

REPRESENTATIVE FOR PETITIONERS:

Tony L. Hiles, Vice President and CEO of Von, Inc.

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Yvonne C. Hiles and Von, Inc. /	)	Petition Nos.:	See attached listing
Tony L. Hiles,	)		
	)	Parcel Nos.:	See attached listing
Petitioners,	)		
	)		
v.	)	County:	Huntington
	)		
Huntington County Assessor,	)	Township:	Huntington
	)		
Respondent.	)	Assessment Year:	2009

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

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

## PROCEDURAL HISTORY

2. The Petitioners initiated their 2009 assessment appeals of 11 parcels by filing Petitions for Correction of an Error (Form 133s) with the Huntington County Auditor on May 9, 2014.<sup>1</sup> On June 13, 2014, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioners any relief. On July 23, 2014, the Petitioners filed all 11 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 for the Petitioners.<sup>2</sup> Deputy County Assessor Julie Newsome appeared for the Respondent. Both were sworn and testified.
5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	“Special Message to Property Owner” attachment to the tax bill (Form TS-1A) for parcel 35-05-14-100-259.000-005,
Petitioners Exhibit 2:	Notice of Assessment (Form 11) for parcel 35-05-14-100-259.000-005,
Petitioners Exhibit 3:	Form TS-1A for parcel 35-05-14-100-288.900-005,
Petitioners Exhibit 4:	Form 11 for parcel 35-05-14-100-288.900-005,
Petitioners Exhibit 5:	Form TS-1A for parcel 35-05-14-100-729.400-005,
Petitioners Exhibit 6:	Form 11 for parcel 35-05-14-100-729.400-005,
Petitioners Exhibit 7:	Form TS-1A for parcel 35-05-14-100-177.600-005,
Petitioners Exhibit 8:	Form 11 for parcel 35-05-14-100-729.400-005,
Petitioners Exhibit 9:	Form TS-1A for parcel 35-05-14-100-259.400-005,
Petitioner Exhibit 10:	Form 11 for parcel 35-05-14-100-729.400-005,
Petitioners Exhibit 11:	Form TS-1A for parcel 35-05-14-100-226.700-005,
Petitioners Exhibit 12:	Form 11 for parcel 35-05-14-100-226.700-005,
Petitioners Exhibit 13:	Form TS-1A for parcel 35-05-14-100-136.400-005,

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<sup>1</sup> Tony L. Hiles is listed as the owner of six parcels and the remaining five parcels list Yvonne C. Hiles and the corporation Von, Inc, as the owner of record.

<sup>2</sup> Again, Mr. Hiles is listed as the owner of six parcels and is listed as the Vice President and CEO of Von, Inc., for the remaining five parcels.

- Petitioners Exhibit 14: Form TS-1A for parcel 35-05-14-100-258.900-005,
- Petitioners Exhibit 15: Form 11 for parcel 35-05-14-100-258.900-005,
- Petitioners Exhibit 16: Form 11 for parcel 35-05-14-100-258.700-005,
- Petitioners Exhibit 17: Summary Transfer History for parcel 35-05-14-100-266.700-005,
- Petitioners Exhibit 18: Property record card for parcel 35-05-14-100-182.400-005,
- Petitioners Exhibit 19: Form TS-1A for parcel 35-05-14-100-182.400-005,
- Petitioners Exhibit 20: Photograph of Mr. Hiles’ “documents library,”
- Petitioners Exhibit 21: Listing of parcels filed stamped by Huntington County Auditor on May 9, 2014.

6. The Respondent offered the following exhibits:

- Respondent Exhibit 1: Form 133 petitions for all 11 parcels,
- Respondent Exhibit 2: Text of Ind. Code § 6-1.1-26.

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 consist mostly of vacant lots. Four of the parcels have assessments for improvements, one of which is the Petitioners’ residence located at 392 Lindley Street in Huntington. The remaining parcels are located at various addresses on Lindley Street and Swan Street in Huntington

9. The PTABOA determinations list the following 2009 assessments for the subject parcels:<sup>3</sup>

<b>Parcel No.</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
35-05-14-100-259.000-005	\$6,400	\$0	\$6,400
35-05-14-100-288.900-005	\$6,400	\$0	\$6,400
35-05-14-100-729.400-005	\$6,400	\$0	\$6,400
35-05-14-100-177.600-005	\$6,400	\$0	\$6,400
35-05-14-100-259.100-005	\$6,400	\$0	\$6,400
35-05-14-100-226.700-005	\$6,200	\$1,500	\$7,700
35-05-14-100-136.400-005	\$6,400	\$0	\$6,400

<sup>3</sup> For reasons discussed in the Board’s analysis, it appears these are not the parcels’ actual 2009 assessments of record.

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

### **JURISDICTIONAL FRAMEWORK**

10. 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.

