

**TOWNSHIP OF EGG HARBOR  
SPECIAL PLANNING BOARD MEETING**

**March 21, 2016**

**Planning Board Professional(s):**

**Solicitor:** Christopher Brown, Esq.: (Not in Attendance)

**Engineer:** James A. Mott, P.E., of Mott Associates: (Not in Attendance)

**Planner:** Vincent Polistina, P.P., of Polistina and Associates: (Not in Attendance)

**Planning Board Deannexation Professional(s):**

**Special Counsel:** Dean R. Marcolongo, Esq. (present)

**Special Planner:** Stuart B. Wiser, P.P., A.I.C.P., Remington, Vernick & Walberg Engineers (present)

A regular meeting of the Planning Board of Egg Harbor Township was held on the above date, 5:00 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairperson opened the meeting by reading the statement in compliance with the Open Public Meetings Act.

**Roll Call Taken as follow(s):**

Manuel E. Aponte, V-Chair., present

Charles Eykyn, present

James Garth, Sr., Chairperson, present

Frank Kearns, present

Dennis Kleiner, Alt. #1, excused

Robert Levy, another engage.

Mayor James J. McCullough, Jr., \* See below

Peter Miller, Township Administrator, recused \*

Committeewoman, Laura Pfrommer, present

Daniel Pittaro, Alt. #II, excused

Paul Rosenberg, 2<sup>nd</sup> V-Chairperson, out-of-town

**\*May the record reflect:** Mayor James J. McCullough has recused himself from these hearings. He has sent Atlantic County Freeholder, John Carman, whom is present.

**\* May the record reflect:** Township Administrator, Peter Miller joined the Board at 9:00 p.m. in order to memorialize resolutions.

**CONTINUATION OF PUBLIC HEARING(S):**

- Public Hearing:** Deannexation petition submitted by the Seaview Harbor section of Egg Harbor Township seeking annexation with Longport Borough.

Special Board Solicitor Marcolongo advised Special Board Planner Wiser had made a presentation to the concerning his report of findings on February 22, 2016 and Attorney Doyle began cross examination of Special Board Planner Wiser on February 23, 2016 and this will continue this evening. He reminded Special Board Planner Wiser that he is still under oath.

Attorney Doyle asked Special Board Planner Wiser that is just his own material 257 pages. Special Board Planner Wiser stated something like that, if he says so. Attorney Doyle asked if this report was prepared based on a variety of sources including the record during the 27 hearings. Special Board Planner Wiser stated close to it. Attorney Doyle stated did he also go through the 268 Exhibits. Special Board Planner Wiser stated yes. Attorney Doyle stated the report also contains some independent research on some topics. Special Board Planner Wiser stated yes, on some topics.

Attorney Doyle stated Special Board Planner Wiser has researched and reviewed other reports that he has chosen to include as exhibits, such as the 2008 Pinelands Commission study. Special Board Planner

Wiser stated he included the Livable Communities Plan because it came up in testimony, the board wanted to see it, so he included it as an exhibit. Attorney Doyle stated it plays really little part, if any part, in what we are doing here. He asked if there is any need to have it as part of the record. Special Board Planner Wiser stated the board asked for it, Ms. CuvIELlo cited it as part of her report and as a part of that the board requested to see it so he included. Attorney Doyle considering it is over 100 pages and Ms. CuvIELlo made one fleeting statement that it did not mention Seaview Harbor and as it was rightly pointed out by you, it was to only cover the area the Pinelands Zone which does not include Seaview Harbor does it play any part in these secessions.

Special Board Planner Wiser stated his recollection is that Ms. CuvIELlo made an issue of the fact that no planning takes place for Seaview Harbor and she cited this report as evidence of that. He indicated from that the Board wanted to see the report and because the Board asked for the report he gave it to them.

Attorney Doyle stated from the 27 hearings with minutes for the most part, exhibits, own independent research, other reports examined and this was placed in a mixer of his experience as a planner and a citizen of the County and the Township and he came up with the report. Special Board Planner Wiser stated the fact that he is resident of the County and the Township really did not play any role in it.

Attorney Doyle stated to Special Board Planner Wiser living here as an active citizen some knowledge of the town, such as growth pattern, demographics, blight. Special Board Planner Wiser stated he would agree. Attorney Doyle stated o.k. Attorney Doyle stated this line of questioning is more from the Board than for Special Board Planner Wiser. Attorney Doyle stated he notes from the invoices that there is at least 183 hours that went into this report so he would say to the board, if he takes a few hours, anything that was this time consuming will take time for the questioning.

Attorney Doyle stated Special Board Planner Wiser's report is the next to last document because the Board is going to file its own impact report and you contribute to that with this report. Special Board Planner Wiser stated if that is what the board choses to do after him. Attorney Doyle stated in reviewing the statute, which Special Board Planner Wiser's makes it appropriately so in his opinion, about the way the Board is prepare an impact report. Attorney Doyle asked if he is familiar with Strathmere case, because obviously you were involved in it, correct. Special Board Planner Wiser stated ah, hum.

Attorney Doyle stated in earlier proceeding of that case (Strathmere) Judge Armstrong rendered an opinion of the role of the board versus the role of the Township. He then read onto the record a portion of this decision. Attorney Doyle then asked Special Board Planner Wiser if he feels the report he gave, as Judge Armstrong said, is independent of the governing body and the Township.

Special Board Planner stated yes. He advised he would like to take a step back. He stated did he ask the Township and some of the employees for information, yes he did. He further noted we went over this. He stated did that information color his report one way or the other, no. Attorney Doyle stated again using Judge Armstrong's words, are you satisfied that your report is unbiased. Special Board Planner Wiser stated yes.

Attorney Doyle asked Special Board Planner Wiser if he is aware the petitioners concluded their testimony almost a year and a half ago with Mr. Ryan's testimony on October 24, 2014. Special Board Planner Wiser stated he will accept what the date was. Attorney Doyle asked if Special Board Planner Wiser would agree that some of the facts may have changed, new information or material may have

been discovered that was not known than or thought to be relevant. Special Board Planner Wiser stated possibly.

Attorney Doyle asked Special Board Planner Wiser that he would agree with this to the extent that he used new or additional material that they would not have had as of October 24, 2014, and they have not had the opportunity to hold that up to the light of our questioning on behalf of the petitioners. Special Board Planner Wiser stated this is correct. Attorney Doyle stated in Special Board Planner Wiser's report he made particular recommendations and findings that were new as the date that he filed the report, which was January 29, 2016. Special Board Planner Wiser stated yes.

Attorney Doyle stated as he goes through his line of questioning and Special Board Planner Wiser comes to the conclusion there are errors, mistakes inaccuracies in the report would he correct them. Special Board Wiser stated if the Board asked him to as to the extent necessary. Attorney Doyle stated if Special Board Planner Wiser were shown evidence that some of the conclusions he reached were not valid or based upon invalid data or standards would he re-examine those conclusions in the report. Special Board Planner Wiser stated if the Board asked him to re-examine them.

Attorney Doyle asked if Special Board Planner Wiser finds that there is a mistake in and of your own, as a professional, would he not say he made a mistake instead of waiting for the board to tell him to do or not to do. Special Board Planner Wiser stated if it is evident in response to a particular question that he made a mistake than he will own up to the mistake and if it requires further review and the board does not wish for him to undertake that review I will do that. Attorney Doyle stated o.k.

Attorney Doyle referred to Page 71 of Special Board Planner Wiser's report. He read onto the record the third paragraph on this page concerning text in quotation marks within the report. He then asked Special Board Planner Wiser if this means when they see something in quotes during his summary of proceedings we are not sure that is actually what the person said word for word. Special Board Planner Wiser stated as referenced he did not have access to a transcript he had access to his notes, the minutes that were adopted at the time, and that is the way he intended to present.

Attorney Doyle stated transcripts were available. He stated certainly the board could have gotten them. Special Board Planner Wiser stated they were not available to him. Attorney Doyle asked Special Board Planner Wiser in the matter he is dealing with in Berkley Township is the board paying for those transcripts. Special Board Planner Wiser stated he has no idea. Attorney Doyle stated going back when you use quotes in a legal issue they are word for word quotes from the case. Special Board Planner Wiser stated when he indents and italicizes those are direct quotes.

Attorney Doyle stated he needs to be clear. He indicated the cases cited by Special Board Planner Wiser are all in the books and they are written word for word. So when he has something in quotes and says the court held this. That is a quote is it not. Special Board Planner Wiser stated it is a quote. He advised he may have left out a word or two (2) or altered a word or two (2) for tense and contexts but yes. Attorney Doyle stated o.k.

Attorney Doyle asked the survey of the petitioners was to find out how many lived there, what the sentiment was concerning deannexation, social patterns, confusion of address, whether they were being served by Egg Harbor Township, emergency service. He stated these are all one or more areas the cases referenced as relevant subjects are they not. Special Board Planner Wiser stated he would suppose. Attorney Doyle stated while they may be relevant areas of surveying Special Board Planner Wiser

questioned on Page 72 the methodology of the survey. He asked Special Board Planner Wiser if he did any independent; objective survey to determine what was the sentiment of Seaview Harbor residents towards deannexation. Special Board Planner Wiser advised stated he did not.

Attorney Doyle asked Special Board Planner Wiser that he would agree from the petition that was deemed complete, was signed by an overwhelming percentage of the voters, from the testimony heard, the exhibits placed into evidence, effort and expense of residents over the last two (2) years. There is no question in his mind the sentiment of the residents is to have the petition granted. Special Board Planner Wiser stated they would not be here if it wasn't.

Attorney Doyle stated unlike Strathmere where 17 who spoke out in opposition to the grant of deannexation not one resident from Seaview Harbor has come forward in objection of the petition being granted. Special Board Planner Wiser stated he does not believe so. Attorney Doyle asked if it is not true other than employees of Egg Harbor Township, the Egg Harbor Township school board, members of the Egg Harbor Township fire company, two (2) professionals meaning Dr. Perniciaro and Mr. Wiser, only one (1) Egg Harbor Township citizens amongst the 45,000 people in Egg Harbor Township has stated opposition to this petition being granted. Special Board Planner Wiser stated his recollection is that there was more than one. He stated there were a number of people at the last hearing when the public spoke who raised concern. He stated one of them lived at the Village Grand and another woman who lived off Zion Road who expressed concerns and there may have been one other. Attorney Doyle stated there were 12 people that were allowed to testify. He indicated one (1) whom was Mrs. Byrd and he rightly recalled objected and another whom indicated she previously lived in Seaview Harbor and now does not and has concerns both ways and could not state an opinion, though she was asked, whether for or against and the other ten (10) were residents of Seaview Harbor and were all in favor of it.

Attorney Doyle stated in any event nowhere in his lengthily report was it mentioned that only one person came forward. Special Board Planner Wiser stated he would disagree with that. Attorney Doyle stated he did mention Mrs. Byrd came out. Special Board Planner Wiser stated be that as it may. Attorney Doyle asked Special Board Planner Wiser if thinks in the legal standard whether deannexation would do significant injury to the wellbeing of the municipality that if only one (1) non-employee; non-paid or expert citizen came out that has relevance. Special Board Planner Wiser stated no, not necessarily. It may or may not.

Attorney Doyle stated throughout the report Special Board Planner Wiser make a distinction between whether a resident is a full time resident or a seasonal resident. He asked if there is anything in the statute that separates the residents as to whether they sign the petition or not. Special Board Planner Wiser stated yes, they have to be registered voters. Attorney Doyle stated you cannot be a registered voter unless this is your domicile which is a different standard than being a resident. He advised you can be a seasonal resident but you cannot vote, correct. Special Board Planner Wiser stated you could or you couldn't depending on how you're registered to vote. Attorney Doyle asked if he is not suggesting that a three (3) month resident can declare this their domicile and vote from it, is he. Special Board Planner Wiser stated he is suggesting that indeed happens. He indicated whether it happened in this case or not he does not know. Attorney Doyle or legally or not.

Attorney Doyle asked why the distinction in any event. He stated when Special Board Planner Wiser says non-petitioner resident DaBek testified, what difference does it make that he signed the petition or because he lived at the time, out of the area and could not sign it. Special Board Planner Wiser stated he was trying to complete a picture of who the witnesses were. The same way as he referred to Mr.

Miller as the Township Administrator. Attorney Doyle noted that is his title. He asked if non-resident is a title. Non-petition signer. He stated it seemed to him that was a way of diminishing their value as a witness. He indicated maybe he read it wrong. Special Board Planner Wiser stated that is Attorney Doyle's opinion. He indicated that was certainly not his intent.

Attorney Doyle stated in any event while only voters can sign the petition the standard in the statute is for all residents. He indicated it says that refusal to consent to the petition is detrimental to the economic and social wellbeing of the majority so this would include petitioners, non-petitioners, full time residents and seasonal residents, correct. Special Board Planner Wiser stated yes. Attorney Doyle referred to Page 74 of the report. He then read onto the record the first paragraph. He asked Special Board Planner Wiser based on this paragraph that he would agree 95% of the people who responded to the survey told people they lived in Longport and nearly ¾ of the respondents mentioned confusion as reason to seek deannexation and that this confusion does exist. Does it not. Special Board Planner Wiser stated he suggested in his report that it does.

Attorney Doyle stated to the degree that Mr. McCullough, before he was the Mayor in 1982, was quoted as saying he tells people he lives in Longport. Attorney Doyle stated this has been a long term and structural circumstance. Special Board Planner Wiser stated it has been a long term circumstance. Attorney Doyle asked why not structural. Special Board Planner Wiser stated other than the article in the paper he is not familiar what the play of objections were back in the 1980's or before. Attorney Doyle stated he is not sure what Special Board Planner Wiser means by the "play of objections" but what he thinks it means the reason for why people were talking about deannexation. Special Board Planner Wiser stated this is correct. The full breath of reasons.

