



Agenda Date: 4/3/09
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 BERGEN COUNTY OVERPECK)
PARK – PETITION FOR EXEMPTION FROM MAIN)
EXTENSION RULES AT N.J.A.C.14:3-8.8(b)(1))
)

ORDER APPROVING
EXEMPTION

Docket No. EO09020102

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by Bergen County – Overpeck County Park (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. Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of extending electric and water service. The Petitioner is transforming an old landfill into a public multiuse recreational facility, referred to as Area III, (the Park) that is surrounded by the municipalities of Ridgefield Park, Teaneck and Leonia, all municipalities are designated Planning Area 1, Metropolitan Planning areas. This area is not designated for growth.

The Park will provide passive and active recreation amenities including a natural grass baseball field, a natural grass softball field, two artificial turf soccer fields, six tennis courts, an ADA compliant playground complex, a grass amphitheater with a band shell, a nature overlook and boat launches for park patrons. In a letter dated November 17, 2008, the County of Bergen 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 and water service to the park.

Preliminary estimates of the cost to extend underground electric service to the park are approximately \$245,079.68, or \$213,020.14 for overhead service, from Public Service Electric and Gas (PSE&G) and \$560,017.00 to extend the 8" water main for the installation of 8 fire hydrants from Challenger Road into the Park from United Water.

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 is converting an old landfill into a public multiuse recreational facility. The Park will include "a natural grass baseball field, a natural grass softball field, two artificial turf soccer fields, six tennis courts, a state-of-the-art ADA compliant playground complex, a grass amphitheater with band shell, a natural overlook and boat launches for park patrons." Additionally, the park will provide three miles of trails, which will be graded for handicap accessibility. Petitioner argues that the park will constitute a benefit to the public because it will provide passive and active recreation to the adjacent communities of Ridgefield Park, Leonia and Teaneck as well as all the residents of Bergen County who will have access to the sports facilities, playground and walking trails. This site is adjacent to and will be connected to the Overpeck County Park Complex via a vehicular/pedestrian bridge across Overpeck Creek.

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 park is an area not designated for growth, construction of buildings, road access, playing fields, tennis courts, and ADA compliant playground in the park will be consistent with smart growth as it will constitute compact and clustered development adjacent to heavily populated Metropolitan Planning areas designated for growth. The undeveloped portion of the park will provide active and passive recreation and will preclude future residential and commercial development on park land. Petitioner further states that the park will reclaim a landfill and transform it into useful public space while preserving open space, scenic and environmental resources, including Overpeck Lake. Petitioner states that by reclaiming this landfill as a public use park, it is preserving scenic and environmental resources.

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

Petitioner states that while the landfill to become park 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 Bergen County. The Petitioner contends that

the redevelopment of the landfill into a public multiuse recreational facility necessitates the extension of the water main to the site to provide fire protection, public toilet facilities, domestic water and irrigation. The extension of the electric service to the site allows for the development of both service and recreational facilities where none currently exist. It will also allow for extended use of the park during the evening hours in a densely populated area that has limited sports fields. Evening activities and events further necessitate providing roadway, parking lot and walkway lighting for public safety.

Petitioner states that while the park will not be located in areas designated for growth, there is a need for recreation facilities that require open space and would not be practicable in other sites in Bergen County, if other sites were available, which they are not. Therefore constructing the park in an area designated for growth is not practicable.

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 delineated as a Parks and Natural Areas Planning Area, specifically Local Park Planning Area 8 (PA 8), as provided by the New Jersey State Development and Redevelopment Plan (State Plan). 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. The area is wholly surrounded by a densely populated area of Bergen County, which is situated in a Metropolitan Planning Area1 (PA 1).

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 dated January 23, 2009, that this project is consistent with Smart Growth, namely Goal 7: Preserve and Enhance Areas with Historic, Cultural, Scenic, Open Space and Recreational Value of the State Plan, in that it will "enhance, preserve and utilize this open space and recreational asset through collaborative planning, design, investment and management techniques to Serve Ridgefield Park, Teaneck, and Leonia." This project is consistent with:

Policy 5 of the State Plan which is to ensure that there are adequate recreational facilities where appropriate for the year-round enjoyment and health of residents and tourists; Policy 6 which is to ensure that the character, location, magnitude and timing of development and redevelopment are linked to the availability of adequate recreational facilities and open space land need to serve growth; Policy 8 which is to link recreational and open space land by way of corridors, paths, rivers and stream corridors other resources and public open spaces, through the cooperation of state, regional and local government; Policy 12 which is to maintain and improve public access to coastal and waterfront areas of recreational, aesthetic, cultural or ecological value, provided that such access does not degrade the function and value of the natural resource system and finally, Policy 13 which is to locate recreational facilities and open space as close as possible to the populations they serve, taking into account the nature of the recreational facility or open space. Moreover the development of new open space and recreation facilities is planned to reinforce other goals, especially urban revitalization and beneficial economic growth.

