To Be Argued By:
Matthew D. Brown
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Appellate Division Docket No. CA 18-01448
Monroe County Index No.: 2007-4442

Court of Appeals

of the

State of New York

TOWN OF IRONDEQUOIT and TOWN OF BRIGHTON,

Petitioners/Plaintiffs-Appellants,

vs.

COUNTY OF MONROE, TIMOTHY P. MURPHY, as Director of Real Property Tax Service for the County of Monroe, and ROBERT FRANKLIN, as Director of Finance and Chief Financial Officer for the County of Monroe,

Respondents/Defendants-Respondents.

Brief for Respondents/Defendants-Respondents County of Monroe, et al.

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Cases Cited

Questions Presented

Question 1. Is there a distinction between "property taxes", "special ad valorem levies", and "special assessments"?

Yes, the Fourth Department correctly distinguished between these terms because the RPTL provides different definitions for these terms and court precedence treats each category as separate.

Question 2: Are town charges for demolishing a house or mowing a lawn "property taxes"?

No, the Fourth Department correctly found these charges are not "taxes" because those charges are not public burdens imposed generally for governmental purposes benefiting the entire community.

Question 3. Are town charges for demolishing a residential house or mowing lawns "special ad valorem levies"?

No, the Fourth Department correctly found these charges are not "special ad valorem levies" because those charges are not computed based on the value of the property.

Question 5: Are town charges for demolishing a residential house or mowing lawns "special assessments"?

Yes, because those charges are based on the cost of the benefit conferred.

Question 6: Are special assessments subject to the Real Property Tax Law §936 guarantee?

No. RPTL §936 explicitly exempts "special assessments" from the guarantee.

Preliminary Statement

Respondents/Defendants-Respondents (the "County") submit this brief to oppose Petitioners/Plaintiffs-Appellants Town of Irondequoit and Town of Brighton's ("Petitioners" or "Towns") appeal of the Fourth Department's Memorandum and Order, (**R. 344**), which correctly dismissed the Towns' hybrid Article 78 action holding that the Towns' demolition and lawn maintenance charges were not "taxes" guaranteed by Real Property Tax Law §936.

The Fourth Department's Memorandum and Order should be affirmed because charges imposed on real property by the Towns for demolition and lawn maintenance are not "property taxes", but, instead, are "special assessments" that are not included in the Real Property Tax Law §936 guarantee.

A further basis for affirming the Fourth Department's Decision is that requiring the County to pay the Towns' demolition and lawn-mowing costs impairs the powers of the County in violation of NYS Constitution Article IX, §2(d). This argument is not a challenge to the Towns' Ordinances as unconstitutional but instead that applying the Towns' Ordinances in the manner the Towns suggest would violate the NYS Constitution.

Counter-Statement of Facts

A. The Real Property Tax Law §936 Guarantee

Under Real Property Tax Law §936, the County guarantees the Towns' unpaid real property taxes. How this works in practice is that the Towns collect the real property tax levied by both a town and County, but the town then keeps 100% of the town's assessed real property taxes—regardless of the amount actually collected—and the town then gives the remainder of the collected taxes to the County. (**R. 160,** ¶9)

Thus, for example, assume in a certain town the assessed town real property tax levy was $100,000 and the County's assessed real property tax levy for that town was $100,000—adding to $200,000 in town and county taxes due on real property in that town. (**R. 160,** ¶10)

If some property owners fail to pay their taxes and the town only collects $150,000 (which in this example is a delinquency of $25,000 in town taxes and $25,000 in County taxes), because of the guarantee the County incurs the entire loss, the town keeps $100,000, and the town remits only $50,000 to the County. Thus, the town collects its entire tax levy, while the County takes a loss of $50,000 on its tax levy in that town. (**R. 160,** ¶11)

Here, Petitioners claim that charges for demolition and lawn-mowing asserted against properties in their towns are "taxes" guaranteed by Real Property Tax Law

§936 and that the County must, therefore, pay those costs.

B. The County Cannot Recover the Lawn-Maintenance and Demolition Charges

The Towns incorrectly argue that the County should pay the Towns' demolition charges because the County can allegedly recover the costs of these charges through the tax foreclosure process. This is inaccurate. (**R. 164,** ¶37)

When Irondequoit charges over $20,000 to demolish a residence on a property owing several years of unpaid tax levies (see **R. 268**), this leaves a significant tax lien, plus an over $20,000 demolition cost, plus lawn-mowing charges at $600 per mowing, for a vacant parcel of land with such little value its owner abandoned the property. (**R. 164,** ¶38)

Because the amount owed typically far exceeds the vacant property's value, the County cannot recover the tax lien plus the demolition and lawn-mowing costs at a tax foreclosure sale on such properties. (**R. 164,** ¶39)

For instance, for the property at 55 SeaCliffe Road, the Town of Irondequoit charged $26,537 for demolition (see **R. 268**), charged at least one mowing charge for $600, the property owed several years of taxes for a total bill of $33,376, but Irondequoit assessed the full market value of 55 SeaCliffe as $18,700 (see **R. 275**). (**R. 164,** ¶40) Thus, by Irondequoit's own assessment regarding the value of the property, it is impossible for the County to sell the property and recover the amounts of the tax liens, plus demolition costs, plus lawn maintenance charges.

Likewise, at 159 Montcalm Drive, Irondequoit charged $28,094 for demolition (see **R. 268**), the property owes back taxes for a total bill of $65,051, but Irondequoit assessed the full market value of the property as $19,100 (see **R. 275**). (**R. 165,** ¶41) Again, by Irondequoit's admission, it is impossible to recover even close to the entire $65,051.

Thus, if these properties sell at "full market value", which is doubtful, the sale will not cover Irondequoit's charges for demolition, let alone the owed taxes and mowing charges. (**R. 165,** ¶42). Irondequoit thus acknowledges that the County cannot recover these costs through a foreclosure sale. (**R. 165,** ¶43). Instead, this is an attempt to force County taxpayers to pay the Towns' costs. (**R. 165,** ¶44)

Moreover, the claim that the County will receive a windfall if not forced to guarantee the demolition and lawn mowing costs is untrue. Under the Real Property Actions and Proceedings Law, the "officer conducting the [foreclosure] sale shall pay out of the proceeds all taxes, **assessments**, and water rates which are liens upon the property sold" (§1354[1], emphasis supplied). Thus, if a foreclosure sale obtains more money than the property tax lien, such excess money will first go to the Towns for their assessment charges for demolition and lawn maintenance. Thus, in the unlikely event a property is sold for more than the property tax lien, the Towns will be reimbursed for demolition and lawn maintenance special assessment charges.

Next, the officer conducting the foreclosure sale shall "pay to the holder of

any subordinate mortgage . . . from the then remaining proceeds the amount then due on such subordinate mortgage, or so much as the then remaining proceeds will pay and take the receipt of the holder . . . for the amount so paid, and file the same with his report of sale." (§1354[3]). Thus, to the extent a foreclosure sale obtains more money than the tax lien and Towns' demolition charges, any excess money is paid to any mortgage holder or other liens on the property.

Finally, all "surplus moneys arising from the sale shall be paid into court by the officer conducting the sale within five days after the same shall be received." (§1354[4]). Thus, if after paying the property tax lien, Towns' demolition charges, and any outstanding mortgage, there remain funds, such funds must be paid into the Court, not kept by the County.

After such surplus moneys are paid into the Court, any person with a claim to the money can make a claim. (Real Property Actions and Proceedings Law §1361). The Court then determines who has a right to such money. If there is money left after all liens are paid from the surplus money, the former owner of the property is entitled to the remainder. (Real Property Actions and Proceedings Law §1362).

Thus, it is untrue that the County will receive a windfall for foreclosing on a tax lien if the Towns' charges are not guaranteed. The County can keep no money above its tax lien and, if there is surplus money from a foreclosure sale, the Towns are first in line to receive such money for special assessment liens for demolition or

lawn maintenance. If the Towns believed these properties could sell for enough money to cover the tax liens and demolition charges, the Towns would not attempt to have a court declare such charges "property taxes" guaranteed by Real Property Tax Law §936. Instead, what the Towns' want is for the County to pay their costs.

Procedural History

Petitioners brought their hybrid Article 78 action by Notice of Petition (**R. 28**), and Summons with a Verified Petition and Complaint, with exhibits (**R. 31**).

The County answered (**R. 152**).

The County moved to dismiss because the charges for demolition and lawn maintenance are not "property taxes" but instead "special assessments", which are not guaranteed by Real Property Tax Law §936 (**R. 156**).

Following oral argument, the lower court issued its Decision, Order, and Judgment, dated November 3, 2017, which incorrectly found that charges for demolition and lawn maintenance are "property taxes" subject to the RPTL §936 guarantee, denied the County's motion to dismiss and granted the relief requested by Petitioners (**R. 7**).

On November 9, 2017, Petitioners served the County with Notice of Entry of the lower court's Decision, Order, and Judgment, which was filed with the Monroe County Clerk on November 9, 2017 (**R. 27**).

The County served and filed its Notice of Appeal on November 15, 2017 (**R.**

4), appealing every part of the Decision, Order, and Judgment (the "Decision").

The Fourth Department, Appellate Division, issued its Memorandum and Order on August 22, 2019 (**R. 344**). The Towns appealed. (**R. 341** and **343**).

Argument

The charges imposed on real property by the Towns for demolition and lawn maintenance are not "taxes", but are instead "special assessments", which are not included in the Real Property Tax Law §936 guarantee of Town taxes. The Fourth Department's Memorandum and Order should be affirmed.

Further, requiring the County to pay for Town demolitions and lawn mowing impairs the powers of the County, in violation of the New York State Constitution Article IX, §2(d) and Municipal Home Rule Law §10(5).

Point 1

Charges for Demolition and Lawn Mowing are "Special Assessments" and are Not Guaranteed by RPTL §936

Applying appropriate statutory construction and court precedence, the Towns' charges for demolition and lawn-mowing fall under the RPTL definition of "special assessments" and are not "taxes" guaranteed by RPTL §936.

Real Property Tax Law §936(1) provides:

> Upon the expiration of his warrant, each collecting officer shall make and deliver to the county treasurer an account, . . . of all taxes on the tax roll which remain unpaid, ... The county treasurer shall, if satisfied that such account is

> correct, credit him with such unpaid delinquent **taxes.** Such return shall be endorsed upon or attached to the tax roll.

