

REPRESENTATIVE FOR PETITIONER: Bradley Hasler, Dentons Bingham Greenbaum LLP
REPRESENTATIVE FOR RESPONDENT: Beth Henkel, Esq.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HOBBY LOBBY STORES, INC.,)	Petition Nos.: 20-012-22-2-8-00431-22
)	20-012-22-2-8-00432-22
Petitioner,)	
)	Parcel Nos.: 20-06-05-453-007.000-012
)	20-06-05-389-016.000-012
v.)	
)	County: Elkhart
)	
ELKHART COUNTY ASSESSOR,)	Assessment Year: 2022
)	
Respondent.)	

February 29th, 2024

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Hobby Lobby Stores, Inc., (“Hobby Lobby”) appeals the denial of its application for a religious, educational, and charitable exemption on a church building and grounds (the “Subject Property”) that it purchased from one church and leased to another church. Hobby Lobby moved for summary judgment, but it was not fully briefed until the day of the hearing on the merits. We deny summary judgment but conclude that Hobby Lobby has established on the merits that it owns the Subject Property for a religious purpose.

PROCEDURAL HISTORY

2. On March 30, 2022, Hobby Lobby filed two Form 136 applications for exemptions on the subject parcels requesting religious, charitable, and educational exempt status. On May 4, 2022, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued Forms 120 denying the applications by finding both parcels to be 100% taxable. Hobby Lobby timely filed Form 132 appeals with the Board. Through case management conferences, a hearing date of October 24, 2023, was selected and noticed for final hearing.
3. On September 15, 2023, Hobby Lobby filed its “Petitioner’s Motion for Summary Judgment” and “Brief in Support of Petitioner’s Motion for Summary Judgment” and designated the following evidence:

Petitioner Ex. P-1:	Affidavit of Les S. Miller
Petitioner Ex. P-2:	Property Record Card (“PRC”) for parcel 20-06-05-453- 007.000-012
Petitioner Ex. P-3:	PRC for parcel 20-06-05-389-016.000-012
Petitioner Ex. P-4:	Corporate Warranty Deed from First Congregational Church to Hobby Lobby Stores, Inc. recorded December 29, 2021
Petitioner Ex. P-5:	Affidavit of Reverend S. Elizabeth Harbin
4. On October 18, 2023, the Elkhart County Assessor (“Assessor”) filed her “Assessor’s Designation of Material Issues of Fact and Brief in Opposition to Petitioner’s Motion for Summary Judgment” and designated the following evidence:

Respondent Ex. R-1:	Corporate Warranty Deed dated December 28, 2021
Respondent Ex. R-2:	Indiana Secretary of State’s “Certificate of Authority” for Hobby Lobby Stores, Inc.
Respondent Ex. R-3:	Lease Agreement between Hobby Lobby Stores, Inc. and Elkhart City Church, Inc. dated December 28, 2021
5. On October 24, 2023, Hobby Lobby filed its “Petitioner’s Reply Brief in Support of Motion for Summary Judgment” and designated no additional evidence.

6. On October 24, 2023, our designated administrative law judge, David Smith (“ALJ”), held a final hearing¹ on the merits. Neither he nor the Board inspected the property.
7. Bradley Hasler, Attorney, appeared for Hobby Lobby. Beth Henkel, Attorney, appeared for the Assessor. Neither party presented witness testimony at the hearing.
8. Hobby Lobby offered no exhibits at the hearing and relied on the materials designated in its summary judgment motion.
9. The Assessor offered the following exhibits at the hearing:
 - Respondent Ex. 1: Corporate Warranty Deed from First Congregational Church to Hobby Lobby Stores, Inc. dated 12/28/2021, recorded 12/29/2021
 - Respondent Ex. 2: “Certificate of Authority” for Hobby Lobby Stores, Inc.
 - Respondent Ex. 3: Lease Agreement between Hobby Lobby Stores, Inc. and Elkhart City Church dated 12/28/2021
 - Respondent Ex. 4: Indiana Code § 6-1.1-11-1.5
 - Respondent Ex. 5: *Hamilton County PTABOA v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654 (Ind. 2010)
 - Respondent Ex. 6: Indiana Code § 6-1.1-10-36.3
10. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal, (2) all notices and orders issued by the Board or our ALJ, and (3) an audio recording of the hearing.

