

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

**Petition Number:** 31-008-08-1-4-00001  
31-008-09-1-4-00002  
**Petitioner:** Crossroads Developers LLC  
**Respondent:** Harrison County Assessor  
**Parcel No.:** 31-09-25-203-006.000-008  
**Assessment Year:** 2008 & 2009

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

**PROCEDURAL HISTORY**

1. Crossroads Developers, LLC, appealed the subject property's 2008 and 2009 assessments. On August 11, 2010, the Harrison County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations on both appeals.
2. Crossroads then timely filed a Form 131 petition with the Board for each assessment year. Crossroads elected to have the appeals heard according to the Board's small claims procedures.
3. On January 14, 2011, the Board held an administrative hearing before its duly appointed administrative law judge, Rick Barter ("ALJ").
4. The following people were present and sworn in at the hearing:
  - a. For Crossroads: Milo E. Smith, Certified Tax Representative,
  - b. For the Assessor: Lorena A. Stepro, Harrison County Assessor,  
Ken Surface, Nexus Group.

**FACTS**

5. The subject property contains a vacant restaurant building on .8110 acres of land. It is located at 1780 Highway 135 N.W. in Corydon, Indiana.
6. The ALJ did not inspect the property.

7. For 2008, the PTABOA determined the following assessment for the subject property:

2008

Land: \$143,600      Improvements: \$150,600      Total: \$294,200

2009

Land: \$143,600      Improvements: \$155,000      Total: \$298,600.

8. Crossroads asked for a total assessment of \$130,000 for each year under appeal.

**PARTIES' CONTENTIONS**

9. Summary of Crossroads' contentions:

- a. The subject property was assessed too high in light of the value estimated by Belinda A. Graber, an Indiana Certified General Real Estate Appraiser. *Smith argument; Pet'r Ex. 1*. Ms. Graber prepared a summary appraisal report in which she estimated the subject property's market value at \$130,000. On the report's cover sheet, Ms. Graber wrote that she had estimated the property's value as of March 1, 2007. *Pet'r Ex. 1*. In the body of the report, however, Ms. Graber wrote that she had estimated the property's value as of March 1, 2008. *Id. at ii, viii, 22-23*. She also found that the property had the same market value as of March 1, 2009. *Id. at 23*. Ms. Graber prepared her report conformance with Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice ("USPAP") for a Restricted Appraisal Report, the Standards of Professional Practice, and the Code of Ethics of the Appraisal Institute. *Id.*
- b. According to Ms. Graber, the restaurant building on the subject property was built around 1979 and was used to operate a Hardees fast food restaurant until 2006. Hardees apparently closed the restaurant because it was no longer profitable. *Pet'r Ex. 1 at 11*. Since 2006, the property's owners have been unable to lease the property for very long. *Id.* In 2006 and 2009, the property generated no income. *Smith testimony*. In 2007, it generated income of \$29,000, and in 2008, it generated income of \$12,960. *Id.; see also Pet'r Ex. 1 at 19*. According to Mr. Smith, the property has been vacant since July 2008. *Smith testimony*.
- c. Ms. Graber considered using all three generally accepted approaches to value—the cost, income, and sales-comparison approaches. *Pet'r Ex. 1 at 12*. Because Ms. Graber believed that the improvements were very close to 100% depreciated, she felt that estimating depreciation would be very subjective. *Id.* Thus, Ms. Graber only partially developed the cost approach—she estimated the value of the site as if vacant but did not estimate the improvements' reproduction costs. *Id. at 1, 12-18*. Similarly, Ms. Graber did not develop a sales-comparison analysis because she was unable to find any improved sales of secondary restaurant uses, either in the immediate area or regionally. *Id. at 12*. Ms. Graber, however, did develop a "summary" income approach. *Id. at 12, 18-20*.

