

SCOTT A. HEIART, ESQ. (#016662004)  
**CARLIN & WARD, P.C.**  
25B Vreeland Road, Suite 203  
P. O. Box 751  
Florham Park, New Jersey 07932  
973-377-3350  
scott.heiart@carlinward.com  
Attorneys for Plaintiff  
Long Beach Island Consolidated School District  
Board of Education

LONG BEACH ISLAND  
CONSOLIDATED SCHOOL DISTRICT  
BOARD OF EDUCATION

PLAINTIFF,

V.

BOROUGH OF SHIP BOTTOM, THE  
COUNCIL OF THE BOROUGH OF  
SHIP BOTTOM AND THE LAND USE  
REVIEW BOARD OF THE BOROUGH  
OF SHIP BOTTOM

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – OCEAN COUNTY  
DOCKET NO.

Civil Action

**COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

Plaintiff, the Long Beach Island Consolidated School District Board of Education (the “School Board” or “Plaintiff”) by and through its attorneys, Carlin & Ward, P.C., by way of Complaint against Defendants, the Borough of the Ship Bottom (the “Borough”), the Council of the Borough of Ship Bottom (the “Council”), and the Land Use Review Board of the Borough of Ship Bottom (the “Land Use Board” which together with the Council and Borough shall be collectively referred to as the “Borough Defendants”) herein states:

**PRELIMINARY STATEMENT**

1. This Complaint challenges the Borough Defendants’ arbitrary, capricious, unreasonable and bad faith actions of entering into a scheme and colluding to hinder and/or prevent the sale of the Long Beach Island Grade School property (the “School Property”) and to improperly devalue the School Property for purposes of a future acquisition by the Borough.

**THE PARTIES**

**A. The Plaintiff**

2. The School Board is a public agency, organized under the auspices of New Jersey Statutes Title 18A and tasked with providing efficient and free public education for school-aged children residing in the communities of Barnegat Light, Harvey Cedars, Long Beach Township, Ship Bottom and Surf City, New Jersey.

3. The School Board has its principal place of business located at 201 20<sup>th</sup> Street, Ship Bottom, New Jersey 08008.

4. The School Board is the owner of the School Property which is located at 240 W. 20th Street, Ship Bottom, NJ 08008 and also identified as Block 48, Lot 1 on the Borough’s Tax Map.

**B. The Defendants**

5. The Borough is a municipal corporation of the State of New Jersey with its principal place of business located at 1621 Long Beach Blvd., Ship Bottom, NJ 08008.

6. The Council is a body politic of the State of New Jersey with its principal place of business located at 1621 Long Beach Blvd., Ship Bottom, NJ 08008.

7. The Land Use Board is a municipal land use board organized and authorized under the authority of the New Jersey Municipal Land Use Law and in accordance with the ordinances of the Borough with its principal place of business located at 1621 Long Beach Blvd, Ship Bottom, NJ 08008.

**FACTS COMMON TO ALL COUNTS**

**A. The School Property & the School Board**

8. The School Board purchased the School Property back in 1929 from Beach Arlington Realty.

9. The School Property is approximately 3.96 acres and is improved with an approximately 54,941 sq. ft. school building known as the Long Beach Island Grade School (the “Grade School”).

10. The Grade School opened in 1951 and currently services students in Grades 3 - 6.

11. The School Property is located within the Borough’s P, Public District Zone.

12. The School Property is surrounded by residential properties and a residential zone.

13. As recently as 2019, there was a public referendum to vote on spending approximately \$8,000,000.00 in order to make necessary HVAC and structural repairs to the Grade School.

14. The proposed repairs were not all-encompassing as there would have been other costly repairs that still would have needed to be done.

15. The referendum was heavily voted down by the taxpayers.

16. After the referendum was voted down, the School Board explored the option of consolidating all students either at the Ethel Jacobsen Elementary School (the “EJ School”) or the Grade School.

17. The EJ School is an approximately 33,135 sq. ft. building which, as of 2019, housed approximately 106 students Grades Pre-K through 2. The EJ School is located on an approximately 5 acre parcel, with half of the parcel being in Surf City and the other half located in the Borough.

18. The School Board's exploration was due to decreasing enrollment at the Grade School and to be fiscally responsible in addressing the aging schools on the Island, the concerns of the local taxpayers and the needs of the students.

19. The goal was, and still is, to consolidate all of the students into one renovated school building while minimizing costs to the taxpayers.

20. The School Board considered all options, including making improvements and additions to both the Grade School and the EJ School for purposes of consolidation.

21. The Board retained Spiezle Architects who presented to the community and the School Board a report detailing the costs to renovate and put an addition at the EJ School or the Grade School.

22. Based on the Spiezle Report, it would cost approximately \$16,000,000.00 to renovate and do an addition to the EJ School.

23. In contrast, the Spiezle Report concluded that it would cost approximately \$19,000,000.00 to do the necessary improvements, repairs and an addition to the Grade School.

24. Also present at the presentation to the community and School Board, was a representative from the engineering firm of Harrison-Hamnett who had conducted inspections at the Grade School.

25. The engineer from Harrison-Hamnett expressed that it was not prudent to invest money into the Grade School because of the significant issues already known, including structural issues, and also because they did not know what other issues they would likely find.

26. The School Board also examined the total amount of estimated proceeds which they could possibly get from the sale of either school.

27. It was determined that the property on which the EJ School resides was worth significantly less due to factors as set forth in the title which would limit the amount the School Board would ultimately receive and also due to the right of first refusal held by Surf City.

28. Taking the taxpayers into consideration, the School Board determined the best way to move forward from a fiscal standpoint, and what was best for the students of Long Beach Island in terms of receiving the best education possible, was to sell the Grade School, consolidate the students at the EJ School and use the proceeds from the sale towards a necessary addition and renovations to the EJ School.

29. Around the same time frame, the School Board retained the appraisal services of Integra Realty Resources (“IRR”), to value the Grade School Property.

30. The IRR Appraisal Report, dated September 14, 2020, concluded that based on the surrounding residential zoning, the most reasonably probable use of the School Property, assuming the Grade School is closed, would be for a residential subdivision development.

31. Based on this conclusion, IRR valued the School Property as of September 14, 2020 at \$9,700,000.00.

32. On January 26, 2021, the School Board conducted a public meeting at which time it unanimously voted (with the exception of 1 abstention) in favor of beginning the process for the sale/disposition of the School Property.

33. At the same meeting, the School Board voted in favor of consolidating the students enrolled in the Grade School and the EJ School into the EJ School, at a date to be determined by the School Board.

34. The proceeds from the sale of the School Property would go towards the planned expansion of the EJ School.

35. The Borough Defendants did not object or file a challenge to the School Board's actions taken at the January 26, 2021 meeting.

36. By way of a letter sent via email, dated February 3, 2021, the School Board wrote to Borough Mayor Huelsenbeck formally advising the Borough of its determination to sell the School Property and consolidate the students with the EJ School.

37. In the letter, the School Board inquired whether the Borough was interested in acquiring the School Property prior to it being put out for public bid.

38. The Borough Defendants did not respond to the School Board's February 3, 2021 email.

39. Having not received a response from the Borough, on February 10, 2021, the School Board had the February 3, 2021 letter hand delivered to the Mayor.

40. Once again, the Borough did not provide any response to the School Board's inquiry.

41. On February 23, 2021, the School Board conducted a public meeting at which time it approved the retention of Spiezle Architects to perform architectural and engineering services related to the renovations and addition at the EJ School.

42. In March 2021, the sale of the Grade School was sent out for public bid.

43. On March 16, 2021, the School Board unanimously approved a capital reserve withdrawal in the amount of \$2,700,000.00 to perform certain improvements, renovations to the EJ School.

44. The Borough Defendants did not object or file a challenge to the actions taken by the School Board at the March 16, 2021 meeting.

45. Instead of objecting or filing a formal challenge to the School Board's actions regarding the sale of the School Property and the consolidation of the students at the EJ School, the

Borough Defendants engaged in a scheme to hinder the School Board's efforts to sell the School Property and to devalue the School Property.

**B. The Master Plan and 2021 Reexamination Report**

46. The Borough originally adopted its Master Plan in 1979, and itself recommends that the Borough's master plan be updated. Exhibit A at p. 17.

47. The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL") only requires a municipality to undertake a reexamination of its master plan at least once every ten (10) years.

48. Since adopting its Master Plan in 1979, the Borough has prepared reexaminations in 1982, 1988, 1992, 2000, 2006 and 2018 and 2021.

49. Despite having done a reexamination of the Master Plan as recently as 2018, and in direct response to the School Board's decision to sell the School Property, the Land Use Board retained T&M Associates to prepare a 2021 Master Plan Reexamination Report.

50. The 2021 Master Plan Reexamination Report, dated March 4, 2021 ("2021 Reexamination Report"), was presented to, and voted on by, the Land Use Board on March 17, 2021. A true and accurate copy of the 2021 Master Plan Reexamination Report is annexed hereto as **Exhibit A**.

51. The 2021 Reexamination Report does not constitute an amendment to the Borough Master Plan.

52. The 2021 Reexamination Report stated that the Borough had significant concerns about the planned closure of the School Property and the potential for its subsequent conversion to uses not consistent with the P (Public) Zoning. Exhibit A at p. 11.

53. The 2021 Reexamination Report further provided that it was the Borough's position that the School Property remain in public use. Exhibit A at p. 11.

54. The 2021 Reexamination Report stated that the most critical issue facing the Borough was the need to maintain the “integrity” of the P (Public) Zone. Exhibit A at p. 17.

55. The 2021 Reexamination Report provided that the need to address the integrity of the P (Public) Zone is heightened as a result of the “issues” related to the School Property. Exhibit A at p. 17.

56. The 2021 Reexamination Report recommended that the Borough revise the P (Public) Zone to list specific prohibited uses including, but not limited to, residential, commercial and industrial uses. Exhibit A at p. 17.

57. The 2021 Reexamination Report recommended that the Borough revise its current recreation and open space element to target certain properties for acquisition by the Borough, including, at a minimum, the School Property. Exhibit A at p. 17.

58. In identifying goals advanced by the preservation of the School Property, the 2021 Reexamination Report cites the following: Environmental Sustainability – “Protect, maintain and conserve the natural resources of Ship Bottom for continued environmental quality and health of all residents” and “[e]ncourage provision of such environmentally friendly features as rain gardens, porous pavement and natural landscapes with native plantings as appropriate.” Exhibit A at pp. 11-12.

59. The 2021 Reexamination Report asserted that maintaining the School Property as a public use will protect the “existing neighborhood character” around the School Property. Exhibit A at p. 11.

60. This rationale is flawed as the surrounding properties on 21<sup>st</sup> and 18<sup>th</sup> Street are residential homes and, in fact, the surrounding area is zoned Residential.



61. The 2021 Reexamination Report also cited the mitigation of nuisance flooding as a goal/rationale for preventing the development of the School Property. Exhibit A at p. 11.

62. The goals and rationale cited in the 2021 Reexamination Report are nothing more than subterfuge.

63. The 2021 Reexamination Report does not show how a residential development on the School Property would increase nuisance flooding.

64. The 2021 Reexamination Report makes blanket assertions about concerns over increased impervious coverage but fails to show any direct correlation between use and impervious coverage as it relates to the School Property.

65. The existing School building and paved areas are already impervious over approximately  $\frac{3}{4}$  of the area of the School Property.

66. The 2021 Reexamination Report does not show that a residential development on the School Property would not fit in with the residential “character” of the surrounding neighborhood especially since the surrounding zone is residential.

