,662,950,152, a 48.61% increase.

2. Tax Revenues<sup>561</sup>

a. The various 2014 tax rates and resultant tax levies applicable to properties in Seaside Park in 2014 were:

| <i>TAXING ENTITY</i>                      | <i>TAX RATE</i> <sup>562</sup> | <i>TAX LEVY</i> <sup>563</sup> |
|---|--------------------------------|--------------------------------|
| <i>County Tax</i> <sup>564</sup>          | 0.361                          | \$4,036,504                    |
| <i>County Library Tax</i>                 | 0.040                          | \$449,932                      |
| <i>County Health Service Tax</i>          | 0.014                          | \$161,824                      |
| <i>County Open Space Tax</i>              | 0.013                          | \$141,909                      |
| <i>Regional School Tax</i> <sup>565</sup> | 0.376                          | \$4,209,184                    |

<sup>560</sup> Moore Report: p. 1 & Exhibit 1 (exclusive of Tax Exempt Property) and Exhibit A-54

<sup>561</sup> Moore Report: Exhibit 2

<sup>562</sup> Per \$100 of assessed value. Tax rates are calculated by dividing the actual amount to be raised by taxes for each taxing entity by each municipality’s Assessed Valuation or Net Valuation Taxable.

<sup>563</sup> Individual tax bills are formulated by multiplying a property’s Assessed Value by the various individual tax rates applicable to each taxing entity and dividing by 100.

<sup>564</sup> The Moore Report (p. 7) stated that all County taxes will be recalculated based on the new equalized valuations should annexation occur.

<sup>565</sup> The Moore Report (p. 7) stated that the Regional School Taxes will be recalculated based on the new equalized valuations should annexation occur. Seaside Park’s payment of Regional High School Tax will increase by \$2,083,378.



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| <b>TAXING ENTITY</b>                     | <b>TAX RATE<sup>562</sup></b> | <b>TAX LEVY<sup>563</sup></b> |
|--|-------------------------------|-------------------------------|
| <i>School District Tax<sup>566</sup></i> | <i>0.055</i>                  | <i>\$613,281</i>              |
| <i>Municipal Local Purpose Tax</i>       | <i>0.449</i>                  | <i>\$5,022,604</i>            |
| <b>TOTAL</b>                             | <b>1.308</b>                  | <b>\$14,635,239</b>           |

*Excerpt from Exhibit A-9*

- b. Assuming Seaside Park assesses properties the same way as Berkeley Township, Mr. Moore calculated that adding the South Seaside Park assessment to Seaside Park's ratable base would decrease the Borough's 2014 tax rates as follows:<sup>567</sup>

| <b>TAXING ENTITY</b>               | <b>TAX RATE<sup>562</sup></b> | <b>TAX LEVY</b>     |
|------------------------------------|-------------------------------|---------------------|
| <i>County Tax</i>                  | <i>0.355</i>                  | <i>\$5,902,297</i>  |
| <i>County Library Tax</i>          | <i>0.039</i>                  | <i>\$656,638</i>    |
| <i>County Health Service Tax</i>   | <i>0.014</i>                  | <i>\$237,979</i>    |
| <i>County Open Space Tax</i>       | <i>0.012</i>                  | <i>\$207,185</i>    |
| <i>Regional School Tax</i>         | <i>0.376</i>                  | <i>\$6,292,562</i>  |
| <i>School District Tax</i>         | <i>0.037</i>                  | <i>\$613,281</i>    |
| <i>Municipal Local Purpose Tax</i> | <i>0.302</i>                  | <i>\$5,022,604</i>  |
| <b>TOTAL</b>                       | <b>1.136</b>                  | <b>\$18,932,545</b> |

*Excerpt from Exhibit A-49*

- c. Operational Revenues<sup>568</sup>

Since he had not reviewed Seaside Park's operating budget "in any way", Mr. Moore stated that he was not able to project the "cost savings or increase" for Seaside Park attributable to annexation. Nonetheless, Exhibit 2 of his Report included an "After Deannexation and Cost Savings" projection:

<sup>566</sup> The Moore Report (p. 7) stated that the number of students living in South Seaside Park "is minimal, and should not impact the operating budget of the Seaside Park School District". Accordingly, the Seaside Park School tax levy "will not change" with the addition of South Seaside Park.

<sup>567</sup> Assumes no change in municipal costs or revenues resulting from annexation.

<sup>568</sup> Testimony on December 3, 2015



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| <b>TAXING ENTITY</b>        | <b>TAX RATE</b> | <b>TAX LEVY</b>     |
|-----------------------------|-----------------|---------------------|
| County Tax                  | 0.355           | \$5,902,297         |
| County Library Tax          | 0.039           | \$656,638           |
| County Health Service Tax   | 0.014           | \$237,979           |
| County Open Space Tax       | 0.012           | \$207,185           |
| Regional School Tax         | 0.378           | \$6,292,562         |
| School District Tax         | 0.037           | \$613,281           |
| Municipal Local Purpose Tax | 0.329           | \$6,292,562         |
| <b>TOTAL</b>                | <b>1.165</b>    | <b>\$19,373,895</b> |

*Excerpt from Exhibit A-49*

d. Expense Impacts

Again, Mr. Moore testified<sup>568</sup> that he had not reviewed Seaside Park’s operating budget, and that an evaluation of the additional costs to be incurred by Seaside Park, should annexation occur, will have to be undertaken. He was, however, able to opine that the Borough’s Operating Budget would not significantly change should annexation occur.<sup>569</sup>

The only change for Seaside Park that Mr. Moore was able to calculate was \$423,788 of Berkeley Township’s debt that he found to be attributable to South Seaside Park.<sup>570</sup>

e. Reserve for Uncollected Taxes

Mr. Moore did not provide a Reserve for Uncollected Taxes figure for Seaside Park should annexation occur.

<sup>569</sup> Added costs for the beach patrol will be offset by beach fees, trash collection and other public works and safety costs. In 2014, every \$166,300.00 of spending equaled \$0.01 on the Seaside Park Tax Rate (Exhibit A-49, p. 7).

<sup>570</sup> Exhibit A-53 & testimony on December 3, 2015.

*...that is the only cost that I knew would flow over there. And that's the only one I could really reflect.*



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f. Additional Adjustments<sup>571</sup>

- The Regional School Tax will be recalculated based on the new equalized valuations should annexation occur. Mr. Moore calculated that Seaside Park’s payment of Regional School Tax will increase by \$2,083,378.
- All County taxes will be recalculated based on the new equalized valuations should annexation occur. The County tax ratio will remain the same after annexation, but Seaside Park’s payment of the Total County Taxes will increase by \$2,213,929.

g. Net Impact of Annexation on Seaside Park<sup>572</sup>

- The Total Local Purpose and Local School Tax Rate Tax Rate for Seaside Park in 2014 was 0.504 per \$100 of assessed value. This includes:

| TAX                          | TAX RATE / \$100 OF ASSESSED VALUATION |
|------------------------------|--|
| Municipal Local Purpose Tax  | 0.449                                  |
| Berkeley School District Tax | 0.055                                  |

*Report Table L*

- Assuming that annexation will not cause a significant change in operating costs for the Borough, Mr. Moore calculated that, should annexation occur, the [first-year-post-annexation] Total Municipal Tax Rate for Seaside Park would decrease by 0.143 per \$100 of assessed value ~ a reduction of 10.93% from pre-annexation figures.

The 0.143 rate reduction includes a 0.120 reduction per \$100 for the Seaside Park Local Purpose Tax and a 0.018 reduction per \$100 assessment for the Seaside Park School District Tax ~ for a Total [first-year-post-deannexation] reduction in the Municipal Tax Rate of 0.138 per \$100 assessment ~ a reduction of 27.4% from pre-annexation figures.

- Mr. Moore revised these figures to reflect a pre-annexation tax rate of 0.478, a post-annexation tax rate of 0.322 (excluding municipal debt) and a post-annexation tax rate of 0.348 (including municipal debt).<sup>573</sup>

<sup>571</sup> Moore Report: pp. 4 & 7

<sup>572</sup> Moore Report: Exhibit 2

<sup>573</sup> Exhibit A-54



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h. Tax Impact of Annexation on Seaside Park Property Owners<sup>574</sup>

Mr. Moore calculated the impact of [first-year] post-annexation Tax Rates on the residents of Seaside Park for a range of property assessments should annexation occur.

| BEFORE ANNEXATION   |                 |                   | UPON ANNEXATION & COST SAVINGS <sup>575</sup> |                   | CHANGE          |                |                                  |                |
|---------------------|-----------------|-------------------|---|-------------------|-----------------|----------------|----------------------------------|----------------|
| ASSESSED VALUE      | TOTAL TAX       | LOCAL PURPOSE TAX | TOTAL TAX                                     | LOCAL PURPOSE TAX | TOTAL TAX       |                | LOCAL PURPOSE TAX <sup>576</sup> |                |
| \$100,000           | \$1,308         | \$449             | \$1,165                                       | \$329             | -\$143          | -10.93%        | -\$120                           | -26.73%        |
| <b>\$183,600*</b>   | <b>\$2,401</b>  | <b>\$824</b>      | <b>\$2,139</b>                                | <b>\$603</b>      | <b>-\$262</b>   | <b>-10.93%</b> | <b>-\$221</b>                    | <b>-26.82%</b> |
| \$200,000           | \$2,616         | \$898             | \$2,330                                       | \$657             | -\$286          | -10.93%        | -\$241                           | -26.84%        |
| \$250,000           | \$3,270         | \$1,123           | \$2,913                                       | \$821             | -\$357          | -10.93%        | -\$302                           | -26.89%        |
| \$350,000           | \$4,578         | \$1,572           | \$4,078                                       | \$1,150           | -\$500          | -10.93%        | -\$422                           | -26.84%        |
| <b>\$479,900**</b>  | <b>\$6,227</b>  | <b>\$2,155</b>    | <b>\$5,591</b>                                | <b>\$1,579</b>    | <b>-\$636</b>   | <b>-10.21%</b> | <b>-\$576</b>                    | <b>-26.73%</b> |
| \$500,000           | \$6,540         | \$2,245           | \$5,825                                       | \$1,643           | -\$715          | -10.93%        | -\$602                           | -26.82%        |
| <b>\$767,200***</b> | <b>\$10,035</b> | <b>\$3,445</b>    | <b>\$8,938</b>                                | <b>\$2,524</b>    | <b>-\$1,097</b> | <b>-10.93%</b> | <b>-\$921</b>                    | <b>-26.73%</b> |
| \$1,000,000         | \$13,080        | \$4,490           | \$11,650                                      | \$3,286           | -\$1,430        | -10.93%        | -\$1,204                         | -26.82%        |

*Excerpt from Exhibit A-49*

\* Median Assessed Value of Owner-Occupied Housing Units in Berkeley Township.<sup>577</sup>

\*\* Median Assessed Value of Owner-Occupied Housing Units in South Seaside Park.<sup>578</sup>

\*\*\* Median Assessed Value of Owner-Occupied Housing Units in Seaside Park Borough.<sup>579</sup>

Based on the totality of the foregoing, given the information that he was able to review, and recognizing he did not undertake a full analysis of Seaside Park’s budget, Mr. Moore opined that there would there be a property tax benefit to the residents of both Seaside Park and South Seaside Park should deannexation / annexation occur.

<sup>574</sup> Moore Report: Exhibit 2 & Exhibit 3

<sup>575</sup> Mr. Moore testified (December 3, 2015) that this heading should read cost increases, not savings. Mr. Moore also testified (December 3, 2015) that he had not reviewed Seaside Park’s operating budget and that an evaluation of the additional costs to be incurred by Seaside Park should annexation occur will have to be undertaken. It is therefore unclear how he arrived at these figures.

<sup>576</sup> Not included in the Moore Report. Calculated for this Report of Findings based on information contained in Moore Report: Exhibit 2

<sup>577</sup> Mr. Moore testified (February 4, 2016) that this statistic was provided by Mr. Bauman. While Mr. Moore referenced that data as being the “Average” Assessed Value, the statistic cited in the Bauman Report (p. 15) is the “Median” Value. The data source used by Mr. Bauman is the 2008-2012 American Community Survey. The Tax Year used by Mr. Moore is 2014. While Mr. Moore's calculation may be used for comparison purposes, the actual values derived may not be accurate.

<sup>578</sup> Not included in the Moore Report. Calculated for this Report of Findings based on information contained in the Moore Report: Exhibit 2.

<sup>579</sup> Not included in the Moore Report. Calculated based on 2008-2012 American Community Survey information obtained for this Report of Findings and information contained in the Moore Report: Exhibit 2.



