PRELIMINARY REPORT

of the Joint Task Force charged with eliminating corruption in the Real Property Assessment Unit of the New York City Department of Finance

August 2002

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PRELIMINARY REPORT OF THE JOINT TASK FORCE CHARGED WITH ELIMINATING CORRUPTION IN THE REAL PROPERTY ASSESSMENT UNIT OF THE NEW YORK CITY DEPARTMENT OF FINANCE

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I. INTRODUCTION

On February 25, 2002, eighteen current or former New York City Tax Assessors employed by the New York City Department of Finance (DOF), Property Division, Real Property Assessments Unit were arrested on federal racketeering, bribery and mail fraud charges. A joint investigation by the New York City Department of Investigation (DOI), the U.S. Attorney for the Southern District of New York and the Federal Bureau of Investigation revealed that the assessors accepted more than $10 million in bribes over a thirty-five year period to change the assessed values of almost 600 properties. The scheme is estimated to have cost New York City approximately $40 million annually since tax year 1997/1998 and an undetermined amount in previous years.

Assessors are responsible for determining the market value of all real property in connection with the assessment of real property taxes. Property values are updated annually so that values reflect current market conditions. In the current fiscal year, DOF estimated market value of almost $600 billion and billable assessments of $93.3 billion. For Fiscal Year 2002, the City collected approximately $8.5 billion dollars in property taxes – based on a levy of about $9.3 billion. The property tax is the City's single largest source of revenue.

In response to the arrests, the Commissioners of DOI and DOF took several steps. Chief among these was establishing a joint Anti-Corruption Task Force (the Task Force) charged with examining the property assessment function at DOF and developing recommendations to eliminate the potential for future corruption in this area. The Task Force brought together key staff from DOI's Inspector General's Office for the Department of Finance and other DOI units knowledgeable about the specific allegations in the indictments and corruption vulnerability assessments. It also brought together key DOF staff knowledgeable about the real property assessment process and the operational and technological systems that support the assessment function. This report sets forth the Task Force's preliminary findings and recommendations.

The assessment process is not well understood by the public. There is a widespread perception -- especially in light of the recent arrests -- that property assessment is the exclusive domain of a small cadre of "expert assessors" who rely primarily on their own subjective judgments to arrive at assessment values. In preparing its observations and recommendations, the Task Force was cognizant of a variety of comments from elected officials, industry groups and the media calling for the City to demystify the property assessment process and make it more objective.

First and foremost, DOF must eliminate corruption risks in the Real Property Assessment Unit and see to it that the way it estimates values is transparent and easy to understand. This Preliminary Report contains 23 specific recommendations to accomplish these goals. These recommendations

are largely within the City's control and, for the most part, can be implemented immediately or in the near future. These recommendations are organized as follows:

A. Improving the Quality of Data Used in the Assessment Process
B. Improving Agency Operations
C. Improving Oversight and Integrity Controls
D. Making Better Use of Technology
E. Improving Public Awareness

In addition, the report includes 12 recommendations that require further analysis, external cooperation and input from the real estate, appraisal, and legal communities; unions; elected officials; and, most importantly, the public. One such recommendation seeks a new system for categorizing properties based on widely available income and expense information rather than individualized information submitted by owners. Ultimately, the goal is to simplify the way the Department does assessments, which will further improve the transparency of the process for property owners, the real estate industry and the public at large.

The report also recommends that the City set an agenda for labor/management cooperation that seeks to redefine the assessor job descriptions, implement a new assignment rotation system and re-evaluate professional credentials for assessors. The report recommends that the City undertake a review of best practices, including how to reassess properties that have been assessed corruptly and how assessments are done elsewhere, with an emphasis on sources of data and property classifications.

The Task Force further recommends that the City undertake a review of the appellate process governing real property assessments in other jurisdictions, with an emphasis on comparing the respective roles and standards of review employed by the Tax Commission and the State Courts pursuant to Article 7 proceedings. Such a review would determine whether the appeals process could be made fairer, more efficient and consistent with the standard of review employed in other appellate processes.

Next the report recommends that the City review the complexity of the legal framework supporting the Property Tax with a view towards demystifying the process and promoting public awareness.

The Task Force recommends that the City adopt seven of the eight recommendations contained in the recent report of the New York State Assembly on Assessor Practices and Assessment Administration in New York City. Four of the Assembly's recommendations are similar to ones proposed by the Task Force; though not identified specifically in text, their similarity is footnoted where applicable. Three of the Assembly's recommendations, which do not overlap with the Task Force's, are discussed individually.

The Task Force does not support the State Assembly's call for the creation of a new City agency to handle assessment, as it believes that the reforms set forth in this report would enable DOF both to improve the handling of assessments and to safeguard the integrity of the process.

Next Steps

In the next several months, the Task Force will schedule working group meetings with the assessors union, property owners, tenants, the legal community, elected officials, other government agencies and members of the general public to discuss the recommendations contained in this Preliminary Report. The ultimate goal will be to publish a final report in early 2003 that includes public comments and legislative recommendations.