67. The 2021 Reexamination Report failed to include a balancing test between the conflicting public interests of the Borough and the School Board.

68. The 2021 Reexamination Report is silent as to the impacts its recommendations will have on the value of the School Property.

69. The value of the School Property is important to the taxpayers of the entire Island, which includes as a subset, the taxpayers of the Borough.

70. The 2021 Reexamination Report attests that the Borough has not prepared a housing element or fair share plan or otherwise has taken action to meet its affirmative obligations under the Mount Laurel Doctrine.

71. Redevelopment of the School Property offers the ability to contribute to the fulfillment of the Borough's obligations to the protected class by providing low and moderate income housing.

72. The 2021 Reexamination Report cites to, and relies upon, the 2018 County Multi-Jurisdictional Hazard Mitigation Plan (the "Mitigation Plan"). Annexed hereto as **Exhibit B** is a true and accurate copy of the relevant section of the relevant table from the Mitigation Plan regarding the School Property.

73. The 2021 Reexamination Report provides, in relevant part, that the Mitigation Plan recommends the retention of the School Property for use as an emergency shelter. Exhibit A at p. 11.

74. The 2021 Reexamination Report states that the Mitigation Plan calls for the acquisition of the School Property by the Borough. Exhibit A at pp. 11 and 13.

75. The relevant portion of the Mitigation Plan does not recommend the acquisition of the School Property, but rather provides that the Borough "prefers" to acquire the School Property for use as an emergency shelter. Exhibit B.

76. One of the authors of the 2021 Reexamination Report, Stan C. Slachetka, PP, AICP of T&M Associates, was quoted in the Sandpaper, a local newspaper, as saying that the recommendations set forth in the Report, as they relate to the School Property, would make it even "harder" for a purchaser of the Property to obtain a D(1) Use Variance.

77. Mr. Slachetka admitted in that same article that the sale of the School Property was the "primary reason" for presenting the 2021 Reexamination Report.

**C. The Land Use Board Hearing Regarding the 2021 Reexamination Report**

78. On March 17, 2021, the Land Use Board conducted a public hearing regarding the 2021 Reexamination Report.

79. No evidence was presented at the hearing demonstrating that the sale of the School Property and development thereof would lead to additional or increased nuisance flooding.

80. No evidence was presented at the hearing that a residential use upon the School Property would be inconsistent with the surrounding neighborhood.

81. No evidence was presented at the hearing that demonstrated that the Land Use Board performed a balancing test between the interests of the Borough and that of the School Board.

82. No evidence was presented at the hearing, nor was there any analysis done by the Land Use Board and its professionals, regarding the change in demographics and enrollment for the Grade School and the need to raise the necessary capital to upgrade the EJ School.

83. No evidence was presented at the hearing, nor was there any analysis performed, regarding the Borough's obligations under the Mount Laurel Doctrine.

84. No evidence was presented at the hearing, nor was there any analysis performed, regarding the fact that the sale and redevelopment of the School Property offers the ability to contribute to the fulfillment of the Borough's obligations to a protected class by providing needed low and moderate income housing.

85. Despite the lack of evidence to support the purported goals set forth in the 2021 Reexamination Report, the Land Use Board voted to approve the Reexamination and recommended that the Council make the necessary changes to the P (Public) Zone and amend the current recreation and open space element to acquire the School Property.

**D. Letter to New Jersey Department of Education**

86. In furtherance of the scheme to hinder or prevent the sale of the School Property, it was reported that by way of letter dated April 21, 2021, Mayor Huelsenbeck, along with Surf City Mayor Hodson and Long Beach Township Mayor Mancini, wrote to the Acting Commissioner of the

New Jersey Department of Education asking for a meeting to discuss their concerns with the sale of the School Property.

87. The School Board had no knowledge of the letter, was not provided a copy of the letter, and did not have any opportunity to provide any response or input.

88. As of the date of this filing, the School Board is unaware of whether the Acting Commissioner has responded to the Mayors' request.

**E. Ordinance 2021-05 and the April 27, 2021 Council Hearing**

89. On March 23, 2021, the Council introduced Ordinance 2021-05 entitled "Ordinance Amending Chapter 16.20 of the Code of the Borough of Ship Bottom, Entitled P Public District to Define the Intent and Purpose of the P Public District and Specify Prohibited Land Uses Therein." Annexed hereto as **Exhibit C** is a true and accurate copy of Ordinance 2021-05.

90. Ordinance 2021-05 states, in relevant part, that "enactment of new section of the municipal code defining the intent and purpose of the P Public District and setting forth prohibited uses therein is consistent with the recommendations of 2021 Mater Plan Reexamination Report."

91. The stated purpose and intent of Ordinance 2021-05 was to prohibit all uses other than those which are currently permitted in the P Public District Zone. Such prohibited uses include: residential uses; commercial uses; industrial uses; any other principal use not specifically identified in §16.20.010.B; and any other accessory use not specifically identified in §16.20.010.C.

92. On or about April 21, 2021, the Land Use Board conducted a hearing and reviewed Ordinance 2021-05 for consistency with the recommendations set forth in the 2021 Reexamination Report.

93. The Land Use Board did not review Ordinance 2021-05 to see if it was in conformance with the Master Plan as required by the MLUL.

94. The Land Use Board, in cursory fashion, voted in favor of the Council moving forward with the proposed Ordinance.

95. In advance of the April 27, 2021 public hearing, counsel for the School Board wrote a letter to the Mayor and Council advising of the Board's intentions to object to Ordinance 2021-05 and also provided the Mayor and Council with the planning analysis prepared by J. Creigh Rahenkamp, NJPP (the "Rahenkamp Analysis") demonstrating why the Ordinance was inconsistent with the powers granted to the Borough under the MLUL and the constitutional protections afforded landowners. Annexed hereto as **Exhibit D** is a true and accurate copy of the April 26, 2021 Letter and along with the Rahenkamp Planning Analysis.

96. The letter asked that the Council recognize Mr. Rahenkamp and permit him to testify regarding his Analysis.

97. On April 27, 2021 the Council held a public hearing on Ordinance 2021-05.

98. Both Mr. Rahenkamp and counsel for the Board appeared during the April 27, 2021 hearing.

99. Despite counsel's request for sufficient time to be heard, the Mayor and Council limited counsel's objections to five (5) minutes.

100. The Mayor and Council refused to allow Mr. Rahenkamp to testify, stating that there was no reason they needed to hear from a planner regarding the proposed amendment to the Zoning Ordinance.

101. At the repeated behest of the School Board's counsel, the Council agreed to make the letter and Rahenkamp Analysis part of the record.

102. The Land Use Board's counsel appeared at the April 27, 2021 Council meeting and took an active role in the Council's process regarding Ordinance 2021-05 by commanding authority and objecting to the School Board's counsel statements.

103. Counsel for the Land Use Board said the Ordinance was not making any changes to the Zone and, therefore, there was no basis for the School Board's objection.

104. After closing the public comment portion of the hearing as it related to the Ordinance, the Council decided to re-open the matter for additional public comments from two residents who supported maintaining the Grade School.

105. One of those residents was William Fenimore, the former President of the School Board.

106. Previously, in his capacity as School Board President, Mr. Fenimore sought to close and sell the EJ School and consolidate all students at the Grade School. These efforts were done without knowledge of certain members of the School Board and they ultimately failed.

107. Instead of focusing on the Ordinance, both members of the public used the opportunity for re-opened public comment to improperly and unnecessarily levy attacks against the School Board.

108. The Council did not present any lay or expert testimony regarding why the Ordinance should be adopted, why it was necessary to have the P Public Zone amended to specifically list prohibited uses and/or any discussion regarding the impacts this amendment to the Ordinance would have on the School Property.

109. The Council did not perform a balancing test between the interests of the Borough and that of the School Board.

110. The Council did not conduct any discussion of the Borough's obligations under the Mount Laurel Doctrine and how the opportunity to develop the School Property could fulfill a portion of that obligation.

111. The record before the Council was wholly barren of any reasoning or justification for the adoption of Ordinance 2021-05 other than that it conformed to the recommendation of the Land Use Board.

112. When confronted by the counsel for the School Board about the true motives and intent behind the 2021 Reexamination Report and adoption of the Ordinance being to hinder the sale of the School Property and devalue the School Property for a future acquisition, the Council had no response.

113. No evidence was presented at the hearing, nor was there any analysis done by the Council or its professionals, regarding the change in demographics and enrollment for the Grade School and the need to raise the necessary capital to upgrade the EJ School.

114. No evidence was presented at the hearing, nor was there any analysis performed, regarding the Borough's obligations under the Mount Laurel Doctrine.

115. No evidence was presented at the hearing, nor was there any analysis performed, regarding the fact that the sale and redevelopment of the School Property offers the ability to contribute to the fulfillment of the Borough's obligations to a protected class by providing needed low and moderate income housing.

116. Despite the lack of a record, the Council voted unanimously in favor of the adoption of Ordinance 2021-05.

**F. The Rahenkamp Planning Analysis**

117. The Council's refusal to allow testimony from Mr. Rahenkamp tainted the process regarding the adoption of Ordinance 2021-05.

118. Mr. Rahenkamp began his analysis with the 2021 Reexamination Report's statement that flooding "is exacerbated by increased impervious cover" and that the "athletic field and playground...represent an important and large area of porous cover and natural landscape that should be preserved to mitigate nuisance flooding." Exhibit D (analysis) at p. 2.

119. In that regard, the Rahenkamp analysis indicated that there is no direct correlation between use and impervious cover and that impervious cover can be addressed through zoning regulations without having to resort to an elimination of all non-public uses. Further, the compacted nature of the soils underlying an active recreation field are not conducive to stormwater absorption or control, and therefore, their asserted value in this role is greatly overstated. Exhibit D (analysis) at p. 2.

120. The Rahenkamp analysis further recognized that the Borough Defendants failed to follow the appropriate procedures under the MLUL insofar as the Land Use Board's consistency review under N.J.S.A. 40:55D-26 was with respect to the 2021 Master Plan Reexamination Report and not the Master Plan, as amended. Exhibit D (analysis) at p. 4.

121. The Rahenkamp analysis indicated that the Borough has failed to comply with its obligations under the Mount Laurel doctrine and further failed to consider the valuable contribution which the School Property could have toward meeting said obligations. Exhibit D (analysis) at p. 4.

122. In addition to the foregoing, the Rahenkamp analysis addressed and rebutted the 2021 Reexamination Report as it related to the overall character of the neighborhood and reviewed



Ordinance 2021-05 from the standpoint of equal protection and spot zoning. Exhibit D (analysis) at p. 4.

123. Mr. Rahenkamp's analysis correctly indicated that the MLUL does not permit the use of zoning to manipulate land value for a subsequent taking/acquisition. Exhibit D (analysis) at p. 1.

**G. The Impacts of the Borough Defendants' Actions**

124. The Borough Defendants' scheme to hinder and/or prevent the sale of the School Property had resulted in the quelling of possible qualified bidders.

125. As a direct and proximate result of the Borough Defendants' actions, the School Board has temporarily delayed its actions.

**COUNT I**

**The Actions of the Land Use Board Were Arbitrary Capricious and Unreasonable**

126. Plaintiff repeats each allegation set forth above as if fully set forth in this Count I.

127. The Land Use Board, acting at the behest of the Council, had the 2021 Reexamination Report commissioned as part of a larger scheme to hinder and/or prevent the sale of the School Property and to devalue the School Property.

128. At the March 17, 2021 hearing, the Land Use Board did not produce any substantial credible evidence that the sale of the School Property would result in the concerns stated in the 2021 Reexamination Report, i.e. increased flooding and negatively altering the character of the surrounding residential neighborhood.

