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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
----------X

In the Matter of the Application of
COONEY REALTY CO.,

Petitioner,

-against -

THE ASSESSOR OF THE TOWN OF GREENBURGH, THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF GREENBURGH, AND THE TOWN OF GREENBURGH,

Respondents,

For a Review of Tax Assessments under Article 7 of the Real Property Tax Law.

DECISION/ ORDER/JUDGMENT

Index Nos:
16264/01
16265/01
17685/02
17686/02

----------X

In the Matter of the Application of
WESTCHESTER INDUSTRIES, INC.,

Petitioner,

-against -

THE ASSESSOR OF THE TOWN OF GREENBURGH, THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF GREENBURGH, AND THE TOWN OF GREENBURGH,

For a Review of Tax Assessments under Article 7 of the Real Property Tax Law.

Respondents.

Index Nos.
16266/01
16267/01
17687/02
17688/02

----------X

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In the Application of
FERRY LANDING, LLC and WESTCHESTER
INDUSTRIES, INC.,

Petitioner,

Index Nos.
16364/03
15891/04
16077/05

- against -

THE ASSESSOR OF THE TOWN OF GREENBURGH,
THE BOARD OF ASSESSMENT REVIEW OF THE
TOWN OF GREENBURGH, AND THE TOWN OF
GREENBURGH,

Respondents.

For a Review of Tax Assessments under
Article 7 of the Real Property Tax Law.

----------X
In the Matter of the Application of
COONEY REALTY CO.,

Petitioner,

Index Nos.
6525/01
6527/01
7113/02

- against -

THE ASSESSOR OF THE VILLAGE OF TARRYTOWN,
THE BOARD OF ASSESSMENT REVIEW OF THE
VILLAGE OF TARRYTOWN, AND THE VILLAGE OF
TARRYTOWN,

Respondents.

For a Review of Tax Assessments under
Article 7 of the Real Property Tax Law.
----------X

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In the Matter of the Application of
WESTCHESTER INDUSTRIES, INC.,

Petitioner,

-against -

THE ASSESSOR OF THE VILLAGE OF TARRYTOWN,
THE BOARD OF ASSESSMENT REVIEW OF THE
VILLAGE OF TARRYTOWN, AND VILLAGE OF
TARRYTOWN,

Respondents.

For a Review of Tax Assessment under
Article 7 of the Real Property Tax Law.

Index Nos.
6526/01
7114/02
6830/03

----------X
In the Matter of the Application of
FERRY LANDING, LLC and WESTCHESTER
INDUSTRIES, INC.,

Petitioners,

-against -

THE ASSESSOR OF THE VILLAGE OF TARRYTOWN,
THE BOARD OF ASSESSMENT REVIEW OF THE
VILLAGE OF TARRYTOWN, AND VILLAGE OF
TARRYTOWN,

Respondents.

For a Review of Tax Assessment under
Article 7 of the Real Property Tax Law

Index Nos.
6690/04
6861/05

----------X

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In the Matter of the Application of
FERRY LANDING, LLC,

Petitioners, Index Nos. 6839/03

-against -

THE ASSESSOR OF THE VILLAGE OF TARRYTOWN, THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF TARRYTOWN, AND VILLAGE OF TARRYTOWN,

Respondents.

For a Review of Tax Assessment under Article 7 of the Real Property Tax Law
----------X

LaCAVA, J.

The trial of this Tax Certiorari Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the Village of Tarrytown and Town of Greenburgh of the real property owned by Cooney Realty, Co, Ferry Landing LLC, and Westchester Industries (collectively Ferry or Petitioner), took place before the Hon. Thomas A. Dickerson on eighteen dates[1] in 2006, and in addition the following post-trial papers numbered 1 to 8 were considered in connection with the trial of this matter[2]:

PAPERS	NUMBERED
PETITIONERS' POST TRIAL MEMORANDUM OF LAW	1
PETITIONERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	2
POST TRIAL MEMORANDUM OF RESPONDENT GREENBURGH	3

[1]By stipulation entered into between the parties on the record on April 19, 2007, the parties agreed to have this Court rule on the instant matter, notwithstanding that the matter was tried before Justice Dickerson on the following dates: January 17, 18, 19, 20, and 23; March 20, 21 and 24; April 17, 19 and 21; May 10; July 5; August 1 and 2, and September 25, 26, and 27 2006.

[2]The Court acknowledges the assistance of Jessica L. Gush, summer intern and third year student at Pace University School of Law, and Andrew Berman, summer intern and second year student at Cardozo School of Law, in the preparation of this Decision and Order.

Based upon the credible evidence adduced at the trial, and upon consideration of the arguments of respective counsel and the post trial submissions, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The subject property consists of seven tax lots located within the Town of Greenburgh and the Village of Tarrytown, New York. The seven lots are contiguous, cover approximately 13 acres, and are known as Tax Map ID Nos. Vol. 1, Sheet 1, Parcels P13, P14, P21, P22, P23, P24 and P24A. All the lots are located within the Waterfront General Business District ("WGBD") of the Town of Greenburgh and the Village of Tarrytown; this zoning designation was changed from ID-Industrial to WGBD in 1998.

Proceedings were filed in assessment years 2001-2005 against both the Town of Greenburgh and the Village of Tarrytown. The prior owners, Cooney Realty Company (which owned lots P13, P24, and P24A) and Westchester Industries, Inc. (which owned P14, P21, P22 and P23), commenced these proceedings in 2001 and 2002; the current owners, Ferry Landings, LLC, then purchased the Cooney Realty lots, and received the Westchester Industries lots through a stock sale transfer, both in 2002, and have since commenced the remaining proceedings.

In 2003, Ferry submitted a formal site plan application to the Village of Tarrytown, proposing a mixed-use development of townhouses, loft residences, and commercial office space. In 2004, the Village of Tarrytown amended Local Law No. 1-2004 (the zoning ordinance) to accommodate this type of proposed development on the subject property. In 2005, the environmental review of the proposed development proceeded to a FEIS (Final Environmental Impact Statement).

The Individual Tax Lots

Lot P13 comprises approximately 2.16± acres of land with frontage on Railroad Avenue and Division Street. The tax lot is subject to an easement that benefits lots P22, P24 and P24A. The parcel was improved with a macadam surface, and utilized for many

years as a parking lot[3]. In 2004, a building permit was obtained to construct a 14,633± square foot building that is joined to an existing structure on adjoining, unrelated lots; this building/extension was then donated to the Village of Tarrytown by petitioner, and the use by the Village continues today. On the eastern section of the land is a depreciated, dilapidated building which is over 100 years old.

Lot P14 comprises approximately .62± acre of land and access is only available over the adjoining lot P13. Like the latter lot, this parcel was also improved with a macadam surface, and has been utilized as a parking lot throughout the valuation period.

P21 is approximately 5.34± acres of land with frontage on Lower Main Street to the north and the bank of the Hudson River to the west. The tax lot is subject to a surface right-of-way benefiting P23, which abuts P21. The site contains the dilapidated remains of six buildings formerly used in conjunction with an asphalt plant operated on adjoining lot P23. There is also a blacktop driveway extending from West Main Street to the New York Waterways dock on the Hudson River. Portions of the lot are located in a designated 100-year and 500-year floodplain.

P22 is approximately 1.37± acres of land with a surface right-of-way over abutting P13 to Division Street. In 1970, a part one- and two-story building was constructed and has been used to provide office space and as a warehouse with drive in bay trucking access and loading docks. There are also blacktop-parking areas to the east and north of the building. The lot is located in a Zone C area of minimal flooding.

P23 comprises approximately 1.93± acres of land and benefits, as set forth above, from a surface right-of-way extending over abutting P21 to the south. The lot abuts the Hudson River to the west. The site contains moveable equipment and machinery formerly used in the operation of the asphalt plant. Portions of the lot are also located in a designated 100-year and 500-year floodplain, and the parcel is contaminated with coal tar, although partial remediation of this condition was effected during the valuation period.

P24 comprises approximately 1.46± acres of land and benefits from a surface right-of-way extending over P13 to the east. The lot

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[3]As set forth in greater detail below, while the WGBD zoning precludes parking on this parcel and on parcel P14, the use, dating from at least the early 1990s, was a pre-existing non-conforming use.

abuts the Hudson River on the west. Portions of the lot too are located in a designated 100-year and 500-year floodplain. P24 is also improved by a one-story garage and office building which was constructed about 1971. The overall quality of this building is fair or average.

P24A is approximately .17± acre of land which benefits from a right-of-way which extends from the southern side of Division Street. This lot is located in Zone C areas of minimal flooding, and contains a one-story garage building build around 1965 and added-to in 1977. The building is currently subject to a long-term lease to the Tarrytown Union Free School District, and the overall quality of the building is average.

THE TESTIMONY

Petitioner's Appraisal Values and Arguments

Tax Lot P13

For all of the tax years at issue, petitioner's appraiser used both the sales comparison approach (as if the land was vacant) and the income capitalization approach (utilizing the parking lease). Zoning clearly allowed vehicular storage until 1998. In that year the zoning designation was changed, and vehicle storage was no longer permitted, however, since the prior use was demonstrably continuous, without any evidence of enforcement by respondent, it is evident that parking was a pre-existing non-conforming use. In October 2004 construction of a building on the site was completed, and the Tarrytown Department of Public Works took up residence therein.

Petitioner's income capitalization approach relied, for the period 2001-2003, on rents actually paid by tenants leasing either lots P13 or P14. Expenses were estimated, and a capitalization rate derived from the Korpacz Real Estate Investor Survey. The appraiser concluded the following values:

June 1, 2001 - $860,000
June 1, 2002 - $860,000
June 1, 2003 - $895,000
June 1, 2004 - $1,121,250

Petitioner's sales comparison approach used six comparable sales for the 2001-2003 tax years.

Comparable Land Sale No. 1 compromising approximately 2.76 acres is located on Marbledale Road in the Village of Tuckahoe,

Town of Eastchester, New York. It was purchased in November 1999 for $1,100,000, or $398,984 per acre. Notably, hillside property comprises some 40,000 square feet of this site.