(Emphasis supplied). Under RPTL §936, the County guarantees and credits the Towns for unpaid real property "taxes". Under RPTL §936 the County does not guarantee other charges against a property, such as charges for demolitions or lawn mowing.

Under RPTL §102(20) a "tax" is defined as "a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, **but does not include a special ad valorem levy or a special assessment**. The term "tax" or "taxes" as used in articles five, nine, ten and eleven of this chapter shall for levy and collection purposes include special ad valorem levies" (emphasis supplied). Thus, to be a "tax" under §936, the town charges must either be a general real property "tax" or a "special ad valorem levy".

A. Rules of Statutory Construction Require a Finding that the Town Charges are "Special Assessments"

This is a matter of statutory construction—the Court must determine whether the town charges for demolition and lawn maintenance fall under the RPTL's definition of "tax", "special ad valorem levy", or "special assessment".

The Legislature may define any word or phrase used in a statute. (*People v. Dugan*, 91 Misc. 2d 239 [Dutchess Co Ct 1977]; *Hayman v. Morris*, 179 Misc. 265

[NY Co Sup Ct 1942]). The Legislature's definition of words employed in a statute binds the courts (*Stoike v. First Nat. Bank of City of New York*, 290 NY 195 [1943]; *Bird v. McGoldrick*, 277 NY 492 [1938]) and a statutory definition will supersede the commonly accepted dictionary or judicial definition. (*Robinson v. Rogers*, 237 NY 467 [1924]; *Huff v. City of New York*, 202 AD 425 [2d Dept 1922]).

Absent direct and specific evidence of the legislative intent regarding the meaning of a statutory term, a proper analysis may be informed by three sources: first, the language of the statute itself; second, precedent; and third, a dictionary definition. *De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530 [2013]; see *Rosner v. Metropolitan Property and Liability Ins. Co.*, 96 NY2d 475 [2001] [absent a statutory definition, the meaning ascribed to a word or phrase by lexicographers is useful]; *Quotron Systems, Inc. v. Gallman*, 39 NY2d 428 [1976]; *Paterson v. University of State of NY*, 14 NY2d 432 [1964] [same]).

The starting point in statutory interpretation is the language itself, giving effect to the plain meaning. When a statute does not define a particular term, it is presumed the term should be given its precise and well-settled legal meaning in the state's jurisprudence. (*People v. Duggins*, 3 NY3d 522 [2004]; *People v. Reed*, 265 AD2d 56 [2d Dept 2000]). Legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense without resorting to artificial or forced construction.

(*Frank v. Meadowlakes Development Corp.,* 6 NY3d 687 [2006]; *Nonhuman Rights Project, Inc. v. Stanley,* 49 Misc. 3d 746 [NY Co Sup Ct 2015]). Where the words of a statute have a definite and precise meaning, the court should not search elsewhere to restrict or extend that meaning (*Erie County Agric. Soc. v. Cluchey*, 40 NY2d 194 [1976]) and words of ordinary import in a statute are given their usual and commonly understood meaning unless it is clear from the statutory language that a different meaning was intended. (*Drew v. Schenectady County*, 88 NY2d 242 [1996]).

Applying these standards, the Fourth Department correctly held:

> The maintenance charges are assessed against individual properties for their benefit and thus do not fall within the general definition of "tax," which instead contemplates "'public burdens imposed generally for governmental purposes benefitting the entire community'" . . . A "'[s]pecial ad valorem levy'" is "a charge imposed upon benefitted real property in the same manner and at the same time as taxes for municipal purposes to defray the cost, including operation and maintenance, of a special district improvement or service" (id.). Although the definition of "tax" does, in certain enumerated circumstances, include "special ad valorem levies" (RPTL 102[20]), the maintenance charges are not special ad valorem levies because they are not used to defray the cost of a "special district improvement or service" (RPTL 102[14]). Maintenance charges also are not assessed "ad valorem" because the charge is not based on property value but is instead based on the actual expense to the town. Assuming, arguendo, that the charges are "special assessments" as defined by RPTL 102(15), we note that the definition of "tax" specifically excludes "special assessments" (RPTL 102[20]).

(**R. 345-6**).

B. "Tax", "Special Ad Valorem Levy", and "Special Assessment" have precise legal meanings.

The Towns attempt to blur the distinctions between the terms "tax", "special assessment", and "ad valorem tax levy", but these terms have definite and precise legal meanings in New York jurisprudence and the Fourth Department correctly applied these precise meanings.

The trial court held, and the Towns continue to argue, that the "'practice of meeting deficiencies in the collection of taxes of subordinate political subdivisions by a larger taxing unit has been long-established and **entrenched** in our system of government' . . . This deeply ensconced practice places '**upon the tax-collecting unit the risk** that it might not be able to collect the full amount'" (**R. 21**, emphasis in original, citations omitted). No party disputed this. The question is not whether the County must guarantee the Towns' property taxes, but whether the charges for demolition and lawn mowing constitute "property taxes" instead of "special ad valorem levies" or "special assessments". Applying the rules of construction, the Towns' charges are not "taxes" under §936, are not "special ad valorem levies" under §102(14), but instead are "special assessments" under RPTL §102(15).

Although the term "taxes" generally includes assessments (*Roosevelt Hospital v. City of New York*, 84 NY 108 [1881]; *In re St. Joseph's Asylum's Petition*, 69 NY

353 [1877]; *Salerno v. Buono*, 207 Misc. 680 [City Ct. 1955]) and the right to impose assessments has its foundation in the taxing power, a distinction exists between the terms "taxes" or "general taxes" and "special taxes" or "special assessments." (*Church of Christ the King, Inc. v. City of Yonkers*, 115 Misc. 2d 461 [Westchester Co Sup Ct 1982]; *New York Tel. Co. v. Common Council and Assessor of City of Rye*, 43 Misc. 2d 668 [Westchester Co Sup Ct 1964], *order aff'd,* 25 AD2d 682 [2d Dept 1966]; *Roosevelt Hospital v. City of New York*, 84 NY 108 [1881]; *County of Westchester v. Town of Harrison,* 201 Misc. 211 [Westchester Co Sup Ct 1951]).

The New York State Department of Taxation and Finance routinely argues before courts and the New York Courts routinely hold that "special assessments" and "ad valorem levies" are **not** "taxes". (See *Piccolo v NY State Tax Appeals Trib.*, 108 AD3d 107 [3rd Dept 2013]; *Matter of Stevenson v NY State Tax Appeals Trib.*, 106 AD3d 1146, 1149 [3rd Dept 2013] [same]; *Luther Forest Corp. v McGuiness*, 164 AD2d 629, 631 [3rd Dept 1991] [term "taxation" contained in RPTL 480(3)(a) does not apply to special benefits represented by "special ad valorem levies" or "special assessments"]).

The Towns argue the precedent in *Piccolo, Stevenson*, and *Luther Forest Corp*., are inapplicable as they do not involve the same charges as are at issue in this matter. This misses the authority provided by these decisions. First, these cases demonstrate that despite the opinion the Towns rely on—9 Ops Counsel SBEA No.

55 (1990) (incorrectly opining that demolition costs are generic property "taxes")—the New York State Department of Taxation and Finance argues before New York courts the opposite—that "special assessments" and "special ad valorem levies" are not "taxes". (See, e.g., *Piccolo*, 108 AD3d 107; *Matter of Stevenson*, 106 AD3d at 1149 [same]; *Luther Forest Corp.*, 164 AD2d at 631). Thus, 9 Ops Counsel SBEA No. 55 contradicts the Department of Taxation and Finance's long-standing position—argued before numerous courts—that "special assessments" and "special ad valorem levies" are not "taxes". As such, 9 Ops Counsel SBEA No. 55 is contrary to both the Department's position and law.

Piccolo, *Stevenson*, and *Luther Forest Corp*. also demonstrate a clear legal distinction between a real property "tax", a "special assessment", or a "special ad valorem levy". (See *Piccolo*, 108 AD3d 107; *Matter of Stevenson*, 106 AD3d at 1149 [same]; *Luther Forest Corp.*, 164 AD2d at 631 [term "taxation" contained in RPTL 480(3)(a) does not apply to special benefits represented by "special ad valorem levies" or "special assessments", as defined under the RPTL]). The Towns ignore this precedent and implicitly argue there is no distinction between a "tax", a "special assessment", or an "ad valorem levy".

The Towns also attempt to differentiate these cases by arguing they deal with different tax circumstances. However, each case reviews a municipality charge against a property and determines whether the charge is a "tax", an "ad valorem

levy", or a "special assessment". The definitions of those terms remain the same whether the issue is tax exemptions under the qualified empire zone, tax exemptions for religious institutions, income tax exemptions, or like here–whether the demolition charges are a "tax" or a "special assessment" under RPTL §936. Further, neither the Town Law, Municipal Home Rule Law, or Real Property Tax Law define the term "charge against property" as automatically being a "tax" and the definitions of "tax", "special ad valorem levy", and "special assessment" do not turn on whether the municipality is a town, city, village, or county, but instead remain the same whether the municipality is a town, city, village, or county.

In *Piccolo*, a case where the issue was whether a charge was a "tax", an "ad valorem levy", or a "special assessment", petitioner sought Qualified Empire Zone Enterprise ("QEZE") income tax credits for "downtown improvement tax" payments petitioner had made for its properties in the Downtown Business Improvement District, which levied a charge—known as the downtown improvement tax—on properties in the district to pay for beautification projects, cultural events, business promotion, safety programs, and accessibility projects.

Petitioners in *Piccolo* filed state personal income tax returns for several years and claimed refundable QEZE credits for each year, including for the downtown improvement tax. Although the claimed refunds were initially issued, the Department of Taxation and Finance conducted an audit and issued notices of

deficiency for the downtown improvement tax for each year. Petitioners filed a petition for redetermination, resulting in an Administrative Law Judge granting the petition and canceling the notices of deficiency. The Division of Taxation appealed and the Tax Appeals Tribunal reversed. Petitioners brought an Article 78 challenging the Tribunal's determination.

