

REPRESENTATIVE FOR PETITIONER:

Tony L. Hiles, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Tony L. Hiles,	)	Petition Nos.: See attached listing
	)	
Petitioner,	)	Parcel Nos.: See attached listing
	)	
v.	)	County: Huntington
	)	
Huntington County Assessor,	)	Township: Huntington
	)	
Respondent.	)	Assessment Year: 2010

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

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**March 8, 2016**

**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. Is the Petitioner able to challenge the subject parcels' values or the application of influence factors on Form 133 petitions? And if so, did the Petitioner prove the subject parcels' assessments are incorrect?

## PROCEDURAL HISTORY

2. The Petitioner initiated his 2010 assessment appeals of six parcels by filing Petitions for Correction of an Error (Form 133s) with the Huntington County Auditor on May 9, 2014. On June 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner any relief.<sup>1</sup> On July 23, 2014, the Petitioner filed all six Form 133s with the Board.
3. On December 9, 2015, the Board's administrative law judge (ALJ), Joseph Stanford, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject parcels.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Mr. Hiles appeared *pro se*. Deputy County Assessor Julie Newsome appeared for the Respondent. Both were sworn and testified.
5. The Petitioner offered the following exhibits:

Parcel 35-05-14-100-226.700-005

Petitioner Exhibit 1: Notice of Assessment (Form 11),

Petitioner Exhibit 2: "Special Message to Property Owner" attachment to tax bill (Form TS-1A),

Parcel 35-05-14-100-136.400-005

Petitioner Exhibit 1: Form TS-1A,

Parcel 35-05-14-100-258.900-005

Petitioner Exhibit 1: Form 11,

Petitioner Exhibit 2: Form TS-1A,

Parcel 35-05-14-100-258.700-005

Petitioner Exhibit 1: Form 11,

Parcel 35-05-14-100-394.500-005

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<sup>1</sup> For parcels 35-05-14-100-182.400-005 and 35-05-14-100-258.700-005, the PTABOA's determination is dated June 17, 2014.

Petitioner Exhibit 1: Summary Transfer History for parcel 35-05-14-100-266.700-005,  
Petitioner Exhibit 2: Second page of a property record card,

Parcel 35-05-14-100-182.400-005

Petitioner Exhibit 1: Form TS-1A,  
Petitioner Exhibit 2: Subject property record card.

6. The Respondent offered the following exhibits:

Parcel 35-05-14-100-226.700-005

Respondent Exhibit 1: Form 133 petition,  
Respondent Exhibit 2: 2010 property record card,  
Respondent Exhibit 3: Aerial photograph,  
Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,  
Respondent Exhibit 5: Board's 2010 determination for this parcel filed via Petition for Review of Assessment (Form 131),

Parcel 35-05-14-100-136.400-005

Respondent Exhibit 1: Form 133 petition,  
Respondent Exhibit 2: 2010 property record card,  
Respondent Exhibit 3: Aerial photograph,  
Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,  
Respondent Exhibit 5: Board's 2010 determination for this parcel filed via Form 131,

Parcel 35-05-14-100-258.900-005

Respondent Exhibit 1: Form 133 petition,  
Respondent Exhibit 2: 2010 property record card,  
Respondent Exhibit 3: Aerial photograph,  
Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,  
Respondent Exhibit 5: Board's 2010 determination for this parcel filed via Form 131,

Parcel 35-05-14-100-258.700-005

Respondent Exhibit 1: Form 133 petition,  
Respondent Exhibit 2: 2010 property record card,  
Respondent Exhibit 3: Aerial photograph,  
Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,  
Respondent Exhibit 5: Board's 2010 determination for this parcel filed via Form 131,  
Respondent Exhibit 6: "Historical" property record card,

Parcel 35-05-14-100-394.500-005

Respondent Exhibit 1: Form 133 petition,  
Respondent Exhibit 2: 2010 property record card,  
Respondent Exhibit 3: Aerial photograph,

- Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,
- Respondent Exhibit 5: Board’s 2010 determination for this parcel filed via Form 131,

Parcel 35-05-14-100-182.400-005

- Respondent Exhibit 1: Form 133 petition,
- Respondent Exhibit 2: 2010 property record card,
- Respondent Exhibit 3: Aerial photograph,
- Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,
- Respondent Exhibit 5: Board’s 2010 determination for this parcel filed via Form 131.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 133 petitions,
- Board Exhibit B: Hearing notices, dated October 29, 2015,
- Board Exhibit C: Hearing sign-in sheet with attached parcel listing initialed by both parties’ representatives.

