

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

**Petition No.:** 35-002-19-1-1-01086-19  
**Petitioner:** Fred John Kalakay Jr.  
**Respondent:** Huntington County Assessor  
**Parcel:** 35-04-03-400-001.802-002  
**Assessment Year:** 2019

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

**Procedural History**

1. The Petitioner initiated his 2019 assessment appeal with the Huntington County Assessor on May 29, 2019.
2. On September 24, 2019, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On July 16, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Fred John Kalakay Jr. appeared *pro se* via telephone. County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent via telephone. All were sworn.

**Facts**

6. The property under appeal is 40 acres of agricultural and excess residential land located at 500 North in Andrews.
7. The PTABOA determined a 2019 total land assessment of \$87,600.
8. The Petitioner requested a total land assessment of \$23,038.

## Record

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

a) A digital recording of the hearing.

b) Exhibits:<sup>1</sup>

Petitioner Exhibit 20.3:	Aerial map of the subject property,
Petitioner Exhibit 20.4:	Aerial map of the subject property,
Petitioner Exhibit 30 – 30.2:	Beacon summary report for parcel #35-04-10-100-034.800-002 at 4468 North 825 West in Andrews,
Petitioner Exhibit 40 – 40.1:	Beacon summary report for parcel #35-04-09-200-001.000-002 at West 500 North in Andrews,
Petitioner Exhibit 50 – 50.2:	Beacon summary report for parcel #35-04-10-200-033.900-002 at 500 North in Andrews,
Petitioner Exhibit 60 – 60.1:	Beacon summary report for parcel #35-04-04-300-000.900-002 at 1000 West in Andrews,
Petitioner Exhibit 70 – 70.2:	Beacon summary report for parcel #35-04-09-200-037.704-002 at North 1000 West in Andrews,
Petitioner Exhibit 80 – 80.2:	Beacon summary report for parcel #35-04-02-100-045.200-002 at 500 North in Huntington,
Petitioner Exhibit 90 & 90.3:	Beacon summary report for parcel #35-03-34-200-019.900-019 at 8667 West 700 North in Huntington,
Petitioner Exhibit 100 & 100.3:	Beacon summary report for parcel #35-03-34-100-042.600-019 at 8453 West 700 North in Huntington,
Petitioner Exhibit 110 – 110.2:	Beacon summary report for parcel #35-04-03-400-001.801-002 at 500 North in Andrews,
Petitioner Exhibit 120 – 120.1:	Beacon summary report for parcel #35-04-04-100-039.200-002 at 500 North in Andrews,
Petitioner Exhibit 130 – 130.3:	Beacon summary report for parcel #35-04-03-400-033.100-002 at 500 North in Andrews,
Petitioner Exhibit 208 – 212:	Building Advisor article “Soil and PERC Testing.”
Respondent Exhibit 1:	Form 131 dated November 12, 2019,
Respondent Exhibit 2:	Notice of Hearing on Petition – Real Property (Form 114) and Form 115,

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<sup>1</sup> The Petitioner’s exhibits were inconsistently numbered. The Petitioner submitted but did not enter Petitioner’s Exhibits 1, 2, 3, 4, 5, 6, 20, 20.1, 20.2, 200, 201, 202, 203, 204, 206 and 207 into the record.

Respondent Exhibit 3:	Taxpayer’s Notice to Initiate an Appeal (Form 130), dated June 4, 2019,
Respondent Exhibit 4:	Sales Disclosure Form for subject property dated July 6, 2010,
Respondent Exhibit 5:	Three Beacon aerial photographs of the subject property,
Respondent Exhibit 6:	2018 subject property record card,
Respondent Exhibit 7:	Letter from Terri Boone to Fred Kalakay dated March 13, 2020, <sup>2</sup>
Respondent Exhibit 8:	2019 subject property record card,
Respondent Exhibit 9:	Agland soil assessment report and aerial map for the subject property,
Respondent Exhibit 10:	Indiana codes § 6-1.1-4-13 “Agricultural land; assessment; soil productivity factors,” § 6-1.1-6-1 “Classification,” § 6-1.1-6-2 “Forest plantation,” § 6-1.1-6-2.5 “Wildlands,” § 6-1.1-6-3 “Native forest land,” § 6-1.1-6-3.5 “Restrictions on use of classified land,” and § 6-1.1-6-7 “Classification not permitted if grazing on parcel,”
Respondent Exhibit 11:	Definitions of market value, sales comparison approach, cost approach, and income approach,
Respondent Exhibit 12:	Comparable land sales analysis, aerial map, and: <ul style="list-style-type: none"> <li>● Property record card and two aerial maps for parcel #35-04-11-200-035.301-002 at 500 North in Andrews,</li> <li>● Property record card and aerial map for parcel #35-04-02-300-043.900-002 at 500 North in Andrews,</li> <li>● Sales disclosure form, property record card and aerial map for parcel #35-04-12-300-030.500-002 at 445 North in Huntington,</li> <li>● Sales disclosure form, property record card and two aerial maps for parcel #35-04-02-300-012.502-002 at North 750 West in Andrews,</li> <li>● Sales disclosure form, property record card and two aerial maps for parcel #35-04-22-100-036.100-002 at West River Road in Andrews,</li> </ul>

