
Massachusetts Department of Revenue
Division of Local Services

BETTERMENTS AND LIENS
Assessment and Collection Issues



2013

Workshop A

Amy A. Pitter, Commissioner
Robert G. Nunes, Deputy Commissioner

www.mass.gov/dls

**BETTERMENTS AND LIENS:
ASSESSMENT AND COLLECTION ISSUES
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Workshop A Case Study Problems

CASE STUDY 1

The Capital Projects Planning Committee in Oldtowne, Massachusetts has been charged by Town Meeting with conducting a comprehensive assessment of the town's long-neglected infrastructure needs. The old sewer system needs an upgrade; the town needs a water supply system of its own, instead of having to purchase water from neighboring towns; a number of roads in a growing neighborhood need to be repaired, expanded, and extended; and the neighborhood needs sidewalks built to facilitate pedestrian traffic. Since several major projects are deemed necessary, questions of prioritization have been referred to the Selectboard. As a report and recommendations are being prepared for Town Meeting, the Selectboard has instructed the assessors' and collector's offices to review the step-by-step process of imposing betterments and special assessments for each of these identified improvements. To maximize revenue for capital projects, the Selectboard intends to crackdown on scofflaws across the board, extracting overdue payments and charges and imposing liens on unpaid charges wherever possible. The collector has been asked to explain the basics of how liens work.

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CASE STUDY 2

Mr. Robert Devereux, a longtime resident of Smalltown, Massachusetts, is a skilled craftsman. For nearly 50 years, he has been making wooden garden gnomes and paper flowers—prolifically. Due to shifts in consumer preferences, however, he has been unable to sell more than a few gnomes or paper flowers each year for the past 10-15 years. Still churning out his signature products all the same, he has accumulated vast quantities of garden gnomes and paper flowers throughout his house and yard. Over the years the house has fallen into disrepair and the great weight of the garden gnomes is causing the floors—and the ceiling under the attic—to buckle. Gnomes are stacked insecurely on top of each other and in danger of falling over. Movement through the house has become difficult if not impossible, as gnomes and paper flowers increasingly obstruct passageways and exits, and the presence of so much flammable clutter may create a fire hazard. Neighbors complain about the proliferation of gnomes and paper flowers strewn throughout his yard, and the walls of the house have begun visibly to sag.

With community concern growing, the Selectboard has directed that the Board of Health, the Building Inspector, the Assessors and the Town Collector collaborate to investigate the condition of Mr. Devereux's property and devise possible solutions to any health or safety hazards they identify. The Select Board is concerned that the town not be financially burdened, and wants Mr. Devereux to be responsible for the costs of remedying the situation.

- a. Several families with young children in the neighborhood convinced town officials that the clutter of garden gnomes and paper flowers in the yard constitute an "attractive nuisance," *i.e.* they catch the eyes of young children and draw them into the yard so as to put themselves in danger. Mr. Devereux has not volunteered cooperation in dealing with the nuisance. What remedies does the town have to abate the threat to small children?
- b. The Building Inspector now deems the house to be unsafe, with the bulky stacks of garden gnomes straining the aging structure and the piles of flammable paper flowers strewn about a potential cause of a home accident. What options are there to eliminate the safety hazard?
- c. The strain on the house has reached the point that the structural integrity of the residence has been questioned by the Building Inspector. Walls are cracking and the floor has fallen through in several places. What procedures are available to the town?

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- d. On the assumption that Mr. Devereux does not comply with the various orders and the town is forced to do the clean-up or demolition itself, how would the town go about recouping its costs?

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CASE STUDY 3

100 years ago, the coastal town of Beachville built a sewer system for a part of the community, Buzzards Point, which then consisted primarily of summer residences. The pipes were laid out along the public ways in Buzzards Point, sewage was gathered at a central collection point, and the outflow moved through a pipe to a discharge point in the harbor 700 feet from the shore. Town Meeting decided to pay for this sewer system partially through the tax levy, with the balance made up by “permanent privilege” charges to the properties served in Buzzards Point, in an amount to be reckoned by the Board of Selectmen.

It was determined after 35 years that the pipe discharging outflow into the harbor had deteriorated significantly and would not continue to function in the near future. The Board of Health insisted that some other way be found to dispose of sewage rather than dumping it untreated into the harbor. After several years of planning meetings, negotiations with state officials, and media controversy, it was decided that the old sewer system needed to be expanded and a more environmentally-friendly way devised to dispose of the waste. The new system would cover the northern half of the town, which included Buzzards Point, and new pumping stations and treatment facilities built to process the discharge of sewage without causing environmental damage. It was decided that all properties within the new northern sewer district would be assessed for the cost of the system expansion and upgrades. Construction work began in the mid-1950’s.

Some residents of Buzzards Point, which was by then a gated enclave fronting the coast, challenged the special assessments on the grounds that they had paid for a *permanent* privilege of discharging sewage into the town system long ago. They argued that the additional construction was needed to bring other areas in northern Beachville into the system, and the upgraded treatment capacity cost significantly more than simply repairing the pipes that discharged sewage into the harbor. They argued that the benefit to them—a pollution-free harbor—was the same as residents enjoyed town-wide; and that the upgraded system was not needed for their properties specifically. They objected to being charged a fixed rate per foot of frontage their properties had, since new sewer customers were receiving the particularized benefit.

- a. Is Beachville precluded from assessing Buzzards Point properties for the costs of the system upgrades because of the “permanent privilege” charge paid in 1913?

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- b. Is there enough of a particularized benefit to Buzzards Point and the northern half of town to justify a special assessment on properties there?
- c. Is Beachville obligated to choose the least expensive construction plan to repair the sewer system in Buzzards Point?

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CASE STUDY 4

Vulture Cove, a lakefront community in central Massachusetts, built a sewer system to cover about 75% of community households around the turn of the 20th century, and made certain system improvements and upgrades in the 1960's to modernize. Since then, the volume of effluent which passes through the town's treatment facility has nearly reached the plant's capacity. Meanwhile, the Turkeybottom neighborhood of Vulture Cove has never had town sewer service, forcing residents to maintain septic systems in order to meet the requirements of the Uniform State Plumbing Code.

The town board of health has recently conducted a series of water quality tests in Turkeybottom. In an area of the neighborhood characterized by the presence of wetlands, levels of nutrient enrichment in the water table were found to be elevated. The board of health has determined that the scale of the nutrient enrichment is such that improvements to individual septic systems would not be an effective countermeasure.

Under pressure from the Department of Environmental Protection, the board of health has recommended that sections of Turkeybottom affected by nutrient enrichment be required to hook up to an expanded town sewer system. After a contentious town meeting, the comprehensive water resources management plan ("CWRMP") developed by the board of health and DEP was approved, the town accepted the local option at G.L. c. 83, § 1A, and authorization was given to the recommended sewer expansion. Additional sewerage treatment plant capacity is planned to accommodate the additional effluent from affected sections of Turkeybottom.

The Sewer Commissioners are considering possible options for building and financing the sewer improvements.

- a. The sewer commissioners have tentatively decided on a plan that will require sewer connections of only those Turkeybottom properties that are identified in the CWRMP as demonstrably related to the nutrient enrichment problems, which relies on the purchase of processing capacity from neighboring Clearwater. When are the sewer special assessments to be committed? When does the lien on affected properties arise? Are there any mechanisms to accelerate the anticipated cash flow needed to finance the improvements?

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- b. Initial cost projections are discovered to have been undercounted by a mistake as to the number of properties requiring sewer connections. The sewer special assessments have not yet been committed. What can the town do?
- c. Following project completion, special assessments are ready to be made against the affected parcels, in an overall amount that substantially exceeds initial cost estimates. How are the assessments allocated among benefited parcels? When do bills go out? When are they due? What happens if a property owner doesn't pay the assessment in full within 30 days?
- d. Over how long a time period can sewer special assessments be apportioned? How does interest work?
- e. The sewer commissioners are reconsidering the plan to buy a little more treatment capacity from Clearwater, concerned that rising demand for sewer connections over the next 20 years—not limited to affected areas in Turkeybottom—will require a substantial rebuilding of the sewerage treatment plant. A volume of waste matter 40% higher than currently processed is anticipated. Can the costs of this general system upgrade be assessed to Turkeybottom landowners? Is a sewer special assessment the only mechanism by which the sewer commissioners can finance the overall increase in system capacity beyond that needed to accommodate Turkeybottom? Does this alternative route have any impact on what costs of system improvements can be charged to Turkeybottom property owners?

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CASE STUDY 5

Pruneisle is a neighborhood of Newfortport situated on a barrier island just off the coast of Northeastern Massachusetts. It is connected to the rest of Newfortport and the mainland by two bridges. In recent years the beachfront in Pruneisle has suffered significant erosion due to rising sea levels. One beachfront cottage was literally washed into the Atlantic Ocean and several more homes have been condemned as the beach in front of them disappeared. Concerned about predictions of rising sea levels into the indefinite future, Newfortport is developing options to stop the erosion and protect the fragile environment of Pruneisle.

Town Meeting has decided that a sea wall needs to be built along the entire waterfront of Pruneisle. The assessors' and collectors' offices have been directed to develop financing plans that rely on borrowing and betterment assessments?

- a. Can the town borrow to construct the planned sea wall? What would be the maximum term of the debt?
- b. Can the town pay for the sea wall by assessing betterments on properties on Pruneisle that are in danger of being eroded? Who would have the authority to order the betterment assessments? Would resort to the power of eminent domain be required?
- c. How is it determined who is liable for the betterment assessments (*i.e.* who receives a special benefit not generally shared with others in the community.)

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CASE STUDY 6

John Smith is the sole owner of a single family house. He and his wife are having marital difficulties and have separated. His wife remained in the house with their infant child and the husband relocated elsewhere in town. The husband and wife have come to an agreement whereby he would be responsible for the real estate taxes and she would pay all utility bills.

