

4. Extension of facilities

Where it was not shown that town had an easement in private way into which petitioner sought to compel board of commissioners of water district to extend water main, this section regarding proceedings for water main was not applicable. 931 Fox St. v. Roos, 1947, 70 N.Y.S.2d 232.

A water district may not extend its mains outside the district for the purpose of serving outside consumers. 12 Op. State Compt. 87, 1956.

A town board of a town may extend a sewer lateral from a main sewer to connect to a proposed village lateral at the village line. 10 Op.State Compt. 118, 1954.

A town board may construct a lateral within a water district from the main water line to the district boundary to serve property along a new road and may permit connection thereto by a pipe line serving property outside the district. 8 Op.State Compt. 197, 1952.

5. Financing cost of construction

A town may construct an additional lateral water main to serve a new street within a water district, and the cost of such construction may be financed by the issuance of bonds or capital notes; or surplus moneys of the water district may be used, if the district is on an "ad valorem basis." 25 Op.State Compt. 193, 1969.

In a water district established on a "benefit" basis, the cost of a lateral constructed pursuant to this section may not be paid from surplus moneys of the district. 12 Op.State Compt. 398, 1956.

The town board may, upon a petition and after a public hearing, authorize the construction of lateral water mains to serve new streets within a water district and the cost may be financed pursuant to the provisions of the Local Finance Law. 12 Op.State Compt. 380, 1956.

A town board may not agree to refund to a developer the whole or a portion of the cost of a water system by payment

§ 200. Petition for street improvement and proceedings thereon

1. The owners of real estate fronting or abutting upon either side of a street or highway or private road or right of way used for access

over a period of years of a portion of the water rents collected in a water district or district extension. 12 Op.State Compt. 194, 1956.

Surplus moneys of a water district may be used to construct laterals within the district if the district is on the "ad valorem" or "area" basis, but not if the district is on the "benefit" basis. 12 Op. State Compt. 87, 1956.

The cost of improvements made pursuant to this section need not be financed by the issuance of obligations if moneys are available to pay the cost thereof. Op.State Compt. 97, 1950.

Surplus funds of a water district may be used to pay the cost of construction undertaken pursuant to section 202-b of this chapter or, if the district is on an "ad valorem" or "area" basis, the cost of construction undertaken pursuant to this section, however, if the district is on the "benefit" basis, the cost of construction undertaken pursuant to this section may not be paid from surplus district funds. 4 Op.State Compt. 236, 1948, 1st case.

6. Purchases from private parties

Where the town board, on behalf of a water district, purchases lateral water mains installed by a private developer, such purchase must be authorized by a proceeding pursuant to this section. 8 Op.State Compt. 303, 1952. See, also, 10 Op.State Compt. 309, 1954.

7. Gifts

A lateral water main within a water district should not be accepted as a gift by the town board without following the procedure as provided for in this section. 13 Op.State Compt. 17, 1957, 1st case.

8. Abandoned projects

Where proceedings for the constructions of laterals in a water district have progressed to the point where the construction is under way, the town board may not abandon the project, in the absence of factors of illegality or financial inability. 9 Op.State Compt. 144, 1953.

to said premises or to a portion thereof to the extent of at least one-half of the entire frontage or bounds on both sides of said street or highway or private road or right of way or portion thereof, may petition the town board or the town board on its own motion may adopt a resolution to improve said street or highway, private road or right of way or portion thereof, by the construction of sidewalks, curbs, gutters, culverts, and other necessary improvements in connection therewith, or by construction and paving of such street or highway or private road, or right of way or portion thereof; but such curbs, gutters, culverts and other necessary improvements shall not be constructed under authority of this section unless a pavement has been constructed prior thereto or is to be constructed at the same time upon said street, highway, private road, right of way or portion thereof.

2. If the proposed improvement will serve the property on only one side of a street, highway, private road or right of way, or portion thereof, the petition for such improvement shall be signed by the owners of real property fronting or abutting upon the side to be served of said street, highway, private road or right of way to the extent of at least one-half of the entire frontage on such side of said street, highway, private road or right of way, or portion thereof.

3. Streets or highways which may be improved pursuant to this section shall include the portion of any state highway or county road which lies within the town. No state highway shall be improved pursuant to this section until the commissioner of transportation shall consent thereto and approve the plans and specifications which shall be prepared therefor as hereinafter provided. No county road shall be improved pursuant to this section until the county superintendent of highways shall consent thereto and approve the plans and specifications which shall be prepared therefor as hereinafter provided.

