

Tanisha Edwards, Chief Counsel,
Finance Division

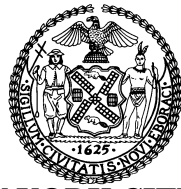
Raymond Majewski, Deputy Director, Chief
Economist, Finance Division

Emre Edev, Senior Legislative Financial
Analyst, Finance Division

Amy Stokes, Legislative Financial Analyst,
Finance Division

Thomas Donaldson, Counsel, Community
Development

Amanda Santiago, Policy Analyst,
Community Development



THE NEW YORK CITY COUNCIL

PRESTON NIBLACK, DIRECTOR, FINANCE DIVISION

JEFF RODUS, FIRST DEPUTY DIRECTOR

COMMITTEE ON FINANCE

DOMENIC M. RECCHIA, JR. CHAIR

COMMITTEE ON COMMUNITY DEVELOPMENT

ALBERT VANN, CHAIR

February 28, 2013

OVERSIGHT:

Examining the New York City Department of Finance assessment practices relating to properties affected by Superstorm Sandy.

I. INTRODUCTION

On the evening of Monday October 29, 2012, Superstorm Sandy (“Sandy”) brought an

unprecedented storm surge to New York City, causing extensive property damage, which in many of cases resulted in complete property loss.¹ Although Sandy effectively left the city by October 30, 2012, the effects of Sandy still remain.

Today, the Committees on Finance and Community Development will hold an oversight hearing to examine the New York City Department of Finance's assessment practices relating to properties affected by Sandy. Specifically, this hearing will focus on the ways in which the New York City Department of Finance ("DOF") determines market values for properties, particularly those properties that suffered severe damage as a result of Sandy. The impetus of this hearing stems from recent news reports² and property owner complaints of increases in the market value on property that were severely damaged by Sandy.

II. THE PROERTY TAX ASSESSMENT PROCESS

The real property tax system is a complicated process. State law regulates the framework of assessments and how the property tax burden is distributed amongst various properties. Within that framework, DOF determines assessments while the Council is charged with calculating the tax rates. The New York State Real Property Tax Law ("RPTL") provides that all real property in the City be divided into four classes: Class One, which includes one, two and three family homes; Class Two, which includes other residential property not included in Class One (i.e. apartment buildings, cooperatives and condominiums); Class Three, which includes utility property; and Class Four,

¹See *SuperStorm Sandy Slams Small Business: 'Losing My Business Means Losing My House'*, available at http://www.huffingtonpost.com/2012/11/02/ice-cream-puddle-rice-ca_n_2060539.html (last accessed February 21, 2013).

² *City Hikes Taxes on Sandy hit houses*, NEW YORK POST, February 11, 2013, available at http://www.nypost.com/p/news/local/brooklyn/city_hikes_taxes_on_sandy_hit_houses_kBcLp8as7ZI1TSiNINetnL (last accessed February 22, 2013).

which includes all other property (including most commercial property)³ Each year, DOF determines the value of every taxable property in the city.⁴ The determination of value assigned to a property is termed an “assessment.”⁵ The level of assessment on a property is one of the factors used to determine the amount of property taxes owed on a particular property.

A. Market Value

A property's assessment is based on its market value. This market value is the worth of a property determined by DOF based on a property's Classification⁶ and is set to the value of the property as of the “taxable status date”. This date is defined by Section 1507 of the New York City Charter which provides that the taxable status of real property in the City to be fixed for the succeeding fiscal year⁷ on January 5. This means that for the upcoming Fiscal 2014 year that begins July 1, 2013, properties will be taxed based on what the value of the property was on January 5, 2013.⁸

State law does not prescribe the formulas to be used when determining the market value of property which gives DOF latitude in using the method it feels best fits the type of property. There are three generally accepted approaches to estimate the property's full market value: (1) sales analysis and comparison (common approach for Class One properties); (2) income approach (common approach for income producing properties in Class Two and Class Four), and (3) the cost

3 See Real Property Tax Law § 1802(1)

4 See New York City Charter § 1508.

5 See Real Property Tax Law § 102(2).

6 See NYC Residential Property Taxes brochure for Class one available at <http://www.nyc.gov/html/dof/html/property/assessment.shtml> (last accessed February 24, 2013).