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C. Debt Service<sup>580</sup>

While the ultimate disposition of the portion of the Berkeley Township debt that could be attributed to South Seaside Park should deannexation / annexation occur was and remains the subject of debate, Mr. Moore assumed that some portion of the Township's debt would transfer and calculated:

1. Based on the Township's total outstanding debt as of December 31, 2014 of \$37,974,647 and the 10.68% figure, an annual debt service of \$423,778<sup>581</sup> would follow South Seaside Park to Seaside Park.
2. Based on an average<sup>582</sup> residential assessment of \$183,600, the *average home* in Berkeley Township pays \$143.03 towards municipal debt service annually. Since the average assessment in South Seaside Park is higher than for the balance of the Township, the average debt service payment is also higher in South Seaside Park than for the average home in the balance of the Township.

Should deannexation / annexation occur, that same home would pay \$46.79 as their portion of the Berkeley Township debt being ported to Seaside Park.<sup>583</sup> As such, Mr. Moore opined that *"there is a benefit, not a non-benefit, for [the residents of South Seaside Park] to go to Seaside Park and pay their debt service there"*.

While a property owner in Seaside Park with an assessment of \$183,600 is going to pay, in addition to Seaside Park's existing debt service, \$46.79 as their portion of South Seaside Park's debt being ported to the Borough should deannexation / annexation occur, they will also enjoy the benefit of a 48.61% increase in ratables attributable to the addition of South Seaside Park to their municipality.

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<sup>580</sup> Moore Report: p. 6 & Exhibit A-53

<sup>581</sup> It is unknown how Mr. Moore calculated debt service.

<sup>582</sup> Testimony of Mr. Moore of February 4, 2016, citing information from Mr. Bauman. While Mr. Moore indicated the information was "Average" Assessed Value, the statistic cited in the Bauman Report (p. 15) is the "Median" Value.

<sup>583</sup> This figure does not include the portion of Seaside Park's existing debt that South Seaside Park property owners would be required to pay upon becoming part of the Borough.



### **3.11.2 ISSUES RAISED DURING CROSS-EXAMINATION**

- A. When asked if he had prepared any calculations to support his conclusions that both Petitioners and the Township would see financial savings should deannexation occur, Mr. Bauman, who rendered a number of opinions and conclusions based on financial matters, testified<sup>584</sup> that *“the financial savings is directly from the time spent in travel and operational costs of vehicles going back and forth to the Mainland... Which would vary from person to person”*.

When asked if he undertook *“an empirical analysis or quantify how much from the financial or fiscal perspective or economic perspective that time travel would correspond to”*, Mr. Bauman stated that he had not, but that *“it's known that driving 45 minutes to a municipal building rather than walking 10 minutes or biking 5, ...costs more time and money for the individual”*.

When pressed on this issue, Mr. Bauman testified that he did not quantify what those potential savings could be; nor did he consult with Mr. Moore to form the basis of his opinion.<sup>585</sup>

- B. In response to questions regarding his statement that *“local services can be made more efficient without the burden of maintaining South Seaside Park on the Barrier Island”*,<sup>586</sup> Mr. Bauman testified:

*...Just an example would be the police protection and costs of gasoline and going down through the Barrier Island to South Seaside Park. Those costs being, if they were not in place, the local services could be more efficient if they weren't driving and servicing South Seaside Park...*

After being reminded that, should deannexation occur, the Township would still provide services to Pelican Island, and that as such, the travel distances saved due to deannexation were not from the Mainland to South Seaside Park (16 miles), but from Pelican Island to South Seaside Park (2 miles), Mr. Bauman was asked if this fact changed his analysis as to how the Township would benefit financially from deannexation. Mr. Bauman responded that it did not.<sup>584</sup>

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<sup>584</sup> Testimony on September 3, 2015

<sup>585</sup> Mr. Moore testified on February 4, 2016 that he completed his report after Mr. Bauman submitted his report, and that Mr. Bauman did not consult with him on any of his analyses or thought processes.

<sup>586</sup> Bauman Report: pp. 6 & 7 & Testimony on September 3, 2015



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- C. When asked to reconcile his conclusion that “*deannexation of South Seaside Park from Berkeley Township would not result in significant economic... injury to Berkeley Township residents*”<sup>587</sup> against the loss of revenues attendant to White Sands Beach, Mr. Bauman conceded that “*there would be a value loss*”, albeit one that he could not calculate.
- D. Mr. Moore disagreed with Mr. Bauman’s findings<sup>588</sup> that withdrawal of South Seaside Park’s students from the Berkeley School District or the Central Regional School District due to deannexation “*would result in a financial savings to the Berkeley Township School District, and this savings is a direct economic benefit to Berkeley Township residents*”.<sup>589</sup> In fact, Mr. Moore opined that there would be a “*cost detriment [to the Township] because of the school*” because school districts have their own tax levy that is designed to divide the school budget among the property tax payers in the district. Since the Berkeley Township schools budget will not change should deannexation occur, the same budgetary figure would be divided by a lesser number of property tax payers, thereby increasing the share for each taxpayer.
- E. After identifying direct costs where possible and presenting a number of expense assumptions where direct costs were not identifiable, Mr. Moore calculated 2014 expenditures and revenues attributable to South Seaside Park to be \$2,399,582<sup>590</sup>
- F. During an exchange between Mr. Moore, the Board Attorney and the Township Auditor regarding the impact of annexation on Seaside Park, Mr. Moore conceded the possibility that his conclusions were incomplete given the lack of cost analyses undertaken.<sup>591</sup>

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<sup>587</sup> Testimony on August 6, 2015

<sup>588</sup> Bauman Report: p. 35

<sup>589</sup> Testimony on December 4, 2015

<sup>590</sup> Exhibit A-50

<sup>591</sup> Testimony on February 4, 2016

*QUESTION: ...So they would save \$250.*

*RESPONSE: Little bit more. Yes.*

*QUESTION: ...that's because you're sharing that \$423,000 [\$423,788 is the percent of Berkeley Township's debt that Mr. Moore found to be attributable to South Seaside Park] with an additional \$1.2 worth of assessments in Seaside Park.*

*RESPONSE: And I completely agree.*

*QUESTION: So you're sharing it with other people. So you're spreading it out over a bigger population.*

[continued]



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G. In response to a series of questions posed by the Board Attorney aimed at determining the costs of annexation to the residents of Seaside Park ~ and therefore the residents of South Seaside Park, Petitioners' Counsel replied<sup>592</sup> that Mr. Moore:

*...has said very emphatically that it is in the best interest of the South Seaside Park residents. ...there's going to be substantial savings to them.*

To which the Board Attorney responded that while Mr. Moore presented a complete financial impact of tax levies for Seaside Park,<sup>593</sup> he did not present “*any analysis of what Seaside Park is going to have to incur in costs...* ”.<sup>594</sup>

Mr. Moore conceded that such information “*was not presented*”.

#### H. Municipal Debt

1. While N.J.S.A. 40A:7-17 et seq. states that “*the municipality to which the territory shall be annexed, shall be liable to pay a proper proportion of the bonded and other indebtedness of the municipality of which the annexed territory formerly formed a part*”, no Statutory or Case Law governs how municipal debt is to be treated in a deannexation matter.

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[continued]

*RESPONSE: And that is what decreases... the rate. ...that's the calculation. ... the schedule we're showing that the entire [tax rate] of Seaside Park are going to go down by ...10%. That's part of what we've... presented here. So we've always are saying there is a savings to join Seaside Park.*

*QUESTION: I don't think you can make that assumption, though, until you do the rest of your calculations that you're going to eventually have to do to get [Seaside Park] to take [South Seaside Park]. Because there's a lot of costs. You're saying there's a 10% savings, but that's only because you're assuming that Seaside Park's] budget can handle everything that [South Seaside Park] needs, except it's going to add this little bit of debt service to it, \$423,000.*

*RESPONSE: I'm not assuming any of that.... But I think we've said, I have not done any analysis. We have not had any discussion with... Seaside Park.*

*QUESTION: But your calculation, that you're saying [Seaside Park is] saving 10%, is only taking Seaside Park's tax rate and adding the \$423,000 worth of debt to it and then spreading that out over the entire [post-annexation] population. And then saying it's going to be a 10% savings. I don't think you can make the statement that that 10% savings is complete because there's probably other costs that they're going to have to add to [Seaside Park's] budget.*

*RESPONSE: ...there's a possibility of that. ...I have not done that calculation. Maybe the Township will ask you to do that. Then we'll know what the number is.]*

<sup>592</sup> Testimony on February 4, 2016

<sup>593</sup> Moore Report: p. 10

<sup>594</sup> Testimony on February 4, 2016



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Lacking such guidance, Mr. Moore opined that South Seaside Park represents 10.68% of Berkeley Township's ratables and should therefore be responsible to 10.68% of the Township's debt. And since the debt "would follow the deannexation", 10.68% of the Township's debt would be assumed by Seaside Park should deannexation occur.

An extended discussion ensued regarding what portion of South Seaside Park's debt would transfer to Seaside Park and how the Borough would redeem such debt ensued. While possibilities include Seaside Park issuing their own debt to pay Berkeley Township in one or more payments or the Borough paying the Township's debt service on an annual basis, Mr. Moore admitted that the issue would have to be resolved via negotiations between Berkeley Township and Seaside Park ~ assuming the petitions for deannexation / annexation were approved by both municipal governing bodies.

2. In an attempt to gain an understanding of the impact that debt service would have on the residents of South Seaside Park should deannexation / annexation occur, the Board Attorney asked Mr. Moore if he was able to calculate the combined debt total that Seaside Park would face upon assuming South Seaside Park's portion of Berkeley Township's debt (i.e., existing Seaside Park debt + South Seaside Park debt).

Mr. Moore replied that he was unable to calculate such a figure because he did not know if Seaside Park was "going to assume the debt... have a contract with Berkeley Township to reimburse them for the annual debt they pay" or address the issue via some other mechanism.<sup>595</sup>

3. Given the significant difference in median values for owner occupied housing units in South Seaside Park (\$479,900) vs. owner occupied housing units in Mainland Berkeley Township (\$183,600),<sup>596</sup> Mr. Moore was asked<sup>597</sup> if the calculation of the debt service for

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<sup>595</sup> Testimony on December 3, 2015

*...this discussion took place last meeting... And I said, I can't answer that. ...would Seaside Park issue debt, give you the \$4 million thereabouts back, or whatever the debt would be equal to? And I believe it's maybe three and a half million. Or would there be an arrangement where Seaside Park would pay this piece over to you as revenue? I can't answer that...I... really have no ability to get into how that debt's going to be structured.*

<sup>596</sup> Bauman Report: p. 15. Statistics used by Mr. Moore in his debt service analysis.

<sup>597</sup> Testimony on February 4, 2016



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the Township should be based upon the assessed value in South Seaside Park as opposed to that of the Mainland.

*QUESTION: ... shouldn't the calculation of what South Seaside Park's portion of the debt payment that's made currently... be based on the assessed value of the property since that's how they're taxed?... according to this, if it was a \$500,000 house... You'd be paying \$389.53 in debt service. ... On an annual basis from South Seaside Park.*

*RESPONSE: Correct. And if they go to Seaside Park, they would pay \$127.*

*QUESTION: So but the Mainland portion would have to make that up?*

*RESPONSE: No. The Mainland portion would not have to make that up. Because... the assessments drop in the Mainland but so does the debt drop. They are equal.*

**I. Impact to Local School District**

1. Mr. Moore calculated that the impact of deannexation would result in an approximately \$0.07 School Tax increase per \$100 of assessed value for the properties in Mainland section of Berkeley Township. Based on an average value of \$183,600, the average residential property on the Mainland would see a first-year-post-deannexation School Tax increase of \$121.18.<sup>598</sup>
2. Mr. Moore opined<sup>599</sup> that deannexation would result in a direct economic benefit to Berkeley Township residents as relates to the Regional Schools, but an economic detriment as relates to the Local Schools.

*...The Regional School tax is based on [real estate] assessments. So if assessments move out of Berkeley Township [via deannexation], the Regional School tax would go with [the properties to Seaside Park].*

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<sup>598</sup> Moore Report: pp. 9 & 11

<sup>599</sup> Testimony on February 4, 2016

*...the district school, the \$28 million in levy. That never changes. ... But if the assessments go down, then it's going to have to be absorbed by less dollars. So if you went to Page 11, the total dollars are reflected in that, and it's going to have a change. So that dollar amount for Berkeley Township per assessed value is going to go up.*



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*In the local [school district], you have a levy based on what it costs to run the school[s]. When the assessments go down [due to deannexation], the levy of the local school[s], I'm assuming, doesn't change because there is only maybe 1 [South Seaside Park] student that goes to the local school. Maybe 2. ...So that now I'm spreading the levy over less assessments. So that levy would have to be absorbed by a fewer dollars...*

3. Mr. Bauman and Mr. Moore expressed conflicting opinions as to the financial impact of deannexation on the Berkeley Township School system. Mr. Moore attempted to explain this difference of opinion by testifying:<sup>600</sup>

*[Mr. Bauman is] saying there's going to be... some cost reduction if students don't go to the local school. ...And in the regional school, it doesn't matter. Because regional school dollars follow the [children]. So assuming that there are... 2 students or 3 students in the school, and there's some savings because they go to a different school, that might be what he's referring to.*

*What I'm saying is, with the assessments going down \$540 million, the [remaining] residents of Berkeley Township are going to have to pay more based on the absorption of the levy. Because I'm assuming the levy does not change. For the local school.*

*The Regional School, those taxes are going to follow the assessments, so that would not have any effect, would lower Berkeley Township's overall tax. But it's almost a zero tradeoff...<sup>601</sup>*

4. An extended discussion took place regarding the impact that deannexation might have on the amount of State Aid received by the Township's School District.

