SUPREME COURT – STATE OF NEW YORK
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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In the Matter of the Application of
THE CITY OF NEW YORK,

Petitioner,

For review under Article 7 of the Real Property Tax Law of the State of New York etc.,

-against-

THE TOWN OF CARMEL, the TOWN OF CARMEL TAX ASSESSOR(s), and THE TOWN OF CARMEL BOARD OF ASSESSMENT REVIEW,

Respondents,

SCHOOL BOARD OF THE MAHOPAC CENTRAL SCHOOL DISTRICT and NORTH SALEM CENTRAL SCHOOL DISTRICT,

Intervenor-Respondents.

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index Nos. 500712/2022
501000/2021
500785/2020
501073/2019
500820/2018
500524/2017

Mot. Seq. No. 2

INTERIM DECISION AND ORDER

The following papers numbered 1 to 11 were read on Petitioner's motion for partial summary judgment:

Notice of Motion – Affirmation / Exhibits – Affidavit / Exhibits -- Memorandum 1-4

Affirmation in Opposition (MCSD) / Exhibits – Memorandum 5-6

Affirmation in Opposition (Town) – Memorandum 7-8

Reply Affirmation / Exhibits – Reply Memorandum 9-10

Sur-Reply Affirmation 11

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

These tax certiorari proceedings concern property owned by the City of New York (the "City"), located in the Town of Carmel in Putnam County, and comprising a part of the City's extensive water supply system. The City seeks partial summary judgment declaring that the pumping station located at the base of the Croton Falls Reservoir is exempt from taxation pursuant to Real Property Tax Law ("RPTL") §406(4) and Administrative Code of the City of New York §24-301 (formerly Greater New York Charter §480). Respondent Town of Carmel contends that the tax exemption therein codified is unconstitutional, and all Respondents assert that the City's motion is premature in that they require an engineering inspection of the pumping station to determine whether portions of that facility may fall outside the scope of the exemption.

THE RELEVANT STATUTES

RPTL §406(4) provides that "[t]he ***aqueducts*** which are a part of the water supply system of the city of New York shall be entitled to the exemption provided by law." Section 24-301 of the Administrative Code of the City of New York provides:

> a. The lands taken, or to be taken, for storage, reservoirs, or for other constructions necessary for the introduction and maintenance of a sufficient supply of water in the city, or for the purpose of preventing contamination or pollution, shall be assessed and taxed in the counties in which they are or may be located, in the manner prescribed by law, ***exclusive of the aqueducts***.
>
> b. This section shall not be construed to prevent the assessors in the county of Nassau from assessing for taxation the pumping stations and buildings located in such county.

At common law, and until 1840, all municipal property held for governmental and public purposes was exempt from taxation. The history and scope of the narrower exemption of the City's aqueducts from taxation was elucidated by the Court of Appeals in *In re City of New York v. Mitchell,* 183 NY 245 (1905).

> The general exemption, to which the municipality was entitled, with respect to property held and used for governmental and public purposes, was first affected by legislative

enactment in 1840 (chapter 235, p. 185, Laws 1840), when its lands, not within corporate limits, were subjected to assessment and taxation at their value, but "*exclusive of the aqueduct and the constructions and works necessary for its purposes*." Acts subsequently passed, relating to the development and extension of the municipal waterworks system, substantially preserved this qualified exemption, down to the enactment of Section 480 of the Greater New York charter of 1897 (Laws 1897, p. 167, c. 378). In 1901 (chapter 466, p. 214, Laws 1901) that section was amended to read as follows: "The lands heretofore taken or to be taken for storage, reservoirs, or for other constructions necessary for the introduction and maintenance of a sufficient supply of water in the city, or for the purpose of preventing contamination or pollution, shall be assessed and taxed in the counties in which they are or may be located, in the manner prescribed by law, *exclusive of the aqueducts*. But nothing in this section contained shall prevent the assessors in the county of Nassau from assessing the pumping stations and buildings located in such county." By this amendment the direction that the lands shall be assessed and taxed "at the value of the lands" and exclusive of "the constructions and works necessary for its purposes…", which was the language of the preceding laws, was omitted.

