To be Argued by:
MEGAN K. DORRITIE
(Time Requested: 10 Minutes)

APL-2019-00195
Appellate Division Docket No. CA 18-01448
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Court of Appeals

of the

State of New York

In the Matter of
TOWN OF IRONDEQUOIT and TOWN OF BRIGHTON,

Petitioners-Plaintiffs-Appellants,

– against –

COUNTY OF MONROE, TIMOTHY P. MURPHY, as Director of REAL PROPERTY TAX SERVICE FOR COUNTY OF MONROE, and ROBERT FRANKLIN, Director of Finance and Chief Financial Officer of COUNTY OF MONROE,

Respondents-Defendants-Respondents.

BRIEF FOR PETITIONER-PLAINTIFF-APPELLANT TOWN OF IRONDEQUOIT

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1. Were the trial court and the Appellate Division's two-Justice dissent correct in determining that the Town Law, Real Property Tax Law, Municipal Home Rule Law, Monroe County Tax Act, and Irondequoit and Brighton Town Codes authorize and permit maintenance, repair, and demolition charges to be imposed in the same manner as property taxes and special ad valorem levies?

Answer: Yes.

2. Does Real Property Tax Law § 936 require counties to guarantee and credit the maintenance, repair, and demolition charges that towns are authorized to impose in the same manner as taxes and special ad valorem levies against real property?

Answer: Yes.

3. Assuming, arguendo, that maintenance, repair, and demolition charges that towns are authorized to impose are appropriately classified as "special assessments" under Real Property Tax Law § 102 (15), was the Appellate Division's two-Justice dissent correct that such charges are still to be treated as taxes for purposes of property tax collection?

Answer: Yes.

PRELIMINARY STATEMENT

New York State towns are responsible for protecting the public health, safety, and general welfare of their residents. Well-maintained properties are important to residents' quality of life, safety, economic viability, and property values. As noted by Governor Cuomo, "[f]or many New Yorkers, homes are our single most important investment, but that investment can be undermined by the blight of neglected and abandoned properties." (R. 33 ¶ 1.)

Towns are statutorily authorized to prevent and minimize blight and loss of quality of life associated with vacant and unsafe buildings, as well as to prevent unhealthful, hazardous, and/or dangerous conditions. (R. 34 ¶ 2.) Indeed, the New York State Legislature has enacted laws allowing towns to perform property maintenance *if* a landowner fails to do so; and, to repair and secure or demolish and remove unsafe buildings *if* a property owner fails to act.

When towns incur charges for property maintenance and/or demolition, they are authorized to assess and levy such charges against the real property on which the towns performed the services. These charges are assessed as town taxes. These taxes are authorized by provisions of the Town Law, Municipal Home Rule Law, and Real Property Tax Law. (R. 34 ¶ 4.)

New York's statutory scheme requires all counties to guarantee and credit towns for unpaid delinquent town charges and taxes. In exchange, New York law

allows counties—but not towns—to foreclose on delinquent tax liens. In addition to the right to foreclose, counties are authorized to charge interest and retain all proceeds recovered, including proceeds in excess of the taxes owed. (R. 34 ¶ 5.)

After years of operating under this established system, in February of 2017, the County of Monroe issued a "Tax Memo" declaring that it would no longer guarantee the collection of demolition and property maintenance fees assessed against real property and asserting for the first time that these charges are "special assessments" not "taxes." (R. 35 ¶ 6.) This position ignores the plain language of the Real Property Tax Law, the Town Law, the Municipal Home Rule Law, the Monroe County Code, the Irondequoit Town Code, and the Brighton Town Code. The Tax Memo also ignores 80 years of instructive New York State administrative determinations and court precedent.

In response to the Tax Memo, the Towns of Irondequoit and Brighton (the "Towns") timely commenced a hybrid article 78 declaratory judgment action against the County, Timothy Murphy, as Director of Real Property Tax Service for County of Monroe, and Robert Franklin, as Director of Finance and Chief Financial Officer of County of Monroe (hereinafter, collectively "the County") challenging the legality of the Tax Memo. (R. 33-53.)

Based on the statutory language and established legal authority contradicting the County's new policy, the trial court annulled the Tax Memo in its entirety and

ruled that the County must adhere to its statutory obligations and guarantee all maintenance and demolition charges as taxes. (R. 7-26.) The County appealed.

A three-Justice majority of the Appellate Division, Fourth Department (Centra, J.P., Peradotto, and Carni, JJ.), reversed the judgment, on the law; granted the County's motion to dismiss; and dismissed the Towns' Petition-Complaint. The majority held that the maintenance and demolition charges are not "taxes" for the purpose of Real Property Tax Law § 936 and, thus, the County is not legally obligated to guarantee and credit those charges.

Two Justices (NeMoyer and Troutman, JJ.) dissented from that decision, concluding instead that, when a town exercises its statutory authority to assess maintenance, repair, and demolition charges against real property, such charges must be guaranteed by the County in the same manner as property taxes and special ad valorem levies. The dissent explained that, even if such charges are classified as "special assessments" instead of taxes or special ad valorem levies, the well-established statutory scheme continues to require that those charges be treated as taxes for purposes of property tax collection and be guaranteed by the County. The dissent poignantly observed that this "has been the law in this State for decades."

Because the Appellate Division's Memorandum & Order is a final determination with a two-Justice dissent on a question of law, the Towns timely commenced this appeal of right pursuant to CPLR 5601 (a).

This Court should reverse the Appellate Division order on the law. The Appellate Division majority's holding defies the plain language of the relevant statutes and, if left to stand, will essentially prohibit towns from recouping their costs for engaging in statutorily authorized activities aimed at blight and its associated perils throughout this State. That holding is inconsistent with the State's statutory scheme, administrative determinations and court precedent, and 80 years of practice.

STATEMENT OF FACTS

Statutory Background

Through Town Law §§ 64 (5-a) and 130 (16) and Municipal Home Rule Law, the New York State Legislature authorizes all towns to impose property clean-up and demolition charges against the real property on which the work is performed.

Relying on these statutory provisions, the Town of Irondequoit ("Irondequoit") adopted its own local code provisions that authorize Irondequoit to impose property clean-up and demolition charges against the real property on which Irondequoit performs the work. (R. 40 ¶ 35.)

Irondequoit imposes such charges at an open meeting pursuant to the procedures required by its local law. (R. 43 ¶ 47.) Other towns, including the Town of Brighton ("Brighton"), enacted similar local code provisions based on the same statutes (R. 41-42 ¶¶ 38-39, 44-45; *see also* R. 284 ¶ 24 [setting forth the code provisions for the towns of Greece, Henrietta, and Perinton, all within the County of Monroe, that similarly authorize the assessment of property clean-up and demolition costs as charges against real property].)

Real Property Tax Law ("RPTL") § 936 and the Monroe County Tax Act § 10 both require the County to guarantee and credit the Towns for unpaid charges assessed against real property for municipal purposes. (R. 40 ¶ 33; R. 43 ¶ 48.) This scheme—where towns are responsible for combatting blight by doing maintenance and demolition and then imposing necessary charges and counties guarantee those charges—is logical given that counties, not the towns, are authorized to foreclose on taxed property for unpaid taxes.

The Tax Bill Charges Memo

Nonetheless, on December 30, 2016, Timothy P. Murphy, the Director of Real Property Services for the County, issued a Tax Bill Charges Memo (the "Tax Memo"), stating that the County would no longer guarantee or credit unpaid fees and "non-tax" charges, including property maintenance and demolition charges, to local municipalities. (R. 37 ¶ 22.) The Tax Memo explains that "[d]uring the

County's tax collection period, if such fees and non-tax charges are collected by the County, they will be forwarded to the Town. If[,] however, such fees and non-tax charges remain uncollected by August 20th, those uncollected fees and non-tax charges will be cancelled from the tax bill and excluded from the tax lien on the property." (R. 57.) The Tax Memo then states that, to the extent the Towns or other municipalities owe the County money for fees and non-tax charges that remain uncollected, the County will deduct such amounts from the November sales tax distribution. (*see id*.)

