



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

IN THE MATTER OF THE BOROUGH OF MILLSTONE)
- PETITION FOR EXEMPTION FROM MAIN)
EXTENSION RULES AT N.J.A.C. 14:3-8.8(a)(6))
)
) ORDER APPROVING
) EXEMPTION
)
) NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by the Borough of Millstone ("Petitioner" or "Borough") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(a)(6). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is replacing a contaminated well with new potable water service to its Borough Hall at 1353 Main Street, Millstone, New Jersey. Borough Hall, and the entire .5 square mile Borough is in an area not designated for growth. In a letter dated August 1, 2007, the Borough of Millstone petitioned the Board for an exemption under N.J.A.C. 14:3-8.8(a)(6). Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of extending water service to Borough Hall. A Preliminary estimate from New Jersey American Water Company of the cost to extend water service to Borough Hall is approximately \$2900.00.

The Petitioner submits that it is exempt from the requirements for the costs of the extensions pursuant to N.J.A.C. 14:3-8.8(a)(6), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption based on significant public good, a person must demonstrate to the Board that all of the following criteria are met: (1) the project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) the project is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth; and (3) there is no practicable alternative means of providing the benefit while still complying with this subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

- 1. Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment**

Petitioner argues that the extension of water service will constitute a benefit to the public because it will replace a contaminated well that serves Borough Hall. According to Petitioner, this building is over 100 years old and the only public building in the municipality. It serves as a meeting place for all boards and commissions of the Borough as well as their Emergency Operations Center in times of emergency or disaster. Additionally, all municipal functions and community contacts with local government operate from Borough Hall.

2. Whether the Project is Consistent with Smart Growth, or that the Benefit of the Project Outweighs the Benefits of Smart Growth. In Making this Determination, the Board will Consult with the Office of Smart Growth and other State agencies

Petitioner acknowledges that the entire .5 square mile Borough is an area not designated for growth. However, Petitioner states that construction of a water extension is simply replacing a contaminated well with a clean source of water and therefore it is consistent with smart growth. Moreover, the Borough states that it is actively working to place most of its undeveloped land into Green Acres.

3. Whether there is a Practicable Alternative Means of Providing the Benefit While Still Complying with this Subchapter

Petitioner states that there is no practicable alternative means of providing the benefit of a clean and secure water supply to Borough Hall other than an extension of service from New Jersey American Water Company. The Borough maintains that its budget cannot accommodate the \$2,900 nonrefundable cost that it would be required to pay absent an exemption to N.J.A.C. 14:3-8.1 et seq.¹

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.

Board Staff located the building site on the State's "Smart Growth Locator" web tool. See <http://sql.state.nj.us/>. Based on information obtained from the "Smart Growth Locator" the State Development and Redevelopment Plan designated the Site as Planning Area 3, Fringe. The Site is in an area not designated for growth as defined in the Board's Main Extension Rules at N.J.A.C. 14:3-8.2. Board Staff has also reviewed aerial photographs obtained from the "Smart Growth Locator". These photographs show the site is located in a rural area.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the Office of Smart Growth. Benjamin Spenili, Executive Director of the Office of Smart Growth, confirmed in a letter dated October 3, 2007 that by granting the requested exemption, the Board will not negatively impact the achievement of the State's smart growth goals. This letter further noted that the Borough "meets the Village center criteria of compact and center-based development offering a small core with public facilities and community activities." Additionally, they feel that

¹The Petitioner notes that it cannot afford the cost of this project. Such information does not impact the practicable alternative prong of this analysis, but instead may be relevant to an exemption based on a financial hardship pursuant to N.J.A.C. 14:3-8.8(a)(7). As such an exemption has not been sought; the Board will not analyze this issue.

the project generally meets smart growth principles and has a clear public benefit. The October 3, 2007 letter from the Office of Smart Growth was provided to the Petitioner on December 7, 2007.

