

REPRESENTATIVES FOR PETITIONER: Paul Ramos, owner

REPRESENTATIVES FOR RESPONDENT:

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Paul Ramos & Paul Anthony Ramos,)	Petition No.: 45-004-00-3-5-00154
)	Parcel No.: 25-47-0247-0037
Petitioners,)	
)	
v.)	
)	
Lake County Property Tax)	County: Lake
Assessment Board of Appeals, ¹)	Township: Calumet
)	Assessment Year: 2000
Respondent.)	
)	

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

June 28, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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

ISSUES

1. The issues presented for consideration by the Board were:
 ISSUE 1 – *Whether the taxes, as a matter of law, are illegal.*
 ISSUE 2 – *Whether the property should be sound valued.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-12, Petitioner filed a Form 133 Petition for Correction of Error, petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on March 31, 2003. The determination of the PTABOA was issued on September 24, 2003. The Petitioner filed an appeal to the Board on October 10, 2003.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on April 19, 2004 in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Paul Ramos, Owner

Danny Cruz, Assistant Supervisor, Calumet Township

For the Respondent:

No one was present from the Lake County PTABOA

5. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – City of Gary Building Inspection Report and map showing location of the property

Petitioner Exhibit 2 – Nine photographs (copies) of the subject property dated March 31, 2003.

¹ Usually the township assessor is considered the Respondent in such appeals; however, it is apparent from documents submitted by the township representative that the Calumet Township Assessor’s office agreed with the petitioner and filed the petitions on behalf of the taxpayer.

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A - Form 133 petition with attached note and copy of PTABOA determination
 - Board Exhibit B - Notice of Hearing dated February 6, 2004
 - Board Exhibit C – Telephone Conference Sheet – ALJ verified PTABOA assessed values with county assessor’s office
 - Board Exhibit D – Copy of letter from Calumet Township Assessor to Petitioner

7. The subject property is classified as a residential property as is shown on the property record card #001-25-47-0247-0037.

8. The ALJ did not conduct an on-site inspection of the subject property.

9. For March 1, 2000, the PTABOA determined the assessed value of the property to be:
 - Total: \$8,900

10. The assessed value of the subject property for 2000 as shown on the Form 133 petition as the current assessment and as shown on the letter from the Calumet Township Assessor to the petitioner:

Land: \$700	Improvements: \$2,270	Total: \$2,970
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11. The assessed value for 2000 requested by the Petitioner on the Form 133 petition:

Land: \$700	Improvements: \$670	Total: \$1,370
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JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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).
14. 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. Wash. Twp. 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”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

ISSUE 1: *Whether the taxes, as a matter of law, are illegal*

16. The Petitioner contends there should be no taxes on the improvements because the City of Gary was supposed to demolish the building. The dwelling was purchased at a tax sale in 2000. *Ramos testimony; Petitioner Exhibit 1.*

17. The PTABOA determination does not explain the reason for its determination. The determination merely shows that no change was made to the assessment. *Board Exhibit A.*

18. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A The Petitioner purchased the property at a tax sale. The transfer date as shown on the petition was January 10, 2000. *Board Exhibit A.*
 - B The Petitioner submitted a building inspection report, which showed the property had been recommended for emergency demolition as early as November 11, 1997. *Petitioner Exhibit 1.*
 - C The Petitioner was relying on the City to demolish the improvements when he purchased the property. *Ramos testimony.*
 - D Photographs of the subject property dated March 31, 2003. *Petitioner Exhibit 2.*

19. The Petitioner filed a Form 133 petition alleging that the taxes, as a matter of law were illegal, and should not be assessed on the improvements because the City of Gary should have demolished the improvements. The Petitioner did, however, include an assessed value amount for the improvements (\$670) on the Form 133 petition and the statement that a sound value should have been used.

20. While the Petitioner may be understandably upset with the assessment, the fact is that the improvements, such as they were, existed on the assessment date of March 1, 2000. Real property shall be assessed at the place where it is situated, and it shall be assessed to the person liable for the taxes. *Ind. Code § 6-1.1-4-1.* The owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property. *Ind. Code § 6-1.1-2-4(a).* The Petitioner was the owner of record on said assessment date. The amount of the assessment may be disputed, but the taxes are not illegally assessed to the Petitioner.

ISSUE 2: Whether the property should be sound valued.

21. The Petitioner contends that the structure is being assessed as 70% complete when a sound value should have been used.
22. The PTABOA determination does not explain the reason for its determination. The determination merely shows that no change was made to the assessment. *Board Exhibit A.*
23. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The structure has burned twice. The Petitioner is being assessed for a burned out building. *Ramos testimony; Cruz testimony.*
 - B. The Petitioner submitted a building inspection report, which showed the property had been recommended for emergency demolition as early as November 11, 1997. *Petitioner Exhibit 1.*
 - C. The township entered the structure as 70% complete where a sound value should have been entered. The total assessed value should be \$1,370 for the year 2000. *Cruz testimony.*
24. The Petitioner filed a Form 133 petition stating the property should have been valued using a sound value. Sound value is an estimate of the depreciated value of an improvement made directly by comparing it to improvements of comparable condition, desirability, and usefulness without first estimating its replacement cost new. *50 IAC 2.2-1-56.*
25. A Form 133 petition is available for those errors that can be corrected without resort to subjective judgment. *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758 (Ind. Tax Ct. 1993); *O'Neal Steel v. Vanderburgh Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857 (Ind. Tax Ct. 2003).

26. As stated above (*¶ 24*), sound value is an estimate of the depreciated value of an improvement. Estimating the sound value of an improvement would require the subjective judgment of the assessor.
27. The Form 133 petition may not be used to correct errors that require subjective judgment. Therefore, the Form 133 petition cannot be used to determine the sound value of the structure.

OTHER

28. The PTABOA determination computed the assessed value as 100% of the true tax value for the March 1, 2000 assessment date. Pursuant to Ind. Code § 6-1.1-1-3, assessed value equals 33 $\frac{1}{3}$ % of true tax value for the March 1, 2000 assessment date. Based on Ind. Code § 6-1.1-1-3, the correct assessed value for 2000 should be \$2,970. The ALJ verified the assessed value with the county assessor's office in a phone call. *Board Exhibit C.*

SUMMARY OF FINAL DETERMINATION

Determination of Issue 1: *Whether the taxes, as a matter of law, are illegal*

29. The Petitioner was the owner of record on said assessment date. The structure existed as of said assessment date. The taxes are not illegal as a matter of law. The assessment is not changed as a result of this issue.

Determination of Issue 2: *Whether the property should be sound valued*

30. A Form 133 petition cannot be used to correct errors that require subjective judgment. Therefore, the Form 133 petition cannot be used to determine the sound value of the subject structure. The assessment is not changed as a result of this issue.

Other Findings

31. The Board finds that the correct total assessed value for 2002 is \$2,970 as explained above. See ¶ 28, *infra*. A change is made in the assessment as a result of this finding.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.