

**IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**



ANTERO RESOURCES CORPORATION,

Petitioner,

v.

**CIVIL ACTION NO. 17-AA-1
PRESIDING JUDGE: WILKES**

**THE HONORABLE DALE STEAGER,
West Virginia Tax Commissioner,
THE HONORABLE ARLENE MOSSOR,
Assessor of Ritchie County, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,
Sitting as the Board of Assessment Appeals,**

Respondents.

**ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT**

This matter came before the Court this 15th day of June 2020, upon the Petitioner's Motion for Summary Judgment with Incorporated Memorandum of Law. The Petitioner, Antero Resources Corporation, by counsel, Craig A. Griffith, Esq., and Respondents, The Honorable Dale W. Steager, West Virginia Tax Commissioner and The Honorable Arlene Mossor, Assessor of Ritchie County, by counsel, L. Wayne Williams, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

I. Findings of Fact

1. Petitioner Antero Resources Corporation (hereinafter "Petitioner" or "Antero") is a producer for numerous Marcellus Shale horizontal wells in Ritchie County, West Virginia. See Pet's Mot., p. 3. Originally, Antero avers the Tax Department valued Antero's producing Marcellus Shale oil and gas wells in Ritchie County at \$194,400,979 for Tax Year (TY) 2016. *Id.* The Court notes the Tax Department avers its original valuation of Antero's producing Marcellus Shale oil and gas wells in Ritchie County was made at \$194,188,277 for Tax Year (TY) 2016. See Tax Department's Resp., p. 2. The original valuation was appealed to Circuit Court¹, and then to the West Virginia Supreme Court of Appeals.

2. The West Virginia Supreme Court of Appeals decided the case of *Dale W. Steager, WV State Tax Commissioner, et al., v. CONSOL Energy, Inc., dba, CNX Gas Company, LLC, et al.*, 242 W. Va. 209, 832, S.E.2d 135 (2019), remanding the matter to the Business Court Division to determine the final valuation of wells in Ritchie and Ritchie Counties². See Tax Dept.'s Resp., p. 1.

3. Antero provided a list of wells for TY2016 subject to re-valuation by the Tax Commissioner. See Pet's Mot., p. 3. Antero avers the re-valuation of those wells should be \$191,083,218 for TY 2016. *Id.*; see also Pet's Mot., Ex. F.

4. On a prior day, Antero filed the instant Motion for Summary Judgment, seeking summary judgment in its favor that the true and actual value of its Marcellus Shale horizontal wells should be set at \$191,083,218 for TY 2016 in Ritchie County. See Pet's Mot., p. 7.

¹ The Court notes the matter was referred from the Circuit Court of Ritchie County to the Business Court Division.

² The Court notes said decision affirmed the Business Court's decision in part, reversed the decision in part, and remanded the matter to the Business Court Division for further proceedings consistent with the opinion. See Pet's Mot., p. 3.

5. On a prior day, Respondents The Honorable Dale W. Steager, West Virginia Tax Commissioner and The Honorable Arlene Mossor, Assessor of Ritchie County (collectively, "Tax Department") filed "Response of WV Tax Department and The Honorable Arlene Mossor, Assessor of Ritchie County, Opposing Antero Resources' Motion for Summary Judgment", arguing the motion should be denied as the Tax Department re-valued the aforementioned wells in Ritchie County consistent with the Supreme Court's remand at \$194,188,277³ for TY 2016. *See* Tax Dept.'s Resp., p. 2. Further, Respondents proffered their valuation and methodology for calculation was supported by the Affidavit of Cynthia R. Hoover, Tax & Revenue Manager of the West Virginia Property Tax Division, Special Properties Section, which was attached as an Exhibit to its own motion for summary judgment in the instant civil action. *Id.*

6. Finally, on a prior day, Antero filed its Reply in Opposition to Respondents' Motions for Summary Judgment, and attached Memorandum of Law, which it averred supported its own Motion for Summary Judgment (the instant motion) as well as replied to Respondents' own motions for summary judgment, reiterating its argument that actual value of its Marcellus Shale horizontal wells should be set at \$191,083,218 for TY 2016 in Ritchie County. *See* Reply, p. 4.

