

Plan On It

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Establishing Private Water and Sewer Systems What Every Municipality and Planning Board Should Know

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Planning for the development of water and sewer systems goes hand in hand with sound land use planning, and can be a key tool in a community's efforts to promote development in a manner consistent with Greenway concepts and smart-growth principles. Many development projects, because of size, density or configuration, require the construction of some form of centralized water and/or sewer system. If a proposed project is within an existing public service area, the solution is relatively simple. But if development is proposed outside of an existing system, municipalities will generally be faced with a request from the project developer to establish new private water and sewer systems.

Understanding What the Law Allows

New York State Law establishes the powers and duties of a local government regarding the evaluation and approval of private water and sewer systems. Municipal officials can benefit by understanding the full scope of powers and opportunities that this approval authority confers.

Article 4 of the New York State Transportation Corporation Law addresses the creation of a private water works corporation, while Article 10 addresses the establishment of a private sewer works corporation. In both instances, the law provides that no private water or sewer corporation can be incorporated without a resolution of approval from the local governing body of the municipality in which the proposed corporation will operate.

Planning Ahead and Getting the Most for Their Money

Communities can use this approval power to leverage better water and wastewater system planning, design and construction. Is the proposed development adjacent to, or in close proximity to, an existing sewer system? If so, the municipality should require an interconnection to the existing system, rather than development of a new independent system. If an interconnection is not currently possible, can the new system be designed and constructed in a manner that facilitates a future interconnection? Municipalities may require minimum pipe sizes and construction of pipe stubs extending to a property line for future connections. The establishment of easements can provide for future interconnecting mains, or for construction of a pump station that will allow wastewater to be diverted to another sewage treatment system in the future. Some components of a system can be upsized without significant additional expense to allow future development to tie into the systems being constructed.

What Are the Municipalities Obligations?

Construct and/or Operate System if the Developer Cannot

When presented with an application for a private sewer corporation, municipal officials should be aware that the law also places an additional obligation on the

municipality; if the private owner fails to complete the construction or abandons the operation of the sewer system, the responsibility to construct and/or operate passes to the municipality. Fortunately, the law also includes provisions that will enable a municipality to ensure that a sewer system is designed and constructed to provide reliable, affordable service over its projected life span.

Create a Sewer District

Towns are strongly advised to create a town sewer district in conjunction with the approval of a private sewer corporation, in order to protect the Town in the event it becomes the owner of the system down the road. Creation of a district is a much simpler, faster and less expensive process prior to, rather than after, subdivision and occupation of a project.



Construction of a pump station for the Central Dutchess Water Transmission Line.

Engineering Review

Under Article 10, the local governing body is required to utilize a licensed professional engineer to review and approve the design plans for the proposed sewer system, and to perform inspections during the construction to ensure the system is built in accordance with the approved plans and specifications. The cost of the municipality's engineering review is to be reimbursed by the applicant.

This technical review ensures the system is designed and built properly, and well maintained from day one. While County Health Department approval is also required, a municipality can use its approval authority to negotiate for provisions that go above and beyond the standards imposed by the Health Department. There is, in many aspects, a direct connection between the manner in which a system is designed and constructed, and the costs that will be billed to future residents to operate and maintain the system. For example, requiring redundant capacity in key treatment components will enable the plant to meet all applicable permits when key components are offline for repair or maintenance.

Option to Require Posting of Bonds

The municipality is also empowered to require the posting of bonds to guarantee completion of construction, and that the system is properly operated and maintained for the first five years of operations. In determining the appropriate amount of the performance bond, municipalities should take into consideration not just the estimated cost of the construction, but also the cost escalation that will occur over time, and the increased cost that would be incurred for the municipality to complete the construction as a public works project. Similarly, communities should consider inflation and public operating expenses when establishing the required amount for the five year maintenance bond.

Help is Available

But what to do if your community is not experienced in the design, construction and operation of sewer systems, or not interested in taking on additional sewer service responsibilities? The Dutchess County Water and Wastewater Authority has developed a model agreement to provide assistance to municipalities in such instances. The municipality approves the sewer corporation contingent upon the applicant entering into a three way agreement with the Authority and the municipality. Under the agreement, the

Authority takes responsibility for the review and approval of the design and construction of the sewer system. The applicant provides to the Authority, rather than the municipality, the escrow funds to cover engineering review and inspection costs, and posts the performance, payment and maintenance bonds to the Authority as well.

The Authority agrees that, in the event of a default, the Authority will accept responsibility to construct and/or operate the system, relieving the town of the responsibility to do so. A multiple party agreement can also facilitate the approval and establishment of a sewer corporation that extends across municipal boundaries (e.g., within both a town and a village, or two adjacent towns.) The municipality benefits from the experience and expertise that the Authority brings to bear on the review and inspection process, and eliminates the risk that it will end up the unwilling owner of a sewer system at some point in the future. Future residents will benefit by being served by a well-designed, constructed and operated sewer system.



Staff from the Dutchess County Water and Wastewater Authority (DCWWA) review engineering documents for a sewer system.

More Information

[Dutchess County Water and Wastewater Authority \(DCWWA\)](#)

[Article 10, NYS Transportation Corporation Law](#)

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This newsletter was developed by the Dutchess County Department of Planning and Development, in conjunction with the Dutchess County Planning Federation.

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