



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

IN THE MATTER OF OXFORD TOWNSHIP ) ORDER APPROVING EXEMPTION  
PETITION FOR AN EXEMPTION FROM )  
MAIN EXTENSION RULES AT )  
N.J.A.C. 14:3-8.8(b) (1) ) DOCKET NO.: WO08110962

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by Oxford Township located in Warren County, 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 is seeking to have a water main installed to replace arsenic contaminated private wells currently servicing ten homes and two vacant lots.<sup>1</sup> Oxford Township is located in the Highlands Planning Area.

Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of installing water service to ten homes and two vacant lots.

The cost from New Jersey American Water ("NJAW") for installing water and/or connecting to the service tap is \$179,650.00 to install a water line and connect eight (8) properties on Upper Denmark Road and install service tap connections to four (4) properties on Route 31<sup>2</sup>.

The Petitioner submits that it is exempt from the requirements for the costs of the extension 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

<sup>1</sup> Seven homes and one vacant lot are located on upper Denmark Road and three properties and one vacant lot is located on Route 31.

<sup>2</sup> NJAW's April 9, 2008 Extension Deposit Agreement indicates that the \$179,650 cost includes 1000' of 8" diameter main and 8 services. However its March 30, 2009 letter to the Board indicates that the \$179,650 includes the cost of servicing 10 homes and 2 vacant lots.

subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth ("OSG") 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 water main extension and service tap connections will provide the residents of 10 existing homes and two vacant lots with potable water. Currently the wells servicing these homes are contaminated with arsenic levels far exceeding the NJDEP allowable level.

**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 proposed water main extension and service only the 10 existing single family homes and 2 vacant lots. These homes are located on lots which are too small for further subdivision. Two of these lots are currently vacant and therefore there is a possibility that two additional homes could be built in the service area. The density of the homes along Upper Denmark Road is far greater than the density anywhere else in the Township.

Additionally Petitioner argues that the majority of the homes to be served are connected to public sanitary sewers serviced by a treatment plant that discharges into a Class 1 stream. Replacing individual private wells containing extremely high levels of arsenic with public water that meets or exceeds safe drinking water standards will eliminate a potentially harmful contaminate (arsenic) from the treatment effluent and the Class 1 stream ecosystem.

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

The homes to be serviced by the water main extensions are existing single family homes and therefore this extension will not encourage growth of any kind. The lots are situated between the existing houses and it is practical to install the water main accessible to the properties, the individual service installation for homes built after the order is granted will be subject to the BPU Main Extension Rules for development in a non-growth area.

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 OSG, the Department of Environmental Protection ("DEP") and Highlands Water and Planning Protection Council ("Highlands Council"). Benjamin Spinelli, Executive Director of the Office of Smart Growth, has identified that Oxford Township is located in a Planning Area 4, non-growth, and the Highlands Planning Area as provided by the New Jersey State Development and Redevelopment Plan (State Plan). It is not located in an area designated for growth.

Director Spinelli's May 4, 2009 letter states,

As it relates to providing an exemption in accordance with N.J.A.C. 14:8.8(h), OSG has determined the following:

The extension would provide a significant benefit to the residents of Oxford Township. The extension is consistent with the State Development and Redevelopment Plan (SDRP) Policy 3: Public Investment Priorities: Policy 1: Priority for Public Health and Safety. Highest priority should be given to infrastructure projects and programs statewide that mitigate life threatening situations and emergent threats to the public's health and safety, regardless of the location.

In conclusion, OSG believes that this exemption should be granted to Oxford Township for the extension of utilities to the Upper Denmark/Route 31 residents.

The Highlands Council reviewed the petition and Director Eileen Swan provided the following response on May 27, 2009.

The subject properties<sup>3</sup> are located in the Planning Area of the Highlands Region, as defined by the Highlands Water Protection and Planning Act. The subject properties have been designated as Existing Community Zone and Existing Community-Environmentally Constrained Subzone, as defined by the Highlands Water Protection and Planning Act Land Use Capability Map (LUCM) which is part of the RMP. The RMP [Regional Master Plan] states that "The Existing Community Zone includes those areas characterized by existing development with comparatively fewer natural resource constraints than the Protection and Conservation Zone; they often are currently or more easily served with public infrastructure.

