Comprehensive Wastewater Management Plan

PHASE V

CAPITAL COST RECOVERY PLAN

Project No. 222474

Town of Tyngsborough
Sewer Commission

December 2010

WOODARD &CURRAN

980 Washington Street, Suite 325
Dedham, MA 02026
(781) 251 - 0200

woodardcurran.com
COMMITMENT & INTEGRITY DRIVE RESULTS

TABLE OF CONTENTS

SECTION		PAGE NO.
Executive Summary		**ES-1**
1.	**INTRODUCTION**	**1-1**
1.1	Project Update	1-1
1.2	Evaluation and Determination of Benefits of Legal Cost Recovery Options	1-1
1.2.1	Property Taxes / General Funds / Expenditures	1-1
1.2.2	Betterments / Sewer Assessments	1-2
1.2.3	Privilege Fees	1-4
1.2.4	Actual Connection to the Municipal System Charges	1-5
1.2.5	District Improvement Financing (DIF)/Tax Increment Financing (TIF)	1-5
1.2.6	User Charges/Fees	1-5
1.2.7	Permit and License Fees	1-6
1.2.8	General Funding Information	1-6
1.2.9	MassWorks Infrastructure Funding Frequently Asked Questions (FAQ)	1-7
2.	**PRESENTATION OF EVALUATION RESULTS, DISCUSSION AND REFINEMENT**	**2-1**
2.1	Overview of Existing Cost Recovery Statutes and Guidance	2-1
2.1.1	Town's Current Method of Assessing Betterments / Connection Fees	2-1
2.1.2	Project-By-Project By-Law Cost Recovery	2-1
2.2	Economic Development Focus – New Town Center	2-17
2.2.1	Cost Association Strategies	2-17
2.3	Recommendations	2-18
3.	**DEVELOP COST RECOVERY PROGRAM**	**3-1**
3.1	Draft Warrant Articles	3-1
3.1.1	Local Cost Recovery By-Law	3-1
3.1.2	Phase 1 Design Services	3-2
3.1.3	Phase 2 Design Services	3-2
3.2	Cost Estimates for Sewer Construction from Phase IV CWMP	3-3
3.2.1	Capital Project Costs	3-3
3.2.2	Proforma Debt Services Schedules	3-4
4.	**FUNDING SUMMARY**	**4-1**
4.1	CWMP Funding Summary	4-1
4.2	Grant/Loan Administration	4-1
4.3	Future Loan Administration	4-1
5.	**PUBLIC PARTICIPATION**	**5-1**

LIST OF TABLES

TABLE	PAGE NO.
Table 2-1 Sewer Phase 1 East	2-2
Table 2-2 Sewer Phase 1 West	2-3
Table 2-3 Sewer Phase 2	2-6
Table 2-4 Sewer Phase 3	2-7
Table 2-5 Sewer Phase 4	2-10
Table 2-6 Sewer Phase 5	2-12
Table 2-7 Sewer Phase 6	2-15
Table 3-1 Phase 1 Sewer Design and Bidding Costs	3-2
Table 3-2 Phase 2 Sewer Design Costs	3-2
Table 3-3 Phase IV CWMP Capital Costs	3-3
Table 3-4 Phase 1 Sewer Construction Costs	3-4
Table 3-5 Phase 2 Sewer Construction Costs	3-4
Table 5-1 Distribution List	5-3

LIST OF FIGURES

FIGURE		PAGE NO.
Figure 2-1:	Land Use Phase 1 East	2-4
Figure 2-2:	Land Use Phase 1 West	2-5
Figure 2-3:	Land Use Phase 2	2-8
Figure 2-4	Land Use Phase 3	2-9
Figure 2-5:	Land Use Phase 4	2-11
Figure 2-6:	Land Use Phase 5 West	2-13
Figure 2-7	Land Use Phase 5 East	2-14
Figure 2-8:	Land Use Phase 6	2-16

APPENDICES

Appendix A: Long Pond Betterment Information

Appendix B: Town of Tyngsborough's *"Sewer Assessments and User Charge System"*

Appendix C: CWMP / FEIR MEPA Certificate

Appendix D: Massachusetts General Law Chapter 41, Sections 63 through 65

Appendix E: Massachusetts Department of Revenue, "*Levy Limits: A Primer on Proposition 2½*"

Appendix F: Massachusetts Department of Revenue, "*Proposition 2½ Ballot Questions Requirements and Procedures*"

Appendix G: Massachusetts Department of Revenue, "*Betterments and Special Assessments – Assessment and Collection Procedures*"

Appendix H: Draft Copies of Future Tyngsborough Town Meeting Articles Accepted Betterment Article

Appendix I: Massachusetts General Law Chapter 83, Section 17

Appendix J: District Improvement Financing (DIF) and Tax Increment Financing (TIF)

Appendix K: Executive Summaries from Tyngsborough Economic Development Plans

Appendix L: CWMP / FEIR Sewer Phase Cost Estimates

Appendix M: Massachusetts State Revolving Fund Applications CY2010 Cover Letter

EXECUTIVE SUMMARY

INTRODUCTION

The Town of Tyngsborough's recognition of the need to investigate options relative to the future sewer infrastructure within Town was realized after the completion of the Comprehensive Wastewater Management Plan and Final Environmental Impact Report (CWMP/FEIR), EEA No. 11788. After a series of meetings and presentations with the Tyngsborough Sewer Commission, and preplanning for future Town Meeting actions, the Commission worked with Woodard & Curran to develop a working information document for the Town's municipal wastewater infrastructure improvements based on the Final Recommended Plan in the CWMP. This Phase V CWMP is the workbook developed to identify options for capital cost recovery for future sewer construction of the Needs Areas identified and approved in the CWMP.

The Town of Tyngsborough's (the Town's) wastewater system was initially developed in the 1970s, with the two original phases east of the Merrimack River around Mascuppic Lake. The sewer system in this area was constructed using federal and state grants and provided sewer services to residences around the Lake that were deemed to be degrading the water quality/resources in the Lake. The Town entered into an Intermunicipal Agreement with the Town of Dracut to transmit its wastewater through Dracut's wastewater system to be treated and discharged at the Lowell Regional Wastewater Utility (LRWU) treatment plant located in Lowell. This small, original section of sewers has continued to grow over the decades following the original construction and today, the Town has identified additional needs for sewers throughout the area east of the River through its CWMP.

In the early 1990s, additional sewers were extended into the Town for specific needs. Initially, the sewer extension into Chelmsford was for a private development. Another area located west of the River, the Charles George Landfill, a Federal Superfund Cleanup Site, was in need of sewers to transport industrial strength wastewater generated at the site. The federal government extended sewer north from Flint's Corner to the Charles George Landfill. The Town entered into an Intermunicipal Agreement with Chelmsford to send the wastewater to Chelmsford for transport to the Lowell Regional Wastewater Utility (LRWU) for treatment and disposal.

In the 1970s sewers were extended to bring the Lowell Vocational School on-line through a sewer extension directly to the Lowell WWTF. This extension connects directly with the City's wastewater system and provides service to several other properties located along the service route. The original sewer extension to the school was done without the benefit of an Intermunicipal Agreement. Subsequently, the Vesper Country Club and Stonehedge Inn filed a Sewer Extension Permit to extend the sewer from the school north to their facilities. At that time, the Intermunicipal Agreement was negotiated between the City of Lowell and Tyngsborough.

In the late 1980s, the Town undertook a sewer project in the Long Pond area, directly abutting the Town of Dracut border on the northeast section of Town. In December 1989, a Betterment Assessment Plan for the Long Pond Sewer project was recorded. This was the first and only time a Betterment Plan was assessed for capital cost recovery in Town. Refer to Attachment A for correspondence relative to this betterment phase.

Currently the Board of Sewer Commissioners recovers capital costs for sewer projects – connections into existing sewer infrastructure through connection fees, inspection fees and other fees as appropriate. The

Town has not undertaken a new, major sewer project involving capital construction in a number of years; in part due to the mandate from the state that the Town complete a CWMP before applying for any municipal sewer extensions. There have, however, been several developers in Town that have completed new sewer infrastructure that has tied into the existing system. All users of the sewer system are assessed user charges according to the rules and regulations outlined in the *Sewer Assessments and User Charge System, February 13, 2003*. Refer to Attachment B. Residents' services are charged a flat rate based on an Equivalent Dwelling Unit, while commercial and industrial users are required to be metered and are charged based on water usage.

In the fall of 1998, Tyngsborough began its Comprehensive Wastewater Management Planning with the filing of an Environmental Notification Form (ENF). The Secretary of the Executive Office of Environmental Affairs determined that the Project required an Environmental Impact Report and divided the planning into four phases: 1) Phase I Needs Analysis; 2) Phase II Screening of Alternatives; 3) Phase III Draft Comprehensive Wastewater Management Plan and Draft Environmental Impact Report; and 4) Phase IV Final Comprehensive Wastewater Management Plan and Final Environmental Impact Report (CWMP/FEIR). All reports were filed under a Special Procedure through the Massachusetts Environmental Policy Act (MEPA) Office.

The CWMP/FEIR was approved with a MEPA Certificate on January 30, 2009. Refer to Attachment C. The estimated cost for the Final Recommended Plan in the Phase IV Report is $39.1 Million (Present Day Cost based on an Engineering News Record Construction Cost Index of 8140 for May 2008). The Phase IV Report identified a variety of potential funding sources to implement the Final Plan with brief summaries of each. Based on the individual Needs Areas, land uses within each Needs Area and a host of other issues specific to each Need Area, there is no clear picture of how the Town can begin the process of implementing sewering and recovering costs in a fair and equitable fashion. This Phase V Report addresses a detailed capital cost recovery plan for each of the Needs Areas included in the CWMP. The Report summarizes the options available and the legal and institutional issues that need to be addressed before moving forward with implementation of sewers in Needs Areas. This Report contains recommendations for the Institutional Arrangements necessary to start this process.

1. INTRODUCTION

1.1 PROJECT UPDATE

The Phase IV CWMP/FEIR was approved with a MEPA Certificate on January 30, 2009. The state-approved Report is a 20-year planning document delineating the Town's wastewater needs. Areas proposed for sewers are summarized based on their specific locations in relation to the Town's existing intermunicipal connections and resultant treatment at the Lowell Regional Wastewater Utility (LRWU) treatment facility and include estimated flows and number of potential new users. While the Phase IV Report contains information relating to the potential users and estimated costs, most of the information is general in nature. The Phase IV Report is not a preliminary design report but rather an insight into what the Town can expect it will need to provide over the next 20 years. The estimated cost for the Final Recommended Plan in the Phase IV Report is $39.1 Million (Present Day Cost based on an Engineering News Record Construction Cost Index of 8140 for May 2008). Although the Phase IV Report summarized typical funding sources/capital cost recovery options for the geographic region, it did not contain specific information for the Town to consider and utilize to provide for capital cost recovery for each individual Needs Area.. Capital costs include all costs incurred on the project from design, engineering, construction, fiscal, legal and administrative. This Phase V Report addresses a detailed capital cost recovery plan for each of the Needs Areas included in the CWMP. The Report also summarizes the options available and legal and institutional issues that need to be addressed.

1.2 EVALUATION AND DETERMINATION OF BENEFITS OF LEGAL COST RECOVERY OPTIONS

The following is a detailed description of local share cost recovery scenarios that the Town may consider when preparing to implement sewer design and construction of the Needs Areas contained in the CWMP. Each alternative delivers specific benefits that may or may not be appropriate depending on land uses and planning, such as for economic development, in the Needs Areas. Recommendations will be made as to which cost recovery alternative best matches both the needs of the Town and property owners. The following options for cost recovery are addressed in this Report.

Property Taxes / General Funds	Betterments / Sewer Assessments
Privilege Fees	Individual Site Connection Charges/Fees to Municipal System
District Improvement Financing (DIF)	User Charges/Fees
Permit and License Fees	

1.2.1 Property Taxes / General Funds / Expenditures

State statutes allow the Town of Tyngsborough Town the ability to raise revenue through assessing real and property taxes. The passage of Proposition 2 ½ (Massachusetts General Law Chapter 59, Section 21C) is a Massachusetts Statute passed in 1980 that took effect in 1982. This statute places constraints on the amount of the levy raised by a city or town, basically a 2.5 percent annual limit on the increase in taxes that a municipality is allowed to levy. Proposition 2 ½ established two forms of levy limits:

- Levy Ceiling -The total annual property tax revenue raised by a municipality shall not exceed 2.5% of the assessed value of all taxable property contained in it. Property taxes can exceed the levy ceiling only if the community passes a capital exclusion, a debt exclusion or a special exclusion.

- Levy Limit - The annual increase of property tax cannot exceed 2.5%, plus the amount attributable to taxes that are from new real property. This levy limit can only be exceeded if the community passes a capital exclusion, a debt exclusion or a special exclusion.

In Needs Areas where there is a benefit to the general public with the construction of sewer infrastructure, capital cost recovery can be attained through an increase in the Town's taxes. For example, along Middlesex Road in Needs Area 1 West, the proposed Town Center area would provide benefit to the entire Town and thus could be paid for through the general tax base. There are also instances where this option would be included as partial cost recovery with another option detailed further in this section. It is vital that a computation of the benefit percentage be done in order to determine a fair and equitable percentage of costs to be attributed to this option.

The Massachusetts Department of Revenue, Division of Local Services has published a booklet that provides a complete overview of the taxing process and is included in Attachment E. This "*Levy Limits: A Primer on Proposition 2 ½*" outlines the law and the provisions that a community needs to understand before turning to this option for capital cost recovery. The parameters of an "override" or actual means of superseding the existing law are also discussed. With an override, a community would be able to recover costs with a vote for a debt exclusion or a capital outlay expenditure exclusion.

Attachment F contains additional information including the Massachusetts Department of Revenue, Division of Local Services publication "*Proposition 2 ½ Ballot Questions Requirements and Procedures*" which details the types of ballot questions, referendum procedures, relationship to appropriations, role of Mass DOR and sample forms. There are also documents identifying successful Proposition 2 ½ overrides in Massachusetts.

1.2.2 Betterments / Sewer Assessments

A betterment/sewer assessment is a special property tax for a benefit furnished from the construction of a public improvement and may be assessed upon the land benefited in proportion to the amount of such benefit. Wherever a part of a community benefits from a public improvement (water, sewer, sidewalk), special property taxes may be assessed to those property owners that are benefited from the improvement. The betterment may be in whole (100%) or can be in part (percentage less than 100%). Each property receiving the improvement can be assessed a proportionate share of the cost of the improvement. This cost can be paid in full at the time the improvement (benefit) is operational or can be apportioned over a period of up to 20 years.

The two methods of betterments are described in the paragraphs below.

<u>Frontage Method (also called Fixed Uniform Rate Method)</u>

Assessment costs are divided according to the amount of frontage and/or area the property has on the street or by the way in which the pipeline is constructed. This method assumes that larger properties will contribute more cost to the construction. With this method, more pipeline abutting the property is equated to a increase in the cost of construction to serve that property and subsequently a larger

share of the overall project cost to better this particular property than others that are also due to be bettered.

Uniform Unit Method

Assessment costs are calculated by dividing the project cost by the total number of "residential units" abutting the project in this manner:

- Each sewer unit is equal to a single-family residence and is called an equivalent dwelling unit (EDU).
- Every property is assessed, including developable vacant parcels.
- A residential unit is defined as the quantity of wastewater flow expected from the unit. This may be based on average water meter data or on assumed flow based on a standard such as the Massachusetts Sanitary Code Title 5 regulations.
- For multiple-family residential properties, the number of residential units is determined based on a factor and/or multiplier such as the number of bedrooms, total number of rooms, or water use (For example, more than 3 rooms = 1 unit, less than 3 rooms = ½ unit).
- Non-residential properties are assessed based on existing zoning regulations and best use. Residential equivalency can be determined by floor space (4000 s.f. = 1 sewer unit) or total developable area, or by comparing water use to the residential water use basis. For undeveloped properties, determined by likely use, high wastewater demand businesses are considered best use (e.g. restaurants).

Note: An unrecorded apartment in a residential unit impacts the total count. A single developed lot must be assessed as two units if it can be further subdivided within the zoning. Subdivision may not always be fair due to environmental restrictions on portions of the parcel (e.g. wetlands)

The Sewer Commission made the decision to move forward with a draft betterment by law based on the Uniform Unit Method. This is the most fair and equitable method and is similar to how the Commission now charges user/connection fees.

The only time that Tyngsborough has utilized the betterment/sewer assessment cost recovery option was in the late 1980s in the Long Pond sewer area. It was implemented through a town meeting vote for the specific area. Attachment A contains documents relative to this scenario.

The publication by the Massachusetts Department of Revenue, Division of Local Services entitled, "*Betterments and Special Assessments-Assessment and Collection Procedures*" detail this process in its entirety, including nature of assessments, authority to levy assessments, procedures for assessment and collection, remedies for both property owners and administrators and accounting methods. The publication also includes samples schedules and forms. This is included in Attachment G.

Woodard & Curran has had multiple discussions with the Sewer Commission over the potential for capital cost recovery. A draft betterment by-law was developed, vetted with the Commission and reviewed by Town Counsel for new sewers. The by-law was developed for presentation at a future Town Meeting. A Town Meeting article to adopt the provisions of Massachusetts General Laws Chapters 80

and 83 was also prepared and proposed for a future town meeting. Copies of all proposed town meeting articles, as well as the draft betterment article, are included in Attachment H. In September 1983, the Town voted and accepted MGL Chapter 83, Section 16A-16F, which afforded the Sewer Commission the ability to establish tax liens. In May 2007, the Town voted to accept MGL Chapter 16G-deferral of charges and MGL Chapter 80, Section 13B-deferral and recovery agreements. These are also included in Attachment H.

The Sewer Commission is preparing to conduct a series of public education sessions to present its by-law to Town officials and the general public. The options available under this betterment alternative are to adopt the general by-law as written or to go before Town Meeting with specific betterments for each area being constructed as in the Long Pond case.

Attachment G includes the MassDOR publication, sample betterments, and MGL Chapters 80 and 83.

1.2.3 Privilege Fees

A privilege fee is a mechanism of cost recovery that can be used when a public improvement is extended to a new area and is used to recover the capital costs associated with the new project. This method assigns the costs of the project to those who benefit from the project, rather than assigning it to the entire tax base. Massachusetts General Law, Chapter 83, Section 17, et al. allows the Town to establish a privilege payment system in lieu of or in case a sewer assessment was not applicable at the time the original sewer was constructed.

There are times when a privilege fee is assessed in lieu of a betterment as follows:

Privilege fees are utilized for those properties that do not abut the sewer line, but connect in to the system at a later date. In this case, the privilege assessment shall be due on the date upon which the property connects into the system.

This option is also used when a property that abuts the sewer is connected and at a future date is subdivided. The time of assessment is usually the date when the subdivided parcels connect to the sewer system.

Additionally, if a developer or entity other than the Town, constructs a sewer extension to the municipal system, the Sewer Commission can assess a privilege fee against each property connecting into the system. In Tyngsborough's case, this can only be afforded to those properties identified and approved as Needs Areas in the CWMP/FEIR.

A compensatory privilege fee can be assessed in the case where there is undeveloped property and a betterment was assessed based on a certain number of sewer units and the property actually develops into a number in excess of those originally assessed. This can be utilized in both residential and commercial/industrial cases.

Refer to Attachment I for a copy of MGL Chapter 83, Section 17.

1.2.4 Actual Connection to the Municipal System Charges

Connection fees/charges are costs borne by the user to connect to the municipal system. These costs vary depending on the site specifics and types of connections required. For example, a property that runs parallel to the roadway, has its indoor plumbing located on the wall facing the roadway and its location is close to the sewer in the street with amenable soil conditions will assume a connection cost that is far less than a property that is located a distance away from the sewers, has severe soils or large trees located within the pathway for a connection and has indoor plumbing conditions that need upgrade will cost significantly more. Each property's conditions are individually assessed and charged accordingly. One thing the Town may do to prepare for an area to be sewered is work with local contractors that may be doing a large portion of the connection work to discount costs based on number of jobs to be done-economies of scale.

An additional cost to be borne by the property owner is the abandonment of the existing on site system. Once the sewers are operational in the area and the property owner has hooked into the system, the on site system must be pumped of its contents and the tank either removed or broken up in the ground. Again, these costs will depend on the specific site conditions.

1.2.5 District Improvement Financing (DIF)/Tax Increment Financing (TIF)

DIF and TIF are economic tools that promote redevelopment through public/private partnerships. TIF offers tax breaks to developers and DIF directs tax dollars into targeted redevelopment districts. DIF is authorized by Massachusetts General Laws Chapter 40Q and its implementing regulations 402 CMR 3.00, et seq. Fairly new to Massachusetts, DIF has been implemented in other states with considerable success. A city or town wishing to utilize DIF must first designate a development district and a corresponding development program. The district and program must then be certified by the State Economic Assistance Coordinating Council ("EACC"). TIF is authorized by Massachusetts General Law Chapter 40 Section 59 and its implementing regulations 760 CMR 22.01. This legislation affords landowners to be granted tax exemptions with an agreement with a municipality for a maximum term of 20 years.

In Massachusetts, DIF and TIF are presented through the Smart Growth/Smart Energy principles in a "toolkit" designed to guide a community through the process. With the use of these two programs, communities are able to redevelop areas that have previously blighted or underutilized areas and bring economic development to the area. The Massachusetts Office of Business Development oversees the application process for this option.

Refer to Attachment J for information on these options.

1.2.6 User Charges/Fees

User fees may be used to recover some or all of the capital costs in addition to covering operations and maintenance costs. One benefit of a user fee is that costs can be spread over the entire customer base. The Town collects user fees based on its regulations in "*The Town of Tyngsborough Sewer Assessments and User Charge System*" dated February 13, 2003.

Properties connected to the Town's wastewater system are levied a user charge based upon their proportionate share of the loading imposed on the collection system and treatment works. Loadings are

based on "equivalent dwelling units" or EDUs, or wastewater volumes. For example a typical single family residential EDU is based on 330 gallons per day (gpd), which is based on the Massachusetts Sanitary Code Title 5.

Attachment B contains the regulations contained in "*The Town of Tyngsborough Sewer Assessments and User Charge System*".

1.2.7 Permit and License Fees

These fees are established by a municipality to offset reasonable costs of administering permits, licenses and services rendered in connection with such documents. The Town requires that a written building sewer permit must be obtained before any construction to the sewer system is begun. This applies to all connections-new or existing. The permit requires that an application supplemented with drawings, specifications, plans and profiles and any other pertinent information that the Town may require be submitted and approved. These are detailed in the "*The Town of Tyngsborough Sewer Assessments and User Charge System*". There may be additional permits, licenses and fees that will apply depending on the specific circumstance. For example, a state sewer extension permit may be required. Each area needs to be reviewed for applicability. Refer to Attachment B for a copy of the Town's regulations.

1.2.8 General Funding Information

There are a variety of federal and state grant and loan programs that offer a wealth of information aimed at supporting the financial needs of the Commonwealth's communities. Often, it is a combination of federal, state, local, and private funding and expertise that are leveraged to fulfill goals of the individual community, while also meeting the goals of the funding mechanism's intended purpose.

Programs exist that assist communities with smart growth, economic development, infrastructure costs, preservation of environmental resources, and a variety of other specific municipal purposes.

The following list of Massachusetts municipal funding Programs is intended to assist the Town in identifying and developing the most advantageous source(s) of funding in order to fully implement the proposed projects. A full range of options including United States Department of Agriculture Rural Development, Massachusetts Department of Housing and Community Development Grants and Loan Programs, Executive Office of Energy and Environmental Affairs Grant and Loan Programs, and other local options are listed. The programs included herein may be able to assist the Town in building an affordable solution for future municipal projects and afford the Town the ability to estimate costs to potentially be covered by grants and/or loans, benefit assessments, and the general tax base.

The following is a synopsis of the most utilized programs, most of which are very project specific such as the Massachusetts Brownfield's Grant/Loan, and others less restrictive such as the Department of Housing and Community Development Action Grant Program. There are attributes and prerequisites of some of the major program offerings that Tyngsborough may not immediately qualify for such as the USDA Rural Development Programs. These Programs are based on a having a population of less than 10,000/20,000, with priority going to those communities with populations of 5,000 or less. Applicants with a low median household income (80% or less than the state non-metropolitan average MHI) receive the greater percentage of grants. Tyngsborough's recent designation as a Massachusetts "Green Community" may, also, afford the community funding opportunities.

Once Tyngsborough has a very specific project at hand that requires funding assistance, an appropriate funding program can be identified and researched more comprehensively for applicability and qualification. For example, when the Town is ready to move forward in areas with economic development, such as the new Town Center or areas along Middlesex Road, there may be opportunities to form public/private partnerships with commercial entities. In an instance such as this, the Massachusetts Office of Business Development would be helpful.

The following list is intended to be a tool that the Town will have at its disposal to provide the necessary guidance in choosing a funding mechanism to serve the specific purpose the Town is looking for at that time.

- USDA Rural Development – Community Facility Direct Loans and Grants
- USDA Rural Development Rural Water and Waste Grants and Loans
- Massachusetts Community Development Action Grant (CDAG)
- Community Development Block Grant Program (CDBG)
    a. CDBG's Economic Development Fund (EDF)
    b. CDBG's Community Development Fund I & II
    c. CDBG's Housing Development Support Program (HDSP)
    d. CDBG's Mini-Entitlement Program
- Public Works Economic Development Program (PWED)
- Urban Self- Help Program
- Federal Land and Water Conservation Fund
- Urban Brownfields Site Assessment Program
- Smart Growth Technical Assistance Grant Program
- Massachusetts Office of Business Development
- Miscellaneous Grant and Loan Programs of Massachusetts

In September 2010, Massachusetts consolidated a number of these funding programs into the "MassWorks Infrastructure Program". This is intended to become a one-stop shop for municipalities looking towards public infrastructure financing that supports economic development and job creation. The following is a release from the state with *Frequently Asked Questions* on this consolidation effort:

1.2.9 MassWorks Infrastructure Funding Frequently Asked Questions (FAQ)

What is the Massworks Infrastructure Program? The MassWorks Infrastructure Program provides a one-stop shop for municipalities seeking public infrastructure funding to support economic development and job creation. The Program represents an administrative consolidation of six grant programs:

- Public Works Economic Development (PWED) Grant
- Community Development Action Grant (CDAG)
- Growth District Initiative (GDI) Grants

- Massachusetts Opportunity Relocation and Expansion Program (MORE)
- Small Town Rural Assistance Program (STRAP)
- Transit Oriented Development (TOD) Program.

What Types of Activities Does the Program Support? The MassWorks Infrastructure Program provides public infrastructure grants for publicly owned infrastructure including, but not limited to sewers, utility extensions, streets, roads, curb-cuts, parking facilities, site preparation and improvements on publicly owned land, demolition, pedestrian walkways, and water treatment systems. The program will consider any activity that was previously allowed by any of the aforementioned individual programs.

Why Consolidate These Programs? For the past two fiscal years, the individual program managers have met regularly, coordinated reviews, and shared information on a pilot program basis. That exercise revealed that there is significant value in centralizing the programs and streamlining the grant process.

Reduce the burden on municipalities. Rather than having to "shop around" to different agencies at different times trying to piece together enough resources to advance their objectives, cities and towns will now have a single entry point for state economic development grants, with a single application, and a single solicitation schedule. The streamlining will reduce municipal grant management burdens as well. The MassWorks Infrastructure Program will provide a single draw schedule, single set of grant rules, and a single set of reporting requirements.

Improve government efficiency. Each of these programs is designed to support job creation and economic development, but the programs were administered by different agencies, in different ways, at different times. Consolidating review and evaluation of these programs under the Executive Office of Housing & Economic Development enables the state to ensure that these grants meet their intended purpose to cause an immediate impact on job creation and development in the state. By streamlining the application and review process, the MassWorks Infrastructure Program will reduce duplication, improve accountability, and provide for the most effective management of state resources.

Will This Consolidation Make It More Difficult For Small Communities To Access Grant Funds? No, the program will favor shovel-ready projects of all shapes and sizes. A certain percentage of funds will continue to be reserved for rural communities only, as was previously required by the STRAP Program. However the consolidation presents even greater funding opportunities for shovel ready projects in small communities.

Does This Consolidation Mean There Are Net New Funds To Distribute? Not immediately. Because the consolidation will honor grants that are currently under contract, the 2010 grant round will offer limited funding availability. However, future grant rounds will offer communities abetter chance to fully fund projects that are ready to go. The 5 year capital plan will reveal the anticipated bond authorization for total grant spending issued under the MassWorks Infrastructure Program.

How Will The Consolidation Impact My Existing Grant Contract? It won't. All existing grant contracts will be honored by the contracting agency and will continue to be administered by the agency that originally issued it.

When Will The Massworks Infrastructure Program Open A Funding Round? It is anticipated that the program will offer two annual funding rounds. A primary competitive funding round will be offered in September for projects that are ready to proceed as soon as weather permits during the upcoming construction season. A second competitive round will be held in January to consider projects that were not

ready in September but are now prepared to proceed to construction during the upcoming construction season. **Only those projects that are prepared to proceed to construction in the upcoming spring should apply for consideration.**

Priority for funding will be given to projects that demonstrate consistency with Administration priorities and a reasonable level of shovel-readiness. A guidance document and schedule will be released soon.

What Happens If My Community Receives A Grant Award But The Project Is Not Shovel-Ready By The Required Dates? In order to ensure that the maximum benefit is realized from available grant funds, it is important that grant awards are putting people to work right away.

Projects put forward for consideration in September will be expected to complete permitting and design, secure all necessary rights of way, and obligate all other funding sources by December 1 of that year. Any project that receives an award in September but does not demonstrate shovel-readiness by December lst will lose its funding commitment for that year and will not be eligible to submit the project for funding consideration again until the following September. Funds originally committed during the September round to projects that are unable to demonstrate shovel-readiness by December 1st will be redistributed to other shovel-ready projects during the January funding round.

Projects put forward for consideration in January will be expected to complete permitting and design, secure all necessary rights of way, and obligate all other funding sources by April 1 of that year. Any project that receives an award in January but does not demonstrate shovel-readiness by April lst will lose its funding commitment for that year.

How Will The Consolidation Impact My Pending Grant Application? All pending grant applications, such as STRAP and PWED applications that were solicited over the summer, will be transferred to the MassWorks Infrastructure Program. Applicants will receive notification of the transfer, a request for further information if needed, and a schedule for when decisions will be rendered. STRAP and PWED applications have already been substantially reviewed and those decisions will be rendered in a timely fashion.

Will This Program Consider Commonwealth Capital Program Scores? Yes, Commonwealth Capital scores will be considered as part of the MassWorks Infrastructure Program scoring system. Municipalities seeking state grants are encouraged to submit an FY11 Commonwealth Capital application immediately if they have not yet done so. Additional information on the FY11 Commonwealth Capital Program is available at http://www.mass.gov/commcap.

When Will The Consolidation Take Place? The consolidation is effective immediately. A transition team representing the Executive Office of Housing & Economic Development, Executive Office of Administration & Finance, and the Massachusetts Transportation Department (MassDOT) has been established to ensure that the consolidation is smooth and effective.

Who Will Administer The Consolidated Program? The MassWorks Infrastructure Program will be administered by the Executive Office of Housing & Economic Development in consultation with the Massachusetts Department of Transportation (MassDOT) and the Executive Office for Administration and Finance (ANF).

Where Can I Go For More Information? Please visit www.mass.gov/eohed/infrastructure for additional information. The MassWorks Infrastructure Program will hold information sessions for

municipalities across the state and the schedule will be posted online in the coming weeks. Interested parties are encouraged to attend.

Again, once the Town decides to move forward in sewering a Needs Area from the CWMP/FEIR, a discussion on not only how to assess capital recovery costs, but, also, what, if any, grant/loan programs exist that the specific Needs Area may qualify for should ensue.

A very important item to note is that most funding programs in Massachusetts require a yearly filing of a completed Commonwealth Capital Application (CCA). It is strongly recommended that the Town be proactive and prepare and submit the CY2011 CCA application completed and on file for future use with funding opportunities. The application as well as additional information can be accessed on the state's website at:

http://www.mass.gov/?pageID=gov3subtopic&L=5&L0=Home&L1=Key+Priorities&L2=Job+Creation+%26+Economic+Growth&L3=Clean+Energy+%26+Smart+Growth-Smart+Energy&L4=Commonwealth+Capital&sid=Agov3

The following chapters will outline each Needs Area and its land use with the purpose of identifying alternatives appropriate for capital cost recovery.

2. PRESENTATION OF EVALUATION RESULTS, DISCUSSION AND REFINEMENT

2.1 OVERVIEW OF EXISTING COST RECOVERY STATUTES AND GUIDANCE

Chapter 1 identified the cost recovery options available to the Town and includes a thorough compilation of back-up documentation. The Town will be able to review different methods and their applicability in each of the Need s Areas as it moves towards implementation.

As was mentioned in Chapter 1, the Town has not completed significant sewer construction in quite a few years due to the fact that it was completing its state-mandated CWMP. As part of the CWMP process, the Town was in the position of reviewing an overall assessment of options available as well as developing a standard for betterment options for future use. The last time the Town utilized betterments for cost recovery was during the Long Pond Sewer project in the 1990s-the Town's last major sewer project.

2.1.1 Town's Current Method of Assessing Betterments / Connection Fees

The Sewer Commission has not completed any major sewer projects (sewer extensions) since the Phase I Sewers to connect the high school. Capital costs in Town are assessed through its "*Sewer Assessments and User Charge System*" dated February 13, 2003. According to the system, any person proposing a new connection to the sewer system must obtain a written building sewer permit from the Commission. Once all required supporting documentation is submitted with the permit application, a Tie-In Fee is collected. There have been several iterations of Tie-In Fees established (flat fee) over the years with some included in a Covenant Agreement allowing payment of the Tie-In Fee over 20 years in equal installments. The Commission has also had a one time, up front payment amount that was adjusted based on the Consumer Price Index as of December 31st of the previous year. All commercial/industrial properties connecting into the system were allocated based on a Tie-In Fee set amount per gallon of wastewater generated. These examples are of rates set for connecting into *existing* sewer infrastructure.

Any new connections requiring a Sewer Extension Permit are subject to the building sewer permit fee and a connection/privilege fee based on state land use codes. Privilege fees for commercial/industrial privately funded new construction are based on an allocated amount per gallon of wastewater volume generated.

There are multiple scenarios of fee structures detailed in the Town's "*Sewer Assessments and User Charge System*" dated February 13, 2003. Once decisions are made with regards to future capital cost recovery scenarios, the current user charge system will need to be updated.

The only time that Tyngsborough has utilized a betterment cost recovery option was in the late 1980s in the Long Pond sewer area, which was enacted through a Town Meeting vote for the specific area. Attachment A contains documents relative to this scenario.

The following identifies and describes each of the Needs Areas geographically based on its land use

2.1.2 Project-By-Project By-Law Cost Recovery

The Phase IV CWMP finalized six areas of need, delineated into Sewer Phases. Each phase represents a geographic area of Town with a need for an off-site solution to its wastewater collection and treatment. These six areas are recommended to be sewered and sent for treatment and disposal through one of the

Town's existing three Intermunicipal Agreements to the LRWU. Cost recovery in each of these sewer phases, through the proposed Betterment Plan contained herein, will ultimately depend on the individual land uses within each geographic delineation. For example, if the proposed Betterment Plan is approved through Town Meeting, each parcel will be assessed as detailed in Chapter 1 an "Equivalent Dwelling Unit or EDU". For one single family residential parcel that would equate to 330 units. If the parcel is a two-family residential, then it would equate to two units of the EDU and therefore two betterments. If a commercial parcel utilizes 3,330 gallons per day of water, then it would be assessed 10 betterments (3,330 /330=10). This section details the land uses that the Town Assessor assigned to each parcel included in the sewer phase. The capital cost recovery decision in each area will be based on this land use and is equally based on the base of one residential single family EDU of 330.

Sewer Phase 1

This phase consists of approximately 21,000 feet of gravity sewer, three pumping stations, approximately 4,000 feet of force main, 2,000 feet of low pressure sewer, and two brook crossings. This phase is broken into two delineations – Phase I East and Phase I West due to their geographic locations in Town.

Sewer Phase 1 East is located east of the Merrimack River close to the Hudson, New Hampshire border. Also known as Sunset Park area, this phase contains 85 parcels, with 100 percent of the parcels designated as residential use. Specific land use codes as applicable to this phase are summarized in the following Table 2-1: With the land uses in this Needs Area all falling into a residential category, the "benefit" of the sewer falls within each property owner. Typically this area would be recommended to be funded through 100 percent betterment apportioned equally to each property owner. Figure 2-1 details the land use within Phase I East.

Table 2-1 Sewer Phase 1 East

Number Of Parcels	Land Use	Definition
80	101	Single Family Residential
3	104	Two-Family Residential
1	109	Multiple House Residential
1	132	Undevelopable Land

Sewer Phase 1 West is located west of the Merrimack River in the center of Town. This area runs along Middlesex Road and is the area where the new Town Center is proposed. This phase contains 87 parcels, with 62 percent of the parcels designated as residential use, 18 percent designated as tax exempt parcels, and 12 percent designated as commercial. The remaining parcels are industrial and multiple use designations. Specific land use codes as applicable to this phase are summarized in Table 2-2. This area would be recommended to be funded through a sharing of costs between individual property owners with a portion paid by betterment and a portion on the general tax rate. Once the final land uses are defined in this area, a cost recovery plan can be identified that fairly and equitably apportions out costs to each property owner. Figure 2-2 details the land use within Phase I West.

Table 2-2 Sewer Phase 1 West

Number Of Parcels	Land Use	Definition
1	0	Multi-Use
3	13	Primarily Residential Multi-Use
41	101	Single Family Residential
1	102	Condominium
6	104	Two-Family Residential
1	105	Three-Family Residential
1	106	Accessory Land Residential
1	109	Multiple Houses
1	111	Four-Eight Unit Apartments
2	130	Vacant Developable Land
1	323	Retail – Shopping Center/Mall
2	325	Small Retail and Services Stores
1	332	Retail-Auto Repair Facility
1	343	Commercial Condo
5	390	Vacant Developable Commercial
1	403	Industrial Manufacturing Land
1	424	Electricity Regulating Property
1	430	Telephone Exchange Stations
1	901	Public Service Properties
9	903	Municipalities, Districts
1	904	Colleges, Schools (private)
1	905	Charitable Organizations
2	906	Churches, Synagogues, Temples
1	908	Housing Authority
1	919	MA Reimbursable Land - Other

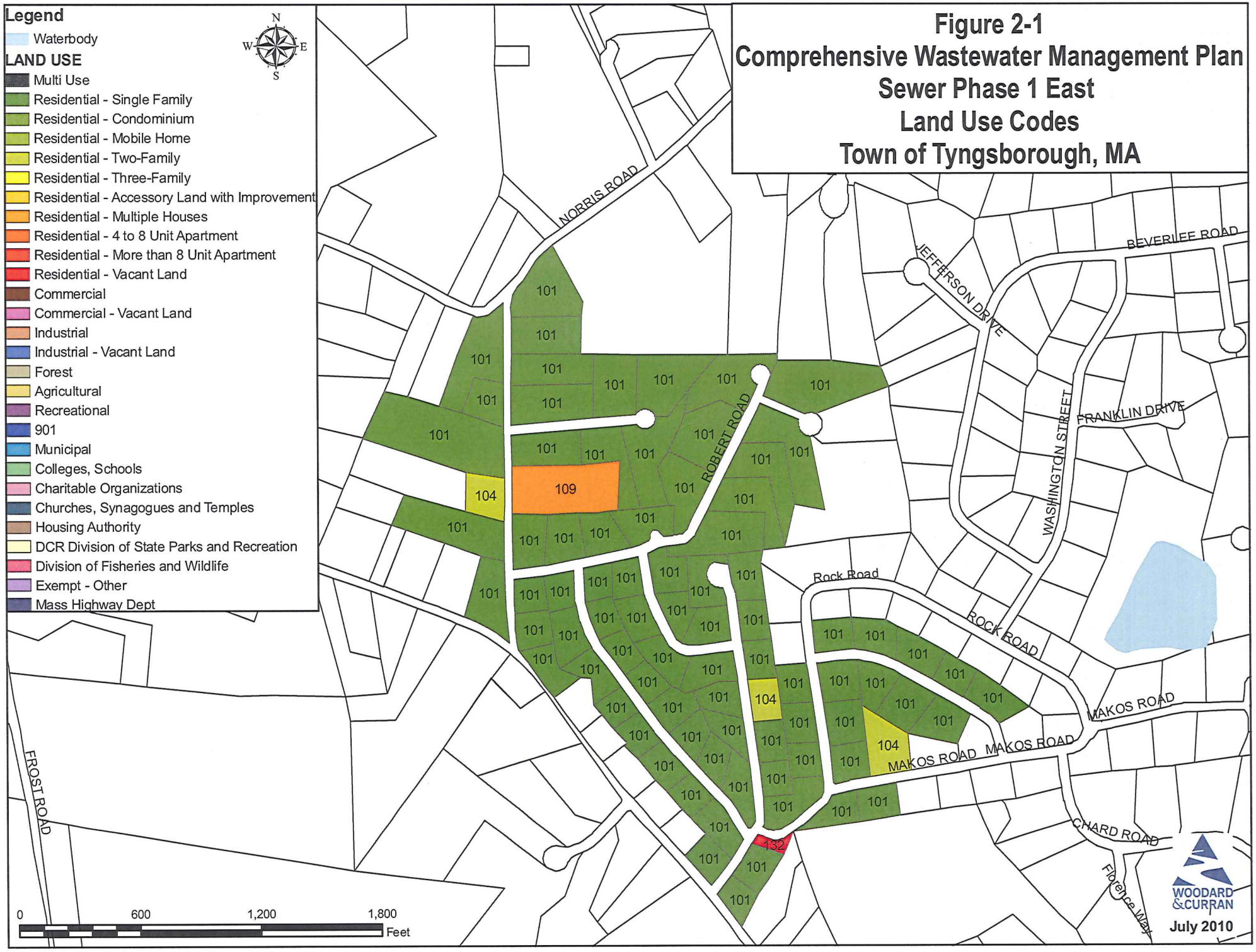


Figure 2-1
Comprehensive Wastewater Management Plan
Sewer Phase 1 East
Land Use Codes
Town of Tyngsborough, MA

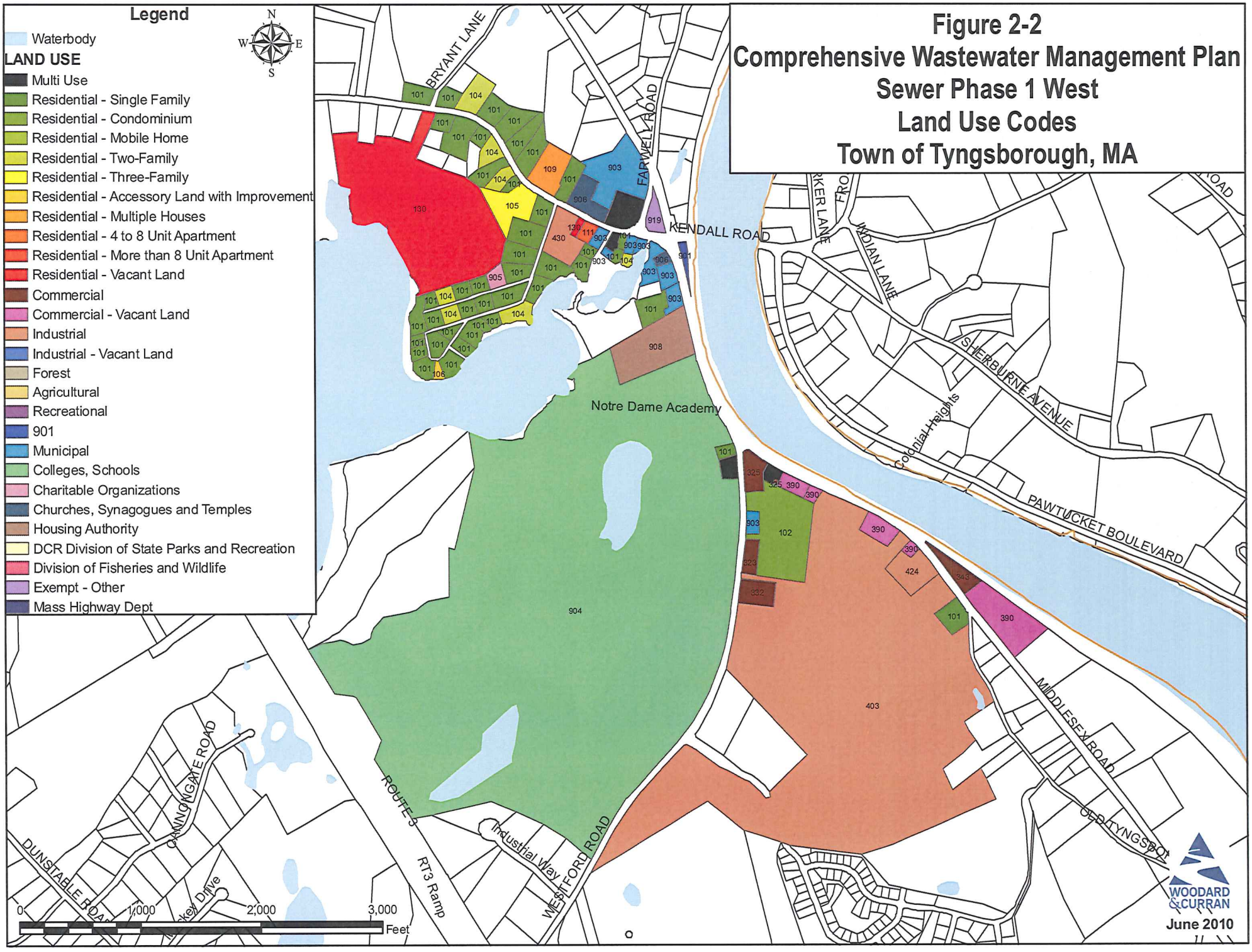


Figure 2-2
Comprehensive Wastewater Management Plan
Sewer Phase 1 West
Land Use Codes
Town of Tyngsborough, MA

Sewer Phase 2

Sewer Phase 2 is located in the northwest part of Town, mainly west of the Merrimack River along Middlesex Road, north of Sewer Phase 1 West. This phase is a combination of both upgrades to the existing collection system as well as new sewer infrastructure. Upgrades consists of one railroad crossing, one bridge crossing of the Merrimack River, and one brook crossing, as well as upgrades to the River Road Pump Station and the Phalanx Pump Station. New sewer infrastructure includes installation of approximately 15,000 LF of gravity sewer, 2,000 feet of force main, one new pumping station, and one river crossing and three brook crossings.

This phase consists of 141 parcels, with 53 percent designated as residential, 27 percent as commercial, 8 percent as multiple use, and the remainder as tax exempt parcels, industrial, and agricultural parcels. Specific land use codes as applicable to this phase are summarized in Table 2-3. This area would be recommended to be funded through a sharing of costs between individual property owners with a portion paid by betterment and a portion on the general tax rate. The "benefit" factor would need to be determined as it applies to each property owner and the Town and a cost recovery plan can be identified that fairly and equitably apportions out costs to each property owner. Figure 2-3 details the land use within Phase 2.

Table 2-3 Sewer Phase 2

Number Of Parcels	Land Use	Definition
5	0	Multi-Use
5	13	Primarily Residential Multi-Use
2	17	Multi-Use Residential/Agriculture
66	101	Single Family Residential
1	102	Condominium
1	103	Mobile Home
1	104	Two-Family Residential
1	106	Accessory Land Residential
1	130	Developable Land
1	131	Potentially Developable Land
3	132	Undevelopable Land
1	303	Commercial Transient Group
1	318	Commercial Greenhouses
3	323	Retail – Shopping Center/Mall
6	326	Retail – Eating & Drinking
3	330	Retail – Automotive Sales
1	332	Retail-Auto Repair Facility
2	334	Retail – Gas Service Station
1	337	Retail – Parking Lot
3	340	General Office Buildings
2	341	Bank Buildings
1	343	Commercial Condo
1	344	Commercial Condo
1	371	Ice Skating Facility
1	380	Golf Courses

Number Of Parcels	Land Use	Definition
6	390	Vacant Developable Commercial
2	391	Industrial Manufacturing Land
3	392	Electricity Regulating Property
2	423	Telephone Exchange Stations
1	441	Industrial – Pot. Developable Land
2	712	Agricultural – Productive Crops
10	903	Municipalities, Districts
1	919	MA Reimbursable Land - Other

Phase 3

Sewer Phase 3 is located east of the Merrimack River, along Frost Road from Lake View Avenue to Sherburne Avenue. This phase is a combination of upgrades to the existing collection system as well as new sewer infrastructure. The sewer upgrades include 1,475 feet of gravity sewer. The new sewer infrastructure includes approximately 16,000 feet of new gravity sewer, 2,000 feet of force main, 2,500 feet of low pressure sewer and 37 low pressure sewer pumping systems, and 4 brook crossings.

This phase includes 130 parcels, with 92 percent designated as residential, four percent as tax exempt properties, and the small remainder as multiple uses, commercial, and agricultural. Specific land use codes as applicable to this phase are summarized in Table 2-4. This area would be recommended to be funded through a sharing of costs between individual property owners with a portion paid by betterment and a portion on the general tax rate. The "benefit" factor would need to be determined as it applies to each property owner and the Town and a cost recovery plan can be identified that fairly and equitably apportions out costs to each property owner. Figure 2-4 details the land use within Phase 3.