8. The properties under appeal are residential lots, some vacant and some containing improvements, located at various addresses on Lindley Street and Swan Street in Huntington.

9. The PTABOA determinations list the following 2010 assessments for the subject parcels:

<b>Parcel No.</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
35-05-14-100-226.700-005	\$6,200	\$2,100	\$8,300
35-05-14-100-136.400-500	\$6,400	\$0	\$6,400
35-05-14-100-258.900-005	\$6,400	\$0	\$6,400
35-05-14-100-258.700-005	\$6,400	\$85,500	\$91,900
35-05-14-100-394.500-005	\$0	\$37,800	\$37,800
35-05-14-100-182.400-005	\$6,400	\$34,300	\$40,700

**OBJECTIONS**

10. Ms. Newsome objected to Petitioner Exhibit 2 (parcel 35-05-14-100-394.500-005) arguing “the exhibit needs to have a front and back page; anybody can copy the second page...current or prior.”

11. Mr. Hiles responded by stating he would “have no objection to removing” the exhibit from the record because the Respondent was “going to offer the same exhibit.” The ALJ took the objection under advisement.
12. Ms. Newsome’s objection is sustained. While the Petitioner’s Exhibit 2 appears to be for the same property the as Respondent’s Exhibit 2, that is not a foregone conclusion. *See Resp’t Ex. 2 (parcel 35-05-14-100-394.500-005)*. The sketch on the two exhibits, as well as the physical property characteristics listed, appear to be identical on both exhibits. Yet, the two exhibits show different neighborhood codes, different depreciation amounts, and different true tax values for the improvements. Thus, even if Petitioner’s Exhibit 2 is for the same property, the assessment year that the exhibit relates to is unknown. Consequently, the exhibit holds no relevance to the Board in its determination. For these reasons, Petitioner’s Exhibit 2 (parcel 35-05-14-100-394.500-005) is excluded from the record.
13. Mr. Hiles objected to Respondent’s Exhibit 6 (parcel 35-05-14-100-258.700-005), arguing the exhibit is irrelevant. Ms. Newsome responded by stating the exhibit is relevant because the exhibit indicates the parcel’s historical values. The ALJ took the objection under advisement.
14. Mr. Hiles objection here goes to the weight of the evidence rather than its admissibility. Therefore, the objection is overruled, and Respondent’s Exhibit 6 (parcel 35-05-14-100-258.700-005) is admitted.
15. The Board notes, however, that neither the exclusion of Petitioner Exhibit 2 (parcel 35-05-14-100-394.500-005) nor the inclusion of Respondent Exhibit 6 (parcel 35-05-14-100-258.700-005) has any effect on the Board’s final determination.

### **JURISDICTIONAL FRAMEWORK**

16. 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.

#### PETITIONER'S CONTENTIONS

17. While the Petitioner has appealed the assessments of six different parcels, his main contentions as to why those assessments are incorrect are generally the same. The Petitioner argues the assessments increased due to the Respondent improperly removing negative influence factors. *Hiles argument.*
18. The Petitioner argued that by removing the negative influence factors, assessment “standards” were not being followed. Therefore, the errors are objective rather than subjective. *Hiles argument.*
19. The Petitioner also alluded to other “errors” in the assessments. For parcel 35-05-14-100-226.700-005, the Petitioner argues there are “errors on there as far as the description of the property.” Specifically, the Petitioner argues this parcel lacks a sidewalk and public utilities. *Hiles testimony; Pet’r Ex. 1, 2 (parcel 35-05-14-100-226.700-005).*
20. For parcel 35-05-14-100-258.700-005, the Petitioner argues “there were just several errors on the property record card that I thought should have been corrected...which are defiantly not subjective.”<sup>2</sup> *Hiles testimony; Pet’r Ex. 1 (parcel 35-05-14-100-258.700-005).*
21. Parcel 35-05-14-100-394.500-005 has not been utilized as a rental property since 2004. However, the Respondent continues to assess it as a rental property. The Petitioner also pointed to the following “errors” on the subject property record card: The house is situated on a crawl space not a slab, there is no carpet in the house, the siding is not vinyl, and the home does not contain six rooms. Also, the home does not have a “three-fixture