The Future Land Use section of the RMP explains that anticipated new growth will occur in the form of redevelopment and infill. The existing houses are located in a compact neighborhood and are consistent with smart growth. The vacant lots would be considered "infill" and, subject to low impact development policies, would also be consistent with smart growth. Policy 6G4 supports infill development, specifically, "To evaluate land use capability and support planning for development, redevelopment and infill meets that RMP policies and objectives."

Objective 2B4b calls for high priority to be given to water extensions in instances of contaminated water supplies, specifically, "The highest priority for use of Net Water Availability or Conditional Water Availability within ECZ subwatersheds, through a Water Use and Conservation Plan developed under Objective 2B8c, local development review and Highlands Project review to serve documented threats to public health and safety from contaminated water supplies, designated TDR Receiving Zones, infill development, designated Highlands redevelopment

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<sup>3</sup> Eileen Swan's May 27, 2009 letter references seven developed and two vacant lots which would be serviced by the proposed main on Upper Denmark Road.

Area, affordable housing projects where at least 10% of the units are affordable, or new areas for development that meet all other requirements of the RMP. [Emphasis added in the original]

Given the combination of factors, an existing neighborhood of compact homes and the existence of contaminated wells, the Highlands Council has no objection to the extension of a water main to service the above described parcels. Furthermore, the Highlands Council finds that the proposed water main extension is 'consistent with smart growth.'

The Office of Planning and Sustainable Communities at the DEP deferred the analysis of the matter to the Highlands Council and responded that the DEP has no objection to an exemption from the main extension rules for the residents in the area of Oxford Township near Upper Denmark Road and Route 31.

#### 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 has reviewed the recommendation of the OSG, where it notes that the entire Borough is located in a Planning Area 4 or Rural Planning Area or non-growth area. OSG further notes that the water main extension is consistent with the State Development and Redevelopment Plan ("SDRP"). "[The] highest priority should be given to infrastructure projects and programs statewide that mitigate life threatening situations and emergent threats to the public's health and safety, regardless of the location." The Highlands Council also states that this petition is consistent with its Regional Master Plan.

The Board notes that this Petition seeks exemption for service to be extended to ten existing homes and 2 vacant lots. As to the occupied homes, the Board notes that the footprint or the environmental impact of these structures will not change as a result of the extension at issue. Additionally, the current wells servicing these homes are contaminated with Arsenic. While the principals of smart growth would focus future development into areas designated for growth, there clearly needs to be a clean and safe water supply provided to the residents of these existing homes whose wells are contaminated. The Board notes that the water main is being built to serve an existing community and is not necessitated by increased growth. See In the Matter of the Board of Fire Commissioners of Fire District #1 Freehold Township – Exemption from Smart Growth Regulations at N.J.A.C. 14:3-8.8(a)(5), BPU Dkt. GO05080718, September 19, 2005 (noting that public facility extensions necessitated by growth have ample notice of the spirit and letter of the law). However, any service connections to now vacant lots would constitute an increase in growth. The Board therefore FINDS that the public good served by the extension of a water main and service connections for the ten existing homes ONLY on Upper Denmark Road and Route 31 in Oxford Township, NJ constitutes a significant benefit to the public for purposes of the Main Extension Rules.

As noted above, the OSG 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 Highlands Council further states that the petition is consistent with the Highlands Regional Master Plan. The Board agrees with the assessment of the OSG and Highlands Council and FINDS that extending water service to existing facilities to replace contaminated well water, where the facilities are already connected to other utility services, including waste water services, is consistent with the principles of Smart Growth. Therefore, the Board FINDS that benefit of this project as to the 10 pre-existing homes ONLY is consistent with and outweigh any negative impacts on Smart Growth.