In the Tax Memo, the County acknowledged that "New York Real Property Tax Law requires Monroe County to guarantee the collection of town . . . property taxes and authorized user fees." (R. 56.) Despite this, the County concluded that it could not "legally re-levy as a County tax certain unpaid fees and charges," including property maintenance and demolition charges. (*Id*.)

Irondequoit sent a demand letter to the County Attorney, Michael E. Davis, Esq., challenging the Tax Memo (the "Demand Letter"). (R. 59-63.) The Demand Letter pointed out that the County's analysis regarding demolition/clean-up fees was wrong, and, thus, the Town expected its "property maintenance and demolition charges to be guaranteed by Monroe County as has been done in years past." (R. 59.) The Demand Letter cited the controlling requirements of the RPTL and the opinions of various New York State agencies in support of Irondequoit's

position. (R. 59-63.) The Demand Letter also explained that the County is not authorized "to withhold money from the quarterly sales tax allocations [the County] is required to pay the Town." (R. 62.)

On February 23, 2017, the County's Department of Law issued a legal opinion letter purportedly to address the concerns raised by Irondequoit (the "Legal Opinion Letter"). (R. 139-140.) The Legal Opinion Letter, without citing any further legal authority, stated that the County is not required to guarantee payment of Irondequoit's "property specific demolition and clean-up charges" and "there is no legal basis for it to do so." (R. 139.) As part of the County's rationale, the County Attorney explained that some nearby counties had taken the same position. (*See id*.) The County Attorney also claimed that the "amounts towns and villages have added to tax bills for demolition and clean-up charges have grown dramatically," and "[t]here appears to be no limit to the amount that a town or village can or will add to tax bills for property specific user charges." (*Id.* at 140.) The Legal Opinion Letter did not address any of the legal authorities cited by Irondequoit in the Demand Letter.

Given the County's intractable commitment to an erroneous interpretation of the relevant legal authorities, the Towns were left with no choice but to file this lawsuit.

PROCEDURAL HISTORY

The Petition

The Towns initiated this lawsuit on April 27, 2017. (R. 28-29.) In the joint Verified Petition and Complaint for a declaratory judgment, the Towns requested a judgment pursuant to CPLR article 78 and CPLR 3001:

1. Annulling the County's determination in the Tax Memo that the County will no longer guarantee and credit "fees and non-tax charges" for property maintenance and demolition charges assessed by the Towns as taxes against real property;

2. compelling the County, in accordance with RPTL 936 and Monroe County Code, ch 673, § 10, to guarantee, and credit, the Towns for assessed but unpaid taxes incurred by the Towns for property maintenance and demolition charges;

3. declaring that, pursuant to RPTL 936 and Monroe County Code, ch 673, § 10, the County is required to guarantee, and credit, the Towns for assessed but unpaid property maintenance and demolition charges;

4. enjoining the County, pursuant to CPLR 7806, from deducting any amounts of money allegedly owed to them by the Towns for credits given by the County for unpaid delinquent Town taxes from the November, or any future, sales tax distribution; and

5. granting such other and further relief as the court deems just, equitable, and proper, together with the costs of this proceeding.

The County filed a verified answer on May 12, 2017. (R. 152-155.)

The Motion to Dismiss

On June 26, 2017, the County moved to dismiss the Verified Petition and Complaint under CPLR 3211 (a) (7) and 7804 (f) for failure to state a cause of action. (R. 156-157.) In support, the County submitted the affidavit of Robert Franklin (R. 159-166), and the affidavit of Timothy P. Murphy. (R. 277-279.)

In opposition, Irondequoit submitted the affidavit of David Seeley, the Town Supervisor for the Town of Irondequoit (R. 280-287), and the affirmation of Edward F. Premo, II, Esq. (R. 334-335.)

Supreme Court's Decision, Order, and Judgment

By Decision, Order, and Judgment, dated November 3, 2017, Supreme Court, Monroe County (Odorisi, J.), denied the County's motion to dismiss and granted the Verified Petition and Complaint. (R. 7-26.) The trial court ordered the following relief:

- "[The County's] Tax Memo determination is annulled;
- [The County is] compelled to guaranty and credit the maintenance, repair, and demolition charges;
- It is judicially decreed that [the County is] legally obligated to guaranty and credit the maintenance, repair, and demolition charges; and,
- [The County is] restrained from decreasing the November sales tax distribution to Plaintiffs, or any other town in the County that has implemented the [Town Law] and [Municipal Home Rule Law] in their Codes."

(R. 26.)

In its decision, the trial court observed that towns incur property maintenance, repair, and demolition charges in the exercise of their police powers to ensure the public health and safety. (R. 8.) The court acknowledged Governor Andrew Cuomo's comments on recently-enacted legislation designed to curb the threats posed to entire communities by "zombie properties," asking State and local governments to act to save "entire neighborhoods" from the "corrosive effect of blight and neglect." (R. 8-9.) The trial court aptly noted that only five months after this legislation went into effect, the County issued the Tax Memo. (R. 9.)

On the merits,[1] the trial court held "that [the Towns] have a legally valid basis to demand and receive the guaranty and credit of the subject charges which qualify as taxes." (R. 18.) Specifically, the trial court interpreted the Town Law, RPTL, Municipal Home Rule Law, the County's Tax Act, and the Towns' Codes all to "permit the maintenance, repair, and demolition charges to be levied as taxes against the real property, for which the County is responsible for collecting, guaranteeing, and crediting." (R. 22.)

The trial court rejected the County's contention that it could simply choose not to guarantee and credit the collection of maintenance, repair, and demolition

[1] Prior to deciding the merits, the trial court determined that, despite being at the motion to dismiss stage, "[t]he case at hand is essentially one of statutory construction," and "[t]herefore, and having been provided with the very well briefed legal positions and legal authorities, the Court will decide the merits without aid of further documentation." (R. 14.) The County has never challenged the trial court's decision to rule on the merits or that this is a case of statutory construction. (County's App. Br. p. 9.)

charges, and found that the Tax Memo was "precariously perched upon an error of law." (R. 22.) The trial court also rejected the County's "'special assessment' classification" as "erroneous given the town-wide public welfare impact, [] the lack of special district, and [] the Monroe County Tax Act § 9 (1) which requires its tax warrants to include 'moneys to defray any other town expenses or charges.'" (R. 22-23 [internal citation omitted].)

Accordingly, the trial court denied the County's motion to dismiss and awarded the Towns the "full panoply of their demanded relief." (R. 25.) The County appealed. (R. 4-5.)

The Appellate Division's Memorandum & Order

A divided Appellate Division, Fourth Department (Centra, J.P., Peradotto, Carni, NeMoyer, and Troutman, JJ.), reversed the judgment, on the law without costs; granted the County's motion to dismiss; and dismissed the Towns' Petition-Complaint (*see Matter of Town of Irondequoit v County of Monroe*, 175 AD3d 846 [4th Dept 2019]). As an initial matter, the Justices all agreed that this lawsuit should be deemed only a CPLR article 78 proceeding "inasmuch as the relief sought by the Town[s] is available under CPLR article 78 without the necessity of a declaration" (175 AD3d at 847).[2]

[2] In this appeal, Irondequoit challenges the Appellate Division's determination that this proceeding should be deemed only an article 78 proceeding, rather than a hybrid article 78/declaratory judgment action, where the Towns requested declaratory relief that does not fall

Turning to the dispositive statutory interpretation issue, the three-Justice majority (Centra, J.P., Peradotto, and Carni, JJ.) held that that the Towns' maintenance and demolition charges are not "taxes" for the purpose of RPTL 936 and, thus, the County is not legally obligated to guarantee and credit those charges (*Id.* at 848). Recognizing that RPTL 936 (1) provides that the County must guarantee the Towns' "taxes" by crediting the Towns' "with the amount of . . . unpaid delinquent taxes," the majority outlined three general categories of town charges, each of which has its own tax implications under RPTL 936: taxes, special ad valorem levies, and special assessments (*see id.*).

