To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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In the Matter of the Application of
LORTERDAN PROPERTIES OF PV,
by Huff Wilkes, L.L.P., Agent

Petitioner,

-against -

THE TOWN OF PUTNAM VALLEY, its ASSESSOR, and BOARD OF ASSESSMENT REVIEW,

Respondents,

For a Review Under Article 7 of the RPTL.

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DECISION & ORDER

Index Nos. Westchester:

12721/07
15694/08
16225/09
16854/10

Putnam:

1856/11
1704/12
1507/13

GROSSMAN, J.S.C.

Petitioner, Lorterdan Properties of Putnam Valley ("Petitioner" or "Lorterdan") challenges Respondents' property tax assessments on its property located in the Town of Putnam Valley for the years 2007, 2008, 2009, 2010, 2011, 2012 and 2013 as being in excess of the true market values of the subject parcels, in violation of the requirements of the Real Property Tax Law ("RPTL") and the New York State and U.S. Constitutional limitations on tax assessments. Petitioner seeks a reduction on all parcels as of the taxable status dates of July 1, 2008, July

1, 2009, July 1, 2010, July 1, 2011 and July 1, 2012. Petitioner also seeks a reduction for Lot 35 as of July 1, 2006 and July 1, 2007, in addition to the ensuing years.

The Property

The property consists of five parcels totaling approximately 150 acres located in the Town of Putnam Valley, in Putnam County, New York. The parcels are identified on the tax assessment map as Section 74, Block 1, Lot 35(35 acres) and Section 63, Block 3, Lots 28 (60 acres), 45 (27 acres), 50(1 acre) and 52 (27 acres) (the "Property"). The Property is bordered by Bryant Pond Road to the west and to the south, the Taconic State Parkway to the east, and Peekskill Hollow Road to the north. Lot 35 is approximately 35 acres of commercially zoned property with approximately 25 existing structures that are in significant disrepair and uninhabitable. It was previously occupied as a religious retreat prior to being re-zoned as commercial property. Lot 35 (the commercial portion) contains state-regulated wetlands adjacent to Bryant Pond. The remaining lots (28, 45, 50 and 52) are residentially zoned parcels that have all remained undeveloped.

The subject property was acquired in two transactions. The first transaction, covering 90.2 acres was the subject of a Contract of Sale entered into on July 7, 2000 between Petitioner

and Living Springs Retreat at a price of $2,400,000.00. The closing was contingent upon obtaining approvals for an adult living facility consisting of a maximum 160 dwelling units in 75-80 buildings in a clustered development, a use not permitted by then existing zoning. The Deed was dated September 8, 2005. Lot 28, consisting of an additional 59.6 acres was acquired in July 2003 for $330,000.00. At the time of the closing in 2005, the approvals had not been granted and Petitioner had already invested more than one million dollars in the project.(Tr. 22)[1]

The southern portion of the subject property is commercially zoned, but has not been used for that purpose. The commercial portion of the subject property has limited or no exposure to the Taconic State Parkway, which does not allow truck access. The area west of the Taconic State Parkway is zoned strictly residential.

The residential subject land has wetlands. Peekskill Hollow Creek, which is a classified watercourse, runs through tax lot 28 near Peekskill Hollow Road.[2] Beyond the creek and adjacent wetlands are steep slopes abutting the Taconic State Parkway. Municipal water and sewer are not available. Natural gas is also

[1] References are to the Trial Transcript.

[2] Section 144-4 of the Town of Putnam Valley Town Code (Section entitled "Fresh Water Wetland, Watercourses and Waterbodies") and the NYS Department of Environmental Conservation both require a 50-foot wide adjacent area and permits must be issued to disturb such area. These local and state regulations limit the potential use of Peekskill Hollow Road as a means of access by vehicles to the subject property.

not available. Any large-scale development will require wells and a sewage treatment plant. The factors described above are among the reasons that the Property has remained a challenge to develop for nearly two decades.

In 2000, at the time of the signing of the contract, the residential development market had been booming in Putnam County. Single-family building permit statistics (See Sterling Appraisal, Exhibit 2, p.29) demonstrate that between 1999 and 2006, permit activity feel nearly 65% in Putnam County and dropped by 82% in the Town of Putnam Valley. The significant drop in building permits reflects additional factors. One, the remaining available building parcels are more likely to be constrained by the topographical, wetlands, and rock formations which are part of Putnam Valley's natural characteristics, charm, and beauty[3]. Two, such available parcels are likely more costly to develop. Three, the costs of development do not appear to be justified by the lack of demand. Four, the subsequent financial downturn in the region and nationally has impacted value. Hence, it is clear that

[3] The Court received in Evidence as Petitioner's Exhibit 11, the Comprehensive Plan and Generic Environmental Impact Statement (GEIS) adopted by the Town Board in December 2007. The GEIS identified the characteristics of Putnam Valley's natural setting, and noted "From a development perspective, however, these same environmental features pose significant constraints" (p.1). The GEIS also noted that "moderate to steep slopes over a significant portion of Town. In fact, 36% of the Town is constrained by slopes equal to or greater than 20%" (p.1). Significantly, the Report noted: "With some exceptions, most of the land in the Town that remains undeveloped is either constrained with steep slopes and wetlands or is land that is considered to be open space" (p.2).

the price for the 90.2+ acres of the subject property essentially agreed to in 2000 had no relationship to its value as of the July 1, 2006, appraisal date as a result of changes in market condition.

The Assessments and Equalized Values

The parcels comprising the Property were assessed at the following levels in the assessment years at issue:

Tax Map No.	Assessment Year	Assessed Value
74.-1-35	2007	$3,027,000
74.-1-35	2008	$3,027,000
74.-1-35	2009	$1,995,100
63.-3-28	2009	$ 356,400
63.-3-45	2009	$ 148,900
63.-3-50	2009	$ 108,000
63.-3-52	2009	$ 148,000
74.-1-35	2010	$1,995,100
63.-3-28	2010	$ 356,400
63.-3-45	2010	$ 148,900
63.-3-50	2010	$ 108,000
63.-3-52	2010	$ 148,000
74.-1-35	2011	$1,875,400
63.-3-28	2011	$ 335,100
63.-3-45	2011	$ 148,900
63.-3-50	2011	$ 101,600
63.-3-52	2011	$ 139,200
74.-1-35	2012	$1,875,400
63.-3-28	2012	$ 335,100
63.-3-45	2012	$ 148,900
63.-3-50	2012	$ 101,600
63.-3-52	2012	$ 139,200

Tax Map No.	Assessment Year	Assessed Value
74.-1-35	2013	$1,762,870
63.-3-28	2013	$ 321,000
63.-3-45	2013	$ 148,900
63.-3-50	2013	$ 101,600
63.-3-52	2013	$ 139,200

(Only Lot 35 is under review for the 2007 and 2008 assessment years.)