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<sup>2</sup> Ms. Newsome described Respondent’s Exhibit 7 as a letter requesting information from Mr. Kalakay on the use of the subject property. However, the exhibit is a list of witnesses for the Board’s hearing originally scheduled for March 31, 2020.

- Sales disclosure form, property record card and aerial map for parcel #35-04-10-400-035.002-002 at North 825 West in Andrews,
- Sales disclosure form, property record card and aerial map for parcel #35-04-34-300-040.501-002 at 8840 West Division Road in Andrews,
- Sales disclosure form, property record card and aerial map for parcel #35-04-11-100-020.700-002 at 6967 West 500 North in Huntington,
- Sales disclosure form, property record card and aerial map for parcel #35-04-12-100-001.300-002 at 4950 North 635 West in Huntington,

Respondent Exhibit 13: Letter from Terri Boone to Fred Kalakay dated March 13, 2020,  
 Respondent Exhibit 14: Assessor’s exhibit list,  
 Respondent Exhibit 15: Assessor’s concluding comments.

- c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

### Contentions

10. Summary of the Petitioner’s case:

- a) The subject property is over assessed. The property has been classified as agricultural since 2010 and the use has not changed “in 20 years.” In 2019, a portion of the land classification was erroneously changed from agricultural to excess residential. *Kalakay testimony (referencing Resp’t Ex. 8).*
- b) In 2018, the property was assessed as follows: 12.14 acres tillable, 1.91 acres non-tillable, 24.2 acres woodland, and .44 acres legal ditch.<sup>3</sup> In 2019, the land was assessed as follows: 9.91 acres tillable tillable land, .02 acre public road, and the remaining 30.07 acres was changed to excess residential. The non-tillable, legal ditch, and woodland were removed. These changes resulted in a tax increase of 269%. *Kalakay testimony (referencing Resp’t Exs. 6, 8).*
- c) The subject property is surrounded on three sides by agricultural properties and a “resident” neighbor and county road on the remaining side. Based on an observation,

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<sup>3</sup> The 2018 property record card states the following: 12.41 acres tillable, 1.91 acres non-tillable, 24.24 acres woodland, and 1.44 acres legal ditch. *Resp’t Ex. 6.*

the neighboring properties remain unchanged in use, purpose, and characteristics. But these properties remain classified as agricultural, while the subject property was changed to both agricultural and excess residential. *Kalakay testimony.*

- d) According to the Petitioner, in 2019, the subject property was a mix of tillable, non-tillable and woodland. The tillable land is rented. A portion of the property is used for hiking, camping, ATV riding, and hunting on occasion. The woodland is for the harvest of wood products, soil erosion, water quality, and “environmental stewards” of wildlife. This area is also used to harvest ginseng, fungi, fruits, wild vegetables, maple syrup, and firewood timber. Select areas are being developed as walnut groves for the harvest of “nut meat.” There is a low area that is “generally” wet and a filter strip in the woodland, which floods once a year. To date, ash bore has taken a “huge toll” on the timber, so the woodland has not been harvested.<sup>4</sup> With that being said, woodland development and harvesting is a long-term practice and investment. *Kalakay testimony; Pet’r Ex. 20.3.*
- e) The Petitioner purchased the property on July 6, 2010, for \$84,100. According to the Petitioner, tillable farmland in the area sells for \$6,500 an acre. Based on this sales information, he calculated the following values: \$80,600 for the 12.4 acres of tillable land and \$127 per acre or \$3,500 (rounded) for the 27.6 acres of woodland. Accordingly, the property should be valued at no more than the purchase price of \$84,100. *Kalakay testimony (referencing Resp’t Ex. 4).*
- f) The Petitioner claims at the PTABOA hearing, the Assessor stated that to reduce his taxes the property should be enrolled in a government program, such as, Classified Forest or Wildlife Program. In an effort to prove the property did not need to be enrolled in a government program or have a farm number in order to be classified as agricultural land, the Petitioner offered Beacon summary reports with aerial maps of eleven comparable properties.<sup>5</sup> *Kalakay testimony.*
- g) The eleven comparable properties have a combination of tillable, non-tillable, “drainage areas,” and woodland. Some of the properties have ponds and homesteads. While others have adjoining homestead land. None of these properties have had woodland acreage reclassified as excess residential. *Kalakay testimony; Pet’r Exs. 30-30.2, 40-40.1, 50-50.2, 60-60.1, 70-70.2, 80-80.2, 90, 90.3, 100, 100.3, 110-110.2, 120-120.1, 130-130.3.*
- h) In response to questioning, the Petitioner stated that he reports on his yearly tax return income made from “selling off” the subject property. *Kalakay testimony.*

