

FILED

FEB 18 2020

Superior Court of New Jersey
County of Atlantic**PREPARED BY THE COURT**

SEAVIEW HARBOR REALIGNMENT
COMMITTEE, LLC; JOHN DABEK; DIAN
DABEK; EDWARD MCGLINCHEY;
VIRGINIA MCGLINCHEY; JOSEPH
STEWART; AND PAMELA STEWART,

Plaintiffs/Petitioners,

V.

TOWNSHIP COMMITTEE OF EGG
HARBOR TOWNSHIP; AND EGG
HARBOR TOWNSHIP,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-79-17

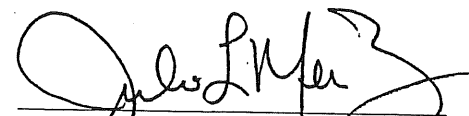
ORDER**COURT ORDER**

THIS MATTER having come before the Court by way of a Complaint in Lieu of a Prerogative Writ filed by the Plaintiffs/Petitioners on January 11, 2017; and the Court having conducted a Final Hearing on Count I on July 8, 2019 and July 9, 2019; and Plaintiffs/Petitioners SEAVIEW HARBOR REALIGNMENT COMMITTEE, LLC; JOHN DABEK; DIAN DABEK; EDWARD MCGLINCHEY; VIRGINIA MCGLINCHEY; JOSEPH STEWART; AND PAMELA STEWART having been represented by JOHN PAUL DOYLE, Esq., and Defendants TOWNSHIP COMMITTEE OF EGG HARBOR TOWNSHIP, AND EGG HARBOR TOWNSHIP having been represented by MARC FRIEDMAN, Esq. and MICHAEL BARKER, Esq.; and for all the reasons outlined in the attached Memorandum of Decision dated February 18, 2020; and for good cause shown;

IT IS, on this 18th day of FEBRUARY 2020, **ORDERED** as follows:

1. Plaintiffs'/Petitioners' Complaint is denied.
2. The Township's decision to deny the Petition is reaffirmed.
3. Count IV is bifurcated and a separate docket number will be provided.
4. This is a final order.

Date: February 18, 2020


Julio L. Mendez, A.J.S.C.

FILED

FEB 18 2020

Superior Court of New Jersey
County of Atlantic**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

SEAVIEW HARBOR REALIGNMENT
COMMITTEE, LLC; JOHN DABEK; DIAN
DABEK; EDWARD MCGLINCHEY;
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Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-79-17

Memorandum of Decision

Dated: February 18, 2020

DECIDED: February 18, 2020

JOHN PAUL DOYLE, Esq., representing Petitioners, SEAVIEW HARBOR REALIGNMENT COMMITTEE, LLC; JOHN DABEK; DIAN DABEK; EDWARD MCGLINCHEY; VIRGINIA MCGLINCHEY; JOSEPH STEWART; AND PAMELA STEWART; and MARC FRIEDMAN, Esq. and MICHAEL BARKER, Esq., representing Defendants, TOWNSHIP COMMITTEE OF EGG HARBOR TOWNSHIP, AND EGG HARBOR TOWNSHIP.

Mendez, A.J.S.C.

This matter comes before the Court by way of a Complaint in Lieu of a Prerogative Writ filed on January 11, 2017. Petitioners, representing an area of Egg Harbor Township known as Seaview Harbor, are seeking to de-annex from Egg Harbor Township and annex to the Borough of Longport. Petitioners' primary reasons for seeking secession is that they are geographically and demographically more akin to Longport; they look to Longport for their civic, social, cultural, and religious needs; and the Township center is so far from Seaview Harbor that it is difficult to participate in basic municipal activities. Petitioners also highlighted the economic detriment associated with the significantly higher payment of real estate taxes in Egg Harbor Township. In

accordance with the Annexation Statute (N.J.S.A. 40A:7-12), the governing body referred the Petition to the Egg Harbor Township Planning Board.

The Planning Board conducted thirty-two (32) meetings over two (2) years and two (2) months (March 31, 2014 through May 24, 2016), and heard from fifty-two (52) witnesses, received 275 exhibits into evidence and, listened to more than 100 hours of testimony. Then, the Egg Harbor Township Planning Board adopted an impact report and recommended that the Township Committee deny the Petition for annexation. Their central reason was that annexation will cause significant injury to the financial and social well-being of Egg Harbor Township. The Planning Board also concluded that while the refusal to consent would be detrimental to the economic well-being of the residents of Seaview Harbor, it would not be detrimental to the social well-being of Seaview Harbor. The Township Committee accepted the Planning Board's recommendation and denied the Petition.

The Court conducted a Final Hearing regarding this matter on July 8, 2019 and July 9, 2019. This judicial review is in accordance with N.J.S.A. 40A:7-12.1. The Court is also guided by the various Supreme Court decisions and appellate court decisions on annexation and de-annexation. The 1982 Annexation Statute reflects the legislative intent to preserve municipal boundaries and maintain municipal integrity. The Statute has also imposed a heavier burden on petitioners seeking to de-annex or annex. This Court is also guided by the presumption of validity and deference afforded to decisions made by planning boards and governing bodies.

For judicial review, the Statute outlines the burdens to be met by the Petitioners. The Court has analyzed the Petitioners' burden in this order: (1) that the refusal (of Egg Harbor Township) to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land (Seaview Harbor); (2) that the annexation will not cause

significant injury to the well-being of the municipality in which the land is located (Egg Harbor Township); and (3) that the refusal (of Egg Harbor Township) to consent to the petition was arbitrary or unreasonable.

The Court has carefully examined all the legal issues and considered all the arguments. The Court has also carefully reviewed the entire record. For all the reasons outlined in this Opinion, the Court denies Petitioners' Complaint and reaffirms Egg Harbor Township's decision to deny the de-annexation Petition. The Court has concluded that refusal of Egg Harbor Township to consent to the Petition was not arbitrary or unreasonable. The Petitioners have failed to establish, as required by the Statute, that the annexation will not cause significant injury to Egg Harbor Township. The Court has determined that the annexation will cause significant injury to the well-being of Egg Harbor Township. The Court finds that the evidence regarding loss of ratables and loss of revenue is compelling. Egg Harbor Township would lose \$95,385,300 in tax ratables. This loss of ratables translates into an annual loss of \$505,542.09 in municipal tax revenue and an annual loss of \$1,819,951.52 in revenue to the Township schools. The total annual loss of tax revenue amounts to \$2,325,493.61.

The Petitioners only met one of the elements of the statutory standard. The Court has concluded that Petitioners successfully established that the refusal to consent to the de-annexation is detrimental to the economic and social well-being of the residents of Seaview Harbor.

For all the reasons in this Opinion, the Court denies Petitioners' Complaint and reaffirms Egg Harbor Township's decision to deny the de-annexation Petition.

FACTUAL AND PROCEDURAL BACKGROUND

The Court reincorporates the factual and procedural history set forth in this Court's written decision dated March 8, 2019. On February 18, 2014, Petitioners, Seaview Harbor Realignment Committee (hereinafter the "Realignment Committee"), and taxpaying residents of Seaview Harbor filed a petition for de-annexation (hereinafter the "Petition"), pursuant to N.J.S.A. 40A:7-12, with the Township Committee of Egg Harbor Township (hereinafter the "Township Committee"). Seaview Harbor is a shore community which is currently part of Egg Harbor Township (hereinafter the "Township"). Seaview Harbor is located on the portion of an island at the eastern boundary of the Township, isolated and non-contiguous with the mainland Egg Harbor Township. This noncontiguity dates to the late 1800s when Somers Point and Longport were founded and separated from Egg Harbor Township. This created a geographical anomaly where a piece of land remained and separated Egg Harbor Township from Somers Point and Longport. This piece of land was uninhabited until the 1960s when Seaview Harbor was created. One must travel through the municipalities of Somers Point and/or Linwood to get from Seaview Harbor to mainland Egg Harbor Township.

The Petition

The Petition sought to de-annex Seaview Harbor from Egg Harbor Township and annex it to the Borough of Longport. Longport is a municipality contiguous to Seaview Harbor. Seaview Harbor and Longport are geographically and demographically similar. Seaview Harbor and Longport are small seasonal communities with similar median ages. A drive from Seaview Harbor to Longport is about two (2) minutes. Whereas, it could take thirteen (13) minutes or more to drive to mainland Egg Harbor Township from Seaview Harbor.

In accordance with the requirements of the Annexation Statute (N.J.S.A. 40A:7-12) the Petition was submitted in writing and signed by the sixty percent (60%) required by the Statute, with a map and description of the land which annexation is sought to be made. The Petition was filed with the Township Committee to review, and if complete refer same to the Egg Harbor Township Planning Board (hereinafter “the Board”) to report on the impact of the annexation upon the municipality. Following motions filed before the Court, the Court found that Petitioners satisfied the prerequisites of the Statute and that the Petition was complete. (See March 8, 2019 Opinion and Order).

The Township Committee and the Planning Board

The Township Committee is comprised of five (5) committee members, which includes the mayor, deputy mayor, and three (3) committee members. One (1) committee member is selected by the Township Committee to be the mayor. The Planning Board is comprised of nine (9) members which pursuant to statute includes the mayor, an officer of the municipality who does not serve on the Township Committee, a committeeperson, and six (6) members. At the time the Petition was filed, the mayor of the Township was James McCullough (hereinafter “Mayor McCullough”), a resident of Seaview Harbor. Mayor McCullough had been on the Township Committee for thirty (30) years. Of those thirty (30) years, he was the Mayor for twenty-six (26) years. If the Petition had been granted by the Township Committee and Seaview Harbor became a part of Longport, then Mayor McCullough would have no longer been eligible to serve on the Township Committee or as the Township’s Mayor. Currently, Mayor McCullough is no longer the Mayor of the Township and no longer a resident of Seaview Harbor.

As Mayor, Mayor McCullough had the authority pursuant to N.J.S.A. 40:55D-23 to appoint members of the Planning Board as well as serve with members of the Township Committee.

Mayor McCullough and the Township Committee appointed Peter Miller (hereinafter “Township Administrator Miller”) as the Township Administrator. Township Administrator Miller served beginning in June 1989 and continuously since then. After the Petition was filed, Mayor McCullough recused himself from participating in the proceedings relating to the de-annexation. He initially recused himself as a Planning Board member, then later as a Township Committee member.

Before the Petition

Prior to filing their Petition for de-annexation, in April 2013, Seaview Harbor residents scheduled a meeting with their Counsel to determine whether to proceed with de-annexation efforts. Township Administrator Miller learned of the meeting and asked Seaview Harbor Community Association President, Edward McGlinchey if he could address the group. Township Administrator Miller’s request was denied.

In February 2014, the Seaview Harbor residents had a meeting to hear from Seaview Harbor’s Counsel. The meeting also addressed residents of Seaview Harbor and Longport about the impending filing of the annexation Petition. After hearing about the meeting, by letter dated February 7, 2014, on Egg Harbor Township letterhead, Township Administrator Miller wrote to every Seaview Harbor resident in his capacity as Township Administrator. His letter sought to provide the Seaview Harbor residents the Township Committee’s “side of the story.” This was an attempt to convince the members not to proceed with their application for secession. This letter provided, in relevant part, as follows:

In a decision making process, I believe it is imperative to hear both sides of an argument before making a decision, especially an economic decision.

The Township Committee does not believe it is fair for our residents to expend funds without fully understanding the ramifications of a secession action, its process and costs.

The Hearings Before the Planning Board

On February 27, 2014, the Township Committee referred the Petition to the Board for review, with instruction to forward a report of the impact of the annexation upon the municipality to the governing body pursuant to N.J.S.A. 40A:7-12. (S-2). The Board accepted the Petition and its obligation to deliver the statutorily required impact report at its March 10, 2014 meeting. At that meeting, Board Member and Township Administrator Miller recommended the hiring of Stuart Wiser, P.P., AICP (hereinafter “the Board’s Special Planner, Wiser”) as special planner for the Board based upon his involvement in a de-annexation case in another municipality. At the time he was hired and testified for the Board, Wiser was a resident of Egg Harbor Township, as he continues to be. Wiser also has a child that attends the Township public schools.

On March 19, 2014, Township Administrator Miller appeared before the Longport Board of Commissioners to request that they go on record in opposition to the Petition filed by the Petitioners. He appeared at the meeting with then Deputy Mayor of the Township, and now Mayor, Paul Hodson. Hodson later voted in favor of the Resolution denying the Petition. At the meeting, Township Administrator Miller stated that “Egg Harbor Township’s answer is no at this time of losing a portion of our community.” Following the exchange of correspondence between Petitioners’ counsel and the Board attorney, at the first meeting on March 31, 2014, Township Administrator Miller recused himself from participating in the Planning Board’s consideration of the Petition. After his recusal, he still attended almost every Planning Board meeting.