Attorney Doyle stated when Special Board Planner Wiser indicates he is not familiar with it. He remembers Mr. Kohler testified that he had heard about deannexation since the 1960's and that is in the minutes. Special Board Planner Wiser stated he recalls Mr. Kohler made a reference to that. Attorney Doyle asked if Special Board Planner Wiser recalls put into evidence was S10, S80, S81, S82 and S101 which all reflected an ongoing drum beat of discussion about deannexation from 1982, 1985 into the 1990's, into the 2000's and through the community news letter from 2007 and 2013. Special Board Solicitor Marcolongo asked if Special Board Planner Wiser has the ability to answer the question without reviewing each one of the exhibits. Special Board Planner Wiser stated he does not know what those exhibits are so he does not know how to specifically respond.

Attorney Doyle asked Special Board Planner Wiser without reviewing the record he does not recall those exhibits, the resolution from Mr. LaPorta, minutes in which Mayor McCullough stated it is never going to happen. Special Board Planner Wiser he recalls those and instance, and he is not sure who, wanted to secede and create their own town out of Seaview Harbor. Attorney Doyle stated he would ask Special Board Planner Wiser if he could take a look at the record and see who said they wanted to form another municipality. Special Board Planner Wiser stated he will make note of it.

Attorney Doyle asked Special Board Planner Wiser that he would agree a large part of the confusion stems from the assignment in the 1960's of the Longport zip code 08403 and Egg Harbor Township has its own other two (2) zip codes. Special Board Planner Wiser stated to his recollection of the record Egg Harbor Township did not get their own zip code until the 1990's. The confusion and the fact that Seaview Harbor was assigned a particular zip code attendant to Longport and Egg Harbor Township didn't have its own zip code as time moved forward he is sure it created confusion and he believes he noted that agreement in his report.

Attorney Doyle stated in fact, he will recall when Chief Davis was sitting where you are and he misidentified somethings happening in Longport and Egg Harbor Township rendered mutual aid service to Longport but were really happening in Egg Harbor Township but the records had been done by zip code. Special Board Planner Wisner stated he does not recall that specifically. He knows Chief Davis did a search or asked someone to do a search by zip code and did create some confusion in the data.

Attorney Doyle stated he has been given an envelope that was addressed to John and Diane DaBek, 36 Sunset Boulevard, Egg Harbor Township, New Jersey, 08403, which came from the Chief's office and was sent on January 19, 2016. He indicated it contains a refrigerator card, as a public service, with Egg Harbor Township information and a note from the Chief to please put on your refrigerator. Attorney Doyle stated the point of this is ask if Special Board Planner Wisner knows or does it add to confusion, he has been advised that it was not received until February 29, 2016 which is a month and ten (10) days later.

Attorney Doyle stated the other municipal officers and officials when sending out tax bills and MUA bills send it to Longport, 08403 and one (1) public employee takes it upon himself to send out as that only add to the confusion. Special Board Planner Wisner stated to Attorney Doyle that he has noted in his report and he asked the question several different ways. He agrees that there is address confusion, the zip code that they have, has created a true problem. He indicated if it would help to speed through the proceedings it is in his report and he has indicated this. Attorney Doyle stated obviously he did not have a chance to ask this because he did not know it happened. He advised it was not delivered until February 29<sup>th</sup> and this is the first meeting since then. He did say he wanted to ask something else. Attorney Doyle stated Mr. Miller advised when he testified all that counts is the zip code regardless of what town you place on it. Special Board Planner Wisner stated Mr. Miller did say this and he understands that was his testimony based on his conversations with the postmaster in Atlantic City. Special Board Planner Wisner stated he has indicated in his report that clearly things don't happen that way all the time and there is an issue there. Attorney Doyle stated so when Mr. DaBek gets something mailed out from the Township and it comes some 40 days later and his neighbors had gotten it a day or two (2) after it was sent out that is a problem. Special Board Planner Wisner asked if all his neighbors had the Longport address or Egg Harbor Township.

Special Board Solicitor Marcolongo stated to Attorney Doyle that they had spoken previously. He indicated the cross examination is not supposed to be an opportunity to supplement the record and that is exactly what he is doing. He indicated Attorney Doyle is providing us information regarding a mailing you are receiving information from behind you as to the date it was received. He stated it has nothing to do with Special Board Planner Wisner's report and that is the cross examination that is supposed to be occurring at this time. Attorney Doyle stated he is not going to be limited by his cross-examination as to what Special Board Solicitor Marcolongo thinks he should be able to ask. He indicated this just happened and he could not have possibly asked about it. He further noted confusion is one (1) thing but confusion that is added to by the contrary actions of a public official needs to be identified. Attorney Doyle further noted Mr. Miller testified, as Special Board Planner Wisner agreed, if you put 08403 it is going to get there just like it would regardless of what town you put on and this shows no, it's a problem.

Special Board Solicitor Marcolongo stated Attorney Doyle just suggested he will not be limited in his cross examination. He stated if we reach a point where he feels Attorney Doyle is attempting additional evidence or if he is in an area where he should not be than he will recommend to the Board that they

cut off testimony and it will be the Chairman's prerogative as to whether to cut off that cross-examination or area of cross-examination off. Attorney Doyle stated he understand Special Board Solicitor Marcolongo may do this and he understands the board will decide what will happen. But he will not be threatened early on in the process. Special Board Solicitor Marcolongo stated there is no way that was a threat he was simply reiterating what he said last time. This is a cross-examination of Mr. Wiser and his report and not an opportunity by other means to supplement the record. Board Member Aponte stated before we started this cross-examination he said the same thing, on the record, while he was chairing the last meeting. He stated it was one of the first things he said that we are going to stick to facts of the record and use this as a means to add more to the testimony and Attorney Doyle said the same thing.

Attorney Doyle stated in Special Board Planner Wiser's findings of confusion he left out any mention of S67 the article Mr. Lemongello wrote in the Atlantic City Press. He asked if Special Board Planner Wiser if he recalls the article. May the record reflect: Special Board Planner Wiser did not answer this question, since Attorney Doyle immediately after asking interjected that there were 268 exhibits and he would move on, appreciating what was said.

Attorney Doyle stated when we started this meeting the first night, than Board Member Levy, mentioned in response to there is no restaurants in Longport to go to. He stated Cafe' Luciano's is in Longport. Attorney Doyle stated that is restaurant in Seaview Harbor that is in Egg Harbor Township. Special Board Planner Wiser stated that is correct. Attorney Doyle stated New Jersey monthly mixed that up too, did they not. Special Board Planner Wiser stated he has no idea without seeing it.

Attorney Doyle asked if Board Planner Wiser would agree the fact of the mailing address is carried out to people's driver's licenses creates further difficulties given the almost universal use of the driver's license for identification. Special Board Planner Wiser stated once again this was included in his report. Attorney Doyle stated to be fair Special Board Planner Wiser did ultimately conclude that the Longport assignment of the zip code indeed causes confusion that results in certain difficulty as noted on Page 79 of the report. Attorney Doyle stated Special Board Planner then concluded on Page 88 "the testimony and exhibits taken as a whole support petitioners assertions of confusion over the municipality in which Seaview Harbor is located". Attorney Doyle asked Special Board Planner Wiser if he would not agree this is a structural issue that emanates in large part over the years, as he points out, from the zip code designation. Special Board Planner Wiser asked Attorney Doyle to point out to him where he made this specific comment. Attorney Doyle stated Page 88 at the bottom.

Special Board Planner Wiser asked Attorney Doyle what his question was again. Attorney Doyle stated given Special Board Planner Wiser's acknowledgement that it does result in confusion would he not agree this is a structural issue that comes in large part from the zip code designation. Special Board Planner Wiser stated yes, the address confusion comes from the assignment of the zip code. Attorney Doyle stated as well as just general social quorum or people saying they live in Longport or people thinking they live in Longport. Special Board Planner Wiser stated there is the old adage, which he is not suggesting anyone is lying, if you tell a lie often enough it becomes the truth. People say they live in Longport long enough people begin to believe it is Longport. He indicated that is not necessarily the truth.

Attorney Doyle stated Special Board Planner Wiser indicated on Page 88 these issues are relatively minor in nature. He indicated as a resident of Egg Harbor Township with assumedly a mailing address for Egg Harbor Township he has never been subject to the kinds of problems mentioned by the

petitioners has he. Special Board Planner Wiser stated he has had his mail routinely delivered to other people's houses and he has had mail delivered to his house that belong to other people in other neighborhoods. He indicated whether it is systemic as is claimed by the petitioners or not. He does not know. He stated is it a pain, yes. Is he ready to secede from the Township because of it, no. Attorney Doyle stated you conclude "the individual difficulties cited are relatively minor in nature and likely easily ameliorable, if not curable". Attorney Doyle stated obviously we are not going to cure it by having a zip code change. Special Board Planner Wiser stated he is not an expert in the mail. He advised if the zip code is at some level changed to Egg Harbor Township 08234 maybe it would help. He stated if that is possible or not he does not know.

Attorney Doyle asked in conclusion does he feel the confusion causes a detriment to the social wellbeing of the majority of the residents of Seaview Harbor. Special Board Planner Wiser stated he believes it caused inconvenience and annoyance and as he wrote in the report he does not believe it causes the type of detriment that would warrants secession.

Attorney Doyle stated he would like to discuss the type of detriment that warrants secession and quoting from Special Board Planner Wiser's report "long term, structural, and inherently irremediable detriment that the legislature had in mind" when it adopted the deannexation statute". Footnote 99, which says Avalon Manor. He asked and this is the standard. Special Board Planner Wiser advised it is from Judge Perskie's decision in Avalon. Attorney Doyle asked from Judge Perskie. Special Board Planner Wiser stated yes, it was Judge Perskie. Attorney Doyle asked if it is the case in the Reporters. Special Board Planner Wiser stated he does not have that book.

Attorney Doyle asked Special Board Planner Wiser if he read the case. Special Board Planner Wiser stated yes. Attorney Doyle stated the Appellate Division was written by Judge Lisa for a three (3) Judge panel which quoted somewhat extensively from Judge Perskie's. Special Board Planner Wiser stated he read the Superior Court case as well and that is where he got the language from. Attorney Doyle asked if this came from the Superior Court law division case. Special Board Planner Wiser stated whatever you lawyers call it. He stated when the Avalon folks were denied their petition they took it to the court and whatever that level court was Judge Perskie wrote a decision that was affirmed and that is quote from his decision. Special Board Solicitor Marcolongo stated Judge Perskie's decision is what we would call the Superior Court case and then it went up on appeal to the Appellate Division affirmed writing their own decision.

Attorney Doyle asked Special Board Planner Wiser that he would agree the standard he used does not rise to the long term, structural and inherently irremediable detriment that the legislature had in mind. Is a tougher standard than the one in the law that says the refusal to consent is detrimental to the economic and social wellbeing of the majority of the resident's. Special Board Planner Wiser stated he would agree this is a statement in Judge Perkie's opinion and the opinion was upheld by the Appellate Division. He indicated they did not reverse that quote. They did not say the Judge was wrong in that instance so he assumed it was proper.

Attorney Doyle stated Special Board Planner Wiser assumed as a non-lawyer. Special Board Planner Wiser stated if we are going to go down that road. Attorney Doyle stated no, no. He stated the reason why he asked that is because Special Board Planner Wiser used this standard several times. He indicated Special Board Planner Wiser used it on Pages 45, 109, 178, 254, 265 and 266 and given the importance he put on this standard Attorney Doyle went back to the final case in which the Judge wrote



an opinion. He indicated the Judges quoted some of Judge Perskie's with affirmation. He stated other significant parts of it they did not.

Attorney Doyle stated the standards Special Board Planner Wisner used to judge what is serious is not in final Avalon case. He stated at least when he puts it through a word check the words irremediable, inherently, structural were nowhere in the opinion. He stated maybe it is more a lawyer question and he does not mean to separate the lawyers, he stated he is not going down that path, but Special Board Planner Wisner would agree in having read the Appellate division case that is not the standard by which the Appellate Judges measured what was the statutory standard did they.

Special Board Planner Wisner stated he would tend to think if the Appellate Division had some objection to the standard that was put forward by Judge Perskie they would have overturned that standard whether they overturned the decision or not. He stated they did not mention and by not mentioning his non-lawyerly assumption was that they did not have a problem with it. Attorney Doyle stated because they are difficult to get. Does Special Board Planner Wisner have a copy of the Trial Court level, as opposed to the Appellate Court level that was published? Special Board Planner Wisner stated yes. Attorney Doyle asked Special Board Planner Wisner if would be kind enough to provide to him. Attorney Doyle stated he does not have it and he has not read it.

Attorney Doyle asked Special Board Planner Wisner if he would agree the petitioners and residents in Seaview Harbor feel a greater affinity in connection to Longport than they do to Egg Harbor Township. Special Board Planner Wisner stated the ones we heard speak before us and the ones that responded to the survey expressed that, yes. Attorney Doyle asked does he know a contrary thought expressed. Special Board Planner Wisner stated no, but he is not convinced that every resident of Seaview Harbor expressed their opinion. He indicated all he knows is what was placed into the record and what was testified to.

Attorney Doyle asked if Special Board Planner Wisner would not believe it unless 100% people all said the same thing. Special Board Planner Wisner advised that is not what he said. He indicated he is saying the people who responded to the survey and the people who testified said that. He indicated he does not know the other people's sentiments. Attorney Doyle advised  $\frac{3}{4}$  of the residents responded to the questionnaire, correct. Special Board Planner Wisner stated he does not know how the questionnaire was administered and whether multiple responses were allowed by anyone person, but he will accept that there were that number of responses and assume they were all from all different people.

Attorney Doyle stated clearly it makes to the degree that it is relevant as the social injury the standard of being the majority of the residents. Special Board Planner Wisner stated, I guess, yes. Attorney Doyle asked if Special Board Planner Wisner would agree the petitioners and residents and those generally testifying said the affinity comes in part from distances. That Egg Harbor Township is simply further away from them than Longport is. Attorney Doyle stated he thinks that is their felling. Attorney Doyle asked Special Board Planner Wisner if he would agree this affinity in relationship between, indifference between the affinity for Longport and Egg Harbor Township comes not only from distance but similar demographics. Such as an older population that is more likely to be seasonal than all year round. Special Board Planner Wisner stated he does not know.

