

SEWER CAPACITY ALLOCATION POLICY TOWN OF RICHLANDS

A. Background

The Town of Richlands agreed to lease its water and sewer system to the Onslow Water and Sewer Authority (ONWASA), but reserved the right to allocate any unused capacity of the wastewater treatment plant, as well as up to 130,000 gallons per day of additional capacity scheduled to be added in 2008. The additional 130,000 gallons per day will be available in increments as part of an approved Special Order by Consent (SOC) between ONWASA and NCDENR. Furthermore, some allocations of capacity previously made have also remained unused within a reasonable period of time. Having invested substantial capital in a wastewater treatment infrastructure designed to support healthy growth and prosperity, the Town desires to insure that any available wastewater treatment capacity is allocated and utilized in a manner that best serves the interests of the citizens of Richlands.

B. Purpose

This Sewer Capacity Allocation Policy is designed to utilize a valuable and limited resource to:

1. To encourage the development and availability of essential and desirable community services;
2. To promote the financial health and stability of the town government;
3. To insure the orderly growth and development of the community;
4. To encourage high quality, attractive development, especially in key gateway areas of the town.

C. Evaluation Criteria

Requests for the allocation of sewer capacity shall be evaluated on the following preference criteria:

1. Location of the project within the Town's corporate boundaries.
2. The project's provision of critical, essential, or highly desirable community services.
3. A high ratio of added property tax base in relation to the estimated cost of town services.
4. Significant generation of other, additional revenues to help support town services.
5. Location of the project on a site that promotes needed infill, compact growth of the town boundaries, and efficient, cost-effective provision of municipal services.
6. Consistency with- and/or advancement of the Town's Land Use Plan and/or other comprehensive plan elements.
7. The provision of desirable, high-quality community amenities.
8. The provision of desirable public facilities, easements, or rights-of-way.
9. Agreement to develop the property in a specific fashion that exhibits high quality site, building, and landscaping design.
10. Preservation of key resources or structures that are part of the unique character of the town.
11. Preservation and/or protection of natural resources, such as water quality or vegetation.
12. Evidence of the project's ability to utilize the requested allocation in an expeditious manner.

13. Mitigation of significant, identified public health or environmental problems.
14. A demonstrated history of high quality development by the owner or developer.
15. A demonstrated history of expeditious project completion by the owner or developer.
16. Willingness to furnish performance bonds or other substantial guarantees of any promises and commitments contained in the application.
17. The availability of- and/or investment in significant infrastructure required to support building, occupancy, and use. (To be considered, any investments must be pursuant to approval of required plans and permits by the Town or other appropriate agency.)

D. Applications

1. General. All applicants are encouraged to carefully review the criteria set forth in this policy and the application requirements before submitting an application.
2. Form. The owner of any project or property who desires to apply for an allocation of sewer capacity shall submit a written application, in a form required by the Town, which provides key ownership, property, and project information, which indicates the amount of capacity being requested, which sets forth the proposed timetable for the project, and which provides sufficient factual information to address the evaluation criteria set forth in this policy. All applications and any approvals shall be subject to the standard terms and conditions set forth in this policy. No letters or other communications may be substituted for submission of a proper and complete application.
3. Fees. Sewer allocation applications shall be accompanied by non-refundable application fees, based on a schedule of fees set by the Board of Aldermen from time to time.
4. Review. Applications will be reviewed and evaluated by the Town staff to insure completeness of needed information and to determine the extent to which the application addresses the evaluation criteria.
5. Approval or Denial. After required application information and the initial evaluation are complete, applications shall be considered for approval or denial as follows:
 - a. *Town Board Reviews*. The Town Board of Aldermen shall review and make decisions on all applications with the following characteristics:
 - (1) Projects which require or may require a daily flow allocation of over 480 gallons;
 - (2) Projects located outside the corporate boundaries of the Town;
 - (3) Projects that are subject to special zoning or development review requirements, such as conditional uses, planned unit developments, or projects located in overlay or conditional zones.
 - b. *Management Reviews*. The Town Administrator may review and make decisions on applications located within the corporate boundaries of the Town that require a daily flow allocation of 480 gallons or less. In considering such minor applications, the Town Administrator shall keep in view the evaluation criteria set forth in this policy, but such minor allocations may not be required to have evaluation ratings as high as major projects. Denials of minor applications may be appealed, as a new application, to the Board of Aldermen.

