

REPRESENTATIVE FOR PETITIONERS:

Joseph Luzar, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Tara Acton, Deputy Assessor, Wayne Township

Michael Thompson, Deputy Assessor, Wayne Township

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Joseph M. and Mary Luzar,	)	
	)	Petition for Review of Assessment
Petitioners	)	Form 131
	)	Petition No.: 49-901-02-1-5-00627
	)	
v.	)	County: Marion
	)	
Wayne Township Assessor,	)	Township: Wayne
	)	
Respondent	)	Parcel No.: 9019945
	)	Assessment Year: 2002

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

**August 23, 2004**

**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. The issue presented for consideration by the Board was:

*Whether the condition rating was correct.*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioners filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on October 10, 2003 with the Marion County Assessor. The determination of the Marion County Property Tax Assessment Board of Appeals (“PTABOA”), Form 115, was issued on September 26, 2003.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 31, 2004 in Indianapolis before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present and sworn in as witnesses at the hearing:  
For the Petitioners:  
Joseph M. Luzar  
  
For the Respondent:  
Tara Acton, Deputy Township Assessor  
Michael Thompson, Deputy Township Assessor
5. The Form 131 petition was made a part of the record and labeled as Board Exhibit A. The Notice of Hearing on Petition was labeled as Board Exhibit B.

6. The following exhibits were presented:

For the Petitioners:

Petitioners' Exhibit 1- Five photographs of subject property.

For the Respondent:

Respondent's Exhibit 1- Subject property record card.

Respondent's Exhibit 2- Version A-Real Property Assessment Guidelines, Appendix B, page 7.

Respondent's Exhibit 3-List of sales and assessed values for subject neighborhood.

Respondent's Exhibit 4-Base Lot Contribution (seven pages) for subject neighborhood.

7. The subject property is residential property located at 1044 Medford Avenue in Wayne Township, Marion County.

8. The Administrative Law Judge did not view the subject property.

9. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$3,400	Improvements: \$10,000	Total Value: \$13,400
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10. For 2002, the Petitioners Form 131 petition contended the assessed value of the property should be:<sup>1</sup>

Land: \$1,500	Improvements: \$2,000	Total Value: \$3,500
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<sup>1</sup> At the administrative hearing, the Petitioners testified they were not contesting the land value and presented no evidence concerning the value of the land.

## JURISDICTIONAL FRAMEWORK

11. 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

12. 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).
13. 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”).
14. 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: Whether the condition rating was correct.

15. The Petitioners contended the subject property condition rating should be “Very Poor.”
16. The Respondent contended the current condition rating of “Fair” is correct.
17. “Fair” and “Very Poor” condition ratings are defined as follows:

Residential Condition Ratings, “Fair”:

The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of the structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures.

Residential Condition Ratings, “Very Poor”:

Conditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.

*Real Property Assessment Guideline –Version A, Appendix B, page 7.*

18. The Petitioner presented the following evidence and testimony in regard to this issue:
  - a. The previous owner of the home moved to a nursing home. Petitioners stated the subject property, built in 1910, was on the market for about a year before the Petitioners were contacted in 1998 by the attorney of the prior owner. The Petitioners and the previous owner’s attorney agreed on a purchase price of \$1,000. A real estate broker was not involved in the sale. The Petitioners presented a check for approximately \$900 at the hearing but offered no sales agreement or closing statement.<sup>2</sup> *Luzar testimony.*
  - b. The subject property has no gas, kitchen, bathroom, or water. Termites destroyed the framing for the walls; the floors, ceiling and walls were torn out due to the

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<sup>2</sup> This check was not formally presented into evidence and was not made a part of the record.

termite infestation. The subject has a flat roof, which leaks. The Petitioners purchased the property to use as a garage and storage area. *Luzar testimony*.

- c. Petitioners presented five photographs of the subject property to support the claim that ceilings and floors were torn out. *Petitioners' Exhibit 1*.

19. The Respondent presented the following evidence and testimony in regard to this issue:

- a. Respondent confirmed Petitioners gutted the subject property and agreed that Petitioners use the subject property to park their car. *Thompson testimony*.
- b. Respondent acknowledged most interior walls have been torn down and, without major work, the subject property is not in a livable condition. *Thompson and Acton Testimony*.
- c. Respondent stated subject house does not need reconstruction, but it does need to be finished. *Acton testimony*.

20. The Petitioners asserted the property was purchased in 1998 for approximately \$1,000. No sales agreement or closing statement was presented at the administrative hearing. The circumstances of this sale (the previous owner had moved to a nursing home and the Petitioners were contacted directly by the attorney of the prior owner) limit the weight to be given this evidence. Any contention that the total market value of the property should be \$1,000 is further rebutted by the Petitioners' own estimate of total value of \$3,500 on the Form 131 petition. Finally, at the administrative hearing, the Petitioners testified only the improvement's value was being contested, not the land value of \$3,400.

21. In further support of their position, the Petitioners presented testimony and evidence concerning the condition rating of the subject house. The Petitioners testified the house is uninhabitable and has no heat, gas, kitchen, bathroom, or water. Petitioners further asserted they tore out floors, walls, and ceilings, and found the house to be termite infested. The house has a flat roof that leaks and the Petitioners use the house to park their car. Petitioners presented five photographs to support the above claims. *Luzar testimony and Petitioners' Exhibit 1*.

22. The Petitioners evidence establishes a prima facie case that the subject property should be classified in “Very Poor” condition for depreciation purposes. The burden therefore shifts to the Respondent to rebut the Petitioners’ evidence.
23. The Respondent confirmed the Petitioners had “guttled” the subject property and acknowledged the subject property is in non-livable condition. Respondent testified the subject property was assessed as 60% complete to account for the unlivable condition.  
*Thompson and Acton testimony.*
24. Respondent opined the subject house does not fit the definition of “Very Poor” condition contained in the Real Property Assessment Guideline – Version A, Appendix B, page 7. Respondent stated the subject property “does not need reconstruction, it just needs finished.” The Respondent declared the subject property is in “Fair” condition because the property suffers from deferred maintenance and the exterior of the structure is sound.  
*Acton testimony and Respondent’s Ex. 2.*
25. The testimony by both parties and the photographic evidence presented show the condition of the subject property (built in 1910) is not simply the result of “minor deferred maintenance,” as indicated by the current condition rating of “Fair.” Both parties testified the structure is in a non-livable condition, indicating the condition rating of “Very Poor” best describes this property.
26. The Respondent failed to successfully rebut the Petitioner’s prima facie case of error.
27. The subject house is to be assessed using the current replacement cost depreciated by using a “Very Poor” condition rating. Additionally, the 60% percentage of completion adjustment should be removed from the property.

## SUMMARY OF FINAL DETERMINATION

ISSUE: Whether the condition rating was correct.

28. The Petitioners have made a prima facie case that was not rebutted by the Respondent. The Board finds in favor of the Petitioners. Accordingly, the Board determines the condition rating of the property should be changed from “Fair” to “Very Poor” and the 60% percentage of completion adjustment should be removed.

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

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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.**