

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

MAVIS TIRE SUPPLY CORP.,
Joseph E. St. Onge, Esq., Agent

**DECISION/
ORDER/JUDGMENT**

Petitioners,

Index Nos:

- against -

TOWN OF OSSINING,
A Municipal Corporation, its Assessor or
Board of Assessors and Board of Review,

21713/90
23477/91
23482/92
18775/93
17690/94
16906/95

Respondents.

17219/96
16220/97

For a Review Under Article 7 of the RPTL.

16641/98
16179/99

-----X

LaCAVA, J.

15912/00
15822/01
17724/02
16905/03
17083/04
18253/05
20445/06
20943/07

The trial of this Tax Certiorari Real Property Tax Law (RPTL) Article 7 proceeding, challenging the valuation by the Town of Ossining (Town or Respondent) of the real property owned by Mavis Tire Supply Corp (Mavis or Petitioner), took place before the Court on September 18, 19, 25, and 26, 2008. The following papers numbered 1 to 5 were considered in connection with the trial of this matter:

PAPERS
POST TRIAL MEMORANDUM

NUMBERED
1

| | |
|--|---|
| RESPONDENT'S POST TRIAL MEMORANDUM | 2 |
| REAL ESTATE APPRAISAL BY JOSEPH M. ADRIAN, CSA | 3 |
| PETITIONER'S EXHIBIT 6 | 4 |
| REAL ESTATE APPRAISAL BY BARRY M HERBOLD, ASA | 5 |

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 instant property is owned in fee by Mavis. It is known and designated on the Official Tax Map of the Town and Village of Ossining as Section 89.15, Block 1, Lots 14 and 15 (although it was formerly designated as Section 2, Plate 1, Block 2, Lots 10 and 11.) The parcel is located on Route 9, and is also known as 170 North Highland Avenue.

The property has been described as a generally irregular parcel with a frontage of 168.9 feet on the east side of North Highland Avenue, a depth on its north line of about 124.78 feet, a depth on its irregular south line of about 169.98 feet, and a rear (east) line of about 252.96 feet. The parcel contains approximately 25,920 sq. ft. or .595 acre, of which approximately 10,000 sq. ft. is usable, with the remaining approximately 15,920 sq. ft. being unusable hillside. The property is zoned B-2, Neighborhood Business District, which permitted uses include a variety of retail, service, and other commercial establishments. The subject parcel is a conforming use.

On all dates at issue here, the subject parcel was improved with a one-story, plus mezzanine, commercial garage building which had been erected in 1974. The first floor contains approximately 3,888 sq. ft. with a height of 13.5 feet. The ground floor also includes a customer service office, an electric closet, 2 lavatories, and 8 open garage bays. The mezzanine level consists of approximately 1,040 sq. ft. of open storage space, with a 12.5 feet high ceiling. The total floor area of the parcel is 4,928 sq. ft. On the exterior portion of the subject property are two curb-cuts onto North Highland Avenue, and a paved driveway with parking area for 11 cars.

The Testimony

At the trial of this matter, petitioners moved into evidence a previously-served Notice to Admit Ratio concerning the 1990

through 2003 tax years, and a previously-served Notice to Admit Ratio for the 2004 through 2007 tax years. Petitioners also presented testimony from their appraiser, Joseph M Adrian, an appraiser with substantial experience in real estate valuation who has testified as an expert witness previously before the Court. Adrian was qualified by the Court as an expert in real property valuation, and his appraisal report and the addendum to the report were both admitted into evidence.

Adrian testified that, to arrive at a conclusion on valuation on the subject commercial garage, he employed both a market approach to value (the "sales comparison method") and an income approach to value (the "income capitalization method") in his appraisal. As part of his market approach, Adrian used fourteen (14) comparable sales ("comps"), half of which were located in the Town of Ossining. Additionally, some of these comps which were in the Town, were also located in the vicinity of the subject, on North Highland Avenue. Indeed, one such nearby comparable sale, employed by Adrian as comparable sale #14, was a sale of the property immediately adjacent to the subject on its north side (172 North Highland Avenue, Ossining). The premises, however, a two-story masonry, brick, steel and wood frame building, was substantially larger than the subject at 7,310 square foot, and was a commercial building with 4 stores on the first floor, and three offices on the second floor.

