

**REDACTED DECISION – DK# 25-1055**

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON OCTOBER 29, 2025  
ISSUED ON MARCH 18, 2026**

**FINAL DECISION**

This is a Commercial Property Tax Appeal for the 2025 Tax Year. The Taxpayer, a hotel ownership company, owns a XYZ Motel in Mercer County, West Virginia. This dispute involves the Mercer County Assessor’s valuation of that motel.

On February 26, 2025, the Taxpayer filed a Petition for Appeal with this tribunal. An Evidentiary Hearing was held on September 8, 2025, and the case became ripe for decision when the record closed on October 29, 2025. After reviewing the exhibits, hearing transcript, and relevant authorities, this tribunal concludes that the Petitioner has not met its burden of proving that the Assessor’s appraisal and assessment were incorrect.

**FINDINGS OF FACT**

1. The Petitioner is Company ABC, LLC (hereafter “Company ABC” or “Petitioner”).
2. The Respondent is the Assessor of Mercer County, West Virginia (“Assessor” or “Respondent”).
3. The Parcel Identification Number in controversy here is 28-05-024C-0061-0000. Petitioner’s Exhibit (“PX–”) 1 at cover page and numbered pages 1, 4, 18, 27; Respondent’s Exhibit (“RX–”) 1; Evidentiary Hearing Transcript (“Transcript”) at p. 41.
4. The Petitioner is a single-member limited liability company doing business as an XYZ Motel in Mercer County, West Virginia. Petition for Appeal; Transcript at pp. 1, 9.

5. The Petitioner's sole owner appears to be John Roe, although no supporting documents or testimony were offered at the Evidentiary Hearing. RX-3 at p. 4; Transcript at pp. 1, 9, 46.

6. The Assessor's appraised value is \$2,133,100.00. RX-1 at p. 1; Transcript at pp. 52, 57, 103, 105.

7. The Petitioner believes the hotel's appraised value should be \$1,270,000.00. Transcript at pp. 4, 23, 24, 25, 35, 51, 105.

8. The Assessor's assessed value is \$1,279,860.00, which is 60% of the appraised value. RX-1 at p. 1; Transcript at pp. 4, 58, 105.

9. The Petitioner believes the hotel's assessed value should be \$762,000.00, which is 60% of the Petitioner's proposed appraised value. Transcript at pp. 4, 105.

10. No owner or member of the Petitioner testified or appeared at the hearing.

11. No witness testified about when or where the Petitioner was formed, whether there are other members, or where else the Petitioner might operate.

12. The Petitioner employs a property tax management firm called Smith & Jones. Transcript at pp. 44, 67.

13. Smith & Jones hired Property Appraisers LLC, an appraisal firm, to appraise the subject property for Property Tax Year 2025. *See* PX-1.

14. Jane Roe, an employee of Smith & Jones, testified that Smith & Jones received profit and loss statements from the Petitioner's accountant, which she forwarded to Property Appraisers LLC, but that she did not know whether they were accurate. Transcript at pp. 44-45.

15. John Doe, an appraiser with Property Appraisers, LLC, prepared an appraisal for the subject property dated May 21, 2025 (PX-1 at pp. 1, 4, 7), with an effective appraisal date of July 1, 2024 (PX-1 at pp. 2, 4).<sup>1</sup>

16. Mr. Doe testified that he received 2021, 2022, and 2023 profit and loss statements from Smith & Jones. Transcript at pp. 36, 107.

17. Mr. Doe testified that he assumed the profit and loss statements from Smith & Jones were correct, but he did not know. Transcript at pp. 26-27, 29, 116.

18. Mr. Doe appraised the property using the income approach to valuation. PX-1 at pp. 4, 6, 34, 37, 41, 49; Transcript at pp. 14, 15, 21, 23, 35, 113.

19. Mr. Doe testified that the best source of information for an income valuation would be financial data from the Petitioner, but the only financial information he received was from Smith & Jones. Transcript at pp. 25, 26, 30, 35, 109, 116.

20. Mr. Doe arrived at a capitalization rate of 11.70% by adding 10% to the tax rate of 1.7%. PX-1 at p. 41; Transcript at pp. 22, 86, 94, 110, 115.

