

Westchester County Board Of Legislators  
Committee on Environment & Energy  
Septic Subcommittee  
Meeting Minutes, October 14, 2009

In attendance:

Committee Members:

Subcommittee Chair: Hon. Peter B. Harckham;

Ed Delaney, Bibbo Associates

Sue Gerry, Office of the County Executive

William Harding, NYS Department of State: Executive Director, Watershed Protection and Partnership Council

Michael Meyer, Bureau of Water Supply NYCDEP

Hon. Richard Lyman, Board Member, Town of Pound Ridge

Roberta Wiernik, League of Women Voters Environment Committee

Guests & Visitors:

Vincent Giorgio, NYCDEP

Bruce Thompson, Building Inspector, Town of North Salem

BOL Staff: Chris Crane, Wendy Wild

Chair Peter Harckham called the meeting to order at 3:35 P.M., and minutes for the September 10, 2009 meeting were approved.

In response to discussion at the last meeting- a copy of the Sewer District Modification Policy was distributed (copy attached for the record).

The balance of the meeting was group discussion and editing of the proposed cover letter to accompany the planned municipal package. The final draft developed by the subcommittee is attached.

The agenda item for discussion of future topics was deferred until after completion of the proposed package.

The next meeting will be on Wednesday, December 16<sup>th</sup>, at 3:30 P.M.

The meeting adjourned at 5:10 P.M.

Respectfully submitted by Wendy Wild.



## **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.

## **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.