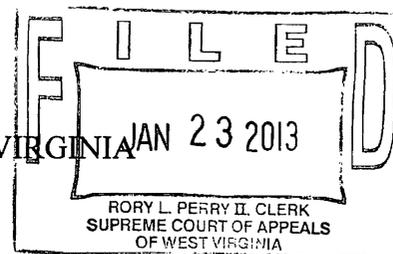


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 12-0992



LEE TRACE LLC

Petitioner,

v.

GEARL RAYNES, AS ASSESSOR
FOR BERKELEY COUNTY, WEST
VIRGINIA,

BERKELEY COUNTY COUNCIL SITTING AS
BOARD OF REVIEW AND EQUALIZATION,

and

BERKELEY COUNTY COUNCIL,

Respondents.

Appeal from a final order
Of the Circuit Court of
Berkeley County (11-AA-2)

Consolidated Reply Brief

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STATEMENT REGARDING ORAL ARGUMENT AND DECISION

As discussed in Petitioner's Brief, this case presents issues of first impression in West Virginia and involves constitutional principles. Thus, Petitioner has respectfully requested oral argument and decision under Rule 20. Respondents contend that this case does not present issues so significant or fundamental as to require oral argument. This contention is shown to be false by the mere fact that Respondents have filed 50 pages of briefs to counter Petitioner's Brief. The issues raised involve issues of equal protection under the West Virginia Constitution, as well as interpretation of state law. Petitioner reasserts its contention that because of the importance of the issues raised by this appeal, oral argument be allowed.

ARGUMENT

I. STANDARD OF REVIEW AND EVIDENCE

The parties agree that final orders and dispositions by circuit courts are reviewed under an abuse of discretion standard, that this Court reviews challenges to a circuit court's finding of fact under a clearly erroneous standard and that conclusions of law and statutory interpretation are reviewed "*de novo*." See cases cited in Petitioner's Brief, pp. 7-8.

II. THERE IS NO BASIS IN THE RECORD FOR THE CIRCUIT COURT'S VALUATION OF THE PROPERTY

The arguments raised in the briefs filed by Respondent Board of Review and Equalization and Berkeley County Council (the "Board") and Gearl Raynes, as Assessor for Berkeley County (the "Assessor") (collectively "Respondents") (the briefs will be referred to herein as the "Board's Brief" and the "Assessor's Brief," respectively, or collectively as "Respondents' Briefs") are notable for their inconsistencies and their ignoring of key issues. However, once the many irrelevancies raised by Respondents are sorted out, the issue for this

Court is simple and clear. Was there sufficient basis in the record and was a legally proper method used for the Circuit Court to arrive at the assessed value it set for Petitioner's property known as the Lee Trace Apartments (the "Property") for 2011?

The Circuit Court, without any basis, followed the Board's lead and, instead of arriving at the "true and accurate value," meaning "fair market value" (see cases cited in Petitioner's Brief, p. 8) arbitrarily used an average of the Assessor's 2010 cost approach and admittedly erroneous income approach figures. Respondents have admitted that the Circuit Court made a mistake in using the 2010 cost approach valuation, and that the income approach valuation was erroneously calculated. In addition, such arbitrary averaging is not acceptable.

The other asserted bases for the valuation set by the Circuit Court were: 1) A presumption of correctness to the value placed on the Property by the Assessor and adopted by the Board; 2) the value placed on the Property for fire insurance purposes; and 3) the value placed on the Property by a third-party "expert" retained by the Board, Darrell Rolston (the "Rolston Appraisal") that was based on income figures after the date of the assessment. Because each of these bases are factually and/or legally insufficient, the value placed on the Property by the Circuit Court is clearly erroneous and the Circuit Court's final decision is an abuse of discretion.

In addition, the Circuit Court rejected the appraisal submitted by Petitioner's expert, L. Steven Noble of Noble Valuations, LTD (the "Noble Appraisal"), erroneously stating that he was not licensed in West Virginia.

Finally, by setting a value that is substantially higher than competing properties on a per unit basis, and by using a different method of valuing the Property than was used for valuing

competing properties, Petitioner's rights under the West Virginia Constitution and West Virginia Code have been violated.

A. The Circuit Court's Determination of the Value of the Property was Erroneously Based on Admittedly Improper Valuations.

