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MEMORANDUM

To: Assessing Officials, County Auditors

From: Department of Local Government Finance

Date: February 12, 2008

Subject: Classification and Valuation of Agricultural Land

1. Summary

a. Pursuant to IC 6-1.1-35-1, it is the direction of the Department of Local Government Finance ("Department") that land devoted to agricultural use shall be classified as agricultural land. Existing statutes and rules are sufficient to determine proper classification. Specifically, woodlands used for agricultural purposes shall be classified as "agricultural land" as directed by existing Indiana statutes and rules. Assessing officials shall observe Indiana statutes and rules when classifying such land, whether small or large in acreage, as "agricultural land."

b. The Department has received numerous inquiries from assessing officials and taxpayers regarding the appropriate classification of woodlands, non-tillable land, and other land used for agricultural purposes. At issue are woodlands re-classified from "agricultural" to a non-agricultural classification of residential excess acreage during the 2006-pay-2007 annual trending; and instances where parcel size was determined by the assessor to prevent application of the "agricultural" classification. This memorandum is to clarify existing statutes and rules and give guidance to both taxpayers and assessing officials.

2. Statutes

a. IC 6-1.1-4-13 and the *Real Property Assessment Guidelines for 2002* ("*Guidelines*"), Chapter 2 provide adequate direction for assessing agricultural land, including woodlands. Additionally, other sections of the Indiana Code provide a list of various agricultural activities that may be helpful to the assessor; including forage, wildlife, timber, forest products, vineyards, bees, and fish. Refer to IC 24-4.5-1-301, IC 32-30-6-1 and IC 36-7-4-616(b) for examples.

b. IC 6-1.1-4-13(a) declares, "In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use." IC 6-1.1-4-13(d) states, "This section does not apply to land purchased for industrial, commercial, or residential uses."

Subsections (a) and (d) have read the same since before the 1979 reassessment. Re-interpretation of agricultural land classification was not directed for the 2006-pay-2007 trending.

c. Based on IC 6-1.1-4-13, land "devoted to agricultural use" shall be assessed as agricultural land. However, land "***purchased for***" an industrial, commercial, or residential uses shall not be assessed as agricultural land. Additionally, according to the *Guidelines*, "[a]ll land ***utilized*** for agricultural purposes is valued" using a statewide base rate and a soil productivity index system[1]. The *Guidelines* also assert that "the parcel's size does not determine the property classification or pricing method for the parcel.[2]" Rather, "the property classification and pricing method are determined by the property's use or zoning.[3]" For example, some commercial and industrial zoned acreage tracts devote a portion of the parcel to an agricultural use. The assessor classifies these parcels as either commercial or industrial. However, the portions of land devoted to agricultural use are to be valued using the agricultural land assessment formula. Portions not used for agricultural purposes are to be valued using the commercial and industrial acreage guidelines.[4]

d. Examples:

(1) A major industrial corporation purchased a 40 acre corn field to locate a corn processing facility in Indiana. After under-going the local zoning process, the entire parcel was re-zoned from agricultural zoning to industrial zoning. The corporation has utilized 15 acres of the parcel by constructing a manufacturing and warehouse facility with the idea that the remaining 25 would be available for future expansion, if necessary. The 25 acres in reserve is currently being cash rented to a local agricultural producer, who row-crops the acreage.

Conclusion: The assessor should assign a property classification of 310 - Food and drink processing facility to the 40 acre parcel. The 15 acre portion of the acreage that is utilized for industrial purposes should be assigned land use codes representing the industrial acreage base rates for that particular area of the township. The 25 acre portion of the parcel that is being row-cropped by the local farmer should be valued using the agricultural productivity method of pricing. The 25 acres would have the soil types delineated by soil type, have each type soil analyzed for its land cover class, and have its assessment calculated using the agricultural base rate for that particular year.

(2) The ACME Development Company purchased a 30 acre parcel of land that was being used for agricultural purposes. ACME has appeared before the local zoning officials and has received a zoning change for the front 10 acres as to be commercial retail and the rear 20 acreage, which has access from an adjoining state highway, a zoning designation of commercial office. ACME immediately began constructing a retail shopping complex on front 10 acres of the parcel. The remaining 20 acres is being cash rented to a local farmer but is being offered for sale by a local real estate broker.

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[1] *Real Property Assessment Guidelines for 2002-Version A*, Book 1, Chapter 2, page 68.
[2] *Id*.
[3] *Id*.
[4] *Id*., page 100.

