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

Petitions:	**03-011-15-1-5-00305-15**
	03-011-15-1-5-00307-15
	03-011-15-1-5-00308-15
	03-011-16-1-5-00029-17
	03-011-16-1-5-00032-17
	03-011-16-1-5-00033-17
	03-011-17-1-5-00813-17
	03-011-17-1-5-00815-17
	03-011-17-1-5-00816-17
Petitioner:	**Russell Family Partnership**
Respondent:	**Bartholomew County Assessor**
Parcels:	**03-94-23-000-002.600-011**
	03-94-23-000-002.602-011
	03-94-23-000-002.603-011
Assessment Years:	**2015, 2016, & 2017**

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 its 2015, 2016, and 2017 appeals with the Bartholomew County Assessor for each parcel referenced above.

2. On October 30, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations for the 2015 appeals, denying the Petitioner any relief.

3. On December 16, 2016, the Bartholomew County PTABOA issued its determinations for the 2016 appeals, denying the Petitioner any relief.

4. For the 2017 appeals, the Petitioner signed Standard Form Agreements to Forego the PTABOA hearings on May 25, 2017. Accordingly, the PTABOA did not act on the 2017 appeals.

5. The Petitioner timely filed nine Petitions for Review of Assessment (Form 131s) with the Board and elected the Board's small claims procedures.

6. On July 18, 2018, the Board's designated administrative law judge (ALJ) Patti Kindler held a consolidated hearing. Neither the Board nor the ALJ inspected the properties.

7. Certified tax representative Milo Smith appeared for the Petitioner. County Assessor Lew Wilson appeared for the Respondent. Local government representative Virginia Whipple was a witness for the Respondent. All of them were sworn.

Facts

8. The properties under appeal are three vacant lots located on State Road 46 West in Columbus.

9. For parcel 03-94-23-000-002.600-011 (600), the PTABOA determined a total assessment of $44,300 for the 2015 and 2016 assessment years. The Petitioner waived the PTABOA hearing for 2017, so the assessment remained at $44,300.

10. For parcel 03-94-23-000-002.602-011 (602), the PTABOA determined a total assessment of $13,500 for the 2015 and 2016 assessment years. The Petitioner waived the PTABOA hearing for 2017, so the assessment remained at $13,500.

11. For parcel 03-94-23-000-002.603-011 (603), the PTABOA determined a total assessment of $150,200 for the 2015 and 2016 assessment years. The Petitioner waived the PTABOA hearing for 2017, so the assessment remained at $150,200.[1]

Record

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

    a) A digital recording of the hearing,

    b) Exhibits:

    The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	2014 subject property record card (PRC) for parcel 600,
Petitioner Exhibit 2:	2015 subject PRC for parcel 600,
Petitioner Exhibit 3:	2016 subject PRC for parcel 600,
Petitioner Exhibit 4:	2017 subject PRC for parcel 600,
Petitioner Exhibit 5:	2014 subject PRC for parcel 602,
Petitioner Exhibit 6:	2015 subject PRC for parcel 602,
Petitioner Exhibit 7:	2016 subject PRC for parcel 602,
Petitioner Exhibit 8:	2017 subject PRC for parcel 602,
Petitioner Exhibit 9:	2014 subject PRC for parcel 603,
Petitioner Exhibit 10:	2015 subject PRC for parcel 603,
Petitioner Exhibit 11:	2016 subject PRC for parcel 603,
Petitioner Exhibit 12:	2017 subject PRC for parcel 603,

[1] The Petitioner only appealed the classification of the three parcels.

Petitioner Exhibit 13:	"Property Tax Management System Code List,"
Petitioner Exhibit 14:	Indiana Code § 6-1.1-15-17.1,
Petitioner Exhibit 15:	*James E. Stout v. Orange Co. Ass'r,* Petition no. 59-007-09-1-5-00001 (IBTR December 9, 2011),
Petitioner Exhibit 16:	"Statement of Continued Use" of the land signed by Albert H. Schumaker II, owner, dated July 17, 2018.