According to the majority, the Towns' maintenance and demolition charges did not "fall within the general definition of 'tax'" under RPTL 936 because they "are assessed against individual properties for their benefit" (*Id*.) Next, the majority concluded that the Towns' maintenance and demolition charges are not special ad valorem levies (which, in certain circumstances, are also defined as "taxes" under the RPTL) because the charges are not being "used to defray the cost of a 'special district improvement or service'" (*Id.*, quoting RPTL 102 [14]).

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under the strictures of CPLR 7803. (R. 29 ¶ 3.) Nevertheless, even if this Court holds that this is an article 78 proceeding, there is no concern about the timeliness of this proceeding where it is undisputed that the County's determination outlined in the Tax Memo became final within the meaning of the CPLR within four months of the commencement of this lawsuit. (R. 37 ¶ 18.)

In addition, the Justices all agreed that the County failed to "preserve [its] constitutional challenge to the local laws of the Town[s] inasmuch as [the County] failed to raise that challenge in Supreme Court" (175 AD3d at 847). The County has not cross-appealed to challenge that determination and, accordingly, that issue is not before this Court.

Turning to the last category—special assessments—although the majority again declined to outright define the charges, it wrote "assuming, arguendo, that the charges are 'special assessments' . . . the definition of 'tax' specifically excludes 'special assessments'" (*Id.*, quoting RPTL 102 [20]). The majority never actually determined the specific nature of the charges, but only summarily concluded that the charges do not fall within any of the three above-mentioned categories.

Although silent on the basis and legislative background for the Towns' zombie property laws, the majority then went on, without precedential support or substantive explanation, to reject the Towns' additional argument that, under plain readings of the Monroe County Tax Act, Municipal Home Rule Law, and the Irondequoit Town Code, the subject maintenance and demolition charges are properly classified as "taxes" under RPTL 936 (*see id.*).

In a thorough dissenting opinion that included an "overview of New York State's property tax collection scheme" (*Id.* at 849), Justices NeMoyer and Troutman disagreed with the majority and concluded that the County is statutorily required to guarantee and credit the maintenance and demolition charges properly assessed by the Towns (*see id.*). According to the dissent, the essential legal question is whether "the definition of 'delinquent taxes'" under RPTL 936 (1) "encompasses maintenance, repair, and demolition charges assessed by a town against real property" (*Id.*). Although the dissent noted that the subject charges

"are, strictly speaking, not taxes" and should be classified as "special assessments," the dissent recognized that "[t]he RPTL . . . expressly contemplates that special assessments, under some circumstances, are to be treated as taxes for purposes of property tax collection" (*Id.*).

Essential to the dissent's analysis was the fact that the term "'delinquent tax,' when used in article 11 of the RPTL, entitled 'Procedures for Enforcement of Collection of Delinquent Taxes,' includes an unpaid *'special assessment* or other charge imposed upon real property by or on behalf of a municipal corporation . . . relating to any parcel which is included in the return of *unpaid delinquent taxes* prepared pursuant to [RPTL 936]" (*Id.* at 850, quoting RPTL 1102 [2] [emphasis added]). Moreover, the dissent explained:

> [S]pecial assessments may be used to finance public improvements (*see* Town Law § 231 *et seq.*) and, if the town is unable to collect such assessments, the tax roll listing the unpaid assessments is then transmitted to the county "*and collection thereof shall be enforced in the manner provided by law for the collection of unpaid town taxes*" (§ 243). Likewise, maintenance, repair, and demolition charges are to be 'collected in the same manner, and at the same time as other town charges' (§ 65 [5-a]). Indeed, counsel for the State Board of Equalization and Assessment, citing the same provisions, opined long ago that maintenance, repair, and demolition charges assessed by the town against real property are '*in the same nature' as taxes*, and thus they are guaranteed by the county pursuant to RPTL 936 (9 Op Counsel SBEA No. 55 [1990]). *That has been the law in this State for decades.*

(*Id.* [emphasis added]).[3]

The dissent forewarned that "[i]f the rule proposed by the majority were to stand, towns would almost never be able to recoup their costs for maintaining, repairing, or demolishing blighted properties" (*Id.*). Indeed, "in practice, towns would lack the ability to enforce the liens or collect the charges from defaulting owners, forcing the towns to accept the deficiency" (*Id.*). The dissent ultimately opined that "such a rule is not consistent with the statutory scheme, nor is it consistent with historical practices, nor is it good policy" (*Id.*).

Pursuant to CPLR 5601 (a), the Towns timely filed their Notice of Appeal and Preliminary Appeal Statement. On October 1, 2019, this Court directed the appeal to proceed in the normal course of briefing and argument.

ARGUMENT

I. STANDARD OF REVIEW

In an article 78 proceeding, a court may decide whether the determination of a body or officer challenged therein was "affected by an error of law" (CPLR 7803 [3]). When a determination is affected by an error of law, the appropriate remedy is to annul the determination (*see e.g. Pace Univ. v New York City Comm'n on Human Rights*, 85 NY2d 125, 130 [1995]).

[3] The Towns cited to 9 Op Counsel SBEA No. 55 (1990) in support of their Petition-Complaint and included that administrative authority as an exhibit. (R. 72-74.)

As the courts below recognized and the parties agree, the question before this Court is one of statutory interpretation: When a town exercises its statutory authority to assess maintenance, repair, and demolition charges against real property (*see* Town Law §§ 64 [5-a]; 130 [16]), must the County guarantee such charges "in the same manner" as property taxes and special ad valorem levies (Town Law § 64 [5-a]; *see* RPTL 936) and "town expenses and charges" under the Monroe County Code? To answer this question, the Court must engage in a plain reading of the RPTL, the Town Law, the Monroe County Code, Municipal Home Rule Law, and the Irondequoit and Brighton Town Codes.

Given that this is an issue "of statutory construction," it is "a pure question of law—and not a factual debate." (R. 14.) Accordingly, a *de novo* standard of review applies (*see e.g. Matter of Beekman Hill Assn. v Chin*, 274 AD2d 161, 166 [1st Dept 2000]).

II. THE TOWNS' PROPERTY MAINTENANCE AND DEMOLITION CHARGES MUST BE GUARANTEED AND CREDITED BY THE COUNTY "IN THE SAME MANNER" AS PROPERTY TAXES AND SPECIAL AD VALOREM LEVIES.

New York State's property tax collection scheme makes clear that (1) the Towns are authorized to assess and levy property maintenance and demolition charges; (2) the County is required to guarantee and credit the Towns for unpaid town taxes; and (3) the Towns' assessed property maintenance and demolition charges are "taxes" that the County must guarantee and credit. This reading of the

relevant statutes is bolstered by state agency opinions, as well as established precedent. Thus, the trial court correctly held that the County is legally obligated to guarantee and credit the Towns' maintenance, repair, and demolition charges, and the Appellate Division's Memorandum & Order must be reversed on the law.

A. Town Law §§ 64 (5-a) and 130 (16) and the Municipal Home Rule Law, Authorize the Towns to Assess and Levy Property Maintenance and Demolition Charges.

