



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, Appellants,**

v.

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

and

**Coalquest Development, LLC, Petitioner Below,
Appellee,**

and

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

and

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

and

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

APPELLANTS' BRIEF

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I. ASSIGNMENTS OF ERROR

1. The Circuit Court erred in its Final Order entered on May 10, 2012, (hereinafter “Final Order”), reversing the five decisions of the County Commission of Taylor County sitting as the Board of Equalization and Review (hereinafter “Board”) and ordering that the assessments of Appellees’ properties be returned to the initial values provided by the State Tax Commissioner and recorded upon the land books in Taylor County, West Virginia.

2. The Circuit Court erred in its Final Order in ruling that, as a matter of law, under W. Va. Code §11-1C-7a, 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.

3. The Circuit Court erred in its Final Order in ruling that, as a matter of law, under W. Va. Code §11-1C-10(g), the only way for the Assessor to change the assessed value of Appellees’ property was for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission.

4. The Circuit Court erred in its Final Order in ruling that applicable Legislative Rules and methodologies were disregarded at the Board hearings.

5. The Circuit Court erred in its Final Order in reversing the five decisions by the Board because the Board hearings were not in violation of statutory provisions or founded upon unlawful procedures.

II. STATEMENT OF THE CASE

This case involves the assessment of Appellees’ 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. Appellants Judith Collett, Assessor, and the Taylor County Commission (hereinafter collectively “Appellants”) 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.

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 Appellees’ 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.*

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 Appellants 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.

III. STATEMENT OF FACTS

a. The Assessor, the State Tax Commissioner, and the Board

The Honorable Judith Collett is the duly elected assessor of Taylor County, West Virginia. *Joint Appendix Volume I page 11*. 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.* The State Tax Commission has been charged with the valuation of all minerals, including coals reserves. *Joint App. Volume I. p. 24*. W. Va. Code §11-2-6 states, in part:

It shall be his duty to examine and revise the lists of property taken by his deputies to see that the assessment is equal and uniform throughout his county; and if in his opinion any property, real or personal, in any of such lists, is valued at more or less than its value, according to the rule prescribed by law, he shall correct the same by giving to such property its value according to such rule. If it should appear that any property liable to taxation has been omitted from any taxpayer's list, the assessor shall list and value the same.

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*.

The duties of the Board are stated in W. Va. Code §11-3-24. *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 §11-3-24.¹

¹ "At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them." W. Va. Code §11-3-24(b). "The board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. The board shall correct all errors in the names of persons, in the description and valuation of

Pursuant to W. Va. Code §11-1C-10(d)(2), the State Tax Commissioner is required to appraise natural resources properties for ad valorem property taxation purposes. *Joint App. Volume II, pp. 309-11.* The reserve coal appraisals are to be conducted in conformity with requirements of Title 110 Series 1I of the Code of State Rule (hereinafter “Legislative Rules”), which requires the State Tax Department to develop a Unit Value for all coal properties in the State and to allocate a portion of such unit value to each reserve coal seam based upon the seam’s probable time of mining. *Id.*

Pursuant to Legislative Rules, the State Tax Commissioner valued Appellees’ property by use of a computer model developed to assist with the valuation of reserve coal properties. *Id. at p. 309.* The Reserve Coal Valuation Model (“RCVM”) is a tool used to assist the State Tax Commissioner in the appraisal of reserve coal properties. *Id.* The RCVM is a tool that the State Tax Commissioner uses, however, the State Tax Commissioner is the one who appraises the property. The State Tax Department is not mandated to use the RCVM in valuing coal reserves, but rather uses it as a tool to assist the Tax Commissioner in his statutory responsibilities in appraising natural resource properties. ***The State Tax Commissioner, not the RCVM, assigns the six (6) factors used to determine the “T-score.”*** See 110 CSR §11.4.2.3.17, *Id. at pp. 235-36.*²

b. Board Hearings on February 12, 2010 and February 22, 2010

property, and shall cause to be done whatever else is necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.” W. Va. Code §11-3-24(c).

² Those six factors to determine the “T-Score” include the market interest factor, the market mineability factor, the prime coal bed factor, the environmental factor, the use conflict factor and the volatility factor. See 110 CSR §11.4.2.3.17, *Id. at pp. 235-36.*

In December of 2009, the State Tax Commissioner submitted the appraised values for all mineral properties in Taylor County to the Assessor. *Joint App. Volume II. pp. 311-315.* The Assessor *accepted* those values and entered them in the land records in the appropriate districts of Taylor County. *Id.* The Assessor then contacted consultant Jerry Knight to assist her in reviewing the values for accuracy and correctness. *Id.* Mr. Knight is a former Director of Property Tax Division of the State Tax Department and Mr. Knight is one of the leading experts in the State Tax Department's Coal Valuation Methodology. *Id.* Mr. Knight brought several glaring differences in values from the prior year to the Assessor's attention. *Id.* Mr. Knight then discussed these changes with Mr. Scott Burgess, the Assistant Director of the Property Tax Division and he agreed that there was an error made by the State Tax Department. *Id. at 308, 315, 318-19.*