As set forth in Petitioner's Brief, the Circuit Court determined the valuation of the Property for 2011 by averaging the 2010 cost approach valuation with an admittedly erroneous income approach valuation. (A.R. 1148, 1161). The Board admits that the use of the 2010 cost approach valuation by the Circuit Court was in error while the Assessor totally ignores this fact. See Board's Brief pp. 9 (stating "this was a mistake"). Both Respondents totally ignore the Assessor and the Circuit Court's admissions that the income approach valuation relied on by the Circuit Court and the Board was not conducted in accordance with the West Virginia Code of State Rules ("State Rules"). Specifically, the Assessor stated:

The methodology used by the 2011 Berkeley County Council sitting as a Board of Review and Equalization of averaging two values is **plainly wrong as a matter of law**. The hybrid income approach employed in this case during the Board of Review and Equalization was, as previously found by the Court, performed contrary to W.Va. Code of State Rules §110-1P-2.2.1.2 and §110-1P-2.3.6....

(A.R. 1098 (emphasis added)).

The Circuit Court agreed, stating:

This income-type approach assessment [performed by the Assessor]... differ[ed] from that described in the Code of State Rules.

(A.R. 1148).

Thus, there is no dispute that both valuations relied on by the Circuit Court to set the value of the Property were in error. For this reason alone, the Circuit Court's decision and valuation of the Property was erroneous and must be reversed.

B. The Value Placed on the Property by Respondents is Not Entitled to a Presumption of Correctness, and to Average Two Different Values was in Error.

Respondents' Briefs are replete with disingenuous excuses for the Assessor's failure to conduct an income approach to value for the Property. These excuses are baseless because the Assessor relied on such an income approach to value for competing properties, and the State Rules and prior decisions of this Court require the income produced by a commercial property to be considered.¹

Ultimately, however, at the last minute, on the last day of the Board hearing, the Assessor provided the Board with what it claimed was an income approach to value but later admitted was incorrectly calculated.² The Board, instead of accepting this value, arbitrarily "averaged" it with the Assessor's prior cost approach. As stated above, the Assessor has admitted that that this methodology is "plainly wrong as a matter of law." Thus, the value placed on the Property by the Board is not entitled to a presumption of correctness because it arbitrarily averaged these two approaches instead of finding the "true and accurate value." The Board, in its brief, argues that the averaging was not arbitrary but was "perhaps" based on the Board's consideration of various

¹ Respondents argue that the Assessor's valuation was proper even though it did not consider an income approach to value because Petitioner did not timely provide the Assessor with actual income data for the Property. Even if this was true, which it is not, Respondents also argue that a proper income valuation must be based on "economic rent" not "actual rent;" therefore, lack of actual income data would not be an obstacle. See Assessor's Brief, pp. 5. Respondents also argue that an income approach to value could not be performed because there was insufficient sales data from which to develop a capitalization rate but admit that they used an income approach to value for other similar properties. (A.R. 552). Thus, their inability to develop a capitalization rate must not have been an obstacle.

² The Assessor argues: "If Petitioner disagreed with this income approach appraisal methodology, it should have brought this disagreement to the Board during its February 2011 session, or produced its own income approach appraisal to that Board" and "Petitioner did not produce any expert witnesses at the 2011 Board hearings to challenge or Supplement the dual appraisals." Assessor's Brief, pp. 16, 18. These arguments are amazing given the fact (admitted by the Board at Board's Brief, p. 2) that the Assessor's income approach was first presented by the Assessor on the last day of the last hearing in front of the Board, and Petitioner was given no opportunity to respond with its own appraisal until the appeal to the Circuit Court. Furthermore, as stated above, the Assessor has recently admitted that income approach was improperly calculated. (A.R. 1098).

factors.³ Board's Brief, p. 7. But "perhaps" is not evidence. The Board cites nothing in the record with respect to these issues supposedly underlying the Board's decision, and the Circuit Court had no basis for giving a presumption of correctness to such an arbitrary and improper valuation. As stated in Petitioner's Brief, and by this Court in In re Nat'l Bank of West Virginia at Wheeling, 137 W.Va. 673, 688, 73 S.E.2d 655, 664 (1952), when different methods of appraisal do not yield similar results, averaging the different results does not remedy the error. Despite Respondents' attempts to distinguish that case, the result is the same. That the issue in In re Nat'l Bank was the valuation of stock in a company which owned real property does not make its findings any less relevant to valuation of real property.

