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

**Petition:** **57-011-14-1-5-10283-15**
**Petitioners:** **Samuel & Marianne Slone**
**Respondent:** **Noble County Assessor**
**Parcel:** **57-04-15-400-139.000-011**
**Assessment Year:** **2014**

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

## Procedural History

1. The Petitioners initiated their 2014 assessment appeal with the Noble County Assessor on October 22, 2014.

2. On May 18, 2015, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the requested by the Petitioners.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.

4. The Board issued a notice of hearing on August 24, 2015.

5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on October 29, 2015. She did not inspect the property.

6. Samuel and Marianne Slone appeared *pro se*. County Assessor Kim Miller appeared for the Respondent. All of them were sworn.

## Facts

7. The property under appeal is a single-family rental property located at 0555 Lakeside Court in Rome City.

8. The PTABOA determined the total assessment is $101,200 (land $60,600 and improvements $40,600).

9. On their Form 131 the Petitioners requested a total assessment of $62,600 (land $22,800 and improvements $39,800). [1]

[1] At the hearing, the Petitioners requested a total assessment of $78,000.

## Record

10. The official record for this matter is made up of the following:

a) Petition for Review of Assessment (Form 131) with attachments,

b) A digital recording of the hearing,

c) Exhibits:

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| Petitioners Exhibit A: | "Estate Showcase" Orizon Real Estate, Inc., May 2015 newspaper listing for the subject property, |
| Petitioners Exhibit B: | Orizon Real Estate, Inc., September 2015 newspaper listing for the subject property, |
| Petitioners Exhibit C: | Orizon Real Estate, Inc., October 2015 newspaper listing for the subject property, |
| Petitioners Exhibit 1: | "Comparable Market Value" report prepared by Tim Hess, Associate Broker, ReMax Results, dated October 15, 2015. |
| Respondent Exhibit 1: | Phone record between the Respondent and Orizon Real Estate, Inc., dated October 28, 2015, |
| Respondent Exhibit 2: | Letter from Ms. Miller to the Petitioners dated February 5, 2015, regarding their pending appeals, |
| Respondent Exhibit 3: | Form 131, |
| Respondent Exhibit 4: | Subject property record card, |
| Respondent Exhibit 5: | Multiple Listing Service (MLS) for the subject property, |
| Respondent Exhibit 6: | Aerial photograph of the subject property, |
| Respondent Exhibit 7: | Tyler Technology land analysis spreadsheet for the subject property's neighborhood, |
| Respondent Exhibit 8: | Letter from Ms. Miller to the Petitioners, dated October 5, 2015, requesting their exhibit and witness list, |
| Respondent Exhibit 9: | Land sales including MLS screen shots for the properties located at Lot 620, Lakeside Drive, 0000 Lions Drive, and Addis Road, along with property record cards for the properties located at Lakeside Drive and Spring Beach Road. |
| Board Exhibit A: | Form 131 petition with attachments, |
| Board Exhibit B: | Notice of hearing, dated August 24, 2015, |
| Board Exhibit C: | Hearing sign-in sheets. |

d) These Findings and Conclusions.

## Objections

11. Ms. Miller objected to all of the Petitioners' exhibits on the grounds that the Petitioners failed to provide copies of the exhibits prior to the hearing when requested by the Respondent. *See Resp't Ex. 8*.

12. In response, the Petitioners testified that they did not have the evidence in time to exchange it timely. The ALJ took the objection under advisement.

13. 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 the Petitioners in a letter dated October 5, 2015. The Petitioners failed to comply with that request. Thus, Ms. Miller's objection is sustained, and the Petitioners' evidence is excluded, pursuant to 52 IAC 3-1-5(d).

14. The Board's ruling on this objection, however, does not affect the final determination. For the reasons discussed below, even if the Board were to consider the Petitioners' evidence, the final determination would remain the same.

## Contentions

15. Summary of the Petitioners' case:

    a) The property's assessment is too high. The property was reasonably assessed at $68,600 in 2013. Prior to the reduction made at the PTABOA level, the property's 2014 assessment was $131,200. *Samuel Slone argument.*

    b) The property has been listed with Orizon Real Estate, Inc., for $131,200. It was only listed at this price "to prove that it cannot be sold." *Samuel Slone testimony; Pet'rs Ex. A, B, C.*

    c) In an effort to prove the property is over-assessed, the Petitioners presented a Comparable Market Value Report performed by Tim Hess, a Broker for ReMax Results. *Marianne Slone testimony; Pet'rs Ex. 1.*

    d) Mr. Hess' used three sales of comparable properties. The first property, located in Wawaka, sold for $55,000. This property has "more acreage and outbuildings." The second property, located in Rome City, sold for $82,000. This property has more acreage than the subject property. The third property, also located in Rome City, sold for $45,000 after 348 days on the market. This property has more acreage, but the home has one less bedroom. Mr. Hess made adjustments to reflect the differences. The adjusted price of this property equates to $78,700. After an analysis of these

three comparable properties, Mr. Hess valued the subject property at $78,000. *Marianne Slone testimony; Pet'rs Ex. 1.*

e) The land assessment is excessive when compared to the land assessment of neighboring lots. For example, a 12.67-acre lot bordering the subject property sold for $8,524 per acre. Additionally, two 20-acre lots also located in close proximity to the subject property are assessed at $4,800 per acre. Meanwhile, the subject property is assessed at $75,000 an acre. S*amuel Slone argument.*

f) The Respondent erroneously relied on several sales where "the buyers purchased the properties to tear the houses down." For these sales, the Respondent "rotated the improvements into the land value." *Samuel Slone argument (referencing Resp't Ex. 9).*