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<sup>600</sup> Mr. Moore's testimony occurred after Mr. Bauman's. As such, the discrepancy in opinion was not discovered in time to confirm this statement with Mr. Bauman.

<sup>601</sup> As with municipalities, Counties and Regional Taxing entities derive their revenues to operate via Real Estate Taxes, which are based on the assessed values of the taxable lands and improvements in each municipality in the given Taxing District. Assessed values, in turn, are to be based on the market value of the real estate. Real estate values vary from municipality to municipality. And, due to changes in market conditions, the property tax assessments in individual municipalities may not reflect true market value. In order to insure that all properties in all municipalities in a Taxing District pay an equitable proportion of their District Taxes, an equalization formula ~ based on how close assessments are to actual market value ~ is applied. Since Berkeley Township and Seaside Park have relatively similar equalization ratios, Mr. Moore does not believe that deannexation will result in a significant impact to the Regional School Tax.



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- a. Mr. Moore testified that he attempted to find out how the State Aid would change and whether or not the Township would receive more State Aid in the event of deannexation by contacting the New Jersey Department of Education,<sup>602</sup> but the officials he spoke to would not release that information to non-Township personnel. Mr. Moore and Petitioners' Counsel requested that the Township attempt to obtain this information from the Department of Education. That apparently did not occur.
- b. *While the annual amount that a municipal school district is to receive under the State School Funding Program is established by formula, the historic inability of the New Jersey Legislature to provide sufficient funding for the Department of Education to follow such formula is well documented.*
  - i. When asked if attempting to calculate State Aid is “speculation at best because they don't follow the formula and year to year it's different”, Mr. Moore replied that he “couldn't agree more”.<sup>603</sup>
  - ii. When asked if any school district knows what they're going to get in State Aid, Mr. Moore replied “No”.<sup>603</sup>
  - iii. When asked the last time the School Finding Formula was adhered to, Mr. Moore replied (jokingly) “1740”.<sup>604</sup>
  - iv. Mr. Moore commented on several occasions that “we have no idea how to calculate the State Aid”.<sup>604</sup>
  - v. When asked if he thought that the Township could “rely on any representations about School Aid that may or may not be forthcoming...” and, given the history of how school funding, State Aid has been allocated “is there any way, in your opinion, to really estimate how deannexation will change the funding formula...”,

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<sup>602</sup> The State Agency that maintain the formula for calculating such Aid.

<sup>603</sup> Testimony on December 3, 2015

<sup>604</sup> Testimony on February 4, 2016



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Mr. Moore testified:<sup>605</sup>

*...I think what we brought out was that if somebody from the Township were to contact the State Department of Education, they would have some better ability to ask them to run the calculation. What the other gentleman brought up was that, in his opinion, there was 2 stratus of the populations, South Seaside Park and the rest of Berkeley Township. South Seaside Park, he indicated that they had a higher per capita income... and that the rest of Berkeley Township was lower. Under normal circumstances, if a higher per capita income were to leave, they're going to fund more for the lower per capita income. So, based on what he indicated, I would think there is some chance of getting additional aid.*

- vi. Assuming that the Township was able to obtain a State Aid figure from the State Department of Education, Mr. Moore was asked, in his experience, how reliable that number would be moving into the future; to which he responded:<sup>606</sup>

*No one can tell ... and that's why I did not put any indication in this report as to a number.*

- vii. A Board Member with knowledge of the situation commented<sup>604</sup> that the Seaside Park School District is classified as a District Factor Group D/E while Berkeley Township is a District Factor Group B., and “*the higher the letter, the worst the grade*”. It was therefore the opinion of the Board Member that the Township will be impacted, “*and most likely to the detriment. And receive less funding*”.
- viii. South Seaside Park resident Mr. James Fulcomer, who was characterized as an “*expert educator with particular knowledge of State Aid*”,<sup>607</sup> was offered as a “*fact Witness*” on this subject.

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<sup>605</sup> Testimony on June 2, 2016

<sup>606</sup> Testimony on May 5, 2016

<sup>607</sup> Mr. Fulcomer testified that he taught at Elizabeth High School and its predecessor institutions for 42 years, that as a former Union County Freeholder, he was liaison to the County Educational Advisory Board. As Rahway City Council member, he participated in negotiations with the local school board on defeated school budgets.

Mr. Fulcomer further testified that he taught New Jersey government and history for 43 years, and as a member of Berkeley Township Board of Education (served “*a little less than 4 years*” ~ including terms as Vice President and President), he chaired the Board’s Committee on State [continued]



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Mr. Fulcomer testified<sup>604</sup> that, in order to determine whether or not the Berkeley School District would lose State Aid or whether State Aid would be made-up by the State in the event of deannexation, he:

1. Sent a letter to the Township's State legislative delegation<sup>608</sup> asking a "hypothetical question" about if the Toms River Zip Code of Berkeley Township left, would there be any increase in State Aid.<sup>609</sup>

Mr. Fulcomer testified that, by letter dated March 11, 2016,<sup>610</sup> the Legislative Delegation confirmed such a supposition by stating, as described by Mr. Fulcomer:

*...among other things, that the Bayville section of the Township would have received more State Aid if the Holiday City section had left. ...Under the current State School Aid Formula, Berkeley Township would receive additional State Aid in the event that the Toms River Zip Code section of Berkeley Township seceded from the Township.*

Mr. Fulcomer testified that this finding would be true under the current deannexation situation.

2. Mr. Fulcomer further testified<sup>604</sup> that, in his experience:

*...a general principle, ... in the educational area of finance education in our state, is that the more ratables that stand behind each student in the public school system, excluding the special districts, formally called Abbott, is the less State Aid you're likely to get. And the less ratables behind each student, the more State Aid you're likely to get...*

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[continued]

Aid Education. As a member of the Board of Education when the Petition for Deannexation was circulated, Mr. Fulcomer did not sign the Petition due to what he believed to be a conflict of interest. Mr. Fulcomer's Résumé was marked as A-55 for identification.

<sup>608</sup> State Senator Christopher Connors and Assemblyman Brian Rumpf.

<sup>609</sup> When asked why this question was posed in such a way vs. specifically asking about South Seaside Park, Mr. Fulcomer replied:

*Because years ago, ... an analysis was made on a proposition that the Holiday City section of Berkeley Township might secede from the Township. And I knew that they had done that analysis... And it certainly was analogous because if Holiday City or the Toms River Zip Code section of Berkeley Township left the Township, it would be a loss of tax ratables and that would have the impact of having the State increase the State Aid to Berkeley Township.*

<sup>610</sup> Exhibit A-56



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Mr. Fulcomer then cited a section of a State website referencing State Aid:

*...any school funding formula should provide for up-to-date measures of the individual districts' ability to pay. And that includes both tax ratables and also income.*

Based on Petitioners' testimony and statements made by the Board Professionals, it is

Mr. Fulcomer's understanding:

*...that if South Seaside Park leaves Berkeley Township, you're likely to diminish the income growth of the Township and also definitely diminish the tax ratable. So, based on that principal, logically, there should be more State Aid. ...and at the very least, there should be no reduction in State Aid.*

Mr. Fulcomer testified that he was:

*...quite surprised when somebody... raised the question at the last Board meeting that maybe there would be a reduction of State Aid. That would never happen under these circumstances.*

and that it "would be illogical" to "conclude that something similar would happen in the event of South Seaside Park deannexing".

3. The letter Mr. Fulcomer received in response to his inquiry from the Township's State legislative delegation<sup>611</sup> states, in pertinent part:

*...more than a decade ago under the **previous State school aid formula**, the 9<sup>th</sup> District Delegation requested an analysis with respect to the distribution of State school aid in a hypothetical situation based on the premise that the Holiday City section of Berkeley Township seceded from the Township. ...the analysis confirmed that both the Holiday City section and the Bayville section of the Township would have received more State school aid, due to the factors of calculation used in the **previous State school aid formula**, if the secession occurred. [**emphasis added**]*

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<sup>611</sup> Exhibit A-56



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*We would **surmise** that, under the current State school aid formula, Berkeley Township would receive additional State Aid in the event that the Toms River Zip Code section of Berkeley Township seceded from the Township.*

4. Upon questioning, Mr. Fulcomer confirmed:

- A copy of the analysis referenced in the legislators’ response letter was not submitted to the Board for review;
- While the analysis was **requested** by the legislators’, no information was provided as to whom **actually performed** the study;
- The analysis was made 10 years ago under a prior State Aid funding formula; and
- The impact of deannexation under the **current formula** was **surmised** by the legislators’.

5. Mr. Fulcomer pointed-out that the role of ratables under the prior State Aid formula:

*...was basically the same as in the new State Aid formula. But the new State Aid formula has other components such as a greater emphasis on special education. But the fact of the matter is ... that the principle that if you have more ratables per student, you should get less State Aid. If you have less ratables per student, you should get more State Aid, that is true of the previous ten year ago State Aid formula. And it's true today.*

When asked if he knew “*how many school districts are currently not funded at the appropriate State Aid because there's not enough money*”, Mr. Fulcomer responded that he did not, but he didn’t think that’s pertinent.

Within the context of his understanding of how the State Aid formula is **supposed** to work, Mr. Fulcomer was asked if he was “*aware of other towns that under the formula are entitled to more aid, but don't receive it because there's not enough money to hand out*”; to which Mr. Fulcomer referenced the contents of the legislators’ response, stating:



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*...If their analysis indicates that we should get more money if the Toms River Zip Code leaves the Township, the same sort of principle logically would follow... with South Seaside Park. But let me take it one step further. The reason I am here is, a member of your Board suggested that if you lost ratables from South Seaside Park, that that might mean that Berkeley Township is going to lose State Aid. Well, that's **utterly impossible** under the previous State Aid formula and the current State Aid formula. It just would not happen. And, of course, we are being funded under that State Aid formula. **[emphasis added]***

When again asked if he was familiar with the fact that there are many school districts which do not receive what they're supposed to receive under that formula based upon their ratable base and the fact that they have less ratables per student but they don't receive their full funding, Mr. Fulcomer replied:

*Should. Should. But I never said would. I said should under the principles of our State law. And my main point is, you're not going to lose any State Aid because you have lost ratables. That will not happen if you lost ratables. You will not lose any State Aid.*

When asked a third time if, based on his experience in education, he was familiar with the fact that “there are hundreds of towns in this State who are entitled to a certain amount of State Aid, under that State Aid formula, but they don't receive that amount”, Mr. Fulcomer replied:

*I have been aware for years that the State of New Jersey has had state laws on school finance that have not been fully funded by the State legislature.... And due to the fact that State of New Jersey has decided not to honor the full school funding formula at different points, I am aware of that problem. However, this is the law. And one thing for certain under this law, if you lose ratables, you're not going to get a cut in State Aid.*

6. Under the assumption that he was correct that the Township would see an increase in State Aid upon the loss of ratables due to deannexation, Mr. Fulcomer



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was asked if he had calculated how much more State Aid Berkeley Township would receive should deannexation occur, as opposed to how much it would lose via the loss of ratables. Put another way, Mr. Fulcomer was asked if there is a correlation between the money Berkeley Township would lose in terms of ratables and the income they would gain in School State Aid?

Mr. Fulcomer replied that he did not believe there was any such correlation, but that the calculations “*could only be done by the State*”.

In response to the question that “*we don't know if there's a benefit to what your testimony was all about, a financial benefit?*” Mr. Fulcomer testified:

*Well, we know that under State law, there **should be a financial benefit in State Aid.** We also know that under State law, **there would be no reduction in State Aid based on the way the law's written.** And, **obviously,** ...they don't reduce the amount of State Aid the town gets when suddenly they have less ratables. **They're not that crazy.** [emphasis added]*

In response to a statement by a Board Member’s that “*we don't know if there is a benefit to gaining... School State Aid and losing the ratables. Because we don't have the numbers. And we may never have the numbers until it happens*”, Mr. Fulcomer replied “*That is correct*”.

