The Real Property Tax Law provides for correction of errors made on assessment rolls. This authority is limited, however, to the correction of clerical errors, illegal assessments, and to put omitted taxable property on the assessment roll. There is no authority (except with respect to review on grievance day) for any local officer or governing body to substitute their judgment with respect to the assessor’s determination of value.

*1 Our opinion has been requested as to the advisability of a local governing body modifying assessment determinations made pursuant to a town-wide revaluation program. It was proposed by town officials that the town board rescind the 1973 assessment roll and reinstate the 1972 assessment roll. Another proposal was that the board of assessment review change all assessments to the values entered on the 1972 roll, even though complaints were not received. Apparently, the town board and the board of assessment review believed that reinstating the 1972 assessment roll would better reflect the wishes of the taxpayers and voters.

At the outset, it would be helpful to review some of the basic principles of real property assessment and taxation. The assessor is a public officer with a constitutionally protected office. He has the responsibility, in the first instance, to identify real property as taxable or exempt and to make appropriate entries on the assessment rolls identifying the property and its value for purposes of taxation.

From time to time it may become advisable to conduct a general reappraisal of all property in an assessing unit. In such case the Real Property Tax Law, section 572, authorizes the governing body of a municipality to employ experts to assist assessors in the reappraisal program. However, the assessment roll which is prepared following a reappraisal still constitutes a record of the assessor’s judgment of value. The reappraisal is considered to be for the assessor’s “assistance”, and the assessor is required to make his independent determinations and to verify that he has estimated the assessed values as prescribed by law (Real Property Tax Law, § 514).

The law requires that real property be assessed at full value (or a uniform percentage thereof). Any taxpayer who believes that he is being treated unfairly in the assessment of his property may seek a review of his assessment. The first step a taxpayer takes is filing a timely and proper complaint before the local board of assessment review. The board of assessment review certifies its changes to the assessor who records the changes on the assessment roll (this being the only change the assessor may make on the assessment role after he publishes it). If the review by this quasi-judicial administrative body results in a determination which a taxpayer believes is unfair, he may then commence a proceeding for judicial review in State Supreme Court (Real Property Tax Law, Article 7).

The town board does not have authority to change or modify the determinations of the assessor; nor can the town board order the assessor to change the level of assessment which he has chosen for his assessment roll (Drelich v. Kahn, 60 Misc.2d 227, 302 N.Y.S.2d 634). This principle was clearly underscored in a recent case in the Town of Ramapo where the town board attempted to direct the assessor to assess at a different percentage of full value, and the court upheld the assessor’s autonomous authority to make assessments (McAlevey v. Williams, 41 App.Div.2d 971, 344 N.Y.S.2d 193). Finally, the board of assessment review does not have any jurisdiction to change an assessment unless a complaint is properly and timely filed by the taxpayer.

*2 Accordingly, it is our opinion that town officials have no authority to rescind their current assessment roll, nor does the board of assessment review have power to make changes except where complaints were timely and properly made.
Errors on the roll do, of course, occur, and currently law does provide for corrections of errors on assessment rolls (Real Property Tax Law, Article 5, Title 3). However, it is important to note that at no time during the entire assessing and taxing process is there authority (except with respect to review on grievance day) for any officers or bodies to substitute their judgment with respect to the assessor’s determination of value. The authority present in current law is to correct erroneous assessments where the error is traceable to a clerical error, to correct illegal assessments where the assessor was without authority to make the assessment in the first instance, and to pick up taxable properties which were omitted from the assessment roll.

After the assessor publishes the roll, and prior to the levy of taxes, he may, on his own motion, petition the county board of supervisors to correct errors attributable to clerical mistakes in copying or transcribing (§ 554). This is confined to demonstrable clerical errors and does not encompass changes in judgment as to value. The board of supervisors on its own motion may correct certain errors and order refunds of taxes levied against an illegal or erroneous assessment other than an erroneous assessment due to an error in judgment in respect to the valuation of real property (§ 556).

Section 558 provides for “reassessment”. This section was derived from section 57 of the Tax Law, and it originally contained an introductory phrase “[w]henever by the judgment of a court of competent jurisdiction, it appears to the governing body that any property liable to taxation was illegally or erroneously assessed, such body may "reassess" the property.

The section is used where an assessment is set aside by a court, and it provides authority to the governing body to assess property which is subject to taxation but which might, in the absence of section 558, otherwise escape taxation (see, Western N.Y. and P. Ry. Co. v. City of Buffalo, 176 Misc. 350, 27 N.Y.S.2d 249, aff’d, 264 App.Div. 832, 35 N.Y.S.2d 751, aff’d, 290 N.Y. 702, 49 N.E.2d 633, when railroad property erroneously regarded in the past as subject to special franchise assessment was reassessed for those years). Clearly, this authority to “reassess” is not an authorization to substitute a valuation judgment; rather, it is solely authority to enter on the rolls property which has enjoyed a tax free status.

It is to be noted that subdivision 3 of section 558 provides that the amount of tax levied pursuant to this section be deducted from the aggregate amount of taxes levied in the current year. This provision simply makes it clear that when a court orders taxes for prior years to be levied against property erroneously not taxed during those years, then such taxes should be subtracted from the current budgets of the municipalities which benefit from the payments. This procedure insures that the property owner will pay the amount which he should have paid and that such amount, rather than being a windfall to the municipality, will be used to reduce the current tax rate.

*3 NOTE: Chapter 177, Laws of 1974 repealed Sections 554, 556, and 558, and added a new correction of errors procedure contained in Article 5, Title 3, Sections 550–559.