

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

**Petition No.:** 09-017-10-1-4-00014  
**Petitioner:** Ronald L. Popejoy, *et al.*  
**Respondent:** Cass County Assessor  
**Parcel No.:** 09-06-12-100-030.000-017  
**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 R. Popejoy, who has a life estate in the property at issue and pays taxes on it,<sup>1</sup> appealed the property's 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 then timely filed a Form 131 petition with the Board. He elected to have his 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.<sup>2</sup>

**Facts**

5. The property contains a small engine and welding shop located at 2582 North 50 East in Logansport.
6. The PTABOA determined the following assessment:  
Land: \$23,400      Improvements: \$24,500      Total: \$47,900.
7. Mr. Popejoy did not request a specific value.

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<sup>1</sup> 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.

<sup>2</sup> Karla Popejoy and Karen Moss were sworn, but did not testify.

## Contentions

8. Summary of Mr. Popejoy's case:
  - a. The property as a whole is assessed too high in light of what Mr. Popejoy originally paid for it. Mr. Popejoy and his wife bought the property from Troyer Poultry for \$5,000 sometime well before 2004, although Mr. Popejoy never recorded the deed. The Assessor offered to reduce the assessment to \$29,000, but that is far more than what Mr. Popejoy paid for the property. *L. Popejoy testimony; Pet'r Ex. 10.*
  - b. The assessment is also too high in light of the condition of the building. Mr. Popejoy operated the property as a small engine repair business until March of 2004, when his mother fell ill and required 24-hour care. After his mother died in August 2004, a judge decided that the property was part of her estate.<sup>3</sup> The other heirs—Mr. Popejoy's four siblings—have not agreed to transfer the property to him. Therefore, he has not spent any money to maintain the vacant building and it is falling apart. Several areas of the roof are leaking—some were torn off by wind and others have fallen in completely. The inside of the building is extremely deteriorated. There are places where it is not safe to walk. The bathroom also leaks. *L. Popejoy testimony; Pet'r Exs. 1-8.*
  - c. Finally, the Assessor wrongly classified the property as commercial. Mr. Popejoy has repeatedly tried to get the property taken out of that classification without success. He eventually went to the planning department for Cass County, Logansport, and Walton. It provided a letter indicating that the property is zoned as agricultural. The letter is dated July 22, 2013. According to the planning department, a typical business cannot use property in that zoning classification without approval from the Cass County Zoning Board. *L. Popejoy testimony; Pet'r Ex. 9.*
9. Summary of the Assessor's case:
  - a. Mr. Popejoy's petition does not even indicate what he is requesting. Regardless, the property is assessed fairly and accurately. Mr. Popejoy offered no evidence to justify reducing the assessment. *Becker argument.*
  - b. Assessors must annually adjust ('trend') assessments 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 applied to Mr. Popejoy's property to arrive at its 2010 assessment. *Becker testimony; Resp't Exs. 2-5, 6.*

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<sup>3</sup>Given Mr. Popejoy's testimony that he and his wife bought the property, it is not clear why it became part of his mother's estate. Mr. Popejoy did not explain the basis for the judge's decision.

- c. Because there were insufficient sales of commercial property in Noble Township, the Assessor used the base rate for homesites to value primary commercial land. Thus, while the record card for this property reflects a commercial classification, it actually was assessed as a residential property. In any case, the letter from the planning department is irrelevant to this appeal because it does not indicate how the property was zoned in 2010. *Becker testimony and argument.*
- d. Although Mr. Popejoy pointed to the deterioration of the building, the assessment already reflects that deterioration. The building was assessed as being in poor condition, which prompted the Assessor to apply 80% physical depreciation. She further reduced the assessment by 35% to account for functional obsolescence. In fact, given the size of the building (9,000 square feet), it was assessed at close to its salvage value. *Becker testimony; Resp't Ex. 3.*
- e. Finally, the price Mr. Popejoy paid should be given little weight. He offered no evidence about the terms and conditions of the sale. He did not even identify the sale date. *Becker argument.*

### **Record**

10. 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: Copies of seven interior photographs of the shop,
- Petitioner Exhibit 2: Copies of nine interior and exterior photographs of the shop,
- Petitioner Exhibit 3: Exterior photograph of the shop,
- Petitioner Exhibit 4: Four exterior photographs of the roof,
- Petitioner Exhibit 5: Two exterior photographs of the shop,
- Petitioner Exhibit 6: Four exterior photographs of the roof,
- Petitioner Exhibit 7: Four exterior photographs of the shop,
- Petitioner Exhibit 8: Exterior photograph of the roof,
- Petitioner Exhibit 9: July 22, 2013 letter from Cass County/Logansport/Walton Planning Department to the Popejoys,
- Petitioner Exhibit 10: Copy of a proposed stipulation agreement signed by Cathy Isaacs,
- 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 of the property,  
Respondent Exhibit 5: Cass County – Noble Township Trended Improved Sales  
Data Report,  
Respondent Exhibit 6: Copy of 50 IAC 27,

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

d. These Findings and Conclusions.

### **Burden of Proof**

11. 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.
12. 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 did not increase between 2009 and 2010. Therefore, Mr. Popejoy has the burden of proof.

### **Analysis**

13. Mr. Popejoy failed to make a prima facie case for changing this assessment. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which 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 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

cost or sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles may also be probative.

- b. In any case, 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). Otherwise, the evidence lacks probative value. For 2010, the assessment and valuation dates were both March 1, 2010. *See* I.C. § 6-1.1-4-4.5(f).
- c. Mr. Popejoy relies primarily on the price that he paid for the property sometime well before 2004. But that sale occurred more than six years before the relevant valuation date, and Mr. Popejoy offered nothing to relate the sale price to the value as of March 1, 2010. The sale price therefore carries no probative value.
- d. Mr. Popejoy also points to the deterioration of the building. But as Ms. Becker explained, the assessment already accounts for substantial deterioration. More importantly, Mr. Popejoy did not offer any probative evidence to quantify the extent to which the deterioration affected market value-in-use or to show a value, or even a range of values, for the property.
- e. Finally, Mr. Popejoy apparently disagrees with the Assessor's decision to classify the property as commercial for assessment purposes given its agricultural zoning. His claim, however, amounts to little more than a challenge to the Assessor's methodology in computing the assessment under the Real Property Assessment Guidelines for 2002 – Version A. As the Indiana Tax Court has explained, strict application of the assessment regulations is not enough to rebut the presumption that an assessment is correct. Instead, a party should offer the types of market value-in-use evidence described in the Manual. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006).<sup>4</sup>

### **Conclusion**

- 14. Mr. Popejoy failed to make a prima facie for changing this assessment. Therefore, the Board finds in the Assessor's favor and orders that the assessment will not be changed.

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<sup>4</sup> Mr. Popejoy offered a partially executed stipulation agreement containing what appears to be an offer from the Assessor to resolve the case by lowering the assessment to \$29,000. The Board, however, has previously rejected attempts to rely on settlement negotiations as evidence given the strong policy reasons for encouraging parties to engage in settlement negotiations.

## 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 not be changed.

ISSUED: December 5, 2013

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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>>.