

REPRESENTATIVE FOR PETITIONER: Katie Kotter, Hart Bell, LLC

REPRESENTATIVE FOR RESPONDENT: Catherine Lane, Knox County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Chris and Jenifer Whobrey,)	Petition No.: 42-027-15-1-4-01557-16
)	
Petitioners,)	
)	
v.)	Parcel No.: 42-12-26-306-002.003-027
)	
Knox County Assessor,)	
)	
Respondent.)	Assessment Year: 2015

Appeal from the Final Determination of the
Knox County Property Tax Assessment Board of Appeals

January 11, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND 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:

I. Introduction

1. Chris and Jenifer Whobrey claim the Knox County Assessor over assessed their property. They offered an appraisal from Benjamin Hopkins, who used comparable sales to value the property. Hopkins appraised the property based on its highest-and-best use. He did not appraise the property at its current use, which was not an economically feasible use and would have led to a lower value. The Whobreys requested the value in Hopkins’ appraisal. The Assessor failed to significantly impeach Hopkins’ appraisal or offer her

own probative evidence to show a higher value. We therefore find that the Whobreys are entitled to have their assessment lowered to the amount reflected in the appraisal.

II. Procedural History

2. The Whobreys filed a petition with the Knox County Property Tax Assessment Board of Appeals (“PTABOA”), contesting their 2015 assessment. On June 27, 2016, the PTABOA determined the following value for the property:

Land: \$117,000 Improvements: \$189,700 Total: \$306,700

3. The Whobreys timely filed a Form 131 petition to appeal the PTABOA’s determination. On August 14, 2018, our designated administrative law judge, Kyle Fletcher (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property.
4. The following people were sworn as witnesses and testified: Jenifer Whobrey; Benjamin Hopkins, appraiser; and Catherine Lane, Knox County Assessor.
5. The parties offered the following exhibits:
 - Petitioner’s Exhibit 1 (A)¹: Maps/photos of subject property
 - Petitioner’s Exhibit 2 (B): 2015 pay 2016 Property Tax Appeal Form
 - Petitioner’s Exhibit 3 (C): Form 115 determination
 - Petitioner’s Exhibit 4 (D): Form 131 petition
 - Petitioner’s Exhibit 5 (E): Property record card (“PRC”) for the subject property and information for the subject property from Beacon website
 - Petitioner’s Exhibit 6 (F): Blossom Hill, LLC² profit and loss statements for 2014 and 2015
 - Petitioner’s Exhibit 7 (G): Benjamin Hopkins’ appraisal report for the subject property
 - Respondent’s Exhibit 1: 2013 PRC for the subject property

¹ The Whobreys’ referred to their exhibits by both numbers and letters. We will use numbers when we cite to them.

² After the assessment date at issue, the Whobreys transferred the subject property to Blossom Hill, LLC, an entity they own.

6. We recognize the following additional items as part of the record: (1) all filings by the parties; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

III. Findings of Fact

A. The Subject Property

7. The subject property is located at 2697 E State Rd 61 in Vincennes. It is in what Hopkins described as a “transitional land area,” meaning the area has a lot of farmland with rural home sites, some of which people try to turn into commercial uses such as offices or commercial storage. When the Whobreys first bought the property, Kohl’s had recently opened a store, and they thought it was an up-and-coming area. But the additional development they anticipated did not happen. *Whobrey testimony; Hopkins testimony; Pet’r Exs. 5, 7.*
8. The property contains a 3,584-square-foot pole barn and a parking lot on two acres of land. The building has a metal ceiling, wood siding both inside and outside, a bar, a restroom, and a food-prep area. The food-prep area contains a warming oven and a small chest freezer—it does not have walk-in coolers or freezers. The building’s maximum capacity is between 100 and 120 people. There are six paved parking spaces at the building’s entrance and a larger unpaved gravel lot and driveway. *Whobrey testimony; Hopkins testimony; Pet’r Exs. 5-7.*
9. In 2008, the previous owners, Steven and Linda Nesbitt, built the building as a retail shop for their 16-acre orchard. After a storm damaged part of the building, they began using it as an event space. During that time, the Whobreys owned and operated a catering business, and the Nesbitts had hired them several times to work events. Because of that working relationship, the Nesbitts eventually offered to sell the property to the Whobreys. The Nesbitts did not list the property with a real estate agent, and there is no evidence that they otherwise marketed it for sale. In August 2013, the Whobreys bought the

property, including all of the personal property used to operate the event center, for the Nesbitts' asking price of \$350,000. The Nesbitts did not bid against any other prospective buyers and they did not see any financial information for the event center before the sale. A financing appraisal supported the sale price. But neither party offered a copy of that appraisal or described how the appraiser reached his or her conclusions. *Whobrey testimony; Pet'r Ex. 7.*

