

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Application of
ROBERT B. BERNSTEIN

Petitioner,

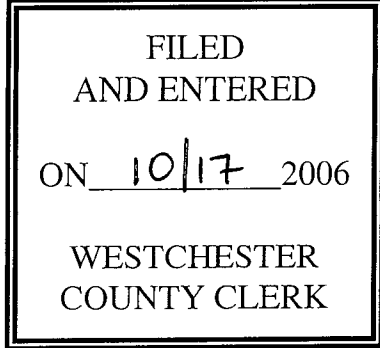
For the Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

-against-

PAUL FEINER, as Town Supervisor,
Town of Greenburgh, New York and
THE TOWN OF GREENBURGH,

Respondents,

-----X
CACACE, J.



Decision & Order
Index No.: 6807-06

This is a proceeding pursuant to Article 78 of the Civil Practice Law and Rules wherein petitioner seeks a judgment declaring the actions of the respondents adopting a budget that levies taxes only on assessable lands in the unincorporated part of the Town for costs of acquiring and maintaining parks to be in violation of state law and enjoining the respondents from continuing to levy taxes in accordance with this procedure.

The petitioner is a resident in the unincorporated area of Edgemont in the Town of Greenburgh. In December, 2005, the Town of Greenburgh adopted a budget for 2006 which provided for the expenses for the parks, playgrounds and recreational facilities of the town to be paid from the taxes levied from the lands in the unincorporated portions of the town.

The petitioner initiated this proceeding pursuant to Article 78 of the Civil Practice Law and Rules seeking to enjoin the town from enacting this budget. The petitioner argues that this action violates §§ 220 and 232 of the New York State Town law.

By Order to Show Cause dated May 16, 2006, Mayors of the Villages of Ardsley, Dobbs Ferry, Elmsford, Hastings on the Hudson, Irvington and Tarrytown, all villages within the town of Greenburgh, moved for an order permitting intervention as parties in this proceeding.

By a decision and order of this court dated August 11, 2006, filed and entered August 14, 2006, the application for permission to intervene was denied. The mayors now move to reargue.

CPLR § 2221(d) provides that a motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.

The Court has reviewed the original motion papers as well as those submitted in connection with this motion to reargue and the Court is not persuaded that any matter of fact or law was overlooked or misapprehended. All of the arguments which were advanced in the motion were set forth in the original motion and considered by the Court in the original decision.

The motion to reargue is denied.

The Court considered the following papers in connection with this application: (1) Notice of Petition with Petition verified April 18, 2006 with attached exhibits; (2) Order to Show Cause dated May 16, 2006 with attached affidavits in support and exhibits; (3) Affirmation in Opposition of petitioner dated May 25, 2006 with attached exhibits;(3) Respondents' Affirmation in Response dated May 25, 2006 with attached exhibits;(4) Reply Affirmation in support of motion to intervene dated May 30, 2006 with attached exhibits; (5) Order to Show Cause dated August 28, 2006 to reargue motion to intervene; (6)

Petitioner's memorandum of law in opposition to motion to reargue dated September 11, 2006; and (7) Proposed Interveners' memorandum of law in support of motion dated September 15, 2006.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
October 17, 2006



HON. SUSAN CACACE

ROBERT B. BERNSTEIN, ESQ.
Petitioner, Pro Se
48 Old Colony Road
Hartsdale, New York 10530

TIMOTHY W. LEWIS
Town Attorney for the Town of Greenburgh
Attorneys for the Respondents
177 Hillside Avenue
Greenburgh, New York 10607

KEANE & BEANE, P.C.
Attorneys for the proposed interveners
445 Hamilton Avenue
15th floor
White Plains, New York 10601
By: Richard L. O'Rourke, Esq.

Donna Minort
Chief Clerk
Westchester County