

**REDACTED DECISION – DK#’S 24-1086**

**BY: MICHAEL E. BEVERS ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON SEPTEMBER 15, 2025  
ISSUED ON NOVEMBER 12, 2025**

**FINAL DECISION**

This property tax appeal seeks to overturn an Assessment of residential property for the 2024 Tax Year, which had not increased from the 2023 Assessment. The Respondent Angela Banks, Assessor of Jefferson County, West Virginia (hereafter “Assessor” or “Respondent”), appraised the property of the Taxpayers John and Jane X (referenced collectively as “Petitioners”) and assessed the property based on the appraisal. The Petitioners challenged the assessment by filing a Petition for Appeal with the Office of Tax Appeals on March 28, 2024.

On July 31, 2024, the parties appeared by videoconference for an Evidentiary Hearing. Petitioner John X (“Mr. X” or “Petitioner”) appeared *pro se*, and Stephen V. Groh, Jefferson County Assistant Prosecuting Attorney, appeared for the Assessor. By Order dated May 12, 2025, the record was reopened to allow the Parties to offer additional evidence on the issue of how the presence of radon, pollution, or other contaminants affects property valuation. A Supplemental Evidentiary Hearing was held on June 11, 2025, and the matter became ripe for decision on September 15, 2025, when the post-hearing brief filing period ended and the hearing record closed.

Having reviewed the exhibits, hearing transcripts, Parties’ briefs and arguments, and the applicable authorities, this Tribunal finds that the Petitioners have *not* met their burden of proving that the Assessor’s actions were mistaken.

**FINDINGS OF FACT**

1. The Petitioners live in Jefferson County, West Virginia, and own the subject property, Jefferson County Map 7, Parcel Number A. Joint Exhibit (“JX–”) 1 (Petition for Appeal).

2. The address of the Petitioners' property is 1 Alpha Road, Ranson, Jefferson County, West Virginia. JX-1.

3. The subject property consists of a 1.54-acre lot, a single-family 1,325 square foot house built in 2004, which sits on a crawl space, with two bedrooms, two full bathrooms, a heat pump for heating and cooling, a two-car garage, and a shed. July 31, 2024 Evidentiary Hearing Transcript ("Hearing I Transcript") at pp. 53-54.

4. The subject property is located in Neighborhood 17, which is in a minor subdivision of the rural neighborhood for the Charles Town District. Hearing I Transcript at p. 55.

5. The Petitioners bought the subject property in 2007 for \$260,000.00. Hearing I Transcript at pp. 45, 47.

6. The Petitioners argue that the total value of their property is \$169,700.00 based on a single page from a Uniform Residential Appraisal Report that looks like it lists a "Reallocated Value by Cost Approach" of \$169,700.00, but the copy offered as an exhibit is almost illegible, and the document has no signature or date, refers to no specific property, and was not authenticated by its preparer. *See* Petitioners' Exhibit ("PX-") 17; Hearing I Transcript at pp. 5, 6, 8.

7. The Assessor found that the property's value for Tax Year 2024 was \$280,100.00, based on appraising the Petitioners' land at \$120,700.00 using the Comparable Sales Approach and appraising the buildings at \$159,400.00 using the Cost Approach. Respondent's Exhibit ("RX-") 4; *see* Hearing I Transcript at pp. 1, 5, 11, 21, 28, 54.

8. The Assessor's valuation for Tax Year 2023, the prior tax year, was also \$280,100.00. Hearing I Transcript at pp. 8, 11.

9. The Petitioners attempted to challenge the Assessor's 2023 valuation, but they failed to file a Petition for Appeal by the statutory March 31 deadline. Hearing I Transcript at pp. 8-9.

10. The Petitioners now challenge the Assessor's 2024 valuation of their property. Joint Exhibit ("JX-") 1; Hearing I Transcript at pp. 4-5.

11. The Petitioners offered one example of a neighboring property that they believed was comparable to theirs and noted that the neighboring property was valued lower. PX-15; Hearing I Transcript at pp. 40-41.

12. June Bowers, who currently appraises property for tax purposes and supervises the Jefferson County Tax Appraisers, has worked for the Jefferson County Assessor's Office as a Tax Appraiser for 39 years. Hearing I Transcript at p. 49.

13. Ms. Bowers testified that the Assessor reviews neighborhood sales each year and determines the fair market value of all properties by considering sales and other factors. Hearing I Transcript at pp. 59, 67, 79.

