

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

**Petition:** 65-018-11-1-5-00001  
**Petitioners:** Andrei Sharygin and Tatiana Sharygina  
**Respondent:** Posey County Assessor  
**Parcel:** 65-27-09-230-063.000-018 (0090217400)  
**Assessment Year:** 2011

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

**Procedural History**

1. The Petitioners appealed the 2011 assessment for the subject property to the Posey County Property Tax Assessment Board of Appeals (PTABOA).
2. On May 10, 2012, the PTABOA issued a determination denying any change.
3. The Petitioners filed a Form 131 petition with the Board. They mailed the Form 131 to the Board on June 22, 2012, and it was received by the Board on June 26, 2012. They elected to have this appeal heard under the Board's small claims procedures.
4. On December 13, 2012, the Board held a hearing on the petition through its designated Administrative Law Judge, Rick Barter. He did not inspect the subject property.
5. Andrei Sharygin and County Assessor Nancy Hoehn testified at the hearing. Mike Montgomery also was sworn, but he did not testify.

**Facts**

6. The subject property is an improved residential parcel located at 115 Elm Street, Mount Vernon.
7. The PTABOA determined the assessment is \$7,100 for land and \$23,800 for improvements (total \$30,900).
8. The Petitioners requested a value of \$7,100 for land and \$4,000 for improvements (total \$11,100).

## Contentions

### 9. Summary of the Respondent's case:

- a) The Petitioners' Form 130 appeal to the PTABOA was untimely. Tax bills were mailed on April 6, 2012. Therefore, May 22, 2012, was the deadline for taxpayers to appeal their assessment. A date stamp on the Form 130 shows it was received on June 22, 2012. *Hoehn testimony; Resp. Exs. K, L, M, O.*<sup>1</sup>
- b) The Form 131 to the Board also was untimely. The Form 115 notice from the PTABOA was issued on May 10, 2012. State law gives a 45-day appeal window that ended June 24, 2012. The Form 131 is stamped as received on June 26, 2012, which is past the deadline. *Hoehn testimony.*
- c) The Petitioners' list of comparable sales contains all invalid sales (according to the definition by the State of Indiana). They cannot be used for trending or the ratio studies. An assessed value cannot be based on invalid sales. *Hoehn testimony; Pet'r Ex. 5.*
- d) Sales must be within certain parameters to qualify for use in ratio studies. Except for one, all of the sales listed on Respondent Exhibit A are within those parameters. The neighborhood sales database and the sales/assessment ratio studies were approved by the Department of Local Government Finance (DLGF) and support the disputed assessment of the subject property. Ten sales of properties in the area between March 1, 2010, and December 27, 2011, demonstrate the average sale price is \$25 per square foot. The ratio study shows a sales value of \$25 a square foot. That would make the 2011 assessed value of the subject property \$39,200, which would be \$9,000 higher than the current assessment. *Hoehn testimony; Resp. Ex. A through J.*
- e) The cost approach was used to determine the value of the subject property. The cost tables have proven to be good and accurate. *Hoehn testimony.*
- f) Because the home is rental and investment property, the income approach to value utilizing a Gross Rent Multiplier (GRM) procedure was also considered. The Respondent did not know the actual rent for the subject property, but used a market rent of \$600 a month based on other rentals. The GRM is determined based on income from rental properties. A GRM of 72 would create a value of \$43,200 for the subject property. A GRM of 65 produces a value of \$39,000. An extremely low GRM of 20 would be required to get the value the Petitioners want. *Hoehn testimony.*
- g) Making the adjustment requested by the Petitioners would amount to sales chasing, which would be improper. *Hoehn testimony.*

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<sup>1</sup> Ms. Hoehn's direct testimony ignored a second file mark on the Form 130 (part of her Exhibit O) dated January 13, 2012. On cross examination, when she was asked about that other date, as well as the date the Form 11 was mailed (December 9, 2011, as shown on Petitioner Exhibit 2), her response was simply, "Well—maybe—I would have to go back and look. I don't have that information in front of me right now."

