

REDACTED DECISION – DK#’S 23-1366

**BY: CRYSTAL S. FLANIGAN, DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON FEBRUARY 20, 2024
ISSUED ON SEPTEMBER 19, 2024**

**NOTE: THIS ADMINISTRATIVE DECISION WAS APPEALED BEYOND THE
OFFICE OF TAX APPEALS**

FINAL DECISION

On February 3, 2023, AAA (hereinafter “Petitioners”) had a hearing before Board of Equalization and Review in BBB County, West Virginia where they disputed the valuation of their property. On February 15, 2023, the BBB County Commission issued a decision stating there was no change in assessment, ruling in favor of CCC, the BBB County Assessor.

Upon receipt of the decision from the BBB County Commission, the Petitioners timely filed their Petition for Property Tax Appeal with this Tribunal on March 2, 2023. Subsequently, notice of a hearing on the petition was sent to the parties and in accordance with the provisions of West Virginia Code Section 11-10A-10, a hearing was held on November 8, 2023. Thereafter, the parties submitted briefs, with the evidence closed on April 2, 2024, and the matter became ripe for decision at that time.

FINDINGS OF FACT

1. The Petitioners filed a Petition for Property Tax Appeal with the Office of Tax Appeals dated March 2, 2023, challenging the appraised value of their property. Pet’rs’ Petition for Appeal.
2. The Petitioners reside at, and own residential real property located at DDD, BBB County, West Virginia, which is the property at issue in this matter. Pet’rs’ Petition for Appeal.
3. The Petitioners purchased this property on June 14, 2005, for \$XX. Resp’t’s Ex. 3.

4. The structure of the home was built in 2007 and has approximately 3,198 square feet and the real property has approximately 8.12 acres. Evidentiary Hr’g Tr. 49, Nov. 28, 2023, Resp’t’s Ex. 1 and 4.

5. The deed to the property at issue includes right of way easement language “to any one or more of the gas wells currently situate upon this property, the centerline of which right-of-way or easement shall be the centerline of the current gas well road now utilized by ZZZ, for the operation and maintenance of said wells.” Resp’t’s Ex. 3.

6. The BBB County Assessment history shows that in 2022 the land was valued at \$XX and the structure was valued at \$XX, for a total value of \$XX. Resp’t’s Ex. 2.

7. The BBB County Assessment history shows that in 2023 the land was valued at \$XX and \$XX, for a total value of \$XX. Resp’t’s Ex. 1 and Ex. 2.

8. The Petitioners concede that the methodologies followed by the Respondent did not violate any West Virginia statute, regulation, or case. Hr’g Tr. 65.

9. The Respondent used the Integrated Assessment System to assess the Petitioners’ property. Hr’g Tr. 76-78, 80-81.

DISCUSSION

The issue in this matter is whether the Respondent has properly valued the Petitioners’ residential property for the 2023 tax year. The Petitioners filed a Petition for Property Tax Appeal with the Office of Tax Appeals on March 2, 2023, challenging the appraised value of their property located at DDD, WV. Although the Petitioners concede that the Respondent followed West Virginia law, they assert the Respondent failed to consider several factors that they allege resulted in their property being overvalued. Those factors are as follows: 1) an existing easement was not considered as wasteland and that gas service to their property is uncertain and should reduce its value; 2) four dilapidated properties near their property were not considered; and 3) the price per

square foot assessed to their home does not comport with the price per square foot assessed with other homes in the area.

The Respondent asserts that she followed the required valuation method as set out under the West Virginia Constitution wherein real property shall be “equal and uniform” throughout the state. W.Va. Const. art, 10, § 1. The Tax Commissioner shall have the power to “determine the methods of valuation for both real and personal property” which provides the authority to prescribe the methods for the valuation of real property under West Virginia Code Section 11-1C-5. W.Va. § 11-1C-5. The Tax Commissioner has required the county assessors of the fifty-five counties in West Virginia to use a statewide software system, the Integrated Assessment System (hereinafter “IAS”) to value residential real property. *See* Admin. Notice 2018-15. The IAS allows the county assessors in every county in West Virginia to utilize several inputs which include comparable sales from neighborhoods.¹ Once the data inputs are in the IAS, the data is used to assess properties. The county assessors may make visits to gather field collection data which is summarized on a residential review document and input into the IAS. A field data collector will give any structure which is located on the property a property record card.² Hr’g Tr. 81.

EEE, a Field Appraiser with the BBB County Assessor’s Office further testified that a residential review document was completed, and an informal review conducted of the Petitioners’ property. Hr’g Tr. 78, 82, Resp’t’s Ex. 1. It was upon this informal review that she discovered that the wasteland was removed due to it being improperly included the tax assessments. Hr’g Tr. 94-

¹ A comparable sale must be a valid sale which must be advertised on the open market, no multiple parcels involved, and no excessive personal property. Hr’g Tr. 77. *See also*, Admin Notice 2018-15.