In the interim, Finance will continue to make important changes, including filling the 15 vacancies created by the arrests last February, sharing DOF's assessment guidelines with the public and improving the public notices it sends. Over the fall, Finance will test new technology and set up new assessment districts. By taking these steps, Finance will ensure that the January 2003 assessment roll is accurate and fair.

The property tax is too important to the City's fiscal health to tolerate the kind of illegal activity that was revealed by the assessor arrests. The Task Force is committed to making sure that the public's trust in the property tax is never violated again.

II. BACKGROUND: UNDERSTANDING THE CORRUPTION RISKS IN NEW YORK CITY'S ASSESSMENT PROCESS

Property Classes

Pursuant to Section 1802 of the New York State Real Property Tax Law, real property in New York City -- which currently includes 983,831 properties -- is divided into four main tax classes.

- Tax Class 1 consists primarily of 1-3 family homes, certain condominiums and residentially zoned vacant land in Manhattan north of 110th Street and the other four boroughs. There are currently 691,348 Tax Class 1 properties in the City.

- Tax Class 2 consists of all residential buildings that are not in Tax Class 1. The class consists primarily of rental, cooperative and condominium apartment buildings with more than 10 units. There are currently 183,392 Tax Class 2 properties representing 1.4 million residential units in the City.

- Tax Class 3 consists of utilities such as telephone lines and poles, boilers and cables. There are currently 5,110 Tax Class 3 properties in the City.

- Tax Class 4 consists primarily of hotels, office buildings, stores, factories, warehouses, garages and certain vacant land. There are currently 103,904 Tax Class 4 properties in the City.

Valuation Methods

The purpose of the property assessment process is to determine full market value for all properties, which is defined as the price an informed buyer would pay an informed seller for a particular property in an "arms-length" sale. There are three methods for valuing real estate -- sales, cost and income.

- The sales approach assumes a property's value is the amount that it or a comparable property would sell for. This approach is most useful when a number of similar properties have been sold in the market.

- The cost approach assumes a property's value is the cost of constructing it. This approach is particularly useful in valuing new construction or unique properties such as utility pipelines and museums.

- The income approach assumes a property's value is equal to the income that the property can generate after providing the owner with a reasonable rate of return. This approach is used to value income producing properties such as office and apartment buildings.

What Went Wrong

Commercial Properties -- Office and Apartment Buildings

Properties in Classes 2 and 4 pay a substantial amount of the property tax burden. In Fiscal Year 2002 these properties paid $7.6 billion, more than 80 percent of the $9.3 billion property tax levy.

Class 2 and 4 properties are valued using the income approach. The income approach requires assessors to estimate three variables: income, expenses, and a capitalization rate, which is the rate of return an investor would reasonably expect. For cooperatives and condominiums the process is more complicated because Section 581 of the New York State Real Property Tax Law requires that these properties be valued as rent-regulated properties even though most people think about the values of these properties based on sales prices.

There is a high degree of subjectivity in the valuation process for these properties; thus, opportunities for corruption abound. The assessor could manipulate all three variables -- use a lower income estimate, higher expenses and an above average capitalization rate -- and the resulting value would be substantially lower. In addition, the assessor could manipulate the building characteristics including square footage. For cooperatives and condominiums, the assessor could also base the assessment on a low-valued, rent regulated property.

The key to good assessments is good data. However, the data currently available to assessors, particularly data required to assess income-producing properties and co-ops and condominiums cannot be shared publicly and are not adequate. Therefore, it is very difficult to explain how DOF establishes its values.

Real Property Income and Expense Statements

In 1986, the City enacted Title 11, Chapter 2, Section 11-208.1 of the Administrative Code of the City of New York requiring owners of income producing properties to provide DOF with income and expense information. Owners must submit Real Property Income and Expense Statements (RPIEs) annually and the law requires that DOF keep the information submitted secret.

As a result, the process by its very nature precludes DOF from providing sufficient information to the public on how it arrives at values. In addition, since DOF must base its assessments on the owners RPIEs, two similar buildings rarely have the same value. To make the process more transparent, nothing DOF does in the valuation process should be based on information that cannot be freely shared publicly.

RPIEs Are Problematic in Other Respects

- DOF only relies on the information from the RPIEs in limited instances because the information is stale and assessors often think owners have an economic interest in understating the income and overstating the expenses associated with their properties.

- The income and expense information is property-specific, making it very difficult for owners to compare their values to each other. Two buildings next to each other could have vastly different values based on the income and expense information they submit.

- The information contained in the RPIEs lags the assessment process by two years. For example, for the assessment year 2002/03, the most recent RPIE will be for the year 2000. Thus, the information contained in the RPIE has to be updated by the assessors, a process that requires subjective judgment and could be vulnerable to corruption. (See Appendix, which describes the RPIE timeline for the 2002 assessment cycle.)