7 The real property tax collections are done on the basis of the City's fiscal year, which runs from July 1 to June 30. See New York City Charter §226.

8 See New York City Charter §1508.

approach (cost to rebuild property minus land value).⁹

B .Assessed Value

The assessed value of a property is the value on which a property tax bill is based. In New York City, real property assessed values are set at a fraction of its market value, with the percentage dependent upon the Class to which a piece of real property belongs.¹⁰ Class One properties are assessed at 6 percent of market value, while the other three classes of properties are assessed at 45 percent of market value. These proportions are commonly referred to as “target assessment ratios.”

Section 1805 of the RPTL limits the amount assessments can increase annually.¹¹ This is a protection done to smooth the impact on property owners from large increases in values in any one year. That said, assessed values will continue to rise within those limits until the assessed value reaches the target assessment ratio. Consequently, even when market values decline, assessed values may continue to increase. In fact, many Class One property owners have experienced this confusing aspect of the system in recent years as their property values declined due to the housing bust but their assessed values were still climbing to reflect the massive market value growth that had occurred during the housing boom of the last decade. Ironically, this makes what was designed to be a protection to property owners feel like a backdoor tax increase.

9 Office of Real Property Services, *How Property is Assessed*, at <http://www.tax.ny.gov/pit/property/learn/howassess.htm> (last visited on February 22, 2013).

10 Pursuant to section 305 of the Real property Tax law, each class of property must be assessed at the same percentage of full value.

11 Class One assessment increases due to market conditions are subject to a 6% annual cap and a 20% cap over five years, regardless of the increase in market value. *See* Real Property Tax Law § 1805(1); Small Class 2 properties (apartments with 4-10 units, or co-ops/condos with 2-10 units), are subject to an 8% annual cap and a 30% cap over 5 years; *See* Real Property Tax Law § 1805(2); Larger Class 2 (buildings with more than 10 units) and Class 4 also have transition assessments which phase in increases and decreases in actual assessments over 5 years; and

It is very important note that this assessment limits only apply to increases attributable to sales prices (i.e. market-driven) and not increases due to renovations, demolition or construction.¹² As a result, Sandy damaged properties could see large tax increase when they are repaired. Indeed, the property might see a larger tax bill after the repair than had it never been damaged in the first place¹³. The exact outcome in these situations will depend to a large part on how DOF interprets damage and repairs to that damage in market values.

C. Assessment Rolls

Assessment rolls are public documents that list value information for every property in the city. The first assessment roll, termed the “tentative roll”, lists property information (level of assessment, market value and other related information), and is made available for public inspection in each borough office starting no later than January 15 until March 1 (May 10 for non-residential property).¹⁴

In addition, DOF mails all property owners a Notice of Property Value (“NPV”), which provides a property owner with a description of his or her property, applied exemptions, and the assessed and market values of such property as reflected in the tentative roll.

¹² See Real Property Tax Law § 1805(3). With the exception of class 2C properties, physical changes to a property are not subject to the assessment caps but instead are immediately added to the property’s assessed value. See Real Property Tax Law § 1805(6).

¹³ For example, take a Class One home with a pre-storm value of \$200,000 that because of the assessment caps has an assessed value of 4 percent or \$8,000. Normally, and assuming no changes to the market value, it would take this property about nine years to reach its target assessed value of \$12,000 (6 percent of \$200,000). But say Sandy damages the house and reduces its market value by 50 percent to \$100,000. This, in turn, would cause the assessed value to fall to \$6,000 (6 percent of \$100,000). During the next year, the owner repairs the property to its pre-storm condition, raising the value back up to \$200,000. Since the \$100,000 increase in value is due to construction, the assessed value increase of \$6,000 is not capped and is therefore immediately added to the assessed value resulting in a new assessed value of \$12,000. So what would have taken nine years to achieve now occurs in just two.

