Report of the

Special Committee on Budget Allocation

September 20, 2005
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I. Executive Summary

The Special Committee on Budget Allocation (SCOBA) was formed by the Greenburgh Town Supervisor, Paul Feiner, to examine aspects of the Town’s budgeting, and particularly the allocation of revenues and expenses between the Town’s two budgets – the town-wide budget (which includes the entire town and is generally referred to as the A budget) and the town-outside budget (which includes the part of the town referred to as the unincorporated area, which does not include the villages within the town, and is generally referred to as the B budget).

SCOBA found that in some instances, in both the revenue and the expense sides of the budget, there was a lack of alignment between the services rendered by the Town to the residents of the unincorporated area and the villages and the allocated budgeted charges, and between the allocated budgeting for revenues received and the relative benefits flowing from these revenues to the residents of the unincorporated area and the villages. In general, the lack of alignment on the expense side tended to be disadvantageous to residents of the villages, and the lack of alignment on the revenue side tended to be disadvantageous to unincorporated area residents. Although most of the budget allocations are mandated by applicable legal rules, there is one instance where the Town does not place an item in the proper budget, which is the amount of expense associated with the operation of the Glenville Woods park, and which should be transferred from the B budget to the A budget. There are a few instances where there may be a question as to whether an item is placed in the right budget, and this Report suggests that the Town Attorney and the Town Comptroller review those cases and make recommendations to the Town Board where appropriate. These will be discussed in the section of this Report entitled “Budget Allocations and Services.”

SCOBA members understand that most issues which exist (i.e., the lack of alignment in a number of expense and revenue budget items and the expressed sense of many residents that they are not being fairly taxed, which will be more fully discussed later in this Report) are beyond the power of the Town Board to solve. In general, any remedies must come in the form of New York State legislation. However, since there are 932 towns in New York State, and they have different problems and issues, it seems to SCOBA that the best avenue for a remedy, if the Town Board deems it appropriate, would be a special law promulgated by the State Legislature to address the issues in Greenburgh.

This Report consists of the following sections:

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II. Introduction

The Town of Greenburgh, an incorporated town, has a population of approximately 87,000 people. It includes six incorporated villages: Ardsley, Dobbs Ferry, Elmsford, Hastings-on-Hudson, Irvington and Tarrytown. Approximately 42,000 people (48%) live in the part of Greenburgh generally described as the unincorporated area (i.e., the Town outside of the villages) and a total of approximately 45,000 people (52%) live in the six villages.

In 2004, the total assessed value of the real property in the unincorporated area was approximately $328,500,000 (55% of the total), and the total combined assessed value of the real property in the six villages was approximately $267,000,000 (45% of the total). All residents of the Town of Greenburgh are required by New York State law to pay a town tax to the Town of Greenburgh. The amount of town tax paid respectively by residents of the unincorporated area and the six villages is determined by the allocation of certain revenues and expenses to the A budget (i.e., the entire town, including the six villages) and to the B budget (i.e., the unincorporated area only).

The 2005 appropriated expense budget of the Town of Greenburgh, excluding districts such as Water, Sewer and Fire, is $65,622,807. Of this amount, $14,074,607 is in the A budget and $51,548,200 is in the B budget. These expense appropriations are funded through a variety of sources including real property taxes, the sales tax, the mortgage recording tax, licenses and fees, departmental income, fines and forfeitures, interest and earnings on investments, rental income, and interest and penalties on late tax payments. In the 2005 budget, real property taxes of $41,761,178 were assessed, with $4,632,888 in the A budget and $37,128,290 in the B budget. Residents in the unincorporated area pay the entire B budget plus 55% of the A budget, for total town real property taxes of $39,683,831. Village residents pay 45% of the A budget, but none of the B budget (which does not provide services for the villages), or $2,077,347 in town real property taxes.

Town taxes typically represent slightly more than 1% of total real property taxes for a village resident and approximately 20% of real property taxes for a resident of the unincorporated area. These ratios vary somewhat because of differences in school, fire district and village real property tax rates. In 2004 and 2005, town real property tax rates increased 50.1% and 31.6%, respectively, for village residents and 8.6% and 7.9%, respectively, for residents of the unincorporated area. Town taxes for the village resident with a home assessed at $15,000 rose from $59 in 2003 to $117 in 2005, an increase of $58 or 97.6% over the two-year period. Town taxes for a resident of the unincorporated area with a home assessed at $15,000 rose from $1,546 in 2003 to $1,812 in 2005, an increase of $266 or 17.2% over the two-year period.

The A budget tax rate is structurally more sensitive to changes (increases or decreases) in both expenses and revenues than the town tax rate paid by residents of the unincorporated area, which is a combination of the A budget and B budget tax rates. This is owing to the fact that real property tax revenue is a much smaller percentage of total expense funding in the A budget than in the B budget. Other sources of revenue (e.g., sales and mortgage recording taxes) and appropriated fund balances make up the difference. In the 2005 budget, real property tax revenues provide 33% of expense funding for the A budget and 72% of expense funding for the B budget. A 10% change
in expense in the A budget, with no change in revenue, would result in a 30% change in the town real property tax rate for the residents of the villages. However, a 10% change in expense in both the A and B budgets, with no change in revenue, would result in a 15% change in the real property tax rate for residents of the unincorporated area. Changes in revenue would also show disproportionate effects on the two tax rates.\(^1\)

In the spring of 2004 and in February 2005 there occurred two events which created serious disputes between the residents of the villages and residents of the unincorporated area. These two events, which focused intense attention on Greenburgh budgeting issues, were the following:

(a) In July 2003, the Greenburgh Town Board made a multimillion dollar settlement in a litigation (the *Hilliard* case) involving a dead tree in the unincorporated area which fell on a car, causing the death of one person and the serious injury of another person, and in the spring of 2004 the Town Board charged $6,000,000 of the uninsured portion of that settlement to the A budget, and

(b) In February 2005, in the case of *Bernstein v. Feiner*, the New York State Supreme Court in Westchester County decided that the cost of the acquisition and maintenance of a parkland known as Taxter Ridge, which is located in the unincorporated area but is, by state and county law, accessible to the general public, should be charged to the A budget.

These two events sparked public disputes and demands in both the unincorporated area and the villages. In the unincorporated area there was a demand, based on the *Bernstein v. Feiner* decision and other requirements of law, that additional expenses should be moved from the B budget to the A budget and that revenues that were in the A budget be moved to the B budget. In the villages there were protests that village residents were being charged for governmental services provided by Greenburgh to the unincorporated area but not to village residents (who received those services from their own village governments) and that revenues that were in the B budget should properly be in the A budget. Residents of the unincorporated area asserted that they were subsidizing the villages, and village residents asserted that they were subsidizing the unincorporated area.

As a consequence of these conflicting demands and the disputes that resulted, and aware of the complex legal and historical aspects of the issues, the Greenburgh Town Supervisor, Paul Feiner, formed a citizens’ committee – the Special Committee on Budget Allocation (SCOBA) – to study and report to him, and thus to the Town Board and to the public, the following:

- Study in detail the allocation of revenues and expenses between the A budget and the B budget to determine whether, and to what extent, the allocations are proper and fair.

\(^1\)A claim has been made that an amount in excess of $9,500,000 of expenses in the B budget for recreation and recreational facilities should be transferred to the A budget. If such a claim were successful it is estimated that the town tax paid by village residents would more than triple and the town tax paid by residents of the unincorporated are would decline by approximately 11%.
• Study in detail the applicable New York State statutes to see whether any of them are the cause of these imbalances and, if so, to make recommendations as to how these statutes can be amended.

SCOBA originally had sixteen members, nine of whom were residents of unincorporated Greenburgh and seven of whom were residents of the villages. Early on several members resigned for a variety of personal reasons and most were replaced. The membership of SCOBA, as finally constituted, consists of fifteen members, of whom eight are residents of unincorporated Greenburgh and seven are residents of the villages. Their names are listed at the conclusion of this Report.

The Supervisor appointed Herbert Rosenberg as Chairperson of SCOBA. The Chairperson formed three subcommittees – a legal subcommittee, to study the legal structure governing budgetary determinations by the Town; a budget analysis subcommittee, to obtain factual information from each Town department and the Town Court as to their operations; and a subcommittee to review community responses. Michael Sigal chaired the legal subcommittee, which also included Stephen Filler and Paul Monte. Jack McLaughlin chaired the budget analysis subcommittee, which also included Gerald Barbelet, Milton Hoffman, Randy Klipstein, Herman Lockhart, Iris McLee, and Louis Weinstein. Kevin Swersey chaired the community response subcommittee, which also included Karen Schatzel, Iris McLee and Michelle Hertz. Herbert Rosenberg, chairperson of SCOBA, was a member of each of the three subcommittees.