- Property owners often do not submit RPIEs within the time period prescribed by law. Of the 45,000 properties required to file RPIEs in 2000, only 27,000 properties filed -- a non-compliance rate of 40 percent. The Department of Finance has not used its legal authority to compel the production of income and expense records from owners failing to file. In addition, the Department has not imposed the legally authorized penalties -- up to 5 percent of assessed value -- for failing to submit RPIEs. However, owners who do not submit RPIEs are denied a hearing before the Tax Commission.

- RPIEs are filed on paper, making it difficult to capture needed information in a timely fashion and to ensure that data is not being manipulated.

III. 23 SHORT–TERM RECOMMENDATIONS

A. Improve the Quality of Data Used in the Assessment Process

1) DOF should use non-secret, reliable, objective, independent, publicly available data to determine values instead of individualized income and expense statements submitted by property owners.

These might include:

- **Industry data,** such as
  - Cushman and Wakefield "Property Trends", which provides office vacancy and office market income and expense data by neighborhood
  - Jones Lang LaSalle, which also provides office vacancy and office market income and expense data
  - Trends, which provides hotel expense ratios
  - Julien Studley, which also provides office vacancies and office market income by neighborhood

- **Capitalization rates,** such as
  - KORPACZ, published by Price Waterhouse Coopers, which includes interest rates, equity rates and capitalization rates.
  - Barrons, which provides mortgage ratios
  - American Council of Life Insurances, which provides data on rates of return and financing levels

- **Information from government entities such as the**
  - New York City Buildings Department, which collects building dimensions including square footage for all New York City properties
  - New York State Division of Housing and Community Renewal, which collects rent roll information for rent-regulated apartments
  - New York City Department of Housing Preservation and Development, which through various vehicles, including the Housing Development Corporation, provides financing for housing
  - Rent Guidelines Board
  - New York City Housing Authority
  - City Planning Department
  - Economic Development Corporation

The Task Force understands that independent industry data does not currently exist to support the assessment of certain types of properties, such as warehouses, garages and stores. However, most of these properties are not required to file RPIEs because they are owner occupied. In addition, given rent regulations, apartment buildings must be valued using actual income and expense data.

Nevertheless, there is sufficient publicly available industry data that would support better, more consistent and more predictable assessments for a great

number of New York City properties. If DOF continues to rely on RPIEs, owners should be required to file this information electronically and the secrecy provision should be repealed.

2) **DOF should be required to provide the public with information about how values are determined including how income and expenses are estimated and capitalization rates are derived. DOF also should provide aggregate data about sales prices.**

B. Improve Agency Operations

3) **DOF should redesign the assessors' work process to eliminate opportunities for inappropriate contacts with property owners and their representatives.**

Contact between assessors and property owners or their representatives has been conducive to influence and/or corruption. Assessors who speak repeatedly with property owners or frequently visit particular properties may develop relationships with those property owners or their representatives. Over time, these relationships present the opportunity for owners or their representatives to influence the outcome of assessments and for corrupt situations to develop. To avoid this, it is necessary to limit the assessors' contacts with property owners and their representatives. The work process should be redesigned to eliminate -- to the extent possible -- opportunities for relationships to develop between assessors and owners/owner's representatives.

Specifically:

- **DOF should prohibit assessors from personally meeting with property owners or their representatives.** Owners and their representatives should no longer be able to request that they speak with "their assessor."

- **Owners and their representatives should request follow-up inspections in writing to the Assessor-in-Charge of the Borough.**

- **DOF should document all such requests in the assessment records.**

- **DOF should not permit assessors who originate assessments to return for follow-up work.** Sending a different assessor reduces opportunities for inappropriate relationships to develop and provides for an independent second opinion where there is disagreement with the original valuation.

4) DOF should implement a comprehensive field time accountability system.

Managers do not have an effective means to determine where field assessors are at any point in the day. Currently, DOF relies on a "Beep-and-Meet" system, whereby supervisors from time-to-time page assessors working on location and direct them to meet the supervisor at a specified location. DOF also requires assessors to fill out planned and actual field reports, which are lacking in that they do not include actual time of arrival and departure for each location.

DOF should:

- **Institute more detailed daily time logs that specify the time of arrival and departure from all locations visited.**
- **Direct supervisors to review work schedules more closely and distribute workloads more evenly.**
- **Utilize state-of-the-art technology.**

5) DOF should assign different individuals to perform the data collection and analysis functions.

Currently, the same assessor collects and analyses the data. A dishonest assessor could have an incentive to distort information. Data collection and data analyses are discrete functions that should be performed by different individuals with sufficient knowledge of the assessment process. Allowing one assessor to control this entire process fails to provide important checks and balances. The assessor that does the data collection should not be the same assessor that determines the value of the property. Separating these functions will improve the integrity of the process.

6) DOF managers should perform random reviews of assessments.