14. Assessors appraise the value of land using the Comparable Sales Approach and appraise the value of structures using the Cost Approach, which considers the size and dimensions of a structure and its rooms, construction materials used, construction quality, construction date, present condition, style, mechanical systems, bathrooms, porches, decks, garages, basements, chimneys, exterior, and outbuildings. RX-2; Hearing I Transcript at pp. 68, 93.

15. Here, the Assessor appraised the Petitioners' property using the State Tax Department's statewide mass appraisal software system, the Integrated Assessment System ("IAS"), which West Virginia's county assessors use to value real property. Hearing I Transcript at p. 68; *see also* RX-2 (Administrative Notice 2021-15).

16. The Assessor considered 18 sales of similar property in the Petitioners' neighborhood, all of which she found to be arm's length transactions. RX-5; Hearing I Transcript at pp. 55, 69.

17. The sale prices of houses that were similar (within 100 square feet) in size to the Petitioners' house ranged from \$212,000.00 to \$417,000.00; the average sale price was \$306,385.00, and the median sale price was \$296,000.00. RX-5; Hearing I Transcript at p. 61.

18. The Assessor also used the IAS mass appraisal system to determine the values of the 18 comparable properties. Hearing I Transcript at p. 69; *see also* RX-2.

19. The 18 comparable properties the Assessor considered gave her more than enough information to determine the value of the Petitioners' property. Hearing I Transcript at pp. 68-69.

20. The Assessor's expert testified that the sole property that the Petitioners claimed was comparable to theirs was not sold within the relevant time frame, has access only by a private gravel road, and is of a lower construction quality grade. Hearing I Transcript at pp. 56, 57.

21. The presence of radon has not affected property values anywhere in West Virginia. Hearing II Transcript at pp. 18, 45.

22. The presence of radon has not affected the Petitioners' property value. Hearing II Transcript at pp. 18, 20, 45.

23. The presence of water contamination has not affected the Petitioners' property value. Hearing II Transcript at pp. 19, 20, 46.

24. The Petitioners did not file a post-hearing brief.

25. The Petitioners offered no reliable evidence that supports the property valuation they seek.

### **DISCUSSION**

The issue presented in this appeal is whether the Assessor properly valued the Petitioners' residential property for the 2024 Tax Year. The Petitioners argue that the Assessor misapplied the law. The Assessor counters that she followed the law.

## I. STATUTORY AND REGULATORY FRAMEWORK

The statutes and regulations that govern this matter are unambiguous. Hence, this tribunal will give force and effect to every word and give the words their plain and ordinary meaning.<sup>1</sup>

The West Virginia Constitution provides, “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.

Property must be assessed at its “true and actual value” for taxation purposes. “Value,” “market value,” and “true and actual value” all have the same meaning, and mean the price at which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arm’s length transaction without either the buyer or the seller being under any compulsion to buy or sell. W. Va. Code Ann. § 11-1A-3(i) (West 1986). “True and actual value” means “the price for which property would sell if voluntarily offered for sale by the owner for the value at which it would usually be sold, and not the price for which it would sell at a forced sale.” W. Va. Code Ann. § 11-3-1(a) (West 2014).

All property subject to ad valorem taxation is assessed at 60% of its true and actual value. W. Va. Const. art. X, § 1b; *Kline v. McCloud*, 174 W. Va. 369, 377, 326 S.E.2d 715, 724 (1984).

An assessing officer’s property valuation is presumed to be correct. *E.g.*, Syl. Pt. 1, *Berkeley County Council v. Gov’t Properties Income Trust LLC*, 247 W. Va. 395, 880 S.E.2d 487 (2022); Syl.

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<sup>1</sup> *E.g.*, Syl. Pt. 4, *Antero Resources Corporation v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020); Syl. Pt. 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011) (holding that when interpreting a legislative enactment, in the absence of any definition of the intended meaning of the act’s words or terms, they will be given their common, ordinary, and accepted meaning as used); *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corporation*, 223 W. Va. 146, 157, 672 S.E.2d 282, 293 (2008) (same holding); *Jackson v. Kittle*, 34 W. Va. 207, 12 S.E. 484 (1890) (it is necessary to give effect to every word and part of a statute to effectuate its true meaning).

Pt. 1, *Musick v. University Park at Evansdale, LLC*, 241 W. Va. 194, 820 S.E.2d 901 (2018); *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W. Va. 14, 672 S.E.2d 150 (2008); *In re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000) (same holding); Syl. Pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 303 S.E.2d 691 (1983) (same holding).

