



State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

IN THE MATTER OF JEREMY COURT)
LLC, PETITION FOR EXEMPTION FROM) ORDER
MAIN EXTENSION RULES N.J.A.C. 14:3-8.1) Docket No: EO08121113
ET SEQ. PURSUANT TO N.J.A.C.14:3-8.8)

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board of Public Utilities (Board) considers a request by Jeremy Court LLC ("Petitioner") for a determination that its property is de facto located in a designated smart growth area and Main Extension Rule deposits are subject to partial refund. Petitioner also requested consideration of an exemption from the Main Extension Rules, N.J.A.C. 14:3-8.1 et seq. ("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. As set forth below, because of the Board's determination herein, the Board will not address Petitioners' significant public good exemption request at this time.

FACTUAL BACKGROUND

Petitioner states that it is constructing 8 residential homes in Franklin Township, Somerset County. The Project is located in Planning Area 3 under the State Development and Redevelopment Plan ("SDRP") and is therefore in an area not designated for growth according to the Main Extension Rules (N.J.A.C. 14:3-8.2). Pursuant to N.J.A.C. 14:3-8.6, the developer would be required to pay the full cost to extend utility service.

On January 29, 2008 pursuant to N.J.A.C. 14:3-8.8, Petitioner filed a petition requesting that the Board determine that Petitioner's Project is exempt from the requirements to pay for costs of extensions to serve developments in areas not designated for growth. On multiple occasions in the late summer and fall of 2007, prior to Petitioner purchasing this property and later in a letter dated October 31, 2008, the Director of the Department of Community Affairs Office of Smart Growth ("DCA OSG"), Benjamin Spinelli, advised that "the ... area should more accurately be

¹ Petitioners letter on April 14, 2008 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).

reflected as a Suburban (PA2) Planning Area.” Mr. Spinelli noted that after review of the property during the OSG Cross Acceptance Process, DCA OSG will recommend that the area be designated a Suburban (PA2) Planning area.

The Cross Acceptance process is the “process of comparing planning policies among government levels with the purpose of obtaining consistency between municipal, county, regional, and State plans and the State Development and Redevelopment Plan.” N.J.A.C. 5:85-1.4. The Cross Acceptance Process is an “open and thorough dialog that involves not only governments but the public at-large as well.” N.J.A.C. 5:85-1.6(c). This Cross Acceptance process results in recommendations to change the SDRP. N.J.A.C. 5:85-4.6(c)

The costs of extending utility service to the Project is Public Service Electric and Gas (PSE&G) electric \$102,685.63 (including non-reimbursable pole relocation and re-wiring costs totaling \$49,143.79) and PSE&G gas \$59,503.80 (plus \$230.00 street opening permit).

The Board notes that the cost of extensions of cable television providers is governed by N.J.S.A. 48:5A-28(h)² and that cable television providers are not governed by the Main Extension Rules. Petitioner has not sought Main Extension Rule relief regarding any Verizon New Jersey services.

Petitioner has started only utility pole relocation work, the cost and payment of which is not affected by this application.

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 of its existing facilities where in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction ... and when the financial condition of the public utility reasonably warrants the original expenditure.” Pursuant to N.J.S.A. 48:2-13, -16, -23 and -27, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq. Where a project is not in a designated growth area, a utility may only contribute to the cost of the project if the builder meets one of a number of limited exemptions at N.J.A.C. 14:3-8.8. Pursuant to N.J.A.C. 14:3-8.2, a “Designated growth area” is:

an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (Metropolitan Planning Area, or PA-1);
2. Planning Area 2 (Suburban Planning Area, or PA-2);
3. A designated center;
4. An area identified for growth as a result of a petition for municipal plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7;

² The Board notes that pursuant to N.J.S.A. 48:5A-28(h)(2) cable television operators, including telecommunication service providers that have obtained a system-wide franchise, are exempt from the Board’s rules at N.J.A.C. 14:3-8.1 et seq. Verizon New Jersey received a system-wide franchise by Board Order on December 15, 2006.

5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or

6. A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town, as designated in the Comprehensive Management Plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-8.

The State Planning Commission ("SPC") is to "revise and readopt at least every three years" the SDRP. N.J.S.A. 52:18A-199. The last SPC cross acceptance process ended with the adoption of the current State Plan in 2001. The SPC has not completed the Plan since then, but is working toward that goal and anticipates completion this year.