Staff also consulted with the Department of Environmental Protection Office of Planning and Sustainable Communities. William S. Purdie responded on December 12, 2008 that

[a]lthough Overpeck Park is delineated as a Park on the State Plan Policy Map, it is surrounded by the Metropolitan Planning Area, and an integral part of Bergen County. The park is part of the fabric of urban Bergen, and is an important amenity to residents. Expansion of utilities and development of the park will not cause sprawl development or be at odds with the principles of smart growth, rather expansion of recreation opportunities will enhance quality of life for residents.

The project and extension of utilities does not appear to be inconsistent with Department lands and programs, assuming Bergen County obtains any state and local environmental permits that may be applicable.

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 transforming of this prior landfill to a public park was done in furtherance of efforts to preserve open space from development and provide land for public recreation. The project will provide passive recreation through the nature center and amphitheater with band shell along with active recreation through the hiking trails, various sports fields, ADA compliant playground, and boat launches for canoes and kayaks in Overpeck Lake. The Board FINDS that the public good served by the development and improvement of the park's passive and active recreation facilities constitutes a significant 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 in that it is consistent with Policies 5, 6, 7, 8, 12 and 13 of the State Plan and the DEP Office of Planning and Sustainable Communities concluded Bergen County's request that an exemption is warranted here and that the project and extension of utilities does not appear to be inconsistent with Department plans and programs. The Board agrees with the assessments of the Office of Smart Growth and the Office of Planning and Sustainable Communities. The Board also notes that this property is located in a Parks and Natural Areas Planning Area, specifically Local Park Planning Area 8 (PA 8). Bergen County is expanding Overpeck Park through this project and is seeking an extension of service to enhance the utilization of this property as a park. The Board therefore FINDS that the water and electric extensions to Overpeck County Park are consistent with the principles of Smart Growth.

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. As further noted above, this project is reclaiming a landfill sight and using it to expand Overpeck County Park. The facility extensions being sought will enhance the use of the park and public safety, such as fire protection. 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. Public Service Electric and Gas was sent a letter on March 3, 2009 asking this question. PSE&G responded on March 11, 2009 that it has no objection to Bergen County's requested exemption provided that relief is ordered by the Board. United Water was

sent a letter on March 5, 2009 asking if the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to satisfy the expense. In response, on March 20, 2009 United Water responded that it "has no objection to the State granting a designated growth exemption," but it had some concerns that the extension of service will not furnish sufficient business to justify the expense. United Water estimates that the annual revenue generated from the extension would be \$14,747.00. United Water indicated that it should be able to recover any expenses it incurs through its next rate case.

As to United Water's position regarding recovery of expenses, the Board makes no determination at this time regarding the recovery of expenses incurred by utilities in providing utility extension. Any such determination shall be made at the time of the next relevant rate proceeding.

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 Overpeck County Park for lighting the parking lots, roads, fields and public restroom facilities will constitute a significant benefit to the public and water extensions to extend an 8" water main into the park for fire hydrants, irrigation and public restrooms will constitute a significant public good; (2) the benefits of having reclaiming a landfill as 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 Park, the State's smart growth goals will not be negatively impacted as the Park's development allows for service and recreational facilities where none currently exist, to serve the densely populated area that surrounds the park; and (4) because of the landfill reclamation, the proximity to natural resources and the need for sufficient open space to allow for recreation facilities and the lack of other open space within Bergen County, a heavily populated metropolitan planning area county, 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 and water service to Overpeck County Park located in Bergen County surrounded by Ridgely Park, Teaneck and Leonia, 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 Overpeck County Park 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: 4/3/09

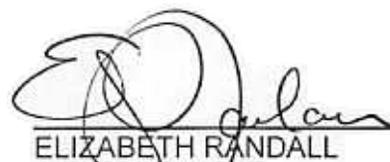
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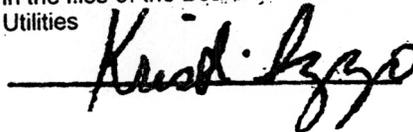

NICHOLAS ASSELTA
COMMISSIONER


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



IN THE MATTER OF THE COUNTY OF BERGEN - OVERPECK COUNTY PARK –
PETITION FOR EXEMPTION FROM MAIN EXTENSION RULES
AT N.J.A.C.14:3-8.8(1)(b)
DOCKET NO.EO09020102

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