

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

**Petition No.:** 35-005-12-1-5-00236  
**Petitioner:** Tony L. Hiles  
**Respondent:** Huntington County Assessor  
**Parcel No.:** 35-05-14-100-394.500-005  
**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. Tony L. Hiles filed a written document contesting the subject property's March 1, 2012, assessment. On April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level that Mr. Hiles had requested.<sup>1</sup>
2. Mr. Hiles then timely filed a Form 131 petition with the Board, electing to have his appeal heard under the Board's small claims procedures.
3. On November 26, 2013, the Board held a hearing on Mr. Hiles' petition through its designated Administrative Law Judge (ALJ) Patti Kindler.<sup>2</sup> She did not inspect the property.
4. Tony Hiles appeared *pro se*. County Assessor Terri Boone and Deputy County Assessor Julie Newsome represented the Respondent. All were sworn and testified.

**Facts**

5. The property under appeal is a 55-foot wide by 132-foot deep lot with a home located at 319 Swan Street in Huntington.
6. The PTABOA determined the following assessment for 2012:  
Land: \$3,000                      Improvements: \$12,700                      Total: \$15,700

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<sup>1</sup> The Form 115 submitted by Mr. Hiles indicated the notice was mailed on April 26, 2013. However, the Form 115 submitted by the Respondent indicates the notice was mailed on February 28, 2013. *Resp't Ex. 3*. Because the Respondent did not raise this issue, the Board will defer to April 26, 2013, as the date the notification was mailed. Thus, the Petitioner's appeal is timely with the Board.

<sup>2</sup> The ALJ also consolidated the hearing with a hearing on two separate properties owned by Mr. Hiles located at 237 Lindley Street in Huntington. The Board is issuing a separate determination for the Lindley Street properties.

7. Mr. Hiles requested the following assessment for 2012 on his Form 131 petition:  
Land: \$2,000                      Improvements: \$2,500                      Total: \$4,500

**Record**

8. The official record for this matter contains the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Aerial photograph of the subject property,
- Petitioner Exhibit 2: Exterior photographs of the house,
- Petitioner Exhibit 3: Interior photographs of the house,
- Petitioner Exhibit 4: Photographs of the detached shed,
- Petitioner Exhibit 5: First page of the subject property's record card,
- Petitioner Exhibit 6: Second page of the subject property's record card,
- Petitioner Exhibit 7: First page of the Beacon subject property record,
- Petitioner Exhibit 8: Second page of the Beacon subject property record,
- Petitioner Exhibit 9: Third page of the Beacon subject property record,
- Petitioner Exhibit 10: Fourth page of the Beacon subject property record,
- Petitioner Exhibit 11: Letter from Stephen Ness to Mr. Hiles dated November 21, 2013,
- Petitioner Exhibit 12: Multiple Listing Service (MLS) listing for 1512 East Market Street,
- Petitioner Exhibit 13: MLS listing for 405 Hasty Street,
- Petitioner Exhibit 14: MLS listing for 864 Wilkerson Street,
- Petitioner Exhibit 15: MLS listing for 336 Hannah,
- Petitioner Exhibit 16: MLS listing for 934 Second Street,
- Petitioner Exhibit 17: First page of email from Joanie Veach to Mr. Hiles dated November 21, 2013,
- Petitioner Exhibit 18: Second page of email from Joanie Veach to Mr. Hiles dated November 21, 2013,
- Petitioner Exhibit 19: First page of MLS listing for 1235 Edwin Street,
- Petitioner Exhibit 20: Second page of MLS listing for 1235 Edwin Street,
- Petitioner Exhibit 21: First page of MLS listing for 1659 East State Street
- Petitioner Exhibit 22: Second page of MLS listing for 1659 East State Street,
- Petitioner Exhibit 23: First page of MLS listing for 999 Riverside,
- Petitioner Exhibit 24: Second page of MLS listing for 999 Riverside,
- Petitioner Exhibit 25: First page of MLS listing for 312 Brawley Street,
- Petitioner Exhibit 26: Second page of MLS listing for 312 Brawley Street,
- Petitioner Exhibit 27: Cover sheet for Kent Bower's MLS listings,
- Petitioner Exhibit 28: MLS listing for 1163 Elm Street,
- Petitioner Exhibit 29: MLS listing for 237 East Columbia Street,