I should say that the purpose of the legislation from 1840 to 1901 is sufficiently conspicuous. Originally, and until the general tax law of 1896 (Laws 1896, p. 795, c. 908) was passed, it was to take away from the city that right to exemption from taxation, which it enjoyed under the rule at common law, so far as the naked value of the lands held for aqueduct purposes was concerned. The general tax law, however, changed the rule and destroyed all distinctions in the taxation of property, by providing that "all real property within this state, and all personal property***is taxable unless exempt from taxation" (section 3), which exemption was of "property of a municipal corporation of the state held for a public use, except the portion of such property not within the corporation" (section 4). But, when the Legislature came to the enactment of the Greater New York charter in 1897, it was moved to restore to the city such exemptions from taxation of its aqueduct properties as it had previously enjoyed under special legislation. A few years later it again was moved, upon further consideration, to withdraw the exemption and to *leave this municipal property not within the corporation, exclusive only of the aqueduct, to be taxed as all other property was taxed within the state*. In 1901 it broadly authorized the assessment and taxation of lands in the counties where they were located "in the manner prescribed by law," which was the equivalent of *a command to follow the provisions of the general tax law, except so far as special local regulations might exist.* Under the general tax law and by the general understanding, the term "lands" when used with reference to assessment for purposes of taxation, includes with the land, whether above or under water, all constructions which have been erected upon or affixed thereto.

It may be observed that a clause added to the section, to the effect that nothing therein should "prevent the assessors in the county of Nassau from assessing the pumping stations and buildings," furthers the argument, because of *the possible implication that, as they were essential adjuncts or mechanical parts of the aqueduct itself, they would, without special legislative mention, have come within the exemption from taxation accorded to the aqueduct*. I think it to be clear that words of Section 480 of the charter,

> prior to 1901, "at the value of the lands exclusive of the aqueduct and the constructions and works," etc., imply that, *except for such language, the assessment of the land for taxation could lawfully have comprehended such structures. The change in language, when re-enacting the section in later years, so to exclude only the aqueducts, has a significance too obvious to be argued away* by refinements of reasoning upon the applicability of the general tax law to the situation after the amendment....

In re City of New York, supra, 183 NY at 247-249 (italics added).

The Court accordingly held that for tax year 1902 (*i.e.*, after the 1901 amendment to the Greater New York Charter), the Town of Southeast properly included various constructions placed by the City upon land acquired for use in connection with its waterworks system. Judge Bartlett concurred that this holding was "in accordance with the letter of the statute", but added: "Not only the aqueduct, but its appurtenances, should be exempt. The Legislature ought to amend the statute in the interest of the city of New York, as it is engaged in a work of great public necessity." *Id.*, at 250.

As Petitioner observes, Section 480 of the Greater New York Charter of 1897, as amended in 1901, is now codified as Section 24-301 of the Administrative Code of the City of New York. Thus, it is the tax exemption as construed by the Court of Appeals in *In re City of New York v. Mitchell, supra*, that is at issue here. The Court of Appeals' teaching as it bears on the issues presented here is essentially threefold:

1. As a matter of general law, lands acquired by the City outside its corporate borders for use in connection with its water supply system, including constructions thereon, are subject to assessment and taxation.

2. As a matter of special legislation, the City's aqueducts are exempt from taxation.

3. Pumping stations and other buildings insofar as they are "essential adjuncts or mechanical parts of the aqueduct itself" fall within the scope of the tax exemption.

THE RESPONDENT TOWN'S CONSTITUTIONAL OBJECTION

The Respondent Town of Carmel attacks the constitutionality of the exemption of the City's aqueducts from taxation on the ground that it is violative of NYS Constitution Article XVI, §1, which provides that real property tax exemptions may only be granted by general law. Petitioner contends that the Town lacks standing to raise this constitutional objection, and in any event that (1) RPTL §406(4) and Administrative Code of the City of New York §24-301 are general laws, not special laws; and (2) the tax exemption for City aqueducts predates Article XVI, §1, and the constitutional prohibition against granting real property tax exemptions except by general law is not retroactive.

A. Standing

The general rule of law is that a political subdivision of the State has no standing to challenge the constitutionality of an act of the State Legislature which restricts its governmental powers. *See, Town of Black Brook v. State of New York,* 41 NY2d 486, 487 (1977). Thus, in *City of Buffalo v. State Board of Equalization and Assessment,* 26 AD2d 213 (3d Dept. 1966), the Court held that Buffalo had no standing to challenge the constitutionality of a statute granting railroads an exemption from local real estate taxation. *See, id.,* at 215. A constitutional challenge to the very tax exemption at issue here was rebuffed in *City of New York v. Christiansen,* 85 AD2d 663 (2d Dept. 1981), *aff'd* 58 NY2d 884 (1983) on the ground that the intervenor school district lacked standing. *See, id.,* 85 AD2d at 664 (citing *Town of Black Brook, supra*).