129. The 2021 Reexamination Report made unnecessary recommendations to the Council and the only credible basis for recommending the amendment of the P-Public Zone was to hinder or prevent the sale of the School Property and devalue the School Property.

130. Despite the Land Use Board's arguments as to why the recommended changes to the P-Public Zone were necessary, the author of the 2021 Reexamination Report, Stan Slachetka, PP, AICP truthfully stated that the Reexamination was done to make it more difficult for a purchaser of the School Property to obtain a use variance and that the Reexamination was done in response to the actions taken by the School Board.

131. The Land Use Board committed voidable error at its April 21, 2021 meeting where it reviewed Council Ordinance 2021-05 to see if it conformed to the 2021 Reexamination Report instead of the Master Plan as required by the MLUL.

132. The Land Use Board's adoption of the 2021 Reexamination Report and the recommendations set forth therein was arbitrary, capricious, and unreasonable.

**WHEREFORE**, Plaintiff demands judgment against the Land Use Board as follows:

A. Declaring null and void and/or vacating the Land Use Board's Adoption of the 2021 Reexamination Report and any actions taken at the March 17, 2021 Hearing and April 21, 2021 Hearing as they pertain to the School Property.

B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable.

## **COUNT II**

### **The Actions of the Council Were Arbitrary Capricious and Unreasonable**

133. Plaintiff repeats each allegation set forth above as if fully set forth in this Count II.

134. The Council engaged in a scheme to hinder and/or prevent the sale of the School Property and to devalue the School Property.

135. At the April 27, 2021 hearing, the Council failed to establish any evidence, let alone substantial credible evidence, to support the adoption of Ordinance 2021-05.

136. At the April 27, 2021 hearing, the Council first heard Ordinance 2021-04 and did not set a time limit for public comment as to that ordinance.

137. When Ordinance 2021-05 was introduced, the Council set a five minute time limit for statements or objections.

138. The Council's limitation of five minutes with respect to the statements by the counsel for the School Board was a violation of Plaintiff's due process rights to be heard.

139. The Council's refusal to allow Mr. Rahenkamp to testify regarding his planning analysis was a violation of Plaintiff's due process rights to be heard.

140. The Council did not consider its outstanding obligations under the Mount Laurel Doctrine when addressing the impacts the adoption of Ordinance 2021-05 would have on the sale of the School Property and the potential residential development that would occur thereon.

141. The only credible basis for adopting the amendment to the P-Public Zone was to hinder and/or prevent the sale of the School Property and devalue the School Property for a future acquisition.

142. By adopting Ordinance 2021-05 and listing specific prohibited uses in the P-Public Zone, such as residential, the Council was clearly advising the Land Use Board that no use variances should be granted in this Zone.

143. Pursuant to N.J.S.A. 40:55D-28 and 62, a master plan must contain, at a minimum, a statement of goals, a land use element and the adoption of a housing element before a municipality can adopt a zoning ordinance. The 2021 Reexamination Report indicates that the Borough has no housing element.

144. The Council lacked this prerequisite and therefore was barred from adopting Ordinance 2021-05 or any other zoning ordinance.

145. The actions of the Council were based on a predetermined conclusion in which Plaintiff had no meaningful opportunity to have substantive input into the process.

146. The Council's actions were arbitrary, capricious and unreasonable.

**WHEREFORE**, Plaintiff demands judgment against the Council as follows:

A. Declaring null and void and/or vacating the Ordinance 2021-5; and

B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable.

### **COUNT III**

#### **The Land Use Board and Council Failed to Comply with the Procedural Mandates of the MLUL**

147. Plaintiff repeats each allegation set forth above as if fully set forth in this Count III.

148. Pursuant to N.J.S.A. 40:55D-26, the adoption of a zoning ordinance by the Council is predicated upon the Land Use Board's threshold determination as to whether the proposed ordinance is consistent with the master plan.

149. The 2021 Reexamination Report, which was adopted pursuant to N.J.S.A. 40:55D-89, does not serve as an amendment to the Master Plan, but rather expressly provides for proposed amendments to the Master Plan based upon its recommendation.

150. The Land Use Board committed voidable error at its April 21, 2021 meeting where it reviewed Council Ordinance 2021-05 to see whether it conformed to the 2021 Reexamination Report instead of the Master Plan as required by the MLUL.

151. The Council committed voidable error at its April 27, 2021 hearing when it voted to adopt Ordinance 2021-05 without the Land Use Board having first reviewed Council Ordinance 2021-05 to see whether it conformed to the 2021 Reexamination Report instead of the Master Plan as required by the MLUL.

152. The Council committed voidable error by failing to follow the procedural requirements of the MLUL insofar as it did not have the referral to, and/or recommendation of, the Land Use Board marked into the record or posted ahead of the virtual hearing.

**WHEREFORE**, Plaintiff demands judgment against the Council as follows:

- A. Declaring null and void and/or vacating the Ordinance 2021-5; and
- B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable.

**COUNT IV**

**The Council is Barred from Adopting Zoning Ordinances by Virtue of its Deficient Master Plan**

153. Plaintiff repeats each allegation set forth above as if fully set forth in this Count IV.

154. Pursuant to N.J.S.A. 40:55D-62, the Council may adopt or amend a zoning ordinance only after the it has adopted a master plan which conforms with the requirements of the MLUL.

155. Pursuant to N.J.S.A. 40:55D-28 and 62, the master plan must contain, at a minimum, a statement of goals, a land use element, and the adoption of a housing element before a municipality can adopt a zoning ordinance. The 2021 Reexamination Report indicates that the Borough's Master Plan lacks a housing element.

156. In the absence of a master plan which conformed with the requirements of the MLUL, the Council lacked the statutory authority by which to adopt Ordinance 2021-05.

**WHEREFORE**, Plaintiff demands judgment against the Council as follows:

- A. Declaring null and void and/or vacating the Ordinance 2021-5; and
- B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable.

**COUNT V**

**The Borough Defendants Acted in Bad Faith**

157. Plaintiff repeats each allegation set forth above as if fully set forth in this Count V.

158. The Council and Land Use Board acted in concert to prevent and/or hinder the School Board from selling the School Property.

159. The Council and Land Use Board acted in concert to devalue the School Property in order to allow the Borough to acquire it in the future.

160. The underlying purpose and intent of Ordinance 2021-5 and the 2021 Reexamination Report were to constrain any future possibility that a purchaser/applicant could obtain a use variance on the School Property.

161. The use of zoning to manipulate land value for a subsequent taking/acquisition is not a proper public or planning purpose.

162. The actions taken by the Council and Land Use Board constitute bad faith and have been found to be unlawful by our Courts, including in the matters of Riggs v. Long Beach Twp., 109 N.J. 601 (1988) and Borough of Essex Fells v. Kessler Inst. for Rehab., Inc., 289 N.J. Super. 329 (Law. Div. 1995).

163. Instead of objecting or filing an action challenging the actions of the School Board, the Borough Defendants acted in concert with each other and allowed the School Board to spend taxpayer dollars on an appraisal, title commitment and architectural and engineering services, all while acting to undermine the School Board's efforts to sell the School Property.

164. The actions taken by the Land Use Board and Council are an improper collateral attack on the School Board's vote to sell the School Property.

**WHEREFORE**, Plaintiff demands judgment against the Borough Defendants as follows:

- A. Declaring null and void and/or vacating all actions taken by the Borough Defendants with respect to the 2021 Reexamination Report and Ordinance 2021-5; and
- B. Restraining the Borough Defendants from taken any action that will hinder or preclude the sale of the School Property or devalue the School Property; and
- C. Awarding Plaintiff compensatory and punitive damages; and
- D. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable

**COUNT VI**

**Conflict of Interest**

- 165. Plaintiff repeats each allegation set forth above as if fully set forth in this Count VI.
- 166. The appearance and participation of the Land Use Board's counsel at the April 27, 2021 Council hearing tainted the process and created a conflict of interest as the Council should be separate and independent from the Land Use Board with respect to voting on matters which were recommended by the Land Use Board.
- 167. The Land Use Board's counsel took an active role in the Council's process regarding Ordinance 2021-05 and commanded authority and objected to the School Board's counsel statements.
- 168. The conflict of interest was such that the Land Use Board's counsel was in a position to have the appearance, if not actual ability, to improperly influence the Council's actions.
- 169. The conflict of interest vitiates the process and warrants the vacation of Ordinance 2021-05.

**WHEREFORE**, Plaintiff demands judgment against the Borough Defendants as follows:

- A. Declaring null and void and/or vacating all actions taken by the Borough Defendants with respect to the 2021 Reexamination Report and Ordinance 2021-5; and

B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable

**COUNT VII**

**Unlawful Usurpation**

170. Plaintiff repeats each allegation set forth above as if fully set forth in this Count VII.

171. The School Board serves as the policymaking entity for the consolidated school district on Long Beach Island.

172. The Board is charged with providing oversight of the operations of the local school system and is accountable for the operations of the schools.

173. The Board is also democratically elected and represents the interests of the local taxpayers on issues related to public education.

174. In these various capacities, the School Board has the discretion, subject to the State Department of Education, to close certain schools and sell/dispose property which it owns and controls.

175. The Borough Defendants have exceeded their legislative authority by interfering with the discretion of the School Board regarding the operations of the school and the management and disposition of school owned property.

176. The Borough Defendants should not be permitted to use zoning and other planning tools to interfere with the School Board's freedom and statutory rights to operate the school owned properties as it deems fit.

177. The Borough Defendants' actions amount to an unlawful usurpation of the School Board's rights under the law.



**WHEREFORE**, Plaintiff demands judgment against the Council as follows:

A. Declaring null and void and/or vacating all actions taken by the Borough Defendants with respect to the 2021 Reexamination Report and Ordinance 2021-5; and

B. Awarding Plaintiff its attorney's fees and costs and such other further relief as the Court may deem just and equitable

**CARLIN AND WARD, P.C.**

Attorneys for Plaintiff

**s/SCOTT A. HEIART**

SCOTT A. HEIART, ESQ.

ID# 016662004

Dated: May 3, 2021

**TRIAL ATTORNEY DESIGNATION**

Pursuant to Rule 4:5-1, the undersigned is hereby designated as trial counsel for the Plaintiff in this matter.

**CARLIN AND WARD, P.C.**

Attorneys for Plaintiff

**s/SCOTT A. HEIART**

SCOTT A. HEIART, ESQ.

ID# 016662004

Dated: May 3, 2021

**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge the within matter is controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding, nor is any action or arbitration proceeding contemplated, nor are other parties required to be joined in this action at this time.

**CARLIN AND WARD, P.C.**  
Attorneys for Plaintiff

**s/SCOTT A. HEIART**  
SCOTT A. HEIART, ESQ.  
ID# 016662004

Dated: May 3, 2021

**CERTIFICATION PURSUANT TO RULE 1:38-7(b)**

Pursuant to Rule 1:38-7(b), the undersigned certifies that confidential identifiers have been redacted from documents now submitted to the Court and be redacted from all documents submitted in the future.

**CARLIN AND WARD, P.C.**  
Attorneys for Plaintiff

**s/SCOTT A. HEIART**  
SCOTT A. HEIART, ESQ.  
ID# 016662004

Dated: May 3, 2021

**CERTIFICATION PURSUANT TO RULE 4:69-4**

I hereby certify in accordance with Rule 4:69-4 that all necessary transcripts of the Council and Land Use Board have been requested.

