

RESOLUTION 08-9

**WASHINGTON TOWNSHIP
MUNICIPAL AUTHORITY**

**RESOLUTION ADOPTING POLICY REGARDING
RESERVATION OF SEWER CAPACITY AND
PAYMENT OF RESERVATION OF CAPACITY FEES**

WHEREAS, the Authority currently has in effect certain rules and regulations, including a fee schedule, which govern when, how and at what cost new customers may tap-on to the Authority's Sewer System;

WHEREAS, the Authority's existing rules and regulations require payment in full of the Authority's water tapping fee in order to reserve capacity in the Sewer System;

WHEREAS, the Authority desires to implement a policy for the reservation and allocation of capacity to users or potential users of the Authority's Sewer System and to modify its existing fee schedule;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Washington Township Municipal Authority that new Rules and Regulations regarding Reservation of Sewer Capacity and Payment of Reservation of Capacity Fees shall be adopted as follows:

Subsection 1. Method of Allocation of Capacity: The Authority shall allocate capacity of the Sewer System in terms of Equivalent Dwelling Unites ("EDU's"). Applicants for allocation of capacity for a particular tract of land ("Owner") shall determine the estimated number of EDU's needed for that tract of land in accordance with the applicable provisions of the Authority's Rules and Regulations and its Resolutions concerning tapping and connection fees.

Subsection 2. Reservation of Capacity Not Transferable from Tract to Tract: The Authority shall reserve the allocated capacity for a particular tract of land within the Authority's Service Area, and such capacity cannot be transferred to any other tract. The reserved capacity shall belong to the Owner of the tract of land until the Owner of the tract of land notifies the Authority of the transfer of ownership of the tract of land for which capacity has been reserved.

Subsection 3. Requests for Allocations and Reservation of Capacity: All requests for allocation and reservation of capacity in the Sewer System shall be made in writing on a form supplied by the Authority. Said form may not be submitted to the Authority prior to requests for preliminary subdivision plan approval but may be submitted at any time after, if the Owners of subdivisions wish to reserve Sewer System Capacity for those subdivisions. The request form will require the Owner to provide such information as is requested by the Authority and its Engineer concerning the location of the property to be serviced, the size of

the tract, the proposed use, status of subdivision and/or land development application, if any, the estimated use, and the number of EDU's.

Subsection 4. Allocation of Capacity. Capacity remaining in the Sewer System shall be allocated on a first-come, first-served basis, subject to restrictions set forth in Subsection 4(A) through (D) below. Allocation shall be made only after the Authority approves the request and only after the applicant pays in full an amount equal to the Reservation Fee for the number of EDU's requested.

The order in which capacity shall be allocated to Owners shall be determined by the order in which requests are received and logged in by the Authority's designated representative. The entire request for capacity of an Owner, up to the annual quota designated Subsection 4(A) shall be allocated before the remaining capacity is allocated to a subsequent Owner.

Allocation of capacity shall be subject to the following restrictions:

- A. No single Owner may reserve more than 50 EDU's of capacity per calendar year. An owner may reserve an additional 50 EDU's in each subsequent year, up to a limit of the number of planned connections in a given subdivision.
- B. The Authority will begin accepting requests for reservation of capacity on the Monday following adoption of this Resolution.
- C. At such time as the Authority determines that it has no more than 200 EDU's of available capacity remaining in its Sewer System, the Authority will stop reserving capacity according to the procedure set forth above. The Authority will thereafter implement a lottery for the remaining EDU's of available capacity. Notice of said lottery, including instructions for participation, will be published at least ten (10) days in advance of the lottery in the same publication in which the Authority advertises its regular meetings. No Owner will be permitted to submit more than one application to the lottery pool and no Owner will be awarded more than 50 EDU's of capacity through the lottery.
- D. In the event significant additional capacity in the Sewer System becomes available after a lottery system has been implemented, the Authority will notify the public of the amount of additional capacity that has become available. If the additional capacity is less than 200 EDU's, another lottery will be conducted pursuant to Subsection 4(C). If the additional capacity is greater than 200 EDU's, the capacity will be allocated on a first come, first served basis, subject to the limitations of Subsection 4(A).

Subsection 5. Reservation of Capacity: After capacity is allocated to an Owner, it shall be reserved for the tract of land set forth in the application. All reservations of capacity shall be made in accordance with the provisions of this Resolution and, in particular, with this Subsection 5.

- A. All reservations of capacity for a tract of land shall remain valid indefinitely from the date the Authority approves the initial allocation and reservation of the capacity for the tract of land, provided the Owner pays the required fee per year, per EDU before the anniversary of the original reservation approval. This fee shall be payable for the year in advance. If the Owner fails to pay the required annual fee by the anniversary date for the next year in advance, then the reservation shall expire on the day after the anniversary date.
- B. If, after allocation and reservation of capacity, the Owner receives or requests subdivision and/or land development approval for its proposed use that would permit less intensive development than that for which capacity was requested, any EDU's that are not required by the development as approved through the subdivision and land development process shall revert to the Authority and shall be available to the Authority for reallocation. In such case, the reservation fees paid for the unneeded EDU's shall be refunded to the Owner for the year in which the land development plan was approved or revised on a pro-rated basis from the time reservation was withdrawn through the end of the anniversary date for those reservations. Reservation fees paid for any prior years shall not be refunded. For example, if an Owner requests allocation and reservation of capacity for a 100 EDU subdivision, but the land development plan as approved permits the erection of only 75 EDU's, then 25 EDU's shall revert to the Authority and shall be available to the Authority for reallocation. In this example, the Owner would receive a partial refund of the reservation fee paid for the remainder of the one year reservation period for those 25 EDU's.
- C. Transfer of ownership of tract of land: If an Owner transfers ownership of the tract of land to which an allocation and reservation of capacity has been made, the Authority may permit the allocation and reservation to be transferred with the tract to the new owner, provided that the required number of EDU's for the transferee's proposed use remains constant. The transferee of the tract of land shall not allocate any additional EDU's as a result of the transfer or any proposed change in the use of the tract. As a condition of approval, the Authority must receive and approve an application for such transfer submitted by the transferee, which shall include, but not be limited to, information such as the names of the old and new owner(s) of the tract and any information related to capacity requirements and anticipated use of the tract by the transferee. Under no circumstances may an Owner transfer reserved capacity from one tract of land to another.

