

A REPORT ON
LOCAL IMPROVEMENT WORKS
AND TAXES
IN
ONTARIO

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INTRODUCTION

Local improvements have been used in Ontario municipalities for many years to finance the construction of public improvements. Their use is in many ways identified with the earliest traditions of the role of local government. They are a means by which services and improvements can be provided by public authorities on the initiative and at the expense of those who benefit from their provision. This study reviews the statutory authorities for local improvements, their nature and relative importance as a municipal revenue and expenditure item. The study identifies a current trend which appears to be changing the traditional theory lying behind local improvements.

Collection of data for the study presented something of a problem. Some information was available from published sources, such as the annual summaries of municipal statistics of the Department of Municipal Affairs. But in order to learn very much about the use of special assessments by various classes of municipality and for financing various types of improvements, it was necessary to develop statistics from original sources. For this purpose, the records of the Ontario Municipal Board were analyzed and information obtained for three sample years: 1957, 1959 and 1962. Statistics based on this information is referred to as having been prepared from the records of the Ontario Municipal Board.

Throughout the study, the terms local improvement taxes and special assessments are used synonymously in spite of the fact that the latter may have a slightly broader connotation than the former. Both terms are taken to refer to:

"charges imposed by a government upon the owners of a selected group of properties to defray, in whole or in part, the cost of a specific improvement or service which is presumed to be of a special benefit to the owners of such properties".¹

IMPORTANCE OF LOCAL IMPROVEMENT TAXES

The value of special assessment taxes collected from benefiting property owners is shown in Table I. The growth in these revenues is also shown.

1. Dominion Bureau of Statistics - Municipal Finance Reporting Manual, 1960.

TABLE I

LOCAL IMPROVEMENT TAXES COLLECTED

(Property Owner's share)

000's

	Cities		Towns/Villages		Twnsps./Imp.Distrs.		Total	
	\$	per cap.	\$	per cap.	\$	per cap.	\$	per cap.
1957	5,868	2.75	610	.63	4,660	2.11	11,137	2.09
1959	6,900	3.08	2,226	2.13	5,475	2.28	14,602	2.57
1962	9,600	3.86	2,456	2.18	5,873	2.41	17,929	2.96
% increase 1957-62		46%		403%		26%		61%

Source: Annual Report of Municipal Statistics, Department of Municipal Affairs.

Though there has been an overall increase of 61% over the period, local improvement taxes collected in towns and villages increased in absolute terms by 403% or by 290% on a per capita basis. In spite of this substantial change, the share of taxes collected in towns and villages only increased from 5% or total local improvement taxes in 1957 to 14% in 1962.

The bulk of such taxes are collected in cities (approximately 50%) and townships (approximately 33%), though the proportionate share in the latter decreased from 42% in 1957 to 33% in 1962. A substantially greater use of special assessments was made in cities (\$3.86/capita) in 1962 than in other classes of municipalities.

Local improvement taxes represent a consistently small proportion of municipal tax receipts. Table 2 indicates a more or less static 2% - 3% which does not vary significantly between classes of municipality.

TABLE 2

VALUE OF LOCAL IMPROVEMENT TAXES COLLECTED
AS % OF TOTAL TAX REVENUE

Year	Cities	Towns/Villages	Townships Improvement Districts	All Municipalities
1957	2.6	2.7	3.2	2.8
1959	2.6	2.7	3.0	2.8
1962	2.7	2.3	2.6	2.6

Source: Annual Report of Municipal Statistics, Department of Municipal Affairs.

However, local improvement taxes have increased more rapidly during the period (61%) than have total municipal tax revenues (38%) but the relative increase in dollar terms is not large enough to be particularly significant.

Turning from local improvement taxes as a revenue source, to a comparison of such works as a municipal expenditure item, Table 3 shows the value of works constructed and financed as local improvements.

TABLE 3

VALUE OF WORKS FINANCED BY SPECIAL ASSESSMENTS

by Sample Year and Class of Municipality

000's

Year	Cities		Towns/Villages		Townships Impr. Districts		Total	
	\$	per cap. \$	\$	per cap. \$	\$	per cap. \$	\$	per cap. \$
1957	21,484	10.06	4,319	4.45	14,455	6.53	40,258	7.57
1959	20,629	9.20	5,130	4.91	19,367	8.08	45,126	7.94
1962	39,603	15.92	5,576	4.95	20,758	8.53	65,937	10.90
% increase 1957-62		84%		29%		44%		64%

Source: Compiled from records of the Ontario Municipal Board.

There was an increase of 64% from 1957 to 1962. However, the increase was quite uneven ranging from 84% in cities to 29% in towns and villages. The relative proportions represented by works in the various classes of municipalities did not change materially. In 1962, local improvement works approved by cities amounted to 60% of the total value of all such works; towns and villages 9%; and townships 31%. These proportions were relatively consistent for each year sampled.

When total municipal capital expenditures are compared with expenditures for local improvements, the proportion represented by works constructed as local improvements appears to be increasing. Table 4 shows that in 1957, of new debt contracted by municipalities, and the amount taken from current revenues for capital expenditure, 21% was for purposes of local improvement works. In 1962, the proportion had risen to 30%. Therefore, about one out of every three dollars invested by municipalities in capital assets took the form of local improvements.