Town Law §§ 64 (5-a) and 130 (16)

As it relates to maintenance charges, Town Law § 64 (5-a) authorizes towns to "require the owners of land to cut, trim or remove from the land owned by them brush, grass, rubbish, or weeds, or to spray poisonous shrubs or weeds on such land" (Town Law § 64 [5-a]). If the property owner fails to comply, the town may "cause such grass, brush, rubbish or weeds to be cut, trimmed or removed and such poisonous shrubs or weeds to be sprayed by the town" (*Id*.).

When a town performs these services, the Town Law authorizes "the total expense of such cutting, trimming, removal or spraying [to] be assessed by the town board on the real property on which such brush, grass, rubbish, weeds or poisonous shrubs or weeds were found" (*Id.*). To guarantee the reimbursement, the statute provides that: "the expense so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or

discharged and shall be collected in the same manner and at the same time as other town charges" (*Id.*; *see also* Town Law § 130 [5] [regarding fire prevention]).

Pursuant to Town Law § 130 (16), towns are also permitted to "[p]rovid[e] for the removal or repair of buildings in business, industrial and residential sections that, from any cause, may now be or shall hereafter become dangerous or unsafe" and to assess the cost of such service "against the land on which said buildings or structures are located" (Town Law § 130 [16] [g]).

The Municipal Home Rule

The Municipal Home Rule law also authorizes towns to collect such charges as taxes:

> (ii.) [E]very local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:
>
> > a. A county, city, town or village:
> >
> > …
> >
> > (8) The levy and administration of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be consistent with laws enacted by the legislature.
> >
> > …

> (9-a) The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.
>
> …
>
> (14) The powers granted to it in the statute of local governments.

(Municipal Home Rule Law §§ 10 [1] [ii] [a] [8], [9-a], [14]). Statutes of Local Governments § 10 (1) grants local governments "[t]he power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties." Therefore, towns may enact local laws to carry out the authority granted to them pursuant to Town Law §§ 64 (5-a) and 130 (16).

Irondequoit Town Code Chapters 94 and 104

Pursuant to Town Law §§ 64 (5-a) and 130 (16), and the Municipal Home Rule Law, Irondequoit exercised its authority in its adoption of Irondequoit Town Code Chapters 94 and 104. (R. 40-41 ¶¶ 35-37; 42 ¶¶ 42-43.)

Irondequoit Town Code Chapter 94 authorizes Irondequoit to "seek[] to remove danger to health, life and property by requiring owners of lands to cut, trim or remove brush, grass, rubbish or weeds or to spray with herbicides [and] to cut, trim, remove or destroy poisonous shrubs or weeds" (Irondequoit Town Code § 94-1 [B]). When a landowner fails to do this, Irondequoit can "cause the same to

be done and *assess the costs against the real property* on which such brush, grass, rubbish, shrubs or weeds are found" (*Id.* [emphasis supplied]).

Irondequoit can then assess and levy the costs and administrative expense upon the affected real property, "*and the expenses so assessed shall constitute a lien and charge on the real property* on which it is levied until paid or otherwise satisfied or discharged and *shall be collected in the same manner and at the same time as other Town charges*" (*Id.* § 94-9 [emphasis supplied]).

Irondequoit Town Code Chapter 104, article III provides:

> All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually removing such building, shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law, as amended or changed, for the levy and collection of a special ad valorem levy. Nothing herein shall be construed to limit other remedies available to the Town under applicable law.

(Irondequoit Town Code § 104-14).[4]

Pursuant to the Irondequoit Town Code, Irondequoit's Town Board "specifically orders that the expenses for work performed each year be assessed and levied against the property and collected in the same manner and same time as other assessments and tax levies of the Town." (R. 60.)

[4] Brighton also exercised its authority pursuant to Town Law §§ 64 (5-a) and 130 (16), and the Municipal Home Rule Law, by adoption of Brighton Town Code Chapter 129 (property maintenance) and Chapter 51 (demolition). (R. 41 ¶¶ 38-39; R. 42 ¶¶ 44-45.)

B. Under the RPTL and the Monroe County "Tax Act," The County Is Required to Guarantee and Credit the Towns for Unpaid Town Taxes.

RPTL Article 9

Article 9 of the RPTL deals exclusively with the collection of taxes. Section 936 requires counties to guarantee clean-up and demolition charges like other town taxes:

> Upon the expiration of his [or her] warrant, each collecting officer shall make and deliver to the county treasurer an account, subscribed and affirmed by him [or her] as true under the penalties of perjury, of all taxes listed on the tax roll which remain unpaid, except that such collecting officer shall not include in such account the amount of the installments of taxes returned unpaid pursuant to section nine hundred twenty-eight-b or subdivision one of section nine hundred seventy-six of this chapter. The county treasurer shall, if satisfied that such account is correct, credit him [or her] with the amount of such unpaid delinquent taxes. Such return shall be endorsed upon or attached to the tax roll.

(RPTL 936 [1] [emphasis added]).

This section requires counties to guarantee and credit towns for unpaid delinquent town taxes (*see Rose v Eichhorst*, 42 NY2d 92, 95 [1977] [stating that "(s)hould the amount of taxes collected by the town tax collector be less than the sum levied for town purposes, the county must pay the town the difference"]; *Town of Irondequoit v County of Monroe*, 158 Misc 123, 134 [Sup Ct, Monroe County 1935] [holding that the County of Monroe was "required to reimburse" the

Town of Irondequoit "for the amount of its uncollected taxes returned by the town collector"]; *see also* 1976 Ops St Comp No. 76-96 at 20 ["(RPTL) 936 (1), with respect to returning a list of unpaid taxes to the county treasurer, provides that the county treasurer must credit the town collecting officer for the amount of such unpaid taxes. . . . This Department has expressed the view that the practical result of (RPTL 936) is to make the county, in effect, the guarantor of all town taxes"]; 1968 Ops St Comp No. 68-217 at 233 ["A return of the unpaid taxes must be made by the town receiver of taxes and assessments to the county treasurer who credits the town with the amount of the unpaid taxes"]).

The Monroe County "Tax Act"

In addition to RPTL 936, Monroe County Code Chapter 673, titled the "Tax Act," requires the County to guarantee and credit the Towns for unpaid delinquent Town taxes *and other town expenses and charges*.

Tax Act § 10 specifically provides: "Each receiver of taxes and assessments or collector shall . . . make and deliver to the county treasurer an account of unpaid taxes . . . which he [or she] shall not have been able to collect" (Monroe County Code, ch. 673, § 10). "[U]pon the verification of the said account by the county treasurer he [or she] *shall* be credited by the county treasurer with the amount of such account" (*Id*. [emphasis added]).

The Tax Act then goes further and requires the County to pay "[t]o the supervisor of the town, all the moneys levied therein for the support of highways and bridges, moneys to be expended by the town welfare officer for welfare purposes *and moneys to defray any other town expenses or charges*" (*Id.* [emphasis added]).

C. The Trial Court Correctly Held that the Towns' Assessed Property Maintenance and Demolition Charges Are "Taxes" That the County Must Guarantee and Credit.

1. Under the Plain Language of the Relevant Statutes, Taxes Include Charges Imposed Upon Real Property.

As described previously, pursuant to the Town Law, Municipal Home Rule Law, and RPTL, the New York State Legislature authorizes towns to levy clean-up and demolition expenses as taxes and requires those taxes be guaranteed by counties.

When the language of a statute is clear, effect should be given to the plain meaning of the words used (*see Lloyd v Grella*, 83 NY2d 537, 545-46 [1994]). "In such circumstances, the court should look no further than unambiguous words and need not delve into legislative history" (*Id*. at 546).

