

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

**Petitions:** 35-005-13-1-5-00105  
35-005-14-1-5-00055  
**Petitioners:** Yvonne C. Hiles & Von Inc.<sup>1</sup>  
**Respondent:** Huntington County Assessor  
**Parcel:** 35-05-14-100-288.900-005  
**Assessment Years:** 2013 and 2014

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 and 2014 assessment appeals with the Huntington County Assessor on August 16, 2013, and August 11, 2014, respectively.
2. On, March 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2013 assessment year denying the Petitioners relief.
3. On October 27, 2014, the PTABOA issued its determination for the 2014 assessment year also denying the Petitioners relief.
4. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing to have their appeals heard under the Board's small claims procedures.
5. The Board issued notices of hearing on February 10, 2015.
6. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on March 25, 2014. She did not inspect the property.
7. Tony L. Hiles appeared *pro se*.<sup>2</sup> County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. Kent Bowers was a witness for the Petitioners. All of them were sworn.

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<sup>1</sup> According to the March 1, 2014 Form 131 petition, Yvonne C. Hiles and Von Inc. each have an "undivided one-half interest" in the subject property.

<sup>2</sup> Mr. Hiles signed the 2013 and 2014 Form 131 petitions as Vice-President and Chief Operating Officer for Von, Inc.

## Facts

8. The property under appeal is an unimproved lot, legally described as Gepharts Addition Lot 18, located on Lindley Street, in Huntington.
9. The PTABOA determined a total assessment of \$3,400 for 2013 and 2014.
10. On their Form 131 petitions, the Petitioners requested a total assessment of \$1,500 for 2013 and a total assessment of \$500 for 2014.

## Record

11. The official record for this matter is made up of the following:
  - a) Petitions for Review of Assessment (Form 131s) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:<sup>3</sup>

Petitioner Exhibit 1:	Description of the subject property,
Petitioner Exhibit 2:	An undated letter from the Assessor requesting the Petitioners' pre-hearing evidence,
Petitioner Exhibit 3:	A spreadsheet consisting of various assessments from 2008 to 2013,
Petitioner Exhibit 4:	Aerial map of the subject property,
Petitioner Exhibit 6:	A photograph of the front of the subject property under water, and a photograph showing the grade of the property and a concrete floodwall,
Petitioner Exhibit 7:	A photograph of the subject property,
Petitioner Exhibit 8:	Property record card for 430 Lindley Street,
Petitioner Exhibit 9:	Page 1 of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 10:	Page 2 of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 11:	Page 3 of the April 28, 2015, "Commissioners Certificate Sale,"
Petitioner Exhibit 12:	Property record card for 245 Jackson Street,
Petitioner Exhibit 13:	Property record card for 1632 East Market Street,
Petitioner Exhibit 14:	Property record card for 530 Court Street,
Petitioner Exhibit 15:	Property record card for vacant Washington Street,
Petitioner Exhibit 16:	Property record card for 1632 East Market Street,
Petitioner Exhibit 17:	Multiple Service Listing (MLS) sheet for 870 Frederick Street,

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<sup>3</sup> The Petitioners did not submit an Exhibit 5.

Petitioner Exhibit 18: MLS sheet for 870 Frederick Street,  
 Petitioner Exhibit 19: MLS sheet for 0 Frederick Street,  
 Petitioner Exhibit 20: March 5, 2015, letter from Bryn Keplinger, Director  
 Huntington City Community Development and  
 Redevelopment, to Huntington County Assessor,  
 Petitioner Exhibit 21: Three photographs of the vacant lot located on East Market  
 Street,  
 Petitioner Exhibit 22: Photograph of 430 Lindley Street,  
 Petitioner Exhibit 23: Photograph of 538 Lindley Street.

Respondent Exhibit A: Undated letter from the Assessor to the Petitioners  
 requesting all pre-hearing evidence,  
 Respondent Exhibit 1: Board's hearing notice for the 2013 appeal dated February  
 10, 2015,  
 Respondent Exhibit 2: 2013 Form 131 petition,  
 Respondent Exhibit 3: 2013 Form 115,  
 Respondent Exhibit 4: The Petitioners' letter initiating the 2013 appeal dated  
 August 10, 2013, with aerial map of the subject property,  
 Respondent Exhibit 5: 2013 subject property record card,  
 Respondent Exhibit 6: Board's hearing notice for the 2014 appeal dated February  
 10, 2015,  
 Respondent Exhibit 7: 2014 Form 131 petition,  
 Respondent Exhibit 8: 2014 Form 115,  
 Respondent Exhibit 9: 2014 subject property record card,  
 Respondent Exhibit 10: Aerial map indicating the Respondent's comparable land  
 sales,  
 Respondent Exhibit 11: Spreadsheet with for nine vacant land sales, property record  
 cards for the sales, sales disclosures and aerial maps,<sup>4</sup>  
 Respondent Exhibit 12: Aerial map of the subject property showing other adjacent  
 lots owned by the Petitioners and a letter from the  
 Huntington City Development and Redevelopment dated  
 March 5, 2015.