The Board conducted hearings regarding the assessment of various tracts of reserve coal properties on February 12, 2010, and February 22, 2010. The hearing on February 12, 2010 concerned reserve coal property owned by ICG and Coalquest. *Joint App. Volume I. pp.35-43.* At issue in the hearing on February 12, 2010, was whether the ICG and Coalquest property should be classified as reserve or active mining property and what the proper "T-Score" would be for the reserve coal property. *Joint App. Volume I. pp.35-43.* At the hearing on February 12, 2010, Assessor Judith Collett, presented witnesses before the Board, including Scott Burgess, Assistant Director of Property Tax from the State Tax Department, and Jerry Knight of Knight Consulting. *Id.* at p. 10. Scott Burgess appeared on behalf of the State Tax Department, but was not present with counsel. *Id.* Jerry Knight presented seven (7) exhibits on behalf of the Assessor, which were labeled as State's Exhibits, the Tax Department presented one (1) exhibit, and the Assessor presented one (1) exhibit. *Id. at pp.38-39, 214-16.*

Mr. Burgess, on behalf of the State Tax Department, testified at both the February 12 and 22, 2010 hearings before the Board. He testified at the February 12, 2010 hearing about the environmental factor and the other factors which ultimately produced the “T-Score” under 110 CSR §11.4.2.3.17.g. He testified the environmental factor should be changed from a 40 to a 20 as they had been the year before, and advised the Assessor that the “T-Score” would change accordingly. *Id. pp. 72-7, 128-131*. This change in the “T-Score” resulted in an increase in the values in some reserve coal properties, including Appellees’ properties. *Id.*

Subsequently, the Board accepted the testimony of Mr. Burgess on behalf of the State Tax Commissioner that the correct assignment of the “T-Score” resulted in the new assessment for Appellees’ property. *Id.* Correction of the Tax Commissioner’s errors in the assignment of the “T-Score” for certain of the properties in question would result in the revised appraisals. *Joint App. Volume II at p. 346*. Subsequently, the Board ordered the revisions to Appellees’ tax accounts for reserve coal properties that are subject to this appeal.

At this hearing, David Goddard, counsel for ICG and Coalquest, presented 15 exhibits and he argued against the procedures used to bring these matters before the Board. *Id.* at pp. 222-263. Mr. Goddard specifically argued that the Assessor had to go to the West Virginia Property Valuation Training and Procedures Commission to change the State Tax Department reserve coal appraisals. *Joint App. Volume I at pp. 197-201*. Mr. Knight testified that there was no reason for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission because she had already accepted the appraisals of the Tax Commissioner. *Joint App. Volume I, pp. 38, 162-65*.

The February 22, 2010 Board hearing concerned natural resource property owned by ICG and Coalquest, Patriot, Eastern (then West Virginia Coal Mines, LLC), and Trio. *Joint*

App. Volume II. p. 306. At the hearing on February 22, 2010, Assessor Judith Collett, presented witnesses before the Board, including Scott Burgess, Assistant Director of Property Tax from the State Tax Department, and Jerry Knight of Knight Consulting. *Joint App. Volume I. p. 10.* Scott Burgess appeared on behalf of the State Tax Department, but was not present with counsel. *Id.* Jerry Knight presented twenty-four (24) exhibits on behalf of the Assessor, the Tax Department presented one (1) exhibit, and the Assessor presented one (1) exhibit. *Joint App. Volume II. pp.338-388.*

The State Tax Commissioner valued Appellees' properties by using the RCVM. *Id. at p. 309.* In December, 2009, the State Tax Commissioner submitted the appraised valued for all mineral properties to the Assessor. *Id. at pp. 311, 315.* The Assessor accepted those values and entered them on the land records in the appropriate districts of Taylor County. *Id.*

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. *Id. at p. 309.* He further testified that the computer model assigned an environmental factor of 40 on the subject properties that would indicate that there is an identified environmental problem which would significantly impede mining. *Id. at pp. 319-20.* After discussing the matter with Mr. Knight, he reviewed Appellees' accounts and made a determination that a change should be made in the environmental factor and that resulted in the increase in the "T-Score" values in some reserve coal properties. *Id. at pp. 315, 319-20.*³ As Mr. Burgess testified, he agreed that the environmental factors, which ultimately produced the "T-Score" should be changed from a 40

³ The environmental factor is based upon environmental obstacles that may affect mining, 110 CSR 11.4.2.3.17.d and it is assigned a numerical value between 0, 20, 40 or 80 depending on whether there is an environmental problem that may affect mining.

to a 20 as they had been the year before, and advised the Assessor accordingly. *Id. at p. 320.* This change in environmental factors resulted in an increase in the “T-Score” values in some reserve coal properties, including Appellees’ properties. *Id. This determination was made after the books had been delivered to the Board, thus, the corrections could not be made without the Board’s approval. Id. at pp. 309-311.*

Subsequently, the Taylor County Commission accepted the testimony of Mr. Scott Burgess on behalf of the State Tax Commissioner that the correct assignment of the “T-Score” resulted in the new assessment for Appellees’ properties. *Id.* Correction of the State Tax Commissioner’s errors in the assignment of the “T-Score” for certain of the reserve coal properties in question resulted in the revised appraisals. *Joint App. Volume II. p. 346.* Subsequently, the Board ordered the revisions to Appellees’ tax accounts for natural resource properties that are subject to this appeal.