TABLE 4

VALUE OF DEBENTURE DEBT FOR LOCAL IMPROVEMENT WORKS AS % OF TOTAL
NEW DEBT CONTRACTED AND CAPITAL EXPENDITURES FROM CURRENT REVENUE

Year	Value of debenture debt for local improvements	\$000's		%
		New debt contracted and capital expenditures	from current revenue	
1957	40,258	179,761 15,761	195,525	21
1959	45,126	187,592 20,434	208,026	22
1962	65,937	193,370 27,465	220,835	30

Source: Ontario Municipal Board;
Annual Report of Municipal Statistics

INITIATION OF LOCAL IMPROVEMENTS

1.) Local Improvement Act

Local improvements under the Local Improvement Act may be initiated in two ways:

- a.) on petition from property owners who are to receive a direct benefit from the works,
- b.) on the initiative of the municipal council.

In the first case, a council may pass a by-law for undertaking a work if it receives a petition signed by at least two thirds of the owners representing at least one-half of the value of lots to be specially assessed for the work. But the presentation of a petition does not compel a municipality to act on the request of the petitioners.

Second, works may be initiated by council with benefiting properties being specially assessed. This may be done in several ways:

- a.) The initiative plan. Without prior receipt of a petition from benefiting property owners, councils on their own initiative, may authorize that a work be undertaken and a share of the cost assessed against benefiting property owners. If, within one month of publication of the council's intention, a petition is received objecting to the work from at least a majority of owners representing one half the value of

lots to be specially assessed, the same work may not be undertaken as a local improvement under the initiative plan for at least two years. However, a different proposal may be put forward by the council for the same area. In spite of receiving a petition objecting to the work, council may still undertake the work under Section 8 of the Local Improvement Act as described below.

- b.) A council, on the recommendation of the Minister of Health or a local board of health may, by by-law passed by a vote of 2/3 of its members, require that a work be undertaken in the public interest on sanitary grounds. In such cases, the cost of the work may be specially assessed against the properties receiving a benefit.
- c.) Without petition, a council, by a vote of 2/3 of its members, may require that service drain connections or works which are ancillary to other local improvement works, be constructed and the cost thereof be included in the special assessment levy. For instance, if a pavement is to be constructed, council may require that, at the same time, drainage works necessary to maintain the pavement, or private drain connections whose construction would disrupt the pavement once laid be constructed at the same time. The cost of such ancillary works becomes part of the overall cost of the local improvement and charged to benefiting properties.
- d.) When 2/3 of the entire membership of a council support the construction of curbs, pavements, sidewalks, sewers and watermains, bridges and a variety of extensions and improvements to roads and sewers and a by-law to this effect, passed in accordance with Section 8 of the Local Improvement Act, is confirmed by the Ontario Municipal Board, the work may be undertaken as a local improvement with there being no right of petition to council against the work as is provided under the initiative plan described above.

2.) Other Acts.

Drainage works constructed under authority of the Drainage Act (until 1961, The Tile Drainage Act, and the Municipal Drainage Act) require petitions for initiation. In the case of small drainage works costing less than \$2,500, an individual owner may petition council. If, on the basis of engineering reports, the proposed work is justified, the Council is obliged to proceed with it.

Larger drainage works involving several property owners are initiated by petition. On receipt of a petition of a majority in number of owners of lands or roads in an area requiring drainage, councils may proceed with the work.

Extensions of public utility undertakings under the Municipal Act and the imposition of special assessments on the owners benefiting from such works are initiated by councils. If a by-law is approved by the Ontario Municipal Board and passed by a vote of three-fourths of all members of the council, the work may proceed and no assent of the electors is required.

Local improvement works authorized by the Municipal Act (construction of parking lots; the extension of 'utility undertakings' etc.) are initiated by council. The large proportion of local improvements initiated under this Act and the absence of provision for their initiation on petition are significant in so far as the element of local option implicit in local improvements is diminished.

Table 5 shows that since 1957 at least, a distinctive trend has developed in the method by which special assessment works are initiated. For purposes of simplification, the various methods of initiation have been placed in two groups so as to include:

(i) works initiated by property owners:

- Local Improvement Act - petition
- Municipal Drainage Act
- Municipal Tile Drainage Act

(ii) works initiated by Councils:

- Local Improvement Act - Section 8
- Initiative Plan
- Municipal Act - s.s. 379, 380, 386.
- Telephone Act.

TABLE 5

PERCENTAGE OF LOCAL IMPROVEMENT WORKS INITIATED BY PROPERTY OWNERS AND COUNCILS -- ALL MUNICIPALITIES

Initiation by:	\$000's	
	property owners	councils
1957	42%	58%
	\$17,275	\$22,983
1959	33%	67%
	14,837	30,289
1962	17%	83%
	11,193	54,744

Source: Compiled from Ontario Municipal Board records.

In the case of the first group, the proportion of works initiated by property owners has decreased from 42% in 1957 to 17% in 1962. The corresponding increase in the proportion of works initiated by councils means that by 1962, 83% of all works were initiated in this way. The shift has occurred as the total value of such works has risen by 61% over the six year period and is primarily due to the increasing use that recently has been made of provisions in the Municipal Act which permit Councils to initiate local improvement works.

The trend is reflected in an analysis according to classes of municipality shown in Table 6.

TABLE 6.

PERCENTAGE OF LOCAL IMPROVEMENT WORKS INITIATED BY
PROPERTY OWNERS AND COUNCILS ACCORDING TO CLASS OF MUNICIPALITY

(percent)

	Property Owners:			Councils:		
	Cities	Towns/ Villages	Towshps./Impr. Districts	Cities	Towns/ Villages	Towshps./Impr. Districts
1957	46%	40%	39%	54%	60%	61%
1959	35	40	28	65	60	72
1962	11	17	29	89	83	71

Source: Compiled from Ontario Municipal Board records.

