

## IS THERE A FIX FOR NASSAU'S \$6B PROPERTY TAX SYSTEM?

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The bitterly contentious issue of how to permanently fix Nassau's \$6 billion property tax assessment system is developing into a dominant focus of this year's emerging county executive race, as tens of thousands of taxpayers file assessment challenges before a deadline extended amid heightened public concern.

Even before the candidates have been selected, the issue was staked out by Democratic Party county chairman Jay Jacobs, who said in an interview that the organization's endorsed choice, county Legis. Laura Curran of Baldwin, will feature a long-overlooked reform proposal as part of her platform. The plan's creator, state Sen. John Brooks (D-Seaford), describes it as a low-cost system that replaces tax refund checks with tax credits as a means of reducing the huge expenses associated with successful assessment challenges.

"I don't think any Nassau Republicans would oppose this, because they would be sealing their death warrant in terms of re-election," Jacobs said.

Like Curran, her two Democratic primary challengers, county Comptroller George Maragos and Assemb. Charles Lavine (D-Glen Cove), have issued statements critical of the county's current system in the wake of a Newsday investigation that documented a shift of \$1.7 billion in taxes over the past seven years from the roughly 61 percent of property owners who won assessment appeals to the 39 percent who haven't. Maragos separately criticized Brooks' plan.

With County Executive Edward Mangano, a Republican, yet to announce whether he will run for re-election, no Republicans have entered the race. Mangano, who would normally hold great sway on this assessment issue after riding it to electoral victory twice, is under federal indictment on unrelated corruption charges and Newsday has reported that the powerful Republican organization is looking elsewhere for a candidate.

Brooks' plan is markedly different from Mangano's policies, which led to the massive shift, but also saved taxpayers money. Mangano estimates the savings from his reforms at \$20 million to \$30 million a year in reduced costs by resolving residential property grievances before they lead to costly tax refunds. Under a state law known as the county guaranty that once nearly bankrupted Nassau, the county has to pay refunds for taxes overpaid not just to itself but to all the school districts and other authorities that rely on its assessment system.



State Sen. John Brooks (D-Seaforth) has one plan for reforming Nassau's property assessment system.

Credit: James Escher

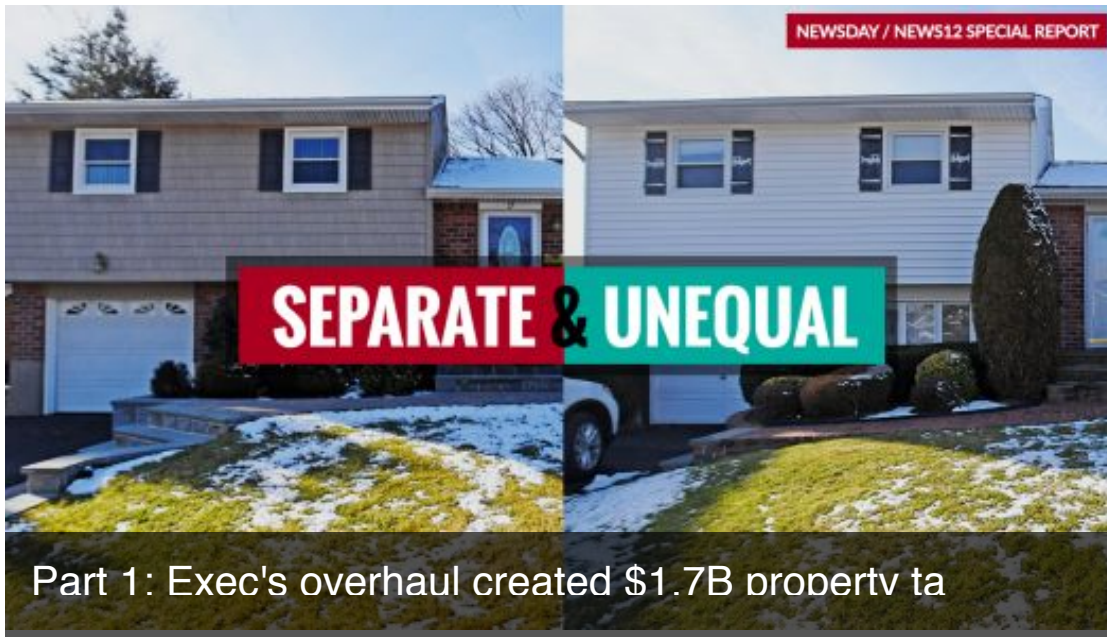
A separate program for which Mangano won state support recently began addressing commercial property refunds through an initiative that essentially charges all commercial property owners for their substantial cost. He continues to push for additional initiatives, including an already launched reassessment of all properties in the county, the first since 2003, but he has failed to find sponsors for other proposals that need state authorization.