Table 2-4 Sewer Phase 3

Number Of Parcels	Land Use	Definition
2	0	Multi-Use
1	17	Multi-Use Residential/Agriculture
101	101	Single Family Residential
2	102	Condominium
8	104	Two-Family Residential
2	106	Accessory Land Residential
2	130	Residential Developable Land
2	131	Residential Pot. Developable Land
2	132	Undevelopable Land
1	326	Retail – Eating & Drinking
1	344	Commercial Condo
1	712	Agricultural – Productive Crops
5	903	Municipalities, Districts

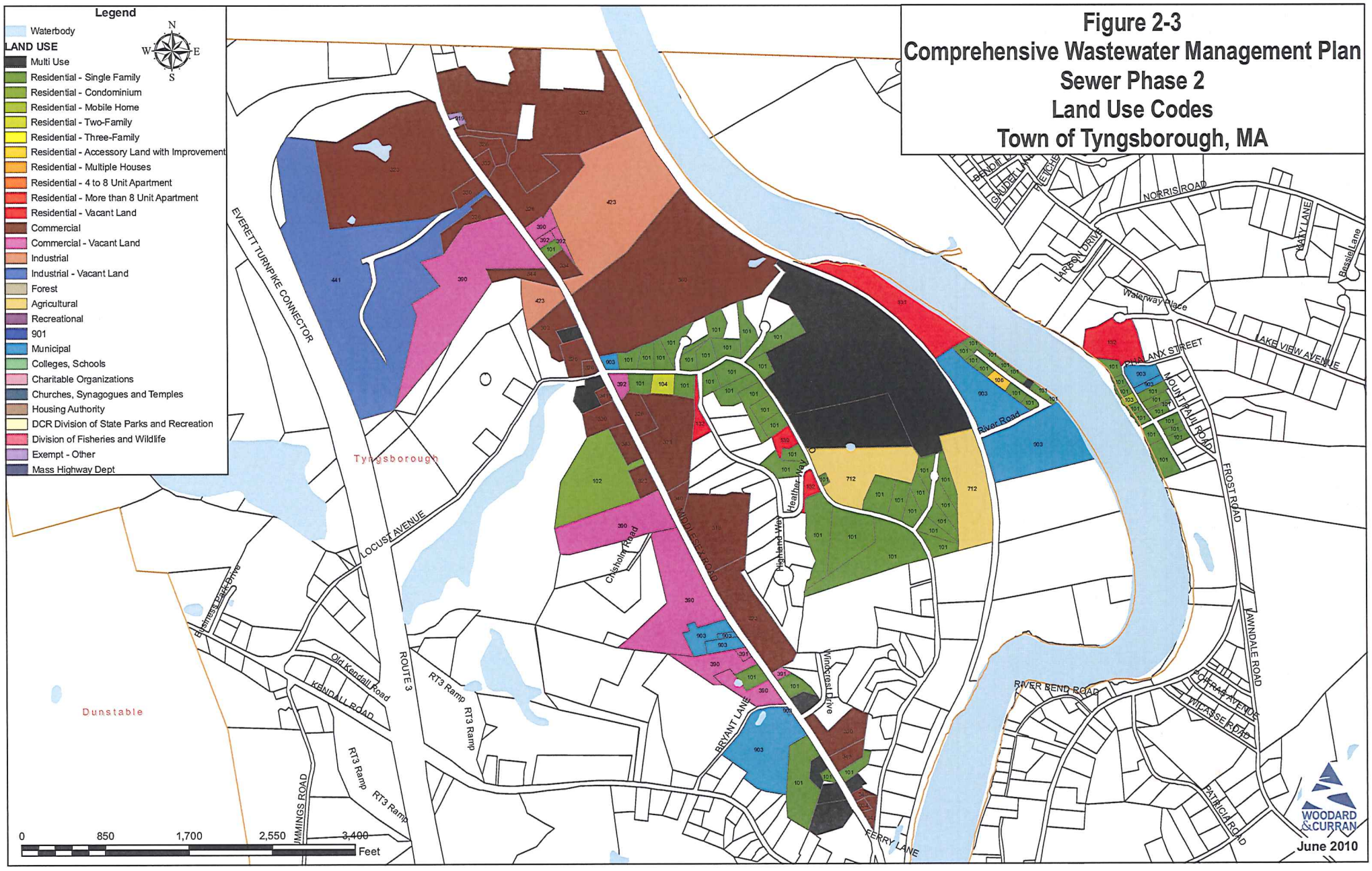


Figure 2-3
Comprehensive Wastewater Management Plan
Sewer Phase 2
Land Use Codes
Town of Tyngsborough, MA

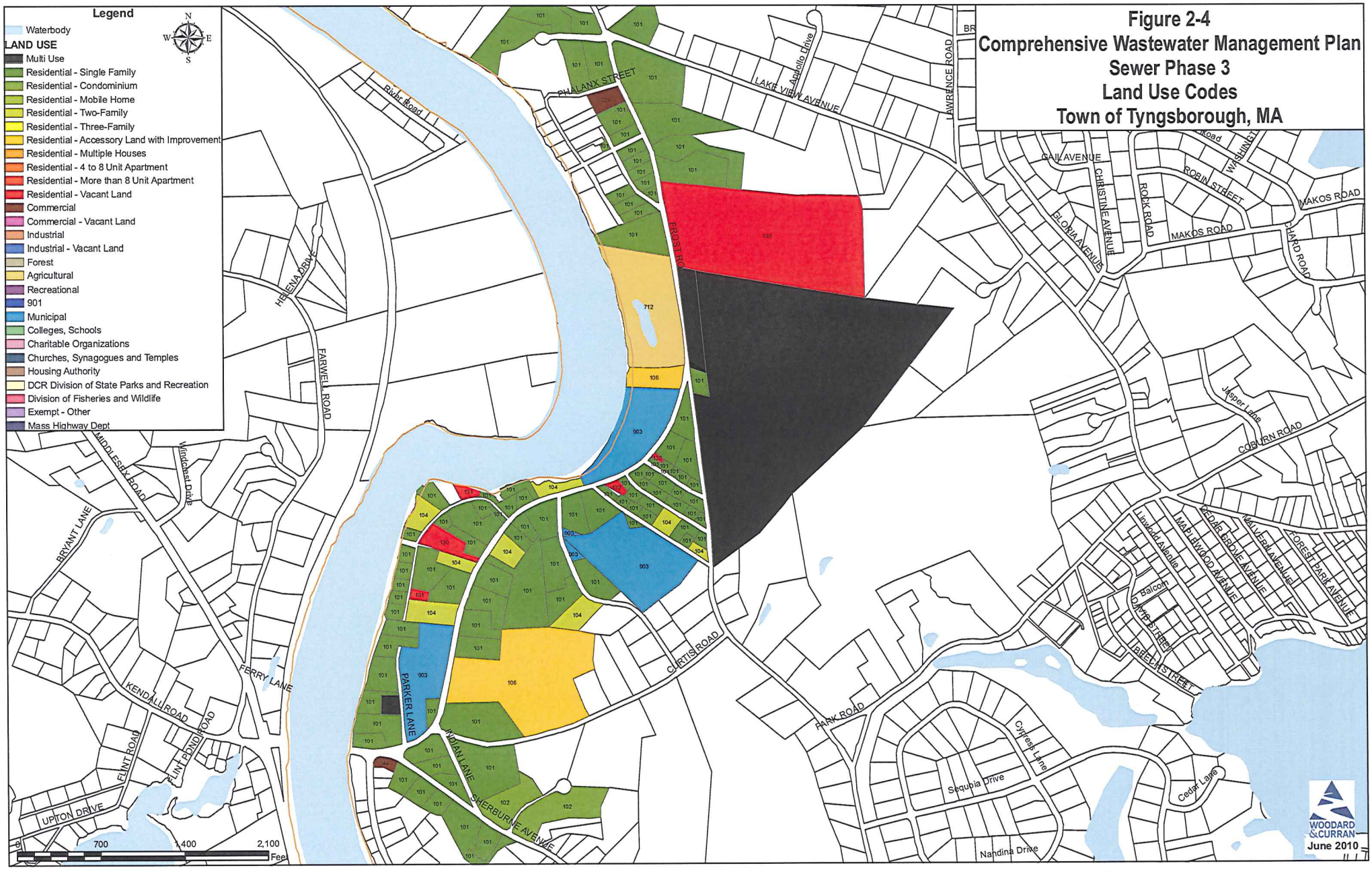


Figure 2-4
Comprehensive Wastewater Management Plan
Sewer Phase 3
Land Use Codes
Town of Tyngsborough, MA

Phase 4

Sewer Phase 4 is located south of Sewer Phase 3, east of the Merrimack River along Pawtucket Boulevard and Sherburne Avenue. The new sewer infrastructure includes approximately 9,500 feet of gravity sewer, 400 feet of low pressure sewer and 37 low pressure sewer pumping systems, and one brook crossing.

This phase includes 34 parcels, with 77 percent with residential designations, nine percent multiple use, 9 percent commercial, and five percent tax exempt parcels. Specific land use codes as applicable to this phase are summarized in Table 2-5. The "benefit" factor in this area appears to be specific to each property owner and thus could divide out in betterments that fairly and equitably apportion out costs to each property owner. Figure 2-5 details the land use within Phase 4.

Table 2-5 Sewer Phase 4

Number Of Parcels	Land Use	Definition
1	0	Multi-Use
2	38	Multi-Use Commercial/Recreation
16	101	Single Family Residential
2	102	Condominium
4	104	Two-Family Residential
2	130	Residential Developable Land
2	132	Residential Undevelopable Land
1	300	Commercial – Hotels
1	316	Commercial – Warehouse Storage
1	373	Swimming Pools
2	903	Municipalities, Districts

Figure 2-5
Comprehensive Wastewater Management Plan
Sewer Phase 4
Land Use Codes
Town of Tyngsborough, MA

Phase 5

Sewer Phase 5 includes two separate areas of town: along Althea Avenue, in East Tyngsboro along the Dracut Line, as well as east of the Merrimack River along Pawtucket Boulevard south of Sewer Phase 3 and north of Sewer Phase IV. The new sewer infrastructure includes approximately 7,000 feet of gravity sewer, 400 feet of force main, 4,000 feet of low pressure sewer and 29 low pressure sewer pumping systems, one pumping station and 2 brook crossings.

This phase consists of 70 parcels, 83 percent with residential land use, seven percent tax exempt land use, four percent commercial, and the remainder multiple use and recreational land use. Specific land use codes as applicable to this phase are summarized in Table 2-6. The "benefit" factor in this area appears to be specific to each property owner and thus could divide out in betterments that fairly and equitably apportion out costs to each property owner. Figure 2-6 details the land use within Phase 5 West and Figure 2-7 details Phase 5 East.

Table 2-6 Sewer Phase 5

Number Of Parcels	Land Use	Definition
2	0	Multi-Use
31	101	Single Family Residential
2	102	Condominium
2	104	Two-Family Residential
2	106	Accessory Land Residential
1	109	Multiple Houses
5	130	Residential Developable Land
15	132	Residential Undevelopable Land
1	316	Commercial – Warehouse Storage
1	334	Retail – Gas Service Station
1	340	General Office Buildings
2	805	Golf Course
3	903	Municipalities, Districts
1	905	Charitable Organizations
1	910	DCR State Parks and Reservations

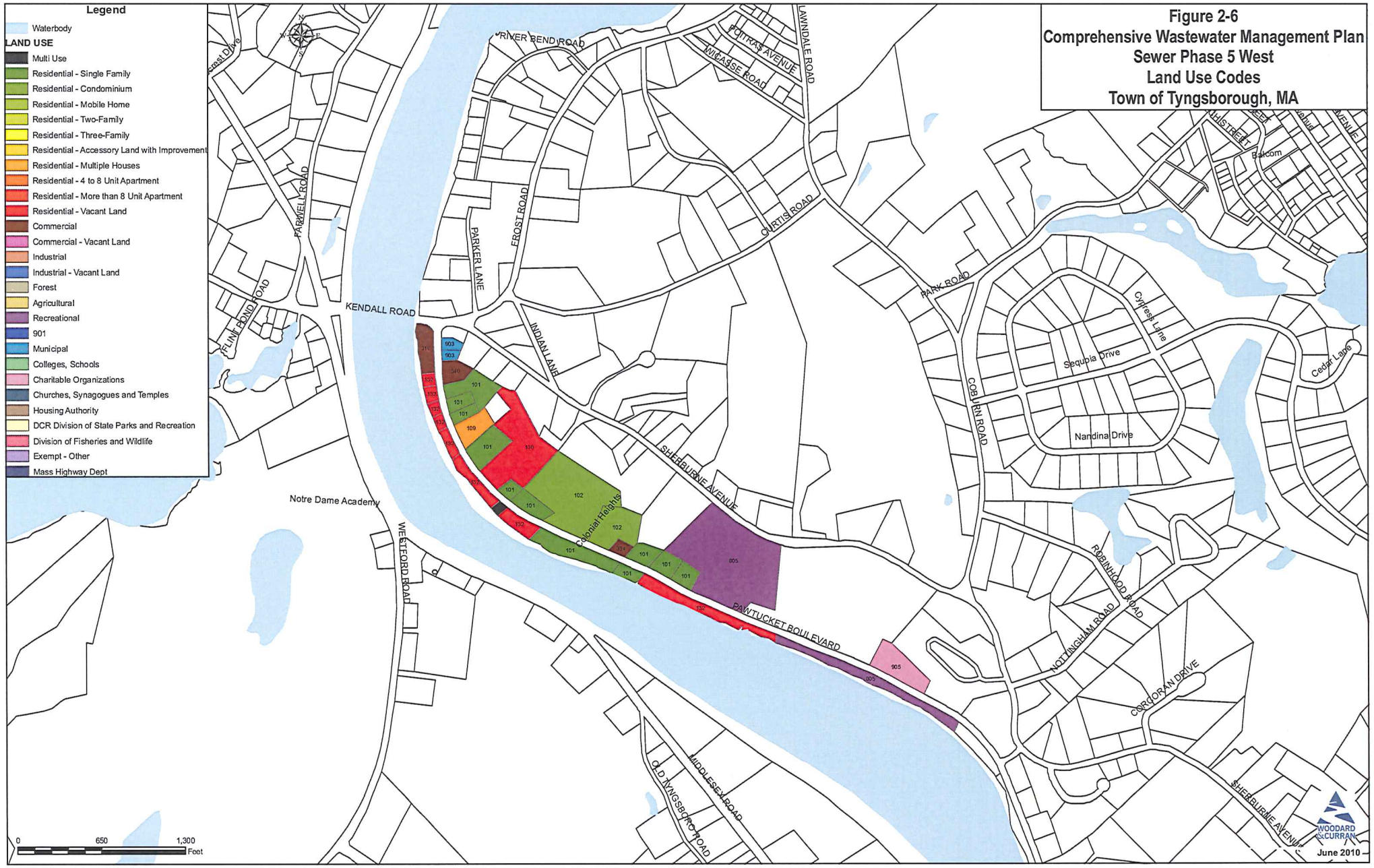


Figure 2-6
Comprehensive Wastewater Management Plan
Sewer Phase 5 West
Land Use Codes
Town of Tyngsborough, MA

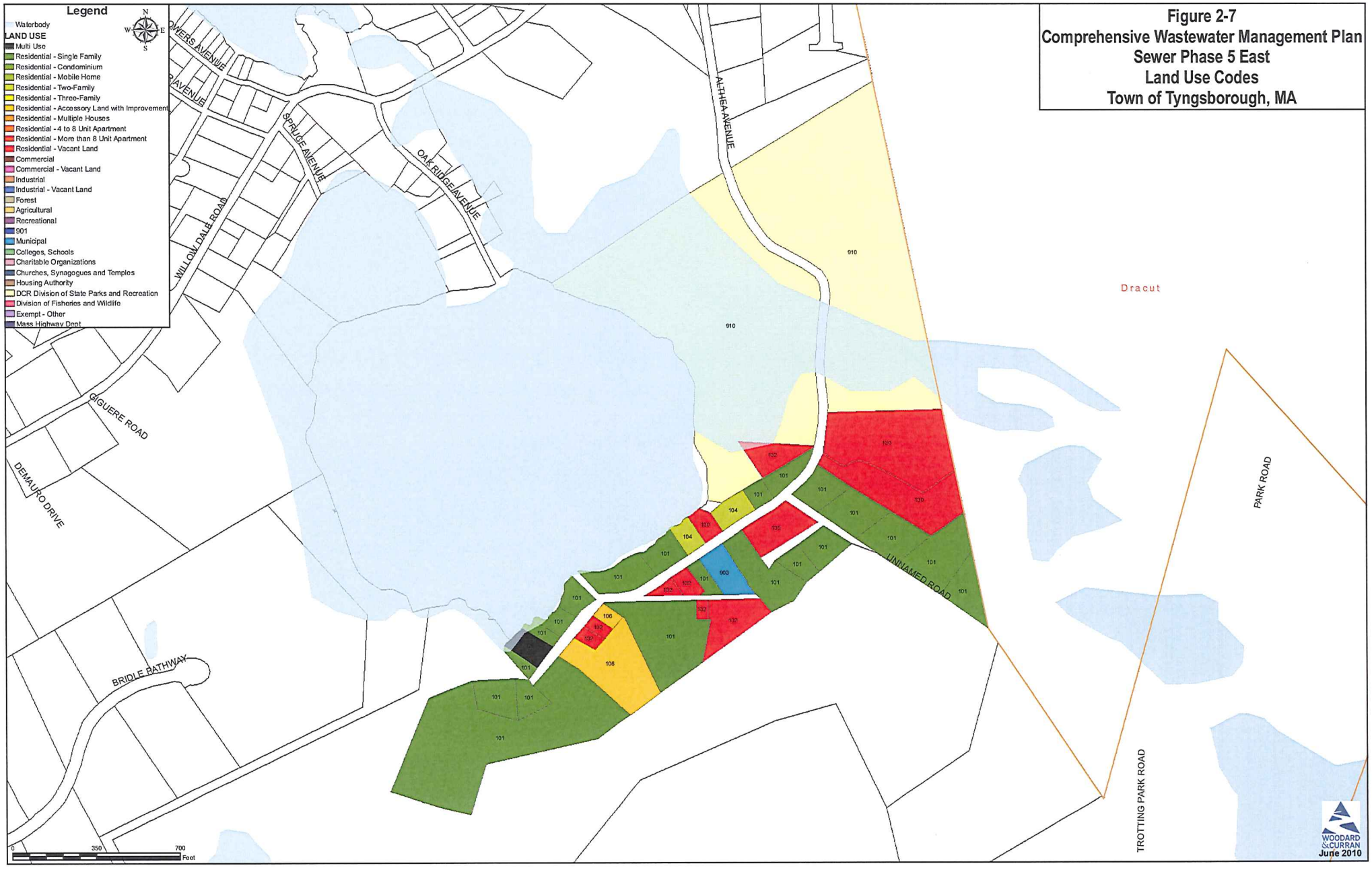


Figure 2-7
Comprehensive Wastewater Management Plan
Sewer Phase 5 East
Land Use Codes
Town of Tyngsborough, MA

Phase 6

Sewer Phase 6 is located in northwest Tyngsborough, and includes the side streets off of Middlesex Road and Farwell Road. The scope of this phase includes approximately 5,000 feet of gravity sewer, 47 feet of force main, 6,000 feet of low pressure sewer and 32 low pressure sewer pump stations, and three brook crossings.

This phase consists of 52 parcels, with 93 percent of the parcels with residential land use, 4 percent commercial, and the small remainder having multiple use and tax exempt land use codes. Specific land use codes as applicable to this phase are summarized in Table 2-7. The "benefit" factor in this area appears to be specific to each property owner and thus could divide out in betterments that fairly and equitably apportion out costs to each property owner. Figure 2-8 details the land use within Phase 6.

Table 2-7 Sewer Phase 6

Number Of Parcels	Land Use	Definition
1	31	Multi-Use Commercial/Residential
38	101	Single Family Residential
3	104	Two-Family Residential
3	130	Residential Developable Land
4	131	Residential Pot. Developable Land
1	132	Residential Undevelopable Land
1	325	Small Retail & Services stores
1	903	Municipalities, Districts

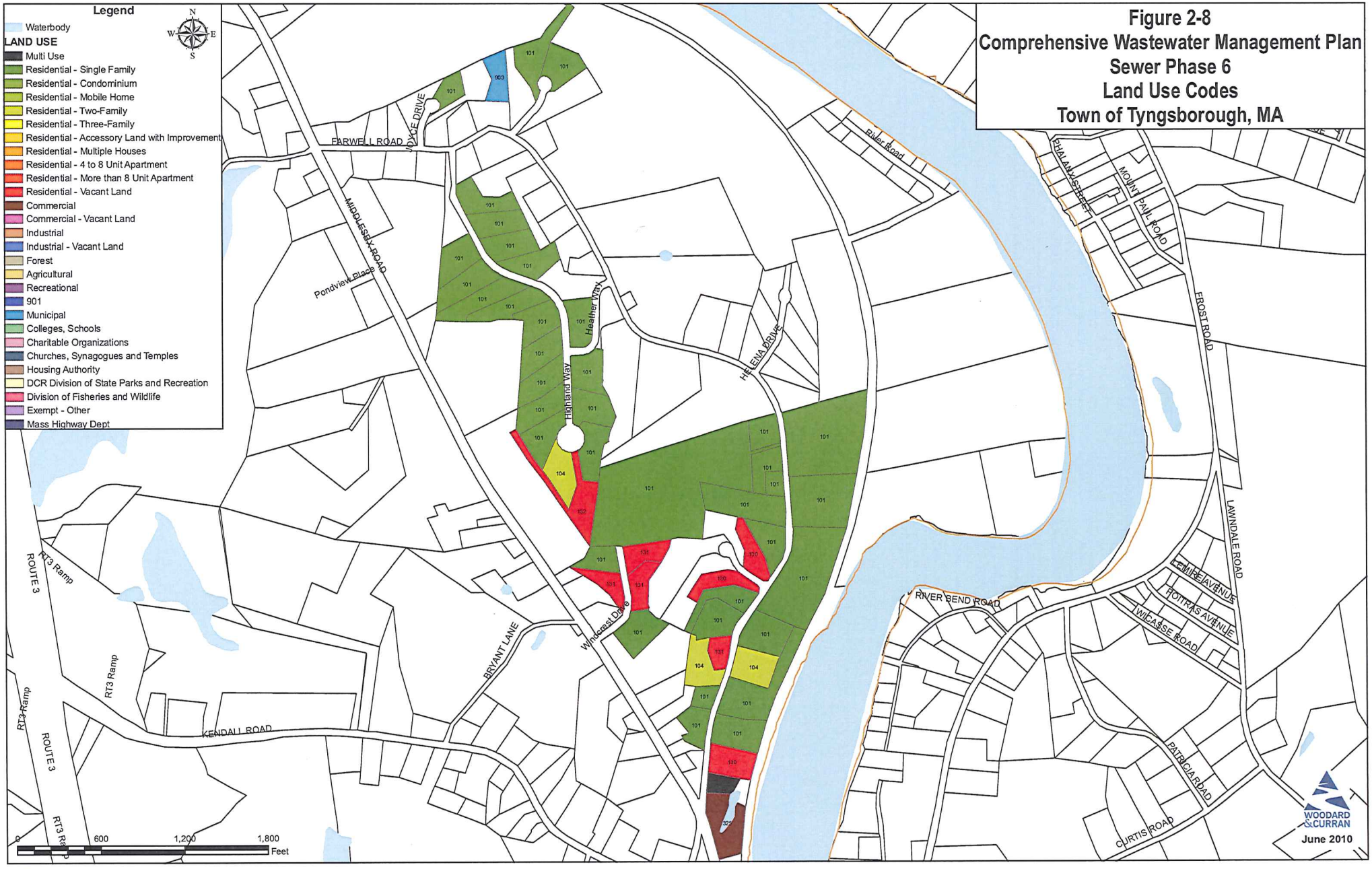


Figure 2-8
Comprehensive Wastewater Management Plan
Sewer Phase 6
Land Use Codes
Town of Tyngsborough, MA
Legend
Waterbody
LAND USE
Multi Use
Residential - Single Family
Residential - Condominium
Residential - Mobile Home
Residential - Two-Family
Residential - Three-Family
Residential - Accessory Land with Improvement
Residential - Multiple Houses
Residential - 4 to 8 Unit Apartment
Residential - More than 8 Unit Apartment
Residential - Vacant Land
Commercial
Commercial - Vacant Land
Industrial
Industrial - Vacant Land
Forest
Agricultural
Recreational
901
Municipal
Colleges, Schools
Charitable Organizations
Churches, Synagogues and Temples
Housing Authority
DCR Division of State Parks and Recreation
Division of Fisheries and Wildlife
Exempt - Other
Mass Highway Dept
N
W
E
S
FARWELL ROAD
JOYCE DRIVE
MIDDLESEX ROAD
Pondview Place
Highland Way
Heather Way
HELENA DRIVE
Riley Road
RHALAN STREET
MOUNT PAUL ROAD
FROST ROAD
LAWNDALE ROAD
LEMIRE AVENUE
HOITRAS AVENUE
WICASSE ROAD
RIVER BEND ROAD
PATRICIA ROAD
CURTIS ROAD
Windcrest Drive
BRYANT LANE
KENDALL ROAD
ROUTE 3
RT3 Ramp
RT3 Ramp
RT3 Ramp
RT3 Ramp
101
103
104
130
131
132
0
600
1,200
1,800
Feet
WOODARD & CURRAN
June 2010

2.2 ECONOMIC DEVELOPMENT FOCUS – NEW TOWN CENTER

In September 2008, a report entitled, "*Town of Tyngsborough, Massachusetts Town Center Master Plan*" was completed by Concord Square Planning & Development, Inc. and Morris Beacon Design under the leadership and direction of the Tyngsborough Economic Development Committee. The Town Center Master Plan is a long term vision to designate an area along Middlesex Road/Kendall Road in the area by the bridge as a new Town Center that will stimulate growth and provide economic development, provide a reuse of Town-owned properties, provide infrastructure improvements-sewer service in particular, provide open space and improvements for pedestrians and in general promote this area as a vibrant and active nucleus for the Town.

The Town Center Master Plan Report details the need for municipal sewer service in this area if it is to realize its full potential to not only maintain full use of existing properties, but to also entice new industries and commercial entities in to Town. With sewer infrastructure in this area, the Town will be able to encourage and direct economic development in this priority location. The planning vision contained in this Report also drives back to the historical significance of town centers in New England Villages. This vision is where the townspeople live, work, shop and visit. It is basically the "heart" of the Town.

There are additional studies and reports completed over the years outlining an economic development strategy, including the Tyngsborough Economic Development Plan completed in 2006. Copies of ES are inc. in Attachment K.

The CWMP includes the proposed Town Center in its Needs Area approved for sewer infrastructure. This area is delineated as Phase I West. At this writing, the Town Assessor shows 87 parcels, with 67 percent of those designated as residential use. There are 18 percent with a tax exempt designation and the remaining 12 percent as commercial. With the varied land uses in existence, there may be the need to rezone parcels, particularly the tax exempt, some of which are municipally owned. This land use is summarized earlier in this chapter.

There is still work to be done in this area before a Capital Cost Recovery Plan can be finalized. With the current land uses and opportunities for redevelopment of many parcels as described in the Town Center Master Plan Report, a more definitive plan needs to be looked at in order to summarize a cost apportionment. For example the municipal parcels cannot be assessed a betterment, which eliminates them from the equation. But the Report speaks to potential sales of these municipal parcels to commercial/industrial entities, which would change the apportionment. These need to be more closely defined in order to work out a cost recovery. There is definitely a "benefit" to the entire Town with the development of the Town Center, so a portion of the cost could be born by the taxpayers. With a definitive plan in place for land use in this Need Area, a cost recovery plan would most likely include a sharing of the costs with some portion devoted to betterment and some to the general tax rate. Betterments for specific land uses would follow a betterment by law that the Town would approve beforehand. The Draft Betterment By Law in Attachment H spells out the suggested apportionment.

2.2.1 Cost Association Strategies

With the development and adoption of a betterment by law, the Town will be prepared and able to plan for cost recovery as each Needs Area approaches implementation. Once a betterment by law is in effect, each Needs Area should work to identify any potential "benefit" derived from sewer infrastructure other

than the individual property owner. For example, the new Town Center is proposed to bring redevelopment, economic development, relief of residential tax burden and general overall "benefit" to the entire Town and thus could be considered for a splitting of the capital cost recovery-a portion on the individual property owners as a betterment and a share on the general tax base. Another example could be in the areas where there are water resources enjoyed by all-in and around lakes, where Town beaches are located-these areas also afford a "benefit" to the entire Town, and so on. Once the Sewer Commission puts forward a plan to extend sewer infrastructure in a specific Needs Area, a discussion should be open to all to discuss the cost association strategy that is fair and equitable in the particular areas.

The following items are addressed in the Draft Betterment By Law developed for the Town as well as outlined in MGL Chapters 80 and 83. Copies can be found in Attachment H.

- Residential parcels
- Commercial/Industrial parcels
- General versus specific benefit
- Lien and appropriation process
- Time extension and deferrals
- Abatement and appeals process
- Responsibilities of various departments in Town in betterment process

On May 15, 2007, the Town voted and accepted MGL Chapter 83, Section 16G (Deferral of charges) and MGL Chapter 80, Section 13B (Deferral and recovery agreements, application, recordation and lien). It is recommended that the Town move forward with accepting the overall provisions of both MGL chapters 80 and 83 at a future Town Meeting. An article has been prepared for this purpose. Refer to Attachment H for a copy of the draft article.

2.3 RECOMMENDATIONS

This Report recommends that the Town adopt the overall provisions of MGL Chapters 80 and 83 and the Draft Betterment By Law that specifically addresses all of the afore-mentioned issues. This will provide the Town with a template for handling cost recovery fairly and equitably in all Needs Areas. With the land uses in the six Needs Areas all different, adoption of a standard betterment by law all will afford the same treatment and overall costs when the time comes for implementation and assessment of betterments in each area. It also provides the Town a standard method of collection of betterments fees, the lien and appropriation process, any time extensions, deferrals, abatements and appeals. MGL Chapters 80 and 83 clearly spell out the responsibilities of various Town departments and property owners.

The more prepared the Town is with respect to its Institutional Arrangements within the Sewer Commission, the less apt it is to fall into any unknown areas. Once the plans for extending sewers in particular areas come to fruition, there will be no surprises as to how the costs will be recovered and who pays for what. Preparation for all of this should be in an on-going comprehensive public participation program where comments can be solicited and incorporated into the final planning. Coordination with the on-going efforts in economic development in Town need also be done. There are benefits to be realized by all taxpayers in Town through increased tax income, job growth, and higher utilization of existing Town businesses in areas of commercial and industrial growth.

3. DEVELOP COST RECOVERY PROGRAM

3.1 DRAFT WARRANT ARTICLES

The Sewer Commission prepared 10 draft town meeting articles for presentation and consideration at a future town meeting. The articles drafted include:

1. General Betterment By-Law to adopt Massachusetts General Laws Chapter 80 and 83
2. Draft Betterment By-Law for future sewer extensions capital cost recovery
    a. Detailed Betterment By-Law
3. Design for Phases 1 complete
4. Construction costs for Phase 1 complete
5. Design costs for Sewer Phase 1 East
6. Design costs for Sewer Phase 1 West
7. Design Costs for Sewer Phase 2
8. Construction costs for Sewer Phase 1 East
9. Construction costs for Sewer Phase 1 West
10. Construction costs for Sewer Phase 2

Refer to Appendix H for copies of all draft warrant articles and full Draft Betterment By-Law. The Sewer Commission is working on a Public Outreach schedule in order to solicit comments from residents, property owners, industrial and commercial entities and Tyngsborough municipal departments. Once the program has been able to build consensus on the approach to capital cost recovery, the Sewer Commission will prepare to present the articles at Town Meeting.

3.1.1 Local Cost Recovery By-Law

A draft Betterment By-Law was developed for future cost recovery with new sewer extensions. The draft document underwent review with Town Counsel in April 2010 and all comments were incorporated into the draft document. The by-law was reviewed, edited and finalized by the Sewer commission in April 2010 and will be presented in up coming public outreach sessions in order to build consensus for approval at a future Town Meeting. The draft by-law incorporates recommendations and approvals from the state-approved CWMP. Future meetings include the Board of Selectmen, Economic Development Commission and Town and public meetings. The draft by-law is included in Appendix H.

3.1.2 Phase 1 Design Services

Costs were developed for Phase 1 design based on the completed and state approved CWMP. Phase I includes two different geographic areas in Town:

- Sunset Park
- Middlesex Road area near proposed new Town Center

Individual costs, as well as comprehensive costs for entire phase, were developed for design fees. These were separated out so the Town can decide on how it moves forward at a future Town Meeting. Table 3-1 details the costs for this phase.

Table 3-1 Phase 1 Sewer Design and Bidding Costs

Phase	Cost
Phase 1 East – Sunset Park	396,000
Phase 1 West – Middlesex Road Area (includes new proposed Town Center)	408,000
Phase 1 Combined Areas	804,000

3.1.3 Phase 2 Design Services

Costs were developed for Phase 2 design based on the completed and state approved CWMP. Phase 2 includes the northern section of Middlesex Road that abuts the New Hampshire border. Table 3-2 details the costs for this phase.

Table 3-2 Phase 2 Sewer Design Costs

Phase	Cost
Phase 2 – Northern Middlesex Road Area (includes proposed directional drilling under Merrimack River)	755,000

3.2 COST ESTIMATES FOR SEWER CONSTRUCTION FROM PHASE IV CWMP

Cost estimates were developed in order to file the Calendar Year 2010 Project Evaluation Forms (PEF) for State Revolving Fund low interest loans. The Phase IV CWMP developed planning level costs in late 2008/early 2009, which were updated in order to complete the cost estimates for the PEFs. The Phase IV CWMP included costs for all six phases of sewer in order to complete the filing. These costs will need to be updated as each phase moves forward towards implementation in order to identify more accurate and up to date costs. Table 3-3 outlines the costs included in the Phase IV Report.

Table 3-3 Phase IV CWMP Capital Costs

Sewer Phase	Costs (Millions)
Phase 3	$7,006,697
Phase 4	$3,793,737
Phase 5	$4,646,771
Phase 6	$3,252,376

3.2.1 Capital Project Costs

The Phase IV CWMP costs for Phases 1 and 2 were updated in order to get a more accurate reading although the costs used for the CY2010 PEF is still an estimate as it is planning level at this point in time. Costs for engineering services for design and bidding are based on the quantities provided in the Phase IV CWMP and construction costs were taken verbatim from the Phase IV Report. The quantities taken from the Phase IV Report have not been verified as of this writing, but will undergo analysis during preliminary design. In order to develop more accurate costs, a preliminary design report will need to be completed and utilize data from borings and a survey, which will delineate measurements more accurately. Once a final design is completed and the project is put out for bids, very detailed cost estimates will be defined.

For the CY2010 PEFS, costs were analyzed and updated for the purpose of applying for funding under the SRF Program. Tables 3-4 and 3-5 detail the cost estimates.

Table 3-4 Phase 1 Sewer Construction Costs

Phase	Cost
Phase 1 East – Sunset Park	3,514,000
Phase 1 West – Middlesex Road Area (includes new proposed Town Center)	6,841,000

Table 3-5 Phase 2 Sewer Construction Costs

Phase	Cost
Phase 2 – Northern Middlesex Road Area (includes proposed directional drilling under Merrimack River)	10,053,000

The cost estimates prepared for the Phase IV CWMP are included in Appendix L.

3.2.2 Proforma Debt Services Schedules

Proforma debt service schedules will be set up in advance of implementation for each phase of sewer so the Town can prepare its capital improvements plan and overall debt schedule. As an example, if Phase I Sunset Park were to move forward with an SRF loan (2% interest over 20 years), the debt schedule would look like Table 3-6. Costs are proportioned over the SRF 20 year period, with principal amounts expanding and interest amounts decreasing over the life of the loan.

Massachusetts Water Pollution Abatement Trust
Water Pollution Abatement and Drinking Water Revenue Bonds
Pool Program Bonds, Pool 15
Preliminary Structuring Analysis

Schedule C

BORROWER NAME

LOAN NUMBER

DRAFT

Loan Term (in Years)	20
Borrowed Amount	$3,514,000
Loan Rate	2%

Initial Loan Obligation: 3,514,000.00

Date	Schedule of Loan Repayments* Principal	Interest	Total	Administrative Fee (0.15%)	Loan Origination Fee ($7.5/1000)	Total Due	Annual Loan DS
01-Oct-09							
15-Jul-10	122,092	58,566.67	180,658.65	2,635.50	26,355.00	209,649.15	
15-Jan-11		33,919.08	33,919.08	2,543.93		36,463.01	214,577.73
15-Jul-11	148,222	33,919.08	182,140.87	2,543.93		184,684.80	
15-Jan-12		32,436.86	32,436.86	2,432.76		34,869.63	214,577.73
15-Jul-12	151,216	32,436.86	183,653.03	2,432.76		186,085.80	
15-Jan-13		30,924.70	30,924.70	2,319.35		33,244.05	214,577.73
15-Jul-13	154,271	30,924.70	185,195.74	2,319.35		187,515.09	
15-Jan-14		29,381.99	29,381.99	2,203.65		31,585.64	214,577.73
15-Jul-14	157,388	29,381.99	186,769.62	2,203.65		188,973.27	
15-Jan-15		27,808.11	27,808.11	2,085.61		29,893.72	214,577.73
15-Jul-15	160,567	27,808.11	188,375.29	2,085.61		190,460.90	
15-Jan-16		26,202.44	26,202.44	1,965.18		28,167.63	214,577.73
15-Jul-16	163,811	26,202.44	190,013.40	1,965.18		191,978.58	
15-Jan-17		24,564.33	24,564.33	1,842.32		26,406.66	214,577.73
15-Jul-17	167,120	24,564.33	191,684.60	1,842.32		193,526.93	
15-Jan-18		22,893.13	22,893.13	1,716.98		24,610.11	214,577.73
15-Jul-18	170,496	22,893.13	193,389.57	1,716.98		195,106.55	
15-Jan-19		21,188.17	21,188.17	1,589.11		22,777.28	214,577.73
15-Jul-19	173,941	21,188.17	195,128.97	1,589.11		196,718.09	
15-Jan-20		19,448.76	19,448.76	1,458.66		20,907.41	214,577.73
15-Jul-20	177,455	19,448.76	196,903.52	1,458.66		198,362.18	
15-Jan-21		17,674.21	17,674.21	1,325.57		18,999.78	214,577.73
15-Jul-21	181,040	17,674.21	198,713.92	1,325.57		200,039.48	
15-Jan-22		15,863.81	15,863.81	1,189.79		17,053.60	214,577.73
15-Jul-22	184,697	15,863.81	200,560.89	1,189.79		201,750.67	
15-Jan-23		14,016.84	14,016.84	1,051.26		15,068.11	214,577.73
15-Jul-23	188,428	14,016.84	202,445.17	1,051.26		203,496.44	
15-Jan-24		12,132.56	12,132.56	909.94		13,042.50	214,577.73
15-Jul-24	192,235	12,132.56	204,367.52	909.94		205,277.46	
15-Jan-25		10,210.21	10,210.21	765.77		10,975.97	214,577.73
15-Jul-25	196,118	10,210.21	206,328.71	765.77		207,094.47	
15-Jan-26		8,249.02	8,249.02	618.68		8,867.70	214,577.73
15-Jul-26	200,080	8,249.02	208,329.51	618.68		208,948.19	
15-Jan-27		6,248.22	6,248.22	468.62		6,716.84	214,577.73
15-Jul-27	204,123	6,248.22	210,370.74	468.62		210,839.35	
15-Jan-28		4,206.99	4,206.99	315.52		4,522.52	214,577.73
15-Jul-28	208,246	4,206.99	212,453.20	315.52		212,768.72	
15-Jan-29		2,124.53	2,124.53	159.34		2,283.87	214,577.73
15-Jul-29	212,453	2,124.53	214,577.73	159.34		214,737.07	
15-Jan-30		0.00	0.00	0.00		0.00	214,577.73
15-Jul-30	0	0.00	0.00	0.00		0.00	
15-Jan-31		0.00	0.00	0.00		0.00	0.00
15-Jul-31	0	0.00	0.00	0.00		0.00	
15-Jan-32		0.00	0.00	0.00		0.00	0.00
15-Jul-32	0	0.00	0.00	0.00		0.00	
15-Jan-33		0.00	0.00	0.00		0.00	0.00
15-Jul-33	0	0.00	0.00	0.00		0.00	
15-Jan-34		0.00	0.00	0.00		0.00	0.00
15-Jul-34	0	0.00	0.00	0.00		0.00	
15-Jan-35		0.00	0.00	0.00		0.00	0.00
15-Jul-35	0	0.00	0.00	0.00		0.00	
15-Jan-36		0.00	0.00	0.00		0.00	0.00
15-Jul-36	0	0.00	0.00	0.00		0.00	
15-Jan-37		0.00	0.00	0.00		0.00	0.00
15-Jul-37	0	0.00	0.00	0.00		0.00	
15-Jan-38		0.00	0.00	0.00		0.00	0.00
15-Jul-38	0	0.00	0.00	0.00		0.00	
15-Jan-39		0.00	0.00	0.00		0.00	0.00
15-Jul-39	0	0.00	0.00	0.00		0.00	
15-Jan-40			0.00	0.00		0.00	0.00
15-Jul-40	0			0.00		0.00	
	3,514,000	777,554.62	4,291,554.62	56,559.60	26,355.00	4,374,469.22	4,291,554.62

In addition to the debt schedule, the Town will need to look at the financing plan for each area. Chapter 2 of this Report details the land uses in each phase and will be the basis for determining the capital cost recovery plan.

Once the Sewer Commission with the Town makes the decision on moving forward with a phase of sewer, a plan will be developed as to how to recover the project cost. At this point in time, the Sewer Commission is looking towards a betterment plan, which will be dependent on the individual land use in each phase and a determination of "benefit" in each area. For example, if it is determined that the overall "benefit" rests with each property owner and there is no general benefit to the Town, then it may be decided to cover costs with a 100 percent betterment. If on the other hand, it can be determined that there is benefit to both the property owner and the Town, the betterment/tax ratio may be split. For example, if it is decided that the property owner benefits 50 percent, then the cost recover framework could be 50 percent betterment and 50 percent on the tax rate. Again this will be decided as each phase moves towards implementation.

4. FUNDING SUMMARY

4.1 CWMP FUNDING SUMMARY

As part of the scope of this Town-wide CWMP, a Massachusetts Department of Environmental Protection (MassDEP) Calendar Year 2006 Project Priority List/Intended Use Plan (IUP), a Project Evaluation Form (PEF) was filed on August 15, 2005. On March 1, 2006, the Calendar Year 2006 IUP was finalized by MassDEP and the Town-wide CWMP-Phases III and IV were identified on the IUP as a project (MassDEP/BRM Project Number CWSRF 2934) eligible for financial assistance from the SRF effective January 1, 2007. The Town approved the SRF package at Annual Town Meeting May 16, 2006 and continued on May 23, 2006. The Phase III and IV were completed under this Program and MassDEP approved the addendum of Phase V – Capital Cost Recovery Plan within the confines of the original loan. These phases are funded through the SRF with a 2 percent loan rate.

4.2 GRANT/LOAN ADMINISTRATION

Grant/Loan administration services are being provided in accordance with MassDEP financial assistance guidelines and procedures. Liaison among the Town, MassDEP and Woodard & Curran, and contract administration are being carried out. Woodard & Curran is assisting the Town in submitting (on average) monthly SRF drawdown requests to the MassDEP for reimbursement for costs incurred to undertake the CWMP. Upon completion of the Phase V, the Town and Woodard & Curran will prepare and submit the required loan closeout documents. The Town will continue to budget for debt service payments to the Water Pollution Abatement Trust over the original 20-year payoff period for the entire loan.

4.3 FUTURE LOAN ADMINISTRATION

For Calendar Year 2010, an application was filed with the SRF for a low interest loan to cover the costs for implementing Phase 1 and Phase 2 sewers. The SRF Program is the most cost-effective option for financing large sewer projects in Massachusetts. The SRF Program was established to provide low-interest funding to assist communities in Massachusetts to comply with federal and state water quality projects. The SRF is a joint effort between the federal government (80%) and the state government (20%). Currently SRF loans are subsidized at 2 percent interest. Typical funding of the SRF operates on a $300 to $350 million per year.

The Town's CY2010 SRF application did not make the Intended Use Plan (IUP) for funding in March 2010. A supplemental application was completed and submitted to the MassDEP for CY2010 funds and while additional points were scored on the application, it still fell below the cutoff points for funding. Around the time of filing the SRF application, the Sewer Commission decided not to move forward with Town Meeting requests for funding, so this will be revisited in August 2010 for CY2011 funds. Appendix M includes CY2010 PEF filing cover letters as well as general SRF information.

5. PUBLIC PARTICIPATION

The Sewer Commission set a schedule of meetings in order to solicit comments from Town Departments and the public. The Commission made arrangements to go before the Board of Selectmen on August 16, 201 in order to apprise all of efforts to date on the CWMP. The Commission Chairman, Gerry Foley summarized the CWMP Project from the early planning stages of Phase I in 2003 through Phases II, III, IV and this final Report Phase V. Mr. Foley expressed the Commission's desire to move the Final Recommended Plan contained in the CWMP forward with the help of a larger Town group that he hoped would be formed through the Board of Selectmen.

At this time, the Town is working to form an ad hoc group with representatives from the Board of Selectmen, Sewer Commission, Finance, Planning and other interested Town departments as well as residents at-large that will work to advance sewer planning in Town. Decisions such as how to recover capital costs, where sewer implementation should begin and other important issues will be worked through this group. The Sewer Commission is ultimately responsible for the administration of all issues related to sewer and will work with this ad hoc group and the Board of Selectmen to bring the CWMP to fruition.

A public informational meeting was held at Town Hall on September 23, 2010 to present the results of the Phase V Report to the public and solicit input from interested parties on cost recovery options. The meeting was posted in Town Hall and direct mailings went out to property owners in the Phase I East area. A large group attended the presentation and a lengthy and healthy discussion ensued after the presentation.

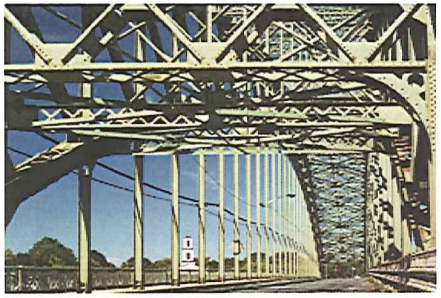
On Monday December 6th, 2010 the Board of Selectman approved the formation of a Sewer Design and Construction Committee. The recommendation is that this committee be formed encompassing various interested parties/stakeholders so that any Town decision made reflects the consensus of many public interests. While the Sewer Commission has jurisdiction in many of these areas, it will be in the Town's best interest to form a group with multiple public interests so that all decisions can be thoroughly vetted through a public process so that a final plan reflects a consensus-building in preparation for Town Meeting presentation and acceptance. The group may involve at a minimum the following:

- Sewer Commission
- Board of Selectmen
- Finance
- Assessor
- Town Economic Development Committee
- Northern Middlesex Council of Governments
- Members at Large (possibly representative from the various Needs Areas, i.e. Sunset Park)

Once formed, the group needs to prioritize "Needs Areas" sewer phases, vet financing tools and review available outside funding sources, and develop a stakeholder/public outreach program to solicit public comment. The group then needs to recommend a plan to the Sewer Commission, Selectmen and Finance Committee for adoption.

The Sewer Commission considers these efforts the start of a more comprehensive public outreach and is planning to continue hosting these sessions in order to solicit public input and keep all apprised of progress.

The following are copies of presentations and an attendance list for the Public Informational Meeting.



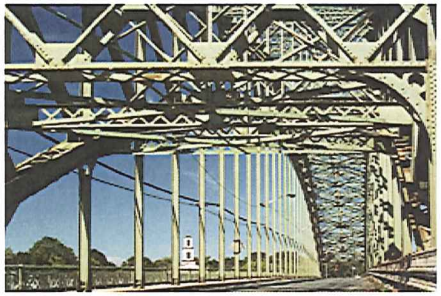
Town of Tyngsborough, Massachusetts

CWMP CAPITAL COST RECOVERY

Public Informational Meeting

September 23, 2010

WOODARD &CURRAN



TOWN OF TYNGSBOROUGH, MASSACHUSETTS

HOW DO WE PAY FOR SEWERS?

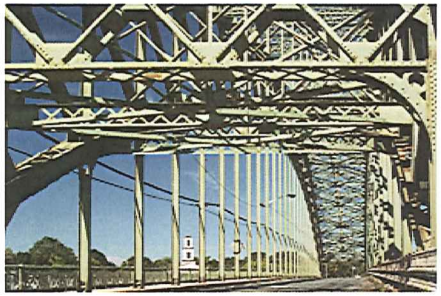
-NO SEWER EXTENSIONS

-ONLY SEWER WHEN FORCED TO DO SO:
- -TITLE 5 FAILURES
- -PUBLIC HEALTH THREATS

-SEWER ONLY WHEN FORCED BY REGULATORY FORCES

-SEWER PLANNED BUILDOUT
- -CWMP NEEDS AREAS
- -MASTER PLAN
- -ECONOMIC DEVELOPMENT

WOODARD &CURRAN



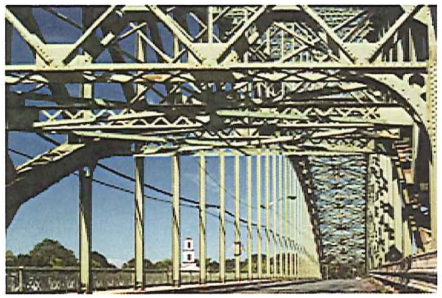
TOWN OF TYNGSBOROUGH, MASSACHUSETTS

HOW DO WE PAY FOR SEWERS?

LOCAL FUNDING OPTIONS

- -GENERAL FUND – FULL SUPPORT
- -COMBINATION OF SUPPORT
  - -GENERAL FUND – APPROPRIATION / BORROWING
  - -USER CHARGES
  - -SPECIAL TAXES
    - -BETTERMENTS
    - -PRIVILEDGE CHARGES
- -PRIVATE FUNDING
- -SHARED WATER DISTRICT FUNDING

WOODARD &CURRAN



TOWN OF TYNGSBOROUGH, MASSACHUSETTS

HOW DO WE PAY FOR SEWERS?

FEDERAL & OR STATE FUNDING OPTIONS

- -MWPAT – CWSRF 2 % LOANS
- -CDBG – SMALL CITIES GRANTS
  - -LOW / MODERATE INCOME RESIDENTIAL
- -ARRA – BUILD AMERICA BONDS
- -ECONOMIC DEVELOPMENT
  - -RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS
  - -DIF / TIF
  - -CDAG GRANTS
  - -MORE JOBS GRANTS
  - -I-CUBED PROGRAM

WOODARD &CURRAN

Town of Tyngsborough Phase V Public Informational Meeting
Town Hall
September 23, 2010

SIGN IN SHEET

NAME	ADDRESS	CONTACT
Christine Lawson	8 Robins Drive	
Michael Sokolowski	25 Rock Rd	
TIMOTHY HANKS	19 GLORIA AVE	
Richard Sigmon	3 GAIL AVE	
Henry + Yvette Moulton	10 Lawrence Rd	
Christine Miceli	10 Beverlee	
Allen Curell	47 River Rd.	
Ken + Pam Johnson	23 GLORIA AVE	
Patty Heckley	4 Robins Drive	
GERRY FOLEY	1 ROCK RD	SEWER COMMISSIONER
RICK REAULT	10 LOUIS AVE	" "
JEFF HANNAFORD	14 LAUREL LN	" "
Jim Allen	28 MAKOSI	
FRAN Allen	28 MAKOS ST	
SHARON Jones	26 MAKOS ST	"

Town of Tyngsborough Phase V Public Informational Meeting
Town Hall
September 23, 2010

SIGN IN SHEET

NAME	ADDRESS	CONTACT
Ron Sylvester	15 Gail Ave	978-649-9362
Jerry Buchman	15 Gloria Ave	978-649-0365
Rosemary Blaegrund	Woodard & Curran	781-251-0200
John Daniels	Woodard & Curran	"

COMMITMENT & INTEGRITY
DRIVE RESULTS

980 Washington Street | Suite 325
Dedham, Massachusetts 02026
www.woodardcurran.com

T 800.446.5518
T 781.251.0200
F 781.251.0847

WOODARD &CURRAN

AGENDA

TOWN OF TYNGSBOROUGH BOARD OF SELECTMEN MEETING
MONDAY, JULY 26, 2010

A. Introductions

- Gerry Foley – Brief introductions and summary of activities to date

B. Woodard & Curran - Rosemary Blacquier and John Daniels

- Summarize CWMP Process
- Detail Phase V Activities
  1. Maps Phase I Sewers
- Capital Cost Recovery Options

C. Meeting Schedule

- Board of Selectmen
- Economic Development Committee

D. Commonwealth Capital Application

This Phase V CWMP will be distributed as detailed in the following Table 5-1.

TABLE 5-1
DISTRIBUTION LIST

Kevin Brander Massachusetts Department of Environmental Protection/Northeast Region 205B Lowell Street Wilmington, MA (Two copies)	Town of Tyngsborough Economic Development Committee 25 Bryants Lane Tyngsborough, MA 01879
Tyngsborough Sewer Commission 25 Bryants Lane Tyngsborough, MA 01879 (Five copies)	Town of Tyngsborough Town Manager 25 Bryants Lane Tyngsborough, MA 01879
Town of Tyngsborough Board of Selectmen 25 Bryants Lane Tyngsborough, MA 01879 (Three copies)	

APPENDIX A: LONG POND BETTERMENT INFORMATION

5-30-90

ZAROULIS & MAILLE
LAWYERS

CHARLES J. ZAROULIS
BRENDA P. MAILLE

9 MIDDLESEX STREET
LOWELL, MASSACHUSETTS 01852

(508) 458-4583

May 29, 1990

Mr. Ronald Corcoran
Tyngsborough Sewer Commission
Lakeview Avenue
P.O. Box 11
Tyngsborough, MA 01879

Re: Long Pond Betterment Assessment Plan
Our File: Tyng/Sewer

Dear Mr. Corcoran:

Regarding your telephone call to my office, please note that my records indicate that on December 28, 1989, the Long Pond Betterment Assessment Plan was recorded in Plan Book 171, Plan 134.

If you need any additional information, please do not hesitate to call me.

Sincerely yours,

Charles J. Zaroulis
Town Counsel

CJZ/MB

[Please reference subject matter on all correspondence to this office.]

M13/TY/Betterme/1

Whitman & Howard
Environmental Engineers, Scientists, and Planners

September 29, 1989

Mr. Ronald V. Corcoran, Chairman
Sewer Commission
P.O. Box 11
Tyngsborough, MA 01879

Re: Long Pond Services
WPC-Mass-CS0-213

Dear Mr. Corcoran:

Enclosed is a copy of a table which represents my understanding of pertinent costs to be included in calculating a betterment charge for the subject project.

The costs were identified at our meeting with Dick Choate, the Town Accountant on Wednesday September 20th.

The number of abutters used in the calculation was divided from out Draft Betterment Plan dated August 23, 1989 and is based soley on the number of lots listed, with no allowance for lots with multiple Equivalent Functional Units. An Equivalent Functional Unit (EFU) would be a domicile housing a single family.

Our calculations indicate one time betterment charge of $764.85 per EFU or $509.72 per year over 15 years based on 65 users which may be high.

No additional interest charges beyond the debt service interest is included in the $509.72 figure.

Lastly, the above amounts are only approximate pending the Commissions determination of the number of EFU that will be charged in Tyngsborough and how Tyngsborough will recover costs from service to homes and establishments in Dracut.

We will be pleased to assist the Commission in this activity.

Very truly yours,

WHITMAN & HOWARD, INC.

James F. Murphy

James F. Murphy, P.E.
Vice President

Established 1869

JFM/dn
cc: Mr. Richard Choate, Town Accountant
88-040

Board of Assessors
50 Billerica Road
Chelmsford, MA 01824

Please apportion the Sewer Betterment assessed on the property of _____ (Owner) located at _____ (Address) over a period of 20 years.

I am aware that the first portion of this apportionment will appear on the 1992 tax bill at an interest rate of 8.20%.

