

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00225  
**Petitioner:** Marian Gunia  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-18-28-0141-0005  
**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 January 27, 2004, in Lake County. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$115,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L on April 30, 2004.
3. The Board issued a notice of the hearing to the parties dated May 16, 2005.
4. Special Master Kathy J. Clark held a hearing on June 20, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 8124 Jackson Avenue, Munster. The location is in North Township.
6. The subject property is a one story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:  
Land \$27,400            Improvements \$88,200            Total \$115,600.
9. Assessed value of the subject property requested by the Petitioner:  
Land \$20,000            Improvements \$40,000            Total \$60,000.

10. The following persons were present and sworn in at the hearing:  
Marian E Gunia, Owner,  
Mary Ellen Slazyk, Owner's Daughter,  
Elizabeth and Alexandra Kaminski,  
Joseph Lukomski, Jr., Assessor/Auditor, DLGF.

### Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The subject dwelling needs major repairs. The Petitioner was unable to find any comparable homes within the City of Munster that suffer from the severe damage that the subject dwelling has. If the subject property was put on the market it would bring a low price because the damage, especially the mold problem, would qualify it as a "fixer-upper". *Petitioner Exhibit 3; Slazyk testimony.*
  - b. Due to a bad foundation, there has been major water seepage into the basement. The seepage occurs every time it rains. This has caused the wooden basement stairs to rot and black mold to infest the entire basement. *Petitioner Exhibits 3A 1-3, 3B; Slazyk testimony.*
  - c. The foundation cracks need repair and the basement needs to be waterproofed just to stop the problems. The ground around the foundation would also need attention. *Slazyk testimony.*
  - d. The detached garage has a collapsing roof, needs paint, and the overhead door is falling off. The overhead door is in such bad condition that the Petitioner must prop it up with bricks. *Petitioner Exhibits 3C, 3E 1-3; Slazyk testimony.*
  - e. The back, outside stairs to the dwelling are rotted and need to be replaced and the gutters are damaged. *Petitioner Exhibit 3D; Slazyk testimony.*
  - f. The concrete exterior stairs are cracked and pitted and the railings are unsafe. *Petitioner Exhibit 3F 1-4; Slazyk testimony.*
  - g. Because both the Petitioner (Gunia) and Ms Slazyk are on fixed incomes none of the repairs could be made prior to selling the subject property. The Petitioner fears that the City of Munster may issue a citation labeling the subject dwelling as uninhabitable because of the presence of the black mold. *Slazyk testimony.*
12. Summary of Respondent's contentions:
- a. None of the properties put forth as comparable to the subject were considered to have a black mold problem. They are all listed in average condition. *Respondent Exhibits 3, 4; Lukomski testimony.*
  - b. Consideration should be given on the subject's assessment for the black mold problem and other issues of condition submitted by the Petitioner at this hearing. *Lukomski testimony.*

### Record

13. The official record for this matter is made up of the following:
- a. The Petition,
  - b. The tape recording of the hearing labeled Lake County 1563,

- c. Exhibits:
  - Petitioner Exhibit 1: Summary of Evidence,
  - Petitioner Exhibit 2: Witness List,
  - Petitioner Exhibit 3A1-A3: Photographs showing condition of basement,
  - Petitioner Exhibit 3B: Photograph of exterior wall,
  - Petitioner Exhibit 3C: Photograph of garage exterior wall,
  - Petitioner Exhibit 3D: Photograph of back stairs,
  - Petitioner Exhibit 3E1-E3: Photographs of garage door,
  - Petitioner Exhibit 3F1-F-4: Photographs of porch and stairs,
  - Respondent Exhibit 1: Subject property record card,
  - Respondent Exhibit 2 Subject photographs,
  - Respondent Exhibit 3: Top 20 comparable sales,
  - Respondent Exhibit 4: Comparable property record cards and photographs,
  - Board Exhibit A: Form 139 L,
  - Board Exhibit B: Hearing Notice,
  - Board Exhibit C: Sign-in sheet,
- d. These Findings and Conclusions.

### Analysis

- 14. The most applicable governing cases 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.
- 15. The Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
  - a. The house is currently assessed as being in average condition. “Average condition” is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. “Most of the major components are still viable and are contributing to the overall utility and value of the property.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 62 (incorporated by reference at 50 IAC 2.3-1-2).

- b. The Respondent testified that the black mold, foundation seepage and other conditions were not addressed on the current assessment and should be considered. *Lukomski testimony.*
- c. “Fair condition” is described as a dwelling where marked deterioration is evident. “It is rather unattractive or undesirable, but still quite useful.” It needs a substantial number of repairs. “Many items need to be refurbished, overhauled, or improved.” There is obvious deferred maintenance. *Id.*
- d. “Poor condition” is described as a dwelling with definite, obvious structural deterioration. “It is definitely undesirable or barely usable.” It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
- e. The testimony and the photographs prove that this house has several condition problems, including rotting and crumbling stairs and failing plumbing. The most significant problem, however, is the cracked foundation. This situation allows water to leak into the basement and has resulted in a serious black mold problem. Clearly this house is not in average condition and the assessment is erroneous for considering it to be so.
- f. The evidence has established deterioration and the need for many repairs and refurbishing; however, there is no probative evidence that the condition is so bad that the property is barely usable. Overall this house is best described as in fair condition.
- g. The garage is already assessed as in fair condition and, again, no probative evidence has been offered that the garage condition is so bad that it is barely usable. The condition of the garage shall remain unchanged.
- h. The Petitioner made a prima facie case that the condition should be lowered to fair. The Respondent agreed that a change in condition was warranted.

### **Conclusion**

- 16. The Board finds that the condition of the dwelling is in error. The dwelling condition should be changed to fair. The Petitioner failed, however, to prove that the garage is in less than fair condition. The garage condition should remain as fair.

### **Final Determination**

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

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

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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 Court 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/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.