

REDACTED DECISION – DK#’S 23-1351

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON OCTOBER 31, 2023
ISSUED ON APRIL 10, 2024**

FINAL DECISION

On February 22, 2023, the Petitioners timely filed with this Tribunal six property tax appeals, each involving a commercial property in AAA County, West Virginia, specifically, hotels. The appeals concern property tax year 2023.

An evidentiary hearing was held on October 31, 2023, after which the matter became ripe for decision. Once this Final Decision was being drafted some anomalies came to light. First, one of the six (6) appeals was filed by an entity named BBB. However, at hearing, when the presiding administrative law judge directed the parties to identify the properties that form the basis of this matter, no property owned by BBB was identified. Instead, counsel for the Petitioner presented testimony and exhibits regarding property owned by CCC, despite CCC not having filed an appeal with this Tribunal. Once this error was discovered, the undersigned directed the Respondent to advise, in writing, if he wished to contest the inclusion of the property owned by CCC into the final decision in this matter. By letter dated March 28, 2024, counsel for the Respondent advised this Tribunal that due to the fact that the Respondent had the opportunity to cross examine witnesses and view exhibits regarding the CCC property, he would not raise any objection to this property becoming part of this Final Decision.

Another anomaly arose when it was discovered that Petitioner, DDD had included a tax ticket with its Petition of Appeal that identified the property being appealed as Parcel No. XX. However, the evidence presented at hearing concerned property identified as Parcel No. XX. Counsel for DDD was instructed to confirm, in writing, that the Petitioner intended on Parcel No.

XX being the subject of this matter, not Parcel No. XX. However, no such confirmation was received.¹

FINDINGS OF FACT

1. The Petitioners in this matter are five (5) LLCs and one corporation, doing business as hotels in AAA County, West Virginia.²

2. No officer in the corporation, nor member of the LLCs appeared at hearing. There was testimony identifying someone named EEE as being a member of the LLCs. No additional information regarding the Petitioners, such as when and where the LLCs were formed, if there are other members or where else the LLCs may operate was introduced at hearing. Counsel for the Petitioners was instructed to provide that information after the hearing concluded, however this was not done.

3. According to the records of the AAA County Assessor, the Petitioners are as follows:

- a. FFF, doing business as a GGG, parcel no. XX.
 - i. Assessor appraised value: \$XX.
 - ii. Owner appraised value: \$XX.
- b. CCC, doing business as a HHH, parcel no. XX.
 - i. Assessor appraised value: \$XX.
 - ii. Owner appraised value: \$XX.
- c. III, doing business as a JJJ, parcel no. XX.
 - i. Assessor appraised value: \$XX.

¹ Despite counsel's failure to provide clarification, this Final Decision concerns Parcel No. XX, due to the fact that all of the evidence and testimony concerned this parcel.

² During the evidentiary hearing, counsel for the Petitioners indicated that all six (6) property owners are LLCs, however, one of the property record cards maintained by the assessor, identifies one property owner as a corporation. *See Respondent's Exhibit 7.*

- ii. Owner appraised value: \$XX.
- d. KKK, doing business as a LLL, parcel no. XX.
 - i. Assessor appraised value: \$XX.
 - ii. Owner appraised value: \$XX.
- e. DDD, doing business as a MMM, parcel no. XX.
 - i. Assessor appraised value: \$XX.
 - ii. Owner appraised value: \$XX.
- f. NNN, doing business as a OOO, parcel no. XX.
 - i. Assessor appraised value: \$XX.
 - ii. Owner appraised value: \$XX.

4. The Petitioners employ a property tax management firm called PPP. An employee of PPP attempted to explain the nature of the Petitioners' complaints, however, his logic was less than clear. Tr. P13-14 at 3-5. However, it is clear from the testimony taken in its entirety that the Petitioners believe that their property tax values are too high.