10. Summary of the Petitioners' case:

- a) The Assessor's testimony about the late filing dates for the Form 130 and the Form 131 is incorrect. The Petitioners filed both their Form 130 and their Form 131 within the time allowed. The Form 11 Notice of Assessment is dated December 9, 2011. It specifically states that taxpayers have 45 days to file a written notice for an appeal. The Form 130 was filed on January 13, 2012. The Respondent received this appeal within the 45-day limit. The Form 115 Notice of the PTABOA determination states that it was mailed on May 10, 2012, and again states that 45 days are allowed to file an appeal. The Petitioners have proof of mailing their Form 131 to the Board on June 22, 2012, which was within the allowed time, even though the Board's file mark indicates June 26, 2012. The Petitioners also called the Board and confirmed the appeal was filed on time. *Sharygin testimony; Pet'rs Ex. 1, 2.*
- b) Three of the ten sales the assessor used in her ratio study for 2011 occurred outside the time frame set by the DLGF. The Manual issued by the DLGF says assessing officials should use sales between March 2, 2009, and March 1, 2011. The three untimely sales were for properties at 1133 E. Water Street on April 26, 2011; 531 E. Third Street on March 22, 2011; and 917 E. Fourth Street on December 27, 2011. The assessor's list also does not include any of the 21 sales the Petitioners supplied as evidence to the PTABOA. *Sharygin testimony; Pet'rs Ex. 5.*
- c) The assessed value is significantly higher than the Petitioners' September 2007 purchase price of \$11,100. The property was purchased in a competitive and open market under all conditions requisite to a fair sale. *Sharygin testimony.*
- d) In the 2007 appeal for the subject property, the Board determined the purchase of this property was a valid sale, even though the Petitioners bought it from a bank. *Sharygin testimony; Pet'rs Ex. 4.*

**Record**

11. The official record contains the following:

- a) Form 131,
- b) Digital recording of the hearing,
- c) Petitioners Exhibit 1 – Form 130 - Short,  
Petitioners Exhibit 2 – Form 11,  
Petitioners Exhibit 3 – Chart of assessment values for 2008-2011,  
Petitioners Exhibit 4 – *Sharygin v. Posey County Assessor*, pet. no. 65-018-07-1-5-0001 (Oct. 27, 2009),  
Petitioners Exhibit 5 – List of 21 comparable property sales,  
Respondent Exhibit A – List of neighborhood sales, per square foot prices and ratio study results,

Respondent Exhibit B – PRC for parcel at 115 Elm Street,  
 Respondent Exhibit C – PRC for parcel at 917 E. Fourth Street,  
 Respondent Exhibit D – PRC for parcel at 531 E. Third Street,  
 Respondent Exhibit E – PRC for parcel at 231 E. Second Street,  
 Respondent Exhibit F – PRC for parcel at 838 E. Sycamore Street,  
 Respondent Exhibit G – PRC for parcel at 419 W. Fourth Street,  
 Respondent Exhibit H – PRC for parcel at 1145 E. Water Street,  
 Respondent Exhibit I – PRC for parcel at 1113 E. Water Street,  
 Respondent Exhibit J – PRC for parcel at 1112 E. Second Street,  
 Respondent Exhibit K – Letter from the Respondent to the Petitioner dated June 22,  
 2012,  
 Respondent Exhibit L – Envelope to Nolan Blood marked “unable to forward, return  
 to sender,”  
 Respondent Exhibit M – Letter from Kim Pastrick to Linda Curtis dated June 22,  
 2012,  
 Respondent Exhibit N – Notice of Hearing,  
 Respondent Exhibit O – Petitioners’ Form 130, Form 131, Form 115, and Notice of  
 Hearing,  
 Board Exhibit A – Form 131,  
 Board Exhibit B – Notice of Hearing,  
 Board Exhibit C – Hearing Sign-In Sheet,  
 Board Exhibit D – Envelope for the Form 131,

d) These Findings and Conclusions.

### **Burden**

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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 Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. Both parties agreed the Respondent has the burden to prove the assessment is correct because the disputed 2011 assessment increased by more than 5%.