In 1957, 46% of special assessment works in cities were initiated by property owners. The proportion declined to 11% in 1962. Similarly, the proportion has decreased in towns and villages from 40% to 17% during the same period. In townships and improvement districts, the shift has been from 39% in 1957 to 29% in 1962.

In each case, though the degree of shift varies, the proportion of works initiated by councils has increased very substantially.

In 1962, as in 1957, Councils were primarily responsible for initiating the major types of works financed by special assessment. The degree of responsibility for initiation shows considerable variation. Almost all sewer works, for instance (94% in 1962) were proposed by councils whereas councils and property owners shared more or less equal responsibility for initiating the construction of new roads.

But in spite of this unevenness, the same trend away from property owner initiation is evident for each type of work. The shift is again illustrated

in Table 7.

TABLE 7

SOURCE OF INITIATIVE FOR CONSTRUCTION OF VARIOUS TYPES OF WORKS

	1957		1962	
	property owners	councils	property owners	councils
sewers	37%	63%	6%	94%
water	45	55	19	81
sidewalk	49	51	25	75
road construction	31	69	42	58
pavement	31	69	29	71
curbs/gutters	60	40	34	66
street lighting	48	52	23	77

Source: Compiled from records of the Ontario Municipal Board

With the exception of road construction, the proportion of works initiated by councils increased between 1957 and 1962. Almost three-quarter of the works most frequently financed by special assessment -- sewer, water, pavements -- were initiated by councils.

To summarize, a growing proportion of works (by 1962, 83%) financed by special assessments, were undertaken on initiative of municipal councils. The trend is particularly pronounced in cities where councils, in 1962, initiated 89% of such works, an increase of 35% since 1957. Each of the major types of works reflected this shift.

The following tables show the extent to which local improvement works are authorized under the Local Improvement Act and other statutes. Table 8 shows the value of works, and Table 9, the relative proportion according to year and class of municipality.

TABLE 8

VALUE OF LOCAL IMPROVEMENT WORKS
AUTHORIZED UNDER VARIOUS STATUTES.

	\$000's		
	<u>1957</u>	<u>1959</u>	<u>1962</u>
a.) <u>Local Improvement Act</u>	\$37,042	\$34,595	\$24,801
b.) <u>Municipal Act</u>			
i) s. 379 (1,p.54)		7,537	36,540
ii) s. 377 (1,p.67)		84	199
c.) <u>Municipal Drainage Act</u>	1,761	1,028	1,390
d.) <u>Municipal Tile Drainage Act</u>	1,425	1,750	2,795
e.) <u>Telephone Act</u>		100	212
f.) <u>Water Resources Commission Act</u>			

Under s. 41 (R.S.O. 1960) and s. 39 (R.S.O. 1950) municipalities may authorize charges for sewer and water systems constructed under agreements with the Commission on an area basis. The actual levying of these rates is under authority of s. 380 or 379 of the Municipal Act. The value of such works is therefore reflected in figures for each of these sections.

TABLE 9

RELATIVE IMPORTANCE OF STATUTES UNDER WHICH LOCAL IMPROVEMENT WORKS WERE AUTHORIZED
BY YEAR AND CLASS OF MUNICIPALITY

	Local Improvement <u>Act</u>	<u>Municipal Act</u>	<u>Other</u>
<u>1957</u>			
cities	100%		
towns/villages	98%		2%
townships/impr. districts	79%		21%
total	92%		8%
<u>1959</u>			
cities	80%	20%	
towns/villages	67%	31%	2%
townships/impr. districts	77%	17%	6%
total	75%	23%	3%
<u>1962</u>			
cities	35%	65%	
towns/villages	35%	63%	2%
townships/impr. districts	45%	35%	20%
total	38%	55%	7%

The most important point brought out by these tables is the pronounced decrease in significance of the Local Improvement Act and the recent advantage that has been taken of provisions in the Municipal Act which permit the financing of these works by special assessment. In 1957, 92% of all local improvement taxes were levied for works constructed under the Local Improvement Act but by 1962, the proportion had decreased to 35%. Almost 2/3 of all local improvement taxes in 1962 were levied for works constructed under provisions of the Municipal Act. The reason for this shift, involving approvals of proposed projects and flexibility with regard to levying charges according to benefit, is described elsewhere.

APPEAL AGAINST LOCAL IMPROVEMENT TAXES

1.) Against the Initiation of the Work

Local improvement works initiated by councils under the so-called initiative plan, may be petitioned against by owners affected by and objecting to the works. If a petition is received by council from a majority of owners, representing one-half value of lots to be specially assessed, the work may not be proceeded with for a period of two years. Objecting property owners do not have the same right of petition against works to be constructed under Section 8 of the Act, or Section 9 on public health grounds. In the first case, property-owners objecting to proposed works may file their objections only with the Ontario Municipal Board whose approval is required before the work may be proceeded with. The proposal may be modified by the Board but not necessarily set aside. In the second case, if a majority of owners, representing at least one-half the value of the lots that are to be specially assessed for works undertaken on public health grounds object to the work, they may submit a petition to the Municipal Board conveying their objection. In both instances, the Board may investigate the objections and make whatever amendments to the proposal it sees fit.