In his appraisal, Adrian concluded that the proper values for the subject premises averaged approximately \$81-83 per sq. ft. of improved building area for the tax years 1991 through 1997 and from \$81 to \$101 per sq. ft. in 2000; he also concluded on values of \$122 per sq. ft. for the June 2003 tax year, \$136 per sq. ft. for the 2004 tax year, and \$138 per sq. ft. for the 2005 tax year. Notably, however, it is unclear from either his testimony or his report how Adrian arrived at these amounts as "averages", since his comparable property grid generally includes only one sale for each of the tax years at issue (an 11/91 sale for 1991; a 4/93 sale for 1993; and a 2/96 sale for 1996, for example.) Adrian simply fails to explain whether, for example, he used only one sale for each year, a clear breach of common appraiser practice as set forth in The Appraisal of Real Estate, 12th edition, ("sales comparison approach: a set of procedures in which a value indication is derived by comparing the property being appraised to similar **properties...**", p. 417, emphasis added), or whether he employed some undisclosed method of trending. Following the comparable sales method as just described, and as set forth in greater detail **infra**

regarding the ceiling and floor, Adrian arrived at values for the subject premises ranging from \$310,000 in 1990 to \$590,000 in 2007.

As set forth above, Adrian also offered an income capitalization approach to value for the subject property. Adrian employed thirteen (13) comparable leases, including, most importantly, three leases of commercial garage buildings by petitioner Mavis. The remaining ten (10) leases employed by Adrian were also of commercial garages. However, as with his sales comparison method, it is unclear how Adrian arrived at the amounts noted as "averages", since here too his comparable leases grid generally includes only one lease for each of the tax years at issue (a 3/90 lease for 1990; a 9/91 lease for 1991; and a 4/98 sale for 1998, for example). Adrian thus here too fails to explain whether he used these individual leases (only one for each year, again a clear violation of common appraiser practice [see, passim, The Appraisal of Real Estate, supra, p 487-88, particularly noting that small errors in income estimates can be magnified into significant errors of valuation] or whether he was employing some trending method. From these comparable leases, Adrian concluded on a representative gross rental value for the subject of between \$15.00 per sq. ft. per year (\$57,000.00) in June 1990, increasing to \$22.35 per sq. ft. per year (\$85,000.00) in June 2007.

Adrian then assumed a 5% vacancy and credit loss, and proceeded to examine the subject's reported actual expenses for the tax years at issue, concluding on insurance costs of \$2,600.00 per year in 1990 rising to \$4,500.00 per year in 2007; replacement reserves and structural repairs of 5% of effective annual income; and management expenses of 6% of effective annual income. He also assumed that utilities and property maintenance would be tenant expenses. Utilizing the above factors, he computed a Net Operating Income value for each of the tax years, to which he applied his derived capitalization rates. In his original appraisal, Adrian did not specify how he arrived at the rates he utilized, rates ranging from a high of 11.50% in 1990 to a low of 8.50% in 2007. In an addendum, however, he asserted that he employed a mortgage equity method to arrive at the rates he used. Finally, as set forth above, his values ranged from a low of \$310,000.00 in 1990 to a high of \$590,000.00 in 2007. However, Adrian did not present, in either his original appraisal or the addendum, a reconciliation page, or explain in any other way how he arrived at his final value figures (i.e. by averaging his income values with his market conclusions).

The Respondent's appraiser was Barry M. Herbold, the principal of Empire State Appraisal Consultants, Inc. of Kinderhook, New York. As petitioner properly points out, although Herbold was qualified by the Court as a real estate valuation expert on the consent of both parties, Herbold actually appears to have done only a few tax certiorari appraisals recently for properties located in Westchester County, which appraisals were all for the Town of Ossining. Herbold testified that he considered all three approaches to value in preparing his appraisal, although he rejected the cost method outright as inapplicable to this non-specialty property. Further, in his opinion, most single-occupant retail establishments, such as the subject, tend to be owner-occupied, including 12 of 16 Mavis tire stores in Westchester County. Since comparable rental data is often not available under these circumstances, he determined not to use the income approach, and thus concluded that **only** the sales comparison approach was appropriate.

Herbold initially utilized three (3) Comparable Sales for the 1990-1996 period at issue, and utilized a trending analysis to arrive at values for the years 1997 through 2000. He went on to use three (3) different comparable sales during the 2001-2002 time period; two (2) additional sales, and one previously-used comparable, for the 2003-2004 period; and, finally, three (3) sales for the years 2005 through 2007.

