REPRESENTATIVE FOR PETITIONERS:
Tony L. Hiles, Vice President of Von, Inc.

REPRESENTATIVE FOR RESPONDENT:
Julie Newsome, Huntington County Deputy Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Yvonne C. Hiles & Von, Inc.,	)	Petition No.: 35-005-17-1-5-01906-17
	)	
Petitioners,	)	Parcel No.: 35-05-14-100-259.000-005
	)	
v.	)	Huntington County
	)	
Huntington County Assessor,	)	Huntington Township
	)	
Respondent.	)	2017 Assessment Year

Appeal from the Final Determination of the
Huntington County Property Tax Assessment Board of Appeals

June 25, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Did the Petitioners prove the 2017 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2017 appeal with the Huntington County Assessor on May 26, 2017. On September 1, 2017, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.

3. On February 7, 2018, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Tony Hiles appeared *pro se*.[1] County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn

5. The Petitioners offered the following exhibits:[2]

Petitioners Exhibit 1:	Petitioners' description of the subject property,
Petitioners Exhibit 2:	Flood zone map,
Petitioners Exhibit 3:	Aerial photograph of the subject property,
Petitioners Exhibit 4:	Letter from the City of Huntington Community Development & Redevelopment to the Petitioners, dated May 28, 2015; letter from the City of Huntington Community Development & Redevelopment to County Assessor Terri Boone, dated March 5, 2015; City of Huntington Zoning Code Reference Format; incomplete copy of Huntington City Zoning Ordinances,
Petitioners Exhibit 5:	2002 Real Property Assessment Guidelines pages 9, 11, 43-50, 56-63,
Petitioners Exhibit 6:	Spreadsheet listing the subject property's assessed values from 2008 to 2014,
Petitioners Exhibit 7:	Property record card and aerial map for a vacant lot on Brawley Street; property record card for a vacant lot

[1] Mr. Hiles signed the Form 131 as the Vice President of Von, Inc. The property is titled to Yvonne C. Hiles & Von, Inc., each undivided one-half interest.

[2] Mr. Hiles read verbatim from Petitioners' Exhibits 4 and 5 in a previous hearing for petition number 35-005-17-1-5-01904-17. At the parties' request, the Board will incorporate that testimony by reference into this record.

	located on Grayston Avenue; property record card for a vacant lot at 1328 Swan Street; two property record card for vacant lots both located on Swan Street; property record card for a vacant lot located on Lindley Street; property record card and Beacon assessment and transfer data for a vacant lot located on Roscoe Street; property record card for a vacant lot located on Roscoe Street; Beacon assessment and transfer data for a vacant lot located on Roscoe Street; property record card for a vacant lot located on East State Street; property record card for vacant land located on North Broadway; property record card for a vacant lot located on North Broadway; property record card for a vacant lot located on Brawley Street; Beacon assessment and transfer data and property record card for a vacant lot located at 408 Brawley Street,
Petitioners Exhibit 8:	Cover sheet from the Assessor's Operations Manual, Revised March 2015,
Petitioners Exhibit 9:	Page 3 of the Notification of Final Assessment Determination (Form 115) issued on September 1, 2017,
Petitioners Exhibit 10:	"Flood zone definitions,"
Petitioners Exhibit 11:	Property record cards for agricultural land located at 11483 North Highway 24 East, 1100 North, and 900 North,
Petitioners Exhibit 12:	A list of properties slated for sale at the Commissioner's Certificate Sale held April 28, 2015; document entitled *Properties Offered at Sale for Huntington County,* printed on September 26, 2017; document entitled *Not Sold Properties Listing for Huntington County*, dated September 26, 2017; property record card for a vacant lot located at 871 Wilkerson Street; property record card for a vacant lot located at 802 First Street; property record card for a vacant lot located at 719 Leopold Street; property record card for a vacant lot located at 530 Court Street; property record card for the vacant lot located at 48 West Sunnydale; property record card for the vacant lot located on Hasty Street,
Petitioners Exhibit 13:	Property record card and aerial map for a property owned by the Petitioners located on Lindley Street,
Petitioners Exhibit 14:	Subject property record card and Special Message to Property Owner (Form TS-1A) for 2009 and 2010.

