

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

**Petition No.:** 53-008-12-1-5-00040  
**Petitioner:** The David E. Sherlock Trust<sup>1</sup>  
**Respondent:** Monroe County Assessor  
**Parcel No.:** 53-08-22-200-012.000-008  
**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 his 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 were sworn as witnesses: David E. Sherlock; Patrick Jordan, Petitioner’s witness; and Judith Sharp, the Monroe County Assessor.<sup>2</sup>

**Facts**

6. The property under appeal is a single-family home located at 2240 East Rhorer Road in Bloomington.

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<sup>1</sup> David E. Sherlock signed as the owner of the subject property on the Form 131 petition. The owner, listed on the Form 131 petition, is the 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 authorized to appear at the hearing on behalf of the David E. Sherlock Trust.

<sup>2</sup> Jack Davis, PTABOA member, appeared at the hearing but did not testify.

7. The PTABOA determined the following values:  
Land: \$50,000      Improvements: \$104,300      Total: \$154,300.
8. Petitioner requested the following assessment:  
Land: \$50,000      Improvements: \$87,800      Total: \$137,800.

### **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: Notice of Assessment of Land and Structures – Form 11,
  
    - Respondent Exhibit A: Aerial map of the subject property,
    - Respondent Exhibit B: 2012 property record card (“PRC”) and photograph of the subject property,
    - Respondent Exhibit E: Five comparable property sales,
    - Respondent Exhibit F: 2012 PRC and photograph for 198 Rhorer Road,
    - Respondent Exhibit G: 2012 PRC for 2408 East Rhorer Road,
    - Respondent Exhibit H: 2012 PRC for 235 East Rhorer Road,
    - Respondent Exhibit I: 2012 PRC for 2225 East Rhorer Road,
    - Respondent Exhibit J: 2012 PRC for 1420 East Rhorer Road,<sup>3</sup>
  
    - Board Exhibit A: Form 131 petition,
    - Board Exhibit B: Hearing notice,
    - Board Exhibit C: Hearing sign-in sheet,
  - c. These Findings and Conclusions.

### **Burden of Proof**

10. 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.

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<sup>3</sup> The Assessor did not submit an Exhibit C or Exhibit D.

11. 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).
12. 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.
13. 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.*
14. Here, the assessment increased by more than 5% between 2011 and 2012. Consequently, 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**

15. Summary of Respondent’s case:
  - a. Ms. Sharp stated the subject property is a 1,300 square foot partial brick, ranch style home with a partial basement and basement garage. The home was built in 1969. The home was assessed with a C grade and a 30% depreciation rate. She discovered in 2011 that the basement garage had been omitted from the subject property. As a result of this change, the subject property’s assessment increased. *Sharp testimony; Resp’t Ex. A & B.*
  - b. Ms. Sharp testified the subject property was one of the original homes on East Rhorer Road. She stated that over the last 20 years, East Rhorer Road has become some of the “hottest” property in Monroe County, as the area has new subdivisions, a new elementary school, apartment complexes, doctor’s offices, commercial buildings, and shopping areas. *Sharp testimony.*

