

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

**Petition Nos.:** 35-005-12-1-5-00234  
35-005-12-1-5-00235  
**Petitioner:** Von Incorporated, Tony L. Hiles  
**Respondent:** Huntington County Assessor  
**Parcel Nos.:** 35-05-14-100-182.400-005 [Lot 19]  
35-05-14-100-182.501-005 [Lot 20]<sup>1</sup>  
**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, on behalf of Von Incorporated, filed written documents contesting the above-captioned parcels' assessments for 2012. On April 26, 2013, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations lowering both assessments, but not to the level that Mr. Hiles had requested.
2. Mr. Hiles then timely filed Form 131 petitions with the Board, electing to have his appeals heard under the Board's small claims procedures.
3. On November 26, 2013, the Board held a hearing on Mr. Hiles' petitions through its designated Administrative Law Judge (ALJ) Patti Kindler. She held a consolidated hearing covering both parcels.<sup>2</sup> She did not inspect the property.
4. Tony L. Hiles appeared on behalf of Von Incorporated. County Assessor Terri Boone and Deputy County Assessor Julie Newsome represented the Respondent. All were sworn and testified.

**Facts**

5. The main parcel involved in this appeal is Lot 19. Lot 19 is a 60-foot by 145-foot lot with a house and a utility shed located on it. The other parcel under appeal is Lot 20. Lot 20 is a connecting eight-foot by 145-foot strip of unimproved, supporting land. Mr. Hiles uses the parcels together as a single property. They are located at 237 Lindley Street, Huntington.

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<sup>1</sup> Lot 20's owner is listed as "Von Incorporated" on the Form 131 petition. *Resp't Ex. 7.* Lot 19's owner is listed as "Von Incorporated, Tony L. Hiles" on the Form 131 petition. *Resp't Ex. 3.*

<sup>2</sup> The ALJ also consolidated the hearing with a hearing on a separate property owned by Mr. Hiles located at 319 Swan Street in Huntington. The Board is issuing a separate determination for the Swan Street property.

6. The PTABOA determined the following assessments for 2012:

<b>Lot No.</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
19	\$3,400	\$2,600	\$6,000
20	\$ 500	\$0	\$ 500
Total	\$3,900	\$2,600	\$6,500

7. Mr. Hiles requested the following assessments on his Form 131 petitions:

<b>Lot No.</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
19	\$3,400	\$1,600	\$5,000
20	\$ 100	\$0	\$ 100
Total	\$3,500	\$1,600	\$5,100

**Record**

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

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

Petitioner Exhibits for Lot 19

- Petitioner Exhibit 1: Aerial photograph of the subject parcels,
- Petitioner Exhibit 2: Exterior photographs of the house,
- Petitioner Exhibit 3: Interior photographs of the house,
- Petitioner Exhibit 4: Interior photographs of the house,
- Petitioner Exhibit 5: Photographs of the back yard and shed,
- Petitioner Exhibit 6: First page of property record card for Lot 19,
- Petitioner Exhibit 7: Second page of property record card for Lot 19,
- Petitioner Exhibit 8: First page of Beacon property record card for Lot 19,
- Petitioner Exhibit 9: Second page of Beacon property record card for Lot 19,
- Petitioner Exhibit 10: Third page of Beacon property record card for Lot 19,
- Petitioner Exhibit 11: Fourth page of Beacon property record card for Lot 19,
- Petitioner Exhibit 12: Letter from Stephen Ness to Mr. Hiles dated November 21, 2013,

Petitioner Exhibit 13: Multiple Listing Service (MLS) listing for 405 Hasty Street,  
 Petitioner Exhibit 14: MLS listing for 1512 East Market Street,  
 Petitioner Exhibit 15: MLS listing for 336 Hannah Street,  
 Petitioner Exhibit 16: MLS listing for 864 Wilkerson 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 634 Second Street.

Petitioner Exhibits for Lot 20

Petitioner Exhibit 1: Aerial photo of the subject parcels,  
 Petitioner Exhibit 2: Photographs of Lot 20,  
 Petitioner Exhibit 3: Property record card for Lot 20,  
 Petitioner Exhibit 4: First page of Beacon property record card for Lot 20,  
 Petitioner Exhibit 5: Second page of Beacon property record card for Lot 20,  
 Petitioner Exhibit 6: Third page of Beacon property record card for Lot 20,  
 Petitioner Exhibit 7: Letter from Stephen Ness to Mr. Hiles dated November 21, 2013,  
 Petitioner Exhibit 8: First page of email from Joanie Veach to Mr. Hiles dated November 21, 2013,  
 Petitioner Exhibit 9: Second page of email from Joanie Veach to Mr. Hiles dated November 21, 2013,  
 Petitioner Exhibit 10: Property record card for parcel number 35-05-14-100-701.800-005.

