A LEGAL ANALYSIS OF ASSESSMENT PRACTICES AND PROPERTY TAX EQUITY IN THE VILLAGE OF BRONXVILLE

By

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Submitted to the Board of Trustees
of the Village of Bronxville, New York
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September 12, 2005

Hon. Mary C. Marvin
Mayor, and Members of
the Board of Trustees
Village of Bronxville
Village Hall
200 Pondfield Road
Bronxville, New York 10708

Re: Legal Analysis of Assessment Practices
and Tax Equity in the Village of Bronxville

Dear Mayor Marvin and Members of the Board:

The Board of Trustees of the Village of Bronxville (the "Village Board") retained our firm in April 2005 to advise the Village Board concerning the legal fitness of the tax assessment roll of the Village of Bronxville (the "Village") in light of recent public criticism alleging property tax inequities and assessment improprieties, and that called for an immediate Village-wide revaluation or face litigation. We were further asked to advise the Village Board of its options under the law in the event that expert analysis might indicate that corrective action should, or could, be taken.

Working in concert with the assessment expert retained by the Village Board, Joseph K. Eckert, Ph.D., a Director of BearingPoint Consulting, and basing our conclusions in part on the results of Dr. Eckert's study that have recently been provided to us, we are pleased to submit our analysis to you in the following report.

Sincerely,

HUFF WILKES, LLP

By: David C. Wilkes

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Introduction

Early this year concerns were expressed to the Village Board relating to the maintenance of the Village assessment roll over approximately the past nine years. One source of such allegations was a letter, dated January 31, 2005, and addressed to the Village Board,[1] that principally focused attention on a comparison of the manner in which the respective assessors of the Town of Eastchester (the "Town") and the Village had responded to building permits issued for home improvements on properties that lay coterminous within the Village of Bronxville and the Town during the past decade. The various discussions that ensued focused in particular on the extremely disparate response to the same home improvements by the two assessors. The differing approaches appeared dubious according to the January 31 Letter, especially to those unfamiliar with the nuances and largely imprecise standards of assessment practice in New York State.

The Village of Bronxville is similar to many villages throughout New York State but at the same time unique in certain respects pertaining to property tax assessment. Like many other villages, Bronxville contains a relatively small number of tax parcels, and performs its own independent assessment function even though these same parcels are also assessed by the Town within which Bronxville is wholly situated.

Like other villages in Westchester, Bronxville's assessment roll utilizes an annual valuation date of January 1, which is the same as its taxable status date, and a tentative assessment roll is proffered annually for public review on February 1 with a final assessment roll, following grievance period, published April 1 of each year. Historically, Bronxville has looked much like its counterparts in Westchester in employing its assessor on only a part-time basis and relying on limited and less than state-of-the-art methods of tracking the local real estate market and maintaining the assessment roll. Unlike some other states, New York provides no legal mandate that any different or better system be maintained by the Village. Also in contrast to the practices of other states, local municipalities in New York such as Bronxville receive little or no support, financial or otherwise, from the state or county governments in performing the assessment function, nor does Bronxville enjoy the benefits of a coordinated county-wide assessment program. As a village, Bronxville is also specifically excluded from many State programs regarding improved assessment procedures[2] and is

[1] Letter to the Village Board, dated January 31, 2005, hereinafter referred to as the "January 31 Letter", reviewed at http://www.bronxville.us/interest.htm.
[2] *See*, e.g., RPTL §§ 334, 1562.

ineligible for State assistance for attaining or maintaining improved local tax administration.[3]

Bronxville last performed a village-wide revaluation of all properties in 1967. Although international best practices suggest a more regular and frequent revaluation cycle, Bronxville is hardly alone, or in legal noncompliance with the governing statutory requirements, in maintaining an aged assessment roll. Westchester is well known among New York State counties for its predominance of communities that have not conducted a revaluation in several decades. Indeed, the last revaluation in many other communities extends back several decades prior to 1967. The Eastchester Town Board, for instance, has not directed a revaluation since 1941 according to the information provided to me.

Outside of Westchester, a large number of cities, towns, and villages are similarly well outside the international standard for regular revaluation; until its recent revaluation, Nassau County was on a rough par with Westchester. This is not surprising considering that New York State law, in stark contrast to the law of many other states across the country, does not mandate the performance of a revaluation at any time, much less on a specified periodic basis. As discussed in another context later in this report, international standards that are not codified in state statutory law or incorporated into case law have no legal bearing in New York State. Revaluations are for many reasons considered politically risky and costly endeavors that in many instances have caused, in the perception of some, devastating consequences for those in the community who may be most vulnerable to spiking taxes, particularly senior citizens.

Notwithstanding its many similarities, Bronxville stands out from other villages in New York, however, in at least two important respects. In most communities in which, say, a town and village maintain independent assessment rolls for the same properties, school taxes are levied from the town's assessments along with town, county, and special district taxes, while the only taxes levied from the village's assessment roll are village taxes. In Bronxville, however, both village *and* school taxes are levied from the Village assessment roll. Because school taxes often amount to in excess of 60% of one's total property taxes in any event (indeed, we are advised that school taxes comprise about 83% of the total Village tax bill), and village taxes would typically account for the next largest tax portion, the lion's share of Bronxville residents' property taxes are determined by their Village assessment, not their Town assessment. For this reason, to Bronxville property owners, taxes levied based on the Village assessment roll are in most instances more significant than taxes levied on the Town assessment roll. In addition, the school tax levy brings with it a significant

[3] RPTL §§ 1572, 1573, 1574.

administrative function that must be performed by the Village; the Village assessor must administer New York State's School Tax Relief ("STAR") program, which can become a time-intensive ministerial function. In villages other than Bronxville, this function is performed only by the town assessor who frequently has greater staffing resources to manage this task.

Second, Bronxville's real property market is highly unique. The keystone of an appraiser's tools—measuring the comparability of one home to the next—is largely lacking for single family homes in the Village, at least to the extent one would find in most other communities. In other words, the individual character of a large proportion of Bronxville homes makes the use of one sale as predictor of value for another home more difficult than in more homogenous communities. The one category of homeownership in which somewhat less heterogeneity exists in Bronxville is in the market for condominiums and cooperative apartments; however, for assessment purposes, these properties are among the very few instances in which New York State law provides a specific standard of valuation, and that standard requires that the assessor *ignore* unit sales, thus making the comparability issue largely irrelevant in relation to sale prices. Bronxville is further unique among several of its immediate geographic neighbors in the extraordinarily high dollar value of many homes, the more rapid market appreciation of these homes and the improvements performed on them, and, part and parcel of these factors, the high dollar value attached simply to the prestige of a "Bronxville" zip code.

The two distinguishing features of Bronxville discussed in the foregoing paragraphs, in the context of New York State assessment law, present a particularly difficult market in which to maintain some semblance of assessment equity over time and one in which tax disparities are easily exacerbated particularly with the passage of years.

It is against this backdrop that the current controversy over the Village's past assessment practices and assessment equity has become the subject of much attention among some residents of Bronxville and upon which we present the following evaluation and recommendations. Our legal analysis, which is based largely on the factual findings and statistical analysis of assessment expert Dr. Eckert, focuses first upon the assessment practices of former Village Assessor Robert W. Balog and second, looking at the Village assessment roll in its current form, whether the roll may require some form of repair or overhaul, and if so, what options may legally exist to do so.