- d. For her site valuation, Ms. Graber thoroughly analyzed the local market for comparable sales of unimproved land. She found three sales from Corydon:
- a .2954-acre lot at Wyandotte & Old Sate Road 13 that sold for \$69,000 (after subtracting \$5,000 for building demolition) on May 4, 2009;
  - a .0810-acre lot at 270 Federal Drive North West that sold for \$150,000 on March 7, 2005; and
  - a 3.925-acre lot on Highway 62 that sold for \$185,000 on December 18, 2009.

*Pet'r Ex. 1 at 13-16.*

- e. Ms. Graber then considered whether the sold lots differed from the subject lot in ways that might affect their relative market values. Thus, she looked at things like the size, shape and location of the lots, whether the lots had utility access, how the lots were zoned, and their sale dates in comparison to her valuation date for the subject property. *Pet'r Ex. 1 at 17.* Ms. Graber ultimately adjusted one or more of the lots' sale prices to account for differences with the subject property in terms of size, location, shape, and corner access. *Id.* She, however, did not make any adjustments to reflect time-related market differences. *Id.* Ms. Graber based her adjustments on paired sales analyses as much as possible. *Id.*
- f. The adjusted sale prices ranged from \$96,624 to \$237,275 per acre, with an average of \$145,951. *Pet'r Ex. 1 at 17.* Giving equal consideration to all the sales, Ms. Graber settled on an indicated value of \$145,000 for the subject property. *Id.* As the final step to valuing the land "as vacant," Ms. Graber subtracted the cost of demolishing the improvements and preparing the site for another use, which she estimated at \$15,000. *Id. at 17.* That left a total value of \$130,000. *Id. at 18.*
- g. For her income-approach analysis, Ms. Graber first looked for leases of comparable properties in the local market so she could estimate the subject property's potential gross income. *Pet'r Ex. 1 at 19-20.* She found five confirmed leases, all of which involved properties at Old Capital Plaza in Corydon and had Crossroads as the lessor. *Id. at 19.* The annual rent under those leases ranged from \$5.40 per square foot for a CVS to \$14.00 for a Domino's Pizza. *Id.* Based on those leases, Ms. Graber felt that the subject property could be leased for \$7.00 to \$8.00 per square foot. *Id.* But given the fact that Crossroads had received rent of only \$12,960 in 2008 and nothing since, Ms. Graber estimated the subject property's rent at \$6.00 per square foot. *Id.* After subtracting estimated vacancy losses, collection losses and operating expenses, Ms. Graber estimated the property's net operating income at \$13,793. *Id.*
- h. Ms. Graber then capitalized that net operating income using a rate of 11%, which she derived from a mortgage-equity band of investment analysis and published capitalization rates. *Pet'r Ex. 1 at 21-22.* When Ms. Graber applied her 11% rate to

the property's estimated net operating income, she came to a value of \$125,000. *Id. at 22.*

- i. Throughout her appraisal, Ms. Graber explained that the subject improvements were close to 100% depreciated and that they contributed little, if anything, to the subject property's value. *See, e.g. Pet'r Ex. 1 at 11-12* ([I]t is believed that the building improvements—if they contribute any value at all—do so only on a limited basis."); *Pet'r Ex. 1 at 12* ("As mentioned throughout this report, the building improvements are very close to 100% depreciation.") She therefore settled on \$130,000—her estimate of the site value—as her opinion of the subject property's overall market value. *Id. at 22-23.*

10. Summary of the Assessor's contentions:

- a. Ms. Graber's use of \$6 per square foot to estimate the subject property's gross potential income was inappropriate in light of the comparable leases listed in her appraisal report. *Surface testimony; Pet'r Ex. 1.* The \$14 per square foot lease for Domino's Pizza was the most appropriate lease to use in estimating market rent for the subject property. *Id.* If Ms. Graber had used the Domino's lease, she would have arrived at a value of \$293,000, which is very close to the subject property's 2008 and 2009 assessments. *Surface testimony.*
- b. The Assessor's witness, Ken Surface, also pointed to a sale and a listing that he felt supported the subject property's assessment. The sale involved an improved property that Mr. Surface testified was very comparable to the subject property. That property sold for \$318,217 in January 2008. *Surface testimony; Resp't Exs. D, H, I & J.* The listing was for a .25-acre paved vacant lot located next to the subject property. The listing price was \$110,000. *Surface argument; Resp't Exs. F & G.*