**CARLIN AND WARD, P.C.**  
Attorneys for Plaintiff

**s/SCOTT A. HEIART**  
SCOTT A. HEIART, ESQ.  
ID# 016662004

Dated: May 3, 2021

# **EXHIBIT A**

## 2021 Master Plan Reexamination Report

### Borough of Ship Bottom Ocean County, New Jersey

Prepared:  
March 4, 2021

Prepared for:  
Ship Bottom Borough Land Use Board

Prepared by:



T&M Associates  
11 Tindall Road  
Middletown, NJ 07748

---

Stan C. Slachetka, PP, AICP  
NJ Professional Planner No.: 33LI00350800

---

Robert E. Dare, PP, AICP, MCIP  
NJ Professional Planner No.: 33LI00596400

*The original of this document has been signed  
and sealed in accordance with New Jersey Law.*

## Table of Contents

Introduction.....	1
<b>Major Problems and Objectives Relating to Land Development at the Time of the Adoption of the Last Reexamination Report .....</b>	<b>2</b>
Goals and Objectives .....	2
Land Use .....	2
Circulation .....	2
Community Facilities .....	2
Recreation and Open Space .....	3
Utilities .....	3
Environmental Sustainability.....	3
Compatibility with Other Planning Initiatives and Documents .....	3
Major Land Use Trends and Issues .....	3
<b>Extent to Which Such Problems and Objectives Have Been Reduced or Increased.....</b>	<b>4</b>
Goals and Objectives .....	4
Land Use .....	4
Circulation .....	4
Community Facilities .....	5
Recreation and Open Space .....	5
Utilities .....	5
Environmental Sustainability.....	6
Compatibility with Other Planning Initiatives and Documents .....	6
Major Land Use Trends and Issues .....	6
<b>Extent to Which There Have Been Significant Changes in the Assumptions, Policies and Objectives .....</b>	<b>8</b>
Changes at the Local Level .....	8
Population Development.....	8
Residential Development Activity .....	8
Non-Residential Development Activity .....	9
Land Use Change .....	9
Ordinance Revisions .....	10
Long Beach Island Grade School (Block 48, Lot 1) .....	10

**2021 Master Plan Reexamination Report**  
*Borough of Ship Bottom, Ocean County, New Jersey*  
*March 4, 2021*

---

Former CVS Pharmacy Site (Block 107, Lot 9) .....12

Changes at the Regional Level.....12

    Ocean County Comprehensive Plan Amendment .....12

    Ocean County Multi-Jurisdictional Hazard Mitigation Plan.....13

    Transportation Improvement Program for Fiscal Years 2020 through 2023.....13

Changes at the State Level .....14

    Land Use Plan Statement of Strategy on Smart Growth, Storm Resiliency and  
    Environmental Sustainability.....14

    Climate Change Related Hazard Vulnerability Assessment.....15

    Local Redevelopment and Housing Law .....15

    New Jersey Council on Affordable Housing.....15

Specific Changes Recommended to the Master Plan and Development Regulations .....17

    Prepare Ordinance Amendments.....17

    Amend Land Use Element .....17

    Amend Recreation and Open Space Element.....17

    Prepare a Third-Round Housing Element and Fair Share Plan .....18

Recommendations Concerning the Incorporation of Redevelopment Plans .....19

## Introduction

The New Jersey Municipal Land Use Law (NJSA 40:55D-1 et seq.; hereinafter MLUL) requires that each municipality undertake a reexamination of its master plan at least once every ten years. The purpose of the reexamination is to review and evaluate the master plan and municipal development regulations on a regular basis to determine the need for updates and revisions thereto. The reexamination is also intended to review the progress of the municipality in achieving its planning objectives, and to consider the need for changes to ensure that the master plan is current and meets the needs of the municipality. In addition, the preparation of a statutorily compliant reexamination provides a presumption of validity of the municipal zoning ordinance under the law.

The municipal planning board, or, in the case of the Borough of Ship Bottom, the municipal land use board, is responsible for completing the reexamination, as well as preparing and adopting by resolution and report on the findings of the reexamination. The Borough of Ship Bottom originally adopted its master plan in 1979, and subsequently prepared reexaminations in: 1982; 1988; 1992; 2000; 2006; and 2018.

This report serves as the 2021 Master Plan Reexamination Report for the Borough of Ship Bottom. It has been prepared in accordance with the requirements for reexaminations that are specified in the MLUL at NJSA 40:55D-89. These requirements specify that reexamination reports describe the following:

- a. *The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.*
- b. *The extent to which such problems and objectives have been reduced or have increased subsequent to such date.*
- c. *The extent to which there have been significant changes in assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county, and municipal policies and objectives.*
- d. *The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulation should be prepared.*
- e. *The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.*

The 2021 Master Plan Reexamination Report addresses each of these statutory requirements.



## Major Problems and Objectives Relating to Land Development at the Time of the Adoption of the Last Reexamination Report

The major problems and objectives relating to land development in the Borough are embodied in its master plan goals and objectives. The goals and objectives, as expressed in the 2018 Master Plan Reexamination Report, are outlined below.

### Goals and Objectives

The Borough's goals and objectives relate to the following areas: land use; circulation; community facilities; recreation and open space; utilities; environmental sustainability; and compatibility with other planning initiatives and documents.

#### Land Use

- Promote policies and strategies that meet the demands of the current and future populations.
- Encourage occupancy of vacant commercial properties within the Commercial District.
- Continue to require residential on-site parking, especially in areas where on-site parking availability is minimal.
- Maintain the use of planning techniques and zoning regulations that preserve the integrity of the existing residential districts and preserve the character of the town as a seashore destination.
- Encourage attractive exterior elevations for dwellings raised to meet FEMA's flood regulations.
- Prioritize the value of public access to the waterfront and the importance of a sustainable shoreline void of erosion.

#### Circulation

- To maintain a community-wide circulation system that provides for the safe, convenient and efficient movement of people and goods within and through the Borough by means of transportation and land use planning.
- Support and assist the Borough's efforts in maximizing the number of available off-street and on-street parking spaces.
- Encourage continuation of walking and biking lanes where appropriate.
- Provide continued support of the LBI Shuttle System as a means of local mass transportation.

#### Community Facilities

- Maintain and support the acquisition of additional parcels to be used for community facilities.
- Provide adequate municipal, education and cultural facilities to meet the needs of Ship Bottom residents and vacationers.
- Utilize grant and loan programs to improve facilities provided the costs of applying for an administering the funding do not outweigh the benefits.

- Prioritize the raising or reconstruction of the Borough Hall to achieve compliance with the minimum FEMA flood standards for critical facilities.

#### Recreation and Open Space

- Maintain existing parkland and support the acquisition of additional parcels to be used for open space and recreation.
- Promote the revitalization of the existing parks system while specifically enhancing the natural features of each and support the development of park-specific improvement plans that are cost effective and achievable within a reasonable time period. An emphasis should be placed on sustaining the shorelines with natural vegetation or hard structures, if necessary.

#### Utilities

- Provide safe and dependable utilities to residential and commercial users.
- Continue coordination with local, state and federal partners to combat storm surge and nuisance flooding.
- Consider best-available sea level rise data when designing new utility infrastructure.
- Implement appropriate actions derived from recommendations relating to studies of storm water drainage, vulnerability and resiliency.
- Utilize best-available technology when upgrading existing utility infrastructure public water, sanitary sewer and storm water facilities.

#### Environmental Sustainability

- Protect, maintain and conserve the natural resources of Ship Bottom for continued environmental quality and health of all residents.
- Support and apply best-available data related to sea level rise and storm surge risks for substantial improvements, new developments and community facilities.
- Encourage provisions of such environmentally friendly features such as rain gardens, porous pavement and natural landscapes with native plantings as appropriate.

#### Compatibility with Other Planning Initiatives and Documents

- Participate in the Ocean County Master Plan Process.
- Participate in the Ocean County All Hazard Mitigation Plan.
- Participate in planning initiatives aimed at resiliency, mitigation and shoreline stability.

#### Major Land Use Trends and Issues

In addition to the major problems and objectives that are embodied in the Borough's master plan goals and objectives, the Borough's 2018 Master Plan Reexamination Report includes a discussion of major trends and issues that focuses on increased large-scale residential development, increasing sea level rise, and recent historic storm events that are directly affecting the Borough's shoreline and infrastructure. The 2018 Master Plan Reexamination Report notes that nuisance flooding is a major issue that has been aggravated by said increase in large-scale residential development, sea level rise, and storm events.

---

## Extent to Which Such Problems and Objectives Have Been Reduced or Increased

Since the adoption of the 2018 Master Plan Reexamination Report, some of the problems and objectives relating to land development in the Borough have changed substantially, while others have only changed slightly or not at all.

As part of this master plan reexamination report, the Borough has assessed its master plan goals and objectives, as well as the current state of major land use trends and issues, that were identified in the 2018 Master Plan Reexamination Report. The results of this assessment are provided in **bold italicized font** in the following subsections.

### Goals and Objectives

#### Land Use

- Promote policies and strategies that meet the demands of the current and future populations.  
 – ***This goal remains valid.***
- Encourage occupancy of vacant commercial properties within the Commercial District.  
 – ***This goal remains valid.***
- Continue to require residential on-site parking, especially in areas where on-site parking availability is minimal.  
 – ***This goal remains valid.***
- Maintain the use of planning techniques and zoning regulations that preserve the integrity of the existing residential districts and preserve the character of the town as a seashore destination.  
 – ***This goal remains valid.***
- Encourage attractive exterior elevations for dwellings raised to meet FEMA's flood regulations.  
 – ***This goal remains valid.***
- Prioritize the value of public access to the waterfront and the importance of a sustainable shoreline void of erosion.  
 – ***This goal remains valid.***

#### Circulation

- To maintain a community-wide circulation system that provides for the safe, convenient and efficient movement of people and goods within and through the Borough by means of transportation and land use planning.  
 – ***This goal remains valid.***
- Support and assist the Borough's efforts in maximizing the number of available off-street and on-street parking spaces.  
 – ***This goal remains valid.***
- Encourage continuation of walking and biking lanes where appropriate.

