



Agenda Date: 5/11/07
Agenda Item: 9A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

MISCELLANEOUS

IN THE MATTER OF LAWRENCE DURR –)	ORDER APPROVING
EXEMPTION FROM SMART GROWTH)	EXEMPTION
REGULATIONS AT <u>N.J.A.C. 14:3-8.8(h)</u>)	
)	
)	NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Board of Public Utilities (Board) adopted its Extension of Service Rules (Main Extension Rules) on November 16, 2004, and these rules were subsequently published in the New Jersey Register on December 20, 2004 at 36 N.J.R. 5928. The Main Extension Rules were promulgated to ensure that the Board's regulations governing extension of service reflected the State of New Jersey's Smart Growth policies. This Order will address a petition for an exemption from the Main Extension Rules.

The Board will address a request by Lawrence Durr (Petitioner) for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(h). 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 built a single family house at 137 Old York Road in Chesterfield, Burlington County, New Jersey, in an area not designated for growth. Petitioner now seeks an exemption from the rules which would otherwise require him to pay the entire cost of extending gas and electric service to the house. PSE&G determined that the cost of extending gas service to the house is \$7,471 if Petitioner provides the trench, and \$20,865 if PSE&G provides the trench. The house is set back approximately 700 feet from the street from where the extension would originate. PSE&G determined the cost of extending electric service is \$5,928.

To obtain an exemption based on a significant public good, N.J.A.C. 14:3-8.8(h) states that 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. That the project described in (h)1 above 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; and
3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

Mr. Durr submitted the following to demonstrate that he meets the above criteria. Regarding the first criterion, the Petitioner indicated that he owns a 100 acre farm and has voluntarily participated in the Chesterfield Township Transfer of Development Rights (TDR) program. TDR is a realty transfer system whereby the development potential of a property located in a specified preservation area can be purchased by private investors. The investors then can use these development rights to build high density projects in specified growth areas. In exchange for cash payments, sellers of development rights place restrictive easements in perpetuity on their property. In New Jersey, TDR is authorized by statute. See N.J.S.A. 40:55D-137, et seq.

By participating in the Chesterfield Township Transfer of Development Rights program, Petitioner has sold the development rights on his 100 acre farm, reserving one building lot for himself. Petitioner will farm this property.

Regarding the second criteria, Petitioner argues that this project is consistent with the State's smart growth policies because the Petitioner's innovative land use techniques will help the State achieve its smart growth goals.

Finally, Petitioner argues that compliance with the main extension rules would mean that the Petitioner would pay the full cost of extending gas and electric service to his house and that the intent of the main extension rules is to promote smart growth. Petitioner argues that because TDR programs are a tool to achieve smart growth, it follows that the Board's rules should not serve to add significant costs to people who choose to participate in TDR programs.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Board Staff consulted with the Office of Smart Growth. Eileen Swann, Executive Director of the Office of Smart Growth confirmed that by granting this exemption, the Board will not negatively impact the achievement of the State's smart growth goals.

DISCUSSION:

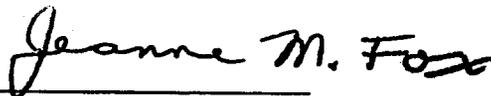
After reviewing the petition, the Board FINDS that the above criteria are met. Specifically, the Board FINDS that construction of gas and electric extensions to serve Mr. Durr's house at 137 Old York Road in Chesterfield will constitute an activity that will provide a significant benefit to the public or to the environment; that Mr. Durr's participation in a TDR program will help the State achieve its smart growth goals; and that because TDR programs are designed to promote

smart growth, there is no practicable alternative means of providing the benefit while still complying with the rules. Petitioner has provided a significant benefit to the public and to the environment by participating in the TDR program and preserving 100 acres from development while at the same time helping to promote growth in areas of the Township better suited for development. Eileen Swan, Executive Director of the Office of Smart Growth, fully supports this petition and concurs that TDR programs are critical tools designed to help promote smart growth. Therefore, the Board HEREBY ACCEPTS AND APPROVES the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(h) for an extension of gas and electric service to 137 Old York Road in Chesterfield, Burlington County, 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 the above referenced costs for this extension shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions serving a designated growth area. Under this rule provision, Petitioner and PSE&G may come to a mutual agreement as to the cost of the extension. Should no agreement be reached on this issue, the parties shall apply the suggested formula set forth at N.J.A.C. 14:3-8.11. Because of the potential impact on ratepayers, and because the house is situated beyond the standard setback, the Board HEREBY ORDERS Petitioner to be responsible for the cost of providing the trench for the gas line or, in the alternative, provide for the cost of trenching as a non-refundable contribution in aid of construction pursuant to N.J.A.C. 14:3-8.9(h).

DATED: 5/17/07

BOARD OF PUBLIC UTILITIES
BY:



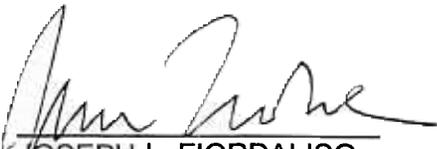
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER

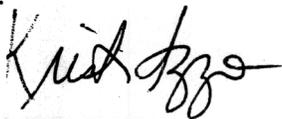


JOSEPH L. FIORDALISO
COMMISSIONER



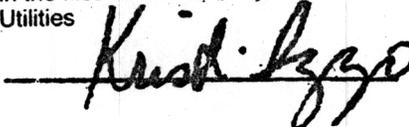
CHRISTINE V. BATOR
COMMISSIONER

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 LAWRENCE DURR –
EXEMPTION FROM SMART GROWTH
REGULATIONS AT N.J.A.C. 14:3-8.8(h)

NON-DOCKETED MATTER

SERVICE LIST

Lawrence Durr
137 Old York Rd.
Chesterfield, NJ 08515

Robert Taylor
Public Service Electric & Gas Co.
80 Park Plaza, T8C
PO Box 570
Newark, NJ 07101

Suzana Loncar, DAG
Division of Law
124 Halsey Street, 5th Floor
Newark, New Jersey 07102