

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

**Petition No.:** 02-070-09-1-5-00024  
**Petitioners:** Thomas C. & Marcia R. Scalzo  
**Respondent:** Allen County Assessor  
**Parcel No.:** 02-13-03-108-012.000-070  
**Assessment Year:** 2009

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

**Procedural History**

1. Thomas and Marcia Scalzo appealed the subject property’s 2009 assessment to the Allen County Property Tax Assessment Board of Appeals (“PTABOA”). On April 21, 2010, the PTABOA issued its determination denying the Scalzos relief.
2. The Scalzos then timely filed a Form 131 petition with the Board. The Scalzos elected to have their appeal heard under the Board’s small claims procedures.
3. On February 16, 2011, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:

Thomas Scalzo

Debbie Thomas, Deputy County Assessor

**Facts**

5. The subject property contains a single-family residence located at 6623 Trickingham Court in Fort Wayne.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:  
Land: \$28,300      Improvements: \$133,500      Total: \$161,800
8. The Scalzos requested the following values:  
Land: \$24,300      Improvements: \$123,600      Total: \$147,900

## Parties' Contentions

9. The Scalzos offered the following evidence and arguments:

- a) The subject property's assessment is too high in light of a market analysis prepared by Grace Cisna, who Mr. Scalzo described as a licensed broker. *Scalzo testimony*. Ms. Cisna's analysis is contained on a single page of what may or may not be a multi-page appraisal form. *Pet'rs Ex. 1*. The form contains a sales-comparison grid, which Ms. Cisna completed. *Id.* The form also contains spaces for the following: (1) "Comments on Sales Comparison, (2) a values indicated by the income approach, (3) "Comments and Conditions of Appraisal," and (4) a final reconciliation of values. *Id.* All of those spaces are blank. *Id.* Below those spaces, the form reads:

This appraisal is based on the above requirements, the certification, contingent and limiting conditions, and Market Value Definition as stated in

- FmHA, HUD &/or VA Instructions  
 Freddie Mac Form 439 (Rev 7/86/Fannie Mae Form 10048 (Rev. 7.86) filed with client \_\_\_\_\_ 19\_\_  attached

The boxes are unchecked and the blanks are not filled in. *Id.* Ms. Cisna signed the form below the following sentence: "I (We) certify: that to the best of my (our) knowledge and belief the facts and data used herein are true and correct: that I (we) personally inspected the subject property, both inside and out, and have made an exterior inspection of all comparable sales cited in this report: and that I (we) have no undisclosed interest, present or prospective therein." *Id.* Ms. Cisna accompanied her signature by writing "Realtor/Broker," but she did not include a license or certification number. *Id.*

- b) Ms. Cisna estimated the property's market value at \$147,900 as of March 3, 2010. *Pet'rs Ex. 1*. She used three comparable sales: 6626 Trickingham Court, which sold for \$133,000 on May 30, 2008; 6613 Parsons Court, which sold for \$139,000 on June 26, 2008; and 6614 Trickingham Court, which sold for \$165,000 on December 4, 2006. *Id.* All three properties are "villa-minimums" for retirees and are located in the same neighborhood as the subject property. *Scalzo testimony*.
- c) Ms. Cisna compared the three properties to the subject property along a number of lines, including: age, condition, finished living area, above-grade room count, below-grade finished rooms, and functional utility. *Scalzo testimony; Pet'rs Ex. 1*. In most instances, Ms. Cisna found that the properties were similar to the subject property. *Id.* She, however, did adjust one or more of the sale prices to account for differences with the subject property in terms of overall finished living area, number of bedrooms and bathrooms, and the presence of an additional fireplace. *Id.* The adjusted sale prices for the three properties were \$136,020, \$140,680, and \$167,236, respectively. *Id.* According to Mr. Scalzo, Ms. Cisna averaged the three adjusted sale prices to arrive at her estimate of \$147,900 for the subject property. *Scalzo testimony*.

- d) In performing her own analysis, the Assessor's witness, Debbie Thomas, used only two of Ms. Cisna's comparable properties. Mr. Scalzo did not understand why Ms. Thomas excluded the third sale. *Scalzo testimony*. As an engineer, Mr. Scalzo has found that using more data leads to a more accurate number. *Id.*
- e) Mr. Scalzo also questioned other parts of the subject property's assessment. For example, he did not understand why the Assessor used the median value in computing a neighborhood factor. He also questioned how the Assessor came up with the "unfactored dwelling value" in calculating a neighborhood factor. *Scalzo testimony; Resp't Ex. 2*. Finally, Mr. Scalzo does not believe that the Assessor used retail prices as required by law. *Scalzo testimony*.