The Tax Commissioner must determine the valuation methods for real and personal property. W. Va. Code Ann. § 11-1C-5 (a)(2) (West 1990). To ensure equal and uniform taxation throughout the state, all county assessors must appraise real and personal property in their jurisdiction at fair market value and follow the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system set by the Tax Commissioner. W. Va. Code Ann. §§ 11-1C-5(a)(2) (West 1990) and 11-1C-7(a) (West 2017).

County assessors may use any available information on the characteristics and values of property within their jurisdictions, including the latest data available on any statewide electronic data processing system network. W. Va. Code Ann. § 11-1C-7(b) (West 2017). County assessors enter the data collected during their assessment functions into the statewide Integrated Assessment System (“IAS”) operated by the State Tax Commissioner, which is the method the assessors use to appraise residential real estate across the state. Administrative Notice 2021-15 (RX-2). Using the IAS fulfills the Tax Commissioner’s duty to “devise and cause to be established a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property, through the timely sharing of property tax information among county assessors and the tax commissioner.” W. Va. Code Ann. § 11-1A-21(a) (West 1983).

A party that fails to file an opening brief shall not be permitted to file a reply brief unless authorized by the presiding administrative law judge. W. Va. Code R. § 121-1-44.3.2 (2023).

Nothing in the West Virginia Office of Tax Appeals Procedural Rule provides that a party may submit evidence into the record after the record has been closed. The only regulation within this tribunal’s Procedural Rule that provides for the admission of new evidence after the record has closed does not apply here; it provides that after a final decision has been issued, a party may file a motion to correct clerical or computational mistakes, reopen the record, request reconsideration, or vacate a decision. W. Va. Code R. § 121-1-49.1 (2023).

This Tribunal will consider the Parties’ arguments with these legal standards in mind.

II. THE ASSESSOR’S APPRAISAL IS SUPPORTED BY THE EVIDENCE OF RECORD.

The Petitioners argue that the value of their property is \$169,700.00. To support this claim, they rely on a single page from a Uniform Residential Appraisal Report that lists a “Reallocated Value by Cost Approach” of \$169,700.00, which they obtained when they refinanced their house. But the document has no probative value. It is nearly illegible, lacks a signature or date, does not specify any particular property, and its preparer did not verify its authenticity.

Even if the document the Petitioners rely on had a proper evidentiary foundation — which it does not — the Cost Approach applies only to structures. It does not apply to land. Administrative Notice 2021-15 (RX–2). The value claimed by the Petitioners, using the Cost Approach, is \$169,700.00. The Assessor used the Cost Approach and appraised the Petitioners’ buildings at \$159,400.00, which is more than \$10,000.00 *lower* than the value the Petitioners claim.

The Petitioners argue that it is unfair that a neighboring property that they claim is comparable to theirs was valued lower. The Assessor’s expert explained that the neighboring property was not sold within the relevant time frame, has access only by a private gravel road, and is of a lower construction quality grade.

The Petitioners also argue that their house's value should be lowered because the crawlspace tested positive for radon in January 2024, and the water tested positive for contaminants in 2018. And they present several technical arguments: their street name is misspelled in some documents; their house's exterior is vinyl instead of aluminum; their lot is 1.5388 acres rather than the 1.54 acres found by the Assessor; the shed measures 11½ feet by 24 feet instead of 12 feet by 24 feet found by the Assessor; easements on their property reduce its value; and the utility shed's value should be decreased because it is not permanently attached. As further explained below, the Assessor's expert refuted these arguments and explained why they are unpersuasive.

The Petitioners offered no expert witness report or testimony at the Evidentiary Hearing.

The Assessor's witness was Chief Appraiser June Bowers, a 39-year veteran of the Jefferson County Assessor's Office. Ms. Bowers testified that she used the statewide IAS system, which all county assessors in West Virginia must use to value real property, to assess the Petitioners' property. She also considered 18 comparable property sales in Neighborhood 17, a small subdivision within the rural area of the Charles Town District.

Ms. Bowers stated that the Petitioners purchased the property for \$260,000.00 in 2007. She explained that the property is reappraised each tax year. The Assessor uses the Comparable Sales Approach to value land and the Replacement Cost Approach for structures; the latter considers the size, dimensions, and rooms of a structure, along with features like construction materials, quality, construction date, condition, style, mechanical systems, chimneys, exterior, and outbuildings.