At this hearing, David Goddard, counsel for ICG and Coalquest, again argued against the procedures used to bring these matters before the Board, particularly the Assessor’s failure to go to the West Virginia Property Valuation Training and Procedures Commission to change the State Tax Department reserve coal appraisals. *Joint App. Volume II. p. 330.* Mr. Knight testified that there was no reason for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission because she had already accepted the appraisals of the Tax Commissioner. *Id. at pp. 330-31.*

The Board also decreased the values of several tax accounts in the active mine filings of Coalquest. *Joint App. Volume I. p. 22.* These accounts were not part of the appeal filed by Coalquest, but when later pressed at the Circuit Court hearing on January 12, 2012, regarding

the appeals in these cases, counsel for Coalquest stipulated they should be restored to the values set by the State Tax Commissioner. *Joint App. Volume VII. pp. 1254-1319.*

The specific facts and the procedural history for each of the underlying cases are as follows:

c. Civil Action No. 10-P-11

Eastern Royalty, LLC, as successor to West Virginia Coal Mine, LLC (“Eastern Royalty”), is the owner of certain reserve coal properties located in Taylor County, West Virginia. *Joint App. Volume I. p. 6.* Prior to February 1, 2010, the Assessor completed her assessment of Eastern Royalty’s property and made up her official copy of the land books based upon the appraisal amount of \$119,634 provided to her by the State Tax Commission. *Id.* Thereafter, Eastern Royalty (West Virginia Coal Mine, LLC at the time) was noticed of a proposed increase in the 2010 appraisal by notice of a hearing before the Board at 9:00 A.M. on Monday, February 22, 2010. *Id.* The proposed increase in assessment was from \$119,634 to \$1,449,447. The Board ordered the increase in value to \$1,449,447 after the hearing. *Id.*

On February 22, 2010, a hearing was held before the Board where all parties appeared and were given the opportunity to protest the proposed changes. *Joint App. Volume I-II. pp. 35-304.* Subsequently, the Board adopted the testimony of Mr. Scott Burgess with the State Tax Commissioner for the corrected values. *Joint App. Volume II. pp. 308-11, 318-30.*

On March 18, 2010, Eastern Royalty filed its “Petition for Administrative Agency Appeal” and a hearing was held before the Circuit Court on January 12, 2012. *Joint App. Volume IV. p. 780.* On February 24, 2012, the Circuit Court entered an order finding that the hearing before the Board was held in violation of statutory provisions and made upon unlawful procedures. *Id. at pp. 817-823.* The Circuit Court ordered that Eastern Royalty’s property for

the tax year 2010 was the value as appraised by the State Tax Commissioner and initially placed in the Taylor County real property book and submitted to the Board by the Assessor. *Id.* On March 6, 2012, Circuit Court entered an Order granting the Assessor/County Commission's Motion to Substitute Counsel. *Id. at pp. 824-29.* The same day, Appellants filed a Motion to Alter/Amend Judgment. *Id. at pp. 830-47.*

d. Civil Action No. 10-P-12 and 10-P-13

Coalquest Development, LLC ("Coalquest"), is the owner of certain reserve coal properties in Taylor County, West Virginia. At issue are six (6) Coalquest Tax Accounts.⁴ *Joint App. Volume I. p. 7.* After holding a hearing on February 12, 2010 to hear evidence and arguments regarding these tax accounts, the Board voted to increase the State Tax Department appraisals for tax accounts 46-04-9999-0000-1130-0000, 46-03-9999-0000-7540-0000, 46-03-9999-0000-7750-0000 and to decrease the appraisal for tax account 46-05-9999-0000-4000-0000. *Id.* In a letter signed and dated March 2, 2010, the Board ordered the revisions to the four Coalquest tax accounts for the year 2010. *Id. at p. 9.* The total increase in assessments for these six (6) Coalquest Tax Accounts was \$7,147,056. *Id.*

Patriot Mining Company, Inc. ("Patriot") is the owner of certain reserve coal properties located in Taylor County, West Virginia. *Id. at p. 9.* This appeal centers on tax account 46-06-9999-0000-2850-0000. *Id.* After holding a hearing on February 22, 2010, in a letter signed and dated March 2, 2010, the Board ordered the appraisal for Patriot's tax account 46-06-9999-0000-2850-0000 to be increased from \$13,791 to \$153,586. *Id.*

⁴ 46-04-9999-0000-1130-0000, 46-03-9999-0000-7540-0000, 46-05-9999-0000-4000-0000, 46-03-9999-0000-7750-0000, 46-07-9999-0000-0430-0000, and 46-05-9999-0000-3610-0000.

Coalquest and Patriot filed civil actions 10-P-12 and 10-P-13. They are related companies with almost identical arguments and they were represented by the same counsel, therefore, the Board heard all arguments at the same time on February 12, 2010 and February 22, 2010. *Joint App. Volume I-III. pp. 35-471*. In a letter signed and dated March 2, 2010, the Board ordered the revisions to both Coalquest and Patriot's tax accounts. *Joint App. Volume I. p. 8*.