6. Re-Application. Applications which are denied may not normally be re-submitted for at least 90 days and should submit evidence of significant changes in their applications that may justify reconsideration.

E. Terms and Conditions

All approvals of sewer capacity allocation shall be subject to the following conditions and any other conditions set forth in the action of approval.

1. Form of Approval. Any approved allocations shall be issued in writing and shall be subject to all of the terms, conditions, and provisions of this policy, as well as any specific conditions related to project that are stipulated by the Town Board of Aldermen. Such conditions may include requirements for expeditious completion of projects or other requirements which, if not fulfilled, will cause the allocation to become null and void.
2. Annexation. All approvals of sewer capacity allocations will be conditioned upon submission of an irrevocable petition for voluntary annexation.
3. Nature of Allocations. Approved allocations of sewer capacity are conditional distributions based on estimated or expected plant capacity, but are not unconditional guarantees or rights to service capacity. All allocations made by the Town are contingent on the actual availability of capacity at the time of property improvement and connection. All rights to sewer capacity subject to distribution by the Town shall remain at all times the property of the Town, and no person shall acquire any interest in property as a result of a sewer capacity allocation. The Town may, in some circumstances, elect to approve allocations that are explicitly contingent upon the availability of future capacity, the expiration, lapse, or release of existing allocations, and/or the occurrence of other events.
4. Order of Service. If limited actual capacity is available at the time of proposed connection, the approval of actual connections, among those owners or projects with approved allotments, shall be on a first come, first served basis.
5. Expeditious Completion. In order to insure that other potentially worthwhile projects are not unreasonably prevented from obtaining allocations of this scarce resource, allocations will be made with the expectation that capacity will be utilized in a timely manner. All approved allocations require vigorous and expeditious prosecution of the proposed project. Allocations may not be “banked” for use beyond the duration of the allocation.
6. Partial or Limited Allocations. In considering applications for multi-unit projects or developments, sewer allocations may be limited to- and made for a portion of the total amount requested, in order (a) to encourage expeditious utilization of allocated capacity; (b) to encourage demonstration of project completion ability, and (c) to protect available capacity against over-allocation and non-utilization.

7. Scheduled Availability. Sewer allocations may also be made on a scheduled basis, in which the availability of capacity – especially in projects with multiple units or phases – is scheduled for specific dates or periods of time. Allocations that are not accompanied by scheduling shall be for a specific period of time (see “Duration” below) beginning at the date of approval.
8. Other Permits and Approvals. Approval of a sewer capacity allocation does not confer or imply any other approvals required by the Town, County, State, or other agencies (such as the Health Department or North Carolina Department of Environment and Natural Resources). The Town of Swansboro shall bear no cost, liability, or responsibility if other needed approvals for a project are denied or withheld.
9. Vested Rights. The approval of a sewer capacity allocation is, as indicated herein, conditional and does not imply or create a vested right. All applications for sewer capacity allocations shall be based on this understanding and condition, and all applicants shall agree that no claim of a vested right, guarantee, or property interest may be made based on any allocation of sewer capacity.
10. Agreements. Any specific promises or commitments made by the applicant and considered in the evaluation process shall be set forth, if an allocation is approved, in specific agreements between the Town and the applicant.
11. Transferability. Applications are evaluated based on information and commitments provided by a specific applicant with regard to a specific property and project. Approved allocations of sewer capacity may not be transferred by the applicant to any other person, owner, entity, organization, corporation, property, project, or location. Allocations are valid only for the named applicant and project. If the recipient of an approved allocation desires to request transfer of an approved allocation to any other person or entity, an updated application must be presented for evaluation and consideration by the same reviewer (Town Board or Town Manager) that conducted the original review. In a residential subdivision, sale of individual lots to an individual builder or owner for the purpose of construction of homes is not – up to a maximum of five lots – considered a “transfer”, but any associated capacity allocation remains subject to the duration and conditions of the original allocation.
12. Changes in Use, Design, or Location. Allocations are limited to the project use, design, and location described in an approved allocation. Proposed changes in use, design, or location require submission of- and evaluation of a new application.
13. Duration and Expiration. All approved allocations shall be for a period of 12 months from the date of approval, unless availability is scheduled for a specific date or period of time in the future.) After the standard allocation duration or other time period specified in the approval, the allocation will expire (unless extended) and the allocation will be subject to re-allocation.
14. Extensions. Updated applications are required to consider any extensions of allocations, and requests for extensions will be based on updated conditions at the time of the request. All requests for extensions shall be based on substantial justification of the need for the extension and a substantial explanation of the applicant’s failure to