Signature _____

Address _____

_____

Tyngsborough Sewer Commission
P.O. Box 11
Tyngsborough, Massachusetts 01879
Tel: 508-649-6344

LONG POND SEWER PROJECT
WPC-MASS-CS-213
BETTERMENT ASSESSMENT

Item			Total
Debt Service (1)	Principle	$585,000	
	Interest	$295,290	$880,290
Debt Service (2)	Principle	$50,000	
	Interest	$10,875	$60,875
Bonding Cost (3)			$3,503
Short Term Interest (4)			$29,393
Administrative (FY89)(5)			$13,000
Administrative (FY88) (5)			$4,093
Electric Service (5)			$10,381
Design Engineering (6)			$49,700
Total Local Share			$1,051,235
50% Local Share			$525,618

$$\frac{\$525,618}{66 \text{ Abutters}} = \$7,963.91$$

(1) From Debt Service Chart, Bank of New England 15 Year Note

(2) From Debt Service Chart, Bank of New England 5 Year Note

(3) Bonding Cost

$$\$29,191.62 \times \frac{\$585,000 \text{ (Sewer)}}{\$4,935,000 \text{ (Mun. Pur Loan)}} = \$3,503 \text{ Bank of NE}$$

(4) Town Treasurer Records

(5) Town Accountant's Records

(6) Town Appropriation

ZAROULIS & MAILLE
LAWYERS

CHARLES J. ZAROULIS
BRENDA P. MAILLE
MATTHEW P. DEMARAS

9 MIDDLESEX STREET
LOWELL, MASSACHUSETTS 01852

(508) 458-4583

March 7, 1989

Tyngsborough Sewer Commission
P.O. Box 11
Tyngsborough, MA 01879

Attn: Mr. Ronald V. Corcoran, Chairman

Re: Betterment Charges
Our File: Tyngs/Sewer Project

Dear Mr. Corcoran:

Regarding your letter of February 22, 1989, please note the following:

Massachusetts General Laws, Chapter 83, Section 23, provides:

"A town by vote of its town meeting . . . shall determine whether it shall pay the whole or a portion of the cost of laying out and constructing main drains or of a system or systems of sewerage and sewage disposal, and if a portion, what portion. If the town . . . votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system . . . the town . . . may avail itself of any or all of the methods of payment authorized by law to a town . . . and the provisions of chapter eighty relative to the apportionment, division, . . . shall apply to assessments made under this chapter. At the same meeting at which it determines that any portion of the cost is to be borne by the town . . . it may by vote determine by which of such methods the remaining portion of said cost shall be provided."

Massachusetts General Laws, Chapter 83, Section 15, provides that a town may adopt a system of sewerage and may provide that assessments under Section 14 shall be made upon owners of land within such territory by a fixed uniform rate or a rate based upon a uniform unit method.

Section 15 further provides that fixed uniform rate shall be based upon the estimated average cost of all the sewers, according to the frontage of such land on any way in which a

sewer is constructed, or according to the area of such land within a fixed depth from such way, or according to the area of such land within a fixed depth from such way, or according to both such frontage and area; but no assessment in respect to any such land, which by reason of its grade or level or any other cause cannot be drained into such sewer, shall be made until such incapacity is removed.

A uniform unit method shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served, after having proportioned the cost of special and general benefit facilities. Each sewer unit shall be equal to a single family residence. Potential sewer units shall be calculated on the basis of zoning then in effect. Existing and potential multifamily, commercial, industrial and semipublic uses shall be converted into sewer units on the basis of residential equivalents.

Massachusetts General Laws, Chapter 80, Section 1, provides that when an area receives benefits or advantage, other than the general advantage to the community, from a public improvement, if the order states that betterments are to be assessed for the improvement, then your Board shall within six months after the completion of the improvements determine the value of such benefit or advantage and assess upon each parcel a proportionate share of the cost.

Section 2 of said Chapter provides that there be a recordation of the order with a description sufficiently accurate for identification and an estimate of the betterments that will be assessed and the order is recorded within 90 days from the adoption of the order with the registry of deeds.

I would assume that the consultants, Whitman & Howard have provided some material concerning the implementation. If you have received this material, I would appreciate your forwarding a copy to me.

In any event, when you have read this memorandum, give me a telephone call to discuss this matter.

Sincerely yours,

Charles J. Zaroulis
Town Counsel

CJZ/MB
M3/Lett1036

APPENDIX B: TOWN OF TYNGSBOROUGH'S *"SEWER ASSESSMENTS AND USER CHARGE SYSTEM"*

Town of

Tyngsborough, MA

TYNGSBOROUGH SEWER COMMISSION

Sewer Assessments and User Charge System

February 13, 2003

SEWER ASSESSMENT AND USER CHARGE SYSTEM
TABLE OF CONTENTS

Section	Description	Page
Section 1.0	User Charge System	1
1.1	General	1
	1.1.1 Authority and Definition	1
	1.1.2 Basis of User Charge System	1
	1.1.3 Identification of Users	1
	1.1.4 Authority within the Town	2
1.2	EPA User Charge Provisions	2
1.3	User Charge Methodology	3
	1.3.1 General	3
	1.3.2 User Classification	4
	1.3.3 Infiltration/Inflow	4
	1.3.4 Wastewater Strength Parameters	4
1.4	User Charge Rates	5
	1.4.1 General	5
	1.4.2 System Costs	5
	1.4.3 User Charge Rate	8
	1.4.4 Surcharge Rate	8
	1.4.5 Notification and Approval of User Charge Rate	9
	1.4.6 Abatement of Rates	9
	1.4.7 Deferral of User Charges	9
1.5	Implementation of User Charge System	9
	1.5.1 Coordination with Water Districts	9
	1.5.2 Billing of User Charge	9
Section 2.0	Building Sewer Permits & Sewer Assessments	10
2.1	Existing Sewer Systems	10
2.2	New Sewer Systems	12

Related Documents

First Amended and Restated Sewer Use Regulations
Technical Specifications

Section 1.0 User Charge System

1.1 General

1.1.1 Authority and Definition

Section 204 (b) of the Water Pollution Control Act Amendments of 1972, authorizes the Environmental Protection Agency (EPA) to enforce guidelines specifically relating to the implementation of a user charge system for wastewater services. Grantees seeking Federal assistance funds for the construction of wastewater treatment works, which shall consist of all facilities used for the collection, transmission, storage, treatment and disposal of wastewater, must satisfy the related rules and regulations adopted by EPA and incorporated in Part 35 of Title 40, Code of Federal Regulations (CFR). These rules and regulations provide for a fair and equitable cost allocation system, which is designed to offset those operation, maintenance and replacement costs associated with the treatment works. For Tyngsborough, the costs paid by user fees also includes the costs for purchasing treatment system capacity.

1.1.2 Basis of User Charge System

A property receiving wastewater services shall be allocated a user charge based upon its proportionate share of the loading imposed upon the collection system and treatment works. Loadings are characterized by equivalent dwelling units or wastewater volumes, domestic wastewater strengths (i.e. Biochemical Oxygen Demand, Suspended Solids) and any additional pollutants so designated within the pretreatment program of the City of Lowell wastewater treatment facility.

1.1.3 Identification of Users

User charges as described herein shall be collected from all users within the Town of Tyngsborough receiving wastewater services from collection and/or treatment works operated and maintained by the Tyngsborough Sewer Commission, and those collection and treatment works owned, operated, and maintained by the Town of Chelmsford, Town of Dracut, and/or City of Lowell, all in accordance with the most recent executed version of the applicable Intermunicipal Agreement.

1.1.4 Authority within the Town

The authority to supplement, rescind, or revise any methodologies related to this user charge system and to make final judgment in any disputes, public or private, in this regard shall rest with the Town of Tyngsborough Sewer Commission.

1.2 EPA User Charge Provisions

The Town of Tyngsborough User Charge System shall adhere to specific provisions established by EPA in accordance with 40 CFR 35.2122, 35.2140 et. al. These provisions allow for a fair and equitable user charge rate to cover costs for purchasing treatment system capacity and to cover costs associated with the operation, maintenance and replacement related to the wastewater treatment works. They are summarized as follows:

- The User Charge System must include a financial management system, which accounts for revenues and expenditures.
- Rates must result in the distribution of the costs for purchasing treatment system capacity, and costs of operation, maintenance and replacement of all treatment works within the Town's jurisdiction. Distribution must be in proportion to each user or user class contribution to the total wastewater loading of the treatment works.
- Rates must generate sufficient revenues to offset the costs for purchasing treatment system capacity and the cost of all treatment works operation, maintenance and replacement.
- Each user who discharges pollutants to the treatment works causing increased costs will pay for such increased costs.
- The Town must apportion operation, maintenance and replacement costs associated with the treatment and disposal of Infiltration/Inflow (I/I) to users on the basis of the allocation of all other operations, or a system that includes consideration of flow volume of the users.
- The user charge system must be incorporated by municipal legislative enactment in order to be approved by the appropriate state and/or federal agency.
- User charge regulations must provide that each user will be notified at least annually of the user charge rate.

1.3 User Charge Methodology

1.3.1 General

The user charge system for the Town of Tyngsborough shall be a hybrid system. Commercial and industrial properties shall be billed based upon actual use (metered flow) and residential properties shall be billed based upon a flat rate per home (equivalent dwelling units). Under this methodology a user shall pay an annual rate proportionate to the loadings imposed upon the treatment works by the characteristic wastewater flows or equivalent dwelling units introduced by that particular user. The specific system to be adopted by the Town of Tyngsborough is comprised of the following:

- A Commercial/Industrial rate based on the volume of wastewater introduced into the treatment works. Said volume shall be dependent upon water usage, and shall include an allowance for Infiltration/Inflow. The minimum Commercial/Industrial rate shall be equivalent to the then current residential equivalent dwelling unit rate.

- A residential rate based on the number of equivalent dwelling units (or fraction thereof) introducing wastewater into the treatment works. Equivalent dwelling units are established as follows:

TABLE 1

DESCRIPTION	EQUIVALENT DWELLING UNITS
Single Family Residence	1
Multi-Family Dwellings (per apartment or dwelling unit)	1
Single Family Residence with In-Law Apartment	1.5

- A surcharge based on wastewater strength parameters, which shall include excessive domestic wastewater strengths and/or high concentrations of additional pollutants as defined within the pretreatment program adopted by the receiving treatment facility.

1.3.2 User Classification

Most existing and potential users of the Town of Tyngsborough's existing and proposed sewer system are not metered for water use. To adequately determine the wastewater volumes introduced by each user, a system of user classification must be established. Within the Town of Tyngsborough all users shall be distinguished within two user classes. They are as follows:

Commercial/Industrial: All Commercial/Industrial properties are required to be metered for water use and shall be responsible for a wastewater volume equivalent to 100 percent of the volume of water use as recorded by water meter readings.

Residential: This class shall include single and multi-family dwellings.

1.3.3 Infiltration/Inflow

The total wastewater volumes introduced into the treatment works includes infiltration/inflow (I/I). That volume of wastewater in excess of the total estimated wastewater volume loading attributable to all users shall be assumed to be I/I. Costs for collection and treatment of I/I shall be proportionately distributed to all users based upon each user's share of the total estimated wastewater volume.

1.3.4 Wastewater Strength Parameters

Domestic Wastewater Strengths

Wastewater strengths (concentrations) covered under this category shall pertain to biochemical oxygen demand (BOD) and suspended solids (SS). Acceptable strengths of these wastewater components have been established as 500 mg/l by standards contained within the pretreatment program of the Lowell POTW. Users who introduce wastewater into the treatment works exhibiting wastewater strength levels in excess of the adopted standards shall notify the treatment facility in accordance with an Agreement or Contract or any other authoritative document related thereto, between the treatment works users and the treatment facility. These users shall be assessed a surcharge rate as described in Section 1.4.4 of these regulations.

Additional Pollutants

Excessive wastewater strengths covered under this category shall pertain to those pollutants as described within the pretreatment program of the Lowell POTW. All rules and regulations related to notification of the treatment facility as described above under "Domestic Wastewater Strengths" shall apply. Users found to introduce wastewater into the treatment works exhibiting concentrations termed "excessive" by said program shall pay a surcharge rate as described in Section 1.4.4 of these regulations.

1.4 User Charge Rates

1.4.1 General

User charge rates shall be calculated based upon methodologies as described in Section 1.3 of these regulations. All rates shall be on a basis of dollars per thousand gallons of wastewater produced in Tyngsborough and treated at the Lowell POTW. The total allocable costs to the user charge system shall include costs associated with operation, maintenance and replacement related to the collection system and treatment works as well as costs for purchasing treatment system capacity as outlined in Section 1.1.1 of these regulations.

Operation and maintenance costs shall be those expenditures incurred during the useful life of the treatment works for materials, labor, utilities and other items which are necessary for managing and maintaining the facilities in order to achieve the capacity and performance for which it was designed and constructed. Replacement costs shall reflect expenditures related to obtaining and installing equipment, accessories or appurtenances necessary to maintain the functional capacities of the treatment works during the useful life. Costs for purchasing treatment system capacity shall include any payments to the Town of Chelmsford, the Town of Dracut, and/or the City of Lowell for the rights to the use of collection and/or treatment works within these communities.

1.4.2 System Costs

The system costs to be covered by the user charge system described herein shall be equivalent to the total allocable costs as detailed in Section 1.4.1 less any applicable non user charge related revenue generated by the Tyngsborough Sewer Commission. Said revenue shall include any and all permit, connection, and/or tie-in fees collected by the Commission. Projected costs and revenues for the current fiscal year with a detailed breakdown of the program are shown in Table 1. As previously

discussed in Section 1.3.1, commercial and industrial properties shall be billed based upon actual use (metered flow) plus an allowance for infiltration/inflow and residential properties shall be billed based upon a flat rate per home (equivalent dwelling units). Actual user charges for Commercial/Industrial properties will be based on actual water meter readings. Residential user charges shall be based on the total budgeted annual costs required to maintain the system, less revenues from Commercial/Industrial user charges, divided by the number of equivalent units. As shown in Section 1.4.3, the current FY03 calculated rates are as follows:

TABLE 2

USER CLASIFICATION	RATE
Residential	$330/unit
Commercial/Industrial	$3.59 per 100 c.f. ($4.80 per 1,000 gallons)

A minimum charge is set to cover administrative costs for billing and all fixed costs to operate and maintain the system. The minimum user charge for all properties shall be equal to the then current equivalent dwelling unit user charge. The Tyngsborough Sewer Commission is required to review and, if necessary, adjust the rates at least every two years. Any excess revenues collected in a given year will be applied to the following year and the rates will be adjusted accordingly.

TABLE 3

CURRENT BUDGETED ANNUAL COSTS AND ANTICIPATED REVENUES
FISCAL YEAR 2003

	EXPENDITURES	REVENUES
BUDGETED EXPENDITURES		
OPERATIONS	$68,150	
UTILITIES	$221,236	
SUPPLIES	$43,504	
MANAGEMENT & STAFFING	$139,910	
CONSULTANT SERVICES	$60,900	
CAPITAL IMPROVEMENTS, UPGRADES, & EQUIPMENT	$67,996	
TOTAL BUDGETED EXPENDITURES	$601,696	
ANTICIPATED REVENUES		
COVENANT AGREEMENT PAYMENTS (a)		$39,000
NEW TIE-INS (b)		$37,500
TOTAL ANTICIPATED REVENUES		$76,500
REMAINING REVENUES TO BE REALIZED THROUGH USER CHARGES (TOTAL ANNUAL SYSTEM COST)		$525,196

(a) There are currently 104 Covenant Agreements being paid over time at $375 per year

(b) Based on recent trends, it has been assumed that $37,500 will be collected for new connections in FY2003

1.4.3 User Charge Rate

The user charge rate for Commercial/Industrial users shall be determined based on the total annual wastewater volume, including I/I, introduced into the treatment works, and the annual system costs as described in Section 1.4.2. The rate shall be calculated as follows:

$$\text{Commercial/Industrial rate} = \frac{\text{Total Annual System Cost (\$) X I/I Allowance}}{\text{Total Annual Wastewater Volume (1000 gallons)}}$$

Where: Total Annual System Cost FY2003 = $525,196
I/I Allowance = 27% or 1.27 (a)
Average Annual Wastewater Volume (1,000 gallons) = 138,700 (a)

Current Commercial/Industrial rate = $4.80/1,000 gal

Total annual projected Commercial/Industrial user charge revenue = $110,454

Residential user charges shall be based on the total budgeted annual costs required to maintain the system, less revenues from Commercial/Industrial user charges, divided by the number of equivalent units. The rate shall be calculated as follows:

$$\text{Residential rate} = \frac{\text{Total Annual System Cost (\$) - Commercial/Industrial User Charge Revenue}}{\text{Equivalent Dwelling Units}}$$

Where: Equivalent dwelling units = 1,251 (b)

Current Residential rate = $330

(a) Numbers derived from October 2002 Inflow/Infiltration Study
(b) As provided by the Tyngsborough Sewer Commission

1.4.4 Surcharge Rate

The surcharge rate shall be allocated to those users as described in Section 1.3.4 of these regulations. The actual rate shall be based upon the added costs associated with treating wastewater exhibiting excessive strengths determined in accordance with the pretreatment program of the City of Lowell treatment facility. Said surcharge rate shall apply to that volume of wastewater introduced into the treatment works which has been analytically proven to exhibit excessive domestic and/or industrial wastewater strengths.

Due to the type of industrial and commercial businesses in Tyngsborough, waste characteristics of these businesses are not expected to vary considerably from domestic waste. Therefore, allocation by waste volume would be approximately equal to allocation by constituent loading rates.

1.4.5 Notification and Approval of User Charge Rate

Users shall be notified on an annual basis as to what rate they shall be charged within the limits of the Tyngsborough User Charge System. This notification will be included in the User Charge Billing.

1.4.6 Abatement of Rates

Users shall have the right to apply for an abatement of the user charges by filing a petition with the Tyngsborough Sewer Commission in accordance with the provisions of MGL Ch83 Section 16E.

1.4.7 Deferral of User Charges

Upon the vote of Tyngsborough Town Meeting to adopt MGL Ch83 Section 16G, the Tyngsborough Sewer Commission shall defer charges for use of common sewers in accordance with this section of the Massachusetts General Laws.

1.5 Implementation of User Charge System

1.5.1 Coordination with Water Districts

Coordination between the Tyngsborough Sewer Commission, the Tyngsborough Water District, and the Dracut Water District must be achieved to properly implement the Commercial/Industrial user charge system described herein. The Commission must utilize the existing water metering system for purposes of estimating wastewater volumes.

1.5.2 Billing of User Charge

The procedures associated with billing of the user charge shall be the responsibility of the Tyngsborough Sewer Commission. Utilization of a computerized database in conjunction with the compilation of data regarding all users shall facilitate the task of billing.

That portion of the revenue generated through user charges, which is due to treatment services provided by the Lowell POTW, shall be paid in accordance with the provisions of the aforementioned Intermunicipal Agreements.

Section 2.0 Building Sewer Permits and Sewer Assessments

All sewer connections are covered under either the Existing Sewer Systems or New Sewer Systems categories. The fees discussed within this document are subject to review and adjustment by the Tyngsborough Sewer Commission on an annual basis.

Building Sewer Permits

No person shall start construction of a sewer line or connection without first obtaining a written building sewer permit from the Tyngsborough Sewer Commission for such a sewer or sewer connection. Any person proposing a new connection, disconnection, reconnection, discharge, or change in the volume or pollutant character shall notify the Commission in writing thirty (30) days in advance of the proposed change. In all cases, the owner or the owner's agent shall complete and submit a building sewer permit application to the Town for approval. The building sewer permit application shall be supplemented by drawings, specifications, and other information deemed pertinent in the judgment of the Superintendent. Drawings shall include sewer plan and profiles. The Superintendent may require a professional certification (registered engineer and/or registered land surveyor) on all project submissions.

2.1 Existing Sewer Systems

The definition of a sewer connection to the existing sewer systems category is all new connections that do not require a MADEP extension permit and are connecting to a part of the system that was installed prior to January 1, 2003. Completion of the building sewer permit application is required for all units directly connecting to the existing sewer systems. These sewer connections shall not be subject to the building sewer permit fee or the connection / privilege fees discussed further in this document but will rather be allocated a tie-in fee based upon the classification of the property as discussed below. All construction must be completed within six months of the building sewer permit approval by the Commission.

Tie-in Fee

- Residential

In the past, the Tyngsborough Sewer Commission has offered a "Residential Sewer Connection Fee Agreement and Covenant" for existing residential properties fronted by the municipal sewer who are required to pay a tie-in fee. Execution of this Covenant Agreement allows for payment of a previously established Tie-In Fee of $7,500 over 20 years in equal installments at 0% interest. This Covenant Agreement for the $7,500 tie-in fee and 0% interest over 20 years will only be available until January 1, 2004 at which time the option to enter into this Covenant Agreement will be discontinued and no such Covenant Agreement will be offered or executed by the Commission or the Town of Tyngsborough. Once a property owner enters into a covenant agreement, they shall be held to the full terms of that agreement without exception.

In lieu of the covenant agreement and payment over time plan, the Tyngsborough Sewer Commission has established a new one time up front pay-off amount of $4,950 for the Tie-In Fee. This amount was established by calculating the present value of $7500, based on 20 years calculated back to January 2003 using an interest rate of 2%. The actual formula used was $P = F (1+i)^{-n}$ where:

P = Present Value as of January 2003 of $7,500 over the life of the covenant agreement

F = Future Worth = the total $7,500 collected over the life of the covenant agreement

n = the life of the covenant agreement = 20 years

i = an assumed interest rate of 2% (*)

(*) This rate was chosen based on MGL Ch 80 Section 13, which states that a Board may assess an interest rate not to exceed 2% above the rate of interest chargeable to the city or town. The Town of Tyngsborough received a 0% loan through the State Revolving Loan Fund Program of the Department of Environmental Protection for the most recent Phase I construction project.

This fee of $4,950 will only be valid until December 31, 2003 as this one time up front pay-off amount will be adjusted annually based on the annual Consumer Price Index (CPI) as of

December 31st of the previous year. The CPI is published by the U.S. Department of Labor – Bureau of Labor Statistics. The exact index to be utilized is for All Urban Consumers (CPI-U), U.S. City Average, All Items. This index for the past four years is as follows:

1999	-	168.3
2000	-	174.0
2001	-	176.7
2002	-	180.9

Upon discontinuation of the covenant agreement, the only tie-in fee option available to residential property owners will be the one time up front pay-off amount established for the then current year.

- Commercial/Industrial

  All commercial/ industrial properties connecting to the existing sewer systems shall be allocated a tie-in fee of $15 per gallon based upon their estimated daily wastewater volume. Wastewater daily volumes will be estimated based upon Title 5 and / or the industrial user permit with a minimum fee equivalent to that of a residential tie-in fee.

2.2 New Sewer Systems

The definition of the new sewer systems category is all new connections that do require a MADEP extension permit and are connecting to a part of the system that was installed after January 1, 2003. All units directly connecting to the new sewer systems shall be subject to the building sewer permit fee and the connection or privilege fees discussed below based upon the classification of the property. All construction must be completed within six months of the building sewer permit approval by the Commission.

Building Sewer Permit Fee

The Building Sewer Permit Fees shall be as follows:

Residential Property Activation or Reactivation	-	$250
Commercial/Industrial Property Activation or Reactivation	-	$500
Residential or Commercial/Industrial Property Disconnection	-	$100

Building Sewer Permit Fees will cover administrative costs of reviewing and processing the building sewer permit request, costs associated with review of the submittal, and inspection costs for Town personnel to oversee the actual installation. When more than two hours of inspection time are required, an additional charge of $75 per hour will be charged for any portion of an hour beyond two hours. In addition, an escrow account shall be required at the discretion of the Commission to cover the costs of a third party engineering review, anticipated inspection time in excess of two hours and / or for new sewer main and pump station construction.

Connection Fee -Municipal Funded New Construction

Municipal funded new construction connection fees will be determined on a project by project basis based upon the size, scope, cost, and funding source for each individual project.

Privilege Fee - Privately Funded New Construction

- Residential

  Privately funded new construction privilege fees for residential projects shall be allocated based upon their estimated daily wastewater volume. Wastewater daily volumes will be estimated based upon Title 5, the MADEP permit extension flow with a minimum fee of $4,950. The minimum fee is for a three bedroom residential home as discussed in Title 5 (based on 330 gallons per day and $15.00 per gallon).

- Commercial/Industrial

  Privately funded new construction privilege fees for Commercial/Industrial projects shall be allocated $15.00 per gallon based upon their estimated daily wastewater volume. Wastewater daily volumes will be estimated based upon Title 5, the MADEP permit extension flow and/ or the industrial user permit (whichever is the highest) with a minimum privilege fee equivalent to that of a residential privilege fee.

- The Tyngsborough Sewer Commission reserves the right to consider costs incurred by the proponent on a case-by-case basis and to consider reductions in the above-calculated costs based upon MGL Ch 83 Section 17.

APPENDIX C: CWMP / FEIR MEPA CERTIFICATE

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
http://www.mass.gov/envir

January 30, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS ON THE PHASE IV: FINAL EIR/FACILITIES PLAN

PROJECT NAME	: Comprehensive Wastewater Management Plan
PROJECT MUNICIPALITY	: Tyngsborough
PROJECT WATERSHED	: Merrimack
EOEA NUMBER	: 11788
PROJECT PROPONENT	: Town of Tyngsborough
DATE NOTICED IN MONITOR	: December 24, 2008

As Secretary of the Executive Office of Energy and Environmental Affairs (EEA), I hereby determine that the Phase IV: Final Environmental Impact Report (EIR)/Comprehensive Wastewater Management Plan (CWMP) submitted for this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00).

Project Description

This project involves the development of a town-wide CWMP for Tyngsborough. The goal of the CWMP is to examine the full range of wastewater management needs and identify environmentally sustainable treatment and disposal alternatives that respond to the community's needs while meeting water quality and public health standards. The Town has identified alleviating non-point source pollution, protecting water quality, and promoting groundwater recharge as priorities. The Final EIR presents a recommended wastewater management plan that outlines how the Town of Tyngsborough will treat and dispose of its wastewater over the next 20 years.

Currently, one-third of the Town's wastewater management needs are met through existing sewers in the areas of Mascuppic Lake, Dunstable Road and the southern end of Pawtucket Boulevard. The Tyngsborough Sewer Commission is responsible for administering, maintaining, and operating these sewage collection systems. Sewage is conveyed from Tyngsborough to the Lowell Regional Wastewater Utility (LRWU) for treatment via sewage collection systems Dracut, Chelmsford and Lowell. Wastewater flow limits are established through intermunicipal agreements (IMAs) with each of these communities. The remaining two thirds of the wastewater management needs are met through on-site systems located throughout the town. Seventy percent of the Town's water needs are met through local aquifers and, as noted previously, protection of groundwater resources is an important priority of the CWMP.

The Final EIR concludes that the Town should manage existing and future wastewater needs through a combination of sewer extensions and continued use of on-site disposal systems. The Town is proposing to extend sewers within seven of the Needs Areas, and convey wastewater flows to the LRWU for treatment and discharge, subject to the limitations contained in the IMAs. The Final Plan has been refined since the filing of the previous document and indicates that the project will include construction of more than 93,000 linear feet (lf) of sewers (gravity and low pressure), over 10,000 lf of force mains, 4 new pump stations (and 1 expanded pump station) and 161 low-pressure pump stations.[1] The current cost estimate for the plan is $39.1 million dollars. The construction of wastewater infrastructure is proposed in the following phases: Phase 1: 2009 - 2013, Phase 2: 2011 - 2015, Phase 3: 2015 – 2018, Phase 4: 2019 to 2022, Phase 5: 2023 to 2025 and Phase 6: 2026 to 2028.

Procedural History

In the fall of 1998, the Town of Tyngsborough filed an Environmental Notification Form (ENF) for the CWMP. In December of that year, a Certificate on the ENF was issued defining a Special Review Procedure (SRP) for the CWMP and allowing a portion of the proposed plan, east of the Merrimack River, to proceed as Phase I prior to completion of the EIR for the overall project. On April 6, 2001, a Certificate was issued on a Notice of Project Change (NPC) granting the Town's request to add a section of sewers to the Phase I project to support the development of Sycamore Networks, a campus-style office park off Potash Hill Road.

The SRP required the Town of Tyngsborough to file four documents. Phase I: Needs and Growth Management Analysis included an assessment of existing conditions and an analysis of wastewater management needs. On May 15, 2003, a Certificate was issued on the Phase I document which indicated that it adequately and property complied with MEPA regulations and established the Scope for the Phase II document. Phase II: Screening of Alternatives included the development and screening of water resources and wastewater management alternatives to address

[1] These estimates are based on data provided in Table 4-6 Estimated Project Costs.

the needs defined in the Phase I document. The report assessed 10 potential sites for locating wastewater management facilities and concluded that none of these sites were appropriate for one or several of the following reasons: soils (moderate to severe), land use restrictions (many sites are under conservation restrictions), water supply impacts (many are located within Interim Wellhead Protection Areas (IWPA)) or other environmental impacts (endangered species habitat, proximity to surface waters). On July 28, 2006, a Certificate was issued on the Phase II document which indicated that it adequately and properly complied with MEPA, required the Town to re-evaluate some of the sites that were proposed to be sewered and directed the Town to prepare and submit the Phase III: Draft EIR/Facilities Plan. The Draft EIR/Facilities Plan was filed in June 2008. It provided additional analysis of the options for wastewater management and presented a draft plan. On August 1, 2008, a Certificate was issued on the Phase III document which indicated that it adequately and properly complied with MEPA and its implementing regulations. The Scope for the Final EIR consisted primarily of responding to comments raised by state agencies.

Permits and Jurisdiction

The project is undergoing MEPA review and subject to preparation of a mandatory EIR pursuant to Section 11.03 (5)(a)(3) because it requires a state agency action and will include construction of one or more new sewer mains ten or more miles in length. It will require Sewer Extension and Connection permits from the Department of Environmental Protection (MassDEP) and review by the Natural Heritage and Endangered Species Program (NHESP). It may require a Chapter 91 License and a 401 Water Quality Certificate from MassDEP, Construction Access Permits from the Massachusetts Highway Department (MHD) and review by the Massachusetts Historical Commission (MHC). Work proposed on conservation land is subject to the EEA Article 97 Policy.

The project will require Orders of Conditions from the Tyngsborough Conservation Commission (and a Superseding Order of Conditions from MassDEP if the local Order is appealed). In addition, it may require National Pollutant Discharge Elimination System (NPDES) permits from the U.S. Environmental Protection Agency (EPA).

Because the project will receive funding or financial assistance from MassDEP through the State Revolving Fund (SRF), MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Review of the Phase IV: Final EIR/CWMP

The Final EIR provides a final plan for wastewater management, identifies associated potential environmental impacts, identifies measures to minimize environmental impacts and includes responses to comments on the previous document. It indicates that environmental

impacts associated with this project are minimized because the majority of work will take place within existing roadways. It includes a separate section on mitigation measures, including draft Section 61 Findings for state permits, and a summary table of proposed mitigation. Comments from MassDEP indicate that the proposed wastewater management plan is reasonable and appropriate and identify issues that should be addressed in project permitting. Comments from NHESP identify rare species that may be affected by the project and identify project elements that will be or may be subject to its review.

The report identifies sewer capacity available through existing intermunicipal agreements (IMAs) and describes associated flow limits. Total available capacity within existing IMAs is 1,430,000 gallons per day (gpd) and existing flows are estimated at 458,000 gpd. Remaining capacity for existing sewered areas and needs areas is 972,000 gpd. Projected wastewater flow based on full build-out is 1,775,200 gpd which exceeds the current available capacity of 1,430,000 gpd in the IMAs.

Based on the review of alternatives and technologies and the site selection analysis, the report identifies expansion of the existing sewer system for seven of the study areas and use of on-site wastewater disposal systems for the remaining areas. Expansion of the sewer system is proposed for:

- Needs Area 1 – Norris Road;[2]
- Needs Area 2 - Merrimack East;
- Needs Area 6 - Althea Lake;
- Needs Area 7 - Merrimack West;
- Needs Area 8 - Middlesex North;
- Needs Area 9 – Locust North;[3] and
- Needs Area 11 - Flint Pond.

Corresponding flow allocations have been developed for each of the IMAs and are included in a table below. To ensure that flow limits will not be exceeded, the Town will establish sewer districts and require monitoring and reporting of flows when 75% to 80% of the IMA capacity is allocated. The Town will develop and implement Septage Management Plans (SMPs) to effectively track and manage the construction, operation, and maintenance of these systems for areas that will continue to depend on them. The Final EIR includes a general description of proposed sewer districts and SMPs but does not identify specifically how these programs will be developed and implemented.

2 Sewering is limited to the south central portion (Sunset Park) of the Needs Area.
3 Sewering is limited to the area east of Route Three within this Needs Area.

Proposed Flow Allocations to Intermunicipal Agreements

IMA	IMA Capacity	Average Existing Flows	Available Capacity	Allocated Flow for Existing Sewered Areas	Allocated Flow for Needs Areas
North Chelmsford	350,000	56,000	294,000	184,000	110,000
Dracut	1,000,000	382,000	618,000	171,585	446,515
Lowell	80,000	20,000	60,000	45,489	14,511
TOTAL	**1,430,000**	**458,000**	**972,000**	**401,074**	**571,026**

To minimize extraneous clean water (Infiltration/Inflow (I/I)) within the system and to secure additional capacity, the Town is continuing efforts to study sources of I/I and develop a plan to eliminate sources of I/I. The Town has been approved by MassDEP for funding to build on its October 2002 I/I study and further evaluate I/I within the Mascuppic Trail, Willowdale Avenue and Elm Street areas. The Final EIR includes a Scope of Work for this effort which includes continuous flow metering, rainfall monitoring, ground water modeling and analysis of the data to estimate the amount of I/I within these systems.

Comments from MassDEP indicate that prior to permitting each phase of the project, it will review current information on wastewater flows which must demonstrate that sufficient capacity remains within the Town's IMA to allow for the connection of new flows. MassDEP comments express support for establishment of sewer districts and implementation of SMPs to ensure the effectiveness of the wastewater management program and recommends that the proponent consider institution of a sewer district earlier in the implementation phase. The Town should provide a draft of these plans to MassDEP for review prior to implementation.

The Final EIR identifies proposed sewer alignments that extend into the Zone I, Zone II and Interim Wellhead Protection Areas (IWPAs) of public water supplies. The Final EIR does not provide confirmation that any extensions into Zone I areas are necessary to eliminate existing sources of pollution in accordance with 314 CMR 7.06(3). MassDEP comments indicate that the Town will need to provide documentation that these extensions are necessary to abate *existing* public health risks and that there are no feasible alternatives to align the sewer outside of the Zone I.

Wetlands

The Final EIR identifies potential impacts to wetland resource areas, describes the nature of the impacts (temporary or permanent) and identifies the areas of proposed construction in the vicinity of the wetlands on a site plan at a readable scale. Work is proposed within the buffer zone to wetlands, riverfront area, 100-year floodplain and within rare species habitat. Measures to avoid, minimize and mitigate impacts include avoiding impacts by locating infrastructure within existing roadways, locating pump stations in previously disturbed areas and/or as far from streams as possible, use of erosion controls during construction, installation of stormwater management systems to minimize runoff and restoration of disturbed areas. Sewers located within the 100-year floodplain will include manholes with rim elevations at or above the 100-year floodplain or, where this is not feasible, will include watertight covers and frames as well as waterproofing material. Phase 2 will include installation of a twin force main under the Merrimack River. To avoid and minimize impacts, the force mains will be installed with directional drilling.

Rare Species

The Draft EIR included a water balance impact analysis, as required. The Merrimack River watershed has been identified as a non-stressed basin. The analysis indicated that under full build-out there will continue to be an export of water out of the Needs Areas within the Merrimack River watershed although the water will remain within the watershed. The analysis assumes that all developed and developable lots in Tyngsborough are or will become customers of the municipal water system. The Final EIR confirms that the Town will coordinate water supply and wastewater planning and, as requested by NHESP, includes additional information regarding assumptions included in the water balance impact analysis.

Since the filing of the Phase III document, the 13th Edition of the MA Natural Heritage Atlas was issued (effective October 1, 2008). According to comments from NHESP, Needs Areas 2, 6, 7, 8, 9, 10, and 11 are located within Priority and Estimated Habitat. NHESP continues to express concern that extension of the sewer system has the potential to affect the hydrology within the sub-basins of the watershed, which may affect state-listed species and their habitats; however, these comments acknowledge that, to the extent that new development is served by municipal water as proposed, these impacts would be avoided.

NHESP comments reiterate that construction or replacement of sewer lines and septic systems is exempt from the Massachusetts Endangered Species Act (MESA) review pursuant to 321 CMR 10.14(6) and 10.14(5). They indicate that only portions of the proposed project that require review are the construction of the Middlesex Road Pump Station, the River Road Pump Station and the construction of the entrance and/or exit pit associated with the directional drilling below the Merrimack River. In addition, proposed stream crossings located within Priority Habitat may also require MESA review. The proponent should continue consultations with NHESP as the project phases are proposed.

Article 97 Land

The Final EIR indicates that the project may impact conservation land which is protected under Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts. Potential impacts area associated with the proposed River Road Pump Station which will be located on town-owned conservation land (the Hunter Property). Other work will occur within roadways near the Lowell/Dracut/Tyngsboro State Forest, the Times Farm Area and the Hunter Property; however, it will not directly impact these properties. The Final EIR indicates that construction of the River Road parcel would impact approximately 7,500 to 10,000 square feet. It indicates that the site was selected to align with the right-of-way on the east side of the Merrimack River for the force main alignment. The Final EIR indicates that a privately owned parcel that abuts the Hunter Parcel could be acquired by the Town for construction of the pump station to avoid impacts to conservation land. In addition, it indicates that the Town has identified a vacant parcel approximately 1,000 feet to the south of the Hunter Parcel that could be acquired and preserved as open space to serve as mitigation for Article 97 impacts. The 1.23 acre parcel would provide mitigation on a greater than 1:1 basis.

Article 97 addresses the high value placed upon the preservation of existing protected open space lands. To further the Commonwealth's open space goals, EEA's Article 97 Land Disposition Policy requires that all feasible options to avoid the transfer/change in use of public land have been examined. The Final EIR does not suggest that location of the pump station on the privately owned parcel is infeasible. As this would avoid impacts to Article 97 land, the proponent should pursue this alternative to avoid impacts to the Hunter Parcel. In the event the Town cannot acquire this or another suitable parcel for location of the pump station, the Town should file a Notice of Project Change (NPC) that addresses the EEA Article 97 Policy in detail and proposes a compensatory mitigation plan.

Greenhouse Gases (GHG)

The Final EIR does not include an assessment of how greenhouse gas emissions (GHG) associated with the project can be minimized; however, it does include a commitment that the Town will explore opportunities to reduce greenhouse gas emissions by evaluating equipment to optimize energy efficiency. This will include consideration of the use of premium efficiency motors and variable frequency drives as applicable for mechanical equipment such as pumps and HVAC/odor control fans. I strongly encourage the Town to utilize high-efficiency equipment wherever feasible to reduce energy usage and associated GHG emissions.

Conclusion

Based on a review of the Final EIR, consultation with state agencies and a review of comment letters, I hereby determine that the Final EIR adequately and properly complies with MEPA and its implementing regulations. The project may proceed to permitting.

January 30, 2009
Date

for Ian A. Bowles

Comments received:

1/23/09	Department of Environmental Protection/Northeast Regional Office (DEP/NERO)
1/22/09	Division of Fisheries & Wildlife/Natural Heritage & Endangered Species Program (DFW/NHESP)
1/23/09	Northern Middlesex Council of Governments (NMCOG)

IAB/CDB/cdb

APPENDIX D: MASSACHUSETTS GENERAL LAW CHAPTER 41, SECTIONS 63 THROUGH 65

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 41. OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

OFFICERS IN CHARGE OF ROADS, SEWERS AND WATER WORKS

Chapter 41: Section 63. Road and sewer commissioners

Section 63. A town may at an annual meeting if official ballots are not used, otherwise at a meeting held at least thirty days before the annual meeting, vote to elect in the following manner three road commissioners or three sewer commissioners, or both.

It shall, at the annual meeting when such vote is passed or at the annual meeting next succeeding the meeting at which the vote was passed, elect one for one year, one for two years and one for three years; and at each annual meeting thereafter it shall elect one for three years. A town which has voted to elect said officers as herein provided may in like manner rescind such action; and thereupon, if at an annual meeting, the offices of road commissioners or sewer commissioners or both shall be abolished. If such vote is taken at a meeting held at least ty days before the annual meeting, such abolition shall take effect at the next annual meeting. Upon the election oad commissioners as herein provided, the office of highway surveyor shall be abolished.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 41. OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

OFFICERS IN CHARGE OF ROADS, SEWERS AND WATER WORKS

Chapter 41: Section 64. Road commissioners; powers and duties

Section 64. If road commissioners be chosen, they shall exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and surveyors of highways relative to public ways, monuments at the termini and angles thereof, guide posts, sidewalks and shade trees, and, if sewer commissioners be not chosen, relative to sewers and drains.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 41. OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

OFFICERS IN CHARGE OF ROADS, SEWERS AND WATER WORKS

Chapter 41: Section 65. Sewer commissioners; powers and duties

Section 65. If sewer commissioners be chosen, they shall, as to sewers and drains, exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and road commissioners.

APPENDIX E: MASSACHUSETTS DEPARTMENT OF REVENUE, *"LEVY LIMITS: A PRIMER ON PROPOSITION 2½"*

Massachusetts Department of Revenue *Division of Local Services*

Frederick A. Laskey, Commissioner *Joseph J. Chessey, Jr., Deputy Commissioner*

Levy Limits: A Primer on Proposition 2½

Introduction

The Division of Local Services has developed this primer to guide local officials through the mechanics of Proposition 2½. Proposition 2½ revolutionized property tax administration and is a fundamental feature of the Massachusetts municipal fiscal landscape. Yet there is still some confusion about its meaning for cities and towns, particularly because the law is complex and has undergone a number of changes since Proposition 2½ was enacted in 1980.

The purpose of this primer is to explain, as simply as possible, the basic provisions of Proposition 2½. We focus in particular on those aspects of the law that we have found to cause the most confusion, for example: the ways in which Proposition 2½ limits the property tax, how the levy limit is calculated, how an override differs from a debt exclusion or capital outlay expenditure exclusion, and how new growth works.

With the help of this primer, a local official should be able to understand the fundamentals of Proposition 2½. However, this primer is not intended as a substitute for legal guidance on a community's options and obligations under the law. If you have any questions, please refer to the Resources section included in this primer and contact the Division of Local Services for assistance and information. In addition, an order form is provided with a list of publications and instructions for obtaining copies.

We hope this primer will help you grasp the basic concepts of Proposition 2½ and act on behalf of your community with a better understanding of the law. We welcome questions and comments on this publication.

What is a Levy?

The property tax levy is the revenue a community can raise through real and personal property taxes. We will refer to the property tax levy simply as the **levy**. In Massachusetts, municipal revenues to support local spending for schools, public safety and other public services are raised through the property tax levy, state aid, local receipts and other sources. The property tax levy is the largest source of revenue for most cities and towns.

What is a Levy Ceiling? What is a Levy Limit?

Proposition 2½ places constraints on the amount of the levy raised by a city or town and on how much the levy can be increased from year to year.

A levy limit is a restriction on the amount of property taxes a community can levy. Proposition 2½ established two types of levy limits:

First, a community cannot levy more than 2.5 percent of the total full and fair cash value of all taxable real and personal property in the community. In this primer we will refer to the full and fair cash value limit as the **levy ceiling**.

Second, a community's levy is also constrained in that it can only increase by a certain amount from year to year. We will refer to the maximum amount a community can levy in a given year as the **levy limit**. The levy limit will always be below, or at most, equal to the levy ceiling. The levy limit may not exceed the levy ceiling.

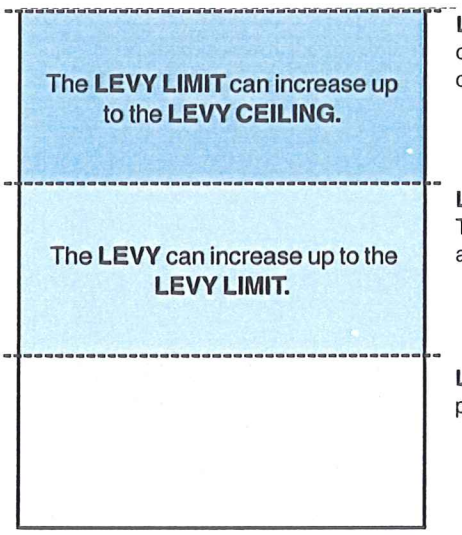
Proposition 2½ does provide communities with some flexibility. It is possible for a community to levy above its levy limit or its levy ceiling on a temporary basis, as well as to increase its levy limit on a permanent basis. These options are discussed in more detail in other sections of this primer. The concepts of levy ceiling and levy limit are illustrated in *Figure 1*.

How is a Levy Ceiling Calculated?

The levy ceiling is determined by calculating 2.5 percent of the total full and fair cash value of taxable real and personal property in the community:

Full and Fair Cash Value x 2.5% = LEVY CEILING
Full and Fair Cash Value = $100,000,000
$100,000,000 x 2.5% = $2,500,000

In this example, the levy ceiling is $2,500,000.



LEVY CEILING: The maximum the levy limit can be. The ceiling equals 2.5 percent of the community's full and fair cash value.

LEVY LIMIT: The maximum the levy can be in a given year. The limit is based on the previous year's limit plus certain allowable increases.

LEVY: The amount the community can raise through the property tax. The levy can be any amount up to the levy limit.

Figure 1

How is a Levy Ceiling Changed?

The total full and fair cash value of taxable real and personal property in a community usually changes each year as properties are added or removed from the tax roll and market values increase or decrease. This also changes the levy ceiling. See *Figure 2.*

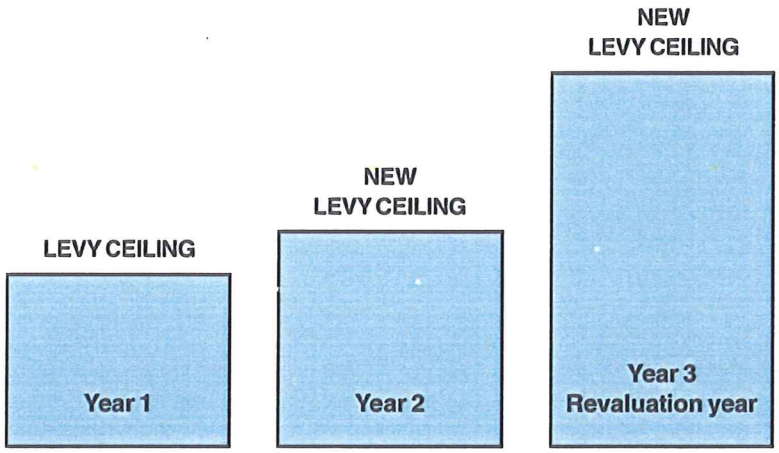


Figure 2

How is a Levy Limit Calculated?

A levy limit for each community is calculated annually by the Department of Revenue. It is important to note that a community's levy limit is based on the previous year's levy limit and not on the previous year's actual levy.

Each step in the example below is detailed in other sections of this primer. A levy limit is calculated by:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2000 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2001 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2001 Override	**+**	**$100,000**
E. FY2001 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F):

F. FY2001 Levy Ceiling	**$2,500,000**

$1,140,000
Applicable FY2001 Levy Limit
(Lesser of E and F)

This community's levy limit, the maximum amount in real and personal property taxes it can levy, is $1,140,000 for FY2001. How much of this amount the community actually wants to use — that is, the amount of the levy — is up to the discretion of local officials. The community can levy up to or at any level below the entire levy limit amount, regardless of what its levy was in the previous year. Levy increases are discussed on page 13.

How is a Levy Limit Increased?

The levy limit is increased from year to year as long as it remains below the levy ceiling. Permanent increases in the levy limit result from the following:

Automatic 2.5 percent increase. Each year, a community's levy limit automatically increases by 2.5 percent over the previous year's levy limit. This does not require any action on the part of local officials; the Department of Revenue calculates this increase automatically.

New Growth. A community is able to increase its levy limit each year to reflect new growth in the tax base. Assessors are required to submit information on growth in the tax base for approval by the Department of Revenue as part of the tax rate setting process. New growth is discussed on page 8.

Overrides. A community can permanently increase its levy limit by successfully voting an override. The amount of the override becomes a permanent part of the levy limit base. Overrides are discussed on page 9.

Please note: Debt exclusions, capital outlay expenditure exclusions and overrides are all often referred to as "overrides" and enable a community either to permanently increase its levy limit or temporarily levy above its levy limit or levy ceiling. This primer makes a distinction between an override and a debt or capital outlay expenditure exclusion, because there is a significant difference in the impact of each on a community's levy limit. An override enables a community to permanently increase its levy limit, while an exclusion only allows for a temporary increase in taxes over a community's levy limit. Overrides, debt exclusions and capital outlay expenditure exclusions are discussed in greater detail in other sections of this primer.

In summary, the levy limit can increase from year to year in these ways: automatic 2.5 percent increase, new growth and overrides. Once the levy limit is increased in any of these ways, the increased levy limit amount becomes the base upon which levy limits are calculated for future years. See *Figure 3*.

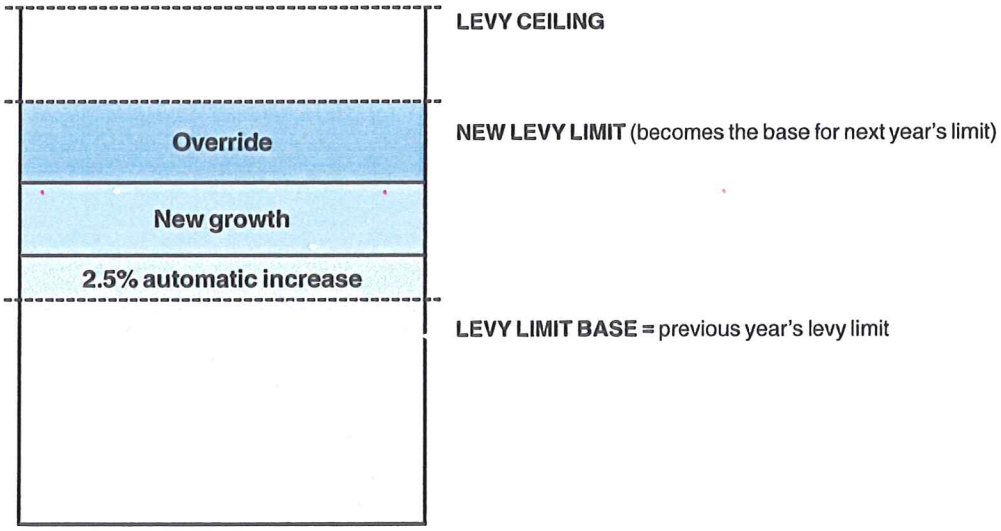


Figure 3

How Can a Community Levy Taxes in Excess of its Levy Limit or Levy Ceiling?

A community can assess taxes in excess of its levy limit or levy ceiling by successfully voting a debt exclusion or capital outlay expenditure exclusion. The amount of the exclusion does not become a permanent part of the levy limit base, but allows a community to assess taxes for a certain period of time in excess of its levy limit or levy ceiling for the payment of certain debt service costs or for the payment of certain capital outlay expenditures. See *Figures 4a and 4b.*

In *Figure 4a* the debt exclusion or capital outlay expenditure exclusion gives the community temporary additional taxing capacity over and above its levy limit, but below its levy ceiling.

In *Figure 4b* the debt exclusion or capital outlay expenditure exclusion gives the community temporary additional taxing capacity that is over and above not only its levy limit, but also its levy ceiling.

For more information on debt exclusions and capital outlay expenditure exclusions, see page 10.