The parties in *Piccolo* agreed that petitioners could claim QEZE credits for "eligible real property taxes" (Tax Law §15[a], [former (e)]). The Court held that the "definition of [the phrase "taxes imposed on real property"] presents a question of pure statutory interpretation, requiring [the Court's] analysis of the statutory language and legislative intent, with no deference accorded to the Division of Taxation's or the Tribunal's interpretations" (*Piccolo*, 108 AD3d at 110).

The Court held that Tax Law §15 and the RPTL deal with the same general subject, and must be construed together. The Court stated that "[a]lthough the Legislature has specifically referred, in other sections of the Tax Law, to definitions in the RPTL . . . and has amended Tax Law §15(e) to include a definition of tax for that subdivision rather than referring to RPTL 102(20) . . . it is still logical to apply RPTL 102 definitions to terms in Tax Law §15 when no definition is supplied there" *Piccolo*, 108 AD3d at 110. The definition of tax in RPTL 102(20) is "a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, but does not include a special ad

valorem levy or a special assessment."

The *Piccolo* Court found that the Legislature implied through several other Tax Law sections that the term "tax" does not include "special assessments" or "ad valorem levies". In multiple instances, the Legislature stated that, for certain sections of the Tax Law, the term "tax" includes special assessments, indicating that the term "tax" does not include "special assessments" when used elsewhere in the Tax Law. (*Piccolo*, 108 AD3d at 110-111, citing *Claim of Gruber*, 89 NY2d 225, 234 [1996] and Tax Law §§32[a][13]; 33[a][6]; 173-a[1][a]; 174-a[2]; 174-b[2]; 3002[a]).

And the *Piccolo* Court found that the Legislature separately referred to "taxes", "special assessments", and "special ad valorem levies" in different sections of the Tax Law, establishing those terms are **not** interchangeable and the term "taxes" rarely encompasses "special assessments" or "special ad valorem levies" (*Piccolo*, 108 AD3d at 111, citations omitted). The *Piccolo* Court held that "courts have long recognized that general exemptions from taxation do not include an exemption from special assessments for local benefits or improvements, thus indicating the different treatment of taxes versus special assessments" (*Piccolo*, 108 AD3d at 111 [emphasis supplied], citations omitted).

Similar to here, petitioner in *Piccolo* argued for an interpretation that would include ad valorem levies and special assessments within the phrase "eligible real property taxes." But, the Court held that despite its label, the "downtown

improvement tax" was not actually a tax, but was instead either a "special ad valorem levy" or "special assessment". (*Piccolo,* 108 AD3d at 113). Because it was immaterial to the outcome, the *Piccolo* Court did not decide whether the "downtown improvement tax" was a "special assessment" or a "special ad valorem levy".

Here too, what the Towns name the charge is immaterial and the issue is whether under the RPTL the charges are a "tax", "special ad valorem levy", or "special assessment".

Similar to the downtown improvement tax in *Piccolo*, the charges against property in *Matter of Herrick v NY State Tax Appeals Trib.* (106 AD3d 1149 [3rd Dept 2013]) were found to be an ad valorem levy or a special assessment, not a "tax". Likewise in *Matter of Stevenson* (106 AD3d 1146 [3d Dept 2013]), Sanitary District charges qualified as either ad valorem levies or special assessments, not "taxes".

Accordingly, the terms "taxes", "special ad valorem levies", and "special assessment" have distinct meanings that must be applied.

C. Charges for Demolition or Lawn-mowing are not "Taxes" Under the RPTL

Charges imposed by towns on real property for lawn maintenance and demolition are not real property "taxes" under the Real Property Tax Law.

The RPTL is a comprehensive statutory scheme that empowers municipalities to levy general taxes against real property based on the real property's value. Taxes

on property are taxes assessed on all property (or on all property of a certain class) within a certain territory on a specified date in proportion to its value, or under some other reasonable method of apportionment, for which the obligation to pay is absolute and unavoidable and not based on any voluntary action of the person assessed. Nowhere in that scheme does it provide that charges for demolition or lawn maintenance are general real property taxes.

"Taxes are public burdens imposed generally for governmental purposes benefiting the entire community, whereas an ad valorem levy [or special assessment] is an assessment imposed for specific municipal improvements that confer a special benefit on the property assessed beyond that conferred generally" (*Piccolo*, 108 AD3d at 112-113; quoting *Matter of Crandall Pub. Lib. v City of Glens Falls*, 216 AD2d 814, 815 [3d Dept 1995]; *see Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 58 [1978]). Here, the Town charges are not "public burdens", instead they are burdens on single pieces of property. The Town charges also do not benefit "the entire community", instead the demolitions and lawn maintenance benefits, at most, a specific neighborhood. The charges are thus not "taxes" under the RPTL.

The Towns argue that the demolition and clean-up charges do not benefit a particular property or a specified area, and argue that such charges benefit the entire town. The implicit argument is that by demolishing a building or mowing a lawn,

property values are improved. However, property values would only be improved in the immediate neighborhood of the property. A property ten or more blocks away will not see improved property value because a lawn was mowed across town. By the Town's logic, any improvement anywhere in a municipality benefits the entire town because property values in one neighborhood are improved. This reasoning makes the RPTL's distinction between "taxes", "special assessments", or "ad valorem levies" redundant. Why have fire districts, lighting districts, sewer districts, etc. if every charge for an improvement is a "tax"? Each should be a "tax" as opposed to a "special assessment" because the entire town is allegedly benefitted by increased property values through said neighborhood improvements. Yet, the RPTL does not agree. Instead, the RPTL provides for "special assessments" or "ad valorem levies" for such individual property or neighborhood improvements as opposed to a general "tax". The Towns also strangely argue that demolishing a dilapidated house or building is not an improvement to that property.

The Court of Appeals held in *Lane v Mt. Vernon* (38 NY2d 344 [1976]) held that Assessments for demolitions are not real property "taxes". In *Lane*, regarding a municipality's charge against a property for demolition of a building, the Court held the "assessment before us was not a tax levy but was enacted pursuant to the police power of the State, delegated, under our State Constitution, to local governments" (*Lane*, 38 NY2d at 347-348, emphasis supplied). As in *Lane*, the charges here for

demolition and lawn maintenance are not real property "taxes" but "special assessments".

In *Lane* the "building commissioner . . . certified the cost . . . to the city council", which then "ordered the City Commissioner of Assessment and Taxation to prepare a proper assessment roll and to charge the costs against the property" (*Lane*, at 347). Like the Towns' codes here, the City's building code in *Lane* provided that if the city made repairs, it will "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" (*Lane*, 38 NY2d at 348). This is the situation here. Claiming *Lane* differs because the term "special assessment" was used by the Court in describing the demolition charge is circular reasoning. The issue is whether the demolition charge is a real property "tax", a "special assessment" or an "ad valorem levy", and what a municipality named the charge is irrelevant as to which category the charge belongs under New York law. In *Lane*, the Court of Appeals stated that charges for demolition are not "taxes", which is controlling.

The Towns' argue that the ordinance in *Lane* is somehow different than the Towns' Ordinances here. The "ordinance" in *Lane* was simply the City adopting the costs and adding them to the assessment role (see **Exhibit A**, a copy of the City's

Ordinance from the Record on Appeal in *Lane*). The authority to demolish and chargeback the costs of the same to the property was contained in the City's Building Code (see **Exhibit B**, a copy of the City's Building Code taken from the Record on Appeal in *Lane*), which contained language similar to the Towns' local laws. The Towns argue that *Lane* differs because "[t]here, the city chose the assessment option" (Brief, p. 32). The Towns' implicit argument is that what a town labels a charge against a property makes it so and statutory definitions are meaningless.

The facts in *Lane* and here are nearly identical—buildings demolished under local law and the cost of those demolitions charged against the land and added to the tax assessment—and the legal analysis is likewise almost identical. In *Lane*, the plaintiff argued that the assessment was an illegal tax. The Court found that the assessment—which was added to the tax roll—"was not a tax levy but was enacted pursuant to the police power of the State, delegated, under our State Constitution, to local governments" (*Lane*, 38 NY2d 347-348). Here too, the Towns' demolished buildings under local law and the costs of those demolitions were charged against the land and added to the tax assessment. Like *Lane*, Petitioners here ask the Court to declare those charges a "tax" as opposed to a "special assessment".

More important, the Towns ignore that the *Lane* Court held that the "assessment before us was not a tax levy but was enacted pursuant to the police power of the state, delegated, under our State Constitution, to local governments.

Such bodies may enact laws for the 'protection, order, conduct, safety, health and well-being of persons or property therein.'" (38 NY2d at 347-8, emphasis supplied, citation omitted). If, as the Towns argue, the demolition charge in *Lane* could have been asserted against the property as either a "tax" or "assessment", why was it necessary for the Court to hold that the "assessment before us was not a tax levy"? Under the Towns' analysis of *Lane*, whether the charge was a "tax" or "assessment" was immaterial and purely a choice by the City. Yet, in upholding the local law in *Lane*, the Court found it important to state and hold that the demolition charge was not a tax.

The Towns' argument is that if a municipality calls something an "assessment" rather than a "tax", the court is bound by the municipality's choice of term. But, the issue in cases dealing with the terms "tax", "special assessment" and "ad valorem levy" is a challenge to a municipality's designation of a charge as a "special assessment" or "ad valorem levy" versus a "tax". If courts were bound by the municipality's designation, those cases would not exist.

If the Towns' reasoning were correct, there would be no need for the RPTL to create definitions for "special assessment" or "special ad valorem levy" because every charge imposed by a town against property would be a "tax". If the Towns' interpretation is correct, RPTL 102(20) would not exclude "special ad valorem levy" or "special assessment" from the definition of "tax", as all such charges would

simply be "taxes".

The Towns also misrepresent the holding in *4M Holding Co. v. Diamonte* (215 AD2d 383 [2d Dept 1995]), claiming it holds a demolition charge is a tax, which is untrue. *4M holding* does not hold that demolition charges are a "tax" but instead accepts the parties' contention that the charges were a "special ad valorem levy" because no party challenged that designation.

