

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of an :
Article 78 Proceeding :

ROBERT B. BERNSTEIN, :

Index No. 03-10944

Petitioner :

AFFIDAVIT

-against- :

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

Respondents :

STATE OF NEW YORK)
)ss:
COUNTY OF WESTCHESTER)

HERBERT ROSENBERG, being duly sworn, deposes and says:

1. I am a resident of the Village of Dobbs Ferry, an incorporated village within the Town of Greenburgh, and a former Acting Village Justice of Dobbs Ferry. I am familiar with the facts set forth herein and I make this affidavit in opposition to the petition of Robert B. Bernstein.

2. I am not a party to this action, although it is my intention to intervene in this action in accordance with the provisions of the CPLR. My interest in making this affidavit and my prospective intervention is based on the fact that the true parties in interest, on the Respondent's side, are the residents of the six villages which are part of the Town of Greenburgh¹ – just as Petitioner Bernstein's true interest is as a resident of the unincorporated area of the Town of Greenburgh.

¹ The six villages are Dobbs Ferry, Hastings-on-Hudson, Ardsley, Irvington, Tarrytown and Elmsford. The combined population of these six villages is slightly more than the population of the unincorporated area of Greenburgh.

3. The issue in Petitioner's petition is whether the cost of the acquisition by the Town of Greenburgh of a parcel of open space in the unincorporated area of Greenburgh called "Taxter Ridge," which was jointly purchased by the Town, Westchester County and the State of New York, should be taxed to the owners of taxable property in the unincorporated area of Greenburgh or to the owners of taxable property in the entire Town, including the villages.² Petitioner claims that the taxes should be town-wide, because Taxter Ridge is, in his phrase, "open to the residents of the Town, whether they live in the villages or the unincorporated area."

4. In an effort to buttress his argument, Petitioner asserts, in paragraph 10 of his petition, that while village residents are taxed for their own municipal services, and those services include operating and maintaining public parks owned and operated by the villages themselves, "[s]uch 'village' parks are restricted in use by the villages to village residents only."

5. There are many things wrong with Petitioner's petition, but the incorrectness of his assertion, quoted in the preceding paragraph, completely undercuts the basis of his claim. I cannot speak about all the parks in all the villages, but I can speak about several of them, and these (listed below) are owned and operated and maintained by the respective villages but are open to the entire general public – including residents of unincorporated Greenburgh and elsewhere:

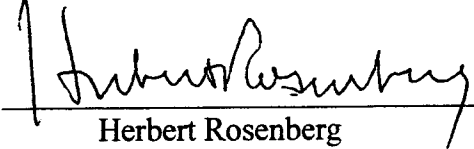
- a. The Juhring Estate Park in Dobbs Ferry (approximately 76 acres of parkland).
- b. Hillside Woods Park in Hastings-on-Hudson (approximately 50 acres of parkland).
- c. MacEachron Waterfront Park in Hastings-on-Hudson.
- d. Patriot Park in Tarrytown.
- e. Scenic Hudson Park in Irvington (approximately 12 ½ acres of waterfront parkland).
- f. Ashford Park in Ardsley, containing athletic fields, tennis courts and a playground).

6. The reason these village parks are open to the entire general public is the same as the reasons why Taxter Ridge and the other two Greenburgh parklands are open to the general public, i.e. they have been partially funded by New York State and/or Westchester County, and when these

² Plaintiff also raises this issue with respect to two other areas of parkland in the unincorporated area that would be affected by this case.

governments provide funds they require that the parklands be open to everybody, without restriction as to residence. Furthermore, in Hastings-on-Hudson all its parks are open to the general public without residency requirements, even those which have not been funded by the state or county. Mr. Bernstein is disingenuous in saying that the three Greenburgh parklands are "open to the residents of the entire Town, including the villages." They, like the aforementioned village parks, are open to the entire world.

7. Although these village and town parks are required to be open to the general public, in practice they are used by the local residents. Residents of one village don't typically travel to the parks of other villages or unincorporated Greenburgh to use their parks, and *vice versa*. The "open to the general public" requirement is a legal one, without practical meaning. Mr. Bernstein's underlying notion that the unincorporated area is subsidizing the villages is wrong and this will be further demonstrated in the documents I will submit after intervening.


Herbert Rosenberg

Sworn to before me this
5th day of January, 2005


Notary Public

MARIANNE DELISE
NOTARY PUBLIC STATE OF NEW YORK
NO. 01DE5012400
COMMISSION EXPIRES JUNE 15 2007