

# **OFFICE OF THE NASSAU COUNTY COMPTROLLER**



**Review of the Residential Property  
Procedures and Controls of the  
Nassau County Assessment Review  
Commission**

**December 21, 2021**

**JACK SCHNIRMAN  
COMPTROLLER**

# OFFICE OF THE NASSAU COUNTY COMPTROLLER

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OFFICE OF THE NASSAU COUNTY COMPTROLLER  
REVIEW OF RESIDENTIAL PROPERTY PROCEDURES AND CONTROL OF THE  
ASSESSMENT REVIEW COMMISSION

**WHAT IS THE ASSESSMENT REVIEW COMMISSION (ARC)**

The Assessment Review Commission (ARC) is the agency that property owners apply to in order to seek a review of their property assessment. This review, commonly referred to as a “grievance” or “appeal” begins by filing an Application for Correction of Property Tax Assessment.

**“IF YOU ASSESS PROPERTIES AT A MARKET VALUE, PROPERTY OWNERS CAN EVALUATE THE ACCURACY AND FAIRNESS OF THEIR ASSESSMENTS IN A STRAIGHTFORWARD MANNER; IF ASSESSMENTS DIFFER SIGNIFICANTLY FROM MARKET VALUES, PROPERTY OWNERS WILL HAVE DIFFICULTY COMPREHENDING AND DETERMINING THE FAIRNESS OF THEIR ASSESSMENT.”<sup>1</sup>**

New York State Department of Taxations and Finance, Publication 1016: “Level of Assessment determination: An Owner’s Manual for Maintaining Uniformity”

The Assessment Review Commission conducts these reviews, as an independent agency, separate from the Nassau County Department of Assessment (DoA). Residential property taxpayers who are not satisfied with the final determination and/or AV reduction offer made by ARC may apply for a Judicial Review through a process called Small Claims Assessment Review (SCAR). Residential property owners must initiate an administrative review with ARC before they are eligible to seek a SCAR review.

**WHY WE DID THIS REPORT**

Nassau County is responsible for the assessment of properties within the County. This responsibility is unique to Nassau County relative to other counties in New York State. In other Counties, assessment is done by the various municipalities within the County (whether village, town, city or other taxing authority). Also unique to Nassau County is that the County is responsible for the payment of any refund of moneys owed to property taxpayers who receive a reduction to their property assessment subsequent to the Final Assessment Roll. This responsibility for the payment of refunds is referred to as the “County Guarantee” and includes refunds for the County and all other taxing districts that use its Assessed Valuations.

For a variety of reasons, including the generally high taxes paid by property owners in Nassau County relative to other Counties, the number of Nassau County property owners who file for review of their Assessed Value is much higher relative to other Counties. This volume of requests for review places a burden on the Assessment Review Commission.

In filing a grievance, the property taxpayer is contesting the tentative values set by the Nassau County Department of Assessment. As such, this report was initiated as part of a broader review of the systemic issues in the Nassau County Assessment and Assessment Review processes which contribute to the high volume of Assessed Value reviews (“grievances” or “appeals”) filed with the Assessment Review Commission. This report also evaluated ARC’s performance and methodologies utilized to process these appeals.

**WHAT WE OBSERVED AND FOUND**

**Auditors estimate that over a billion dollars in tax burden has been shifted, while Firms made hundreds of millions in fees representing property taxpayers, due to the complexity of the Nassau County Assessment System and the unprecedented number of Assessed Value grievances.**

Our review resulted in a number of Observations & Findings concerning the overall process of Property Assessment and Assessment Review in Nassau County.



OFFICE OF THE NASSAU COUNTY COMPTROLLER  
REVIEW OF RESIDENTIAL PROPERTY PROCEDURES AND CONTROL OF THE  
ASSESSMENT REVIEW COMMISSION - CONTINUED

WHAT WE OBSERVED AND FOUND (CONTINUED)

The report observes that the Assessment Review Commission is receiving a much higher volume of grievances than it was designed and/or intended to handle. There are multiple systemic conditions which cause property taxpayers to find it necessary and advantageous to file a grievance, often annually, to reduce their Assessed Value and possibly property taxes.

Generally, these systemic issues include:

- the lack of a cyclical reassessment (the freeze) and recording Assessed Values at less than Market Value;
- a “Cap” on increase in individual property Assessed Values pursuant to New York State Law;
- the application of a different Level of Assessment (LOA) to settle or determine AV reductions; and
- the need for the County to settle grievances before the issuance of the Final Assessment Roll, so that reductions do not become a cost to the County pursuant to the County Guarantee. Property Tax should be a revenue source for the County not a liability.

Relative to the high taxes in Nassau County, the cost to the property taxpayers to file grievances using a Representative Firm may seem de minimis. Additionally, there are few outlets for property taxpayers to object to high taxes.

The major observations within this report are:

- An increasing excessive number of “grievances” or “appeals” are filed with the Assessment Review Commission each year, exacerbated during a period of time when cyclical reassessments were not being conducted, known as “the freeze”.
  - Appeal volumes escalated to over 261,000 filed for 2020/21.
  - The national average percentage of properties that appeal in large municipalities is 2.9%, while auditors estimate that Nassau County’s Applications reached 62% in 2021.
  - In 1993 Nassau County had less than 55,000 grievances. In 2003, the year after the first revaluation in over 65 years, there were just over 100,000 grievances.
  - The County’s 2020/21 volume was over 2.5 times that volume, equivalent to over a 160% increase since 2003 and 374% since 1993.
- The application of a different ratio, known as LOA, to properties which sought a review and not to property owners that did not seek a review, caused disparity in Assessed Values, shifting the tax burden.
- Nassau County’s Lack of Cyclical Reassessment Deteriorated the Accuracy of Values and the Fairness of the Final Assessment Roll. Per the NYS Office of Real Property Tax Services, the benefits of maintaining current market value assessments include:
  - “*Assessment Equity for Taxpayers* – The longer it has been since a municipality has updated assessments, the more likely it is that some taxpayers are paying more or less than their fair share of taxes. Up-to-date assessments eliminate unfair assessments and the "sticker shock" that taxpayers experience when assessments are adjusted after years of neglect.”
  - “*Improved Bond Ratings* – In addition to State Aid, many municipalities are receiving improved bond ratings as a result of efforts to keep assessments current. These municipalities are saving tens of thousands of dollars each year (and, in some cases, much more than that).”



**OFFICE OF THE NASSAU COUNTY COMPTROLLER**  
**REVIEW OF RESIDENTIAL PROPERTY PROCEDURES AND CONTROL OF THE**  
**ASSESSMENT REVIEW COMMISSION - CONTINUED**

**WHAT WE OBSERVED AND FOUND (CONTINUED)**

- ***“Fewer Court Challenges to Assessments*** – By keeping assessments up-to-date, municipalities are likely to have fewer tax certiorari cases.”
- ***“Increased State Land Assessments*** – Because State land assessments are frozen at the year of the last municipal-wide reassessment conducted after 1990, reassessments allow municipalities to make changes in market value that could not otherwise be captured.”
- ***“Transparency*** – Improve taxpayer understanding of the process; easier to explain to taxpayers.”
- New York State Law designed to mitigate the effects of fluctuations in reassessed market values causes undervaluation(s), shifting the tax burden and increasing grievance volumes.
- Firms who represent property owners received **over \$500 million in fees from 2012 to 2019** to reduce the assessment on individual properties, while:
  - in general fair market values of properties increased during this period;
  - increased volume of grievances continually lowered the tax base, inversely increasing annual tax rates paid by all taxpayers;
  - auditors estimate that from 2012 to 2019, successful appeals continually reduced the frozen tax base resulting in an estimated overall tax rate increase of 46% while the average Tax Levy only increased by 12%;
  - the increases in tax rates were the result of the constant reduction in the “frozen” tax base from the high number of grievances filed and not necessarily due to budget increases; these higher tax rates were paid by all property owners, including those who successfully grieved;
  - Auditor’s estimate that Nassau County’s levy only increased 6% over seven years and the total levies for all taxing authorities within the County (including schools and specials districts) increased 12%.
- Due to the unique County “Guarantee” the County seeks to settle Assessed Value challenges prior to the finalization of the roll through Mass Settlement Programs. These settlements lead to a high volume of reductions, shifting the tax burden and destabilizing the Assessment Roll in the aggregate.
- Firms based fees on what auditors define as “Perceived Tax Savings” in that as more properties successfully appeal, the actual tax dollar savings of each AV reduction decreases because the final tax rate paid by everyone on the Roll continues to increase, including those that appeal.
- Of 179 active firms, 9 firms negotiated the LOA and represented 54% of the class 1 appeals filed in 2020 resulting in tax rate increases for all. Auditors estimate that of \$917.5 million in contingency fees (both Residential and Commercial) actual client savings is only a portion of this or \$569.8 million after paying fees and having taxes shifted back.
- The “County Guarantee” resulted in excessive tax refunds and related long-term debt and continues to contribute to tax shifts and destabilization of assessed values exposing the county to further potential liability.



## OFFICE OF THE NASSAU COUNTY COMPTROLLER REVIEW OF RESIDENTIAL PROPERTY PROCEDURES AND CONTROL OF THE ASSESSMENT REVIEW COMMISSION - CONTINUED

### WHAT WE OBSERVED AND FOUND (CONTINUED)

- There are no limits to how often a property owner can file a grievance and no downsides to filing which drives increased grievances along with the following:
  - Unlike in other states, such as New Jersey, ARC does not charge processing fees to cover the cost of processing appeals.
  - ARC is restricted from raising assessed values. ARC can only reduce assessed values or leave them the same, even when ARC determines FMV's should be higher.
  - The use of representative firms only results in additional costs if an appeal is successful.

The report found that in general, the Assessment Review Commission is handling more reviews than it is designed and/or intended to handle. ARC did not recommend policies and procedures for adoption by the County Legislature to mitigate the progressively increasing high volume of grievances filed each year and/or to assist them in mitigating the associated control issues with such high volumes.

More specifically, some of the major findings of the report are:

- The period for review of Application for Corrections at ARC is 10 times longer than the average period in other Counties with a large number of properties.
- ARC processed appeals from representative firms without verifying the property owners' authorizations due to issues with quality control.
- ARC accepted Application for Corrections with authorizations that were dated before the Tentative Assessed Values were known.
- ARC's lack of authority and/or ability to resolve duplicate applications administratively at ARC causes unresolved duplicates to advance to judicial review, undermining the purpose of ARC.
- ARC and the Department of Assessment did not disclose the level of assessment and fair market values utilized to settle grievances.

### WHAT WE RECOMMENDED

The County Legislature and the County Executive, in coordination with the appropriate New York State agencies and representatives (such as the Office of Real Property Tax Services), create a Commission to study and make recommendations, legislative or otherwise to address the systemic issues noted in the Observations in this report.

Issues to be reviewed should include:

- the County Guarantee;
- the Special Assessing Unit status of Nassau County;
- the application of Level of Assessment and the use of Full Market Value;
- the Halpern Stipulation and Order and the resulting separate Level of Assessment;
- cyclical reassessment;
- the special exemptions or "Caps" in place under New York State Law;
- the licensing and regulation of Representative Firms; and



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**ASSESSMENT REVIEW COMMISSION - CONTINUED**

**WHAT WE RECOMMENDED (CONTINUED)**

- mitigation of the economic impact to taxpayers of any proposed changes.

Additionally, with respect to the Assessment Review Commission the Recommendations include:

- ARC work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average and to ensure they reflect the current rules that ARC should follow;
- ARC exercise its powers and duties to develop and recommend rules of procedure to be adopted to eliminate the negative effects of duplicate Applications;
- ARC develop procedures to ensure 100% of Authorizations are reviewed with an approval audit trail;
- ARC discourage unauthorized filings and duplicate filings by charging a processing fee for each Application filed by Representative Firms;
- ARC develop and propose regulations to limit the ability to grieve for two tax years following any type of Assessed Value reduction between reassessment years;
- ARC develop and disseminate to all employees a formal updated policy and procedure manual that documents the operating procedures and internal controls, along with individual job functions, responsibilities and deadlines;
- ARC develop a standard Annual Authorization Form and require that it be submitted with all Applications from Representative Firms;
- ARC develop guidelines to regulate non-attorney Representative Firms (including licensing requirements, advertising guidelines, fee limitations, debarment procedures); and
- ARC establish procedures to disclose and require petitioner notifications to include the separate LOA and the market value used by ARC to negotiate and settle assessed values in the computation of ARC's offer and ARC should ensure that property owners are aware of the value they are protesting, by requiring the property's Assessed Value be entered on the Annual Authorization Form.

**WHAT WAS THE RESPONSE?**

The Assessment Review Commission agreed with the many of the Observations, Finding and Recommendations.

They stated that, "It is ARC's responsibility and mission to review valid Applications for Correction of Assessment (grievances) filed by Nassau County Real Property Owners and Taxpayers. ARC's jurisdiction is classified as 'Administrative Review', as opposed to the Supreme Courts' 'Judicial Review', which is typically only available after a Final Determination from ARC.

ARC is unique among Administrative review bodies in New York State, evident by the fact that ARC was authorized and operates under NY RPTL §523-b; which among other things, sets ARC at a 14 month review period and permits the operation of the Commission throughout the year rather than just on delineated 'Grievance Days'. These and other unique characteristics of ARC were implemented as a result of both the New York and Nassau County Legislatures' recognition that Nassau County's Real Property Tax Assessment system is confronted by challenges that have resulted in refund liability. Unlike other Jurisdictions, Nassau County has refund liability due to the County Guaranty for all other taxing Jurisdictions including School Districts.

This Audit is not only a review of ARC, but also a review of the Nassau County Assessment System as a whole."



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ASSESSMENT REVIEW COMMISSION - CONTINUED**

**WHAT WAS THE RESPONSE? (CONTINUED)**

Amongst other comments, ARC also noted that:

- NYS Laws allows property owners to contest level of assessment;
- “ARC review is necessary as the grievance process inherently degraded the roll (see Halpern Stipulation)”;
- “Insofar as the Audit recommendation that ARC apply its determined LOA to the entire Assessment Roll, it is beyond ARC’s jurisdiction and authority. Such a change would need to be implemented via New York Law”;
- “ARC provided the LOA on its website in the Frequently asked Questions page under ‘Level of Assessment’;
- “ARC agrees that non-attorney Representative firms should be regulated” and “ARC has provided recommendations to the Legislature on more than one occasion”;
- “ARC conducts annual reviews of statistically valid samples of authorizations. An authorization signed by a property owner does not necessitate the filing of a grievance;” and
- “ARC...notes that amending the grievance review period would require changes to both New York Law and the County Administrative Code;”

**WHY IS THIS REPORT IMPORTANT?**

Property taxes represent 25% of the budgeted revenue of Nassau County. While property taxes are a large revenue source, due to the unique “County Guarantee” the County is continuously liable for millions of dollars in corrected liability which dramatically offset these revenues. It is important to the County that Assessed Values are kept current and accurate, within industry standards, so that the Assessment Review Process is not overwhelmed, and that potential refund liability is reduced. More importantly, property owners are entitled to a fair and equitable assessment.

## Executive Summary

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### Purpose

The purpose of the review was to:

- Identify and review the applicable Real Property Tax Laws that the Assessment Review Commission (ARC) follows and review overall compliance including disclosure and reporting requirements.
- Identify and review the process used to negotiate assessed values.
- Determine if assessed value grievance decisions are granted timely and objectively following ARC procedures.
- Analyze the number of assessed value grievances denied or settled and analyze success rates for those filed by owner versus those filed by authorized representatives.
- Confirm that settled Assessment Review Commission values are properly updated, recorded timely and correctly reflected in the Department of Assessment's systems.

### Introduction:

This report will examine the functions of the Assessment Review Commission.

When a value set by the Department of Assessment (DoA) is challenged, the Assessment Review Commission will independently value the property based upon amongst other factors, an analysis of recent selling prices of comparable properties to determine if the DoA's value was too high.

Regardless of which valid methodologies an Assessor applies to determine market value, the 'true' value is subjectively dependent upon what any given buyer would be willing to pay at any given moment and any seller is willing to agree to accept. The Assessor is challenged with determining fair and accurate values in an ever fluctuating market. Property owners must have confidence in their Assessment or challenges of those values will inevitably be filed with ARC.

***“If you assess properties at a market value, property owners can evaluate the accuracy and fairness of their assessments in a straightforward manner; if assessments differ significantly from market values, property owners will have difficulty comprehending and determining the fairness of their assessment.”<sup>1</sup>***

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<sup>1</sup> (New York State Department of Taxations and Finance, Publication 1016: “Level of Assessment determination: An Owner's Manual for Maintaining Uniformity”

## Executive Summary

The Summary of Findings and Recommendations as a result of this audit can be found on the next page.

<b>Summary of Audit Findings and Recommendations</b>		
#	Audit Finding	Audit Recommendation(s)
<b>1</b>	The Assessment Review Commission and the Department of Assessment Did Not Disclose the Level of Assessment (LOA or Ratio) and Fair Market Value (FMV) included in the Calculations that Resulted from Negotiated/Stipulated Settlements	We recommend that <ol style="list-style-type: none"> <li>a) ARC establish procedures to disclose and require petitioner notifications include the separate LOA and the market value used by ARC to negotiate and settle AV's in the computation of ARC's AV offer;</li> <li>b) ARC work with DoA to establish guidelines for the adequate disclosure of LOA's and market values used for property valuations of appealed properties on DoA's website;</li> <li>c) ARC cease the broad application of a separately negotiated Level of Assessment to only those that appeal and base AV reduction decisions on substantive reviews of comparable sales and the uniform application of the stated or stipulated rate; and</li> <li>d) If a separate LOA than that set by the Assessor and ARC continues to be applied, such Ratio be applied by ARC or the DoA to all other properties in the class and restate market values to ensure Uniformity before ARC performs any Application (grievance) Reviews to ensure uniformity prior to tax bills being generated.</li> </ol>
<b>2</b>	ARC Failed to Recommend Necessary Regulations to The Legislature for Adoption	We recommend that ARC: <ol style="list-style-type: none"> <li>a) Develop guidelines to regulate non-attorney Representative Firms (including licensing requirements, advertising guidelines, fee limitations, debarment procedures and present these guidelines to the Nassau County Legislature for approval; and</li> <li>b) Develop regulations that limit the ability to grieve for two tax years following any type of Assessed Value reduction.</li> </ol>
<b>3</b>	The "120 Day Rule" Allowed ARC to Accept an Estimated 694,000 Authorizations that were Signed by Property Owners Before the Tentative Values Were Even Known	We recommend that ARC: <ol style="list-style-type: none"> <li>a) Eliminate the 120-day rule and require authorizations to be signed and dated during the grievance enrollment period of January 2 to March 1 and not accept predated authorizations;</li> <li>b) Develop a standard Annual Authorization Form and require that it be submitted with all Applications from Representative Firms;</li> <li>c) Ensure property owners are aware of the value they are protesting, by requiring the property's Assessed Value and corresponding FMV be entered on the Annual Authorization Form; and</li> <li>d) Require that Authorizations be submitted with any Representative Firm Applications (as part of the initial Application) or be dismissed requiring re-Application.</li> </ol>
<b>4</b>	Nassau County's 395 Day Grievance Period is over 10 Times the Average of Other Large Parcel Counties and 3 times Longer than New York City's Grievance Period	We recommend that ARC propose and seek approval from the Nassau County Legislature for a more effective processing timeframe at a maximum of one year or less, thereby eliminating overlapping years and confusion and making Final Determinations within the same year.

## Executive Summary

### Summary of Audit Findings and Recommendations

#	Audit Finding	Audit Recommendation(s)
5	ARC was Processing Appeals Received from Firms Without Verifying Property Owner Authorizations; ARC's Quality Control over Authorizations is Faulty	<p>We recommend that ARC:</p> <ul style="list-style-type: none"> <li>a) Require a standard Authorization Form (such as the AR-10), be submitted with all Applications (AR-1) filed by Representative Firms or Attorneys Representatives;</li> <li>b) Disallow the submission of Firm contracts/agreements as authorization to represent individuals;</li> <li>c) Develop a reconciliation process to ensure all non-Pro Se Applications have an authorization by matching the PARID on the authorization to the Application;</li> <li>d) Require that Authorizations submitted via upload be in an individual format by PARID and not submitted in bulk;</li> <li>e) Develop procedures to ensure 100% of Authorizations are reviewed with an approval audit trail;</li> <li>f) Discourage unauthorized filings and duplicate filings by charging a processing fee for each Application filed by Firms; and</li> <li>g) Eliminate the 120-day rule and require authorizations be signed and dated during the enrollment period of January 2 to March 2 and refrain from accepting authorizations with pre-printed dates.</li> </ul>
6	Without the Authority for ARC to Resolve Duplicate Applications, Unresolved Duplicates Can Advance to the Small Claims Assessment Review (SCAR) Process Undermining the Purpose of ARC	<p>We recommend that ARC exercise its powers and duties to develop and recommend rules of procedure to be adopted to eliminate the negative effects of duplicate Applications including the authority for setting predetermined factors that would set precedence for the order of validity.</p>
7	Lack of Compliance with NYS and County Laws Regarding ARC Commissioner Requirements as to the Number of Commissioners, Appropriate Term(s), Political Affiliations and Training	<p>We recommend that ARC:</p> <ul style="list-style-type: none"> <li>a) Request that the County Executive with the approval of the Legislature appoint the remaining Commissioners required to meet the requirement of nine Commissioners;</li> <li>b) Work with the County Legislature to ensure that appointment resolutions adequately identify the Commissioners' terms that are being replaced as new Commissioners are appointed;</li> <li>c) Work with the County Executive and the Legislature to ensure procedures exist for the reappointment of Commissioners in a timely manner when their term expires;</li> <li>d) Develop appropriate training materials and provide introductory and supplemental training as required by law; and</li> <li>e) Retain appropriate training attendance records, extension notices and training certificates as required law.</li> </ul>

## Executive Summary

<b>Summary of Audit Findings and Recommendations</b>		
#	Audit Finding	Audit Recommendation(s)
<b>8</b>	ARC Did Not File Commissioner Property Disclosure Forms with the Nassau County Assessor as Required by NYS Law, Increasing the Risk that Related Party Transactions are not Properly Reviewed, and Possible Conflicts of Interests are not Identified	We recommend ARC: <ul style="list-style-type: none"> <li>a) Ensure the Commissioners file disclosures with the County Assessor as required by law;</li> <li>b) Develop procedures and controls for Commissioner related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail;</li> <li>c) Develop similar procedures and controls for the Assessment Employees, ARC Employees, the County Legislature and County Executive related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail; and</li> <li>d) Refrain from the use of “unilateral reductions” for Commissioner and employee related properties and create procedures to ensure such reductions are adequately disclosed to avoid the appearance of any conflict of interest.</li> </ul>
<b>9</b>	ARC Staff Decreased by 35% as Appeal Volumes Doubled within Seven Years, Contributing to the Need to Rely on a Mass Settlement Program	We recommend that ARC work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average.
<b>10</b>	ARC is Processing Applications Without Complete Written Procedures, Following Outdated Rules and Processing Applications After The New York State Deadline	We recommend that ARC: <ul style="list-style-type: none"> <li>a) Review and update ARC’s Rules of Procedure to ensure they reflect the current rules that ARC should follow and seek Legislative approval of these updates;</li> <li>b) Develop and disseminate to all employees a formal updated policy and procedure manual that documents the operating procedures and internal controls, along with individual job functions, responsibilities and deadlines. This should include procedures for annual updates of policies and procedures, high level workflows, internal controls and managerial reviews, with copies of key documents, report titles, and succession or transition planning for key management; and</li> <li>c) Mark “Late” and dismiss all future Applications received after the first business day of March of any given year.</li> </ul>

## **Executive Summary**

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The matters covered in this report have been discussed with the officials of the Assessment Review Commission. On November 23, 2021 we submitted a draft report to the Assessment Review Commission for their review. Exit Conferences were held and revised drafts were provided. The Assessment Review Commission provided their response on December 16, 2021. Their response and our follow-up to their response are included at the end of this report.

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### **Background**

#### **Assessment Review Commission**

In Nassau County, the Assessed Values on a Tentative Assessment Roll can be challenged by filing an “Application for Correction of Property Tax Assessment” with the **Assessment Review Commission (“ARC”)**<sup>2</sup>. This challenge is commonly referred to as a “grievance”<sup>3</sup> or an “appeal”.

Established in 1998, ARC is responsible for reviewing all Applications for Correction of Property Tax Assessment (“Applications” or “grievances” or “appeals”) for Residential and Commercial property values as set by the Department of Assessment (“DoA”) on each annual Tentative Assessment Roll<sup>4</sup>.

ARC is independent from the DoA. Pursuant to New York State Real Property Law (RPTL) §523-b and County Law, ARC is to consist of nine Commissioners (5-year terms) including a Chairperson (3-year term) all appointed by the County Executive with the approval of the County Legislature<sup>5</sup>. In order to perform work necessary to process Applications for Corrections, ARC is authorized to hire appraisers and other staff. ARC also provides valuation resources to support the County Attorney's Office in judicial proceedings.

ARC does not review all property values on the Tentative Assessment Roll. ARC reviews those values that are challenged through timely filed Applications for Correction. Additionally, ARC reviews Applications filed to correct property tax class and exemption issues or errors.

Per Nassau County Administrative Code (“Nassau County Code”) § 6-40.4, ARC is responsible for the independent review of all Applications. ARC’s final determination will never increase an Assessed Value. ARC’s final determination should be based on a “*substantive review*”. A substantive review includes, but is not limited to, consideration of comparable sales, available appraisals and/or income and expense statements. Property owners<sup>6</sup> that are not satisfied with ARC’s administrative determination may apply for a Judicial Review through a process called Small Claim’s Assessment Review (SCAR), provided they meet guidelines set by SCAR.

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<sup>2</sup> Per New York State Real Property Tax Law 523, each local government should have a Board of Assessment Review. Through New York State Real Property Tax Law 523-b Nassau County alternatively created the Assessment Review Commission. New York City performs these functions within the New York City Tax Commission.

<sup>3</sup> Pursuant to Nassau County Administrative Code Section 6-41.0 with respect to the Assessment Review Commission, “Grievance” and “Grievant” refers to an application filed with ARC (Grievance) by an authorized property owner (Grievant) for administrative review of the assessed value of Class Four properties. For purposes of this report, grievance or grievant will be utilized to refer to any Application for Correction filed (grievance) by any individual property owner or representative (grievant).

<sup>4</sup> The Tentative Assessment Roll is published on January 2<sup>nd</sup> of each year and is finalized the following April 1<sup>st</sup>.

<sup>5</sup> Upon appointment the Nassau County Legislature determines the compensation of the commissioners, some serving full-time and others serving part-time receiving stipends.

<sup>6</sup> Or other individuals with a legal interest.

## Introduction

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ARC's final determinations and settled values are used by DoA to correct its Tentative Assessment Roll and establish the Final Assessment Roll which is used to equitably calculate tax rates.

### **Property Taxes**

Property tax is an "ad valorem tax", meaning it is imposed against the value of a property. The actual "property tax rate" changes from year-to-year based on the taxing districts levy<sup>7</sup> and the total Assessed Values of all properties within that same taxing district. The total levies collected by Nassau County and other local taxing jurisdictions do not increase or decrease based upon the assessment of any individual property.

Property Tax calculations are based on the Final Roll of Assessed Values established by the Department of Assessment after any corrected Assessed Values have been applied resulting from administrative or judicial review. A Property's tax is calculated based on its assessed value adjusted for qualifying exemptions and multiplied by the applicable taxing authority's property tax rates.

Tax Rates are calculated separately for each taxing authority by apportioning its levy to the taxable value of the Final Roll. Each property's proportionate share of the tax levy is based on its final Assessed Value ("AV") compared to the total Final Roll within the applicable district.

Depending on a property's location in Nassau County, a property's tax bill is prepared and mailed by each of the three towns (and two cities<sup>8</sup>) and will include many different line item tax rates. For example:

- School Taxes may include: School, Library and Recreation Tax rates; and
- General Taxes may include: General Fund, Environmental Bond, Fire Prevention, Nassau Community College, Police Headquarters, Police, Town General, Park District, Sewer District, Garbage Districts, Water District and other types of Special District Tax rates.

Under New York State Real Property Tax Law (RPTL), only Nassau County and New York City are considered Special Assessing Units<sup>9</sup>. NYS Law sets forth that separate tax rates be established for each of four classes of real property within Special Assessing Units<sup>10</sup>. The four classes of real property for Nassau County are as follows:

- Class 1: includes One, two and three-family residences, residential condominiums (three stories or less), and certain residential vacant land;
- Class 2: includes Residential property other than Class 1 (e.g. apartments, residential coops & residential condominiums (four stories or more);
- Class 3: includes public utility property; and

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<sup>7</sup> A real property tax levy is the amount of taxes on all real property which needs to be collected by a jurisdiction for budget purposes.

<sup>8</sup> Cities and Villages separately collect for a variety of taxes.

<sup>9</sup> NYS Real Property Tax Law Article 18.

<sup>10</sup> Per NYS Real Property Tax Law 1801 - Definitions, "Special assessing unit" means an assessing unit with a population of one million or more.

## Introduction

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- Class 4: includes property not included in Classes 1, 2 or 3.

The County portion of the overall tax rate is approximately 16%. Per NYS<sup>11</sup>, Nassau County's average Overall Tax Rates, from 2012 to 2018, were:

- \$29.57 per \$1,000 of Full Value; including
- \$4.77 per \$1,000 of Full Value for the County portion.

Once a tax levy is set by a taxing authority (through a budget process) the total amount to be collected by the authority does not change.

Nassau County's 2020 budgeted Property Tax Revenue was \$821.7 million representing 25% of all budgeted County revenues, second to Sales Tax Revenue representing 39%.

### **Department of Assessment (DoA)**

The DoA is responsible for annually establishing fair and equitable Assessed Values for all of Nassau County's Residential and Commercial<sup>12</sup> properties. These values are used in the calculation of property Tax Rates used by Town and City tax collectors to collect their levies. The DoA does not Levy or collect Taxes.

The Assessor is responsible for making sure that all properties are assessed at the same uniform percentage of market value. New York State guidance<sup>13</sup> requires that the assessor annually:

- “keep assessments uniform as of the valuation date (Sections 301, 305)”;
- “sign an oath that the assessments are uniform (Section 505)”;
- “state a Level of Assessment (LOA)<sup>14</sup> on the Tentative Roll (Section 502)”.

**Nassau County is the second largest assessing entity in New York State, after New York City. The County's Assessment Roll<sup>15</sup> for 2020 included over 423,000 properties with full valuation of over \$329 billion<sup>16</sup>.**

### **Process of Reviewing Tentative Assessed Values**

State laws provide a means for property owners<sup>17</sup> to grieve or appeal<sup>18</sup> real property assessments (Tentative Assessed Value) based on any of the following grounds:

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<sup>11</sup> NYS estimated these tax rates based on a combination of levies set by the county, city, town, village, school district, and/or special districts.

<sup>12</sup> Excluding Class 3 which is set by New York State.

<sup>13</sup> NYS Office of Real Property Tax Services - Level of Assessment Determination: An Owner's Manual NYS.

<sup>14</sup> LOA is the percentage of Full Market Value at which assessments are, on average, made in a given assessing unit.

<sup>15</sup> A document listing, all of the Assessed Values within an assessment jurisdiction together with their land and total values, the names and addresses of owners, exemption data, property types and other pertinent information.

<sup>16</sup> Per the 2021 Nassau County Proposed Budget Summary Book.

<sup>17</sup> Property owner or other aggrieved applicant-taxpayer, or representative who has the applicant's written authorization.

<sup>18</sup> File an Application for Correction of Assessment.

## Introduction

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- Unequal Assessment;
- Excessive Assessment;
- Unlawful Assessment; and/or
- Misclassification.

All property owners in New York State are eligible to contest their Assessed Values through a review. In Nassau County, there are **two levels of review**:

- 1) Administrative Review - conducted by the Assessment Review Commission; and**
- 2) Judicial Review - via Small Claims Assessment Review (SCAR)<sup>19</sup> or Tax Certiorari<sup>20</sup> proceedings in State Supreme Court (only after exhausting Administrative remedies).**

In Nassau County, residential property owners can begin the review process by filing an Application for Correction of Property Tax Assessment<sup>21</sup> with Assessment Review Commission (ARC). Property taxpayers can file an Application (1) as a Pro Se<sup>22</sup> filer on their own at no cost; (2) authorize an unpaid Representative to file or (3) retain a Representative known as “Grievance Representatives or Firms” for an agreed upon fee<sup>23</sup>. Property taxpayers that are not satisfied with ARC’s determination may apply for a Judicial Review through SCAR, provided they meet guidelines set by SCAR.

Any successful Application resulting in a reduction of taxable assessed value not resolved prior to the issuance of property tax bills will require a refund of the property tax overpayment to the taxpayer.

Due to a unique “County Guarantee”, established in 1948, Nassau County is responsible for determining assessments for most taxing jurisdictions within the County and is also responsible for the entire liability associated with property tax refunds on behalf of the townships, special districts and all but one school district.

### **ARC’s Expenditures**

Exhibit I below shows ARC’s actual expenditures from 2014 through 2019 which were \$5.8 million in 2019.

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<sup>19</sup> SCAR provides owners of 1, 2 or 3 family owner-occupied dwellings, or owners of properties that are unbuildable, an opportunity to challenge the assessment on their properties in a court hearing. It is designed to be an inexpensive alternative to a Judicial Review.

<sup>20</sup> The legal process by which a property owner can challenge the real estate tax assessment on a given property in an attempt to reduce the property’s assessment and real estate taxes.

<sup>21</sup> Either through ARC’s website or by completing an Application for Correction of Assessment (i.e. “Form AR1”) by March 1<sup>st</sup> on each year.

<sup>22</sup> Latin for "for oneself, on one's own behalf." When litigants proceed without legal counsel.

<sup>23</sup> Represented by Law Firms or other for profit or fee-based property assessment reduction firms.

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## Introduction

### **Exhibit I**

Actual Expenditures (Dollars in Millions) <sup>(1)</sup>							
As of December 31 <sup>st</sup> of							
	2014	2015	2016	2017	2018	2019	2020
Assessment Review Commission	\$3.3m	\$3.3m	\$3.7m	\$3.7m	\$3.8m	\$5.8m	\$6.8m

(1) Per the Nassau County Comprehensive Annual Financial Report of the Comptroller.

### **ARC Employees:**

Exhibit II below shows the number of full-time and part-time ARC employees from 2009 to 2020. The number of employees was reduced from 52 to 30 from 2009 to 2017, respectively, then increased starting in 2018, reaching 64 in 2020.

### **Exhibit II**

Assessment Review Employee Count <sup>(1)</sup>												
By Year 2009 - 2020												
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Tax Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
<u>Employee Count</u>												
Full-Time	46	43	30	29	29	29	30	29	28	39	59	61
Part-Time	6	3	3	0	1	1	1	2	2	2	3	3

(1) 2009 through 2020 Nassau County Comprehensive Annual Financial Report of the Comptroller

### **Number of Applications:**

Exhibit III below presents the number of Applications<sup>24</sup> filed with ARC each year from 2010 (Tax Year 2011/12) to 2019 (Tax Year 2020/21). The number of Applications filed increased over 100% from 2010 to 2019, 126,623 to 259,414 applications, respectively.

<sup>24</sup> Per Nassau County Comprehensive Annual Financial Report of the Comptroller, Operating Indicators by Function.

## Introduction

### **Exhibit III**

Number of Applications Received For Tax Years 2011/12 through 2020/21										
Received in	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
For Tax Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Residential Applications	107,547	111,019	111,133	129,946	136,523	148,710	162,238	184,781	218,691	236,371
Commercial Applications	19,076	18,940	19,868	20,449	20,726	20,963	20,878	20,949	22,323	23,043
Total <sup>(1)</sup>	<u>126,623</u>	<u>129,959</u>	<u>131,001</u>	<u>150,395</u>	<u>157,249</u>	<u>169,673</u>	<u>183,116</u>	<u>205,730</u>	<u>241,014</u>	<u>259,414</u>

<sup>(1)</sup> As reported in the Nassau County Comprehensive Annual Financial Report of the Comptroller. Per ARC these counts are applications received and will be different than ARC's final processed counts based on timing.

Per ARC's files, there were approximately 261,037 appeals filed for the 2021/22 year, the 1<sup>st</sup> year after the reassessment.

Exhibit IV below shows ARC's Determinations for both Residential and Commercial Applications, as a combined percentage of all Applications filed each year from 2016 to 2020. On average, 69% of all Applications filed received reductions and 22% were denied providing the opportunity to pursue a Judicial Review.

### **Exhibit IV**

ARC Determinations by Percentage <sup>(1)</sup> for Residential & Commercial Appeal Applications						
Tax Years 2015/16 through 2019/20						
<u>Determinations</u> <sup>(2)</sup>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>	<u>2019/20</u>	<u>Avg.</u>
Accept Zero Reduction	3%	4%	5%	2%	3%	4%
Denied	26%	22%	19%	21%	22%	22%
Dismissed	0%	1%	1%	1%	0%	1%
<b>Reduction</b>	<b>66%</b>	<b>67%</b>	<b>71%</b>	<b>72%</b>	<b>70%</b>	<b>69%</b>
Unilateral Reduction	2%	2%	1%	0%	1%	1%
Withdrawn	3%	3%	3%	3%	3%	3%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

<sup>(1)</sup> These percentages are based on analysis of data supplied by ARC to the auditors and may differ slightly from percentages reported on the Nassau County Comprehensive Annual Financial Report or in the Budget based on timing and/or categorization.

<sup>(2)</sup> See Appendix for ARC Determination Descriptions.

The schedule above combines both Commercial and Residential Applications. Residential properties have higher average rates of reduction and lower average rates of denials than Commercial properties. While the combined average Residential and Commercial reduction was 69%, from 2015/16 to 2019/20, residential Applications alone averaged a 77% reduction success rate and 15% received denials.

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### **Recent History of ARC or DoA Valuation Related Events**

- In 2010, the prior Administration through Executive Order No. 6 - 2010, known as the Tax Stabilization Order of 2010 (See Appendix A) determined that it shall be the policy of the County to reassess all parcels of real property on a four-year cyclical plan rather than an annual basis.

Commonly known as the “Freeze”, Assessed Values of property were frozen at 2011/12 levels. Property owners could challenge these values through the Administrative Review process and the Judicial Review process.

Executive Order No. 6 - 2010 froze Assessed Values at a time when the prior Administration was attempting to deal with a growing “County Refund Liability”. In conjunction with the “Freeze” the County Executive proposed and received County Legislature approval to eliminate the County Guarantee through the Common Sense Act of 2010 (Local Law 18-2010). In attempting to eliminate the County Guarantee, the Local Law would have shifted the obligation to pay Real Property Tax refunds from the County to the individual taxing districts that actually received the Levy Funds.

- Upon reviewing the validity of the Common Sense Act of 2010 (Local Law 18 – 2010), the Appellate Division, Supreme Court State of New York (2013), affirmed by the New York State Court of Appeals (2014), determined, *inter alia*, that Nassau County was prohibited from enacting Local Law 18-2010, as such an action was inconsistent with and superseded general and special State laws. The Court concluded<sup>25</sup> (Appendix B) that only by action of the State Legislature or pursuant to expressly conferred authority to the County by the State Legislature could the County Guarantee be repealed.
- In 2010, the prior Administration also implemented the assessment process known as the “Residential Grievance Negotiation and Settlement Program” (the Mass Settlement Program). This program sought to settle assessment challenges at ARC. By settling at ARC, prior to finalizing the residential Assessment Roll and before tax calculation(s), any value reductions are made prior to the Final Tax Assessment Roll being published and prior to the property owner paying taxes. Since the reduction is made before the property taxes are calculated, there is no need for a refund payment to be made pursuant to the County Guarantee.
- In 2010, the Residential Assessment Reform Team created by the prior administration proposed a “Bill of Rights” to protect Nassau County homeowners.
- In 2011, Nassau County agreed by Stipulation and Order in *Halpern v. the County of Nassau*<sup>26</sup> (known as the “Halpern Agreement” or “Halpern Stipulation”) (Appendix C) with several Grievance Representatives on a method for determining ratio which is required to be used by ARC. The Halpern Stipulation, amongst other things, set forth

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<sup>25</sup> Matter of Baldwin Union Free Sch. Dist. v. County of Nassau: Court of Appeals of New York; 22 N.Y.3d 606

<sup>26</sup> Richard and Ellen Halpern vs. The Board of Assessors and the Assessment Review Commission of the County of Nassau, 2011, Supreme Court of the State of New York County of Nassau

## Introduction

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procedures for the Grievance Representatives to challenge the Class 1 Ratio. The agreement initially applied for eight years commencing with the 2012/13 tax year and was later extended for 6 years through tax year 2026/27 (Appendix D).

- In March 2018 (Appendix E), the current administration<sup>27</sup> implemented a plan to ‘unfreeze’ Assessed Values and conduct a countywide reassessment of all four property classes for the 2020/2021 tax year.
- In September of 2018 (Appendix F), the current administration through an Executive Order<sup>28</sup> authorized the Assessor to set the Level of Assessment for the tax year 2020/2021 at a level below .25% (.0025) for Class One Residential properties.
- In January 2019 the then Assessor ultimately set the Class One Residential Level of Assessment at .1% (.0010) for the 2020/2021 Tentative Assessment Roll.
- In March 2020, the current administration, with authority from State Legislation, created an exemption through a Local Law 3-2020<sup>29</sup>, known as the “Reassessment Phase-In Act of 2020” or the “Taxpayer Protections Plan (TPP)” (Appendix G). The Exemption is designed to spread out the impact of increased valuations incurred by class one property owners resulting from the 2020/21 reassessment over a five-year period.
- For the 2020/21 Reassessment year, after being reviewed at ARC, over 80,000 property owners challenged their assessments with SCAR. The Nassau County DoA instituted a Mediation Program that resolved over 58,000 appeals.
- In November 2020, the Administration announced that the 2022/23 Tentative Assessed Values would be frozen<sup>30</sup> at 2021/22 **starting values** to protect against the recent value fluctuations from housing demand due to COVID-19<sup>31</sup>.

### Audit Scope and Methodology

The tax years analyzed for testing purposes during this review were 2015/16, 2016/17, 2017/18 and 2018/2019. Additional analysis, when necessary, was performed in limited circumstances on prior tax years to as early as 2010/2011 and as late as 2022/2023. This limited review concentrated on ARC’s processes for Class 1 residential properties.

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<sup>27</sup> Elected in November 2017.

<sup>28</sup> Curran Executive Order No. (6)-2018.

<sup>29</sup> Local Law No. 3 -2020.

<sup>30</sup> Per a news article titled “Nassau to freeze property values in 2022-23, County Executive Laura Curran says” (Updated December 2, 2020) the county Executive announced in a press release that “Nassau County will freeze property values in 2022-23 at the previous year's level in an effort to avoid sharp changes in assessments after the coronavirus pandemic caused volatility in the housing market and spiking home prices.

<sup>31</sup> During COVID-19, there was increased demand as people moved to the suburbs.

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The purpose of the audit was to evaluate ARC's compliance with, and adequacy of, its operating policies and procedures for the receipt and review of property owner's Applications, and its determination concerning reductions in values of residential properties.

The specific objectives of the audit were to:

- Review ARC's overall compliance with state and local laws and its rules and regulations;
- Identify and review the process used to negotiate assessed value;
- Determine if assessed value grievance decisions are granted timely and objectively following established procedures;
- Analyze number of assessed value grievance Applications denied or settled and calculate the success rates for those filed by property owner versus authorized Representatives; and
- Confirm that settled ARC values are properly updated, recorded timely and correctly reflected in the Department of Assessments ("DoA") systems.

To achieve the objectives, we performed the following review procedures:

- We reviewed applicable New York State and Nassau County laws, ordinances, ARC Rules, resolutions, and directives and interviewed key employees of ARC to obtain an understanding of ARC's internal operations;
- Reviewed the process used to negotiate values;
- Reviewed policies, procedures and practices to assess the effectiveness of ARC's overall property valuation Application review process;
- Obtained a list of the annual number of Applications filed with ARC including both denied and settled Applications. Analyzed the success rates for those filed by property owners versus those filed by authorized Representatives;
- Sampled and tested residential properties with the largest percentage decrease in assessed value. Evaluated if the reductions were granted objectively and procedures were properly followed; and
- Sampled and traced ARC settled values to updated values in the systems used by the Department of Assessments.

In order to review ARC's procedures and controls it was necessary to perform a systemic analysis of the County's overall assessment processes. In doing so, Auditors developed impressions about these processes which are reflected in the Observations contained in this report.

Auditors also made certain conclusions with respect to ARC which are reflected in the Findings and Recommendations contained in this report.

We believe our review provides a reasonable basis for the Observations and Findings & Recommendations contained herein. Auditors acknowledge that they are not qualified assessors

## **Introduction**

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with experience and expertise in the field of assessment. The exhibits and various examples used in this report are to add demonstrative value to the Observations, Findings & Recommendations.

## AUDIT OBSERVATION (1)

### **(1) The Excessive Number of Applications (grievances) Filed with ARC During the Freeze Impacted the Entire Assessment Roll**

The function of the Department of Assessment is to develop fair and equitable assessments of all property in their jurisdiction on an annual basis.

The function of the Assessment Review Commission (ARC) is to review and correct any errors to assessment of real property based upon Applications filed for correction (grievances). In order to accomplish the Assessor's functions, the Assessor needs to estimate market values of property based on the best available data using appraisers and/or other methods of analysis.

**“The Assessor is obligated by New York State law to maintain assessments at a uniform percentage of market value each year”<sup>32</sup>.** In order to maintain a uniform Roll, the Department of Assessment “DoA” needs to analyze all of the properties on the Roll <sup>33</sup>.

Applications for Correction of Property Tax Assessment filed with ARC escalated excessively to over 261,000 filings for the 2020/2021 Tax Year. The excessive volume of grievances resulted in what Auditors estimate to be ARC reducing the Roll by 26% for 2015/16. These reductions grew to 40% of the 2019/20 Roll. As a result of the application volume and the freeze, while performing the function of correcting errors of the Assessor and through the required use of a stipulated LOA, ARC substantially impacted the final values of DoA's entire Tentative Roll.

The Nassau County Assessment Roll was frozen for almost a decade. The “freeze” of the County Assessment Roll eliminated the DoA's ability to properly value every property in a fair and equitable manner.

During the freeze ARC continued to accept Applications and reduced Assessed Values every year. The lack of updated DoA Assessed Values led to an excessive year-over-year growth of Applications submitted by first time and repeat filers. **As a result, throughout the freeze, those that did not appeal consequently and unintentionally incurred an increased tax burden shifted to them as a result of grievances won by those that filed each year.**

### **Increase in Appeal Volumes**

In 2010<sup>34</sup>, the year the prior administration froze the Roll, there were 126,623 Applications filed. This meant **ARC was reviewing about 30% of the Assessed Values** of County properties.

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<sup>32</sup> New York State Department of Taxation and Finance, NYS Publication 1118, The Job of the Assessor, [https://www.tax.ny.gov/pubs\\_and\\_bulls/orpts/assessjo.htm](https://www.tax.ny.gov/pubs_and_bulls/orpts/assessjo.htm).

<sup>33</sup> Ibid.

<sup>34</sup> Applications reported in the County's Comprehensive Annual Financial Report for 2010 relate to the 2011/2012 tax year.

## Audit Observations

- By 2016, **ARC was reviewing 38% of the County’s Assessed Values** and reducing 26% of all the values on the Roll, even though the rest of the values were frozen.
- By 2020, the **volume of Applications** was so great that **ARC subsequently reviewed 57% of the Roll and reduced 40% of all the values on the Roll** while the rest remained frozen and unchanged.

Even though the 2020/21 Roll was reassessed<sup>35</sup> for the first time in a decade, at current market value and deemed accurate within professional standards, the **appeal volume escalated to over 261,000 Applications filed for 2020/21.**

**For the 2020/21 Reassessment Tax Year, Tentative AV’s were considered accurate within industry standards.** As such, ARC found that a majority of the assessments were correct and did not warrant a reduction.

Exhibit V below shows the increase in Applications from 2015/16 to 2019/20 before reassessment and corresponding information for the 2020/21 reassessment year.

### **Exhibit V**

Analysis of Appeals For Tax Years 2015/16 through 2020/21							
Description	2015/16	2016/17	2017/18	2018/19	2019/20	% Increase (2016 - 2020)	2020/21 (Reassessed)
Total Number of Parcels in Nassau County	424,143	424,074	424,181	424,267	424,283	0%	424,413
Total Appeals <sup>(1)</sup> Filed	162,546	175,728	189,364	224,097	241,024	48%	261,037
Total Parcels that Received Reductions	110,212	121,452	135,757	162,250	171,061	55%	62,508
<b><u>Percentage of :</u></b>						<b><u>Average</u></b>	
DoA Tentative Roll Values Reviewed by ARC	38%	41%	45%	53%	57%	47%	62%
Appeals that Received a Reduction	68%	69%	72%	72%	71%	70%	24%
Parcels that Received Reductions	26%	29%	32%	38%	40%	33%	15%

<sup>(1)</sup> Total appeals filed per ARC 'Protest' Files will differ from the Nassau County Comprehensive Annual Financial Report counts based on timing.

The volume of Applications<sup>36</sup> processed by ARC increased by 61% from 2016 to the 2021 reassessment year. Prior to the reassessment, from 2016 to 2020:

- ARC decreased Assessed Values for an average of 70% of the Applications filed each year;
- Applications that received reductions in property valuation increased by 55%; and
- ARC reduced property valuations of 26% of the Roll in 2015/16 increasing to 40% by 2019/20.

<sup>35</sup> The current County Administration hired a new Assessor, in June 2018, who led the DoA’s completion of the first County reassessment in almost a decade.

<sup>36</sup> NYS guidance (Standard on Property Tax Policy [IAAO 2020]) notes that the need for response to value-related Applications “typically increase during reappraisal years or periods with rapid property value inflation”.

## Audit Observations

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**The national average percentage of properties that appeal in large municipalities<sup>37</sup> is 2.9%, while Nassau County’s Applications reached 62% in 2021.** At that national average, Nassau County should only have approximately 12,300 Applications annually. Instead, Nassau County’s appeal volume is over **20 times the national average** exceeding 261,000 in 2020/21.

### **Assessment by Appeal**

Nassau County Code<sup>38</sup> provides property taxpayers the right to challenge an assessment by filing an Application for Correction of Property Tax Assessment (Application/appeal/grievance).

**The Legislative Intent of creating ARC was for the County to have a separate independent agency review all grievances “for corrections of assessments” after the establishment of the Roll (or Tentative Roll) by the Assessor. While this process of establishment of the Rolls by the Assessor and corresponding administrative review by ARC should result in some small percentage of grievances, it should not result in ARC (through the administrative review) effectively assessing and revaluing 40% of all Nassau County property for 2020 and then reviewing 62%<sup>39</sup> of newly reassessed values for 2020/21.**

The excessive volume of grievances was largely caused by a lack of reassessment by the County in that, if **values are not kept current, they will be challenged.** With respect to reassessment, Nassau County is one of only two Counties in New York State that assesses property at the County level (the other, Tompkins County, maintains property assessments at 100%). The rest of the State generally assesses properties at the town or city level.

For purposes of assessing, pursuant to Article 18 of the New York State Real Property Tax Law Nassau County (along with only New York City) is considered a Special Assessing Unit wherein assessment is based on four classes of real property. Nassau County is second, in New York State, to New York City in the number of parcels within its assessing unit.

Illustrated below, Exhibit VI compares parcel and grievance volumes for Tompkins County and Nassau County along with 1 Town and 2 Cities. For the 2018/19 property Tax Roll year, Nassau County’s percentage of grievances to number of parcels is almost **2.5** times that of New York City and **53** times that of Tompkins County.

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<sup>37</sup> Based on results of large jurisdictions with over 100,000 parcels responding to a survey performed by Lawrence C. Walters, PH.D. and the IAAO Research Committee, titled “Staffing in Assessment Offices in the United States and Canada: Results of 2013 Survey”.

<sup>38</sup> Nassau County Admin Code § 6-40.3 (a) states During the time between publication of the Tentative Assessment Roll and publication of the Final Assessment Roll, any person or corporation claiming to be aggrieved by the assessed value of real property may apply for a grievance for correction of such assessment on state approved forms.

<sup>39</sup> Per ARC protest files in 2020/21 there were 261,037 grievances filed on 424,413 parcels for 2020/21.

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## Audit Observations

### Exhibit VI

<b>Comparison of Appeals to Parcel Counts Tax Year 2018/19 <sup>(1)</sup></b>						
<u>Municipality</u>	<u>Type</u>	<u>Total Parcels or Tax Lots</u>	<u>Total Appeals</u>	<u>Percent Appealed</u>	<u>SCAR<sup>(2)</sup></u>	<u>Residential LOA %</u>
Tompkins	County	35,530	197	1%	3	100.00
Yonkers	City	36,540	2,701	7%	962	2.29
Huntington <sup>(3)</sup>	Town	73,700	12,000	16%	6,100	0.84
Nassau	County	424,267	224,018	53%	12,751	0.25
New York	City	1,068,863	227,988	21%	85	6.00

<sup>(1)</sup> 2018/19 or 2019 Tax Year depending on the municipality, unless otherwise noted.

<sup>(2)</sup> SCAR counts for Tompkins, Nassau and NYC are for 2018 per the NYS SCAR activity report. Yonkers and Huntington were obtained from the Yonkers Assessment Department and Huntington's 2019 Adopted Budget, respectively.

<sup>(3)</sup> Estimates from the Town of Huntington 2019 Adopted Budget showed the 2018 LOA as .84% and projected the 2018/19 SCAR caseload to be 6,100.

Such an excessively high volume of grievances indicates a systemic issue with initial Assessed Values (not necessarily values created by ARC) and causes an unnecessary duplication of efforts as one County Department is essentially redoing 53% (2018/19) of the work performed by another department instead of correcting the exceptions.

**In 1993 Nassau County had less than 55,000 grievances. In 2003, the year after the first revaluation in over 65 years, there were just over 100,000 grievances. The County's 2020/21 volume was over 2.5 times that volume, equivalent to over a 160% increase since 2003 and 374% since 1993.**

## AUDIT OBSERVATION (2)

### **(2) Nassau County’s Lack of Cyclical Reassessment Deteriorated the Accuracy of Values and the Fairness of the Final Assessment Roll**

Per NYS “Guidelines for Cyclical Reassessment”<sup>40</sup>, *“The fairness, or equity, of the real property tax depends on whether similar properties are treated alike. By keeping assessments up-to-date, assessors can go a long way toward ensuring that taxpayers do not pay more or less than their fair share of taxes.”*

**By not updating Assessed Values, the former County Executive and the former acting assessor<sup>41</sup> did not follow these New York State Real Property guidelines and froze<sup>42</sup> the County’s Assessment Roll; however, values were effectively only frozen for those that did not grieve.**

**During the nearly 10-year freeze, values were not kept current and as a result there was over a 100% increase in grievances submitted to ARC.**

**Per NYS the benefits<sup>43</sup> of maintaining current market value assessments include:**

- ***“Assessment Equity for Taxpayers*** – The longer it has been since a municipality has updated assessments, the more likely it is that some taxpayers are paying more or less than their fair share of taxes. Up-to-date assessments eliminate unfair assessments and the "sticker shock" that taxpayers experience when assessments are adjusted after years of neglect.”
- ***“Improved Bond Ratings*** – In addition to State Aid, many municipalities are receiving improved bond ratings as a result of efforts to keep assessments current. These municipalities are saving tens of thousands of dollars each year (and, in some cases, much more than that).”
- ***“Fewer Court Challenges to Assessments*** – By keeping assessments up-to-date, municipalities are likely to have fewer tax certiorari cases.”
- ***“Increased State Land Assessments*** – Because State land assessments are frozen at the year of the last municipal-wide reassessment conducted after 1990, reassessments allow municipalities to make changes in market value that could not otherwise be captured.”
- ***“Transparency*** – Improve taxpayer understanding of the process; easier to explain to taxpayers.”