A neighborhood is an area the county assessor determines is alike or similar due to features such as, land use, economic characteristics, pricing, roads, and topography. Hr’g Tr. 76, *Id*.

² The property record card details information about the property such as type of structure, type of exterior walls, style and age of the structure, number of rooms, number of bedrooms, number of family rooms, type of plumbing, the physical condition of the structure, whether the structure has a garage, the grade factor, the desirability, utility, and the cost. Hr’g Tr. 81, *Id*.

95. The Petitioners rely on the 2017 and 2018 tax year where the land value was approximately \$XX in 2018 reduced from \$XX in 2017 based upon the easement being designated as wasteland. Ms. EEE testified that many property owners in BBB County have easements on their property and they do not receive a decreased valuation because of them. Hr'g Tr. 82-84. The Petitioners received a reduction due to this easement being designated as wasteland that had not afforded other property owners. *Id.* Therefore, to maintain equal and fair treatment, the Assessor removed the wasteland designation and corrected this issue. *Id.*

ATTORNEY FFF: When we look at the building value for 2023 and we look at the land value for 2023, when we look at the land value, the land value was increased --- I'm sorry, the assessment on the land increased because it was previously listed as waste land. And the reason for that was listed because of an easement, is that correct?

MS. EEE: Yes.

ATTORNEY FFF: And that is not in conformity with the rest of BBB County or with West Virginia law?

MS. EEE: Correct.

ATTORNEY FFF: So, that needed to be changed so that it was not waste land, correct?

MS. EEE: Yes. In order to be uniform with the other properties in BBB County.

ATTORNEY FFF: And that change was made in the IAS system, correct?

MS. EEE: Yes.

Hr'g Tr. 94-95.

Additionally, Ms. EEE testified that the building structure increase was due to a county modifier, which was a county wide change applied to every property owner for 2023.³

ATTORNEY FFF: That's a county modifier that applies to every county resident?

MS. EEE: Yes.

ATTORNEY FFF: And if you didn't apply that, you would be treating him differently than you treat every other resident of BBB County?

MS. EEE: Yes.

ATTORNEY FFF: Which would then be treated different than every other resident of all 55 counties because it wouldn't be in compliance with the mandates of the State Tax Commissioner and West Virginia law?

MS. EEE: Yes.

Hr'g Tr. 95-96.

Mr. AAA was also permitted to call CCC, the BBB County Assessor, as an adverse witness to inquire on these issues but could not show that the county wide modifier was assessed only to his property. Hr'g Tr. 108-114.

Mr. AAA further argued that he had hard evidence that his property was assessed differently, and he was afforded an opportunity to provide such hard evidence during the hearing. However, he conceded to this Tribunal during the hearing that he did not have hard evidence as follows:

JUDGE FLANIGAN: When you say you have hard evidence, I need to know what that is so I can consider it in the decision.

³ A county modifier is a study that is required every year of every Assessor in the State of West Virginia that helps determine current building cost. It is a study that is applied to the homes in West Virginia counties every year. Hr'g Tr. 95, Admin Notice 2018-15.

MR. AAA: I do not have that at this time.

JUDGE FLANIGAN: Okay, so then there is no hard evidence for today.

MR. AAA: Not for today.

Hr'g Tr. 97.

The Petitioners also allege that the natural gas service due to the easement to their property should reduce its value. A letter from GGG dated April 23, 2018, stated that the natural gas service was going to be cut off. Pet'rs' Ex. 8. Upon inquiry by this Tribunal, Mr. AAA conceded that the natural gas service was never cut off, a limited-service agreement remains in place, and that the property continues to have gas service to this day. Hr'g Tr. 23-25.

MR. AAA: It was never a temporary interruption. The letter clearly said it was a permanent discontinuance of natural gas services. Permanent.

JUDGE FLANIGAN: Okay. But that never happened, though, right?

MR. AAA: No.

JUDGE FLANIGAN: You still have your natural gas. You've never had any disruption. You have this meeting and had this limited agreement. Right? And that's still in effect, that agreement?

MR. AAA: Yes. And again, any potential buyer of this property would have to be made aware of it.

Hr'g Tr. 25-26.

According to the Petitioners, four (4) adjacent dilapidated properties should also reduce the value of their properties. The Petitioners believe that the marketability of properties for sale near them are being negatively affected by the dilapidated properties because those properties are on the market longer than typical. Consequently, the Petitioners believe the longer selling times for

these other properties will reduce the marketability and value of their property as well. This argument was addressed by Ms. XXXX as follows:

ATTORNEY FFF: For instance, when you look at some of the things that Mr. AAA has complained of today, like these dilapidated properties, that would be considered in the fact that some of the other properties in these neighborhoods have sold.