On March 22, 2010, the Petition for Administrative Appeal was filed in both cases. *Joint App. Volume V. pp. 877-87, 1001-08*. On March 6, 2012, the Circuit Court entered an Order granting the Assessor/County Commission's Motion to Substitute Counsel. *Joint App. Volume V-VI. pp. 960-61, 1064-68, 1071-77, 1084-93*. On March 9, 2012, Coalquest and Patriot filed their Proposed Order regarding its Petition and on April 3, 2012, Appellants filed a Brief in Response to the Proposed Order.

e. Civil Action No. 10-P-14

Trio Petroleum Corporation, Waco Oil & Gas, Inc. and Mike Ross, I.L. Morris & Mike Ross, Inc. ("Trio") are the owners of 2 tracts of real property, set forth in 6 property accounts.⁵ *Joint App. Volume I. p. 10*. On February 13, 2010, the Board mailed Trio notice of its intent to consider new proposed valuations and that the hearing would be held on February 22, 2010. *Id.* At the conclusion of the February 22, 2010 hearing, a decision was rendered by the Board. *Id.* at p. 11. Trio's assessment by the Board was \$3,125,891.00 more than the initial value provided by the State Tax Commissioner to the Assessor. *Id.*

⁵ 46-06-9999-0000-1030-0000, 46-06-9999-0000-0390-0000, 46-06-9999-0000-1010-0000, 46-06-9999-0000-1840-0000, 46-06-9999-0000-2770-0000, and 46-06-9999-0000-3130-0000.

On February 22, 2010 hearings were held before the Board and taxpayer Trio appeared and it was given the opportunity to protest the proposed changes of the ad valorem tax assessment of its subject property. *Joint App. Volume I-III. pp. 35-471.* Subsequently, the Board rendered a decision adopting the new proposed valuations. *Id.*

On March 22, 2012, Trio filed its Petition for Administrative Agency Appeal. *Joint App. Volume VI. pp. 1109-1119.* On March 6, 2012, the Circuit Court entered an Order granting the Assessor/County Commission's Motion to Substitute Counsel. *Id. at pp. 1160-61.* On March 14, 2012, Trio filed its Proposed Order regarding its Petition and on March 27, 2012, Appellants filed a Brief in Response to the Proposed Order. *Id. at pp. 1162-78.*

f. Civil Action No. 11-P-17 / Board Hearing on February 28, 2011

Coalquest, is the owner of certain reserve coal properties located in Taylor County, West Virginia. *Joint App. Volume I. p. 15.* Fourteen (14) 2011 Coalquest tax accounts were at issue in this appeal.⁶ *Id. at p. 16.* Coalquest received notice of a proposed increase on the fourteen accounts on February 18, 2011, and the notice also advised that a hearing would be held on February 28, 2011. *Id.*

The Board initiated the February 28, 2011 hearing because the values on the property books for tax year 2011 for these fourteen (14) tax accounts were far below the values for tax year 2010. *Joint App. Volume III. P. 478.* The Board had requested review of all coal properties in the county, however, the subject accounts were the only ones that had blatant errors by the State Tax Commissioner in the application of the Legislative Rules. *Joint App. Volume III. pp.*

⁶ 46-07-9999-0000-0260-0000, 46-07-9999-0000-0430-0000, 46-07-9999-0000-8300-0000, 46-03-9999-0000-7540-0000, 46-03-9999-0000-7750-0000, 46-04-9999-0000-1130-0000, 46-03-9999-0000-1520-0000, 46-03-9999-0000-4630-0000, 46-03-9999-0000-7420-0000, 46-03-9999-0000-7970-0000, 46-03-9999-0000-2440-0000, 46-03-9999-0000-2450-0000, 46-03-9999-0000-3200-0000, and 46-04-9999-0000-5890-0000.

472-779. At the hearing before the Board on February 28, 2011, all parties appeared and were given the opportunity to protest the proposed changes.

During the February 28, 2011 hearing, the Board heard arguments in favor of increasing the appraisals submitted by the State Tax Commissioner on the 14 accounts set forth above. *Id.* Arguing against the Board's proposed increases at the February 28, 2011 hearing were Coalquest and the West Virginia State Tax Department. *Id.*

During this hearing, several individuals appeared on behalf of the West Virginia State Tax Department: Jan Mudrinich, attorney for the West Virginia State Tax Department, Michael Marlow, an attorney for the West Virginia State Tax Department, Jeffrey Kern, employee of Research Technologies Corporation, a consultant for the West Virginia State Tax Department, Tyler Bragg, GIS Program Analyst with the West Virginia State Tax Department, and Pat White, an employee of the West Virginia State Tax Department. *Id.*

In its Final Order, the Circuit Court found "Mr. Burgess' presence [at the February 12 and 22, 2010. Hearings] without any type of representation highly suspect" and that "regardless of whether Mr. Burgess did or did not have authority from the State Tax Commissioner to be present, the Court finds he had no authority under law to make changes to override the appraisal of the Tax Commissioner, or to usurp the jurisdiction of the Property Valuation Training and Procedures Commission." *Joint App. Volume I. pp. 28-29.* The Circuit Court also stated in its Final Order that "given the numerous procedural defects and extremely short notice on changes in the appraisals regarding significant and complex issues, this Court would entertain a motion to develop the issues of the actual/apparent agency of Scott Burgee should this matter be reversed on appeal for consideration on the substantive issues, as the Court believes it would be improper to accept that Scott Burgess had actual authority from the State Tax Department when

considering the substantive issues set forth below having viewed the allegations against Mr. Burgess in the February 28, 2011 transcript.” *Id. at pp.30-31*⁷.

