

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 46-023-15-1-5-01806-16
Petitioner: J. Charles Sheerin
Respondent: LaPorte County Assessor
Parcel No.: 46-01-22-104-006.000-023
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. Sheerin contested the 2015 assessment of his property located on Lakeshore Drive in Long Beach. The LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant lot at \$132,000.
2. Sheerin filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on the petition beginning on June 21, 2017. After the Assessor’s evidentiary presentation, Sheerin moved for a continuance. Our ALJ took the motion under advisement. We subsequently granted Sheerin’s continuance request over the Assessor’s objection. After three additional continuances, we denied a final continuance request from Sheerin and concluded the hearing on July 24, 2018.
3. Sheerin appeared pro se. Bradley Adamsky appeared as counsel for the Assessor. Sheerin, LaPorte County Assessor Michael Schultz, Chief Deputy Assessor Stacey Sweitzer, and appraiser Patrick Troy were sworn as witnesses.¹

RECORD

4. The official record for this matter contains the following:

Petitioner Exhibit 1: Map of Long Beach

Respondent Exhibit 1: Notice of Hearing

¹ At the July 24, 2018 hearing, only Mr. Schultz was sworn as a witness for the Assessor. Marina B. Sheerin was present at both hearings, but was not sworn and did not testify.

Respondent Exhibit 2:	Property Record Card
Respondent Exhibit 3:	Appraisal Report from Troy Appraisals, LLC
Respondent Exhibit 4:	E-mail from Lawrence P. Wall
Respondent Exhibit 5:	Listing summary

- The record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

PENDING MOTION

- Toward the end of the second day of the hearing, Sheerin made an oral motion requesting that our ALJ personally inspect his property and the comparable properties relied on by Troy in his appraisal. We deny Sheerin's request. While the Board may inspect a property that is the subject of a petition for review, we are not required to do so. *See* Ind. Code § 6-1.1-15-4(b) ("If the Indiana board conducts a site inspection of the property as part of its review of the petition, the Indiana board shall give notice to all parties of the date and time of the site inspection.") And Sheerin pointed to no authority permitting us to inspect properties that are not before us on a petition for review.

OBJECTIONS

- Sheerin objected to the admission of Respondent Exhibit 3, the appraisal from Troy Appraisals, LLC, because he contends: (1) the appraisal is hearsay; (2) Troy included an inaccurate description of a photograph of Sheerin's property; and (3) the Assessor did not present it at the PTABOA hearing.
- We overrule the objection. Indiana Code § 6-1.1-15-4(p) states that we cannot exclude appraisals on hearsay grounds. Sheerin's second contention (regarding the photograph) fails no better because the appraisal is relevant and material regardless of whether Troy's description of one photograph was inaccurate. And Sheerin is mistaken in his belief that the appraisal needed to be offered at the PTABOA hearing to be admissible in a hearing before us. *See* 52 IAC 2-7-1 ("[A] party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county PTABOA.")
- Sheerin also objected to Respondent Exhibit 5, a listing summary for Sheerin's property, because a listing price is not equivalent to market value, and the listing describes his property as buildable when it would take an engineer to determine whether that is actually true. In response, the Assessor agreed that a listing price is not equivalent to market value and pointed out that Sheerin was in fact advertising the property as a buildable lot. Our ALJ overruled the objection and admitted the exhibit. Because we find the exhibit to be at least marginally relevant to the ultimate valuation issue, we adopt her ruling.

10. Both parties also made objections to questions posed to witnesses or to their testimony in response. Most of those objections were on relevance grounds, while others dealt with the form of the questions or that certain questions went beyond the scope of direct examination. We need not revisit most of those objections, and we adopt the ALJ's rulings.
11. However, during the July 24, 2018 portion of the hearing, the Assessor objected to Sheerin's testimony concerning the actions of the PTABOA because a hearing before the Board is *de novo*. Our ALJ did not rule on the objection. While we agree that what happens at a PTABOA hearing is generally irrelevant given that our hearings are *de novo*, there was some useful background information about lots adjacent to his property interspersed with his testimony about the PTABOA hearing. We therefore overrule the objection.
12. Finally, our ALJ sustained Sheerin's objection to answering a question seeking to find out what price he sold the property for on relevancy grounds. Given that the purchase price of a property can be the best evidence of a property's value, we would generally overrule such an objection. However, since the sale took place more than two years after the relevant valuation date, it is unlikely the purchase price would have been probative evidence of the property's market value-in-use absent a time adjustment. Moreover, the Assessor could have made an offer of proof, or he could have independently offered evidence of the purchase price. We therefore adopt our ALJ's ruling sustaining the objection.

