

+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.: 35-005-17-1-5-01919-17
)	
Petitioners,)	Parcel No.: 35-05-14-100-258.900-005
)	
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

December 6, 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 July 24, 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 Deputy County Assessor Julie Newsome and Deputy County Assessor Molly Burris appeared for the Respondent. All of them were sworn.
5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	Petitioners' description of the subject property along with the subject property record card,
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 2018,
Petitioners Exhibit 7:	Property record card and aerial map for a vacant lot on Brawley Street; property record card for a vacant lot located on Grayston Avenue; property record card for a

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.

vacant lot at 1328 Swan Street; two property record cards for vacant lots both located on Swan Street; property record card for a vacant lot located on Lindley Street; property record card, 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 (page 1) and pages 7 to 19 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, "Flood zone definitions,"

Petitioners Exhibit 10: Property record cards for agricultural land located at 11483 North Highway 24 East, 900 North, and 1100 North,

Petitioners Exhibit 11: The definition of "true tax value" and a citation to *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) from an unknown Board determination; a list of properties slated for sale at the Commissioner's Certificate Sale held April 28, 2015; property record cards for 48 W. Sunnysdale Drive, Hasty Street, 871 Wilkerson Street, 802 First Street, 719 Leopold Street, and 530 Court Street; document entitled *Sold Properties Listing for Huntington County*, printed on September 26, 2017; document entitled *Properties Offered at Sale for Huntington County*, printed September 26, 2017; document entitled *Not Sold Properties Listing for Huntington County*, dated September 26, 2017; document entitled *Properties Offered at Sale for Huntington County*, printed May 2, 2017; document entitled *Huntington County 2016 Cash Report*; a document entitled *Tax Sale Property Status Report*, printed October 10, 2016; document entitled *Tax Sale Property Status Report for Huntington County*, printed October 10, 2016; two documents entitled *Tax Sale Property Status Report for Huntington County*, printed April 13, 2016; a list of parcel numbers for parcels that sold

in the 2017 Commissioner’s sale; property record cards for 760 Colorado Street, 838 North Broadway, 1901 Kocher Street, 244 Grayston Avenue; property record card and Beacon aerial map for 530 Court Street; property record cards for 522 Court Street, 623 East Market Street, 632 East Washington Street, 871 Wilkerson Street, 604 Court Street, a vacant lot on Third Street; property record card and tax sale data for 437 South Briant Street; property record cards for a vacant lot on Circle Drive, 802 First Street, 338 Court Street, 408 East Tipton Street, 719 Leopold Street; property record card and Beacon aerial map for 862 George Street; property record card and Beacon aerial map for 716 North Lafontaine; property record cards for 614 Salamonie Avenue, 833 Wright Street, 979 Charles Street, a vacant lot on Hasty Street, 13 West Taylor Street, 417 North Grover Street; document with a handwritten note stating “tax sales;” Beacon document entitled Beacon—Huntington County, IN, with five pages of city owned lots; Beacon aerial map showing lots in red that were purchased by Huntington city; Tax Deed document for parcels located at 750 Webster Street, 1645 East State Street, vacant East State Street, 1749 East State Street, vacant East State Street, 35 South Jefferson Street, and 1631 East State Street; property record cards for 750 Webster Street; 1645 East State Street, vacant lot on East State Street, 1749 East State Street, vacant lot on East State Street, 1631 East State Street and 35 South Jefferson Street; a blank document with “sales” handwritten on it; property record card for 408 Brawley Street; property record card and tax sale history for 1243 Superior Street; property record cards for 1115 East Market Street and 1303 East Market Street; a document with “assessment comps” handwritten on it; property record cards for Herman Street, a vacant lot on South Jefferson Street, Riverside Drive, South Jefferson Street, 34 South Jefferson Street; property record cards for two vacant lots on South Jefferson Street; property record cards for 1749 East State Street, 35 South Jefferson Street, and a vacant lot on East State Street,

Petitioners Exhibit 13:

Ten exhibits presented by the Respondent at a Board hearing for parcel 35-05-14-100-288.900-005 held on February 7, 2018, including: Form 131; Form 115; Form 134; appeal letter; property record card; value analysis;

comparable spreadsheet; sales disclosures; list of exhibits and witnesses; and, historical filings,
Petitioners Exhibit 14: Beacon aerial map of the four comparable sales used by the Assessor at the Board's hearing for parcel 35-05-14-100-288.900-005 held on February 7, 2018.