Arbitrarily averaging two different appraisal results does not arrive at the right result, and the value arrived at by doing so can be nothing other than arbitrary and capricious. This was confirmed by the Circuit Court when it stated, quoting from this Court's prior decisions:

Title 110, Series 1P of the West Virginia Code of State Rules confers upon the State Tax Commissioner discretion in choosing and applying **the most accurate method** of appraising commercial and industrial properties. ..." Syl. Pt. 5, *In re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W.Va. 250 (2000), Syl. Pt. 4, *Stone Brooke Ltd. Partnership v. Sisinni*, 224 W.Va. 691, 688 S.E.2d 300 (2009).

(A.R. 1154 (emphasis added)).

The language "the most accurate method" does not allow an assessor or a County Board of Supervisors to simply average various methods together. Such a shorthand approach is not "choosing and applying the most accurate method" and does not arrive at a "true and accurate value." The Circuit Court stated "while the Board may in its discretion reduce the amount [of

³ The Board states: "The averaging performed by the Respondent Board and affirmed by the circuit court was not done to 'split the baby'. Rather it was done because the Board, after considering all the evidence, and **believing that perhaps** the cost approach to value in an economy such as existed in Berkeley County in 2010 and 2011 might reflect a somewhat too high assessment value of the real property in question but, also believing that the value reflected as a result of the income approach method was too low given the cost of construction, the purchase price of the land, the supportive nature of the Respondent Assessor's independent appraisal, and the amount of fire insurance purchased on the property." Board's Brief, pp. 7-8 (emphasis added).

the assessment] in consideration of a different approach, it may not be done arbitrarily.” (A.R. 1158). But then, ignoring its own advice, the Circuit Court did exactly that (as had the Board) by averaging the results of the two different appraisals methods.

The cases from other jurisdictions cited in the Assessor’s Brief as support for its opposition to this Rule are inapplicable and do not change this result. For example, the Assessor relies on the Fifth Circuit case of Lake Charles Harbor & Terminal District v. Henning to support a method of averaging appraisals. But the court in that case made it clear that it was only proper to do so when there were differing experts and “differences in judgment alone divide the opinions of experts.” Lake Charles Harbor & Terminal District v. Henning, 409 F.2d 932, 937 (5th Cir. 1969). In the instant case, there was no averaging of differing expert opinions but rather the arbitrary averaging of different methodologies employed by the Assessor without any explanation as to why one methodology might be better employed over the other, all the while, for improper reasons, refusing to consider the expert testimony of Petitioner’s expert.

In cases more directly applicable, where one expert has arrived at a value by averaging the result of two different methods, courts have found reversible error. See e.g. Times Square Realty, Inc. v. City of Grenada, 421 So. 2d 1053 (Miss. 1982) (averaging of two separate and entirely different approaches to value in an eminent domain case was abuse of discretion); E-470 Pub. Highway Auth. v. Jagow, 30 P.3d 798, 805 (Colo. Ct. App. 2001) aff’d, 49 P.3d 1151 (Colo. 2002), citing *5 Nichols on Eminent Domain, supra*, § 17.1[4] at 17-24 (“Even though within the range of the testimony, if the award represents an averaging of the conflicting appraisals, it is improper.”).

As further evidence of the irrelevance of the cost approach to value, particularly based on actual costs of construction of the Property, one need look only to the calendar. Construction

began on the apartment complex in 2007, with contracts entered into prior to that date. (A.R. 1146). This was just before the economic downturn that hit the commercial real estate market particularly hard. (A.R. 920). By the time construction was complete in 2009, because of the economy, anticipated rentals could not be obtained. (A.R. 920, 943, 947). It is obvious that no one would build that apartment complex for the amounts expended had they been able to anticipate the subsequent economic conditions. The assessment at issue for 2011 must be based on the fair market value of the Property as of July 1, 2010, not 2007.

The Assessor argues: “Noteworthy is the fact that Petitioner asserts that the value of its property, which is newly constructed apartment complex is considerably less than the cost of its construction . . .” Assessor’s Brief, p. 5. This is noteworthy only because it is so obvious. Given the unique economic conditions that occurred between 2007 and 2011, that the value of the complex is less than its original construction costs is hardly surprising, and it is apparent that the original costs of construction are irrelevant to this inquiry. “The prospective purchaser of commercial property is primarily interested in the potential net return and tax shelter the property will provide. That price which is justified to pay for the property is a measure of the prospects for a net return from the investment. . .” (A.R. 915, quoting the Mass Appraising section of the State of West Virginia Real Property Appraisal Manual, p. 38).

C. The Noble Appraisal, Rejected by the Circuit Court, Was the Best Evidence of Value.

The Circuit Court abused its discretion in ignoring the Noble Appraisal, based on its clearly erroneous finding that Petitioner’s expert appraiser was not licensed in West Virginia.