- a. The wife failed to pay the water bills. Two water bills were outstanding – the bill due November 1, 2011 and the bill due May 1, 2012. Notwithstanding the agreement between husband and wife, could the town have liened the unpaid water bills to the fiscal year 2013 real estate tax bill?
- b. Assume the water bills due November 1, 2011 and May 1, 2012 were not liened to the FY 2013 real estate tax bill. Can these unpaid bills be liened to the FY 2014 real estate tax bill? Could there be a problem with the liens?
- c. When John Smith received his real estate tax bill, he was very upset to discover a water lien on the tax bill. He angrily gave the collector a check to cover payment only for the real estate tax. In fact, he wrote on the check “Tax Only.” Can the collector comply with his wishes? How should the collector apply payment? Can the collector make a tax taking? Can the town shut off the water?

G.L. Ch. 40 §42A-42B

G.L. Ch. 83 §16B

G.L. Ch. 164 §58C

G.L. Ch. 59 §57

G.L. Ch. 60 §3E

220 CMR 25.03

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CASE STUDY 7

Five homeowners are located in the outskirts of Hastings, Massachusetts. They do not receive water or sewer from the town. They petitioned the neighboring town of Corinth, Massachusetts to allow the households to tie into the Corinth water and sewer system.

- a. Can the town of Corinth extend water and sewer service to the Hastings residents? Could the town of Corinth impose special assessments to collect payment from the five households? What do you recommend about payment?
- b. Assume the five houses are now connected to the Corinth water and sewer lines. A few years later, some of these residents fail to pay their water and sewer bills. Can liens be placed on these unpaid Hastings properties? How can Corinth collect the unpaid charges?

G.L. Ch. 40 §42A

G.L. Ch. 83 §16A

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CASE STUDY 8

On the afternoon of the NCAA championship game, snow blanketed the region. John Green who was an avid college football fan half-heartedly cleared snow from his sidewalk and then withdrew to the comforts of his house to watch the game. A neighbor returning home late at night from work slipped on the sidewalk. The neighbor used his cellphone to call for assistance and a town ambulance was dispatched. The ambulance workers notified the town administrator about the uncleared snow on the sidewalk.

- a. Can the town place a lien on Green's property for the uncleared snow?
- b. The neighbor refused to pay the ambulance bill. Can the town place a lien for the ambulance service on Green's real estate tax bill?

G.L. Ch. 40U

G.L. Ch. 40 §58

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CASE STUDY 9

A house on Willow Lane was sold to Richard Jones. His attorney obtained a municipal lien certificate which did not list any water liens. There was no sewer service on Willow Lane.

- a. After he moved into the house, the water department claimed there was an unpaid balance. Can the town assert a lien exists? Can the town shut off water if the bill remains unpaid? What action can the town take to receive payment?
- b. A year after he bought the house, Jones noticed heavy construction equipment operating in the neighborhood. He learned that the town would be providing sewer service and sewer assessments would be placed on each parcel on Willow Lane. Jones called his attorney and inquired whether he would be liable for his share of the cost of construction. The attorney informed him that the town lost its lien for any sewer assessment due to the issuance of the erroneous municipal lien certificate. Is the attorney correct?
- c. Assume there is a valid lien. Jones now wants to refinance his mortgage and the potential lender has requested the town to subordinate its lien to the mortgage. Can the town comply with the bank's request? What action can Jones take?

G.L. Ch. 60 §23

G.L. Ch. 40 §42B

G.L. Ch. 60 §35

G.L. Ch. 83 §27

G.L. Ch. 80 §12

Gudanowski v. Town of Northbridge, 27 Mass. App. Ct. 1179 (1989)

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CASE STUDY 10

In the 1970s the town constructed a sewer system in the western portion of town which was financed with general property tax revenues. Extensions of the system into other parts of town were installed and financed by developers. A street near the town river has now been further developed and the property owners on that street requested that the town extend the sewer system there.

- a. Town officials studied the request and a decision was made to extend the sewer line with full payment to come from the affected property owners in the form of special assessments. The owners were alarmed at this news. What recourse do the property owners have?
- b. The owner of a hotel in another part of town which has sewer service plans to construct another building on the site. Can the town enact a bylaw to impose a connection fee? Would the bylaw survive a legal challenge?

Bertone v. Department of Public Utilities, 411 Mass. 536 (1992)

Emerson College v. Boston, 319 Mass. 415 (1984)

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CASE STUDY 11

The owner of a professional sports team is preparing for another championship season. The owner has announced plans to develop a 2.8 acre vacant parcel in front of the stadium. According to filings made to the town's development office, the owner proposes to build three towers on the site which would consist of a 600 foot residential tower with 497 units, a 320 foot middle tower for a hotel with 306 rooms and an office tower which would reach 420 feet. The scope of the project is huge since it would result in: 668,000 square feet of office space; 142,000 square feet of flex office space; 235,000 square feet for restaurant and retail; 25,000 square feet for an atrium hall leading toward Main Street, and a 40,000 square foot expansion of the stadium for additional concessions and elevator service. There would be 800 additional parking spaces. Still on the drawing board are plans for a grocery store and cinema. Phase one of the project for the retail base, hotel tower and stadium expansion would commence in 2014 and end in early 2017. The additional phases would be completed two to three years thereafter.

Residents are concerned about the potential impact of this development on the town's infrastructure.

- a. Can the town impose water and sewer assessments on the vacant lot?
- b. Alternatively, can the town impose surcharges on the owner's water and sewer bills?
- c. Alternatively, can the town impose a permanent privilege on the site?

G.L. Ch. 83 §17

Seiler v. Board of Sewer Commissioners of Hingham, 353 Mass. 452 (1968)

Morton v. Town of Hanover, 43 Mass. App. Ct. 197 (1997)

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CASE STUDY 12

- a. Robert Williams entered into an agreement with the town's board of health for replacement of his faulty septic system. The town agreed to lend the money for payment to a third party contractor, and Williams agreed to repay the town by apportioning the cost over twenty years at five per cent interest. For several years Williams made payments. He failed to pay the apportioned betterment which appeared on his FY 2013 real estate tax bill. Williams now plans to sell the house. Can the collector make a tax taking for the unpaid FY 2013 apportioned betterment? Is Williams personally liable for the septic betterment? Is Williams required to repay the entire amount prior to the sale of the property as the buyer's mortgage company states?
- b. Town officials are interested in appropriating money to a Stabilization Fund which would be used to loan money to residents at a reduced rate of interest for connection to the town sewer system. Under this program, the recipients of the loans would repay the money with interest in annual payments over a five to twenty year period. Is this loan program legal?

G.L. Ch. 111 §127B½

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CASE STUDY 13

A statement is recorded establishing a lien upon an undeveloped parcel for a sewer improvement. Later, a condominium in three phases is declared. Under the master deed, all three phases will be built on the parcel on which the sewer assessment was made. When the town assessed the costs for the sewer project, only one phase of the condominium with twenty units had been built. The developer, however, retains the right to build two additional phases for twenty units each.

- a. Can part of the assessment be allocated to potential units that will not have their percentage interests fixed until amendments to the master deed are filed?
- b. Assume assessments were made on potential units. The developer, however, has abandoned plans to build the remaining two phases. How will the town collect the assessments on the unbuilt units?

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CASE STUDY 14

The town recently installed water mains in a section of town and a decision was made to pay for the construction through betterments on the benefited parcels.

- a. An elderly taxpayer received notice of the water betterment but cannot afford to pay the bill. The betterment was apportioned over twenty years. The taxpayer is presently deferring his taxes under G.L. Chapter 59 Section 5 Clause 41A. Can he defer his water betterment? If he can defer, what interest is owed? Can he defer his water bills?
- b. Another taxpayer owns a vacant lot on which he plans to build a house at some future date. Can the taxpayer defer payment of the water or sewer assessment? What is the interest rate?
- c. A taxpayer claims his vacant parcel is unbuildable. What should the taxpayer do?

G.L. Ch. 80 §13B

G.L. Ch. 40 §42J

G.L. Ch. 80 §13A

G.L. Ch. 83 §19

G.L. Ch. 40 §42I

G.L. Ch. 80 §5

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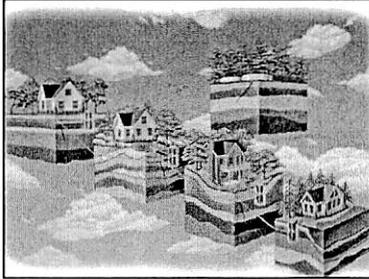
CASE STUDY 15

The town plans to extend water service to the western part of town where there are residential properties, a nonprofit high school and a farm with over four hundred acres of land. The farm contains an historic farmhouse where the owner resides.

- a. Would the nonprofit school be exempt from a water betterment?
- b. Would an abatement of the betterment be warranted for the farm?
- c. Assume the farm is later divided into house lots by a recorded plan, and the town has opted not to exercise its right of first refusal. What happens to the betterment on the vacant farm land?

Williams College v. Williamstown, 219 Mass. 46 (1914)

G.L. Ch. 61A §18



Betterments, Special Assessments, and Liens

Introduction and Procedural Guide
2013 Municipal Law Seminar Workshop A

Nature of Assessments

- Property within a limited/determinable area receives special benefit from public improvement
- Costs assessed to taxpayers in area
- Assessments must be reasonable, proportional, and not substantially in excess of special benefits

Authority to Levy Betterments

- Statutory authority needed to impose betterments and special assessments
- True betterments require eminent domain takings
- G.L. c. 80 provides procedural framework

Types of Special Assessments

- General laws allow assessments for:
 - Water Supply
 - Highways
 - Sewers, Drains, and Sidewalks
 - Snow Removal
 - Street Railway Changes

Recouping Costs of Improvements

- Special assessments not exclusive way to recover costs of improvements
- Connection fee, permanent privilege charge, surcharge for service may be imposed
- Direct, indirect, and incidental expenses operate as ceiling on total collected
- Offset required where portion of costs covered by tax levy

Water Supply Assessments

- All or part of costs of water distribution systems can be assessed
 - Including costs of pipes, other materials, labor, and incidental expenses
- Acceptance of G.L. c. 40, §§ 42G, 42H, 42I, 42K by legislative body to authorize uniform unit method, *before* construction starts

Sewer Special Assessments

- Assessment may include all or part of costs of general benefit and special benefit facilities
- Legislative body authorization necessary
- All properties abutting sewer streets with potential to be served must be assessed
- Right to connect

Ordering Improvements and Assessments

- Body with authority to impose assessments (“assessing body”) makes formal order
- Area to be assessed must be delineated
- Intent to impose betterment or assessment must be stated
- Assessments for water/sewer improvements require action by legislative body

Making Water Assessments

- Water Assessments must be made within “reasonable” time following project completion
- Ordinance/by-law sets method of allocation:
 - Frontage
 - Area within fixed depth of way
 - Assessed Valuation
 - Uniform Unit

Making Sewer Assessments

- Sewer assessments must be authorized within a reasonable time after project completion
- Methods of allocation allowed by law:
 - Frontage and/or
 - Area within fixed depth of way
 - Uniform unit

Assessing Betterments

- Betterments
 - Must be assessed within 6 months of project completion
 - No allocation method prescribed by statute

Liens: What and When to Record

- For betterments, order, plan, and estimates within 90 days of 1) date order adopted or 2) town acceptance of street layouts if required
- For water assessments, order, list of ways to be serviced, list of non-abutting parcels to be included, and list of owners “forthwith”
- For sewer assessments, order, list of ways to be serviced, and list of owners “forthwith”

Commitment and Billing

- Assessing body certifies assessments to board of assessors within a reasonable time
- Assessors commit assessments to collector with warrant
- Collector sends bill in amount of assessment
- Owners must pay in full within 30 days *after commitment* (w/o interest) or request apportionment of assessments into maximum of 20 equal portions

Commitment and Billing cont'd.

