

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

<p>SIOUX CITY BOARD OF REVIEW and ALAN JORDAN, ASSESSOR FOR SIOUX CITY, IOWA,</p> <p>Petitioners,</p> <p>vs.</p> <p>IOWA PROPERTY ASSESSMENT APPEAL BOARD,</p> <p>Respondent.</p>	<p>NO. CVCV174678</p> <p>RULING ON PETITIONERS' PETITION FOR JUDICIAL REVIEW</p>
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This case comes before the Court pursuant to a Petition for Judicial Review filed by Petitioners, Sioux City Board of Review and Alan Jordan, Assessor for Sioux City, Iowa. On October 23, 2017, this matter came before the Court for judicial review. The Petition seeks review of a decision entered by the Iowa Property Assessment Appeal Board (hereinafter referred to as "IPAAB") on February 23, 2017, finding that Northwest Iowa Hospital Corporation is entitled to a partial charitable exemption under Iowa Code Section 427.1(8) for 66.28% of its property for Parcel No. 8847-09-352-004. The decision of IPAAB reversed the Sioux City Board of Review's decision entered May 28, 2015, which had denied the partial charitable exemption. IPAAB filed its Answer to the Petition for Judicial Review on March 27, 2017. Attorney Jack Faith represents the Petitioners and attorney Jessica Braunschweig-Norris represents the Respondent. Northwest Iowa Hospital Corporation (hereinafter referred to as "Northwest Iowa") filed an Application to Intervene on April 18, 2017, which Application was granted by the Court on April 28, 2017. Northwest Iowa, who is represented herein by Charles

Corbett, then filed its Answer to the Petition for Judicial Review on May 2, 2017. Pursuant to the order of the Court, the parties submitted briefs supporting their respective positions and the matter was submitted without oral argument. After considering the briefs and arguments of the parties, and reviewing the record submitted as well as the applicable law, the Court enters the following ruling on the Petitioners' Petition for Judicial Review.

PROCEDURAL HISTORY

On January 28, 2015, Northwest Iowa filed an Application for Property Tax Exemption with the Sioux City Assessor's Office for the Sunnybrook Medical Plaza property. In this Application Northwest Iowa claimed that the entire parcel was exempt from taxation under the provisions of Chapter 427.1(8) of the Code of Iowa. This application was denied by the Assessor for the City of Sioux City on March 9, 2015.

Northwest Iowa then filed a Petition with the Sioux City Board of Review on May 5, 2015, in which Northwest Iowa again claimed a 100% exemption on the Sunnybrook Medical Plaza property.¹ Subsequent to the filing of the Petition with the Sioux City Board of Review, Northwest Iowa filed an Amendment to its Petition in which it reduced the total percent of the parcel it claimed to be exempt to 66.28% of the total assessed value. After hearing, the Sioux City Board of Review found that the assessment for the Sunnybrook Medical Plaza property was correct and that the property did not qualify under Section 427.1 for exemption.

Northwest Iowa then filed a Notice of Appeal to IPAAB on July 21, 2015, appealing only the issue of whether the property was exempt. A hearing on the appeal

¹ Northwest Iowa also appealed the 2015 Assessed Value of the property but did not further appeal the Assessed Value to the IPAAB.

was held before IPAAB on October 19, 2016. On February 23, 2017, IPAAB issued its Findings of Fact, Conclusions of Law, and Order finding that Northwest Iowa was entitled to a partial charitable exemption under Iowa Code Section 427.1(8) for 66.28% of its Sunnybrook Medical Plaza property.

The Sioux City Board of Review and Alan Jordan, the City Assessor for Sioux City, then filed their Petition for Judicial Review on March 9, 2017, pursuant to Iowa Code Sections 17A.19, 441.38, 441.38B and 441.39. In its Petition for Judicial Review, the Petitioners requested that the Court find that the IPAAB's Order of February 23, 2017, be set aside and further find that Northwest Iowa is not entitled to a charitable exemption for 5885 Sunnybrook Drive, Sioux City, Iowa (Parcel No. 8847-09-352-004) and affirm the action of the Sioux City Board of Review denying the claim for exemption for the reasons that the IPAAB order was:

a. based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency;

b. based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record when the record is viewed as a whole;

c. based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency; and

d. otherwise unreasonable, arbitrary, capricious or an abuse of discretion.

The IPAAB filed its Answer to the Petition for Judicial Review on March 27, 2017, and requested that the Court affirm its decision. Northwest Iowa filed its Answer on May 2, 2017, likewise requesting that the action of the IPAAB be affirmed.