Comparable Land Sale No. 2 includes approximately 1.61 acres (encumbered by a roughly 10,600 square foot permanent easement). It is located on Ashburton Avenue in the City of Yonkers, and was purchased in December 2001 for $530,000 or $329,193 per acre.

Comparable Land Sale No. 3, a 2.26 acres parcel on Edison Avenue in the City of Mount Vernon, was purchased in July 2000 for $1,500,000 or $662,544 per acre. It is subject to an agreement by the buyer to both clean the property and indemnify buyer from any claims arising from contamination.

Comparable Land Sale No. 4, measuring approximately 2.65 acres is located partially on South Terrace Avenue in the City of Mount Vernon and partly in Bronx County. It was purchased in October 2000 for a price of $2,000,000 or $754,148 per acre. Notably, the site is accessed via an easement over several neighboring properties.

Comparable Land Sale No. 5, a parcel of approximately 0.62 acres located on Lafayette Avenue in White Plains, was purchased in August 2004 for $650,000 or $1,048,667 per acre.

Comparable Land Sale No. 6 is a 2.951 acre parcel (of which 1.93 acres is upland and roughly 1.02 acres are underwater) situated on Fernbrook, Yerks and Pier Streets in the City of Yonkers. It was purchased in November 1997 for $800,000 or $1,271,095 per acre. The appraiser adjusted the unit price to $413,864 per acre for the uplands areas.

Generally, petitioner’s appraiser noted that land prices have increased by roughly 5% per year between 2000 and the valuation date. Other adjustments included size differences; encumbrance for right-of-way easements; site building depreciation; clean-up and indemnification costs; and flood zone location. The range in adjusted sales prices per acre extended from $240,722 to $584,465, with the appraiser placing somewhat more weight on Comparable Sale 1 than on the other comparable properties. Applying the data, a Greenburgh valuation of $400,000 per acre was selected as appropriate for the subject parcel, which the appraiser then reduced by 2.5% for the Tarrytown taxable status date.

The valuations for Tax Lot 13 using the comparable sales approach are as follows:

Tax Years 2001-2003

Sales Values:	Greenburgh	Tarrytown
June 1, 2001	$865,000	$845,000
June 1, 2002	$885,000	$865,000
June 1, 2003	$900,000	$880,000

Tax Years 2004-2005

The appraiser used five comparable leases, deriving a June 1, 2004 value of $75 per square foot, and a June 1, 2005 value of $76.50 per square foot, or

Income Values:
June 1, 2004 - $1,055,000
June 1, 2005 - $1,075,000

Weighing the 2004-20055 values equally, he determined

Final Values (Greenburgh and Tarrytown):

June 1, 2004 - $1,100,000
June 1, 2005 - $1,100,000

Tax Lot P14

For tax years 2003-2005, the petitioner's appraiser used both the sales comparison and income capitalization methods. He acknowledged the physical improvements on the parcel, noting that, like Tax Lot 13, zoning permitted parking prior to 1998, and that, since that use continued, it was a pre-existing non-conforming use.

Sales Comparison Approach

For 2001 to 2003, the appraiser also used the same six comparable sales as for parcel P13. He then made several adjustments, including for size, access, location within a flood zone, and arrived at a range of adjusted sales prices per square foot of between $8.11 to $19.45, with $13 per square foot as the most appropriate value for the subject parcel, which was then reduced by 2.5% for the Tarrytown tax dates.

Sales Value:	Greenburgh	Tarrytown
June 1, 2003	$385,000	$375,000
June 1, 2004	$405,000	$395,000
June 1, 2005	$425,000	$415,000

Income Capitalization Approach

The appraiser employed rents actually paid by tenants who leased either lots P13 or P14, while expenses were estimated and a capitalization rate derived the following values for both Greenburgh and Tarrytown:

January/June 1, 2003 - $385,000
January/June 1, 2004 - $385,000
January/June 1, 2005 - $385,000

Weighing the sales over the income values, that yielded final values of:

Sales Value:	Greenburgh	Tarrytown
June 1, 2003	$385,000	$375,000
June 1, 2004	$405,000	$395,000
June 1, 2005	$425,000	$415,000

Tax Lot P21

Petitioner's appraiser argued that the current "improvements", including the foundations on the parcels, offer no contributory value to the parcels. He also noted that demolition costs are roughly equivalent to the salvage value of the parcels.

Sales Comparison Approach

For all of the tax years form 2001 to 2005, the appraiser again used the same six comparable sales as for the above parcels. He then adjusted for, *inter alia*, size, the lack or minimal nature of easement encumbrances, and the non-flood zone status of the parcel, and found a range in adjusted sales prices per acre from $256,770 to $642,911. Equally emphasizing all comparables, as with the prior two parcels, he then arrived at a value of $450,000 per acre for the subject parcel.

Sales values:

	Greenburgh	Tarrytown
June 1, 2001	$2,400,000	
June 1, 2002	$2,525,000	
June 1, 2003	$2,650,000	$2,585,000
June 1, 2004	$2,775,000	$2,707,000
June 1, 2005	$2,925,000	$2,850,000

Tax Lot P22

This parcel is improved by a light industrial building. For all of the tax years at issue, petitioner's appraiser utilized both the sales comparison and income capitalization methods.

Sales Comparison Approach

Petitioner's appraiser utilized five comparable sales for the tax years at issue, yielding adjusted sales value per square foot of: $58.99; $61.38; $65.13; $57.61; $61.76, and a rent per square foot of building area of:

June 1, 2001 - $60.00
June 1, 2002 - $61.25
June 1, 2003 - $62.50
June 1, 2004 - $63.75
June 1, 2005 - $65.00

This yielded a Market Value (reduced 1% for the January taxable status dates of Tarrytown, based on his estimate of 2% per year increases), as follows:

	Greenburgh	Tarrytown
June 1, 2001	$1,600,000	$1,585,000
June 1, 2002	$1,600,000	$1,585,000
June 1, 2003	$1,700,000	$1,685,000
June 1, 2004	$1,700,000	$1,685,000
June 1, 2005	$1,700,000	$1,685,000

Income Capitalization Approach

The appraiser used rental data from the subject itself, as well as six market rental comparables.

Comparable Rental No. 1, an Industrial/Warehouse/Office building of 13,167 square feet, had an actual rent of $9.50 per square foot. Comparable Rental No. 2, a similar structure of 7,770 square feet, had an actual Rent of $10.04 per square foot. Comparable Rental No. 3, another similar property of 4,270 square feet, had an actual rent of $9.84 per square foot.

Comparable Rental No. 4, another Industrial/Warehouse/Office building with a size of 2,021 square feet, had an actual rent of $8.91 per square foot. Comparable Rental No. 5, a Warehouse/Office structure consisting of 3,065 square feet, had an actual Rent of $11.21 per square foot. Comparable Rental No. 6, an Industrial/Warehouse/Office property measuring 2,800 square feet,

had an actual Rent of $10.00 per square foot.

His final adjusted square foot rental amounts were $9.12; 9.32; $9.98; $8.51; $10.58; and $9.47 for all the Comparables.

Since the area of the subject was estimated at 19,346 square feet, comprised mostly of warehouse and light manufacturing space, the proper rent per square foot, as calculated by the appraiser, with an emphasis on comparable No. 3, was:

2001 - $9.50
2002 - $9.60
2003 - $9.70
2004 - $9.80
2005 - $9.90

Since he determined that the second story area (totaling 7,322 square feet) was worth approximately 20% less in each year, he calculated market values for that portion of the premises at:

2001 - $7.60
2002 - $7.70
2003 - $7.75
2004 - $7.85
2005 - $7.90

He then calculated the vacancy rate to be 10% for 2001-2002, and 15% for 2003-2005, with management expenses of 3% and reserves of 5%. The appraiser then used a non-institutional capitalization rate, believing that the property is not investment grade property. This yielded values, for both Greenburgh and Tarrytown, of:

June 1, 2001 - $1,500,000
June 1, 2002 - $1,500,000
June 1, 2003 - $1,500,000
June 1, 2004 - $1,500,000
June 1, 2005 - $1,600,000

Finally, relying primarily upon the income capitalization method for his final value estimate, he concluded the following:

Market Values Greenburgh/Tarrytown:

2001 - $1,500,000
2002 - $1,500,000
2003 - $1,500,000
2004 - $1,500,000
2005 - $1,600,000

Tax Lot P23

This parcel has minimal improvements, as well as non-assessable personal property related to the asphalt plant operation. The sales approach used by the appraiser was as if the land were vacant. Notably, while tax years 2001 to 2005 were at issue for the town, only 2003 to 2005 were at issue for the village.

For these tax years, the same six comparable sales were used as for parcels P13, P14, and P 21. The appraiser adjusted for, among other things, size, access, a permanent easement, and flood zone status. The range of adjusted sales prices per acre is from $328,987 to $759,804. He equally emphasized on all comparables, and calculated $500,000 per acre as being most appropriate for the subject parcel. With land prices increasing an average of about 5% per year, and considering a reduction of 2.5% for the Tarrytown tax date, the Market Value yielded is as follows:

	Greenburgh	Tarrytown
June 1, 2001	$1,065,000	
June 1, 2002	$1,120,000	
June 1, 2003	$1,175,000	$1,145,000
June 1, 2004	$1,225,000	$1,195,000
June 1, 2005	$1,300,000	$1,270,000

Tax Lots P24 and P24A

These two parcels are improved by two separate light industrial buildings, with a combined total area of approximately 16,270 square feet. Lot P24 contained roughly 75% of the total improvements, while Lot P24A contained the remaining 25%. For all of the tax years involved, petitioner’s appraiser employed both the sales comparison and income capitalization methods. Due to the configuration of the lots (tax lot P24A is virtually enclosed by tax lot P24), and the unlikelihood that hey would be sold to separate owners, petitioner determined that the lots should be treated as a single property.

