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

Petition No.: **73-002-14-1-5-00001**
Petitioner: **Marie Elaine Deaton Living Trust**
Respondent: **Shelby County Assessor**
Parcel: **73-11-08-100-239.000-002**
Assessment Year: **2012**[1]

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

A. Proceedings at the county level

1. The Petitioner, Marie Elaine Deaton Living Trust, by its trustee, Timothy Deaton, filed a Form 130 petition contesting the subject property's 2012 assessment of $116,600.

2. The Shelby County Assessor then unilaterally changed her records to reflect a lower assessment of $90,500, apparently in conjunction with an offer she made to Deaton. The offer had proposed applying a 26% adjustment for obsolescence. *See Resp't Ex. Q; Pet'r Ex. 4*.

3. The Shelby County Property Tax Assessment Board of Appeals ("PTABOA") held a hearing on Deaton's Form 130 petition, which Deaton did not attend. Six days later, on August 28, 2013, the PTABOA issued a Form 115 determination. In the space provided for indicating who appeared for the taxpayer, the PTABOA wrote the Assessor's name.

4. On the second page of the Form 115 determination, the PTABOA wrote "no change." On the front page, it listed the following assessment:

   Land: $22,700 Improvements: $68,700 Total: $91,400

   Thus, the Form 115 determination is ambiguous. While it purports to make no change, the actual determination does not reflect either the original assessment or the Assessor's unilateral change. Lacking any assistance from the parties to resolve this ambiguity, we find that the PTABOA determined the assessment at $91,400.

[1] The Form 115 determination from the Shelby County Property Tax Assessment Board of Appeals mistakenly listed 2014 as the assessment date at issue. The parties agree that the reference to 2014 was a scrivener's error and that the appeal covers the 2012 assessment year.

B. Proceedings and record before the board

5. Unsatisfied with the PTABOA's determination, Deaton filed a Form 131 petition with the Board. He accepted our small claims procedures.

6. Deaton, who was living in Florida at the time he filed his appeal petitions, repeatedly represented that serious injuries precluded him from attending a hearing in Indiana. On June 16, 2016, after a telephonic pre-hearing conference, Deaton filed a motion asking us to hold our hearing telephonically. In the alternative, he asked that we proceed under 52 IAC 3-1-6, which allows parties to a small claims appeal to waive a hearing and have us issue a determination "based solely on the written and documentary evidence submitted by the parties." In conjunction with the second alternative, Deaton asked us to issue an order "requiring the parties to submit an initial brief, after discovery, of the evidence to the Board and allowing one written rebuttal from each party." *Petition for Telephonic Hearing or, in the Alternative, for Hearing on Written Evidence*. The Assessor objected to holding a telephonic hearing. But she indicated that she would agree to waive a hearing and have the case decided on the parties' written submissions if we allowed them to conduct limited discovery.

7. At a second telephonic pre-hearing conference, the parties agreed to waive the hearing and have the appeal decided on their written and documentary evidence. They further agreed that we would not set a discovery schedule or otherwise order discovery, but that they could voluntarily exchange information. Following that conference, our designated administrative law judge, David Pardo, issued his Order Granting Petition for Hearing on Written Evidence ("Hearing Order"). The Hearing Order laid out the parties' agreement, set a deadline of January 4, 2017, for the parties to submit all of their written and documentary evidence and set deadlines for initial briefs and reply briefs.

8. On January 4, 2017, the parties filed the following exhibits:

Deaton's Exhibits:

Petitioner Exhibit 1:	Grant of Permanent and Temporary Sewer Easement and affidavit from Deaton (4 pages),
Petitioner Exhibit 2:	Form 130 petition and attachments (11 pages)
Petitioner Exhibit 3:	Comparative market analysis and affidavit from Elizabeth Cottler (7 pages),
Petitioner Exhibit 4:	June 5, 2013 letter from the Assessor to Deaton with enclosures (6 pages),
Petitioner Exhibit 5:	Form 134 Joint Report by Taxpayer/Assessor to County Board of Appeals of Preliminary Informal Meeting with "Exhibits" (27 pages),
Petitioner Exhibit 6:	July 11, 2013 letter from the Assessor to Deaton,

Petitioner Exhibit 7:	July 25, 2013 letter from Deaton to the Assessor,
Petitioner Exhibit 8:	August 12, 2013 letter from Deaton regarding PTABOA hearing (3 pages),
Petitioner Exhibit 9:	Form 115 determination (3 pages),
Petitioner Exhibit 10:	Form 131 petition (3 pages),
Petitioner Exhibit 11:	Portions of 2011 Real Property Assessment Manual and 2011 Real Property Assessment Guidelines (47 pages).