Notably, as petitioner points out, Herbold's appraisal contained only a single comparable sale in the Town of Ossining, their Comparable Sale No. 2. The remaining sales were either in large or medium cities (Yonkers or New Rochelle) or busy towns (Larchmont or Greenburgh), all of which are in the southern part of Westchester County. Notably, too, the comparables were generally in better commercial locations, in some cases substantially better commercial locations, than the subject; indeed, even the sole Ossining comparable was located in a much-more heavily-trafficked area. Petitioner, upon cross-examination, also pointed to many, in some cases significant, errors made by Herbold, particularly numerous instances in which he understated the sizes (i.e. square footage) of the comparable properties, collectively increasing their comparable values substantially by this under-reporting.

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, while petitioner's expert is not licensed as an appraiser in the State of New York, and while his appraisal methods might have in some respects proved difficult to follow, and while he may have failed in many instances to conform to the all of the standards applicable to appraisers (e.g. USPAP), the Petitioner has submitted substantial evidence based upon "sound theory and objective data" consisting of an appraisal and the testimony of appraiser Joseph Adrian, and has demonstrated the existence of a valid dispute concerning the propriety of the assessments during the tax years at issue herein¹.

THE CEILING AND THE FLOOR

Ceiling & Floor Analysis

The Court has found it useful in determining the true value of

¹ While not necessary to the Burden of Proof analysis, the Court notes also that, to the extent the assessed values differ from respondent's appraised valuations, the respondent concedes that a valid dispute exists as to the proper valuation of the subject parcel.

real property in tax certiorari and eminent domain proceedings to establish a valuation floor and/or ceiling below which and/or above which this Court may not go, based upon certain well accepted principles.

The Ceiling and the Floor

This Court finds that the Ceiling, based on the actual assessments set by the Respondent Assessor, and the corresponding market values as disclosed by the respondent's appraisal, based on the conceded equalization rates², is as follows:

| Tax Year | Respondent's Assessment | NYS Equalization Rate | Respondent's Indicated Full Value | Respondent's Appraisal Values |
|----------|-------------------------|-----------------------|-----------------------------------|-------------------------------|
| 1990 | 54,400 | 10.12 | 540,000 | 525,000 |
| 1991 | 54,400 | 9.93 | 538,000 | 625,000 |
| 1992 | 54,400 | 10.17 | 511,000 | 625,000 |
| 1993 | 54,400 | 10.70 | 515,000 | 625,000 |
| 1994 | 54,400 | 10.62 | 511,000 | 625,000 |
| 1995 | 54,400 | 10.70 | 504,000 | 625,000 |
| 1996 | 54,400 | 10.86 | 500,000 | 625,000 |
| 1997 | 54,400 | 10.94 | 507,000 | 670,000 |
| 1998 | 54,400 | 10.78 | 551,000 | 720,000 |
| 1999 | 54,400 | 9.92 | 500,000 | 770,000 |
| 2000 | 54,400 | 9.33 | 586,000 | 830,000 |
| 2001 | 54,400 | 8.79 | 622,000 | 900,000 |
| 2002 | 54,400 | 7.93 | 690,000 | 960,000 |
| 2003 | 54,400 | 7.16 | 764,000 | 1,000,000 |

² The parties have agreed on the applicable equalization rates for the tax years at issue, via petitioner's Notice to Admit admitted into evidence.

| | | | | |
|------|--------|------|------------------|-----------|
| 2004 | 54,400 | 6.20 | 882,000 | 1,100,000 |
| 2005 | 54,400 | 5.65 | 968,000 | 1,200,200 |
| 2006 | 54,400 | 4.93 | 1,100,000 | 1,310,000 |
| 2007 | 54,400 | 4.85 | 1,128,000 | 1,310,000 |

(Ceiling noted in boldface above. In each case, the lower values indicated by the assessments is taken as a declaration against interest, on the issue of value, against the respondent, in relation to its appraisal values. See *Orange and Rockland Utilities v Southern Energy Bowline et al.*, Supreme Court, Rockland County, Dickerson, J., May 2, 2005.)