Conclusion: The 30 acre parcel should have a property class designation of 326 Neighborhood shopping center assigned to it. The 10 acre commercial portion of the parcel should be valued using the commercial acreage base rates for this area of the township. The 20 acre portion of the parcel that is being farmed by the local farmer should be valued using the agricultural productivity method. The 20 acres should have the soil types delineated by soil type, have each type soil analyzed for its land cover class, and have its assessment calculated using the agricultural base rate for that particular year.

(3) The Good Development Corporation (GDC) purchased a 20 acre parcel that was being used for agricultural purposes and had a property class code of 100 – Vacant land. The agricultural productivity method of calculating an assessment valued the parcel at $22,800 at the time of the purchase in October 2007. GDC purchased the land for the purpose of platting and developing a 40 lot residential subdivision. Once the local Area Planning Commission granted approval for the subdivision and changed the zoning from agricultural to residential, GDC did all the necessary paperwork and filed the plat with the county recorder's office in February 2008.

Conclusion: For March 1, 2008, the county auditor follows IC 6-1.1-5-3 and assigns parcel numbers to the 40 lots indicated on the plat of the subdivision and notifies the assessor that the 20 acre parcel has become 40 lots which need to be assessed for March 1, 2008. The assessor acknowledges that GDC is the developer by reviewing the plat and based on IC 6-1.1-4 – 12(h) knows that the overall assessment cannot be increased because the acreage has become 40 platted lots. However, the agricultural base rate within the agricultural productivity formula has increased from March 1, 2007's $1,140 to $1,200 for March 1, 2008. Before removing the 20 acre parcel from the computer system, the assessor recalculates an assessment for that parcel using the new 2008 rate of $1,200. The True Tax Value for this particular 20 acre parcel would equal to $24,000, if not platted into the 40 lots. Based on the language of IC 6-1.1-4-12(h), each of the 40 parcels would have an assessed value of $600 ($24,000 / 40 lots = $600 per lot). The application of this True Tax Value can be achieved in either of 2 ways:

(a) A flat value amount of $600 can be applied to each of the 40 property record cards, or

(b) The assessor can calculate the assessment by determining the lots size of each parcel, applying a front foot or acreage base rate that calculates the applicable 2008 value of improved land in the extended value area of the land summary section of the property record card, and granting an influence factor adjustments to each parcel that makes the value of each parcel equal to $600 per lot.

e. Land purchased and used for an agricultural purpose qualifies for all land use types associated with the agricultural classification and agricultural soil productivity method of pricing. This includes cropland or pasture land (i.e., tillable land) as well as woodlands[5].

[5] *Id*., pages 103-104.

f. IC 6-1.1-4-12 states that if land assessed on an acreage basis (i.e., agricultural land) is subdivided into lots; or land is rezoned for, or put to, a different use, the land shall be reassessed on the basis of its new classification. If improvements are added to real property, the improvements shall be assessed. Such an assessment or reassessment is effective on the next assessment date. For example, a corporation that purchased farmland, subdivided it into residential lots, and sold all but one lot, retaining ownership and converting that vacant lot into an income-producing shopping center, was not entitled to retain the lot's agricultural classification for property tax purposes. The land was properly re-classified from "agricultural" to "commercial" to reflect the land's change in use. *See Aboite Corp. v. State Bd. of Tax Com'rs*, 762 N.E.2d 254 (Ind. Tax Ct. 2001); *see also Howser Development LLC v. Vienna Twp Assessor*, 833 N.E.2d 1108 (Ind. Tax Ct. 2005).

g. However, IC 6-1.1-4-12(h) and (i), added by Public Law 154-2006, Section 1, clarifies the "developer's discount" for assessments after December 31, 2005. The "developer's discount" is designed to encourage developers to buy farmland, subdivide into lots, and resell the lots. The exception states that if a lot, or a tract that has not been subdivided into lots, to which a land developer holds title in the ordinary course of its business, may *not* be reassessed until the next assessment date following the earliest of:

(1) the date on which title to the land is transferred by the land developer (or successor land developer) to a person that is not a land developer; or

(2) the date on which construction of a structure begins on the land; or

(3) the date on which a building permit is issued for construction of a building or structure on the land.