6. The Respondent offered the following exhibit:[3]

Respondent Exhibit 5: Subject property record card.

7. The record also includes (1) all documents filed in the current appeal, (2) all orders and notices issued by the Board or ALJ, and (3) a digital recording of the hearing.

8. The property under appeal is a 60 by 145-foot vacant residential lot located on Lindley Street in Huntington.

9. The PTABOA determined a total assessment of $3,400.

10. The Petitioners requested a total assessment of $100.

OBJECTIONS

11. The Respondent objected to several of the Petitioners' exhibits. Specifically, Ms. Newsome claimed Petitioners' Exhibits 2, 3, 4, 10, 11, 12, 13, and 14 were not provided prior to the hearing. In response, Mr. Hiles stated he supplied "most of the evidence" by providing her with one packet of exhibits for all five hearings scheduled for the day. While he acknowledged that he may have "thrown in a couple things" to support his testimony, Ms. Newsome "got most" of the exhibits. The ALJ took the objections under advisement.

12. Because the Petitioners opted out of the Board's small claims procedures, both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). However, the Board

[3] The Respondent presented several exhibits in a bound folder. Although she presented the entire folder, she only offered Respondent's Exhibit 5.

may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 52 IAC 2.7-1(d).

13. With that being said, the Board's pre-hearing exchange rule does not necessarily require Mr. Hiles to organize his exhibits in any particular fashion, just to disclose them. The parties should have worked together to alleviate problems such as this prior to the hearing. Excluding evidence is an extreme sanction the Board will not impose lightly. What the Respondent has alleged is not sufficient for the Board to conclude the exhibits should be excluded. Here, she failed to state with specificity if she had actually received the exhibits in question prior to the hearing. However, the Board is troubled by Mr. Hiles stating that he "may have thrown in a couple things." These exhibits seem to include the subject property record card and the property record card of another lot owned by the Petitioners.[4] These exhibits should not be a surprise to the Respondent because they are public records and the inclusion of them into the record does not prejudice the Respondent in any way. Thus, the Respondent's objections are overruled, and the Petitioners' Exhibits are admitted into the record.

14. The Board notes this ruling does not affect the final determination. Additionally, the Board encourages Mr. Hiles to properly label and identify each exhibit prior to the hearing to alleviate issues such as this in the future.

JURISDICTIONAL FRAMEWORK

15. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

[4] The Board can only conclude that these are the exhibits "thrown in" because they were not introduced in the Petitioners other hearings that occurred on this same date.

SUMMARY OF THE PETITIONERS' CASE

16. The property's assessment is too high. The vacant lot is "under-improved" and lacks a driveway, sidewalks, and utilities. Approximately 99% of it is located in a flood zone. A drainage ditch runs diagonally from front to back limiting the use of the lot. The lot is only accessible by passing through an adjacent lot also owned by the Petitioners. *Hiles argument; Pet'rs Ex. 1, 2, 3.*

17. The lot has "limited to no use" because it is located in the "Zone AE and A1 to A30 flood zone." For example, after the Petitioners "dumped a load of dirt" on a neighboring flood zone lot they also own, they received a letter informing them that they had committed a zoning code violation. According to the letter "it is a violation of Section 158.049(C)(3) of the zoning code to commence development in the floodplain without first obtaining the necessary Floodplain Development Permits." The zoning code regulates what can be built and how it must be built when a lot is located in a flood zone. *Hiles testimony; Pet'rs Ex. 4, 10.*

18. According to the Guidelines, the subject property is eligible for a negative influence factor based on being located in a flood zone, adverse topography, lack of access, and for the absence of improvements. Based on these various "restrictions," the Assessor should have applied a negative influence factor to the assessment.[5] *Hiles argument; Pet'rs Ex. 1, 2, 3, 5.*

19. The Petitioners offered several property record cards to support their interpretation of the typical "base lot" found in the Guidelines. These various property record cards include:

- A 60 by 143-foot lot located on Brawley Street that is a "good base lot" because it is "relatively flat." This lot is currently assessed for $3,400.
- A 40 by 132-foot lot located on Grayston Avenue.
- A 40 by 132-foot lot located at 1328 Swan Street.

