



Informational Guideline Release

Bureau of Municipal Finance Law
Informational Guideline Release (IGR) No. 2021-1
February 2021

Supersedes Prior Inconsistent Written Statements

BETTERMENTS AND SPECIAL ASSESSMENTS

ASSESSMENT AND COLLECTION PROCEDURES

These guidelines provide guidance to local officials on the assessment and collection procedures regarding betterments and special assessments and supersede the guidelines issued in the April 2001 Betterments and Special Assessments Procedures Manual.

Topical Index Key:

Betterments and Special Assessments
Collection Procedures
Liens
Tax Bills

Distribution:

Assessors
Collectors
Treasurers
Accountants/Auditors
City/Town
Managers/Administrators/Exec. Secys.

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BUREAU OF MUNICIPAL FINANCE LAW

PATRICIA HUNT, CHIEF

GUIDELINES:

I. NATURE OF ASSESSMENT

A. Special Property Tax

A betterment or special assessment is a special property tax that is permitted by general or special law where real property within a limited and determinable area receives a special benefit or advantage, other than the general advantage to the community, from the construction of a public improvement. See *Berriault v. Wareham Fire Dist.*, 360 Mass 160, 168 (1971); *Opinion of the Justices*, 261 Mass. 556, 608 (1927). If properties abutting or nearby the improvement are specially benefited, all or a portion of the cost of making that improvement may be assessed on those properties. *Union Street Railway v. Mayor of New Bedford*, 253 Mass. 304 (1925).

B. Assessment Standard

Assessments of the project costs must be reasonable and proportional and not substantially in excess of the special benefits received from the improvement, that is, benefits beyond the benefit received generally by all property in the municipality.

1. **Definition:** A special benefit is defined as an enhancement of the value or use of property due to the construction of the improvement. See *Sears. v. Boston*, 173 Mass. 71, 75-77 (1899).
2. **Measurement:** A special benefit is measured by how much the particular improvement has increased the fair market value of the property considering all present and future uses to which the property is or may be reasonably adapted in the hands of any owner. *Driscoll v. Northbridge*, 210 Mass. 151, 155 (1911); *Union Street Railway*, at 309-312.

C. Exemptions

Property owned by governmental entities and devoted to public purposes, including property of housing authorities, is exempt from taxation, betterments and special assessments. See *Worcester County v. Worcester*, 116 Mass. 193 (1874) and *Boylston Water Dist. v. Tahanto Regional School Dist.*, 353 Mass. 81, 82-83 (1967). However, individuals and charitable, religious or other organizations, ordinarily eligible for full or partial exemptions from annual property taxes, are not exempt. *Williams College v. Williamstown*, 219 Mass. 46 (1914). See also *Boston Seamen's Friend Society v. Boston*, 116 Mass. 181 (1874).

II. AUTHORITY TO LEVY ASSESSMENTS

The Commonwealth, a county, city, town or district must have statutory authority to impose a betterment or special assessment for a public improvement. In *Berriault v. Wareham Fire Dist.*, 360 Mass. 160, 166-168 (1971), the Supreme Judicial Court lists the various types of special assessments authorized by specific provisions of the general laws.

We note that betterments and special assessments are not necessarily the only way a municipality may recoup the costs of certain capital improvements. Even where a betterment or special assessment is not authorized, the cost may be recoverable by user charges for the service, including a surcharge for those users specially benefited by a public improvement. See *Morton v. Hanover*, 43 Mass. App. Ct. 197, 204 (1997), and the cases cited therein. We suggest that a city/town consult with its municipal counsel if it wishes to pursue a surcharge similar to that described in the *Morton* decision.

A. Betterments

The cost of all or a portion of a public improvement made upon formal order or vote of a board of officers of the Commonwealth, a county, city, town or district may be assessed as a betterment. G.L. c. 80, § 1. Betterments typically apply to improvements involving eminent domain takings such as laying out, widening, or extending streets. See, e.g., *Quinn v. Springfield*, 233 Mass. 595, 597-99 (1919). However, the installation of streetlamps may not be financed through betterment assessments because it is deemed a general, not a particularized benefit to property owners. See *Williams College v. Williamstown*, 219 Mass. 46, 48 (1914).

B. Water Special Assessments

Cities, towns and districts may assess all or a portion of the cost of installing water distribution systems along public and private ways. This includes the cost of pipes, other materials and labor and other incidental expenses. G.L. c. 40, § 42G.

In order to make the assessments, the city council, town meeting or district meeting must first accept G.L. c. 40, §§ 42G, 42H, 42I. It must then authorize the assessments for the project by vote, ordinance or by-law, *before* construction on the water improvements begins. See *Berriault* at 164.

C. Sewer Special Assessments

Cities and towns may assess all or a portion of the costs of sewer system plants and facilities. This includes the cost of general benefit facilities, such as treatment plants, pumping stations, trunk and force mains, and special benefit facilities, such as mains serving adjacent properties and grinder pumps. G.L. c. 83, § 15.

City council or town meeting authorization by vote, ordinance or by-law is required to make the assessments. Assessments are made after the construction of the improvements on all properties abutting sewered streets that have the potential to be served by the sewer system, not just those actually connecting to it. G.L. c. 83, §§ 14-15. See *Stepan Chemical Co. v. Wilmington*, 8 Mass. App. Ct. 841 (1979). The reasoning behind assessing potential users is that abutting landowners have “a right to [sewer] connections” enforceable by writ of mandamus. *Clark v. Bd. of Water and Sewer Comm’rs of Norwood*, 353 Mass. 708, 711 (1968), interpreting G.L. c. 83, § 3.

Cities and towns may also assess a “charge for the ‘permanent privilege’ of using a common sewer” against a parcel in lieu of a sewer special assessment. See *Exeter Realty Corp. v. Bedford*, 356 Mass. 399, 403 (1969). See also G.L. c. 83, §§ 17-24. Permanent privilege charges are imposed to recapture a share of the costs of constructing the improvements but are typically assessed when a parcel is connected to the sewer system, rather than when construction of the improvement is completed. They are usually authorized by ordinance or by-law. No parcel can be assessed both a permanent privilege charge and a special assessment.

