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SPECIAL ASSESSMENT ROLLS

A special assessment is defined by Real Property Tax Law [RPTL], §102(15), as: "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." Such a charge may be imposed by a city, county, town or village to pay the costs of eligible improvements or services.

A multitude of statutes **unequivocally** provide that before a special assessment may be imposed, affected property owners must be given an opportunity to object to their property's tentative special assessment(s) by presenting an objection to the municipal governing board, that is, the city council, county legislature, town board, or the village board of trustees.¹ Examples of such statutes are County Law, §271; Town Law, §§202-a and 239; Village Law, §22-2200; City of Mount Vernon Code, §58-5; and City of Rye Code, §128-7.² The time period within which such public hearings may be held varies in accordance with applicable law.³

Numerous laws also clearly state a tentative special assessment roll **must** be prepared before the date on which aggrieved property owners may present their objections to the municipal governing board. The information that must be included in a tentative special assessment roll is generally set forth in considerable detail by the applicable statutes. Such a tentative special assessment roll must contain specified information, some of which is not included on tentative assessments rolls for tax purposes that are prepared pursuant to RPTL, §504. That specified information is discussed below.

In some situations, assessors are responsible for preparing tentative special assessment rolls. For example, Town Law, §237, states "[i]t shall thereupon be the duty of assessors, or the town board, if the town board shall so elect, to prepare an assessment-roll which shall contain a description of each lot or parcel of land so that the same may be ascertained and identified; the names of the reputed owners thereof; the amount of benefit of said improvement which each lot or parcel shall have received, and the amount assessed against each such lot or parcel." However, that is not always the case.⁴

The owners of the properties that would be subject to a proposed special assessment, in addition, must be given notice of their right to present objections to the municipal governing board. Applicable statutes provide that such notice must be published in a specified manner within a particular time period.⁵ The Court of Appeals has further determined that "direct notice" to the affected property owners is also **constitutionally mandated** in most circumstances before a special assessment may be imposed (*Garden Homes Woodland Company v. Town of Dover*, 95 N.Y.2d 516, 742 N.E.2d 593, 720 N.Y.S.2d 79 (2000)).⁶ Since so many laws with differing procedural requirements apply to the preparation of special assessment rolls, it is not practical for ORPS to create a computer model that could be used by local governments in general. This is particularly so because, as noted above, assessors are not always given legal responsibility for preparing the local government's special assessment rolls.⁷ Instead, this memo offers suggestions for how each local government should prepare its special assessment rolls.

In our opinion, the judiciary would most likely agree that a particular special assessment roll

contains the minimally necessary amount of information if such a roll contains all of the elements required by Town Law, §237, that is, "a description of each lot or parcel of land so that the same may be ascertained and identified; the names of the reputed owners thereof; the amount of benefit of said improvement which each such lot or parcel shall have received, and the amount assessed against each lot or parcel." Again, in our opinion, it would be legally sufficient if such a tentative special assessment roll states, for example, the number of units proposed to be assessed against each parcel within the special district, as a method of stating "the amount of benefit of said improvement which each such lot or parcel of land shall have received." Further, it would be good practice for the local government to have available for public inspection a statement of the benefit formula proposed to be used for levying the special assessments. Since so many statutes are applicable to the different types of special assessments, the local government may also wish to consult its attorney in regard to this issue.

It is also our opinion that a local government may prepare a special assessment roll which is only available as a computer document or record.⁸ The preparation of such a computer record seems consistent with RPTL, §1582(1), which states "[a]ssessment rolls and tax rolls may be prepared by means of electronic data processing, and may be prepared in any form which can be made readily available in legible form."⁹

As previously noted, tentative special assessment rolls for tax purposes, that are prepared pursuant to RPTL, §504, do not contain all the information that is required to be included in a tentative special assessment roll. Nevertheless, such tentative assessment rolls for tax purposes and their supporting data tables, when generated by Version 4 of ORPS' Real Property System (RPSV4), may have information that could be used to prepare a special assessment roll.

It would seem both reasonable and useful for municipalities to use assessment data (e.g., owners' names, property address and parcel identification data such as print-key) and associated inventory data when creating a special assessment roll. For instance, this might occur when a benefit formula used for determining each property's special assessment is based on the number of bathrooms within each structure located inside the boundaries of the special district. ORPS staff may offer technical advice to those responsible for generating a special assessment roll regarding how to "extract" parcel identification data, owners' names and property address along with other relevant information from an RPSV4 data base for use in creating a tentative special assessment roll. For example, the RPSV4 custom report writer allows a user to select many of the descriptive data fields that might be needed for a special assessment roll. A user has the option of saving the results in a number of file formats (Excel, HTML, Lotus, .dbf, etc.). The user could then add the benefit formula, which is not resident on the RPSV4 database, to the extracted information to create a special assessment roll.