The decision in *4M Holding* states that "the petitioner was advised that if it did not remove the debris within 10 days, the Town would enter upon the property, remove the material, and charge the cost of the removal as an ad valorem tax against the property" (*4M Holding Co.*, 215 AD2d at 384, emphasis supplied). *4M Holding* did not hold that the charge was a "property tax". Instead, *4M Holding* found the petitioner was advised by the town that he would be charged the cost of the removal as an "ad valorem tax". Petitioner in *4M Holding* **did not challenge** whether the charge was an "ad valorem tax" versus a "special assessment" or real property "tax" and the *4M Holding* Court made no finding regarding the same. Instead, the petitioner in *4M Holding* challenged the authority of the town to clean his land and charge the land for the same and challenged the charge. *4M Holding* does not hold that a demolition charge is a "tax" as the Towns claim and does not overrule *Lane*.

This case is the reverse of *4M*. Here, no party challenges the Towns' authority to demolish the properties and charge those costs against the property—instead, the

issue is whether such charges are a "tax" or a "special assessment", which was not addressed in *4M*.

The Towns also argue that language stating that expenses incurred by the town go "against the land" makes such expenses "property taxes". There is no authority for such argument. There are many charges that "go against the land" that are not "property taxes": for instance special ad valorem levies, special assessments, and mechanic's liens.

The Towns also claim that language stating the charges "shall be collected in the same manner and at the same time as other town charges" makes the charges "taxes" as opposed to "ad valorem levies" or "special assessments". Again, there is no authority to support this claim. That the town intends the charges to be collected in "the same manner" as a "special ad valorem levy" does not make the charge a "special ad valorem levy". It simply means that the charges will be placed on the tax bill the same way a "special ad valorem levy" is placed on a tax bill. "The phrase 'in the same manner' has a well-understood meaning in legislation, and that meaning is not one of restriction or limitation, but of procedure. It means by similar proceedings, so far as such proceedings are applicable to the subject-matter" (*La Monica v. Krauss*, 191 Misc. 589, 590 [NY Mun Ct 1948] [citations omitted]; see also, *Matter of Desotelle,* 143 Misc. 732 [Clinton Co Sur Ct 1932]). "[I]n the same manner" refers to the process by which the charge is added to the tax bill, not the substance of what

the charge is (see *People ex rel. New York School for the Deaf v. Townsend,* 173 Misc. 906 [Westchester Co Sup Ct 1940], *judgment aff'd,* 261 AD 841 [2d Dept 1941], *order aff'd,* 298 NY 645 [1948] [charges were "special assessments" even though charges were to be levied and collected in the same manner and at the same time as town taxes]). Thus, stating a charge is to be collected at the same time or in the same manner as other town charges does not make a demolition charge a "tax".

Municipalities routinely collect special assessments "in the same manner and at the same time as other town charges". Charges for lighting districts, sewer districts, fire districts, etc., are included in town, city, village, or county tax levies "in the same manner and at the same time" as other municipal charges. This does not make such charges "taxes" under RPTL §936.

For example, RPTL §102(14) provides "Special ad valorem levy" means a charge imposed upon benefited real property in the same manner and at the same time as taxes . . ." (emphasis supplied), yet despite this language, there is a distinction between a "special ad valorem levy" and a "tax". Indeed, the RPTL §102(20) definition of "tax" excludes "special ad valorem levies". Thus, because a charge is collected "in the same manner" as a "special ad valorem levy", does not make it a "special ad valorem levy" or a "tax".

The Towns also claim Municipal Home Rule Law §10 makes demolition and clean-up charges "taxes". This is wrong. Section 10 does not define demolition or

clean-up charges as "taxes". The statute instead authorizes towns to perform clean-up and demolition and assess the costs of the same as "charges" against the property. The statute does not define such charges as "taxes" and instead provides:

> (8) The levy and administration of local **taxes authorized by the legislature** and of assessments for local improvements . . .
>
> (9) The collection of local taxes authorized by the legislature and of assessments for local improvements . . .
>
> (9-a) The fixing, levy, collection and administration of local government rentals, charges . . .

(Municipal Home Rule Law §10[ii][a]).

Nor does the Town Law define charges for demolition as "taxes". Instead, it provides for "the assessment of all costs and expense incurred by the town in connection with the proceedings to remove or secure, including the cost of actually removing said building or structure, against the land on which said buildings or structures are located." (Town Law §130[16][g]). Towns may assess the costs of demolition against the property. This does not make such charges a "tax". Using the Towns' logic, any charge authorized by statute is a "tax", which is not true.

Likewise, Town Law §64 does not define charges for yard clean-up as "taxes". Again, under the statute towns can assess the charges of clean-up against the property. This does not make such charges a "tax".

The Towns also argue that if the legislature wanted to exempt these charges from RPTL 936, it could have defined them as a special assessment. As

demonstrated here, there is no statute defining demolition and clean-up charges as a "tax". Instead, there are distinct legal definitions for "tax", "special ad valorem levy", and "special assessment". One could thus argue that if the legislature wanted demolition charges included in the RPTL §936 guarantee, it could have stated the same in Town Law §130, and because the legislature did not, the charge is not a tax.

The Towns also argue that because the demolition costs are a "charge" and a "lien" on the real property, it is a "tax". However, special assessments also constitute liens and charges against real property. Further, like these charges, special assessments are collected in the same manner and at the same time as other town charges. None of this makes the charges a "tax" as opposed to a "special assessment".

Thus the Fourth Department correctly held that:

> although Municipal Home Rule Law §10(1) permits towns to collect the maintenance charges, we disagree with the Town petitioners that the Municipal Home Rule Law renders those charges "taxes" under RPTL 936. Similarly, although Irondequoit Town Code §§94-9 and 104-14 provide that the maintenance charges shall be "collected in the same manner" as other town charges and special ad valorem levies, that describes the procedure for collecting the charges and does not address whether they must be guaranteed pursuant to RPTL 936.

(**R. 346**)

D. The Charges are "Special Assessments"

Because the Towns' charges for demolition and lawn maintenance are not a general real property tax and are not based on the value of the property, but instead are based on the cost of the benefit conferred, those charges are "special assessments" under the Real Property Tax Law.

A special assessment is 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. (RPTL §102(15]).

"Special assessments" are impositions for improvements beneficial to particular property and imposed in proportion to the specific benefits conferred. (*Church of Christ the King, Inc.*; *New York Tel. Co. v. Common Council and Assessor of City of Rye*; *Roosevelt Hospital*; *In re St. Joseph's Asylum's Petition*, 69 NY 353 [1877]).

There is a clear distinction between taxes levied to raise funds for general public purposes and assessments imposed for specific improvements. The former is levied upon all property within the municipality, is based upon a general benefit to the entire community, and is considered a tax. (*Church of Christ the King, Inc.*, 115 Misc 2d at 463-464; *Matter of Knickerbocker Vil. v Reid*, 256 AD 973 [1st Dept 1939, affd 281 NY 861; *State Univ. of N. Y. v Patterson*, 42 AD2d 328 [3d

Dept 1973]). The latter is based upon a particular benefit to a specific area, is levied to finance improvements especially beneficial to that area beyond the benefits conferred by general taxation, and is considered equivalent compensation for the enhanced value derived from the improvement. (*Matter of Hun*, 144 NY 472, 477 [1895]; *Roosevelt Hosp.*, 84 NY at 111-112; *Matter of O'Hara v Board of Supervisors of Suffolk County*, 42 Misc 2d 716 [Suffolk Co Sup Ct 1964], affd 44 Misc 2d 572, affd 24 AD2d 843; *NY Tel Co.*, 43 Misc 2d at 669-670 [Dutchess Co Supt Ct 1964], *aff'd*, 25 AD2d 682 [2d Dept 1966]). Here, the town charges are based on a particular benefit to a specific area and are based on the alleged actual costs of the service provided, making the charges "special assessments".

The Towns' argument that a "special district" must be created before a special assessment can be charged against property misconstrues the statute. RPTL §102(15), defines "special assessment" as "a charge imposed upon benefited real property in proportion to the benefit received by such property to defray the cost . . . *of a* special district improvement **or** service **or** *of a* special improvement **or** service" (emphasis supplied). The word "or" is used to link *alternatives*. Use of the word "or" in RPTL §102(15) means a charge can be imposed to defray the cost of the noted categories, including a "special improvement" (with no special district) or "service" (again, with no special district). Nowhere in RPTL §102(15) or (16) is there a requirement that a "special district" be created before a special assessment can be

charged. Here, the clean-up and demolition are a "special improvement" or "service", making the charges "special assessments".

Further, the Court of Appeals found in *Lane v Mt. Vernon* (38 NY2d 344 [1976]) that a demolition charge is a special assessment—despite there being no "special district".

Charges imposed for the cost and maintenance of public improvements within a limited area are classified as "special assessments" notwithstanding that the statute imposing them does not require that assessments be levied on the property in proportion to the benefits received, and although such charges are to be levied and collected in the same manner and at the same time as the town taxes. (*New York School for the Deaf,* 173 Misc. 906).

For instance, a town's special sewer district charges were not "special ad valorem levies" but were "special assessments", where the charges were based upon a "tripartite" calculation only part of which related to assessed valuations of property, comprising a direct "user charge" based upon water consumption, on assessed valuation, and on square feet of land, and where the charge bore a direct relationship to a benefit to real property. (*Town of Cheektowaga v. Niagara Frontier Transp. Authority*, 82 AD2d 175 (4th Dept 1981]). Likewise here, the Towns' charges are not "ad valorem levies" but "special assessments" because the Towns' charges are based on actual costs to the benefitted property—bearing a direct

relationship to a benefit to the real property—and not based on the value of the property.

"Special assessments" are not "taxes" under RPTL §102(20), where a "tax" is defined as a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, but does not include a . . . special assessment.

The Fourth Department dissent admitted the demolition charges are not "taxes" or "special ad valorem levies", but instead "special assessments". (175 AD3d at 849). The dissent then incorrectly states such "special assessments" are still guaranteed by RPTL §936 despite the RPTL explicitly stating the definition of "taxes" "does **not** include a . . . special assessment" (RPTL RPTL §102[20]).

The Fourth Department's dissent, and the Towns, fail to understand the distinction between something that can be collected "like a tax" and RPTL defined "taxes" for the purpose of the RPTL §936 guarantee. The dissent incorrectly argued:

> The RPTL, however, expressly contemplates that special assessments, under some circumstances, are to be treated as taxes for purposes of property tax collection. 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]" (RPTL 1102 [2]). Moreover, special 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" (§64[5-a]).