The amount committed as a permanent privilege charge is secured by a lien on the parcels in the same way as sewer special assessments are. The owners of such parcels have the same rights to abatement and apportionment as the owners of parcels subject to sewer special assessments. (See IGR Section V-A below.) Capital costs recovered through a permanent privilege charge must be allocated among benefited properties using the same allocation method applied to the costs of the original sewer special assessment.

Permanent privilege assessments should operate to recover capital costs of system improvements that have not already been recovered through sewer assessments, i.e., the overall design of assessments should be to allocate a reasonable and proportionate share of the costs of the sewer system against all benefited properties. Charges imposed on new users should reasonably relate “to the incremental cost of the additional facilities needed to provide them with service ...” *Berry v. Danvers*, 34 Mass. App. Ct. 507, 511 (1993), quoting *Bertone v. Department of Public Utilities*, 411 Mass. 536 (1992). New users can be charged for the costs of system-wide improvements where such improvements are necessary to enable immediate access to otherwise restricted sewer system capacity. *Denver Street LLC v. Saugus*, 462 Mass. 651, 660-62 (2012).

New statutory provisions address the costs of sewer and drain construction and operation in areas where the effect of nutrient enrichment on supplies of drinking water is critical. See G.L. c. 83, §§ 1A-1H. This local option is subject to approval of a Comprehensive Water Resources Management Plan (“CWRMP”) by the Department of Environmental Protection. Properties in areas identified in the CWRMP as needing enhanced wastewater collection and treatment to combat nutrient enrichment can be required to connect with the planned common sewer. Assessments are made at the time of actual connection to the common sewer, although estimated sewer assessments are authorized under G.L. c. 83, § 15B. (See IGR Section III-E below.)

D. Sidewalk Special Assessments

Cities or towns may assess no more than fifty percent of the cost of sidewalk original construction or reconstruction with material of more permanent character, and may by ordinance or by-law limit the amount assessed on each parcel to no more than one percent of the parcel’s preceding year’s assessed valuation. G.L. c. 83, § 26.

E. Assessments for Repairs to Private Ways

G.L. c. 40, § 6N allows a city or town to finance repairs to private roads which are open to the public. An ordinance or bylaw is required and can provide for betterment charges to be

assessed. A community has considerable latitude in determining the scope of repairs and the amount of costs to be assessed.

III. ASSESSMENT PROCEDURE

The procedural framework for imposing betterments and special assessments is found in G.L. c. 80.

A. Ordering Improvement and Assessment

The municipal body with authority to impose betterments and special assessments (City/Town Council, Board of Selectmen, Water/Sewer/Road Commissioners), also known as the “Assessing Board,” must formally adopt an order for construction of the improvement that describes the area to be benefited by the particular project and states that betterments or special assessments will be levied for the improvement. Assessments for water and sewer improvements require the adoption of an ordinance or bylaw by the City/Town Council or Town Meeting.

1. Betterments: The order must describe the area to be benefited, referring to a plan of the area, and contain an estimate of the betterments to be assessed on each parcel within the area. G.L. c. 80, § 2.
2. Water Assessments: The order must identify the ways in which the pipes will be laid and describe the parcels not abutting the ways that will be assessed. G.L. c. 40, §§ 42G and 42I.
3. Sewer/Sidewalk Assessments: The order must identify the ways in which sewer/sidewalk is located. G.L. c. 83, §§ 25 and 27.

B. Creating Lien

A special assessment or betterment is secured by a lien on the property benefited. To enforce collection, the Assessing Board must establish a valid lien. Generally, a property owner is not personally liable for the assessment.

1. Recording Requirements

To create a lien which will bind subsequent purchasers and mortgagees, the Assessing Board must record the following at the Registry of Deeds:

- a. Betterments: Order, plan and estimates must be recorded within 90 days of (1) date order adopted or (2) town acceptance of street layouts, relocation or alterations, if acceptance required. G.L. c. 80, § 2.
- b. Water Assessments: Order, list of ways and parcels not abutting the ways to be assessed (identify in same way as of prior January 1 for tax purposes using assessors' maps) and list of owners of each parcel to be assessed (as of

prior January 1 for tax purposes) must be recorded "forthwith." G.L. c. 40, § 42I.

- c. Sewer/Sidewalk Assessments: Order and list of ways must be recorded "forthwith." G.L. c. 83, § 27. The list of owners of each parcel to be assessed (as of prior January 1 for tax purposes) should also be recorded.

2. Deferred Recording Procedure

The Assessing Board may defer recording the required information for betterments authorized by G.L. c. 80 and sewer or sidewalk assessments authorized by G.L. c. 83 until after the project is completed, assessments are made, and bills issued and then only for those properties where the assessment was not paid in full within the 30-day period for paying without incurring interest. Use of this option requires city council, town meeting or district meeting authorization. G.L. c. 80, § 12. Because it is unclear whether the deferred recording procedure gives adequate notice of the lien to prospective purchasers and mortgagees of property without actual knowledge of the construction of the improvement and potential assessment, a statement of intent to impose a forthcoming assessment should be recorded at the Registry of Deeds.

3. Subordination of Lien

The city's or town's interest or lien in the assessed property cannot be subordinated to that of a bank or other third party.

4. Duration of Lien

- a. Arises: The lien exists from the time the recording is made. G.L. c. 80, § 12; G.L. c. 40, § 42I; G.L. c. 83, § 27.
- b. Terminates: The lien terminates two years from October 1 of the year (1) the entire assessment is first added to the tax bill or (2) the last apportioned amount appears on the tax bill, whichever is later, if there has been a recorded alienation during that time. If there has been no recorded alienation during that period, the lien continues until there is a recorded alienation.

Exceptions: The lien will continue: (1) even if there is a recorded alienation, if a suit is brought to challenge the validity of the assessment, for a year after the validity is finally determined; (2) if a sale or taking cannot be made because of federal or state law or a pending proceeding and the collector files a statement at the Registry of Deeds to continue the lien; and (3) if time for payment is extended and the collector files a statement at the Registry of Deeds, until payment or abatement. The lien for a betterment or special assessment, or an apportioned part of it that has been added to an annual property tax, will continue for as long as the lien for the tax to which it has been added and will be secured by any tax title in which that property tax is included.

- c. Dissolves: The lien dissolves upon recording in the Registry of Deeds a “Certificate to Dissolve” lien from the collector stating that the assessment, interests, and costs have been paid or abated. G.L. c. 80, § 12. A charge of \$4 is imposed upon the property owner for the certificate, which is credited to the general fund. The recording fees are also paid by the property owner.

