

AMENDMENT IN THE NATURE OF SUBSTITUTION TO CLERK ITEM 283/10

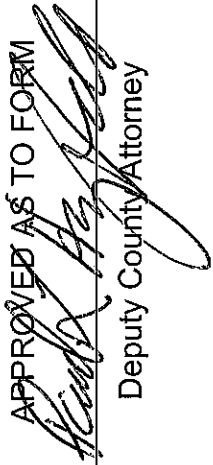
MASSAU COUNTY
LEGISLATURE
2010 JUN 28 PM 8:09

Submitted by the County Executive and Introduced by Presiding Officer Schmitt

PROPOSED LOCAL LAW NO. - 2010

A LOCAL LAW to amend the Nassau County Administrative Code to require the owners of Class four real properties, consisting primarily of commercial and business properties, to take certain actions

APPROVED AS TO FORM



Deputy County Attorney

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. Legislative Intent. This Local Law will require the owners of Class Four real properties, consisting primarily of commercial and business 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. The purpose of these requirements is to allow the Assessment Review Commission and the Department of Assessment to correct the Class Four real properties' assessment before the assessment roll is finalized and taxes are levied. By correcting the assessment roll before it is final, Nassau County's liability for refunds based on erroneous assessments will be reduced. This Local Law applies only to the owners of Class Four real properties, consisting primarily of commercial and business properties, and does not apply to homeowners or to any residential properties.

§2. Title B of Chapter VI of the Nassau County Administrative Code is hereby amended by adding a new section 6-41.0 which shall read as follows:

a. Definitions:

1. "ARC" or the "Commission" means the Nassau County Assessment Review Commission.

2. “Certified Appraisal” means an appraisal prepared by a licensed real estate appraiser that includes a statement by the licensed appraiser setting forth the basis for the appraisal and attesting to its accuracy as of the valuation date for the assessment.
3. “Class Four Property” or “Class Four Properties” mean that class of property or properties, consisting primarily of commercial and business properties, defined in section 1802 of New York Real Property Tax Law as “Class four.” As used herein, the terms “commercial property” and “commercial properties” shall have the same meaning as Class Four Properties.
4. “Grievance” means an application filed with ARC, pursuant to section 6-40.3 of this Code, for administrative review of the assessed value of the Class Four property.
5. “Grievant” means a party authorized to file a Grievance including, but not limited to, a commercial property owner or tenant and their authorized representatives.
6. “Petition” means a tax certiorari petition filed with the New York State Supreme Court seeking judicial review of the assessed value of real property.
7. “Reasonable Basis Proposal” means a good faith proposal by the filer to settle a disputed assessment. A proposal that is eighty-seven and one-half percent (87.5%) or more of the assessed value determined by the Assessor in the tentative assessment roll shall be automatically deemed a Reasonable Basis Proposal. A proposal that is less than eighty-seven and one-half percent (87.5%) of the assessment in the tentative assessment roll shall also be deemed a Reasonable Basis Proposal provided that 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.
8. “Reasonable Offer to Settle” means a good faith offer, made by ARC, to settle a disputed assessment after ARC has received a Reasonable Basis Proposal from the Grievant and ARC has reviewed the disputed assessed value, which review shall include the evidence submitted by the Grievant, 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.

9. “Substantial Change to the Property” shall mean:

(1) material construction or destruction of improvements as such terms are defined by subdivision a of section 6-24.1 of this Code; or

(2) change in zoning, use, or classification of such property that has a material impact on value; or

(3) change in the physical or economic occupancy rate of thirty-three percent (33%) or greater from the valuation date for the tentative assessment roll that is the subject of a grievance application. Economic occupancy is the actual gross cash collected (after vacancy, credit, and collection loss) as a percentage of the total potential rents; or

(4) discovery of environmental contamination that has a material impact on value.

b. (i) All Grievants who file Grievances for correction of their assessments with ARC shall, on or before October 1st of the year in which such Grievance is filed, take one of the following actions with respect to each commercial property: (1) submit to ARC, by email, portable data format or other electronic means, the receipt of which will be confirmed by 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.

(ii) The Grievant shall include with the submission of either a Certified Appraisal or a Reasonable Basis Proposal, a certification for the pending tentative assessed valuation executed by the Grievant or his representative in which the Grievant agrees to be bound by the assessed value set forth in either the Certified Appraisal or the Reasonable Basis Proposal. If ARC accepts such value or ARC fails to respond within 150 days as provided herein, the County shall be bound by such value.

(iii) 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.

(iv) 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.

(v) A Grievance shall be deemed finally determined and shall be binding on the Grievant and the County if ARC makes a Reasonable Offer to Settle in response to a Reasonable Basis Proposal under paragraph (i) of this subdivision, and the Grievant accepts ARC's Reasonable Offer to settle

c. Notwithstanding the forgoing provisions of law, ARC may choose to sustain the challenged assessment as valid, and such determination shall be deemed to be a Reasonable Offer to Settle.

d. In the event that:

- (i) ARC accepts a Reasonable Basis Proposal that is eighty-seven and one-half percent (87.5%) or more of the assessed value determined by the Assessor on the tentative assessment roll; or
- (ii) A Reasonable Basis Proposal that is eighty-seven and one-half percent (87.5%) or more of the assessed value determined by the Assessor on the tentative assessment roll is implemented due to ARC's failure to respond pursuant to Section 6-41.0(b)(iv) of this code; or
- (iii) ARC makes a Reasonable Offer to Settle in response to a Reasonable Basis Proposal under paragraph (i) or this subdivision, and the Grievant accepts ARC's Reasonable Offer to settle; and
- (iv) where, in addition to the circumstances under paragraphs (i), (ii) and (iii) of this subdivision, the Reasonable Basis Proposal was not accompanied by credible evidence supporting the amount of the proposal or other relevant financial information, then (except for where a factor under Section 6-41.0(a)(9) of this code is present), the County and the commercial property owner shall be bound by the assessed value either in the Reasonable Basis Proposal or in ARC's Reasonable Offer to Settle 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.

