



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

IN THE MATTER OF THE BDR. RITA C. SCHIAVO)
MEMORIAL LIBRARY PETITION FROM MAIN)
EXTENSION RULES AT N.J.A.C. 14:3-8.8(b) (1))

ORDER APPROVING EXEMPTION
Docket No. EO08070506

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by the Dr. Rita C. Schiavo Memorial Library located in Strathmere New Jersey ("Petitioner") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(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 constructing a library on the site of Dr. Rita Schiavo's former summer home site. The Petitioner was left the property and estate by Dr. Rita C. Schiavo for the purpose of constructing a library for the town on the site of her former summer home. The library is in an area not designated for growth. The library will provide passive recreation amenities as well as a community center. In a letter dated July 15, 2008, the Dr. Rita C. Schiavo Memorial Library 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 upgrading electric service to the library.

Preliminary estimates of the cost from Atlantic City Electric Company are approximately \$4,898.91 to install a new transformer to provide sufficient service for the computing, air conditioning and other services. Petitioner submits that basic electric service as well as other necessary services are already provided to the property as the library has been built over the footprint of Dr. Schiavo's former summer home.

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 Petitioner 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 public library facility in Strathmere will provide a significant public good as it will provide a focal point year round as well as a climate controlled meeting place in summer for this small shore town of approximately 300 homes. Additionally, the library will provide a venue for community clubs to hold meetings as a meeting room has been included in the building design. The library will preserve the natural habitat of the surrounding beach and will not encroach on the dunes or open space on the beach. The library will promote a sense of place for this community within walking distance of homes and the beach.

The applicant is a not for profit that is operating under a tight budget. The nearest library facility, located in Upper Township, is a 15 mile drive over the causeway. Another branch of the Cape May County Library is in Sea Isle City.¹

2. That 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 the library is being constructed on the home site of the donor, thereby containing the initial footprint and preserving the natural habitat of the surrounding beach. The project has complied with DEP regulations pertaining to wetlands and wildlife. The library will provide year round recreation for the residents and summer homeowners. The town provides primarily summer recreation with few year round facilities for the approximate 100 year round residents. The library provides an attractive facility that provides a sense of place within walking distance for many residents, many who are seniors.

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter

Petitioner states that there is no practicable alternative means as the specific site, the former homestead of the donor, was donated and identified by Dr. Rita C. Schiavo as the site for the library. The library is built over the original footprint of the original home.

The property was left with the specific intent of its being used as the library site. The terms of the bequest require the town to use the specific parcel for the specific purpose of a library in and for the town of Strathmere. As all of Strathmere is a barrier island and no growth is allowed on a barrier island, there is no other practicable alternative means of providing a library for the town and locating it in the town. The estate left both a valuable piece of property and the financial means to construct the library for the town at virtually no cost to the town's residents. Thus, the Petitioner claims, there is no other practicable means of building a library for this town in a growth area. Additionally, the basic utility infrastructure is established in Strathmere; the main

¹ Petitioner indicated that their nearest municipal library was over 15 miles away. Board Staff determined that the nearest Cape May County public library branch was 3.5 miles away in Sea Isle City.

line extension exemption is for an upgrade of that extension to accommodate the library's air conditioning, heating and computer technology needs.

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

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, has identified that Strathmere Island was not identified by Upper Township's Plan Endorsement as an area designated for growth. His November 19, 2008 letter states "...the Office of Smart Growth finds that the development of a library in PA5B outside of Upper Township's designated Center is not consistent with the State Development and Redevelopment Plan and smart growth planning principles." He went on to state "while this opinion concerns only the suitability of the area for growth, there are currently no libraries available to the residents of Strathmere and libraries are a public good. The Board of Public Utilities may consider an exemption from cost limits on areas not designated for growth." The letter describes the PA5B as "...an area consisting of large contiguous land areas with valuable ecosystems, geological features and wildlife habitats." Strathmere is a barrier island with these properties. This library, however, does not aggravate these environmental features as it is built over the footprint of an existing home. .

Staff consulted with the Department of Environmental Protection in November 2008 and received comments that the library served a significant public good and stressed that the closest library available to the residents of Strathmere is a 40 mile round trip.² They opined that a library located in the town would limit the exhaust emissions/carbon foot print of that trip and provide a public amenity in an existing place.

The OSG assessment was provided to Petitioner on January 9, 2009. A response was received by the Board on January 16, 2009, including a copy of the Library's mission statement and an article from the Atlantic City Press.