4. Before any such street, highway, private road or right of way or portion thereof other than a state highway or a county road shall be improved pursuant to this section, the town board shall cause it to be surveyed, and the lines and grades thereof to be established and such survey and a profile of the grade shall be filed in the town clerk's office.

5. But if there be any resident owners, no petition for improvements shall be of any force or effect, nor shall such petition be acted upon by said board unless thereon appear the signatures of resident owners owning not less than one-half of the frontage owned by resident owners residing in or along the street or highway or private road, right of way or part of street or highway or private road or

right of way covered or represented by such petition; provided, however, that if such petition shall have thereon the signatures of owners of real estate fronting or abutting upon either side of the street or highway or private road, right of way or portion of street, highway or private road or right of way covered or represented by such petition to the extent of at least eighty per centum of the entire frontage or bounds, then the foregoing requirements as to signatures of resident owners shall not apply thereto.

6. Such petition for improvements shall be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions, and shall state the maximum amount proposed to be expended for the improvement. The resolution adopted pursuant to subdivision one of this section shall state the improvement proposed, the maximum amount proposed to be expended and the area benefited.

7. When a petition for improvement containing the required signatures shall have been presented or a resolution adopted by the town board on its own motion, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petition or adoption of such resolution as the case may be, the improvement proposed, the maximum amount proposed to be expended for the improvement and the area benefited as stated in the petition or the resolution, and specifying the time when and the place where said board will meet to consider the petition or resolution and to hear all persons interested in the subject thereof concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision six of section thirty of this chapter and conspicuously in five public places along the street or highway or private road or right of way or portion thereof to be improved not less than ten nor more than twenty days before the day designated for the hearing as aforesaid.

8. If the town board shall determine after such hearing and upon the evidence given thereat, that it is in the public interest to make the improvement, the board shall direct the engineer to prepare definite plans and specifications and to make a careful estimate of the expense, and with the assistance of the town attorney or an attorney employed for that purpose, to prepare a proposed contract for the execution of the work. Thereupon the said board shall examine such

definite plans, specifications, estimate and the proposed contract, and may reject the same or make such modifications and changes therein as shall seem necessary and desirable.

9. If the estimate of the cost of the improvement as prepared by said engineer exceeds the maximum amount proposed to be expended for said improvement, the town board shall adopt an order calling a further public hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. A notice of such further hearing shall be published and posted in the manner hereinabove in this section provided and there shall be included in such notice a statement that the improvement cannot be constructed within the maximum amount proposed to be expended, the cost of said improvement as estimated by the engineer, a brief description of the improvement and the place and time at which the town board will conduct such further hearing. A copy of such notice shall also be sent by regular mail to the last known address of each person who has signed the petition, but failure to receive said notice shall in no way affect the validity of any proceedings hereunder. Such further hearing shall be conducted in the same manner as the original hearing upon the petition or resolution.

10. If after such further hearing said board shall determine that it is in the public interest to construct said improvement within the cost estimated by the engineer it shall adopt a resolution providing for such definite plans, specifications, estimate and the proposed contract and cause the improvement to be constructed all in the same manner as hereinbefore in this chapter provided for the construction of trunk sewers, drains and water systems. Where necessary, provision shall be made in such resolution for acceptance of any outstanding offer of dedication of such street, highway, private road or right of way. In any case where such public hearings were held as a result of the adoption of a resolution by the town board in lieu of taking action pursuant to petition, the resolution provided in this subdivision shall be subject to a permissive referendum in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of real property situate in the proposed benefited area described in the resolution as shown upon the latest completed assessment roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if it is initiated and signed, and acknowledged or proved, or authenticated in the same manner as a petition for improvements pursuant to this section.

11. Where such petition or resolution is for the construction of sidewalks, curbs, gutters, culverts and other necessary underground

works in connection therewith along different streets or highways, private roads or rights of way or portions of streets or highways, private roads or rights of way, such construction of streets, highways or private roads or rights of way or portions thereof shall be deemed one continuous street or highway or private road or right of way for the purposes of this section.

12. Where the petition or resolution seeks the improvement of such a street or highway or private road or right of way not previously dedicated, the amount to be expended for the improvement shall include the cost of the proceeding to acquire so much land as may be necessary to lay out such highway and the cost of the plan and the town board shall in making its determination authorize and direct the town superintendent of highways to take and complete condemnation proceedings pursuant to the applicable provisions of law and the town superintendent shall take and complete such proceedings before such determination shall become final.

13. Any such street or highway or private road or right of way not previously dedicated shall not be less than three rods in width provided however, that upon certification in writing by the commissioner of transportation, of the necessity therefor and the filing of such certification in the office of the town clerk of such town, any such highway may be of such width less than three rods as the commissioner shall specify in such certificate.