STATEMENT OF FACTS AND RULING OF IPAAB

Northwest Iowa is a 501(c)(3) nonprofit entity and is part of Unity Point Health. Northwest Iowa's Articles of Incorporation provide that no earnings of the corporation shall inure to the benefit of or be distributed to its members, directors, officers or other persons. Northwest Iowa also has a stated policy that it will provide services regardless of an individual's ability to pay.

Northwest Iowa's main hospital facility is known as Unity Point St. Luke's Regional Medical Center which is located on the Northside of Sioux City, Iowa. Northwest Iowa also operates an outpatient medical facility known as Sunnybrook Medical Plaza which operates under the St. Luke's Iowa Hospital license. Sunnybrook Medical Plaza is located at 5885 Sunnybrook Drive, which is located in the Morningside (Eastside) area of Sioux City and is identified as Parcel #8847-09-352-004. The property has an assessed value of \$14,565,600 as of the 2015 assessment.

Northwest Iowa constructed the Sunnybrook Medical Plaza in 2012/2013. Funding for the construction came from St. Luke's internal funds in the amount of \$4,440,562 plus \$21,000,000 in funds borrowed from Iowa Health Systems. The internal funds are cash reserves that had accumulated over the years by Northwest Iowa through the operation of its hospital. A portion of the building constructed is leased to an Urgent Care Clinic, a primary physician's office and a specialty physician's

office. The space leased to these entities totals 33.72% of the building, leaving 66.28% used by Northwest Iowa for its Sunnybrook outpatient clinic.

Sioux City has two hospitals, Unity Point St. Luke's which is located on the Northside of Sioux City, and Mercy Hospital which is located in downtown Sioux City. Part of Northwest Iowa's reasons for constructing the Sunnybrook Medical Plaza was the lack of hospital services in the Morningside area of Sioux City. Northwest Iowa provides the following services at the Sunnybrook outpatient clinic: outpatient radiology and breast screening services, preparation of medications for outpatient services, outpatient IV infusion services, outpatient phlebotomy and lab services, outpatient cardiac clinic and testing services, outpatient cardiology and pulmonary rehab services, and outpatient diabetic education services. The cardiac rehabilitation and pulmonary rehabilitation services, as well as outpatient mammography services, are provided exclusively at the Sunnybrook location, although the same or similar services may be provided by other providers outside the Northwest Iowa organization.

In determining fees to be charged for services rendered at Sunnybrook, consideration is given to what it takes to meet expenses for the service being provided. Sunnybrook is also limited as to what it can charge by Medicaid/Medicare guidelines and health insurance reimbursement limitations. Patients are advised of the availability of financial assistance when registering, with the assistance policy being based on Federal Poverty Income Guidelines. When a patient registers they are advised of available assistance. The summary of assistance is available in twelve different languages and on-site and off-site interpreters are available. Patients expressing an interest in financial assistance are provided an application and they are immediately

advised if they qualify for assistance. Approximately 97% of applicants receive some amount of financial assistance. Payment plans are also offered to patients who receive minimal or no financial assistance. The total number of patients served at the Sunnybrook clinic in 2013 was 7,951, 29,731 in 2014, 34,229 in 2015 and 21,827 through July 2016. The number of patients granted financial assistance and the amount of said assistance in 2013 was 108 (\$33,253), 396 in 2014 (\$190,333), 594 in 2015 (\$248,350) and 524 through July 2016 (\$132,394). The percentage of patients receiving financial assistance was 1.35% in 2013, 1.33% in 2014, 1.74% in 2015 and 2.4% in 2016. The Sunnybrook clinic had a net operating loss of \$1,728,254 in 2013, an operating profit of \$178,923 in 2014, and operating losses of \$194,828 and \$28,353 in 2015 and 2016 respectively.² In 2015, had the charitable exemption not applied, a tax of \$354,751 would have been imposed on the Sunnybrook property which Northwest Iowa claimed as exempt.

St. Luke's Health Foundation is a separate 501(c)(3) corporation under the Iowa Health Systems umbrella that acts as a fundraising agent for St. Luke's Regional Medical Center and Northwest Iowa for the use in the provisions of services and replacement of capital and equipment. Funds provided by St. Luke's Health Foundation are used by Northwest Iowa for education of staff, replacement of equipment, purchasing new equipment and support of existing services that do not cover their own costs. The Foundation has established restricted funds for the operations at Sunnybrook with the Center for Heart/Vascular services having balances of \$227,820 and \$139,254 respectively as of September 2016 and the Mammography Center using

² Northwest Iowa as a whole had large operating profits.

funds from the Foundation in the amount of \$175,607 from November 2013 to February 2015.

