



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

IN THE MATTER OF ANDREW AND )  
LAUREN KAISER - PETITION FOR AN )  
EXEMPTION FROM MAIN EXTENSION )  
RULES AT N.J.A.C. 14:3-8.8(b)(1) )  
ORDER DENYING  
EXEMPTION  
DOCKET NO. AO08030152

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by Andrew and Lauren Kaiser ("Petitioners") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1)<sup>1</sup>. 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 Petitioners seek to build a single-family residence on a parcel of land adjacent to the Mountain Hill School, which Petitioners own in Leonardo/Middletown, Monmouth County.<sup>2</sup> Mountain Hill School is a private for-profit pre-school consisting of two classroom buildings, a single family dwelling used for offices, a barn and accessory storage shed. The property is located in an Environmentally Sensitive Planning Area (PA-5), not a designated growth area.

Petitioners seek relief from the rules which would otherwise require the Petitioners to pay the cost of providing utilities to the residence. The estimated cost for the residence from Jersey Central Power & Light ("JCP&L") to change a 45 foot pole, extend underground primary to a new underground pad mounted transformer, and connect the customer owned underground at the new pad mounted transformer is \$6,535.75.<sup>3</sup> The estimated cost from New Jersey Natural Gas Company ("NJNG") for meter installation and new gas service is \$6,964.00

Petitioners submit that they are 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

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<sup>1</sup>Petitioners 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 Rules 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).

<sup>2</sup>Petitioners state that they will seek to bring in a natural gas line to the school in the future. As no such request has been brought before the Board, it is not addressed in this order.

<sup>3</sup>The proposed residential home is located at 726 Kings Highway (Block 835, lot 15.02). The pre-school facility is located at 724 Kings Highway (Block 835, lot 15.01) JCP&L's Fixed Cost Agreement lists the location of service as 724 Kings Highway. In a letter dated July 16, 2009, Petitioners have confirmed that this agreement is in fact for services to be provided at 726 Kings Highway, Middletown, Monmouth County, NJ.

described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that in order 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 ("OSG") and other State agencies.

Petitioners present 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**

Petitioners argue that the residence will allow the owners to oversee the premises of the private school. The school is unique because it maintains a bucolic farm environment<sup>4</sup> with a barn, paddocks, pasture, hiking trails and farm animals. The school has provided childcare service to the community for nearly sixty years. The property provides safety to the children because of its isolation. Currently, the school services approximately 200 children, ages 2 ½ through kindergarten.

**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, Petitioners state that the proposed residence is consistent with smart growth. Specifically, Petitioners maintain that the development will stay within the policy of an Environmentally Sensitive Planning Area. First, the development is consistent with land use. The resident will have a minimal impact upon the habitat. The Petitioners have placed a conservation easement across a portion of the property to ensure protection of the area. The parcel will protect and preserve large contiguous tracts of property and maintain "agricultural ambience." Second, there will be continued historic preservation of the area. Therefore, Petitioners state that the proposal will continue to be consistent with smart growth.

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

Petitioners state that the residence will be immediately adjacent to the pre-existing school so that the owners may oversee the premises.

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<sup>4</sup>In a letter dated July 16, 2009, Petitioners have confirmed that they do not maintain a farm on the property that would trigger the Main Extension Rule agricultural exemption. The agricultural exemption applies to New Jersey "commercial farms." N.J. S.A. 4:1C-3 states: "'Commercial farm' means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$ 2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$ 50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.)."

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 and the Department of Environmental Protection Office of Planning and Sustainable Communities (“DEP”). James A. Souder, Interim Executive Director of the Office of Smart Growth, has identified that this property in Middletown Township is located in Planning Area 5, an Environmentally Sensitive 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, or an area in which the State Plan encourages growth and development.

Interim Director Souder’s June 8, 2009 letter states that “the development of a single family home in an area not designated for growth is not consistent with smart growth principles.” Additionally, the benefits of the residence do not outweigh the benefits of smart growth. The residence does not further any of the goals of the State Plan, and the State Plan discourages development in Planning Area 5. The critical significance of the resources in Planning Area 5 requires development away from these areas. Moreover, Middletown Township contains great amounts of Planning Area 2, designated smart growth areas, making it unnecessary to build in Planning Area 5.

William S. Purdie, from the Office of Planning and Sustainable Communities, New Jersey Department of Environmental Protection, stated in his March 18, 2009 e-mail that the residence does not qualify for an exemption. The e-mail stated that public subsidizing of the extension of utilities to a private school would run counter to the purpose of the cost limits.

Petitioners responded to the Board’s correspondence with OSG by letter dated July 9, 2009. Petitioners again asserted that the existing and proposed developments in the area are consistent with smart growth principles. According to Petitioners, the proposed development seeks to work within smart growth limitations by pursuing environmental preservation in an environmentally sensitive manner. Specifically, the proposed development will “maintain two large contiguous tracts of land with the lowest intensity of additional development while providing substantial conservation easements along the environmentally sensitive wetland and steep slope areas of the parcel.”