Plainly, taxes are charges imposed upon real property (*see* RPTL 102 [20] [defining "tax" as "a charge imposed upon real property by or on behalf of a…town"]). The New York State Legislature authorized the imposition of unpaid demolition and clean-up expenses as charges upon real property (*see* Town Law

§ 64 [5-a]; Town Law § 130 [16] [g]). The Irondequoit Town Code intentionally mirrors the language of the RPTL and the Town Law and authorizes the imposition of unpaid demolition and clean-up expenses as charges upon real property, *i.e.*, as taxes (*see* Irondequoit Town Code §§ 104-14, 94-9, 94-1 [B]).

In the context of RPTL article 9, the term "taxes" is defined as all charges imposed upon real property, except special assessments (*see* RPTL 102 [20] [defining "tax" as "a charge imposed upon real property by or on behalf of a…town,…for municipal () purposes(,) (and) as used in articles five, nine, ten and eleven of this chapter shall for levy and collection purposes include special ad valorem levies"] [emphasis added]). Special ad valorem levies are included in the definition of taxes for the purposes of RPTL article 9 because they are "charge[s] imposed upon benefited real property in the same manner and at the same time as taxes for municipal purposes" (RPTL 102 [14]; *compare* RPTL 102 [15] [defining special assessment]).

The County argued below that "[n]owhere in the [RPTL] does it provide that charges for demolition or lawn maintenance are general real property taxes" (County's App. Br. p. 28.) But the RPTL also does not say that those charges are *not* real property taxes. Indeed, while the RPTL discusses town charges generally, it does not discuss demolition or lawn maintenance charges specifically. But the Town Law does.

Notably, although the Appellate Division majority broadly outlined the three categories of charges—taxes, special ad valorem levies, and special assessments—it never actually determined the specific nature of the charges, only summarily concluding that the charges do not fall within any of those three categories. The majority's analysis neglects to answer the only relevant question—what are these charges?

Here, the Towns used the statutory authority granted to them in the Town Law §§ 64 (5-a) and 130 (16) (g) to enact local laws allowing for the collection of unpaid demolition and clean-up expenses as charges upon real property—to be collected in the same manner and at the same time as other town charges, *i.e.*, taxes assessed upon real property (*see e.g.* Irondequoit Town Code §§ 104-14, 94-9).

Upon examination of the relevant statutory language, it is clear that the New York State Legislature intended demolition and clean-up charges to be the charges against real property—taxes guaranteed under RPTL 936:

	New York Town Law *The Enabling Statute*	**Irondequoit Town Code** *Local Law Implementation*	**Real Property Tax Law** *Definitions*
Clean up Charges	[T]he total expense … may be assessed by the town board on the real property … and the expense so assessed shall constitute a lien and charge on the real property…and shall be collected in the same manner and at the same time as other town charges (Town Law § 64 [5-a]).	The Town Board [may] assess the costs against the real property.... (Irondequoit Town Code § 94-1 [B]). [The Town] shall be reimbursed …by assessment and levy upon the lots or parcels of land … and the expenses so assessed shall constitute a lien and charge on the real property … and shall be collected in the same manner and at the same time as other Town charges (Irondequoit Town Code § 94-9).	"Tax"…means a charge imposed upon real property by or on behalf of a … town … for municipal … purposes[,]but does not include a special ad valorem levy or a special assessment. The term "tax"…as used in article[]…nine,…shall for levy and collection purposes include special ad valorem levies. (RPTL 102 [20]). "Special ad valorem levy" means a charge imposed upon benefited real property in the same manner and at the same time as taxes for municipal purposes.... (RPTL 102 [14]). *Compare with* "Special assessment" means a charge imposed upon benefited real property in proportion to the benefit received by such property to defray the cost, including operation and maintenance, of a special district improvement or service or of a special improvement or service, but does not include a special ad valorem levy (RPTL 102 [15]).
Demolition Charges	For the assessment of all costs and expense…against the land on which said buildings or structures are located (Town Law § 130 [16] [g]).	All expenses incurred by the … shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law . . . . (Irondequoit Town Code § 104-14).	

As this chart demonstrates, for the purposes of RPTL article 9, the term "tax" includes *all charges imposed upon real property*, excepting only special

assessments (*see* RPTL 102 [20]). Because the New York State Legislature defined the property clean-up and demolition charges as charges on the real property, and not as special assessments, they are taxes that must be guaranteed and credited by the County pursuant to RPTL 936 (*see People v Elmer*, 19 NY3d 501, 507 [2012] [noting that the legislature is presumed to know the distinction between the terms used in its legislation]; *Braschi v Stahl Assocs. Co*., 74 NY2d 201, 208 [1989] ["(W)here a problem as to the meaning of a given term arises, a court's role is not to delve into the minds of legislators, but rather to effectuate the statute by carrying out the purpose of the statute as it is embodied in the words chosen by the (l)egislature"].).

This interpretation is buttressed by the method of collection prescribed by the Town Law: "[T]he expense so assessed shall constitute a lien and charge on the real property . . . shall be collected *in the same manner and at the same time as other town charges*" (Town Law § 64 [5-a] [emphasis added]). Likewise, special ad valorem levies are "charge[s] imposed upon benefited real property *in the same manner and at the same time as taxes for municipal purposes*" (RPTL 102 [14] [emphasis added]).

Although not included in the tax levy, on the tax assessment roll, or in the tax cap, the County agreed and abided by this interpretation since it was last ordered to guarantee the Towns' taxes after losing a challenge similar to this (*see*

Town of Irondequoit v County of Monroe, 158 Misc 123, 141 [Sup Ct, Monroe County 1935]). Accordingly, property maintenance and demolition charges are charges authorized to be levied as taxes against real property although they are not based on the assessed value of the property. (R. 284 ¶ 25.)

2. State Agencies All Agree that Demolition and Clean-up Expenses Are Enforceable as Taxes.

State agencies charged with interpreting the relevant statutory provisions conclude that property maintenance and demolition charges incurred pursuant to Town Law § 64 (5-a) are taxes:

> Where costs and expenses are imposed pursuant to [section] 64 (5-a) . . . the costs and expenses are in the same nature as any taxes levied for town purposes. Thus, where the same remain unpaid, the town is made whole by the county (RPTL 936). The county would then enforce the lien in accordance with either Article 10 or Article 11 of the RPTL (or a special tax act, if applicable).

(9 Ops Counsel SBEA [the State Board of Equalization and Assessment] No. 55 [1990] [property maintenance charges]).

> Explicit statutory authority under Town Law presently exists for . . . removal or repair of unsafe buildings and collapsed structures (section 130 [16]) . . . [T]he town may assess the owners for expenses incurred, and the assessment will constitute a lien on the property until paid.

(1982 Ops St Comp No. 82-216 [demolition charges]; *see also* 2015 Opinion of the Attorney General 2015-3 [finding that a county that collects and guarantees village

taxes "cannot refuse to relevy the remediation costs and pay the amount of the costs to the Village"]).

As the trial court noted, the County's "downplay of legal opinions" in this litigation is "disingenuous" because the County "relied upon the same in the Tax Memo." (R. 23 n.5; *see* County's App. Br. p. 40-43.)[5] The opinions of the SBEA Counsel were issued by the New York State Department of Taxation and Finance. The Commissioner of the Department of Taxation and Finance is specifically authorized to "[h]ave general supervision of the function of assessing throughout the state," and "[f]urnish assessors with such information and instructions as may be necessary or proper aid to them in making assessments, which instructions shall be followed and compliance with which may be enforced by him or her" (RPTL 202 [1] [d], [f]).

Although such state agency opinions are not binding on courts, "[the] opinions of the Attorney General are persuasive and entitled to consideration by this court" (*State v Abortion Info. Agency, Inc.*, 37 AD2d 142, 144 [1st Dept 1971]).

[5] The trial court also rightly noted that 1998 Op Atty Gen No. 98-35—to which the County cited in the Tax Memo—"dealt with Village charges, a wholly different taxation scheme; thus, it does not support the Tax Memo outcome." (R. 23 n.5.)