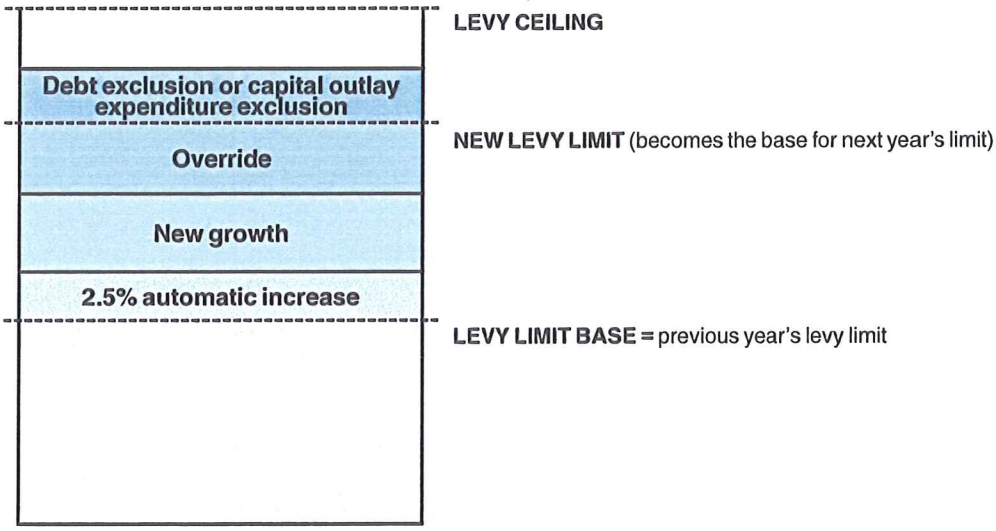


Figure 4a

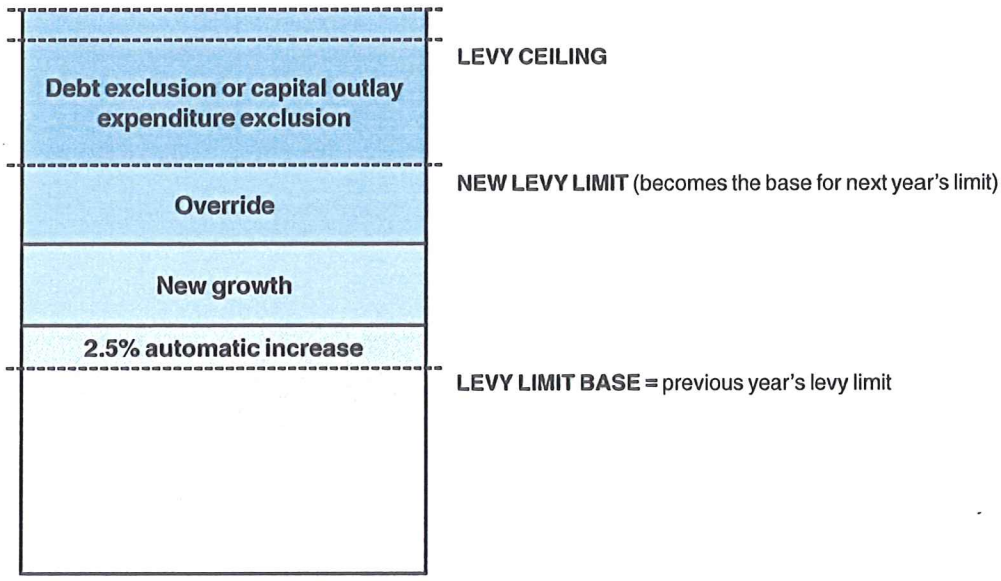


Figure 4b

What is New Growth?

Proposition 2½ allows a community to increase its levy limit annually by an amount based on the increased value of new development and other growth in the tax base that is **not** the result of revaluation. The purpose of this provision is to recognize that new development results in additional municipal costs; for instance, the construction of a new housing development may result in increased school enrollment, public safety costs, and so on. New growth under this provision includes:

- Properties that have increased in assessed valuation since the prior year because of development or other changes.
- Exempt real property returned to the tax roll and new personal property.
- New subdivision parcels and condominium conversions.

New growth is calculated by multiplying the increase in the assessed valuation of qualifying property by the prior year's tax rate for the appropriate class of property. **Any increase in property valuation due to revaluation is not included in the calculation.**

Below we highlight how new growth is calculated:

Increases in Assessed Valuation
x Prior Year's Tax Rate for Particular Class of Property
= New Growth Addition to Levy Limit

For example, for a community that applies the same tax rate to all classes of property:

Increases in Assessed Valuation = $1,000,000
Prior Year's Tax Rate = $15.00/1000
$1,000,000 x ($15.00/1000) = $15,000
New Growth Addition to Levy Limit = $15,000

Below we highlight where the addition of new growth occurs in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2000 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2001 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2001 Override	**+**	**$100,000**
E. FY2001 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F):

F. FY2001 Levy Ceiling	**$2,500,000**

$1,140,000
Applicable FY2001 Levy Limit
(Lesser of E and F)

New growth becomes part of the levy limit base, and thus increases at the rate of 2.5 percent each year as the levy limit increases. Reporting of new growth provides a community with an opportunity to increase its levy limit, which can provide for added budget flexibility in the future. Boards of Assessors are required to report new growth each year as a part of setting the tax rate.

What is an Override?

Proposition 2½ allows a community to assess taxes in excess of the automatic annual 2.5 percent increase and any increase due to new growth by passing an **override.** A community may take this action as long as it is below its levy ceiling, or 2.5 percent of full and fair cash value. An override cannot increase a community's levy limit above the level of the community's levy ceiling.

When an override is passed, the levy limit for the year is calculated by including the amount of the override. The override results in a permanent increase in the levy limit of a community, which as part of the levy limit base, increases at the rate of 2.5 percent each year.

A majority vote of a community's selectmen, or town or city council (with the mayor's approval if required by law) allows an override question to be placed on the ballot. Override questions must be presented in dollar terms and must specify the purpose of the override. Overrides require a majority vote of approval by the electorate.

Below we highlight where the amount of an override is added in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:		
A. FY2000 Levy Limit		**$1,000,000**
B. (A) x 2.5%	+	**$25,000**
Adding to the levy limit amounts of certified new growth added to the community's property tax base:		
C. FY2001 New Growth	+	**$15,000**
Adding to the levy limit amounts authorized by override votes:		
D. FY2001 Override	+	**$100,000**
E. FY2001 Subtotal (A+B+C+D)	=	**$1,140,000**
Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F):		
F. FY2001 Levy Ceiling		**$2,500,000**
	$1,140,000	
Applicable FY2001 Levy Limit (Lesser of E and F)		

The community can levy up to its levy limit of $1,140,000 in FY2001.

What is a Debt Exclusion? What is a Capital Outlay Expenditure Exclusion?

Proposition 2½ allows a community to raise funds for certain purposes above the amount of its levy limit or levy ceiling. A community can assess taxes in excess of its levy limit or levy ceiling for the payment of certain capital projects and for the payment of specified debt service costs. An exclusion for the purpose of raising funds for debt service costs is referred to as a **debt exclusion,** and an exclusion for the purpose of raising funds for capital project costs is referred to as a **capital outlay expenditure exclusion**. Both exclusions require voter approval with very limited exceptions. These exceptions are explained on page 12.

The additional amount for the payment of debt service is added to the levy limit or levy ceiling for the life of the debt only. The additional amount for the payment of the capital project cost is added to the levy limit or levy ceiling only for the year in which the project is being undertaken. Unlike overrides, exclusions do not become part of the base upon which the levy limit is calculated for future years.

Reimbursements such as state reimbursements for school building construction are subtracted from the amount of the exclusion.

A capital outlay expenditure exclusion or debt exclusion is effective even in the rare case when the exclusion would bring the community's levy above its levy ceiling.

Both of these exclusions require a two-thirds vote of the community's selectmen, or town or city council (with the mayor's approval if required by law) in order to be presented to the voters. A majority vote of approval by the electorate is required for both types of exclusion.

Questions presented to exclude a debt obligation must state the purpose or purposes for which the monies from the debt issue will be used. Questions presented to exclude a capital outlay expenditure exclusion must state the amounts and purposes of the expenditures.

Below we highlight how exclusions are added to the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2000 Levy Limit	**$**	**1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2001 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2001 Override	**+**	**$100,000**
E. FY2001 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2001 levy limit to the FY2001 levy ceiling and applying the lesser number (compare E and F):

F. FY2001 Levy Ceiling	**$2,500,000**

$1,140,000
Applicable FY2001 Levy Limit
(Lesser of E and F)

Calculating FY2001 levy limit with debt exclusion or capital outlay expenditure exclusion:

H. FY2001 Levy Limit	**$**	**1,140,000**
I. Add FY2001 Debt Exclusion or Capital Outlay Expenditure Exclusion	**+**	**$50,000**

$1,190,000
Applicable FY2001 Levy Limit with Debt Exclusion or Capital Outlay Expenditure Exclusion

In FY2001, this community can levy up to $1,190,000, its applicable levy limit with this debt exclusion or capital outlay expenditure exclusion.

What is a Special Exclusion?

For a few limited capital purposes, a community may assess taxes above the amount of its levy limit or levy ceiling without voter approval. Otherwise, special debt and capital outlay expenditure exclusions are like voter approved exclusions. The amount of the special exclusion is only added to the levy limit or ceiling for a temporary period of time, and does not become part of the base upon which the levy limit is calculated for future years.

One special debt exclusion allows a community to add water and sewer project debt service costs to its levy limit or levy ceiling for the life of the debt, as long as it reduces water and sewer rates by the same amount. The water and sewer debt exclusion is adopted by a majority vote of the community's selectmen, or town or city council (with the mayor's approval if required by law) and may include all or part of existing and subsequently authorized water and sewer debt or just the residential share of that debt.

Another special debt or capital outlay expenditure exclusion applies if a community has a program to assist homeowners to repair or replace faulty septic systems, remove underground fuel storage tanks or remove dangerous levels of lead paint in order to meet public health and safety code requirements. Under the program, the board of health and the homeowner agree that the board may contract with third parties to perform the work, and the homeowner will repay the community for all project costs. Homeowners may make the repayment by having a portion of the repair costs, with interest, added to their property tax bills for up to 20 years. The community may automatically add to its levy limit or levy ceiling the amount appropriated, or the amount of the debt service costs on any borrowing for the program.

What is an Underride?

Proposition 2½ allows a community to reduce its levy limit by passing an **underride**. When an underride is passed, the levy limit for the year is calculated by subtracting the amount of the underride. The underride results in a permanent decrease in the levy limit of a community because it reduces the base upon which levy limits are calculated for future years.

A majority vote of a community's selectmen, or town or city council (with the mayor's approval if required by law) allows an underride question to be placed on the ballot. An underride question may also be placed on the ballot by the people using a local initiative procedure, if one is provided by law. Underride questions must state a dollar amount and require a majority vote of approval by the electorate.

Below we highlight where the amount of an underride is subtracted in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2000 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2001 New Growth	**+**	**$15,000**

Subtracting from the levy limit amounts authorized by underride votes:

D. FY2001 Underride	**–**	**$ 40,000**
E. FY2001 Subtotal (A+B+C–D)	**=**	**$1,000,000**

$1,000,000
Applicable FY2001 Levy Limit

The community can levy up to its levy limit of $1,000,000 in FY2001.

Levy Increases

Once a community's levy limit is established for a particular year, the community can determine what its levy will be. The community may set its levy at any amount up to the levy limit. (Or, if it has voted a debt exclusion or capital outlay expenditure exclusion, it may levy up to the levy limit plus the additional temporary capacity resulting from the exclusion.)

It is important to note that as long as a community levies no more than its levy limit, there is no restriction on the dollar increase or percentage increase in its levy from year to year. Proposition 2½ restricts increases in the levy limit, not the levy. A community is permitted to tax up to its levy limit, even if it must raise its levy by a large percentage over the previous year's levy.

For example, a community could decide to increase its levy between FY2000 and FY2001 because the people of the community feel that the town should respond to some unmet local needs. Below we highlight the community's FY2000 and FY2001 levy limits and levies:

FY2000 Levy Limit = $1,000,000
FY2000 Levy = $900,000

FY2001 Levy Limit = $1,025,000
FY2001 Levy = $1,025,000

Percentage Change In Levy Limit = 2.5%
Percentage Change In Levy = 13.8%

From FY2000 to FY2001, the community's levy limit only increases by the allowed 2.5 percent. (In this example assume the community has no new growth and has not voted an override.) The community's levy increases from the FY2000 amount of $900,000 up to its FY2001 levy limit of $1,025,000. This is a total dollar increase in the actual levy of $125,000 — and a percentage increase in the actual levy of 13.8 percent. From FY2000 to FY2001, the actual levy increases by 13.8 percent while the levy limit only increases by the allowed 2.5 percent.

It is important to note that the 13.8 percent increase described here is allowable under the provisions of Proposition 2½. As long as the levy limit only increases each year by the amount allowed under Proposition 2½, the actual levy can increase or decrease within the levy limit established each year, as decided by the community. The community may increase its levy up to its new levy limit regardless of the percentage increase in the levy. This concept is illustrated in *Figure 5*.

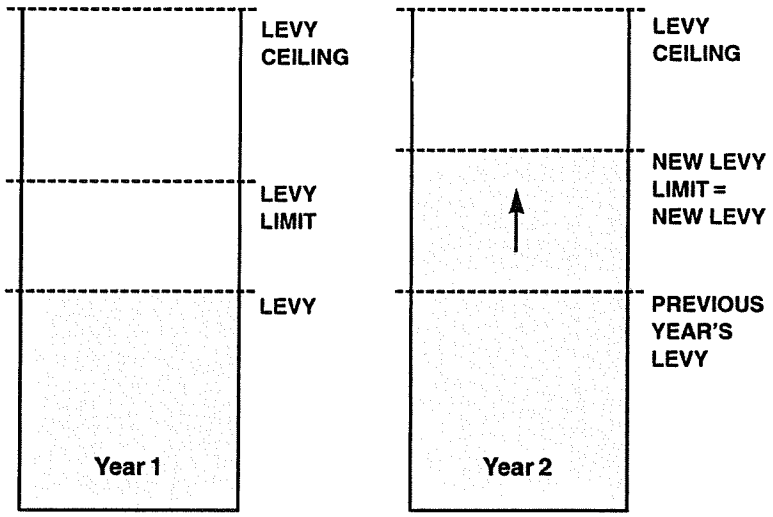


Figure 5

In Year 1, the community levies well below its levy limit.

In Year 2, the community's levy limit increases by the amount permitted under Proposition 2½. The community decides to levy all the way up to its new levy limit. The increase in the levy in Year 2 over Year 1 is indicated by the arrow. This increase is permissible under Proposition 2½.

Excess Levy Capacity

As discussed in the previous section, a community may choose to set its levy at any amount below or equal to its levy limit. When a community sets its levy below the limit, the difference between the levy and the levy limit is commonly referred to as **excess levy capacity**. This is an additional amount the community could, but chose not to, levy.

Levy Limit – Levy = Excess Levy Capacity

The concept of excess levy capacity is not a part of the Proposition 2½ law, as are the levy limit and levy ceiling. However, excess levy capacity is an important factor in municipal finance, and local officials should understand this concept.

There are two common misconceptions about excess levy capacity. The first misconception is that if a community has excess levy capacity in one year, then its ability to levy up to its levy limit in succeeding years is negatively affected. This misconception is based on the fact that Proposition 2½ limits the amount a community can increase its property taxes from year to year. Many think this means that a community cannot raise its levy all the way up to the levy limit to use all its excess capacity in just one year.

This is not true. As we have already seen, Proposition 2½ limits increases from year to year in the levy limit, not the levy. Before the tax rate is set, the full amount of the levy limit is always available to the community, **regardless** of how much of the limit the community has chosen to levy in previous years. It is within the law under Proposition 2½ for a community to have excess levy capacity in one year and, in the following year, to levy right up to the full amount of its new levy limit. This is true no matter what the percentage increase in the levy would be in order to achieve this result.

The second misconception about excess levy capacity is that a community is able to go back and "capture" excess levy capacity from a previous year. This is also not true. Once the community sets its tax rate for a given year, any revenues foregone because of excess levy capacity in that year are lost forever. This is only a one-time loss, however. In the following year, the community may levy up to its new levy limit, regardless of its levy in the previous year. See the example below:

FY2000 Levy Limit = $1,000,000
FY2000 Levy = $900,000
FY2000 Excess Levy Capacity = $100,000

FY2001 Levy Limit = $1,025,000
FY2001 Levy = $1,025,000
FY2001 Excess Levy Capacity = $0

Increase In Levy Limit = $25,000
Increase In Levy = $125,000

In FY2000, the town levies only $900,000 of its levy limit of $1,000,000, foregoing $100,000 of tax revenue it could have collected. In FY2001, the town's levy limit increases by the automatic 2.5 percent allowed by Proposition 2½, or up by $25,000 to $1,025,000. The town decides to levy all the way up to its new levy limit, so it has no excess capacity in FY2001. Its FY2001 levy is $125,000 higher than its FY2000 levy. The town cannot also levy an additional amount to capture the $100,000 foregone in FY2000. In other words, it cannot levy up to $1,125,000 for a total levy increase of $225,000. The $100,000 foregone in FY2000 is lost forever. This is a one-time loss, since the community can, in FY2001, levy all the way up to its new levy limit. This is highlighted in *Figure 6*.

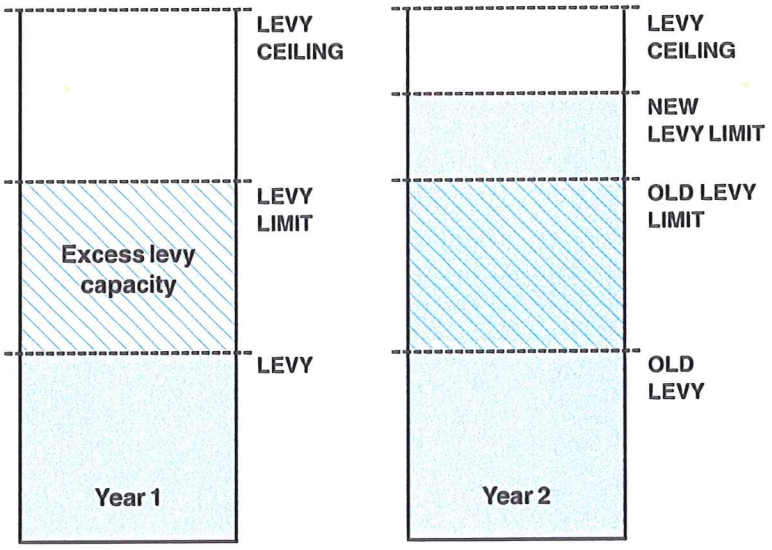


Figure 6

In Year 1, the community levies below its levy limit and as a result has excess levy capacity, represented by the area indicated.

In Year 2, the community may levy all the way up to its new levy limit. By levying up over its "old" levy limit (that is, its levy limit in Year 1), the community "uses" the excess capacity accrued in Year 1, shown by the area indicated. The community may increase its levy up to the new levy limit regardless of the percentage increase in the levy that is required to do so.

However, in Year 2 the community may not go back and recover the actual dollars of excess levy capacity foregone in Year 1 (the area indicated in the Year 1 diagram). That tax revenue is lost forever. It is only a one-time loss since the community can tax up to or above that level in Year 2.

Resources

For information on levy limits, levy ceilings, new growth and ballot questions (overrides, debt exclusions and capital outlay expenditure exclusions), contact DOR's Division of Local Services at:

- (617) 626-2300 by phone;
- (617) 626-2330 by fax; or
- the DLS webite at **www.state.ma.us/dls**.

To order copies of resources please use the order form on page 17.

Order Form

Please send me the following:

_____ copies of *Guidelines for Determining Annual Levy Limit Increase for Tax Base Growth*
_____ copies of *Proposition 2½ Referenda Questions*

Name: _____ **Title:** _____

Street address: _____

City/Town: _____ **Zip:** _____

Send to:
Public Information Officer
Division of Local Services
PO Box 9490
Boston MA 02205-9490

APPENDIX F: MASSACHUSETTS DEPARTMENT OF REVENUE, *"PROPOSITION 2½ BALLOT QUESTIONS REQUIREMENTS AND PROCEDURES"*

Massachusetts Department of Revenue *Division of Local Services*
Alan LeBovidge, Commissioner **Gerard D. Perry, Deputy Commissioner**

Proposition 2½ Ballot Questions

Requirements and Procedures

Property Tax Bureau
February 2002

TABLE OF CONTENTS

PROPOSITION 2½ BALLOT QUESTIONS
REQUIREMENTS AND PROCEDURES

I.	**INTRODUCTION**	Page 1
II.	**TYPES OF BALLOT QUESTIONS**	1
A.	Overrides	1
B.	Exclusions	1
1.	Debt Exclusions	2
a.	Pre-Proposition 2½ Debt Exclusions	2
b.	Post-Proposition 2½ Debt Exclusions	2
2.	Capital Expenditure Exclusions	3
C.	Underrides	3
III.	**REFERENDUM PROCEDURE**	3
A.	Placing Questions Before Voters	3
1.	Overrides and Underrides	3
2.	Exclusions	3
B.	Election Procedure	4
C.	Form of Questions	4
1.	Statement of Purpose	4
a.	Specificity of Purpose	4
b.	Definition of Purpose	5
2.	Other Information	6
D.	Approval of Questions	6
E.	Approval of Multiple Questions on Same Ballot	7
1.	Overrides	7
a.	Pyramid Overrides	7
b.	Menu Overrides	7
2.	Exclusions	7
F.	Voter Information	8
G.	Campaign Activities	8
H.	Revocation of Questions	8
IV.	**RELATIONSHIP TO APPROPRIATIONS**	9
A.	Use of Additional Taxing Authority (Earmarking)	9
1.	Overrides	9
2.	Debt Exclusions	9
a.	Total Exclusion	9
b.	Annual Exclusion	10
3.	Capital Expenditure Exclusions	10
B.	Appropriation - Referendum Sequence	11
C.	Contingent Appropriations	11
V.	**ROLE OF DEPARTMENT OF REVENUE**	12
APPENDICES		
A	Proposition 2½ Ballot Question Forms	13
B	Levy Limit Override Purposes	15
C	Levy Limit Override Approaches	17
D	Sequencing Options	21
E	Division of Local Services Staff Contacts	23

PROPOSITION 2½ BALLOT QUESTIONS
REQUIREMENTS AND PROCEDURES

General Laws Chapter 59 §21C

I. INTRODUCTION

Proposition 2½ limits the amount of revenue a city or town may raise from local property taxes each year to fund municipal operations. This amount is known as the annual levy limit. However, the law allows a city or town to increase tax revenues above that limit with voter approval. It also requires a city or town to reduce its levy limit as specified by the voters. General Laws Chapter 59, Section 21C.

This summary explains the referendum procedure established by Proposition 2½ and the different types of referenda questions communities may ask voters to approve.

II. TYPES OF BALLOT QUESTIONS

Proposition 2½ establishes two types of voter approved increases in taxing authority. It also allows voters to mandate a reduction in taxing authority.

A. OVERRIDES

A levy limit override increases the amount of property tax revenue a community may raise in the year specified in the override question and in future years. It increases the community's levy limit and becomes part of the base for calculating future years' levy limits. The result is a permanent increase in taxing authority. G.L. Ch. 59 §21C(g).

The purpose of the override is to provide funding for municipal expenses likely to recur or continue into the future, such as annual operating and fixed costs, although it may be used for any municipal spending purpose.

The only limitation on the amount of the override is that the new levy limit, including the override, cannot exceed the overall Proposition 2½ levy ceiling of 2½ percent of the community's full and fair cash value.

B. EXCLUSIONS

An exclusion increases the amount of property tax revenue a community may raise for a limited or temporary period of time in order to fund specific projects. The amount of an exclusion may be raised in addition to the community's levy limit. It does not increase the community's levy limit nor becomes part of the base for calculating future years' levy limits.

The exclusion may be used to raise additional funds only for a capital purpose, which is defined as any purpose for which a city or town is authorized to borrow under G.L. Ch. 44 §7 and 8. This would include most public building and public works projects, as well as land and equipment acquisitions.

There is no limitation on the number or dollar amount of exclusions.

1. Debt Exclusions

If a capital project is being funded by debt, approval of a debt exclusion permits the community to raise the amount of the annual debt service payment for that project each year until the debt is retired. See Section IV-A-2 below.

A debt exclusion may be used by a community to exclude municipal debt or to exclude its proportionate share of debt issued by a regional governmental unit of which it is a member.

Debt exclusion questions may be presented to and approved by the voters before or after the related debt is authorized or issued. An exclusion approved after repayment of the debt had begun applies prospectively, *i.e.*, to the remaining debt service payments owed on the obligation.

a. Pre-Proposition 2½ Debt Exclusions

A community may fund its remaining debt service payments on obligations issued and outstanding on November 4, 1980 by presenting a single "Pre-Proposition 2½" debt exclusion question to the voters. If approved, the community may exclude the remaining debt service payments on all of those obligations until the debts are retired. An approved "Pre-Proposition 2½" debt exclusion also covers the community's apportioned share of the debt service on any bonds that were issued by a regional governmental unit of which it is a member and were outstanding on November 4, 1980. G.L. Ch. 59 §21C(j).

b. Post-Proposition 2½ Debt Exclusions

A community may fund debt service payments on obligations issued after November 4, 1980 by presenting a "Post-Proposition 2½" debt exclusion question to the voters for municipal or regional governmental unit borrowings it wishes to exclude. G.L. Ch. 59 §21C(k). A separate question may be presented for each borrowing or multiple borrowings may be included within a single question.

2. Capital Expenditure Exclusions

If the capital project is being funded by an appropriation, voter approval of a capital expenditure exclusion question permits the community to raise the amount of the project costs up to the amount stated in the question. This additional taxing authority is available only for the one fiscal year specified in the question. G.L. Ch. 59 §21C(i½).

C. UNDERRIDES

A levy limit underride decreases the amount of property tax revenue a community may raise in the year specified in the underride question and in future years. It decreases the community's levy limit and becomes part of the base for calculating future years' levy limits. The result is a permanent decrease in taxing authority. G.L. Ch. 59 §21C(h).

III. REFERENDUM PROCEDURE

A. PLACING QUESTIONS BEFORE VOTERS

Proposition 2½ referenda questions are placed on an election ballot by vote of the "local appropriating body," which is defined in towns as the board of selectmen, not town meeting. In towns without selectmen, a vote of the town council is required to present a referendum question to the electorate. In cities, a vote of the city council, with the mayor's approval where required by law, is needed. G.L. Ch. 59 §21C(a).

This is the only way an override or exclusion question may be placed on the ballot. They may not be placed on the ballot by vote of town meeting or through use of a local initiative referendum procedure. A local referendum procedure, if authorized by law, may be used as an alternative method of placing an underride question on the ballot, however.

The board or council must vote the question exactly as it will appear on the ballot.

1. Overrides and Underrides

A majority vote of the entire board or council is needed to place an override or underride question on the ballot. G.L. Ch. 59 §21C(g), (h).

2. Exclusions

A two-thirds vote of the entire board or council is needed to place an exclusion question on the ballot. G.L. Ch. 59 §21C(i½), (j), (k).

B. ELECTION PROCEDURE

Proposition 2½ referenda questions may be placed on a regular or special municipal election ballot. Questions may also be placed on the state biennial election ballot. However, those questions must be submitted to the Secretary of State for certification by the first Wednesday in August preceding the election. G.L. Ch. 59 §21C(i).

The usual laws and procedures relating to municipal elections apply. The municipal clerk must receive written notice of the referendum at least 35 days before the date of the election. G.L. Ch. 54 §42C. The vote to place a question on the ballot must take place in sufficient time to meet this advance notice requirement.

A city or town may present Proposition 2½ questions to the voters as many times during the year as it chooses. The only constraint on the interval between these elections is the time needed to call and hold each election.

The Office of the Secretary of State is responsible for administering and enforcing municipal election laws. Specific questions about the application of these laws to the Proposition 2½ referendum procedure should be referred to the Elections Division of that agency at 617-727-2828.

C. FORM OF QUESTIONS

Proposition 2½ specifies the form of each type of ballot question. This exact language must be used to properly place a question before the voters. The question forms are found in **Appendix A**.

1. Statement of Purpose

All override and exclusion questions require a statement of the purpose or purposes for which the monies from the tax "assessment" or debt "issue" will be used.

a. Specificity of Purpose

The purpose must be described in a manner that enables voters to determine the appropriation(s) or debt obligation(s) covered by the question. The degree of specificity required to do this will depend on the type of question.

(1) Overrides

Override questions are designed to increase the amount of revenue generally available for appropriation. As a result, the spending purpose in an override question may be broad in scope such as general or departmental operating purposes. More specific spending purposes may also be stated such as where a service will be reduced or eliminated without the override. Examples of acceptable spending purposes are found in **Appendix B**.

(2) Exclusions

Exclusion questions are designed to fund specific capital projects. Therefore, the borrowing or spending purpose in an exclusion question must describe the particular project(s) being funded by the question.

b. Definition of Purpose

The purpose used in an override or exclusion question must be a spending or borrowing purpose. This means a purpose for which a community's appropriating body could vote to appropriate money or authorize debt. The purpose cannot be used to provide voters with information on the impact of an unsuccessful vote on the question, on the underlying events or circumstances that may cause budget difficulties or to otherwise promote or advocate for the override or exclusion.

For example, language that does not meet the definition of spending purpose would be questions with the stated purpose of "restoring monies lost due to local aid reductions" or "increasing free cash." These questions do not state a spending purpose because communities do not appropriate funds for these purposes.

In addition, language that explains the impact of voter action on the question and is intended to promote the override or exclusion does not meet the definition of spending purpose. For example, "preventing substantial reductions in town services, programs and personnel and further deferral of vital capital projects," "preventing a reduction in the police department budget," "preventing the layoff of 4 police officers," "maintaining current municipal and educational services" or "restoring school athletic programs" would be inappropriate. The question must simply specify the personnel, services or programs for which the additional funds will be used. Thus, appropriate purposes for the examples would be "funding the town's operating and capital expenses," "funding the police department operating budget," "funding the salaries of 4 police officers," "funding municipal and educational services," or funding school athletic programs."

Finally, the spending purposes should not be characterized in a manner intended to promote the question by including financial information usually provided during the budget process. Examples would be "funding uncontrollable increases in employee health insurance costs" or "funding a 28% increase in the town's regional school district assessment." Again, the question should just state the spending purpose: "funding employee health insurance costs" or "funding the town's regional school district assessment."

2. Other Information

Override and capital expenditure exclusion questions must also include the total amount of additional taxing authority being requested and the fiscal year in which it will be used. This information is not included in debt exclusion questions.

Any additional information about the requested amount, the services and programs to be funded by the requested amount, and the impact the vote will have on those services cannot be included in the question or on the ballot. That type of information should be provided in the course of a balanced, comprehensive, public information effort. Public information efforts undertaken by local officials must be consistent with election and campaign finance laws. See Sections III-F and G below.

D. APPROVAL OF QUESTIONS

A question is approved if a majority of the people voting on that question vote "yes."

E. APPROVAL OF MULTIPLE QUESTIONS ON SAME BALLOT

A community may place as many questions on a regular or special municipal election ballot as it chooses. However, if the community decides to place questions on the state biennial election ballot, it is limited to three questions. G.L. Ch. 59 §21C(i).

1. Overrides

a. Pyramid Overrides

A community may present a "pyramid" override to the voters. A pyramid override asks voters to determine which, if any, of two or more funding levels they are willing to approve. A separate override question would be placed on the ballot for each funding level, with each question stating the same purpose. Any question is approved if a majority of the persons voting on that question voted "yes." If more than one question is approved, the question specifying the highest dollar amount governs. This rule also applies where the questions are presented as alternative proposals to the voters.

The Elections Division of the Secretary of State's Office advises communities presenting "pyramid" overrides to include voting instructions on the ballot. The following language is recommended:

> Questions 1a, 1b and 1c are separate questions. You may vote for or against each question independently. Each question requires a majority of those voting on that question to pass. If more than one question passes, the question with the highest dollar amount will prevail.

b. "Menu" Overrides

A community may place several override questions each of which will fund different services or programs on the same ballot. If voters approve more than one override question stating different purposes, the community's levy limit may be increased by the total of the amounts specified in all approved questions.

Appendix C provides examples of single, pyramid and menu override approaches.

2. Exclusions

A community may place several exclusion questions for different capital projects on the same ballot. The community may raise the additional amounts excluded by each question approved by the voters.

F. VOTER INFORMATION

Local officials may not publish and provide voter information materials at public expense unless specifically authorized by statute. See Chapter 274 of the Acts of 1987, Chapter 630 of the Acts of 1989, Chapter 180 of the Acts of 1996 and Chapter 89 of the Acts of 1998, which authorize the preparation and distribution of voter information on municipal referenda questions by the Newton Election Commission, Cambridge Election Commission, Sudbury Board of Selectmen and Burlington Board of Selectmen respectively. In addition, a community may not include any explanatory information on the ballot, such as a summary of the impact a "yes" and "no" vote will have on local services.

G. CAMPAIGN ACTIVITIES

General Laws Chapter 55 governs the raising and spending of money for referenda questions as well as political candidates. The law also regulates the conduct of public officials and employees undertaking campaign finance activities.

In general, the law regulates conduct not speech. Thus, while local officials can take a position on an override or exclusion question and speak in favor of or in opposition to it, they cannot spend public funds or use public resources, such as personnel, supplies and facilities, to promote or oppose the question. Anderson v. City of Boston, 376 Mass. 178 (1978). Public employees may work on an override or exclusion campaign on a volunteer basis, on their own time, in any capacity other than fundraising. They may also make personal contributions to political committees established for the purpose of promoting or opposing the ballot question.

The Office of Campaign and Political Finance is responsible for administering and enforcing campaign finance laws. Specific questions about the application of these laws to the conduct of local officials and employees in the Proposition 2½ referendum procedure should be referred to that agency at 617-727-8352.

H. REVOCATION OF QUESTIONS

Proposition 2½ does not provide for the revocation or rescission of an approved referendum question. An override can be negated, however, by voter approval of an underride. An exclusion can be negated by not funding the related borrowing or appropriation.

IV. RELATIONSHIP TO APPROPRIATIONS

Proposition 2½ establishes a limit on the annual property tax levy and approval of an override or exclusion question only increases the amount a community may raise in taxes. It does not authorize or require spending for the purpose of the question. Similarly, an underride only decreases the amount a community may raise in taxes. The legal power to make spending decisions is still vested in the community's appropriating body (town meeting/town council/city council).

A. USE OF ADDITIONAL TAXING AUTHORITY (EARMARKING)

Approval of an override or exclusion question establishes the maximum amount of additional taxing authority available to the community. The spending decisions made by the community's appropriating body determine if any or all of this additional taxing authority is actually used. Thus, while the additional dollars are still part of the community's general unrestricted revenues (levy) and are not a separate financing source for the purpose of making appropriations, those dollars are considered "earmarked" because they cannot be raised in the tax levy unless the community appropriates them for the purpose stated in the question.

1. Overrides

A community's levy limit is increased by the amount stated in the override question so long as appropriations for the stated purpose and fiscal year equal or exceed that amount. All appropriations made for that purpose for the year are considered in that determination. If total appropriations are less than the stated amount, however, then the community may only increase its levy limit by the amount actually appropriated.

The additional funds raised by the override are "earmarked" for the stated spending purpose only in the first fiscal year.

2. Debt Exclusions

a. Total Exclusion

A debt exclusion covers debt service on the amount of borrowing authorized or contemplated for the stated purpose at the time of the referendum. Debt service includes payments of principal on permanent debt and interest on permanent and temporary debt.

The debt service on any additional borrowing above the amount fixed at the time of referendum is not covered unless (1) it is a modest amount attributable to inflation, new regulatory requirements or minor project changes, or (2) another debt exclusion is approved by the voters.

b. Annual Exclusion

The additional taxing authority available to a community each fiscal year until the debt covered by the exclusion is retired is the total principal and interest payment due net of any reimbursement received from the state or federal government for the project. This amount represents the community's share of the project's debt service for that year. If user fees, betterments or other local revenues are being used to fund all or part of the debt service, a community may exclude the principal and interest net of the local revenue, but it is not required to do so.

If an additional borrowing for the project is not covered by the exclusion, the additional taxing authority for each year is calculated by applying the percentage the borrowing amount fixed at the time of the referendum bears to the total debt issued for the project.

The annual exclusion amount may be adjusted from year to year in order to moderate the impact on taxpayers, provided that (1) in any year in which the exclusion raised is more than the actual local share of the debt service due for that year, the accounting officer reserves the excess for appropriation to pay debt service costs for future years, and (2) the total amount excluded during the adjusted schedule does not exceed the amount that would be excluded otherwise.

3. Capital Expenditure Exclusions

A community may use all of the additional taxing authority provided by an approved capital expenditure exclusion question so long as the amount appropriated for the specified capital project for the fiscal year, net of any reimbursement received from the state or federal for the project, equals or exceeds the amount stated in the question. This amount represents the community's share of the project cost for that year. If the community's share is less than the amount stated in the question, then the community may only increase its taxing authority by its share. If user fees, betterments or other local revenues are being used to fund all or part of the project, a community may net out the local revenue, but it is not required to do so.

B. APPROPRIATION - REFERENDUM SEQUENCE

A community should adopt a budget process that will result in a balanced budget by July first, but in any event it must have a balanced budget within the limits of Proposition 2½ by the time it sets a tax rate for the year. It may establish its expenditure and revenue budgets in any order it chooses. It could first seek voter approval of an override or exclusion question and then make appropriations for the year within a fixed revenue estimate. Alternatively, the community could choose to first adopt its expenditure budget and if that budget requires additional revenue to fully fund it, then seek voter approval of an override or exclusion question. If the question is successful, the budget will be balanced and a tax rate may be set without further action. If the question is not successful, then the community will have to reduce appropriations and/or increase non-tax revenues in order to establish a balanced budget and set a tax rate. The chart in **Appendix D** summarizes the sequencing options explained in this section and Section IV-C below.

C. CONTINGENT APPROPRIATIONS

A third budgeting approach available to towns only is to adopt a balanced budget and then appropriate additional amounts to supplement that budget expressly contingent on the subsequent approval of an override or exclusion question. G.L. Ch. 59 §21C(m). A contingent appropriation vote does not place a question on the ballot, however. The decision whether or not to present any Proposition 2½ referendum question to the voters is still made by the selectmen. See Section III-A above.

Contingent appropriations may be made from the tax levy, available funds or borrowing and are subject to the following requirements:

- A contingent appropriation is not effective until the override or exclusion question is approved. This means that until the question is approved, a town cannot spend from the contingent appropriation.

- The statement of purpose in the override or exclusion question must be substantially the same purpose as the contingent appropriation. This means the question need not be worded in exactly the same way as the appropriation. However, it must describe the purpose in a sufficiently similar manner that the voters can identity the particular appropriation the question is intended to fund. In addition, each contingent appropriation need not be the subject of a separate question. The selectmen retain the power to decide the content of all questions and may include several contingent appropriations within a single override or exclusion question. In that case, the question must state the purpose of each appropriation it is intended to fund.

- The deadline for obtaining voter approval of override or exclusion questions for contingent appropriations made at an annual town meeting is September 15. More than one election may be held, but the contingent appropriation is null and void if the related question is not approved by September 15.

- The deadline for obtaining voter approval of override or exclusion questions for contingent appropriations made at any other town meeting is 90 days after the close of the town meeting at which the contingent appropriation vote was taken. More than one election may be held, but the contingent appropriation is null and void if the related question is not approved by the end of the 90 day period.

- If the contingent appropriation was made from the tax levy, the tax rate cannot be submitted to the Department of Revenue for approval until the override or exclusion question has been voted upon, or the applicable deadline for holding an election has passed, whichever occurs first.

V. ROLE OF DEPARTMENT OF REVENUE

The Division of Local Services in the Department of Revenue has general supervisory authority over local property tax administration and financial practices. It issues guidelines to assist local financial officials in the performance of their duties, renders legal opinions on local tax and finance issues, conducts training programs and approves revaluations and tax rates.

The Division is also responsible under Proposition 2½ for calculating a community's levy limit and for ensuring that a community does not set a tax rate that results in a tax levy exceeding the amount allowed by the law. G.L. Ch. 59 §21D.

The Division's legal staff is available to answer general questions about the use of the Proposition 2½ referendum procedure. Other Division staff members can provide data on the number of communities using the procedures and specific information on a community's levy limit. **Appendix E** contains the Division's address and telephone number as well as contacts for additional information.

Appendix A

PROPOSITION 2½ BALLOT QUESTION FORMS

The form of each type of Proposition 2½ referendum question is prescribed by G.L. Ch. 59 §21C. To properly present a question to the voters, the following statutory language must be used:

Levy Limit Override (G.L. Ch. 59 §21C(g)):

Shall the (city/town) of _____ be allowed to assess an additional $_____ in real estate and personal property taxes for the purposes of (state the purposes(s) for which the monies from this assessment will be used) for the fiscal year beginning July first nineteen hundred and _____?

Yes ____ No ____

Levy Limit Underride (G.L. Ch. 59 §21C(h)):

Shall the (city/town) of _____ be required to reduce the amount of real estate and personal property taxes to be assessed for the fiscal year beginning July first nineteen hundred and _____ by an amount equal to $_____?

Yes ____ No ____

Capital Expenditure Exclusion (G.L. Ch. 59 §21C(i½)):

Shall the (city/town) of _____ be allowed to assess an additional $_____ in real estate and personal property taxes for the purposes of (state the purposes(s) for which the monies from this assessment will be used) for the fiscal year beginning July first nineteen hundred and _____?

Yes ____ No ____

Pre-Proposition 2½ Debt Exclusion (G.L. Ch. 59 §21C(j)):

Shall the (city/town) of _____ be allowed to exempt the total amounts required to pay for bonded indebtedness incurred prior to the passage of proposition two and one-half, so-called, from the city's/town's limit?

Yes ____ No ____

Post-Proposition 2½ Debt Exclusion (G.L. Ch. 59 §21C(k)):

Shall the (city/town) of _____ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (state the purpose or purposes for which the monies from the local issue will be used)?

Yes ____ No ____

Appendix B

LEVY LIMIT OVERRIDE PURPOSES

Voter approval of a levy limit override under G.L. Ch. 59 §21C(g) increases the amount of revenue a community may raise from the property tax on a permanent basis. An override is designed to provide a community with the ability to generate sufficient revenues to fund costs that are likely to continue into the future, such as annual operating and fixed expenses, although it may be used to provide funds for any valid municipal spending purpose.

All override questions require a statement of the purpose or purposes for which the additional monies will be used. The purpose used in the question must be a spending purpose. This means a purpose for which a community's appropriating body could vote to appropriate money. The spending purpose may be broad in scope, such as general or departmental operating purposes, or may be stated as a specific program or service.

If the override is to fund personnel costs and other expenses normally appropriated as part of departmental operating budgets, the spending purpose may be broadly stated as in the following examples:

- Funding the Town's operating budget
- Funding operating expenses and capital expenditures
- Providing for the general administrative cost of operating the schools, police department, fire department and other town departments
- Funding the operating budget of the Public Schools and the Municipal Government
- Defraying school operating expenses
- Funding the Town's Regional School District assessment.

Specific positions, programs and services ordinarily funded within a departmental budget may be the subject of an override question when the additional funds will be used to prevent the reduction or elimination of those services or to permit their commencement or expansion. For example, if two firefighter positions within the fire department operating budget were being eliminated, an override for the purpose of "funding two firefighter positions" would be acceptable.

A more specific spending purpose may also be used if the override is to fund a particular purpose or program that is the subject of a separate line item or special article appropriation as in the following examples:

- Defraying the costs of retirement contributions and health, life and unemployment insurance premiums
- Funding the contractual costs of trash collection and disposal
- Funding the Stabilization Fund.

While local officials have flexibility in describing the purposes of an override generally, less flexibility exists in describing the purposes of an override where it is being presented to fund one or more contingent appropriations because the purpose of the question must state substantially the same purpose(s) as the appropriation(s). Therefore, if, for example, an additional appropriation is made for the school department operating budget contingent on an override, local officials would be limited to using "funding school operating expenses," "funding the school department operating budget" or similar language to describe the purpose of the override. They could not be as specific about the positions, programs or services that the school committee intends to eliminate from the budget if the override is unsuccessful as they might be if a contingent appropriation had not been used.

Moreover, local officials cannot use the question to provide voters with information on the underlying events or circumstances that are causing budget difficulties or to promote or otherwise advocate for the question. For example, "preventing the layoff of 4 firefighters" would be inappropriate because it explains the impact of voter action on the question and is intended to advocate for the override. The question should simply state the personnel, services or programs the additional amounts will be used to fund, which in this case would be "funding 4 firefighter positions."

Other examples of purposes in override questions that include advocacy language or would otherwise be inappropriate are the following:

- Restoring monies lost due to local aid reductions
- Funding uncontrollable increases in employee health insurance costs
- Preventing substantial reductions in public safety, education and other municipal services
- Maintaining an adequate level of municipal services
- Funding current positions
- Restoring school athletic programs.

Appendix C

LEVY LIMIT OVERRIDE APPROACHES

I. SINGLE QUESTION OVERRIDE

Presents voters with a single choice of additional funding for general or specific spending purposes. The following are examples of single question overrides:

Example 1. General Purposes

Shall the Town of Yourtown be allowed to assess an additional $2,000,000 in real estate and personal property taxes for the purposes of funding the operating budgets of the Town and the Public Schools for the fiscal year beginning July 1, ____?

Example 2. General Categories

Shall the Town of Yourtown be allowed to assess an additional $2,000,000 in real estate and personal property taxes for the purposes of local and regional school, public safety, library, highway, parks and recreation and general government expenses for the fiscal year beginning July 1, ____?

Example 3. Multiple Departmental Purposes with Allocation

Shall the Town of Yourtown be allowed to assess an additional $2,000,000 in real estate and personal property taxes for the purposes of funding the following departmental expenses: School Department ($750,000), Police Department ($250,000), Fire Department ($250,000), Public Works Department ($250,000), Public Library ($250,000), Parks and Recreation Department ($150,000), Council on Aging ($25,000) and Financial Offices, including Assessors, Collector-Treasurer, Accountant, ($75,000) for the fiscal year beginning July 1, ____?

Example 4. Single Departmental Budget

Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, ____?

Example 5. Specific Positions/Programs/Services

Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of funding four full-time firefighter positions for the fiscal year beginning July 1, ____?

II. MULTIPLE QUESTION OVERRIDES

Presents voters with multiple choices of additional funding for general or specific spending purposes. There are two multiple question approaches: "menu" and "pyramid" overrides.

A. "MENU" OVERRIDE

The "menu" approach presents two or more questions each of which will fund different services or programs. Each question stands on its own merits. Therefore, if the voters approve more than one question, the community's levy limit can be increased by the total of the amounts specified in all approved questions.

The following is an example of a "menu" override:

> Shall the Town of Yourtown be allowed to assess an additional $1,000,000 in real estate and personal property taxes for the purposes of funding the Yourtown Public and Yourtown Valley Regional High Schools for the fiscal year beginning July 1, ____?
>
> Shall the Town of Yourtown be allowed to assess an additional $250,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, ____?
>
> Shall the Town of Yourtown be allowed to assess an additional $250,000 in real estate and personal property taxes for the purposes of funding the Police Department for the fiscal year beginning July 1, ____?
>
> Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of funding the Public Library for the fiscal year beginning July 1, ____?

B. "PYRAMID" OVERRIDE

The "pyramid" approach provides voters with a choice of two or more different funding levels for general spending purposes or for specific services or programs. A separate question is presented for each funding level. The funding levels are presented as alternative, not independent, proposals, which means the highest funding level proposed in a question also includes all lower ones. Therefore, if the voters approve more than one question, the question stating the highest dollar amount prevails and the community's levy limit can be increased by that amount.

The following are examples of "pyramid" overrides:

Example 1. General Purpose

1A Shall the Town of Yourtown be allowed to assess an additional $1,000,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional $500,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional $250,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

Example 2. Multiple Purposes with Allocation

1A Shall the Town of Yourtown be allowed to assess an additional $1,000,000 in real estate and personal property taxes for the purposes of funding the school ($500,000), police ($250,000) and fire ($250,000) departments for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional $500,000 in real estate and personal property taxes for the purposes of funding the school ($250,000), police ($125,000) and fire ($125,000) departments for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional $250,000 in real estate and personal property taxes for the purposes of funding the school ($125,000), police ($62,500) and fire ($62,500) departments for the fiscal year beginning July 1, ____?

Example 3. Multiple "Pyramids"

1A Shall the Town of Yourtown be allowed to assess an additional $300,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional $200,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?

2A Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?

2B Shall the Town of Yourtown be allowed to assess an additional $50,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?

2C Shall the Town of Yourtown be allowed to assess an additional $25,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?

Example 4. Specific Positions/Programs

1A Shall the Town of Yourtown be allowed to assess an additional $200,000 in real estate and personal property taxes for the purposes of funding 8 firefighter positions for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional $100,000 in real estate and personal property taxes for the purposes of funding 4 firefighter positions for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional $50,000 in real estate and personal property taxes for the purposes of funding 2 firefighter positions for the fiscal year beginning July 1, ____?

Appendix D

SEQUENCING OPTIONS

Number 1 **Election - Appropriation**	Number 2 **Appropriation - Election**	Number 3 **Contingent Appropriation - Election Towns Only**
Referendum election held • Annual or special municipal • State biennial	**Appropriation made by town meeting or city/town council** • Annual or special	**Appropriation made by town meeting** • Annual or special
Appropriation made by town meeting or city/town council • Annual or special	**Referendum election held** • Annual or special municipal • State biennial	**Referendum election held** • Annual or special municipal, state biennial • Referendum deadline: • September 15 for appropriations made at annual town meeting • 90 days after special town meeting dissolves for appropriations made at that meeting
If referendum passes and appropriation fails • Referendum is valid • If override/capital exclusion, have until tax rate set to appropriate for same purpose • If debt exclusion, have reasonable time to authorize debt for same project	**If referendum passes and appropriation fails** • Referendum is valid • If override/capital exclusion, have until tax rate set to appropriate for same purpose • If debt exclusion, have reasonable time to authorize debt for same project	**If referendum passes** • No further action required - appropriation validated and tax increase approved to cover expenditure
If appropriation passes and referendum fails • Appropriation is valid • Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just referendum purpose, and/or community may raise non-tax revenues) • Referendum may be presented again	**If appropriation passes and referendum fails** • Appropriation is valid • Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just referendum purpose, and/or community may raise non-tax revenues) • Referendum may be presented again	**If referendum fails** • No further action required - appropriation null and void • Referendum may be presented at other elections, but must be approved by: • September 15 for appropriations made at annual town meeting • 90 days after special town meeting dissolves for appropriations made at that meeting
If referendum and appropriation both pass or both fail • No further action required	**If referendum and appropriation both pass or both fail** • No further action required	**If referendum not held by deadline** • Appropriation null and void

Appendix E

STAFF CONTACTS

Division of Local Services
Department of Revenue
Boston MA
(617) 626-2300
FAX (617) 626-2330

MAILING ADDRESS: P.O. Box 9569, Boston MA 02114-9569
LOCATION: 6th Floor, 100 Cambridge Street, Boston

INTERNET ADDRESS: http://www.mass.gov/dls

40 Southbridge Street - Room 210
Worcester MA 01608
(508) 792-7300
FAX (508) 421-2310

436 Dwight Street - Room 401
Springfield MA 01103
(413) 784-1000
FAX (413) 784-1034

For further information on Proposition 2½ referendum procedure, or legal opinions on any municipal tax or finance issue, including Proposition 2½:

- Contact the Division's legal staff (Boston)

For DOR publications and data on Proposition 2½ election results:

- Contact Joan Grourke, Executive Assistant to Deputy Commissioner (Boston)

For information on a community's levy limit:

- Local officials may contact the Bureau of Accounts Representative assigned to the community (Boston/Worcester/Springfield)
- Others should contact Joan Grourke, Executive Assistant to Deputy Commissioner (Boston)

Home

Proposition 2 1/2 Resource Area

January 01, 2003

Proposition 2½ limits the amount of revenue a city or town may raise from local property taxes each year to fund municipal operations. Communities must seek voter approval to raise additional funds beyond Proposition 2½ limits.

Proposition 2½ Override and Exclusion Vote Resources

The Boston Globe's Override Central
Coverage of Proposition 2½ override campaigns in more than 30 communities in Greater Boston.

Proposition 2½ Ballot Questions (1983-present)
Comprehensive records of Proposition 2½ ballot questions (overrides, underrides, and exclusions). Provided by the state's Division of L Services (DLS).

DLS Publications About Proposition 2½

"Levy Limits: A Primer on Proposition 2½" (PDF file, 92K)

"Proposition 2½ Ballot Questions: Requirements and Procedures" (PDF file, 216K)

List of successful overrides complied by DLS for fiscal 1990-2005 (PDF file, 52K)

More About Proposition 2½

In Massachusetts, municipal revenues to support local spending for schools, public safety, and other public services are raised through tl property tax levy, state aid, local receipts, and other sources. The property tax levy is the largest source of revenue for most cities and to

Proposition 2½, approved by Massachusetts voters in 1980 and first implemented in fiscal 1982, limits the amount of revenue a city or t raise, or levy, from local property taxes each year to fund municipal operations.

The law (M.G.L. Ch. 59, Sect. 21C) places two constraints on the amount of property taxes a city or town can levy:

1. A community cannot levy more than 2.5 percent of the total full cash value of all taxable property in the community (called the levy c

2. A community's allowable levy for a fiscal year (called the levy limit) cannot increase by more than 2.5 percent of the maximum allow for the prior year, plus certain allowable increases such as new growth from property added to the tax rolls.

Proposition 2½ establishes two types of voter-approved increases in taxing authority:

Overrides: A levy limit override increases the amount of property tax revenue a community may raise in the year specified in the overr question and in future years. The result is a permanent increase in taxing authority. The purpose of the override is to provide funding for municipal expenses likely to recur or continue into the future, such as annual operating and fixed costs.

Exclusions: An exclusion increases the amount of property tax revenue a community may raise for a limited or temporary period of tim to fund specific projects. It does not increase the community's levy limit nor become part of the base for calculating future years' levy lir exclusion may be used to raise additional funds only for capital purposes, such as public building, public works projects, land and equip acquisitions.

