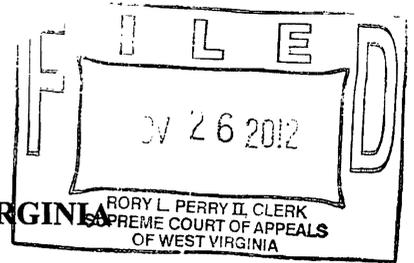


Nos. 12-0764, 12-0765, 12-0766, 12-0767, 12-0768



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Judith Collett, Assessor of Taylor County,
and the County Commission of Taylor County,
Respondents Below, Petitioners,**

v.

**Eastern Royalty, LLC, as successor petitioner to
West Virginia Coal Mine, LLC, Petitioner Below,
Respondent,**

and

**Coalquest Development, LLC, Petitioner Below,
Respondent,**

and

**Patriot Mining Company, Inc., Petitioner Below,
Respondent,**

and

**Trio Petroleum Corporation, Waco Oil & Gas, Inc.,
Mike Ross, and I.L. Morris & Mike Ross, Inc.,
Petitioners Below, Respondent,**

and

**Coalquest Development, LLC, Petitioner Below,
Respondent.**

PETITIONERS' REPLY BRIEF

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COUNSEL FOR PETITIONERS

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SUMMARY OF ARGUMENT

This case involves the assessment of Respondents' reserve coal properties located in Taylor County, West Virginia by the Assessor of Taylor County and the County Commission of Taylor County (hereinafter "Taylor County Commission") for Tax Years 2010 and 2011. Petitioners Judith Collett, Assessor, and the Taylor County Commission (hereinafter collectively "Petitioners") are appealing the May 10, 2012, Final Order of the Circuit Court of Taylor County, West Virginia (hereinafter "Circuit Court"), reversing five decisions by the Board in Civil Action Nos. 10-P-11, 10-P-12, 10-P-13, 10-P-14, and 11-P-17.¹

The Circuit Court ruled in its Final Order as a matter of law, under W. Va. Code §11-1C-10(g), that the only way for the Assessor to change the assessed value of Respondents' reserve coal property was for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission. The Circuit Court further ruled in its Final Order as a matter of law, under W. Va. Code §11-1C-7a, that the State Tax Commissioner has the exclusive jurisdiction to assess natural resources property and that the Assessor had no legal authority to hire a separate consultant to review appraisals conducted by the State Tax Commissioner and to question the methods of the State Tax Commissioner. Both Mr. Scott Burgess and Mr. Jeffrey Kern, representatives of the State Tax Department, testified at the hearings before the Board that errors were routinely made in State Tax Department appraisals of natural resources property and that it was common for taxpayers to file proceedings before the Board to correct those errors. *See Joint Appendix Volume II, p. 309 and Volume III, pp. 523-24.*

¹ In the original Brief filed in this matter, undersigned counsel improperly referred to the parties under the prior nomenclature as Appellants and Appellees. After filing this Brief, counsel learned that the proper designation is to Petitioners and Respondents under the Revised Rules of Appellate Procedure. Undersigned counsel has corrected the designations in this Reply Brief and apologizes to the Court for the error in filing the original Brief.

Under the Circuit Court's Final Order, only taxpayers may raise errors before the Board as the decision clearly holds that the Assessor and the Taylor County Commission have no ability to correct any errors that they may find with the State Tax Department's appraisals of natural resources property. The Petitioners now argue before this Court that they have clear statutory duties to perform with regard to the assessment of natural resource property, and therefore, this Court should reverse the Circuit Court's Final Order as a matter of law.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN REVERSING THE FIVE BOARD DECISIONS BECAUSE THE BOARD HEARINGS WERE NOT HELD IN VIOLATION OF STATUTORY PROVISIONS OR FOUNDED UPON UNLAWFUL PROCEDURES.

The hearings before the County Commission of Taylor County sitting as the Board of Equalization and Review (hereinafter "Board") were not held in violation of statutory provisions and unlawful procedures. Pursuant to W. Va. Code §11-3-24, the Board had the ultimate legal authority to establish the true and actual value of all real and personal property within the County. There was no proof that the County Commission of Taylor County (hereinafter "Taylor County Commission") arbitrarily accepted the values proposed by the State Tax Commissioner and supported by Judith Collett, the Assessor.