### Analysis

14. An appeal can be initiated within 45 days after the Notice of Assessment (Form 11). Ind. Code § 6-1.1-15-1(c). In this case the Form 11 was dated December 9, 2011. This notice informed the taxpayers their deadline was January 23, 2012. It even informed the Petitioners they would not be able to file an appeal based on their tax bill. The Petitioners filed a Notice to Initiate an Appeal (Form 130) on January 13, 2012. Some copies of the Form 130 show a second date stamp, June 22, 2012. This later date is clearly not when the appeal process was initiated because the PTABOA determination is dated May 10, 2012. Neither party explained the later date stamp. Furthermore, in this case the time for initiating the appeal process has nothing to do with the tax bills that were mailed on April 6, 2012. The Respondent's specious argument on this point simply disregards the express deadline stated on the Form 11 and the earlier file mark on the Form 130. The Form 130 clearly was filed within the time allowed.
15. Appeal petitions to the Board can be filed not later than 45 days after the Form 115 is mailed. Ind. Code § 6-1.1-15-3(d). The PTABOA's Form 115 is dated May 10, 2012. The Board did not receive the Petitioners' Form 131 until June 26, 2012. The envelope in which it was mailed, however, is postmarked June 22, 2012. The postmark date on an appeal sent by first class United States mail is considered prima facie evidence of the date of filing. 52 IAC 2-3-1(c). May 10 to June 22 is less than 45 days. Therefore, the Petitioners' Form 131 was filed within the time allowed.
16. The Respondent failed to make a prima facie case that the assessed value of \$30,900 is correct. The Board reached this decision for the following reasons:
- a) Real property is assessed based on its true tax value, which means the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Other kinds of permissible evidence include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.

- d) A substantial amount of the Respondent's case related to how the mass appraisal system and annual trending is supposed to work, as well as how the Respondent met those responsibilities. The Respondent implied that the subject assessment draws validity from the fact that the disputed assessment is within an acceptable range for mass appraisals. An appeal of an individual assessment, however, is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property for the purposes of this appeal. Accordingly, this argument is of no probative value when determining whether the current assessment is correct.
- e) According to the Respondent, the disputed assessment was computed using the cost approach. The assessor, however, offered no details about how it was applied. The back of the property record card, which presumably showed the calculations used in the cost approach, was not entered into the record. The Respondent merely offered conclusory statements that the cost tables are "good and accurate" as support for her assessed value. This sort of evidence, however, does not prove that the assessed value actually is a correct market value-in-use for the subject property. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) The Respondent correctly pointed out that the gross rent multiplier is the preferred method for valuing rental properties with fewer than four units. Ind. Code § 6-1.1-4-39(b). But the Respondent presented no GRM calculation in support of the assessment. Instead, she testified that using a GRM of 72 results in a property value of \$43,200 and a GRM of 65 produces a value of \$39,000. The Respondent, however, offered no explanation as to how a value of either \$43,200 or \$39,000 supports the current assessment of \$30,900. The range of GRM numbers (from 72 down to 20) used in the Respondent's examples were not explained or substantiated in any way. Furthermore, the Respondent acknowledged she did not know the rental income for the subject property. She used an assumed income of \$600 per month, based on income received by other rental properties. The Respondent did not identify these other properties or show how they are comparable to the Petitioners' property. Merely offering conclusory statements that a property is "similar" or "comparable" to another property does not constitute probative evidence. *Long*, 821 N.E.2d at 470. The Respondent was "responsible for explaining to the Indiana Board the characteristics of [the] property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471. In this appeal, the Respondent failed to offer any meaningful comparison between the subject property and those that were the basis for the assumption about monthly income. Where the other properties are not specifically identified and no meaningful comparison is even attempted, this kind of evidence has no probative value. *Id.* Therefore, the Respondent's speculative testimony about various values purportedly based on GRM methodology has no probative value.

## Conclusion

17. The Respondent failed to offer substantial proof that the assessed value of the subject property is actually correct. Ordinarily, where the Respondent had the burden of proof that failure would require that the property's March 1, 2011, assessment be reduced to the previous year's level of \$10,800. But the Petitioners only claimed the correct assessment should be \$11,100. Under those circumstances, the Board will not reduce the assessment below the amount the Petitioners claimed.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the 2011 assessed value must be reduced to \$11,100.

ISSUED: April 15, 2013

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Commissioner, 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, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.