Past Assessment Practices

The standards underlying proper maintenance of a tax assessment roll stem largely from the principles of equity and fairness required by the constitutions of the United States and New York State. According to the United States Supreme Court, whatever the method of assessment used or standards selected, the cardinal rule is that the approach to assessment must be "applied even-handedly to all similarly situated property within the [jurisdiction]." *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster Co., W. Va.*[4] New York State law adheres to this principle.[5]

In municipalities that do not regularly revalue their properties, this principle of even-handedness in assessment is often most relevant in the assessor's selection of which properties to reassess. The *Allegheny Pittsburgh* case observed that so long as the selection of property for reassessment "is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."[6]

In practice, these principles of law have been applied to strictly limit the instances in which an assessor may reassess—or change the assessment of—a given property when no comprehensive revaluation is being undertaken on a regular basis. The most common example is the so-called "welcome stranger" scenario, in which the true market value of a given property comes to the attention of an assessor based upon an arms length sale of an existing property at which no improvements have recently been made.[7] In such an instance, the assessor has been provided with "perfect" evidence of the property's market value, which is the benchmark for *ad valorem* assessment in New York State. Yet, although the property in question might be significantly underassessed at the time of sale and thus warrant an assessment increase based on the obvious market value, the assessor is legally prohibited from changing the assessment based on the sale alone.[8] *See* 10 Op. Counsel SBRPS No. 60. To do so would arbitrarily single out for reassessment properties that recently sold, even though

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[4] 488 U.S. 336, 345 (1989).
[5] *See, In re Stern v. Assessor of City of Rye*, 268 A.D.2d 482, 483 (2d Dept. 2000).
[6] 488 U.S. at 344; *see also In re Krugman v. Board of Assessors of Vil. Of Atl. Beach*, 141 A.D.2d 175, 182-183 (2d Dept. 1988).
[7] This is notably distinguishable from a situation in which additional property "inventory" comes to the assessor's attention by way of a sale listing, in which case an assessment change—essentially prompted by the sales activity—may be permissible.
[8] Sales are not *per se* an impermissible reassessment event: in California, for instance, the law popularly known as "Proposition 13" generally provides that property will be reassessed only when transferred or constructed upon, or in a limited manner for inflation. That provision is considered constitutional because it is the law of the state and generally applied, as opposed to the more random use of sales as occurs frequently in New York.

the other properties that did not sell, but are similarly situated, are not reassessed. As a legal matter, the property must remain underassessed.[9]

In a community that does not regularly perform revaluations the addition of assessment to a given property is principally restricted to instances of property modifications that enhance the value of the property. The extent of such reassessments is also limited, according to case law, to the value of the improvements.[10] To illustrate this, suppose a home sells at arm's length for $1 million, but the assessment of the home indicates a value of only $800,000. The new homeowner then adds a deck to the property, using an independent contractor, at a cost to the homeowner of $15,000. The assessor may legally increase the existing assessment, but only to a maximum of the improvement value, for a total "equalized" assessment value of about $815,000, and the property must remain otherwise underassessed by law.

Moreover, in choosing which property improvements may be assessed, the assessor must adhere to the constitutional standards of "even-handedness" described in the *Allegheny Pittsburgh* case. A common and legally defensible standard that is used widely by assessors is reliance on building permits, although the building permit is not, *per se*, a required assessment standard and conceivably others could apply. The issuance of a building permit is generally considered to be a fair and equitable triggering event that allows an assessor to consider whether to reassess a given property. This is also not to suggest that a building permit *requires* reassessment, but that so long as an assessor initiates his or her review *only* upon the issuance of a building permit, he or she cannot legally be accused of acting arbitrarily (though in some instances the *extent* of the assessment increase may create doubt as to whether the building permit was in fact the actual triggering event). In fact, many assessors do restrict themselves to taking reassessment action only upon the issuance of a building permit, even where they may become aware of improvement activity through other means, such as word of mouth.

The next item that must be understood in evaluating Bronxville's past reassessment practices is the method by which an assessor may determine that a given improvement is "assessable", regardless of whether he or she may increase the assessment. For instance, while the addition of a structure that

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[9] A comprehensive and very informative discussion of the subject of selective reassessment in New York can be found in the very recent Decision and Order of New York State Supreme Court Justice Thomas A. Dickerson (White Plains) in *In re MGD Holdings HAV, LLC v. Assessor of the Town of Haverstraw* (Supreme Ct. Rockland Co., Index No. 4725/04, July 13, 2005); this as-yet unreported decision is on file in our office and also available at: http://www.courts.state.ny.us/courts/9jd/TacCert_pdfs/MGDHOLDINGSDECISION.pdf.

[10] *See, e.g., In re Stern v. Assessor of City of Rye*, 268 A.D.2d 482, 483 (2d Dept. 2000).

expands the footprint of a home, or the construction of an additional bedroom or bathroom, may seem to be obviously assessable, how should an assessor regard the replacement of kitchen countertops, or a new window, or landscaping, or a new roof, or many similar improvements? New York State provides assessors with few "bright line" standards to guide them in making these finer distinctions. One fairly simple approach is, again, to act only upon the issuance of a building permit which, in many of the foregoing examples, would not ordinarily be required and thus would not trigger an assessment review. The assessor's statutory obligation is to make an "inventory" of all the real property in the jurisdiction (*see* RPTL § 500(1)), but New York statutes provide little additional guidance, and certainly no standard that usefully distinguishes among specific types of home improvements.

Rather, assuming a valid basis exists for considering reassessment of a given property—such as the issuance of a building permit—the assessor, acting in the role of a valuation expert, will consider whether the particular improvement adds market value to the property. Some improvements simply do not add real value. Some "improvements" may arguably detract from value (in-ground swimming pools are considered by some assessors to be an example of an expensive improvement that might actually reduce market value). If the improvement would enhance value, the assessor must next determine the market value indicated by the existing assessment (the "equalized assessment") and decide whether the property is already equitably assessed or perhaps overassessed, in which case the addition of assessment for the improvement may result in an overassessment. On the other hand, if the property appears to be underassessed, the assessor may then decide to add to the assessment to account for the improvement (only to the extent of its cost).

In many instances, assessors must make finer determinations than this. For example, where a homeowner has embarked on a wide ranging series of renovations, the assessor may need to parse out those costs that are assessable from those that are not. The result may be that the assessment is increased, but not to the full extent of the cost of the renovations. To complicate matters, very often the homeowner will not permit the assessor to gain access to view the improvements, and a denial of such access is the homeowner's legal right. By law, the assessor must then rely on any other reasonable method to make an appraisal of the improvements (*see* 2 Op. Counsel SBRPS No. 78; 9 Op. Counsel SBRPS No. 4), which in practical terms results in no more than an educated guess at value, usually at the high end considering that the assessor will not generally be permitted a second chance. If the homeowner is dissatisfied, he or she has the remedy of the grievance process pursuant to Article 5 of the RPTL and the courts pursuant to Article 7.

If nothing else, it should be clear from the foregoing that the statement, "[r]eassessing properties that have increased in value due to improvements is not a matter of discretion"[11] is simply wrong and quite misleading. To the contrary, while good assessment practice can be distinguished from bad, there is hardly a scientific or formulaic method to be followed, and two diligent assessors would be unlikely to arrive at identical assessments given the same facts from which to work.

In Bronxville, based on the information provided to me, during the period 1996 to April of 2005, approximately 1,300 building permits were issued in total. The estimated cost for all of such work was in excess of $110 million. Notably, many of these permits were for items that were either not assessable, added no value or, in certain instances, if assessed, would have resulted in an overassessment of the property in question, as discussed above. Indeed, according to the assertions made in the January 31 Letter, the Town Assessor saw fit to reassess in some 621 instances out of some 1,300, thus indicating, as was later confirmed by Dr. Eckert and myself, that Town Assessor O'Donnell employs discretion in deciding whether to reassess, as he should.

Among the many issues confronting an assessor, one further item merits discussion preliminary to our evaluation of Bronxville's past assessment practices. As mentioned above, one of the first determinations an assessor must make when considering work pursuant to a building permit for a given property is the current level of assessment for that particular property. If the property is already overassessed in comparison with the market, then it will make no sense to add further assessment that will create a greater overassessment that is easily reduced in court.

A simple method to do this, which is followed by many assessors, is to divide the current assessment by the latest Residential Assessment Ratio ("RAR") promulgated by the New York State Office of Real Property Services ("ORPS"). For example, given an assessment of $25,000 and an RAR of 3.03%, the market value indicated by the assessment is $660,066 ($25,000 ÷ 0.0303). As Dr. Eckert points out, however, this common approach contains several fundamental flaws that tend to distort the results. First, the RAR itself is calculated based on a non-random sampling of assessments that are themselves often aged and the product of an infirm system; second, the RAR fails to account for the finer distinctions in the village-wide market that may cause some neighborhoods to appreciate at different rates than others. In actual fact, the RAR is simply a point estimate that, statistically, is better stated as a range. In other words, while the RAR may be declared by ORPS to be 3.03%, it is

[11] January 31 Letter, at 3.

probably more accurate to say that the true RAR falls within a range in which 3.03% is merely the mid-point. Dr. Eckert observes:

> With this knowledge the prudent assessor would use the upper bound of the range to capitalize the assessment to get an estimate of fair market value. Another consideration that must be looked at by the assessor must be the relationship of the proposed improvement to the neighborhood norm for the improvement. Regardless of possible overall price level constraints, some improvements might be fully capitalized while others might have capitalization ratios of more or less than 1 (Eckert Report at 12).

