

**Comments by Mayor Jon Mark
Village Board Meeting
October 25, 2016**

On the 2016 Revaluation Related Matters and Update:

On October 14, 2016, we received two emails from Mayra Kirkendall-Rodriguez prompted by the Committee of the Whole meeting on October 13, 2016, which was held to consider whether or not to take steps to phase in certain assessment increases resulting from the 2016 revaluation for a limited number of certain eligible residents. That question was taken under advisement and will be considered further this evening.

In summary, the emails received asked the following questions:

1. What precedents and statutes prohibit the Board of Trustees from invalidating the 2016 revaluation?
2. Have any of you spoken to any counsel other than the Village Attorney?
3. Why was Tyler not given a chance to do the 2016 revaluation? Were Trustees aware that Tyler sent a proposal to the Assessor?
4. Can State Assemblywoman Amy Paulin be asked to introduce emergency legislation to invalidate the 2016 revaluation?
5. Who at the New York State Office of Real Property Tax Services (ORPTS) did we speak with on this subject?
6. When will an ad hoc committee on revaluation be convened? How will its members be selected? Will it be up to residents to volunteer?

I responded to the emails noting that I would address the questions in my comments tonight. Here is my response.

1. The legal framework in which the Board is operating was summarized in a 1972 opinion of counsel of the State Board of Equalization Assessment (SBEA) issued March 13, 1972 (Volume 1 – Opinions of Counsel SBEA No. 75). The SBEA was the predecessor to the ORPTS. The question presented was “whether a town board has the authority to prohibit the assessor from using a reappraisal the board considers unsatisfactory and to direct the assessor to use a prior roll as the basis for the current assessment roll to be completed.” The Opinion reviews relevant statutory provisions. It cites Section 2 of Article 16 of the Constitution of the State of New York noting that it provides, in part, that the Legislature shall provide for the supervision, review and equalization of assessments for purposes of taxation. The opinion then states that the State Legislature has delegated the exclusive authority to assess real property for the purposes of local real property taxation to local assessors (citing, Town Law, section 33 and Real Property Tax Law, section 500 et. seq.). The opinion concludes that: “The town board, therefore, has no authority to substitute its judgment for that of the assessor and the exclusive remedy available to a property owner, who considers himself aggrieved by reason of any assessment made by the assessor, is that which is provided by Article 5 and Article 7 of the Real Property Tax Law.” Article 5 is the provision that establishes the Board of Assessment review grievance process. Article 7 establishes the process for judicial review of assessments through SCAR filings and certiorari petitions. The counsel to the SBEA issued an opinion stating the same conclusion on July 3, 1975 and again by way of update on February 10, 2012 (Volume 2 – Opinions of Counsel SBEA No. 29).

2. No subsequent interpretation, regulation or case that asserts a contrary view has been brought to our

attention and therefore these opinions appear to state a definitive view of the law.

3. Last month we had a telephone call on this subject with Assemblywoman Amy Paulin and members of the ORPTS Staff. Included in that call was Amanda Hiller, the Deputy Commissioner and Counsel of ORPTS. She confirmed our understanding of the legal limits on this Board's authority as set forth in the SBEA (the predecessor to ORPTS) opinions. So in terms of speaking with counsel other than the Village Attorney, the answer is yes, we have spoken with other counsel who is conversant with the relevant regulatory scheme and so is an authoritative source for the purpose of confirming what our own research has shown.

4. In terms of whether or not the Board knew of Tyler's interest in doing the follow-up revaluation, I have not seen evidence that it did. However, given the level of resident criticism of the work Tyler did in 2014 it would have been an unlikely choice at the time to do a follow-up revaluation. By analogy, that would have been tantamount to asking J. F. Ryan to do the next revaluation. However, whether the prior Board knew of Tyler's interest or not, it is reasonably clear that at least a part of the answer to the question on why J.F. Ryan was chosen to do a revaluation in the manner it was done seems to have been based on budgetary considerations and the goal sought to be achieved by the 2016 revaluation. As we all now know, the 2016 revaluation was prompted in large part by the criticism of some residents of flaws they perceived and analyzed in the Tyler revaluation. It was hoped that a further revaluation would improve on what Tyler had done. In seeking to do so, budget concerns played a part in seeking a means for achieving that objective at a lower cost than the just under \$1 million spent on the Tyler revaluation. It was believed that could be accomplished because the subsequent revaluation would utilize – and did utilize -- all of the property data collected by interior inspections made by Tyler of virtually all properties located in the Village. Having had an unprecedented 95% participation rate by residents in granting access to their homes to collect that data, it was believed that by using that current data, a subsequent revaluation would not have to involve access to residents homes and substantial savings could be achieved. In fact, ORPTS, in accordance with its Cyclical Reassessment Aid Program, requires all parcels to be "physically inspected" once every six years. This type of physical inspection does not necessarily require the kind of comprehensive Village-wide interior data collection completed by Tyler for the 2014 revaluation. The generally accepted industry standard for completing such a comprehensive interior inspection is no less than once every 10 years but certainly not two years after such an effort was accomplished.

5. As far as asking Assemblywoman Paulin to introduce legislation providing authority to invalidate the 2016 revaluation, whether or not such a request should be made is a matter with which members of this Board have wrestled. The issue is not whether we can make that request or not – any request can be made and Assemblywoman Paulin has always been supportive of Scarsdale. We have confirmed this point with her.

I have also had a similar conversation with State Senator Andrea Stewart-Cousins who also said that she would do what she could to be supportive of the Village.