Prior to the publication of the tentative real property tax roll, DOF should convene a panel of managers -- for example, the Deputy Commissioner, Chief Assessor, Deputy Chief Assessor, and others -- to randomly review district assessor's valuations. Each assessor would be required to explain, in detail, the rationale for any assessment. The parcels reviewed must be selected at random to ensure that increases as well as decreases -- regardless of size -- as well as unchanged values are included. This would preclude opportunities for assessors to tailor valuations to "fall under the radar."

C. Improve Oversight and Integrity Controls

The Department of Finance's ability to prevent corruption in the Assessment Area -- as well as in other field operations, including Audit, Revenue Operations, and the Sheriff's Office -- is hampered by the lack of independent oversight capacity to review/audit exception reports, fieldwork products and the whereabouts of personnel on field assignments.

DOF currently has a Department Advocate's Office within the Administration Division, which investigates allegations of employee misconduct and makes referrals for disciplinary proceedings. This office does not currently have sufficient resources to proactively identify corrupt employees.

DOF also has an Internal Audit Unit responsible for developing and carrying out a systematic review of internal control weaknesses throughout the Department. However, this unit also does not currently have sufficient staff to implement an effective internal audit program.

The City's overall ability to prevent corruption would be enhanced if it increased DOI's limited resources for proactive anti-corruption activities.

7) DOF should enhance and expand the Department Advocate's Office.

DOF should provide the Department Advocate's Office with sufficient resources to perform its current disciplinary functions and also work closely with DOF's Inspector General's Office -- following DOI's protocols -- to conduct field investigations, integrity testing and double checking. Specifically, resources are needed to allow the Department Advocate's Office to:

- **Conduct investigations in response to referrals from the Inspector General (IG) and report findings to the IG** or the appropriate office within DOF for follow-up.
- **Conduct investigations to ensure that assessors accurately report the time they work.**
- **Follow-up on findings of the Internal Audit Unit that indicate patterns of misconduct, and/or training weakness,** which do not necessarily rise to the level of criminality.
- **Respond to complaints from the public regarding actions of assessors, auditors and other DOF field agents.**
- **Work closely with the Inspector General to randomly conduct integrity testing of assessors, auditors and other field personnel.**

- **Conduct double check reviews of field inspections, assessments, and audits.**

- **Investigate allegations of employee misconduct and make referrals for disciplinary proceedings.**

- **Initiate hearings and other appropriate disciplinary action as warranted.**

- **Monitor and review compliance with DOF and City rules.**

- **Coordinate with the Office of Training and Special Programs to ensure that DOF personnel receive adequate training.**

The Department Advocate's Office would not conduct independent criminal investigations. Any allegations or patterns of criminality would be reported to the Inspector General's Office for DOF immediately.

8) DOF should enhance and expand the current Internal Audit Unit.

The Department's Internal Audit Unit does not have adequate supervision and staff resources to conduct annual assessments of internal control weaknesses. Nor can it maintain a rigorous enough internal audit program to effectively monitor and report on internal control weaknesses. For example, the most recent internal audit covering aspects of the property assessment function was completed in 1996.

- **DOF should recruit an Audit Director as well as an Electronic Data Processing (EDP) Auditor and other qualified auditors at both the experienced and entry levels.** In the past, recruitment and retention of qualified personnel for these positions has been a problem for DOF. The Internal Audit Unit should continue to report directly to the Commissioner of Finance or her designee.

- **The Internal Audit Unit should cooperate and coordinate with the DOF Inspector General's Office and the Department Advocate's Office.** The Director of the Internal Audit Group, in consultation with the Commissioner of Finance, would be responsible for developing an effective annual assessment of internal control weaknesses as well as developing and implementing an effective annual audit plan.

9) **DOF should require assessors to complete financial disclosure forms.**[1]

All assessors -- regardless of salary -- should be required to fill out financial disclosure forms and submit them to DOI and the Conflict of Interest Board annually.

10) **The large City agencies that benefit from DOI's anti-corruption activities should be required to allocate additional staff to DOI to maintain and expand this important function.** The recent investigation has highlighted the need for vigorous, creative and proactive anti-corruption initiatives from DOI that could only come from a revitalized and fully staffed corruption prevention unit.

D. Make Better Use of Technology – Improving the Systems that Support the Assessment Process

Two primary information technology systems support the property assessment function: the Computer Assisted Mass Appraisal (CAMA) system and the Real Property Assessment Division (RPAD) system.

The CAMA system, developed in 1992 through a contract with the Cole-Layer-Trimble Company, maintains a database of physical, economic and valuation information for each parcel of property and assists the assessors in valuing the parcels using cost, sales and income methods of valuation.

Since properties in New York City are assessed at a percent of value and are subject to other complex rules, the RPAD system, originally developed in the early 1980s, is programmed with legally mandated formulas to arrive at assessments used for tax purposes. RPAD also is the repository for property sales dating back to the 1970s. In addition, RPAD is used to calculate exemption and abatement values. The system also maintains information about assessment protests filed with the Tax Commission.