Sales Comparison Approach

Over the period in question, five comparable sales were used. Estimated rent per square foot of building area was:

June 1, 2001 - $60.00
June 1, 2002 - $62.50
June 1, 2003 - $65.00
June 1, 2004 - $67.50
June 1, 2005 - $70.25

Total Sales Market Value, both parcels:

June 1, 2001 - $1,000,000
June 1, 2002 - $1,100,000
June 1, 2003 - $1,100,000
June 1, 2004 - $1,100,000
June 1, 2005 - $1,200,000

Sales Market Value for lot 24, with the 2.5% reduction for the Tarrytown tax date, is:

June 1, 2001	$750,000	$742,500
June 1, 2002	$825,000	$817,500
June 1, 2003	$825,000	$817,500
June 1, 2004	$825,000	$817,500
June 1, 2005	$900,000	$892,500

Sales Market Value for lot 24A:

	Greenburgh	Tarrytown
June 1, 2001	$250,000	$247,500
June 1, 2002	$275,000	$272,500
June 1, 2003	$275,000	$272,500
June 1, 2004	$275,000	$272,500
June 1, 2005	$300,000	$297,500

Income Capitalization Approach

The appraiser noted that there were two separate sources of income for the two lots. Lot P24A was leased to the Union Free School District of the Tarrytowns during all of the years at issue, while Lot P24 contained office space that was leased for $9,100, and received $14,000 a year from New York Waterways for the use of a ferry slip.

He then calculated Potential Gross Income to be:

2001 - $165,550
2002 - $181,237
2003 - $182,924
2004 - $184,611
2005 - $186,298

and the vacancy rate to be 10% for 2001 and 2002, and 15% for 2003 through 2005. He then estimated the expenses at 3% for management, and 5% for reserves. Here too, he utilized a non-institutional capitalization rate, believing that the property was not investment grade property.

This yielded a Total Market Value of:

June 1, 2001 - $1,000,000
June 1, 2002 - $1,100,000
June 1, 2003 - $1,100,000
June 1, 2004 - $1,100,000
June 1, 2005 - $1,200,000

which includes an Income Market Value (for both Greenburgh and Tarrytown)for lot 24 of:

June 1, 2001 - $750,000
June 1, 2002 - $825,000
June 1, 2003 - $825,000
June 1, 2004 - $825,000
June 1, 2005 - $900,000

and an Income Market Value (for both Greenburgh and Tarrytown)for lot 24A of:

June 1, 2001 - $250,000
June 1, 2002 - $275,000
June 1, 2003 - $275,000
June 1, 2004 - $275,000
June 1, 2005 - $300,000

Weighting for the Income method, he determined these to be his final value conclusions for the two parcels.

Respondent Greenburgh's Appraisal Generally

Respondent Greenburgh structured the parcels into a large combined property, "under improved with three industrial and office or garage buildings." The Town's appraiser first utilized comparable land sales for all seven of the tax lots, asserting that the "land is appraised as though vacant and available for development to its highest and best use …" Standards Rule 1-3(b). Looking at the property as whole, with the value in the land, any structures are to be considered transitional uses, utilizing only small areas of the overall site, he argued. Therefore, the Town's appraiser used the sales comparisons as though the land was "substantially" vacant with interim uses. The respondents define

interim as “to help pay taxes while property is pending entitlements.” (T738).

Petitioner strongly objected to Greenburgh’s appraiser’s combined assessment analysis, wherein the appraiser considered that the subject parcels, being under common beneficial ownership, lessen the potential value reduction due to access problems and different sized/shaped configurations of parcels. The petitioner notes that the appraiser valued the assembled lots as if they had good configuration, access from two streets, and area along river. Additionally, the petitioner also objected to the lack of information in the appraiser’s report on the uses on the land, the appraiser failing to mention the parking uses on P13 and P14, the building on P13 that was donated, or the buildings on P21 and P23.

Greenburgh’s Sales Method and Comparables

Land Sale No.1, located in the City of Yonkers, consists of 65,830 ± square feet (1.51 ± acres) of land with frontage on the Saw Mill River and with access frontage. It was partially utilized as a junkyard and/or as an auto wrecker site, is zoned industrial, and had an unadjusted sale price of $15.19 per square feet in 1999.

Land Sale No.2, referred to as Ichabod’s Landing, is located in the Town of Mt. Pleasant, and comprises 146,970± square feet (3.374 acres, with 1.83 acres underwater). The parcel, located on the Hudson River and sold without approvals, is zoned riverfront district and had an unadjusted sale price in 2002 of $16.09.

Comparable Land Sale No. 3 is located in the City of New Rochelle and is 36,590 ± square feet or .84 ± acres. At the time of the sale, the parcel was improved by a five room dwelling and a garage building with 3,200 square feet office or apartment space overhead. The building was given a depreciated value of $25 per square foot, which equates to $80,000 of contributory value. Two other sheds added no value to the parcel. It is zoned manufacturing. The unadjusted sale price in 2000 was $21.04.

Land Sale No.4 is 117,612 ± square feet or 2.7 acres of land in the City of Yonkers. The land was vacant at the time of the sale. It is zoned industrial. The unadjusted sale price for 2000 was $13.26.

Land Sale No.5 is 120,222 ± square feet or 2.76 acres, including approximately 95,800 ± square feet in the City of Mt Vernon and 24,422 ± square feet in the Bronx. It is partially paved and was used for parking and outdoor storage. It is zoned industrial in Mt. Vernon and manufacturing in the Bronx. The

unadjusted sale price was $16.64 in 2000.

Land Sale No.6 is located in the City of Mt. Vernon and is approximately 19,270 square feet. The parcel is 2-6 feet below the grade of the adjacent streets. It is zoned landscaped industrial. In 2001, the unadjusted sale price was $24.65.

Respondent's Land Sale no.7 is located in the City of Yonkers and is approximately 70,400 square feet or 1.62 acres. It is zoned industrial. The property was part of a park and subject to a permanent easement in favor of the MTA. The sale price does not include the charitable gift of $110,000 by seller to buyer. In 2001, the unadjusted sale price was $17.52.

Land Sale No.8 is located in the City of New Rochelle and is approximately 10,019 square feet or .23 acres. It was used for parking and outdoor storage. It is zoned light industrial. The unadjusted sale price in 2002 was $30.65.

Respondent's Land Sale No.9 is located in Long Island City (Queens) and is 731,500 ± square feet or 16.79± acres. It is zoned "MI-4". It was considered vacant and has frontage on the East River. In 2003, the unadjusted sale price was $22.87.

Land Sale No.10 is located in the City of New Rochelle. The property is a vacant parcel of land composed of four contiguous lots and one other parcel across the street. The contiguous lots are approximately 9,584 square feet. The parcel across the street is approximately 2,614 square feet. It is zoned light industrial. In 2003, the unadjusted sale price was $37.30.

Land Sale No.11 is in the City of Yonkers and was vacant land utilized for outdoor storage. It is 43,560± square feet or 1± acre of upland, and 40,075± square feet of land underwater. It is zoned as industrial. The unadjusted sale price was $26.40 in 2003.

Respondent's final Land Sale, No. 12, is located in Manhattan and is approximately 86,738 square feet and 1.99 acres. It is a paved lot utilized for parking and zoned "M1-1". In 2004, the unadjusted sale price was $36.32.

Greenburgh's Sales Adjustments

Respondents used a 7.5% per annum adjustment for the difference in market conditions between the date of the sale and the date of valuation, and for location, topography, configuration and utility. An additional value of $250,000 was included in the valuation for the P24 building, due to the large size of the site,

and the relatively small and low cost improvements thereon. This amounted to a value of $20 per square foot.

Income Approach for P22 and P24A

Respondents also made use of the Income Capitalization Method to value parcels P22 and P24A. First, the respondent estimated the potential gross income of the property and then estimated the expenses to be deducted from the annual income to arrive at an estimated Net Operating Income (NOI). The final step involved selecting the interest and capitalization rates, in order to convert the income into value.

Greenburgh's Lease Comparables

Greenburgh used nine comparable leases to calculate market rent.

As Comparable Lease No. 1, respondent used a lease of Lot 24A (see below), consisting of a 4,270± square foot free standing garage or shop space in a one story concrete building on a 7,500± square foot lot. The lease to the Tarrytown Unified School District commenced in 1997 for five years. A five-year renewal option was thereafter exercised extending the lease through 2007. The rents ranged from $10.33 in the first year at issue to $11.41 in the final assessment year.

Comparable Lease No.2, located in the Town of Greenburgh, involves a building which is a one and part two story open storage structure with a two story office section and 14,728 square feet, of which 3,200 square feet is finished office space. Rent for the 2001 to 2004 period was $9.78 per square foot, rising to $10.76 per square foot in 2005.

Comparable Lease No.3 is also located in the Town of Greenburgh and and is approximately 8,400 square feet of space on the first floor of a two story storage/wholesale building. Rent was set at $9.00 per square foot in 2001 through 2003, and thereafter rose to $9.43 per square foot.

Comparable Lease No. 4 is located in the Village of Elmsford and involves approximately 1,908 square feet of space located on the first floor of a two story industrial and office building constructed in 1989. Rents from Sato Auto Repair from 2001 to 2003 were $12.58 per square foot.

Comparable Lease No. 5, also located in the Town of Greenburgh, includes approximately 8,400 square feet, which

consists of the entire second floor in a two story storage/wholesale building (see comparable Lease No. 3 above). Rents in 2001, 2002, and 2003 were $66,000, $69,000 (or $8.21 per square foot) and $72,000 per year, respectively.

Comparable Lease No. 6 is located in the City of Peekskill. The tenant leases 2,300 square feet of space, consisting of third floor office space of approximately 1,200 square feet, storage and warehouse space of approximately 768 square feet, and a garage area of approximately 332 square feet. The rents, from lessee Hudson Valley Heating, ranged from $9.65 per square foot in 2002 to $11.22 per square foot in 2005.

Comparable Lease No. 7, located in the Village of Pleasantville, involves approximately 3,353 square feet. From 2002 through 2005, the tenant, Premier Business Machines, rented one story office/ warehouse space in a two story building, at the rate of $13.30 per square foot.

Comparable Lease No. 8, located in the Village of Pleasantville, involves approximately 2,200 square feet of first floor office/warehouse space, plus the third and fourth floors of the building (10,800 square feet of leasable space). Total area includes 13,000 square feet. Annual rental for the tenant, Akadine Press, is $131,172 based on rent of $10.09 per square foot in 2002, with rent increases annually according to the CPI.