Respondent Town of Carmel invokes a limited exception, recognized by the Court of Appeals in *Town of Black Brook,* which permits a local government to challenge a statute which violates the "home rule" guarantees of Article IX of the NYS Constitution. *See, id.*

The power of taxation is granted specifically, and exclusively, to the State Legislature. *See,* NYS Const., Article XVI, §1; *United States Steel Corp. v. Gerosa,* 7 NY2d 454, 459 (1960); *People ex rel. Metropolitan S.R. Co. v. State Board of Tax Comm'rs,* 174 NY 417, 444 (1903). Section 480 of the Greater New York Charter (*i.e.,* the predecessor of Admin. Code §24-301) is "an exercise of the sovereign power of taxation, both in terms of subjection and of exemption." *People ex rel. City of New York v. Neville,* 183 AD 799, 801 (2d Dept. 1918).

The Town has not identified any Article IX "home rule" guarantee that has been violated by the Legislature's exercise of its sovereign taxing power relating to City property acquired and used in connection with its water supply system. Under Article IX, §2[c][8], local governments' power with respect to taxation extends only to "[t]he levy, collection and administration of local taxes *authorized by the legislature* and of assessments for local improvements, *consistent with laws enacted by the legislature.*" Since Respondent's "home rule" taxing power is exercisable only consistent with state law, it is not infringed by tax exemptions created by the State Legislature.

The Court therefore concludes that the Town lacks standing to challenge the constitutionality of RPTL §406(4) and Administrative Code of the City of New York §24-301. *See, Town of Black Brook v. State of New York, supra*; *City of New York v. Christiansen, supra.* However, assuming *arguendo* that the Town has standing to challenge an *unconstitutional* tax exemption as an infringement of its Article IX taxing power, the Court will address the constitutional issues.

B. Article XVI, §1

NYS Const. Art. XVI, §1 provides that "[e]xemptions from taxation may be granted only by general laws."

The City contends, first, that RPTL §406(4) and Administrative Code of the City of New York §24-301 are general laws, not special laws, theorizing that although they refer specifically, and exclusively, to the City of New York, they should nevertheless be construed as applying generally to the class of cities with a population of more than one million people, of which class New York City is the only member.

This argument flies in the face of *People ex rel. City of New York v. Deyo,* 158 AD 319 (3d Dept. 1913). The *Deyo* Court held that the tax exemption for City aqueducts in Section 480 of the Greater New York Charter – the predecessor to §24-301 of the Administrative Code – was a special law, not a general law, else it would have been superseded by the general tax law of 1909 providing that *all* property of a municipal corporation outside the corporate limits should be subject to taxation. *See, id.,* 158 AD at 320-321. *See also, In re City of New York, supra,* 183 NY at 248-249. The City's argument also takes no account of the definitions of "general law" and "special law" for purposes of Article IX of the NYS Constitution which, at least for purposes of the standing issue presented here, is the relevant context:

> General law. A law which *in terms and in effect* applies alike to all…cities…
>
> Special law. A law which *in terms and in effect* applies to one or more, but not all…cities…

NYS Const. Art. IX, §3[d][1, 4]. *See also, Murray v. Town of North Castle,* 203 AD3d 150, 160 (2d Dept. 2022).

In view of the foregoing, the Court concludes that RPTL §406(4) and Administrative Code of the City of New York §24-301 are special laws, not general laws.

However, it does not follow that those statutory provisions are violative of NYS Const. Art. XVI, §1 for, as the City further argues, the constitutional requirement that exemptions from

taxation be granted only by general laws is not retroactive. Article XVI, §1 was adopted on November 8, 1938 and made effective on January 1, 1939. A similar constitutional provision in Article III, §18 (now §17) was adopted in 1901. In *In re Montefiore Home,* 159 AD 644 (1st Dept. 1913), *aff'd* 211 NY 549 (1914), the Court considered the ongoing validity of a tax exemption granted by special law in 1897 in light of Article III, §18. It wrote:

> In 1901 Section 18 of Article 3 of the Constitution was amended to provide that the Legislature shall not pass a private or local bill "granting to any person, association, firm or corporation, an exemption from taxation on real or personal property." *This provision, of course, had no retroactive effect and left untouched the special statute of 1897 under consideration.*

