

The OBVTA Board of Directors has concluded its' preliminary research into the likelihood of Ortley Beach seceding from Toms River Twp. New Jersey applicable statutes were researched, applicable case law was researched, and consultation with experts was also undertaken. A summary and an in-depth written analysis is below.

SUMMARY:

Therefore, the OBVTA finds that:

1. Secession in cases similar to that of Ortley Beach are rarely, if ever, successful, largely because the secession is usually harmful to the municipality from which the neighborhood is seceding, in this case, Toms River.
2. The time frame for undertaking secession would be extremely long, likely in excess of five years and possibly as long as ten.
3. The cost could be prohibitive, likely in excess of \$500,000 and possibly \$1 million, well beyond the means of OBVTA.
4. The likelihood of success is extremely limited, most likely less than 25% and possibly as low as 5%.
5. Unless Ortley Beach has a guaranteed municipality to join, the entire effort is a large waste of time and money.

OBVTA SECESSION MEMORANDUM
(DETAILED REPORT)

ISSUE

Per the OBVTA General Membership's request, the OBVTA Board of Directors was asked to conduct a feasibility study on the potential likelihood of success of Ortley Beach seceding from Toms River Township.

APPLICABLE LAW

The applicable law controlling the potential annexation of an area from its' governing body can be found under N.J.S.A. 40A:7-2 entitled Annexation: Petitioning Contents, and more particularly under N.J.S.A. Section 40A:7-12.1. N.J.S.A. Section 40A:7-12.1 reads in pertinent parts:

“In any judicial review of the refusal of the governing body of the municipality in which the land is located or the governing body of the municipality to which annexation is sought to consent to the annexation, the petitioners have the burden of establishing that the refusal to consent to the petition was arbitrary or unreasonable, that refusal to consent to the annexation is detrimental to the economic and social well-being of a majority of the residents of the affected land, and that the annexation will not cause a significant injury to the well-being of the municipality in which the land is located”. See N.J.S.A. Section 40A: 7-12.1. The statutes have been cited in a multitude of cases over the years. The most controlling and/or similar cases currently being the New Jersey Supreme Court and Appellate Division Cases of:

1. West Point Island Civil Association, etc., et al vs. Township of Dover, et al 54 N.J. 339
2. Sea View Harbor Realignment Committee, LLC, et al vs. Egg Harbor Township (Appellate Division case)
3. Bay Beach Way Realignment Committee, LLC, et al vs Township of Toms River, et al (Appellate Division case).

These cases set forth the ‘heavy burden’ on Petitioners seeking to secede from a governing municipal entity. Once a group petitions their local municipality for annexation, and the governing body, in this case Toms River, rejects that petition for annexation, the case law sets forth a heavy burden that must be established in order for the courts to grant the Petitioner’s request for annexation from the local government. The Petitioners must show ALL three of the following criteria that is set forth in the applicable statute:

1. The governing body’s refusal to consent to the petition was
 - Arbitrary and unreasonable;
 - The refusal is detrimental to the economic and social well-being of the majority of the residents of the affected land, in this case, Ortleigh Beach, and;
 - That the annexation will not cause a significant injury to the well-being of the municipality (in this case Toms River), in which the land is located.

If all three are not able to be successfully established, then the request for annexation shall be denied.

Of particular note, and of similarity to the situation involving Ortley Beach and Toms River Township, the case listed above, Sea View Harbor Realignment Committee, LLC, et al vs. Egg Harbor Township, is quite telling. The residents located in Sea View Harbor had an adjoining municipality, Long Port Borough, that they wished to join, seceding from Egg Harbor Township. Their geographic conditions and economic conditions are similar to those facing Ortley Beach and Toms River Township. The Court in Sea View Harbor indicated that the 1982 annexation statute set forth that it imposes support by the New Jersey Legislature to preserve current municipal boundaries and imposes a “heavier burden” on those seeking to secede from their local government. In that case, the Appellate Division confirmed the trial judge’s ruling that Egg Harbor Township’s refusal to consent to annexation was neither arbitrary nor unreasonable and further went on to indicate that “the Petitioners did in fact meet their burden to establish that the refusal to consent to the annexation is detrimental to the economic and social well-being of the residents of Sea View Harbor.” However, the court went on to conclude that the “Petitioners failed to meet their burden to establish that the annexation will not cause significant injury to the well-being of Egg Harbor Township.” Finally, the court also concluded that the refusal of Egg Harbor Township to consent to the petition was not arbitrary or unreasonable. As such, the Appellate Division in that case denied Petitioners request and affirmed Egg Harbor Township’s decision to keep Sea View Harbor as part of Egg Harbor Township. The standards set forth in the Sea View Harbor case are consistent with those set forth in other cases involving secession and annexation and, in fact, are very similar to the hurdles faced by Ortley Beach when considering potential annexation from Toms River Twp. Toms River would most certainly claim that the loss of Ortley Beach would most definitely cause significant injury to the well-being of the Township. It would be impossible for Ortley Beach to argue otherwise given the large portion of the Township’s property tax paid by Ortley Beach.