"The jurisdiction to fix the assessment system lies with the New York State Legislature," Mangano said. "If John Brooks wants to help, he should pass the reforms we've requested."

Brooks, a Republican who ran as a Democrat, narrowly won election last November over Michael Venditto, the son of former Oyster Bay Supervisor John Venditto, who resigned after being indicted with Mangano on the corruption charges. John Venditto and Mangano have pleaded not guilty.

With the politics of Mineola making the political calculus in Albany all the more complicated, state legislators are examining the ramifications of Brooks' plan and the other often widely supported proposals that have been discussed for decades but never acted upon. Some want to dig in on the review.

"I would like to see the governor take a lead and have a commission put together," said Sen. Carl Marcellino (R-Syosset), who added that he wants to take a "holistic view of this thing from an arm's length distance and really solve the problem."



The intense focus on the system comes after Newsday’s investigation, which included a series of detailed data analyses that determined Mangano’s policies favored highly valued properties at the expense of all others and reversed years of effort by the county to make assessments more accurate and to correct an imbalance that led to disproportionately high taxation in minority communities.

The investigation also found that tax-appeal firms, which are major Mangano political contributors, had earned, conservatively, roughly half a billion dollars since his overhaul, which firm owners helped shape. That was an estimated \$167 million more than they would have earned under the old system.

The Newsday articles provoked enormous interest, with hundreds of thousands of online views, including 26,000 unique visitors to an interactive tool that allows property owners to compare their tax loads to those of neighbors. The county extended its deadline for filing assessment challenges from March 1 to March 10 after Newsday’s disclosures.

Although Mangano was first elected in 2009 on a tax-reform platform, overhauling a property assessment system is usually a third-rail issue for politicians. Even under circumstances far less pressing than those in Nassau, there is a belief that reassessments shift tax burdens onto those who were underassessed and who typically tend to be more engaged and vote more, said Gerald Benjamin, a distinguished teaching professor at the State University at New Paltz who has studied New York government for more than 30 years and served as an elected official for 12 in upstate Ulster County.

*“It’s a sleeping beast no one wants to wake up”*

*– Gerald Benjamin, SUNY New Paltz professor*



Assessment fairness is a fundamental obligation of government, he said, but accomplishing it can cost an official re-election. “It’s a sleeping beast no one wants to wake up,” he said.

In Nassau, which, according to Census statistics, has the highest average residential property tax bills in the country, a reassessment of its 424,000 properties can be even more politically volatile,

particularly because of an assessment freeze implemented by Mangano — which has lasted seven years — and his grievance program. The program encourages property owners to settle appeals quickly so that the county does not have to pay refunds to those who win after tax bills go out.

The combination of the two programs produced what are effectively two different assessment systems, one for those who appealed and the other for those who didn’t, and created substantial inequities that led the county’s system to fall out of compliance with the four main industry standards for fairness, Newsday found in its investigation.

Virtually any plan the county embarks on that seeks to correct this imbalance would probably lead to taxes going down for many owners, but rising significantly for many of those who benefited from the \$1.7-billion tax shift identified by Newsday — 46 percent of which was transferred from owners of the 8 percent of appealed properties the county valued at \$1 million or more before their reductions.