The Board proceeded with their statutory responsibility to provide an impact report. In order to do that, from March 31, 2014 until May 24, 2016, the Board conducted thirty-one (31)

hearings. Seven (7) hearings were devoted to witnesses for the Petitioners, seventeen (17) for Township witnesses, one (1) for public comment, and six (6) for the planning testimony of the Board's Special Planner, Wisner. The hearings were conducted as follows:

2014	2015	2016
March 31, 2014: Testimony of Seaview Harbor Resident	February 23, 2015: Testimony of Township Administrator Miller	February 22, 2016: Testimony of the Board's Special Planner, Wisner
April 21, 2014: Testimony of Seaview Harbor Resident	March 24, 2015: Testimony of Township Administrator Miller	February 23, 2016: Testimony of the Board's Special Planner, Wisner
June 2, 2014: Testimony of Seaview Harbor Resident	April 20, 2015: Testimony of Township Administrator Miller	March 21, 2016: Testimony of the Board's Special Planner, Wisner
June 30, 2014: Testimony of Seaview Harbor Resident	May 5, 2015: Testimony of Township Director of Public Works Simerson	April 6, 2016: Testimony of the Board's Special Planner, Wisner
July 21, 2014: Testimony of Seaview Harbor Resident	June 29, 2015: Meeting at which Fire Chief Danz was to appear and failed to do so	April 26, 2016 Testimony of the Board's Special Planner, Wisner
September 22, 2014: Testimony of Petitioners' expert planner, Cuviallo	July 28, 2015: Testimony of Police Chief Raymond Davis	May 24, 2016: Testimony of the Board's Special Planner, Wisner
October 24, 2014: Testimony of Petitioners' expert accountant, Ryan	August 17, 2015: Testimony of Police Chief Raymond Davis	
November 5, 2014: Testimony of Township Administrator Miller	August 25, 2015: Testimonies of Fire Chief Charles Winkler and Former Sculville Fire Station Chief Stauffer	August 8, 2016: Planning Board's Consideration of the Petition
November 7, 2014: Testimony of Township Administrator Miller	September 29, 2015: Testimony of Police Chief Raymond Davis	October 7, 2016: Impact Report, Resolution Vote
November 17, 2014: Testimony of Township Administrator Miller	September 30, 2015: Testimonies of School Board Administrator Kateryna Bechtel and Dr. Richard Perniciaro	October 19, 2016: Finnerty announces conflict; Committee hearing dates set

December 15, 2014: Testimony of Township Administrator Miller	October 6, 2015: Testimony of Township Municipal Accountant Leon Costello	November 9, 2016: Township Committee review of Impact Report
	October 7, 2015: Testimony of Director of Ambulance Services William Higbee	
	October 27, 2015: Testimony of Township Municipal Accountant Leon Costello	
	November 16, 2015: Public Hearing, cut short by vote of Board	

On March 31, 2014, at the beginning of the first hearing on the Petition, it was announced that Mayor McCullough would not be present. Later, it was disclosed that Mayor McCullough recused himself from the proceedings. Pursuant to N.J.S.A. 40:55D-23, Mayor McCullough appointed as his designee to the Planning Board, Township Committee-member, Laura Pfrommer. At the time Committee-member Pfrommer was designated to serve as the Mayor's designee, there was another member of the Township Committee, John Carman, serving on the Board as a Class III Member. Committee-member Pfrommer continued to serve as the Mayor's designee until Committee-member Carman was elected to the County Board of Freeholders. Then Committee-member Pfrommer became the Township Committee's designee on the Planning Board as a Class III Member and Committee-member Carman became the Mayor's designee.

During the first seven (7) hearings, Petitioners presented the testimony of a few Seaview Harbor residents. They also produced as witnesses a licensed and expert professional planner, Tiffany Cuviallo (hereinafter "Petitioners' expert planner, Cuviallo") as well as a licensed and expert certified municipal public accountant, Steven Ryan (hereinafter "Petitioners' expert

accountant, Ryan”). Each of these experts had prepared reports that were previously submitted to the Board and placed into evidence. Petitioners’ expert planner, CuvIELlo testified regarding the social detriment to Seaview Harbor residents if the Petition was not granted. Petitioners’ expert accountant, Ryan, testified as to the economic impact on the residents of Seaview Harbor.

Thereafter, the Board heard testimony from a variety of municipal officials and others brought forth by the Board’s designated Special Counsel, Dean Marcolongo (hereinafter “the Board’s Special Counsel, Marcolongo”). Township Administrator Miller testified over seven (7) hearings, from November 5, 2014 through April 5, 2015. Following his testimony, there was additional testimony taken of: Director of Public Works, Alan Simerson (hereinafter “Township Director of Public Works Simerson”); Township Police Chief Raymond Davis (hereinafter “Police Chief Davis”); Township Fire Chiefs Charles Winkler (hereinafter “Fire Chief Winkler”) and former Sculville Fire Station Chief Donald Stauffer; School Business Administrator, Kateryna Bechtel (hereinafter “School Business Administrator Bechtel); Dr. Richard Perniciaro; Township Municipal Accountant, Leon Costello (hereinafter “Township Municipal Accountant Costello”); and Director of Ambulance Services, William Higbee.

The final six (6) hearings were devoted to the testimony and questioning of the Board’s Special Planner, Wisner. The Board’s Special Planner, Wisner was to submit his report by December 31, 2015, however, his report was not completed until January 29, 2016. As a result of the delayed report, two (2) meetings that were to be held in January 2016 were cancelled. Prior to his testimony, on January 29, 2016, the Board’s Special Planner, Wisner submitted an approximately 300-page document, entitled “Report of Findings,” concluding that the Petition should be denied. This became the subject of his testimony over the course of the six (6) hearings before the Board.

On August 8, 2016, the Board set forth their findings of fact and conclusions as to the potential impact of de-annexation. The Board authorized the Board's Special Counsel, Marcolongo, to draft an impact report that recommended the Petition be denied. The Impact Report set forth: a procedural history in three (3) pages; legal standards in eleven (11) pages; and a synopsis of thirty-one (31) hearings of testimony which consumed approximately 1,000 pages of the hearing minutes, and approximately 4,000 pages of transcript in 114 pages. This distillation of the complete record, including over 250 exhibits, was done by the Board's Special Counsel, Marcolongo. The findings and conclusions of the Board were set forth in twelve (12) pages (Impact Report, 129-140). The Board adopted the Impact Report unanimously, summarizing their findings as follows:

In summary, the Board finds that deannexation would result in a positive effect to the Petitioners and the affected lands in the following manner:

1. Property owners in the affected area would pay between 75%-85% lower property taxes if annexed to Longport.
2. If annexed to Longport, the Petitioners would, in all likelihood, receive weekly recycling collection during the summer.
3. If annexed to Longport, the Petitioners would, in all likelihood, receive a discount on their flood insurance which is currently not available in Egg Harbor Township.
4. The Petitioners would have a legal address and zip code in Longport that may reduce some inconvenient confusion.
5. School age children could attend school through the Longport School System including; Margate Elementary, Atlantic City and Ocean City High Schools.

If deannexation were approved, a positive impact would occur to the remaining portion of Egg Harbor Township in the following manner:

1. Egg Harbor Township would no longer provide public works services including trash pickup, snow removal, street sweeping, road repair, and certain landscaping services. There would be a de minimis reduction in the municipal budget which the Board cannot quantify.

2. Egg Harbor Township would no longer be required need [sic] to provide police services to Seaview Harbor which would result in a de minimis savings to the Township. The Board cannot quantify these savings and notes that police services must still be provided on Route 152 to the border of Seaview Harbor. Egg Harbor Township will continue to provide fire and EMS services to Seaview Harbor based upon its Mutual Aid Agreement.

If Seaview Harbor was permitted to deannex from Egg Harbor Township and annex to Longport, the following negative impacts to the residents of Seaview Harbor would result:

1. The residents would lose the superior resources of the Egg Harbor Township Public Works Department and police department, although it is possible that police presence in Seaview Harbor may be improved.
2. Seaview Harbor residents would no longer receive a discount at the Township's municipal golf course.
3. Deannexation would result in a loss of the opportunity to participate in the social diversity afforded by the remainder of Egg Harbor Township.

If deannexation were consented to, the following negative impacts would result to the Township of Egg Harbor:

1. Egg Harbor Township would be deprived of the civic and governmental participation of the residents of Seaview Harbor who have been a critical component and have provided important leadership to the Township during the last 40 years together with their meaningful interaction with other members of the community.
2. Deannexation would result significant loss of ratables and revenues to the Township's municipal budget which would result in a reduction of services and/or increase in taxes to maintain existing services at its current level which would

be borne, in perpetuity, by the remaining citizens of the Township.

3. The significant loss of ratables and revenues would result in a significant increase in the Township's school tax and/or result in a significant loss of jobs, services and programs by the Egg Harbor Township schools (or both) with the effects on the municipal and school budgets occurring in the initial year and for years to follow.

4. There would be a de minimis reduction in the Township's bonding capacity. However, the loss of revenues would, in all likelihood, result in a reduction in the Township's bond rating given the fact that the Township's fund balance is already at critical levels and, in all likelihood, will be further negatively impacted by deannexation.

5. Deannexation would result in the loss of one of the Township's most unique affluent and upscale communities which affects the Township's prestige, social standing and diversity.

6. The reduction in municipal revenues during a time of economic stress and recession, absent tax increases, would result in a reduction of public works, police and fire service funding and a concurrent reduction in manpower and services which would be detrimental to the well-being of the remaining citizens of the Township.

The Township Committee's Decision

The Board ultimately concluded that there would be significant injury to Egg Harbor Township and recommended that the Township Committee deny Petitioners' Petition for deannexation. The Planning Board adopted the Impact Report and the Planning Board's findings and recommendations were referred to the Township Committee for consideration. The Township Committee first considered the Board's Report, findings, and recommendations at its meeting of October 19, 2016.

Mayor McCullough, who had recused himself earlier as a member of the Planning Board, also recused himself as a Township committee-member. Committee-member Frank Finnerty also

recused himself and he stated that, “last year, I was running for the Township Committee. I participated in a Candidate’s Debate Night. One of the questions asked was my position on deannexation, the petition submitted by Seaview Harbor. I responded by saying Seaview Harbor is an integral part of Egg Harbor Township and I was not in support of the petition for the deannexation . . . I was elected last November, but the position taken by me in last year’s debate raises an issue on my objectivity in deciding this matter.”

These recusals left an insufficient number of members on the Township Committee to constitute a quorum comprised of “two-thirds of the full membership of the governing body,” see N.J.S.A. 40A:7-12, to adopt a resolution for de-annexation without conflicted members being part of the process. The Township attorney was not present at the meeting of October 19, 2016, but subsequently spoke to the Petitioners’ counsel concerning this issue. They agreed that the Rule of Necessity applied so as to allow conflicted members of the Township Committee to participate in the decision to satisfy the two-thirds requirement of the Statute. N.J.S.A. 40A:7-12.

At the final meeting on November 9, 2016, Petitioners’ counsel gave a summation of the evidence presented and argued that Seaview Harbor had met its burden of proof as to de-annexation. The Township Committee deliberated. The Township Committee then adopted Resolution 425 entitled, “Resolution accepting Planning Board Resolution #01-16 Denying the Petition for Deannexation by the Seaview Harbor Realignment Committee,” which concluded as follows:

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Egg Harbor, located in the County of Atlantic and State of New Jersey hereby denies the Petition for deannexation submitted by the Seaview Harbor Realignment Committee for the reasons set forth in the Resolution, Impact Report and its exhibits, which are hereby incorporated and made part of this resolution.

The Board additionally adopted Resolution 426 wherein they embraced the Board's Special Planner, Wisner's recommendation that there were legal impediments to the Petition which included lack of contiguity as well as insufficiency of the map reference in the Petition. This Court previously determined on Summary Judgment that Resolution 426 lacked legal merit and Resolution 426 was set aside by the Court. (March 8, 2019 Opinion and Order). This Court ruled that the Petition met the statutory requirements and that the Petition was valid.

The Petitioners' Complaint and Procedural History

On January 11, 2017, Petitioners appealed the Township's decision to deny the Petition by the filing of a Complaint in Lieu of Prerogative Writ and a civil rights violation claim in the Atlantic County Superior Court. The Complaint asserted four (4) counts as follows: (1) Count I sought a determination that the Township's refusal to consent to the Petition was arbitrary and unreasonable; (2) Count II sought a determination that the Petition and map were proper and complete upon filing and to set aside Resolution 426, which declared otherwise; (3) Count III alleged a violation of the New Jersey Open Public Meetings Act and Open Public Records Act; and (4) Count IV asserted a violation of the New Jersey Civil Rights Act.

