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Amenia Hamlet Central Sewer Project
Alternative Options for Sewer District Establishment
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The following is intended as a general comparison of the two primary options for sewer district creation for the Amenia Hamlet Sewer Project, and the processes and project implications associated with each. The options include the establishment of a Town Sewer District or a Part-County Sewer District. This memo provides a general description of the procedure under each option; it is not intended, and should not be taken, to eliminate the need for legal counsel when embarking on a district creation process.

Purpose of District Creation

Whether established at the Town or the County level, the purpose of the district is, in short, to establish what parcels of land have the right to receive sewer service from the proposed sewer system, and how all of the costs of the proposed sewer system will be allocated among those benefited properties.

The involvement of the Water and Wastewater Authority adds an additional element to the purpose of the sewer district. While the Authority has the ability to issue debt (bonds) to fund the construction of the sewer system, the Authority does not have taxing power to provide the strongest guarantee to the bond holders that the necessary revenues will be available to pay the debt service on the bonds when due. The stronger the repayment guarantee, the lower the interest rate on the bonds. Accordingly, the Authority has utilized the model of entering in to a Service Agreement with a special district which, in turn has the taxing power to provide that guarantee.

Under the Service Agreement, the Authority pledges to utilize the infrastructure that it owns and operates, and for which it has bonded, to provide sewer service to the properties within the district. The district annually levies assessments (taxes) against the included properties in an amount sufficient to pay the Authority's annual debt services, and pays those services over to the Authority as a "Service Fee." The district provides the additional advantage of allowing unpaid user fees to be re-levied against delinquent properties.

The Authority has the ability to enter into a Service Agreement with either a Town Sewer District, or a County Sewer District. However, it is important to note that, at this time, all of the Authority's service areas (both water and sewer) fall within County water or sewer districts, and the Authority has entered into Service Agreements with only the County (as the governing body of those districts.) That is not to say the Authority Board of Directors would not consider working through a town sewer district for the Amenia project, but to note that it is a departure from our normal practice.

Part-County Sewer District

A Part-County Sewer District would be established pursuant to the provisions of Article 5-A of New York State County Law; the district is established by resolution of the County Legislature.

Map, Plan and Report - The County Legislature must first require the preparation of a Map, Plan and Report that details (1) a written description of the boundaries of the proposed district and the specific tax parcels to be included, (2) the sewer collection and treatment facilities to be constructed, (3) estimates of the cost of construction or acquisition of the facilities as described, (4) the method of financing those costs including estimates of revenues to be derived from sewer rents.

Public Hearing – The Legislature must hold a public hearing regarding the proposed district. The order scheduling the public hearing must include; (1) the boundaries of the proposed district, (2) the improvements proposed, (3) the maximum amount proposed to be expended for the improvements, (4) the estimated cost of hook-up fees, and (5) the cost of the district to the typical property and, if different, the typical one or two family home in the district.

District Approval – Creation of the proposed district is accomplished by a resolution of the County Legislature, supported by a determination by the Legislature that, (1) all of the properties within the proposed district are benefited, (2) all properties that are benefited are included in the proposed district, and that (3) it is in the public interest to create the district.

Permissive Referendum – The action of the County to establish a district is subject to permissive referendum (as provided in Article 3 of County Law.)

A referendum on the County Legislature's action is triggered by a petition signed by 100 registered voters living within the proposed district, or 5% of owners of taxable real property within the proposed district, whichever is less. There is a period of 45 days from the date the resolution is adopted within which to submit the petition.

Eligibility to vote in a referendum under County law is limited to "resident electors," being individuals who are registered to vote and reside within the proposed district. Eligible voters do not need to be property owners. The action of the County Legislature is upheld if approved by majority of those voting in the referendum.

Town District

A Town Sewer District may be created pursuant to the provisions of either Article 12 or Article 12-A of New York State Town Law.

Article 12-A Process

Pursuant to Article 12-A, the Town Board may act on its own initiative (i.e., absent a petition signed by property owners) to establish a sewer district, but such action is then subject to a permissive referendum (as provided in Article 7 of Town Law.)

Most of the process is similar to that described above; the completion of Map Plan and Report, a public hearing requirement and specific findings of public interest to be made, in this instance by the Town Board. As with the County district creation process, under the Town 12-A process the Town resolution to establish a district is subject to a permissive referendum.

Permissive Referendum – A referendum upholding or overturning the Town’s resolution to establish a district is triggered by a petition signed by at least five percent of the *owners* of taxable real property in the proposed district or by 100 such owners, whichever is the lesser. A corporate owner of taxable real property is considered one owner for the purposes of the petition. The petition must be filed within 30 days of the Town Board’s action. If a referendum is held, upholding the Town’s action requires a majority vote of the owners of taxable real property in the proposed district. Again, a corporate owner shall be entitled to one vote to be cast by an officer or agent of the corporation.

Article 12 Process

Pursuant to Article 12, the Town Board may act to establish a district upon receipt of a petition signed by the owners of taxable real property within the proposed district (in accordance with specific requirements of the law.)

Petition - The petition must be signed by owners of taxable real property owning, in the aggregate, at least half of the assessed value of all taxable real property as shown on the latest completed Town assessment role. If there are resident owners, the petition must also include resident owners owning, in the aggregate, at least half of the assessed value of taxable real property owned by resident owners.

Map, Plan and Report – The Town must prepare a Map, Plan and Report that details (1) a written description of the boundaries of the proposed district, (2) the sewer collection and treatment facilities to be constructed, (3) estimates of the cost of construction or acquisition of the facilities as described, (4) the method of financing those costs including estimates of revenues to be derived from sewer rents.

If the Town prepares a Map, Plan and Report before a petition is filed, the town resolution appropriating the money to fund the Map, Plan and Report is subject to permissive referendum. If a district is subsequently created, the cost of the Map, Plan and Report can be included in the cost of improvements for the District, and the town reimbursed for its expenditure.

Public Hearing - The Town board must hold a public hearing on the Map, Plan and Report. The order scheduling the public hearing must include; (1) the boundaries of the proposed district, (2) the improvements proposed, (3) the maximum amount proposed to be expended for the improvements, (4) the estimated cost of hook-up fees, and (5) the cost of the district to the typical property and, if different, the typical one or two family home in the district.

Town Resolution – After the public hearing, the Town board shall determine (1) if the petition is properly signed and validated, (2) if all properties within the proposed district are benefited, (3) if all properties benefited have been included in the district and, (4) if creating the district is in the public interest. If the Town board finds in the affirmative they shall adopt a resolution to establish the district.

State Approval - Within 10 days of adopting a resolution to create the district, the Town shall file with the State Department of Audit and Control a copy of the resolution and an application for approval of the district. Note that State Audit and control approval is not required if the total annual cost to a typical property is less than the threshold level annually set by the State Comptroller. The threshold for 2014 for Town Sewer districts is \$721 for a typical property.