- *This goal remains valid.*
- Provide continued support of the LBI Shuttle System as a means of local mass transportation.
  - *This goal remains valid.*

#### Community Facilities

- Maintain and support the acquisition of additional parcels to be used for community facilities.
  - *This goal remains valid.*
- Provide adequate municipal, education and cultural facilities to meet the needs of Ship Bottom residents and vacationers.
  - *This goal remains valid.*
- Utilize grant and loan programs to improve facilities provided the costs of applying for an administering the funding do not outweigh the benefits.
  - *This goal remains valid.*
- Prioritize the raising or reconstruction of the Borough Hall to achieve compliance with the minimum FEMA flood standards for critical facilities.
  - *This goal remains valid.*

#### Recreation and Open Space

- Maintain existing parkland and support the acquisition of additional parcels to be used for open space and recreation.
  - *This goal remains valid.*
- Promote the revitalization of the existing parks system while specifically enhancing the natural features of each and support the development of park-specific improvement plans that are cost effective and achievable within a reasonable time period. An emphasis should be placed on sustaining the shorelines with natural vegetation or hard structures, if necessary.
  - *This goal remains valid.*

#### Utilities

- Provide safe and dependable utilities to residential and commercial users.
  - *This goal remains valid.*
- Continue coordination with local, state and federal partners to combat storm surge and nuisance flooding.
  - *This goal remains valid.*
- Consider best-available sea level rise data when designing new utility infrastructure.
  - *This goal remains valid.*
- Implement appropriate actions derived from recommendations relating to studies of storm water drainage, vulnerability and resiliency.
  - *This goal remains valid.*
- Utilize best-available technology when upgrading existing utility infrastructure public water, sanitary sewer and storm water facilities.
  - *This goal remains valid.*

#### Environmental Sustainability

- Protect, maintain and conserve the natural resources of Ship Bottom for continued environmental quality and health of all residents.
  - ***This goal remains valid.***
- Support and apply best-available data related to sea level rise and storm surge risks for substantial improvements, new developments and community facilities.
  - ***This goal remains valid.***
- Encourage provision of such environmentally friendly features such as rain gardens, porous pavement and natural landscapes with native plantings as appropriate.
  - ***This goal remains valid. It is noted that provision of such features would promote resiliency and mitigate nuisance flooding, which is identified as a major land use issue in the 2018 Master Plan Reexamination Report.***

#### Compatibility with Other Planning Initiatives and Documents

- Participate in the Ocean County Master Plan Process.
  - ***This goal remains valid. It is noted that the Borough of Ship Bottom has been an active participant in the Ocean County Master Plan Process and intends to sustain its participation in the future. It is further noted that the Ocean County Comprehensive Master Plan was originally adopted in December 2011, and subsequently amended in January and September 2018. As of the preparation of the 2021 Master Plan Reexamination Report, there are no pending amendments to the Ocean County Comprehensive Master Plan.***
- Participate in the Ocean County All Hazard Mitigation Plan.
  - ***This goal remains valid. It is noted that the Borough of Ship Bottom has been an active participant in the Ocean County Hazard Mitigation Planning Process and intends to sustain its participation in the future. It is further noted that the Ocean County Multi-Jurisdictional Hazard Mitigation Plan (Ocean County HMP) was last adopted in 2018 and approved by FEMA in 2020. The next update of the Ocean County HMP is scheduled to commence in 2023 and be completed by 2025 (n.b., the current Ocean County Multi-Jurisdictional Hazard Mitigation Plan is set to expire in 2025).***
- Participate in planning initiatives aimed at resiliency, mitigation and shoreline stability.
  - ***This goal remains valid.***

#### Major Land Use Trends and Issues

In addition to the major problems and objectives that are embodied in the Borough's master plan goals and objectives, the Borough's 2018 Master Plan Reexamination Report includes a discussion of major trends and issues that focuses on increased large-scale residential development, increasing sea level rise, and recent historic storm events that are directly affecting the Borough's shoreline and infrastructure. The 2018 Master Plan Reexamination Report notes that nuisance flooding is a major issue that has been aggravated by said increase in large-scale residential development, sea level rise, and storm events.

**2021 Master Plan Reexamination Report**  
**Borough of Ship Bottom, Ocean County, New Jersey**  
**March 4, 2021**

---

***Sea level rise and the threat of severe weather continue to be major trends and issues within the Borough of Ship Bottom. Without intervention, the issue of nuisance flooding will likely increase in the future due to the fact that, as outlined in the Ocean County HMP, climate change can alter the frequency and intensity of flooding.***

## Extent to Which There Have Been Significant Changes in the Assumptions, Policies and Objectives

The following subsections outline the extent to which there have been significant changes in the assumptions, policies and objectives related to land development in the Borough of Ship Bottom since the preparation of the 2018 Master Plan Reexamination Report.

### Changes at the Local Level

As described in the following subsections, there have been some important changes in local assumptions, policies and objectives since the adoption of the 2018 Master Plan Reexamination Report.

#### Population Development

Since the adoption of the 2018 Master Plan Reexamination Report, the Borough of Ship Bottom's population has remained relatively stable, as has been the case since the time of the 2010 United States Census. Recent population development is shown in Table 1.

**Table 1: Recent Population Development**

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1,156	1,146	1,140	1,137	1,123	1,126	1,136	1,138	1,146	1,153

Source: United States Census Bureau

As can be seen in Table 1, the Borough's population has been relatively stable in the period since 2010. Indeed, there has been a loss of three residents in the period between 2010 and 2019, and the annual change has averaged at -0.33 residents. It is, however, important to note that while population change may appear to be significant between individual years, only sustained, long term trends should be considered to be a valid representation of population development in the Borough.

The stability in the Borough's population is reflective of its fully developed character and limited capacity to accommodate new residential growth and development.

In addition to the above, please note that the population values provided in this section represent full-time (i.e., year-round) population. Annual estimates of seasonal population are unavailable from the United States Census Bureau.

#### Residential Development Activity

As reflected in data of the New Jersey Department of Community Affairs, Division of Codes and Standards, there was a net increase of 20 housing units in the period from May 1, 2018 through November 30, 2020 (n.b., this reflects the period beginning the first month after the preparation of the 2018 Master Plan Reexamination Report and ending at the last point for which data is currently published). This net increase of 20 housing units is shown in Table 2.

**Table 2: Residential Development Activity Since 2018 Master Plan Reexamination Report**

	<b>2018</b> <b>(From 05-01-18)</b>	<b>2019</b>	<b>2020</b> <b>(Through 11-30-20)</b>
<b>Certificates of Occupancy</b>	17	29	14
<b>Demolition Permits</b>	10	18	12
<b>Net</b>	7	11	2
<b>Net Total</b>			<b>20</b>

Source: New Jersey Department of Community Affairs, Division of Codes and Standards

As can be seen in Table 2, there has been a net increase of 20 housing units in the period since the preparation of the 2018 Master Plan Reexamination Report. It is, however, important to note that while the Borough is fully developed, these units were likely associated with densification, which is identified as a major land use trend and issue in the 2018 Master Plan Reexamination Report. To illustrate, the 2018 Master Plan Reexamination Report indicates that: “older and smaller structures are being demolished in favor of larger homes that can accommodate multiple families simultaneously”; and “larger parcels, especially those that are at least 100 feet in width, are being subdivided to allow for the construction of two or more homes.”

**Non-Residential Development Activity**

As reflected in data of the New Jersey Department of Community Affairs, Division of Codes and Standards, there was a small amount of non-residential development that occurred in the period since the preparation of the 2018 Master Plan Reexamination Report. The area of this non-residential development measured 8,234 square feet and included: 1,478 square feet of office space; 2,116 square feet of retail space; and 4,640 square feet of assembly space for uses related to food and/or drink consumption (e.g., restaurants, banquet halls, etc.).

Please note that this total of 8,234 square feet represents new area. It does not represent a net increase of non-residential space (n.b., estimates of demolished square footage are not available from the New Jersey Department of Community Affairs, Division of Codes and Standards).

**Land Use Change**

Recent land use changes are depicted in Table 3, which compares land use classifications of parcels provided in MOD-IV property tax assessment information from 2018 and 2020.



**Table 3: Land Use Classification of Parcels in 2018 and 2020**

	2018		2020		Change: 2018-2020	
	Number	Percent	Number	Percent	Number	Percent
<b>Class 1 -- Vacant</b>	79	3.7	63	2.9	-16	-20.3
<b>Class 2 -- Residential</b>	1,844	86.9	1,886	87.8	42	2.3
<b>Class 4A -- Commercial</b>	139	6.5	138	6.4	-1	-0.7
<b>Class 4C -- Apartments</b>	3	0.1	3	0.1	0	0.0
<b>Class 6A -- Telephone</b>	1	0.0	1	0.0	0	0.0
<b>Class 15A -- Public School</b>	2	0.1	2	0.1	0	0.0
<b>Class 15C -- Public Property</b>	49	2.3	49	2.3	0	0.0
<b>Class 15D -- Charitable</b>	2	0.1	2	0.1	0	0.0
<b>Class 15F -- Other Tax Exempt</b>	4	0.2	4	0.2	0	0.0
<b>Total</b>	<b>2,123</b>	<b>100</b>	<b>2,148</b>	<b>100</b>	<b>25</b>	<b>1.2</b>

Source: MOD-IV Property Tax Assessment Information

In the period between 2018 and 2020, the numbers of vacant and commercial parcels have decreased by approximately 20.3 percent and 0.7 percent, respectively. During the same period, the number of residential parcels has increased by approximately 2.3 percent. This suggests that infill development on vacant properties and subdivision of existing residential parcels is occurring (n.b., the change in commercial properties represents the loss of one commercial parcel and is, therefore, insignificant).

**Ordinance Revisions**

Since the adoption of the 2018 Master Plan Reexamination Report, the Borough Council has amended the Borough’s Land Development Code with the adoption of Ordinance No.: 2018-08, which revised the definition of “Building Height” provided in Section 16.08.020. The amendment expanded the definition to add the following provision to the existing definition: “[f]or all lots westward of Long Beach Boulevard that have been filled sixteen (16) inches for interior lots and twenty (20) inches for lots fronting the bay or lagoon, the building height shall be increased by one (1) foot.”

Based on a review of the Borough’s Land Development Code, no further amendments have been made since the adoption of the 2018 Master Plan Reexamination Report.

**Long Beach Island Grade School (Block 48, Lot 1)**

The site of the Long Beach Island Grade School is surrounded by Central Avenue (Ocean County Route No.: 89), West 19<sup>th</sup> Street, East Bay Terrace, and West 20<sup>th</sup> Street, and identified on the Borough’s tax assessment records as Block 48, Lot 1. The property has an area of approximately 3.96 acres and tax records indicate that the school was constructed in 1951. The property is located in the P (Public) Zone District.

**2021 Master Plan Reexamination Report**  
*Borough of Ship Bottom, Ocean County, New Jersey*  
March 4, 2021

---

According to the Long Beach Island Consolidated School District, the closure of the Long Beach Island Grade School is planned due to low enrollments at the school and within the district overall as well as the planned expansion of the Ethel A. Jacobsen Elementary School, which is located on Block 60, Lot 2 in the Borough of Surf City.

The Borough has significant concerns about the closure of Long Beach Island Grade School and the potential for its subsequent conversion to uses not consistent with the property's current P (Public) zoning. The Borough's position is that the property should remain in public use to maintain existing neighborhood character and prevent further densification within the Borough. In addition, the Long Beach Island Grade School site is anticipated to be an essential component of the Borough's comprehensive recreation and open space plan.

The prevention of further densification within the Borough is important due to the fact that the Borough experiences significant nuisance flooding, which is exacerbated by increased impervious cover within the Borough and has contributed to the need for infrastructure improvements, including the need for infrastructure upgrades to East Bay Terrace and West 20<sup>th</sup> Street (n.b., the Borough adopted Ordinance 2020-17 to bond for infrastructure upgrades in this area and, in addition, the New Jersey Department of Transportation awarded a local assistance grant of \$375,000 in 2019 to fund improvements to roadway infrastructure in this area).

In addition to the above, it is noted that the Long Beach Island Grade School site contains an athletic field and playground. These areas represent an important and large area of porous cover and natural landscape that should be preserved to mitigate nuisance flooding, as well as an important recreational resource that could be used by the community at large. Retention of public use on the Long Beach Island Grade School site would provide the best means of ensuring the continued presence of these features. It is further noted that the Ocean County Multi-Jurisdictional Hazard Mitigation Plan, which is discussed later in this report, recommends the retention of the Long Beach Island Grade School site for public use as an emergency shelter.

The continued public use of the Long Beach Island Grade School site would be consistent with the following master plan goals and objectives:

- **Community Facilities:**
  - Maintain and support the acquisition of additional parcels to be used for community facilities.
  - Provide adequate municipal, education and cultural facilities to meet the needs of Ship Bottom residents and vacationers.
- **Recreation and Open Space:**
  - Maintain existing parkland and support the acquisition of additional parcels to be used for open space and recreation.
- **Environmental Sustainability:**

- Protect, maintain and conserve the natural resources of Ship Bottom for continued environmental quality and health of all residents.
- Encourage provision of such environmentally friendly features as rain gardens, porous pavement and natural landscapes with native plantings as appropriate.