On March 17, 2017, the Township filed a Motion to Dismiss Count IV of the Complaint, which asserts a civil rights claim, on the grounds that it was not ripe for adjudication. By way of order dated April 10, 2017, this Court denied the Township's Motion to Dismiss and bifurcated Count IV to be heard at a later date. Thereafter, the parties filed several motions to settle and/or expand the record. The Court's decision concerning same were memorialized by way of orders dated March 26, 2018 and June 7, 2018.

On August 15, 2018, Petitioners filed a Motion for Partial Summary Judgment as to Counts II and III of the Complaint. Petitioners' Motion for Summary Judgment as to Count II sought a

declaration that Petitioners satisfied N.J.S.A. 40A:7-12 which requires, in relevant part, an annexation petition to “specifically” set forth the boundaries of the land to which annexation is to be made and whether the de-annexing land is contiguous to the land it is seeking to be annexed to. The Petitioners’ Motion for Summary Judgment as to Count II also sought an order to set aside Resolution 426, which held otherwise. Petitioners’ Motion for Summary Judgment as to Count III sought a declaration that the Township violated the Open Public Meetings Act and/or the Open Public Records Act by failing to disclose minutes of a closed-session meeting for a three-year period. The Township filed a Cross-Motion for Summary Judgment as to Count II, seeking a declaration that Petitioners failed to satisfy the statutory standard and that Longport is not contiguous to Seaview Harbor. The Township opposed Petitioners’ Motion for Summary Judgment as to Count III.

By way of Orders and a Decision dated March 8, 2019, the Court granted Petitioners’ motions for Partial Summary Judgment as to Counts II and III and denied Township’ Cross-Motion for Summary Judgment as to Count II. Specifically, the Court found that the annexation Petition filed by Petitioners complied with the statutory requirements of N.J.S.A. 40A:7-12. The Court also set aside the Board and Township Committee’s Resolutions to reject the Petition on procedural grounds. The Court further found that the Township violated the Open Public Records Act by failing to turn over the meeting minutes within a reasonable time. In accordance with this finding, the Court designated Petitioners as a prevailing party entitled to the fee shifting provisions of the Open Public Records Act.

The issue addressed in this Opinion is a hearing on the merits regarding the refusal to consent to the annexation Petition. In this Opinion, the Court addresses all issues related to Egg Harbor Township’s denial of Seaview Harbor’s annexation Petition.

DISCUSSION

I. STANDARD OF REVIEW

The Court's role in reviewing determinations of local planning boards or zoning boards is clearly defined by case law, from which emerges a deferential standard of review. Because planning boards and zoning boards are independent administrative bodies acting in a quasi-judicial manner, Dolan v. DeCapua, 16 N.J. 599, 612 (1954), and because their powers stem directly from statutory authority, Duffcon Concrete Prods., Inc. v. Cresskill, 1 N.J. 509, 515-16 (1949), the burden of proof rests with the challenging party and the standard of review is whether the decision can be found to be arbitrary, capricious, or unreasonable, Kramer v. Bd. of Adjustment of Sea Girt, 45 N.J. 268 (1965). Such boards, because of their peculiar knowledge of local conditions must be allowed wide latitude in their delegated discretion. Ward v. Scott, 16 N.J. 16, 23 (1954). Accordingly, a trial court must view the decision of the Board as presumptively correct. Rexon v. Bd. of Adjustment of Haddonfield, 10 N.J. 1, 7 (1952).

A board's decision is presumed to be valid as long as there is evidence in the record to support its determination. Lang v. Zoning Bd. of Adjustment, 160 N.J. 41, 58 (1999). That determination must be made on the basis of what was before the board and not on the basis of a trial de novo. Antonelli v. Planning Bd. of Waldwick, 79 N.J. Super. 433, 440-41 (App. Div. 1963). Despite this heavy burden, courts will grant relief where the board's decision lacks a reasonable basis. Gerkin v. Village of Ridgewood, 17 N.J. Super. 472, 477 (App. Div. 1952).

This matter involves Egg Harbor Township's refusal to consent to the de-annexation of Seaview Harbor from Egg Harbor Township. "In giving or withholding consent to deannexation, governing bodies have traditionally been afforded discretion, but discretion nonetheless subject to judicial review." Avalon Manor Improvement Ass'n., Inc. v. Middle Twp., 370 N.J. Super. 73, 90 (App. Div. 2004) (citing West Point Island Civic Ass'n. v. Township Comm. of Dover Tp., 54 N.J.

339, 347-48 (1969)). The municipality's exercise of discretion is "subject to review under the standard principles of arbitrariness or unreasonableness." Russell v. Stafford Tp., 261 N.J. Super. 43, 48 (Law Div. 1992).

In conducting judicial review, the Court is guided by the principles established by the Supreme Court in Ryan v. Mayor & Council Bor. of Demarest. In Ryan, the Supreme Court stated "We find in the 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." Ryan v. Mayor & Council Bor. of Demarest, 64 N.J. 593, 606 (1974). (emphasis added). Subsequent to the Ryan case, the Legislature modified the Annexation Statute, making it even more difficult to achieve annexation.

Under the statutory framework for judicial review that the Court will discuss below, the Petitioners have the burden of proving the arbitrariness or unreasonableness of the municipality's action. 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 petitioners have the burden of establishing that 1) the refusal to consent to the petition was arbitrary or unreasonable; 2) the 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; and 3) the annexation will not cause a significant injury to the well-being of the municipality in which the land is located. Avalon, 370 N.J. Super. at 90 (quoting N.J.S.A. 40A:7-12.1).

II. STATUTORY FRAMEWORK FOR JUDICIAL REVIEW

N.J.S.A. 40A:7-12.1, states:

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 petitioners have the burden** of establishing that the refusal to consent to the petition was arbitrary or unreasonable, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land, and that the annexation will not cause a significant injury to the well-being of the municipality in which the land is located. (emphasis added).

In 1982, the State Legislature adopted the current Annexation Statute N.J.S.A. 40A:7-12. The municipality's exercise of discretion is "subject to review under the standard principles of arbitrariness or unreasonableness." Russell, 261 N.J. Super. at 48. The statutory language imposes upon petitioners the same burden of showing an abuse of discretion whether their challenge is to the action of the de-annexing or annexing municipality. Id. at 49. In Russell, Judge Serpentelli opined that under the revised Statute, petitioners now have the burden to show "annexation will not cause a significant injury to the well-being of the deannexing municipality," which is different from "the initial burden being upon the deannexing municipality to prove that it will be injured." Ibid. Judge Serpentelli interpreted the amended Statute "to have imposed a heavier burden on the petitioners, thereby making deannexation more difficult or, perhaps, discouraging attempts to undertake the effort at all." Id. at 50. The court in Russell highlighted that this is a reversal from the previous law which placed "the initial burden upon the de-annexing municipality to prove that it will be injured." Id. at 49. This Court agrees with the careful analysis of the statutory scheme by Judge Serpentelli. Indeed, this Court concludes that the legislative intent of the 1982 Annexation Statute makes

it much more difficult to achieve de-annexation. This reflects the strong policy adopted by the Legislature to maintain municipal boundaries and to discourage de-annexation efforts.

The legal principles previously cited place a heavy burden upon the Petitioners here. The Legislature has established guidelines pursuant to the Statute. In conducting this analysis, the Court will determine whether the Petitioners met their burden using the framework in this order: (1) that the 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 (Seaview Harbor); (2) that the annexation will not cause significant injury to the well-being of the municipality in which the land is located (Egg Harbor Township); and (3) that the refusal to consent to the petition was arbitrary or unreasonable.

Against this backdrop for judicial review, the Court will first examine whether Egg Harbor Township's refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of Seaview Harbor. Second, the Court will analyze whether the annexation will not cause significant injury to the well-being of Egg Harbor Township. Third, the Court will assess whether Egg Harbor Township's refusal to consent to the Petition was arbitrary or unreasonable. The court will address all of these issues keeping in mind that Petitioners have the burden to meet each of these elements as outlined in the statutory framework.

III. THE COURT HOLDS THAT THE PETITIONERS MET THEIR BURDEN AND ESTABLISHED THAT EGG HARBOR TOWNSHIP'S REFUSAL TO CONSENT TO THE ANNEXATION IS DETRIMENTAL TO THE ECONOMIC AND SOCIAL WELL-BEING OF A MAJORITY OF THE RESIDENTS OF SEAVIEW HARBOR

Petitioners must establish that the refusal to consent to the annexation is detrimental to the economic and social well-being of the residents of Seaview Harbor. Economic detriment to the

Petitioners is only the first part of this section of the analysis. The Petitioners must also meet the burden of proving that the refusal to consent to the annexation is detrimental to the social well-being of the residents of Seaview Harbor. The evidence in the record below must show these two detriments. When analyzing the detriment to the economic and social well-being of Seaview Harbor residents, the Court will carefully weigh all the evidence on the record. First, the Court will address the economic detriment to the residents of Seaview Harbor.

A. Economic Detriment to the Residents of Seaview Harbor

The Township asserts that Petitioners are simply attempting to tax shop. Specifically, they argue that it is no coincidence the 2013 assessments prompted the majority of the residents to file the annexation Petition on February 18, 2014. In Ryan v. Mayor & Council Bor. of Demarest, the Supreme Court stated “We find in the 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.” Ryan v. Mayor & Council Bor. of Demarest, 64 N.J. 593, 606 (1974). (emphasis added).

The detriment to the economic well-being of Seaview Harbor residents is not disputed. By the Planning Board’s “Resolution 01-16- Deannex,” the Board acknowledged the indisputable fact that the majority of the residents of Seaview Harbor would suffer detriment to their economic well-being if the petition was denied. The Board found that “the petitioners had satisfied their burden of proof in evidencing that the refusal to consent to deannexation would be detrimental to the economic well-being of a majority of the residents of Seaview Harbor.”

The economic detriment to Seaview Harbor residents in terms of tax savings was quantified in the Impact Report at page 131. It recognized that the average residence in Seaview Harbor,

based on 2014 numbers, would see a reduction in their total tax bill from \$20,759 to \$3,347, or a total savings of \$17,412. Leon Costello testified on behalf of the Township as its municipal accountant (hereinafter “Township Municipal Accountant Costello). He testified in October 2015, which was one year after Petitioners’ expert accountant, Ryan testified. Township Municipal Accountant Costello had the most recent numbers as to average residential value and annually changing tax rates. He acknowledged that the loss in 2015 would have been \$17,992.32 or \$580.32 greater than the year before, for the average Seaview Harbor homeowner. For that year, Seaview Harbor had an average tax assessment evaluation of \$873,700 for each property.

The Board in its Impact Report also concluded a financial detriment to the residents of Seaview Harbor resulting from the Township’s inaction to join the Community Rating System (“CRS”). The Impact Report noted that, “They currently lag behind other communities including Longport, in obtaining these flood insurance discounts for its residents. Seaview Harbor residents would, in all likelihood, benefit from Longport CRS discount if deannexation were to occur.” The Township points out that desirability of participating in the CRS program was only recently spurred by the 2012 Biggert-Waters Act and the 2013 Super Storm Sandy which occurred four (4) months before the de-annexation Petition was submitted. Township Administrator Miller testified the Township was compelled to act in the best interests of all its residents and that this financial impact was not uniquely limited to Seaview Harbor, but would negatively affect over 400 other properties. In 2017, the Township entered into the CRS program.

In the Court’s opinion, the Board correctly concluded that Petitioners had met their burden of proof regarding the economic detriment because, if de-annexation was consented to, the average residence in Seaview Harbor would see a total tax savings of \$17,992.32 in 2015. Because of that significant tax savings, the Court agrees that the Township’s refusal to consent to de-annexation

is indeed detrimental to the economic well-being of the residents of Seaview Harbor. The Court also finds some merit in the Township's argument that there was an element of tax shopping on the part of the residents of Seaview Harbor. Indeed, the timing of the Petition effort follows the 2013 tax reassessment conducted by the Township. It is undeniable that the reassessment resulted in a significant tax increase to the average homeowner in Seaview Harbor. The economic detriment to the residents of Seaview Harbor if they remain as part of Egg Harbor Township is also undeniable. Taking all these findings into consideration, the Court is of the opinion that, as required by the Statute, the Petitioners met their burden in establishing the economic detriment to the residents of Seaview Harbor.

Next, the Court will analyze the second prong of this element and determine whether Petitioners met their burden as to social detriment to the residents of Seaview Harbor.

B. Social Detriment to the Residents of Seaview Harbor

The Supreme Court in Ryan set forth a number of factors that may appropriately be considered in determining whether the refusal to consent to a petition for de-annexation will be detrimental to the social well-being of the residents of the affected land, which, in the present matter, refers to Seaview Harbor. Ryan, 64 N.J. These factors include, but are not limited to geography, logistics, community life, schools, availability of businesses, and the availability of municipal services. See Id. The Supreme Court in Ryan nevertheless recognized that these factors were not "all inclusive" and that the decision was dependent on the facts of each case. Id. at 605.