DISCUSSION

Concurrent with the consideration of this petition, the Board has proposed amending its Main Extension Rules at N.J.A.C. 14:3-8.1A.³ The rule proposal provides for the Board to issue a suspension order where the Board has received a letter from the Director of the DCA OSG, stating 1) the address, block and lot of the property and 2) that the Director of DCA OSG has recommended or will recommend to the SPC that the subject property be redesignated as a growth area.

Additionally the proposed rule amendment requires a Petitioner who has received a rule suspension order to notify the Board and the utilities involved, within sixty (60) days of the re-adoption of the SDRP and State Plan Policy Map ("Map"), of the adopted state plan designation of the area covered by the smart growth suspension order. If the property subject to the suspension order is located in an area designated for growth in the readopted state plan, the Board will issue a summary order closing the matter. If the property subject to the suspension order is not located in an area designated for growth in the readopted SDRP, the holder of the smart growth suspension order may, within 60 days after the SDRP is readopted, either: pay the utility the cost of the extension or apply for an exemption pursuant to N.J.A.C. 14:3-8.8.

The proposed rule amendment is intended to allow the Board to consider petitions for Main Extensions during the pendency of the final adoption of the SDRP and Map. Pursuant to N.J.A.C. 14:1-1.2, the Board may "relax or permit deviations from [its] rules" for good cause shown. The Board has reviewed the Petition and FINDS that the unique situation presented here provides an appropriate basis for the Board to relax its current rule and allow this petition to be reviewed in light of the Board's proposed rule.

Therefore, the Board will consider the within application in light of the proposed rule amendments. Here, the DCA OSG has stated that the Petitioner's property has been vetted through the cross acceptance process and will be recommended for redesignation as a growth area.

³ The proposed rule will be published in the New Jersey Register on April 6, 2009. At the time the Board executed this Order, a copy of the proposed rule is available at the Board's website at <http://nj.gov/bpu/pdf/rules/smartgrowth.pdf>

On October 31, 2008 Benjamin Spinelli, Director of DCA OSG forwarded a letter to the Board regarding the project ("OSG Letter"). The OSG Letter indicated that "the ... area should more accurately be reflected as a Suburban (PA2) Planning Area." The letter went on to note that this re-designation was being recommended by DCA OSG.

By statute, the SPC is to "revise and readopt at least every three years" the State Development and Redevelopment Plan. (N.J.S.A. 52:18A-199) But, as noted above, the last SPC cross acceptance process ended with the adoption of the current State Development and Redevelopment Plan in 2001. According to the DCA OSG, if the cross acceptance process was completed and the updated SDRP was adopted by the SPC, Petitioners property would likely be in an area designated for growth. Were the plan amended as will be recommended, Petitioner would not have had to seek relief from the Board's Main Extension Rules. The Board FINDS that the letters received by the Board from DCA OSG, as described above, satisfy the requirements of proposed N.J.A.C. 14:3-8.1A(d).

The OSG Letter and the OSG Director's statements to the Petitioner in 2007 indicated that the property where the Petitioner's Project is to be built is recommended to become an area designated for growth. The change from PA3 to PA2 is, however, contingent on SPC approval. The proposed rule N.J.A.C. 14:3-8.1A(g) provides for the repayment of funds if the properties are not designated for growth in the readopted State Plan. Proposed N.J.A.C. 14:3-8.1A(i) requires that if a property is not designated for growth, any deposits held by the utility shall be applied to the cost of the extension.

The Board hereby ORDERS that N.J.A.C. 14:3-8.6 shall be suspended as applied to the property described in the Petition, pending the final adoption of the SDRP and Map by the SPC.

While the suspension order is in effect, for purposes of the Board's Main Extension Rules, the property shall be classified as being in an area designated for growth, the proposed PA2. Petitioner shall comply with all requirements of proposed N.J.A.C. 14:3-8.1A. If the subject property is *not* included in the final SDRP and Map adopted by the SPC, then, within 60 days of the adoption of the new SDRP and Map the costs of distribution must be recalculated as if the property was in an area not designated for growth. Petitioner shall pay that recalculated amount to the utility minus any money previously paid to the utility including but not limited to the deposit required by N.J.A.C. 14:3-8.9 and 8.10 or apply for an exemption pursuant to N.J.A.C. 14:3-8.8.

