

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

Petition No.: 09-017-10-1-1-00013
Petitioner: Ronald L. Popejoy, *et al.*
Respondent: Cass County Assessor
Parcel No.: 09-06-12-100-019.000-017
Assessment Year: 2010

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

Procedural History

1. Larry Popejoy, who pays taxes on the property at issue,¹ appealed its 2010 assessment to the Cass County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA mailed notice of its determination denying Mr. Popejoy relief on October 26, 2012.
2. Mr. Popejoy filed a Form 131 petition with the Board. He elected to have the appeal heard under the Board’s small claims procedures.
3. On September 19, 2013, the Board held a hearing through its designated administrative law judge, Dalene McMillen (“ALJ”). Neither the Board nor the ALJ inspected the property.
4. Larry Popejoy and his wife, Karla Popejoy, County Assessor Cathy Isaacs, Jennifer Becker and Karen Moss were sworn as witnesses.²

Facts

5. The PTABOA determined the following assessment:
Land: \$25,200 Improvements: \$49,100 Total: \$74,300.
6. Mr. Popejoy did not request a specific value.

¹ Although the Form 131 petition lists the property’s owners as Ronald L. Popejoy, *et al.*, Larry Popejoy signed the petition and prosecuted the appeal. The Board therefore refers to Larry Popejoy as the petitioner.

² Karla Popejoy and Karen Moss were sworn-in, but did not testify.

Contentions

7. Summary of Mr. Popejoy’s case:

- a. The land was assessed at \$25,200, or approximately \$8,000 per acre, which is far too high. Although the Assessor’s witness testified that the land was actually assessed for less than \$1,400 per acre, that amount is still too high. The land is not suitable for crops—part of it is swamp and other parts are wooded. Plus, there is a sand hill in the middle of the property that would need to be bulldozed before the property could be farmed. All told, less than one acre is farmed, and the remaining land has animals on it. *L. Popejoy testimony.*
- b. The home, which was built in 1904, also has various problems. The electrical service, which contains old wiring, is inadequate. The seals on the thermal pane windows are broken and the inside of the windows are cracked. Part of the vinyl siding is missing and the flashing around the chimney is leaking. The deterioration detracts from the value of the home. *L. Popejoy testimony; Pet’r Exs. 1-5.*
- c. Finally, the property record card shows a barn assessed for \$1,000 that was actually “laying on the ground” in 2010 and was no more than “kindling.” *L. Popejoy testimony.* The barn came down in a storm, although Mr. Popejoy could not remember exactly when. *Id.; see also, Resp’t Ex. 3.*

8. Summary of the Assessor’s case:

- a. Mr. Popejoy’s claim that the land was assessed for \$8,000 per acre is wrong. It has 18.73 acres³ assessed for a total of \$25,200—less than \$1,400 per acre.⁴ The land assessment is broken down as follows:

| Classification | Size | Adjusted Rate | Influence Factor | Value |
|-----------------------|-------------|----------------------|-------------------------|--------------|
| Tillable land | 2.7 acres | \$1,316/acre | none | \$3,550 |
| Woodland | 1.63 acres | \$1,316/acre | -80% | \$430 |
| Woodland | 10.70 acres | \$993/acre | -80% | \$2,130 |
| Woodland | 2.70 acres | \$1,432/acre | -80% | \$770 |
| Homesite | 1.00 acres | \$16,000/acre | 15% | \$18,400 |

Becker testimony; Resp’t Ex. 3.

- b. Assessors must adjust, or trend, assessments annually to account for changes in the market. The Assessor used nine sales from Mr. Popejoy’s neighborhood in the trending process. From those sales, she extracted a trending factor of .98, which she

³ The 18.73 acres does not include areas assessed as legal ditch and public road. Those areas were assessed at \$0. *Resp’t Ex. 3.*

⁴ The individual components of the land assessment actually total \$25,280. It appears that the Assessor rounded that total down to \$25,200.

applied to Mr. Popejoy's property to arrive at its 2010 assessment. Adjusting the assessment of this property outside the annual adjustment rule would create an inconsistency in the neighborhood's level of assessment. *Becker testimony; Resp't Exs. 5-6.*