- e. Upon the filing of a grievance with ARC and opting to file a Reasonable Basis Proposal, the Grievant shall be provided with, acknowledge receipt of, and agree to be bound by this section of law and the applicable ARC rules.
- f. Where Grievant rejects ARC's Reasonable Offer to Settle, which rejection shall be in writing, filed not later than thirty days after the written issuance of the Reasonable Offer to Settle, ARC shall correct the tentative assessment to reflect the assessed value in the Reasonable Offer to Settle.
- g. 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 foregoing shall preclude the Grievant from filing any Petition with the New York State Supreme Court for judicial 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.
- h. 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.
- i. 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 \$4000 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).

§3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this local law is a “Type II” Action within the meaning of Section 617.5(c)(20) of 6 N.Y.C.R.R. (“routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment”), and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

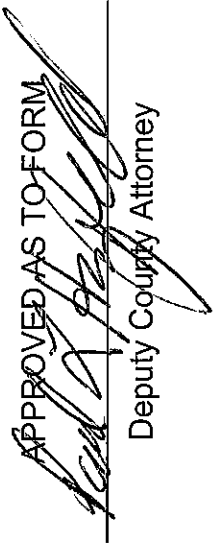
§4. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§5 Effective Date. This law shall take effect immediately, except that for the duration of calendar year 2010, the requirements contained in section 2 of this law shall be voluntary. Effective for grievance applications filed on or after January 1, 2011, for the 2012/13 tentative assessment roll and thereafter, all requirements contained in all sections of this law shall be fully effective and mandatory.

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§3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this local law is a “Type II” Action within the meaning of Section 617.5(c)(20) of 6 N.Y.C.R.R. (“routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment”), and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

§4. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§5 Effective Date. This law shall take effect immediately, except that for the duration of calendar year 2010, the requirements contained in section 2 of this law shall be voluntary. Effective for grievance applications filed on or after January 1, 2011, for the 2012/13 tentative assessment roll and thereafter, all requirements contained in all sections of this law shall be fully effective and mandatory.

AMENDMENT IN THE NATURE OF SUBSTITUTION TO CLERK ITEM 283/10

The following mark up shows the changes from the bill that was filed on June 24, 2010

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~~ARC makes a Reasonable Offer to Settle in response to a Reasonable Basis Proposal under subdivision (i) hereof, and the Grievant accepts ARC's Reasonable Offer to settle~~

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~~Deleted: If ARC determines that the Grievant's Reasonable Basis Proposal was not accompanied by credible evidence supporting the amount of the proposal or other relevant financial information, then, except as otherwise provided for in Section 6-41.0 (a)(8) of this code, the County and the Grievant shall be bound by the assessed value for the lesser period of 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 for the balance of the County's assessment cycle or until such time as the County performs a general reassessment of all properties within the County.~~

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County performs a general reassessment of all properties within the County.

e. Upon the filing of a grievance with ARC and opting to file a Reasonable Basis Proposal, the Grievant shall be provided with, acknowledge receipt of, and agree to be bound by this section of law and the applicable ARC rules.

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Deleted: Upon the filing of a grievance with ARC, and opting to file a Reasonable Basis Proposal, the Grievant shall waive the right to file any Grievance with ARC for administrative review of the assessment and the right to file any Petition with the New York State Supreme Court for judicial review under Article VII of the Real Property Tax Law, of the property's assessment for the lesser period of 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 for the balance of the County's assessment cycle or until such time as the County performs a general reassessment of all properties within the County.

f. Where Grievant rejects ARC's Reasonable Offer to Settle, which rejection shall be in writing, filed not later than thirty days after the written issuance of the Reasonable Offer to Settle, ARC shall correct the tentative assessment to reflect the assessed value in the Reasonable Offer to Settle.

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g. 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 foregoing shall preclude the Grievant from filing any Petition with the New York State Supreme Court for judicial 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.

h. 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.

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i. 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 \$4000 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).

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§3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) of 6 N.Y.C.R.R. ("routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment"), and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

§4. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§5 Effective Date. This law shall take effect immediately, except that for the duration of calendar year 2010, the requirements contained in section 2 of this law shall be voluntary. Effective for grievance applications filed on or after January 1, 2011, for the 2012/13 tentative assessment roll and thereafter, all requirements contained in all sections of this law shall be fully effective and mandatory.

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¶
LOCAL LAW NO. - 2010¶

¶
A LOCAL LAW to amend the Nassau County Administrative Code to require the owners of Class four real properties, consisting primarily of commercial and business properties, to take certain actions¶

APPROVED AS TO FORM ... [1]