FACTS NOT IN DISPUTE

11. This appeal relates to a church building and two parcels of land, roughly totaling one acre, located at 431 S. Third Street in Elkhart, which the First Congregational Church of Elkhart (“First Church”) owned and occupied for many years.² On December 28, 2021, First Church sold the property to Hobby Lobby, a for-profit corporation. On the same date, Hobby Lobby leased the property to Elkhart City Church, Inc. (“Elkhart City Church”), at the rent of \$1.00 a month. The lease required Elkhart City Church to use the property for “religious and educational purposes.” The one-year term of the lease could

¹ On September 28, 2023, the Board issued an order denying Hobby Lobby’s motion for continuance.

² While this is likely inaccurate, the property record cards list First Church as the owner since January 1, 1901.

be renewed up to five times, but Hobby Lobby could also terminate the lease with 30-days-notice. *Forms 132; Pet'r Exs. P-4, P-5; Resp't Ex. R-1, R-3.*

12. Included as a supplement to the Forms 132 is a letter dated April 1, 2022, specifically pleading that:

Hobby Lobby's religious beliefs motivated it to acquire the subject property for the purpose of leasing it to a church for a rental amount that frees up the maximum amount of funds for the church to devote to ministry.

Hobby Lobby also appended a U.S. Supreme Court decision referencing the company's statement of purpose to support Christian ministries and acknowledging its sincerely held religious beliefs. *Forms 132.*³

13. The parties do not dispute that the Subject Property is a church and that First Church and Elkhart City Church occupied and used the property for religious purposes during the 2021 calendar year.⁴

CONCLUSIONS OF LAW

A. ANALYSIS

14. Although tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional power to exempt certain categories of property. *Hamilton Cnty. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 656-57 (Ind. 2010). All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a). The exemption extends to a tract of land on which an exempt building is situated, as well as to parking lots and other structures that serve the exempt building. I.C. § 6-1.1-10-16 (c)(1)-(2). It also applies to personal

³ The letter is authored by counsel for Hobby Lobby, who acted as power of attorney and signed the Forms 132 under oath. Accordingly, Hobby Lobby's application alleges that it purchased the property for a religious purpose.

⁴ The activities of First Church in 2021 were curtailed by COVID and the decision of the congregation to close the church. It does not appear that Elkhart City Church conducted any services during the first three days of its lease commencing December 28, 2021, but the lease clearly granted possession on that date. *Aff. of Les Miller; Forms 136 (Lease; Excerpt from Elkhart City Church website).*

property that is owned and used in a manner that would make it exempt if it were a building. I.C. § 6-1.1-10-16(e).

15. Because exemptions relieve properties from bearing their fair share of the cost of government services, they are strictly construed against the taxpayer. *Id.* at 657. A taxpayer therefore bears the burden of proving that its property is entitled to the exemption it seeks. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citation omitted), *review denied*. It is axiomatic that “determining whether an exemption applies is a fact-sensitive inquiry.” *Hamilton Cnty. Assessor v. Duke*, 69 N.E.3d 567, 570 (Ind Tax Ct. 2017).
16. If a property is not owned, occupied, and used by a single entity, then “both entities must demonstrate that they possess their own exempt purposes.” *Oaken Bucket*, 938 N.E.2d at 657. Generally, a landlord “holds the property for its own benefit, not that of the public, and thus its property is not entitled to the statutory exemption.” *Id.* at 659. This is because, no matter how charitable the tenant, a landlord “applies the rents from the land to his own personal advantage,” and the underlying purpose of ownership is “for his own use, benefit [and] individual profit,—and not for the public good.” *Id.* at 659 (*citing Travelers' Insurance Co. v. Kent*, 151 Ind. 349, 50 N.E. 562 (Ind. 1898); *Hammer v. MacGurn*, 86 S.W. 138, 139 (Mo. 1905)). Charging below market rent “may demonstrate some indicia of the entity’s beneficent motives . . . [b]ut more is required to show that the entity possesses its own exempt purposes.” *Oaken Bucket*, 938 N.E.2d at 658.
17. In *Oaken Bucket*, a landlord leased part of a multi-unit office building to a church through a triple-net-lease. *Id.* at 655. It sought a religious use exemption which was denied by the county and the Board. *Id.* The Tax Court reversed the Board and granted the exemption. *Id.* The Supreme Court, after finding that the Tax Court erred in reweighing the Board’s determination that the landlord did not charge below-market rent, reversed the Tax Court and held that the exemption should be denied. *Id.* at 658. The Court held