Comparable Lease No. 9, rented to Hillside Food Outreach, Inc., is located in the same building as Lease No. 8 in the Village of Pleasantville. It includes approximately 5.500 square feet of second floor warehouse space in a one and part four story industrial building. The annual rent in 2003 was $64,620, based on $11.75 per square foot, with rent increases annually by the CPI rising to $12.10 in 2005.

Finally, Comparable Lease No. 10, also involves the same building as Leases No. 8 and 9 in the Village of Pleasantville. The tenant, RDI Warehouse, rented approximately 12,000 square feet of first floor warehouse space. The lease commenced in November 2003, with an annual rent of $120,000 based on rent of $10 per square foot, and with the rent increasing annually by 3%.

Greenburgh's Lease Adjustments

Adjustments were made for some of the properties for location, condition, layout, quality of finish and appointments, and expense handling under some of the leases.

Greenburgh Market Values[4]:

		2001	2002	2003
P13	Sales Comp	1,880,000	2,110,000	2,950,000
P14	Sales Comp	-	-	610,000
P21	Sales Comp	4,180,000	4,760,000	6,860,000
P22	**Income**	**1,670,000**	**1,840,000**	**2,450,000**
	Sales Comp	1,250,000	1,400,000	1,570,000
P23	Sales Comp	1,770,000	1,980,000	2,740,000
P24	Sales Comp	1,580,000	1,740,000	2,310,000
P24A	Income	**330,000**	**350,000**	**370,000**
	Sales Comp	170,000	180,000	200,000

		2004	2005
P13	Sales Comp	2,650,000	2,950,000
P14	Sales Comp	690,000	780,000
P21	Sales Comp	6,100,000	6,860,000
P22	**Income**	**2,180,000**	**2,450,000**
	Sales Comp	1,740,000	1,940,000
P23	Sales Comp	2,460,000	2,740,000
P24	Sales Comp	2,110,000	2,310,000
P24A	**Income**	**400,000**	**440,000**
	Sales Comp	230,000	250,000

Respondent Tarrytown's Appraisal Generally

Sales Comparison Approach – P13, P14, P21, P23 and P24

Respondent Village of Tarrytown used only the Sales Comparison to value lots P13, P14, P21, P23 and P24, their appraiser asserting that Income Approach has application only to P22 and P24A. The same seven comparable sales are also offered for all the lots, with the valuation date for the Village being January 1.

The appraiser asserts that the only value to be considered for P13 and P14 is the value of the land, since any income from the parking improvements on those parcels is an illegal use under its WGBD zoning. The P13 building, constructed in 2004, generated no income during the years at issue because the temporary Certificate of Occupancy was issued after the last taxable status date under review. Thus, the appraiser attributed no value to any of the

[4]Note that, for parcels 22 and 24A, where Greenburgh used both methods, the value selected is in bold.

improvements listed for these lots.

The Sale Comparables

Comparable Land Sale No. 1 is located in the Village of Sleepy Hollow and Town of Mount Pleasant and is referred to as Ichabod's Landing. It contains approximately 5.208 acres, with approximately 1.834 acres of underwater land, and is zoned Riverfront District.

Land Sale No. 2 is located in the Village of Tarrytown and Town of Greenburgh, measures approximately 28,840 square feet, and is zoned Waterfront General Business District.

Comparable Land Sale No. 3 is located in the Village of Tarrytown and the Town of Greenburgh; it comprises approximately 33,505 square feet or .77+ acres, with remediation costs of approximately $361,000, and is zoned Neighborhood Shopping.

Comparable Land Sale No. 4 is located in the Village of Dobbs Ferry and the Town of Greenburgh, and entails approximately 69,880 square feet or 1.607+ acres. Site improvements include a one-story 10,940+ square foot office/laboratory building erected in 1962; it is zoned Business.

Land Sale No. 5 is located in the City of Yonkers and encompasses approximately 62,996 square feet or 1.446+ acres. The zoning is Planned Executive Park.

Land Sale No. 6 is located in the Village of Dobbs Ferry and the Town of Greenburgh, is improved with a 10,000+ square foot abandoned automobile sales/service building, and contains approximately 51,400 square feet or 1.18+ acres.

Comparable Land Sale no. 7 is located in the City of White Plains. It embodies approximately 95,935 square feet (2.202 acres) and zoned Restricted Business.

Adjustments

The appraiser adjusted some sales significantly for time, for utility/frontage, and for size. Comparable Sale No. 7, which measures 95,935 square feet (2.202 acres), compared to the instant property's measurements of approximately 93,787 square feet or 2.16+ acres, requires no size adjustment. It was, however, given a significant, -40% adjustment for location.

Income Approach and Sales Comparison Approach – P22 and P24A

Respondent Tarrytown relied on the Income Approach to value P22 and P24A. The Sales Comparison Approach was also used to establish the value of the subject land.

The Sales Comparison Approach

In valuing P22 and P24A, respondents appraiser employed the same identical three Comparable Sales No. 1, 2 and 3 as were utilized for the Village's Sales Comparables analysis of parcels P13, P14, P21, P23, and P24, above. Respondent's appraiser used various time adjustments in his calculation, ranging from 40% to –26.6%; size adjustments ranging from 20% to –10%; and utility/frontage adjustments.

Tarrytown Market Values[5]:

		2001	2002	2003
P13	Sales Comp	1,735,000	1,875,000	2,065,000
P14	Sales Comp	-	-	490,000
P21	Sales Comp	-	-	4,420,000
P22	**Income**	**1,800,000**	**1,940,000**	**2,000,000**
	Sales Comp	1,075,000	1,135,000	1,200,000
P23	Sales Comp	-	-	1,850,000
P24	Sales Comp	1,200,000	1,300,000	1,400,000
P24A	**Income**	**350,000**	**375,000**	**395,000**
	Sales Comp	140,000	150,000	160,000

		2004	2005
P13	Sales Comp	2,230,000	2,390,000
P14	Sales Comp	520,000	560,000
P21	Sales Comp	4,770,000	5,115,000
P22	**Income**	**2,045,000**	**2,160,000**
	Sales Comp	1,250,000	1,310,000
P23	Sales Comp	2,000,000	2,145,000
P24	Sales Comp	1,510,000	1,620,000
P24A	**Income**	**420,000**	**440,000**
	Sales Comp	175,000	185,000

[5]Note that, for parcels 22 and 24A, for which the Village used both methods, the derived value is in bold face.

The Income Approach

P22

The subject building was utilized for many years, in conjunction with the operation of Westchester Industries, Inc. Upon cessation of the business of this entity, portions of the building were rented to third parties; some of these tenants had no leases, while some vacated within a short period of time.

While these occupancies provide some indication of market rental value, the appraiser chose instead to rely primarily on comparable lease data.

Comparable Lease No. 1, involving property located on the northeast side of Executive Boulevard in the Town of Greenburgh, included approximately 23,750 square feet of warehouse and light industrial/office space. That lease was for a term of 3 years and 11 months, with a rent was $196,250 per annum, or $8.26 per square foot as of February 2000.

Comparable Lease No. 2, also located in the Town of Greenburgh, involved 46,465+ square feet of warehouse and light industrial/ office space. The lease term was eight years, starting January 2001. For years 1 to 5, the rental was $406,570 per annum, and for years 6 to 8, the rental was $418,200 per annum. The rental per square foot was $8.75 as of January 2001; the lessee, The Wine Enthusiast, Inc., was responsible for all utilities and a pro rata share of the real estate taxes.

Comparable Lease No. 3, also located in the Town of Greenburgh, ran for a term of 5 years 4 months, beginning July 2000. The rental was $427,500 per annum or $9.50 per square foot. The lessor was responsible for the base year taxes and the lessee for increases in taxes and utilities. The area leased by J.S. Sales Company, Inc., comprises 45,000+ square feet of office space.

The appraiser estimated net operating income to range from $211,550 to $243,800 per year. Applying his derived capitalization rate, the following rounded values were yielded:

January 1, 2001	$1,800,000
January 1, 2002	$1,940,000
January 1, 2003	$2,000,000
January 1, 2004	$2,045,000
January 1, 2005	$2,160,000

P24A

This property, starting December 1, 1997, was subject to a lease of the entire premises to the Tarrytown Union Free School District. The respondent's appraiser employed the actual contract rental, with rates, from 1997 to 2005 (the last of three option years) per square foot of $9.76; $9.76; $10.00; $10.25; $10.51; $10.77; $11.04; and $11.32.

The appraiser estimated net operating income to range from $41,320 to $49,650 per year. Applying his derived capitalization rate, the following rounded values were yielded:

January 1, 2001	$350,000
January 1, 2002	$375,000
January 1, 2003	$395,000
January 1, 2004	$420,000
January 1, 2005	$440,000

CONCLUSIONS OF LAW

THE PRESUMPTION OF VALIDITY

The Respondents argue that the Petitioner's valuation evidence failed to rebut the presumption of validity of the assessments in that the Petitioner's Appraisal was not based upon standard and accepted appraisal techniques and, therefore, did not meet the substantial evidence standard. A party seeking to overturn an assessment must first overcome this presumption of validity through the submission of substantial evidence *See e.g.*, *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 N.Y.2d 179, 187 (1998)] "In the context of tax assessment cases, the 'substantial evidence' standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility and persuasiveness are not germane during this threshold inquiry...a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on 'sound theory and objective data' "; *see also Matter of Niagara Mohawk Power Corp. v Assessor of the Town of Geddes*, 92 N.Y.2d 192, 196, (1998) ("In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser"); 22 N.Y.C.R.R. 202.59(g)(2)(appraisal reports utilized in tax assessment review proceedings "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”)]

A VALID DISPUTE EXISTS

This Court finds that the Petitioner has submitted substantial evidence based upon “ sound theory and objective data ” consisting of an Appraisal and the testimony of Appraiser William Beckmann and has demonstrated the existence of a valid dispute concerning the propriety of the assessments.

THE CEILING AND THE FLOOR

Petitioner’s challenges to the assessments on the subject parcels embrace all parcels for all of the affected years, except as follows:

Greenburgh–-Not P14: tax years 2001, 2002, 2003
Tarrytown–-Not P14, P21, and P23: tax years 2001 and 2002.