¹⁴ See New York City Charter §§1510 and 1512 and Administrative Code §11-210.

During the public inspection period of the tentative roll, the Commissioner of DOF is permitted to change the assessed value of any piece of property “as may be just or necessary for the equalization of taxation, but notice of any increase must be given to the property owner at least ten days prior to such increase.”¹⁵ Further, any increases of value must be provided to the property at least 30 days prior to the final day of filing an assessment appeal (i.e. February 1).”¹⁶

After the inspection period and any necessary adjustments, the assessment roll is finalized, termed the “final assessment roll”, and delivered to the Council no later than June 20, although in recent years DOF has published the final assessment rolls around May 25.¹⁷

Property tax bills, the first of which is due by July 1 of each year, are based on the information on the final assessment roll.

D. Appealing Assessments

Following publication of the tentative assessment roll, property owners have a limited opportunity to contest their assessments. **It is critical that property owners review their NPV before the March appeal deadlines (listed below);** waiting to act at the first tax bill of the new fiscal year in July is too late for the owner to take action.

Challenges to descriptive data that is used by DOF to determine market value are made through DOF by filing a Request to Update Property Data form. For Fiscal Year 2014, the deadline

¹⁵ See New York City Charter §1512.

¹⁶ See New York City Charter §1511. This requirement is generally satisfied with the mailing of the NPV, which DOF sends to all property owners on or about January 15th of each year.

¹⁷ See New York City Charter §1514.

to file the form is March 15 for Class One and Class Two properties and April 1 for Class Four properties.¹⁸

Challenges to the level of assessment are made through the Tax Commission, which is an independent review board that reviews assessments of real property made by DOF. The Tax Commission can only adjust the assessed value of a property, not market values.¹⁹ The grounds for review of an assessment is limited to a complaint that the assessment is excessive, unequal, unlawful (property is exempt or not located in city), or that the real property is misclassified.²⁰ The deadline to file an application is March 1 (March 15 for Class One properties).²¹ Property owners must file before these deadlines to preserve their right to appeal.

Pursuant to the New York City Charter, the Tax Commission may act upon these applications between January 15 and May 25²² of each year (or in the case of properties with an assessed value of \$750,000 or more, between February 1 and September 1 of each year²³). For Class One properties, a determination made by the Tax Commission resulting in a reduction or reclassification must be entered on the final roll;²⁴ and for properties with an assessed value of \$750,000, a refund, if applicable, must be given if such determination is made after May 25.²⁵

Property owners dissatisfied with a decision made by the Tax Commission may file a Petition for Review, a lawsuit against the City that taxpayers may file under Title 1 of Article 7

18 See New York City Department of Finance website available at http://www.nyc.gov/html/dof/html/property/property_val_appeals.shtml (last accessed February 25, 2013)

19 See New York City Tax Commission website available at <http://www.nyc.gov/html/taxcomm/html/about/about.shtml> (last accessed February 22, 2013).

20 See Administrative Code §11-231.

21 See New York City Charter §§ 163 and 164-b (b).

22 See New York City Charter §164.

23 See New York City Charter §164-a.

24 See New York City Charter §164-b(e).

of the New York City Real Property Tax Law²⁶; and owners of one-, two-, and three-family homes used for residential purposes may appeal their assessment through the Small Claims Assessment Review Program of the State Supreme Court on the grounds of inequality, overvaluation, or improper denial of a partial exemption.²⁷

III. DOF's Sandy Response Effort

On the evening of Monday October 29, 2012, Sandy caused massive flooding and extensive property damage throughout the City, particularly in Zone A (see appendix A). Viewed as one of the most destructive storms in New York City history, thousands of residential and commercial property owners alike suffered extensive property damage, which, in some cases, resulted in complete property loss, or rendered the property inhabitable or unsafe to occupy.