Appeals against the undertaking of a work under authority of the Municipal Act are pretty well restricted to the same action that can be taken against the passage of any municipal by-law. Councils may authorize extensions of utilities (section 379 of the Municipal Act) by by-law approved by three-fourths of council members. Approval of the Municipal Board also is required. Objections may be lodged with council against the enabling by-law or with the Municipal Board but there is no statutory provision for petitioning against

the work.

In isolated instances, such as the construction of parking lots as local improvements, the Municipal Act provides that approval of the enabling by-law must be withheld by the Municipal Board if there is a petition, signed by at least two thirds of the assessed owners representing at least one half the assessed value of the land to benefit from the parking lot.

These are appeals against the undertaking of a work by municipal councils. Other appeals may be directed against the apportionment of special assessments, the jurisdiction of the assessing authority, or the procedure followed in bringing forward a work.

2.) Appeal against the Division of Cost, Procedure, etc.

Before a special assessment is imposed, a sitting of a court of revision is held. The court, constituted under provisions of the Assessment Act, is empowered to review and correct:

- a.) the actual cost of the work
- b.) the share of the cost to be borne by properties abutting the work or property not abutting the work but benefiting directly from it.
- c.) matters relating to exemptions, proportion of the cost to be borne by the corporation as a result of statutory provisions relating to intersections, flankage, etc. and the constitution of the special assessment role.

The court, however, does not have power to review the proportion of the cost to be borne by lands specially assessed, ^{either} or by the corporation.

An appeal lies to a judge of the county court from any decision of the court of revision. The powers conferred on the court are also conferred on the judge so that any question of fact may be raised and any new evidence offered.

From a judge of the county court, an appeal may go to either the Ontario Municipal Board or the Court of Appeal. The grounds for appeal to either of these bodies and the matters on which the courts of revision, county judges and the Ontario Municipal Board may make a final decision are not clear and recently have been questioned in the courts. However, the current position appears to be as follows: [†]

[†] Based on opinions expressed in the Assessor's Guide by W. S. McKay.

Courts of revision, the county judge and the Ontario Municipal Board may determine appeals with regard to persons said to be wrongfully placed on or omitted from the special assessment roll or assessed at too high or too low an amount. Their decision in these matters is final. While such assessment appeal courts may express an opinion on a matter of law, for instance, whether a certain property is liable for payment of a special assessment or is exempt, the opinion is not equivalent to a judicial determination of the question. If the opinion does not satisfy the appellants, an appeal lies to the County or Supreme Courts.

Extensions of 'public utilities' constructed under authority of Section 379 of the Municipal Act must be approved by the Ontario Municipal Board. Before giving such approval, the Board must be satisfied that among other things, the proposed work is in the public interest and within the means of the municipality. Representations to the Board by affected property owners offer one opportunity for appeal against the work or against the special levy imposed to recover the cost from benefiting property owners. Decisions of the Board may be appealed to the courts on judicial grounds.

Appeals against the apportionment of the costs of drainage works, under authority of the Drainage Act, may be made initially to the Court of Revision. An appeal from the Court of Revision lies to a county court judge on any decision of the court or its neglect to hear or decide an appeal. The judge's decision in the matter is final.

On grounds that a drainage work is not necessary, does not comply with the requirements of the Act or any ground not related to the apportionment of cost between benefiting properties, an appeal lies to a referee appointed by the Lieutenant Governor in Council. A further appeal lies to the Court of Appeal in the same manner as from a decision of a judge of the Supreme Court.

PURPOSES FOR WHICH SPECIAL ASSESSMENTS ARE LEVIED

1.) By type of work.

The type of works financed by special assessments follow a pattern which is consistent throughout the period. Tables 10 and 11 show this. In 1957, the cost of sewers was the most important item in the cost of all special

assessment works as it was again in 1962. Water and pavement works switched positions, but represented either the second or third largest item. Drains, sidewalks, and extensions to municipally owned hydro-electric systems were next.

TABLE 10

IMPORTANCE OF WORKS BY RANK

<u>1962</u>	<u>1959</u>	<u>1957</u>
1. sewers	1. sewers	1. sewers
2. water	2. pavement	2. pavement
3. pavement	3. water	3. water
4. drains	4. sidewalk	4. sidewalk
5. hydro	5. hydro	5. drains
6. sidewalk	6. drains	6. curbs
7. road construction	7. road construction	7. road construction
8. gas	8. curbs	8. lanes
9. curbs		

TABLE 11

SUMMARY OF SPECIAL ASSESSMENT EXPENDITURES ACCORDING TO TYPE OF WORK

<u>Year</u>	<u>sewers</u>	<u>water</u>	<u>pavement</u>	<u>other</u>
1957	38%	12%	27%	23%
1959	39%	13%	21%	27%
1962	59%	11%	11%	19%

Source: Compiled from records of the Ontario Municipal Board.

While sewers maintained their leading position, their importance increased sharply. In 1957, expenditures for sewers represented 38% of the total; in 1962 59%. But the increase is of even greater significance than these proportions suggest in the light of the overall increase in special assessments. In 1957, the value of sewage works amounted to \$15 million of a total \$40 million spent on local improvement works. But in 1962, the amount was \$39 million of \$66 million. Thus, the value of sewage works constructed as local improvements increased by more than two and one half times.

The value of water works was about constant at 11% to 13% of the total. Pavements decreased from 27% to 11%. The proportion represented by all other types of works was quite small.