From September 2013 to August 2016 volunteers donated 2,096.75 hours of services to Sunnybrook. Volunteers are scheduled to be at the facility from 8 a.m. to 4:30 p.m. Monday through Friday.

In order to determine whether Northwest Iowa was entitled to a charitable exemption, the IPAAB found that Northwest Iowa had to establish three factors by a preponderance of the evidence³, namely:

1. that it was a charitable institution at the time of the claimed exemption;
 2. that it did not operate the facility with a view to pecuniary profit;
- and
3. that the actual use of facility was solely for the appropriate objects of the charitable institution.

Considering the evidence presented, the IPAAB concluded that Northwest Iowa met its burden of proof in establishing each of these three factors.

STANDARD OF REVIEW

On judicial review of an agency's decision, the district court acts in its appellate capacity. *Greater Cnty. Hosp. v. Pub. Employment Relations Bd.*, 553 N.W.2d 869, 871 (Iowa 1996). Under Iowa Code Section 17A.19(1), a person aggrieved or adversely affected by a final agency action is entitled to judicial review. Iowa Code Section 17A.19(10) provides that the district court exercises its power of judicial review when it

³ The IPAAB was relying on the guidance of the Iowa Supreme Court in *Carroll Area Child Care Ctr, Inc. v. Carroll County Board of Review*, 613 N.W.2d 252, 254-255 (Iowa 2000).

acts in an appellate capacity to review an agency action and correct errors of law. *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 265 (Iowa 2001) (citing *IBP, Inc., v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000)). The district court does not exercise de novo review. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). The scope of judicial review is limited to the determination of whether the agency committed any errors of law specified in Iowa Code section 17A.19(10)(a)–(n). *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001).

A reviewing court may reverse, modify, or grant other relief when the substantial rights of a person seeking judicial review were prejudiced for reasons listed in Iowa Code Section 17A.19(10). The burden of proof on judicial review lies with the party challenging the agency action. Iowa Code Section 17A.19(8)(a).

The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

Section 17A.19(10)(c)

The agency action is “Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.” If the court concludes that the agency has not been clearly vested with the authority to interpret a provision of law, the court may substitute its own interpretation if it finds the agency’s interpretation is erroneous. *Tremel v. Iowa Dep’t of Revenue*, 785 N.W.2d 690, 692-93 (Iowa 2010). IPAAB has the authority to adopt rules for the administration and implementation of its power but has not been given

explicit authority to interpret Iowa Code Chapter 427. *Nauman v. Iowa Property Assessment Appeal Bd.*, 791 N.W.2d 258 (Iowa 2010). IPAAB is authorized to review decisions of local boards of review regarding property assessments and is vested with the authority to apply the law to the facts in contested cases before it. *Tremel*; Iowa Code Sections 421.1A(3); 441.37A(1)(b).

Section 17A.19(10)(f)

The agency action is “based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.” “Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

“Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences.” *Gaskey v. Iowa Dep’t of Transp., Motor Vehicle Div.*, 537 N.W.2d 695, 698 (Iowa 1995). The determining factor is not whether the evidence supports a different finding but whether the evidence supports the finding actually made. *City of Hampton v. Iowa Civil Rights Comm’n*, 554 N.W.2d 532,536 (Iowa 1996). As the trier of fact the agency determines the credibility of witnesses, weighing of the evidence and deciding the facts in issue. *Arndt v. City of LeClair*, 728 N.W.2d 389, 394-95 (Iowa 2007).

Section 17A.19(10)(m)

The agency action is “based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.” “When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency’s application of the law to the facts of the particular case if that application is ‘irrational, illogical, or wholly unjustifiable.’ ” *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). “The true nature of the inquiry requires a reviewing court to look at those facts that were and were not considered by the agency in applying law to fact and then to determine whether, on the whole, the agency’s application of law to fact was irrational, illogical, or wholly unjustified.” *Id.* at 266. Because factual determinations are within IPAAB’s discretion, “so is its application of law to the facts.” *Clark v. Vicorp Restaurants, Inc.*, 696 N.W.2d 596, 604 (Iowa 2005) (citing *Mycogen Seeds*, 686 N.W.2d at 465)). Applying this standard, the court is giving “appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.” *Mycogen Seeds*, 686 N.W.2d at 465 (quoting Iowa Code § 17A.19(11)(c)). A finding is “arbitrary or capricious when the decision was made without regard to the law or facts.” *Doe v. Iowa Bd. of Med. Exam’rs*, 733 N.W.2d 705, 707 (Iowa 2007).