SCOBA had its first meeting on March 28, 2005 and subsequently met a number of times to review the ongoing work of SCOBA and its subcommittees. The members were mindful of the need to act with dispatch, in order to provide a report of its findings so that the Supervisor, the Town Board, the Town Attorney and the Town Comptroller would have the benefit of SCOBA’s findings when planning the 2006 budget. SCOBA was also mindful of the fact that the public was entitled to know – indeed, that it is important for the public to know – why certain items of revenue and expense were in the A budget or the B budget, and where, if anywhere, there appeared to be any lack of alignment in these allocations. The members of the budget analysis subcommittee interviewed the heads of each Town department and two Town Justices, and also researched the files of several of the departments. Much helpful information was provided by the Town Attorney and the Town Comptroller, and except for the initial organizational meeting, no elected Town officials attended SCOBA meetings or participated in its work or the preparation of this Report.

Budgets of other large towns were examined. The legal subcommittee did extensive research on the numerous New York State statutes, court decisions, and New York State Comptroller Opinions (many of which are unreported and were obtained through the Freedom of Information Act). The detailed outline prepared by the legal subcommittee, entitled Report on Legal Basis of Town/Village Taxation (hereinafter referred to as the “Legal Report”) which is appended to this Report, outlines some of the legal requirements for the revenue and expense allocations. These requirements, as well as the findings of the budget analysis subcommittee, will be discussed.

SCOBA sent letters to the mayors and administrators of the six villages and to twenty-five civic associations and homeowners’ associations, requesting that they advise SCOBA whether they believed that the allocations in the Greenburgh budget were fair and balanced, and if not, to explain
why, in as detailed a manner as possible, and invited recommendations and suggestions for SCOBA to consider. The mayors and/or administrators of four villages responded, and their view was that there was not a fair and balanced distribution of revenues and expenses between the A and B budgets and they urged that this be rectified. The president of one civic association responded, stating that he believed that the revenues and expenses were fairly balanced between the A and B budgets.

This Report is intended to convey factual information about the relationship of Town expenses and revenues to services and benefits in the unincorporated area and the villages. It is also intended to provide information as to legal requirements – information which has not been easily available and which has been acquired through a great deal of work and effort.

III. Historical Background

In New York State, everyone who doesn’t live in a city or on an Indian reservation, lives in a town. Villages are municipalities separately incorporated, but nevertheless within and part of a town. There are 932 towns and 554 villages in New York State, and many towns have several villages. More than half of the towns do not have within them any villages.

Originally towns were rural areas in New York State. For many years towns provided only the most basic governmental services, such as organizing elections, administering local judicial functions, and constructing and maintaining roads. However, in the mid-19th century, as populations increased and clusters of residents required and demanded additional services from their local governments that were not provided by the towns, there began the creation of incorporated villages as municipalities within a town to provide the required services. Initially the villages provided most services to their residents, while towns continued their minimal services to their rural constituencies and the villages.

However, with the rapid growth of populations in the 20th century, especially in the suburban centers around and within large metropolitan areas, many towns (such as Greenburgh) began to provide the same services to the residents of the unincorporated areas of the towns that the villages were providing to their residents, though by law the towns do not provide such services to the residents of the villages.

Town governments do not govern the villages, which are governed under the New York State Village Law. Section 60 of the New York State Town Law provides as follows:

“In every town the supervisor and the town councilmen shall constitute the town board and shall be vested with all the powers of such a town and shall possess and exercise all the powers and be subject to all the duties now or hereafter imposed by law upon town boards and town boards of health within such towns; but it is not intended to extend the power of said boards or officers within the limits of any incorporated village or city, or in any manner to abridge or interfere with the power and authority of the officers of any such village or city within its corporate limits, except as otherwise provided by law.”
Nevertheless, residents of villages continued— and continue—to be residents of the towns in which they live. In Greenburgh village residents have the right to vote for the election of town officials (Town Supervisor, Town Board, Town Clerk, Town Justices and Town Receiver of Taxes). In Greenburgh, village residents constitute a majority of the town’s population. Residents of villages are subject to taxation for all the expenses of the town, except as otherwise provided by state law. While this was not considered a problem as long as the towns provided the minimal services that they originally provided, as towns increased their services to the unincorporated area, it became apparent that this created an unfair burden upon the village residents as the town increased its services to the unincorporated areas, because village residents were to some extent taxed for those services. The New York State Legislature has, from time to time, enacted a number of statutes which have had the effect of mitigating some of this burden on village residents. These statutes provided that certain functions and activities, such as police services, building and zoning functions, highway maintenance, and others, would be allocated and charged solely to the unincorporated area of the town and other functions could, by action of the Town Board, be allocated to the unincorporated area (for a more complete list of these functions and activities, see Sections D and E of the Legal Report). Certain other statutes provide that village residents receive a disproportionate benefit of town revenues. However, the cost of a number of town activities and services continued to be allocated to the entire town (see Section C of the Legal Report).

In 1985 a County/Town/Village Task Force was formed by the then Westchester County Executive Andrew O’Rourke to study the interrelationships between and among the county and its towns and villages, including the budgeting issues between the towns and villages. The O’Rourke Commission Report states, on page 41, that “[T]he entire issue of the duplication of services, overlapping programs and double taxation among the villages and towns is perhaps one of the most sensitive and unresolved problems...” and “[W]ith reference to the double taxation, which the villages so strongly call attention to, there are definite indications that the towns appear to want to retain revenues attributable to the unincorporated areas. Villages, on the other hand, make a persuasive argument that there is little in the way of cost/benefit that is received from the towns.”

Notwithstanding the perceived sensitivity of the problem, the O’Rourke Commission’s Legislative Committee stated this about the town/village taxation problem:

“This topic was the subject of several reports by various committees of the Task Force. The reports of those other committees focused mainly upon possible legislative solutions whereby the town’s power to apportion the cost of a town service between the town and a village would be diminished, or at least made subject to judicial review. The Subcommittee of the Legislative Committee approached the problem from a different perspective. It found that the actual financial impact of the portion of the entire town tax levied within a village (at least in Westchester County) was minimal. Rather, based upon comments from Task Force members and other municipal officials, it appeared to the subcommittee that the true issue was one of control and authority in which the village officials have expressed a general dissatisfaction with the perceived domination that town officials have over certain
aspects of the lives of village residents. The subcommittee concluded that there was really no acceptable legislative solution to this underlying political problem.”

The two events described in the Introduction, and the resulting surge of publicity, focused attention on the increases in town taxes paid by residents of the villages and the unincorporated area. The town tax paid by village residents, while not large in proportion to their total real property taxes, doubled between 2003 and 2005, in part because of the financial impact of the allocation of the costs of those two events (although generally, village residents pay a village real property tax which is greater than the town taxes that are paid by residents of the unincorporated area for property similarly assessed and, in the aggregate, village residents pay combined village and town taxes which are greater than they would pay at the same assessed value in the unincorporated area).

IV. State Legal Requirements for the Budget

State law determines budgetary requirements for towns. For the historical reasons set forth in the preceding section, and as documented in the appended Legal Report, general rules have been stated and applied by the New York State Comptroller regarding the allocation of expenses and revenues in town/village budgeting. These rules arise from the fact that villages, though separate municipalities, are nonetheless parts of the towns in which they are situated and village residents are town residents as well. The rules have been stated in New York State Comptroller’s Opinions, as follows.

With respect to expenses, “As a general rule, all real property taxes raised for town purposes must be levied on the whole area of the town, including the real property located in villages situated in the town, unless there is a State statute that requires or permits monies for any given purpose to be raised from taxes levied only in the unincorporated area of the town.” New York State Comptroller Opinion 2002-15.

With respect to revenues, “It is a general rule, however, that unless a statute provides otherwise and except for revenues received as a result of a part-town function or activity, revenues received by a town are credited to the general fund, town-wide.” New York State Comptroller Opinion 90-1.