Using this approach, the equalized value of a given property might actually be somewhat different than if an assessor simply utilized the RAR, and this in turn might lead to different conclusions about whether to increase an assessment based upon improvements made. Making this determination requires an individual assessor's judgment and knowledge of the local real estate market to decide whether a given property's market value can sustain added assessment. In either event, it should also be borne in mind that, further complicating the matter, RPTL § 730 provides for the use of the RAR (and no other measure) in small claims assessment review proceedings that challenge an assessment. Therefore, though fundamentally flawed, the RAR is nevertheless a legal benchmark that the assessor must take into consideration when setting an assessment because it will most certainly be used when he or she is challenged.

Application to Bronxville Assessment Practices

At the outset, in consultation with Dr. Eckert, it was determined that it would be virtually impossible and certainly of little benefit to make an armchair evaluation of Assessor Balog's response to each and every one of the nearly 1,300 work permits issued since 1996. Aside from the vagaries and discretionary determinations inherent in such determinations, as discussed above, it would be impossible to perform retroactive inspections of the work performed over a nine-year period—a task that is difficult enough in the first instance—and further infeasible to collect all of the information that might have been more readily available at the time of the performance of the work.

There was also, as discussed below, a significant lack of information contained in the assessor's files pertaining to such permits from which any reliable conclusion could be drawn. Moreover, even were it possible to achieve some reasonable degree of certainty in evaluating the actual response to all permits (which it was not), this would ultimately produce little real benefit to the Village but at an enormous and unjustifiable cost in hours expended and other

resources utilized. In the end, as a legal matter that is detailed below, it is my opinion that there is no viable means of recapturing assessment value that might have been added to the assessment rolls of prior years and thus reapportioning the tax levies for years 1996 to 2005. Because our firm's role is not that of a prosecutor, it is beyond the scope of our work to pinpoint and catalog specific incidents of improper assessment determinations, if they should be found to exist.

It should also be recognized that, whatever may be alleged about the assessment practices of the former Bronxville assessor, his actions are not the central cause of the full extent of the dispersion in the roll as determined by Dr. Eckert. Rather, as with every other municipality that has not revalued in nearly 40 years, the dispersion is due largely to aged assessments, a changing property market, and the state of the law in New York. Indeed, as noted by Dr. Eckert, it is quite possible that any decisions to refrain from increasing certain assessments on the Bronxville roll may have minimized further dispersion (Eckert Report at 11).

Sample and Review

Instead, Dr. Eckert and I determined that the best course of action would be to review the general practices of Assessor Balog based on a sample of work permits selected by the two of us. From a review of the actions taken by Assessor Balog in response to these permits, and further aided by an additional review of the actions taken by Assessor O'Donnell concerning these same permits, we were able to gain a fairly coherent picture of the typical thought process and record-keeping practices of both assessors, as well as the general justifiability of their respective assessment determinations.

Dr. Eckert and I selected a sample of work permits of greatly varying dollar amounts and work descriptions that were fairly evenly spread over the nine-year period in question. Each assessor was asked to explain and provide supporting documentation detailing his review of these permits. Although I personally participated in an initial meeting among Dr. Eckert and Mr. Balog and then Mr. O'Donnell in order to make introductions and explain the nature of our review, I specifically excluded myself from meetings and discussions that followed among Dr. Eckert and Messrs. Balog and O'Donnell. I did so in consideration of my role as attorney, my desire to minimize any influence my presence might have on the assessors' candor, and the fact that Dr. Eckert's expertise is in assessment practices and the maintenance of an assessment roll, so that it would be more appropriate for me to rely on Dr. Eckert's opinions as the Village's expert.

The procedure that Dr. Eckert and I followed was in no way intended as a review or critique of Mr. O'Donnell's fitness as an assessor, nor was it assumed that Mr. O'Donnell's work product would be the benchmark by which Mr. Balog's work should be measured. Rather, our inquiry into Mr. O'Donnell's general practices resulted from the fairly unique situation in which two independent assessors had been charged with the assessment of the same properties and had taken seemingly diametrically opposite approaches. As such, Mr. O'Donnell's work provided helpful information solely for comparison purposes.

Dr. Eckert's report describes the comparison that was made between the assessors as "a study in contrast" (Eckert Report at 11). It appears that through the interview process Assessor Balog provided an oral narrative description of the method by which he evaluated home improvements pursuant to work permits. Generally, that description fits within the basic contours of the typical and acceptable assessment practices I described above, and it is apparent that Mr. Balog understands the mechanics of assessment and the points in the assessment process at which professional judgment must be exercised. According to the Eckert report, Mr. Balog stated that he "had notes on all the permit work he reviewed and could support all of his decisions" (Eckert Report at 11). However, to date, it does not appear that any notes were provided that were created contemporaneously with Mr. Balog's asserted review and decision-making process. For example, no notes were provided that might have been made at the time of a site inspection immediately following issuance of a work permit for any property; no similar documents were provided to Dr. Eckert that could corroborate Mr. Balog's narratives, written or oral, with respect to actions that might have been taken contemporaneous with the building permits over the nine-year period at issue.

The only document provided by Mr. Balog in response to Dr. Eckert's requests is a summary narrative describing Mr. Balog's thought process pertaining to 15 of the properties in the sample (the "Balog Narrative"). The Balog Narrative identifies the permit and certificate of occupancy for each property, describes the improvements made, any assessment change that was made, and in some cases the comparable sales that were reviewed in relation to the market value of the subject property. Each such description is in general conformity with the appropriate assessment methodology described earlier in this report. To my knowledge, and upon review of Dr. Eckert's report, I am unaware of any further documents provided by Mr. Balog that pertained to the remaining properties we submitted for comment to him. Further, as noted, I am unaware of any supporting documentation or official reports prepared by him in connection with his review of these or any other building permits.

Dr. Eckert's Evaluation

Unfortunately, given scarce evidence from which to evaluate his responses to building permits over a nine-year period, the best one could hope to do is to assume that the general approach he relates in the Balog Narrative was the same approach he used for all other permits. Yet, from the sampling conducted by Dr. Eckert, this approach seems unlikely to lead to the conclusion that no change in assessment was warranted in every case in which that occurred. Dr. Eckert states,

> He made general conclusions that were not based on any real market analyses that I could see. In most cases where there appeared to me to be a significant home improvement involved, he declined to add the cost of the improvement to the assessment and presented little evidence for the decision. (Eckert Report at 11).

Mr. Balog has stated that the vast differences between his approach and that of Mr. O'Donnell are due to individual "judgment". I have relied on Dr. Eckert's evaluation, as quoted above and in his report, and it is beyond my scope of expertise to determine whether Mr. Balog's judgment was appropriate in every instance in which a building permit was issued. I would refrain from casting a broad judgment on his assessment acumen over the course of a decade based on what might be isolated events, or instances that might be looked at differently on a case-by-case basis. Based on an uncorrectable lack of information, it remains impossible to make a blanket statement, on this record, that Mr. Balog may have employed anything more than disputable judgment in many cases or that he may have been inattentive to certain building permit activity, possibly as a result of the addition of several administrative responsibilities to the Village, such as STAR administration, that were not required of former Bronxville assessors because the STAR program was implemented in 1998.