Former CVS Pharmacy Site (Block 107, Lot 9)

Block 107, Lot 9, which is located at the northeastern corner of East 8<sup>th</sup> Street and Long Beach Boulevard (Ocean County Route No.: 607), contains a vacant, 9,775 square-foot building that was previously occupied by CVS Pharmacy. The property in question is located in the GC (General Commercial) Zone District and has an area of approximately 0.73 acres.

In 2019, the Ship Bottom Borough Land Use Board approved a “d(1)” use variance to permit the development of a family entertainment/amusement use, subject to certain conditions, within the existing building. While the specifics of the particular application to develop a family entertainment/amusement use on the property in question resulted in the grant to a “d(1)” use variance, it is the Borough’s position that the integrity of the GC (General Commercial) Zone District should be maintained and encroachment of non-permitted uses into the district should be prevented as part of the Borough’s comprehensive land use plan. This is important from the perspective of maintaining the character of the Borough’s existing neighborhoods and mitigating negative impacts of development, such as traffic and exacerbation of nuisance flooding. Accordingly, the intent of the current GC (General Commercial) Zone District, including uses currently permitted in the district, is reaffirmed and it is recommended that no additional uses, including entertainment/amusement uses be permitted in the district.

Changes at the Regional Level

As described in the following subsections, there have been changes at the regional level since the adoption of the 2018 Master Plan Reexamination Report.

Ocean County Comprehensive Plan Amendment

In September 2018, the Ocean County Comprehensive Plan was amended to include new required right-of-way widths for specific county roadways. It is noted, however, that none of the affected roadways were located in the Borough of Ship Bottom. Thus, the required right-of-way widths of county roadways within the Borough of Ship Bottom remain as specified in the January 2018 amendment to the Ocean County Comprehensive Plan. These required right-of-way widths are as follows:

- 100-foot right-of-way:
  - Long Beach Boulevard (Ocean County Route No.: 607).
- 60-foot right-of-way:
  - Central Avenue (Ocean County Route No.: 89);
  - North Barnegat Avenue, south of West 8<sup>th</sup> Street (New Jersey Route No.: 72 West);
  - West 28<sup>th</sup> Street, between Central Avenue (Ocean County Route No.: 89) and Long Beach Boulevard (Ocean County Route No.: 607); and

- West 11<sup>th</sup> Street, between Central Avenue (Ocean County Route No.: 89) and Long Beach Boulevard (Ocean County Route No.: 607).

Ocean County Multi-Jurisdictional Hazard Mitigation Plan

The Ocean County Multi-Jurisdictional Hazard Mitigation Plan was adopted in 2018 and subsequently submitted to the Federal Emergency Management Agency (FEMA). FEMA approved the Ocean County Multi-Jurisdictional Hazard Mitigation Plan on July 16, 2020. The term of approval expires on July 15, 2025.

The Ocean County Multi-Jurisdictional Hazard Mitigation Plan identifies the following as hazards, which confront the Borough of Ship Bottom:

- Coastal erosion;
- Flood, flash flood, ice jam;
- Hurricane, tropical storm, nor'easter;
- Tornado, wind storm;
- Winter storm;
- Utility interruption; and
- Climate change.

To address the aforementioned hazards, the Ocean County Multi-Jurisdictional Hazard Mitigation Plan identifies a series of mitigation actions to be completed within the Borough. These actions include:

- Elevation of 186 dwelling units;
- Elevation or replacement of municipal building;
- Inform and educate property owners about the National Flood Insurance Program;
- Upgrade to next class level in the Community Rating System Program;
- Elevate and improve drainage along Long Beach Boulevard (Ocean County Route No.: 607);
- Acquire the Long Beach Island Grade School Property;
- Elevate the West 15<sup>th</sup> Street Water Well Plant; and
- Construct a living shoreline on Shore Avenue and West 12<sup>th</sup> Street.

With specific regard to the action described as “acquire the Long Beach Island Grade School Property,” it is noted that said property is Block 48, Lot 1, which has been discussed above within the context of “Changes at the Local Level.” The purpose of said action, as outlined in the Ocean County Multi-Jurisdictional Hazard Mitigation Plan, is to acquire the property to retain it as an emergency shelter.

Transportation Improvement Program for Fiscal Years 2020 through 2023.

The North Jersey Transportation Planning Authority (NJTPA) is the Metropolitan Planning Organization for 13 New Jersey counties, including Ocean County. A key function of the NJTPA is to channel federal funding for transportation projects within its jurisdiction. To this end, the NJTPA periodically publishes a Transportation Improvement Program, which contains detailed

information on the funding, scheduling, and purpose of transportation projects within its jurisdiction.

Transportation Improvement Program for Fiscal Years 2020 through 2023 outlines specific projects within the Borough of Ship Bottom, as follows:

- **Project Number (DBNUM): 11385** — Contract 1B of this project will include operational and safety improvements. Specifically, approximately 3,000 linear feet of West 9<sup>th</sup> Street (New Jersey Route No.: 72 East) and West 8<sup>th</sup> Street (New Jersey Route No.: 72 West) and three perpendicular roadways (viz., Barnegat Avenue, Central Avenue [Ocean County Route No.: 89] and Long Beach Boulevard [Ocean County Route No.: 607]) will be widened. Two-way traffic will be provided along said perpendicular roadways, and five traffic signals will be reconstructed. In addition, a new traffic signal will be installed at the intersection of West 8<sup>th</sup> Street and Long Beach Boulevard (Ocean County Route No.: 607). A new storm drainage system will also be installed along West 9<sup>th</sup> Street (New Jersey Route No.: 72 East) and West 8<sup>th</sup> Street (New Jersey Route No.: 72 West). Bicycle and pedestrian facilities, Intelligent Transportation Systems (ITS) improvements, lighting and utility relocations will also be provided.
- **Project Number (DBNUM): 00357D1** — To facilitate protection of Bay Avenue Bridge (New Jersey Route No.: 72), this project will include the implementation of Submerged Aquatic Vegetation (SAV) mitigations requirements in the Manahawkin Bay in compliance with applicable regulations. The overall goal of this work is to offset losses to SAV through a combination of adaptive management and facilitate research to establish and enhance SAV beds within the Barnegat Bay. The research element will include the monitoring of existing SAV beds to measure recovery post Superstorm Sandy, and the adaptive management component will include establishing and/or enhancing up to 10 acres of new or existing SAV beds to facilitate recovery efforts and promote resiliency.

#### Changes at the State Level

As described in the following subsections, there have been considerable changes at the state level since the adoption of the 2018 Master Plan Reexamination Report.

#### Land Use Plan Statement of Strategy on Smart Growth, Storm Resiliency and Environmental Sustainability

The MLUL was amended in 2018 to provide that any land use element adopted after January 8, 2018 must provide a statement of strategy concerning:

- Smart growth, which shall consider potential locations for the installation of electric vehicle charging stations;
- Storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure; and
- Environmental sustainability.

#### Climate Change Related Hazard Vulnerability Assessment

The MLUL was further amended in 2021 to provide that any land use element adopted after February 4, 2021 must include a Climate Change-Related Hazard Vulnerability Assessment, which analyzes climate change-related natural hazards, such as increased temperatures, drought, flooding, hurricanes and sea level rise. The Climate Change-Related Hazard Vulnerability Assessment will be required to include the following additional components:

- Build-out analysis;
- Critical evacuation assets analysis;
- Impact analysis;
- Risk reduction strategy; and
- Policy recommendations.

The amendment requires that municipalities must rely on the most recent natural hazard projections and best available science provided of the New Jersey Department of Environmental Protection when preparing the Climate Change-Related Hazard Vulnerability Assessment.

#### Local Redevelopment and Housing Law

The Local Redevelopment and Housing Law (NJSA 40A:12A-1 et seq.; hereinafter LRHL) was amended in 2019 to expand the criterion for designation as an area in need of redevelopment that is provided at N.J.S.A. 40A:12A-5(b) to include the discontinuance or abandonment of buildings used for retail, shopping malls and office parks, as well as buildings with significant vacancies for at least two consecutive years. As amended, NJSA 40A:12A-5(b) reads:

- b. The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.*

#### New Jersey Council on Affordable Housing

The Council on Affordable Housing (COAH) originally adopted affordable housing rules for the third-round period (i.e., the period from 1999 through 2025) in 2004. However, an Appellate Division decision in 2007 stayed COAH from reviewing any plans as part of a petition for substantive certification and resulted in a remand of the 2004 rules back to COAH to revise them to be consistent with the Appellate Division decision. COAH subsequently adopted revised third-round rules in 2008.

In 2010, the Appellate Division invalidated COAH's 2008 third-round rules, and the "growth share" methodology upon which they were based. In 2013, the New Jersey Supreme Court upheld and modified the Appellate Division's 2010 decision that invalidated COAH's third-round rules. As a result, COAH was then charged with the task of adopting new affordable housing rules.

**2021 Master Plan Reexamination Report**  
*Borough of Ship Bottom, Ocean County, New Jersey*  
March 4, 2021

---

Due to COAH's failure to adopt such rules, the New Jersey Supreme Court concluded, on March 10, 2015, that there no longer exists a legitimate basis to block access to the courts, which was the original intent of the COAH process. The New Jersey Supreme Court's 2015 decision notes that: "parties concerned about municipal compliance with constitutional affordable housing obligations are [now] entitled to such access, and municipalities that believe they are constitutionally compliant[,] or that are ready and willing to demonstrate ... compliance [with such obligations,] should be able to secure declarations that their housing plans and implementing ordinances are presumptively valid in the event they ... must defend [themselves] against exclusionary zoning litigation."

COAH records indicate that the Borough of Ship Bottom has not petitioned for third-round substantive certification (n.b., the Borough filed a petition for second-round substantive certification on August 14, 2000, but said petition was not approved). Given the issues surrounding the Long Beach Island Grade School site (Block 48, Lot 1) and former CVS site (Block 107, Lot 9), it is recommended that the Borough consider filing a petition for third-round substantive certification.

## Specific Changes Recommended to the Master Plan and Development Regulations

At this juncture, the most critical issue facing the Borough of Ship Bottom is the need to maintain the integrity of its P (Public) and GC (General Commercial) zone districts. The need to address this issue is heightened as a result of the issues related to the Long Beach Island Grade School (Block 48, Lot 1) and former CVS Pharmacy (Block 107, Lot 9) sites that have previously been discussed in this report. To address said issues, this report recommends the strategies that are outlined in the following subsections.

### Prepare Ordinance Amendments

Land development regulations for the P (Public) and GC (General Commercial) zone districts are provided in chapters 16.20 and 16.48 of the Code of the Borough of Ship Bottom, respectively. While said chapters very clearly define permitted principal and accessory uses, they do not specify the purpose of the respective zone district or define prohibited uses. It is, therefore, recommended that the Borough revise said chapters to very clearly communicate the purpose of the respective zone district and specify uses prohibited therein. By doing so, the Borough's intentions for each zone district would be clarified and provide a framework for the Ship Bottom Borough Land Use Board in analyzing any future requests for "d" variances.

### Amend Land Use Element

This report recommends that the Borough prepare an updated land use element. The new land use element should provide detailed description of the Borough's intent and purpose for each land use district. The new land use element should also be coordinated with a new recreation and open space element for the Borough as recommended in the following subsection.

Any update to the Land Use Element would also need to conform with the new statutory requirements for land use elements that have been described in this report. These include the requirement to provide: a land use plan statement of strategy on smart growth, storm resiliency and environmental sustainability, and a climate change related hazard vulnerability assessment.