The Assessor's Exhibits:

Respondent Exhibit A:	Hearing Order,
Respondent Exhibit B:	2012 property record card ("PRC") and GIS map for the subject property;
Respondent Exhibit C:	Appraisal report for the subject property prepared by Steven R. Abel
Respondent Exhibit D:	Metropolitan Indianapolis Board of Realtors ("MIBOR") listing sheet for comparable sale #1 from Abel's appraisal,
Respondent Exhibit E:	MIBOR listing sheet for comparable sale #2,
Respondent Exhibit F:	MIBOR listing sheet for comparable sale #3,
Respondent Exhibit G:	MIBOR listing sheet for comparable sale #4,
Respondent Exhibit H:	MIBOR listing sheet for comparable sale #5,
Respondent Exhibit I:	MIBOR listing sheet for comparable sale #6,
Respondent Exhibit J:	Sales disclosure form for comparable sale #1,
Respondent Exhibit K:	Sales disclosure form for comparable sale #2,
Respondent Exhibit L:	Sales disclosure form for comparable sale #3,
Respondent Exhibit M:	Sales disclosure form for comparable sale #4,
Respondent Exhibit N:	Sales disclosure form for comparable sale #5,
Respondent Exhibit O:	Sales disclosure form for comparable sale #6,
Respondent Exhibit P:	Form 130 petition,
Respondent Exhibit Q:	Form 134 with attachments,
Respondent Exhibit R:	Form 115 determination with PRC for subject property,
Respondent Exhibit S:	Form 131 petition.

9. The parties then timely filed their initial briefs. Deaton, however, also filed a Motion to Strike Respondent's Exhibit C and Accompanying Documents[2] as well as an Amendment to Brief. Both parties included additional evidentiary exhibits:

Deaton Exhibits with Brief and Motion to Strike:

Petitioner Exhibit A:	Page 2 from Form 131 petition
Petitioner Exhibit B:	Copy of Respondent's Exhibit R (5 pages),

[2] Deaton's submission also included (1) a cover letter in which he pointed out that Respondent's Exhibits P and R were incomplete, and (2) his Affidavit Unsworn Statement Under Penalty of Perjury."

Petitioner Exhibit C:	Unsigned July 25, 2013 letter from Deaton to the Assessor,
Petitioner Exhibit D:	June 5, 2013 letter from the Assessor to Deaton with enclosures (6 pages),
Petitioner Exhibit E:	"Map" with subject property's dimensions,
Petitioner Exhibit F:	Information regarding listing history of several properties and Deaton's arguments as to why the average days on the market supports Cottler's CMA (3 pages).

Attachment to Amendment to Brief:

Uniform Residential Appraisal Report form completed by Deaton ("URAR") (2 pages).

Assessor's Exhibits with Brief:

Respondent's Exhibit T:	Sales disclosure form for 2056 S. Miller Street
Respondent's Exhibit U:	PRC for 2056 S. Miller Street
Respondent's Exhibit V:	PRC for 732 S. West Street
Respondent's Exhibit W:	PRC for 1109 S. Harrison Street
Respondent's Exhibit X:	List of sales from Cottler's comparative market analysis with sale dates,
Respondent's Exhibit Y:	GIS map with the subject property and properties from Cottler's analysis identified.

10. Finally, the parties timely filed their reply briefs (Deaton titled his "Rebuttal Brief"). Deaton attached more documents to his brief, some of which appear to be duplicates of exhibits or other documents he had previously offered:

URAR (2 pages)
Amendment Worksheet
Notice of Faith Based Objection to Swearing or Taking Oath
Affidavit Unsworn Statement Under Penalties of Perjury
Affidavit from Cottler with her CMA attached (4 pages)
Affidavit from Deaton

Deaton also filed his Request to Take Judicial Notice and Offer to Prove Incorporating Memoranda in Support of Motion.[3]

11. Despite being ordered to submit all their evidence by January 4, 2017, both parties offered additional evidentiary submissions with their briefs. And neither party objected to that additional evidence on grounds that it violated the Hearing Order. Although we

[3] The record of proceedings includes all the parties' filings as well as any orders, notices, or other documents issued by the Board or our administrative law judges.

are exasperated by the parties' inability to follow our ALJ's clear instructions, we will consider their additional evidentiary submissions in making our determination.

Rulings on Motions and Objections

A. Motion to Strike

12. Deaton moved to strike Abel's appraisal report on two grounds. First, he alleges that the Assessor's counsel misrepresented the purposes of the appraisal when she asked him to allow Abel to inspect the home so the parties could negotiate and avoid a hearing. He claims that counsel further promised to give him a copy of the appraisal, but that she neither provided the copy nor contacted him to negotiate. According to Deaton, had he known the real reasons for the appraisal, he would not have let Abel into his home. Second, Deaton points to what he describes as numerous errors in Abel's report and alleges that those errors show bias.

