



Agenda Date: 7/29/09
Agenda Item: 9C

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

IN THE MATTER OF UPPER SADDLE RIVER LIONS)
MEMORIAL PARK FIELD HOUSE PETITION FOR)
EXEMPTION FROM MAIN EXTENSION RULES AT)
N.J.A.C. 14:3-8.8(b)(1))
ORDER APPROVING)
EXEMPTION)
Docket No. EO09040326)

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by Upper Saddle River ("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 service. The Petitioner is building a new Field House ("Field House") to provide handicapped accessible bathrooms, sports' team storage and a concession area for the Lions Field Recreation Area. The Lions Memorial Park ("Park") is located on a property that is partially a growth area and partially a non-growth area.

The Field House is a normal use for a park with recreational playing fields providing handicap accessible bathrooms and services. The Field House's location is in the non-growth area because placing the Field House in the growth area would place the building beyond the physical limitations of its intended use for sports and playground patrons/spectators, children, physically challenged, and the elderly. In a letter dated April 20, 2009, the Borough of Saddle River 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 underground electric service to the park.

Preliminary estimates of the cost to extend underground electric service to the park from Rockland Electric Company ("RECO") are approximately \$12,884.85.

The area is wholly surrounded by a densely populated area of Bergen County, which is situated in a Metropolitan Planning Area 1 ("PA 1").

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 ("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 is constructing a Field House to provide needed bathrooms, sport team storage, and a concession area for the Lions Field Recreation Area. The Lions Memorial Park in which the recreation area is located contains four ball fields, football practice and soccer fields, a playground, passive walking track, and is used by the Board of Education for elementary school children.

The Field House will provide an A.D.A. compliant sanitary facility, enhanced patron security via the incorporation of a lighting, early warning system, and an emergency refuge area.

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 area of the Park where the Field House is located is an area not designated for growth, construction of the Field House building, bathrooms, sports' team storage areas and a small concessions area in the park will be consistent with smart growth as it will constitute compact and clustered development adjacent to a growth area in the park that is too steep for placing the Field House. Petitioner further states that the project is consistent with smart growth initiatives because the existing recreation area already serves and supports populations in surrounding smart growth areas. The project's benefits outweigh the detriment to smart growth initiatives since the Field House is a necessary and key element to a typical recreation area.

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

Petitioner contends there is no practical alternative to the project because locating the Field House within the nearby smart growth area would place the building well beyond the reasonable physical limitations of its intended use for sports and playground patrons/spectators, children, physically challenged, and the elderly. The Field House will be handicap accessible to all fields and the playground. Placement of the building in the smart growth area would put it much higher in physical elevation thus making it unusable for the physically disabled or elderly.

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. Benjamin Spinelli, Executive Director of the Office of Smart Growth noted in a letter dated April 23, 2009, that the Field House is located in an area delineated as a Parks and Natural Areas Planning Area 8 ("PA-8"). The area is surrounded by a densely populated area of Bergen County which

is designated as PA-1, a growth area. The park and the new Field House infrastructure are consistent with smart growth, namely Goal 7: Preserve and Enhance Areas with Historic, Cultural, Scenic, Open Space and Recreational Value of the State Plan. The Field House will

enhance, preserve and utilize this open space and recreational asset through collaborative planning, design, investment and management techniques to Upper Saddle River Borough. This project is also consistent with the State Plan by locating and designing in open space, recreational facilities and supporting infrastructure to improve access to and protect Lions Memorial Park.

The OSG concludes that this exemption should be granted to Upper Saddle River Borough for the extension of utilities to the Lions Memorial Park. According to OSG, the Field House allows for the development of both service and recreational facilities where none currently exist, as well as serving the densely populated area that currently surrounds the park.

Staff also consulted with the Department of Environmental Protection Office of Planning and Sustainable Communities ("DEP"). William S. Purdie responded on June 16, 2009, that DEP has no objection to an exemption from utility extension rules for the Upper Saddle River Lions Field.

"It appears that the recreation fields and proposed Field House are within a narrow area delineated as Environmentally Sensitive associated with the Saddle River. Beyond the narrow river corridor, the area is all developed in suburban scale and density development as part of the Metropolitan Planning Area. As the existing fields and proposed Field House are on previously developed lands, they pose no environmental issues."

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 addition of a Field House to an existing park is done to fully utilize the park and its location makes it accessible to all citizens, including the physically challenged and elderly. The Board FINDS that the public good served by building a Field House to enhance the development and improvement of the park constitutes a significant public good for purposes of the Main Extension Rules.