The parties have submitted arguments regarding the following factors: geography and demographics; emergency services; municipal services; and social/community life and schools. The Court has analyzed the arguments by both parties regarding each factor. The Court has also carefully reviewed the full record, especially the expert testimonies and reports.

1. Geography and Demographics

Petitioners argue that in analyzing the social detriment to Seaview Harbor residents in this case, the Court is guided by West Point Island Civic Ass'n v. Tp. Com. of Dover Tp., 54 N.J. 339 (1969); and Bay Beach Way Realignment Com., LLC v. Tp. Council of Toms River, No. OCN-L-2198-07, aff'd, 2009 N.J. Super. Unpub. LEXIS 1792 (July 9, 2009), certif. denied, 200 N.J. 476 (2009). Petitioners argue that while West Point Island was decided based on the prior Annexation Statute, it remains good law and is applicable and extremely relevant here.

West Point Island involved the de-annexation of West Point Island from then Dover Township to the contiguous municipality of Lavallette. The petitioners in West Point Island sought de-annexation from Dover Township because its unique geography rendered it isolated from the schools as well as the governmental, business and shopping areas of Dover Township. West Point Island comprised one-half mile square of Dover Township's 44.03 square miles in Ocean County. It was located 7.5 miles from the business center of Dover Township by way of the nearest bridge, and one had to travel through two (2) municipalities and Dover Township to reach that center. On the other hand, because of its proximity to Lavallette, West Point Island residents "naturally looked" to Lavallette as "the focus of community interest and activity." The record showed that the West Point Islanders used Lavallette recreational facilities, and the Lavallette Borough Hall for community meetings. In terms of demographics, the Island was more like Lavallette than Dover Township in that it was mostly comprised of seasonal residents, with a winter population of eighty-four (84) residents which increased by over 2,000 in the summer months.

Based on the proofs submitted and the fact that Dover Township would not be economically or socially injured by de-annexation, the Supreme Court concluded that "the geography is so pointedly in favor of allowing it" that "on the facts of this case there is no reason

to deny the overwhelming majority of voters and taxpayers on West Point Island the opportunity of joining the Borough of Lavallette.” Id. at 349-50. The Supreme Court emphasized that the trial court found that the loss in ratables by Dover Township would be “offset by an equivalent reduction in cost of municipal services to the Township.” Id. at 349.

In a subsequent case, Bay Beach Way, the petitioners sought de-annexation from the Township of Toms River, formerly Dover Township, to the Borough of Lavallette. The petitioners’ property consisted of sixty (60) residential lots of which fifty-eight (58) were developed and situated on the north and south sides of Bay Beach Way, a dead-end private thoroughfare. There were no additional lots or land available for future development, either commercial or residential. The tract was isolated by lagoons to its north and south, and one leaving the area must travel into and through Lavallette. Bay Beach Way consisted roughly of nine (9) acres, comprising only .0003% of Toms River’s total area which consisted of approximately 26, 880 acres (forty-two (42) square miles). 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 Township. The Court concluded that the annexation would not cause significant injury to Toms River. Thus, the court granted the petition for de-annexation. The Township appealed the trial court’s decision. On appeal, the Appellate Division concluded that, “We have carefully considered the record in light of the Council’s arguments and the applicable law. We find that the arguments lack sufficient merit to warrant discussion in a written opinion. We are satisfied that there is sufficient credible evidence in the record to support the decision of the trial court and we affirm substantially for the reasons set forth in [the court’s] extensive and well-reasoned written decision dated July 22, 2008.” Bay Beach Way, slip op. at 7.

Here, Petitioners argue that the geographic conditions of Seaview Harbor are akin to those of the de-annexing lands in West Point Island and Bay Beach Way. Petitioners contend that like West Point Island and Bay Beach Way, “due to the most unusual geography” Longport is unquestionably the natural focus of Seaview Harbor. Petitioners point out that Seaview Harbor is an island on the other side of the bay, isolated from the Township’s mainland, including the Township schools, emergency services, and governmental, business and shopping areas. Seaview Harbor is approximately five (5) miles from the border of the Township and over seven (7) miles from its town center. Like the residents in West Point Island, residents of Seaview Harbor have to travel through another municipality, either Somers Point and/or Linwood, to get from Seaview Harbor to mainland Egg Harbor Township. With a land mass of approximately sixty (60) acres, or 0.09 square mile, Seaview Harbor comprises approximately 1/700th of Egg Harbor Township, which is approximately sixty-eight (68) square miles or 43,520 acres. Seaview Harbor residents have a Longport mailing address and a Longport ZIP code of 08403. The only other area that has that ZIP code is Longport. Petitioners contend that as a result, residents of Seaview Harbor most appropriately receive their mail addressed to them as living in Longport, New Jersey 08403.

In terms of demographics, Petitioners argue that Petitioners’ expert planner, CuvIELLO identified the many similarities Seaview Harbor has with Longport. She also highlighted the differences between Seaview Harbor and mainland Egg Harbor Township. Petitioners’ expert planner, CuvIELLO undertook a review and analysis of the census data for Egg Harbor Township, Seaview Harbor and Longport. According to the 2010 census data, the age eighteen (18) and under population for Egg Harbor Township accounts for twenty-six percent (26%) of the total population, in contrast to Seaview Harbor where there are only thirteen (13) persons under the age of eighteen (18) or thirteen percent (13%) of Seaview Harbor’s total population. In the Borough

of Longport, the under eighteen (18) population is twelve percent (12%) which Petitioners' expert planner, Cuiello viewed as comparable to that of Seaview Harbor. In comparing the median ages in Egg Harbor Township, Seaview Harbor, and Longport, Petitioners' Expert Planner, Cuiello found that Seaview Harbor with its median age of fifty-five (55) and Longport with its median age of fifty-eight (58) are comparable in terms of demographics. The Township median age, on the other hand, is thirty-nine (39).

Petitioners' expert planner, Cuiello characterized both Seaview Harbor and Longport as small communities. She also observed that Seaview Harbor is a more seasonal community with forty-seven percent (47%) of its residents year-round in contrast to ninety-three percent (93%) year-round residents in Egg Harbor Township. Longport is more similar to Seaview Harbor with its year-round residents at twenty-eight percent (28%) of its population. As a result of these factors, Petitioners' expert planner, Cuiello concluded that the remote location of Seaview Harbor, as well as its demographics and community lifestyle make the Seaview Harbor a better geographical and demographical fit with the Borough of Longport.

Based on geography and demographics, Petitioners highlight that the West Point Island and Bay Beach Way cases are analogous and relevant to the present case. In response, the Township argues that although there are some geographic and demographic similarities such as size comparisons, travel distances, and seasonal occupancy, significant geographical differences are apparent. The Township contends that Seaview Harbor is neither an island nor is it completely removed from Egg Harbor Township. Further, the Township explains that in both West Point Island and Bay Beach Way, the outcomes reached are easily distinguishable since the courts determined there were no facts to show those municipalities would be socially or financially injured if the petition were granted.

The Township proffers that Avalon Manor, which was decided in this vicinage, is significantly more similar to the case at hand and presents relevant legal guidance. The Township points out that geographically Manor is akin to Seaview Harbor as it is separated from the mainland by water and marshlands, thereby requiring access from a causeway and bridge. The land upon which Seaview Harbor is located has been part of the Township since its incorporation in 1710, although its development did not occur until the 1960s. Like Manor, its size and location limit its growth potential. Manor contained approximately 150 homes, mostly waterfront, and was seasonally occupied. By comparison, Seaview Harbor has ninety-two (92) waterfront homes, each having its own dock. Approximately 53% are seasonally occupied by secondary homeowners. Like Manor, there are no children residing in Seaview Harbor that attend the Township schools.

The Township points out that the extent to which Seaview Harbor is geographically isolated from the mainland portion of the Township was evident by maps and testimony. The Township also offered evidence concerning its size, travel times, and distances. The Township noted that the municipal building is located almost in the middle of the Township and that Seaview Harbor is a twelve-minute drive which is no further away than other residents in the Township. Several Board members rendered findings of fact on the advantages and disadvantages of driving distances to town hall, and commercial, business, and recreational areas. Those members saw these driving distances as a normal fact of social life and not unique to Seaview residents. The Board was aware of the Petitioners' concerns about the distance to municipal facilities. The Board referred to Seaview Harbor as a "small out-lying subdivision." The Township argues that based on these facts, it is readily apparent that the Board and the Township Committee did not disregard substantial facts concerning Seaview Harbor's geographic location. Geographic distances are undisputed and unchangeable. Regarding concerns about confusion relating to the ZIP code, the

Township points out that the Petitioners' witness acknowledged that the Township has no control over ZIP code assignments because the federal government assigns them.

Based on careful review of all the evidence, the Court is of the opinion that Seaview Harbor is a small outlying area of Egg Harbor Township and is geographically more similar to Longport than mainland Egg Harbor Township. The geography of Seaview Harbor makes it more convenient for its residents to look to Longport for the focus of their many social activities. Likewise, Seaview Harbor is demographically similar to Longport. The population dynamics is similar to Longport's. The median age in Seaview Harbor is similar to that of Longport (fifty-five (55) and fifty-five (5)8), whereas the Township's is thirty-nine (39). Seaview Harbor and Longport are more seasonal communities with year-round residents at 47% and 28% (93% for the Township).

While Seaview Harbor is in some ways similar to the petitioners in the West Point Island and Bay Beach Way cases, those cases are very distinguishable from our facts. The geography and demographic commonality of Seaview Harbor and Longport are akin to the facts in those two cases. Nonetheless, those cases are distinguishable from the facts here because there was no showing that those municipalities would be socially or economically injured if the petitions were granted. In fact, in West Point Island, the loss of ratables would be offset by an equivalent reduction in the cost of municipal services to Dover Township. This was a significant factor considered by the Supreme Court. The Court finds the argument regarding geography and community focus to be particularly compelling on the part of Petitioners. The geography is pointedly in favor of allowing annexation. And the demographics are very similar between Seaview Harbor and Longport. In conclusion, the Court weighs this element of geography and demographics in favor of Seaview Harbor.

However, the analysis does not end here. The Court will consider and weigh other elements regarding social detriment to Seaview Harbor. After that, the Court will analyze the other two prongs under the statutory framework. The injury to the Township is analyzed in Section IV of this opinion.

2. Emergency Services

Petitioners argue that the geographical isolation of Seaview Harbor from the Township, and the population of the mainland Township have resulted in significant social injury to the residents of Seaview Harbor. Specifically, they assert that they receive little to no services from the Egg Harbor Township police and fire departments. Petitioners contend that the remote location of Seaview Harbor to these emergency service facilities contributes to the inability of the Township to be the first responder to Seaview Harbor. Due to Longport's proximity to Seaview Harbor, the Township relies on Longport to be the first responder to provide police, fire and ambulance services to Seaview Harbor. The Township responders eventually arrive, after an emergency call, to complete a police report. Petitioners maintain that while the residents of Seaview Harbor pay local property taxes to the Township for many of these emergency services, Longport customarily provides these services.

To illustrate the separation of services, Petitioners' expert planner, Cuiello identified the distance between Seaview Harbor and the emergency service facilities of the mainland Township versus Longport (this included police stations, fire district stations and ambulance squads). The closest Egg Harbor Township fire station to Seaview Harbor (which is also the fire district meant to service Seaview Harbor) is Scullville Station No. 1. This Station is 7.5 miles or thirteen (13) minutes from Seaview Harbor. Station 2 is located even further away at 10.24 miles. On the other

hand, the Longport fire department is located 0.95 mile from Seaview Harbor and can reach Seaview Harbor residents in no more than two (2) minutes.

The same is true with respect to police services. The Township Police Department is located approximately 7.22 miles or thirteen (13) minutes from Seaview Harbor. In contrast, the Longport Police Department is located just 0.95 mile away with a two (2) minute response time. The record establishes that the Egg Harbor Police Department has five zones. The largest zone is the District within which Seaview Harbor is located and encompasses of approximately fifteen (15) square miles (patrolled on average by two Egg Harbor Township police vehicles). The combined size of Longport and Seaview Harbor is a little more than one (1) square mile.

The Township acknowledges that Seaview Harbor is a small outlying portion of Egg Harbor Township, some distance from the center point of the Township. The Township admits that the geographic location of Seaview Harbor creates certain challenges to the Township in providing emergency services to this portion of the community. The Township argues that these challenges have been overcome and more than adequately addressed through the careful, organized, and efficient planning conducted with the cooperation of all emergency management departments within the Township, adjacent communities, and volunteer organizations in the development of a county-wide mutual aid program.

