



Agenda Date: 8/19/08

Agenda Item: 9A

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

IN THE MATTER OF THE PASSAIC RIVER
COALITION – PETITION FOR EXEMPTION FROM)
MAIN EXTENSION RULES AT N.J.A.C. 14:3-8.8(b)(1))
)

ORDER APPROVING
EXEMPTION

NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by the Passaic River Coalition (“Petitioner”) for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1).¹ 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 states that it is a non-profit watershed association established in 1969 and acquired a 17 acre parcel of land in the Borough of Ringwood (Block 310, Lots 2.01 – 2.05), Passaic County New Jersey (“the farm”). The Petitioner further states that it purchased the farm in 2004 through a land trust that it formed in 1992 to acquire environmentally sensitive lands within the Passaic River Basin. The farm includes an existing bunk house and is located in an area not designated for growth. The Petitioner states that it will use the small one bedroom bunk house for a field office and will rent space to Skylands CLEAN, a non-profit group working to protect the environment in New Jersey’s Highlands region. Petitioner states that establishing this field office will allow it to more efficiently work on “water resource issues of the Highlands and Greenwood Lake” as well as manage several parcels of land it purchased for watershed protection. Petitioner further states that the farm property will be open to the public and that there is a conservation easement on the property. This easement provides that the farm will be used only for recreation and conservation purposes as defined in the Open Space Preservation Bond Act of 1992 and in the Green Acres, Farmland and Historic Preservation and Blue Acres Bond Act, of 1995. Petitioner may also construct a batting cage on the farm as the property was once a practice field for Babe Ruth. In a letter dated August 3, 2007, the Passaic River Coalition petitioned the Board for an exemption under N.J.A.C. 14:3-8.8(b)(1). Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of extending electric service to the bunk house on the farm. The preliminary estimate from

¹Petitioner initially filed for an exemption pursuant to N.J.A.C. 14:3-8.8(a)(6). Effective May 19, 2008, the Board amended its Main Extension Regulations and moved the relevant exemption from N.J.A.C. 14:3-8.8(a)(6) to N.J.A.C. 14:3-8.8(b)(1).

Rockland Electric Company of the cost to extend electric service to the bunk house is approximately \$9935.00.

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(b)(1), 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 farm will constitute a benefit to the public because it will serve the community of Ringwood Borough with recreational facilities, such as hiking trails. The preservation of this property will also protect this environmentally sensitive land from future development.

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

Here, Petitioner states that although the farm is in an area not designated for growth, the only development will be the renovation of an existing bunk house. The undeveloped portion of the farm will provide active and passive recreation and will preclude future residential and commercial development.

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

Petitioner states that while the farm is not located in an area designated for growth, there is a need for recreation facilities and the preservation of open space that would not be practicable in other sites in Ringwood Borough. The Petitioner does not provide other specific examples of the unavailability of other recreational facilities in the Borough of Ringwood.

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://sgl.state.nj.us/>. Based on information obtained from the "Smart Growth Locator", the State Development and Redevelopment Plan designated the Site as Planning Area 5, Environmentally Sensitive. 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.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the Office of Smart Growth. Benjamin Spinelli, Executive Director of the Office of Smart Growth noted in a letter (OSG Assessment) dated September 13, 2007, that the extension of “electrical service to an existing structure is consistent with the smart growth planning principles.” It was the opinion of his Office that the extension of service to the batting cages, however, was not consistent with smart growth planning principles. Specifically, they indicated that new development, such as the batting cages in this highly sensitive area should be distinguished from rehabilitation of an existing structure. They are particularly concerned with “no in impervious coverage, no extension of water or wastewater services, and no impact to the surrounding natural environment.”

The OSG Assessment was provided to the Petitioner on October 22, 2007. Petitioner was given an opportunity to respond to the OSG Assessment and submitted a letter to the Board dated November 8, 2007 taking issue with several items in the OSG Assessment (“Petitioner Response Letter”). The Petitioner Response Letter indicated that there are no plans to extend electric service to the batting cage and that the batting cage was a request by the Borough and that the Petitioner may or may not construct a batting cage on this property. Petitioner also noted that if a batting cage is erected, it will take down two existing sheds on the property, thereby improving the impervious surface coverage on the site.