- Collector certifies unpaid/apportioned assessments to assessors *before* annual tax commitment for first year to appear on bill
- Unpaid and apportioned charges added to tax
- Interest runs to October 1st, then from October 1st to October 1st thereafter
- Rate: 5% or (optional) 2 points above rate on borrowed project funds

Liens for Overdue Charges

- Delinquent charges or fees for services that are liens are added to tax on property to initiate collection
- Most common charges added:
 - Water and sewer
 - Municipal light use
 - Trash or solid waste
 - Demolition

Creation of Liens

- Operation of Law
 - Utility (Water, sewer, light, trash)
 - Statute accepted by legislative body and acceptance recorded
 - Lien arises day after due date
- Recording
 - Demolition charges
 - Municipal charges
 - Betterments and Special Assessments



*Commissioner
Mitchell Adams
Deputy Commissioner
Leslie A. Kirwan*

Massachusetts Department of Revenue

Division of Local Services

**Informational Guideline
Release**

Property Tax Bureau
Informational Guideline Release No. 92-208
November 1992

DEMOLITION CHARGES AND LIENS

Chapter 133, SS. 462, 494, 499 and 500 of the Acts of 1992
(Amending G.L. Ch. 111, SS. 125 and 127B, Ch. 139, S. 3A,
Ch. 143, S. 9 and Ch. 148, S. 5)

This Informational Guideline Release informs local officials about a change in the law regarding the collection of various state and municipal charges for the removal or abatement of public health and safety hazards.

Topical Index Key:

Betterments and Liens
Fees and Charges

Distribution:

Assessors
Collectors
Selectmen/Mayors
City Solicitors/Town Counsels

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (Informational Guideline Releases detailing legal and administrative procedures) and the Bulletin (announcements and useful information) for local officials and others interested in municipal finance.

Division of Local Services, PO Box 9655, Boston, MA 02114 - 9655 (617) 727-2300

Informational Guideline Release No. 92-208
November 1992

DEMOLITION CHARGES AND LIENS

Chapter 133, SS. 462, 494, 499 and 500 of the Acts of 1992
(Amending G.L. Ch. 111, SS. 125 and 127B, Ch. 139, S. 3A,
Ch. 143, S. 9 and Ch. 148, S. 5)

SUMMARY:

This legislation establishes uniform procedures for municipalities to collect expenses incurred in the removal or abatement of public health or safety nuisances and hazards. These so-called demolition charges can result from an order issued by various state and local officials as follows:

<u>Statute</u>	<u>Type of Action</u>	<u>Officials</u>
Ch. 111 §125	Abatement of nuisances	Board of Health
Ch. 111 §127B	Cleanup of buildings unfit for human habitation	Board of Health Commissioner of Housing Inspection
Ch. 139 §3A	Demolition of unsafe structures	Mayor/Selectmen
Ch. 143 §9	Demolition or securing of abandoned structures	Building Inspector
Ch. 148 §5	Abatement of fire hazards	Fire Chief State Fire Marshal

Demolition charges, which constitute liens upon filing a statement of claim at the Registry of Deeds, will now all be added to the real estate tax on the property and collected as part of the tax if they remain unpaid, as is the case for most other delinquent municipal charges constituting liens. Previously, communities had to institute separate foreclosure proceedings to collect some of these charges.

GUIDELINES:

A. Billing Demolition Charges

A bill for the expenses incurred by the city or town (or the state in certain cases) in removing or abating the health or safety hazard should be issued immediately upon completion of the work ordered.

PROPERTY TAX BUREAU

HARRY M. GROSSMAN, CHIEF

As a general rule, the bill would be issued by the official or board ordering the work. Alternatively, the collector may issue the bill if the city or town has accepted G.L. Ch. 41 §38A, which empowers the collector to collect all accounts receivable. The bill should state that the amount is now due and payable and that interest at the rate of 6% per annum accrues from the date the bill was issued. It should also state that any additional collection costs will be added to the amount due.

The bill should be mailed to the owner of the property. If the charges were incurred to abate nuisances ordered by the board of health under G.L. Ch. 111 §125, the bill may be issued to the owner's authorized agent or the occupant of the property as an alternative. The bills may also be issued to the owner's authorized agent if the charges were incurred to demolish unsafe structures under G.L. Ch. 139 §3A. If, as permitted, the bill is issued to someone other than the owner, it is recommended that the owner be mailed a copy.

B. Establishing Demolition Lien

To establish a valid lien for a demolition charge, a statement of claim must be filed with the Registry of Deeds for record or registration within 90 days of the date the bill was issued. The statement must state the amount claimed for the work, without interest, and be signed by the official or board that ordered the work. Attached is a "Statement of Claim" that may be used as a model.

C. Duration of Demolition Lien

The lien for demolition charges takes effect upon filing the statement of claim. It expires two years from the October first following the filing date. For example, if the statement is filed on December 1, 1992, the lien will expire on October 1, 1995. The lien may be discharged by filing with the Registry of Deeds for record or registration a certificate from the collector that the claim, together with all interest and costs, has been paid or legally abated.

All costs of recording and discharging the lien are to be borne by the owner of the property.

D. Adding Demolition Charges to Tax

If the demolition charges remain unpaid, they will be added to the real estate tax on the property and collected as part of that tax.

Each year, the assessors should be notifying the collector and other officials that bill and collect various charges, including demolition charges, of the timetable for completing the annual assessment list. At that time, the collector or officials would certify any unpaid demolition charges for which liens exist to the assessors. The assessors will then add the unpaid charge, together with interest and any recording or collection costs, to the tax assessed on the property. In the case of exempt property, the charge will be committed as the tax.

E. Collecting Demolition Charges

If the added amount remains unpaid, it is subject to the same interest and collection charges as delinquent property taxes and the collector can use any of the remedies available under G.L. Ch. 60 for collecting taxes to collect it, including taking the property into tax title.

However, unlike many other liens for delinquent municipal charges, demolition liens are not coterminous with the tax lien on the property. See Section C above. The collector should be aware of the date the lien expires and make a tax taking to perfect the lien before that time.

In cases where the lien has terminated before the demolition charges were added to the tax and a taking made, the collector may bring a civil action against the person assessed the charges. G.L. Ch. 60 §35. Lawsuits for the collection of overdue municipal accounts may be brought in the name of the collector or municipality and must be commenced within 6 years from the date the account is due and payable. Depending on the amount, the suit may be brought in superior or district court. The small claims procedure in district court may be used where the amount is \$1500 or less.

Alternatively, the collector may have the treasurer withhold or "set-off" the unpaid charges from monies owed by the municipality to that person. G.L. Ch. 60 §93. This remedy can be used at any time.

THIS INSTRUMENT MUST BE FILED FOR RECORD OR REGISTRATION

THE COMMONWEALTH OF MASSACHUSETTS

_____ of _____
(city/town)

STATEMENT OF CLAIM
FOR EXPENSES TO REMOVE OR ABATE HEALTH AND SAFETY NUISANCES OR HAZARDS

The _____ of _____ hereby states that it has a claim in
(city/town)
the amount of _____ (\$ _____) against
_____ of _____
(name(s)) (address)
for expenses incurred in the removal or abatement of certain public
health and safety nuisances or hazards.

This claim is a result of _____

(describe work)
pursuant to General Laws Chapter ____ § ____ and constitutes a lien on
the property described below.

DESCRIPTION OF PROPERTY

Statement made this date of _____, 19__

(NAME OF BOARD OR OFFICER)

THE COMMONWEALTH OF MASSACHUSETTS

_____ ss. _____, 19__

Then personally appeared the above named _____
(Board/Officer) for the _____ of _____, and acknowledged the
foregoing instrument to be (their/his/her) free act and deed before me,

Notary Public/Justice of the Peace

My commission expires _____

Phillip M. Seiler & others v. Board of Sewer Commissioners of Hingham

[NO NUMBER IN ORIGINAL]

Supreme Judicial Court of Massachusetts

353 Mass. 452; 233 N.E.2d 306; 1968 Mass. LEXIS 665

November 8, 1967, Argued

January 3, 1968, Decided

PRIOR HISTORY: [***1] Plymouth.

Petition filed in the Superior Court on March 4, 1966.

The case was heard by *Murray, J.***DISPOSITION:** *Order affirmed.***HEADNOTES***Sewer. Taxation, Betterment, Sewer assessment.***SYLLABUS**

Where it appeared that in an area of a coastal town a sewer system discharging into the ocean was constructed and each of the users thereof paid a certain sum "for the permanent privilege to his estate," and that many years later, when it had been determined that the discharge of the sewage into the ocean was creating a health menace and the existing system was incorporated in a newly constructed system for a district of the town including such area, the discharge into the ocean was eliminated and the sewage from the entire system became discharged into the Metropolitan District system, it was held that by such changes the estates on the original portion of the system received special benefit justifying assessments on those estates not in excess of the benefit, and that the town's sewer board was not required to allocate Federal grants and town funds in connection with the extended project in such a manner as to put the burden of assessments wholly on the estates located on the new portion [***2] of the system.