Proposition 2½ also allows voters to mandate a reduction in taxing authority. A levy limit underride decreases the amount of property ta a community may raise in the year specified in the underride question and in future years. The result is a permanent decrease in taxing a

Successful Overrides in Massachusetts, Fiscal 1990 to 2005

Municipality	Number of Wins	Average Amount Won	Total Amount of Overrides Won
ABINGTON	2	539,000	1,078,000
ACTON	4	1,469,500	5,878,000
ALFORD	1	40,000	40,000
AMHERST	6	617,732	3,706,390
AQUINNAH	13	39,288	510,744
ARLINGTON	1	2,520,000	2,520,000
ASHBURNHAM	5	297,780	1,488,899
ASHBY	4	47,138	188,550
ASHFIELD	3	77,933	233,799
AUBURN	1	713,584	713,584
AVON	1	962,614	962,614
AYER	3	254,706	764,119
BARNSTABLE	1	1,700,000	1,700,000
BECKET	2	140,814	281,628
BELCHERTOWN	3	326,494	979,483
BELMONT	3	2,498,315	7,494,946
BERLIN	11	32,975	362,724
BERNARDSTON	2	101,957	203,913
BLANDFORD	4	24,750	99,000
BOLTON	9	228,065	2,052,589
BOURNE	1	2,285,000	2,285,000
BOXBOROUGH	1	103,000	103,000
BOXFORD	26	108,030	2,808,772
BOYLSTON	4	170,750	683,000
BREWSTER	6	274,570	1,647,421
BRIMFIELD	1	253,034	253,034
BROOKLINE	1	2,960,000	2,960,000
BUCKLAND	8	27,511	220,085
CARLISLE	19	109,817	2,086,529
CHARLEMONT	1	95,000	95,000
CHARLTON	5	44,296	221,481
CHATHAM	55	65,772	3,617,455
CHELMSFORD	2	1,302,500	2,605,000
CHESTER	8	12,164	97,309
CHESTERFIELD	2	35,259	70,517
CHILMARK	25	71,117	1,777,932
COHASSET	10	253,039	2,530,385
COLRAIN	1	90,000	90,000
CONCORD	13	547,578	7,118,519
CONWAY	4	64,000	256,000
DEERFIELD	3	200,838	602,515
DENNIS	11	323,181	3,554,986
DOUGLAS	3	66,800	200,400
DOVER	9	255,018	2,295,163
DUNSTABLE	4	113,438	453,750
DUXBURY	1	1,000,000	1,000,000
EASTHAM	34	46,052	1,565,757
EASTHAMPTON	3	83,188	249,564
EAST LONGMEADOW	2	415,472	830,944
EASTON	2	1,064,817	2,129,633
EDGARTOWN	23	115,414	2,654,514
EGREMONT	2	85,000	170,000
ERVING	1	175,000	175,000
ESSEX	12	111,881	1,342,571
FALMOUTH	1	980,000	980,000
FLORIDA	1	40,000	40,000
FRAMINGHAM	4	2,912,735	11,650,938
GEORGETOWN	2	112,887	225,773
GILL	1	110,000	110,000
GOSHEN	1	98,000	98,000
GOSNOLD	1	7,219	7,219
GRANBY	4	127,260	509,041
GREAT BARRINGTON	2	362,380	724,760
GREENFIELD	1	1,358,297	1,358,297
GROTON	4	535,876	2,143,502
GROVELAND	9	154,157	1,387,414
HALIFAX	2	244,809	489,618
HAMILTON	13	300,251	3,903,261
HAMPDEN	7	53,851	376,957
HANCOCK	2	8,500	17,000
HANOVER	2	1,140,100	2,280,199
HANSON	4	165,554	662,217
HARVARD	14	125,885	1,762,395
HARWICH	14	129,418	1,811,846
HATFIELD	2	13,500	27,000
HAWLEY	1	15,000	15,000
HEATH	5	58,809	294,045
HINGHAM	3	704,730	2,114,190
HINSDALE	3	91,879	275,637
HOLBROOK	2	566,000	1,132,000
HOLDEN	3	202,963	608,890
HOLLAND	24	28,169	676,060
HOLLISTON	2	230,000	460,000
HOLYOKE	4	1,276,000	5,104,000
HOPEDALE	1	382,000	382,000
HOPKINTON	4	674,475	2,697,899
HUDSON	1	699,684	699,684
HUNTINGTON	2	53,230	106,460
IPSWICH	3	301,382	904,147
KINGSTON	1	513,000	513,000
LAKEVILLE	2	670,419	1,340,838
LANCASTER	5	523,565	2,617,826
LEE	1	228,683	228,683
LEICESTER	1	629,827	629,827
LEVERETT	8	53,859	430,871
LEXINGTON	13	998,545	12,981,090
LEYDEN	2	50,380	100,759
LINCOLN	8	350,625	2,805,000
LITTLETON	2	185,522	371,044
LONGMEADOW	2	2,200,000	4,400,000
LUNENBURG	3	354,246	1,062,739
LYNNFIELD	2	941,810	1,883,620
MANCHESTER	4	332,283	1,329,131
MANSFIELD	1	1,587,144	1,587,144
MARBLEHEAD	5	438,683	2,193,414
MARION	37	52,751	1,951,772
MARSHFIELD	6	320,000	1,920,000
MASHPEE	3	444,855	1,334,565
MATTAPOISETT	23	80,965	1,862,189
MAYNARD	3	208,129	624,387
MEDFIELD	5	633,400	3,167,000
MEDWAY	1	1,881,203	1,881,203
MELROSE	1	3,000,000	3,000,000
MENDON	2	280,795	561,589
MERRIMAC	4	123,511	494,042
MIDDLEFIELD	2	52,500	105,000
MIDDLETON	5	133,046	665,229
MILLIS	3	240,229	720,687
MILTON	6	1,018,133	6,108,797
MONSON	1	451,000	451,000
MONTAGUE	1	76,190	76,190
MONTEREY	1	65,000	65,000
MOUNT WASHINGTON	5	30,156	150,780
NAHANT	2	164,244	328,488
NANTUCKET	7	626,116	4,382,811
NATICK	1	427,000	427,000
NEEDHAM	15	330,156	4,952,334
NEW BRAINTREE	1	1,690	1,690
NEWBURY	6	126,922	761,534
NEW MARLBOROUGH	1	60,000	60,000
NEW SALEM	11	22,412	246,528
NEWTON	1	1,150,000	1,150,000
NORFOLK	10	162,468	1,624,681
NORTH ANDOVER	4	1,236,005	4,944,019
NORTHBOROUGH	1	487,370	487,370
NORTHBRIDGE	1	24,200	24,200
NORTHFIELD	5	102,666	513,331
NORTH READING	1	1,244,773	1,244,773
NORWELL	2	462,500	925,000
OAK BLUFFS	11	202,882	2,231,697
OAKHAM	2	12,758	25,515
ORANGE	14	47,105	659,468
ORLEANS	7	132,077	924,541
OTIS	4	81,517	326,068
PAXTON	13	31,277	406,598
PELHAM	2	74,000	148,000
PERU	2	17,225	34,450
PHILLIPSTON	5	69,322	346,610
PLYMPTON	2	49,640	99,280
READING	2	3,455,256	6,910,512
RICHMOND	3	113,260	339,781
ROCHESTER	5	64,653	323,263
ROCKLAND	1	389,500	389,500
ROCKPORT	7	445,382	3,117,673
ROWLEY	6	68,293	409,759
ROYALSTON	1	16,000	16,000
RUTLAND	3	140,007	420,020
SALISBURY	7	157,152	1,100,067
SANDISFIELD	5	19,469	97,347
SANDWICH	6	481,188	2,887,130
SAVOY	2	14,520	29,039
SCITUATE	2	1,161,610	2,323,220
SHARON	6	1,338,203	8,029,220
SHEFFIELD	4	194,913	779,650
SHELBURNE	3	70,198	210,593
SHERBORN	9	324,611	2,921,500
SHIRLEY	3	120,000	360,000
SHUTESBURY	7	69,326	485,280
SOUTHAMPTON	2	87,898	175,795
SOUTHBOROUGH	6	197,597	1,185,580
SOUTHBRIDGE	2	183,593	367,186
SPRINGFIELD	5	2,162,427	10,812,136
STERLING	4	99,375	397,498
STOCKBRIDGE	1	250,000	250,000
STOW	9	187,423	1,686,803
STURBRIDGE	3	230,383	691,148
SUDBURY	6	1,204,502	7,227,011
SUNDERLAND	7	78,583	550,081
SUTTON	1	614,983	614,983
SWAMPSCOTT	2	2,153,395	4,306,790
TEMPLETON	4	171,587	686,348
TISBURY	32	37,571	1,202,283
TOLLAND	1	50,000	50,000
TOPSFIELD	12	240,689	2,888,265
TOWNSEND	7	120,356	842,490
TRURO	30	70,827	2,124,814
TYNGSBOROUGH	1	580,000	580,000
TYRINGHAM	1	94,000	94,000
UPTON	4	478,831	1,915,322
UXBRIDGE	2	400,000	800,000
WAKEFIELD	1	760,000	760,000
WALES	1	20,120	20,120
WALPOLE	1	3,709,259	3,709,259
WARE	1	80,000	80,000
WARWICK	7	9,215	64,508
WASHINGTON	7	10,745	75,217
WAYLAND	6	888,316	5,329,895
WELLESLEY	8	1,136,920	9,095,358
WELLFLEET	36	63,573	2,288,635
WENDELL	1	19,598	19,598
WENHAM	11	149,395	1,643,346
WEST BOYLSTON	1	200,000	200,000
WEST BRIDGEWATER	1	62,500	62,500
WESTHAMPTON	5	17,105	85,525
WESTFORD	8	512,016	4,096,126
WESTMINSTER	11	146,322	1,609,545
WEST NEWBURY	5	192,030	960,148
WESTON	7	476,429	3,335,000
WESTPORT	2	80,000	160,000
WEST STOCKBRIDGE	2	236,188	472,375
WEST TISBURY	46	70,965	3,264,389
WESTWOOD	3	1,058,260	3,174,780
WHATELY	4	40,653	162,613
WILBRAHAM	5	605,215	3,026,075
WILLIAMSBURG	23	28,558	656,831
WILLIAMSTOWN	2	572,633	1,145,266
WINCHENDON	1	97,000	97,000
WINCHESTER	1	4,550,000	4,550,000
WINDSOR	4	35,705	142,818
WINTHROP	1	2,500,000	2,500,000
WORCESTER	1	4,583,000	4,583,000
WORTHINGTON	6	33,867	203,204
WRENTHAM	1	681,000	681,000
YARMOUTH	4	901,818	3,607,271

224 communities have passed at least one override since fiscal 1990.

Note: This chart includes successful overrides only; it does not include results of debt or capital exclusions.

Source: Massachusetts Department of Revenue, Division of Local Services, Municipal Databank/Local Aid Section

APPENDIX G: MASSACHUSETTS DEPARTMENT OF REVENUE, "*BETTERMENTS AND SPECIAL ASSESSMENTS – ASSESSMENT AND COLLECTION PROCEDURES*"

Massachusetts Department of Revenue *Division of Local Services*
Frederick A. Laskey, Commissioner Joseph J. Chessey, Jr., Deputy Commissioner

Betterments and Special Assessments

Assessment and Collection Procedures

Prepared by the Division of Local Services, April 2001

TABLE OF CONTENTS
BETTERMENTS AND SPECIAL ASSESSMENTS

ASSESSMENT AND COLLECTION PROCEDURES 1

I. Nature of Assessment 1
- A. Special Property Tax 1
- B. Assessment Standard 1
- C. Exemptions 1

II. Authority to Levy Assessments 1
- A. Betterments 1
- B. Water Special Assessments 2
- C. Sewer Special Assessments 2
- D. Sidewalk Special Assessments 2

III. Assessment Procedure 2
- A. Ordering Improvement and Assessment 2
- B. Creating Lien 3
- C. Assessing Costs 4
- D. Committing Assessments 5

IV. Collection Procedure 5
- A. Assessment Notice 5
- B. Payment/Apportionment 5
- C. Adding Assessment to Tax Bill 5
- D. Suspensions/Deferrals 7
- E. Prepayment of Apportioned Assessments 7

V. Property Owner Remedies 8
- A. Abatement 8
- B. Other Remedies 9

VI. Administrative Remedies 10
- A. Property Divided After Assessment 10
- B. Reassessment 10

VII. Accounting for Revenue 11
- A. Enterprise Fund 11
- B. Estimated Sewer Assessments 11
- C. Special Act Betterment Reserves 11

RESPONSIBILITIES OF PARTIES 13

SCHEDULE OF EVENTS 15

PAYMENT –APPORTIONMENT –INTEREST EXAMPLE 17

BETTERMENT REPAYMENT SCHEDULE 19
- Semi-annual Payment System Example 21
- Quarterly Payment System Example 23

SENIOR CITIZEN DEFERRALS 25
- Reprinted from **City & Town**, January 1995

BETTERMENTS AND SPECIAL ASSESSMENTS
Assessment and Collection Procedures

I. NATURE OF ASSESSMENT

A. Special Property Tax

A betterment or special assessment is a special property tax that is permitted 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. 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 Ry. 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.

1. Definition: A special benefit is defined as an enhancement of the value or use of property due to the construction of the improvement.

2. Measurement: A special benefit is measured by how much the particular improvement has increased the fair market value of the property, as between a willing buyer and seller 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 Ry. at 309-312.

C. Exemptions

Properties owned by governmental entities for public purposes are exempt from betterments and special assessments, but individuals, and charitable, religious or other organizations, ordinarily eligible for full or partial exemptions from annual property taxes are not exempt.

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.

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 betterments. G.L. Ch. 80 §1. This typically applies to improvements involving eminent domain takings such as street layouts.

B. Water Special Assessments

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

In order to make the assessments, the city council, town meeting or district meeting must accept G.L. Ch. 40 §§42G, 42H, 42I and 42K (to use uniform unit method) and authorize the assessments for the project by vote, ordinance or by-law.

C. Sewer Special Assessments

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

City council or town meeting authorization by vote, ordinance or by-law is required to make the assessments.

D. Sidewalk Special Assessments

Cities or towns may assess no more that 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 preceding year's assessed valuation. G.L. Ch. 83 §26.

III. ASSESSMENT PROCEDURE

A. Ordering Improvement and Assessment

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

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. 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. 40 §§42G and 42I.

3. Sewer/Sidewalk Assessments: The order must identify the ways in which sewer/sidewalk is located. G.L. Ch. 83 §§25 and 27.

B. Creating Lien

A special assessment or betterment is a lien on the property benefited. In order to enforce collection, the Assessing Board must establish a valid lien. The property owner is not personally liable for the assessment.

1. Recording Requirements

In order to create a lien, the Assessing Board must record the following information at the Registry of Deeds:

a. Betterments: Order, plan and estimates within 90 days of (1) date order adopted or (2) town acceptance of street layouts, relocation or alterations, if acceptance required. G.L. Ch. 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) "forthwith." G.L. Ch. 40 §42I.

c. Sewer/Sidewalk Assessments: Order and list of ways "forthwith." G.L. Ch. 83 §27. Should also record list of owners of each parcel to be assessed (as of prior January 1 for tax purposes).

2. Deferred Recording Procedure

The Assessing Board may defer recording the required information for betterments authorized by G.L. Ch. 80, and sewer or sidewalk assessments authorized by G.L. Ch. 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. Ch. 80 §12.

3. Duration of Lien

a. Arises: The lien exists from the time the recording is made. G.L. Ch. 80 §12; G.L. Ch. 40 §42I; G.L. Ch. 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 proceeding and the collector files a statement at the Registry of Deeds to continue the lien, until payment or abatement; and (3) if time for payment is extended and the collector files a statement at the Registry of Deeds, until payment or abatement.

c. Dissolves: The lien dissolves upon recording in the Registry of Deeds a certificate from the collector that the assessment, interests, costs have been paid or abated. A charge of $4 is imposed for each certificate the collector issues to be paid over to the general fund.

C. Assessing Costs

Once the project is completed, the Assessing Board determines the actual benefits to and assesses the cost of the project among the properties.

In some cases, the methods to be used to determine the benefits and allocate the costs are prescribed by statute. If not, the Assessing Board may adopt any method that is reasonably calculated to determine the benefits received so long as it does not result in the assessments being substantially in excess of or disproportionate to those benefits. For example, a frontage, area and/or valuation formula may be appropriate methods for apportioning the cost of various improvements. In addition, it may be permissible to classify properties for assessment purposes into those receiving direct or remote benefits.

1. Betterments: Assessments must be made within six months of project completion. G.L. Ch. 80 §1. No method is prescribed by statute. The amount assessed cannot exceed the estimate recorded. G.L. Ch. 80 §2.

2. 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: 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. Ch. 40 §§42H and 42K.

3. Sewer Assessments: Assessments should be made within a reasonable time after project completion. A city or town may adopt one of the following statutory methods: 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. Ch. 83 §15.

4. Sidewalk Assessments: Assessments should be made within a reasonable time after project completion. No method is prescribed by statute.

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. Ch. 80 §4.

Because interest on unpaid betterments accrues from the 30th day after the commitment not the mailing of betterment notices (See Section IV below), the assessors should not make this formal commitment until the collector has prepared the betterment notices for mailing.

IV. COLLECTION PROCEDURE

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. Ch. 80 §4.

The collector should include an explanation of the property owner's options and provide a form to request an apportionment from the assessors.

B. Payment/Apportionment

The property owner may pay the assessment in full within 30 days after the assessments are committed to the collector (not 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 amount into a maximum of 20 equal portions. The request for an apportionment is made to the assessors. G.L. Ch. 80 §13.

C. Adding Assessments to Tax Bill

The collector must certify the unpaid assessments to the 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. Ch. 80 §13.

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 2000 (*i.e.*, on or before January 1, 2001, which is the assessment date for FY2002 taxes) must be added to a tax commitment no later than the FY2002 commitment and bills.

Assessments committed during calendar year 2000 (*i.e.,* before January 1, 2001) may be added to the FY2001 tax commitment and bill so long as property owners have an opportunity to pay the full assessment without incurring interest before the addition.

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 original commitment until October 1.

      Example: The assessments are originally committed on April 1, 2000. They are first added to the taxes assessed as of January 1, 2001 for FY2002. Interest is computed from May 1, 2000 until October 1, 2001. If they were first added to FY2001 taxes, interest would be computed from May 1, 2000 to October 1, 2000.

   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 to be applied is five percent per year unless (a) a city or town has voted the optional rate, which is 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. Ch. 80 §13.

D. Suspensions/Deferrals

1. Suspensions

If the assessed parcel is vacant, then the Assessing Board may extend the time for paying the assessment until the land is built upon or for a fixed time. Interest on a suspended assessment accrues at the rate of four percent per year. For water assessments, payment of both the assessment and interest is suspended. In all other cases, only payment of the assessment is suspended. The property owner must pay the interest annually. Payment of the suspended amount is due within three months after the land is built upon or the fixed time period expires, which applies. G.L. Ch. 80 §13A; G.L. Ch. 40 §42I; Ch. 83 §19.

Assessments on classified forestland, except those for the installation of water pipes to provide fire protection to the forestland, are suspended during the time the land is classified. G.L. Ch. 61 §5. If the assessment is on classified agricultural or horticultural land, the assessment and interest on the assessment may be suspended upon application by the property owner until the use of the land changes. G.L. Ch. 61A §18. If the assessment is on classified recreational land, however, only payment of the assessment may be suspended until the land use changes. The property owner must pay the interest annually. G.L. Ch. 61B §13.

2. Deferrals

If the city or town accepts the provisions of G.L. Ch. 80 §13B, the Assessing Board may permit the deferral of betterment 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. Ch. 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.

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 assessment was originally committed 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. Ch. 80 §13.

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. Ch. 80 §5.

Exception: If a suit challenging the validity of an assessment is brought during the 6 month filing period or within six months after the determination of an earlier lawsuit involving the same challenge, brought within that timeframe, which was dismissed on certain jurisdictional or procedural grounds, the deadline for filing an abatement application is extended until six months after the final determination of the lawsuit. G.L. Ch. 80 §6.

2. Grounds

The grounds for an abatement are that the amount of the assessment (1) is more than the enhanced value of the property attributable to the improvement or (2) reflects a disproportionate allocation of the cost of the project in relation to the enhanced value of the property when compared to other benefited property. Whiting v. Boston, 106 Mass. 89, 97 (1870); Driscoll at 154; Union Street Ry. at 312.

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. The Assessing Board must notify the property owner within ten days of its decision. G.L. 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. Ch. 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. Ch. 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. Ch. 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 denied by operation of law and the property owner may appeal in the same manner as if the application had been denied, except that he has 60, rather than 30, days to file the appeal. In addition, 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. Ch. 80 §10A.

B. Other Remedies

The property owner may challenge the validity of the assessment because the applicable recording requirements were not met or other procedures for ordering and constructing the improvement or assessing the costs were not followed. If so, an abatement proceeding is not the appropriate remedy.

1. Before Commitment

Before the commitment of the assessments to the collector, the property owner may challenge the validity of an assessment by bringing a civil action in the nature of certiorari, G.L. Ch. 249, §4; Chilson v. Mayor of Attleboro, 247 Mass. 191, 202 (1924), or for a declaratory judgment, California Village Corporation v. Town of East Longmeadow, 4 Mass. App. Ct. 128, 130 (1976); Zambernardi v. Selectmen of Wilmington, 2 Mass. App. Ct. 873 (1974).

These remedies are separate and distinct from an abatement proceeding and the property owner may bring a suit challenging the validity of the assessment and 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), and, where the assessment is wholly void, to an action to recover an unlawful tax under G.L. Ch. 60, §98, Wheatland v. City of Boston, 202 Mass. 258 (1909); California Village Corporation at 129.

VI. ADMINISTRATIVE PROCEDURES

A. Property Divided After Assessment

As with real estate taxes, 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 apportion 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.

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 that was 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.

G.L. Ch. 80 §15.

B. Reassessment

If an assessment is invalid and it has not been paid in full, 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 within that time. If not, 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.

G.L. Ch. 80 §16.

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 unless:

A. Enterprise Fund

An enterprise fund has been adopted under G.L. Ch. 59 §53F½ for the capital improvement or facility for which the assessments are made. If so, the revenue belongs to the enterprise.

B. Estimated Sewer Assessments

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

C. Special Act Betterment Reserves

Special legislation specifically authorizes the betterment and special assessment revenue to be reserved for appropriation to pay for debt service or other purposes.

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 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. Ch. 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. Has no personal liability for assessment which is a lien on property.

B. Pays bill in full without interest within 30 days of commitment <u>or</u>

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

D. May file application for abatement with Assessing Board.

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

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. Ch. 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. Ch. 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 they are committed, unless the property owner requests an apportionment. In that case, the assessments are payable in a maximum of 20 installments with interest.

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 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 Assessors complete 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 commitment 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.

EXAMPLE
Betterment Or Special Assessment
Payment - Apportionment - Interest

- Sewer assessment $4000 committed April 1, 2000 - Due May 1, 2000.

- Payment of $1000 made April 21, 2000 (no interest due on $1000) leaving balance of $3000.

- On September 1, 2000, owner wants to pay an additional $1000. Interest is owed on $1000 from May 1, 2000 to September 1, 2000.

- **Unpaid balance of $2000** must be added to a tax **no later than FY2002 actual tax bill** in fall 2001 with interest (Note assessors **may add** unpaid assessments originally committed during calendar year 2000 to **FY2001 actual tax bill** so long as property owners had at least 30 days to pay full assessment without incurring interest, as is case here)

- If entire unpaid balance of $2000 is added to FY2002 tax bill, interest on that balance would run from May 1, 2000 to October 1, 2001. (If added to FY2001 tax bill instead, interest would run from May 1, 2000 to October 1, 2000).

- **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 **FY2002** actual tax bill with interest on unpaid balance of $2000 from May 1, 2000 to October 1, 2001. In second year, $200 would be added to FY2003 bill with one year's interest (October 1, 2001 to October 1, 2002) on unpaid balance of $1800 ($2000 - $200) and so on until the final $200 portion is added to **FY2011** tax bill with one year's interest (October 1, 2009 to October 1, 2010) on unpaid balance of $200. (Again assessors may add apportioned assessments originally committed during calendar 2000 to FY2001 tax bill so long as property owners had at least 30 days to pay the full assessment without incurring interest, as is case here. If first $200 was added to FY2001 bill instead, interest on unpaid balance of $2000 would run from May 1, 2000 to October 1, 2000, etc. until final portion is added to FY2010 tax bill with one year's interest on unpaid balance of $200 from October 1, 2008 to October 1, 2009).

- **On August 20, 2003, property owner decides to prepay in full.** Assessors commit remaining unpaid balance with interest from October 1, 2002 to August 20, 2003. Assuming that the first $200 was added to the FY2002 tax bill, the interest would have been calculated on an unpaid balance of $1600.

- **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, 2002 to August 20, 2003. The $500 prepayment reduces the unpaid balance to $1100, 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 otherwise due in FY2011 and FY2010 tax bills, and it would reduce the $200 portion due in FY2009 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. Here, $200 would be added to the FY2004 tax bill with committed interest on $1100 from October 1, 2002 to October 1, 2003, to the FY2005 tax bill with committed interest on $900 from October 1, 2003 to October 1, 2004, and so on until the remaining unpaid balance of $100 is added to the FY2009 tax bill with committed interest on that balance from October 1, 2007 to October 1, 2008.

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
COMMITTED	4/1/2001

A	B	C	D	E
FISCAL YEAR	UNPAID BALANCE	INTEREST (x%) (on B)	PRINCIPAL	ADD TO TAX BILL (C + D)
2002	10,000	5/1/2001 to 10/1/2001	500	
2003	9,500	10/1/2001 to 10/1/2002	500	
2004	9,000	10/1/02 to 10/1/03	500	
2005	8,500	10/1/03 to 10/1/04	500	
2006	8,000	10/1/04 to 10/1/05	500	
2007	7,500	10/1/05 to 10/1/06	500	
2008	7,000	10/1/06 to 10/1/07	500	
2009	6,500	10/1/07 to 10/1/08	500	
2010	6,000	10/1/08 to 10/1/09	500	
2011	5,500	10/1/09 to 10/1/10	500	
2012	5,000	10/1/10 to 10/1/11	500	
2013	4,500	10/1/11 to 10/1/12	500	
2014	4,000	10/1/12 to 10/1/13	500	
2015	3,500	10/1/13 to 10/1/14	500	
2016	3,000	10/1/14 to 10/1/15	500	
2017	2,500	10/1/15 to 10/1/16	500	
2018	2,000	10/1/16 to 10/1/17	500	
2019	1,500	10/1/17 to 10/1/18	500	
2020	1,000	10/1/18 to 10/1/19	500	
2021	500	10/1/19 to 10/1/20	500	

(over)

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

LOAN AMOUNT	$10,000
TERM	20 years
COMMITTED	4/1/2001

A	B	C	D	E
FISCAL YEAR	UNPAID BALANCE	INTEREST (x%) (on B)	PRINCIPAL	ADD TO TAX BILL (C + D)
2003	10,000	5/1/2001 to 10/1/2002	500	
2004	9,500	10/1/02 to 10/1/03	500	
2005	9,000	10/1/03 to 10/1/04	500	
2006	8,500	10/1/04 to 10/1/05	500	
2007	8,000	10/1/05 to 10/1/06	500	
2008	7,500	10/1/06 to 10/1/07	500	
2009	7,000	10/1/07 to 10/1/08	500	
2010	6,500	10/1/08 to 10/1/09	500	
2011	6,000	10/1/09 to 10/1/10	500	
2012	5,500	10/1/10 to 10/1/11	500	
2013	5,000	10/1/11 to 10/1/12	500	
2014	4,500	10/1/12 to 10/1/13	500	
2015	4,000	10/1/13 to 10/1/14	500	
2016	3,500	10/1/14 to 10/1/15	500	
2017	3,000	10/1/15 to 10/1/16	500	
2018	2,500	10/1/16 to 10/1/17	500	
2019	2,000	10/1/17 to 10/1/18	500	
2020	1,500	10/1/18 to 10/1/19	500	
2021	1,000	10/1/19 to 10/1/20	500	
2022	500	10/1/20 to 10/1/21	500	

EXAMPLE

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

Total Assessment:	**$10,000**
Apportionment Schedule:	**20 years**
Annual Principal Payment:	**$500**
Interest Rate:	**5%**
Commitment Date:	**4/1/2001**

OPTION 1 - First Apportionment Billed in FY2002

	FY2001	FY2002	FY2003	FY2004	FY2005
Real Estate Tax	$2000	$2100	$2200	2300	2400
Special Assessment	0	500	500	500	500
Committed Interest	0	208	475	450	425
		(5 months on $10,000) (5/1/2001 to 10/1/2001)	(1 year on $9,500) (10/1/2001 to 10/1/2002)	(1 year on $9,000) (10/1/2002 to 10/1/2003)	(1 year on $8,500) (10/1/2003 to 10/1/2004)
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 FY200 (must begin billing no later than bill for taxes assessed as of January 1, 2002)

	FY2002	FY2003	FY2004	FY2005	FY2006
Real Estate Tax	$2000	$2100	$2200	2300	2400
Special Assessment	0	500	500	500	500
Committed Interest	0	708	475	450	425
		(17 months on $10,000) (5/1/2001 to 10/1/2002)	(1 year on $9,500) (10/1/2002 to 10/1/2003)	(1 year on $9,000) (10/1/2003 to 10/1/2004)	(1 year on $8,500) (10/1/2004 to 10/1/2005)
TOTAL DUE	2000	3308	3175	3250	3325
First Half Payment	1000	2258	2075	2100	2125
Second Half Payment	1000	1050	1100	1150	1200

**** Betterment May be Included in Preliminary Bill if Issued**

EXAMPLE

BETTERMENT OR SPECIAL ASSESSMENT PAYMENT SCHEDULE -*Quarterly Tax Payment System)*

Total Assessment:	**$10,000**
Apportionment Schedule:	**20 years**
Annual Principal Payment:	**$500**
Interest Rate:	**5%**
Commitment Date:	**4/1/2001**

FIRST APPORTIONMENT BILLED IN FY2002

		FY2001	FY2002	FY2003	FY2004	FY2005
Real Estate Tax		$2000	$2100	$2200	2300	2400
Special Assessment		0	500	500	500	500
Committed Interest		0	208	475	450	425
			(5 months on $10,000)	(1 year on $9,500)	(1 year on $9,000)	(1 year on $8,500)
			(5/1/2001 to 10/1/2001)	(10/1/2001 to 10/1/2002)	(10/1/2002 to 10/1/2003)	(10/1/2003 to 10/1/2004)
TOTAL DUE		2000	2808	3175	3250	3325
OPTION 1	**Q1**		500	525	550	575
Preliminary - 50% Prior Year Tax Only	**Q2**		500	525	550	575
Actual - Current Year Betterment/Interest First Billed	**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 Tax Only and	**Q2**		854	1012.50	1025	1037.50
Current Year Betterment/Interest First Billed	**Q3**		550	575	600	625
	Q4		550	575	600	625
OPTION 3	**Q1**		500	702	793.50	812.50
Preliminary - 50% Prior Total Due	**Q2**		500	702	793.50	812.50
Actual - Current Year Betterment/Interest First Billed	**Q3**		904	885.50	831.25	850
	Q4		904	885.50	831.25	850

NOTE: All Examples Uses 50% of Prior Year for Preliminary Taxes, but May Increase to Reflect 50% of Annual 2.5% Levy Limit Increase, Overrides & Exclusions

(over)

FIRST APPORTIONMENT BILLED IN FY2003 (Must Begin Billing No Later Than Bill for Taxes Assessed as of January 1, 2002)

		FY2002	FY2003	FY2004	FY2005	FY2006
Real Estate Tax		$2000	$2100	$2200	2300	2400
Special Assessment		0	500	500	500	500
Committed Interest		0	708	475	450	425
			(17 months on $10,000)	(1 year on $9,500)	(1 year on $9,000)	(1 year on $8,500)
			(5/1/2001 to 10/1/2002)	(10/1/2002 to 10/1/2003)	(10/1/2003 to 10/1/2004)	(10/1/2004 to 10/1/2005)
TOTAL DUE		2000	3308	3175	3250	3325
OPTION 1	**Q1**		500	525	550	575
Preliminary - 50% Prior Year Tax Only	**Q2**		500	525	550	575
Actual - Current Year Betterment/Interest First Billed	**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 Tax Only and	**Q2**		1104	1012.50	1025	1037.50
Current Year Betterment/Interest First Billed	**Q3**		550	575	600	625
	Q4		550	575	600	625
OPTION 3	**Q1**		500	827	793.50	812.50
Preliminary - 50% Prior Total Due	**Q2**		500	827	793.50	812.50
Actual - Current Year Betterment/Interest First Billed	**Q3**		1154	760.50	831.25	850
	Q4		1154	760.50	831.25	850

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 C1.41A 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 separate 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

continued on page eight

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

8.7M-7/95-12028

City & Town
Division of Local Services
PO Box 9655

Boston, MA 02114-9655

Address Correction Requested

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* 972 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.

CITY& Tom Editorial Board
Managing Editor: *Sharyn Adelman* Bureau of Accounts: *Judy Luca* Technical Assistance: *Frederick Kingsley* Executive Bureau: Marilyn *Browne* Property Tax Bureau: Harry Grossman Bureau of Local Assessment: Gary *McCabe* Western Regional Office: *John McAuliffe* Municipal Data Bank: *John Sanguinet* Division Contributors: *Kathleen Colleary* James Crowley, *Roger Hatch and Manellen Murphy*

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 Dies	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

Your Betterment Tax Bill Explained

City of Boston Public Improvement Commission

M. G. L. Chapter 80, Section 4

"It is my hope that the information contained here will provide property owners in Boston with a clearer understanding of the costs associated with public improvements and the various payment options available to them.

Dennis E. Royer, Chairman

Public Improvement Commission (617) 635-4965

What is a betterment?

A betterment is a specific type of public improvement undertaken by the City of Boston Public Works Department. The laying out and construction of new streets and upgrading of sidewalks are considered betterments. Repaving or replacing streets, sidewalks and sewers are not considered betterments.

Why am I being billed?

State law allows the City to assess the cost of a betterment to affected properties. Usually, properties that abut the betterment are assessed. For each betterment, a lien that specifies the estimated amount of assessment for each affected property has been filed with the Suffolk County Registry of Deeds.

How was my betterment determined?

Individual assesssments are based on the overall cost of the betterment and parcel-specific factors such as length of frontage and the land area of the parcel.

The assessed owner has up to six months to petition the Public Improvement Commission for an abatement.

What are my payment options?

You may pay the bill within thirty days with no penalty. Payments should be made to the City of Boston and mailed *ONLY* to the following adddress:

City of Boston
Office of the Collector-Treasurer
P. O. Box 9711
Boston, MA 02114

After thirty days, interest will accrue on any unpaid balance at a rate of seven (7) percent per year. Beginning with the next fiscal year (July 1 - June 30) the unpaid balance will be added to your annual Third Quarter property tax bill (issued in late December) as a special assessment. The special assessment plus interest, will be spread out over a ten-year period. You have the option to spread out the payments over a longer period, up to twenty years. To do so, contact the City of Boston Assessing Department before November 1.

To Contact Us

For questions regarding abatement or how your tax bill was determined, contact the Public Improvement Commission at: (617) 635-4965.

Contact the Taxpayer Referral & Assistance Center (TRAC) for all other estions at: (617)635-4287.

SAMPLE

THE COMMONWEALTH OF MASSACHUSETTS
City of Boston
Office of the Collector Treasurer

NOTICE OF BETTERMENT ASSESSSMENT

9/15/2008

NOTICE IS HEREBY GIVEN:

DOE JANE A
6 NAME ST
ROXBURY MA 02120

That a Sidewalk assessment has been levied and this day committed as follows:

PIC	Street	District	Amount	Parcel ID
4	**6 NAME ST**	**ROXBURY CROSSIN**	**$743.57**	**10-00000-000**

As shown on a plan on file in the office of the Engineering Division, Public Works Department.

All payments shall be to the City of Boston, P. O. Box 9711, Boston, MA 02144. If a receipt is desired, a self address stamped envelope should be enclosed.

Unpaid assessments bear 7% interest form the thirtieth day after the date of this notice. Any petition for abatement or exemption must be filed within six months after the date hereof with the Public Improvement Commission at the following address: Public Improvement Commission Attn: Executive Secretary, 1 Cit Hall Square, Room 714, Boston, MA 02201. Request for abatement or exemption does not absolve responsibility for payment of said assessment.

In accordance with the provisions of Chapter 80: section 13 as amended, the Board of Assessors, if requested, will apportion an assessment of this kind over a period of years not exceeding twenty. If no request is made unpaid assessments are usually apportioned over a period of years not exceeding ten. Requests for apportionment of assessment should be sent to Board of Assessors, 1 City Hall Square, Room 301, Boston, MA 02201.

DATE: 9/15/08

PARCEL ID: **10-00000-000**

OWNER: DOE JANE A
STREET: 6 NAME ST
CITY: ROXBURY CROSSIN **STATE:** MA **ZIP:** 02120

AMOUNT: $743.57
INTEREST: 0.00
TOTAL: $743.57

Collector Treasurer of the City of Boston

IMPLEMENTING EFFECTIVE BETTERMENT POLICY FOR WASTEWATER PROJECTS: WALKING THE LABRYNTH

William J. Gustus, J.D.[1]
Stanley D. Elkerton, P.E.[2]

Introduction

Sewer capital costs are often recovered through betterment assessments to abutters. In Massachusetts, two laws address betterments: Massachusetts General Laws, c. 80 'Betterments', and c. 83 'Sewers, Drains and Sidewalks'. Section 15 of c. 83 identifies methods of betterment assessments applicable to sewers, the most common being the 'uniform unit' method'. This paper discusses implementation of betterments using this method.

Sewers are typically and logically assessed under the uniform unit method. This method is based upon defining a "residential unit", then assessing each property owner as some multiple of this unit. Normally, a single house is one unit and multiple housing properties are more than one unit, as are commercial properties. The value of the assessment is determined by taking the portion of the capital costs as determined by city council or town meeting and dividing by the total number of units abutting the project. This procedure sounds simple and fair on the face of it, but the reality poses many complexities and opportunities for debate. A well thought-out betterment policy is crucial for minimizing problems.

The Theory

Betterment Fees are utilized to share the capital costs of the project (including engineering and construction) among the properties owners benefiting from the project. A betterment is a special assessment in the nature of a tax that is permitted where 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. 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. Betterments are a common way within the Commonwealth for the users to pay the cost of constructing wastewater facilities and other infrastructure projects. By using betterment fees, the cost of the constructed project is separated from the municipality's general fund. General tax revenues need not be applied to the project.

City council or town meeting must vote to create a betterment. The legislative body must vote on the project, even though the improvement only affects a portion of the city or

[1] Town Administrator, Town of Lynnfield, Massachusetts
[2] Senior Vice President, Guertin Elkerton & Associates, Inc., Stoneham, Massachusetts

town. The betterment vote may occur when the engineering plans are completed and a construction cost estimate is available; or when the construction bids are received and the prospective winning contractor and its price are identified. The legislative body must specifically decide on the following issues:

1. Authorization to borrow money for the project
2. Amount of the construction cost to collect through betterments
3. Method of assessing betterment (e.g.)., uniform unit method or frontage method)
4. Interest surcharge to be added by the Town.

The completed project cost will be different from the cost at the start of construction due to changes in field conditions and other unanticipated costs or savings. For example, if the amount of ledge excavation required is greater than predicted in the plans and specifications, the construction cost may increase. The final betterment fee will be determined upon completion of the project, when all the costs are known and final.

The municipality may assess a sewer betterment based upon (1) the uniform unit method or (2) upon a method based on frontage, or area within a fixed depth from the street right-of-way, or a combination of the two. It is logical to use the uniform unit method for sewer assessments inasmuch as the benefit is to the homeowner. Under the uniform unit method, several issues arise:

- A single homeowner on a single lot is counted as one unit.
- A homeowner on a subdividable lot under current zoning regulations may be counted as more that one unit. The total unit count is a function of the developable potential of the lot. For example, a stretch of road may fall into a Residential District requiring minimum frontage of 100 feet and a minimum area of 40,000 square feet. A three acre lot configured to follow the frontage may possibly be assessed as three units unless a portion of the land is unbuildable (e.g., wetland area). Because the shape and frontage of the parcel is important, a simple determination of number of units in this example is not conclusive. However, the point is made that a large occupied lot may be counted as more than one unit.
- Vacant lots are also assessed as one or more uniform unit, depending upon the size of the parcel and the zoning.

Commercial properties are assessed as multiple units of the "residential equivalent" based upon the highest and best use of the property. Residential equivalent may, for example, be determined on the basis of water use of the commercial property as a ratio to water use by a typical resident. If the analysis establishes that a commercial property's highest and best use would result in water use 2 times a typical residential property, then the commercial property would be assessed as 2 uniform units.

The betterment program is inherently unfair in a number of ways stemming from complexities in implementation. The process requires the authority within the

municipality (e.g., Sewer Commissioners) to make uniform decisions without knowing exactly the demands on a system by an individual user, or an earlier phase of a project versus a later phase. For example, a twelve bedroom mansion will pay the same assessment as a 4 room ranch house (notwithstanding other factors such as the potential to subdivide the parcel). Another example is the costs borne by individuals currently served verses those in a future phase. These problems need to be considered when implementing policy to achieve some semblance of balance.

The Devil is in the Details

There are a number of issues related to implementation of a betterment program. Each issue presents its own peculiarities and need for careful attention, and include:

1. Determining the amount of the project capital to be recovered by betterments
2. Identifying the source of revenue for funding the portion not covered by betterments
3. Collecting funds through estimated assessments
4. Codifying procedure for assigning multiple units to non-residential properties
5. Assessing undeveloped lots
6. Determining highest and best use
7. Assessing dividable lots
8. Codifying appeals process
9. Accounting for exemptions and deferrals
10. Establishing interest and term of betterment.

The municipality would be well-served to develop a by-law addressing the apportionment of betterments to the users early in the development of sewers. A well defined policy will help avoid future unbalancing of assessments. One Massachusetts community developed a five-phased program to sewer a section of the town over a 10 year period. The betterments assessed per unit ranged from approximately $8,000 in the first phase to about $24,000 in the last phase, leading disgruntled residents to ask the question, "Why such a disparity when it's all part of the same project?" The political fallout was predictable.

How Much to Recover?

A betterment is a municipal lien on a property. The property owner may elect to pay all or a portion of the lien when assessed, and stretch the remainder over the bonding period, or any portion thereof. The municipality can charge an interest rate on the apportioned balance at the rate of 5% or a rate up to 2% above the underlying bond rate.

Some property owners will pay the entire assessment immediately, despite what may be a favorable interest rate[3]. The collection of the betterment over the life of the bond

[3] For example, a town funding a project with a 2% SRF loan may elect to impose a 3% rate onto the property owner—certainly favorable in comparison to normal private loan rates.

becomes somewhat unpredictable because of this. Consequently, it is possible that collections may be insufficient to cover debt service in one or more years. This must be considered in determining the portion of project capital costs to defer or transfer to other sources.

Cash Flow Requirements to Cover Debt Service

The first step is to precisely define the project area[4], establish the number of 'uniform units', and estimate the betterment based upon the portion of costs to be recovered. Some estimates of cash recovery over time can then be made—but it gets a little complicated.

There are several vehicles available to a municipality to recover capital costs not included in the initial betterment, including:

- Transfer from General Fund
- User Fees
- General Benefit Facilities apportionment to future phases
- Privilege Fees.

The timing of recovery varies with the method used. The objective of covering the debt service every year according to a plan is paramount. This requires a fiscally conservative approach when making decisions regarding the source of revenue for capital cost recovery.

Cost Recovery From General Fund

Sometimes, a contribution from the General Fund can be justified. For example, it is arguable that a sewer project serving a new high school benefits the entire town. Therefore, a proportion of the cost can be transferred to the General Fund. The cost transferred may be based upon avoided costs (e.g., groundwater discharge wastewater treatment plant otherwise required for the school) or in proportion to flow contributed. In this instance, the assessment to the General Fund can be apportioned over the life of the bond. In effect, this is assessing a betterment upon the town based upon the number of single family units attributable to the public facility.

Enterprise Fund

Many sewer systems are set up as an Enterprise Fund[5]. A municipality is permitted to carry surpluses from year to year within the fund to be used for future capital expenditures or to reduce subsequent user fees. The availability of cash within an existing enterprise fund will have some bearing on the decisions for recovery through betterments. It is desirable to maintain a positive cash balance in the fund.

---

[4] This is straightforward with a sewer project—generally properties that touch the new sewer are included.
[5] An Enterprise Fund is a separate account within the Town which allows a town-owned utility (e.g., sewer) to maintain separate transactions. The intent is to derive sufficient revenue from the operation of the account to pay for all costs—capital and O&M.

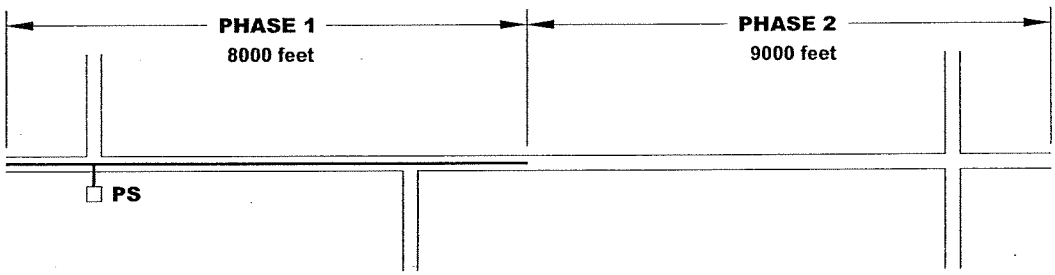
The municipality is obligated by law to transfer cash from the General Fund to the Enterprise account to cover any year end cash deficit. This may take the form of a loan, to be returned to the General Fund upon restoration of fiscal surpluses in the enterprise account. This dynamic is beyond the scope of this paper—other than to point out that there is a dynamic that impacts decisions on betterment assessments.

Deferred Cost Recovery

Two options exist to defer the cost of a portion of the project to a future class of beneficiaries.

General Benefit Facilities

The law allows for identification of portions of the project as extending benefits beyond the immediate project limits. For example, a sewer project may include a 'main-line' pump station sized for future expansion of the system. The municipality has the choice to defer a portion of the pump station cost to those future users. The example in Figure 1 illustrates this point.



	Phase 1: 2003	Phase 2: 2007
Special conditions	Ledge encountered, sewer cost $140 per foot.	Little ledge encountered, sewer cost $100 per foot.
Equivalent units	80	76
Option 1	**Pump station not considered as General Benefit Facility**	
Costs	Sewer $1,120,000 Pump Station $ 400,000 Total $1,520,000	Sewer $900,000
Betterment	$1,520,000/20 = $19,000	$900,000/76 = $11,842
Option 2	**Pump station considered General Benefit Facility**	
Costs	Sewer $1,120,000 Pump Station $ 200,000 Total $1,320,000	Sewer $ 900,000 Pump Station $ 200,000 Total $1,100,000
Betterment	$1,320,000/80 = $16,500	$1,100,000/76 = $14,473

Figure 1. Deferral of costs related to General Benefit Facilities

The example in Figure 1 may have also considered a portion of the phase 1 sewer a General Benefit Facility in that it carries the Phase 2 flows. The temptation exists to defer as much as possible to keep the Phase 1 betterments low (perhaps to meet an earlier number). The reality is that deferral of collections tends to unbalance the cash flow. The

constructed Phase 1 has immediate debt retirement needs that must be met. The station has to be paid for whether or not any future expansion takes place. Some fiscally conservative estimate of probability and timing must be made in order to predict the recovery of capital versus the debt service. Then given a reasonable scenario, a plan must be devised to cover any cash shortfalls, such as a loan from the General Fund, or refinancing debt.

Privilege Fees

The municipality may choose to implement a privilege fee to assess a future beneficiary adjacent to the project area. For example, a subdivision may be built in the future behind the properties that abut the project. The developer may then choose to access the subdivision by purchasing one or more lots abutting the project, and connecting a dry sewer to the existing project sewer. The developer (and consequently the new property owner) has borne the costs of installing a sewer in the subdivision, but usually at a much lower cost than the common project sewer betterment assessment. Out of fairness, the developer may be asked to pay additional sums for the privilege of connecting to the common sewer, under the theory that he must pay for a portion of the capacity built into it.

A privilege fee provides this mechanism. The municipality may require that each new property pay a prescribed amount in order to connect to the common sewer. This amount may be expressed as a fixed number, as a percent of the original betterment or some other reasonable and specific formula. Figure 2. illustrates this example.

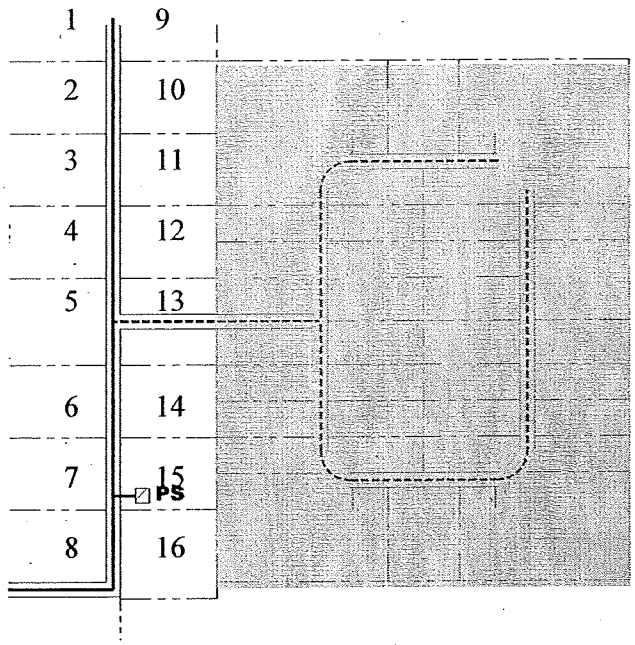


Figure 2. Privilege Fee Assessment

In this example, lots 1 through 16 were part of the initial sewer project, and each were assessed a betterment of $12,000. A few years later, a developer purchased lot 13 and a large undeveloped lot behind lot 13 (shaded area). With access to the road and utilities, the developer creates a subdivision of 43 residential lots. The cost of the dry sewer he installs is $170,000 resulting in a cost per lot of $3,953. The betterment by-law adopted by the town requires the payment of a privilege fee equal to 40% of the betterments assessed to the abutters of the initial sewer project, or $4,800. Thus, the effective cost per house lot in the new subdivision is $8,753. The town collects additional revenue towards the debt retirement and the developer pays a reasonable fee for access to a sewer paid for by others.

User Fees

User fees may also provide a source of funds for cost recovery, but is not a fair method. The users are hit twice, once with the betterment and once with the user fee. User fees are intended to cover operating and maintenance costs and should not be used for recovery of capital costs.

Determining Number of Units

Under the Uniform Unit Method, each sewer unit shall be equal to a single family residence. Most municipalities define a Dwelling Unit in the Zoning By-Law, which can serve to define a single family resident[6].

It is important to note that every property must be assessed, not just those that will actually use it. Thus, a vacant parcel must be assessed in accordance with its zoned use. A vacant residential parcel must be assessed a number of equivalent units equal to the full potential lots into which it may be subdivided along the sewer[7] under current zoning.

Residential Unit

The residential unit is the building block for this method. The single residential unit must be defined in a way that will facilitate the determination of equivalent units for all other properties. The obvious approach is to define the unit in terms of flow—for example a single family home could be defined as a 330 gallon per day wastewater generator based upon Title 5 flows[8]. This flow rate would then be adopted as the measure of a uniform unit.

The single residential unit is relatively easy to identify within the project area. It is possible that an unrecorded apartment may exist in a residential unit thereby impacting

---

[6] The Town of Weymouth definition: DWELLING UNIT -- A room or suite of rooms used by one family as a habitation which is separate from other rooms or suites of rooms and which contains cooking and sanitation facilities.

[7] That is, subdivided as an "Approval Not Required" subdivision under M.G.L. c. 41, Section 81P.

[8] The flow estimate for a three bedroom home under Title 5 (Part 2, Section 13) of the State Environmental Code of the Commonwealth of Massachusetts, Minimum Requirement for the Subsurface Disposal of Sanitary Sewage.

the count. Also, a single developed lot must be assessed two or more units if it is further able to be subdivided within the zoning.

The number of units to apply to a residential lot will usually be limited first by the zoning dimensional requirements. A residential zone for example may require minimum one-acre lots and minimum 100-foot frontage. A three acre lot with 180 feet of frontage would be counted as one unit. Similarly, a 1.8 acre lot with 250 feet of frontage would be counted as one unit as well.

The owner of a subdividable lot may apply for an abatement if there is a limitation on the actual developable area of the lot. Thus an abatement may be appropriate if wetlands on a parcel render it unbuildable.