DISCUSSION:

The Board’s jurisdiction over utility extensions is 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. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board recognizes the policy interests of this State to preserve open space for passive and active use. “The provision of lands for public recreation and the conservation of natural resources promotes the public health, prosperity and general welfare and is a proper responsibility of government” N.J.S.A. 13:8A-2(a). See also Mount Laurel Tp. v. Mipro Homes, L.L.C., 379 N.J. Super. 358, 374 (App. Div. 2005) (citing the Municipal Trust Fund Act, N.J.S.A. 40:12-15.1 and the Garden State Preservation Act N.J.S.A. 13:8C-1 et seq.) The purchase and use of this property was made in furtherance of efforts to preserve open space from development and provide land for public recreation. The project will provide passive recreation through hiking trails and the bunk house will be used by an environmental group. The bunk house is on well and septic and no extension of sewer system is foreseen. The preservation of the farm by the Petitioner saved the property from development as it was zoned for a large lot subdivision. The project may also include public batting cages. The bunk house had previously been served by RECO, but that service had been removed prior to the Petitioner purchasing the property. Therefore the Petitioner is seeking the restoration of service for the adaptive reuse of the bunk house. The Board FINDS that the public good served by the preservation of the farm and passive hiking trails and other recreational facilities constitutes a public good for purposes of the Main Extension Rules.

As noted above, the Office of Smart Growth concluded that the requested extension is consistent with smart growth principles and confirmed that by granting this exemption, the Board will not negatively impact the achievement of the State's smart growth goals.² The Board agrees with the assessment of the Office of Smart Growth as to the bunk house. The Board notes that the request for batting cages was made by the community and if they are constructed, they would remove other structures to balance the impervious surface coverage of the site. The Board therefore FINDS that an extension to the bunk house is consistent with the principles of Smart Growth.

The Board further notes that as development continues to envelop this state contiguous open space suitable for a public park is increasingly difficult to find, let alone acquire. This project will integrate active and passive recreational uses for the site, which will be used by the public. 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. Rockland Electric Company (RECO) was sent a letter on April 22, 2008 asking if the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. In response, RECO sent an undated letter that did not respond staff's request to provide information about the financial condition of the utility and if it warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. Instead, the response from RECO simply provided the company's opinion as to whether or not it thought that the Petitioner had satisfied the regulatory criteria laid out in N.J.A.C. 14:3-8.8(h). RECO did not request a hearing, nor did they allege any factual disputes. Naturally, the issue of whether or not Petitioner meets the regulatory criteria of N.J.A.C. 14:3-8.8(h) is an issue for the Board to determine.

After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met. Specifically, the Board FINDS as follows: (1) the construction of electric extensions to serve the bunk house will constitute a significant benefit to the public; (2) the benefits of having preserved open space and recreation facilities outweigh the potential negative impact on the achievement of the State's smart growth goals; (3) the Office of Smart Growth has also confirmed that by granting an exemption for the bunk house, the State's smart growth goals will not be negatively impacted; and (4) because of the need for sufficient open space to allow for recreation facilities, 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(b)(1) for an extension of electric service to the bunk house located in the Borough of Ringwood (Block 310, Lots 2.01 – 2.05), Passaic County 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 electric service to the

² The Office of Smart Growth noted that an extension to batting cages would not be consistent with Smart Growth. The Petitioner responded that no extension of service is being sought beyond the bunk house. The exemption granted herein is limited to the bunk house and does not constitute an exemption for an extension to batting cages, which has not been requested by the Petitioner.

bunk house 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.

DATED: 8/22/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

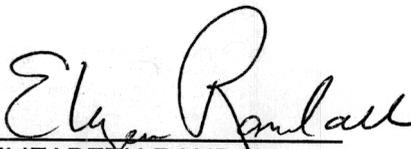

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

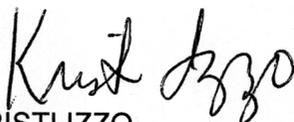
Dissent of Commissioner Elizabeth Randall

With respect to the Passaic River Coalition's Petition for Exemption from Main Extension Rules at N.J.A.C. 14:3-8.8(b)(1), I vote "no." I agree with my fellow Commissioners that the Passaic River Coalition's plan to develop public hiking trails and recreational facilities on the farm it owns in Ringwood Borough provides ample public benefits. In addition, I am pleased that the Passaic River Coalition will protect the land from future development.

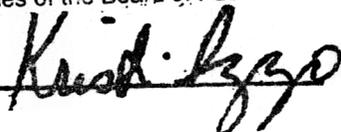
However, I do not agree that providing electric service to the existing bunk house on the property meets the significant public good standard set forth in N.J.A.C. 14:3-8.8(h). The bunk house will not be open to the public, but will instead be used as a field office for the Passaic River Coalition, which will also sublet space in the building to another organization. For this reason, I do not support requiring all ratepayers to bear the cost of extending electric service to the bunk house, and, therefore, vote "no."


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



IN THE MATTER OF THE PASSAIC RIVER COALITION –
PETITION FOR EXEMPTION FROM MAIN EXTENSION RULES
AT N.J.A.C. 14:3-8.8(b)(1)
NON-DOCKETED MATTER

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