This Court finds that the Ceiling, based on the actual assessments set by the Respondent Village’s and Town’s respective Assessors, and the corresponding market values, based on the appropriate equalization rates[6], is as follows:

Ceiling – Tarrytown

	2001	2002
Equalization Rate	5.97%	5.42%
	Market Value	Market Value
P13	$1,735,000	$1,875,000
P14	-	-
P21	-	-
P22	$1,800,000	$1,940,000
P23	-	-

[6]Neither party employed equalization rates in calculating the equalized market values for the respective tax years; rather, they simply noted the assessments for those years. The Court is cognizant of the fact that, for the taxable status dates in the years at issue, the equalization rates in effect were those of the immediately previous tax year (i.e., the 2000 rate was in effect on both the Town and Village taxable status dates in 2001). Consequently, the Court has employed those previous equalization rates in calculating equalized market values for the tax status dates and the years in question.

P24	$1,200,000		$1,300,000
P24A	$350,000		$375,000

2003	
Eq Rate.	4.29%
	Market Value
P13	$2,065,000
P14	$490,000
P21	$4,420,000
P22	$2,000,000
P23	$1,850,000
P24	$1,400,000
P24A	$395,000

	2004		2005	
Equalization Rate	4.02%		3.52%	
	Market Value		Market Value	
P13	$2,230,000		$2,390,000	
P14	$520,000		$560,000	
P21	$4,770,000		$5,115,000	
P22	$2,045,000		$2,160,000	
P23	$2,000,000		$2,145,000	
P24	$1,510,000		$1,620,000	
P24A	$420,000		$440,000	

Ceiling – Greenburgh

	2001		2002	
Equalization Rate	5.65%		4.52%	
	Market Value		Market Value	
P13	$1,880,000		2110000	
P14	-		-	
P21	4180000		4760000	
P22	1670000		1840000	
P23	1770000		1980000	
P24	1580000		1740000	
P24A	440000		460000	

2003	
Eq Rate	4.18%
P13	2950000
P14	610000
P21	5400000
P22	1990000
P23	2210000
P24	2310000
P24A	590000

	2004	2005
Equalization Rate	3.64%	3.37%
	Market Value	Market Value
P13	2650000	2950000
P14	690000	780000
P21	6100000	6860000
P22	2180000	2450000
P23	2460000	2740000
P24	2110000	2310000
P24A	520000	590000

This Court also finds that the Floor, based on the petitioner's appraisal and the appraiser's trial testimony, and the corresponding market values, based on the conceded equalization rates, is as follows:

Floor – Tarrytown

	2001	2002
Equalization Rate	5.97%	5.42%
	Market Value	Market Value
P13	$845,000	865,000
P14	-	-
P21	-	-
P22	1500000	1,500,000
P23	-	-
P24	750,000	825,000
P24A	250,000	275,000

2003	
Eq Rate	4.29%
	Market Value
P13	880000
P14	375000
P21	2585000
P22	1500000
P23	1145000
P24	825000
P24A	275000

	2004	2005
Equalization Rate	4.02%	3.52%
	Market Value	Market Value
P13	1,100,000	1,100,000

P14	395,000	415,000
P21	2,705,000	2,850,000
P22	1,500,000	1,600,000
P23	1,195,000	1,275,000
P24	825,000	900000
P24A	275,000	300,000

Floor – Greenburgh

	2001	2002
Equalization Rate	5.65%	4.52%
	Market Value	Market Value
P13	865000	885000
P14	350000	370000
P21	2400000	2252000
P22	1500000	1500000
P23	1065000	1120000
P24	750000	825000
P24A	250000	275000

2003	
Eq Rate	4.18%
P13	900000
P14	385,000
P21	2,650,000
P22	1500000
P23	1,175,000
P24	825,000
P24A	275,000

	2004	2005
Equalization Rate	3.64%	3.37%
	Market Value	Market Value
P13	1100000	1100000
P14	405000	425000
P21	2775000	2925000
P22	1500000	1600000
P23	1225000	1300000
P24	825000	900000
P24A	275000	300000

PETITIONER'S BURDEN OF PROOF

Having met its initial burden, the Petitioner must prove, through a preponderance of the evidence, that the assessments are excessive. As indicated above, Court has considered and evaluated the weight and credibility of the evidence, the arguments of respective counsel, and the submissions of the parties to determine

whether the Petitioner has proven that the assessments are excessive.

ANALYSIS OF VALUATION METHODOLOGIES

Both parties concur that, as two of the subject parcels, P21 and P23, are unimproved property, the proper method of valuation as to those parcels is the Sales Comparison method. The Court also notes that the petitioner has appraised all of the remaining properties not only by the Sales Comparison Method, but also by the Income Capitalization method. The respondents, on the other hand, have only employed the Income Capitalization method for P22 and P24A.

As an initial matter, the Court is compelled to reject respondents' appraiser's methodology insofar as they generally reject the Income Capitalization method for properties clearly earning income, and thereby decline to appraise several of the parcels "as is", namely, in their current, income producing condition and use. Respondent Greenburgh, for example, generally states that the parcels are "appraised as though vacant and available for development to their highest and best use." RPTL § 302 (1) provides:

> The taxable status of real property in cities and towns shall be determined annually according to its condition and ownership as of [the applicable taxable status date]

while RPTL § 1400 similarly provides:

> Date of taxable status. Real property shall be assessed for village purposes according to its condition and ownership as of [the applicable taxable status date.]

As petitioner properly points out, in *Adult Home at Erie Station v. City of Middletown*, 801 N.Y.S.2d 776[Supreme Court, Orange County, Dickerson, J., 2005], this Court recognized that said "condition and ownership" relates to the specific use being made of the property by the petitioner on the relevant taxable status date. *See also* Volume 10 Opinions of Counsel SBRPS No 45, p 3:

> for purposes of real property tax assessments, property must be valued based upon its current use, not its highest and best use, except in the case of vacant land which is idle and put to no use whatsoever. In such latter case,

> the property may be valued on the basis of its highest and best use.

All parties recognize the existence of the latter exception; respondents, however, urge the Court to find the presence of such circumstances, "vacant land which is idle and put to no use whatsoever", here, justifying an across-the-board use of a highest and best use valuation for **all** of the parcels.

Respondents rely primarily on *Weingarten v. Town of Ossining*, 85 A.D.2d 697, 698 [emphasis added] (2nd Dept. 1981), which indeed held that "zoning and reasonable development potential of **unimproved** land may be taken into account in determining the market value of property on taxable status dates." Respondents also cite to *Dresser-Rand v. Assessor, Town of Erwin et al.*, 227 A.D.2d 890 (4th Dept. 1996), which held that a parcel which contains buildings which had deteriorated to the extent "that they reached their maximum useful life and are not marketable" may be valued as if vacant, with a per acre premium for the interim use the deteriorated buildings were then being put to. In order to argue the applicability of *Weingarten* and *Dresser-Rand* to the subject parcels, respondents describe the parcels variously as "interim" uses (Greenburgh's appraiser, generally); the income generated from parking as "interim income" (P13 and 14); the parcels as containing "unused buildings" (P21); and as "functionally vacant", of "little use", and "generating no income"(P24).

The Court notes, however, that these, in general, are factually inaccurate assertions. To be sure, P21 and P23 do contain the dilapidated remains of structures or equipment formerly, although not during the tax years at issue, in use. But P13 and 14 were used for parking for at least several years before the first of the taxable status dates, and six or more before the last; such use can hardly therefore be termed "interim." P13 is also subject to a further use, commencing in 2004 (*i.e*. for the last two of the tax years), namely a newly-constructed 14,633 square foot building, which was joined to a similar structure on an adjacent lot, utilized by respondent Village. P22 contains both a rented bay garage and outside parking. P24 was improved by a one-story garage and office building, both of which were rented during the relevant tax years. And P24A was also the site of a contemporary garage, rented to respondent Village's School District. Excepting P21 and P23, none of the parcels were either truly "unimproved" land (per *Weingarten*), or contained buildings which had deteriorated to the extent that they reached their maximum useful life **and** are not marketable (per *Dresser-Rand*). To that extent, then, the Court concludes that it is improper to value P13, P14, P22, P24, and P24A, as if vacant, and, as such, according

to their highest and best use, and rejects respondents' appraisals to the extent that they so valued those parcels.

The Court also notes respondents' frequent citation to the fact that the zoning of the subject parcels was changed in 1998 to facilitate residential and other development as has been contemplated by petitioners; to the status of approvals for that development; and to the fact that *Weingarten*, as quoted above, held that zoning and reasonable development potential may be considered in the valuation of unimproved land. Even if it were demonstrated that the parcels were entirely unimproved, however, and despite the change in zoning, it has been conclusively established in this case that initial approval for development of the subject parcels (acceptance of the Final Environmental Impact Statement from the Village) occurred only **after** the period at issue, namely on December 21, 2005, which is over six months (and, in the case of the Village, nearly one year) after the 2005 (and last) taxable status date. Additionally, even when one considers *Weingarten*, and weighs the instant conducive zoning for the parcels, there otherwise exists an absence of proof before the Court of reasonable development potential, at least to the extent of treating the subject improved parcels as if instead they were unimproved. (*See Baj v Asessor, Town of Goshen,* Supreme Court, Orange County, LaCava, J. 2008; NYLJ, July 1, 2008, p. 27, col.3.)

In addition, in regards to the methodologies employed by the parties, the Court notes that, in employing the sales method, petitioner's appraiser elected to make significant adjustments for the effect of access and encumbrances (easements) on the subject parcels. The Court recognizes, however, that as a matter of law, where a property burdened by an easement is joined in ownership with a property benefitted by the same easement, the easement is either extinguished or, as relates to easements by necessity, at the very least suspended during the term of joint ownership. (*See Simone v. Heidelberg*, 9 N.Y.3d 107 [2007]; *Stilbell Realty Corp. v. Cullen*, 43 A.D.2d 966, 967 [2nd Dept 1974]. To be sure, some access and encumbrance issues will remain, as the uses of the parcels have not changed by their unification. Nevertheless, the Court elects to modify petitioner's appraiser's extensive adjustments in this area based on the reduced effect of the unification of the parcels under one owner (reducing -30% adjustments to -15%, and -25% and -20% adjustments to -10%.)