6. The Respondent did not offer any exhibits.
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.

JURISDICTIONAL FRAMEWORK

11. 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.

SUMMARY OF THE PETITIONERS' CASE

12. The property's assessment is too high. The vacant lot is "under-improved" and lacks a driveway, sidewalks, and utilities. A "large portion" of the lot is located in a flood zone. A drainage ditch runs across the front of the property limiting the use of the lot. The lot is only accessible through a rear alley. *Hiles argument; Pet'rs Ex. 1, 2, 3.*
13. The lot also has "limited to no use" because it is located in the "Zone AE and A1 to A30 flood zone." After the Petitioners "dumped a load of dirt" on their own neighboring lot,

also located in a flood zone, they received a letter informing them 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.*

14. According to the Guidelines, the subject property is eligible for a negative influence factor for its location in a flood zone, adverse topography, irregularity and shape, lack of access, and for the absence of improvements. Because of these various “restrictions,” the Assessor should have applied a negative influence factor to the assessment.² *Hiles argument; Pet’rs Ex. 1, 2, 3, 5.*

15. The Petitioners offered several property record cards to support their interpretation of the typical “base lot” found in the Guidelines. The various property record cards include:
 - A 60 by 143-foot lot on Brawley Street that is a “usable property” located just a “couple blocks away from the subject parcel.” It is assessed at the same price as the subject property, but “doesn’t have a drainage ditch running through it.”
 - A 40 by 132-foot “smaller lot” on Grayston Avenue with a negative 50% influence factor.
 - A 40 by 132-foot lot at 1328 Swan Street with a negative 50% influence factor.
 - A 40 by 132-foot lot on Swan Street with a negative 50% influence factor.
 - Another 40 by 132-foot lot on Swan Street with the “same influence factor.”
 - A 60 by 132-foot lot on Lindley Street with a negative 50% influence factor.
 - A 61 by 157-foot lot on Roscoe Street with a negative 50% influence factor that sold at the Commissioner’s Sale in 2013 for \$100.

² According to the subject property record card, the lot is receiving a 50% negative influence factor for the 2017 assessment year. *See Pet’rs Ex. 1.*

- A 157 by 61-foot lot on Roscoe Street with a negative 50% influence factor that also sold at the Commissioners' Sale in 2013 for \$100.
- A 65 by 125-foot lot on East State Street with a 75% negative influence factor.
- A 1.32-acre lot on North Broadway with a negative 50% influence factor.
- A 66 by 187-foot lot on North Broadway with a negative 50% influence factor.
- A 132 by 143-foot lot on Brawley Street with a negative 50% influence factor.
- A 227 by 143-foot lot on Brawley Street with a negative 50% influence factor that was purchased at a tax sale in 2010 for \$1,900.

These base lots are assessed with the same influence factor as the subject property, but they do not suffer from the same “deficiencies.” *Hiles testimony; Pet’rs Ex. 7.*

16. Next, the Petitioners introduced evidence of three agricultural flood zone properties located outside the city limits. The first property, located at 11483 North Highway 24 East is receiving a negative 100% influence factor for a portion of the property where a ditch is located. The second property, located on 900 North is receiving a negative 80% influence factor for woodlands that are not tillable. The third property, located on 1100 North benefits from a negative 100% influence factor to account for a “legal ditch.” *Hiles testimony; Pet’rs Ex. 11.*

17. The Petitioners contend that according to a previous decision by the Board, a property’s sale price can be “compelling evidence of its market value-in-use.” They went on to argue that according to the Indiana Tax Court, “as for the auction, a property’s sale price can be compelling evidence of its market value-in-use.” The Petitioners claim they have had this “discussion” several times in hearings and they were told “that an auction price doesn’t mean anything.” To that end, the Petitioners 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 “sold for \$50.” The Petitioners also presented a list of properties “offered for sale” at the Commissioner’s Certificate Sale on May 2, 2017, along with the 2016 Cash Report for Huntington County. The Petitioners went on to introduce a list of

properties offered for sale, a list of properties “for sale,” and a list of “not sold properties” offered at the Huntington County tax sale on September 26, 2017. Finally, the Petitioners presented Tax Sale Property Status Reports for Huntington County dated April 13, 2016, and October 10, 2016. *Hiles testimony; Pet’rs Ex. 12.*