Multiple-family Residential Properties

These can vary from in-law apartments and duplex homes to apartment buildings. A method of units based upon number of bedrooms is a potential measure. However, often bedrooms may be disguised as dens or family rooms. A cleaner method would be to apply a multiplier to each unit based upon the total number of rooms. For example, a unit with more than three rooms could be considered 1 unit, and three or less one-half. This rule would hold whether considering an apartment within a house, a duplex, condominium or large apartment building.

Non-residential Properties

Non-residential properties include all other properties—commercial, industrial, institutional, and charitable. Each of these properties must be converted to equivalent residential units based upon highest and best use under current zoning. So the question becomes, "What is highest and best use?" It is subjective at best, and must be determined with a sense of reasonableness.

For existing developed properties, it is reasonable to assume that highest and best use is the current use. If, at a later date, the property is converted to a legal use with a greater demand on the sewer, the municipality can assess additional units if provided for in the by-law.

The number of equivalent units should be based upon estimated wastewater contribution. If the property is connected to a public water system and is metered, the basis can be (for example) the average daily flow (gpd) during the peak 30 day period, divided by 330 (equivalent unit).

Highest and best use for undeveloped commercial property is more difficult. The determination should tend towards likely use. Highest and best use in the absolute sense may appear to be a restaurant—a large wastewater demand use. However, if the likelihood of an additional restaurant in a commercially zoned area is low, then another use should be determined. Also, three undeveloped parcels within the same stretch of commercial zone are unlikely to have similar highest and best use.

Exemptions, Deferrals and Extensions

There is no legal basis for abating an assessment on property owned by a non-profit, charitable organization that qualifies for a local property tax exemption. However, where land is classified as agricultural, horticultural, recreation or forest land under M.G.L. c. 61A, 61B, and 61, payment is suspended without interest accruing for so long as the land is devoted to that use.

The law also allows property owners of undeveloped lots to petition to defer payment until the property is developed. But it requires that in such case, the municipality charge an annual interest at the rate of 4% until such time as the assessment is paid.

The municipality may also permit certain residential property owners aged 65 or older to defer the assessment in compliance with M.G.L. c. 59, Section 5, Forty-first A. Certain individuals may qualify for this deferral, provided that upon demise of the owner, deferred assessment is paid in full with interest.

Estimated Betterments

The municipality may wish to assess an interim estimated sewer assessment in order to accelerate revenue against borrowing ahead of the final determination of costs. The total amount of such estimated sewer assessments can not exceed 50% of the municipality's liability under all contracts it has entered for the construction of the facilities. When the final costs are known, the municipality may assess and collect the actual sewer assessment.

This feature of the law has another significant benefit. It will flush out abatements, and in so doing, provide the municipality with the opportunity to recover the revenue when assessing the final betterment.

Apportioning Payments

The property owner is given some flexibility for paying the betterment. The owner may pay all or a portion of the betterment upon its assessment, and the remainder based upon a schedule over one or more years. The apportioned betterment appears on the municipal property tax bill.

The property owner may pay some or none of the assessment within 30 days after the assessments are committed to the collector without interest. The property owner may request the unpaid balance be apportioned into a maximum of 20 equal annual portions.

The law allows for either of two methods for interest on apportioned betterments. The municipality may charge a flat rate of 5% per annum on outstanding balances, or a rate not to exceed 2% above the underlying bond rate. If a system is constructed with a 2%

SRF loan, the municipality may charge the owner 5% interest, or a rate equal to or less than 4%.

Summary

The two pillars of good betterment policy are fairness and cash flow. A well thought-out policy understands the impacts of apportionment and deferrals against the need to retire debt, and is based upon a conservative fiscal view. A good understanding of the project, the characteristics of the properties served, and a sense of the public served will be invaluable in predicting annual collections and cash needs.

Adoption of a by-law based upon common sense (within the ambit of the law) represents the best opportunity for an even-handed betterment policy. Stalwart political leadership must be exercised in establishing the portions of the project cost to be shared town-wide, collected through betterments, and deferred to future users. The temptation to defer to popular pressures must be resisted with a plan that accounts for short-term cash needs and long-term system demands and growth. And an understandable appeals program must be available to those with legitimate abatement arguments.

In the end a rationale method for assessing betterments is best able to resist the challenges to the process.

References

1. Municipal Bulletin No. 33. Laws Relating to Municipal Finance and Taxation, The Commonwealth of Massachusetts, Department of Revenue, Division of Local Services, May 2000 by West Group.
2. Title 5 (Part 2, Section 13) of the State Environmental Code of the Commonwealth of Massachusetts, Minimum Requirement for the Subsurface Disposal of Sanitary Sewage.
3. Betterments and Special Assessments, prepared by Massachusetts Department of Revenue, Division of Local Services, April 2001 (available on DOR website).
4. Opinion by Harry M. Grossman, Chief, Property Tax Revenue, Massachusetts Department of Revenue, Division of Local Services, to Joseph Beresik, Assistant Assessor, Ashland, MA, December 13, 1995.

Appendix A Sample Betterment Policy for a Town

Sewer Assessment By-Law

Section 1. Assessments.

(a) *General*

Every person owning land abutting upon any way in which a main or common sewer has been laid out, and who enters or has entered his particular drain into such main drain or common sewer, or who by more remote means receives benefit thereby for draining his land or buildings, shall be assessed under the provisions of M.G.L. c. 83 section 14. The Sewer Commission shall have the power as set forth in M.G.L. c. 83 section 15, when ascertaining assessments as a betterment for construction, to apply a rate based upon a uniform unit method. A uniform unit method shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served after having proportioned the cost of special and general benefit facilities.

(b) Assessments under this section shall be ascertained, assessed, certified and committed to the Town Treasurer by the Sewer Commission. Such assessments may be made for all sewers, lateral sewers, pump stations and appurtenant works. Sewer betterment assessments and any sewer betterment policies which are adopted by the Town under M.G.L. c. 80 and M.G.L. c. 83 for particular public sewer construction projects shall follow the procedures set out hereinbelow.

(b) *Method of assessment: uniform unit.*

(1) The Town of Lunenburg shall assess sewer betterments based upon a uniform unit method. Each unit shall be equal to a single-family residence. Multiple family buildings and non-residential buildings as described herein shall be converted into units on the basis of residential equivalents. The total assessment for a particular sewerage construction project shall not be based on or limited by an estimated betterment. Revenue generated by said betterment assessment shall be equal to or shall cover the total project costs associated with design and construction of the sewers and pumping station, and appurtenant work.

(2) The Town shall levy assessments against all properties abutting a sewered street after acceptance of the entire pertinent construction contract(s) including finalization of all pertinent contractual documents. The date of acceptance shall be determined by the Sewer Commission. In the order of assessment, the Town shall designate the owner of each parcel on the preceding January 1st as liable for assessment under the provisions of the General Laws.

(3) For assessment purposes, all properties receiving direct benefit from the sewerage system shall be converted into sewer units. Properties receiving direct benefit, either developed or undeveloped, shall be designated a number of sewer units under the following guidelines:

1. Single-family dwellings shall comprise one (1) sewer unit.
2. Two-family dwellings shall comprise two (2) sewer units.
3. Three-family dwellings shall comprise three (3) sewer units.
4. Four-family dwelling shall comprise four (4) sewer units.

(4) Multiple family dwellings in excess of four (4) units shall comprise a number of sewer units based on the following methodology:

a. Rental residential properties such as apartments shall be assessed one (1) sewer unit for each apartment with more than one (1) bedroom. Rental

properties shall be assessed one-half ($^1/_2$) of one (1) sewer unit for each one (1) bedroom or studio apartment.

b. Residential condominium complexes shall be assessed one (1) sewer unit for each dwelling unit.

(5) Subdivisions shall be assessed one (1) sewer unit for each buildable lot except that a subdivision which pursuant to subdivision regulations of the Town of Lunenburg agreed to install and by the appropriate assessment date for betterments has actually installed a dry system in said subdivision shall not be assessed a sewer betterment fee per lot but shall be assessed a sewer privilege fee as set by Section 2 hereinbelow. Certain lots not involving actual subdivision shall also be assessed as provided in Section 3(c) hereinbelow.

(6) a. Non-residential buildings, which shall include all industrial, commercial and municipal properties, shall comprise a number of sewer units based upon water consumption as follows: Sewer units = Non-residential water usage (gpd) / 300 (gpd). (Rounded up to the next whole number.) Non-residential buildings not metered for water use shall be assigned a water consumption volume based on Title 5 (Part 2, Section 13) of the State Environment Code of the Commonwealth of Massachusetts, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.

(6) b. When a single structure or building contains a non-residential use and a residential use and neither use is accessory to the other and the non-residential use does not receive municipal water service, such mixed use structure shall be charged a betterment only for the residential unit or use. This provision shall not apply in the following zoning districts as defined in the Town zoning by-law:
Retail Commercial; Commercial; Office Park and Industrial.

(7) Undeveloped residential lots shall be converted into dwelling units on the basis of maximum number frontage and area requirements as directed in the zoning by-law in effect at the time of assessment. Each potential dwelling unit shall then comprise one (1) sewer unit; The owner of an undeveloped lot may apply pursuant to M.G.L. c. 83 section 19 to extend the time for payment as provided in Section 3 hereinbelow. In addition, land classified as agricultural, horticultural, recreations, or forest land, upon the application of the owner, may have the betterment assessment suspended for so long as the land is devoted to that use pursuant to M.G.L. c. 61A section 18, M.G.L., c. 61B section 13, and M.G.L. c. 61 section 5.

(8) Undeveloped non-residential lots shall be converted into a maximum anticipated water consumption on the basis of the zoning by-law. An equivalent number of sewer units shall then be determined utilizing the formula described for non-residential, developed properties (Rounded up to the next whole number).

(9) Nothing in this section shall supersede the language of Section 2 hereinbelow concerning a compensatory fee for increase in the use of the land.

(c) *Betterment payment.*

Except as provided herein, the provisions of the General Laws relative to the assessment, apportionment, division reassessment, abatement and collection of sewer assessments shall apply. The Tax Collector of the Town of Lunenburg shall have all of the powers conveyed by the General Laws. In accordance with M.G.L. c. 80 section 12, assessments made shall constitute a lien upon the land assessed until the full balance is paid. At the time of assessment, a property owner may select a payment schedule over a period of ten (10) years or twenty (20) if they so specifically request. Once a selection has been made, the

payment method may not be changed at a later date; however, the balance of the principal due on any lien may be paid in full at any time.

Upon the transfer of title to a new owner, the seller/transferor shall immediately notify the Town Treasurer/Collector and Town Assessors. After transfer of title, the betterment lien may be transferred. The betterments may be paid in full to the collector's office without interest or charges within thirty (30) days of the date of assessment. With regard to apportionment, the interest rate charged by the Town shall be the project bond rate paid by the Town for the sewer project plus a flat fee of two hundred dollars ($200.00), as allowed by Acts and Resolves of 1993, Commonwealth of Massachusetts, Chapter 433.

(d) *Abatements and deferrals.*

(1) *Unbuildable lot.* A property owner may request of the Building Inspector a formal written opinion which declares that under the then current Town zoning by-law, the lot(s) which have been assessed a sewer betterment is not buildable without issuance of one (1) or more variances under the applicable zoning by-law provisions. This letter must be filed permanently with the Building Inspector and with the Zoning Board of Appeals. Upon issuance of the opinion, the property owner may then file an application for abatement with the assessing board which shall include a certified copy of the building inspector's opinion and which shall require a notarized statement that the owner and any subsequent purchaser or their assigns or agents shall not apply for a variance to make the lot buildable.

A property owner may file a notice of intent to construct a dwelling with the Town Conservation Commission for one (1) or more lots which have been assessed a sewer betterment. Following the regular hearing procedures of the Conservation Commission for any such notice, if the commission issues a formal denial of the notice of intent to construct a dwelling, and if all such documents which are otherwise required by law to be filed with the Registry of Deeds have been so filed, then the property owner may file with the assessing board an appeal action

for abatement so long as the owner did not appeal the denial. The appeal action shall include a certified copy of the denial of the notice of intent to construct a dwelling.

All such abatements which are issued by the assessing board under this Section 1(d)(1) shall also be permanently filed with the offices of the Building Inspector and the conservation commission. All applications and orders or opinions issued under this section shall state that the property owner has voluntarily requested that the property be found unbuildable and that the property owner fully understands all consequences stemming from such determination.

(2) *Age and income.* A property owner may defer the betterment assessment as provided in M.G.L. c. 80 section 13B, which has been accepted by the Town of Lunenburg, if they are sixty-five (65) years of age or older and qualify under M.G.L. c. 59 section 4, Clause 41A. However, the transfer of lien provision, Section 3(c), betterment payments, shall not apply to deferrals as provided for in this section, in compliance with M.G.L. c. 80 section 13B.

Sec. 2 Compensatory sewer privileges fee; increase in use of land.

Notwithstanding the other provisions of this Sewer Assessment By-Law, if a betterment has: (i) been assessed to a property based upon the estimated number of developable sewer units as required by this article or a sewer betterment policy adopted by the Sewer Commission and said property is ultimately developed to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, and/or (ii) been assessed to a developed parcel and later in time the use of that parcel is increased to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, then the Town shall assess a compensatory sewer privilege fee to reflect the increased use. This fee shall be equivalent to the amount which would have been charged as a

betterment assessment upon the additional uses or units at the time of the original assessment. Apportionment of this fee shall be permitted only if specifically requested at the time of assessment and only for a period of ten (10) years or less. Apportioned sewer privilege fees shall bear interest at the same rate charged for the most recent Town sewer project betterments.

Section 3. Laying out and payment for particular sewers connecting with common sewer or main drain and sewer privilege fee.

(a) Whenever any land is connected with a common sewer or main drain laid out by the Sewer Commission in a public way, the Commission shall, at the expense of the Town, lay and maintain the particular sewer providing such connection from the common sewer or main drain to the boundary of the way. If, at the time of construction by the Town of a sewer extension, it is determined that a grinder pump or other such device will be required in order to connect any existing building to the sewer, the Town shall specify the type of pump to be installed by the homeowner and shall specify the type of force main, electrical connections and all other appurtenances necessary to make said connection. The Town shall maintain the pump, force main and all appurtenances from the boundary of the street up to the building (specifically excluding any components such as plumbing and electrical panels and/or services located inside or on the building. When a common sewer or main drain is constructed in a public way, the Sewer Commission may lay such particular sewers from the common sewer or main drain to the boundary of such way as may be necessary in the opinion of the Sewer Commission to connect land abutting on such way with such main drain or common sewer.

(b) The owner of any land benefited by the layout out of a particular sewer from the common sewer to the boundary of the way shall pay to the Town for the permanent privilege of using the same, such reasonable amount as the Sewer Commission may determine, under the provisions of M.G.L. c. 83

section 24, and the amount so determined shall be assessed, certified and committed to the Town Treasurer by the Sewer Commission.

(c) Notwithstanding the provisions of Section 1 hereinabove and Sections 3(a) and (b), the owner(s) of a subdivision which pursuant to the regulations of the Planning Board who has/have been required to construct a sanitary sewer, shall not be assessed a sewer betterment fee but shall be assessed a sewer privilege fee on a per lot basis in lieu of a betterment. Such fee shall be assessed at the time that the subdivision dry sewer is connected to the main sewer and may be subject to apportionment. In addition, regardless of whether or not a subdivision is involved, any applicant for a sewer extension permit shall at the time such sewer extension is completed pay such privilege fee. The fee shall be determined by the Sewer Commission and shall not exceed forty (40) percent of betterment for the most recent Town sewer project.

Section 4. Land not built upon; extension of time for assessment.

Any land not built upon at the time of a sewer betterment assessment may upon application of the land owner receive an extension of time for the payment of the assessment until the land is built upon. Interest at the rate of four (4) percent per year shall be paid annually upon the assessment from the time it was made. The assessment shall be paid within three (3) months after such land is built upon.

CDM

Technical Memorandum 2-1 Supplement

To: *Yarmouth Integrated Water Resources Planning Committee*

From: *CDM Project Team*
Rob Musci, David Young

Date: *September 21, 2005*

Subject: *TM 2-1 Supplement - Phase II CWMP*
Cost Recovery Options for Sewer and Treatment

Purpose

The following text is taken directly from Technical Memorandum 4-5, dated May 24th 2005, from the Yarmouth Phase II CWMP. This text is being provided as a supplement to Technical Memorandum 2-1 of the Phase III CWMP as it defines and discusses several of the technical terms to be reviewed in this phase.

Discussion of Cost Recovery Methods

The Town of Yarmouth has never undertaken a costly town-wide program such as the installation of sewers, wastewater treatment and effluent disposal. The town has rarely utilized a betterment program to pay for capital improvements. Therefore, the various means for recovering costs to pay for this program will need to be discussed by appropriate town boards and committees with potential user input. Below is a discussion of the various types of cost recovery methods that have been utilized by other communities in order to begin the process here in Yarmouth.

Types of Charges

The net costs (total cost less grants/loans or other subsidies) of building Yarmouth's wastewater program could be recovered from all property owners within the town through the town's general tax fund, from those connected to each system through user fees, or from those property owners who directly benefit through special fees. Special fees are targeted to those property owners who benefit, while the other methods would spread the costs to all taxpayers or all system customers. The proportion of the costs to be derived from each of these general methods could range from zero to 100%. However, the total cost must be recovered from one method or the other, so that, for example, a 50% recovery through direct charges to property owners would require recovery of the balance (50%) through property taxes and/or user charges. Similarly, if nothing is recovered from direct charges, all of the cost (100%) must be recovered from taxes and/or user charges.

Thus, a threshold issue facing the town is whether or not a portion of the net cost of expanding these services should be recovered from the general populace through ad-valorem taxes, and/or all sewer customers through user fees. The rationale for such a widespread sharing of the burden is premised on the health and environmental benefits received by the whole community, the improvement to the quality of life, as well as equity concerns. This latter concern can include a recognition of the need to keep initial investment costs low in order to attract more tie-ins. Additionally, there is a potential economic benefit to existing customers since increasing the number of customers could result in lower user fees, by spreading fixed treatment costs over a greater number of users.

Assuming it is determined that a portion of the cost will be recovered through taxes and/or user fees, and a portion will be paid by those directly benefiting from a particular project then the town must decide what the appropriate proportions should be. Often a compromise is struck whereby those facilities installed to service many customers (General Benefit Facilities, e.g. main sewer interceptors and treatment facilities) are paid for by general funds, and those facilities required to provide service to individual customers or a single street are recovered directly from those receiving the benefit (Special Benefit Facilities, e.g. lateral sewers and service connections).

In the following sections a description of the options available to the town for recovery of the capital costs associated with expansion of its water and sewer systems is provided. We begin with ad-valorem taxes because they have traditionally been used as a primary source of funds for system expansions.

Ad-Velorum Taxation

This is the simplest method of cost recovery. Ad-valorem taxation, or a tax based on property value, is widely used in recovering a municipality's capital costs. All water/wastewater system costs that are not recovered elsewhere are generally added to the municipality's total expenditures for all other purposes, in determining the property tax rate. When ad valorem taxes are used to recover capital costs, the following reasons are generally given as justification:

- In most cases, wastewater facilities provide a measurable reduction in actual or potential health hazards.
- Historically, most water/wastewater system expansion to new streets/areas was paid from general tax revenues. To maintain equity to new connectors this practice should be continued for future expansion.
- The general practice is to design major interceptors, pumping stations and treatment facilities with capacity to accommodate additional connections resulting from tie-ins from those who previously had private wastewater disposal systems. Therefore, it is reasonable to expect those for whom these benefits are reserved to assist in paying for them.

- The State Revolving Fund loan program (SRF) program currently provides the equivalent of a 25% grant through low interest loans. While this funding assistance is helpful, a major portion of the burden of funding is the responsibility of local communities. The other 75% must be covered by either betterment assessments or general fund revenues.

- Typical betterment assessments for the installation of new sewer laterals in public ways is based on charging each abutting property owner a prorated share of the project cost based on the length of their frontage.

One factor used in prioritizing projects for partial funding under the State Revolving Fund (SRF) program is the extent to which capital and operating costs are recovered from user charges. This would tend to lower the ranking of those projects funded from ad valorem taxes. Conversely, in those communities where all or a high percentage of system costs, including system expansion costs, are recovered from user fees, their expansion projects would be ranked somewhat higher because of this.

In Massachusetts, and many other states, it has become more difficult to increase taxes because of constraints imposed by proposition two-and-a-half (Prop. 2 1/2). The Town needs to assess the likelihood of raising funds through property taxes either without or, if needed, with a tax overide petition and/or a debt exclusion vote. From a property owners perspective Ad valorem taxes have the advantage of being deductible from federal income taxes, as opposed to user charges or special assessments, which are not tax deductible. However, this benefit to individual taxpayers may be small given the need to spread the costs to all property owners in the Town. The Town needs to weigh all these factors in deciding what portion of the costs, if any, will be recovered from taxes.

User Charges

Wastewater user charges are used by many municipalities to recover some or all capital costs in addition to operation and maintenance (O&M) costs. User charges are used to recover capital costs primarily in those municipalities where wastewater services are generally available throughout the community. Since the passage of tax limitation measures, however, the use of user fees to recover capital costs has become more widespread. Clearly, the addition of capital costs to an O&M component of rates will increase charges above those designed to recover only O&M costs. There are two basic types of user charges; namely, fixed or flat charges and consumption-based charges. Each is described below:

- **Periodic fixed charges** - These charges are periodically levied on the existing customers on a regular basis (annual, semi-annual, quarterly, bimonthly or monthly). Minimum charges, service charges, and customer charges are examples of this type of charge.

- **Consumption or use charges** - These charges are typically based on sewer or water use and are normally expressed in rates per unit of consumption. In general, sewer charges

have been based on a uniform (constant) charge applied to each unit (gallons or cubic feet) of use. Some communities have, however, used other options including both increasing and decreasing block rate structures. Historically, water rates were based on a declining block structure. Many of these have been replaced in recent years by uniform, and in some cases, increasing block structures.

User charges have the same disadvantage as ad-valorem taxes - they are not targeted to those receiving direct benefit. In order to assess system expansion cost through user charges to only direct beneficiaries, it would be necessary to distinguish between "old" and "new" customers, charging the latter group an additional amount to recover expansion costs. Such rates are not typically used. The use of user charges to recover capital costs has an additional disadvantage in that the property owner would not be able to deduct user charges from their federal income taxes.

One advantage supporting the recovery of capital costs through user charges is that they spread the cost over a much larger base. By increasing the customer base (number of customers) the average capital or fixed cost (per customer) decreases because the same costs can be spread over a greater number of customers. This is also true of operating costs, to a lesser extent, because of economies of scale. Therefore, if rates are not increased to partially pay for expansion cost, the average cost to the existing customer base would tend to decrease and their rates could be lowered proportionately. Additionally, for certain facilities such as treatment plants, interceptors and pumping stations, it is more equitable to charge all customers through user fees because most, if not all users, benefit from these facilities.

Direct Charges

There are a number of types of direct charges or sources of revenues that can be considered when evaluating alternative cost recovery methods. These alternative charges can be used to derive revenue from specifically targeted groups or user types. They can also be used as a mechanism for recovering specifically allocated expenses. In order to fully evaluate all of its options, the town must understand these alternative types of charges and their potential implications. Assuming some of the costs are to be recovered from direct charges, there are two basic methods which could be employed: developer exactions and special assessments. Each is listed below along with a general description and summary of the advantages and disadvantages associated with each.

Developer Exactions

Developer exactions are payments negotiated by towns with developers seeking zoning changes and/or subdivision approvals. They are used by a community to recover all or a part of the increased public costs associated with the development. This method is based on the premise that costs associated with new system extensions should be borne directly by those requiring the new service. Under this method the developer contributes the facilities needed to provide water

or sewer service to his development. Typically, the developer constructs the pipelines and, if necessary, pumping stations, based on standards developed by the town, often with the town providing inspection to ensure proper construction techniques. The costs associated with inspections are billed to the developer. If there are no existing pipes that go through or by the new development, the developer may be required to construct pipes from the development to the nearest town mains which have sufficient capacity.

If a utility main constructed by a developer passes through municipal streets or along the route of a future expansion project, the developer is often required to construct pipes with enough capacity to carry future municipal flows. As other abutters connect to the same facilities the original developer may receive partial credits or rebates based on proportional flows.

Once the facilities are completed and accepted by the town, the developer turns them over to the town for continued operation, maintenance and ownership. As a result, the town has no financial burden associated with the construction of facilities in new developments beyond continued operations. It is assumed that the developer's cost of constructing these facilities is included in the price charged for the new homes or businesses in the development. Since the cost of the facilities is included in the price of the home, the new homeowner will generally finance this cost through a home mortgage. There is no cost to others in the town. Because of these advantages, the town should consider adopting this approach for new developments.

In addition to these contributions, developers should be required to install and pay for the cost of making service connections within the development. This is equivalent to a connection charge levied on a property owner who decides to connect to a nearby utility.

Special Assessments/Fees
Special assessments are normally levied as a lump sum charge when sewer service is extended to a new area or when a customer requests a service connection to his property. This type of charge has been used by many communities to recover the capital costs associated with system expansion. An example of this type of fee currently used by Massachusetts cities and towns is the betterment charge levied on properties abutting wastewater sewer mains. Special assessments are preferred by some because they reduce the impact of project specific costs on the tax rate and they provide a direct means of relating or assigning costs to particular customers. One time fixed charges have been adopted throughout the country and in Massachusetts under many different names and for many different purposes. They have been called connection fees, availability charges, impact fees, investment fees, hookup fees, betterments, customer contributions, privilege fees, etc.

Simple connection charges have frequently been adopted to recover the cost of making the physical connection to the sewer system. The municipality's cost in this case is usually limited to oversight inspection services to ensure the connection is made to the municipality's standards. Betterment assessments have been used historically to recover the cost of extending

sewer lines in front of homes and businesses. Betterments have been and are currently levied by many communities in Massachusetts. They have been used for a limited number of sewer projects, the last one having been applied about 10 years ago. Privilege fees have recently been adopted in Massachusetts to recover the cost of lateral sewers, major interceptors, pumping stations and wastewater treatment facilities.

Betterments

While the use of taxes, user charges, connection charges and customer contributions to recover capital costs can be summarized succinctly, the application of betterment assessments and privilege fees merits a more complete discussion for the Town's current needs.

Many varying kinds of property assessments and combinations thereof have historically been used to recover capital costs. The most common method has been betterment assessments, which are one-time charges levied against all bettered properties. The general power to levy betterment assessments is contained in Chapter 80 of the Massachusetts General Laws (MGL). Sections of the statute provide detail on the procedures of apportionment, division, reassessment, abatement and collection of assessments. Chapter 83 of the General Laws provides additional specific guidance on sewer-related betterment assessments, including a permanent privilege fee.

Among the requirements for betterment assessments are:

- The town shall (except in the case of privilege fees), at the request of the owner of the assessed property, apportion all assessments on the unpaid balance into a number of equal annual payments not exceeding twenty. The assessment accrues interest at a rate which cannot exceed two percent above the municipality's borrowing rate for the sewer construction. Traditionally, this payment procedure has been used by Massachusetts communities.

- The town, in making the order for the assessment of any betterment upon land which is not built upon, may extend the time of payment of the assessment until it is built upon or for a fixed time. However, interest shall be paid annually, and the assessment shall be paid within three months after the land is built upon or at the expiration of the fixed time.

- An assessment must be a proportional share of the cost of the improvement, and may be fixed only after the project is completed and all costs are known. In total they must not exceed the amount of adjudged benefit.

- Any land which, because of its grade or level can not be drained into the sewer system by gravity must have this situation remedied before the assessment can be made. This means that provisions for pumping of the wastewater must be made in those cases,

before assessments can be made on such properties. This does not apply if only a portion of the land cannot be drained to the sewer. Chapter 83 of the laws of Massachusetts provides guidance on three types of betterment assessments for sewer facilities: Assessment for Sewer Construction, Assessment for Sewerage Systems and Privilege Fees. The first two are described briefly below.

Assessment for Sewer Construction

Chapter 83, Section 14 of the Massachusetts General Laws specifically authorizes communities in the Commonwealth to assess and charge betterment fees for the construction of sewers. Furthermore, it describes a particular betterment assessment known as an "assessment for construction." This assessment applies to a person who enters his "particular drain" into a main or common sewer, or who by remote means receives benefit from draining his land or buildings. There are three classes of beneficiaries: (1) persons who do not desire to enter their drains into the sewer; (2) those who have lots with no buildings upon them; and (3) those who have houses with drains which they do wish to enter. An assessment under this section must be made according to the value of the land exclusive of buildings, and the charge must reflect a proportionate share of the cost to install the abutting and tributary mains. Section 14 assessments are limited to those persons who enter their drains into the sewer, or who, by remote means, receives benefit thereby.

Assessment for Sewerage Systems

Section 15 of Chapter 83, "assessment for sewerage systems" permits a town to base the assessment on factors other than land values, including the following:

- the frontage of land on any way in which a sewer is constructed,
- the area of land within a fixed depth from the way,
- both the frontage and the land area; or
- a uniform rate per equivalent residential unit (ERU) in the area served by each project, whereby the construction costs are divided among the total existing and potential sewer units to be served. A unit is equal to a single family residence, with non-residential units put on an equivalent basis.

Section 15 provides for the application of betterment assessments to all land owners in the area in which the town has adopted a sewerage system. Furthermore, it should be noted that assessments which were limited to only those who entered the sewer system have been overturned by the courts.

Section 15 of Chapter 83 permits a town to charge property owners for sewer construction, basing the assessment on a fixed uniform rate at the estimated average cost of all the sewers. It could be

applied to expansion of mains into areas that are developed but not previously served. If this type of assessment were used to recover capital costs in Yarmouth, each property owner in that area would be assessed an amount based on the average cost of all expansion facilities needed to serve them. Determination of the number of potential ERUs for a particular project must be based on restrictions and limitations specified in the Town's Zoning by-laws.

The method(s) used to determine the assessments is a key policy issue to be decided by the town.

TOWN OF HARVARD

TOWN CENTER SEWER ACTION GROUP

A Sub-Committee of the Harvard Board of Selectmen

Frequently Asked Sewer Questions

Will my property tax be affected by the betterment of my property with installation the sewer system?

There is no real estate assessment criteria for sewer connection that would affect your assessment. If sales of homes connected to sewer sold at a premium, assessed values would eventually reflect that market data.

Why upgrade the waste water treatment infrastructure?

Adding residential flow would provide a warmer environment and a steadier, more nutritionally balanced diet for the microorganisms that actually process the nutrients and help plant operations, but problems with clogging of the media that supports the microorganisms, ground water infiltration to the collection system near the schools, and the need for transfer pump upgrades and installation of flow equalization tank capacity to buffer peak flows all need to be addressed.

How is the WWTP upgrade cost divided among the taxpayers?

After consideration by the committee and the Board of Selectmen it was decided that a fair approach would be to assign 62% of the cost to be carried by private participants of the sewer system and the remaining 38% of the cost to be bourn by the taxpayers. This larger portion of cost reflects costs the Town would incur regardless of whether the sewer project goes forward.

Why was a low pressure sewer system design selected?

A low pressure system would be less expensive to install than a gravity system. The pipe size is smaller, not buried as deep since it doesn't need a fixed slope which minimizing the cost risks of ledge removal and may be run uphill eliminating a number of costly pumps stations needed to serve a gravity system. At the same time this system allows flexibility in that the collection system could be adapted to evolving needs over time.

Why Special Legislation?

The Home Rule Petition or Special Act would adopt most of the applicable state sewer laws with a few key differences. The MA General Laws provide a general right to connect to the sewer. The special act takes exception to this right to connect and includes growth neutral language that limits growth enabled solely by the availability of sewer service and assures that the Town can reserve capacity for those property owners who choose not to connect right away. The act has more flexibility in interest rates charged and the repayment period for betterment charges which get paid over time to minimize costs to system users over time. The act also provides flexibility to redefine the service area in the future should the Town need to address sewer issues elsewhere in town.

What is a "betterment"?

Service by a public sewer is an improvement over on-site wastewater disposal (i.e. septic systems, etc.) of such lasting duration that it is considered to be in perpetuity. Therefore, when a municipality constructs public sewers, the value of those properties abutting the sewer line are said to have been improved or "bettered". In Massachusetts, sewer betterments are governed by Chapters 80 and 83 (excluding Sections 1 and 2 of Chapter 80) and are under the jurisdiction of the Department of Revenue. Sewer betterment assessments are monies intended to pay back all or a portion of the debt service of the "local share" of the sewer construction and associated engineering capital costs.

Do I have to pay betterment if I don't connect?

Under the recommendation of the TCSAG the only way this project would be financially viable is if the was complete participation. As such the betterment fee would have to be mandatory though connection is optional.

How much are betterment charges and when would I have to pay them?

The betterment assessment for a single family home is projected at $17,000. Assessments can be paid in full when assessed or apportioned and paid over time. Current projections using State Revolving Funds show betterment payments over twenty years come to about $1,100 per year.

When I sell my house or business, will I need a Title V compliant system?

Absolutely! Properties having private wastewater disposal systems of any kind must prove that they have (or will have) a Title V compliant system before the property can be transferred. Properties connected to a municipal wastewater disposal system are relieved of this, often costly, requirement.

Are betterment payments tax deductible?

Interest is fully tax deductible. Most bank escrow statements report simply report taxes and betterment assessments as local real estate taxes.

What will happen to any unpaid betterment assessment balances when my property is sold?

Most communities have the betterment paid off when the property is sold or the title is transferred.

I just installed a Title V compliant private system at great expense, why should I be required to pay into a municipal system?

Except for the annual betterment charge, you wouldn't be required to do so. When, and whether, to connect into and use the municipal system, except in cases of private system failure as determined by the Board of Health, will be an individual property owner's decision.

If I don't connect right away, will I be able to connect at a later date?

Yes. While reserving capacity means that the Town continues to pay the annual operating cost of any unused capacity, the Selectmen decided that anyone who has paid a betterment should have a right to connect to the system for a period of up to thirty years (period corresponding to betterment repayment period).

Will connection costs increase over time?

Most likely they will. Since the town carries the cost of unused treatment capacity, it is in the public interest to encourage individual connection to the system as soon as possible. Reduced connection costs will be an incentive for early connection.

What if I can't afford the one time connection costs?

As an incentive to initial connection, we anticipate that property owners who connect right away will be allowed to pay a portion of the connection costs over time. Grinder pump costs and connection fees would certainly qualify. A state program provides funds to allow individual property owners to borrow the costs for sewer/septic upgrades; the Town will apply to participate in this program.

Could the town construct a municipal only system?

Yes, such a system could be constructed to service only the municipal properties in the center. Although technically feasible, it fails to support the goals and recommendations for the town center contained in the Harvard Master Plan and Town Center Plan and would incur all of the permitting and design costs necessary for the full proposed sewer district. Such a system would not benefit the operation of the current plant as municipal sewage is very similar to the current schools effluent. A municipal only system would do nothing to eliminate the residential and business septic systems located in the DEP interim well head protection area that surrounds our town wells on Pond Road. Finally, the Town would bear all the capital costs and annual operational & maintenance costs, with no offset in overall costs to the town from private capital and operating cost contributions.

I've heard that the school treatment plant is now operating within DEP permitted guidelines, so why do I also hear that the plant's efficiency would be improved by the addition of residential inflows?

Wayne C. Perry, P.E. of Norfolk Ram Group, the professional engineer who has been involved with our facility since its construction, replies: "Currently the wastewater treatment facility (WWTF) is operating within permit limits. However, the addition of more consistent flow rates with more BOD (dissolved solids) and lower nitrogen demands would only help in maintaining the Plant's proper operation. The lack of flow during school summer vacation as well as the three, one week school-year vacations, only compounds the difficulties in keeping the WWTF in compliance with its discharge permit. The added residential flow will provide a better "buffer" for the plant should there be any sudden changes in the plant's influent quality or flow quantity."

What happens now during the summer school vacation? How will the minimal summer flows affect the plant's operation come fall when schools re-open?

Again, Wayne Perry of NRG replies: "During summer months the Plant basically recycles flow within the treatment components and has little or no discharge to the groundwater. This is obviously not an efficient way to operate the Plant. When the flow picks up in the fall, it takes a lot of extra effort and the addition of "bugs" and chemicals to get the plant up and operating properly again. Plus if there is any kind of a Plant upset during the summer, it would be extremely difficult to have the Plant return to proper operation in a reasonably short period of time, and thereby stay in compliance with the discharge limits. The low flow reduces the Plant's buffering capacity to withstand any abnormal influent parameters. Further, with the residential wastewater the quantity of available carbon in the wastewater is increased, thereby reducing the Pant's need for an outside carbon source, such as Methanol. This will result in lower operations cost for the Plant."

What is involved in decommissioning my existing septic system?

The pipe to the septic tank is disconnected when the grinder pump is installed. The septic tank then has to be pumped out by a licensed septic hauler and the tank must be filled with sand or other material to render it unusable.

What happens if interest rates or construction costs go way up, won't I be faced with huge betterment increases?

This is not likely because:

1) State Revolving Fund costs are expected to be stable.
2) Our consruction cost estimates are conservative and include a substantial 20% contingency.
3) There are financial circuit breakers in the Selectmen's Financing Model that require the project to come back to Town Meeting if certain cost thresholds are exceeded.

What is the timeline for the sewer project?
Pursuant to an affirmative vote for Article 24 and 25 and passage of the debt exclusion ballot question, application for funding would be made this year, with design and documentation completed in 2010 and construction in 2011.

Can the district be changed or expanded?

Yes. The Sewer Commission can recommend changes to the district for Town Meeting approval if needs change over time.

How will the Town Meeting decision on sewer be implemented?

The Board of Selectmen have created a structure for a Sewer Build Sewer Building Committee to work through the issues of implementation and construction if the project moves forward.

Why do we need a $2 million debt exclusion right now, won't the costs be incurred incrementally over time?

The full debt authorization provides the legal "standing" and authority to apply for the funding.

What happens if the project is not approved?

First, Town Meeting should approve Article 26 to fund needed design work for the waste water treatment plant repairs and upgrades to assure continued compliance with our discharge water quality permit. Beyond that, the project will be stalled until we as a community are willing to consider the issue again.

Meanwhile, property owners, including the Town, will be on their own for solving their Title 5 compliance issues. It is possible that if the Town fixes the waste water treatment facility's various issues and finds a septic solution for the old library, there may never be the public will to proceed with a town center sewer system.

GENERAL LAWS OF MASSACHUSETTS

APTER 80. BETTERMENTS.

Chapter 80, Section 1. Assessment of cost of public improvements.

Chapter 80, Section 2. Assessment order; plan and estimate; recordation.

Chapter 80, Section 3. Surrender of land assessed.

Chapter 80, Section 4. Collection.

Chapter 80, Section 5. Petition for abatement; filing, etc..

Chapter 80, Section 6. Filing petition; time limitation; extension.

Chapter 80, Section 7. Appeal to superior court.

Chapter 80, Section 8. Death of person entitled to petition for abatement.

Chapter 80, Section 9. Trial procedure.

Chapter 80, Section 10. Appeal to county commissioners.

pter 80, Section 10A. Petition for abatement; procedure on failure of board to act.

Chapter 80, Section 11. Contribution by lessee; rights and remedies of lessee.

Chapter 80, Section 12. Lien status of assessment; duration of lien.

Chapter 80, Section 13. Apportionment and reapportionment.

Chapter 80, Section 13A. Land devoid of structures; extension of time for payment of assessments.

Chapter 80, Section 13B. Deferral and recovery agreements; application; recordation; lien.

Chapter 80, Section 14. Repealed, 1923, 377, Sec. 6.

Chapter 80, Section 15. Division of assessed land.

Chapter 80, Section 16. Reassessment.

Chapter 80, Section 17. Application of chapter.

Return to:

** Next Chapter TOC ** Previous Chapter TOC ** Legislative Home Page

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 1. Assessment of cost of public improvements

Section 1. Whenever a limited and determinable area receives benefit or advantage, other than the general advantage to the community, from a public improvement made by or in accordance with the formal vote or order of a board of officers of the commonwealth or of a county, city, town or district, and such order states that betterments are to be assessed for the improvement, such board shall within six months after the completion of the improvement 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, and shall include in such cost all damages awarded therefor under chapter seventy-nine; but no such assessment shall exceed the amount of such adjudged benefit or advantage. The board shall in the order of assessment designate as 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.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 2. Assessment order; plan and estimate; recordation

Section 2. An order under section one which states that betterments are to be assessed for the improvement shall contain a description sufficiently accurate for identification of the area which it is expected will receive benefit or advantage, other than the general advantage to the community, from such improvement, and shall refer to a plan of such area, and shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area; and such order, plan and estimate shall be recorded, within ninety days from the adoption of the order, or from the acceptance by a town of the laying out, relocation or alteration of a way in case such acceptance is required before the establishment thereof, in the registry of deeds of every county or district in which the benefited area is situated. No betterments shall be assessed for such improvement unless the order, plan and estimate are recorded as herein provided, nor upon any parcel of land not within such area, nor for a greater amount than such estimate.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 3. Surrender of land assessed

Section 3. An owner of land abutting on a public improvement and liable to assessment therefor under this chapter may give notice in writing to the board, within three months after the award of damages is made, that he elects to surrender his land; and if said board adjudge that the public convenience and necessity require the taking of such abutting estate for the improvement named, they may take the whole thereof, and shall thereupon estimate its value, excluding the benefit or advantage accruing from such improvement; and such owner shall convey the estate to the body politic or corporate on behalf of which the assessment was made and may recover therefrom in contract the value so estimated. The commonwealth, county, city, town or district may sell any portion of said land which is not needed for such improvement.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 4. Collection

Section 4. Within a reasonable time after making the assessment the board shall certify to the assessors the list of assessments upon land in each town who shall forthwith commit such assessments with their warrant to the collector of taxes thereof, and he shall forthwith send notice in accordance, except as to the date of notice, with section three of chapter sixty, to the person designated under section one as the owner of each parcel assessed, and any demand for the payment of such assessment shall be made upon such person. Except as otherwise herein provided, the collector 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 the annual taxes, to the sale of land for the non-payment thereof and to redemption therefrom shall apply to assessments made under this chapter, so far as the same are applicable; but the owner of land assessed shall not be personally liable for the assessment thereon. Every collector of taxes receiving a list and warrant from the assessors shall collect the assessment therein set forth, and at such times as the assessors shall direct, or in the case of assessments relating to te funded projects, as the collector of taxes and the board determine shall pay over to the treasurer of the body tic on behalf of which the assessment was made the amounts collected by him.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 5. Petition for abatement; filing, etc.

Section 5. The owner of any real estate upon which betterments have been assessed may, within six months after notice of such assessment has been sent out by the collector, file with the board a petition for an abatement thereof, and the board shall grant such abatement as may be necessary to make such assessment conform to section one. Such petition may be filed with the clerk or secretary of the board, or delivered by mail or otherwise at their office. The board shall within ten days after their decision upon the petition give written notice thereof to the petitioner. If an assessment is abated by the board the assessment so determined shall stand as the assessment upon the land, and if it has not been paid shall be collected in the same manner as the original assessment. If the assessment has been paid, the person by whom it was paid shall be reimbursed by the body politic on behalf of which it was assessed to the amount of the abatement allowed, with interest at the rate of six per cent per annum from the time of payment.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 6. Filing petition; time limitation; extension

Section 6. If a suit in which the validity of an assessment is drawn in question is brought within the time for filing a petition to the board for the abatement thereof or within six months after the determination of an earlier suit involving the same question, brought within the time for filing such petition, which failed for want of jurisdiction, defect of form or other like cause not decisive of the merits of the controversy, the petition may be filed within six months after the final determination of such suit.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 7. Appeal to superior court

Section 7. A person who is aggrieved by the refusal of the board to abate an assessment in whole or in part may within thirty days after notice of their decision appeal therefrom by filing a petition for the abatement of such assessment in the superior court for the county in which the land assessed is situated. If a single parcel of land so assessed lies in more than one county the petition may be filed in the superior court for either such county, and the court in which such petition is first filed shall have exclusive jurisdiction thereof.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 8. Death of person entitled to petition for abatement

Section 8. If a person who is entitled to petition for an abatement under this chapter dies within the time limited for such petition without having filed the same, his executor, administrator, heir or devisee, if interested, may, within one year after his interest vests, file such petition in the same manner and with the same effect as if filed by the deceased in his lifetime.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 9. Trial procedure

Section 9. Upon the filing of a petition under section seven, process shall issue and service be made as in suits in equity upon the body politic on behalf of which the assessment was made. Any defence to the petition not relating to the amount of the assessment must be pleaded within thirty days of the return day of the subpoena; but no answer relating solely to the amount of the assessment shall be filed, and there shall be no default for failure to enter an appearance. The trial shall be by the court unless one of the parties within the time prescribed in actions at law files a notice that he desires a trial by jury; and the court may appoint an auditor. Interrogatories may be filed with the same effect as in actions at law. The court, as the request of any party, shall advance the petition so that it may be heard and determined with as little delay as possible. In case petitions have been filed for the assessment of damages and for the abatement of betterments with respect to the same parcel of land and the same public improvement, the petitions shall be tried together. In case of trial by jury, if either party requests it the jury shall view the premises. If the assessment is not reduced the respondent shall recover costs and an execution shall issue therefor as in actions at law; but if the assessment is reduced the petitioner shall recover judgment for costs, and the assessment so determined shall stand as the assessment upon the land, and if it has not been paid shall be collected in the manner provided for an original assessment. If the assessment has been paid judgment shall be entered for the petitioner for the amount of the reduction, with interest at the rate of four per cent per annum from the time of payment.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 10. Appeal to county commissioners

Section 10. A person who is aggrieved by the refusal of a board of officers of a city, town or district to abate an assessment may, instead of pursuing the remedy provided by section seven, appeal within the time limited therein to the county commissioners of the county in which the land assessed is situated. The person so appealing shall, within ten days after the filing of said appeal, give written notice thereof to such city, town or district. Such notice may be given by mailing a copy of the appeal by registered mail, postage prepaid, to the board which made the assessment or to the clerk of such city, town or district. 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 by which it was assessed, and may make an order as to costs. The decision of the county commissioners shall be final.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 10A. Petition for abatement; procedure on failure of board to act

Section 10A. If the board with which a petition for the abatement of an assessment has been duly filed in accordance with the provisions of section five fails to act upon said petition within four months of the date of the filing of such petition, the petition shall be deemed to be denied, and the petitioner shall have the right within sixty days after the expiration of said four months to appeal as if the board had in fact denied the said petition; provided, that if the assessment has been paid, no appeal shall be taken after the expiration of ten months from the time of payment.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 11. Contribution by lessee; rights and remedies of lessee

Section 11. If an assessment is made upon land the whole or part of which is leased, the owner shall pay the assessment, and may collect of the lessee an additional rent for the portion so leased equal to ten per cent per annum on that proportion of the amount paid which the value of the leased portion bears to that of the whole estate, after deducting from the whole amount any money received for damages to such land in excess of what he has necessarily expended thereon by reason of such damages. A lessee aggrieved by the imposition of this burden may, within six months from the time demand is made upon him for such additional rent, file a petition in the superior court for the county in which the land is situated, to determine the proportion of the assessment which he ought to bear, and the proportion determined upon the petition shall be substituted for the proportion provided by this section. If such proportion is reduced the lessee shall recover costs from the owner; otherwise the owner shall recover costs from the lessee.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 12. Lien status of assessment; duration of lien

Section 12. Assessments made under this chapter shall constitute a lien upon the land assessed. The lien shall take effect upon the recording of the order stating that betterments are to be assessed for the improvement. Notwithstanding any other provision of this section or chapter eighty-three, if a county, city, town, or district elects to send notice to the owner of the land assessed indicating the amount of the assessment for the betterment, and said owner pays the amount due, no lien shall be recorded. The assessors shall indicate on the next tax bill that the amount of the betterment assessment has been paid and no further notation or demand shall be made on land so assessed. Except as otherwise provided, such lien shall terminate at the expiration of two years from October first in the year in which the assessment is first placed on the annual tax bill under section thirteen or, if an assessment has been apportioned, from October first in the year in which the last portion is so placed upon the annual tax bill, whichever is later, if in the meantime in either case the estate has been alienated and the instrument alienating the same has been recorded. If there is no recorded alienation within such period, the lien shall continue until there is a recorded alienation. If the validity of an assessment made under this chapter is called in question in any legal proceeding to which the board which made the assessment or the body politic for the benefit of which it was made is a party, instituted prior to the expiration of the lien therefor, the lien shall continue until one year after the validity of the assessment is finally determined, even though an alienation be recorded in the meantime. If at any time while a lien established by this section is in force, a sale or taking cannot in the opinion of the collector be legally made because of any federal or state law or because of any injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A, subject, however, to any lawful action under any paramount authority conferred by the constitution or laws of the United States or the constitution of the commonwealth. If the time for payment of an assessment is extended under section thirteen A or under any general or special law, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A. A lien under this section may be dissolved by filing for record in the registry of deeds of the county or district where the land subject to the lien lies a certificate, in a form approved by the commissioner of revenue, from the collector of taxes that the assessment, constituting the lien, together with any interest and costs thereon, has been paid or legally abated. The collector of taxes shall charge four dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 13. Apportionment and reapportionment

Section 13. Assessments made by a board of the commonwealth under this chapter shall bear interest at one rate of five per cent per annum or, at the election of the board at a rate not to exceed two per cent above the rate of interest chargeable to the body politic on behalf of which the assessment was made, for the betterment project to which the assessments relate, from the thirtieth day after assessments have been committed to the collector. All other assessments made under this chapter shall bear interest at one rate of five per cent per annum or, at the election of the city or town at a rate equal to two per cent above the rate of interest chargeable to the city or town, for the betterment project to which the assessments relate, from the thirtieth day after assessments have been committed to the collector. The assessors shall add each year to the annual tax assessed with respect to each parcel of land all assessments, constituting liens thereon, which have been committed to the collector prior to January second of such year and which have not been apportioned as hereinafter provided, remaining unpaid, as certified to them by the collector, when the valuation list is completed, with interest to the date when interest on taxes becomes due and vable. At any time before the completion by the assessors of the valuation list for the year in which such essments will first appear on the annual tax bill, the board of assessors may, and at the request of the owner of the land assessed shall, apportion all assessments or unpaid balances thereof made under this chapter into such number of equal portions, not exceeding twenty, as is determined by said board or as is requested by the owner, as the case may be, but no one of such portions shall be less than five dollars; provided, that, if an original assessment exceeds one hundred dollars and has been placed upon the annual tax bill, or has been apportioned into a number of portions less than twenty and the first portion has been placed upon an annual tax bill, the board of assessors may in its discretion, upon a request for the apportionment of such assessment into twenty portions made by the owner prior to a sale or taking of the land for the non-payment of such assessment or portion and upon payment of any necessary intervening charges and fees and such portions of such assessment as would have become due and payable if the request for apportionment had been seasonably made, apportion or reapportion the said assessment as aforesaid, and if any other tax or assessment constituting a lien upon the parcel to which the assessment so apportioned or reapportioned relates remains unpaid after such apportionment or reapportionment, the collector may institute proceedings anew for the sale or taking of such parcel at any time prior to the expiration of the lien or of a period of twenty days after such apportionment or reapportionment, whichever is the later. In any case in which an assessment relates to a state-funded project, the apportionment or reapportionment described herein shall be undertaken in accordance with the terms aforesaid by the board on whose behalf the assessment was made; provided, however, that the apportionment shall be made of said assessments or unpaid balances together with any interest due thereon. The assessors shall add one of said portions, with interest on the amount remaining unpaid from thirty days after the commitment of the original assessment to the collector to the date when interest on taxes becomes due and payable, to the first annual tax upon the land and shall add to the annual tax for each year thereafter one of said portions and one year's interest on the amount of the assessment remaining unpaid until all such portions shall have been so added; all assessments and apportioned parts thereof, and interest thereon as rein provided, which have been added to the annual tax on any parcel of land shall be included in the annual tax thereon. After an assessment or a portion thereof has been placed on the annual tax bill, the total amount of

said bill shall be subject to interest under and in accordance with the provisions of section fifty-seven of chapter fifty-nine.

ɪwithstanding a prior apportionment, the assessors, upon written application of the owner of the land assessed, shall order that the full amount, or any portion thereof, remaining unpaid of any assessment be payable forthwith and shall commit said amount, together with interest thereon from thirty days after the commitment of the original assessment if no portion has been added to a tax levy, or if a portion has been added to a tax levy, then with interest from October first of the year to which the last portion has been added, with their warrant therefor, to the collector for collection. If a part of a prior apportioned assessment is ordered to be payable forthwith, the payments shall be credited to the terminal or final years so as to reduce the period of payment.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 13A. Land devoid of structures; extension of time for payment of assessments

Section 13A. The board making the order for the assessment of any betterment upon land which is not built upon may extend the time of payment of the assessment until it is built upon or for a fixed time; but interest at the rate of four per cent per annum shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid within three months after such land is built upon or at the expiration of such fixed time.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 13B. Deferral and recovery agreements; application; recordation; lien

Section 13B. In a city or town which accepts the provisions of this section, the board of a county, city, town or district making the order for the assessment of any betterment, or balance of any assessment apportioned in accordance with the provisions of section thirteen, shall, upon the application of the owner of the real property assessed, if such owner is eligible for an exemption under clause Forty-first A of section five of chapter fifty-nine, enter into a deferral and recovery agreement with such owner on behalf of the city or town. In any instance in which a board of the commonwealth makes an order for the assessment of any betterments, said board of the commonwealth may enter into a deferral and recovery agreement on its own behalf in accordance with the terms of this section. Any such application shall be filed with the appropriate board within sixth months after notice of such assessment has been sent out by the collector. Such application may be filed with the clerk or secretary of said board, or delivered by mail or otherwise at their office.