Ms. Bowers testified that the 18 comparable sales considered were arm's length transactions, that she needed to consider at least three or four, and that the Assessor used the IAS Mass Appraisal system for the comparable properties. The sale prices of houses that are of similar size (within 100 square feet) to the Petitioners' house ranged from \$212,000.00 to \$417,000.00. The average sale price was \$306,385.00, with a median of \$296,000.00. RX-5. The Assessor appraised the

Petitioners' property at \$280,100.00. Based on comparable sales, the Aggregate Sales Ratio was 87.32%, and the Median Sales Ratio was 84.8%, which means that the Assessor undervalued homes in the neighborhood, including the Petitioners' home. RX-6 at p. 2; Hearing I Transcript at p. 55.

As noted above, Ms. Bowers explained how the neighbor's property, which the Petitioners claimed as comparable, differs in several ways. She noted that the neighbor's property was not sold within the relevant time frame, is accessible only by a private gravel road, while the Petitioners' property is accessible by a paved road, and that the neighbor's house is classified as Grade C, of lower quality than the Petitioners' Grade C + house.

Turning to the issue of radon, the radon test results of record are from January 2024. Since then, the Petitioners have installed a mitigation fan to try to remove the radon or redirect it out of the house, but they have not tested the house for radon since they installed the fan. They now have a continuous radon monitor, but the monitor is not active because it has not been calibrated.

Ms. Bowers testified about radon at both hearings. At the first hearing, she stated that if a house had radon in its basement, the Assessor would consider how the radon might impact the property's resale. During the second hearing, she provided detailed testimony on how she would evaluate several environmental factors that could influence the property's value and how she would enter the information into the IAS System as needed.

Ms. Bowers testified that radon is widespread in Jefferson County, but fixing the problem is not expensive, and the presence of radon has never affected property values:

MS. BOWERS: [R]adon is prevalent in the --- in West Virginia, especially in this area. But in my experience, I have done tax appraisals for over 40 years and radon has never been an issue as far as property values. I'm not aware of any reductions or the radon coming up as a reduction in this --- in my tenure as a tax appraiser.

ATTORNEY GROH: And is it fair to say that if there was an issue separate from radon, how --- let me ask. Let me back up. Is it fair to say that whatever effect the radon might have on prices, if it's mitigated relatively inexpensively?

MS. BOWERS: Yes. My understanding is as far as fixing the problem, it is not a high-expense item. So, it is something that can be easily remedied.

ATTORNEY GROH: So, if it costs \$1,000, I think I heard some number like that, how would that affect the valuation of a property over time, if it was a one-time fix?

MS. BOWERS: For tax purposes, we would not make an adjustment for that.

Hearing II Transcript at p. 18. When asked how the Assessor would account for the presence of radon, Ms. Bowers explained that she would consider the property's condition and enter the information into the IAS System in the Condition, Desirability, and Utility section ("CDU section"):

JUDGE BEVERS: How would the assessor, or how would you consider it if you thought it would affect the resale of the property?

MS. BOWERS: It would have to do with the condition, with what we call the CDU, which is condition, utility, and usability.

JUDGE BEVERS: Could you repeat that for me? I didn't hear all of [it].

MS. BOWERS: It would have to do with the condition of the property as far as the CDU, which is condition, desirability, and utility. That we have a --- basically a --- anywhere from excellent to unsound, as far as the value, and looking at the current condition.

. . . .

JUDGE BEVERS: Okay. Is that some --- is that information that you would enter into the IAS system?

MS. BOWERS: Yeah.

JUDGE BEVERS: Okay. And how would you do that? How would you enter that information in?

MS. BOWERS: It's basically a range from unsound to excellent based on the age of the house and the maintenance of the house.

JUDGE BEVERS: All right. So, if a homeowner, and I guess this is somewhat hypothetical, but if a homeowner did tell the assessor or, you know, one of the assessor's agents that the --- his or her house had radon, would that affect the value of the property?

MS. BOWERS: At this point in time, like I say, with my experience, we have not had that issue come to light. I'm not aware of anybody discussing radon with me or no appeals that I'm aware of that made any changes based on the radon level, because it is a situation that can be corrected, and it's a fairly inexpensive correction.

. . . .

JUDGE BEVERS: All right. So, if somebody did tell you that they had radon, would --- and I think you said you considered the condition of the property as far as condition, desirability, utility, usability. Is that something that you would enter into the IAS system?

MS. BOWERS: It's something that we could, if we felt that it did actually affect the resale value of the home. And of course, once it's corrected, then it would go back to a normal situation.

JUDGE BEVERS: All right. So, you could enter it into the system under one of those, or maybe under that section, that condition, desirability, and utility section, you could enter something in about the radon?

MS. BOWERS: Yes, we could actually adjust that particular field based on any issues with the property.