DoA did not perform a reassessment of property values for nearly a decade.

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<sup>40</sup> NYS Office of Real Property Tax Services, Guidelines for Cyclical Reassessment, June 2017

<sup>41</sup> Referring to the former acting Assessor who served between 2011 through March 2018

<sup>42</sup> In 2010, the prior Administration through Executive Order No. 6, known as the Tax Stabilization Order of 2010, replaced the process of ‘reassessment’ of county property on an annual basis to a four-year cyclical plan. Commonly known as the “Freeze”, Assessed Values of property were frozen at 2011/12 levels unless property owners successfully reduced them by challenging values through the Administrative Review process and possibly the Judicial Review process.

<sup>43</sup>NYS Office of Real Property Tax Services, Guidelines for Cyclical Reassessment, June 2017.

## **Audit Observations**

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Prior to the 2019 Reassessment, for the 2020/21 tax year, the last reassessment was for the 2011/12 tax year.

NYS guidelines<sup>44</sup> state regularly scheduled appraisal of all parcels, at least once every 4 years, is necessary to maintain assessment equity. A lack of reassessment destabilizes the accuracy of values over time leading to increased grievances and; uniquely in Nassau County, due to the County Guarantee there is a risk of ever-increasing refund liability.

Per NYS, hundreds of municipalities conduct frequent reassessments to ensure fair and accurate assessments. The NYS Aid for Cyclical Reassessments program<sup>45</sup> encourages localities to provide fair assessment to protect their initial investments in quality Assessment Rolls. This program even provides monetary aide to municipalities to conduct reassessments. To be eligible, assessing units must commit to conducting reappraisals of all property at least once every four years (See Appendix H). Up to \$5 per parcel is available in the year of a full reappraisal. For fiscal year 2019-2020, up to \$750,000 in aid was available. Aid is only payable to assessing units conducting a reassessment that have not received aid in the previous two years.

Even when reassessing, Nassau County is restricted pursuant to NYS Real Property Tax Law Section 1805 from increasing Assessed Value on any one parcel by more than 6% per year or 20% over 5 years, with certain exceptions. This is commonly referred to as the 6/20 Rule<sup>46</sup> (See Observation No. 4 for more detail). The lack of frequent reassessment, especially in periods of increasing value, limits DoA's ability to capture increases in value and properly reflect Assessed Values without violating the 6/20 Rule. Over time, properties become undervalued which data suggests results in grievances by other property owners.

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<sup>44</sup> NYS Office of Real Property Tax Services, Guidelines for Cyclical Reassessment, June 2017

<sup>45</sup> New York State Office of Real Property Tax Services, Guidelines for Cyclical Reassessment, June 2017.

<sup>46</sup> N.Y. Real Property Tax Law 1805 – Limitation On Increases of Assessed Value of Individual Parcels.

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### AUDIT OBSERVATION (3)

#### **(3) A Separately Negotiated “Ratio” or “Level of Assessment” (LOA) Used by ARC Caused Disparity in Assessed Values - Shifting the Tax Burden**

As a result of (1) the Mass Settlement Program implemented by the prior Administration and (2) separately, ARC’s required application of a Level of Assessment agreed to pursuant to the Halpern Stipulation and Order<sup>47</sup>, values became disparate shifting the tax burden.

The current administration’s Executive Order No 6-2018 Relating to Levels of Assessment for the 2020/21 Reassessment Roll stated “...*Mass settlements have severely degraded the accuracy and integrity of assessments and shifted the tax burden disproportionately*”.

Every year during the freeze a group of grievance Firms [hereinafter referred to as Tax Assessment Representatives and Attorneys (“TARA”)] contested the Department of Assessment’s Class 1 Residential Ratio<sup>48</sup> resulting in negotiations with ARC, the County Attorney’s Office and TARA to determine a Ratio to be applied pursuant to procedures set forth by the Halpern Agreement. This resulted in a lower Ratio than that applied by the Assessor, who maintained the Ratio at .25% (.0025) for class one properties on each Tentative Roll.

As a result, each year ARC applied the separate stipulated Ratio, to the portion of the Roll that grieved. These reductions effectively negated the freeze, deteriorating and destabilizing the accuracy of the entire Roll.

Per NYS Office of Real Property Tax Services (ORPTS) Publication 1016, New York Real Property Laws call for the Assessor to “*determine your LOA and for the State to study whether you have so accurately and, if not, to restate your LOA.*”

For the 2020/21 Roll, the then Assessor<sup>49</sup> lowered the Level of Assessment (LOA) to .10% (.0010) stating that “*Unfortunately, the stipulation signed in 2011-and extended in 2016-all but guaranteed that the County would not be able to defend against a ratio challenge were it to maintain the .25% class one level of assessment*”.

The separately negotiated LOA combined with frozen property values shifted the tax burden to those that did not grieve by:

- circumventing the principle of **Uniform Percentage of Value** (NYS Law); and
- causing **Disparity in Assessed Values** on the Assessment Roll.

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<sup>47</sup> Richard and Ellen Halpern vs. The Board of Assessors and the Assessment Review Commission of the County of Nassau, 2011, Supreme Court of the State of New York County of Nassau.

<sup>48</sup> The negotiations resulted in annual agreements, referred to as a “*Ratio Stipulation*”, signed by the ARC Chairperson, the County Attorney and at least 6 firms representing TARA for the Class 1 properties. The agreements stipulate the ratio (rate) to be used for the resolution of Administrative Applications and negotiations and another higher ratio that would be used for Tax Certiorari proceedings (including Article 7 and SCAR) if the Class 1 appeal was not resolved during the administrative review process. A similar negotiation occurred for Class 2 and 4 Properties.

<sup>49</sup> Referring to the former acting Assessor who served between 2018 and 2021

## Audit Observations

### Uniform Percentage of Value

The Assessor is responsible for making sure that all properties are assessed at the same uniform percentage of value<sup>50</sup>. The separately negotiated/Halpern Agreement Ratio or Level of Assessment which is required to be used by ARC failed to maintain such uniformity.

NYS ORPTS requires all real property in each assessing unit to be assessed at a uniform percentage of value (known as LOA or Ratio). As a result of the Mass Settlement Program<sup>51</sup> and the creation of separate Ratio agreements with TARA, different Ratios were applied to properties within a given class. This effectively caused properties within the same class to become unequally assessed.<sup>52</sup>

NYS requires that the DoA set the LOA<sup>53</sup> for the Tentative Roll to be uniform within each property class, “*all properties in the same class must be assessed at the same percentage of their market values.*”<sup>54</sup> **ARC was required to apply the separately negotiated LOA to only those properties that grieved and not all the properties within the same class. As a result, the Final Roll was effectively not assessed at a uniform percentage of value.**<sup>55</sup>

The NYS Uniform Assessment Standards also state that “*The uniformity standard requires that each individual property within reasonable limits be at the same percentage of full market value. Without such uniformity, there can be no property tax equity.*”

For assessment years 2011/12 through 2019/20, the former Nassau County Assessor<sup>56</sup> set and maintained the Ratio for class one properties at .25% (.0025) each year on the Tentative Assessment Rolls. During the annual Application (grievance) review process, for only properties that filed such Applications, ARC was required to apply the separately negotiated Ratio (the stipulated Rate for that particular year) to calculate assessed value offers and settle with those who filed Applications for Correction.

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<sup>50</sup> The Nassau County Department of Assessment website defines “**Uniform Percentage of Value**” as the “*standard of assessment in New York State. All properties in an assessing unit must be assessed at the same percentage of their market values except where **classified assessments** are allowed in which case all properties in the same class must be assessed at the same percentage of their market values.*”

<sup>51</sup> Prior County Executive announced the “Residential Tax Grievance Negotiation and Settlement Program” which was implemented through what is known as the ‘Mass Settlement Program’ unofficially included but was not limited to negotiating a separate LOA, a Frozen Tax Roll and a Carryforward of prior Settled Values. Also see <https://archive.nassaucountyny.gov/agencies/CountyExecutive/NewsRelease/2012/08-08-2012.html>.

<sup>52</sup> N.Y. Real Property Tax Law 701 – Definitions: An “Unequal Assessment” is defined as “*an entry on the Assessment Roll of a special assessing unit of the assessed valuation of real property which is made at a higher proportionate valuation than the assessed valuation of other real property in the same class on the same roll by the same officer.*”

<sup>53</sup> Per the Nassau County website, Level of Assessment is the “**percentage of full market value**” at which assessments are, on average, made in a given assessing unit”

<sup>54</sup> Per the Nassau County Department of Assessment website.

<sup>55</sup> The Nassau County Department of Assessment website defines “**Uniform Percentage of Value**” as the “*standard of assessment in New York State. All properties in an assessing unit must be assessed at the same percentage of their market values except where **classified assessments** are allowed in which case all properties in the same class must be assessed at the same **percentage of their market values.***”

<sup>56</sup> Referring to the former acting Assessor who served between 2011 and 2018

## Audit Observations

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As required by NYS Law, the Department of Assessment, annually, sends out Tentative Assessed Value Notices based on DoA's stated Ratio. However, the separately negotiated reduced Ratio for each year from 2011/12 to 2019/20, was not applied to the Tentative Assessed Values.

Auditors obtained stipulation letters (Appendix I) for five out of the last six years evidencing that the Tentative Assessed Value Notices were sent to property owners **prior to the separate Ratio being stipulated.**

Per IAAO<sup>57</sup> Professional Standards, Ratio Studies *“play an important role in judging whether constitutional uniformity requirements are met. Compliance with state or provincial performance standards should be verified by the local jurisdiction before value notices are sent to property owners.”* Regardless of the reappraisal cycle, Ratio Studies should be conducted, by the DoA, at least annually.

The Halpern Agreement allows Grievance Representatives thirty (30) days from the date the Tentative Roll is available to challenge the LOA, 120 days to exchange Ratio Studies and an additional 30 days to engage in meaningful good faith settlement negotiations. In each Tax Year since 2011, with the exception of the 2020/2021, **this process has resulted in a reduced Ratio.** As a result, in order for a property owner to receive the advantage of the reduced negotiated Ratio they must file a grievance.

Although these **negotiated Ratios were** available on ARC's website through Frequently Asked Questions (FAQs) this may not be adequate to inform **the general public that separately negotiated LOA's were being applied by ARC** to settle grievances with property owners while property owners who did not file grievances remained at the LOA initially published by DoA.

Homeowners being informed the Roll was frozen and/or without being informed about the separate LOA, may not have filed grievances while others filed grievances “just in case” in anticipation<sup>58</sup> of a different LOA. Those that did file a grievance received the same lower LOA, regardless of whether they filed as pro se (on their own) or hired a Grievance Representative (paying a fee of approximately half the anticipated tax savings).

**As of 2016, ARC was reducing Assessed Value's (AV) on 26%<sup>59</sup> of the frozen Roll using a separate LOA. By 2020, ARC's AV reductions increased to 40%<sup>60</sup> of the frozen Roll using a separate LOA. The lack of uniformity within each property class occurred on an annual basis.**

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<sup>57</sup> International Association of Assessing Officers

<sup>58</sup> Some Grievance Firms advertise “whether or not last year's grievance values have been finalized yet, file a grievance this year as a preventative measure”.

<sup>59</sup> By 2016, 110,213 of 424,143 (26%) of parcels in Nassau County received reductions using a separate LOA than those that did not appeal.

<sup>60</sup> By 2020, 171,041 of 424,283 (40%) of parcels in Nassau County received reductions using a separate LOA than those that did not appeal.

## Audit Observations

### Disparity of Assessed Values

The combination of frozen property values and ARC's required application of a separate LOA to only a portion of the Roll caused similar properties with similar market values to have disparate Assessed Values, shifting the tax burden.

To illustrate the assessed value disparity caused by the use of two separate LOA's within the same class, Exhibit VII below shows a sample home with a \$500,000 Fair Market Value ("FMV") assessed by applying the actual Department of Assessment's LOA versus ARC's LOA for assessment years 2012 through 2021.

Exhibit VII shows that just with the mere application of a different LOA the AV of a property could be valued 44% less than properties that did not grieve.

### Exhibit VII

<b>A Sample Home With a \$500,000 FMV Assessed Using DOA LOA versus ARC LOA</b>						
<b>Tax Year</b>	<b>Sample Home FMV(\$)</b>	<b>DOA LOA</b>	<b>ARC LOA</b>	<b>DOA Assessed Value</b>	<b>ARC Assessed Value</b>	<b>Assessed Value Reduction</b>
2011/12	500,000	0.0025	0.0024	\$ 1,250	\$ 1,200	4%
2012/13	500,000	0.0025	0.0022	\$ 1,250	\$ 1,100	12%
2013/14	500,000	0.0025	0.0020	\$ 1,250	\$ 1,000	20%
2014/15	500,000	0.0025	0.0019	\$ 1,250	\$ 950	24%
2015/16	500,000	0.0025	0.0018	\$ 1,250	\$ 900	28%
2016/17	500,000	0.0025	0.0017	\$ 1,250	\$ 850	32%
2017/18	500,000	0.0025	0.0016	\$ 1,250	\$ 800	36%
2018/19	500,000	0.0025	0.0015	\$ 1,250	\$ 750	40%
2019/20	500,000	0.0025	0.0014	\$ 1,250	\$ 700	44%
2020/21 <sup>(1)</sup>	500,000	0.0010	0.0010	\$ 500	\$ 500	0%

<sup>(1)</sup> 2020/21 was a Reassessment Year and ARC agrees with DOA's LOA.

**The use of 2 separate LOA's causes a shift in tax burden from those that grieve to those that do not as property taxes are based on one property's proportionate AV compared to the total AV of the other properties within each taxing authority.**

To illustrate the actual effect on Nassau County properties, Auditors identified two neighboring properties, one that grieved every year and one that had not grieved during the freeze. These neighboring homes were both built in the same year and have many similar features. However, even though Property 2 has 25% more acreage and 17% more living area it paid \$36,194 **less** in taxes over the past nine years as a result of the application of a different LOA.

## Audit Observations

Exhibit VIII below compares these two neighboring properties with similar features and similar market values.

### **Exhibit VIII**

<b>Values and Taxes on Two Similar Neighboring Nassau County Homes During the Freeze</b>									
Year	Property 1 - Never Grieved				Property 2 - Grieved Each Year				Excess Taxes
	DOA AV	DOA FMV	ARC FMV	Taxes	DOA AV	DOA FMV	ARC FMV	Taxes	
2011/12	1,868	\$ 747,200	n/a	\$ 11,786	2,252	\$ 900,800	\$ 938,333	\$ 14,208	\$ (2,423)
2012/13	<b>1,868</b>	<b>\$ 747,200</b>	<b>n/a</b>	<b>\$ 13,286</b>	<b>1,868</b>	<b>\$ 747,200</b>	<b>\$ 849,091</b>	<b>\$ 13,286</b>	\$ -
2013/14	1,868	\$ 747,200	n/a	\$ 15,002	1,528	\$ 611,200	\$ 764,000	\$ 12,271	\$ 2,731
2014/15	1,868	\$ 747,200	n/a	\$ 16,026	1,452	\$ 580,800	\$ 764,211	\$ 12,457	\$ 3,569
2015/16	1,868	\$ 747,200	n/a	\$ 16,799	1,376	\$ 550,400	\$ 764,444	\$ 12,375	\$ 4,425
2016/17	1,868	\$ 747,200	n/a	\$ 17,539	1,299	\$ 519,600	\$ 764,118	\$ 12,196	\$ 5,342
2017/18	1,868	\$ 747,200	n/a	\$ 18,393	1,223	\$ 489,200	\$ 764,375	\$ 12,042	\$ 6,351
2018/19	1,868	\$ 747,200	n/a	\$ 19,288	1,146	\$ 458,400	\$ 764,000	\$ 11,833	\$ 7,455
2019/20	1,868	\$ 747,200	n/a	\$ 20,468	1,070	\$ 428,000	\$ 764,286	\$ 11,724	\$ 8,744
2020/21	1,008	\$ 1,008,000	n/a	n/a	1,266 <sup>(1)</sup>	\$ 1,266,000	\$ 1,134,000	n/a	n/a
Total Excess Taxes over 9 years									<u>\$ 36,194</u>

<sup>(1)</sup> This AV was reduced at SCAR to 1123.

Exhibit VIII above demonstrates that:

- Both had the **same Assessed Value of \$1,868 and Fair Market Value of \$747,200 in 2012/13;**
- Both **paid the same in Taxes in 2012/13;**
- Property 1 **never grieved** during the freeze resulting in its AV remaining at \$1,868 all 9 years while Property 2 **grieved and reduced its AV by 49%** from 2011/12 to 2019/20;
- Property 2 **paid \$36,194 less in taxes** over 9 years; and
- **The 2020/21 Reassessment illustrates that Property 2's actual FMV is 12.5% higher than Property 1, yet property 1 paid \$8,744 more in taxes the prior year.**

**Property 2 only received these reductions because they grieved all nine years receiving a lower stipulated LOA than given to the comparable neighboring home that did not appeal. This LOA should have been applied equally throughout the same property class.**

The Reassessment Phase-In Act of 2020 <sup>61</sup> allows the separate LOA to continue to negatively impact those that did not grieve for another 5 years, as this phase-in created a temporary annual exemption for many properties that were previously benefiting from the separate LOA to gradually spread out the 2020/21 Reassessment AV and related tax increases over 5 years. (Appendix G)

<sup>61</sup> Local Law NO. 3 -2020

## Audit Observations

### Mass Settlement

The Mass Settlement Program primarily included the application of a separate LOA to two types of reductions, the Initial Year Reduction and the Carryforward Reduction, being applied before tax bills were prepared to avoid liability from the County Guarantee<sup>62, 63</sup>.

For the Initial Year Reductions, ARC would perform a valuation to determine if a property's Assessed Value was eligible for a reduction. **If the property received an AV reduction in the initial year it automatically qualified for the Carryforward Reduction for each consecutive year, thereafter, that it filed.**

It is noted that pursuant to §6.40-4.4 of the Nassau County Administrative Code, settlements are based upon adequate documentation of entitlement of settlement and final determinations “*shall be based upon substantive review of information provided by the applicant or otherwise obtained by the Department of Assessment and the Assessment Review Commission, which should include, but not be limited to, consideration of comparable sales, available appraisals and/or income and expense statements.*”

### Initial Year Reduction

In general,<sup>64</sup> during the freeze, in the first year a property grieved, known as the Initial Reduction Year, ARC would analyze the property's Market Value.

In general, ARC:

- Analyzed market values by dividing ARC's current lower LOA into the properties prior years settled Assessed Values<sup>65</sup> to determine ARC's initial Equalized Market Value (EQMV)<sup>66</sup>;
- Compared the EQMV to a range of values to determine if the EQMV was too high and if a lower FMV was appropriate for the grieved property. The EQMV was essentially DoA's TAV<sup>67</sup> converted into a higher market value that ARC compared against ARC's range of values<sup>68</sup>. A higher EQMV enabled ARC to justify a Fair Market Value reduction and corresponding AV reduction by multiplying the lower FMV by ARC's lower LOA; and

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<sup>62</sup> Nassau County Administrative Code § 6-26.0 (b) (3) (c) (L 1939, chs. 272, 701-709, as amended), known as the "County Guarantee," requires the County of Nassau, the Assessor of the County of Nassau (hereinafter the Assessor), and the Nassau County Board of Assessors (hereinafter the BOA), to refund certain special ad valorem levies judicially determined to be invalidly imposed upon the plaintiff's real property.

<sup>63</sup> Nassau County Admin Code §6-26.0(b)(3)(c) [page 150] (c) Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or hereafter arising from a decrease in an assessment or tax under subdivisions one, four and seven of section 6-24.0, or sections 6-12.0 or 5-72.0 of the code or by reason of exemption or reductions of assessments shall be a county charge. (Subparagraphs (a) and (b) amended and subparagraph (c) added by L. 1948 Ch.851, in effect April 16, 1948.)

<sup>64</sup> Auditors were told by ARC Management that each year the process was slightly different.

<sup>65</sup> Department of Assessments current Tentative Assessed Value frozen from the prior year.

<sup>66</sup> EQMV is the temporary starting value that ARC applied to evaluate FMV's.

<sup>67</sup> Tentative Assessed Value frozen from the prior year, found on the Tentative Roll.

<sup>68</sup> Not all residential properties were valued this way as some may have had unique characteristics that did not meet the parameters of this process and required individual attention. For example, high value or those that initially appeared to qualify for an excessive decrease over a specified threshold were hand reviewed.

## Audit Observations

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- Chose the highest of the lower range of values and convert it into a new AV by multiplying it by ARC's current year lower LOA to determine the Corrected Assessed Value Offer.

**Regardless of which LOA is accurate, Exhibit IX below illustrates the calculation of an Initial Year Reduction and how a property valued by DoA at \$500,000 and valued by ARC at \$510,000 is still reduced to a market value of \$489,600. Although ARC determined that the property's actual value was higher than DoA's value, through the use of a separate LOA, ARC reduced the AV from 1250 to 1224.**

## Audit Observations

### Exhibit IX

#### Example of Initial Reduction on Home Originally Valued by DoA at \$500,000

DoA's Level of Assessment (DoA's LOA)	0.0025
ARC's Level of Assessment (ARC's LOA)	0.0024

#### DoA's Assessed Value Calculation:

**DoA's Assessed Value = the Home's value x DoA's Level of Assessment**

DoA's Market Value	X	DoA's LOA	=	DoA's Assessed Value
\$500,000	X	0.0025	=	1250

#### ARC's Assessed Value Calculation:

**Equalized Market Value (EQMV) = DoA's Assessed Value / ARC's Level of Assessment**

Assessed Value	/	ARC's LOA	=	Equalized Market Value <sup>(1)</sup>
1250	/	0.0024	=	\$520,833

<sup>(1)</sup> The application of ARC's LOA to DoA's Assessed Value increases DoA's Market Value of **\$500,000** to ARC's equalized value of **\$520,833 (EQMV)**.

#### **ARC's Initial Year Market Value Determination**

To determine Market Value ARC compares the EQMV to a range of values it computes. ARC chooses its highest value below the EQMV. In this example, ARC's highest estimate that is below the EQMV is \$510,000 in Market Value, \$10,000 higher DoA's Tentative Value.

#### **ARC's Conversion of Market Value to its Assessed Value Offer**

To Determine the Assessed Value Offer ARC applies its Level of Assessment of .0024 instead of DoA's Level of Assessment of .0025 resulting in a reduction from 1250 to 1224.

Value	X	ARC's LOA	=	New Assessed Value
\$510,000	X	0.0024	=	1224

The new Assessed Value of 1224 is reported on the DoA website with a **\$489,600 Market Value**.

New Assessed Value	/	DoA's LOA	=	Value
1224	/	0.0025	=	\$489,600

<sup>(3)</sup> Had DoA's LOA of .0025 been uniformly applied to ARC's Estimated of Market Value ARC's resulting AV Offer would have been 1275 and would not require a reduction.

## Audit Observations

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### **Carryforward Reduction**

During the freeze DoA was not revaluing properties and was restricted from increasing a property's AV unless there was a physical change to the property. If a property received an Initial Year Reduction it automatically qualified for a Carryforward Reduction in each consecutive application filing year, thereafter.

**Unlike Initial Year Reductions, there were no valuations performed by ARC on property's that grieved and received Carryforward Reductions. Instead ARC would apply the current years Carryforward Ratio<sup>69</sup> to the prior year Settled AV<sup>70</sup> (Frozen Value) to create the current year Carryforward Reduction offer.**

Exhibit X below illustrates the calculation of the subsequent years Carryforward Reduction for the property in the Exhibit IX above. Exhibit X below shows how a property valued by ARC at \$510,000 reduced to a market value of \$489,600 in the Initial Year Reduction is further reduced in the Carryforward Year to \$448,800. Although the ARC's EQMV in the current year would have been \$556,364, indicating there had been an increase in market value, through the use of a separate LOA, ARC reduced the AV from 1224 to 1122.

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<sup>69</sup> The Carryforward Ratio was essentially the difference in ARCs prior year LOA minus ARC's current year.

<sup>70</sup> Settled Assessed Value is the Assessed Value settled on between the petitioner and ARC or SCAR, if applicable.

## Audit Observations

### Exhibit X

#### Example of Carryforward Reduction on a Home Originally by the DoA Valued at \$500,000

DoA's Level of Assessment (LOA)	0.0025
ARC's Level of Assessment (LOA) prior year (2012)	0.0024
ARC's Level of Assessment (LOA), current year (2013)	0.0022

#### ARC's Carryforward Reduction and Corrected Assessed Value Offer Calculation

##### Calculation of the Carryforward Ratio for Carryforward Reduction

$$\text{Carry Forward Ratio} = (\text{Prior Year LOA} - \text{Current Year LOA}) / \text{Prior Year LOA}$$

Prior year ARC LOA	-	Current year ARC LOA	=	Change in LOA
0.0024	-	0.0022	=	0.0002

Change in LOA	/	ARC's prior year LOA	=	Carryforward Ratio
0.0002	/	0.0024	=	8.33%

##### Application of Carryforward Ratio to Calculate the Carryforward Reduction

$$\text{Carryforward Reduction} = \text{Carryforward Ratio} \times \text{Prior Year Assessed Value}$$

Carryforward Ratio	X	Prior year AV	=	Carryforward Reduction
8.33%	X	1224	=	102

##### Calculation of ARC's Corrected Assessed Value Offer

$$\text{Corrected Assessed Value Offer} = \text{Prior Year Assessed Value} - \text{Carryforward Reduction}$$

Prior Year AV	-	Carryforward Reduction	=	Corrected AV Offer
1224	-	102	=	1122

##### Result of the Application of Carryforward Reduction on Market Value

In the prior year, the property was frozen at ARC's lower Corrected Assessed Value Offer of 1224 and recorded on the DoA website as a \$489,600 Market Value.

Frozen AV	/	DoA LOA	=	Frozen DoA MV
1224	/	0.0025	=	\$489,600

In the current year, the property will be reduced and frozen at ARC's new lower Corrected Assessed Value Offer of 1122 and recorded on the DoA website as a \$448,800 Market Value.

New AV	/	DoA LOA	=	DoA MV <sup>(1)</sup>
1122	/	0.0025	=	\$448,800

<sup>(1)</sup> Note that the new Market Value of the property is reflected at only **\$448,800** by the DOA on the website even though ARC determined that the Market Value in the Initial Reduction Year to be **\$510,000** (see prior Exhibit). After the application of ARC's current LOA of .0022 to the prior Frozen AV of 1224 the EQMV would be \$556,364, yet it received another AV reduction to 1122 reflecting a DoA MV of \$448,800. Had this been an Initial Year Reduction with the initial AV of 1250, the EQMV would have been \$568,182.

## Audit Observations

**Carryforwards were essentially automatic reductions that were received not based on value but the fact that a property grieved in the prior and current year.** If a property missed a consecutive grievance year the cycle would restart with a new initial Settlement Value in the next nonconsecutive year the property filed an appeal.

To summarize the effects of the Mass Settlement Program Exhibit XI below illustrates the estimated reduction rate received for both Initial Year Reductions and Carryforward Reductions between 2012 through 2020.

### Exhibit XI

<b>Initial Year Reduction and Carryforward Reduction Percentage</b>					
Year	DOA LOA	ARC LOA	Difference	Initial Year Reduction Percentage	Carryforward Reduction Percentage
<b>2011/12</b>	0.0025	0.0024	0.0001	4.0%	n/a
<b>2012/13</b>	0.0025	0.0022	0.0003	12.0%	8.3%
<b>2013/14</b>	0.0025	0.0020	0.0005	20.0%	9.1%
<b>2014/15</b>	0.0025	0.0019	0.0006	24.0%	5.0%
<b>2015/16</b>	0.0025	0.0018	0.0007	28.0%	5.3%
<b>2016/17</b>	0.0025	0.0017	0.0008	32.0%	5.6%
<b>2017/18</b>	0.0025	0.0016	0.0009	36.0%	5.9%
<b>2018/19</b>	0.0025	0.0015	0.0010	40.0%	6.3%
<b>2019/20</b>	0.0025	0.0014	0.0011	44.0%	6.7%
<b>2020/21</b>	0.0010	0.0010	n/a <sup>(1)</sup>	n/a	n/a

<sup>(1)</sup> 2020/21 was a Reassessment Year and ARC agreed with DOA's LOA.

During the freeze, regardless as to whether a property received an Initial Reduction or Carry Forward Reduction:

- **ARC's LOA was continually lower than DoA's LOA;**
- **The application of a different LOA** contributed to the further deterioration of the accuracy of the Roll;
- **Cumulatively, those property's that grieved each year during the freeze whether or not their assessed value was too high or low, received a continual and greater benefit than those that only grieved once or sporadically; and**
- **The earlier a property began filing consecutive grievances the greater the overall accumulated Carryforward Reduction percentage they would receive, cumulatively 52% vs 44% in 2020/21.**

## AUDIT OBSERVATION (4)

### **(4) The NYS Appreciation Cap limits the County's Ability to Assess Properties at 100% of Current Market Value, Causing Undervaluation(s) that Resulted in a Tax Burden Shift and Increasing Grievance Volumes**

Best practices suggest that municipalities maintain the Level of Assessment at 100% of current Fair Market Value "FMV"<sup>71</sup>. NYS Real Property Tax Law 1805 requires that special assessing units, Nassau County and NYC, limit assessed value increases to 6% per year and no more than 20% over 5 years; this is known as the 6/20 Rule (Cap).

This Cap limits Nassau County's ability to sufficiently increase Assessed Values to maintain them at current FMV. As a result of the application of the 6/20 Rule the County undervalues properties that appreciate above the Cap, which shifts the associated tax burden to all other properties.

In periods of appreciation in market values **that exceed** the 6/20 Rule limit, unless the Assessor applies an ever-decreasing LOA to absorb the increases, **the Cap will:**

- **Limit Nassau County's ability** to adjust Assessed Values **to maintain** them at **their current FMV**;
- **Cause Nassau County to continue to undervalue properties** that appreciate above the Cap; and
- Cause a tax shift to the remaining properties leaving these undervalued properties paying less than their share.

**A lack of cyclical re-assessment, especially in periods of appreciation, magnifies this situation.** Overtime, the undervaluation of properties can result in an increased volume of Applications for Correction of Property Tax Assessment (grievances) filed with the Assessment Review Commission.

The application of the 6/20 Rule causes Nassau County to apply an ever-decreasing Level of Assessment to Market Values to adjust Assessed Values to capture appreciation and avoid the Cap. In addition, the continued **use of a fraction of a percent to calculate Assessed Values makes it very difficult for the property owner to understand the accuracy of their assessed value** "*If you assess properties at a market value, property owners can evaluate the accuracy and fairness of their assessments in a straightforward manner; if assessments differ significantly from market values, property owners will have difficulty comprehending and determining the fairness of their assessment.*" (New York State Department of Taxations and Finance, Publication 1016: "*Level of Assessment determination: An Owner's Manual for Maintaining Uniformity*")

Even though, for the 2020/21 tax year, Nassau County Class 1 Residential properties were reassessed at current market values, the Department of Assessment applied an even lower fractional LOA to maintain Assessed Values within the NYS 6/20 Rule.

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<sup>71</sup> Per the NYS Office of Real Property Tax Services - Level of Assessment Determination: An Owner's Manual: "Except for New York, all states have legal standards for the level of assessment. The most common standard is 100 percent of market value."

## Audit Observations

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**Best practices** set forth by the International Association of Assessing Officers “IAAO”<sup>72</sup> state that **Assessments should be based on the current market value of property.**

- Only a system requiring current market value **acknowledges changes in local economies.**
- Assessing property at current market value **maintains a uniform relationship between property-based wealth and property taxes.**
- Current market valuations are to be **based on objective market evidence.**
- Under a current market value standard, **it is easier for the public to understand whether they are being treated fairly.**

IAAO also states that “*current market value implies annual assessment of all property*”. **In annual assessment, the assessing officer should consciously reevaluate the factors that affect value, express the interactions of those factors mathematically, and use mass appraisal techniques to estimate property values.**

Thus, it is necessary to observe and evaluate, but not always to change, the assessment of each property each year in order to achieve current market value.

IAAO recommends that “*assessing officers establish regular reappraisal cycles or at least appraisal level and uniformity (vertical and horizontal equity) thresholds that trigger reappraisal*”.<sup>73</sup>

### **Cap Limits the County’s Ability to Maintain Current Market Value**

Exhibit XII below illustrates how the application of the 6/20 Rule results in the continued need to decrease the LOA below its already fractional value. The average of the total Nassau County Class 1 residential property Assessed Values was 904 in 2020<sup>74</sup> (equating to current market value of \$361,600 at a LOA of .25% (.0025)) and the average reassessed Tentative Assessed Value was 654 in 2021<sup>75</sup> (and equating to current market value of \$654,000 at a .10% (.0010) LOA).

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<sup>72</sup> Standard on Ratio Studies [IAAO 2013b].

<sup>73</sup> Ibid.

<sup>74</sup> Per Assessment Review Commission Final Roll File.

<sup>75</sup> Per Assessment Review Commission Tentative Roll File.

## Audit Observations

### Exhibit XII

#### Analysis of Average Appreciation of FMV and AV

**2020 to 2021**

The average Nassau County Residential Property with a final Assessed Value of 904 in 2020 reassessed with a tentative Assessed Value of 654 in 2021<sup>(1)</sup>

#### Calculation of Average Equivalent Market Values

Although the 2020 Average Frozen Final Assessed Value of 904 was Reduced to 654, the Equivalent Market Value Increased through the application of a Reduced LOA.

	<u>2020</u>	<u>2021</u>
DoA declared LOA	0.0025	0.001
Average Final AV <sup>(2)</sup>	904	
Average Tentative AV <sup>(2)</sup>		654
Average Equivalent Final 2020 Market Value <sup>(3)</sup>	<u>\$361,600</u>	
Average Equivalent Tentative 2021 Market Value <sup>(3)</sup>		<u>\$ 654,000</u>

#### Comparison of Average Appreciation of FMV and AV

Although the Average FMV Appreciation resulting from the 2020/21 reassessment increased by approximately 81% (following a decade of frozen AV undervaluation's from successful appeals) the application of the lower 2020/21 LOA resulted in an Average AV reduction of 28%.

	<u>FMV</u>	<u>AV</u>
Equivalent Tentative Values for 2021	\$654,000	654
Equivalent Final Values for 2020	<u>\$361,600</u>	<u>904</u>
Value Appreciation after Reassessment	<u>\$292,400</u>	<u>(250)</u>
Average Estimated Percentage Appreciation	81%	-28%

<sup>(1)</sup> Per Assessment Review Commission Tentative Roll and Final Roll Files.

<sup>(2)</sup> Unaudited Average Values obtained from ARC.

<sup>(3)</sup> Calculated by Audit based on applicable LOA divided into AV.

## Audit Observations

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Using average values from Exhibit XII above, due to the application of the 6/20 Rule:

- Had the Assessor maintained the 2021 LOA at .25% (.0025) the maximum increase allowed would be limited to 54 (6%) or 958 in total AV for one year;
- Had the Assessor maintained the 2021 LOA at .25% (.0025) the maximum increase allowed would be limited to 181 (20%) or 1085 in total AV over five years;
- Had the Assessor maintained the 2021 LOA at .25% (.0025) the AV would have shown an increase of 81% to 1,635 AV violating the 6/20 Rule; and
- The reduction of the LOA to .10% (.0010) reduced the average AV by 28% to 654 absorbing the appreciation in the AV.

**Although Nassau County performed a reassessment in 2020/21, the NYS 6/20 Rule limited the Assessor's ability to follow industry best practices and record Assessed Values at 100% of the newly determined and more accurate market values. Instead the DoA reduced the already low LOA of .25% (.0025) to .10% (.0010) to capture years of value appreciation. Per NYS<sup>76</sup> a "LOA of other than 100% of full value is much more difficult for property taxpayers to determine whether they are being assessed equitably. It also becomes much more difficult for the assessor to manage the valuation process."**

Upon lowering the LOA to .10% (.0010), the prior Assessor stated that *"Unfortunately, the stipulation signed in 2011 [referring to the Halpern Agreement]-and extended in 2016-all but guaranteed that the County would not be able to defend against a ratio challenge were it to maintain the .25% class one level of assessment"*<sup>77</sup>.

**Without lowering the LOA, it would take over 100 years for the average residential Assessed Value to be raised to 100% of current FMV's due to the 6/20 Rule.**

### **Cap Causes Undervaluation**

In increasing markets, the 6/20 Rule Cap can cause undervaluation of Assessed Values of faster appreciating properties. This causes disparity for those that do not appreciate at the same pace resulting in a tax burden shift, unless the County continues to lower the LOA to capture all excess increases over the Cap.

Per a preliminary report<sup>78</sup> written by the New York City Advisory Commission on Property Tax Reform: *"the AV Growth Cap is a major driver of inequity within Class 1. Over time, AV Growth Caps have produced inequities among properties that have seen different rates of market value appreciation."*

Per a report<sup>79</sup> published in the Journal of Property Tax Assessment and Administration: *"Assessment limits protect taxpayers owning properties that have rapidly increasing market*

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<sup>76</sup>Uniform Assessment Standards: I. Valuation Standards:1.1 Standard of Assessment

<sup>77</sup> Nassau County Press Release: Curran Moves to Fix Corrupted Assessment Roll, posted September 26, 2018.

<sup>78</sup> January 31, 2020

<sup>79</sup> Prepared by the Research Committee of the International Association of Assessing Officers, Journal of Property Tax Assessment and Administration, "Assessed Value Cap Overview", Vol. 7, Issue 1, Page 14.

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## Audit Observations

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*values at the expense of taxing district revenue or taxpayers owning properties with decreasing values or with more limited increases.”*

Even if Nassau County were able to record Assessed Values at 100% of FMV, the 6/20 Rule will eventually cause undervaluation(s) in increasing markets that exceed the Caps unless the LOA is reduced, and reassessments are performed frequently.

### **Inconsistencies in valuations and undervaluation caused by Caps and lack of reassessment encourage grievance volumes.**

The New York State 6/20 Rule restricts Nassau County’s ability to accurately reflect values which the County is required to ensure through the County Guarantee.

As demonstrated in Exhibit XII above, the most recent reassessment confirmed Nassau County properties were predominately underassessed requiring a lower LOA to be applied.

Application of the 6/20 rule diminishes the Assessor’s ability to maintain current market value. A report<sup>80</sup> published in the Journal of Property Tax Assessment and Administration states that while *“caps appear to impose order and predictability, they also can have negative effects, even on some of the properties ostensibly in the group to be protected.”*

We performed an analysis using estimated FMV’s from a national real estate valuation firm to estimate year to year growth over 5-year increments. The average Nassau County Class 1 property FMV increase for the prior five years, for each year in 2018, 2019 and 2020, was 25%. Which means had Nassau County been able to report Assessed Value at Fair Market Value, all properties above the Caps would be undervalued, on average by 5% each year.

Exhibit XIII below illustrates how, if Nassau County were to maintain Assessed Values at 100% of FMV, without removing the 6/20 Rule, properties can be **undervalued** in rising markets. The exhibit shows the Average Home Value Index<sup>81</sup> of Nassau County residential property increased 26.2% over 5 years (from 2014 to 2019) which exceeded the 20% 5-year maximum allowable increase to Assessed Values.

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<sup>80</sup> Alan S. Dornfest, AAS, Journal of Property Tax Assessment and Administration, “Effects of Taxable Value Increase Limits Fables and Fallacies”, Vol. 2, Issue 4, Page 5.

<sup>81</sup> Per Zillow an American online real estate company and licensed broker in multiple states that provides consumers with real estate data.

## Audit Observations

### Exhibit XIII

Demonstration of Undervaluation % Resulting From 6/20 Rule		
Description	Values	Percent
2019 Middle Price Tier of Home Values <sup>(1)</sup>	\$ 568,000	
2014 Middle Price Tier of Home Values <sup>(1)</sup>	\$ 450,000	
5 Year Increase in Middle Price Tier Values	\$ 118,000	26.2%
2019 Middle Price Tier of Home Values <sup>(1)</sup>	\$ 568,000	
Maximum 5 Year Value per 6/20 Rule <sup>(2)</sup>	\$ 540,000	20.0%
Undervaluation resulting due to the 6/20 Rule	\$ (28,000)	-6.2%
<p><sup>(1)</sup> Values obtained from the website of a popular real estate valuation company and only includes the middle price tier of homes, as of 3/18/2021.</p> <p><sup>(2)</sup> The 6/20 Rule restricts AV increases to a maximum of 6% per year or 20% over 5 years. This would limit the \$450,000 2014 value to a \$90,000 increase over 5 years.</p>		

The 6/20 Rule will limit average or higher value appreciations above 20% and cause the undervaluation of these properties by at least 6.2% if the LOA is not adjusted lower.

Per a report<sup>82</sup> published in the Journal of Property Tax Assessment and Administration:

- ***“Any assessed value cap or limit on the assessment, tax rate, or levy has predictable consequences that affect the distribution of the property tax burden. One group of property owners has to pay an increased tax burden if another group of property owners is allowed to pay less than they would have had to pay if there were no cap in place. Often the biggest beneficiaries of tax caps are property owners whose properties increase in value due to external market forces at a rate greater than the market rate.”*** and
- ***“As a result of changing economic conditions, real property market value changes are not uniform across all properties within a jurisdiction. For a substantial number of properties, this can result in the unintended consequence of being adversely affected by the assessed value limits intended to assist them. This is the result of different properties increasing in value due to external market forces—some increase at a rate greater than the assessed value cap; others increase at a rate less than the assessed value cap; and still others decrease in value due to external market forces. Properties that increase in value due to external market forces at a rate greater than the assessed value limit or cap rate receive favorable treatment from the cap, while properties that increase in value due to external market forces at a rate equal to or less than the assessed value limit or tax cap receive unfavorable treatment. The assessed value cap generates a lower effective tax rate for properties that increase in value due to external market forces at a rate greater than the assessed value limit and a greater effective tax rate for properties that increase***

<sup>82</sup> Prepared by the Research Committee of the International Association of Assessing Officers, Journal of Property Tax Assessment and Administration, “Assessed Value Cap Overview”, Vol. 7, Issue 1, Page 14.

## Audit Observations

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*in value due to external market forces at a rate equal to or below the assessed value limit.”<sup>83</sup>*

### **Cap Causes Tax Shift**

The **undervaluation** caused by the 6/20 Rule **causes a tax burden shift** unless the County lowers the LOA to capture excess increases over the Cap.

To avoid violating the 6/20 Rule and underassessing the Roll, Nassau County would have to lower the LOA to absorb the average 6% increase in market value. Otherwise any property over the average would be underassessed and under taxed.

Exhibit XIV below illustrates the effects of the 6/20 Rule using the average home value index for Nassau County from the exhibit above. The exhibit shows the resulting tax shift for an average property and the undervaluation in the 5th year from the disregarded value over the 20% Cap.

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<sup>83</sup> Ibid

## Audit Observations

### Exhibit XIV

6/20 Rule Causes Undervaluation and Tax Shift		
Description	Fair Market Value	Assessed Value <sup>(1)</sup>
2014 Middle Price Tier of Home Values <sup>(2)</sup>	\$ 450,000	450
6/20 Rule 5 Year Cap	20%	20%
Resulting Maximum 5 Year Increase	\$ 90,000	90
2014 Middle Price Tier of Home Values <sup>(2)</sup>	\$ 450,000	450
Maximum 5 Year Increase	\$ 90,000	90
Maximum 5 Year Value Capped	\$ 540,000	540
2019 Middle Price Tier of Home Values <sup>(2)</sup>	\$ 568,000	568
Maximum 5 Year Value Capped	\$ 540,000	540
Undervaluation over Cap	\$ 28,000	28
Estimated Tax Shift in 5th Year <sup>(3)</sup>	\$ 828	

<sup>(1)</sup> at the 2020/21 LOA of .001  
<sup>(2)</sup> Values obtained, in March 2021, from the website of a popular real estate valuation company and only includes the middle price tier of home values as of January of each year.  
<sup>(3)</sup> Nassau County's average overall tax rate was \$29.57 per \$1,000 of full value per NYS estimates, from 2012 to 2018, based on a combination of levies set by the county, city, town, village, school district, and/or special districts.

The above undervaluation resulted in an approximate \$828 tax burden shift<sup>84</sup> in those properties that appreciated higher than the Cap to the rest of the properties including those that did not appreciate.

Nassau properties are currently seeing a large increase in value. Many people have been attracted to the suburbs during the COVID-19 pandemic, increasing demand. These increases may require the Assessor to lower the LOA below .10% (.0010) or undervalue those properties causing the properties that did not appreciate over 6% to incur the shifted increase in taxes, even though these properties were reassessed in 2020/21 and trended for 2021/22.

The IAAO Standard on Property Tax Policy regarding Valuation Increase Limits state: *“Limits that constrain changes in assessed or appraised value of property may appear to provide control*

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<sup>84</sup> The tax shift will be higher or lower depending on increases or decreases in other Assessed Values that will affect the overall tax rate.

## Audit Observations

*but actually distort the distribution of the property tax, destroying property tax equity and increasing public confusion and administrative complexity.”<sup>85</sup>*

Unless reassessments occur frequently, the application of the 6/20 Rule will cause Assessed Values to become disparate in appreciating real estate markets, shifting tax burdens and/or will continually require the LOA to be reduced to a fragment of a percentage (i.e. from .0025 to .0010).

### AUDIT OBSERVATION (5)

#### **(5) Firms Billed Residential Property Owners Over Half a Billion Dollars by Reducing Assessed Values as FMV’s Actually Increased by 34%**

Auditors estimate that from 2012-2019, Representative Firms charged residential clients (Nassau County property owners) over \$506.5 million in fees to grieve and reduce AV’s, through ARC, shifting and redistributing \$1.1 billion in tax burden. In addition, this resulted in the Tax Certiorari Liability reaching \$588.5 million at fiscal year-end 2019.

By leveraging New York State Real Property Tax Laws, Nassau County Laws and the Halpern Agreement, Firms filed increasing volumes of grievances that continually lowered the tax base and inversely **increased annual tax rates paid by all taxpayers**, even during the time period when the DoA’s property values were supposedly frozen and actual home values rose approximately 34%<sup>86</sup>.

While Assessed Values were frozen by DoA, ARC processed more than a million residential Applications For Correction (grievances). ARC does not charge a fee to process the grievances, however, grievance Firms billed residential property owners more than **half a billion dollars** to negotiate **Reductions** in AV that increased tax rates and shifted the tax burden.

The Firms were able to leverage the County’s need to limit its liability **due to the County Guarantee along with the** lack of County reassessments during the near decade long freeze and the County’s aggressive settlement of appealed values via a “Mass Settlement Program”.

Per NYS Publication 1288<sup>87</sup>:

*“Settlement can occur when both parties agree to resolve their differences as to the assessment or fair market value of the property. **However, the parties may not “artificially” reduce assessments (i.e. reduce, in order to avoid paying a refund, an assessment in future years by more than is necessary to make it reflect its fair market value).**”*

<sup>85</sup> IAAO Standard on Property Tax Policy: 5.4.3 Valuation Increase Limits, January 2010

<sup>86</sup> Noting that there were fluctuations in market values due to Superstorm Sandy, geographic location and other market factors, per an online Home Value Index, Values rose from \$424,000 in June 2012 to \$574,000 in June 2020.

<sup>87</sup> Publication 1288 (02/12): New York State Real Property Tax System Alliance: Understanding Real Property Tax Assessment Review Proceedings in New York State A Primer for Municipal Officials. As described in the publication, the New York State Real Property Tax System Alliance “*is a committee composed of state, county, city, town and school district officials organized by the New York State Office of Real Property Services to investigate the current system for the administration of the real property tax and to make recommendations for improvements, where needed, within the existing constitutional framework and to promote an efficient and equitable future system.*”

## Audit Observations

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ARC primarily settled values with these Firms through the application of the stipulated LOA that was applied only to those that grieved. **The separate LOA created assessed value reductions that had an adverse effect on the uniformity of the Roll that, ironically, the appeal system was meant to remedy.**

Bound by the Halpern Agreement, ARC<sup>88</sup> was required to apply the separate LOA to the portion<sup>89</sup> of the properties on the Roll that grieved, thereby avoiding refund liability, **even though FMV's were increasing. This caused disparate values with similar properties that did not file grievances and reduced a large portion of the values on the frozen Roll further every year. This fueled the annual increase in tax rates and grievance Applications filed along with the increasing demand for grievance Firm services that garnered millions of dollars in Firm fees.** Firms perpetually advertised to challenge these disparate values.

Whether the DoA Tentative Assessed Values were correct or not, the **Representative Firms capitalized on the County's need to settle, and would aggressively advertise to property owners that their Tentative AV's were too high, even at a time when actual real estate values were generally rising and were typically higher than the FMV's used in DoA calculations for the Tentative Assessed Values being challenged.**

The Auditors estimated that, as of 2019, **the Class 1 portion of the DoA's Assessment Roll was undervalued by almost \$100 billion in FMV yet record numbers of AV grievances were filed each of those years claiming overassessment.**

During nearly a decade of the DoA's Assessed Value freeze, actual residential real estate values rose by 34%<sup>90</sup>, while the DoA Assessed Values<sup>91</sup> either remained frozen or were further reduced by appeals, each year. From 2012 to 2019, successful appeals continually reduced the frozen tax base resulting in an estimated **overall tax rate increase of 46%<sup>92</sup> while the average Tax Levy only increased by 12%<sup>93</sup>.**

While FMV's were increasing, Firms encouraged property taxpayers to grieve against the frozen Roll and reduced the AV Tax Base by an estimated 23%, while receiving approximately a half a billion dollars in fees for such residential services.

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<sup>88</sup> Bound by the application of the Halpern Stipulation, ARC is required to use a stipulated LOA for that year on all appeals within the particular class.

<sup>89</sup> Per ARC, NYS Law and ARC Rules only allow ARC to review values for those properties that file appeals. As a result, only those that appealed had the separate LOA applied to their Assessed Values.

<sup>90</sup> Noting fluctuations in market values due to Superstorm Sandy, geographic location and other market factors, per an Online Home Value Index, Values rose from approximately \$424,000 in June 2012 to \$570,000 in June 2019.

<sup>91</sup> DoA corresponding FMV's were also decreasing as the DoA would apply its higher LOA to ARC's lower AV's to determine the FMV associated with the settled appeal.

<sup>92</sup> Nassau County taxing authority levy's cross multiple district lines making it complicated to determine an overall tax rate for Nassau County. The Auditors randomly chose one property from each of the three Nassau County towns to estimate an overall combined school, general and library tax rate. Audit noted that this estimated rate increased by approximately 46% from 2012 to 2019. This is not a representative sample.

<sup>93</sup> Based on the difference in total levy for all taxing authorities within Nassau County of \$5,997,473,000 for 2012 and \$ 6,725,004,000 for 2019.

## Audit Observations

Exhibit XV below compares property value increases to DoA's assessed value decreases, during the multiyear freeze, and related estimated under valuations, tax savings, and Representative Firm fee revenues for residential appeals.

### Exhibit XV

Estimated Representative Firm Fees Residential Class 1 Properties 2012-2019			
Tax Year	Total DoA AV	Total Estimated Equivalent FMV	
		DoA FMV <sup>(1)</sup>	Auditor's FMV <sup>(2)</sup>
2012	\$ 466,861,324	\$ 186,744,529,600	\$ 194,525,551,667
2019	\$ 361,128,468	\$ 144,451,387,200	\$ 240,752,312,000
Increase / (Decrease)	\$ (105,732,856)	\$ (42,293,142,400)	\$ 46,226,760,333
Percent Change	-23%	-23%	24%
Comparison of Estimated FMV % Increases (2012 to 2019)			
Per Auditors - Estimated Minimum FMV Increase <sup>(2)</sup>			24%
Per Real Estate Value Index (as of 2019) - Estimated FMV Increase			34%
Per 2020/21 DoA Reassessment - Estimated FMV Increase			35%
Estimated Residential Tax Shift and Related Firm Fees from Appeals			
Property Taxes Shifted Resulting From Representative Grievances <sup>(3)</sup>		\$	1,125,547,399
Taxpayer Fees Paid to Firms <sup>(4)</sup>		\$	506,496,329
<p><sup>(1)</sup> Estimated using AV's provided by ARC and based on DoA's LOA that remained at .25% (.0025) from 2012 to 2019.</p> <p><sup>(2)</sup> Estimated using AV's provided by ARC and based on the stipulated LOA of .24% (.0024) in 2012 and .15% (.0015) in 2019.</p> <p><sup>(3)</sup> Estimated using \$42,293,142,400 in FMV reductions multiplied by a \$29.57 Tax Rate (the average rate noted by New York State, per 1,000 of FMV, from 2012-2018) multiplied by 90% to remove the average of 10% Pro Se filings from 2012 to 2019.</p> <p><sup>(4)</sup> Fees estimated using an approximated average Representative Firm fee of 45% of Estimated Tax Savings (Taxes Shifted) paid by those that did not file as Pro Se.</p>			

The residential grievance volumes increased by 120%<sup>94</sup> by 2019 for the 2020/21 year. These grievance Applications are processed by ARC without charge, while Representative Firms typically charge property taxpayers contingency fees of between 33%-50% based on tax savings if realized from the grievance. **Property taxpayers can file<sup>95</sup> directly with ARC at no charge**

<sup>94</sup> Residential appeals increased by 120% (107,547 to 236,371 appeals) (per the County's Comprehensive Annual Financial Report from 2009-2019).

<sup>95</sup> As a Pro se filer, filing on behalf of themselves.

## Audit Observations

**and, in most cases, receive similar results. Simply by filing an Application for Correction (grievance) the property owner qualified for the lower LOA and corresponding reductions.**

As shown in Exhibit XV above, Representative Firms billed property taxpayers for their services to reduce AV's while FMV's were actually increasing.

Exhibit XV provides estimates resulting from grievances of frozen Assessed Values from 2012 to 2019 for Class 1 Residential Property, as follows:

- The DoA Total AV's **reduced by 23%**, from \$467 to \$361 million;
- The DoA Total FMV **reduced by 23%**, from \$187 to \$144.5 billion as DoA maintained LOA at .25% (.0025) each year;
- The Auditors estimated that the DoA 2019 FMV's were undervalued by \$96.3 billion<sup>96</sup>;
- The Auditors estimated that FMV's **increased**, by 24%, from \$194.5 billion<sup>97</sup> to approximately \$241 billion<sup>98</sup>;
- An online Home Value Index<sup>99</sup> estimated that FMV's **increased**, by 34%, from \$424,000 to \$570,000;
- The Nassau County DoA 2020/21 Reassessment indicated that FMV's **increased** by 35% to \$253 billion<sup>100</sup>, from 2012 to 2021;
- The Auditors estimated that from 2012 to 2019 residential property taxes of \$1.3 billion were shifted to those that did not appeal; and
- The Auditors estimated that while FMV's were increasing, residential taxpayers paid approximately \$506.5 million<sup>101</sup> in Representative Firm fees to lower their AV's.