The Board corrected errors made by the State Tax Department in assigning the prime coal bed and the environmental factors that comprised the “T-Score.” *Joint App. Volume III. pp. 576-77, 608-14*. The Board corrected the misapplication of the Model contained within the Legislative Rule. *Id. at pp. 567-68*. The Board relied on Jerry Knight, an expert and former Director of Property Tax Division of the State Tax Department, who not only was the primary drafter of the Legislative Rules, but testified that the State Tax Department failed to follow such Rules. *Id. at pp. 485-91, 567-69*. The State Tax Department’s own expert, Jeffrey Kern recognized at the 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.” *Id. at pp. 523-24*.

The Board was required to bring values of the Appellees’ properties in compliance with the applicable Legislative Rules. *Id. at pp. 576-77*. The Board accurately valued, consistent with the Legislative Rules, the properties that were erroneously valued by the State Tax Commissioner, at less than one-tenth (1/10) of their actual values. *Id. at pp. 569-72, 576-77; W. Va. Code § 11-3-24*. The Board’s action was a move toward equality with similar properties. W. Va. Const. Art. X, §1. Therefore, the Board corrected the misapplication of the RCVM contained within the Legislative Rules.

The Board also applied the black and white definition of the Legislative Rules. *Id. at pp. 529-31*. The Middle Kittanning seam is an active coal bed and valued as such by the State Tax

⁷ The 2010 and 2011 Board hearings were conducted on different tax accounts. However, the Circuit Court comingled the evidence from all hearings when reaching its decision. *Joint App. Volume I. pp. 4-34*. Appellants will address his Final Order by doing the same.

Department. *Id.* Pursuant to 110 CSR 11.4.2, “Prime Coal Bed” assignment is served solely for reserve coal beds. *Id. at pp. 502-03.* The Board did not accept the misapplication of the State Tax Department’s own rule. *Id. at pp. 529-33, 610-11, 622;* 110 CSR 11.4.2.3.14 permits a percentage reduction in value of adjoining seams based on the percentage of *actual* undermining and overmining of those seams. The State Tax Department’s witness, Jeffrey Kern, testified that as of July 1, 2010, no mining had occurred on the seam immediately above or immediately below the subject seams. *Id. at pp. 515-20.* Thus, Board corrected the values of the subject properties to comply with the Legislative Rules and the Board’s actions brought the appraisals into compliance with the Legislative Rules. *Id. at pp. 529-33, 610-11, 622.*

Appellees’ own expert, Jeff Schaffer, who is Coalquest’s project manager of all Tygart Reserves, and who is more than intimately familiar with the actual plans and operations of the Tygart 2 property, testified to the timetable of the mining operation. *Id. at pp. 569-72.* Mr. Schaffer testified that it would be subject to mining within twelve (12) to fourteen (14) years. *Id.* The State Tax Commissioner valued the subject property as if it would not be subject to mining for forty (40) years. *Id. at pp. 576-77.*

In an Order dated March 1, 2011, the Board ordered the revisions to the fourteen (14) Coalquest reserve coal property tax accounts for tax year 2011, with a total increase of \$9,095,569. *Id. at p. 22.* The March 1, 2011 Order also decreased the values of several tax accounts in the “active” mine filings of Coalquest, which were not a part of the appeal filed by Coalquest. *Id. at p. 23.*

On March 22, 2012, the Circuit Court entered an Order granting the Petition for leave to file a petition for administrative agency appeal. *Joint App. Volume VI. pp. 1192.* On March 13, 2012, the Circuit Court entered an Order granting the Assessor/County Commission’s Motion

to Substitute Counsel. *Id. at pp. 1224-28.* On March 9, 2012, Coalquest filed its Proposed Order regarding its Petition and on April 3, 2012, Appellants filed the Brief in Response to the Proposed Order. *Id. at pp. 1217-23, 1231-40.*

IV. SUMMARY OF ARGUMENT

The Circuit Court erred in its Final Order reversing the Five decisions by the Board and ordering that the assessments be returned to the initial values provided by the State Tax Commissioner and recorded upon the land books in Taylor County, West Virginia. The Circuit Court's Final Decision was also made under the misapprehension of the law. "The tax commissioner is the state official ultimately responsible for ensuring equitable assessment in this state." Syl. Pt. 4, *State ex rel. Rose v. Fewell*, 170 W. Va. 447, 294 S.E.2d 434 (1982). The record clearly shows that the Board accepted the corrected values recommended by the State Tax Commissioner.

The Circuit Court erred in ruling in the Final Oder that, as a matter of law, under W. Va. Code §11-1C-7a, 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." *Joint App. Volume I. p. 28.* 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. *See Syl. Pt. 2, in part, In re Property of Righini*, 197 W. Va. 166, 475 S.E.2d 166 (1996) (The assessor and county commission have the ultimate authority and responsibility of determining the true and actual value of real and personal property.).