In response to this storm, the City Council, and the Mayor's office through various agencies, implemented and initiated many proposals to offer relief to City residents affected by Sandy. DOF employed many initiatives designed to assist New Yorkers affected by Sandy and collect updated property information. These efforts, many of which are ongoing, include:

1. **Property Value Reduction:** According to DOF, they made reductions in market value to many properties based on a review of aerial photographs, prior to the release of the tentative roll. It is unclear how many properties received such reductions.
2. **Sandy-Specific Outreach Events:** According to DOF, they have conducted nine SuperStorm Sandy-specific outreach events with city and state elected officials, six of them were conducted in the month of January following the release of the tentative roll. The Tax Commission was also in attendance, enabling property owners to submit paperwork to challenge their assessed values.

²⁵ See New York City Charter §164-a (d).

²⁶ See New York City Charter §165-a; *see also* Real Prop. Tax Law §§ 702 and 704.

²⁷ See Tax Commission website at www.nyc.gov/html/taxcomm/downloads/pdf/tc708.pdf (last accessed on Feb. 22, 2013).

3. **Property Damage Reporting Form for Sandy Damage:** On December 11, DOF released a web- and paper-based 7 question reporting form (see appendix B) relating to their Sandy-related property damage. According to DOF, they have received over 5,000 forms to date. The deadline for submission of this form was originally February 1, and it has been extended several times (February 15, and now March 15) to accommodate more property owners.
4. **Educational Materials/Website Information:** In the NPVs, DOF included a one-page insert (see appendix C) that explained the Sandy damage reporting process, and the deadline extension of property taxes for Class One and Class Two properties. The actual property damage form was not included in the NPV. Red-tagged properties (tags issued by HPD to properties that were seriously damaged and unsafe to occupy, or were completely demolished by Sandy) also received additional assessment appeal information. DOF's website also has a SuperStorm Sandy page that explains the Sandy damage reporting process, and explains that DOF's review process of Sandy affected properties are on-going and changes will be made to an assessment, if appropriate.²⁸
5. **Tax Relief Legislation:** The Council, in conjunction with DOF, introduced and passed legislation that delayed payment of real property taxes for Class 1 homeowners that were severely damaged by Sandy.²⁹ Additionally, the Council, along with DOF and the Mayor are seeking State legislation that would allow a property tax rebate for Class One and Class Two homeowners that were severely impacted by Sandy.
6. **Additional Inspections:** According to DOF, while assessors have not scheduled appointments in response to those who completed the Sandy-relief forms, assessors have made, and will continue to make, unscheduled visits to the homes of such individuals.
7. **Red-Tag Properties Inspection:** According to DOF, all red-tagged properties have, through scheduled appointments,³⁰ received in-person inspections by DOF assessors.

As indicated above, DOF made a great many strides in offering assistance and working to collect information from property owners affected by Sandy. However, questions remain regarding

28 See http://www.nyc.gov/html/dof/html/property/property_SuperStorm_sandy_reporting.shtml (last accessed February 21, 2013).

29 See Local Law 63 of 2012. Pursuant to Local Law 63, severely damaged properties are properties issued a red tag by the Department of Housing Preservation and Development between November 1, 2012 and December 28, 2012. Red tags were issued to properties that were seriously damaged and unsafe to occupy, or were completely demolished.

30 Information learned through communication between Council Finance staff and DOF on February 22, 2013; see also *Soar point: City homeowner property taxes up*, NEW YORK POST, January 16, 2013, available at

http://www.nypost.com/p/news/local/soar_point_city_homeowner_property_pMsPLTr0WuzT4Cu7X6tTQI (last

the extent of these response efforts. For example, while all red-tagged properties received in-person inspections via scheduled appointments, which allowed communication between property owner and DOF, owners of non-red tagged properties that have completed a Sandy property damage form do not receive scheduled appointments. Rather, DOF has performed these on-site inspections by “walking the streets of affected communities, making note of structural damage that is still visible and, in some cases, speaking with property owners...if they are home.”³¹ It is not clear whether DOF made attempts to contact (via phone, email, first class mail or otherwise) the property owner prior to such visit to provide the property owner an opportunity to directly communicate with the assessor.