**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 Exhibit 1 – Summary Appraisal Report of subject property,

Respondent Exhibit A: 2008 property record card (PRC) for the subject property,

Respondent Exhibit B: 2009 PRC for the subject property,

Respondent Exhibit D: Aerial map of subject area with highlights,

Respondent Exhibit E: Copy of photograph of subject improvements,

Respondent Exhibit F: LoopNet data sheet for parcel 31-09-25-251-011.000-008,

Crossroads Developers LLC  
Petitions No. 31-008-08-1-4-00001 and 31-008-09-1-4-00002

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Respondent Exhibit G: PRC for parcel 31-090-25-251-011.000-008,  
Respondent Exhibit H: Sales disclosure form for parcel 31-09-25-430-003.000-008,  
Respondent Exhibit I: Copy of photograph of improvements on parcel 31-09-25-430-003.000-008,  
Respondent Exhibit J: Aerial map showing parcel 31-09-25-430-003.000-008,<sup>1</sup>

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet.

d. These Findings and Conclusions.

### ANALYSIS

12. The most applicable governing cases are:
- a. A petitioner seeking review of an assessing official's determination has the burden to make a prima facie case proving 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).
  - b. In making its case, the petitioner must explain how each piece of evidence is relevant to the 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”).
  - c. Once the petitioner makes 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
13. Crossroads proved by a preponderance of the evidence that the subject property's 2008 and 2009 assessments should be lowered to \$130,000. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have

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<sup>1</sup> The Respondent's packet of exhibits included Exhibit C, a PRC for the subject property for tax year 2010. The Assessor withdrew that exhibit.

traditionally used three methods to determine a property's value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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 under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *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 ("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 property or comparable properties and 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 subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2006). For March 1, 2009 assessments, the valuation date was January 1, 2009. *Id.*
- d. Crossroads relied solely on Ms. Graber's appraisal report. In that report, Ms. Graber estimated the subject property's market value at \$130,000 as of March 1, 2008. *Pet'r Ex. 1*. Ms. Graber arrived at her opinion using generally accepted approaches to value, and she said that she had complied with USPAP. Thus, Ms. Graber's appraisal is prima facie evidence of the subject property's market value-in-use as of March 1, 2008.
- e. Of course, Ms. Graber estimated the subject property's value as of a date different from the valuation dates for the 2008 and 2009 assessments under appeal. But Ms. Graber's valuation date was only four months after the January 1, 2008—the appropriate valuation date for the 2009 assessment. In fact, Ms. Graber's valuation date fell within the window that assessors were instructed to use in conducting ratio studies for the 2009 assessment year. *See* 50 IAC 4-21-3-3(a)(2006) ("For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date."). Thus, the Board finds that Ms. Graber's valuation opinion bears at least some relationship to the subject property's value as of January 1, 2008.