COUNSEL: *Stuart DeBard* for the petitioners.*John R. Hally (Nathan Newbury, III, with him),* for the respondent.**JUDGES:** Wilkins, C.J., Cutter, Spiegel, & Reardon, JJ.**OPINION BY:** SPIEGEL**OPINION**

[*452] [**307] This is an appeal from an order of the Superior Court dismissing a petition for a writ of certiorari to quash the assessments made by the respondent board of sewer commissioners of Hingham against the petitioners' estates for a proportional part of the cost of a new sewer system in the town of Hingham. The petitioners are the owners of twenty-nine parcels of real estate in the Crow Point section of Hingham.

The case was tried on an "Agreed Statement of Facts," and the exhibits are before us. We state the agreed facts as summarized by the trial judge in his memorandum and [*453] order. "In 1900 common sewers were constructed in the public ways, on which the several estates of the petitioners now abut, by the Town pursuant to authorization granted at the annual town meeting of that year. These sewers all discharged through an outflow sewer constructed in Hingham Bay. The outflow sewer emptied into a channel in the Bay about 700 feet from shore. [***3] The houses served by the sewers in 1900 were used almost exclusively for seasonal occupancy. At said annual meeting it was determined that the cost of the sewers and outflow sewer, estimated at \$ 4800., should be met by the Town paying \$ 2500. and that 'every person who uses the common sewer to be constructed at Crow Point shall pay for the permanent privilege to his estate such reasonable sum as the Selectmen shall determine.' This latter determination was pursuant to P. S. c. 50, § 8, which authorized the Town to provide 'that, instead of paying an assessment under section four every person who uses such . . . common sewers in any manner shall pay for the permanent privilege to his estate such reasonable sum' as the selectmen shall determine. See now *General Laws c. 83, §§ 17, 14.* The selectmen determined upon the sum of \$ 75.00. No new construction of said common sewers or changes in design thereof or method of operation occurred until the work done by the Board and described . . . [below]. Meanwhile, beginning about 1934, the discharge of raw sewage through the outflow pipe, which was falling into disrepair, was causing a health menace in the judgment of the Board of Health [***4] of the Town, and, in the judgment of the respondent Board, the pollution in Hingham Harbor

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caused by such raw sewage had to be brought to an end. By Chapter 82 of the Acts of 1946 the Town was authorized to 'lay out, construct, maintain and operate a system or systems of . . . common sewers for the north sewer district of the town as defined . . . [by statute], with such connections, pumping stations and other works as may be required for a system of sewage disposal' Commencing in 1955 the Town has constructed . . . a system of common sewers [*454] for the North Sewer District, which includes as part thereof the Crow Point section and the public ways on which the several estates [**308] of the petitioners abut. Among the changes wrought by the Board in the sewers constructed in 1900 was the elimination of the outflow sewer and the substitution for it of the newly constructed means and method of discharge By such change sewage now deposited in the 1900 sewer system no longer discharges into Hingham Bay, but, by the system newly constructed by the Town since 1955, flows . . . [through various new gravity and force mains and pumping stations] ultimately [***5] to the Metropolitan District Sewer System. With the exception of the rights claimed by petitioners by reason of the 1900 sewer construction and the determination that every person who used such 1900 sewers should pay \$ 75. for the permanent privilege to his estate of such user, petitioners agree that all action of the respondent in constructing the sewers commencing in 1955 and in making the assessments in relation to such construction were in accordance with the applicable statutes and votes of the Town. By section 8 of Chapter 82 of the Acts of 1946 the Town was authorized to determine what proportion 'not less than one-fourth nor more than two-thirds of the whole cost' of the 'system or systems of sewerage and sewage disposal the Town shall pay . . .,' and . . . in 'providing for the payment of the remaining portion of the cost of the system . . . or for the use of the system . . ., the Town may avail itself of any or all of the methods permitted by general laws' The vote of the Town at the 1955 annual meeting determined that the Town shall pay 65% of the whole cost of the system of sewers for the North Sewer District, and that the 'remaining portion of the cost . . . [***6] shall be provided for by assessments upon the owners of lands abutting on that part of any way in which a sewer is constructed according to the frontage of land on such way at the rate of \$ 5.00 per linear foot of such frontage, provided that in no case shall any sewer assessment be made in excess of the actual benefit.' The estates of petitioners constitute [*455] a small number of the estates assessed by the respondents, and have been assessed in the same manner 'for the remaining portion of the cost of the system' as the owners of other estates on Crow Point situated on public ways where new sewers have been constructed since 1955."

The judge stated that the "Substitution of the newly constructed mains, sewers and pumping stations . . . for

the old outflow sewer, (1) eliminated that part of the 1900 sewer system which had fallen into disrepair, (2) eliminated the health menace caused by the presence of raw sewage in Hingham Bay, around Crow Point and in Hingham Harbor, due to the design and operation of the 1900 sewer system, and (3) provided the 1900 sewer system with up-to-date means and methods for discharge of sewage collected in it." He concluded that the foregoing constituted [***7] a special benefit to the petitioners which justifies the assessments in question. The main thrust of the petitioners' appeal appears to be directed at this last conclusion.

The petitioners argue that they have paid for the 1900 sewer system which has not been replaced; that the new sewer system is primarily for the benefit of other sections which had no preexisting sewer system; and that the mere provision of a new outlet for their preexisting sewer system does not rise to the level of a special benefit to them. They cite *Ayer v. Mayor & Aldermen of Somerville*, 143 Mass. 585, in support of this proposition. In that case, this court refused relief to a landowner abutting a new sewer system who complained that he was unfairly assessed for its cost when abutters on another system, which drained through the one on which he abutted, were not so assessed. However, we stated that "in some cases, it might be just and reasonable to require owners of lands upon an upper or tributary sewer to contribute something towards the cost of making and maintaining a lower sewer, used as a means of discharge for the upper one," although we declined to make any general rule to that [**309] [***8] effect, *supra*, at 587. Equally undispositive is *Sears v. Street Commrs. of Boston*, 173 Mass. 350, [*456] cited by the petitioners where new assessments to cover the cost of remotely connected sewers were discussed. There, protection from new assessments was limited to cases "Where lands have paid assessments for special benefits from the construction of *all sewers by whose operation they are affected . . .*" 173 Mass. at 353 (emphasis supplied). The issue for determination in the instant case remains whether the new sewers and discharge systems affect the petitioners so as to give them a special benefit.

The petitioners' position is that the only benefit conferred on them by the new sewer system is the abatement of pollution in Hingham Harbor. They maintain that this benefits them less than the rest of the residents of Hingham, since the petitioners' lands front on Hingham Bay which the tidal currents keep free of pollution from the discharge pipe of the 1900 sewer system. At most they are benefited equally with all other residents of Hingham. The continued existence and functioning of the 1900 system, it is contended, rebuts any other special benefit to them [***9] from the new construction.

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Whether the pollution adversely affects the petitioners' frontage on Hingham Bay is not the controlling factor. It is not contested that the pollution problem existed, and that the further discharge of raw sewage into Hingham Bay from the 1900 sewer system could not be tolerated. It follows that prior to the new construction the 1900 sewer system on which the petitioners' estates abut was not functioning properly, in that it had no usable outlet. The respondent could have chosen to repair and extend the old discharge pipe into the bay. This might also have required other efforts to prevent the continued discharge of raw sewage. Such a project, exclusively for the benefit of the users of the 1900 system, could undeniably have been assessed to the petitioners and to their fellow abutters. That the respondent chose to solve this problem by tying the 1900 system into a new and general plan for the disposal of sewage through the Metropolitan District System does not diminish the special benefit to the petitioners.

[*457] We agree with the judge that "The Town was not bound to maintain the design of the 1900 sewer system in perpetuity by the vote taken [***10] at the annual meeting of 1900. Neither that vote nor any payments made or to be made thereunder are a bar to assessments otherwise validly made for any changes in the design of that system or improvements thereto which

result in special and peculiar benefits to the estates owned by the petitioners."

The petitioners also argue that general town revenues and Federal grants used for the North Sewer District project should have been allocated to cover that portion of the construction from which they derive benefit, with the remainder assessed against only those estates abutting on new sewer laterals. It having been determined that the petitioners derive special benefits from the incorporation of the 1900 sewer system into the North Sewer District, they are liable to assessment for a proportional share of the general cost. There is nothing to compel the respondent to allocate funds so as to put the general burden exclusively on abutters other than on the petitioners. In view of the difficulty of attempting to estimate benefits to the estates individually, it is necessary only that the principle by which the expenditures are apportioned provide for reasonable and proportional assessments, [***11] not substantially in excess of the benefits received. There is nothing to show that the assessments have not been made in conformity with these requirements.

There was no error in refusing to quash the assessments.

Order affirmed.

DENVER STREET LLC vs. TOWN OF SAUGUS (and three companion cases')

1 Paul DiBiase, trustee of Oak Point Realty Trust vs. Town of Saugus; Kevin Procopio, trustee of Vinegar Hill Estates Trust vs. Town of Saugus; and Central Street Saugus Realty, LLC vs. Town of Saugus.

SJC-10927

SUPREME JUDICIAL COURT OF MASSACHUSETTS

462 Mass. 651; 970 N.E.2d 273; 2012 Mass. LEXIS 586

January 6, 2012, Argued

June 29, 2012, Decided

PRIOR HISTORY: [*1]**

Essex. Civil actions commenced in the Superior Court Department on November 8, 2005, December 9, 2005, and May 26, 2006. After consolidation, the cases were heard by Frances A. McIntyre, J. After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Denver Street LLC v. Town of Saugus, 2009 Mass. Super. LEXIS 345 (Mass. Super. Ct., Mar. 16, 2009)

Denver St. LLC v. Town of Saugus, 78 Mass. App. Ct. 526, 939 N.E.2d 1187, 2011 Mass. App. LEXIS 17 (2011)

HEADNOTES

Constitutional Law, Taxation. Taxation, Sewer assessment. Municipal Corporations, Sewers, Fees. Sewer.