Attorney Doyle asked Special Board Planner Wisner if he would agree in terms to specific facts such as amount of school children. He indicated just on this one there is an affinity with Longport which has five (5) school children than Egg Harbor Township that has say 7,500 children. Special Board Planner Wisner stated again those are two (2) similar statistics between Seaview Harbor and Longport. He indicated he

does not know if that drives an affinity. He indicated they have similar statistics. He stated there are few school children in both communities. Attorney Doyle asked if he thinks the geographical setting, Longport and Seaview Harbor both relatively small. One is 60 acres and the other is 1 square mile and Egg Harbor Township is 45 square miles contributes to the affinity. Special Board Planner Wisner stated the size of one particular neighborhood or a municipal is a particular size he does not think generates an affinity one way or another.

Attorney Doyle stated both Seaview Harbor and Longport have significant waterfront areas. He asked Special Board Planner Wisner if he thinks this contributes. Special Board Planner Wisner stated he thinks it contributes to common interest. He further noted the school issue better said than he said before creates a common interest. He advised he does not know that it creates an affinity per se. Attorney Doyle asked what Special Board Planner believes if the difference between common interest and affinity. Special Board Planner Wisner stated an affinity is an affection, a tie, a connection. He advised they create a common interest to the extent there are similar demographics. He does not see it creates an affinity. Attorney Doyle asked Special Board Planner Wisner to the degree in part, you see affinity as a connection, using his words, doesn't he feel the people of Seaview Harbor feel more connected with Longport than Egg Harbor Township. Special Board Planner Wisner stated yes.

Attorney Doyle stated the population statistics provided by Ms. Cuvillo within her report concerning percent of population under 18 and over 65. The percentages living year round and seasonal all lend to the greater interest or connection. Special Board Planner Wisner stated they are similar statistics. He stated you could probably find, he dare say, neighborhoods in Egg Harbor Township and elsewhere that have similar statistics. He stated he does not believe in and of itself create a bond. Attorney Doyle asked Special Board Planner Wisner that there is a greater feeling of bond with Longport among the residents of Seaview Harbor than there is to Egg Harbor Township.

Special Board Planner Wisner stated he thinks the petitioners feel that they want to be connected and in some way feel connected to Longport and don't feel that connection with Egg Harbor Township. Attorney Doyle stated given the fact that Seaview Harbor is basically stable, he stated there is only a couple or three (3) vacant residential lots and Egg Harbor Township continues to grow. He asked this is not going to change in the future is it. Special Board Planner Wisner stated this is the interesting thing about neighborhoods. They grow older they do change. He advised he grew up in a particular neighborhood on a particular block and his parents are still there but the character of that block has changed. He indicated people have gotten old, they have moved on or passed away and now the neighborhood is completely different than the neighborhood he grew up in. He indicated things do not stay the same.

Attorney Doyle stated the distance is not going to change, the proximity of Longport is not going to change, he stated the nature of the population because of it being waterfront isn't likely going to change. Special Board Planner Wisner stated he would disagree. He stated the nature of the population could change. He stated the ages could change, as people unfortunately pass-on, things could change.

Attorney Doyle stated Seaview Harbor has had roughly seven (7) new houses since 1990. He asked Special Board Planner Wisner if it has changed since 1990. Special Board Planner Wisner stated he could not put the date on it but you can drive through and see from the architecture the changes in Seaview Harbor. He advised you can see the older homes, which are more modest and the newer homes, which in some cases are quite grand. Doyle: has no houses since 1990. Wisner: see the older homes which are more modest and the newer are grand. Attorney Doyle asked Special Board Planner Wisner because the

architecture changes he is suggesting the people who live in them are a bit different nature than the old residents. Special Board Planner Wiser stated he thinks to suggest otherwise would be silly. Attorney Doyle asked Special Board Planner Wiser that Seaview Harbor in and of itself is a diminutive portion of Egg Harbor Township. Special Board Planner Wiser asked in what aspect. Attorney Doyle stated population 102 people out of 45,000, based on Ms. Cuvillo's report, which Special Board Planner Wiser did not disagree or cite for this purpose in his report. Attorney Doyle stated Ms. Cuvillo's estimate was 102 people in Seaview Harbor. Special Board Solicitor Marcolongo asked if this was the estimate for year round or seasonal. Attorney Doyle suggested he look at S64. Special Board Planner Wiser stated there is 92 houses he would believe there are more than 102 people, but whatever it is, it is a small population compared to the balance of the rest of the Township, yes. Attorney Doyle asked a fraction of 1%. Special Board Planner Wiser stated whatever the math works out to be.

Attorney Doyle asked 60 acres of 66 land square miles which is  $\frac{1}{7}$  of 1% that is insignificant isn't it. Special board Planner Wiser stated terms of geography it is a small percentage. Attorney Doyle stated putting aside the value or the people whom live in the houses there were currently 91 homes. He stated he believes one (1) has come down since the process began and there are 15,000 in Egg Harbor Township. He asked Special Board Planner Wiser if he agreed  $\frac{1}{2}$  of 1 percent of the houses in Egg Harbor Township small number. Special Board Planner Wiser stated it is a small number.

Attorney Doyle asked if Special Board Planner Wiser if the Township having 3,787 vacant tax parcels as noted in S64 as compared to three (3) in Seaview Harbor is a small number in proportion. Special Board Planner Wiser stated this is a little different to say yes or no to because he does not know how much of the number of parcels cited for Egg Harbor Township are buildable, but he would say proportionally it is a small number.

Attorney Doyle asked that case law looks in part at these numbers to look at the proportion of the area seeking deannexation is from the town they wish to leave. Special Board Planner Wiser stated it has been referenced in the various cases, yes. Attorney Doyle stated it is appropriate for us to place on the record. Special Board Planner Wiser stated he does not object to it and board can consider it absolutely.

Attorney Doyle stated the cases, particularly the Avalon case, speaks of the future. He indicated there the petitioners suggested they should just look at a snapshot and the courts clearly said it is not a snapshot were should look down road and see where the area is going, where the petitioners are going, where the town is going. He asked if this is an accurate on thought of deannexation is it not at least in part. Special Board Planner Wiser stated yes, he would agree, he stated he thinks it is more complicated than that but in terms of his question absolutely. Attorney Doyle asked to the degree it implies planning you may take a little look in the rearview mirror but planning is something you do for the future. Special Board Planner Wiser stated yes.

Attorney Doyle stated despite of the importance of where we are today, where we are going and the future. Mr. Miller spent some time putting into evidence who served on the Township Committee, the Planning Board and the Zoning Board back in the 1990's and so on. He stated Special Board Planner Wiser stated on Page 99 this evidence cannot be under estimated. He asked if who served in the 1990's going to make a differences in what happens in 2017, 2018, etc. Special Board Planner Wiser stated to the extent they set the table, as it were, to the actions being taken today and the actions being taken tomorrow. He stated he believes it is significant.

Attorney Doyle asked Special Board Planner Wiser to provide him a specific planning board decision made in 1994 made by Mr. McCullough, Mr. Fiore, or Mr. McKernan is going to make a difference in 2017. Special Board Planner Wiser stated he cannot speak to a Planning Board decision but he believes the governing body's decision to assist Seaview Harbor in getting sewer was significant and set the stage for the type of development you have there now. He advised the actions of the Township in terms of the traffic light at Hospitality Drive and the various, be it planning board or other actions, did set the table.

Attorney Doyle stated let him begin with the light. He stated so much throughout Special Board Planner Wiser's report he states, deannexation will not change that. Attorney Doyle stated the light has been there since 2000, he believes, he advised deannexation is not going to take the light down or put a different light up. He stated it is what it is. Special Board Planner Wiser stated Attorney Doyle is asking him two (2) separate questions. He stated Attorney Doyle asked him how the individuals in the past, who may have been in a decision making capacity, shape. Attorney Doyle stated he did not. He asked whatever it was they did will make changes for the future. He stated that traffic light is there. It's not going change is it.

Special Board Planner Wiser stated that is a change they put forward and from the record they doggedly prosecuted. Attorney Doyle asked with respect to the sewers was it not Mr. Ryan's testimony that while it had to be through the Township the facts clearly showed each individual owner paid for their sewer. Not only for the sewer connection but for their portion of the overall line cost. Special Board Planner Wiser stated he does not disagree with him, but the fact of the matter is the Township did take those actions and made it happen at, from what he understands, at a greatly reduced interest rate.

Attorney Doyle stated Mr. Ryan also testified a significant amount of the administrative cost was build t to the homeowners and they paid more than they should have. Special Board Planner Wiser stated he does not know what they should have. He asked could they have gotten financing otherwise. He does not know. Attorney Doyle stated Special Board Planner Wiser mention it effected the type of houses that were there. He asked how so. He indicated they had 70 some than and they have 91 now. Special Board Planner Wiser stated one of the petitioners spoke about the community being on septic and how the septic was fouling the drinking water and the fact the sewer came in addressed that issue. He stated if things were happening as he understood, to have been happening, presumably and he does not have the answer to this, it could be possible no one would have been permitted to have drinking water in Seaview Harbor from their wells.

Attorney Doyle stated that decision, made in the 1990's, to the degree it changed Seaview Harbor in the 1990's, it is what it is today March, 2016 isn't it. Whether Seaview Harbor is granted or denied deannexation those sewers are always going to be there. Special Board Planner Wiser stated the conditions today are the conditions today and yes he will agree with Attorney Doyle.

Attorney Doyle saying going forward of all of the people who served on the boards in the past only two (2) currently serve on any board now that live in Seaview Harbor. Special Board Planner Wiser stated he believes that is the number. Attorney Doyle stated and only those have served for the last seven (7) or eight (8) years. They are Mayor McCullough and Mr. Steinberg. Special Board Planner Wiser stated something like that. Attorney Doyle stated Mr. Steinberg signed the petition did he not. Special Board Planner Wiser stated he does not recall if he did or not but will accept that he did. Attorney Doyle asked Special Board Planner Wiser if he ever examined who signed the petition. Special Board Planner Wiser stated he did but it was a while ago.

Board Member Aponte stated it was noted that we will have more than one meeting for Special Board Planner Wiser. Board Member Aponte stated he was thinking about the Livable Communities plan because he was part of it when it was made. He indicated he recalls vividly that we talked about all parts of the Township not just the mainland. He indicated they talked about Morris Beach, West Atlantic City and many more parts of the town. He indicated though at the end of the day it was an action plan and we focused on this. Board Member Aponte stated Mr. Henry was part of this action plan committee.

Attorney Doyle asked the point is. Board Member Aponte indicated he does not want to put words in his mouth but you asked about the future in relationship to Mr. Steinberg. But this was to be a road map for the future so he in a way disagrees with the fact this has no relevance. He indicated we all discussed it as members of what we need to do in our town. Attorney Doyle asked when it was adopted. He indicated he is sure over the last 20 years a lot of things have been discussed. He indicated that does not make it relevant. Board Member Aponte stated he understands what Attorney Doyle is saying, however, he wanted to advise it was discussed. Attorney Doyle stated he understands and agrees with Special Board Planner Wiser because he didn't really think it was that relevant. He stated why Ms. Cuvillo mentioned it was about the Pinelands area and Longport and Seaview Harbor are not in the Pinelands and a part of Egg Harbor Township that is in the Pinelands is removed.

Attorney Doyle asked is it fair to say the concerns raised in these hearings by the petitioners and Seaview Harbor residents have been and will continue in the future will be lack of connection to Egg Harbor Township a greater physical and social proximity Longport. A lack of what they see is adequate services provided by Egg Harbor Township and particularly emergency services and the financial impact caused by different tax rates between the two (2) municipalities. He asked if this is a fair summary. Special Board Planner Wiser stated yes. He believes this is a fair sentiment.

Attorney Doyle asked does who served on Township Committee or any other municipality the last century or decade effect how those services will be done in the future, the financial impact in the future or the connection or lack of it in the future. Special Board Planner Wiser stated to the extent that there were any system, programs or policies made by those individuals that carry into the future yes. To the extent new issues come up that have to be addressed, probably less so.

Attorney Doyle stated the common denominator between the past, the present, and the future, is and Mayor McCullough who lives in Seaview Harbor. He stated he appoints the people on the Planning Board including the people discussed in the 1990's when he was Mayor and as the Mayor serves on the Planning Board, but not in this matter. Attorney Doyle asked if deannexation were to be granted and the Mayor continued to live in Seaview Harbor, he by reason of that residence, not be in Egg Harbor Township could not be a member of Township Committee and hence not the Mayor and not on the Planning Board. Special Board Planner Wiser stated he would leave that to a Judge but he presumes that would be the case.

Attorney Doyle stated using the statutory language that granting the petition would in fact disqualify Mayor McCullough from being the Mayor of Egg Harbor Township. Attorney Doyle asked if that does significant injury to Egg Harbor Township. Special Board Planner Wiser stated as an individual Mayor McCullough has been a Mayor obviously for a significant period of time. He stated he does not know what his plans are. He just won re-election. He does not know what his plans are and whether he would seek to run for another term. Special Board Planner Wiser stated he is sure there are people,

whether they are on the governing body now or not in public service yet that would step up and do a job as Mayor.

Attorney Doyle stated he is not asking for Mayor McCullough's, whom he has never met, sentiments or whether people would step up. He stated as he well knows Mayor's and Assemblymen and everyone else come and go. He stated he is asking in terms of the statutory language about the Township. He asked would Egg Harbor Township be significantly injured by reason of grant of the petition disqualifying Mr. McCullough as Mayor. Special Board Planner Wiser stated he is not sure if he knows how to answer the question. He asked Attorney Doyle if he is asking him if anyone stepping in as Mayor would be as qualified. He stated he does not know what is asking. He stated the way Attorney Doyle phrased the question he cannot separate the individual from the office. Attorney Doyle asked Special Board Planner Wiser if he thinks the disqualification of the 100 or so voters in Seaview Harbor from holding public office, in Egg Harbor Township, does significant injury to Egg Harbor Township.

Special Board Planner Wiser stated there are a lot of very smart people in Seaview Harbor. He advised he thinks they are very active in their own community and should they wish to become active in a larger Township governance or policy making realm he thinks would be a benefit for the town. Attorney Doyle asked Special Board Planner Wiser that practically speaking he does not see this happening, do you. Special Board Planner Wiser stated he is not going to say that because this community has been activated by this petition. This community is now organized, not to say they were not before, but they are organized in a way that perhaps they were not before and he could very much see one or more people wishing to get involved to improve their own if they are not permitted to deannex.