Subsection 6. Reservation Fees:

- A. Fees for the reservation of capacity shall be established by this Resolution of the Authority. Said fees shall reserve capacity for one year. This fee shall be

sixty percent (60%) of the average annual sewer usage rate for one (1) EDU of sewer established under the Authority's Schedule of Rates, Charges and Fees in effect at the time the reservation request is submitted and shall in all respects be consistent with Pennsylvania Act 57, 53 Pa. C.S. §5607 (d)(24).

- B. Reservation fees shall not be subject to any discounts or credits.
- C. Reservation fees shall be non-refundable except as described in Subsection 5(B) and Subsection 11. Reservation fees payable hereunder shall not act as a credit toward then-current tapping fees imposed by the Authority.
- D. Payment of reservation fees does not freeze the tapping fee and connection fee amount that is payable at the time of connection. The final tapping fee and connection fee amount due and payable shall be the tapping fee and connection fee amount at the time a Sewer Connection Permit is obtained.

Subsection 7. Current Rules and Regulations: Extensions of and connections to the Sewer System shall be made in accordance with the Authority's current policies and regulations. Nothing contained herein shall be considered to modify or abrogate the requirements of such policies, resolutions, regulations and/or statutes. Nothing in this Resolution shall prevent the Authority from enforcing any of its other Rules and Regulations.

Subsection 8. Pre-Existing Allocations and Reservations of Capacity: Nothing in this Resolution shall be considered to modify or abrogate any agreement regarding the reservation of capacity in the Sewer System that is in existence at the time this Resolution becomes effective.

Subsection 9. Mandatory Reservation of Capacity: All Owners who desire to reserve capacity or connect to the Authority's Sewer System shall either reserve water capacity pursuant to this Resolution or purchase water capacity by paying the current tapping fee, if permitted by Authority policy, with certain exemptions as described in Subsection 10. No assurance of connection or capacity, now or in the future, shall be made or implied by the Authority unless one of these two options has been exercised, subject to the limitations set forth in Subsection 11 below.

Subsection 10. Applicability: This Resolution shall apply to Owners who apply for sewer capacity in the Sewer System for any project. Depending on the progress of an Owner's project, the Owner will be required to either purchase sewer capacity or pay sewer tapping fees. Owners who possess special agreements with the Authority may be exempt from this Resolution, in whole or in part, and those Owners who have previously paid for tap-ins shall be exempt from this Resolution.

Subsection 11. Reduction in Capacity: In the event any governmental or regulatory body or court having competent jurisdiction to do so, an act of nature or force majeure, ever reduces the Authority's capacity in its Sewer System and such reduction makes it impossible, in the

Authority's sole discretion, for the Authority to honor the reservations of capacity previously approved by the Authority, the Authority shall take the following steps:

- A. Reallocate its remaining capacity (after such reduction) among all Owners who have received approved capacity reservations from the Authority. Such reallocation shall be made on a proportionate basis among all holders of capacity reservations in the same proportion as said Owners' reservations bear to the total reservations then in effect. Any localized capacity reduction will be reallocated on a proportionate basis among holders of capacity reservations within the affected area of localized capacity reduction.
- B. Refund any reservation fees, on a straight line pro-rated basis, paid for the unused portion of the current year for capacity lost to each Owner.
- C. The Authority shall, in the event of a reduction of capacity, give written notice to all parties holding capacity reservations, informing them of the cause of the reduction in capacity, providing a calculation of the reduction in capacity and the amount of capacity reallocated to such Owner. The notice shall also contain a calculation of the reservation fees that will be refundable in connection with the reallocated capacity.
- D. This Subsection can be illustrated by the following hypothetical situation: The Authority previously approved 1,000 EDU's of reserve capacity for the following owners in the following amounts:

Owner A – 500 EDU's = 50% of total capacity committed;
Owner B – 300 EDU's = 30% of total capacity committed;
Owner C – 200 EDU's = 20% of total capacity committed;

If the Authority's available capacity in the Sewer System is reduced from 1,000 EDU's to 500 EDU's, the 500 EDU's of capacity shall be reallocated to Developers A, B and C in proportion to their previously reserved capacity as follows:

Owner A shall receive 250 EDU's (equal to 50% of available capacity);
Owner B shall receive 150 EDU's (equal to 30% of available capacity);
Owner C shall receive 100 EDU's (equal to 20% of available capacity).

The reservation fees paid by Owner A in connection with the 250 EDU's of capacity which have been lost as a result of the reduction in capacity will be refunded to Owner A in connection with the reallocation of capacity. Likewise, the reservation fees paid by Owner B and Owner C for capacity that has been lost shall be refunded.

Subsection 12. Repealer. Resolution 05-12 as well as all Resolutions or parts of Resolutions inconsistent herewith are expressly repealed.

Effective Date: This Resolution shall become effective and in force as of May 21, 2008

DULY RESOLVED this 20th day of May 2008, by the Washington Township Municipal Authority in lawful session duly assembled.

WASHINGTON TOWNSHIP
MUNICIPAL AUTHORITY

Signed and Approved by Jeffrey Geesaman, Chairman on May 20, 2008