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:

| Assessment Year | Petitioner's Appraisal Values | Petitioner's Indicated Assessment |
|-----------------|-------------------------------|-----------------------------------|
| 1990 | \$310,000 | \$31,400 |
| 1991 | 315,000 | 31,800 |
| 1992 | 320,000 | 32,500 |
| 1993 | 325,000 | 34,800 |
| 1994 | 325,000 | 34,500 |
| 1995 | 330,000 | 35,300 |
| 1996 | 340,000 | 36,900 |
| 1997 | 355,000 | 38,800 |
| 1998 | 365,000 | 39,300 |
| 1999 | 380,000 | 37,700 |
| 2000 | 395,000 | 36,900 |
| 2001 | 425,000 | 37,400 |
| 2002 | 445,000 | 35,300 |

| | | |
|------|----------------|--------|
| 2003 | 475,000 | 34,000 |
| 2004 | 500,000 | 31,000 |
| 2005 | 535,000 | 30,200 |
| 2006 | 570,000 | 28,100 |
| 2007 | 590,000 | 28,600 |

(Floor also noted in boldface above.)

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, the 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 in fact excessive.

METHODOLOGIES, COMPARABLES, VALUATIONS, AND REBUTTALS

Both parties concur that, where property such as the subject parcel may be purchased for operation of a commercial concern by the owner thereof, the sales comparison method is an equally proper method of valuation. (See *In the Matter of Spring Valley v. NBW Enterprises, Ltd.*, Supreme Court, Rockland County, LaCava, J., January 22, 2008.) As an initial matter, however, the Court is compelled to reject respondent's appraiser's methodology insofar as he failed to have also utilized the Income Capitalization Method as proper for determining valuation. He is, to be sure, to some degree correct in concluding that, in many instances, an owner-occupied premises is generally not purchased for investment purposes, and thus should normally not be exclusively valued by the income method. Nevertheless, it is proper to rely on the Income Capitalization Method to value any income-producing property. (*Appraisal of Real Estate*, 12th Edition, 472-3, 419.; see also *In the Matter of Spring Valley v. G & J Realty*, Supreme Court, Rockland County, LaCava, J., May 18, 2009.) Regarding the subject property, while it is indeed owner-occupied, petitioner correctly notes that a significant percentage (25%) of the similar properties operated under the Mavis name in Westchester County are operated as leaseholds, not by owner-occupiers. Thus, it is appropriate not to ignore the Income

Capitalization Method, but simply to weight the Sales Comparison Method significantly over the Income Capitalization Method.

However, as also noted above, petitioner's appraiser's methodology is unclear in at least two significant respects: how he reports average sales and his computation of lease values. As discussed in greater detail above, his comparable sales and lease grids generally include only one sale or lease for each of the tax years at issue, in both cases, clearly contrary to generally accepted appraisal practice, should they have been the only sales and leases relied upon for valuation in those years. It is, on the other hand, unclear if instead Adrian arrived at these value figures through some trending methodology. Given the uncertainties from petitioner's valuation method, the Court concludes that valuation is to be determined primarily within the bounds of the Ceiling and the Floor, as set forth above; through an examination of respondent's values, as corrected for the significant errors noted above, as well as respondent's appraiser's failure to select the proper unit of comparison for automobile repair facilities such as the subject (price per square foot of gross building area, as opposed to gross sales price utilized by Herbold in his appraisal; see The Appraisal of Real Estate, supra, p. 124), and as checked for accuracy by petitioner's values.

1990-1996

Herbold utilized three properties, comparables #1, #2, and #3, in Yonkers, Ossining, and Yonkers again, respectively, for these tax years. The gross prices of these sales were \$630,000.00, \$950,000.00, and \$1,000,000.00 respectively, or \$126, \$118, and \$156 per square foot. Herbold applied no adjustments to property #1, but determined that net adjustments of -30% were required for properties #2 and #3. Using his net adjustments of -30% on the latter two comparables yields indicated values of \$126, \$83, and \$109 per square foot for each of the properties. Applied against the 3,888 square feet of gross building area of the subject, this yields comparable values of \$500,000.00, \$322,000.00, and \$424,000.00 rounded (hereinafter "r"), or an average value for the subject, based on these comparables, of \$415,000.00 r. Respondent asserts that, based on market trends at that time, this average value figure is reflective of proper value throughout the tax years 1990 through and including 1996, and the Court accepts that opinion.