Respondents argue that the Circuit Court did not refuse to consider the Noble Appraisal because of the erroneous contention that he was not licensed but rather found his appraisal to be “unpersuasive” because of that issue and because the value arrived at by the Board was

supported by other valuations. Assessor's Brief, p. 23. Specifically, Respondents claim that the value arrived at by the Board was supported by the value placed on the Property for fire insurance and the value placed on the Property by the Board's appraiser. These semantic arguments are irrelevant. (The Board admits that the Circuit Court "reject[ed]" the Noble Appraisal. Board's Brief, p. 4.) The fact of the matter is that each of the reasons given by the Circuit Court for ignoring this key evidence were clearly erroneous or wrong as a matter of law.

First, as shown in Petitioner's Brief, Mr. Noble indeed held a temporary license in West Virginia which would not have been shown on the website relied on *sua sponte* by the Circuit Court. Respondents argue that even if the Circuit Court was wrong on this point, it adequately justified its rejection of the Noble Appraisal by pointing to the value for fire insurance purposes placed on the Property. However, Respondents, as did the Circuit Court, totally ignore the nature of fire insurance policies and the fact that the value placed on the Property for fire insurance included personal property. See Petitioner's Brief, p. 17. To elaborate further on what was said in Petitioner's Brief, the fire insurance value for the insured property is a cap on what the insurance company would have to pay in the event of a fire damage loss. The policy provides that the insurance company will pay the lesser of the actual cost to repair or replace the damage from the fire or that capped amount. Neither of those scenarios provides the fair market value of the property, which the Assessor is required to determine.

Respondents argue that even if the Circuit Court was wrong on this point, it adequately justified its rejection of the Noble Appraisal by pointing to the value for fire insurance purposes placed on the Property. However, Respondents, as did the Circuit Court, totally ignore the fact that the value placed on the Property for fire insurance included personal property. See Petitioner's Brief, p. 17. Respondents also point to the Circuit Court's "confirmation" of its

value⁴ based on the evidence submitted by the Board through the Rolston Appraisal. But Respondents ignore the fact that the Rolston Appraisal was entitled to no weight as a matter of law because it relied on income data for operations after the assessment date. The Assessor erroneously argues, providing no legal support whatsoever⁵, that state law does not prevent consideration of such data. To the contrary, W. Va. State Rule §110-1P-2.1.1.9 only allows consideration of:

The income, if any, which the property actually produces and has produced within the next **preceding three (3) years** . . .

Emphasis added.

As stated succinctly by the Supreme Court of New Jersey, considering this exact issue:

[V]aluation, although based upon a forecast of earnings, must be found upon what was known and anticipated as of the assessing date, unaided by hindsight.

City of New Brunswick v. State Div. of Tax Appeals, Dept. of Treasury, 39 N.J. 537, 545, 189 A.2d 702, 706 (1963)

In fact, the Circuit Court, in its Final Order, recognized this, stating:

⁴ In another game of semantics, the Assessor asserts “the Circuit Court of Berkeley County did not rely on or utilize the Rolston Appraisal to determine the value of Petitioner’s property, but rather found the value determined by the Rolston Appraisal to be confirmatory of the assessed value determined by [Respondent Board].” Assessor’s Brief, p. 27. The Assessor’s argument is circular. It first argues that the errors by the Circuit Court in presuming the Assessor’s values to be correct and in averaging two different values are not fatal because the values were confirmed by other means, including the Rolston appraisal. Next, it argues that the errors in the Rolston Appraisal are not fatal because it was only used to confirm findings arrived at by other (albeit improper) means.

⁵ The Assessor attempts to address this point at pages 11, 12 and 27 of its brief stating only that “nothing in W.Va. Code §11-3-1...prevent use of data collected after the assessment date” and again stating, with no support whatsoever, that “the **apparent** purpose of establishing an assessment date is to determine ownership of a property as of a definite date to facilitate the identification of the owner to receive a tax ticket and any statutory notice.” Assessor’s Brief, pp. 11-12, emphasis added. Nothing in the cited code section supports the Assessor’s interpretation. In fact, this Court, in the context of personal property taxation, covered by that same code section, has stated:

The statute, Code, 11-3-1, as amended, provides that all property shall be assessed annually on the first day of July...All property must be assessed annually because the value changes...

George F. Hazelwood Co. v. Pitsenbarger, 149 W.Va. 485, 492, 141 S.E.2d 314, 319 (1965).