Eastchester's Process

As Dr. Eckert indicates, interviews with Mr. O'Donnell and his staff provided additional information about Eastchester's permit review process. Mr. O'Donnell provided a full narrative for each property we requested, indicating a history of the dates that each property was visited. Mr. O'Donnell also readily opened his files for examination, revealing often multiple reviews of improvements as well as multiple dated signatures from himself and/or his staff attesting to the Town's contemporaneous review of the building permits within the relevant time period following their issuance. Without speculating on the accuracy of Mr. O'Donnell's assessment determinations, it was at least obvious from his records that there was a general logic and consistency to his approach,

and that the review of each permit had actually occurred. Where he concluded that no change in assessment was warranted, his determination was properly documented and justified. Moreover, Mr. O'Donnell made available for inspection a book that he maintains that depicts maps of the entire town that his office has color-coded to indicate sales activity over time. While today's GIS imaging systems provide assessors with far better tools to track such information more easily and with pinpoint accuracy, Mr. O'Donnell is clearly using the resources available to him to the best extent possible and likely achieving the same result, albeit with more effort that might be needed if he were provided with greater resources.

Much has been made in comparing Mr. O'Donnell's 621 assessment changes to Mr. Balog's 37 changes over the relevant time period. I believe this comparison to be largely irrelevant, other than possibly for the general magnitude of the discrepancy. An assessor in a community that does not regularly revalue might with all good intention seek to moderate the amount of assessment increases in an effort to minimize overall dispersion in the assessment roll. Indeed, with a coefficient of dispersion ("COD") of just under 20% (see Eckert Report at 6-7), Bronxville's assessment roll is not egregiously random (as some Westchester rolls are). One would expect a difference, perhaps even a significant one, in the number of changes made by two assessors. However, 37 changes out of some 1,300 permits are strikingly few.

Of concern to me was the lack of records produced in support of the determination made with respect to each permit in the Village. The lack of records contemporaneous with the issuance of building permits is of particular concern. The records by which municipal decisions are made are an essential means by which taxpayers may learn the specific basis of determinations that affect them; as is apparent here, where those records are not available or never created in the first instance, citizens are deprived of the basic right to know about important daily functions of their local government.

Because of the inconclusive nature of the information provided, and the lack of any definitive statement of why many permits did not result in greater analysis and documentation, there can also be no concrete evidence of impropriety across the board insofar as assessment determinations are concerned. At most, Bronxville's new assessor might probe some of these permits further to determine whether any inventory has clearly been omitted from the Bronxville assessment roll and then include such inventory going forward. For reasons stated in more detail below, however, even this approach will be fraught with difficulty and much imprecision. Further, assuming inventory is definitively lacking, there is no legal basis by which Bronxville could reform and correct the assessment rolls of the past nine years. The allocation of the tax levy

for these years has long since been made, and paid, and ownerships have in many cases changed as well, making it also impractical to consider such a reallocation even if it were legally possible. The best that can be done is to implement improved and more transparent assessment practices going forward.

A "Bronxville Tax"?

Tangentially, but in the context of considering Eastchester's assessment practices, some residents have expressed the notion that the Eastchester assessor applies a heavier hand when assessing Bronxville properties than other properties in the Town, resulting in a so-called "Bronxville Tax". Although no empirical data was collected to evaluate this issue, which I consider to be somewhat beyond the scope of our core focus, the issue deserves comment. Moreover, Dr. Eckert's examination did reveal information relevant to the discussion.

As noted, the assessor's job is to add value where appropriate and legally permitted based on the value added by the particular improvement. Anecdotally, there should not be much dispute that improvements in the Village of Bronxville add more value and sustain such value better than in, say, the Village of Tuckahoe. It may also be generally true that the quality of such improvements are often superior in many cases in Bronxville than elsewhere in the Town. If this is true, then it also makes logical sense that assessment increases based on added value may often be more significant in Bronxville than elsewhere in Eastchester, just as they would carry more value than in, say, portions of Mount Vernon. This is not to say that this will hold true in every case, and each homeowner possesses the right to challenge an assessment determination, but logic supports the premise.

Dr. Eckert's studies further support the determinations made by the Eastchester assessor. Dr. Eckert evaluated the market conditions in Bronxville and sought to determine the capitalization rates for different improvements. As noted in his report (at 12-13), he constructed a model that considered various types of home improvements as well as the location of the property and determined that there was a strong correlation between permit work and sales prices when the properties sold after the work was completed. Dr. Eckert found that 82% of the cost of the permit work was capitalized into the sales price.

Because Assessor O'Donnell's determinations were based on a review of comparable sales in the local neighborhoods as part justification for the decision to increase assessments and the extent thereof, Dr. Eckert's findings suggest that Mr. O'Donnell's conclusions in Bronxville had a logical and consistent basis. Again, individual cases may of course defy this conclusion, and we did not

attempt to review every such case, but the Eastchester methodology is generally supported.

Evaluating General Legal Equity in the Bronxville Roll

Courts have often stated that the constitutional standard for "fairness" in taxation "is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners."[12] This notion of rough equity is a result of the many discretionary factors that go into the assessment process described in the previous sections of this report. It is necessarily impossible to reach a state of "perfect" taxation, and even if it were, the real estate trade is a dynamic and ever changing mark that will quickly dissolve tomorrow what was true today, and thus any assessment system requires regular and vigilant attention.

The principal requirement of assessment roll maintenance under New York's statutory law is that all assessments be at full market value or at a uniform percentage thereof. RPTL § 305. In most cases, a revaluation will result in a new assessment roll that values all real property at 100% of estimated fair market value. Over time, unless the revaluation is continually updated, the changing real estate market will likely cause the assessments set at the time of revaluation to be only a fraction of full fair market value. For instance, if a home was worth $1 million last year and the assessment was therefore set at $1 million (100% of value), but this year the home is now worth $1.1 million, then last year's assessment, if carried forward without change, will represent only 91% of full value (1.0 ÷ 1.1). If all homes are assessed on an equal basis in accordance with RPTL § 305, they should all be assessed at 91% of full value. Given the vagaries of real estate appraisal, it would be unrealistic to find that this was true—even in the best system (hence the notion of "rough equity")—but this is a standard courts will enforce when challenged by individual property owners. This uniform percentage of value, when applied to *all* properties, including commercial and residential, among other classes, is sometimes also referred to as the "Equalization Rate", though the Equalization Rate and the Uniform Percentage of Value are not strictly speaking the same thing. The measure of the uniform percentage of value as applied solely to one-, two-, and three-family homes is the RAR (discussed above). The uniform percentage of value is, like real estate values, more imprecise a measure than it may sometimes seem: various statistical methodologies exist to compute it, and the data used in its computation is often subject to interpretation. At the same time, the ratio is one of the key components in determining municipal and school revenues and liabilities. As a result, Equalization Rates have historically been the subject of extensive litigation.

[12] *Allied Stores of Ohio v. Bowers,* 358 U.S. 522, 526-527 (1959).

Over time, the uniform percentage of value will change. For reasons that are beyond the scope of this discussion, a generally rising property market will result in a decreasing uniform percentage of value. In New York State's computation of the ratio, particularly where all classes of properties are considered together, this fact tends to result in the overassessment of many commercial properties (including condominiums and cooperatives) often for reasons that are beyond the control of the assessor. Over many years the change will appear dramatic. For instance, at the time of Bronxville's last revaluation, the uniform percentage of value (using the Equalization Rate as a proxy) was 100%, while as of 2004 the Village Equalization Rate was only 3.73%, a decline of 96.27%. This is the reason most assessments appear to be only a small fraction of the true value of the real estate.

A uniform percentage tells us something about fairness, and is certainly the prime legal issue on which courts will focus when assessments are challenged. But, particularly over time, other statistical measures of tax equity will become significant, if not strictly from a legal perspective then at least in addressing policy concerns over tax disparities among residents. Indeed, in theory, where these disparities become egregious there is a possibility that the courts might potentially see fit to take action, though New York courts have historically refrained from doing so and have exercised extreme restraint.

The uniform percentage of value, used as the statistical point of reference for measuring equality among taxpayers, fails to provide a complete and meaningful description when considering the full assessment roll. Rather, the uniform percentage is useful only in the context of measuring the fairness of taxes for individual properties, as occurs most often in court. The uniform percentage is only an average data point out of the total population of assessment ratios derived from the assessment roll. When any other individual property's ratio of assessment-to-value is compared to the Village's uniform percentage, one can determine whether the selected property is higher, lower or equal with the *average* assessment ratio for the entire municipality, and thus whether that property is fairly assessed.