(**R. 347**). Yes, the demolition charges can be collected *like taxes* but they are not *guaranteed* by the County. This is the distinction neither the Fourth Department dissent nor the Towns understand. "Like taxes" means that they are a lien on the property and will have priority over other liens on the property as taxes do—not that those charges are guaranteed by the County under RPTL §936.

This is the reason the Legislature exempted "special assessments" from the RPTL §936 guarantee—so Counties would not be forced to pay for decisions towns make regarding properties. As pointed out elsewhere in this brief, it is highly unlikely the properties at issue can be sold for enough to cover the tax liens plus demolition costs. The Towns know this, which is why they are desperate to include these costs in the guarantee. Also as pointed out elsewhere in this brief, the charges for demolition and lawn maintenance are liens against the property for which the Towns will be reimbursed if the properties sell for enough to cover the tax liens plus those charges. But again, because the Towns know that is unlikely to happen, they want the County to pay those costs through the guarantee. Again, this is exactly why the Legislature exempted special assessments from the RPTL §936 guarantee—to

protect counties from such schemes. Otherwise, towns could run amok and force counties to pay for all sorts of nonsense.

The town charges are not included in the RPTL §936 guarantee, and the Fourth Department's decision should be affirmed.

E. The Charges are not "Special Ad Valorem" Levies

Because the demolition and lawn maintenance charges are not based on the value of the property, but instead are based on the alleged actual costs of the demolition or lawn maintenance, those charges are not "ad valorem levies".

A "special ad valorem levy" is a charge imposed on benefited real property in the same manner and at the same time as taxes for municipal purposes to defray the cost, including operation and maintenance of a special district improvement or service. (RPTL §102(14]). An "ad valorem levy" is an assessment imposed for specific municipal improvements that confer a special benefit on the property assessed beyond that conferred generally (*see, Norwood v Baker,* 172 US 269 [1898]; *Roosevelt Hosp. v Mayor, Aldermen & Commonalty of City of N. Y.,* 84 NY 108, 112 [1881]; *Church of Christ the King,* 115 Misc 2d at 463; *see also,* RPTL §102[20]). Ad valorem levies are utilized for such things as constructing sewers (*see, Wilkosz v Village of Brocton,* 166 AD2d 885 [4th Dept 1990]), the costs of garbage collection services (*see, Matter of Pokoik v Incorporated Vil. of Ocean Beach,* 143

AD2d 1021 [2d Dept 1988], *lv denied* 73 NY2d 706; *Sysco Corp. v Town of Hempstead*, 133 AD2d 751 [2d Dept 1987]), and the costs of providing fire protection services (*see, Tuckahoe Hous. Auth. v Town of Eastchester*, 208 AD2d 521 [2d Dept 1994]).

The phrase "ad valorem" means "according to the value" and is used in the field of taxation to designate an assessment of taxes against the property at a certain rate upon its value. (See *Guardian Life Ins. Co. of Am. v Chapman*, 302 NY 226, 238-239 [1951]). An "ad valorem tax" is "[a] tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure" (*N.Y. Tel. Co. v Supervisor of Oyster Bay*, 4 NY3d 387, 395 fn1 [2005], quoting Black's Law Dictionary 1496 [8th ed. 2004]; see also *USA Recycling Inc. v. Town of Babylon*, 66 F.3d 1272, 1286 [2d Cir. 1995] [distinguishing between taxes on property owners on "ad valorem basis" or in proportion to the value of the property and those on a "benefit basis" or in proportion to the actual benefit conferred on the property]).

The definition of "ad valorem" excludes the charges imposed by the Towns. The Towns' charges for maintenance or demolition are not based on an assessment of the value of the property and the charges are not imposed according to the property's value. Instead, those charges are imposed based on the alleged actual costs of the services performed (i.e., the cost of lawn-mowing or demolition of

structures). Because the Towns' charges are not general "taxes" and are not "special ad valorem levies", they do not fall under the RPTL §936 guarantee.

F. The Administrative Agencies' Opinions the Towns Rely on are Wrong as a Matter of Law and Entitled to No Deference

Because the New York Department of Taxation and Finance, New York State Comptroller, and New York State Attorney General do not enforce Real Property Tax laws and because this issue is one of statutory construction, the opinions of those agencies are entitled to no deference. (see *Piccolo v NY State Tax Appeals Trib.*, 108 AD3d 107, 110 [3rd Dept 2013] [definition of "taxes imposed on real property" or more general term "taxes" presents question of statutory interpretation, requiring court's analysis of statutory language and legislative intent, with no deference accorded to the Division of Taxation's interpretations]).

The Towns incorrectly rely on opinions of the New York State Department of Taxation and Finance found at 9 Ops Counsel SBEA No. 55 (1990); the New York State Comptroller found at 1982 Ops St Comp No. 82-216, and the New York State Attorney General found at 2015 Ops Atty Gen No. 2015-3.

First, those opinions are wrong as a matter of law because they ignore the definite and precise legal meanings for the terms "taxes", "special assessment", and "ad valorem tax levy" and also ignore the Court of Appeals' decision in *Lane v Mt. Vernon* (38 NY2d 344, 347-348 [1976] [finding municipal charges for demolition

are not a tax levy]).

Second, while true that "[d]eference is generally accorded to an administrative agency's interpretation of statutes it enforces when the interpretation involves some type of specialized knowledge" (*Belmonte v Snashall*, 2 NY3d 560, 565 [2004], emphasis supplied), such deference is not appropriate here because the Department of Taxation and Finance, Comptroller, and New York Attorney General do not enforce Real Property Tax laws. Instead, Counties, Cities, and Villages enforce Real Property Tax Laws.

Also, despite the opinion in 9 Ops Counsel SBEA No. 55 (1990), which opined that demolition charges are "taxes", the New York State Department of Taxation and Finance argues before New York courts the opposite—that "special assessments" and "special ad valorem levies" are not "taxes". (See, e.g., *Piccolo v NY State Tax Appeals Trib.*, 108 AD3d 107 [3rd Dept 2013]; *Matter of Stevenson*, 106 AD3d at 1149 [same]; *Luther Forest Corp.*, 164 AD2d at 631).

Further, interpreting these Real Property Tax Law sections does not require specialized knowledge. Instead, it is a question of statutory construction, which is the Court's province. An agency's construction of a statute will not be accorded special deference when—as here—the question is one of statutory analysis dependent on accurate determination of legislative intent. (see *Piccolo v NY State Tax Appeals Trib.*, 108 AD3d 107, 110 [3rd Dept 2013] [definition of "taxes

imposed on real property" or more general term "taxes" presents question of statutory interpretation, requiring court's analysis of statutory language and legislative intent, with no deference accorded to the Division of Taxation's interpretations]; *KSLM-Columbus Apartments, Inc. v. New York State Div. of Housing and Community Renewal*, 5 NY3d 303 [2005]; *Polan v. State of NY Ins. Dept*, 3 NY3d 54 [2004]; *Belmonte v. Snashall,* 2 NY3d 560 [2004]; *Lorillard Tobacco Co. v. Roth*, 99 NY2d 316 [2003]; *Sbriglio v. Novello,* 44 AD3d 1212 [3d Dept 2007]; *New York State Superfund Coalition, Inc. v. New York State Dept of Environmental Conservation,* 18 NY3d 289 [2011] [in such a case, there is little basis to rely on any special competence or expertise of administrative agency] *Drew v. Schenectady County*, 88 NY2d 2424 [1996] [same]; *Angello v. Labor Ready, Inc.*, 7 NY3d 579 [2006]). This matter is one of statutory analysis dependent on accurate determination of legislative intent requiring no deference to an agency opinion.

Legal interpretation is ultimately the court's responsibility. (*Drew v. Schenectady County*, 88 NY2d 2424 [1996]). As a general rule, courts will not defer to administrative agencies in matters of statutory interpretation and questions of law (*Bikman v. New York City Loft Bd*., 14 NY3d 377 [2010] [city loft board's interpretation of Loft Law provision governing a qualified residential tenant's right to sell improvements to the owner of the premises or an incoming tenant]; *O'Brien v. Spitzer*, 7 NY3d 2395 [2006]; *Madison-Oneida Bd. of Co-op. Educational*

Services v. Mills, 4 NY3d 515 [2004]).

Because the New York Department of Taxation and Finance, New York State Comptroller, and New York State Attorney General do not enforce Real Property Tax laws and because this issue is pure statutory interpretation, the opinions of those agencies (which are wrong as a matter of law) are entitled to no deference and should be ignored.

G. Arguments Regarding Enforcing Tax Liens are Irrelevant

The Towns argue that because towns cannot enforce tax liens, the County must pay their charges for lawn maintenance and demolition. First, whether or not the Towns can enforce tax liens is irrelevant to the question. Second, while the Towns cannot enforce tax liens (i.e., foreclose on a property) they can sue property owners for the town-imposed charges. Third, the County likely cannot recover the Towns' demolition and lawn maintenance charges. (See **R. 164-5,** ¶¶37-44). Fourth, if the County does miraculously manage to sell one of these properties for more money than the tax lien, the Towns would be entitled to surplus moneys to pay the special assessment liens for demolition and clean up charges. The County cannot keep surplus money from a foreclosure sale.

The Towns argue that they do not have a choice. It is disingenuous to claim towns have no choice whether to demolish a building.

The Towns argue that this "scheme is not unfair because the County, not the Town, has full control over the enforcement of the unpaid taxes." The issue here is whether the charges for demolition and clean-up are taxes versus special assessments. Regardless, the only power of the County is to foreclose on a property and sell it at auction. This does not guarantee full payment of the Towns' high lawn-mowing and demolition charges and in fact, the Towns do not dispute the County likely cannot collect anywhere near the full unpaid taxes, clean-up, and demolition charges through a foreclosure sale. This argument by the Towns is disingenuous.

The towns claim upwards of $600 to mow one residential lot a single time. They charge more than $20,000 to demolish a residential structure, leaving the County with an unpaid real property tax lien on an abandoned property that likely constitutes several years of unpaid taxes, plus more than $20,000 charge for demolition, and $600 for each time the town mowed the property. The County likely could not sell such vacant lot (the value of which is demonstrated by its owner's abandonment) at a price high enough to recover the tax liens and town charges – leaving the County taxpayers on the hook for town financial decisions.