The Township explains that mutual aid agreements are agreements between agencies, organizations, and jurisdictions that provide a mechanism to quickly obtain emergency assistance in the form of personnel, equipment, materials, and other associated services. The primary objective is to facilitate rapid short-term deployment of emergency support prior to, during, and after an incident. The goal of mutual aid agreements among emergency responders is to lend assistance across jurisdictional boundaries. This may occur due to an emergency response that

exceeds local resources, such as a multiple-alarm fire. Often, it is included in a formal standing agreement for cooperative emergency management on a continuing basis, to ensure that resources are dispatched from the nearest fire station, regardless of which side of the jurisdictional boundary the incident is on. The Township argues that the Mutual-Aid program ensures the swiftest response time together with the ability of the emergency service departments to bring the best resources to the situation as quickly as possible.

Petitioners assert that this situation in and of itself, regardless of the successful operation of the Mutual-Aid program, constitutes detriment to the social well-being of Seaview Harbor residents. They maintain that mutual aid is not a satisfactory substitute for their own municipality providing those services. Petitioners point out that the Mutual Aid Statute was enacted to allow municipalities to seek assistance from contiguous municipalities for emergencies to “suppress a riot or disorder” or “protect life and property outside the normal territorial jurisdiction of the department or company to which such request is directed.” See N.J.S.A. 40A:14-156 and N.J.S.A. 40A:14-26. They maintain that mutual aid was not intended to subcontract the most basic of public services to another municipality.

In analyzing the element of emergency services, the Court concludes that this element weighs in favor of Seaview Harbor. This adds to the social detriment to the residents of Seaview Harbor. Under normal circumstances, the taxpayers of Seaview Harbor should be entitled to receive emergency services from Egg Harbor Township. The Court is satisfied that the record undeniably reflects that in emergency situations occurring in Seaview Harbor, Longport police, fire, and ambulance services are the first responders to these incidents with the Egg Harbor Township departments responding thereafter as necessary. The Court also acknowledges that Egg Harbor Township has made arrangements to address emergency situations in Seaview Harbor

through the use of mutual aid and shared services agreements. There is also no actual evidence on the record pointing to a situation where the residents of Seaview Harbor did not receive emergency services when needed. Overall, while not as significantly as geography and demographics, this element still weighs in favor of Seaview Harbor.

3. Municipal Services

Petitioners argue that the issue of distance is not limited to emergency services: other normal public services and needs, including licensing, permits, community recreational programs, public meetings, and voting are impacted due to Seaview Harbor's dislocation from the Township. Petitioners contend that many of these activities require Seaview Harbor residents to travel to the municipal complex or other public buildings. Seaview Harbor is located 7.22 miles away, a thirteen-minute drive, from the Township municipal building. In order to drive to the municipal complex for building permits, to attend public meetings, obtain a yard sale license, and participate in many other similar activities, residents must travel through Somers Point and back into the Township to reach the municipal building.

Petitioners further argue that as a residential community, there is an expectation of services from the municipal government. This is especially true for snow removal, which, according to local residents is rarely provided to Seaview Harbor by the Township. During the hearings, Petitioners testified about the slowness with which snow was cleared and their dependence on self-help. Township Director of Public Works Simerson acknowledged that the geography does cause problems. During the hearings, testimony was also presented that recreational programs and facilities are unavailable or remotely located to Seaview Harbor residents. There are no Township publicly owned recreational facilities on Seaview Harbor. The Township recreational facilities are located between five (5) and eight (8) miles from Seaview Harbor.

With respect to participation in government and voting, the residents of Seaview Harbor are part of Atlantic County Freeholder District 2 which includes waterfront-based towns, Northfield, Linwood, Somers Point, Longport, Margate, and Ventnor. The majority of the Township is part of Voting District 3. The Freeholder who represents Seaview Harbor on a county level is different than the Freeholder for the Township mainland area. Furthermore, voting occurs at the Township Fire House. On Election Day, residents from Seaview Harbor have to drive over seven (7) miles to the polling location. This involves leaving the Township coastal area and traveling through Somers Point before re-entering the Township mainland.

The Township points out that the Petitioners' concerns raised during the hearings before the Board were acknowledged by the Board. As noted in the Board's Special Planner, Wisner's Report,

The various elements of purported social detriment presented by Petitioners, while fully within the framework established by the New Jersey Supreme Court in Ryan, may be, individually, irritations and inconveniences. Taken collectively, these elements may work to negatively impact Petitioners' lives. However, it is recommended that they do not establish the kind of long-term, structural, and inherently irremediable "detriment" the legislature had in mind when enacting the Deannexation Statute.

The Township proffers that when one considers that citizens only vote two times a year and they can now vote by mail, the alleged appears to be more of a minor inconvenience. The Township also maintains that when one considers how often the average homeowner needs a license and/or permit, and that those can now be completed by fax, mail or email, the finding of the Board in its Impact Report is even more reasonable;

The residents of Seaview Harbor raised concerns regarding the distance to municipal facilities; i.e., municipal hall and polling places. The Board finds these distances are not onerous given the few times that these facilities are used. The distances are also no

farther than distances that must be traveled by other residents of the Township.

The Township offers that during the hearings, the issue of snow removal was addressed. At its hearing of May 5, 2015, the Board received testimony from Township Director of Public Works Simerson. Township Director of Public Works Simerson testified as to public works services rendered to Seaview Harbor including trash, recycling, leaves, and tree debris pick-up; road maintenance and potholes; street sweeping; stormwater outlet and pipes; etc. Addressing snow removal, he testified that “Egg Harbor Township Public Works has 17 trucks and ten pieces of heavy equipment capable of plowing snow. The Department is responsible for approximately 200 miles of municipal roads. Since the fall of 2012, Public Works also has the ability to pretreat the roads by applying brine to the primary roads. During a major snow event, Public Works priorities are to maintain access for police, fire, and EMS: first on primary streets then, as conditions permit, moving on to secondary and tertiary streets.” The Township argues that based upon the testimony received, it was perfectly reasonable for the Board to make the following Findings of Fact contained in its Impact Report:

The Board finds that concerns raised by the Seaview Harbor residents regarding inadequate municipal services, i.e., snow plowing, road repairs, street sweeping, police presence, are not supported by the record. The Board notes that the Township’s longtime mayor, James McCullough, has resided in Seaview Harbor for 42 years and it is not credible that this portion of the community would receive inadequate services. In addition, the record is practically devoid of any official complaints of inadequate services prior to these hearings and it appears that some of these issues have been rectified during the proceedings.

The Court acknowledges that there are significant inconveniences to the residents of Seaview Harbor because most municipal services are located on the Township mainland. This is not the most convenient location for the residents of Seaview Harbor. The Court also notes that

these distances are no farther than distances many other Township residents on the mainland have to travel for similar services. A thirteen-minute drive to the Township municipal building to obtain a license is not a detriment and is not unreasonable. Likewise, having to travel to vote, once or twice a year, is an inconvenience but not a detriment. The Court points out that for the few year-round residents of Seaview Harbor vote by mail is also available. Overall, regarding this element, the Court weighs this in favor of the Township. The Court is satisfied that this element is not a social detriment to Seaview Harbor residents.

4. *Social/Community Life and Schools*

Petitioners argue that the proofs throughout the hearings established that, the social, economic, commercial, and religious focus of the citizens of Seaview Harbor are towards Longport and not Egg Harbor Township. Petitioners' expert planner, CuvIELLO's report notes, "A large part of living in a municipality and being part of a community is participating in local events, interacting with friends and neighbors, using public facilities and other similar activities." Petitioners point out that the residents of Seaview Harbor do not participate in Egg Harbor Township activities, they attend church in Longport, use the post office in Longport, and even use recreational facilities in Longport. Petitioners further argue that the real estate magazines advertise Seaview Harbor as part of Longport. Petitioners' expert planner, CuvIELLO testified as follows:

Seaview Harbor doesn't participate in things with Egg Harbor Township. Not because they don't like you. That's not why. It's because their proximate to Longport, and they are more related to Longport. The population demographic is similar to Longport. Their housing is similar to Longport. The lifestyle of living on the water is similar to Longport. And that's where they see themselves. That's where they fit in. there is a geographic distance and commonality of population that makes this boundary realignment make sense.

(T-9/22/2014, 57:15-25).

Furthermore, Petitioners' expert planner, CuvIELLO highlighted that Seaview Harbor has historically not had school children in the Egg Harbor Township School District. Petitioners point out that the Board in its Impact Report specifically found that the school age children from Seaview Harbor would benefit if they could attend free of tuition the Margate Elementary Schools which are much closer to Seaview Harbor.

The Township responds that the record reasonably supported their conclusion that the social well-being of the Seaview Harbor residents would not be harmed by a refusal to consent to annexation. The Township contends that Seaview Harbor's participation in social and community activities in other municipalities is a preference and not a social detriment. To highlight that residents of Seaview Harbor have been very active in the Township affairs, the Board's Special Planner, Wisner cites to the testimony and exhibits presented by Township Administrator Miller. For instance, they serve on the municipal government, land-use Boards and various commissions. Particularly, the mayor over the last couple of decades, was a resident of Seaview Harbor (Mayor McCullough).

Undoubtedly, the social life, schooling, and religious focus of the residents of Seaview Harbor is towards Longport and other locational preferences. Conveniences and preferences do matter, especially because of the geographical distance and lack of commonality with the rest of the Township. Both parties made solid arguments regarding this element. The Court gives significant weight to the argument that the residents of Seaview Harbor have been active participants as public servants and have made significant contributions to Egg Harbor Township. The evidence on the record demonstrates that the focus of the social and community life of Seaview Harbor residents is more towards the coastal communities. This is more related to preferences

than geography. Overall, the Court finds this element is an equipoise, as it is balanced on both sides.

Conclusion to Social and Economic Detriment to the Residents of Seaview Harbor

Under the Statute, the Petitioners have the burden to demonstrate that the Township's refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of Seaview Harbor. In making this determination, the Court is also guided by the Supreme Court decision in Ryan as well as the other de-annexation and annexation court decisions. The Court has now evaluated both the economic and social well-being elements, and whether Egg Harbor Township's refusal to consent to annexation is detrimental to the economic and social well-being of the residents of Seaview Harbor. The Supreme Court stressed the legislative intent of preserving municipal boundaries and maintaining municipal integrity against frivolous challenges driven by considerations like tax shopping.

In Ryan, the Supreme Court also provided factors to be weighed in analyzing the social detriment prong. The Court has balanced all the factors regarding social detriment. The Court has weighed geography and demographics; emergency services; municipal services; and social/community life and schools. The Court weighs geography and demographics in favor of Seaview Harbor because it is isolated from the mainland Township and more akin to Longport. The geography of Seaview Harbor makes it more convenient for its residents to look to Longport for the focus of their many social activities. Likewise, Seaview Harbor is demographically similar to Longport. The population dynamics is similar to Longport's. The median age in Seaview Harbor is similar to that of Longport (fifty-five (55) and fifty-eight (58)), whereas the Township's is thirty-nine (39). Seaview Harbor and Longport are more seasonal communities with year-round residents at 47% and 28% (93% for the Township). The geography and demographic commonality

of Seaview Harbor and Longport are akin to the facts in the West Point Island and Bay Beach Way cases. In conclusion, the geography is pointedly in favor of allowing annexation and the demographics are very similar between Seaview Harbor and Longport. The Court weighed this factor in favor of Seaview Harbor.

The Court also weighs emergency services in favor of Seaview Harbor. The record undeniably reflects that in emergency situations occurring in Seaview Harbor, Longport police, fire, and ambulance services are the first responders to these incidents (with the Egg Harbor Township departments responding thereafter as necessary). The Court has also concluded that the Township has made arrangements to address emergency situations in Seaview Harbor through the use of mutual aid and shared services agreements and that there is no evidence on the record pointing to a situation where the residents of Seaview Harbor did not receive emergency services when needed.

The Court weighs municipal services in favor of the Township. The Court is satisfied that this element is not a social detriment to Seaview Harbor residents. The Court acknowledges that there are significant inconveniences to the residents of Seaview Harbor because most municipal services are located on the Township mainland, which is not convenient for the residents of Seaview Harbor. However, this inconvenience is not unique to the residents of Seaview Harbor. Many Township residents on the mainland have to travel similar distances for similar services. Likewise, having to travel to vote, once or twice a year, is an inconvenience but not a detriment.

The Court weighs social/community life and schools as equipoise. The social life, schooling, and religious focus of the residents of Seaview Harbor is towards Longport and other locational preferences. Conveniences and preferences do matter, especially because of the geographical distance and lack of commonality with the rest of the Township. Both parties made

solid arguments regarding this element. The Court gives significant weight to the argument that residents of Seaview Harbor have been active participants as public servants and have made significant contributions to Egg Harbor Township.

In weighing all the elements regarding social detriment, the Court concludes that the record supports the position of Petitioners. The Petitioners established that the Township's refusal to consent to the annexation is detrimental to the social well-being of Seaview Harbor.

