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

Petitions:	**46-062-17-1-5-00521-18**
	46-062-17-1-5-00522-18
Petitioner:	**Elijah Haddad**
Respondent:	**LaPorte County Assessor**
Parcels:	**46-02-18-200-016.000-062**
	46-02-18-200-017.000-062
Assessment Year:	**2017**

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Haddad contested the 2017 assessments of two contiguous unimproved parcels located at W. 1000 N. in Michigan City. The LaPorte County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations valuing Parcels 46-02-18-200-016.000-062 and 46-02-18-200-017.000-062 at $7,600 and $6,400, respectively.

2. Haddad filed Form 131 petitions with the Board for both parcels and elected to proceed under our small claims procedures.[1] On July 24, 2018, Ellen Yuhan, our designated administrative law judge ("ALJ"), held a hearing on Haddad's petitions. Neither she nor the Board inspected the properties.

3. Elijah Haddad appeared pro se. Brad Adamsky appeared as counsel for the Assessor. Haddad, Appraiser Louis A. Pezzuto, Deputy Assessor Steven Pawlak, and LaPorte County Assessor Michael Schultz were sworn as witnesses.

RECORD

4. The official record contains the following:

[1] Although Haddad listed himself as the Petitioner, Michiana Lakeshore Properties, LLC owns the two parcels. Haddad testified that he owns the LLC.

Petitioner Exhibit 1:	Appraisal report prepared by Louis A. Pezzuto, dated February 21, 2018[2]
Petitioner Exhibit 1-A:	Appraisal report prepared by Louis A. Pezzuto, dated March 20, 2018
Petitioner Exhibit 2:	CMA Report
Petitioner Exhibit 3:	Request for information e-mail
Petitioner Exhibit 4:	MLS and Beacon website information for properties listed in Petitioner's Exhibit 2
Respondent Exhibit 1:	Notices of Hearing
Respondent Exhibit 2:	Property Record Cards for the subject parcels
Respondent Exhibit 3:	Comparable sales with Property Record Cards and MLS listings
Respondent Exhibit 4:	Printouts from the Beacon website for the subject parcels and an adjacent parcel

5. The official 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.

OBJECTIONS

6. The Assessor objected to Haddad's attempt to offer a recording of the PTABOA hearing held to address the 2017 assessments. The Assessor argued that any issues Haddad might have concerning the PTABOA hearing are irrelevant because our hearings are *de novo.* Our ALJ sustained the objection and we adopt her ruling.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana 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 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).

[2] Petitioner's Exhibit 1 is an appraisal Pezzuto prepared for an adjacent parcel owned by Haddad that is not before us. However, an appraisal Pezzuto prepared for the two parcels that are the subject of this appeal is in the record as an attachment to one of Haddad's Form 131 petitions. Because both parties failed to catch the error and went on to address the contents of the correct appraisal at the hearing as if it was Petitioner's Exhibit 1, we will consider it in our review. For ease of reference, we have listed it as Petitioner Exhibit 1-A.

8. Because Parcel 46-02-18-200-016.000-062's assessment decreased from 2016 to 2017, Haddad has the burden of proof for that parcel. However, Parcel 46-02-18-200-017.000-062's assessment increased by more than 5% from 2016 to 2017. The Assessor therefore has the burden with respect to that parcel.[3]

SUMMARY OF CONTENTIONS

9. Haddad's case:

   a. Haddad purchased the two parcels under appeal at a county tax sale for $250 each in order to clean up the trash the previous owner and the county failed to address. His goal of simply cleaning up the properties has become a more expensive proposition because their assessed values have suddenly increased. *Haddad testimony.*

   b. Haddad presented an appraisal prepared by Louis A. Pezzuto, a certified residential appraiser. Pezzuto certified that he performed his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). In addition to valuing Parcels 46-02-18-200-016.000-062 and 46-02-18-200-017.000-062, however, Pezzuto's appraisal also includes the value of a third parcel owned by Haddad that is not under appeal (Parcel 46-02-18-200-027.000-062). *Haddad testimony; Pezzuto testimony; Pet'r Ex. 1-A.*

   c. Pezzuto relied on the sales comparison approach to value the properties, and estimated the combined market value of all three parcels to be $2,000 as of March 20, 2018. Pezzuto described the parcels as "primarily non-buildable land." He has major concerns about whether the parcels are environmentally sound given the amount of trash present on the sites. Pezzuto also noted that the parcels are in a designated wetland area that would prevent the installation of a septic system on either parcel. *Pezzuto testimony; Pet'r Ex. 1-A.*

   d. Pezzuto complained that the Assessor is comparing Haddad's properties to properties with road frontage. He maintains that Haddad's properties are landlocked because they have no road frontage of their own. Pezzuto also testified at length about a number of comparable sales the Assessor had presented at the PTABOA hearing that the Assessor did not rely on during our hearing. *Pezzuto testimony; Pet'r Ex. 1-A; Resp. Ex. 3.*

[3] Our ALJ preliminarily ruled that the burden of proof was on the Assessor for both parcels under appeal based on the Assessor's representations regarding changes in the parcels' land classifications. However, Haddad did not contest the validity of those changes.