BURDEN OF PROOF

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b). In this case, the Assessor conceded he has the burden of proof.

SUMMARY OF CONTENTIONS

14. The Assessor's case:
 - a. The property's original 2015 assessment was \$220,000. Sheerin successfully appealed that value to the PTABOA and had it reduced to \$132,000. Sheerin desired a lower value, however, and filed a petition with the Board. While the appeal was pending and prior to the Board's hearing, the Michigan Township Assessor agreed to a value of \$99,000. The Assessor did not agree to that value, and the Township

Assessor was supposed to contact Sheerin to inform him that the settlement agreement was invalid. The Assessor thinks that the 2015 assessment should remain at \$132,000. He is not seeking to raise the assessment. *Schultz testimony; Resp't Ex. 2.*

- b. Patrick Troy, a certified residential appraiser, prepared an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), valuing the property at \$160,000 as of January 1, 2015. *Troy testimony; Resp't Ex. 3.*
- c. Sheerin’s property is located in the Long Beach neighborhood. The neighborhood is approximately 70% developed, and there are limited vacant land sales available in the immediate area. Troy relied on a limited visual inspection of the property. He did not walk the property, nor did he access the rear of the property because he did not have permission to do so. He described the property as having a “severe slope” that is “fairly typical” for dune lots throughout the Long Beach area. *Troy testimony; Resp't Ex. 3.*
- d. Troy relied solely on the sales comparison approach to value the property. He selected three vacant lot sales from similar neighborhoods that are located nearby. Comparable #1 is in Sheridan Beach, which typically has lower values than Long Beach. Troy therefore made a positive 25% location adjustment to its sale price. Comparable #2 is a hillside lot in Long Beach that is identical in size to Sheerin’s property. Unlike Sheerin’s property, it only has a slight slope and is ready to build on. Troy therefore made a negative 50% adjustment to its sales price to account for the additional construction and excavation costs that it would take to make Sheerin’s property a buildable lot. Those costs can range from \$50,000 to \$200,000 depending on the slope and the amount of excavation work and pilings needed to make a lot buildable. Comparable #3 is located in Duneland Beach. Troy applied a negative 25% location adjustment to account for Duneland’s slightly superior values. He also made a positive 25% adjustment for its inferior site/view, and a negative 10% adjustment for the difference in slope. *Troy testimony; Resp't Ex. 3.*
- e. On January 1, 2015, Sheerin had his property listed for sale for \$199,500. As of June 2016, he had reduced its list price to \$146,500. Troy noted that the list prices support his appraised value of \$160,000. *Troy testimony; Resp't Ex. 3.*
- f. During cross-examination, Troy agreed that Lakeshore Drive provides the only access to the property. He also acknowledged that a town ordinance requires property owners to pay to connect to the sewer system if a property is within 300 feet of an existing sewer, and that there are provisions requiring an owner to provide enough parking for three cars. Troy further acknowledged that there are NIPSCO powerlines and a waterline running across the front of the property. Additionally, Troy admitted that the middle photograph in his appraisal’s photograph addendum, which he labeled as a rear view of the property, actually shows the front of the property from a different angle. *Troy testimony; Resp't Ex. 3.*