21. Mr. Doe used a national average of capitalization rates instead of determining the rate based on actual hotel sales in Mercer County or other West Virginia counties. Transcript at pp. 110-111.

22. Mr. Doe estimated the value of the Petitioner's furniture, fixtures, and equipment at \$370,000.00, based on market data, public survey information, and the assumption that the property was in average condition and aligned with the market, but he admitted, "I don't know the actuals." PX-1 at pp. 2, 4, 35; Transcript at pp. 32, 33.

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<sup>1</sup> The report also states, "[t]his appraisal was conducted to conclude to a True and Full Value of the property as of January 1, 2020 according to the definition of "True and Full Value" set forth in the West Virginia Code Chapter 11 Title 26-26-1202." PX-1 at p. 31. The year 2020 appears to be a typographical error.

23. Mr. Doe admitted that he could not criticize the Assessor or identify any mistakes the Assessor made. Transcript at pp. 31, 111–113.

24. The Assessor considered both the income approach and market approach, but lacked enough financial information to apply either method, so he appraised the property using the cost approach. Transcript at pp. 53, 56, 57, 58, 62, 63, 74, 88, 95, 96, 103, 104.

25. The Assessor used the Tax Commissioner’s Integrated Assessment System (“IAS”), a computer program that all county assessors across the state are required to use to appraise property. Transcript at pp. 48, 50, 51, 57, 65, 102.

26. Appraisal data, such as the original cost to build the building, is collected by county assessors and entered into the IAS system, which shares the information with the Tax Commissioner. Transcript at p.73.

27. The IAS program helps the assessors calculate inflation and depreciation. Transcript at pp. 65, 88, 102, 103.

28. Assessors also use a county modifier that calculates a specific inflation rate, enabling them to estimate the cost of building the same structure new. Transcript at pp. 73, 88.

## **DISCUSSION**

The issue in this appeal is whether the Assessor properly valued the Petitioner’s commercial property for Property Tax Year 2025.

### I. **BACKGROUND INFORMATION**

At the hearing of this case, the Petitioner called two witnesses. Neither witness received any source documents, knew the source of the information in the profit and loss statements, nor knew whether the profit and loss statements were accurate. The profit and loss statements were not introduced into evidence as exhibits.

John Doe, a commercial real estate appraiser with Property Appraisers LLC, has been valuing commercial properties for about 40 years. Mr. Doe testified that buyers and sellers typically use the income approach for hotel valuation. He chose the income approach and asserted that the cost approach does not apply to older properties like the subject property.

Mr. Doe testified that the only financial information provided to him was profit and loss statements, none of which were introduced into evidence. He received the profit and loss statements from Smith & Jones, but did not receive any financial documents from the Petitioner's owner, John Roe, such as his tax returns, documents filed with the Internal Revenue Service, bank records, or any source documents that Smith & Jones relied upon when creating the profit and loss statements. Mr. Doe's opinion is based on the information he received from Smith & Jones, and he assumed that the profit and loss statements were accurate. He also relied on the Star Report, which considers regional surveys and estimated information rather than details specific to the subject property.

Mr. Doe arrived at a capitalization rate ("cap rate") of 11.70% by adding 10% to the tax rate of 1.7%. PX-1 at p. 41; Transcript at pp. 22, 86, 94, 110, 115. He explained that he used a national average of cap rates rather than determining the cap rate based on actual hotel sales in Mercer County or other West Virginia counties. He estimated the value of furniture, fixtures, and equipment ("FF&E") at \$370,000.00. PX-1 at pp. 2, 4, 35. Mr. Doe's estimate was based on market data, public survey information, and the assumption that the property was in average condition and "would be in line with market" (Transcript at p. 32), but he admitted, "I don't know the actuals" (*Id.* at p. 33).

Mr. Doe testified that he would not recommend purchasing a hotel unless he had the source documents and confirmation of the hotel's actual income. He stated that he would want all

available information, but acknowledged that he never received precise financial data about the subject motel. He also acknowledged that he did not visit the property.

Mr. Doe admitted that he could not criticize the County Assessor. He admitted that the income approach requires accurate financial information from the property owner. And he acknowledged that the county could not use the income approach unless it could review precise financial data, something that he had never seen himself.