18. As further evidence the subject property’s assessment is excessive, the Petitioners introduced several property record cards for lots that sold in the Commissioners’ Certificate Sale on April 28, 2015. A 55 by 130-foot lot located at 48 West Sunnydale sold for \$250 on April 17, 2017. A 52 by 204-foot lot located on Hasty Street sold for \$50 on April 17, 2017. 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. And a 60 by 120-foot lot located at 530 Court Street sold for \$50 on April 17, 2017. *Hiles argument; Pet’rs Ex. 12.*
19. The Petitioners offered property record cards for lots that “do not flood” and do not “have a ditch running through them” that sold at the Commissioner’s Certificate Sales:
 - A 66 by 120-foot improved lot at 760 Colorado Street sold for \$50 in the 2016 Commissioner’s Certificate Sale and sold the following year for \$3,500.
 - A 63 by 125-foot improved lot at 838 North Broadway sold for \$3,900 in 2016, and the lot “is a pretty good deal for having a house on it.”
 - A 61 by 233-foot improved lot at 1901 Kocher Street sold for \$3,000 on November 28, 2016.
 - A 60 by 132-foot improved lot at 244 Grayston Avenue sold for \$9,100 on October 17, 2016.
 - A 60 by 120-foot lot at 530 Court Street sold for \$50 on April 17, 2017.
 - A 40 by 60-foot lot at 522 Court Street sold for \$50 on April 17, 2017.
 - A 30 by 152-foot lot at 623 East Market Street sold for \$50 on April 17, 2017.

- A 60 by 132-foot lot at 632 East Washington Street sold for \$50 on October 25, 2016.
- A 30 foot by 132-foot lot at 871 Wilkerson Street sold for \$50 on November 9, 2016.
- A 60 foot by 60-foot lot at 604 Court Street sold for \$50 on April 17, 2017.
- A 76 foot by 70-foot vacant lot on Third Street sold for \$50 on April 17, 2017.
- A 31 foot by 132-foot and 2 foot by 102-foot lot at 437 South Briant Street sold for \$50 on November 10, 2015.
- A 40 foot by 133-foot vacant lot on Circle Drive sold for \$50 on April 17, 2017.
- A 66 foot by 93-foot vacant lot at 802 First Street sold for \$50 on April 17, 2017.
- A 33 foot by 132-foot lot at 338 Court Street sold for \$50 on November 16, 2016.
- A 60 foot by 99-foot improved lot at 408 East Tipton Street sold for \$13,000 on November 2, 2016. This property was assessed at \$56,300 in 2016.
- A 30 by 141-foot lot at 719 Leopold Street sold for \$50 on April 17, 2017.
- A 141 by 132-foot lot at 862 George Street sold for \$450 on April 30, 2016.
- A 50 by 124-foot lot at 716 North Lafontaine sold for \$650 on January 22, 2017. This lot is located “up north” in a “pretty well established area.”
- A 59.5 by 121-foot improved lot at 614 Salamonie Avenue sold for \$850 on November 28, 2016.
- A 46 by 60-foot lot at 833 Wright Street sold for \$350 on October 17, 2016.
- A 50 by 62-foot lot at 979 Charles Street sold for \$50 on October 27, 2016.
- A vacant 52 by 204-foot lot on Hasty Street sold for \$50 on April 17, 2017.
- An improved 46 by 135-foot lot on 13 West Taylor Street sold for \$6,200 on September 27, 2016.

- A 66-foot by 132-foot lot improved with a shed at 417 Grover Street sold for \$50 on October 20, 2016.

Hiles argument; Pet'rs Ex. 12.