5. Municipal Lien Certificates

Municipal lien certificates should list overdue real estate tax and surcharge, plus added betterments, special assessments and charges added to tax, for each fiscal year not secured by tax title. G.L. c. 60, § 23. It should also note potential or actual betterments and special assessments not added to a listed tax, for example, when a project is planned or voted, when the assessment is committed, when there is an actual or estimated assessment, or when there is an unpaid balance to be added.

- C. Assessing Costs

1. In General

Once the project is completed, the Assessing Board determines the actual benefits and assesses the cost of the project among the properties. The cost of the public improvement, including direct, indirect, and incidental expenses, operates as a ceiling on the total amount that can be collected. See generally, Philip Nichols, *Taxation in Massachusetts, 757-758 (3rd edition), citing Chase v. Aldermen of Springfield, 119 Mass. 556, 563 (1876)*. An offset must be made to the total assessed where a portion of the cost is covered by a grant, the tax levy or another financing source.

Betterments and special assessments must be imposed using the same configuration of parcels the assessors used for assessing annual property taxes for the most recent fiscal year. All present and future uses to which those properties are or may be reasonably adapted in the hands of any owners are to be considered in measuring the special benefits received by each property.

In some cases, the methods to be used to determine the benefits and allocate the costs are prescribed by statute. If no method of allocating costs is prescribed, the Assessing Board may adopt any method that is proportional and reasonably calculated to determine the benefits received as long as it does not result in the assessments being substantially in excess of or disproportionate to the benefits received. See *Seiler v. Board of Sewer Commissioners of Hingham, 353 Mass. 452, 457 (1968)* and *Estes v. Newton, 241 Mass. 229, 233 (1922)*. For example, a frontage, area and/or valuation formula may be appropriate methods for apportioning the cost of some improvements. In addition, it may be permissible to classify properties for assessment purposes into those receiving direct or remote benefits. Once an allocation method has been decided upon and the assessments committed and billed, it is not possible to adopt a different method.

The uniform unit method of allocating costs (often used for allocating the costs of water and sewer improvement projects) estimates the number of potential water or sewer units per parcel according to existing zoning rules. If potential units are allowable under the subdivision control laws or other applicable rules, those units may be considered as well. Properties with some permanent legal restriction on their use (such as a conservation restriction or dedication as a cemetery), or feature of the land (such as topography), that precludes any current or future use of, or benefit from, the water or sewer system would not be included. See *Ninety-Six, LLC v. Wareham Fire District*, 92 Mass. App. Ct. 750, 757 (2018).

2. Betterments: Assessments must be made within six months of project completion. G.L. c. 80, § 1. No method of allocating costs is prescribed by statute. The amount assessed cannot exceed the estimate recorded. G.L. c. 80, § 2.
3. Water Assessments: Assessments should be made within a reasonable time after project completion. A city, town or district may adopt by ordinance, by-law or vote one or more of the following statutory methods of allocating costs: frontage, area within fixed depth of way, assessed valuation, or uniform unit (number of existing and potential water units based on existing zoning). G.L. c. 40, §§ 42H and 42K.
4. Sewer Assessments: Assessments require authorization of the city's or town's legislative body and should be made within a reasonable time after project completion. A city or town may adopt one of the following statutory methods of allocating costs: fixed uniform rate (frontage, area within fixed depth of way or both frontage and area) or uniform unit (number of existing and potential residential equivalent sewer units based on existing zoning). G.L. c. 83, § 15. See also *W.R. Grace & Co. v. Acton*, 62 Mass. App. Ct. 462 (2004). If an ordinance or by-law proposes to open up a sewer system built at private expense to common use, a reduced assessment which makes allowance for the cost of improvements made at private expense is appropriate. See *Exeter Realty Corp.*, 356 Mass. at 404, *citing G.L. c. 83, § 22*.
5. Sidewalk Assessments: Assessments should be made within a reasonable time after project completion. No cost allocation method is prescribed by statute. G.L. c. 83, § 26. The assessment on abutting properties cannot exceed 50% of the cost of the project. An ordinance or by-law may provide that the total assessed upon any individual property shall not exceed one per cent of the assessed value of the property determined by the last preceding annual assessment.

D. Committing Assessments

Within a reasonable time after making the assessments, the Assessing Board certifies them to the assessors. The assessors then commit the assessments to the collector with a warrant. G.L. c. 80, § 4.

E. Estimated Sewer Special Assessments

Under G.L. c. 83, § 15B, municipalities may commit estimated sewer special assessments that cannot total more than half the estimated cost of all contracts that the municipality has entered into for the project. The estimated special assessments must be assessed against the

same parcels using the same allocation method that will be used for the actual special assessment. Estimated sewer special assessments can be apportioned and added to annual property tax bills just as actual assessments can be, but property owners have no right to apply for an abatement of an estimated assessment. The revenue from the estimated sewer special assessment is reserved for appropriation to pay project costs. (See IGR Section VII-C below.)

The actual special assessment will supersede the estimated assessment and should be committed for the gross amount of the project costs to be recovered, with credits for each parcel for the amount of any payments made toward the estimated assessment. A new apportionment may be made of the net amount of the actual special assessment for up to the full 20 year apportionment period authorized by G.L. c. 80, § 13, irrespective of the period over which the estimated assessment may have been apportioned. Property owners may apply for an abatement once the actual special assessment has been committed. (See IGR Section V below.) Liens do not have to be separately recorded for estimated and actual sewer assessments.

F. Redetermination of Sewer Assessments

Under G.L. c. 83, § 15A, cities and towns acting through their respective legislative bodies may periodically redetermine the uniform rate or uniform unit on which assessments to benefited properties are based. A redetermination may be appropriate to address issues such as a change in the amount of available grant funding or a failure to fully capture recoverable costs in the original determination of the amount of assessments. However, it is doubtful that the redetermination procedure affords a viable legal mechanism for shifting the burden of capital costs or rebating a portion of a fully paid sewer assessment.

IV. COLLECTION PROCEDURES

A. Assessment Notice

After receiving the commitment, the collector sends a bill showing the amount of the assessment to the owner of each parcel assessed. G.L. c. 80, § 4.

