Nassau County
Office of the Comptroller

Limited Review of Tax Certiorari Appraisal Reports of Real Property and Legislative Reform

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Background

New York State and Nassau County ("County") laws provide administrative and judicial means for taxpayers to redress their grievances with regard to their property's assessment as set by the Nassau County Department of Assessment ("Assessment"). Assessment annually values all properties in Nassau County and establishes an assessed value based on a fixed percentage of fair market value. Commercial properties are currently assessed at 1% of their fair market value.

The grounds for most reviews are that the assessment is unequal or excessive[1] when compared to comparable properties. The assessment of the property may represent a different ratio than that of other properties or the property may be assessed on a market value that is unequal when compared to comparable properties.

The settlement or adjudication of certiorari proceedings is based on determinations of value obtained from Certified Real Estate Appraisers. The petitioner and the County each hire an appraiser to determine the fair market value of the subject property. The settlement or litigation process includes evidence of property values supported by appraisals prepared by the appraisers in conformance with Uniform Standards of Professional Appraisal Practice which are then used by the petitioner and the County Attorney to defend their estimates of the properties' fair market value.

A petition for administrative review is the first step in the grievance process and it is filed with ARC. If the decision of ARC is unsatisfactory to the taxpayer, judicial recourse is available to commercial property owners through filing a certiorari writ with the New York State Supreme Court. The Assessment Litigation Bureau ("Bureau") of the County Attorney's Office is responsible for defending the County against the taxpayers' writs.

The County has also enacted legislative reforms including the Emergency Taxpayer Protection Order of 2010 ending annual reassessments in favor of reassessment on a four year cycle and Local Law 12-2010 which amends Title B of Chapter VI of the Nassau County Administrative Code to require the petitioner to either submit a certified appraisal or make a reasonable basis proposal to settle a tax grievance.

Scope of Review

The scope of our review was to analyze and compare the appraisals prepared for both the petitioner's and commercial property settlements and judgments during the year 2009 to determine the reasons for the divergences in values. Our sample of settlements included seven commercial properties with refunds totaling almost $10 million. The settlements included in the sample were judgmentally selected from a list of refunds paid during 2009 and our selection included various property types: two office buildings, two large stores, a shopping mall, a small retail store and vacant land. Our scope was limited due to

[1] Real Property Tax Law §524. Complaints with Respect to Assessments. The other two grounds for review are misclassification of property or denial of exemption.

attorney-client privilege. Files containing settlement documents and correspondence were reviewed by the Bureau and any documents that would have violated that privilege were removed from the files before the files were provided to us. As a result, our review was limited to only those documents provided to us. Additional information was obtained based on a series of interviews with the Chief Deputy County Attorney ("CDCA"). While the CDCA was assigned to the Bureau during the years prior to 2009, she was assigned elsewhere during 2009 and the 2009 Bureau Chief was no longer employed by the County during 2010.

We also reviewed and analyzed Executive and Legislative initiatives taken in 2010 to reform the assessment and administrative grievance process. These reforms included the Emergency Taxpayer Protection Order of 2010, ending annual reassessments in favor of reassessment on a four-year cycle and Local Law No. 12-2010. This legislation amends Title B of Chapter VI of the Nassau County Administrative Code to change the responsibilities of property owners and the Assessment Review Commission in the administrative review process.

Significant Audit Findings

Review of Appraisals

The settlement or adjudication of Certiorari proceedings is based on determinations of value obtained from Certified Real Estate Appraisers. The petitioner and the County each hire an appraiser to determine the fair market value of the subject property. These valuation conclusions are subjective, based on the professional opinions of the appraisers as to the many factors that affect the income and expenses generated by the subject property and the rate of return expected by an investor. Our review of settlement files showed that professional opinions widely differ and that there may be no "right" determination of fair market value.

This subjective nature of the appraisals exposes the County to refund liability. Despite the appraiser's assertions that the appraisals are unbiased, for the case files we have reviewed in this and previous audits, the petitioners' appraisals valuations support the petitioners' demands for refunds and reach lower valuation conclusions than those reached by the County's appraiser. The petitioner's appraisals typically assumed lower rentals, higher vacancies, higher operating expenses and higher capitalization rates than the County appraiser. As can be seen below, these differences resulted in the petitioners claiming substantially lower valuations than claimed by Assessment or by the County's appraisers.

Comparison of Assessment, County Appraiser and Petitioner's Appraiser's Valuations					
				Petitioner's Appraiser's Value as a Percentage of	
	Department of Assessment's Avg. FMV	County's Appraisers' Avg. FMV	Petitioner's Appraisers Avg. FMV	Assessment's Value	County Appraiser's Value
711 Stewart Avenue	$ 47,132,365	$ 37,378,333	$ 28,434,000	60.3%	76.1%
50 Charles Lindbergh Boulevard	$ 32,704,545	$ 27,941,715	$ 23,347,319	71.4%	83.6%
Sears	$ 33,887,710	$ 28,593,886	$ 25,063,161	74.0%	87.7%
Target	$ 27,236,925	$ 24,498,146	$ 20,986,941	77.1%	85.7%
Rockaway Realty	$ 53,649,549	$ 56,990,000	$ 41,976,667	78.2%	73.7%
Westbury Property Investors	$ 1,102,594	$ 45,107	$ 32,571	3.0%	72.2%

The court is charged with a review of the range of evidence comparing the petitioner's appraisal with the county's appraisal. Given the subjective nature of the appraisal process, we believe that there will always be differences between the County's appraiser's valuations and the petitioner's appraiser's valuations and that tax refunds will result.

Our analysis included a comparison of the assumptions used by the petitioner's and County's appraisers for the different income and expense components that underlie the valuation conclusions.

Square Footage

The property's square footage is multiplied times the rental rate per square foot to determine gross rental income. Square footage is a finite physical characteristic that can be measured, however we found that the county and petitioner's appraisers determined different square footages and applied different characterizations as to the utility of the space.

Rental Rates of Comparable Properties

The rental rates attributed to each property are determined by the appraisers using lease information for comparable properties. Comparable properties and the leases used are never identical to the subject property and therefore adjustments to the rental rates they attract need to be made to remove the dissimilarities. We found that these adjustment factors are subjective, that the adjustments are not fully explained in the appraisals, and that the adjustments lead to large fluctuations in valuations. Even in cases where both appraisers use the same leases as comparables, their rental rate conclusions can be far different.

Vacancy Rates

The appraisals include an adjustment to gross rental income to reflect the probability that a portion of the rentable space will remain vacant and/or that a portion of the rent may be uncollectible. The higher the vacancy rate, the lower the property value estimate will be.

For three of the five cases reviewed that had files containing both the petitioner's and County's appraisals, we noted that the petitioner's appraiser's estimate of vacancy rate exceeded the vacancy rate attributed by the County's appraiser.

Operating Expenses

Operating expenses are those expenses that are the responsibility of the landlord. Each appraiser must determine the type and amount of expenses associated with the property for each year. The higher the operating expenses are, the lower the property value will be. For four of the five cases reviewed in which the files contained both the petitioner's and County's appraisals, we found that the petitioner's appraiser's estimates of operating expenses exceeded the operating expenses estimated by the County's appraiser.

Composite Capitalization Rates

The estimated net income of a property is converted to a fair market value by dividing the net income by the composite capitalization rate. The composite capitalization rate is the return an investor requires to pay the real estate taxes on the property, make mortgage payments consisting of both principal and interest and to provide a return on the owner's equity investment. The higher the capitalization rate, the lower the property's value will be.

Although the appraisers cite similar survey sources for determining capitalization rates, we found that in our test sample cases where we had both the petitioner's and County's appraisals and the income method of determining value was used in both, the petitioner's appraiser always selected higher capitalization rates than the County's appraiser.

The impact of petitioner's appraiser making assumptions for each component of the appraisal that are less favorable to valuation than those chosen by the County's appraiser results in refund expense because the petitioner's appraiser determines substantially lower fair market values than those determined by the County appraisers.

Legislation to Amend Title B of Chapter VI of the Nassau County Administrative Code

Local Law 12-2010 was enacted on July 21, 2010 to require the owners of Class Four (commercial) properties who file property assessment grievances to submit a certified appraisal or making a reasonable basis proposal[2] to resolve any dispute over assessed values. Prior to the enactment of this law, the information required to be provided included all income received or accrued and all expenses paid or incurred in the real

[2] A reasonable basis proposal is defined as a proposal that is 87.5% or more of the assessed value determined by Assessment in the tentative roll. In addition, a proposal requesting a reduction of greater than 12.5% is considered a reasonable based proposal as long as the proposal is accompanied by "credible evidence supporting the amount of the proposal, is consistent with and based upon the standards and guidelines utilized in assessing real property, including any relevant judicial precedents and statutory provisions, and is also based upon the market conditions as of the applicable date of assessment relevant to the property whose assessment is being grieved." Local Law No. 12-2010, §2.a (7).

estate operation of the property; however this information was insufficient for valuing the subject property. Commercial property valuations are based on the income and expense information of comparable properties, not on the income and expense information of the subject property. While the information required was useful for ARC in establishing a database of income and expense information to be used for comparable properties, it could not be used directly to value the property being grieved. Local Law 12-2010 partially addresses this lack of subject property information as it requires the petitioner to either submit a certified appraisal or make a reasonable basis proposal to settle the grievance.