While sewage works, water and pavements were the most important throughout the period, expenditures on sewers increased so rapidly that all others

were reduced to minor significance.

2.) By class of municipality.

Table 12 shows the relative importance of various types of works constructed as local improvements according to the three classes of municipality. It is not surprising that in cities, the prominence of sewage works is even more pronounced than the overall average. The next largest item is pavement at 14%. All others are of minor significance.

TABLE 12

RELATIVE VALUE OF EXPENDITURES ON LOCAL IMPROVEMENTS
BY TYPE OF WORK, 1957, 59, 62.

<u>CITIES</u>						
	<u>pavement</u>	<u>sewers</u>	<u>sidewalks</u>	<u>water</u>	<u>other</u>	
1957	37%	36%	12%	4%	11%	
1959	41%	26%	8%	10%	15%	
1962	14%	66%	3%	9%	8%	
<u>TOWNS/VILLAGES</u>						
	<u>pavement</u>	<u>sewers</u>	<u>sidewalks</u>	<u>water</u>	<u>hydro</u>	<u>other</u>
1957	41%	34%	6%	10%	-	9%
1959	12%	33%	-	24%	14%	7%
1962	-	51%	3%	22%	15%	9%
<u>TOWNSHIPS/IMPROVEMENT DISTRICTS</u>						
	<u>sewers</u>	<u>water</u>	<u>sidewalks</u>	<u>hydro</u>	<u>drains</u>	<u>other</u>
1957	41%	17%	9%	-	21%	12%
1959	53%	13%	-	7%	14%	13%
1962	48%	9%	-	8%	20%	15%

Source: Compiled from records of the Ontario Municipal Board.

In towns and villages, sewers represent more than 50% of all local improvement expenditures. Water works have increased to 22% of the total. In townships, sewers and drains account for 68% of local improvement expenditures with no other type of work being of much importance.

Thus, in all classes of municipalities, sewer and drainage works represent such a large proportion of the value of local improvements that, with the exception of water works in towns and villages, no other single type of work is

significant in terms of expenditures.

DIVISION OF COST OF LOCAL IMPROVEMENTS

The general principle governing the division of cost of local improvements under the Local Improvement Act is that the entire cost is to be borne by lots abutting directly on the work according to the extent of their respective frontages. An equal special rate per foot of frontage is levied sufficient to defray the cost of the work. The principle is then modified by a number of exceptions:

- a.) the municipal corporation pays the share of charges attributable to properties exempt from local improvements under any special or general acts
- b.) the municipal corporation must pay the entire cost of work at street intersections, the full cost of fire hydrants, and works provided for surface drainage. The corporation also must bear the cost of sewers having a sectional area of greater than four feet, the cost of pavement which exceeds in width pavement that is replaced, the reduction allowed irregular shaped lots and lots bounded on more than one side by the improvement. Beyond such specific provisions, it is pretty well left to the discretion of the council to determine the share of the cost that the corporation shall pay from general revenues. But three quarters of council must approve any increase in the corporation's share over and above the statutory requirement.

Precise figures showing the division of cost of local improvements between benefiting property owners and municipal corporations are not available. However, some idea is possible from Table 13. The figures show that of gross outstanding debt for local improvements, about equal shares are attributable to benefiting owners and municipal corporations. Though the extent to which municipal councils share in the cost of local improvement works, over and above that laid down by statute, varies very considerably, in the aggregate, it appears that about half the cost is paid from the general rate and half is borne by benefiting property owners.

TABLE 13

FUNDED DEBT OUTSTANDING: LOCAL IMPROVEMENTS

\$000's

	Municipality's Share*	Owner's Share	Total
1957	60,290 (53%)	53,256 (47%)	113,546
1959	58,712 (44%)	75,595 (56%)	134,307
1962	86,696 (53%)	77,119 (47%)	163,815

Source: Annual Report of Municipal Statistics, Department of Municipal Affairs.

* Some municipalities did not report the proportion of debt attributable to owners and the corporation. Consequently, the municipal share tends to be overstated.

c.) There is a further exception to the general principle that the entire cost be borne by lots abutting directly on the work. In the Local Improvement Act and other acts, there are numerous instances in which lands not directly abutting, but directly or indirectly benefiting may be assessed for a "fair and equitable" share of the cost of the works.

For instance, specific provision exists for sharing costs of developing parks, constructing bridges, roads, sewer and water mains by lands not immediately abutting the work. A general provision (s. 38) in the Local Improvement Act covering most works, permits the designation of areas receiving varying degrees of benefit and the levying of special assessments on a frontage basis according to the extent of benefit received from the work.

A further departure from the general principle of the Act is provided for townships and villages. The construction or replacement of sewers, water mains or street lighting facilities may be assessed and levied against properties in a benefiting area, not necessarily abutting the works, on the basis of rateable property.

Thus, while the general principle of assessing the entire cost of local improvements against abutting properties according to their frontage on the work remains as the basis of the Act, benefiting properties may be relieved of any proportion of the cost of local improvement works (approved by a vote of three quarters of council) with the reduction being met from general revenues of the corporation. In addition, property not directly abutting the work may be assessed if a direct benefit is derived, and in certain instances,

rateable property is the basis of the division of cost rather than frontage.

A similar variety of methods of assessing the cost of local improvement works is provided by other acts. Because of the extensive use that is now being made of the special assessment provisions of the Municipal Act, the methods of distributing the cost under this Act apply in the majority of cases today.