- Petitioner Exhibit 30: MLS listing for 751 East Tipton,  
 Petitioner Exhibit 31: MLS listing for 534 Poplar Street,  
 Petitioner Exhibit 32: MLS listing for 515 Court,  
 Petitioner Exhibit 33: MLS listing for 818 North Wayne Street,  
 Petitioner Exhibit 34: MLS listing for 628 Whitelock Street,  
 Petitioner Exhibit 35: MLS listing for 634 Second Street.
- Respondent Exhibit A: Exhibit coversheet, copy of Respondent’s letter to Mr. Hiles requesting evidence prior to the Board’s hearing dated November 7, 2013,
- Respondent Exhibit 1: Notice of hearing,  
 Respondent Exhibit 2: Form 131 petition,  
 Respondent Exhibit 3: Form 115,  
 Respondent Exhibit 4: Description of subject property prepared by the Respondent with a photograph,  
 Respondent Exhibit 5: Subject property record card,  
 Respondent Exhibit 6: Sales disclosure form for the subject property,  
 Respondent Exhibit 7: “Approach to value analysis” including information on the sales, income, and cost approaches to value,  
 Respondent Exhibit 8: Comparable sales analysis prepared by the Respondent,  
 Respondent Exhibit 9: Photograph, property record card, and sales disclosure for 1318 East Market Street; photograph, property record card, and sales disclosure for 1414 East Franklin Street; photograph, property record card, and sales disclosure for 312 Brawley Street; photograph, property record card, and sales disclosure for 1437 East Market Street,  
 Respondent Exhibit 10: Aerial map indicating location of the subject property and comparable properties,  
 Respondent Exhibit 11: Aerial map, property record cards, and sales disclosures for vacant lots at East Market Street and First Street,  
 Respondent Exhibit 12: Copy of Level II Certificates for Ms. Boone and Ms. Newsome.
- Board Exhibit A: Form 131 petition with attachments,  
 Board Exhibit B: Hearing notice,  
 Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Objections**

9. Ms. Newsome, on behalf of the Respondent, objected to all of the Petitioner’s exhibits because Mr. Hiles did not provide the county with copies of the exhibits when she requested them prior to the Board’s hearing. Ms. Newsome entered the letter she sent Mr. Hiles requesting the evidence on November 7, 2013, as Respondent Exhibit A. At the hearing, the ALJ took the objection under advisement.

10. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) ("If requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of all evidence" from Mr. Hiles in a letter dated November 7, 2013. Mr. Hiles failed to comply with that request. *Newsome testimony; Resp't Ex. A at 2.*
11. In response to the objection made by the Respondent, Mr. Hiles first claimed that he did not receive the Respondent's request for evidence. Mr. Hiles then acknowledged that "it could have gone to Marion, I am not sure, I haven't been down there in some time."<sup>3</sup> Ms. Newsome testified that she mailed a copy of this request to both Mr. Hiles place of business located at 1353 North Miller Avenue and to Mr. Hiles residence at 392 Lindley Street. In any case, Mr. Hiles claimed that he never saw the Respondent's request, and therefore did not comply with it.<sup>4</sup> Thus, Ms. Newsome's objection is sustained, and the Petitioner's evidence is excluded, pursuant to 52 IAC 3-1-5(d).
12. Ms. Newsome further objected to the Petitioner Exhibits 11, 17, and 18. Ms. Newsome objected on the grounds of hearsay because these exhibits offered the opinions of the property's value from Stephen Ness and Joanie Veach. Given that all of the Petitioner's exhibits were already excluded above, the Board need not rule on this objection.
13. The Board's ruling on these objections, however, does not affect the final determination made here. For the reasons discussed below, even if the Board were to consider the Petitioner's evidence in total, it is not sufficient to make a prima facie case of error in the assessment.