Petitioner's Proof

Respondents' appraiser, Edward Ferrarone[4], based his opinions of assessed value on a large number of properties he felt were comparable to the subject property. In some instances, both appraisers used the same parcels as evidence of comparable sales in support of their conclusions. They also agreed on the methodology. While Mr. Sterling limited his comparable residential sales to the Town of Putnam Valley, the commercially comparable sales included four properties in the Town of Putnam Valley, Southeast, and Patterson. In contrast, Mr. Ferrarone used a larger number of commercially comparable sales throughout Putnam County as well as a large number of sales of residential properties throughout Putnam County.

Petitioner's appraiser, Robert Sterling, MAI, of Sterling Appraisals, Inc., submitted an appraisal (Exhibit 2) and testified about the market value of the Property in these

[4] The qualifications and expertise of Edward Ferrarone, Respondent's appraiser, and Robert Sterling, MAI, Petitioner's appraiser, was not disputed.

proceedings as of the applicable taxable status and valuation dates. His appraisal concluded that the Sales Comparison Approach was the most appropriate methodology for the property, and that the income approach and cost approach are not appropriate methods for the valuation of the Property.[5] The appraisal therefore notes that a sales comparison approach, using the Highest and Best Use Analysis, is the only acceptable method of valuing the property pursuant to recognized methods and techniques of real property appraisal.

Mr. Sterling's appraisal relied on seven residential sales in Putnam Valley to value the residential parcels. The price per acre of these sales ranged from $1,116 to $8,652, with an average price per acre of $4,764 during the relevant time period. Appraiser Sterling made adjustments based on relevant and material factors, including location, unit of value (land size), configuration, street frontage, topography, wetlands and water, flood zone, zoning, easements, and utilities. Petitioner's appraisal opined the following average adjusted price per acre as of the applicable Town valuation dates: $5,977 for July 1, 2008, $2,245 for July 1, 2009, July 1, 2010, and July 1, 2012 and

[5]The income capitalization approach was not used because development land is rarely leased for rental income and comparable leases were not known to exist that would provide a reliable value within recognized appraisal methods and techniques. The cost approach was not used because the subject property has no improvements that significantly contribute to total property value. On this point, the appraisers for each party agreed.

$1,721 for July 1, 2011. An allocation of Market Values to each residential tax lot (a multiplication of the average price per acre by the lot acreage size) can be found on page 73 of the appraisal.

With respect to residential land sales, Mr. Sterling limited his comparable sales to vacant land in the Town of Putnam Valley between February 2007 and November 2012. Adjustments were made for location, land size, configuration, frontage, topography, wetlands and water, easements and encumbrances and other factors when appropriate. With these adjustments, the average price of parcels 1-4 as of the July 1, 2008 was $5,977/acre (Exhibit 2, p. 67). As of the valuation dates for July 2009, 2010, and 2012, parcels 5-8 had an average price per acre of $2,245 (Exhibit 2, pp.68-9). For July 2011, the same parcels, as adjusted, had an average per acre price of $1,721. There is some question about the comparisons and adjustments in the July 2008 grid, which are not fully explained. Sales 1-4 are all within two miles of the subject property and the -5% location adjustment allocated to parcels 1, 3 and 4 is not explained. The adjustment for land size for sale 3 at -5% for a parcel that is larger than sales 1 and 2 with a similar adjustment is not explained. The frontage adjustment for sales 1 and 2 which have "adequate frontage" should be different from sales 3 and 4 which have irregular,

broken, or limited frontage, but the same adjustment is made. Similar adjustment issues are raised with respect to sales 5-8 for the years July 2009, 2010, and 2012. A -5% location adjustment for properties along Peekskill Hollow Road is not explained. The adjustment for configuration of sale 6 is not explained.

Petitioner's appraisal uses four commercial sales in Putnam County to value Lot 35. One of the four properties is in Putnam Valley, one is in the Town of Southeast and two are in the Town of Patterson.

The price per acre of these sales ranges from $8,142 to $16,833, with an average price per acre of $10,204. Mr. Sterling made adjustments based on location, unit of value (land size), configuration, street frontage, topography, wetlands and water, flood zone, zoning, easements, and utilities. The Sterling appraisal supports an average adjusted price per acre of $9,000 for July 1, 2006, July 1, 2007 and July 1, 2008. No commercial land comparable to the subject property has sold since the financial crisis escalated in September 2008. Based on the residential sales, the market further declined from 2009 through 2011, and increased very slightly in 2012. The price per acre was adjusted in a similar fashion to the residential sales, and this can be found on page 88 of Petitioner's appraisal.

Mr. Sterling also noted in his report how various factors affected the market for the subject property in addition to the more particular criteria utilized in appraising vacant land. These factors include a leveling off of population growth in Putnam County between 2000 and 2010, the consistent reduction in housing permits issued from a high of 372 in 1999 to a low of 36 in 2012; in Putnam Valley there were 44 permits issued in 1999 but only 3 in 2012. The overall effects of the Recession that began in 2007 and the escalation of the national financial crisis in 2008 and thereafter (Ex. 2, pp. 26-31). These factors affect demand, as well as price. Mr. Sterling challenged the highest and best use of the commercial parcel. He believes the parcel should be re-zoned as a three acre residential zone (Ex. 2, pp. 44-5). The parcel, according to Mr. Sterling is constrained by environmental concerns. Commercial development is not financially feasible as evidenced by the Town's refusal to approve Petitioner's development proposals and the general lack of commercial development in the Town of Putnam Valley.