In re Montefiore Home, supra, 159 AD at 646 (italics added). Here, as the history recited by the Court of Appeals in *In re City of New York v. Mitchell* shows, the exemption from taxation of the City's aqueducts goes back at least to the passage of Section 480 of the Greater New York Charter in 1897 (Laws 1897, p. 167, c. 378) – prior to the adoption of Article III, §18, and long before the adoption of Article XVI, §1. *See, id.,* 183 NY at 247-248. Per *Montefiore*, those constitutional provisions have no retroactive effect and do not invalidate the tax exemption for the City's aqueducts embodied in Section 480 of the Greater New York Charter. Furthermore, since RPTL §406(4) and Administrative Code §24-301 merely continued, and did not modify, enlarge or expand the tax exemption for the aqueducts, they too are immune from attack as violative of Article XVI, §1 or Article III, §17 of the NYS Constitution. *See, City of Poughkeepsie v. Town of Poughkeepsie,* 52 Misc.2d 721 (Sup. Ct. Dutchess Co. 1967), *aff'd* 37 AD2d 852 (2d Dept. 1971) (1910 law exempting city property from taxation held not repugnant to Article III, §18 [now §17] as it did not extend exemptions contained in law pre-dating 1901 constitutional amendment).

Therefore, the Court holds that the Town of Carmel's assertion that RPTL §406(4) and Administrative Code §24-301 are constitutionally infirm is without merit.

THE SCOPE OF THE TAX EXEMPTION FOR THE CITY'S AQUEDUCTS

Summarizing once again the Court of Appeals' teaching in *In re City of New York v. Mitchell, supra,* (1) lands acquired by the City outside its corporate borders for use in connection with its water supply system, including constructions thereon, are subject to assessment and taxation; (2) the City's aqueducts are exempt from taxation; and (3) pumping stations and other buildings insofar as they are "essential adjuncts or mechanical parts of the aqueduct itself" fall within the scope of the exemption.

The law, as interpreted by the Court of Appeals in light of its legislative history, provides broadly for assessment and taxation of City lands and buildings acquired for use in connection with its water supply system subject to a narrow exemption for the "aqueducts." *See, id.,* 183 NY at 247-250. *See also, People ex rel. City of New York v. Keeler,* 205 AD 467, 473 (2d Dept. 1923); *People ex rel. City of New York v. Page,* 192 AD 406, 408 (2d Dept. 1920). Originally, in 1840, the exemption from taxation encompassed "the aqueduct *and the constructions and works necessary for its purposes.*" After 1897, and now, *the exemption encompasses only the aqueduct*, and, conversely, lands and "constructions necessary for the introduction and maintenance of a sufficient supply of water" are taxable. Thus, the Court in *In re City of New York v. Mitchell, supra,* concluded that "various constructions placed upon the land by the city, in connection with the waterworks system" were subject to taxation – with a concurring Judge explicitly recognizing that the aqueduct's "appurtenances" are not exempt from taxation under the statute as written. *See, id.*

Accordingly, New York caselaw (1) confines the tax exemption, in accordance with the language of the statute, to the aqueduct, and (2) analyzes the purpose/function of the particular property at issue in tax certiorari proceedings to determine whether it is part of the aqueduct or so essential to its operation as to be effectively a part thereof.

The term "aqueduct" means "a conductor, conduit or artificial channel for conveying water, especially one for carrying a large quantity of water which flows by gravitation." *See, People ex rel. City of New York v. Barker,* 17 NYS2d 305, 311 (Sup. Ct. Westchester Co. 1939) (quoting Webster's Dictionary). In *City of New York v. Christiansen, supra,* the City sought a tax exemption for a "standby water induction facility known as the Hudson River Pumping Station." The Court observed that "[t]he function of the facility is to draw water from the Hudson River, partially purify it, and deposit it in the aqueduct system by means of a pump." The Court held:

> As used in the statute, the term aqueduct is not restricted. It merely refers to a conduit conveying quantities of water. This definition encompasses the Hudson River Pumping Station which conveys water from its source, the Hudson River, to the Delaware aqueduct by means of gravity and pressure created by the pump.

Id., 85 AD2d at 664. In other words, in determining that the pumping station was exempt from taxation, the Court inquired as to the facility's *function*, determined that its purpose was to *convey water* to the Delaware aqueduct by means including *gravity* (and the pump), and concluded therefore that the station itself fell within the definition of an *aqueduct.*

In *People ex rel. City of New York v. Deyo, supra,* 158 AD 319 (3d Dept. 1913), the Court considered the status of a "discharge pipe" (or "blow-off") "through which water in the aqueduct may be drawn off and discharged into the [Wallkill] creek." In the absence of evidence as to its nature or purpose, the Court opined that "if the [discharge pipe] constitutes an *essential*

part of the aqueduct, and was necessary to its operation" it would be part of the aqueduct and hence exempt from taxation. *See, id.,* 158 AD at 322 (italics added).