Board Exhibit A: Form 131 petitions with attachments,  
 Board Exhibit B: Hearing notices, dated February 10, 2015,  
 Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

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<sup>4</sup> The Respondent did not include a sales disclosure sheet for 430 Lindley Street.

## Objections

12. The Respondent objected to all of the Petitioners' Exhibits. Ms. Newsome argued that she had requested the Petitioners' exhibits prior to the hearing but had not received them. *See Resp't Ex. A.* Mr. Hiles argued that his prehearing evidence was submitted in a timely fashion. The ALJ took the objection under advisement.
13. Much of Ms. Newsome's argument refers to an earlier hearing involving the same parties. In this earlier hearing, Ms. Newsome explained that the basis of her objection to the admission of the Petitioners' exhibits was not that they were untimely, but rather that the exhibits were not properly organized or labeled. According to Ms. Newsome, the Petitioners delivered their unlabeled prehearing evidence to the Respondent as loose papers in a single box. This same box also contained exhibits pertaining to several other hearings scheduled for the same hearing date. Ms. Newsome argued the Respondent was not obligated to go through the Petitioners' box of prehearing exhibits because those exhibits were not properly organized.
14. Mr. Hiles claimed that he provided the Respondent with copies of the Petitioners' pre-hearing evidence in a timely manner. Given the unique circumstances and the fact that the Petitioners were scheduled for multiple hearings on the same day, the Board incorporates by reference the evidence and Ms. Newsome's testimony regarding her objection from the prior hearing involving the following petition numbers: 35-005-12-1-5-00238, 35-005-13-1-5-00098 and 35-005-14-1-5-00048.<sup>5</sup>
15. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) ("[I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of any and all evidence" from the Petitioners in an undated and unlabeled letter incorporated by reference from the prior hearing. According to Mr. Hiles' testimony in the earlier hearing, the pre-hearing exhibits were provided five business days in advance. While the Board has procedural rules regarding the labeling and organization of exhibits for Board hearings, those procedural rules do not address the labeling and organization of prehearing evidence.
16. The Board overrules the Respondent's objection. Mr. Hiles testified that all of the Petitioners' exhibits were presented to the Respondent in accordance with 52 IAC 3-1-5(d). Accordingly, the Petitioners' exhibits are admitted. The Board's ruling on the objection, however, does not change the final determination because the Petitioners failed to make a prima facie case for reducing the assessments.<sup>6</sup>

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<sup>5</sup> The parties are advised that when there are multiple hearings scheduled for a petitioner in one day, each hearing is separate and each party to the appeal should offer a complete record for every appeal hearing without relying on the record from prior hearings.

<sup>6</sup> In the future, to avoid questions of whether prehearing evidence was properly presented to the Respondent, the Board advises the Petitioners to label and organize each prehearing exhibit packet separately in the same manner they will be presented at the Board's hearings, especially when the Petitioners are scheduled for multiple hearings.

17. Mr. Hiles objected to the Respondent's Exhibit 11, arguing that two of the sales were "not comparable" to the subject property and that these two sales occurred beyond the relevant valuation dates. Ms. Newsome did not respond to the Petitioners' objection. The ALJ took the objection under advisement.
18. The Petitioners' objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules the Petitioners' objection and Respondent's Exhibit 11 is admitted.
19. Mr. Hiles also objected to Respondent's Exhibit 12 stating "where it says Tony Hiles' property, Tony Hiles' land, that is not correct, that is Yvonne C. & Von Incorporated property." Again, Ms. Newsome did not respond to the Petitioners' objection. The ALJ took the objection under advisement.
20. If the Board were to view this objection as a relevancy objection, it would go to the weight of the exhibit rather than its admissibility. It is unclear from the record if the Respondent did in-fact mislabel this exhibit or not. Ultimately, the Petitioners' objection is overruled and Respondent's Exhibit 12 is admitted. The Board's ruling on the objection, however, does not change the outcome of this final determination.

### **Contentions**

21. Summary of the Petitioners' case:
  - a) The subject property's 2013 and 2014 assessments are too high. The lot is located on the east side of Huntington in a declining and undesirable neighborhood. The northeast corner of the lot is located in a flood zone. The property has a steep grade and is unbuildable. Consequently, no one would be interested in purchasing the property. *Hiles argument; Bowers testimony; Pet'rs Ex. 4, 6, 7, 20.*
  - b) According to Mr. Bowers, a real estate broker with over twenty-five years of experience, the subject property is "probably worth between \$500 and \$1,000." Mr. Bowers claimed he would not even list the property for sale with his firm because it would be a "waste of money." *Bowers testimony.*
  - c) Mr. Bowers was unable to find sales of "unbuildable vacant parcels" located in flood zones in similar neighborhoods. Thus, all of the Petitioners' comparable sales were for level, "buildable" lots ready for construction. *Bowers testimony; Pet'rs Ex. 8, 17, 18, 19.*
  - d) The first comparable lot, located at 430 Lindley Street, sold for \$2,000 on February 18, 2014. According to Mr. Hiles, the owner purchased this 60-foot by 145-foot lot "about a year" before the February 14, 2014, transfer date. *Hiles testimony; Pet'rs Ex. 8.*

- e) The second lot, located at 870 Frederick Street, sold for \$4,900 on March 18, 2011. This 64-foot by 144-foot lot already had a foundation in place. *Hiles testimony; Pet'rs Ex. 17.*
- f) The third lot, also located at 870 Frederick Street, sold for \$4,500 on March 31, 2011. This 90-foot by 144-foot lot included a 40-foot by 20-foot barn. *Hiles testimony; Pet'rs Ex. 18.*
- g) The fourth lot, a 207-foot by 119-foot lot located at 0 Frederick Street, sold for \$3,000 on March 18, 2011. *Hiles testimony; Pet'rs Ex. 19.*
- h) The Petitioners also presented the Commissioners Certification Sale list indicating 25 lots available for purchase. Some of the lots listed have been available for years. The Petitioners specifically pointed to four vacant lots: 245 Jackson Street, 1632 East Market Street, 530 Court Street, and Washington Street. These lots are “level and buildable” and none of them are located in a flood zone. *Hiles argument; Bowers testimony; Pet'rs Ex. 9, 10, 11, 12, 13, 14, 15, 16.*
- i) Finally, the Respondent’s purportedly comparable properties are flawed. The Respondent’s properties are superior to the subject property. Three of the properties are located on the south side of Huntington, in a “better neighborhood.” One sale took place in 2010 and is too far removed from the relevant valuation dates for these appeals. And all of the Respondent’s comparable sales were purchased by adjacent property owners. *Hiles argument (referencing Resp't Ex. 11); Bowers testimony; Pet'rs Ex. 21, 22, 23.*

22. Summary of the Respondent’s case:

- a) The subject property is assessed correctly. The property is currently receiving a 50% negative influence factor because of the lack of utilities. The property is adjacent to the other parcels owned by the Petitioners, thus the property has value to them. *Newsome argument; Resp't Ex. 12.*
- b) The Petitioners’ assumption that the subject property is unmarketable is incorrect. There are numerous sales of vacant lots in Huntington, two of which are located on Lindley Street. *Newsome argument; Resp't Ex. 11.*
- c) The Respondent offered evidence of nine vacant land sales in Huntington. The sales occurred between June 9, 2010, and June 6, 2014. The average price per square foot was \$0.55. *Newsome argument; Resp't Ex. 11.*
- d) The Petitioners’ claim that the subject property is unbuildable is also incorrect. A letter from Bryn Keplinger at Huntington City Development and Redevelopment indicates that the subject property has approximately 4,800 square feet available for improvements. *Newsome argument; Resp't Ex. 12.*

## **Burden of Proof**

23. Generally, the taxpayer has the burden to prove an assessment is incorrect and to prove 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.
24. First, Ind. Code section 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
25. 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.
26. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2012 to 2013. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the Petitioners have the burden for the 2013 assessment year. The burden for the 2014 assessment year will depend on the Board’s findings from the prior year’s appeal.

## **Analysis**

27. The Petitioners failed to make a prima facie case for reducing the 2013 and 2014 assessments.
  - 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). For a 2014 assessment, the valuation date was March 1, 2014. *Id.*
- c) Here, the Petitioners offered photographs and a map of the subject property to establish that the property floods occasionally, has a steep grade, and is not buildable in its current state. They also argue the subject property is located in an undesirable neighborhood. While these factors are likely detrimental to the property's value, they do not establish that the assessments are in error. The Petitioners failed to quantify their actual effects, or to quantify a more accurate value. Without more, this is not enough to make a prima facie case for changing the assessments.
- d) The Petitioners did attempt to offer market-based evidence. Specifically, they pointed to the sale of one lot on Lindley Street and three separate sales of lots located on Frederick Street. The Petitioners essentially rely on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- e) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *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.*
- f) Here, the type of analysis required and the related adjustments are lacking from the Petitioners' evidence. In fact, the Petitioners relied on properties they claimed were superior to the subject property. However, the Petitioners failed to make any adjustments to those purportedly comparable properties. Further, the Petitioners' evidence failed to yield an indicated value. Thus, the evidence lacks probative value.
- g) The Petitioners also offered a list of vacant lots from the Commissioners Certificate Sale to support their argument that numerous "buildable vacant lots" are available,



but there is no interest in the properties. It is unclear if the Petitioners were attempting to rely on this evidence as another sales-comparison approach analysis, but if they were, it falls short. The type of analysis required and the related adjustments are lacking from the Petitioners' evidence. First, the Commissioners Certificate Sale was not scheduled until late April 2015, well after the requisite valuation dates for these appeals. Second, the Petitioners have not shown that properties listed for sale at a Commissioners Certificate Sale are market-value sales.<sup>7</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.

- h) Consequently, the Petitioners failed to make a prima facie case that the 2013 and 2014 assessments are 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**

28. The Board finds for the Respondent.

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<sup>7</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.

## Final Determination

In accordance with these findings and conclusions, the 2013 and 2014 assessments will not be changed.

ISSUED: June 23, 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>>.