Mr. Sterling concluded that the commercial lot and the residential lots are all significantly over-assessed, and therefore assessment reductions and refunds from the Town and County are required. It is noted that the assessments prepared by the Town Assessor since 2007 reflect periodic reductions through

2013, from a high of $3,027,000 to a low of $1,762,870 for the commercial lot (Ex. A., p. 141).[6]

Trial testimony by Mr. Jackson, Plaintiff's President, Town Supervisor Robert Tendy, and Anthony Nester, an Engineer also revealed the history of development attempts, including potential uses and significant hurdles facing the developer.[7] Those hurdles included:

1. No access is permitted from the Taconic State Parkway.

2. Limited access - frontage along Bryant Pond Road due in part to steep slopes

3. Limited or no access from Peekskill Hollow Road to the north across Peekskill Hollow Creek for which development disturbance is regulated by the Town's wetlands code, and NYSDEC Regulations; even if access were permitted across Peekskill Hollow Creek, construction costs would be prohibitive

4. Property's steep natural gradients and wetlands area limit development

5. Only the tract of property fronting Bryant Pond Road is viable

6. Steeper portions of the land (above 15% in grade) would be prohibited from installing septic systems

7. Large amount of rock present at the surface of the Property, increases construction and cost developments

8. The property is subject to a limited flood hazard

9. Lack of municipal water or sanitary services

10. The development would be limited to wells for

[6] An addendum to the report covering 2012 was received as Exhibit "13"

[7] Petitioner's Exhibit 1 is the Summary Engineering Report

water supply, individual septic areas and/or development of an expensive wastewater treatment plant

Petitioner's President Robert Jackson testified as to his efforts to develop the property. He is the Managing member of Petitioner, and he has been engaged in real estate development for more than twenty years in the New York region and Northern New Jersey. (Tr. 13-15). The original development proposal involved a 164 unit senior citizen community in clustered buildings on 30 acres, leaving 90 acres of open space. (Tr. 21). The project was not approved. The most recent and last proposal includes 15-unit residential development would require access across the commercial parcel (Lot 35). In addition, the northern parcel (Lot 28) along Peekskill Hollow Road would not be developed, and that parcel would effectively remain as open space, with limited or no practical value to a developer. The current proposal, contained in Exhibit B-1 also involved the creation of a commercial recreation facility. A third possibility involved a town-owned recreation facility, which would be adjacent to the residential development.[8] During the time period involved, each of these proposals was affected by the local, regional, and national economic conditions that affected market value, construction and financial costs.

[8] There was also testimony that a special use permit would have allowed additional permissible uses. The testimony was conflicting as to why a special use permit was not obtained.

Respondent's Proof

Mr. Edward Ferrarone testified as Respondent's appraiser. His testimony and report addressed the five lots including the four residential lots totaling 115 acres and one commercial lot of 35 acres. The "improvements" on the commercial lot were dilapidated structures without heat or electricity. The lot was treated as vacant land. The minimum lot area is five acres. The four residential lots have a minimum building lot size of three acres, but topographical, environmental, and zoning limitations limit the number of available residential lots to approximately 15, with a large buffer of open space that includes wetlands, steep slopes, rock outcroppings, and Peekskill Hollow Creek. The most recent development plan submitted by Petitioners included the development of the commercial parcel with an 110,000 square foot indoor soccer and basketball center, outdoor fields, and the subdivision of the residential parcels into 13 building lots.[9] Access to the interior lots would require crossing other lots, as there is no access from Peekskill Hollow Road or the Taconic State Parkway, and access is further limited by road length regulations.

With respect to the residential parcel, Mr. Ferrarone used the

[9] This proposal would require a waiver of a 1,200 foot road length limitation. Although one other development received such a waiver in 2007 (Tr. 200-239), there was no assurance of similar treatment on the last submitted proposal. Supervisor Tendy's assessment and opinion of the potential action of the Planning Board, while offered candidly and in good faith, is an invitation to speculation which the Court declines.

Sales Comparison approach to value the property by comparing it to sales of other vacant parcels with appropriate adjustments for location, topography, conditions of sale, parcel size and other factors. He utilized 18 sales throughout Putnam County between May 2006 and April 2011. The parcels ranged in size from 13 acres to 255 acres. The price per acre ranged from $8,129 to $46,403. On close examination, the "comparability" of many of the sales is questionable as unknown, unexplained or irrelevant factors affected value. For example, Comparable Number 3 reflects a price increase from 600,000 in June 2005 to $1,290,000 in October 2006, while Comparable Number 4 increased in value from $195,000 to $223,750 between June 2005 and February 2007. Comparable Sale Number 5, like Sales 3 and 4, is zoned Rural Residential and sold for an average price of $5,547/acre, significantly less than sales 3 and 4 ($10,711/acre). Comparable Sale Number 6 consists of 46.66 acres in an R-3 zone, similar to the zoning of the subject property. Mr. Ferrarone's report identified the Comparable Sale # 6 entire site as "a State wetlands and wetlands buffer zone". It is unknown how much of that land, if any, could be developed as a result of the description of the wetlands limitation. Comparable Sale Number 7 consists of three adjacent tax parcels, one of which has no street frontage. There is also an elevation change suggesting steep slopes and wetlands along

the frontage where Peekskill Hollow Creek parallels Peekskill Hollow Road. The three parcels, totaling 69.2 acres are located in an R-3 zone and sold for a price per acre of $8,871.

Sales 8 and 9 are both located in the adjacent Town of Kent. One is in a two acre residential zone, and the second has no direct street frontage and it was purchased as a buffer to New York City Water Supply lands. Sales 10, 14, and 15, are located in the hamlet of Garrison, a wealthy enclave within the Town of Philipstown with large estates and significantly higher property values. Sale Number 10 was a conveyance of three contiguous parcels to the State of New York Office of Parks Recreation and Historic Preservation. Sales 17 and 18 are also questionable as to their comparability. Sale 17 is a 16.36 acre parcel in an established gated community in the Town of Carmel. Sale 18 is a 60 acre parcel overlooking the Reservoir in the Town of Southeast where it lies in close proximity to commercial centers, highways, and rail transportation. While identity of size, use, zoning, and other factors is not required, the utilization of such varied parcels raises serious questions as to the degree of comparability. That degree of comparability is a question of fact. *Latham Holding Co. v. State of New York*, 16 NY2d 41, 45-6 (1965). In making that factual determination, the Court will focus on the quality of the comparables, not the quantity. Indeed, the quantity itself, suggests the properties do not have

many comparable factors. In addition, the proximity of comparables is a factor to consider. "Receiving evidence of sales of property beyond the immediate vicinity of the subject property is a matter resting in the sound discretion of the trial judge". *Levin v. State of New York*, 13 NY2d 87, 92 (1963). For the reasons herein, the Court rejects Mr. Ferrarone's "Comparable Sales" 3,4,5,6,7,8,,9,10,14,15,and 18. *Matter of Bialystock & Bloom v. Gleason*, 290 AD2d 607, 610 (3rd Dept. 2002).