As set forth above, while respondents did utilize the income method to value only P22 and P24A, petitioner used the method to value each parcel except P21 and P23. The Court has examined the methodologies generally employed by both petitioners and respondents, and found them both to be mostly sound, except as

regards several points noted herein. For example, regarding capitalization rates employed by the parties, and having given due consideration to the arguments advanced by all three parties, the Court concludes that petitioner's chosen base cap rates are too high, while respondent's are too low. Petitioner, for example, notes that the parcels themselves may arguably not be institutional grade, but neglects to note that the petitioner's status as a likely sound borrower would undoubtably influence the proper market rate applied to the parcels. In addition, the Court finds that respondent Tarrytown's use of the same rate for all 5 years insufficiently reflects movements in the market during the time period at issue . Thus, the Court concludes that the proper rates to be utilized in relation to the instant parcels are:

2001	9.5%
2002	9.25%
2003	9.0%
2004	9.0%
2005	8.75%

Finally, the Court also concludes that, as properly argued by respondent Tarrytown, in employing the sales method, the properties most accurately reflective of the proper values for each of the parcels, due to their proximity to the subject, as well as other similar characteristics, are Tarrytown's Sales Comparables 1, 2, and 3, namely 45 River Street, Sleepy Hollow (Ichabod's Landing); 184 Main Street, Tarrytown (184 Main); and South Broadway and White Plains Road, Tarrytown (South Broadway), and most particularly, of the three, Ichabod's Landing. However, the Court also concludes that, in the case of those properties, petitioner's appraiser's calculation of 5% as the average market price increase during the years at issue is more appropriate and reflective of the market than the larger market increases utilized by respondents' appraisers. The Court thus determines that proper valuation by comparable sales includes an average of petitioner's comparables, adjusted as indicated above, with the above-mentioned comparables offered by one or both respondents, again adjusted as set forth above.

VALUATION

Parcel 13

As set forth previously, this parcel was used only for parking during tax years 2001 to 2003, and then, in 2004 and 2005, was improved by a light industrial building. Petitioner valued this parcel by both the sales and income methods, weighting the former more heavily for the period 2001 to 2003, but weighting them

equally for 2004 and 2005. Based on the income-producing nature of this property throughout the tax years at issue, the Court credits the use of both techniques for those tax years, and credits the weighting by petitioner of the sales and income methods equally in the latter two years.

The Court adopts the adjusted sales price per acre used by petitioner for the six comparable sales, namely $428,908; $320,963; $692,911; $779,286; $882,392; and $444,904. The Court further accepts petitioner's adjustments, except for the encumbrances, which are modified as set forth above. This yields final adjusted sales prices of:

Comparable	Price $/acre	Price $/sq. foot[7]
1	450,353	10.34
2	272,819	6.26
3	606,297	19.92
4	701,357	16.10
5	670,618	15.40
6	378,168	8.68

To these adjusted prices the Court, as also set forth above, elects to add Tarrytown's Sales Comparables 1, 2, and 3, for the purpose of averaging them. As set forth above, it is the Court's conclusion that respondent Tarrytown's time adjustment should be 5% and not 8%; the Court also concludes that Tarrytown's size adjustment for Comp 1 is far too high at + 15%, and should instead be + 5%. Adjusted + 2.5% for Greenburgh's tax status date, this yields adjusted prices per square foot of $18.13; $14.31; and $18.47 for these parcels, respectively.

Averaging all of these newly adjusted sales prices, the Court concludes that a proper valuation for P13 for tax year 2001 is $ 13.49 per square foot for Greenburgh, and $ 13.15 per square foot for Tarrytown. Based on the square footage of P13, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Sales MV $	Greenburgh	Tarrytown
2001	1,265,187	1,233,557
2002	1,328,446	1,295,235
2003	1,394,869	1,359,997

[7]The Court elects to use both price per acre and price per square foot since respondents both employ the latter.

2004	1,464,612	1,427,996
2005	1,537,843	1,499,396

As set forth above, and as reflective of the rental income generated by the light industrial improvement added to the parcel in 2004, petitioner additionally used the income method to value this parcel for 2004 and 2005. The Court concludes that petitioner's methodology is sound, except as set forth above with regard to the capitalization rates utilized for 2004 and 2005. Employment of the rates found proper by the Court for those years (9.0% and 8.75%) yield overall (tax weighted) cap rates of 11.75% for each year. In light of the identical Net Operating Income found by the petitioner for those two years, $220,000, market values yielded under the income method equals $1,872,340 for both 2004 and 2005. Weighting both methods equally, that provides final market values for P13 as follows:

Final MV $	**Greenburgh**	**Tarrytown**
2001	1,265,187	1,233,557
2002	1,328,446	1,295,235
2003	1,394,869	1,359,997
2004	1,668,476	1,650,168
2005	1,705,092	1,685,868

Parcel 14

The Court's analysis for this parcel is substantially similar to that for P13. This parcel was used exclusively for parking during the tax years at issue. Petitioner valued this parcel by both the sales and income methods, weighting the former more heavily for the period. Based on the income-producing nature of this property throughout the tax years at issue, the Court credits the use of both techniques for those tax years, and credits the weighting by petitioner of the sales method over the income method.

The Court adopts the adjusted sales price per acre used by petitioner for the six comparable sales, namely $428,908; $320,963; $692,911; $779,286; $882,392; and $444,904. The Court further accepts petitioner's adjustments, except for access, which the Court concludes, regarding comparable property # 4, should be "Average", rather than "Below Average". Accordingly, the Court discounts 5% "Below Average" adjustment. This yields final adjusted sales prices of:

Comp	**Price $/ac**	**Price $/sf**
1	589,749	13.54

2	378,572	8.69
3	728,798	16.73
4	837,733	19.23
5	891,215	20.46
6	490,229	11.25

To these adjusted prices the Court, as previously, adds Tarrytown's Sales Comparables 1, 2, and 3, for the purpose of averaging them. As set forth above, it is the Court's conclusion that respondent Tarrytown's time adjustment should be 5% per year and not 8%; the Court also concludes that Tarrytown's size adjustment for Comp 1 is far too high at +25%, and should instead be + 15%. Adjusted + 2.5% for Greenburgh's tax status date, this yields adjusted prices per square foot of $16.49; $16.45; and $19.73, respectively.

Averaging all of these newly adjusted sales prices, the Court concludes that a proper valuation for P14 for tax year 2001 is $ 15.84 per square foot for Greenburgh, and $ 15.44 per square foot for Tarrytown. Based on the square footage of P14, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Sales MV $	**Greenburgh**	**Tarrytown**
2001	-	-
2002	-	-
2003	-	463,220
2004	498,852	486,381
2005	523,794	510,700

As set forth above, and as reflective of the rental income generated by the parking at the parcel, petitioner additionally used the income method to value this parcel. The Court concludes that petitioner's methodology is sound, including the capitalization rates utilized for the period at issue. Direct capitalization of the Net Operating Income from the parcel yields market values, under the income method, of $370,000 for 2001, 2002, and 2003, and $385,000 for both 2004 and 2005. Weighting the sales method predominantly as petitioner did, the Court finds final market values for P14 as follows:

Final MV $	**Greenburgh**	**Tarrytown**
2001	-	-
2002	-	-
2003	-	463,220
2004	498,852	486,381

2005	523,794	510,700

Parcel 21

Unlike most of the other parcels at issue, Petitioner and Respondents agreed generally on the proper methodology to be employed in valuing this parcel. Since the property was in essence unimproved, the parties concur that it should be valued as if vacant, and thus according to highest and best use. To that end, the parties also exclusively employed the sales comparison method.

The Court adopts the adjusted sales price per acre used by petitioner for the six comparable sales, namely $428,908; $320,963; $692,911; $779,286; $882,392; and $444,904. The Court further accepts petitioner's adjustments, except for the encumbrances, which, as set forth above, have only a present minimal effect due to the current joint ownership of the parcels, and thus should not exceed -10%. This yields final adjusted sales prices of:

Comp	Price $/ac	Price $/sf
1	503,967	11.57
2	272,819	6.26
3	623,620	14.32
4	720,840	16.55
5	652,970	14.99
6	389,291	8.94

To these adjusted prices the Court here again adds Tarrytown's Sales Comparables 1, 2, and 3, for the purpose of averaging them. As set forth above, it is the Court's conclusion that respondent Tarrytown's time adjustment should be 5% per year and not 8%; adjusted + 2.5% for Greenburgh's tax status date, this yields adjusted prices per square foot of $18.14; $14.50; and $18.07, respectively.

Averaging all of these newly adjusted sales prices, the Court concludes that a proper valuation for P21 for tax year 2001 is $13.70 per square foot for Greenburgh, and $13.36 per square foot for Tarrytown. Based on the square footage of P21, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Final MV $	Greenburgh	Tarrytown
2001	3,184,154	-
2002	3,343,362	-
2003	3,510,530	3,423,407

2004	3,686,056	3,594,577
2005	3,870,359	3,774,306

Parcel 22

The Court's analysis for this parcel is similar to that for P13 and P14. This parcel was improved by a one- and part two-story building containing approximately 26,668 square feet. During the tax years at issue, the property was leased to various tenants, with the second floor utilized as office space and the bulk of the first floor used as a warehouse space with drive in bay trucking access and loading docks. Petitioner valued this parcel by both the sales and income methods, weighting the latter more heavily for the period. Based on the income-producing nature of this property throughout the tax years at issue, the Court credits the use of both techniques for those tax years, and credits the weighting by petitioner of the income method over the sales method.