Our comments with regard to this legislation are:

- The Law's Requirements do not Apply to Class 2 Residential Properties - The law only applies to Class 4 commercial properties. The cost of Class 2 refunds is substantial. An analysis of the $116,888,142 in refunds paid for 2009 show that more than 10%, or $17,301,296 relate to Class 2 properties. Similar to commercial properties, the class 2 properties are valued using the income method. Unlike commercial property owners, these property owners do not have to submit certified appraisals or make reasonable basis proposals to settle the grievances.
- Reduction of Time ARC has to Evaluate Grievances - The legislation severely reduces the amount of time ARC has to evaluate grievances. For example, for the 2008/09 tax year calendar, ARC had 394 days to evaluate grievances, under the Law; ARC will have only 150 days. While the inclusion of a grievant's appraisal will be helpful, we found that the appraisals are very subjective. As such, we believe that ARC cannot rely solely on the grievant's appraisals and will still have to perform de novo appraisals of all properties grieved. If ARC cannot make a valuation determination on all grievances within the 150 days allotted, those grievances that have not been determined are granted.
- Lack of Requirement for Certified Appraisal - The Law does not require grievants who demand reductions in excess of 12.5% to provide certified appraisals. The Law's definition of "reasonable basis proposal" obviates the need to provide a certified appraisal with demands in excess of 12.5% and instead allows the proposal to be considered a reasonable based proposal if it is "accompanied by credible evidence supporting the amount of the proposal, is consistent with and based upon the standards and guidelines utilized in assessing real property, including any relevant judicial precedents and statutory provisions, and is also based upon the market conditions as of the applicable date of assessment relevant to the property whose assessment is being grieved".[3]
- Need for Further Deterrence of Frivolous Claims - The recommendations in the Comptroller's Tax Certiorari Bureau Audit Report for 1999 to require the petitioner to submit substantiation of claims were intended to deter the filing of frivolous claims. The legislation may accomplish this to some extent because it requires documentation for requests for reduction of greater than 12.5%. However, requests for reductions of less than 12.5% can be still be made without the grievant providing any support for the claim. The imposition of filing fees, similar to those imposed by counties in New Jersey, may

[3] Local Law No. 12-2010, §2.a (7).

serve a dual purpose: they act as a deterrent to filing frivolous claims and provide the County with revenue to offset the cost of administering claims.

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The matters covered in this report have been discussed with the officials of the County Attorney's Office during this review. An exit conference was held on September 9, 2010. On January 20, 2011 we submitted a draft report to the County Attorney's Office for its comments. Based on the comments received on February 11, 2011, we submitted a revised draft to the County Attorney on May 10, 2011. The County Attorney's written comments and our responses to those comments are included as an appendix to this report.

Table of Contents

Review Finding (1):

Review of Appraisals

Background

The settlement or adjudication of Certiorari proceedings is based on determinations of value obtained from Certified General Real Estate Appraisers. The petitioner and the County each hire an appraiser to perform an appraisal of the subject property with the goal of determining value. According to the New York State Office of Real Property Services ("ORPS"), value is the price a willing buyer would pay a willing seller in an arm's length transaction.[4]

There are three approaches to value:

- Comparable Sales – Comparing sales prices of recent similar property sales within the same market area to the subject property and adjusting for dissimilarities;
- Cost Approach – using the depreciated current cost to reconstruct improvements, plus land value; and
- Income Approach – using the net rental capacity of the real estate value and converting the income to a value using a multiplier. This requires collecting verifying and analyzing rentals, expenses, interest rates, capitalization rates and vacancy rates.

ORPS states that "The income approach is the preferred approach for income producing property."[5]

The settlement cases we reviewed, with one exception, contained valuations determined using the income approach.

Reductions and Refunds on Cases Reviewed

Standard 1 of the Uniform Standards of Professional Appraisal Practice ("USAP") states: "In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of the work necessary to solve the problem, and correctly complete research and analysis necessary to produce credible appraisal."[6] In addition, the ethical standard for valuation for record keeping requires that, "an appraiser must prepare written records (data and information to support the findings and conclusions)…and retain such records for a period of at least five years after preparation or at least two years after final

[4] ORPS Valuation Standards 1.2 http://www.orps.state.ny.us/ref/pubs/uniformAssmntStd/valuation.htm.
[5] Ibid. 1.4.2.
[6] http:www.orps.state.ny.us/assessor/valuation/valstdsm.htm "The Valuation Process".

disposition of any judicial proceeding involving those records, whichever expires last”.[7] As part of our review of the County Attorney tax certiorari process, we selected seven cases from a list of refunds paid or approved during 2009 to determine how the appraisers hired by the property owner (Petitioner) and the County evaluate and arrive at their estimates of fair market value. A summary of the case settlement reductions and a review of the related appraisals are seen in Exhibit 1 as follows:

Exhibit 1

Summary of Test Case Settlements

Property	Number of Years Settled	Avg. FMV per Stipulation Rate	Avg. FMV per Settlement	Avg. Percentage Reduction	Refund of Property Tax	Regular Interest	Demand Interest	Total Refund
711 Strewart Avenue	3	$ 47,132,365	$ 31,840,395	32.4%	$ 1,153,868	$ 66,994	$ 15,919	$ 1,236,781
50 Charles Lindbergh Boulevard	7	$ 32,704,545	$ 26,268,237	19.7%	$ 1,756,460	$187,397	$ 24,437	$ 1,968,295
Sears	7	$ 33,887,710	$ 27,218,345	19.7%	$ 2,251,837	$219,302	$ 23,158	$ 2,494,297
Target	6	$ 27,236,925	$ 22,777,264	16.4%	$ 1,492,811	$222,596	$ 14,191	$ 1,729,599
Rockaway Realty	3	$ 53,649,549	$ 43,434,169	17.8%	$ 545,090	$ 55,628	$ 9,226	$ 609,944
Henry Street	16	$ 493,903	$ 405,640	17.9%	$ 102,548	$ 25,202	$ 2,866	$ 130,615
Westbury Property Investors	9	$ 1,102,594	$ 43,351	96.1%	$ 496,496	$ 47,617	$ 3,009	$ 547,123
Average Reductions and Total Refunds	7.3	$ 28,029,656	$ 21,712,486	22.5%	$ 7,799,111	$824,735	$ 92,807	$ 8,716,653

Of the sample selected, we found that 711 Stewart Avenue, 50 Charles Lindbergh Boulevard, Rockaway Realty, and Target went to trial. Sears and Westbury Property Investors were stipulations of settlement and Henry Street was undetermined as the Bureau could not locate the final settlement document.

A comparison of the average of each year’s fair market values for each property as determined by the settlements to the averages based on petitioner’s appraisers and the County’s appraisers are seen in Exhibit 2 as follows:

Exhibit 2

Average Final Settlements
Comparison of Settlements to Appraisals

	Petitioner's Appraisers Avg. FMV	County's Appraisers' Avg. FMV	Midpoint Between County's and Petitioner's Appraisals	Average Settlement	Deviation from MidPoint
711 Stewart Avenue	$ 28,434,000	$ 37,378,333	$ 32,906,167	$ 31,840,395	-3.2%
50 Charles Lindbergh Boulevard	$ 23,347,319	$ 27,941,715	$ 25,644,517	$ 26,268,237	2.4%
Sears	$ 25,063,161	$ 28,593,886	$ 26,828,524	$ 27,218,342	1.5%
Target	$ 20,986,941	$ 24,498,146	$ 22,742,544	$ 22,777,264	0.2%
Rockaway Realty	$ 41,976,667	$ 56,990,000	$ 49,483,334	$ 43,434,169	-12.2%
Westbury Property Investors	$ 32,571	$ 45,107	$ 38,839	$ 42,297	8.9%

The table shows that, with the exception of Rockaway Realty, the average settlements were near to the midpoints between the petitioner’s and the County’s appraisals.

[7] http://www.orps.state.ny.us/assessor/valuation/valstdsm.htm “Valuation Standards”.

Review of Petitioner's and County Appraisals

Settlements are generally reached based on a comparison of the fair market value conclusions of an appraiser hired by the County and/or an appraisal performed by the Assessment Review Commission and an appraiser hired by the petitioner. The valuation conclusions are subjective, based on the professional opinion of the appraisers as to the many factors that affect the income generated by the subject property and the rate of return expected by an investor.

Our review of settlement files showed that professional opinions widely differ and that there may be no "right" appraisal. By nature, any opinion of fair market value is subjective. The most dependable indication of fair market value may be determined based on an arms-length-sale taking place on the tax roll's valuation date. There are no requirements as to which methodology or methodologies are to be used by appraisers. For example, if ten appraisers used the same comparable properties to value a subject property, ten different values could result.

Appraisals contain certification statements to help assure the users of their impartiality. For example, the petitioner's Certificate of Appraisal for 711 Stewart Avenue contains the following statements:

"THAT, we have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved with this assignment;"

"THAT, our engagement in this assignment was not contingent upon developing or reporting predetermined results;"

"THAT, our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal."

The County's appraiser included similar statements in its report.

Given these assurances, one would expect to find that the petitioner's appraisal estimates of fair market value would sometimes be higher or sometimes be lower than the County appraiser's estimate. Instead we found that the petitioner's appraisal's indicated a fair market value lower than that of the County in six of the six cases in which we had both the petitioner's and County's appraisals.

In our review of the settlement file for Rockaway Realty Associates, we found that a case summation prepared by the Bureau outlined reasons why the petitioner had not met the burden of proof that the property had been overvalued. It contains statements arguing as to why the petitioner's appraisal is unreliable, including:

- "An appraiser's job is to reflect conditions in the marketplace, not to inexplicably inject his own rates and figures into the mix."
- "We see over and over in the petitioner's appraisal deviation from the market and/or actual figures without any explanation as to why . . . when an appraiser shows a significant deviation from the actuals or the market, it is incumbent upon him to justify this deviation, and to justify with an explanation that comports with reason. Here we see a recurring theme-deviation without explanation."
- "Whether by oversight, by neglect, or by design, the petitioner through his appraiser has taken a little bit away on the income side, added a little bit on the expense side, utilized cap rates that are above the market (as seen by his own source data), overvalued the NYC property for the purpose of deducting it from the total valuation of the shopping center. . . when you combine all of these factors, the result is a value that is below the true and reasonable range of values of the subject property. . ."

Our review of the appraisals for the test sample cases supports the above statements.

The appraisals we reviewed calculated fair market values using the same basic template:

	Gross Rentable Area
Times	Rent per Square Foot
Equals	Gross Rental Income
Less	Vacancies and Collection Losses
Equals	Net Rental Income
Less	Operating Expenses
Equals	Net Income
Divided By	Capitalization Rate
Equals	Fair Market Value

As can be seen by the following hypothetical example, Exhibit 3, small differences in the appraiser's assumptions as to each component of the appraisal accumulate to significant differences in the fair market value estimates.