Motion *in Limine*

At trial, petitioner's moved *in limine* to disregard that portion of Respondent's Appraisal (Exhibit A) addressed to the residential lots (lots 28, 45, 50, and 52) (Ex. A, pp. 94-141). Trial appraisals were exchanged on May 14, 2014 and the trial commenced on June 3, 2014. The motion was made in open court on June 10, 2014. The Court reserved decision at the time and chose to hear the testimony of Respondents Appraiser subject to the motion. Counsel did not object to this procedure.

The grounds for the motion was Respondent's alleged failure to comply with 22 NYCRR 202.59 (g) (2). Petitioner claims that Respondents' appraisal fails to "contain a statement of the method of appraisal relied on and the conclusions of value reached by the expert together with the facts, figures, and calculations by which the conclusions were reached" 22 NYCRR

202.59 (g) (2). Further, the Rule requires "the report shall contain a clear and concise statement of every fact a party will seek to prove in relation to those comparable properties".[10] Id. In support of its application Petitioner claims a grid showing percentage adjustments on the residential lots for time, location, size, zoning, access, and topography and a net percentage change were not explained beyond the mathematical computations.[11] Neither the adjustments, or lack of adjustments is supported by an explanation, nor discussion of the factors relied upon by Respondents Appraiser.

Respondent opposes the motion, claiming the detailed adjustment grids contain the facts, figures and calculations. The absence of a narrative containing further description does not lead to striking the residential portion of the report, according to Respondent. Respondent's appraiser admitted that he did not have a separate explanation for residential adjustments (Tr. 293). While the report is described on the cover page as a self-contained format as required for a trial appraisal, Respondent's appraiser makes repeated references within the document to the

[10] 22 NYCRR 202.59 (g)(2) embodies the goal of meaningful and relevant data: "All pertinent value influences, facts and conclusions about trends should be clearly indicated in the report and related specifically to the property being appraised. Because the data forms the basics for the appraisers judgments, a thorough explanation of the significance of the data reported ensures that the reader will understand these judgments". The Appraisal of Real Estate, 13. ed. p. 137. The Appraisal Institute.

[11] Notably, the missing data and support are included in the Appraiser's report with respect to the commercial parcel (Ex. A, pp. 83-4).

fact that it is a "summary appraisal report" (Tr. 289-93), which he asserts were typographical errors.

The motion is granted to the extent the Court will utilize the report and testimony concerning residential sales where the explanations of adjustments are sufficient, but will limit the weight, or ignore, unexplained or incomplete factors.

In the first instance, the premise of 22 NYCRR 202.59 (g)(2)arises in a RPTL Article 7, tax certiorari proceeding, where he taxing authority is granted a rebuttable presumption of validity to the valuation of property it made. *Matter of Roth v. City of Syracuse*, 21 NY3d 411, 417 (2013). The taxpayer, here Petitioner, has the burden of coming forward with substantial evidence that the property was overvalued, by offering a "detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser" (*Matter of Niagara Mohawk Power Corp. v Assessor of Town of Geddes*, 92 NY2d 192, 196, 699 N.E.2d 899, 677 N.Y.S.2d 275 [1998] quoted in *In the Matter of the Board of Managers of French Oaks Condominium v. Town of Amherst, et al.*, 23 NY3d 168,175 (2014)). Should Petitioner fail to meet that burden, the Petition is dismissed. *Mtr. of Johnson v. Town of Haverstraw*, 133AD2d 86 (2d Dept. 1987). Once Petitioner satisfies the substantial evidence standard, the presumption disappears and the court must "weigh

the entire record" *Mtr. of FMC Corp. v. Unmack*, 92 NY2d 179, 187 (1998). That record will usually include an appraisal report on behalf of the taxing authority. In order to facilitate the trial of such proceedings, the Uniform Rules for the New York State Trial Courts require as the basic requirements for written appraisals:

> "The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also may contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs".

22 NYCRR 202.59 (g)(2).

The Court of Appeals recently addressed 22 NYCRR 202.59 and the purpose it serves, recognizing the exchange of trial ready reports facilitates the presentation of testimony and allows counsel to prepare for cross-examination. *In the Matter of the Board of Managers of French Oaks Condominium v Town of Amherst, et. al.*, 23 NY3d 168 (2014). There, the Court of Appeals acknowledged a series of Appellate Division holdings that "an appraisal should be disregarded when a party violates section

202.59 (g)(2) by failing to adequately "set forth the facts, figures and calculations supporting the appraiser's conclusions". *Id.* 176. See also *Matter of Gullo v. Semon*, 265 AD2d 656 (3rd Dept. 1999). The appraisal process itself entails some degree of subjectivity. The absence of "facts, figures, and calculations" inflates the inherent subjectivity to the point of speculation, whim, or desired result. Subjective mental adjustments are not a substitute for "facts, figures, and calculations" *Mtr. of Rusciano & Son Corp. v. Roche*, 118 AD2d 861 (2d Dept. 1986).

Yet the deficiencies and omissions might not be readily apparent from the report itself. While the description of each comparable residential sale contains some facts and figures which were subject to cross-examination, a review of Respondent's appraiser's testimony illustrates further shortcomings. A 6% adjustment for "access" is not explained beyond the given description (Tr. 381), and nowhere in the discussion of the residential properties is there a definition or standard of "access" by which an adjustment can be made (Tr. 382). He conceded that it could mean access to a local highway, or access to the parcel. At another point the witness testified that access is "access to the lot itself" (Tr. 389). It is noted that almost every access adjustment is 6% except for one which is 0% and one which is -6% (Tr. 382). Similarly, the comparison of an

approved subdivision to an unimproved subdivision, in terms of value, or whether an adjustment is required is not explained (Tr. 383). Topography and wetlands are significant building constraints in Putnam Valley, but receive only passing mention in many descriptions, and adjustments for these factors, are not explained. Frontage is given disparate treatment in that extensive frontage may be important on some parcels, but not others. The witness concedes that the difference between certain facts and his conclusions is not explained; at one point there was this colloquy:

> Q. There is nothing that shows me the calculation you made to get from $10,671. ?,
>
> A. It's not. I don't think I have to give you a calculation. I simply concluded based on that information and everything else that is contained in this report that the value for that year is $9,000 per acre.