5. The Petitioners previously hired an appraisal firm call QQQ (hereinafter "QQQ") to appraise the six properties, presumably for property tax year 2022. An appraiser with that firm prepared appraisals for the six (6) properties at issue, with an effective date for each of July 1, 2021. For the purposes of this current appeal, involving property tax year 2023, the firm prepared short updated reports for five (5) of the six (6) properties, with an effective date of July 1, 2022. For Property owner NNN, the firm prepared two full reports, one for property tax year 2022 and one for property tax year 2023. The QQQ appraiser testified that the reason for two full reports for this Property owner was due to the fact that the firm was ostensibly provided additional financial information for property tax year 2023, specifically, profit and loss statements for two additional years, 2020 and 2021. Tr. P111-112 at 17-3 & Tr. P113 at 16-19. However, the QQQ

appraiser was not provide a profit and loss statement for calendar year 2022. Tr. P120-121 at 18-3.

6. The QQQ appraiser's five (5) appraisals for property tax year 2023 (save for) all consisted of one page. *See* Petitioner's Exs 3,5,7,9 & 11.

7. The QQQ appraiser testified that his one-page appraisals "updated" his 2022 appraisal reports. Tr. P36 at 6-13.

8. A review of the one-page 2023 reports shows that they contain no information from the 2022 reports.

9. The one-page reports arrive at a value by taking the appraised values of five (5) hotels in West Virginia. The QQQ appraiser then took those appraised values and divided them by the number of rooms in each hotel, to arrive at a value per room amount. He then took the five (5) per room values and arrived at a median value per room. Finally, he took his median value per room and multiplied it by the number of rooms in the hotel he was appraising for this matter.³ Tr. P33-36.

10. The QQQ appraiser confusingly testified that his one page "updates" utilized information contained in his full reports for property tax year 2022. Tr. P36 at 6-13. However, a review of Petitioner's exhibits 3,5,7,9 & 11 shows that they contain no information from the full reports. Specifically, they contain no financial information from the property owners, nor do they contain any sales information regarding similar properties.

11. Upon cross examination, the QQQ appraiser admitted that the best information to conduct an income valuation would be financial information from the property owner, and that for the property tax year in question he had been provided with none. Tr. P34 at 1-8.

³ The calculations led to the owner appraised values listed in Findings of Fact number 3 above.

12. For his part, the Assessor appraised all of the properties exclusively using the cost approach. Tr. P59 at 6-8. However, the county appraiser who conducted the appraisals testified somewhat confusingly that he also conducted a sales comparison analysis as a backstop, to ensure that the county's values were within the parameters that he felt comfortable with. Tr. P58-59 at 11-9.

13. Specifically, under the cost approach, the county appraiser utilized a computer program that is used statewide. Generally, the data utilized includes the original cost to build the building, which is based upon figures provided by the property owner. The computer program calculates the depreciation. Additionally, a county modifier is utilized, which calculates a specific inflation rate, to allow the county appraisers to calculate what it would cost to build the same building new, on the appraisal date.⁴ Tr. P55-57 & P66-68.

14. Upon cross examination, the QQQ appraiser testified that he could not identify any mistakes made by the county appraiser.

DISCUSSION

This final decision is the first final decision issued by this Tribunal regarding property tax valuation. Nonetheless, the law of property tax valuation in West Virginia is well settled. As early as 1950, the West Virginia Supreme Court of Appeals stated “[I]t is a general rule that valuation for taxation purposes fixed by an assessing officer are presumed to be correct.” Bankers Pocahontas Coal Co. v. Cnty. Ct. of McDowell Cnty., 135 W. Va. 174, 179, 62 S.E.2d 801, 804 (1950). The Court reiterated the point as recently as two years ago. “It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of

⁴ There was testimony regarding some of the other parameters utilized by the computer program. As will be discussed below, due to the fact that the property owners' expert could point to no mistakes made by the county's appraiser, the specific facts regarding these other parameters are not relevant.

such fact must be clear.” Syl. Pt. 1, Berkeley Cnty. Council v. Gov't Properties Income Tr. LLC, 247 W. Va. 395, 880 S.E.2d 487 (2022).⁵

Here, we are able to quickly dispatch the Petitioner’s arguments, due to the fact that the Petitioner’s own expert testified that the AAA County Assessor’s office had committed no errors in its valuation of the properties that are the subject of this appeal. However, it should be noted that even if the Petitioner’s expert had not testified as such, we still would be unable to rule in the Petitioner’s favor.