The Court also concludes that Petitioners met their burden regarding economic detriment. The Court is satisfied that the Board correctly concluded that Petitioners had met their burden of proof in regard to the economic detriment to Seaview Harbor. The average residence in Seaview Harbor would have seen a total tax savings of \$17,992.32 in 2015. The Court also finds some merit in the Township's argument that there was an element of tax shopping on the part of the residents of Seaview Harbor. Indeed, the timing of the Petition effort follows the 2013 tax reassessment conducted by the Township, but that was not the only driving force. It is undeniable that the reassessment resulted in a significant tax increase to the average homeowner in Seaview Harbor. It is also undeniable, as outlined in this Opinion, the economic detriment to the residents of Seaview Harbor. On this element of prong one, the Court agrees that the Petitioners met their burden of establishing that the Township's refusal to consent to the annexation is detrimental to the economic well-being of the residents of Seaview Harbor.

For all the above reasons, the Court holds that the Petitioners met their burden and established that Egg Harbor Township's refusal to consent to the annexation petition is detrimental to the economic and social well-being of a majority of the residents of Seaview Harbor. This is one of the elements of the statutory burden. Next, the Court will analyze the second element,

which is whether the annexation will not cause significant injury to the well-being of the municipality.

IV. THE COURT HOLDS THAT THE PETITIONERS FAILED TO ESTABLISH THAT THE ANNEXATION WILL NOT CAUSE A SIGNIFICANT INJURY TO THE WELL-BEING OF EGG HARBOR TOWNSHIP

The next step in the analysis is whether the annexation will not cause a significant injury to the well-being of Egg Harbor Township. In this part of the Opinion, the Court concludes that Petitioners failed to meet their burden regarding this element. The Court is of the opinion that the record demonstrates that the annexation of Seaview Harbor to Longport will cause a significant injury to the well-being of Egg Harbor Township.

Petitioners highlight that the evidence establishes that the annexation will not cause significant injury to Egg Harbor Township for several reasons. Petitioners contend that the record establishes that the Township is a large and financially sound municipality and the Township can easily manage the loss of revenue. Further, Petitioners assert that the annexation will not cause significant injury to the well-being of the Township through its loss of tax revenues because the Township is growing and has other means to recoup the loss tax ratables.

Petitioners point out that Seaview Harbor residents do not participate in civic or governmental matters of the Township and that the Township will not lose children at Township schools because none attend Township schools. Petitioners proffer that the Township will not lose Seaview Harbor's participation in religious or social activities because Seaview Harbor residents do not attend such activities in the Township. Petitioners highlight that there will be no loss of recreational or social amenities to the residents of the Township because the public restaurant and marina located in Seaview Harbor will remain open to the public. Petitioners indicate that Seaview Harbor's estimated population of 102 people is less than one-quarter of one percent of Egg Harbor

Township's 43,323 people. This was described by Petitioners' expert planner, CuvIELlo as a very de minimus amount.

A. Egg Harbor Township's Loss of Tax Ratable and Tax Revenue

With respect to the economic detriment of Egg Harbor Township, Petitioners argue that there is an understandable resistance on the part of any municipality to lose tax ratables regardless of its amount. The Township would incur a loss of approximately \$91,000,000 in ratables which translates into a loss of \$2,325,000 in tax revenues (municipal and school taxes) if the Petition had been granted in 2015. Petitioners argue that this number is to be considered in light of the combined \$170,500,000 budget of the municipality and school board and that the true loss is 1.3% of the combined budgets.

The total acreage of the municipality is over 40,000 acres with an estimated 9,000 acres that are privately owned and vacant. Petitioners' expert planner, CuvIELlo testified that Egg Harbor Township "has experienced an unprecedented level of growth over the past twenty years and the Township has had a 55% increase in the population since 1980, with no end in the foreseeable future." During the same time, Seaview Harbor's estimated population remained at 102 people. The Township has an estimated 22.7% of its total land area or more than fourteen (14) square miles privately owned and available for the Township's continuing growth. There is no more opportunity for expansion for the development of Seaview Harbor as there are only three (3) residential lots left.

Petitioners' expert accountant, Ryan testified that Egg Harbor Township had slightly over \$4 billion dollars in ratables as of 2013. Ryan also testified that the total ratables which was within Seaview Harbor was approximately \$101 million or 2.48 % of the whole of the Township (that number has dropped by \$10 million due to tax appeals). The Township would incur a loss of

approximately \$91,000,000 in ratables if annexation was achieved. Seaview Harbor's proportion of ratables, according to Township Administrator Miller, in the 1990s was 10% of the Township's. In the short time between the filing of the Petition and the denial, Seaview Harbor's proportion of ratables decreased from 2.48% to 2.24%, or a decrease of 9.6%.

Beyond taxes, Petitioners' expert accountant, Ryan noted that the Township and the School District received significant funds in non-tax revenue as a part of their budget. He explained that the Township has a diversified economic base with over 20% of its value being industrial or commercial. In the three (3) years preceding the filing of the Petition, the Township took in \$2.3 million in construction fees for building permits alone. (S-72). Petitioners argue that the ratables coming from these buildings will add to the Township's economic growth, while Seaview Harbor's growth will be limited to the three (3) vacant lots and the occasional rebuild, renovation or minor improvements.

Township Municipal Accountant Costello testified that if Seaview Harbor were to secede the Township would lose the \$95,385,300 in tax ratables, as assessed in 2015. The loss of ratables would result in school tax increase of 4.6 cents and a municipal tax increase of 1.3 cents for a total tax increase of 5.9 cents. This, for the average home in Egg Harbor Township, which is assessed at \$208,100, would result in a \$122.78 increase in tax payments. Overall, the Township maintains that annexation would result in an annual loss of \$505,542.09 in municipal tax revenue. The annexation would also result in an annual loss of \$1,819,951.52 in revenue to the Township schools. This would be a total annual loss of \$2,325,493.61.

Petitioners proffer that the significance of the \$122.78 tax increase should also be examined in the context of the average tax rate increases that occurred in the Township in the pre-petition/re-evaluation years. According to Petitioners' expert accountant, Ryan's unchallenged numbers, the

average annual increase during that eight-year period was \$176.61 (including years when it rose \$281 and \$457). The maximum difference of the expected 2015 tax increase is less than the average annual increase that have been imposed by the Township and school board. Petitioners assert that this rate change is not out of the ordinary; thus, it does not present significant injury to the Township.

Next, Petitioners contend that the Court must balance the maximum effect in the taxpayers \$122.78 increase with the continuous financial burden to the average Seaview Harbor resident if the Petition's denial is upheld. Township Municipal Accountant Costello estimated the continuous financial burden on Seaview Harbor at near \$17,992.32 (if Seaview Harbor remains with Egg Harbor Township) or about 150 times greater than the effect on the average Township homeowner (if Seaview Harbor secedes). In summary, Petitioners argue that should Seaview Harbor secede, the financial burden to the Township residents is much lower than the financial burden to Seaview Harbor residents should Seaview Harbor remain with the Township.

The Township acknowledges that the \$17,992.32 in annual tax savings to be expected by the average residence in Seaview Harbor (should annexation occur) is not insignificant to Seaview Harbor residents. The Township argues that the combined annual tax increase of \$122.78 likewise is not insignificant for the owner of the average Township residence. The Board's findings in the Impact Report are as follows:

The Board finds that deannexation would result in a loss of 2.4% of the Township's ratable base. This reduction would result in more than a \$505,000.00 loss of revenue to the Township Municipal Budget in the first year alone (based on 2015 figures) and would continue going forward. The effect of this loss of revenue to the Township together with the 2% budget cap would, in all likelihood, result in a decrease in services to the remaining citizens of the Township and/or a tax increase to maintain the status quo on services. The Township continues to remain in a state of economic stress as a result of state mandates, the failure of the state to

adequately fund programs including the gross receipts revenues, the economic recession, reductions in property values and the casino crisis in Atlantic City. The remaining citizens of Egg Harbor Township can ill-afford the increased tax burden or reduction in municipal services which result if deannexation were to occur.

(Impact Report at 135)

The Board finds that if deannexation were to occur that there would be a loss of revenue to the Egg Harbor Township School System of more than 1.8 million dollars in the first year (based on 2015 figures) with that loss continuing each year into the future. The loss of these revenues would have a catastrophic consequence on the school budget and, in all likelihood, would result in either the loss of jobs within the school system, continued cutbacks in school services and programs or significant increases in the school tax above what currently exists. The school budgets are currently constrained by the 2% school budget cap and underfunding pursuant to the unreliable state funding formula.

(Impact Report at 136)

The Township also points out that Township Municipal Accountant Costello stated that the Township's 2015 fund balance had the lowest percentage in the county which could not make up for the permanent loss of the Seaview Harbor ratables. The Township's recent history of fund balances are depicted below:

<i>YEAR</i>	<i>ADOPTED BUDGET</i>	<i>FUND BALANCE</i>	<i>% OF BUDGET</i>
2015	\$38,512,282.00	\$29,128.00	0.08%
2014	\$37,452,155.00	\$153,780.00	0.41%
2013	\$36,486,934.00	\$255,126.00	0.70%
2012	\$34,811,608.00	\$991.00	0.003%
2011	\$35,661,697.00	\$752,057.00	2.11%
2010	\$33,650,659.00	\$162,074.00	0.48%
2009	\$33,352,115.00	\$259,984.00	0.78%
2008	\$33,764,595.00	\$283,464.00	0.84%
2007	\$32,638,418.00	\$492,180.00	1.51%
2006	\$28,881,626.00	\$660,031.00	2.29%

Township Municipal Accountant Costello testified that a further decrease in ratable base is likely to adversely affect the Township's bond rating. He also testified that "rating agencies like

to see surplus of 10%” and presented the S&P rating sheet for the Township’s most recent bond issue which stated: “if budgetary performance were to deteriorate significantly, or if available fund balance were to decrease below \$500,000, we could lower the rating. We believe what we consider Egg Harbor’s very weak local economy limits upward rating pressure. We therefore do not believe we will change the rating within the outlook’s two-year period.” (B-118 at 4).

Township Director of Public Works Simerson testified that the savings from a Seaview Harbor de-annexation would be nominal since his department would still be charged with servicing Anchorage Poynte and the remainder of Route 152. (T-5/5/15, 64:6 to 65:10). More importantly, if de-annexation occurred, he anticipated the lost revenue would result in budget cuts that would cause a loss of employees which would affect his ability to service the remainder of the Township.

The Township claims that the testimony rendered by the Township’s administrator, department heads, and business administrator from the School Board provided compelling evidence about the impact of the loss of tax revenue. Their testimony highlighted the reduction in valuable services and labor force. Their testimonies also painted a picture of the significant injury to Egg Harbor Township if it permanently loses tax revenue generated from its highest valued community (which has an average tax assessment evaluation of \$873,700 per home).

The evidence regarding the loss of tax ratables in the amount of \$91,000,000 and tax revenue in the amount of \$2,325, 493.61 year after year moving forward is compelling evidence of significant injury to Egg Harbor Township. Despite Petitioners’ attempts to minimize and put these numbers in context, in this Court’s opinion, this loss of ratables and tax revenue cannot be understated. This is a significant distinction from the outcomes of the West Point Island and Bay Beach Way cases where there was minimal or no economic injury to the municipalities.

B. Injury to the Township Police and Fire Departments

On July 28, 2015, Township Police Chief Davis testified about the financial impacts of de-annexation on the Egg Harbor Township Police Department (which receives the greatest percentage of the municipal budget). (B-100). If annexation were to occur, he anticipated a loss of approximately \$175,000 to \$200,000 per year. The annual budgetary decrease would result in a reduction in officers and the community policing events. In his testimony, he suggested that the loss of staff and programs will result in an uptick in crime and an increase in response times. He opined that de-annexation will have a significant negative effect upon the remainder of the Township.

Police Chief Davis also testified that the Egg Harbor Township Police Department has been a leader in community-oriented services by the creation of its own Community Policing Unit. Patrol officers participate in numerous civic, educational, and charitable programs that will be negatively impacted by de-annexation. He expounded on this point by extensively identifying over twenty-five (25) community-oriented programs that would be “on the chopping block” if de-annexation were to occur. The Township maintain that these community programs would be negatively impacted and the first to be eliminated. This would adversely affect its most vulnerable residents, the children, and the community as a whole. The programs provide services to the needy and large segments of the Township’s population who rely on these amenities without cost throughout the year and the holiday season. Police Chief Davis further testified that the loss of ratables and revenue would have a negative impact on equipment acquisition, staffing, and department structure.

The Board also received evidence from the Egg Harbor Township Volunteer Fire Department on a variety of topics including finances and services. The Department consists of

five (5) fire companies, staffed by approximately 176 active trained volunteers. Each company receives \$15,000 per year to offset their building costs, and operations. They receive another \$15,000 for small firefighting equipment, costs, and upkeep. Fire Chief Winkler said the amounts received do not go very far to maintain building costs, utilities, and renovations. To support their operations, the Volunteer Fire Departments engage in a variety of fundraising activities including coin drops, events, and dinners. Other services include assisting EMS, Police Department, and Public Works by responding to accidents, storms, utility emergencies, and rescue operations.