Few tax systems are easy to understand, but Nassau’s is particularly complicated. By absorbing a few key concepts, the choices ahead become clearer:



Properties are now assessed at a minuscule fraction of true value, including 0.25 percent for residential properties and rates substantially lower for the tens of thousands every year that win appeals. Many experts advocate that properties be valued at 100 percent of their true values, which makes systems more transparent and probably helps curb appeals but which voters have often greeted with wariness.

Because of the county guaranty, Nassau is unique in New York State in being obligated to pay the refunds of every taxing agency in its jurisdiction. Mangano and others have fought to eliminate the guaranty, something that has led to \$1 billion in bonding, passing the cost of the refunds onto future generations. But every attempt to kill it has failed in the courts or Albany, and, if it were eliminated, the tax burden would be transferred to school districts, towns and other agencies.

Enormous numbers of assessment challenges are won by property owners who receive minor adjustments, which are no doubt still appreciated in a state where it costs nothing to appeal. Experts say this ignores the fact that assessments can never be perfect and that such a policy ignores an appropriate margin of error. Should appeals be rejected if the reduction to be awarded is less than five percent, something that could cut down on the number of appeals, but, particularly in the case of more valuable properties, eat into owners' pocketbooks?

The choices coming out of this complicated mix become clearer than one might expect:

How to make the system fairer, by, for example, going to full value assessment, which has had broad-based support locally for decades and which experts say is necessary to maximize the success of the county's reassessment?

How to cut down and absorb the cost of refunds, either by trying once more to eliminate the county guaranty, by providing disincentives for people to appeal, or by adopting Brooks' tax credits plan?

## **Mangano's proposals**

Over seven years and counting, Mangano has tried a bit of many of those plans, and has also taken measures that, as Newsday's investigation revealed, worked in counterpoint to the goal of equity and fairness.

His reforms are projected to save taxpayers between \$115 million and

\$299 million by the end of his second term this year, depending upon various factors analyzed by Newsday. But Mangano holds that the savings would have been more if state officials supported his other reform proposals.

Mangano tried to repeal the guaranty by signing a law passed by the County Legislature in 2010, but that was overturned by the New York Court of Appeals after school districts sued to stop it.

Meanwhile, his grievance program, which has significantly curtailed the cost of refunds paid to homeowners but not as much for others, has led to the median tax bills of those who appealed increasing \$466, compared to an increase of \$2,748 for those who did not.

Mangano's planned reassessment, which is expected to be complete in January 2018 at the earliest, should help correct those inequities at an initial cost of \$3.8 million.



But he plans on it being done at 100 percent of true value, and that requires support from Albany. He also wants state legislators to pass legislation instituting a margin of error for assessment challenges.

"I welcome anybody in the state who wants to help us pass bills that will correct the system," Mangano said.

Mangano has also implemented reforms aimed at addressing commercial property refund costs, which make up 70 percent of the total, by getting state legislators to pass legislation in 2014 that created an escrow-like pool called the Disputed Assessment Fund.

Under that program, taxes generated off the portion of any commercial property assessment that is being challenged are placed into the fund until the grievance is resolved. The money in the fund is then used to pay any refund and any excess is distributed to governments.

*"We feel the entire system should be ultimately shut down"*

*-Kevin Clyne, tax attorney*

The first payments into the fund were billed in January, and because those tax dollars were sequestered into the fund, governments increased taxes on all commercial property owners to make up the difference in usable revenue, essentially charging them for the refunds.

Melville tax attorney Kevin Clyne said his firm, Herman Katz Cangemi & Clyne, is preparing a lawsuit seeking repayment of the money in the fund.

“I believe the law is unconstitutional. We believe it is an illegal delegation of the taxing authority,” Clyne said. “We feel the entire system should be ultimately shut down.”

Attorney Michael Helfer experienced a tax bill increase of \$4,263 in the last set of tax bills for the converted Bellmore home housing his practice in part due to the Disputed Assessment Fund. Since October 2010, his bills have risen \$9,918, or 46 percent. He said he is looking into appealing this year.

