

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

**Petition Nos.:** 68-019-07-1-5-00414; 68-019-08-1-5-00054  
**Petitioner:** Simmons Family Trust  
**Respondent:** Randolph County Assessor  
**Parcel No.:** 68-02-25-102-081.204-019  
**Assessment Years:** 2007; 2008

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

**Procedural History**

1. Robert E. Simmons, on behalf of Simmons Family Trust,<sup>1</sup> filed Form 130 petitions contesting the subject property’s 2007 and 2008 assessments. On December 16, 2008, the Randolph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination making no change to the 2007 assessment. On November 20, 2009, the PTABOA issued its determination lowering the property’s 2008 assessment, but not to the level that Mr. Simmons had requested.
2. Mr. Simmons then timely filed Form 131 petitions for both assessment years with the Board. He elected to have his appeals heard under the Board’s small claims procedures.
3. On November 16, 2010, the Board held a single administrative hearing on both petitions through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. Robert E. Simmons and Beverly Fields, Randolph County Assessor, testified under oath.

**Facts**

5. The subject property is a condominium located at 205 Allen Drive in Union City Indiana. It is part of a complex known as Crown Pointe Condominiums.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:

For March 1, 2007:

Land: \$0                      Improvements: \$108,800      Total: \$108,800.

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<sup>1</sup> Mr. Simmons did not identify his interest in the property. Presumably, he is the trustee or beneficiary of the trust. In any event, the Assessor referred to Mr. Simmons as if he were the party to the appeal and owned the subject property in his individual capacity rather than as trustee. For ease of reference, the Board follows suit.

For March 1, 2008:

Land: \$0                      Improvements: \$88,500                      Total: \$88,500

8. Mr. Simmons requested the following values for each year:

Land: \$0                      Improvements: \$74,500                      Total: \$74,500

**Parties' Contentions**

9. Summary of Mr. Simmons's contentions:

- a) According to Mr. Simmons, the subject property's assessment should be lowered to \$74,500, which was the property's assessment in 2006. *Simmons testimony*. The property's assessment had fluctuated greatly, ranging from \$48,800 when Mr. Simmons bought the property in 2003 to a high of \$113,000. *See id.; see also Pet'r Exs. 2, 3.*
- b) Mr. Simmons also pointed to the sale of a neighboring unit located at 207 Allen Drive. That unit was assessed at \$123,200, but sold for only \$88,900. *Simmons testimony; Pet'r Ex. 4*. Mr. Simmons did not know exactly when that sale occurred, but he believed that it was "within the last couple of years." *Id.* According to Mr. Simmons, the subject property is several years older and much smaller than the neighboring unit. *Id.*
- c) The subject property was one of the original 16 condominium units in the complex, and half of those units are for sale. The complex's developer has lowered the prices on everything. *Simmons testimony*. Since Mr. Simmons bought the subject property in 2002, only the four newest units have sold. *Id.*
- d) Finally, Mr. Simmons contends that, under "condo law," he only owns the inside of his condominium unit and the developer or condominium association owns the roof, the exterior, and everything else outside the unit, including the land that the unit sits on. *Simmons argument*.

10. Summary of the Assessor's contentions:

- a) The original 2007 assessments for Crown Pointe were inconsistent and contained errors. The Assessor therefore made corrections to those assessments and notified the property owners. *Fields testimony; Resp't Ex. 1*. As part of those corrections, she changed the subject property's exterior finish to brick, and assessed the property as having a two-car garage rather than a one-car garage. *Id.*
- b) For 2008, the PTABOA applied an obsolescence factor that reduced the subject property's assessment to \$88,500. *Fields testimony; see also, Resp't Ex. 9.*

**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:

Petitioner's Exhibit 1: June 11, 2008 letter to Mr. Simmons from County Assessor,

Petitioner's Exhibit 2: Form 11, dated October 28, 2003,

Petitioner's Exhibit 3: Copy of back of subject property record card,

Petitioner's Exhibit 4: Sale listing for 207 Allen Drive,

Petitioner's Exhibit 5 Copy of 2007 payable 2008 tax statement.

Respondent Exhibit 1: Memo from Assessor to Crown Pointe Condominium owners, Form 11, property record card,

Respondent Exhibit 2: Form 130 for 2007 assessment,

Respondent Exhibit 3: Informal hearing proposal rejection,

Respondent Exhibit 4: Form 130 for 2008 assessment,

Respondent Exhibit 5: Form 115 for 2007 assessment,

Respondent Exhibit 6: Form 130 date August 19, 2009,

Respondent Exhibit 7: Form 115 for 2008 assessment,

Respondent Exhibit 8: GIS view of Crown Pointe condominiums & "layout IDs,"

Respondent Exhibit 9: Spreadsheet listing all Crown Pointe condominiums,

Respondent Exhibit 10: 2003 property record card,

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**

#### **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. Once the taxpayer makes a prima facie case, the burden shifts to the respondent 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.

Mr. Simmons' Case

15. Mr. Simmons failed to 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 (2006)). Appraisers have traditionally 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 use 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 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.; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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, or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject 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). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2007 and March 1, 2008 assessments, those valuation dates were January 1, 2006 and January 1, 2007, respectively. *See* 50 IAC 21-3-3(2006).
  - d) Mr. Simmons offered little evidence to support his conclusion that the subject property was worth only \$74,500. His most concrete piece of evidence was a listing sheet for a neighboring condominium unit at 207 Allen Drive. But that listing sheet is undated, and Mr. Simmons could only say that he believed the neighboring unit had sold "within the last couple of years" before Board's hearing. *Simmons testimony*. Mr. Simmons did not explain how the sale price related to the subject property's market value in use as of January 1, 2006 or January 1, 2007—the relevant

valuation dates for the assessments under appeal. Thus, the listing information and sale price for neighboring unit lack probative value.

- e) Mr. Simmons also claimed that, according to “condo law,” he only owns the inside of his condominium unit and does not own the unit’s roof, its exterior brick facing, or any land. But the subject property’s assessment does not include an amount for land. And “condo law” does not, by itself, tell the Board whether Mr. Simmons had an ownership interest in the unit’s roof and exterior. To answer that question, Mr. Simmons needed to offer some probative evidence, such as his deed or the condominium declaration. *See* Ind. Code § 32-25-7-1(a)(4) and (5)(requiring a condominium declaration to describe common areas and limited common areas and the percentage of undivided interest in those areas that appertains to each unit). Absent any probative evidence, Mr. Simmons failed to show that the assessments under appeal included items in which he had no ownership interest.

### **Conclusion**

16. Because Mr. Simmons offered no probative evidence to rebut the presumption that the subject property was accurately assessed, he failed to make a prima facie case for reducing the subject property’s assessments. 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 subject property’s 2007 and 2008 assessments.

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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>>.