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. The Circuit Court erroneously concluded in the Final Order that, as a matter of law, under W. Va. Code §11-1C-10(g), that the only way to change the assessed value of Appellees' reserve coal property was for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission.

For purposes of property taxation, *In re Property of Righini*, 197 W. Va. 166, 475 S.E.2d 166 (1996) does not leave any doubt that under the West Virginia Constitution, Art. IX, § 1, and the provisions W. Va. Code §§11-3-1 and 24, the Assessor and the Taylor County Commission have the ultimate legal authority to establish the true and actual value of all real and personal property within the county, including that of all natural resources properties.

Accordingly, pursuant to W. Va. Code §11-2-6 the Assessor properly hired Mr. Knight as a consultant and he inquired of the State Tax Department about the reserve coal property values. At the Board hearings, no proof was offered by Appellees that the applicable regulations and methodologies were disregarded. Experts in this field testified that the new values were in accordance with the Legislative Rules. Thus, the values adopted by the Board brought the values in conformity with the regulations. Because the Assessor accepted the appraisal provided by the State Tax Commissioner and corrected errors based on the testimony of an employee of the State Tax Commissioner, she was not required to propose a separate valuation method that would necessitate her presenting a plan to the Property Valuation and Training Commissioner pursuant to W. Va. Code §11-1C-10(g).

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 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 Taylor County Commission arbitrarily accepted the values proposed by the State Tax Commissioner and supported by the Assessor.

Therefore, Appellants respectfully request that this Court reverse the Circuit Court's Final Order and affirm the values of the Appellees' property as determined by the Taylor County Commission for Tax Years 2010 and 2011.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Appellants request an oral argument under Rule 20 of the *Revised Rules of Appellate Procedure* because this case involves questions of first impression under the West Virginia Constitution, Art. IX, § 1, W. Va. Code §11-1C-10(g), W. Va. Code §§11-3-1 and 11-3-24, and because Appellants believe that the decisional process would be significantly aided by oral argument.

VI. STANDARD OF REVIEW

Generally, a multifaceted standard of review is applicable to decisions of a circuit court: "This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to *findings of fact under a clearly erroneous standard; conclusions of law are reviewed de novo.*" (Emphasis added).

Century Aluminum of W. Va., Inc. v. Jackson County Comm'n, 2012 W. Va. LEXIS 284, 10-11 (W. Va. May 29, 2012)(citing Syl. pt. 4, *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996)). See Syl. Pt. 1, *In re Tax Assessment of Foster Foundation's Woodlands Ret. Cmty.*, 223 W. Va. 14, 672 S.E.2d 150 (2008). Accord Syl. pt. 2, *Walker v. West Virginia Ethics Comm'n*, 201 W. Va. 108, 492 S.E.2d 167 (1997) ("In reviewing challenges to the findings and

conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review.”).

[J]udicial review of a decision of a board of equalization and review regarding a challenged tax assessment valuation is limited to roughly the same scope permitted under the West Virginia Administrative Procedures Act, W. Va. Code ch. 29A. In such circumstances, a circuit court is primarily discharging an appellate function little different from that undertaken by this Court; consequently, our review of a circuit court's ruling in proceedings under § 11-3-25 is de novo.

In re Tax Assessment Against Am. Bituminous Power Partners, L.P., 208 W. Va. 250, 255, 539 S.E.2d 757, 762(2000). *Cf. Wheeling-Pittsburgh Steel Corp. v. Rowing*, 205 W. Va. 286, 293, 517 S.E.2d 763, 770 (1999).

“[W]hen the taxpayer has appeared before the Board of Equalization and Review, judicial review by the circuit court and by this Court will be limited. Assessments fixed by the assessor or by the Board of Equalization and Review will not be set aside if there is substantial evidence to support them.” *In re Tax Assessment Against Am. Bituminous Power Partners, L.P.*, 208 W. Va. 250, 255, 539 S.E.2d 757, 762(2000). *See also* Syl. Pt. 3, *Western Pocahontas Properties, Ltd., supra* (“An assessment made by a board of review and equalization and approved by the circuit court will not be reversed when supported by substantial evidence unless plainly wrong.”)

A finding [of fact] is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's

account of the evidence is plausible in light of the record viewed in its entirety.

Woo v. Putnam County Bd. of Educ., 202 W. Va. 409, 413, 504 S.E.2d 644, 648 (1998) (citing Syl. pt. 1, in part, *In the Interest of Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996).

VII. ARGUMENT

A. THE ASSESSOR AND THE TAYLOR COUNTY COMMISSION HAVE STATUTORY ROLES TO FULFILL IN THE ASSESSMENT OF NATURAL RESOURCE PROPERTIES.

The Assessor's legal duties are provided in W. Va. Code §§11-1C-1, *et seq.*, §§11-2-1, *et seq.*, and §§11-3-1, *et seq.* The State Tax Commission has been charged with the valuation of all minerals, including coals reserves. *Joint App. Volume I. p. 24.* W. Va. Code §11-2-6 states, in part:

It shall be his duty to examine and revise the lists of property taken by his deputies to see that the assessment is equal and uniform throughout his county; and if in his opinion any property, real or personal, in any of such lists, is valued at more or less than its value, according to the rule prescribed by law, he shall correct the same by giving to such property its value according to such rule. If it should appear that any property liable to taxation has been omitted from any taxpayer's list, the assessor shall list and value the same.