“It’s oppressive, that’s all I can say,” Helfer said of the tax increase. “When you think about what you have to outlay before you do business, before you are able to generate income, it’s the only word I can think of.”

## The Brooks proposal

The alternative plan for dealing with the refund burden touted by the county Democratic leadership is the one offered by Brooks, which takes an innovative approach aimed at the peculiarities of the county guaranty. The plan had gone largely unnoticed since he came up with it in 2010.

Outside of Nassau County, if a property owner is due a refund for taxes overpaid to a single school district or other government, the cost is borne by that school district or agency. But in Nassau, because of the county guaranty, the cost is largely transferred out of each school district or other agency and onto all the county’s taxpayers.



Uniondale tax attorney Laureen Harris, president of the real estate industry’s Association for a Better Long Island. Credit: Bob Giglione

This has fueled the many calls for a repeal, to which Brooks' plan offers an alternative. Uniondale tax attorney Lauren Harris, president of the real estate industry's Association for a Better Long Island, for example, said she believes repealing the guaranty would put more pressure on school districts and other governments to more efficiently manage their budgets. The county's enormous tax bills are the real cause of the public's focus on the assessment system, she said.

Brooks' solution does not involve repealing the guaranty and shifting the refund cost to school districts, a powerful lobbying force in Albany. Instead, he wants the county to pay for refunds through tax credits, which would reduce the taxes of those due a refund by the amount they are owed.

The credits would be paid for by owners of similar properties — business, commercial or otherwise — in the same school district or other government as those receiving them. This, Brooks said, would save taxpayers money, because the current process allows school districts or other governments to keep the overpaid taxes that other county taxpayers have to pay to refund. Under his plan, he said those receiving a tax credit would pay for a greater share of the expense.

Property tax bills would list how much each owner paid in taxes to each government, how much she or he paid for refund tax credits to each government, how much was received in a refund tax credit and what was paid to their tax appeal firm, if anything.

Brooks said he believes this would allow property taxpayers to see for the first time the true costs and benefits of a successful assessment appeal, with the likely effect that the real savings turns out to be less than they assumed. This, he says, would cause many not to bother appealing to begin with.

"People are going to realize there is no big gain if your house is only off slightly," Brooks said.

Brooks said his plan could also be used to fund the county's backlog of refunds, which are those it currently owes or expects to owe in the future for challenges that haven't been resolved yet. That backlog stood at \$300 million at the end of 2015, according to the county's most recent audited financial statements. Interest on those unpaid refunds continues to accumulate.

Many legislators and other assessment-system stakeholders are only hearing of Brooks' plan for the first time, and its complications may take some time to absorb.

*“Nobody should be winning assessment grievances.”*

*— George Maragos, Nassau County comptroller*



For instance, what would happen if an owner due a tax refund credit sold a property before being able to take advantage of it? Brooks said the county would cut a check when the property is sold.

Or, how would tax appeal firms, who now take a cut of refunds, be paid? Brooks said the county could cut them a check, too, or they could just bill their client directly.

Another complication comes with assessment challenges that stretch on for years before resulting in a reduction, as occurs frequently with expensive commercial property claims. Who would be responsible for paying the interest that accumulated on those refunds while the challenges were being litigated? Brooks said the county's budget would continue to pay those costs.

stakeholders contacted by Newsday said they wanted to know more before taking a position on Brooks' plan. After years of supporting other proposals for fixing the county's tax refund issues, they remained skeptical of new ones.

Maragos, the county comptroller who is running for county executive, said he was opposed to not repealing the guaranty and said Brooks' plan doesn't do anything to make assessments more accurate.

"It does nothing to solve the problem of the shift," Maragos said. "Nobody should be winning assessment grievances."