The Court adopts the adjusted sales price per square foot used by petitioner for the five comparable sales (notably, different comps than those used for parcels P13, P14, and P21), namely $ 65.54; $68.20; $74.84; $67.78; and $60.26. The Court further accepts petitioner's adjustments, except for access, which the Court concludes should be characterized, for the subject, as "Average", rather than "Below Average", and thus the Court discounts the -5% adjustment therefore. This yields final adjusted sales prices of:

Comp	Price $/sf
1	62.26
2	64.79
3	59.87
4	61.00
5	64.78

Averaging these five[8] newly adjusted sales prices, the Court

[8]To the adjusted prices presented by petitioner, the Court has heretofore added Tarrytown's Sales Comparables 1, 2, and 3, for the purpose of averaging them. In both of their appraisals, however, respondents chose to derive sales comparison method values for this parcel (and P24A also) by valuing the land as a whole (i.e., all 59,632 square feet, not just the 26,668 square feet of the improvements), and to derive a separate income capitalization value for the improvements. Further, Tarrytown Comp #1 has no improvements, Comp # 2 has only dilapidated

concludes that a proper valuation for P22 for tax year 2001 is $ 65.54 per square foot for Greenburgh, and $ 60.98 per square foot for Tarrytown. Based on the square footage of the improved portion of P22, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Sales MV $	Greenburgh	Tarrytown
2001	1,667,817	1,626,215
2002	1,751,208	1,707,525
2003	1,838,768	1,792,902
2004	1,930,706	1,882,547
2005	2,027,242	1,976,674

As set forth above, and as reflective of the rental income generated by the light industrial improvement on the parcel, the parties additionally used the income method to value this parcel. The Court concludes that, while all of the income capitalization methodologies appear sound[9], and in fact have generated Net Operating Income figures within at most a 25% divergence, the use by petitioner of both the actual rents derived from marketing of the premises on the parcel, and the 6 comparable leases, makes its figures more accurate. Employment, then, of the rates found proper by the Court for these years (9.5%; 9.25%; 9.0%; 9.0% and 8.75%) yield overall (tax weighted) cap rates of 12.75% and 12.5% for 2001 and 2002, respectively, and 11.75% for each remaining year. The Court therefore concludes, upon capitalizing the net income calculated by petitioner, that the following income method values are most appropriate:

Income MV $	Greenburgh/Tarrytown[10]
2001	1,568,627
2002	1,600,000
2003	1,617,021

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improvements, while Comp # 3 has new, but minimal improvements. Thus, the Court is unable to utilize Tarrytown's Comps in arriving at an average sales price for this parcel.

[9]In particular, the Court concludes that, while generally sound, respondent Greenburgh has likely overstated estimated income by as much as 20%, and, that respondent Tarrytown has utilized a vacancy and collection loss figure which is considerably overstated as well.

[10]The Court adopts petitioner's conclusion that, based on conditions in the market during this period, the derived income capitalization market value is the same for both respondents.

2004	1,617,021
2005	1,702,128

The Court accepts the conclusions of all parties that, as relates to Parcel 22, the Income Method best reflects proper market value. Accordingly, and weighting for that method, final market values for P22 are as follows:

Final MV $	**Greenburgh/Tarrytown**
2001	1,568,627
2002	1,600,000
2003	1,617,021
2004	1,617,021
2005	1,702,128

Parcel 23

As with Parcel 21, petitioner and respondents agreed generally that since the property was essentially unimproved, it should be valued as if vacant, and thus according to highest and best use. Both parties utilized only the sales comparison method to derive value for this parcel.

The Court adopts the adjusted sales price per acre used by petitioner for the six comparable sales, namely $428,908; $320,963; $692,911; $779,286; $882,392; and $444,904. The Court further accepts petitioner's adjustments, except for any adjustment for "access." As set forth above, access to the instant property is "Average", and thus the comparables, which have similarly average access, need not be adjusted at all. This yields final adjusted sales prices of:

Comp	**Price $/ac**	**Price $/sf**
1	546,848	12.55
2	345,035	7.92
3	658,265	15.11
4	720,840	17.44
5	785,329	18.03
6	437,814	10.05

To these adjusted prices the Court again adds Tarrytown's Sales Comparables 1, 2, and 3, for the purpose of averaging them. As set forth above, it is the Court's conclusion that respondent Tarrytown's time adjustment should be 5% per year and not 8%, and that the size adjustment for Comp # 1 should be + 5%, not + 15%. Adjusted + 2.5% for Greenburgh's tax status date, this yields

adjusted prices per square foot of $18.13; $16.45; and $21.39, respectively.

Averaging all of these newly adjusted sales prices, the Court concludes that a proper valuation for P23 for tax year 2001 is $15.23 per square foot for Greenburgh, and $14.85 per square foot for Tarrytown. Based on the square footage of P23, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Final MV $	**Greenburgh**	**Tarrytown**
2001	1,283,097	-
2002	1,347,252	-
2003	1,414,614	1,379,319
2004	1,485,345	1,448,285
2005	1,559,612	1,520,699

Parcels 24 and 24A

Parcel 24 was improved by a one-story garage and office building, while P24A contains a one-story garage structure. The Court's analysis for these parcels is similar to that for parcel 22. Petitioner treated both properties together, since they were formerly joined as one (they were separated for leasing purposes at the then-owner's request), and, since P24 essentially surrounds P24A, it would be unlikely for P24A to be sold separately from P24. Petitioner valued both parcels by both the sales and income methods, while respondents, treating the properties separate, valued P24 solely by the sales comparison method, but, like petitioner, valued P24A by both methods.

Petitioner weighted the income method more heavily in his analysis, as did the respondents for P24A. Based on the income-producing nature of these parcels throughout the tax years at issue, the Court credits the use of both techniques for those tax years, and credits the weighting by the parties of the income method over the sales method.

The Court adopts the adjusted sales price per square foot used by petitioner for the five comparable sales (again, different comps than those used for parcels P13, P14, P21, and P23), namely $ 65.54; $68.20; $74.84; $67.78; and $60.26. The Court further accepts petitioner's adjustments, except for access, which the Court concludes should be characterized, for the subject, as "Average", rather than "Below Average", and thus the Court discounts the -5% adjustment therefore. This yields final adjusted sales prices of:

Comp	Price $/sf
1	63.90
2	66.50
3	63.61
4	64.39
5	66.29

Averaging, as with P22, these five newly adjusted sales prices, the Court concludes that a proper valuation for P24 and P24A for tax year 2001 is $64.94 per square foot for Greenburgh, and $63.32 per square foot for Tarrytown. Based on the square footage of the improved portion of P24 and P24A, and an increase in market value of 5% per year, this yields valuation figures for the taxable status dates as follows:

Sales MV $	Greenburgh	Tarrytown
P24 and P24A		
2001	1,095,538	1,068,208
2002	1,150,315	1,121,619
2003	1,207,830	1,177,700
2004	1,268,222	1,236,585
2005	1,331,633	1,298,414

The Court accepts petitioner’s conclusion that the improved portion of P24 is approximately 12,600 square feet, or approximately 75% of the improved portion of both parcels, while the improved portion of P24A is approximately 4,270 square feet, or approximately 25% of the total improved area. This yields the following sales comparison market values for each parcel:

Sales MV $	Greenburgh	Tarrytown
P24		
2001	821,654	801,156
2002	862,736	841,214
2003	905,873	883,274
2004	951,167	927,438
2005	998,725	973,810

and

Sales MV $	**Greenburgh**	**Tarrytown**
P24A		
2001	273,885	267,052
2002	287,579	280,405
2003	301,958	294,425
2004	317,056	309,146
2005	332,908	324,603

Due to the rental income generated by the improvements on the parcels, petitioner additionally used the income method to value both parcels, as did respondents for P24A. The Court concludes, upon analysis of the several methodologies, that the use by petitioner of both the actual rents derived from marketing of the premises on the parcels, and the numerous comparable leases for each of the two parcels, constitutes the most sound methodology and renders its figures more accurate. Employment, then, of the rates found proper by the Court for these years (9.5%; 9.25%; 9.0%; 9.0% and 8.75%) yield overall (tax weighted) cap rates of 12.75% and 12.5% for 2001 and 2002, respectively, and 11.75% for each remaining year. The Court therefore concludes, upon capitalizing the net income figures calculated by petitioner, that the following income method values are most appropriate:

Greenburgh/Tarrytown

Income Market Value in Dollars (MV $)

P24 and P24A	
2001	1,058,824
2002	1,200,000
2003	1,234,043
2004	1,234,043
2005	1,276,596

Application again of the distribution accepted previously (75% P24, 25% P24A) yields the following income values for the two parcels:

G**reenburgh/Tarrytown**

MV $

P24

2001	794,118
2002	900,000
2003	925,532
2004	925,532
2005	957,447

G**reenburgh/Tarrytown**

MV $

P24A

2001	264,706
2002	300,000
2003	308,511
2004	308,511
2005	319,149

The Court accepts the conclusions of all parties that, as relates to these parcels, the Income Method best reflects proper market value. Accordingly, and weighting for that method, final market values for P24 and P24A are as follows:

Greenburgh/Tarrytown

Final MV $

P24

2001	794,118
2002	900,000
2003	925,532
2004	925,532
2005	957,447

Greenburgh/Tarrytown

Final MV $

P24A

2001	264,706
2002	300,000
2003	308,511
2004	308,511
2005	319,149

FINAL MARKET VALUES

These calculations result in final values of:

Parcel 13

Final MV $	Greenburgh	Tarrytown
2001	1,265,187	1,233,557
2002	1,328,446	1,295,235
2003	1,394,869	1,359,997
2004	1,668,476	1,650,168
2005	1,705,092	1,685,868

Parcel 14

Final MV $	Greenburgh	Tarrytown
2001	-	-
2002	-	-
2003	-	463,220
2004	498,852	486,381
2005	523,794	510,700

Parcel 21

Final MV $	Greenburgh	Tarrytown
2001	3,184,154	-
2002	3,343,362	-
2003	3,510,530	3,423,407
2004	3,686,056	3,594,577
2005	3,870,359	3,774,306

Parcel 22

Final MV $	Greenburgh/Tarrytown
2001	1,568,627
2002	1,600,000

2003	1,617,021
2004	1,617,021
2005	1,702,128

Parcel 23

Final MV $	Greenburgh	Tarrytown
2001	1,283,097	-
2002	1,347,252	-
2003	1,414,614	1,379,319
2004	1,485,345	1,448,285
2005	1,559,612	1,520,699

Parcels 24 and 24A

Final MV $	Greenburgh/Tarrytown
P24	
2001	794,118
2002	900,000
2003	925,532
2004	925,532
2005	957,447

Final MV $	Greenburgh/Tarrytown
P24A	
2001	264,706
2002	300,000
2003	308,511
2004	308,511
2005	319,149

which values are well within the range of testimony. *(See Rose v. State,* 24 N.Y2d 80 [1969].)