As set forth in the Legal Report, the New York State Legislature has enacted much legislation that directs the allocation of revenues and expenses to the A budget or the B budget. In some instances these legislative enactments are consistent with the general rule. In other instances, the purpose of the legislative enactments has been to create exceptions to the general rule, in recognition of the fact that the governmental services delivered by towns, and the relationship between towns and the villages within such towns, has changed dramatically from the days of rural towns and population clusters in villages to the present status of towns having large suburban populations and being the primary deliverer of governmental services to residents of the towns’ unincorporated areas. Thus, as a general rule, town expenses that are not related to a town-outside function or activity or otherwise allocated to the B budget under a specific State statute, are to be charged town-wide, to the A budget. Revenues that are not derived from a town-outside function or activity or otherwise
allocated to the B budget under a specific State statute are, as a general rule, to be credited to the A budget. Conversely, as a general rule, expenses and revenues related to or derived from a town-outside function or activity or otherwise allocated to the B budget under a specific State statute are to be allocated to the B budget.

The discussion in the next section, regarding budget allocations and services, will, where appropriate, make reference to these general rules and statutory requirements.

V. Budget Allocations and Services

Members of SCOBA interviewed the Town Supervisor, several Town Board members, the heads of each Town department and two of the Town Justices, in order to learn what each of them and the departments do, and to what extent they or the departments and the Town Court provide services to the unincorporated area and the villages. SCOBA has accepted the estimates given by these persons as to the services provided to the villages and the unincorporated area. Some of these estimates include the indirect providing of services to the villages, i.e., the providing of services to a department that provides services to the villages. In the event that there is an occasion for the Town Board to legally change the budget allocations, it will be appropriate for it to scrutinize these estimates more carefully. SCOBA also reviewed documents and files as necessary to help in understanding why certain revenues and/or expenses properly belong in the A or the B budgets.

The Town Comptroller gave SCOBA members a list of departments and their budgets and showed how these budgets were allocated to the A and B budgets, as well as a list of Town revenues and showed how those revenues were allocated to the A and B budgets. SCOBA found several instances where there was a lack of alignment between the expense allocation and the services actually provided; these, however, are mandated by the law. SCOBA also found some revenue items that were clearly not proportionate in their beneficial effect on village residents and residents of the unincorporated area, and these too are mandated by law. SCOBA did find, however, that there are some items of revenue and expense that may be in the wrong budget, and SCOBA will refer these items to the Town Board, the Town Attorney and the Town Comptroller for their attention.

Although for the most part, town government provides services to the unincorporated area and village governments provide services to the villages, there are a number of instances where the municipalities cooperate and share and consolidate services, partly because of statutory requirements and partly because the cooperation benefits both the town and the villages. Examples include the advanced life support program, the animal control program, the drug and alcohol task force provided by the Greenburgh Police Department; the preparation of road signs and street striping provided by the Greenburgh Public Works Department; and the senior nutrition program provided by the Greenburgh Recreation Department. These cooperative activities permit such things as the acquisition of equipment, training and staffing on a basis which is more economically efficient than if individual villages performed these services for their residents. The 2005 A budget contains approximately $2,300,000 (including approximately $500,000 in employee benefits) for these items.
The departments of the town, and items of revenue, as to which generally there are no questions or concern about budget allocations (and which therefore the committee believed required no discussion in this Report other than to note that they are very material items of expense and revenue) include the following Departments: Public Works Department, Unallocated Insurance, Judgments and Claims, Police Department, Zoning and Planning, and the Library; and the following Revenues: Sales Taxes, Fines and Forfeitures, Interest and Penalties on late tax payments, and departmental revenues and income from licenses and permits.

There are, however, items of expenses and revenues that in one instance appears to be inconsistent with the applicable legal requirements, and in other instances either (a) do not appear to reflect an alignment between the amount budgeted and the services performed or benefits obtained, or (b) as to which questions have been raised. The following sections, headed “Expenses” and “Revenues,” discuss those items.

A. Expenses

Employee Benefits. This item is not included in most other department budgets but should be considered when assessing the real cost of other departments. According to the Town Comptroller, the expense of employee benefits is based on, and tracks, compensation paid to Town employees as recorded in the allocation of the departmental budgets to the A and B budgets. For full-time employees of the Town, employee benefits are estimated at an average of 45% of salaries and overtime. This varies by department, depending on the type of civil service contract. The percentage of employee benefit expense for each department varies depending on the number of part-time personnel, outside contractors and utilities and supplies included in the department budget. This expense is budgeted at $2,144,660 in the A budget and $9,770,039 in the B budget.

The Town Board. The budget for the Town Board is $110,374. The Town Board constitutes the Legislature of the Town of Greenburgh. As previously stated, it does not have governing authority over the villages. A Town Board member has advised that the Town Board indirectly provides assistance to the villages in general support of village problems and through the Board’s governing role over departments which, directly or indirectly, provide services to the villages. This Town Board member estimated the percentage of time spent on village issues as 20%. The entire Town Board is charged to the A budget because of the requirements of New York law.

The Town Court. The budget for the Town Court is $1,259,028. The Town Court has jurisdiction over the entire Town. In fact, however, because each village has a village court that has jurisdiction identical to that of the Town Court and which handles all matters that arise in the villages, the Town Court does not handle any matters that arise in the villages, or arise anywhere outside the unincorporated area of Greenburgh. There are two minor exceptions: (a) all criminal courts are empowered to arraign a person arrested in another jurisdiction if no judge in that other

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2The old Town Hall, purchased from the A budget, will be turned over to the new library. It will be necessary to make the appropriate transaction so that the Town transfers from the library appropriations to the A budget the value of the old Town Hall property.
jurisdiction is available, and (b) on occasions when a judge in another jurisdiction is recused, a case from that jurisdiction could be assigned to the Greenburgh Town Court. The expenses relating to the Town Court are charged to the A budget, and correspondingly fines and forfeitures, budgeted at $1,200,000, imposed and collected by the Town Court, are credited as revenues to the A budget, because of the requirement of New York law.

**Town Supervisor, Town Comptroller and Town Attorney.** The budget for the Supervisor’s office is $217,053. The budget for the Town Comptroller Department is $632,955. The budget for the Town Attorney’s office is $1,344,844. The Supervisor stated that he believes that he spends approximately 10% of his time on village issues. The Comptroller stated that his department works primarily for the town government and its departments, and he could not readily estimate a percentage of his department’s services devoted to the entire town as distinct from the unincorporated area. The Town Attorney stated that his office services the town government and he believes that 24% of his office’s time was attributable to activities that affect the entire town, and 76% was devoted to unincorporated area matters. All are charged to the A budget in accordance with the requirements of New York law.

**Independent Auditor.** The budget for the independent auditor is $140,133. The independent auditor reviews the books of the Town and certifies its financial statements. The firm performs no services for the villages except insofar as its services may have an indirect relationship to the villages because of the work of departments of the Town that are included in the independent audit. The independent auditor is included in the A budget because of the requirement of New York law.

**Tax Collection (Receiver of Taxes).** The Receiver of Taxes Department is budgeted at $225,677. This department has been described as the largest tax collection department in Westchester. It collects the taxes in Greenburgh for Westchester County, ten school districts, the Town of Greenburgh and several fire districts and sewer districts. In addition to the Receiver of Taxes, there are two full-time employees and two part-time employees. During the year the department collects about $350,000,000 in taxes (including delinquent taxes), and it has been successful in collecting about 99% of the taxes billed. Those not collected wind up in foreclosures or other enforcement activities.

The amount of town taxes for 2005 billed to the six villages is $2,077,347 and the amount billed to unincorporated Greenburgh is $39,683,831. The department mails out 28,139 bills, of which 14,498 are mailed to the unincorporated area and 13,641 are mailed to the villages. The Receiver could not give a breakdown of the penalties and interest revenues as between the villages and unincorporated area or school and town taxes, but based on information provided by the Comptroller, the budgeted $1,690,000 of interest and penalties consists of 73% ($1,233,700) for school taxes, 14% ($236,600) for county taxes, and 13% ($219,700) for the Town and special district taxes (fire and fire protection districts, sewer districts, etc.).

While the amount of town taxes collected from village residents is less than that collected from residents of unincorporated Greenburgh, the number of tax bills sent to village residents and to residents of the unincorporated area are 48% and 52% respectively. The Receiver believes that the work involved, e.g., calls, correspondence, personal contacts, etc., is probably split evenly
between the villages and the unincorporated area. The entire budget for the Receiver of Taxes is included in the A budget because of the requirement of New York law.