Section 17A.19(10)(n)

The agency action is “otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.” A finding is “arbitrary or capricious when the decision was made without regard to the law or facts.” *Doe v. Iowa Bd. of Med. Exam’rs*, 733 N.W.2d 705, 707

(Iowa 2007). Action is unreasonable if the agency acted in the face of evidence as to which there is no room for difference of opinion among reasonable minds ... or not based upon substantial evidence. *Id.* The court must determine whether there is a basis in law and fact for the agency's decision. *Dico, Inc. v. Iowa Employment Appeal Bd*, 576 N.W.2d 352, 355 (Iowa 1998).

CONCLUSIONS OF LAW

Iowa's Property Assessment Laws

A property owner or aggrieved taxpayer that disagrees with the taxpayer's assessment may file a protest with the local board of review. Iowa Code § 441.37. The protest may be due to one of the following grounds: the assessment is not equitable when compared to like property, the property is assessed for more than the value authorized by law, the property is not assessable, there is an error in the assessment, or there is fraud in the assessment. *Id.* § 441.37(1).

An appeal of the board of review can be taken to the property assessment appeal board or the district court. *Id.* § 441.37A. The IPAAB was created to establish "a consistent, fair, and equitable property assessment appeal process." *Id.* § 421.1A(1). The property assessment appeal board can affirm, reverse, or modify a local board of review's determination. *Id.* § 421.1A(4)(a). It was also given the power to adopt administrative rules necessary to preserve order and regulation of the proceedings before it. *Id.* § 421.1A(4)(f).

The authorizing statute mandates that the board member considering the appeal determine all questions arising before the local board of review anew as it relates to the liability or amount of the property assessment. *Id.* § 441.37A(3)(a). The decision of the

IPAAB is considered the final agency action. *Id.* § 441.37A(3)(b). The IPAAB's decision can be appealed to the district court, but no new grounds may be added and no new evidence to sustain those grounds may be introduced when appealing from the property assessment appeal board to the district court. *Id.* § 441.38.

The Iowa Code contains provisions that provide that certain properties are exempt from real estate taxation. In particular Section 427.1(8)(a) provides an exemption to:

Property of religious, literary, and charitable societies.

a. All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. For assessment years beginning on or after January 1, 2016, the exemption granted by this subsection shall also apply to grounds owned by a religious institution or society, not exceeding a total of fifty acres, if all monetary and in-kind profits of the religious institution or society resulting from use or lease of the grounds are used exclusively by the religious institution or society for the appropriate objects of the institution or society.

The burden is upon the one claiming the exemption to prove that the property falls within the exemption claimed. *Care Initiatives v. Bd. of Review of Union County*, 500 N.W.2d 14, 17 (Iowa 1993). Taxation is the rule and exemption is the exception. *Bethesda Foundation v. Bd. of Review of Madison County*, 453 N.W.2d 224, 226 (Iowa App. 1990). "Exemption statutes are premised on the theory that the benefits received by the community from the facility outweigh the inequality caused by the exemption of the property from taxation." *Id.* (citing *Richards v. Iowa Dep't of Revenue*, 414 N.W.2d

344, 351 (Iowa 1987)). Statutes exempting property from taxation must be strictly construed, and any doubt must be resolved in favor of taxation. *Care Initiatives* at 16-17. Exemptions from taxation must be decided on a case-by-case basis. *South Iowa Methodist Homes, Inc. v. Bd. of Review of City of Des Moines*, 173 N.W.2d 526, 532 (Iowa 1970).

The Iowa Supreme Court has established a three-factor test which must be established by a preponderance of the evidence in order for an exemption to be granted to an entity claiming the exemption under Section 427.1(8). The Iowa Supreme Court noted in *Carroll Area Childcare Center, Inc. v. Carroll County Board of Review*, 613 N.W.2d 252, 254-55 (Iowa 2000), that it has repeatedly held that an entity must prove the following three factors by a preponderance of the evidence to establish the tax exempt status of its property under Section 427.1(8): (1) the entity was a charitable institution at the time of the claimed exemption, (2) the entity did not operate the facility with a view to pecuniary profit, and (3) the actual use of the facility was solely for the appropriate objects of the charitable institution.