20. The Petitioners also contend numerous lots offered at the Commissioner's Certificate Sale did not "even bring \$50" and instead were "handed over" to the City of Huntington or other towns around Huntington County. The Petitioners offered several property record cards and a document detailing the parcels' tax sales histories as an example of the lots that "nobody wanted" that were handed to the municipalities "for free." The parcels are located at 750 Webster Street, 1645 East State Street, vacant East State Street, 1749 East State Street, 35 South Jefferson Street, and 1631 East State Street.³ *Hiles argument; Pet'rs Ex. 12.*

21. The Petitioners also presented property record cards for four additional properties to indicate the subject property's assessment is excessive. A 102 by 143-foot lot at 408 Brawley Street sold for \$1,900 on October 25, 2010. This property suffers from the same "issues" as the subject property because it is located in a flood zone. A 30 by 132-foot lot at 1243 Superior Street sold for \$321 in 2012, before it sold in a tax sale in 2014. A 50 by 32-foot lot at 1115 Market Street sold for \$50 on November 13, 2017. Finally, a 34 by 132-foot lot at 1303 East Market Street sold for \$288 on March 15, 2017. *Hiles testimony; Pet'rs Ex. 12.*

22. The Petitioners next focused on comparable assessments. They offered the following property record cards, including:

- A 0.414-acre lot on Herman Street assessed at \$1,700.
- A 17 by 134-foot lot on South Jefferson Street assessed at zero because it is receiving a negative 100% influence factor.

³ The Petitioners conceded the city purchased this property for \$30,000 on October 23, 2017, and stated "maybe we should have put that (property) in another category."

- A 0.064-acre undeveloped unusable, lot on Riverside Drive assessed at zero because it is receiving a negative 100% influence factor.
- A 18 by 78-foot lot on South Jefferson Street assessed at zero because it is receiving a negative 100% influence factor.
- A 0.0100-acre lot classified as “undeveloped unusable lot” on South Jefferson Street assessed at zero because it is receiving a negative 100% influence factor.
- A 0.0550-acre undeveloped lot at 34 South Jefferson Street that is assessed at zero because it is receiving a negative 100% influence factor.
- A 0.0500-acre undeveloped unusable lot on South Jefferson Street is receiving a negative 100% influence factor.
- A .0200-acre undeveloped unusable lot on South Jefferson Street is receiving a negative 100% influence factor.
- A 0.800-acre lot on South Jefferson Street is receiving a negative 100% influence factor.
- A 0.0350-acre lot on South Jefferson Street is receiving a negative 100% influence factor.
- A 0.0100-acre lot on South Jefferson Street is receiving a negative 100% influence factor.
- A lot at 1749 State Street “was given to the city in 2017.”
- A lot at 35 South Jefferson Street was also “given” to the city “for zero in a Commissioner’s sale.”
- A 60 by 132-foot lot on East State Street is receiving “40% and 50% negative influence factors.”

Hiles testimony; Pet’rs Ex. 12.

23. Finally, the Petitioners offered several exhibits the Respondent presented at a prior Board hearing for a different parcel also owned by the Petitioners. The Petitioners pointed to photographs of the Respondent’s four purportedly comparable sales arguing that the properties were “flat lots without a drainage ditch running through them” and the lots “are not located in a flood zone” like the subject property. *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). The Petitioners failed to submit any evidence to support a change in value. *Newsome argument.*

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 and extensive testimony 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, the drainage ditch, 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" and "comparable assessments" 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 thirteen 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 thirteen “base lot” 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 copy of an unknown Board determination citing *Hubler Realty v. Hendricks County Assessor*, issued by the Indiana Tax Court in 2010. The Petitioners argue that according to *Hubler*, an auction price may be compelling evidence of a property’s market value-in-use. The Petitioners relied on this citation to support their presentation of auction sales through tax sales and commissioner’s sales. However, as is the case with any sales analysis, the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach.

36. The Petitioners’ attempt to rely on various sales from county tax and Commissioners’ sales as well as exempt properties acquired by the city to prove the subject property is incorrectly assessed, falls short. By offering these sales, the Petitioners are essentially relying on the sales-comparison approach. 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 any of the tax sales and Commissioner’s Certificate Sales constituted market-value sales.⁴ The Petitioners argument that according to the tax court a property’s sale price, even at auction can be compelling evidence of its market value-in-use, does not show the subject property was excessively assessed. The subject property did not sell at auction. And the only auction sales presented by the Petitioners were tax and commissioner’s sales. Finally, even if the auction sales were considered probative they failed to yield an

⁴ 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.

indicated value for the subject property. Thus, the Petitioner's tax and commissioner's sales evidence lacks probative value.

37. 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 the properties benefited from either an 80% or 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.
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 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. 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, LLC 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 and Assessor's Operation Manual, 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>>.