

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

**Petition Nos.:** 35-005-13-1-5-00096  
35-005-14-1-5-00046  
**Petitioner:** Tony L. Hiles  
**Respondent:** Huntington County Assessor  
**Parcel No.:** 35-05-14-100-394.500-005  
**Assessment Years:** 2013 and 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 Petitioner initiated his 2013 and 2014 appeals with the Huntington County Assessor on August 16, 2013, and August 11, 2014, respectively.
2. On March 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2013 assessment year denying the Petitioner any relief.
3. On October 27, 2014, the PTABOA issued its determination for the 2014 assessment year denying the Petitioner any relief.
4. Mr. Hiles timely filed his Petitions for Review of Assessment (Form 131s) with the Board, electing to have his appeals heard under the Board's small claims procedures.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on March 25, 2015. She did not inspect the property.
6. Tony Hiles appeared *pro se*. County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared the Respondent. All were sworn.

**Facts**

7. The property under appeal is a 55-foot wide by 132-foot deep lot with a home and storage shed, located at 319 Swan Street in Huntington.
8. The PTABOA determined the following assessed values:

2013: Land: \$3,000	Improvements: \$12,300	Total: \$15,300
2014: Land: \$3,000	Improvements: \$12,100	Total: \$15,100

9. The Petitioner requested the following assessed values on his Form 131s:

2013: Land: \$2,000	Improvements: \$2,500	Total: \$4,500
2014: Land: \$3,000	Improvements: \$2,000	Total: \$5,000

### **Record**

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

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

Petitioner Exhibit 1:	2010 tax sale information for 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 record card,
Petitioner Exhibit 6:	Second page of the subject property record card,
Petitioner Exhibit 7:	First page of the property record card for 800 North, Bippus,
Petitioner Exhibit 8:	Second page of the property record card for 800 North, Bippus,
Petitioner Exhibit 9:	Aerial map of 800 North, Bippus,
Petitioner Exhibit 10:	Page one of the Commissioners Certificate Sale, dated April 28, 2015,
Petitioner Exhibit 11:	Page two of the Commissioners Certificate Sale,
Petitioner Exhibit 12:	Page three of the Commissioners Certificate Sale,
Petitioner Exhibit 13:	Tax and transfer information for the property located at 1437 Superior Street,
Petitioner Exhibit 14:	First page of the property record card for 1437 Superior Street,
Petitioner Exhibit 15:	Second page of the property record card for 1437 Superior Street,
Petitioner Exhibit 16:	Sales disclosure form for 544 Webster Street,
Petitioner Exhibit 17:	First page of the property record card for 544 Webster Street,
Petitioner Exhibit 18:	Second page of the property record card for 544 Webster Street,
Petitioner Exhibit 19:	Sales disclosure form for 440 Jackson Street,
Petitioner Exhibit 20:	First page of the property record card for 440 Jackson Street,
Petitioner Exhibit 21:	Second page of the property record card for 440 Jackson Street,

Petitioner Exhibit 22: Multiple Listing Service (MLS) sales sheet for 515 Court Street,  
Petitioner Exhibit 23: MLS sales sheet for 544 Webster Street,  
Petitioner Exhibit 24: MLS sales sheet for 1834 Sabine Street,  
Petitioner Exhibit 25: MLS sales sheet for 229 Garfield Street,  
Petitioner Exhibit 26: MLS sales sheet for 249 Condit Street,  
Petitioner Exhibit 27: MLS sales sheet for 448 Lindley Street,  
Petitioner Exhibit 28: MLS sales sheet for 634 Second Street,  
Petitioner Exhibit 29: MLS sales sheet for 628 Whitelock Street,  
Petitioner Exhibit 30: MLS sales sheet for 958 Iowa Street,  
Petitioner Exhibit 31: MLS sales sheet for 2142 Sabine Street,  
Petitioner Exhibit 32: MLS sales sheet for 759 East Washington Street,  
Petitioner Exhibit 33: MLS sales sheet for 519 Webster Street,  
Petitioner Exhibit 34: MLS sales sheet for 740 East Market Street.

Respondent Exhibits for 2013 appeal:

Respondent Exhibit 1: Photograph of the subject property,  
Respondent Exhibit 2: Notice of hearing, dated February 10, 2015,  
Respondent Exhibit 3: “Description and analysis of the subject property,”  
Respondent Exhibit 4: 2013 Form 131 petition,  
Respondent Exhibit 5: 2013 Form 115,  
Respondent Exhibit 6: The Petitioner’s letter initiating the 2013 appeal, dated August 10, 2013,  
Respondent Exhibit 7: Subject property record card,  
Respondent Exhibit 8: Aerial photograph of the subject property.