MS. EEE: Yeah.

ATTORNEY FFF: They've sold in a fair market transaction, which we'll talk about in a minute, correct?

MS. EEE: Yes.

ATTORNEY FFF: And that price includes what people will pay for a house close to those dilapidated properties?

MS. EEE: Yes.

ATTORNEY FFF: So, that information is not ignored. It's incorporated into the comparative sales and valid sales transactions.

MS. EEE: Yes. And to their sell price that the property sold for.

ATTORNEY FFF: That's utilized through the IAS system and would have been considered with Mr. AAA's assessment?

MS. EEE: Yes.

Hr'g Tr. 76-77.

Mr. AAA was provided an opportunity to cross examine Ms. EEE regarding the dilapidated properties issue and this was the testimony as follows:

MR. AAA: Yes. I'm specifically talking about the increase in the land and the increase in the building that you and the Assessor did this year. Of my knowledge, you did not perform a site visit because we were not contacted.

MS. EEE: Sir, I had contacted you in January of 2023 to review the property with you prior to you coming to a BRE, and you told me you had nothing you wanted to discuss and that you would just take it to the commission. So, in order for us to be properly prepared and make sure that all of our assessment was correct on it, we did go. We looked at the area, we looked at how everything was assessed, make sure that it was uniform, that everything looked correct prior to coming to the BRE meeting.

MR. AAA: During that site visit, did you actually enter our property and do a walk around of the building and evaluation of the land in person, or did you do it from your vehicle outside of my house?

MS. EEE: We did. At that time, we were not on the property. However, we would have would you have agreed to speak with me about it when I called you in January 2023.

MR. AAA: I have no further questions.

Hr'g Tr. 93-94.

The Petitioners did not inquire about the dilapidated properties during this exchange with Ms. EEE. Mr. AAA called the Respondent as an adverse witness and received another opportunity to inquire about dilapidated properties. During her testimony, Mr. AAA did not ask her about

dilapidated properties and how those properties would reduce the value of his property. Hr'g Tr. 108-114.

The Petitioners compared the 186 homes in three (3) subdivisions, HHH, III, and JJJ to their home based on square footage alone. Pet'rs' Ex. 12-16B. By comparing only the square footage to the three (3) subdivisions, the Petitioners' methodology ensures a result that shows square footage prices for several homes that are lower than their home. However, they did not consider several other factors such as number of rooms, age of the home, type of structure, basement or attic, etc. Resp'ts' Ex. 1, Admin Notice 2018-15.

The Respondent argues that the Petitioners' use of valuing homes in the surrounding neighborhoods and subdivisions, chosen by the Petitioners, as justification that their property valuation was incorrect is misplaced. The same methodology used to evaluate those 186 properties was also used to value the Petitioners' property. However, the Petitioners are not contesting the methodology used to value the other properties to which they are comparing their property. The Respondent argues that the Petitioners want a different methodology used for their property as opposed to the methodology used for all the other properties.

The Petitioners in this case seek to reduce their valuation of their residential real estate by relying on a methodology they created. They wish to have their valuation for the structure of the home based on comparisons to three (3) subdivisions of their choosing on square footage alone. Their home has 3,198 square feet, has approximately 8.12 acres of land, and is not in a subdivision. Square footage is certainly one factor in property valuation, but it is not the only factor, and those factors may include, but are not limited to, the age of the home, style of home, number of rooms, etc. *See* Admin Notice 2018-15. These other factors mentioned are not an exhaustive list but a few of the many that are considered in property valuation and that the Petitioners failed to include in

their analysis. Additionally, the Respondent valued the homes from HHH, III, and JJJ subdivisions under the IAS and followed the requirements of West Virginia law. Moreover, the Petitioners do not argue that the Assessor failed to use the correct methodology or failed to follow West Virginia law in valuing these other homes in their analysis or for their home. Instead, they essentially argue that different factors should be used for their property for both the structure (i.e., square footage only) and various factors discussed below for the land valuation.

The Petitioners seek to have their easement counted as wasteland as it was designated in 2018. They were well aware of this easement when they purchased this property in 2005. This change occurred when the Assessor conducted an informal review of the property and found that this easement had been incorrectly assigned as wasteland. Thereafter, she removed the wasteland designation because there was no legal authority for it and no other properties with easements in BBB County were being designated as wasteland. This removal, in turn increased the value of the Petitioners' land. The Petitioners insist that this "reversal" by the Respondent should be corrected, and a reduced value of the land be reinstated. This Tribunal finds that since there is no existing legal authority that provides for an easement to be wasteland, the Petitioners' arguments are without merit.