Exhibit 3

	County's Appraiser		Petitioner's Appraiser	
Square Feet		40,000		39,500
Rent per Square Foot	$	26	$	25
Gross Revenue	$	1,040,000	$	987,500
Vacancy Rate		2.5%		5.0%
	$	26,000	$	49,375
Net Revenue	$	1,014,000	$	938,125
Expense Rate		20%		25%
		202,800		234,531
Net Income	$	811,200	$	703,594
Capitalization Rate		14.0%		15.0%
Indicated Fair Market Value	$	5,794,286	$	4,690,625
Indicated Difference in Fair Market Value	$	1,103,661		
Percentage Difference		19.0%		

This subjective nature of the variables exposes the County to refund liability. Despite the appraiser's assertions that the appraisals are unbiased, for the case files we have reviewed in this and previous audits, the petitioners' appraisals valuations support the petitioners' demands for refunds and reach lower valuation conclusions than those reached by the County's appraiser. We found that the appraiser's opinions on each of these factors differed, even on factors that should not be subjective, such as square footage and real estate tax rates. In the cases reviewed, the petitioner's appraisals typically showed lower rentals, higher vacancies, higher operating expenses and higher capitalization rates than the County appraiser. Even if the only difference in appraisals was the capitalization rate, substantial valuation differences could result. The capitalization rate serves as a multiplier to convert net income to value. In the hypothetical example above, had both appraisers agreed to a 14% capitalization rate, the petitioner's valuation would have been $5,025,671 and the percentage difference reduced to 15%.

The court is charged with a review of the range of evidence by comparing the petitioner's appraisal with the county's appraisal. Given the subjective nature of the appraisal process, we believe that there will always be differences between the County's appraiser's valuations and the petitioner's appraiser's valuations and that tax refunds will result.

Based on our review of petitioner's and County appraisals, we found the following with regard to the different components of each appraisal:

Square Footage

Square footage is a physical characteristic that can be measured, however we found that different appraisers determined different square footages and applied different characterizations as to the utility of the space. Examples include:
<u>50 Charles Lindbergh Boulevard</u>

The County's appraiser used 217,329 as the square footage of rentable office space along with 4,822 of space on the lower level while the petitioner's appraiser calculated rental income using 211,845 square feet for office space and 2,500 square feet as storage. The lower square footage amounts of 5,484 square feet in office space and 1,984 square feet of storage equates to approximately $1.2 million of the $4.3 million difference in values between the County's and Petitioner's appraisers.

Sears

The Sears property is comprised of the main store, an automotive center, a bank and a restaurant. The Sears store consists of a main level, along with a basement, part of which is sales space and part of which is storage. The County appraiser's calculation of rental income included rental from 272,210 square feet (the entire main level and basement) while the petitioner's appraiser applied rental rates only to the main floor (142,903 square feet) and the finished space in the basement (65,175 square feet). Similarly, the County's appraiser included rental income on 34,088 square feet of storage space in the automotive center while the petitioner's appraiser did not. The County's appraiser considered the first floor of the automotive center to be 45,451 square feet while the petitioner's appraiser considered the first floor to be 46,630 square feet.

Rockaway Realty Associates

This property is an anchored community shopping center. The County's appraiser considered the property to consist of 448,813 square feet while the petitioner's appraiser considered it to be 428,579 square feet. Each appraiser apportioned the space differently and applied different rental rates to each type of space. The petitioner's appraiser divided the spaces based on ranges of square feet, such as "first floor retail under 10,000", "10,000 to 20,000", "20,000 to 50,000", "second floor", etc. The County appraiser classified the space as discount department store, large store, second floor etc. As such, we could not determine the exact impact on value of the discrepancies. Using the average net income per square foot determined by the petitioner and the petitioner's capitalization rate, we estimated that the 20,234 square feet discrepancy in square footage resulted in a variance of approximately $2 million in fair market value between the two appraisals.

Target

The petitioner's appraiser used 156,425± square feet as the basis for gross income calculations up through 2006/07and 172,014± square feet for 2007/08 and 2008/09. The County appraiser also used 172,014± square feet for 2007/08 and 2008/09, but used 156,249 square feet up until 2006/07.

Rental Rates of Comparable Properties

The rental rates attributed to each property are determined by the appraisers using lease information for comparable properties. Comparable properties and the leases used are never identical to the subject property and therefore adjustments to the rental rates they attract need to be made to remove the dissimilarities. The adjustments are made to account for the following differences:

- Time – Leases signed on different dates must be adjusted or trended to correct for historical differences in rental rates due to market fluctuations. For example, leases signed after the valuation date in a rising market would be trended downward to reflect the market as of the valuation date;
- Location – Adjustments are based on a review of the communities surrounding the property and its comparison to the community in which the subject property is located. A lease on a comparable property in a location superior to the subject property must be adjusted downward to reflect the inferior location and vice-versa;
- Size – Leases generally include a discount for larger spaces. Therefore a comparable lease for greater square footage than the subject property would be adjusted downward to reflect the smaller space;
- Condition – A lease of a property in better condition than the subject property would be adjusted downward; and
- Utility – to account for any other differences.

We found that these adjustment factors are subjective, that the adjustments are not fully explained in the appraisals, and that the adjustments lead to large fluctuations in valuations. The lower the rental rates, the lower the estimate of property value will be.

Even in cases where both appraisers use the same leases as comparables, their conclusions can be far different. In some cases, lease rates were determined that did not seem to be supported by the comparable properties cited in the appraisal. In addition, we found that in some cases, the appraisers' "comparable" properties selected were not equivalent and required that one or more adjustment factors be applied against all of the selected leases.

The determination of a property's rental rate is important as it is used to establish the property's potential gross income. This rate is then "trended" by applying a percentage on an annual basis to determine the potential gross income for all of the tax years under review. We found that appraisals may not contain explanations or offer support for the percentages chosen. These adjustment factors have significant impact on the valuation of the subject property. We found significant variances in six of the seven properties we reviewed as follows:

Sears

The two appraisers used four identical leases as comparables to the subject property, but as can be seen in Exhibit 4, by applying different adjustment percentages for time, location, size, condition and utility, reached divergent conclusions regarding the adjusted rental rate.

Exhibit 4

Appraiser's Adjustments to Comparable Leases

	Target - Hicksville		**BJ's - Levittown**		**Home Depot - Westbury**		**Wal-Mart - Westbury**	
	County	Petitioner	County	Petitioner	County	Petitioner	County	Petitioner
Lease Rate per sq.ft.	$14.74	$14.74	$17.75	$17.75	$25.36	$25.36	$20.14	$23.33
Time	5%		-5%		-5%		-10%	
Location	10%	5%	10%	-10%	-10%	-20%	-10%	-25%
Size	-15%		-15%	-5%	-15%		-15%	-5%
Condition/Features	-5%	5%	-5%	10%	-10%	10%	-5%	10%
Utility	-20%		-20%		-20%		-20%	
Composite	75%	110%	68%	94%	52%	88%	52%	78%
Adjusted Lease Rate	$11.00	$16.21	$11.98	$16.69	$13.27	$23.32	$10.54	$18.20

Time – The County's appraiser adjusted all four comparable leases for time, but the Petitioner's appraiser did not.

Location – The Petitioner's appraiser considered the location of BJ's in Levittown to be superior while the County appraiser considered it to be inferior.

Size – The County's appraiser made negative adjustments to the Target-Hicksville and Home Depot-Westbury leases for size, while the Petitioner's appraiser did not.

Condition – The County's appraiser made downward adjustments to all four comparable leases while the Petitioner's appraiser made upward adjustments for the same properties.

Utility – The County's appraiser made downward adjustments for all four comparable leases while the Petitioner's appraiser did not make any adjustments.

We found that the rents as indicated by the adjusted comparable leases were not always used in the appraisals. For example, the calculated median of the petitioner's appraiser's comparable leases for the ground floor was $17.45 per square foot; however the petitioner's appraiser used $17; the basement comparables' mean was $10.47 per square foot, but the petitioner's appraiser used $9 per square foot. For the same space, the County's appraiser's comparable properties had a median rent of $11.49 per square foot and the appraiser rounded the rental up to $11.50 per square foot. The impact of rounding rentals down by $1 per square foot on 250,000 square feet of rentable space can equate to an understatement of property value of more than $1.5 million dollars.

(While the petitioner's appraisal used higher rental rates per square foot for the appraisals, the overall estimate of revenue was much lower because the appraiser did not apply the rental rate to approximately 94,000 square feet of unfinished space. For the year 2004/05, the petitioner's estimated gross rental income was $264,477 lower than the County's appraiser's estimated gross rental income).

Target

Similar to the Sears' appraisals, we found that the County's and the petitioner's appraisals used the same comparable properties to determine rental rates. In this case, they applied similar adjustment factors and, for 2003/04, the first year of the appraisal, used rents that were only $.25 per square foot apart; the County's appraisal used $21.25 per square foot and the petitioner's appraisal used $21.00 per square foot. However, both appraisers then trended the rentals for future rental increases at different rates. The County's appraiser increased the rent by $1 per year while the petitioner's appraiser increased it by $.75 per year. There were no explanations in the appraisals as to the basis for the trending. By the year 2008/2009, the differential in lease rates had grown to $1.25 per square foot, resulting in a variance in value of more than $1 million.