COUNSEL: Ira H. Zaleznik for town of Saugus.

James R. Senior for Denver Street LLC & others.

The following submitted briefs for amici curiae: John L. Davenport for Conservation Law Foundation, Inc.

Martha Coakley, Attorney General, & Louis Dundin, Assistant Attorney General, for the Commonwealth.

Ben Robbins & Martin J. Newhouse for New England Legal Foundation & another.

JUDGES: Present: Ireland, C.J., Spina, Cordy, Botsford, & Gants, JJ.

OPINION BY: IRELAND

OPINION

[*652] [*274] IRELAND, C.J. We granted the town of Saugus's (town's) application for further appellate

review in these consolidated cases to determine whether a monetary charge imposed on the plaintiff developers (developers) for access to the town's sewer system is a lawful fee or an impermissible tax. After a bench trial, a Superior Court judge found that the charge was an unlawful tax. The Appeals Court affirmed. *Denver St. LLC v. Saugus, 78 Mass. App. Ct. 526, 528, 533-534, 939 N.E.2d 1187 (2011)*. [***2] Because we conclude that the charge in this case has the requisite characteristics of a fee rather than an impermissible tax, we reverse the judgments and enter judgments for the town.

Background. A recitation of the relevant legal principles is in order.

"A municipality does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature." *Silva v. Attleboro, 454 Mass. 165, 168, 908 N.E.2d 722 (2009)*, quoting *Commonwealth v. Caldwell, 25 Mass. App. Ct. 91, 92, 515 N.E.2d 589 (1987)*. However, a fee lawfully may be charged. *Silva v. Attleboro, supra at 168-169*. There are two kinds of fees, "user fees based on the rights of the entity as proprietor of the instrumentalities used" and "regulatory fees," "founded on police power to regulate particular businesses or activities." [**275] *Emerson College v. Boston, 391 Mass. 415, 424, 462 N.E.2d 1098 (1984)* (Emerson College), citing *Opinion of the Justices, 250 Mass. 591, 597, 602, 148 N.E. 889 (1925)*.

In Emerson College, this court stated that "the nature of a monetary exaction 'must be determined by its operation rather than its specially descriptive phrase.'" *Emerson College, supra*, quoting *Thomson Elec. Welding Co. v. Commonwealth, 275 Mass. 426, 429, 176 N.E. 203 (1931)*. [***3] There are three "traits" that distinguish fees from taxes. Fees "[1] are charged in exchange for a particular government service which benefits the party paying the fee in a manner 'not shared by other members of society'[:] . . . [2] are paid by choice, in that the party paying the fee has the option of not utilizing the gov-

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ernmental service and thereby avoiding the charge[;] . . . and [3] . . . are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." *Emerson College, supra* at 424-425, quoting [*653] *National Cable Tel. Ass'n v. United States*, 415 U.S. 336, 341, 94 S. Ct. 1146, 39 L. Ed. 2d 370 (1974). The burden is on the party challenging the fee to prove it is not lawful. See *Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgt. Bd.*, 421 Mass. 196, 201, 656 N.E.2d 563 (1995). "Fees are not taxes," even if the only way to avoid payment is to relinquish the right to develop one's property. *Bertone v. Department of Pub. Utils.*, 411 Mass. 536, 549, 583 N.E.2d 829 (1992), citing *Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge*, 396 Mass. 395, 402, 486 N.E.2d 700 (1985).

Facts and procedure. We summarize the essential facts taken from the judge's findings, supplemented by uncontested facts in the [***4] record, and reserve certain details for our discussion. *Millennium Equity Holdings, LLC v. Mahlowitz*, 456 Mass. 627, 630, 925 N.E.2d 513 (2010).

Since at least 1986, the town had a deteriorating sewer system. Defects allowed inflow and infiltration (I/I)² in the system. Certain rain storms or other "wet weather events" overwhelmed the system's capacity, causing sanitary sewer overflow (SSO). The result was the release of untreated waste water and raw sewage, which contaminated the ocean and "river tributaries and wetlands," posing a "public health and environmental risk." Moreover, to avoid SSO onto residential property or into housing, the town had installed, without proper approval or permits, a bypass pump at one of its pumping stations that discharged raw sewage into the Saugus River (river), affecting it, as well as Rumney Marsh, an "area of critical environmental concern."

2 Infiltration is groundwater that leaks into a sewer system through defective pipes, pipe joints, and sewer connections. Inflow is extraneous water that enters a sewer system from public sources such as manhole covers and from private sources such as roof drains and sump pumps. Both infiltration and inflow increase the volume [***5] of liquid in a sewer system that can lead to overburdening and overflow.

In 2005, the town entered into an administrative consent order (ACO) with the Department of Environmental Protection (department). The ACO noted that the town had had an evaluation of its sewer system in 1997, which found "numerous deficiencies" including "leaking manholes, mainlines and service lines, . . . [and blocked] sewer pipes," as well as "illegal connections of sump pumps, driveway drains, and storm drains into the sewer system." These deficiencies "allegedly" went unaddressed

by the town. The ACO further stated that the town's actions violated the [*654] Clean Water Act, *G. L. c. 21*, §§ 43 and 44, as well as regulations concerning surface water, and operation and management. [**276] See 314 *Code Mass. Regs. § 3.03* (2003); 314 *Code Mass. Regs. §§ 12.02-12.04* (1997).

In addition to being fined \$25,000 by the department, the town was required to pay fines for any violation of the terms of the ACO, until the town "correct[ed] the violation or complete[d] performance whichever is applicable." Under the ACO, the town was required to implement plans to identify and eliminate sources of I/I, and there was a moratorium on any [***6] new connection to the sewer system until the I/I problem was addressed. The town embarked on a ten-year, \$27 million dollar plan to repair the system that would result in the reduction of I/I (plan). Ratepayers were to finance the majority of the plan. By the time of trial in 2009, the town had expended approximately \$6.5 million to remove some 450,000 gallons of I/I from the sewer system. The funding came from a town bond issue and a loan from the State revolving fund, i.e., funds separate from the monies at issue here.

In order to allow new connections to the system while the I/I problem was being addressed incrementally under the plan, the ACO permitted the town to establish a "sewer bank," which was a mechanism for calculating, in gallons, when I/I reduction was such that new flow into the system would be permitted. The town had to demonstrate that it had the "technical, financial and managerial capacity to operate" a sewer bank in order to obtain permission to establish it. To that end, the town had to create a sewer connection and extension policy for new users, such as the developers here, that had to be approved by the department (new connection policy).

Moreover, before any [***7] new connections would be allowed, the sewer bank had to have enough I/I reduction to accommodate the new flow. The ACO specified a formula to determine the ratio of gallons of I/I that had to be removed from the system in order for one gallon of new flow to be allowed into the system. For example, until the town made repairs that removed 250,000 gallons of I/I from the system, the town was allowed to add one gallon of flow for every ten gallons of I/I removed; when the town had removed 500,000 gallons of I/I, that ratio would be [*655] one gallon of flow added for every four gallons of flow removed.^{3,4} The ACO required that the net effect of any new flow had to be a decrease in flow, i.e., a one-to-one trade-off between gallons allowed and gallons removed would not be acceptable because the goal was to eliminate I/I.

3 In her written decision, the judge stated that the town "freely negotiated" the ten-to-one ratio.

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This contradicts several other findings and the stipulated facts, as well as the testimony of the engineer who stated that the ten-to-one ratio was imposed by the department. Although the administrative consent order (ACO) was negotiated between the town and the department, there [***8] is no indication that the department would have allowed anything less than a ten-to-one ratio because, as the judge herself found, the problem was so severe. Indeed the ACO states that "the Department shall allow" the town the ten-to-one ratio, as well as the reduced ratios, described above, as more gallons of I/I were removed. In addition, one of the agreed facts states that the department "allow[ed]" the town the ten-to-one ratio.

4 The town had removed 500,000 gallons by the beginning of 2006, and by December, 2007, the ratio was one gallon of new flow added for every four removed. Apparently, the town began removing I/I before the ACO was signed so that the town was able "to keep a positive balance in the sewer bank."

In addition, the ACO stated that the department had "the right to disapprove any proposed addition of flow credit to the [s]ewer [b]ank" and that each time the town allowed any new flow, it was required to "reduce the [s]ewer [b]ank [b]alance by [**277] the approved design flow." There was testimony that the department did not always agree with the town's measurement of the I/I reduction. See note 17, *infra*, and accompanying text.

The town requires all developed commercial or residential [***9] properties to connect to the sewer system. While it addressed the I/I problem, the town handled permits for new connections by requiring payment of a charge called an I/I reduction contribution (I/I charge). The amount of the I/I charge was calculated first by multiplying, by a factor of ten, the number of gallons of new flow proposed to be generated by a developer's project and discharged into the sewer.⁵ As the town reduced the I/I flow through repairs, the factor by which the number of gallons of new flow was multiplied also decreased, so that by December, 2007, the factor was four. Although the ACO required the town to demonstrate that it had the financial capability to operate the [*656] sewer bank, and the sewer bank was the mechanism through which new connections to the system were allowed, the ACO did not require specific use of an I/I charge on new connections to finance the reduction of I/I for credit in the sewer bank.

5 Three dollars was the estimated cost of repairing leaks to the system sufficient to remove one gallon of I/I. The judge found that the real cost

was higher than this amount, from some four dollars to four dollars and fifty cents per gallon to thirteen to fourteen [***10] dollars per gallon.

The developers were required to pay the I/I charge to connect their projects to the sewer system. They had paid a total of \$670,460 to accommodate new flow from the single-family houses and multifamily housing they constructed. They filed actions in the Superior Court alleging that the I/I charge was an illegal tax. The cases were consolidated for trial. We note that it is undisputed that the I/I charge is proprietary, not regulatory, in nature.