In *People ex rel. City of New York v. Neville, supra,* 183 AD 799 (2d Dept. 1918), the Second Department applied the test articulated by the Court in *Deyo* to determine whether or not a property entitled the "Hill View reservoir" fell within the scope of the tax exemption for aqueducts. The Court observed that the character of the property is determined not by its name but by its "purpose and use." Hill View was not a "storage reservoir", but an "equalizing reservoir." The Court described its function in terms as follows:

> The office of the Hill View reservoir is to regulate each daily supply relative to the demands of the different periods of each day. It is located "practically" at the entrance of the distribution system. It has a north gatehouse for the intake and a south gatehouse for the outlet. The aqueduct construction is continued from gate to gate of this reservoir by a by-pass. This "reservoir" does not store any of the waters that are brought to it. Such waters are carried to it by the conduit for the supply of each day. Normally, the reservoir but acquires the supply of the day according to the periods of it, and some of those periods require all of the waters brought to the reservoir. In effect, here is a governor of the current of the day on its way to the city of New York.

Neville, supra, 183 AD at 804. On those facts, the Court held that "[a]s the collected water, on its direct way to the city for distribution, flows through its conduit to this reservoir, through the reservoir, and out of it, and the use of this reservoir is but to regulate the volume according to the demands of the different periods of each day, in the words of [*Deyo*], it '*constitutes an essential part of the aqueduct and was necessary to its operation*," and [*Deyo's*] conclusion, 'it would seem to be a *part of the aqueduct*, and exempt from taxation and assessment,' is applicable." *Id.,* 183 AD at 805-806 (italics added).

Also instructive is *People ex rel. City of New York v. Barker,* 34 NYS2d 510 (Sup. Ct. Westchester Co. 1941). The critical question therein was whether two gatehouses were part of

the aqueduct, and hence exempt from taxation, or part of the dam, and hence subject to assessment and taxation. The Court found that:

- Gate-house No. 1 "performs an aqueduct function, is *part of the aqueduct* and is, therefore exempt."
- Gate-house No. 2, whose purpose was "to lower the level of the water in the reservoir," is "*essential to the maintenance of operation of the aqueduct* and, hence, is part thereof and is exempt.
- The "gravity sections" of the gate-houses, however, "are an integral part of the dam and have *only a partial and incidental connection with the gate-houses or aqueducts*," and are therefore assessable.

See, Barker, supra, 34 NYS2d at 514 (italics added).

THE CROTON FALLS PUMPING STATION

The City's engineering expert, James W. Keeler, has established *prima facie* that the Croton Falls Pumping Station is "a necessary component of the aqueduct, required to accomplish the task of conveying water from the [Croton Falls] Reservoir to the Delaware Aqueduct and on to the City of New York." (Keeler Aff. ¶18). Mr. Keeler also established *prima facie* that in terms of its function and purpose the Croton Falls Pumping Station is essentially identical to the Hudson River Pumping Station (*Id.*, ¶21), which in *City of New York v. Christiansen,* 85 AD2d 663 (2d Dept. 1981), *aff'd* 58 NY2d 884 (1983) was held to be part of the aqueduct and hence exempt from taxation. It appears that Respondents do not take issue with the conclusion that the Croton Falls Pumping Station *qua* pumping station falls within the scope of the tax exemption for City aqueducts. The question, rather, is whether portions of that facility may fall outside the scope of the exemption.

Relying largely on *People ex rel. City of New York v. Morris,* 211 AD 862 (2d Dept. 1924), *aff'd* 242 NY 504 (1926), and more particularly upon an unreported referee's opinion

that was confirmed and then affirmed without opinion in that case, the City contends that the entirety of the Croton Falls Pumping Station facility should be deemed exempt from taxation. Applying a test derived from the referee's opinion, the City contends that the term "aqueduct" broadly encompasses:

> all structures, machines, conveniences and equipment necessary, reasonably appropriate, convenient, useful, conducive to, suitable and proper for the purpose of introducing water for consumption once it has left the storage reservoir or other water supply resource, and for all reasonable and necessary supporting functions thereto.

