

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

**Petition:** 35-005-13-1-5-00101  
**Petitioners:** Yvonne C. Hiles & Von Inc.  
**Respondent:** Huntington County Assessor  
**Parcel:** 35-05-14-100-259.000-005  
**Assessment Year:** 2013

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

**Procedural History**

1. The Petitioners initiated their 2013 assessment appeal with the Huntington County Assessor on August 16, 2013.
2. On March 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued the notice of hearing on February 25, 2015.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on April 9, 2015. He did not inspect the property.
6. Tony L. Hiles appeared *pro se*.<sup>1</sup> County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

**Facts**

7. The property under appeal is a 60-foot by 132-foot vacant lot, legally described as Gephart's Addition Lot 32, located on Lindley Street in Huntington.
8. The PTABOA determined a total assessment of \$3400.
9. On their Form 131 petition, the Petitioners requested a total assessment of \$500.

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<sup>1</sup> Mr. Hiles signed the Form 131 petition as the Vice President and Chief Operating Officer for Von Inc.

## Record

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

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

Petitioners Exhibit 1:	Summary of assessments from 2008-2014 with subject property highlighted,
Petitioners Exhibit 2:	Description of the subject property,
Petitioners Exhibit 3:	Letter from Bryn Keplinger to Terri Boone dated March 5, 2015,
Petitioners Exhibit 4:	City of Huntington Zoning Code Section 158.049 defining "Zone AE and A1-A30" flood zones,
Petitioners Exhibits 5-7:	Aerial photographs of the subject property and "AE flood zone,"
Petitioners Exhibit 8:	Subject property record card,
Petitioners Exhibits 9-10:	Aerial photographs of the subject property,
Petitioners Exhibits 11-12:	Photographs of the subject property,
Petitioners Exhibits 13-14:	Property record card and aerial photograph for 2108 Roscoe Street,
Petitioners Exhibits 15-16:	Property record card and aerial photograph for 1353 North Miller Avenue,
Petitioners Exhibits 17-18:	Property record card and aerial photograph for 345 Swan Street,
Petitioners Exhibits 19-43:	"Parcel reports" and property record cards for 12 properties listed in "2012 Tax Sale and Commissioner Sale,"
Petitioners Exhibits 44-46:	Listing of properties for April 28, 2015, "Commissioners Certificate Sale,"
Petitioners Exhibits 47-69:	"Parcel reports" and property record cards for properties included in April 28, 2015, "Commissioners Certificate Sale,"
Petitioners Exhibits 70-155:	Property record cards, and miscellaneous notations, for 83 unimproved parcels in Huntington County.
Respondent Exhibit 1:	Form 131 petition,
Respondent Exhibit 2:	Form 115 along with letter from Petitioners initiating 2013 appeal,
Respondent Exhibit 3:	Page one of subject property record card,
Respondent Exhibit 4:	Aerial photograph of subject property,

Respondent Exhibit 5: Three aerial photographs of the subject property, two letters dated March 16, 2015, from Terri L. Boone to Tony L. Hiles.

Board Exhibit A: Form 131 petition with attachments,  
Board Exhibit B: Notice of hearing, dated February 25, 2015,  
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

### Contentions

11. Summary of the Petitioners' case:

- a) The subject property is assessed too high. A "creek or drainage ditch" runs diagonally across the lot. It makes the property of little use to anyone and "unbuildable." Further, the lot has no access from the front or rear. *Hiles argument; Pet'rs Exs. 2-12.*
- b) It is difficult to find properties that are comparable to the subject property. However, the following sales or assessments indicate the assessment is too high:
  - The property located at 2108 Roscoe Street, roughly half a mile from the subject property, is twice the size. It sold for \$1000, on February 27, 2013. This "buildable" property is not located in a flood zone. *Hiles testimony argument; Pet'rs Exs. 13, 14.*
  - The property located at 1353 North Miller Avenue is owned by the Petitioners. It is located "just down the street from the subject property." This property, similar to the subject property, is located in a flood zone with a creek running through it. After an inspection, this property's assessment was lowered to \$700. *Hiles testimony; Pet'rs Exs. 15, 16.*
  - Another property located at 345 Swan Street has the same drainage ditch running through it as the subject property. It also lacks access from the front or rear. In 2013 this property was assessed for \$2000. *Hiles testimony; Pet'rs Exs. 17, 18.*
- c) The results of a "2012 Tax Sale and Commissioner Sale" also suggest the subject property is over-assessed. The Petitioners selected 12 parcels of various sizes. Some did not sell, and others sold anywhere from \$100 to \$1000. Unlike the subject property, many of these properties are "buildable." *Hiles testimony; Pet'rs Exs. 19-43.*