OSG concluded that the requested extension is consistent with smart growth principles in that it is consistent with Policies 5, 6, 8, 12 and 13 of the State Plan. The Board agrees with the assessments of the OSG. The Board also notes that this property is located in a Parks and Natural Areas Planning Area, specifically Local Park Planning Area 8. Upper Saddle River in Bergen County is expanding the use and accessibility of the existing park through this project and is seeking an extension of service to enhance the utilization of this property as a park. In

addition, DEP indicated that the Field House poses no environmental issues. The Board therefore FINDS that the electric extension to the Field House is consistent with the principles of Smart Growth and that the benefits of the project outweighs the benefits 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 increase the use and accessibility of the existing park in a densely populated area of the state. This project is located in an existing park and will improve the quality of the park in an area surrounded by the PA 1. The Board further notes that the location within the park was chosen to ensure access to the facility by physically challenged and elderly citizens. Therefore, the Board FINDS that there is no practical alternative for 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. RECO was sent a letter on April 24, 2009 asking this question. RECO responded on May 7, 2009 that

[i]n the electric service design, a portion of the service is currently within the Smart Growth Area (SGA). The appropriate SGA entitlements and benefits were applied to this portion. The cost of the service within the SGA portion exceeded the revenue entitlement test.

If the Board approves the exemption and RECO were to treat the remainder of the service as if it were an area designated for growth, RECO will incur \$500.40 for which the applicant will no longer be responsible. This cost is associated with the transformer delivery and cost of the meter. The Borough of Saddle River will then be responsible for the cost of \$12,384.45 to be paid to RECO for the installation.

As to RECO'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.

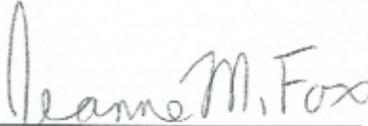
After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met. Specifically, the Board FINDS as follows: (1) the construction of electric extensions to serve Upper Saddle River's Lions Memorial Park Field House constitutes a significant benefit to the public; (2) the benefits of expanding the use of an existing Public Park surrounded by a metropolitan or growth planning area 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 building of a Field House in the Park allows for the expansion of the use of the park to all the residents in the surrounding growth areas and will allow children, the physically challenged, and elderly to utilize the park's facilities; and (4) because the Park has existed for many years the Park is located on open property in the highly developed area of Bergen County and the field house is being built on flat land accessible to the physically challenged, 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 to the Field House Upper Saddle River Lions Memorial Park located in Bergen County, New Jersey.

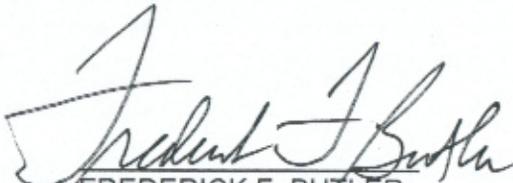
Pursuant to N.J.A.C. 14:3-8.8(k)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore,

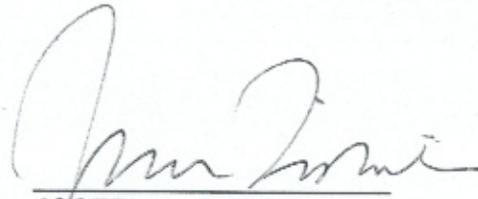
the Board HEREBY ORDERS that the distribution of costs of extending electric service to Upper Saddle River Lions Memorial Park shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area. The Board FURTHER ORDERS that any agreement between the utility 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.

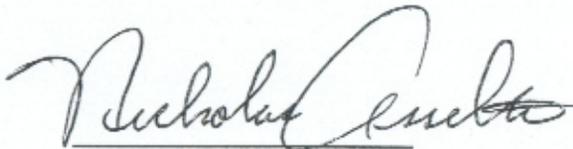
DATED: 7/31/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

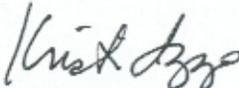

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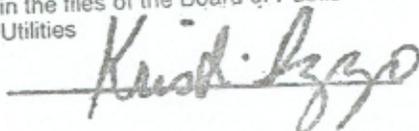

NICHOLAS ASSELTA
COMMISSIONER


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 THE UPPER SADDLE RIVER –
LIONS MEMORIAL PARK FIELD HOUSE
PETITION FOR EXEMPTION FROM MAIN EXTENSION RULES
AT N.J.A.C.14:3-8.8(1)(b)

DOCKET NO. EO09040326

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