Respondent Exhibits for Lot 19 and Lot 20

- 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: Respondent’s list of witnesses and exhibits,
- Respondent Exhibit 2: Notice of hearing for Lot 19,
- Respondent Exhibit 3: Form 131 petition for Lot 19,
- Respondent Exhibit 4: Form 115 for Lot 19,
- Respondent Exhibit 5: Letter from Mr. Hiles requesting a review of Lot 19’s assessment dated August 20, 2012,
- Respondent Exhibit 6: Notice of hearing for Lot 20,
- Respondent Exhibit 7: Form 131 petition for Lot 20,
- Respondent Exhibit 8: Form 115 for Lot 20,
- Respondent Exhibit 9: “Approach to value analysis” including information on the sales, income, and cost approaches to value,
- Respondent Exhibit 10: “Description and analysis of the subject property,”
- Respondent Exhibit 11: Aerial map showing both Lot 19 and Lot 20,
- Respondent Exhibit 12: Property record cards for Lot 19 and Lot 20,
- Respondent Exhibit 13: 2005 sales disclosure for Lot 19 and Lot 20,
- Respondent Exhibit 14: Comparable sales analysis prepared by the Respondent,
- Respondent Exhibit 15: Photograph and property record card for 1824 East State Street; photograph, property record card, and sales disclosure for 312 Brawley Street; and photograph, property record card, and sales disclosure for 1834 East State Street,
- Respondent Exhibit 16: Aerial map showing the subject parcels and the Respondent’s comparable properties.
- Board Exhibit A: Form 131 petitions with attachments,
- Board Exhibit B: Hearing notices,
- 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 also objected to the Petitioner Exhibits 12, 17, and 18 for Lot 19 and Petitioner Exhibits 7, 8, and 9 for Lot 20. 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:

#### For Lot 19

- a) The subject property is assessed too high in light of the home’s condition. The house has no value and should be assessed at zero because of the cost of remedying its problems. The home has not been occupied for over ten years. It would cost at least \$15,000 to make it livable again. *Hiles argument.*
- b) Mr. Hiles, who lives down the street, purchased the property at a tax sale because he wanted to stop the flow of drugs coming from its former tenants. Photographs illustrate its unlivable condition including its torn-out kitchen, peeling plaster, fallen chimney and rotting floors. *Hiles testimony; Pet’r Ex. 2, 3, 4, 5.*
- c) Mr. Hiles hired three realtors to value the subject parcels. First, Stephen Ness with Ness Brothers Realty, estimated Lot 19’s value at \$3,500. Mr. Ness relied on four comparable sales of similar homes. He made adjustments to arrive at his opinion of value. *Hiles testimony; Pet’r Ex. 12, 13, 14, 15, 16.*

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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 Petitioner’s Form 131s.

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

- d) Second, Joanie Veach, a real estate broker with Coldwell Banker, also valued the subject parcels using eight comparable sales. She concluded that Lot 19 was worth \$5,200. *Hiles testimony; Pet'r Ex. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.*
- e) According to Mr. Hiles, both Mr. Ness and Ms. Veach's estimates of value are too high. Mr. Hiles asked a third realtor, Kent Bowers, to value the property. Mr. Bowers did not provide an opinion of value. Instead, Mr. Bowers provided six MLS data sheets of properties that had sold. Mr. Bowers noted that some of the comparables were "very nice" or "livable" on the MLS data sheets he provided. *Hiles argument; Pet'r Ex. 27, 28, 29, 30, 31, 32, 33.*
- f) Mr. Hiles took issue with the Respondent's purported sales comparables. The Respondent failed to inspect the subject property's interior, thus she should not be able to tell if her comparables were truly similar to the subject property or not. The Respondent's comparable properties are in much better condition than the subject property. For example, all three comparables presented by the Respondent had detached garages, which can add a considerable amount of value to a property. Moreover, the home at 1824 East State Street is not even close to being comparable to the subject home. This particular property was purchased by a neighbor who "fixed it up to sell later." Further, the second and third comparable properties were move-in ready, while the subject property was unlivable. At most, Mr. Hiles argues the subject property is worth about half as much as the comparable properties presented by the Respondent. *Hiles argument.*