The Board FINDS that the criteria set out in the Main Extension Rules at N.J.A.C. 14:3-8.6 for a project located in a non-smart growth planning area are suspended for this Petitioners' property as a result of the recommendation by Benjamin Spinelli, Director of the DCA-OSG that the Petitioners' property is recommended for re-designation to a PA2, an area designated for growth. Specifically, the Board FINDS as follows: (1) the main extension exemption rules are suspended as set forth herein and a final decision on the exemption petition is suspended pending the final adoption of the SDRP and Map; (2) Petitioners' property is to be treated as Planning Area 2 pending the action of the SPC; (3) if the Petitioners' property is not re-designated Planning Area 2 as a result of the SPC's re-adoption of the SDRP and Map and remains a non-growth Planning Area 3, the Petitioner must pay the full costs for the main line utility extensions to the utility companies involved or Petitioner may reapply for an exemption pursuant to N.J.A.C. 14:3-8.8, (4) suspension of the rules is warranted to allow progress while awaiting re-adoption of the SDRP and Map by the SPC; (5) the Director of the DCA OSG has confirmed in writing that this property has been reviewed during Cross Acceptance and will be recommended as a Planning Area 2, an area designated for growth, and is consistent with smart growth; and (6) the Board takes judicial notice of the policy, procedure and

recommendations of its sister State agency, the DCA OSG, recommending these areas as designated areas for growth.

Therefore, the Board hereby ORDERS that Petitioner be given a temporary suspension order of N.J.A.C. 14:3-8.6 for Petitioner's property located in Franklin Township, Somerset County, New Jersey, contingent upon the SPC adopting a new SDRP and Map. The Board further ORDERS, that Petitioners provide to the Board within 60 calendar days of the re-adoption of the SDRP and Map by the SPC notice of whether the property subject to the suspension order is located in an area designated for growth or whether the property subject to the suspension order is located in an area not designated for growth. Consistent with proposed N.J.A.C. 14:3-8.1A(e)(3) the distribution of costs of extending electric and gas service to this project during the time the suspension order is in effect shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area. If the Petitioners' property is *not* included in the SPC's readopted SDRP and Map then the costs of distribution must be recalculated as if the property was in an area not designated for growth consistent with proposed N.J.A.C. 14:3-8.1A(f)(2). As this property will be treated as being designated for growth pending the adoption of the SDRP and Map by the SPC, the Board will not consider Petitioner's public good exemption request at this time.

Consistent with proposed N.J.A.C. 14:3-8.1A(g), any outstanding amount shall be paid by Petitioner to the utilities within 60 days of the SPC's adoption of the SDRP and Map unless Petitioner file an exemption request (or requests that the Board consider its previously filed public good exemption request). If Petitioner's property is in an area re-designated for growth, the Board will issue an Order closing this matter, in accordance with N.J.A.C. 14:3-8.1A(f)(1).

The Board further ORDERS that Petitioner and the relevant utilities shall apply the suggested formula at N.J.A.C. 14:3-8.10 in determining the deposit and refund schedule.

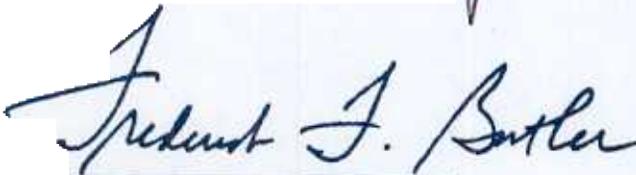
The issuance of this suspension order shall not, by itself, constitute grounds for reliance, or for an exemption from any requirement of the Main Extension Rules at N.J.A.C. 14:3-8.8.

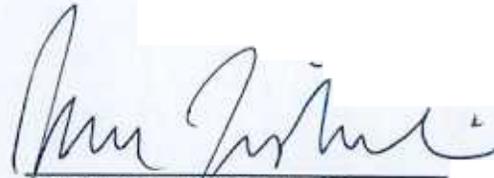
Petitioner shall otherwise comply with proposed N.J.A.C. 14:3-8.1A. If proposed N.J.A.C. 14:3-8.1A is adopted prior to the final adoption of the SDRP by the SPC, the language of the Rule as adopted shall govern this petition and the Petitioner shall comply with all requirements therein.

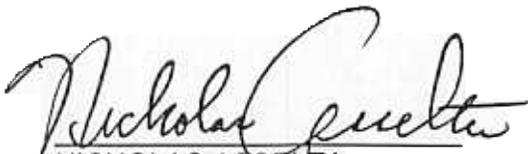
DATED: 4/14/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

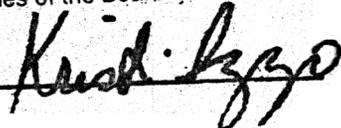

NICHOLAS ASSELTA
COMMISSIONER


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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Docket No. EO08121113

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