13. We deny the motion to strike. Deaton's fraud allegation is not credible. That is particularly true given the fact that Deaton made that incendiary allegation in a forum in which he could not be cross-examined. Even if we were to accept that counsel misrepresented the purpose of Abel's appraisal and that Deaton would not have let Abel inspect his home if he knew the Assessor intended to use the appraisal for purposes of litigation rather than negotiation, we fail to see how Deaton was prejudiced. Deaton put his property's value at issue by appealing the assessment. To the extent Deaton refused to allow Abel to inspect the property, the Assessor would have been within her rights to seek an order compelling him to do so. Similarly, Deaton was not prejudiced by counsel's alleged failure to share Abel's report. He has had more than enough opportunity to impeach Abel's valuation opinion.

14. As for Deaton's claim of bias, the alleged errors in Abel's appraisal report go more to the weight we ultimately give to Abel's valuation opinion than to the report's admissibility. Abel is a licensed appraiser who certified that he performed the appraisal and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). That more than suffices to make his appraisal report relevant and admissible.

B. Objections

15. In his reply brief, Deaton makes several hearsay objections, including objections to Respondent's Exhibits C (Abel's appraisal) and D through I (MIBOR listing sheets). We have been exceedingly forgiving of Deaton's disregard for the Hearing Order and tolerant of his voluminous filings. But waiting until his Rebuttal Brief to object to documents that the Assessor offered in her original submission of evidence goes too far. It deprives the Assessor of an opportunity to respond.

16. In any case, we would overrule Deaton's objections even if they had been timely. As to his first objection, we are statutorily prohibited from excluding an appraisal on hearsay grounds. *See* I.C. § 6-1.1-15-4(p) ("[T]he Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection.").

17. As to the MIBOR sheets, we agree they are hearsay. They contain assertions made by people who did not provide affidavits or otherwise affirm the truth of those assertions. *See* Ind. Evid. R. 801 (defining hearsay as a statement not made by a declarant while testifying at a hearing or trial that is offered to prove the truth of the matter asserted).[4] But we may admit hearsay, with the caveat we cannot base our determination solely on hearsay that is objected to and that does not fall under a generally recognized exception to the hearsay rule. 52 IAC 3-1-5(b).[5] In any event, we do not rely solely on those exhibits, and we would reach the same determination without them.

18. Deaton also objects to "[t]he entire brief of the Respondent, other than that which is public record," as hearsay. But the Assessor did not offer her brief as evidence. To the extent she makes any factual representations in the brief that are not otherwise contained in the record, we disregard them.

Summary of the Parties' Contentions

A. Deaton's case

1. Procedural irregularities at the PTABOA hearing

19. Deaton claims that the Assessor had a conflict of interest and that he was denied due process because the Assessor appeared at the PTABOA hearing on his behalf without his authorization. And he believes that the Assessor failed to offer evidence in his favor and object to evidence unfavorable to him, which he views as a breach of her fiduciary duty. Deaton claims that the Assessor violated Ind. Code § 6-1.1-15-17.3, which prohibits a county assessing official from appearing before the PTABOA as a tax representative with respect to property subject to taxes in that county. And he claims that all of these things happened with the PTABOA's knowledge. For relief, he asks us to invalidate any evidence offered to the PTABOA by or on behalf of the Assessor and to accept the valuation Deaton requested from the PTABOA in his correspondence. *Pet'r Brief.*

[4] Any affidavits offered by the Assessor would also have been hearsay. The parties, however, waived any objection to witnesses testifying by affidavit when they waived a hearing and agreed to have us decide the appeal based on their written and documentary evidence.

[5] Deaton's objection is puzzling. He relies far more heavily on those MIBOR listings to impeach Abel's valuation opinion than the Assessor relies on them to support the opinion.

2. Errors in assessment

20. Regardless of the procedural irregularities before the PTABOA, Deaton believes that the subject property is assessed for significantly more than it is worth. He claims that the Assessor and PTABOA made various errors and used flawed methodology in computing the assessment. First, Deaton claims that the Assessor and PTABOA ignored a sewer easement burdening the property. As shown by a Grant of Permanent and Temporary Sewer Easements, Deaton granted the city of Shelbyville a permanent 15-foot-wide easement along the entire north border of the property. Although the grant shows that the easement covers approximately .0689 acres, Deaton asserts that it covers approximately .1 acre or 18% of his property.[6] He claims that it makes a 41' x 125' "rear tongue" at the west end his property useless. He also claims that the easement makes his backyard unusable for expansion because of how his home sits on the property, although he did not offer any detail on that point. All told, Deaton claims that the easement makes one third of his property useless other than to mow. *Pet'r Brief; Pet'r Ex. 1*.