Further, to date, according to DOF, it has received over 5,000 Sandy-related property damage forms. It is unclear, however, how many of the property owners who submitted such forms received a reduction in market value, nor is it clear how many forms are awaiting DOF review and action.

Additionally, while Sandy-related property damage forms are available on DOF’s website, no telephone number is provided to property owners to allow them to speak with someone directly at DOF about such form, or about the assessment of their property. This can be extremely frustrating for property owners because when one challenges his or her assessment through the Tax Commission, that owner can call the agency directly for assistance. However, when challenging market value, which is done through DOF, a property owner must call 311 because no other telephone number is publicly available for DOF. The lack of a direct line to DOF for assessment questions and Sandy-related questions can arguably slow the process in which Sandy applications are processed and in which technical questions best answered by DOF will be addressed.

accessed February 21, 2013).

31 Information learned through communication between Council Finance staff and DOF on February 22, 2013;

Moreover, while DOF has been able to share with the public and Council its Sandy response efforts, it remains unclear exactly how DOF utilized the information it has been collected. This is not to call into question whether it processed information correctly or responsibly, rather it is to highlight that this aspect of the response is missing from the public record. To that end, this hearing will seek to have DOF illuminate how these efforts informed one of their principle tasks in valuing property.

IV. DOF's Assessment of Sandy Affected Properties

A. Scope & Limitations of Analysis

While DOF made a number of efforts to connect with and capture information from owners of damaged property, there were those who were shocked in early February when they received their NPV to find that DOF increased the market values of damaged property. As noted in Section II of this report, for some owners that shock could be a result of the ability of the assessed value of a property to rise, even if market values are dropping. However, there were reported cases where the market value increased, even though the property had Sandy related damage. For that reason, Council Finance conducted analysis of market values to Sandy damaged properties.

Ideally, any analysis would focus on properties that incurred property damage from the Sandy, and to do that one has to identify which properties were damaged. Indeed, part of DOF's efforts has focused on fulfilling that deceptively difficult task. One easy way to begin to identify these properties would be through the system of red, yellow, and green tags used by the Department of Buildings (DOB) in determining habitability of properties soon after Sandy. The Council requested from the Administration a list of all properties that either received a red or yellow tag. However, that request was denied several times on the grounds that it would be an invasion of privacy of the property owner, even though the tags were all placed on the properties in full public

view.

Therefore, the Council's analysis focuses on all properties within the Zone A of the OEM evacuation map. This is an imperfect tool, as not all properties in Zone A were damaged, and not all properties that were damaged were in Zone A³².

B. Market Value Analysis

Nonetheless, Council Finance identified 43,773 properties in Zone A that were not tax-exempt in Fiscal 2013³³. While Zone A properties exist in all five boroughs, over 90 percent of them are in the boroughs of Brooklyn, Queens, and Staten Island and over 80 percent of the properties are Class 1. For these reasons, the analysis will focus mostly on those boroughs and Class One.

Council Finance's analysis found that market values changes within Zone A were close to flat on average and generally followed the same trend as the rest of their respective boroughs³⁴. Looking at the prior five year period, this appears to be no change from the larger trend. This indicates that DOF made no specific adjustments to Zone A market values as a whole based on Sandy, though this does not preclude that DOF made changes to a small subset of these properties, such as the damaged ones. Indeed, red-tagged properties probably make up less than 2