Assessor. The Assessor’s department is budgeted at $624,050. The Assessor’s office provides assessments for all properties in the entire Town for the following taxing bodies: Westchester County, Town of Greenburgh, the school districts within Greenburgh, and the fire districts. The villages have their own assessors. The department also handles grievances regarding assessments for the taxing bodies for which it assesses (but not the villages, which have their own grievance procedures). The department also administers exemptions (e.g., non-profits, clergy residences, cultural institutions, etc.) for all property taxes other than village property taxes.

The Assessor stated that though his department does not assess for the villages, it does include the villages in certain services, such as providing its computer system to produce tax rolls and tax bills and its exemption data base. The department also provides tax maps and property cards (e.g., record keeping cards for properties) but the department is reimbursed for those.

The Assessor stated that he believes that his department’s services are town-wide. The Assessor’s budget is included in the A budget because of the requirement of New York law.

Purchasing. The Purchasing Department has a budget of $160,620. Everything that is purchased for the Town government is purchased through the Purchasing Department. Requisitions come only from the departments in the Town government, not from the villages. The Purchasing Department states that it provides an indirect service to the villages. Examples include purchasing for the assessor and the tax receiver, who perform services to the villages. The head of the department stated that although his department provides some indirect services to village residents, he could not measure them. The entire cost of the Purchasing department is included in the A budget because of the requirement of New York law.

Town Clerk. The Town Clerk has a budget of $708,786. The Town Clerk’s office has a staff of four persons – a deputy Town Clerk and two assistants, and a part-time employee. The office maintains minutes of the Town Board and the various commissions and boards (e.g., Planning Board, Zoning Board) and ultimately has charge of all records of the town departments (except the Town Court, which is a separate branch). The office handles all general elections, but not village elections. The office owns the voting machines and has the responsibility of maintaining and repairing them. The machines are used town-wide and are made available to the villages for village elections and to schools for the school elections, and the villages and schools pay for their elections. Payroll records must be retained permanently and the Town Clerk also pays for the storage of police records but does not store them.

The Town Clerk also issues licenses and permits. Marriage and hunting and fishing licenses are issued to any New York State resident (indeed, marriage licenses can be issued to anyone choosing to be married anywhere within New York State, irrespective of residence). All other licenses – e.g., dog licenses, peddler’s licenses, taxi licenses, business licenses – are issued only to residents of unincorporated Greenburgh. The Town Clerk also issues birth certificates and death certificates when persons are born or die in the unincorporated area of Greenburgh.
Of the Town Clerk’s budget, $521,928 is included in the A budget and $186,858 is included in the B budget. The Town Clerk stated that of the $521,928 included in the A budget, $307,348 is attributed to office functions and $214,580 to election functions. Of the $186,858 included in the B budget, an amount of $184,592 is attributed primarily to the cable television director and his assistant(s) and $2,226 to the Registrar of Vital Statistics. Greenburgh Town cable programming, which carries meetings of the Greenburgh Town Board, the Greenburgh Planning Commission, interviews with Town Board members, and the like, is broadcast throughout the entire town.

The $521,928 included in the A budget covers some services that are not provided to the villages, and the entire amount is in the A budget because of the requirement of New York law. As to the $184,592 relating to the cable director and his assistant, we suggest that the Town Attorney consider whether this expense properly belongs in the A budget.

Central Services. Central Services provides a variety of office and administrative services for all Town departments and employees.

The budget for Central Services is $840,548 in the A budget and $333,658 in the B budget. Certain budget items are assigned to the A or B budgets based on the using department. Other budget items which support departments that support both the entire Town and the unincorporated area are charged only to the A budget. Other items, such as professional fees for labor counsel, are charged to the A budget even though a majority of the Town employees covered by collective bargaining agreements are in departments, such as Police and Public Works, which support primarily the unincorporated area.

Central Data Processing. The Central Data Processing budget of $458,794 is charged to the A budget. It performs centralized data processing services for all the departments in the Town, except for the Police Department, which has its own server and full-time support person, and except for software for the Town Court, which is charged directly to the Town Court.

Based on an analysis of the direct and indirect users of its services, the department estimates that approximately 25% of the service contracts support the unincorporated area and 75% support the entire town. The department budget is allocated to the A budget because of the requirement of New York law.

Town Engineer. The budget for the Town Engineer is his salary $105,060. Of this amount, the A budget is charged 5%, the B budget is charged 15%, the Water and Sewer Districts are charged 60%. Ten per cent is charged to each of equipment repair and building maintenance. Under New York law, the cost of the Town Engineer is required to be charged to the A budget. We suggest that the Town Comptroller consider whether it is appropriate that there be reimbursement to the A budget for the Town Engineer’s services to independent agencies such as the Water and Sewer Districts.

Superintendent of Highways. Under the general rules, the cost of the Superintendent of Highways is to be charged to the A budget. The Town of Greenburgh does not have a Superintendent of Highways. Inasmuch as there is a Highway Department, someone is performing the duties that would be done by a Superintendent (that person possibly being the Commissioner of
Public Works or the general foreman for highways). We suggest that the Town Comptroller consider whether it is appropriate to allocate to the A budget such part of the salary of that person as his “superintendent” duties bear in relationship to his other duties.

**Parks and Recreation.** The budget for the Department of Recreation is $4,032,285, of which $292,855 is charged to the A budget and $3,739,430 is charged to the B budget.

The Commissioner of Parks and Recreation stated that the community served by the Greenburgh Department of Parks and Recreation is the unincorporated area of the Town of Greenburgh. The unincorporated area of the Town of Greenburgh and the villages do not overlap recreation services with the exception of Special Recreation. Special Recreation programs are provided by the Greenburgh Department of Parks and Recreation and are open to the residents of the villages.

The Town of Greenburgh has more than 600 acres of parkland. Although the Town is not the sole owner of all the land, the Department of Parks and Recreation is solely responsible for its management and maintenance. The 600 acres of parkland consist of 27 parks, and includes the Greenburgh Nature Center. The expenses for park management and maintenance are charged to the B budget with the exception of Taxter Ridge Park Preserve. The debt, interest, management and maintenance cost for Taxter Ridge is charged to the A budget.

The department has a staff of 40 full-time and 350 part-time seasonal employees. The department provides more than 150 programs including day camps, teen trips, special events, adult activities, a comprehensive program for the developmentally disabled and a nutrition program for senior citizens. The developmentally disabled (special recreation) and the senior nutrition programs are town-wide programs that are open to village residents.

The items charged to the A budget are the special recreation programs for the developmentally disabled ($241,241), and the Parks and Recreation Department cost of Taxter Ridge Park ($51,615). The total cost of Taxter Ridge included in the A budget is $284,120, including debt service of $223,520, employee benefits of $8,986, and the previously mentioned $51,615. Parks and Recreation Department revenue of $885,000 is credited to the B budget. The A budget contains approximately $34,000 in Parks and Recreation revenue from special recreation fees.

The Greenburgh Parks and Recreation Department serves primarily the unincorporated area of the Town of Greenburgh, and therefore recreation programs and most parks are restricted to use by residents of the unincorporated area of the town, and where participation by non-residents in recreation programs is permitted, non-residents generally pay a premium. The exceptions are Pocantico, East Rumbrook, Hart’s Brook Nature Preserve, Massaro, Greenburgh Nature Center, Taxter Ridge Park Preserve, Travis Hill and Glenville Woods. There are no restrictions to the use of these parks because federal, state or county funds were used to purchase, construct or improve them. Funds received under federal grants, which bar residential restrictions, were involved in these parks except for Taxter Ridge and Glenville Woods. Chapter 891 of the Laws of 1982 (hereinafter referred to as the “Finneran Law”) provides that the Town shall charge the costs of its parks, recreational facilities and playgrounds to the B budget and that the Town shall restrict the use of such parks, recreational facilities and playgrounds to the residents of unincorporated Greenburgh,
subject to the requirements of any federal grants. Based on the decision in *Bernstein v. Feiner*, the cost of maintaining the Glenville Woods park should be charged to the A budget and non-residents of unincorporated Greenburgh would be admitted to the park.