Series 1P of Title 110 of the West Virginia Code of State Regulations contains the regulations regarding the valuation by the Tax Commissioner of commercial and industrial property. Subsection 3.2.1. directs the Tax Commissioner as to what methods must be considered in valuing property such as the hotels that are the subject of this appeal.⁶ “In determining an estimate of fair market value, the Tax Commissioner shall consider and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market.” W. Va. Code R. § 110-1P-3.2.1 (2013). Series 1P both defines the three (3) approaches and discusses their foundational principles.

2.4. "Cost approach" means the appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property. W. Va. Code R. § 110-1P-2.4 (2013).

⁵ As will be discussed below, this Tribunal is aware that with the passage of H.B. 2581 during the 2021 Legislative Session, the Legislature changed the burden of proof for property owners in property tax appeals, from the clear and convincing standard to a preponderance of the evidence standard.

⁶ In West Virginia, commercial property is appraised and assessed by the county assessor’s office. However, all of the work done by the county assessors is overseen to some extent by the Tax Commissioner. There are numerous statutory provisions contained in Chapter 11 of the West Virginia Code which outline the working relationship between the two entities. *See e.g.* W. Va. Code Ann. § 11-1C-7(a) (West) (county assessors shall appraise all real and personal property utilizing the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system established by the Tax Commissioner.) As such, any references to the Tax Commissioner’s mandatory duty to follow the directives of Series 1P flows to the county assessors as well. Additionally, assessors statewide utilize a computer program to value commercial property that is established and maintained by the West Virginia State Tax Department.

2.12. "Income approach" means the appraisal process of discounting an estimate of future income into an expression of present worth. W. Va. Code R. § 110-1P-2.12 (2013).

2.17. "Market approach" means the appraisal process of examining sales data and translating the data into an estimate of present worth. W. Va. Code R. § 110-1P-2.17 (2013).

3.2.1.1. Cost approach. - To determine fair market value under this approach, replacement cost of the improvements is reduced by the amount of accrued depreciation and added to an estimated land value. In applying the cost approach, the Tax Commissioner shall consider three (3) types of depreciation: physical depreciation, functional obsolescence, and economic obsolescence. W. Va. Code R. § 110-1P-3.2.1.1 (2013).

3.2.1.2. Income approach. - A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate shall be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate. W. Va. Code R. § 110-1P-3.2.1.2 (2013).

3.2.1.3. Market approach. - The Tax Commissioner shall apply the market approach by considering the selling prices of comparable properties. W. Va. Code R. § 110-1P-3.2.1.3 (2013).

We would be unable to rule for the Property owners in this matter because the updated reports prepared by their expert appraiser for five (5) of the properties do not utilize any of the three (3) methodologies required under West Virginia law. Specifically, they obviously do not utilize the cost approach or the market approach, because the one page reports plainly make no mention of sales of other properties, nor do they contain any information about the property owners' costs to construct the hotels. As for the income approach, the one page updates do not utilize that method either. In fact, the QQQ appraiser testified that he utilized the method he did (the value per room approach discussed in finding of fact number 9 above) precisely because he did not have any income information from the five (5) property owners.

ATTORNEY RRR: And the update --- the only thing that I see in the update is a value per room approach.

MR. DDD: That's correct.

ATTORNEY RRR: So is that the extent of the 2022 information that you used for the income approach?

MR. SSS: Yes, financial information was not available, so we used the most appropriate approach where we could find the most accurate information.

ATTORNEY RRR: Okay. How come the financial information was not available?

MR. SSS: It was not provided to us.