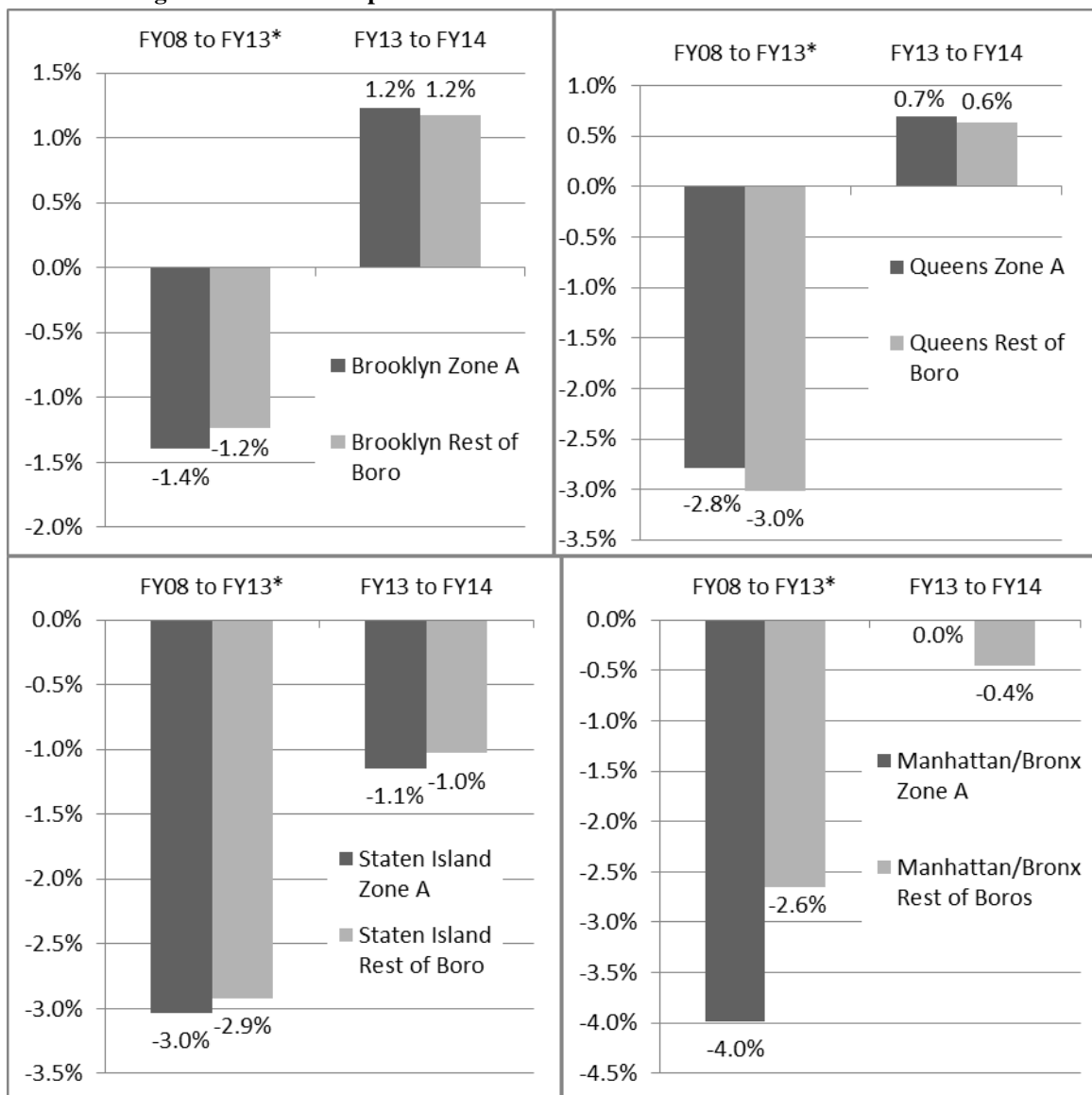
32 Gerritsen Beach is an example of part of the city not in Zone A, but suffered extensive Sandy damage. <http://thebrooklynink.com/2012/10/30/49475-in-gerritsen-beach-fighting-the-flood-and-finding-shelter/>

33 In this analysis, properties refers to tax lots. The analysis also excludes all properties that were fully tax-exempted, such as park land, as these properties do not pay a property tax and can be more difficult to determine an accurate value.