Hearing II Transcript at pp. 21–23. She testified that if radon were present, whether the house had a radon mitigation system might affect the property's value, but the Assessor has never adjusted property values based on the presence of radon or radon mitigation systems. *Id.* at pp. 23–24.

Ms. Bowers testified that the presence of radon has never affected property values anywhere in West Virginia, and that the Assessor would not adjust the Petitioners' property value here:

MS. BOWERS: At this point in time, as far as making adjustments for radon, there is --- has been no adjustments made anywhere in the state of West Virginia that I'm aware of. She's not here, but [Assessor Angela Banks] has inquired with other assessors, and we're not aware of any adjustments that have been made for the radon because there is, like I say, it's prevalent in this area, and there are inexpensive ways to correct the problem as best it can be corrected.

JUDGE BEVERS: Okay. So, again, just based on your knowledge, it sounds like you're unaware of any adjustments that have been made in the state of West Virginia for radon?

MS. BOWERS: *I am not aware of any adjustments that have been made anywhere in the state of West Virginia because of radon.*

JUDGE BEVERS: Okay. All right. So then, even so, even considering this [radon test result of], 14.6 you know, picocuries per liter, you would not enter that into the IAS system or the CDU? That's not something you would enter in?

MS. BOWERS: At this point in time, no, we would not make an adjustment. If it's something that is persistent, and especially if the health department would get involved to the point that it was unhealthy to live in the structure, then we would consider making adjustments.

JUDGE BEVERS: All right. So, that would be something that the assessor would not contact the health department to ask them to look into it more carefully?

MS. BOWERS: It would be up to the property owner to bring us the information. We have over 30,000 properties to put values on. It is a mass appraisal system. So, it is up to the property owners to point out any problems there are with the individual properties.

Hearing II Transcript at pp. 45–46 (emphasis added). The Petitioner acknowledged that the Petitioners did not tell anyone in the Assessor’s Office about the presence of radon in their house before they filed the underlying appeal in March 2024. *Id.* at pp. 6–7.

Turning next to the issue of contaminated water, the well water test results provided by the Petitioners originate from testing conducted in December 2018, making them six years old at the time they were presented. PX–8, PX–9. The document’s preparer did not authenticate the documents or testify about what level of contamination would render their water unsafe to drink. Since 2018, the Petitioners have had a three-stage filtration system installed between the well and the house. Hearing II Transcript at pp. 5, 8. The Petitioners requested water tests, and water samples were taken on June 2, 2025, the results of which were pending at the time of the second hearing. *Id.* at pp. 10, 12. This tribunal received no test results before the record closed on September 15, 2025.<sup>2</sup>

Ms. Bowers testified about water contamination at both hearings, and her testimony about water was much like her testimony about radon, except that the Assessor’s Office has dealt with contaminated water. She testified that if a house had contaminated water, the Health Department would determine the severity of the contamination, and the Assessor would consider how the contamination might affect the property’s value, but here, the Assessor has received no information that would cause her to adjust the value of the Petitioners’ property:

ATTORNEY GROH: And with respect to water, it sounds like he might have some bacteria in his well water. How would the assessor respond to a situation like that?

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<sup>2</sup> On September 22, 2025, after the record had closed, this tribunal received several documents from the Petitioners, one of which was an Analytical Report generated on June 12, 2025, and which appears to analyze the Petitioners’ drinking water. This tribunal’s Procedural Rule does not provide that a party may submit evidence into the record after the record has closed except under circumstances that are not present here. *See*, W. Va. Code R. § 121-1-49.1 (2023). Thus, this tribunal will only consider documents filed before the record closed.

MS. BOWERS: That's something that we would look at on a case-to-case basis. There's really no set standards, but we would take a look at it to see if it would affect the resale of the property.

. . . .

ATTORNEY GROH: Isn't the health department the agency in the county that would approve wells and/or septic?

MS. BOWERS: Yes, that's something that would go through the health department even before the house is started, during the building permit process.

ATTORNEY GROH: And you wouldn't substitute your judgment for whatever the health department would approve or not approve?

MS. BOWERS: No, sir.

ATTORNEY GROH: In your experience, have you had to deal with contaminated wells in the past?

MS. BOWERS: We have had a couple of issues with contaminated wells and water systems, but it had to do with leaking gas tanks at service stations.

ATTORNEY GROH: But at this point, there's no results for us to even consider whether or not his water is healthy, that you've seen?

MS. BOWERS: Yes, sir.