There are several weaknesses in these systems as they currently exist that should be addressed immediately.

11) **DOF should program the CAMA system to support the production of values for commercial properties in order to reduce subjective discretion in valuing commercial properties.**

Commercial valuations are currently done manually outside of the CAMA system, which gives assessors wide latitude for subjective discretion in arriving at

[1] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

values for commercial properties. There is a subsystem within CAMA that can accommodate commercial valuations, but it is not fully functional.

Specifically, DOF must:

- **Add certain value components to the system, e.g., income, expense, capitalization rate or gross income multiplier, in order to accommodate commercial valuations; and**

- **Secure these changes with uneditable codes so that any change by an assessor would require a code change.** DOF should produce reports of such code changes and related reason codes, which should be reviewed by supervisors and oversight units.

12) Assessors should record field observations on handheld computers.

Currently, an assessor records the result of field observations by hand in a manner of his/her choosing. Handwritten data recorded in the field are transferred to other paper documents -- Property Valuation Documents (PVDs) -- and eventually entered into CAMA by the assessor, an assistant or supervisor. Multiple transfers of data are not only inefficient but subject to repeated errors and data manipulation.

- **A state-of-the-art handheld, user-friendly computerized device for recording the results of fieldwork would greatly reduce errors and data manipulation** and facilitate automated transfer of information to the CAMA system.

- **Handhelds could also provide real-time monitoring of the data collector's physical location and daily activities** through the inclusion of global positioning system (GPS) technology.

- **Handhelds could be equipped with cameras for capturing images of properties,** and they could incorporate workflow assignments, with standardized fill-in worksheets and Geographic Information System (GIS) routing of the tasks to be performed.

- **Property characteristics could be downloaded to handhelds for field confirmation.**

Currently, individual assessors retain custody of the Property Valuation Documents (PVDs) even after the valuation is completed. Although supervisors may have access, no standardized central storage or file management system exists. Allowing the assessor to maintain control of these documents presents corruption and quality control risks. If this information were captured electronically, there would be no reason to maintain paper records.

13) **DOF should store all records supporting property assessments centrally.** Centralized storage of files will reduce integrity risks and will afford management better control and access to these important documents.

DOF also should maintain a digital library of all property assessment records so managers can access them remotely.

14) **DOF should improve the password, User ID protection and other security standards on the CAMA and RPAD systems.**

The password protection and User ID process for the CAMA and RPAD systems are not adequate.

Specifically, DOF should:

- **Make CAMA's passwords expire and be a minimum of six characters composed of letters and numbers, in accordance with City standards.**
- **Properly format RPAD's passwords.**
- **Systematically delete or revoke inactive User Ids.**
- **Conduct annual reviews of users, their associated IDs and access rights.**

DOF has no security policy regarding control over access to and the dissemination of information within the CAMA and RPAD systems. Nor is there a consistent set of rules for controlling and limiting access to the input of data.

DOF must develop stringent security standards.

15) **DOF should program the CAMA system to produce an efficient and reliable audit trail of all changes entered into the system.**

It is questionable whether the CAMA system is able to produce a trail for audit purposes of changes to property values or characteristics. An audit trail is an essential tool for managers and oversight groups to monitor changes as a means of preventing corruption. CAMA's ability to perform this function should be improved.

16) DOF should improve CAMA system controls to prevent tampering.

The CAMA system provides too much latitude for assessors and other employees to change data. DOF should undertake a complete review of each user's authority to enter changes into the CAMA system. Also, DOF should program tighter controls into the system to prevent data tampering.

17) DOF must improve the reporting capability of the CAMA and RPAD systems.

A number of currently produced reports are never used, primarily due to the volume of their data. Moreover, production of reports generally depends on a few knowledgeable and competent individuals. This is due in part to complexities in the underlying data structures of CAMA and RPAD and the interdependencies of the data.

- **DOF should review the reports generated by the CAMA and RPAD systems in light of current requirements.**

- **DOF should build a data warehouse and employ user-oriented analysis and reporting tools.** This would support the development of new and useful reports for management and audit purposes -- for example, a graphical representation of the assessment changes by auditor or by district.

- **DOF should train staff as appropriate to use the data warehouse to produce reports.**

18) DOF should improve the user interface for the CAMA system.

From the user's perspective, the CAMA system has several deficiencies. There are, for example, too many unused screens and too many codes, which impedes the user's ability to access information efficiently.

DOF should design a new graphical interface (front-end) to make the system more user-friendly.

19) DOF should perform regular audits of the CAMA and RPAD computer codes.

DOF currently does not perform audits of the computer codes that exist in CAMA and RPAD. Such audits are important to prevent corruption on the part of computer programmers.

DOF should obtain applicable software in order to conduct such audits.

