

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of
ROBERT B. BERNSTEIN

Petitioner,

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

-against-

Decision & Order
Index No.: 6807-06

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

Respondents,

-----X
CACACE, J.

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

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

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

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

CPLR § 7802 (d) addresses applications for intervention in Article 78 proceedings. The section reads, "The court may direct that notice of the proceedings be given to any person. It may also allow other interested persons to intervene."

The standard for permissive intervention in Article 78 proceedings is more liberal than that of CPLR § 1013 which applies to actions in general. Elinor Homes Co. v. St. Lawrence, 113 AD 2d 25. However, there is the requirement that the party seeking to intervene must be an "interested party." "To be an interested party which a court may allow to intervene in an Article 78 proceeding, one must have a legally cognizable claim to intervene, rather than just a general interest in the result of the proceeding." Kruger v. Bloomberg, 1 Misc 3d 192, 195.

The issues before the Court are closely related to those involved in an earlier Article 78 proceeding brought by the petitioner against the respondent. (Bernstein v. Feiner, Westchester Co. Index No. 03-109440. The earlier matter is presently on appeal before the Appellate Division. The Appellate Division has denied the proposed interveners the opportunity to file an *amicus brief* in that matter. Contrary to the assertion of the interveners, the standard for filing an *amicus brief* is less stringent than that for granting intervention.


The proposed interveners have failed to show that they possess a "legally cognizable claim". Their position in support of intervention is that they represent

individuals who would be affected by the outcome of this action. The villages themselves would not be directly affected. Accordingly, the motion to permit intervention is denied.

The Court considered the following papers in connection with this application: (1) Order to Show Cause dated May 16, 2006 with attached affidavits in support and exhibits; (2) Affirmation in Opposition of petitioner dated May 25, 2006 with attached exhibits; and (3) Respondents' Affirmation in Response dated May 25, 2006 with attached exhibits.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
August 11, 2006



HON. SUSAN CACACE

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