Jane Roe, an agent for Smith & Jones, testified that Smith & Jones relied on the profit and loss statements received from the Petitioner's accountant. She assumed the financial information was accurate, but she did not know.

William Damewood is the commercial property appraiser for the Mercer County Assessor's Office. Mr. Damewood has been with the Assessor's Office for 12 years, having averaged about 1200 parcel appraisals each year. He explained the process he follows when appraising properties and noted that he always uses the Tax Commissioner's IAS program. He noted that in 2022, he appraised the property at \$2.32 million; in 2023, at \$2.38 million; in 2024, at \$2.06 million; and in 2025, at \$2.13 million.

Mr. Damewood testified that he received no financial information from the Petitioner before the appeal was filed. He considered the cost, income, and market approaches, but he used the cost approach because the information needed to develop either the income or market approach was unavailable. He stated that the IAS program uses the cost method to appraise property and that the Assessor's appraised value is based on fair market value. The Assessor's appraised value is \$2,133,100.00, and the assessed value, which is 60% of the appraised value, is \$1,279,860.00.

Todd Kendall has been with the Assessor's Office for 17 years and is now the Chief Deputy. Mr. Kendall testified that he prepared the data sheet based on the business personal property return

received from the Petitioner. The Petitioner completed the return form and mailed it to the Assessor's Office. The Assessor's Office entered that information into the IAS computer system, which calculated inflation and depreciation, and provided the appraised value.

Mr. Kendall testified that the Petitioner's value for furniture and fixtures was \$5,000.00, and the Petitioner's total value was \$20,507.37, so the FF&E numbers the Petitioner provided to the Assessor totaled approximately \$25,000.00. He noted that Smith & Jones reported a value of over \$370,000.00 for the FF&E and testified that an income approach would not be feasible given the discrepancy between the Petitioner's numbers and Smith & Jones' numbers. Mr. Kendall emphasized that it is important for taxpayers to provide accurate information to the county, that the information the Petitioner provided was not accurate, and that the profit and loss statements "conflict with everything else." Transcript at p. 81.

Leroy Barker, the owner of Barker Land and Consulting, has 39 years of experience in valuing commercial and industrial properties. He started in the Lewis County Assessor's Office in May 1986 and worked there for nine years as an appraiser. He then went to work for the State Tax Department as a Senior Appraiser specializing in industrial appraisals, a position he held for 15 years. During that time, he advanced to become the chief appraiser for the northern four districts and the northern 38 counties. Next, he spent four years as the Department Coordinator for Harrison County. He then returned to the State Tax Department as the Appraisal Manager for the entire state, where his team monitored county assessors and appraised all industrial properties for the department. Later, he became the Director of the State Tax Department Property Tax Division before retiring in May 2021.

Mr. Barker testified that he reviewed Smith & Jones' profit and loss statements and found he could not rely on them because he needed more information about repairs, loan interest, an

explanation of depreciation override, insurance costs, franchise fees, and management fees. The Tax Division would default to a cap rate of 7%, but Mr. Doe used a cap rate of 11.7%. Mr. Barker noted that the IRS Profit and Loss from Business Schedule C was inconsistent with the profit and loss statements. He also noted that Mr. Doe had identified inconsistencies in the information he received, so he relied on hypothetical conditions, extraordinary assumptions, national averages, national surveys, a high cap rate, and the Star Report to try to overcome the inconsistencies.

Mr. Barker testified that the Assessor valued the land and building based on construction costs and applied a county modifier to determine an inflation rate, which enabled the county appraisers to estimate the cost to rebuild the property on the appraisal date. He explained that the Assessor considered the cost, income, and market approaches to value the property, but found the cost approach most reliable because there was not enough data to develop either the income or market approach. He also noted that all other commercial properties in Mercer County, including motels and hotels, are appraised using the cost approach.

Mr. Barker confirmed that the Assessor's appraised value was based on fair market value, considering current construction costs. He stated that the Assessor used the Tax Department's IAS System and relied on the cost approach to determine the property's value. Although the Assessor considered both the income and market approaches, he did not use either because the Petitioner had not provided enough information for the Assessor to use the income method for valuation.