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<sup>2</sup> The Petitioner failed to provide any details regarding the “errors.”

bath,” a kitchen sink, or a water heater. Finally, the Petitioner alleges that a swimming pool was erroneously added to the assessment in the past, but subsequently was removed. *Hiles testimony; Pet’r Ex. 1, 2 (parcel 35-05-14-100-394.500-005).*

22. Finally, for parcel 35-05-14-100-182.400-005, there are “several incorrect things” on the property record card, but “some of it has been corrected.”<sup>3</sup> *Hiles testimony; Pet’r Ex., 1, 2 (parcel 35-05-14-100-182.400-005).*

### **RESPONDENT’S CONTENTIONS**

23. The Respondent appropriately reviewed the influence factors applied to the subject parcels. After an evaluation, she removed the negative influence factors that were incorrectly applied to the properties. *Newsome testimony.*
24. Parcel 35-05-14-100-226.700-005 is a lot containing a dated detached garage. The lot size, as indicated on the property record card, is correct. Thus, the Petitioner is appealing the assessment because he disagrees with the value. This cannot be done via a Form 133 filing. *Newsome argument; Resp’t Ex. 1, 2, 4 (parcel 35-05-14-100-226.700-005).*
25. Parcels 35-05-14-100-136.400-005 and 35-05-14-100-258.900-005 are both vacant lots. The lot sizes are also correctly shown on the property record cards. Again, the Petitioner is protesting value applied to the lots. *Newsome argument; Resp’t Ex. 1, 2, 4 (parcel 35-05-14-100-136.400-005 and 35-05-14-100-258.900-005).*
26. Parcel 35-05-14-100-258.700-005 is a lot including a home. After an inspection of the property, errors contained on the property record card were corrected. Further, negative influence factors were removed from this property. While Ms. Newsome noted the second floor was unfinished, she did not “notice the other errors that Petitioner alleges.” The lot size on the property record card “should actually be increased.” While the property record card notes that the house has wood siding, it is mostly vinyl. However, making that change would not impact the assessment. Finally, if either a shed or a pool

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<sup>3</sup> Again, the Petitioner did not identify any specific errors that had been corrected or those requiring correction.

exists on the property, these items need to be added to the assessment. *Newsome argument; Resp't Ex. 1, 2, 4, 6 (parcel 35-05-14-100-258.700-005).*

27. Parcel 35-05-14-100-394.500-005 was assessed as a rental property until 2012. When the Respondent was notified that the use of the property had changed, she removed the gross rent multiplier and indicted the home was in poor condition. Again, the Petitioner is contesting value, which cannot be done via a Form 133 filing. *Newsome argument; Resp't Ex. 1, 2, 4 (parcel 35-05-14-100-394.500-005).*
28. Finally, for parcel 35-05-14-100-182.400-005 the negative influence factor was correctly removed. The condition of the home was lowered to “very poor” resulting in a lower overall assessment. *Newsome argument; Resp't Ex. 1, 2, 4 (parcel 35-05-14-100-182.400-005).*
29. The Petitioner has already filed Form 130 and Form 131 petitions for the assessment year under appeal. Because he is utilizing Form 133 petitions for subjective issues, he has filed these appeals “erroneously.” *Newsome argument; Resp't Ex. 5 (all parcels).*

#### **BURDEN OF PROOF**

30. 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.
31. 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 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 the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

32. 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 is applicable to all appeals pending before the Board.
33. Here, the Petitioner initiated his appeals with Form 133 petitions. The challenge of a property’s value is not available via a Form 133. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioner.