Use of Anthony F. Veteran Park is restricted to residents of the unincorporated area, but use is permitted for Emergency Service Workers and volunteer firefighters from the villages, as a reward for their public service. The Town Board deemed such use to be beneficial to the Town. The Emergency Service Workers and volunteer firefighters are charged the same fee as the residents of the unincorporated area. The 2005 budget assumes twelve season passes for Emergency Service Workers and volunteer firefighters. These passes represent a *de minimus* percentage of the total Veteran Park activity and are revocable by the Town Board. The allocation of the expense for Anthony F. Veteran Park to the B budget appears to be correct.

**Nature Center.** The land for the Greenburgh Nature Center – thirty-three acres of trails, ponds, orchards and several buildings – is located off Central Avenue in the Greenville section. It was acquired after town residents approved a referendum in 1973, and the purchase price was funded in part through a federal grant under the Land and Water Conservation Act. For thirty years it has provided conservation programs for the town as well as carried out the Center’s other missions of education, research and cultural enrichment. It provides exhibits on birds and animals and plants, and conducts educational programs for individuals and for groups, particularly schoolchildren. Additionally, it furnishes specialized informational and other services in regard to wildlife for the general public, as well as the Greenburgh police and animal wardens serving the town and its villages.

The Nature Center, a town park, is operated as a non-profit organization. Through a contract with the town, it receives funds from the Town of Greenburgh, currently about 40 percent of its needs. The fact that it is a non-profit organization allows it to operate more freely as it seeks revenues from other governments, state and federal, and from private donors. The budget for the Nature Center is $349,572 and this sum is in the B budget. A small portion of the Nature Center’s budget is indirectly in the A budget, principally because of its work in regard to wildlife.

The Nature Center is intended primarily to serve unincorporated Greenburgh, although there are no residence restrictions as per the requirements of the federal grant. Residents of the unincorporated area who have a Town park pass pay half price for admission. The Nature Center appears to be a recreational facility covered by the Finneran Law.

**Community Center.** The expense for the operation of the Theodore D. Young Community Center is $3,555,794 and it is charged to the B budget.

The Community Center provides a variety of educational, cultural, and social programs and services for residents of the Town. It was constructed in 1972. In 1970 the Community Center received a grant from the U. S. Department of Housing and Urban Development to build and operate the Community Center as a “neighborhood facility.” The grant contract provides that the project will be carried out “in accordance with the Application.” The Community Center’s application contains language regarding its aim to provide services to the Fairview-North Elmsford area and also that it
should be available to the residents of the Town of Greenburgh. The Community Center also houses a swimming pool, which was constructed in 1978 with the aid of a $325,000 grant from the U. S. Department of the Interior to the Town under the Land and Water Conservation Act. This grant contains a provision that there will be no discrimination on the basis of residence.\(^3\)

The Community Center is intended to serve primarily the Fairview-North Elmsford area of Greenburgh. According to the Executive Director of the Community Center, it is open to residents outside of that area, including non-residents of Greenburgh. The enrollment data reflects that 80% are residents of the unincorporated area and 20% are non-residents of the unincorporated area. Generally, non-residents of the unincorporated area pay a premium fee for all programs.

We suggest that the Town Attorney review the grant contracts and advise whether the Community Center is covered by the Finneran Law or whether its cost is chargeable to the A budget.

**Day Care Center.** The Union Child Day Care Center is a not-for-profit corporation offering day care services to working parents. It is located in a building owned by the Town (and purchased from the State of New York in the 1970s for $1.00). The Town makes the building available to the Day Care Center rent-free and supplies the maintenance for the building without charge to the Day Care Center. The cost of such maintenance is $109,247 and that item is charged to the B budget. There is also pending an application by the Day Care Center for a grant from Westchester County, and that grant would involve matching funds from the Town of approximately $450,000.

The Day Care Center currently has 189 children enrolled in its programs. Of these, 73 come from the unincorporated area of Greenburgh, 18 come from Elmsford, 46 come from the City of White Plains, 15 come from Yonkers, and 37 come from other parts of Westchester and the Bronx. Fewer than half of the children come from unincorporated Greenburgh and fewer than 10% come from one village in Greenburgh.

The Day Care Center is funded by tuition and grants. About two-thirds of the children enrolled qualify for aid, and thus their tuition is supported and paid, wholly or in part, by various federal, state and county subsidies, including the Federal Head Start program. SCOBA suggests that the Town Attorney consider whether the Day Care Center is covered by the Finneran Law as a recreational facility receiving federal grants barring residency restrictions. If it is not, then it would appear that the expenses related to the Day Care Center would belong in the A budget.

**Hartsdale Public Parking.** The Hartsdale Public Parking Garage is operated by the Hartsdale Public Parking Authority. The Authority is an independent legal entity. It is self-sustaining and has the authority to issue bonds for capital construction with a guarantee from the Town. It operates the Hartsdale Public Garage and receives its income from the sale of parking permits and from moneys deposited in meters.

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\(^3\)A history of the Community Center written in the 1980s states that it has also received a grant from the U. S. Department of Health and Human Services. As of the writing of this report SCOBA has been unable to obtain a copy of the HHS grant contract.
Enforcement of parking violations is provided by the Town police pursuant to the Town Code. The enforcement cost is charged to the A budget. Fines collected for parking violations (the amount of which SCOB has been unable to determine from the Town Court) are imposed by the Town Court and included in its revenues. Questions have been raised whether these fines should be credited to the B budget rather than the A budget. In that connection, SCOB notes that the fines are not revenues of the Parking Authority but rather of the Town Court, the costs and revenues of which are in the A budget.

**Debt Service.** This expense includes payments of principal and interest on debt obligations, principally for capital projects, and aggregate $5,219,637. The amount of $1,602,221 is charged to the A budget. This amount consists primarily of payments of principal and interest on the new Town Hall ($643,559), the borrowed portion of the Hilliard case settlement ($467,033), and the Taxter Ridge acquisition ($223,520). The expense of a Town Hall is required by New York law to be charged to the A budget. The allocation of the Hilliard case settlement was made by the Town Board based upon advice from the Town Attorney.

**Other Non-Departmental Charges.** There are a number of items of expense contained in the budget which are not related to activities of any Town department (and which do not appear to be material in amount). These expense items are not discussed in this Report.

**B. Revenues**

**Cable TV - Franchise Tax and Cable TV - Equipment.** The budget includes revenues of $460,000 as a franchise tax and $75,000 for equipment, all of which are credited to the B budget. We understand that these cable franchise fees relate to cable television services provided to the residents of the unincorporated area, and the villages charge a separate cable franchise fee for cable services provided to village residents. Town Law 64(7) authorizes a town to grant franchises and receive franchise revenue. We have not found any statute that directs or permits such revenues to be credited on a town-outside basis. We suggest that the Town Board and the Town Attorney consider whether this revenue is received as a result of a town-outside function or activity.

**Interest and Earnings.** The budget contains a credit of $290,000 to the A budget and $675,000 to the B budget for interest and earnings on moneys temporarily invested between receipt of those moneys by the Town and their expenditure. These allocations track the underlying cash flow. The Uniform System of Accounts for Towns, formulated by the New York State Comptroller pursuant to General Municipal law, Section 36, sets forth accounting requirements for towns, and identifies account numbers for various accounts which are, or may be, used in maintaining the financial records of a town. This document lists an account designation for Interest and Earnings under both the A budget and the B budget. We have not found any statute that specifically directs or permits such revenues to be credited on a town-outside basis. It has been suggested that General Municipal Law, Section 36, and the System of Accounts provide a statutory basis for the current allocation. Accordingly, we suggest that the Town Attorney consider whether a statutory basis exists for the allocation of these revenues and whether it has been correctly made.
We note that this transaction is recorded on a “net” basis, i.e., the net rental after the grants. We suggest that the Town Comptroller consider whether this transaction should be recorded on a more transparent basis – i.e., that the entire rent of $1,222,844 be recorded as revenue and the grants be recorded as appropriations.

**Rental of Real Property.** The budget shows revenues from three rentals of real property, all credited to the B budget. They are “Rental of Real Property” for $128,191 (which covers rentals of land for the use of cell phone towers), “Rental of Real Property ATS Program” for $146,330, and “Rental of Real Property-WestHELP” for $372,844. The Town Law permits a town to rent property and receive income. We have not found any statute that directs or permits rental income to be credited other than to the town-wide budget.