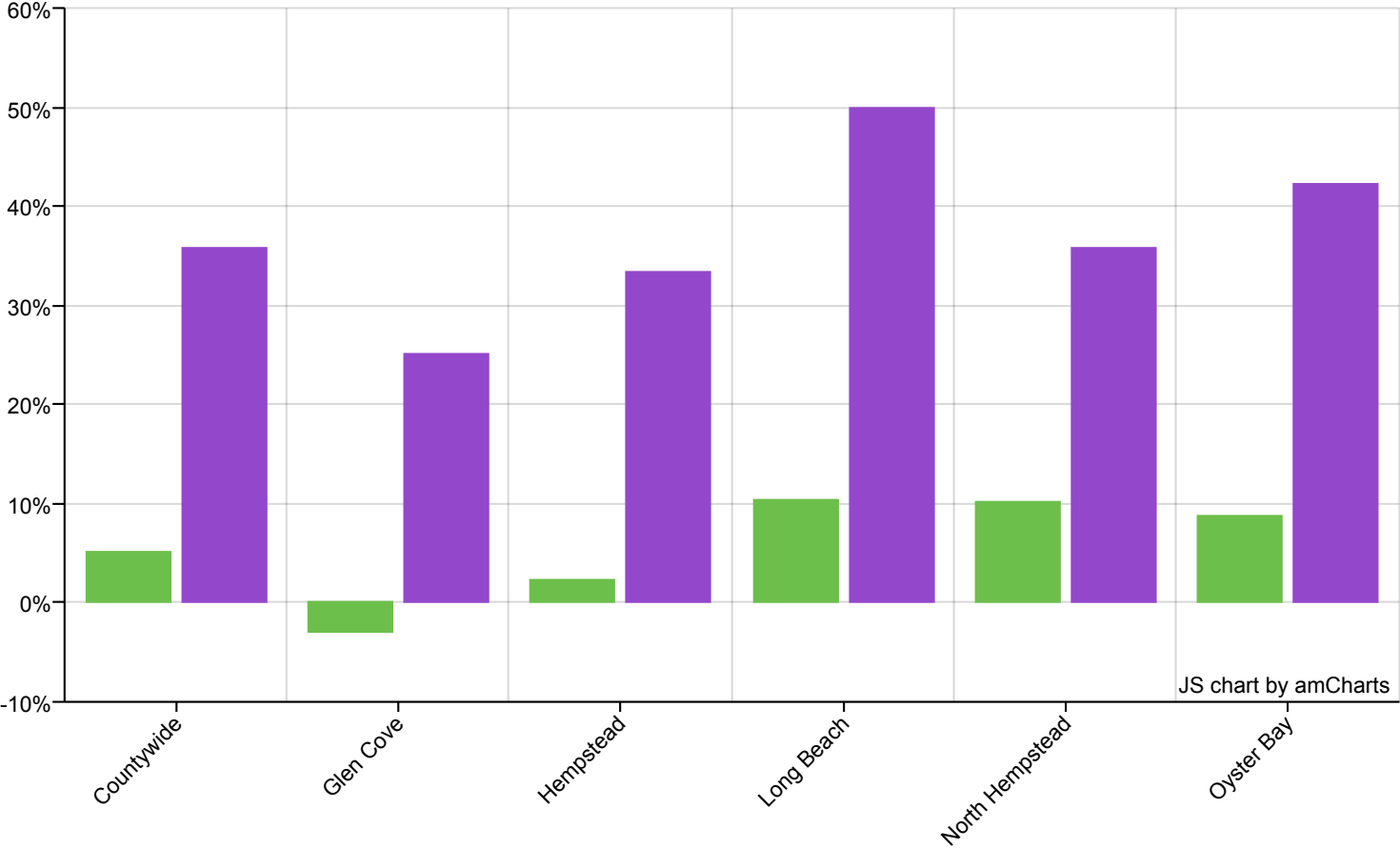
Clyne, who also favors repealing the guaranty, said he wanted to know more after hearing about Brooks' plan.

"It certainly sounds interesting," Clyne said. "But I have suspicions of anything that leaves the guaranty in place."

Brooks said he is working to build support from key groups and that the plan is being drafted into state legislation that will need support in both Albany and Mineola to become law.