The bill must include the assessed owner, parcel address and ID, amount owed, assessment date, payment due date and options, interest rate and abatement rights. The bill should also include the current owner, if different, an explanation of the assessment purpose (project), and provide a form to request an apportionment from the assessors.

B. Payment/Appportionment

The property owner may pay the assessment in full within 30 days after the bills are mailed without interest. Alternatively, the property owner can pay some or none of the assessment and request an apportionment of the unpaid balance. G.L. c. 80, § 13. The apportionment methodology prescribed by statute cannot be varied by ordinance, by-law, or agreement. A sale of the assessed property does not accelerate the timetable for paying off an apportioned betterment or special assessment.

The request for an apportionment is made to the Board of Assessors. The assessment can be apportioned under G.L. c. 80, § 13 into a maximum of 20 portions unless the city/town has adopted one of the following alternatives:

- i. Annual portions equal to the number of years for which bonds are issued;
- ii. Portions so that the amount payable each year for assessment principal and interest are as nearly equal as practicable or portions that provide for a more rapid amortization of the assessment principal amount where the debt service on the bonds issued for the project is so structured; or
- iii. Portions corresponding to the same number of preliminary and actual installments as real estate taxes fall due with each installment equal in amount.

C. Adding Assessments to Tax Bill

The collector must certify the unpaid assessments to the Board of Assessors before they complete the annual real estate tax commitment list for the year the assessments will first appear on the tax bill. Any unpaid or apportioned assessments are then collected by adding them to the real estate tax bill and collecting them as part of the tax. G.L. c. 80, § 13. Under the default payment schedule, the entire amount of each annual apportionment of principal and interest is due at the same time as the first half of the annual tax bill in a semi-annual billing system. Under a quarterly billing system, the annual apportioned obligation is payable in two installments, either in the preliminary cycle or the actual cycle depending on the timing of the mailing of the bills. An alternative is to structure annual portions so that they are payable in the same number of preliminary and actual installments as the real estate tax. (See IGR Section IV-B(iii) above for description of this alternative.)

1. Timing

Assessments originally committed to the collector on or before January 1 must be added to a tax no later than the tax assessed as of that date.

Example: Assessments committed during calendar year 2021 on or before January 1, 2022 (the assessment date for FY 23 taxes) must be added to a tax commitment no later than the FY 23 commitment and bills.

However, assessments committed during calendar year 2021 before January 1, 2022 may be added to the FY 22 tax commitment and bill provided property owners have had an opportunity to pay the full assessment without incurring interest.

2. Amount

- a. Apportionment Requested: If the property owner requested an apportionment, the assessors will add one of the portions with interest.
- b. Apportionment Not Requested: If the property owner did not pay the assessment in full and did not request an apportionment, then the assessors will add the amount of the entire assessment that remains unpaid with

interest or may apportion the assessment on their own and add one of the portions with interest.

3. Committed Interest

- a. First Year: In the first year, the entire or apportioned amount is committed with interest on the amount of the entire assessment that remains unpaid calculated from the 30th day after the bills are mailed until October 1.

Example: The bills for the assessments are mailed on April 1, 2021. They are first added to the taxes assessed as of January 1, 2022 for FY 23. Interest is computed from May 1, 2021 until October 1, 2022. If they were first added to FY 22 taxes, interest would be computed from May 1, 2021 to October 1, 2021.

- b. Subsequent Years: In subsequent years, the apportioned amount is committed with interest on the unpaid balance calculated from October 1 to October 1.

4. Rate

The interest rate on the unpaid assessment is five percent per year unless (a) a city or town has voted the optional rate, which is up to two percent above the rate charged the city or town if it borrowed for the project, or (b) a special act establishes another rate. G.L. c. 80, § 13.

If an installment remains unpaid after it has been added to the tax bill, 14% interest accrues on the unpaid installment after the tax bill due date.

5. Takings and Foreclosure

When taking a property for non-payment of taxes or foreclosing the owner's equity of redemption, municipal collectors and treasurers are obligated to collect all amounts committed as district betterments. No town or district official has the power to waive taxes, charges, or assessments except as authorized in G.L. c. 60, § 15. For properties acquired by tax title foreclosure, the proceeds of any later sale are applied in the order set forth in G.L. c. 60, § 43.

D. Suspensions/Deferrals

1. Suspensions

For water assessments, if the assessed parcel is vacant, the Assessing Board must suspend payment of both the assessment and interest until the parcel is built upon or for a fixed time. Interest on a suspended assessment accrues at the rate of four percent per year. G.L. c. 40, § 42I.

In all other cases where the parcel is vacant, the Assessing Board may suspend payment of the assessment until the parcel is built upon or for a fixed time; however, the property owner must pay the four percent interest annually. G.L. c. 80, § 13A; G.L. c. 83, § 19.

The suspended assessment constitutes a lien against the property and should appear on any lien certificates the city or town issues.

Payment of the suspended amount in all cases is due within three months after the land is built upon or the fixed time period expires, whichever applies. G.L. c. 80, § 13A; G.L. c. 40, § 42I; G.L. c. 83, § 19. Apportionment is not an option when a suspended assessment comes due.

Assessments and interest on classified forest land, agricultural or horticultural land, and recreational land, upon application by the property owner, must be suspended while the land is classified and until the use of the land changes. G.L. c. 61, § 5; G.L. c. 61A, § 18 and G.L. c. 61B, § 13.

2. Deferrals

If the city or town accepts the provisions of G.L. c. 80, § 13B, the Assessing Board (as opposed to the Board of Assessors) may permit the deferral of betterments and special assessments for elderly property owners in the same manner as property taxes are deferred.

Only property owners who are eligible for a deferral of their property taxes under G.L. c. 59, § 5[41A] may defer assessments. They must apply to the Assessing Board for a deferral within six months of the date the assessment notices were sent by the collector. If approved, the Assessing Board will enter into a deferral and recovery agreement with the property owner and will record the agreement in the Registry of Deeds. G.L. c. 80, § 13B.

E. Prepayment of Apportioned Assessment

After an assessment has been apportioned, the property owner may choose to pay all or a part of the assessment. If a property owner makes a written request to prepay the assessment, the assessors commit the amount of the prepayment, with interest, to the collector with a warrant. If no apportioned amount has been added to the tax, the interest is calculated from the 30th day after the date the bill was mailed until the date of prepayment. If an apportioned amount has been added to the tax, then the interest is calculated from October 1 of the year the last portion was added until the date of prepayment and the prepayment will be applied to the final year(s) so as to reduce the payment period. G.L. c. 80, § 13.