### **Contentions**

14. Summary of the Petitioner's case:
  - a) The subject property is assessed too high in light of the condition of the house and shed. In an attempt to clean up the neighborhood, the Petitioner is purchasing properties and tearing them down to prevent the flow of drugs. He purchased the subject property at tax sale on January 12, 2012, for \$2,423, with intentions to use it as storage. It was in poor, unlivable condition. No one had lived in the home for seven to eight years prior to his purchase. *Hiles testimony; Pet'r Ex. 2, 3, 4.*
  - b) The Petitioner presented photographs to show the home's unlivable condition, including evidence of water leaks and exposed ceilings. Much of the plumbing is unusable. The kitchen sink, water heater, and bathtub are not in place or hooked up.

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<sup>3</sup> It appears that Mr. Hiles is referring to the address of 1353 North Miller Avenue, Marion, Indiana. This address is listed as the property owner's address on the Form 131s for the Lindley Street appeals.

<sup>4</sup> Mr. Hiles did not state whether he submitted any of the evidence at the PTABOA hearing.

In addition, the shed is not salvageable and certainly cannot be used as car storage. *Hiles testimony; Pet'r Ex. 2, 3, 4.*

- c) Two realtors have indicated values for the subject property. First, Stephen Ness with Ness Brothers Realty estimated the subject property's value at \$4,500. He provided several comparable sales. *Hiles testimony; Pet'r Ex. 11, 12, 13, 14, 15, 16.*
- d) Also, Joanie Veach, a real estate broker with Coldwell Banker, used several comparables to value the subject property at \$5,900. But according to Mr. Hiles, both of the realtors' estimates of value for the subject property are too high. *Hiles argument; Pet'r Ex. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.*
- e) A third realtor that the Petitioner contacted, Kent Bowers, did not provide an opinion of value for the subject property. Instead, Mr. Bowers provided eight MLS listings of properties that sold. Mr. Bowers noted that some of the comparables were "very nice" or "livable" in the data he provided. Some of the sold homes that Mr. Bowers provided even had garages. *Hiles testimony; Pet'r Ex. 27, 28, 29, 30, 31, 32, 33, 34, 35.*
- f) Mr. Hiles took issue with the Respondent's purported comparable sales. First and foremost, the comparables are livable homes while the subject property is not. Second, the Respondent's first comparable, located at 1318 East Market, sold in 2013, which is after the valuation date. Finally, the Respondent's fourth comparable, which is located at 1437 East Market and sold for \$26,000, is far superior to the subject property. *Hiles argument.*

15. Summary of the Respondent's case:

- a) The subject property includes a one-story masonry house built in 1946, and a detached 10-foot by 20-foot car shed, on a 55-foot by 132-foot lot. The house measures 792 square feet with a full crawl space, and it is in poor condition. Although it was designed as a dwelling, it is not being used as one. *Newsome testimony; Resp't Ex. 4, 5, 7.*
- b) The Petitioner bought the subject property at tax sale. A tax sale purchase is not considered an arm's length transaction; it is considered a "stressed sale." Thus, the Respondent looked at the following stressed and distressed sales of properties within the subject's neighborhood to show that its 2012 assessment is fair:<sup>5</sup>

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<sup>5</sup> Ms. Newsome did not specifically define what she meant by "stressed sales." The first comparable sale appears to have been a land contract. The second, third, and fourth comparable sales appear to have sold conventionally, according to their sales disclosures. *Newsome testimony; Resp't Ex. 9.*

Address	Sale Date	Price per square foot
1318 East Market	February 26, 2013	\$12.37
1414 East Franklin	March 21, 2011	\$13.13
312 Brawley	September 27, 2011	\$15.34
1437 East Market	October 4, 2011	\$30.23

While the subject property is assessed at \$19.82 per square foot, the comparable properties sold between \$12.37 to \$30.23 per square foot. Accordingly, the subject property's 2012 assessment is fair and should not be changed. *Newsome testimony; Resp't Ex.7, 8, 9, 10.*

### Burden of Proof

16. Generally, the 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
17. First, Ind. Code section 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 Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
18. Second, Ind. Code section 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 IC 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.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
19. In 2011, the assessment of the subject property was \$37,800. The 2012 assessment of the subject property was \$15,700. Because the assessment decreased, the burden remains with the Petitioner and the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply in this appeal.

