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

Petition:	**53-006-10-1-5-00051**
	53-006-11-1-5-00102
	53-006-13-1-5-00018
Petitioner:	**Elden L. and Betty L. Holsapple**
Respondent:	**Monroe County Assessor**
Parcel:	**53-11-17-100-024.000-006**
Assessment Year:	**2010, 2011, 2013**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Procedural History

1. The subject property includes a duplex on one acre of land located at 8150 S. Old State Rd. 37 in Bloomington. The Holsapples contested the property's assessments for the 2010, 2011, and 2013 assessment years. The Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations valuing the property as follows:

2010:	Land: $20,000	Improvements: $95,800	Total: $115,800
2011:	Land: $20,000	Improvements: $95,800	Total: $115,800
2013:	Land: $20,000	Improvements: $112,300	Total: $132,300

2. The Holsapples timely filed Form 131 petitions with the Board. They elected to proceed under our rules for small claims. On September 11, 2014, our designated administrative law judge, Andrew Howell, held a hearing on the Holsapples' petitions. Neither he nor the Board inspected the property.

3. Elden Holsapple appeared *pro se.* Brian Cusimano appeared as counsel for the Monroe County Assessor. Mr. Holsapple and Ken Surface testified under oath.

Record

4. The official record for this matter is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners' Ex. 1: Photographs of the subject property,
Petitioners' Ex. 2: Document packet containing petitions, property record cards, and an appraisal report for the subject property as well as handwritten notes concerning costs of repairs or improvements,[1]

Respondent's Ex. A: Aerial photographs and property record cards for the subject property,
Respondent's Ex. C: Property record card and sales disclosure form for 8581 S. Old State Rd. 37,[2]

Board Ex. A: Form 131 petitions with attachments,
Board Ex. B: Hearing notices,
Board Ex. C: Hearing sign-in sheet.

c. These Findings and Conclusions and all other orders and filings.

Burden of Proof

5. Generally, the taxpayer has the burden of proving that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, creates two exceptions to that rule.

6. First, the statute "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." I.C. § 6-1.1-15-17.2(b).

7. Second, subsection (d) of the statute "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1.15." I.C. § 6-1.1-15-17.2(d). Under those circumstances, "if the gross assessed value of the real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." *Id.*

[1] The Assessor objected to the appraisal on hearsay grounds. We explain our ruling on the objection below.
[2] The Assessor did not submit an Exhibit B.

8. Thus, two mechanisms may trigger a shift in the burden of proof: (1) an increase of more than 5% between years, and (2) a successful appeal that reduces the previous year's assessment below the current year's level, regardless of the amount. The subject property's assessment did not increase by more than 5% between 2009 and 2010, or between 2012 and 2013.[3] Similarly, there is no evidence to show that the Holsapples successfully appealed the 2009 or 2012 assessments. Thus, neither triggering mechanism applies to the Holsapples' 2010 or 2013 appeals, and the Holsapples have the burden of proof for those years.

9. The analysis is slightly different for 2011. As things currently stand, the 2010 and 2011 assessments are the same ($115,800). But we cannot determine whether the second triggering mechanism applies until we decide the merits of the Holsapples' 2010 appeal. If we reduce the 2010 value, the burden will shift to the Assessor for 2011. If we uphold the 2010 value, the burden remains with the Holsapples. We therefore address that question below after our analysis of the 2010 appeal.

Summary of the Parties' Contentions

10. The Holsapples' case:

    a. The subject property is a one-acre parcel that appears to be adjacent to another parcel owned by the Holsapples. According to Mr. Holsapple, the subject parcel includes a duplex and some or all of the following: a livestock feed lot, livestock fencing, water, agricultural reserve, and a cattle corral. The property record card, however, shows only the duplex and a utility shed on the property. According to Mr. Holsapple, the property should be assessed somewhere between $76,000 and $89,000. *Holsapple testimony; see also, Pet'rs Ex. 2.*

    b. Mr. Holsapple identified problems with the duplex. The crawlspace has been damaged, and the front steps are settling into the house, which is causing water to pool underneath the corner of the house. The steps were assessed from $1,100 to $1,300. Mr. Holsapple believes they should instead be assessed at $420—the cost to repair them. *Holsapple testimony; Pet'rs Exs. 1-2.*

    c. In the winter, Mr. Holsapple brings cattle onto the property to feed them, which creates an odor problem. He therefore believes that the land should be assessed for only $10,000. *Holsapple testimony.*

    d. The Holsapples also offered an appraisal report prepared by Richard Figg, in which Mr. Figg valued the property at $115,000 as of March 1, 2013. *Pet'rs Ex. 2.*