Rockaway Realty Associates

Our review showed that the comparable properties used to support the selection of rental rates did not always support the rates used. (See Exhibit 5)

Exhibit 5

Comparison of Petitioner's Adjusted Comparable Lease Rates to Lease Rates Used in Petitioner's Appraisal

Type of Retail Space	Median Rental Rate per Petitioner's Appraisers Comparable and Subject Properties	Rental Rate used in Petitioner's Appraisal
1st Floor Retail under 10,000 Sq.Ft.	$36.46	$36.00
Free Standing *	$81.41	$95.00
1st Floor Retail 10,000 Sq.Ft. - 20,000 sq.ft.	$30.12	$28.00
1st Floor Retail 20,000 Sq.Ft. - 50,000 sq.ft.	$29.31	$23.00
1st Floor Retail over 50,000 sq.ft.	$20.28	$18.00
1st/2nd Floor Retail over 50,000 sq.ft.	$19.82	$18.00
2nd Floor Retail	$10.90	$9.50

* Petitioner's appraisal cited only one comparable lease. The subject lease for this property was signed two months prior to the comparable lease and had a rental rate of $108.50 per sq.ft.

Had the petitioner's appraiser used the average rental rates indicated by its comparable leases in its appraisal calculations, it would have valued the property approximately $6.2 million higher than in the appraisal submitted. It should be noted that this property received a reduction in 2005/06 that represented approximately $7 million in fair market value.

711 Stewart Avenue

According to the County's appraisal, this property contained 283,677 square feet of office space. The County's appraiser determined an appropriate rent to be $25, $26 and $27 per square foot for the years 2006/07, 2007/08 and 2008/09, respectively. The petitioner's appraiser listed 28 comparable leases with an average rent of $24.51 per square foot and then rounded down the first years rent to $24 per square foot. The petitioner's appraiser trended the second and third years rent upward by $.50 per year to $24.50 and 25.00 for the next two years. The differences of $1, $1.50 and $2 result in significant differences between the petitioner's and the County's appraisers estimations of value. The $2 per square foot difference for 2008/09 equates to approximately $3.5 million in market value.

50 Charles Lindbergh Boulevard

The petitioner's appraisal used rental rates, which graduated from $26 per square foot in 2002/03 up to $30.50 in 2008/09. This compares to the County's appraisal where the rents graduated from $27.50 to $31.00 per square foot over the same period. The petitioner's appraiser used 28 leases in five comparable properties and adjusted them for location, size, condition and features. The petitioner's appraisal states that, "The comparable leases were executed during or just prior to the review period and were considered similar to the subject in terms of market conditions, requiring no adjustment for time". The median adjusted rental for these 28 properties was $29.62, $3.62 higher than the $26 per square foot used in the appraisal for 2002/03. (In comparison, the County's appraiser used 23 comparable leases, which, after adjustment, had a median rent of $28.61, or $1.11 higher than the rental used for 2002/03.) There was no explanation for the difference between the rental rates indicated by the comparable leases and the rental rates used.

The use of a rental rate by the petitioner's appraiser that is $3.62 lower than that indicated by the comparable properties resulted in a lower 2002/03 fair market value determination than that which would have been reached if the average of the adjusted comparable properties had been used.

Henry Street Investors Ltd.

Thirteen comparable leases were used by the County's appraiser to determine the properties' (a liquor and convenience store) rent per square foot for the tax years covering 1992/93 through 2001/02. One of these leases was held by a beer distributor and another beverage center. The other leases were for unrelated business types, i.e. religious goods, cabinet maker, day care center, upholsterer, etc. Also, although the property comprises 9,722 square feet, only five of the comparable leases were over 5,000 square feet, the largest being a supermarket having 26,082 square feet. The median rent per square foot for these thirteen leases was $10.29. However, the County's appraiser used a rental rate of $6.50 per square foot for the starting tax year of 1992/93. This initial rental rate is important as the subsequent tax years under review are trended forward from this rate. These tax years were trended at rates varying from approximately 4% to 6.5%. There is no indication in the appraisal report as to why $6.50 per square foot was chosen as the rental rate or what methodology was used in determining the trending percentages used.

Vacancy Rates

The appraisals include an adjustment to gross rental income to reflect the probability that a portion of the rentable space will remain vacant and/or that a portion of the rent may not be collectible. The higher the vacancy rate, the lower the property value estimate will be. For the five cases reviewed that had files containing both the petitioner's and County's appraisals, we noted that in three of the five cases the petitioner's appraiser's estimates of vacancies exceeded the vacancy expense attributed by the County's appraiser. (See Exhibit 6)

Exhibit 6

Vacancy Rates - First Year of Settlement			
	County	**Petitioner**	**Year**
Rockaway Realty Associates	5.00%	7.74%	2005/06
Sears - Hicksville	5.00%	5.00%	2003/04
711 Stewart Avenue	10.00%	11.50%	2006/07
Target - Westbury	2.50%	5.00%	2003/04
50 Charles Lindbergh Boulevard	5.00%	5.00%	2002/03

The appraisers typically did not provide direct support for the vacancy rates used, but instead stated that they were based on trends.

Operating Expenses

Operating expenses are those expenses that are the responsibility of the landlord. Each appraiser must determine the type of expense and amount of expenses associated with the property for each year. The higher the operating expenses are, the lower the property value will be. For four of the five cases reviewed in which the files contained both the petitioner's and County's appraisals, we noted that the petitioner's appraiser's estimates of operating expenses exceeded the operating expenses estimated by the County's appraiser. (See Exhibit 7)

Exhibit 7

Operating Expenses				
	First Year of Settlement		Last Year of Settlement	
	County	Petitioner	County	Petitioner
Rockaway Realty	$ 1,841,292	$ 2,197,000	$ 1,954,964	$ 2,243,000
Sears	$ 276,855	$ 231,000	$ 362,434	$ 283,000
711 Stewart Avenue	$ 1,967,725	$ 2,357,000	$ 2,017,333	$ 2,538,000
Target	$ 196,312	$ 226,000	$ 256,801	$ 278,000
50 Charles Lindbergh Boulevard	$ 2,137,082	$ 1,956,000	$ 2,207,018	$ 2,454,000
Total	$ 6,419,266	$ 6,967,000	$ 6,798,550	$ 7,796,000

We found that direct comparisons of the operating expense assumptions used by the petitioner's appraisers to those used by the County's appraisers was not possible because there was no consistent classifications of operating expenses by type. For example, the County's appraisals for Rockaway Realty Associates and 50 Charles Lindbergh Boulevard include approximately one-half to two-thirds of operating expenses under a caption "Operating Expenses".

The operating expense assumptions used for the estimates are based on actual operating expenses of comparable buildings. The operating expenses of the subject property can be used as a benchmark against which to evaluate the appraiser's estimates. We found that where the actual operating expense information for the subject properties was available and compared to the appraiser's estimates, the actual expenses were considerably less than the operating expenses used in the appraisals. (See Exhibit 8)

Exhibit 8

711 Stewart Avenue

	Actual Expenses per Petitioner's Appraisal	2008/09 Assumed Expenses Per County Appraisal	Assumed Expenses Per Petitioner's Appraisal
Insurance	$ 73,313	$ 73,313	$ 100,000
Utilities	$ 425,983	$ 450,000	$ 417,000
Maintenence and Repair	$ 953,841	$ 884,995	$ 1,084,000
Management and Professional	$ 117,377	$ 241,597	$ 369,000
Structural Repairs and Reserves		$ 106,199	$ 67,000
Tenant/Leasehold Improvements		$ 149,274	$ 334,000
Leasing Commissions		$ 111,955	$ 167,000
	$ 1,570,514	$ 2,017,333	$ 2,538,000
Percentage Higher than Actual Expenses		28%	62%

50 Charles Lindbergh Boulevard

	Actual Expenses per Petitioner's Appraisal	2008/09 Assumed Expenses Per County Appraisal	Assumed Expenses Per Petitioner's Appraisal
Operating Expenses		$ 1,545,000	
Reserve for Replacement		$ 45,732	
Management/Leasing Expense		$ 389,233	
Insurance	$ 61,067		$ 72,000
Utilities	$ 800,100		$ 847,000
Maintenence and Repair	$ 715,743		$ 826,000
Management and Professional	$ 211,814		$ 309,000
Repacement Reserves - Tenant Improvements		$ 227,053	$ 200,000
Repacement Reserves - Structural Improvements			$ 100,000
Leasing Commissions			$ 100,000
	$ 1,788,724	$ 2,207,018	$ 2,454,000
Percentage Higher than Actual Expenses		23%	37%

Rockaway Realty Associates

	Actual Expenses per Petitioner's Appraisal	2007/08 Assumed Expenses Per County Appraisal	Assumed Expenses Per Petitioner's Appraisal
Operating Expenses		$ 1,071,805	
CAM	$ 650,577		$ 678,000
Insurance	$ 313,502		$ 271,000
Management and Professional	$ 245,214	$ 311,703	$ 480,000
Tenant Improvements			$ 226,000
Structural Repair and Replacement Reserve	$ 154,091		$ 136,000
Leasing Commissions		$ 571,456	$ 452,000
	$ 1,363,384	$ 1,954,964	$ 2,243,000
Percentage Higher than Actual Expenses		43%	65%

Composite Capitalization Rates

The estimated net income of a property is converted to a fair market value by dividing the net income by the composite capitalization rate. The composite capitalization rate is the return an investor requires to pay the real estate taxes on the property, make mortgage payments consisting of both principal and interest and to provide a return on the owner's equity investment. The composite capitalization rate is comprised of the overall rate (consisting of the sum of the mortgage payments and return on equity), plus the effective real estate taxes. The higher the expected return, the less an investor will be willing to pay for the property and the lower the fair market value. The capitalization rate has the effect of being a multiplier. For example, the petitioner's capitalization rate of 13.77% used for 711 Stewart Avenue, year 2006/07, results a fair market value equal to 7.26 times net income while the County's capitalization rate of 15.32% results in a fair market value of 6.53 times net income, or 10% less.

Both the petitioner and the County's appraisers cite sources for information used in establishing capitalization rates as published in surveys such as the American Council of Life Insurers, Korpacz Surveys and others for determining the Overall Rate. The effective tax rates are based on the actual tax rates from Assessment's records.