The 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, with interest as applied in accordance with the provisions of section thirteen;

(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, 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 making the order for the assessment of a betterment and the owner or owners of such real property, said board shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated 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 chapter, plus interest as hereinafter provided. 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 any statement recorded on behalf of a board of the commonwealth

shall be paid by the owner or owners of such real property. The filing fee for other such statements shall be paid by the city or town and shall be added to and become a part of the taxes due.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 14. Repealed, 1923, 377, Sec. 6

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 15. Division of assessed land

Section 15. If land which is subject to a lien for an assessment made under this chapter is subsequently divided by sale, mortgage, partition or otherwise and such division has been duly recorded in the registry of deeds, the board, before the land has been advertised for sale for non-payment of the assessment, may, or upon the written request of the owner or mortgagee of a portion thereof, accompanied by a plan sufficient for the identification of the division of the whole estate, with the names of the different owners 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 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 and of the time appointed therefor, unless such notice has been waived. A person aggrieved by any action of the board under this section shall have the same remedy as a person aggrieved by the refusal of the board to abate an assessment.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 16. Reassessment

Section 16. If an assessment is invalid and 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 board 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 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. It shall be collected in the same manner as an original assessment, and shall in all other respects be subject to this chapter.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80. BETTERMENTS

Chapter 80: Section 17. Application of chapter

Section 17. Whenever a formal vote or order for the laying out or construction of a public improvement, or for the taking of land therefor, states that betterments are to be assessed, no betterments shall be assessed except under this chapter or chapter eighty A, and all proceedings relating to such betterments shall be as herein or therein provided, notwithstanding any special act hitherto enacted.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 1. Authorization

Section 1. A board of officers, hereinafter called the board, upon whom authority to take real estate by eminent domain on behalf of the commonwealth or of any county, city, town or district thereof, hereinafter described as the body politic, has been conferred by law, for the purpose of effecting a public improvement, may, at its election, instead of proceeding in accordance with chapter seventy-nine, or in accordance with chapters seventy-nine and eighty if betterments are to be assessed, institute proceedings for the taking of real estate or any interest therein, and for the assessment of betterments, in accordance with this chapter. So much of sections two to fifteen, inclusive, as relates to the assessment of betterments shall apply only to proceedings thereunder wherein the board votes under section two to assess betterments and so states in the order adopted thereunder.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 2. Order of intention; contents

Section 2. The board, having first complied with all the preliminary requirements prescribed by law, shall adopt an order of intention to take, which shall contain a description of the property to be taken sufficiently accurate for identification, and shall state the interest therein to be taken and the purpose for which such property is to be taken, and, if betterments are to be assessed therefor, shall so state; otherwise, it shall state that no betterments are to be assessed. In case there are trees upon land so to be taken, or structures affixed thereto, the order shall state whether the same are to be included in the taking, and, if they are not to be so included, shall allow the owner a reasonable time after the taking becomes absolute to remove the same, to be specified in the order.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 3. Order of intention; additional provisions; notice of adoption

Section 3. The order shall contain an estimate of all damages sustained by every person in his property by reason of such taking as of the date of the adoption of the order, and shall contain an estimate of the cost of the improvement, including such damages, and, if betterments are to be assessed, a description sufficiently accurate for identification of the area which it is expected will receive benefit or advantage, other than the general advantage to the community, from such improvement, and shall refer to a plan of such area, and shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area. Notice of the adoption of such order shall be sent forthwith by registered mail to every person, whose address is known, appearing of record to have an interest in any land to be taken, damaged or assessed, by or on account of the proposed improvement, setting forth all estimates contained in said order in relation to said land, and a like notice shall be posted in a conspicuous place on each parcel thereof. Such order, plan and estimate shall be recorded, within ten days from the adoption of the order, in the registry of deeds of every county or district in which property to be taken or assessed is situated.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 4. Petition to take property

Section 4. Within ten days from the recording of such order, plan and estimate, the board shall cause to be filed in the superior court of the county in which such proposed public improvement or the major part thereof is situated a petition on behalf and in the name of the body politic undertaking such improvement, to establish its right to take the property described in the order and, if betterments are to be assessed, to assess the same on account of the special benefits to be derived from the improvement, and to determine the compensation and damages to be paid, the area to be assessed and the amount of the benefits to be made the basis of assessments. The petition shall contain a copy of the order and estimates, and shall designate the registry or registries of deeds in which the order, plan and estimate have been recorded as provided in section three. The proceeding thus instituted shall be in rem against the land to be taken, damaged or assessed, but every person appearing of record to have an interest in any of said land at the time of the adoption of the order shall be made a party respondent. The court shall issue an order notice to all of said respondents, returnable at any return day which occurs thirty days or more after the filing of petition, which shall be served upon all respondents who are residents of the commonwealth or can be found therein in the manner prescribed for serving a writ of summons in civil actions, and upon all other parties by posting a copy thereof on each parcel of land to be taken, damaged or assessed and by sending a copy thereof by registered mail to each of said parties whose address is known, at least twenty days before said return day. Persons not in being, unascertained or unknown who may have an interest in any of such land shall be made parties respondent by such description as seems appropriate, and service may be made on such persons by publication, in such manner as the court may order.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 5. Answer

Section 5. Any of said respondents, and any other person claiming an interest in any of the land to be taken, damaged or assessed by or on account of said improvement, may appear and file an answer within thirty days after the return day of the petition. In such answer he may (1) deny the right of the petitioner to make the improvement, or to take or damage his land, (2) deny the right of the petitioner to levy an assessment upon his land, (3) impugn the validity or regularity of the proceedings for establishing the improvement, taking property by eminent domain or assessing betterments therefor so far as any absence of such validity or regularity may affect the legality of the taking or damaging of his land, or of the assessment of betterments thereon, in which case he shall specify the invalidity or irregularity relied on, (4) deny the sufficiency of the compensation or damages allotted to him in the estimate of the board, in which case he shall state the amount of compensation or damages claimed by him, (5) deny that his property will receive benefit or advantage, other than the general advantage to the community, from establishment of the improvement, in the amount stated in the estimate, in which case he shall state the value of h benefit or advantage, if any, which he admits his property will receive.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 6. Default judgments; appointment of guardians

Section 6. The court shall, on motion of the petitioner, enter a default against all persons served with process or who otherwise appear to have seasonably received personal notice of the petition and who have not appeared and answered within the time prescribed. The court shall appoint one or more disinterested persons to act as guardian or guardians ad litem for minors, for persons under disability, and for all persons not in being, unascertained, unknown or out of the commonwealth, who have been named or described as parties respondent and for whom no duly authorized person has appeared and answered, and such guardian or guardians ad litem shall be allowed thirty days from his or their appointment to appear and answer on behalf of the persons whom he or they represent.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 7. Hearing; judgment

Section 7. If any person in his answer denies the right of the petitioner to make the improvement or to take or damage his property, or to levy an assessment thereon, or impugns the validity or regularity of the proceedings, the court shall forthwith hear and determine the issue thus raised, and may order the petition dismissed or may enter an order establishing the right of the petitioner to take the real estate, or interest therein, described in the order for the purpose therein stated and to assess betterments as therein set forth, or may enter such other order as law and justice may require. If the court does not order the petition dismissed, and one or more of the respondents allege exceptions or appeal to the supreme judicial court or the matter is reported to the supreme judicial court, further proceedings shall not be stayed unless the justice who heard and determined the matter so directs. If no such issue is raised by any person in his answer, the court shall, on motion of the petitioner, enter an order establishing the right of the petitioner to take the real estate, or interest therein, described in the order for the purpose therein stated [illegible] to assess betterments as therein set forth. An order under this section establishing the right of the petitioner to [illegible] property or to assess betterments shall be final and conclusive as to the validity of the proceedings up to the date of the adoption of such order.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 8. Arbitration of disputes; appointment of commissioners

Section 8. If the court shall enter an order establishing the right of the petitioner to take the real estate, or interest therein, described in the order for the purpose therein stated and to assess betterments as therein set forth, and any person has in his answer denied the sufficiency of his compensation or damages as estimated in the order under section three or has denied that his property will receive benefit or advantage in the amount estimated therein, the court shall appoint not more than three disinterested persons as commissioners to hear and determine the issues thus raised. The provisions of law in regard to auditors shall so far as apt apply to such hearing, and all controversies as to the amount of compensation, damages and betterments arising out of the same petition shall be referred to the same commissioners. The commissioners shall hear the parties as speedily as may be and shall thereafter file a draft report with the clerk of the court and shall send notice of such filing to the several parties. The commissioners shall not determine the compensation or damages to which any person is entitled to be greater than as alleged by him in his answer, nor less than as estimated by the board; nor shall they determine the benefit to any parcel of land to be less than as admitted by the owner in his answer nor more than as estimated by the board.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 9. Redetermination of damages; procedure

Section 9. Any person aggrieved by the determination of the commissioners with respect to his compensation or damages may have a redetermination thereof by a jury by making application therefor within twenty days after the sending of the notice of the filing of the commissioners' draft report. The application may be placed on the trial list of the next ensuing sitting of the court with jury in the county and heard and determined in the same manner as other civil cases and may be advanced for speedy trial; but if there are two or more such applications with respect to a particular public improvement which cannot be heard forthwith without unduly delaying the trial of other civil cases, the court may direct that a special jury be summoned to hear and determine all such applications. The administrative justice for the superior court department shall preside or designate a justice sitting in said department to preside over the sittings of such special jury, who shall have in the hearing and determination of such applications all the powers of a justice appointed to said department presiding over the trial of an ordinary civil action. The award of the commissioners shall be prima facie evidence of the compensation or damages to which the applicant is entitled, and the jury shall not award compensation or damages to any person in a greater amount than as alleged by him in his answer nor less than as estimated by the board. If the jury does not agree upon a verdict, or if the verdict is set aside, the applicant shall be entitled to a new jury from time to time until a verdict has been rendered and established; but he may at any time, upon terms, waive his right to a trial by jury and accept the compensation or damages awarded by the commissioners.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 10. Final adjudication

Section 10. If the verdict of the jury as finally established shall differ from the award of the commissioners with respect to the compensation or damages to which any person is entitled, the report of the commissioners shall be amended accordingly, and, after all applications for redetermination of compensation or damages have been disposed of, the report shall be presented to the court for confirmation. The report of the commissioners as thus amended shall be final and conclusive as to all questions of fact, but the court may hear and determine questions of law arising therefrom and may order the report to be confirmed or to be recommitted to the commissioners to be reconsidered in accordance with law, or may itself make such amendments and alterations as are necessary to render the report consistent with the law. If an appeal to the supreme judicial court or exceptions are taken with respect to the order of the justice of the superior court upon the motion for final confirmation of the commissioners' report, or if the matter is reported to the supreme judicial court, the same shall be heard and determined without awaiting further proceedings in the superior court. The operation of the order shall be stayed pending the disposition of such appeal, exceptions or report, and the order shall, if necessary, be modified to conform to the decision of the supreme judicial court. After the expiration of thirty days from the final confirmation of the report, or if the same is affirmed by the supreme judicial court, of thirty days from the date of the rescript of said court, if the proceedings have not in the meantime been discontinued, and if it shall be made to appear that all laws requiring appropriations of money, to be raised by loan or otherwise, in cases of taking of property by eminent domain, in so far as applicable, have been complied with, judgment of condemnation shall be entered upon motion of the petitioner which shall be final and conclusive against all the world with respect to the validity and extent of the taking, and the right of the petitioner to assess betterments therefor, and against all parties to the proceedings with respect to the amount of compensation or damages to which any person is entitled and the amount of benefit or advantage which each parcel of land within the designated area will receive from the improvement. If judgment of condemnation is not entered within six months from the confirmation of the commissioners' report, or from the rescript of the supreme judicial court, the petition shall be dismissed upon motion of any one or more of the parties respondent. The clerk of the court shall forthwith transmit for record to every registry of deeds designated in the petition as provided in section four a certified copy of any judgment of condemnation entered under this section or of any interlocutory judgment of condemnation entered under section eleven.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 11. Abandonment or discontinuance of proceedings

Section 11. The board may at any time before final judgment of condemnation abandon the proposed improvement and discontinue the proceedings, in which case all action taken thereunder and under the proceedings for the laying out or establishment of such improvement shall become void; but in such case, or in case the petition shall be dismissed on motion of a party respondent under section ten, any person who has suffered damage or loss or been put to expense by the proceedings shall be entitled to recover indemnity in full by order of the court and for which execution shall issue. In case of abandonment or dismissal as aforesaid, the clerk of the court shall forthwith transmit for record to every registry of deeds designated in the petition as provided in section four a certificate that all proceedings in relation to such improvement have been discontinued or dismissed. At any time after the right of the petitioner to take the property described in the order for the purpose stated therein and to assess betterments therefor has been established, if it shall be made to appear that all laws requiring appropriations of money, to be raised by loan or otherwise, in cases of the taking of land by eminent domain, in so far as applicable, have been complied with, the court shall on motion of the petitioner enter an interlocutory judgment of condemnation, which shall have the same effect as a final judgment of condemnation, except with respect to compensation, damages and assessments for benefits, and the proceedings shall continue as herein provided with respect to compensation, damages, and assessments; but the petitioner shall not thereafter have the right to discontinue the proceedings.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 12. Transfer of property; interest transferred; payment of compensation

Section 12. The taking shall become absolute and the right of the body politic to the real estate or interest therein described in the petition and the right of the respondents to compensation or damages shall vest upon the entry of either final or interlocutory judgment of condemnation, and it shall have immediate right of entry and possession, subject to the rights of the owners under section two with respect to structures and trees. The compensation or damages shall be payable when vested, or as soon thereafter as they are finally determined, and if not then paid may be recovered in an action of contract. In case two or more persons have appeared in the proceedings as parties respondent with interests adverse to each other with respect to a particular parcel of land, the body politic shall not be bound to pay such compensation until one or more of such persons have established his or their rights thereto in proper judicial proceedings to which the others of such persons are parties; but the proceedings to determine the amount of compensation shall not be stayed pending the establishment of such rights. Compensation and damages shall be assessed as of the date of the adoption of the order, and shall bear interest at the rate of six per cent per annum from the date when the right to damages becomes vested until payable, but shall not bear interest after they are payable unless the body politic fails upon demand to pay the same to the person entitled thereto. The body politic shall not pay compensation or damages to any person in excess of its estimate, except in accordance with an award of the commissioners, nor in excess of the award of the commissioners, except as amended in accordance with a verdict of the jury.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 13. Taxation of costs

Section 13. If the petition is dismissed under section seven, costs, as in actions at law, shall be awarded to the respondents, in addition to indemnity for loss and damages as provided in section eleven. If, upon entry of an interlocutory or final judgment of condemnation it appears that a respondent has been awarded greater compensation or damages than was allotted to him in the estimate contained in the order adopted under sections two and three or if betterments to be assessed on the land of any respondent have been determined to be less than as estimated in said order, such respondent shall be entitled to such costs; otherwise, he shall be liable for such costs.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 14. Assessment of improvements; assessment lien; effective date

Section 14. If the right to assess betterments has been established, the board, within six months after the completion of the improvement, shall assess a proportionate share of the whole or part of the cost thereof upon each parcel of land with respect to which a benefit or advantage has been determined as herein provided and in the amount so determined, unless the betterments so assessed shall exceed the cost of the improvement, in which case they shall be proportionately reduced; and such assessments shall not thereafter be abated. The lien for such assessments shall take effect upon the recording of the order of intention to take under section three.

The General Laws of Massachusetts Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIII. EMINENT DOMAIN AND BETTERMENTS

CHAPTER 80A. EMINENT DOMAIN TAKINGS AND BETTERMENT ASSESSMENTS BY JUDICIAL PROCEEDINGS

Chapter 80A: Section 16. Election to proceed under this chapter

Section 16. In any case where the commonwealth, or a county, city, town or district thereof, has been or shall be authorized by provisions of general or special law to take real estate or any interest therein by eminent domain under chapter seventy-nine, the officer or board of officers thereof authorized to exercise such power may, unless otherwise provided, elect to take such property or interest under this chapter and, if betterments are to be assessed, to assess the same hereunder.

GENERAL LAWS OF MASSACHUSETTS

APTER 83. SEWERS, DRAINS AND SIDEWALKS.

CONSTRUCTION AND MAINTENANCE OF SEWERS AND DRAINS.

Chapter 83, Section 1. Construction and maintenance of sewers and drains by cities or towns; acquisition of lands by eminent domain or purchase; agreements with water resources authority.

Chapter 83, Section 2. Plans and records.

Chapter 83, Section 3. Sewer connections.

Chapter 83, Section 3A. Private ways; repair of sewers.

Chapter 83, Section 4. Highway drains.

SEPARATION, PURIFICATION AND DISPOSAL OF SEWAGE.

Chapter 83, Section 5. Separate systems for drainage of water and sewage.

Chapter 83, Section 6. Sewage disposal works.

Chapter 83, Section 7. Sewage disposal works; prevention of nuisances.

REGULATIONS AND PENALTIES.

Chapter 83, Section 8. Digging up public ways.

Chapter 83, Section 9. Obstruction of ditches.

Chapter 83, Section 10. Rules and regulations regarding use and connections.

Chapter 83, Section 11. Sewer connections.

Chapter 83, Section 12. Repair of private drains.

Chapter 83, Section 13. Equity jurisdiction of courts.

SEWER ASSESSMENTS.

Chapter 83, Section 14. Sewer assessments; authorization.

Chapter 83, Section 15. Sewerage systems; adoption; assessment; uniform units; separation of costs.

Chapter 83, Section 15A. Redetermination of assessment.

ter 83, Section 15B. Water pollution treatment facilities; construction; sewer assessments.

Chapter 83, Section 16. Charge for use of sewers.

pter 83, Section 16A. Certificate of acceptance; effect; recordation.

Chapter 83, Section 16B. Effective date of sewer charge lien; termination; methods of collection and enforcement of rate or charge.

Chapter 83, Section 16C. Certification of rate or charge to assessors; commitment as tax.

Chapter 83, Section 16D. Application of other law; powers of tax collectors.

Chapter 83, Section 16E. Remedies of aggrieved real estate owners.

Chapter 83, Section 16F. Recovery of real estate owner against tenants.

Chapter 83, Section 16G. Deferral of charges.

Chapter 83, Section 17. Payment for permanent sewer privileges.

Chapter 83, Section 18. Method of assessment.

Chapter 83, Section 19. Assessments; extension of time for payment.

Chapter 83, Section 20. Fee for use of sewers.

pter 83, Section 21. Assessment on land abutting on more than one way.

Chapter 83, Section 22. Assessment of sewers built by landowners.

Chapter 83, Section 23. Cost of sewers; payment of portion by municipality.

Chapter 83, Section 24. Assessment for particular sewers.

SIDEWALKS.

Chapter 83, Section 25. Sidewalks; establishment.

Chapter 83, Section 26. Assessments.

GENERAL PROVISIONS RELATING TO ASSESSMENTS.

Chapter 83, Section 27. Recording of statements; assessment liens.

Chapter 83, Section 28. Application of betterment law.

Chapter 83, Section 29. Betterment assessments created by special act; duration of lien.

Return to:

APPENDIX H: DRAFT COPIES OF FUTURE TYNGSBOROUGH TOWN MEETING ARTICLES ACCEPTED BETTERMENT ARTICLE

Town of Tyngsborough, Massachusetts
Annual Town Meeting, Tuesday, May 18, 2010
Adoption of Massachusetts General Law Chapters 80 and 83

ARTICLE _____.
To see if the Town will vote to adopt the provisions of Massachusetts General Law (MGL) Chapter 80, Betterments and MGL Chapter 83, Sewer, Drains and Sidewalks, for the purpose of establishing a municipal sewer system; and to take any other action relative thereto.

Submitted by the Sewer Commission

Explanation: This article is requesting authorization to adopt the provisions of MGL Chapter 80, Betterments, and MGL Chapter 83, Sewers, Drains and Sidewalks, to fund all capital costs associated the municipal sewer system to serve properties located within the Town of Tyngsborough. All properties receiving a benefit or advantage greater than that of the general public due to the construction of the public sewer infrastructure shall be assessed a pro-rata share of the total capital cost of the project, proportional to their "benefit". Betterments shall be calculated as defined in the Tyngsborough Betterment By-Law.

MOTION _____.
Move that the Town of Tyngsborough adopt the provisions of MGL Chapter 80, Betterments, for the purpose of funding capital costs of extending the municipal sewer system in the areas identified and approved in the CWMP and the provisions of MGL Chapter 83 for the purpose of defining the method of assessing betterments.

Vote Required: 2/3 Majority

Article XX
Sewer Betterment By-Law

To see if the Town will vote to adopt a Sewer Betterment By-Law that will authorize the Tyngsborough Sewer Commission to assess sewer betterments for the purpose of capital cost recovery for future sewer construction in the Town.

Article XX
Phase I Sewer Design – Sunset Park and New, Proposed Downtown Need Areas

To see if the Town will vote to authorize the Sewer Commission to raise and appropriate the sum of $_____ for the design of Phase I Sewers, Sunset Park and the New, Proposed Downtown Need Areas, as delineated in the Town's State-approved Comprehensive Wastewater Management Plan (CWMP).

Motion

Voted: that $_____ is appropriated for the purpose of financing the design of Phase I, Sunset Park and the New, Proposed Downtown Need Areas sewers as delineated in the approved Comprehensive Wastewater Management Plan and that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase I Sewer Construction - Sunset Park and New, Proposed Downtown Need Areas

To see if the Town will vote to appropriate a sum of money for the construction of Phase I Sewers, Sunset Park and the New, Proposed Downtown Need Areas as delineated in the state approved Comprehensive Wastewater Management Plan (CWMP); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Motion

Voted: that $_____ is appropriated for the purpose of financing the construction of Phase I, Sunset Park and the New, Proposed Downtown Need Areas sewers as approved in the Comprehensive Wastewater Management Plan including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow up to $_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid (ARRA, Main Street Jobs) available for the project or for the financing thereof; that the Tyngsborough Sewer Commission is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase I Sewer Design - Sunset Park Need Area

To see if the Town will vote to authorize the Tyngsborough Sewer Commission to raise and appropriate a sum of money for the design of Sunset Park Need Area included in the Phase I Sewers as delineated in the Town's State-approved Comprehensive Wastewater Management Plan (CWMP).

Motion

Voted: that $_____ is appropriated for the purpose of financing the design of Phase I, Sunset Park Need Areas sewers as delineated in the State approved Comprehensive Wastewater Management Plan and that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase I Sewer Construction - Sunset Park Need Area

To see if the Town will vote to appropriate a sum of money for the construction of the Sunset Park Need Area of Phase I Sewers as delineated in the State approved Comprehensive Wastewater Management Plan (CWMP); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Motion

Voted: that $_____ is appropriated for the purpose of financing the construction of Phase I, Sunset Park Need Areas sewers as delineated in the state approved Comprehensive Wastewater Management Plan including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow up to $_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid (ARRA, Main Street Jobs) available for the project or for the financing thereof; that the Tyngsborough Sewer Commission is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase I Sewer Design - Sunset Park Need Area

To see if the Town will vote to authorize the Tyngsborough Sewer Commission to raise and appropriate a sum of money for the design of Sunset Park Need Area included in the Phase I Sewers as delineated in the Town's State-approved Comprehensive Wastewater Management Plan (CWMP).

Motion

Voted: that $_____ is appropriated for the purpose of financing the design of Phase I, Sunset Park Need Areas sewers as delineated in the State approved Comprehensive Wastewater Management Plan and that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase I Sewer Construction - New, Proposed Downtown Need Area

To see if the Town will vote to appropriate a sum of money for the construction of the New Proposed Downtown Need Area of Phase I Sewers as delineated in the state approved in Comprehensive Wastewater Management Plan (CWMP); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Motion

Voted: that $_____ is appropriated for the purpose of financing the construction of Phase I, the New, Proposed Downtown Need Areas sewers as delineated in the State approved Comprehensive Wastewater Management Plan including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow up to $_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid (ARRA, Main Street Jobs) available for the project or for the financing thereof; that the Tyngsborough Sewer Commission is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase II Sewer Design - Northern Middlesex Road

To see if the Town will vote to authorize the Tyngsborough Sewer Commission to raise and appropriate the sum of $_____ for the design of Phase II Northern Middlesex Road Sewers as delineated in the Town's State-approved Comprehensive Wastewater Management Plan (CWMP).

Motion

Voted: that $_____ is appropriated for the purpose of financing the design of Phase II, Northern Middlesex Road Need Areas sewers as delineated in the State approved Comprehensive Wastewater Management Plan and that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

Article XX
Phase II, Sewer Construction - Northern Middlesex Road

To see if the Town will vote to authorize the Tyngsborough Sewer Commission to raise and appropriate a sum of money for the construction of Phase II, Northern Middlesex Road Sewers as delineated in the Town's State approved Comprehensive Wastewater Management Plan (CWMP); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Water Pollution Abatement Trust or otherwise; and to take any other action relative thereto.

Motion

Voted: that $_____ is appropriated for the purpose of financing the construction of Phase II, Northern Middlesex Road Need Areas sewers as delineated in the State approved Comprehensive Wastewater Management Plan including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow up to $_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid (ARRA, Main Street Jobs) available for the project or for the financing thereof; that the Tyngsborough Sewer Commission is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, that the Tyngsborough Sewer Commission is authorized to apply for, receive and expend any other federal or state aid available for the project and to take any other action necessary to carry out the project.

DRAFT BETTERMENT ASSESSMENT AND
SEWER PRIVILEGE FEES BY-LAW
TOWN OF TYNGSBOROUGH, MASSACHUSETTS
MARCH 2010

Section 1. General

The entire cost of planning, laying out, design and constructing recommended additions to and expansion of the Town's system for the collection and transmission of sewage for all or any part of the Town shall be borne by the land benefited by such system additions and/or expansions in accordance with the following provisions.

Capital costs of the treatment and disposal of sewage, whether by intermunicipal agreement or as the result of such facilities being constructed in Tyngsborough may also be assessed as herein after described.

This by-law incorporates the "Final Recommended Plan" contained in the Town's December 24, 2008 state-approved "Comprehensive Wastewater Management Plan and Final Environmental Impact Report", EEA No. 11788, (CWMP). The amount of sewage that can be processed through the Town's three existing Intermunicipal Agreements is clearly defined in the CWMP; and all applications for connection to the Town's system are subject to the overall provisions in the CWMP, including, but not limited to capacity issues.

The Town of Tyngsborough, acting through its Sewer Commission, or duly authorized agent, shall assess the owners of the land abutting a public sewer line or having a legal right of access to said line installed by the Town based upon the "uniform unit method". Sewer assessments shall be determined utilizing sewer unit values and shall be levied as betterment assessments or sewer privilege fees, as described herein. Net revenue generated by said sewer betterment assessments or privilege fees shall be retained and reserved to pay for the local (Town) share of the total project costs associated with planning, laying out, design and construction of sewer projects and appurtenant work.

The authority to assess betterments and/or sewer privilege fees, as well as the permitted methodologies for doing so, are described in Chapter 80 "Betterments" and Chapter 83 "Sewers, Drains, and Sidewalks", Sections 14 to 24 of the General Laws of the Commonwealth of Massachusetts.

If any provisions of this by-law, or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect other provisions or applications of this by-law, which can be given effect without such invalid provisions or applications.

Section 2. Definitions

Unless the context specifically indicates otherwise; the meaning of terms used in this by-law shall be as follows:

2.1 "CWMP" shall mean the December 24, 2008 State-approved "Comprehensive Wastewater Management Plan and Final Environmental Impact Report, EEA No. 11788, on file.

2.2 "IMA" or "Intermunicipal Agreement" shall mean one of the three current Intermunicipal Agreements on file in Tyngsborough by and between Tyngsborough and the Town of Dracut, Town of Chelmsford and the City of Lowell.

2.3 "Need Area" shall mean the geographic locations of Tyngsborough identified and approved in the CWMP as needing an off-site solution for wastewater treatment and disposal.

2.4 "Sewer Service Area" shall mean "Need Area" as defined in 2.3 above.

2.5 "Sewer Commission" shall mean the elected or appointed Sewer Commission of the Town of Tyngsborough.

2.6 "Sewage" shall mean wastewater.

2.7 Title 5 of the State Environmental Code for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage shall mean 310 CMR 15.00.

2.8 "Uniform Unit Method" shall mean assessment costs are calculated by dividing the project cost by the total number of "residential units" abutting the project in this manner:

- Each sewer unit is equal to a single-family residence and is called an equivalent dwelling unit (EDU).
- Every property is assessed, including developable vacant parcels.
- A residential unit is defined as the quantity of wastewater flow expected from the unit. This may be based on average water meter data or on assumed flow based on Title 5 standards.
- For multiple-family residential properties, the number of residential units is determined based on a factor and/or multiplier such as the number of bedrooms, total number of rooms, or water use.
- Non-residential properties are assessed based on existing zoning regulations and best use. The residential equivalency basis can be determined by floor space or total developable area, or by comparing water use to the residential water. For undeveloped properties, determined by likely use, high wastewater demand businesses are considered best use (e.g. restaurants).

Note: An unrecorded apartment in a residential unit impacts the total count. A single developed lot must be assessed as two units, if it can be further subdivided within zoning regulations. Subdivision may not always be fair due to environmental restrictions on portions of the parcel (e.g. wetlands)

Section 3. Method of Assessing Betterments

3.1 General

The Sewer Commission shall assess sewer betterments based upon the uniform unit method. Lands shall be assessed proportional to the value assigned to the sewer unit at the time of

assessment. Said assessment shall be determined by unit and user class and shall apply to all eligible lands developed or undeveloped abutting the aforementioned public sewer line. The assessment shall be calculated by dividing the local share of total, allocable sewer project costs by the total number of sewer units. The local share of the project costs may include, but are not limited to, all costs of sewer system development including costs of planning, engineering survey, subsurface exploration, design, construction, land acquisition, construction engineering services, legal, fiscal and administrative services, bidding and all related contingencies less all state and federal aid, gifts and other offsets received.

3.2 Time of Assessment

3.2.1 Betterments

The time of assessment for land abutting a sewer line shall be that date upon which the sewer system with appurtenances is "approved for use" or any reasonable amount of time immediately thereafter up to such time that the total project costs are known. In the case where the construction of that portion for the sewer system to be funded by betterments is completed prior to the date upon which the sewer system is "approved for use," or at which time the total project costs are known, it shall be within the powers of the Sewer Commission, or their duly authorized agent, to establish an earlier date of assessment.

3.2.2 Estimated Assessments

The Sewer Commission may, at its discretion, assess and collect estimated assessments on a given project so long as the total estimated assessments not exceed one half of the value of the construction contract(s) entered into to construct said facilities. Said estimated assessment payments shall be credited against and offset the final betterments to be assessed at project completion.

3.2.3 Sewer Privilege Fees

For those properties not abutting the sewer line but connecting to the system at a future date, the time of assessment shall be the date upon which that property connects into the sewer system.

3.3 Sewer Unit Value Determination

The sewer unit value shall be determined as follows:

$$\text{One Sewer Unit (\$)} = \frac{\text{Amount to be Recovered by Assessments (\$)}}{\text{Total Number of Sewer Units*}}$$

*Total Number of Sewer Units as determined by Section 4, below.

Section 4. Sewer Unit Designation

4. 1 General

Sewer units shall be designated based upon the unit and user class of those properties to be assessed a betterment. The user class shall be determined based on the most recent, available information from the Tyngsborough Assessor's Department. Said classes shall include residential and non-residential. The non-residential class shall include commercial, industrial and any or all other nonresidential properties; however, as specifically exempted by statute, properties owned by governmental entities for public purposes are exempt from betterments and special assessments. Individuals and charitable, religious or other organizations ordinarily eligible for full or partial exemptions from annual property taxes are not exempt from betterments and special assessments. Properties receiving direct benefit from the public sewer system, whether developed or undeveloped shall be designated a number of sewer units in accordance with the following guidelines:

4.2 Sewer Unit Determinations

4.2.1 Residential. Developed

4.2.1.1 Single family dwellings shall comprise one sewer unit.

4.2.1.2 Duplex dwellings shall comprise two sewer units.

4.2.1.3 Three-family dwellings shall comprise three sewer units.

4.2.1.4 Four-Family dwellings shall comprise four sewer units.

4.2.1.5 Multiple family dwellings (in excess of four dwelling units) shall comprise a number of sewer units based on the following methodology:

4.2.1.5.1 Rental properties (apartments) shall be assessed one sewer unit for each apartment.

4.2.1.5.2 Condominium complexes shall be assessed one sewer unit for each dwelling unit.

DRAFT

4.2.2 Non-Residential. Developed

4.2.2.1 Non-residential buildings shall include all industrial, commercial and other non-profit organization properties.

4.2.2.2 Non-residential buildings, which are metered for water use shall comprise a number of sewer units based upon water consumption using the following formula:

$$\frac{\text{Non-residential water usage in gallons per day (gpd)}}{330 \text{ gpd}} = \text{Equivalent number of sewer units}$$

(All decimals shall be rounded up to the nearest whole number)

Non-residential water usage in the above formula shall be based upon an average of the past two years water use. If less than two years of metered water consumption records are available, or if the Sewer Commission deems that the water records are not representative of the potential usage, the calculation shall be based on "Title 5 of the State Environmental Code for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage", as outlined below.

4.2.2.3 Non-residential buildings not metered for water use shall be assigned an average sewage disposal volume based on "Title 5 of the State Environmental Code for the Commonwealth of Massachusetts Minimum Requirements for the Subsurface Disposal of Sanitary Sewage". An equivalent number of sewer units shall then be determined by using the following formula:

$$\frac{\text{Non-residential sewage flow in gallons per day (gpd)}}{330 \text{ gpd}} = \text{Equivalent number of sewer units}$$

(All decimals shall be rounded up to the nearest whole number)

4.2.3 Residential, Undeveloped

Undeveloped lots shall be converted into dwelling units on the basis of maximum number of buildable dwelling lots using the applicable minimum frontage and area requirements as directed in the Tyngsborough Zoning By-Laws in effect at the time of assessment. Each potential dwelling unit shall then comprise one sewer unit

4.2.4 Non-residential, Undeveloped

Undeveloped lots shall be converted into maximum anticipated water consumption on the basis of the Tyngsborough Zoning By-Laws and/or existing CWMP planning documents on file for the sewer system. An equivalent number of sewer units shall then be determined utilizing the formula described for non-residential, developed properties in Section 4 2.2.2 of this section.

4.2.5 Dual Use Lands

Lands having both residential and nonresidential uses shall be assessed based on the total number of units for the residential portion, Section 4.2.1 and 4.2.2 non-residential portion Section, respectively, with an allowance made for residential water use. Dual use properties shall have a minimum assessment of two (2) sewer units.

Section 5. Betterment Payment

5.1 General

Except as herein provided herein, the provisions of the Massachusetts General Laws (MGL) relative to the assessment, apportionment, division, re-assessment, abatement, and collection of sewer assessments, liens, and interest thereon shall apply to assessments made under this by-law, and the Tyngsborough Tax Assessor shall have all of the powers conveyed by the MGL.

DRAFT

5.2 Lump Sum Betterment

The lump sum betterment payment for an assessed property shall be equivalent to the product of the total number of sewer units designated upon said property and the appropriate value for one sewer unit at the time of assessment. Said values shall be determined as described herein.

5.3 Apportionment for Betterment Payment

Property owners shall have the option to finance betterment payments through apportionment over 20 years. The interest rate charged by the Town shall be 5 percent or 2 percent greater than the cost of borrowing.

5.4 Betterment Deferral

The provisions of Massachusetts General Laws, Chapter 80, Section 13B, with regard to deferral of betterment assessments shall apply.

5.5 Abatements

The Sewer Commission will review and may provide abatements on the payment of the betterment assessment on an individual case-by-case basis.

Section 6. Sewer Privilege Fee

6.1 Private Sewer Extension

If a private developer or a person other than the Town of Tyngsborough, or duly authorized representative of same, applies to construct a sewer extension to the public sewer system, the Town shall assess a sewer privilege fee in lieu of betterment assessment against each property connecting to said sewer extension. The sewer privilege fee shall be equivalent to the amount that would have been calculated as the betterment assessment pertinent to each property as determined following procedures outlined in Section 5. Sewer privilege fees shall be levied at the time of connection to the public sewer system. Section 5.2 of this by-law shall govern a property owner's method of payment. Said fees shall be due and payable in full upon approval to connect.

Any request to connect to the Tyngsborough sewer system shall be in accordance with the approved Sewer Service Areas defined as a Need Area designated in the CWMP.

In addition, property owners connecting to a private sewer extension shall bear the burden of all costs, including costs of legal services, related to the following:

- Review of design plans and specifications for the private sewer extensions to be accepted as part of the municipal sewer system conducted by a Registered Professional Engineer as authorized by the Tyngsborough Sewer Commission.

- Inspection fees related to the installation of the private sewer line connecting to the public sewer system.

- Application fees for any applicable Town inspection or connection permits.

Costs associated with the design and construction of a private sewer extension shall be considered separate to the sewer privilege fee. Payments or method of payment related to these costs shall not be reflected within the sewer privilege fee.

6.2 Compensatory Sewer Privilege Fee

In situations where (1) a betterment has been assessed to an undeveloped property based upon the estimated number of developable sewer units as required by this by-law and said property is ultimately developed to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, or (2) a betterment has been assessed to a developed parcel and later in time the use of that parcel is increased to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, the Town shall assess a compensatory sewer privilege fee to reflect the increased use. This fee shall be equivalent to that sum of money that would have been charged as a betterment assessment upon the additional sewer units at the time of the original assessment. Section 5.2 of this by-law shall govern the method of payment.

6.3 Sewer Connection Charge

Sewer connection charges shall be levied at the time of connection to the public sewer system. Section 5.2 of this by law shall govern a property owner's method of payment.

6.4 Superseding Conditions

This by-law supersedes all previous Sewer Commission regulations for all future capital additions to the Tyngsborough Sewer System and no further Sewer Commission Regulations will be necessary.

6.5 Miscellaneous Authorization

The Tyngsborough Sewer Commission is authorized to take any other action necessary or appropriate to accomplish the establishing and recovery of such betterment assessments.

DRAFT

TOWN OF TYNGSBOROUGH
Office of the Town Clerk
Town Hall – 25 Bryants Lane
Tyngsborough, Massachusetts 01879-1003
(978) 649-2300, Ext. 129
jshifres@tyngsboroughma.gov

Joanne Shifres, Town Clerk

This is to certify that the following vote was taken by the Town of Tyngsborough at the Special Town Meeting held on September 27, 1983:

Article 1: *To see if the Town will vote to adopt the provisions of Massachusetts General Laws, Chapter 83, Sections 16A – 16F, inclusive, authorizing the Sewer Commissioners to establish Tax Liens for unpaid sewer charges and establishing procedures elating thereto, all as set forth in the General Laws, or take any action in relation thereto.*

Motion: *To accept Article 1 as printed.*

Action: *Voted in the affirmative.*

Attest: a true copy

Joanne Shifres

Joanne Shifres
Town Clerk

TOWN OF TYNGSBOROUGH
Office of the Town Clerk
Town Hall – 25 Bryants Lane
Tyngsborough, Massachusetts 01879-1003
(978) 649-2300, Ext. 129
jshifres@tyngsboroughma.gov

Joanne Shifres, Town Clerk

March 9, 2010

This is to certify that the following votes were taken by the Town of Tyngsborough at the Annual Town Meeting held on May 15, 2007:

Article 33. To see if the Town will vote to accept Massachusetts General Laws Chapter 83, Section 16G, Deferral of Charges, or take any other action relative thereto.
Motion: That the Town approve this article as printed.
Action: Does carry.

Article 34. To see if the Town will vote to accept Massachusetts General Laws Chapter 80, Section 13B, Deferral and Recovery Agreements; Application; Recordation; Lien, or take any other action relative thereto.
Motion: That the Town approve this article as printed.
Action: Does carry.

Sincerely,

Joanne Shifres
Town Clerk

APPENDIX I: MASSACHUSETTS GENERAL LAW CHAPTER 83, SECTION 17

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIV. PUBLIC WAYS AND WORKS

CHAPTER 83. SEWERS, DRAINS AND SIDEWALKS

SEWER ASSESSMENTS

Chapter 83: Section 17. Payment for permanent sewer privileges

Section 17. The aldermen of any city except Boston or a town in which main drains or common sewers are laid may determine that a person who uses such main drains or common sewers in any manner, instead of paying an assessment under section fourteen, shall pay for the permanent privilege of his estate such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners shall determine.

APPENDIX J: DISTRICT IMPROVEMENT FINANCING (DIF) AND TAX INCREMENT FINANCING (TIF)

Smart Growth / Smart Energy Toolkit

District Improvement Financing (DIF)/ Tax Increment Financing (TIF)

In Brief: District Improvement Financing (DIF) and Tax Increment Financing (TIF) are economic tools that promote redevelopment by use of public/private partnerships. TIF offers tax breaks to developers, while DIF channels tax dollars into targeted redevelopment districts.

The Problem

Many municipalities in Massachusetts are faced with blighted, distressed, or simply underutilized areas. Many of these sites contain abandoned or contaminated facilities, while others are characterized by dilapidated infrastructure and commercial operations that simply are not economically viable. These areas often see a decrease in assessed property values with a corresponding decrease in municipal revenue. At the same time, they pose a drain upon municipal services. Often, it is difficult to attract private investment to these areas.

Both DIF and TIF provide municipalities with innovative tools to target districts or specific projects for redevelopment. The use of tax increments is the centerpiece of both tools. A tax increment is the difference between the beginning assessed value of the targeted property in its dilapidated state and the assessed value going forward in time, as the planned improvements take shape. The tax increment, calculated by the local Assessor, is the tax on the added value of new construction, rehabilitation or new equipment or machinery. Determining the value of the tax increment is essentially the same for both DIF and TIF. How the tax increment is used as an incentive, however, is very different. Using DIF, municipalities can pledge all or a portion of tax increments to fund district improvements over time. With TIF, municipalities may grant property tax exemptions to landowners of up to 100% of the tax increment for a fixed period.

Introduction to DIF/TIF

DIF is authorized by M.G.L.c. 40Q and its implementing regulations 402 CMR 3.00 et seq. New to Massachusetts, DIF has been implemented in other states with considerable success. A city or town wishing to utilize DIF must first designate a development district and a corresponding development program. The district and program must then be certified by the State Economic Assistance Coordinating Council ("EACC"). A development district

may be as small as one parcel or may comprise up to 25% of a town or city's land. A district can be in effect for a maximum of 30 years. Each district must have a unique development program. The development program spells out the goals of the district and the means to achieve them. The program will identify the following:

- Existing uses and current zoning,
- Proposed uses and any needed zoning changes,
- Any planned construction or rennovations,
- Current and planned infrastructure,
- A financial plan.

Application forms, with detailed requirements for submittal, are available from the Massachusetts Office of Business Development (MOBD).

Once a district and program have been certified, the city or town has the ability to use various tools to implement the program. These include acquiring land, constructing or reconstructing improvements (such as buildings, roads, schools and parks), incurring indebtedness and pledging tax increments and other project revenues for repayment of these debts. Initial funding for these activities is usually accessed through the posting of a bond by the city or town. DIF also allows for public/private development partnerships.

TIF is authorized by M.G.L.c. 40§59 and its implementing regulations 760 CMR 22.01. Under this legislation, landowners may be granted property tax exemptions of up to 100% of the tax increment. A municipality may enter into a TIF Agreement with a landowner for a maximum term of 20 years. M.G.L.c. 40§60 also authorizes TIFs for housing in urban centers. A city or town must initiate a TIF by a vote of its governing body approving the TIF Plan, which must include:

- Designation of the area that will be the TIF zone;
- Description in detail, including plans and specifications where appropriate, of all construction and construction related activity;
- Projection of public and private costs and a betterment schedule for the defrayal of public costs;
- Authorization of a tax increment exemption from property taxes;
- Establishment of a maximum percentage of costs of public construction that can be recovered through betterments or special assessments against any parcel in the TIF zone eligible for exemptions;
- Identification of property owners in the TIF Zone;
- Executed Agreements between the city or town and each owner of property within the TIF zone;
- Delegation of authority to enter into development agreements to one municipal agency, board or officer;
- Data demonstrating that the TIF Zone is located so as to maximize the likelihood of a net economic benefit to the municipality, such as land use information, proximity of mass transit services and tenants within the zone.

A TIF Zone must be in an area approved by the EACC as an Economic Opportunity Area (EOA) or found to be an area "presenting exceptional opportunities for economic development" by the Director of Economic Development. Certification of the TIF Plan is issued by the Economic Assistance Coordinating Council (EACC) after the plan is accepted by municipal vote.

Benefits

DIF and TIF provide opportunities to redevelop areas in ways which can lead to increased property values, increased tax revenue, improved infrastructure, enhanced transportation services, increased housing supply, new jobs and an overall improvement in quality of life for the inhabitants of the city or town.

Success is tied to careful planning which identifies the needs of the district and combination of uses most likely to succeed. While TIF focuses on job creation, DIF allows significant flexibility in planning for the district's housing and commercial needs. The role of private partners can be crucial to achieving the desired effects. In both cases, public/ private agreements provide details and guidelines.

DIF and TIF programs, depending on their design, will satisfy many of the Commonwealth's Sustainable Development Principles including:

ncentrate Development and Mix Uses: Both DIF and TIF concentrate development in areas in or adjacent to existing downtowns. In doing they make use of existing infrastructure and mass transit. The use of DIF and TIF encourages redevelopment of existing dilapidated sites, urban infill and revitalization.

• **Advance Equity:** DIF and TIF provide economic incentives to developers and encourage true economic partnerships between developers and municipalities. By virtue of their focus on vacant and underutilized properties in urban centers DIF and TIF often create environmental justice benefits.

• **Expand Housing Opportunities:** DIF allows the use of tax increments to fund both affordable and market priced housing projects. TIF can be used as an incentive for housing development in urban centers.

• **Increase Job and Business Opportunities:** By virtue of their economic objectives, TIF and DIF Agreements are directly tied to the creation of new jobs.

• **Plan Regionally:** DIF and TIF can be used to satisfy regional needs for industry, consumer services, health care, and employment.

Financial Considerations

Both DIF and TIF provide funding mechanisms for development in targeted districts. Considerable planning is required up front, but the payoff in both increased future revenues and benefits to the public can be great. Successful projects will result in increased tax revenue to the municipality.

TIF provides a direct upfront benefit to a Developer in the form of tax relief. The money saved on taxes helps pay the project's construction costs. Depending on the size and location of the project, Developers utilizing TIF benefits can also often access other state financial incentives such as Investment Tax Credits, Abandoned Building Tax Deductions and Research and Development Tax Credits.

DIF provides financial benefits to developers as well, by providing infrastructure and surrounding amenities to support their projects. Early public funding takes the initial burden off the developer and minimizes risk.

Case Studies | Bylaw | Slideshow | Links

District Improvement Financing
DIF
Tax Increment Financing
TIF

Smart Growth / Smart Energy Toolkit

What is DIF/TIF?

- District Improvement Financing (DIF) and Tax Increment Financing (TIF) are both economic tools that promote redevelopment by the use of tax increments.
- TIF offers tax breaks to developers.
- DIF channels tax dollars into targeted redevelopment districts.

The Problem

MANY municipalities in Massachusetts are faced with high unemployment rates and blighted, distressed, or simply underutilized areas. Many of these sites contain abandoned or contaminated facilities, while others are characterized by dilapidated infrastructure and commercial operations that simply are not economically viable.

Both DIF and TIF provide municipalities with innovative tools to target districts or specific projects for redevelopment.

DIF

Authority: M.G.L., Chapter 40Q

FIRST STEPS:

- Designate a district
- Certify district: State Economic Assistance Coordinating Council ("EACC")
- Term of District: 30 years maximum

DIF

The development program spells out the goals of the district and the means to achieve them. The program will identify the following:

- Existing uses and current zoning,
- Proposed uses and any needed zoning changes,
- Existing buildings Planned construction or renovation,
- Current and planned infrastructure,
- A financial plan.

Application Forms are available from:

MA Office of Business Development (MOBD)
Boston Regional Office
One Ashburton Place
Suite 2101
Boston, MA 02108
Voice: (617) 788-3637
Fax: (617) 788-3695
www.mass.gov/mobd/

Once a District & Program Have Been Certified:

TOOLS FOR IMPLEMENTATION:

- Acquiring land
- Constructing or reconstructing improvements (such as buildings, roads, schools and parks)
- Incurring indebtedness and pledging tax increments and other project revenues for repayment of these debts
- Posting of a bond by the City or Town (for initial funding)

TIF

Authority: M.G.L., Chapter 40d§59
FIRST STEPS:

- Developer Agreement
- Term of TIF: 20 years maximum

TIF

A city or town must initiate a TIF by a vote of its governing body approving the TIF Plan which must include:

- Designation of the area that will be the TIF zone;
- Description in detail, including plans and specifications where appropriate, of all construction and construction related activity;
- Projection of public and private costs and a betterment schedule for the defrayal of public costs;

TIF

AND

- Authorization of tax increment exemption from property taxes;
- Establishment of a maximum percentage of costs of public construction that can be recovered through betterments or special assessments against any parcel in the TIF zone eligible for exemptions;

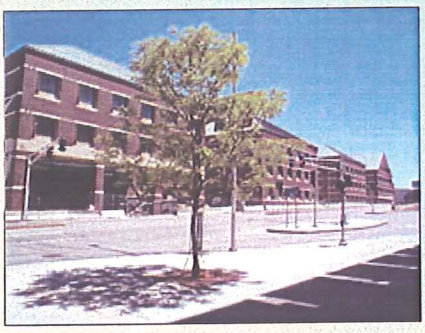
TIF

AND

- Identification of property owners in the TIF Zone;
- Executed Agreements between the city or town and each owner of property within the TIF zone;
- Delegation of authority to enter into development agreements to one municipal agency, board or officer;

TIF

A TIF Zone must be in an area approved by the EACC as an Economic Opportunity Area (EOA) or found to be an area "presenting exceptional opportunities for economic development" by the Director of Economic Development.



SUCCESS

REDEVELOPMENT BRINGS:

- Increased tax revenue;
- Improved infrastructure;
- Improved transportation services;
- Increased housing supply; and
- New jobs

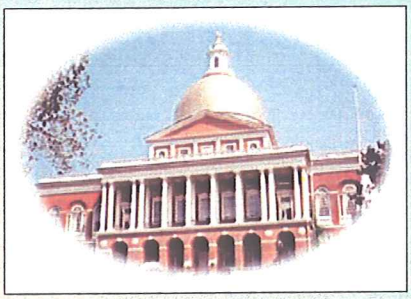
SUCCESS

Is tied to careful planning which identifies the needs of the district and combination of uses most likely to succeed. While TIF focuses on job creation, DIF allows significant flexibility in planning for the district's housing and commercial needs.

SUCCESS

The role of private partners is crucial to achieving the desired effects. In both cases, public/ private agreements provide details and guidelines.

SUCCESS



DIF and TIF programs will satisfy many of the Commonwealth's Sustainable Development Principles, including:

REDEVELOPMENT FIRST

The use of DIF and TIF encourages redevelopment of existing dilapidated sites, urban infill and revitalization.

CONCENTRATE DEVELOPMENT

Both DIF and TIF facilitate concentrated development in areas in or adjacent to existing downtowns. They make use of existing infrastructure and mass transit.

Smart Growth / Smart Energy Toolkit DIF/TIF

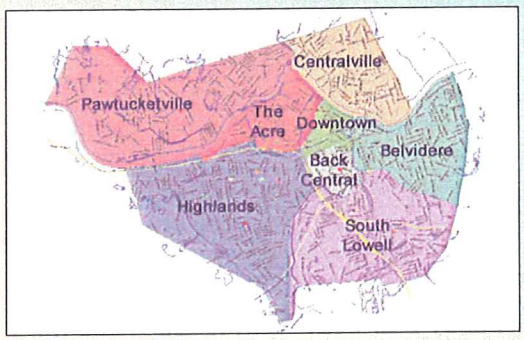
ARE FAIR

DIF and TIF provide economic incentives to developers and encourage true economic partnerships between developers and municipalities.

Smart Growth / Smart Energy Toolkit DIF/TIF

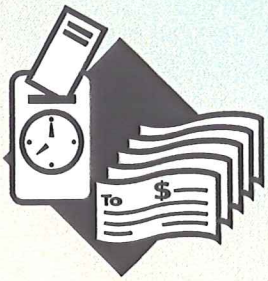
EXPAND HOUSING OPPORTUNITIES

DIF allows the use of tax increments to fund both affordable and market priced housing projects. TIF can be used as an incentive for housing development in urban centers.