The "developer's discount" applies regardless of whether the lot or tract is rezoned while a land developer holds title to the land. Thus, until one of the aforementioned events occurs, the land developer "reaps the benefit" of the lower agricultural land assessment.

h. Therefore, the controlling factors that determine whether land is to be assessed as agricultural land are whether the land was purchased for a non-agricultural use, and whether the land is currently used or zoned for an agricultural purpose; however, in some instances, the "developer's discount" may apply and reassessment of the land may not occur until transfer of title to a non-developer, the start of construction of a building, or the issuance of a construction permit.

3. Rules

a. The definition of "agricultural land" in the *Guidelines* provides ample basis for the vast majority of assessor decisions. These guidelines were adopted as directed in IC 6-1.1-4-13(c) and incorporated by reference into 50 IAC 2.3-1-2.

b. According to the *Guidelines*, there is a subtle distinction between residential acreage tracts and land valued using the agricultural soil productivity method. The basis for this distinction is

the different valuation methods used to determine land value for the two types of land. "Agricultural land" is valued using a statewide base rate and a soil productivity index system. All land utilized for agricultural purposes is valued in this manner. "Residential land" is land that is utilized or zoned for residential purposes[6].

4. Other References

a. Assessors are further directed that all acres enrolled in programs of the United States Department of Agriculture (USDA), Farm Services Agency, and Natural Resources Conservation Service and have received a "farm number" are eligible for classification as "agricultural." Those acres have been determined by those administering federal programs to be a part of an "agricultural operation." This applies to non-homestead acreage.

b. As further evidence of the proper classification of woodlands as agricultural land, the Indiana State Department of Agriculture (ISDA) considers the growing of timber as an agricultural activity by identifying the need to "increase Indiana's competitiveness in the hardwood sector" as one of its eight major strategies. The Department's practices and rules support the assertion that the growing of timber is a viable Indiana agricultural crop and should be assessed as such.

c. The Department recognizes that certain circumstances may blur the line between the residential property class designation and the agricultural designation when wooded areas are involved. In the preparation of this memorandum, the Department has consulted with the Department of Natural Resources (DNR). The DNR monitors Indiana's timberland and classified forest programs. In its implementation of the Classified Forest and Wildland Certification Program authorized in IC 6-1.1-6, participating woodland owners with 10 acres or more automatically qualify for the American Tree Farm System's certification benefits, which include marketing the forest's products as "green certified." The Classified Forest and Wildland Program materials also state that timber harvest is not required to qualify for the classification program. The Department believes that the guidelines used for the classified program are applicable when distinguishing agricultural use from non-agricultural use, but other agricultural uses may qualify a parcel for the productivity method of valuation.

5. Parcel Size

As stated above, the issue of parcel size has no bearing on the appropriate classification or pricing method of agricultural land, whether the parcel is wooded or used for other agricultural activities.[7]

6. Woodland

a. "Woodland" is defined in the *Guidelines* as "land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana

[6] *Id*., page 68.
[7] *Id*., page 68.

Department of Natural Resources as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland.[8]"

b. A wooded parcel of land less than 10 acres may be assessed using the agricultural soil productivity method upon evidence of timber production or other agricultural use. In addition, smaller than 10 acre parcels not contiguous with other wooded parcels under the same ownership may qualify as "agricultural." Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a "farm number" or programs designed to foster timber production management. The determining factors are provided in IC 6-1.1-4-13 and the *Guidelines*. Of particular interest to the assessor is the reason for the purchase of the land.

c. A wooded parcel of land over 10 acres shall be classified and valued as agricultural land using the same methods and considerations outlined above.

d. While not controlling in the assessor's determination, the following factors may be of assistance:

(1) the acreage is designated by the DNR as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs;

(2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest;

(3) the owner possesses a DNR management plan to further enhance the forest quality; and

(4) the owner can show that regular forest harvests have occurred over a long time period.

7. Woodland Examples

a. A seven acre parcel of land that comprises a one acre home site and six acres of woods. The property owner claims that the six acres of woods should be assessed at the agricultural rate because the increase in the assessment caused by the residential "excess acreage" classification is exorbitant. The owner acknowledges that there is no timber management plan in-place. He bought the seven acre parcel because the Zoning Department requires at least five acres to construct a dwelling in a non-subdivided rural area.

Conclusion: The owner admits purchasing the parcel to satisfy residential use, not agricultural use. There is no evidence the land is used for an agricultural purpose. Additionally, there is no evidence of a timber management plan in-place, or past timber harvests. The parcel should be priced using the residential excess acreage rate.