The uniform percentage does not, however, tell us how all of the assessment ratios are *distributed* above and below the uniform percentage. Many assessment ratios may be significantly higher or lower than the uniform percentage, indicating that some properties are being taxed at a much higher effective level than the average and many others may be taxed at a much lower level. In practical terms, homes of similar value may be taxed at quite different levels; at a point, these differences may be considered so statistically meaningful as to become legally significant under the Equal Protection requirements of the

United States and New York State constitutions. *Every* population of data will have a uniform percentage, but the important question that must be answered in considering the entire assessment roll is whether the data are clustered in tight proximity to the uniform percentage—the sign of equality in taxation—or are so randomly distributed as to be beyond the "rough equity" to which courts have referred.

Notwithstanding these concerns, New York's Real Property Tax Law is structured to rely very heavily upon legal action by individual property owners to correct inequities in their own tax assessments (principally using the State Equalization Rate and RAR) while providing virtually no effective means by which property owners may compel sweeping changes in an assessment roll. Class action status is not typically conferred in such cases, and taxpayer suits frequently fail for lack of sufficient standing to sue. Of course, as a practical matter, homeowners who are taxed too much will naturally seek legal redress while homeowners who are taxed fairly or too little will not do so. For the reasons described earlier in this report, underassessed properties will not, in the New York system, typically be raised up to a more equitable level through the court system. Rather, broader remedies for assessment rolls that contain widespread inequities are left to the local legislature, which must necessarily consider the full range of impacts that assessment roll changes will have on various community residents and businesses. In a nutshell, these factors are the bases for most of Westchester's ancient assessment rolls.

An expert statistician, such as Dr. Eckert, is able to distill assessment and sales data for a community into a literal image of the distribution and equity of assessments in the roll. This is the most scientific inquiry one can hope to make, and is the basis from which legal and policy decisions can be made. It would be a mistake, and highly unscientific, to presume that a problem exists merely because the assessment roll is aged. The better course is to first thoroughly evaluate the equity of the assessment roll, as the Village Board asked Dr. Eckert to do, and then, once the picture is more clear, proceed to the second stage of analysis and action if corrective measures are indeed required.

The coefficient of dispersion (COD) is among the prime statistical measures of central tendency in a data set[13]. The COD is frequently calculated for assessment rolls because it describes the range in which most assessment ratios fall on the high and low sides of the uniform percentage, or average, assessment ratio. As the New York courts have stated:

[13] Dr. Eckert's report details the various statistical measures of assessment equity and the reader is referred to that report for a more complete explanation.

> Generally, a coefficient of dispersion is a statistical comparison of 'the closeness of assessment ratios of individual parcels to each other' (9 NYCRR 185-4.2[b]). A high coefficient of dispersion indicates a high degree of variance with respect to the assessment ratios under consideration. A low coefficient of dispersion indicates a low degree of variance. In other words, a low coefficient of dispersion indicates that the parcels under consideration are being assessed at close to an equal rate (*see,* 9 NYCRR 185-4.4)" (*Waccabuc Constr. Corp. v. Assessor of Town of Lewisboro,* 166 A.D.2d 523, 524, 560 N.Y.S.2d 805). *Chasalow v. Board of Assessors of County of Nassau*, 202 A.D.2d 499 (2d Dept.), *lv. denied*, 83 N.Y.2d 759 (1994).

A high COD means that there may be too much randomness in the assessment roll, perhaps to the point at which there may be little or no correlation between a given home value and its assessment, and thus violative of the "rough equity" requirement set forth in *Bowers.*[14]

Dr. Eckert's analysis determined that the COD in Bronxville is about 19.17%, and also that the sample was "non-normal" (Eckert Report at 7), meaning that the data was not predominantly clustered only around the mean, but rather that the assessment ratios tended to form in multiple clusters. While a "normal" distribution looks, graphically, like a single bell curve that captures most of the data, a non-normal distribution suggests multiple bell curves with the data distributed mostly among them. In other words, the Bronxville assessment roll contains a fair degree of randomness. In Dr. Eckert's view, based on his report and my discussions with him, while these findings were not egregious in comparison with many other municipalities in the local area, they do indicate that the Bronxville assessment roll is too aged to provide an acceptable level of tax equity. The Bronxville assessment roll, from the standpoint of assessment best practices (though not as a matter of law, as discussed below), requires significant reform if a sufficient level of fairness is to be achieved.

This leads us to the most significant question facing the Village: assuming the accuracy of Dr. Eckert's conclusions, as more fully set forth in his own report, what action is legally required of the Village Board and what options are legally available to address the inequities in the Bronxville assessment roll? I have identified four courses of action available to the Village Board under the laws of New York State that should be considered:

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[14] *Allied Stores of Ohio v. Bowers* 358 U.S. 522, 526-527 (1959).

1. *Maintain the Status Quo:* take no action to reform the Bronxville assessment roll and direct the new Village Assessor to produce and maintain the assessment roll as-is going forward, with the proviso that building permit activity be monitored and addressed more appropriately on future assessment rolls;

2. *"Plug the holes":* direct the new Village Assessor to reexamine all building permit activity that occurred since 1996 and compare that to available assessment records to determine whether some property inventory remains unaccounted and, if so, add such inventory and additional assessment, where appropriate, on future assessment rolls;

3. *Adopt the Town of Eastchester roll:* the Village Board may dispense with its current assessment roll and replace it with the assessments of Village properties used by the Town instead, thus effectively capturing lost assessment value; and

4. *Direct a Revaluation:* upon preparation and evaluation of a revaluation "model" that discloses the approximate tax impacts of a Village-wide revaluation, direct that a revaluation be performed and implemented, including consideration of means by which more severe impacts may be mitigated if possible.

The balance of this report is principally devoted to a discussion of each of the foregoing options.

Maintain the Status Quo

New York State law does not mandate that the Village Board do anything in response to Dr. Eckert's findings. Revaluations are not mandatory in New York State. Nor does our state law provide concrete requirements pertaining to the COD and other statistical measures of equity. Specific quantitative guideposts do exist: the International Association of Assessing Officers (IAAO) sets a COD standard of 15% or less for older and more heterogeneous residential areas such as Bronxville (10% for newer, homogenous areas, and 20% for income-producing properties). Indeed, Dr. Eckert's own reference manual, created for the IAAO, discusses these standards in detail.

According to Dr. Eckert's findings, Bronxville's roll has moderately exceeded the residential standard to varying extents in every year since 1996. However, as a legal matter, the IAAO standard is non-binding on the Village. The regulations of the New York State Board of Real Property Services ("BRPS") generally concur with the IAAO standard[15], but suggest a COD of 10% for residential property generally (without distinction among property characteristics) and 15% for all combined classes of properties. But the BRPS regulations are merely considered goals for taxing jurisdictions and no penalty is imposed if these goals are not met.[16] In sum, no state law requires that the Village take action here.

Moreover, the minimal case law of New York State that is relevant to the issue suggests that a COD of 19.17%, if not desirable, would at least be acceptable and not rise to the level of a constitutional violation of the Equal Protection Clause. In the famous 1996 case of *Chasalow v. Board of Assessors of County of Nassau*[17], on review of alleged disparities in the Nassau County assessment roll, New York State's Appellate Division rejected a trial court finding of unconstitutional assessments. The appellate court compared CODs and found Nassau's to be acceptable, the "evidence merely establish[ing] a moderate statistical deviation from a hypothetical norm".[18] It wrote that "petitioners' evidence does not meet the rigorous requirements needed to establish a constitutional infirmity [citations omitted]"[19].

Interestingly, at the time of the facts at issue in *Chasalow*, the New York BRPS had found that only 7.2% of New York State assessing units met its residential COD standards. Statewide, the BRPS had concluded that CODs were roughly 19.6%, and the New York City COD was 25.84%. According to the court in *Chasalow*, a certain federal report concluded that the average COD nationally was 21.3% and the New York State average was 23.1%.[20] The appellate court rejected the petitioners' claim in *Chasalow* and relied principally on the statewide and national averages as indicators, finding that "the evidence supports the conclusion that reasonably equitable assessments are produced by [Nassau] County's assessment methodology". While the actual data considered in *Chasalow* has certainly changed in the years since, the court's views on such data must be assumed to continue to be true. Thus, Bronxville's 19.17% COD is well within the ranges described in *Chasalow*.