EXPERTS OPINIONS OF SECESSION

In addition to the OBVTA Board of Directors review of the applicable statutes as well as the applicable case law, the Board of Directors also consulted three experts in the field of annexation. The information obtained during the interviews and meetings with the experts in this matter were strikingly consistent with each other. Some of the relevant and pertinent parts to Ortley Beach's situation are set forth hereunder.

With regard to the time frame involved in this process, the experts indicated that from the time of preparing the initial petition to secede from Toms River through the full litigation process including appeals, could be anywhere from eight to ten years. One of the experts indicated that the time frame he characterized as "short of forever but not by much". The Sea View Harbor case took in excess of eight years and the case involving South Seaside Park, which is just beginning its appeal process has currently taken in excess of eight years. Another attorney involved in the Egg Harbor case calculated that given the planning time leading up to the original petition, the Egg Harbor case actually took in excess of ten years. The experts opined that many factors change the political and legal landscape during such an extensive time period and the experts all indicated that the change in laws, expenses, residents supporting secession, and the local councils and mayors all changed during these time periods making it extremely difficult to determine whether it is even worth-while to undertake such an endeavor at the beginning of a process.

Another issue discussed with the experts was the cost involved in undertaking an attempt at annexation. The cost for these matters include but are not limited to the hiring of legal counsel, hiring of town planners, hiring of certified municipal accountants, costs associated with the litigation, etc. There was some variance as to the total cost estimated by the legal experts but it was estimated that if the litigation involving Ortley Beach in its attempt to secede from Toms River "only took" five years, the cost would easily be in excess of \$500,000.00 and would probably be closer to \$1,000,000.00. The attorney representing the Petitioners in one of the matters was charging \$450.00 an hour at the end of the litigation. In the recent case involving South Seaside Park in their battle against Berkeley Township, the South Seaside Park residents have expended attorney's fees

alone in the neighborhood of \$250,000.00 - \$350,000.00. The town has spent in excess of \$1,000,000.00. One of the experts consulted did indicate that he learned that the attorney's fees alone in the Egg Harbor Township litigation from the Petitioners side were in excess of \$800,000.00. This does not include the cost of the planning experts, municipal economist experts, as well as the litigation costs. From the information gathered through experts, it appears that the petitioners in those cases basically ran out of money towards the end. As can be seen from the numbers quoted, the cost and expenses involved in such a secession undertaking can be enormous and way beyond any amount that could be considered by OBVTA, or the residents of Ortley Beach.

Each of the experts consulted indicated that another factor to consider when analyzing potential expense for the efforts at secession is that as the litigation goes on and on, less and less residents tend to support the litigation, which in turn, leaves the remaining individuals supporting the litigation paying an increasingly larger share.

The Board of Directors also discussed with the experts, the "likelihood of success" of Ortley Beach attempting to secede from Toms River. All of the experts were of the same opinion that given our current situation, our large percentage of taxes, that the likelihood of success would be very slim. The experts' opinions ranged from one expert indicating that if Ortley Beach were his clients, he would be forced to indicate that the likelihood of success would be probably less than 5%. Another expert was more optimistic but indicated that it would "certainly be less than 25%".

Many factors would go into this case but the experts all agreed that assuming Toms River handled the original refusal of the application correctly, it would be extremely difficult to have that decision later overturned in court considering that we are a substantial portion of the tax base of Toms River and therefore, it would be very difficult to establish that annexation of Ortley Beach would not cause significant injury to the well-being of Toms River.

Each of the experts consulted typically asked towards the end of the consultation, "if not Toms River, where would Ortley Beach go?" One of the experts consulted, is friendly with the Mayor of Lavallette, Walter Lacicero. His opinion was that there was "no way" Wally would ever be in

favor of taking Ortley Beach into Lavallette. All experts agreed that it could be possible that Seaside Heights would accept Ortley Beach, but each were familiar with Ortley Beach's situation and each indicated that they would be extremely surprised if the majority of all residents of Ortley Beach would want to join Seaside Heights. All experts indicated that if you really don't have a guaranteed place to go, then all of this is really just a waste of time and huge sums of money.

CONCLUSION

Upon review of the applicable New Jersey Statutes, applicable case law, and consultation with experts, it seems that:

1. Secession in cases similar to that of Ortley Beach are rarely, if ever, successful, largely because the secession is usually harmful to the municipality from which the neighborhood is seceding, in this case, Toms River.
2. The time frame for undertaking secession would be extremely long, likely in excess of five years and possibly as long as ten.
3. The cost could be prohibitive, likely in excess of \$500,000 and possibly \$1 million, well beyond the means of OBVTA.
4. The likelihood of success is extremely limited, most likely less than 25% and possibly as low as 5%.
5. Unless Ortley Beach has a guaranteed municipality to join, the entire effort is a large waste of time and money.

Based on the above, it is the opinion of the OBVTA Board of Directors that the issue of secession of Ortley Beach from Toms River should not be further pursued at this time.

December 15 , 2022