16. Summary of the Respondent's case:

a) The property is assessed correctly. The 2014 assessment increased because of "rising neighborhood land values." *Miller argument; Resp't Ex. 2.*

b) A recent ratio study and trending was performed in conjunction with Tyler Technologies for the subject property's neighborhood. By utilizing the study, they determined property values in the neighborhood were below market value. Utilizing all recent sales, a median value of $22,250 was established. Utilizing only vacant land sales, the study yielded a median value of $18,500. Finally, when utilizing the abstraction method, a median value of $29,250 was arrived at.[2] Here, Ms. Miller elected to utilize the median value of $22,250. The subject property's current land assessment is supported by the study. *Miller testimony; Resp't Ex. 2.*

c) To further emphasize the assessed value was "within reason," the Respondent presented the per acre value that Tyler Technologies utilized in their study. The study results suggested a median acreage base rate value of $117,000. If this amount would have been utilized on the subject property, their land assessment would have increased substantially. Ultimately, the Respondent decided to use $75,000 as the base rate for the subject property. *Miller testimony; Resp't Ex. 7.*

d) The Respondent also offered information for five comparable properties to support the current assessment.

- A 0.57-acre buildable lot in Rome City is listed at $47,900.
- A 10.28-acre "marshy lot" located on Lions Drive is listed for $53,000.
- The property located on Lakeside Drive sold for $32,500. This property also included a 24-foot by 48-foot garage.

[2] The Respondent defined the "abstraction method" as "taking the same sales with land and improvements and subtracting the improvements."

- The property located on Spring Beach Road sold for $75,000. This property measures 0.34 acres and includes a detached garage.

- A 0.8-acre property located on Addis Road is listed for $45,000.

*Miller testimony; Resp't Ex. 9.*

**Burden of Proof**

17. 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. Ass'r*, 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 amended by P.L. 97-2014 creates two exceptions to that rule.

18. 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 Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

19. 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 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

20. Here, the parties agree that the total assessed value increased by more than 5% from 2013 to 2014. In fact, the assessment increased from $68,600 to $101,200. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2014 assessment is correct.

**Analysis**

21. The Respondent failed to make a prima facie case that the 2014 assessment was correct.

    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, a party must explain how the evidence relates to the relevant 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. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here, the Respondent had the burden to prove the 2014 assessment was correct. First, the Respondent argues that a correction in the land value triggered the increase. The Respondent attempted to support the land portion of the property's assessment by introducing a "study" she had completed. She arrived at three possible median values for the land portion of the property's assessment. One study included "all sales and listings" and indicated a median value of $22,250. A second study was performed with "only vacant lots" and indicated a median value of $18,500. Finally, a third study was performed utilizing the abstraction method and yielded a median value of $29,250.

d) It appears the Respondent was using the ratio study to explain why the subject property's assessment increased by more than 5% from 2013 to 2014. The Respondent, however, failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporates by reference, says otherwise:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . . **However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added in italics in original).

e) The Respondent also offered evidence regarding several purportedly comparable properties. In doing so, the Respondent essentially relies on a sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.

f) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id*. at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

g) In some respects she attempted to compare her purportedly comparable properties to the subject property. However, she failed to make any adjustments to account for differences between the properties. Most importantly, she failed to provide any indication that her analysis conforms to generally accepted appraisal principles and USPAP. In addition, several of the properties utilized were listings and not valid sales. And she failed to explain how a listing price was relevant to the subject property's value. Therefore, the sales data presented lacks probative value.

h) For these reasons, the Respondent did not offer enough probative evidence to indicate the 2014 assessment was correct. Therefore, the Petitioners are entitled to have their assessment returned to its 2013 level of $68,600. However, the Petitioners specifically testified that they were seeking a value of $78,000. Thus, even though the Petitioners' documentary evidence to support that amount was excluded from the record, the Board accepts the Petitioners' concession.

## Conclusion

22. The Respondent had the burden of proving the 2014 assessment was correct. She failed to make a prima facie case, thus the assessment would normally be reduced to the previous year's amount, $68,600. However, the Petitioners conceded that the assessment should be $78,000. Thus, the Board orders that the 2014 assessment be changed to $78,000.

## Final Determination

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to $78,000.

ISSUED: January 26, 2016

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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 of 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>.