The property tax scheme in West Virginia requires assessment of property at “its true and accurate value” in order to determine the tax. *W.Va. Code §11.3.1*. To accomplish this, the value is established as of July 1, representing the “assessment date,” . . .

(A.R. 1144, 1150).

The Circuit Court then quotes from the State Rules:

Under this type of valuation, economic rent means “the rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.”

(A.R. 1152, quoting *W. Va. C.S.R. §110-1P-2.3.6*).

Respondents also argue that the Noble Appraisal was not due any consideration because it contained inconsistencies in its data. The Assessor argues:

Indeed, there was a wide variation between the “Summary” of “assessed per value unit” analysis for other apartment complexes provided by Petitioner to the Board in February 2011 and the assessed value per unit provided by Petitioner’s appraiser in April 2012 for the same July 1, 3010 [*sic*] assessment date for the 2011 year.

Assessor’s Brief, p. 24.

This difference is because Berkeley County refused, for a long period of time, to produce information regarding the most recent assessments of similar properties, including the Stoney Point apartment complex. They would not give Petitioner the assessments for 2011 until after the lawsuit was filed. Thus, Petitioner’s numbers for Stoney Point when Petitioner presented information in February of 2011 were based on its 2010 assessment, not its 2011 assessment. While the case was pending at the Circuit Court, Petitioner was finally able through discovery to obtain information regarding the 2011 assessments and Mr. Noble included that in his appraisal. Thus, there is no inconsistency in these numbers.

The Assessor also argues that “engaging in such a comparison between apartment complexes on an assessed value per unit basis is not a method of appraisal recognized by West

Virginia regulation or statute. To the contrary, such comparison is critical to the appraisal process. The State of West Virginia Real Property Appraisal Manual, states:

Underlying, and fundamental to each of the approaches is the comparison process. Regardless of whether the principal criteria are actual selling prices, income-producing capabilities, or functional usefulness, like properties must be treated alike. **The primary objective is equalization.**

(A.R. 915 (emphasis in original)).

D. The Circuit Court's Decision Violated Equal Protection Principles.

Article X, §1 of the Constitution of West Virginia provides:

Taxation shall be equal and uniform throughout the state... No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value.

West Virginia Code §11-1C-1(a) states:

All property in this state should be fairly and equitably valued wherever it is situated so that all citizens will be treated fairly and no individual species or class of property will be overvalued or undervalued in relation to all other similar property within each county and throughout the state.

The importance of such equalization in assessments was recognized in the drafting of the State of West Virginia Real Property Appraisal Manual, quoted above, which states the primary objective is equalization. (A.R. 915).

Respondents argue that there can be no violation of equal protection because there is no proof of systematic undervaluation of competitive properties, ignoring the clear argument that has consistently been made by Petitioner that competitive properties have been properly valued based on an income approach to value, while the subject Property has been valued significantly higher because the valuation was based, at least in part, on a cost approach to value.

The 2011 assessment of the Property violates the above requirements of the Constitution of West Virginia and the West Virginia Code because the Property is being treated differently

from other similar apartment complexes. The Board, and the Circuit Court, set an assessed value for the Property by averaging a cost approach with an admittedly erroneous income approach, but the Assessor used only an income approach for other similar properties. The Assessor admitted that this was the first time the Board had ever used this averaging method for determining the value of a property. (A.R. 585). This has resulted in the Property being taxed at a higher rate than other similar apartment complexes. (A.R. 552).

Instead of disputing this fact, the Board argues, based on Kline v. McCloud, 174 W.Va. 369, 326 S.E.2d 715 (1984), that “Petitioner has offered no evidence of alleged overvaluation of its property by the Assessor is the result of any systematic and intentional departures from the principle that practical equality is the standard to be applied in our system.” Board’s Brief, p. 14. However, the Board mischaracterizes Petitioner’s position. The Kline analysis applies only when a petitioner is attempting to prove under valuation of other properties, and thus overvaluation of petitioner’s property.

The rule is well settled that a taxpayer, **although assessed on not more than full value**, may be unlawfully discriminated against by undervaluation of property of the same class belonging to others.... But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause.”

Kline, 174 W. Va. at 373-74, 326 S.E.2d at 720 (emphasis added), *citing* Meyer v. Cuyahoga County Bd. of Revision, 58 Ohio St.2d 328, 390 N.E.2d 796 (1979), *quoting from* Southern Ry. Co. v. Watts, 260 U.S. 519, 526, 43 S.Ct. 192, 195, 67 L.Ed. 375, 387 (1923).