7. Mr. Fulcomer further testified

*I would just point out, though, the State Aid that the Berkeley Township Board of Education gets this year, this fiscal year, is attached to the back of [the legislators'] letter, so that is known. We know what we get now. **We don't know for sure what you're going to get in the future...** [emphasis added]*

8. During the foregoing discussion, the Board was reminded that Mr. Moore had attempted to obtain State Aid information from the New Jersey Department of Education but was denied, and that Petitioners asked the Board to get that information, which Petitioners had yet to receive.



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*So, it's very hard for us to answer that question [the impact of deannexation on the amount of State Aid received by the Berkeley Township School District] when we've asked for the information. Our expert asked for it from the State. He couldn't get it from the State. And this Board, this Board or some subdivision of the municipality would have the ability to do that. But we haven't been able to get it.*

To which the Board Attorney responded:

*Let's be clear about something. The town would never be able to get that... I thought I put this before on the record. The town today doesn't know what State Aid they're going to get **for this year**. There's no way they're going to be able to get a calculation from the State as to what they would get in the future. That's just never going to happen... Because there's no way for them to know what it would be. **[emphasis added]***

9. Additional testimony provided by Mr. Fulcomer<sup>612</sup> indicated that, “at least during the last 5 years [there has been] an increase in state aid to Berkeley Township school year every single year.”

5. Impact of deannexation on the debt of the Berkeley School District<sup>613</sup>.

An extended discussion ensued regarding the impact of deannexation on the debt of the Berkeley School District. Mr. Moore testified that the impact of deannexation on the District’s debt service is included in the District’s budget, which he projected to increase by approximately \$0.07<sup>614</sup> per \$100 of assessed value for the remaining Berkeley properties should deannexation occur.

a. Understanding that the School District’s debt service is a component of the District’s budget, discussion turned to whether or not a portion of this value should be assumed by Seaside Park should deannexation occur.

<sup>612</sup> Testimony on September 6, 2018 - Exhibit P-4

<sup>613</sup> Moore Report and Testimony on May 5, 2016

<sup>614</sup> Moore Report: p. 9



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South Seaside Park represents 10.68% of the Township’s assessed value. Using this figure as a basis for debt allocation, Mr. Moore calculated that an annual debt service of \$423,778<sup>615</sup> would follow South Seaside Park to Seaside Park should annexation occur.

When asked if the same proportion of School District debt should be assumed by Seaside Park should annexation occur, Mr. Moore replied “*absolutely not*” and explained:

*...the difference between the school debt and municipal debt is gigantic. When the municipality separates in a deannexation, they're going to take infrastructure, possibly some buildings, maybe equipment... But in the school situation, no assets are going to transfer to South Seaside Park. And that's... the reason that the debt of Berkeley Township would follow South Seaside Park....But in the school situation, there are no assets being transferred.*

*And even if [assets were to be transferred], they would still remain part of the School District, not part of South Seaside Park.*

b. Berkeley Township Sewerage Authority

- i. When asked if he gave any consideration to the financial impact that deannexation would have as relates to the Berkeley Township Sewage Authority (“BTSA”), Mr. Moore testified<sup>616</sup> that, to the best of his knowledge, “*nothing would change*” because South Seaside Park would remain with the Authority.

Upon being informed that the BTSA **does not** serve Seaside Park, Mr. Moore replied that he had not performed the required an analysis. However, if the BTSA were to continue to service South Seaside Park should deannexation occur, it was his opinion that there would be no impact.<sup>617</sup>

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<sup>615</sup> The basis for this calculation is unknown.

<sup>616</sup> Testimony on February 4, 2016

<sup>617</sup> Among the issues that might prohibit the BTSA from servicing South Seaside Park should deannexation occur is whether or not the Authority’s charter permits it to service property outside of Berkeley Township. Mr. Moore’s testimony assume that it can, but no authoritative testimony or evidence was submitted by Petitioners.



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- ii. As relates to investment in South Seaside Park, Mr. Moore was asked if he had reviewed the records of bonded improvements made by the Sewage Authority, to which he responded that he had not.<sup>618</sup>

**B. Tax Shopping**

In Ryan, New Jersey Supreme Court rejected the concept of Tax Shopping ~ i.e., seeking to deannex from one municipality and annex to another municipality with a less expensive tax burden ~ as a lawful justification for deannexation.<sup>619</sup>

1. In an attempt to address the possibility that Petitioners were engaging in Tax Shopping, Petitioners' Counsel questioned Mr. Moore about the nature of the housing stock in South Seaside Park vs. Mainland Berkeley Township. Mr. Moore testified that his analysis of the assessments in South Seaside Park found "only 3" residential properties where the improvements were valued over \$500,000.

While a specific number was not provided, Mr. Moore testified that there are more than 3 such properties in Mainland Berkeley Township.

2. In terms of comparisons with other beach towns, Mr. Moore testified<sup>620</sup> that:

*...the distinction that I saw was that the houses don't appear to be very lavish in South Seaside Park and versus ... Ventnor and Avalon and Stone Harbor. Those communities have... gone through the teardown [and] duplex [re]building. Have built out everything to the maximum that they can. Whereas, South Seaside Park ... based on what I'm seeing, hasn't changed in 30, 40 years.*

3. When asked if there would be a tax savings to the people who live in South Seaside Park if they become part of Seaside Park, Mr. Moore replied that there would be, but that the benefit is "not significant".

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<sup>618</sup> Testimony on May 5, 2016

<sup>619</sup> §2.2.2 B.5.f. herein

<sup>620</sup> Testimony on December 3, 2015



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4. In considering whether the Township’s Mainland development plans would be expected to ameliorate the financial impacts of deannexation, Mr. Moore stated that he had not calculated such impacts. He did testify however, that the addition of a large number of assessments on the Mainland would “*lower the percentage that’s associated with South Seaside Park*” and therefore lower the overall impact that deannexation would have on Berkeley Township.

**3.11.3 TOWNSHIP RESPONSE**

- A. Township Chief Financial Officer / Treasurer (and Assistant Administrator) Fredrick C. Ebenau, C.M.F.O., prepared a Report entitled *South Seaside Park Financial Impact Analysis as it Relates to the Deannexation from the Township of Berkeley*.<sup>621</sup>

During cross-examination at the March 1, 2018 Planning Board, hearing it was determined that Mr. Ebenau’s report and testimony contained numerous errors. Based on these noted issues, Mr. Ebenau prepared revisions to his report<sup>622</sup> and provided testimony as to the errors at the April 5, 2018 hearing.

Mr. Ebenau’s findings related to assessments, taxation and operational issues are addressed in §3.11.5 of this Report.

- B. As stated, New Jersey Law requires municipalities to maintain a Reserve for Uncollected taxes to fund the municipal budget. Mr. Ebenau testified<sup>623</sup> that since South Seaside Park has a higher rate of tax compliance (payments) than does the municipality as a whole, deannexation may require the Township to increase this Reserve to compensate; thereby increasing taxes on remaining property owners.

- C. Bonding Capacity<sup>624</sup>

In New Jersey, the maximum amount a municipality may bond for improvements ~ the Bonding Capacity ~ is (with certain statutory exemptions) 3.5% of the ratable base of the

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<sup>621</sup> Exhibit T-38

<sup>622</sup> Exhibit T-39

<sup>623</sup> Testimony on March 1, 2018.

<sup>624</sup> N.J.S.A. 40A:2-6 & 7



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municipal ratable base. For school districts, the maximum Bonding Capacity cannot exceed an amount equal to  $\frac{2}{3}$  of the amount of obligations (exclusive of utility and assessment obligations) for the payment of which an appropriation was made in the budget of the district for the current fiscal year, plus  $\frac{2}{3}$  of the amount raised in the tax levy of the current fiscal year by the district for the payment of bonds or notes.

1. While the impact of deannexation on the Township's Bonding Capacity was not specifically addressed by Mr. Moore, his report did state that the Township's 2014 equalized valuation was \$5,094,011,422,<sup>625</sup> 3.5% of which is \$178,290,399.

Mr. Ebenau testified that the elimination of the South Seaside Park ratable would place that valuation number at \$4,550,048,622,<sup>Error! Bookmark not defined.</sup> 3.5% of which is \$159,251,701.

Deannexation would therefore reduce the Township's Bonding Capacity by \$19,038,698.

2. At the time of his testimony, Mr. reported that the Township held debt of \$37,974,647<sup>Error! Bookmark not defined.</sup>, resulting in a remaining borrowing power of 2.75% with South Seaside Park and 2.67% should deannexation occur. Deannexation would therefore represent a reduction in [then] current Bonding Capacity of 0.07%<sup>626</sup>.

D. Township Administrator John Camera testified:<sup>627</sup>

1. That many of the savings to which Mr. Moore and Mr. Ebenau testified would not actually happen. The Township does not anticipate reductions in its labor force as a result of deannexation. Police, Public Works, Sanitation, and other departments will still need to service Pelican Island. As such, travel times would not be drastically reduced.

Numerous Township officials testified that they would reassign the existing workforce to other areas of the municipality should deannexation occur.

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<sup>625</sup> Exhibit A-49

<sup>626</sup> Testimony on December 7, 2017

<sup>627</sup> Testimony on May 3, 2018



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2. Since deannexation would remove South Seaside Park from Berkeley Township, the Township would no longer be under the obligation to make payments to the Tri-Boro First Aid Squad. However, given Tri-Boro's financial condition, Mr. Camera indicated that they would not be agreeable to the Township reducing its payment.

### **3.11.4 REBUTTAL TESTIMONY**

- A. The Ryan Court has ruled "*Tax Shopping*" (i.e., seeking deannexation for the purpose of "*avoidance of assessments*") as "*frivolous considerations*" that are not proper motives for deannexation. When asked if there would be a tax savings to the people who live in South Seaside Park if they become part of Seaside Park, Mr. Moore replied that there would be, but that the benefit is "*not significant*".<sup>628</sup>

In his rebuttal testimony,<sup>629</sup> he stated that the figure would be "*approximately 40%*".

- B. Mr. Moore<sup>629</sup> introduced the existence of a tax freeze program and its effects on a potential tax increase regarding the Township's senior population. While not previously discussed, the program reimburses eligible senior or disabled residents for property tax increases on their principal residence from a baseline established at upon enrollment in the program. Enrollees pay taxes to the municipality under the normal procedure, but are reimbursed the difference (the increase) at a later date by the State.

### **3.11.5 ANALYSIS**

Due to the timing of their individual testimonies, the tax and revenue and expense data utilized by Mr. Moore was current through 2014, while the data used by Mr. Ebenau was current through 2017. As with the Census data used by the Planners, the differing years makes an apples-to-apples comparison of the information of little value.

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<sup>628</sup> Testimony on December 3, 2015



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Additionally, the financial experts used different methodologies to calculate costs and projected savings the Township would experience should deannexation occur. Examples of these methodologies include, but are not limited to:

- Mr. Ebenau utilizing **2017 budgeted** numbers while Mr. Moore used **2014 actual** numbers.<sup>629</sup>
- How the Reserve of Uncollected Taxes and Township contributions to the Public Employees Retirement System (pension) were calculated.
- Mr. Moore utilized what he termed a ‘5-criteria analysis’ to develop cost savings associated with deannexation based on determining what percent of items could be directly related to South Seaside Park, while Mr. Ebenau presented savings based on a ‘line item basis’<sup>630</sup> with input from various municipal departments.

Rather than presenting Mr. Ebenau’s analysis and attempting to ‘normalize’ the 2 sets of data ~ which would required additional assumptions that are beyond the scope of this Report of Findings and the authors’ expertise, this Report utilizes Mr. Moore’s base data, augmented by Mr. Ebenau’s information where applicable.

After factoring various assumptions into pre- and post-deannexation conditions regarding:

- Property Tax Assessments;
- Tax Revenues;
- Operational Revenues;
- Expenses;
- Reserve for Uncollected Taxes; and
- Cost Savings, including pro-rated reduction in personnel and equipment.

Mr. Moore calculated, should deannexation occur (based on 2014 figures):

A. A net savings to the Township of:

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<sup>629</sup> Testimony of Mr. Moore on October 4, 2018

*The budget's prepared as a guide to determine what amounts the municipality is allowed to spend during the year. It does not necessarily mean they are going to spend those funds. So, it's just strictly a guideline and puts a cap on what they can spend during the year. On the revenue side, it's the ability to anticipate revenues based on the prior year to offset the levy.*

<sup>630</sup> Exhibit T-44: p. 7



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- \$1,689,388 (3.82%) if no reduction in police cars and attendant manpower occurs.
- \$2,452,632 (5.55%) if deannexation results in the elimination of 1 police car and attendant manpower.
- \$3,321,112 (7.52%) if deannexation results in the elimination of 2 police cars and attendant manpower.

