

NEW CASTLE COUNTY
DEPARTMENT OF SPECIAL SERVICES
DEPARTMENT OF LAND USE
SEWER CAPACITY POLICY

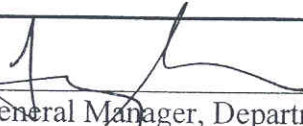
Special Services Policy No: 02

Land Use Policy No.: 2.9

Subject: Available Sanitary Sewer Capacity Determinations and
Processing of Land Development Applications

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Approved: 
General Manager, Department of Special Services

Approved: 
General Manager, Department of Land Use

LEGAL AUTHORITY: The New Castle County (“County”) Department of Special Services (“Special Services”), the County Department of Land Use (“Land Use”)(Land Use and Special Services collectively hereinafter known as “Departments”) and the General Managers of these Departments enact this policy pursuant to authority granted to them in Title 9, Section 1341 of the Delaware Code, 9 Del. C. § 1341; Title 9, Section 1301 of the Delaware Code, 9 Del. C. § 1301; Chapter 2, Section 2.05.301 of the County Code (“Code”), N.C.C.C. § 2.05.301; Chapter 2, Section 2.05.100 of the County Code, N.C.C.C. § 2.05.100; and Section 40.05.320 of the Unified Development Code (“UDC”), N.C.C.C. § 40.05.320.

BACKGROUND: In light of the significant investment the County has made to rehabilitate and upgrade the County-wide sewer system, and in light of increased building pressure, this policy provides the Departments with standards for determining when sewer capacity will be available for proposed development. This policy also avoids inefficient use of the Departments’ limited resources in the event sewer capacity is not or will not be available. The policy outlined below supercedes all previous policies regarding sewer capacity availability provisions in Article 5 of the UDC.

POLICY: Section 40.05.320 of the UDC provides that for sewer developments located in the County, prior to receiving final plan approval, “the developer must obtain verification from the Department of Special Services that sewer capacity is available or will be

available at the time of the proposed development.” N.C.C.C. § 40.5.320. The determination of whether sewer capacity “is available” shall be based upon Special Services’ analysis of the sewer capacity model on the date that the request is received. Any statement by Special Services that capacity is available prior to execution of a sewer agreement at the record plan stage is not a guarantee that sanitary sewer capacity will be available later in the plan review process. Sewer capacity shall only be available on a first come, first serve basis and may only be reserved through the execution and recording of a sewer agreement at the record plan stage. *See* N.C.C.C. § 38.02.002.C; N.C.C.C. 40 § 31.820.

In some areas, sewer capacity is not available at the time of the capacity request; however, a sewer improvement project is scheduled to provide capacity in that area. In these circumstances, the Department may determine that capacity “will be available” for the proposed development if the necessary sewer improvement project has been approved and fully funded by the County Executive and County Council as part of the County’s Capital Program & Budget for the fiscal year in which the Department receives the request.*

If a determination is made by Special Services that capacity “will be available” at the exploratory or preliminary plan stage of the application process, the developer may continue through the development plan application and review process. The developer’s continued processing of such plans is made with the understanding that capacity may not be available at the record plan stage and with the understanding that the Department may place a hold on building permits and/or certificates of occupancy at the record plan stage as necessary to ensure that sewer improvements are completed prior to the proposed development connecting to the County sanitary sewer system. Special Services does not guarantee if and/or when sewer improvements will be completed, and does not guarantee if and/or when sewer capacity will be available. The developer shall proceed at his or her own risk in processing plan applications where capacity “will be available,” understanding that numerous factors, such as obtaining required permits from other government agencies, obtaining right-of-ways, unforeseen weather conditions, construction issues, changes in policy or plans, the commitment of available capacity for other developments, and other unforeseen circumstances may impact the ultimate availability of sewer or the timing and completion of proposed sewer improvements.

In instances where Special Services determines that capacity “will be available” and where Special Services is willing to consent to the recording of a record plan with restrictions, Special Services shall notify developers by letter of the restrictions on building permits and/or certificates of occupancy at the record plan stage. The Department shall also note any restrictions in the sewer agreement for the development and require notes to that effect on the recorded record plan.

* While most of the projects in the County’s Capital Program & Budget provide funding for a specific improvement to a section of the system, *i.e.*, parallel line, add a pump to a pump station, increase pipe size, etc., some projects merely provide funding to allow the Department to study sections of its system to identify problems. More defined projects develop as a result of such studies. The studies themselves shall not be considered “sewer improvement projects” under this policy for the purpose of determining that capacity will be available for a development unless the Department reasonably believes that work performed as part of the study (*i.e.*, line cleaning, grouting, etc.) will provide capacity. If/when the study identifies a specific project to provide capacity, the Department may then determine that capacity will be available upon completion of such project, consistent with this policy.

Processing of Land Use Applications When Sewer Capacity Is Not Available

Section 40.05.320 of the UDC states that Land Use cannot provide final plan approval for a plan unless verification from Special Services is received indicating that sewer capacity is or will be available for a proposed development. Thus, once a developer of proposed sewer development is notified by Special Services that sanitary sewer capacity is not and will not be available for the proposed development, the application shall not be permitted to continue through the land use application process. The County will not process plan applications for connection to sewer when service is not or will not be available because continued processing of a plan application that cannot ultimately be recorded is an inefficient use of the County's limited financial and personnel resources. The Developer shall be notified via letter from Special Services with a copy provided to Land Use when sewer capacity is not or will not be available.

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