

# WELLS SANITARY DISTRICT

## Sewer Assessment Policy

(Adopted by Board of Trustees August 31, 2000)

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***HISTORY AND PERSPECTIVE***

The Wells Sanitary District, established in 1970, is a quasi-municipal district organized under the laws of the State of Maine, enabled by 38 M.R.S.A. 1101 et. seq. The original design and construction of the sewer system was done with the financial assistance of certain grants from the federal and state governments. Such grants have generally not been available for sewer extensions for many years. Therefore, any additions to the sewer system must be paid for by user fees and/or assessments to those who will benefit from the expansion.

***STATUTORY AUTHORITY***

The legislature of the State of Maine has empowered the Trustees of a Sanitary District to pay for part of the cost of construction of a new common sewer through the use of assessments of those who will benefit from it. This authority is found in the statute at 38 M.R.S.A. § 1203, a portion of which reads as follows:

"When any sanitary district ... has constructed and completed a common sewer, the trustees may ... in order to defray a portion of the expense thereof, determine what lots or parcels of land are benefited by such sewer, and estimate and assess upon such lots and parcels of land, and against the owner thereof ... such sum not exceeding such benefit as they may deem just and equitable ... the whole of such assessment not to exceed 1/2 of the cost of such sewer..."

***AMOUNT OF TOTAL ASSESSMENT -- POLICY PRESUMPTION***

When the trustees have determined that an assessment for a common sewer shall be made, it is the policy of the District that the total amount assessed to properties which benefit from the sewer shall be presumed to be one-half of the cost of the new sewer and sewage disposal units, the maximum amount authorized by statute at 38 M.R.S.A. § 1203. This policy does not prevent the trustees from determining, on a case by case basis that the total assessment may be less than the maximum amount authorized by law.

***DETERMINATION OF THE LOTS WHICH BENEFIT FROM A NEW SEWER***

In the determination of the trustees as to which "lots or parcels of land are benefited by such sewer", they may use information generally available at the time of the assessment. For example, lots not abutting the sewer may reasonably be found to benefit, if information available to the public, including information disclosed at a public meeting of the trustees, would lead to a reasonably foreseeable use of the sewer.

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***DETERMINATION OF INDIVIDUAL ASSESSMENT***

In their determination of what sum will be deemed to be a just and equitable reflection of the benefit of the common sewer to a specific lot or parcel, the trustees may use one or more of the following measures: water usage; design flow of a new or proposed facility; lot frontage; lot size; proposed use; average or typical consumption of similarly situated, sized or located lots or parcels; and such other criteria or standards as may be found to be appropriate at the time of an assessment.

At the time of an assessment, the trustees shall articulate and give adequate notice of the allocation criteria used and their rationale for its use in the assessment for a particular project.

***ASSESSMENT PROCEDURE***

Upon the determination of an assessment, " ... the trustees shall file with the clerk of the district the location of such sewer and sewage disposal unit ... and a statement of the amount assessed upon each lot or parcel of land so assessed, a description of each lot or parcel, and the name of the owner ... and within 10 days after such filing, each person so assessed shall be notified of such assessment ... with an order of notice ... stating the time and place for a hearing upon the subject matter of said assessments ... (provisions for alternative service of notice) ... and upon such hearing the trustees shall have power to revise, increase or diminish any of such assessments ... . 38 M.R.S.A. § 1203. (See statute for full text.)

***APPEAL PROCEDURE***

"Any person aggrieved by the decision of said trustees as it relates to any assessment for sewer construction under section 1203 shall have the same rights of appeal as are provided in the case of laying out of town ways." 38 M.R.S.A. § 1204

This statutory procedure, which supersedes the District's Appeal Procedure contained in the Administrative Policy Manual (July 30, 1992), is the exclusive appeal for assessments.

***RELATIONSHIP TO IMPACT FEES***

The assessment described in the statute at 38 M.R.S.A. § 1203 and in this policy is independent of the District's Sewer Impact Fee, which fees may also be charged if appropriate under that policy. See "Sewer Impact Fee Policy, Wells Sanitary District".

***ENFORCEMENT OF PAYMENT OF ASSESSMENTS***

"All assessments made under section 1203 shall create a lien upon each and every parcel of land so assessed and the buildings upon the same, which lien shall take effect

when the trustees file with the clerk of the district the completed assessment, and shall continue for one year after. ... If said assessments are not paid within 3 months ... the treasurer may bring civil action for the collection of the assessment. ... for the enforcement of said lien. ... " 38 M.R.S.A. §1205

### ***AGREEMENT FOR SCHEDULE OF PAYMENTS***

The trustees recognize that, while a sewer may be of great long-term benefit to a lot owner, an unanticipated assessment may be a financial burden in the short term. The District will therefore make available a schedule of payments, with interest, for the payment of the assessment.

Once the trustees have made a determination of which lots or parcels are benefited by a sewer, as well as the amount assessed upon each lot or parcel, the trustees may enter into a written agreement with the owner or other person assessed for a schedule of payments on the assessment. So long as the agreement is not breached or in default, the trustees will forego enforcement action on the unpaid assessment upon the following conditions:

- a.) The owner or other person assessed requests a payment plan, provides a written affirmative statement that full payment within the statutory 3 months would be a hardship, and negotiates a payment schedule with the superintendent or trustees.
- b.) The owner or other person assessed waives the time limits on the statutory enforcement provisions and further agrees to submit to these enforcement provisions in the event of a default on the payment schedule or a breach of other terms of the payment agreement, even if more than one year has elapsed from the time of the original assessment.
- c.) The owner or other person assessed agrees to take affirmative actions to fully disclose to any mortgagee or potential buyer the terms and status of any such payment agreement.

### ***DISCLOSURE AND INFORMATIONAL FILING IN REGISTRY OF DEEDS***

If the owner of a lot or parcel enters into a payment plan agreement with the District, which plan includes an agreement by the District to a payment schedule in excess of 3 months, the District trustees may elect to make an informational filing in the registry of deeds which makes reference to the assessment and payment plan.

Further, in order to protect the public in the event of the sale or transfer of a lot or parcel before the plan is completed, the District shall disclose the fact and status of any payment plan upon any inquiry.