20) DOF should assign management responsibility for the CAMA system to its Management Information System (MIS) Division.

DOF's Management Information Systems (MIS) Division has direct responsibility for managing DOF's key Information Technology Systems that support revenue collections. MIS is responsible for ensuring that system security standards are uniformly maintained throughout the agency. Responsibility for CAMA, which resides within the Property Division, should be moved to the MIS Division.

21) DOF should consider using Business Intelligence (BI) software to highlight areas for management and oversight review.

There are automated tools available, commonly referred to as Business Intelligence (BI) software, which have the ability to uncover patterns and relationships not readily apparent in a normal review process. DOF currently uses BI software in the audit process to select likely audit candidates. BI is also used in the health care field to expose fraudulent claims. DOF should explore the feasibility of utilizing BI software to uncover patterns that could reveal fraud in the assessment process.

E. Improve Public Awareness

22) DOF should better inform the public about the assessment process.[2]

The public should be better educated about how DOF determines property assessments.

- **DOF should modify its Notice of Assessment (Flak Notice), as it has its real estate bills, to more clearly explain how the values are determined.** This notice would contain all the elements, rule-based and discretionary, which were used to determine the market value and assessment.

- **DOF also should publish guidelines that explain how various factors are used to determine assessments.** This data should be published like any proposed regulatory change, under the City Administrative Procedure Act (CAPA), in the City Record with a 30-day period set aside for public comment. DOF should consider all evidence provided in the course of this process in determining whether a change in its assessment guidelines is warranted.

[2] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

23) DOF should widely disseminate its policies, including the one that limits contact with assessors, to industry groups and the public.

For example, the Department of Finance's policy regarding limitations on contact with assessors should be sent to industry and special interest groups such as the Real Estate Board of New York (REBNY), the Rent Stabilization Association (RSA) and the Tax Certiorari Bar. This will inform the industry that owners and their representatives are not permitted to contact assessors directly, and should instead go through the Assessor-in-Charge of the Borough. This notification should also be placed on DOF's website and in other written material.

IV. 12 RECOMMENDATIONS REQUIRING EXTERNAL COOPERATION

A. Set an Agenda for Labor/Management Cooperation

1) DOF should redefine assessor job descriptions and reevaluate the district rating criteria.

Current job specifications and district ratings reduce flexibility in rotation of personnel. Assessors may be City Assessors at assignment levels I, II, IIIa, IIIb or IV. Job specifications establish the types of properties and districts that assessors at each assignment level ("tier") may assess. In addition to assessor assignment levels, each of the City's 124 districts is also rated, requiring an assessor at a particular assignment level ("tier") to be assigned to a district with a corresponding rating. The current district ratings and job specifications hamper management's flexibility to change assignments and to rotate assessors to different districts as needed.

Redefining the job descriptions and re-evaluating the district rating criteria would increase DOF's flexibility to make necessary changes and rotations in assessor assignments.

2) DOF should recruit technologically sophisticated individuals for its team responsible for valuing residential properties using the sales approach.

3) DOF should implement a new assignment rotation system.

The current borough and district assignment rotation system is not sufficient to prevent corruption. Assessors are now required to rotate districts every three years. In addition, the current rotation system is too limited to offer a meaningful opportunity for assessors to move to varied districts and develop a wide range of assessment skills over the course of their careers. Assessors, for example, should be able to assess properties regardless of the office to which they are assigned.

- **Increasing the frequency and the distance of the district rotations will prevent the development of relationships between assessors and property owners or their representatives that could foster opportunities for corruption.**

- **Increasing and enhancing the rotation system could give management greater flexibility in varying assessor assignments, and improve job satisfaction and productivity.**

In addition, with technology, valuation need not be location based and the district rotation system can be overhauled. Assessors in Queens will be able to value properties in Manhattan or Brooklyn. Most important is that values by property type (office building, warehouse, factory, apartment building) are rational and consistent within boroughs and citywide.

4) DOF should re-evaluate the professional credentials required for the assessor positions and offer training and support[3].

The Department of Finance should seek to attract and retain the best-qualified, career-focused employees.

DOF should:

- **Require assessors to have a strong background in statistics and data analysis.** Professional and educational credentials for City Assessors should be re-evaluated to meet this standard.
- **Require current employees in the assessor titles to meet new standards within a specified period of time – and DOF should provide ongoing training.**
- **Explore ways to increase staff development and educational opportunities for assessors in partnership with colleges and universities, including the City University of New York.**
- **Develop an anti-corruption training curriculum** in consultation with DOI and coordinated through the Department of Finance's training unit and the Inspector General's Office.
- **As recommended by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration, the City should seek State reimbursement for assessor training.**

[3] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

B. Setting an agenda for discussions with the real estate industry and the public.

DOF should seek the input of the real estate industry and the public in a concerted initiative to arrive at a more fair and equitable process for assessing property that will assure objectivity and restore public trust in the City's property assessment process.