However, the threshold question before us is not whether we can make such a request, but rather if we did and even if it were granted would that be the best result for the Village as a whole. It is on this threshold question that I have a different view from those residents who have urged us to make such a request. I believe that even if the final 2015 assessment roll could be reinstated, that would not be the best result, have stated so previously and will repeat some of what I have said before on this subject.

For members of this Board who were on the Board at the time of the Tyler revaluation the similarity of the circumstances we face today with respect to the 2016 revaluation are several in important respects. There is a strong dissatisfaction with the results of the 2016 revaluation. The same was true in the case of the 2014 Tyler revaluation. There is a call to do another revaluation as soon as possible. The same was true in 2014. The two scenarios differ in those who are voicing these sorts of concerns, but the calls to action are essentially the same: the product is flawed, let's throw it out and redo it.

As I have said before, in my view replacing the 2016 revaluation which has been criticized for its flaws, with the results of the 2014 revaluation that were subject to similarly vehement criticism, does not address the issue at hand. This not a question of the Board being afraid to anger some residents. This Board has shown in the past year and a half that it does not shrink from exercising what it believes to be a reasonable judgment just because it might make some residents angry. So too in this situation, as the Board considers the issues before it one thing is clear, that probably any decision made by the Board will make some folks unhappy. That is simply the nature of the circumstances in which we find ourselves. As I have said previously, reinstating the prior assessment roll, with the flaws inherent in it, will undoubtedly precipitate a host of issues – some that might be anticipated and some unforeseen. Several sorts of legal and practical issues may arise.

- A legal issue that re-instatement would trigger is that those who may be grieved by the reinstatement of the 2015 roll would be denied an opportunity to file grievances. That inability must be seriously considered. A course of action that fails to afford residents their due process grievance rights would be an egregious result -- not simply a matter of angry residents. In contrast, those homeowners aggrieved by the 2016 roll were afforded the opportunity for – and did pursue administrative and judicial relief from the assessments through the statutory grievance process.
- During the period such legislation was working its way through the legislative process a period of months of uncertainty over assessed values in the Village would continue, with no promise of what the resolution would be. The legislative process would require action by each of the State Assembly and the State Senate and then action by the Governor. The formal legislative process could not start until January 2017 when the legislators go back in session. We have also heard that it is sometimes the case that individual legislators from one locality will withhold voting on legislation focused on another locality until the end of the legislative term in June. They use their vote as a negotiating tool for getting votes on measures they are sponsoring. That this means is that just because our representatives may support legislation we might request, passage could involve a very prolonged period during which the process plays out with little certainty as to the result. This sort of extended period of uncertainty would do little to ease the angst some have experienced as a result of the 2016 revaluation and if the legislation did not get adopted, would not address it at all.
- As a practical matter, if authorizing legislation was passed, implementation would likely not be feasible until deep into 2017 either concurrent with the time for issuance of initial tax bills – or even after initial tax bills went out based on the 2016 valuations still in place. This would create a chaotic scenario in the administration of taxes on the County and local level increasing the possibility of incorrect billings, the need to issue refunds and additional tax bills. Such a scenario would be another source of distress for residents that cannot be dismissed.
- Lastly, reinstating the 2015 roll does not squarely address the problem now confronting us,

making pursuing this course undesirable in my view.

The framework provided by statute for dealing with the effects of a Village-wide revaluation are in process. 1,103 of our homeowners availed themselves of the administrative appeal to the Board of Assessment Review and based on data provided to me today, of those, 584 have filed for further review of their grievances either by way of SCAR proceedings (463) or Cert petitions (121). Any assessment reductions granted these property owners will automatically cause a redistribution of property taxes to the other property owners who did not grieve.

The point is that to address the present concerns of the residents who have spoken up, the path forward is to do another Village-wide revaluation – and do it in a well thought-out, well publicized and inclusive manner that is adequately documented and understood – even if there are some that may disagree with whatever its outcome may be.

Moving forward: process for considering future revaluation: So when and how do we go about doing another re-valuation. Once we carefully map out the “how” process, the “when” can be determined. In terms of the “how” we have asked the Village staff to draft an outline of a revaluation process that reflects what we have all learned from the 2014 and 2016 processes. The high points are fairly straight forward: locating a pool of qualified and available vendors and selecting a vendor through a suitable vetting process; drafting a clear and manageable professional services agreement including a detailed scope of work, achievable milestones and the necessary deliverables; oversight of the process in a manner that assures what has been contracted for is actually performed and delivered; allowance of a period in which residents can informally ask questions about preliminary assessment results and in which appropriate corrections can be made prior to the tentative assessment roll statutory filing date; and budgetary considerations.

We have commented that the process for considering a future revaluation should be a thoughtful one that included, among other things, resident input. In that regard, we had spoken generally about forming an ad hoc advisory committee of residents, with Village staff representation, for that purpose.

To that end, we are considering what the make-up of the Committee should be, taking into account the suggestions we have received from residents in that regard.

We will need to flesh out the mandate for the ad hoc committee but in general terms, it would be a vehicle for making recommendations to the Village Board and the Village staff on the process for the next revaluation; for providing input on the selection of a firm to do the work; and providing some level of oversight of the process, consistent with any legal or conflict of interest limitations. The scope of these roles will have to be thought out further, but it is not contemplated that the ad hoc committee would do the work or otherwise be involved in the conduct of the revaluation itself. It would be important for all residents to know that the execution of the revaluation will be, and was, in the hands of whatever vendor was engaged for the purpose and Village staff – and was not subject to the control of a select – albeit well-meaning – group of residents. The process of appointing this sort of ad hoc committee will be advanced in the coming months and we will let residents know when we are ready to start accepting applications.