B. A first-year-post-deannexation combined Municipal Local Purpose, Municipal Open Space and Berkeley School District Tax Rate increase from pre-deannexation figures of:

- 2.057 per \$100 of assessed value ~ an *increase* in the tax rate of 0.102 (5.2%)
- 2.040 per \$100 of assessed value if deannexation results in the elimination of 1 police car and attendant manpower ~ an *increase* in the tax rate of 0.085 (4.3%).
- 2.021 per \$100 of assessed value if deannexation results in the elimination of 2 police cars and attendant manpower ~ an *increase* in the tax rate of 0.066 (3.4%).

C. Mr. Moore calculated the resultant tax increases on the remaining (post-deannexation) residents of Berkeley Township for a range of property assessments. Local Purpose Tax figures include municipal Local Purpose Tax and municipal Open Space Tax, but not the Berkeley School District Tax.<sup>631</sup>

- If no reduction in police manpower or equipment (police cars) occurs.

| ASSESSED VALUE | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE    |       |                                  |      |
|----------------|---------------------|-------------------|----------------------------------|-------------------|-----------|-------|----------------------------------|------|
|                | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX |       | LOCAL PURPOSE TAX <sup>536</sup> |      |
| \$100,000      | \$1,955             | \$610             | \$2,057                          | \$646             | \$102     | 5.21% | \$36                             | 5.9% |
| \$183,600*     | \$3,589             | \$1,120           | \$3,776                          | \$1,185           | \$187     | 5.21% | \$65 <sup>557</sup>              | 5.8% |
| \$200,000      | \$3,910             | \$1,220           | \$4,114                          | \$1,291           | \$204     | 5.21% | \$71                             | 5.8% |
| \$250,000      | \$4,888             | \$1,525           | \$5,142                          | \$1,614           | \$254     | 5.21% | \$89                             | 5.8% |
| \$350,000      | \$6,843             | \$2,135           | \$7,199                          | \$2,260           | \$356     | 5.21% | \$125                            | 5.9% |
| \$479,900**    | \$9,382             | \$2,927           | n.a.                             | n.a.              | n.a.      | n.a.  | n.a.                             | n.a. |
| \$500,000      | \$9,775             | \$3,050           | \$10,284                         | \$3,228           | \$509     | 5.21% | \$178                            | 5.8% |

<sup>631</sup> Calculated for this Report of Findings based on information contained in Moore Report: Exhibit 3.



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|----------------|---------------------|-------------------|----------------------------------|-------------------|-----------|-------|----------------------------------|------|
|                | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX |       | LOCAL PURPOSE TAX <sup>556</sup> |      |
| \$1,000,000    | \$19,550            | \$6,100           | \$20,568                         | \$6,457           | \$1,018   | 5.21% | \$357                            | 5.9% |

*Excerpt from Exhibit A-49*

\* Median Assessed Value of Owner-Occupied Housing Units in Berkeley Township.<sup>558</sup>

\*\* Median Assessed Value of Owner-Occupied Housing Units in South Seaside Park.<sup>559</sup>

- Assuming the Elimination of 1 Police Car and attendant manpower:

| ASSESSED VALUE     | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                                  |             |
|--------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|----------------------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX <sup>559</sup> |             |
| \$100,000          | \$1,955             | \$610             | \$2,040                          | \$629             | \$85         | 4.35%        | \$19                             | 3.1%        |
| <b>\$183,600*</b>  | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,745</b>                   | <b>\$1,155</b>    | <b>\$156</b> | <b>4.35%</b> | <b>\$35</b>                      | <b>3.1%</b> |
| \$200,000          | \$3,910             | \$1,220           | \$4,080                          | \$1,258           | \$170        | 4.35%        | \$38                             | 3.1%        |
| \$250,000          | \$4,888             | \$1,525           | \$5,100                          | \$1,572           | \$212        | 4.35%        | \$47                             | 3.1%        |
| \$350,000          | \$6,843             | \$2,135           | \$7,140                          | \$2,201           | \$297        | 4.35%        | \$66                             | 3.1%        |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <b>n.a.</b>                      | <b>n.a.</b>       | <b>n.a.</b>  | <b>n.a.</b>  | <b>n.a.</b>                      | <b>n.a.</b> |
| \$500,000          | \$9,775             | \$3,050           | \$10,200                         | \$3,144           | \$425        | 4.35%        | \$94                             | 3.1%        |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,400                         | \$6,289           | \$850        | 4.35%        | \$189                            | 3.1%        |

*Excerpt from Exhibit A-50*

\* Median Value of residential property in Berkeley Township.

\*\* Median Value of residential property in South Seaside Park.

- Assuming the Elimination of 2 Police Cars and attendant manpower:

| ASSESSED VALUE    | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                                  |             |
|-------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|----------------------------------|-------------|
|                   | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX <sup>559</sup> |             |
| \$100,000         | \$1,955             | \$610             | \$2,021                          | \$610             | \$66         | 3.37%        | \$0.00                           | 0.0%        |
| <b>\$183,600*</b> | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,710</b>                   | <b>\$1,120</b>    | <b>\$121</b> | <b>3.37%</b> | <b>\$0.00</b>                    | <b>0.0%</b> |
| \$200,000         | \$3,910             | \$1,220           | \$4,042                          | \$1,220           | \$132        | 3.37%        | \$0.00                           | 0.0%        |



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|--------------------|---------------------|-------------------|----------------------------------|-------------------|-------------|-------------|----------------------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX   |             | LOCAL PURPOSE TAX <sup>579</sup> |             |
| \$250,000          | \$4,888             | \$1,525           | \$5,052                          | \$1,524           | \$165       | 3.37%       | -\$1.00                          | -0.07%      |
| \$350,000          | \$6,843             | \$2,135           | \$7,073                          | \$2,134           | \$231       | 3.37%       | -\$1.00                          | -0.05%      |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <i>n.a.</i>                      | <i>n.a.</i>       | <i>n.a.</i> | <i>n.a.</i> | <i>n.a.</i>                      | <i>n.a.</i> |
| \$500,000          | \$9,775             | \$3,050           | \$10,104                         | \$3,049           | \$329       | 3.37%       | -\$1.00                          | 0.03%       |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,209                         | \$6,098           | \$659       | 3.37%       | -\$2.00                          | 0.03%       |

*Excerpt from Exhibit A-50*

- \* Median Value of Owner-Occupied Housing Units in Berkeley Township.
- \*\* Median Value of Owner-Occupied Housing Units in South Seaside Park.

**D. Impact of Annexation on Seaside Park**

While Mr. Moore did not perform the same budgetary and operational analysis for Seaside Park that he did for Berkeley Township, he did project, should deannexation occur (based on 2014 figures):

- Assuming that annexation will not cause a significant change in operating costs for the Borough, a first-year-post-annexation reduction of 0.143 per \$100 of assessed value (10.93%) in the Total Municipal Tax Rate.

The 0.143 rate includes a 0.120 reduction per \$100 for the Seaside Park Local Purpose Tax and a 0.018 reduction per \$100 assessment for the Seaside Park School District Tax ~ for a Total [first-year-post-deannexation] reduction in the Municipal Tax Rate of 0.138 per \$100 assessment ~ a reduction of 27.4% from pre-annexation figures.

- Mr. Moore revised these figures to reflect a pre-annexation tax rate reduction of 27.2% excluding municipal debt and 32.6% including municipal debt from pre-annexation figures.

**E. Mr. Moore calculated the resultant tax decreases for a range of property assessments.<sup>632</sup>**

| BEFORE ANNEXATION |           |                   | UPON ANNEXATION & COST SAVINGS <sup>575</sup> |                   | CHANGE    |                                  |
|-------------------|-----------|-------------------|---|-------------------|-----------|----------------------------------|
| ASSESSED VALUE    | TOTAL TAX | LOCAL PURPOSE TAX | TOTAL TAX                                     | LOCAL PURPOSE TAX | TOTAL TAX | LOCAL PURPOSE TAX <sup>576</sup> |

<sup>632</sup> Moore Report: Exhibit 2 & Exhibit 3



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| BEFORE ANNEXATION   |                 |                   | UPON ANNEXATION & COST SAVINGS <sup>575</sup> |                   | CHANGE          |                |                                  |                |
|---------------------|-----------------|-------------------|---|-------------------|-----------------|----------------|----------------------------------|----------------|
| ASSESSED VALUE      | TOTAL TAX       | LOCAL PURPOSE TAX | TOTAL TAX                                     | LOCAL PURPOSE TAX | TOTAL TAX       |                | LOCAL PURPOSE TAX <sup>576</sup> |                |
| \$100,000           | \$1,308         | \$449             | \$1,165                                       | \$329             | -\$143          | -10.93%        | -\$120                           | -26.73%        |
| <b>\$183,600*</b>   | <b>\$2,401</b>  | <b>\$824</b>      | <b>\$2,139</b>                                | <b>\$603</b>      | <b>-\$262</b>   | <b>-10.93%</b> | <b>-\$221</b>                    | <b>-26.82%</b> |
| \$200,000           | \$2,616         | \$898             | \$2,330                                       | \$657             | -\$286          | -10.93%        | -\$241                           | -26.84%        |
| \$250,000           | \$3,270         | \$1,123           | \$2,913                                       | \$821             | -\$357          | -10.93%        | -\$302                           | -26.89%        |
| \$350,000           | \$4,578         | \$1,572           | \$4,078                                       | \$1,150           | -\$500          | -10.93%        | -\$422                           | -26.84%        |
| <b>\$479,900**</b>  | <b>\$6,227</b>  | <b>\$2,155</b>    | <b>\$5,591</b>                                | <b>\$1,579</b>    | <b>-\$636</b>   | <b>-10.21%</b> | <b>-\$576</b>                    | <b>-26.73%</b> |
| \$500,000           | \$6,540         | \$2,245           | \$5,825                                       | \$1,643           | -\$715          | -10.93%        | -\$602                           | -26.82%        |
| <b>\$767,200***</b> | <b>\$10,035</b> | <b>\$3,445</b>    | <b>\$8,938</b>                                | <b>\$2,524</b>    | <b>-\$1,097</b> | <b>-10.93%</b> | <b>-\$921</b>                    | <b>-26.73%</b> |
| \$1,000,000         | \$13,080        | \$4,490           | \$11,650                                      | \$3,286           | -\$1,430        | -10.93%        | -\$1,204                         | -26.82%        |

*Excerpt from Exhibit A-49*

\* Median Assessed Value of Owner-Occupied Housing Units in Berkeley Township.<sup>577</sup>

\*\* Median Assessed Value of Owner-Occupied Housing Units in South Seaside Park.<sup>578</sup>

\*\*\* Median Assessed Value of Owner-Occupied Housing Units in Seaside Park Borough.<sup>579</sup>

F. The foregoing do not include the cost of additional services that may be required to address the needs of South Seaside Park. Presumably, such services may include, but need not be limited to, costs related to:

- Increased police coverage to service South Seaside Park;
- Expanding daily beach cleaning to White Sands Beach;
- Expanding the water fountains and restrooms into South Seaside Park;
- Create and maintain a Bay Beach in South Seaside Park;
- Create and maintain additional parks and amenities in South Seaside Park;
- Service the debt transferred to Seaside Park as a result of deannexation / annexation; and
- Other items to address the issues raised by Petitioners.

G. Since deannexation would remove South Seaside Park from Berkeley Township, Pelican Island would remain with the Township. As such, it would appear that Berkeley would still be obligated to make payments to the Tri-Boro First Aid Squad, albeit perhaps not in the amounts currently budgeted.



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H. Mr. Camera's position that the Township would not see a reduction in its labor force as a result of deannexation is speculation. While the Township will still need to service Pelican Island, the reduction in revenue as a result of deannexation may require the Governing Body to defund certain positions.

However, any reduction in manpower will likely result in a reduction in services.

I. As stated, the Senior Tax Freeze described by Mr. Moore is a reimbursement program. Program enrollees will still be required to pay any tax increase adopted as a result of deannexation, but will be reimbursed at some point in the [then] future. As a practical matter, such reimbursement will not benefit enrollees who could not afford the initial monetary outlay.

And while this program is currently in existence, its elimination or modification is often a topic of discussion by State officials as part of a means to balance the budget.

J. Berkeley School District

While the Berkeley School district declined an invitation to testify before the Planning Board, they did submit a letter authored by Business Administrator Laura Ginerelli, indicating that the district's budget would not change in the event of deannexation. This means that while the amount the district requires would not change. The local school tax would have to be increased to address the post-deannexation loss of ratables.

K. State Aid

The participants in the discussion regarding State Aid agreed that the program is not funded in accordance with the law, and, with the possible exception of Mr. Fulcomer, agreed that there is no way to calculate the impact that deannexation might have on State Aid to the Berkeley School District.

Absent funding in accordance with the State Aid established formula, an understanding of how such Aid is allocated is unknown. What is known is that the 2019 allocations for certain districts were increased from their 2018 levels, while some were decreased.