### **PETITIONERS' CONTENTIONS**

11. While the Petitioners have appealed the assessments of 11 different parcels, their contentions as to why those assessments are incorrect are generally the same. The Petitioners argue the assessments increased due to the Respondent improperly removing negative influence factors. Further, the Petitioners argue the changes made to those assessments are “illegal because they occurred at such a late date.” *Hiles argument.*
12. For many of the parcels, the Petitioners offered what Mr. Hiles referred to as the “TS-1A Form.” Mr. Hiles noted these forms indicate “each parcel’s 2009 and 2010 assessments and each form has ‘corrected bill’ stamped on it.” All of the forms are dated April 22, 2010. Thus, for the 2009 assessment date the Petitioners are of the opinion their parcels were assessed on April 22, 2010. *Hiles testimony; Pet’rs Ex. 1, 3, 5, 7, 9, 11, 13, 14, 19.*
13. The Petitioners also offered their Form 11s for many of the parcels. Similar to the Form TS-1A, the Form 11 indicates significant increases in the parcels’ assessments from 2009 to 2010. *Hiles testimony; Pet’rs Ex. 1, 2.*

14. The Petitioners further contend that they received the “corrected tax bills” two weeks before their 2010 taxes were due. Further, these tax bills were received “a couple of days” after a meeting with an employee of the Assessor’s Office regarding pending Form 131 petitions they had filed. It was at this time that the Petitioners noticed their negative influence factors were no longer applied to the parcels. The Petitioners argue that “state law mandates that an empty lot with no utilities be given a negative influence factor.” Therefore, they contend that their Form 133 appeals are based on “an objective argument, not a subjective argument.” *Hiles argument.*
15. Parcel 35-05-14-100-258.700-005 includes the Petitioners’ residence. Mr. Hiles testified that this parcel had also been “reassessed” on April 22, 2010, and that there were “some issues” with square footage, exterior construction materials, year of construction, and “the date of the utility.” He also noted that the total assessment increased from \$6,800 in 2009 to \$91,900 in 2010. *Hiles testimony; Pet’rs Ex. 16, 17, 18.*
16. Finally, the Petitioners dispute the Respondent’s argument regarding the timeliness of their Form 133 filings. Mr. Hiles testified that he “originally hand-delivered the petitions to Cindy Yeiter, the Huntington County Auditor at the time, on May 10, 2013.” Mr. Hiles went on to testify that they placed them on “Ms. Yeiter’s desk, but Ms. Yeiter indicated that her office does not accept them.” *Hiles argument; Pet’rs Ex. 20, 21.*

#### **RESPONDENT’S CONTENTIONS**

17. The Petitioners’ Form 133 petitions were not timely filed. The petitions were received by the Auditor’s Office on May 9, 2014, and immediately forwarded to the Assessor’s Office. However, according to Ind. Code § 6-1.1-26-1, correction of error forms relating to the 2009 assessment were required to be filed by May 9, 2013. *Newsome argument; Resp’t Ex. 1, 2.*
18. Further, according to Ind. Code § 6-1.1-15-12, a taxpayer may only correct objective errors via a Form 133 petition. The Form 133 cannot be used to petition for changes that

require subjective judgment. Here, the Petitioners have raised issues requiring subjective judgment. *Newsome argument; Resp't Ex. 1, 2.*

### **BURDEN OF PROOF**

19. 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.
20. 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).
21. 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.
22. Here, the Petitioners initiated their 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 Petitioners.

#### ANALYSIS

23. Here, the Petitioners seek to correct alleged errors in the subject parcels' 2009 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 (Petition to Correct Error Statute).<sup>4</sup> Before addressing the merits of the Petitioners' case, the Board first turns to the question of whether the Petitioners timely filed their Form 133 petitions, and if they are able to correct the issues they have raised via a Form 133 petition.
24. In 2013, the Indiana Tax Court held that there was no deadline to file a Form 133 petition for the date at issue in these appeals. *Hutcherson v. Ward*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (holding that there was no time limit for filing Form 133 petitions after April 1, 2000, when an administrative regulation imposing a three-year filing deadline was repealed).<sup>5</sup>
25. However, the Petition to Correct Error Statute does not expressly grant the right to a tax refund. A separate statute, Ind. Code § 6-1.1-26-1, provides an avenue for a taxpayer to claim a refund. That statute provides that a claim for refund must be filed within three years after the taxes were first due. Ind. Code § 6-1.1-26-1(2).
26. The record is silent as to whether the Petitioners filed claims for refund. Mr. Hiles offered detailed testimony regarding his memory of filing the Form 133 petitions on May 10, 2013. But he failed to offer any testimony that he also filed claims for a refund.

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<sup>4</sup> The statute does not actually contain any reference to a petition, nor even to a taxpayer's right to petition for a correction of an error. The DLGF promulgated Form 133 "Petition for Correction of an Error" in State Form 12483. The right for a taxpayer to petition to correct an error, rather than await action by the assessing official, was established in *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 858 (Ind. Tax Ct. 1990).

<sup>5</sup> Following *Hutcherson*, the Indiana General Assembly amended the Petition to Correct Error Statute to provide that a taxpayer is not entitled to relief unless the taxpayer files a petition to correct error "(1) with the auditor of the county in which the taxes were originally paid; and (2) within three (3) years after the taxes were first due." P.L.183-2014; SEC.19; I.C. § 6-1.1-15-12(i) (2014).