- c. The home was assessed as being in fair condition, which accounts for the deferred maintenance that Mr. Popejoy described. While he testified that the barn was no longer standing on the assessment date, he failed to report that fact to the Assessor. Regardless, following an examination of the property in connection with the 2012 general reassessment, the barn is no longer being assessed. *Becker testimony.*

Record

- 9. The official record for this matter contains the following:

- a. The Form 131 petition.
- b. A digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit 1: Exterior photograph of the home,
- Petitioner Exhibit 2: Exterior photograph of the home,
- Petitioner Exhibit 3: Exterior photograph of the home,
- Petitioner Exhibit 4: Exterior photograph of the home,
- Petitioner Exhibit 5: Nine interior and exterior photographs of the home,

- Respondent Exhibit 1: Respondent exhibit coversheet,
- Respondent Exhibit 2: Summary of Respondent Exhibits and Testimony,
- Respondent Exhibit 3: 2010 property record card,
- Respondent Exhibit 4: Aerial map,
- Respondent Exhibit 5: Cass County trending information for neighborhood 9140001,
- Respondent Exhibit 6: Copy of 50 IAC 27

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

- d. These Findings and Conclusions.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that 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). In making its case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board...through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut 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.
11. The burden of proof lies with an assessor, however, where the assessment under review represents an increase of more than 5% over the value that the assessor determined for the same property in the immediately preceding year. *See* I.C. § 6-1.1-15-17.2. Here, the parties agree that the assessment for Mr. Popejoy's property increased by less than 5% between 2009 and 2010.⁵ Mr. Popejoy therefore has the burden of proof.

Analysis

12. Mr. Popejoy failed to make a prima facie case for changing the assessment. The Board reaches that conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which for most property is “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). Evidence in a tax appeal generally must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles may also be probative.
 - b. The statutory and regulatory scheme for assessing agricultural land, however, requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the Department of Local Government Finance (“DLGF”) to promulgate guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other

⁵ The assessment went from \$73,200 in 2009 to \$74,300 in 2010.

- types of land. I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate for assessing agricultural land by taking a rolling average of capitalized income from agricultural land. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* at 99-100; *see also* I.C. § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average). The base rate is then adjusted according to soil productivity factors. And influence factors are applied in predetermined amounts based on how the land is classified. For example, agricultural woodlands, which the Guidelines define as “land supporting trees capable of producing timber or other wood products” that “has 50% or more canopy cover or is a permanently planted reforested area,” receives an 80% negative influence factor. *GUIDELINES*, ch. 2 at 104, 115. By contrast, assessors are directed to determine influence factors for other land types by estimating the effect of a property’s peculiar characteristics on its market value-in-use. *See GUIDELINES*, ch. 2 at 56-58, 74, 89-90.
- c. Thus, unlike appeals of other types of property that focus on the types of market-based evidence described in the Manual rather than on how the Real Property Assessment Guidelines for 2002 – Version A were applied, appeals challenging the assessment of agricultural land are governed by the Guidelines.
 - d. Mr. Popejoy challenged both the assessment of his land, which includes 17.73 acres of agricultural land plus a one-acre homesite, and of his home. The Board will address the assessment of the agricultural land first. According to Mr. Popejoy, most of the land is unsuitable for crops. But he did not show that any particular section of the land was misclassified. Indeed, only 2.7 acres were assessed as tillable land for a total of \$3,550. The remaining 15.03 acres were assessed as woodland. After applying the pre-determined negative 80% influence factor, the entire woodland area was assessed for only \$3,330.
 - e. Mr. Popejoy’s real dispute appears to be with the assessment of his home and the one-acre homesite. In challenging that portion of the assessment, he largely relies on the deterioration of the home. But as Ms. Becker explained, the assessment already accounts for significant deterioration. More importantly, Mr. Popejoy did not offer any probative evidence to quantify the extent to which the deterioration affected the market value-in-use or to show a value, or even a range of values, for the property.
 - f. Mr. Popejoy, however, did show that his property was assessed for a barn that was no longer standing on March 1, 2010. The Board therefore finds that the 2010 assessment should be reduced by \$1,000—the value that the Assessor assigned to the barn.

Conclusion

13. Because the assessment under appeal included \$1,000 for a barn that was no longer standing on the assessment date, the assessment should be reduced to \$73,300. Mr. Popejoy failed to make a prima facie case for any further reduction.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should be changed to \$73,300.

ISSUED: December 5, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.