F. Collection Remedies

A tax taking and foreclosure is the only collection remedy. The Collector must do the taking before the lien expires. (See IGR Section III-B-4 above for duration of lien.)

V. PROPERTY OWNER REMEDIES

A. Abatement

1. Deadline

The property owner may seek an abatement of the assessment by filing an application with the Assessing Board within six months of the date the collector mailed the assessment notice. G.L. c. 80, § 5. The Assessing Board imposing the betterment or special assessment, *e.g.*, the Water Commissioners, rather than the Board of Assessors, has the authority to abate the assessment.

2. Grounds

An abatement is warranted if the amount of the assessment (1) is more than the increment in property value attributable to the improvement or (2) the assessment reflects a disproportionate allocation of the cost of the project in relation to other benefited property. See *Cape Ann Citizens Association v. Gloucester*, 47 Mass. App. Ct. 17, 18 (1999). See also *Illinois Cent. R.R. v. Decatur*, 147 U.S. 190, 199 (1893); *O'Malley v. Pub. Improv. Comm'n of Boston*, 342 Mass. 624, 628-29 (1961); *Driscoll*, at 155; *O'Connell v. First Parish in Malden*, 204 Mass. 118, 121 (1910). If the value or use of the property is enhanced by the improvement, it does not matter that the property owner did not request or may not use the improvement.

3. Assessing Board Action

The Assessing Board has four months from the date the application is filed to consider the merits of the property owner's claim and to act on the application by granting or denying the abatement. A failure to act within four months results in a deemed denial of the abatement application, which triggers rights of appeal. The Assessing Board must notify the property owner within ten days of its decision. G.L. c. 80, §§ 5 and 10A.

4. Approved Abatement Applications

If the Assessing Board grants an abatement, the assessors are notified so that they can process the abatement. The assessment as abated is then collected in the same manner as the original assessment. However, if the property owner had paid the assessment in full, he is entitled to a refund in the amount of the abatement with interest at the rate of six percent calculated from the date the assessment was paid. G.L. c. 80, § 5.

5. Appeal of Denied Abatement Applications

- a. Denied: If the Assessing Board denies the application, the property owner may appeal that decision to the County Commissioners or the Superior Court. The appeal must be filed within 30 days after the property owner is notified of the Assessing Board's decision. G.L. c. 80, §§ 7, 10.

If the property owner chooses to appeal to the County Commissioners, he must give notice to the city, town or district within ten days of filing the appeal by mailing a copy, registered mail, to the Assessing Board or the city, town or district clerk. G.L. c. 80, § 10.

- b. Deemed Denied: If the Assessing Board did not act on the application within four months of the date it was filed, then the application is deemed denied by operation of law and the property owner may appeal in the same manner as if the application had been denied, except that s/he has 60, rather than 30 days, after the expiration of the four months to file the appeal. However, if the assessment has been paid in full, the property owner cannot appeal after ten months from the date the assessment was paid. G.L. c. 80, § 10A.
- c. Reimbursements: If the Superior Court orders betterments or special assessments to be abated and the assessment has been paid, payments must be refunded with interest at the rate of 4% from the time of payment. G.L. c. 80, § 9.

B. Other Remedies

The property owner may challenge the validity of the assessment if the applicable recording or other procedural requirements were not met.

1. Before Commitment

Before the commitment of the assessments to the collector, the property owner may bring a civil action in the nature of certiorari, G.L. c. 249, § 4; *Chilson v. Mayor of Attleboro*, 247 Mass. 191, 202 (1924), or for a declaratory judgment, *Berriault*, at 160; *California Village Corporation v. Town of East Longmeadow*, 4 Mass. App. Ct. 128, 130 (1976).

These remedies are separate and distinct from an abatement proceeding and the property owner may also file for an abatement in order to challenge the amount of the assessment. *Chilson*, at 202-203; *Hitchcock v. Aldermen of Springfield*, 121 Mass. 382, 386 (1876).

2. After Commitment

After the assessments have been committed to the collector, the property owner is limited to the abatement and appeal procedure. *Gallo v. Division of Water and Pollution Control*, 374 Mass. 278, 288-289 (1978); *Gudanowski v. Northbridge*, 17 Mass. App. Ct. 414, 421 (1984). Where the assessment is wholly void because of the municipality's failure to comply with statutory requisites, the taxpayer has recourse to an action to recover an unlawful tax under G.L. c. 60, § 98, *Wheatland v. City of Boston*, 202 Mass. 258 (1909); *California Village Corporation*, at 129, and could raise the invalidity of the assessment as a defense to a foreclosure

proceeding. See *Milton v. Ladd*, 348 Mass. 762, 763-64 (1965); *Norwood v. Norwood Civic Association*, 340 Mass. 518, 524 (1960).

VI. ADMINISTRATIVE PROCEDURES

A. Property Divided After Assessment

Under G.L. c. 80, § 15, if a parcel is divided by sale, mortgage, partition or otherwise after the assessment has been made and the division has been recorded at the Registry of Deeds, the Assessing Board may and, if requested by the owner or mortgagee of any of the divided parcels, must allocate the amount of the assessment that remains unpaid, including interest and costs, among the divided parcels. The division cannot occur after the property has been advertised for sale or taking for non-payment of the assessment.

The division is to be made so that the amount assessed upon each divided parcel is proportionate to the benefit received by the divided parcel from the improvement. After the division, only that portion of the assessment, interest and costs assessed on the divided parcel constitutes a lien on it. Division of a betterment or special assessment does not accelerate an existing apportionment schedule or preclude apportionment if the assessment has not been apportioned already.

At least seven days before making the division, the Assessing Board is required to send a notice by registered mail to all owners of the parcel to be divided of its intention to make the division. A property owner may contest the division in the same manner as if the Assessing Board had denied an abatement application.

B. Reassessment

Under G.L. c. 80, § 16, if an assessment is invalid and it has not been paid in full or has been paid under such circumstances that it can be recovered back, it may be reassessed by the Assessing Board in the amount the original assessment should have been made. The reassessment must be made within two years of the date of the assessment if there has been an alienation of the property within that time. If there has been no alienation, the reassessment must be made at any time before the property is alienated.