[8] *Id*., page 104.

b. Various wooded parcels, both large and small, within a county have been reclassified from the agricultural productivity method of calculation to a flat excess acre rate. The following are examples:

(1) An 81 acre parcel has a one acre home site, 61 acres of woods, and 20 acres of tillable land. The county classified the 61 acres of woods using an excess acreage rate. The 61 acres of wooded area is determined to be land capable of producing timber or other wood products and has 50% or more canopy cover.

Conclusion: The parcel's segmented land use types should continue to be priced using the agricultural productivity method because the parcel was purchased for agricultural use and is utilized for agricultural purposes as described in the *Guidelines*. Evidence of a farm number is also a factor in the assessor's determination.

(2) Mr. Zee recently inherited a 54 acre parcel upon the death of his grandfather. The grandfather pastured the hillside property in the 1970s but had let the pastures overgrow with vegetation for the past 30 years. The parcel has a one acre home site and 53 acres of woods. Mr. Zee, who has no affiliation with agriculture, is planning on moving his family into the dwelling but has no plans for the 53 acre woods. The property is not enrolled in a Federal Government program, there is no timber management plan in-place, the parcel is not enrolled in a classified program, nor has there ever been a timber harvest associated with the parcel. The parcel's assessed value was calculated using the agricultural productivity method before the 2006 trending. As a result of trending, the 53 acres of woods was priced at the residential "excess acre" rate.

Conclusion: The land is appropriately classified because Mr. Zee did not purchase the land with the intent to pursue agricultural activities. Additional considerations are that Mr. Zee does not have a farm number, and he has not produced evidence of a timber management program.

(3) An eight acre parcel contains a one acre home site and seven acres of woods in an exclusive residential setting. Lots are purchased and sold in this neighborhood as residential. The owner asserts that the land is properly classified as agricultural because he cuts and sells firewood. He also files a farm schedule with his Federal Income Tax claiming that he is an agricultural producer, but does not have a farm number.

Conclusion: Firewood alone is not evidence of agricultural activity. The assessor should examine the reasons for the purchase of the land and its current use. Evidence of a farm number, enrollment in classified forest programs, or timber harvests may be taken into consideration. In making a final determination, the assessor should outline statutory or rule reference to support the conclusion.

8. Other Agricultural Uses

a. A 40 acre parcel, which at one time was a small farm, has since become a mixture of small, scattered trees and brush with less than 50% canopy cover. The assessor classified this

parcel as residential excess acreage; the effect of which created a higher assessed value and tax burden than the agricultural soil productivity method.

Conclusion: The current owner purchased the parcel as an agricultural property many years ago. The land is currently uncultivated or fallow, but has not changed use nor been re-zoned. This parcel should continue to be classified as agricultural as it was purchased for agricultural use and is used as "non-tillable land" as defined in the *Guidelines*.

b. A five acre parcel has a one acre homesite and cattle grazing on the remaining four acres. The assessor classified the four acres using the residential excess acreage rate and refuses to acknowledge the presence of grazing cattle as an agricultural activity because the parcel is less than 10 acres. The county has an unofficial policy of denying agricultural classification to parcels of less than 10 acres.

Conclusion: The grazing of cattle is an agricultural activity; thus, the parcel should be assessed using the agricultural productivity method as it meets the definition of "agricultural operation" in IC 32-30-6-1 and in the *Guidelines*, which define agricultural "tillable land" as land used "for cropland or pasture that has no impediments to routine tillage." The size of the parcel has no bearing on the determination of agricultural classification.

c. A five acre parcel has a one acre home site and the remaining four acres is devoted to hay production. The county classified the hay field using the residential excess acre rate. The owner has a signed statement from a neighboring dairy farmer that the neighbor harvests the hay from the field for his cattle.

Conclusion: The acreage meets the criteria of agricultural "tillable land" as defined in the *Guidelines*. The four acres should be priced using the agricultural soil productivity method. The size of the parcel has no bearing on the determination of agricultural classification.

9. In conclusion, land that meets the definition of the agricultural land use type of "woodland" should not be re-classified and valued at the residential excess acreage rate due to parcel size. The controlling factors that determine whether land is to be assessed as agricultural land are whether the land was purchased for a non-agricultural use, and whether the land is currently used or zoned for an agricultural purpose; however, in some instances, the "developer's discount" may apply and reassessment of the land may not occur until transfer of title to a non-developer, the start of construction of a building, or the issuance of a construction permit. It is the Department's hope that this memorandum has provided helpful guidance.

10. If you have any questions, please feel free to contact the Assessment Division Director, Barry Wood, at bwood@dlgf.in.gov or (317) 232-3762.