The cost of constructing parking lots, disposing of refuse, and extending any works of a 'public utility' nature may be recovered by special assessments on benefiting properties under authority of the Municipal Act. Though the basis varies on which such assessments are levied, the cost is most frequently divided according to the assessed value of benefiting properties. This contrasts with the Local Improvement Act in which the cost of the majority of works is levied according to the frontage of each property benefited. There are exceptions to this rule. For instance, the cost of a deferred highway widening, under Section 338 of the Municipal Act must be divided between benefiting properties according to frontage. Sewer rates, levied in respect to the capital cost of sewage works, may be distributed on the basis of frontage. But the cost of works for the improvement, extension, or enlargement of a 'public utility' undertaking (sewage, water, hydro, gas, street lighting, transit systems), the construction of parking lots, removal of refuse, and others all may be recovered by special assessments levied on the basis of the assessed value of benefiting properties.

As is the case with the Local Improvement Act, various provisions in the Municipal Act permitting the levying of special assessments, provide that the division of costs recognize the degree of benefit received by different properties or groups of properties from individual works. For example, 'area charges' may be levied to recover the cost of extending a transit system. Areas of varying benefit may be defined, each paying a share of the cost according to the degree of benefit received from the extension. In addition, areas which are determined to receive deferred benefits may be charged a special rate until a further extension of the system converts the deferred benefit to an immediate one, when the rate may be changed accordingly.

Other bases for the division of cost also are provided. Section 380 of the Municipal Act permits municipalities to charge sewer, and water works rates for the capital cost of additions to plant, and sewage service charges for the operation, repair and maintenance of sewage works. Sewer and water rates may be levied on the basis of a frontage rate, an acreage rate, a mill rate or

assessed value, or a rate based on water consumption. Sewage service rates, to recover operating costs, may be established on any basis which reflects the nature, volume and frequency of use.

The same degree of flexibility provided by the Local Improvement Act with regard to the proportion of the cost of a project which must be borne by benefiting properties is provided by the Municipal Act. The cost of all works constructed on a local improvement basis may be recovered, at the discretion of council, from general revenues of the municipality or from the proceeds of special assessments levied against benefiting properties.

One further method of levying special assessments should be noted. Under the Drainage Act, the cost of a work is divided according to the proportionate share of the total benefit of the work derived by individual properties. An engineering report, submitted to council, estimates in actual dollar amounts, the relative proportion of the total cost of the work to be borne by each property according to the benefit each receives. This method of apportioning cost avoids the reliance on an arbitrary measure of benefit such as frontage or assessment but is possible only because the majority of works constructed under the Drainage Act usually involve a limited area composed of relatively large tracts of agricultural land.

COLLECTION

For purposes of collection and recovery of rates imposed for payment of special assessments, all such rates are deemed to be taxes. As such, the provisions of the Assessment Act apply whereby rates may be collected by distress on the goods and chattels of owners subject to special assessment or in the same way as other municipal taxes are collected. The regulations governing these proceedings are provided in the Assessment Act.

EXEMPTIONS

The general rule with regard to local improvement charges or special assessments is that all properties benefiting from a work must share in its cost. Exceptions to this rule are few, reflecting the notion that because special assessment works return a direct and often measurable benefit, all property owners should bear their share of the cost.

Some exceptions are listed in the Local Improvement Act. In other enabling statutes, such as the Municipal Act, the same conditions for exemptions from by-laws imposing special assessments apply as for any other by-law. Once a council defines a benefiting area against which a special assessment is to be made all properties, including those exempt under the Local Improvement Act but excluding those specifically accepted by council are liable.

Such exemptions as there are fall into these groups:

a.) Crown properties.

All properties of the Crown in the right of the Dominion or Ontario and their Boards or Commissions are exempt from any taxation. However, the practice has evolved whereby the Federal government now includes the full equivalent of special levies as part of its grant in lieu of taxes. The same policy is observed by the Province of Ontario in respect to its own properties and Crown agencies. The Ontario Hydro Electric Power Commission pays the equivalent of all special assessments as well. It might be noted that local improvement taxes are not paid on these properties by the government of British Columbia or Alberta.

b.) General Acts.

The Local Improvement Act specifies that schools maintained in whole or in part by a legislative grant or a school tax are exempt from local improvement taxes. Other general Acts provide for minor exemptions such as the exemption of transmission pipelines under the Assessment Act from local improvement charges or the exemption of the land of a place of worship from a special rate imposed under the Municipal Act for the removal of refuse.

c.) Special Acts.

Property of certain public and private organizations, and municipalities may be relieved of liability for special levies by special legislation and private bills. Private organizations or municipalities have been granted special rights in regard to these exemptions by means of private bills. Special legislation, such as the Niagara Parks Act which exempts the Niagara Parks Commission from local improvement charges or the Ontario St. Lawrence Development Commission act which gives similar relief also has been used to grant exemptions.

The value of these exemptions is difficult to determine and would require a search of all private legislation for some time in the past.

PROVISION OF LOCAL IMPROVEMENTS IN NEWLY DEVELOPED AREAS

When suburban growth was less rapid than it is today and when property owners were content to gradually acquire public improvements, the financing and construction of such works as local improvements was a convenient and practical means of increasing community amenities. But as the pace of development quickened and the demand for fully serviced neighbourhoods increased, municipalities sought a means whereby they would be relieved of the expenses of providing local improvement works. The practice of requiring developers to install and finance services was adopted in response to this need.