At trial, the town argued that, under *Emerson College*, the particular benefit the developers received for payment of the I/I charge was accelerated access to the sewer system. The judge's written decision and order set forth findings of fact, in part derived from stipulated facts. In analyzing whether the I/I charge was a fee or a tax, the judge applied the three factors from *Emerson College*. She also relied on the analysis of a sewer connection charge in *Berry v. Danvers*, 34 Mass. App. Ct. 507, 613 N.E.2d 108 (1993) (*Berry*), to conclude that the I/I charge provided no particularized benefit to the developers because the public also benefited from the I/I reduction. She found that the amount of the I/I charge was excessive compared to the [***11] regulatory costs involved. After determining that the I/I charge was a tax and not a fee, the judge ordered the town to refund the developers' I/I charges, as well as statutory interest, fees, and costs.⁶ She denied the town's posttrial motions.

6 Concerning the second factor discussed in *Emerson College v. Boston*, 424-425, 462 N.E.2d 1098 (1984) (*Emerson College*), whether payment of the I/I charge was paid by choice, the parties agree that it was voluntary. Therefore, we do not address voluntariness, except to say that it is undisputed that the developers could have avoided the I/I charge by waiting until all repairs were done to the sewer system before connecting. We note, however, that in *Silva v. Attleboro*, 454 Mass. 165, 171-172, 908 N.E.2d 722 (2009), this court discussed the usefulness of voluntariness in assessing whether a charge is a fee or a tax. The court noted that other jurisdictions have found voluntariness unhelpful and stated that if the fee was regulatory as opposed to proprietary, voluntariness is of no relevance. *Id.* at 172, and cases cited. The *Silva* case left to another day whether voluntariness was useful where, as here, the fee is proprietary. *Id.* See generally *Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgt. Bd.*, 421 Mass. 196, 205, 656 N.E.2d 563 (1995) [***12] (*Nuclear Metals*) (choice realistically not "free choice").

[*657] [**278] Discussion. We begin by noting that the judge (and the developers) downplay the central role of the ACO in discussing whether the developers received a particularized benefit for the I/I charge. The ACO required a moratorium on new connections until the system was repaired, which was projected to take ten years to complete. Because of the impracticability of a moratorium, the department "allow[ed]" the town to create the sewer bank in order to permit new flow into the sewer system. Without the sewer bank, the moratorium would have remained in place. No new users would have been allowed to connect to the sewer system, and the developers here would have been unable to occupy or sell the housing they had built, until the town completed the repairs. These facts inform our discussion of the application of the *Emerson College* factors to this case.

1. "Sufficiently particularized" benefit. In her written decision, the judge rejected the town's arguments that the developers' particularized benefit was immediate permission to connect to the sewer system and that, because the ACO required a reduction in I/I to accommodate new users, the [***13] developers are the only users obligated to pay the I/I charge. She stated that the town's plan for reducing I/I was not designed to pay for any additional infrastructure to accommodate new connections or to cover the costs of physically connecting to the sewer system; the new connection policy provided no other source to finance the repairs to the sewer system except the I/I charge;⁷ and, but for the town's failure to keep its sewer system repaired, the I/I problem would not exist. Relying on *Berry, supra*, she also stated that "the I/I reduction offered as much or greater benefit to the larger community, than was afforded to the [developers]." She concluded that the entire purpose of the new connection policy was to reduce I/I flow for the town and, therefore, was not a particularized service being afforded to the developers.

⁷ It is not entirely clear, but we assume that the judge was referring to the fact that the cost of I/I reduction to allow new users access to the sewer system was paid by those users. As discussed, the ratepayers were financing the majority of the town's proposed \$27 million plan, and the first \$6.5 million had been financed through a bond and a loan.

The town argues, [***14] in essence, that the judge erred in finding [*658] that the I/I charge was an unlawful tax and not a legitimate fee, because the developers were paying a reasonable amount for a particularized benefit: accelerated access to the town's sewer system. The town also contends that the judge erred in relying on *Berry* and argues that, once a particularized benefit is identified, the first *Emerson College* factor is satisfied.

Berry concerned sewerage overflows due to I/I in Danvers, which levied a charge on new connections to its sewer system. *Id. at 508-509*. The charge was calculated based on predicted discharge into the sewer system and was used to remove two gallons of I/I from the system for each new gallon of flow added. *Id. at 509*. The Appeals Court determined that, although the "removal of I/I would theoretically benefit new users by freeing up additional capacity and allowing them to connect to the sewer system," the benefit was not "sufficiently particularized" when compared to the benefit I/I removal provided to current users. *Id. at 510-511, 512*.

The *Berry* case distinguished *Bertone v. Department of Pub. Utils., supra* (Bertone), [**279] a case involving a fee for new users of a municipal lighting [***15] plant. *Berry* emphasized the fact that, at the time the fee was charged in Bertone, "the existing electrical system was capable of meeting the then-current load, and all necessary maintenance was covered by the rates charged all users for electricity," whereas in *Berry*, the financing was going to "repair problems inherent in the existing system." *Berry, supra at 511-512*. Moreover, as part of its analysis whether there was a sufficiently particularized benefit, the court quoted language from Bertone that weighed the benefits received by new users of the electrical system against the benefits derived by all customers. *Berry, supra at 511*, quoting *Bertone, supra at 546*. However, in the quoted portion of Bertone, the court was weighing benefits as part of its analysis whether the fee was discriminatory under *G. L. c. 164, § 58*, a statute governing operation of municipal lighting plants, not whether there was a sufficiently particularized benefit under *Emerson College, Bertone, supra at 545-547, 549*.

A precise balancing or weighing of public benefits against a particularized benefit is not part of the first *Emerson College* factor. In [*659] *Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgt. Bd., 421 Mass. 196, 202-205, 656 N.E.2d 563 (1995)* [***16] (*Nuclear Metals*), the court held that an assessment levied against generators of low-level nuclear waste was a valid fee. In analyzing the first *Emerson College* factor, the court considered only whether the plaintiffs were receiving a government service, and because it determined that they were (i.e., disposal of the low-level radioactive waste in compliance with Federal law), the court then considered only whether the service was particularized "in a manner 'not shared by other members of society.'" *Nuclear Metals, supra at 202*, quoting *Emerson College, supra at 424*. Although the court noted that the public received a benefit because it was protected by the safe disposal of low-level radioactive waste, it nevertheless determined that the benefit was sufficiently particularized because it was "the plaintiff . . . that required access to disposal facilities." *Nuclear Metals, supra at 204*. Likewise, in *Silva v. At-*

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tleboro, 454 Mass. 165, 171, 908 N.E.2d 722 (2009), the court held that a municipal burial permit charge was a fee because the particularized benefit was a well-regulated industry for the disposal of human remains, even though the court also acknowledged that the public benefited from the preservation [***17] of "public health, safety and welfare."

Although the *Nuclear Metals* and *Silva* cases involved regulatory fees, the Appeals Court has decided cases that involved proprietary fees like the I/I charge at issue here, which acknowledged a public benefit but did not weigh it against the particularized benefit. In *Morton v. Hanover*, 43 Mass. App. Ct. 197, 682 N.E.2d 889 (1997), the court held that a water rate surcharge, paid by abutters to construct a new water main in an expanding commercial zone, was a valid fee even though the major purpose of the water main was to provide adequate water to fire hydrants, because abutters received the particularized benefit of better water flow and pressure. *Id.* at 198, 201-202 & nn.6,72. In *Commonwealth v. Caldwell*, 25 Mass. App. Ct. 91, 94-96, 515 N.E.2d 589 (1987), the court held that a "slip fee" for mooring boats at a public waterfront was valid, where the particular benefit was safety and order provided by the harbormaster, and determined that the public also benefited from the harbormaster's duties.

To the extent that *Berry* established a rule that a court must weigh a particularized [**280] benefit against a benefit to the public in [*660] applying the first Emerson College factor, we do not follow [***18] it.⁸ Emerson College focused on whether the services for which a fee was imposed "are sufficiently particularized as to justify distribution of the costs among a limited group . . . rather than the general public." *Id.* at 425. This inquiry does not involve an exact measuring or quantifying of the comparative economic benefits of the limited group and the general public. Instead, the inquiry is whether the limited group is receiving a benefit that is, in fact, sufficiently specific and special to its members. *Id.* at 424 (service must benefit fee payer in manner "not shared by other members of society"). Once a sufficiently particularized benefit is found, then the first *Emerson College* factor is satisfied.⁹

⁸ *Nuclear Metals*, *supra* at 206 n.11, noted that *Berry v. Danvers*, 34 Mass. App. Ct. 507, 613 N.E.2d 108 (1993), also was not controlling authority in its analysis of the voluntariness requirement in the Emerson College factors.

⁹ The Emerson College case involved a statute allowing the city of Boston to levy a charge on owners of buildings of a certain size, construction, and use, to reimburse the city for the costs of additional fire fighting equipment and personnel.

Emerson College, *supra* at 416. [***19] The court held that the charge was neither a tax nor a fee and affirmed the Superior Court judgment invalidating both the statute as well as the city ordinance. *Id.* at 419. The court stated that the charge was not sufficiently particularized because the calculation included not only the cost of fire fighting capacity to preserve an owner's particular building, but also the cost to safeguard the building's inhabitants and to prevent the fire from spreading to other buildings. *Id.* at 426. The court further noted that the charge was compelled. *Id.*

Here, by paying the I/I charge, the developers gained immediate access to the sewer system for their new connections, at a time when the town was required to reduce I/I under the ACO. We do not agree with the judge that the main purpose of the new connection policy was to reduce I/I for the entire town. As discussed, the new connection policy was established pursuant to the part of the ACO that specifically addressed the sewer bank, which was the mechanism that allowed new flow to enter the sewer system.¹⁰ The value of the immediate access is related to the sewer bank, without which a moratorium on new connections would have been imposed because, [***20] as a witness from the department testified, the new connections would exacerbate the I/I problem. Furthermore, access to the sewer system for new [*661] connections was not a benefit shared by anyone other than those who paid the I/I charge.¹¹

¹⁰ The ACO required the town to create other plans to address I/I; they were not introduced in evidence at trial.

¹¹ Under the ACO, certain entities were exempt from the sewer bank.