Board Staff reviewed the location of the project relative to the nearest branch of the public library in Sea Isle City. Board Staff notes that although the distance to the nearest public library branch is less than initially noted by Petitioner, the site is located on a barrier island, and the population swells thirty-fold in the summer months. This influx of residents makes vehicle travel impracticable even over short distances. Additionally, Board Staff consulted with the library foundation to discuss any fees that would be charged to access this facility. The foundation indicated that this facility would not receive money from the county library system and therefore small fees may be assessed to assist in the upkeep of the facility.

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.

² See Footnote 1

The Board has reviewed the recommendation of the OSG, where it notes that although the property is outside Upper Township's designated centers, where the focus of residential and commercial growth and public facilities should be focused, "there are currently no libraries available to the residents of Strathmere," and expressed its opinion that libraries are a public good. OSG further describes planning area PA5B as an area consisting of large continuous land areas with valuable ecosystems, geological features and wildlife habitats.

The Board notes that this library was built over the existing footprint of the home donated by Dr. Rita C. Schiavo. The Board further notes that the cost of the extension relates to upgrades to the existing facilities for computers and air conditioning. In addition to providing books, computers, newspapers and magazines, this facility will provide community meeting areas and access to a temperature controlled facility within walking distance to the residents and other persons in Strathmere. The Board therefore FINDS that the public good served by the library and other recreational facilities constitutes a public good for purposes of the Main Extension Rules.

The Board recognizes that Board staff has reviewed the location of the library in consideration of the unique geographic features of the island and the need for community facilities within a reasonable walking distance. The Department of Environmental Protection has stated that the extension of service to support development of this public amenity in an existing place is consistent with reducing the carbon footprint as called for in the Energy Master Plan. In this case, this project is being built within Strathmere, which is separated from the designated centers of Upper Township by a causeway. Access to the nearest public library may require vehicular transportation at times when parking and travelling, even on the island, is difficult. Additionally, as noted above, this facility is being built primarily on the footprint of an existing building which requires electric service upgrades to provide certain amenities. Therefore, the Board FINDS that benefit of this project is consistent with and outweigh any negative impacts on Smart Growth.

Additionally, because the town of Strathmere is located in a Planning Area 5B – Environmentally Sensitive/Barrier Island, there is no practicable alternative means of providing a library for this town, within the town. Therefore, the Board FINDS that there is no practical alternative of providing the benefit while still complying with the rules.

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. Atlantic City Electric was sent a letter on November 24, 2008. Atlantic City Electric did not provide a written response to this request. Atlantic City Electric contacted Board staff and reiterated the cost of the extension of service.

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 the Dr. Rita C. Schiavo Library will constitute a significant benefit to the public; (2) that benefit to the public of the extension to upgrade service to support the Dr. Rita C. Schiavo Library and community facility, which is being built primarily over the footprint of an existing building, is consistent with and outweighs potential negative impacts on smart growth; and (3) because the unique geographic features of the town of Strathmere, which is entirely located in a Planning Area 5B – Environmentally Sensitive/Barrier Island, there is no practicable alternative means of providing a library for this town, within the town, while still complying with the rules. Therefore, the Board HEREBY

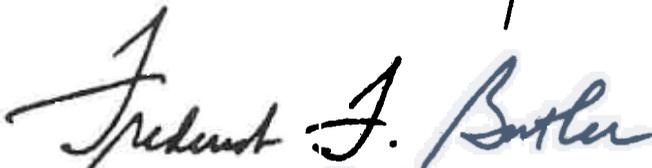
GRANTS the exemption from the Main Extension Rules pursuant to N.J.A.C.14:3-8.8(b)(1) for an extension of electric service to the Dr. Rita C. Schiavo Memorial Library located at 801 S. Commonwealth Avenue, Strathmere, New Jersey.

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 to the Dr. Rita C. Schiavo Memorial Library shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 4/30/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

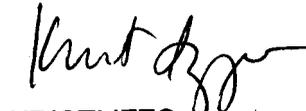

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

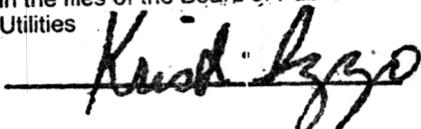

NICHOLAS ASSELTA
COMMISSIONER


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



**IN THE MATTER OF DR. RITA C. SCHIAVO MEMORIAL LIBRARY
PETITION FOR EXEMPTION FROM MAIN EXTENSION RULES
AT N.J.A.C.14:3-8.8**

DOCKET NO. EO08070506

SERVICE LIST

Dr. Rita C. Schiavo Library
c/o Mr. Bruce Riordan
1 Vincent Road
Strathmere, NJ 08248

Bethany Rocque-Romaine
Smart Growth Advisor
New Jersey Board of Public Utilities
2 Gateway Center
Newark, NJ 07102

Geoffrey Gersten, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 17102