14. Any street or highway or private road or right of way improved or laid out under this section shall after such improvement is constructed, be maintained as a public highway under the applicable provisions of law and not as a charge against such real property anything in this article to the contrary notwithstanding.

(L.1932, c. 634; amended L.1939, c. 589, § 3; L.1941, c. 263, § 14; L.1945, c. 566, § 3; L.1952, c. 658; L.1953, c. 606; L.1955, c. 471; L.1963, c. 420, § 9; L.1963, c. 706; L.1965, c. 855; L.1966, c. 935, §§ 1, 2; L.1968, c. 420, §§ 304, 305; L.2000, c. 37, § 23, eff. Sept. 1, 2000.)

Legislative Histories

L.2000, c. 37: For Legislative, Executive or Judicial memorandum relating to the law, see McKinney's 2000 Session Laws of New York, p. 1481.

Cross References

Apportionment and payment of state money for highway, see Highway Law § 26.
Establishment or extension of improvement districts, petition for, see Town Law § 191.
Improvement of highways in certain towns, see McK. Unconsol. Laws § 3011 et seq.

Library References

Municipal Corporations § 292(1).
Towns § 12, 26.
C.J.S. Municipal Corporations § 973.
C.J.S. Towns §§ 2, 82 to 93.
In a caselaw database, run TO(268) or 268k[add key number] to retrieve cases related to Municipal Corporations.
In a caselaw database, run TO(381) or 381k[add key number] to retrieve cases related to Towns.

Research References

Encyclopedias

NY Jur., 2d, Acknowledgments § 2, Purpose and nature.
NY Jur., 2d, Acknowledgments § 4, Other instruments.
NY Jur., 2d, Highways, Streets, and Bridges § 97, Work on town highway.
NY Jur., 2d, Highways, Streets, and Bridges § 119, Sidewalks and streets in towns.
NY Jur., 2d, Highways, Streets, and Bridges § 144, Curbs, shoulders, guardrails, and retaining walls.
NY Jur., 2d, Highways, Streets, and Bridges § 145, Drains, ditches, and sewers.
NY Jur., 2d, Highways, Streets, and Bridges § 172, Generally.
NY Jur., 2d, Public Securities § 30, Down payment.
NY Jur., 2d, Public Securities § 45, Cities, towns, and villages.
NY Jur., 2d, Taxation and Assessment § 786, Ownership of land.
NY Jur., 2d, Taxation and Assessment § 897, Lands erroneously believed to be exempt.
NY Jur., 2d, Taxation and Assessment § 899, Maps, plans, and specifications of improvement.

Forms

McKinney's Forms, Local Gov't, Town Law § 200 Form 1, Petition for Construction of Street Improvement.
McKinney's Forms, Local Gov't, Town Law § 200 Form 3, Resolution Approving Construction of Street Improvement and Directing Town Engineer to Prepare Plans, Specifications, Estimate and Proposed Contract.
McKinney's Forms, Local Gov't, Town Law § 200 Form 4, Resolution Adopting Plans, Specifications, Estimate and Proposed Contract for Construction of Street Improvement Where Engineer's Estimated Cost Does Not Exceed Maximum Amount Stated in Petition.
McKinney's Forms, Local Gov't, Town Law § 200 Form 7, Resolution Adopting Plans, Specifications, Estimate and Proposed Contract for Construction of Street Improvement After Further Hearing Where Engineer's Estimated Cost Exceeds Maximum Amount Stated.

Notes of Decisions

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1. Construction with other laws

Although construction of second phase of industrial access road should have been authorized pursuant to Highway Law, rather than Town Law, defense of laches was applicable in Article 78 proceedings with respect to that part of road already completed, where nearby property owner had actual knowledge of town board's intent to construct second phase and to finance it as special assessment against landowner's property. *Harriman Woods Associates v. Town of Monroe* (3 Dept. 1990) 168 A.D.2d 781, 563 N.Y.S.2d 931. Highways ⇨ 101

2. Improvements, generally

Pursuant to this section, the town board is invested with authority to complete construction of roads on a subdivision upon which work, some six years ago, had been terminated due to the bankruptcy of the original developer and the cost would be assessed against properties abutting the highway. Op.State Compt. 82-114.

Paving and other improvements of town highways and streets may be performed pursuant to this section. 23 Op. State Compt. 407, 1967.

This section authorizes construction of sidewalks, pavement, curbs, culverts and similar improvements but does not authorize ditching, widening and crowding a highway. 11 Op.State Compt. 553, 1955.