Mr. Doe returned to testify and reiterated that he did not know who did the calculations in the profit and loss statements he received from Smith & Jones; that he did not review any tax returns or any documentation that the Petitioner sent to the Internal Revenue Service; that he used the Star Report—which is based on estimates and surveys rather than actual financial information—in arriving at his valuation; that he used a national average of cap rates rather than

determining the cap rate based on actual hotel sales in Mercer County or other West Virginia counties; that he could not point out any mistakes the Assessor made or any way the Assessor misinterpreted West Virginia law in appraising the property; and that he did not use the Tax Department's IAS System.

Mr. Doe acknowledged that buyers and sellers would want actual financial data as the most accurate information; that he did not know where Smith & Jones got the profit and loss statements; that he did not know whether the profit and loss statements were correct; and that he thought the Assessor made extraordinary assumptions to appraise the subject property by using national construction costs rather than local costs.

Todd Kendall was recalled for rebuttal testimony. Mr. Kendall stated that each year, the Assessor conducts a local construction cost modifier study and uses those results to appraise properties in Mercer County. He confirmed that the Assessor used Mercer County construction costs instead of national construction costs to appraise the subject property.

## II. STATUTORY AND REGULATORY FRAMEWORK

The statutes and regulations that govern this matter are unambiguous. For that reason, this tribunal will give force and effect to every word and give the words their plain and ordinary meaning.<sup>2</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

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<sup>2</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, absent 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).

value to be ascertained as directed by law.” W. Va. Const. art. X, § 1. However, the assessed value of such property is capped at 60% of its true and actual value. W. Va. Const. art. X, § 1b; W. Va. Code Ann. § 11-3-1(a) (West 2014) (all property except public service businesses shall be assessed annually as of July 1 at 60 percent of its true and actual value, which means fair market value, or what property would sell for if sold on the open market); *see also, Kline v. McCloud*, 174 W. Va. 369, 377, 326 S.E.2d 715, 724 (1984) (assessed values that are recognized under Article X, Section 1b are less than true and actual values). Stemming from that Constitutional mandate, our Legislature has codified the definition of “true and actual value:”

“Value”, “market value” and “true and actual value” shall have the same meaning and shall mean the price at or 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 2007).

Commercial property in West Virginia is appraised and assessed by the county assessors. But all work done by the county assessors is overseen in part by the Tax Commissioner. Several statutes in Chapter 11 of the West Virginia Code outline the working relationship between the Tax Commissioner and the county assessors. *See, e.g.,* W. Va. Code Ann. § 11-1C-5(a)(3) (West 1990) (the Tax Commissioner has the power and duty to periodically review the progress of each assessor in conducting required appraisals, evaluate each assessor’s performance, and take appropriate measures to require any assessor to correct any deficiencies); W. Va. Code Ann. § 11-1C-7(a) (West 2017) (to ensure that taxation is “equal and uniform throughout the state,” county assessors must appraise all real and personal property in their jurisdiction at fair market value using the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system established by the Tax Commissioner). Thus, any

references to the Tax Commissioner's duty to follow the directives of Series 1P pass through to the county assessors as well.

Title 110, Series 1P of the West Virginia Code of State Rules confers on the State Tax Commissioner, and by extension to the Assessor, broad "discretion in choosing and applying the most accurate method of appraising commercial and industrial properties. The exercise of such discretion will not be disturbed upon judicial review absent a showing of abuse of discretion." Syl. Pt. 5, *In re Assessment Against American Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000).

Assessors statewide use a computer program to value commercial property that is established and maintained by the West Virginia Tax Division. Assessment data is collected by county assessors and shared with the Tax Commissioner. *See* W. Va. Code Ann. § 11-1A-12 (West 1991). This information is gathered and entered into a computer database:

All county assessors in West Virginia perform Computer-Assisted Mass Appraisal ("CAMA") and input data collected during their assessment functions into a statewide Integrated Assessment System ("IAS") maintained and administered by the Tax Commissioner. The Tax Commissioner has access to the information in the IAS (and therefore the CAMA files) for purposes of supervision, auditing, and oversight; however, only the county assessors can input or change the data therein.