The statement of purpose in an organization's articles of incorporation and its nonprofit status are not controlling. *Evangelical Lutheran Good Samaritan Society v. Board of Review of City of Des Moines*, 200 N.W.2d 509, 51 (Iowa 1972). Iowa Courts have consistently recognized "the actual use of a facility is more important than its stated purpose." *Bethesda Found.*, 453 N.W.2d at 227. Whether an entity and its "appropriate objects" are charitable is a question of fact. *Evangelical Lutheran Good Samaritan Soc. v. Bd. of Review of Montgomery County*, 688 N.W.2d 482, 486 (Iowa

Ct. App. 2004) (citing *Mayflower Homes, Inc. v. Wapello Cnty. Bd. of Review*, 472 N.W.2d 632, 634 (Iowa Ct. App. 1991).

Charity, in the form of gratuitous or partly gratuitous care, can be provided in two ways. An institution can subsidize the care of those who are unable to pay, or it can “use charitable contributions to cover the costs of establishing the facility and some portion of the ongoing operating expenses, thereby subsidizing the cost of the facility for all persons who use it, regardless of their ability to pay.” *Carroll Area Child Care Ctr., Inc.*, 613 N.W.2d at 255.

In this appeal, the Petitioners challenge the IPAAB’s finding that Northwest Iowa’s use of the Sunnybrook Clinic was solely for the appropriate objects of Northwest Iowa. The Petitioners argue that the use of the clinic by Northwest Iowa was not for the appropriate charitable objects and accordingly asks for this court to reverse the IPAAB’s decision and affirm the Sioux City Board of Review’s decision.

On judicial review it would not be appropriate to reverse the decision of the IPAAB **and** affirm the decision of the Sioux City Board of Review. The scope of judicial review is limited to the determination of whether the agency committed any errors of law specified in Iowa Code section 17A.19(10)(a)–(n). *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001). The IPAAB’s decision was the final agency action for purposes of this appeal. Iowa Code § 441.37A(3)(b). Therefore, this court’s review is of the IPAAB rather than the Sioux City Board of Review. This court does not have the authority to affirm the decision of the Sioux City Board of Review as that entity’s decision is not before the Court.

ANALYSIS

In entering its ruling on May 3, 2017, the IPAAB analyzed the three-factor test set out in *Carroll Area Child Care Ctr., Inc. v Carroll County Board of Review*, supra. Initially the IPAAB found that Northwest Iowa was a charitable institution. In reaching this conclusion, IPAAB considered several different facts such as:

1. Northwest Iowa is a nonprofit corporation organized under United States Code Section 501(c)(3) as a charitable institution at the time of the claimed exemption;
2. Northwest Iowa's Restated Articles of Incorporation note its purpose includes, among other things, establishing and maintaining hospitals and related facilities for the sick and disabled, carrying on educational activities related to health, carrying on scientific research, and providing health care services in cooperation with other organizations in the region;
3. Northwest Iowa accepts patients without regard to their ability to pay, and has demonstrated it has subsidized some patients' care which has steadily increased since its inception in 2013;
4. Northwest Iowa receives charitable contributions from the St. Luke's Foundation to subsidize services at the Sunnybrook Clinic; and
5. Northwest Iowa is assisted by volunteers that staff Sunnybrook's reception desk and have done so since the clinic opened in 2013.

From a review of the record substantial evidence exists to support the finding of the IPAAB that Northwest Iowa was a charitable institution at the time it applied for the exemption under Section 427.1(8) and that it is clear that the discretion to make this determination has been vested in the IPAAB and such determination is not unreasonable, arbitrary, capricious, or an abuse of discretion in light of the facts as they exist.

The second factor considered by the IPAAB was whether or not the Sunnybrook Clinic was operated with a view of pecuniary profit. After considering the evidence, the

IPAAB found that Northwest Iowa was not operating the Sunnybrook Clinic with a view of pecuniary profit. In its decision the IPAAB found that there was no evidence that any earnings from the operation of the Sunnybrook Clinic inured to the benefit of any individuals since its inception in 2013. In actuality, the evidence indicated that any “profit” was reinvested in activities related to and in line with its charitable mission that included, in part, the building of the clinic itself.

From a review of the record substantial evidence exists to support the finding of the IPAAB that Northwest Iowa did not operate the Sunnybrook Clinic with a view of pecuniary profit and that it is clear that the discretion to make this determination has been vested in the IPAAB and such determination was not unreasonable, arbitrary, capricious, or an abuse of discretion in light of the facts as they exist.