**The estimated 23% reduction<sup>102</sup> of Total DoA Assessed Value was primarily due to the excessive number of annual grievances settled by ARC through a separate LOA.**

**The Auditors determined that while the annual AV Tax Base<sup>103</sup> was reducing, the average total effective tax rate increased by an approximate average of 6%<sup>104</sup> per year, while the total annual tax levies for all taxing authorities in Nassau County only increased at an average of 2% per year. These AV reductions resulted in an estimated **46%<sup>105</sup> tax rate increase** by the eighth year.**

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<sup>96</sup> Determined by separately applying DoA's stated LOA and ARC's stipulated LOA applied to the total AV's to DoA's 2019 total AV and determining the difference. (\$240,752,312,000 - \$144,451,387,200).

<sup>97</sup> Audit estimated \$194.5 billion by applying the 2012 stipulated LOA of .24% (.0024) to DoA's TAV.

<sup>98</sup> Audit estimated the increase to \$241 billion by applying the 2019 stipulated LOA of .15% (.0015) to DoA's TAV.

<sup>99</sup> Analysis of data from a popular online home value Index like Freddie Mac House Price Index, Zillow.com and S&P/Case-Shiller U.S. National Home Price Index.

<sup>100</sup> Based on the 2020/21 Reassessment. ARC supplied Tentative Assessed Values for 2020/21 of \$253 million which equals \$253 billion in FMV at the stated Residential LOA of .10% (.0010).

<sup>101</sup> This does not include estimated Representative Firm Fees billed for appeals they filed for Class 2,3 or 4 properties.

<sup>102</sup> This reduction would be even higher had new construction values not been included in the Roll.

<sup>103</sup> Referred to by the Auditors as the total taxable Assessment Roll.

<sup>104</sup> Nassau County taxing authority levy's cross multiple district lines making it complicated to determine an overall tax rate for Nassau County. The Auditors randomly chose one property from each of the three Nassau County towns to estimate an overall combined school, general and library tax rate. This is not a representative sample.

<sup>105</sup> Ibid.

## Audit Observations

**The large increases in tax rates<sup>106</sup> were primarily a result of the constant reduction in the “frozen” tax base** from the high number of grievances filed and not necessarily due to budget increases. These **higher tax rates were paid by all** property owners, **including those who successfully grieved.**

Exhibit XVI below shows the estimated tax rate increase, the percentage changes of the Residential Assessed Values, the overall municipal levies and the estimated FMV’s, between 2012 and 2019.

### **Exhibit XVI**

<b>Comparison of Residential AV and FMV to Total Levy's and Estimated Residential Tax Rate Increases 2012 to 2019</b>			
<u>Comparison of:</u>	<u>2011/12</u>	<u>2018/19</u>	<u>Total % Change from 2011/12 (+/-)</u>
Total Residential Appeals Filed <sup>(1 &amp; 2)</sup>	107,547	184,781	<b>72%</b>
Total Residential AV Roll (per ARC)	466,861,324	361,128,468	<b>-23%</b>
Total Estimated Residential FMV <sup>(3)</sup>	\$ 194,525,551,667	\$ 240,752,312,000	<b>24%</b>
Total Nassau County Levy (000's)	\$ 985,060	\$ 1,048,988	<b>6%</b>
Total Levy's for All Taxing Authorities within Nassau County (000's)	\$ 5,997,473	\$ 6,725,004	<b>12%</b>
Estimated Residential Tax Rate (per 100 in AV) <sup>(4)</sup>	\$ 1,107	\$ 1,615	<b>46%</b>

<sup>(1)</sup> The 2011/12 Appeals were filed in 2010. The 2018/2019 Appeals were filed in 2017.  
<sup>(2)</sup> The Residential Appeals filed in 2019 for the 2020/21 year were 236,371, a 120% change from 107,547 in 2012.  
<sup>(3)</sup> Calculated using the stipulated .24% (.0024) LOA for 2012 and .15% (.0015) for 2019 to convert AV to FMV \$'s  
<sup>(4)</sup> Nassau County taxing authority levies cross multiple district lines making it complicated to determine an overall tax rate for Nassau County. The auditors randomly chose one property from each of the three Nassau County towns to estimate an overall combined school, general and library tax rate. This is not a representative sample.

Exhibit XVI above shows that annual residential grievances filed increased by 72%, from 2012 to 2019. While FMV’s rose a minimum 24% and the frozen DoA AV’s were reduced by 23%:

- **Nassau County’s levy only increased 6% over seven years;**
- **The total levies for all taxing authorities within the County (including schools and special districts) increased 12%;** and
- **The estimated Residential tax rate increased 46%.**

<sup>106</sup> Tax rates were further increased in 2020/21 as a result of a reduction in LOA from .25% (.0025) to .10% (.0010). This did not increase the taxes collected, it proportionately reduced the tax base which increased the rate. The reduction in LOA did capture excess FMV appreciation for some property’s which in turn partially reduced the tax rate for all.

## Audit Observations

### AV Reductions

Representative Firm fees are typically calculated based on **reductions in AV and related taxes**. As stated before, ARC was required to apply a separate (lower) LOA to properties that grieved and not to those properties that did not grieve. In most cases, the reduction received by the property that grieved is derived entirely from the systematic application of the separate Ratio.

This can easily be demonstrated when two identical properties<sup>107</sup> have the same FMV but have separate fractional LOA's applied, the result is two completely different taxable AV's. Exhibit XVII below demonstrates the calculations for one of two hypothetically identical properties assuming one appealed at ARC while the other did not appeal maintaining the DoA LOA.

### Exhibit XVII

Example of Assessed Value Reduction Two Identical Properties (One Appealed and One Did Not)					
Description	Tentative AV	FMV	DoA LOA <sup>(1)</sup>	ARC LOA <sup>(1)</sup>	Final AV
<b>Property 1 - Did Not Appeal</b>	1,500	\$ 600,000	0.0025		1,500
<b>Property 2 - Appealed at ARC</b>	1,500	\$ 600,000		0.0015	900
<b>AV Reduction for Appealed Property 2</b>					<u><u>600</u></u>
Example Fee Calculation					
<b>AV Reduction</b>		600			
<b>Estimated 2019 Tax Rate<sup>(2)</sup></b>		\$ 1,615	(Per 100 in Assessed Value)		
<b>Hypothetical Tax Savings</b>		\$ 9,690	(Tax Rate X Assessed Value/100)		
<b>Hypothetical Firm Fee</b>		\$ 4,845	(50% of Estimated Tax Savings)		
<sup>(1)</sup> Based on actual 2019 LOA for DoA of .0025 and ARC of .0015 <sup>(2)</sup> Nassau County taxing authority levy's cross multiple district lines making it complicated to determine an overall tax rate for Nassau County. The auditors randomly chose one property from each of the three Nassau County towns to estimate an overall combined school, general and library taxrate. This is not a representative sample.					

As seen above, both the DoA and ARC valued the FMV at \$600,000, yet the lower fractional LOA that ARC is required to apply on grievances resulted in an AV Reduction of 600 and \$9,690 less in taxes; generating \$4,845 in fees paid to Representative Firms.

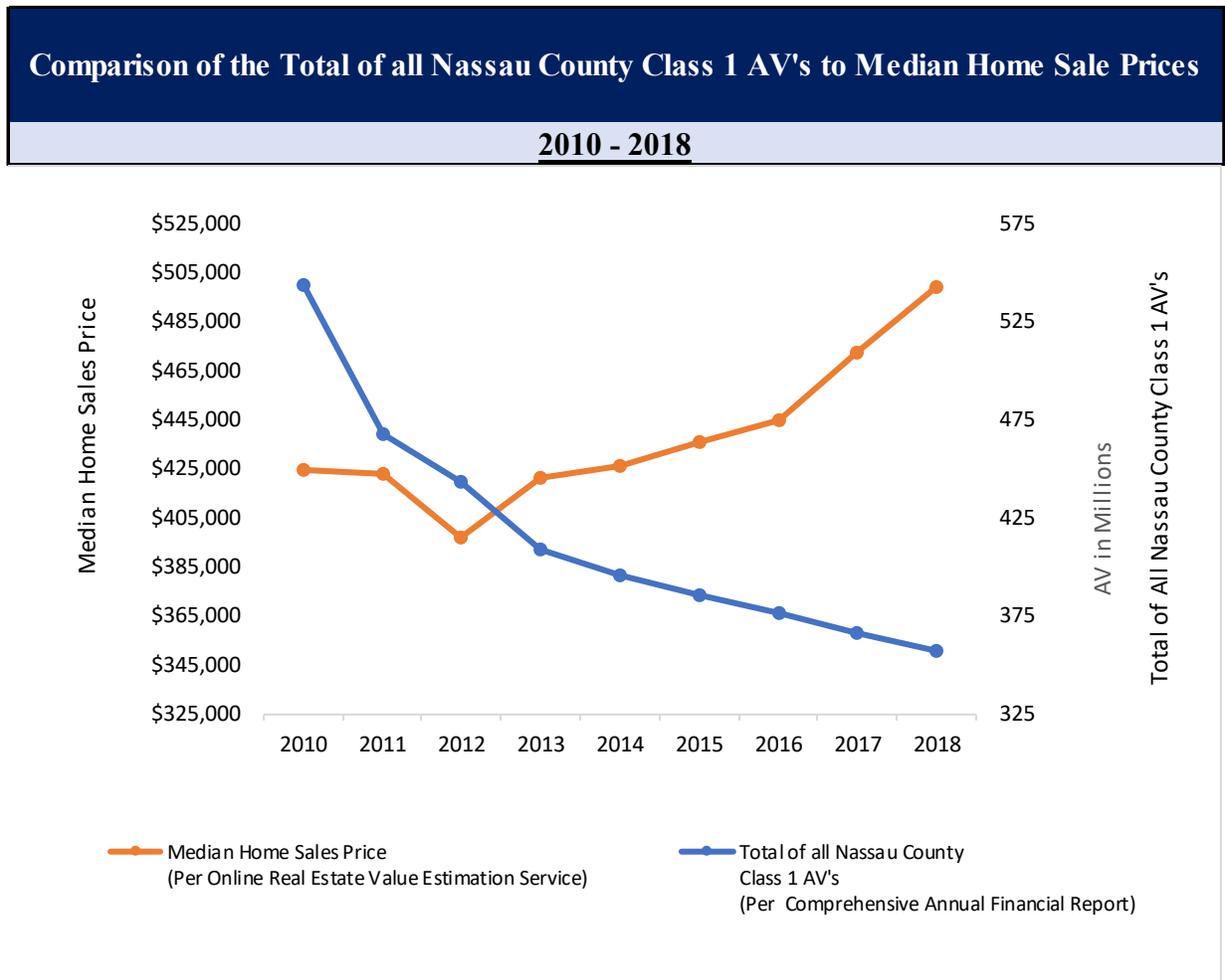
<sup>107</sup> Similar properties should be assessed similarly to ensure taxes are shared proportionally and fairly.

## Audit Observations

The grieving property would now have an assessed value of 900, while the identical property that did not grieve would remain at DoA's Tentative Assessed Value of 1500. If these were the only two properties on the Roll the \$9,690 tax savings would have shifted and become the other property owners tax bill increase even though both the DoA and ARC agreed both properties had the same FMV.

Exhibit XVIII below demonstrates that, between 2010 and 2018, while Nassau County AV's were being reduced through the grievance process, the actual home values<sup>108</sup> in Nassau County were generally increasing.

### Exhibit XVIII



The majority of reductions were based on the **application of the separate LOA** applied to a portion of the Roll, not the whole Roll, creating derived reductions in AV.

<sup>108</sup> Per Nassau /Suffolk House Price Index.

## Audit Observations

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By leveraging the Halpern Agreement<sup>109</sup> to negotiate a reduced LOA, Firms claimed that the LOA declared by the DoA was too high. After negotiating a separate lower LOA, the Representative Firms then challenge AV's (at ARC, and then possibly SCAR) ironically claiming that applying the lower LOA to DoA's Tentative AV caused an overvaluation of FMV.

ARC would address this by offering to reduce the higher FMV (typically higher than DoA's value). ARC is, however also required<sup>110</sup> to apply the lower stipulated LOA when settling values. The application of the lower LOA to the higher FMV creates a lower derived AV than stated by DoA on the Tentative Roll. **Hence, creating a derived AV reduction<sup>111</sup> below DoA's Tentative AV. The AV results in fees for the Firms.**

Exhibit XIX below demonstrates how while for one individual property ARC may determine the FMV to be even higher than DoA's Tentative FMV, the application of the separate lower LOA still may result in an AV reduction.

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<sup>109</sup> ARC is bound by the application of the Halpern Stipulation.

<sup>110</sup> The Halpern Decision set the guidelines and parameters for the Ratio Study used to determine the LOA when it is challenged. If challenged, once negotiated and settled, ARC is required to use the stipulated LOA for that year on all appeals within the particular class.

<sup>111</sup> Another way to say this is that FMV's were artificially increased requiring a reduction in LOA to reduce AV's to uniform values.

**Audit Observations**

**Exhibit XIX**

<b>Example of Assessed Value Reduction for One Property Even Though ARC Determined a Higher FMV than DoA</b>			
Description	FMV	LOA <sup>(1)</sup>	AV
<b>DoA Valuation</b>	\$ 600,000	0.0025	1,500
<b>ARC Valuation</b>	\$ 800,000	0.0015	1,200
<b>AV Reduction</b>			<u><u>300</u></u>
<b>Example Fee Calculation</b>			
<b>AV Reduction</b>	300		
<b>Estimated 2019 Tax Rate<sup>(2)</sup></b>	\$ 1,615	(Per 100 in Assessed Value)	
<b>Hypothetical Tax Savings</b>	\$ 4,845		
<b>Hypothetical Firm Fee</b>	\$ 2,423	(50% of Estimated Savings)	
<sup>(1)</sup> Based on actual 2019 LOA for DoA of .0025 and ARC of .0015. <sup>(2)</sup> Nassau County taxing authority levy's cross multiple district lines making it complicated to determine an overall tax rate for Nassau County. The auditors randomly chose one property from each of the three Nassau County towns to estimate an overall combined school, general and library tax rate. This is not a representative sample.			

In the example above, ARC determined the FMV to be \$200,000 higher than DoA's Tentative Value, yet the lower LOA ARC is required to apply to grievances resulted in a 300 AV Reduction, \$4,845 less in taxes and generated \$2,423 in Firm Fees. If these were the only two properties on the Roll the \$4,845 tax savings would have shifted and become the other property owners tax increase even though both the DoA and ARC agreed they had the same FMV.

The systematic application of a separate lower LOA automatically produces AV reductions that create the appearance that Firms negotiate a lower FMV. Ironically, by negotiating and lowering the LOA the Firms and ARC are actually **acknowledging that the FMV's used by DoA on the Tentative Roll are too low**. Paradoxically, ARC makes AV reduction offers because they apply a different LOA than DoA, **resulting in continuous revenue opportunities for Firms**.

The Comptroller's Office recognizes that individuals are entitled to utilize a Representative Firm for such challenges. Representative Firms can add value for an Applicant, assisting in a number of ways, such as the processing of the Application and by researching and submitting necessary information to support market value evaluations. Representative Law Firms contacted by the Comptroller's Office generally recognized that settlement on Ratio contributes to their fees.

## AUDIT OBSERVATION (6)

### **(6) Firms Base Fees on Perceived Tax Savings Not Actual Savings**

Auditors obtained a sample of an invoice for two Firms who represented a total of 30% of all appeals filed with ARC in 2019, noting that the invoices charged contingency fees. However, these fees are based upon what Auditors define as “**Perceived Tax Savings**” and not “**Actual Savings**”.

Basing fees on Perceived Tax Savings resulted in individual taxpayers saving less in taxes than reflected on invoices with the fees billed by Representative Firms. Additionally, from the perspective of the tax base as a whole, as more properties successfully appeal, the actual tax dollar savings of each AV reduction decreases because the tax rate for everyone on the Roll goes up, including those that appeal.

These concepts are described in more detail in the following sections below:

- Firm Fees Calculated Through Perceived Tax Savings.
- Tax Rates Increase as the Tax Base Decreases.
- Benefits of Appealing are Reduced as Appeal Volumes Increase.
- Perceived Tax Savings Summary
  - *Effects on the Whole Roll, and*
  - *Representative Firms benefit as Actual Savings Decrease.*

Auditors recognize that Law Firm Representatives are bound by Professional Rules of Conduct with regard to retainer agreements with clients, including a reasonableness standard for fees, and that such Firms generally provide for and advise clients of the specifics of their retainer engagement in such agreements as required of legal professionals.

### **Firm Fees Calculated Through Perceived Tax Savings**

Perceived Tax Savings refer to what some Firms **portray** as “*Actual Tax Savings*” or “*Taxes Saved*”. These are actually estimated tax savings that appear larger than net Actual Savings received and are used to calculate contingent fees for Firms on individual properties.

Regardless as to whether AV reductions are warranted or not, successful appeals that reduce AV do not necessarily result in a direct property tax savings.

**There is no direct correlation between a reduction in AV and actual tax savings since every property’s portion (or percentage) of the total final tax pie changes fluidly with each other’s individual property change in AV. As individual AV’s go down, the County’s total tentative tax base reduces and inversely increases the tax rates paid by every taxable property owner, even those that appeal.**

## Audit Observations

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**A property's true tax savings depends on whether or not the values of other properties within the taxing district went up or down, more or less, than the subject property.** Auditors obtained and reviewed two invoices for one Representative Firm and one invoice for a second Firm that billed property taxpayers to file their appeal. Auditors noted that the fees calculated were based on what Auditors will define as **Perceived Tax Savings which inflated the fees as compared to how Auditors would calculate the savings.**

Auditors would define a property owner's actual tax savings as equal to:

$$\text{Initial Tentative Taxes}^{112} \text{ minus the Actual Final Taxes}^{113}$$

The Auditor's noted that Representative Firms' calculated the estimated tax savings by multiplying the property's net AV reduction by the **new higher total Tax Rates** resulting from the applicable taxing district's final lower tax base. This **created a higher Perceived Tax Savings** which inflate the Firms contingent fees relative to how Auditors would calculate these fees.. Auditors obtained two letters, regarding 2019/20 and 2020/21, from a law firm acting in the capacity of a Representative Firm addressed to a 4<sup>th</sup> property stating that:

### **For the Tax Year 2019/20**

*"While you have been benefiting from the reduced assessment since October 2019, we cannot accurately determine our bill for services rendered until the County releases the General tax rates in January 2020. Therefore, we are not billing you now, but we anticipate sending you a bill with finalized information for services rendered in January."*

### **For the Tax Year 2020/21**

*"we cannot provide the exact dollar amount of the savings or our bill amount for services rendered, until the County publishes the relevant tax rates in November 2020 for the School and January 2021 for the General taxes respectively."*

These quotes indicate that this Firm is waiting until the new higher tax rates are calculated before they calculate their invoices.

The fee calculations that Auditors reviewed used the following formula:

$$\text{Tentative AV minus Final AV}^{114} \times \text{Final Higher Tax Rate} \times \text{Contracted Firm Fee Percentage}$$

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<sup>112</sup> Taxes that would have been owed without appeals (Initial Tax Rate x Initial Tentative AV).

<sup>113</sup> Taxes that are owed after all appeals are settled and the Roll is finalized (Final Tax Rate x Final AV).

<sup>114</sup> Reduced AV from the appeal.

## Audit Observations

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While this formula may be easy to calculate and is mentioned by NYS as a way for taxing units to estimate potential liability exposure<sup>115</sup>, Auditors determined that the use of this formula inflated Representative Firm fees relative to how Auditors would calculate these fees.

Auditors would determine tax savings by calculating an Initial Tentative Tax Rate<sup>116</sup> and applying it in the following formula:

$$\text{(Tentative AV x Initial Lower Tax Rate) - (Final AV x Final Higher Tax Rate)} \\ \text{x Contracted Firm Fee\%}$$

**This increase in the tax rate does not have a material effect in other large municipalities as the national average percentage of properties that appeal in large municipalities<sup>117</sup> is only 2.9%. To the contrary, the increase in the tax rate can be material in Nassau County as its appeal rate reached 61% in 2021, the equivalent to 21 times the national average of large municipalities.** If a large enough portion of the 61% of properties that appealed in Nassau County were successful it could have a significant impact on the final higher rate, especially in light of the fact that from 2016-2020 the appeal average reduction success rate of residential appeals was 77%.

By applying the final higher tax rate to the initial higher Tentative AV the Firms give the perception that initial taxes would have been much higher had the property not appealed, which after deducting the lower final taxes inflates estimated tax savings and ultimately results in higher Representative Firm fees (Exhibit XX).

Individual properties and the tax base (as a whole) incur increased tax rates that also result in higher fees for those that appeal based on Perceived Tax Savings.

Exhibit XX below illustrates how, on an individual property basis, using the higher Final Tax Rate to calculate Representative Firm Invoices creates a Perceived Tax Savings that does not necessarily benefit the Property Owner as much as it benefits the Representative Firm.

For Illustration purposes the property below is being reduced by a 6.25% carryforward rate and is assessed at 100% so both the Tentative FMV and Tentative AV are both \$500,000. In addition, we utilize the sample tax rates labeled Lower Tentative Tax Rate of \$20.00 and the Final higher Rate of \$20.92 calculated in the second exhibit below (Exhibit XXI).

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<sup>115</sup> NYS Publication 1288 states that *“To calculate the potential exposure of the taxing jurisdictions (or the potential refund to the petitioner), one first computes the difference between the actual assessment and the assessment claimed in the grievance complaint or petition. One then multiplies the various tax rates from the most current tax bills by the difference in assessment to arrive at the potential exposure of the taxing unit or refund to the petitioner.”*

<sup>116</sup> Initial Tentative Tax Rate would be determined by proportionately distributing the Tax Levies to the Total Tentative Roll, not the Final Roll, which will generate a lower tax rate.

<sup>117</sup> Journal of Property Tax Assessment & Administration, Vol 11, Issue 2: Based on results of large jurisdictions with over 100,000 parcels responding to a survey performed by Lawrence C. Walters, Ph.D. and the IAAO Research Committee, titled *“Staffing in Assessment Offices in the United States and Canada: Results of 2013 Survey”*

## Audit Observations

### Exhibit XX

PERCEIVED TAX SAVINGS and FEES Calculation (Per Hypothetical Invoice)			
Tentative AV(FMV)	\$ 500,000.00		
Final AV(FMV) <sup>(1)</sup>	\$ 468,750.00		
Reduction	\$ 31,250.00		
Higher Final Rate <sup>(4)</sup>	\$ 20.92		
Taxes	\$ 9,806.25		
Perceived Tax Savings <sup>(2)</sup>		\$ 654	
FIRM Fees Invoiced <sup>(3)</sup>			\$ 327
ACTUAL SAVINGS Calculation (Estimated by Auditors)			
	<u>Tentative Taxes Were</u>		
Tentative AV(FMV)	\$ 500,000.00		
Lower Tentative Rate <sup>(4)</sup>	\$ 20.00		
Tentative Tax was	\$ 10,000.00		
	<u>Final Taxes</u>		
Final AV(FMV)	\$ 468,750.00		
Higher Final Rate <sup>(5)</sup>	\$ 20.92		
Taxes	\$ 9,806.25		
Actual Tax Savings		\$ 194	
Actual Firm Fees Should be			\$ 97
Auditors Estimated EXCESS Savings and Fees			
<i>EXCESS PERCEIVED SAVINGS</i>		\$ 460	
<i>EXCESS FIRM FEES</i>			\$ 230
<sup>(1)</sup> After 6.25% AV Carryforward Reduction <sup>(2)</sup> AV Reduction of \$31,250 / 1,000 X Higher Tax Rate of \$20.92 <sup>(3)</sup> 50% of the Estimated Tax Savings (Perceived Tax Savings) <sup>(4)</sup> Per \$1,000 in AV, calculated based on the Final Lower Tax Base (see Exhibit XXI) <sup>(5)</sup> Per \$1,000 in AV, calculated based on the higher Tentative Value Tax Base (see Exhibit XXI)			

In Exhibit XX above the \$500,000 home value decreased by a 6.25%<sup>118</sup> carryforward reduction to \$468,750, however:

- The property owner incurred \$327 in Representative Firm Fees based on \$654 of Perceived Tax Savings;
- The Representative Firm Fee of \$327 actually exceeded the property's true Tax Savings of \$194;
- The Fee based on Actual Savings would have been \$97 but instead resulted in fees of \$230, and

<sup>118</sup> This was the actual Carryforward Reduction Rate applied by ARC in 2019.

## Audit Observations

- The Tax Rate increased by 5% from \$20.00 to \$20.92.

The Actual Savings (estimated by Auditors) provides a more accurate and conservative approach to estimating tax savings. It applies the Initial Tax Rates to the Initial Tentative Roll to determine what the Initial Taxes would have been and then subtracts the final actual taxes (calculated by multiplying the final AV by the final Tax Rate). This accurately reflects Actual Savings and translates to lower and more accurate fees.

### Tax Rates Increase as the Tax Base Decreases

Audit analysis also noted that as the volume of successful appeals increase the tax base will decrease and the tax rate will increase. The resulting increase in tax rate progressively reduces the Actual Savings while increasing Perceived Tax Savings. Exhibit XXI below demonstrates this concept:

### Exhibit XXI

Inverse Relationship Between Tax Base and Tax Rate									
To illustrate the inverse relationship between tax base and tax rate:									
Below are 3 sample assessment roll scenarios with 10 identical properties (making up the entire roll) each with a DoA FMV of \$500,000 and a LOA of .001 which equals a Tentative AV of 500.									
<ul style="list-style-type: none"> <li>Scenario A: None of the properties on the roll appeal</li> <li>Scenario B: 30% of the properties on the roll successfully appeal</li> <li>Scenario C: 70% of the properties on the roll successfully appeal</li> </ul>									
For illustration purposes, Audit used Nassau County's actual 2019 LOA Carry Forward Rate of 6.25% for all successful appeal reductions below.									
	<u>Scenario A</u>			<u>Scenario B</u>			<u>Scenario C</u>		
	<u>No Properties Appeal</u>			<u>30% Successfully Appeal</u>			<u>70% Successfully Appeal</u>		
Property	Tentative AV	% of Pie	Taxes	Reduced AV	% of Pie	Taxes	Reduced AV	% of Pie	Taxes
1	500	10.00%	\$ 10,000	469	9.55%	\$ 9,554	469	9.80%	\$ 9,804
2	500	10.00%	\$ 10,000	469	9.55%	\$ 9,554	469	9.80%	\$ 9,804
3	500	10.00%	\$ 10,000	469	9.55%	\$ 9,554	469	9.80%	\$ 9,804
4	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	469	9.80%	\$ 9,804
5	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	469	9.80%	\$ 9,804
6	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	469	9.80%	\$ 9,804
7	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	469	9.80%	\$ 9,804
8	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	500	10.46%	\$ 10,458
9	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	500	10.46%	\$ 10,458
10	500	10.00%	\$ 10,000	500	10.19%	\$ 10,191	500	10.46%	\$ 10,458
LEVY			\$ 100,000			\$ 100,000			\$ 100,000
TAX BASE	5000			4906			4781		
TAX RATE			\$ 20.00			\$ 20.38			\$ 20.92

## Audit Observations

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The Scenario's A, B & C above demonstrate that as more properties appeal and their individual Assessed Values decrease the:

- Total Tax Levy remains the same;
- Total Tax Base decreases;
- Tax Rate progressively increases for everyone, including those who successfully Appealed; and
- Amount of Taxes that shift from those that Appeal to those that do not Appeal increases.

The effects of not appealing combined with the tax rate increase can be seen in property #10 above. Property #10's AV was **not appealed and remained at an AV of 500** in all 3 scenarios. However, as more properties successfully appeal, property #10's share of taxes increased by \$191 in Scenario B and increased by \$458 in Scenario C, **both as a result of not appealing and the increased tax rate.**

The effects of higher volumes of successful appeals can be seen in Property #3. The taxes for Property #3 reduced from \$10,000, in Scenario A, to \$9554. However, because more properties successfully appealed in Scenario C the **same reduced AV of 469** now **only** reduces taxes from \$10,000, in Scenario A, to \$9,804, in Scenario C. Property #3's **savings was only \$250 in Scenario C as the volume of successful appeals rose to 70% from 30% in Scenario B.**

**On a case-by-case basis, Representative Firms may contend that the final Tax Rates should be used to calculate billable Estimated Tax Savings. However, with higher appeal volumes, when looking at the Roll as a whole, the actual Tax Rates would not have increased at such a high rate and the billable Estimated Tax Savings that resulted in Firm Fees would not be as high.**

In Exhibit XXII below the Auditors demonstrate the progression of Tax Rates, Taxes and Firm Fees as the volume of successful appeals increases.

In Scenario A, no properties appeal leaving the AV Tax Base at 5,000 and a Tax Rate of \$20. In Scenario B, 30% appeal reducing the AV Tax Base to 4,906 and increasing the Tax Rate of \$20.38. In Scenario C, 70% appeal reducing the AV Tax Base to 4,781 and increasing the Tax Rate of \$20.92.

## Audit Observations

### Exhibit XXII

TAXES AND FEES INCREASE AS APPEAL VOLUMES INCREASE														
Scenarios A, B and C, from the Illustration above, are expanded below to include property tax changes and Representative Firm fees that result as the volume of successful appeals increase:														
	<u>Scenario A</u>		<u>Scenario B</u>				<u>Scenario C</u>							
	<u>No Properties Appeal</u>		<u>30% Successfully Appeal</u>				<u>70% Successfully Appeal</u>							
<u>Property</u>	<u>Tentative</u>		<u>Reduced</u>	<u>AV</u>	<u>Taxes</u>	<u>50%</u>	<u>Fee</u>	<u>Total</u>	<u>Reduced</u>	<u>AV</u>	<u>Taxes</u>	<u>50%</u>	<u>Fee</u>	<u>Total</u>
	<u>AV</u>	<u>Taxes</u>						<u>Paid</u>						<u>Paid</u>
1	500	\$ 10,000	469		\$ 9,554	\$ 318		\$ 9,872	469		\$ 9,804	\$ 327		\$ 10,131
2	500	\$ 10,000	469		\$ 9,554	\$ 318		\$ 9,872	469		\$ 9,804	\$ 327		\$ 10,131
3	500	\$ 10,000	469		\$ 9,554	\$ 318		\$ 9,872	469		\$ 9,804	\$ 327		\$ 10,131
4	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	469		\$ 9,804	\$ 327		\$ 10,131
5	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	469		\$ 9,804	\$ 327		\$ 10,131
6	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	469		\$ 9,804	\$ 327		\$ 10,131
7	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	469		\$ 9,804	\$ 327		\$ 10,131
8	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	500		\$ 10,458	\$ -		\$ 10,458
9	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	500		\$ 10,458	\$ -		\$ 10,458
10	500	\$ 10,000	500		\$ 10,191	\$ -		\$ 10,191	500		\$ 10,458	\$ -		\$ 10,458
LEVY*		\$ 100,000			\$ 100,000						\$ 100,000			
TAX BASE	5000		4906						4781					
TAX RATE		\$ 20.00			\$ 20.38						\$ 20.92			
LEVY & FEE*		\$ 100,000						\$ 100,954						\$ 102,291

\*Total amounts rounded for illustration purposes

As demonstrated above, as more properties successfully appeal, more taxes shift to those that do not appeal, while those that do appeal do not necessarily receive as much of a benefit from appealing as expected. In Scenario A the total Levy and Fees were only \$100,000 without appeals, while after appealing in Scenario C the total Levy and Fees increased for everyone to \$102,291. The greater the percentage of properties that successfully appeal the more the:

- Tax Base decreases and the corresponding Tax Rate Increases; and
- Individual property tax reductions will decrease Representative Firms can bill, per appeal, due to Tax Rate increases.

### **Benefits of Appealing are Reduced as Appeal Volumes Increase**

As demonstrated in Exhibit XXII above, as successful appeal volumes increase the actual benefit of appealing decreases, while Firms continue to bill higher amounts. In Properties 1,2 & 3, for **both** Scenario B & C, all three properties had the **same** successful AV **appeal reductions** from 500 to 469 in AV. However, the benefits of those reductions were reduced in Scenario C as more properties appealed and received reductions.

## Audit Observations

### Comparing Scenario A to Scenario B:

- Properties 1,2 & 3 each received a tax reduction of \$446 (\$10,000 - \$9,554), they now paid contingency fees to Representative Firms of \$318 equating to 71% of the tax savings.
- Properties 1,2 & 3 only **saved** a net of \$128 each (\$10,000-\$9,872) after fees, while the other 7 that did not appeal paid \$191 each **more** in taxes.
- **The Firms billed \$954 (\$318 x 3) to shift taxes of \$1337 (\$191 x 7) to other properties and only saved a total of \$384<sup>119</sup> for properties 1, 2 & 3.**
- **As a whole, with only 30% grieving, the tax base paid 1% <sup>120</sup>more in taxes and fees than had no one grieved.**

### Comparing Scenario B to Scenario C (40% More Properties Appealed):

As appeal volumes increase, individual property tax reductions will decrease. As seen in Property #1, taxes went from \$9,554 in Scenario B to \$9,804 in Scenario C even though the AV had been reduced to 469 in both Scenarios.

Although properties 1, 2 and 3 had the same AV in both Scenarios B & C, as appeal volumes increase:

- Properties 1,2 & 3 paid \$9,804, or \$250 **more** in taxes in Scenario C than in B.
- Properties 1,2 & 3 paid \$327, or about 3% **more** in fees in Scenario C than in B.
- Properties 8, 9 & 10, the remaining 30% of properties that did not appeal paid \$267 **more** in taxes.

### Comparing Scenario A to Scenario C:

In Scenario C, the increased appeal volumes and the Representative Firms billing strategy caused all 10 properties to pay more in taxes and fees than had no properties grieved in Scenario A. In Scenario C: Firms billed \$2,289<sup>121</sup> to save taxpayers that appealed nothing after fees and rate increases, while taxes of \$1,374<sup>122</sup> were shifted to the others.

#### **The only ones to benefit from the appeals were the Firms:**

- Even though properties 1-7 appealed receiving a 6.25% reduction in AV to 469 and a \$196<sup>123</sup> tax reduction, they **actually lost \$131 each** after paying \$327 in fees based on Perceived Tax Savings.
- The remaining 3 properties (8,9 & 10) that did not appeal each paid \$458<sup>124</sup> (4.6%) more in taxes.

<sup>119</sup> Tentative Taxes of \$10,000 minus Final Taxes & Fees of \$9,872 x 3

<sup>120</sup> Final Taxes & Fees of \$100,954 - \$100,000 Original Levy and no fees assuming no one appealed

<sup>121</sup> \$2,289 = \$327 in fees x 7 Properties

<sup>122</sup> \$1,374 = \$458 in increased taxes x 3 Properties

<sup>123</sup> \$10,000 - \$9,804

<sup>124</sup> \$10,458 - \$10,000

## Audit Observations

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- The Firms billed \$2,289<sup>125</sup>, earning **2.3% of the total Levy and causing everyone to pay more in taxes than had no one appealed.**

### **Perceived Tax Savings Summary**

As demonstrated, in Exhibit XX above, the Firms calculate their fees by taking the difference of DoA's Tentative Assessed Value (of 500) and ARC's Final Determined Assessed Value (of 469) and multiplying the difference (of 31) by the new higher Tax Rate (Scenario C - \$20.92) instead of the original lower Tax Rate (Scenario A - \$20), then multiplying this Perceived Tax Savings (\$20.92 x 31) then by the contracted contingency fee of up to 50%. This inflates fees and negatively impacts both the individual customers that appeal and the tax base as a whole.

### **Effects on the Whole Roll**

**As more properties successfully appeal, the actual tax dollar savings of each AV reduction decreases because the final tax rate paid by everyone on the Roll continues to increase, including those that appeal.**

*For those that do not Appeal:*

If a lower LOA is negotiated, it is applied to all properties that appeal within a class, whether they filed as a Pro Se or were represented by a Firm. Properties that do not appeal do not receive the benefit of a lower LOA and pay higher taxes both because their AV did not go down in line with others and because the tax rate went up. (See Property #10 in Exhibit XXII above)

*For those that do Appeal:*

As more properties on the Roll successfully appeal, even those that appeal are negatively impacted. AV's may be going down, but the tax rate continues to rise for all taxpayers, even those that appealed. The Actual Savings are also reduced but not the Perceived Tax Savings that the inflated Representative Firm fees are based on. (See Property #3 in Exhibit XXII above).

### **Representative Firms Benefited as Actual Savings Decrease**

Firms collect greater fees as more properties successfully appeal but the Actual Savings per property decreases.

Ironically, as more properties successfully appeal, the resulting higher tax rates increase both the appealing property's taxes and the contingent fees charged by Firms.

The higher the tax rate the higher the Perceived Tax Savings and the higher the resulting Firm Fee. As more properties successfully appeal, more taxes shift to those that do not appeal while those that do appeal do not receive as much of a benefit from appealing as expected. As a greater percentage of properties appeal the more the (See Exhibit XXII):

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<sup>125</sup> \$327 x 7

## Audit Observations

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- tax rate increases;
- individual reduction in property tax decrease; and
- corresponding Grievance Representative fees increase.

### AUDIT OBSERVATION (7)

#### **(7) Of 179 Active Firms, 9 Firms Negotiated the LOA and Represented 54% of the Class 1 Appeals Filed in 2020 Resulting in Tax Rate Increases for All**

Reductions from grievances shift the tax burden through increased tax rates for the entire Assessment Roll, including those that grieve, while Firms collect millions of dollars in fees. Auditor analysis demonstrates that as grievance volumes increase, taxpayers hiring Firms to grieve save less while Firms earn more.

The top 20 Firms by volume (of 179 active Firms) represented 77% of all Class 1 grievances in 2020. Nine of these top 20 Firms were parties to the Halpern Agreement that negotiates the separate LOA, they represented 54% of all Class 1 grievances filed in 2020.

Individually, property-by-property, it may appear grieving is beneficial, but excessive successful grievances raise tax rates, destabilize values and result in less savings for those that successfully appeal.

As seen in Exhibit XXIII below, from 2012 to 2019, grievances filed by **the Representative Firms shifted billions of dollars in taxes to all**. Auditor analysis estimates that, the grievances submitted by the Representative Firms:

- Shifted over \$2 billion<sup>126</sup> in taxes **to all taxpayers** including to their paying clients that successfully appealed;
- Resulted in \$917.5 million<sup>127</sup> in contingent fees (grievances for both Residential and Commercial DoA values); and
- Actually saved clients only a portion of these values, \$569.8 million after paying fees and having taxes shifted back to them.

Exhibit XXIII below shows that Representative Firms conservatively billed an estimated \$917.5 million while saving residential taxpayers, as a whole, less than an estimated \$569.8 million.

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<sup>126</sup> For Class 1,2 and 4

<sup>127</sup> Ibid

## Audit Observations

### Exhibit XXIII

Analysis of Estimated Firm Fees, Actual Savings and Tax Shifts All Property Classes (Excluding Class 3) 2012 to 2019			
This table shows data from two specific years, 2012 & 2019, and the totals of all the years 2012 through 2019 combined.			
Description	2012	2019	All Years Combined, 2012 Through 2019*
Perceived Tax Savings from Firm Related Appeals (1)	\$ 153,523,663	\$ 245,335,130	\$ 2,038,943,704
Less: Inflated Savings (2)	\$ 4,200,423	\$ 10,096,189	\$ 91,331,500
Estimated Tax Savings from Firm related Appeals before Fees and Tax Shift Effects (3)	\$ 149,323,240	\$ 235,238,941	\$ 1,947,612,204
Less: Estimated Firm Fees Paid (Based on Higher Tax Rates and Perceived Savings) (4)	\$ 69,085,648	\$ 110,400,809	\$ 917,524,667
Estimated Actual Savings from Firm Appeals before Tax Shift Effects (3)	\$ 80,237,592	\$ 124,838,132	\$ 1,030,087,537
Less: Estimated Tax Rate Increase Shifted Back to Those Using Firms to Appeal (5)	\$ 24,969,073	\$ 83,131,160	\$ 460,300,860
Estimated Net Actual Savings by Properties Using Firms to Appeal	\$ 55,268,519	\$ 41,706,972	\$ 569,786,677
Total Levies (6)	\$ 5,997,473,000	\$ 6,725,004,000	
Nassau County Property Tax Levy (6)	\$ 985,060,000	\$ 1,048,988,000	
Percentage of Firm Fee to Total Levies	1%	2%	
Percentage of Firm Fee to Nassau County Property Tax Levy	7%	11%	
Potential Annual County Guarantee Refund Liability from Firm Related Appeals	\$ 149,323,240	\$ 235,238,941	
Total Estimated FMV of the Tentative Roll (Excluding Class 3) (7)	\$ 263,520,850,000	\$ 212,872,081,700	
Total Estimated FMV of the Final Roll (Excluding Class 3) (8)	\$ 256,310,892,700	\$ 204,111,832,700	
Estimated Total FMV Reductions from All Appeals (9)	\$ 7,209,957,300	\$ 8,760,249,000	\$ 80,345,231,600
Estimated Total FMV Reductions resulting from Firm Related Appeals (10)	\$ 6,561,061,143	\$ 7,446,211,650	\$ 72,187,005,718
Estimated Initial Tax Rate (per \$1,000 FMV) (11),(12)	\$ 22.76	\$ 31.59	
Estimated Final Tax Rate (per \$1,000 FMV) (11),(13)	\$ 23.40	\$ 32.95	
Estimated Rate increase	3%	4%	
(1) Calculated using the estimated total FMV reduction (difference between the Tentative and Final Roll for firm related Appeals) multiplied by the estimated higher Final Tax Rate.			
(2) Estimated Total FMV Reduction from Firm Related Appeals multiplied by the difference between the estimated Tentative Tax Rate and Final Tax Rate.			
(3) Actual Tax Shift Estimate uses the Original Lower Tax Rate assuming no properties appealed.			
(4) Estimated by multiplying the higher Perceived Tax Savings by the estimated final higher Tax Rate for Firm related appeals. Includes Estimated Fees for Appeals of Class 1,2 & 4 Properties. Class 3 is not included as those Appeals are negotiated with New York State.			
(5) Increase In Estimated Tax Rate times the Final Reduced FMV of All Properties that Appealed.			
(6) Per the Applicable Comprehensive Annual Financial Report.			
(7) Class 1,2 & 4 based on Tentative AV's provided by ARC converted to FMV using the applicable LOA declared by DOA on the Tentative Rolls and the Actual FMV is Higher Based on ARC's Lower LOA.			
(8) Class 1,2 & 4 based on Final AV's provided by ARC converted to FMV using the applicable LOA declared by DOA on the Tentative Rolls and the Actual FMV is Higher Based on ARC's Lower LOA.			
(9) Assumes that the majority of reductions in AV (converted to FMV via applicable LOA by class and year) were the result of Appeals as all years included were frozen rolls.			
(10) Estimated Total FMV Reductions from Appeals multiplied by the estimated % represented by firms.			
(11) Due to the complexity of overlapping taxing jurisdictions and Nassau County having the a four 4-class property tax system, it is not possible to determine a countywide class-specific rate. Based on a combination of levies set by the county, city, town, village, school district, and/or special districts, New York State annually estimates the overall full value tax rate. The average from 2012-2018 was \$29.57 per 1,000 in FMV.			
(12) The Estimated Initial Tax Rate equals the Total Levies / (Total Estimated FMV of the Tentative Roll / 1,000).			
(13) The Estimated Initial Tax Rate equals the Total Levies / (Total Estimated FMV of the Final Roll / 1,000).			
<i>*Note: The "Total 2012 Through 2019" Column includes the data for the years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 combined.</i>			

In 2019, Nassau County incurred expenditures of \$17.6 million for DoA to determine property values and \$5.8 million for ARC<sup>128</sup> to reduce Assessed Values while Firms were rewarded with a

<sup>128</sup> Total Salaries, Fringe Benefits, General Expenses & Contractual Expenses for ARC & DoA, respectively \$5.8 and \$17.6 million. This does not include \$29.8 million in other Suits and Damages incurred by DoA

## Audit Observations

conservatively estimated \$110.4 million to file grievances that shifted but did not **reduce taxes, as a whole.**

The estimates in Exhibit XXIII above demonstrate that the:

- Estimated fees increased from \$69 Million in 2012 to \$110 Million in 2019 while estimated net actual savings decreased from \$55 Million to \$42 Million from 2012 to 2019, respectively;
- Ratio of Firm Fees to Actual Taxpayer Net Savings for 2019 is 265%<sup>129</sup>, and 161%<sup>130</sup> combining 2012 through 2019;
- Potential County Guarantee<sup>131</sup> Liability of \$235.2 million represented 22%<sup>132</sup> of total Nassau County Property Taxes Levied in 2019;
- Firm fees equaled 11%<sup>133</sup> of Nassau County's 2019 Levy;
- Firms reduced the estimated FMV of the 2019 Assessment Roll by \$7.4 billion; and
- **Appeals resulted in an approximate 4%<sup>134</sup> tax increase incurred by all taxpayers.**

Throughout the Freeze, taxing authorities were collecting their entire budgeted Levy Revenue, while Taxpayers that grieved paid an estimated \$917.5 million in Firm fees and all taxpayers paid higher tax rates on their final AV's.

There are no limits to how often a property owner can file a grievance and no downsides to filing which drives increased grievances along with the following:

- **Unlike in other states, such as New Jersey, ARC does not charge processing fees to cover the cost of processing appeals;**
- ARC is restricted from raising Assessed Values. ARC can only reduce Assessed Values or leave them the same, even when ARC determines FMV's should be higher; and
- The use of Representative Firms only results in additional costs if an appeal is successful.

As a result, there is no risk or downside for Firms to file massive volumes of appeals.

Ironically, through the application of a separate lower **LOA** ("*uniform percentage of current value*") equitable treatment is lost on those that do not grieve. Many do not know how or do not have the time to grieve and as a result retain a Representative Firms to file while others just don't file.

Per guidance from the NYS Uniform Assessment Standards<sup>135</sup>:

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<sup>129</sup> Estimated by dividing \$110,400,809 by \$41,706,972 for 2019.

<sup>130</sup> Estimated by dividing \$917,524,667 by \$569,786,677 from 2012 to 2019.

<sup>131</sup> Nassau County Administrative Code § 6-26.0 (b) (3) (c) (L 1939, chs. 272, 701-709, as amended), known as the "County Guarantee," requires the County of Nassau, the Assessor of the County of Nassau (hereinafter the Assessor), and the Nassau County Board of Assessors (hereinafter the BOA), to refund certain special ad valorem levies judicially determined to be invalidly imposed upon the plaintiff's real property.

<sup>132</sup> Estimated by dividing \$235,238,941 by \$1,048,988,000.

<sup>133</sup> Estimated by dividing \$110,400,809 by \$1,048,988,000.

<sup>134</sup> Estimated by dividing (\$32.95 - \$31.59) by \$31.59.

<sup>135</sup> NYS Uniform Assessment Standards 1.1 Standard of Assessment: All real property is assessed at its current full value.

## Audit Observations

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*“Real Property Tax Law (RPTL) 305(2) only provides that all parcels within an assessing unit are assessed at a **uniform percentage of current value** (Level of Assessment, or LOA). When the Level of Assessment is not at 100% of full value, the administration of the property tax becomes less transparent. In particular, an LOA of other than 100% of full value is much more difficult for property taxpayers to determine whether they are being assessed **equitably**.”*

Per a NYS ORPTS Publication<sup>136</sup>, the “Fair Assessments - a guide for property owners”:

*“The fairness, or equity, of the real property tax depends on whether similar properties are treated alike.”*

The right to grieve is important to all, as such Pro Se filers should have minimal or no cost to file a grievance on their own, but Firms profiting from the grievance process should incur a portion of the County’s expense associated with processing those grievances.

**Had ARC charged a \$100 fee for residential grievances filed by Representative Firms, for the 2020/21 tax year, ARC could have retained \$19.9 million<sup>137</sup> in revenue that could have been applied towards tax refunds.**

As seen in Exhibit XXIII, in 2019 alone, appeals represented by Grievance Firms removed approximately \$8.8 billion in FMV from the tax base resulting in a 4% tax rate increase. **That is the equivalent of removing almost 18,000 homes worth \$500,000 each from the taxable Roll in just one year.**

For the 2020/21 property tax year, over 261,000 grievances were filed for approximately 424,000 parcels, the equivalent of appealing 61.5% of property values; even though in general, these reassessed values were more accurate than they have been in a decade.

The majority of the reductions received, during the freeze, were “paper savings” resulting from the mere application of a separate ARC LOA, broadly applied to only the portion of the Roll that grieved, not the entire Roll.

**If 100% of properties successfully grieved, only the Firms would benefit. Taxpayers using Firms would pay fees of 33% to 50% of the determined individual tax savings but would actually not create taxpayer savings.**

Exhibit XXIV below **demonstrates that if 100% of the properties grieved (using the 2019 Carryforward of 6.25%), it would result in the Firms earning fees of over 3% of the total levy paid for by the taxpayers who would save nothing in taxes.**

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<sup>136</sup> NYS Office of Real Property Tax Services: Fair Assessments – A guide for property owners (Publication 1112 8/21).

<sup>137</sup> A combined 199,747 Residential Class 1 and Class 2 appeals were filed by firms in 2020/21

## Audit Observations

### Exhibit XXIV

Hypothetical 100% of Roll Receives 6.25% Carryforward Reduction									
TAX ROLL IF:	No Properties Appeal			100% Successfully Appeal			Results		
Property	Tentative AV	% of Tax Pie	Taxes	NEW AV	% of Tax Pie	Taxes	Actual Savings <sup>(1)</sup>	Perceived Savings <sup>(2)</sup>	Rep Firm Fees <sup>(3)</sup>
1	400	8.0%	\$ 8,000	375	8.0%	\$ 8,000	\$ -	\$ 533	\$ 267
2	400	8.0%	\$ 8,000	375	8.0%	\$ 8,000	\$ -	\$ 533	\$ 267
3	400	8.0%	\$ 8,000	375	8.0%	\$ 8,000	\$ -	\$ 533	\$ 267
4	500	10.0%	\$ 10,000	469	10.0%	\$ 10,000	\$ -	\$ 667	\$ 333
5	500	10.0%	\$ 10,000	469	10.0%	\$ 10,000	\$ -	\$ 667	\$ 333
6	500	10.0%	\$ 10,000	469	10.0%	\$ 10,000	\$ -	\$ 667	\$ 333
7	500	10.0%	\$ 10,000	469	10.0%	\$ 10,000	\$ -	\$ 667	\$ 333
8	600	12.0%	\$ 12,000	563	12.0%	\$ 12,000	\$ -	\$ 800	\$ 400
9	600	12.0%	\$ 12,000	563	12.0%	\$ 12,000	\$ -	\$ 800	\$ 400
10	600	12.0%	\$ 12,000	563	12.0%	\$ 12,000	\$ -	\$ 800	\$ 400
Total	5,000		\$100,000	4,688		\$ 100,000	\$ -	\$ 6,667	\$ 3,333
RESULTS IF:	No Properties Appeal			100% Successfully Appeal			% Change		
LEVY			\$100,000			\$ 100,000			0%
AV TAX BASE			5,000			4,688			-6.25%
TAX RATE <sup>(4)</sup>			\$ 20.00			\$ 21.33			6.67%

<sup>(1)</sup> In this example, there are no actual savings because all properties were equally reduced, because they all benefited from the same lower LOA. As a result, their percentage of the tax pie, did not change and their tax payment was not reduced.

<sup>(2)</sup> In this example, even though there was no actual savings there are Perceived Savings that could be billed to the taxpayer because firm invoices are calculated based on the difference between the (New higher Tax Rate times the Higher Initial Tentative AV) minus the (New higher Tax Rate times the lower Final AV). This formula results in a higher savings used to calculate contingent fees, instead of comparing what actual taxes would have been with no appeals versus the final tax bill.

<sup>(3)</sup> Estimated using a 50% Contingency Fee

<sup>(4)</sup> In this example, the Tax Rate is the amount billed per one hundred dollars of assessed value expressed in dollars and cents. Each local governing body - county, town, school and special district - determines its own budget. The amount to be raised by taxes, divided by the assessed value from the jurisdiction would equal the tax rate per \$100 of assessed valuation.

As seen above, before appeals the tax Levy was \$100,000, the AV Tax Base was 5,000 and the Tax Rate was \$20. After appeals the tax Levy paid by all taxpayers was still \$100,000, but the:

- Taxpayers did not save;
- Taxpayers paid Representative Firms fees representing 3.3% of the total Levy;
- AV Tax Base went down (6.25%) to 4,688; and
- Tax Rate went up 6.67% to \$21.33, paid by all Taxpayers.

**This extreme example illustrates how the more properties that are encouraged to grieve, the more the benefit of successful grievances decreases for the entire tax base, as a whole. By allowing unrestricted grievances in mass, Nassau County and its taxpayers are rewarding the grievance industry, not the taxpayer base. In this example, these 10 properties thought they saved \$6,667, but instead they paid Representative Firms \$3,333 in fees and all paid the same in taxes they would have had no one grieved.**

## Audit Observations

This has been a longstanding problem for many years, in 2004, Assessment Officials were quoted as saying they:

*“anticipated the high volume of protests, mainly because it costs nothing to file a grievance and because a **cottage industry** of companies and lawyers specializing in filing property-tax challenges has existed on Long Island for years. As each year's appeal period comes around, it is not unusual for homeowners to receive solicitation letters from as many as five different tax-challenge services, offering to represent them before the Assessment Review Commission.”*

The cottage industry and elected officials continue to bombard the public with ads casting doubt on Assessed Values and encouraging everyone to grieve.

**This continual cycle did not change even after the 2020/21 reassessment. One year after the first reassessment in a decade, again due to the Halpern Stipulation and Order ARC was required to apply a LOA of .095% (.00095) instead of DoA's .10% (.0010) for all grieving properties.** That is the equivalent of an **automatic 5% reduction** in assessed value for only those that grieved, of which **Firms will earn upwards of 50%** of estimated taxes saved. The more properties that are encouraged to grieve the more the Firms make, the more the tax base decreases, the more the tax rate will increase and the less petitioners save while the Tax burden is shifted.

**If all property owners<sup>138</sup> filed a grievance for 2021/22<sup>139</sup> under the current paradigm, all grievances would receive at least a 5% reduction in assessed value. Assuming there are no other value reductions other than the change in LOA, this would allow them to maintain their same percentage of the tax pie burden but without a corresponding tax savings.**

**Although this 5% reduction in AV would not create a tax savings, the Firms would earn upwards of \$168,125,000<sup>140</sup> based on the 2019 Total Tax Levy just for filing.**

In the two years immediately following the 2020/21 Reassessment, ARC stipulated to apply lower Ratios than set by DoA:

- ARC agreed to reduce the 2021/22 LOA to .095% (.00095) if accepted by the grievant at ARC and to .097% (.00097) if pursued further through SCAR; and
- ARC agreed to reduce the 2022/23 LOA to .009% (.00090) if accepted by the grievant at ARC and to .092% (.00092) if pursued further through SCAR.

In addition, on January 21, 2021, the current administration announced a 60-day extension to accept appeals for the 2022/23 tax year.

<sup>138</sup> Including Commercial properties that had a separate stipulated LOA of .94% (.0094), below DoA's 1% (.01) LOA

<sup>139</sup> If they do not appeal, then the tax burden is shifted to them as a result of separate LOA's.