#### 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 school is located in a Planning Area 5 or Environmentally Sensitive Planning Area or non-growth area. OSG further notes that the proposal is not consistent with smart growth policy and there are other practicable alternatives. Finally, the OSG states that there is “vast amounts of Planning Area 2, Suburban Planning Area” in Middletown Township.

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 not met.

Specifically, the Board FINDS, that the residence does not constitute a significant benefit to the public, is not consistent with smart growth or that the benefit of the residence does not outweigh the benefits of smart growth, and that there are practicable alternative means of providing the benefit.

First, the Board FINDS that the residence will not constitute a significant benefit to the public or environment. While Petitioners assert numerous benefits provided by the private pre-school, such benefits are not impacted by the residence except to allow the owners to live adjacent to their business, in an otherwise environmentally sensitive area. Additionally, Petitioners decision to not build over the “sensitive wetland and steep slope areas of the parcel” do not ameliorate the planned development in this environmentally sensitive area. As to the services offered by the pre-school, such services are distinct and separate from any perceived benefit from the residence.<sup>5</sup>

Second, the Board FINDS that the residence is not consistent with smart growth and that the benefit of the project does not outweigh the benefits of smart growth. The policy of the OSG is to discourage development in Environmentally Sensitive Planning Areas or Planning Area 5. These areas are designated non-growth. OSG states that the resources are critically important to the citizens of New Jersey. The residence directly conflicts with these policies and runs counter to the policy of smart growth. As such, placing a conservation easement on a portion of the lot does not overcome the potential environmental disturbance of building the residential home. Additionally, the only asserted public benefit, the owner’s ability to live immediately adjacent to and oversee their business, is not a significant benefit to the public and therefore cannot outweigh the benefits of smart growth. Cf. I/M/O O.C.E.A.N. Inc. Petition for Exemption from Smart Growth Rules N.J.A.C. 14:3-8.8(a)(5) (September 27, 2006) (non-docketed matter) (finding that the public good is served by a child care facility for low income parents on a college campus outweighs the negative impact of smart growth goals) and See I/M/O United Communities Petition for Exemption from Smart Growth Rules N.J.A.C. 14:3-8.8(a)(6) (August 1, 2007) (non-docketed matter) (finding a benefit in having adequate and highly efficient Energy Star housing located on the grounds of the McGuire Air Force Base and Fort Dix joint military that will be located near occupants’ employment centers). Petitioners contend that because the existing and proposed developments are consistent with environmental preservation they are consistent with smart growth policy. This assessment misses the main issue OSG has with the additional development. OSG discourages any development in Planning Area 5, an Environmentally Sensitive Area. Thus, the development needs to outweigh the benefits of smart growth which, as stated, is not the case in the present matter.

Finally, the Board FINDS that there are practicable alternative means of providing the benefit while still complying with this subchapter. As noted supra, the OSG found that Middletown Township contains vast amounts of Planning Area 2. These areas are designated for growth. Petitioners offer no evidence that it is necessary for the residence to be “immediately adjacent” to the school. Attendees do not board at the school and, as noted in their Petition, the school has provided the same services the last sixty years without a residence.

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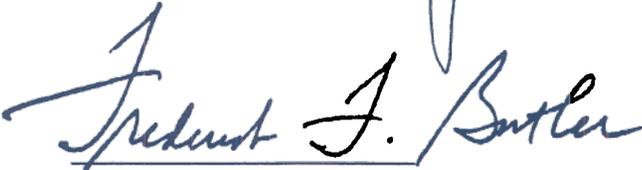
<sup>5</sup>See footnote 2, *supra*. The Board takes no position on whether the school provides a significant benefit to the public or environment pursuant to N.J.A.C. 14:3-8.8(h)(1).

Petitioners have failed to meet any of the three criteria set forth in N.J.A.C. 14:3-8.8(h). Therefore, the Board HEREBY DENIES the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) for the extension of utilities to a residence built adjacent to a private school in an Environmentally Sensitive Planning Area in Leonardo/Middletown, Monmouth County.

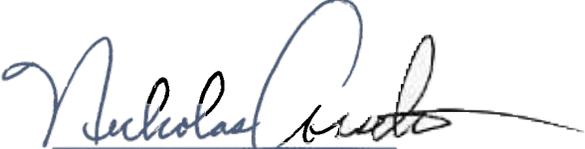
DATED: 8/19/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

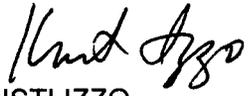
  
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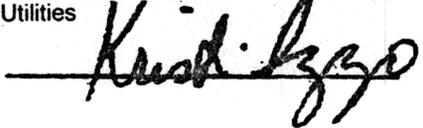
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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 ANDREW AND LAUREN KAISER - PETITION FOR AN EXEMPTION  
FROM MAIN EXTENSION RULES AT N.J.A.C 14:3-8.8(b) (1)**

Docket No. AO08030152

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