7. The Court now finds the instant Motion is ripe for adjudication.

II. Legal Standard

A party is entitled to summary judgment pursuant to Rule 56 of the *West Virginia Rules of Civil Procedure* if the record shows there is "no genuine issue as to any material fact and that the

³ The Court notes the parties both stated that re-valuation resulted in no change from figure originally calculated by the Tax Department. *See* Pet's Mot., p. 3; *see also* Tax Department's Resp., p. 3. Although, the Court also notes that the parties' state different numbers as to what the Tax Department's valuation was and is. Antero avers the Tax Department's valuation of Antero's Marcellus Shale horizontal wells in Ritchie County is \$194,400,979, and the Tax Department instead avers its valuation of Antero's Marcellus Shale horizontal wells in Ritchie County is \$194,188,277. *Id.*

moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c). Summary judgment is a favored procedure that “plays an important role in litigation.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 58, 459 S.E.2d 329, 335 (1995). “It is ‘designed to effect a prompt disposition of controversies on their merits without resort to a lengthy trial,’” and “to isolate and dispose of meritless litigation.” *Id.* (quoting *Painter v. Peavy*, 192 W.Va. 189, 192 n.5, 451 S.E.2d 755, 758 n.5 (1994)). Summary judgment is proper “when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” *Stemple v. Dobson*, 184 W.Va. 317, 320, 400 S.E.2d 561, 564 (1990) (citation omitted); see also W. Va. R. Civ. P. 56, 50. The moving party initially bears the burden of showing that there is no genuine issue of fact, after which “the burden of production shifts to the nonmoving party,” who must present evidence showing that there are material facts in dispute. *Williams*, 194 W.Va. at 60, 459 S.E.2d at 337. “[T]he nonmoving party must nonetheless offer some ‘concrete evidence from which a reasonable . . . [finder of fact] could return a verdict in . . . [its] favor.’” *Id.* (alteration in original) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s position” cannot satisfy that burden. *Liberty Lobby*, 477 U.S. at 252. Further, any such evidence may not consist of vague, unsupported assertions by counsel; rather, “the nonmovant must go beyond the pleadings and contradict the showing by pointing to specific facts demonstrating a single ‘trialworthy’ issue.” *Powderidge Unit Owners Ass’n v. Highland Props.*, 196 W. Va. 692, 699, 474 S.E.2d 872, 879 (1996).

III. Conclusions of Law

Upon remand from the Supreme Court of Appeals, both Petitioner and Respondents have proffered the figures for which they argue the re-valuation of Antero’s Marcellus Shale

horizontal wells in Ritchie County should be valued at. The Court notes the parties do not dispute the list of which wells in Ritchie County should be re-valued. The Court also notes the parties' valuations differed when it came to those Antero Marcellus Shale horizontal wells in Ritchie County which produce both oil and gas.

First, Antero avers the re-valuation of its Marcellus Shale horizontal wells in Ritchie County should be \$191,083,218 for TY 2016. *See* Pet's Mot., p. 3; *see also* Pet's Mot., Ex. F. Antero avers the following with regard to how it valued the wells: "Antero...valued the horizontal Marcellus Shale wells using a singular monetary average of \$150,000 for produced natural gas and \$5,750 for produced oil...". *See* Pl's Mot., p. 2-3.

On the other hand, the Tax Department avers it re-valued the instant wells at \$194,188,277 for TY 2016. *See* Tax Dept.'s Resp., p. 2. As the Court has noted, Antero has proffered this figure as \$194,400,979. A review of the WV State Tax Department's and The Honorable Arlene Mossor, Assessor of Ritchie County's Motion for Summary Judgment reveals that the Tax Department proffered there too that its valuation is \$194,188,277 for TY 2016. *See* Tax Department's Mot. for Summ. J., p. 3. For these reasons, the Court will apply the \$194,188,277 as value for the Tax Department's re-valuation of the instant wells, as it has asserted.