- f. The same does not hold true for the January 1, 2007 valuation date that applied to the subject property's 2008 assessment. Thus, for the Board to find that Crossroads made a prima facie case for the 2008 assessment year, the record must contain some explanation about how Ms. Graber's valuation opinion relates the subject property's market value-in-use as of January 1, 2007. The body of Ms. Graber's appraisal report supplies that explanation. In her site-value analysis, Ms. Graber looked to three sales—two from 2009 and one from 2005. Although she considered adjusting those sales to reflect time-related market differences between the sale dates and her retrospective valuation date of March 1, 2008, she did not make any such adjustments. The Board therefore infers that, at least in Ms. Graber's professional opinion, the relevant market for commercial properties remained stable during that period. In fact, Ms. Graber indicated that commercial properties were not selling at all. Crossroads' inability to consistently lease the subject property further supports the notion that its value was unlikely to have changed much between January 1, 2007 and March 1, 2008. The record therefore contains enough, albeit barely enough, evidence relating Ms. Graber's valuation opinion to the subject property's market value-in-use as of January 1, 2007.
- g. Because Ms. Graber's appraisal sufficed to make a prima facie case that the subject property's true tax value was \$130,000 for the 2008 and 2009 assessment years, the burden shifted to the Assessor to offer probative evidence to impeach or rebut Ms. Graber's appraisal.
- h. The Assessor sought to impeach Ms. Graber's valuation opinion on three grounds: (1) Ms. Graber's report contains inconsistencies, (2) she did not do a sales-comparison approach, and (3) she used unreasonably low market rent to estimate the subject property's value under the income approach. The Board addresses those points in order.
- i. First, the Assessor did not explain how Ms. Graber's report was inconsistent; the Assessor's witness, Mr. Surface, simply asserted that it was. The Board gives Mr. Surface's conclusory assertion no weight.
- j. Second, Ms. Graber explained why she did not develop an analysis under the sales-comparison approach—she could not find any improved sales of secondary restaurant uses either locally or regionally. Granted, the Assessor offered data on an improved sale from January 2008. But it was for a property used as a pawn shop, not as a restaurant. One might therefore dispute whether, given the difference in the properties' uses, the pawn shop property was even comparable to the subject property. In any case, the fact that Ms. Graber may have missed a single arguably comparable sale does little to impeach her decision to forego a sales-comparison analysis.
- k. Finally, the Board gives some weight to the Assessor's qualms with Ms. Graber's estimate of market rent. Given that Ms. Graber apparently looked only for secondary restaurant uses in considering whether to develop a sales-comparison analysis, it is a

little surprising that she used leases of other types of buildings in determining the subject property's market rent, and that she settled on an estimate that was less than half the rent for the one restaurant lease (Domino's Pizza) that she identified. That being said, Ms. Graber persuasively explained why, given the subject property's age, depreciation, and spotty rental history, she estimated comparatively low market rent for the subject property. *Id.* Thus, while the Assessor may have mildly impeached the credibility of Ms. Graber's valuation opinion, the Board still finds her opinion persuasive.

- l. The Assessor, however, did not rest solely on her attempts to impeach Ms. Graber's valuation opinion. The Assessor's witness, Mr. Surface, pointed to two items that he felt supported the property's 2008 and 2009 assessments: (1) the pawn shop sale, and (2) a LoopNet listing for a nearby paved lot. First, the paved lot did not actually sell; the lot's listing price therefore does little to prove its market value. Second, other than describing where the pawn shop and paved lot were located, Mr. Surface did not even attempt to explain how those properties compared to the subject property. *See Long*, 821 N.E.2d at 470 (finding that a taxpayer's statements that properties are "similar" or "comparable" to each other are not probative evidence). Finally, Mr. Surface failed to explain how any differences between his purportedly comparable properties and the subject property affected the properties' relative market values-in-use. *See id.* at 471 (finding that taxpayers needed to explain how any differences between the characteristics of their property and purportedly comparable properties affected the properties' relevant market values-in-use.). For those reasons, the Assessor's sale and listing information lacks probative value.
- m. Given the Assessor's failure to significantly impeach or rebut Ms. Graber's valuation opinion, the Board is persuaded by that opinion and finds that the subject property's true tax value for the 2008 and 2009 assessments was \$130,000.

### **CONCLUSION**

14. Crossroads proved by a preponderance of the evidence that the subject property's 2008 and 2009 assessments were wrong and that the property should have been assessed for \$130,000 for each year.

### **FINAL DETERMINATION**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject 2008 and 2009 assessments should be changed to \$130,000.



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

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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

- 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>.