10. The Assessor's case:

    a. The Assessor argued that the valuation changes made to the parcels' assessments were the result of changes made to the amount of acreage receiving a negative 90% influence factor applied to areas designated as wetlands by the Department of Natural Resources. Parcel 46-02-18-200-017.000-062 was initially receiving a negative 90% influence factor on the entire property, but the Assessor adjusted it so it applied only to the area designated as wetlands by the DNR. Conversely, the portion of Parcel 46-02-18-200-016.000-062's land receiving the negative 90% influence factor increased, lowering its assessed value from $8,000 down to $7,600. *Adamsky argument*; *Pawlak testimony; Resp't Exs. 2, 4*.

    b. The Assessor contends that the sales of three comparable properties support the $5,000/acre base rate used to value both parcels' land. The first sale included three parcels purchased by a single buyer on August 21, 2017. The second sale occurred on November 21, 2017, and the third sale closed on June 11, 2018. *Pawlak testimony; Resp. Ex. 3.*

    c. Regarding Pezzuto's appraisal, the Assessor disagreed with the negative $10,000 adjustments Pezzuto made to two of his comparable sales for their supposed lack of road frontage. The Assessor asserted that Haddad owns an adjacent parcel immediately to the north of the two parcels under appeal that provides them with road access. Had Pezzuto not made those adjustments, his two comparable properties would be valued at $12,000 and $12,500. And those values are higher than either of the assessments Haddad is challenging. *Pawlak testimony*.

ANALYSIS

11. Haddad failed to make a prima facie case for reducing Parcel 46-02-18-200-016.000-062's assessment. The Assessor failed to make a prima facie case supporting Parcel 46-02-18-200-017.000-062's assessment, and Haddad failed to make a prima facie case for a reduction below its 2016 assessed value. 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*. For 2017, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).

Parcel 46-02-18-200-016.000-062

c. As discussed above, Haddad has the burden of proof for Parcel 46-02-18-200-016.000-062. In support of his requested assessment, Haddad offered an appraisal prepared by Louis A. Pezzuto, a licensed residential appraiser who certified that he performed his appraisal in accordance with USPAP. However, Pezzuto's appraisal has several serious flaws that make his appraisal unreliable.

d. Pezzuto relied on the sales-comparison approach to develop his opinion of value, concluding to a value of $2,000. But Pezzuto's appraisal lumps three of Haddad's parcels together and only offers an opinion of their combined value. We are therefore unable to discern what portion of the total value he would allocate to any of the three individual parcels. That might not be problematic if we were addressing all three parcels as one economic unit, but one of the parcels Pezzuto included in his valuation is not even before us.

e. Pezzuto's decision to aggregate Haddad's parcels created another significant problem—he appears to have adjusted all three of his comparable sales based on differences between their respective acreages and the combined acreage of all three of Haddad's parcels. Moreover, Pezzuto did not explain the large dollar amounts he adjusted them by. And while we disagree with Pezzuto's characterization of Haddad's properties as landlocked given their access over a contiguous parcel Haddad owns, they clearly do not have road frontage. But he provided no support for the negative $10,000 adjustments he made to Comparable Nos. 1 and 2 for that particular characteristic. As the above examples illustrate, Pezzuto repeatedly failed to provide any meaningful analysis in support of his adjustments. Those failures further detract from the overall reliability of Pezzuto's appraisal.

f. Furthermore, Pezzuto's appraisal values the three parcels as of March 20, 2018, a date more than a year removed from the relevant valuation date. Consequently, Haddad's failure to explain how Pezzuto's valuation opinion relates to the January 1, 2017 valuation date undermines its probative value. *See Long*, 821 N.E.2d at 471 (holding

that a party must explain how their evidence relates to the relevant valuation date for it to have probative value).

g. Because Haddad offered no probative market-based evidence to demonstrate Parcel 46-02-18-200-016.000-062's correct market value-in-use, he failed to make a prima facie case for lowering its assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Parcel 46-02-18-200-017.000-062

h. The Assessor has the burden of proving that Parcel 46-02-18-200-017.000-062's assessment is correct. He argued that the increase in the parcel's assessment was the result of changes made to the amount of acreage receiving a negative influence factor. However, the Assessor's focus on the influence factor is misplaced. To prove that the parcel's assessment is an accurate reflection of its true market value-in-use, the Assessor needed to use market-based evidence. *Eckerling*, 841 N.E.2d at 678.

i. The Assessor did assert that the sales of three purportedly comparable properties support the base rate used to value the parcel, but he provided us with little more than their sale dates. The Assessor did not identify the properties' relevant characteristics or compare them to Haddad's parcel. And he completely failed to explain how any relevant differences affected their values. Thus, the Assessor's sales-comparison approach falls well short of providing the level of analysis the Tax Court has explained is necessary when relying on comparative sales data. *See Long*, 821 N.E.2d at 470-71 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how differences affected value).

j. Because the Assessor failed to make a prima facie case supporting Parcel 46-02-18-200-017.000-062's assessment, Haddad is entitled to have its assessment revert to its 2016 value of $1,300. I.C. § 6-1.1-15-17.2(b); *See also, CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, 1290 (Ind. Tax Ct. 2017) (stating that when the burden has shifted, the reversion applies if "the burden to prove the property's correct assessed value has not been met by either party.") As Haddad's evidence only provides an aggregate valuation, we are unable to determine whether Haddad sought a value lower than the reversion for this particular parcel. Nevertheless, for the reasons discussed above, we conclude that Pezzuto's appraisal is insufficient to make a prima facie case for a further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to Parcel 46-02-18-200-016.000-062's assessment. And we order Parcel 46-02-18-200-017.000-062's assessment reduced to its 2016 value of $1,300.

ISSUED: November 19, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.