Attorney Doyle stated the questionnaire showed that nearly 2/3<sup>rd</sup> of the Seaview Harbor people attend religious services in Longport. He stated without any other responsive testimony Special Board Planner Wiser chose to do his own research and came to your conclusions found on Pages 95 and 96, correct. Special Board Planner Wiser stated yes. Attorney Doyle stated Special Board Planner Wiser concluded the fact that the Catholic and Episcopal that many attend from Seaview Harbor are located in Longport. He indicated this may change if we get more Hindu's, Methodist or Baptist amongst others. Special Board Planner Wiser stated he is suggesting that if there are people of faiths they are not Episcopalian or Roman Catholic and they wish to worship they are not worshipping in Longport.

Attorney Doyle ask Special Board Planner Wiser if he agrees that the things that make Seaview Harbor a more common interest with Longport besides distance, the absence or presence of children, seasonal residency or age. He asked Special Board Planner Wiser if he sees the median age in Seaview Harbor, which is 55, changing over the years. Special Board Planner Wiser stated at some point it is going to change. Attorney Doyle asked what blows in the wind that gives you certainty. Special Board Planner Wiser stated death would be one of them. Attorney Doyle asked if he sees the school population coming from Seaview Harbor, which has be -0- over the last decade in the public schools changing. Special Board Planner Wiser stated it could. Attorney Doyle stated anything could. Attorney Doyle asked if he sees as a Planner the likelihood of this changing. Special Board Planner Wiser stated he would make room that it could. He stated if change is defined as one and one household comes in and they want to send their children to Swift School or Slaybaugh School that is change.

Attorney Doyle stated Mrs. Fiore testified during the citizens meeting that she wanted to sell her home and had a buyer until the found out the taxes they would have to pay were paid in large part because their children, unless they could pay beyond the taxes to go somewhere else, to Egg Harbor Township

Schools, as indicated by Special Board Planner Wiser, at some distance. He asked Special Board Planner Wiser does he not think it a deterrent to having the organic change in populations.

Special Board Planner Wiser stated first he did not say at some distance. He indicated they were Attorney Doyle's words. He noted the Swift or Slaybaugh School's. He stated would have to in large part want to send their children. Attorney Doyle stated 25 minutes from your statics. Special Board Planner Wiser stated o.k. Special Board Planner Wiser stated as he wrote in his report people make choices in their lives. If someone feels living on the bay is something they want to do that is of value to them and is a priority to them. They could come in and send their children to Seaview Harbor. He stated will the tax structure make that universe smaller yes, it probably is. But people who want to live on the water and as your clients have stated over and over again unique community, which he agrees with. May chose to do that and rather than sending their children, as Attorney Doyle said pay extra, they would take advantage of the Egg Harbor Township school system.

Attorney Doyle stated Special Board Planner Wiser heard residents and petitioners say they were not putting their kids on a school bus because they felt the periods of time they would be on the bus. As opposed to what you place in your report for which there was no testimony from the School Board representative. He asked if this is not a deterrent also. Special Board Planner Wiser stated he finds the one individual who gave a time and it was some extremely lengthy amount of hours on the bus, frankly hard to believe. Attorney Doyle asked when they said this did you cross-examine or asked questions of that witness to suggest it was not creditable and allow him the opportunity as to how he determined this. Special Board Planner Wiser stated he does not remember whether he did or didn't.

Attorney Doyle referred to Page 262. He indicated Special Board Planner Wiser stated Egg Harbor Township would be negatively impacted by deannexation because residents of Seaview Harbor who do not currently participate at levels that they did in the past eliminating this educated, active, and well-meaning community from a pool of eligible participants is detrimental to the Township. He asked when he speaks of participation are you speaking of governing body, planning board or clubs/organizations such as the Rotary, the Lions, etc. Attorney Doyle state it is item "A" on Page 262. Special Board Planner Wiser stated as he defines civics club it is the Kiwanis up to the governing body. Attorney Doyle stated he thinks with one exception every petitioner said they did not belong to anything in Egg Harbor Township. He asked Special Board Planner Wiser if he somehow thinks that will dramatically change. Without any evidence of change having happened. Special Board Planner Wiser stated to assume that everything is going to remain the same in perpetuity is not logical. Attorney Doyle stated if Egg Harbor Township does not have their participation now they do not lose anything if they don't have it in the future do they. Special Board Planner Wiser stated unless you consider the opportunity for it to happen.

Attorney Doyle stated you mention where Seaview Harbor people go to restaurants, hospitals, doctors, food stores and like most citizens they are going to go to whatever is convenient or personally preferable and this won't change with deannexation. He asked Special Board Planner that he gave this same opinion in Strathmere did he not. Special Board Planner Wiser stated he may have. He does not remember. Attorney Doyle asked is that likely the situation in any deannexation case. Special Board Planner Wiser stated it depends on the particular facility that you talking about. Attorney Doyle stated Special Board Planner Wiser has now been involved in three (3) deannexation cases. He stated this matter, Strathmere and in the mist of Seaside Heights. He asked if this is not consistent in all three (3) cased. Special Board Planner Wiser stated we have not gotten far enough in South Seaside Park for him to make an opinion. But to the extent there is no hospital in either Strathmere or Seaview Harbor that is not going to change. He stated deannexation will not change that.

Attorney Doyle referred to Page 98 paragraph G, which he read into the record. Thereafter, he asked Special Board Planner Wiser where he draws the line between long term and recently. Special Board Planner Wiser stated he does not know specifically and this is why he did not give specific examples. Attorney Doyle stated to the degree we had several petitioners who were long term seasonal and who became full time where does he put them in the crafted distinction as to who you should and should not believe. Special Board Planner Wiser stated he thinks people who were only seasonal residents and recently became full time residents commenting on things that may have happen in the winter is probably less creditable then people living in Seaview Harbor full time for 20 years. Attorney Doyle stated again you have no people in mind this is a general statement. Special Board Planner Wiser stated yes, that is a general statement.

Attorney Doyle stated on the same page, paragraph "H" Special Board Planner Wiser speaks of a sentimental attachment people from Seaview Harbor have to their neighborhood and say sentimental attachments aren't an appropriate place in a deannexation case and cite West Point Island. He asked in the West Point Island case was not the situation in reverse. He asked was not the Judge speaking of the town who did not want to let them go and said they were sentimentally attached to West Point Island and that is not enough of a reason. Special Board Planner Wiser stated yes. Attorney Doyle asked in this matter it is reverse. Special Board Planner Wiser stated sentimental attachment is sentimental attachment.

Attorney Doyle stated given Seaview Harbor residents wherever they go outside of Egg Harbor Township, as Special Board Planner Wiser said, they will continue to go to the restaurants, doctors, shops, etc., that they find convenient or to their liking. He stated with that being so deannexation would not mean Egg Harbor Township is losing Seaview Harbor business, jobs, jobs they may create, dollars they might put into the registers at the local store because if they are not going there before deannexation they are not going after. Special Board Planner Wiser stated he never suggested that the Township would. Attorney Doyle stated there would not be an injury in that regard to Egg Harbor Township. Special Board Planner Wiser stated not in that regard.

Attorney Doyle stated other than the loss of Seaview Harbor ratables, to whatever the degree, is there any other economic injury being done to Egg Harbor Township if deannexation were granted. Special Board Planner Wiser stated as the impact of the loss of that ratable trickles through the rest of the Township and has an impact on individuals who live in the Township it could have secondary impacts beyond just the Seaview Harbor community. Attorney Doyle asked for an example of a secondary loss or injury. Special Board Planner Wiser stated people who see their taxes rise have to make choices as to, which this is hypothetical because we do not know since we have not seen it happen because they have not deannexed, but perhaps someone, which he means is a number of people in similar economic conditions, don't go out to dinner as often because they have to pay their taxes or get their hair done as often, their nails done or buy that extra candy bar for child. But obviously increased taxes on the remainder of the residents would have some measure of impact.

Attorney Doyle stated during the hearings Special Board Planner Wiser has heard a quantum of tax impact measured. Special Board Planner Wiser stated if he is asking did he sit through two (2) CPA types talk about tax increases would be assuming deannexation, yes. Attorney Doyle stated from Mr. Costello report the tax impact, which is quoted in Special Board Planner's report on Page 236, would be \$122.78. Attorney Doyle asked in the Avalon case, the Appellate division case, the Judges spoke at looking at the financial impact of both the petitioners and the town didn't they. Special Board Planner Wiser stated he



has not read it in a while and he does not remember specifically. Attorney Doyle stated the Judge in the Bay Beach Way case looked at it both ways didn't he and said you had to look at it in balance citing the Avalon case. Special Board Planner Wiser stated again it has been a while. Attorney Doyle stated in the Avalon case the Appellate opinion said financial injury to the Avalon Manor people would be \$1,469.00. He indicated neither in Judge Perskie's opinion or the Appellate case tax shopping was not mentioned as a decisive issue was it. Special Board Planner Wiser stated he does not remember if it was referenced as a "tax shopping". He stated he does not remember. Attorney Doyle stated just to put that impact in and reference it because you talked about it in your report and in his testimony.

Special Board Planner Marcolongo asked if he could have a proffer as to what the document is that Attorney Doyle has. He stated again we are not supplementing the record. He stated if this is simple a regurgitation of the information received by Mr. Costello or their CPA why can we not work off their pages then using this.

Attorney Doyle stated first of all Special Board Planner Wiser just testified the economic injury would be significant in that more than the ratable there will be secondary impact and Attorney Doyle stated he wishes to measure that, what he said, and the case law about balance and all of the figures on that sheet are drawn from his report. He stated we did not have, in the petitioner's case, median household incomes, which come from his report. He indicated these are new numbers and the third column is the mathematical computation. He indicated this goes to the very point from the beginning when he asked Special Board Planner Wiser there will be areas that come up because of his report and this does.

Special Board Solicitor Marcolongo stated he agreed with Attorney Doyle if there was additional information that the Board had not heard before from Special Board Planner Wiser cross-examination on those areas would be appropriate. He indicated whether this is that he is not sure. Attorney Doyle added from the numbers he concludes that there is significant injury done to both sides and that it is similar and that is new. Attorney Doyle stated he wants to test the credibility of Special Board Planner Wiser's conclusion that the injury is similar is disproved by these numbers.

Special Board Solicitor Marcolongo asked Attorney Doyle to show document to Special Board Planner Wiser for a moment and not to the members. Special Board Solicitor Marcolongo stated his question to Special Board Planner Wiser is regarding the information provided on this document. Is all the information contained on here new information he provided to the Board or was it available through the testimony of the two (2) CPA's. Special Board Solicitor Marcolongo stated to Attorney Doyle he would agree the third column has not been provided to the board. Attorney Doyle stated the third column has not been provided to the Board because it is a mathematical computation derived from columns one and two. He stated while column two was testified by Mr. Ryan and Mr. Costello. Column one only came into evidence after the petitioners filed their case from Dr. Perniciaro and Special Board Planner Wiser's report. So two of the columns are new.

Special Board Solicitor Marcolongo stated 2/3 of it is new information that we have not seen before so it is supplementing the record. Attorney Doyle stated he thinks it is new and evidentiary because this has not been before the board is a new and it goes to more than most anything the heart of Special Board Planner Wiser's report and certainly the report was not in evidence before and he will assume they will seek to place it in evidence, so if something is going to go into evidence that is not there how can he not have the right to ask questions about it. Special Board Solicitor Marcolongo stated he did not understand what Attorney Doyle just reference.

Attorney Doyle stated the report of Special Board Planner Wiser is going to be put in evidence and he is going to ask questions. This information helps he ask the questions. Special Board Solicitor Marcolongo asked Attorney Doyle to ask the question from the report not an additional document and this resolves the problem. Attorney Doyle stated he is sorry from the word play that you cannot see what he is talking about as members of the board. He stated he does not think they should be deprived of that opportunity.

Attorney Doyle stated to Special Board Planner Wiser that he gave in his report gave the median household income for all Egg Harbor Township residents. Special Board Planner Wiser stated honestly he may or may not have. He does not remember. Attorney Doyle referred him to Page 108 of the report. Attorney Doyle stated there is a figure of \$70,875.00 and there is a figure for census tract 135 entire tract including Egg Harbor Township of \$84,671.00 and this is the median household income for Seaview Harbor residents. Special Board Planner Wiser stated estimated, yes. Attorney Doyle then asked the annual tax impact figures in your report and taken from Mr. Costello. Special Board Planner Wiser stated yes.

Attorney Doyle stated the proportions could not be because we did not have in evidence your report or the median household incomes. Special Board Planner Wiser stated o.k. Attorney Doyle when Special Board Planner Wiser speaks of the economic consequences being beyond the loss of ratables. You are talking about how an Egg Harbor Township resident be impacted by having to spend \$122.78 more a year in taxes an amount roughly equally to \$2.40 a week. Special Board Planner Wiser stated o.k. Attorney Doyle noted or  $\frac{1}{6}$  of 1% of their income is that the economic loss you talking to.

Special Board Planner Wiser stated no, because there is correlation between median household income and annual tax impact. He stated the median household income is what someone makes. The tax impact is based on your salary it is based on the assessment of your property. Attorney Doyle stated the tax impact upon you as a tax payer, a homeowner in Egg Harbor Township is what he is talking about. Special Board Planner stated yes, but there is no correlation between someone having to spend an additional \$122.78 on taxes and someone making \$70,875.00. He stated you could have someone making a heck of lot more or a heck of lot less who has chosen to live in home that ends up having taxes at \$122.78. Attorney Doyle asked but by using the median household income and the average assessment try to draw an appropriate middle line between what typically happens. Special Board Planner Wiser stated maybe it tries to but it fails. He stated there is no correlation here. He stated you are talking income versus property values and there is no correlation.

Attorney Doyle asked Special Board Planner Wiser when he gives in his report the effect on taxes will be similar because they are both impacted doesn't he say that in his report. Special Board Planner asked Attorney Doyle to show him where. Attorney Doyle stated that was not in his current line of questioning but he will show it to him. Attorney Doyle asked if there is any question that the tax impact, he asked Special Board Planner Wiser he thinks it's worthless to say what the impact is. Special Board Planner Wiser stated he did not say that. He advised in his report he says that Seaview Harbor residents are going to have a significant impact he believes and he also said the remaining residents of Egg Harbor Township are going to be impacted but there is no correlation household income and what people pay in property taxes.