(Tr. 437). These examples are not exhaustive but are intended to illustrate the deficiency. The effect is to leave the court with limited guidance on these issues. Yet, given the amount of information provided, the impact of disregarding or striking that portion of the report relating to the residential portion of the property in its entirety would seem an extreme penalty though a permissible one.[12]

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[12] This is especially true where some of the adjustments made by Petitioner's appraiser were not satisfactorily explained, but were not the subject of a motion *in limine*.

Matter of Northville Indus. Corp. v. Bd. of Assessors of Town of Riverhead,143 AD2d 135, 136-37 (2nd Dept. 1988). The alternative available to the Court is to utilize the report and testimony concerning residential sales where possible, but to limit the weight given to unexplained, or incomplete factors. Specifically, the Court will reject Respondents adjustments for "access" and other adjustments that are not clearly explained. *Mtr. of 50540 Realty v. Tax Comm. of the City of New York*, 136 AD2d 699 92nd Dept. 1988); *Mtr. of Johnson v. Town of Haverstraw*, 133 AD2d 86 (2nd Dept. 1987).

Appraisal Criteria

The "ultimate purpose of valuation…is to arrive at a fair and realistic value of the property involved". *Matter of Great Atl. and Pac. Tea Co. v. Kiernan*, 42 NY2d 236, 242. See generally, *FMC Corporation v. Unmack*, 92 NY2d 179, 189-90 (1998). While the "best evidence of value is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy", *Matter of Allied Corp. v. Town of Camillus*, 80 NY2d 351, 356 (1992) here, that yardstick is lacking. The original sale cannot be said to be an arm's length transaction, since more than a year had passed between the signing of the contract date and the sale date. An arm's length

sale refers to a real estate transaction in an open market freely arrived at by normal negotiations without undue pressure on either the buyer or seller. See, *Plaza Hotel Associates v. Wellington Assocs.*, 37 NY2d 273, 277 (1975) quoting, *Matter of Woolworth Co. v. Tax Comm.*, 20 NY2d 561, 565 (1967); *Matter of Reckson Operating Partnership, LP v. Assessor of the Town of Greenburgh*, 289 AD2d 248 (2nd Dept. 2001); *Matter of Robert Lovett v. Assessor of the Town of Islip*, 298 AD2d 521 (2nd Dept. 2002); *W.T. Grant Company v. Srogi*, 52 NY2d 496 (1981). In the present case, the contract date (July 7, 2000) and sale date (September 8, 2005) are more than five years apart, and this sale is therefore not an arm's length transaction.., *F.W. Woolworth Co. v. Tax Commission of City of New York*, 20 NY2d 561, 565 (1967).

Comparability is a key factor in the Sales Comparison approach.[13] How it is defined is subjective and varies from case to case. "By its very definition, a comparable sale need not be identical to the subject property… but need only be sufficiently similar to serve as a guide to the market value of the [subject] complex, notwithstanding differences between these comparables and the [subject] property" *Matter of Eckerd Corp. v. Semon*, 35

[13] "Comparable" is a relative term. If "comparable" is meant to mean a reasonable alternative or substitute for prospective purchasers of the subject property, few, if any, of the properties utilized by the appraisers would fit the description. Essentially, the Court is being asked to extrapolate from items of comparison on particular properties.

AD3d 931,933-34, (3d Dept. 2006) [internal quotation marks and citations omitted].

Appraisal Testimony
Residential Property

Both appraisers agreed that certain residential parcels were comparable. These parcels include parcel 63-2-1 (Ferrarone #5, Sterling #1) parcel 85.13-1-29 (Ferrarone #6, Sterling #2), parcel 73-2-25,27,and 29 (Ferrarone #7, Sterling #3) It is unknown why Mr. Ferrarone did not include parcel 73-2-24, utilized by Mr. Sterling, and apparently adjacent to parcels 73-2-25,27, and 29, utilized by both appraisers. In addition, each appraiser treated the four residential parcels as one parcel for assessment purposes as they agreed that the development proposal in Exhibit B-1, utilizing all four parcels was appropriate. The four parcels include a 60 acre parcel that was devoted to open space (and not buildable), and a 1.27 acre parcel which provides a point of emergency access to Bryant Pond Road, if needed, and two 27 acre parcels.

The first comparison of parcel 63-2-1 shows a significant variation in adjustments. Mr. Ferrarone's adjustments total 8% while Mr. Sterling has an adjustment of -30%. The main difference between the two is a topography adjustment of -5% by Mr. Sterling and 12% by Mr. Ferrarone. Without an explanation from Mr. Ferrarone, his adjustment cannot be accepted. Similarly the

access adjustment is not explained, leaving a net adjustment of -10% or $4,992. With "adequate" frontage there does not appear to be a basis for Mr. Sterling's -5% adjustment, nor does there appear to be a basis for a "location" adjustment of -5%. Thus, Mr. Sterling's net adjustment should be reduced from -30% to -20% or $4,437.

The next comparison of parcel 85.13-1-29 reflects an almost equal set of net adjustments, but for different reasons. The Sterling appraisal gives more weight to the role of seller financing (which might raise a question about whether the transaction is arms-length). There is a difference in the topography adjustment as well as a wetlands adjustment by Mr. Sterling. Mr. Ferrarone indicated a wetlands issue in his report (Exhibit A, pp.105, "The entire site is State wetlands and wetlands buffer zone"), but did not adjust for it while Mr. Sterling made a 20% adjustment for it. The lack of adjustment by Mr. Ferrarone was not explained.

The third parcel used by both is 73-2-25, 27 and 29, a combination of three parcels. Here too, the net adjustment differs by 21%. The access adjustment by Mr. Ferrarone is not explained and a regular use of an access adjustment of 6% or -6% that is not otherwise explained should not be considered. Thus, his net adjustment should be reduced to 5% for a value of $9,091.