### Amend Recreation and Open Space Element

It is further recommended that the Borough amend its current recreation and open space element, which is included in the 2018 Master Plan Reexamination Report. The purpose of such an amendment would be to identify specific preservation and acquisition targets for recreation and open space, which would include, at a minimum, the Long Beach Island Grade School Site (Block 48, Lot 1).

When preparing an amended recreation and open space element, it is recommended that the Borough follow applicable guidelines for recreation and open space elements that are published by the Green Acres Program of the New Jersey Department of Environmental Protection.



By amending the recreation and open space element in the manner that has been described herein, the Borough is maximizing its potential to secure funding from the Green Acres Program to support the acquisition of specified preservation targets.

Prepare a Third-Round Housing Element and Fair Share Plan

The Borough has not prepared a third-round housing element and fair share plan. It is therefore recommended that the Borough engage its legal counsel to develop a third-round compliance strategy and prepare a third-round housing element and fair share plan.

When developing said plan, it is recommended that the Borough consider preparing a vacant land adjustment in accordance with applicable affordable housing regulations that have been accepted by the courts. It is noted that the regulations pertaining to vacant land adjustments permit municipalities to reserve up to: three percent of their developed and developable land area for future use as active recreation; and three percent of their total area for use as conservation, parklands and open space (i.e., passive recreation). It is noted, however, that reservation of land for active and passive recreation requires that the lands to be reserved be designated in the municipality's master plan; which would be addressed in an amended recreation and open space plan.

## Recommendations Concerning the Incorporation of Redevelopment Plans

The Borough of Ship Bottom neither contains designated areas in need of redevelopment, nor is the designation of such areas contemplated at this time.

**\*\*The Chairman reserves the right to revise the order of the Agenda as needed\*\***

Agenda  
Ship Bottom Land Use Review Board  
Regular Meeting  
Wednesday, March 17, 2021

1. Flag Salute
2. Work Shop - 7:00 P.M.
3. Call meeting to Order
4. Certification of Compliance - Public Notice (Open Public Meetings Act)
5. Roll Call of Members:
  - Mr. Dixon
  - Councilman English
  - Mr. Fenimore, Alt. 1
  - Mr. Hay
  - Ms. Schmidt
  - Vice Chairman Tallon
  - Mr. Yankowski, Alt. #2
  - Mr. Basile
  - Mr. Bishop
  - Councilman Butkus
  - Chairman Cooper
6. Correspondence
7. Approval of Minutes:
  1. February 17, 2021
8. Approval of March Bill List
9. New Business:
  1. Docket No. 21:03 **\*CARRIED\***  
Louis & Lisa Notaro  
103 East 15<sup>th</sup> Street  
Block 576, Lot 18
10. Resolutions:
  1. Docket No. 21:01  
1809 & 1815A Long Beach Blvd., LLC  
1809 Long Beach Blvd.  
Block 55, Lot 2.01
  2. Docket No. 21:02  
1701 J&A, LLC  
1701 Long Beach Blvd.  
Block 58, Lot 2
11. Business of the Board – Master Plan
12. Adjournment

Maximum time period allowed to present testimony, witnesses and other proofs are limited to one (1) hour and may be extended only at the discretion of the board.

Meeting will adjourn at 10:30 pm with no further testimony being taken unless otherwise ordered at the discretion of the board.

# **EXHIBIT B**

Ocean County 2018 Multi-Jurisdictional All Hazard Mitigation Plan

**Mitigation Action Table**

Action	Jurisdiction	Name	Action Category	Description	Hazards Addressed	Priority	Responsible Party	Potential Funding	Cost Estimate	Timeline	Action Status
Action 6.4.35-1:	Ship Bottom Borough	Elevate 186 homes	Structure/Infrastructure Project	Elevation project for 187 homes to build to higher standards and elevation that will mitigate impact of flood related hazards while maintaining residents in community	Coastal Erosion; Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Climate Change	High	Ship Bottom Borough (Emergency Services)	HMA, For 25% local match, in-kind services, Community Development Block Grant (CDBG-DR) and NFIP Increased Cost of Compliance (ICC)	\$14,025,000	1 year	Ongoing
Action 6.4.35-3:	Ship Bottom Borough	Elevate or replace Municipal Building	Structure/Infrastructure Project	Elevating Municipal Building to mitigate flood related hazards	Coastal Erosion; Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Climate Change	High	Ship Bottom Borough	HMA, CDBG-DR, ICC	\$300,000	1 year	Ongoing
Action 6.4.35-5:	Ship Bottom Borough	Inform and educate property owners on NFIP	Education and Awareness Program	Continue to participate in the NFIP to support pro-active floodplain management that will protect property from flood related hazards, clearly inform property owners about the risks of being in and near the SFHA, and promote flood insurance	Coastal Erosion; Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Climate Change	High	Ship Bottom Borough (Emergency Services) and borough residents	Homeowners	N/A	5 years	Ongoing
Action 6.4.35-10:	Ship Bottom Borough	Upgrade to the next class level in CRS Program	Education and Awareness Program	Continue participation in CRS program and consider upgrading to the next class level to complete pro-active floodplain management and assist residents with flood insurance costs	Coastal Erosion; Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Climate Change	High	Ship Bottom Borough	Ship Bottom Borough; HMA, FEMA	N/A	5 years	Ongoing
Action 6.4.35-11:	Ship Bottom Borough	Elevate and improve drainage on Long Beach Blvd.	Structure/Infrastructure Project	Elevate and improve drainage on Long Beach Blvd where continued nuisance and storm flooding occur. This street is the main evacuation route on Long Beach Island.	Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Tornado, Wind Storm; Winter Storm; Utility Interruption	High	Ship Bottom Borough	HMA, CDBG-DR		5 years	New 2018
Action 6.4.35-12:	Ship Bottom Borough	Acquire the Long Beach Grade School Property	Structure/Infrastructure Project	The Borough of Ship Bottom prefers to acquire the property to retain it as an emergency shelter.	Flood, Flash Flood, Ice Jam; Hurricane, Tropical Storm, Nor'easter; Tornado, Wind Storm; Winter Storm; Utility Interruption	High	Ship Bottom Borough	HMA, CDBG-DR		5 years	New 2018
Action 6.4.35-13:	Ship Bottom Borough	Elevate the 15th Street Water Well Plant	Structure/Infrastructure Project	Elevate the 15th Street Water Well Plant	Utility Interruption	High		HMA, CDBG-DR		5 years	New 2018

# EXHIBIT C

**ORDINANCE 2021-05  
BOROUGH OF SHIP BOTTOM,  
COUNTY OF OCEAN,  
STATE OF NEW JERSEY**

**ORDINANCE AMENDING CHAPTER 16.20 OF THE  
CODE OF THE BOROUGH OF SHIP BOTTOM,  
ENTITLED "P PUBLIC DISTRICT," TO DEFINE  
THE INTENT AND PURPOSE OF THE P PUBLIC  
DISTRICT AND SPECIFY PROHIBITED LAND  
USES THEREIN**

**WHEREAS**, within its general powers as a municipality, the Borough of Ship Bottom may make and enforce ordinances, rules and regulations not contrary to federal or state law as it deems necessary and to protect the public safety and welfare of its residents; and

**WHEREAS**, the governing body wishes to enact new sections of the municipal code defining the intent and purpose of the P Public District and setting forth prohibited uses therein; and

**WHEREAS**, enactment of new sections of the municipal code defining the intent and purpose of the P Public District and setting forth prohibited uses therein is consistent with the recommendations of the 2021 Master Plan Reexamination Report of the Borough of Ship Bottom.

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Ship Bottom as follows:

**PART 1.** Chapter 16.20 of the Code of the Borough of Ship Bottom, entitled "P Public District," is hereby amended to re-letter existing Paragraphs A and B as new Paragraphs B and C with no change to their content or order.

**PART 2.** Chapter 16.20 of the Code of the Borough of Ship Bottom, entitled "P Public District," is hereby amended to re-letter existing Paragraphs C through G as new Paragraphs E through I with no change to their content or order.

**PART 3.** Chapter 16.20 of the Code of the Borough of Ship Bottom, entitled "P Public District," is hereby amended to add new Paragraph A, entitled "Intent and Purpose," as provided below:

- A. Intent and Purpose: The intent and purpose of the P Public District is to: recognize the importance and value of uses that provide necessary public services to the community; provide adequate space at appropriate locations for their development and operation; and, ensure that non-public purpose uses do not encroach upon, replace, or adversely impact these uses that are critical to the general welfare of the community.

**PART 4.** Chapter 16.20 of the Code of the Borough of Ship Bottom, entitled "P Public District," is hereby amended to add new Paragraph D, entitled "Prohibited Uses," as provided below:

- D. Prohibited Uses.
1. Residential uses;
  2. Commercial uses;
  3. Industrial uses;
  4. Any other principal use not specifically identified § 16.20.010.B;
  5. Any other accessory use not specifically identified § 16.20.010.C.

**PART 5.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason declared invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct

and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**PART 6.** All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency.

**PART 7.** This ordinance shall become effective upon publication as required by law or

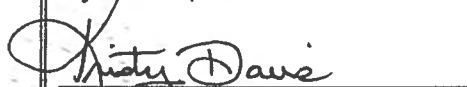
**STATEMENT OF NOTICE**

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a public meeting of the Borough Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on March 23, 2021 at 6:30 p.m. via Zoom #965 0252 3123 Passcode #566967. A copy of the ordinance can be obtained, without cost, by any member of the general public at the Office of the Municipal Clerk, 1621 Long Beach Blvd., Ship Bottom, NJ 08008 Monday through Friday, 9:00 a.m. to 4:00 p.m., on our website at [www.shipbottom.org](http://www.shipbottom.org) or via email [kdavis@shipbottom.org](mailto:kdavis@shipbottom.org) Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a public meeting of the Borough Council to be held on April 27, 2021 at 6:30 p.m. via Zoom #965 0252 3123 Passcode #566967.

**CERTIFICATION**

I, **KRISTY DAVIS**, Municipal Clerk of the Borough of Ship Bottom, in the County of Ocean, New Jersey, HEREBY CERTIFY that annexed hereto is a true copy of Ordinance No. 2021-05 which was introduced and passed on first reading at a duly convened meeting of the Borough Council March 23, 2021.

IN WITNESS WHEREOF, I hereby set my hand and the seal of the Borough this 23<sup>rd</sup> day of March, 2021



\_\_\_\_\_  
BOROUGH OF SHIP BOTTOM  
IN THE COUNTY OF OCEAN, NEW JERSEY  
KRISTY DAVIS, Municipal Clerk



# **EXHIBIT D**

# CARLIN & WARD

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

25B VREELAND ROAD  
P.O. BOX 751  
FLORHAM PARK, NEW JERSEY 07932

973-377-3350  
FAX: 973-377-5626

E-MAIL: [scott.heiart@carlinward.com](mailto:scott.heiart@carlinward.com)  
WEBSITE: [www.carlinward.com](http://www.carlinward.com)

**SCOTT A. HEIART, ESQ.**

April 26, 2021

**VIA E-MAIL ([kdavis@shipbottom.org](mailto:kdavis@shipbottom.org)) AND FEDERAL EXPRESS**

Mayor William Huelsenbeck & Council Members  
c/o Kristy Davis – Municipal Clerk  
Borough of Ship Bottom  
1621 Long Beach Boulevard  
Ship Bottom, New Jersey 08008

**Re: Ordinance 2021-05  
Long Beach Island Grade School  
201 20th Street, Ship Bottom, New Jersey 08008  
Block 48, Lot 1  
(the “Subject Property”)  
Our File No. 40842-01**

Dear Mr. Mayor and Council:

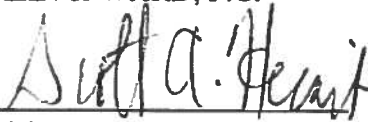
This office has been retained by the Long Beach Island Consolidated School District Board of Education (the “Board”) to represent its interests with respect to the above referenced Subject Property. It is our understanding that the Council will be conducting a public hearing on April 27, 2021, at 6:30 p.m. via ZOOM to vote on Ordinance 2021-05 (the “Ordinance”). The Ordinance seeks to amend the “P Public District” Zone, which controls the zoning for the Subject Property. The amendment seeks to prohibit all uses other than those which are currently permitted in the P Public District Zone. The Ordinance would amend the P Public District Zone to specifically prohibit the following listed uses: residential uses; commercial uses; industrial uses; any other principal use not specifically identified in §16.20.010.B; and any other accessory use not specifically identified in §16.20.010.C.