Attorney Doyle asked why do we try to evaluate the question look at what an average is or a median is. Special Board Planner Wiser stated you have to look at the medians within the same family. He stated

Attorney Doyle is attempting to make a connection between apple and oranges. He stated it is not there. Attorney Doyle stated a family like a business has money coming in and out. He stated the statute says does it do injury to the residents and significant injury to the municipality. He indicated the case law talked about it. He stated Avalon talked about it, Bay Beach Way talked about it. He it impacts the average home owner. Attorney Doyle noted Special Board Planner Wiser knows the numbers as well as he does. So why is it not appropriate to talk about the average impact in terms of what percentage of the average household income is. Special Board Planner Wiser stated because you cannot draw that percentage because there is no correlation between. He asked has he not heard of someone being house poor. He stated there is no correlation between what someone makes and what they pay in taxes.

Attorney Doyle stated there will always be outliers doesn't the fact we use median and averages. He indicated this is Special Board Planner Wiser's report and he used the median. Special Board Planner Wiser stated yes, but he did not try to make a comparison with it the way Attorney Doyle is trying to make the comparison. Attorney Doyle stated is it not true Special Board Planner Wiser does not want to make the comparison because the impact on the average resident is  $\frac{1}{6}$  of 1% and on the average in for a Seaview Harbor resident it is more than 20%. Special Board Planner Wiser stated he recognizes that. He stated not in the percentages but recognize in the differences of the magnification. He stated he is not hiding from that. He stated what Attorney Doyle is trying to do here does not work. He indicated there is no correlation. Attorney Doyle asked Special Board Planner Wiser that he does accept the fact that if you compare the two proportions to the average household in either of the areas the impact on the average Seaview Harbor homeowner is a 120 times what it is for the average Egg Harbor Township resident. Special Board Planner Wiser stated the 20% is based on the median household income and the connection is not there. Attorney Doyle asked to the average homeowner who makes that income and pays that tax bill is it there. Special Board Planner Wiser stated no.

Attorney Doyle asked Special Board Planner Wiser how does he judge what the impact is. He indicated if he was going to say that then you could say any number, \$2.00 a year is significant. Special Board Planner Wiser stated if it is not up to the court to decide what is significant it is not up to him to decide what is significant. He indicated he pointed out for the Board what the tax implications are. The Board will take that and do with it what they see fit. Attorney Doyle asked if Special Board Planner Wiser is suggesting any number tax impact be it \$122.00, the \$67.00 mentioned there 15 years or more ago, if a board were to decide \$5.00 is a significant injury to our people they have an absolute right to do that.

Special Board Planner Wiser stated he is not saying this. He stated he thinks that what the courts have said. He stated what he is saying is he recognizes the significant impact to the residents of Seaview Harbor, which he noted in his report. He indicated he also says there is an impact to the balance of the Township, the remaining residents of the Township and that significant impact has been quantified by Mr. Costello at \$122.78. He stated now that will go up and down and things are going to happen to it but that was the information submitted to him and that is what he has relayed to the board. He indicated does he think \$17,412.00 is significant, yes he does. He advised it is up to the board to weigh the two figures.

Attorney Doyle asked Special Board Planner Wiser if he thinks it is appropriate to look at the balance between the two. What it does to a Seaview Harbor resident on average and what is the Egg Harbor Township resident on average. Special Board Planner Wiser stated if he was a board member he would take a look and place it in his decision making process. Attorney Doyle asked Special Board Planner

Wiser that he has already recommended to the Board what they should decide. Special Board Planner Wiser stated he does not do that. He advised he gave the Board a recommendation which they are free to accept or reject.

Attorney Doyle referred to Pages 261 and 262 stating Special Board Planner Wiser speaks of the negative impact for the majority of Seaview Harbor Residents. He indicated Special Board Planner Wiser does not list in those two (2) things the \$17,000.00 tax consequence. Special Board Solicitor Marcolongo stated that would be a positive. He indicated it is listed under letter "E" on Page 261. Attorney Doyle then referred to Page 266 stating under Economic Injury/Financial Impact he then stated more specifically Page 267. Attorney Doyle then read into the record the first paragraph noted on this page, thereafter, asking Special Board Planner Wiser that he does not think \$17,412.00, which is Mr. Ryans number from 2014. He advised Mr. Costello's number from 2015 grew and it is now \$17,850.00, is not detrimental to their economic wellbeing.

Special Board Planner Wiser stated prefaced that if you go to Page 266 with the tax shopping and the avoidance of assessments. He indicated he did not say they were not injured by it. What he said was it does not conform, in his non-lawyerly opinion, to the standard that is required. That tax shopping is not an appropriate component, proof for deannexation. Attorney Doyle stated in Avalon Judge Perskie nor the Appellate Division said that they were tax shopping. He stated they ruled against them for another reason. He asked what evidence does Special Board Planner Wiser have that the people in Seaview Harbor are tax shopping other than it's his conclusion. Special Board Planner Wiser stated from the months and months of hearings that we have had.

Attorney Doyle asked what about the 1980's when they constantly complained about bad service as they did throughout these hearings. Special Board Planner Wiser stated they complained about getting bad service and their taxes are too high. Attorney Doyle asked saying their taxes are too high is evidence of tax shopping. Special Board Planner Wiser stated he think we want to go to Longport because they have a better tax structure is a suggestion of tax shopping. Attorney Doyle asked is not the fact that there are service concerns that they feel are justifiable and the change in the taxes are a consequence of deannexation. Special Board Planner Wiser stated it is all a consequence if deannexation is granted. Attorney Doyle asked Special Board Planner Wiser if he is suggesting that no one should be allowed deannexation even if the town they want to go to has lower taxes than the town they are in because instantaneously that is tax shopping. Special Board Planner Wiser stated that aspect of it, he believes, the courts have disallowed. The rational being to go to a different town where the taxes would be lower. Attorney Doyle any changes in taxes in favor of the people seeking deannexation means they are tax shopping and the petition should be disproved. Special Board Planner Wiser stated he thinks to the extent that is offered as a proof as a component of satisfying the burden of proof he would think so.

Attorney Doyle stated so in the cases of where they said there was fiscal injury and the injury was exactly like that the loss of the benefit of a tax reduction that should automatically disqualify any deannexation petition. Special Board Planner Wiser stated he would think so. Avoidance of assessment and avoidance of taxes he would think so.

Attorney Doyle stated take Bay Beach way there was a tax difference of \$5,000.00. He stated the Judge granted deannexation and the Appellate Division affirmed and though it is not noted in Special Board Planner Wiser's dissertation on the law. The Supreme Court twice rejected taking the case up, thus affirming the lower court's opinion. He asked Special Board Planner Wiser what he said was wrong.

Attorney Doyle stated Special Board Planner Wiser said any tax savings gives the town the right to say you cannot have deannexation. Special Board Planner Wiser stated he does not know enough about the specifics, but Attorney Doyle certainly does, about the Bay Beach Way case but he would think reliance on that aspect of an argument, given what the courts have ruled about tax shopping would be disallowed. He thinks that would be the case. Board Member Aponte stated with respect to Page 262 has there any cases on secession that have taking into effect the cap instituted by the legislation and signed into law by Governor Christie that you cannot have more than a 2% cap. Special Board Planner Wiser stated he is not aware of any. He indicated a majority of the cases were before that so it would not have been an issue. He advised he is not sure the year the cap came in but he knows it was not part of the Strathmere case because in that particular case Upper Township did not have a local purpose tax.

Special Board Planner Wiser stated the next case is Bay Beach Way and he would be better off asking Attorney Doyle that question. Attorney Doyle stated he was the Attorney for Bay Beach Way. Special Board Solicitor Marcolongo stated he knows of no case that addresses the 2% cap that have been addressed in deannexation cases. Board Member Aponte stated there is a 2% cap if they are allowed to secede and town loses those ratables how can you make that up. Special Board Planner Wiser stated in his report he noted there are clearly two (2) ways to make up a short fall. You can raise taxes, cut services or cut spending. He indicated if you have a cap in raises taxes and cannot be appealed than you left to cutting to balance your budget which you are required to do under the State constitution. Board Member Aponte stated this could be an injury to Egg Harbor Township as well. Special Board Wiser stated theoretically.

Attorney Doyle asked if there was any proof given by Mr. Costello as to what the affect deannexation would have with respect to the cap. Special Board Planner Wiser stated not that he recalls. Attorney Doyle asked that Special Board Planner Wiser is not a finance person correct. Special Board Planner Wiser stated no. Attorney Doyle asked Special Board Planner Wiser that he is guessing in response to Board Member Aponte's questions or speculation. Special Board Planner Wiser stated it is all speculation.

Attorney Doyle stated with respect to schools Special Board Planner Wiser noted on Page 103 what the travel times would be. He indicated there was testimony given as Special Board Planner Wiser recalled earlier as lacking in credibility. Attorney Doyle asked if the times placed in the report testified to by Mrs. Bechtel. Special Board Planner Wiser stated he does not believe so. Attorney Doyle stated the only testimony received about school travel times was from the petitioners, to this point. Special Board Planner Wiser stated he believes that is correct. Attorney Doyle stated given this is new where did Special Board Planner Wiser obtain his time table. Special Board Planner Wiser advised at some point during the process he was provided some notes from Mrs. Bechtel. He indicated he believed he noted this in his report.

Special Board Planner Wiser referred to Page 102, specifically the paragraph in the middle of the page which references times provided by Mrs. Bechtel. Attorney Doyle asked if this was after she testified. Special Board Planner Wiser stated he does not remember. Attorney Doyle stated he cannot cross examine her now. He asked if Special Board Planner Wiser personally knows what the travel time is. Special Board Planner Wiser stated currently the travel time is nothing because there are no students bused from Seaview Harbor to the schools. Attorney Doyle stated considering Special Board Planner Wiser spoke of organic change and things happening in the future and we are suggesting you are never going to have a school child there because the travel times are too far. He stated what is happening

now you have to look at with a broader brush. He again asked Special Board Planner Wisner if he knows how long it would take other than map quest and some not we do not have from Mrs. Bechtel.

Special Board Planner Wisner stated what he believes Mrs. Bechtel did testify, actually one of the petitioners testified that there is an \$840.00 stipend given to that would be given to Seaview Harbor residents to pay for the transportation because they would not bus from Seaview Harbor. That the school system wouldn't bus from Seaview Harbor. He stated given that the case you are left with parents driving students and it is not a multiple hour drive. Attorney Doyle asked to Egg Harbor Township Schools, which no one has done in ten (10) years. Special Board Planner Wisner stated something that none of the petitioners have testify to. He indicated he does not know if someone has done it.

Attorney Doyle stated he will refresh Special Board Planner Wisner recollection. Attorney Doyle stated he asked Mrs. Bechtel when was the last time and she indicated roughly 2004 and Committeewoman Pfrommer stated she recalled 2006. So again no one in ten (10) years. Special Board Planner Wisner stated o.k. Attorney Doyle stated speaking of organic change and things can happen. Regardless of the dollars putting a child on a school bus a half hour each way. Might a parent decide that is not a place for them. Special Board Planner Wisner stated it might. He indicated it may depend upon where they grew up it may be a much shorter time then they took.

Attorney Doyle stated so these are map quest numbers and does not take into account going through Somers Point or how many stops they make. Special Board Planner Wisner stated he does assume map quest does take into account going through Somers Point. He stated in fact it does because it mapped it out for him. Attorney Doyle asked does it take into account the stops or whether the child is the first or last on the bus. Special Board Planner Wisner stated assuming the child does not get on the bus and is driven by a parent there are no stops.

Attorney Doyle stated given if Seaview Harbor was part of Longport and they were sending their high school children to Ocean City High School why are the times listed for Atlantic City High School. He asked why this is relevant. Special Board Planner Wisner stated because they have an option. He indicated they do not automatically send their children to Ocean City High School. They have an option of Atlantic City High School or Ocean City.

Attorney Doyle asked why two (2) different times were given for Ocean City. Special Board Planner Wisner stated because there are two (2) different ways to go and one is a toll and the other is not and he is not sure how a bus would go. Attorney Doyle stated nor how long it would take in real time other than what map quest says. Special Board Planner Wisner stated this is what map quest stated.

Attorney Doyle stated in any event the times given by the parents that were contradicted were longer times. Special Board Planner Wisner stated considerably longer. Attorney Doyle asked Special Board Planner Wisner if he would not agree that the fact there has not been a public school child for Seaview Harbor in a decade tied into the fact this is a seasonal community where the average age is 55 and therefore are less likely to have a school aged child. Special Board Planner Wisner stated it is a component. Attorney Doyle asked Special Board Planner Wisner that the absence of school children from this particular neighborhood is likely to continue into the indefinite future. Special Board Planner Wisner stated no he would not agree with that and this was discussed earlier.

Attorney Doyle stated as a planner and an Egg Harbor Township resident yourself can he cite any other neighborhood or subdivision the size of Seaview Harbor, other than age restricted communities, that do not produce school children. Special Board Planner Wiser stated he would have no way of knowing this one way or the other.

Attorney Doyle with respect to public works. He indicated Special Board Planner Wiser acknowledge that the testimony according to exhibit B98 was that after the snow storm of December 19, 2009, Seaview Harbor was not first plowed until 8:00 p.m. for an operation that commenced at 5:30 a.m., that morning or 14 ½ hours later. He then noted to refer to Page 129 of the report. Special Board Planner Wiser stated he does not see what Attorney Doyle is referencing on Page 129. Attorney Doyle stated Special Board Planner Wiser had changed B98, which Mr. Simerson had placed in chronological order, and he changed it to Reported Snowfall least to most. Special Board Planner Wiser stated yes. Attorney Doyle stated he believes in transposing Special Board Planner Wiser erroneously said for the next to last snow storm on Page 129 that the difference of time shown on B98 is 14 ½ hours and you change to 13 ½ hours. He indicated he wanted this noted.