This Court discussed the authority of the County Assessor and County Commission to review all property values under W. Va. Code §§ 11-3-1 and 24. *In re Property of Righini*, 197 W. Va. 166, 171, 475 S.E.2d 166, 171 (1996). Under the West Virginia Constitution, Art. IX, § 1, and the provisions W. Va. Code §§11-3-1 and 24, the Assessor and Taylor County Commission have the legal authority to establish the true and actual value of all real and personal property within the county, including that of all natural resources. *Id.*

The record clearly shows that the Board accepted the corrected values recommended by the State Tax Commissioner. Both Mr. Scott Burgess and Mr. Jeffrey Kern, representatives of the State Tax Department, testified at the hearings before the Board that errors were routinely made in State Tax Department appraisals of natural resources property and that it was common for taxpayers to file proceedings before the Board to correct those errors. *See Joint App. Volume II at p. 309 and Volume III. pp. 523-24.*

At the February 22, 2010, hearing, Mr. Scott Burgess testified that the State Tax Department reviewed 750,000 parcels of coal seams and that they did not have time to adequately review all of the numbers generated by the state computer system. *Joint App. Volume II at p. 309.* Mr. Kern testified in the Coalquest 2011 hearing, that statistically there could be as many as five percent errors by the State Tax Department in evaluations and “that’s why every year the State of West Virginia has Commission hearings, to hear specific objections or changes.” *Joint App. Volume III at pp. 523-24.*

The Taylor County Commission also corrected errors made by the State Tax Department in assigning the prime coal bed and the environmental factors which lead to a computation of the “T-Score.” *Joint App. Volume III. pp. 576-77, 608-14.* If the Board did not correct the errors, the values of Respondents’ properties would have been unequal and non-uniform compared to other similarly situated properties in Taylor County and throughout the State of West Virginia. The Board’s actions were therefore, a move towards equality and uniformity of fair and equitable taxation. W. Va. Const. Art. X, §1.

The Taylor County Commission was required to bring values of the Respondents’ properties in compliance with the applicable Legislative Rules. In particular, at the Board hearing on February 28, 2011, the Taylor County Commission accurately valued, consistent with

the Legislative Rules, the tax accounts that were erroneously valued by the State Tax Commissioner, at less than one-tenth (1/10) of their actual values. W. Va. Code § 11-3-24. *Joint App. Volume III. p. 478.*

The Taylor County Commission corrected the misapplication of the RCVVM contained within the Legislative Rule. *Joint App. Volume III. pp. 567-68.* The Taylor County Commission made the corrections based on the plans to begin mining of the subject properties in approximately twelve (12) to fourteen (14) years for the Tygart 2 Mine based on the testimony under oath and subject to cross examination by the Project Manager of Patriot. *Id. at pp. 569-70.*

The Taylor County Commission applied the black and white definition of the Legislative Rules. *Id. at pp. 529-31.* Taylor County Commission corrected the values of the subject properties to comply with the Legislative Rules and the County Commission's actions brought the appraisals into compliance with the Legislative Rules. *Id. at pp. 529-33, 610-11, 622.* The State Tax Department's own expert, Jeffrey Kern recognized that statistically there could be as many as five percent errors by the State Tax Department in evaluations and "that's why every year the State of West Virginia has Commission hearings, to hear specific objections or changes." *Id. at pp. 523-24.*

The Board accepted the testimony of Mr. Scott Burgess that the correct assignment of the "T-Score" resulted in the new assessment for the Respondents' reserve coal property. Mr. Burgess testified on behalf of the State Tax Department that a determination was made that the environmental factors, which is one of the six factors that produced the "T-Score," should be changed from a 40 to a 20 as it had been the year before, and advised the Assessor accordingly. *Joint App. Volume II. pp. 308-11, 318-30.* Thus, the Tax Commissioner was in agreement that Respondents' property should be valued as a T-20 property. Not only was such correction

suggested by the State Tax Commissioner for the tax year 2010 values, but the State Tax Department valued certain properties as a T-20 property in tax years 2011 and 2012 as well.²

Mr. Burgess was the Assistant Director of the State Tax Department's Property Tax Division. In the 2010 Board hearings, Mr. Burgess appeared before the Board in his official capacity as Assistant Director, requesting corrections in errors made by the State Tax Department. Respondents argue at length that Mr. Burgess was perhaps a "rogue" employee of the State Tax Department. Regardless of whether or not Mr. Burgess had the authority to testify on behalf of the State Tax Department or not, the Board had no reason to doubt the veracity of his testimonies. State Tax Department did not make such a suggestion to the Board until after the 2010 record had been established and Board rendered its decision for tax year 2010.