5) With the real estate industry's input and support, DOF should develop a new system for categorizing properties based on objective criteria that are widely available.

Pursuant to Chapter 58 of the New York City Charter, DOF has the legal authority to promulgate rules describing how buildings are classified. To make the assessment process more transparent, objective and less vulnerable to corruption, DOF should consider developing a new property classification system based on location, size, age, condition, and other pertinent factors so that all similar properties are grouped in the same category. For example, Cushman & Wakefield, which publishes industry data, currently defines three classes of commercial properties:

- Class A: Buildings that meet three or more of the following criteria: centrally located, professionally managed and maintained; attract high-quality tenants and command upper-tier rental rates. Structures are modern or have been modernized to successfully compete with newer buildings.

- Class B: Buildings with less than three of the above criteria. In addition, the current or prospective tenants must be office space users.

- Class C: Buildings competing for tenants requiring functional space at rents below average.

It may be necessary to break these or similar categories down into sub-categories in order to adequately represent the diversity of properties in the City.

6) DOF should support legislation to make sales prices public information[4].

Unfortunately, DOF cannot share sales price information with the public. Like relying on secret income and expense statements, prohibiting DOF from

[4] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

disclosing sales prices makes it difficult for DOF to explain to the public how it values property.[5]

C. Research Best Practices

7) **The City should examine how other jurisdictions are able to reassess properties that may have been initially assessed based on corrupt practices.**

Based on such review, DOF should advise whether the rules in New York City should be changed.

8) **The City should conduct an extensive review of how assessments are done elsewhere in the country, with emphasis on sources of data and property classifications.**

The availability of this information will assist DOF as it seeks to improve the assessment process in New York City.

9) **The City should review the process governing appeals of real property assessments in New York City and elsewhere – including the role of the Tax Commission and Article 7 proceedings – to determine if it can be made fairer and more efficient.**

The Tax Commission

The Tax Commission, established pursuant to Chapter 7, Section 153 of the New York City Charter, now provides a second administrative procedure for property owners to contest assessments on the grounds that the assessment is excessive, unequal or unlawful or that the property has been misclassified. The Tax Commission performs *de novo* assessments of property (i.e. the assessment done at the DOF level is disregarded) based on information that may be more current than that which was available to DOF at the time of the original assessment.

Chapter 7, Section 164 (b) of the New York City Charter limits the discretion of the Tax Commission to either maintaining or lowering the original assessment.

- **The City should examine whether the Tax Commission, an appellate forum, should replace the *de novo* standard of review**

[5] This year the Assembly and the Senate passed legislation that authorizes the City to share sales price information with the Office of Real Property Services (ORPS) like all other assessing jurisdictions in New York State. ORPS would be authorized to release the information to the public. The bill is awaiting the Governor's signature.

with one that determines whether DOF's assessment is supported by the record.

- **To the extent that the Tax Commission finds that DOF's assessment is too high or low based on the record, the Tax Commission should have the ability to adjust it accordingly.**

- **To the extent that the City recommends that the Tax Commission continue to use the standard of *de novo* review, it should examine expanding the Tax Commission's discretion to enable it to *increase* as well as maintain or lower original assessments.** The narrow range of discretion currently afforded the Tax Commission is unfair to the City.

- **The City should consider proposing legislation that would impose penalties for filing "frivolous" claims before the Tax Commission.**

- Article 7 Filings

Title 1 of Article 7 of the Real Property Tax Law provides property owners with a judicial forum for review of their assessments. Under Article 7, the State Supreme Court may review or correct on the merits any determination of the Tax Commission. Thus, property owners who dispute their assessments are entitled to yet a third de novo review of the factual basis for their assessment. This is an exception to the modern practice whereby Courts will not upset administrative determinations unless they are arbitrary or capricious.

The Law Department is charged with defending the City in Article 7 proceedings. To avoid protracted litigation and limit the City's liability for substantial refunds, the Law Department settles many cases prior to a full judicial determination.

Property owners may file for a judicial review under Article 7 even though they have not fully exhausted their administrative remedies. For example, a property owner need only file an Application for Correction of Assessment to the Tax Commission before seeking an Article 7 review. There is no requirement for a Tax Commission hearing to have taken place as a prerequisite for property owners to obtain an Article 7 review.

- **The Tax Commission should be required to conduct a hearing on every claim brought before it before an Article 7 judicial review can be brought.** As a result, property owners would be required to fully exhaust all administrative remedies in order to obtain standing for an Article 7 review. Accordingly, the Law Department would then only be required to defend cases that have been decided at the administrative level.

- **Both the taxpayer and the City should have the right to appeal a Tax Commission determination to the Appellate Division.** Court review should be limited to determining whether the record supported the Tax Commission's decision.

10) The City should review the legal framework supporting the property tax.

