

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND  
ENTERED  
ON 5/6 20 05  
WESTCHESTER  
COUNTY CLERK

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

Petitioner,

- against -

PAUL J. FEINER, as Town Supervisor,  
Town of Greenburgh, New York, and the  
TOWN OF GREENBURGH,

Respondents.

-----X  
MOLEA, J.

DECISION & ORDER

Index No. 10914/03

COPY

The following papers, numbered one (1) through thirty-one (31) were read upon review of the respondents' motion to reargue the amended decision, order and judgment of the Court, filed and entered in the above-entitled action on February 17, 2005, providing declaratory relief upon a petition for relief brought pursuant to Article 78 of the Civil Practice Law and Rules (CPLR).

Notice of Motion .....	1-2
Affidavit in Support - Exhibit .....	3-13
Memorandum of Law in Opposition .....	14-22
Reply Affidavit .....	23-31

Upon the foregoing papers, it is ordered and adjudged that the respondents' motion to reargue is disposed of as follows:

Petitioner's motion for leave to reargue is granted and upon reargument, the Court adheres to its original decision.

It is an established principle of law that an application seeking reargument is properly addressed to the sound discretion of the court and may only be granted upon a showing that relevant facts were overlooked or misapprehended by the court, or that it misapplied any controlling principle of law, thereby mistakenly reaching its earlier decision (*see*, CPLR

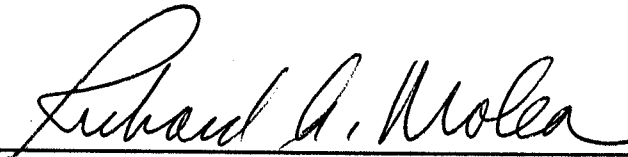
2221[d][2]; *see also*, *Grassel v. Albany Medical Center Hosp.*, 223 AD2d 803, 805, *lv. denied* 88 NY2d 842; *Pahl Equip. Corp. v. Kassis*, 182 AD2d 22, *lv. denied, app. dismissed* 80 NY2d 1005; *Duque v. Ortiz*, 154 AD2d 333, 334; *Schneider v. Solowey*, 141 AD2d 813; *Klein v. Mount Sinai Hosp.*, 121 AD2d 164; *Foley v. Roche*, 68 AD2d 558, 567). These statutorily created limitations upon consideration of an application for reargument reflect the well-settled view that the motion to reargue is not designed to serve as a vehicle which may enable an unsuccessful party to re-litigate an issue which was previously decided (*see, McGill v. Goldman*, 261 AD2d 593, 594; *see also, Matter of Mayer v. National Arts Club*, 192 AD2d 863, 865; *Pahl Equip. Corp. v. Kassis, supra*, at 594; *Bankers Trust Co. of California v. Payne*, 188 Misc.2d 726).

Here, the respondents assert that the Court overlooked the applicability of General Municipal Law §§ 119-o and 119-n(c) in finding that the respondent's assessment, levy and collection of a tax solely from the owners of property located within the unincorporated area of the Town, in order to finance the cost of acquisition, operation and maintenance of Taxter Ridge as parkland to be made available for use by all persons irrespective of their residency status, constituted a violation of Town Law §232. However, the arguments presently raised by the respondents in this regard are substantively the same as those considered and soundly rejected by the Court upon issuance of the amended decision, order and judgment filed and entered in the above-entitled action on February 17, 2005 which provided declaratory relief upon a petition for relief brought pursuant to Article 78 of the CPLR. Despite the respondents' claim that the instant application demonstrates that relevant facts were overlooked or misapprehended by the court, or that it misapplied any controlling principle of law, the instant motion is plainly an application brought by an unsuccessful party to re-litigate a matter which was previously decided.

Accordingly, as the respondents' have failed to demonstrate that relevant facts were overlooked or misapprehended by the court, or that it misapplied any controlling principle of law and mistakenly reached its earlier decision, the standard for reargument has not been met and the instant motion must be denied (*see, Grassel v. Albany Medical Center Hosp.*, 223 AD2d 803, 805, *lv. dismissed, lv. denied* 88 NY2d 842; *see also, Pahl Equip. Corp. v. Kassis, supra*, at 594; *Duque v. Ortiz*, 154 AD2d 333, 334; *Klein v. Mount Sinai Hosp.*, 121 AD2d 164).

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
May 6, 2005



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Honorable Richard A. Molea  
Acting Justice of the Supreme Court

TO:

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