(a) The cell towers are at two locations. One is atop the Knollwood Water Tower, which is located on town property and that supplies water to some residents of the unincorporated area. The second cell tower is located on town property that also houses the town garage. Both the Water District and the Town Garage are town-outside functions. We suggest that the Town Attorney consider whether the receipt of rental revenues for these cell towers should be credited to the A budget or whether they are revenues received as a result of a town-outside function or activity.

(b) The rental paid by ATS (the alcohol treatment facility that is operated by St. John’s Medical Center) is for the use of the Town’s building in Fairview (which also houses the Union Child Day Care Center). This rental is a commercial transaction. In the absence of a statute permitting such rent to be credited to the B budget, we suggest that the Town Attorney consider whether such rent should be credited to the A budget and, if so, the appropriate charge for maintenance, now in the B budget, to be charged to the A budget.

(c) The rental of $372,888 for WestHELP arises from a complex transaction between the Town and Westchester County. In 1990 Westchester County leased property it owned in Greenburgh to WestHELP for a ten-year term commencing in September 1992, to provide transitional housing for homeless families. At the same time the County leased the property to the Town of Greenburgh (which intended to use it for senior housing) for a term of thirty years, to commence upon the expiration of WestHELP’s ten-year lease. In 2001 the County determined that it wanted to continue WestHELP, and therefore entered into an agreement with the Town of Greenburgh to sublease back its property for another ten years at a rent of $1,222,844 per year, commencing in September 2001. The Town was requested, and agreed, to use some of its rent to make three grants: an educational grant to the Valhalla Union Free School District of $650,000 per year (to provide special services to the children who live in WestHELP): a grant of $100,000 per year to the Fairview Fire District; and a grant of $100,000 per year to the Knollwood Manor Civic Association. The first two grants have been paid. Because the Town was advised by the Michaelian Institute that the grant of Town funds to a civic association was unlawful, the grant to the civic association has not been paid and the funds so allocated have been segregated and are in an account at a financial institution.

In the absence of a statute permitting the rent for the WestHELP property to be credited to the B budget, we suggest that the Town Attorney consider whether such rent should properly be credited to the A budget. Comptroller opinions state that a municipality may, by local law, make

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4 We note that this transaction is recorded on a “net” basis, i.e., the net rental after the grants. We suggest that the Town Comptroller consider whether this transaction should be recorded on a more transparent basis – i.e., that the entire rent of $1,222,844 be recorded as revenue and the grants be recorded as appropriations.
gifts to other public corporations “in furtherance of a public purpose of the donor municipality.” We suggest that the Town Attorney consider (i) whether the substantive and procedural requirements have been met for the grants to the school and the fire districts, and (ii) the appropriate budget placement of the funds (now held in a reserved account) originally granted to the civic association.

**Mortgage Tax.** The mortgage tax is budgeted at $3,000,000 and is credited to the A budget. The mortgage tax revenue arises from the rebate to local municipalities of a portion of the tax paid by mortgagees upon recording a mortgage. In recent years, with the very active housing market, and a significant number of refinancings, this tax has produced significant revenue for government.

The mortgage tax is paid to villages and towns based on a formula contained in Section 261 of the Tax Law. Although the mortgage tax is predicated on assessed values of village and town properties, the formula does not allocate the tax proportionately. A village’s share is less than its proportionate share of assessed value and the Town’s is greater. However, the Town is required to credit all of its share of the mortgage tax to the A budget. As a result, village residents receive a proportionately larger benefit from the distribution of the mortgage tax than do residents of the unincorporated area.

Actual mortgage tax revenue received by the Town and the villages in 2004 was $7,511,229. The Town received $5,827,243, which was credited to the A budget. The six villages received a total of $1,683,986. The total amount of mortgage tax benefit received by real property owners in the villages was therefore $4,296,872. Real property owners in the unincorporated area received a benefit of $3,214,357. Under the above formula, real property owners in the villages received the benefit of approximately $929,000 more (and real property owners in the unincorporated area approximately $929,000 less) than they would have received if the law based mortgage recording tax revenue on assessed valuation. The year 2004 may not be representative of mortgage recording tax revenues in coming years. The recent rise in interest rates, and the prediction of still higher rates, may affect the financings which give rise to the mortgage recording tax revenue.

**State Revenue Sharing Per Capita.** The budget has an amount of $337,035 for this item of revenue, all credited to the B budget. Section 54 of the State Finance Law provides that state per capita aid shall be paid by the state to municipalities, including cities, towns and villages. This statute is not clear as to how this revenue is to be allocated between the A budget and the B budget.

**VI. Recommendations**

This Report is intended to convey factual information about the relationship of Town expenses and revenues to services and benefits in the unincorporated area and the villages. It is also intended to provide information as to legal requirements – information that has not been easily available and that has been acquired through a great deal of work and effort.

The Town Supervisor and several members of the Town government asked that SCOBA make specific recommendations about what changes the Town Board should consider in the budgeting process, as well as recommendations as to possible amendments to statutes that mandate
some of the alignment issues discussed in this Report. Accordingly, a specific recommendation was
made in the one instance in which the committee believes that a present New York statute or binding
court decision requires a change. The committee also identified specific budget items where it
appears that there may be legal or factual questions that need further attention. In these cases, the
committee recommends that the Town Board ask the Town Attorney and/or the Town Comptroller
to undertake the necessary research and review the findings with the Town Board. In that
connection, we respectfully suggest that the Town Attorney consider requesting opinions from the
New York State Comptroller with regard to certain of those items.

Also, we have noted where we found that the budget allocations for services did not align
with those residents who benefitted from those services and where the revenues received by the
Town did not benefit residents proportionately. SCOBA members hope that this Report will help
provide a basis for the judgments that the Town Board must make, but they believe that any effort
by SCOBA to make substantive or policy recommendations, or recommendations regarding specific
statutory amendments, would invite concerns about political motivations and might detract from the
objectivity of this Report. Any changes to the budgetary process to address the issues of alignment
or lack thereof cannot be resolved by the Town Board but would require action by the New York
State Legislature. SCOBA believes that such legislative action should be investigated. Since there
are similarities and differences among the various towns and the issues that they may have, such
investigation may consider whether issues of alignment or the lack thereof are best addressed by an
amendment of any New York statutes, a special statute or statutes specifically for Greenburgh (akin
to the Finneran Law), or a combination of both methods. SCOBA recommends that the Town Board
sponsor a committee consisting of several Town officials (perhaps the Town Comptroller and/or the
Town Attorney, as well as one or two Town Board members), several representatives of village
governments, and knowledgeable residents of both the unincorporated area and the villages, to
continue to study the information contained in this Report and to seek ways of addressing the impor-
tant goals of the municipalities and to provide fairness to the residents of the entire town, and in
doing so, to consider the overall impact on taxpayers in both the villages and the unincorporated
area. SCOBA believes that such a consensus can be reached by officials and residents of good will.

VII. Conclusion

The members of the Special Committee on Budget Allocation realize that the subject matter
of their mission was controversial and politicized. They have also been mindful of the importance
of their mission, and they have done their best to bring fairness and objectivity to their explorations,
analysis, and deliberations, and to do so in an open manner. They hope that their work will provide
background for the public of the complex factual and legal issues involved and aid the members of
the Town Board in addressing the decisions they must make in creating a budget that complies with
the law. The Committee hopes, most of all, that its work will help provide a useful framework for
the Town Supervisor, the Town Board and the public to develop a consensus toward future action.
SCOBA members have felt much satisfaction at having participated in the important work which is reported herein and hope that it will be helpful to the community of Greenburgh.

The Special Committee on Budget Allocation

Herbert Rosenberg, Chairperson
Michael Sigal, Chairperson, Legal Subcommittee
John McLaughlin, Chairperson, Budget Analysis Subcommittee
Gerald Barbelet
Stephen Filler
Michelle Hertz
Milton Hoffman
Randy Klipstein
Herman Lockhart
Iris McLee
Paul Monte
Karen Schatzel
Vikki Simmons
Kevin Swersey
Louis Weinstein
REPORT ON LEGAL BASIS OF TOWN/VILLAGE TAXATION

By: Special Committee on Budget Allocation
    Legal Subcommittee

Herbert Rosenberg, Committee Chair
Michael Sigal, Subcommittee Chair
Stephen Filler
Paul Monte
A. EXECUTIVE SUMMARY

I. Everyone in New York lives in a town or a city, or on an Indian reservation. Some residents also live in a village, which is a municipality within a town.