Although the appraisers cite similar survey sources we found that in our test sample cases where we had both the petitioner's and County's appraisals and the income method was used in both, the petitioner's appraiser always selected higher capitalization rates than the County's appraiser. We also found that although the effective tax component of the rate is not subjective, the petitioners' appraisers sometimes calculate it differently than the County's appraisers. The effective tax rate consists of the General Tax (County, police, sewer, special district, etc.) and school taxes. The general tax rate is assessed on a calendar year basis while school taxes are assessed on a fiscal year basis, July 1 of one year through June 30 of the following year. For example, appraisals for the 2005/06 year are based on a valuation date of January 1, 2004. The petitioner's appraisal for Sears calculated the effective tax rate by adding the 2005 general tax rate and the 2005/06 school tax rate. The County's appraiser calculated the effective tax rate by adding the 2005 general tax rate and an average of the 2004/05 and 2005/06 school tax rates. In an environment of rising school tax rates, the petitioner's methodology will yield higher tax rates and lower real estate values.

Exhibit 9 shows the consistency of the petitioner's appraiser using higher capitalization rates.

Exhibit 9

Comparison of Capitalization Rates
Petitioner's Appraiser vs. County's Appraiser

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
711 Stewart Avenue						
County's Appraiser	N/A	N/A	N/A	N/A	13.77%	13.76%
Petitioner's Appraiser	N/A	N/A	N/A	N/A	15.32%	15.39%
Incremental Rate per Petitioner	N/A	N/A	N/A	N/A	1.55%	1.63%
Rockaway						
County's Appraiser	N/A	N/A	N/A	14.23%	14.28%	14.58%
Petitioner's Appraiser	N/A	N/A	N/A	15.12%	14.93%	14.92%
Incremental Rate per Petitioner	N/A	N/A	N/A	0.89%	0.65%	0.34%
Sears						
County's Appraiser	N/A	14.86%	14.86%	14.38%	13.84%	14.24%
Petitioner's Appraiser	N/A	15.23%	15.23%	15.57%	15.29%	15.34%
Incremental Rate per Petitioner	N/A	0.37%	0.37%	1.19%	1.45%	1.10%
Target						
County's Appraiser	N/A	14.54%	14.54%	13.67%	13.15%	13.91%
Petitioner's Appraiser	N/A	14.98%	14.98%	15.33%	15.19%	15.24%
Incremental Rate per Petitioner	N/A	0.44%	0.44%	1.66%	2.04%	1.33%
50 Charles Lindbergh Boulevard						
County's Appraiser (ARC)	13.78%	14.11%	14.11%	13.24%	13.40%	14.08%
Petitioner's Appraiser	15.08%	14.65%	14.65%	15.21%	15.18%	15.25%
Incremental Rate per Petitioner	1.30%	0.54%	0.54%	1.97%	1.78%	1.17%

As shown in Exhibit 10, below, the differences in the appraisers' opinions of capitalization rates have contributed to as much as 67% of the difference between the petitioner's and the County's appraiser's valuation estimates.

Exhibit 10

	Components of Differences in Valuation Estimates						
	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
711 Stewart Avenue							
Variance in Value Due to Income	N/A	N/A	N/A	N/A	$ 2,451,035	$ 3,823,676	$ 2,186,772
Variance in Value due to Capitalization Rate	N/A	N/A	N/A	N/A	$ 3,475,363	$ 3,684,631	$ 3,355,537
Total Variance in Value	N/A	N/A	N/A	N/A	$ 5,926,398	$ 7,508,307	$ 5,542,309
Percentage due to Capitalization Rate	N/A	N/A	N/A	N/A	59%	49%	61%
Cost to Cure Vault	N/A	N/A	N/A	N/A	$ 2,172,000	$ 2,838,000	$ 2,838,000
Total Valuation Difference	N/A	N/A	N/A	N/A	$ 8,098,398	$ 10,346,307	$ 8,380,309
Rockaway Realty							
Variance in Value Due to Income	N/A	N/A	N/A	$ 10,199,796	$ 8,865,845	$ 7,402,517	N/A
Variance in Value due to Capitalization Rate	N/A	N/A	N/A	$ 2,685,311	$ 2,123,330	$ 1,156,648	N/A
Total Variance in Value	N/A	N/A	N/A	$ 12,885,107	$ 10,989,175	$ 8,559,165	N/A
Percentage due to Capitalization Rate	N/A	N/A	N/A	21%	19%	14%	N/A
Valuation Diff due to NYC Portion of Property	N/A	N/A	N/A	$ 4,000,000	$ 4,200,000	$ 4,400,000	N/A
Total Valuation Difference	N/A	N/A	N/A	$ 16,885,107	$ 15,189,175	$ 12,959,165	N/A
Sears							
Variance in Value Due to Income	N/A	$ 1,351,274	$ 1,351,274	$ 2,050,906	$ 1,465,134	$ 1,626,186	$ 2,208,249
Variance in Value due to Capitalization Rate	N/A	$ 588,000	$ 588,000	$ 2,139,261	$ 2,914,565	$ 2,238,258	$ 2,663,247
Total Variance in Value	N/A	$ 1,939,274	$ 1,939,274	$ 4,190,166	$ 4,379,699	$ 3,864,444	$ 4,871,496
Percentage due to Capitalization Rate	N/A	30%	30%	51%	67%	58%	55%
Target Stores							
Variance in Value Due to Income	N/A	$ 1,003,727	$ 1,003,727	$ 1,353,983	$ 1,694,204	$ 2,102,581	$ 2,442,365
Variance in Value due to Capitalization Rate	N/A	$ 580,717	$ 580,717	$ 2,377,208	$ 3,178,272	$ 2,217,089	$ 2,532,636
Total Variance in Value	N/A	$ 1,584,443	$ 1,584,443	$ 3,731,192	$ 4,872,476	$ 4,319,670	$ 4,975,001
Percentage due to Capitalization Rate	N/A	37%	37%	64%	65%	51%	51%
50 Charles Lindbergh Boulevard							
Variance in Value Due to Income	$ 2,241,805	$ 2,210,670	$ 2,210,670	$ 2,558,806	$ 2,384,583	$ 3,174,505	$ 3,933,352
Variance in Value due to Capitalization Rate	$ 2,064,109	$ 896,209	$ 896,209	$ 3,399,500	$ 3,132,511	$ 1,991,115	$ 1,066,730
Total Variance in Value	$ 4,305,913	$ 3,106,879	$ 3,106,879	$ 5,958,305	$ 5,517,094	$ 5,165,620	$ 5,000,082
Percentage due to Capitalization Rate	48%	29%	29%	57%	57%	39%	21%

The impact of adjusting factors on appraisal valuations, such as the capitalization rate, can cause a significant variance on the final value as determined by the appraiser

Other Valuation Factors Affecting Fair Market Value

Our review of the appraisals showed that factors other than net income and capitalization rates may affect property values. In the appraisals we reviewed, the property value was determined by using the income method or comparable sales method and then an adjustment was applied to recognize a diminution of value due to other factors such as encumbrances on the property, renovations needed to make the property rentable, and property partially located in New York City.

The impact of these factors on values may also be subjective in nature. The cases we reviewed were impacted as follows:

Encumbrances - Westbury Property Investors

The subject property is a strip of land 585 feet long southwesterly from its 86 foot frontage along Merrick Avenue in Westbury. It is used as a public access road under an easement granted on the property. The property provides vehicle access to the rear of the two adjoining properties. The valuation factor affecting value is the easement that was granted on the property.

The County's appraiser used the sales comparison method to estimate the value of the land through using the sale prices of comparable properties that were sold and by the petitioner's appraiser using the income method. Both appraisers determined the FMV and then adjusted the value downward to reflect the impact of the easement on the property.

The values determined by the appraisers are shown in Exhibit 11:

Exhibit 11

Year	FMV per County Assessor	FMV per County Appraisal	FMV per Petitioner Appraisal
2001/02	$ 929,688	$ 38,750	$ 30,000
2002/03	$ 991,667	$ 41,500	$ 30,000
2003/04	$ 974,225	$ 44,000	$ 32,000
2004/05	$ 974,225	$ 44,000	$ 32,000
2005/06	$ 1,028,021	$ 46,500	$ 32,000
2006/07	$ 1,140,642	$ 49,250	$ 35,000
2007/08	$ 1,321,140	$ 51,750	$ 37,000

The County's appraiser wrote "The sole purpose of this easement was to provide access to the rear portion of these properties by developing the Subject Property as a public access roadway. . . .This easement severely impacts the fee position of the Subject Property, limiting its utility and marketability, and requiring an additional 95% reduction in Market Value." The petitioner's appraiser adjusted lease rates for comparable properties downward by 95% as an adjustment for utility. The overall valuation conclusions reached by the two appraisers were similar, and were much lower than that of Assessment.

It is apparent Assessment may not have considered, or may not have been aware of, the easement in determining the fair market value of the property for assessment purposes. Easements can be filed in a number of ways, through the towns or as part of the deeds. In this case, the easement, which was agreed to on May 1, 1990, was part of the deed and would have been on file in the County Clerk's Office. The lack of consideration of impact on fair market value caused by the easement, resulted in a refund costing the County $547,122.

We note that neither Assessment, in its required Annual Survey of Income and Expense ("ASIE") filing, nor the ARC, in its "Application for Correction of Property Tax Assessment" requires petitioners to disclose any easements granted on the property that might impact market value.

<u>Cost to Cure - 711 Stewart Avenue</u>

A former tenant, who vacated the building in 2005, used 50,000 square feet of the building to hold securities in safekeeping. The petitioner's appraiser described this space as "A two story portion of the unit, consisting of 50,000± square feet is a vault. The vault had 27-inch thick reinforced concrete walls, floors and ceilings. Each floor has three vault doors to allow access to the interior." The condition of this space had a large impact on the value of the property because the settlement recognized that the building's value should be lowered by the amount of investment needed to convert the space to a marketable condition.

A review of the appraisals showed that both the appraisers' opinions of net rental income for each year were reasonably close to each other. For example, for the tax year 2006/07, the petitioner's appraiser estimated net rentals of $7.087 million while the County appraiser estimated net rentals of $7.035 million.

