

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition #:** 91-015-06-1-5-00025  
**Petitioners:** Phillip R. & Phyllis A. Drake  
**Respondent:** White County Assessor  
**Parcel #:** 011-34220-06  
**Assessment Year:** 2006

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

**Procedural History**

1. On December 30, 2006, Phillip R. & Phyllis A. Drake appealed their property’s assessment to the White County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on December 13, 2007.
2. The Drakes then timely filed a Form 131 petition with the Board. They elected to proceed under the Board’s small claims rules.
3. On June 5, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
  - a) For the Drakes: Phillip R. Drake, property owner  
Bill Jones, Tax Representative
  - b) For the Assessor: Scott Potts, Authorized County Representative

**Facts**

5. The property is a single-family residence located at 225 East, Brookston, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the Drakes’ property:  
Land: \$29,800      Improvements: \$77,700      Total: \$107,500.
8. The Drakes request a total assessment of \$75,000.

## Parties' Contentions

9. The Drakes offered the following evidence and arguments:
- a) The Drakes originally bought their property intending to build a house on it. *Drake testimony*. First, though, the Drakes built what Mr. Drake alternately described as a “barn” and/ or a “garage.” *Drake testimony*. The building has what Mr. Drake described as a foundation suitable for a barn rather than for a house. *Id.* Mr. Drake intended to use the building to store supplies before he built the house. The Drakes installed a bathroom, a well and septic system, a kitchen sink, and cabinets. *Id.* But the building does not have any drywall. According to Mr. Drake, the Drakes cannot afford to build their envisioned house because the current building is assessed too high. *Id.*
  - b) To support their claim that the property is assessed too high, the Drakes offered an appraisal prepared by Jack Cross, an Indiana Certified General Appraiser. *Pet'rs Ex. 2*. Mr. Cross estimated the market value-in-use of the Drakes' property to be \$75,000, as of October 26, 2007. *Id. at 3*.
  - c) Mr. Cross based his valuation opinion solely on the sales-comparison approach, finding both the cost and income approaches “inapplicable.” *Pet'rs Ex. 2 at 5*. He examined fourteen sales of vacant properties. The sale prices ranged from \$15,000 to \$65,000. *Pet'rs Ex. 2 at 5-9*. He then adjusted those sale prices to account for various differences between the vacant lots and the Drakes' property. His biggest single adjustment for each property was \$30,000 to account for the lack of an improvement. *Id.* Mr. Cross quantified that adjustment using the replacement cost for the Drake's building, which he reduced by 25% for depreciation and 10% for location. *Pet'rs Ex. 2 at 10*.
  - d) The appraisal's effective date was “outside the range for the Indiana trending process.” Nonetheless, the Department of Local Government Finance's “adjustment rule” allows for using sales that occur outside that range, provided that the prices are adjusted to the appropriate date. *Jones argument*. Because property generally appreciates, one can deduct “two or three percent” from Mr. Cross's appraisal and still be “in the same ballpark” for the 2006 assessment. *Id.*
  - e) The Assessor improperly valued their building as a dwelling rather than as a barn or garage. Thus, Mr. Jones calculated what he viewed as a more appropriate building value, using costs from the garage and attic schedules contained in the Real Property Assessment Guidelines for 2002-Version A. *Jones testimony; Pet'rs Ex. 1*. Using that method, he calculated an improvement value of \$53,500, and a total assessment of \$83,300. *Id. at 2*.

- f) The Drakes, however, offered Mr. Jones's cost calculation only to support Mr. Cross's appraisal. The property's assessment should be based on its market value-in-use, and Mr. Cross's appraisal is the best evidence of that. *Jones argument*.
10. The Assessor submitted the following evidence and arguments:
- a) Mr. Cross did not adequately support his valuation opinion. Specifically, he used only vacant land sales in his sales-comparison analysis. He arbitrarily adjusted each sale price by a flat \$30,000 to account for the property's lack of improvements. *Potts argument; see also Pet'rs Ex. 2 at 6-9*. Mr. Cross did not offer any documents to support that adjustment. *Id*.
- b) Similarly, Mr. Jones's cost-approach calculation suffers from two major flaws. First, he used the Guidelines' attached-garage schedule (schedule E.1), which assumes one non-supporting wall. The Drakes' building, however, has four supporting walls. Second, the Drakes' building has a high-pitched roof that the attic schedule does not account for. *Potts argument*.
- c) Although Mr. Jones also suggested using the Guidelines' barn schedule, that schedule fails to account for the building's interior finish. Thus, while the Drakes' building is difficult to value using the Guidelines, the dwelling schedule (schedule A) best accounts for all of the building's components. *Potts argument*.

### **Record**

11. The official record for this matter is made up of the following:
- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:
- Petitioners Exhibit 1: Summary of contentions and cost calculation  
Petitioners Exhibit 2: Certified appraisal
- Respondent Exhibit A: Page 13, chapter 3 of Guidelines  
Respondent Exhibit B: Page 11, chapter 3 of Guidelines  
Respondent Exhibit C: Page 12, chapter 3 of Guidelines  
Respondent Exhibit D: Summary of contentions  
Respondent Exhibit E: Subject property record card  
Respondent Exhibit F: Notice of Appearance for Scott Potts on behalf of the  
White County Assessor
- Board Exhibit A: Form 131 petition  
Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet

- d) These Findings and Conclusions.