[5] According to the subject property record card, the lot is receiving a 50% negative influence factor for the 2017 assessment year. *See Resp't Ex. 5.*

- A 40 by 132-foot lot located on Swan Street.
- Another 40 by 132-foot lot located on Swan Street.
- A 60 by 132-foot lot located on Lindley Street.
- A 61 by 157-foot lot located on Roscoe Street that sold at the Commissioner's Sale in 2013 for $100.
- A 157 by 61-foot lot located on Roscoe Street that sold at the Commissioners' Sale in 2013 for $100.
- A 65 by 125-foot lot located on East State Street currently receiving a 75% influence factor.
- A 1.32-acre lot owned by United States Mineral Products.
- A 66 by 187-foot lot owned by United States Mineral Products.
- A 132 by 143-foot lot located on Lindley Street.[6]
- A 227 by 143-foot lot located "right behind the subject property" that was purchased at tax sale in 2010 for $1,900.

The Respondent "could have used" these lots to "establish a base lot." *Hiles testimony; Pet'rs Ex. 7.*

20. Next, the Petitioners introduced evidence of three agricultural flood zone properties located outside the city limits. It is "interesting" these "county properties" receive a 100% negative influence factor while "city properties" do not. If a property has "a ditch, woodland, or flooded ground and is useless in the county then it should be useless in the city." *Hiles testimony; Pet'rs Ex. 11.*

21. The Petitioners also presented a list of properties offered first at a tax sale, and then at the April 28, 2015, Commissioners' Certificate Sale. Many of these properties "sell for $50." The Petitioners also introduced a list of properties offered at the Huntington

[6] According to the property record card this lot is located on Brawley Street rather than Lindley Street.

County tax sale on September 26, 2017, along with a list of "not sold properties." *Hiles testimony; Pet'rs Ex. 12.*

22. The Petitioners also introduced six property record cards for lots that sold in the Commissioners' Certificate Sale. A 30 by 132-foot lot located at 871 Wilkerson Street sold for $50 on November 9, 2016. A 66 by 93-foot lot located at 802 First Street sold for $50 on April 17, 2017. A 30 by 141-foot lot located at 719 Leopold Street sold for $50 on April 17, 2017. A 60 by 120-foot lot located at 530 Court Street sold for $50 on April 17, 2017. A 55 by 130-foot lot located at 48 West Sunnydale sold for $250 on April 17, 2017, but "Sunnydale is a nicer neighborhood." A 52 by 204-foot lot located on Hasty Street sold for $50 on April 17, 2017. These sales are a "good example of what lots are selling for in Huntington County." *Hiles argument; Pet'rs Ex. 12.*

23. Finally, the Petitioners presented a property record card and an aerial map for a vacant lot they own on Lindley Street. This lot is 60 by 145-foot and is currently assessed for $700. It is located in a flood zone and also has a drainage ditch running through it. It has minimal street access. In comparison, the subject property also has a drainage ditch that runs diagonally through it and is located in a flood zone. These are two nearly "identical lots" and yet one is assessed at $700 while the other is assessed at $3,400. *Hiles testimony; Pet'rs Ex. 13, 14.*

SUMMARY OF THE RESPONDENT'S CASE

24. The property is correctly assessed. The property was assessed using a fair market value method following the Guidelines set forth by the Department of Local Government Finance (DLGF) and the Uniform Standards of Professional Appraisal Practice (USPAP). An assessment cannot be changed because the Petitioner "feels the value is overstated." Here, the Petitioners failed to submit any evidence to support a change in value. *Newsome argument; Resp't Ex. 5.*

BURDEN OF PROOF

25. 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.

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

27. 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 for 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.

28. Here, the parties agree the assessed value did not change from 2016 to 2017. Further, the Petitioners failed to offer any argument the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioners.

ANALYSIS

29. Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

30. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.

31. Here, the Petitioners offered an aerial map that purports to indicate a portion of the property is located in a flood zone and prone to flooding. They also argue the property is under-improved, without a driveway, sidewalks, or utilities. The Respondent did not dispute these claims. However, while these factors most likely negatively affect the property's value, they do not establish the assessment is incorrect. The Petitioners failed to quantify their claim or prove a more accurate value based on these factors. The Petitioners needed to offer probative evidence to establish the effect those factors have on the market value-in-use as of the assessment date. The Board cannot pick a value for a lower assessment. It is up to the Petitioners to prove the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West*, 805 N.E.2d at 478. Without more, the Petitioners' arguments relating to flooding and lack of improvements are not enough to make a prima facie case for reducing the assessment.