Additionally, this Main Extension and service will serve 10 pre-existing homes in Oxford Township, which are entirely located in a Planning Area 4 – Rural Planning area. 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. New Jersey American Water was sent a letter on March 11, 2009. New Jersey American Water responded to this request on March 24, 2009 by providing the breakdown of refundable vs. non refundable costs and concluded their letter with a review of the consumption versus cost as follows:

"The Company estimates that the total cost to extend water service to the Properties is \$179,650.00." "... should the BPU grant the Township's exemption request, the Company has determined that the costs to extend water service to the Properties would be reasonably warranted."

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 a water main extension in Oxford Township, Warren County, for the 10 pre-existing homes of Upper Denmark Road and Route 31 will constitute a significant benefit to the public; (2) that benefit to the public of the extension of a water main for the 10 pre-existing homes of Upper Denmark Road and Route 31 is consistent with and outweighs potential negative impacts on smart growth; and (3) because the geographic location of Oxford Township, which is entirely located in a Planning Area 4 – Rural Planning Area, there is no practicable alternative means of providing a water main extension for these 10 pre-existing homes, 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 a water main to service the homes located at 1 Upper Denmark Road, Block 26, Lot 72, 5 Upper Denmark Road, Block 26, Lot 73, 9 Upper Denmark Road, Block 26, Lot 74, 11 Upper Denmark Road, Block 26, Lot 75, 15 Upper Denmark Road, Block 26, Lot 76, 23 Upper Denmark Road, Block 26, Lot 78, 251 Upper Denmark Road, Block 26, Lot 79, and the installation of service taps to 201 Route 31, Block 31, Lot 70, 301 Route 31, Block 30, lot 3 and 287 Route 31, Block 3, Lot 1 located in Oxford Township, Warren County, New Jersey.

However, as the Board noted above, the factors associated with the 2 vacant lots are different than the 10 pre-existing homes currently served by contaminated wells. As any service to these lots would include growth, the Board FINDS that it is inappropriate to consider an extension for these lots at this time, without examining other factors relating to future construction. The Board therefore FINDS that while the extension granted herein will necessarily pass 19 Upper Denmark Road, Block 26, Lot 77 (vacant lot) and the Route 31 main currently passes 281 Route

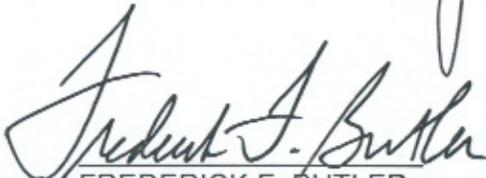
31, Block 26, Lot 71 (vacant lot), the installation of service taps at these locations shall not be included in this exemption Order and shall be subject to the requirements of the Main Extension Rules at N.J.A.C. 14:3-8.1 et seq. As to these two vacant lots, the Petition for an exemption of the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) is DENIED without prejudice.

Pursuant to N.J.A.C. 14:3-8.8(k)(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 to Oxford Township homes located at 1 Upper Denmark Road, Block 26, Lot 72, 5 Upper Denmark Road, Block 26, Lot 73, 9 Upper Denmark Road, Block 26, Lot 74, 11 Upper Denmark Road, Block 26, Lot 75, 15 Upper Denmark Road, Block 26, Lot 76, 23 Upper Denmark Road, Block 26, Lot 78, 251 Upper Denmark Road, Block 26, Lot 79, and the installation of service taps to 201 Route 31, Block 31, Lot 70, 301 Route 31, Block 30, lot 3 and 287 Route 31, Block 3, Lot 1 shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 7/1/09

BOARD OF PUBLIC UTILITIES  
BY:

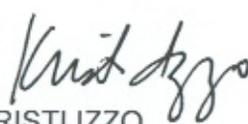
  
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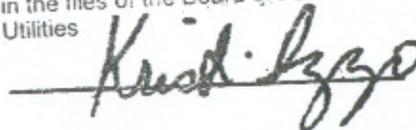
  
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ATTEST:  
  
KRISTI IZZO  
SECRETARY

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 OXFORD TOWNSHIP PETITION FOR AN EXEMPTION  
FROM MAIN EXTENSION RULES AT N.J.A.C.14:3-8.8(b) (1)

Docket No. WO08110962

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