The towns' argument that towns can simply demolish any building and require the County to pay whatever demolition or mowing costs the town imposes defies logic. This would require the taxpayers of all the surrounding towns to pay the demolition costs, without requiring the town performing the demolition to pay any

costs, i.e., the demolishing town would be reimbursed. Such a scheme does not qualify as a "tax" as contemplated by the Real Property Tax Law.

H. The Monroe County Tax Code does not include a guarantee for the Town charges

The Fourth Department also correctly held that Monroe County Code Chapter 673, Tax Act, "does not expand the County respondents' obligations under RPTL 936, i.e., it does not require them to guarantee or credit the maintenance charges." (**R. 346**)

County Tax Act §3 provides that the "assessor shall complete the assessment roll . . . and shall forthwith cause a notice to be published and conspicuously posted . . . conforming to the requirements and provisions of the real property tax law of the state of New York relating to notice of completion of tentative roll, public examination, complaints, and board of assessment review; **and in all other respects shall proceed in the preparation, correction, completion and certification of the assessment roll as directed by the real property tax law of the state of New York**" (emphasis supplied). Further, §10 provides that each "receiver of taxes and assessments or collector shall . . . make and deliver to the county treasurer **an account of unpaid taxes**, upon the tax roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, **and upon the verification of the said account by the**

county treasurer he shall be credited by the county treasurer with the amount of such account" (emphasis supplied).

The Monroe County Tax Act mirrors the Real Property Tax law regarding RPTL Article 9's guarantee of taxes by the County. The Towns' argument for expanding the guarantee to include *any* charge imposed by the Town defies logic. Under the Towns argument, the Towns can include any charge against a property and the County must pay such charge regardless of amount or ability to recover. The RPTL and the County Tax Act do not support conferring such broad power on the Towns.

The Court cites language that the Monroe County Tax Code requires County "tax warrants to include 'moneys to defray any other town expenses or charges'", but reading the County Tax Code this broadly would require the County to reimburse the Towns for every expense, which is not the purpose of the RPTL or Monroe County Tax Code.

Point 2

The Towns' Local Laws Impair the Powers of the County

Requiring the County to guarantee payment of the Towns' demolitions and lawn-mowing charges would impair the powers of the County in violation of the New York State Constitution Article IX, §2(d) and Municipal Home Rule Law §10(5).

The argument is not that the Towns' local laws are unconstitutional, but that their and the trial court's interpretation of the Towns' Local Laws violate the New York State Constitution Article IX, §2(d) and Municipal Home Rule Law §10(5). The Town's laws allowing them to demolish buildings or clean-up yards and charge the costs against the properties are not unconstitutional. Holding that such charges are "taxes" as opposed to "special assessment" is what violates the NY Constitution and MHRL.

In Opinion 86-76 of the New York State Comptroller, the Comptroller was asked to render an opinion on whether a village could adopt a local law authorizing the levy and collection of delinquent electric charges with annual general taxes. In finding a village could not adopt such a local law, the Comptroller cited two reasons: First, only the State Legislature can exercise authority regarding the assessment and collection of taxes; and second, the adoption of such a local law "would nonetheless be prohibited by Municipal Home Rule Law §10(5) *in those instances where*

delinquent taxes are collected by the County." (emphasis supplied).

MHRL §10(5) provides "a local government shall not have the power to adopt local laws that impair the powers of any other public corporation." In Opinion 86-76, the Comptroller states the effect of such a local law providing for the levying of unpaid utility charges on the tax bill "would be to require the county to guarantee their payment to the village even though it is not required to do so under the Real Property Tax Law"—what Petitioners seek to accomplish in this Article 78 proceeding. The Comptroller concludes by stating that "[u]nder these circumstances, a village local law providing for the collection of unpaid utility charges with village taxes would impair the powers of the county and would be improper…"

MHRL §10(5) is derived from New York State Constitution Article IX, §2(d), which provides that "[e]xcept in the case of a transfer of functions under an alternative form of county government, a local government shall not have the power to adopt local laws which impair the powers of any other local government." The policy behind the constitutional provision and MHRL is that one local government should not be able to negatively impair or control another local government, which is what Petitioners seek to do.

Any local law purporting to levy code enforcement (such as lawn-mowing) and demolition liens is subject to Article IX, Section 2(d) and MHRL §10(5) and cannot "impair the powers of any local government." In Opinion 86-76 of the New

York State Comptroller, to the extent the effect of such a local law requires the County to guarantee their payment to Petitioners, it impairs the powers of the County and is improper.

The New York State Constitution and Municipal Home Rule Law do not allow Petitioners attempt to impair the powers of the County by creating a potentially staggering additional mandate in which the County would guarantee the cost of code enforcement and demolitions by local governments. With 31 local governments in the County, code enforcement expenses for demolitions and lawn-care or other code violations per municipality would cause a significant tax increase for County residents.

Turning to New York State Attorney General's Opinion 98-35, the opinion involved a village in Montgomery County and states that unless the County amends its local law to provide for reimbursement of village costs of demolition and clean-up, the village must consider an alternative. AG Opinion 98-35 recognizes the applicability of the principles enunciated in State Comptroller Opinion 86-76: that when a county opted into collecting and guaranteeing real property taxes under RPTL §1442, a village cannot by local law impair the powers of the county as prohibited by the Constitution and MHRL and create a mandate forcing the county to also guarantee village code enforcement and demolition expenses – unless the county agrees to do so.

Here the Towns claim upwards of $600 to mow one residential lot a single time. They charge more than $20,000 to demolish a residential structure, leaving the County with an unpaid real property tax lien on an abandoned property that likely constitutes several years of unpaid taxes, plus more than $20,000 charge for demolition, and $600 for each time the town mowed the property. The County likely would never sell such vacant lot (whose value is such that its owner abandoned the property) at a price high enough to recover the tax liens and town charges–leaving the County taxpayers on the hook for town financial decisions.

Petitioners' problems with deteriorating properties require a legislative, not judicial, solution from amongst all levels of government–federal, state, and local. It is not a matter to be solved by Petitioners unilaterally creating a new mandate for County government.

CONCLUSION

Because the charges imposed on real property by the Towns for demolition and lawn maintenance are not "taxes", but instead are "special assessments", which are not included in the Real Property Tax Law §936 guarantee of Town taxes, and because requiring the County to pay the Towns' demolition and lawn-mowing costs impairs the powers of the County in violation of NYS Constitution Article IX, §2(d), the County respectfully requests that the Court affirm the Fourth Department's decision.

December 19, 2019

Michael E. Davis
Monroe County Attorney

By: 

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Certificate of Compliance

I certify pursuant to 22 NYCRR Part 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionately spaced typeface was used, as follows:

Name of Typeface:	Times New Roman
Point Size:	14
Line Spacing:	Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, corporate disclosure statement, questions presented, statement of related cases, or any authorized addendum containing statutes, rules, regulations, etc., is 10,947 words.

December 19, 2019

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A

Section 3. This ordinance shall take effect immediately.

George E. Bantz
Alderman

APPROVED AS TO FORM
AND LEGALITY

THIS ORDINANCE
ADOPTED BY COMMON COUNCIL

Louis R. Pagano
Asst. Corporation Counsel

Irving B. Kendall
President

ATTEST:

Walter Meyer
Clerk

Charles F. Barker

APPROVED
Dept. Oct. 23/63

APPROVED
Oct 24 1963

By P. Raymond Sirignano
Mayor

AN ORDINANCE CONFIRMING THE ASSESSMENT ROLL IN THE MATTER OF REMOVAL OF DEBRIS AND RUBBISH, ETC., FROM PREMISES NO. 245 FRANKLIN AVENUE, BEING LOT 24 IN BLOCK 3156.

WHEREAS, a public hearing, after due publication of notice thereof, was held by this Common Council on December 11, 1963, on the confirmation of the assessment roll in the matter of the removal of debris and rubbish, etc., from premises No. 245 Franklin Avenue, being Lot 24 in Block 3156; and

WHEREAS, at said public hearing, no one appeared in person in opposition thereto; NOW THEREFORE,

The City of Mount Vernon, in Common Council convened, does hereby ordain and enact:-

Section 1. It is hereby ordered and directed that the assessment roll in the matter of removal of debris, rubbish, etc., from premises No. 245 Franklin Avenue, known as Lot 24 in Block 3156, be and the same hereby is confirmed to the end that the sum of $970.00 shall be ap-

38 NY 2d 944

portioned, assessed, confirmed and collected on and from Lot 24 in Block 3156, being the property deemed to be benefitted thereby and heretofore established as a district of assessment.

Section 2. The City Clerk is hereby directed to deliver the assessment roll in the above matter to the Comptroller who shall collect the assessment set forth therein in the manner provided by law.

DEC 26 1963

Section 3. This ordinance shall take effect immediately.

George E. Bantz
Alderman

APPROVED AS TO FORM
AND LEGALITY

Louis R. Pagano
Asst. Corporation Counsel

THIS ORDINANCE
ADOPTED BY COMMON COUNCIL

Irving B. Kendall
President

Charles DePasquale
APPROVED

Dept. Ass't & Taxation

ATTEST:

Walter Meyer
City Clerk

APPROVED
DEC 27 1963
Date

By P. Raymond Sirignano
Mayor

Exhibit A

38 MY 2d 344

#11

AN ORDINANCE FIXING THE TOTAL COST OF REMOVAL OF DEBRIS AND RUBBISH, ETC., FROM PREMISES NO. 245 FRANKLIN AVENUE (LOT 24 IN BLOCK 3156).

WHEREAS, it appears from the certification of the Commissioner of Building, dated October 23, 1963, that pursuant to Local Law #4 of the year 1962, and Article 21 of the Building Code, that it was necessary for him to remove debris, rubbish, equipment and other materials from premises No. 245 Franklin Avenue, being Lot 24 in Block 3156 on the Tax Assessment Map of the City of Mount Vernon, New York, and that the cost thereof to date is the sum of $970.00 and that the removal from said premises is complete and that the total cost of the work of removal was the sum of $970.00; NOW THEREFORE,

The City of Mount Vernon, in Common Council convened, does hereby ordain and enact:-

Section 1. The work of the removal of debris, rubbish, equipment and other materials from premises No. 245 Franklin Avenue, being lot 24 in Block 3156 on the Tax Assessment Map of the City of Mount Vernon, N.Y., is hereby declared to be complete and that the total cost of said removal which was done pursuant to Local Law #4 of 1962 and Article 21 of the Building Code, was the sum of $970.00.

