

REPRESENTATIVE FOR PETITIONER:

Larry Popejoy, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Cathy Isaacs, Cass County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Larry Popejoy, <sup>1</sup>	)	Petition No.:	09-017-12-1-1-00005
	)		
Petitioner,	)	Parcel No.:	09-06-12-100-019.000-017
	)		
v.	)	County:	Cass
	)		
Cass County Assessor,	)	Township:	Noble
	)		
Respondent.	)	Assessment Year:	2012

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

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**May 21, 2015**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the 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 claimed that his property's location near a recycling plant detracts from its value. Because he offered no probative evidence to show the extent to which the location affected the property's value, he failed to make a prima facie case for changing its assessment.

### Procedural History

2. Mr. Popejoy contested his 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, Cass County Assessor Cathy Isaacs, and Jay Morris of Ad Valorem Solutions were sworn as witnesses.<sup>2</sup>
5. Mr. Popejoy offered no 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: Cass County – Noble Township Trended Improved Sales Data Report and Appraisal Ratios Report,
  - 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> Neither Karla Popejoy nor Cathy Isaacs actually testified.

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 is a single-family home with two detached garages and a utility shed located at 2604 North 50 East, Logansport.
9. The PTABOA determined the following assessment:  
Land: \$29,500      Improvements: \$45,700      Total: \$75,200
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. I.C. § 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 of those circumstances applies here because the assessment actually decreased between 2011 and 2012, going from \$75,400 down to \$75,200. Mr. Popejoy therefore has the burden of proof.

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

13. The assessment is too high in light of the various problems with the home, which was built in approximately 1908. Mr. Popejoy has not put any money into the home. *L. Popejoy testimony.*
14. In addition, the property's location has become less desirable. According to Mr. Popejoy, the county zoning department allowed a recycling plant to locate near the property. That has led to an increase in noise and traffic, which has decreased the property's value. *L. Popejoy testimony.*

### **The Assessor's Contentions**

15. Mr. Popejoy's petition does not indicate what value he is requesting. Regardless, the property was assessed fairly and accurately. The Assessor rated the home's condition as "fair," which accounted for its deferred maintenance. Mr. Popejoy failed to submit any market value-in-use evidence to justify changing the assessment. *Morris testimony; Resp't Ex. 2.*
16. 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. The Assessor used 12 sales from Mr. Popejoy's neighborhood ranging from \$30,000 to \$135,000. From those sales, she extracted a trending factor of .66, 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 neighborhood's level of assessment. *Morris testimony; Resp't Exs. 2-3, 5-7.*
17. The Assessor's witness, Mr. Morris, agreed that the property's location near a recycling plant might decrease its value. But Mr. Popejoy offered no sales data or appraisals to

show that actually happened. Without such data, Mr. Popejoy's claim is mere speculation. *Morris testimony*.

### **Analysis**

18. 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 Township Assessor*, 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 acceptable 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).
19. Mr. Popejoy pointed to two factors he argues decreased the property's value—the home's deterioration and its location near a recycling plant. But he offered no market-based evidence to quantify how either factor affected the property's true tax value or even to show a likely range of values. He therefore failed to make a prima facie case for reducing the assessment.

### **SUMMARY OF FINAL DETERMINATION**

20. Mr. Popejoy failed to make a prima facie case for changing the assessment. Therefore, the Board 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>>.