We also do not agree with the judge or the developers that the fact that the town would have had to pay for all repairs mandated by the ACO is relevant. The purpose of the moratorium on new connections, as well as the sewer bank, was to prevent overwhelming an already impaired sewer system with new flow. The developers could have chosen to wait until those repairs were completed before connecting to the sewer system. We conclude that the I/I charge was sufficiently particularized to satisfy the first *Emerson College* factor.¹²

¹² The judge concluded that certain other facts were relevant to whether a particularized service was provided in exchange for the I/I charge, and the developers emphasize them on appeal. They include that no new infrastructure was constructed; that the state [***21] of disrepair of the sewer system was not the fault of the developers; and that there were no administrative costs ex-

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pended by the town. Emphasizing these facts confuses the facts in particular cases with the requirements of Emerson College. See, e.g., *Silva v. Attleboro*, 454 Mass. 165, 166, 908 N.E.2d 722 (2009) (fees covered costs of municipal employees for administrative duties related to burial permits); *Bertone v. Department of Pub. Utils.*, 411 Mass. 536, 545-546, 583 N.E.2d 829 (1992) (electrical system in proper repair, new infrastructure built from fee charged for new hookups).

[**281] 2. Purpose of I/I charges. In assessing the third Emerson College factor, whether the I/I charge was designed to compensate the town for its expenses rather than to raise revenue, "the critical question is whether the . . . charges [are] reasonably designed to compensate [the town] for anticipated expenses," *Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge*, 396 Mass. 395, 404, 486 N.E.2d 700 (1985), or to reimburse a municipality for expenditures initially paid from a general fund. See *Bertone*, *supra* at 549-550. "[R]easonable latitude must be given to the agency in fixing [the amount of] charges," and such charges should "not be scrutinized [***22] too curiously even if some incidental revenue were obtained." *Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge*, *supra* at 403, quoting *Opinion of the Justices*, 250 Mass. 591, 602, 148 N.E. 889 (1924).

Here, the judge found, in relevant part, that the monies collected from the I/I charge were placed in an account (I/I account), which was separate from the account that held monies collected from ratepayers, called the sewer enterprise fund. She [*662] also found that the I/I charge paid by the developers "reimbursed the [t]own for the monies previously expended by the [t]own to reduce I/I," concluding that "pay[ing] gallon for gallon for the creation of credit for the new flow . . . could be seen as reasonable," but that requiring the developers to pay the ten-to-one ratio was overcompensating the town. In addition, she stated, and the developers agree, that the charge of three dollars per gallon was reasonable because the actual cost of one gallon of remediation was higher. See note 5, *supra*.

The judge also discussed that, at some point, the town transferred some \$440,000 from the I/I account into the sewer enterprise fund and, of that, \$100,000 was spent on a new pump at one of the town's pumping [***23] stations. This expenditure did not result in any I/I being credited to the sewer bank, but the new pump allowed the station to handle I/I that flowed from elsewhere in the system, thereby reducing the necessity of discharging SSO into the river. However, the judge concluded that the \$100,000 payment supported her conclusion that the I/I charge was a tax, stating that, as a percentage of the \$440,000 the developers paid, \$100,000 was a "substantial" amount diverted for general sewer repair, as opposed

to direct I/I remediation. She concluded, "[W]hile the funds exacted from [the developers] have generally been put to the purpose of I/I reduction, the reality is that any repair to the dilapidated Saugus system could be so characterized. I am satisfied that the [t]own has already used the I/I [charge] as a source of funding for more general sewer repair."

The developers contend that the judge was correct to conclude that it was unreasonable for them to pay for the removal of ten gallons of I/I for each gallon of new flow they introduced, and that they should have paid only for what they introduced into the system. They also argue that if immediate access to the sewer bank was the particularized [***24] benefit, only costs incurred [**282] to allow that access, such as administrative costs, would be relevant.

We are not persuaded because, as discussed above, these arguments minimize the importance of the ACO. Pursuant to the terms of the sewer bank set forth in the ACO, the town was required to remove, at least initially, ten gallons of I/I for each gallon of new flow. Therefore, the town's requirement that the [*663] developers comply with that ten-to-one ratio was inherently reasonable. It also was reasonable for the developers to shoulder the entire financial burden involved in their adding new flow to an overburdened system before it was fully repaired, in exchange for immediate access to the sewer system.

The developers also claim that the judge was correct to conclude that, because the \$100,000 spent on the new pump did not result in a certain number of gallons of I/I being credited to the sewer bank, the I/I charge was a tax. We do not agree.

As discussed, the judge concluded that the I/I charge was used to reimburse the town for some of the monies it already had spent to remove I/I, so that the sewer bank could become operational. Because she determined that what the developers were paying [***25] for was not for immediate access to the sewer system, but for gallons of credit to the sewer bank, she analyzed whether the expenditure provided any direct I/I removal. This was error. We conclude that the analysis of where the monies in the I/I account were spent should have ended when the judge found that the developers reimbursed the town for some of the monies already spent on I/I removal. See *Emerson College*, *supra* at 425 (valid fee where monies "compensate the governmental entity providing the services for its expenses").

Moreover, although the \$100,000 was arguably "substantial" when compared to a total of \$440,000 the developers paid, it was incidental when compared to the \$6.5 million the town paid to remove enough I/I to allow the developers access to the sewer system by means of the sewer bank. In addition, the developers do not claim that

they were denied access to the sewer system as a result of the installation of a new pump or that the new pump failed to help the pumping station handle I/I flow that originated elsewhere in the system.

Finally, the developers argue that, in any event, the town should have reduced the ratio of the number of gallons of I/I they had to pay [***26] to remove from ten to six gallons (and then to four) sooner than it did, pointing out that the issue whether the town should reduce the number of gallons of I/I removed was voted down by the board of selectmen, serving as sewer commissioners, several times. Although there was testimony that the commissioners did vote down reducing the ratio, no dates or [*664] minutes of these meetings are in the record.¹³ In addition, the judge made no explicit findings concerning whether the ratios should have been reduced sooner. She stated only that the town achieved the reduction of 250,000 gallons of I/I removal "in approximately August of 2005" and 500,000 gallons in early 2006. The stipulated facts state that the developers paid their I/I charges through 2005 and 2006, before and after the town [**283] achieved its milestones under the ACO.¹⁴ The town reduced the ten-to-one ratio to six-to-one on January 30, 2007, and to four-to-one on December 11, 2007.

13 The developers focus only on the deposition testimony of the town manager, who stated that the reason the sewer commissioners voted against a reduction in the ratio was to save taxpayers money, but the judge did not explicitly credit the testimony. There [***27] is deposition testimony of two members of the sewer commission, who testified to other reasons that they voted against a reduction in the ratio, see note 17, *infra*.

14 Denver Street LLC paid on October 4, 2005; Oak Point Realty Trust paid on November 9, 2005; and Central Street Saugus Realty, LLC, paid "on various dates" from May, 2005, through December, 2006. There was no evidence when Vinegar Hill Estates Trust paid its I/I charge, but it is uncontested that this trust benefited from reduced ratios.

The town argues that there is evidence that it did not lower its ratio right away because there were "clear difficulties" in estimating the actual amount of I/I removed due to any single repair. Therefore, it argues, given that the financial consequences were so high for violating the ACO, it should not be penalized for erring on the side of providing a "margin of safety." We agree.

Concerning when the town should have reduced its ratio from ten-to-one to six-to-one, we conclude that it should have done so within a reasonable time after it achieved the removal of the first 250,000 gallons of I/I. Therefore, as to the I/I charges paid before "approxi-

mately" August of 2005, there can be no [***28] question that the amount charged was reasonable. As to the I/I charges paid on October 4 and November 9, 2005, see note 14, *supra*, the developers have not demonstrated that the town's delay in reducing the ratio, at least through the end of 2005, was not "reasonably designed to compensate [the town] for anticipated expenses," because the town had achieved only the minimum results required to utilize the sewer bank. [*665] *Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge*, 396 Mass. 395, 404, 486 N.E.2d 700 (1985). We conclude that it was rational for the town to require removal of ten gallons for every gallon of new flow the developers introduced, so that the new flow did not create a situation where the town was falling below the initial 250,000 gallons of I/I established by the ACO.

The question remaining is whether the developers have demonstrated that it was reasonable for the town to wait approximately eighteen months after the removal of 250,000 gallons of I/I to reduce the ratio to six-to-one, and approximately eighteen months after the removal of 500,000 gallons of I/I to reduce the ratio to four-to-one.

The facts that inform our analysis on this question are as follows. The three dollars [***29] per gallon charge was only a standard industry estimate of the costs of removing the I/I. The costs could not be "figure[d] . . . with any degree of accuracy," and depending on calculations not relevant here, the department would accept a figure as high as thirteen to fourteen dollars per gallon. Thus, as the judge found, the developers were not paying the true cost of removing each gallon of I/I, even if one accepts the lowest estimate of the actual cost of four dollars to four dollars and fifty cents. In addition, according to the testimony of the professional engineer¹⁵ whose testimony the judge credited, one of the problems with estimating the number of gallons of I/I that was removed with each repair was due to groundwater migration. That is, when certain known leaks or defects were repaired in a pipe, I/I would travel further down the system where defects had not been evident in an initial inspection, and cause I/I overflow that also had to be repaired. He testified that, accordingly, the town may have thought it removed one hundred gallons of I/I but eighty gallons [**284] would come back in a pipe one to two years later. He further stated that this groundwater migration was not part [***30] of the number of gallons of I/I the town estimated was removed from each repair. The engineer testified that, in his opinion, the ten-to-one ratio had a built-in safety factor because, after having been fined already, "the last thing the town would want" was another SSO event. Moreover, from the time the ACO was signed until the time of trial, there were [*666] instances where the town and the department disagreed over the number of gallons of I/I that had been removed, with the department always

prevailing; the result was that the town was informed that it had not removed the number of gallons of I/I that it reported that it had.¹⁶ For example, according to the town manager, thousands of gallons of I/I allegedly removed between April and August, 2005, were disputed by the department and, by the time of the deposition in September, 2006, that dispute had yet to be resolved.¹⁷

15 The town had hired the engineer's firm to assist, in part, in estimating the amount of I/I removal consistent with the ACO.

16 This may account for the testimony at the December, 2008, trial that, at that time, the town had removed approximately 450,000 gallons of I/I, yet the judge found that 500,000 gallons of I/I had been removed [***31] in early 2006.