## Analysis

20. The Petitioner did not make a prima facie case for reducing the subject property's 2012 assessment.
- 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." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may 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 to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E. 2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
  - c) As set forth above, the Petitioner's exhibits were excluded due to Mr. Hiles' failure to comply with 52 IAC 3-1-5(d). In lacking documentary evidence to support his claim that the assessment is wrong, Mr. Hiles' contentions amount to little more than conclusory statements, and conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Thus, the Petitioner failed to make a prima facie case that the subject properties assessments should be lowered.
  - d) The result in this appeal, however, would have been no different even if the Board had considered the Petitioner's evidence. The photographs of the property Mr. Hiles offered show that the house is in very poor condition. But just showing a property is in poor or in unlivable condition is not enough to establish that the subject assessment is in error. Mr. Hiles needed to offer probative evidence that establishes the effect of that deferred maintenance on the subject property's market value-in-use as of the assessment date. Without more, Mr. Hiles' photographs and testimony are not enough to make a prima facie case for changing the assessment.
  - e) Mr. Hiles did attempt to offer some sales comparison evidence. Specifically, he offered opinions of three realtors, two of whom offered written opinions of value.

The two written opinions were based on purportedly comparable sales. The third realtor merely provided MLS listings for purportedly comparable properties.

- f) To effectively use any kind of comparison approach to value a property, however, one must establish that the properties are truly comparable. Conclusory statements that properties are “similar” or “comparable” are not sufficient. *Long*, 821 N.E.2d at 470. The Petitioner is “responsible for explaining to the Indiana Board the characteristics of their own 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.
- g) The realtors and Mr. Hiles failed to offer the type of evidence contemplated by *Long*. Only a small amount of information was provided regarding the purportedly comparable properties, and none of the realtors provided any adjustments for differences between the listed or sold properties and the subject properties.
- h) Furthermore, nothing in the record indicates that the realtors’ letters of opinion were prepared in accordance with USPAP or followed generally accepted appraisal principles. Additionally, both of the realtor’s opinion letters are dated November 21, 2013, and neither realtor offered an explanation to relate their opinions of value to the March 1, 2012, valuation date. *See Whitley Products, Inc.*, 704 N.E.2d at 1113, 1119 (explaining that unsupported conclusory statements are not probative evidence). Accordingly, even if these exhibits had been admitted into the record, they do not constitute probative evidence of what the subject property’s 2012 assessment should be.
- i) The subject property was purchased at tax sale on January 12, 2012, for \$2,423. True, a property’s sale price can be compelling evidence of its market value-in-use. The Petitioner does not say anything else about the purchase, except to say he purchased it at tax sale.
- j) The Manual defines “market value.”

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;

- v. The price is unaffected by special financing or concessions.

MANUAL at 10.

- k) It is apparent from the Manual's definition that a property purchased at a tax sale may not reflect its market value for reasons such as a lack of exposure to the open market or the seller not being typically motivated. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) *review denied* (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm).
- l) The Petitioner offered nothing to show that the subject property was listed on the market and nothing to establish that tax sales were the market norm for the subject property's neighborhood on January 1, 2012. Under these circumstances, the price that Mr. Hiles paid for the subject property is not probative of its market value-in-use.
- m) Thus, even had the Petitioner's exhibits been admitted, the Petitioner still failed to make a prima facie case that the 2012 assessment was incorrect.
- n) Where the Petitioner has not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 21. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the 2012 assessment will not be changed.

ISSUED: May 21, 2014

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Chairman, 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>>.