

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

Petition No.: 53-008-12-1-5-00042
Petitioner: David E. Sherlock Trust¹
Respondent: Monroe County Assessor
Parcel No.: 53-08-22-200-016.000-008
Assessment Year: 2012

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

Procedural History

1. The David E. Sherlock Trust (“Petitioner”) appealed its 2012 property tax assessment to the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”).
2. Petitioner timely filed a Form 131 petition with the Board and elected to have the appeal heard under the Board’s small claims procedures.
3. On January 28, 2015, the Board held a hearing through its designated administrative law judge, Andrew Howell (“ALJ”). Neither the Board nor the ALJ inspected the property.
4. David E. Sherlock appeared *pro se*. Attorney Marilyn Meighen appeared as counsel on behalf of the Monroe County Assessor (“Respondent”).
5. The following people testified under oath: David E. Sherlock; Patrick Jordan, Petitioner’s witness; and Judith Sharp, Monroe County Assessor.²

Facts

6. The property under appeal is a single-family home located at 2380 East Rhorer Road in Bloomington.

¹ Mr. Sherlock signed as the owner of the subject property on the Form 131 petition. The owner, listed on the Form 131 petition, is David E. Sherlock Trust. It is not clear under what capacity Mr. Sherlock appeared at the hearing. The Board will assume that Mr. Sherlock is the trustee and / or is authorized to appear at the hearing on behalf of the David E. Sherlock Trust.

² Jack Davis, PTABOA member, appeared at the hearing but did not testify.

7. The PTABOA determined the following values:
Land: \$50,000 Improvements: \$34,700 Total: \$84,700.
8. Mr. Sherlock requested the following assessment:
Land: \$50,000 Improvements: \$27,300 Total: \$77,300.

Record

9. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:
 - Petitioner Exhibit 1: Form 131 petition, page 2 – grounds for appeal,
 - Petitioner Exhibit 2: 2012 Notice of Assessment of Land and Structures – Form 11,
 - Petitioner Exhibit 3: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134 (“Form 134”) for the 2009 assessment,
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 - Respondent Exhibit A: Aerial photograph of the subject property,
 - Respondent Exhibit D: 2012 property record card (“PRC”) and photograph of the subject property,
 - Respondent Exhibit E: Five comparable property sales between 2010 and 2012,
 - Respondent Exhibit F: 2012 PRC and photograph for 198 East Rhorer Road,³
 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet,
 - c. These Findings and Conclusions.

Objections

10. Respondent objected to the admission of Petitioner’s Exhibit 3 – Form 134 because the values were for 2009. According to Respondent, Petitioner’s Exhibit 3 was irrelevant to the 2012 assessment under appeal. The ALJ took the objection under advisement.
11. Respondent offered no legal basis for the objection. Her argument that the content of Petitioner’s Exhibit 3 may be irrelevant goes to the weight of the evidence, rather than to

³ The Assessor did not submit an Exhibit B or Exhibit C.

its admissibility. Consequently, the objection is overruled and Petitioner's Exhibit 3 is admitted.

Burden of Proof

12. Generally, a taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden shifting statute creates two exceptions to the rule.
13. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a) “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15. Under those circumstances,

if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.
15. Ind. Code § 6-1.-1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See P.L. 97-2014.*
16. Here, the parties agree that the assessment increased by more than 5% between 2011 and 2012, going from \$77,300 to \$84,700. There is no dispute that the 2011 assessment and the 2012 assessment were for the same property. The requirements for shifting the burden of proof in Ind. Code § 6-1.1-15-17.2(a) and (b) are satisfied in this case. The Respondent therefore has the burden of proof.

Summary of the Parties' Contentions

17. Summary of Respondent's case:

- a. The subject property is assessed correctly. Respondent testified that the value of the subject property has increased because the area has become an upscale residential neighborhood. Furthermore, Respondent testified that when "land becomes more valuable, the building itself becomes more valuable because people want to move out there." *Sharp testimony.*
- b. Respondent further stated that the subject property was assessed at a D-1 grade, which is 5% higher than a tar paper shack and it received 47% normal depreciation. She stated that there is no discretion for the \$50,000 assessment of the land, and \$34,700 for a 783 square foot home that is livable, has air conditioning, and in this location is "more than fair." *Resp't testimony; Resp't Ex. D.*
- c. To support the subject property's 2012 assessment, the Respondent presented a spreadsheet of five properties that sold in the subject neighborhood between 2010 and 2012. She testified that the subject property was most comparable to the sale of the Rink property at 198 East Rhorer Road, which sold February 25, 2011 for \$100,000 or \$174 per square foot. She stated that the two houses are almost identical, with a slight grading difference that places the subject property at a D-1 and the Rink property at a D+2. The Rink property is about two hundred square feet less than the subject property. The Rink property has a crawl space, whereas the subject property has 459 square foot basement and 324 square foot crawl space. Additionally, the Rink property has an effective age that is thirty years newer than the subject property. *Resp't testimony; Resp't Ex. D-F.*
- d. Respondent stated that she found the lowest value sale in the neighborhood, the Rink property, and gave the subject property a value about \$30 a square foot less, not including the basement.⁴ *Resp't testimony.*
- e. Respondent testified that even if a homeowner does nothing with their property, the property can still go up because of sales. *Resp't testimony.*