**Analysis**

12. The following describes the parties' burden of proof:
- a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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 petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1012 (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 respondent to impeach or rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
13. The Drakes failed to prove that their property’s assessment should be reduced. The Board reaches this decision for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable

- properties and other any information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an assessment appeal must explain how his evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
  - d) The Drakes offered an appraisal report prepared by Jack Cross, an Indiana Certified General Appraiser, in which Mr. Cross estimated the value of the Drakes property at \$75,000—substantially less than its current assessment of \$107,500. *Pet'rs Ex. 2*.
  - e) Mr. Cross's opinion, however, does not expressly relate to the property's value as of the relevant January 1, 2005, valuation date. Indeed, he estimated the property's value as of October 27, 2007, more than 2½ years after that valuation date. At most, the Board might draw a weak inference that Mr. Cross believed property values remained stable between May of 2005—the date of 2 of his 14 comparable sales—and October 27, 2007. The Drakes' representative, Mr. Jones, also attempted to relate Mr. Cross's valuation opinion to January 1, 2005, by asserting that real property generally appreciates and that the Board could therefore deduct two or three percent from Mr. Cross's estimate and still be “in the same ballpark.” *Jones testimony*. Mr. Jones, however, offered no support for those conclusory assertions. Thus, Mr. Cross's valuation opinion relates only tenuously to the property's value as of the relevant valuation date.
  - f) Valuation-date issues aside, the Assessor also attacked Mr. Cross's methodology. As the Assessor pointed out, Mr. Cross valued the Drakes' improved property by examining sale prices for vacant lots only, and then adjusting those sale prices by a flat \$30,000 to account for the Drakes' building. The Assessor, however, incorrectly characterized Mr. Cross's adjustments as arbitrary. Mr. Cross explained his reasoning—he quantified his adjustments by calculating the replacement cost for the building and deducting 25% for depreciation and 10% for location. *Pet'rs Ex. 2*.
  - g) Nonetheless, while Mr. Cross's adjustments were not arbitrary, his methodology was sufficiently troublesome to deprive his valuation opinion of credibility, at least without Mr. Cross further explaining how that methodology complied with generally accepted appraisal principles. Valuing an improved property by comparing it to vacant lots raises serious concerns. And Mr. Cross quantified his primary adjustment to the sale prices for those vacant lots by using the depreciated cost of the Drakes' building. Thus, Mr. Cross appears to have mixed two independent valuation methodologies—the cost and sales-comparison approaches. And he did so despite having separately found that the cost approach was inapplicable. *Pet'rs Ex. 2 at 5*.

- h) The Board recognizes that the Drakes' property presents a difficult valuation question. There may not have been any comparably improved properties upon which to base a sales-comparison analysis. But the Board cannot simply take Mr. Cross's apparently unorthodox methodology on faith. That is particularly true given the impact that Mr. Cross's disputed building adjustment had on his overall valuation opinion. Mr. Cross's \$30,000 adjustment actually exceeded the unadjusted sale prices for 3 of his 14 comparable properties and exceeded 80% of the unadjusted sale prices for 3 other comparable properties. In fact, that adjustment exceeded 50% of the unadjusted sale price of all but one of Mr. Cross's comparable properties. *See Pet'rs Ex. 2 at 5-9.*
- i) The Drakes nonetheless sought to bolster Mr. Cross's appraisal with Mr. Jones's Guidelines-based calculations for the depreciated replacement cost of the Drakes' building. Taxpayers, however, no longer can rebut the presumption that an assessment is accurate simply by contesting the assessor's methodology in computing it. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax 2006). Thus, strictly applying the Guidelines, as Mr. Jones attempted to do, does not, by itself, rebut an assessment's presumption of accuracy. *Id.*
- j) Nor did Mr. Jones's Guidelines-based calculation sufficiently bolster Mr. Cross's otherwise unreliable opinion. Assuming, without deciding, that a Guidelines-based valuation can at least serve as supportive evidence even if it does not suffice to make a prima facie case by itself, Mr. Jones's calculation offers little aid. The Drakes' building, with its free-standing walls, high-pitched roof and partially finished interior, does not closely resemble any of the Guidelines' models for residential structures. Thus, Mr. Jones's choice of the garage- and-attic cost schedules is not significantly more persuasive than the Assessor's decision to use the dwelling schedule and deduct for the building's lack of interior finish.
- k) Even if Mr. Jones's schedule choices were persuasive, his calculation would do little to support Mr. Cross's appraisal. Mr. Jones valued the Drakes' building at \$53,500 (rounded)—\$23,500 more than the building adjustment that Mr. Cross used in his appraisal. In fact, had Mr. Cross used a similar number, his ultimate valuation opinion likely would have approached the property's \$107,500 assessment.

### **Conclusion**

14. To sum up, the lack of evidence relating Mr. Cross's valuation opinion to January 1, 2005, combined with his questionable methodology in applying the sales-comparison approach, renders his opinion too unreliable for the Board to afford it any weight. And Mr. Jones's independent Guidelines-based calculation of the building's value does not cure those problems. The Board therefore finds for the Assessor.

## Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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

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Commissioner,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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>