Attorney Doyle stated he also wanted noted that Director Simerson said they try to get everything cleared up in 24 to 36 hours did he not. Special Board Planner Wiser stated something like that. Attorney Doyle stated on the two (2) snow storms of most significance it took over 50 hours or more than two (2) days in one case and on the second occurrence it took over three (3) days to the third plow in Seaview Harbor.

Special Board Solicitor Marcolongo stated he would like to review Mr. Simerson exhibit B98. May the record reflect: Special Board Planner Wiser reviewed exhibit B98. He then asked Attorney Doyle what his question was. Attorney Doyle stated despite Mr. Simerson testimony, which Special Board Planner Wiser indicated was an accurate quote, to have the roads cleaned and treated within 24 to 36 hours after the ending precipitation. He indicated for Seaview Harbor those two (2) storms it took over 50 hours in one case and 72 hours in another. Special Board Planner Wiser stated he does not know where he is getting those numbers. Attorney Doyle stated if you take snow event #1 Wiser: not sure where these numbers comes. Doyle referred to snow storm #1 from 12/19 at 5:30 to 12/21 at 8:00 that is two (2) days plus 2 ½ hours so it is 15 ½ hours. He indicated if you take snow storm #3 which commenced operations on 2/5 at 1:00 p.m. and they did not get plowed out until 2/8 at 15:51 that is 74 hours and 54 minutes. He stated in other words Seaview Harbor did not fit the norm and because of their distance and smallness and the fact that cul-de-sacs come third, but for Mr. Stewart and Mr. McGlinchey's work, they would have been high and dry. Attorney Doyle stated the time limit the Township's person said didn't apply and Seaview harbor had it rougher.

Special Board Planner Wiser stated what he thinks it says is that the Township did not achieve its goal and he does not know you can ascribe distance to it. You can ascribe doing residential communities last but you are talking about a storm duration of 4 and 5 days so those storms are not hit and run events and would not want to place to put words in Mr. Simerson's mouth nor should he. But he will state they did not make the goal, which is what he said before.

Attorney Doyle stated Special Board Planner Wiser did not mention in his report Mr. McGlinchey's testimony of going through Longport after the snow had fallen and finding while Egg Harbor Township had not appeared in Seaview Harbor the Longport roads were clear. He asked why was this left out. Special Board Planner Wiser stated as we have talked about this at length, that was wrapped up in going

to get the coffee, to his recollection and Mr. McGlinchey had said Longport roads were clear but he does not know he'd know that.

Attorney Doyle asked Special Board Planner Wiser that in the Bay Beach Way case the Judge specifically mentioned how the people on that street looked across the Lagoon where they could see Lavallette and that the snow was cleared in Lavallette but because of the distance and the time to get across the bridges from the mainland to Bay Beaches Way location they were not plowed out. So is this not a relevant factor along with others to be considered. Special Board Planner Wiser stated he remembers, not in the detail that Attorney Doyle described, but remember that issue in the Bay Beach Way case. He indicated he does not remember why he did not include it.

Attorney Doyle stated Mr. Simerson testified he had known Mr. McGlinchey and he read his testimony and he had no reason to doubt his honesty of Mr. McGlinchey and the testimony he read did not change that. He indicated more than that Mr. Simerson stated he had been to five (5) meetings, read the transcripts regarding his area and he had his notes done in 2014 that he read from when he testified. Attorney Doyle stated given his personal preparation Special Board Planner Wiser testified you would meet with witnesses before to tell them what to expect in terms of what people had said. He indicated Mr. Simerson had already done his homework had he not according to his testimony. Special Board Planner Wiser stated he has no idea. He indicated he does not know. He indicated he did not pay attention when he did his notes or his presentation. He indicated he does not know if it was before, during or after meeting with him and he does not know whether he revised his comments based on his conversations.

Attorney Doyle stated he can advise Special Board Planner Wiser by reading the minutes of the May 5<sup>th</sup> meeting, what he just said in his question is what he testified to. He indicated given this his question is why was it necessary for Special Board Planner Wiser to meet with Mr. Simerson twice for a total of over nine (9) hours if he knew what he had to testify about. Special Board Planner Wiser stated he does not know if we actually met with him for nine (9) hours and the reason why he did it, for as long as it took, is because Special Board Solicitor Marcolongo asked him to. He indicated we were there together. Attorney Doyle stated Mr. Simerson was also asked on May 5<sup>th</sup> if he discussed with anyone concerning he was testifying. He indicated Mr. Simerson stated Mr. Miller and the Attorney. Attorney Doyle asked why Mr. Simerson left out Special Board Planner Wiser. Special Board Planner Wiser stated he is just a lowly planner. Attorney Doyle stated he asked Chief Davis did he talk to anyone and he stated Mr. Miller and the attorney. He stated according to the vouchers Special Board Planner Wiser met with him a number of times. He asked why did Chief Davis not recollect Special Board Planner Wiser being there. Special Board Planner Wiser indicated Attorney Doyle would have to ask them. He stated he does not know.

Attorney Doyle stated at the conclusion of his questioning Mr. Simerson he asked if it was reasonable to expect given the difference in size, distance and time between Longport and Seaview Harbor that the snow would have been cleared off the streets of Seaview Harbor quicker by Longport than Egg Harbor Township and in his testimony he stated that would be reasonable conclusion. Attorney Doyle asked if Special Board Planner Wiser has any reason to disagree with this expert's conclusion. Special Board Planner Wiser stated yes, because he also said in his testimony that during Sandy Longport did not have equipment to handle the clean-up and they had to hire contractors to do it. He indicated there was also a piece of conversation, that he recalls, that related that to plowing snow. The lack of equipment and this is where he got that concept, thought.



Attorney Doyle stated there was no reference to Mr. Simerson talking about his knowledge of Longport having insufficient equipment to clear snow. Special Board Planner Wiser stated he made the connection he does not remember exactly what he said. Attorney Doyle stated right after he asked Mr. Simerson that question, in which he said it would be reasonable to expect Longport get there quicker, Special Board Planner Wiser asked him the question whether he knew there was some level of snow event that Longport is not capable of because they do not have the equipment. Attorney Doyle stated Mr. Simerson indicated he did not know what they have.

Attorney Doyle stated when your own expert said Longport could do it better and Special Board Planner Wiser suggested they could not and he did not receive the answer he wanted. Special Board Planner Wiser did not put Mr. Simerson's conclusion within the report. Special Board Planner Wiser stated it was not his recollection. Attorney Doyle asked Special Board Planner Wiser if he would not particularly agree, given Mr. Simerson's testimony and the Bay Beach Way precedence, as this is a relevant fact that the ability to, and Mr. McGlinchey's testimony that Mr. Simerson did not challenge. Does it not constitute a social detriment to the majority of Seaview Harbor residents not to be able to have the snow cleared by Egg Harbor Township as fast as Longport would have done it had they been in Longport.

Special Board Planner Wiser stated he thinks it is speculation to know how Longport would have responded to a storm in Seaview Harbor. He stated we cannot know this. He indicated having said this he will leave that to the Board to decide. Attorney Doyle stated at the Township Committee meeting following that snow storm the Mayor, understandably plead the size of the snow fall, but also said we have 400 miles of road. Attorney Doyle stated there is other documents that have placed in that said there is 400 miles of road and he knows what Mr. Simerson said "I am saying 200 and I am sticking to my story". Attorney Doyle stated regardless if it is 200 or 400. He asked if it is not just common sense that if Longport has, as Department of Transportation records show, 12.78 miles of local road and Egg Harbor Township has hundreds of miles and Longport is 2 miles away and Egg Harbor Township is 15 minutes away that Longport could do a quicker job.

Special Board Planner Wiser stated he does not know how you could say that. He indicated no one has told him how many people work at Longport's public works, how many pieces of equipment they have, what their manpower is. He indicated none of this was put into evidence. He indicated he cannot know this. Attorney Doyle asked Special Board Planner Wiser that he did not see this as his job to find it out on your own that is the petitioner's job. . Special Board Planner Wiser stated this is your case and he is taking the evidence as it was presented to him. Attorney Doyle stated but Special Board Planner Wiser is indicated it is not enough to make a conclusion. Special Board Planner Wiser stated he could not make that conclusion. Attorney Doyle stated that Mr. Simerson did, did he not. Special Board Planner Wiser indicated he does not recall Mr. Simerson saying that.

Attorney Doyle stated Special Board Planner Wiser just heard him read the minutes. He asked if he has any reason to say that was not in the minutes. Special Board Planner Wiser stated he did not recall him saying that. Attorney Doyle stated now having heard Mr. Simerson said that by having the minutes read to him. Is it not something that should have a second look at, that the likelihood of better snow removal from Longport being so small and so close a matter of social detriment? Special Board Planner Wiser stated if the Board wishes him to explore that further he will.

Attorney Doyle stated no, as a planner he was commissioned to do the report and he has the information. Special Board Planner Wiser stated he does not have any information. Attorney Doyle

stated you have the forgotten information about Mr. Simerson's conclusion. Special Board Planner Wisner stated which Attorney Doyle has just given the Board.

Attorney Doyle stated on Page 140 of the report concluded that the Longport public policy to fund weekly recycling rather than Egg Harbor Township's bi-weekly would be beneficial to Seaview Harbor. Special Board Planner Wisner stated yes. Attorney Doyle stated so to that degree, as noted in the report, if this petition were denied would result in social detriment to the residents of Seaview Harbor. Special Board Planner Wisner stated that would be a negative. Attorney Doyle asked if negative means a social detriment. Special Board Planner Wisner asked if Attorney Doyle is going to base an entire boundary re-alignment on trash pick-up. He stated in and of itself does it rise to the level of social detriment. No he does not. He stated he thinks it is an inconvenience and may make neighborhood sloppy on a Monday morning after a party in the middle of July. But he does not think it rises to the level, in and of itself, as social detriment.

Attorney Doyle stated on July 10, 2015 Special Board Planner Wisner asked Mr. Simerson to review the section of the report you had drafted regarding his testimony and was there anything significant in it that you had missed. Attorney Doyle stated as of July 10, 2015 the hearings were still going on. The public had yet to be heard from and Special Board Planner Wisner had already concluded, at least in the draft report, what he had concluded. He asked why did Special Board Planner Wisner not wait for all the evidence to be in before he drew conclusions. Special Board Planner Wisner stated he tried to, to the extent time and schedule would allow to get his piece done and if he needed to go back and revise it he would. But while his testimony was as fresh as it could have been in his memory.

Attorney Doyle stated in that draft report sent Mr. Simerson it stated draft report 28. He asked what was the significance of the 28. Special Board Planner Wisner stated he routinely save documents in successive numbers for large documents so if he has a computer problem and gets corrupted he can go back to the previous document so that was 28. He indicated he may end up with 5 or 6 documents on any given day. Attorney Doyle asked if this means there were 27 other areas before that which were drafted of conclusions. Special Board Planner Wisner stated no. As he said on the same day, on the same page, he may have multiple numbers ascribe to a draft. He stated it is just the way of making sure he does not lose a huge chunk of work if he has a corrupted document.

Attorney Doyle stated Special Board Planner Wisner started to draft his report on January 5, 2015 according to vouchers. He stated at that time we still did not have at least the last two (2) hearings with Mr. Miller where he testified plus all the other Township witnesses plus the cross examination of them and the public meeting in November. He indicated a jury does not give a finding until it hears all the evidence. He asked how does Special Board Planner Wisner start writing reports with conclusions before all the findings are in. Special Board Planner Wisner stated who is saying he was drawing conclusions at those times. Attorney Doyle stated the draft report he sent by email to Mr. Simerson had conclusions. Special Board Planner Wisner stated which he would have changed if testimony or further exhibits warranted. Attorney Doyle asked if Special Board Planner Wisner did go back and change any. Special Board Planner Wisner stated his recollection is that Mr. Simerson had two (2) very small things that he had not gotten correct from his testimony. He indicated he does not remember what they were.

Attorney Doyle stated he will make the question broader. He asked if Special Board Planner Wisner went back and changed any of the draft. He indicated prior to the November 16 public meeting Special Board Planner Wisner spent 180 hours writing the draft report. Special Board Planner Wisner stated he kept going back and revising throughout the process, yes.

Attorney Doyle asked if Special Board Planner Wiser recalls Dr. Berger testifying. Special Board Planner Wiser stated truthfully not by name. He indicated he remembers there was a Dr. Berger. Attorney Doyle asked Special Board Planner Wiser if he believes a 3 year passage of time to repair a construction issue in a road way by a house is too long time. Special Board Planner Wiser stated it may or may not be depending on what the issues are. Attorney Doyle stated a sinkhole developing sometime in 2011 he then read onto the record information from the May 5<sup>th</sup> minutes concerning Mr. Simerson's testimony concerning this issue. Attorney Doyle ending with stating Director Simerson testified he could not dispute. He asked Special Board Planner Wiser if he does not think three (3) years to resolve a sinkhole problem more that an inconvenience. Special Board Planner Wiser asked how big was the sinkhole. He stated Attorney Doyle is asking him, he stated he does not know the answer to that. He stated there are so many variables in the question that there is no way he can answer it from what he knows.

Special Board Solicitor Marcolongo stated Attorney Doyle has already had Mr. Simerson answer this question in a way that was acceptable to him. Is this not correct. Attorney Doyle stated he told him about the three (3) years but what he could not answer as a planner is that not a detriment to social wellbeing of a resident and that was not noted in the report correct. Special Board Planner Wiser stated he did not note this in his report.

Attorney Doyle stated Special Board Planner Wiser concluded that the ratable loss would do detriment. He then referred to Page 262 (D1), which he subsequently read this statement onto the record. Attorney Doyle stated Mr. Ryan testified, did he not, the conservative approach, so as to be fair to the municipality, would be to assume the municipality would want to provide the same level of services by having the same amount of dollars and assuming they did not cut the budget. It would require a 1.3 cent tax increase. Attorney Doyle asked Special Board Planner Wiser if he recalls this testimony. Special Board Planner Wiser stated not specifically, but if that was reflective in his report. Attorney Doyle stated this is what Special Board Planner Wiser has in his report to. Special Board Planner Wiser stated ok.