Ultimately, the opinions of these state agencies buttress what the language of the relevant statutes already makes clear: property maintenance and demolition charges are charges authorized to be levied as taxes against real property.

3. New York Courts Agree that Demolition and Clean-up Expenses are Enforceable as Taxes.

New York courts, including this Court, have similarly concluded that municipalities have the authority to assess the cost of securing or demolishing a building as taxes upon real property if so authorized by the legislative branch.

In *Lane v Mt. Vernon*, this Court upheld the validity of local demolition ordinances and the subject enabling legislation (*see Lane v Mt. Vernon*, 38 NY2d 344 [1976] [declaring the city ordinance valid and constitutional]). Stating that "[t]he assessment [at issue] was not a tax levy but was enacted pursuant to the police power of the State, delegated, under our State Constitution, to local governments," this Court explained that "it has long been recognized that when a local government, in the proper exercise of its delegated powers, summarily abates a public nuisance, it may compel the owner of the property involved to bear the cost of abatement" (*Id.* at 349 [emphasis added]).

In *Lane*, this Court upheld the city building code, which declared, "if the commissioner has to make the repairs himself, he [or she] 'shall cause the costs of such repair, vacation or demolition to be charged against the land on which the building or structure existed, as a municipal lien, or cause such costs to be added to

the tax roll as an assessment or to be levied as a special tax against the land upon which the building or structure stands or did stand, or to be recovered in a suit at law against the owner'" (*Id.* at 348 [emphasis added]).

Thus, while this Court described the charges as "not a tax levy," it upheld the city's ordinance which called for "costs to be added to the tax roll as an assessment or to be levied as a special tax against the land upon which the building or structure stands or did stand" even though the city chose, instead, to add the costs to the tax role as an assessment (*Id.*; *accord 4M Holding Co. v Town Bd.*, 81 NY2d 1053 [1993] [reaffirming that "Town Boards may summarily abate nuisances . . . in appropriate circumstances and compel property owners to bear the cost of abatement without prior notice"]). As the trial court correctly noted below, "[t]his is exactly the same power[] being exercised [here]." (R. 24.)

When considering the impact of this Court's holding in *Lane*, note that cities, towns, and villages are all subject to regulation by the State through separate and distinct statutory schemes (*compare* New York Town Law, *with* New York Village Law, *with* New York General City Law). The General City Law in *Lane* allowed the City of Mount Vernon to *choose* whether to enforce any costs incurred by tax levy or by special assessment. There, the City choose the assessment option. Looking at the circumstances of this case, there is no similar discretion found in the Town Law. Rather, under the Town Law, repair costs and demolition

charges "shall be collected in the same manner and at the same time as other town charges," *i.e.*, as taxes (Town Law § 64 [5-a]).

As the trial court explained, "*Lane* recognized the breadth of a municipality's police power as including 'everything essential to the public safety, health, and morals'" (R. 24, quoting 38 NY2d at 348). And, a major lesson from *Lane* is that a municipality's enabling legislation and subsequent ordinance—which allow for costs of "repair, vacation or demolition to be charged against the land on which the building or structure existed, as a municipal lien, or cause such costs to be added to the tax roll as an assessment or to be levied as a special tax against the land upon which the building or structure stands or did stand"—will be deemed valid and constitutional (*Lane*, 38 NY2d at 347-348 [emphasis added]).

Similarly, the Second Department in *4M Holding Co. v Diamante*, 215 AD2d 383 (2d Dept 1995) upheld the validity of a tax lien for demolition charges. In *4m*, a property owner challenged a $1.1 million tax lien assessed for town demolition and clean-up charges. The petitioner challenged both the town's resolution and the charge, generally, as contrary to Town Law § 64 (5-a) (*see* 215 AD2d at 383-384). In *4m*, the Second Department noted that the town was authorized to abate nuisances and assess the charges against the property pursuant to this Court's decisions in *Lane*, 38 NY2d 344, and *4M Holding Co. v Town Bd.*, 81 NY2d 1053. Based on this precedent, the Second Department held that the

amount and enforcement of the levy of the lien as an ad valorem tax against the property did not violate Town Law § 64 (5-a) (*see id.*). Thus, being a "tax," such charges were within the RPTL 936 guarantee.

4. This Court Should Reinstate the Trial Court's Determination that the Towns' Assessed Property Maintenance and Demolition Charges Are Not "Special Assessments."

Irondequoit respectfully submits that this Court should hold that the trial court correctly interpreted the Town Law, RPTL, Municipal Home Rule Law, and Monroe County Tax Act and, based on that interpretation, properly held that the subject charges are taxes, not special assessments. (R. 22.)

Throughout this litigation, the County has attempted to shoehorn the demolition and maintenance charges into the definition of a "special assessment" to avoid the RPTL 936 guarantee. (*see e.g.* R. 160-161.)

As the trial court correctly stated, this "'special assessment' classification is erroneous given the [1] town-wide public welfare impact, and [2] the lack of a special district." (R. 22 [internal citation omitted].) The trial court also properly found that the County's position is further belied by Monroe County Tax Act § 9 (1) which requires the County's tax warrants to include 'moneys to defray other town expenses or charges.'" (R. 23.)

Indeed, under RPTL 102 (15), a special assessment "means a charge imposed upon benefited real property *in proportion to the benefit received by such*

property to defray the cost, including operation and maintenance, of *a special district* improvement . . . but does not include a special ad valorem levy" (emphasis added). The trial court's conclusion is supported in several respects.

First, courts only find charges to be "special assessments" where those charges bear a direct relationship to the benefit to the individual property (*see Cheektowaga v Niagara Frontier Transp. Authority*, 82 AD2d 175, 178 [4th Dept 1981] [sewer charge was a special assessment because it was directly based upon the measured water consumption]). In contrast, taxes are "public burdens imposed generally for governmental purposes benefiting the entire community" (*Crandall Pub. Lib. v City of Glen Falls*, 216 AD2d 814, 815 [3d Dept 1995]).

Here, the Towns' maintenance and demolition charges do not benefit a particular property or a specified area. Instead, the express purpose of the charges is "[t]o protect the public health, safety and the general welfare of the residents of the Town of Irondequoit" (Irondequoit Town Code § 94-1; *see also id.* § 104-2 ["It is the purpose of this chapter to ensure the safety, health, protection and general welfare of persons and property in the Town of Irondequoit by addressing vacant and unsafe properties"]). Indeed, in its brief to the Appellate Division, the County even noted that "the statu[t]e imposing" the subject charges "does not require that the assessments be levied on the property in proportion to the benefit received." (County's App. Br. p. 26.)

Moreover, at least as to the demolition charges, the demolition of improvements on a piece of land is a detriment to the specific property. The benefit rather inures to the public, generally (*see Christ Church v Eastchester*, 197 Misc 943, 949 [Sup Ct, Westchester County 1950] [holding "(t)he levy for each, police, water, lighting and garbage districts, is a levy to provide services governmental in nature, and such levy is therefore a tax(,)" not a special assessment]; *Cooper Union for Advancement of Science & Art v City of New York*, 272 App Div 438 [1st Dept 1947], *aff'd* 298 NY 578 [1948]) (holding that "levies for public improvements imposed on a city-wide or borough-wide basis were taxes and not special assessments").

Next, without a special district, there can be no special assessment. We have no special district here.[6]

A special district is "a town or county improvement district, district corporation or other district established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such district or to benefit the real property within such district" (RPTL 102 [16]). In a special district, real property is "subject to special ad valorem levies or special assessments for the purposes for which such district was established" (*Id.*). The trial court (and even

[6] In its brief to the Appellate Division, the County did not argue that this case involves a special district. (County's App. Br. p. 24-27.)

the Appellate Division majority) rightly recognized here that the subject charges are not being used to "defray the cost of a 'special district improvement or service'" (175 AD3d at 848). Instead, under the Town Law, repair costs and demolition charges "*shall* be collected in the same manner and at the same time as other town charges," *i.e.*,—as taxes, not special assessments (Town Law § 64 [5-a]). Thus, there is no special district.

