

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

Petition No.: 53-008-12-1-5-00041
Petitioner: David E. Sherlock Trust¹
Respondent: Monroe County Assessor
Parcel No.: 53-08-22-200-011.000-008
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, the Monroe County Assessor.²

Facts

6. The property under appeal is a single-family home located at 2210 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: \$61,800 Total: \$111,800.
8. Mr. Sherlock requested the following assessment:
Land: \$50,000 Improvements: \$54,500 Total: \$104,500.

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,
 - Petitioners Exhibit 2: Notice of Assessment of Land and Structures – Form 11,
 - Petitioners Exhibit 3: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134 (“134”) for the 2011 assessment,

 - Respondent Exhibit A: Aerial map of the subject property,
 - Respondent Exhibit C: 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.

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.

³ The Assessor did not submit an Exhibit B 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, Petitioner argued that his 2011 appeal was successful and that the burden should shift to Respondent for the 2012 appeal. Ms. Meighen agreed on the record that Respondent had the burden.

Summary of the Parties’ Contentions

15. Summary of the Respondent’s case:
 - a. The subject property is assessed correctly. Respondent testified that the value of the subject property increased between 2011 and 2012 because of the updated Real Property Assessment Guideline cost table. No other changes were made to the property. Furthermore, Respondent testified that most houses appreciate somewhat, and a \$7,000 increase was appropriate for a house of this size. *Sharp testimony.*
 - b. Respondent further stated that the subject property was built in 1953. It was assessed at a C-1 grade, which indicates that its construction is of less quality than an average home. Respondent stated that the property was allowed forty percent depreciation, and also another twenty-eight percent reduction for abnormal obsolescence. She stated that the detached garage was assessed correctly at \$10,900 for an average two car garage. *Sharp testimony; Resp’t Ex. C.*

- c. To support the 2012 assessment, Respondent presented a spreadsheet of five properties that sold in the subject neighborhood between 2010 and 2012. These sales were initially used in the trending process to establish the 1.20 “adjustment factor” for this neighborhood.⁴ *Sharp testimony; Resp’t Ex. C & E.*
- d. Respondent found that the subject property was most comparable to the sale of the Rink property at 198 East Rhorer Road. She stated that the two houses are comparable in age, design, and quality of construction. The Rink property is 1,080 square feet less than the subject property. Additionally, the Rink property has an effective age that is 27 years newer than the subject property and does not have any obsolescence. Respondent testified that because of the differences between the Rink home and the subject home, the subject home is assessed at approximately \$30 per square foot less. *Sharp testimony; Resp’t Ex. C & E- F.*
- e. The Rink property sold on February 25, 2011, for \$100,000 or \$174 per square foot. While Petitioner’s property is assessed at \$117 per square foot. Respondent argues that based on the per square foot sale price of the Rink property, the subject property’s assessment of \$117 per square foot is appropriate.⁵

16. Summary of Petitioner’s case:

- a. The assessment is too high. Petitioner contends that the 7% increase was unjustified and that the assessment should remain at the 2011 assessment amount of \$104,500. *Sherlock testimony; Pet’r Ex. 1-3.*
- b. Petitioner contends he originally purchased the subject property for the land. He contends that the property is of poor construction. The original portion of the house was “built in 1953 from ammunition boxes.” The ceiling height ranges from six-feet and seven-inches to seven-feet and four-inches. Additionally, the heat ducts are in the attic. Finally, the floor consists of concrete slabs at four different levels. *Sherlock testimony.*
- c. Mr. Jordan, witness for the Petitioner, was called to attest to the poor quality of the subject property. He testified that the ceiling could not be raised to eight-feet without major construction. Furthermore, he agreed that the cost of raising the roof would exceed the value of the home. *Jordan testimony.*
- d. Petitioner was upset with Respondent’s choice of the Rink property as a comparable property. He stated the property is located close to Kroger and has a small home on it. He believes the property’s zoning can be changed to commercial and it was

⁴ Ms. Sharp appears to be referring to Ind. Code § 6-1.1-4-4.5, which states “The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect.” Ind. Code § 6-1.1-4-4.5.

⁵ The subject PRC shows the home has 1,656 square feet and the total assessed value is \$111,800 or \$67.51 per square foot not \$117. *Resp’t Ex. C.*

purchased for the land as an investment. Whereas, the subject property is located a mile away from the Rink property and the land is not as valuable. *Sherlock testimony*.

- e. Finally, Petitioner listed the property for sale in 2007 for \$139,000. He reduced the price to \$115,000 and received an offer of \$110,000 with the condition that Mr. Sherlock raise the ceilings. Mr. Sherlock further states that he would demolish the home if it was not for his desire to provide a place for his grandson to live. *Sherlock testimony*.

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 \$111,800 was correct.
 - d. Respondent first claimed the subject property was assessed fairly compared to a similar home in the area. In support of her contention, Respondent submitted PRCs for the subject property and the Rink property. Pursuant to Ind. Code § 6-1.1-15-18 (c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district ...”

- Ind. Code § 6-1.1-15-18. However, “the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” *Id.*
- e. Here Respondent merely observed that the Rink property was similar in design and quality of construction. Location, lot size, age, size, quality of construction, condition and amenities of the house all play a role in the value of the property. *Long*, 821 N.E.2d at 471. Respondent testified the Rink property is assessed at \$30 less per square foot because it has 1,080 square feet less living area and is 27 years newer. She made no attempt to identify specific similarities in the properties or support the differences in the properties. Therefore, the assessed value of the comparable property does not support a finding that Petitioner’s property was assessed correctly.
 - f. Respondent also presented a spreadsheet with sale prices of five properties purported to be comparable to 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 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.*
 - g. In this case, Respondent offered no evidence relating the purportedly comparable properties’ specific features and amenities to the subject property. Indeed, with regard to four of the purportedly comparable properties, Respondent failed to offer any explanation of how those properties compared to the subject property. Respondent only discussed the Rink Property located at 198 East Rhorer Road.
 - h. 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. She stated that the Rink property was similar to the subject property, but she failed to identify how the differences affected the value of the property. She noted that the effective age of the Rink’s house was 1980, and that Petitioner’s home had an effective age dating from 1953. Respondent also stated that the Rink property was 1,080 square feet less than the subject property, and the Rink property received no obsolescence, whereas the subject property received a 28% abnormal obsolescence. Once again, Respondent did nothing to show how the comparable property’s characteristics were actually similar to those of the subject property as required by *Long*.
 - i. Respondent failed to explain the differences between the purported comparable property and the subject property. She did not offer evidence to show that adjustments were made to account for the difference in abnormal obsolescence, desirability, condition, location, and size of the properties.

- j. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d 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.
- k. 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 \$104,500.

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 \$104,500.

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>>.