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Interestingly, Berkeley’s allocation increased by 5.6% over 2019 levels while Seaside Park’s decreased by 2.0%

| <b>OCEAN COUNTY<sup>633</sup></b> |                 |                         |                 |
|-----------------------------------|-----------------|-------------------------|-----------------|
| <b>DISTRICT</b>                   | <b>2018 AID</b> | <b>2019 REVISED AID</b> | <b>% CHANGE</b> |
| Barnegat                          | \$20,154,629    | \$20,440,810            | 1.4%            |
| Bay Head                          | \$70,208        | \$72,910                | 3.8%            |
| Beach Haven                       | \$226,743       | \$236,588               | 4.3%            |
| Berkeley                          | \$2,424,703     | \$2,560,810             | 5.6%            |
| Brick                             | \$35,304,821    | \$34,142,597            | -3.3%           |
| Central Regional                  | \$4,117,752     | \$4,256,787             | 3.4%            |
| Eagleswood                        | \$652,202       | \$679,821               | 4.2%            |
| Island Heights                    | \$298,853       | \$299,080               | 0.1%            |
| Jackson                           | \$49,635,886    | \$48,770,072            | -1.7%           |
| Lacey                             | \$21,204,577    | \$20,970,400            | -1.1%           |
| Lakehurst                         | \$6,022,038     | \$5,974,209             | -0.8%           |
| Lakewood                          | \$24,793,040    | \$23,465,461            | -5.4%           |
| Lavallette                        | \$173,596       | \$172,510               | -0.6%           |
| Little Egg Harbor                 | \$9,496,540     | \$9,395,550             | -1.1%           |
| Long Beach Island                 | \$728,456       | \$787,180               | 8.1%            |
| Manchester                        | \$5,450,389     | \$5,406,832             | -0.8%           |
| Ocean                             | \$6,816,273     | \$6,534,846             | -4.1%           |
| Ocean County Vocational           | \$5,585,095     | \$5,585,095             | 0.0%            |
| Ocean Gate                        | \$930,598       | \$953,863               | 2.5%            |
| Pinelands Regional                | \$11,155,600    | \$11,128,086            | -0.2%           |
| Plumsted                          | \$11,569,334    | \$11,386,005            | -1.6%           |
| Point Pleasant                    | \$5,967,620     | \$5,813,354             | -2.6%           |
| Point Pleasant Beach              | \$506,265       | \$583,748               | 15.3%           |
| Seaside Heights                   | \$1,030,432     | \$1,049,577             | 1.9%            |

<sup>633</sup> Source: New Jersey State Legislature, Dave Sheingold/staff graphic  
<https://www.northjersey.com/story/news/new-jersey/2018/07/13/nj-state-budget-school-district-funding-taxes/739052002/>



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| OCEAN COUNTY <sup>633</sup> |              |                  |          |
|-----------------------------|--------------|------------------|----------|
| DISTRICT                    | 2018 AID     | 2019 REVISED AID | % CHANGE |
| Seaside Park                | \$154,075    | \$151,067        | -2.0%    |
| Southern Regional           | \$2,071,194  | \$2,325,842      | 12.3%    |
| Stafford                    | \$9,482,878  | \$9,434,616      | -0.5%    |
| Toms River Regional         | \$66,975,394 | \$65,984,284     | -1.5%    |
| Tuckerton                   | \$2,278,716  | \$2,250,416      | -1.2%    |

*Report Table M*

L. As part of their analyses, both financial experts statistically compared South Seaside Park to Berkeley Township as a whole. Since the average assessment in South Seaside Park is higher than the average in the balance of the Township, the elimination of South Seaside Park from the statistical equation will reduce the average assessment for the Township. Although not addressed in the record, the impact of any such reduction is likely to impact property values for the Township should deannexation occur.

**3.11.6 FINDINGS**

A. Financial Impacts<sup>634</sup> of Deannexation

1. After calculating the Township’s loss in revenues against the reduction in costs, and factoring for the assumptions as detailed, the net impact of deannexation on Berkeley Township is a saving of:

- \$1,689,388 (3.82%) based on 2014 figures and no changes in manpower.
- \$2,452,632 (5.55%) based on 2014 figures and the elimination of 1 police car and attendant manpower.
- \$3,321,112 (7.52%) based on 2014 figures and the elimination of 2 police cars and attendant manpower.

These figures are projected to result in a [first-year-post-deannexation] tax rate increase for the Township’s remaining property owners of:

<sup>634</sup> Based on Mr. Moore’s analysis.



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- 0.102 per \$100 of assessed value (5.2%) based on 2014 figures and no changes in manpower.
- 0.085 per \$100 of assessed value (4.3%) based on 2014 figures and the elimination of 1 police car and attendant manpower.
- 0.066 per \$100 of assessed value (3.4%) based on 2014 figures and the elimination of 2 police cars and attendant manpower.

Since the Township would remain responsible for patrolling Pelican Island should deannexation occur, and since police procedure is to always have a car in a patrol area, 2 patrol cars are necessary (1 on patrol and 1 in transit for a change in shift). Conversely, 2 cars appears excessive for the small Pelican Island.

Since it is likely that at least 1 car will continue to service Pelican Island, the following first-year-post-deannexation property tax impact projections are offered for a range of property assessments, assuming the elimination of 1 police car and attendant manpower:

| ASSESSED VALUE     | BEFORE DEANNEXATION |                   | UPON DEANNEXATION & COST SAVINGS |                   | CHANGE       |              |                   |             |
|--------------------|---------------------|-------------------|----------------------------------|-------------------|--------------|--------------|-------------------|-------------|
|                    | TOTAL TAX           | LOCAL PURPOSE TAX | TOTAL TAX                        | LOCAL PURPOSE TAX | TOTAL TAX    |              | LOCAL PURPOSE TAX |             |
| \$100,000          | \$1,955             | \$610             | \$2,040                          | \$629             | \$85         | 4.35%        | \$19              | 3.1%        |
| <b>\$183,600*</b>  | <b>\$3,589</b>      | <b>\$1,120</b>    | <b>\$3,745</b>                   | <b>\$1,155</b>    | <b>\$156</b> | <b>4.35%</b> | <b>\$35</b>       | <b>3.1%</b> |
| \$200,000          | \$3,910             | \$1,220           | \$4,080                          | \$1,258           | \$170        | 4.35%        | \$38              | 3.1%        |
| \$250,000          | \$4,888             | \$1,525           | \$5,100                          | \$1,572           | \$212        | 4.35%        | \$47              | 3.1%        |
| \$350,000          | \$6,843             | \$2,135           | \$7,140                          | \$2,201           | \$297        | 4.35%        | \$66              | 3.1%        |
| <b>\$479,900**</b> | <b>\$9,382</b>      | <b>\$2,927</b>    | <i>n.a.</i>                      | <i>n.a.</i>       | <i>n.a.</i>  | <i>n.a.</i>  | <i>n.a.</i>       | <i>n.a.</i> |
| \$500,000          | \$9,775             | \$3,050           | \$10,200                         | \$3,144           | \$425        | 4.35%        | \$94              | 3.1%        |
| \$1,000,000        | \$19,550            | \$6,100           | \$20,400                         | \$6,289           | \$850        | 4.35%        | \$189             | 3.1%        |

*Excerpt from Exhibit A-50*

\* Median Value of residential property in Berkeley Township.

\*\* Median Value of residential property in South Seaside Park.

2. No review of the operational impacts that deannexation / annexation might have on Seaside Park was undertaken. Accordingly, the property tax impacts on the residents of the Borough cannot be projected with any degree of certainty. Within this context however, the record does include information as to what the tax savings deannexation might be for a range of



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property assessments in Seaside Park:

| BEFORE ANNEXATION   |                 |                   | UPON ANNEXATION & COST SAVINGS |                   | CHANGE          |                |                   |                |
|---------------------|-----------------|-------------------|--------------------------------|-------------------|-----------------|----------------|-------------------|----------------|
| ASSESSED VALUE      | TOTAL TAX       | LOCAL PURPOSE TAX | TOTAL TAX                      | LOCAL PURPOSE TAX | TOTAL TAX       |                | LOCAL PURPOSE TAX |                |
| \$100,000           | \$1,308         | \$449             | \$1,165                        | \$329             | -\$143          | -10.93%        | -\$120            | -26.73%        |
| <b>\$183,600*</b>   | <b>\$2,401</b>  | <b>\$824</b>      | <b>\$2,139</b>                 | <b>\$603</b>      | <b>-\$262</b>   | <b>-10.93%</b> | <b>-\$221</b>     | <b>-26.82%</b> |
| \$200,000           | \$2,616         | \$898             | \$2,330                        | \$657             | -\$286          | -10.93%        | -\$241            | -26.84%        |
| \$250,000           | \$3,270         | \$1,123           | \$2,913                        | \$821             | -\$357          | -10.93%        | -\$302            | -26.89%        |
| \$350,000           | \$4,578         | \$1,572           | \$4,078                        | \$1,150           | -\$500          | -10.93%        | -\$422            | -26.84%        |
| <b>\$479,900**</b>  | <b>\$6,227</b>  | <b>\$2,155</b>    | <b>\$5,591</b>                 | <b>\$1,579</b>    | <b>-\$636</b>   | <b>-10.21%</b> | <b>-\$576</b>     | <b>-26.73%</b> |
| \$500,000           | \$6,540         | \$2,245           | \$5,825                        | \$1,643           | -\$715          | -10.93%        | -\$602            | -26.82%        |
| <b>\$767,200***</b> | <b>\$10,035</b> | <b>\$3,445</b>    | <b>\$8,938</b>                 | <b>\$2,524</b>    | <b>-\$1,097</b> | <b>-10.93%</b> | <b>-\$921</b>     | <b>-26.73%</b> |
| \$1,000,000         | \$13,080        | \$4,490           | \$11,650                       | \$3,286           | -\$1,430        | -10.93%        | -\$1,204          | -26.82%        |

*Excerpt from Exhibit A-49*

\* Median Assessed Value of Owner-Occupied Housing Units in Berkeley Township.

\*\* Median Assessed Value of Owner-Occupied Housing Units in South Seaside Park.

\*\*\* Median Assessed Value of Owner-Occupied Housing Units in Seaside Park Borough.

B. This office cannot concur with Petitioners’ assertion that deannexation will not cause a significant injury to the wellbeing of the residents of Berkeley Township.

While South Seaside Park may represent a small land area, it represents 10.68% of the property tax revenue stream for the Township (\$3,318,173) and its School District (\$3,018,994). This loss to the public sector are not one-time shortfalls but impacts that will be felt annually.

Logically, such shortfalls can only be addressed by some combination of increasing taxes and cutting programs and services. Under state law, municipalities and School Districts operate under a 2% cap on tax increases. Given the non-discretionary cost increases ‘built into the system’ (inflation, contracted commitments, pensions and insurances, etc.), the Township’s Governing Body and Board of Education ~ as with most municipalities and School Districts ~ have found it increasingly difficult to adopt budgets that achieve this cap. Deannexation will only compound this difficulty.

C. An analysis of the relative tax implications of deannexation must be viewed in the context of the Courts’ decisions in Avalon Manor and in Ryan.



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1. In Avalon Manor, the Court held, in pertinent part:

*[It is not] the Court's proper function to assess the relative "significance" of an annual tax increase of \$67.97 or \$75.52. ...It was not unreasonable for the Township to have considered such financial impacts as "significant," especially in view of the tax savings that would accrue to the residents of Avalon Manor from deannexation.*

Petitioners' financial expert projected<sup>635</sup> a first-year-post-deannexation tax increase for the remaining residents of Berkeley Township of 3.1%. Such percentage translates to increased property tax payments ranging from \$19 for a home assessed at \$100,000 to \$35 for the average Berkeley Township home assessed at \$183,600 to \$94 for a home assessed at \$500,000.

These increases will be subject to a compounding affect as the impact of deannexation extends in perpetuity.

2. In Ryan, the Court condemned "tax shopping" as a rationale for deannexation:

*We find in the [Deannexation Statute] an intention on the part of the Legislature to give precedence to a more significant policy, that of preservation of municipal boundaries and maintenance of their integrity against challenge prompted by short-term or even frivolous considerations such as 'tax shopping' or avoidance of assessments...*

Petitioners' financial expert projected a first-year-post-annexation tax reduction for the residents of South Seaside Park of "approximately 40%". While Petitioners have testified that their motives in pursuing deannexation is not tax shopping, the implications of a 40% reduction is difficult to ignore.

- C. Since South Seaside Park has a higher rate of tax compliance (payments) than does the municipality as a whole, deannexation may require the Township to increase this Reserve to compensate for the loss of the compliant taxpayers; thereby increasing taxes on remaining

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<sup>635</sup> Based on 2014 figures.



