

POLICY FOR MODIFICATIONS TO COUNTY SEWER DISTRICTS

Modification of a County sewer district can only take place by an Act of the County Board of Legislators (the "Board"). The Board requires a feasibility report to be prepared by the Westchester County Department of Environmental Facilities ("Environmental Facilities" and/or the "Department"). Prior to completing the feasibility report, Environmental Facilities requires a review and determination of the proposal by the Westchester County Department of Health ("Health").

Pursuant to Section 237.31 of the Laws of Westchester County (the "Law"), the Commissioner of Environmental Facilities (the "Commissioner") has been charged with the care and maintenance of the County sewers. Moreover, pursuant to the County Environmental Facilities Sewer Act Section 824.11, there is a duty to, among other things, protect the public health and welfare and prevent excessive volumes and/or inordinate rates of flow of sewage and waste into the County sewer system. To that end, the Commissioner must strictly monitor sewage flow capacity at County wastewater treatment plant(s) (each a "WWTP"), which includes the current sewage flow received at a WWTP, and the potential sewage flow from undeveloped or partially developed in-district parcels not yet connected to a WWTP, as well as the proposed sewage flow from undeveloped and/or partially developed parcels seeking inclusion.

In addition to the above stated considerations, pursuant to Section 873.720 of the Law, the County must monitor separate sewage disposal systems in order to preserve the health and safety of the drinking water and other natural resources of the County and to ensure that the sewage and other wastewater generated from habitable buildings and properties in the County is processed in the most environmentally appropriate manner possible, including to require, where possible, connection of such buildings or properties to public sewer systems, as many parcels arguably may not support a long-term septic function. The impermanence of separate sewage disposal systems is implicit in the requirement for an expansion area stated in Section 4.0 of Westchester County Health Department Rules and Regulations for the Design and Construction of Residential Subsurface Sewage Treatment Systems. Moreover, Section 873.931 of the Law is intended to promote healthful and safe environmental conditions within communities and states, in pertinent part that "public sewerage facilities should be constructed whenever possible." Accordingly, any request to remove a parcel from a County sanitary sewer district shall be in harmony with the above policy considerations.

It should be noted, that in addition to the criteria set forth herein, applicants must comply, at their sole cost and expense, with all applicable federal, state and local laws, rules and regulations, including but not limited to County law.

ADDITION OF A PARCEL TO A COUNTY SANITARY SEWER DISTRICT

In light of the foregoing, in order to accurately project the anticipated new sewage flow from a parcel seeking inclusion in a County sanitary sewer district, an applicant must provide a sewage flow estimate from the applicant's engineer or municipal engineer utilizing engineering standards and methods acceptable to the Department of Environmental Facilities. In addition, Environmental Facilities reserves the right to calculate capacity on other than a strictly flow basis. To that end the Department reserves the right to request additional information in order to determine if an applicant will have significant contributions of solids, organic or other loads, such as for example certain industrial users.

Addition of new parcels to a County sanitary sewer district will only be processed if the WWTP in question has the capacity to process the additional anticipated sewage flow, which shall be determined in the sole and reasonable discretion of the Commissioner of Environmental Facilities.

FULLY DEVELOPED PARCELS:

Commercial & Residential. An applicant seeking inclusion in a County sanitary sewer district for fully developed parcel(s), whether commercially or residentially zoned, must provide the Commissioners of Environmental Facilities and Health with a resolution from the municipality with jurisdiction requesting addition of the parcel. The package submitted with the resolution shall include tax roll information, a location map, and a sewage flow estimate. The applicant shall provide such additional information as may be requested by the County.

UNDEVELOPED OR PARTIALLY DEVELOPED PARCELS 5 ACRES AND UNDER:

A.) Residential Zoned Parcels:

An applicant seeking inclusion in a County sanitary sewer district for subdividable undeveloped or partially developed parcel(s) must provide the Commissioners with a resolution from the municipality with jurisdiction requesting addition of the parcel. The package submitted with the resolution shall include tax roll information, a location map, a sewage flow estimate, and a statement as to whether an application for subdivision has been submitted to the municipality, and if so, its status. The applicant shall provide such additional information as may be requested by the County.

Any residential property that contains an existing residence with a functioning septic system and can be subdivided into no more than two (2) lots on the basis of local zoning need not come into the district with site plan approval or an estimated valuation for future lots; however, a statement should be provided from the municipality with jurisdiction that the property, based upon local zoning, cannot support more than two (2) building lots.

It should be noted that Section 873 941 of the Laws of Westchester County defines a realty subdivision as "any tract of land which is divided into more than two (2) habitable building sites or parcels on any site along an existing or proposed street, highway, easement or right-of-way or other means or proposed means of access, road or street, for sale, lease or rent, regardless of whether the

sites are to be sold or offered for sale or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description.”

Undeveloped single family residential parcels that are not subdividable must provide Environmental Facilities with a resolution from the municipality with jurisdiction requesting addition of the parcel. The package submitted with the resolution shall include tax roll information, a location map, a sewage flow estimate, and an estimated assessed valuation of the parcel after the construction of the new residence has occurred from the local tax assessor. The applicant shall provide such additional information as may be requested by the County.

B. Commercially Zoned Parcels:

An applicant seeking inclusion in a County sanitary sewer district for undeveloped or partially developed commercially zoned parcel(s) must provide Environmental Facilities with a resolution from the municipality with jurisdiction requesting addition of the parcel. The package submitted with the resolution shall include tax roll information, a location map, and a sewage flow estimate. The applicant shall provide such additional information as may be requested by the County.