In such a situation, when there is no allegation that Petitioner’s property is valued higher than full value, a petitioner must show that the under valuation of the other properties was intentional and systematic. In the instant case, there is no allegation of under valuation of other similar properties, and there **is** an allegation that the Property is valued higher than its true and

actual value. The evidence has shown that other similar properties were correctly assessed at their true and actual value based on the income approach to value. The subject Property was, however, over-assessed because the Assessor considered and used only a cost approach to value. Based on these facts, Petitioner is not required to show “intentional and systematic” under valuation of other properties, and Kline is simply not relevant.

CONCLUSION

The Circuit Court’s valuation of the Property for 2011 was clearly erroneous because each of the stated bases as support for such valuation were unsupported by any evidence or were wrong as a matter of law. In calculating the valuation of the Property for 2011, the Circuit Court erroneously used the 2010 cost approach valuation and an income approach valuation that both the Assessor and the Circuit Court admitted was not in accordance with the State Rules. The other primary basis for the Circuit Court’s finding of valuation was a presumption of correctness it attributed to the value placed on the Property by Respondents. But, as stated in Petitioner’s Brief, there can be no such presumption when the valuation performed by Respondents were, as here, contrary to state law.

The Assessor’s valuation was contrary to state law in that it did not include an income approach to value. The Circuit Court, ignoring §110-1P-2.1.1.9 of the State Rules, concluded that, under §110-1P-2.2.1 that assessor need only consider the income produced by a property “where applicable.” The Circuit Court was wrong as a matter of law in its interpretation of §110-1P-2.2.1, but also, even if its interpretation of that section were correct, it cannot ignore the clear edict of §110-1P-2.1.1.9 and this Court’s statement in Stone Brooke Ltd. Partnership v.

Sisinni that consideration of income produced by the property is required. Stone Brooke Ltd. Partnership v. Sisinni, 224 W.Va. 691, 688 S.E.2d 300 (2009).

The Assessor's adamant contention that it could not consider an income approach to value because it did not have the necessary data (income data for the Property and comparative sales from which to construct a capitalization rate) is belied by its position that actual rent is not relevant and that only economic rent is relevant. Further, by its own admission, the Assessor performed income approaches to value for other apartment complexes in Berkeley County and was thus obviously able to compile a capitalization rate.

Finally, by admitting that they performed income approach appraisals for other competitive apartment complexes, Respondents have admitted that they had the income data necessary to determine 'economic rent' for the Property⁶. When the Assessor, at the final hearing of the Board, finally presented an income approach to value, the Board, instead of accepting that value, arbitrarily averaged it with the previous cost approach, arriving at a meaningless value that was higher than an income approach could justify and higher, on an adjusted basis, than assessments for competing properties. The Circuit Court did a similar averaging of values arrived at by different appraisal methods, even though such averaging is contrary to law, and in doing so erroneously used a 2010, not 2011, cost approach valuation figure. The Circuit Court justified its position, however, pointing to confirming evidence, to wit fire insurance valuations and the Rolston Appraisal. However, those items of confirming evidence were in and of themselves fatally flawed. The fire insurance figure includes personal property, and Respondents' expert used income data from after the assessment date.

⁶ The Assessor's assertion that the entry of a protective order with respect to its financial data prevented the Assessor from obtaining "economic rent" in order to perform an income approach appraisal. Assessor's Brief, p. 22. But it is the accumulation of data from other apartment complexes, not just Petitioner's, that allows an assessor to arrive at "economic rent," which it obviously was able to do for Petitioner's competitors.

For all of these reasons, the decision of the Circuit Court constitutes an abuse of discretion and must be reversed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

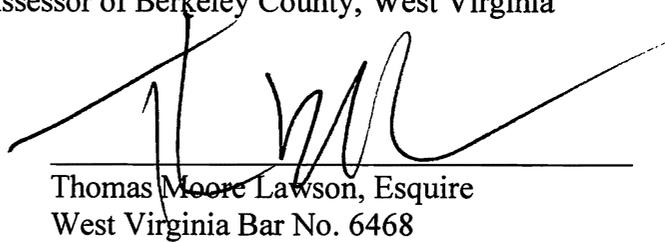
I hereby certify that on this 22nd day of January, 2013, true and accurate copies of the foregoing Consolidated Reply Brief were deposited in the U.S. Mail contained in postage-paid envelopes address to counsel for all other parties to this appeal as follows:

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