

REPRESENTATIVE FOR PETITIONER:

Larry Popejoy, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Cathy Isaacs, Cass County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Larry Popejoy, <sup>1</sup>	)	Petition No.:	09-017-12-1-4-00007
	)		
Petitioner,	)	Parcel No.:	09-06-12-100-030.000-017
	)		
v.	)	County:	Cass
	)		
Cass County Assessor,	)	Township:	Noble
	)		
Respondent.	)	Assessment Year:	2012

Appeal from the Final Determination of the  
Cass County Property Tax Assessment Board of Appeals

**May 21, 2015**

**FINAL DETERMINATION**

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

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<sup>1</sup> The Notification of Final Assessment Determination issued by the Cass County Property Tax Assessment Board of Appeals lists the property’s owners as Ronald L. Popejoy, *et al.* Larry Popejoy, who has a life estate in the property, listed himself as the owner on the Form 131 petition, signed the petition, and prosecuted the appeal. The Board therefore refers to Larry Popejoy as the Petitioner.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Introduction

1. Larry Popejoy claims that his property was assessed too high in light of the lack of maintenance. Because he offered no probative evidence to show the extent to which the property's condition affected its value, he failed to make a prima facie case for changing the assessment.

### Procedural History

2. Mr. Popejoy contested the property's 2012 assessment. On September 27, 2013, the Cass County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding that assessment. Mr. Popejoy then timely filed a Form 131 petition with the Board.
3. On November 25, 2014, the Board's administrative law judge, Dalene McMillen, held a hearing. Neither she nor the Board inspected the property.
4. Larry Popejoy and his wife, Karla Popejoy, County Assessor Cathy Isaacs, and Jay Morris of Ad Valorem Solutions were sworn as witnesses.<sup>2</sup>
5. Mr. Popejoy did not offer any exhibits.
6. The Assessor offered the following exhibits:

Respondent Exhibit 1:	Respondent Exhibit Coversheet,
Respondent Exhibit 2:	Summary of Respondent Exhibits & Testimony,
Respondent Exhibit 3;	2012 property record card,
Respondent Exhibit 4:	Aerial map of the property,
Respondent Exhibit 5:	Sales data reports and appraisal ratio reports,
Respondent Exhibit 6:	Copy of 50 IAC 27,
Respondent Exhibit 7:	June 27, 2012 letter from Brian Bailey to Cathy Isaacs.

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<sup>2</sup> Karla Popejoy and Cathy Isaacs were sworn but did not testify.

7. The following additional items are part of the record:
  - Board Exhibit A: Form 131 petition,
  - Board Exhibit B: Hearing notice,
  - Board Exhibit C: Hearing sign-in sheet.
8. The property under appeal contains a small shop located at 2582 North 50 East in Logansport.
9. The PTABOA determined the following assessment:  
Land: \$21,800      Improvements: \$26,200      Total: \$48,000
10. Mr. Popejoy did not request a specific value.

### **Burden of Proof**

11. Generally, a taxpayer challenging an assessment must prove that the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2 (a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase ...." I.C. § 6-1.1-15-17.2(d).
12. Neither circumstance applies here. There is no evidence that Mr. Popejoy appealed the property's 2011 assessment. Similarly, while the assessment increased from \$47,900 in 2011 to \$48,000 in 2012, that increase was far less than 5%. Mr. Popejoy therefore has the burden of proof.

### **Mr. Popejoy's Contentions**

13. Because of issues with his siblings, Mr. Popejoy has spent nothing to maintain the property. The building no longer has gas heat, and it has continued to deteriorate. *L. Popejoy testimony.*

### **Respondent's Contentions**

14. Mr. Popejoy's petition does not say what value he requests. Regardless, the property is assessed fairly and accurately. Mr. Popejoy did not offer any market value-in-use evidence to justify changing the assessment. The assessment already reflects the building's deterioration. The Assessor rated it as being in poor condition, which prompted her to apply 80% physical depreciation. She further reduced the assessment by 50% to account for functional obsolescence. *Morris testimony; Resp't Ex. 2.*
15. Assessors must annually adjust assessments to account for changes in the market. To do so, they must gather and validate sales in the county during a 14-month period prior to the assessment date. There were no commercial sales in Mr. Popejoy's neighborhood, so she used 26 commercial sales from the county ranging from \$30,000 to \$1,500,000. From those sales, the Assessor extracted a trending factor of .89, which she applied to Mr. Popejoy's property to arrive at its 2012 assessment. Adjusting the assessment outside the annual adjustment rule would create an inconsistency in the level of assessment. *Morris testimony; Resp't Exs. 2-3, 5-7.*
16. The Assessor valued one acre under Mr. Popejoy's building as primary commercial land and the rest of the land as residential excess acreage. She has therefore accounted for the fact that Mr. Popejoy does not currently operate the property for commercial purposes. *Morris testimony.*

## **Analysis**

17. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s 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 the Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (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 accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
  
18. Mr. Popejoy pointed to the building’s deterioration. But as Mr. Morris 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 building’s market value-in-use or to show a value, or even a range of values, for the property. He therefore failed to make a prima facie case for changing the property’s assessment.

## **SUMMARY OF FINAL DETERMINATION**

19. Mr. Popejoy failed to make a prima facie case for changing his assessment. The Board therefore finds for the Assessor and orders no change to the assessment.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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>>.