Further, the Court notes that in support of their valuation, the Tax Department proffered the Affidavit of Cynthia R. Hoover, Tax & Revenue Manager of the West Virginia Property Tax Division, Special Properties Section. *See* Tax Dept.'s Resp., p. 2; *see also* Tax Department's Mot. for Summ. J., p. 3. The Tax Department, like Antero, also used the monetary average of \$150,000 for produced natural gas and \$5,750 for produced oil. The Tax Department valued the

wells producing both oil and gas using the monetary average of \$150,000 for produced natural gas and \$5,750 for produced oil, by taking into account how much oil the certain well produced versus how much natural gas it produced. See Pl's Mot., p. 5; see also Tax Department's Resp., p. 3.

The Tax Department explained in Ms. Hoover's affidavit that for TY 2016, in instances where the well is producing both oil and gas, the allotted maximum ordinary operating expense is calculated depending on the percentage of gas versus oil receipts involved. For Marcellus horizontal wells the allotted maximum ordinary operating expense will vary between \$5,750 and \$150,000 depending on the percentage of gas versus oil receipts involved, as required by the Tax Department's Administrative Notice 2016-08. See Pl's Mot., Ex. B; see also Tax Department's Resp., p. 3. As an example, the Tax Department proffered in Ms. Hoover's affidavit and in its Response the following: "if 75% of a Marcellus Shale horizontal well's gross receipts were derived from natural gas and 25% of gross receipts were derived from oil production, then the Property Tax Division pro-rated the Average Annual Industry Operating Expense as: $75\% (150,000) + 25\% (5,750) = \$113,937.50$. See Tax Department's Resp., p. 3.

Antero argues the Tax Department's valuation, as described above, runs afoul of the Supreme Court's decision in *Steager*, and instead, Antero's re-valuation of its Marcellus Shale horizontal wells in Ritchie County at \$191,083,218 for TY 2016 is appropriate because, in its opinion, it comports with the Supreme Court's direction in *Steager*. See Pl's Mot., p. 5. For wells producing both oil and gas, Antero utilized the \$150,000 deduction for natural gas, as well as the \$5,750 deduction for oil.

As initial matter, the Court notes that *Steager* did not address wells that produce both oil and gas. In *Steager*, the Supreme Court of Appeals found that “neither the West Virginia Code of State Rules § 110-1J-4.1 nor § 110-1J-4.3 [requiring average industry operating expenses] provide for a ‘sliding scale’ or pro rata operating expense deduction.” *Steager*, at 151. Instead, the Supreme Court found that the regulation “contemplates use of a monetary average which must be applied evenly across the board to avoid an unconstitutionally impermissible application. We therefore hold that the provisions contained in the West Virginia Code of State Rules § 110-1J-4.1 nor § 110-1J-4.3 for the deduction of the average annual industry expense requires the use of a singular monetary average deduction”. *Id.* The Court notes this holding overturned this Court’s utilization of an operating expense percentage deduction. *See* Pl’s Mot., p. 5. The Supreme Court ruled regarding the percentage deduction, that the Property Tax Division cannot “cap” the average annual industry expense at 20% of gross receipts of natural gas. *See* Tax Department’s Resp., p. 7.

Antero argues the Tax Department’s valuation runs afoul of the Supreme Court’s decision in *Steager* with regard to the instant wells that produce both oil and gas. Specifically, Antero argues the valuation runs afoul of *Steager* because its use of the oil figure and gas figure in relation to how much gas and oil each of the wells (that produce both) produced impermissibly results in a sliding scale or pro rata amount of operating expense deducted. *See* Pl’s Mot., p. 6. Antero argues the Tax Department’s method, as applied to the wells producing both oil and gas, ignores the Supreme Court’s direction that the monetary average be “singular”. *Id.* at 5.