1997-2000

Herbold argued for reliance on his 1996 value as a basis for determining the appropriate value for the 1997-2000 period as well, adjusting solely by trending for market conditions. The Court accepts his estimate of market increases of 7.0% per year for this period, which, when applied to the Court's value of \$415,000.00 for 1996, yields values of \$450,000.00, \$476,000.00, \$510,000.00, and \$546,000.00 r, for the years 1997, 1998, 1999, and 2000, respectively.

2001-2002

Herbold utilized three properties, comparables #4, #5, and #6, in New Rochelle, Mamaroneck, and Greenburgh, for these tax years. The gross prices of these sales were \$1,755,000.00, \$900,000.00, and \$1,300,000.00, respectively, or \$208, \$161, and \$272 per square foot. Using his financial adjustments to derive prices of \$208, \$151, and \$228 per square foot, the Court must then determine and apply the physical adjustments appropriate to these properties. In each instance, as noted by petitioner, Herbold under-reported the actual building square footage of these properties by as much as almost 40%, the actual sizes being 11,337 square feet, 5,568 square feet, and 4,770 square feet, respectively. The Court thus determines that, due to the increase of nearly 3,000 square feet to comparable #4, the building size adjustment regarding that comparable should be -40%, rather than -30%. The increase of over 560 square feet to comparable #5 should be reflected in a -5% size adjustment, rather than a 0% adjustment employed by Herbold. Combined with, in the Court's opinion, a location adjustment properly at -25% for comparable #6, these corrections yield total net adjustments of -40%, +5%, and -25% respectively for these three comparable properties, thus yielding values of \$125, \$156, and \$172 rounded per square foot. The average of \$151 per square foot, when applied to the 3,888 square feet of the subject, yields a value of \$587,000.00 r for tax year 2001. The Court also accepts Herbold's estimate of a 7% market increase from 2001 to 2002, yielding a value in the latter year of \$628,000.00.

2003-2004

Herbold utilized three comparable properties: #6 again, #7, and #8, in Greenburgh, New Rochelle, and Yonkers, respectively, for these tax years. The gross prices of these sales were \$1,300,000.00, \$850,000.00, and \$900,000.00, respectively, or \$273,

\$116, and \$153 per square foot. Using his financial adjustments to arrive at prices of \$273, \$104, and \$138 per square foot, the Court again must determine and apply the physical adjustments appropriate to these properties. In the case of both comparables #6 and #8, Herbold again under-reported the actual building square footages of these two properties, the actual sizes being 4,770 square feet and 5,900 square feet, respectively. Examining the physical adjustments next, the Court determines that, due to the latter increases, the building size adjustment should be -10%, rather than no adjustment as calculated by Herbold. Further, the disparity between the subject and comparable #7 calls for, in the Court's judgment, a -25% size adjustment rather than the -20% adjustment employed by Herbold. In addition, the Court concludes that the location of comparable #7 is such that a +10% location adjustment is appropriate, not +20%; it should be adjusted for site by -10%, rather than no adjustment; and the utility adjustment should only be +10% rather than +20%. Finally, as petitioner properly argues, and the Court has already held, above, comparable #6, a far better location than the subject, should be adjusted for location by -25% rather than -20%. Combined with other minor changes in adjustments, this yields net adjustments of -20%, +20%, and +15%, respectively, and corresponding values of \$218, \$124, and \$158 per square foot for comparables #6, #7, and #8. The average of these three computes to \$167 per square foot, which, when applied to the 3,888 square feet of the subject, yields a value of \$650,000.00 for 2003. The Court also accepts Herbold's estimate of a 10.0% market increase from 2003 to 2004, thus yielding a value in the latter year of \$715,000.00.

2005-2007

Herbold made use of three comparable properties: #9, #10, and #11, in Greenburgh, New Rochelle, and Greenburgh again, respectively, for these tax years. The gross prices of these sales were \$1,400,000.00, \$1,700,000.00, and \$775,000.00, respectively, or \$320, \$165, and \$264 per square foot. Using his financial adjustments to derive prices of \$256, \$150, and \$221 per square foot, the Court must again apply the physical adjustments appropriate to these properties. In the case of comparable #10, Herbold here too substantially under-reported the actual building square footage of this property, the actual size being 10,330 square feet, or some 40% larger than Herbold calculated. Examining the physical adjustments as a whole, the Court determines that, due to the increase in square footage, the building size adjustment should be -25% for that property, rather than Herbold's -20%.

