

REPRESENTATIVE FOR PETITIONER:
Rex D. Hume, Uzelac & Associates

REPRESENTATIVE FOR RESPONDENT:
Hank Adams, St. John Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Peter Levin Pontiac,)	Petition No.: 45-036-03-3-4-00162
)	
Petitioner,)	
)	Parcel No.: 009-20-13-0728-0002
v.)	
)	
St. John Township Assessor)	County: Lake
)	Township: St. John
Respondent.)	
)	Assessment Year: 2003

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

July 31, 2009

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

ISSUE

1. The issue presented for consideration by the Board is whether the Lake County Property Tax Assessment Board of Appeals (PTABOA) erred in changing the land classification on a Form 133, Petition for Correction of Error.

PROCEDURAL HISTORY

2. On October 19, 2004, Peter Levin Pontiac (the Petitioner) filed a Form 133 Petition for Correction of Error, for assessment year 2003, with the Lake County Auditor.
3. On May 3, 2007, the Lake County PTABOA issued its assessment determination for the property, making agreed upon changes to the area of the building, the wall height, sprinklers and office area. Additionally, during the Form 133 review process, the township assessor made a change to the land classification, which was also included in the PTABOA's assessment determination.
4. On June 1, 2007, the Petitioner filed the Form 133 with the Lake County Auditor petitioning the Board to conduct an administrative review of the claim presented in the petition. The Board received the Form 133 on June 6, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Ellen Yuhan, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on May 6, 2009, in Crown Point, Indiana.

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

For the Petitioner: Rex D. Hume, Uzelac & Associates

For the Respondent: Hank Adams, St. John Township Assessor.¹

7. The Petitioner submitted the following exhibit:

Petitioner Exhibit 1 – Form 133 Petition with attachments:

Power of Attorney; Certificate of Petitioner's argument; PTABOA Final Determination; Property Record Card for 2003; Property Record Card showing township proposal and PTABOA determination; State Board of Tax Commissioners Instructional Bulletin 99-2; Real Property Assessment Guideline, Chapter 2, page 85; and the Final Determination in *Evind Corporation v. Monroe County Board of Review and Van Buren Township Assessor*.

8. The Respondent submitted the following exhibit:

Respondent Exhibit 1 – Packet with cover letter, and including:

PTABOA determination; Real Property Maintenance Records; Real Property Assessment Guideline, Chapter 2, page 85; Property Record Card for 2003; photograph of the subject property; Ind. Code § 6-1.1-13-3; and the Property Record Card showing township proposal and PTABOA determination.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 133 Petition,
Board Exhibit B – Notice of Hearing dated April 1, 2009,
Board Exhibit C – Hearing sign-in sheet.

10. The subject property is a car dealership located at 1400 Wicker Avenue, in Schererville, Indiana.

¹ Melody Kikkert and Betty Wilusz, both deputy assessors for St. John Township, were present and sworn but did not testify.

11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2003, the Lake County PTABOA determined the assessed value of the property to be \$1,234,100 for the land and \$2,075,600 for the improvements, for a total assessed value of \$3,289,700.
13. For 2003, the Petitioner contends the assessed value should be \$939,400 for the land and \$2,075,600 for the improvements, for a total assessed value of \$3,015,000.

JURISDICTIONAL FRAMEWORK

14. 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

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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).
16. 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”).

17. 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.

PETITIONER’S CONTENTIONS

18. The Petitioner’s representative contends that the assessor improperly made changes to the land value in the Petitioner’s appeal. *Hume testimony*. Mr. Hume testified that the township assessor corrected multiple errors in the physical description of the improvements and, according to the Petitioner’s representative, the Petitioner and the Assessor agreed to a corrected improvement value. *Id.* Mr. Hume contends, however, that when the township assessor returned the Form 133 to the county officials he had also changed the land classification on some land from usable undeveloped to primary. *Id.*
19. The Petitioner’s representative argues that the Form 133 petition is limited by statute to the correction of objective errors. *Hume testimony*. In support of this contention, Mr. Hume cites to the Board determination in *Evind Corporation v. Monroe County Board of Review and the Van Buren Township Assessor*. *Id.*; *Petitioner Exhibit 1*. Mr. Hume also contends that the State Board of Tax Commissioners² Instructional Bulletin 99-2 similarly limits the issues to those that can be corrected without regard to subjective judgment. *Id.*; *Hume testimony*;

² On December 31, 2001, the legislature abolished the State Board of Tax Commissioners (State Board). 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Indiana Board of Tax Review (Indiana Board) as "successor" to the State Board. Ind. Code Ann. §§ 6-1.5-1-3; 6-1.5-4-1 (West Supp. 2004-2005); 2001 Ind. Acts 198 § 95.