Where the appraisals differed was in the inclusion of a cost to cure the vault space along with higher operating expenses related to repairs, maintenance and reserves for structural replacement reserves.

After determining fair market value under the income method, the Petitioner's appraiser reduced each year's fair market value by a cost to cure all vacant space in the building. This reduction was calculated as follows:

Exhibit 12

Tax Year	Vacant Space	Cost to Cure per Square Foot	Cost to Cure
2006/07	108,605	$20	$2,172,000

2007/08	141,905	$20	$2,838,000
2008/09	141,905	$20	$2,838,000

The petitioner's appraisal did not include support for these amounts, other than to include a statement that "The $20 per square foot is based on comparable leases and comparable building histories. . . ".

In addition to a deduction from fair market value for a cost to cure the vacant space, the Petitioner's appraiser's estimates of operating expenses related to maintenance, repairs and tenant improvements were significantly higher than those estimated by the County appraiser. (See Exhibit 13)

Exhibit 13

Total of Repairs, Maintenance, Tenant Improvements and Structural Reserves

Year	Per Petitioner's Appraisal	Per County's Appraiser's Appraisal	Impact on Fair Market Value
2006/2007	$ 1,967,725	$ 2,357,000	$ 2,566,084
2007/2008	$ 1,999,904	$ 2,448,000	$ 2,907,826
2008/2009	$ 2,017,333	$ 2,538,000	$ 3,378,761

We believe that the petitioner's appraiser, by estimating a higher level of expenses for repairs, structural and tenant improvements than those estimated by the County appraiser and including it as a $20 per square foot cost to cure all vacant space may represent a double counting of the cost to renovate the vault space for purposes of leasing it out.

711 Stewart Avenue represents a settlement that went to trial. The judge's decision allowed a deduction to the fair market value for a "cost to cure" the vault area. The judge's decision, dated February 27, 2009, states that "The issue that the Court has to come to grips with, and does by way of this decision, is the 50,000 plus or minus square feet of what has been described as vaulted space. Clearly, the subject property is used as an office building other than for these 50,000 square feet. It was constructed to house securities, and has climate control and various other heat and humidity devices that would preserve documents, negotiable instruments. Its walls are 27 inches thick, three feet. And the question before this Court is whether or not and how to evaluate that 50,000 square feet."[8]

The judge's decision seems to address the cost to cure for only the vault area, stating, "It is clear from the testimony that extensive renovation needs to be done to this vaulted area, whether you call it retro-fitting or cost to cure. That concept must be applied by the Court in determining the assessed value."[9]

[8] ROSE-711, LLC. v. Board of Assessors, et. al., Index No. 400746/07, pg. 5 (February 27, 2009).
[9] ROSE-711, LLC. v. Board of Assessors, et. al., Index No. 400746/07, pg. 8 (February 27, 2009).

The judge allowed $1,629,075 for 2006/07, $2,128,575 for 2007/08 and $2,128,575 for 2008/09 or 75% of the petitioner's request for each year. The petitioner's request was based on the cost to cure 108,605 square feet in 2005/06 and 141,905 square feet in 2006/07. It would appear that based on the petitioner's appraisal, the cost to cure the vacant 50,000 square foot vault was represented by the petitioner as $1,000,000 (50,000 square feet * $20=$1,000,000).

The judge's decision with regard to the valuation determination states: "Having listened to the testimony and read all of the exhibits presented to the Court, the Court adopts the following: In trying to attempt and, in fact, determining the income, the Court used a blended approach."[10] As seen in Exhibit 14 below, the judge:

- split the differences between the petitioner's and the County's appraiser's estimates of incomes and expenses;
- allowed the petitioner to claim 75% of its estimated cost to cure; and
- allowed the petitioner slightly higher capitalization rates than the averages of the two estimates:

[10] ROSE-711, LLC. v. Board of Assessors, et. al., Index No. 400746/07, pg. 7 (February 27, 2009).

Exhibit 14

Judges Decision				
	Petitioner's Appraisal	County's Appraisal	Judges Decision	Average of Petitioner and County Appraisals
2006-2007				
Gross Income	$ 7,087,000	$ 7,035,232	$ 7,061,000	$ 7,061,116
Expenses	$ 2,357,000	$ 1,967,725	$ 2,162,500	$ 2,162,363
Net Income	$ 4,730,000	$ 5,067,507	$ 4,898,500	$ 4,898,754
Cap Rate	15.32%	13.77%	14.60%	14.55%
	$ 30,870,000	$ 36,800,000	$ 33,551,370	$ 33,835,000
Cost to Cure	$ 2,172,000		$ 1,629,075	$ 1,086,000
Valuation	$ 28,698,000	$ 36,800,000	$ 31,922,295	$ 32,749,000
2007-2008				
Gross Income	$ 7,235,000	$ 7,313,042	$ 7,274,000	$ 7,274,021
Expenses	$ 2,448,000	$ 1,999,904	$ 2,224,000	$ 2,223,952
Net Income	$ 4,787,000	$ 5,313,138	$ 5,050,000	$ 5,050,069
Cap Rate	15.39%	13.76%	14.70%	14.58%
	$ 31,100,000	$ 38,615,000	$ 34,353,741	$ 34,857,500
Cost to Cure	$ 2,838,000		$ 2,128,575	$ 1,419,000
Valuation	$ 28,262,000	$ 38,615,000	$ 32,225,166	$ 33,438,500
2008-2009				
Gross Income	$ 7,383,000	$ 7,169,137	$ 7,276,000	$ 7,276,069
Expenses	$ 2,538,000	$ 2,017,311	$ 2,277,500	$ 2,277,656
Net Income	$ 4,845,000	$ 5,151,826	$ 4,998,500	$ 4,998,413
Cap Rate	15.54%	14.03%	14.92%	14.79%
	$ 31,180,000	$ 36,720,000	$ 33,502,011	$ 33,950,000
Cost to Cure	$ 2,838,000		$ 2,128,575	$ 1,419,000
Valuation	$ 28,342,000	$ 36,720,000	$ 31,373,436	$ 32,531,000

The judge's decision appears to have allowed the petitioner both the benefit of higher operating expenses and the cost to cure all vacant space.

It is our understanding that it is not unusual for the judges to review both appraisals and split the difference when both appraisals present credible evidence.

<u>Adjustments for Property Partially in Queens County</u>

The Rockaway Realty Associates property is a shopping mall; the Five Towns Shopping Center, part of which is in Queens County, part of New York City. The Queens County portion is not subject to Nassau County based property taxes and should not be included in the assessed value. The petitioner's appraiser valued the shopping mall in total using the income method and then reduced the total appraised value by what it deemed to be the value of the property located in Queens County. According to the petitioner's appraiser, the land in Queens is 84,000± square feet of parking area.

The Petitioner's appraiser's valuation reduction for the Queens property for the three years under review was $4 million, $4.2 million and $4.4 million respectively, for the years 2005/06, 2006/07 and 2007/08. These reductions may have represented an overstatement of the valuation of the Queens property. The initial value of the land was included in the overall income method appraisal of the shopping mall, however when the petitioner's appraiser calculated the value of the Queens land to be used as a reduction to the overall value, it valued the land using the sales comparison approach. The petitioner's appraiser determined the value by considering the sales price per square foot of three of vacant land parcels located in Queens. For the tax year 2005/06, the petitioner's appraiser determined this value to be $47.50 per square foot.

The petitioner appeared to be inconsistent in its representations regarding the value of the land in Queens County. A summation outline contained in the settlement file stated: "Just as noteworthy is the fact that whereas the petitioner has adopted the appraisal figures of Good-Marks which included a valuation of the Queens portion of the shopping center property at $4.4 million for the 2007/08 tax year, the petitioner itself is claiming in Queens Supreme Court that the property is worth a mere $420,000 for the 2007/08 tax year (a difference of approx $4 million!), which is significantly less than the NYC assessment and less than our own expert's estimate of the properties worth."

Based on the petitioner's appraisal, the entire property totals 1,084,597± square feet. Using the petitioner's 2005/06 estimate of fair market value for vacant land of $47.50 per square foot, the fair market value of the entire 1,084,597± square feet (if vacant) would have a fair market value of approximately $51.5 million, or $8.6 million more than the petitioner's valuation of the property inclusive of the 451,923 square feet shopping area building.

In reviewing the settlement cases for Sears and Target, we could not ascertain the impact of the lot size on the valuation. Valuations for those appraisals as well as for the Rockaway Realty property were determined based on the income produced by the buildings. Therefore it is not clear that any adjustment should have been made for the vacant land located in Queens.

The settlement resulted in the petitioner receiving a reduction averaging approximately 90% of the difference between the petitioner's appraisal and the County's appraisal.

Other Revenues

Property owners sometimes earn additional revenue through income received from licenses on the property. For example, the County's appraiser noted that Rockaway Realty Associates rents space on its rooftop for an antenna and received $30,000 per year in income: "…note that the petitioner's expert did not include the $30,000 in annual income . . . from the rental of rooftop space for cell antennas. Said amount was clearly detailed in the subject rent roll and I included said income in my analysis." The County appraisal of 50 Charles Lindbergh Boulevard included license fee income of approximately $12,000 to $14,000 per year from providers of internet services and an ATM machine. The petitioner's appraiser did not include these license fees in its analysis.

Recommendations:

a) Support Legislative Changes to Allow a Range of Assessed Values

Given the subjective nature of the appraisals, the fact that settlements are typically negotiated and that Judge's often split the differences between the petitioner's and County's appraisers valuation, we recommend that the County consider sponsoring state legislation wherein if the County's assessed value falls within a specified percentage range of values, the petitioner would not be entitled to a reduction in assessed value. If the appraisal falls outside of the range specified, an adjustment should be made upward or downward to correct the appraisal.