Accordingly, in the 2010 Board hearings, the Board had no reason to believe that Mr. Burgess was not operating in his official capacity. The Board would have violated its statutory duty had it not accepted Mr. Burgess' testimony. Therefore, the Board hearings were not held in violation of statutory provisions and unlawful procedures. The Board did not "override" the State Tax Department's authority. Rather, the Board was in compliance with its statutory duty and authority pursuant to W. Va. Code §11-3-24.

The Taylor County Commission also relied on Jerry Knight, an expert who not only was the primary drafter of the Legislative Rules while formerly employed at the State Tax Department, but he also testified that the State Tax Department failed to follow such Legislative Rules. *Joint App. Volume II. pp. 311-15*. Based on the testimony of Jerry Knight, the Taylor County Commission corrected the values of the subject properties to comply with the Legislative

² With regards to Respondent Eastern Royalty, LLC's account 069999000051400000, this Court may take judicial notice that the State Tax Commissioner made the T factors for years 2011 and 2012 as T20. To accomplish this, the State Tax Commissioner changed the environmental factor to 0. Also, on Respondent Coalquest Development, LLC's account 039999000075400000, the Property Tax Division valued the MKT in 2012 as a T20, which has been Petitioner's position since 2010.

Rules and the Taylor County Commission's actions brought the appraisals into compliance with the Legislative Rules. *Id.* Pursuant to *Mohr v. County Court*, 145 W. Va. 377, 115 S.E.2d 806 (1960) and W. Va. Code §11-3-24, the Assessor or the Taylor County Commission had the right to hire a consultant to review appraisals and methods by the State Tax Commissioner.

The testimony presented by Mr. Knight and Mr. Burgess before the Board on February 12, 2010 and February 22, 2010 illustrated that the numerical value of some of the six factors that led to the "T-Score" were incorrectly assigned by the State Tax Commissioner to seams located on certain of the Respondents' reserve coal properties in question. *Joint App. Volume I-III. pp. 35-471.* The Taylor County Commission's action was a move towards equality with similar properties. W. Va. Const. Art. X, §1.

The Assessor's duties are provided in W. Va. Code §§11-1C-1, *et seq.*, §§11-2-1, *et seq.*, and §§11-3-1, *et seq.* W. Va. Code §11-1C-10, did not repeal the Assessor's duties as required by W. Va. Code §§11-2-1, *et seq.* or §§11-3-1, *et seq.* Pursuant to W. Va. Code §11-1C-10, the values are transmitted to the Assessor who applies the assessment rate of sixty percent (60%) and includes them in the appropriate tax books. *Joint App. Volume I. pp. 24-25.* Once the Assessor has completed her work, the books are then submitted to the Board. W. Va. Code §11-3-24(a). *Id. at p. 26.*

This is exactly what the Assessor did. She placed the Tax Commissioner's appraised values of the property books at 60% in full compliance with the requirements of W. Va. Code 11-1C-10(g). The Assessor accepted the values provided by the State Tax Department, therefore, was not required by W. Va. Code 11-1C-10(g) to the Property Valuation and Training Commissioner ("PVC"). Once the Assessor places the natural resources assessments upon the property books and the Board received the books, the Board acts up on its statutory duty to

correct errors in the values *with the assistance of the Assessor*. W. Va. Code §11-3-24. W. Va. Code 11-1C-10(g) required the Assessor to petition the PVC only if she failed to place the values on the books at 60% of the Tax Commissioner's appraisals.

The duties of the Board are stated in W. Va. Code §11-3-24, which provides guidance concerning correction of errors in values upon the property books once they are delivered to the Board. *Joint App. Volume II, pp. 311-12*. In particular, the Board is to correct "all errors" and the Assessor's duties are to "attend and render every assistance possible in connection with the value of property assessed" by the Board. *Id.* W. Va. Code §11-3-24. If the Legislature had intended for W. Va. Code 11-1C-10(g) to alter the duties of the Assessor under the provisions of W. Va. Code §11-3-24, it would have done so by revising her duties when subsection (g) was created in 1990 with the passage of HB 4127. However, the statutory language of both W. Va. Code 11-1C-10(g) and 11-3-24 is clear; the Assessor satisfactorily fulfilled her duties by assisting the Board in the correction of errors on the property books.