34 The exceptions to this finding were properties in the Bronx, and Class 2 and 4 properties in Manhattan saw notable differences. However, Zone A properties reflect only a small part of those boroughs making any comparison to the full borough more difficult.

percent of the properties in the study unit³⁵ and so any changes to that small of a group just might not be visible. In short, this analysis finds little evidence to support any widespread market value increases to Sandy damaged properties, though this lack of evidence may be a function of not having the data to do a proper analysis.

Median Changes in non-tax-exempt Class 1 Market Values



Source: NYC Department of Finance, NYC Council Finance

*FY08 to FY13 represents the average annual change over that period.

35 DOF informed Council Finance in late November that there were 550 red-tagged Class One and Class Two properties and that the number was not likely to change much from that level.

In the long-run, one might to see a downward adjustment to property values located in Zone A, regardless of whether they were damaged. For example, a property that received no damage may be next door to a property that was severely and visibly damaged. It is not unreasonable to think the damaged property would depress the values of surrounding properties for fear they could easily be damaged in the next storm. While there are a few studies that do address this issue³⁶, it is unclear to what extent and when they would apply to New York City. And at a period of less than four months since the storm, there might not be enough evidence to make these determinations.

C. Land Value Analysis

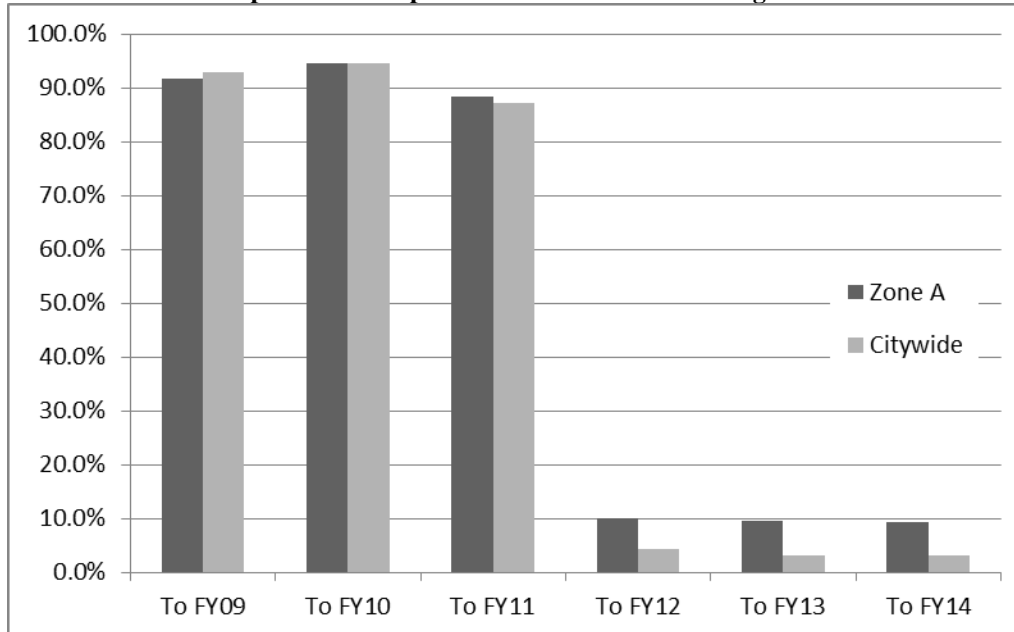
Council Finance also analyzed land values in Zone A. In verbal briefings, DOF told Council Finance that properties that were destroyed by the hurricane or torn down by the City soon after due to damage, would see their market values drop to the value of the land plus whatever small improvement value might have been left (a foundation, etc). Therefore, an accurate land value becomes very important to a property owner who lost their home as it serves as the basis on which that property is taxed.

The analysis found that land values were largely unchanged on tentative roll; only 3.1 percent of Class One properties citywide saw their land values changed over the prior year. This percentage jumps to 9.3 percent when limited to Zone A properties.