complete the project in an expeditious manner. The reviewer (Town Board or Town Administrator) may, if such extensions are approved, make approvals conditional on terms or conditions different from those in the original approval. Extensions, if approved, shall normally be for a period of six months only.

15. Capacity Accounting. Calculation of availability of sewage treatment capacity is, by its nature, an inexact science, due to the dynamic nature of wastewater flow and treatment, weather, seasonal use, the regulatory environment, and other factors. The Town will make its best efforts to track the amount of capacity that may be available for allocation, but any calculations or reports shall not be construed as a policy statement, commitment, or guarantee of the amount of capacity available for allocation.
16. Actions Adversely Affecting Capacity. Any allocation approvals are subject to potential actions of legislative bodies or regulatory agencies that may affect the actual availability of capacity. Wastewater treatment capacity may also be adversely affected by operational practices, severe storms, other acts or God, and acts of intentional or unintentional damage to facilities. The Town assumes no responsibility for actions or events beyond its control that have an adverse effect on actual treatment capacity.
17. Cancellation. Failure to comply with the specific terms and conditions of any allocation and/or of this policy shall render an allocation null and void.

F. Previous Allocations

In consideration of any requested extensions, it is the intent of the Town to give priority to projects or portions of projects for which infrastructure installations are complete at the time of allocation expiration. Portions of planned projects for which infrastructure is not complete will be fully subject to the terms, conditions, and criteria of this policy and may, if re-approved, be subject to (a) scheduling of any re-approved allocations and/or (b) re-approval as contingent allocations.

G. Definitions

1. "Allocation", "sewer allocation", or "sewer capacity allocation" is a conditional designation of estimated sewer treatment capacity to a specific owner and project, subject to all of the provisions of this policy and any document of approval.
2. "Contingent allocations" are conditional designations of estimated sewer treatment capacity that become effective only upon the occurrence of specific events.
3. "Critical, essential, or highly desirable community services" are commercial, institutional, or public services that have been identified by an official planning document or which are found by the Board of Aldermen to be vital, under-provided needs for the residents of the town.
4. "Evaluation criteria" are the factors and findings by which applications for sewer capacity allocations are analyzed and evaluated to assist in decisions regarding allocations.
5. "Impact fee" is a fee levied to recover past or future capital cost required to provide increased capacity of water or sewer facilities
6. "Infill" is building or development that is significantly surrounded by existing improved property, particularly developed property located within the town limits.

7. "Infrastructure installations" are improvements (such as streets, sidewalks, water and sewer mains, and storm water conveyance or mitigation facilities) required by town subdivision regulations and/or other major facilities improvements required to prepare the property for building improvements.
8. "Scheduling" means designation of a specific time or time period during which a sewer capacity allocation is available for use.
9. "Tap" is the connection made at the customer's service line (including meter or cleanout) to a water or sewer main.
10. "Tap fee" is a fee charged to defray the cost of the connection of a customer's service line to a water or sewer main.