

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00150  
**Petitioner:** Stephen G. Gustas  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003-23-09-0503-0092  
**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. Pursuant to Ind. Code § 6-1.1-4-34(c)(3), Helen J. Lund (Petitioner) filed a Form 139L, Petition for Review of Department of Local Government Finance (DLGF) Action for Lake County Residents, petitioning the Board to conduct an administrative hearing of the above petition. The Form 139L petition was filed on April 12, 2004.

### Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-4-34, a hearing was scheduled for October 5, 2004 at 1:30 PM in Crown Point, Indiana. Notice of Hearing on Petition was mailed to the Petitioner at the address listed on the Form 139L petition. The Notice of Hearing on Petition was mailed, with proof of mailing on August 31, 2004.
3. On October 5, 2004, Barbara Wiggins, the duly designated Special Master authorized by the Board under Ind. Code § 6-1.1-4-34(e), conducted the administrative hearing on the Form 139L petition. The Petitioner did not appear at the hearing.
4. The Petitioner did not contact the Board or the Special Master prior to the scheduled hearing date and did not request a continuance of the hearing.

5. The Special Master verified that the Notice of Hearing was mailed with proof of mailing. The Special Master also verified that the notice was not returned to the Board as undeliverable.
6. The following items are officially recognized as part of the record of proceedings:
  - A. Form 139L petition
  - B. Notice of Hearing on Petition
  - C. Proof of mailing

### **Jurisdictional Framework**

7. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of real property that is made from a determination by the Department of Local Government Finance. All such appeals are conducted under Ind. Code § 6-1.1-4-34.
8. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Ind. Code § 6-1.1-4-34(k).

### **Administrative Review and the Petitioner's Burden**

9. A Petitioner seeking review of a determination of the Department of Local Government Finance 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).
10. 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”).

11. Essentially, the Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what the assessment is correct. *See State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax 2002).
12. 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.

### **Summary of Final Determination**

13. The Petitioner did not appear at the hearing. The Form 139L petition is denied for the failure of the Petitioner to appear at the hearing and present evidence in support of the alleged errors in the assessment.

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.**