Final Value, Assessment, and Refund

The indicated assessments, based on these assessed values, are:

Greenburgh Indicated Assessed Values

Parcel 13

Final MV $	Greenburgh	Eq Rate[11]	Indicated AV $
2001	1,265,187	5.65%	71,483
2002	1,328,446	4.52%	60,046
2003	1,394,869	4.18%	58,306
2004	1,668,476	3.64%	60,733
2005	1,705,092	3.37%	57,462

Parcel 14

Final MV $	Greenburgh	Eq Rate	
2001	-	-	
2002	-	-	
2003	-	-	
2004	498,852	3.64%	18,158
2005	523,794	3.37%	17,652

Parcel 21

Final MV $	Greenburgh		
2001	3,184,154	5.65%	179,905
2002	3,343,362	4.52%	151,120
2003	3,510,530	4.18%	146,740
2004	3,686,056	3.64%	134,172
2005	3,870,359	3.37%	130,431

Parcel 22

Final MV $	Greenburgh		
2001	1,568,627	5.65%	88,627
2002	1,600,000	4.52%	72,320
2003	1,617,021	4.18%	67,591
2004	1,617,021	3.64%	58,860
2005	1,702,128	3.37%	57,362

[11]Prior to trial, the parties stipulated to the equalization rates in the two municipalities in the tax years at issue.

Parcel 23

Final MV $	Greenburgh		
2001	1,283,097	5.65%	72,495
2002	1,347,252	4.52%	60,896
2003	1,414,614	4.18%	59,131
2004	1,485,345	3.64%	54,067
2005	1,559,612	3.37%	52,559

Parcels 24 and 24A

Final MV $	Greenburgh		
P24			
2001	794,118	5.65%	44,868
2002	900,000	4.52%	40,680
2003	925,532	4.18%	38,687
2004	925,532	3.64%	33,689
2005	957,447	3.37%	32,266

Final MV $	Greenburgh		
P24A			
2001	264,706	5.65%	14,956
2002	300,000	4.52%	13,560
2003	308,511	4.18%	12,895
2004	308,511	3.64%	11,230
2005	319,149	3.37%	10,755

Greenburgh Assessed Values and Assessments

Parcel 13

	Indicated AV $	Assessment	Over / Under Assessment
2001	71,483	59,400	Under
2002	60,046	59,400	Under
2003	58,306	59,400	1,094
2004	60,733	59,400	Under
2005	57,462	59,400	1,938

Parcel 14

2001	-	-	-
2002	-	-	-
2003	-	-	-
2004	18,158	17,200	Under
2005	17,652	17,200	Under

Parcel 21

2001	179,905	246,000	66,095
2002	151,120	246,000	94,880
2003	146,740	246,000	99,260
2004	134,172	246,000	111,828
2005	130,431	246,000	115,569

Parcel 22

2001	88,627	177,750	88,523
2002	72,320	177,750	105,430
2003	67,591	177,750	110,159
2004	58,860	177,750	118,890
2005	57,362	177,750	120,388

Parcel 23

2001	72,495	97,800	25,305
2002	60,896	97,800	36,904
2003	59,131	97,800	38,669
2004	54,067	97,800	40,733
2005	52,559	97,800	45,241

Parcels 24 and 24A

P24

2001	44,868	85,300	40,432
2002	40,680	85,300	44,620
2003	38,687	85,300	46,613
2004	33,689	85,300	51,611
2005	32,266	85,300	53,034

P24A

2001	14,956	21,800	6,844
2002	13,560	21,800	8,240
2003	12,895	21,800	8,905

2004	11,230	21,800	10,570
2005	10,755	21,800	11,045

Tarrytown Indicated Assessed Values

Parcel 13

Final MV $	Tarrytown	Eq Rate[12]	Indicated AV $
2001	1,233,557	5.97%	73,643
2002	1,295,235	5.42%	70,202
2003	1,359,997	4.29%	58,344
2004	1,650,168	4.02%	66,337
2005	1,685,868	3.52%	59,343

Parcel 14

2001	-	-	-
2002	-	-	-
2003	463,220	4.29%	19,872
2004	486,381	4.02%	19,553
2005	510,700	3.52%	17,977

Parcel 21

2001	-	-	-
2002	-	-	-
2003	3,423,407	4.29%	146,864
2004	3,594,577	4.02%	144,502
2005	3,774,306	3.52%	132,856

Parcel 22

2001	1,568,627	5.97%	93,647
2002	1,600,000	5.42%	68,640
2003	1,617,021	4.29%	69,370
2004	1,617,021	4.02%	65,004
2005	1,702,128	3.52%	59,914

Parcel 23

2001	-	-	-
2002	-	-	-

[12]Prior to trial, the parties stipulated to the equalization rates in the two municipalities in the tax years at issue.

2003	1,379,319	4.29%	59,173
2004	1,448,285	4.02%	58,221
2005	1,520,699	3.52%	53,529

Parcels 24 and 24A

P24

2001	794,118	5.97%	47,409
2002	900,000	5.42%	48,780
2003	925,532	4.29%	39,705
2004	925,532	4.02%	37,206
2005	957,447	3.52%	33,702

P24A

2001	264,706	5.97%	15,803
2002	300,000	5.42%	16,260
2003	308,511	4.29%	13,235
2004	308,511	4.02%	12,402
2005	319,149	3.52%	11,234

Tarrytown Assessed Values and Assessments

	Indicated AV$	Assessment	Over/Under Assessment
Parcel 13			
2001	73,643	70,350	Under
2002	70,202	70,350	148
2003	58,344	70,350	12,006
2004	66,337	70,350	4,013
2005	59,343	70,350	11,007
Parcel 14			
2001	-	-	-
2002	-	-	-
2003	19,872	24,250	4,378
2004	19,553	24,250	4,697
2005	17,977	24,250	6,273
Parcel 21			
2001	-	-	-
2002	-	-	-

2003	146,864	130,000	Under
2004	144,502	130,000	Under
2005	132,856	130,000	Under

Parcel 22

2001	93,647	125,100	31,464
2002	68,640	125,100	56,460
2003	69,370	125,100	55,730
2004	65,004	125,100	60,096
2005	59,914	125,100	65,186

Parcel 23

2001	-	-	-
2002	-	-	-
2003	59,173	79,550	20,377
2004	58,221	79,550	21,329
2005	53,529	79,550	47,350

Parcels 24 and 24A

P24

2001	47,409	67,800	20,391
2002	48,780	67,800	19,020
2003	39,705	67,800	28,095
2004	37,206	67,800	30,594
2005	33,702	67,800	34,098

P24A

2001	15,803	20,650	4,847
2002	16,260	20,650	4,390
2003	13,235	20,650	7,415
2004	12,402	20,650	8,248
2005	11,234	20,650	9,416

This would result in a reduction in assessed value, for each of the municipalities, for each of the tax years and tax refunds, where payments were already based on such Town and Village assessments, as follows:

Greenburgh

Assessment Year	Town Assessment	Ind. Assessment	Reduction
Parcel 13			
2001	59,400	-	
2002	59,400	-	
2003	59,400	1,094	
2004	59,400	-	
2005	59,400	1,938	
Parcel 14			
2001	-	-	
2002	-	-	
2003	-	-	
2004	17,200	-	
2005	17,200	-	
Parcel 21			
2001	246,000	66,095	
2002	246,000	94,880	
2003	246,000	99,260	
2004	246,000	111,828	
2005	246,000	115,569	
Parcel 22			
2001	177,750	88,523	
2002	177,750	105,430	
2003	177,750	110,159	
2004	177,750	118,890	
2005	177,750	120,388	
Parcel 23			
2001	97,800	25,305	
2002	97,800	36,904	
2003	97,800	38,669	
2004	97,800	40,733	
2005	97,800	45,241	

Parcels 24 and 24A

P24

2001	85,300	40,432
2002	85,300	44,620
2003	85,300	46,613
2004	85,300	51,611
2005	85,300	53,034

P24A

2001	21,800	6,844
2002	21,800	8,240
2003	21,800	8,905
2004	21,800	10,570
2005	21,800	11,045

Tarrytown

Assessment Year	Village Assessment	Ind. Assessment Reduction
Parcel 13		
2001	70,350	-
2002	70,350	148
2003	70,350	12,006
2004	70,350	4,013
2005	70,350	11,007
Parcel 14		
2001	-	-
2002	-	-
2003	24,250	4,378
2004	24,250	4,697
2005	24,250	6,273
Parcel 21		
2001	-	-
2002	-	-
2003	130,000	-
2004	130,000	-
2005	130,000	-

Parcel 22

2001	125,100	31,464
2002	125,100	56,460
2003	125,100	55,730
2004	125,100	60,096
2005	125,100	65,186

Parcel 23

2001	-	-
2002	-	-
2003	79,550	20,377
2004	79,550	21,329
2005	79,550	47,350

Parcels 24 and 24A

P24

2001	67,800	20,391
2002	67,800	19,020
2003	67,800	28,095
2004	67,800	30,594
2005	67,800	34,098

P24A

2001	20,650	4,847
2002	20,650	4,390
2003	20,650	7,415
2004	20,650	8,248
2005	20,650	9,416

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 Opinion, Decision, and Order of the Court.

Settle Judgement on notice.

Dated: White Plains, New York
August , 2008

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HON. JOHN R. LaCAVA, J.S.C.

Joseph Albert, Esq.
Albert & Albert
Attorney for Petitioner Cooney Realty Co., Ferry Landing LLC and Westchester Industries, Inc.
100 White Plains Road
Tarrytown, New York 10591

Paul B. Bergins, Esq.
Attorney for Town of Greenburgh
Six Chester Avenue
White Plains, New York 10601

Peter Carparelli, Esq.
Attorney for Town of Greenburgh
177 Hillside Avenue
Greenburgh, NY 10607

Jeffrey S. Shumejda, Esq.
Attorney for Village of Tarrytown
47 Beekman Avenue
Sleepy Hollow, New York 10591

John F. Burkhardt, Esq.
Attorney for Tarrytown School District
445 Hamilton Avenue, Suite 1500
White Plains, New York 10601