that even if the landlord had leased the property to the church at below-market rent, the landlord still failed to establish its own exempt purpose. *Id.* at 658, 659-660.

1. Summary Judgment

18. Our procedural rules expressly authorize the filing of motions for summary judgment pursuant to the Indiana Rules of Trial Procedure. 52 IAC 4-7-3. Summary judgment is appropriate only when the designated evidence proves that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Wittenburg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E. 2d 483, 487 (Ind. Tax Ct. 2002), *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 873 N.E. 2d 1099, 1110 (Ind. 2012). The moving party must make a prima facie case to meet both prongs. *Coffman v. PSI Energy, Inc.*, 815 N.E. 2d 522, 526 (Ind. Ct. App. 2004). If the moving party satisfies its burden, the non-movant may not rest upon its pleadings, but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Hughley v. State*, 15 N.E. 3d 1000, 1003 (Ind. 2014). In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-moving party. *Carey v. Ind. Physical Therapy, Inc.* 926 N.E. 2d 1126, 1128 (Ind. App. 2010). Summary judgment “should not be granted when it is necessary to weigh the evidence.” *City of Marion v. London Witte Group*, 169 N.E.3d 382, 395 (Ind. 2021).
19. We take this moment to note that the use of summary judgment in the administrative setting is best limited to procedural disputes or narrowing questions of law in a complex case. While it is true an exemption case rarely involves conflicting testimony, the adjudication of the case largely depends on what weight should be accorded to the facts. On summary judgment, all facts and inferences must be construed in favor of the nonmoving party, which will often defeat the motion. If the motion is denied, often the exact same evidence and arguments are presented a second time at the hearing on the

merits. In terms of judicial economy, this is inefficient for both the Board and the parties.⁵

a. Hobby Lobby has presented a prima facie case for summary judgment.

20. In its summary judgment motion and briefing, Hobby Lobby makes two factual showings to support its claim for an exemption. The first designation of facts relies entirely on First Church's use of the property in 2021 to justify an exemption on the property for 2022. It argues that those are the relevant and dispositive facts necessary to establish eligibility for an exemption under the predominant use statute, I.C. § 6-1.1-10-36.3(a). This statute looks to the "time that [the property] is used or occupied in the year that ends on the assessment date of the property" in determining the predominant use of the property. *Id.* Hobby Lobby reasons that because First Church occupied and used the property for all but three days of 2021, these facts establish that the property was predominantly used for a religious purpose and an exemption should be awarded for 2022.
21. While it is true that eligibility for an exemption depends on the use of the property in the year prior to the assessment date, the focus of I.C. § 6-1.1-10-36.3(a) is "on the amount of time that property was used for exempt purposes in relation to its total usage." *Duke*, 69 N.E.3d at 570. The Assessor argues that this statute must be read in tandem with another statute, I.C. § 6-1.1-11-1.5(b):

An award of an exemption from property taxation for tangible property for a particular assessment date must be based on the tangible property's eligibility of the exemption on that assessment date.