- c. In support of the assessment, Ms. Sharp submitted data on five properties that sold in the subject neighborhood between October 15, 2010, and January 4, 2012. They ranged in sales price from \$100,000 to \$645,000. The sales were part of the county's annual trending process. According to Ms. Sharp, to defend an assessment, she analyzes properties per square foot, which is determined by dividing the sale price by the size of home. The Rink property located at 198 East Rhorer Road, which is a rental property, appears to be a good comparison to the subject property in location, age, and construction. The home sold on February 25, 2011, for \$100,000, or approximately \$174 per square foot. *Sharp testimony; Resp't Ex. E & F.*
- d. The Kenworthy property, located at 1420 East Rhorer Road, sold for \$175,000, or \$118 per square foot.<sup>4</sup> The Rothrock property located at 2408 Rhorer Road is considered an anomaly in the area. It sold in a sheriff's sale on December 16, 2010 for \$750,000, or \$127 per square foot.<sup>5</sup> Finally, the Harlow property located at 235 East Rhorer Road, which is a rental property, has more amenities such as a partial finished basement, 1,778 square feet of living area, an enclosed masonry porch, a two-car garage, and is situated on 1.55 acres. It sold on January 4, 2012, for \$252,000 or \$141 per square foot, while the subject property is assessed at approximately \$117 per square foot. Ms. Sharp claims that, based on the per square foot sale prices, the subject property's assessment of \$117 per square foot is appropriate. *Sharp testimony; Resp't Ex. E, G-H, & J.*
- e. Although Mr. Sherlock pointed to the deterioration of his home, the assessment already reflects that deterioration. The home was assessed with 30% depreciation, which accounts for the deferred maintenance, such as the roof and painting. *Sharp testimony; Resp't Ex. B.*
- f. In her closing argument, Ms. Meighen argued that the property's 2013 mold problem is irrelevant with regard to a 2012 assessment. She claims that Mr. Sherlock has failed to present any certification or evidence that the mold problem existed in 2011. *Meighen argument.*

16. Summary of Petitioner's case:

- a. Petitioner believes the assessment increase was unjustified. The home was built in 1969 and has various problems. It is in need of repair and is depreciating in value. The home also has an odor and a mold problem. *Sherlock testimony; Pet'r Ex. 1.*
- b. Mr. Jordan testified to the poor condition of the home. He is a certified mold remediation technician and testified that in May of 2013, he examined the home and found fungus growing on the drywall. Based on this discovery, Mr. John Belts of

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<sup>4</sup> The PRC shows the Kenworthy property sold on October 18, 2011, for \$170,000. It also shows the home has 2,280 square feet of finished living area. This would equal a sale price per square foot of \$74.56 (i.e. \$170,000 divided by 2,280 square feet). *Resp't Ex. J.*

<sup>5</sup> The PRC shows the Rothrock property's sale price per square foot would be \$125.04 (i.e. \$750,000 divided by 5,998 square feet of living area). The Assessor's sales analysis shows the property sold again on May 6, 2011, for \$645,000 or \$107.54 per square foot. *Resp't Ex. E & G.*

CIH Services, who is a state certified environment hygienist, came to the home and tested for mold. He found approximately 47,000 mold spores of several different types in the basement and others throughout the home. The total cost to test and fix the mold issue was \$37,069.64. In response to questioning, Mr. Jordan testified that mold can grow in clean water within 72 hours and in black water within 48 hours. *Pet'r testimony.*

- c. Additionally, Mr. Jordan testified there were leaks in the roof, the fireplace, and the basement foundation. The costs to repair these items were \$8,023. The carpet also had to be replaced at a cost of \$3,876. *Pet'r testimony.*
- d. Petitioner was upset with Respondent's choice of comparable properties used at the PTABOA hearing. Petitioner claimed it was like "comparing apples to oranges." Petitioner determined one property is a small home located close to a Kroger store that sold for \$100,000. He believes that property was purchased for the land as an investment. The second property is a newer home in good condition located on the north side of East Rhorer Road that sold for \$170,000. Both comparable properties are rentals that are superior to the subject property. *Pet'r testimony; Pet'r Ex. 1.*

### **Analysis**

- 17. 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 \$154,300 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 certain of the purportedly comparable properties, Respondent failed to offer any explanation of how those properties compared to the subject property.
- f. Respondent failed to offer probative evidence relating the specific features and amenities of the purportedly comparable properties to the subject property. Her evidence mainly highlighted their differences. 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 properties 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 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**

- 18. 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. Thus, the Board finds the 2012 assessment must be reduced to the 2011 assessed value of \$137,800.

**Final Determination**

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessment should not be changed.

ISSUED: September 28, 2015

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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>>.