20. The Petitioner’s representative contends that land classification is a subjective issue that cannot be changed on a Form 133. *Hume testimony; Petitioner Exhibit 1, citing Evind Corporation v. Monroe County Board of Review and the Van Buren Township Assessor.* According to Mr. Hume, identifying primary commercial acreage requires the exercise of judgment to determine what “necessary” support land is. *Id.; Petitioner Exhibit 1.* The identification of secondary land also requires the exercise of judgment to define the purposes that are secondary to the primary use. *Id.* Mr. Hume also contends that identifying usable undeveloped land as opposed to unusable undeveloped land is subjective because the assessor must determine if the land is not regularly used or is being held for future development. *Id.*
21. In response to the assessor’s argument, Mr. Hume contends that Indiana Code § 6-1.1-13-3 gives the PTABOA the general authority to reassess property but that, read in context with Indiana Code § 6-1.1-13-1, it is clear that the section addresses the county board’s authority to review a current year’s assessment. *Hume testimony.* According to Mr. Hume, the statute requires the PTABOA to send notice and hold a hearing “and generally provide all the normal appeal rights that are triggered by an assessment notice.” *Id.* Mr. Hume contends that § 6-1.1-13-3 does not address the PTABOA’s review of a Form 133 petition and therefore is not relevant in this case. *Id.*

RESPONDENT’S CONTENTIONS

22. The Respondent contends that in the process of reviewing the Petitioner’s Form 133 appeal, the assessor determined that the company who assessed the property did not follow the land order and that a portion of the land was improperly assessed. *Adams testimony. Respondent Exhibit 1.* According to Mr. Adams, the PTABOA reclassified the land pursuant to the requirements of the Real Property Assessment Guidelines. *Id.*

23. The Respondent further contends that Indiana Code § 6-1.1-13-3 gives the PTABOA the right to change an assessment if the PTABOA determines the assessment is incorrect. *Adams testimony; Respondent Exhibit 1*. According to Mr. Adams, such a change is a correction of error. *Id.*

ANALYSIS

Mr. Hume Violated the Board's Rules of Practice

24. The Petitioner did not personally appear at the hearing. Instead, it was represented by Mr. Rex Hume, a certified tax representative. Although not admitted to practice law, a certified tax representative can practice before the Board subject to several express limitations.
25. Among other things, a tax representative cannot make a claim regarding the constitutionality of an assessment or engage in any other representation that involves the practice of law. 52 IAC 1-2-1(b)(3) – (4). In *Indiana State Bar Ass'n v. Miller*, 770 N.E.2d 328 (Ind. 2002), a majority of justices on the Indiana Supreme Court found that a tax representative engaged in the practice of law when he raised a constitutional claim. *See* 770 N.E.2d at 330 (plurality opinion) (“Miller's conduct amounted to the practice of law, and we are inclined to agree, at least as to the constitutional claim”) and 770 N.E.2d at 331 (Shepard, J. dissenting) (“Miller used, or attempted to use, all the tools of the legal profession to represent a client before a state adjudicative body. . . . [He] even presented state constitutional claims”).

26. Here Mr. Hume violated those restrictions. In both his attachment to the Form 133 petition, which he signed on the Petitioner’s behalf, and his argument at the hearing, Mr. Hume raised only a single issue – that the PTABOA had no legal authority to change the assessed value of the land during a Form 133 appeal.³ *Board Exhibit A; Petitioner Exhibit 1; Hume testimony.* Mr. Hume presented no evidence or argument that the assessment was incorrect or that the assessed value did not reflect the market value-in-use of the subject property. He merely argued that the PTABOA could not make the change it did. Further, Mr. Hume raised Constitutional due process rights by claiming that Indiana Code § 6-1.1-13-1 requires the PTABOA to send notice and hold a hearing “and generally provide all the normal appeal rights that are triggered by an assessment notice.” *Id.* In supporting his legal arguments, Mr. Hume cited Board decisions and statutory provisions. *Petitioner Exhibit 1; Hume testimony.*
27. Because Mr. Hume’s violations appear to be isolated, the Board will not take any further action. The Board, however, strongly cautions Mr. Hume against further violating its rules of practice. And it reminds him that practicing law without a license is a crime. *See* Ind. Code § 34-43-2-1 (making it a class-B misdemeanor to “engage[] in the business of a practicing lawyer without having been admitted as an attorney by the Indiana Supreme Court”). If Mr. Hume again violates the Board’s rules of practice, the Board may take further action, such as reporting Mr. Hume’s violation to the Department of Local Government Finance, the Indiana Attorney General, the Supreme Court Disciplinary Commission, and the Indiana State Bar Association.⁴

³ It is clear from the record that Mr. Hume’s legal arguments were pre-planned. They were not formed on the spur of the moment or in response to the Respondent’s case. Mr. Hume drafted an attachment to the Petitioner’s Form 133 Petition wherein he raised the argument that the PTABOA could not change the land classification in the context of a Form 133 appeal.

⁴ The Department of Local Government Finance oversees the certification and de-certification of tax representatives. *See* 50 IAC 15-5-8. The Attorney General, Supreme Court Disciplinary Commission, and Indiana State Bar Association can all bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

The Petitioners Failed to Make a Prima Facie Case

28. Because Mr. Hume violated the Board's rules of practice by claiming that the PTABOA had no legal right to make the change it did, all his arguments relating to that claim were nullities. Mr. Hume made no other arguments regarding the propriety of the assessment or the value of the property. The Petitioner therefore failed to raise a prima facie case.

CONCLUSION

32. The Petitioner's representative violated the Board's rules of practice by engaging in the unauthorized practice of law. The Petitioner therefore presented no arguments before the Board. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessed value of the land for the 2003 assessment year should not be changed.

ISSUED: July 31, 2009

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>