Twenty years ago, the State adopted S-7000A, which established the legal framework for New York City's assessment system.[6] The law has been amended several times since enactment and each change has added a new layer of complexity. This complexity makes it virtually impossible for DOF to explain what it does to the public. Helping the public understand how DOF values property will be an important tool in combating corruption. The public can help police assessor practices if they understand how DOF determines values and how assessments work. For example,

- Property in New York City must be assessed at a percentage of value not market value (fractional assessments). Property in Class 1 is assessed at 8 percent and all other classes are assessed at 45 percent of value.

- Property in New York City is divided into four classes and each class is supposed to be assessed at a uniform percentage of market value -- all Class 1 properties should be assessed at 8 percent of value. However, other legally mandated rules make it difficult to maintain uniformity within each class.

- Assessment increases for Class 1 properties are limited to 6 percent per year and 20 percent over five years regardless of changes in the market. This often means that assessments continue to increase when values are decreasing. For some properties within Class 2, assessment increases are limited to 8 percent per year and 30 percent over five years.

- Changes in property values are required to be phased-in over a five-year period, which requires the use of complex formulas to compute "transitional assessments."

- The percent of the property tax levy allocated to each class of property is restricted by law (class shares). Commercial property owners bear a far greater share of the tax burden than they represent in market value.

[6] New York City and Nassau County are the only jurisdictions in New York State with the four class assessment system created by S-7000A.

- The tax rate freeze that has been policy for the last 12 years further complicates matters because it causes assessors to think of themselves as revenue generators instead of as public servants responsible for setting an accurate value for properties. This may lead assessors to overstate values and resist reducing values when the real estate market is declining.

- Co-ops and condominiums, which are essentially single family residences, are required to be assessed as income-producing properties (Class 2) subject to rent regulation. The derived values bear no relationship to the market values for these properties.

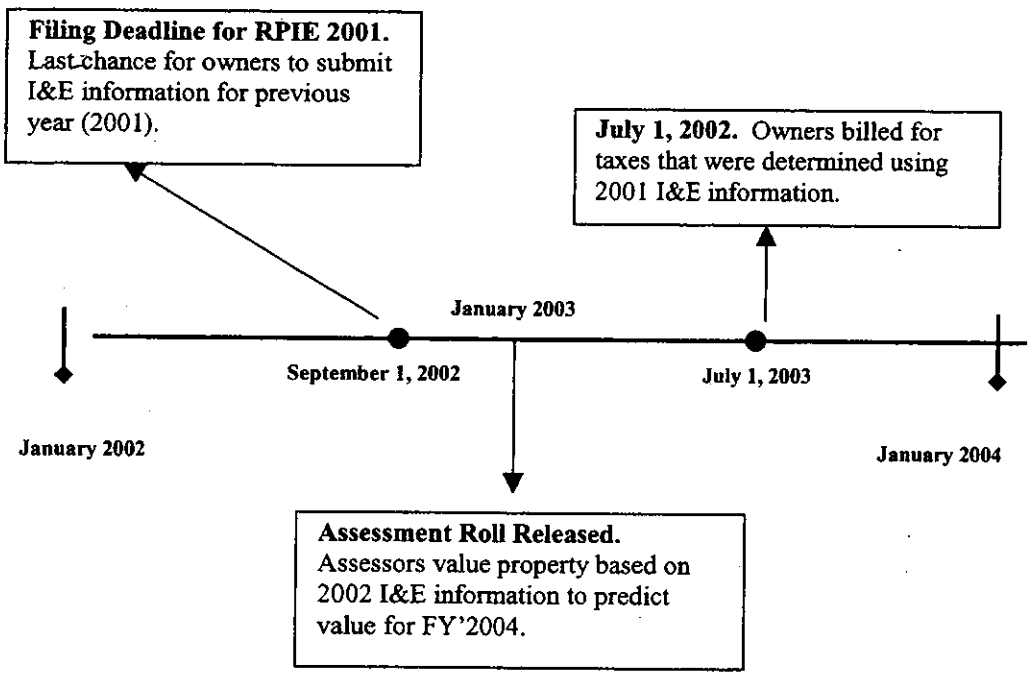
- Utility properties are isolated in a class that has far fewer properties now then it had when the law was originally enacted. As a result, utilities pass the tax burden to each other and then on to consumers.

- DOF cannot release sales information to the public to support its assessments, even though other jurisdictions in New York State can.

This complexity contributes to the public's perception that the property tax in New York City is mystifying and suspicious.

Simplified tax laws will demystify the process and promote awareness and responsible self-monitoring on the part of property owners to efficiently bring to light evidence of unequal treatment.

11) As recommended by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration, the City should determine whether new legislation is needed to insure that it is able to pursue civil actions to recover tax revenue lost as a result of corruption in the assessment process.

12) Also, as recommended by the New York State Assembly, the City should explore the feasibility of getting the State to lift the current cap of $500,000 on State Aid for maintaining updated assessment valuations and assessment rolls.

APPENDIX – The RPIE Timeline for the 2002 Assessment Cycle