If the reassessed amount has not yet been paid in full, it is a lien on the parcel and is collected in the same manner as the original assessment.

VII. ACCOUNTING FOR REVENUE

Betterments and special assessments are special property taxes. Anticipated revenues from apportioned and unapportioned betterments and special assessments, including committed interest, are treated as estimated receipts when setting the tax rate and actual receipts are credited to the general fund except in the following circumstances.

A. Betterment Reserve

If the city, town, or district borrows to pay for the improvement for which betterments or special assessments are imposed, revenue from betterments and special assessments are reserved for appropriation for payment of the debt incurred in financing the improvement. These betterment and special assessment revenues are kept separate from all other monies of the municipality or district, and interest earned remains with the revenues available for appropriation. No more can be appropriated in a given year than the amount of principal and interest due for repayment in that year. G.L. c. 44, § 53J.

Any surplus remaining after such debt is repaid shall belong to any enterprise fund established under G.L. c 44, § 53F½ that the improvement for which the betterments or special assessments are assessed is part of, or, if no such enterprise fund is established, to the general fund of the city, town or district.

B. Enterprise Fund

If an enterprise fund has been adopted under G.L. c. 44, § 53F½ for the capital improvement or facility for which the assessments are made, the revenue belongs to the enterprise.

C. Estimated Sewer Assessments

The revenue from estimated sewer assessments made under G.L. c. 83, § 15B is reserved for appropriation to pay for the cost of constructing the facility for which the assessments are made or the debt service on the facility.

D. Park Betterments

If debt was issued to finance the laying out of parks under G.L. c. 45, betterment payments are credited to a special revenue fund that must be applied to pay such debt service. G.L. c. 45, § 6.

E. Sewers Built Under a Comprehensive Water Resources Management Plan

Under G.L. c. 83, § 1G, a city/town with a comprehensive water resources management plan (CWRMP) under review or approved by the department of environmental protection may establish and maintain a separate account into which it may collect and deposit and expend funds from eligible property owners for the difference in cost between a conventional subsurface wastewater disposal system as required in 310 CMR 15.00, et seq. and the cost of a subsurface wastewater disposal system designed to reduce the nitrogen discharge from said system. Funds from this account may be used only for the purpose of the construction, maintenance and operation of said wastewater treatment and collection works and shall be applied to the costs of connection and/or betterment assessed to the property in question.

Attachment 1
BETTERMENTS AND SPECIAL ASSESSMENTS
Responsibilities of Parties

I. City, Town or District (City/Town Council, Town/District Meeting)

- A. Accepts any applicable local option provisions.
- B. Authorizes assessments for water and sewer system improvements.
- C. Determines assessment method(s) and percentage of costs to be assessed for some improvements.

II. Assessing Board (Selectmen, City/Town Council, Water/Sewer/Road Commissioners)

- A. Issues order to assess betterments/special assessments for particular project.
- B. Records assessment order and other required information at Registry of Deeds.
- C. Determines benefit and makes assessments on parcels after project completed.
- D. Certifies list of assessments to the Board of Assessors.
- E. Grants or denies applications for abatement.
- F. Suspends or extends time for payment on assessments on vacant parcels until built upon or for a fixed period of time.
- G. Enters into deferral and recovery agreement if property owner is eligible for a deferral under G.L. c. 59 § 5[41A].
- H. Divides assessments proportionately if parcel assessed is subsequently subdivided.
- I. Reassesses assessments under certain conditions.

III. Board of Assessors

- A. Commits list of assessments to Collector.
- B. Apportions assessments with or without request of property owner.
- C. Processes abatements and issues abatement certificate only when notified to do so by Assessing Board.
- D. Issues special warrant if property owner requests to prepay apportioned assessment in full or in part.

IV. Tax Collector

- A. Mails assessment notices.
- B. Certifies unpaid/unapportioned assessments to Assessors for addition to annual real estate tax.
- C. Has same powers and duties with respect to collection of assessments as with real estate taxes.

V. Property Owner

A. Generally, has no personal liability for assessment which is a lien on property.

B. Pays bill in full without interest within 30 days of commitment

or

Requests apportionment of unpaid assessment and pays annual installments, with interest, until assessment paid in full.

C. May file application for abatement with Assessing Board.

D. May appeal denial of abatement to Superior Court or County Commissioners.

Attachment 2
BETTERMENTS AND SPECIAL ASSESSMENTS
Schedule of Events

1. City/Town/District takes action required by law to impose assessments such as accepting statutes, authorizing assessments for system, deciding on method for making assessments and on percentage of costs to be assessed.
2. Assessing Board records assessment order and other required information at Registry of Deeds within 90 days of order for betterments under G.L. c. 80 or forthwith for water, sewer and sidewalk assessments, unless the deferred recording procedure applies and is elected.
3. Assessing Board determines benefit and makes assessments within 6 months of project completion for betterments under G.L. c. 80 or within a reasonable time for water, sewer and sidewalk assessments.
4. Assessing Board certifies assessments to the Assessors within a reasonable time after making them.
5. The Assessors commit the assessments to the Collector forthwith.
6. The Collector mails the assessment notices.
7. The assessments are due and payable in full within 30 days after the bills are mailed unless the property owner requests an apportionment. In that case, the assessments are payable in a maximum of 20 installments with interest unless the city/town has adopted one of the alternative apportionments. (See IGR Section IV-B above.)
8. Assessing Board records assessment order and other required information at Registry of Deeds if the deferred recording procedure applies and is elected.
9. The property owner has 6 months from the date the assessment notices are mailed to file an application for an abatement with the Assessing Board and/or to file an application for a deferral of the assessments.
10. The Assessing Board must notify the property owner within 10 days of making a decision to grant or deny the abatement request.
11. If the Assessing Board acts on the abatement application within 4 months after it is filed, the property owner has 30 days to file an appeal with the Superior Court or the County Commissioners.
12. If the Assessing Board did not act on the abatement application within 4 months after it is filed, the property owner has 60 days to file his/her appeal with the Superior Court or the County Commissioners.
13. If the property owner files the appeal with the County Commissioners, the property owner must notify the Assessing Board or City/Town Clerk within 10 days of filing the appeal.