10. The personal property involved in the sale included tables and chairs, mounted flat-screen TVs and projection equipment, kitchen and bar equipment, and other equipment. There is no evidence showing how the Nesbitts and Whobreys allocated the sale price between real and personal property. Although Jenifer Whobrey testified that the Whobreys claim less than \$20,000 in assessed value on their business personal property returns, she did not say for which years. *Whobrey testimony; Pet'r Ex. 7.*
11. After buying the property, the Whobreys completed the remaining events scheduled by the Nesbitts. The Whobreys now host between 20 and 30 events a year at the property, including weddings, receptions, birthday parties, and anniversary parties. *Whobrey testimony.*

B. Hopkins' Appraisal

12. The Whobreys hired Benjamin Hopkins, an Indiana certified general appraiser and member of the Appraisal Institute ("MAI"), to appraise the property. He certified that he performed his appraisal and prepared his report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Hopkins testimony; Pet'r Ex. 7.*
13. Hopkins estimated the market value of the fee simple interest in the property. He determined that the property's highest and best use as improved was for commercial storage. In his opinion, the Whobreys' use of the property as an event center was not financially feasible. The building is too small to host anything but small events. It does

not have room for a dance floor. And it lacks a walk-in cooler or freezer for food preparation and storage. Although the Whobreys operate a catering business and prepare food off-site, typical buyers do not. Hopkins believed that the building's low occupancy for events and the Whobreys' inability to generate sufficient cash flow from the building supported his conclusion. *Hopkins testimony; Pet'r Exs.6-7.*

14. Hopkins considered each of the three generally accepted appraisal approaches—the cost, sales-comparison, and income approaches. He decided against developing the cost approach because estimating depreciation for a building as old as the subject building would be too subjective. He also decided against the income approach, explaining that a typical buyer of a property like the subject property occupies it for commercial storage rather than renting it out. Although the Whobreys rented the property out for events, that use was not financially feasible. Applying the income approach based on the property's use as an event center would have shown it was worthless, which Hopkins did not believe was a reasonable conclusion. *Hopkins testimony; Pet'r Ex. 7.*
15. Hopkins first estimated the value of the land as if vacant. Because the property was located in a transitional area, he looked for sales of similarly situated land. He found three sales of vacant sites that were between 2.9 acres and 10 acres. One was from Vincennes and two were from the nearby town of Washington. He adjusted the sale prices to account for differences in market conditions, location, and physical characteristics. The adjusted sale prices ranged from \$25,375/acre to \$32,178.75/acre, with an average of \$28,715.13/acre. Hopkins settled on \$30,000/acre, or \$60,000 for the subject land. *Hopkins testimony; Pet'r Ex. 7.*
16. Hopkins then turned to sales of comparable improved properties. He chose five sales based on their similarity to the subject property: two each from Vincennes and Washington, and one from Wheatland. Two properties had pole barns. Another was used as an event center, but it sold for use as commercial storage when the event business

failed. Hopkins believed that sale in particular supported his conclusions about the subject property's highest-and-best use. *Hopkins testimony; Pet'r Ex. 7.*

17. As with his land sales, Hopkins adjusted the sale prices to account for relevant differences between the subject property and his comparable improved sales. He adjusted for differences in market conditions, location, and various physical characteristics, such as age, condition, and construction quality. The net adjustments increased the sale prices between 53% and 84%. The adjusted prices ranged from \$29.14/sq. ft. to \$43.05/sq. ft. with an average of \$35.62/sq. ft. Hopkins reconciled that range to a value of \$40/sq. ft. because the subject property was nicer than some of the comparable properties. Applying that unit price, Hopkins estimated the value at \$145,000. *Hopkins testimony; Pet'r Ex 7.*

IV. Conclusions of Law

A. Objection

18. The Whobreys objected to Assessor's Exhibit 1—a 2013 property record card for the subject property—because she did not identify the exhibit or provide a copy of it before the hearing. The ALJ took the objection under advisement.
19. Our procedural rules require each party to give all other parties a list of its witnesses and exhibits at least 15 business days before a hearing and copies of its documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b). This rule allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues at the hearing. Although we may exclude evidence for failure to comply with those requirements,³ we generally will not do so without some showing of prejudice.