36 Bin, Okmyung , and Stephen Polasky. "Effect of Flood Hazards on Property Values: Evidence Before and After Hurricane Floyd." *Land Economics* 80, no. 4 (2004): 490-500. The study saw an impact from Hurricane Floyd on home values in Pitt County, NC. However, it is unclear how these effects in a county with a large rural area and in a more hurricane prone state would translate to the urban environment of NYC.

Looking at the last six assessment rolls³⁷, it appears that land values in New York City had largely not been updated in the most recent three. As figure above shows, after the Fiscal 2011 assessment roll, land values were largely left unchanged on subsequent rolls. So the lack of changes appears to be a longer term issue, rather than just one that occurred on the Fiscal 2014 tentative roll.

Percent of Non-Exempt Class 1 Properties with Land Value Changes from Prior Year



Source: NYC Department of Finance, NYC Council Finance

While unchanged land values do not necessarily mean the values are wrong, it does raise the question about the accuracy of the values. While in most years, the land value is of little importance since its portion of the full market value has no impact on the final tax bill, for properties destroyed by Sandy, the land value becomes a large part of the basis of the new value. Indeed, it may be the case that among the properties that saw changes to their land values were the properties destroyed by Sandy.

³⁷ FY2008 through FY2014's tentative roll.

IV. 2013 Sandy-related /Assessment Actions

January	February	March	April
2 nd Real Property Tax due	5 th DOF and Tax Commission Briefing on Understanding the Notice of Property Value and How to Protest your Assessment (“Briefing”) (1 Centre Street)	1 st Last Day to File Tax Commission Appeal Application for Class 2, 3, 4 Properties	1 st Last Day to challenge descriptive data used to determine Market Value with DOF(Class 4)
5 th Taxable Status Date(Value is based on status of property on this date)	6 th Briefing (1 Centre Street)	6 th Revised Notice of Property Value	2 nd Property Tax (4 th quarter real property tax installation due)
15 th Tentative Roll published	7 th Briefing (Queens Borough Hall)	15 th Last Day to File Tax Commission Application for Class 1 Properties	28 th Revised Notice of Property Value
15 th Tax Commission begins review of Assessment Appeal applications	11 th Briefing (Queens Borough Hall)	15 th Last Day to File Property Tax Exemption Application	
16 th Hurricane Sandy Outreach Event Sheepshead Bay)	12 th Briefing (345 Adams St)	15 th Last Day to challenge descriptive data used to determine Market Value with DOF(Class 1 and Class 2)	
24 th Hurricane Sandy Outreach Event (Gerritsen Beach)	13 th Briefing (3030 Third Avenue, BX NY & Brooklyn Borough Hall)		
28 th Hurricane Sandy Outreach Event (Howard Beach)	14 th Briefing 250 St. Marks Place		
29 th Hurricane Sandy Outreach Event (Rockaways)	19 th Briefing 3030 Third Avenue, BX		
30 th Hurricane Sandy Outreach Event (Staten Island)	20 th Briefing 350 St. Marks Place, SI		
31 st Hurricane Sandy Outreach Event (Rockaways)			
May	June	July	August
27 th Final Assessment Roll Published		1st Property Tax (1st half or 1st quarter real prop. tax installment due)	6th Real Property Income & Expense (RPIE)
27 th End of Tax Commission Review of Appeal Applications (properties valued at less than \$750k AV)			
September	October	November	December
1 st End of Tax Commission Review of Appeal Applications (properties valued over \$750k AV)	1 st Property Tax (Second quarter real property tax installment due)		
3 rd Real Property Income & Expense (RPIE)			

V. Conclusion

This hearing will examine DOF's assessment practices of properties affected by Sandy. The Committees on Finance and Community Development would also like to hear about new procedures or proposals, if any, that have been established, or in the process of being established, by DOF that would provide additional assistance to property owners affected by Sandy.

Representatives from DOF, the New York City Tax Commission, and members of the public have been invited to testify.