Attorney Doyle further noted Mr. Costello stated it was the most conservative approach but he could not nor was he prepared to predict the future. Special Board Planner Wiser stated that is what he recalls. Attorney Doyle stated he did say they raise taxes, cut the budget, and as Special Board Planner Wiser stated one or the other or a combination of both. Attorney Doyle stated if they raise the budget 1.3 cents it will not result in the loss of manpower or services correct. He indicated they make up the money at the expense of the tax payer the \$122.00. Special Board Planner Wiser stated if they could fill the hole than that would not happen, yes.

Attorney Doyle asked Special Board Planner Wiser how much if he knows it would cost the department of public works if they had to cut the budget. He indicated we know if the Township took the approach it would be \$122.78 to the average tax payer, but if the Township took the approach and said we are not going to restore any of that money the \$505,000.00 and referred to in paragraph D on Page 262. Special Board Planner Wiser stated he believes the \$505,000.00 is Mr. Costello's number and Mr. Ryan was fairly close to this number if he recalls. Attorney Doyle stated Mr. Ryan was at \$486,000.00 but we have been using the \$505,000.00 fairly consistently throughout this exercise.

Attorney Doyle stated it is mathematically doable to say what portion of that would go to public works. Is it not. Special Board Planner Wiser stated there could be a multitude of permutations as to what that number would end up being on any one department. Attorney Doyle stated assuming that they kept

everybody at the level that they spent and they did not make up the loss and they all took proportionately equal and the department of public works has a total budget in 2015 of \$4,695,639.00. \$38,499,941.00 total general appropriations the department of public works is 12.2% of the budget. He asked if this is a fair assumption that everyone takes it equally to try to determine what would be the effect since Special Board Planner Wisner indicates it could potentially result. Special Board Planner Wisner indicated as he said elsewhere with respect to the police and ambulance. He has no way of knowing how the Township Committee will decide to apply the cuts. So he has no way of know.

Attorney Doyle stated in the absence of what we can't possibly know, the 2017 budget, because the 2016 is not finished yet. He stated looking at the 2015 budget is it not fair to determine whether in fact the proportional share that the department of public works would have to burden or suffer whether it would in fact result in manpower and services and is so to what degree. Otherwise how can you measure whether deannexation would do significant injury to the Township unless he is assuming it. Special Board Planner Wisner stated Attorney Doyle or someone asked Mr. Simerson what the impact of deannexation was and believes he said it would likely cost him manpower and services. Special Board Planner Wisner stated he did not quantify it.

Attorney Doyle stated he would like to go through the exercise with Special Board Planner Wisner. He stated if you took their proportional share of the budget which is 12.2%. Special Board Solicitor Marcolongo noted for the record: Special Board Planner Wisner does not have this information in front of him, he does not have the total budget, nor the total budget of the municipality, he does not know the percentage Attorney Doyle is quoting is exact so he is going to accept for the purposes of this exercise Attorney Doyle's numbers and try to work from them.

Attorney Doyle asked based upon what facts did Special Board Planner Wisner determine deannexation could potentially result in a reduction of public works funding leading to a reduction in manpower and services. Special Board Planner Wisner stated he believes that was Mr. Simerson's testimony. Attorney Doyle asked if that potentiality was not realized than to that degree there would not be significant injury to the municipality would there. Special Board Planner Wisner stated on that issue, if there are no cuts than no. Attorney Doyle stated with all of that said, understanding Special Board Solicitor Marcolongo's comments, that you could revisit whether his numbers taken from the 2015 budget is right or whether the general appropriations across the board are right they do mathematically come to 12.2% of the budget.

Attorney Doyle stated if you apply that to the \$505,000.00 it means the department of public works loses \$61,592.00. He indicated Mr. Simerson did not have that number in front of him and he did not have that number because the 2015 budget was not done and Mr. Costello had not yet testified. So he could not put that number together. He stated now putting that number together he asked Special Board Planner Wisner if he would not agree that \$61,592.00, generally speaking would not cost even one (1) employee. Special Board Planner Wisner stated he would have no way of knowing. Attorney Doyle asked Special Board Planner Wisner if he recalls Mr. Costello testimony that unless a deannexation would save a whole person you could not say it would save any money on the personnel side. Special Board Planner Wisner stated he recalls something along those lines. Attorney Doyle having said that he is just using the reverse, which he would think is equally accurate, if the amount of money lost does not equal a salary than you have not cost a person either. Special Board Planner Wisner stated he has no idea what the salary structure is in public works to know whether \$61,000.00 just cited would be a person or not. Attorney Doyle stated \$61,000.00 represents 1.3% of the public works budget in other words it would be left 99% whole. He asked if leaving it 99% does significant injury to Egg Harbor Township in so much

as public works is concerned. Special Board Planner Wiser stated on the face of it, as Attorney Doyle has presented it, one would think not but he does not know that. He stated he does know when someone asked Mr. Simerson what would happen if his budget was cut and he said he would have to cut manpower and/or services. Attorney Doyle stated did Mr. Simerson not say that Mr. Miller takes care of the budget. Special Board Planner Wiser stated yes, he thinks he did.

Attorney Doyle stated Mr. Simerson on Page 13 of the minutes (May 5<sup>th</sup>) was asked by him that Mr. Miller stated if the snow was not cleared in the Mayor's neighborhood it would be a problem and Mr. Simerson indicated he said the same thing. Attorney Doyle stated Special Board Planner Wiser concluded in his report that this office was impressed by Mr. Simerson's statement concerning his likely discharge if Seaview Harbor was not taken good care of because the Mayor lived there. Attorney Doyle asked if that is a quote from his report. Special Board Planner Wiser asked what page. Attorney Doyle noted it was Page 142. Special Board Planner Wiser stated it is not directly an exact quote of what Attorney Doyle said but it is the sentiment.

Attorney Doyle asked when Special Board Planner Wiser says this office is it someone more than him. Special Board Planner Wiser stated no. Attorney Doyle asked Special Board Planner Wiser why he finds this impressive, in his words. Special Board Planner Wiser stated the man has been the director of public works since 1994 and through all of the allegations that the public works department does not service the neighborhood if it were that bad he believes the Mayor would have something to say about it. He further noted that Mr. Simerson has been the director since 1994 and employee since 1992 would indicated that the neighborhood, he would think, indicates the neighborhood gets serviced fairly well.

Attorney Doyle stated because the Mayor gets what he wants. Special Board Planner Wiser stated those are Attorney Doyle's words. Attorney Doyle asked is that not conclusion he can draw from Special Board Planner Wiser's words. Special Board Planner Wiser stated he would think if the neighborhood was treated as badly as testified than the neighbors would have gotten on their neighbor, the Mayor, and complained to him insisently such as that he would take action. Attorney Doyle indicated or that Seaview Harbor is so far away from the center of town and the department of public works that they got served furthest and last. He indicated 50 hours, 75 hour later than the 36 hours and the Mayor legitimately said you can't do what you can't do were just out further. He asked if this is a reasonable option.

Special Board Planner Wiser stated he thinks if the Mayor said that to any of the petitioner's it would have been in evidence and they would have testified to it. Attorney Doyle stated Special Board Planner Wiser is speculating and surmising again. Special Board Planner Wiser stated he is responding to the question he is asking. Attorney Doyle stated if Mr. Simerson, as a 30 year employee, has to worry about his job because the Mayor wouldn't have been satisfied everyone in this process sitting up on the dais is either a colleague those on the Township Committee or an appointee of his and if you use that same reasoning than how can this be an objective process. He indicated if Mr. Simerson has to worry about his job. Even when it is impossible to do. Special Board Planner Wiser stated he thinks the point is he does not have to worry about his job. He stated the point is the Mayor is satisfied with the job he is doing, clearly, because he would not have been director since 1994.

Attorney Doyle stated the town standard is 36 hours and on the two (2) worst snow storms this town had they did not come close to meeting this did they. Special Board Planner Wiser stated while looking back at this chart it is 36 hours from the end of the storm. He indicated some of these storms were five (5) day storms. So to make the correlation that Attorney Doyle is trying to make or that he keeps

reiterating does not seem to be what Mr. Simerson chart really says. Attorney Doyle stated you are speaking of what the chart says, however, you have stated twice you do not remember Mr. Simerson's testimony. He asked if Special Board Planner Wiser recalls what Mr. Simerson said regarding 24 to 36 hours. Special Board Planner Wiser stated that is their goal and Attorney Doyle brought up the issue about several days and B98. He indicated when you look at B98 it is from the end of the storm. Attorney Doyle asked Special Board Planner Wiser did not Mr. Simerson say they go out when the snow stops because no sense going out before that. Special Board Planner Wiser stated he is not sure he said that because they have to keep the major roads clear for emergency vehicles and they are not going to wait on a five (5) day storm to clear the major roads of snow. Attorney Doyle suggested they both take a look at the May 5<sup>th</sup> testimony. He stated there may be further questions.

Attorney Doyle stated on Page 107 Special Board Planner Wiser indicated "the record is replete with petitioner's statements and exhibits regarding the uniqueness of Seaview Harbor" and he used that phrase tonight. Attorney Doyle advised unique is defined in the dictionary as one of kind is it not. Special Board Planner Wiser stated he does not know but will accept. Attorney Doyle stated on Page 107 Special Board Planner Wiser noted the record is replete and cited two (2) petitioners out of the of the twenty some that testified 25 and he also cited S67 the Mayors comments, which Attorney Doyle read onto the record. He then noted in terms of being a waterfront area where there is beautiful sunsets Seaview Harbor is not unique. You still have Anchorage Poynte and West Atlantic City.

Special Board Planner Wiser stated he is not the one who kept saying it was unique. He stated Attorney Doyle's clients kept saying over and over again how it was unique, how it is the only seashore area in Egg Harbor Township, the only area with docks as part of Egg Harbor Township. He indicated it was in the first chunk of client's testimony. Attorney Doyle asked if Special Board Planner Wiser can provide him quotes from the record during the next meeting. Special Board Planner Wiser stated no because he does not have access to the transcripts. Attorney Doyle he indicated so the record is clear. We assume we will need that record for when we are denied. He indicated when you are denied it is the safe place to go. He explained if you are denied court will well say minutes are not clear enough. We need a full record and you commission a reporter to produce a transcription when and if needed. He advised if the petitioner were to be granted by the Township then we would not have to spend the significant amount of money for the transcripts.

Attorney Doyle noted there have been a few occasions, maybe four (4) out of 20 something hearings when they did order transcripts. He indicated anyone can pay and he would assume Mrs. Silotoe and her employer to get the record. He stated he would assume either party often times decides to pay that burden until they have to. He indicated until that time the best he and Special Board Planner Wiser have, about much of the testimony are the minutes.

Special Board Planner Wiser asked Attorney Doyle if he is saying we did not have all this issue about where the shore is and where the shore isn't. He asked if Attorney Doyle does not recall that. Attorney Doyle stated he is not telling him anything. He is asking questions. May the record reflect: after a brief back and forth Chairman Garth gavelled down both Special Board Planner Wiser and Attorney Doyle. Special Board Solicitor Marcolongo advised we do not cut each other off. He indicated we are civil, we listen to each other statements, we let them finish and then we respond and this is how we will do this.

Attorney Doyle stated we are here to ask and answer questions. He stated Special Board Planner Wiser just cannot make a statement. Special Board Solicitor Marcolongo stated the formal rules of evidence are not applicable here and are liberally construed. He stated we are trying to have a dialogue here to

present the information to the Board so they can have a full picture. Attorney Doyle stated in Special Board Planner Wiser's report says the record is replete and he noticed that he footnotes. He indicated in this particular case you only had two (2) comments, correct and the article in which the Mayor is quoted. He stated forget what his petitioner's allegedly said. Do you believe Seaview Harbor is unique within Egg Harbor Township. Special Board Planner Wiser stated yes, he does.

Attorney Doyle asked to that degree what makes it unique. Special Board Planner Wiser stated he would like to take a step back because he does not want to get tripped over what the word unique means. Attorney Doyle stated he is not trying to trick Special Board Planner Wiser. Attorney Doyle asked what Special Board Planner Wiser thinks unique means. Special Board Planner Wiser stated he does not think it is used as, one of a kind, limiting all else or precluding all else as the dictionary definition may suggest. He indicated we have an area that is on the shore, that has a marina, boat docks, and a restaurant and a lot of very nice houses that's lay out is almost as a suburban subdivision would be that is different than West Atlantic City. He indicated it generally faces the sunrise as opposed to the sunset and he thinks all of that is unique. He indicated if it is not unique than it is charming or it has character. He stated pick your words. He indicated he does not want to be tied up into a definition.

Attorney Doyle stated he has read where Mayor McCullough has said Egg Harbor Township has more e water frontage than any other municipality in the State. Attorney Doyle stated we are not unique because there must be a lot of other water front areas in this municipality. Special Board Planner Wiser stated Attorney Doyle should have this conversation with his clients because they testified otherwise. Attorney Doyle stated to Special Board Planner Wiser that he is asking him a question not for him to continue to point the finger at his clients. Special Board Planner Wiser stated his clients are the petitioner's and they are the ones that have testified. May the record reflect: Attorney Doyle asked the court reporter to repeat the question, which she did, so Special Board Planner Wiser could answer. After the question was read Attorney Doyle noted it is a simple yes or no. Are there a lot of other water front communities in Egg Harbor Township.

Special Board Planner Wiser stated as Mr. Miller has testified in response to the petitioner's statements, yes, there are a lot of other water fronts. Attorney Doyle asked, as Mr. Miller testified, would Special Board Planner Wiser agree there are a number of other marina's, as he presented into evidence, licensed marina's. Special Board Planner Wiser stated yes. Attorney Doyle asked and the hundreds of homes that have docks. Special Board Planner Wiser stated yes. Attorney Doyle stated there was presented into evidence documents relating to community rating service that there are 880 homes in Egg Harbor Township that has flood insurance. Special Board Planner Wiser stated he forgets the number but the number 800 does stick in his mind.