3. Streets or highways, generally

Street and highway improvements authorized by this section can only be made on public streets and highways. 15 Op. State Compt. 314, 1959.

Streets do not "exist" in the sense that they may be improved under this section where they merely are shown on subdivision map and on official map of town, but must be actually laid out and opened before such improvements may be made. 9 Op.State Compt. 227, 1953.

4. Petition

Corner parcels having access to a public street must be considered in determining

the sufficiency of signatures on a petition for improvement of a private street. 23 Op.State Compt. 915, 1967.

5. Benefit to property

Where a town improves a street, owners of homes whose back yards abut such street, but whose front yards do not, and have access to a dedicated sidewalk, must pay their apportioned share of the special assessment, but such facts should be considered in determining the amount of benefit conferred upon such property by the improvement. 32 Op.State Compt. 85, 1976.

While a town board may construct a sidewalk along an existing highway, the petition of owners of real property fronting or abutting the same, it cannot make a determination that the property not fronting or abutting the highway is also benefited thereby, simply because that property's occupants also may use the sidewalk; but the town board may establish a sidewalk district and determine what property is benefited thereby. 24 Op.State Compt. 900, 1968.

There is no authority for a town board to make a determination that certain land is benefited by the improvement of a road leading to a school merely because land constitutes the area served by the school. 22 Op.State Compt. 677, 1966.

6. Assessment of cost

The expense of improving a private road, including acquisition of a three-foot road easement, has to be paid by abutting owners. 1975, Op.Atty.Gen. (Inf.) 166. See, also, 31 Op.State Compt. 22, 1973.

A town may not create a highway district as such, but it may improve a road and assess the cost to abutting owners under the conditions set forth in this section. 34 Op.State Compt. 172, 1978.

Where a town has title to land for highway purposes, the expense of making general highway improvements is a town expense and is not to be charged back upon the adjoining property owners, except where such improvements have been made in accordance with the provisions of this section. 23 Op.State Compt. 537, 1967.

The funds for road improvements performed pursuant to this section must be

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raised by means of a benefit assessment. 23 Op.State Compt. 407, 1967.

7. Abandoned projects

Where a petition requesting construction of certain street improvements has been filed, a public hearing has been held and the town board has adopted a resolution approving the construction of such improvements, it may nevertheless rescind the resolution and thus abandon the project. 11 Op.State Compt. 654, 1955.

8. Dedication and acceptance of streets

It is within the discretion of the town superintendent and town board to accept the dedication of a private road. Op. State Compt. 79-663.

A town may not condition its acceptance of an offer to dedicate land for a town highway upon the agreement of property owners to petition for improvements pursuant to this section. 11 Op. State Compt. 553, 1955.

9. Referendum

There is no permissive referendum requirement where street improvement

proceedings have been initiated by petition. Op.State Compt. 81-353.

Any corporation, which is an owner of real property fronting or abutting a street to be improved, may petition for a referendum on such improvement, although such corporation is not entitled to vote. 24 Op.State Compt. 459, 1968.

A bond resolution for street and highway improvements under this section is not subject to referendum. 5 Op.State Compt. 258, 1949.

10. Right of way

Subdivision 12 of this section provides that a right of way must be obtained by a town before the determination to improve the private road shall become final. 1975, Op.Atty.Gen. (Inf.) 160.

11. Town employees

Where a town approves plans and specifications pursuant to a petition for street improvements, it may use its own employees to perform the required work for such improvements. 1963 Op.Atty.Gen. (Inf.) 200.

§ 200-a. Construction and repair of sidewalks pursuant to order of town board

Whenever the town board shall have adopted an ordinance, rule or regulation pursuant to the provisions of article nine of this chapter, describing how sidewalks shall be built in such town, the town board may adopt orders from time to time, directing the owners of the respective lots and parcels of land abutting on any street, or, in towns of the first class, with the consent of the county superintendent of highways or the state commissioner of transportation, as the case may be, abutting on a county or state highway within the town, along which it is desired that sidewalks be built, relaid or repaired, to construct the same to conform with such ordinance, rule or regulation, and specify the time within which the same shall be done. The town clerk shall give notice thereof by certified mail addressed to each such owner at his address as it appears upon the assessment roll of such town or, in the alternative, by publication of a notice thereof in the official paper at least twice, the first publication of which shall be at least fifteen days before the time specified for the completion of the work. If, within the time prescribed in the order and notice, the sidewalks required to be built, relaid or repaired shall not have been so built, relaid or repaired, then the board may cause