This change will give recognition to the fact that there is no one "right" appraisal. The Office of Real Property Services, in its 2008 Report on the Effectiveness of State Technical and Financial Assistance Programs states that ". . . State Board rules required that all assessing units be evaluated based on an acceptable COD level of 15%."[11] The Coefficient of Dispersion is a measure of the uniformity of assessment by determining a

[11] http://orps.state.ny.us/ref/pubs/2008report/section3.htm IIIB.

ratio of the actual values of a sample of properties to their assessed values.[12] It is the "…primary means of measuring assessment equity for the sampled assessing units…"[13]

New Jersey adopted legislation that gives recognition to a 15% variation as acceptable for years other than those in which a revaluation or reassessment takes place. A Monmouth County publication, "Understanding Property Tax Assessments Appeals", states that "The Courts have held that where it is impossible to have every property assessed exactly at the common level, it is reasonable to require that all properties are within a "reasonable range" around the municipality's Common Level".[14]

In 1973, the New Jersey legislature adopted a formula known as ***Chapter 123*** to test the fairness of an assessment, standardize the application of the "reasonable range" concept, and determine appropriate adjustments, if any, to assessments under appeal. Once the Tax Board has determined the true market value of a property during an appeal, they are required to automatically compare the true market value to the assessment. If the ratio of the assessment to the true value exceeds the average ratio by 15%, then the assessment is automatically reduced to the common level. However, if the assessment falls within this common level range, no adjustment will be made. If the assessment to true value ratio falls below the common level, the Tax Board is obligated to increase the assessment to the common level. This test assumes the taxpayer will supply sufficient evidence to the Tax Board so they may determine the true market value of the property subject to the appeal.[15] This is in accordance with New Jersey State Law.[16]

The County Attorney provided a list of refunds that were paid in 2009 or approved in 2009 but awaiting payment by the Treasurer. We analyzed these refunds to determine the savings that would have been achieved had they been paid according to the New Jersey Law's tolerance for a 15% variance from actual fair market value and the amounts that would have been saved if the tolerance for error was reduced to 10% and 5%. We found the following potential savings:

[12] The Nassau County Department of Assessment in its May 29, 2009 Nassau County Assessment Administration System Review defines the COD as "the average deviation of a group of sales-to-assessment ratios around the median of those ratios".
[13] http:www.orps.state.ny.us/ref/pubs/cod/reporttext.htm "Assessment Equity in New York: Results from the 1998 Market Value Survey".
[14] http://co.monmouth.nj.us/page.aspx?ID=279 "Filing an Appeal".
[15] N.J.S.A. 54:3-22 (c).
[16] N.J.S.A. 54:3-22 (c) to (f).

Exhibit 15

	Actual 2009 Refunds	Refunds Where Variance was Greater than 15%	Refunds Where Variance was Greater than 10%	Refunds Where Variance was Greater than 5%
Refund	$116,888,142	$76,021,645	$93,225,077	$106,418,297
Savings	N/A	$40,866,497	$23,663,065	$ 10,469,845

b) Require Disclosure of Easements

We recommend that Assessment and ARC require petitioners to disclose easements on subject properties. This disclosure should be required in Assessment's ASIE filing and in ARC's "Application for Correction of Property Tax Assessment." Disclosure of this information would enable both Assessment and ARC to consider the easement's impact on market value, if any, before releasing the tentative assessment roll and before the roll becomes final. Proper consideration of impact on market value may help avoid the need for a refund.

We also recommend that the County support legislation whereby the petitioner's failure to disclose an easement (under the recommended revised disclosure requirements) should bar the petitioner from receiving refunds to the extent that the property's overvaluation can be attributed to the impairment in value caused by the easement.

c) Require Disclosure of the Cost to Cure

ARC's "Application for Correction of Property Tax Assessment" ("AR2") requires the property owner's response to "Is there a plan of correction of environmental contamination?" As per the form's instructions, the property owner must also provide a copy of the plan to cure the contamination; to indicate which work has been completed and attach contractor's estimates for the work planned but not yet completed. However, in neither document is the property owner required to disclose whether there is any contamination associated with the property or to provide the cost of any completed remedial work. As typically included in the "Underlying Assumptions and Limiting and Qualifying Conditions" section of the petitioner's appraisal reports:

"The appraisers are not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraisers that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The appraisers' value estimate is predicated on the assumptions that there is no such material on or on the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraisers' descriptions and comments are the result of the routine observations made during the appraisal process."

Similar language is also included in the County's appraisal reports. Therefore, the petitioner's disclosure of any such contamination and the related costs to cure would better enable the County to more accurately establish an assessed property value for the tax rolls and for the appraisers to determine a more accurate appraised value during the tax certiorari process.

We recommend that the application be changed to require full disclosure of any environmental contamination or the presence of any hazardous and/or toxic materials and to provide the cost to cure or implement the plan of correction. The documentation requested in the instructions should be set forth in the application itself. We also recommend that the County support legislation whereby the petitioner's failure to disclose such information (under the recommended revised disclosure requirements) would bar the petitioner from receiving refunds to the extent that the property's over-valuation can be attributed to the impairment and reduction in value caused by the contamination and the associated costs to cure. Additionally, since contamination can have a significant impact on the property's valuation, a monetary penalty should be imposed for such failure to disclose.

d) <u>Obtain Agreement between Appraisers on Non-Subjective Information</u>

We recommend that the County appointed appraiser and the petitioner's appraiser reach agreement on non-subjective factors regarding the subject properties before performing the appraisals. Fair market value determinations are affected by information that is not subjective, such as the square footage and the tax rate.

Square footage of properties is not subjective and should be available from various sources such as surveys, blueprints, measurements or County building records. Both the County and petitioner's appraisers should agree to base their appraisals on the same square footage. This will eliminate square footage as a variable in gross income calculations as was found in Rockaway Realty Associates and 50 Charles Lindbergh Boulevard.

The County's and petitioners' appraisers should concur on a single methodology for calculating the real estate tax component of the capitalization rate. We recommend that the school tax component be based on the average of the rates for the January to June periods and the July to December period because it better reflects the calendar year period covered by the general tax rates. We also recommend that the department institute supervisory oversight to ensure uniformity of appraisal data, which can be readily verified. Since information used such as square footage, which is then multiplied by rental rates per square foot to determine gross income, and tax rates, which can significantly impact the property's valuation, having data that is consistent for evaluation purposes is critical.

e) Require Better Substantiation of Value Determinations

To enhance the reliability of the appraiser's report, we recommend that appraisers be required to provide substantive data and calculations to support their value determinations. Deviations from market values and/or actual figures should be properly and adequately validated and justified. To ensure such compliance, the ethical standard for valuation for record keeping as described by the Uniform Standards of Professional Appraisal Practice ("USPAP") Standard 1 should be enforced.

Review Finding (2):

Legislation to Amend Title B of Chapter VI of the Nassau County Administrative Code

Local law 12-2010 was enacted on July 21, 2010 to require the owners of Class Four (commercial) properties who file property assessment grievances to take certain actions, such as submitting a certified appraisal or making a reasonable basis offer to resolve any dispute over assessed values.

Our audit of the Tax Certiorari Bureau for 1999 found that the petitioners were not required to file proof of claims and that this condition led to a higher number of claims being filed, and that the claims filed may not have always been justified. The audit report recommended that "The Bureau should set strict guidelines requiring substantial and pertinent documents to be filed in order for the claims to be accepted for review."[17] (At that time, ARC's predecessor, the Board of Assessment Review did not review many commercial property claims.) We performed a review of ARC for the year 2000 and found that it reviewed approximately 350 commercial claims out of the 15,351 filed.[18] Therefore, the burden of defending the County's assessed values substantially fell on the County Attorney's Office. Since that time, ARC was re-organized with full time employees and charged with the responsibility for annual review of all applications for corrections of assessment filed in Nassau County.

ARC promulgated an application (form AR 2) and filing instructions for commercial property owners to file claims for assessed value reductions. For income producing property, Real Property Tax Law § 523-b 6(e) requires "all income received or accrued and all expenses paid or incurred in the real estate operation of the property, shall be

[17] Report of Examination: Tax Certiorari & Condemnation Bureau Office of County Attorney, September 29, 1999, page 45.
[18] Limited Review Assessment Review Commission, January 18, 2001, pages 4-7.

submitted and filed as prescribed by the rules of the Commission". This information is insufficient for valuing the subject property. Commercial property valuations are based on the income and expense information of comparable properties, not on the income and expense information of the subject property. While the information required is useful for ARC in establishing a database of income and expense information to be used for comparable properties, it cannot be used directly to value the property being grieved.

The amendment to Title B of Chapter VI of the Nassau County Administrative Code partially addresses the recommendations we made in the 1999 audit report as it would require the petitioner to either submit a certified appraisal or make a reasonable basis proposal to settle the grievance. A reasonable basis proposal is defined as a proposal that is 87.5% or more of the assessed value determined by Assessment in the tentative roll. In addition, a proposal requesting a reduction of greater than 12.5% is considered a reasonable based proposal as long as the proposal is accompanied by "credible evidence supporting the amount of the proposal, is consistent with and based upon the standards and guidelines utilized in assessing real property, including any relevant judicial precedents and statutory provisions, and is also based upon the market conditions as of the applicable date of assessment relevant to the property whose assessment is being grieved."[19]

Once this information is received by ARC:

- Upon submission of a Certified Appraisal:
  "Within one hundred and fifty (150) days of the submission to ARC of a Certified Appraisal, ARC shall respond by either accepting the assessed value set forth in the Certified Appraisal or by making a Reasonable Offer to Settle with the Grievant. If ARC does not respond within one hundred and fifty (150) days, ARC shall correct the tentative assessment to reflect the assessed value in the Certified Appraisal."[20]
- Upon submission of a Reasonable Basis Proposal:
  "Within one hundred and fifty (150) days of the submission to ARC of a Reasonable Basis Proposal, ARC shall respond by either accepting the Reasonable Basis Proposal or by making a Reasonable Offer to Settle with the commercial property owner. If ARC does not respond within one hundred and fifty (150) days, ARC shall correct the tentative assessment to reflect the assessed value in the Grievant's Reasonable Basis Proposal."[21]