II. All town residents, including village residents, must pay for all town expenses, unless a general or special state statute requires or permits otherwise. Similarly, all town revenues are generally credited to the town’s general fund, unless a general or special state statute requires or permits otherwise and except for revenues received as a result of a part-town function or activity.

III. NY State Legislature has passed several special statutes that are applicable only to the Town of Greenburgh. These relate to (i) libraries, (ii) parks and recreational facilities, and (iii) sidewalks fronting school properties.

B. RELATIONSHIP OF TOWNS AND VILLAGES IN NEW YORK STATE

- Towns encompass all territory within New York State except for cities and Indian reservations.

- Town governments are the primary units of local government in New York State. Everyone in New York State lives in a town, except for those living in one of New York State’s 62 cities or on an Indian reservation.

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• A village is a municipal corporation within a town. Its area remains part of the town, and its residents continue to be residents and taxpayers of the town. Historically, villages were formed to provide an enhanced level of governmental services to concentrated populations. There are 574 villages in New York State, with 24 being in Westchester County.

• General Rule for Real Property Taxation: All property owners in a town, whether in unincorporated areas or villages, must pay taxes for all expenditures in the town budget, unless a state statute requires or permits monies for any given purpose to be raised from taxes levied only in the unincorporated areas. Similarly, it is a general rule that town revenues are credited to the town’s general fund, in which village residents share, unless a general or special statute requires or permits otherwise and except for revenues received as a result of a part-town function or activity.

ROLE OF NEW YORK STATE COMPTROLLER

New York State Constitution Article V, Sections 1.4
• State Comptroller shall prescribe methods of accounting.

General Municipal Law, Section 36
• The State Comptroller may prescribe systems of keeping accounts for municipal corporations.

The State Comptroller has prescribed a Uniform System of Accounts for Towns (Rev./90). Part A, which is entitled “General Fund – Townwide,” is the principal operating fund and includes all operations not required to be recorded in other funds. Part B, which is entitled “General Fund – Town Outside Village” is used to record transactions which are required by a statute to be a charge on the area of the town outside the village. These are continued in State Comptroller Accounting and Reporting Manual (Rev. March 2005).

The State Comptroller also, at his discretion when he deems appropriate, issues advisory opinions to municipalities on taxation issues, and other issues of municipal finance.6

6 This presentation takes Comptroller opinions at their face, and makes no judgments as to the validity of their conclusions or binding effect.
We understand that the Town of Greenburgh has requested a comptroller’s Opinion with respect to sidewalk issues, although the Committee does not know if and when such an opinion would be issued.

C. EXAMPLES OF TOWN-WIDE TAXES PURSUANT TO NEW YORK STATE GENERAL TAXATION RULE

New York State Comptroller Opinion 72-800
- Town Supervisor
- Town Board
- Town Justice
- Town Assessor
- Town Receiver of Taxes
- Town Attorney
- Town Engineer
- Town Traffic Control Signals

New York State Comptroller Opinion 89-61
- Town Clerk
- Town Superintendent of Highways

New York State Comptroller Opinion 80-456
- Town Liability Insurance
- Town Dog Licencing (even though villages in Westchester are also required to license dogs)

New York State Comptroller Opinion 80-334
- Town Court

New York State Comptroller Opinion 2002-15
- Town Hall

New York State Comptroller Opinion 94-26
- The general principal – town-wide taxation except where a New York State statute requires or permits otherwise, applies even when a village is also authorized to perform the same or similar functions.

New York State Comptroller Opinions 77-614, 82-59
- Discretion to construct sidewalks.\(^7\)
- See Part F for special Town of Greenburgh rule for sidewalks fronting school properties.

Highway Law Sections 140(18), 151
- Maintain sidewalks
- This includes snow removal. New York State Comptroller Opinion January 24, 1956 (12 Opinion St. Compt. 32)

\(^7\)We understand that the Town of Greenburgh has requested a comptroller’s Opinion with respect to sidewalk issues, although the Committee does not know if and when such an opinion would be issued.
Real Property Tax Law Sections 102(20), 300

- Taxation is a charge imposed by a municipality.
- All real property in State of New York shall be subject to real property taxation unless exempted by law.
- Town-wide taxation mandated unless state statute requires or permits otherwise. NY State Comptroller Opinion 80-334. Municipalities, including towns, can not directly or indirectly grant exemptions from real property taxation without statutory authority. NY State Comptroller Opinion 69-240.

DuBois v. Town of New Paltz, 35 N.Y. 2d 617 (Ct.App. 1974)

- It is constitutional for village residents to be subject to town-wide taxation unless (1) exempted by the NY State Legislature or (2) the NY State Legislature grants the town the discretion to exempt and the town does so.

“The present system of allocation of taxing powers between towns and villages, which has evolved over a period of legislative history...serves several legitimate purposes. Adequate revenue base is assured, particularly in instances in which a disproportionate ratio of the taxable property is situated within the village....”


- Expenditures authorized under Town Law Section 220 (certain town improvements) are subject to town-wide taxation.

D. TOWN EXPENDITURE REQUIRED TO BE TAXED ONLY OUTSIDE VILLAGES

D.1. Town Building, Zoning, Planning Activities

- Town Law Sections 138, 261
- New York State Comptroller Opinions 72-800, 89-61, 96-15
- Outside counsel in connection with these activities are outside village charges - New York State Comptroller Opinion 87-37
- Uniform System of Accounts for Towns, Accounts B3620.0, B8010.0 and B8020.0 at B-10 and B-12

D.2. Town Board of Health (not applicable in Town of Greenburgh)

- Public Health Law Section 304
- Uniform System of Accounts for Towns, Account B4010.0 at B-10

D.3. Town Registrar of Vital Statistics

- Public Health Law Section 4124
- Uniform System of Accounts for Towns, Account B4020.0 at B-10

D.4. Town Police Department When Village Maintains a Police Department

- Town Law Section 150
- Uniform System of Accounts for Towns, Account B3120 at B-10
D.5. Town-Village Library
- Education Law Sections 255, 256
- Uniform System of Accounts for Towns, Account B7410 at B-11
- See Part F for special Town of Greenburgh rule in 1960 Session Laws, Chapter 642, for Greenburgh Library.

D.6. Judgments Against Town Attributable to Building, Zoning or Planning Activities
- New York State Comptrollers Opinion 96-15

D.7. Town Highway Garage
- Highway Law Section 142 (4a)
- New York State Comptroller Opinion 80-456

D.8. Town Highways Repair and Improvement
- Highway Law Sections 141(1), 277
- New York State Comptroller Opinion 83-172

E. Town Expenditures Permitted to be Taxed Only Outside Villages

E.1. Machinery and Tools, Snow Removal and Other Miscellaneous Highway Expenses
- Highway Law Sections 141(3) and (4), 277
- NY State Comptroller Opinion 78-281

E.2 Improvement Districts
- Town Law Sections 190, 191, 202, 202-a, 244-c
  - Improvement Districts may be created for facilities and services such as sewerage, drainage, water supply, water treatment, parks, public parking, lighting, snow removal, sidewalks, garbage.
  - Improvement Districts are created (i) upon a petition of a certain percentage of homeowners (by assessed value) in the proposed district, or (ii) upon resolution of the Town Board, subject to a permissive referendum.  
- Town Law Section 170
- Town Board my establish fire districts (Town Law Section 170)

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Villages may opt into improvement districts pursuant to Town Law Sections 190 and 209.
F. SPECIAL NY STATE STATUTES APPLICABLE TO TOWN OF GREENBURGH

F.1 1960 Session Laws, Chapter 642
• Authorizes public library for, and charge against, portion of Town outside villages of Tarrytown, Irvington, Dobbs Ferry, Hastings-on-Hudson, Ardsley and Elmsford

F.2 1982 Session Laws, Chapter 891 (“Finneran Law”) applies to parks, playgrounds and recreational facilities in the Town of Greenburgh.

Bernstein v. Feiner, Index No. 109944/03 (Sup. Ct. Westchester Cty., Feb. 17, 2005 (on appeal) interpreted the Finneran Law as a conditional authorizing statute and held that if restricted to use to residents of unincorporated areas of Greenburgh, acquisition, operation, and maintenance costs shall be a town-outside-village charge.

