

IMPLEMENTING EFFECTIVE BETTERMENT POLICY FOR WASTEWATER PROJECTS: WALKING THE LABRYNTH

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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

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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 than 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 versus 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 rate³. 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 area⁴, 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 Fund⁵. 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.

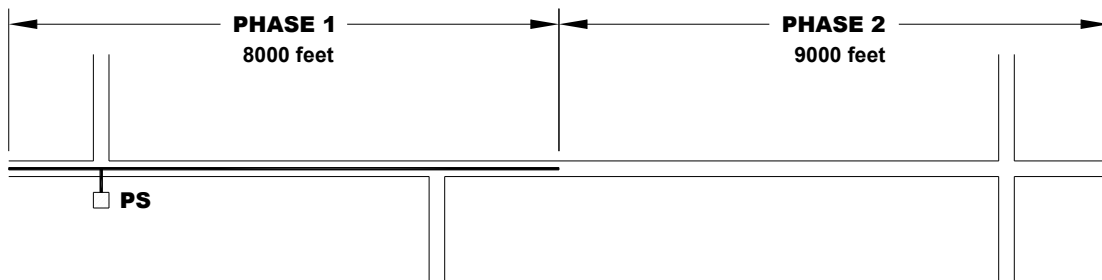
The municipality is obligated by law to transfer cash from the General Fund to the Enterprise account to cover any year end cash deficit. This may take the form of a loan, to be returned to the General Fund upon restoration of fiscal surpluses in the enterprise account. This dynamic is beyond the scope 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	\$1,520,000/80 = \$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.

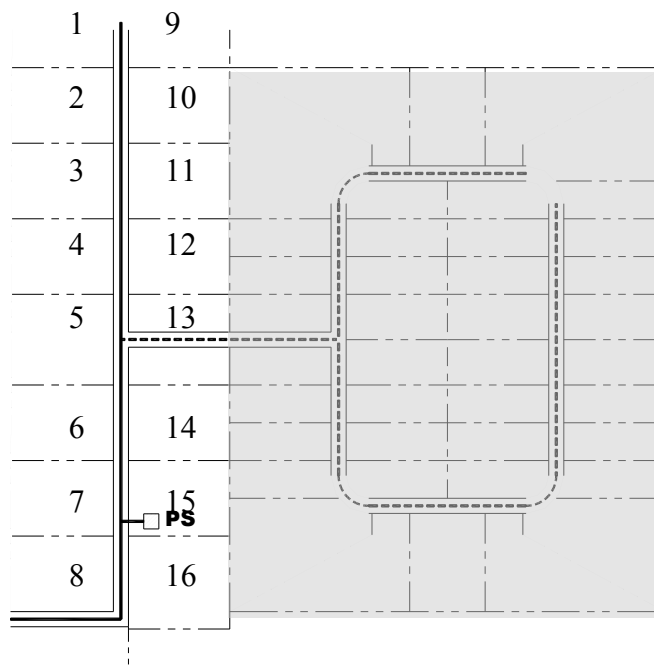


Figure 2. Privilege Fee Assessment

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 resident⁶.

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 sewer⁷ 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 flows⁸. 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 sewer 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.