21. Second, Deaton points to what he claims are several factual errors on the property record card ("PRC"), including: an inaccurate description of the home's heating system; incorrect measurements for a shed, which has only three sides; incorrect measurement of the basement, which is actually 60 square feet smaller than what the PRC says; and an incorrect description of the parcel's topography as level. Third, he claims that the PTABOA did not apply a 26% obsolescence adjustment as she proposed on her Form 134 offer. Had she applied that adjustment to the average per-square-foot value indicated by her deputy's comparative market analysis ("CMA"), she would have come to a value of $67,100, which would have promoted settlement. Finally Deaton claims that using mass-appraisal techniques to assess the subject property is improper given its deteriorated condition and the burden posed by the sewer easement. *Pet'r Brief.*

22. Deaton offered three different valuations that he believes more accurately reflect the property's market value. The first is contained in a CMA from a local realtor named Elizabeth Cottler. The other two can only be understood in conjunction with Deaton's criticisms of Abel's appraisal. We therefore summarize Cottler's analysis first before moving to Deaton's criticisms of Abel's appraisal and his alternate valuation opinions based on his modifications to that appraisal. *Pet'r Brief; Amendment to Pet'r Brief.*

a. Cottler's CMA

23. Cottler began by describing the subject property and its condition. She indicated that the porch on the home's south side was "non-existent," that the home needed stone and concrete work to make it sellable, that the exterior windows needed work, and that trim needed to be painted. Although Cottler described the home's interior as comfortable, she

[6] The discrepancy appears to stem from Deaton's belief that the easement is 22.5 feet wide. A careful reading of the grant shows otherwise.

identified several issues, including the need to modernize the kitchen, remodel the main bathroom, replace fixtures in the unfinished bathroom, and replace carpeting. She also believed that several areas needed to be painted. She additionally found that the garage needed work, that an outbuilding was little more than a "three-sided concreted shed, that ditch work remained unfinished, and that the home's layout resulted in only about half the parcel being used. *Pet'r Ex. 2*.

24. According to Cottler, the MIBOR database had no sales of directly comparable properties from the same zip code during the two years leading up to December 27, 2012 (the date of her analysis). She therefore broadened the scope of her search using listing criteria that she described as superior to the subject property "in the major aspects sought by the buying public (e.g. bedrooms, bathrooms, square footage)." She found 21 properties, which she believed was a sufficient number to support a professional evaluation. Because one of the properties sold three times, she only included the final sale in her evaluation. She eliminated several properties from "detailed consideration" because some of the "lower end" properties appeared to be "distressed sales of units in need of significant rehabilitation, though the inclusion of these properties and those at the higher end strongly supports the estimated Fair Market Value*."* The sale prices ranged from $27,150 to $155,900 with an average of $71,317 and a median of $75,000. Cottler did not include any sale dates. *Pet'r Ex. 2 (emphasis in original)*.

25. Of the 21 properties Cottler identified, she believed that 2056 South Miller Street was the most comparable to the subject property. Its home was built around the same time as the subject home, and its lot had about the same usable area as the subject lot. The home's brick exterior was comparable, but preferable, to the subject home's stone exterior, while its single garage and carport provided more space, but less protection, than the subject property's garage. The Miller Street home had substantially more finished floor space, a newer roof, and newer mechanicals than the subject property. It also had a finished basement, a forced air furnace, central air, a fireplace, and both gas and electric service. The bedrooms were slightly smaller than the subject home's bedrooms, but the Miller Street home's additional rooms and concrete drive were attractive. Both properties were on busy streets, and their proximity to the high school was "neutral." Cottler concluded that the subject property was comparable to, though less desirable than, the Miller Street property. The Miller Street property sold for $69,500. *Pet'r Ex. 2*.

26. Based on the Miller Street sale, Cottler believed the subject property, in its then-current condition, should have been listed for $62,500, with an expected sale price of $59,500. If Deaton made her suggested improvements, Cottler recommended listing the property at $74,000, with an expected sale price of approximately $67,000. Cottler indicated that her "further analysis" of the remaining properties substantiated her conclusions. *Pet'r Ex. 2*.

27. Cottler, however, only discussed two other properties—732 South West Street and 1109 South Harrison Street. She described several ways in which she believed the West Street property was superior to the subject property, including the home's slightly larger area,

its refurbishing and modernization, the availability of both gas and electric service, and its location in a quieter neighborhood. The West Street property sold for $79,000. Cottler did less to compare the South Harrison Street property to the subject property, although she did note that it was located closer to the subject property than her other comparable sales. She also pointed out a few similarities between the properties as well as a few ways in which the South Harrison Street property was superior. The South Harrison Street property sold for $80,000. *Pet'r Ex. 2*.