The record indicates that the Board's decision brought the values of the Respondents' natural resources properties in compliance with the applicable Legislative Rules. "The Legislature has provided for democratic self-assessment, and has given the tax commissioner authority to make the final determination of true and actual value." Syl. Pt. 2, *State ex rel. Rose v. Fewell*, 170 W. Va. 447, 294 S.E.2d 434 (19 82). "The tax commissioner is the state official ultimately responsible for ensuring equitable assessment in this state." Syl. Pt. 4, *Id.* An assessment must be reversed when it is "plainly wrong" or when it is not supported by "substantial evidence." Syl. Pt. 1 *West Penn Power Co. v. Board of Review and Equalization of Brook County*, 112 W. Va. 442, 164 S.E.862 (1932).

The Circuit Court erred in ruling that it was a “violation of [the Assessor’s] mandatory statutory duty to fail to present the issue to the Property Valuation Training and Procedures Commission.” The Final Order erroneously concludes that, as a matter of law, under W. Va. Code §11-1C-10(g), the only way to change the assessed value of the Appellees’ property was for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission. *Joint App. Volume I. pp. 4-34.*

The Assessor’s duties are provided in W. Va. Code §§11-1C-1, *et seq.*, §§11-2-1, *et seq.*, and §§11-3-1, *et seq.* W. Va. Code §11-1C-10, did not repeal the Assessor’s duties as required by W. Va. Code §§11-2-1, *et seq.* or §§11-3-1, *et seq.* However, the Circuit Court solely relied on W. Va. Code §11-1C-10(g) to hold that this repealed the Assessor’s general statutory duties. This Court’s decision in *In re Property of Righini*, 197 W. Va. 166, 475 S.E.2d 166 (1996) strongly suggests to the contrary.

The hearings before the Board were not held in violation of statutory provisions and unlawful procedures. Pursuant to W. Va. Code §11-3-24, the Taylor County Commission had the ultimate legal authority to establish the true and actual value of all real and personal property within the county. There was no proof that the Board arbitrarily accepted the values proposed by the State Tax Commissioner and supported by the Assessor. A review of the record before this Court reveals that the County Commission asked probative questions and demonstrated a clear knowledge of the coal mining properties in their county as well a solid understanding of the issues being presented. Accordingly, the County Commission made its determination based on the information presented by the State Tax Department’s representative and they reached the proper conclusion for the assessed valued of the Respondents’ properties as a matter of law.

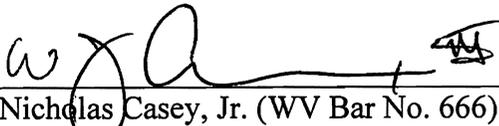
Given these facts, and the Assessor and Taylor County Commission's legal duties set forth in W. Va. Code §§11-1C-1, *et seq.*, §§11-2-1, *et seq.*, and §§11-3-1, *et seq.* and W. Va. Code §11-3-24, this Court should find as a matter of law that the Assessor and Taylor County Commission acted properly. Therefore, Petitioners respectfully request this Court to reverse the Circuit Court's Order and to affirm the values of the Respondents' property as determined by the Taylor County Commission for Tax Years 2010 and 2011.

CONCLUSION

WHEREFORE, Petitioners Judith Collett, Assessor of Taylor County, and the County Commission of Taylor County pray that this Honorable Court reverse the Final Order by the Circuit Court of Taylor County, West Virginia, and to affirm the values of the Respondents' property as determined by the Taylor County Commission for Tax Years 2010 and 2011.

**JUDITH COLLETT, ASSESSOR OF
TAYLOR COUNTY, AND THE
COUNTY COMMISSION OF TAYLOR
COUNTY,**

By Counsel,



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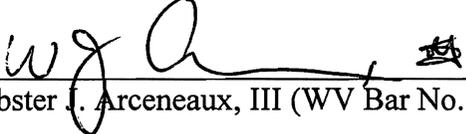
CERTIFICATE OF SERVICE

I, Webster J. Arceneaux, III, counsel for Petitioners Judith Collett, Assessor of Taylor County, and the County Commission of Taylor County does hereby certify that on this 26th day of November, 2012, I served a copy of the foregoing “**PETITIONERS’ REPLY BRIEF**” by depositing the same to them in the U. S. Mail, postage prepaid and sealed in an envelope upon:

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