³ See 52 IAC 2-7-1(f).

20. The Assessor did not even attempt to justify her failure to provide the Whobreys with an exhibit list or a copy of her exhibit. But the Whobreys were not unfairly surprised or prejudiced by the Assessor offering basic information about the property's assessment history. We therefore overrule the objection. In any case, admitting the exhibit does not affect our determination. The Assessor apparently offered the exhibit to impeach Jenifer Whobrey's testimony that the property had been assessed or zoned as agricultural when the Whobreys bought it and that she did not know it would later be taxed as commercial. We give no weight to Whobrey's testimony on that point in reaching our decision.

B. Burden of Proof

21. 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), (d). The parties agree that neither exception applies and that the Whobreys have the burden of proof.

C. The Whobreys proved that the subject property's market value-in-use was no more than \$145,000

22. Indiana assesses property based on its "true tax value," which is 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." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according USPAP often will be probative. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under

appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable 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).

23. 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). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the year under appeal was March 1, 2015. *See* I.C. § 6-1.1-2-1.5; I.C. § 6-1.1-4-4.5(f).
24. The Whobreys relied on Hopkins' USPAP-certified appraisal of the subject property. He considered all three generally accepted valuation approaches and explained his reasons for ultimately developing only the sales-comparison approach. He researched sales in the area and chose the ones he believed were the most comparable to the subject property. He then adjusted the sale prices to account for relevant differences between those properties and the subject property. In short, Hopkins completed what appears to be a methodologically sound appraisal.
25. That said, Hopkins' appraisal had some problems. As the Assessor pointed out, he made large gross and net adjustments to all his comparable sales. While the Assessor offered little to dispute the soundness of Hopkins' adjustments, the amount and size of those adjustments show that he was using less-than-ideal sales data. Under those circumstances, we are a little troubled by Hopkins' decision not to develop another valuation approach to provide at least a check on his conclusions under the sales-comparison approach. While he justified his decision not to develop the cost approach on grounds that the building's age made estimating depreciation too subjective, the building was only seven years old on the valuation date. Despite those problems, however, we are persuaded by Hopkins' opinion that the property's market value was \$145,000.

26. We also note that Hopkins did not purport to value the property for its current use, as required by Indiana's true-tax-value standard. But he convincingly explained that the current use was not economically feasible and that appraising the property based on that use would result in a lower value than the value he determined based on the property's highest-and-best use. The Assessor did little to dispute Hopkins' explanation. Although she claimed that her own analysis under the income approach showed that the property had value as an event center, she did not say what value her analysis yielded or explain how she prepared it. Hopkins' appraisal may not necessarily show what the property's true tax value was. Nonetheless, it persuades us that the true tax value was no more than \$145,000. And the Whobreys do not ask for a lower value.
27. Although the Assessor did little to impeach Hopkins' methodology, she did point to what she believed was better evidence of the property's value—the 2013 sale to the Whobreys. That sale, however, occurred more than 18 months before the valuation date at issue in this appeal, and the Assessor did not even try to explain how it related to the required date. Regardless, Hopkins and Jenifer Whobrey raised significant concerns about the reliability of the sale as an indicator of market value (or market value-in-use). Most significantly, there is no evidence that the Nesbitts exposed the property to the market. They instead simply contacted the Whobreys, with whom they had an existing business relationship, and asked if the Whobreys were interested in buying it. While a financing appraisal apparently supported the sale price, the Assessor offered nothing to show how the appraiser reached his or her conclusions. Without that information, the financing appraisal does nothing to allay our concerns about the usefulness of the sale price as an indicator of market value.
28. In addition, the Assessor offered no evidence to show how the Whobreys and Nesbitts allocated the sale price between real and personal property. The fact that the Whobreys later reported less than \$20,000 of personal property does little to help answer that question. Unlike real property assessments, in which assessors must determine market value-in-use, taxpayers generally must value their personal property by depreciating the

property's adjusted acquisition cost through asset-life pools provided by the DLGF. *See* 50 IAC 4.2-4-7. Had the Assessor offered the Whobreys' business personal property returns, those returns might have disclosed what the Whobreys reported as the personal property's acquisition cost. That, in turn, might have shed some light on how the Whobreys and Nesbitts allocated the sale price. But the Assessor did not offer the Whobreys' returns.

V. Final Determination

29. Based on Hopkins' appraisal, we find that the Whobreys are entitled to have their 2015 assessment reduced to \$145,000.

We issue this Final Determination of the above-captioned matter 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>>.