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**D. Municipal & School Debt**

1. The ultimate disposition of the portion of the Berkeley Township debt that could be attributed to South Seaside Park, as well as how such debt is calculated, will be subject to negotiations between Berkeley Township and the Borough of Seaside Park. Any discussion to the contrary is speculation.
2. Despite Mr. Moore's protestations to the contrary, the ultimate disposition of the portion of the Berkeley School District's debt that could be attributed to South Seaside Park, as well as how such debt is calculated, will be subject to negotiations between the district and the Borough of Seaside Park. Again, any discussion to the contrary is speculation.
3. Deannexation would reduce the Township's Bonding Capacity by \$19,038,698. While the calculated reduction of the current bonding capacity is a de minimis 0.07%, this reduction could potentially have implications into the future.

**E. Schools**

1. The number of students that attend Berkeley Township Schools is de minimis. Deannexation will not reduce costs for the district.
2. The tax levy for school districts is divided among the property tax payers in the district. Since the Berkeley Township schools budget will not change should deannexation occur, the same budgetary figure would be divided by a lesser number of taxpayers should deannexation occur; thereby increasing the share for each taxpayer.
3. The tax levy for Regional School Districts is allocated based on the equalized value of the various municipalities comprising the district. With the loss of South Seaside Park, the remaining property owners of Berkeley Township will see their proportion of the Regional School Tax reduced.



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4. Given the historic inability of the New Jersey Legislature to fund the State Aid program according to the established formula, there is no way to determine whether or not the increase in State Aid allocated to the Berkeley School District in 2019 is an anomaly or whether the district can expect such increased in the future.

F. Berkeley Township Sewerage Authority (“BTSA”)

The record contains no information as to whether or not the BTSA will be permitted to service South Seaside Park should deannexation occur, or the implications for debt service should it not be permitted to do so.

- G. Assertions that any financial loss attributable to deannexation could be offset by projected growth on the Mainland must be viewed in the context of the Court’s decision in Avalon Manor. In rendering its decision, the Court held, in pertinent part:

*The plaintiff argued... that the economic consequence of deannexation could be "softened" by the application to the tax rate of proceeds... from added assessments;... I do not believe that... these techniques may properly be considered as an "amelioration" of the increase in the proportion of... taxes that would be borne by the remaining taxpayers of the Township in the event of deannexation... [W]hatever revenues are generated by... these activities **already belong to all of the property owners of the Township**. To suggest that these revenues could be considered as an "offset" or "amelioration" of the added taxes attendant to a deannexation is to suggest that the taxpayers of the Township should apply their own resources to the reduction of the increase in their taxes. **Without deannexation, these revenue sources, if realized, would accrue to the benefit of the taxpayers of the Township and would reduce their tax payments below the current levels, or perhaps offset increases unrelated to a deannexation. There is no equitable basis to charge their interest in these revenues with the burden of "offsetting" the increases that would result from deannexation.** [emphasis added]*

- H. Beyond revenue, the analogy likening South Seaside Park’s contribution to the Township’s social and economic stability to a personal financial portfolio is compelling.



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The attraction of the waterfront adds a dimension to this section of the Township that is more likely to keep that neighborhood and the housing stock stable.

*Based on the totality of the foregoing, this Report of Findings finds and recommends that, while the residents of South Seaside Park would see a financial benefit by deannexing from Berkeley Township and annexing to the Borough of Seaside park, the remaining residents of Berkeley Township will be burdened by additional taxes.*

*Petitioners' assertions that the Township will experience savings related to municipal services are inconclusive and speculative. Absent a 2-car reduction in the police force, the Petitioners' financial expert calculates a tax increase.*



## **4.0 SUMMARY & CONCLUSIONS**

### **4.1 IMPACTS OF DEANNEXATION**

As required by the *Deannexation Statute* and relevant case law, the Planning Board must, in its evaluation of the impacts of deannexation, determine whether Petitioners have sustained their burden of proof in evidencing that:

- A. Refusal to consent to deannexation is detrimental to the economic and social well-being of a majority of the residents of South Seaside Park; **AND**
- B. Deannexation will not cause a significant injury to the well-being of Berkeley Township.

Both A and B must be met for deannexation to be affirmed.

In evaluating the impact of deannexation upon both South Seaside Park and the Township, case law points to the following factors as potentially relevant areas of investigation:

- C. Any substantial social injury or detriment that might be found in the Township being deprived of Petitioners' participation in religious, civic, cultural, charitable and intellectual activities, their meaningful interaction with other members of the community, or their contribution to the Township's prestige and social standing and/or the part they play in the general scheme of social diversity; and conceivably, the wholesome effect their presence has on racial integration.
- D. Any long term or short term economic impacts, such as loss of ratables, impacts upon local, school or other taxes of the Township and South Seaside Park, including the cost or savings in providing municipal services and what types of municipal services have been provided to date.
- E. The impact upon emergency services and equipment, including the cost of providing same and the need to provide same in the future.
- F. The impact upon recreational and school facilities in both Berkeley Township and South Seaside Park.



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- G. An analysis of the tax assessments of the relevant lands, including the total tax assessment of the Township as it relates to South Seaside Park and the total area of the Township as it relates to South Seaside Park.
- H. Zoning and planning implications for the municipality.
- I. Population, demographics and geographic matters.

The foregoing is not intended to be an exhaustive list. Local decision makers are expected to bring to bear their own knowledge, experience and perceptions in determining what, in the context of deannexation, would inflict social injury upon the well-being of the community. Additionally, these values will undergo change with the times, and may be accorded different weight depending in part on the composition of the community.

***Based upon the totality of the testimony and Exhibits comprising the record as detailed herein, this Report of Findings finds and recommends that:***

**4.1.1 DISTANCE FROM MAINLAND BERKELEY TOWNSHIP / PROXIMITY TO SEASIDE PARK**

While this Report of Findings recognizes that there is a considerable distance between South Seaside Park and Mainland Berkeley Township, and that Seaside Park is contiguous to South Seaside Park, neither the Deannexation Statute nor Case Law recognize distance, in-and-of-itself, as a valid reason to grant deannexation.

The distances between South Seaside Park, Seaside Park and Mainland Berkeley Township have not changed since these communities were formed and Petitioners elected to purchase homes on the Island. And Township facilities have historically been located on the Mainland. The fact that Petitioners no longer find it acceptable to travel to the Mainland as many of them once did, while understandable, is a “*short-term consideration*” of the type the Ryan Court characterized as an invalid reason for deannexation.



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**4.1.2 GENERAL UNRESPONSIVENESS / NEGLECT OF SOUTH SEASIDE PARK**

While this Report of Findings recognizes that many of the requests that Petitioners have made of the Township have not been fulfilled, have taken longer to fulfill than Petitioners may think is reasonable, or have not been fulfilled in the manner that Petitioners may have envisioned, the record does not reflect that the Township has been unresponsive or neglectful of South Seaside Park sufficient to warrant deannexation.

The size, geometry and availability of land is a limiting factor in many of the Petitioners' requests.

Further, there are mechanisms other than deannexation that could address many of the Petitioners' concerns.

**4.1.3 LACK OF INVESTMENT**

As with unresponsiveness and neglect, this Report of Findings recognizes that many of the requests that Petitioners have made of the Township have not been fulfilled, have taken longer to fulfill than Petitioners may think is reasonable, or have not been fulfilled in the manner that Petitioners may have envisioned. However, the record does not reflect that the Township has not invested (capital or human resources) in South Seaside Park.

Again, the size, geometry and availability of land is a limiting factor in many of the Petitioners' requests. Further, there are mechanisms other than deannexation that could address many of the Petitioners' concerns.

Neither the Deannexation Statute nor case law provides guidance as to what would constitute a "lack of investment" within the context of deannexation. A reasonable extrapolation from Ryan would be that such a lack of investment must result in economic and/or social injury.<sup>636</sup>

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<sup>636</sup> With appropriate considerations regarding social detriment being Petitioners being deprived of :

- Participation in religious, civic, cultural, charitable and intellectual activities of the municipality;
- Meaningful interaction with other members of the community;
- Contribution to the prestige and social standing of the municipality;
- The part they play in the general scheme of the municipality's social diversity; and, conceivably
- The wholesome effect their presence has on racial integration.

[continued]



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This Report of Findings finds and recommends that the specific issues cited by the Petitioners to evidence a lack of investment by Berkeley Township in South Seaside Park do not establish the kind of “*long-term, structural, and inherently irremediable detriment the legislature had in mind when enacting the Deannexation Statute*”.

**4.1.4 SOCIAL INJURY**

A. While this Report of Findings recognizes that Petitioners’ lives are more closely aligned with Seaside Park ~ and the surrounding areas ~ than with Berkeley Township, they are not *limited* to these areas. And while distance may make it inconvenient or difficult for Petitioners to participate in the religious, civic, cultural, charitable and intellectual activities of the Township or to meaningfully interact with other members of the community, they are not being *deprived* of the ability to participate or interact.

The record is replete with testimony that Petitioners enjoy activities beyond Seaside Park and Seaside Park. As with most people, Petitioners shop where the stores are, dine where the food is to their liking, visit their doctors at their offices, worship where their religious institutions are located and associate with like-minded individuals without regard for municipal boundaries. These social habits will not change should deannexation occur.

B. The record is replete with testimony regarding the uniqueness of South Seaside Park.

While specifically addressing the monetary value of the petitioning community to its host municipality, the Avalon Manor Court held that deannexation of such a community would, in pertinent part,

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[continued]

In developing this list, the Court significantly cautioned that such factors:

*are in no way intended to be all-inclusive, for in the final analysis the governing body and the trial judge will have to bring to bear their own knowledge, experience and perceptions in determining what, in the context of deannexation, would inflict social injury upon the well-being of a community.*

The Court stressed that the foregoing:

*are values which undergo change with the times and are accorded different weight depending in part on the composition of the community and its governing body. We repeat that in listing them, we are recognizing only some of the appropriate considerations.*



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*suggest implications for the Township's... 'prestige and social standing' such that 'the loss of such a... sector of the municipality of necessity would inflict a significant 'social injury' on the Township and its ability to continue to attract the kinds of residents ~ desirable in any community.*

The Court found that the loss of the "intangible enhancements to the municipality of one of its nicest areas constituted a 'significant injury' to the well-being of the Township".

Applying this ruling to South Seaside Park suggests that deannexation would be detrimental to the prestige and social standing of Berkeley Township and would negatively impact the Township's social diversity.

C. The demographic information in the record reveals that deannexation would have a de minimis impact on the age, racial composition and unemployment rate of the Township. However, deannexation would:

- Reduce the overall education level of Township residents;
- Remove a significantly higher income cohort from the Township and thereby reduce the overall income of Township residents;
- Remove high median value real estate; and
- Reduce the Township's overall Civilian Labor Force.

As a result, deannexation would reduce the social diversity of the Township.

D. Since there are no schools or libraries in South Seaside Park, Berkeley Township residents will not incur any loss of any physical intellectual or cultural resources should deannexation occur. However, the Township would lose the active participation of South Seaside Park residents in the civic life of the municipality.

E. Again, there are mechanisms other than deannexation that could address many of the Petitioners' concerns.



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**4.1.5 ECONOMIC INJURY**

This Report of Findings recognizes that:

- Conducting personal business on the Mainland is more expensive for the residents of South Seaside Park than for residents of other sections of the Township.
- There is an extra (travel) cost for residents of South Seaside Park to participate in recreational opportunities on the Mainland.
- There is an extra cost for residents of South Seaside Park to participate in certain recreational opportunities in proximity to their homes (i.e., Seaside Park).
- While the future of White Sands Beach remains unresolved, there are scenarios where deannexation may actually increase badge fees for residents of South Seaside Park.

South Seaside Park being a part of Berkeley Township does work an economic injury to the residents of the community. And deannexation may address many of the issues cited by Petitioners. However, there are mechanisms other than deannexation that could address many of these concerns as well.

**4.1.6 PUBLIC WORKS SERVICES**

- A. The record reflects that the Township recognizes the special needs of South Seaside Park and has attempted to accommodate those needs, but does not support Petitioners' assertions that the Township does not repave the roads in South Seaside Park.
- B. Seaside Park's recycling facility is undoubtedly more convenient for the residents of South Seaside Park than the Township's facility, which is located on the Mainland.
- C. The record contains no evidence to support a contention that the White Sands Beach requires cleaning beyond that provided by the Township.
- D. The Bay Beach in South Seaside Park is not a bathing beach and cannot accommodate the types of recreational facilities that have been created along the bay in Seaside Park, where the land is Borough-owned and much wider.