In light of the above, the Petitioners did not actively dispute that Northwest Iowa was a charitable institution at the time it applied for the exemption herein nor that it did not operate the Sunnybrook Clinic with a view of pecuniary profit. The Petitioners do dispute, however, whether the actual use of the Sunnybrook Clinic by Northwest Iowa was solely for the appropriate objects of the charitable institution which is the third factor of the *Carroll Area Child Care Ctr., Inc.* test.

Regarding this third factor, the Petitioners assert that the charitable exemption should not have been granted to Northwest Iowa for the operation of the Sunnybrook Clinic for a variety of reasons. The primary theme of the Petitioners’ argument is that in order for an exemption to be granted, the benefits from granting the exemption must outweigh the inequality that will be caused to the remaining taxpayers from the grant of the exemption. The Petitioners argue that the IPAAB erred by not making a direct

comparison of the taxes which would be received from the property without the charitable exemption with the actual dollars of charitable care provided by Northwest Iowa at the facility.

In support of this position, the Petitioners relied upon *Holy Spirit Retirement Home, Inc. v. Board of Review of City of Sioux City*, 543 N.W.2d 907 (Iowa App. 1995). In *Holy Spirit* the Court of Appeals found that an apartment complex owned and operated by the Diocese of Sioux City did not qualify for an exemption under Section 427.1 as a charitable institution and stated that

Taxes lost to the public by reason of an exemption must be exacted from all other taxpayers. Hence the law requires that the institution be run for those who have a real need for it. If it is operated only for those who can well afford to pay their taxes it is not right to pass that burden along to others. *Holy Spirit* at 912 (citing *Mayflower Homes, Inc. v. Wapello County Board of Review*, 472 N.W.2d 632, 634-35 (Iowa App. 1991).

The Petitioners assert that the value of financial assistance provided by Northwest Iowa at the Sunnybrook Clinic is well below the amount of tax revenue that would have been received for 2013, 2014 or 2015 if the exemption had not been granted, resulting in a net loss of tax revenue of \$372,636 in 2013, \$193,377 in 2014, and \$106,398 in 2015. The Petitioners further argue that at a minimum the charitable services/care provided by the facility should exceed at least 3% of the total value of services offered by the entity to entitle it to claim exempt status and relied upon the holdings of *Partnership for Affordable Housing, Ltd. v. Board of Review of Davenport*, 550 N.W.2d 161 (Iowa 1996), *Mayflower Homes, Inc. v. Wapello County Board of Review*, 472 N.W.2d 632 (Iowa App. 2005) as well as *Holy Spirit*.

In *Holy Spirit*, the Court of Appeals considered several factors in making its determination that the apartment complex operated by the Diocese was not a charitable institution. Those factors considered by the Court of Appeals were:

1. whether nursing care is provided to the residents;
2. whether admission to the facility is limited to the physically and financially independent;
3. whether the institution makes concession on fees to residents who are unable to pay;
4. whether there is a policy against retaining residents who are unable to pay the fees;
5. whether there exists and the residents are informed of a fund to help pay residents' rent;
6. whether applicants are screened to determine if they fall below a certain income level, whether donations result in a reduction of the payments each resident is required to make. *Holy Spirit at 910-911.*

In reviewing these six factors, the Court of Appeals found that the apartment complex did not have a charitable or benevolent purpose. The Court of Appeals noted that the apartment complex required that the occupants had physical and financial independence; that applicants had to have financial resources adequate to pay the residency fee of between \$40,000 and \$60,000 as well as a monthly service fee of \$481.25 per month; that while Holy Spirit claimed to have a fund to help pay the monthly service fee, no money from the fund had ever been used for that purpose; that no evidence existed to show that the apartment complex made any concessions of fees if a resident was unable to pay; that the residency fee had only been waived on four occasions, each involving a Catholic priest; and that the monthly service fee had never been waived and the complex reserves the right to terminate residents who are unable

to pay the fees; that applicants had to be of sufficiently good health to live without assistance. The Court found that the services provided by Holy Spirit at its apartment complex were designed to accommodate only those who could well afford to pay for the services provided. *Holy Spirit at 911-912.*

In *Mayflower Homes*, the Court of Appeals considered similar factors as were considered in *Holy Spirit*. As was the case in *Holy Spirit*, residents at the apartments in *Mayflower* were also charged a significant entrance fee as well as monthly maintenance fees. Over a period of 27 years only five exemptions were granted for the entrance fee out of a total of 165 and no exemptions were granted for the monthly maintenance fees. The residents were also required to be able to provide care for themselves and no nursing care was provided. In *Mayflower* there was an endowment to provide former church employees with assistance but that assistance only applied to ten percent of the apartments available. As in *Holy Spirit* the Court of Appeals in *Mayflower* denied the charitable exemption to all but 10% of the property as the rest of the apartments were offered to people who had the ability to pay. *Mayflower at 634-635.*