Municipalities in Ontario pioneered in this practice. But unfortunately figures have never been developed showing the value of services installed by developers. Yet it is likely that a very high proportion of municipal improvements that otherwise would have been provided as local improvements have been installed by developers over the past twelve or fifteen years. However, a partial list of services which municipalities in Ontario may require developers to provide, or 'contributions' that must be made gives some indication of their importance.

Partial list of Services required under terms
of Subdivision Agreements

local water services
water trunk mains within subdivision
connecting water trunk mains outside subdivision

local sanitary sewers
sanitary sewer trunks within subdivision
connecting sanitary sewer trunks outside subdivision

open ditches and culverts within subdivision
open ditches and culverts outside subdivision
storm sewers within subdivision
storm sewers outside subdivision

improved secondary roads
paved secondary roads
paved main roads
improved main roads
connecting roads outside subdivision

curbs and gutters
sidewalks
grading boulevards
sodding/planting boulevards

street signs
local street lighting and/or payment in lieu

enlargement of sewage treatment plant
enlargement of water treatment plant

public electric service and/or payment in lieu
public gas service and/or payment in lieu

other capital contributions for:
school construction
unspecified purposes
miscellaneous: sewage
parks
inspection services

Source: Citizens Research Institute, The Subdivisions Story, June 1960.

The scarcity of data relating to the provision of local services by developers makes it difficult to trace the growth of this practice. If a trend is discernible, it is one of continual increase in the variety and quality of services that must be provided. Prior to the enactment of the Planning Act in 1946, plans of subdivisions and the provision of local services were regarded as quite separate matters. Plans of subdivisions were submitted to the Ontario Municipal Board for approval and services were provided on the initiative of property owners, as local improvements. In the immediate post-war years, the importance of services in relation to subdivision design was recognized and under the pressure of new residential development and demands on the municipal purse, the custom of requiring the provision of local services as a condition of subdivisions approval was adopted at both the municipal and provincial level. The explosive growth of North York Township and the development of subdivision agreements in that municipality set the pace throughout the province. The Table illustrates the effect of such agreements and their growth between 1953 and 1958.

TABLE 14.

Actual cost per linear foot of roadway, of municipal services in typical subdivisions in the Townships of Etobicoke, North York and Scarborough

1953, 1958

	Etobicoke	North York	Scarborough
1953	\$27.25	\$31.80	\$55.22
1958	60.40	67.00	74.55
Increase:	122%	111%	35%

Source: Urban Development Institute 1960.

Although no figures are available to support the contention, it seems certain that in the last fifteen years most local services have been constructed under terms of subdivision agreements and not as local improvements. In fact, when the present outstanding debenture obligations of municipalities are

considered, the pressures exerted by Central Mortgage and Housing Corporation for fully serviced building lots and the influence of various provincial agencies in requiring sewer and water services, it is likely that much of the suburban residential development of today would have been impossible without heavy reliance on developers for the provision of services. In addition, the proportion of all local improvement works provided by developers is likely to increase. Since 1960, the Municipal Board has all but eliminated the use of special assessment to finance the installation of new services in subdivisions.

There are a number of important consequences of this practice. Certainly the provision of full community services has affected the price of new residential development. Whereas in earlier times, property owners were able to acquire various services, paying for them as local improvements, gradually according to their means, the cost of such services now is added to the price of each dwelling. The result has certainly been to remove the prospect of home ownership from many and to increase the overall cost of housing in several ways.

In the first place, the total obligation of the home buyer is increased. In addition, the cost of carrying the debt for the local services is likely to be greater since instead of becoming an obligation of the municipality, it becomes part of the mortgage interest rate, which traditionally is higher than municipal debenture rates. One advantage, however, of financing services through mortgages is that the term is longer and annual debt charges lower. Yet, over the longer term of the mortgage, the interest cost is greater.

Another effect of financing services at the expense of developers is that the cost of services is borne to a greater extent by the home owner alone. The cost of works installed as local improvements is normally shared by benefiting properties and the municipality. But since the cost of services must be met by developers who are likely to shift the burden to home purchasers, there is no sharing, though municipalities often assume part of the cost of services, such as arterial roads or oversize sewers, which benefit a larger area than the immediate subdivision.

In spite of these effects, the provision of services by developers has produced cleaner, more healthy, if more antiseptic and stereotyped neighbourhoods. In addition, if recent suburban growth had had to rely on septic tanks and well water, suburban areas would be even more spread out and fragmented than they are today. In fact, it is doubtful whether today's scale of development could have been accommodated at all.

THE THEORY OF SPECIAL ASSESSMENTS

The traditional philosophy underlying special assessments is that they are levied for improvements which benefit the properties charged in a direct and measurably manner. Charges are levied according to the benefit received. This principle is sound and has worked well in practice. If property owners wish improvements over and above those supplied throughout the municipality, and paid for from general taxation, the added cost is borne by those receiving a direct benefit. There is a reciprocal relation between individual and specific benefit, and payment of the special assessment. So long as this principle is observed -- and could embrace the range of services to be paid for by special charges, the use of special assessments has adequate philosophic justification.