*Hurlbert v. Matkovich*, 233 W. Va. 583, 587, 760 S.E.2d 152, 156 (2014). Thus, information gathered by assessors through CAMA is entered into IAS. IAS fulfills the Tax Commissioner's 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 sharing of property tax information among county assessors and the tax commissioner." W. Va. Code Ann. § 11-1A-21 (West 1983).

When valuing real property, assessors are directed to "consider and use where applicable, three generally accepted approaches to value: (A) cost, (B) income, and (C) market." W. Va. Code

R. § 110-1P-3.2.1 (2013). Series 1P defines “cost approach” as the appraisal process in which the 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)); “income approach” as 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)); and “market approach” as 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)). Guidance regarding each of these methods is contained in Subsection 3.2.1 of the regulations:

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.

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.

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 (2013).

The standard of proof that a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence. W. Va. Code Ann. § 11-3-23a(e) (West 2021); *see also* W. Va. Code Ann. § 11-10A-10(h) (West 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”).

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

### III. ANALYSIS

The Parties agree on the governing law of this case. The Petitioner contends that the Assessor should have applied the income approach to value the motel because the Petitioner supplied adequate income information. The Assessor maintains that his use of the cost method was appropriate because the financial information the Petitioner provided was inadequate.

West Virginia's property tax law is well settled. An assessing officer's property valuation for taxation purposes is presumed to be correct.<sup>3</sup> As early as 1950, the West Virginia Supreme Court of Appeals stated, "it is a general rule that valuation[s] for taxation purposes fixed by an assessing officer are presumed to be correct." *Bankers Pocahontas Coal Co. v. County Ct. of McDowell County*, 135 W. Va. 174, 179, 62 S.E.2d 801, 804 (1950). The Assessor has discretion in the valuation of commercial properties, and "[t]he exercise of such discretion will not be disturbed upon judicial review absent a showing of abuse of discretion." Syl. Pt. 5, *In re Tax Assessment Against Am. Bituminous Partners, L.P.*, 208 W. Va. 250, 539 S.E. 2d 757 (2000).

Here, the Petitioner's arguments fail because Mr. Doe, the Petitioner's own expert, testified that the Mercer County Assessor's office made no mistakes in its valuation of the subject property. But even if Mr. Doe had testified differently, we still could not rule in the Petitioner's favor. Mr. Doe admitted that he did not know who prepared the profit and loss statements, where Smith & Jones got the profit and loss statements, or whether the profit and loss statements were correct.

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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).

This tribunal has often encountered purported financial documents like the profit and loss statements in this case. Common sense has shown that if a simple sheet of paper with numbers on it lacks supporting source documents, it should receive no weight. So too here. The Petitioner's profit and loss statements are no more than plain sheets of paper with numbers on them.

We also cannot rule for the Petitioner because its appraiser used none of the three methodologies required under West Virginia law. Mr. Doe testified clearly that he did not use the cost approach or the market approach. Although he attempted to apply the income approach with what little information he had, he had no source documents, and the information he did have was not enough. The only financial data provided to Mr. Doe was a set of profit and loss statements, none of which were introduced into evidence. Mr. Doe assumed the profit and loss statements were accurate, but he had no way to verify them.

The Rules of Evidence do not bind this tribunal. *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). We have consistently ruled that Section 10(c) directs us to use common sense when addressing questions about the evidence presented in a matter. Moreover, the West Virginia Supreme Court of Appeals has advised courts not to 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).

The Assessor was correct in using the cost approach to appraise the Petitioner's property. While preparing the assessment, the Assessor tried to gather the necessary data to develop either the income or market approach, but could not do so. "When possible, the Tax Commissioner

should use the most accurate form of appraisal, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial or industrial properties, the choice between alternative appraisal methods may be limited.” 110 W. Va. C.S.R. 1P-3.2.2.a. If the choices are limited, our Supreme Court has determined that “[a]n Assessor need not perform a useless act of considering an appraisal method where the assessor does not have sufficient data to perform that appraisal method.” *Lee Trace, LLC v. Raynes*, 232 W. Va. 183, 193, 751 S.E.2d 703, 713 (2013). In *Lee Trace*, the Assessor testified that she could not do an income approach because she lacked the necessary data to make the calculations.