b. Criticisms of Abel's appraisal

28. Deaton levels several criticisms at Abel's appraisal, ranging from questions about Abel's qualifications, to allegations of bias and error. As for Abel's qualifications, Deaton argues that he is a paid contractor who the Assessor did not qualify as an expert. Thus, Deaton argues that Abel should be treated as a lay witness and given less credence than Deaton and Cottler, who have experience buying and selling real estate and first-hand knowledge both of the subject property and of market conditions at the time of the assessment. Deaton also takes issue with the facts that Abel did not testify under oath (presumably meaning that he did not provide an affidavit) and that he inspected the property and prepared his report more than four years after the assessment date at issue. *Pet'r Rebuttal Brief.*

29. Deaton's allegations about the errors in Abel's appraisal generally fall into two categories: errors in how Abel described the subject property, and errors in his adjustments, or lack thereof, to his comparable properties' sale prices. *Pet'r Brief; Amendment to Brief.*

30. Beginning with the first category, Abel ignored the sewer easement and described the property as having no apparent easements or encroachments. Deaton also claims that Abel failed to account for the property's poor condition. Although Abel indicated that deterioration was present in all properties and was typical for dwellings of a similar age, Deaton believes that the subject property was in worse condition than Abel's comparable properties. He claims that Abel failed to capture substantial deterioration in his photographs and that in some instances, he failed to recognize deterioration that his photographs actually depicted. Among other things, Abel failed to account for deterioration in the home's walls, ceiling, foundation, and porch. He also failed to note an outbuilding's deterioration. *Pet'r Motion to Strike; Pet'r Brief.*

31. According to Deaton, Abel also erred in describing some of the home's construction elements and amenities. He incorrectly described the bathroom wainscot as fiberboard and the floors as carpeted. And he described the yard's topography as gently sloping when it actually slopes by 40°. He similarly failed to show that a manhole obstructed part of the driveway. *Pet'r Brief.*

32. Deaton has a laundry list of what he claims are errors in how Abel adjusted, or failed to

adjust, his comparable properties' sale prices. First, Deaton identifies several adjustments he believes Abel should have made to some of the sale prices, including deductions for the following ways in which the comparable properties were superior to the subject property:

- Lack of easements
- Access to gas service
- Asphalt drives
- Fireplaces
- New roofs, gutters, leaf guards, downspouts, doors, and water softeners
- Updates and remodeling
- Finished basements
- Solar panels and other energy efficient items
- Handicap accessibility
- Mini barns and additional storage
- Partial fencing
- Sun rooms.

Pet'r Brief.

33. Abel adjusted some sale prices for the presence of amenities, such as an extra bathroom, or a porch, patio and sun room, but he did not adjust others for those same amenities. In one instance, he adjusted a sale price upward by $2,500 for additional living area when he should have adjusted the price downward. That amounted to a $5,000 error. Abel made a similar error when he adjusted a sale price upward by $17,000 to account for that property's larger basement. Again, he should have adjusted the price downward. That amounted to a $34,000 error. *Pet'r Ex. 2; Resp't Exs. D-I.*

c. Deaton's valuation opinions

34. Deaton prepared his own valuation opinions using Abel's comparable sales. He used information about the comparable properties contained in the appraisal except where Abel erred in transferring data from the MIBOR listings or where Deaton had personal knowledge that information from a MIBOR listing was wrong. Deaton used the numerical adjustments from the appraisal, which he described as Abel's subjective guesswork. Where no numbers existed, as was the case where (in Deaton's view) Abel erroneously failed to adjust for the various ways in which the comparable properties were superior to the subject property, Deaton used what he described as conservative estimates based on his knowledge and experience gained through years of buying, selling, rehabilitating, and financing properties in the Indianapolis "SMSA" and other areas. Deaton laid out his adjustments on a Uniform Residential Appraisal Report ("URAR") form. According to Deaton, the only other way to quantify adjustments is through "linear regression analysis on mass data." *Pet'r Brief, Amendment to Pet'r Brief.*

35. The average adjusted sale price was $81,344. According to Deaton, however, simply adjusting the sale prices is not enough. In his view, properties are put in "tip top" condition for sale, so various repairs would have been needed to bring the subject property to the same conditions as Abel's comparable properties. Deaton therefore listed ranges of estimated costs for various repairs (including some of the items used in his adjustments, such as the cost for a new roof and for remodeling and updating). He then subtracted his low, average, and high estimates of the repair costs ($26,450, $32,250, and $38,050, respectively) form the average adjusted sale price to come up with values ranging from $43,294 to $54,892. *Pet'r Brief; Amendment to Pet'r Brief.*

36. But Deaton does not believe those values account for how the sewer easement affects the property. He therefore offered two additional approaches under which he took the average adjusted sale price from his URAR analysis and subtracted an amount equal to one-third of the land assessment. He then applied 26% obsolescence (as reflected in the Assessor's proposal on the Form 134) in lieu of the repair costs. He applied that obsolescence alternately to the property as a whole and to the improvements only. Those calculations yielded values of $48,490 and $54,894, respectively. Deaton asks that the property be assessed for either of those values or for $59,500 (the estimate from Cottler's CMA). *Amendment to Pet'r Brief; Pet'r Rebuttal Brief.*

