

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00680  
**Petitioners:** Manuel & Debra Guzman  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-01-39-0300-0001  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 28, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$34,500. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 25, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

### Facts

5. The subject property is located at: 2200 W. 48<sup>th</sup> Place, Gary, Calumet Township, Lake County, Indiana.
6. The subject property is a single-family residence located on .291 acres.
7. The Special Master did not conduct an on-site visit of the property
  - a) Assessed Values of subject property as determined by the DLGF:  
Land: \$14,500      Improvements: \$20,000      Total: \$34,500
  - b) Assessed Value requested by Petitioners per the Form 139L Petition:  
Land: \$12,000      Improvements: \$ -0-      Total: \$12,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: Debra Guzman, Petitioner

For Respondent: Joseph Lukomski, Jr., representing the DLGF

### **Issues**

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) The Petitioners bought the subject property from Debra Guzman's parents in 1996 for \$10,000. No one has lived in the subject dwelling since the Petitioners purchased it. The Petitioners planned to make improvements to the property and utilize it as a rental property, but they lacked the funds to do so. *Guzman testimony; Petitioner Exhibits 4, 9.*
  - b) The subject dwelling is not habitable. It lacks gas, water, toilets, or a heating system, even though the property record card (PRC) shows the dwelling as having central heat. The walls have holes in them. The only utility that is still working is the electricity. The structure is like a big storage shed. *Id.*
  - c) In 1995, the subject property was assessed for \$2,630 (land and improvements) with a neighborhood rating of "fair" and a condition rating for the dwelling at "poor." *Petitioner Exhibit 2.* The Petitioners do not understand why the assessment increased so much in 2002. *Guzman testimony; Petitioner Exhibit 1.* The Petitioners also presented a document entitled Real Property Maintenance Report, which shows the property assessed at \$8,200 for "2004 payable 2005." *Guzman testimony.*
  - d) The Petitioners do not object to the land valuation of \$14,500. It is a nice piece of land but the house is very old. The Petitioners do not believe that they would receive \$20,000 for the house in its current condition. *Id.*
11. Summary of Respondent's contentions in support of the assessment:
  - a) The current property record card (PRC) for the subject property reflects a quality grade of "D+1" and a condition rating of "fair" for the subject dwelling. This is a change from the previous years. *Lukomski testimony; Respondent Exhibit 2.*
  - b) The Real Property Maintenance Report (Petitioner Exhibit 3) shows that the assessment was reduced from \$34,500 to \$8,200 for a subsequent assessment year, but it does not explain the reason for that reduction. *Lukomski testimony.*
  - c) The Respondent presented information concerning the sale prices of other properties in the same area as the subject property. *Lukomski testimony; Respondent Exhibits 4-*

5. The Respondent assumed that the dwellings on those properties were habitable.  
*Id.*

### **Record**

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 1293.
- c) Exhibits:

- Petitioner Exhibit 1: Notice of Final Assessment.
- Petitioner Exhibit 2: Notice of Assessment dated June 28, 1996
- Petitioner Exhibit 3: Real Property Maintenance Report dated May 27, 2003
- Petitioner Exhibit 4: Quit Claim Deed dated August 5, 1996
- Petitioner Exhibit 5: Tax Bills from 1995-1996
- Petitioner Exhibit 6: Tax Bills from 1997 - 2000
- Petitioner Exhibit 7: Reconciliation Tax Bill
- Petitioner Exhibit 8: Photographs of subject dwelling
- Petitioner Exhibit 9: Summary of Petitioners' Arguments

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card (PRC)
- Respondent Exhibit 3: Subject Photograph
- Respondent Exhibit 4: Top 20 Comparable Sheet
- Respondent Exhibit 5: Comparable PRCs/Photographs

- Board Exhibit A: Form 139 L Petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

### **Analysis**

13. The most applicable laws are:

- a) 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).

- b) 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. Washington 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”).
- c) 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.

14. The Petitioners provided sufficient evidence to support a change in assessment. This conclusion was arrived at because:

- a) The Petitioners point to three factors that they believe support a reduction in the current assessment: (1) assessments from prior and subsequent years are substantially lower than the current assessment; (2) the sale price of \$10,000 for which the bought the subject property from Debra Guzman’s parents in 1996 is substantially less than the current assessment; and (3) the subject dwelling is not habitable.

*Assessments from other years*

- b) The Petitioners presented evidence concerning the assessment of the subject property for years both prior to and subsequent to the 2002 assessment at issue in this case. *See Petitioner Exhibits 3-7.*
- c) Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001)(citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different year. *See, Id.* The Petitioners’ evidence regarding the assessment of the subject property in prior and subsequent tax years therefore lacks probative value in this appeal.
- d) Moreover, the Board notes that much of the Petitioners’ evidence relates to assessments performed under regulations promulgated for the 1995 statewide general reassessment. In 2002, the State Board of Tax Commissioners promulgated new rules and regulations for the 2002 statewide general reassessment. Unlike prior years, the rules governing the 2002 general reassessment required real property to be assessed based upon its market value-in-use. 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2).

*Purchase of the subject property*

- e) The Petitioners also presented evidence that they purchased the subject property from Debra Guzman’s parents for \$10,000 in 1996. *Guzman testimony; Petitioner Exhibit 4*. This evidence is lacks probative value on the question of the subject property’s market value-in-use for two reasons. First, the parties to the transaction were related, casting significant doubt as to whether the transaction was at arms length. Second, the relevant valuation date for the 2002 general reassessment is January 1, 1999. MANUAL at 4. Thus, the Petitioners were required to explain how the 1996 sale price relates to the subject property’s market value-in-use as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The Petitioners failed to do so.

*Condition of the subject dwelling*

- f) The Petitioners also presented photographs and testimony regarding the deteriorated condition of the subject dwelling.
- g) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13.
- h) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following descriptions are relevant to this appeal:

Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

Very Poor      Conditions in the structure render it unusable. It is extremely unfit for human habitation or use and it is approaching abandonment. The structure needs major renovation to have any value.

GUIDELINES, ch. 3 at 60-61.

- i) The current PRC for the subject property indicates that the dwelling is in “fair” condition. *Respondent Exhibit 2*. The Petitioners, however, presented photographs of the exterior of the subject dwelling that depict substantial deterioration, including the absence of any exterior finish on a significant portion of the dwelling. Moreover, Debra Guzman testified that the dwelling lacks gas, water, toilets, and a heating system and that the walls have holes in them. *Guzman testimony*. Ms. Guzman also testified that nobody has lived in the subject dwelling since the Petitioners purchased it. *Id.*
- j) The undisputed evidence demonstrates that the subject dwelling suffers from more significant deterioration than the deferred maintenance associated with a dwelling in “fair” condition. Instead, the evidence demonstrates that the subject dwelling is “extremely unfit for human habitation or use and it is approaching abandonment,” as set forth in the Guidelines’ description of a dwelling in “very poor” condition. GUIDELINES, ch. 3 at 61.
- k) Based on the foregoing, the Petitioners have established by a preponderance of the evidence that the current assessment is based upon an erroneous condition rating of “fair,” and that the condition rating should be changed to “very poor.”

### **Conclusion**

- 15. The Petitioners made a prima facie case as it related to the condition rating of the subject dwelling *only*. Based on the Petitioners’ evidence the condition rating of the subject dwelling should be changed to “very poor”. The Respondent did not rebut the Petitioners’ evidence on this issue. The Board finds in favor of the Petitioners. The assessed value of the subject dwelling and the total assessed value of the subject property should be changed accordingly.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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.** You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.