[3] The property was assessed for $110,700 in 2009 and $115,800 in 2010—an increase of 4.6%. The property was assessed for $128,700 in 2012 and $132,300 in 2013—an increase of 2.7%. *See Resp't Ex.A.*

11. The Assessor's case:

    a. For 2010, the property's one acre of land was assessed at $20,000, which was the base rate for homesites in the neighborhood. The improvements were assessed by valuing one-half of the duplex, then multiplying that figure by two to arrive at the total improvement value. *Surface testimony.*

    b. A property in the same neighborhood sold for $75,000 in 2012. It has a home that is roughly one-half the size of the subject duplex. It was assessed using a homesite value of $20,000, with an additional $3,000 for one acre of excess land. Thus, the same base rate is being used to assess similar properties. *Surface testimony; Resp't Ex. C.*

    c. The assessments should not be changed. Mr. Figg's appraisal report is hearsay, and the Holsapples' other evidence is insufficient to support a reduction. *Cusimano argument.*

Analysis

12. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance has defined as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." I.C. § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2); *see also* 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.10 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; I.C. § 6-1.1-15-18.

13. Regardless of the valuation method used, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the assessment years under appeal, those valuation dates were March 1, 2010, March 1, 2011, and March 1, 2013, respectively. *See* I.C. § 6-1.1-2-1.5; I.C. § 6-1.1-4-4.5(f). A party offering evidence relating to a different date must explain how the evidence demonstrates, or is relevant to, the appropriate valuation date. *Long*, 821 N.E.2d at 471.

14. Mr. Holsapple identified various issues with the property, including problems with the crawlspace, the steps, and issues associated with cattle.[4] Aside from testifying about the cost to repair the steps, Mr. Holsapple did nothing to quantify how those problems affected the property's value. Mr. Figg's appraisal did quantify a value. Leaving aside the fact that the appraisal was hearsay, Mr. Figg valued the property as of March 1, 2013—well past the valuation date for the 2010 assessment year. And the Holsapples offered nothing to relate the appraisal to the valuation date. Even if we were to give the appraisal weight, Mr. Figg valued the property at only $800 less than the assessment for each year. The Holsapples therefore failed to make a prima facie case for changing the 2010 or 2011 assessments.

15. The Holsapples offered the same evidence and arguments for 2011. We come to the same conclusion, again noting that the effective date of Mr. Figg's appraisal is still two years removed from the appropriate valuation date.

16. The Holsapples' claims regarding the 2013 assessment require some additional analysis. Mr. Figg appraised the property as of the March 1, 2013 valuation date. The Assessor, however, objected to the appraisal on hearsay grounds. The appraisal is hearsay. *See* Ind. Evidence Rule 801(c) (defining hearsay as a statement not made by the declarant while testifying at the trial or hearing and offered to prove the truth of the matter asserted). Nonetheless, we admit it under 52 IAC 3-1-5(b). But that does not end our analysis. If hearsay "(1) is properly objected to, and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 3-1-5(b). That rule essentially restates the "modified Residuum Rule" that Indiana courts have applied to administrative hearings in general. *See CTS Corp. v. Shoulton*, 270 Ind. 34, 383 N.E.2d 293, 296 (Ind. 1978) ("If properly objected to at the hearing and preserved on review and not falling within a recognized exception to the Hearsay Rule, then an award may not be based solely upon such hearsay.") (*quoting CTS Corp. v. Shoulton*, 354 N.E.2d 324, 332 (Ind. Ct. App. 1976) (Buchanan, J. dissenting).

17. The Holsapples did not lay a foundation for admitting the appraisal under any recognized exception to the hearsay rule. We therefore cannot base our decision solely on the appraisal. Because the Holsapples' other evidence does not support a reduction in value, we cannot order any change for the 2013 assessment year.

[4] Mr. Holsapple did not argue that the land should be assessed as agricultural. In any case, the Real Property Assessment Guidelines for 2002 – Version A, provide that one acre per dwelling on agricultural property should be classified as agricultural homesite, which appears to be how the Assessor classified the property. *See* 2002 GUIDELINES at 102-06; *see also*, 2011 REAL PROPERTY ASSESSMENT GUIDELINES at 93; *Resp't Ex. C*.

FINAL DETERMINATION

18. The Holsapples had the burden of proof for each year under appeal. They failed to make a prima facie case for changing the assessment in any of those years. We therefore find for the Assessor and order no change to the 2010, 2011, or 2013 assessments.

ISSUED: February 5, 2015

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.