ATTORNEY RRR: And wouldn't that have been the best information to use to provide an income approach?

MR. SSS: Yes, sir.

Tr. P33-34.

Based upon the testimony above, counsel for the assessor was being generous in referring to the methodology utilized by the QQQ appraiser as an “income” approach. It is important to note that regarding the full reports, the appraiser prepared for property tax year 2022, one could make the straight face argument that those reports make a passing stab at the income approach. This assumes that the market information utilized in the full reports would pass muster under West Virginia law. For some inexplicable reason, that was not clarified at hearing, the QQQ appraiser left behind his methodology from the full reports and came up with a new method that is clearly not contemplated under West Virginia law or the generally accepted principals of appraisal.⁷

Regarding the OOO, the QQQ appraiser did prepare a full updated report, dated February 23, 2023. This February 2023, report was prepared ostensibly because the QQQ appraiser had income information from property owner NNN. However, this report is rife with problems as well.

⁷ Again, this Tribunal is new to the law of property valuation. Therefore, it causes us some pause to unequivocally state that the update reports do not fall into any of the generally accepted methods of appraising property. However, as the PPP appraiser testified, he had no income information, and on their face the reports contain no information regarding sales or cost.

While the appraiser testified that the whole reason for preparing a full report for property tax year 2023 was due to his receipt of more financial information, (than was provided for the other five (5) property owners) it soon became apparent that this was not the case. First, and foremost, the only financial information provided to the appraiser from the property owners, for both the 2022 reports, and for this February 2023 report was “profit and loss statements.” We utilize quotes because none of these statements were introduced into evidence. The QQQ appraiser testified that he presumed that the information provided was accurate. This line of questioning led to the following exchange:

JUDGE POLLACK: Now, I was provided a profit and loss statement that we did not mark as an exhibit because Mr. SSS did not use it. But I did glance at it, and it purports to be a profit and loss statement from January through December of 2022. And it's got a bunch of figures, but it's just a plain white piece of paper with figures typed out on it.

MR. TTT: Correct, Your Honor.

JUDGE POLLACK: If I were to ask the AAA County assessor's office to prepare an income valuation, and I gave the assessor's office five white pages with some figures typed out that purported to be my expenses and my income, and that's all I gave the assessor's office, would that suffice?

MR. TTT: No, Your Honor. Kind of goes back to Ronald Reagan, trust to verify. So I would take that piece of paper, but I would love to see the original documentation submitted to the IRS.

Tr. P132-133.

Not only were the profit and loss statements bereft of source documents, the QQQ appraiser testified that he was not even provided a profit and loss statement for the period January 1, 2022 through December 31, 2022.

The Office of Tax Appeals is not bound by the rules of evidence. *See* W. Va. Code Ann. § 11-10A-10(c) (West 2018) (The office of tax appeals may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or

her affairs). This Tribunal has traditionally ruled that Section 10(c) directs us to use common sense when it comes to questions regarding the evidence presented in a matter. Moreover, the West Virginia Supreme Court of Appeals has also stated, in dicta, that courts should not abandon their common sense at the courthouse door. “Although a court may not read into a statute language purposefully omitted, courts of this state are not required to **“insulate themselves from all knowledge of happenings and events in the world about them, and pretend ignorance to that which among the mass of citizens is common knowledge, . . .”**” State v. Blatt, 235 W. Va. 489, 500, 774 S.E.2d 570, 581 (2015) (internal citations omitted). Many times this Tribunal has been confronted with purported financial documents like the profit and loss statements in this matter, namely plain white pieces of paper with numbers on them. In those matters, common sense directed us that without source documents, the information should be afforded no weight. Regarding the profit and loss statements in this matter, we make the same finding.⁸

Finally, we must discuss the statutory change to the burden of proof in property tax appeals, made by the West Virginia Legislature in 2021. “For all appeals regarding property tax assessments, taxability, and classifications pursuant to § 11-3-1 *et. seq.*, the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard.” W. Va. Code Ann. § 11-10A-10(h) (West). Prior to the statutory changes, the burden of proof in such cases was clear and convincing evidence. However, in this matter we do not need to devote time to this evidentiary change, because as discussed above, the property owners have presented no evidence that the valuations arrived at by the AAA County Assessor’s office were erroneous.

