



February 25, 2005

Eric J. Carty
Water & Sewer Manager
Department of Public Works
85 Wood Street
P.O. Box 171
Hopkinton MA 01748

Re: Sewer Assessment Abatements
Our File No. 2005-44

Dear Mr. Carty:

You asked whether the current owner of a parcel of undeveloped land may be granted an abatement of a sewer assessment. As we understand the facts, the sewer assessment was made in 1997. At that time, a developer owned the parcel, which was part of a subdivision plan and was developable under the zoning law in effect. Except for a parcel the developer designated as open space on the plan, a sewer assessment was made against all other parcels in the subdivision, including the parcel in question. Sometime around 2000, the developer decided to build on the parcel originally designated as open space and make the parcel in question open space instead. The current owner of the recently designated open space parcel is the homeowners' association for the subdivision. The association is seeking an abatement in order to reflect the land's current use.

The sewer commissioners do not have jurisdiction to grant an abatement. As you know, the exclusive remedy under Massachusetts law for contesting the amount of a betterment or special assessment is the abatement process. See Gallo v. Division of Pollution Control, 374 Mass. 278 (1978); Stark v. City of Boston, 180 Mass. 293 (1902); Gudanowski v. Town of Northbridge, 17 Mass. App. Ct. 414 (1984). Under G.L. Ch. 80 §5, an application for abatement of the assessment must be filed with the assessing board or officer within six months of the date the bills were mailed by the collector. Failure to timely file terminates any right to an abatement and deprives the assessing board or officer of the authority to grant one. In this case, the filing deadline has long since passed and therefore, the sewer commissioners do not have any legal power to abate this assessment.

Moreover, even if the current owner had acquired the property in time to have timely filed an abatement application, the current use of the property is not legal grounds for a reduction in the assessment. Betterments and special assessments are special property taxes and like annual property taxes, they are assessed as of a fixed point in time. See Treadwell v. City of Boston, 123 Mass. 23 (1877); Jones v. Board of Alderman of City of Boston, 104 Mass. 461 (1870). Subsequent changes in the condition or legal status of the property are not a basis for abatement.

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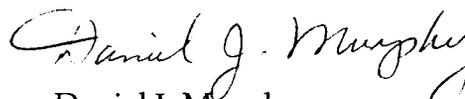
You also asked whether the commissioners may now assess the parcel that had originally been designated as open space and subsequently developed.

As you know, under G.L. Ch. 83 § 15, sewer system construction costs are to be assessed on all improved and vacant properties abutting a sewer street that have the potential to be connected to the system, not just those improved properties actually using the system and immediately benefiting by its construction. Stepan Chemical Company v. Town of Wilmington, 8 Mass App. Ct. 870 (1979) (sewer assessments on actual users only void). This means every property adjacent to the sewer system should be assessed unless it has some permanent legal restriction on its development or use (such as a conservation restriction or dedication as a cemetery), or some physical feature (such as grade), that absolutely precludes any use of, or connection to, the system. The only other properties not assessed are those owned by a governmental entity and held for public use, which are exempt. Worcester County v. Worcester, 116 Mass. 193 (1874).

In this case, the sewer commissioners apparently made a substantive decision that the parcel was not benefited by the sewer system. We assume that decision was based on the parcel's being subject to a conservation or other legal restriction that precluded development at the time the assessments were made. If so, we do not think the sewer commissioners may now assess the parcel because of a subsequent change in those circumstances. As indicated earlier, sewer assessments are taxes assessed as of a fixed point in time. You should review your sewer assessment by-law, however, to see whether it provides for a permanent privilege assessment against properties not originally assessed and if so, whether it would apply in this case. Permanent privilege assessments are usually used to reserve a portion of the system costs and defer assessing them on certain vacant land until the land is actually developed and connected to the system. G.L. c. 83 §17. Typically, the land is developable under the zoning in effect at the time the sewer assessments are made and therefore, clearly benefits from the sewer system. The zoning permits a range of permissible development, however, which makes the land's share of the system costs difficult to calculate at that time. In this case, the land was not developable when the sewer assessments were made and given the passage of time, the system costs may have already been fully assessed.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,


Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC