

hundred and seven of the General Laws, the state secretary may authorize in the manner set forth under said section thirty-nine, the solemnization of a marriage by the Honorable Peter Rutherford, as he is a justice of the district court in the commonwealth of Massachusetts, in the town of Belchertown on March twenty-ninth, nineteen hundred and eighty-seven between Judy E. Clarke of the town of Belchertown and Archer D. Battista of said town of Belchertown, and the state secretary shall issue to said Peter Rutherford in his capacity as aforesaid a certificate of such authorization.

Approved March 26, 1987.

Chapter 8. AN ACT RELATIVE TO THE APPROPRIATION OF FUNDS BY THE TOWN OF HINGHAM TO CONSTRUCT WATER MAINS IN SAID TOWN AND TO PROVIDE FOR THE APPORTIONMENT OF THE COST THEREOF.

Be it enacted, etc., as follows:

SECTION 1. The town of Hingham at any town meeting may vote to authorize the board of selectmen of said town to utilize betterment assessments to finance the installation of water mains and necessary equipment, including lateral water mains and fire hydrants, to serve public ways in the town that are in existence as of the effective date of this act, as certified by the town clerk, that are not served by water mains.

The board of selectmen shall adopt an order that any owner of land which receives benefit from the laying of water pipes in said ways upon which his land abuts or which by more remote means receives benefit through the availability of a supply of water to his land or buildings shall pay a proportionate part of the cost not already assessed of extending such water supply to his land. The amount to be charged against each parcel of land receiving such benefit shall include the cost of the pipes, equipment and material and of labor and other expenses incidental thereto and shall be ascertained, assessed and certified by the board of selectmen. The board of selectmen shall within six months after the completion of the improvement, or at such earlier time as it shall choose, determine the value of such benefit or advantage to the land within such area and assess upon each parcel thereof a proportionate share of the cost of such improvement.

The assessment shall be made upon the parcels of land receiving benefit from the laying of the water mains by a fixed uniform rate based upon the cost of the water pipes laid and the laying thereof, according to the frontage of such land on any way in which a water pipe is laid or according to the area of such land within a fixed depth from such a way or according to valuation for purposes of taxation in the last annual assessment or according to two or all of such measures.

The board of selectmen shall, in its order of assessment, designate as

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the owner of each parcel the person who was liable to assessment therefor on the preceding January first under the provisions of chapter fifty-nine of the General Laws. The order shall also contain a description sufficiently accurate for identification of the area which shall receive benefit or advantage, other than the general advantage to the community, from such improvement, and shall specify the ways in or along which such water pipes are to be laid and shall describe such land as does not abut upon any such way which is to be assessed for such improvement, and shall refer to a plan of such area, and shall contain a statement of the betterments that shall be assessed upon each parcel of land within such area; and such order and plan shall be recorded, within ninety days from the adoption of the order, in the registry of deeds. Payment of assessments shall be made on an annual or semi-annual basis, or some combination thereof, and the total number of payments for each parcel of land assessed shall not exceed forty payable over a period not to exceed twenty years, all as specified in said order. No betterments shall be assessed for such improvement unless the order and plan are recorded as herein provided, nor upon any parcel of land not within such area, nor for a greater amount than as stated in the order.

SECTION 2. Subsequent to the town meeting vote, and prior to the recording of any order of assessment, the board of selectmen shall enter into an agreement, upon such terms as the board of selectmen shall determine, with the Hingham Water Company, its successor or other company or entity to supply water to the areas to which service is to be extended under this act, including, as determined by the board of selectmen and as agreed upon, provision for the ownership of mains, other pipes and facilities, the installation of which was financed under the provisions of this act, and the repair, maintenance and replacement of same.

SECTION 3. No assessment shall be levied in excess of the benefit to the land from the laying of the water pipes for which the assessment is levied. If any assessment is found to exceed such benefit, it shall be abated as provided for in this act.

SECTION 4. The owner of any real estate upon which betterments have been assessed may, within thirty days after the first notice of such assessment has been sent by the collector of taxes, file with the board of assessors for an abatement thereof, and the board of assessors shall grant such abatement as may be necessary to make such assessment conform to this act. There shall be no right of appeal from a betterment assessment, or other remedy, except as specified in this section with respect to the first notice of such assessment. Such application may be filed with the clerk or secretary of the board of assessors or delivered by mail or otherwise at their office. The board of assessors shall within ten days after their decision upon the application give written notice thereof to the applicant by mailing notice to the address which appears upon the application for abatement. If an assessment is abated by the board of assessors, the assessment as so determined shall stand as the assessment

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upon the land. If the assessment is abated, the person by whom it was paid shall be reimbursed the amount of the abatement allowed.

SECTION 5. A person who is aggrieved by the refusal of the board of assessors to abate an assessment in whole or in part may, within thirty days after the board of assessors has sent notice of its decision to the address appearing on the application for abatement, appeal therefrom by filing a petition for the abatement of such assessment in the superior court department of the trial court for Plymouth county.

SECTION 6. If a person who is entitled to file an application under section four or a petition under section five dies within the time limited for filing such application or petition without the same having been filed, his executor, administrator, heir or devisee may, within one year after his interest vests, file such application or petition in the same manner and with the same effect as if filed by the deceased in his lifetime.

SECTION 7. Upon the filing of a petition under section five process shall issue and service shall be made upon the board of selectmen and the board of assessors. Any defense to the petition not relating to the amount of the assessment shall be served within thirty days of the date of receipt of the summons, but no answer relating solely to the amount of the assessment need be served or filed and there shall be no default for failure to enter an appearance. The trial shall be by the court. Interrogatories may be filed and served in the same manner and with the same effect as in civil actions. No party shall be entitled to further discovery, except by leave of the court. The court, at the request of any party, shall advance the petition so that it may be heard and determined with as little delay as possible. In cases where petitions have been filed for the abatement of betterments with respect to the same parcel of land and the same improvement, the petitions may be tried together. If the assessment is abated, judgment shall be entered for the petitioner for the amount of the reduction. There shall be post-judgment interest only at the rate of six per cent per annum from the date of entry judgment. No party shall be entitled to costs or attorney's fees. Except as otherwise provided in this act, proceedings shall be conducted as are civil cases in the superior court department of the trial court.

SECTION 8. A person who is aggrieved by the refusal of the board of assessors to abate an assessment may, instead of pursuing the remedy provided by section five, appeal within the time limited therein to the county commissioners of Plymouth county. The person so appealing shall, within ten days after the filing of said appeal, give written notice thereof to the board of selectmen and the board of assessors by providing each a copy of the appeal filed with the county commissioners. Such notice shall be given by delivery in hand or by registered mail, postage prepaid. Within thirty days of the date of receipt of such notice, the board of selectmen or the board of assessors may file a petition in the superior court department of the trial court for Plymouth county

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together with a copy of the appeal filed with the county commissioners. Upon the filing of said petition the appeal to the county commissioners shall be deemed dismissed and said superior court shall have jurisdiction to determine the appeal as provided for in section seven. The board of selectmen and the board of assessors shall file an answer to said appeal as provided for in section seven. The county commissioners shall hear the parties and shall have the same powers and duties with respect to the abatement of such assessment as the board of assessors. The decision of the county commissioners shall be final.

SECTION 9. No application, petition or appeal for abatement, as provided for in sections four, five and eight, may be considered or acted upon except where each payment of the betterment assessment due has been paid in full within thirty days of the date notice of the amount due was sent.

SECTION 10. If the board of assessors with which an application for the abatement of an assessment has been duly filed in accordance with the provisions of section four fails to act upon said application within three months of the date of the filing of such application, the application shall be deemed to be denied, and the applicant shall have the right within thirty days after the expiration of said three months to appeal as if the board of assessors had in fact denied said application.

SECTION 11. Within a reasonable time after making the assessment the board of selectmen shall certify to the board of assessors the list of assessments, who shall forthwith commit such assessments with their warrant to the collector of taxes, who shall forthwith send notice in accordance with, except as to the date of notice, section three of *chapter sixty of the General Laws to the person designated in the order of assessment as the owner of each parcel assessed and demand for the payment of such assessment shall be made upon such person. Except as otherwise herein provided, the collector of taxes shall have the same powers and be subject to the same duties with respect to such assessments as in the case of the annual taxes upon real estate, and the law in regard to the collection of such annual taxes, to the sale of land for the nonpayment thereof and to redemption therefrom shall apply to assessments made under this act, so far as the same are applicable; but the owner of land assessed shall not be personally liable for the assessment thereon. The collector of taxes shall collect the assessments and hold them in a separate interest bearing account to be utilized as authorized by this act.*

SECTION 12. Assessments made under this act shall constitute a lien upon the land assessed. The lien shall take effect upon the recording of the order described in section one.

SECTION 13. The board of selectmen making the order for the assessment of any betterment shall, upon the application of the owner of

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the real property assessed, if such owner is eligible for an exemption under clause forty-first A of section five of chapter fifty-nine of the General Laws, enter into a deferral and recovery agreement with such owner on behalf of the town. Any such application shall be filed with said board of selectmen within six months after notice of such assessment has been sent by the collector of taxes. Such application may be filed with the clerk or secretary of said board of selectmen or delivered by mail or otherwise at their office.

Said agreement shall provide:

(1) that no sale or transfer of such real property may be consummated unless the betterment assessment which would otherwise have been collected on such real property has been paid together with interest thereon at the rate of twelve per cent per annum;

(2) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total betterment assessment which would otherwise have been due, plus interest; provided, however, that if such heir-at-law, assignee or devisee is a surviving spouse who enters into a betterment assessment deferral and recovery agreement under this section, payment of the betterment assessment and interest due shall not be required during the life of such surviving spouse;

(3) that if the betterment assessments due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such betterment assessments and interest shall be recovered from the estate of the owner; and

(4) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

In the case of each betterment assessment deferral and recovery agreement entered into between said board of selectmen and the owner or owners of such real property, said board of selectmen shall forthwith cause to be recorded in the registry of deeds in Plymouth county a statement of their action, which shall constitute a lien upon the land covered by such agreement for such betterment assessment as has been assessed under the provisions of this act, plus interest as provided in this section. The statement shall name the owner or owners and shall include a description of the land. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the town and shall be added to and become a part of the assessment due.

SECTION 14. The board of selectmen making the order for the assessment of any betterment upon land which is not built upon shall extend the time for payment of the assessment until the land assessed is built upon or for a fixed time; but interest at the rate of twelve per cent per annum shall be paid annually upon the assessment and the assessment shall be paid within three months after such land is built upon or at the expiration of such fixed time.

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SECTION 15. If land which is subject to a lien for an assessment made under this act is subsequently divided by sale, partition or otherwise and such division has been duly recorded in the registry of deeds accompanied by a plan sufficient for the identification of the division of the whole estate, including the names and addresses of the different owners thereof, the board of assessors may, or upon the written request of the owner of a portion thereof, shall, divide said assessment or the amount thereof remaining unpaid, and the costs and interest accrued thereon, among the several parcels into which said land has been divided, assessing upon each parcel the part of the original assessment remaining unpaid proportionate to the special benefit received by such parcel from the improvement. After such assessment has been so divided, only the part of the assessment, interest and costs assessed upon each parcel shall constitute a lien upon such parcel. At least seven days prior to making such division the board of assessors shall send by registered mail to all owners of any interest in the land assessed, whose addresses are known to them, a notice of their intention to make such division, unless such notice has been waived. A person aggrieved by any action of the board of assessors, under the provisions of this section, shall have the same remedy as a person aggrieved by the refusal of the board of assessors to abate an assessment.

SECTION 16. If an assessment is for any reason invalid and has not been paid in full, it may be reassessed by the board of selectmen in the amount for which the original assessment ought to have been made, at any time before the expiration of two years from the date of the original assessment, if the land has in the meantime been alienated; otherwise at any time before the alienation thereof. Such assessment shall be a lien upon any sum paid on account of the original assessment, and to the extent that it is not thereby satisfied shall be a lien upon the land as provided for in this act. It shall be collected in the same manner as an original assessment and shall in all other respects be subject to this act.

SECTION 17. This act shall take effect upon its passage.

Approved March 31, 1987.

Chapter 9. AN ACT MAKING A CERTAIN CORRECTIVE CHANGE IN A CERTAIN GENERAL LAW.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately restore to the state ethics commission jurisdiction which was inadvertently changed by chapter five hundred and fifty-seven of the acts of nineteen hundred and eighty-six, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows: