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

Petition:	**35-005-15-1-5-00283-15**
Petitioners:	**Yvonne C. Hiles & Von, Inc.**[1]
Respondent:	**Huntington County Assessor**
Parcel:	**35-05-14-100-177.600-005**
Assessment Year:	**2015**

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 2015 assessment appeal with the Huntington County Assessor on August 19, 2015.

2. On October 16, 2015, 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 a notice of hearing on May 10, 2017.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on June 13, 2017. She did not inspect the property.

6. Tony L. Hiles appeared *pro se*.[2] County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The subject property is a vacant residential lot located on Lindley Street in Huntington.

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

9. The Petitioners requested a total land assessment of $1,000.

[1] The letter initiating review at the local level indicates Yvonne C. Hiles and Von Inc., each have an "undivided one-half interest" in the subject property.
[2] Mr. Hiles signed the Form 131 as the Vice-President of Chief Operating Officer of Von Inc.

Record

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

    a) Form 131 with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioners Exhibit 1:	"Description of the subject property,"
Petitioners Exhibit 2:	Subject property record card,
Petitioners Exhibit 3:	Flood zone map,
Petitioners Exhibit 4:	Property record card for a lot located on Brawley Street,
Petitioners Exhibit 5:	Aerial photograph of the Brawley Street lot.
Petitioners Exhibit 6:	"Summary of Assessments 2008 to 2014,"
Petitioners Exhibit 7:	2002 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 43, 44, 45, 46, 47, 48, 49 and 50.

The Respondent did not present any exhibits.

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated May 10, 2017,
Board Exhibit C:	Hearing sign-in sheet.

    d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

    a) The subject property's 2015 assessment is too high. Approximately 90% of the property is located in a flood zone. A drainage ditch runs through the lot, and the area "used to be a swamp." Fill dirt and concrete are the only additions to the lot. There is no public access to the property; it is an "unusable property." *Hiles argument; Pet'rs Ex. 1, 3.*

    b) The subject property's assessments have "varied" from 2008 to 2014, indicating the current assessment is incorrect. When the reassessment was completed in 2012, all of the vacant lots were given a 50% influence factor. This influence factor appears to be "standard." *Hiles testimony; Pet'rs Ex. 2, 6.*

    c) In an effort to prove the lot is over assessed, the Petitioners presented an assessment of a nearby "base lot" located on Brawley Street. This "useable" property is currently assessed at $3,400. This lot has street access, is not located in a flood zone, and lacks a drainage ditch, but it still receives the 50% influence factor. *Hiles argument; Pet'rs Ex. 4, 5.*

d) Several "standards" regarding influence factors are set forth in the Guidelines. Because the property is encumbered by a drainage ditch, it is "impossible" to build on this lot. Several vacant lots in the immediate vicinity indicate "there must be some kind of problem in this area." The flood zone "can limit the use of anything quite a bit." For these reasons, negative influence factors should be applied to this lot. *Hiles argument; Pet'rs Ex. 7.*

12. Summary of the Respondent's case:

a) The property is correctly assessed. The burden is with the Petitioners and they have failed to offer any evidence that the assessment should be reduced. *Newsome argument.*

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 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 § 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the Respondent argued that because the assessment did not change from 2014 to 2015, the burden should remain with the Petitioners. The Petitioners failed to offer any argument that the burden should shift to the Respondent. According to the evidence on record, the assessment remained the same from 2014 to 2015. Thus, the burden shifting provisions of Ind. Code §6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

17. The Petitioners failed to make a prima facie case for reducing the 2015 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 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

    c) Here, the Petitioners offered an aerial photograph and testimony indicating the lot floods and is encumbered by a large drainage ditch. The Petitioners also claimed the property lacks street access and is "unusable." While these factors are likely detrimental to the subject property's value, they do not establish that the assessment is incorrect. The Petitioners failed to quantify the actual effects or quantify a more accurate value. The Petitioners needed to offer probative evidence that establishes the effect those factors have on the properties' market value-in-use as of the assessment date. The Board cannot simply pick a value for lower assessments. It is up to the Petitioners to prove the current assessments are incorrect and specifically what the correct assessments should be. *See Meridian Towers East & West*, 805 N.E.2d at 478. Without more, the Petitioners' aerial photograph and related arguments are not enough to make a prima facie case for reducing the assessment.

    d) The Petitioners also offered a property record card and aerial map for a property located on Brawley Street. The Board assumes that the Petitioners intended to

compare assessments.[3] 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). The record is not entirely clear if the purportedly comparable property meets the boundary requirements, but it appears this property is located within the same taxing district.

e) 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 the value).

f) While the Petitioners introduced a property record card and photograph for the purportedly comparable property, they failed to offer significant testimony comparing specific features and characteristics to the subject property. Instead they focused on the fact that the purportedly comparable property is a "base lot" with no obstructions. Moreover, they failed to offer any explanation or value adjustments for the differences between the subject property and the purportedly comparable property. Additionally, they failed to offer any authority suggesting that utilizing only one purportedly comparable property suffices to establish a subject property's value. For these reasons, their evidence lacks probative value.

g) Consequently, the Petitioners failed to make a prima facie case for reducing the 2015 assessment. 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).

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[3] The Petitioners implicitly raise the issue of a lack of uniformity and equality in assessments. 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. Ass'r*, 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 sales 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' did not make a showing for a change in the assessment based on lack of uniformity and equality.

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: September 11, 2017

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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>.