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

Petitions:	**35-005-15-1-5-00285-15**
	35-005-15-1-5-00286-15
Petitioners:	**Yvonne C. Hiles & Von, Inc.**
Respondent:	**Huntington County Assessor**
Parcels:	**35-05-14-100-259.000-005 [Lot 32]**
	35-05-14-100-258.900-005 [Lot 33]
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 appeals 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 determinations denying the Petitioners any relief.

3. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing the Board's small claims procedures.

4. The Board issued notices of hearing on January 26, 2017.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on March 1, 2017. She did not inspect the properties.

6. Tony L. Hiles appeared *pro se*.[1] County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The properties under appeal are vacant residential lots located on Lindley Street in Huntington.

8. The PTABOA determined the total assessment of each lot is $3,400.

9. The Petitioners requested a total assessment of $100 for each lot.

[1] Mr. Hiles signed the Form 131s as Vice President and Chief Operating Officer for Von, Inc.

Record

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

    a) Form 131s with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:[2]

Petitioners Exhibit 1:	"Description of property,"
Petitioners Exhibit 2:	Flood zone map,
Petitioners Exhibit 3:	Aerial photograph of the subject property,
Petitioners Exhibit 4:	Subject property record card,
Petitioners Exhibit 5:	2010 Special Message to Property Owner (Form TS-1A),
Petitioners Exhibit 6:	2012 Notice of Assessment of Land and Structures (Form 11),
Petitioners Exhibit 7:	Property record card for 228 North Brawley Street,
Petitioners Exhibit 8:	Aerial photograph of 228 North Brawley Street,
Petitioners Exhibit 9:	2002 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 56, 57,
Petitioners Exhibit 10:	2011 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 43, 44, 45, 46, 47, 48, 49.

    The Respondent did not submit any exhibits.

Board Exhibit A:	Form 131s with attachments,
Board Exhibit B:	Hearing notices dated January 26, 2017,
Board Exhibit C:	Hearing sign-in sheet.

    d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

    a) The 2015 assessments are too high. Approximately 99% of Lot 32 is located in a "flood zone." And approximately 80% of Lot 33 is located in a "flood zone." Both lots are "irregularly shaped" and have "irregular topography." A drainage ditch runs across the front of the lots and an alley is located at the rear. But, the alley does not constitute "access" to the properties for "assessing purposes." The lots also lack

[2] The Petitioners offered the same exhibits for each parcel, but the information within the exhibits is specific to each property.

utilities, walkways and driveways. All of these "restrictions" limit their value. *Hiles argument; Pet'rs Ex. 1, 2, 3.*

b) Several "standards" set forth in the Guidelines for applying influence factors are relevant to the lots. Because the drainage ditch "has a lower elevation" the lots suffer from "uneven topography." The lots are under-improved, have an abnormal shape and size, and have "unusual restrictions" due to the drainage ditch. For these reasons, negative influence factors should be applied to both lots. *Hiles argument; Pet'rs Ex. 9, 10.*

c) In an effort to prove the lots are over assessed, the Petitioners presented an assessment of a nearby "base lot" located at 228 North Brawley Street. It is "an undeveloped city lot" but "buildable." The property is currently assessed at $3,400, but has a 50% negative influence factor applied to its assessment. This lot does not suffer from the same "restrictions and encumbrances" the subject properties do. *Hiles argument; Pet'rs Ex. 7, 8.*

12. Summary of the Respondent's case:

a) The properties have been assessed in a "fair and equitable" manner. The Petitioners have the burden of proof. They failed to offer any probative valuation evidence supporting a reduction in the assessments. *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 parties agree the assessed value of both parcels did not change 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 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 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

c) First, the Petitioners offered an aerial flood map of the subject properties' neighborhood that appears to indicate the properties are in a flood zone and are susceptible to flooding. They also claim that the lots suffer from abnormal topography, and abnormal shape and size. While these factors are likely detrimental to the subject properties' values, they do not establish that the assessments are in error. The Petitioners failed to quantify the actual effects of their claim or quantify more accurate values. 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 flood map and related arguments are not enough to make a prima facie case for changing the assessments.

d) The Petitioners also offered a comparison of their assessments to that of a purportedly comparable property.[3] 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 purported comparable property is located within the same taxing district and appears to meet the boundary requirements.

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 an aerial map for the purportedly comparable property, they failed to offer significant testimony comparing specific features and characteristics to the subject properties. 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 differences between the subject properties and the purportedly comparable property. For these reasons, their evidence lacks probative value.

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

[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 assessments will not be changed.

ISSUED: May 30, 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>.