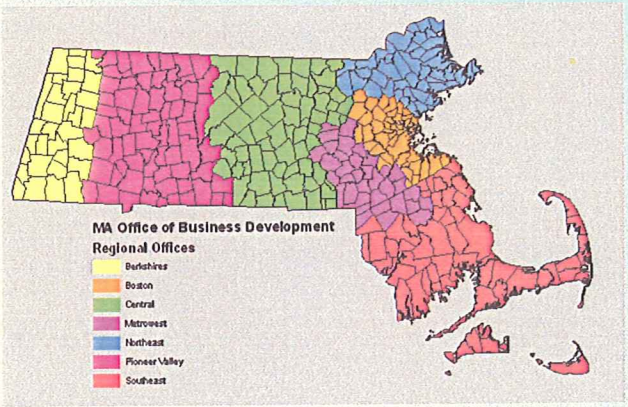
INCREASE JOB OPPORTUNITIES

By virtue of their economic objectives, TIF and DIF Agreements are directly tied to the creation of new jobs.



PLAN REGIONALLY

DIF and TIF can satisfy regional needs for industry, consumer services, health care, and employment.



FINANCIAL CONSIDERATIONS

Both DIF and TIF provide funding mechanisms for development in targeted districts:

- COSTS: - Planning/administrative
- BENEFITS: - Increased tax revenues
  - Improved standard of living

FINANCIAL CONSIDERATIONS

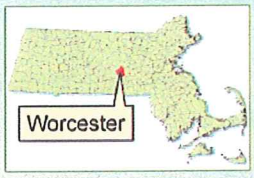
COMMONWEALTH OF MASSACHUSETTS
Department of Revenue

TIF provides a direct upfront benefit to a Developer in the form of tax relief. The money saved on taxes can pay the project's construction costs. Developers utilizing TIF benefits can also often access other state financial incentives such as Investment Tax Credits, Abandoned Building Tax Deductions and Research and Development Tax Credits.

FINANCIAL CONSIDERATIONS

DIF provides financial benefits to developers by providing infrastructure and surrounding amenities to support their projects. Early public funding takes the initial burden off the developer and minimizes risk.

TIF CASE STUDY



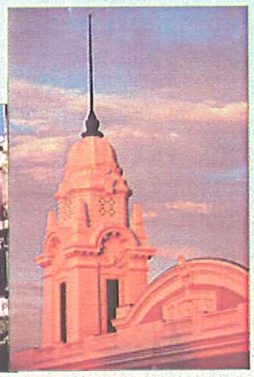
Worcester, Massachusetts
St. Vincent's Hospital relocation

The City entered into a TIF Agreement with St. Vincent's Hospital which enabled the hospital to move to a downtown site and expand, creating the new Worcester Medical Center.

TIF: ST. VINCENT'S HOSPITAL

TIF AGREEMENT:

- Tax exemptions by declining formula;
- Term of 18 years;
- 55 full time jobs; and
- 41 part time jobs.



TIF: ST. VINCENT'S HOSPITAL

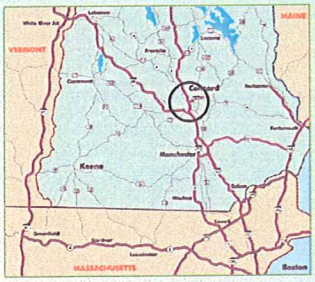
The expectations have been exceeded, with the creation of 117 full time jobs and 215 part time jobs to date.

TIF: ST. VINCENT'S HOSPITAL

TIF: ST. VINCENT'S HOSPITAL

The new Worcester Medical Center provides needed state of the art medical care to area residents in a beautifully designed setting, with the convenience of a downtown location. It is surrounded by shops, restaurants and a 1900 space parking garage. It offers needed jobs to the community and has greatly increased the city's tax base. At the end of the TIF's term, the city will realize the benefit of the increased tax revenue.

DIF CASE STUDY

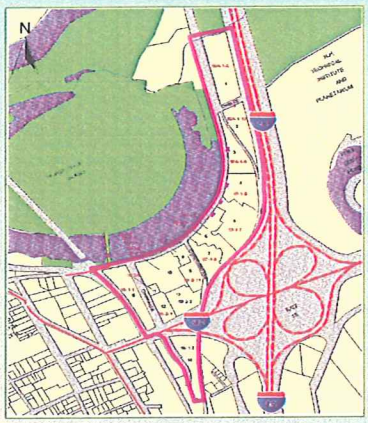


Concord, New Hampshire

Redevelopment of 40 acres abandoned lumberyard and adjacent mill building

DIF: CONCORD, NH

Location was a highly visible location, at the intersection of I-93 and I-393,on the edge of the Concord's downtown.



Travelers passing through Concord to mountain vacation spots, saw only the blight. Nothing invited them to explore the otherwise, vital and charming downtown district.

DIF: CONCORD, NH

PLANNING BY THE CITY:

- Identified area need for hotel/conference center;
- Acquired land;
- Issued bonds; and
- Partnered with private developer.

DIF: CONCORD, NH

99 room Marriott Courtyard and Grappone Conference Center

DIF: CONCORD, NH

The site now houses adjacent office buildings. The abandoned mill has been converted into elderly housing.

DIF: CONCORD, NH

Medical Center at DIF Site

DIF: CONCORD, NH

The owner of the hotel/conference center pay taxes to the city. The city uses the tax increment; the tax revenue due the to difference is the current assessed value the original assessed value to pay off the bond debt.

$ $

DIF: CONCORD, NH

FINAL RESULT:

- Increased $30 million dollars in tax base for the city;
- A flourishing project for the private developer;
- Increased availability of elderly housing;
- Creation of new jobs, and
- Prevention of the spread of blight to an attractive site that marks the entrance to Concord.

TIF CASE STUDY

Leominster, Massachusetts

The City of Leominster entered into a TIF Agreement with Star Container Corporation, to encourage Star Container's expansion plans for its packaging facility.

TIF: LEOMINSTER

Star Container had a long established, successful manufacturing presence in Leominster. The expansion consisted of an additional 54,000 square feet of floor area and the purchase of additional corrugated box manufacturing equipment.

TIF: LEOMINSTER

TIF AGREEMENT:

- Eight year term;
- Front loaded sliding scale of property tax exemptions; and
- No tax of increment as follows:

TIF: LEOMINSTER

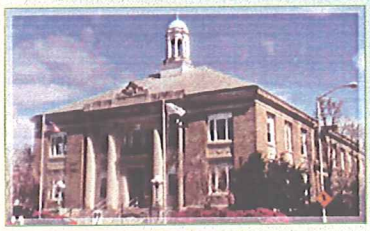
Year 1:	100 %	of the increment
Year 2:	90 %	of the increment
Year 3:	75 %	of the increment
Year 4:	60 %	of the increment
Year 5:	45 %	of the increment
Year 6:	30 %	of the increment
Year 7:	15 %	of the increment
Year 8:	0 %	of the increment.

TIF: LEOMINSTER

Star Container invested approximately 6.2 million dollars into the facility and equipment. The Agreement provided for the creation of 25 new full time manufacturing and managerial jobs. 150 existing jobs were retained by ensuring the facility stayed at the existing site.

TIF: LEOMINSTER

At the end of the TIF period, the City will gain approximately $23,000.00 annually in additional property taxes. Star Container is located in the state designated Economic Target Area of Northern Worcester County. Therefore, Star Container can seek other state economic incentives in addition to the TIF Agreement with the City.



TIF: LEOMINSTER

USE TIF TO ENCOURAGE business compatible with city's needs

Leominster uses TIF for manufacturing businesses because:

- Existing base in manufacturing plastics;
- Creates jobs, which pay higher than the minimum wage; and
- Greater economic benefit.

LINKS:

MOBD: www.mass.gov/mobd/

Worchester TIF: www.worcestermedcenter.com

Concord DIF:
www.ci.concord.nh.us/Businessdev/Devopps/hotelctr

Leominster TIF:
www.leominster-ma.gov/planning_department_index.htm

APPENDIX K: EXECUTIVE SUMMARIES FROM TYNGSBOROUGH ECONOMIC DEVELOPMENT PLANS

TYNGSBOROUGH ECONOMIC DEVELOPMENT PLAN

SUMMARY DOCUMENT

June 2006

Prepared for:

The Town of Tyngsborough
Economic Development Committee

Prepared by:

Northern Middlesex Council of Governments

TYNGSBOROUGH ECONOMIC DEVELOPMENT PLAN

SUMMMARY DOCUMENT

June 2006

Prepared for:

The Town of Tyngsborough
Economic Development Committee

Prepared by:

Northern Middlesex Council of Governments

Acknowledgements

The Northern Middlesex Council of Governments (NMCOG) hereby acknowledges the active participation of the following members of the Tyngsborough Economic Development Committee:

- Richard Lemoine, Board of Selectmen
- Tracy Connor, resident
- Walter Eriksen, business representative
- Robert Nista, resident

NMCOG also wishes to thank the following individuals for their assistance and participation in the plan development process:

- Jacqueline Schnackertz, Board of Selectmen
- Karyn Puleo, Board of Selectmen
- Kevin O'Connor, Board of Selectmen
- Jay Booth, Board of Selectmen
- Rosemary Cashman, Town Administrator
- Jeanne Kidder, Assistant Assessor
- Lori Capone, Conservation Director
- Darryl Wickens, Planning Board
- Robert Kydd, Zoning Board of Appeals
- Jerry Foley, Sewer Department
- David Denommee, Tyngsborough Water District

Funding for the preparation of this document was appropriated by the Massachusetts Legislature, and made available to the Town of Tyngsborough through a grant managed by the Massachusetts Department of Housing and Community Development. The Town wishes to thank Representative Colleen Garry and Senator Steve Panagiotakos for their support of this project.

This document also serves as a component of NMCOG's ongoing Comprehensive Economic Development Strategy (CEDS) efforts. NMCOG is pleased to provide support for local economic development initiatives and regional economic development projects. NMCOG thanks the Council for their ongoing leadership and acknowledges the contributions made by the following individuals:

- Ellen Day Rawlings, Chairperson
- Robert W. Flynn, Executive Director
- Jay J. Donovan, Co-author
- Beverly A. Woods, Co-author
- John C. Matley, GIS Specialist
- Janet L. Thompson, Support Staff

TABLE OF CONTENTS

		Page No.
I.	Introduction	1
	A. Project Overview	1
	B. The Economic Development Committee	2
	C. The Study Areas	2
II.	Recommendations	10
	A. General Recommendations	10
	1. Economic Development Tools	10
	2. Infrastructure Issues	12
	3. Organizational Framework and Professional Staff	12
	4. Improved Permitting Process	13
	5. Design Guidelines for the Town Center and Middlesex Road	13
	B. Study Area Recommendations	14
	1. Middlesex Road Study Area	14
	2. Recommendations for the Town Center	17
	3. Westford Road Study Area	19
	4. East Tyngsborough Study Area	21
	5. Kendall Road/Cummings Road Study Area	23
	6. BU/Sycamore Networks Study Area	25
III.	Conclusions, Priority Recommendations and Plan Implementation	29

LIST OF TABLES

	Page No.
Table 1: Short-Term Actions and Implementation Responsibility	30
Table 2: Intermediate Actions and Implementation Responsibility	33
Table 3: Long-Term Actions and Implementation Responsibility	35

LIST OF MAPS

	Page No.
Map 1: Tyngsborough Economic Development Plan Study Areas	4
Map 2: Study Area A – Middlesex Road	5
Map 3: Study Area B – Westford Road	6

LIST OF MAPS (cont'd)

Page No.

Map 4: Study Area C – East Tyngsborough 7

Map 5: Study Area D – Kendall Road and Cummings Road . . . 8

Map 6: Study Area E - BU/Sycamore Networks 9

Map 7: Proposed Town Center Overlay District 27

Map 8: Proposed Corridor Overlay District 28

I. Introduction

A. Project Overview

The Northern Middlesex Council of Governments (NMCOG) entered into a contract with the Town of Tyngsborough to develop the Tyngsborough Economic Development Plan as a means to encourage economic growth, while maintaining the quality of life for the town's residents. Funding for the project was appropriated by the Massachusetts Legislature, and the funds were made available to the Town through a grant managed by the Massachusetts Department of Housing and Community Development (DHCD).

Throughout the plan development process, NMCOG staff worked closely with Economic Development Committee. This document will be utilized to advance the goals of the town's 2004 Master Plan and *Affordable Housing Comprehensive Plan*. The Tyngsborough Economic Development Plan will also be tied into the regional *Comprehensive Economic Development Strategy (CEDS)* prepared for the Economic Development Administration (EDA) of the U.S. Department of Commerce. Collectively, the Tyngsborough Economic Development Plan and the documents outlined below, establish the framework for economic development and affordable housing initiatives in the town and the region:

- The *Master Plan for the Town of Tyngsborough*, prepared in 2004, is the community's policy plan for future growth and development. The Master Plan contains several recommendations that focus on economic development, including the creation of commercial nodes in the town center, evaluation of the benefits of establishing a mixed-use zoning district in the area of the proposed relocated Pawtucket Boulevard, the establishment of an I-2 zoning district, and identification of opportunities for additional development along Middlesex Road, Westford Road and Kendall Road;

- The *Greater Lowell Comprehensive Economic Development Strategy (CEDS) for 2004-2008*, a regional economic "blueprint' that outlines economic development initiatives for the region, builds upon the strengths and opportunities of the region's central city, Lowell, and the eight surrounding communities. Approval of the CEDS by the Economic Development Administration (EDA) of the U.S. Department of Commerce qualifies the Greater Lowell region for EDA funding; and

- By way of the *Tyngsborough Affordable Housing Comprehensive Plan,* the Town has developed a partnership with DHCD through the approval process associated with this document, and controls the future development of affordable housing as long as it is established in accordance with the approved plan.

The Tyngsborough Economic Development Plan is predicated on the land use, economic development and affordable housing strategies outlined in each of the documents described above.

B. The Economic Development Committee

The Tyngsborough Economic Development Committee is comprised of five members who have been appointed by the Board of Selectmen based on their skill set in the area of economic development. The committee is responsible for sustaining existing businesses within the town and actively pursuing new businesses opportunities, as outlined in the Town's 2004 Master Plan. According to the committee bylaws, the committee shall: "(1) identify parcels of land suitable for re-zoning opportunities, development by new businesses and industries, and enhancement of business simulation within the realm of the Master Plan; (2) work closely with Town officials, boards, committees and other entities to ensure proper adherence to Town By-laws and regulations...and develop a plan for fast track approvals of business expansion or development; and (3) develop marketing tools and materials to be used to attract new businesses and industries to the Town".

The Tyngsborough Economic Development Committee provided feedback to the NMCOG staff throughout the study process. The Committee met 1-2 times per month throughout the plan development process on the following dates:

- February 8, 2006
- March 7, 2006
- March 29, 2006 (Kick-Off Meeting)
- May 10, 2006
- May 31, 2006
- June 14, 2006 (Public Meeting)
- June 28, 2006.

C. The Study Areas

The Economic Development Plan focuses on five study areas, as shown on Maps 1 through 6 and described on the following pages.

- **Study Area A- Middlesex Road Corridor**: This area includes the land along the Middlesex Road corridor from the Chelmsford town line to the New Hampshire state line. The study area north of Kendall Road extends westerly to Route 3, and in the east incorporates the Pheasant Lane Mall parcel. Initially, the boundaries throughout the length of the corridor were established by cordoning an area 250 feet in each direction from the centerline of Middlesex Road. Each parcel with frontage on Middlesex Road was then incorporated into the study area. The westerly expansion of the study area north of Kendall Road was based on the Economic Development Committee's desire to examine undeveloped or vacant industrial parcels in that area.

  North of Westford Road, the study area is zoned either Business/Commercial 2 or Business/Commercial 3. South of Westford Road, the area on the east side of Middlesex Road is zoned primarily for industrial use; while the zoning on the west side is a mix of Business/Commercial 1, Business/Commercial 3, Industrial, and

Residential 1. The Tyngsborough Water District provides water service throughout the Middlesex Road study area, except for the section of the corridor extending from Applewood Plaza north to the intersection of Locust Avenue/Farwell Road. Sewer has been constructed from the Chelmsford town line north to Old Tyng Road. Sewer service is currently unavailable north of Old Tyng Road.

- **Study Area B- Westford Road**: The boundaries of this study area extend along Westford Road, from the intersection of Westford Road and Middlesex Road, to the intersection of Westford and Swan Road. The Notre Dame Academy property has been incorporated into this study area.

  The northeast end of the study area is zoned either Business/Commercial 2 or Business/Commercial 3. The area from Potash Hill Road southwest to the intersection of Westford Road and Dunstable Road is zoned either Industrial or Residential 2. Southwest of Dunstable Road, the study area is zoned either Business/Commercial 3 or Residential 3. The Tyngsborough Water District provides service throughout the study area. Sewer is only available in the area southwest of the intersection of Westford Road and Dunstable Road.

- **Study Area C- Pawtucket Boulevard:** This is the only study area east of the Merrimack River, and incorporates land in the vicinity of the proposed relocated Pawtucket Boulevard. The relocation project is being designed by MassHighway. It is anticipated that construction will commence in 2008.

  This study area is primarily zoned either Residential 1 or Residential 3, with the exception of the area immediately southeast of the intersection of Pawtucket Boulevard and Frost Road, which is zoned Business/Commercial 1. There is no water or sewer service available in this study area

- **Study Area D- Kendall Road**: This study area extends along Kendall Road from the intersection of Middlesex Road westerly to the Dunstable town line. The study area also extends to the south, on the west side of Route 3, and incorporates the Cummings Road/Progress Avenue area, including the site of the Charles George Landfill.

  Much of this study area is zoned Industrial and Business/Commercial 2, with the exception of the area contiguous to the Dunstable town line that is zoned Residential 2. Water is available along Kendall Road within the Town Center, along Progress Avenue and along the southwestern portion of Cummings Road. Sewer is only available along Progress Avenue and the southwestern end of Cummings Road.

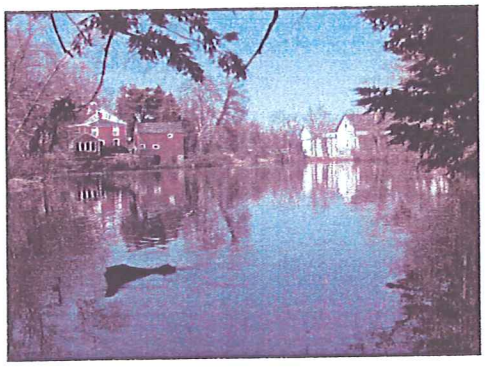
- **Study Area E- BU/Sycamore Networks**: This study area includes the property owned by Boston University, as well as the property owned by Sycamore Networks. In general, the area includes much of the land that lies between Old Tyng Road and the northern end of Westford Road.

Town of Tyngsborough, Massachusetts

TOWN CENTER MASTER PLAN

Tyngsborough Economic Development Committee

September 2008



TOWN OF TYNGSBOROUGH
Economic Development Committee
25 Bryants Lane
Tyngsborough, MA 01879
Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

CONCORD SQUARE PLANNING & DEVELOPMENT, INC.

MORRIS BEACON design
132 Irving Avenue
Providence, RI 02906
t: 401.654.4949
f: 617.275.8673

Acknowledgements

Tyngsborough Economic Development Committee:
Selectman Richard Lemoine, Chair; Walter Eriksen; Bob Nista; Tracy Connor; Beverly Woods (Northern Middlesex Council of Governments); Jeanne Kidder, Town Assessor

The Economic Development Committee would like to thank the following individuals and offices for devoting their time and energy to the creation of this Town Center Master Plan:

Board of Selectmen:
Kevin V. O'Connor; Richard B. Lemoine; Karyn M. Puleo; Jacqueline M. Schnackertz; Jay S. Booth; and Ashley L. O'Neill

Rosemary Cashman, Town Administrator

Planning Board:
Caryn DeCarteret, Chair; John Forti; Steven Nocco; Darryl Wickens; Steve O'Neill; and Joyce Harrington

Historical Commission:
Warren Allgrove, Chair; Marie Lambert; George Dupras; Rob Kydd; Herb Morton; Rodney Wood; and Therese Gay

and

The many Tyngsborough residents, landowners and merchants whose advice and feedback during the Town Center Master Plan process has helped shape this document.

Prepared by and under contract with:

- **Concord Square Planning & Development, Inc.**
  Ted Carman, President
  Angus Jennings, AICP, Principal Planner
  www.concordsqdev.com

- **Morris Beacon Design**
  Jon Ford, PE, President
  www.morrisbeacon.com

Table of Contents

I. Executive Summary.....4

II. History, Master Plan Elements and Planning Process.....8

a. History. The Tyngsborough Town Center as it has Evolved

b. Master Plan Elements

c. Planning Process

III. Re-use of Town Owned Properties.....19

a. Winslow School

b. Littlefield Library

c. Old Town Hall

d. Shur-Fine Market

IV. Open Space & Pedestrian Improvements.....31

a. Flint Pond Green Space and Walking Path

b. Winslow School Public Space

c. Winslow Drive Green Space Extension and Improvements

d. Former Town Common

e. New Town Hall / Library Pedestrian Connection

V. Opportunity Sites for New Development.....44

a. Opportunity Sites: Introduction

b. Description of Opportunity Sites 1-6

c. Zoning and Design Guidelines

d. National, State and Local Historic Preservation Resources

VI. Infrastructure Improvements.....55

a. Winslow Drive

b. Parking Amount and Accessibility

c. New Vehicular Connection from Middlesex Road to Kendall Road

d. Kendall Road Streetscape

VII. Conclusions.....64

VIII. Recommendations Matrix.....66

I. Executive Summary

This Tyngsborough Town Center Master Plan has been prepared by Concord Square Planning & Development, Inc., and Morris Beacon Design under the leadership of Tyngsborough's Economic Development Committee (EDC). It follows on several prior planning initiatives that designated the Town Center as a key priority for the future. The goal of the Master Plan is to offer a long term vision that can translate into an economically vibrant and dynamic Town Center.

This Master Plan was prepared from January through August 2008, and reflects many meetings, working sessions with and calls and letters received from Tyngsborough residents, merchants, and property owners.

The Town Center Master plan sets forth recommendations to realize its vision by evaluating and offering recommendations in the following areas:

1. Re-use of Town-Owned Properties
2. Open Space and Pedestrian Improvements
3. Opportunity Sites for New Development
4. Infrastructure Improvements

A detailed description of each of these recommendations is included in the chapters that follow, including a review of current conditions and a discussion of the steps necessary to implement each proposal. A summary matrix is also provided, including designation of each recommendation as a short, medium or long-term priority.

The Plan identifies and recommends potential reuse options for four Town-owned buildings within the Town Center Study Area. These properties are the Winslow School, the Littlefield Library, the Old Town Hall and the recently acquired Shur-Fine Market. At the time of the study all stood vacant, and only the Library is fit for and has current use.

The evaluation carried out by Concord Square indicates that the four properties are served by existing septic systems in various states of operational capacity. It appears that the proposed new uses for these buildings can be served by the existing systems as they may be expanded or improved. Consequently, the Town should be in a position to move forward in the near term with plans to effect the renovation and reuse of all of these buildings, without having to wait for a public sewer system to be installed.

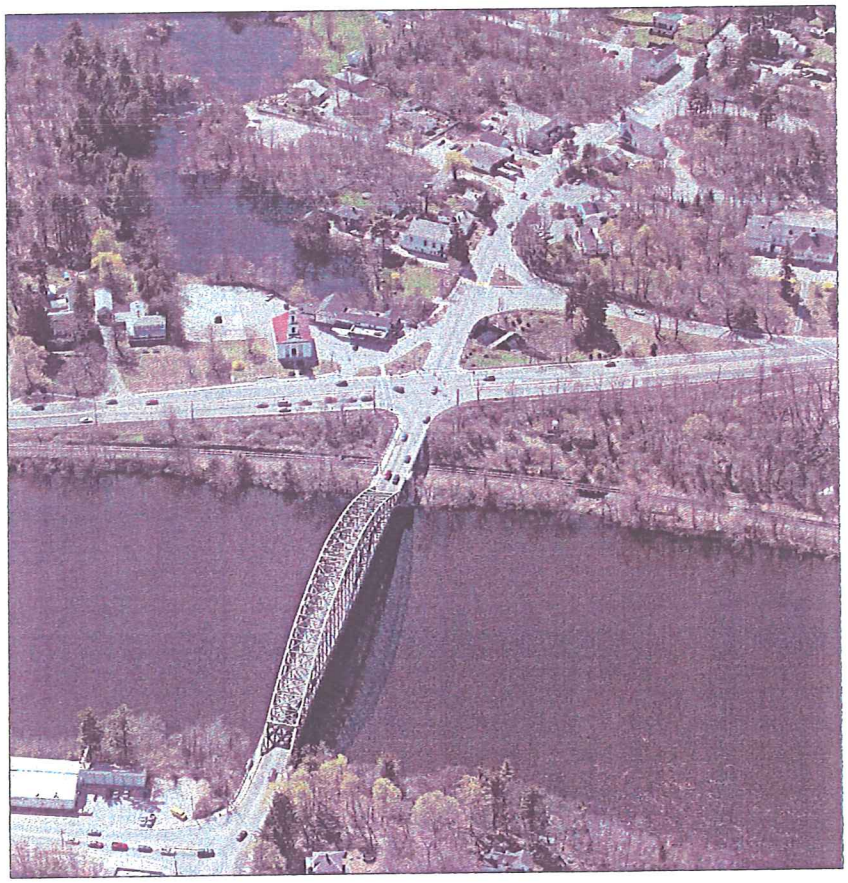
In some cases, depending on decisions made by the Town, the Town may continue ownership and complete the renovations with public funds. In other cases the buildings may be renovated by private parties pursuant to Requests for Proposals that are accompanied by well thought-out design standards.

This Town Center Master Plan sets forth a strategy to create a Town Center for Tyngsborough that reestablishes many of its historical functions while respecting and working within the constraints of the automobile and its requirements relative to land use and design. Collectively, the recommendations aim to stimulate the growth of an economically viable, distinct and coherent Town Center, one that will visually capture the attention of those who pass by.

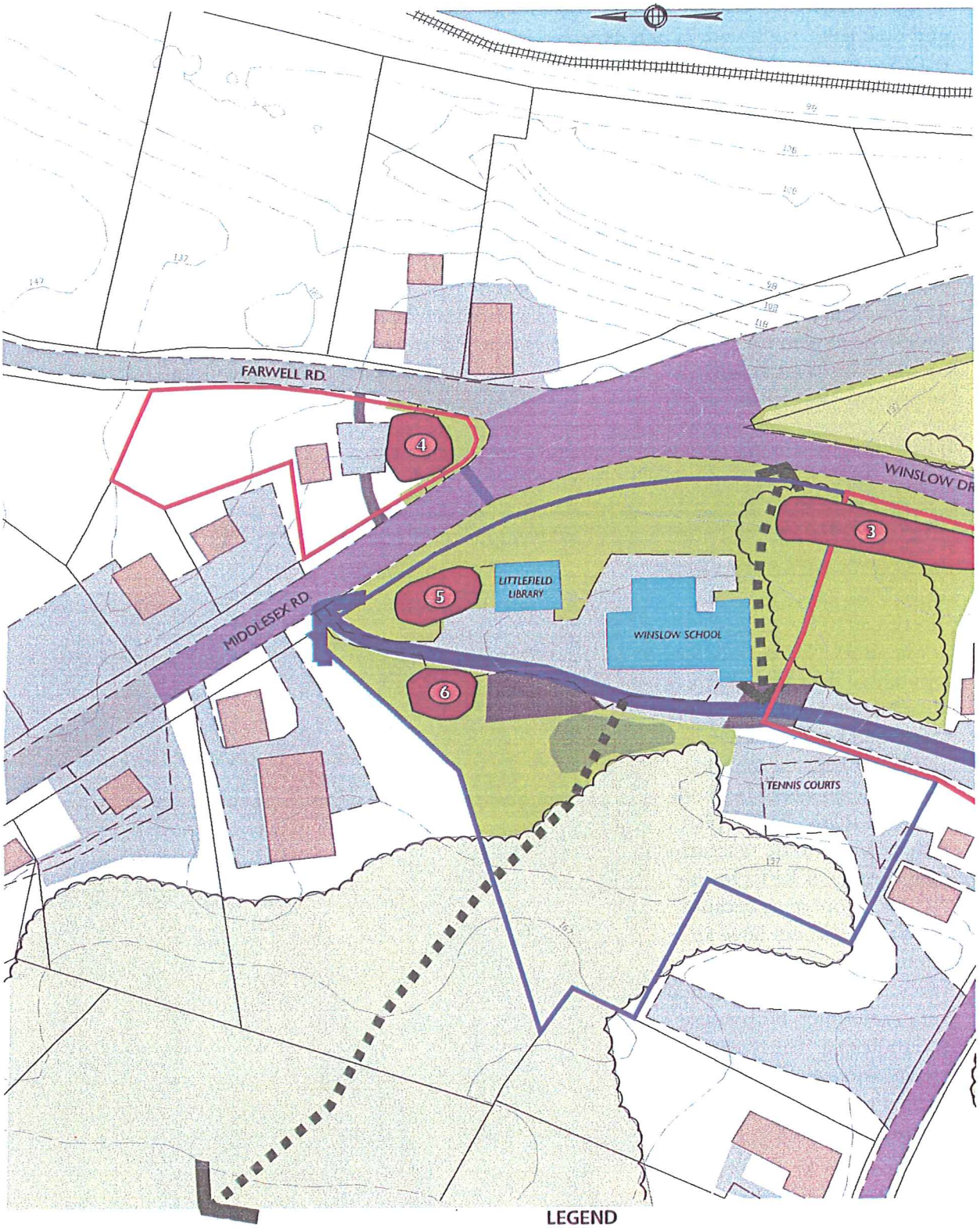
Tyngsborough, like many Massachusetts communities, is faced with severe budget constraints, and no change in this situation is expected in the near future. Therefore, in conceptualizing this plan, every effort has been made to propose concepts and directions that will create economic value. Economic value will attract private investment capital, and private funds can help pay for the costs. The planning goal has been to minimize the amount of public investment required, and to maximize the amounts that can be obtained from the private sector.

That having been said, a key public investment that must be made in order to realize the full potential of Tyngsborough's Town Center is the provision of public sewer capacity. Although it appears feasible to carry out the renovation and reuse of the four Town-owned properties using existing or expanded septic systems, it may not be possible to develop the Opportunity Sites for new construction that have been identified without public sewer. Thus, an immediate objective should be to plan for and find the resources that will bring public sewer service to the Town Center. This work is being led by the Sewer Commission in coordination with the Economic Development Committee, and is well underway.

The extensive amount of Town-owned property in the Center of Tyngsboro makes the realization of much of the vision that is offered a realistic goal, and not simply a planning exercise. Development of these properties can be managed through the process of issuing Requests for Proposals ("RFPs") for the purchase and redevelopment of one or more specific parcels. It may be strategically advisable to issue an RFP for more than one, or even all of the properties at one time. This would allow a potential developer to create a plan for the entire area that could be more ambitious and larger because the various elements would be mutually reinforcing. Such a plan is more likely to be successful than a series of RFPs for individual properties, because the larger plan can have an internal coherence with the various elements coordinated with each other, both in use and in design. The overall quality and specific details of what is to be built for these properties, as well as for other properties, can be carefully controlled through RFP evaluation criteria, zoning, and design standards that are part of the RFP process and through the zoning.



Aerial view of Tyngsborough Town Center, with the Merrimack River in the foreground.

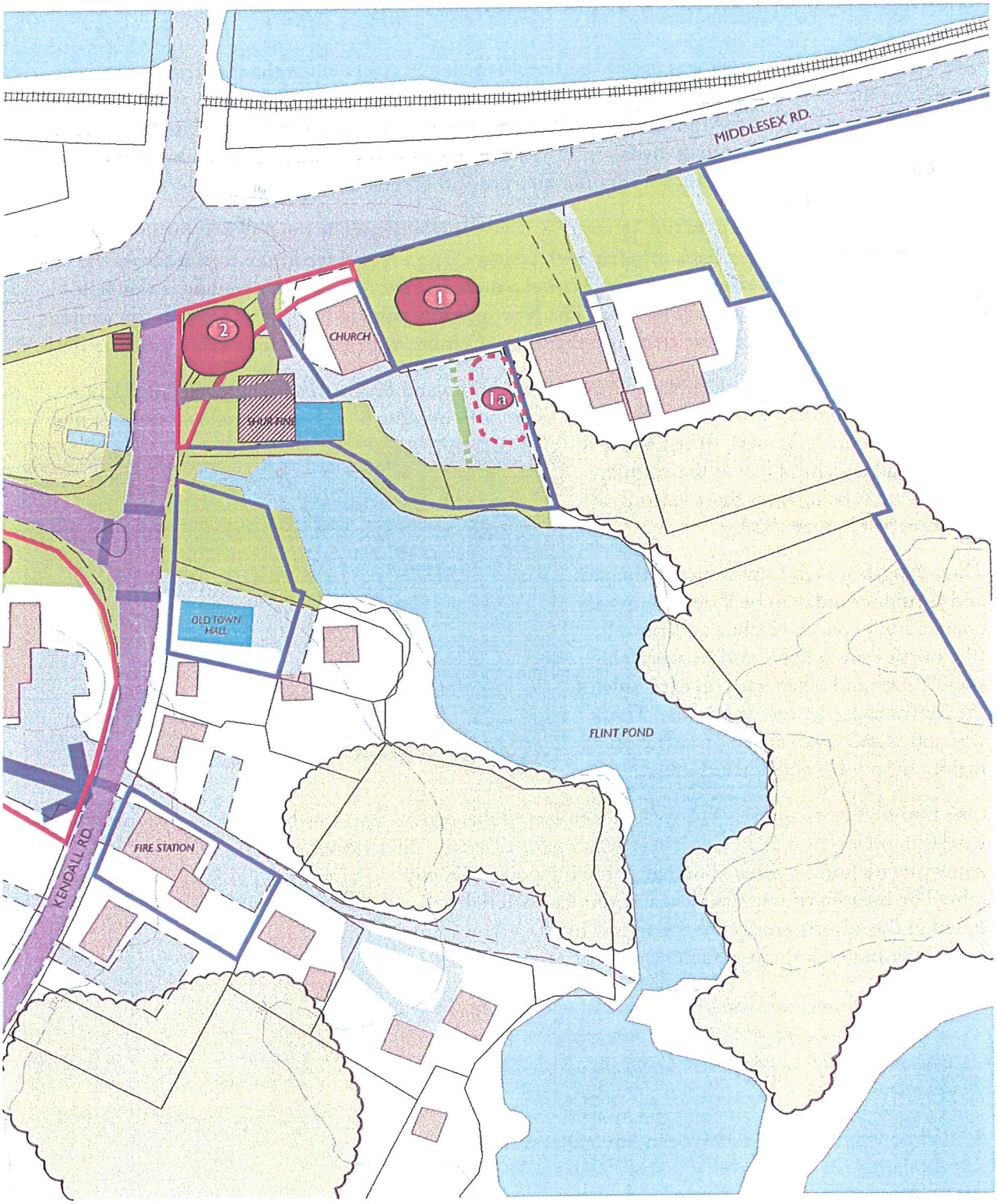


LEGEND

- TOWN OWNED PARCEL
- PRIVATELY OWNED OPPORTUNITY SITE
- ADAPTIVE REUSE
- OPPORTUNITY SITE
- PEDESTRIAN/BICYCLE CONNECTION
- VEHICULAR CONNECTION
- INFRASTRUCTURE/STREETSCAPE IMPROVEMENTS
- ENHANCED OPEN SPACE

CONCORD SQUARE PLANNING & DEVELOPMENT, INC.

MORRIS BEACON design
132 Irving Avenue
Providence, RI 02906
t: 401.654.4949
f: 617.275.8673



Tyngsborough Town Center Study

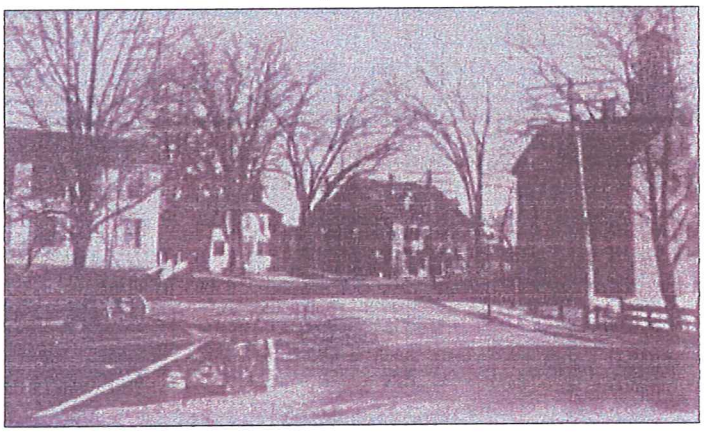
Overview

History. The Tyngsborough Town Center as it has Evolved:

The Town of Tyngsborough was established on February 23, 1809 when the municipality broke away from the much larger Dunstable Township. For many years Tyngsborough was referred to as the "Gateway to the White Mountains" because of its location at the New Hampshire border and its quiet and rural setting with many lakes. It was a popular vacation resort area. It also had a number of modest industrial operations - granite quarries and several box factories.

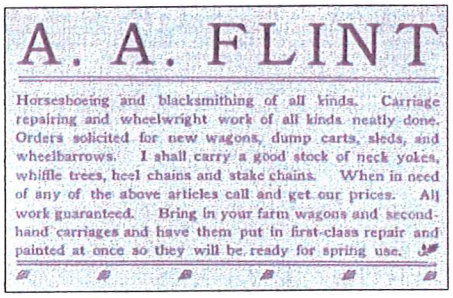
The Town Center is located on the Merrimack River. It was originally the location for the ferry across the river - extending back into the 18th century. The first bridge in the region across the river was built in 1874 at the edge of the Town Center, and the former ferry landing is visible today. The arched bridge was built in 1932. The North-South railroad lines were built on the western shore of the river - between the river and the Town Center - with rail service commencing in 1841.

Upstream on the Merrimack is Nashua, New Hampshire and downstream is Lowell, Massachusetts. Drawing on the water power from the river, both became heavily industrialized cities in the nineteenth century. Lowell, of course, was the first industrialized city in the country, with the mills being built there starting in the years just before 1820.



Thus Tyngsborough Center was in the past and continues today to be a busy four-way connection between Nashua and Lowell (the north - south axis), and between the populations and businesses on each side of the Merrimack (the east-west axis). There was and is and will be a lot of traffic on its major automobile and truck routes.

One hundred years ago the Town Center reflected this activity and was home to many typical New England town center activities. There was a general store, other stores and shops, a post office, many private homes, three churches, a town green and many jobs. The breadth of merchandise and services offered is illustrated in the advertisements of the times. In 1913 A.A. Flint (who built boxes at the box factory) also offered:


A. A. FLINT

Horseshoeing and blacksmithing of all kinds. Carriage repairing and wheelwright work of all kinds neatly done. Orders solicited for new wagons, dump carts, sleds, and wheelbarrows. I shall carry a good stock of neck yokes, whiffle trees, heel chains and stake chains. When in need of any of the above articles call and get our prices. All work guaranteed. Bring in your farm wagons and second-hand carriages and have them put in first-class repair and painted at once so they will be ready for spring use.

> *Horseshoeing and blacksmithing of all kinds. Carriage repairing and wheelwright work of all kinds… new wagons, dump carts, sleds and wheelbarrows… neck yokes, whiffle trees, heel chains and stake chains.*

A 1933 ad from Perham and Queen, the general store, which was similar to advertisements it placed for over 40 years, said:

PERHAM & QUEEN

Dealers in

General Merchandise

AGENTS FOR FERTILIZERS and WIRTHMORE GRAIN

WIRTHMORE

TYNGSBOROUGH, MASS.

A NATION WIDE STORE

> *Dealers in General Merchandise. Grain, Groceries, Hardware, Paints, Grass Seed, Boots, Rubbers, Fruit and Confectionery. Agents for Fertilizers and Wirthmore grain.*

APPENDIX L: CWMP / FEIR SEWER PHASE COST ESTIMATES

TABLE 4-6
TOWN OF TYNGSBOROUGH CWMP/FEIR
PHASES I THROUGH VI
ESTIMATED PROJECT COSTS

Phase Name	Description	Quantity	Unit	Unit Price	Extended Total	Estimated Project Cost [1]
Phase I	Gravity Sewer	21,336	L.F	$225	$4,800,654	$6,720,916
(2009-2012)	Grinder or Suction Lift Pumping Station	1	Each	$750,000	$750,000	$1,050,000
	Grinder or Suction Lift Pumping Station	1	Each	$500,000	$500,000	$700,000
	Force Main	4,359	L.F	$100	$435,906	$610,268
	Land Acquisition	2	Each	$100,000	$200,000	$280,000
	Low Pressure Sewer	2,279	L.F	$125	$284,899	$398,858
	Low Pressure Sewer Pumping System	26	Each	$12,500	$325,000	$455,000
	Brook Crossing	2	Each	$50,000	$100,000	$140,000
	Total Collection System Cost					**$10,355,042**
Phase II	Upgrade to Existing Collection System					
(2013-2015)	Railroad Crossing	1	L.S.	$165,000	$165,000	$231,000
	Merrimack River - Bridge Crossing Phase I					
	Borings	1	L.S.	$50,000	$50,000	$70,000
	Directional Drilling (Twin Force Mains)	1200	L.F	$400	$480,000	$672,000
	River Road Pump Station	1	L.S.	$750,000	$750,000	$1,050,000
	Phalanx Pump Station Upgrade	1	L.S.	$1,000,000	$1,000,000	$1,400,000
	Brook Crossing	1	Each	$50,000	$50,000	$70,000
	Proposed Work					
	Gravity Sewer	15,229	L.F	$225	$3,426,597	$4,797,235
	Grinder or Suction Lift Pumping Station	1	Each	$750,000	$750,000	$1,050,000
	Force Main	2,091	L.F	$100	$209,146	$292,804
	Land Acquisition	1	Each	$100,000	$100,000	$140,000
	Low Pressure Sewer	0	L.F	$125	$0	$0
	Low Pressure Sewer Pumping System	0	Each	$12,500	$0	$0
	Brook Crossing	4	Each	$50,000	$200,000	$280,000
	Total Collection System Cost					**$10,053,040**

[1] Estimated Project Cost includes Cost for Project Services.

TABLE 4-6
TOWN OF TYNGSBOROUGH CWMP/FEIR
PHASES I THROUGH VI
ESTIMATED PROJECT COSTS

Phase Name	Description	Quantity	Unit	Unit Price	Extended Total	Estimated Project Cost [1]
Phase III (2016-2018)	Upgrade to Existing Collection System					
	Gravity Sewer	1,475	L.F	$225	$331,875	$464,625
	Proposed Work					
	Gravity Sewer	15,567	L.F	$225	$3,502,593	$4,903,630
	Grinder or Suction Lift Pumping Station	0	Each	$500,000	$0	$0
	Force Main	1,936	L.F	$100	$193,582	$271,015
	Land Acquisition	0	Each	$100,000	$0	$0
	Low Pressure Sewer	2,514	L.F	$125	$314,234	$439,927
	Low Pressure Sewer Pumping System	37	Each	$12,500	$462,500	$647,500
	Brook Crossing	4	Each	$50,000	$200,000	$280,000
	Total Collection System Cost					**$7,006,697**
Phase IV (2019-2021)	Gravity Sewer	9,524	L.F	$225	$2,142,936	$3,000,110
	Grinder or Suction Lift Pumping Station	0	Each	$500,000	$0	$0
	Force Main	0	L.F	$100	$0	$0
	Land Acquisition	0	Each	$100,000	$0	$0
	Low Pressure Sewer	435	L.F	$125	$54,376	$76,127
	Low Pressure Sewer Pumping System	37	Each	$12,500	$462,500	$647,500
	Brook Crossing	1	Each	$50,000	$50,000	$70,000
	Total Collection System Cost					**$3,793,737**

[1] Estimated Project Cost includes Cost for Project Services.

TABLE 4-6
TOWN OF TYNGSBOROUGH CWMP/FEIR
PHASES I THROUGH VI
ESTIMATED PROJECT COSTS

Phase Name	Description	Quantity	Unit	Unit Price	Extended Total	Estimated Project Cost [1]
Phase V	Gravity Sewer	7,395	L.F	$225	$1,663,810	$2,329,334
(2022-2024)	Grinder or Suction Lift Pumping Station	1	Each	$500,000	$500,000	$700,000
	Force Main	424	L.F	$100	$42,365	$59,311
	Land Acquisition	1	Each	$100,000	$100,000	$140,000
	Low Pressure Sewer	4,404	L.F	$125	$550,448	$770,627
	Low Pressure Sewer Pumping System	29	Each	$12,500	$362,500	$507,500
	Brook Crossing	2	Each	$50,000	$100,000	$140,000
	Total Collection System Cost					**$4,646,771**
Phase VI	Gravity Sewer	4,621	L.F	$225	$1,039,678	$1,455,549
(2025-2027)	Grinder or Suction Lift Pumping Station	0	Each	$500,000	$0	$0
	Force Main	47	L.F	$100	$4,672	$6,541
	Land Acquisition	0	Each	$100,000	$0	$0
	Low Pressure Sewer	5,830	L.F	$125	$728,776	$1,020,287
	Low Pressure Sewer Pumping System	32	Each	$12,500	$400,000	$560,000
	Brook Crossing	3	Each	$50,000	$150,000	$210,000
	Total Collection System Cost					**$3,252,376**

[1] Estimated Project Cost includes Cost for Project Services.

APPENDIX M: MASSACHUSETTS STATE REVOLVING FUND APPLICATIONS CY2010 COVER LETTER

COMMITMENT & INTEGRITY
DRIVE RESULTS

980 Washington Street, Suite 325N
Dedham, Massachusetts 02026
www.woodardcurran.com

T 800.446.5518
T 781.251.0200
F 781.251.0847

WOODARD
&CURRAN

September 17, 2009

Steven J. McCurdy, Director
Division of Municipal Services
Massachusetts Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108

Re: Calendar Year 2010 Priority List
Project Evaluation Form Submittal (CWSRF) – 1

Dear Mr. McCurdy:

In accordance with the requirements set forth in the Department's SRF Regulations effective October 31, 1997, specifically at 310 CMR 44.04, .05 and .06, and the Calendar Year (CY) 2010 Project Evaluation Form (PEF) solicitation instructions issued by the Department July 2009, we herewith submit one, two-phase, CY2010 PEF with appropriate attachments for Division review, rating and ranking.

This submittal for CY2010 Project Priority List placement is being made by the September 18, 2009 deadline. This CY2010 request is for one, two-phase, project that includes the following:

1. CWMP/FEIR Approved, Phase I Sewer Extension – Phase I East, New, Proposed Downtown Area and Middlesex Road South
2. CWMP/FEIR Approved, Phase II Sewer Extension – Phase II West including Middlesex Road North.

This CY2010 PEF is being submitted for consideration under the 2008 Environmental Bond Bill for a reduced rate (0% from 2%) as the projects contained herein meets the following requirements:

1. Projects are intended to reduce nutrients
2. Tyngsborough is not subject to any enforcement orders, administrative consents, etc.
3. Tyngsborough has an approved CWMP EOEA #11788
4. The Project is consistent with all regional planning goals
5. Tyngsborough has land use controls within the CWMP and locally
6. The Tyngsborough Sewer Commission is the legal jurisdiction and the Town has adopted 1A of Chapter 83.

Your review of this submission is appreciated. Please do not hesitate to contact our office, if further information and/or clarification are required.

Sincerely,

WOODARD & CURRAN INC.

Rosemary T. Blacquier

Rosemary T. Blacquier
Technical Leader

222474

Enclosure(s)

Massachusetts Clean Water State Revolving Fund Program

MassDEP
Division of Municipal Services
2006

Introduction

The Massachusetts State Revolving Fund (SRF) for water pollution abatement projects was established to provide a low-cost funding mechanism to assist municipalities in complying with federal and state water quality requirements. The SRF Program is jointly administered by the Division of Municipal Services of the Department of Environmental Protection (MassDEP) and the Massachusetts Water Pollution Abatement Trust. Each year MassDEP solicits projects from Massachusetts municipalities and wastewater districts to be considered for subsidized loans. The current subsidy is provided via a 2% interest loan. In recent years the program has operated with $300 to $350 million per year, representing the financing of 50 to 70 projects annually. The SRF Program continues to emphasize watershed management priorities. A major goal is to provide incentives to communities to undertake projects with meaningful water quality and public health benefits and which address the needs of the communities and the watersheds.

Eligible Projects

Financial assistance is available for planning and construction of projects, including CSO mitigation, new wastewater treatment facilities and upgrades of existing facilities, infiltration/inflow correction, wastewater collection systems, and nonpoint source pollution abatement projects, such as landfill capping, community programs for upgrading septic systems (Title 5), brownfield remediation, pollution prevention, and stormwater remediation. In addition, non-structural projects are eligible for SRF funding; e.g., planning projects for nonpoint source problems which are consistent with the MassDEP's Nonpoint Source Management Plan and that identify pollution sources and suggest potential remediation strategies.

Project Rating

In order to be considered for SRF funding, a community must complete a Project Evaluation Form (PEF) at the time of the project solicitation which MassDEP conducts during the summer/fall of each year. MassDEP will rank projects using a rating system which assigns points on the basis of various environmental, programmatic, and implementation criteria. These criteria include the extent to which the project:

- will have demonstrable water quality benefits;
- will eliminate or mitigate a risk to public health;
- is needed to achieve or maintain compliance with applicable discharge permits or other water pollution control requirements;
- will implement or be consistent with watershed management plans (or addresses a watershed priority) and is consistent with local and regional growth plans; and
- the borrower supports the Commonwealth Sustainable Development Initiative, as evidenced by its Commonwealth Capital Score.

CWSRF Process Steps

1. Project Solicitation/PEF
2. Annual Priority List
3. IUP Project List
4. Loan Application
5. Project Approval Certificate
6. Loan Commitment Issued
7. Project Regulatory Agreement
8. Loan Agreement Executed

Project Priority List and Intended Use Plan Project Listing

After evaluating the project requests submitted in response to the annual solicitation, MassDEP develops a list of projects eligible to receive financial assistance. From this annual list, and on the basis of projects' readiness to proceed and priority rating, MassDEP assigns projects to a fundable list, the Intended Use Plan Project Listing (IUP). Projects on the IUP are eligible to apply for financing in the coming year, with the total cost of all projects on the IUP not to exceed the amount of funding available for that year. To qualify for placement on the IUP, a project must have a high enough ranking, have received a local funding appropriation, or be scheduled for funding appropriation by June 30 of the coming year, and the applicant must be able to file a complete loan application no later than October 15 of the coming year.

Funding Commitments

To obtain funding for a project on the IUP, the borrower must file a loan application and obtain a Project Approval Certificate from MassDEP. The loan application must include information about funding authorization, repayment ability, and project schedule. A complete loan application also includes construction contract documents ready for bidding and evidence of compliance with any applicable environmental reviews and permits.

Once MassDEP certifies that costs are eligible for funding from the CWSRF Program, the Trust votes to issue the borrower a binding loan commitment. This commits MassDEP to finance the full eligible cost of the project, as described in the Borrower's initial application. MassDEP then issues a Project Regulatory Agreement (PRA). The PRA includes MassDEP's regulation and supervision conditions and limitations, cash drawdown schedule, and provisions from the PAC.

The Trust, MassDEP, and the borrower then enter into a loan agreement to secure the financing for the project. The loan agreement establishes the security of the loan, repayment schedule, interest rates, and subsidies, as well as various procedural and regulatory requirements related to the MassDEP's oversight of the project. Following MassDEP approval of the PAC, the project must commence in six months.

For More Information

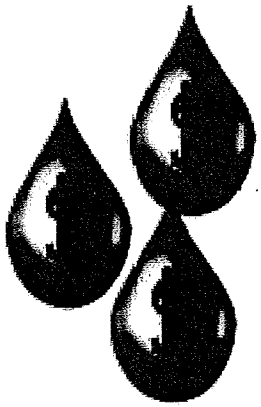
To obtain additional information concerning the SRF Program, please contact one of the following regional program managers:

Northeast:	Kevin Brander	978/694-3236
Southeast:	Richard Keith	508/946-2784
Central:	Paul Anderson	508/767-2802
West:	Deirdre Cabral	413/755-2148

Municipal services staff in MassDEP's Boston office:

Steve McCurdy, Director 617/292-5779

Information also is available on MassDEP's web site:
http://www.mass.gov/dep/water/wastewater/srfhowto.htm
and
Massachusetts Water Pollution Abatement Trust web site:
http://www.mass.gov/treasury/mwpat/wpat.htm



A publication of the Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Department of Environmental Protection, Bureau of Resource Protection, 1 Winter Street, Boston, MA 02108

This information is available in alternative format upon request by contacting the ADA Coordinator at 617/556-1057.