This Court, in considering the Supreme Court’s decision and direction in *Steager*, as well as the briefs of the parties, concludes the Tax Department’s re-valuation is appropriate. The Court notes again that *Steager* did not address wells that produce both oil and gas; instead, it

dealt with the appeal of the valuation of gas producing horizontal wells. The Tax Department took the direction from *Steager* and applied it fairly to those wells which produce both oil and natural gas. The Tax Department correctly utilized the monetary average of \$150,000 for produced natural gas and \$5,750 for produced oil. When the Tax Department was faced with applying these figures to those instant wells producing both oil and gas, it came to a reasonable calculation. The Tax Department correctly used the monetary average of \$150,000 for produced natural gas and \$5,750 for produced oil, and took into account how much oil the certain well produced versus how much natural gas it produced. *See* Pl's Mot., p. 5. The Tax Department utilized data, in the form of gross receipts, to accurately comport which amount of the \$150,000 figure and which amount of the \$5,750 figure would apply to wells producing oil and gas.

Under Antero's argument and valuation, it seeks to receive a deduction of \$150,000 for natural gas production *plus* receive a deduction of \$5,750 for oil production. *See* Tax Department's Resp., p. 3. The Court notes that in doing so, Antero seeks a different valuation methodology than that was utilized for every other horizontal Marcellus well in the State of West Virginia in TY 2016. *Id.* at 4. Instead, Antero demands a methodology utilized for all producers' wells in subsequent tax years be applied to Antero's tax wells for TY 2016. The Court finds the notions of fairness do not support this. Such a determination would result in preferential treatment given to one producer, Antero that is not given to any other producer of Marcellus Shale horizontal wells in TY 2016. *See id.*

At any rate, the Tax Department's argument and valuation supports a utilization of the average annual industry expense, as it relates to the special circumstance where a well produces both oil and gas. The Court notes the Tax Department did not impermissibly "cap" Antero's deduction; rather, it utilized the average annual industry expense figures to apply to both oil

production and natural gas production pertaining to wells that produce both. Under the Tax Department's valuation, Antero does not obtain a higher deduction by virtue of having a well that produces both oil and natural gas; rather, the deduction numbers for oil and natural gas are equitably distributed so that the deductions accurately relate to the percentage of oil and natural gas produced in that well. For this reason, the Court finds the Tax Department's re-valuation of \$194,188,277 for TY 2016 is the correct valuation.

Accordingly, the Court finds the instant motion for summary judgment must be denied. Further, the Court finds that on the other hand, the "WV State Tax Department's and The Honorable Arlene Mossor, Assessor of Ritchie County, Motion for Summary Judgment" must be granted. Additionally, the Court finds the true and actual value of Antero's Marcellus Shale horizontal wells in Ritchie County shall be set at \$194,188,277 for TY 2016.

IV. Conclusion

WHEREFORE, based on the forgoing, it is hereby ADJUDGED and ORDERED that the Court hereby DENIES Antero's Motion for Summary Judgment. Further, it is hereby ADJUDGED and ORDERED that the Court hereby GRANTS "WV State Tax Department's and The Honorable Arlene Mossor, Assessor of Ritchie County, Motion for Summary Judgment".

Also, based on the forgoing, it is hereby ADJUDGED and ORDERED that the true and actual value of Antero's Marcellus Shale horizontal wells in Ritchie County shall be set at \$194,188,277 for TY 2016.

There being no further issues to be decided, this matter is **DISMISSED**, with prejudice, and forever stricken from the Court's docket. The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to

the Business Court Central Office at Business Court Division, 380 West South Street, Suite
2100, Martinsburg, West Virginia, 25401.

Enter this 15th day of June, 2020.

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.

Attest: Rose Ellen Cox

Ritchie County of West Virginia

ENTERED ON

7/18/20

[Handwritten signature]
Circuit Clerk
[Handwritten signature]
Deputy

[Handwritten signature]

CHRISTOPHER C. WILKES, JUDGE
WEST VIRGINIA BUSINESS COURT
DIVISION