#### ANALYSIS

34. Here, the Petitioner seeks to correct alleged errors in the subject parcels’ 2010 assessments via Form 133 petitions, which the Department of Local Government Finance (DLGF) has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12. But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O’Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. of Tax Comm’rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. of Tax Comm’rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. of Tax*

*Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

35. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
36. Here, the Petitioner has challenged the Respondent’s alleged removal of negative influence factors and, to some extent, the parcels’ assessed values. Clearly, the challenge of the properties’ values requires subjective judgment.
37. Subjective judgment is similarly required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. Assessors use influence factors to account for how those conditions affect an individual parcel’s value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch.2 at 43. Because it is directly tied to the determination of value, the estimation of the appropriate influence factor percentage and, whether to apply any influence factor at all involve subjective judgment. As to the Petitioner’s claim that state law requires an objective application of a negative influence factor if certain conditions apply, the Petitioner failed to point to any specific law, standard, or regulation, and the Board is not aware of any.
38. The Petitioner also argued there are errors in some of the parcels’ assessments of improvements. For the most part, the Petitioner failed to specifically identify those errors. For one particular parcel, however, the Petitioner was more specific. He argued that the home sitting on parcel 35-05-14-100-394.500-005 was erroneously being valued as a rental property. He also testified that the house is on a crawl space rather than a slab, there is no carpet, the siding is not vinyl, and there are not six rooms. Also, he testified that the house does not have a “three-fixture bath,” a kitchen sink, or a water heater. The Petitioner’s testimony in this regard was undisputed.

39. However, neither party offered a property record card that actually shows the 2010 assessment for this parcel. The Respondent offered a property record card that indicates the 2011 assessment was \$37,800, which appears to be the same as the 2010 assessment. *Resp't Ex. 2 (parcel 35-05-14-100-392.500-005)*. But the Board cannot simply assume that the 2011 assessment was calculated in exactly the same manner as the 2010 assessment. Even if the Board were willing to make that assumption, it is not clear how the 2011 assessment was calculated.
40. The Respondent did not dispute that the parcel was assessed as a rental property in 2010. Indeed, Ms. Newsome testified that it was assessed as a rental property until 2012, when she removed the gross rent multiplier. On the face of the 2011 property record card, "GR RENT MULT" appears directly above the March 1, 2011 assessed values. *Resp't Ex. 2 (parcel 35-05-14-100-392.500-005)*. However, on the back, or second page, of the card, it appears that the cost approach may have actually been used. The cost schedule pricing yields a "grade adjusted value" of \$36,970 for the dwelling, which is transferred directly to the computed value in the summary of improvements. *Id.*
41. If a gross rent multiplier was used to value the property as both parties contend, then the cost schedule was not used, and therefore any errors related to the property's physical characteristics do not affect the assessment. If the cost approach was used, then the Respondent did not err in the methodology she used. Thus, even if the Board were to look past the absence of a 2010 property record card and assume that the Respondent computed the 2010 assessment in the exact same manner as the 2011 assessment, the Petitioner failed to conclusively prove which set of errors, if any, actually apply here.
42. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis"). Here, the Petitioner listed an assortment of alleged errors, but he failed to produce enough detailed evidence to prove any of them. Consequently, he failed to make a prima facie case.

43. Where the Petitioner has not supported his 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).
44. Finally, regarding the Respondent's argument that the Petitioner has "filed erroneously" by filing both Form 131 and Form 133 petitions for the same parcels and the same years, the Board's holding moots that issue.

#### **SUMMARY OF FINAL DETERMINATION**

45. The Board finds for the Respondent.

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

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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>>.

**LIST OF PETITION NUMBERS AND PARCEL NUMBERS**

<b>Petitioner</b>	<b>Petition Number</b>	<b>Parcel Number</b>
Tony L. Hiles	35-005-10-3-5-00002	35-05-14-100-226.700-005
Tony L. Hiles	35-005-10-3-5-00003	35-05-14-100-136.400-005
Tony L. Hiles	35-005-10-3-5-00006	35-05-14-100-258.900-005
Tony L. Hiles	35-005-10-3-5-00009	35-05-14-100-258.700-005
Tony L. Hiles	35-005-10-3-5-00007	35-05-14-100-394.500-005
Tony L. Hiles	35-005-10-3-5-00010	35-05-14-100-182.400-005