

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

**Petitions:** 64-011-20-1-5-00772-20  
64-011-20-1-5-00773-20  
**Petitioners:** William H. and Dalia K. Wendt  
**Respondent:** Porter County Assessor  
**Parcels:** 64-04-10-251-821.000-011  
64-04-10-251-006.000-011  
**Assessment Year:** 2020

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. The Wendts contested the 2020 assessments of two parcels located in Beverly Shores. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the properties as follows:

Parcel	Land	Improvements
64-04-10-251-821.000-011	\$33,900	\$28,900
64-04-10-251-006.000-011	\$22,800	

2. The Wendts timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On June 22, 2021, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on the Wendts’ petitions. Due to a technical problem with the original recording, our ALJ held a new hearing on August 19, 2021. Neither she nor the Board inspected the property.
3. Attorney Bradley Adamsky represented the Wendts. Attorney Robert Schwerd represented the Assessor.

**RECORD**

4. The official record for the matter contains the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices, and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.<sup>1</sup>

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<sup>1</sup> The parties did not offer any testimony or exhibits.

## BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. 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, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. The Wendts accepted the burden of proof.

## SUMMARY OF CONTENTIONS

7. The Wendts' case:
  - a. The Wendts purchased the two parcels in 2019. They are adjacent to the Indiana Dunes National Park. One parcel is assessed as a commercial property with an abandoned building and the other parcel is assessed as vacant residential land. The properties are not used for commercial or residential purposes. One parcel has over 50% tree canopy and the other probably over 90% tree canopy. In *Kalakay*<sup>2</sup>, the Board held that it could find no support for the proposition that a property must be actively farmed or under a government program to be considered agricultural. The Wendts ask for clarification as to what standard a property owner needs to meet to qualify vacant woodlands as agricultural land. *Adamsky argument*.
  - b. Agricultural land is assessed according to specific regulations. This is in violation of Article 10, Section 1 of the Indiana Constitution, which requires the State to create a uniform, equal, and just system of assessment. The Wendts acknowledge that the Board does not have authority to declare statutes unconstitutional, but they are making the argument in the event the appeals go further. *Adamsky argument*.
8. The Assessor's case:
  - a. The Assessor believes that the Board cannot set aside or rule farmland pricing unconstitutional. This is an improper venue for such an issue. *Schwerd argument*.
  - b. There was never a request for the properties to be assessed as agricultural land, so the issue is not properly before the Board. Further, the Wendts presented no evidence to support that claim and have failed to meet the burden of proof. *Schwerd argument*.

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<sup>2</sup> Adamsky is referring to our Final Determination in *Kalakay v. Huntington Co. Ass'r.*, Petition No. 35-002-19-1-1-01086-19 (dated October 14, 2020).

## ANALYSIS

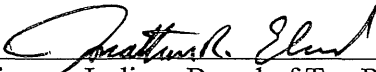
9. The Wendts failed to make a prima facie case that their two parcels should be assessed as agricultural land. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he 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." MANUAL at 2.
  - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of 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). Taxpayers may use cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). The valuation date for this appeal is January 1, 2020. Ind. Code § 6-1.1-2-1.5(a).
  - c. However, the statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the Department of Local Government Finance (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 GUIDELINES, CH. 2 at 77-78; *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.

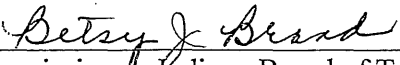
- d. Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, GLOSSARY 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. 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.
- f. The Wendts contend that their two parcels should be assessed as agricultural land because they have over 50% tree canopy and are not used for commercial or residential purposes. However, they failed to present any evidence demonstrating that the properties meet the definition of agricultural land. In fact, they did not offer any evidence at all. Given the complete lack of evidence, we conclude that the Wendts failed to make a prima facie case that their parcels should be assessed as agricultural land.
- g. The Wendts additionally argue that Indiana’s statutory and regulatory scheme for assessing agricultural land violates Article 10, Section 1 of the Indiana Constitution, which requires the State to create a uniform, equal, and just system of assessment. However, the Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Administrative agencies do not have the authority to declare a statute unconstitutional. *See Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994) (stating that allegations a statute is unconstitutional are matters solely for judicial determination). The Board must therefore deny the Wendts’ constitutional claim.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2020 assessments.

ISSUED: NOVEMBER 2, 2021

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
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>.