B. The Assessor's case

37. The Assessor argues that Deaton's focus on the purported irregularities at the PTABOA hearing is misplaced. The Board's proceedings are *de novo*. Nothing about how the PTABOA was composed or how it conducted its hearing hindered Deaton from fully presenting his case to the Board. *Resp't Reply Brief.*

38. Similarly, any supposed errors in computing the assessment are beside the point. Deaton needed to offer market-based evidence to show that the assessment was wrong and what the correct assessment should be. He failed to do so. Cottler's CMA is not probative of the property's true tax value. She did not adjust her comparable properties' sale prices for things such as financing, location, physical characteristics, or other measures of comparison. She similarly failed to adjust for differences in market conditions. In fact, she did not even identify any of the sale dates. But several of the sales occurred well before the valuation date. Indeed, the three sales Cottler actually discussed were from September 2004, June 2006, and May 2010. Absent adjustment to account for the differences in market conditions on those sale dates and the March 1, 2012 valuation date, those sales lack probative value. *Resp't Reply Brief; Resp't Exs. T-W.*

39. Deaton's own analyses likewise do nothing to refute Abel's appraisal report or independently show the property's true tax value. Deaton did not use any of the three traditional methods for valuing real property—the cost, sales-comparison, or income approaches. He instead offered unsupported repair costs and attempted to reassess the property based on a "list price" analysis. *Resp't Reply Brief.*

40. Deaton's subjective analysis is not the same as a quantitative analysis from a professional appraiser like Abel. Abel certified that he conformed to USPAP in appraising the property and preparing his report. He considered all three generally accepted valuation approaches, but developed only the sales-comparison approach, which he believed best reflected the attitudes of typical buyers and sellers of a property like the subject property. *Resp't Reply Brief; Resp't Ex. C*.

41. Abel used sales of six properties with ranch-style homes from the subject property's neighborhood. Those properties sold for prices ranging from $92,000 to $124,800. He considered adjusting the sale prices based on whether the comparable properties differed from the subject property in a variety of ways, including physical characteristics such as the homes' sizes, ages, construction quality and condition, basements (size and finish), and room counts (including bedrooms and bathrooms). He also considered adjustments for differences in amenities. Abel did not explain how he quantified his adjustments, other than to say that he used $20/sq. ft. to adjust for differences in gross living area and that he rounded all of his adjustments to the nearest $500, which "reflect[ed] market conditions." *Resp't Ex. C*.

42. The adjusted sale prices ranged from $96,000 to $114,500. Abel did not explain how he reconciled those adjusted prices other than to say that he used all the sales. He settled on a value of $105,000 as of March 1, 2012. The Assessor asks us to raise the assessment to that amount. *Resp't Ex. C*.

Analysis

A. Deaton's claims about irregularities at the PTABOA hearing

43. Deaton claims that the Assessor represented him at the PTABOA hearing without his authorization. He argues that her actions violated Ind. Code § 6-1.1-15-17.3, were a conflict of interest, and deprived him of due process of law. For a remedy, Deaton asks us to order the assessment changed to the amount he sought before the PTABOA.

44. Deaton did not attend PTABOA hearing and therefore has no personal knowledge about what happened. He bases his claim that the Assessor improperly purported to represent him on the Form 115 determination, which lists the Assessor's name in the space provided for identifying the taxpayer's representative. But that is as likely to be a scrivener's error or the PTABOA's way of reflecting that the Assessor simply passed on the documents Deaton had mailed to her as it is an indication that the Assessor purported to appear as Deaton's representative. It would be helpful if the Assessor had directly addressed Deaton's allegations in her briefs. But she did not. And because the parties chose to waive a hearing, we cannot ask the Assessor, or any other witness, to clarify what happened.

45. None of that matters, however, because Deaton is not entitled to the relief he requests. Our hearings are de novo. Regardless of what happened below, Deaton has had a full and fair opportunity to present his case to us. We therefore deny his request for relief based on any irregularities at the PTABOA hearing.

B. Deaton's valuation claims

46. Having addressed Deaton's claims of procedural irregularities, we now turn to the meat of the appeal—Deaton's claim that his assessment is too high. To analyze that claim, we must first determine who has the burden of proof.

1. Deaton has the burden of proof

47. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal (here, the amount determined by the PTABOA) represents an increase of more than 5% over the prior year's assessment for the same property, (2) or the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a) (b) and (d).

48. Neither circumstance applies here. The assessment actually decreased between years, dropping from $106,100 in 2011 to $91,400 in 2012. Deaton therefore has the burden of proof.