14. Before the Board of Assessors completes the annual tax assessment, the Collector certifies to the Assessors the amount of any assessments committed on or before January 1 that are unapportioned and unpaid, with interest calculated from the 30th day after the mailing of the bills to October 1.
15. The Assessors add the apportioned and unapportioned assessments, including interest, to the annual tax bill.
16. In subsequent years, the Assessors add the apportioned amount, including interest on the unpaid balance from October 1 to October 1.

Attachment 3
EXAMPLE - Betterment or Special Assessment
Payment - Apportionment – Interest

- Sewer assessment \$4000, bills mailed April 1, 2021- Due May 1, 2021.
- Payment of \$1000 made April 21, 2021 (no interest due on \$1000) leaving balance of \$3000.
- On September 1, 2021, owner wants to pay an additional \$1000. Interest is owed on \$1000 from May 1, 2021 to September 1, 2021.
- **Unpaid balance of \$2000** must be added to a tax **no later than FY 2023 actual tax bill** in fall 2022 with interest. (Note assessors **may add** unpaid assessments originally committed during calendar year 2021 to **FY2022 actual tax bill** so long as property owners had at least 30 days to pay full assessment without incurring interest, as is the case here.)
- If entire unpaid balance of \$2000 is added to FY2022 tax bill, interest on that balance would run from May 1, 2021 to October 1, 2021. (If added to the FY2023 tax bill instead, interest would run from May 1, 2021 to October 1, 2022).
- **Alternatively**, the \$2000 unpaid balance can be apportioned for up to 20 years, at property owner's direction, or if no directive is given, at the assessors' option.
- **If \$2000 balance is apportioned for 10 years**, assessors must add first \$200 no later than **FY2023** actual tax bill with interest on unpaid balance of \$2000 from May 1, 2021 to October 1, 2022. In second year, \$200 would be added to FY2024 bill with one year's interest (October 1, 2022 to October 1, 2023) on unpaid balance of \$1800 (\$2000 - \$200) and so on until the final \$200 portion is added to **FY2032** tax bill with one year's interest (October 1, 2030 to October 1, 2031) on the unpaid balance of \$200. (Again, assessors may add apportioned assessments originally committed during calendar 2021 to FY2022 tax bill as long as property owners had at least 30 days to pay the full assessment without incurring interest, as is the case here. If first \$200 was added to FY2022 bill instead, interest on unpaid balance of \$2000 would run from May 1, 2021 to October 1, 2021, etc. until final portion is added to FY2031 tax bill with one year's interest on unpaid balance of \$200 from October 1, 2029 to October 1, 2030).
- **On August 20, 2023, property owner decides to prepay in full.** Assessors commit remaining unpaid balance with interest from October 1, 2022 to August 20, 2023.
- **If instead of prepaying in full, the property owner had decided to make a partial prepayment of \$500**, the assessors would commit \$500 with interest on that amount from October 1, 2022 to August 20, 2023. The \$500 prepayment reduces the unpaid balance but is applied to the portions due in the final years of the original 10-year payment period. **In this case, that credit would reduce the payment period by 2 years by eliminating the \$200 portions that would otherwise be due in the ninth and tenth year of the apportionment period, and it would reduce the \$200 portion due in the eighth year to \$100.** In the meantime, the assessors would continue to add the new reduced balance in \$200 portions to yearly tax bills, but with committed interest on that balance.

Attachment 4 - Betterment Payment Schedules
DEFAULT BETTERMENT PAYMENT SCHEDULE
G.L. Ch. 80 § 13

First apportionment added to tax assessed as of January 1 of year betterment committed

LOAN AMOUNT		\$10,000		
TERM		20 years		
BILLS MAILED		4/1/2021		
A	B	C	D	E
FISCAL YEAR	UNPAID BALANCE	INTEREST (x%) (on B)	PRINCIPAL	ADD TO TAX BILL (C + D)
2022	10,000	5/1/2021 to 10/1/2021	500	
2023	9,500	10/1/2021 to 10/1/2022	500	
2024	9,000	10/1/2022 to 10/1/2023	500	
2025	8,500	10/1/2023 to 10/1/2024	500	
2026	8,000	10/1/2024 to 10/1/2025	500	
2027	7,500	10/1/2025 to 10/1/2026	500	
2028	7,000	10/1/2026 to 10/1/2027	500	
2029	6,500	10/1/2027 to 10/1/2028	500	
2030	6,000	10/1/2028 to 10/1/2029	500	
2031	5,500	10/1/2029 to 10/1/2030	500	
2032	5,000	10/1/2030 to 10/1/2031	500	
2033	4,500	10/1/2031 to 10/1/2032	500	
2034	4,000	10/1/2032 to 10/1/2033	500	
2035	3,500	10/1/2033 to 10/1/2034	500	
2036	3,000	10/1/2034 to 10/1/2035	500	
2037	2,500	10/1/2035 to 10/1/2036	500	
2038	2,000	10/1/2036 to 10/1/2037	500	
2039	1,500	10/1/2037 to 10/1/2038	500	
2040	1,000	10/1/2038 to 10/1/2039	500	
2041	500	10/1/2039 to 10/1/2040	500	

First apportionment added to tax assessed as of January 1 of year after betterment committed

LOAN AMOUNT	\$10,000			
TERM	20 years			
BILLS MAILED	4/1/2021			
A	B	C	D	E
FISCAL YEAR	UNPAID BALANCE	INTEREST (x%) (on B)	PRINCIPAL	ADD TO TAX BILL (C + D)
2023	10,000	5/1/2021 to 10/1/2022	500	
2024	9,500	10/1/2022 to 10/1/2023	500	
2025	9,000	10/1/2023 to 10/1/2024	500	
2026	8,500	10/1/2024 to 10/1/2025	500	
2027	8,000	10/1/2025 to 10/1/2026	500	
2028	7,500	10/1/2026 to 10/1/2027	500	
2029	7,000	10/1/2027 to 10/1/2028	500	
2030	6,500	10/1/2028 to 10/1/2029	500	
2031	6,000	10/1/2029 to 10/1/2030	500	
2032	5,500	10/1/2030 to 10/1/2031	500	
2033	5,000	10/1/2031 to 10/1/2032	500	
2034	4,500	10/1/2032 to 10/1/2033	500	
2035	4,000	10/1/2033 to 10/1/2034	500	
2036	3,500	10/1/2034 to 10/1/2035	500	
2037	3,000	10/1/2035 to 10/1/2036	500	
2038	2,500	10/1/2036 to 10/1/2037	500	
2039	2,000	10/1/2037 to 10/1/2038	500	
2040	1,500	10/1/2038 to 10/1/2039	500	
2041	1,000	10/1/2039 to 10/1/2040	500	
2042	500	10/1/2040 to 10/1/2041	500	