But in recent years, there has been a steady erosion of the benefit principle. In addition, much of the element of local initiative or option on which special assessments are based has been lost. This is due to several factors:

a.) many improvements, once regarded as optional 'extras', are now thought to be necessary throughout municipalities. Paved roads, sidewalks and sewers, often the exception are now regarded as essential for healthy, convenient, efficient urban life.

b.) In response to this changing attitude, municipal councils have more and more taken responsibility for initiating the provision of improvements in place of property owners. Where the powers of councils to initiate local improvements were once invoked only to eliminate particularly haphazard development, much of the attraction of recent local improvement legislation is that it circumvents direct owner approval of works to be financed by special assessments.

c.) A growing number of improvements financed by special assessments benefit properties in addition to those directly abutting them. The mobility of people, and the growing importance of neighbourhood or community facilities contribute to this trend. Consequently, the use of 'area charges' which are intended to recover the cost of improvements from benefiting properties in proportion to the varying benefits they receive have come into greater prominence. But the difficulty of determining the degree of benefit, and its actual extent, has obscured the principle of direct and measurable benefit underlying special assessments. It often appears that special assessments are levied without as much attention being given to the relation of the benefit received and the charge

paid as the traditional principle of special assessment appears to require.

These factors, contributing to the decay of the benefit doctrine -- or its inadequacy under present conditions -- has led one authority to re-define special assessments. *

"A more accurate definition of ^{the} special assessments would be that it is a special levy against real property to defray the cost of constructing such local improvements as the public convenience or necessity may demand, regardless of whether or not the property assessed derives therefrom a benefit equal to that cost."

Practice in Ontario seems to support the contention that the benefit theory, as a justification for special assessments, no longer has the validity it once had. Certainly the importance of local initiative of special assessment works has been displaced and the use of area charges increased. In 1962 83% of local improvement works were initiated by councils, and well over 50% of special assessments were levied on an area basis.

CONCLUDING OBSERVATIONS

In many ways, special assessments are a convenient and equitable device for financing a variety of municipal works. Their use should be encouraged wherever it is possible to attribute the benefits of a particular service or work to individual properties or areas. But there are a number of matters associated with them which need clarification.

1.) Initiation

Experience has shown that if responsibility for initiating local improvements is left solely to property owners, projects may be indefinitely postponed or extended in a disjointed fashion. It is not likely that owners would themselves initiate such improvements as collector sewers or hydro-electric systems, for instance. Yet if the doctrine underlying special assessments has any validity, owners who are to be specially assessed must be permitted to

*

Lutz, H.L. -- Public Finance, 4th edition. p. 234.

register their opinion as to the need for a proposed improvement. If it is not practical to rely on property owners to initiate local improvements, perhaps emphasis should be placed on determining their reaction to them if the element of choice that is implicit in special assessments is to be preserved. An adequate system of appeal against improvements to be financed by special assessments would provide this opportunity for dissent or approval.

2.) Appeal

A major advantage in the eyes of municipal councils of the various provisions of the Local Improvement Act and Municipal Act permitting councils to initiate special assessment works is that no direct approval of the electors is necessary. Protests against the work are limited to objections to the Municipal Board and to the council at the time enabling by-laws are approved. Considering the proportion of local improvements initiated under these provisions, property owners to be specially assessed have restricted opportunity to register their reaction to proposed works and no way to prevent works opposed by a majority of owners to be undertaken.

A solution might be found if one of the existing provisions of the Local Improvement Act were given wider application. Under the 'initiative plan', local improvement works may be initiated by councils. However, if a majority of property owners representing at least one half the value of lots to be specially assessed petition the council not to proceed, the work may not be undertaken. If this device were applied to special assessment works initiated under section 8 of the Local Improvement Act, and the Municipal Act, particularly section 379 (1,52), an element of choice on the part of those to be charged for the work would be provided.

The alternative is to abandon the notion of local choice in special assessments altogether. Under these circumstances, local improvements would be similar to any other municipal service in that a decision regarding their desirability would be the responsibility of the municipal council. The only difference would be that because the service or improvement benefits a definable area or group of properties, its cost would be recovered from those receiving a direct benefit. This, in fact, is the direction local improvements have taken. A restoration of choice on the part of those who are to bear the cost of the improvement requires a reversal of the current trend.

3.) Division of Cost

The distribution of special assessments between benefiting properties is another matter bound up with the changing nature of many local improvement works. Most special assessments now are divided between benefiting properties on the basis of real property assessment. This is a recent development as the traditional division of cost has been based on the frontage of benefiting properties abutting each improvement. The change may have occurred for a number of reasons. The assessment of local improvement charges is a complicated procedure. So much so that many local improvements probably are not administered within the strict requirements of the various Acts. Their administration is also expensive and use of the general property tax base instead of frontage reduces administrative cost.

In addition, it is likely that inequities in the use of frontage, and changes in the nature of local improvements are responsible for the shift to property assessment as the basis for the division of cost. The frontage of a property is an arbitrary measure of benefit which cannot reflect the use of the land benefited. Property assessment does so to the extent that a multiple dwelling unit, for instance, may be assessed at a higher value than a single family house.

Since special assessments must now reflect varying degrees of benefit conferred by local improvements on individual properties or areas, it is difficult to recognize these variations when charges are divided on the frontage basis. The share of the cost borne by each property is intended to be proportional to the benefits received. And since benefits refer to the value added to properties by the provision of improvements, charges based on property assessment are more likely to reflect value added by improvements, whether direct or indirect, immediate or deferred, than charges levied on the basis of frontage.

One disadvantage of the property assessment base is that the value of individual properties may change before the improvement is paid for. This alters the relative share of costs attributable to each benefiting property. But in spite of this fault, division of the cost of local improvements on the basis of property assessment appears to have many advantages over the traditional criteria of frontage.