The Finneran Law provides, in relevant part, that:

“...all costs of acquisition by the town of Greenburgh, Westchester County, of any public park, playground or recreational facility heretofore or hereafter made, all costs of construction or acquisition of any improvement at any such town public park, playground or recreational facility, and all costs of operation and maintenance of any such facility, shall be raised by the levy of a tax upon the lots and parcels of land within said town located in the area outside of incorporated villages and such public park, playground or recreational facility of said town shall, subject to any agreements between said town and the United States government contained in any grant contract, be restricted in use to residents of said town residing in the area of said town outside of incorporated villages.”

The court ruled that, because the Taxter Ridge park was open to all persons regardless of residency status other than pursuant to an agreement in a Federal grant contract, the acquisition, operation, and maintenance costs must be town-wide pursuant to N.Y. State Town Law, Section 232.

The Town of Greenburgh has filed a Notice of Appeal to the Bernstein v. Feiner decision. The construction of the Finneran Law will be determined by the courts.

F.3 Sidewalks Fronting School Property
• Highway Law Section 151

G. INTER-GOVERNMENTAL AGREEMENTS

New York State Constitution, Article IX, Section 1(c) provides that municipalities may enter into inter-governmental agreements (Federal, state or local) to provide facilities or revenues. Costs shall be apportioned upon such portion of the municipality’s area as may be authorized by the NY State Legislature.

General Municipal Law Article 5-g provides for inter-municipal cooperation agreements.
H. REVENUES

H.1 General Rule

- "As a general rule, all moneys utilized for town purposes must be raised by taxes levied on the whole area of the town, including the real property located in villages situated within the town, unless the Legislature by statute requires or permits any given expenditure to be paid from taxes levied only on the unincorporated area of the town. Similarly, unless a statute provides otherwise and except for revenues received as a result of a part-town function or activity, generally, revenues received by a town are credited to the general fund, town wide.” New York State Comptroller Opinion 80-784.

- "It is a general rule that unless a statute provides otherwise and except for revenues received as a result of a part-town function or activity, revenues received by a town are credited to the general fund, town-wide.” New York State Comptroller Opinion 90-1.

Examples of the application of this general rule include:

- Revenues received from the imposition of an assessment on the gross receipts of a commercial hazardous waste facility in the unincorporated area of town must be credited townwide. New York State Comptroller Opinion 90-1. This opinion further states that with respect to the revenue from the hazardous waste facility: “...since villages are not authorized to impose assessments pursuant to [the statute in question] on their own behalf, it appears that the legislature intended that the proceeds of any assessment imposed by a town should inure to the residents of the town as a whole.”

- Revenues received by town from taxes imposed on admissions to pari-mutuel tracks, and moneys received as reimbursement for reductions in such admissions tax revenue, authorized by Town Law section 64(24), must be credited to town wide fund in absence of statute. New York State Comptroller Opinion 80-784.

- Revenues derived by a town from ordinances authorizing bingo games are credited to town-wide fund, in absence of statute, even where a village has enacted a bingo ordinance and receives revenues. New York State Comptroller Opinions 70-753 and 79-614.

H.2 Statutes providing for revenue allocations include:

1. Town Real Property Taxes, Water Fees, and Other Town Fees
   - Town Law Section 37
   - Taxes and fees collected by Receiver of Taxes and are payable to the town. Related interest and penalties are credited town-wide. (With respect to tax moneys collected for taxing entities other than the Town (e.g., school districts) Town Law Section 37 generally requires such interest to be credited to the taxing entity for which the tax moneys were collected.)
2. Mortgage Recording Taxes
   • Tax Law Section 261 sets forth village and town portions.

3. Westchester County Sales Tax
   • Town Law Section 1262-b
   • One-sixth of 1% split between villages and town based on population per Federal census.

4. Per Capita State Aid
   • State Finance Law Section 54 provides for allocation of State per capita aid to town-wide and town-outside budgets.

5. Traffic Fines
   • Vehicle and Traffic Law Section 1803(3) provides that fines based on speeding laws enacted by towns are credited to town-wide fund unless a different disposition is prescribed by local law.
   • New York State Comptroller Opinion 79-802
I. REFERENCES

- New York State Constitution
  - Article V, Sec. 1, 4 (State Comptroller)
  - Article VIII, Sec 1 (gifts for private purposes)
  - Article VIII, Sec 10-a (Improvement District revenues)
  - Article IX, Sec 1-5 (local government; municipal succession)
  - Article X, Sec 5 (Comptroller supervision of accounts of towns and villages)

- Town Law
  - 10  (Classification of towns)
  - 29  (Town Supervisor)
  - 30  (Town Clerk)
  - 37  (Receiver of Taxes)
  - 54  (Special Improvements)
  - 64  (Town Boards)
  - 64(7) Revenues from franchise fees
  - 64(24) Revenues from pari-mutuel tracks
  - 116  (Town charges)
  - 119  (Audit of claims against town)
  - 121  (Judgments against town)
  - 130  (Town ordinances)
  - 138  (Building Inspector)
  - 150  (Police)
  - 170  (Fire Departments)
  - 190  (Establishment of Improvement Districts)
  - 191  (Improvement District petition)
  - 202  (Improvement District expenses)
  - 202-a (Improvement District maintenance)
  - 209  Improvement districts
  - 220  (Certain town improvements, including parks)
  - 32  (Town financing of improvements)
  - 244-c (Recreation systems)
  - 261  (Zoning and Planning)
  - 272  (Repealed)

- Uncodified Session Laws
  - 1982 Session Laws, Chapter 891 (parks, playgrounds, recreational facilities in Town of Greenburgh, referred to as “Finneran Law”).
  - 1960 Session Laws, Chapter 642 (Town of Greenburgh Library)
• Education Law
  • 255 (Establishment of public library)
  • 256 (Library contracts)

• General Municipal Law
  • 30 (Annual financial reports)
  • 36 (Comptroller prescribes system of accounts for municipalities)
  • 72j (Public Parking facilities)
  • 19 (Inter-municipal cooperation agreements)
  • 120 (Purification of water and sewerage)
  • 711 (Municipal succession)

• Highway Law
  • 140 (Highways and sidewalks, snow removal)
  • 141 (Highways and bridges, snow removal)
  • 142 (Highways and snow removal machinery, tools, equipment and implements)
  • 151 (Sidewalks fronting school property)
  • 153 (Shade trees)
  • 277 (Assessment of village property)
  • 327 (Street lighting)

• Municipal Home Rule Law
  • 10

• Public Health Law
  • 304 (Town Board of Health)
  • 4124 (Registrar of Vital Statistics)

• Real Property Tax Law
  • 8b (Comptroller duties)
  • 300 (Taxation of all property unless exempted by law)
  • 924 (Interest on late tax payments)

• State Finance Law
  • 8 (Comptroller duties)
  • 8a (Comptroller duties)
  • 8b Comptroller duties
  • 54 (Per capita state aid)
• Tax Law
  • 261 (Mortgage recording tax revenues)
  • 1262-b (Westchester sales tax)

• Vehicle and Traffic Law
  • 1803 (Local speeding law fines)

• Court Decisions
  • Bernstein v. Feiner, Index No. 109944/03 (Sup. Ct. Westchester Cty. Feb. 17, 2005) (on appeal)

• New York State Comptroller Opinions

  46-14 80-796
  January 24, 1956 82-59
  69-240 83-167
  70-753 83-172
  72-800 87-35
  73-1053 87-37
  77-614 87-54
  78-281 88-22
  79-802 89-61
  79-614 90-1
  80-334 94-10
  80-381 94-26
  80-456 96-15
  80-784 02-15
  June 8, 2004 (file 060438)

• New York State Attorney General Opinions
  • 85-75
  • 87-54

• New York State Comptroller Uniform System of Accounts for Towns

• Office of the New York State Comptroller, Accounting and Reporting Manual (Rev. March 2005)
• Secondary Sources

• New York State Conference of Mayors and Municipal Officials Website (www.dos.state.ny.us)
• Westchester County, County/Town/Village Task Force Report – May 1985 ("O’Rourke Commission Report").

Although this report is based on extensive research, it is for general framework background only. It does not purport to cover each and every expenditure or revenue in a town’s budget, or all legally relevant materials. There may be other statutory provisions, court decisions, and Comptroller opinions that are relevant to any particular expenditure or revenue budgetary matter.

Nothing herein is intended as legal advice, on behalf of the Special Committee on Budget Allocation, any subcommittee or any member, to the Town or any other person, entity or association.