In the event that a Grievant fails to: (1) submit a Certified Appraisal, (2) make a Reasonable Basis Proposal, or (3) withdraw the pending Grievance, then the Grievance shall be dismissed with respect to any claim raised within said pending Grievance, with prejudice, and the Commission shall make a finding and shall promptly inform the Grievant of the basis for dismissal. Failure to comply with the forgoing shall preclude the Grievant from filing any Petition with the New York State Supreme Court for judicial

[19] Local Law No. 12-2010, §2.a (7).
[20] Local Law No. 12-2010, §2.b (iii).
[21] Local Law No. 12-2010, §2.b (iv).

review under Article VII of the Real Property Tax Law with respect to any claim raised within said pending Grievance, of the property's assessment for the lesser period of (1) the final assessment roll for the tax year that is the subject of the grievance application, as well as for the next succeeding year assessment roll, or (2) for the balance of the County's assessment cycle or (3) until such time as the County performs a general reassessment of all properties within the County.[22]

The Grievant may, within 35 days of the issuance of the determination, request in writing that ARC reopen the grievance on the basis that a Certified Appraisal or Reasonable Basis Proposal was submitted, or, alternatively, that the grievance was withdrawn.[23]

Section 2.i. of Local Law 12-2010 also provides as follows:

In the event that the penalties set forth in subdivision (d)(iv) and (g) are determined by a Court of competent jurisdiction, to be illegal, ineffective or unenforceable precluding dismissal of the Grievance with prejudice, or in the event that the penalties set forth in such subdivisions are for any reason determined to be ineffective to preclude the Grievant from filing with the New York State Supreme Court a Petition, under the New York Real Property Tax Law, for judicial review challenging the assessment for the tax year corresponding to the year in the dismissed Grievance, then such Grievant shall be liable for the payment to the County of a civil penalty, recoverable in a civil action, in the sum of $4,000 per grievance. This penalty provision shall only apply prospectively in the event that subdivision (g) is deemed illegal, ineffective or unenforceable and shall not be applied cumulatively, but rather alternatively to subdivision (g).

Our comments with regard to this legislation are:

<u>Law's Requirements do not Apply to Class 2 Properties</u>

The law only applies to Class 4 commercial properties. An analysis of refunds paid by the County for 2009 show that of the $116,888,142 in refunds paid in 2009, more than 10%, or $17,301,296 relate to Class 2 properties. Section 1802 of the RPTL defines Class 2 properties as "all other residential real property which is not designated as Class 1, except hotels and motels and other similar commercial property." This includes apartment buildings, residential cooperatives and residential condominiums of four stories or more.[24] Similar to commercial properties, the Class 2 properties are valued using the income method. ARC's website states "Assessments of cooperatives and Class 2 condominiums are based on the market value of the property as a whole as if it were operated as a rental."[25] Under the law, unlike commercial property owners, these

[22] Local Law No. 12-2010, §2.g.
[23] Local Law No. 12-2010, §2.h.
[24] http://www.nassaucountyny.gov/agencies/Assessor/GeneralInfo/Terms.html.
[25] http://www.nassaucountyny.gov/agencies/ARC/propertyowners.html.

property owners do not have to submit certified appraisals or make reasonable basis proposals to settle the grievances.

Reduction of Time ARC has to Evaluate Grievances

The legislation severely reduces the amount of time ARC has to evaluate grievances. The assessment and review calendar for the 2009/10 tax year was as follows:

- January 2, 2008 – Department of Assessment publishes tentative assessment roll based on value as of this date.
- March 3, 2008 – Last day to file an appeal.
- March 3, 2008 – April 1, 2009 – ARC reviews appeals and makes determinations.
- April 1, 2009 – Department of Assessment publishes the final assessment roll.

Under the 2008/09 tax year calendar, ARC had 394 days to evaluate appeals and make determinations. ARC will now have only 150 days. While the inclusion of a grievant's appraisal will be helpful, our review of appraisals found that the appraisals are very subjective and determine values that are almost always lower than the values determined by the County's appraisers. As such, we believe that ARC will still have to perform de novo appraisals of all properties grieved and cannot rely solely on the grievant's appraisals. If ARC cannot make a determination on all grievances within the 150 days allotted, those grievances that have not been determined are granted. The time frame in the law may put the County at risk for granting unwarranted reductions because ARC may not be able to reach decisions on all properties in time.

Lack of Requirement for Certified Appraisal

The Law does not require grievants who demand reductions in excess of 12.5% to provide certified appraisals. The Law requires each grievant to take one of the following actions:

1. Submit to ARC a Certified Appraisal for each commercial property whose assessment is being grieved;
2. Make a reasonable basis proposal to ARC to settle the grievance; or
3. Withdraw the grievance with prejudice and not file any petition bringing a judicial challenge to the assessment.

The Law defines a reasonable basis proposal as one that is 87.5% or more of the assessed value determined by Assessment. The Law also defines a reasonable basis proposal to include a request that is less than 87.5% of the assessed value as reasonable provided that it is "accompanied by credible evidence supporting the amount of the proposal, is consistent with and based upon the standards and guidelines utilized in assessing real property, including any relevant judicial precedents and statutory provisions, and is also based upon the market conditions as of the applicable date of assessment relevant to the property whose assessment is being grieved".[26]

Therefore, under the definition of reasonable based proposal, certified appraisals are not required, even for requests or reductions in excess of 12.5%. The law only allows requests of more than 12.5% to be considered reasonable basis proposals if accompanied by credible evidence as described above.

<u>Need for Further Deterrence of Frivolous Claims</u>

The recommendations in the Comptroller's Tax Certiorari Bureau Audit Report for 1999 were intended to deter the filing of frivolous claims by requiring supporting documentation. The legislation may accomplish this to some extent because it requires documentation for requests for reduction of greater than 12.5%, but requests for reductions of less than 12.5% can be still be made without the grievant providing any support for the claim.

Counties in New Jersey impose filing fees on a graduated basis depending on the assessed value of the property grieved. The fees are as follows:

Exhibit 16

Filing Fees Bergen County New Jersey[27]

Assessed Valuation	Filing Fee
Less than $150,000	$ 5.00
$150,000 to $499,000	$ 25.00
$500,000 to $999,999	$ 100.00
$1,000,000 or more	$ 150.00

If fees were imposed on grievances of commercial properties based on rate schedules similar to those imposed by New Jersey on filers of grievances, Nassau County would have been provided with approximately $900,000 in revenues based on the 9,837 writs filed for 2009.[28] The fees imposed may serve a dual purpose: they act as a deterrent to filing frivolous claims and provide the County with revenue to offset the cost of administering claims. The imposition of fees for filing writs would require state legislation.

<u>Recommendations:</u>

Our recommendation that Nassau County adopt legislation along the lines of New Jersey State Law N.J.S.A. 54:3-22 (c) to (f) would eliminate the need for the law to distinguish between "Reasonable Basis Proposals" and other proposals because fair market values

[26] Local Law No. 12-2010, §2.a (7).
[27] N.J.S.A. § 54:3-21.3.
[28] Source: File of Writs as of March 10, 2010 provided by Department of Assessment.

within 15% of the assessed fair market value would not be subject to adjustment. If our recommendation was adopted, this law could be amended to require the submission of certified appraisals with all grievances.

If the above recommendation is not adopted, the Law should be amended to:
a) Apply to Class 2 properties as well as Class 4 properties.
b) Change the definition of reasonable based proposals to include requests in excess of 12.5% to be reasonable only if they are accompanied by certified appraisals supporting the reduction requested.

The County Attorney should:
a) Urge the administration to revise the Law to allow ARC more than 150 days to evaluate and decide on all grievances where an appraisal or reasonable basis proposal is tendered thereby reducing the risk of granting unwarranted reductions based on the possible inability of ARC to address all grievances within 150 days.

b) Recommend that the County Legislature request state legislation permitting the County to impose fees on the filing of grievances. Consideration should be given to making the fees refundable in the event that a reduction in assessed value is granted. This would overcome a possible objection that a taxpayer should not pay a fee to have an assessment corrected.

Response to Limited Review of Tax Certiorari Appraisal Reports of Real Property and Legislative Reform

Review Finding (1) – Recommendation (a), (b) and (c)

1. While the County Attorney's office works with the Administration and other agencies to make suggestions on legislation the advocacy for specific reforms is best left with the agencies and legislative bodies. We concur with the statements that information regarding the current status of the property such as costs to cure contaminated or potentially contaminated properties or easements is useful in assessing the merits of the case. However, court decisions for contaminated properties in particular do not give clear guidance on how to value contaminated properties. While this information is instructive is not always dispositive in resolving cases. This type of information would be most helpful at the time the assessments are being created not at the grievant stage when the assessment has already been set.

2. With regard to recommendation (d) the suggestion that agreement be obtained by appraisers on non-subjective information is presently done by the litigating parties when possible. However, while certain factors over non-subjective data or criteria should be uniformly accepted by both sides, it is possible in certain instances that this data can have a subjective component. For example, the square footage of a building is finite; however, an appraiser could attribute a different per square foot value based on the use of the space. Again, where possible the litigating parties try to eliminate all non-subjective factors as much as possible to enable the courts to focus on true disputes in the case.

3. With regard to recommendation (e) all real estate appraisals obtained by the County Attorney's office apply and meet the standards of USPAP and evidentiary requirements set forth in NYCR §202.59.

Auditor's Follow-up Response:

We concur with the corrective action being taken by the Department.

Review Finding (2) – Recommendation (a) and (b)

4. With regard to lack of requirement for certified appraisal in local law 12-2010 the Assessment Review Commission in conjunction with consultation of the County Attorney's office is amending the current ARC Rules to give definition to certified appraisal and set forth the requirements in the ARC Rules. These proposed ARC Rules will be presented to the Nassau County Legislature for adoption in March 2011.

5. While the County Attorney's office works with the Administration and other agencies to make suggestions on legislation the advocacy for specific reforms is best left with the agencies and legislative bodies.

<u>Auditor's Follow-up Response:</u>

We concur with the corrective action being taken by the Department.