For Lot 20

- g) The same two realtors who provided a written valuation for Lot 19 also valued the eight-foot vacant strip of land referred to as Lot 20. Mr. Ness valued Lot 20 at \$300 and Ms. Veach valued Lot 20 at \$200. *Hiles testimony; Pet'r Ex. 7, 8, 9.*
- h) According to area realtors, there are no sales comparables for eight-foot strips of land like Lot 20. However, Mr. Hiles found a comparable assessment, a 10-foot parcel of land in the subject property's neighborhood that has a 2012 assessment of \$600. However, this property benefits from a negative 50% influence factor. *Hiles testimony; Pet'r Ex 10.*
- i) Mr. Hiles argues that the assessment of Lot 20 is excessive based on the fact that he found numerous full-sized lots in neighborhoods all over the city where homes have been torn down and "they are selling for \$50 or \$100 bucks and they can't get rid of them." *Hiles argument.*

15. Summary of the Respondent's case:

For Lot 19

- a) The subject property includes a 60-foot by 145-foot lot with a house (Lot 19) and an eight-foot by 145-foot parcel (Lot 20) which supports the parcel containing the house. The one story masonry home is assessed as having an unfinished 976 square foot interior in very poor condition. Although it was designed as a dwelling, it is not being utilized as a home. The assessment also reflects the fact that the subject property has no kitchen, bath, plumbing or heat. *Newsome testimony; Resp't Ex. 9, 10, 11, 12.*
- b) Three comparable sales of neighborhood properties, all of which were sold as stressed sales, indicate that the subject property is fairly assessed:<sup>5</sup>

Address	Sale Date	Price per square foot
1824 East State Street	January 6, 2010	\$12.30
312 Brawley Street	September 27, 2011	\$15.34
1834 East State Street	July 20, 2011	\$13.82

After performing an interior inspection of the property located at 1824 East State Street, the Respondent determined that it was the best comparable for the subject property. This comparable property was vacant for years and its interior was in poor condition at the time of its sale. The subject property, currently assessed at \$4.60 per square foot for both parcels, is fairly assessed well below the range indicated by all three comparable sales. *Newsome testimony; Resp't Ex. 14, 15, 16.*<sup>6</sup>

For Lot 20

- c) Lot 20's assessment is supported by the sale of two vacant lots. A vacant parcel on East Market Street sold for \$5,000, or \$1.03 per square foot, on May 30, 2012. Another vacant parcel on First Street sold for \$2,000, or \$0.54 per square foot, on May 5, 2011. Lot 20's 2012 assessment was \$500, or \$0.43 per square foot, and is less than the sale price per square foot for either comparable land sale. *Newsome testimony.*

**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.*

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<sup>5</sup> Ms. Newsome did not specifically define what she meant by "stressed sales." The first comparable appears to be a property bought from a bank out of foreclosure, but the second and third comparables appear to be conventional sales according to the sales disclosures provided by Ms. Newsome. *Newsome testimony; Resp't Ex. 14, 15.*

<sup>6</sup> Ms. Newsome testified that she mistakenly listed the subject property's address as 312 Brawley Street under the column for "Subject" on her comparable sales grid. The subject property's correct address should have been listed as 237 Lindley Street. *Newsome testimony; Resp't Ex. 14.*

*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. At hearing, the ALJ preliminarily determined that the Petitioner had the burden of proof for Lot 19, but that the Respondent had the burden of proof for Lot 20. It became evident during the hearing, however, that both lots were purchased together and effectively must be used together due to zoning restrictions. The house encroaches onto Lot 20. The parcels are in essence used together; therefore the Board will view the subject property as one property. Consequently, the Board will look at the parcels’ combined assessment to determine which party has the burden of proof.
20. In 2011, the combined assessment was \$9,800. The combined 2012 assessment was \$6,500. Because the total 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**

21. 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 subject properties assessments are 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 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. Just showing a property is in poor or in unlivable condition is not enough to establish that the subject assessments are 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 subject properties assessments.
  - 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 the exhibits presented by the Petitioner had been admitted into the record, they do not constitute probative evidence of what the 2012 assessments should be.
- i) Thus, even had the Petitioner's exhibits been admitted, the Petitioner still failed to make a prima facie case that the 2012 assessments were incorrect.
- j) 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**

22. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the 2012 assessments 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>>.