<sup>140</sup> Using a 50% Firm fee on a 5% reduction to the 2019 Total Levy of \$6.7 billion (per the 2020 County Comprehensive Annual Financial Report).

**AUDIT OBSERVATION (8)**

**(8) The County Guarantee Resulted in Excessive Tax Refunds and Related Long-Term Debt and Continues to Contribute to Tax Shifts and Destabilization of Assessed Values Exposing the County to Further Potential Liability**

Nassau County is the only County in NYS with a “County Guarantee”<sup>141</sup>. The guarantee, resulted in decades of costly annual refunds issued by the County on behalf of the over 250 other taxing districts located within the County. The guarantee allows these districts to continue to receive and retain their entire Levy while any refunds, as a result of County overassessment, are paid at the expense of County property owners.

The County is liable for excess taxes paid by property owners to other taxing jurisdictions within the County (schools, sanitation, water, etc.) resulting from overassessment that is not rectified before tax bills are generated. To mitigate this risk the County needs to settle assessment grievances timely or refund any excess taxes paid by property owners to these jurisdictions, at the expense of County property owners.

If refunds were to result, they could be greater than the actual taxes collected by the County for its own purposes, contributing to the County’s decision to borrow and incur debt to pay these refunds.

As noted in the County’s 2018 Comprehensive Annual Financial Report, “*This has resulted in the County having to refund more in property taxes than it collected*”. Per the prior County Executive, “*only 17 cents of every dollar it refunds are for the county's own obligation*”.

Even if all Tentative Assessed Values were accurate within industry standards, and recorded at 100% of FMV, the County’s desire to limit the County Guarantee liability by settling at ARC prior to the Final Roll results in undervaluation through AV reductions.

This is evident in the most recent 2020/21 reassessment, where Nassau County’s Department of Assessment (DoA) reassessed all countywide values for the first time in a decade. A study analyzing the 2020/21 Reassessment<sup>142</sup> considered it accurate within Industry Standards, supported by many industry professionals. ARC stood behind the accuracy of most of these values by declining to reduce appealed DoA values. Yet after ARC’s declined, the DoA itself set up a Mediation Program **to negotiate their own newly reassessed values** before they went to Judicial Review under SCAR.

In the years prior to 2010, annual refunds were funded usually by the issuance of debt which contributed to the accumulation of the County’s overall debt liability.

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<sup>141</sup> Nassau County Admin Code §6-26.0(b)(3)(c) [page 141] Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or hereafter arising from a decrease in an assessment or tax under subdivisions one, four and seven of section 6-24.0, or sections 6-12.0 or 5-72.0 of the code or by reason of exemption or reductions of assessments shall be a county charge. (Subparagraphs (a) and (b) amended and subparagraph (c) added by L. 1948 Ch.851, in effect April 16, 1948.).

<sup>142</sup> Newsday performed an in-depth analysis that determined the error rate to be 8.8 percent, well within industry standards of 5.0 to 15.0 percent. Per Newsday a NYS study determined the error rate to be only 7.8 percent.

## Audit Observations

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The NIFA 2009-2012 multi-year plan noted that NIFA:

*“considers this borrowing practice to be one of, if not the preeminent, reason for the original fiscal crisis of the County, which led to the creation of NIFA by the State.”*

Per a prior Nassau County Comptroller’s Report: *“ARC’s 2009/10 Annual Report Draft shows that, over the years 1999-2008, approximately \$1.225 billion was paid in refunds of which approximately \$1.1 billion or 88% were paid to commercial property owners.”*<sup>143</sup>

From 2010 to 2020, the County utilized the “Residential Tax Grievance Negotiation & Settlement Program” also known as the “Mass Settlement Program” to settle assessed value grievances to avoid paying refunds and the need to issue more debt. By negotiating values, the County was deteriorating the accuracy of its own Roll.

The County essentially guarantees the accuracy of its Assessed Values and promises that: *“any deficiency ... in an assessment or tax ... shall be a county charge.”*<sup>144</sup>

The effects of the County Guarantee combined with other issues Auditors identified in this report including the 6/20 Rule, the Halpern Stipulation and Order and the lack of Cyclical Reassessments **collectively deteriorated the values on Nassau County Assessment Roll over the decade prior to the 2020/21 reassessment.** As a result, many values on the Assessment Roll were not defensible during the years of the freeze. The combination of these rules, regulations, court orders and Executive Orders along with the risk of liability from the County Guarantee resulted in large volumes of successful appeals that destroyed valuations, reduced the tax base and resulted in higher tax rates paid by all taxpayers each year.

Before the 2010 Assessed Value freeze, due to the repercussions of the County Guarantee the County issued debt to pay for a growing burden of annual refunds amassed each year.

The issues laid out in this Audit Report reach beyond ARC and will require consideration from the DoA, the County Attorney, the County Administration, the County Legislature and New York State. While there are areas for improvement, ARC itself can do little to stave the large volume of appeals.

Unlike the other assessing units in NYS, the County is liable for its portion, and that of the towns, school districts and special districts, of any refund of tax overpayment related to appeals of the County’s Assessed Values that are not resolved prior to tax rates and tax bills being calculated and distributed. However, towns, schools and special districts retain 100% of their collected levy’s while the refunds are at the expense of the county taxpayer.

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<sup>143</sup> Limited Review of the Department of Assessment, October 3, 2011.

<sup>144</sup> Ibid.

## Audit Observations

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The Guarantee came about in 1948 when the New York State Legislature amended the Nassau County Law<sup>145,146,147</sup>, after a Nassau County Municipal Home Rule request to make the County, rather than its component towns, cities, school districts, and special districts, liable for all real property tax refunds due to adjusted real property tax assessments. The unique state-law amendments are known as the "County Guarantee."

The 1948 Home Rule request and subsequent County Guarantee resulted in a significant Tax Certiorari Liability financed by long-term serial bonds. The total bonds outstanding reached \$855 million in 2001 and approximately \$1.2 billion in 2010. The 2019 County Comprehensive Annual Financial Report estimated these bonds at \$700 million and the Estimated Tax Certiorari Payable increased by about \$300 million in recent years.

Exhibit XXV below shows that while Nassau County has been paying down its Bond Liability the Tax Certiorari liability has increased. As such, the combined total debt associated with the County Guarantee remained stagnant for 10 years between approximately \$1.2 to \$1.4 billion dollars. The exhibit also includes the Disputed Assessment Fund<sup>148</sup> ("DAF") totals that began in 2017.

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<sup>145</sup> Nassau County Charter §302 (9) The proposed budget shall contain: "in the discretion of the County Executive, an estimated amount to provide for uncollected taxes including school districts taxes, which amount shall be a county charge".

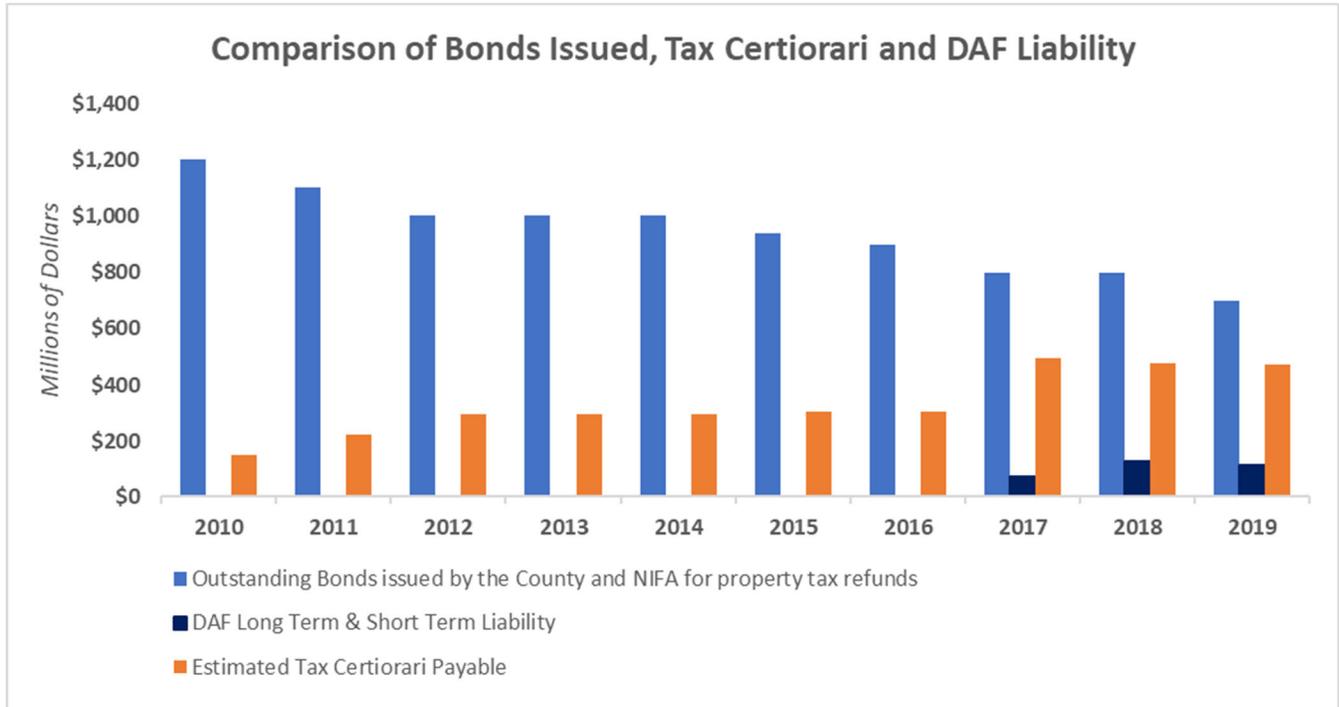
<sup>146</sup> Nassau County Charter §606 (a.) Any surplus existing or hereafter arising from the extension of taxes in excess of the amounts raised for the adopted budget shall be credited to the county, and any deficiencies existing or hereafter arising from the extension of taxes for the adopted budgets shall be a county charge.

<sup>147</sup> Nassau County Administrative Code §6-26.0(b)(3)(c) Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or thereafter arising from a decrease in an assessment or tax under subdivisions one, four and seven of section 6-24.0, or sections 6-12.0 or 5-72.0 of the code or by reason of exemption or reductions of assessments shall be a county charge. (Subparagraphs (a) and (b) amended and subparagraph (c) added by L. 1948 Ch.851, in effect April 16, 1948).

<sup>148</sup> The Disputed Assessment Fund (DAF) became operational in 2017. The County's Administrative Code was amended by New York State Legislation in relation to the levy and extension of real property taxes on class four properties (i.e. commercial properties) and established a disputed assessment charge. The DAF was created as a mechanism to maintain the collections and record the revenues and payments related to the disputed assessment charge.

## Audit Observations

### Exhibit XXV



With the County Guarantee in place, it is necessary for the County to settle grievances to minimize the risk of the tax liability.

This is why during the freeze, the County negotiated and resolved grievances through the Mass Settlement Program before refund liabilities could be created.<sup>149</sup>

Ten years of the Mass Settlement Program temporarily eliminated most residential refunds that would have resulted from the County Guarantee. The program which offered mass reductions to those that appeal to avoid refunds destabilized the Roll because the County negotiated, settled and changed values instead of defending the **accuracy** of them. The prior administrations implementation of the Mass Settlement Program was only meant to be a temporary band-aid<sup>150</sup> to halt refunds and related debt issuances while, in 2010, the Nassau County Legislature attempted to eliminate and repeal the County Guarantee through the Common Sense Act<sup>151</sup>.

<sup>149</sup> Unless, in some cases, appeals are settled after property taxes are calculated and or collected.

<sup>150</sup> In October 2010, the Legislature passed a plan to eliminate the County Guarantee. The plan was not going to take effect until 2013 so the prior Administration implemented the residential and commercial settlement programs to reduce liability prior to the expiration of the County Guarantee.

<sup>151</sup> Local Law No. 18 – 2010: A local law enacting THE COMMONSENSE ACT OF 2010: Section I. Legislative intent. The County Legislature of the County of Nassau hereby recognizes that sections 6-24.0, 6-25.0 and 6-26.0 of the Nassau County Administrative Code, including section 6-26.0 (b)[3](c), commonly collectively referred to as the "County Guarantee" provision, have forced the County to pay the costs of refunds, cancellations or credits of taxes (or other levies or assessments), for tax revenue received by the towns, special districts and all but one of the school districts in the County.

## Audit Observations

In October 2010, the Nassau County Legislature passed the Administration's plan to eliminate the County Guarantee, which was meant to take effect in 2013, allowing over two years for other reforms passed to take effect and reduce the tax liability for all.

In 2013, it was determined by the Courts that the County did not have the authority to eliminate the County Guarantee. However, the temporary Mass Settlement Program that was meant to protect the County continued for the next decade. In 2013, the Appellate Division ruled that the 2010 Common Sense Act *"conflicted with the Municipal Home Rule Law, which prevents the county from superseding any of its laws that relate to the distribution of tax proceeds or benefit assessments."*

Per NIFA's 2009-2012 multiyear plan, borrowing for certiorari judgments and settlements was considered by NIFA to be *"one of, if not the preeminent reason, for the original fiscal crisis of Nassau County, which led to the creation of NIFA by the State."*

While attempting to repeal the County Guarantee, the prior administration tried to limit its negative effects by:

- Freezing the Assessment Roll in an effort to reduce the number of appeals and limit the liability. (However, the Frozen Roll deteriorated the ability for the DoA to effectively defend the Roll as only those properties that filed an appeal, were in effect, reassessed<sup>152</sup>); and
- Creating the Mass Settlement Program to settle the growing number of appeals before tax bills were calculated to avoid costly refunds. (However, this increased the volume of those that grieved and resulted in a shift of the tax burden to those that did not grieve.)

In the rest of New York State, other than the Special Assessing Units of New York City and Nassau County, tax refunds are charged to and reimbursed by cities, towns and special districts that benefit from those taxes collected and are included in their next ensuing, respective, tax levy's. Any final order in a proceeding under NYS RPTL Article Seven, *"which orders or directs the correction or striking of an assessment appearing on that portion of a city, town or county assessment roll applicable to a school district, shall be binding on such school district."*<sup>153</sup>

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<sup>152</sup>EXECUTIVE ORDER NO. 6 – 2010 - EMERGENCY TAXPAYER PROTECTION ORDER OF 2010: *"It shall be the policy of Nassau County to reassess all parcels of real property on a four-year cyclical basis rather than on an annual basis. During the four-year cycle, adjustments may be made to the assessment roll in the event of a physical change to the property, such as additions or demolitions, in the event that the property owner brings a successful administrative or judicial challenge to the assessed value of the real property, and to reflect changes in property classification based upon property use, changes in exemptions and exemption eligibility."*

<sup>153</sup> NYS RPTL Section 726 1 (c):

*Any final order in a proceeding under article seven of this chapter, which orders or directs the correction or striking of an assessment appearing on that portion of a city, town or county assessment roll applicable to a school district, shall be binding on such school district. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the school authorities of such school district, together with interest thereon computed as provided in subdivision two of this section. A school district which levies taxes on behalf of a school district public library may charge back to such public library the portion of such refund attributable to library purposes. Such refund shall be made in accordance with the procedure set forth in this section, provided, however, that application for such refund shall be made, by the petitioner or other person paying such tax, within three years after the entry of the final order ordering or adjudging or determining such assessment to have been excessive, unequal or unlawful, or that real*

## Audit Observations

NYS RPTL Section 556 (6) (a) and (b)<sup>154</sup> state:

6. (a) *“The amount of any tax refunded or credited pursuant to this section shall be a charge upon each municipal corporation ... charged to cities, towns and special districts shall be included in the next ensuing tax levy.”*

6. (b) *“In raising the amount of a refund ... a relieved school tax ... shall charge back against the school district which levied such tax... The amount so charged against such school district shall be deducted by the county treasurer and withheld from any moneys which shall become payable by him to such school district by reason of taxes”*

Additionally, in relation to the county Guarantee

- As of 2010, the liability associated with the County Guarantee reached **\$1.2 billion**.
- **In order to avoid liability associated with the county guarantee, after Arc’s final Determinations were made for the 2020/21 Roll, a DoA Mediation Program was created to settle an excessive volume of SCAR filings before the Tax bills were calculated. The DoA Mediation Program appeared similar to the Mass settlement Program, except it is not ARC granting the reductions, it is DoA granting reductions after ARC reviewed the values. The negotiations reduce AV’s that DoA already set and ARC agreed with, deteriorating the relative accuracy of DoA’s 2020/21 reassessed values.**
- The potential liability from the County guarantee perpetuates in 2022/23 even after values were brought current during the 2020/21 Reassessment. Per a news article<sup>155</sup>, to protect against the recent value fluctuations demand due to COVID-19<sup>156</sup>, the 2021/22 starting values will be frozen and used as the starting 2022/23 Tentative Assessed Values. While

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*property was misclassified. The time of the pendency of any appeal in any such proceeding or from any such order shall not be deemed part of such three years”.*

<sup>154</sup> NYS RPTL Section 556 6 (a), (b):

*“6. (a) The amount of any tax refunded or credited pursuant to this section shall be a charge upon each municipal corporation or special district to the extent of any such municipal corporation or special district taxes that were so refunded. Amounts so charged to cities, towns and special districts shall be included in the next ensuing tax levy.*

*(b) In raising the amount of a refund or credit pursuant to this section of a re-levied school tax the appropriate tax levying body shall charge back against the school district which levied such tax the amount of the refund or credit which shall not exceed the amount paid by the county treasurer to such school district upon the return of such tax. The amount so charged against such school district shall be deducted by the county treasurer and withheld from any moneys which shall become payable by him to such school district by reason of taxes which shall thereafter be returned to him by such school district. No such charge shall be made by the county legislative body against a school district unless ten days' notice thereof by mail has been given to the school authorities thereof. Notice that such deduction will be made shall thereafter be given by the county treasurer in writing to such school authorities on or before the first day of May prior to the making of such deduction.*

<sup>155</sup>Per a news article titled “Nassau to freeze property values in 2022-23, County Executive Laura Curran says” (Updated December 2, 2020) the county Executive announced in a press release that “Nassau County will freeze property values in 2022-23 at the previous year's level in an effort to avoid sharp changes in assessments after the coronavirus pandemic caused volatility in the housing market and spiking home prices.

<sup>156</sup> During COVID-19, there was increased demand as people moved from populated areas to the suburbs.

## **Audit Observations**

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freezing the Tentative Assessed Values may help lessen the impact of temporary market fluctuations, it will result in Taxpayers paying fees to Firms twice to negotiate against the same starting Assessed Values, in both 2021/22 and 2022/23. Even if property owners successfully grieved in 2021/22, they will have to grieve, possibly paying again, to renegotiate and reduce beginning values they already negotiated to reduce.

A prior acting Assessor was once quoted as saying: ***“The county guarantee has been the biggest impediment to eliminating a wasteful and unfair system.”***

**AUDIT OBSERVATION (9)**

**(9) Judicial Review of Applications at NYS Small Claims Assessment Review (SCAR) Took Place Although these Property Owners Had Accepted a Settlement at ARC**

Auditors identified multiple residential properties that received SCAR reductions even though they were not eligible for a Judicial Review at SCAR<sup>157</sup> due to previous ARC dismissals and/or accepted settlements. In some cases, the reductions granted by SCAR were greater than those already agreed upon and settled at ARC.

In order to qualify for a Judicial Review, a residential property must first complete the administrative review process with ARC. Certain dispositions resulting from the administrative review such as denials and unaccepted offers will qualify a property for Judicial Review. However, in addition to withdrawals and exemptions granted, there are two Jurisdictional circumstances that will eliminate eligibility for a Judicial Review:

- Petitions that are already settled and have accepted ARC’s reduction offer, and
- Applications dismissed by ARC.

Exhibit XXVI below identifies the types of ARC Decision Dispositions and potential outcomes in an Administrative Review and whether they would qualify for a Judicial Review at SCAR:

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<sup>157</sup> New York State Real Property Tax Law: Article 7 – Judicial Review.

## Audit Observations

### Exhibit XXVI

ARC DECISION DISPOSITIONS		
Final Disposition by ARC after Administrative Review	Eligible for Judicial Review at SCAR	General Explanation of Decision
<b>Accept Zero Reduction</b>	<b>Yes<sup>(1)</sup></b>	Petitioner signs and accepts an offer of Zero from ARC, acknowledging the acceptance of the Tentative Assessed Value.
<b>Unilateral</b>	<b>No<sup>(2)</sup></b>	ARC Determines the Property should receive a reduction and issues the reduction without a Petitioner Acceptance to minimize future Liability
<b>Denial</b>	<b>Yes</b>	ARC reviewed the application for correction determining the Assessed Value should remain as stated on the Tentative Assessed Value Roll
<b>Dismissal</b>	<b>No</b>	ARC does not consider the Application for Correction based on the lack of merit to the file. For example the application may have been Late, not properly authorized, not signed etc. With the exception of late applications, the applicant is given 35 days to cure issues before the application is dismissed
<b>Exemptions Granted</b>	<b>No</b>	ARC reinstates or approves a request for an exemption of a portion of Assessed Value from the roll, not a reduction of Assessed Value
<b>Reduction</b>	<b>No</b>	ARC granted an Assessed Value Reduction Offer that was stipulated and accepted by the Petitioner
<b>Duplicate Withdrawn</b>	<b>No</b>	ARC determined an erroneous duplicate application was filed and withdraws the extra application
<b>Withdrawn</b>	<b>No</b>	Petitioner withdraws the Application
<p>(1) Accept Zero Reduction offers are acknowledgment by the petitioner that they agree with and accept the Tentative Assessed Value. Such stipulations were previously precluded from filing for Judicial Review. However, Local-Law-26-2019 was recently passed and allows Pro Se Petitioners to retain the right to file for Judicial Review.</p> <p>(2) Per ARC management, Unilateral reductions are for Commercial Properties only.</p>		

ARC is designed to resolve grievances administratively before they reach SCAR to minimize the need for a court proceeding and is inclined to settle in order to minimize the potential liability associated with Assessed Value reductions from SCAR decisions.

In general, Applications filed with ARC result in a reduction, withdrawal, denial or dismissal. There is a clear distinction between a dismissal and a denial and how they are handled:

**Dismissals** indicate an Application was defective, meaning, not complete and was not considered and would not be eligible for further review at SCAR.

Per the Nassau County administrative code: *“an application that is rejected [dismissed] means that the application was not considered because it was incomplete.”*

Per NYS: *“the defective application shall be dismissed by the commission”*

**Denials** indicate an Application was considered and reviewed but ARC determined it did not require a reduction.

Per the Nassau County administrative code: *“denied means that a complete application was considered, but no reduction was indicated.”*

## Audit Observations

As noted in Exhibit XXVI above, SCAR Judicial Reviews can be performed on ARC denials<sup>158</sup> or unaccepted ARC offers which are essentially the prerequisite for a petitioner to be eligible to file with SCAR. The SCAR Hearing Officers' Manual states:

***“Filing Requirements: The property owner, or his or her predecessor-in-interest, must have first filed a complaint for administrative review of the assessment (the “grievance”) pursuant to the provisions of RPTL § 730(1)(a) and local law. A petitioner’s failure to first file a grievance with the Board of Assessment Review (and in Nassau County and NYC, the Assessment Review Commission) is fatal and requires dismissal of the petition.”***

**While an ARC denial permits pursuing a Judicial Review, accepting an ARC settlement offer precludes petitioners from pursuing a Judicial Review. Per NYS:**

*“Where such stipulated assessed value is entered on the final assessment roll, no review of the assessment shall be allowed pursuant to article seven ...”*

After going through the Administrative Review Process, a petitioner has 30 days from ARC's final determination to accept ARC's offer or per ARC's website, to challenge the decision by applying to SCAR for a Judicial review<sup>159</sup>, if desired.

ARC provided the Auditors with a list of 169 administrative grievances, from 2017 to 2020, that had previously been settled or dismissed by ARC. These 169 appeals went to SCAR even though 111 had already accepted ARC offers and 58 were already dismissed by ARC. The Auditors analyzed 20 appeals from 2020 and found that:

- Although not eligible for Judicial Review, 17 of the 20 appeals received AV reductions from SCAR greater than determined by ARC;
- 8 of the 20 appeals were ‘dismissed’ by ARC and received an average of 12% reduction in their AV through SCAR; and
- 12 of the 20 appeals accepted ARC stipulations (Offers) and received greater reductions on average of 2.4% more from SCAR.

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<sup>158</sup> As noted in Finding 6 ARC does not have the authority to dismiss duplicate applications, as a result unresolved duplicates become denials that go to SCAR without a proper Administrative Review.

<sup>159</sup> N.Y. Real Property Tax Law 730 – Procedure to Review Small Claims: “3. The petition for review pursuant to this title shall be filed within thirty days after the completion and filing of the **final assessment roll** containing such assessment or, in a city with a population of one million or more, before the twenty-fifth day of October following the time when the **determination sought to be reviewed was made**, in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.”

**AUDIT OBSERVATION (10)**

**(10) Nassau County Fails to Prevent Consecutive Annual Appeals Causing Dilution in Assessed Values**

NYS Law prevents a property from filing consecutive annual appeals after receiving a reduction through judicial means for one (1) year following a small claims proceeding, per NYS Real Property Tax Law §739<sup>160</sup>, and three (3) years following a final court order or judgment through litigation Per NYS Real Property Tax Law §727<sup>161</sup>.

The New York State SCAR Training Manual<sup>162</sup> states: *“Freeze Provision - If the petitioner gets a reduction at SCAR, he or she can't file again the next year and must wait until the following year. If no reduction is granted, then the petitioner may file again the next year.”*

As a Special Assessing Unit, Nassau County is not under the statutory purview of §727 and §739, and as a result the County allows properties that grieved and settled Assessed Values in the previous years, whether through administrative or judicial means, to challenge again in the year immediately following the reduction.

Between reassessments, Rolls are essentially frozen, unless changed equitably through trending. Allowing any property to grieve more than once between reassessments, while others do not, continually dilutes the entire Roll inequitably distributing the tax burden.

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<sup>160</sup> Per NYS Real Property Tax Law §739, *“where the decision of a small claims hearing officer orders a reduction in an assessment, the assessed valuation contained in such decision shall not be thereafter changed on such property for the next assessment roll prepared on the basis of the taxable status date next occurring on or after the taxable status date of the most recent assessment under review in the proceeding subject to such final order or judgment.”*

<sup>161</sup> Per NYS Real Property Tax Law §727, *“where an assessment being reviewed pursuant to this article is found to be unlawful, unequal, excessive or misclassified by final court order or judgment, the assessed valuation so determined shall not be changed for such property for the next three succeeding assessment rolls prepared on the basis of the three taxable status dates next occurring on or after the taxable status date of the most recent assessment under review in the proceeding subject to such final order or judgment.”*

<sup>162</sup> New York State SCAR Training Manual 2003.

## AUDIT OBSERVATION (11)

### (11) Applying Separate LOA's Within the Same Class Effects Uniformity

While the LOA resulting from the Halpern negotiations may or may not be more accurate than the LOA set by DoA, uniformity within property classes is paramount to the fairness of the Assessment System.

Applying separate LOA's within the same class, whether on the Tentative or Final Roll, effects uniformity.

*"The importance of accurately determining the LOA cannot be overstated. LOAs are crucial for the fair and accurate apportionment of school and other state aid payments tied to local property values."*<sup>163</sup>

The Halpern Stipulation and Order<sup>164</sup> states that:

*"within one-hundred twenty (120) days from the date of the above notice the parties shall exchange ratio studies which shall include but not be limited to underlying sales and applicable time-trend data and/or econometric modeling method (collectively referred to as a "ratio study"), which will be used for settlement purposes only and may not be subsequently utilized in any Court proceeding or mediation for purposes of impeachment unless either party elects to waive such limitation upon submission of their ratio study for purposes of paragraph 5-b and 6 (f). Within thirty (30) days of exchanging ratio studies, the parties shall engage in meaningful, good-faith settlement negotiations concerning LOA."*

The 2011 Halpern Court Stipulation and Order reads: *"WHEREAS the undersigned parties seek to avoid further costly and time consuming litigation which wastes both the parties' resources and judicial resources by establishing a procedure to determine ratio which is efficient and equitable to all of the parties and taxpayers which is intended to be followed during the administrative review of assessments and before the commencement of SCAR hearings"*.

The use of a separate LOA is not *"equitable to all of the parties and taxpayers"*. Such an agreement only benefits the *'parties'* to the action and effects equitable uniformity for the *'taxpayers'* on the Roll.

**As a result, of the use of a separate LOA all property owners should apply for a grievance every year to ensure they receive the most beneficial LOA.**

**It should not be necessary for a Nassau County Property Owner to file an appeal, and potentially incur a fee, every year to ensure that they are treated fairly and equitably.**

**This situation creates and continues to contribute to the record number of appeals that are filed each year, costing taxpayers millions of dollars in Firm fees to shift the tax burden**

<sup>163</sup> New York State Department of Taxation and Finance Office of Real Property Tax Services, Level of Assessment Determination: An Owner's Manual for Maintaining Uniformity Publication 1016 (9/11).

<sup>164</sup> Richard and Ellen Halpern vs. The Board of Assessors and the Assessment Review Commission of the County of Nassau, 2011, Supreme Court of the State of New York County of Nassau.

## **SUMMARY CONCLUSIONS OF AUDIT OBSERVATIONS**

It is clear the Assessment Review Commission (ARC) is receiving a much higher volume of grievances than it was designed or intended to handle. There are multiple systemic issues identified in the observations contained in this report. These observations identify conditions which may cause a property owner to find it necessary to file, often annually, an Application for Correction (grievance) to “reduce their taxes” or simply maintain a level playing field.

The systemic issues include:

- the lack of a cyclical reassessment of the roll (the freeze) and recording Assessed Values at less than Market Value;
- the “Cap” on increases in Assessed Values pursuant to New York State Law (the 6/20 Rule);
- the application of a different Level of Assessment (LOA) to settle or determine reductions; whether pursuant to the “Mass Settlement Program,” mediation program or the application of the Halpern Stipulation and Order; and,
- the benefit for the County to settle grievances before the issuance of the Final Assessment Roll, so that reductions do not become a cost to the County pursuant to the County Guarantee.

In addition, relative to the high tax rates in Nassau County the cost to the property owners to file these grievances may seem de minimis. Likewise, there are few outlets for a property owner to formally object to these relatively high taxes. There is, however, a formal process that a property owner can initiate to “lower the taxes” and that is to grieve.

We recommend that the County Legislature and the County Executive, in coordination with the appropriate New York State agencies and representatives (such as the Office of Real Property Tax Services), create a Commission to study and make recommendations, legislative or otherwise to address these systemic issues. Issues to be reviewed should include:

- the County Guarantee;
- the Special Assessing Unit status of Nassau County;
- the application of Level of Assessment and the use of Current Market Value;
- the Halpern Stipulation and Order and the resulting separate Level of Assessment;
- cyclical reassessment;
- the special exemptions or “Caps” in place under New York State Law; and
- the licensing and regulation of Representative Firms: and
- mitigation of the economic impact to taxpayers of any proposed changes.

### AUDIT FINDING (1)

#### **(1) The Assessment Review Commission and the Department of Assessment Did Not Disclose the Level of Assessment (LOA or Ratio) and Fair Market Value (FMV) included in the Calculations that Resulted from Negotiated/Stipulated Settlements**

The separate LOA and the market value used to determine ARC's Assessed Value offers were not disclosed by ARC, in the ARC offer letters or on the DoA's property search website. ARC's settlement offer notifications, (known as **ARC Residential Stipulation of Settlement**<sup>165</sup>) only include the Tentative AV, Adjusted Tentative AV, the Corrected AV Offer and the AV Reduction determined by ARC. By failing to provide the LOA and market value associated with the offer, the applicant lacks information to determine how ARC's offer was derived.

Further, after updating for ARC's reduced AV's, DoA's website<sup>166</sup> undervalued and misrepresented the Fair Market Values that resulted from ARC's Assessed Value reductions by allowing the separate LOA and FMV's used by ARC to remain hidden. The overall lack of transparency contributed to the continual deterioration of the Assessment Roll values inviting annual increases in Application (grievance) filings and leading to new record number of Applications each year.

The lack of transparency allowed both the separate LOA and the fact that ARC **determined the market value of the property to be higher than DoA's values to remain hidden from and unknown to the general public.** NYS ORPTS Publication 1112, "Fair Assessments - a guide for property owners"<sup>167</sup> states "It almost goes without saying that it's very easy to be confused when assessments aren't kept fair and at market value (and it's also much more difficult to explain)." **Had Nassau County property's been assessed at 100% of MV the use of a separate LOA would have been more transparent.**

#### **LOA & FMV used in ARC's Determination of AV Offers are not disclosed**

Neither ARC's Residential Stipulation of Settlement<sup>168</sup> nor the Final Determination on the Application for Correction of Assessment<sup>169</sup> letters (provided to those that grieved) include the FMV or the LOA used in ARC's determination of AV offers.

ARC's determination of a higher market value than that used by the DoA to calculate its AV would suggest that a grievance of such AV should be denied by ARC. However, such grievances were not denied because assessment valuation decisions, per NYS Law<sup>170</sup>, are based on Assessed Value (AV), not Market Value (MV).

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<sup>165</sup> Appendix J – example individual Residential Stipulation of Settlement

<sup>166</sup> <https://lrv.nassaucountyny.gov/>

<sup>167</sup> NYS Office of Real Property Tax Services: Fair Assessments – A guide for property owners (Publication 1112 8/21).

<sup>168</sup> Appendix J – example individual Residential Stipulation of Settlement

<sup>169</sup> Appendix K – example individual Residential Final Determination on the Application for Correction of Assessment

<sup>170</sup> NYS RPTL § 523 – B, paragraph 7(b) The commission shall determine the final assessed valuation or taxable assessed valuation, or the actual assessment or transition assessment, or the proper class designation of the real

## Findings and Recommendations

By applying the required separate lower LOA, ARC reduced and converted its higher Market Valuations to AV's that were lower than the AV's stated by DoA on the Tentative Roll. **This made it appear that DoA's Assessed Values were too high even though the DoA's original market values were actually less than ARC's market value estimates.**

Per a 2018 amendment to the Nassau County Administrative Code<sup>171</sup> § 6-7.0 (f) the "Notice of Tentative Assessed Value" mailed by the DoA shall include, at a minimum:

- The Level of Assessment for the Tentative Assessment Roll and pending Assessment Roll, including the difference between the two Levels of Assessment; and
- The Tentative Assessed Value for both the Tentative Assessment Roll and pending Assessment Roll.

ARC Rules state that the reviewer "*shall prepare a written report for each matter reviewed on the merits setting forth his or her recommendation and the facts, figures and calculations on which it is based, including the estimated market value, the method of valuation used and comparable properties used, if any*".

While ARC's internal records may or may not contain this information, neither ARC's Stipulation of Settlement<sup>172</sup> or the Final Determination<sup>173</sup> letter included facts or figures as to how the AV Offer was calculated. The settlement communications provided to those that grieved only include the Assessed Value and the reduction of Assessed Value not how the determination is made or the LOA or FMV used.

### **FMV's on DoA's Property Data Website were Undervalued and Misrepresented**

DoA's property data on its website undervalued and misrepresented the FMV's that resulted from ARC's AV Offer reductions allowing the separate LOA required to be applied by ARC to remain hidden from and unknown to the general public. **The DoA did not disclose the fact that a separate LOA was used to negotiate the settled AV's or that the new FMV's represented on DoA's website were lower than those determined by ARC.**

During the freeze, DoA's property data information on its website continually stated that Market Values were based on a .25% (.0025) LOA. After being notified by ARC of a grievance acceptance ARC's Corrected Assessment Offer, DoA updated their records and reflected the new negotiated Assessed Value which it then incorporated into the property data available on DoA's website. However, DoA did not change its LOA of .25% (.0025) during the freeze, even though DoA's LOA was not applied and the lower LOA through the application of the Halpern Agreement<sup>174</sup> was applied each year.

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property of each applicant. The final assessed valuation or taxable assessed valuation of real property may be the same as or less than the original assessment or, if determined to be unlawful, the same shall be ordered stricken from the roll or where appropriate entered on the exempt portion of the roll. If it is determined that the real property is misclassified, the correct class designation or allocation of assessed valuation shall be entered on the roll by the board of assessors

<sup>171</sup> Added in August 2018 and included in the Nassau County Code dated January 15, 2021

<sup>172</sup> Appendix J – example individual Residential Stipulation of Settlement

<sup>173</sup> Appendix K – example individual Residential Final Determination on the Application for Correction of Assessment

<sup>174</sup> Richard and Ellen Halpern vs. The Board of Assessors and the Assessment Review Commission of the County of Nassau, 2011, Supreme Court of the State of New York County of Nassau.

## **Findings and Recommendations**

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The DoA's Property Data did not show the actual Market Value ARC used in negotiating ARC's final settled Assesed Value, but instead plugged FMV by dividing ARC's final settled AV by DoA's higher stated LOA of .25% (.0025) which created the lower MV stated on DoA's website.

### **Illustration of the Lack of Overall Transparency of FMV and LOA**

To illustrate this lack of transparency, Auditors identified a Nassau County property that filed an Application for Correction every year during the freeze. Audit used the 2018/19<sup>175</sup> Tax Year to demonstrate ARC's Carryforward calculation for this actual Nassau County property and how those resulting values were eventually translated and undervalued on DoA's website.

Exhibit 1.1 below shows how, for the 2018/19 Tax Year, ARC settled and lowered the Tentative Assessed Value of 532 to 499 resulting in **a market value represented on DoA's website as \$199,600 even though ARC's lowest estimated market value was \$372,265.**

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<sup>175</sup> Audit obtained two separate screen shots of the DoA's website. Each screen shot lists 4 years of the most recent values for this property, as of 2018 and again in 2020. For comparison purposes, Audit chose the 2018/19 Tax Year as both screen shots included 2018/19 Tax Year values.

## Findings and Recommendations

### Exhibit 1.1

Carryforward Reduction of an Actual Home from 2018 to 2019			
<b>DoA's Level of Assessment (LOA)</b>			<b>0.0025</b>
<b>ARC's Level of Assessment (LOA) prior year (2018)</b>			<b>0.0016</b>
<b>ARC's Level of Assessment (LOA), current year (2019)</b>			<b>0.0015</b>
<u>ARC's Carryforward Reduction and Corrected Assessed Value Offer Calculation</u>			
Calculation of the Carryforward Ratio for Carryforward Reduction			
Carry Forward Ratio = (Prior Year LOA - Current Year LOA) / Prior Year LOA			
Prior year ARC LOA	-	Current year ARC LOA	= Change in LOA
0.0016	-	0.0015	= 0.0001
Change in LOA	/	ARC's prior year LOA	= Carryforward Ratio
0.0001	/	0.0016	= 6.25%
Application of Carryforward Ratio to Calculate the Carryforward Reduction			
Carryforward Reduction = Carryforward Ratio X Prior Year Assessed Value			
Carryforward Ratio	X	Prior year AV	Carryforward Reduction
6.25%	X	532	= 33
Calculation of ARC's Corrected Assessed Value Offer			
Corrected Assessed Value Offer = Prior Year Assessed Value - Carryforward Reduction			
Prior Year AV	-	Carryforward Reduction	Corrected AV Offer
532	-	33	= 499
Result of the Application of Carryforward Reduction on Market Value			
In the prior year, the property was frozen at ARC's lower Corrected Assessed Value Offer of 532 and recorded on the DoA website as a \$212,800 Market Value.			
Frozen AV	/	DoA LOA	= Frozen DoA MV
532	/	0.0025	= <b>\$212,800</b>
In the current year, the property will be reduced and frozen at ARC's new lower Corrected Assessed Value Offer of 532 and recorded on the DoA website as a \$199,600 Market Value.			
New AV	/	DoA LOA	= DoA MV <sup>(1)</sup>
499	/	0.0025	= <b>\$199,600</b>
<sup>(1)</sup> Note that the new Market Value of the property is reflected at only <b>\$199,600</b> by the DOA on the website even though ARC determined the EQMV was \$354,667 and the lowest model was \$372,265.			

## Findings and Recommendations

Based on ARC's LOA for 2018/19, ARC negotiated the equivalent market value down to \$332,667<sup>176</sup>. **The reduction resulted purely from the application of that year's Carryforward Ratio.** For 2019, ARC offered an automatic Carryforward of six and a quarter percent (.0625%)<sup>177</sup> from 532 AV to a 499 AV, even though ARC determined the Equalized Market Value (EQMV) was \$354,667 and the lowest estimated value was \$372,265.

The lack of transparency continued when DoA updated its records to reflect ARC's settled AV of 499 but misrepresented the associated Fair Market Value as only \$199,600<sup>178</sup>.

### **DoA Property Data on its Website Undervalued and Misrepresented the Fair Market Value's**

The exhibits below include two separate DoA property data website screen shots, of an actual Nassau County property, to demonstrate how, during the freeze, the DoA undervalued and misrepresented the FMV's that resulted from ARC's AV reductions.

Each screen below shot lists 4 years of the most recent values, by year, for this property, as of 2018 (Exhibit 1.2) and again in 2020 (Exhibit 1.3).

### **A change was made to the DoA data in 2020 to differentiate FMV from Effective Market Value.**

- In 2018, the DoA website reflected the Fair Market Value of \$199,600 and an AV of 499 for the 2018/19.
- In 2020, the 2018/19 Fair Market Value of \$199,600 was now reflected as \$212,800 and the new line labeled Effective Market Value was listed as \$199,600

**While this change provided some transparency, the new Effective Market Value still does not reflect a separate LOA or the fact that ARC's market valuations were higher at a minimum \$354,667.**

### **Exhibit 1.2**

The screen shot below was taken in 2018 for the 2020 Roll and reflected the Fair Market Value of \$199,600 and an AV of 499 for the 2018/19.

Values	General and School Taxes	Open and Paid Taxes Info	Property Description	Recent Sales	My Nassau Info
Values Used for This Class 1 Property	2020 - School ('19-20) and County/Town '20'	2019 - School ('18-19) and County/Town '19'	2018 - School ('17-18) and County/Town '18'	2017 - School ('16-17)	
Fair Market Values	\$199,600	\$199,600	\$212,800	\$226,000	
Level of Assessment (% of Market Value)	.25%	.25%	.25%	.25%	
Assessed Value	499	499	532	565	
Tax Roll Status	TENTATIVE as of 1/2/18	TENTATIVE as of 1/2/17	Final as of 4/1/17	Final as of 4/1/16	
Taxable Status Date	January 2, 2018	January 2, 2017	January 2, 2016	January 2, 2015	

<sup>176</sup> Per ARC 2018/19 Applications File the Assessed Value was 499 divided by ARC's LOA for 2018/19 of .15% (.0015) equals \$332,667

<sup>177</sup> Carryforward Ratio Reduction % = (Prior Year LOA - Current Year LOA) / Prior Year LOA

<sup>178</sup> Calculated by dividing the DoA's higher LOA of .25% (.0025) into the 499 AV.

## Findings and Recommendations

In 2020, DoA added a line item to its data on its website disclose Fair Market Value vs Effective Market Value but still neither reflects the actual FMV's determined by ARC.

The screen shot below illustrates when DoA added this line item the previously identified 2018/19 FMV of \$199,600 is now represented as the Effective Market Value for 2019 and the Fair Market Value was changed and now reflected as \$212,800.

### Exhibit 1.3

The screen shot below was taken in 2020 for the 2022 Roll illustrating that the "Effective Market Value" line was added.

Values	General and School Taxes	Open and Paid Taxes Info	Property Description	Recent Sales	My Nassau Info	Tax Class 1 Risk Programs (2021 Only)
Values Used for This Class 1 Property	2022 - School (21-22) and County/Town '22'			2021 - School (20-21) and County/Town '21'	2020 - School (19-20) and County/Town '20'	2019 - School (18-19) and County/Town '19'
Fair Market Value	\$489,277			\$472,000	\$199,600	\$212,800
Effective Market Value	\$489,277			\$472,000	\$199,600	\$199,600
Level of Assessment (% of Market Value)	1%			1%	25%	25%
Assessed Value	499			472	499	499
Tax Roll Status	Tentative as of 1/2/20			Final as of 4/1/20	Final as of 4/1/19	Final as of 4/1/18
Taxable Status Date	January 2, 2020			January 2, 2019	January 2, 2018	January 2, 2017

### In Summary

During the freeze, ARC's LOA was continually lower than DoA's LOA. The general public was unaware of ARC's separate LOA. By backing into lower FMV's in the data presented on Nassau's Assessment website<sup>179</sup> the DoA reflected it's LOA at .25% (.0025) (as stated on the Tentative Roll) and it appeared to property owners that:

- all properties on the Roll received a uniform application of the LOA;
- the FMV used to assess the property was lower than the actual FMV; and
- their property was undervalued potentially influencing property owners not to grieve.

*"A common reason owners gave Newsday for not appealing was a belief that their properties were already under-assessed, and, in fact, before the freeze county officials had valued properties somewhat below what they were worth to dissuade owners from appealing. But what the owners didn't realize was that appealed properties are assessed even lower than theirs and that they missed out on the bargain."*<sup>180</sup>

In reality, the AV<sup>181</sup> reflected in the DoA's data was ARC's higher FMV multiplied by ARC's lower LOA<sup>182</sup>. Once the appropriate FMV was determined by ARC, had ARC applied DoA's original tentative LOA to convert the FMV back to AV then ARC's AV's would have been

<sup>179</sup> <https://lrv.nassaucountyny.gov/>

<sup>180</sup> <https://projects.newsday.com/long-island/nassau-county-property-taxes/>

<sup>181</sup> Using the numbers from Exhibit 1.1 to illustrate: AV of 499

<sup>182</sup> Using the numbers from Exhibit 1.1 to illustrate: per ARC 2018/19 Applications File the Assessed Value was 499 divided by ARC's LOA for 2018/19 of .15% (.0015) equals \$332,667.

## Findings and Recommendations

uniform<sup>183</sup> with DoA's AV. The resulting AV would actually have been higher<sup>184</sup> than DoA's AV and resulted in less assessed value corrections.

Instead, ARC applied the separate lower LOA to its higher FMV creating lower AV than on the Tentative Roll resulting in settled AV reductions.

**A reassessment was performed by DoA for the 2020/21 tax year, at which point the Assessor reduced the LOA from .25% (.0025) to .10% (.0010). ARC agreed with this new LOA and the majority of reassessed values.**

**Even with the reassessment, which would result in an assessment that more accurately reflect current market values, the Department of Assessment was required to assess these values at a fraction of their worth using a fractional LOA due to the application of the NYS 6/20 rule which limits increases in assessed value to 6% in any one year and 20% over 5 years (NYS Real Property Law, Section 1805).**

### Audit Recommendations:

We recommend that:

- a) ARC establish procedures to disclose and require petitioner notifications include the separate LOA and the market value used by ARC to negotiate and settle AV's in the computation of ARC's AV offer;
- b) ARC work with DoA to establish guidelines for the adequate disclosure of LOA's and market values used for property valuations of appealed properties on DoA's website;
- c) ARC cease the broad application of a separately negotiated Level of Assessment to only those that appeal and base AV reduction decisions on substantive reviews of comparable sales and the uniform application of the stated or stipulated rate; and
- d) If a separate LOA than that set by the Assessor and ARC continues to be applied, such Ratio be applied by ARC or the DoA to all other properties in the class and restate market values **to ensure Uniformity before ARC performs any Application (grievance) Reviews to ensure uniformity prior to tax bills being generated.**

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<sup>183</sup> Because both ARC's and DoA's LOA would have been the same within the Class.

<sup>184</sup> Using the numbers from Exhibit 1.1 to illustrate: ARC would have an AV of 831 (\$332,667 times .0025 ARC's LOA = 831) which is higher than DoA's original frozen AV of 532 and should have resulted in a denial.

## Findings and Recommendations

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### AUDIT FINDING (2)

#### **(2) ARC Failed to Recommend Necessary Regulations to The Legislature for Adoption**

Pursuant to Section 523-b of the New York State Real Property Law the Assessment Review Commission:

“[S]hall recommend to the local legislative body any necessary regulations of the Commission, the rules and procedures of the commission and rules for the conduct of the Commission.”

Similarly, Section 6-40.2 of the Nassau County Administrative Code – setting forth the powers and duties of the Assessment Review Commission, sets forth that:

§6-40.2(c) “The Commission shall recommend regulations and its own rules of procedure and rules of conduct of the Commission.... to the County legislative body for approval.”

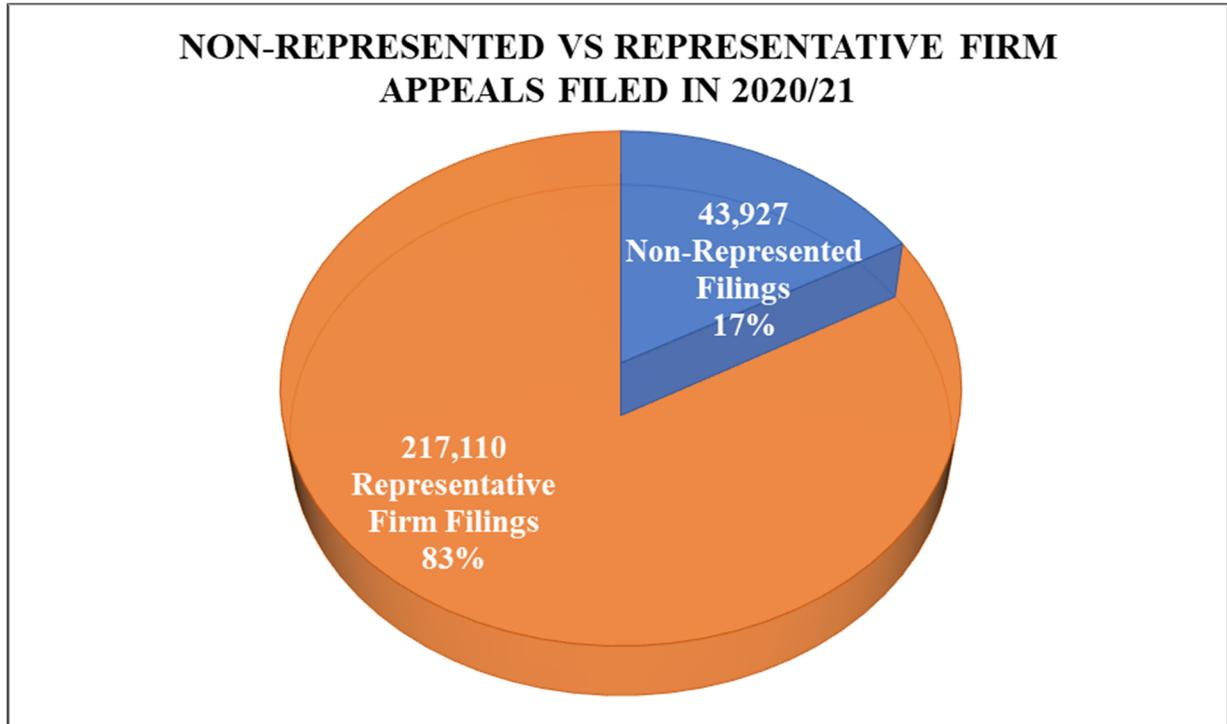
Property owners may grieve without a Representative or Representative Firm (Pro Se filers). Tens of thousands of property owners file their own Application For Correction forms directly with ARC, as Pro Se filers, at no charge. The Pro Se success rates appear similar to those represented by Representatives or Firms.

Hundreds of grievance Firms solicit property owners every year to file grievances **charging property owners up to 50% of the tax savings as calculated by those Firms. In reviewing an Application, ARC performs the revaluation work, yet ARC charges no fees to cover the cost of processing these reductions in assessed valuation.**

The majority of grievances are filed through Representative Firms. For the 2020/21 tax year, Exhibit 2.1 shows that 83% of all Nassau County Assessed Value grievances (for all classes) filed with ARC were filed by grievance Firms, while only 17% were filed as Pro Se.

## Findings and Recommendations

### Exhibit 2.1



The breakout of the number of appeals filed in 2020/21 by Pro Se filers vs. Representative Firms for Residential and Commercial properties are shown in Exhibit 2.2 below:

### Exhibit 2.2

Number of Appeals Filed in 2020/21				
Filed by	Residential <sup>(2)</sup>	Commercial <sup>(2)</sup>	Total	Percentage
<b>Property Owner <sup>(1)</sup> (Pro Se)</b>	43,672	255	43,927	17%
<b>Grievance Firms (Representatives)</b>	199,747	17,363	217,110	83%
<b>Total</b>	<u><u>243,419</u></u>	<u><u>17,618</u></u>	<u><u>261,037</u></u>	<u><u>100%</u></u>

<sup>(1)</sup> Property owner, other applicant-taxpayer, or authorized individual ( ie. Executor).

<sup>(2)</sup> For purposes of distinguishing between property use, Classes 1 & 2 are combined for Residential and Classes 3 & 4 are combined for Commercial.

For a comparison of Pro Se to represented filers success rates, audit performed an analysis of Carryforward Reductions and determined that Pro Se filers received similar Carryforward Reductions to those that paid Representative Firms. Thus, overall, Pro Se filers realized more savings because they did not incur the cost of the Firm fee.

## Findings and Recommendations

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**ARC's limited personnel resources are strained by the high volume of filings, including duplicate filings and filings by Representative Firms without proper authorization to represent the property owner.** The number of filings, duplicate filings, and not properly authorized filings can be reduced and discouraged by enacting regulations.

Auditors found that Firms filed over 6,000 appeals that lacked the foundation to request reductions on average to an equivalent FMV of \$4,000 on properties with initial values worth, on average, \$1.2 million. A more proper application would have requested a reasonable reduction as evidenced by the final AV of \$1.1 million.

Other Nassau County Departments regulate various industries and charge fees for the services they provide, such as:

- The Office of Consumer Affairs issues licenses, and charges a fee for issuance of such licenses, to many types of businesses providing services within the County;
- The County Department of Health issues licenses to restaurants, summer camps, day care centers and other food handlers, and charges a fee for issuance of such licenses;
- The County Clerk's Office charges to record mortgages, obtain copies of deeds, and various other services;
- The Department of Probation charges probationers for pre-sentence reports drug tests; and
- The Parks Department charges permit fees for use of county property (wedding, events and picnics) and fees for the use of softball fields, as well as Leisure pass fees to use various other County properties and services (golf courses and beaches).

**Had ARC proposed a minimal processing fee, for example of \$100 per Residential filing and \$300 per Commercial filing, if filing as a Representative, this could have generated \$25 million in revenue for 2020/21. These funds could have been used to defray ARC processing costs, update technology, pay for Ratio Studies, legal costs and other costs associated with developing and defending County Assessed Values.** This may also deter frivolous challenges.

Exhibit 2.3 below shows the potential revenue that could have been generated with minimal fees enacted for Firm filings only.

## Findings and Recommendations

### Exhibit 2.3

Potential Firm Fees based on 2020/21 Appeal Volumes			
Appeal Type	Appeals	Fee	Total
Residential <sup>(1)</sup>	199,747	\$ 100	\$ 19,974,700
Commercial <sup>(1)</sup>	17,363	\$ 300	\$ 5,208,900
<b>Total</b>	<b>217,110</b>		<b>\$ 25,183,600</b>

<sup>(1)</sup> For purposes of distinguishing between property use, Classes 1 & 2 are combined for Residential and Classes 3 & 4 are combined for Commercial.

As the accuracy of the Assessed Values and Rolls are improved with more frequent reassessments, the volume of filings should decrease keeping the revenue from the associated filings in line with ARC's actual costs.