18. Summary of Petitioner's case:

- a. The assessment is too high. Petitioner contends that the 9.5% increase was unjustified and that the assessment should remain at the 2011 assessment amount of \$77,300. *Resp't testimony; Pet'r Ex. 1.*

⁴ The Rink property sold for \$174 per square foot, while the subject property was assessed at \$108 per square foot. The subject property is valued at \$66 per square foot lower than the Rink property. *Sharp testimony; Resp't Ex. D-F.*

- b. Petitioner contends that the property is of poor quality construction. A tree fell on the home in 2008 and the roof was replaced. Due to faulty construction the roof was replaced again in 2012, and now there is mold in the attic. *Pet'r testimony*.
- c. Mr. Jordan, witness for Petitioner, was called to attest to the poor condition of the subject property. He testified that the basement is comprised of limestone blocks with no mortar between them. Consequently, water in the basement caused fungus to grow. Additionally, the sub-floor and floors of the house are in need of repair due to the moisture of the basement. Mr. Jordan testified that the attic has mold due to poor ventilation, and that the attic needs more insulation. *Jordan testimony*.
- d. Petitioner contends that the maintenance cost of the subject property is greater than the amount he is receiving in rent. He further states that the home is a liability to him and that he would prefer to not have the home. Petitioner states that he would demolish the home if it was not for his desire to provide a place for his granddaughter to live. *Pet'r testimony*.

Analysis

- 19. Respondent failed to make a prima facie case that the 2012 assessed value is correct. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “the 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 at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Kooshtard* 836 N.E.2d at 506 n.6; *see also, I.C. § 6-1.1-15-18* (allowing parties to offer evidence of comparable assessments to determine an appealed property’s market value-in-use).
 - b. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2012, the assessment and valuation dates were the same, March 1, 2012. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Respondent had the burden of proving that the assessment of \$84,700 was correct.

- d. Here, Respondent relied on five comparable sales in the area to show the assessed value of the subject property. In order to rely on such evidence in an assessment appeal, a party must first show that the properties being examined are truly comparable to each other. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long, 821 N.E.2d at 471*. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id. At 471*.
- e. In this case, Respondent offered no evidence relating the purportedly comparable properties' specific features and amenities to the subject property. With regard to four of the purportedly comparable properties, Respondent failed to offer any explanation of how those properties compared to the subject property. She only discussed the Rink Property, which is located at 198 East Rhorer Road.
- f. While Respondent provided the PRC for the Rink property, she failed to offer probative evidence relating the specific features and amenities of the Rink property to the subject property. Her evidence mainly highlighted their differences. She stated that "for whatever reason we decided that the Rink's [property] should be a little bit better." Additionally, she noted that the effective age of the Rink's house was 1980, and that Petitioner's home had an effective age of 1950. She also stated that the Rink property must have had "some major renovations to it over the years." Although Respondent stated that the Rink property is almost identical to the subject property, she did nothing to show how the characteristics actually were similar to those of the subject property as required by *Long*.
- g. Respondent failed to explain the difference between the purported comparable property and the subject property. She did not offer evidence that adjustments were made to account for the difference in time, desirability, condition, location, and size of the properties.
- h. Conclusory statements that a property is "almost identical" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id. At 470*. Because Respondent failed to establish that her purportedly comparable properties were actually comparable to the subject property, her sales comparison approach did not conform to generally accepted appraisal and assessment principles. Thus, she failed to make a prima facie case that the 2012 assessment was correct.
- i. Accordingly, the burden did not shift to Petitioner, and because he did not request a value lower than the 2011 assessment, the Board need not evaluate his evidence. For the foregoing reasons, Petitioner is entitled to have the 2012 assessment reduced to its 2011 value of \$77,300.

Conclusion

20. Respondent had the burden of proving the 2012 assessment was correct. Respondent failed to make a prima facie case that the 2012 assessment was correct, and Petitioner did not seek an assessment lower than the 2011 assessment. Consequently, the Board finds the 2012 assessment must be reduced to the 2011 assessed value of \$77,300.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessment should be changed.

ISSUED: September 28, 2015

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