Attorney Doyle stated which suggest they are around 10% of the water front homes in Egg Harbor Township. Special Board Planner Wiser stated he does not know that you could say that. He indicated you could be in a flood plain but not be water front. Attorney Doyle stated obviously there are a lot of other restaurants in Egg Harbor Township. Special Board Planner Wiser stated yes. Attorney Doyle stated on his way to this municipal building, by coming down Bargaintown Road, on his left he sees a water body. Special Board Planner Wiser stated it is Patcong Creek. Attorney Doyle asked if this is the English Creek Avenue. Special Board Planner Wiser stated no. Attorney Doyle advised this is a very nice area. Special Board Planner Wiser stated yes. Attorney Doyle asked if the English Creek area a nice area too. Special Board Planner Wiser stated it is where he lives so would say yes. Attorney Doyle stated so whoever and whatever was said by the petitioner's, Mr. Miller, Special Board Planner Wiser or himself there are other water front areas that are charming, have boat docks, have marina's, and we are one of

them. He stated maybe some elements different than the others more this less that, better this. Special Board Planner Wiser stated absolutely.

Attorney Doyle stated exhibit S67, as quoted by Special Board Planner Wiser on Page 107, it concludes with Mayor McCullough's comments in the footnote, but the whole article is about confusion. He stated it is entitled "Egg Harbor Township border leave locals, businesses confused" and it gives significant examples of that historic confusion. Attorney Doyle stated on confusion issue Special Board Planner Wiser did not cite this article within his report. Special Board Planner Wiser stated he admitted there was confusion.

Attorney Doyle asked if Special Board Planner Wiser would admit that there is a question what happens when there is a 9-1-1 call from Seaview Harbor. Special Board Planner Wiser asked if Attorney Doyle could be more specific. Attorney Doyle stated in the article Special Board Planner Wiser cited for a point he wanted to make about the nature of Seaview Harbor Mayor McCullough says "if there's a serious incident in Seaview Harbor, Longport would be called first. If there's a 9-1-1 call they would be closer than we would". Attorney Doyle stated Special Board Planner Wiser did not quote this in his report. Special Board Planner Wiser stated he did not quote that but he spoke to that issue. He indicated he spoke of the Longport police responding in an emergency situations, he spoke of the Longport fire being the first responder, and he talked about the Longport ambulance being a first responder. He stated he spent significant time talking about this and mutual aid. Attorney Doyle asked Special Board Planner Wiser if he agrees with what the Mayor said in S67 Page 3, paragraph 2. Special Board Planner Wiser stated yes and this is what he has in his report.

Attorney Doyle stated on Page 261 of Special Board Planner Wiser's report that denying deannexation would prevent Seaview Harbor residents from voting in Longport's elections and that would be detrimental to their wellbeing. Special Board Planner Wiser asked what letter. Attorney Doyle noted "B". Special Board Solicitor Marcolongo stated that was on the positive element and he is not sure that is what Attorney Doyle quoted. Attorney Doyle stated he would like to drop back for a moment. He indicated Special Board Planner Wiser cites this as a positive impact and the statute does not speak of what benefits would accrue from deannexation. He stated it talks about what negatives happen if deannexation is denied, correct. Special Board Planner Wiser stated yes.

Attorney Doyle asked why did Special Board Planner Wiser not put it in the statutory terms, which is evidence of negative detriment to their social and economic wellbeing. He asked is this not what 4.3.1 (page 261) meant to address in the statute. Special Board Planner Wiser stated no, he has that in 4.3.3 (Page 261). He indicated he followed the outline that was provided by the Planning Board in the Strathmere matter. He indicated that is the way it was worded and the way he took it. Attorney Doyle asked Special Board Planner Wiser when you do a municipal land use case or deannexation case do you not start with the statute. He indicated in 40:55D for Zoning and 40A-12 for. Special Board Planner Wiser asked Attorney Doyle if he is suggesting he did not have a full review of the statute in his report.

Attorney Doyle stated Special Board Planner wrote what the statute is, you copied the statute, but he is asking. Special Board Planner Wiser stated on Page 259 of his report under 4.3 he speaks to the statute, he then goes to 4.3.1 positive impact for the majority of the Seaview Harbor residents and then goes 4.3.2 Positive impact for the remaining portion of the Township, 4.3.3 Negative impact for the majority of Seaview Harbor residents, 4.3.4 Negative impact for the remaining portion of the Township, 4.3.5 Neutral impact for the majority of the Seaview Harbor residents, 4.3.6 Neutral impact for the remaining



portion of the Township, 4.3.7 Unknown impact for the majority of Seaview Harbor residents and 4.3.8 Unknown impact for the remaining portion of the Township. He asked what did he miss.

Special Board Solicitor Marcolongo stated the statute reads the Planning Board is supposed to report back to Township Committee on the impact of deannexation. He indicated this is the very first element of it. He stated the way Special Board Planner Wiser presented is a balance in setting forth that there is some positives and there does seem to be some negatives on both sides and it seems to be a fairly balanced approach to this. Attorney Doyle asked Special Board Planner Wiser if he believes the denial of the a petition, he stated factually Special Board Planner Wiser agrees the denial of the petition would mean Seaview Harbor residents could not vote in Longport elections, he stated this is obvious. Special Board Planner Wiser stated that is the way it is today.

Attorney Doyle stated and it would be a positive impact upon them if they could vote in those elections. Special Board Planner Wiser stated they have expressed an interest that they would like to be able to do that and in that sense it would be a positive impact. Attorney Doyle stated these things are finding a way into your conclusions because not merely are you repeating what the petitioners on one hand and what the Township people said on the other, you are determining in your judgement, whether the board accepts it or not, what is the positive impacts, neutral impacts and negative impacts are you not. Special Board Planner Wiser stated this is the way he sees it.

Attorney Doyle stated the way Special Board Planner Wiser sees it, it would be a positive impact for the majority of Seaview Harbor residents to vote in Longport elections. Special Board Planner Wiser stated from their perspective, yes. Attorney Doyle stated Special Board Planner Wiser indicated that is how he sees it. He asked if this is the way Special Board Planner Wiser sees it or is he parroting what the petitioners said. Special Board Planner Wiser stated the petitioners have expressed an interest in voting in the elections. He stated to the extent they vote in those elections it would be a benefit to them. Attorney Doyle asked the last sentence just referenced is that Special Board Planner Wiser speaking or the petitioners. Special Board Planner Wiser stated he fails to see what Attorney Doyle is trying to get out. He stated the petitioners have expressed a certain desire. He indicated to the extent that certain desire is grated they benefit. Attorney Doyle asked if Special Board Planner Wiser agrees it is a benefit to them. Special Board Planner Wiser indicated he agrees that whatever town they live in they should be able to vote in. He noted if they live in Longport they should be able to vote in Longport. If they live in Egg Harbor Township than they should be able to vote in Egg Harbor Township.

Attorney Doyle stated he would like to stay on Page 261. He then read onto the record “based upon the testimony and exhibits comprising the record as detailed in this report of findings, this office finds and recommends that deannexation would likely have: Deannextion would permit Seaview Harbor residents to vote in Longport’s elections and participate in certain of the Borough’s civic offerings”. Attorney Doyle stated to Special Board Planner Wiser that this is his office finding that would be a positive impact isn’t it. Special Board Planner Wiser stated that is what it says. Attorney Doyle asked Special Board Planner Wiser why it would have a positive impact. Special Board Planner Wiser stated that is one of the things they are seeking.

Attorney Doyle stated they are seeking to be deannexed. He indicated Special Board Planner Wiser did not say that was a positive, he did say that would be positive. But this is you recommend as a likely effect. Special Board Planner Wiser stated yes. Attorney Doyle asked their failure to be able to vote in Longport work to their detriment of social wellbeing. Special Board Planner Wiser stated not if they are not a part of that municipality. Attorney Doyle stated no, the denial of the petition would mean they

could not vote in Longport. Special Board Planner Wiser stated correct. Attorney Doyle stated Special Board Planner Wiser note if they could vote that would be a positive to them. Special Board Planner Wiser stated because they could vote in the town where they live. Attorney Doyle stated o.k.

Attorney Doyle asked Special Board Planner Wiser if he thinks denial of the petition results in social detriment to their wellbeing by preventing them from being able to vote in Longport. Special Board Planner Wiser stated no, because they wouldn't be living in Longport. Attorney Doyle stated he understands you cannot vote in a town that you are not a resident of. He indicated if the standard is what Special Board Planner Wiser just said than they would never be able to be deannexed. He stated the question is in terms of the statute, does Special Board Planner Wiser, as a planner believe given their desire and the fact they cannot meet their desire without deannexation being granted. The denial of the petition results in a detriment to their social wellbeing. Special Board Planner Wiser stated he comes back to the same answer. He indicated he knows Attorney Doyle does not like the answer and does not accept it and whatever words you use you're not happy with it and you don't think it responsive but that is his answer. They want to be part of Longport and they want to vote in Longport. He stated if they cannot be part of Longport they don't vote in Longport. He indicated if they vote in Longport they are part of Longport they get what they want. They are happy. It is beneficial. He indicated if nothing changes it is not a negative impact. He indicated it is not taxation without representation he indicated they are not getting taxed in that town.

Board Member Aponte stated at this point we have other matters and Attorney Doyle may want to reword or rethink this question for next time.

Board Secretary Wilbert advised in order to carry this meeting she is requesting the Board establish a special meeting date of Wednesday, April 6, 2016, 7:00 p.m. This meeting will be from 7:00 p.m. – 10:00 p.m. and the possibility of Tuesday, April 26<sup>th</sup>. Board Member Aponte asked Attorney Doyle if his cross examination would be done on the April 6<sup>th</sup>. Attorney Doyle stated he would probably would not.

**Motion Aponte/Carman to set special meeting dates and time of Wednesday, April 6, 2016, 7:00 p.m. – 10:00 p.m. and Tuesday, April 26, 2016, 5:00 p.m. – 9:00 p.m. Vote 6 Yes:** Aponte, Carman, Eykyn, Garth, Kearns, Pfrommer.

**Motion Aponte/Carman to carry public hearing to Wednesday, April 6, 2016, 7:00 p.m., prevailing time. VOTE 6 Yes:** Aponte, Carman, Eykyn, Garth, Kearns, Pfrommer.

Board Secretary Wilbert noted the Board will also conduct their regular meeting on April 18, 2016, which will consist of hearings for regular development applications. The deannexation is not scheduled.

**SUMMARY MATTER(S):**

**SECTION I: Discussions of matters pertaining to the Board:**

**A: General public discussion: Motion Aponte/Carman to open public portion**

John DaBek stated he is not speaking on the hearing per say, but the one thing he would like to say is, as a result of this process someone in the Township, and this came from the Police Chief's office. He stated all their records say they live in Longport, 08403. Board Member Aponte asked the court reporter if knows who this is. Mr. DaBek than for the record advised: John DaBek, 36 Sunset Boulevard, Longport, NJ 08403. He indicated he received something from the Police Chief and it says Egg Harbor Township,

NJ 08403. He indicated that is not their official mailing address. He stated the post office does not sanction that address. Mr. DaBek stated Egg Harbor Township is not an acceptable city for this zip code combination. Mr. DaBek stated all their tax records are correct, his sewerage records are correct. He stated someone is now deciding to use this address and we would just like the township to use the proper mailing address in the future. Mr. DaBek stated he thinks this is coming out of these hearings where people are trying to prove some points. Special Board Solicitor Marcolongo asked Mr. DaBek not to speak of things directly if you are just addressing there was a mailing issue that is fine. He indicated he does not want to go any further. Board Member Aponte stated it could have just been a clerical error.

Mr. DaBek stated he has evidence that it is beyond that. He indicated Mr. McGlinchey's wife. Special Board Solicitor Marcolongo stated we are not going to supplement the record at this point. Mr. DaBek stated this has nothing to do with what he is saying. He advised what he was saying is that now the police wrote out a report for Mr. McGlinchey's wife and they put down her address as Egg Harbor Township, NJ and it is not. He stated it is not their official mailing address. He indicated he wants this information, he stated he does not want these hearings to let the wrong addresses and someone trying to prove a point, right. Let's get our mailing addresses straight. That is all he has to say.

**Motion Carman/Pfrommer to close public portion**

**B: Motion Carman/Aponte to approve Special Planning Board Minutes of September 29 and September 30, 2015. Vote 5 Yes:** Carman, Eykyn, Garth, Kearns, Pfrommer. **1 Abstention:** Aponte

**MEMORIALIZATION OF RESOLUTION(S):**

**May the record reflect:** Township Administrator, Peter Miller, joined the Board in order to vote on the memorialization of resolutions.

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| 1. | <b><u>SD 07-15</u></b><br><b>Robert and Arlene Fischer</b> | <b>Minor Subdivision</b><br><b>3909/34&amp;35</b><br><b>428 &amp; 432 Oakland Avenue</b> |
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**Motion Eykyn/Kearns to memorialize resolution granting conditional minor subdivision approval**  
**Vote 5 yes:** Eykyn, Garth, Kearns, Miller, Pfrommer **2 Abstention(s):** Aponte, Carman

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| 2. | <b><u>SPPF14-15</u></b><br><b>AMI-Real Estate, LLC</b> | <b>Preliminary and Final Major Site Plan</b><br><b>1901/11&amp;12</b><br><b>Black Horse Pike and Spruce Avenue</b> |
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**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waivers, design waivers, variance relief conditional preliminary and final major site plan approval (Phase I), and conditional preliminary and final major site plan approval (Phase II).** **Vote 5 yes:** Eykyn, Garth, Kearns, Miller, Pfrommer **2 Abstention(s):** Aponte, Carman

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| 3. | <b><u>SPPF12-15</u></b><br><b>Atlantic City Electric Company</b><br>Zone, RG-2 & P0-1, 117.07 +/- acres | <b>Preliminary and Final Major Site Plan</b><br><b>1601/6&amp;7</b><br><b>3047 &amp; 3051 English Creek Avenue</b> |
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**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waivers, design waivers, variance relief, conditional preliminary/final major site plan approval, and permit administrative approval for feeder line clearing. Vote 5 yes: Eykyn, Garth, Kearns, Miller, Pfrommer 2 Abstention(s): Aponte, Carman**

**Motion Pfrommer/Aponte to adjourn at 9:05 P.M. VOTE 7 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Miller, Pfrommer**

Respectfully submitted by,

Theresa Wilbert, Secretary