The cases on which the County builds its argument involved special districts (*see e.g. People ex rel. NY Sch. for Deaf v Townsend*, 173 Misc 906, 906 [Sup Ct, Westchester County 1940] [discussing charitable exemptions from water, garbage, fire, and sewer district charges]; *N.Y. Tel. Co. v Common Council & Assessor of Rye*, 43 Misc 2d 668, 669 [Sup Ct, Westchester County 1964] [stating the "sewer tax levied in this case by the City of Rye is an ad valorem tax and is imposed in the same manner and at the same time as the city taxes"]; *see also Roosevelt Hosp. v New York*, 84 NY 108, 111 [1881] [discussing a city sewerage district]; *Watergate II Apartments v Buffalo Sewer Auth.*, 46 NY2d 52, 56 [1978] [discussing "sewer rents" imposed by the Buffalo sewer authority]).

The County's support is not controlling or instructive, especially because each case discusses different pieces of enabling legislation with its own discrete statutory scheme. Not one case discusses the Town Law or demolition or clean-up charges (*see e.g. In re Petition of St. Joseph's Asylum*, 69 NY 353, 354 [1877]

[discussing whether four assessments by the City of New York violated chapter 326 of the Laws of 1840, which prohibited assessments exceeding one-half of the value of the land as assessed]; *In re Hun*, 144 NY 472, 476 [1895] [discussing assessments by the City of Albany for local improvements petitioned for and requested by property owners]).

Importantly, the statutory language in this case is unique to towns and to clean-up and demolition charges. To hold that the charges are anything other than taxes would violate the New York State Legislature's mandate that the charges be assessed against the real property and collected in the same manner and at the same time as other town charges.[7] If the New York State Legislature wanted to exempt these charges from RPTL 936, it could have easily defined them as a special assessment. It did not (*see Rangolan v County of Nassau*, 96 NY2d 42, 47 [2001] ["where … the (l)egislature uses different terms in various parts of a statute, courts may reasonably infer that different concepts are intended"]).

Finally, even if there was a special district, the charges are more akin to special ad valorem levies than special assessments. Special assessments are levied "in proportion to the benefit received by such property" (RPTL 102 [15]). Special ad valorem levies, however, are "imposed upon benefited real property in the same

[7] Again, it is notable that the Appellate Division majority did not actually determine the specific nature of the charges, but instead only summarily concluded that the charges do not fall within the strict definitions of taxes, special ad valorem levies, or special assessments (*see* 175 AD3d at 848).

manner and at the same time as taxes for municipal purposes" (RPTL 102 [14]). Here, like special ad valorem levies, Town Law § 64 (5-a) provides that the charges shall be "collected in the same manner and at the same time as other town charges" (*see also* Irondequoit Town Code § 94-9 [the charges "shall be collected in the same manner and at the same time as other Town charges"]).

Indeed, Irondequoit Town Code Chapter 104 requires that charges be assessed and collected in the same manner as a "special ad valorem levy" (Irondequoit Town Code § 104-14; *see also 4M Holding Co.*, 215 AD2d at 384 [upholding a removal and disposal charges imposed by a Town as an ad valorem tax against the property pursuant to Town Law § 64 (5-a)]; *cf. People ex rel. NY Sch. for Deaf*, 173 Misc at 908 [holding "that the water district was a public improvement created for the benefit of the inhabitants of a particular locality and was a local improvement which the plaintiff charitable institution was not exempt from paying" under Tax Law § 4]; *see also* RPTL 490 [derived from Tax Law § 4, outlining exemptions from special ad valorem levies and special assessments, including water supply and distribution systems, but not including property maintenance or demolition costs]).

In sum, the trial court correctly determined that the demolition and clean-up costs are charges imposed on real property, which are assessed and collected the same as other town charges against real property, *i.e.*, taxes.

Accordingly, this Court should reverse the Appellate Division order on the law because the subject charges are not special assessments and are not exempt from the County's obligation to guarantee and credit such charges.

IV. EVEN IF THE TOWNS' PROPERTY MAINTENANCE AND DEMOLITION CHARGES ARE CLASSIFIED AS "SPECIAL ASSESSMENTS," THE APPELLATE DIVISION DISSENT WAS CORRECT THAT SUCH CHARGES MUST STILL BE TREATED AS TAXES THAT THE COUNTY MUST GUARANTEE AND CREDIT.

Even if this Court agrees with the County that the subject maintenance and demolition charges should be classified as "special assessments" under the RPTL, this Court should still reverse the Appellate Division order, on the law, because—as the dissent rightly explained—such charges must be treated, in this case, as taxes for purposes of property tax collection. Accordingly, this serves as an independent basis for reversal.

According to the dissent, the subject charges "are, strictly speaking, not taxes" and should be classified as "special assessments" (175 AD3d at 849 [internal quotation marks omitted]). However, even under this classification, the dissent explained that the Towns are not foreclosed from recouping their costs for such maintenance and demolition services because "[t]he RPTL . . . expressly contemplates that special assessments, under some circumstances, are to be treated as taxes for purposes of property tax collection" (*Id.*).[8]

[8] As discussed below, the Appellate Division majority entirely neglected to address this statutory analysis by the dissent.

To reiterate, under RPTL 936 (1), the County must guarantee the Towns' property taxes and must credit the Towns with the amount of any "unpaid delinquent taxes." As explained by the dissent, the term "delinquent tax," when used in article 11 of the RPTL, titled "Procedures for Enforcement of Collection of Delinquent Taxes," includes an unpaid "*special assessment* or other charge imposed upon real property by or on behalf of a municipal corporation . . . relating to any parcel which is included in the return of *unpaid delinquent taxes* prepared pursuant to [RPTL 936]" (RPTL 1102 [2] [emphasis added]).

Moreover, special assessments may be used to finance public improvements (*see* Town Law § 231 *et seq.*) and, if a town is unable to collect such assessments, the tax roll listing the unpaid assessments is then transmitted to the county "*and collection thereof shall be enforced in the manner provided by law for the collection of unpaid town taxes*" (*Id.* § 243 [emphasis added]).

Likewise, maintenance, repair, and demolition charges are to be "collected in the same manner, and at the same time as other town charges" (*Id.* § 65 [5-a]). Accordingly, counsel for the State Board of Equalization and Assessment, citing the same provisions, opined almost 30 years ago that maintenance, repair, and demolition charges assessed by a town against real property are "*in the same nature" as taxes*, and thus they are guaranteed by the County pursuant to RPTL 936 (9 Op Counsel SBEA No. 55 [1990]).

The dissent correctly emphasized that this "*has been the law in this State for decades*" (175 AD3d at 850 [emphasis added]). Notably, the majority raised no counter-argument to this plain statutory reading.

Moreover, as further support, the trial court rightly observed that, even if the charges were "special assessments" or special district charges, the Monroe County Tax Act § 9 (1) has no noted exceptions (as compared to RPTL 936 [1]), and requires the County to guarantee "all the moneys levied therein for the support of highways and bridges, moneys to be expended by the town welfare officer for welfare purpose and moneys to defray any other town expenses or charges." Once again, the Appellate Division majority did not provide any explanation for why this language from the Monroe County Tax Act should be ignored.

Accordingly, even if this Court determines that the subject maintenance and demolition charges should be classified as "special assessments" under the RPTL, this Court should still reverse the Appellate Division order, on the law, because—as the dissent rightly explained—such charges are to be treated as taxes that are guaranteed and credited by the County.