In *Partnership for Affordable Housing*, the Iowa Supreme Court considered an application for exemption by limited partnership that provided government assisted housing. In this case the Supreme Court focused on four factors to determine whether the property had an actual charitable use: 1) the establishment and operation of the applicant; 2) the applicant's policies regarding admission and retention of tenants; 3) community support for the project; and 4) community benefits from the project. *Partnership at 166-167.* In *Partnership*, the apartment complex at issue was owned by

a limited partnership whose general partners included one nonprofit corporation. The nonprofit corporation, however, was not operating the apartment complex. The apartment complex was being operated under the Section 8 government program which did provide subsidies to the tenants, however the apartment complex itself did not provide any rent assistance nor did it rent units to persons who could not afford to pay the rent or waive rent for tenants who became unable to pay rent. The only charitable action made by the apartment complex was to provide one apartment out of a total of 37 to an abuse woman who does not have a place to live. The apartment complex also failed to show that it received any community support and did not have any volunteers to help enhance the quality of life for the tenants. Finally, the Supreme Court found that very little community benefit came from the operation of the apartments and that any "charity" involved was coming from the government in the form of rent subsidy payments. After considering each of these factors the Supreme Court found that the apartment complex did not qualify for a charitable exemption. *Id.*

The IPAAB rejected these positions taken by the Petitioners and found that Northwest Iowa was entitled to the charitable exemption under Section 427.1(8). The IPAAB agreed that there is a need to balance the benefits received by the community from the facility with the inequality that is created by the granting of an exemption, the IPAAB indicated that it found no support under current Iowa law that this balancing requires a direct comparison of taxes which would be received from the property with the actual dollars of charitable care provided. Likewise, the IPAAB found that there was no support under current Iowa law for a bright-line test of the amount of charitable care that must be provided in order to qualify for an exemption. In reaching this

conclusion the IPAAB relied on the ruling of the Iowa Court of Appeals in *Victor Health Center v. Board of Review*, 705 N.W.2d 340 (Table) 2005 WL 1964479 (Iowa App 2005).

In *Victor* a non-profit corporation was formed for the purpose of receiving contributions from the community to construct a medical clinic in the rural community of Victor, Iowa. *Victor* at 1. Once constructed, the medical clinic was leased to another non-profit corporation to actually operate the medical clinic, while the initial non-profit continued to own the land and building. The clinic opened in 2003 and a charity care program was offered to qualifying individuals to provide services for free or at a reduced rate. In the first two years of operation only six patients took advantage of the charity care program, but they constituted the only persons who requested assistance. The initial non-profit also relied extensively on volunteers to perform maintenance tasks at the facility. *Id.* at 2. In considering whether the property was being actually used for a charitable purpose, the Court of Appeals in *Victor* stated that charity “can be provided in two ways. An institution can subsidize the care of those who are unable to pay, or it can ‘use charitable contributions to cover the costs of establishing the facility and some portion of the ongoing operating expenses, thereby subsidizing the cost of the facility for all persons who use it, regardless of their ability to pay.’” *Id.* at 3 (citing *Carroll Area Child Care Ctr., Inc.* 613 N.W.2d at 255.)

Further, the IPAAB distinguished the facts of the present case from the facts in *Holy Spirit, Mayflower Homes and Partnership for Affordable Housing*, in particular noting that in each of those cases no provision for admission was given without regard to ability to pay and all required a finding of financial independence. In comparing the

facts and circumstances of the present case to these three cases, the IPAAB found that the charitable care provided by Northwest Iowa rose above the de minimis or non-existent charity provided in those cases. In making this conclusion, the IPAAB found that the Sunnybrook Clinic operated by Northwest Iowa is used for out-patient medical services, some of which are exclusive to the facility and not available at Northwest Iowa's hospital facility. In addition, IPAAB found that while some or all of the services offered at the clinic may be available from other providers in the Sioux City area, Northwest Iowa has a charity care policy and cares for patients without regard for their ability to pay. In 2014, Northwest provided \$190,333 in financial assistance to 396 patients at Sunnybrook. In 2015, it provided \$248,350 in financial assistance to 594 patients. The charitable care equated to approximately 1.4% and 1.6% of total revenues for 2014 and 2015, respectively, and 1.3% and 1.7% of the patient population. Further, charitable care appears to be increasing given the figures for the first half of 2016. IPAAB further found that the evidence also shows Northwest Iowa receives grant money from the St. Luke's Foundation to subsidize the cost of some services, though the exact amount appears to be disputed.