Respondent Exhibits for 2014 appeal:

Respondent Exhibit 1: Notice of hearing, dated February 10, 2015,  
Respondent Exhibit 2: 2014 Form 131,  
Respondent Exhibit 3: 2014 Form 115,  
Respondent Exhibit 4: The Petitioner’s letter initiating the 2014 appeal, dated August 8, 2014,  
Respondent Exhibit 5: Subject property record card.

Board Exhibit A: Form 131 petitions with attachments,  
Board Exhibit B: Hearing notices, dated February 10, 2015,  
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

## Objections

11. Ms. Newsome, on behalf of the Respondent, objected to all of the Petitioner's exhibits. Ms. Newsome argued that she requested all of the Petitioner's exhibits prior to the Board's hearing, but she did not receive the same packet Mr. Hiles offered at the hearing.
12. Mr. Hiles claimed that he provided the Respondent with copies of his exhibits in a timely manner. Mr. Hiles went on to argue that the Board's rules do not specify how prehearing evidence is to be provided. The ALJ took the objection under advisement.
13. Much of Ms. Newsome's argument refers to an earlier hearing involving the same parties. In this earlier hearing Ms. Newsome explained that the basis of her objection to the admission of the Petitioners' exhibits was not that they were untimely, but rather that the exhibits were not properly organized or labeled. According to Ms. Newsome, the Petitioner delivered his unlabeled prehearing evidence to the Respondent as loose papers in a single box. This same box also contained exhibits pertaining to several other hearings scheduled for the same hearing date. Ms. Newsome argued the Respondent was not obligated to go through the Petitioners' box of prehearing exhibits because those exhibits were not properly organized.
14. Given the unique circumstances and the fact that the Petitioners were scheduled for multiple hearings on the same day, the Board incorporates by reference the evidence and Ms. Newsome's testimony regarding her objection from the prior hearing involving the following petition numbers: 35-005-12-1-5-00238, 35-005-13-1-5-00098 and 35-005-14-1-5-00048.<sup>1</sup>
15. 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) ("[I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of any and all evidence" from the Petitioners in an undated and unlabeled letter incorporated by reference from the prior hearing. According to Mr. Hiles' testimony in the earlier hearing, the pre-hearing exhibits were provided five business days in advance. While the Board has procedural rules regarding the labeling and organization of exhibits for Board hearings, those procedural rules do not address the labeling and organization of prehearing evidence.
16. The Board overrules the Respondent's objection. Mr. Hiles testified that all of the Petitioners' exhibits were presented to the Respondent in accordance with 52 IAC 3-1-5(d). Accordingly, the Petitioners' exhibits are admitted. The Board's ruling on the

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<sup>1</sup> The parties are advised that when there are multiple hearings scheduled for a petitioner in one day, each hearing is separate and each party to the appeal should offer a complete record for every appeal hearing without relying on the record from prior hearings.

objection, however, does not change the final determination because the Petitioner failed to make a prima facie case for reducing the assessments.<sup>2</sup>

### Contentions

17. Summary of the Petitioner's case:

- a) The subject property is assessed too high in light of the condition of the house and shed. Mr. Hiles purchased the distressed property at a tax sale on October 28, 2010, for \$2,423.<sup>3</sup> Photographs show that the home is in poor condition, but the garage is still usable. *Hiles argument; Pet'r Ex. 1, 2, 3, 4.*
- b) In an attempt to show that the subject property is over assessed, the Petitioner pointed to the assessment of a property located on 800 North in Bippus. This property includes a 1,008 square foot home and a 336 square foot garage. Similar to the subject property, this home has been turned into a storage shed. However, this property's assessment is only \$1,300 while the subject property's assessment is in excess of \$15,000. *Hiles testimony; Pet'r Ex. 7, 8, 9.*
- c) The Petitioner also pointed to the 2014 assessment of a 1,656 square foot home located at 1437 Superior Street. This property is assessed at \$31,200. It was offered at tax sale for \$978, but there were no interested buyers. *Hiles testimony; Pet'r Ex. 13, 14, 15.*
- d) Likewise, numerous other properties located in the same vicinity as the subject property are listed at the "Commissioner's Certificate Sale" scheduled for April 28, 2015. In the past, there has been little to no interest in these properties from prospective buyers. *Hiles testimony; Pet'r Ex. 10, 11, 12.*
- e) Mr. Bowers, a real estate broker, testified as to his knowledge of 14 MLS listings and sales disclosures for properties similar to the subject property. Mr. Bowers noted that some of the comparables were "pretty nice" or "livable," but others were in "poor condition and unlivable." *Bowers testimony; Pet'r Ex. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.*
- f) Granted, some of the Petitioner's comparable sales are foreclosures and bank-owned sales. Foreclosure and bank sales can, however, represent a market because the properties are listed on the open market for the public to buy. Their market value is determined by the amount a buyer is willing to pay for them. *Hiles argument; Bowers testimony; Pet'r Ex. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.*

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<sup>2</sup> In the future, to avoid questions of whether prehearing evidence was properly presented to the Respondent, the Board advises the Petitioners to label and organize each prehearing exhibit packet separately in the same manner they will be presented at the Board's hearings, especially when the Petitioner is scheduled for multiple hearings.