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[15] *See*, 9 NYCRR 185-4.3(c).
[16] *See*, RPTL Sec. 202; *Chasalow v. Board of Assessors of County of Nassau*, 202 A.D.2d 499 (2d Dept.), *lv. denied*, 83 N.Y.2d 759 (1994).
[17] 176 A.D.2d 800 (2d Dept. 1991); *Chasalow v. Board of Assessors of County of Nassau*, 202 A.D.2d 499 (2d Dept.), *lv. denied*, 83 N.Y.2d 759 (1994).
[18] 202 A.D.2d 499 (2d Dept., 1994), *lv. to app. den.*, 83 N.Y.2d 759 (1994)).
[19] *Id.*
[20] *Id.* at 501.

This being said, the Appellate Division warned the County at that time that it might expect continued constitutional challenges "unless remedial action is taken." Of course, ultimately, one such challenge did result in a settlement with Nassau County pursuant to which a revaluation was commenced.

Most of the municipalities in Westchester County and many others throughout the State, like Bronxville, are not in breach of legal requirements pertaining to the level of assessment COD. The Village Board is not *required* to direct that a revaluation or any similarly significant assessment reform be taken. The Village Board may legally determine that it is in the best interests of the Village to take no such action. However, it is clear that the inequities in taxation are disfavored, if not illegal, and the passage of time gradually worsens the situation. We are also unaware of any New York court that has considered specifically the normality of the assessment ratio distribution, but Dr. Eckert's finding of a non-normal distribution is certainly a factor that should be of concern in considering general equity. There is no "bright line" at which the tax assessment system becomes legally infirm. This is a matter of policy, not law. However, should the Village Board choose to follow a course of restraint, the newly appointed Village Assessor should at least ensure that future building permit activity be monitored and addressed more appropriately than has occurred in the past, with improved on-site record maintenance, as detailed above. The implementation of computer-assisted methods of tracking improvements and computing assessments should strongly be considered.

As a final practical matter, in the event the Village Board determines instead to implement a reform of the assessment roll such as through revaluation, reality dictates that such an undertaking could not possibly be completed properly in time to produce the 2006 assessment roll. A poorly implemented and rushed revaluation could very well create worse inequities and hardships than presently exist, and a year of proper evaluation and planning is certainly warranted. Therefore, if, for instance, a goal is set to implement a reformed assessment roll as of 2007, the continuation of the 2006 assessment roll in approximately its current state would not violate the laws of New York State.

Plug the Holes

One solution that seems attractive at first blush is to direct the new Village Assessor to simply "plug the holes" that are alleged to exist in the current assessment roll where improvements were supposedly ignored. Under this scenario, the new assessor would reexamine all building permit activity that occurred since 1996 and compare that to available assessment records to

determine whether some property inventory remains unaccounted and, if so, add such inventory and additional assessment, where appropriate, on future assessment rolls. In the course of my review, some residents have further suggested that the new assessor might perform such "reconsideration" of improvements for each of the affected past assessment rolls rather than just those in the future.

Under New York law, both such proposals encounter such significant legal and practical prohibitions as to render them futile and a waste of the new assessor's time and the Village's resources.

At least two problems exist with the notion of directing the new assessor to add, on the 2006 assessment roll, to the assessments of properties that underwent improvements in the past. First, out of some 1,300 building permits issued, the assessor would need to determine which ones, if any, were simply not reviewed at all by the former assessor. The former assessor has never stated that he did not review certain permits, and in fact it has been his position that he did review all permits and the decision to omit certain assessment increases was a "judgment" on his part. While the former assessor's judgment has been called into question in many instances, this hardly provides the kind of concrete roadmap the new assessor would need to say, definitively, that certain improvements were simply overlooked.

Assessment records may provide some assistance in this regard, but unfortunately the generally poor condition in which they were maintained will simply leave many such questions unanswered to the degree needed to add assessment. For example, the lack of a notation of the former assessor's contemporaneous review on a property record card does not conclusively establish that he did not actually review an improvement; surely the affected homeowner would challenge any increase in court, relying on the former assessor's position that the improvement was already considered once and should not be reviewed again. In short, attempts to increase assessments will likely run into "selective reassessment" court challenges in all but the clearest cases. It will be exceedingly difficult for the new assessor to conduct the necessary investigation of all building permits in order to sort out those cases that are clear from those that are not. Moreover, this "sorting" process itself may be said to smack of selective reassessment, because those who are reassessed are only chosen by virtue of the arbitrary manner in which records may have been maintained.

The second difficulty is in establishing how much assessment to add to these properties. Assuming one could accurately distill those properties that should have received an assessment increase but did not, the new assessor

would then need to evaluate the property improvements pursuant to the building permit. Absent the ability to go back in time, the collection of this information will be difficult if not impossible in many situations. Owners may have changed, leaving the current owner with little first-hand knowledge of the improvement; some improvements may have by now been removed completely, or partially removed, or updated; itemized construction information may be very difficult to obtain. While certain properties might well deserve an increased assessment, it would be equally unfair to embark on a process that could result in *over*assessing those properties and effectively punishing the homeowner for a lack of information to support his or her argument against the increase.

Most difficult and subject to speculation will be the level of depreciation to apply to a wide variety of improvements over as much as nine years at issue. The assessor is charged with the obligation of assessing property on his 2006 roll in its "condition and ownership" as of the applicable taxable status date[21]. Although improvements might have been added to the roll at their cost "new" when first completed (as adjusted to a 1967 cost level), the 2006 roll must reflect their depreciated value. Although this can be accomplished, it is likely to result in a morass of legal challenges that may stretch on for years[22] and come with no easy answer.

Moreover, the assessor could not re-open the assessment rolls extending back to 1996 to add back assessment dollars he determines should have been added earlier. Practically and legally, those rolls are closed. We evaluated the "correction of errors" process pursuant to Article 5, Title 3 of the RPTL, which in some cases permits changes to the prior year's assessment roll (in this case, 2005) where there is an "error in essential fact"[23] or an "omission"[24], we believe this to be of very limited application to these facts. This is particularly so in view of 9 Op. Counsel SBRPS No. 23, in which an incorrect description of an improvement in the assessor's inventory was considered not to be correctable by the assessor seeking an increase in assessment after the tentative assessment roll had been filed. The new Bronxville assessor may see fit to implement the correction of errors process in certain limited instances where applicable, but I do not recommend these procedures as an across-the-board solution to the problems that were raised.

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[21] RPTL § 302(1).
[22] Notably, the nature of such challenges would be beyond the jurisdiction of the small claims review proceeding—which ordinarily proceeds quickly—and would instead be before the State Supreme Court along with thousands of commercial cases awaiting review. Most such cases remain pending for many years before resolution.
[23] RPTL § 550(3)(d).
[24] RPTL § 550(4-a).

Likewise, the assessment rolls extending back to 1996 could not be recreated to account for lost assessments because this would create intractable billing problems. In particular, if we are to assume for the sake of discussion that assessments could have been increased but were not over the past nine years, this would create an issue of *allocation* of the tax levy among all taxpayers but not one of lost revenue. The Village's budget for each year was fully levied, but each change in a prior year's assessment will alter every other tax bill in the Village for that year. Assuming that this could legally be accomplished—which is doubtful—all prior years' tax bills would need to be recalculated and re-billed, with a dizzying volume of collection issues stemming from general taxpayer confusion as well as changes in ownership, among other things. This is certainly not a recommended course of action.

For the variety of reasons stated above, the Village Board should not direct the new assessor to attempt to reassess properties that allegedly underwent improvements in the past without proper assessment review except in cases in which it is obvious to the assessor, in his professional opinion, that inventory is missing from the roll and was never considered by the assessment office.