DISCUSSION:

The Board's jurisdiction over utility extensions can be found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. The Board has adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board recognizes the benefit of having a common community facility to provide a meeting place and centralized facility to provide services to residents of Millstone Borough. Millstone Borough will benefit from continuing to use this facility as a meeting place for all boards and commissions of the Borough, as its Emergency Operations Center, as well as for local government operations. The Board further notes that the footprint or environmental impact of this facility will not change as a result of the extension at issue. The Board therefore FINDS that the public good served by having a potable water supply at the Borough's municipal building constitutes a significant benefit to the public for purposes of the Main Extension Rules.

As noted above, the Office of Smart Growth concluded that the project is consistent with smart growth and confirmed that by granting this exemption, the Board will not negatively impact the achievement of the State's smart growth goals. The Board agrees with the assessment of the Office of Smart Growth and FINDS that the facilities at the Borough Hall are consistent with the principles of Smart Growth.

As further noted above, there are no alternative public buildings in Millstone Borough that can provide the services to Borough Residents. Additionally, as the entire Borough of Millstone is within an area not designated as growth, it is not possible for any alternative municipal facility constructed within the Borough to be in an area designated for smart growth. The Board recognizes that this facility could not operate as a Borough Hall without a potable water supply. Therefore, the Board FINDS that there is no practical alternative of providing the benefit.

As to the remaining statutory requirements, the Board must ascertain that the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. On May 19, 2008, the Board sent a letter to New Jersey American Water regarding its financial condition and whether the within extension will furnish sufficient business to justify the expense. New Jersey American Water responded on July 2, 2008. New Jersey American did not contest its financial condition to provide the extension, nor did it contest the fact that the extension will furnish sufficient business to justify the expense. The company indicated that it would recover the \$2900 extension cost at a rate of approximately \$100 - \$200 per year.

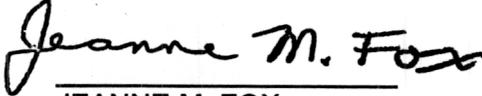
After considering the request for an exemption, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(a)(6) for a project that will provide a significant public good are met. Specifically, the Board FINDS as follows: (1) the construction of a water extension to serve the Borough Hall will constitute a significant benefit to the public; (2) the project is consistent with the State's smart growth goals; (3) the Office of Smart Growth has also confirmed that by

granting this exemption, the State's smart growth goals will not be negatively impacted; and (4) there is no practicable alternative means of providing the benefit while still complying with the rules. Therefore, the Board HEREBY GRANTS an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(a)(6) for an extension of water service to the Borough Hall located at 1353 Main Street, Millstone, New Jersey.

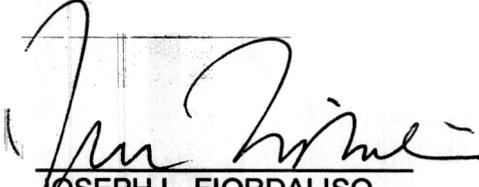
Pursuant to N.J.A.C. 14:3-8.8(j)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending water service shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area. The Board FURTHER ORDERS that any agreement between the utility and Petitioner pursuant to N.J.A.C. 14:3-8.7(c) shall require that the cost of the extension will be recovered through revenue from this extension.

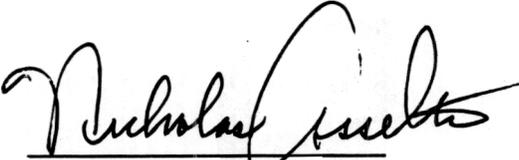
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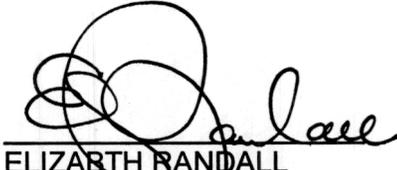
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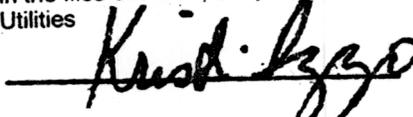

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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AT N.J.A.C.14:3-8.8(a)(6)
NON-DOCKETED MATTER

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