15. Sheerin's case:

- a. The property is a 40x150 foot non-conforming lot that has inadequate parking to accommodate three automobiles. While the lot may ultimately be buildable, the cost of doing so would likely be prohibitively expensive. The Assessor's appraiser even admitted that the costs to make the property buildable could be between \$50,000 and \$200,000. In order to keep sand from damaging a structure erected on his lot, one would have to construct expensive retaining walls. And driving pilings into the hillside during construction could create liability issues due to the potential for adverse effects on adjoining properties. Because there is no rear access to the property, all construction access would have to be from the front of the property. Thus, building materials would have to be moved up the front slope with a crane that would have to negotiate the existing power lines. *Sheerin testimony.*
- b. When Sheerin first listed the property, he started with a price of \$200,000 because that is what his neighbors were asking for their two lots. He has since reduced the listing price to \$146,000, but that is simply so there is room to negotiate. Sheerin claims he would actually sell the property for \$97,000. *Sheerin testimony.*
- c. Sheerin has not received any offers on the property in the last two or three years. Prior to that, he had received offers on the property, but they came with two contingencies. The first contingency was that the buyers insisted on having access to an alley that appears on the plat. However, the alley does not actually exist. The second contingency was that Sheerin connect the property to the sewer system. The sewer connection is approximately 100 feet from the property. It would require excavation to the street and the replacement of the older sewer pipe with a newer and better quality pipe. Such an endeavor would cost approximately \$100,000, which is not affordable. These conditions make the property worth far less than its assessed value. *Sheerin testimony.*
- d. Other nearby properties have lower assessed values than the subject property. For example, properties located at 1315 Lakeshore Drive and 1407 Lakeshore Drive have assessments of \$3,000 per front foot, while his property's assessment is at \$5,500 per front foot. *Sheerin testimony.*
- e. Sheerin argues that Troy's comparable sales are not truly comparable to his property because of their topography and location. He claims that, unlike his property, they have access from the rear of the lots that would facilitate easier construction. And none of the comparable sales have slopes as severe as his property. Sheerin also criticized Troy for certifying that he performed a complete inspection of the property when he had not actually inspected the entire property. Additionally, Sheerin maintains that Troy knowingly included incorrect information in the appraisal. Specifically, Sheerin pointed out that the photograph Troy described as being a

picture of the rear view of the property is really just another picture of the front of the property taken from a different angle. *Sheerin testimony*.

- f. Sheerin further contends that the PTABOA's determination is faulty. The president of the PTABOA made a motion to assess the property at \$132,000. His rationale was that if someone bought the two lots to the west of the subject property, then they would definitely want to acquire Sheerin's lot and would be willing to pay \$132,000 for it. Sheerin also argued that the Assessor had no standing to appear before us because he did not appeal the PTABOA's decision. *Sheerin testimony*.

ANALYSIS

16. The Assessor made a prima facie case in support of the assessment, and Sheerin failed to provide any reliable valuation evidence in rebuttal. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for 2015 assessments was March 1, 2015. Ind. Code § 6-1.1-2-1.5(a).
 - c. In support of the assessment, the Assessor primarily offered the Troy appraisal, which values the property at \$160,000 as of January 1, 2015. Troy is a licensed residential appraiser and he certified that his appraisal complied with USPAP. Although Sheerin pointed out some minor flaws with the appraisal, he failed to offer any significant impeachment of Troy's data or analysis. We find the appraisal credible and sufficient

to support the assessment. We therefore turn to examining whether Sheerin offered sufficient evidence to rebut the Assessor's prima facie case.

- d. Sheerin primarily argued that characteristics of his property such as its size, slope, access, parking, and certain utility issues negatively affected its value, but he failed to present any probative market-based evidence quantifying the effect these issues have on the value of his property. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- e. Sheerin did offer some evidence regarding the assessed values of two other properties located along Lakeshore Drive. Taxpayers may introduce assessment comparison evidence to prove the market value-in-use of a residential property as permitted by Ind. Code § 6-1.1-15-18. But a party offering assessment data must also show the properties are comparable using generally accepted appraisal and assessment practices. Because Sheerin failed to do so, his assessment comparison lacks probative value.
- f. Sheerin also claimed that the PTABOA's determination is flawed. However, our proceedings are *de novo*, meaning that we base our decisions on the evidence and arguments offered at our hearings. Thus, a taxpayer's burden is to prove his or her claim to us, not to demonstrate that a PTABOA's determination relied on inaccurate information or faulty reasoning. And we find no merit to Sheerin's argument concerning the Assessor's standing. The legislature specifically assigned county assessors the duty to defend PTABOA determinations that taxpayers appeal to us. *See* Ind. Code § 6-1.1-15-3(b) ("The county assessor is the party to the review under this section to defend the determination of the county board.")
- g. The Assessor made a prima facie case supporting the assessment, and Sheerin failed to rebut the Assessor's case with probative market-based evidence. The Assessor did not request an increase in the assessment. We therefore order no change.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2015 assessment.

ISSUED: January 17, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. . The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>.