Adopt the Town Roll

The Village of Bronxville is fortunate in its partial duplication of the assessment function that is performed by the Town of Eastchester. The Eastchester assessment roll contains all of the properties that appear on the Village of Bronxville roll. As discussed previously, Dr. Eckert's review of Assessor O'Donnell's general assessment practices indicated that building permits were routinely evaluated upon issuance, construction work was inspected where necessary, and the assessor's determinations were logically supported and well documented. While one might dispute individual assessment determinations involving professional judgment, it is clear that Eastchester's assessment rolls do not contain the type of systemic omissions that are alleged to be present in the Village's assessment rolls.

The RPTL, at Section 1402(2), permits a village assessing unit to adopt the town's assessment roll as the basis for the village assessment roll "so far as practicable".[25] Given the quality with which the Town of Eastchester's assessment roll appears to be maintained in relation to building permits, this

[25] It should be noted that RPTL § 1402(3) permits the village to not only adopt the Town roll, but further to transfer the entire assessing function and control to the Town. This is certainly a possible alternative the Village of Bronxville might wish to consider. The decision turns on policy considerations that we understand may be considered and addressed by the Michaelian Institute in the study it has been asked to provide to the Village.

provision of the RPTL appears to offer an attractive solution by which to eliminate the possibility that the Village roll may contain omissions in assessment. Under this section of the RPTL, the Village would continue to maintain its own independent assessment roll, but would capture previously allegedly unassessed improvements that the Town assessor had applied. Following the year of adoption of the Town assessment roll, the Village would likely update and maintain its new roll separately from the Town, but the Town's roll would provide a new "baseline" set of assessments for the Village.

Although simple, this option is not without significant shortcomings for the Village of Bronxville. Dr. Eckert has computed the level of assessment ratio dispersion of the Town's Bronxville assessments to be 43% (Eckert Report at 7). This figure is not directly relevant in the context of the Town's overall assessment roll and does not tell us about equity in the Town-wide roll or the Town Assessor's performance of his duties. However, if Bronxville were to adopt these assessments, they would be relevant to the Village and would result in much greater assessment ratio dispersion than presently exists. In short, the Village would exchange one problem—allegedly omitted assessment for improvements—for another of perhaps broader implications.

With this in mind, we also considered whether RPTL § 1402 might permit some form of remediation of this level of dispersion. Specifically, RPTL § 1402(2) has been interpreted to permit the Village to "adjust the values as necessary" upon adoption of the Town roll[26]. One might take this to mean that the Town roll could simply be adopted by the Village and any values that appear at odds with the Village Assessor's opinion of true market value could be adjusted. Research has revealed no court decisions on point in this regard and we are left with virtually no legal authority on which to rely in interpreting this statute.

In theory, then, we must consider whether an Assessor may take a "new" set of assessments, i.e., those of the Town, and choose to reassess only a portion of them to bring about a more uniform percentage of value and less ratio dispersion Village-wide. To the extent this exercise would be conducted in an even-handed manner with the principles of the *Allegheny Pittsburgh* case, discussed above, in mind, a good argument might be advanced to support the validity of such action. There can be little doubt, however, that this could result in individual charges of "selective reassessment" (also discussed above), and it is impossible for me to state with certainty whether a court would find that the assessor's actions were appropriate because conducted following the implementation of RPTL § 1402(2).

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[26] "Village Assessment Options", a Report of the State Board of Real Property Services (April 12, 2005): http://www.orps.state.ny.us/legal/localop/village_assessment_options_05.pdf.

Revaluation

The fourth option available to the Village Board is to approve a plan for a Village-wide revaluation of all Bronxville real property. Assessment experts, including Dr. Eckert, are in general agreement that revaluation—and regular maintenance of the revaluation—is surely the most complete and theoretically certain means of achieving comprehensive tax equity on a continuing basis. Dr. Eckert's findings pertaining to taxation inequities and the generally "non-normal" composition of the current roll, coupled with our review of the viability of the foregoing three options, further suggest that revaluation warrants strong consideration by the Village Board as a potentially optimal approach. Dr. Eckert suggests, for instance:

> It could be expected that a very strong revaluation program could cut the COD to around 5.0%. This would reduce ... effective tax variations by three-fourths of the current variations but not entirely eliminate these variations. It would be, as a practical matter, impossible to completely eliminate all variations on an ongoing basis (Eckert Report at 9).

Notwithstanding the many arguments in favor of revaluation, however, it is also a potentially dangerous tool if poorly implemented or made subject to overly restrictive budget concerns or a time-frame that encourages speed at the expense of accuracy and careful reflection. Instances of revaluations that resulted in general taxpayer misery are plentiful. There is also no doubt that where a revaluation is implemented in a real estate market such as Bronxville, where values have grown and been shaped around an aged and inequitable tax system, instances of dramatic tax impacts will occur and the local real estate market will be affected. These are the very reasons frequently cited for maintaining the status quo.

If the Board chooses to direct a revaluation, there is a need, therefore, to implement it in the best manner available under the law that will permit the market, and local property owners, to adjust to the changes and mitigate the severest impacts where possible. In all of this, the Board is reminded that the decision to revalue may be wise policy, but it is not a legal requirement in New York. Therefore, any such decision should be carefully considered and implemented in a deliberate manner. Part of this process of consideration, as the Board has already recognized, is the preparation of a revaluation model that presents an impact analysis. It is our understanding that the Board is considering the further retention of Dr. Eckert to perform such work with the goal of producing a report by the end of this year.

The Mechanics of Revaluation

The RPTL defines a "reassessment" as:

> a systematic review of the assessments of all locally assessed properties, valued as of the valuation date of the assessment roll containing those assessments to attain compliance with the (statutory) standard of assessment.[27]

Beyond an initial period of bringing all assessments into line with market value, reassessment may be accomplished by (a) reviewing all properties and making adjustments, where necessary, by the application of trending factors; (b) making a complete re-inspection and reappraisal of all properties; or (c) a combination of these methods.

An explanation of the full revaluation process and all of the considerations that would need to be explored is beyond the scope of this report. Generally, however, the process involves the following approach:

- Obtain current data on properties and the local market;
- Assemble the data and the information about the local market in a meaningful manner;
- Using recognized techniques for analysis:
  - Ascertain the factors that are most relevant in determining market value;
  - Change assessments where required based on the results of the market analysis;
- Perform a validation component that confirms whether the assessment changes were appropriate.

To maintain assessment equity, these steps would be periodically and regularly performed. The International Association of Assessing Officers (IAAO) provides the following observations on reassessment:

[27] RPTL § 102(12-a).

> Current market value implies annual assessment of all properties. This does not necessarily mean that every property must be appraised each year. 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 to achieve current market value. It is recommended that assessing officers consider establishing regular reappraisal cycles or at least quality (vertical and horizontal equity) thresholds that trigger reappraisal. (Standard on Property Tax Policy [Paragraph 4.2.2.], approved August 1997).

And the IAAO states the following position concerning the frequency and manner of reappraisals:

> Properties should be revalued annually. Annual assessment does not necessarily mean, however, that each valuation must be reviewed or re-computed individually. Instead trending factors based on criteria such as property type, location, size, and age can be developed and applied to groups of properties. These factors should be derived from assessment-ratio studies or other market analyses. The analysis of assessment-ratio studies data can suggest groups or strata of properties in need of physical review. In general, trending factors can be highly effective in maintaining equity when appraisals are uniform within strata. Physical reviews and individual reappraisals are required to correct lack of uniformity within strata. While assessment trending can be effective for short periods, properties should be physically reviewed and individually appraised at least every six years. (Standard on Mass Appraisal of Real Property [Paragraph4.5], approved March 1984.)

The capacity to annually reassess requires adequate funding, management, and the use of mass appraisal techniques. Clearly, this will have budget implications for the Village to consider. The Village will need not only a qualified assessor, but personnel available who are skilled in data processing and statistics to coordinate market research and analysis. Dr. Eckert's report specifically identifies several of the technological and other improvements that should be considered (Eckert Report at 16-17).

Beyond considerations of general equity and the resources to implement a revaluation, the Village must also consider the manner in which a revaluation would be implemented. Quite a number of options exist, and it is clear that

mitigation of severe impacts should be a primary objective. The evaluation and application of such issues are beyond the scope of this report and would be more appropriately considered in detail once preliminary data needed for a revaluation has been collected and analyzed.