UNDEVELOPED OR PARTIALLY DEVELOPED PARCELS OVER 5 ACRES

C. Residential and Commercial Parcels:

An applicant seeking inclusion in a County sanitary sewer district for undeveloped or partially developed parcel(s) over five (5) acres, whether residentially or commercial zoned, must provide Environmental Facilities with a resolution from the municipality with jurisdiction requesting addition of the parcel. In order to prevent delay, such a request should be presented to the County in a single resolution from the municipality and not be mixed on a common resolution with fully developed single family or commercial properties. The package submitted with the resolution shall include tax roll information, a location map, and a sewage flow estimate. The applicant shall provide such additional information as may be requested by the County.

In addition, the following criteria shall apply to subsections A, B and C above:

In order to allow for evaluation of the anticipated sewage flow and calculation of the tax surcharge on the estimated future value of the property, each applicant shall provide a site plan with a preliminary approval resolution from the local planning board and an estimated assessed valuation of the parcel after the approved development has occurred from the local tax assessor. Where there has been no application for subdivision submitted for the parcel (or undeveloped portion thereof), Environmental Facilities will calculate the maximum anticipated sewage flow from such parcel as if fully developed in accordance with current zoning regulations in order to enable the Department to comply with its obligation to reserve sufficient capacity for the future. In the alternative, and upon the written request of the applicant, the County and applicant may enter into an agreement (the “Agreement”) whereby Environmental Facilities agrees to use the property’s currently assessed valuation, or such other valuation as the parties may deem appropriate; provided that applicant executes a Declaration of Restrictive Covenants (the “Declaration”), which the Department will file in the Office of the Westchester County Clerk, Land Records Division. The Agreement and Declaration will provide that in the event an application to develop such parcel is filed with the

municipality with jurisdiction within the ensuing ten (10) year buy-in period, specified by Section 237.141 of the Laws of Westchester County (the "Buy-in Period"), a new buy-in rate will be calculated at the time of final subdivision/site plan approval for each new tax lot based upon estimated assessed valuation of the parcel after the approved development has occurred from the local tax assessor and a new sewage flow estimate is provided. The recalculated buy-in rate, less the amount already paid, shall be due and payable annually for the remainder of the Buy-in Period; however, upon the written request of the applicant or its successors and assigns, the Department may grant an extension of the payment period for the recalculated buy-in rate up to an additional ten (10) years.

VARIANCE:

The Commissioner of Environmental Facilities, in his or her discretion and with the advice from the Health Commissioner, where applicable, may upon written application grant a variance from a specific provision in this policy where such a variance is in harmony with the general purpose and intent of this Policy or when the variance is determined by the Commissioners to be in the best interests of the public health and welfare. In addition, the Commissioner may impose more stringent requirements in a specific case, when necessary, where it is determined to be in the best interests of the public health and welfare. The applicant shall provide such additional information as may be requested by the County in connection with such request. The burden of proof for a variance shall be on the applicant.

REMOVAL OF A PARCEL FROM A COUNTY SANITARY SEWER DISTRICT

Residential Parcels. An applicant seeking removal from a County sanitary sewer district for residential parcel(s), whether developed or not, must provide Environmental Facilities with a resolution from the municipality with jurisdiction requesting removal of the parcel. The package submitted with the resolution shall include tax roll information, a parcel location map and sewer map location. The applicant shall provide such additional information as may be requested by the County.

Parcels in the following categories will not be removed from a County sanitary sewer district:

1. Any parcel less than 40,000 square feet in area;
2. Any parcel where the property lines are within 100 feet of a public sanitary sewer and that sewer is otherwise accessible; or
3. Any parcel that has a documented history of septic failure, i.e. a Health issued notice of violation or hearing within the past five (5) years.

Commercial/Industrially Zoned Parcels. Commercially or industrially zoned parcels, whether developed or not, will not be removed from a County sanitary sewer district.

VARIANCE:

The Commissioner of Environmental Facilities, in his or her discretion and with the advice from the Health Commissioner, where applicable, may upon written application grant a variance from a specific provision in this policy where such a variance is in harmony with the general purpose and intent of this Policy or when the variance is determined by the Commissioners to be in the best interests of the public health and welfare. In addition, the Commissioner may impose more stringent requirements in a specific case, when necessary, where it is determined to be in the best interests of the public health and welfare. The applicant shall provide such additional information as may be requested by the County in connection with such request. The burden of proof for a variance shall be on the applicant.

APPLICATION APPROVALS AND DENIALS

The Department of Environmental Facilities shall issue a notice (the "Notice") of its decision with respect to an application to add or remove a parcel from a County sanitary sewer district to the following: the applicant; municipality; and Commissioner of Health. In the event that an application is denied the Notice shall indicate the reason(s) for the disapproval.

APPEAL PROCEDURE

The following determinations are appealable: denial of an application to add or remove a parcel from a County sanitary sewer district; or denial of a variance application. For appeals, the petitioner shall have the burden of proving that the authorized designee of the Commissioner of Environmental Facilities has abused his/her discretion.

If an applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Disapproval," to the Commissioner, within thirty (30) calendar days of the date on the Notice requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by an Administrative Hearing Officer ("AHO"). There shall be no personal interviews to discuss appeals.

The AHO shall submit a report to the Commissioner within sixty (60) days after the record on appeal is closed with a recommendation as to whether the determination appealed from should be approved, modified, or rejected. The Commissioner shall issue a final decision approving, rejecting, or modifying the AHO's recommendation within thirty (30) days of receipt of the AHO's report.