New York State provides statutory authority for the licensing and regulation of various occupations. These include real estate brokers and real estate appraisers. Licensing is subject to regulations **“designed to protect the public from untrustworthy or incompetent persons or businesses”**<sup>185</sup>

The National Association of Realtors supports licensing for realtors for this reason. **“The principal goal of public protection is secured by laws that vest real estate regulatory agencies with the authority to sanction licensees for violations of the licensing laws. These “disciplinary” powers usually include the authority to investigate allegations of unlawful conduct, provide a fair hearing to prove those allegations and impose sanctions for violations. Sanctions can range from involuntary termination of the license to less invasive rehabilitation requirements, such as additional education or practice monitoring requirements.”**<sup>186</sup>

While law firms are allowed to charge contingent fees, these firms are regulated by an attorney code of ethics. **Many Grievance Representative Firms, including law firms, charge a 40% to 50% contingency fee.** Some may deem these fees excessive<sup>187</sup> especially, in light of the fact, **that in some cases they charge 50% of savings.**

<sup>185</sup> [www.dos.ny.gov/licensing](http://www.dos.ny.gov/licensing).

<sup>186</sup> National Association of Realtors, [www.nar.realtor](http://www.nar.realtor), *Why Require a Licensing System?*

<sup>187</sup> New York Legal Ethics Reporter, How to Lose Your Legal Fee, Part 1: Excessive Legal Fees, <http://www.newyorklegalethics.com/how-to-lose-your-legal-fee-part-1-excessive-fees/>. “A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with the definite and firm conviction that the fee is excessive.” It then goes on to list ten factors which “may” be considered in determining excessiveness, including (1) the time and labor required; (2) the novelty and difficulty of the question presented; (3) the skill needed to perform the task; (4) the likelihood that acceptance of the employment would preclude the lawyer from taking on other work; (5) the fee “customarily charged in the locality for similar legal services”; (6) the amount involved and the results obtained; (7) the time limitations “imposed by the client or by circumstances”; (8) the nature and length of the professional relationship with the client; (9) the “experience, reputation and ability of the lawyer performing these services”; and (10) whether the fee is fixed or contingent.

## Findings and Recommendations

Per NYS Law <sup>188</sup> **contingent fees in a medical, dental or podiatric malpractice action are based on a sliding scale starting at 30% and lowering as recoveries increase. Personal Injury and Wrongful Death<sup>189</sup> actions are allowed contingent fees up to 33 1/3% or may be billed on a sliding scale maxing at 36% for the first \$25,000 and limiting it to 25% thereafter. CPA firms cannot charge contingent fees to lower income taxes.**

An article written in The New York Legal Ethics Reporter suggests that to avoid claims of excessiveness and unconscionability, attorneys *“keep the size of any contingency within customary bounds (generally one-third, but certainly no more than 40%).”*<sup>190</sup>

The article says that claims of excessiveness and unconscionability are a common issue in the field of law. To avoid these issues, *“lawyers should: (a) offer clients alternatives to contingency arrangements; (b) give clients adequate time to read and understand the retainer agreement; (c) keep the size of any contingency within customary bounds (generally one-third, but certainly no more than 40%); (d) make sure that fee terms are written in plain English, and comport with court rules; and (e) use extra care when changing the fee arrangement after the representation has begun, including making clear in writing that the client should consult independent counsel.”*<sup>191</sup>

**While the grievance process is designed to ensure that properties are assessed fairly and equitably, if not regulated this cottage industry exposes property owners to unnecessary expenses and potentially unfair or deceptive practices.**

As early as 2004, Assessment Officials were quoted as saying they:

*“anticipated the high volume of protests, mainly because it costs nothing to file a grievance and because a **cottage industry** of companies and lawyers specializing in filing property-tax challenges has existed on Long Island for years. As each year's appeal period comes around, it is not unusual for homeowners to receive solicitation letters from as many as five different tax-challenge services, offering to represent them before the Assessment Review Commission.”*

The cottage industry and elected officials continue to bombard the public with ads casting doubt on Assessed Values.

**To protect property owners against aggressive mailings and questionable practices ARC should have the ability to regulate Representative Firms, at a minimum to:**

- **invalidate duplicate Applications;**
- **invalidate filings without proper owner consent;**
- **revoke a license of any Firm that violates the law or ARC regulations; and**

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<sup>188</sup> NY Jud L § 474-A (2014) Contingent fees for attorneys in claims or actions for medical, dental or podiatric malpractice.

<sup>189</sup> 22 CRR-NY 806.27 Contingent fees in claims and actions for personal injury and wrongful death

<sup>190</sup> New York Legal Ethics Reporter, How to Lose Your Legal Fee, Part 1: Excessive Legal Fees, <http://www.newyorklegaethics.com/how-to-lose-your-legal-fee-part-1-excessive-fees/>.

<sup>191</sup> Ibid

## Findings and Recommendations

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- require training for Representative Firms.

ARC has the burden of reviewing authorization signatures on filings submitted by Firms. If duplicate Applications are not resolved, as to whom should represent the applicant, the Application will be denied.

In 2017, the New York State Attorney General brought an action against a Representative Firm that practiced as a grievance Firm filing property assessment correction Applications with ARC, alleging that the Firm was charging property owners excessive fees to file Applications for the NYS School Tax Relief (STAR) program which those property owners could have easily filed for and obtained for free. As a result of a settlement, the Representative Firm paid \$920,000 in damages, was dissolved, rescinded all consumer contracts with STAR Exemption, canceled all outstanding billed/unbilled accounts, and was permanently barred from offering any property tax rebate services in the State of New York.

In announcing the settlement, the AG noted that the Firm used an official-sounding name like “Star Exemption Advisor” to scam thousands of homeowners out of tax savings that rightfully belonged to them. Similarly, Auditors noted that:

- **Some firms advertise themselves as “Tax Reduction” Firms and include “Tax Reduction” in their name<sup>192</sup> while in actuality they provide Assessed Value reduction services; and**
- **One Firm previously used the acronym “ARC” in its name.**

**A neighboring county requires that a “Tax Grievance Consultant” be licensed. The licensing Application states:**

“It shall be unlawful for any person to provide, or offer to provide, tax assessment consulting services within the County”... “for or on behalf of any complainant without first obtaining a license from the Office in accordance with the provisions of this chapter”, except for the following: “Attorneys licensed to practice law by the State of New York”.

The associated 16-page licensing Application includes a requirement to pass a written exam, to provide evidence of insurance coverage and provide experience and background information. **This local county charges \$200 for annual licensing.**<sup>193</sup>

**As shown in Exhibit 2.4, the number of Firms, in total, that have “registered” with ARC throughout recent years is 831. This represents an increase by 106 additional Firms between 2016 and 2021 from 725 in 2016 to 831 in 2021.** Of those 831, there are 173 currently active.

### **Exhibit 2.4**

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<sup>192</sup> For instance, a firm might name itself “ABC Tax Reductions” instead of “ABC Assessed Value Reduction Services”

<sup>193</sup> *Suffolk County Department of Labor, Licensing & Consumer Affairs, Tax Grievance Consultant License Application Instructions, [www.suffolkcountyny.gov](http://www.suffolkcountyny.gov).*

## Findings and Recommendations

Estimated Licensing Revenue If a Fee was Charged			
Initial and Recurring Fees	Number of Firms	License Fee	Total
Initial Registrations That Did Not Incur Fees	831	\$ 200	\$ 166,200
Active Registrations Not Incurring Annual Fees	173	\$ 200	\$ 34,600
Total Estimated Licensing Revenue if a Fee was charged			<u>\$ 200,800</u>

### **Audit Recommendations:**

We recommend that ARC:

- a) Develop guidelines to regulate non-attorney Representative Firms (including licensing requirements, advertising guidelines, fee limitations, debarment procedures and present these guidelines to the Nassau County Legislature for approval; and
- b) Develop regulations that limit the ability to grieve for two tax years following any type of Assessed Value reduction.

### AUDIT FINDING (3)

#### **(3) The “120 Day Rule” Allowed ARC to Accept an Estimated 694,000 Authorizations that were Signed by Property Owners Before the Tentative Values Were Even Known**

Section 4.9 of ARC Rules and Procedure set forth that:

**“An application made by an attorney or other Representative shall be accompanied by a written authorization signed by the applicant. An authorization shall be valid for only one tentative assessment roll and shall be signed and dated no more than one hundred-twenty [120] days before the first date of application for corrections of assessments appearing on such roll.”**

**This 120 Day Rule** allows property owners to sign authorizations, to be represented by a Firm, up to 120 days<sup>194</sup> prior to knowing their Tentative Assessed Values. The 120-day rule consequently allows Firms the ability to retain customers before Tentative Assessed Values are even available. This gives Firms leverage to negotiate large volumes of grievances with the County before AV's are known. ARC Rules and NYS Law<sup>195</sup> also allow a 35-day cure period after ARC notifies the Firms that an Application for Correction was filed without proper authorization, allowing Firms additional time to deliver authorizations well past their due date.

NYS Law allows Nassau County petitioners to file Applications for Corrections for 59 days<sup>196</sup>, after the Tentative Assessment Roll<sup>197,198</sup> values are published. ARC's 59 days application period combined with the 120-Day rule and the 35-day cure period, allows Firms up to approximately 214 days to amass Authorizations, inundating ARC with Applications. The more Applications the Firms can generate, the more leverage they have over ARC, as ARC needs to settle to avoid the refund liability associated with the County Guarantee.

Per ARC management, the original point of the 120 Day Rule<sup>199</sup> was to prevent Firms from reusing a single authorization for more than one year.

The 120 Day Rule, created at ARC's inception, states that *“An application made by an attorney or other representative shall be accompanied by a written authorization signed by the applicant. An authorization shall be valid for only one tentative assessment roll and shall be signed and dated no more the one hundred-twenty days before the first date for filing of applications for correction of assessments appearing on such roll.”*

Allowing authorization to occur 120 days before values are known contributes to increased Application volume.

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<sup>194</sup> NYS Law 523 (b) 6(c) states that *“Any form prescribed by the commission shall be available not less than ninety days prior to the publication of the tentative assessment roll”*.

<sup>195</sup> NYS Law 523 (b) 6d.

<sup>196</sup> NYS Law 523 (b) Section 6 states *“from January second through March first”*.

<sup>197</sup> Nassau County Code Section 6-9.

<sup>198</sup> Per the DoA website *“The tentative roll is approved on January 2 and lists the same estimated market value, assessed value, and exemption information contained in the annual Notice of Tentative Assessed Value.”*

<sup>199</sup> Assessment Review Commission Rules of Commission Section 4.9”.

## Findings and Recommendations

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NYS Law<sup>200</sup> requires non-Pro Se Applications to be filed **with** authorizations stating that “*the application must be accompanied by a duly executed power of attorney or authorization*”. Many Applications are filed with incomplete authorizations or without authorizations. ARC permits Firms 35 days from the date the Firms are notified “to cure” the authorizations.

**Auditors noted that 70% of 265 Authorizations reviewed for 2018, that received reductions, were signed by the property owner prior to the Tentative Roll values being published. Auditor’s estimated that over 694,000 Applications, between 2016 and 2020, were filed without the property owner even knowing the Tentative Value for which they were seeking correction.**

While the 120-rule was designed to keep authorizations current, to an applicable year, if a property owner signs an authorization at any time prior to the Tentative Roll, they are signing an authorization to correct unknown values. Without knowing their individual Assessed Values (or if they are under or over assessed) property owners are encouraged to grieve, in mass.

### **Audit Recommendations:**

We recommend that ARC:

- a) Eliminate the 120-day rule and require authorizations to be signed and dated during the grievance enrollment period of January 2 to March 1 and not accept predated authorizations;
- b) Develop a standard Annual Authorization Form and require that it be submitted with all Applications from Representative Firms;
- c) Ensure property owners are aware of the value they are protesting, by requiring the property’s Assessed Value and corresponding FMV be entered on the Annual Authorization Form; and
- d) Require that Authorizations be submitted with any Representative Firm Applications (as part of the initial Application) or be dismissed requiring re-Application.

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<sup>200</sup> NYS Law 523 (b) 6.

## Findings and Recommendations

### AUDIT FINDING (4)

#### **(4) Nassau County's 395 Day Grievance Period is over 10 Times the Average of Other Large Parcel Counties and 3 times Longer than New York City's Grievance Period**

The County's excessive 395-day timeframe to accept, process and finalize an Application for Correction caused unfinished tax years to overlap one another and property owners to sign authorizations and or Applications for one grievance year before the prior tax year is settled, leading to unnecessary confusion.

**For at least three months out of each calendar year, ARC is negotiating two tax years at once.** Auditors could not find any other municipality in New York State with such long overlapping grievance periods. The finalization of values is further delayed by the SCAR process which can be initiated following ARC's administrative review<sup>201</sup>.

The longer it takes to finalize and settle values, the more the exposure to the County, and the greater the risk of refunds due to incorrect final assessment values. This is especially important in Nassau County, as the County Guarantee results in potential refunds on behalf of special districts and school districts which could exceed the portion of taxes the County collected for its purposes.

Upon review of the Grievance processing timeframe, Auditors found that ARC has permitted an excessive amount of time to file and process Applications For Correction. Under New York State Law, generally the Nassau County Assessor is required to publish a Final Assessment Roll on April 1 of each year, which shall reflect actions taken by the Assessment Review Commission through **March 10<sup>th</sup>**. ARC has been unable to resolve all actions pending prior to this March 10<sup>th</sup> date. As a result, the State has subsequently and successively (every two years) legislated authority for ARC to extend this settlement date. As a result, grievance years overlap, causing confusion.

#### **ARC Allows an excessive amount of time to file and process grievances**

**The grievance period in Nassau County (the time from the Application filing due date to the date of the Final Roll) extends 395 days<sup>202</sup> while New York City's (NYC) is only 112 days. The rest of the State, excluding Villages, has an average grievance period of approximately 34 days.**

Our analysis of other municipalities timeframes showed that Nassau County is the only NYS municipality<sup>203</sup> that does not schedule to complete its application process and settlement within 4 months. Exhibit 4.1 below demonstrates that although NYC has 3 times as many parcels as Nassau County, the NYC grievance period is 3 times shorter.

<sup>201</sup> New York State Small Claims Assessment Review (NYS SCAR).

<sup>202</sup> From March 2<sup>nd</sup> to March 31<sup>st</sup> of the following year is 395 days, provided it is not in a leap year.

<sup>203</sup> Excluding Villages.

## Findings and Recommendations

### Exhibit 4.1

Average Number of Days for Appeals Processing in NYS			
NYS Counties <sup>(1)</sup>	Average Days to Submit Applications <sup>(2),(6)</sup>	Average Days between Appeal Due Date and Final Roll <sup>(3),(6)</sup>	Number of Parcels
NYC	46 <sup>(4)</sup>	112	1,110,159
Suffolk	20	41	586,192
<b>Nassau<sup>(5)</sup></b>	<b>59</b>	<b>395</b>	423,938
Westchester	17	82	259,033
Erie	28	34	371,722
Monroe	27	34	266,100
Onondaga	28	33	182,690
Orange	27	34	141,617
Albany	26	35	112,559
Dutchess	27	34	110,791

<sup>1</sup> Counties were selected based on greatest number of parcels, per NYS ORPTS 2018 Municipal Profiles.

<sup>2</sup> Nassau County is one of only two counties in NYS that Assess Properties Countywide. The number of days to submit applications is based on an average of all municipalities within each County.

<sup>3</sup> Includes counties, cities and towns, but excludes villages.

<sup>4</sup> NYC accepts applications within 46 days for Residential and 60 days for Commercial.

<sup>5</sup> Average Day Counts exclude the City of Long Beach and the City of Glen Cove.

<sup>6</sup> Depending on the day of the week and year these averages can vary by 1 or 2 days.

The timeframe in Nassau County to accept Applications is more than 3 times that in Westchester and more than double the other Counties analyzed, except NYC.

For approximately 59<sup>204</sup> days, from January 2 to March 1<sup>st</sup> of a given year, excluding extensions, ARC accepts Applications. Over the next 395 days<sup>205</sup> till March 31<sup>st</sup> of the following year, ARC processes these Applications. Overall it could take ARC 454 days<sup>206</sup> to handle and finalize a grievance. **This 454-day period is subsequent to the DoA determination of the initial tentative values, a process that also takes between 18 to 36 months<sup>207</sup>.**

Exhibit 4.2 below shows the 2020 Tax Year Applications were processed throughout 2018 and 2019, with ARC issuing its official Final Determination on March 27, 2019, for the Final Roll published on April 1, 2019. The Tentative Roll is published on January 2, 2018, 455 days prior to the Final Roll on April 1, 2019.

<sup>204</sup> From January 2<sup>nd</sup> to March 1<sup>st</sup> is 59 days, provided the it is not in a leap year.

<sup>205</sup> From March 2<sup>nd</sup> to March 31<sup>st</sup> of the following year is 395 days, provided it is not in a leap year.

<sup>206</sup> From January 2<sup>nd</sup> to March 31<sup>st</sup> is 454 days, provided the first day is a business day and it is not in a leap year.

<sup>207</sup> In a trend year DoA will typically start establishing initial tentative values right after the publication of the Tentative Roll for the prior year. In a reassessment year DoA will start about six months earlier. In reassessment years after the frozen roll period the process took at least three years.

## Findings and Recommendations

### Exhibit 4.2

Dates From Tentative Roll to Final Roll For The 2020 Tax Year <sup>(1)</sup>	
Description	Applicable Date/Year
Tentative Roll Issued	January 2, 2018
Grievance Applications Due	March 1, 2018
ARC Signed Determination Letter to DOA	March 27, 2019
Final Roll	April 1, 2019

<sup>(1)</sup> Town/County Tax Year 2020, School Tax Year 2019/20

### Overlapping Grievance Years Caused Confusion

Unlike other NYS assessing jurisdictions, Nassau County’s grievance processing years overlap. Nassau County starts collecting Applications three months before the prior year’s Applications are settled, making it confusing for property owners to understand the values associated with each year. This may contribute to property owners lack of confidence in values and to the excessive increase in volume of grievances filed.

Exhibit 4.3 below illustrates how the processing of each given tax year overlaps the next. For example, ARC began accepting Applications to grieve 2020/21 Tax Year values on January 2, 2019, yet the prior Tax Year 2019/20 values were not officially completed until April 1, 2019. For those three months, January through March every year, ARC is working on two tax years at once.

### Exhibit 4.3

Overlap of Tax Years																							
TAX YEAR	12/1/2018	1/2/2018	2/1/2018	3/1/2018	3/10/2018	3/31/2018	4/1/2018	5/1/2018	6/1/2018	7/1/2018	8/12/2018	9/1/2018	10/1/2018	11/1/2018	12/1/2018	1/2/2019	2/1/2019	3/1/2019	3/10/2019	3/31/2019	4/1/2019	4/30/2019	5/1/2019
2020/2021																							
2019/2020		454 Days																					
2018/2019																							

It would be beneficial to ARC, the property owners and the County if ARC reduces the overall processing time frame. For example, if ARC’s Final Determination date was moved to December 1<sup>st</sup> of the current year, instead of March of the following year, this would:

- Allow ARC to focus resources on the accuracy and timeliness one year at a time, eliminating the overlap;
- Provide clarity to property owners as to the timing and related Final Determined Values,

## **Findings and Recommendations**

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- Improve confidence in the Values, as it would be easier to compare prior year values to the values on the Tentative Roll issued January 2<sup>nd</sup>; and
- Help reduce overall grievance volume over time as confidence improves.

### **Additional Time in SCAR**

In addition, ARC's administrative determinations can be challenged through the Small Claims Assessment Review (SCAR) process.

SCAR filings are usually due in April, with SCAR decisions typically being made by August to ensure the DoA has time to calculate and finalize Tax Rates for the Towns to mail the tax bills in October.

As a result of ARC's lengthy determination process period, there is little time to ensure that the Roll is updated and Tax bills are processed timely.

For the 2020/21 Tax year, SCAR petitions were anticipated to exceed 100,000. Due to COVID-19 the time to file was extended multiple times, leaving little time to settle values before tax bills were finalized creating potential liability for the County.

### **Audit Recommendations:**

We recommend that ARC propose and seek approval from the Nassau County Legislature for a more effective processing timeframe at a maximum of one year or less, thereby eliminating overlapping years and confusion and making Final Determinations within the same year.

## Findings and Recommendations

### AUDIT FINDING (5)

#### **(5) ARC was Processing Appeals Received from Firms Without Verifying Property Owner Authorizations; ARC's Quality Control over Authorizations is Faulty**

ARC was not ensuring that proper "Authorizations" were received for each represented property owner.

NYS Law<sup>208</sup> requires an Application form for each appeal: *"The application with respect to an assessment shall be on state approved forms prescribed by the commission, and shall contain an estimate of the value of the property, a statement specifying the grounds for review, and the reduction in assessed valuation or taxable assessed valuation or change in class designation or allocation of assessed valuation sought. Any form prescribed by the commission shall be available not less than ninety days prior to the publication of the tentative assessment roll. The commission shall allow the correction of errors and omissions in otherwise duly completed applications, including applications made on state prescribed or approved forms other than the forms currently prescribed by the commission."*

NYS Law<sup>209</sup> requires that *"the application must be accompanied by a duly executed power of attorney or authorization"* for represented property owners.

The Law<sup>210</sup> states that *"Any person or corporation claiming to be aggrieved by the assessment of real estate may apply"* for a grievance and that each Application *"shall be duly verified by a person having personal knowledge of the facts stated therein"*. ARC would need to review every appeal Application to confirm that the applicant meets the criteria.

Auditors determined that ARC is not reviewing every Application nor is ARC ensuring that all represented party Applications are accompanied by an appropriate Authorization which can result in unauthorized grievances being processed.

**Section 4.9 of the Nassau County Assessment Review Commission Rules of Commission set forth that:**

***"An application made by an attorney or other representative shall be accompanied by a written authorization signed by the applicant. An authorization shall be valid for only one tentative assessment roll and shall be signed and dated no more than one hundred-twenty [120] days before the first date of application for corrections of assessments appearing on such roll."***

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<sup>208</sup> NYS ORPTS 523.b

<sup>209</sup> NYS ORPTS 523.b Section 6.a: "Such application shall be duly verified by a person having personal knowledge of the facts stated therein, provided that if the application is signed by someone other than the person or an officer of the corporation claiming to be aggrieved, the application must be accompanied by a duly executed power of attorney or authorization or as otherwise prescribed by the rules and regulations of the commission."

<sup>210</sup> NYS ORPTS 523.b

## Findings and Recommendations

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**During the years the Auditors reviewed, ARC also processed represented Applications without requiring the standard Nassau County Authorization Form, known as the AR-10<sup>211</sup>. Instead Representatives submitted a variety of inconsistent ‘authorizations’, in different formats, making the review process inefficient and time consuming for ARC staff and limiting its ability to review 100% of the authorizations.** Some Representatives submit their agreements with property owners in place of Applications and/or authorization forms. These contracts/agreements mix authorization information with contract information including fees charged (for successful grievances).

ARC management noted that, as of the 2021/22-year, ARC began to address the Authorization form issue by requesting, but not requiring, that a separate section with specific authorization language be included on all represented party agreements and began accepting these agreements as authorizations.

ARC acknowledged that the high volume of grievances prevents them from reviewing 100% of the Authorizations. Instead, they perform a quality control review (“QC”) on a sample basis.

**The Auditors found ARC did not have adequate written procedures for its Authorization QC review process prior to our audit<sup>212</sup>.** ARC indicated that they annually review only 5-10% of all Authorizations received from Representatives.

Although no adequate Authorization QC review procedures were available, ARC told Auditors that ARC used the following general guidelines to test that proper Authorizations were submitted by Representatives. ARC performs a QC by sampling:

- 5% for Firms submitting more than 10,000 grievances per year;
- 10% for Firms submitting less than 10,000 grievances per year; and
- 100% for Firms that have a problematic history of issues or if issues are identified during the current sampling process.

### **Auditor testing of ARC QC Process**

**ARC could not provide the Auditors with a comprehensive list of all grievances reviewed during its Authorization QC Review Process.** Auditors randomly selected a sample of 265 residential appeals that received a reduction, for the 2017/18 Tax Year, to determine if the QC Review Process that ARC described was performed and if it provided adequate controls to ensure that all represented property owners validly authorized such grievances.

Our testing revealed that 12.8% of the samples may not have been accompanied by valid authorizations.

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<sup>211</sup> The form AR-10 is an authorization to represent an individual property owner in an Application for Correction of property tax assessment. The form AR-11 is an authorization to represent an entity, fiduciary or attorney-in-fact in an Application for Correction of property tax assessment.

<sup>212</sup> Procedures were provided for the 2019/20 tax year labeled “2020 Authorization Quality Control Guideline Booklet”. However, at the time of test work the 2019/20 tax year was not completed yet and there were no procedures available for prior years, except outdated procedures from 2005.

## Findings and Recommendations

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Using the entire population of residential represented grievances that received a reduction, Auditors conservatively estimated that 16,231 of these grievances, filed in 2017/18, lacked authorization. The lack of authorization should have been cured or the Application dismissed.

Several deficiencies were noted in the 265 samples. Included in those, 34 grievances should have been dismissed or denied due to formalities such as missing dates, missing tax year, and being an early submission:

- Two had no authorization on file;
- Five were missing or had illegible dates;
- One was dated 1/20/2006;
- Twenty-three did not have the tax year indicated;
- One had the wrong application year; and
- Two were signed more than 120 days<sup>213</sup> before the Tentative Value date.

### **Other Authorization issues<sup>214</sup> include:**

- At least 49 of the 265 **Authorizations sampled were not reviewed by ARC**, confirming that less than 100% of Authorizations were reviewed. Two of which had no Authorization on file and resulting in a combined approximate reduction of \$134,400 in market value for both.
- ARC acknowledged that a Representative filed 126 appeals, of which 8 were missing authorizations, including the two mentioned above.
- 23 of 265 of the Authorizations tested **had no audit trail** to verify whether ARC had performed QC. Without using a standard coding system, ARC was unable to identify the sample chosen or detail the results of the QC. For one of the major Representative Firms, Auditors were originally told by ARC that the QC was not performed because of lack of resources. However, Auditors later found that approximately 7,500 Authorizations for this Representative were reviewed. Auditors scanned the first 625 of these 7,500 Authorizations and found that **although ARC had reviewed them, Auditors identified at least 64 with deficiencies.** Fourteen had no date, 41 had a preprinted date and 8 were submitted prior to September 1, 2015.
- 35 of 265 of Authorizations had **issues with the date. Auditors found 29 contained preprinted dates indicating the date was probably not the same date the aggrieved party signed it. This could allow the Representatives to bypass the 120-day rule<sup>215</sup>**

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<sup>213</sup> The 120 Day Rule, created at ARC's inception, states that "An application made by an attorney or other representative shall be accompanied by a written authorization signed by the applicant. An authorization shall be valid for only one tentative assessment roll and shall be signed and dated no more the one hundred-twenty days before the first date for filing of applications for correction of assessments appearing on such roll."

<sup>214</sup> Some authorizations that had several deficiencies were included in each category.

<sup>215</sup> Assessment Review Commission, Rules of Procedure, 4.9. An application made by an attorney or other representative shall be accompanied by a written authorization signed by the applicant. An authorization shall be valid for only one tentative assessment roll and shall be signed and dated no more the one hundred-twenty days before the first date for filing of applications for correction of assessments appearing on such roll.

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## **Findings and Recommendations**

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**restricting early signage of the Authorization. Auditors noted that 5 out of 265 were not dated at all and one contained an illegible date.**

- **Firms have attempted to file Applications without Authorization forms or with authorization forms that had no date, were post or predated or just resubmitted prior year authorization forms.**

In summary, there is no reconciliation process in place to ensure, as a check and balance, that all non-Pro Se Applications, which are filed with a Parcel Identification Number (PARID)<sup>216</sup> via Assessment Review on the Web (AROW)<sup>217</sup> have an Authorization. ARC is accepting Authorizations from Representatives in bulk, through a variety of methods, via e-mail, CD and attachment to AROW. These bulk attachment submissions often contain multiple Authorizations, for different Application years, combined in one attachment, making it difficult to verify and review individually. This puts the burden on the ARC staff to sift through e-mails and/or CDs to determine which Authorization(s) apply to which Application; rather than simply requiring an individual authorization for each Application.

### **Audit Recommendations:**

We recommend that ARC:

- a) Require a standard Authorization Form (such as the AR-10), be submitted with all Applications (AR-1) filed by Representative Firms or Attorneys Representatives;
- b) Disallow the submission of Firm contracts/agreements as authorization to represent individuals;
- c) Develop a reconciliation process to ensure all non-Pro Se Applications have an authorization by matching the PARID on the authorization to the Application;
- d) Require that Authorizations submitted via upload be in an individual format by PARID and not submitted in bulk;
- e) Develop procedures to ensure 100% of Authorizations are reviewed with an approval audit trail;
- f) Discourage unauthorized filings and duplicate filings by charging a processing fee for each Application filed by Firms; and
- g) Eliminate the 120-day rule and require authorizations be signed and dated during the enrollment period of January 2 to March 2 and refrain from accepting authorizations with pre-printed dates.

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<sup>216</sup> Each Nassau County property is identified by a parcel identification number known as a “PARID” which is made up by the properties Section, Block and Lot numbers.

<sup>217</sup> Assessment Review on the Web “AROW” is the online service used to enter electronic appeals.

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**AUDIT FINDING (6)**

**(6) Without the Authority for ARC to Resolve Duplicate Applications, Unresolved Duplicates Can Advance to the Small Claims Assessment Review (SCAR) Process Undermining the Purpose of ARC**

The purpose of establishing an Assessment Review Commission, is to permit administrative review of grievances concerning the determination made by the Assessor, thereby relieving the involvement of the Courts to adjudicate these matters.

Section 9 of ARC Rules and Procedure concern “*Duplicate applications*” and set forth that (emphasis added):

*“9.1. Each applicant shall bring only one application in respect to an assessment.*

*9.2. Multiple applications by the same applicant for the same assessment shall be deemed merged.*

*9.3. However, **the Commission shall take no action on an assessment if there are duplicate filings** for the current assessment year by different applicants or different representatives.*

*9.4. If more than one applicant or representative files in respect to an assessment the Commission shall notify each applicant in writing of the existence of the duplicate filings and request that all but one withdraw.*

*9.5. If more than one application remains after the time specified in the notice, which shall be not less than 35 days, the Commission may deny both applications or may make further efforts to resolve the duplication, including a conference or an examination of the applicant or representatives.”*

Based on this rule, ARC does not have the authority to decide the appropriate precedence of duplicate Applications. ARC can only notify the authorized parties that filed the grievance of the existence of a duplicate Application and request the withdrawal of all but one Application. Therefore, the property owner that filed through a Representative, whether paid or unpaid, may not be aware of duplicate filings. Nor can ARC take any action on an unresolved duplicate Application.

This rule, in application, makes sense in that requiring duplicate Applications to be resolved before an offer or decision is made by ARC, prevents conflicting decisions on the same parcel ID. There should only be one final decision per parcel.

## **Findings and Recommendations**

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As a result, when duplicate Application issues are not cured by the Final Determination Due Date<sup>218</sup> ARC recourse is to deny the Applications related to a parcel. This denial, permits the grievant to seek Judicial Review through SCAR and/or Article 7 of the Real Property Tax Law. This rule eliminates ARC's ability to settle grievances via an administrative review and leaves the duplicate Applicant with recourse only to the Courts.

Duplicate appeals occur when more than one appeal is filed on the same Parcel ID with or without proper authorization. As noted, Firms have attempted to file appeals:

- without authorization forms;
- with invalid authorization forms that had no date, were post and/or were predated; and
- by submitting appeals using authorizations for the prior year which are not valid.

Duplicate Applications might be filed by the property owner, co-owner, spouse, tenants or Representative Firms etc. Duplicates burden ARC with the need to resolve which Applicant/Representative can represent the Parcel ID for administrative review.

In 2018, one single parcel had 7 duplicates filed in 7 different Applications with 7 different Firms requesting 7 different assessment values. This can burden ARC's limited resources. Auditors found 6 authorizations from Firms for those Applications, which were all withdrawn, the seventh Firm successfully processed a grievance through ARC and resulted in an Assessed Value reduction.

Exhibit 6.1 below shows the number of parcels with 2 or more appeals filed and the number of appeals per parcel filed each year, from 2016 to 2020. It shows by year how many parcels had 2,3,4,5,6,7,8 or 9 applications filed in one year.

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<sup>218</sup> NYS RPTL 523.b, paragraph 8 the final determination "shall be rendered not later than the tenth day of March in the year following the year in which the tentative assessment roll is published".

## Findings and Recommendations

### **Exhibit 6.1**

<b>Number of Parcels Submitting Duplicate Appeals (Per Year)</b>					
<b>2016 through 2020</b>					
<b>Number of Appeals Submitted by Parcel (Per Year)</b>	<b>Number of Parcels Submitting Multiple Appeals</b>				
	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
2	4,595	5,191	5,400	6,566	6,452
3	297	346	311	428	412
4	27	38	40	77	74
5	5	8	13	11	21
6		2	6	5	1
7		1	1	2	4
8				1	2
9				1	
Total Parcels Submitting Duplicate Appeals	4,924	5,586	5,771	7,091	6,966

Exhibit 6.2 below shows the total # of appeals filed along with the final status of those duplicate appeals from 2016-2020:

### **Exhibit 6.2**

<b>Analysis of Duplicate Appeals Received by ARC</b>						
<b>Final Status of Duplicate Appeals</b>						
<b>By Year 2016-2020</b>						
	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>	<b><u>Average</u></b>
Number of Duplicate Appeals	10,214	11,631	12,001	14,840	14,591	12,655
Number of Parcels associated with Duplicate Appeals	4,924	5,586	5,771	7,091	6,966	6,068
Number of Parcels associated with Duplicates Denied	2,098	2,303	2,253	2,515	2,511	2,336
Number of Appeals	162,546	175,728	189,364	224,097	241,024	198,552
<b><u>Final Status of Duplicate Appeals</u></b>						
Approved Reduction	2,871	3,128	3,384	4,521	4,200	28%
Accepted Zero Reduction	179	292	339	241	412	2%
Denied	3,385	3,374	3,342	3,336	3,332	27%
Dismissed and Other	216	582	457	621	203	3%
Withdrawn	3,563	4,255	4,479	6,121	6,444	39%
Grand Total	10,214	11,631	12,001	14,840	14,591	

## Findings and Recommendations

In 2020, 14,591 of 241,024 appeals were duplicates filed on 6,966 parcels. ARC approved reductions for 29% of the duplicates filed, negotiated a Zero Reduction on 3% and the remaining majority were denied, dismissed or withdrawn. Overall for 2020, of the 6,966 parcels that filed duplicate appeals, 4,200 parcels received a reduction. However, the remaining 2,766 may have been eligible to go to SCAR, provided the other duplicate Applications for these properties did not accept an ARC stipulation.

In 2016, of the 10,214 duplicates filed 3,385 were denied allowing them the ability to file with SCAR.

### Unresolved duplicates:

- **Delay ARC's overall review process** from starting as duplicates need to be resolved before Appeals can be processed.
- **Eliminate ARC's ability to independently review each Application, per legislative intent.** ARC cannot process and/or reach a final determination to settle for any parcel with duplicate Applications.
- Result in denials that may not be communicated directly to the property owner who, if unaware of their rights, may miss the 30-day window of opportunity to appeal to SCAR.
- **Through ARC, gives Firms the ability to negotiate with each other to determine who will represent the property** with or without the property owner's knowledge.
- Allow Applications that **should have otherwise been dismissed to avoid administrative review because they "denied" and not "dismissed," permitting them to advance to SCAR without settlement and exposing the County to potential Liability.**
- Allows Firms to utilize duplicates to extend the filing period, with or without a petitioner's knowledge and/or authorization. This could potentially be done by filing incomplete, unauthorized or otherwise dismissible appeals that could be cured at a later date.

### Recommendation

We recommend that ARC exercise its powers and duties to develop and recommend rules of procedure to be adopted to eliminate the negative effects of duplicate Applications including the authority for setting predetermined factors that would set precedence for the order of validity.

## Findings and Recommendations

### AUDIT FINDING (7)

#### **(7) Lack of Compliance with NYS and County Laws Regarding ARC Commissioner Requirements as to the Number of Commissioners, Appropriate Term(s), Political Affiliations and Training**

New York State Real Property Tax Law § 523-B<sup>219</sup> (“NYS RPTL § 523-B”) and the Nassau County Administrative Code Section 6-40.0 through 6-40.5 sets forth requirements for the number of ARC Commissioners, their terms, political affiliations, training, experience and required disclosures. The Nassau County Administrative Code states:

*“§ 6-40.1 Establishment of Assessment Review Commission.*

*a) There shall be an Assessment Review Commission to consist of nine commissioners who shall be appointed by the County executive subject to approval of the County Legislature, for a term of five years except as specified in paragraph (c) of this section. One commissioner shall be designated chairman and shall serve for a term of three years. Each commissioner shall have at least five years' business experience in the field of real estate, real estate law, in a public agency or in a municipal department and shall attend such training courses as shall be prescribed by the State Board of Equalization and assessment pursuant to section 523 of the Real Property Tax Law. Not more than six commissioners shall at any one time be enrolled voters of the same political party.*

*b) The members of the Board of Assessment Review serving immediately prior to the creation of the Assessment Review Commission shall be appointed to initial terms as commissioners of the Assessment Review Commission.*

*c) The terms of the nine commissioners first appointed pursuant to this section shall be two members for one year, two members for two years, two members for three years, two members for four years, and one member for five years.*

*d) The compensation for the Commissioners of the Assessment Review Commission shall be determined and fixed by the County Legislature and shall be set forth in the ordinance or resolution confirming the appointment of the nine commissioners of the Assessment Review Commission.”*

Auditors found a lack of compliance with NYS and County Laws<sup>220</sup> in that:

- The number of required nine (9) Commissioners was not maintained;
- Commissioners were not appointed/reappointed in a timely manner;
- Commissioners were not appointed for appropriate terms;
- The composition of the Commissioners did not meet the political affiliation requirements;
- ARC did not maintain Commissioner training and experience records; and

<sup>219</sup> NYS Real Property Tax Law § 523-B (amended by N.Y. laws of 2002, ch.401).

<sup>220</sup> NYS RPTL § 523-B and the Nassau County Administrative Code generally mirror each other with respect to Commissioner requirements.

## Findings and Recommendations

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- ARC did not properly meet disclosure requirements.

### **The Number of Required Nine (9) Commissioners was not Maintained**

Per Nassau County Code and NYS RPTL § 523-B, ARC shall “consist of nine commissioners appointed by the County Executive subject to the Legislature for a term of five years.”

Auditors found that from 2010 to 2018 ARC did not maintain the required number of nine Commissioners and averaged only six Commissioners each year, as noted in Exhibit 7.1 below.

Three new Commissioners were appointed in 2018, bringing the total number of Commissioners to only eight of the nine required; all of whom still serve as of October 2020.

### **Exhibit 7.1**

<b>Nassau County Assessment Review Commission Number of Commissioners (per payroll) Serving Each Year from 2010 to 2020</b>		
<b>Year</b>	<b>Number of Commissioners</b>	
<b>2010</b>	<b>6</b>	<b>*</b>
<b>2011</b>	<b>6</b>	
<b>2012</b>	<b>6</b>	
<b>2013</b>	<b>6</b>	
<b>2014</b>	<b>6</b>	
<b>2015</b>	<b>6</b>	<b>*</b>
<b>2016</b>	<b>5</b>	<b>*</b>
<b>2017</b>	<b>6</b>	<b>*</b>
<b>2018</b>	<b>8</b>	
<b>2019</b>	<b>8</b>	
<b>2020</b>	<b>8</b>	

\* These counts are based on payroll records and may or may not include overlapping terms or dates of appointment.

## Findings and Recommendations

**The average attendance at meetings from 2015 to 2017 was only five (5) Commissioners.** Having less than the required nine Commissioners presents potential voting issues due to a lack of quorum<sup>221</sup>.

Auditors noted two separate instances where a Commissioner recused themselves from a vote, which resulted in petitions (for corrections of errors)<sup>222</sup> being adjourned due to the lack of a quorum:

- One instance occurred when four (4) petitions **were adjourned for three (3) meetings** until enough Commissioners were present;
- Two other petitions were adjourned, one for two meetings and the other for one meeting; however, neither of these petitions were mentioned again in the board minutes; and
- One instance where two (2) petitions **were adjourned for five (5) meetings**. After the 5<sup>th</sup> meeting these petitions were not mentioned in the meeting minutes again. Auditors traced and verified the issues were resolved<sup>223</sup>.

NYS Law requires that where a power or duty has been assigned to three or more public officials (such as a board of assessment review), a majority of the whole number must meet and not less than a majority may act.

**Accordingly, since the law requires nine (9) Commissioners, five (5) Commissioners must be present at every meeting** (i.e. the majority of the nine (9), excluding any vacancies). **These five (5) Commissioners would then be required to make unanimous decisions for all votes since a majority, in this case five (5), is required to act.**

### **ARC Commissioners Were Not Appointed/Reappointed in a Timely Manner**

NYS RPTL § 523-B requires that the Commissions 5-year terms be staggered **“to protect [ARC] from political influence” and “to promote stability of membership and political diversity.”**<sup>224</sup> **Auditors found that ARC Commissioners have not been appointed and/or reappointed in a timely manner negating the purpose of the staggered terms.**

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<sup>221</sup> New York Consolidated Laws, General Construction Law - GCN § 41. Quorum and majority, *“Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, gathered together in the presence of each other or through the use of videoconferencing, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words “whole number” shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.”*

<sup>222</sup> These petitions were not valuation grievances but petitions for corrections of errors.

<sup>223</sup> ARC’s petition file noted the parcel was formerly exempt and is to be restored to the Assessment Rolls at the assessed value and classification as of the date of transfer pursuant to section 520 (2) of the Real Property Tax Law. Auditors traced and verified that this parcel was restored to the Roll.

<sup>224</sup> *Sedacca v. Mangano*, United States District Court Eastern District Of New York, 12-cv-1921 (DRH) (AKT) (E.D.N.Y. Apr. 9, 2014).

## Findings and Recommendations

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NYS RPTL § 523-B staggered each 5-year Commissioner term creating a cycle of terms so that two (2) Commissioners' terms expire each year in years one (1) through four (4), and one (1) term expires in the fifth (5<sup>th</sup>) year of rotating terms. The cycle ensures that no more than two terms expire in any one year mitigating the risk of political influence.

New York State Public Officer Law Section 5 provides for guidance when a term expires and there is no successor appointed, stating that:

“Every ...officer whose term is .... having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor.”

Individuals who serve even though their term has expired are “holdovers”.

NYS RPTL § 523-B does not limit the number of terms or specify rules for reappointment.

Auditors found that from 2010 to 2018 there were four (4) Commissioners who served nearly four (4) years or more beyond the expiration of their initial term:

- Two (2) of the four (4) Commissioners were never reappointed, one (1) served almost four (4) years as a holdover and the other remained over seven (7) years as a holdover; and
- Two (2) of the four (4) Commissioners were eventually reappointed through resolution, but only after serving almost four (4) years or more as holdovers before being reappointed.

The 5-year terms were designed to exceed and overlap the length of an Executive's term to protect ARC from political influence.

It is noted that, in 2009, one month prior to leaving office, the outgoing Administration (2002-2009) appointed six (6) ARC Commissioners.

**In January 2010, the subsequent administration (2010-2017) issued termination letters to all ARC Commissioners and appointed five (5) Commissioners in March 2010. Three (3) of the terminated Commissioners brought an action to contest the termination. The Courts ultimately determined that the Administration did not have the authority to remove Commissioners prior to the expiration of their statutory terms in the absence of cause. ARC Commissioners are not at-will employees subject to termination at whim. Even though the court ruled that all three be reinstated, they did not return.** <sup>225</sup>

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<sup>225</sup> Sedacca v. Mangano, United States District Court Eastern District Of New York, 12-cv-1921 (DRH) (AKT) (E.D.N.Y. Apr. 9, 2014).

## Findings and Recommendations

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### Commissioners Were Not Appointed for the Appropriate Terms

Auditors noted that in July 2020 four (4) current Commissioners were serving expired terms. Additionally, three (3) terms expired in the same year (2020), instead of only two (2) as required by law<sup>226</sup>.

ARC had eight (8) active Commissioners<sup>227</sup> in December 2018. As of July 13, 2020, four (4) of those eight (8) Commissioners were serving expired terms:

- One (1) term expired in June of 2019, and
- The other three (3) expired in June of 2020.

This indicates that Commissioner Terms are not being properly monitored to adhere with the County Code. Although resolutions for the three (3) terms that expired in 2020 may have been delayed due to COVID-19 issues, three (3) **terms should never expire in any single year.**

The Auditors also noted the Legislature and ARC incorrectly appointed the Chairperson to a three (3), and not a five (5), year term. NYS RPTL § 523-B provides for 5 year Commissioner terms but also states “*One commissioner shall be designated chairman and shall serve for a term of three (3) years.*”<sup>228</sup> The prior chairperson served her third 3 year appointed term, until October 2021 instead of being appointed to 5 year terms and being designated for 3 year periods as the Chairperson.

Exhibit 7.2 below lists the Commissioners, as of June 2020, their Compensation type, date appointed and term expiration date.

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<sup>226</sup> NYS RPTL § 523-B staggered the 5-year Commissioner terms so that when first appointed a cycle of two (2) commissioners’ terms expire each year in years one (1) through four (4), and one (1) term expires in the fifth (5th) year of rotating terms.

<sup>227</sup> Although NYS RPTL § 523-B requires nine (9)

<sup>228</sup> NYS RPTL § 523-B, 2(a) and Nassau County Administrative Code § 6-40.1(a).

## Findings and Recommendations

### Exhibit 7.2

List of Commissioners (as of June 2020)					
Commissioners	Full/Part Time	Title	Compensation	Date appointed <sup>(1)</sup>	Expiration Date
Robin Laveman	FT	Chairperson	Salary	12/16/14, 12/27/17 <sup>(2)</sup>	6/30/2020
Jeremy May	FT	Vice Chairperson	Salary	4/6/2018	6/30/2021
Anthony T. Ballato	PT	Commissioner	Stipend	4/20/2010, 3/29/17 <sup>(3)</sup> , 8/9/17 <sup>(2)</sup>	6/30/2022
Gregory W. Carman Jr.	PT	Commissioner	Stipend	5/21/2015	6/30/2020
Frank L. Gatto	PT	Commissioner	Stipend	12/27/2017	6/30/2021
David Chulwoo Lee	PT	Commissioner	Stipend	3/29/17, 8/9/17 <sup>(2)</sup>	6/30/2022
Scott Davis	PT	Commissioner	Stipend	4/6/2018	6/30/2020
Richard Gutierrez	PT	Commissioner	Stipend	4/6/2018	6/30/2019
Vacant	PT	Commissioner	Stipend	n/a	n/a

(1) The date the appointment became a resolution with the approval of the County Executive.  
 (2) Reappointment  
 (3) No reappointment resolution was found after the 4/19/2010 appointment. This commissioner continued to serve and was “appointed” on 3/27/17, not “reappointed”, per the resolution.

Auditors found that appointment resolutions voted on by the Legislature do not consistently or adequately identify which prior Commissioner’s term is being replaced as new Commissioners are appointed; making it difficult to track and verify who is taking over which staggered term.

Additionally, it appears that the Chairperson’s term is either being misinterpreted or applied incorrectly. Neither NYS RPTL § 523-B nor the Nassau County Administrative Code specifies who designates the chairperson, § 523-B only states that “*One commissioner shall be designated chairman*”.

The New York State Board of Assessment Review Training Manual, which follows NYS RPTL § 523, states, “*To facilitate the conduct of hearings and other business, the members of the board of assessment review should elect a chairperson from among themselves. Only the board of assessment review itself can designate its chairperson.*”<sup>229</sup>

The 3-year Chairperson Term is “*designated*” in title only. All Commissioners should be serving full 5-year terms or the remainder of existing 5-year terms when filling vacant positions.

NYS RPTL § 523-B and the Nassau County Code do not make any reference to a vice chairperson, or their term or who shall designate such vice chairperson. As of June 2020, ARC employed a full-time vice-chairperson who was serving a previously vacated term set to expire in June 2021.. The resolution appointing this individual did not indicate which term he was replacing or whether upon reappointment it will be for a 3 or 5-year term.

<sup>229</sup> [https://www.tax.ny.gov/research/property/assess/training/Bar\\_manual\\_2019\\_withappendix.pdf](https://www.tax.ny.gov/research/property/assess/training/Bar_manual_2019_withappendix.pdf)

Note: This manual is for NYS Municipalities that follow NYS RPTL § 523, Nassau County ARC follows NYS RPTL § 523-B and does not have a training manual.

## Findings and Recommendations

### **The Composition of the Commissioners Did Not Meet the Political Affiliation Requirements**

NYS RPTL § 523-B and the Nassau County Administrative Code state that of the nine (9) Commissioners, "*no more than six (6) commissioners shall at any one time be enrolled voters of the same political party*". Although ARC has not maintained 9 Commissioners, the intent of the law was to limit political influence of any one party by not having more than 6 out of 9, or 67%, be from the same party.

Auditors reviewed political affiliations of Commissioners from 2015 - 2019 and determined that ARC has not had more than six (6) Commissioners from one single political party, however, the political affiliation of the Commissioners has exceeded 67% for one party:

- **from January 2015 to March 2017, over 80% of the Commissioners were from one party; and**
- Beginning in 2018 to 2019<sup>230</sup>, ARC Commissioners included three (3) Republicans, three (3) Democrats, one (1) Independent, one (1) Undeclared and one (1) vacant position.

### **ARC Did Not Maintain Commissioner Training and Experience Records**

**Auditors' testing found that there are no training manuals, attendance records, certificates or any other evidence that Commissioners were attending or receiving training as required by NYS Law.**

NYS RPTL § 523-B and the Nassau County Administrative Code requires that, "Each commissioner shall have at least five years business experience in the field of real estate or real estate law or experience in a public agency or municipal department and shall attend such training courses as shall be prescribed by the commissioner pursuant to section five hundred twenty-three of this title."<sup>231</sup>

Per ARC's Chairperson, the Office of the County Executive is responsible for obtaining Commissioner resumes and confirming qualifications. As a result, ARC does not receive or review resumes or qualifications for incoming Commissioners, prior to appointment, and is not afforded the opportunity to participate in the process to ensure qualified individuals are appointed. Auditors found that ARC had some resumes for current Commissioners on file but does not have procedures to obtain or retain this information and cannot confirm that qualifications for all Commissioners have been verified.

NYS RPTL § 523 requires that "Upon the initial appointment or reappointment of an individual to a board of assessment review, that appointee<sup>232</sup> shall attend a training course as shall be prescribed by the commissioner. The commissioner shall prescribe an introductory training course for initial appointees and a supplementary training course available to all members of boards of assessment review. Neither training course shall extend beyond four hours in length. The introductory training course shall include, but shall not be limited to, the functions, duties and responsibilities of the

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<sup>230</sup> As of October 2021, Commissioners have not changed since 2018.

<sup>231</sup> New York State Real Property Tax Law § 523-B. 2. (a).

<sup>232</sup> For the purpose of this subdivision, the term "appointee" shall include any individual appointed or reappointed to the board of assessment review.

## **Findings and Recommendations**

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board of assessment review, assessment review, assessment procedures, and exemption administration. The supplementary training course shall include but shall not be limited to real property tax legislation, judicial decisions, and administrative opinions.”<sup>233</sup>

According to ARC’s Chairperson, ARC provides in-house training for Commissioners because outside training does not address regulations unique to Nassau County. Auditors note that there are no training manuals for Nassau County Commissioners. NYS provides a 60-page (excluding Appendix) training manual for other municipalities<sup>234</sup>.

NYS RPTL § 523 also requires that “The commissioner shall prepare a certificate of attendance for each appointee or incumbent member who attends an introductory or supplementary training course, a copy of which must be filed with the clerk of the local government.”<sup>235</sup> Nassau County ARC did not provide the Auditors with evidence of any Commissioner trainings and does not provide training certificates or file copies with the Nassau County Clerk as required.

NYS RPTL § 523 continues that if an appointee is unable to attend the training course, “...the commissioner may issue a notice of extension enabling the appointee to attend such course at the earliest date when such course is next available as specified by the commissioner. The commissioner shall notify each such appointee of the notice of extension and the commissioner shall also file a copy of such notice with the county director of real property tax services and with the clerk of the appointing local government.”<sup>236</sup> Nassau County ARC did not provide any evidence of Commissioner training extensions and did not file copies of such notices with the Nassau County Clerk as required.

Most importantly, NYS RPTL § 523 requires that, “In determining whether a quorum is present at a meeting of a board of assessment review, members of such board who have not attended the course of training and for whom the certificate of attendance has not been filed as required herein, or for whom a notice of extension has not been issued and filed as provided herein, shall not be counted and may not participate in the hearing and determination of complaints.”<sup>237</sup> Without proper records, there is no way for Auditors to determine if ARC Commissioners have properly obtained the required training to be eligible to participate in the hearing and determination of complaints.

### **Audit Recommendations:**

We recommend that ARC:

- a) Request that the County Executive with the approval of the Legislature appoint the remaining Commissioners required to meet the requirement of nine Commissioners;

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<sup>233</sup> New York State Real Property Tax Law § 523. 2. (a).

<sup>234</sup> [https://www.tax.ny.gov/research/property/assess/training/Bar\\_manual\\_2019\\_withappendix.pdf](https://www.tax.ny.gov/research/property/assess/training/Bar_manual_2019_withappendix.pdf).

<sup>235</sup> New York State Real Property Tax Law § 523. 2. (b).

<sup>236</sup> New York State Real Property Tax Law § 523. 2. (c).

<sup>237</sup> Ibid.

## Findings and Recommendations

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- b) Work with the County Legislature to ensure that appointment resolutions adequately identify the Commissioners' terms that are being replaced as new Commissioners are appointed;
- c) Work with the County Executive and the Legislature to ensure procedures exist for the reappointment of Commissioners in a timely manner when their term expires;
- d) Develop appropriate training materials and provide introductory and supplemental training as required by law; and
- e) Retain appropriate training attendance records, extension notices and training certificates as required law.

### AUDIT FINDING (8)

#### **(8) ARC Did Not File Commissioner Property Disclosure Forms with the Nassau County Assessor as Required by NYS Law, Increasing the Risk that Related Party Transactions are not Properly Reviewed, and Possible Conflicts of Interests are not Identified**

Auditor review has found that ARC did not file Commissioner's property disclosure forms with the Nassau County Assessor as required by NYS Law, which increases the risk that appeals for Commissioner-owned and related party<sup>238</sup> properties may not be independently processed.

NYS RPTL § 523-B and the Nassau County Administrative Code requires ARC Commissioners to disclose to the Nassau County Assessor any direct or indirect interest in a property for which a complaint (i.e. "Application for Correction") has been filed. ARC provided Auditors with completed Property Disclosure Forms for all current ARC Commissioners as of August 2019; however, none of these disclosures were filed with the Assessor as required by law<sup>239</sup>.

Per ARC management, although not required by NYS, ARC also requests that in addition to the required Commissioner disclosures, departmental employees also must disclose their related party property interests. ARC did not provide Auditors with any evidence of departmental employee disclosures.