Thus, in this unique circumstance, should the Petitioners prevail in these appeals, they would be entitled to have the parcels' assessments corrected, but would not be entitled to refunds of taxes paid if no refund was claimed.

27. That point becomes moot with the nature of the issues that the Petitioners raised. 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*, 561 N.E.2d 852, 857.
28. 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.*
29. Here, the Petitioners have 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.
30. Subjective judgment is 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, if any is subjective. As to the Petitioners' claim that state law requires an objective application of a negative influence factor if certain conditions apply, the law is clear that an influence factor may not be challenged by a Form 133.



31. Finally, the Petitioners argued that the Respondent's purported changes to the parcels' 2009 assessments were illegal, because they were made too late. But, neither party offered any probative evidence regarding when, how, or why the 2009 assessments were changed. Further, the Petitioners did not conclusively prove that the changes they are protesting were even applied to the 2009 assessments. In fact, the evidence appears to indicate that the increases were not applied until 2010.
32. True, the PTABOA's determinations in the Petitioners' 2009 appeals list the assessed values previously indicated. But as noted above, the values indicated in the PTABOA's determinations do not appear to be the 2009 assessed values of record. Upon examination of the PTABOA's 2009 determinations, the pages listing the parcels' assessed values appear to be copies of the same pages used in the PTABOA's 2010 determinations. In 2010, the assessments actually *did* increase.<sup>6</sup>
33. In support of this conclusion, the Board needs only to turn to the Petitioners' own evidence. For parcel 35-05-14-100-259.000-005, the PTABOA's determination indicates an assessment of \$6,400. However, the Petitioners' evidence indicates otherwise. Specifically, the Form 11 for this parcel lists the 2009 assessment at \$1,300. *Pet'rs Ex. 2*. Likewise, the Form TS-1A indicates a 2009 assessment of \$1,300. *Pet'rs Ex. 1*. Both forms indicate that the assessment did not increase to \$6,400 until 2010. *Pet'rs Ex. 1, 2*.
34. Similarly, for parcel 35-05-14-100-288.900-005, while the PTABOA's determination again lists a 2009 assessment of \$6,400, the Petitioners' evidence indicates they only paid taxes on an assessment of \$2,900. *Pet'rs Ex. 3, 4*. Again, the assessment did not increase to \$6,400 until 2010. *Id.* The same applies to parcel 35-05-14-100-729.400-005. Again, the PTABOA's determination lists a 2009 assessment of \$6,400. But the Petitioners' evidence indicates they only paid taxes on an assessment of \$600. *Pet'rs Ex. 5, 6*.
35. The Petitioners did not offer a Form TS-1A or Form 11 for every parcel that is the subject of this appeal. But for where they did offer these forms, the results are the same. The

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<sup>6</sup> The Petitioners also filed Form 133 petitions for the subject parcels for the 2010 assessment year. The Board held a separate hearing on those petitions. The 2010 petitions are not made part of this record.

Petitioners appear to be protesting assessment changes that did not take effect until 2010. It appears that the Petitioners' initial confusion began by either mistaking the Form TS-1A for a notice of assessment, confusing the tax year with the assessment year, or both. Then the PTABOA exacerbated that confusion by including papers containing 2010 assessed values with the 2009 determinations.

36. Further evidence of the current 2009 assessments came via the Respondent. On an attachment to the hearing sign-in sheet, Ms. Newsome crossed out the assessments indicated on the PTABOA determinations for each parcel, and replaced those values with the values indicated on the Petitioners' Forms TS-1A and 11, which the Board finds to be the actual assessments of record. *See Bd. Ex. C.*
37. In any event, even if the Petitioners were appealing objective issues, they failed to prove that those issues affected the subject parcels' 2009 assessments. To any extent the Petitioners could argue the PTABOA actually increased the assessments as a result of their Form 133 appeals, they failed to offer any evidence to prove that actually occurred. Thus, the Petitioners failed to make a prima facie case for reducing the 2009 assessments.
38. 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).

**SUMMARY OF FINAL DETERMINATION**

39. 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>
Yvonne C. Hiles and Von, Inc.	35-005-09-3-5-00005	35-05-14-100-259.000-005
Yvonne C. Hiles and Von, Inc.	35-005-09-3-5-00011	35-05-14-100-288.900-005
Yvonne C. Hiles and Von, Inc.	35-005-09-3-5-00004	35-05-14-100-729.400-005
Yvonne L. Hiles and Von, Inc.	35-005-09-3-5-00003	35-05-14-100-177.600-005
Yvonne C. Hiles and Von, Inc.	35-005-09-3-5-00001	35-05-14-100-259.100-005
Tony L. Hiles	35-005-09-3-5-00008	35-05-14-100-226.700-005
Tony L. Hiles	35-005-09-3-5-00009	35-05-14-100-136.400-005
Tony L. Hiles	35-005-09-3-5-00006	35-05-14-100-258.900-005
Tony L. Hiles	35-005-09-3-5-00007	35-05-14-100-258.700-005
Tony L. Hiles	35-005-09-3-5-00002	35-05-14-100-394.500-005
Tony L. Hiles	35-005-09-3-5-00010	35-05-14-100-182.400-005