The Respondent submitted separate exhibit packets for each parcel and year under appeal. The packets are identical with the exception of Respondent's Exhibits C and D, which are property record cards specific to each parcel for the years 2014, 2015, 2016 and 2017. The only other exception is the 2015 exhibit packet for parcel 600 that includes Respondent's Exhibit T, a "memo" from Ms. Whipple, dated June 15, 2018. The packets include the following exhibits:

Respondent Exhibit A:	Curricula Vitae for Mr. Wilson and Ms. Whipple,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	Subject PRC,
Respondent Exhibit D:	Subject PRC,
Respondent Exhibit E:	Aerial map for the three parcels under appeal,
Respondent Exhibit F:	Department of Local Government Finance (DLGF) Memorandum entitled *Classification and Valuation of Agricultural Land,* dated February 12, 2008,
Respondent Exhibit G:	Aerial map of the subject parcels,
Respondent Exhibit H:	Memorandum from the Respondent regarding property tax information, dated June 1, 2015,
Respondent Exhibit I:	PRC for parcel 03-94-23-000-002.601-011,
Respondent Exhibit J:	Two emails sent from Ms. Whipple to Mr. Smith, dated October 19, 2015,
Respondent Exhibit K:	*Consumer Price Index Data from 1913 to 2018,* from the US Inflation Calculator,
Respondent Exhibit L:	Comparative Sales Analysis Spreadsheet,
Respondent Exhibit M:	PRCs and sales disclosure form for parcel 03-84-25-000-002.400-016 and parcel 03-84-25-000-002.500-016,
Respondent Exhibit N:	Aerial map for parcel 03-84-25-000-002.400-016,
Respondent Exhibit O:	PRCs and sales disclosure form for parcel 03-94-22-000-002.402-011 and parcel 03-94-27-000-000.100-011,
Respondent Exhibit P:	Aerial map for parcel 03-94-22-000-002.402-011,
Respondent Exhibit Q:	PRC and sales disclosure form for parcel 03-84-27-000-001.601-016,
Respondent Exhibit R:	Aerial map for parcel 03-84-27-000-001.601-016
Respondent Exhibit S:	Summary of the Respondent's requested assessments,
Respondent Exhibit T:	Memorandum prepared by Ms. Whipple regarding a conversation with a Farm Services Agency employee, a

Bartholomew County deputy assessor, and Mr. Smith, dated June 15, 2018.

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.

Objections

13. Ms. Whipple objected to Petitioner's Exhibit 16 for two reasons. First, the exhibit was not provided to the Respondent or the PTABOA prior to the Board's hearing. Second, the exhibit should be excluded because it was not notarized and she "believes Mr. Smith was leading the taxpayer" in the statement. In response, Mr. Smith argued he was not required to submit probative evidence at the PTABOA hearing because the burden was on the Respondent. The ALJ took the objection under advisement.

14. The Petitioner elected the Board's small claims procedures. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The Respondent never argued he requested the Petitioner's evidence prior to the hearing. The Board's hearings are conducted *de novo,* and consequently, the Board owes no deference to the PTABOA hearing. Accordingly, the Respondent's objection is overruled in regard to prior disclosure. In response to the Respondent's second objection to the exhibit, the argument goes to the weight of the exhibit rather than its admissibility. Therefore the objection is overruled and Petitioner's Exhibit 16 is admitted.

Contentions

15. Summary of the Petitioner's case:

a) The three parcels under appeal were assessed too high in 2015, 2016, and 2017. The assessments increased when the parcels' classifications were improperly changed from agricultural to excess residential in 2015 even though the use of the land did not change. *Smith argument; Pet'r Ex. 1, 2, 5, 6, 9, 10.*

b) Mr. Smith submitted a "statement of continued use" from Albert H. Schumaker, II, stating the subject properties are used for agricultural purposes. According to Mr. Schumaker, it is his intent to sell timber growing on the parcels under appeal when the trees are mature enough. Mr. Smith argued that while he did not offer the written statement to the PTABOA, he verbally expressed to them under oath that the properties were being used for timber production. *Smith testimony; Pet'r Ex. 16.*

c) The burden of proof is on the Respondent to show the change in classification is correct. The Respondent's argument that because there is no timber management in

place, the property cannot be classified as agricultural is flawed. According to Mr. Smith, "there is absolutely no requirement that I know of to enter into a management plan before your property can be assessed as agricultural land that is growing timber." Here, the record fails to disprove agricultural use or prove the land is used for some other purpose. For these reasons, the parcels 2015 assessments should revert back to the 2014 levels. For the 2016 and 2017 assessments, the appropriate agricultural land base rates and land classifications should be applied accordingly. *Smith argument (citing* Ind. Code § 6-1.1-15-17.1)*; Pet'r Ex. 14, 15.*