Hearing II Transcript at pp. 18–19. Ms. Bowers testified that if a homeowner told the Assessor that his or her house had contaminated water, it might affect the house's value. The Health Department would get involved, and the house's value would decrease substantially if the Health Department told the homeowners that the house was uninhabitable:

JUDGE BEVERS: If a homeowner told you that his or her house had contaminated water, would that affect the value of the property?

MS. BOWERS: It could affect the value. Yes, sir.

JUDGE BEVERS: Okay.

MS. BOWERS: I would assume if it was an issue as far as the well being contaminated, that the property owner would probably be told not to live in the house.

JUDGE BEVERS: All right. Okay. And that would be something the health department would handle?

MS. BOWERS: Yes, that would be the health department. And then, we would do something in that line because the house at that point is considered not --- not being able to be occupied because of a water system.

JUDGE BEVERS: All right. So, if the health department told a homeowner, get out of the house, that would --- you would enter that into the IAS system, and it would drop the price or the value of the house significantly?

MS. BOWERS: Yes, sir.

. . . .

JUDGE BEVERS: So, would it be fair to say if the health department told a homeowner that they can't live in the house because the water is so bad, then the value of that house would essentially plummet?

MS. BOWERS: Yes, sir, it would.

Hearing II Transcript at pp. 27–28. She testified that if the water was contaminated, whether the house had a contaminated water mitigation system might affect the property's value. The Assessor would enter that information into the IAS System CDU section, and the system would adjust the value either upward or downward. *Id.* at pp. 29–30. Or, if the Health Department condemned the house, that would significantly reduce the house's value. *Id.* at p 30.

When asked about other environmental factors that might affect the property's value, Ms. Bowers explained that the Assessor considers such information on a case-by-case basis and records it in the IAS System CDU section if neighborhood sales are impacted. For example, if a house were near a hazardous waste dump, that could influence its value; the Assessor would note this in the IAS System CDU section. But decisions are based on sales data, and to date, proximity to hazardous waste dumps has not affected sales prices. Similarly, if a house were near a nuclear power plant or other industrial site, it might impact the property's value; in those cases, the Assessor would document this in the IAS System CDU section, but any downward adjustment would be based on lowered sales prices. And if a house were close to a landfill, it might influence the property's value; the Assessor would record this in the IAS System CDU section, and any valuation reduction would be based on sales data. *See* Hearing II Transcript at pp. 24–26.

Other examples of environmental factors that might affect the property's value include proximity to:

- a service station's underground fuel storage tanks;
- a petroleum plant;
- an industrial plant;
- a chemical plant;
- an oil or gas well that released wastewater from fracking;
- a coal slurry pond; and
- a coal mine that released coal ash or heavy metals into the groundwater.

See Hearing II Transcript at pp. 30–32. Additional negative environmental factors would include air pollution, noise pollution, and seismic activity. And as with radon presence or water contamination, the Assessor would enter the information into the IAS System CDU section, and any value reduction would be based on sales. *Id.* at pp. 32–38.

In summary, Ms. Bowers testified that the Assessor would not adjust the Petitioners' property value for either radon or contaminated water:

ATTORNEY GROH: Okay. And to kind of sum this all up, based on the radon and the water and everything you've heard today and anything you've gotten since the last hearing from [the Petitioner], does it change your opinion?

MS. BOWERS: No, sir.

Hearing II Transcript at p. 20.

The West Virginia Code and Code of State Rules are silent on whether the presence of either radon or well water contamination requires a downward reduction of a property appraisal, and the Petitioners did not provide evidence that either radon or contaminated water has reduced the value of their property. Accordingly, this tribunal finds that neither the radon test results nor the water test results show that the Assessor overvalued the Petitioners' property.

Ms. Bowers also addressed the Petitioners' technical arguments and explained why they did not show that the Assessor's appraisal was incorrect. She clarified that different documents with different spellings of the Petitioners' street resulted from a typographical error by one of the Assessor's employees. By analogy, if the driver of a blue vehicle received a speeding ticket and the officer wrote on the ticket that the vehicle was black, the driver would not be exonerated. This tribunal finds such an error to be harmless.

When asked about whether the house's exterior is vinyl rather than aluminum is significant, Ms. Bowers explained that the IAS system does not distinguish between vinyl and aluminum; it distinguishes between framed houses and brick houses:

ATTORNEY GROH: Now, [the Petitioner] has talked about at some point about vinyl versus aluminum. Does the appraisal process make any distinction between those two?