Mr. Sterling limited his properties to those in Putnam

Valley. All but sales 7 and 8 were three acre parcels. While 7 and 8 were in a Conservation District with a minimum five-acre parcel, an adjustment was made for the zoning difference. In contrast, Mr. Ferrarone utilized properties in Kent, Carmel, Patterson, and Garrison (Philipstown). Seven of his "comparables" had adjustments of 40% or more and are questionable. As stated previously, one was in a gated community on 16 acres, and one was a buffer for New York City Reservoir property. The Court declines to consider properties with adjustments of 40% or more as comparables (see note 16, *infra*). Similarly, properties acquired as parkland, or watershed buffers are of dubious comparability (and may be viewed as other than an arms-length transactions due to the unlimited resources of the municipality and the possibility of eminent domain proceedings).

In determining the average value, the Court will utilize Mr. Sterling's sales, as adjusted, and Mr. Ferrarone's sales in Putnam Valley, as adjusted. The adjustments of Mr. Ferrarone's sales incorporates the ruling on the motion *in limine*. Further, set forth below are the residential parcels utilized by the Court in determining the revised assessed value with modifications of Mr. Ferrarone's adjustments in accordance with the ruling herein on the motion *in limine*. In some cases, (Sales 1,3 and 4) adjustment for access was disallowed; in others, the text

explained the adjustments made (Sale 5 and 7).

Set forth below are the average value, mean value, and the Court's determination of value ("value") for the years indicated. In determining value, the court has considered all the factors set forth herein, the average value, the mean value, the range of values, the time periods involved, the details of comparable sales and adjustments, the presence or absence of municipal approvals, development costs, environmental factors, and other relevant factors. Based on an analysis of the average and mean values of the comparable properties as adjusted, and with due regard to the qualities of the individual parcels as set forth in the record, the Court concludes that the following value is proper for each assessment year:

As of July 2008:

<u>Sterling</u>		
Land Sale 1	$ 4,437	
Land Sale 2	$ 4,902	
Land Sale 3	$ 7,787	
Land Sale 4	$ 7,339	
<u>Ferrarone</u>		
Land Sale 1	$ 8,129	(no adjustment for access)
Land Sale 2	$ 9,295	
Land Sale 3	$ 34,803	(no adjustment for access)[14]
Land Sale 4	$ 7,926	(no adjustment for access)
Land Sale 5	$ 4,992	(see text)
Land Sale 6	$ 5,767	
Land Sale 7	$ 9,091	(see text)
Total:	$104,466	

[14] This sale is considered an "outlier" and not used in determining mean value.

Average price per acre: $9,497

Mean (Combination of Sterling 4
and Ferrarone 4) $7,563

Value $8,100

Assessed Value at $8,100 x 115 = $931,500

As of July 2009:

Sterling

Land Sale 5	$ 2,768
Land Sale 6	$ 1,255
Land Sale 7	$ 1,734
Land Sale 8	$ 3,223

Ferrarone

Land Sale 7	$ 9,091 (see text)

Total: $18,071

Average price per acre: $3,614

Mean (#5) $2,768

Value $3,300

Assessed Value at $3,300 x 115 = $379,500

As of July 2010:

Sterling

Land Sale 5	$ 2,768
Land Sale 6	$ 1,255
Land Sale 7	$ 1,734
Land Sale 8	$ 3,223

Ferrarone

Land Sale 16	$ 9,664[15]

Total: $ 18,644

[15] The adjustment for access is eliminated. A larger adjustment for size, from -15% to -20% is warranted based on the size of the parcel.

Average price per acre: $3,729

Mean (#5) $2,768

Value $3,300

Assessed Value at $3,300 x 115 = $379,500

As of July 2011:

<u>Sterling</u>

Land Sale 5	$ 2,076
Land Sale 6	$ 1,004
Land Sale 7	$ 1,387
Land Sale 8	$ 2,417

<u>Ferrarone</u>

Land Sale 16	$ 9,664
Total:	$ 16,548

Average price per acre: $3,309

Mean (#5) $2,076

Value $3,000

Assessed Value at $3,000 x 115 = $345,000

As of July 2012:

<u>Sterling</u>

Land Sale 5	$ 2,768
Land Sale 6	$ 1,255
Land Sale 7	$ 1,734
Land Sale 8	$ 3,223

<u>Ferrarone</u>

Land Sale 16	$ 9,664
Total:	$ 18,644

Average price per acre: $3,729

Mean (#8) $3,223

Value $3,300

Assessed Value at $3,300 x 115 = $379,500

The values set forth above are well within the range of testimony (*See Rose v. State*, 24 NY2d 80 [1969]) as well as supported by other testimony and adequately explained *(Matter of City of New York* [*Reiss*, 55 NY2d 885 [1982]; *Matter of Metropolitan Transportation Authority* [*Longridge Associates*], 122 AD3d 856 [2nd Dept 2014]).

Commercial Property

The dearth of commercial property or development in the Town of Putnam Valley, in and of itself, says much about issues of value, demand, location, and all factors affecting fair assessment. Mr. Sterling found one comparable sale in Putnam Valley (Sale # 1, Ex.2, p.75) which occurred in 2004. Looking beyond the geographic limits of the Town of Putnam Valley, while necessary, requires caution. Both appraisers testified, and the Court adopts their acknowledgment, that other areas of Putnam County have well developed commercial corridors, easy interstate access, adequate parking, and a greater likelihood of benefitting from the adjacent or nearby commercial neighborhood. (Tr.97, 103, 130-31,141,309-11,314-18,323-24,326-27,342-43,362, Ex. 2, p.27). Consequently, the commercial parcels in Putnam Valley cannot generate the revenues of properties in Southeast, Carmel or Patterson.