⁸ Interestingly, in his income approach for the OOO, the PPP appraiser had it valued at approximately eight-hundred thousand dollars higher than the Assessor’s office. Tr. P114 at 19-21. He also arrived at a value for this property using the market approach that was only approximately three-hundred thousand dollars lower than the Assessor’s. We are disinclined to utilize that valuation, in part because the expert could point to no errors on the part of the Assessor, and in part due to the other myriad problems with the presentation of this matter discussed above.

CONCLUSIONS OF LAW

1. Except for property appraised by the State Tax Commissioner under section ten of this article and property appraised and assessed under article six of this chapter, all assessors shall, within three (3) years of the approval of the county valuation plan required pursuant to this section, appraise all real and personal property in their jurisdiction at fair market value except for special valuation provided for farmland and managed timberland. They shall utilize the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system established by the Tax Commissioner. W. Va. Code Ann. § 11-1C-7(a) (2017).

2. All property, except public service businesses assessed pursuant to article six of this chapter, shall be assessed annually as of July 1 at sixty (60) percent of its true and actual value. W. Va. Code Ann. § 11-3-1(a) (2014).

3. A petitioner whose request to an assessor for reconsideration of value is denied, in whole or in part, . . . may file a protest with . . . the Office of Tax Appeals. W. Va. Code Ann. § 11-3-15i(c)(2022).

4. In determining an estimate of fair market value, the Tax Commissioner shall consider and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market. W. Va. Code R. § 110-1P-3.2.1 (2013).

5. Cost approach means the appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property. W. Va. Code R. § 110-1P-2.4 (2013)

6. Income approach means the appraisal process of discounting an estimate of future income into an expression of present worth. W. Va. Code R. § 110-1P-2.12 (2013).

7. Market approach means the appraisal process of examining sales data and translating the data into an estimate of present worth. W. Va. Code R. § 110-1P-2.17 (2013).

8. Cost approach. - To determine fair market value under this approach, replacement cost of the improvements is reduced by the amount of accrued depreciation and added to an estimated land value. In applying the cost approach, the Tax Commissioner shall consider three (3) types of depreciation: physical depreciation, functional obsolescence, and economic obsolescence. W. Va. Code R. § 110-1P-3.2.1.1 (2013).

9. Income approach. - A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate shall be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate. W. Va. Code R. § 110-1P-3.2.1.2 (2013).

10. Market approach. - The Tax Commissioner shall apply the market approach by considering the selling prices of comparable properties. W. Va. Code R. § 110-1P-3.2.1.3 (2013).

11. Regarding the six (6) hotel properties at issue in this matter, the AAA County Assessor's Office correctly valued the property using the cost approach, as those terms are used in Subsections 2.4 and 3.2.1.1 of Series 1P, Title 110 of the West Virginia Code of State Rules. Specifically, he correctly took the replacement cost of the hotels, and reduced that amount by the amount of accrued depreciation and added that figure to an estimated land value.

12. The appraisal figures presented by the Property owners in this matter were not arrived at by utilizing any of the three (3) generally accepted methods contained in Section 3 of Series 1P, Title 110 of the West Virginia Code of State Rules.

13. It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear. Syl. Pt. 1, Berkeley Cnty. Council v. Gov't Properties Income Tr. LLC, 247 W. Va. 395, 880 S.E.2d 487 (2022).

14. The six (6) property owners in this matter failed to meet their burden of showing that the AAA County Assessor's valuations were erroneous.

DISPOSITION

Based upon the foregoing, it is hereby **ORDERED** that the appraised values arrived at by the AAA County Assessor, for the six properties identified above are hereby **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
A.M. "Fenway" Pollack
Chief Administrative Law Judge

Date Entered