MS. BOWERS: Well, the code that we utilize for that is actually aluminum/vinyl. [I]t doesn't matter which one, it still prices the same. It actually prices as framed in comparison to brick.

ATTORNEY GROH: So, aluminum versus vinyl, whatever it is, it doesn't make any difference as far as the appraisal process goes?

MS. BOWERS: No, it does not make any difference. Like I say, the aluminum/vinyl are actually the same code.

Hearing I Transcript at pp. 56–57. When asked about the Petitioners' complaint that the size of their lot is 1.5388 acres rather than the Assessor's finding of 1.54 acres, Ms. Bowers explained that the IAS software rounds to two digits:

ATTORNEY GROH: Now there was some discussion about the precise lot size, whether it's whatever you average it at 1.54 acres versus some slightly different number. Did you look at that issue?

MS. BOWERS: Our system is designed to only take two points after the [decimal]. So, I mean, our current system will not take anything more than two points after the decimal. So, we do have to round.

Hearing I Transcript at p. 57. When asked about the Petitioners' assertion that their storage shed is 11½ feet by 24 feet rather than 12 feet by 24 feet as the Assessor found, Ms. Bowers explained, “[a]ll of our properties, houses, sheds, everything is based on exterior measurement. The reappraisal

is designed to depend on exterior, because there's no way we would be able to do interior, and we are required to round to the nearest foot." Hearing I Transcript at p. 61. Ms. Bowers also explained that easements do not reduce the Petitioners' property value:

ATTORNEY GROH: Now, with respect to the issue that there being utility rights of way affecting his property, what, if any, effect would that have on the value or the appraisal value?

MS. BOWERS: I would say probably 80% to 90% of properties throughout the county have some type of easement. I mean, the electric easement, of course, benefits him, so he has electricity. The only time an easement may they come into play would be a vacant lot that you would be building on. I mean, it may determine where you can build, but once it's improved, I feel the easements are more of an advantage than a disadvantage.

ATTORNEY GROH: Because if somehow his house was not served with electric at all, that would be negative on the value?

MS. BOWERS: Yes, sir, it would.

Hearing I Transcript at pp. 57–58. When asked whether the shed's value should be reduced because it is not permanently affixed, Ms. Bowers explained that accessory structures sold with the land are treated as part of the real property. If they were not treated as real property, they would be subject to the higher personal property tax rate:

ATTORNEY GROH: Now, there was another issue about whether the shed was permanently affixed or not. How does the Assessor's office deal with accessory structures? You know, like, I take it from his testimony, it's like a prefab building they brought in and set in. How do you deal with that generally?

MS. BOWERS: If the person owns the shed and owns the land, we pick it up on real estate. You know, if by chance the shed would be moved, we would take it off as soon as we were let know about it. But as a general practice, if you own the shed and own the property, it is picked up as part of the real estate and is usually sold with the real estate. It was bought with the real estate, most likely it will be sold with the real estate.

. . . .

ATTORNEY GROH: Okay. And based on your card, what's the assessed value of the accessory structure we're talking about?

MS. BOWERS: The shed is 1,680, so it would basically round to \$1,700.

Hearing I Transcript at pp. 58–59.

In conclusion, Ms. Bowers, an assessor with over 39 years of appraisal experience, used the IAS Mass Appraisal system and 18 comparable sales to determine the value of the Petitioners' property — the Petitioners offered one comparable property that was not sold within the relevant time frame and is of a lower construction quality than their house. Based on the existing facts and applicable law, this Tribunal finds that the Petitioners have failed to meet their burden of proving that the Assessor's actions were incorrect, unlawful, or otherwise invalid.

### **CONCLUSIONS OF LAW**

1. The West Virginia Office of Tax Appeals holds original and exclusive jurisdiction to hear appeals by any party aggrieved by determinations of property classifications, determinations of property taxability, or by valuation of real and personal property tax assessments. W. Va. Code Ann. § 11-10A-8(7) (West 2021).

2. In an appeal before this tribunal, the petitioner bears the burden of proving that any property valuation for taxation purposes or tax assessment is incorrect, unlawful, void, or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2021); W. Va. Code R. §§ 121-1-37.5 and 51.12.1 (2023).

3. For appeals of property tax assessments, taxability, and classifications before this tribunal, the petitioner must prove his or her case by a preponderance of the evidence. W. Va. Code Ann. §§ 11-10A-10(h), 11-3-24(k), and 11-3-24a(e) (West 2021).

4. If the evidence supports both sides equally, the party that bears the burden of proof has not met its burden. *Adkins v. Smith*, 142 W. Va. 772, 98 S.E.2d 712 (1957).