EXAMPLE

BETTERMENT OR SPECIAL ASSESSMENT PAYMENT SCHEDULE - *Semi-annual Tax Payment System* **

Total Assessment:	\$10,000	Interest Rate:	5%
Apportionment Schedule:	20 years	Bills Mailed:	4/1/21
Annual Principal Payment:	\$500		

OPTION 1 - First Apportionment Billed in FY2022

	FY2021	FY2022	FY2023	FY 2024	FY2025
Real Estate Tax	\$2000	\$2100	\$2200	\$2300	\$2400
Special Assessment	0	500	500	500	500
Committed Interest	0	208 (5 months on \$10,000) (5/1/21 to 10/1/21)	475 (1 year on \$9,500) (10/1/21 to 10/1/22)	450 (1 year on \$9,000) (10/1/22 to 10/1/23)	425 (1 year on \$8,500) (10/1/23 to 10/1/24)
TOTAL DUE	2000	2808	3175	3250	3325
First Half Payment	1000	1758	2075	2100	2125
Second Half Payment	1000	1050	1100	1150	1200

OPTION 2 - First Apportionment Billed in FY2023 (must begin billing no later than bill for taxes assessed as of January 1, 2022)

	FY2022	FY2023	FY2024	FY2025	FY2026
Real Estate Tax	\$2000	\$2100	\$2200	\$2300	\$2400
Special Assessment	0	500	500	500	500
Committed Interest	0	708 (17 months on \$10,000) (5/1/21 to 10/1/22)	475 (1 year on \$9,500) (10/1/22 to 10/1/23)	450 (1 year on \$9,000) (10/1/23 to 10/1/24)	425 (1 year on \$8,500) (10/1/24 to 10/1/25)
TOTAL DUE	2000	3308	3175	3250	3325
First Half Payment	1000	2258	2075	2100	2125
Second Half Payment	1000	1050	1100	1150	1200

**** Betterment Assessment May be Included in Preliminary Bill if Issued. See DLS Annual Tax Bill IGRs for additional information.**

EXAMPLE

BETTERMENT OR SPECIAL ASSESSMENT PAYMENT SCHEDULE - Quarterly Tax Payment System

Total Assessment:	\$10,000	Interest Rate:	5%
Apportionment Schedule:	20 years	Bills Mailed:	4/1/21
Annual Principal Payment:	\$500		

FIRST APPORTIONMENT BILLED IN FY2022

		FY2021	FY2022	FY2023	FY2024	FY2025
Real Estate (RE) Tax		\$2000	\$2100	\$2200	2300	2400
Special Assessment		0	500	500	500	500
Committed Interest		0	208 (5 mos. on \$10,000) (5/1/21 to 10/1/21)	475 (1 year on \$9,500) (10/1/21 to 10/1/22)	450 (1 year on \$9,000) (10/1/22 to 10/1/23)	425 (1 year on \$8,500) (10/1/23 to 10/1/24)
TOTAL DUE		2000	2808	3175	3250	3325
OPTION 1						
	Q1		500	525	550	575
Preliminary - 50% Prior Year RE Tax	Q2		500	525	550	575
Actual – Add Current Year Assessment/Interest	Q3		904	1062.50	1075	1087.50
	Q4		904	1062.50	1075	1087.50
OPTION 2						
	Q1		854	1012.50	1025	1037.50
Preliminary - 50% Prior Year RE Tax Plus Current Year Assessment/Interest	Q2		854	1012.50	1025	1037.50
Actual	Q3		550	575	600	625
	Q4		550	575	600	625
OPTION 3						
	Q1		500	702	793.75	812.50
Preliminary - 50% Prior Year TOTAL DUE	Q2		500	702	793.75	812.50
Actual – Add Current Year Assessment/Interest	Q3		904	885.50	831.25	850
	Q4		904	885.50	831.25	850

NOTE: Examples use 50% of Prior Year RE Tax for preliminary tax but may increase to reflect 50% of annual 2.5% levy limit increase, overrides & exclusions. See DLS Annual Tax Bill IGRs for additional information.

FIRST APPORTIONMENT BILLED IN FY2023 (Must Begin Billing No Later Than Bill for Taxes Assessed as of January 1, 2022)

		FY2022	FY2023	FY2024	FY2025	FY2022
Real Estate (RE) Tax		\$2000	\$2100	\$2200	2300	2400
Special Assessment		0	500	500	500	500
Committed Interest		0	708 (17 months on \$10,000) (5/1/2021 to 10/1/2022)	475 (1 year on \$9,500) (10/1/2022 to 10/1/2023)	450 (1 year on \$9,000) (10/1/2023 to 10/1/2024)	425 (1 year on \$8,500) (10/1/2024 to 10/1/2025)
TOTAL DUE		2000	3308	3175	3250	3325
OPTION 1						
	Q1		500	525	550	575
Preliminary - 50% Prior Year RE Tax	Q2		500	525	550	575
Actual – Add Current Year Assessment/Interest	Q3		1154	1062.50	1075	1087.50
	Q4		1154	1062.50	1075	1087.50
OPTION 2						
	Q1		1104	1012.50	1025	1037.50
Preliminary - 50% Prior Year RE Tax Plus Current Year Assessment/Interest	Q2		1104	1012.50	1025	1037.50
Actual	Q3		550	575	600	625
	Q4		550	575	600	625
OPTION 3						
	Q1		500	827	793.75	812.50
Preliminary - 50% Prior Year TOTAL DUE	Q2		500	827	793.75	812.50
Actual – Add Current Year Assessment/Interest	Q3		1154	760.50	831.25	850
	Q4		1154	760.50	831.25	850

NOTE: Examples use 50% of Prior Year RE Tax for preliminary tax but may increase to reflect 50% of annual 2.5% levy limit increase, overrides & exclusions. See DLS Annual Tax Bill IGRs for additional information.