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<sup>238</sup> According to NYS RPTL § 523-B- 3. (d), "...a member of the assessment review commission shall be deemed to have a direct or indirect interest in any property for which a complaint has been filed when the member, spouse, or any of his or her minor children: (i) is the owner of such property; or (ii) is an officer, director, partner or employee of an entity which is an owner or lessee of such property; or (iii) is an officer, director, partner or associate of a law firm or real estate firm which has a financial interest with the owner or lessee of such property; or (iv) legally or beneficially owns or controls stock of a corporation which is an owner or lessee of such property..."

<sup>239</sup> NYS RPTL § 523.B – 3. (d), "Commissioners and others appointed to the assessment review commission shall be required to disclose on a form prescribed by the commissioner any direct or indirect interest in a property for which a complaint has been filed. Such disclosure shall be filed with the chairman of the board of assessors of the taxing district for which they serve, on or before the date when the commission submits the statement of assessment changes pursuant to subdivision three of section five hundred twenty-five of this title. Any member of a commission who knowingly and intentionally fails to disclose such interest shall be subject to a civil fine of two hundred fifty dollars for each such omission with respect to property for which a complaint has been filed..."

## **Findings and Recommendations**

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Auditors found that ARC lacks identifiable procedures, controls and related audit trails to ensure that related party property interests are appropriately reviewed and approved allowing potential conflicts of interest. The ARC Chairperson informed Auditors that independence is maintained in the review of Applications filed by ARC Commissioners or departmental employees since employees do not review their own properties and the appeal files do not contain any identifying information other than PARID numbers (Parcel ID Number).

Auditors were also informed that, although not required, an outside firm had been independently reviewing Commissioner Applications for years. Auditors requested several times but were not provided with information about this outside firm or given any documentation to verify that these reviews occurred. Therefore, Auditors could not perform any testing to determine if:

- There was any review of related party properties;
- The outside firm was selected competitively;
- The outside firm performed the review and if they followed proper guidelines;
- This outside firm was paid by ARC for their services;
- the Unilateral Reductions<sup>240</sup> to Commissioner properties were appropriate; and
- ARC Commissioner and employee reductions were appropriate.

Auditors were informed that ARC was unsatisfied with the appeal review work of the outside counsel regarding Commissioner related property appeals. In July 2019, Auditors were told that ARC had proposed a Memorandum of Understanding (“MOU”)<sup>241</sup> with the Village of Hempstead to review each other’s employees’ grievances. The Auditors followed up in July 2020 to inquire about the status of this MOU. We were informed that ARC was not satisfied with the outcomes and the MOU would no longer be used. ARC requested a new solution from the County Attorney.

Auditors also noted Commissioner Properties that were disclosed as related party properties that received Unilateral Reductions.

**Per the NYS Board of Assessment Review Training Manual, a Board “is an independent body and should do their best to appear objective and impartial at all times.”**

### **Audit Recommendations:**

We recommend ARC:

- a) Ensure the Commissioners file disclosures with the County Assessor as required by law;

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<sup>240</sup> “Unilateral Reductions” were defined to Auditors, by ARC, as a reduction in value through ARC’s own volition, to limit refund liability for properties they anticipate will receive reductions in the judicial review process.

<sup>241</sup> A Memorandum of Understanding (MOU) is an agreement between two parties that is not legally binding, but which outlines the responsibilities of each of the parties to the agreement, <https://legaldictionary.net>.

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## **Findings and Recommendations**

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- b) Develop procedures and controls for Commissioner related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail;
- c) Develop similar procedures and controls for the Assessment Employees, ARC Employees, the County Legislature and County Executive related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail; and
- d) Refrain from the use of “unilateral reductions” for Commissioner and employee related properties and create procedures to ensure such reductions are adequately disclosed to avoid the appearance of any conflict of interest.

## Findings and Recommendations

### AUDIT FINDING (9)

#### **(9) ARC Staff Decreased by 35% as Appeal Volumes Doubled within Seven Years, Contributing to the Need to Rely on a Mass Settlement Program**

Auditors review discovered that there were large staff reductions, between 2009 and 2011, of 35%<sup>242</sup> for ARC and 25%<sup>243</sup> for DoA. Subsequent to these reductions annual Applications filed with ARC began to accelerate at paces as high as 17% per year.

By 2018, the number of annual Applications filed each year more than doubled reaching 218,691. ARC’s reduced staffing levels remained stagnant while the DoA’s staffing levels continued to decline, reducing by a total of 114 employees or 51%, by 2017, before hiring resumed for both departments, in 2018.

The annual increase in the ratio of Applications to employees demonstrates that it was necessary for ARC to rely on a Mass Settlement Program and Carryforwards<sup>244</sup> that contributed to the continued deterioration of the Roll.

During the freeze DoA did not perform periodic annual assessments<sup>245</sup>, as recommended by NYS guidelines<sup>246</sup>, leaving ARC to address the record numbers of Applications filed each year.

Exhibit 9.1 below shows total appeals volumes separated by Residential and Commercial Applications, from 2009 to 2019.

#### **Exhibit 9.1**

Assessment Review Commission Number of Appeals Received Fiscal Years 2009-2019											
ARC Appeal Volume <sup>(1),(2)</sup>	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Residential Appeals</b>	107,287	107,547	111,019	111,133	129,946	136,523	148,710	162,238	184,781	218,691	236,371
<b>Commercial Appeals</b>	19,077	19,076	18,940	19,868	20,449	20,726	20,963	20,878	20,949	22,323	23,043
<b>Total Appeals Received</b>	<b>126,364</b>	<b>126,623</b>	<b>129,959</b>	<b>131,001</b>	<b>150,395</b>	<b>157,249</b>	<b>169,673</b>	<b>183,116</b>	<b>205,730</b>	<b>241,014</b>	<b>259,414</b>

<sup>(1)</sup> *Comprehensive Financial Annual Report of the Comptroller For the Fiscal Years Ended December 31, 2018 and 2019. Exhibit T-22.*  
<sup>(2)</sup> *Appeals for correction of assessments are filed yearly between January 1 and March 1 with the Assessment Review Commission ("ARC"). The appeals filed in 2019 were for the 2020/2021 tax year.*

<sup>242</sup> Per the County’s Comprehensive Annual Financial Report data, ARC staff reduced from 46 in 2009 to 30 in 2011.

<sup>243</sup> Per the County’s Comprehensive Annual Financial Report data, DoA staff reduced from 224 in 2009 to 168 in 2011.

<sup>244</sup> The Prior County Executive announced the “Residential Tax Grievance Negotiation and Settlement Program” implemented through what is known as the ‘Mass Settlement Program’ which unofficially included but was not limited to negotiating a separate LOA, a Frozen Tax Roll and a Carryforward of prior Settled Values. Also see <https://archive.nassaucountyny.gov/agencies/CountyExecutive/NewsRelease/2012/08-08-2012.html>.

<sup>245</sup> During the timeframe of the Assessment Tax Roll Freeze, the Department of Assessment did not regularly perform annual assessments on properties unless certain conditions were met such as new construction, expansion or destruction of improvements, sales, etc.

<sup>246</sup> NYS guidelines state regularly scheduled appraisals of all parcels, at least once every four years, are necessary to maintain assessment equity, NYS Office of Real Property Tax Services, Guidelines for Cyclical Reassessment, June 2017.

## Findings and Recommendations

As of 2019:

- Annual Residential Applications grew 120% from 107,287 to 236,371
- Annual Commercial Applications grew 21% from 19,077 to 23,043

In 2021, the year of the reassessment, 62% of the properties on the Roll grieved, including 243,419<sup>247</sup> residential properties.

The Auditors found with the significant increase in Applications, ARC’s staff did not increase. Exhibit 9.2 below, shows Full Time staffing levels in ARC and DoA, from 2009 to 2019.

### Exhibit 9.2

Assessment Review Commission vs. Department of Assessment											
Full-Time Staffing Headcounts											
2009-2019											
Department	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>ARC</b>	46	43	30	29	29	29	30	29	28	39	59
<b>DoA</b>	224	212	168	157	154	147	136	129	110	118	145

*Source: Per 2009 to 2019 Nassau County Comprehensive Annual Financial Report of the Comptroller.*

- ARC Personnel decreased by 35% from 2009 to 2011 and a total of 39% by 2017
- DoA Personnel decreased by 25% from 2009 to 2011 and a total of 51% by 2017

Exhibit 9.3 below includes the Auditors analysis of estimated workloads by comparing annual Applications volumes to ARC’s appraisal related staff. Auditors determined that ARC was not adequately staffed, from at least 2009 to 2019, to properly handle and process the increasing volume of Applications filed each year.

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<sup>247</sup> Per ARC appeals files.

## Findings and Recommendations

### Exhibit 9.3

Estimate of ARC Appraisal Staff to Meet Appeal Workload Demand 2009 - 2019											
Description	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<u>Appeals Received</u>											
Residential Appeals	107,287	107,547	111,019	111,133	129,946	136,523	148,710	162,238	184,781	218,691	236,371
Commercial Appeals	19,077	19,076	18,940	19,868	20,449	20,726	20,963	20,878	20,949	22,323	23,043
Total Appeals	126,364	126,623	129,959	131,001	150,395	157,249	169,673	183,116	205,730	241,014	259,414
<u>Appeal Workload Estimated in Days <sup>(1)</sup></u>											
Residential Workload (20 per Day)	5,364	5,378	5,551	5,556	6,497	6,826	7,435	8,112	9,239	10,934	11,818
Commercial Workload (5 Per Day)	3,816	3,815	3,788	3,974	4,090	4,145	4,193	4,176	4,190	4,465	4,609
Total Estimated Workload in Days	9,180	9,193	9,339	9,530	10,587	10,971	11,628	12,288	13,429	15,399	16,427
<u>Estimated Staff Needed to Meet Workload</u>											
ARC Appraisers Needed <sup>(2)</sup>	42	43	43	44	49	51	54	57	62	71	76
ARC Staff Assigned to Appraisals <sup>(3)</sup>	22	20	13	13	13	12	13	13	13	15	26
Understaffing of ARC Appraisers	(20)	(23)	(30)	(31)	(36)	(39)	(41)	(44)	(49)	(56)	(50)
% of Necessary Staff to meet Workload	52%	47%	30%	30%	27%	24%	24%	23%	21%	21%	34%
Total Understaffing in Work Days <sup>(4)</sup>	(4,428)	(4,873)	(6,531)	(6,722)	(7,779)	(8,379)	(8,820)	(9,480)	(10,621)	(12,159)	(10,811)
<i><sup>(1)</sup> Expectations are approximately 20 Residential Reviews or 5 Commercial Reviews per day, equating to 21 minutes and 84 minutes each, respectively.</i>											
<i><sup>(2)</sup> 216 Work Days per employee after removing estimated leave time.</i>											
<i><sup>(3)</sup> Count from payroll records estimated by job title excluding commissioners and other non appraisal related employees. Indistinguishable appraisal support staff is included with residential estimates.</i>											
<i><sup>(4)</sup> (ARC Staff Assigned to Appraisals) multiplied by (216 Work Days) minus (Total Estimated Workload in Days).</i>											

Analysis of the information above shows that:

- In 2009, before the freeze, ARC did not have the staff necessary to meet Applications demand;
- In 2010, ARC only had 47% of the appraisal related staff it actually needed to properly handle the volume and by 2018 ARC only had 21% of the appraisal related staff needed; and
- Between 2010 and 2019 ARC was understaffed by an average of 40 Appraisal related employees, the equivalent of 8,617 workdays each year.

The combination of increased Application volume and reductions in staff cemented ARC's need to rely on a Mass Settlement Program to avoid the potential Liability created by the County Guarantee<sup>248</sup>.

As stated, in this report, **the national average percentage of properties that appeal in large municipalities<sup>249</sup> is only 2.9%, while Nassau County's appeals reached 62% in 2021.** At that national average, Nassau County should only have approximately 12,300 grievances annually.

<sup>248</sup> Due to a unique County Guarantee, established in 1948, Nassau County is the only municipality within New York State that is responsible for the entire liability associated with property tax refunds on behalf of all the towns, special districts and all but one school district within its boundaries.

<sup>249</sup> Based on results of large jurisdictions with over 100,000 parcels responding to a survey performed by Lawrence C. Walters, PH.D. and the IAAO Research Committee, titled "Staffing in Assessment Offices in the United States and Canada: Results of 2013 Survey."

## Findings and Recommendations

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### **Audit Recommendation:**

We recommend that ARC work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average.

### **AUDIT FINDING (10)**

#### **(10) ARC is Processing Applications Without Complete Written Procedures, Following Outdated Rules and Processing Applications After The New York State Deadline**

ARC does not maintain a complete and updated set of department wide procedures to document departmental processing instructions, valuation procedures, job title functions and responsibilities. The procedural documentation provided to the Auditors was outdated and/or incomplete. The lack of updated written procedures prevented the Auditors from adequately identifying and testing internal controls and ensuring that ARC's Rules of Procedure<sup>250</sup> were properly followed.

A policy is a rule or guideline adopted by the governing body of an organization such as the board of Directors or Legislature to reach its long-term goals. A policy determines major decisions, actions, and boundaries.

While ARC's policies are documented and posted on their website labeled Rules of Procedure there is no evidence that these rules have been reviewed and brought up to date since they were last approved by the Legislature in 2003.

After multiple requests for policies and procedures we were supplied with "staff instructions" which were not a complete set of policies and procedures.

Procedures give step-by-step instructions for completing tasks. They set forth when to act, describe alternatives, include warnings, show how to fill out forms and the proper forms to use. They often include checklists and workflow documentation.

ARC's Rules of Procedure state that "*the Commission shall consider the proposal of rules at least once a year*". ARC Rules have not been updated since December 2003. ARC's Rules of Procedure:

- Refer to Applications filed in 2003, 2004 and 2005, which infers they have not been updated;
- Refer to processes no longer used, such as the ability to arrange with bulk filers for delivery of Application forms when ARC only accepts these electronically; and
- Refer to Representatives being able to submit their own private editions of Application forms when ARC only accepts electronically filed Applications from Representative.

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<sup>250</sup> ARC's Rules of Procedure: <https://www.nassaucountyny.gov/3691/Assessment-Review-Commission-Rules-Of-Co.>

## Findings and Recommendations

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To ensure these Legislative Rules are being followed and that ARCs procedures were current, Auditors requested a set of departmental procedures multiple times, beginning in March 2018. Two months later we received two single page flow charts outlining the basic workflow for both commercial and residential Applications/grievances; neither of these pages provided detail documenting specific procedures or identifying specific controls.

Eleven months later ARC provided outdated operating procedures, last revised in 2005, that did not accurately reflect all current operating activities. The main operating procedures ARC provided had not been updated in 14 years. At a minimum, these outdated operating procedures:

- do not consistently reflect the current procedures being followed;
- are based on an old computer system which has been replaced;
- do not reflect the changes for the implementation of online Applications;
- do not adjust responsibilities for the declines and subsequent increases in staff; and
- list responsibilities for staff that are no longer with ARC.

Also included with the outdated procedures were various separate write-ups of procedures for Incoming Mail, AROW Data Entry, Property File Maintenance, etc. The majority of these documents were not dated, not in any specific order and did not identify the titles or number of people needed to perform these functions. In most cases, the documents did not identify a purpose or specific controls including signoffs, review and approval paths.

Auditors found that there are no written procedures for accepting and processing Applications and authorizations. ARC provided procedures for quality control (“QC”) testing of Authorizations for 2020 that did not apply to prior years that were being reviewed.

The lack of written procedures makes it difficult to ensure that work is performed consistently, accurately, appropriately and efficiently. A lack of procedures also impedes succession or transition planning for the loss of key management and fluctuations in the number of employees due to retirement and budget issues.

The appeal Application due dates have been extended past the **NYS statutory** deadline, which is the first business day in March. This happened under both the prior and current County administrations in five of nine years, excluding the 2021/22<sup>251</sup> which was due to the COVID-19 pandemic. Extensions disregard NYS Law.

The annual March deadline for submission of appeal Applications is established by NYS Law and ARC’s Rules of Commission as follows:

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<sup>251</sup> Regarding the 2021/22 tax year, initially the due date was extended to April 2, 2020, but as a result of the State of Emergency declared by New York State, due to COVID-19, an additional extension was enacted by the Nassau County Legislature to April 30, 2020.

## Findings and Recommendations

- NYS Real Property Tax Law § 523-B stipulates that, “*During the period from January second through March first, any person or corporation claiming to be aggrieved by the assessment of real estate may apply for correction of such assessment.*”
- ARC’s Rules of Commission state, “*An application for correction may be made only by submitting an application form for review by the Commission during the period from the first business day in January until the first business day in March...*”

Auditor review found that extensions to the required application due date were granted in five of nine tax years.

In comparison, NYC does not extend their residential grievance deadline, despite having three times as many parcels as Nassau County.

A NYC Annual report states: “*To be considered timely, an application must be received at the Tax Commission or a borough office of the Department of Finance by the applicable deadline. The Tax Commission has no authority to waive or extend the deadlines.*”<sup>252</sup>

Extending the appeal Application due date and accepting Applications that should have been marked as late and dismissed causes the following issues:

- decreases the time ARC has available to process appeal Applications;
- increases the appeal Application volume; and
- exposes the County to potential refund liability pending the outcome and timing of Judicial Review.

On January 21, 2021, the County Executive announced that ARC would extend the property assessment grievance deadline of March 1, 2021 by providing an additional 60-day grace period. As noted in ARC’s website, “*applications for the 2022/23 received by ARC shall be deemed timely up through April 30, 2021*”.

### **Audit Recommendations:**

We recommend that ARC:

- a) Review and update ARC’s Rules of Procedure to ensure they reflect the current rules that ARC should follow and seek Legislative approval of these updates;
- b) Develop and disseminate to all employees a formal updated policy and procedure manual that documents the operating procedures and internal controls, along with individual job functions, responsibilities and deadlines. This should include procedures for annual updates of policies and procedures, high level workflows, internal controls and managerial

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<sup>252</sup> TAX COMMISSION OF THE CITY OF NEW YORK 2018 Annual Report also states that “*However, if the Department of Finance issues a notice increasing the assessed value or reducing the amount of an exemption, the property owner can file an application for correction within 20 calendar days after the date of that notice even if the 20th day falls after the March 1 or March 15 deadline.*”

## **Findings and Recommendations**

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reviews, with copies of key documents, report titles, and succession or transition planning for key management; and

- c) Mark “Late” and dismiss all future Applications received after the first business day of March of any given year.

EXECUTIVE ORDER NO. 6 – 2010

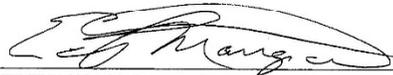
**TAX STABILIZATION ORDER OF 2010**

EXECUTIVE ORDER BY THE COUNTY EXECUTIVE,  
PURSUANT TO SECTION 203 OF THE COUNTY GOVERNMENT  
LAW OF NASSAU COUNTY

*(Relating to reassessments of real property on a quadrennial basis)*

It shall be the policy of Nassau County to re-assess all parcels of real property on a four-year cyclical basis rather than on an annual basis. During the four-year cycle, adjustments may be made to the assessment roll in the event of a physical change to the property, such as additions or demolitions, in the event that the property owner brings a successful administrative or judicial challenge to the assessed value of the real property, and to reflect changes in property classification based upon property use, changes in exemptions and exemption eligibility.

The Assessor is directed to implement this policy consistent with all applicable state and local law, including any changes in law after the execution of this Order.



EDWARD P. MANGANO  
County Executive  
County of Nassau

April 7, 2010  
Mineola, New York

2010 APR 12 PM 2:31  
NASSAU COUNTY  
LEGISLATURE



**A** Neutral  
As of: March 1, 2018 2:50 PM Z

**Matter of Baldwin Union Free Sch. Dist. v. County of Nassau**

Court of Appeals of New York

January 7, 2014, Argued; February 18, 2014, Decided

No. 9

**Reporter**

22 N.Y.3d 606 \*; 9 N.E.3d 351 \*\*; 986 N.Y.S.2d 1 \*\*\*; 2014 N.Y. LEXIS 202 \*\*\*\*; 2014 NY Slip Op 1103; 2014 WL 590617  
[Nassau, 105 AD3d 113, 962 NYS2d 229, 2013 N.Y. App. Div. LEXIS 1218 \(N.Y. App. Div. 2d Dept. 2013\)](#)

**[1]** In the Matter of Baldwin Union Free School District et al., Respondents, v County of Nassau, Appellant. (Matter No. 1.) Barbara Hafner et al., Respondents, v County of Nassau et al., Appellants. (Matter No. 2.) In the Matter of Town of North Hempstead et al., Respondents, v County of Nassau, Appellant. (Matter No. 3.)

**Prior History:** Appeal, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered February 27, 2013. The Appellate Division (1) reversed, on the law, so much of a judgment (denominated order) of the Supreme Court, Nassau County (Thomas A. Adams, J.; op [2012 NY Slip Op 30079\[U\] \[2012\]](#)), entered in two hybrid CPLR article 78 proceedings/declaratory judgment actions (matter Nos. 1 and 3) and a declaratory judgment action (matter No. 2), which were joined for discovery, trial and disposition, as had effectively granted summary judgment to defendants/respondents and defendants in all three matters, declaring that Local Law No. 18-2010 of the County of Nassau does not violate either the New York Constitution or Municipal Home Rule Law; (2) granted that branch of plaintiffs' cross motion in matter No. 2 which was for summary judgment declaring that Local Law No. 18-2010 of the County of Nassau violates the New York Constitution and the Municipal Home Rule Law; (3) upon searching the record, awarded petitioners/plaintiffs in matter Nos. 1 and 3 summary judgment declaring that Local Law No. 18-2010 of the County of Nassau violates the New York Constitution and the Municipal Home Rule Law; (4) denied the petitions in matter Nos. 1 and 3 as academic; and (5) declared that Local Law No. 18-2010 of the County of Nassau violates the New York Constitution and the Municipal Home Rule Law.

[Matter of Baldwin Union Free Sch. Dist. v County of](#)

**Disposition:** [\*\*\*\*1] Order affirmed, with costs.

**Core Terms**

local law, home rule, county charter, Municipal, charter, County's, local taxes, provisions, amendments, state law, powers, taxes, state tax law, refunds, repeal, superseding, local legislation, assessments, real property tax, local government, delegation, state legislature, taxing district, enact, taxation, power of taxation, specify, general state law, City's, restrictions

**Case Summary**

**Overview**

ISSUE: Whether the intermediate appellate court erred in affirming the trial court's order invalidating Nassau County, N.Y., Local Law 18, which shifted the obligation to pay real property tax refunds from the county to its individual taxing districts, thus superseding a special state tax law. HOLDINGS: [1]-As the legislature did not expressly delegate to the county any authority to enact local laws that superseded special state tax laws, under [N.Y. Const. art. XVI, § 1](#), the county was not authorized to enact Local Law 18; [2]-[N.Y. Const. art. IX, § 2\(c\)\(ii\)\(8\)](#) barred the county from passing local tax laws that conflicted with state laws; [3]-As the County Guaranty was a special state law that related to the distribution of tax proceeds and benefits, under [Municipal Home Rule Law § 34\(3\)\(a\)](#), the county could not enact a charter law such as Local Law 18 to supersede the County Guaranty.

**Outcome**

The order of the intermediate appellate court was affirmed.

22 N.Y.3d 606, \*606; 9 N.E.3d 351, \*\*351; 986 N.Y.S.2d 1, \*\*\*1; 2014 N.Y. LEXIS 202, \*\*\*\*1; 2014 NY Slip Op 1103, \*\*\*\*\*1103

**LexisNexis® Headnotes**

all real property tax refunds owed by the taxing districts within the County, whereas virtually every other county may shift that obligation onto the relevant taxing districts.

Governments > Local Governments > Duties & Powers

Constitutional Law > State Constitutional Operation

Tax Law > State & Local Taxes > Real Property Taxes > General Overview

Governments > Legislation > Effect & Operation > Amendments

Governments > Local Governments > Ordinances & Regulations

Governments > Legislation > Enactment

Governments > State & Territorial Governments > Relations With Governments

Governments > Local Governments > Duties & Powers

Governments > State & Territorial Governments > Legislatures

**HN1[↓] Local Governments, Duties & Powers**

May Nassau County, New York, pass a local law that shifts the obligation to pay real property tax refunds from the county to its individual taxing districts, thereby superseding a special state tax law? The Court of Appeals of New York answers this question in the negative. The New York Constitution vests in the State and the counties only a definite and circumscribed set of powers. Beyond its constitutional authority, neither a county nor the State can act, regardless of the perceived wisdom of its conduct or the nobility of its aims.

**HN3[↓] Constitutional Law, State Constitutional Operation**

*N.Y. Const. art. IX, § 2(b)(1)* provides that, subject to any other applicable provisions of the New York Constitution, the legislature shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by art. IX.

Governments > Local Governments > Duties & Powers

Constitutional Law > State Constitutional Operation

Tax Law > State & Local Taxes > Administration & Procedure > Credits, Overassessments & Refunds

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > General Overview

Tax Law > State & Local Taxes > Real Property Taxes > General Overview

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

**HN2[↓] Local Governments, Duties & Powers**

The Real Property Tax Law requires that, in counties other than Nassau County, real property tax refunds be charged to the individual taxing districts within each county. *RPTL § 726(1)*. Regarding Nassau County, however, the RPTL leaves the County Guaranty and its tax certiorari notice provisions intact, *RPTL § 712(2-a)* (2006). Thus, under state law, Nassau County must pay

**HN4[↓] Constitutional Law, State Constitutional Operation**

See *N.Y. Const. art. IX, § 2(c)*, (c)(ii)(8).

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Duties &

## Appendix B - Matter of Baldwin Union Free Sch. Dist. V. County of Nassau

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Powers

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

### [HN5](#) **Constitutional Law, State Constitutional Operation**

See [N.Y. Const. art. IX, § 3\(b\)](#).

Governments > State & Territorial

Governments > Relations With Governments

### [HN7](#) **Local Governments, Duties & Powers**

Governments > Local Governments > Duties & Powers

The Municipal Home Rule Law specifically declares that, except in accordance with provisions of this chapter or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature which relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments. [Municipal Home Rule Law § 34\(3\)\(a\)](#). The Municipal Home Rule Law defines a "charter law" as a local law providing, amending or repealing a county charter, or transferring a function or a duty pursuant to [Municipal Home Rule Law § 33\(a\)](#) of this chapter. [Municipal Home Rule Law § 32\(2\)](#).

Tax Law > State & Local Taxes > Administration & Procedure > Collection of Taxes

Governments > Local Governments > Finance

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

### [HNG](#) **Local Governments, Duties & Powers**

The statutory scheme of the Municipal Home Rule Law declares that, in addition to powers granted in the New York Constitution, the statute of local governments or in any other law, every local government shall have the power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, including the collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws shall be consistent with laws enacted by the legislature. [Municipal Home Rule Law § 10\(1\)\(ii\)\(a\)\(9\)](#). The Municipal Home Rule Law also permits counties to amend their charters in a manner consistent with applicable state laws and the New York Constitution ([Municipal Home Rule Law § 33](#)), contains a savings clause retaining the counties' existing powers under previously enacted statutes ([Municipal Home Rule Law § 35](#)), and continues all existing laws, local laws and charters not expressly repealed ([Municipal Home Rule Law § 56](#)).

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > General Overview

Governments > State & Territorial

Governments > Finance

### [HN8](#) **Local Governments, Finance**

[N.Y. Const. art. XVI, § 1](#) provides that the power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law, and that any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review.

Governments > Local Governments > Duties & Powers

Governments > State & Territorial

Governments > Finance

Tax Law > State & Local Taxes > Administration & Procedure > Assessments

Governments > State & Territorial

Governments > Legislatures

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### [HN9](#) **State & Territorial Governments, Finance**

See [N.Y. Const. art. XVI, § 2](#).

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

### [HN10](#) **Constitutional Law, State Constitutional Operation**

As limited by the New York and federal Constitutions' protection of individual rights and restriction of state power, the New York Constitution establishes the state government as the preeminent sovereign of New York, and the three coordinate branches of the state government may exercise the entire legislative, executive and judicial power of the State, as entrusted to them by the people. [N.Y. Const. art. III, § 1](#); [N.Y. Const. art. IV, § 1](#); N.Y. Const. art. VI. Given that the authority of political subdivisions flows from the state government and is, in a sense, an exception to the state government's otherwise plenary power, the lawmaking power of a county or other political subdivision can be exercised only to the extent it has been delegated by the State.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Duties & Powers

Tax Law > State & Local Taxes > General Overview

Governments > Local Governments > Finance

Governments > State & Territorial Governments > Relations With Governments

### [HN11](#) **Constitutional Law, State Constitutional Operation**

Because the New York Constitution expressly imbues the state government, rather than any locality, with the

power of taxation ([N.Y. Const. art. XVI, § 1](#)), state law governs the tax field unless the state legislature or the Constitution unambiguously delegates certain taxation authority to a political subdivision. Art. XVI, § 1. The power of taxation, being a state function, the delegation of any part of that power to a subdivision of the State must be made in express terms, and the delegation of any form of taxation authority cannot be inferred. So, too, the authority of a municipality to abrogate state law is never implied or inferred, but rather arises only from an express grant, never from a general grant of power by the State.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Finance

Governments > State & Territorial Governments > Relations With Governments

### [HN12](#) **Local Governments, Duties & Powers**

Perhaps the most significant delegation of state legislative authority is embodied in N.Y. Const. art. IX, the home rule article. Art. IX empowers municipalities to legislate in a wide range of matters relating to local concern, and generally, so long as local legislation is not inconsistent with the New York Constitution or any general law, localities may adopt local laws both with respect to their property, affairs or government and with respect to other enumerated subjects, except to the extent that the legislature shall restrict the adoption of such a local law. Art. IX permits localities to make laws with respect to the levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, but such local laws must be consistent with laws enacted by the legislature. [N.Y. Const. art. IX, § 2\(c\)\(ii\)\(8\)](#).

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions

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Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial  
Governments > Relations With Governments

### [HN13](#) **Constitutionality of Legislation, Inferences & Presumptions**

Under its Charter, Nassau County derives its ability to pass local legislation solely from N.Y. Const. art. IX, and therefore the County cannot legislate in a manner inconsistent with the provisions of art. IX. Nassau County, N.Y., Charter § 150(1). Although, within constitutional bounds, the Charter allows Nassau County to pass a tax plan by local ordinance and to provide for the administration of local real property taxes (L 1936, ch. 879), the Municipal Home Rule Law proscribes the enactment of local charter legislation that supersedes any general or special law enacted by the legislature which relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments. *Municipal Home Rule Law § 34(3)(a)*. Even in the face of these restrictions, though, the County's laws, like the duly enacted laws of any legitimate legislative body, carry a strong presumption of constitutionality.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Finance

Tax Law > State & Local Taxes > General Overview

Governments > State & Territorial  
Governments > General Overview

### [HN14](#) **Constitutional Law, State Constitutional Operation**

The constitutional power of taxation extends not just to the collection of taxes or the setting of tax rates, but also to the administration of the tax system and the direct allocation of tax burdens and benefits.

Governments > Local Governments > Charters

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

### [HN15](#) **Local Governments, Charters**

A law that amends the charter-related administrative code of a county is a "charter law" within the meaning of the Municipal Home Rule Law.

Governments > Local Governments > Duties & Powers

Tax Law > State & Local Taxes > General Overview

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial  
Governments > Relations With Governments

### [HN16](#) **Local Governments, Duties & Powers**

The New York Legislature has not delegated to Nassau County the prerogative to supersede a special state tax law, and this lack of authority is fatal to Nassau County, N.Y., Local Law 18.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial  
Governments > Relations With Governments

### [HN17](#) **Local Governments, Duties & Powers**

The Nassau County, N.Y., Charter, as established by the legislature, does not vest in the County the right to repeal a special state tax law. The primary County Charter provision relating to supersession, Nassau County, N.Y., Charter § 151, simply provides that, in

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adopting a local law changing or superseding any provision of an act of the State Legislature which provision does not in terms and in effect apply alike to all counties, the County must specify the exact portions of the state law being superseded. Section 151 thus describes the procedure the County shall follow in adopting a local law superseding a special state law, but it does not state that the County shall have the power to adopt local laws which repeal special state laws, may adopt such legislation, or anything to that effect. Accordingly, § 151 does not expressly confer upon the County any substantive authority to enact local laws which supersede special state tax laws.

Governments > Local Governments > Charters

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

### [HN19](#) **Constitutional Law, State Constitutional Operation**

Nassau County, N.Y., Charter § 150(1) grants the County powers of local legislation under the provisions of N.Y. Const. art. IX. However, art. IX, upon which § 150(1) depends, does not confer upon the County the ability to create local tax laws that supersede special state laws. The New York Constitution actually forbids the County to pass any local tax law of that kind. Although N.Y. Const. IX, § 2 declares that every local government shall have the power to pass local laws relating to the levy, collection and administration of local taxes, those local laws must be consistent with laws enacted by the legislature. [N.Y. Const. art. IX, § 2\(c\)\(ii\)\(B\)](#). By requiring that any local tax-related legislation be consistent with all laws enacted by the legislature, without distinguishing between general and special state laws, art. IX, § 2(c)(ii)(B) plainly prohibits the County from passing local tax laws which conflict with special and/or general state laws. And, while the Constitution contains a savings clause that preserves any pre-existing powers of local legislation granted by an act of the legislature ([N.Y. Const. art. IX, § 3\(b\)](#)), the County has no pre-existing power to pass local laws that supersede special state tax laws. Therefore, the Constitution bars the County from exercising its powers of local legislation to supersede the County Guaranty.

Governments > Local Governments > Charters

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial  
Governments > Relations With Governments

### [HN18](#) **Local Governments, Charters**

Nassau County, N.Y., Charter § 154, denominated "Restriction on county legislation," expressly prohibits the County from superseding state laws which raise the County's debt limit, raise its annual tax revenues, or affect various fiscal, labor or regulatory matters (L 1937, ch. 618, 1-A; § 154(1), (8)). Section 154 does not specify that the County may supersede special state tax laws simply because § 154 prevents the County from superseding special State laws covering certain matters unrelated to taxation. One cannot infer from § 154's limitations that the Charter silently grants the County any and all supersession powers that are not specifically prohibited by § 154. Accordingly, because nothing in Nassau County, N.Y., Charter §§ 151 and 154 expressly delegates to the County the right to supersede special state tax laws, the County had no authority to enact Nassau County, N.Y., Local Law 18, which purports to supplant a special state tax law.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial  
Governments > Relations With Governments

Constitutional Law > State Constitutional Operation

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**[HN20](#) Local Governments, Duties & Powers**

In addition to the absence of constitutional or statutory authority allowing Nassau County to enact Nassau County, N.Y., Local Law 18, the Municipal Home Rule Law affirmatively prohibits the County from doing so. Local Law 18 is a charter law, and the [Municipal Home Rule Law § 34\(3\)\(a\)](#) specifies that such a law shall not supersede any special law of the State relating to the judicial review or distribution of tax proceeds or benefit assessments. Because the County Guaranty is a special State law which relates to the distribution of tax proceeds and benefits, the County could not enact Local Law 18 to supersede it.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Finance

Governments > Local Governments > Home Rule

Governments > State & Territorial

Governments > Relations With Governments

**[HN23](#) Constitutional Law, State Constitutional Operation**

Nassau County, New York possesses substantial home rule powers, but the prerogative to impinge freely upon the State's constitutional power of taxation, by means of superseding a special state tax law, is not among them. Because Nassau County, N.Y., Local Law 18 was designed to achieve that impermissible intrusion, it is declared unconstitutional, invalid, unenforceable and void. With respect to any policy concerns, appeal lies to the ballot and to the legislative processes of democratic government, not to the courts.

**Headnotes/Syllabus**

**Headnotes**

**Local Laws — Inconsistency with State Law — Tax Laws**

Nassau County was prohibited by NY Constitution article IX and the Municipal Home Rule Law from passing Local Law No. 18-2010 of the County of Nassau, which shifted the obligation to pay real property tax refunds from the County, as provided for in an amendment to the County's Administrative Code passed by the state legislature known as the County Guaranty, to its individual taxing districts, thereby superseding a special state tax law. The state legislature has not delegated to the County the prerogative to supersede a special state tax law, and that lack of authority is fatal to Local Law 18. The County Charter, as established by the legislature, does not vest in the County the right to repeal a special state tax law. Moreover, the Constitution bars the County from exercising its powers of local legislation to supersede the County Guaranty. In addition to the absence of constitutional or statutory

Constitutional Law > State Constitutional Operation

**[HN21](#) Constitutional Law, State Constitutional Operation**

Amendments to the New York Constitution do not preserve all pre-existing provisions of the amended portion of the Constitution, thereby forever maintaining all prior delegations of state authority that are curtailed by the amendments themselves. Instead, the very purpose and effect of an amendment is to amend the relevant portion of the Constitution, effectively repealing and voiding any prior version of the particular section so amended.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Duties & Powers

Tax Law > State & Local Taxes > General Overview

Governments > Local Governments > Finance

Governments > State & Territorial

Governments > Relations With Governments

**[HN22](#) Constitutional Law, State Constitutional Operation**

Given the overarching constitutional principle that the power of taxation lies with the State of New York, any ambiguity in the constitutional restrictions on local legislation should be construed in favor of limiting local supersession of state tax laws.

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authority allowing the County to enact Local Law 18, the Municipal Home Rule Law affirmatively prohibited the County from doing so. Local Law 18 is a charter law, and *Municipal Home Rule Law § 34 (3) (a)* specifies that such a law "shall not supersede" any "special law" of the State "relat[ing] to" the "judicial review or distribution" of tax proceeds or benefit assessments. Because the County Guaranty is a special state law which "relates to" the "distribution" of tax proceeds and benefits, the County could not enact Local Law 18 to supersede it. The County possesses substantial home rule powers, but the prerogative to impinge freely upon the State's constitutional power of taxation, by means of superseding a special state tax law, is not among them. Because Local Law 18 was designed to achieve that impermissible intrusion, it was declared unconstitutional, invalid, unenforceable and void.

**Counsel:** *Rosenberg Calica & Birney LLP*, Garden City (Ronald J. Rosenberg, Lesley A. Reardon, Judah Serfaty and Edward M. Ross of counsel), and *Nassau County Attorney's Office*, Mineola, for appellants in the three above-entitled matters. I. Nassau County possesses the authority and power under the Local Legislation Act (L 1936, ch 879; L 1937, ch 618; L 1939, ch 700) and its Charter to change or supersede the special law creating the County Guaranty, which special law does not apply "alike to all counties" but only applies to the County of Nassau. (*Yatauro v Mangano*, 17 NY3d 420, 955 NE2d 343, 931 NYS2d 36; *Matter of Gizzo v Town of Mamaroneck*, 36 AD3d 162, 824 NYS2d 366; *Landmark Colony at Oyster Bay v Board of Supervisors of County of Nassau*, 113 AD2d 741, 493 NYS2d 340; *Matter of Holland v Bankson*, 290 NY 267, 49 NE2d 16; *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 761 NE2d 1018, 736 NYS2d 291; *Matter of Dutchess County Dept. of Social Servs. v Day*, 96 NY2d 149, 749 NE2d 733, 726 NYS2d 54; *Matter of Meegan v Brown*, 16 NY3d 395, 948 NE2d 425, 924 NYS2d 1; *Ferres v City of New Rochelle*, 68 NY2d 446, 502 NE2d 972, 510 NYS2d 57; *Riley v County of Broome*, 95 NY2d 455, 742 NE2d 98, 719 NYS2d 623; *Fire Dept. of City of Rochester v City of Rochester*, 23 AD2d 183, 259 NYS2d 517, 16 NY2d 933, 212 NE2d 439, 264 NYS2d 921.) II. The Appellate Division's application of the 1963 version of *NY Constitution, article IX, § 2* to limit the County of Nassau's local legislative authority was patently erroneous. (*41 Kew Gardens Rd. Assoc. v Tyburski*, 70 NY2d 325, 514 NE2d 1114, 520 NYS2d 544; *Matter of Kelley v McGee*, 57 NY2d 522, 443 NE2d 908, 457 NYS2d 434; *Matter of Heimbach v Mills*, 67 AD2d 731, 412 NYS2d 668; *Rozler v Franger*, 61 AD2d 46, 401 NYS2d 623; *Pearson v Pearson*, 81 AD2d 291,

*440 NYS2d 345; County of Nassau v Incorporated Vil. of Woodsburgh*, 86 AD2d 856, 447 NYS2d 326; *Matter of Main St. in Vil. of Sing Sing*, 98 NY 454.) III. Even if the 1963 version of *NY Constitution, article IX, § 2 (c) (ii)* applied, it does not prohibit the County of Nassau from enacting the Common Sense Act (Local Law No. 18-2010 of the County of Nassau) as a matter of law. (*Yatauro v Mangano*, 17 NY3d 420, 955 NE2d 343, 931 NYS2d 36; *Matter of Dutchess County Dept. of Social Servs. v Day*, 96 NY2d 149, 749 NE2d 733, 726 NYS2d 54; *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 761 NE2d 1018, 736 NYS2d 291; *City of White Plains v Del Bello*, 87 AD2d 483, 452 NYS2d 71; *Sonmax, Inc. v City of New York*, 43 NY2d 253, 372 NE2d 9, 401 NYS2d 173; *Matter of Fifth Ave. Off. Ctr. Co. v City of Mount Vernon*, 89 NY2d 735, 680 NE2d 590, 658 NYS2d 217; *41 Kew Gardens Rd. Assoc. v Tyburski*, 70 NY2d 325, 514 NE2d 1114, 520 NYS2d 544.) IV. Even if *NY Constitution, article IX, § 2 (c) (ii) (8)* applied, the Common Sense Act (Local Law No. 18-2010 of the County of Nassau) is valid and proper based on this Court's holding in *Sonmax, Inc. v City of New York* (43 NY2d 253, 372 NE2d 9, 401 NYS2d 173 [1977]), which established that *Municipal Home Rule Law § 10 (1) (ii) (a) (8)* exempts local laws related to property taxes from having to be consistent with any other laws. (*DJL Rest. Corp. v City of New York*, 96 NY2d 91, 749 NE2d 186, 725 NYS2d 622.)

*Hamburger, Maxson, Yaffe, Knauer & McNally, LLP*, Melville (David N. Yaffe and Richard Hamburger of counsel), for Baldwin Union Free School District and others, respondents in the first above-entitled matter. I. The Nassau County Charter did not delegate authority to enact local laws that supersede state laws relating to real property tax refund obligations or that affect the maintenance or support of public education. (*People v County of Westchester*, 282 NY 224, 26 NE2d 27; *Browne v City of New York*, 241 NY 96, 149 NE 211; *Clark v LaGuardia*, 245 App Div 325, 281 NYS 54; *County Sec. v Seacord*, 278 NY 34, 15 NE2d 179; *Carodix Corp. v Comiskey*, 265 App Div 450, 39 NYS2d 732, 291 NY 737, 52 NE2d 957; *Queens Park Gardens, Inc. v County of Nassau*, 255 App Div 625, 8 NYS2d 332, 280 NY 789, 21 NE2d 619.) II. Local Law No. 18-2010 of the County of Nassau violates the provisions of the NY Constitution and the Municipal Home Rule Law forbidding the enactment of local laws relating to the levy, collection, administration, distribution and judicial review of local taxes inconsistent with state special laws, and affecting the maintenance and support of public education. (*Town of Amherst v County of Erie*,

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[260 NY 361, 183 NE 851](#); [Matter of Rab Co. Highland House Apts. v Tompkins County Bd. of Assessment Review, 68 AD2d 374, 417 NYS2d 788](#); [Sonmax, Inc. v City of New York, 43 NY2d 253, 372 NE2d 9, 401 NYS2d 173](#); [Bugeja v City of New York, 24 AD2d 151, 266 NYS2d 80, 17 NY2d 606, 215 NE2d 684, 268 NYS2d 564](#); [Matter of Gizzo v Town of Mamaroneck, 36 AD3d 162, 824 NYS2d 366](#); [New York Tel. Co. v Supervisor of Town of N. Hempstead, 77 AD3d 121, 908 NYS2d 401](#); [Lanza v Wagner, 11 NY2d 317, 183 NE2d 670, 229 NYS2d 380](#); [Matter of Divisich v Marshall, 281 NY 170, 22 NE2d 327](#); [Board of Educ., Union Free School Dist. No. 4, Town of Greece v Board of Educ. of City of Rochester, 23 AD2d 805, 258 NYS2d 194](#); [People ex rel. Elkind v Rosenblum, 184 Misc 916, 54 NYS2d 295, 269 App Div 859, 56 NYS2d 526, 295 NY 929, 68 NE2d 34.](#)) III. The shifting of municipal tax refund obligations onto school districts is not a matter of local concern. ([Konz v Bedell, 273 App Div 777, 75 NYS2d 18, 298 NY 585, 81 NE2d 322](#); [City of New York v Village of Lawrence, 250 NY 429, 165 NE 836.](#)) IV. Local Law No. 18-2010 of the County of Nassau is irrational, arbitrary and capricious, and Nassau County's appeals to alleged fairness do not obviate the necessity of state action to repeal the County Guaranty. ([Matter of Bowery Sav. Bank v Board of Assessors of County of Nassau, 80 NY2d 961, 605 NE2d 363, 590 NYS2d 876](#); [Matter of Steel Los III/Goya Foods, Inc. v Board of Assessors of County of Nassau, 10 NY3d 445, 889 NE2d 453, 859 NYS2d 576](#); [Town of Amherst v County of Erie, 260 NY 361, 183 NE 851](#); [Matter of Wadhams, 249 App Div 271, 292 NYS 102.](#)) V. The enactment of Local Law No. 18-2010 of the County of Nassau also violates the law of legislative equivalency and the Statute of Local Governments. ([Matter of Moran v LaGuardia, 270 NY 450, 1 NE2d 96](#); [Matter of Torre v County of Nassau, 86 NY2d 421, 657 NE2d 486, 633 NYS2d 465](#); [County Sec. v Seacord, 278 NY 34, 15 NE2d 179](#); [Matter of County of Nassau v Nassau County Interim Fin. Auth., 33 Misc 3d 227, 920 NYS2d 873.](#)) VI. In the alternative, Local Law No. 18-2010 of the County of Nassau fails to specify whether and which portions of Laws of 2006, chapter 503, it intended to supersede, in violation of [Municipal Home Rule Law § 22 \(1\)](#), and it transfers a duty without a referendum, in violation of the NY Constitution and [Municipal Home Rule Law § 33-a](#). ([Kamhi v Town of Yorktown, 74 NY2d 423, 547 NE2d 346, 548 NYS2d 144](#); [Turnpike Woods v Town of Stony Point, 70 NY2d 735, 514 NE2d 380, 519 NYS2d 960](#); [Matter of Town of Smithtown v Howell, 31 NY2d 365, 292 NE2d 10, 339 NYS2d 949.](#))

[Catherine V. Battle, New York City, and Richard E. Casagrande](#) for Barbara Hafner and another, respondents in the second above-entitled matter. I. The public policy reasons for or against the County Guaranty should have no impact on the Court's determination, as they are exclusively vested in the state legislature. ([City of New York v State of New York, 94 NY2d 577, 730 NE2d 920, 709 NYS2d 122](#); [Matter of Wadhams, 249 App Div 271, 292 NYS 102.](#)) II. The overarching principles of law applicable to this case compel the conclusion that Nassau County does not possess the power to repeal the County Guaranty by local law. ([Albany Area Bldrs. Assn. v Town of Guilderland, 74 NY2d 372, 546 NE2d 920, 547 NYS2d 627](#); [Seaman v Fedourich, 16 NY2d 94, 209 NE2d 778, 262 NYS2d 444](#); [Adler v Deegan, 251 NY 467, 167 NE 705](#); [City of New York v Village of Lawrence, 250 NY 429, 165 NE 836.](#)) III. The evolution of Nassau County's power to enact local laws demonstrates that it was not given power to repeal the County Guaranty by local law. The evolution of Nassau County's power to enact charter laws demonstrates that it was not given power to repeal the County Guaranty by charter law. ([Konz v Bedell, 273 App Div 777, 75 NYS2d 18.](#)) V. There is no authority in the Nassau County Charter for the repeal of the County Guaranty by local law. ([City of New York v State of New York, 94 NY2d 577, 730 NE2d 920, 709 NYS2d 122](#); [Sonmax, Inc. v City of New York, 43 NY2d 253, 372 NE2d 9, 401 NYS2d 173](#); [County Sec. v Seacord, 278 NY 34, 15 NE2d 179](#); [Weber v City of New York, 18 Misc 2d 543, 195 NYS2d 269](#); [Matter of Divisich v Marshall, 281 NY 170, 22 NE2d 327](#); [Gunnison v Board of Educ. of City of New York, 176 NY 11, 68 NE 106](#); [Matter of Fuhrmann v Graves, 235 NY 77, 138 NE 743.](#)) VI. The 1963 Constitution and the Municipal Home Rule Law prohibit the repeal of the County Guaranty by local law. ([Matter of Albano v Kirby, 36 NY2d 526, 330 NE2d 615, 369 NYS2d 655](#); [Matter of Board of Educ. of City School Dist. of City of N.Y. v City of New York, 41 NY2d 535, 362 NE2d 948, 394 NYS2d 148](#); [Bugeja v City of New York, 24 AD2d 151, 266 NYS2d 80, 17 NY2d 606, 215 NE2d 684, 268 NYS2d 564](#); [Matter of Board of Co-op. Educ. Servs. of Nassau County v Gaynor, 33 AD2d 701, 306 NYS2d 216](#); [Board of Educ., Union Free School Dist. No. 4, Town of Greece v Board of Educ. of City of Rochester, 23 AD2d 805, 258 NYS2d 194](#); [Matter of Reuss v Katz, 43 Misc 2d 921, 252 NYS2d 546, 21 AD2d 968, 252 NYS2d 871.](#)) VII. Local Law No. 18-2010 of the County of Nassau, if not invalid, is nevertheless inoperable because of Nassau County's failure to conduct a referendum.

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*Jaspan Schlesinger LLP*, Garden City (*Maureen T. Liccione* and *Andrew M. Mahony* of counsel), and *Robert V. Guido*, Lindenhurst, for Town of North Hempstead and others, respondents in the third above-entitled matter. I. The restrictions on enactment of local tax laws in *NY Constitution, article IX, § 2* apply to Nassau County. (*Matter of Dutcher v Hatch*, 19 AD2d 341, 243 NYS2d 80; *Jackson v Nassau County Bd. of Supervisors*, 818 F Supp 509; *Yatauro v Mangano*, 17 NY3d 420, 955 NE2d 343, 931 NYS2d 36; *Matter of Thomas v Bethlehem Steel Corp.*, 95 AD2d 118, 466 NYS2d 808, 63 NY2d 150, 470 NE2d 83, 481 NYS2d 33; *B&F Bldg. Corp. v Liebig*, 76 NY2d 689, 564 NE2d 650, 563 NYS2d 40; *Arbegast v Board of Educ. of S. New Berlin Cent. School*, 65 NY2d 161, 480 NE2d 365, 490 NYS2d 751; *Brady v Village of Malverne*, 76 AD3d 691, 907 NYS2d 68, 16 NY3d 806, 945 NE2d 1021, 920 NYS2d 771.) II. Nassau County has no authority to enact a tax law inconsistent with any state law. (*City of New York v State of New York*, 94 NY2d 577, 730 NE2d 920, 709 NYS2d 122; *County Sec. v Seacord*, 278 NY 34, 15 NE2d 179; *Sonmax, Inc. v City of New York*, 43 NY2d 253, 372 NE2d 9, 401 NYS2d 173; *New York Steam Corp. v City of New York*, 268 NY 137, 197 NE 172.) III. Local Law No. 18-2010 of the County of Nassau is unconstitutional because it is inconsistent with the Real Property Tax Law. (*Matter of O'Shea v Board of Assessors of Nassau County*, 8 NY3d 249, 864 NE2d 1261, 832 NYS2d 862.) IV. Local Law No. 18-2010 of the County of Nassau is void because it is impermissibly vague and has no rational relationship to its avowed purposes. (*Grossman v Baumgartner*, 17 NY2d 345, 218 NE2d 259, 271 NYS2d 195; *Matter of Levine v Whalen*, 39 NY2d 510, 349 NE2d 820, 384 NYS2d 721; *Williams v Mayor of Baltimore*, 289 US 36, 53 S Ct 431, 77 L Ed 1015; *People v Abrahams*, 40 NY2d 277, 353 NE2d 574, 386 NYS2d 661; *Long Is. Coll. Hosp. v Whalen*, 68 AD2d 274, 416 NYS2d 841; *American Sugar Ref. Co. of N.Y. v Waterfront Commn. of N.Y. Harbor*, 55 NY2d 11, 432 NE2d 578, 447 NYS2d 685; *Matter of Shanty Hollow Corp. v Poladian*, 23 AD2d 132, 259 NYS2d 541, 17 NY2d 536, 215 NE2d 168; *Matter of Orchard Hgts., Inc. v Yancy*, 15 AD3d 854, 788 NYS2d 763, 4 NY3d 710, 830 NE2d 1145, 797 NYS2d 816; *Connally v General Constr. Co.*, 269 US 385, 46 S Ct 126, 70 L Ed 322; *People v Stuart*, 100 NY2d 412, 797 NE2d 28, 765 NYS2d 1.) V. Local Law No. 18-2010 of the County of Nassau violates *NY Constitution, article IX, §1* because it transfers county functions and duties to the town and special districts without a referendum. (*Matter of Heimbach v Mills*, 67 AD2d 731, 412 NYS2d 668; *Rooney v City of Long*

*Beach*, 42 AD2d 34, 345 NYS2d 66; *Hausser v Giunta*, 88 NY2d 449, 669 NE2d 470, 646 NYS2d 490.)

**Judges:** Opinion by Abdus-Salaam, J. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

**Opinion by:** ABDUS-SALAAM

### Opinion

[\*\*3] [\*611] [\*\*353] Abdus-Salaam, J.

In this case, we are presented with, essentially, the following question: **HN1** [↑] may Nassau County pass a local law that shifts the obligation to pay real property tax refunds from the County to its individual taxing districts, thereby superseding a special state tax law? We answer this question in the negative. The State Constitution vests in the State and the counties only a definite and circumscribed set of powers. Beyond its constitutional authority, neither a county **[2]** nor the State can act, regardless of the perceived wisdom of its conduct or the nobility of its aims. In the case before us, Nassau County ran afoul of these precepts by exceeding its statutory and constitutional authority in its attempt to supersede a special state tax law.

[\*612] !

These two hybrid *CPLR article 78* proceedings/declaratory judgment actions and one declaratory judgment action arise [\*\*\*\*2] from the intersection of the State's constitutional taxation power, Nassau County's long history of substantial home rule and the State's passage, at the County's request, of a law that designates real property tax refunds as a county charge.

[\*\*4] [\*\*354] A

To understand some of the County's present claims regarding the scope and origin of its power to pass local legislation, we must look to the genesis of those powers in the early 20th century. In the late 1930s, Nassau County elected to adopt an alternative form of government established by state legislation, and the County acquired local legislative powers under a state-drafted Charter and Administrative Code pursuant to article IX, § 2 of the 1938 State Constitution (see L 1936, ch 879; L 1937, ch 618, § 2; L 1939, ch 700, §§ 1-2; Nassau County Charter §§ 150-153). Under the

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Charter as amended by the Administrative Code, the County could levy taxes and "provide by ordinance a plan, not inconsistent with the terms of this [charter], for the assessment of property for tax purposes . . . the levy of taxes, the collection of taxes, [and] the accrual of penalties" (Nassau County Charter § 2201 [L 1936, ch 879, § 2201]; see Nassau County Charter § 103 [6] [L 1936, ch 879, § 103 (6) [\*\*\*\*3]]). As will be explained (see *infra* part III), section 151 of the Charter forms the crux of the County's appellate argument in the instant case. That section, entitled "Effect of local law on acts of State Legislature," stated that, "[i]n adopting a local law changing or superseding any provision of an act of the State Legislature which provision does not in terms and in effect apply alike to all counties" (Nassau County Charter § 151 [L 1937, ch 618, § 2]), otherwise known as a "[s]pecial law" of the State (*NY Const. art IX, § 3 [d] [4]*), "the County Legislature shall specify the chapter number, year of enactment, title of statute, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law" (Nassau County Charter § 151 [L 1937, ch 618, § 2]).