CONCLUSIONS

In order to be successful in their Petition, the Petitioners must establish at least one of four alleged grounds for relief. The Petitioners first assert that the ruling of the IPAAB was based on an erroneous interpretation of a provision of law whose interpretation has not been vested in the discretion of the agency. A review of the record herein shows that the IPAAB based its decision herein on Iowa Code Section 427.1(8) as well as the current case law interpreting this section. In particular, the

IPAAB relied upon the rationale of the *Carroll Area Childcare Ctr* and *Victor Health Center* cases. It is clear that the IPAAB considered the three-factor test required to establish a claim for exemption under Section 427.1(8) in that it determined that Northwest Iowa was a charitable institution; that Northwest Iowa did not operate the Sunnybrook Clinic with a view of pecuniary profit; and third, that Northwest Iowa's actual use of the property was solely for the appropriate objects of the charitable institution. The Petitioners, in effect, conceded factors 1 and 2. It is clear that the IPAAB did not base its decision on an erroneous interpretation of a provision of law and as a result the Petitioners' objection on that ground should be denied.

The Petitioners' second assertion is that the IPAAB's decision was based upon a determination of fact that is not supported by substantial evidence in the record when the record is viewed as a whole. This assertion also fails. The record clearly shows that medical services are offered to patients at reduced cost or no cost if the patient qualifies for assistance. The record also reflects that significant sums have been expended to provide such assistance each year since the clinic opened, with the number of patients receiving assistance and the dollar amount of assistance given increasing each year. The record also supports a finding that there has been significant community support for the clinic both through over 2,000 hours of volunteer service, over \$4,000,000 contributed to the cost of the construction of the clinic from internal funds from Northwest Iowa that had accumulated over the years as a result of their other non-profit and charitable work, as well as significant financial contributions to the maintenance and operation of the clinic from the St. Luke's Foundation which is also a charitable institution.

The Petitioners' third assertion is that the IPAAB decision was based on an irrational, illogical, or wholly unjustifiable application of law to fact. This assertion is also without merit. In effect, the IPAAB applied the rationale of the *Carroll Area Childcare Ctr* and *Victor Health Center* approach in reaching its conclusions herein. If anything, the IPAAB's reliance on *Victor Health Center* may be understated in that in *Victor Health Center* the applicant was only the landlord and did not actually even operate the medical clinic. In that case the tenant provided the financial assistance to patients, not the applicant. In the present case, not only was Northwest Iowa involved in funding the construction of the facility with charitable funds, it also directly operated the clinic and provides the financial assistance that is offered to patients. The Petitioners, on the contrary, are asking that the agency, and now this court, establish new bright-line tests to determine whether an applicant is using its property solely for the appropriate objects of the charitable institution and in effect replace or at least supplement the three-factor test established in *Carroll Area Childcare Ctr*. This court declines to do so. The action of the IPAAB herein is justified in that it has faithfully followed the guidance of the *Victor Health Center* and *Carroll Area Childcare Ctr* cases. The three cases cited by the Petitioners, while clearly also being good law, are distinguishable from the facts of this case.

Finally, the Petitioners assert that the decision of the IPAAB is otherwise unreasonable, arbitrary, capricious or an abuse of discretion. The Petitioners, however, do not allege any additional reasons other than those already discussed above. Accordingly, this assertion is also denied by the Court.

Based on the foregoing, the Court finds that the determination made by the IPAAB that the application of Northwest Iowa for a charitable exemption under Iowa Code Section 427.1(8) should be affirmed. The Court finds no error on the part of the IPAAB and holds that the final agency decision is affirmed without modification.

ORDER

IT IS THEREFORE ACCORDINGLY ADJUDGED THAT the May 3, 2017, decision of the Iowa Property Assessment Appeal Board is AFFIRMED and Petitioners' Petition for Judicial Review is OVERRULED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV174678
Case Title SIOUX CITY BOARD OF REVIEW V IA PROP ASSESSMENT
APPEAL BOARD

So Ordered

A handwritten signature in black ink that reads "Patrick H. Tott". The signature is written in a cursive style and is positioned above a horizontal line.

Patrick H. Tott, District Court Judge,
Third Judicial District of Iowa