16. Summary of the Respondent's case:

a) The properties are correctly assessed as excess residential property. The lots were erroneously assessed as agricultural in 2014 even though they were not used for agricultural purposes. The decision to change the classifications in 2015 to excess residential acreage stems from a memorandum issued by the DLGF regarding the classification and valuation of agricultural land. *Whipple argument; Resp't Ex. F.*

b) In an effort to prove the property is correctly assessed as excess residential, the Respondent offered aerial maps that show the Petitioner owns a residential parcel, which is not under appeal, situated in the middle of these three lots. All four contiguous parcels are "basically the same property." There are "trees, ponds, hills and hollows" and a residential property is located in the middle. *Whipple testimony; Resp't Ex. E, G, I.*

c) On June 15, 2015, the Respondent sent letters to Bartholomew County property owners informing them of the changes to agricultural land assessments. The letter stated "land shall be assessed as agricultural land only when it is devoted to agricultural use." Further, the letter listed programs that qualify for agricultural use. The Petitioner did not respond to the letter or offer any kind of documentation to indicate the subject properties are being used for agricultural purposes. *Whipple testimony; Resp't Ex. H.*

d) On October 19, 2015, Ms. Whipple sent an email to Mr. Smith requesting evidence the subject properties were being farmed or in a land management plan for growing "hardwood timber." The email stated the land classification of the properties had changed from agricultural to excess residential. According to Ms. Whipple, the Petitioner did not respond to the email nor provide any type of proof the properties under appeal were being used for agricultural purposes. *Whipple testimony; Resp't Ex. J.*

e) According to the Bartholomew County Farm Services Agency, there is no farm number associated with the subject properties. Furthermore, there are no personal property assessment farm returns on file for the properties, a further indication the properties are not being farmed or used for growing timber. *Whipple testimony; Resp't Ex. T.*

f) A "quick drive-by" of the properties supports the Respondent's position the properties are not being used for timber production because there are no "obvious logging activities." The hardwood timber is strictly grown for "recreational use." *Whipple testimony.*

g) The Respondent presented a sales-comparison analysis to support the current assessments. The Respondent relied on three sales assessed as excess residential land.[2] The Respondent adjusted the first sale to account for a pole barn. This was accomplished by subtracting the assessed value of the pole barn from the total assessment. The comparable sales were all time adjusted to the assessment years in question by applying a trending factor from the Consumer Price Index (CPI). After the sales were time adjusted, the Respondent took the median adjusted sale price of the comparable properties for each year under appeal and multiplied those figures by the subject properties' acreages for each year to arrive at a requested assessment.

Year	Parcel at Appeal	Assessed Value	Acreage	Time Adj. Sale Price	Requested Assessment
2015	03-94-23-000-002.600-011	$ 44,300	15.31	$3,493	$53,500
2015	03-94-23-000-002.602-011	$ 13,500	3	$3,493	$10,500
2015	03-94-23-000-002.603-011	$150,200	57.66	$3,493	$201,400
2016	03-94-23-000-002.600-011	$ 44,300	15.31	$3,521	$53,900
2016	03-94-23-000-002.602-011	$ 13,500	3	$3,521	$10,600
2016	03-94-23-000-002.603-011	$150,200	57.66	$3,521	$203,000
2017	03-94-23-000-002.600-011	$ 44,300	15.31	$3,698	$56,600
2017	03-94-23-000-002.602-011	$ 13,500	3	$3,698	$11,100
2017	03-94-23-000-002.603-011	$150,200	57.66	$3,698	$213,200

Whipple testimony; Resp't Ex. L-S.[3]

h) The Petitioner's claim it "plans to harvest timber in the future" is not credible. The exhibit presented and prepared by Mr. Smith is "hearsay" and was prepared after the

[2] The Respondent contends the third comparable sale, parcel 03-84-27-000-001.601-016, is currently being assessed as classified forest, but at the time of the sale this property was assessed as excess residential.
[3] The Respondent rounded the requested assessments to the nearest hundred during her verbal presentation.

PTABOA hearings and has not been notarized. *Whipple testimony (referencing Pet'r Ex. 16).*

Burden of Proof

17. 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 as amended by P.L. 97-2014 creates two exceptions to that rule.

18. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

19. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

20. There is no dispute the assessment of each property under appeal increased by more than 5% from 2014 to 2015. Parcel 600 increased from $5,500 in 2014 to $44,300 in 2015. Parcel 602 increased from $700 in 2014 to $13,500 in 2015. And parcel 603 increased from $30,900 in 2014 to $150,200 in 2015.