The Assessed Values for Assessment years 2007 through 2012 range from a high in 2007 and 2008 of $3,027,000 or 86,485/acre to a low in 2013 of $1,762,870 or $50,367/acre. Respondent's concede in the conclusions of Mr. Ferrarone that the commercial parcels are over assessed by approximately 50%, (Exh. A, p. 141) and a reduction is necessary. Petitioner's suggest the over assessment is as high as 90%, which may be reflective of the fewer sales utilized. The court observes that of the 17 commercial parcels used by Mr. Ferrarone six of them had net adjustments of more than 40%, and one had an adjustment of as high as 68%.[16] Those large adjustments clearly suggest that the subject property is substantially less desirable than the other properties. Further, the large adjustments minimizes the comparable nature of some of the properties (Tr. 429-433) utilized by Mr. Ferrarone, notwithstanding some of the properties were also used by Mr. Sterling. "Comparables...which are too "remote" from the subject property, and require "extensive adjustment" are, as a result, diminished in their evidentiary value. *Matter of W.O.R.C. Realty Corp. v. Board of Assessors,*

[16] "If one or two comparable transactions require fewer total adjustments than the other comparable transactions, an appraiser may attribute greater accuracy and give more weight to the value indications obtained from these transactions, particularly if the magnitude of the adjustments is approximately the same. Although the number of adjustments made to the sale prices of the comparable properties may be similar, the gross dollar amount of the total adjustments might vary considerably....If the sales are similar otherwise, less accuracy may be attributable to the comparable property that required the larger adjustment". The Appraisal of Real Estate, 13. ed. p. 312. The Appraisal Institute.

100 AD3d 75, 95 (2nd Dept. 2012).

The Court does not sit solely as a statistician or a mathematician. Still, when confronted with "facts, figures and calculations" some must be included, excluded, and weighed to enable the Court to render a decision. The commercial advantages of the Route 22/Interstate 84/Interstate 684 corridor in Southeast and Patterson, stand in contrast to the almost total absence of those advantages on Bryant Pond Road in Putnam Valley (Tr. 141,326,342-43, Ex. 2, p.32, Ex. A, pp.14-18,29-30,48-55). Here, the Court has evaluated that testimony together with the "facts figures and calculations" with respect to the commercial parcel on Bryant Pond Road. The Court has determined to ignore those "comparable" properties with net adjustments in excess of 40% contained in the appraisal of Mr. Ferrarone.[17] Similarly, the Court rejects Mr. Sterling's "comparable" commercial Land Sale 4 (Ex. 2, pp.113-14) with a 40% net adjustment. Set forth below are the average value, mean value, and the Court's determination of value ("value") for the years indicated. In

[17] Specifically, the Court has rejected Mr. Ferrarone's Land Sales 1,2, 3, 4, 6, 8, 12, and 17. Although Land Sale 16 has a net adjustment of less than 40%, the failure to accord a significant adjustment for location was not sufficiently explained. The parcel is at the center of a commercial location surrounded by two shopping centers, on a major east-west thoroughfare (Route 6) which handles heavy traffic on a daily basis, and also has convenient access to Northern Westchester. The subject property has no neighboring shopping centers. "Few factors affecting the value of commercial real property are better known than the value which is produced by being adjacent to a busy shopping center". *Latham Holding Co. v. State of New York*, 16 NY2d 41, 46 (1965).

determining value, the court has considered all the factors set forth herein, the average value, the mean value, the range of values, the time periods involved, the details of comparable sales and adjustments, the presence or absence of municipal approvals, development costs, environmental factors, and other relevant factors. Based on an analysis of the average and mean values of the comparable properties as adjusted, and with due regard to the qualities of the individual parcels as set forth in the record, the Court concludes that the following value is proper for each assessment year:

As of July 2006:

<u>Sterling</u>	
Sale 1	$ 12,218
Sale 2	$ 8,549
Sale 3	$ 9,917
Sale 4	$ 10,130
<u>Ferrarone</u>	
Land Sale 5	$ 24,313
Land Sale 7	$ 40,031
Total:	$105,158

Average price per acre: $17,526

Mean (combination of sales 1 & 4) $11,174

Value $17,500

Assessed Value at $17,500 x 35 = $612,500

As of July 2007:

<u>Sterling</u>	
Sale 1	$ 12,218

Sale 2	$ 8,549
Sale 3	$ 9,917
Sale 4	$ 10,130

Ferrarone

Land Sale 5	$ 24,313
Land Sale 7	$ 34,584 [18]
Total:	$ 99,711

Average price per acre: $16,618

Mean (combination of sales 1 and 4) $11,174

Value $15,750

Assessed Value at $15,750 x 35 = $551,250

As of July 2008:

Sterling

Sale 1	$ 12,218
Sale 2	$ 8,549
Sale 3	$ 9,917
Sale 4	$ 10,130

Ferrarone

Land Sale 5	$ 24,313
Land Sale 7	$ 34,584
Land Sale 9	$ 27,620
Land Sale 10	$ 32,924
Land Sale 11	$ 47,297
Total:	$207,551

Average price per acre: $23,060

Mean (#5) $24,313

Value $23,500

[18] The Land Sale 7 has two different values on Mr. Ferrarone's grid. In 2006 the adjusted value was $43,031/acre. In 2007, the adjusted value was $34,584. The adjustments for utility change from -6% to 0, and the zoning is changed from -12% to -18%. No explanation is offered. The 2007 value is used in subsequent years.

Assessed Value at $23,500 x 35 = $822,500

As of July 2009:

Sterling

Sale 1	$ 9,942
Sale 2	$ 6,412
Sale 3	$ 7,438

Ferrarone

Land Sale 7	$ 34,584
Land Sale 9	$ 27,620
Land Sale 10	$ 32,924
Land Sale 11	$ 47,297
Land Sale 13	$ 16,057
Land Sale 14	$ 25,286
Land Sale 15	$ 10,997

Total: $218,557

Average price per acre: $21,856

Mean (combination of 13 and 14) $20,670

Value $20,800

Assessed Value at $20,800 x 35 = $728,000

As of July 2010:

Sterling

Sale 1	$ 9,942
Sale 2	$ 6,412
Sale 3	$ 7,438

Ferrarone

Land Sale 9	$ 27,620
Land Sale 10	$ 32,924
Land Sale 11	$ 47,297
Land Sale 13	$ 16,057
Land Sale 14	$ 25,286
Land Sale 15	$ 10,997

Total: $183,473

Average price per acre: $20,386

Mean (#13) $16,057

Value $18,200

Assessed Value at $18,200 x 35 = $637,000

As of July 2011:

Sterling

Sale 1	$ 8,331
Sale 2	$ 5,567
Sale 3	$ 6,446

Ferrarone

Land Sale 10	$ 32,924
Land Sale 11	$ 47,297
Land Sale 13	$ 16,057
Land Sale 14	$ 25,286
Land Sale 15	$ 10,997

Total: $152,895

Average price per acre: $19,111

Mean (combination of 15 and 16) $13,527

Value $17,500

Assessed Value at $17,500 x 35 = $612,500

As of July 2012: [19]

Sterling

Sale 1	$ 9,942
Sale 2	$ 6,412
Sale 3	$ 7,438

Ferrarone

Land Sale 10	$ 32,924
Land Sale 11	$ 47,297
Land Sale 13	$ 16,057

[19] Mr. Ferrarone indicated there was no change in 2012 from 2011 (Exhibit 13)

Land Sale 14	$ 25,286
Land Sale 15	$ 10,997
Total:	$156,353

Average price per acre: $19,544

Mean (combination of 13 and 15) $13,527

Value $18,000

Assessed Value at $18,000 x 35 = $630,000

The values set forth above are well within the range of testimony (*See Rose v. State*, 24 NY2d 80 [1969]) as well as supported by other testimony and adequately explained (*Matter of City of New York* [*Reiss*, 55 NY2d 885 [1982]; *Matter of Metropolitan Transportation Authority* [*Longridge Associates*], 122 AD3d 856 [2nd Dept 2014]).

The Revised Assessments

Based on the determinations of assessed value per acre, the revised assessed values are set forth below and hereby Ordered by the Court:

Tax Map. No.	Assessment Year	Acres	Value Per Acre	Assessed Value
74.-1-35	2007	35	$ 17,500	$612,500
74.-1-35	2008	35	$ 15,750	$551,250
74.-1-35	2009	35	$ 23,500	$822,500
63.-3-28	2009	60	$ 8,100	$486,000
63.-3-45	2009	27	$ 8,100	$218,700
63.-3-50	2009	1	$ 8,100	$ 8,100
63.-3-52	2009	27	$ 8,100	$218,700

74.-1-35	2010	35	$ 20,800	$728,000
63.-3-28	2010	60	$ 3,300	$198,000
63.-3-45	2010	27	$ 3,300	$ 89,100
63.-3-50	2010	1	$ 3,300	$ 3,300
63.-3-52	2010	27	$ 3,300	$ 89,100
74.-1-35	2011	35	$ 18,200	$637,000
63.-3-28	2011	60	$ 3,300	$198,000
63.-3-45	2011	27	$ 3,300	$ 89,100
63.-3-50	2011	1	$ 3,300	$ 3,300
63.-3-52	2011	27	$ 3,300	$ 89,100
74.-1-35	2012	35	$ 17,500	$612,500
63.-3-28	2012	60	$ 3,000	$180,000
63.-3-45	2012	27	$ 3,000	$ 81,000
63.-3-50	2012	1	$ 3,000	$ 3,000
63.-3-52	2012	27	$ 3,000	$ 81,000
74.-1-35	2013	35	$ 18,000	$630,000
63.-3-28	2013	60	$ 3,300	$198,000
63.-3-45	2013	27	$ 3,300	$ 89,100
63.-3-50	2013	1	$ 3,300	$ 3,300
63.-3-52	2013	27	$ 3,300	$ 89,100

Conclusion

The Petitions, with costs [R.P.T.L. §722[1]), are sustained to the extent indicated above, the assessment rolls are to be corrected accordingly, and any overpayments of taxes are to be refunded with interest.

The foregoing constitutes the Decision and Order of the Court. Submit Judgment on notice.

Dated: Carmel, New York
February 10, 2015

HON. VICTOR G. GROSSMAN, J.S.C.

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		Decision		
	Original AV	New AV	AV Reduction	%
2007				
74.-1-35:	$3,027,000	$612,500	$2,414,500	80%
Total:	$3,944,200	$612,500	$2,414,500	80%
2008				
74.-1-35:	$3,027,000	$551,250	$2,421,600	82%
Total:	$3,944,200	$551,250	$2,421,600	82%
2009*				
63.-3-45:	$148,900	$148,900	$0	0%
63.-3-50:	$108,000	$8,100	$99,900	93%
63.-3-52:	$148,000	$148,000	$0	0%
63.-3-28:	$356,400	$356,400	$0	0%
74.-1-35:	$1,995,100	$822,500	$1,172,600	59%
Total:	$2,756,400	$1,483,900	$1,272,500	46%
2010				
63.-3-45:	$148,900	$89,100	$59,800	40%
63.-3-50:	$108,000	$3,300	$104,700	97%
63.-3-52:	$148,000	$89,100	$58,900	40%
63.-3-28:	$356,400	$198,000	$158,400	44%
74.-1-35:	$1,995,100	$728,000	$1,267,100	64%
Total:	$2,756,400	$1,107,500	$1,648,900	60%
2011				
63.-3-45:	$148,900	$89,100	$59,800	40%
63.-3-50:	$101,600	$3,300	$98,300	97%
63.-3-52:	$139,200	$89,100	$50,100	36%
63.-3-28:	$335,100	$198,000	$137,100	41%
74.-1-35:	$1,875,400	$637,000	$1,238,400	66%
Total:	$2,756,400	$1,016,500	$1,739,900	63%
2012				
63.-3-45:	$148,900	$81,000	$67,900	46%
63.-3-50:	$101,600	$3,000	$98,600	97%
63.-3-52:	$139,200	$81,000	$58,200	42%
63.-3-28:	$335,100	$180,000	$155,100	46%
74.-1-35:	$1,875,400	$612,500	$1,262,900	67%
Total:	$2,756,400	$957,500	$1,798,900	65%
2013				
63.-3-45:	$148,900	$89,100	$59,800	40%
63.-3-50:	$101,600	$3,300	$98,300	97%
63.-3-52:	$139,200	$89,100	$50,100	36%
63.-3-28:	$321,000	$198,000	$123,000	38%
74.-1-35:	$1,762,870	$630,000	$1,132,870	64%
Total:	$2,756,400	$1,009,500	$1,746,900	63%

*For 2009, the Judge attempts to increase the assessments for lots 28, 45 and 52, but this is not allowed by law, and a correction should be made