

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
)	
Petitioners,)	Parcel Nos.: See attached listing
)	
v.)	County: Huntington
)	
Huntington County Assessor,)	Township: Huntington
)	
Respondent.)	Assessment Year: 2010

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 2010 assessment appeals of five 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 Petitioners any relief. On July 23, 2014, the Petitioners filed all five 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.¹ Deputy County Assessor Julie Newsome appeared for the Respondent. Both were sworn and testified.
5. The Petitioners offered the following exhibit:²
Petitioners Exhibit 1: Notice of Assessment (Form 11).
6. The Respondent offered the following exhibits:
Respondent Exhibit 1: Form 133 petitions,
Respondent Exhibit 2: 2010 subject property record cards,
Respondent Exhibit 3: Aerial photograph of each parcel,
Respondent Exhibit 4: Text of Ind. Code § 6-1.1-15-12,
Respondent Exhibit 5: Board's 2010 determination for each parcel filed via Petition for Review of Assessment (Form 131).³
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,

¹ Mr. Hiles serves as the Vice President and CEO of Von, Inc.

² The parties offered the same exhibits for each parcel. However, the content of each exhibit is specific to each individual parcel.

³ Respondent's Exhibit 5 was admitted over objection.

Board Exhibit C: Hearing sign-in sheet with attached parcel listing initialed by both parties' representatives.

8. The properties under appeal are all vacant lots located on Lindley Street in Huntington.
9. The PTABOA determinations list the following 2010 assessments for the subject parcels:

Parcel No.	Land	Improvements	Total
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

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 five different parcels, their main contentions as to why those assessments are incorrect are generally the same. The Petitioners argue assessments increased due to the Respondent improperly removing negative influence factors. *Hiles argument; Pet'rs Ex 1.*
12. All of the parcels are vacant and "not up to the standards that most building lots are." The majority of the lots are located in a flood zone with a creek running through them. *Hiles argument.*

13. The Petitioners argue the lack of negative influence factors on these parcels is an objective error rather than a subjective error. The Respondent “objectively decided” that the subject parcels did not meet the requirements to receive an influence factor. Further, the Respondent failed to apply a county-wide or state-wide standard that “an empty city lot with no improvements and no utilities on it was being given a standard negative 50% influence factor.” *Hiles argument*.
14. The Petitioners attempted to file Form 131 petitions for all of the properties under appeal. However, the Board made “no determinations in those appeals because they were filed late.” *Hiles testimony*.

RESPONDENT’S CONTENTIONS

15. 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 parcels do not contain improvements. The Petitioners have not pointed to anything that is incorrect with the assessments of the lots. Therefore, there is nothing that can be corrected via a filing of a Form 133 petition. *Newsome argument; Resp’t Ex. 4*.
16. Further, the Petitioners have already filed Form 130 and Form 131 petitions for these properties for the same year under appeal here. Consequently, because they are arguing “subjective issues” via a Form 133, they have ultimately filed in duplicate. *Newsome argument; Resp’t Ex. 5*.

BURDEN OF PROOF

17. 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.

18. 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).
19. 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.
20. 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

21. Here, the Petitioners seek 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).

22. 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.*
23. 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.
24. 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 or standard requires an objective application of a negative influence factor if certain conditions apply, the case law is clear that influence factors are not appealable under a Form 133. As such, the Petitioners failed to make a prima facie case.
25. Regarding the Respondent’s argument that the Petitioners have “filed in duplicate” 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

26. 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.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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

Petitioner	Petition Number	Parcel Number
Yvonne C. Hiles and Von, Inc.	35-005-10-3-5-00011	35-05-14-100-259.000-005
Yvonne C. Hiles and Von, Inc.	35-005-10-3-5-00001	35-05-14-100-288.900-005
Yvonne C. Hiles and Von, Inc.	35-005-10-3-5-00005	35-05-14-100-729.400-005
Yvonne C. Hiles and Von, Inc.	35-005-10-3-5-00004	35-05-14-100-177.600-005
Yvonne C. Hiles and Von, Inc.	35-005-10-3-5-00008	35-05-14-100-259.100-005