In addition, at the time of the Charter's adoption, the County's Board of Assessors conducted real property tax assessments and maintained the tax rolls (see generally Nassau County Charter §§ 601-607 [L 1936, ch 879, §§ 601-607]). The [\*\*613] County Board of Supervisors would pay any real property tax refunds resulting from [\*\*\*\*4] assessment errors to the taxpayers and then deduct the refunded amounts from the budgets of the taxing districts wherein the particular taxpayers resided (see Nassau County Charter § 122 [L 1936, ch 673, § 11]).

B

In 1948, the County Board of Supervisors sent a home rule message to the state [3] legislature, requesting that the Administrative Code be amended to obligate the County, rather than the taxing districts, to pay any refunds resulting from the County's erroneous assessment of real property taxes. In response, the legislature enacted chapter 851 of the Laws of 1948, which amended the County's Administrative Code to provide as follows:

"Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or hereafter arising from a decrease in an assessment or tax . . . or by reason of exemptions or reductions of assessments shall be a county charge." (Nassau County

Administrative Code § 6-26.0 [b] [3] [c] [L 1948, ch 851, § 2]).

The amendment also stated that, in a proceeding to review such tax assessments or refunds (also called a tax certiorari proceeding), the party challenging the assessment had to serve any papers in connection [\*\*\*\*5] with such a proceeding on the County's Board of Assessors and *not* on "the clerk of any school district" (Nassau County Administrative Code § 6-17.3 [L 1948, ch 851, § 3]). The newly [\*\*\*355] [\*\*\*\*5] amended section of the Administrative Code was commonly called the "County Guaranty."

That same year, the legislature amended the Nassau County Charter to set forth a new procedure for tax extension, whereby the County's assessors would project the taxes to be paid on a given property for the coming year (see Nassau County Charter § 607 [L 1948, ch 98, § 1]). The amended Charter also stated that "[a]ny surplus existing or hereafter arising from the extension of taxes in excess of amounts raised for the adopted budgets shall be credited to the county, and any deficiencies existing or hereafter arising from the extension of taxes for the adopted budgets shall be a county charge" (*id.*).

Explaining the purpose of the County Guaranty and the related amendments to the Charter, the County Attorney wrote to the Governor's counsel that, in light of the fact that it was the county government

[\*\*614] "whose members [we]re charged with the duty of preparing the assessment roles and extending the taxes, it [wa]s deemed to be in the best [\*\*\*\*6] interests of the County of Nassau that section 607 of the Nassau County Government Law be amended to provide that any surplus existing or [t]hereafter arising from taxes in excess of the amounts raised for the adopted budgets shall be credited to the county, and any deficiencies existing or [t]hereafter arising from the extension of taxes for the adopted budgets shall be a county charge." (Letter from County Attorney, Feb. 25, 1948 at 2, Bill Jacket, L 1948, ch 98).

The County Attorney reiterated this point in a second letter to the Governor's counsel (see Letter from County Attorney, Mar. 8, 1948 at 2, Bill Jacket, L 1948, ch 851). The legislation's sponsor in the State Assembly wrote to the Governor's counsel to express a similar intent to make the County responsible for the relevant refunds because the County had made the assessment [4] errors which the refunds were meant to correct (see

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Assembly Sponsor's Mem, Bill Jacket, L 1948, ch 851 at 7-10; see also *Matter of Steel Los III/Goya Foods, Inc. v Board of Assessors of County of Nassau*, 10 NY3d 445, 453-454, 889 NE2d 453, 859 NYS2d 576 [2008] [summarizing legislative intent behind the Guaranty]].

After the passage of the County Guaranty, the legislature enacted [\*\*\*\*7] [HN2](#) [↑] the Real Property Tax Law, which remains in effect today and requires that, in counties other than Nassau County, real property tax refunds be charged to the individual taxing districts within each county (see [RPTL 726 \[1\]](#)). Regarding Nassau County, however, the RPTL leaves the County Guaranty and its tax certiorari notice provisions intact (see [RPTL 712 \[2-a\]](#)). Thus, under state law from 1948 until the present, Nassau County must pay all real property tax refunds owed by the taxing districts within the County, whereas virtually every other county may shift that obligation onto the relevant taxing districts.

### C

In 1963, the legislature and New York voters amended the Constitution's home rule provisions, upon which the County relies heavily in this case. In particular, [HN3](#) [↑] article IX, § 2 of the Constitution provides that, subject to any other applicable provisions of the Constitution, the legislature "[s]hall enact, and may from time to time amend, a statute of local governments [\*\*615] granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article" (*NY Const. art IX, § 2 [b] [1]*).

Article IX, § 2 [\*\*\*\*8] further states:

[\*\*356] [\*\*\*\*6] [HN4](#) [↑] "In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government: . . .

"The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature." (*NY Const. art IX, § 2 [c]*) and [c] [ii] [8] [emphasis added].)

Article IX, § 3 declares, among other things, that [HN5](#) [↑] "[t]he provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions [\*\*\*\*9] [5] shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution" (*NY Const. art IX, § 3 [b]*).

Additionally, in 1963, the state legislature amended the Municipal Home Rule Law. As so amended, that [HN6](#) [↑] ] statutory scheme now declares that, "[i]n addition to powers granted in the constitution, the statute of local governments or in any other law," every local government "shall have [the] power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects," including "[t]he collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local [\*\*616] laws shall be consistent with laws enacted by the legislature" (*Municipal Home Rule Law § 10 [1] [iii] [a] [9]*). The Municipal Home Rule Law also permits counties to amend their charters in a manner consistent with applicable state laws and the Constitution (see *Municipal Home Rule Law § 33*), contains a savings clause retaining the counties' existing powers under previously enacted statutes (see *Municipal Home Rule Law § 35*), and continues all existing laws, local laws and charters [\*\*\*\*10] not expressly repealed (see *Municipal Home Rule Law § 56*).

At the same time, [HN7](#) [↑] the Municipal Home Rule Law specifically declares that, "[e]xcept in accordance with provisions of this chapter or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature . . . [w]hich relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments" (*Municipal Home Rule Law § 34 [3] [a]*). The Municipal Home Rule Law defines a "charter law" as "[a] local law providing, amending or repealing a county charter, or transferring a function or a duty pursuant to section thirty-three-a of this chapter" (*Municipal Home Rule Law § 32 [2]*).

Of course, just as it did at the time of the 1963

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amendments to the Constitution and the Municipal Home Rule Law, the Constitution currently contains a taxation article, which is essential to one of plaintiffs' arguments before this Court. Article XVI of the Constitution [HNS](#) provides that "[t]he power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law," and that [\\*\\*357](#) [\\*\\*\\*\\*7](#) "[a]ny laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide [\\*\\*\\*\\*11](#) for their review" (*NY Const. art XVI, § 1*). Under that article, [HNS](#) "[t]he legislature shall provide for the supervision, review and equalization of assessments for purposes of taxation" (*NY Const. art XVI, § 2*).

### D

In recent years, Nassau County's finances seriously declined. In 2002, the County Comptroller announced that the County had more than \$2.8 billion in debt; the Comptroller blamed the debt burden in part on the unusually large number of tax certiorari proceedings in the county and in part on the County Guaranty (see Howard S. Weitzman, *Nassau County Must Stop Paying School Tax Refunds* [May 30, 2012], available at <http://www.nassaucountyny.gov/agencies/comptroller/Letters/5-30-02.html> [\\*\\*617](#) [last visited Jan. [6](#) 21, 2014]). As this financial decline continued, in 2010, the county legislature enacted Local Law 18, which it called the Common Sense Act.<sup>1</sup> Local Law 18 purportedly amends the County's Administrative Code by repealing the County Guaranty, deletes the section of the County Charter which requires the County to pay deficiencies arising from the extension process, and amends section 6-24.0 of the Administrative Code to state, "The County shall act in accordance with the provisions [\\*\\*\\*\\*12](#) of the Real Property Tax Law with respect to the correction of assessment rolls and tax rolls" (Local Law No. 18-2010 of the County of Nassau § 3, available at <https://www.nassaucountyny.gov/agencies/legis/documents/locallaw18-10.pdf> [last visited Jan. 21, 2014]). Local Law 18 specifies that, 10 days after a tax petitioner has served the County with a petition and notice for tax review, the petitioner must also mail a

<sup>1</sup> According to an affidavit submitted by one of the plaintiffs in this litigation, the County attempted to prepare a home rule message asking the state legislature to repeal the Guaranty (see affidavit of Lorraine Deller ¶¶ 6-11). However, the record does not show that Nassau County has ever formally submitted to the legislature a home rule message seeking the repeal of the County Guaranty.

copy of those papers to the superintendent of any school district wherein the petitioner's property lies (see *id.* § 4). In sum and substance, Local Law 18 purportedly repeals the County Guaranty and allows the County to charge real property tax refunds back to the taxing districts.

### II

After the passage of Local Law 18, various interested parties filed two hybrid [CPLR article 78](#) proceedings/declaratory judgment actions and one declaratory judgment action [\\*\\*\\*\\*13](#) in Supreme Court, Nassau County, challenging the validity of that local law. In the first action, numerous school districts and officials sued the County. In the second action, two taxpayers sued the County, its legislature and its executive. In the third action, various towns and special districts sued the County. In all actions, plaintiffs essentially sought a declaration that Local Law 18 was null, void and unenforceable because it violated, among other things, the Municipal Home Rule Law provisions limiting the powers of local government and the Constitution's home rule and taxation articles. The County moved to dismiss the taxpayers' [\\*\\*618](#) suit for lack of standing and answered the remaining complaints. The cases were consolidated for discovery and decision.

Supreme Court denied the petitions and effectively granted summary judgment to the County in all three actions (see [Matter \[\\*\\*358\] of \[\\*\\*\\*8\] Baldwin Union Free Sch. Dist. v County of Nassau, 2012 N.Y. Misc. LEXIS 153, \\*1-\\*15, 2012 NY Slip Op 30079\[U\], \\*1-7 \[Sup Ct. Nassau County 2012\]](#)). In light of its disposition of the case, the court denied as academic the County's motion to dismiss the taxpayer plaintiffs' suit for lack of standing (see [id. at \\*7](#)). Plaintiffs appealed. [7](#)

In an opinion by Justice Lott, the [\\*\\*\\*\\*14](#) Appellate Division, Second Department unanimously reversed Supreme Court's order, granted plaintiffs' summary judgment motions and entered a declaratory judgment that Local Law 18 violated the Constitution and the Municipal Home Rule Law (see [Matter of Baldwin Union Free Sch. Dist. v County of Nassau, 105 AD3d 113, 114-120, 962 NYS2d 229 \[2d Dept 2013\]](#)). In particular, the Appellate Division found that article IX, § 2 (c) of the Constitution prohibited Nassau County from enacting local tax laws, such as Local Law 18, that were inconsistent with general or special state laws because that constitutional provision required local tax legislation to be "consistent with laws enacted by the legislature"

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(*id.* at 118, quoting *NY Const. art IX, § 2 [c] [iii] [8]*). The court further determined that, because *Municipal Home Rule Law § 34* precluded the establishment of any charter law which superseded a special or general state law " 'relat[ing] to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments,' " the County could not supersede the County Guaranty's distribution of tax refund charges by using Local Law 18 to charge tax over-assessments back to the taxing districts (*id.* at 118-119, [\*\*\*\*15] quoting *Municipal Home Rule Law § 34 [3] [a]*).

Additionally, in the court's view, the County Charter did not authorize the County to enact Local Law 18 and repeal the County Guaranty because the County Charter granted the County only those taxation powers permitted under the home rule article of the Constitution, which banned local tax laws that were inconsistent with special state laws (see *id.* at 119). Thus, given the lack of authority for Local Law 18 in the County Charter, the Constitution's and the Municipal Home Rule Law's savings clauses did not preserve the County's nonexistent power to make charter laws altering the distribution of tax proceeds [\*\*619] and assessments (see *id.*). The County appeals to this Court as of right pursuant to *CPLR 5601 (b) (1)*, and we now affirm.<sup>2</sup>

III

A

[8] *HN10* [↑] As limited by the State and Federal Constitutions' protection of individual rights and restriction of state power, the State Constitution establishes the state government as the preeminent sovereign of New York, and the three coordinate branches of the state government may exercise the entire legislative, executive and judicial power of the State, as entrusted to them by the people (see *NY Const. art III, § 1*; art IV, § 1; art VI; see generally

<sup>2</sup>The Appellate Division did not address the standing issue raised by the County in Supreme Court, and before this Court, the County does not renew its claim that the taxpayer plaintiffs lack standing to bring a lawsuit challenging the validity of Local Law 18. In any event, it is beyond dispute that the municipal and official plaintiffs in the two other actions have standing to bring those suits, and thus we may properly rule on the validity of Local Law 18 [\*\*\*\*16] in those actions without regard to the question of standing in the taxpayer plaintiffs' case. Under these circumstances, we decline to express any opinion on the standing issue or set forth any particular precedential ruling with respect to standing.

*Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 97, 518 [\*\*359] [\*\*\*9] NE2d 903, 524 NYS2d 8 [1987]; *People v De Jesus*, 54 NY2d 465, 468, 430 NE2d 1260, 446 NYS2d 207 [1981]; *Matter of City of New York*, 217 NY 45, 52-53, 111 NE 266 [1916]; *People v Morris*, 13 Wend 325, 337 [1835]). Given that the authority of political subdivisions flows from the state government and is, in a sense, an exception to the state government's otherwise plenary power, the lawmaking power of a county or other political subdivision "can be exercised only to the [\*\*\*\*17] extent it has been delegated by the State" (*Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d 372, 376, 546 NE2d 920, 547 NYS2d 627 [1989]; see *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 NY2d 395, 399-401, 795 NE2d 619, 764 NYS2d 64 [2003]).

Furthermore, *HN11* [↑] because the Constitution expressly imbues the state government, rather than any locality, with "[t]he power of taxation" (*NY Const. art XVI, § 1*), state law governs the tax field unless the state legislature or the Constitution unambiguously delegates certain taxation authority to a political subdivision (see *NY Const. art XVI, § 1*; *Expedia, Inc. v City of N. Y. Dept. of Fin.*, 22 NY3d 121, 130, 3 NE3d 121, 980 NYS2d 55, 2013 NY Slip Op 7759, \*7 [2013, Pigott, J., dissenting]; *Matter of Board of Educ. of City School Dist. of City of N. Y. v City of New York*, 41 NY2d 535, 542, 362 NE2d 948, 394 NYS2d 148 [1977]; *Sonmax, Inc. v City [\*\*620] of New York*, 43 NY2d 253, 257, 372 NE2d 9, 401 NYS2d 173 [1977]; *People v County of Westchester*, 282 NY 224, 232, 26 NE2d 27 [1940]; *County Sec. v Seacord*, 278 NY 34, 37, 15 NE2d 179 [1938]). Indeed, "[t]he power of taxation, being a State function, the delegation of any part of that power to a subdivision of the State must be made in express terms," and the delegation of any form of taxation authority "cannot be inferred" (*County Sec., 278 NY at 37*). So, too, " '[t]he authority of a municipality to abrogate [\*\*\*\*18] State law is never implied or inferred,' " but rather arises only from an " 'express grant, never from a general grant of power' " by the State (*County of Westchester, 282 NY at 232*, quoting *Jewish Consumptives' Relief Socy. v Town of Woodbury*, 230 App Div 228, 234, 243 NYS 686 [2d Dept 1930]); see *Matter of S. H. Kress & Co. v Department of Health*, 283 NY 55, 60, 27 NE2d 431 [1940]).

*HN12* [↑] Perhaps the most significant delegation of state legislative authority is embodied in article IX of the Constitution, the home rule article (see *NY Const art IX*). Article IX "empower[s] municipalities to legislate in a wide range of matters relating to local concern," and

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generally, "[s]o long as local legislation is not inconsistent with the State Constitution or any general law, localities may adopt local laws both with respect to their property, affairs or government, and with respect to other enumerated subjects, except to the extent that the legislature shall restrict the adoption of such a local law" (*Albany Area Bldrs. Assn.*, 74 NY2d at 376 [internal quotation marks and citations omitted]; see *New York State Club Assn. v City of New York*, 69 NY2d 211, 217, 505 NE2d 915, 513 NYS2d 349 [1987]). As previously noted, article IX permits localities to make laws [\*\*\*\*19] [9] with respect to "[t]he levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements," but such local laws must be "consistent with laws enacted by the legislature" (*NY Const. art IX, § 2 [c] [iii] [8]*; see *Sonmax, Inc.*, 43 NY2d at 257).

**HN13** Under its Charter, Nassau County derives its ability to pass local legislation solely from article IX of the Constitution, [\*\*360] [\*\*\*\*10] and therefore the County cannot legislate in a manner inconsistent with the provisions of that article (see Nassau County Charter § 150 [1]). Although, within constitutional bounds, the Charter allows Nassau County to pass a tax plan by local ordinance and to provide for the administration of local real property taxes (see L 1936, ch 879; see also *41 Kew Gardens Rd. Assoc. v Tyburski*, 70 NY2d 325, 332, 514 NE2d 1114, 520 NYS2d 544 [1987]), the Municipal Home Rule Law proscribes the enactment of local charter legislation that "supersede[s] any general or special law enacted by the [\*\*621] legislature . . . [w]hich relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments" (*Municipal Home Rule Law § 34 [3] [a]*). Even in the face of these restrictions, though, the County's laws, like the duly enacted [\*\*\*\*20] laws of any legitimate legislative body, carry a strong presumption of constitutionality (see *41 Kew Gardens Rd. Assoc.*, 70 NY2d at 333; see generally *Brightonian Nursing Home v Daines*, 21 NY3d 570, 575-577, 999 NE2d 510, 977 NYS2d 147 [2013]).

For the reasons set forth below, we conclude that article IX of the Constitution and the Municipal Home Rule Law prohibited the County from passing Local Law 18. We therefore invalidate Local Law 18 without reaching plaintiffs' remaining contentions.

B

To decide whether Nassau County acted within its authority in passing Local Law 18, we must first

evaluate that enactment's essential characteristics to determine its place within the constitutional framework described above.

The County does not dispute that, by enacting Local Law 18, it exercised the "power of taxation" within the meaning of article XVI of the Constitution. Thus, the County necessarily concedes that only a clearly expressed, rather than implied, grant of relevant legislative power could have authorized the passage of Local Law 18 and the repeal of the County Guaranty (see *Castle Oil Corp. v City of New York*, 89 NY2d 334, 339, 675 NE2d 840, 653 NYS2d 86 [1996]; *County Sec.*, 278 NY at 37).

The County is right to acknowledge Local Law 18's place within [\*\*\*\*21] the realm of article XVI's taxing power. **HN14** The constitutional power of taxation extends not just to the collection of taxes or the setting of tax rates, but also to the administration of the tax system and the direct allocation of tax burdens and benefits (see *Castle Oil Corp.*, 89 NY2d at 338-340 [finding a law prohibiting the deduction of a petroleum tax from income tax liabilities to be an exercise of the constitutional power of taxation]; *Matter of Roosevelt Raceway v Monaghan*, 9 NY2d 293, 306-309, 174 NE2d 71, 213 NYS2d 729 [1961] [same with respect to any agreement to either provide state tax credit as an offset against a race track company's federal income taxes or hold only a certain amount of tax revenue [10] in a special account for the benefit of the company]; see also *Matter of PNL Stillwater, LLC v Board of Assessors of Town of Stillwater*, 94 AD3d 1401, 1401-1403, 943 NYS2d 279 [3d Dept 2012] [same for procedures for the assessment of taxes [\*\*622] and agreements to limit tax liability]). By requiring the taxing districts within Nassau County to pay real property tax refunds to the taxpayers, relieving the county government of that tax refund burden and specifying that the taxing districts shall be served with notice of tax certiorari proceedings, [\*\*\*\*22] Local Law 18 directly alters the assignment of tax burdens and the administration of the tax system with respect [\*\*361] [\*\*\*\*11] to tax review proceedings. Thus, Local Law 18 is an exercise of the "power of taxation" which cannot stand unless the State has expressly delegated to the County the power to pass such a local tax law.

Local Law 18 also purports to supersede a special state law, the County Guaranty, and for that reason as well, Local Law 18 could be passed only pursuant to an express and unambiguous delegation of authority by the state legislature (see *County of Westchester*, 282 NY at

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[232](#); [S.H. Kress & Co., 283 NY at 60](#); see also [Matter of Niagara Mohawk Power Corp. v City of Fulton, 8 AD2d 523, 527, 188 NYS2d 717 \[4th Dept 1959\]](#)). In passing Local Law 18, the county legislature stated its intent to repeal the County Guaranty passed by the state legislature (see Local Law No. 18-2010 of the County of Nassau § 1), and Local Law 18 cites the specific Administrative Code provisions containing the County Guaranty and declares that they "are hereby repealed" (Local Law No. 18-2010 of the County of Nassau § 2). There can be no question, then, that Local Law 18 is a local tax law meant to supersede a special state tax law, and thus the County had no right [\*\*\*\*23] to create Local Law 18 unless it had been empowered by the legislature to supersede special state tax laws (see [Castle Oil Corp., 89 NY2d at 339](#); [County of Westchester, 282 NY at 232](#)).

Additionally, Local Law 18 is a charter law subject to the restrictions of [Municipal Home Rule Law § 34 \(3\) \(a\)](#). As we have previously observed, [HN15](#) [↑] a law that amends the charter-related administrative code of a county is a "charter law" within the meaning of the Municipal Home Rule Law (see [Matter of Gallagher v Regan, 42 NY2d 230, 233-235, 366 NE2d 804, 397 NYS2d 714 \[1977\]](#) [stating that public offices created by a county's charter and by its administrative code were established pursuant to charter laws and therefore could not be abolished by a legislative act of lesser import]; see also [Municipal Home Rule Law § 32 \[2\]](#)). In light of Local Law 18's attempted alteration of the County Administrative Code sections that collectively constitute the County Guaranty—a state enactment that had previously amended the County Charter—Local Law 18 is plainly a charter law within the scope of [Municipal Home Rule Law § 34 \(3\) \(a\)](#).

[\*623] In short, Local Law 18 is a tax-related local charter law that purports to supersede a special state tax law. Accordingly, Local Law 18 may be sustained only to the extent that the legislature specifically [\*\*\*\*24] authorized the County to enact local legislation with those characteristics.

C

[HN16](#) [↑] The state legislature has not delegated to the County the prerogative to supersede a special state tax law, and this lack of authority is fatal to Local Law 18.

First, [HN17](#) [↑] the County Charter, as established by the legislature, does not vest in the [11] County the right to repeal a special state tax law. The primary County Charter provision relating to supersession,

section 151, simply provides that, "[i]n adopting a local law changing or superseding any provision of an act of the State Legislature which provision does not in terms and in effect apply alike to all counties," the County must specify the exact portions of the state law being superseded (County Charter § 151). Section 151 thus describes the procedure the County shall follow "[i]n adopting" a local law superseding a special state law, but it does not state that the County "shall have the power to adopt" local laws which repeal special state laws, "may adopt" such legislation, or anything to that effect. Accordingly, County [\*\*362] [\*\*\*12] Charter § 151 does not expressly confer upon the County any substantive authority to enact local laws which supersede special state [\*\*\*\*25] tax laws.

In relying on County Charter § 151's plain terms to interpret it as a procedural provision without any accompanying substantive authority, we do not mean to suggest that section 151 has no practical effect or import. County Charter § 151 still plays a vital role in the Charter's scheme because it sets forth procedures which, in the event the legislature actually decides to endow the County with certain supersession powers, serve to adequately notify the County's citizens and the state government of the claimed applicability of the local law and its apparent conflict with state law.

County Charter § 154 does not supply the necessary legislative rights so clearly absent from section 151. In that regard, [HN18](#) [↑] County Charter § 154, denominated "Restriction on county legislation," expressly prohibits the County from superseding state laws which raise the County's debt limit, raise its annual tax revenues, or affect various fiscal, labor or regulatory matters (see Nassau County Charter § 154 [1]-[8] [L 1937, ch 618, § 2]). [\*624] Section 154 does not specify that the County may supersede special state tax laws simply because that section prevents the County from [\*\*\*\*26] superseding special state laws covering certain matters unrelated to taxation. One cannot infer from section 154's limitations that the Charter silently grants the County any and all supersession powers that are not specifically prohibited by section 154 (see [S.H. Kress & Co., 283 NY at 60](#); [County Sec., 278 NY at 37](#)). Accordingly, because nothing in sections 151 and 154 expressly delegates to the County the right to supersede special state tax laws, the County had no authority to enact Local Law 18, which purports to supplant a special state tax law.

To be sure, [HN19](#) [↑] County Charter § 150 (1) grants the County powers of local legislation "under the

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provisions of" article IX of the State Constitution. However, that article, upon which County Charter § 150 (1) depends, does not confer upon the County the ability to create local tax laws that supersede special state laws. Indeed, the Constitution actually forbids the County to pass any local tax law of that kind. Although article IX, § 2 declares that every local government shall have the power to pass local laws "relating to" the "levy, collection and administration of local taxes," those local laws must be "consistent with laws enacted [\*\*\*\*27] by the legislature" (see *NY [12] Const. art IX, § 2 [c] [iii] [8]* [emphasis added]). By requiring that any local tax-related legislation be consistent with all "laws enacted by the legislature," without distinguishing between general and special state laws, the relevant constitutional section plainly prohibits the County from passing local tax laws which conflict with special and/or general state laws. And, while the Constitution contains a savings clause that preserves any preexisting powers of local legislation granted by an act of the legislature (*NY Const. art IX, § 3 [b]*), as already mentioned, the County has no preexisting power to pass local laws that supersede special state tax laws. Therefore, the Constitution bars the County from exercising its powers of local legislation to supersede the County Guaranty.

**HN20** In addition to the absence of constitutional or statutory authority allowing the County to enact Local Law 18, the Municipal Home Rule Law affirmatively prohibited the County from doing so. As discussed, Local Law 18 is a charter law, and *Municipal Home Rule Law § 34 (3) (a)* specifies that such a law "shall not supersede" any "special law" of the State "relat[ing] [625] [363] [13] to" the "judicial review or distribution" of tax [\*\*\*\*28] proceeds or benefit assessments. Because the County Guaranty is a special state law which "relates to" the "distribution" of tax proceeds and benefits, the County could not enact Local Law 18 to supersede it.

D

Resisting the constitutional and statutory limits on its legislative powers, the County offers a host of arguments, but none of them are persuasive. For example, the County maintains that, because the County Charter originally conferred upon the County the right of home rule under article IX, § 2 of the 1938 Constitution, the County's charter powers are not subject to the restrictions contained in the amended version of article IX passed in 1963. This assertion is perplexing, to say the least.

After all, **HN21** amendments to the State Constitution do not preserve all preexisting provisions of the amended portion of the Constitution, thereby forever maintaining all prior delegations of state authority that are curtailed by the amendments themselves. Instead, the very purpose and effect of an amendment is to amend the relevant portion of the Constitution, effectively repealing and voiding any prior version of the particular section so amended (see *Browne v City of New York, 213 App Div 206, 220, 211 NYS 306 [1st Dept 1925]*, [\*\*\*\*29] *affd 241 NY 96, 149 NE 211 [1925]* ["By that action of the electorate, article 12" of the Constitution, "as so amended, superseded article 12 as it existed at the time when these concurrent resolutions were acted upon by the Legislature, and . . . section 2 of article 12 as theretofore existing ceased to exist and the amended article took its place"]; see also *People ex rel. Carter v Rice, 135 NY 473, 496-497, 31 NE 921 [1892]* [stating that, where a new amendment to the Constitution is inconsistent with preexisting constitutional provisions or adopts a public policy that is clearly contrary to those prior provisions, "it is not too much to hold that in such a case the alterations and amendments which have been actually made in the course of the attempt to effect the change of policy, do in effect and by implication strike out and [13] abrogate a provision which, by reason of the amendments, has no longer any excuse for existence"]; *Popfinger v Yutte, 102 NY 38, 42, 6 NE 259, 1 NY St 334 [1886]* [concluding that an amendment to an article of the Constitution superseded the previous version of that article, such that the legislature no longer had the power to limit the jurisdiction of certain courts which it had enjoyed under the previous [\*\*\*\*30] incarnation of that article]).

[626] Applying that principle here, the County cannot continue to derive its home rule powers from the 1938 version of article IX, which was superseded by the 1963 amendments and therefore no longer exists. Nothing in the 1963 amendments preserved the 1938 constitutional home rule provisions, which did not include the requirement that local tax-related laws be consistent with state laws; the 1963 amendments preserved only preexisting *statutory* home rule powers (see *NY Const. art IX, § 3 [b]*). Consequently, at present, the County may exercise powers of local legislation only if it complies with the 1963 amendments' requirement that local tax-related laws be consistent with state laws. To hold otherwise would leave the constitutional status of the State and the County in an intolerable limbo, governed by multiple Constitutions from different eras.

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22 N.Y.3d 606, \*626; 9 N.E.3d 351, \*\*363; 986 N.Y.S.2d 1, \*\*\*13; 2014 N.Y. LEXIS 202, \*\*\*\*30; 2014 NY Slip Op 1103, \*\*\*\*\*1103

In any event, the legislature has evinced its intent to subject the County to the restrictions of the current form of article IX. After the adoption of article IX of the [\*\*364] [\*\*\*14] 1963 Constitution, the legislature continued to amend the Nassau County Charter (see e.g. L 1992, ch 717 [amending the Charter in relation to the imposition [\*\*\*\*31] of an exigency tax and to allow the County to charge a recording tax on mortgages]), and the legislature declined the opportunity to remove the Charter's reference to article IX or alter the Charter to explicitly invoke the 1938 version of that article. In maintaining the Charter's reference to article IX subsequent to the 1963 amendments, the legislature evidently concluded that the current version of article IX should govern home rule in Nassau County. Accordingly, the current version of article IX, including its ban on local tax-related laws that conflict with special state laws, fully applies to the County and prohibits it from repealing the County Guaranty.

In the alternative, the County invites us to interpret the constitutional requirement that local tax laws be "consistent with laws enacted by the legislature" (*NY Const. art IX, § 2 [c] [iii] [8]*) to permit the County to pass local tax laws that are inconsistent with special state tax laws. Relying on the canon of statutory construction which holds that general language in a statute "is known by the company it keeps" (*People v Illardo, 48 NY2d 408, 416, 399 NE2d 59, 423 NYS2d 470 [1979]*), the County argues that, because the sections of the Constitution surrounding [\*\*\*\*32] the ban on legislation that is not consistent with "laws enacted by the legislature" (*NY Const. art IX, § 2 [c] [iii] [8]*) also prohibit local laws that are "inconsistent with . . . any general law" of the State (*NY Const. art IX, § 2 [c]* [emphasis added]), the seemingly broad [\*627] phrase "consistent with laws" should be narrowed by the company it keeps to mean "consistent with general laws." Therefore, in the County's view, Local Law 18 complies with the relevant limitations because it is consistent with general [14] state tax laws.

However, beneath its surface-level appeal, the County's interpretation of article IX does not withstand close scrutiny. Tellingly, when the legislature defined the generic restrictions on conflicting local legislation using the term "general laws," it removed the qualifier "general" from the comparable specific prohibition against local tax laws that are not consistent with state "laws" (compare *NY Const. art IX, § 2 [c]* with *NY Const. art IX, § 2 [c] [iii] [8]*). There is no reason to suppose, as the County apparently does, that the legislature casually excised the modifier "general" from the prohibition

against local tax laws which are not consistent with state "laws," [\*\*\*\*33] and then somehow assumed that the word "general" would be read back into that restriction based on prior references to "general" laws in other related constitutional provisions. Rather, the legislature must have consciously omitted the term "general" from the prohibition against local tax laws that are not consistent with "laws enacted by the legislature," thereby revealing an intent to broadly ban any local tax law that conflicts with a state law, whether general or special (see *Matter of Albano v Kirby, 36 NY2d 526, 530, 330 NE2d 615, 369 NYS2d 655 [1975]*) ["When different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended"]. Moreover, *HN22* [↑] given the overarching constitutional principle that the power of taxation lies with the State, any ambiguity in the constitutional restrictions on local legislation should be construed in favor of limiting local supersession of state tax laws.

The County asserts that *Sonmax, Inc. v City of New York* (43 NY2d 253, 372 NE2d 9, 401 NYS2d 173 [1977]) governs the constitutional aspects of this case, but [\*\*365] [\*\*\*15] that is not so. In *Sonmax, Inc.*, the State had passed a statute which allowed certain cities to choose to adopt special in rem tax foreclosure procedures, [\*\*\*\*34] and the State had also enacted a series of special laws governing such foreclosures in New York City (see *id. at 255-256*). Eventually, the City passed its own local in rem tax foreclosure law, and certain tax petitioners challenged the local law (see *id. at 255-257*). Relying on the Municipal Home Rule Law provision that a local law must not be "inconsistent" with "any general law" of the State, the petitioners claimed that the City's local law ran afoul of the state statute providing for optional foreclosure procedures, which the petitioners deemed a general state law (see *id. at 257-258*). We [\*628] upheld the City's local tax law (see *id. at 255-256, 258*). First, we noted that, while article IX of the Constitution mandated that neither city nor county laws could be "inconsistent" with a "general law" passed by the legislature, article IX imposed the additional requirement that local tax laws be "consistent with laws enacted by the legislature" only on counties and "not on cities" (*id. at 257* [emphasis added]). Evaluating the City's tax foreclosure law solely under the requirement that city laws not be inconsistent with general state laws, we concluded that, even assuming the relevant state statute was a general [\*\*\*\*35] state law, the City's law was not inconsistent with the state legislation because that state statute clearly permitted cities to choose unique local tax foreclosure procedures (see *id.*

## Appendix B - Matter of Baldwin Union Free Sch. Dist. V. County of Nassau

Page 19 of 19

22 N.Y.3d 606, \*628; 9 N.E.3d 351, \*\*365; 986 N.Y.S.2d 1, \*\*\*15; 2014 N.Y. LEXIS 202, \*\*\*\*35; 2014 NY Slip Op 1103, \*\*\*\*\*1103

[at 257-258](#). [15]

Thus, *Sonmax, Inc.* merely stands for the proposition that, where a city law is not actually inconsistent with a *general* state law, the city law does not violate the Constitution's "not inconsistent with general state laws" rule. By contrast, the instant case involves a conflict between a local law and a *special* state law, as well as the Constitution's requirement that local tax laws be "consistent with laws" passed by the legislature, neither of which was at issue in *Sonmax, Inc.* Here, the "consistent with laws" rule applies to the County, and Local Law 18 violates that requirement because that local law is not, in fact, consistent with the County Guaranty enacted by the legislature.

IV

[HN23](#) [ ] The County possesses substantial home rule powers, but the prerogative to impinge freely upon the State's constitutional power of taxation, by means of superseding a special state tax law, is not among them. Because Local Law 18 was designed to achieve that impermissible intrusion, it is hereby declared unconstitutional, [\*\*\*36] invalid, unenforceable and void. With respect to any policy concerns, "appeal lies to the ballot and to the legislative processes of democratic government, not to the courts" (*Maresca v Cuomo*, 64 NY2d 242, 249, 475 NE2d 95, 485 NYS2d 724 [1984]).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

Order affirmed, with costs.

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End of Document

**Appendix C - Halpern Stipulation and Order**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
In the Matter of

RICHARD & ELLEN HALPERN,

Petitioner,

- against -

**STIPULATION AND  
ORDER**

Index No. 2010/410228

THE BOARD OF ASSESSORS AND THE  
ASSESSMENT REVIEW COMMISSION OF  
THE COUNTY OF NASSAU,

Respondents.  
-----X

WHEREAS, the undersigned petitioners' representatives and law firms (collectively, the "Representatives") have commenced this instant litigation to establish the Class 1 Ratio for tax year 2010/2011;

WHEREAS, while the 2010/2011 Tax Ratio Litigation has been ongoing, but independent of same, Small Claims Assessment Review ("SCAR") hearings have been conducted at which SCAR hearing officers heard testimony and evidence on the issue of ratio;

WHEREAS the aforesaid SCAR hearings have resulted in disparate and unequal determinations of ratio and gave rise to more than one hundred twenty (120) CPLR Article 78 petitions, involving more than one thousand one hundred (1,100) individual determinations, to review such individual determinations; and

WHEREAS the undersigned parties seek to avoid further costly and time consuming litigation which wastes both the parties' resources and judicial resources by establishing a procedure to determine ratio which is efficient and equitable to all of the parties and taxpayers which is intended to be followed during the administrative review of assessments and before the commencement of SCAR hearings;

IT IS HEREBY STIPULATED AND AGREED THAT:

1. As a precursor to a ratio trial pursuant to RPTL §720(3)(b), within thirty (30) days of the date the Tentative Assessment Roll is made available electronically to the Representatives, the Representatives may give written notice to the Nassau County Attorney of a good-faith belief that the Class One Level of Assessment ("LOA") as published with the Tentative Assessment Roll is erroneous and request that the LOA be established as set forth below. Written notice pursuant to any paragraph of this agreement shall be sent by certified AND first class mail, to the addresses listed below for each party. Only one notice need be served by the Representatives for any one tax year.

## Appendix C - Halpern Stipulation and Order

2. Provided notice is sent in accordance with Paragraph 1 above, then within one-hundred twenty (120) days from the date of the above notice the parties shall exchange ratio studies which shall include but not be limited to underlying sales and applicable time-trend data and/or econometric modeling method (collectively referred to as a "ratio study"), which will be used for settlement purposes only and may not be subsequently utilized in any Court proceeding or ~~arbitration~~ for the purposes of impeachment. Within thirty (30) days of exchanging ratio studies, the parties shall engage in *meaningful, good-faith* settlement negotiations concerning the LOA.

Settlement

MS  
R

3-a. The following, non-exclusive list of types of sales shall be excluded from the ratio calculation in accordance with IAAO standards.

- a. Sale Between Relatives or Former Relatives
- b. Sale Between Related Companies, Partners in Business, or Corporate Affiliates
- c. One of the Buyers is also a Seller
- d. Government Agency or Lending Institution is a buyer or seller
- e. Deed Type Not *Warranty* or *Bargain and Sale*
- f. Fraction of or Less than Fee Interest Conveyed
- g. Life Estate conveyed
- h. Seller separates and retains Mineral or Other Rights at the time of sale
- i. Sale of Business Included in Sale Price
- j. Other Unusual Factors (RP 5217 Condition Code = I)
- k. Estate Sale and Trust Sales
- l. Charity, Religious Corporation, Educational Organization, or government Subsidized Housing agency either a buyer or a seller
- m. property was the subject of a Forced Sale (*Foreclosure or in lieu of, Auction, Referee, Tax Sale, Bankruptcy, Divorce, Judicial Order*)
- n. Substantial Personal Property - Good Will Business Value (*10% or More of Full Sales Price - If Amount of Personal Property not specified*)
- o. A Correction Deed is filed that alters the sale price.

## Appendix C - Halpern Stipulation and Order

- p. Seller is a Restricted Trust
- q. More than 1 Year (365 days) Between Contract Date and Sale Date
- r. Full Sale Price Minus Personal Property equals \$10 or Less
- s. Sales with Special Conditions (e.g., trades, land contracts, incomplete or unbuilt common property, auctions)
- t. Acquisitions or Divestments by Large Property Owners that involve multiple parcels
- u. Multiple Parcel Sales
- v. IRS Section 1031 Exchanges
- w. Sale-Leaseback Transactions

**3-b. SALES WITH CAPPED ASSESSMENTS.** The Parties agree that in the event more than one (1%) percent of the residential Assessment Roll contains assessments which are limited by the six (6%) cap of RPTL 1805, then sales which correspond with parcels that have assessments capped pursuant to RPTL 1805 shall not be excluded from ratio studies on the basis that the assessment was capped, and that said capped assessment shall be used for the determination of ratio.

**3-c. TIME PERIOD OF SALES.**

- (i) The time period of sales for the ratio studies exchanged in paragraph 2 shall be the 12 months immediately preceding the taxable status date for the assessment roll at issue;
- (ii) The time period of sales for all other ratio studies exchanged under this agreement shall be the same time period as set forth in 3-c(i) above and the three (3) months immediately following the taxable status date for the assessment roll at issue;
- (iii) The section shall not apply to econometric modeling methods used to determine ratio.

**3-d. SALES CHASING.** Both parties agree that sales chasing is a practice that will not be used in the Sales Ratio Study process.

4. If the parties agree to a LOA, the parties shall enter into a stipulation providing that such ratio shall be effective at administrative review, SCAR hearings and/or any Article 7 proceeding brought by the Representatives on behalf of their clients, and shall be submitted to each Hearing Officer at all SCAR hearings or any Article 7 proceeding for the respective year and presented as the "Stipulated Ratio." The parties waive their rights to submit any evidence of ratio other than the Stipulated Ratio.

## Appendix C - Halpern Stipulation and Order

5-a. **MEDIATION.** In the event the parties are unable to resolve the LOA within sixty (60) days from the exchange of ratio studies, the undersigned Representatives may commence non-binding mediation (the "Mediation") to establish the LOA before the Counselors of Real Estate ("CRE") or such other Mediation body as the parties may agree to in writing. The costs of the Mediation shall be shared 50/50 by the County and the Representatives. The Parties will request that the Mediation hearing will commence no later than 90 days from the date the Mediation is requested or as soon thereafter as practicable. The Mediation shall neither be delayed nor stayed on grounds that ORPTS has not published, issued, or calculated any Class 1 Ratio or Equalization Rates, Residential Assessment Ratio, or any other ratio or equalization rate. Only one request for Mediation need be filed for any one tax year.

5-b. **EXCHANGE OF RATIO STUDIES** The parties agree to exchange ratio studies at least thirty (30) days prior to the first Mediation conference. The failure of a party to exchange a ratio study within the above time period shall be deemed a waiver of that party's right to submit evidence in support of their proffered level of assessment.

5-c. **APPLICABLE MEDIATION RULES.** The determination of the LOA shall be resolved in accordance with the Rules of the CRE Real Estate Dispute Resolution of the Counselors of Real Estate, or similar rules in accordance with the rules of the applicable mediating organization, as may be amended from time to time, by means of mediation. The neutral shall be selected from the panel of mediators maintained by the applicable mediating organization. The mediation process, including neutral selection, will be governed by a representative of the applicable mediating organization. By executing this agreement, each party agrees to be bound by the Mediation Rules of the applicable mediating organization.

5-d. **SUCCESSFUL MEDIATION RESULTS IN STIPULATED RATIO.** Provided the parties resolve the LOA at Mediation, the agreed-upon LOA shall be binding upon the parties at administrative review, SCAR hearings and/or any Article 7 proceeding brought by the Representatives on behalf of their clients, and shall be submitted to each Hearing Officer at all SCAR hearings or any Article 7 proceeding for the respective year and presented as a "Stipulated Ratio." The parties waive their rights to submit any evidence of ratio other than the Stipulated Ratio.

5-e. **STAY OF SCAR PROCEEDINGS DURING MEDIATION OR ARTICLE 7 TITLE 1 LITIGATION.** It is the intention of the parties that the Mediation shall be concluded during administrative review of assessments for the tax year at issue. Should the Mediation be continued after the applicable period of administrative review, any party may seek a stay of any and all SCAR proceedings which the Representatives have commenced, pending a determination of the ratio through Mediation and/or Article 7 Title 1 litigation. The parties consent to such an application on such notice as the Court may direct.

## Appendix C - Halpern Stipulation and Order

### 6. SPEEDY RATIO TRIAL IN THE EVENT MEDIATION IS UNSUCCESSFUL.

In the event Mediation is unsuccessful, then even in the event the applicable tax roll has not been finalized, the Representatives may commence one proceeding by an aggrieved party pursuant to RPTL Article 7 Title 1 (or such other form of special proceeding as the Parties may agree specifically for the purposes of conducting a Supreme Court trial to determine the Class One ratio). The County shall not object to the proceeding on the grounds that it is premature or based upon tentative assessed values. Furthermore, in such a proceeding, the parties agree to the following stipulations:

- A) The sole issue to be decided will be the applicable Class 1 Level of Assessment to be utilized in any SCAR proceeding or Article 7 proceeding pursuant to RPTL §720(b)(3);
- B) The County agrees to waive any defenses in such proceeding it may have with respect to the standing of the petitioner(s), if the petitioner(s) would otherwise qualify as aggrieved party under Article 7 of the RPTL;
- C) The County agrees to waive the automatic stay provisions CPLR 5519(a);
- D) The ratio trial shall neither be delayed nor stayed on grounds that ORPTS has not published, issued or calculated any Class 1 Ratio or Equalization Rates, Residential Assessment Ratio, or any other ratio or equalization rate.
- E) A trial preference shall be requested for the ratio trial and the parties will consent to any application for such a preference, on such notice as the Court may direct.
- F) The parties in such proceeding shall exchange their respective expert ratio studies within thirty (30) days of the date of service of the Article 7 Petition or special proceeding. No prior ratio study submitted or exchanged shall be used for impeachment purposes. Any stays or appeals notwithstanding, the willful failure of any party to exchange a report for trial shall be deemed an admission that the ratio presented by the other party's expert is the true LOA, and the party may obtain an order to that effect by motion on such notice as the Court may direct.
- G) While the Article 7 or special proceeding and ratio trial is pending, including any appeals therefrom, any and all SCAR proceedings which the Representatives have commenced shall be stayed. The parties consent to such an application on such notice as the Court may direct.
- H) The parties agree that the decision rendered by the Court on the issue of ratio may be utilized by any party at administrative review, SCAR proceedings and/or any Article 7 proceedings. Upon a final decision after all appeals, if any, the parties shall be bound by the ratio set forth in the decision as the Stipulated Ratio.
- I) Either party may serve a Demand To Admit ratio pursuant to RPTL 716.

-5-

## Appendix C - Halpern Stipulation and Order

J) The ratio trial cannot be assigned to a Court Referee or JHO without the parties approval.

7. It is understood that with respect to the 2012/13 tax year, the parties have agreed that the notice required in paragraph 2 above shall be made within 15 days of the execution of this agreement, and the exchange of ratio studies shall be made within 105 days of the date of such notice.

8. The LOA shall be calculated as of the 2nd day of January of the year prior to the tax year at issue ("tax status date"). For example, for the 2013/14 tax year the level of assessment shall be calculated as of January 2, 2012. For further example, the 2014/15 tax year, the level of assessment shall be calculated as of January 2, 2013. If the annual assessment calendar is changed and/or Tentative and Final assessment rolls for any tax year are published in the same year i.e, a tentative roll published in January 2013 and the corresponding Final tax roll published in April 2013, the level of assessment shall be calculated as of the first business day of the month of the year the tentative assessment is published.

9. The County acknowledges its prior statements regarding resolution of pending 2011/12 cases in the future cyclic assessment system, commencing with the publication of the 2012/13 tax roll. Reductions implemented on the 2011/12 Final tax roll will appear as Final 2012/13 assessments pursuant to the freeze, subject to further reductions which may be implemented. Since the Tentative roll published under the first year of the cyclic assessment tax roll (2012/13) should reflect reductions that will be implemented on the corresponding prior year's Final tax roll (2011/12), it is agreed that the tax roll both parties will utilize to establish ratio pursuant to this agreement shall be the Tentative tax roll for the tax year which is subject to the notice provided for in paragraph 1 with revisions to that tax roll which appear on the Final roll published for the previous tax year. Such revised assessments shall be deemed to be revised Tentative assessments and shall be effective for purposes of establishing ratio. It is the intention of the parties that the methodology set forth in this paragraph be applied towards any tax year in which the LOA is in dispute and a ratio study is prepared.

10. This agreement shall remain in full force and effect regardless of which year of the cyclic assessment is in effect. The parties agree that the Class one ratio may be established pursuant to this agreement annually.

11. The parties agree that the Representatives and any of their clients, individually or collectively, have standing to bring an action or special proceeding in connection with the enforcement of this agreement or in connection with the LOA.

12. The parties agree that the County or the Representatives may institute an action or special proceeding in connection with the enforcement of this agreement.

**Appendix C - Halpern Stipulation and Order**

13. Within five (5) business days of the execution of this agreement by the parties, Schroder & Strom, LLP shall deliver a stipulation of discontinuance of the 2010/2011 ratio action to the County Attorney's Office, attention Martin E. Valk, Esq., in form suitable for filing, which has been executed by Schroder & Strom, LLP as attorneys for petitioners in that action. Within fourteen (14) days thereafter, the parties to the 2010/2011 Tax Ratio Action shall take the necessary steps to withdraw the pending appeals. This discontinuance is for the ratio trial only and not for the underlying Article 7 Petition.

14. The parties agree that all Article 78 petitions filed by the Representatives to review the alleged improper determination of ratio in SCAR decisions for the 2010/11 tax year, which have not been determined, will be resolved with the following stipulation: The attorneys for the relevant parties shall send a dual-signed letter to Administrative Justice Anthony Marano requesting that all Justices assigned to such proceedings refrain from determining any of the now-pending CPLR article 78 petitions which any Representative executing this agreement has filed, pending submission of the individual ARC grievances to the County's settlement program previously established to review the 2011/12 tax year for a review. If such review does not result in a mutually-agreed upon settlement, then the parties agree to notify each Justice in writing to determine the subject CPLR article 78 petitions limited to the Petitioners whose appeals have not been settled. The parties will provide the Court with such stipulations as may be necessary to effectuate this provision.

15. **DURATION OF THIS AGREEMENT.** This agreement shall be in effect for eight (8) years commencing with the 2012/13 tax year.

16. **NO PRESUMPTION OF VALIDITY.** For purposes of the Stipulation and determining ratio herein, there shall be no presumption of validity of the County's LOA provided the Representatives have proffered ratio studies to the County as set forth in paragraph 5 for mediation purposes, or paragraph 6 for ratio trial purposes, herein.

Dated: JUL 19 2011



JOHN CIAMPOLL, ESQ.  
Nassau County Attorney  
*Attorneys for Respondents*  
One West Street  
Mineola, New York 11501  
(516) 571-4113

SO ORDERED:



HONORABLE THOMAS A. ADAMS

**ENTERED**

JUL 27 2011

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

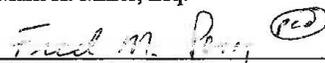
-7-

Appendix C - Halpern Stipulation and Order

SCHRODER & STROM, LLP

By:   
MICHAEL T. SCHRODER, ESQ.  
*Attorneys for Petitioners*  
Suite 218/114 Old Country Rd.  
Mineola, N.Y. 11501  
516-742-7430/ Fax 516-742-7433

ROSENFELD & MAIDENBAUM, LLP

By:   
Mark H. Miller, Esq.  
 (pc)  
FRED N. PERRY, ESQ.

P.T.R.C., INC.

By:  (cur)  
Sean Acosta

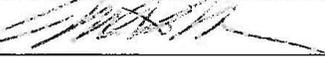
RE-ASSESSMENT & EVALUATION  
SVCS INC.

By:   
Paola Orsini

TAX CORRECTION AGENCY, INC.

By:  (pc)  
Paola Orsini

LONG ISLAND TAX REDUCTIONS, INC.

By:   
Mark H. Miller, Esq.

MAIDENBAUM PROPERTY TAX  
REDUCTION GROUP, LLC

By:   
Mark H. Miller, Esq.

-8-

Appendix D - Halpern Stipulation and Order Extension

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

In the Matter of

STIPULATION AND ORDER

RICHARD AND ELLEN HALPERN,

Petitioner,

Index No. 2010/410228

- against -

THE BOARD OF ASSESSORS AND THE  
ASSESSMENT REVIEW COMMISSION OF  
THE COUNTY OF NASSAU,

Respondents.

WHEREAS, the undersigned petitioners' representatives and law firms entered into a Stipulation and Order dated July 19, 2011 and So Ordered on July 27, 2011 (referred to hereinafter as "So Ordered Stipulation") by the Hon. Thomas A. Adams, which sets forth procedures to challenge the Class 1 ratio administratively and judicially effective as of the 2012/13 tax year;

WHEREAS, the So Ordered Stipulation provides that the agreement is effective for eight years commencing with the 2012/13 tax year;

WHEREAS, the parties acknowledge the procedures set forth in the So Ordered Stipulation have resulted in an efficient and expeditious manner for establishing a Class 1 ratio without formal litigation;

WHEREAS, the parties desire to modify, clarify, and extend the terms of the So Ordered Stipulation;

IT IS HEREBY STIPULATED AND AGREED THAT,

1. Paragraph 2 shall be replaced in its entirety by the following paragraph:

"Provided notice is sent in accordance with Paragraph 1 above, then within one-hundred twenty (120) days from the date of the above notice the parties shall exchange ratio studies

## Appendix D - Halpern Stipulation and Order Extension

which shall include but not be limited to underlying sales and applicable time-trend data and/or econometric modeling method (collectively referred to as a "ratio study"), which will be used for settlement purposes only and may not be subsequently utilized in any Court proceeding or mediation for the purposes of impeachment unless either party elects to waive such limitation upon submission of their ratio study for purposes of Paragraph 5-b and 6 (F). Within thirty (30) days of exchanging ratio studies, the parties shall engage in meaningful, good-faith settlement negotiations concerning the LOA."

2. Paragraph 5-b shall be amended by adding the following to the end of the paragraph:  
"Either party may request an extension of the exchange date by letter application upon good cause shown."
3. Paragraph 3-d shall be amended to delete the word "Salcs."
4. Paragraph 5-e, 6 (A), 6 (G) and 6 (H) shall be modified to the extent that the term "SCAR Proceedings" shall be replaced by the term "SCAR Hearings."
5. Paragraph 5-e shall be amended by modifying the last sentence to read: "The parties consent to a stay on such terms as the Court may direct."
6. Paragraph 6 (C) shall be deleted in its entirety.
7. The Parties desire to extend all of the terms of the So Ordered Stipulation as modified herein for six years commencing with the 2020/21 tax year.

SO ORDERED:

J.S.C.