Pursuant to W. Va. Code §11-1C-10(d)(2), the State Tax Commissioner is required to appraise natural resources properties for ad valorem property taxation purposes. *Joint App. Volume II. pp. 309-11.* The reserve coal appraisals are to be conducted in conformity with requirements of the Legislative Rules, which requires the State Tax Department to develop a Unit Value for all coal properties in the State and to allocate a portion of such unit value to each reserve coal seam based upon the seam's probable time of mining. *Id.*

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.* The duties of the Board are stated in W. Va. Code §11-3-24. *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.

In its Final Order, the Circuit Court ruled as a matter of law, under W. Va. Code §11-1C-7a, 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.” *Joint App. Volume I. p. 28.* 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.

Very similar arguments were made by the taxpayer with regard to the assessment of natural resources property in *In re Property of Righini*, 197 W. Va. 166, 475 S.E.2d 166 (1996) under W. Va. Code §11-1C-10 and this Court completely rejected the taxpayer’s argument in that case. In Syllabus Point 1, this Court stated that “[t]he county commission’s power to “fix property” at its true and actual value, pursuant to W. Va. Code § 11-3-24 (1979), includes the power to increase or decrease the value, which in turn, includes the power to rescind the certification made by the Division of Forestry of managed timberland, because that certification affects the value of property.”

This Court then discussed the authority of the County Assessor and County Commission to review all property values under W. Va. Code §§ 11-3-1 and 24 as follows:

We do not agree that W. Va. Code 11-1C-11 (1990) represents the legislative expression that vests managed timberland assessment authority in the Division of Forestry. This statutory provision authorizes the Division of Forestry to assist other taxing authorities in the managed timberland certification process, but does not preempt the assessor and county commission from their ultimate authority and responsibility of determining the true and actual value of real and personal property.¹⁷ If the Legislature intended W. Va. Code 11-1C-11 to endow the Division of Forestry with such authority so as to replace the assessor and the county commission in its assessment role, then the Legislature can and should have clearly indicated their intention to do so. (footnote omitted).

¹⁷ W. Va. Code 11-1C-10(g) (1994) prescribes the evaluation of natural resources property, including managed timberland, that provides the protocols for an assessor to question the appraisal of the natural resources property. However, that statutory provision has not been cited or relied upon by the parties as being relevant to the resolution of the issues in this case.

197 W. Va. at 171, 475 S.E.2d at 171.

In this case, we can substitute the arguments of the Appellees under W. Va. Code §11-1C-10 that the valuation of the State Tax Department is sacrosanct and that neither the Assessor or the Taylor County Commission have any authority to alter the property values set by the State Tax Department. *In re Property of Righini* involved the assessments of managed timberland, which is defined in W. Va. Code §11-1C-10(a)(2) as a natural resource. Accordingly, for purposes of property taxation, *In re Property of Righini* is based upon the assessment of a natural resources property, the same type of property as reserve coal. Therefore, *In re Property of Righini* does not leave any doubt that 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.

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. The Circuit Court erroneously concluded that, as a matter of law, under W. Va. Code §11-1C-10(g), that the only way to change the assessed value of Appellees' reserve coal property was for the Assessor to apply to the West Virginia Property Valuation Training and Procedures Commission.

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.*

With the volume of tax accounts related to natural resources property and those types of error rates, the Assessor and Taylor County Commission would be remiss in failing to hire an independent consultant to review the actions of the State Tax Commissioner. In this case, the Assessor contacted consultant Jerry Knight to assist her in reviewing the natural resource

property tax account values for accuracy and correctness. *Id.* Mr. Knight is a former Director of Property Tax Division of the State Tax Department and Mr. Knight is one of the leading experts in the State Tax Department's Coal Valuation Methodology. *Id.* Mr. Knight brought several glaring differences in values from the prior year to the Assessor's attention. *Id.* Mr. Knight then discussed these changes with Mr. Scott Burgess, the Assistant Director of the Property Tax Division and he agreed that there were errors made by the State Tax Department. *Id. at 308, 315, 318-19.*

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. 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. As a matter of law, this Court should reverse that decision.

The Circuit Court reviewed the Assessor and Taylor County Commission's conduct regarding the 2010 and 2011 hearings and concluded that they were "founded upon unlawful procedures" and failed to follow "mandatory statutory guidelines." *Joint App. Volume I. at p. 32.*

The Taylor County Commission County Commission corrected the misapplication of the RCVM 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 also applied the black and white definition of the Legislative Rules. *Id. at pp. 529-31.* The Middle Kittanning seam is an active coal bed and valued as such by the State Tax Department. *Id.* Pursuant to 110 CSR 11.4.2, “Prime Coal Bed” assignment is served solely for reserve coal beds. *Id. at pp. 502-03.* The Taylor County Commission did not accept the misapplication of the State Tax Department’s own rule. *Id. at pp. 529-33, 610-11, 622;* 110 CSR 11.4.2.3.14 permits a percentage reduction in value of adjoining seams based on the percentage of *actual* undermining and overmining of those seams. The State Tax Department’s witness, Jeffrey Kern, testified that as of July 1, 2010, no mining had occurred on the seam immediately above or immediately below the subject seams. *Id. at pp. 515-20.* Thus, 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 Taylor County Commission was required to bring values of the Appellees’ 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 had requested review of all coal properties in the county; however, Coalquest's accounts were the only ones that had blatant errors made by the State Tax Commissioner in the application of the Legislative Rules.