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<sup>4</sup> To determine if the property was suitable for building a septic system, the Petitioner had percolation (PERC) tests performed on twenty locations. Each location failed the PERC test. *Kalakay testimony; Pet’r Exs. 20.4, 208 - 212.*

<sup>5</sup> The Petitioner referred to the Beacon summary reports as property record cards during the hearing.

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The Petitioner purchased the property on July 6, 2010, for \$84,100. The Petitioner stated at the county's informal hearing and the PTABOA hearing, the property was not purchased with the intent to farm, but to use for family enjoyment and recreational purposes, such as, hiking, ATV trails, and hunting. *Newsome testimony; Resp't Ex. 4.*
- b) In 2018, the parcel was assessed as follows: 12.41 acres tillable, 1.91 acres non-tillable, 24.41 acres woodland, and 1.44 acres legal ditch. The property record card reflected the land was being devoted to the production of crops. The 2018 assessed value was \$23,800. *Newsome testimony; Resp't Ex. 6.*
- c) In 2019, due to the "reassessment," the Assessor sent letters to all landowners in Dallas Township to determine if their land was devoted to agricultural use, what type crop was planted and harvested, who was farming the land, and if the land was in any type of state program such as Conservation Reserve Program (CRP). If the property consisted of woods, was there any wood management plan in place or was the property marked for timber. *Newsome testimony.*
- d) According to Ms. Newsome, Assessors are directed by Indiana Code § 6-1.1-4-13 that all acres enrolled in programs, such as, the United States Department of Agriculture (USDA), Farm Service Agencies, and/or the Natural Resources Conservative Service, and with a farm number, are eligible for agricultural classification. Agricultural, forest, and wildland parcels are also defined in Indiana Codes § 6-1.1-6-1 through § 6-1.1-6-7. The Petitioner is not participating in any federal agricultural programs. *Newsome testimony; Resp't Ex. 10.*
- e) The Department of Local Government Finance (DLGF) also requires land to be actively farmed. In addition, property cannot be classified as agricultural woodland unless the owner produces a forestry or timber plan. *Newsome testimony.*
- f) In 2019, the Assessor determined that a portion of the property was not being farmed. Accordingly, the land was changed to a mix use of farmland and excess residential land as follows: 9.91 acres tillable, .02 public road right-away, and 30.07 acres excess residential. The 30.07 acres of excess residential land was assessed at a base rate of \$5,000 per acre and given a 50% negative influence factor due to the size. The 2019 assessment increased to \$87,600. *Newsome testimony; Resp't Exs. 5, 8, 9.*
- g) The market value of a property is the most probable price which the property brings in a competitive and open market under all conditions requisite a fair sale. The buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by any undue stimulus. However, in Indiana real property is assessed based on its true tax value, which is defined as the market value-in-use of property for its

current use, as reflected by utility received by the owner or similar users of the property. *Newsome testimony; Resp't Ex. 11.*

- h) To determine the market value-in-use of a property, an Assessor considers the cost approach, sales comparison approach, and income approach to value. Here, she found that neither the cost approach nor the income approach was applicable. The sales comparison approach is the most relevant, so it was used to estimate the market value of the subject property. *Newsome testimony; Resp't Exs. 11, 15.*
- i) The Assessor examined nine sales of woodland properties in Dallas Township. The comparable properties sold between July 22, 2002, and October 11, 2019. The sale prices ranged from \$28,000 to \$151,800. Comparable sales 1, 4, and 5 are the most comparable to the subject property in size. She considered adjustments for financing, time, location, and topography, however, found no adjustments were necessary. Comparable sales 1, 4, and 5 price per acre ranged from \$1,500 to \$3,800 (rounded). Giving the most weight to comparable sale 1, the Assessor estimated value of the subject property to be \$90,000 or \$2,250 per acre. The current assessment of \$87,600 is fair and equitable based on the evidence presented. *Newsome testimony; Resp't Exs. 12, 15.*

### **Burden of Proof**

- 12. Generally, the taxpayer has the burden to prove 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). The burden-shifting statute creates two exceptions to that rule.
- 13. First, Ind. Code § 6-1.1-15-17.2 “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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 14. Second, Ind. Code § 6-1.1-15-17.2(d) “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.” Under those circumstances, “if the gross assessed value of 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.” Ind. Code § 6-1.1-15-17.2(d).

15. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2018 to 2019. According to the property record card the assessment increased from \$23,800 in 2018 to \$87,600 in 2019. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden to prove the 2019 assessment is correct. “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 take to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b) (emphasis added). Additionally, when the assessor changes the land classification, “the county assessor or township assessor making the *change in the classification* has the burden of proving that the change in the classification is correct in any review or appeal.” Ind. Code § 6-1.1-15-17.1(2) (emphasis added). In other words, the Respondent must prove the 2019 assessment of \$87,600 is correct.

### Analysis

16. The Respondent failed to make a prima facie case that the 2019 assessment is correct.
- a) Real property is assessed based on its “true tax value” which means, “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.” Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 2011 MANUAL at 2. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
  - c) However, the statutory and regulatory scheme of assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil productivity that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, chapter 2 at 77-78 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year,



instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.

- d) Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, glossary at 1. The word “devote” means to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.
- e) “Residential property” is defined as “vacant or improved land devoted to, or available for use primarily as, a place to live,” and is “normally constructed to mean a structure where less than three families reside in a single structure.” GUIDELINES, glossary at 18. Additionally, the Tax Court has defined “residential excess” as land “dedicated to a nonagricultural use normally associated with the homesite.” *Stout v. Orange Co. Ass’n*, 996 N.E.2d 871, 875 n.6 (Ind. Tax Ct. 2013).
- f) In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e. tillable land) as well as woodlands. GUIDELINES, CH. 2 at 80. According to the Guidelines, land that has “50% or more canopy” may be considered agricultural woodland. *Id.* at 90. Additional categories of agricultural property include Type 4 “idle cropland” and Type 5 non-tillable land. *Id.* at 103, 104.
- g) According to the Respondent, the Petitioner stated at local hearings the subject property was purchased not with the intent to farm, but to use for family enjoyment and recreational purposes. Additionally, the Petitioner is not participating in any federal agricultural programs.
- h) The Respondent also presented a sales comparison analysis to support the current assessment. However, as already stated, the true tax value of agricultural land is, unlike most other types of property, determined by applying the Guidelines and the proper agricultural rates, something the Respondent did not do.
- i) The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed or is under a government program. Further, we cannot find support for the Respondent’s argument that property cannot be classified as agricultural woodland unless the owner produces a forestry or timber plan. The classification depends on whether the property is put to agricultural or residential use. The Respondent did not dispute the 9.91 acres of tillable land and the .02 acres of public road. However, the Respondent failed to adequately articulate what characteristics, or use of the remaining 30.07 acres, led to

the conclusion that the property should be re-classified as excess residential. Because the burden was on the Respondent to prove the correct classification, she failed to do so.

- j) The Petitioner testified the tillable land is rented and a portion of the property is used for hiking, camping, ATV riding, and hunting on occasion. The Petitioner went on to testify the woodland portion is used for the harvest of wood products, soil erosion, water quality, and “environmental stewards” of wildlife. This area is also used to harvest ginseng, fungi, fruits, wild vegetables, maple syrup, and firewood timber. Select areas are being developed as walnut groves for the harvest of “nut meat.” Nothing has changed between 2018 and 2019. The Respondent failed to present any evidence to rebut the Petitioner’s testimony. For these reasons, we find the Respondent failed to present enough probative evidence to support changing the land classification on this property.
  
- k) Because the record is not entirely clear regarding why the Respondent removed the 1.91 acres or non-tillable, 1.44 acres of legal ditch, removed the woodland designation, and re-calculated the portion of the tillable acres, we order the Respondent to change the 2019 land classifications to mirror the 2018 classifications and reassess the property accordingly.

**Conclusion**

- 17. The Respondent had the burden of proving the 2019 assessment was correct. She failed to make a prima facie case. The Respondent is directed to reassess the property in conformity with these findings and conclusions.

**Final Determination**

In accordance with these findings and conclusions, the Board orders the Respondent to reclassify the property in accordance with this determination.

ISSUED: October 14, 2020

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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>>