Accordingly, the Assessor argues an exemption may not be awarded without a factual showing of an exempt use of the property on the assessment date regardless of another owner's use in the prior year. We agree with the Assessor. Relying on Chapter 11, the Tax Court has held an exemption should be denied where there was "significant

⁵ If the parties believe a case can be resolved on a paper record (i.e. without live testimony and through the admission of affidavits or portions of depositions), the best practice would be to submit a joint stipulated record with accompanying briefing in lieu of a final hearing. Then the evidence would be presented only once, and the Board could issue its decision as trier of fact without the strictures of the summary judgment standard.

ambiguity” as to the owner’s use on the assessment date. *See Bros. of Holy Cross v. St. Joseph County Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548, 551 (Ind. Tax Ct. 2007).

22. Under Hobby Lobby’s interpretation, an undeserving entity could receive unmerited tax relief by piggybacking on the prior use by an exempt entity.⁶ Accordingly, we reject its arguments. First Church no longer occupied the property on the relevant assessment date, January 1, 2022, and we conclude Hobby Lobby must show its own eligibility for an exemption as of the assessment date. Accordingly, Hobby Lobby has failed to make a prima facie case under its first argument.
23. In its reply brief,⁷ Hobby Lobby makes a second factual showing in support of its motion for summary judgment. It states that “the designated evidence demonstrates that, as of January 1, 2022, Hobby Lobby owned the Subject Property for religious purposes to be used and occupied by a church.” In support, Hobby Lobby designates the terms of the lease with Elkhart City Church requiring the tenant to use the property for religious purposes and charging a nominal rent. *Pet’r.’s Reply Br. in Support of S.J. at 2-3.*
24. We must agree that this designation establishes a factual prima facie case, in conformity with I.C. § 6-1.1-11-1.5(b), that Hobby Lobby owned the subject property for religious purposes on the assessment date. It bought the church property and leased it to another church on the same day, at a rent of \$1.00 a month. These actions are entirely consistent with the religious purposes of establishing a church, namely Elkhart City Church. Additionally, there is no dispute the property was predominantly used as a church in the prior year, the showing necessary under I.C. § 6-1.1-10-36.3(a).
25. The burden now shifts to the Assessor to establish a material issue of fact that would preclude summary judgment.

⁶ We need not consider Hobby Lobby’s “Widget Corp.” hypothetical as we hold that a party must show an exempt use on *both* the assessment date and during the prior year. *Pet’r.’s Reply Br. in Support of S.J. at 3.*

⁷ The Board recognizes that the reply brief was received by the Assessor on the date of the hearing on the merits. The Assessor questioned whether a reply brief was contemplated under the Trial Rules, but she did not move to strike it.

b. Construing all facts and inferences in favor of the Assessor, Hobby Lobby is not entitled to summary judgment.

26. In the context of a summary judgment, our consideration of the evidence “resolves all doubts against the moving party, and construes all properly asserted facts and reasonable inferences in favor of the non-movant.” *National Ass'n. of Miniature Enthusiasts v. State Bd. of Tax Commr.'s*, 671 N.E.2d 218, 219, (Ind. Tax Ct. 1996).
27. The Assessor designates ten items that it characterizes as “material issues of fact.” Among them are the facts that Hobby Lobby is a for-profit corporation, it can terminate the lease with thirty-days-notice, and it reserves the right to “own, use, and ultimately develop and/or dispose of the property . . . [in Hobby Lobby’s] sole discretion” As these are simply recitations of facts not in dispute, the Assessor has failed to establish a genuine issue of disputed material fact. *Assessor’s Designation of Material Issues of Fact and Br. in Opposition to Pet’r.’s M. for S.J. at 1-2*.
28. But our analysis does not end here, as we must construe the undisputed facts and inferences therefrom as to “resolve all doubts” in favor of the nonmoving party. The Assessor argues that Hobby Lobby’s purpose in owning the property is in dispute, and the facts could support a finding of a for profit motive.
29. The Assessor argues that the lease terms, which allow Hobby Lobby to terminate with 30-days-notice, evinces a lack of commitment to Elkhart City Church’s religious use of the Subject Property. The Assessor would have us infer that Hobby Lobby, as a for-profit corporation, retained a commercial interest in selling or developing the property whenever advantageous, and therefore the facts should be construed to find a predominantly commercial purpose for owning the property. If we were to find and resolve those inferences in favor of the Assessor, then Hobby Lobby would not be entitled to an exemption under *Oaken Bucket* as it would not have a religious purpose for owning the property.