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- E. Petitioners' assertions that the bayfront in South Seaside Park is not cared for is not without merit.
- F. Given the testimony that Township-wide plowing operations do not commence until 4" to 5" of snow has accumulated and that, depending on snow levels, it could take hours to do one pass through all of South Seaside Park, it is not surprising that Petitioners feel that their streets do not get cleared of snow in a timely manner.
- G. The record contains no evidence to suggest that, should deannexation occur, Seaside Park would do a better job than the Township:
- Collecting refuse and recycling in South Seaside Park;
  - Cleaning the roads;
  - Paving the roads in South Seaside Park;
  - Cleaning White Sands Beach;
  - Policing the bayfront.
- H. Again, there are mechanisms other than deannexation that could address many of the Petitioners' concerns.

**4.1.7 EMERGENCY SERVICES**

- A. The record contains no evidence to support the contention that South Seaside Park would receive better police services if it were part of Seaside Park. Conversely, the record does reflect that, should deannexation occur, the balance of Berkeley Township would likely receive improved service due to the patrol area reduction without a concomitant reduction in police personnel.
- B. Both Seaside Park and South Seaside Park are serviced by the same 911 Dispatch Center, Volunteer Fire Company and Ambulance / EMT squad. Such services will not change should deannexation occur.
- C. The record reflects that South Seaside Park has little crime, is generally safe, and receives timely emergency services, either from Berkeley Township directly or with backup from other jurisdictions.



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While the record reflects that certain Petitioners have suffered individual tragedies, no evidence has been submitted to suggest that South Seaside Park experiences the type of long-term, structural, and inherently irremediable “detriment” of the type the legislature had in mind when enacting the Deannexation Statute.

**4.1.8 SUPERSTORM SANDY**

The nature of Superstorm Sandy, both in its initial impact and in the public sector’s response, was an unprecedented and anomalous act of nature. Attempting to measure Berkeley Township’s reaction against those of any other municipality and whether or not Petitioners would have been better served as part of Seaside Park is supposition at best. Both Seaside Park and South Seaside Park faced mandatory evacuation and both suffered similar physical damage.

Similarly, attempting to ascribe any link between the storm, the Township’s response and South Seaside Park’s island location, and asserting that the Township was somehow ill-prepared or neglectful, is overreach.

This Report of Findings finds and recommends that Petitioners’ assertions that the Township’s planning for and response during and after Superstorm Sandy was inadequate are not supported by the facts in evidence. The record reflects that the Township undertook steps to insure public safety prior to, during and in the immediate aftermath of the storm. While recovery efforts may not have occurred as quickly as Petitioners would have liked, such a temporary inconvenience in the wake of this unprecedented weather event is not recommended as a proper rationale for deannexation.

**4.1.9 PLANNING**

A. While deannexation will not result in a significant injury to Berkeley Township's racial composition and median age, deannexation will impact the Township’s unemployment rate. And while a loss of higher income earning residents as a result of deannexation would not be “*substantial*” from a statistical standpoint, the loss would be “*significant compared to the overall economic well-being of Berkeley Township*”.

The higher education, employment and median and per capita income of South Seaside Park brings a diversity to the tax base and residents of the Township. Beyond mere revenue, the



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socioeconomic differences that South Seaside Park residents represent vis-à-vis residents in the balance of the Township adds economic diversity and stability to the municipality. The education, employment and income characteristics of South Seaside Park make its residents less likely to be as impacted by economic downturns than those of lower incomes and lower educational attainment.

These differences are a strength for Berkeley Township.

In much the same way that financial planners encourage diversification in a personal financial portfolio, it is advantageous to have a tax base that is as diversified as possible. Such diversity in times of economic stress serves to improve the current overall situation of the Township and may form the basis for a quicker and sounder recovery.

- B. The loss of South Seaside Park should deannexation occur would result in a loss of a unique and diverse housing stock that is distinct from other areas of the Township.
- C. The conclusion that the Township's Master Planning efforts do not address South Seaside Park are not supported by the facts in evidence. The record demonstrates that the various Plans do indeed address South Seaside Park. The conclusion that if the Plans do not *specifically and individually reference* South Seaside Park they do not apply to South Seaside Park is unworthy of comment.
- D. Whether or not the Island Zoning introduced in 2008 was appropriate for South Seaside Park was rendered moot by the recently-adopted South Seaside Park Neighborhood Plan, which was crafted with input from that community.
- E. The extended time it has taken for the Township to specifically address Planning issues in South Seaside Park is understandably frustrating for Petitioners. Nothing in the record points to the reasons for this delay. However, there is no evidence that the residents of South Seaside Park have been harmed by the delay. None of the permitted uses removed from the Zoning Ordinance as part of the Seaside Park Neighborhood Plan had actually been constructed or were not likely to be constructed.



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- F. Given the trend toward demolition and reconstruction so prevalent along the New Jersey Shore, the conclusion that “*South Seaside Park has no future growth capacity*” is incorrect, and the related conclusion that there would be no loss of any benefits to the Township from future development should deannexation occur is similarly incorrect.
- G. The conclusions that “*the reduction in housing units is as a result of deannexation...*” would be negated by / compensated by future growth on the Mainland must be viewed in the context of the Court’s decision in Avalon Manor which held, in pertinent part:

*The plaintiff argued... that the economic consequence of deannexation could be "softened" by the application to the tax rate of proceeds... from added assessments;... I do not believe that... these techniques may properly be considered as an "amelioration" of the increase in the proportion of... taxes that would be borne by the remaining taxpayers of the Township in the event of deannexation... [W]hatever revenues are generated by... these activities **already belong to all of the property owners of the Township.** To suggest that these revenues could be considered as an "offset" or "amelioration" of the added taxes attendant to a deannexation is to suggest that the taxpayers of the Township should apply their own resources to the reduction of the increase in their taxes. **Without deannexation, these revenue sources, if realized, would accrue to the benefit of the taxpayers of the Township and would reduce their tax payments below the current levels, or perhaps offset increases unrelated to a deannexation. There is no equitable basis to charge their interest in these revenues with the burden of "offsetting" the increases that would result from deannexation.** [emphasis added]*

- H. The characterization that the Township ignored South Seaside Park because its Affordable Housing Plan did not include this community is belied by testimony that Affordable Housing is not recommended on barrier islands where there is no public transportation and where land prices are high.
- I. The Recreation and Open Space Plan recommended in the South Seaside Park Neighborhood Plan includes tasks to identify recreation needs based on resident population and community interest and to verify riparian grants to identify potential sites for Bayfront recreation (and



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- investigate whether the State would permit a lease option on riparian lands), all designed to increase open space and recreation for South Seaside Park.
- J. The fact that Midway Beach is eligible to be on the National and State Registers of Historic Places makes them significant and unique. Their loss through deannexation would be a detriment to the Township.
  - K. The loss of White Sands Beach is no “*easily compensated*” by Island Beach State Park. The fact that the Township has control of this recreational and cultural resource is underscored by the fact that Island Beach State Park was closed on the July 4<sup>th</sup> weekend due to the 2017 Statewide government shutdown.
  - L. The Township’s Post-Sandy Strategic Recovery Planning Report (“SPRP”) contains recommendations that apply Township-wide. Testimony that they “*were not specific to South Seaside Park*” and therefore do not apply to South Seaside Park is unworthy of comment.

The fact that none of the Community Outreach meetings related to the SRPR were held in South Seaside Park is understandable since there are no facilities in that community large enough to hold such a meeting.

- M. Berkeley Township, including South Seaside Park, has a FEMA CRS rating of 6, which translates into a 20% discount on flood insurance premiums while Seaside Park has a CRS rating of 7, which provides a 15% discount.

This Report of Findings finds and recommends that Petitioners’ assertions that the Township lacks a comprehensive planning strategy regarding South Seaside Park are not supported by the facts in evidence. The record reflects that the Township has under taken numerous Planning efforts that specifically address South Seaside Park, as well as Township-wide Planning efforts that include South Seaside Park.

South Seaside Park the only oceanfront community within Berkeley Township, and it contains many unique components. The loss of this neighborhood via deannexation would be detrimental to the Township as a whole.



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The New Jersey Legislature established the Deannexation Statute separately from the Municipal Land Use Law (“MLUL”). Had the legislature intended deannexation to be linked to zoning, it would have included the concept in the MLUL, or at least cross referenced the MLUL with the Deannexation Statute. There is no reference to deannexation in the MLUL and the Deannexation Statute contains no reference to the MLUL. The D’Anastasio Court ruled that deannexation designed to take advantage of more favorable zoning "does not provide a valid reason for altering otherwise historical municipal boundaries". Accordingly, the Planning Board may not consider zoning in its deliberations.

This Report of Findings concurs that South Seaside Park’s demographics reflect a shore community more than they do the balance of the Township. While Petitioners cite this as an indication that the community should be part of Seaside Park, it is recommended that such diversity and benefits bring considerable value to the Township. In this respect, the Township would experience socioeconomic injury if deannexation were to occur.

**4.1.10 FINANCIAL IMPACT**

A. This office cannot concur with Petitioners’ assertion that deannexation will not cause a significant injury to the wellbeing of the residents of Berkeley Township. Petitioners’ financial expert projected<sup>637</sup> a first-year-post-deannexation tax increase for the remaining residents of Berkeley Township of 3.1%. Such percentage translates to increased property tax payments ranging from \$19 for a home assessed at \$100,000 to \$35 for the average Berkeley Township home assessed at \$183,600 to \$94 for a home assessed at \$500,000.

These increases will be subject to a compounding affect as the impact of deannexation extends in perpetuity.

Converses, Petitioners’ financial expert projected a first-year-post-annexation tax reduction for the residents of South Seaside Park of “*approximately 40%*”. While Petitioners have testified that their motives in pursuing deannexation is not tax shopping, the implications of a 40% reduction is difficult to ignore.

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<sup>637</sup> Based on 2014 figures.



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- B. The ultimate disposition of the portion of the Berkeley Township debt and Berkeley School debt that could be attributed to South Seaside Park, as well as how such debt is calculated, will be subject to negotiations between Berkeley Township and the Borough of Seaside Park. Any discussion to the contrary is speculation.
- C. Deannexation would reduce the Township's Bonding Capacity by \$19,038,698. While the calculated reduction of the current bonding capacity is a de minimis 0.07%, this reduction could potentially have implications into the future.
- D. The tax levy for school districts is divided among the property tax payers in the district. Since the Berkeley Township schools budget will not change should deannexation occur, the same budgetary figure would be divided by a lesser number of taxpayers should deannexation occur; thereby increasing the share for each taxpayer.

The tax levy for Regional School Districts is allocated based on the equalized value of the various municipalities comprising the district. With the loss of South Seaside Park, the remaining property owners of Berkeley Township will see their proportion of the Regional School Tax reduced.

- E. Given the historic inability of the New Jersey Legislature to fund the State Aid program according to the established formula, there is no way to determine whether or not the increase in State Aid allocated to the Berkeley School District in 2019 is an anomaly or whether the district can expect such increased in the future.
- F. The record contains no information as to whether or not the BTSA will be permitted to service South Seaside Park should deannexation occur, or the implications for debt service should it not be permitted to do so.
- G. Assertions that any financial loss attributable to deannexation could be offset by projected growth on the Mainland must be viewed in the context of the Court's decision in Avalon Manor. In rendering its decision, the Court held, in pertinent part:

*The plaintiff argued... that the economic consequence of deannexation could be "softened" by the application to the tax*



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*rate of proceeds... from added assessments;... I do not believe that... these techniques may properly be considered as an "amelioration" of the increase in the proportion of... taxes that would be borne by the remaining taxpayers of the Township in the event of deannexation... [W]hatever revenues are generated by... these activities **already belong to all of the property owners of the Township.** To suggest that these revenues could be considered as an "offset" or "amelioration" of the added taxes attendant to a deannexation is to suggest that the taxpayers of the Township should apply their own resources to the reduction of the increase in their taxes. **Without deannexation, these revenue sources, if realized, would accrue to the benefit of the taxpayers of the Township and would reduce their tax payments below the current levels, or perhaps offset increases unrelated to a deannexation. There is no equitable basis to charge their interest in these revenues with the burden of "offsetting" the increases that would result from deannexation.** [emphasis added]*

H. Beyond revenue, the analogy likening South Seaside Park's contribution to the Township's social and economic stability to a personal financial portfolio is compelling.

This Report of Findings finds and recommends that, while the residents of South Seaside Park would see a financial benefit by deannexing from Berkeley Township and annexing to the Borough of Seaside park, deannexation will work a financial injury on the remaining residents of the Township.

## **4.2 FINDINGS**

*Based upon the totality of the testimony and Exhibits comprising the record as detailed herein, this Report of Findings finds and recommends that while Petitioners may experience inconvenience and frustration in being part of Berkeley Township, they do not suffer the kind of "long term, structural and inherently irremediable detriment" that the Legislature had in mind when it adopted the Deannexation Statute.*

*Conversely, deannexation will work a "long term, structural and inherently irremediable detriment" to the remaining residents of Berkeley Township.*