2. Deaton failed to make a prima facie case for reducing the assessment

49. Before analyzing Deaton's evidence, we begin with some background on Indiana's valuation standard and the types of evidence that are probative in assessment appeals. Indiana assesses real property based on its "true tax value," which does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). True tax value is determined under the rules of the Department of Local Government Finance ("DLGF"). 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." 2011 REAL PROPERTY ASSESSMENT MANUAL 2.

50. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. 2011 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; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market-value-in-use appraisal is the most effective method for rebutting the presumption

that an assessment is correct). Other relevant evidence includes actual construction costs, sales information for the property under appeal, sales or assessment data for comparable properties, and any other information complied in accordance with generally accepted appraisal principles. Normally, a party does not make a case for changing an assessment simply by showing how the assessment regulations should have been applied. *See Eckerling* 841 N.E.2d at 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, he must offer relevant market-based evidence. *See id.*

51. Regardless of the type of evidence a party offers, he must explain how that evidence relates 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 2012 assessments, the valuation date was March 1, 2012.

52. Deaton's claims about the errors on the PRC, the Assessor's proposed changes to the original assessment, or the methodology used to compute the original assessment and the PTABOA's determination, are all beside the point. Simply attacking the methodology used to arrive at an assessment is not enough. *See Eckerling*, 841 N.E.2d at 678. Instead, Deaton needed to offer probative market-based evidence to show the property's true tax value.

53. He attempted to do so through Cottler's CMA and his own alternative valuation opinions. But none of those opinions suffices to show the property's true tax value, in large part because Deaton and Cottler failed to demonstrate that they applied generally accepted appraisal principles.

54. Cottler did not purport to prepare her CMA in accordance with USPAP or generally accepted appraisal principles. Her analysis does resemble the sales-comparison approach in some ways. For example, she looked for properties that she believed were comparable to the subject property. And she explained how three of those properties compared to the subject property in terms of relevant characteristics that might affect market value. But she did not quantitatively adjust the sale prices to account for relevant differences between the properties. Nor did she apply qualitative analysis, aside from saying that all the purportedly comparable properties were generally superior to the subject property. *See Long*, 821 N.E. 2d at 470-71 (finding that sales data lacked probative value where taxpayers did not explain how purportedly comparable properties compared to the property under appeal or how relevant differences affected value).

55. In addition, the three sales that Cottler actually discussed occurred in September 2004, June 2006, and June 2010, respectively—well before the March 1, 2012 valuation date. Yet she did not adjust those sale prices to account for differences in market conditions or otherwise explain how they related to the subject property's value as of the valuation date. *See Long,* 821 N.E.2d at 471. Those sales, and Cottler's analysis of them, therefore lack probative value. In his rebuttal brief, Deaton claims that he addressed that issue in

detail before the PTABOA as well as in the materials he submitted to us. *See Pet'r Rebuttal Brief at 4*. Our review of Deaton's voluminous filings does not reveal any attempt to relate Cottler's sales to the relevant valuation date. To the extent it might be hidden somewhere in those filings, it was Deaton's responsibility to direct us to it. *See Long,* 821 N.E.2d at 471 (explaining that it is the taxpayer's duty to walk the Board through every element of its analysis).

56. Deaton did even less to show that his own alternate valuation opinions, which were modified versions of Abel's appraisal, complied with generally accepted appraisal principles. Deaton did nothing to support the need for many of the additional adjustments he made to the sale prices of Abel's comparable properties. For example, it is not readily apparent that the market necessarily places significant value on things such as handicap accessible bathrooms, "partial fencing," or concrete driveways.

57. In any case, beyond generally pointing to his experience in buying, selling, remodeling, and financing real estate, Deaton offered no support for how he quantified most of his adjustments. While he believes that the only legitimate ways to quantify adjustments are through linear regression analysis or general experience, he points to no authority for that proposition. To the contrary, appraisal literature discusses various other objective ways to adjust sale prices, such as analyzing paired sales. Appraisers may also use qualitative analysis, which may be particularly helpful where there is insufficient data from which to reliably quantify adjustments.

58. Deaton similarly failed to show that his treatment of the sewer easement comports with generally accepted appraisal principles. The 15-foot-wide permanent easement covers approximately .0689 acres or 12% of the .57-acre property. As a practical matter, however, the parcel's configuration means that the easement effectively prevents him from building on an even greater portion of the property. How much greater that portion is remains unclear; Deaton's claim that one-third of the property is unusable is both conclusory and based on an incorrect calculation of the area covered by the easement. But even if we accept Deaton's measurements, that does not mean the easement completely prevents him from using or enjoying the burdened area. Deaton did not offer any market data to determine the extent to which the easement restrictions affected value. Instead, he simply subtracted an amount equal to a third of his land assessment from the average adjusted sale price in his URAR analysis.