We anticipate that assessors and other local officials may have additional questions concerning the preparation of special assessment rolls. Those questions should be addressed to municipal attorneys who may, in turn, seek assistance from this agency and others such as the Office of the State Comptroller and the Association of Towns.

¹In contrast, assessment complaints are presented to the board of assessment review (Real Property Tax Law [RPTL], §512).

²There is no general statute prescribing a uniform procedure by which cities may impose special assessments.

³County Law, §271(1), states "[n]othing herein shall prevent the public hearing on the assessment roll from being held simultaneously with the hearing on the county budget held pursuant to section [359] of this chapter." County Law, §359, in turn, states the hearing regarding the county budget "may be adjourned from day to day, but not later than the twentieth day of December."

Town Law, §202-a(5), which is generally applicable in towns, states "[s]uch original, amended, changed or new roll shall be adopted at least thirty days before the annual meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, except that this provision shall not apply to towns in Westchester county." Apparently, in Westchester County, such a public hearing is to be held in accordance with

Town Law, §108, which applies to town budget hearings, and states in applicable part that "in towns in Westchester county such hearing shall be held on or before the tenth day of December."

Village Law, §22-2200(1), in contrast, does not state a time period within which such a public hearing must be held, but instead provides that "[t]he board may adjourn the hearing from time to time without further notice and, as soon as practicable, shall complete the said apportionment and assessment."

The time period for holding such a public hearing in a city is governed by city charter, local law or ordinance. For example, City of Rye Code, §128-6, does not specify a time period during which a hearing must be held, but does set a time period within which the tentative special assessment roll must be filed: "[w]ithin 30 days after certification of the cost of the improvement, the City Assessor shall submit a special assessment roll to the City Council, which shall describe each lot and parcel benefiting from the local improvement and show the name or names of the reputed owners thereof and the aggregate amount of the assessment to be levied upon such lot or parcel of land."

⁴County Law, §271(1), states "the administrative head or body [of a county special district] shall thereupon annually assess the amount of the estimate of expenditures, less the estimate of revenues as set forth in the estimate so prepared, on the lots and parcels of land in the district in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom and shall prepare an assessment roll which shall describe each such lot or parcel of land in such manner that the same may be ascertained and identified and shall show the name or names of the reputed owner or owners thereof, and the aggregate amount of the assessment levied upon such lot or parcel of land."

Village Law, §22-2200(2), provides that "[w]hen the cost of any such local improvements has been determined the board shall apportion and assess the part of the expense to be raised by local assessments upon the lands in such assessment district, according to frontage, area, or otherwise, as the board may determine during the proceedings to be just and equitable, and file a copy thereof in the office of the village clerk."

City of Mount Vernon Code, §58-4, states "the City Council shall consider the said statement presented by the Comptroller and shall, by ordinance, fix the total cost for the public improvement and direct the Commissioner of Assessment and Taxation to apportion, assess and charge said entire cost, or such portion as has been determined by the City Council, upon the several lots or parcels of land within the district of assessment designated in such ordinance in proportion to the benefits derived by such lots or parcels respectively from the making of such improvements."

⁵For example, County Law, §271(1), states "[n]otice of such public hearing [to be held by the county legislature] shall be published at least once in the official newspapers stating that said assessment roll has been completed and that at a time and place to be specified therein the board of supervisors will meet and hear and consider any objections which shall be made to the roll."

Town Law, §239, provides that "[t]he assessors or the town board, as the case may be, shall file the assessment-roll when completed, with the town clerk and thereupon it shall be the duty of the town board to cause notice to be published at least once in a newspaper published within the town, or, if there be none published in the town, then in a newspaper published in the county and having a circulation within the town, that said assessment-roll has been completed, and that at a time and place to be specified therein the town board will meet and hear and consider any objections which may be made to the roll."

Village Law, §22-2200(2), states "[a]fter making such apportionment the board shall publish in the official paper and serve upon each land owner, personally or by mail, at least ten days before the hearing, a notice of the filing of such apportionment and assessment map or plan, and that at a specified time and place a hearing will be had to review and complete the same, and that the said apportionment and the said map or plan can be examined by any person interested therein at the office of the village clerk during usual business hours, prior to such hearing" (emphasis added).