<sup>3</sup> According to the subject property record card, Mr. Hiles did not acquire the tax deed to the property until February 7, 2012.

- g) The subject property is worth approximately \$1,500. Given the poor condition of the property, it would cost a potential buyer between \$2,500 and \$5,000 to demolish the home. *Bowers testimony.*
- h) Under cross examination, Mr. Hiles replied that he would be willing to sell the subject property for “half of its assessed value.” Mr. Hiles also testified that he would sell the subject property for “\$3,000 if someone offered him that amount.” *Hiles testimony.*

18. Summary of the Respondent’s case:

- a) The Petitioner’s purportedly comparable properties were repossessed properties. A bank-owned sale does not represent the market because it is affected by “undue stimulus.” *Newsome argument.*
- b) The Petitioner had a “special interest” in purchasing the subject property because it is adjacent to his home-site. Thus, the subject property has value to the Petitioner because he owns other properties around it. *Newsome argument; Resp’t Ex. 8.*

**Burden of Proof**

- 19. 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.
- 20. 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).
- 21. 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.

22. Previously, the Petitioner filed an appeal on the subject property's 2012 assessment of \$15,700. On November 26, 2013, the Board held a hearing on that petition, and subsequently found for the Respondent. *See Tony L. Hiles v Huntington Co. Ass'r, Ind. Bd. of Tax Rev. Pet. No. 35-005-12-1-5-00236* (May 21, 2014). Here, the 2013 assessment is \$15,300. Because the assessment decreased between 2012 and 2013, and the 2013 assessment was not changed on appeal, the burden-shifting provision of Ind. Code § 6-1.1-15-17.2 do not apply for the 2013 appeal. The burden for the 2014 assessment year will depend on the Board's finding from the prior year's appeal.

### Analysis

23. The Petitioner did not make a prima facie case for reducing the 2013 and 2014 assessments.
- 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. Ass'r*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). For a 2013 assessment, the valuation date was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f). For a 2014 assessment, the valuation date was March 1, 2014. *Id.*
  - c) The photographs of the property offered by the Petitioner indicate that the house is in very poor condition. However, just showing a property is in poor or in unlivable condition is not enough to establish that the assessments are in error. Mr. Hiles did not offer probative evidence to establish how the deferred maintenance affected the property's value on the valuation date. Without more, Mr. Hiles' photographs and testimony are not enough to make a prima facie case for changing the assessments.

- d) Mr. Hiles did attempt to offer some sales comparison evidence. Specifically, he offered sales data along with the testimony from Mr. Bowers for 14 purportedly comparables sales.
- e) 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.
- f) The Petitioner failed to offer the type of evidence contemplated by *Long*. While he briefly discussed each property, he failed to make adjustments for differences between the purportedly comparable properties and the subject property. Further, Mr. Bowers simply described many of the purportedly comparable properties as “pretty nice on the inside” and “livable.”
- g) The evidence regarding the Commissioners Certificate Sale, offered by Mr. Hiles is not probative. First, the sale was not scheduled until late April 2015, well after the requisite valuation dates for these appeals. Second, Mr. Hiles failed to show that the properties listed for sale are market-values sales.<sup>4</sup> Third, Mr. Hiles failed to make any adjustments to the purportedly comparable properties. And finally, Mr. Hiles’ evidence failed to yield an indicated value for the subject property. Thus, Mr. Hiles’ sales data lacks probative value.
- h) Mr. Hiles also offered a comparison to two other assessments. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district’s boundary. Ind. Code § 6-1.1-15-18(c)(1).
- i) The determination of whether the properties are comparable using the “assessment comparison” approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass’r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value). Again, Mr. Hiles failed to provide the required analysis, thus his evidence lacks probative value.

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<sup>4</sup> Market value is defined in part as 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. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 10.



- j) Consequently, the Petitioner failed to make a prima facie case that the 2013 and 2014 assessments are incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessments 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**

24. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the 2013 and 2014 assessments will not be changed.

ISSUED: June 23, 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>>.