- d) Further, a “Commissioners Sale,” scheduled for April 28, 2015, indicates the subject property is over-assessed. The majority of properties listed have been offered in previous tax sales and “Commissioners Sales.” Many of these lots “cannot even be given away.” *Hiles testimony; Pet’rs Exs. 47-69.*
- e) Finally, the Petitioners pointed to 83 unimproved properties in Huntington that remain on the market. These lots are either “buildable” or adjacent to someone’s home. However, these properties are receiving the same negative influence factor as the subject property. *Hiles argument; Pet’rs Exs. 70-155.*

12. Summary of the Respondent’s case:

- a) An aerial photograph indicates the Petitioners have equipment parked on the lot. Thus, the property has some use and value to the Petitioners. *Newsome argument; Resp’t Ex. 4.*
- b) The subject property is currently receiving a negative 50% influence factor to account for adverse issues affecting its value. The Petitioners have failed to offer any evidence to support a lower value. *Newsome argument; Resp’t Ex. 3.*

**Burden of Proof**

- 13. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 15. 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.

16. Here, in an unusual occurrence, the subject property was the subject of a 2012 appeal before the Board, with the hearing held on an earlier date. Specifically, ALJ Patti Kindler heard the 2012 appeal on March 25, 2015. Because the Board had not yet issued its determination on the 2012 appeal as of the date of this hearing, April 9, 2015, ALJ Stanford made a preliminary determination that the burden of proof rests with the Petitioners. ALJ Stanford warned the parties that the burden of proof could change based on the result of the 2012 appeal and advised both parties to present their best case.
17. On June 23, 2015, the Board issued the determination for the Petitioners' 2012 appeal and found for the Respondent. *See Yvonne C. Hiles & Von Inc. v Huntington Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. No. 35-005-12-1-5-00240 (June 23, 2015). Consequently, the 2012 assessment was not changed and remained at \$3400, the same as the 2013 assessment. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the burden-shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply and the burden rests with the Petitioners.

### Analysis

18. The Petitioners failed to make a prima facie case for reducing the 2013 assessment.
  - a) 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 or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).
  - c) Here, the Petitioners offered aerial photographs of the property to establish that the lot floods and is encumbered by a large drainage ditch or creek. The Petitioners also claimed the property lacks access from Lindley Street, and due to these factors, the property is unbuildable. But showing that a parcel floods, has limited access, or is unbuildable is not enough to establish that an assessment is in error. While these factors are likely detrimental to the subject property's value, they do not establish that the assessment is in error.

- d) The Petitioners also attempted to rely on various sales to prove the property’s 2013 assessment is excessive, thus they are essentially relying on the sales-comparison approach. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) The Petitioners’ evidence lacks the type of analysis and related adjustments required for a probative comparison. First, the April 28, 2015, Commissioners Certificate Sale was not scheduled until well after the requisite valuation dates for this appeal. Second, the Petitioners have not shown that properties listed for sale at a Commissioners Certificate Sale are market-value sales.<sup>2</sup> Third, the Petitioners failed to make adjustments to the purportedly comparable properties. Finally, their analysis failed to yield an indicated value for the subject property. Thus, their evidence lacks probative value.
- f) The Petitioners also relied on other assessments to prove the subject property was over-assessed. 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).
- g) 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).
- h) While the Petitioners introduced property record cards for the purportedly comparable properties, they failed to offer any meaningful testimony relating each property’s specific features and characteristics to the subject property. In fact, Mr. Hiles mainly argues that his purportedly comparable properties have a creek running through them similar to the subject property. Again, the type of analysis and related

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<sup>2</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 knowledgeable, and assuming the price is not affected by undue stimulus. See 2011 REAL PROPERTY ASSESSMENT MANUAL at 10.

adjustments required for a probative comparison are lacking. Thus, the Petitioners' presentation of comparable assessments lacks probative value.

- i) The Petitioners' evidence might indicate that the subject property's assessment is too high. However, the Petitioners' burden of proof does not end there. The Board cannot simply 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.
- j) Despite the fact that the Petitioners introduced well over 100 properties for comparison, they still failed to utilize general accepted appraisal principles to prove a more accurate assessed value for the subject property. Thus, the Petitioners' evidence does not support their requested assessment of \$500.
- k) Consequently, the Petitioners failed to make a prima facie case that the 2013 assessment is incorrect. Where the Petitioners have 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**

19. The Board finds for the Respondent.

### **Final Determination**

In accordance with these findings and conclusions, the 2013 assessment will not be changed.

ISSUED: July 6, 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 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>>.