City of Mount Vernon Code, §58-5, similarly states that "[t]he City Council shall give notice, to be published in the official newspaper, that such assessment roll and report has been filed, and that at a time to be specified therein, which shall be not less than 10 days from the first publication thereof, it will proceed to a consideration of such assessment roll and report and hold a public hearing with reference thereto."

⁶We have construed the Garden Homes decision to mean that "all towns must now give property owners direct notice of hearings to consider objections to special assessments

(Town Law, §239), unless 'compelling or persuasive reasons, economic or otherwise' can be shown why direct notice cannot be given" (11 Op.Counsel SBRPS No. 15). In our opinion, the direct notice mandated by the Garden Homes decision "must advise that the special assessment roll has been completed, and specify the time and the place where the town board will meet to hear any objections to the roll" (Ibid.). We also believe such direct notice may be provided by mailing a letter or a post card to "the names and addresses of the affected landowners ... [as] they appear on the special assessment roll" (Garden Homes, 95 N.Y.2d at 520, 742 N.E.2d at 595, 720 N.Y.S.2d at 81).

We note that such "direct notice" of the public hearing is required to be made "personally or by mail" by Village Law, §22-2200(2). Similarly, City of Rye Code, §128-6, provides that "[t]he City Council shall, so far as practicable, cause notice [of the public hearing] to be mailed to each person appearing on such assessment roll at the time of such publication." The Court in the Garden Homes decision did not state that the direct notice to each owner must include an estimate of the property's special assessment. However, the inclusion of such an estimate in the direct notice for each property would seem to be a good practice in order to further minimize the possibility of a successful procedural due process of law challenge to a special assessment roll.

⁷We note that the administrative correction of errors procedures do define "clerical error" as including "an entry on an assessment roll or on a tax roll which is incorrect by reason of a mistake in the determination or transcription of a special assessment or other charge based on units of service provided by a special district" (RPTL, §550(2)(e)). We believe that definition should be limited to correcting such errors on tax rolls and in tax bills containing special district charges that are inconsistent with the final special assessment roll approved by the municipal governing board (RPTL, §§554, 556, 556-b). We note that RPTL, §550(2)(e), was enacted "to remove any doubt that administrative corrections procedures may be utilized to correct errors occurring in any kind of tax levy" (Memorandum of the State Board of Equalization and Assessment to the Governor regarding chapter 634 of the Laws of 1976, reprinted in 1976 New York State Legislative Annual 331; emphasis added). In addition, our statutory construction is consistent with Town Law, §244, which states "[w]hen it shall be ascertained to the satisfaction of the said [town] board that any error, omission or mistake has been made in measuring or in entering the frontage or bounds of any lot or in the quantity of any parcel of land held to be especially benefited by an improvement or in any other matter connected with the making of a local assessment, it shall be lawful for the said [town] board, and it is hereby authorized to correct such error, omission or mistake."

We recognize that RPTL, §553, could be interpreted as giving assessors the authority to petition the board of assessment review to correct special assessment rolls. In our opinion, such a statutory construction is not well founded because boards of assessment review only have the power to "hear and determine complaints in relation to assessments" (RPTL, §102(4); emphasis added), a term which is defined as limited to "(1) the valuation of real property, including the valuation of exempt real property and (2) whether or not real property is subject to taxation or special ad valorem levies" (RPTL, §102(2)). Therefore, boards of assessment review are not empowered hear complaints regarding the imposition of a "special assessment," a term which is separately defined by RPTL, §102(15).

⁸The Office of the State Comptroller [OSC], which audits the financial records of local governments, has been asked whether they have guidelines for the appropriate preparation of a special assessment roll by a local government. We have been informally advised by OSC staff that OSC has not prescribed any particular format for a special assessment roll.

⁹Such a practice is followed by the Town of Yorktown, which prepares a separate special assessment roll for various town special districts. Each such special assessment roll identifies the properties within the applicable special district by parcel number, states the name and address of each parcel's owner, and states each parcel's tentative special assessment by units. Robert Killeen, the Town of Yorktown Assessor, has advised us that property owners may review such a special assessment roll in the Assessor's Office by using a public access computer terminal; employees within the Assessor's Office also provide an explanation of the district's special assessment benefit formula.

Mr. Killeen has also advised us that each such district's special assessment roll is a part or section of a larger computer document or record that includes all of the town's special assessment rolls for various town special districts. In other words, the large computer record or document is entitled something like "special assessment roll," but by making some kind of key entry, a property owner may access the only part or section of that large computer

record that applies to his or her property's special district charge(s).

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