§2. The Commissioner of Assessment and Taxation is hereby directed to prepare a proper assessment roll and report and to assess and charge the cost of the removal of debris, rubbish, equipment and other materials from premises No. 245 Franklin Avenue, being Lot 24 in Block 3156 as shown on the Tax Assessment Map of the City of Mount Vernon, N.Y., in accordance with the provisions of Local Law #4 of 1962 and Article 21 of the Building Code.

§3. This ordinance shall take effect immediately.

23 1963

EXHIBIT "J"

AN ORDINANCE [illegible]
MATTER OF REMOVAL OF [illegible]
PREMISES NO. 245 FRANKLIN AVENUE, [illegible]
BLOCK 3156.

WHEREAS, a public hearing, after due publication of notice thereof, was held by the Council on [illegible], 1963, on the confirmation of the assessment roll in the matter of the removal of debris and rubbish, etc., from premises No. 245 Franklin Avenue, being Lot 24 in Block 3156; and

WHEREAS, at said public hearing, no one appeared in person in opposition thereto; NOW, THEREFORE, BE

The City of Mount Vernon, in Common Council convened, does hereby ordain and enact:-

Section 1. It is hereby ordered and directed that the assessment roll in the matter of removal of debris and rubbish, etc., from premises No. 245 Franklin Avenue, known as Lot 24 in Block 3156, be and the same hereby is confirmed to the end that the sum of $970.00 shall be apportioned, assessed, confirmed and collected on and from Lot 24 in Block 3156, being the property deemed to be benefitted thereby and heretofore established as a district of assessment.

26 1963
50

§2. The City Clerk is hereby directed to deliver the assessment roll in the above matter to the Comptroller who shall collect the assessment set forth therein in the manner provided by law.

§3. This ordinance shall take effect immediately.

EXHIBIT "M"

B

proval; or in the event of the Mayor's disapproval, a memorandum by the City Clerk of its passage over the Mayor's veto; or in the event the ordinance took effect because of the Mayor's failure to approve or to disapprove and return within ten days, then a memorandum to that effect. The photostatic copies thereof shall be kept chronologically, in annual bound volumes. A copy, certified by the City Clerk, shall be presumptive evidence of the passage of the ordinance and of the facts certified. (As amended by L. L. 1961, No. 10)

§ 40. ADMINISTRATIVE CODE. The Common Council may by ordinances not inconsistent with this chapter or with other laws of the state, regulate the powers and duties of city officers and departments, such ordinances to be known as the "Administrative Code of the City of Mount Vernon;" but no ordinance shall be passed interfering with the exercise of the executive functions of the officers, departments, and boards of the city, as provided in this chapter or otherwise by law. The council shall have power and it shall be its duty by ordinance to designate the different rooms and offices in City Hall, or in any building used as such, to be occupied by the various courts, officers, boards and departments of the city. (As amended by L. L. 1961, No. 11)

§ 41. SPECIAL LIGHTING DISTRICTS.
(Repealed by L. L. 1961, No. 37)

§ 42. ALTERATION OF GRADES AND NAMES OF STREETS. The grade of any street shall not be fixed or established except by ordinance of the Common Council. The grade of a street heretofore or hereafter legally established shall not be changed, except by ordinance of the Common Council, and except also upon compensation for damages done, to be ascertained in and by proceedings provided by law for ascertaining damages for lands taken for the opening of streets. The Common Council shall have full power to change or alter, by ordinance, the name of any street, avenue, place or highway in the City of Mount Vernon, at any time, in the discretion of said Common Council, and said ordinance may prescribe the period of time for which said ordinance shall be published in a newspaper published in the City of Mount Vernon. (As amended by L. L. 1927, No. 2; L. L. 1961, No. 12)

§ 43. APPORTIONMENT OF CITY'S EXPENSE OF IMPROVEMENTS. The Common Council may, by ordinance approved by the Board of Estimate and Contract, fix and determine the amount and proportion of the expense which shall be borne by the city at large of any public improvement. The amount and proportion of the expense of such improvements which shall be borne by the city at large may be included in the budget and raised by tax the same as other general city charges. An amount sufficient to pay, when due, any bonds issued to finance the portion of such expense to be borne by the city at large, together with the accrued interest thereon, shall be included in the tax budget and raised by tax the same as other general city charges and such bonds as they mature, together with the interest thereon, shall be paid out of the moneys so raised by tax. The proportion of the expenses which is not borne by the city shall be assessed and charged upon the property affected by such improvement in the form and manner provided by law or ordinance. The words "public improvement" as used herein shall be deemed to refer to any one of the

following: The laying out, opening constructing, extending, widening, altering, straightening, altering of grade, grading, regrading, paving, surfacing, narrowing and discontinuing of public streets, the construction and altering of drains, gutters, crosswalks, sidewalks and curbs in the public streets, laying out, opening, enlarging, improving and ornamenting public squares and parks and acquiring the land necessary therefor; the constructing, reconstructing, extension and alteration of public sewers and drains within or without the limits of the city; constructing and altering of sewerage disposal works within and without the limits of the city; the construction of bridges, arches and culverts and the extension of mains and pipes and appurtenances for the supplying of water for public purposes and for private consumption; the construction, reconstruction, extension and enlargement of off-street parking spaces, lots, garages, or facilities, the construction of buildings, structures, garages, spaces or facilities for off-street parking purposes for the relief of traffic congestion and the acquisition of real property or any interest therein necessary for or incidental to the construction or operation of parking garages, parking spaces or parking facilities for such purpose; the acquisition of real property, rights-of-way or any interest therein which may be required or necessary in connection with the construction of state arterial highways within the city limits as well as the cost of preparing any such real property so acquired for such public use. In any ordinance which shall provide that the whole or any portion of the expense of any such public improvement shall be assessed and charged upon the property benefited and affected by such improvement, the Common Council may provide that the assessments shall be payable in one installment, or in equal annual installments not exceeding twenty years, but no provision shall be made for such payment in installments for a period beyond the probable usefulness of such improvement as provided by the Local Finance Law. (As amended by L. 1923, Ch. 617; L. 1943, Ch. 710; L. L. 1956, No. 3.)

§ 43-a. SIDEWALKS ON NEW STREETS. Hereafter whenever the Common Council shall determine to regulate, grade, pave or otherwise improve any new street, avenue, highway or public place in the City of Mount Vernon, there shall be included in the plans and specifications therefor, and as part of said improvement, specifications for the construction of sidewalks on said new street or streets, avenue, highway or public place; the material, width, etc., of which said sidewalks shall be constructed, shall be specified in said specifications, and said sidewalks shall be constructed as a part of said improvement. The cost and expense of the construction of said sidewalks shall be apportioned, and assessed upon the several abutting properties at the same time, in the same manner, and with like effect as the cost and expense of said regulating, grading, paving or other improvement made on said new street or streets, avenue, highway or public place aforesaid, and as a part thereof. (As added by L. L. 1927, No. 3.)

§ 43-b. PUBLIC IMPROVEMENTS IN CONJUNCTION WITH STATE, FEDERAL OR COUNTY GOVERNMENTS. When a public improvement is undertaken through, by authority of, or in conjunction with the State, and/or Federal and/or County Governments, or any agency thereof, the Common Council shall, by ordinance approved by the Board of Estimate and Contract, fix and determine the proportion, if any, of the cost and expense of such improvement to the city, to be borne by, as-

LOCAL LAW NO. 3, 1962

A LOCAL LAW AMENDING SECTION 229 OF CHAPTER 490 OF THE LAWS OF 1922.

Be it enacted by the Common Council of the City of Mount Vernon, as follows:

§ 1. Section 229 of Chapter 490 of the Laws of 1922, as amended being the Charter of the City of Mount Vernon, N. Y., is hereby amended to read as follows:

§ 229. APPORTIONMENT OF ASSESSMENT. Any person whose real property is assessed upon the tentative assessment roll with real property of another person as one piece or plot, may at any time after the filing of such assessment roll, before the same shall have been made the final assessment roll, submit his deed or other evidence of title to the property to the Commissioner of Assessment and Taxation. The Commissioner shall apportion the assessment and the tax thereon, and shall forthwith deliver a written statement of his apportionment to the Comptroller. The Comptroller shall thereupon enter the apportionment upon the assessment roll, and shall thereafter separately receive the taxes so apportioned. No apportionment of any lot shall be made, however, unless no part of the property resulting from such apportionment is less than a regular building lot.

§ 2. This local law shall take effect forty-five (45) days after its adoption. (Adopted by Common Council May 23, 1962. Approved by Mayor June 6, 1962.

LOCAL LAW NO. 4, 1962

A LOCAL LAW AMENDING LOCAL LAW NO. 3 AND LOCAL LAW NO. 4 OF THE YEAR 1953, AS AMENDED BY LOCAL LAW NO. 1 OF THE YEAR 1955, AS AMENDED BY LOCAL LAW NO. 1 OF THE YEAR 1962, OF THE CITY OF MOUNT VERNON, N. Y.

Be it enacted by the Common Council of the City of Mount Vernon, as follows:

§ 1. Local Law No. 3 and Local Law No. 4 of the year 1953, as amended by Local Law No. 1 of the year 1955, as amended by Local Law No. 1 of the year 1962, of the City of Mount Vernon, N. Y., is hereby amended and renumbered to read as follows:

§ 113-a. POWERS AND DUTIES, GENERALLY. Except as otherwise provided by statute, and subject to the provisions of law and ordinances of the Common Council, the Department of Buildings shall have jurisdiction, supervision and control as follows:

1. Over the enforcement of the zoning ordinance, the building code and other laws, ordinances, rules and regulations governing the construction, alteration maintenance, use, occupancy, safety, sanitary and mechanical equipment and inspection of buildings or structures in the city, and shall have charge of the removal of buildings or other structures and of the location, construction, alteration and re-

moval of signs, illuminated, or non-illuminated, attached to the exterior of any buildings or structure or erected on any premises, together with all surface and subsurface construction within the sidewalk area, other than pertains to the construction or use of the streets and highways for street and highway purposes, the coverings thereof and entrances thereto, and the issuance of permits in references thereto.