The Board has serious concerns over the proposed Ordinance and the impacts it will have. As such, we hereby respectfully request that we be recognized tomorrow night during the ZOOM meeting and be heard regarding these concerns. In addition, enclosed herewith please find the planning analysis prepared by J. Creigh Rahenkamp, NJPP, regarding the proposed Ordinance. We would ask that Mr. Rahenkamp be recognized and permitted to testify at the hearing and that his analysis be admitted into the record.

Given that the Subject Property is public property and its disposition impacts not just the Borough, but the entire Island, we believe it is important that the Council hear our issues and consider our objections before a final vote.

I thank you for your time and consideration.

Respectfully submitted,  
CARLIN & WARD, P.C.

By:   
SCOTT A. HEIART, ESQ.

SAH:au

Enclosure

cc: Christopher Connors, Esq (via email CConnors@dmmlawfirm.com)  
LBI Bd of Education (via email)  
Anthony P. Sciarrillo, Esq. (via email)  
William J. Ward, Esq. (via email)  
Creigh Rahenkamp (via email)



April 26, 2021

Mayor & Council  
Borough of Ship Bottom  
1621 Long Beach Boulevard  
Ship Bottom, NJ 08008

RE: Ordinance 2021-05  
Opposition on Behalf of the Long Beach Island School Board

Dear Mayor & Council:

I have been asked by the Long Beach Island Consolidated Board of Education to review the proposed ordinance and the 2021 Master Plan Reexamination Report from the perspective of a professional planner. For the reasons set forth below, it is my professional view that the ordinance is not consistent with the powers granted to the Borough under the Municipal Land Use law (MLUL) or constitutional protections afforded landowners.

The Borough has expressed its desires to see the parcel – 201 20<sup>th</sup> Street – remain as a school or be converted to a public use including an emergency shelter and public recreation facilities in the 2021 Reexamination and through its submissions to Ocean County in support of the County's 2018 Multi-Jurisdictional All Hazard Mitigation Plan. To express the governing body's desires in these ways is altogether proper from a planning perspective. However, the adoption of a zoning ordinance is constrained by the powers granted by Article 8 of the MLUL. In short, there is much a municipality can do through planning and other tools under the MLUL, but zoning is limited in its use and purposes.

Clearly, it is well established that the use of zoning to manipulate land value for a subsequent taking/acquisition is not a proper purpose.<sup>1</sup> Individual members of the governing body, counsel and the Borough's planner have been quoted in the press saying that the purpose of the ordinance is to constrain any future possibility that an applicant could obtain a use variance on the tract, which would necessarily have a depressing impact on the land's value in the open market. The question remaining is whether there is a legitimate public purpose that is also being advanced and in determining whether a proper legislative goal is being advanced and is it being effectuated through a mechanism reasonably related to achieving that goal.

---

<sup>1</sup> See for example *Riggs v. Long Beach Township* (109 NJ 601 (1988)) and as it pertains to motive or goals in condemnation see also *Township of Allamuchy v. Progressive Properties, et. al* (182 NJ 147, 862 A.2d 57 (2004)).

Mayor & Council: Borough of Ship Bottom  
 Re: Ordinance 2021-05  
 April 26, 2021  
 Page 2

## The Environmental Argument

The core statement of the 2021 Reexamination is that nuisance flooding is “exacerbated by increased impervious cover” and that the “athletic field and playground...represent an important and large area of porous cover and natural landscape that should be preserved to mitigate nuisance flooding”. In identifying goals advanced by the preservation of the site (not expressly in support of the proposed ordinance) the report cites the following:

- Environmental Sustainability
  - Protect, maintain and conserve the natural resources of Ship Bottom for continued environmental quality and health of all residents.
  - Encourage provision of such environmentally friendly features as rain gardens, porous pavement and natural landscapes with native plantings as appropriate.

First, there is no direct correlation between use and impervious cover. The existing school building and paved areas are already impervious over approximately  $\frac{3}{4}$  of the area of the tract, and whether to be used for education, an office or residents has absolutely no change in effect on the issues cited. If impervious surfaces are the concern, there can easily be regulatory requirements tailored to the concern. This issue does not support the elimination of all non-public uses.

Second, simply saying “environmental” doesn’t make it so. In reviewing environmental factors our courts have reviewed ordinances to ensure that the factors or systems actually exist on the site and that environmental performance is actually advanced by the policy.<sup>2</sup> Perviousness matters to the extent that stormwater can be readily converted into groundwater rather than surface flows that we experience as flooding. The key variables are the ability of water during a storm event to penetrate the top layers of the soil and the ability of water to move through capillary action laterally to fill voids. We model and plan for 100-year storms, not because we have a fixation with the frequency factor, but because of the simple reality that after a few inches of rain everything is impervious! Once the upper layers of soil become saturated during a storm, additional water runs off. In the present matter, the compacted earth of ball fields and playgrounds are not particularly porous in the first place and function equivalently to impervious surfaces after a limited amount of rain. We are not discussing the conversion of the loose and tilled earth of a farm field or the complex richness of a forest floor to developed surfaces, but rather the conversion of heavily compacted topsoil. In fact, the redevelopment of the site under the current stormwater management rules would ensure that stormwater would be held on site at least as well as the

<sup>2</sup> See for example *Pheasant Bridge Corp. v. Township of Warren* (169 NJ 282 (2001), cert. den. 535 US 1077 (2002)).

Mayor & Council: Borough of Ship Bottom  
 Re: Ordinance 2021-05  
 April 26, 2021  
 Page 3

existing condition, and would most likely result in a substantial improvement over the site's current holding capacity of stormwater.<sup>3</sup> Redevelopment would certainly enhance the opportunities to provide rain gardens, porous pavement and naturalized landscaping as called for by the Report.

In short, there is no justification for the proposed ordinance to be found in the protection of the environment.

### Neighborhood Character, Spot Zoning and Equal Protection

The 2021 Reexamination Plan asserts that the Borough wishes to protect "existing neighborhood character". This is a curious argument as its implication is that homes on 21<sup>st</sup> Street or 18<sup>th</sup> Street are somehow deficient in character because they are on streets that are characterized on both sides of the street by similar homes. Open space is surely nice, but its absence is not a community character argument when there are large areas within the neighborhood that are very pleasant residential streets with ample character without it. As our courts have concluded that a municipality cannot simply mandate the preservation of open space from developers as a condition of developing land through zoning, how can it make any sense that a community character argument can support doing so in this context?<sup>4</sup>

Spot zoning is a concept that is grounded on two aspects – advancement of public policy and inconsistency with the surrounding uses. The conflicting policies are addressed in the next section, but is it incontrovertible that the zoning of 201 20<sup>th</sup> Street is inconsistent with what surrounds it. Its justification heretofore was that public ownership was a sufficient circumstance to support a different zoning, but now that that status is about to change, there is no justification in zoning for it to be treated differently based solely on the nature of its prior use. It is similarly situated with regard to the environmental issues and character concerns as all of the other land currently zoned R-2. Without reference to its prior use as a school, there is no rationale that can be advanced to explain why this lot is sufficiently different than all those around it to justify differential treatment.

Again, there is no support for Ordinance 2021-05 from this aspect of the 2021 Reexamination Report. This argument may support efforts to acquire the site, but not to use zoning to require that its future use remain inconsistent with the uses of all of the surrounding property.

<sup>3</sup> Note that this discussion approaches the 2021 Reexamination Report on the concepts it advances. It is unclear how perviousness and conversion to groundwater makes any sense in the context of a barrier island.

<sup>4</sup> See *Shore Builders v. Township of Jackson* (401 NJ Super 152, 167-168 (App. Div. 2008), aff'd 199 NJ 449 (2009)) for open space and *Odabash v. Mayor & Council of Dumont* 65 NJ 115, 120 (1974) for the proposition that zoning should follow nature of established neighborhood.

Mayor & Council: Borough of Ship Bottom  
 Re: Ordinance 2021-05  
 April 26, 2021  
 Page 4

### Conflicting Policy Goals

In traditional challenges to land use ordinances the balance on the scale is between the public interest assumed to be expressed by the adopting authority and the private interests protected by our laws. In this case, the balancing is between conflicting public interests. The Board of Education is responding to the demographic reality of our times – fewer school children – and seeking to raise the capital necessary to upgrade and update its facilities to meet the educational needs of the children of the district by disposing of surplus property. The value of the property is important to the taxpayers of the entire district, which includes as a subset, the taxpayers of Ship Bottom. The weighing of public interests called for by Judge Skillman in the Sartoga case,<sup>5</sup> as applied in this instance, requires that the Ship Bottom Council consider the competing public objectives that could be thwarted by this ordinance.

### Other Concerns

Ordinance 2021-05 says that it “is consistent with the recommendations of the 2021 Master Plan Reexamination Report”. This is problematic, as it is irrelevant to the consideration of the ordinance. The MLUL under NJSA 40:55D-64 and 26, requires the Planning Board to determine the consistency of the proposed ordinance with the “master plan”, which is a creature of NJSA 40:55D-28.<sup>6</sup> A reexamination report is created under NJSA 40:55D-89. At most, as this one does, it can conclude that the master plan needs revision, but it cannot be a substitute for such a revision.

The actual referral and review of the Planning Board does not appear to have been provided in the online notice for the hearing on Ordinance 2021-05 so I cannot verify whether the Planning Board made the same error as the author of the ordinance. However, the absence of this report provided online 48 hours prior to the virtual hearing also appears to violate the current State directives on the holding of virtual meetings.

Finally, as the 2021 Reexamination Report attests, the Borough has not prepared a housing element or made any other effort to meet its obligations under the Mount Laurel doctrine. Vacant land is obviously a scarce resource in the Borough and the availability of 201 20<sup>th</sup> Street as a redevelopment site clearly offers the ability to contribute to the fulfillment of the Borough’s obligations to the protected class. Ignoring this central fact in considering Ordinance 2021-05 is fundamentally fatal to its legitimacy.

<sup>5</sup> Sartoga v. Borough of West Paterson (346 NJ Super 569, 581 (App. Div.) certify. den. 172 NJ 357 (2002).

<sup>6</sup> Which in this matter according to the 2021 Reexamination Report on page 1 is a document prepared in 1979 and never amended despite seven subsequent reexamination reports.

Mayor & Council: Borough of Ship Bottom  
Re: Ordinance 2021-05  
April 26, 2021  
Page 5

Thank you for your consideration of my thoughts on these matters. I look forward to supplementing this material and responding to questions at an appropriate hearing.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Creigh Rahenkamp', with a long horizontal flourish extending to the right.

J. Creigh Rahenkamp, NJPP