The Township Fire Department has significantly invested time and money on firefighting training with the Longport Fire Department. The Township Fire Department has also purchased equipment, including a fire boat, hovercraft, and large tankers, specifically designed to address emergencies in the Seaview Harbor waterfront community. The Longport Fire Department does not possess such equipment. Fire Chief Winkler testified that “Without funding from Egg Harbor Township, fire service to will suffer. We have already seen cuts such as our capital improvement truck request. Loss of taxable properties will continue to hurt our fire service.” Additionally, the Township has reduced its capital purchases for large pieces of equipment (i.e. fire engines) from annually to every two years. As such, he was concerned that the loss of ratables from de-annexation “will affect the fire service for the entire Township”.

In his report of findings, the Board’s Special Planner, Wisner confirmed funding to the Fire Department is limited by statute to \$15,000 per fire station for new equipment and \$15,000 per station for maintenance. This has not been increased since (approximately) 1990. In light of the above, the Board’s Special Planner, Wisner opined that de-annexation could potentially result in a reduction in fire service funding, leading to a reduction in equipment purchases and maintenance. He therefore deemed the loss a negative impact for the remainder of the Township.

The evidence on the record demonstrates that the loss of revenue will have a negative impact upon the police and fire departments. Some programs may be eliminated; purchase of equipment may be delayed; and there is a likelihood of loss of jobs. Overall, the negative impact upon the fire and police departments adds to the finding that the loss of ratables and revenue will cause significant injury to the well-being of Egg Harbor Township.

C. Injury to the Township School System

Township School Administrator Bechtel testified that while a \$1.88 million cut in revenue amounting to 2.5% of the Township annual budget may not sound like a lot, it will significantly affect the School District's ability to provide programs, staffing, and the quality of education. Assuming the District would see a reduction of \$1.88 million in revenues, Township School Administrator Bechtel presented the Board with a list of recommendations for budgetary cuts. Her recommendation included elimination of after-school transportation at all schools, field trips, freshman sports programs, all middle school programs, and after-school activities. To make up for the estimated loss in revenue, she would also have to recommend replacing five full-time paraprofessionals with part-time professionals; the elimination of guidance counselors at the middle school; gifted and talented programs; and elimination of honors math and science programs.

Township School Administrator Bechtel also testified that if Seaview Harbor de-annexed, the School District would only reap the benefit of a small transportation savings of \$4,420 per year because the School District would no longer be required to reimburse transportation costs to those residents attending school elsewhere.

The Court found the evidence regarding injury to the Township's school system to be compelling. The testimony of School Administrator Bechtel was detailed, convincing, and

credible. The loss of \$1.88 million will have a devastating impact on the school budget and on the children of Egg Harbor Township. The impact of the lost revenue to the Township schools significantly adds to the injury of the well-being of Egg Harbor Township.

Conclusion to the Significant Injury to the Well-being of Egg Harbor Township

Upon consideration of the totality of the evidence on the record, and the arguments presented by both sides, the Court holds that the Board reasonably concluded that the Petitioners failed to establish that the annexation will not cause a significant injury to Egg Harbor Township. The Court is impressed with the detailed findings of fact contained in the Impact Report concerning the financial impact to the Township and the School District. The Impact Report states as follows:

The Board finds that deannexation would result in a loss of 2.4% of the Township's ratable base. This reduction would result in more than a \$505,000.00 loss of revenue to the Township Municipal Budget in the first year alone (based on 2015 figures) and would continue going forward. The effect of this loss of revenue to the Township together with the 2% budget cap would, in all likelihood, result in a decrease in services to the remaining citizens of the Township and/or a tax increase to maintain the status quo on services. The Township continues to remain in a state of economic stress as a result of state mandates, the failure of the state to adequate fund programs including the gross receipts revenues, the economic recession, reductions in property values and the casino crisis in Atlantic City. The remaining citizens of Egg Harbor Township can ill-afford the increased tax burden or reduction in municipal services which result if deannexation were to occur.

The Board finds that if deannexation were to occur that there would be a loss of revenue to the Egg Harbor Township School System of more than 1.8 million dollars in the first year (based on 2015 figures) with that loss continuing each year into the future. The loss of these revenues would have a catastrophic consequence on the school budget and, in all likelihood, would result in either the loss of jobs within the school system, continued cutbacks in school services and programs or significant increases in the school tax above what currently exists. The school budgets are currently constrained by the 2% school budget cap and underfunding pursuant to the unreliable state funding formula.

The Board carefully identified, weighed and summarized the positive and negative economic impact to the remainder of the Township as follows:

Egg Harbor Township would no longer provide public works services including trash pickup, snow removal, street sweeping, road repair, and certain landscaping services. There would be a de minimis reduction in the municipal budget which the Board cannot quantify.

Egg Harbor Township would no longer be required to provide police services to Seaview Harbor which would result in a de minimis savings to the Township. The Board cannot quantify these savings and notes that police services must still be provided on Route 152 to the border of Seaview Harbor.

Egg Harbor Township will continue to provide fire and EMS services to Seaview Harbor based upon its Mutual Aid Agreement.

Deannexation would result significant loss of ratables and revenue to the Township's municipal budget which would result in a reduction of services and/or increase in taxes to maintain existing services at its current level which would be borne, in perpetuity, by the remaining citizens of the Township.

The significant loss of ratables and revenue would result in a significant increase in the Township's school tax and/or result in a significant loss of jobs, services and programs by the Egg Harbor Township schools (or both) with the effects on the municipal and school budgets occurring in the initial year and for years to follow. The reduction in municipal revenues during a time of economic stress and recession, absent tax increases, would result in a reduction of public works, police and fire service funding and a concurrent reduction in manpower and services which would be detrimental to the well-being of the remaining citizens of the Township.

The Court has carefully reviewed the entire record and there is more than sufficient evidence to support the findings of the Planning Board and the decision of the Township Committee. In conducting this analysis, the Court provides the appropriate deference to the findings of the Planning Board and the Township Committee. It is within the authority of the Planning Board and ultimately the Township Committee, as representatives of the residents of Egg Harbor Township, to weigh all the factors presented in order to reach a result in accordance with the Annexation

Statute. In this opinion, the Court has carefully evaluated whether the annexation will not cause significant injury to the well-being of Egg Harbor Township. The Court has concluded that the significant loss of revenue in the amount of \$2.3 million dollars; the loss of ratables in the amount of \$91,000,000 along with the impact upon Egg Harbor Township's School District, Police Department and Fire Department constitute significant injury. The Petitioners have failed to meet their burden as it relates to this element of the statutory standard.

The Planning Board and the Township Committee have been recognized by the courts to be best equipped to evaluate the local impact and be acutely sensitive to the needs of their residents. The Court is satisfied that they have fulfilled their statutory obligation to assess the relevant significance of the projected permanent loss of revenue, ratables, and bond rating as well as the potential impact on annual taxes, personnel, and services provided by the Municipality and the School District. The Planning Board and the Township Committee reasonably performed their function and authority by setting forth the reasons supporting their denial of the Petition for annexation, which was on the grounds it would cause a significant injury to the economic and social well-being of the residents of Egg Harbor Township.

For all the reasons outlined in this Opinion, the Court agrees with the Township Committee and the Board that the annexation will cause significant injury to Egg Harbor Township. Specifically, the Township's economic and social well-being will be injured. The evidence regarding the loss of tax ratables in the amount of \$91,000,000 and tax revenue in the amount of \$2,325,493.61 year after year moving forward is compelling evidence of significant injury to Egg Harbor Township. The Court has considered Petitioners' attempts to minimize and put these numbers in context; however, in this Court's opinion, the bottom line is that this loss of ratables

and revenue would be a monumental loss to Egg Harbor Township. The loss of revenue will also negatively impact the bond rating for Egg Harbor Township.

The Court also concludes that the reduction in municipal services adds to the injury of the well-being of Egg Harbor Township. Particularly, the loss of \$1.8 million annually to the Township School System would result in loss of jobs, cutbacks in school services and programs, and or significant increases to the school tax. The Court is particularly concerned about the loss of programs and services impacting the children of Egg Harbor Township.

The injury does not stop there, the reduction to the Township Police Department budget will likely lead to reduction in manpower, an increase in response times, as well as reduction in police services to the community. Also, adding to the injury is the impact upon the already struggling Township Fire Department (which has invested time and money to work with the Longport Fire Department to ensure Seaview Harbor receives necessary services to fire emergencies).

The Court has also considered any savings to the Township in the event that Seaview Harbor secedes. The savings to the township is de minimis. The Board reported an unquantifiable de minimis reduction in the municipal budget when the Township stops providing public works services to Seaview Harbor. The Board also reported an unquantifiable de minimis reduction in the municipal budget when the Township Police Department stops providing services to Seaview Harbor (even though it must continue to provide services on Route 152 up to the Seaview Harbor border).

The Court concludes that the Board correctly weighed all factors, made detailed findings, and had a complete record (expert testimonies, submitted assessments, etc.). For all the reasons outlined in this Opinion, the Court holds that the Petitioners failed to meet their burden of establishing that the annexation will not cause significant injury to Egg Harbor Township. After

carefully reviewing the full record, the Court concludes that the annexation will actually cause significant injury to the well-being of Egg Harbor Township.

V. **THE COURT HOLDS THAT THE REFUSAL OF EGG HARBOR TOWNSHIP TO CONSENT TO SEAVIEW HARBOR'S PETITION FOR DE-ANNEXATION WAS NOT ARBITRARY OR UNREASONABLE**

N.J.S.A. 40A:7-12.1, states:

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 petitioners have the burden of establishing that the refusal to consent to the petition was arbitrary or unreasonable**, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land, and that the annexation will not cause a significant injury to the well-being of the municipality in which the land is located. (emphasis added).

In a judicial review of the refusal to consent to annexation, the Annexation Statute places on petitioners, the burden of establishing that the refusal to consent to the petition was arbitrary or unreasonable. This matter involves Egg Harbor Township's refusal to consent to the de-annexation of Seaview Harbor from Egg Harbor Township. "In giving or withholding consent to deannexation, governing bodies have traditionally been afforded discretion, but discretion nonetheless subject to judicial review." Avalon Manor Improvement Ass'n., Inc. v. Middle Twp., 370 N.J. Super. 73, 90 (App. Div. 2004) (citing West Point Island Civic Ass'n. v. Township Comm. of Dover Tp., 54 N.J. 339, 347-48 (1969)). The municipality's exercise of discretion is "subject to review under the standard principles of arbitrariness or unreasonableness." Russell v. Stafford Tp., 261 N.J. Super. 43, 48 (Law Div. 1992). "The law presumes that municipal governing bodies 'will act fairly and with proper motives and for valid reasons.'" Avalon Manor,

at 28 (citing Kramer v. Board of Adj. of Sea Girt, 45 N.J. 268, 296 (1965)). This Court will now analyze whether the refusal of Egg Harbor Township to consent to Seaview Harbor's Petition to de-annex from Egg Harbor Township was arbitrary or unreasonable.

Egg Harbor Township argues that the decision of the Board was not arbitrary and unreasonable. The Township points out that the full record below establishes that there was a thorough, methodical, and even-handed review of all the evidence presented to the Board and the Township Committee. The Township further asserts that the careful review and evaluation is first evidenced in the Report presented to the Board by the Board's Special Planner, Wisner. The Township argues that the Board's Special Planner Wisner's Report is not biased nor one-sided. The Township specifies that the first section of the Report discusses at length the positive impact that de-annexation will have on the residents of Seaview Harbor. The Township highlights that the Report discusses the elimination of address confusion; ease of voting; increased trash and recycling collection; tax benefits, and increased options regarding the schooling of children.

The Township contends that the Report also notes the neutral and negative impacts on the residents of Seaview Harbor should de-annexation occur. The Township asserts that a careful review of the Board's Findings, Conclusions, and Recommendation evidences the fair, thoughtful, and unbiased reasoning of the Planning Board members, "whose knowledge of local conditions made them best equipped to evaluate the local impact of deannexation on both residents" of Seaview Harbor and Egg Harbor Township. As a result of the Board's recommendation, the Township made its determination to deny the Petition.

Petitioners make several arguments. Their main argument is that the proceedings were unfair and tainted, and that the Board applied an incorrect standard in recommending the denial of the Petition. Their arguments centered around the taint to the proceedings associated with Mayor

McCullough who was a resident of Seaview Harbor at the time of the proceedings. Petitioners assert that the Board applied an improper standard to the evidence presented and that Special Planner, Wisner was biased in his presentation. Petitioners assert that the Board wrongly prejudiced their deliberation and decision by allowing standards not established by statute or case law to influence their decision.