Jeff Schaffer, who is the project manager of all Tygart Reserves, and who is more than intimately familiar with the actual plans and operations of the Tygart 2 property, testified to the timetable of the mining operation. *Id. at pp. 569-72.* Mr. Schaffer testified that it would be subject to mining within twelve (12) to fourteen (14) years. *Id.* The State Tax Commissioner valued the subject property as if it would not be subject to mining for forty (40) years. *Id. at pp. 576-77.* Generally, "anyone having special knowledge of real estate, such as the owner, who may have some peculiar qualification or more knowledge than jurors are ordinarily supposed to possess, can generally express an opinion as to its value." *Leftwich v. Wesco Corporation*, 146 W. Va. 196, 208, 119 S.E.2d 401, 408-09 (1961).

In effect, 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, as testified under oath and subject to cross examination, by the Project Manager of all Tygart Reserves for Appellees. *Id.* Accordingly, the Taylor County Commission's action was a move towards equality with similar properties. W. Va. Const. Art. X, §1.

Thus, the values adopted by the Taylor County Commission brought the values in conformity with the regulations. Because the Assessor accepted the appraisal provided by the State Tax Commissioner as corrected for errors based on the testimony of an employee of the State Tax Commissioner, she was not required to propose a separate valuation method that would necessitate her presenting a plan to the Property Valuation and Training Commissioner pursuant to W. Va. Code §11-1C-10(g). *Joint App. Volume I. pp. 163-66.*

[T]he County Commission, which is responsible for reviewing challenges regarding the amount of property tax assessments. The Legislature requires all county commissions to annually sit as a board of equalization and review “for the purpose of reviewing and equalizing the assessment made by the assessor.” *W. Va. Code* § 11-3-24 (1979) (Repl. Volume 2008).

In re Tax Assessment of Foster Foundation's Woodlands Ret. Cmty., 223 W. Va. 14, 20, 672 S.E.2d 150, 156 (2008).⁸

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 Appellees’ properties as a matter of law.

B. THE CIRCUIT COURT ERRED IN RULING 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 APPELLEES’ NATURAL RESOURCE PROPERTIES WAS FOR THE ASSESSOR TO APPLY TO THE WEST VIRGINIA PROPERTY VALUATION TRAINING AND PROCEDURES COMMISSION.

⁸ “*W. Va. Code* § 11-3-24 is valid on its face. Accordingly, we hold that *W. Va. Code* § 11-3-24 (1979) (Repl. Volume 2008), which establishes the procedure by which a county commission sits as a board of equalization and review and decides taxpayers' challenges to their property tax assessments, is facially constitutional.” *In re Tax Assessment of Foster Foundation's Woodlands Ret. Cmty.*, 223 W. Va. at 24, 672 S.E.2d at 160.

Pursuant to W. Va. Code §11-1C-10 (d)(2), the State Tax Commissioner is required to appraise natural resources properties for ad valorem property taxation purposes. The reserve coal appraisals are to be conducted in conformity with requirements of the Legislative Rules, which requires the State Tax Department to develop a Unit Value for all coal properties in the State and to allocate a portion of such unit value to each reserve coal seam based upon the seam's probable time of mining. 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 Appellees' reserve coal properties in question. *Joint App. Volume I-III. pp. 35-471.*

Subsequently, the Board accepted the testimony of Mr. Scott Burgess an employee of the State Tax Commissioner that the correct assignment of the "T-Score" resulted in the new assessment for the Appellees' 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.*

The record indicates that the Board's decision brought the values of the Appellees' 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 (1982). "The tax commissioner is the state official ultimately responsible for ensuring equitable assessment in this state." Syl. Pt. 4, *State ex rel.*

Rose, supra. 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).

However, 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 Taylor County Commission 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 Rules and the Taylor County Commission’s actions brought the appraisals into compliance with the Legislative Rules. *Id.* 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.*

Therefore, Appellants respectfully request this Court to reverse the Circuit Court's Order and to affirm the values of the Appellees' property as determined by the Taylor County Commission for Tax Years 2010 and 2011.

VIII. CONCLUSION

WHEREFORE, Appellants 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 Appellees' 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,**

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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, Appellants,**

v.

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

and

**Coalquest Development, LLC, Petitioner Below,
Appellee,**

and

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

and

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

and

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

CERTIFICATE OF SERVICE

I, Webster J. Arceneaux, III, counsel for Appellants Judith Collett, Assessor of Taylor County, and the County Commission of Taylor County does hereby certify that on this 18th day of September, 2012, I served a copy of the foregoing “**APPELLANTS’ BRIEF**” by depositing the same to them in the U. S. Mail, postage prepaid and sealed in an envelope upon:

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Webster J. Arceneaux, III (WV Bar No. 155)