(Mem., p. 8; Appendix No. 1, pp. 49-50)

It appears to the Court that:

- This test contravenes *In re City of New York v. Mitchell, supra,* and its progeny, which hold that City property acquired for use in connection with its water supply system is taxable, subject to a narrow exemption for property which is an essential adjunct or mechanical part of the aqueduct itself and necessary to its operation; and further, that "appurtenances" to the aqueduct are subject to assessment and taxation.

- The breadth of this test is such that it might well have rendered tax exempt the buildings held to be taxable in *In re City of New York v. Mitchell, supra,* as well as the "gravity sections" of the gate-houses deemed taxable in *People ex rel. City of New York v. Barker, supra.*

- The referee in *Morris* derived his notion of what is "necessary" to the operation of an aqueduct from, of all places, Chief Justice John Marshall's discussion in *M'Culloch v. Maryland*, 17 U.S. 316, 324-326 (1819) of the scope of Congress's authority "to pass all necessary and proper laws for carrying its powers into execution." In each case, to be sure, assessing "necessity" in terms of function is appropriate. However, it was the breadth, and inherent indeterminacy, of what may be necessary to effect the beneficial purposes for which government is established that led Justice Marshall to conclude that "[t]he true view of the subject is, that if it be a fit instrument to an authorized purpose, it may be used, not being specially prohibited." *Id.,* at 324. Here, in contrast, the matter is one of giving full effect to the tax exemption for aqueducts without defining it so broadly that it infringes upon the Respondent's right to tax all other property acquired by the City for use in connection with its water supply system. Hence, the Court deems *M'Culloch v. Maryland* inapropos.

- Even in *Morris,* the referee recognized that portions of a facility or structure otherwise tax exempt as part of and necessary to the operation of an aqueduct may fall outside the scope of the exemption. (*See,* Mem., Appendix No. 2, p. 61)

> The referee solved this problem by finding that those portions abstracted from the tax-exempt portions of the facility or structure would have no value.[1]

In view of the foregoing, the Court declines to find as a matter of law, on the strength of *Morris,* that the *entirety* of the Croton Falls Pumping Station facility is exempt from taxation. The Court also rejects the City's contention that such a result is compelled by *City of New York v. Christiansen, supra,* as it does not appear from the record that the Appellate Division or the Court of Appeals addressed that question in *Christiansen.* Once again, then, New York caselaw confines the City's tax exemption, in accordance with the language of the statute, to the aqueduct; a pumping station is tax exempt insofar as it is an essential adjunct or mechanical part of the aqueduct itself; and engineering analysis of the purpose/function of the particular property at issue is required to determine whether it is part of the aqueduct or so essential to its operation as to be effectively a part thereof.

CPLR 3212(f)

> CPLR §3212(f) provides:
>
> Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

It is perfectly clear from the caselaw reviewed herein that engineering analysis of the purpose and function of property alleged to fall within the tax exemption for "aqueducts" is essential. Mr. Keeler, the City's engineer, has intimate knowledge of the design and operation of the Croton Falls Pumping Station and has made the engineering case from the City's perspective.

[1] The issue whether taxable portions of the Croton Falls Pumping Station facility would have little or no value abstracted from the tax-exempt portion thereof is not presently before the Court. The Court observes, however, that if that were the case then the effort to distinguish might not be worth the candle.

Respondents have not joined issue on that front because their engineer(s) have not to date inspected the facility. In the interests of justice, the Court grants their application pursuant to CPLR §3212(f), and will hold the City's motion for partial summary judgment in abeyance pending an engineering inspection of the Croton Falls Pumping Station and submission of opposing expert engineering affidavit(s), if any.

It is therefore

ORDERED, that Petitioner's motion for partial summary judgment is temporarily held in abeyance, and it is further

ORDERED, that Petitioner is directed to permit Respondents and their engineering expert(s) to inspect the Croton Falls Pumping Station at a date and time to be mutually agreed upon by the parties, but not later than August 31, 2023, and it is further

ORDERED, that Respondents are directed to file expert engineering affidavit(s), if any, on or before September 29, 2023, and it is further

ORDERED, that Petitioner may file a reply, if any, on or before October 17, 2023, and it is further

ORDERED, that the return date of Petitioner's motion is adjourned to October 19, 2023.

The foregoing constitutes the interim decision and order of the Court.

Dated: July 28, 2023 ENTER
Carmel, New York

HON. VICTOR G. GROSSMAN, J.S.C.