# How much your tax payment changed largely depended on...

■ If you appealed      ■ If you did not appeal



JS chart by amCharts

*SOURCE: Newsday analysis of the change in the median tax bills of appealed and unappealed properties between the 2010-11 and 2016-17 tax years.*

# Margin of error

Other concepts waft around these two approaches, each with its own allure and questions.

One is disallowing assessment reductions when they fall within a small margin of error, say 5 percent.

Ask three appraisers to value a property and they are likely to come up with three different values, suggesting that assessing is an art as much as a science. That is recognized in standards for assessment accuracy and fairness set by the International Association of Assessing Officers, the assessors' core professional society, which sets standards that allow for a range of acceptable values.

But unlike in other states, New York's assessment-challenge law does not recognize any margin of error and challengers can receive even the smallest possible reduction. If the law did recognize a margin of error, it could significantly reduce the number of successful challenges.



Matt Smith's Mineola firm Standard Valuation Services is working on the reassessment project. Credit: Howard Schnapp

Support for instituting a margin of error for assessment challenges is fairly broad locally, with the exception of the tax appeal firm industry. Harris, who also served as chair of the Nassau County Bar Association's Condemnation and Tax Certiorari committee, said that in practice negotiations over grievances already lead to compromises over small variations.

"When we negotiate, if it's within a couple of percentages it's like, well, come on," Harris said. "So we have that as a practical matter." Another proposal that could lead to fewer challenges being filed is the idea of setting assessments at 100 percent of what a property is worth instead of the extremely small fractions of true value that the county now uses.

Experts say establishing assessments at an estimate of what the property is worth eliminates confusion that sometimes prompts people to file challenges.

Full-value assessments are recommended as best practice by the assessors' association and New York's Office of Real Property Services. The idea is supported locally by both major political parties, tax appeal firms, business groups and assessment experts.

Without going to full value, which does not by itself shift any tax burden, for technical reasons the only way the county's reassessment will result in accuracy and fairness is if it reduces even further the minute fractions of true value now being used to determine tax bills, which are as low as 0.25 percent.

Matt Smith, whose Mineola firm Standard Valuation Services is working on the reassessment project, said legislators are often wary about full value but end up being pleasantly surprised.

"The number of residential claims drops dramatically," Smith said, "because the level of understanding is up there."

## **Towns and cities**

Many supporters of repealing the guaranty feel that any repeal should also be coupled with transferring the duty of assessing property to the county's towns and cities.

While the cities of Long Beach and Glen Cove already have assessors, their systems are used to levy only a portion of their residents' taxes. So, in addition to the cities and towns paying the cost of their refunds due to the guaranty repeal they would also have to take on more assessment costs, in most cases from scratch.

Clyne, who supports the idea of town and city assessing, said he believes the cost to taxpayers would be somewhat of a wash after each town had set up its assessment department and the county shut down its own department. Echoing the thoughts of others interviewed for this story, he said having them handle assessing, as they do in Suffolk County and elsewhere in New York, would be better because they have a clearer understanding of the property in their areas.

The argument that towns would produce higher-quality assessments is questionable. Studies conducted by state officials, Newsday and the county for periods before Mangano’s overhaul all reported high levels of assessment accuracy and fairness for the county’s residential assessments. The studies found the assessments fell well within standards set by the state and the assessor’s association.

For instance, one state study released in 2010 found Nassau’s residential assessments were more accurate than those of any Long Island town or city except Shelter Island, according to a Newsday report at the time.

The case for commercial assessment accuracy is less clear, because state officials don’t focus on those properties separately in their studies. Commercial properties have generally been more difficult for the county to accurately assess, its assessors have said in the past, but those same challenges would also be faced by any assessment department.

The director of strategic initiatives for the assessors’ association, Larry Clark, said the trend nationally has been to go up to county assessing and not down to towns and cities, because bigger jurisdictions have more data available that assessors can use to establish more accurate assessments.

“What matters more than anything is the availability of data,” he said.

“What we find is that as the jurisdiction gets smaller there is relatively less data to work with.”

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