5. If the language of a statute or regulation is unambiguous, its plain meaning must be accepted without resorting to the rules of statutory interpretation. Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968); *see also*, *State v. Scruggs*, 242 W. Va. 499, 502, 836 S.E.2d 466, 469 (2019).

6. Properly promulgated legislative rules that have undergone legislative rulemaking carry the force and effect of law, regardless of the extent to which the executive branch drafted them. *See, Appalachian Power Company v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (holding that legislatively approved rules are entitled to more than deference; they are entitled to controlling weight).

7. No agency may modify or rewrite statutes “under the guise of interpretation.” Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019).

8. This tribunal lacks the authority to ignore or rewrite any West Virginia law, so we must adhere to the statutes and regulations as they are written. *E.g.*, Syl. Pt. 4, *McDaniel v. West Virginia Division of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003); Syl. Pt. 3, *Appalachian Regional Health Care, Inc. v. West Virginia Human Rights Commission*, 180 W. Va. 303, 376 S.E.2d 317 (1988).

9. Taxation must be equal and uniform throughout the state, and all real and personal property must be taxed proportionately to its value to be determined as directed by law. W. Va. Const. art. X, § 1.

10. Property must be assessed at its true and actual value for taxation purposes. “True and actual value” means fair market value — what property would sell for if it were sold on the open market. W. Va. Code Ann. § 11-3-1 (West 2014).

11. “Value,” “market value,” and “true and actual value” all have the same meaning, which is the price for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arm’s length transaction without either the buyer or the seller being under any compulsion to buy or sell. W. Va. Code Ann. § 11-1A-3(i) (West 1986).

12. The Tax Commissioner has the power and duty to determine the valuation methods for real and personal property. W. Va. Code Ann. § 11-1C- 5(a)(2) (West 1990).

13. An assessing officer’s property valuation for taxation purposes is presumed to be correct.<sup>3</sup>
14. County assessors may use any information available on the character and values of property in their jurisdictions, including the updated information found on any statewide electronic data processing system network. W. Va. Code Ann. § 11-1C-7(b) (West 2017).
15. All county assessors must appraise all real and personal property in their jurisdiction at fair market value and use 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-5(a)(2) (West 1990) and 11-1C-7(a) (West 2017).
16. County assessors enter the data collected during their assessment functions into the statewide Integrated Assessment System (“IAS”) operated by the State Tax Commissioner; this is the method local county assessors use to appraise residential real estate statewide. Administrative Notice 2021-15 (RX–2).
17. County assessors appraise the value of land using the comparable sales approach and appraise the value of structures using the replacement cost approach, which considers the size and dimensions of a structure and its rooms, construction materials used, construction quality, construction date, present condition, style, mechanical systems, bathrooms, porches, decks, garages, basements, chimneys, exterior, and outbuildings. Administrative Notice 2021-15 (RX–2).
18. The Tax Commissioner’s use of the IAS System fulfills his statutory duty to “devise and cause to be established a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property, through the timely

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<sup>3</sup> E.g., Syl. Pt. 1, *Berkeley County Council v. Gov’t Properties Income Trust LLC*, 247 W. Va. 395, 880 S.E.2d 487 (2022) (it is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct); Syl. Pt. 1, *Musick v. University Park at Evansdale, LLC*, 241 W. Va. 194, 820 S.E.2d 901 (2018) (same holding); *In re Tax Assessment of Foster Foundation’s Woodlands Retirement Community*, 223 W. Va. 14, 672 S.E.2d 150 (2008) (same holding); *In re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000) (same holding); Syl. Pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 303 S.E.2d 691 (1983) (same holding).

sharing of property tax information among county assessors and the tax commissioner.” W. Va. Code Ann. § 11-1A-21(a) (West 1983).

19. Here, the Assessor used the Tax Department’s IAS mass appraisal system, following the methodology for appraising and assessing the Petitioners’ property through which all real and personal property is taxed so that taxation is equal and uniform throughout the State.

20. The Petitioners have not met their burden of proving by a preponderance of the evidence that the Jefferson County Assessor’s actions were incorrect, unlawful, void, or otherwise invalid.

**DISPOSITION**

Based on the exhibits, the testimony, the hearing transcripts, the Parties’ arguments and briefs, and all other matters of record, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the underlying valuation by the Jefferson County Assessor is hereby found to be **CORRECT** and is therefore **AFFIRMED**.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

\_\_\_\_\_  
Michael E. Bevers  
Administrative Law Judge

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Date Entered