Dated:

Dec 6, 2016

SO ORDERED

  
HONORABLE THOMAS A. ADAMS

**ENTERED**

DEC 06 2016

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

2



**EXECUTIVE ORDER NO. 3-2018**

RELATING TO LEVEL OF ASSESSMENT

LAURA CURRAN, County Executive of the County of Nassau, pursuant to powers vested in me by the Nassau County Charter, the Nassau County Administrative Code and the laws of the State of New York, to ensure the continuing statutory protection of taxpayers from unreasonable increases in assessed valuations, hereby exercises that authority and declares as follows:

WHEREAS, the prior administration ordered an assessment freeze beginning in 2011 that has resulted in property market valuations maintained by the Department of Assessment that in many cases are grossly understated, and

WHEREAS, the assessment freeze has created significant inequities and unfairly shifted tax burdens to taxpayers not taking advantage of the grievance system previously established for challenging assessments; and

WHEREAS, these distorted market valuations have also been a major contributor to the County's liability for property tax refunds by weakening the County's defense to claims of unequal assessment, and

WHEREAS, it is necessary for the County to complete its ongoing systematic review reassessment to end the freeze by producing updated and current market values on the next tentative roll in January 2019 to address these problems, and

WHEREAS, it is equally necessary to ensure that such reassessment does not in any way negatively impact the statutory protections from unreasonable assessment increases provided to taxpayers, and

WHEREAS, Section 1805 of the Real Property Tax Law provides that the County Assessor may not increase a class one (residential) assessment in any one year by more than six percent and by more than twenty percent in any five-year period, and

WHEREAS, Section 1805 further provides protections for other properties such that any assessment increases must be phased in over a 5-year period, and

WHEREAS, Section 305 of the Real Property Tax Law, in conjunction with Article 18 thereof, the requires the County to maintain a uniform level of assessment in each property class, and

WHEREAS, the current levels of assessment are .25% for class one and 1% for classes two, three and four; and

WHEREAS, it is the policy of the County in connection with the reassessment to maintain the current uniform levels of assessment in each property class to continue the taxpayer protections contained in Section 1805; *now, therefore,*

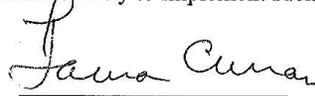
EDWIN J. BROWN, COUNTY CLERK  
NASSAU COUNTY  
SEAL

**Appendix E - Executive Order NO. 3 – 2018 – Relating to Level of Assessment**

IT IS HEREBY ORDERED that the County Assessor (or Acting County Assessor, as the case may be) shall in connection with the reassessment implement the County's policy of maintaining the current uniform levels of assessment (.25% for class one and 1% for classes two, three and four) on the tentative roll to be published in January 2019, so as to continue taxpayer protections contained in Section 1805 of the Real Property Tax Law, and

IT IS HEREBY FURTHER ORDERED, that all departments and agencies of Nassau County are hereby directed to take whatever steps are necessary to implement such policy.

Dated: March 26, 2018



LAURA CURRAN  
COUNTY EXECUTIVE  
COUNTY OF NASSAU

Appendix F - Executive Order NO. 6 – 2018 – Relating to Level of Assessment

EXECUTIVE ORDER NO. 6-2018  
RELATING TO LEVELS OF ASSESSMENT

LAURA CURRAN, County Executive of the County of Nassau, pursuant to powers vested in me by the Nassau County Charter, the Nassau County Administrative Code and the laws of the State of New York (the "State"), to (1) ensure that the County is able to defend the accuracy and integrity of property assessments, (2) protect taxpayers from the costs of excessive property tax refunds, (3) ensure the success of the County's financial plan and (4) protect residents from any relative changes in class one tax burden that could otherwise result from the reassessment and a change in the level of assessment:

WHEREAS, it was the policy of the prior administration to freeze the assessment roll by adjusting County assessments for valuation decreases, but despite rising market prices, not adjusting for valuation increases; and

WHEREAS, such policy led to mass settlements of grievances at the Assessment Review Commission ("ARC") based largely on claims of unequal assessment (ratio challenges) whereby the County was unable to defend the stated levels of assessment; and

WHEREAS, the combination of the frozen roll and mass settlements severely degraded the accuracy and integrity of assessments and shifted the tax burden disproportionately; and

WHEREAS, the County in 2018 has invested millions of dollars in the reassessment of all properties in the County to obtain accurate market values for the January 2019 tentative assessment roll and undo the damage caused by the frozen roll and mass settlements; and

WHEREAS, the County must successfully defend the stated levels of assessment on the tentative assessment roll against ratio challenges to maintain the accuracy and integrity of the roll and protect taxpayers from excessive refund costs; and

WHEREAS, the success of the County's financial plan depends in large part on maintaining the accuracy and integrity of the new assessment roll and not paying excessive refunds; and

WHEREAS, Executive Order 3-2018 contemplated that the completion of the reassessment would enable the County to defend against ratio challenges; and

WHEREAS, subsequent to the issuance of Executive Order 3-2018, the County Assessor determined, upon a review of data from the reassessment and the impact of the Stipulation in *Halpern v. the County of Nassau et al.* signed in 2011 and extended in 2016, that the County would not be able to defend against a ratio challenge were it to maintain the .25% class one level of assessment indicated in Executive Order 3-2018; and

WHEREAS, it is therefore necessary and appropriate, due to this unforeseen development, to amend and supersede Executive Order 3-2018 to the extent necessary to avoid grave risks to the assessment roll were the County to maintain the class one level of assessment at .25%; and

WHEREAS, it is therefore also necessary and appropriate to amend and supersede Executive Order 3-2018 to the extent necessary to avoid risks, if any, to the assessment roll were the County to maintain the level of assessment for each of class two, class three and class four at 1%; and

WHEREAS, it is the policy of the County to recognize that, under these circumstances, the County Assessor, (i) in the exercise, and within the bounds, of his professional responsibility and (ii) pursuant to the powers vested in him by law, is the appropriate official to set the levels of assessment to ensure the accuracy and integrity of the assessment roll, including to prevent it from being degraded by ratio challenges; and

WHEREAS, the County Attorney has advised that the County Assessor has such legal authority; and

WHEREAS, it is also the policy of the County to seek necessary and appropriate protection for taxpayers from any relative changes in class one tax burden that could otherwise result from the reassessment and a change in the level of assessment; now, therefore,

IT IS HEREBY ORDERED that the County Assessor set the levels of assessment for the (January 2019) tentative assessment roll for tax year 2020/2021 to (i) maximize assessment accuracy and integrity, (ii) enable the County to defend successfully against ratio challenges and (iii) avoid the need for mass settlements at ARC and payment of excessive refunds; and

IT IS HEREBY ORDERED that the County Assessor include such levels of assessment in the assessment disclosure notices that are required to be sent to property owners pursuant to Real Property Tax Law § 511; and

IT IS HEREBY ORDERED that the County Attorney prepare draft State legislation that would transition over five-years any relative changes in class one tax burden that could otherwise result from the reassessment and a change in the level of assessment; and

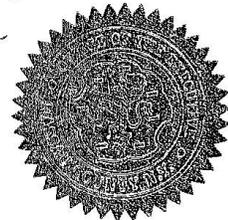
IT IS HEREBY FURTHER ORDERED, that all departments and agencies of Nassau County are hereby directed to take whatever steps are necessary to implement such directions; and

IT IS HEREBY FURTHER ORDERED, that Executive Order 3-2018 is hereby amended and superseded to the extent provided herein.

Dated: September 26, 2018

*Laura Curran*

LAURA CURRAN  
COUNTY EXECUTIVE  
COUNTY OF NASSAU



RECEIVED  
NASSAU COUNTY  
CLERK OF THE LEGISLATURE  
2018 SEP 26 P 1:29

## **Appendix G - Summary of Reassessment Phase-In-Act of 2020**

---

### Reassessment Phase-In Act of 2020

A local law, known as the “Reassessment Phase-In Act of 2020”, proposed by the current County Executive was passed in April 2020. This law created an exemption that will spread out the increases in valuation incurred by class one property owners as a result of the reassessment over a five-year period.

- The DoA will calculate the exemption as a percentage of the exemption base, which is essentially the change in assessment value. The exemption % will be as follows: 80% of the exemption base on the 2020/21 Final Assessment Roll,
- 60% of the exemption base on the 2021/22 Final Assessment Roll,
- 40% of the exemption base on the 2022/23 Final Assessment Roll,
- 20% of the exemption base on the 2023/24 Final Assessment Roll and
- 00% of the exemption base on the 2024/25 Final Assessment Roll.

## Appendix H - Explanation of Reappraisal and Reassessment

---

NYS Guidelines explain Reappraisal and Reassessment as follows:

*Reappraisal* means the process of physically inspecting and reappraising each parcel at least once every six (6) years. Reappraisal refers to the valuation of a single parcel.

(a) Physically inspecting means, at a minimum, observing each property from the public right-of-way in order to ascertain that the physical characteristics necessary for reappraising are complete and accurate.

(b) Reappraising means the developing and reviewing of an independent estimate of market value for each parcel by the appropriate use of one or more of the accepted three approaches to value (cost, market and income).

*Reassessment* means a systematic analysis of all assessments, either within an assessing unit or within a class of a special assessing unit, to assure that they are at the stated uniform percentage of value as of the valuation date of the Assessment Roll upon which the assessments appear. Reassessment applies to a group of parcels. It is synonymous with the term's revaluation and update.

A reassessment can be completed by a reappraisal of all parcels, trending all parcels to current value, or a combination of both.

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

**Stipulated Ratio Letter for 2014/15**

06/13/2013 11:15 5167425863

REA

PAGE 01

**EDWARD P. MANGANO**  
County Executive



**JOHN CIAMPOLI**  
County Attorney

COUNTY OF NASSAU  
OFFICE OF THE COUNTY ATTORNEY  
One West Street  
Mineola, New York 11501-4820  
516-571-3056  
FAX: 516-571-6604

June 12, 2013

To: Tax Assessment Representatives and Attorneys for Class 1 Residential Property Owners

Re: Stipulated Ratio for 2014/15 Grievances and/or SCAR Hearings

This letter is to confirm that the County of Nassau has reached an agreement with the tax assessment Representatives and Attorneys for Class 1 Residential Property owners to utilize an Equalization Ratio of .0019 for the 2014/15 administrative grievances. An Equalization Ratio of .0023 shall apply for all 2014/2015 Article 7 tax certiorari proceedings. An Equalization Ratio of .0023 shall also apply for all 2014/2015 SCAR hearings, unless ARC fails to make the first round of offers in at least seventy-five percent (75%) of all filings (net of the exceptions below) on or before October 31st, 2013, in which case an Equalization Ratio of .0019 shall apply to all SCAR hearings, including the exceptions below. If no offer has been made at all on a case, then that case will be heard or submitted at a .0019 Equalization Ratio at SCAR.

Cases involving duplicate filings which are not promptly resolved, cases presenting jurisdictional issues, cases with open building permits/additions/demolitions, cases involving parcels sold or listed for sale on or after July 1<sup>st</sup>, 2012, cases involving the County's approximately 7,000 condominiums, and cases where the Fair Market Value is shown as two million dollars (\$2,000,000) or higher, shall not be considered in the seventy-five percent (75%) offer deadline calculation.

This stipulation may be signed in counterparts which shall be considered to be one document.

Very truly yours,

A handwritten signature in black ink, appearing to read "Darlene Harris", written over a horizontal line.

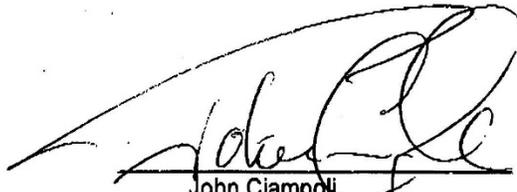
Darlene Harris, Chairperson  
Assessment Review Commission

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

05/13/2013 11:15 5167425863

REA

PAGE 02

  
John Ciampoli  
County Attorney

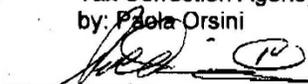
AGREED TO:

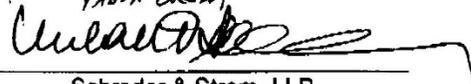


\_\_\_\_\_  
PTRC, Representative  
by: Sean Acosta

  
\_\_\_\_\_  
Maidenbaum & Sternberg, LLP  
Maidenbaum Property Tax Reduction Group, LLC  
Long Island Tax Reductions, Inc., Representatives  
by: Mark N. Miller, Esq.

  
\_\_\_\_\_  
Tax Correction Agency, Representative  
by: Fred N. Perry

  
\_\_\_\_\_  
Fred N. Perry, Esq.  
*(Fred N. Perry)*

  
\_\_\_\_\_  
Schroder & Strom, LLP  
by:

  
\_\_\_\_\_  
Re-Assessment & Evaluation Svcs, Representative  
by: Fred N. Perry

cc: James E. Davis, Acting Assessor  
John Ciampoli, County Attorney  
Tax Certiorari Committee

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

---

**Stipulated Ratio Letter for 2016/17**

EDWARD P. MANGANO  
County Executive



CARNELL T. FOSKEY  
County Attorney

COUNTY OF NASSAU  
OFFICE OF THE COUNTY ATTORNEY  
One West Street  
Mineola, New York 11501-4820  
516-571-3056  
FAX: 516-571-6604

February 2, 2015

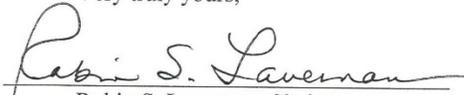
To: Tax Assessment Representatives for Class 1 Residential Property Owners

Re: **Stipulated Ratio for 2016/17 Tax Year for Class 1 Residential Properties**

This letter is to confirm that the County has reached an agreement with the Tax Assessment Representatives and Attorneys for Class 1 Residential Property Owners to utilize .0017 ratio for the resolution of 2016/17 administrative grievances, negotiations and tax certiorari proceedings (including Article 7 and SCAR hearings). The signatories to this agreement acknowledge that the stipulated ratio is the product of negotiations.

Very truly yours,

By:

  
Robin S. Laveman, Chairperson  
Assessment Review Commission

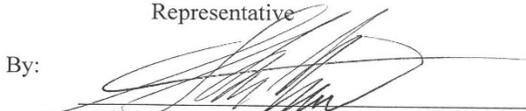
By:

  
Martin Valk  
Deputy County Attorney

By:

  
Sean Acosta  
P.T.R.C., Inc.  
Representative

By:

  
Maidenbaum and Sternberg, LLP  
Maidenbaum Tax Reduction Group, LLC  
(MPTRG)  
Long Island Tax Reductions, Inc.

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

By:   
Tax Correction Agency  
Representative

By:   
Fred N. Perry, Esq.

By:   
Schroder & Strom, LLP

By:   
Re-Assessment & Evaluation SVCS, Representative

c: James E. Davis, Acting Assessor  
Carnell T. Foskey, County Attorney

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

**Stipulated Ratio Letter for 2017/18**

EDWARD P. MANGANO  
County Executive



CARNELL T. FOSKEY  
County Attorney

COUNTY OF NASSAU  
OFFICE OF THE COUNTY ATTORNEY  
One West Street  
Mineola, New York 11501-4820  
516-571-3056  
FAX: 516-571-6604

January 19, 2016

To: Tax Assessment Representatives for Class 1 Residential Property Owners

Re: **Stipulated Ratio for 2017/18 Tax Year for Class 1 Residential Properties**

Handwritten initials and signatures, including "EP", "CF", "mg", and "RN".

This letter is to confirm that the County has reached an agreement with the Tax Assessment Representatives and Attorneys for Class 1 Residential Property Owners to utilize .0016% ratio for the resolution of 2017/18 administrative grievances and for tax certiorari proceedings (including Article 7 and SCAR hearings).

The parties further stipulate that for the 2017/18 pre-trial negotiations and Article 7 and SCAR Hearings that 1) there will be no time adjustments to comparable sales and/or subject sales and 2) sales of comparable residential properties at SCAR will only be utilized from February 1, 2015 through May 1, 2016.

Very truly yours,

By:   
Robin S. Laveman, Chairperson  
Assessment Review Commission

By:   
Martin Valk  
Deputy County Attorney

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

By: 

Sean Acosta  
P.T.R.C., Inc.  
Representative

By: 

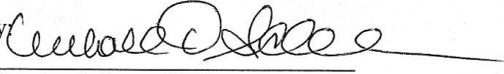
Maidenbaum and Sternberg, LLP  
Maidenbaum Tax Reduction Group, LLC  
(MPTRG)  
Long Island Tax Reductions, Inc.

By: 

Tax Correction Agency  
Representative

By: 

Fred N. Perry, Esq.

By: 

Schroder & Strom, LLP

By: 

Re-Assessment & Evaluation SVCS  
Representative

c: James E. Davis, Acting Assessor  
Carnell Foskey, County Attorney

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

**Stipulated Ratio Letter for 2018/19**

EDWARD P. MANGANO  
County Executive



CARNELL T. FOSKEY  
County Attorney

COUNTY OF NASSAU  
OFFICE OF THE COUNTY ATTORNEY  
Ralph G. Caso Executive and Legislative Building  
One West Street  
Mineola, New York 11501-4820  
516-571-3056  
FAX: 516-571-6604

January 27, 2017

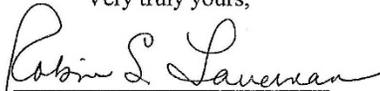
To: Tax Assessment Representatives for Class 1 Residential Property Owners

Re: Stipulated Ratios for 2018/19 Tax Year for Class 1 Residential Properties

This letter is to confirm that the County has reached an agreement with the Tax Assessment Representatives and attorneys for Class 1 Residential Property Owners to utilize a .0015 ratio for the resolution of 2018/19 administrative grievances, negotiations and to utilize a .0017 ratio for tax certiorari proceedings (including Article 7 and SCAR hearings). The signatories to this agreement acknowledge that the stipulated ratio is the product of negotiations.

Very truly yours,

By:

  
Robin S. Laveman, Chairperson  
Assessment Review Commission

By:

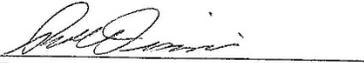
  
Martin E. Valk,  
Deputy County Attorney

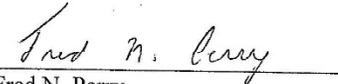
By:

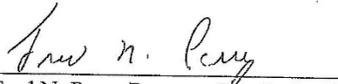
  
Sean Acosta  
P.T.R.C., Inc.  
Representative

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

By:   
Maidenbaum & Sternberg, LLP  
Maidenbaum Tax Reduction Group, LLC  
(MPTRG) *Property*  
Long Island Tax Reductions, Inc.  
Representative

By:   
Tax Correction Agency  
Representative

By:   
Fred N. Perry  
Representative

By:   
Fred N. Perry Property Tax Reduction Group, LLC  
Representative

By:   
Schroder & Strom, LLP  
Representative

By:   
Re-Assessment & Evaluation SVCS  
Representative

cc: James E. Davis, Acting Assessor  
Carnell Foskey, County Attorney

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

**Stipulated Ratio Letter for 2019/20**

LAURA CURRAN  
County Executive



JARED A. KASSCHAU  
County Attorney

COUNTY OF NASSAU  
OFFICE OF THE COUNTY ATTORNEY

May 8, 2018

To: Tax Assessment Representatives for Class 1 Residential Property Owners

Re: Stipulated Ratios for 2019/20 Tax Year for Class 1 Residential Properties

This letter is to confirm that the County has reached an agreement with the Tax Assessment Representatives and attorneys for Class 1 Residential Property Owners to utilize a .0014 ratio for the resolution of 2019/2020 administrative grievances and negotiations and to utilize a .0015 ratio for tax certiorari proceedings (including Article 7 and SCAR hearings). It is agreed that there will be no time adjustments to comparable sales and/or subject sales, *however only 2017 and 2018 Sales may be submitted.*

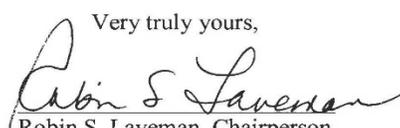
The parties further stipulate that for the 2019/2020 grievance period at the Assessment Review Commission (ARC):

- 1) ARC will hold "Dup days" to assist in resolution of duplicate filings;
- 2) ARC will continue the carry forward program;
- 3) The ratio at .0015 for Article 7 and SCAR proceedings shall only apply provided ARC makes bona fide offers on at least 80% of residential grievances filed.

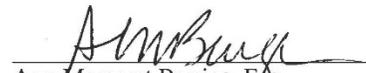
The signatories to this agreement acknowledge that the stipulated ratio is the product of negotiations. Facsimile or electronic signatures shall have the same force and effect as an original signature.

Very truly yours,

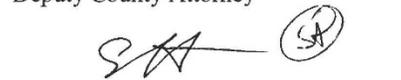
By:

  
Robin S. Laveman, Chairperson  
Assessment Review Commission

By:

  
Ann-Margaret Barriga, Esq.  
Deputy County Attorney

By:

  
Sean Acosta, P.T.R.C.  
Representative

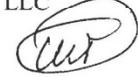
ONE WEST STREET - MINEOLA, NEW YORK 11501-4820  
516-571-3056, FAX 516-571-6684, 6604

**Appendix I - Stipulated Ratios for Class 1 Properties  
(Letters for 2014/15, 2016/17, 2017/18, 2018/19 and 2019/20)**

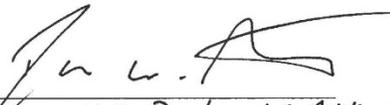
By:    
Name: Amy G. Madson  
Maidenbaum & Sternberg, LLP  
Maidenbaum Property Tax Reduction Group, LLC  
Long Island Tax Reductions, Inc.  
Representative

By:    
Paola Orsini for Tax Correction Agency  
Representative

By:/For    
Paola Orsini  
Fred N. Perry Property Tax Reduction Group LLC  
Representative

By:    
Michael Schroder, Esq  
Schroder & Strom, LLP

By:    
Paola Orsini Re-Assessment & Evaluation SVCS  
Representative

By:    
John Ferrana, Esq. Douglas W. Atkins  
Forchelli Deegan Terrana, LLP

cc: James E. Davis, Acting Assessor  
Jared Kasschau, County Attorney

**Appendix J - Example of ARC Residential Stipulation of Settlement  
Letters for Class 1 Property**

LAURA CURRAN  
County Executive



ROBIN S. LAVEMAN  
Chairperson

NASSAU COUNTY ASSESSMENT REVIEW COMMISSION

240 Old Country Road, Mineola, New York 11501 phone: 516-571-3214

**ARC RESIDENTIAL STIPULATION OF SETTLEMENT**

RECEIVED  
NASSAU COUNTY

2019



ASSESSMENT REVIEW  
COMMISSION - C.S.

In connection with your 2020/21 application, the Assessment Review Commission ("ARC") has determined the assessed value of your property. If the assessed value warrants a reduction, your indicated assessment will be less than your original assessment. If the value does not warrant a reduction in assessment, your indicated assessment will remain the same as the original assessment. We request that you respond to this determination by signing either the accepted line or the rejected line on or before the date at the bottom of the page. Please include your name and date below your signature. Any applicant's acceptance is subject to final approval by the Commission.

Parcel ID	Year	Applicant	Appeal No.	Assessment			
				Original Tentative	Adjusted Tentative	Indicated	Reduction
	2020/21			■	■	■	■

\*If the Adjusted Tentative differs from the Original Tentative, it reflects a reduced assessment based on a prior ARC stipulation or Small Claims Assessment Review decision.

The Assessor is prohibited from increasing the assessment by more than 6%. However, increases in the assessment due to new construction or renovation are not limited by this cap.

Applicant or Representative signature

**Rejected**

Applicant or Representative signature

Print name

Date

Date

If accepted, the applicant agrees to the above indicated assessment and the terms set forth on page 2 of form AR71

This offer is void unless accepted by:

Return the signed and dated stipulation to the Assessment Review Commission via mail.

AR71 Page 1

**Appendix K - Example ARC Final Determination for an  
Application for Correction of Assessment for Class 1 Property**

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LAURA CURRAN  
County Executive



ROBIN S. LAVEMAN  
Chairperson

**NASSAU COUNTY ASSESSMENT REVIEW COMMISSION**  
240 Old Country Road, 5th Floor, Mineola, New York 11501  
Web: [www.askarcnassau.com](http://www.askarcnassau.com) Email: [ARC@nassaucountyny.gov](mailto:ARC@nassaucountyny.gov) Phone: (516) 571-3214

March , 2020

**FINAL DETERMINATION ON THE 2020-21 APPLICATION FOR  
CORRECTION OF ASSESSMENT**

Parcel ID  
Applicant(s):  
Property Location:  
Appeal ID:

Pursuant to Real Property Tax Law § 523-b, the Nassau County Assessment Review Commission directs that the assessment for this property be corrected as follows:

TAXABLE STATUS DATE	TENTATIVE ASSESSED VALUE	ADJUSTED TENTATIVE VALUE	CORRECTED ASSESSED VALUE	ASSESSED VALUE REDUCTION
January 2, 2019	■	■	■	■

The Assessment Review Commission directs the Assessor to amend his records of assessment accordingly. The assessment appearing on the April 2020 roll, which will be the basis for the 2020-21 school bill and 2021 general bill, should be corrected pursuant to this determination.

This determination is based on a stipulation between the Assessment Review Commission and the representative or applicant listed above. The stipulation is a final resolution of all 2020/21 appeals and no proceeding for judicial review may be commenced or maintained on this property.

Very truly yours,

Robin S. Laveman

Appendix L contains an analysis of ARC’s Responses to the Draft Audit Report and the Auditors’ Follow Up Comments. ARC’s 12/16/21 full response letter, as submitted, is included in Appendix M.

**ARC’s Comments on the Background**

*“It is ARC’s responsibility and mission to review valid Applications for Correction of Assessment (grievances) filed by Nassau County Real Property Owners and Taxpayers. ARC’s jurisdiction is classified as ‘Administrative Review’, as opposed to the Supreme Courts’ ‘Judicial Review’, which is typically only available after a Final Determination from ARC.*

*ARC is unique among Administrative review bodies in New York State, evident by the fact that ARC was authorized and operates under NY RPTL §523-b; which among other things, sets ARC at a 14 month review period and permits the operation of the Commission throughout the year rather than just on delineated ‘Grievance Days’. These and other unique characteristics of ARC were implemented as a result of both the New York and Nassau County Legislatures’ recognition that Nassau County’s Real Property Tax Assessment system is confronted by challenges that have resulted in refund liability. Unlike other Jurisdictions, Nassau County has refund liability due to the County Guaranty for all other taxing Jurisdictions including School Districts.*

*This Audit is not only a review of ARC, but also a review of the Nassau County Assessment System as a whole.”*

**AUDIT FINDING (1)**

**(1) The Assessment Review Commission and the Department of Assessment Did Not Disclose the Level of Assessment (LOA or Ratio) and Fair Market Value (FMV) included in the Calculations that Resulted from Negotiated/Stipulated Settlements**

**Audit Recommendations:**

We recommend that:

- a) ARC establish procedures to disclose and require petitioner notifications include the separate LOA and the market value used by ARC to negotiate and settle AV’s in the computation of ARC’s AV offer;
- b) ARC work with DoA to establish guidelines for the adequate disclosure of LOA’s and market values used for property valuations of appealed properties on DoA’s website;
- c) ARC cease the broad application of a separately negotiated Level of Assessment to only those that appeal and base AV reduction decisions on substantive reviews of comparable sales and the uniform application of the stated or stipulated rate; and

## Appendix L – Auditors’ Follow Up Comments to ARC’s Response

- d) If a separate LOA than that set by the Assessor and ARC continues to be applied, such Ratio be applied by ARC or the DoA to all other properties in the class and restate market values to ensure Uniformity before ARC performs any Application (grievance) Reviews to ensure uniformity prior to tax bills being generated.

### **ARC’s Response to Finding (1) Recommendations**

*“At the outset ARC disagrees with the Audit’s finding that ARC’s determined LOA was not published; in fact ARC provides the LOA on its website in the Frequently asked Questions page under ‘Level of Assessment’: <http://www.askarcnassau.com/1517/Frequently-Asked-Questions>*

*Furthermore, it must be noted that when an Applicant files a grievance with ARC, they are challenging their assessed value, not their market value. The inclusion of ARC’s determined FMV or LOA on its offers of settlement or Final Determinations will cause constituent confusion.*

*NYS Law allows property owners to contest the level of assessment; RPTL §523-b and RPTL §524 via a claim of ‘unequal assessment’.*

*As the audit discusses within this finding, it is important to note that ARC’s review is necessary as the grievance process inherently degrades the roll (see Halpern Stipulation).*

*Insofar as the Audit recommendation that ARC apply its determined LOA to the entire Assessment Roll, it is beyond ARC’s jurisdiction and authority. Such a change would need to be implemented via New York Law.”*

### **Auditors’ Follow Up Comments to ARC’s Response to Finding 1 Recommendations:**

Regarding recommendations a) and b) Auditors agree that now “ARC provides the LOA on its website in the Frequently asked Questions page under “Level of Assessment.” Auditors reiterate the need to implement recommendation a) and b) in that this may not be adequate to inform the general public of the LOA being applied by ARC.

Regarding recommendations c) and d) Auditors reiterate the need to implement recommendations c) and d)

New York State Office of Real Property Tax Service Publication 1114 (02/12) states:

“You can claim unequal assessment if assessments in your city, town or village are not at 100% of market value and your property is assessed at a higher percentage of value than the average of all other properties”

And that: “To demonstrate that your property is unequally assessed, first determine an estimate fair market value... Then determine the average level of assessment (also known as the uniform percentage of value) at which all other properties are assessed on the same roll.”

---

**Appendix L – Auditors’ Follow Up Comments to ARC’s Response**

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As such, while auditors agree that petitioners are “challenging their assessed value, not their fair market value”, the FMV is clearly integral to their understanding of an equitable assessment and regarding claims of “unequal assessment”.

We concur with ARC’s comment that “important to note that ARC’s review is necessary as the grievance process inherently degrades the roll (see Halpern Stipulation)”.

We concur with your statement that “ARC apply its determined LOA to the entire Assessment Roll, it is beyond ARC’s jurisdiction and authority. Such a change would need to be implemented via New York Law.”

**AUDIT FINDING (2)**

**(2) ARC Failed to Recommend Necessary Regulations to The Legislature for Adoption**

**Audit Recommendations:**

We recommend that ARC:

- a) Develop guidelines to regulate non-attorney Representative Firms (including licensing requirements, advertising guidelines, fee limitations, debarment procedures and present these guidelines to the Nassau County Legislature for approval; and
- b) Develop regulations that limit the ability to grieve for two tax years following any type of Assessed Value reduction.

**ARC’s Response to Finding (2) Recommendations**

*“ARC agrees that non-attorney Representative firms should be regulated, however disagrees with the finding that ARC failed to recommend such regulations to the Legislature.*

*ARC has provided recommendations to the Legislature on more than one occasion; however, they were never addressed.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 2 Recommendations:**

- a) We are pleased that ARC agrees that non-attorney Representative firms should be regulated. We are also pleased that according to ARC some recommendations have been provided to the Legislature.
- b) We reiterate the need to develop regulations that limit the ability to grieve for two tax years following any type of Assessed Value reduction between reassessment years.

**AUDIT FINDING (3)**

**(3) The “120 Day Rule” Allowed ARC to Accept an Estimated 694,000 Authorizations that were Signed by Property Owners Before the Tentative Values Were Even Known**

**Audit Recommendations:**

We recommend that ARC:

- a) Eliminate the 120-day rule and require authorizations to be signed and dated during the grievance enrollment period of January 2 to March 1 and not accept predated authorizations;
- b) Develop a standard Annual Authorization Form and require that it be submitted with all Applications from Representative Firms;
- c) Ensure property owners are aware of the value they are protesting, by requiring the property’s Assessed Value and corresponding FMV be entered on the Annual Authorization Form; and
- d) Require that Authorizations be submitted with any Representative Firm Applications (as part of the initial Application) or be dismissed requiring re-Application.

**ARC’s Response to Finding (3) Recommendations**

*“ARC conducts annual reviews of statistically valid samples of authorizations. An authorization signed by a property owner does not necessitate the filing of a grievance.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 3 Recommendations:**

a), b), c) and d): We reiterate the need to implement policies and procedures to address the issues set forth in our recommendations a), b), c) and d).

**AUDIT FINDING (4)**

**(4) Nassau County’s 395 Day Grievance Period is over 10 Times the Average of Other Large Parcel Counties and 3 times Longer than New York City’s Grievance Period**

**Audit Recommendations:**

We recommend that ARC propose and seek approval from the Nassau County Legislature for a more effective processing timeframe at a maximum of one year or less, thereby eliminating overlapping years and confusion and making Final Determinations within the same year.

**ARC’s Response to Finding (4) Recommendations**

*“ARC appreciates the Audits’ overall findings that the volume of applications submitted to ARC must be reduced; however, the Audit risks contradicting itself with this finding. ARC requires its full fourteen-month review period to have a practical chance to fulfill its responsibility to issue a Final Determination on the merits of every Application. ARC cannot recommend that this finding be adopted without concurrently either expanding the resources of the Commission or some other forms of volume control being successfully implemented.*

*ARC further notes that amending the grievance review period would require changes to both New York Law and the County Administrative Code.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 4 Recommendations:**

We are pleased that “ARC appreciates the Audits’ overall findings that the volume of applications submitted to ARC must be reduced”.

Due to current appeal volumes, we concur with the statement that ARC requires additional time in its “review period to have a practical chance to fulfill its responsibility” Auditors note that potential appeal volume control measures should be considered as a part of any studies that result from our Summary Conclusions of Audit Observations.

We agree with ARC’s statement that “amending the grievance review period would require changes to both New York Law and the County Administrative Code”.

**AUDIT FINDING (5)**

**(5) ARC was Processing Appeals Received from Firms Without Verifying Property Owner Authorizations; ARC’s Quality Control over Authorizations is Faulty**

**Audit Recommendations:**

We recommend that ARC:

- a) Require a standard Authorization Form (such as the AR-10), be submitted with all Applications (AR-1) filed by Representative Firms or Attorneys Representatives;
- b) Disallow the submission of Firm contracts/agreements as authorization to represent individuals;
- c) Develop a reconciliation process to ensure all non-Pro Se Applications have an authorization by matching the PARID on the authorization to the Application;
- d) Require that Authorizations submitted via upload be in an individual format by PARID and not submitted in bulk;
- e) Develop procedures to ensure 100% of Authorizations are reviewed with an approval audit trail;
- f) Discourage unauthorized filings and duplicate filings by charging a processing fee for each Application filed by Firms; and
- g) Eliminate the 120-day rule and require authorizations be signed and dated during the enrollment period of January 2 to March 2 and refrain from accepting authorizations with pre-printed dates.

**ARC’s Response to Finding (5) Recommendations**

*“ARC already has a quality control measure in place that requires an authorization be matched to every filing by a Representative. In fact, each year ARC issues over a thousand defect notices to firms and other Representatives for their failure to attach individual authorizations to their filings.*

*Audit recommendations d) and e) present cost-prohibitive resource and logistical challenges: as the Audit notes, ARC has received over 200,000 non Pro Se Applications annually for the last several years. ARC implements a statistically valid audit of authorizations by Firm. Should the sample audit indicate a problem further audits of the concerning Firm or Representative are conducted.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 5 Recommendations:**

a), b), c), d), e), f) and g), ARC states that they have a “quality control measure in place that requires an authorization be matched to each filing by a Representative”. Auditors determined that ARC is not ensuring that all represented party Applications are accompanied by an appropriate Authorizations. ARC previously acknowledged that the high volume of grievances prevents them from reviewing 100% of the Authorizations. Instead, they perform a quality control review (“QC”) on a sample basis.

The Auditors found ARC did not have adequate written procedures for its Authorization QC review process prior to our audit. Procedures were provided for the 2019/20 tax year labeled “2020 Authorization Quality Control Guideline Booklet”. At the time of test work the 2019/20 tax year was not completed yet and there were no procedures available for prior years.

ARC could not provide the auditors with a comprehensive list of all grievances reviewed during its Authorization QC Review Process.

We reiterate the need to implement policies and procedures to address the issues set forth in our recommendations a), b), c), d), e), f) and g).

**AUDIT FINDING (6)**

**(6) Without the Authority for ARC to Resolve Duplicate Applications, Unresolved Duplicates Can Advance to the Small Claims Assessment Review (SCAR) Process Undermining the Purpose of ARC**

**Audit Recommendations:**

We recommend that ARC exercise its powers and duties to develop and recommend rules of procedure to be adopted to eliminate the negative effects of duplicate Applications including the authority for setting predetermined factors that would set precedence for the order of validity.

**ARC’s Response to Finding (6) Recommendations**

*“ARC agrees with this recommendation and will develop rules of procedure in 2022.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 6 Recommendations:**

We are pleased that ARC agrees with this recommendation and will develop rules of procedure in 2022. We reiterate the need that these proposed procedures give ARC the authority to set predetermined factors that would set the precedence for the order and validity of Duplicate Applications.

**AUDIT FINDING (7)**

**(7) Lack of Compliance with NYS and County Laws Regarding ARC Commissioner Requirements as to the Number of Commissioners, Appropriate Term(s), Political Affiliations and Training**

**Audit Recommendations:**

We recommend that ARC:

- a) Request that the County Executive with the approval of the Legislature appoint the remaining Commissioners required to meet the requirement of nine Commissioners;
- b) Work with the County Legislature to ensure that appointment resolutions adequately identify the Commissioners’ terms that are being replaced as new Commissioners are appointed;
- c) Work with the County Executive and the Legislature to ensure procedures exist for the reappointment of Commissioners in a timely manner when their term expires;
- d) Develop appropriate training materials and provide introductory and supplemental training as required by law; and
- e) Retain appropriate training attendance records, extension notices and training certificates as required law.

**ARC’s Response to Finding (7) Recommendations**

*“NYS’ Office of Real Property Tax Services (ORPTS) provides training for municipalities other than NYC and Nassau County. ARC already provides introductory and supplemental internal training to its Commissioners via the ARC staff. Attendance records will be maintained for local internal training beginning in 2022.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 7 Recommendations:**

- a) We reiterate the need for the County Executive with the approval of the Legislature to appoint the remaining Commissioners required to meet the requirement of nine Commissioners;
- b) We reiterate the need for ARC to work with the County Legislature to ensure that appointment resolutions adequately identify the Commissioners’ terms that are being replaced as new Commissioners are appointed;

## Appendix L – Auditors’ Follow Up Comments to ARC’s Response

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- c) We reiterate the need for ARC to work with the County Executive and the Legislature to ensure procedures exist for the reappointment of Commissioners in a timely manner when their term expires;
- d) We reiterate ARC develop appropriate training materials and provide introductory and supplemental training as required by law; and
- e) We are pleased that Attendance records will be maintained for local internal training beginning in 2022.

ARC states that, “*ARC already provides introductory and supplemental internal training to its Commissioners via the ARC staff.*” ARC did not provide to the Auditors that any evidence of introductory and supplemental training was provided.

**AUDIT FINDING (8)**

**(8) ARC Did Not File Commissioner Property Disclosure Forms with the Nassau County Assessor as Required by NYS Law, Increasing the Risk that Related Party Transactions are not Properly Reviewed, and Possible Conflicts of Interests are not Identified**

**Audit Recommendations:**

We recommend ARC:

- a) Ensure the Commissioners file disclosures with the County Assessor as required by law;
- b) Develop procedures and controls for Commissioner related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail;
- c) Develop similar procedures and controls for the Assessment Employees, ARC Employees, the County Legislature and County Executive related properties to ensure properties are appropriately reviewed, approved and documented with an audit trail; and
- d) Refrain from the use of “unilateral reductions” for Commissioner and employee related properties and create procedures to ensure such reductions are adequately disclosed to avoid the appearance of any conflict of interest.

**ARC’s Response to Finding (8) Recommendations**

*“ARC goes beyond its statutorily mandated requirements to insure that employee applications are handled without even the appearance of impropriety. The Real Property Tax Law only requires that ARC Commissioner properties be identified and disclosed but ARC requires that all its employees from its Board members to its Customer Service Team disclose their Nassau County property interests.*

*ARC has local Municipalities review all grievances and applications filed by ARC staff. Furthermore, ARC has consistently requested that members of the County Attorney’s Property Assessment Litigation Bureau also disclose their property interests in Nassau County. ARC has consistently had the County Attorney’s office cooperation in these efforts.*

*Any reductions indicated either by outside Counsel or assisting municipalities were implemented without interference from ARC.”*

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**Appendix L – Auditors’ Follow Up Comments to ARC’s Response**

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**Auditors’ Follow Up Comments to ARC’s Response to Finding 8 Recommendations:**

ARC contends that “*ARC has local Municipalities review all grievances and applications filed by ARC staff*”. Auditors were not supplied with documentation to support such.

- a) We reiterate the need to ensure the Commissioners file disclosures with the County Assessor as required by law;
- b) We reiterate the need to develop procedures and controls for Commissioner related properties to ensure properties are appropriately reviewed, approved and documented with an Audit trail; and
- c) We reiterate the need to develop similar procedures and controls for the Assessment Employees, ARC Employees, the County Legislature and the County Executive related properties to ensure properties are appropriately reviewed, approved and documented with an Audit trail; and
- d) We reiterate the need to refrain from the use of “unilateral reductions” for Commissioner and employee related properties and create procedures to ensure such reductions are adequately disclosed to avoid the appearance of and any conflict of interest.

**AUDIT FINDING (9)**

**(9) ARC Staff Decreased by 35% as Appeal Volumes Doubled within Seven Years, Contributing to the Need to Rely on a Mass Settlement Program**

**Audit Recommendations:**

We recommend that ARC work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average.

**ARC’s Response to Finding (9) Recommendations**

*“ARC agrees; however, ARC has no control over Grievances filed. Taxpayers in New York State enjoy the right to grieve. However, it must be noted that in all other NYS jurisdictions, other than New York City and Nassau County, if a Property owner successfully grieves their assessment, they may not file consecutive grievances for three years.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 9 Recommendations:**

We are pleased that ARC agrees that they should work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average.

Auditors acknowledge that ARC has no control over Grievances filed and that Taxpayers in New York State enjoy the right to grieve.

We are pleased that ARC noted, and we agree, that in all other NYS jurisdictions, other than New York City and Nassau County, if a Property owner successfully grieves their assessment, they may not file consecutive grievances for three years.

**AUDIT FINDING (10)**

**(10) ARC is Processing Applications Without Complete Written Procedures, Following Outdated Rules and Processing Applications After The New York State Deadline**

**Audit Recommendations:**

We recommend that ARC:

- a) Review and update ARC’s Rules of Procedure to ensure they reflect the current rules that ARC should follow and seek Legislative approval of these updates;
- b) Develop and disseminate to all employees a formal updated policy and procedure manual that documents the operating procedures and internal controls, along with individual job functions, responsibilities and deadlines. This should include procedures for annual updates of policies and procedures, high level workflows, internal controls and managerial reviews, with copies of key documents, report titles, and succession or transition planning for key management; and
- c) Mark “Late” and dismiss all future Applications received after the first business day of March of any given year.

**ARC’s Response to Finding (10) Recommendations**

*“During the course of the audit, ARC had been focused on reviewing, improving, updating and modernizing its processes. Now that ARC has fully digitized its processes, and has become a paperless office, ARC will finalize the documenting of its policy and procedure manuals in 2022.”*

**Auditors’ Follow Up Comments to ARC’s Response to Finding 10 Recommendations:**

We are pleased that ARC has fully digitized its processes and has become a paperless office.

- a) We are pleased ARC will finalize the documenting of its policy and procedure manuals in 2022. We reiterate the need for ARC to disseminate these policy and procedure manuals to all employees and that they should document the operating procedures and internal controls, along with individual job functions, responsibilities and deadlines.
- b) We reiterate the need to establish procedures for annual updates of policies and procedures, high level workflows, internal controls and managerial reviews, with copies of key documents, report titles, and succession or transition planning for key management.
- c) We reiterate that ARC mark “Late” and dismiss all future Applications received after the first business day of March of any given year.

## Appendix M - ARC's Response

LAURA CURRAN  
County Executive



JEREMY R. MAY  
Acting Chairperson

NASSAU COUNTY ASSESSMENT REVIEW COMMISSION  
240 Old Country Road, 5<sup>th</sup> Floor, Mineola, New York 11501  
Phone: (516) 571-3214

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### INTEROFFICE MEMORANDUM

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**To:** Jack Schnirman, County Comptroller  
**From:** Jeremy R. May, Acting Chairperson – Assessment Review Commission (ARC)  
**Subject:** Nassau County Comptroller Review of the Residential Property Procedures and Controls of the Assessment Review Commission  
**CC:** Helena Williams, Chief Deputy County Executive  
Ana Sousa, Director of Audits & Grants  
Robin Laveman, Acting Assessor  
**Date:** 12/16/21

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Nassau County's (County) Assessment Review Commission (ARC) has received the draft report, Review of the Residential Property Procedures and Controls of the Assessment Review Commission (Audit) and reviewed the findings, recommendations and observations.

Please find ARC's responses to the findings and recommendations outlined in the Audit below.

#### **Background**

It is ARC's responsibility and mission to review valid Applications for Correction of Assessment (grievances) filed by Nassau County Real Property Owners and Taxpayers. ARC's jurisdiction is classified as 'Administrative Review', as opposed to the Supreme Courts' 'Judicial Review', which is typically only available after a Final Determination from ARC.

ARC is unique among Administrative review bodies in New York State, evident by the fact that ARC was authorized and operates under NY RPTL §523-b; which among other things, sets ARC at a 14 month review period and permits the operation of the Commission throughout the year rather than just on delineated 'Grievance Days'. These and other unique characteristics of ARC were implemented as a result of both the New York and Nassau County Legislatures' recognition that Nassau County's Real Property Tax Assessment system is confronted by challenges that have resulted in refund liability. Unlike other Jurisdictions, Nassau County has refund liability due to the County Guaranty for all other taxing Jurisdictions including School Districts.

This Audit is not only a review of ARC, but also a review of the Nassau County Assessment System as a whole.

## Appendix M - ARC's Response

### **Audit Finding (1)**

**The Assessment Review Commission and the Department of Assessment Did Not Disclose the Level of Assessment (LOA or Ratio) and Fair Market Value (FMV) included in the Calculations that Resulted from Negotiated/Stipulated Settlements**

**Audit Finding (1) Recommendation(s):**

- a) ARC establish procedures to disclose and require petitioner notifications include the separate LOA and the market value used by ARC to negotiate and settle AV's in the computation of ARC's AV offer;
- b) ARC work with DoA to establish guidelines for the adequate disclosure of LOA's and market values used in property valuation of appeal property's on DoA's website;
- c) ARC cease the broad application of a separately negotiated Level of Assessment to only those that appeal and base AV reduction decisions on substantive reviews of comparable sales and the uniform application of the state or stipulated rate; and
- d) If a separate LOA than that set by the Assessor and ARC continues to be applied; such Ratio be applied by ARC or the DoA to all other properties in the class and restate market values to ensure Uniformity before ARC performs any Application (grievance) Reviews to ensure uniformity prior to tax bills being generated.

Response:

At the outset ARC disagrees with the Audit's finding that ARC's determined LOA was not published; in fact ARC provides the LOA on its website in the Frequently asked Questions page under 'Level of Assessment': <http://www.askarcnassau.com/1517/Frequently-Asked-Questions>

Furthermore, it must be noted that when an Applicant files a grievance with ARC, they are challenging their assessed value, not their market value. The inclusion of ARC's determined FMV or LOA on its offers of settlement or Final Determinations will cause constituent confusion.

NYS Law allows property owners to contest the level of assessment; RPTL §523-b and RPTL §524 via a claim of 'unequal assessment'.

As the audit discusses within this finding, it is important to note that ARC's review is necessary as the grievance process inherently degrades the roll (see Halpern Stipulation).

Insofar as the Audit recommendation that ARC apply its determined LOA to the entire Assessment Roll, it is beyond ARC's jurisdiction and authority. Such a change would need to be implemented via New York Law.

### **Audit Finding (2)**

**ARC Failed to Recommend Necessary Regulations to the Legislature for Adoption**

**Audit Finding (2) Recommendation(s):**

- a) **Develop guidelines to regulate non-attorney Representative Firms (, including licensing requirements, advertising guidelines, fee limitations, debarment procedures and present these guidelines to the Nassau County Legislature for approval; and**
- b) **Develop regulations that limit the ability to grieve for two tax years following any type of Assessed Value reduction.**

Response:

ARC agrees that non-attorney Representative firms should be regulated, however disagrees with the finding that ARC failed to recommend such regulations to the Legislature.

## Appendix M - ARC's Response

ARC has provided recommendations to the Legislature on more than one occasion; however, they were never addressed.

### **Audit Finding (3)**

**The "120 Day Rule" Allowed ARC to Accept an Estimated 694,000 Authorizations that were Signed by Property Owners Before the Tentative Values Were Even Known**

**Audit Finding (3) Recommendation(s):**

- a) Eliminate the 120-day rule and require authorizations to be signed and dated during the grievance enrollment period of January 2 to March 1 and not accept predated authorizations;
- b) Develop a standard Annual Authorization Form and require that it be submitted with all Applications from Representative Firms;
- c) Ensure property owners are aware of the value they are protesting, by requiring the property's Assessed Value by entered on the Annual Authorization Form; and
- d) Require that Authorizations be submitted with any Representative Firm Applications (as part of the initial Application) or be dismissed requiring re-Application

Response:

ARC conducts annual reviews of statistically valid samples of authorizations. An authorization signed by a property owner does not necessitate the filing of a grievance.

### **Audit Finding (4)**

**The 395 Day Grievance Period in Nassau County is over 10 Times the Average of Other Large Parcel Counties and 3 times Longer than the Grievance Period in New York City.**

**Audit Finding (4) Recommendation:**

- a) We recommend that ARC: Propose and seek approval from the Nassau County legislatures a more effective processing timeframe at a maximum of one year or less, thereby eliminating overlapping years and confusion and making Final Determinations within the same year.

Response:

ARC appreciates the Audits' overall findings that the volume of applications submitted to ARC must be reduced; however, the Audit risks contradicting itself with this finding. ARC requires its full fourteen-month review period to have a practical chance to fulfill its responsibility to issue a Final Determination on the merits of every Application. ARC cannot recommend that this finding be adopted without concurrently either expanding the resources of the Commission or some other forms of volume control being successfully implemented.

ARC further notes that amending the grievance review period would require changes to both New York Law and the County Administrative Code.

### **Audit Finding (5)**

**ARC was Processing Appeals Received from Firms Without Verifying Property Owner Authorizations; ARC's Quality Control over Authorizations is Faulty**

- a) Require a standard Authorization Form (such as the AR-10), be submitted with all Applications (AR-1) filed by the Representative Firms or Attorneys Representatives;
- b) Disallow the submission of Firm contracts/agreements as authorization to represent individuals;
- c) Develop a reconciliation process to ensure all non-Pro Se Applications have an authorization by matching the PARID on the authorization to the Applications;

## Appendix M - ARC's Response

- d) Require that Authorizations submitted via upload be in an individual format by PARID and not submitted in bulk;
- e) Develop procedures to ensure 100% of Authorizations are reviewed with an approval Audit trail;
- f) Discourage unauthorized filings and duplicate filings by charging a processing fee for each Application filed by Firms; and
- g) Eliminate the 120-day rule and require authorizations be signed and dated during the enrollment period of January 2 to March 2 and refrain from accepting authorizations with pre-printed dates.

Response:

ARC already has a quality control measure in place that requires an authorization be matched to every filing by a Representative. In fact, each year ARC issues over a thousand defect notices to firms and other Representatives for their failure to attach individual authorizations to their filings.

Audit recommendations d) and e) present cost-prohibitive resource and logistical challenges: as the Audit notes, ARC has received over 200,000 non Pro Se Applications annually for the last several years. ARC implements a statistically valid audit of authorizations by Firm. Should the sample audit indicate a problem further audits of the concerning Firm or Representative are conducted.

### Audit Finding (6)

**Flaws in ARC Rules Cause ARC to Deny Unresolved Duplicate Applications, Which Can Advance to the Small Claims Review (SCAR) Process, Undermining the Purpose of ARC.**

**Audit Finding (6) Recommendation:**

**We recommend that ARC:**

**Exercise its powers and duties to develop and recommend rules of procedure to be adopted to eliminate the negative effects of duplicate Applications including setting predetermined factor that would set precedence for the order of validity.**

Response:

ARC agrees with this recommendation and will develop rules of procedure in 2022.

### Audit Finding (7)

**Lack of Compliance with NYS and County Laws Regarding ARC Commissioner Requirements as to Required Number, Appropriate Term, Political Affiliations and Training.**

**Audit Finding (7) Recommendation(s):**

- a) Request that the County Executive with the approval of the Legislature appoint the remaining Commissioners required to meet the requirement of nine Commissioners;
- b) Work with the County Legislature to ensure that appointment resolutions adequately identify the Commissioners' terms that are being replaced as new Commissioners are appointed;
- c) Work with the County Executive and the Legislature to ensure procedures exist for the reappointment of Commissioners in a timely manner when their term expires;
- d) Develop appropriate training materials and provide introductory and supplemental training as required by law; and
- e) Retain appropriate training attendance records, extension notices and training certificates as required law.

## Appendix M - ARC's Response

Response:

NYS' Office of Real Property Tax Services (ORPTS) provides training for municipalities other than NYC and Nassau County. ARC already provides introductory and supplemental internal training to its Commissioners via the ARC staff. Attendance records will be maintained for local internal training beginning in 2022.

### **Audit Finding (8)**

**ARC Did Not File Commissioner Property Disclosure Forms with the Nassau County Assessor as Required by NYS Law, Increasing the Risk that Related Party Transactions are not Properly Reviewed, and Possible Conflicts of Interests are not identified.**

**Audit Finding (8) Recommendation(s):**

- a) Ensure the Commissioners file disclosures with the County Assessor as required by law;
- b) Develop procedures and controls for Commissioner related properties to ensure properties are appropriately reviewed, approved and documented with an Audit trail; and
- c) Develop similar procedures and controls for the Assessment Employees, ARC Employees, the County Legislature and the County Executive related properties to ensure properties are appropriately reviewed, approved and documented with an Audit trail; and
- d) Refrain from the use of "unilateral reductions" for Commissioner and employee related properties and create procedures to ensure such reductions are adequately disclosed to avoid the appearance of and any conflict of interest.

Response:

ARC goes beyond its statutorily mandated requirements to insure that employee applications are handled without even the appearance of impropriety. The Real Property Tax Law only requires that ARC Commissioner properties be identified and disclosed but ARC requires that all its employees from its Board members to its Customer Service Team disclose their Nassau County property interests.

ARC has local Municipalities review all grievances and applications filed by ARC staff. Furthermore, ARC has consistently requested that members of the County Attorney's Property Assessment Litigation Bureau also disclose their property interests in Nassau County. ARC has consistently had the County Attorney's office cooperation in these efforts.

Any reductions indicated either by outside Counsel or assisting municipalities were implemented without interference from ARC.

### **Audit Finding (9)**

**ARC Staff Decreased by 35% as Appeal Volumes Doubled within Seven Years, Creating the Need to Rely on a Mass Settlement Program**

**Audit Finding (9) recommendations:**

**ARC work with County Officials to develop a strategy to reduce grievance volumes so that they are more in line with the national average.**

Response:

ARC agrees; however, ARC has no control over Grievances filed. Taxpayers in New York State enjoy the right to grieve. However, it must be noted that in all other NYS jurisdictions, other than New York City and Nassau County, if a Property owner successfully grieves their assessment, they may not file consecutive grievances for three years.

## Appendix M - ARC's Response

### **Audit Finding (10)**

**ARC is Processing Applications Without Written Procedures, Following Outdated Rules and Processing Applications After the New York State Deadline**

**Audit Finding (10) recommendation(s):**

- a) ARC review and update it(s) Rules of Procedure to ensure they reflect the current rules that ARC should follow and Seek Legislative Approval of these updates;
- b) ARC develop and disseminate to all employees a formal updated policy and procedure manual that documents the opening procedures and internal controls, along with individual job functions, responsibilities and deadlines. This should include procedures for annual updates of policies and procedures

Response:

During the course of the audit, ARC had been focused on reviewing, improving, updating and modernizing its processes. Now that ARC has fully digitized its processes, and has become a paperless office, ARC will finalize the documenting of its policy and procedure manuals in 2022.

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**End of Report**