59. Finally, Deaton's decision to apply 26% obsolescence to the entire property, or alternately to the improvements only, violates both generally accepted appraisal principles and logic. Obsolescence is a form of depreciation, and therefore applies only to improvements. And Deaton offered no support for the 26% figure other than that the Assessor proposed that figure in settlement negotiations. Perhaps most importantly, Deaton used the obsolescence adjustment as a substitute for the cost of repairs he claims were needed to bring the property into the same saleable condition as Abel's comparable properties. But Deaton already accounted for several of those repairs when he adjusted

the comparable properties' sale prices for things like new roofs and remodeling.

60. Because Deaton did not offer any probative evidence to show the subject property's true tax value, he failed to make a prima facie case for reducing the assessment. Our inquiry does not end there, however, because the Assessor asks us to increase the assessment based on Abel's appraisal report. We therefore turn to that report.

3. Abel's appraisal is not sufficiently reliable to justify raising the assessment.

61. Abel used a generally accepted methodology—the sales-comparison approach—to estimate the property's value as of March 1, 2012. And he followed that approach's basic requirements. He identified six properties that were generally comparable to the subject property in terms of characteristics that affect value, and he adjusted the sale prices to account for relevant differences. We recognize that Abel did little more than Deaton to explain how he quantified his adjustments. But unlike Deaton, Abel is a licensed appraiser, and he certified that he complied with USPAP. We may therefore infer that he used reliable data and generally accepted methods to quantify his adjustments, at least to the extent that Deaton does not point to evidence calling specific adjustments into question.

62. But Deaton does point to several problems that raise legitimate concerns about the reliability of Abel's valuation opinion. First, Abel adjusted two sale prices upward when he should have adjusted them downward. The second error led to a $34,000 discrepancy in the property's adjusted sale price. Second, he failed to adjust one property's sale price to account for a sun room that was identified in the MIBOR listing, even though he adjusted two other properties' sale prices to account for sun rooms.

63. Third, Abel treated the subject property as if it were in the same condition as all his comparable properties, despite the fact that the MIBOR listing for one home indicated that it had been completely remodeled and had a new kitchen. Perhaps Abel believed that the references in the MIBOR sheet were little more than salesmanship and that the remodeling and kitchen renovation did not appreciably improve the comparable home's condition in comparison to the subject home. But the Assessor did not offer any evidence to show that. Absent some explanation from Abel, his failure to adjust for those things detracts from the reliability of his appraisal.

64. Finally, Abel failed to account for the sewer easement. In her brief, the Assessor claims that Abel knew about the "temporary sewer easement" but that he "indicated through conversation that all properties in the neighborhood have sewer easements that do not affect value." *Ass'r Reply Brief*. Although Deaton granted the city a temporary easement for purposes of completing construction of the sewer line, nobody is claiming that the temporary easement affected the property's value. More importantly, the Assessor did not offer any admissible evidence to support her assertions. Abel does not talk about sewer easements in his report, and the Assessor did not offer an affidavit from Abel or

from anyone with whom he supposedly discussed the easement. We caution counsel against making unsworn factual representations in briefs when those facts are not otherwise in the record.

65. Given the property's configuration, particularly its "rear tongue," we find that the sewer easement likely affected its value to some extent, albeit not to the point of making one-third of the land valueless as Deaton alleges. Abel might have taken that into account and concluded that, because his comparable properties had similar easements, no adjustment was needed. But without Abel's testimony, we have no way of knowing. His failure to address the easement therefore detracts from his appraisal's reliability.

66. In light of those issues, we do not find Abel's appraisal, which valued the property at less than $15,000 above its assessment, sufficiently reliable to justify increasing the assessment.

Conclusion

67. Deaton failed to make a prima facie case for reducing the assessment. And Abel's appraisal is not sufficiently reliable to increase it. We therefore order no change to the assessment of $91,400.

68. We close with some observations about the propriety of the parties waving a hearing and submitting the appeal for determination based on their written and documentary evidence. Their presentations went far beyond what 52 IAC 3-1-6 contemplates. Both parties ignored the Hearing Order and offered additional evidence after January 4, 2013, although Deaton's violations were far more extensive. Deaton continued to raise new issues, and in some instances, objections, with each filing. Perhaps more troubling, he got the Assessor to agree to waive a hearing as a concession to his disability, but then made incendiary allegations, such as accusing the Assessor's counsel of fraud, while being protected from cross examination. In light of those issues, we will not be as amenable to any request to waive a hearing and proceed under 52 IAC 3-1-6 in future appeals.

Summary of Final Determination

69. Deaton failed to make a prima facie case for reducing the assessment, and the appraisal offered by the Assessor was not sufficiently reliable to justify raising it. We therefore order no change.

Issued: June 8, 2017

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Chairman, Indiana Board of Tax Review

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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 within forty-five (45) days of 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>.