17 One member of the sewer commission also addressed the department's disagreement with the town's estimate of the number of gallons of I/I that had been removed in 2005 and 2006. In addition, he stated that he voted against lowering the ratio in 2005 and 2006 because, as repairs were being done, the estimate of the number of gallons of I/I in the sewer system went from approximately four to six million gallons to ten to fourteen million gallons. Therefore, removing 500,000 gallons meant that only five per cent of I/I had been removed when the town thought that ten per cent

would have been removed, and he was concerned about the actual cost of the I/I removal. A second member of the sewer commission reiterated the decertification of gallons of I/I by the department in 2005, and stated that he voted against reducing the ratio because of "concerns about the gallonage, what the scope of the problem is; was the problem larger than we believed or how much it was going to cost to get it done and some [other members] wanted to see the gallonage larger before we made such a reduction."

Given these facts, as well as the financial consequences the town could suffer if it failed [***32] to meet its obligations under the ACO, the developers have not demonstrated that it was unreasonable for the town to postpone reducing its ratios for approximately eighteen months, rather than risk violating the ACO. If the developers thought that the ratio of ten-to-one was too burdensome, they could have waited until the ratio was reduced before connecting their properties.

Conclusion. For the reasons set forth above, the judgments for the plaintiff developers are vacated. Judgments shall enter for the town in each of the four cases.

So ordered.

DLS UPDATE

Senior Citizen Deferrals

Local officials from a community that is constructing a new sewer system recently asked the Division about the administration of two local option statutes, M.G.L. Ch.80 Sec.13B and Ch.83 Sec.16G. If accepted, these two statutes will permit low income senior citizens to defer payment of betterments and other special assessments and sewer user charges. Specifically, the officials were interested in knowing how the local option deferrals for sewer user charges (or water user charges under M.G.L. Ch.40 Sec.42J) and for betterments and special assessments operate in relation to the property tax deferral provided by M.G.L. Ch.59 Sec.5 Cl.41A. The property tax deferral was discussed in detail in the November 1994 edition of *City & Town* (Vol.7 No.11).

The local option user water and sewer charge deferrals are both administered in conjunction with the Cl.41A property tax deferral. Eligibility to defer user charges is limited to those senior citizens who qualify for and are actually receiving a tax deferral. In the first year a deferral of user charges is sought, the ratepayer would apply to the water or sewer commissioners within the same time limit as for applying for tax deferral, i.e., by December 15, or three months after the property tax bills are mailed, whichever is later. If the ratepayer qualifies, the water or sewer commissioners notify the assessors of the amount of user charges to be deferred for the year. The assessors add those charges to and commit them as part of the annual property tax on the property, and defer them along with the tax.

Payment of the deferred charges is secured by the same lien statement recorded by the assessors under Cl.41A; no additional or separate statement is executed or recorded. The deferred charges are added to the Cl.41A tax deferral account established by the collector in the first year the tax deferral was granted. User charges in subsequent years are certified to the assessors by the water and sewer commissioners and deferred in the same manner so long as the ratepayer continues to qualify for a tax deferral. Deferred charges accrue interest at the same rate of 8% per year as deferred taxes and are due and payable at the same time as those taxes, i.e., upon the sale of the property or the taxpayer's death, unless the surviving spouse qualifies and enters into a new tax deferral agreement. However, unlike Cl.41A, there is no limit on the total amount of user charges that may be deferred. In addition, the deferred user charges added to the tax deferral account are not considered when determining whether the Cl.41A tax deferral cap, which is 50% of the taxpayer share of the full and fair cash value of the property, has been reached.

The local option betterment and special assessment deferral, on the other hand, is administered separately from the Cl.41A property tax deferral. Senior citizens do not have to be recipients of tax deferrals in order to defer a betterment or special assessment, but they must satisfy the same criteria as to age, ownership, domicile, residency and gross receipts. Moreover, even if they are receiving Cl.41A tax deferrals, they must enter into separate agreements with the board that assessed the betterment or special assessment for its deferral and recovery. A sepa-

rate lien statement to secure payment of the deferred assessment is also recorded and interest on the deferred assessment accrues at the same betterment and special assessment rate that applies to assessments for the project generally. As with the user charge deferral, however, no limit is placed on the amount that may be deferred.

There are also some differences between the collection procedures that apply to deferred user charges and deferred betterments and special assessments. Because the Cl.41A tax deferral account into which deferred user charges are added is treated as a tax title, the treasurer becomes responsible for collecting all user charges added to the account, as well as the deferred taxes, and the usual tax title interest rate of 16% applies to the charges after they become due and payable upon the sale of the property or the taxpayer's death. If the deferral account is not paid in full when due, the treasurer can proceed with foreclosure proceedings in the Land Court six months after the property sale or taxpayer's death. A deferred assessment account, however, does not have tax title status. Therefore, if the deferred assessment is not paid after it becomes due and payable, it would first have to be added to the next tax assessed on the property, along with the accrued interest, so that the collector could make a tax taking, or certify the amount to an existing tax title account. The treasurer could then proceed with the usual foreclosure process.

The Commissioner of Revenue has not prescribed separate forms for use in the administration of the user charge or betterment and special assessment

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Senior Citizen Deferrals of Property Taxes — User Charges — Betterment Assessments

Deferral Type	Local Acceptance	Application Procedure	Eligibility Criteria	Deferral Agreement and Lien Statement	Maximum Deferral Amount	Interest	Administration
Property Tax M.G.L. Ch. 59 Sec.5 (41A)	No	Annual Application by 12/15 or 3 Months After Tax Bills are Mailed	Be 65 or older as of 7/1 Domiciled in Mass. for Prior 10 Years Owned and Occupied Property as Domicile on 7/1, and Owned and Occupied It, or Any Other Property in Massachusetts, as Domicile for at Least 5 Years Annual Income of \$20,000 or Less (or Local Limit which Cannot Exceed \$40,000)	Deferral Agreement Signed First Year Only Unless Change in Persons with Property Interest Lien Statement Recorded First Year	Deferred Taxes and Interest Cannot Exceed 50% of Taxpayer's Share of the Full and Fair Cash Value of Property	8% Per Annum 16% Per Annum from Date Property Sold or Taxpayer Dies	Assessors Grant or Deny Annual Application, Sign Deferral Agreement, Record Lien Statement, Issue Deferral Certificate/Denial Notice to Taxpayer Collector Certifies Deferred Tax to Tax Deferral Account Treasurer Releases Lien Upon Payment of Entire Tax Deferral Account
Water/Sewer User Charge M.G.L. Ch. 40 Sec.42J M.G.L. Ch. 83 Sec. 16G	Yes	Application in First Year Deferral Sought by 12/15 or 3 Months After Tax Bills are Mailed	Must Receive 41A Tax Deferral for Year's Water/Sewer Bills to be Deferred	41A Deferral Agreement and Lien Statement Covers Deferred Water/ Sewer Charges	None	8% Per Annum 16% Per Annum from Date Property Sold or Taxpayer	Water/Sewer Commissioners Grant or Deny Application, Notify Assessors Annually of Charges to be Deferred Assessors Add Charges to Year's Tax and Defer if Taxpayer Qualifies for 41A, Notify Sewer Commissioners if Taxpayers Does Not Qualify for 41A Collector Certifies Deferred Charges to Tax Deferral Account
Betterment/ Special Assessment M.G.L. Ch. 80 Sec.13B	Yes	Application to Defer Full Assessment by 6 Months After Assessment Bills Are Mailed Application to Defer Apportioned Assessment By 6 Months After Tax Bills on Which Apportionment Appears are Mailed	Must be Eligible to Receive 41A Tax Deferral	Deferral Agreement Signed First Year Only Unless Change in Persons with Property Interest Lien Statement Recorded First Year	None	Application Rate on Betterment/Special Assessment (5% or if Voted by Legislative Body, 2% Points Above Rate Paid by City/Town on Funds Borrowed for Project)	Officials Making Assessment Grant or Deny Application, Sign Deferral Agreement, Record Lien Statement, Issue Deferral Certificate/Denial Notice to Property Owner, Notify Assessors/ Collector of Assessment or Apportionment to be Deferred Collector Releases Lien Upon Payment of Entire Assessment Deferral Account

Municipal Fiscal Calendar

February 1

Taxpayers: *Deadline for Payment of 3rd Quarterly Tax Bill Without Interest* (if mailed before January 1)

February 15

Treasurer: *2nd Quarter Reconciliation of Cash* (due 45 days after the end of the quarter)

February 28

Finance Committees: *Continue Budget Review and Develop Recommendations* (This date will vary depending on dates of town meeting.)

March 1

DOR/MDM-TAB: *Notification of Cherry Sheet Estimates for the Following Year* (pending action taken by the Legislature)

The Cherry Sheet is an estimate of: 1) Receipts — local reimbursement and assistance programs as authorized by law and appropriated by the General Court and; 2) Assessments — state and county assessments and charges to local governments. All amounts listed on the Cherry Sheet are estimates. Actual receipts and charges are based on formulas or guidelines for each program. Copies are mailed to all financial officials. If a member of a regional school district, municipalities also receive a copy of the region's cherry sheet and analysis sheet.

Personal Property Owners: *Submit Form of List*

This is a listing of all personal property filed by the owner with the Assessors each year for the purpose of taxes in the next fiscal year.

Non-Profit Organizations: *Final Filing Date for 3-ABC Forms*

These must be filed on or before March 1 or later if extended by the Assessors. In no event should they be filed later than 30 days after the tax bill is first mailed.

March 31

State Treasurer: *Notification of Quarterly Local Aid Payment on or Before March 31*

DLS Update

→ *continued from page six*

deferrals. However, local officials may develop them by making appropriate modifications in the various forms used under Cl.41A. Those forms include a deferral application (*State Tax Form 97-1*), deferral and recovery agreement (*State Tax Form 97-2*), lien statement and release (*State Tax Forms 97-2* and *97-4*) and deferral certificate (*State Tax Form 97-3*).

The accompanying chart on page seven summarizes the differences and similarities in the operation of the three types of deferrals available to senior citizens. ■

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