V. IF THE APPELLATE DIVISION MAJORITY'S HOLDING IS AFFIRMED, TOWNS WOULD ALMOST NEVER BE ABLE TO RECOUP THEIR COSTS FOR MAINTAINING, REPAIRING, OR DEMOLISHING BLIGHTED PROPERTIES.

A. The County Should Not Be Permitted to Leave the Towns Powerless to Recover Property Maintenance and Demolition Charges.

The County contends that it should not have to guarantee the charges because, allegedly, "[t]he County likely cannot recover the lawn-maintenance and demolition charges" (County's App. Br. p. 7), yet, the County has also argued in this lawsuit that tax lien enforcement is irrelevant. (*Id.* at 43-44.) However, as the trial court aptly noted, where the legal issue is one of statutory interpretation, it must be remembered that "tax laws 'are framed to the end that public expenses shall be met in full.'" (R. 25, *citing Town of Irondequoit*, 158 Misc at 130.)

While the County has argued that the law is inherently unfair, both the New York State Legislature and the Monroe County Legislature sought fit to structure the levy and collection of taxes in this manner. In any event, this scheme is not unfair because the County, not the Town, has full control over the enforcement of the unpaid taxes. The County, not the Town, is authorized to foreclose on taxed property for unpaid taxes (*see Rose*, 42 NY2d at 95-96 ["The county, rather than the town, holds a lien for the unpaid town taxes. The County, but not the Town, is authorized to collect the delinquent taxes"]; *Town of Amherst v County of Erie*, 260 NY 361, 373 [1933] ["After a collector has made his (or her) return to the County Treasurer, all duties resting upon him (or her) under the tax warrant cease and no method is provided by which such unpaid taxes can be collected by the town or collector. All further proceedings for the collection of delinquent taxes are carried on by the County Treasurer"]; *see also Whaley v County of Monroe*, 235 AD 334,

336 [4th Dept 1932] ["(T)he law has created no means by which a town can collect unpaid taxes, otherwise than by returning the same to the county treasurer, who, alone, is given the means, and charged with the duty, to sell the land and bid in the same for the county"]; *Town of Irondequoit*, 158 Misc at 129 ["No authority to levy and collect taxes is delegated by the State to the towns."])

The County, not the Towns, can choose when and whether to foreclose. As the Appellate Division dissent observed, "[t]he power to foreclose has its advantages" (175 AD3d at 849). A county may "take title to privately-held property for the nonpayment of property taxes even where the taxes owing represent only a small fraction of the value of the land," and may thereby "realize a substantial windfall in a tax foreclosure proceeding" (*Matter of Foreclosure of Tax Liens*, 165 AD3d 1112, 1122 [2d Dept 2018]; *see* RPTL 1100 *et seq.*; *see* 1976 Ops St Comp No. 76-96 ["In return for the county's payment of the amount of unpaid town taxes, the county receives the right to enforce collection of all such unpaid taxes, as well as interest and penalties thereon."]).

Indeed, as the dissent explained, "[t]he statute thus incorporates a trade-off. The town lacks recourse against defaulters, but is guaranteed to recover its delinquent taxes from the county. The county accepts the deficiency, but may reap a windfall in collecting delinquent taxes" (175 AD3d at 849).

Ultimately, the County, not the Towns, can choose whether to allow a single property to accumulate years of delinquent taxes, sell its tax liens, or foreclose. The Towns have no such choice. Irondequoit must "protect the public health, safety and the general welfare of the residents of the Town" (Irondequoit Town Code § 94-1). Its ability to do so is contingent on its ability to assess the expenses against the real property, the same as other taxes and town charges. Thus, the dissent rightfully cautioned that if the rule proposed by the majority was left to stand, towns would, in practice, lack the ability to enforce the liens or collect the charges from defaulting owners, thereby forcing the towns to accept the deficiency (*see* 175 AD3d at 849). This is not the law.

B. Regardless of the Amount, the County Must Guarantee the Towns' Taxes.

As a final point, New York State law and the local laws do not limit the amount that a town may charge for demolition and property maintenance services. Nor do they limit the amount of unpaid and delinquent taxes that a county is required to guarantee and credit a town. As this Court noted over 80 years ago, a county must comply with its statutory obligations regardless of it concerns about the wisdom or amount of town charges:

> If the expenditures made by the town and the liabilities incurred by it are for governmental purposes and were made in accordance with the terms of the statute, the fact that they were unwisely and recklessly incurred does not create a legal question. Solution of that problem presents

> a political question which must be solved by the voters of the town or, if checks are needed, they must be supplied by the Legislature.

(*Town of Amherst*, 260 NY at 368).

Moreover, property maintenance charges are a last resort after all other enforcement mechanisms have failed. The Towns are not making a profit from the charges; they are enforcing the law. (R. 287 ¶ 46.)[9] Similarly, the Towns are not "charging the County" or Monroe County tax payers for the maintenance and demolition charges. (County's App. Br. p. 6-7.) The Irondequoit Town Code provides that *the owner* shall reimburse the Town for all expenses and costs, including the actual cost and out-of-pocket administrative expenses, of the work performed or services rendered. This includes Town time, and costs incurred for municipal procurement, notices, hearings, and any publication. (R. 279 ¶ 20, *citing* Irondequoit Town Code §§ 104-14, 94-9.) Only if the demolition or clean-up costs incurred by Irondequoit are unpaid by the property owner as of January 1st of the subsequent year, the costs are assessed against the property as a tax and placed on the Town/County tax bill. (R. 283 ¶ 22.)

CONCLUSION

[9] The County guarantees all towns' taxes, not just Irondequoit and Brighton. Both Irondequoit and Brighton are in Monroe County; the Towns' residents are County residents and contribute equally to County taxes and to the guarantee of all other towns' taxes as well. (R. 284-285 ¶¶ 28-31.)

The New York State Legislature created a statutory scheme that allows towns to address the blight of neglected and abandoned properties. To encourage towns to take these curative actions, the statutory scheme authorizes towns to impose the associated costs as taxes on the land. By statute, counties must guarantee all town taxes. In the name of convenience, not law, the County of Monroe tried to remove these taxes from its guarantee.

"It would be unwise public policy to discourage a town from taking curative actions against unkempt, and sometimes dangerous, locales. Sustaining [the County's] position would have a chilling effect on such endeavors which help a town's overall well-being." (R. 24.) Indeed, "[i]f the rule proposed by the majority were to stand, towns would almost never be able to recoup their costs for maintaining, repairing, or demolishing blighted properties" (275 AD3d at 850).

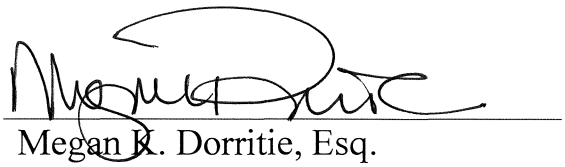
This Court should reject the County's arguments that lack legal support and defy well-established practice, and reverse, on the law, the Appellate Division's Memorandum and Order. In doing so, this Court should affirm the trial court's Decision, Order, and Judgment, which granted the Towns' Verified Petition and Complaint; annulled the County's Tax Memo determination; compelled the County to guarantee and credit the maintenance, repair, and demolition charges; judicially decreed that the County is legally obligated to guarantee and credit the

Complaint; annulled the County's Tax Memo determination; compelled the County to guarantee and credit the maintenance, repair, and demolition charges; judicially decreed that the County is legally obligated to guarantee and credit the maintenance, repair, and demolition charges; and restrained the County from decreasing the November sales tax distribution to any town.

Dated: Rochester, New York
November 18, 2019

Respectfully Submitted,

HARTER SECREST & EMERY LLP

By: 

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NEW YORK STATE COURT OF APPEALS
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Dated: November 18, 2019

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