Petitioners claim that the Board's Special Planner, Wisner adopted what appears to be a personal opinion of the trial court in its decision in Avalon Manor Improvement Ass'n, Inc. v. Tp. of Middle, No. CPM-L-0594-01 (January 24, 2003). In Avalon Manor, Judge Perskie concluded that "in sum, this record does not establish the kind of long-term, structural, and inherently irremediable 'detriment' that I believe that the legislature had in mind in authorizing a petition for deannexation." Avalon Manor, (slip op. at 9). Petitioners argue that this statement, which is not reflected in any statute or legislative history pertaining to annexation, was absent from the Appellate Division's treatment of the issue on appeal, yet the Board's Special Planner, Wisner and later the Board and the Township Committee relied heavily on this standard in voting against deannexation. Petitioners contend that the misapplication by the Board's Special Planner, Wisner of the proper statutory standard in its analysis of social injury is evident under section 4.4.2 entitled "Social Injury" that found as follows:

The various elements of purported social detriment presented by the Petitioners – while fully within the framework established by the New Jersey Supreme Court in Ryan – may be, individually, irritations and inconveniences. Taken collectively, these elements may work to negatively impact Petitioners' lives. However, it is recommended that they do not establish the kind of longterm, structural and inherently irremediable "detriment" the legislature had in mind when enacting the Deannexation Statute. (B-119, p. 265). (emphasis added).

Petitioners point out that the Board's Special Planner, Wisner also refers to the irremediable detriment standards in other sections of his findings. They suggest that it was an intentional effort

to mislead the Planning Board and the Township Committee regarding the appropriate legal standard of review of a petition for de-annexation. Petitioners claim that the Planning Board and the Township Committee arbitrarily relied on this erroneous legal standard in reaching their decisions. They argue that if the legislature had that standard in mind when it adopted the annexation statute, it could have clearly so stated. Petitioners contend that the criteria for de-annexation is clearly and unambiguously set forth in N.J.S.A. 40A: 7-12.1 and controls the analysis before this court. The reliance on any other standard by the Planning Board and the Township Committee was arbitrary and unreasonable. Petitioners assert that for these reasons, the decision by the Township to deny the Petition was arbitrary and unreasonable.

The Court has reviewed the full record below and carefully analyzed the Impact Report and Report of Findings presented by the Board's Special Planner, Wisner. The Board adopted the Report on August 8, 2016. In the Report, the Board set forth their findings of fact and conclusions as to the potential impact of de-annexation on Seaview Harbor and Egg Harbor Township. The Board authorized the Board's Special Counsel, Marcolongo, to draft an Impact Report that recommended the Petition be denied. The Impact Report set forth: a procedural history in three (3) pages; legal standards in eleven (11) pages; and a synopsis of thirty-one (31) hearings of testimony which consumed approximately 1,000 pages of the hearing minutes, and approximately 4,000 pages of transcripts in 114 pages. This distillation of the complete record, including over 250 exhibits, was done by the Board's Special Counsel, Marcolongo.

The findings and conclusions of the Board were set forth in twelve (12) pages (Impact Report, 129-140). The Board adopted the Impact Report unanimously, summarizing their findings as follows:

In summary, the Board finds that deannexation would result in a positive effect to the Petitioners and the affected lands in the following manner:

1. Property owners in the affected area would pay between 75%-85% lower property taxes if annexed to Longport.
2. If annexed to Longport, the Petitioners would, in all likelihood, receive weekly recycling collection during the summer.
3. If annexed to Longport, the Petitioners would, in all likelihood, receive a discount on their flood insurance which is currently not available in Egg Harbor Township. [CRS is now available to Seaview Harbor residents].
4. The Petitioners would have a legal address and zip code in Longport that may reduce some inconvenient confusion.
5. School age children could attend school through the Longport School System including; Margate Elementary, Atlantic City and Ocean City High Schools.

If deannexation were approved, a positive impact would occur to the remaining portion of Egg Harbor Township in the following manner:

1. Egg Harbor Township would no longer provide public works services including trash pickup, snow removal, street sweeping, road repair, and certain landscaping services. There would be a de minimis reduction in the municipal budget which the Board cannot quantify.
2. Egg Harbor Township would no longer be required need [sic] to provide police services to Seaview Harbor which would result in a de minimis savings to the Township. The Board cannot quantify these savings and notes that police services must still be provided on Route 152 to the border of Seaview Harbor. Egg Harbor Township will continue to provide fire and EMS services to Seaview Harbor based upon its Mutual Aid Agreement.

If Seaview Harbor was permitted to deannex from Egg Harbor Township and annex to Longport, the following negative impacts to the residents of Seaview Harbor would result:

1. The residents would lose the superior resources of the Egg Harbor Township Public Works Department and police department, although it is possible that police presence in Seaview Harbor may be improved.
2. Seaview Harbor residents would no longer receive a discount at the Township's municipal golf course.
3. Deannexation would result in a loss of the opportunity to participate in the social diversity afforded by the remainder of Egg Harbor Township.

If deannexation were consented to, the following negative impacts would result to the Township of Egg Harbor:

1. Egg Harbor Township would be deprived of the civic and governmental participation of the residents of Seaview Harbor who have been a critical component and have provided important leadership to the Township during the last 40 years together with their meaningful interaction with other members of the community.
2. Deannexation would result significant loss of ratables and revenues to the Township's municipal budget which would result in a reduction of services and/or increase in taxes to maintain existing services at its current level which would be borne, in perpetuity, by the remaining citizens of the Township.
3. The significant loss of ratables and revenues would result in a significant increase in the Township's school tax and/or result in a significant loss of jobs, services and programs by the Egg Harbor Township schools (or both) with the effects on the municipal and school budgets occurring in the initial year and for years to follow.
4. There would be a de minimis reduction in the Township's bonding capacity. However, the loss of revenues would, in all likelihood, result in a reduction in the Township's bond rating given the fact that the Township's fund balance is already at critical levels and, in all likelihood, will be further negatively impacted by deannexation.
5. Deannexation would result in the loss of one of the Township's most unique affluent and upscale communities

which affects the Township's prestige, social standing and diversity.

6. The reduction in municipal revenues during a time of economic stress and recession, absent tax increases, would result in a reduction of public works, police and fire service funding and a concurrent reduction in manpower and services which would be detrimental to the well-being of the remaining citizens of the Township.

The Report found, after balancing all the appropriate factors, that annexation of Seaview to Longport would result in significant economic and social injury to Egg Harbor Township. The Court is impressed with the detailed and balanced findings and recommendations outlined in the Report. The Report is consistent with the full record which this Court has now reviewed. The Petitioners were giving the full opportunity to present their case and to cross-examine witnesses presented by the Township. The Report summarized the significant injury to the Township as follows: loss of tax ratables; loss of tax revenue; impact to bond rating; challenges to providing municipal services to the residents; budget cuts to the police and fire departments; budget cuts to the Township schools; loss of jobs and programs; tax increase to the residents; loss of prestige; loss of leadership; and loss of civic interaction. The Report also acknowledges the impact on the residents of Seaview Harbor particularly, the economic impact of paying substantially higher taxes if they remain part of Egg Harbor Township.

In other sections of this opinion, the Court thoroughly and carefully reviewed the economic and social detriment to the residents of Seaview Harbor. Although it was undisputed that there will be economic detriment to the residents of Seaview Harbor if Seaview Harbor is not allowed to secede, the social detriment to Seaview Harbor was disputed. The Court has analyzed the issues related to economic and social detriment to Seaview Harbor and concluded that the Petitioners' met their burden on that prong of the statutory standard. The Court has also carefully reviewed

the significant injury to the economic and social well-being of Egg Harbor Township. The Court's position based on the record generally aligns with the findings of the Board.

In the Court's opinion, there was more than sufficient evidence on the record to justify the findings of the Planning Board and the determination of the Township Committee to deny the Petition. The Township was not arbitrary or unreasonable in its decision to deny the Petition. The Board provided the Petitioners ample opportunity to present their evidence to the Board. The Egg Harbor Township Planning Board conducted thirty-two (32) meetings over two (2) years and (two) 2 months (March 31, 2014 through May 24, 2016). In all, the Board heard from fifty-two (52) witnesses, received 275 documents into evidence and, in total, heard more than 100 hours of testimony.

The Court has considered Petitioners' concerns regarding potential taint to the proceedings and the fact that Mayor McCullough lived in Seaview Harbor at that time. Undeniably, the de-annexation effort by Seaview Harbor has been a high-profile and politically charged event in Egg Harbor Township. However, the full review of the record gives the Court great comfort that Seaview Harbor residents received a fair hearing. While there were some references to Mayor McCullough in the record, the Court is satisfied that there was no taint in the proceedings. Mayor McCullough and Township Administrator Miller properly recused themselves from the Board and/or Township Committee. The Court was impressed with the deliberate and thorough approach to creating a full record in this matter. While evaluating the Board's decision, the Court gives deference to the findings of the Board and to the decision of the Township Committee. The Court concludes that the decision was not arbitrary or unreasonable.

The Court has also considered Petitioner's assertions of the Board's Special Planner, Wisner's use of the "wrong standard." Petitioners argue that the Board and the Township might have been "influenced" by Special Planner Wisner's statement which incorporated some dicta from the Avalon Manor case. However, after full review of the record, the dicta from Avalon Manor was in no way the basis for their ultimate decision to deny the Petition. The record reflects that Special Counsel, Marcolongo provided the Board with the proper legal standards in eleven pages.

The Court understands Petitioners' concern about sticking to the statutory language. The Annexation Statute controls the framework for this Court's analysis. Likewise, Supreme Court and appellate decisions guide this Court. In using the statutory framework in this decision and analyzing the thorough record below, this Court concluded that 1) the refusal to consent to annexation is detrimental to the economic and social well-being of the residents of Seaview Harbor; 2) the annexation will cause a significant injury to the well-being of Egg Harbor Township; and 3) Egg Harbor Township's refusal to consent to the Petition was not arbitrary or unreasonable.

In strengthening the burden to achieve annexation, the Legislature intended to preserve municipal boundaries and maintain municipal integrity. The Statute places a heavy burden on petitioners. Here, the Petitioners have failed to meet all their burdens as the Court has carefully outlined in this Opinion. In conclusion, the Court has carefully reviewed the full record and considered all the arguments. The Court holds that Egg Harbor Township was not arbitrary or unreasonable in its refusal to consent to Seaview Harbor's de-annexation Petition.

CONCLUSION

Seaview Harbor sought to de-annex from Egg Harbor Township in an effort to annex to the contiguous Borough of Longport. According to the Annexation Statute, the Board adopted the Impact Report after conducting thirty-one (31) hearings. The Board found that there would be economic detriment to the residents of Seaview Harbor but did not find there would be social detriment to the residents of Seaview Harbor. The Board also found significant injury to Egg Harbor Township should Seaview Harbor secede. The Board unanimously recommended the denial of the Petition. The Township Committee adopted the Impact Report and the recommendations of the Planning Board and denied Seaview Harbor's de-annexation Petition.

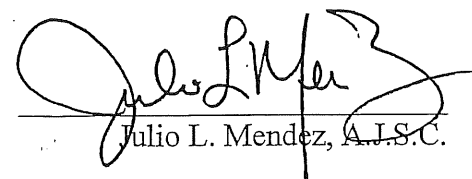
The Court is guided by the statutory framework of the Annexation Statute, adopted in 1982. The Court is also guided by the various Supreme Court decisions and appellate court decisions on annexation and de-annexation. The 1982 Annexation Statute reflects the legislative intent to preserve municipal boundaries and maintain municipal integrity. The Statute has also imposed a heavier burden on petitioners seeking to de-annex or annex. For judicial review, the Statute outlines the burdens to be met by the Petitioners. The Petitioners are to show: (1) that the refusal to consent to annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land (Seaview Harbor); (2) that the annexation will not cause significant injury to the well-being of the municipality in which the land is located (Egg Harbor Township); and (3) that the refusal (of Egg Harbor Township) to consent to the petition was arbitrary or unreasonable.

This Court has carefully analyzed all the legal issues and considered all the arguments. The Court has also carefully reviewed the entire record. The Court has concluded that Petitioners met their burden to establish that the refusal to consent to the annexation is

detrimental to the economic and social well-being of the residents of Seaview Harbor. The Court has concluded that Petitioners failed to meet their burden to establish that the annexation will not cause significant injury to the well-being of Egg Harbor Township. Finally, the Court has concluded that the refusal of Egg Harbor Township to consent to the Petition was not arbitrary or unreasonable.

For all those reasons, the Court denies Petitioners' Complaint and reaffirms Egg Harbor Township's decision to deny the de-annexation Petition.

Date: February 18, 2020



Julio L. Mendez, A.J.S.C.