2. In addition to the foregoing, the Commissioner of Buildings shall have full power and authority to require the owner of any premises within the city upon which there shall be a building that is unoccupied and in an untenantable condition, or a wall, building or other structure, or part thereof, which may be dilapidated and in an unsafe or dangerous condition, to take down and remove the same, and to clear away any and all debris caused thereby, and require the owner of any premises within the city containing or consisting, in whole or in part, of an abandoned excavation to fill in the same. For the purposes of this section, a building which has not progressed beyond the first tier of beams within six months from the date of issuance of permit therefor, shall be considered a building in untenantable condition; and an excavation which exists for a period of three months shall be considered an abandoned excavation. When the owner of such premises shall fail or neglect to raze or remove such building, wall, or other structure, or to clear away said debris, or fill in said excavation, within five days after written notice so to do has been served upon him personally or by delivering and leaving the same at his residence, or if he be a non-resident of the city, by mailing the same to him at his last known place of residence, or if the name of the owner or his last place of residence cannot be ascertained after due diligence, by posting the same in a conspicuous place upon the premises, the Commissioner of Buildings shall have such building, wall or other structure taken down and removed, such debris cleared away and such abandoned excavation filled in, and the expense of said razing, removal, clearing away and filling in, when certified by said Commissioner to the Common Council, shall thereupon be chargeable and become a lien upon the said premises and shall be paid by the city out of its general funds and levied, corrected, enforced and collected in the same manner, by the same proceedings and under the same penalties as an assessment for a public improvement. In the event that the owner of such premises is a corporation, personal service of said notice upon an officer, director or managing agent thereof shall be sufficient and equivalent to personal service upon an individual owner, and an office or place of business of such corporation shall be and constitute the "residence" of the owner hereinabove mentioned.

3. In addition to the foregoing, the Commissioner of Buildings shall have full power and authority to require the owner of any premises within the City who is or has been required by the Zoning Board of Appeals or otherwise by law to erect and maintain fences, hedges, plantings, shrubbery, lawns or other screening or landscaping facilities on said premises, to erect, replace, repair or maintain said fences, hedges, plantings, shrubbery, lawns or other screening or landscaping facilities.

4. When the owner of such premises shall fail or neglect to erect, replace, repair, or maintain said screening or landscaping facilities within thirty (30) days after written notice so to do has been served upon him, either personally by deliveries and leaving the same with him, or by mailing the same by registered or

§ 226. DEEDS, ETC., TO BE PRESENTED: MAPS TO BE FILED. (Repealed by L. L. 1961, No. 46)

§ 227. TENTATIVE ASSESSMENT ROLL. Between the first and fifth days of April in each year, the Commissioner of Assessment and Taxation shall begin to prepare and by the fifteenth day of June shall have completed in triplicate, a tentative assessment roll for the year. The assessment roll shall be in the form required by the tax law. (As amended by L. L. 1933, No. 6.)

§ 228. REVIEW AND CORRECTION OF ASSESSMENTS. When the Commissioner of Assessment and Taxation has completed the tentative assessment roll, he shall publish at least twice in the official paper or papers, a notice of the completion thereof and that it may be examined at his office, and of the days, to be known as grievance days, during which complaints may be filed and heard at his office. A verified written complaint stating the full value of the property and the reasons for complaint must be filed with the Commissioner during the grievance days. The said grievance days shall be between the twentieth and thirtieth days of June in each year. All complaints shall be heard and decided by the Board of Review, which shall attend at the Commissioner's office for the purpose of hearing complaints, if requested in writing by the complainant, on every business day during said period from nine o'clock in the forenoon to twelve o'clock noon, and from two o'clock to four-thirty in the afternoon, and from eight to ten o'clock in the evening on the last business day of said period, and during such other hours as they shall deem necessary. (As amended by L. L. 1930, No. 1; L. L. 1933, No. 6, and L. L. 1961, No. 33.)

§ 229. APPORTIONMENT OF ASSESSMENT. Any person whose real property is assessed upon the tentative assessment roll with real property of another person as one piece or plot, may at any time after the filing of such assessment roll, before the same shall have been made the final assessment roll, submit his deed or other evidence of title to the property to the Commissioner of Assessment and Taxation. The Commissioner shall apportion the assessment and the tax thereon, and shall forthwith deliver a written statement of his apportionment to the Comptroller. The Comptroller shall thereupon enter the apportionment upon the assessment roll, and shall thereafter separately receive the taxes so apportioned.

§ 230. ASSESSMENT OF OMITTED PROPERTY. During the grievance days aforesaid the Commissioner of Assessment and Taxation may add to the tentative assessment roll any property liable to taxation, the assessment of which may have been omitted, and he may increase any assessment upon the tentative assessment roll, upon giving two days' written notice of such addition or increase to the owner or agent of the property if known, otherwise to the occupant thereof. Such notice may be given by publication in the official paper or papers or by registered mail. Complaints against any such change shall be heard in like manner as complaints against an original assessment.

§ 230-a. CONFIRMATION AND LIEN OF LOCAL ASSESSMENTS. If the whole or any portion of the expense of a public improvement be assessed or charged upon

the property affected by such improvement, such assessment shall be confirmed by the Common Council, after a public hearing shall have been had, at which any person interested may present written objections to such confirmation. Notice of the time and place of such hearing shall be published in the official paper of the city at least ten days prior to the hearing.

The title of such assessment, with the date of confirmation by the Common Council, shall be entered, with the date of such entry, in a record of the titles of assessments confirmed and shall be kept in the Office of the Commissioner of Taxes and Assessments. (As added by L. L. 1926, No. 2.)

§ 231. RIGHTS TO REVIEW ASSESSMENT OF TAX FOR LOCAL IMPROVEMENT LIMITED. No action or proceeding to set aside, vacate, cancel or annul any assessment or tax for a local improvement shall be maintained, except for total want of jurisdiction to levy and assess the same on the part of the officers, board or body authorized by law to make such levy or assessment or to order the improvement on account of which the levy or assessment was made. No action or proceeding shall be maintained to modify or reduce any such assessment or tax except for fraud or substantial error by reason of which the amount of such tax or assessment is in excess of the amount which should have been lawfully levied or assessed.

§ 232. PROCEDURE ON REVIEW. No action or proceeding shall be maintained to set aside, vacate, cancel, annul, review, reduce or otherwise question, test or affect the legality or validity of any assessment or tax for a local improvement, except in the form and manner and by the proceedings herein provided. If, in the proceedings relative to an assessment or tax, entire absence of jurisdiction on the part of the officers, board or body authorized by law to levy or assess the same or to order the improvement on account of which the assessment was made or tax imposed, is alleged to have existed or in case any fraud or substantial error, other than the errors or irregularities specified in the preceding section, by reason of which substantial damages have been sustained, are alleged to have existed or to have been committed, any party aggrieved thereby, who shall have filed objections thereto, within the time and in the manner specified by law therefor, and whose objections have been overruled by the Board of Review, may apply, to the Supreme Court at any special term thereof held within the ninth judicial district, for an order vacating or modifying such assessment as to the land in which he has an interest, upon the grounds, in said objections specified, and no other, and upon due notice of such application to the Corporation Counsel. Each such application shall be made within twenty days after the confirmation of the assessment. Thereupon such court may proceed to hear the proofs and allegations of the parties and determine the same, or may appoint a referee to take the proof and report thereon or to hear, try and determine the same. If it shall be determined in such proceeding that the officers, board or body had no jurisdiction to make the levy or assessment complained of or order the improvement, the court may order such assessment or tax vacated. If it shall be determined therein that any such fraud or substantial error has been committed and that the party applying for such relief has suffered substantial damages by reason thereof, the court may order that the assessment or tax be modified as to such party, and that so modified it be confirmed.

A like application may be made to secure a modification or reduction of any such assessment or tax on account of fraud or some substantial error occurring in the performance of the work of the improvement on account of which such assessment or tax is made or levied, and it shall be determined in like manner. If, in any such proceeding, it shall be determined that such fraud or substantial error has been committed, by reason of which any such assessment or tax upon the lands of any such aggrieved party has been unlawfully increased, the court may order that such assessment or tax be modified by deducting therefrom such amount as is in the same proportion to such assessment or tax as the whole amount of such unlawful increase is to the whole amount of the assessment or tax for the improvement. An order so made in any such proceeding shall be entered in the County Clerk's Office of Westchester County, and shall have the same force and effect as a judgment. The court may, during the pendency of any such proceeding, stay the collection of any assessment or tax involved therein as against the parties thereto. Costs and disbursements of any such proceeding may be allowed in the discretion of the court. No appeal shall be allowed or taken from the order made in any such proceeding, but the determination so made therein shall be final and conclusive upon all the parties thereto. No assessment or tax shall be modified otherwise than to reduce it to the extent that the same may be shown by the parties complaining thereof to have been in fact increased in dollars and cents by reason of such fraud or substantial error. In no event shall that proportion of any such assessment which is the equivalent of the fair value or fair cost of the improvement be disturbed for any cause. No money paid on account of any assessment or tax shall be recovered for any cause, except the amount of the excess of such assessment or tax over and above the fair value and cost of the improvement. In case of the failure of any assessment or tax for any cause, the Comptroller shall certify such fact to the Common Council and it shall be its duty to forthwith cause the same to be relevied and reassessed in a proper manner.

§ 233. CONSOLIDATION OF SEPARATE PROCEEDINGS. Two or more persons may unite in commencing and prosecuting proceedings to vacate or modify assessments; and when two or more persons have commenced separate proceedings to vacate or modify assessments for the same improvement, the court before whom the same are commenced or pending, or a judge thereof at special term or chambers may, by order upon due application and notice, consolidate such separate proceedings into one proceeding.

§ 234. REBATES AND DEFICIENCIES. In all cases of assessment for improvement the Commissioner of Assessment and Taxation shall include in the apportionment all the expenses connected with or which were incident to the making of the improvement and assessment. Whenever the amount apportioned shall exceed the actual cost of the improvement, including all expenses connected therewith or incident thereto, the Comptroller shall certify the amount of the surplus to the Commissioner and he shall thereupon declare a rebate and the excess shall be refunded pro rata to the persons who paid their assessments. If the amount assessed for any improvement shall be insufficient to cover the cost of the improvement, including all expenses connected therewith and incidental thereto, the Comptroller shall certify the amount of the deficiency to the Common Council and Com-