Further, the similarity between the subject and comparables #9 and #11 calls for, in the Court's judgment, no adjustment for them for location, rather than the +10% adjustment employed by Herbold for both. In addition, the Court concludes that the slight superiority of comparable #10 as a site over the subject is such that a -5% adjustment is appropriate, not 0% as calculated by Herbold, and the similarity in size between the subject and comparable #11 should yield no adjustment for size, rather than Herbold's +20%. These corrections yield net adjustments of 0%, -30%, and +10%, respectively, and thus values of \$256, \$105, and \$250 per square foot for comparables #9, #10, and #11. The average of these three computes to \$204 per square foot, which, when applied to the 3,888 square feet of the subject, yields a value of \$793,000.00 for 2005. The Court also accepts Herbold's estimate of a 10.0% market increase from 2005 to 2006, which yields a value in the latter year of \$865,000.00. Respondent's calculation of no increase for the period 2006 to 2007 yields the same \$865,000.00 for the latter year.

These calculations, derived by the Court from the above, extensive alterations to Herbold's appraisal, yield in sum the following Market Values for those years, for the subject parcel:

| Assessment Year | Court's Indicated Market Values |
|-----------------|---------------------------------|
| 1990 | \$415,000 |
| 1991 | 415,000 |
| 1992 | 410,000 |
| 1993 | 415,000 |
| 1994 | 415,000 |
| 1995 | 415,000 |
| 1996 | 415,000 |
| 1997 | 445,000 |
| 1998 | 476,000 |
| 1999 | 510,000 |
| 2000 | 546,000 |
| 2001 | 587,000 |

| | |
|------|---------|
| 2002 | 628,000 |
| 2003 | 650,000 |
| 2004 | 715,000 |
| 2005 | 793,000 |
| 2006 | 865,000 |
| 2007 | 865,000 |

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

Petitioner's Appraisal as a Check

As indicated above, the Court has elected, based on the lack of clarity attendant to petitioner's appraiser's methodology in deriving either market or income capitalization values, to use Adrian's appraisal as a check on the market values calculated by the Court. Regarding Adrian's market analysis, the Court notes several instances in which upward adjustments to Adrian's values would be appropriate, including in particular with respect to area size (comparables #1, #3, #4, #9, #13, and #14) and location (comparables #1, #2, #5, #6, and #9.) The cumulative effect of the Court's increases to Adrian's comparable sales adjustments in these and other areas would be to increase many of his values by some 15 to 20%. As so increased, Adrian's market value conclusion would still be less than those values arrived at by the Court, but, in most cases, only approximately 10% below the Court's indicated values. Similar corrections by the Court to Adrian's comparable leases would likewise increase Adrian's rental income figures by in excess of 15%. Further, the Court, upon analysis of Adrian's capitalization rate calculations, would be compelled to conclude that the mortgage and equity rates employed by Adrian are too high by a significant amount, and when combined with the above-mentioned increases from rental income, the indicated values from an income capitalization method would increase, as well, over Adrian's appraisal values, and would not differ significantly from the Court's Indicated Market Values as set forth above.

FINAL MARKET VALUES, ASSESSMENT, AND REFUND

The final Indicated Market Values for the tax years at issue as concluded by the Court are as follows:

| Assessment Year | Court's Indicated Market Values |
|-----------------|---------------------------------|
| 1990 | \$415,000 |
| 1991 | 415,000 |
| 1992 | 410,000 |
| 1993 | 415,000 |
| 1994 | 415,000 |
| 1995 | 415,000 |
| 1996 | 415,000 |
| 1997 | 445,000 |
| 1998 | 476,000 |
| 1999 | 510,000 |
| 2000 | 546,000 |
| 2001 | 587,000 |
| 2002 | 628,000 |
| 2003 | 650,000 |
| 2004 | 715,000 |
| 2005 | 793,000 |
| 2006 | 865,000 |
| 2007 | 865,000 |

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 by the assessor utilizing the aforesaid final Indicated Market Values and the agreed-upon equalization rates as set forth above, and any overpayments of taxes are to be refunded

with interest.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Submit Judgment on notice.

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Dated: White Plains, New York
November 17, 2009

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

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