32. The Petitioners also challenged the assessment by offering purportedly comparable properties they considered "base lots" for the subject property's neighborhood. 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). The purportedly comparable properties presented are located within the same taxing district and appear to meet the boundary requirements.

33. 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 affect the value).

34. While the Petitioners introduced 13 properties they considered "base lots" with no obstructions, they failed to offer significant evidence comparing specific features and characteristics to the subject property. Of the "base lots" offered, two were assessed as industrial lots, four were assessed at the same $110 per front foot base rate as the subject property, and the remaining seven were assessed at $120 per front foot base rate. Most, if not all, of the 13 properties are assessed higher than the subject property. The Petitioners failed to offer any explanation or value adjustments for the differences between the purportedly comparable properties and the subject property. Thus, the Petitioners' "base lot" evidence fails to prove the subject property is incorrectly assessed, and therefore lacks probative value.

35. The Petitioners offered a property record card for another lot they own on Lindley Street that is assessed for $700. The Petitioners did provide some meaningful comparison of

this lot to the subject property. The two lots are located on the same street. They are the same size, and both have a drainage ditch running through them. Yet, the Petitioners still failed to offer any analysis that quantifies any differences in the properties, and failed to offer any computation that attempts to prove the subject property's market value-in-use. Thus, this evidence also lacks probative value.

36. The Petitioners also presented evidence of three agricultural "county properties" in an apparent attempt to show the difference between the subject property's assessment and these "county properties." But because the subject property is a residential platted lot, this evidence also fails to indicate the subject property's assessment is incorrect. The Petitioners failed to establish how these properties related to the subject property, other than to claim they found it "interesting" that they benefit from a "100% negative influence factor." Again, the Petitioners failed to offer any meaningful comparison and failed to make adjustments to account for differences between the properties.

37. The Petitioners also attempted to rely on various sales from county tax and Commissioners' sales to prove the subject property is incorrectly assessed. By doing so, they are again essentially relying on the sales-comparison approach. And again, they failed to offer any meaningful comparison between the properties and failed to make any adjustments to account for differences. Further, the Petitioners failed to offer any evidence that the properties sold at either sale constituted market-value sales.[7] Finally, their analysis failed to yield an indicated value for the subject property. Thus, their evidence lacks probative value.

38. The Board finds little, if any, probative value in the Petitioners' presentation of various property record cards in an effort to show the disparity in the subject property's assessment. The Petitioners merely pointed to what they believe are inconsistent

[7] 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 knowledgeable, and assuming the price is not affected by undue stimulus. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 10.

assessments between the purportedly comparable properties and the subject property. It is unclear if the Petitioners offered the assessment information in an attempt to prove the subject property's true tax value, or instead to claim they were entitled to an equalization adjustment based on a lack of uniformity and equality. They failed to offer sufficient probative evidence on either point.

39. A claim for an equalization adjustment based on a lack of uniformity and equality in assessments similarly fails. As the Tax Court explained in *Westfield Golf Practice Center,* the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLV v. Washington Twp. Assessor,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Here, the Petitioners' uniformity-and-equality claim fails for the same reason, they did not show the market value-in-use for any of the properties they based their claim on.

40. Ultimately, the Petitioners have done little more than challenge the Assessor's methodology in computing the assessment. The Petitioners pointed to restrictions and problems with their property, cited to the Guidelines, listed other properties' assessments, and claimed the Assessor failed to consider various restrictions and problems in developing an influence factor. The record is void of any market-based evidence with *any* value conclusion, let alone the $100 assessment the Petitioners' requested. The Tax Court has held this is an insufficient way to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 678 (Ind. Tax Ct. 2006). The Board

has issued numerous findings that comport with the Tax Court's holding in *Eckerling*, and does so again here.

41. For these reasons, the Petitioners failed to make a prima facie case for reducing the assessment. Where the Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

42. The Board finds for the Respondent. The 2017 assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

_____

Chairman, Indiana Board of Tax Review

_____

Commissioner, Indiana Board of Tax Review

_____

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>.