30. Because the facts, though undisputed, require us to “weigh the evidence,” summary judgment is inappropriate, and Hobby Lobby’s motion is therefore denied.

2. Determination on the Merits

31. We now consider the evidence as factfinder and on the merits. At the hearing, Hobby Lobby relied on the materials designated in its motion for summary judgment without objection. No testimonial evidence was presented by either party. In reaching a final determination, the Board will review the record as a whole, including the petitions and appended documents.

32. It is undisputed and we find that the property was predominantly owned, occupied, and used for religious purposes in 2021 by First Church and Elkhart City Church. Likewise, Elkhart City Church occupied and used the property on the assessment date, January 1, 2022, as established by the December 28, 2022, lease.⁸ As there is a lack of unity of ownership, occupancy, and use following the sale, Hobby Lobby must prove it owned the property for an exempt purpose as of January 1, 2022.

33. Hobby Lobby alleges that its “religious beliefs motivated it to acquire the subject property for the purpose of leasing it to a church for a rental amount that frees up the maximum amount of funds for the church to devote to ministry.” *Forms 132*. These allegations are well-borne out by the facts: Hobby Lobby purchased a church property from a closing congregation, leased it to a fledgling church on the exact same day, and set the rent at \$1.00 a month. The lease could be renewed up to five times for a six-year total occupancy. All of these facts credibly support Hobby Lobby’s claim that it purchased the Subject Property in order to reduce a financial burden and promote Elkhart City Church’s ministries.⁹

⁸ The predominant use test only looks to the “time that [the property] is actually used or occupied during the tax year at issue.” *Hamilton County Assessor v. SPD Realty, LLC*, 9 N.E.3d 773, 778 (Ind. Tax Ct. 2014). The exemption statutes also seek to avoid a gap in exemption eligibility when a property’s ownership or use transfers from one eligible user to another. See I.C. § 6-1.1-11-4; IC § 6-1.1-10-21. Likewise, property acquired for future use may still be exempt. See I.C. § 6-1.1-10-16.

⁹ Additionally, Hobby Lobby has included in its Form 132 the U.S. Supreme Court case of *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014), which includes a summary of the company’s religious motivations. Specifically,

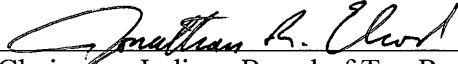
34. The Assessor counters that Hobby Lobby could terminate the lease at any time with 30-days-notice and develop the property for commercial uses. In offering a nearly free space to Elkhart City Church, we find more likely those lease provisions are there to ensure the church operates according to expectations, and for ease of repossession if the church were to fail. These are reasonable provisions consistent with a religious purpose—they in fact give Hobby Lobby the tools to ensure accountability and that the Subject Property is used for religious purposes. As factfinder, we find that Hobby Lobby is not engaged in a ruse to avoid taxation on a property investment, and its religious motivations are sincere.
35. Under the *Oaken Bucket* standard, we conclude that Hobby Lobby does not have an individual profit motive, as reflected in its nominal, dollar a month rent. Likewise, we find that Hobby Lobby holds and owns the property for the public good, namely the promotion of religion. Because the facts establish that Hobby Lobby had its own religious purpose for owning the property, we conclude the Subject Property was owned by Hobby Lobby and occupied and used by Elkhart City Church for religious purposes as of the January 1, 2022, assessment date.

FINAL DETERMINATION

36. Hobby Lobby is awarded a religious exemption for the Subject Property as of the January 1, 2022, assessment date.

Hobby Lobby, a closely held family business, is operated “in accordance with the family’s religious beliefs” and they actively “support Christian ministries.” *Id.* at 703.

We issue this Final Determination on the date first written above.



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>.