21. The Respondent agrees the assessments increased by more than 5%, but claims the burden should be on the Petitioner because the change in assessments was "due to the reclassification of the properties' land classification from agricultural to excessive residential, thereby exempting this matter from the burden statute." True, Ind. Code § 6-1.1-15-17.2(c)(3) specifically excludes the consideration of the burden statute if the assessment is based on a *use* that was not considered in the assessment for the prior tax year. Here, the Respondent changed the land classification of the properties, but failed to offer any evidence that the *actual use* of the properties changed between 2014 and 2015. The Petitioner used the properties in 2015 just as they had used them in 2014. Further, Ind. Code § 6-1.1-15-17.1(2) provides that 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. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 and Ind. Code § 6-1.1-15-17.1 apply. The burden rests with the Respondent for the 2015 assessment year. Assigning the burden for the 2016 and 2017 assessment years depends on the Board's findings from 2015.

Analysis

22. The Respondent failed to make a prima facie case the assessments were correct.

a) Real property is assessed based on its market value-in-use. 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. 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 2015 assessments, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f). For 2016 and 2017 assessments, the valuation date was January 1 of the respective year. *See* Ind. Code § 6-1.1-2-1.5.

c) 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 construed 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'r,* 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, chapter 2 at 80. Additional categories of agricultural property include Type 4 "idle cropland" and Type 5 non-tillable land. *Id.* at 103, 104.

g) The Respondent argued the properties were inspected and ultimately he was unable to find any evidence the properties were actively farmed nor had they been used for agricultural purposes or produced an income for years. He also argued there is no evidence of a "timber plan."

h) The Respondent also argued the classification of the three subject properties should be changed to excess residential land because of their location, contiguous to a residential parcel.

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 Department of Natural Resources (DNR) classified program. The classification depends on whether the property is put to agricultural or residential use. The Respondent provided conclusory statements that the subject property should no longer be classified as agricultural. Because the burden was on the Respondent, it was his duty to provide the Board with probative evidence supporting his notion that the subject property was incorrectly classified. Statements such as "a 'quick drive-by' of the properties supports the Respondent's position the properties are not being used for timber production because there are no 'obvious logging activities'" do not constitute probative evidence. According to the Petitioner's statement, the properties are used for agricultural purposes and the intent is to "sell timber growing on the parcels . . . when the trees are mature enough." Additionally, just because these properties are "contiguous" to a residential property does not mean they should no longer be classified as agricultural. Again, because the onus was on the Respondent to prove the properties were incorrectly classified, he failed to do so. The Respondent failed to adequately articulate what characteristics, or use of the properties, led to the conclusion they should be re-classified as excess residential.

j) The Respondent also argued the properties are "actually under-assessed" for all three years under appeal. In an effort to prove this, the Respondent offered a sales-comparison analysis. However, Respondent failed to establish how that sales

comparison is relevant, given that the subject property should retain its agricultural land classification.

k) For these reasons, the Respondent did not offer sufficient probative evidence that the 2015, 2016, and 2017 assessments were correct. Therefore, the Petitioner is entitled to have the 2015 assessments returned to 2014 levels. Additionally, because the Respondent had the burden for the 2016 and 2017 assessment years, he failed to make a prima facie case for the same reasons as listed above. The Petitioner is entitled to have the 2016 and 2017 assessments returned to the 2014 level as well.

l) This ends the Board's inquiry because the Petitioner only requested the assessments revert back to the prior year's assessment. However, the Petitioner did concede that the reverted assessments "might increase" each year according to the agricultural land base rates for those years. However the burden statute does not account for increases in a reverted assessment to equal that year's pricing schedules or for any other reason. Because 2015 was the first year of this three year appeal, the assessment must revert back to the 2014 assessment of $5,500 for parcel 600. The 2015 assessment for parcel 602 must revert back to $700. And the 2015 assessment for parcel 603 must revert back to $30,900. The 2016 and 2017 assessments must also revert back to the assessments listed above.

Conclusion

23. The Respondent had the burden of proving the 2015, 2016, and 2017 assessments were correct. He failed to make a prima facie case, thus the assessments must be reduced to the previous year's amount.

Final Determination

In accordance with these findings and conclusions, the 2015, 2016, and 2017 assessments for parcel 600 must be reduced to $5,500. The 2015, 2016, and 2017 assessments for parcel 602 must be reduced to $700. The 2015, 2016, and 2017 assessments for parcel 603 must be reduced to $30,900.

ISSUED: October 16, 2018

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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 of 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>.