The Petitioners wish to have this Tribunal also consider the possibility of not having gas service to reduce the value of their property. The Petitioners claim that gas service to their property is not guaranteed and that they could have gas service shut down at any given moment from the gas company. In 2018, the Petitioners received notice from GGG that they could lose their gas service. Due to this issue, they entered into a limited-service agreement (which is still in place) with the gas company and have never once had their gas service disrupted. The gas service issue

has little, if any, probative value for property tax valuation and this Tribunal finds that this argument is without merit.

The last issue that the Petitioners argued was regarding the dilapidated homes near their property and how those dilapidated properties should reduce their property valuation. In their opinion, these unsightly properties reduce the value and marketability of their home. Ms. EEE testified that these dilapidated properties are factors incorporated for comparative sales and valid sales transactions. She confirmed that these sales are utilized through the IAS and were considered for the Petitioners. The Petitioners did not cross examine Ms. EEE on this issue nor did they question the Assessor about dilapidated properties upon examination. Accordingly, this Tribunal finds that this argument is without merit.

This Tribunal has repeatedly informed the Petitioners that it only has jurisdiction over the 2023 tax year during the prehearing conference, the evidentiary hearing, and in its August 24, 2024, *Order Denying Respondent's Motion to Dismiss*. West Virginia law requires that each tax year stands independent of previous or subsequent tax years. Syllabus Pt. 2, *Mountain America, LLC. v. Huffman*, 229 W.Va. 708, 735 S.E.2d 711 (2012) (“[T]he demand for the tax in the subsequent year being a different demand from that for the former”). Not only can this Tribunal not consider tax years before 2023 due to jurisdiction, but each tax year must stand independent of the other tax years. The 2023 tax year is the only tax year that can be considered on appeal and not the valuations for the 2017 or 2018 tax years.

Although the standard of proof in West Virginia in property tax assessment cases was previously a clear and convincing standard, it is now a preponderance of the evidence standard under West Virginia Code Section 11-3-24(k). Despite this change in the standard of proof, the West Virginia Legislature did not alter the presumption of valuations by Assessors as being correct. E.g., Syllabus pt. 1, *Berkeley County Council v. Government Properties Income Trust LLC*, 247

W. Va. 395, 880 S.E.2d 487 (2022), *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W. Va. 14, 25, 672 S.E.2d 150, 161 (2008). Upon review of the testimony of the parties, the exhibits, and the post hearing briefs, this Tribunal finds that the Respondent's assessment is correct and that the Petitioners have not met their burden of proof.

CONCLUSIONS OF LAW

Based upon all the above, it **FINDS** and **CONCLUDES** that:

1. Taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. W. Va. Const. art. X, § 1.

2. The Tax Commissioner shall have the power to determine the methods of valuation for both real and personal property pursuant to West Virginia Code Annotated Section 11-1C-5.

3. The Integrated Assessment System provides the method by which local county assessors appraise residential real estate statewide. *See* Admin Notice 2018-15.

4. The Assessor's valuation of property for taxation purposes is presumed correct. *E.g.*, Syllabus pt. 1, *Berkeley County Council v. Government Properties Income Trust LLC*, 247 W. Va. 395, 880 S.E.2d 487 (2022), *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W. Va. 14, 25, 672 S.E.2d 150, 161 (2008).

5. Each tax year is independent of prior tax years and independent of subsequent tax years. Syllabus Pt. 2, *Mountain America, LLC. v. Huffam*, 229 W.Va. 708, 735 S.E.2d 711 (2012) (“[T]he demand for the tax in the subsequent year being a different demand from that for the former”).

6. All hearings before the Office of Tax Appeals are held *de novo*. W.Va. Code § 11-3-25b (West 2021).

7. 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 § 11-10A-10(h) (West 2021), W.Va. Code Ann. § 11-3-24(k) (West 2021).

8. In a hearing before the Office of Tax Appeals on a Petition for Property Tax Appeal, the burden of proof is on the Petitioners to show the BBB County Assessor's actions are erroneous, unlawful, void or otherwise invalid. W.Va. Code Ann. § 11-10A-10(e) (West 2002), and W.Va. Code R. § 121-1-63.1 (West 2003).

9. The Petitioners have not met their burden of proof to show that the BBB County Assessor's actions were erroneous, unlawful, void or otherwise invalid.

DISPOSITION

Based upon the arguments of the parties, the exhibits of the parties, the testimony and the post hearing briefs, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the valuation by the BBB County Assessor is hereby deemed correct and **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

Crystal S. Flanigan
Deputy Chief Administrative Law Judge

Date