Homestead Tax Option

One such issue that will be at the forefront of a revaluation analysis will be whether to adopt and be governed by the provisions of Article 19 of the RPTL, the so-called Homestead Tax Option. In summary, this section of the law aims to avoid significant tax burden shifts to residential properties as a result of a revaluation. The Homestead Tax Option is not mandatory (as its name suggests), and allows for the establishment of two separate tax rates: a lower rate for residential owners and a higher rate for all other owners. A municipality in New York State may only qualify for the Homestead Tax Option after it has completed a revaluation, and therefore such differing tax rates would only be available to Bronxville if the decision was made to conduct a revaluation.

The homestead tax share is based on the property taxes the residential class of property owners paid in the year before the new assessments pursuant to revaluation are implemented. The tax share is thus "frozen". Importantly, however, the Village would have the ability to make adjustments to the share depending on a number of factors. The Bronxville School District would also be bound by the homestead tax unless it opts out by resolution.

The Homestead Tax Option is often considered desirable because it can have the effect of shielding homeowners from tax rate increases due to commercial tax appeals pursuant to Article 7 of the RPTL (often referred to as "certioraris"). It should be noted that, in general, the Homestead Tax Option would not logically reduce the number of certioraris, although that number might be reduced solely as the result of an effective and ongoing program of revaluation, i.e., even absent adoption of the Homestead Tax Option. Commercial owners would still have the advantageous use of the single Equalization Rate in certiorari proceedings, but reductions in commercial assessments would result in a rise only in the commercial tax rate. So, effectively, certioraris would result in placing a higher tax burden on only commercial properties. Anecdotally, we have seen this occur in other municipalities that adopted the Homestead Tax Option. The rise in commercial taxes tends to be capitalized into the value of those properties, thus de-valuing the commercial market and possibly drawing *more* certiorari challenges.

The most significant concern—which would be addressed by your assessor and perhaps other assessment experts—would be permitting the

commercial tax rate to rise to an unacceptable level over time. Clearly it would be politically desirable to keep the residential tax rate as low as possible while passing necessary increases to the commercial class only. However, ultimately, this will have a detrimental effect on the property market, and it is important that the legislative body periodically review an appropriate redistribution of the tax shares to account for this.

Another issue that would need to be addressed by the Board as a matter of policy would be the classification of condominium apartments as commercial or residential. Condominium apartments are presently valued for assessment purposes based on an income approach, in which actual unit sales are ignored. Cooperatives are valued on a similar basis. For reasons beyond the scope of this report, these methods of valuation, which are required under New York State law, are responsible for the frequent and sizeable assessment reductions in certiorari proceedings for these types of properties. Article 19 permits a choice as to whether the condominiums will be classified as commercial or residential, although no similar choice is provided for cooperatives. On the one hand, treating condominiums as residential properties might allow the consideration of sale prices, resulting in higher assessments; however, such treatment would also result in the lower tax rate that would be applied to residential dwellings. This policy decision will be better addressed following further analysis by Dr. Eckert and those who might conduct a revaluation, but the Board should be mindful of this issue.

One additional benefit of the provisions of Article 19 is the ability to transition in new assessments pursuant to a revaluation over multiple assessment years. Given the need to mitigate the impact of a revaluation and the shocks that would occur in the real estate market, this may be a desirable means of implementing tax equity while minimizing severe consequences and allowing taxpayers and the market to adjust. This provision warrants further evaluation and we will provide the Board with an analysis should the choice to revalue be made.

County Tax Levy

One question that has been raised in the last several months is whether a Village-wide revaluation might result in a significant increase in the County tax portion of local tax bills, as allegedly occurred following revaluation in the Towns of Rye and Pelham. This appears to have resulted from the fact that the true value of all real estate in those towns (determined by the revaluations) indicated a larger portion of the total County "pie" in comparison to other municipalities whose total true value might remain undercounted based on old assessments. Absent County-wide revaluation, this appears to remain a concern for any

municipality considering revaluation and whose assessment roll is the basis for County taxes.

While Bronxville's assessment roll is not the basis for levying County taxes, and County taxes would not be affected directly by a Village revaluation, the legal issue that has been raised is the consequence if, following revaluation, the Town of Eastchester summarily determined to simply adopt the new Village property values for the Village portion of the Town's assessment roll.

In my opinion, such action by the Town that constitutes less than a full Town-wide revaluation, i.e., including the Village of Tuckahoe and the unincorporated portion of the Town, would result in claims of "selective reassessment" to the extent that any such assessment changes were based solely on the Village revaluation and not upon the discovery of new inventory.

As described early in this report, in a municipality such as Eastchester, that does not regularly revalue property assessments Town-wide, an assessor is severely restricted in his or her legal opportunities to increase the assessment of an improved property absent improvements or the discovery of inventory.

Because the County tax levy is based on the Town assessment roll, not the Village assessment roll, no matter how extensive the changes to the Village assessment roll, such changes would have no direct effect on the amount of taxes Village residents pay to the County. The two instances of municipal-wide revaluation in Westchester that are said to have inflated County taxes occurred in towns, not villages.

Assuming that the Town did not also perform a Town-wide revaluation, the Town could not simply "adopt" the new Village market values because this would be no different than the ordinary case of illegal spot reassessment described above except on a massive scale. Indeed, the situation would be the equivalent of reassessing a property upon sale.

For Town assessment roll purposes, there is no legal difference between the manner in which a property in Bronxville, Tuckahoe, or the town-outside should be treated. The arbitrary fact that the Village performs a revaluation while the rest of the Town does not would not provide a legal basis for the Eastchester Assessor to single these properties out for reassessment on the Eastchester roll.

It should be noted that this does not mean that the Eastchester Assessor would be prevented from (a) updating the quality of the information maintained in his records regarding Bronxville properties that he might learn as a result of a Village-wide revaluation and (b) taking action upon particular properties where

the revaluation revealed property inventory that is not recorded in Eastchester's property records. As discussed previously, an assessor has an obligation to take note of all property inventory.

So, the Eastchester Assessor would have the legal right to update his own Town records and add the value of the improvement that was missing from his records to the Town assessment. This would necessarily result in an increase in Town-related taxes for a given property, including the County portion of those taxes. But, this has nothing directly to do with the Village revaluation, but rather with the fact that the individual property owner had more property than was previously known. The foregoing explanation presumes that the Town Assessor acts according to the law and does not intentionally selectively reassess following a Village-wide revaluation. In the course of our review Mr. O'Donnell has indeed acknowledged the legal impermissibility of singling out the Village of Bronxville for "revaluation" of only the Town assessments.

Summary

In conclusion, while a Village-wide revaluation that is properly maintained is acknowledged by assessment experts to be the optimal means of achieving broad tax equity, it is also not legally required of Bronxville. Moreover, a revaluation that is not well implemented with adequate resources may result in worsening the present situation rather than improving it. Further, even if implemented properly, it is indisputable that there will be clusters of Village owners who will experience severe financial shocks that in some cases may be unmanageable. For these reasons, if the Village Board should choose to direct a revaluation, it should do so following a thorough modeling of the tax impacts that would occur and detailed consideration of any means of mitigating the most severe impacts, such as through the Homestead Tax Option and transitional assessments. This will also include a review of the resources needed to achieve and maintain tax equity over the long term.

As noted, the decision to revalue is strictly a policy decision for the Village Board that must be made in consideration of the overall best interests of the Village, weighing all of the advantages and disadvantages. In any event, it would be impossible as a practical matter to implement a properly completed revaluation as of the 2006 Village assessment roll, nor, in my opinion, does the Village roll in its current form suffer from any legal infirmity that would result in its complete invalidation. Therefore, it is suggested that if the Board determines to pursue the option of revaluation, such be implemented in a deliberate and careful manner.

Conclusion

Following review of this report and that of Dr. Eckert, and an opportunity for public comment, the Village Board should consider its various policy options available under the law to improve the assessment function in the Village of Bronxville. Upon determining a course of action, further work and data collection may be required to fully evaluate the precise and optimal means of implementation so as to achieve what will be in the best interests of the Village. Whichever specific course of action the Board decides to pursue, the improvements to general assessment administration, technological capacity, and personnel that are discussed in Dr. Eckert's report and this report should be given priority attention.