In this matter, Mr. Damewood, Mr. Kendall, and Mr. Barker all testified that the Assessor lacked sufficient financial information to develop either the income approach or the market approach. That is why the Assessor used the only available method—the cost approach.

West Virginia law provides that assessments are presumptively correct. Well-supported appraisals that use the cost approach are due to be upheld. “[I]t is clear that the Assessors’ appraisals, all of which were conducted pursuant to the cost approach, were supported by substantial evidence and, thus, that the ad valorem tax assessments based upon such appraisals were not plainly wrong.” *Stone Brooke Ltd. Partnership v. Sisinni*, 224 W. Va. 691, 701, 688 S.E.2d 300, 310 (2009) (citations omitted). The Petitioner clearly did not meet its burden of proving that the Assessor’s appraisal was erroneous.

Here, the Assessor appraised the property at its true and actual value by considering the cost, income, and market approaches, ultimately choosing the cost approach. The Petitioner attempted to value the property using the income approach but failed to provide reliable financial information and tax records sufficient for such an appraisal. The Petitioner merely offered another value for the property using different methods than those the Assessor used. The Petitioner had the right to suggest an alternative valuation method, but that alone does not prove the Assessor’s

valuations lacked substantial evidence or violated any regulation, statute, or constitutional provision—especially since the Petitioner’s appraiser admitted that the Assessor had made no mistakes. Therefore, we cannot rule in the Petitioner’s favor.

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

3. In a property tax appeal before the West Virginia Office of Tax Appeals, the petitioner bears the burden of proving that any property valuation for taxation purposes or tax assessment is erroneous, 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).

4. 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 under the law. W. Va. Const. art. X, § 1.

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

6. “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 compelled to buy or sell. W. Va. Code Ann. § 11-1A-3(i) (West 1986).

7. All property subject to ad valorem taxation shall be assessed at 60% of its true and actual value. W. Va. Const. art. X, § 1b.

8. An assessing officer's property valuation for taxation purposes is presumed to be correct.<sup>4</sup>

9. Assessors must 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-7(a) (2017).

10. Assessors enjoy broad discretion in choosing and applying the most accurate method of appraising commercial properties, and the exercise of such discretion will not be disturbed upon judicial review unless an abuse of discretion is shown. Syl. Pt. 5, *In re Assessment Against American Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000).

11. All county assessors in West Virginia perform computer-assisted mass appraisal, entering data collected during their assessment process into the statewide IAS (Integrated Assessment System), which is maintained and administered by the Tax Commissioner. *Hurlbert v. Matkovich*, 233 W. Va. 583, 587, 760 S.E.2d 152, 156 (2014).

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

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

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<sup>4</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).

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

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

16. To determine fair market value under the cost approach, the 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).

17. 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).

18. To determine fair market value under the 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).

19. 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).

20. To determine fair market value under the market approach, the Tax Commissioner considers the selling prices of comparable properties. W. Va. Code R. § 110-1P-3.2.1.3 (2013).

21. "When possible, the Tax Commissioner should use the most accurate form of appraisal, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of

comparable commercial or industrial properties, the choice between alternative appraisal methods may be limited.” 110 W. Va. C.S.R. 1P-3.2.2.a.

22. If the choice between alternative appraisal methods is limited by the lack of accurate or reliable information, “[a]n Assessor need not perform a useless act of considering an appraisal method where the assessor does not have sufficient data to perform that appraisal method.” *Lee Trace, LLC v. Raynes*, 232 W. Va. 183, 193, 751 S.E.2d 703, 713 (2013).

23. Here, the Mercer County Assessor’s Office correctly valued the property using the cost approach, as set out in West Virginia Code of State Rules Series 1P, Title 110, Section 2.4 and Subsection 3.2.1.1.

24. The appraisal figures the Petitioner offered were not arrived at by utilizing any of the three generally accepted methods contained in Section 3 of Series 1P, Title 110 of the West Virginia Code of State Rules.

25. The Petitioner failed to meet its burden of showing that the Mercer County Assessor’s valuation was erroneous.

**DISPOSITION**

Based upon the foregoing, it is hereby **ORDERED** that the valuation by the Mercer County Assessor for the property identified above is deemed to be correct and is **AFFIRMED**.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

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

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Date Entered