10. The Assessor offered the following evidence and arguments:

- a) Ms. Thomas described the subject property as a villa with curb-appeal located on a well-maintained cul-de-sac. It is located close to shopping and restaurants. *Thomas testimony; Resp't Ex. 1*.
- b) To support the subject property's assessment, Ms. Thomas analyzed what she described as four valid sales from the subject property's neighborhood. *Thomas testimony; Resp't Exs. 5-12*. Three of the sales were the same as the sales from Ms. Cisna's market analysis. *Id.; Pet'rs Ex. 1*. Although Ms. Cisna listed her third comparable property—6614 Trickingham Court—as having sold on December 4, 2006, the Assessors' records show that the property transferred on February 19, 2007. *Thomas testimony; Resp't Ex. 5*. Thus, because that date fell within the range of sale dates used in performing ratio studies for the 2009 assessment (January 1, 2007 through December 31, 2008), Ms. Thomas used it in her analysis. *Id.*
- c) According to Ms. Thomas, the four properties in her analysis are similar to the subject property: all five properties are one-story frame construction on a slab, and they were built within eight years of each other. *Thomas testimony; Resp't Exs. 3-12*. Likewise, the homes have the same quality grade and are all in average condition. *Id.* Finally, of the sales from the subject property's neighborhood, the four that Ms. Thomas used in her analysis are the closest to the subject home in size. *Thomas testimony*. While Mr. Scalzo noted that the subject home has only two bedrooms, it has more finished living area than, and the same total room count as, the comparable homes in Ms. Thomas's analysis. *Id.; Resp't Exs. 3-12*.
- d) Because the villas all have very similar characteristics, Ms. Thomas used price-per-square-foot as her unit of comparison. *Thomas testimony*. The subject property was assessed at \$75.34 per square foot. *Id.; Resp't Ex. 3*. The comparables sold for prices ranging from \$74.38 to \$90.26 per square foot. *Id.; Resp't Exs. 5, 7, 9, 11*. Based on that range, Ms. Thomas believed that the subject property's assessment was fair and equitable. *Thomas testimony*.
- e) Unlike Ms. Thomas, Ms. Cisna reached her value conclusion by simply averaging the adjusted sale prices for her three comparable properties. *Thomas testimony; Pet'rs Ex. 1*. By contrast, when assessors do ratio studies and compute neighborhood

factors, they use the median value—not the average. *Id.* To illustrate that point, Ms. Thomas offered an exhibit showing the Assessor’s calculation of a neighborhood factor for the subject property’s neighborhood. *Id.*; *Resp’t Ex. 2.*

### **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: Market analysis of subject property prepared by Grace Cisna,<sup>1</sup>  
Petitioners Exhibit 2: Form 131 petition and attachments,  
Petitioners Exhibit 3: Market data for “comparable property A” (6626 Trickingham Court),  
Petitioners Exhibit 4: Market data for “comparable property B” (6613 Parsons Court),  
Petitioners Exhibit 5: PTABOA Findings (Form 115 determination), April 16, 2010 letter from Debbie Thomas, first page of Form 130 petition, Ms. Cisna’s market analysis, 3-Up Comparison Report, Neighborhood Factor Calculation, Property record card (“PRC”) for 6613 Parsons Court, PRC for 6614 Trickingham Court, PRC for 6623 Trickingham Court.

Respondent Exhibit 1: Assessor’s position statement,  
Respondent Exhibit 2: Neighborhood Factor Calculations from 2009 pay 2010 trending,  
Respondent Exhibit 3: PRC for 6623 Trickingham Court,  
Respondent Exhibit 4: Picture of 6623 Trickingham Court,  
Respondent Exhibit 5: PRC for 6614 Trickingham Court,  
Respondent Exhibit 6: Picture of 6614 Trickingham Court,  
Respondent Exhibit 7: PRC for 6613 Parsons Court,  
Respondent Exhibit 8: Picture of 6613 Parsons Court,  
Respondent Exhibit 9: PRC for 6626 Trickingham Court,  
Respondent Exhibit 10: Picture of 6626 Trickingham Court,  
Respondent Exhibit 11: PRC for 6306 Talbot Court,  
Respondent Exhibit 12: Picture of 6306 Talbot Court,  
Respondent Exhibit 13: PTABOA Findings (Form 115 determination),

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice dated January 11, 2011,

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<sup>1</sup> On his exhibit list, Mr. Scalzo described this document as an appraisal. At the hearing, he referred to it as a market analysis.

Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

### **Analysis**

#### Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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).
13. In making its case, the taxpayer 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, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’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.

#### Discussion

15. The Scalzos did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion 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). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 (“USPAP”) 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 any

other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the 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). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”)(emphasis added). For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(2006).
- d) Mr. Scalzo relied on an opinion of value prepared by Ms. Cisna. Ms. Cisna formed her opinion using the sales-comparison approach. She compared the properties to the subject property along a number of lines, and she considered adjusting the sale prices for any relevant differences between the three properties and the subject property. Ms. Cisna ultimately made a few adjustments—for the number of bedrooms and fire places, and for the total amount of finished living area.
- e) Thus, at least in form, Ms. Cisna followed the sales-comparison approach—one of three generally accepted valuation approaches. But Ms. Cisna’s opinion was largely conclusory: for example, she did not explain how she quantified any of her adjustments. Ms. Cisna similarly failed to explain how she settled on a value of \$147,900 from adjusted sale prices that ranged from \$136,020 to \$167,236. While her estimate appears to be an average of the three prices, Ms. Cisna offered nothing to show that simply averaging the three adjusted sale prices comported with generally accepted appraisal principles.
- f) The Board recognizes that some appraisal reports may not include all of the facts and judgments underlying the appraiser’s ultimate valuation opinion. But those appraisers typically certify that they have complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”). And they include their certification or license numbers when they sign their reports. Here, Ms. Cisna did not certify that she complied with USPAP or with any other guidelines for that matter. In fact, although the form that she used called for her to check a box showing that she had complied with either (1) FmHA, HUD, and/or VA instructions, or (2) Freddie Mac Form 439, she checked neither box. And while she signed the document as a real estate broker, she did not include a license or certification number.
- g) Under those circumstances, Ms. Cisna’s market analysis was too conclusory to carry any probative weight. And because the Scalzos did not offer any other probative evidence, they failed to make a prima facie case for reducing the subject property’s assessment.

### **Conclusion**

- 16. The Scalzos failed to make a prima facie case. 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.

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Chairman, 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

## IMPORTANT NOTICE

### - 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>.