

**PROPERTY ASSESSMENT APPEAL BOARD  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2018-078-00118R

Parcel No. 7543 32 184 007

**Hillside Bible Fellowship of Council Bluffs,**

Appellant,

vs.

**Pottawattamie County Board of Review,**

Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 3, 2019. Attorney Mark Rater represented Hillside Bible Fellowship of Council Bluffs (Hillside Bible), a religious nonprofit organization. (Ex. E). Assistant County Attorney Leanne Gifford represented the Pottawattamie County Board of Review.

Hillside Bible owns a property located at 130/135 Bennett Avenue, Council Bluffs, Iowa. The subject parcel's January 1, 2018 assessed value was set at \$310,300, allocated as \$56,000 in land value and \$253,400 in dwelling value. The property receives a partial religious tax exemption, reducing the taxable assessed value to \$119,000 in dwelling value. (Ex. A).

Hillside Bible petitioned the Board of Review asserting the subject property is entitled to a 100% tax exemption as it is still used for nonprofit benevolent purposes. Iowa Code § 441.37(1)(a)(3). The Board of Review denied the claim. Hillside Bible then reasserted its claim to PAAB.

## **General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2018). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-71.126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessment is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

## **Findings of Fact**

The subject property is a 1.053-acre site improved with two dwellings. The land and one dwelling receive a religious tax exemption under Iowa Code § 427.1(8). For the 2018 assessment, the Pottawattamie County Assessor reviewed residential exempt properties to determine whether they should be reinstated to the tax rolls. (Ex. E). In a February 2018 letter, County Assessor Penny Ravlin informed Hillside Bible its property tax exemption was partially removed because, in her opinion, a portion of the subject property no longer qualified, noting the subject residence was no longer used solely for appropriate objects of the Church. (Ex. 1).

The one-story subject residence was built in 1965. It has 1252 square feet of gross living area, 1200 square feet of low-quality basement finish, and a two-car attached garage. It is listed as average quality construction (grade 4+10) in normal condition. (Ex. A).

The parties have stipulated to the following facts:

1. Hillside Bible is a religious organization and the subject dwelling is not leased or operated with a view to pecuniary profit. (Ex. E, paras.1 & 10).
2. Hillside Bible's 2015 Restated Articles of Incorporation outlines its purposes as:

Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes; the object and purposes to include preaching the Gospel of Jesus Christ; to provide education in Christian doctrine; to set a biblical standard of morality; and, the establishment and furtherance of home and foreign missions and to conduct any activities which may be useful in accomplishing the foregoing purpose. (Ex. E, para. 11).
3. The subject property is located adjacent to Hillside Bible's place of worship. (Ex. E, para. 2).
4. A mother and her three minor children live in the subject residence. (Ex. E, para. 13).
5. The family does not pay rent to Hillside Bible. (Ex. E, para. 14).
6. The church pays the utilities. (Ex. E, para. 14).
7. The family is required to clean the church on a weekly basis, spending about 10 hours per week cleaning without pay. The family is also required to watch over the subject property and the neighboring church, again without pay. (Ex. E, para. 15).

PAAB makes the following additional findings:

Joel Wymore, Chairman of the Board of Deacons at Hillside Bible, testified on its behalf. Wymore testified that one of the roles of the Church is to help others. Wymore testified that the Hillside Bible congregation is made up of approximately sixty members, of which about ten tithe each week. He noted it will be difficult for Hillside Bible to cover the estimated \$2000 per year in taxes should the subject residence lose its tax exempt status, as it receives no revenue from the use of the home.

He stated the current residents are members of Hillside Bible, and the congregation committed to helping them meet their needs by providing them a home until the children are older. Wymore noted the single mother recently began working as

a para-educator at an Omaha school. None of her children, ages 12 to 16, are currently employed. He stressed doing charitable work, such as providing a home to a family in need, is one of the missions of the church.

Hillside Bible asserts the subject residence meets the three requirements of section 427.1(8)(a). Having met the first two requirements for exemption under section 427.1(8), Hillside Bible argues that allowing a needy family, who is a member of the Church, to live in the subject residence rent-free is solely a charitable purpose that meets the objects of the Church.

Hillside Bible also asserts Ravlin did not fully consider section 427.1(8)(a) in making her determination that the subject residence no longer qualifies for tax exemption. (Ex. 1). It noted Ravlin failed to include the last sentence in her February 2018 letter, which states:

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.  
§ 427.1(8)(a).

Hillside Bible believes, based on the last sentence of section 427.1(8)(a), the subject residence qualifies for 100% tax exemption. It asserts there is no question the subject is owned by a religious institution. While the family continues to occasionally tithe as members of the Church, Hillside Bible receives no monetary profits from the use of the home.

Hillside Bible acknowledged there may be a question as to whether the term “ground,” in the last sentence of section 427.1(8)(a) is intended to refer to land and buildings or just the land. It believes the legislative intent is the former and therefore Hillside Bible clearly falls within the exemption. The Board of Review disagrees with Hillside Bible’s interpretation, asserting the last sentence it is not applicable to the case at hand as it is only applies to land, which is already tax exempt.

While the Board of Review did not call any witnesses to testify, it did indicate both parties agree on the facts of the case and only disagree as to how those facts

apply to the law. The disagreement, it notes, lies in whether the subject residence is used solely for the objects of a religious organization.

The Board of Review argued the subject residence is not being used solely for appropriate objects of the Church under strict construction of the statute, even though its efforts to assist a family in need are laudable. It pointed out that the resident family receives a substantial private benefit, as they have private living quarters and an intended right to privacy.

### **Conclusions of Law**

Hillside Bible asserts the subject residence should be tax exempt under section 427.1(8).

“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.” *Southside Church of Christ of Des Moines v. Des Moines Bd. of Review*, 243 N.W.2d 650, 654 (Iowa 1976) (quoting *Dow City Senior Cit. Hous. V. Bd of Review*, 230 N.W.2d 497 (Iowa 1975)). “They are ‘a legislative recognition of the benefits received by society as a whole from properties devoted to appropriate objects of exempt institutions and the consequent lessening of burden on the government.’ ” *Id.* (quoting *South Iowa Methodist Homes, Inc. v. Bd. of Review of Cass Cnty.*, 136 N.W.2d 488, 490 (Iowa 1965)).

Statutes exempting property from taxation must be strictly construed, and any doubt must be resolved in favor of taxation. *Southside Church of Christ*, 243 N.W.2d at 654. The burden is upon the one claiming the exemption to prove that the property falls within one of the exemption statutes. *Id.* at 651. “Taxation is the rule and exemption the exception.” *Congregation B’Nai Jeshurun v. Bd of Review of the City of Des Moines*, 301 N.W.2d 755, 756 (Iowa 1981) (quoting *Trustees of Griswold College v. State*, 46 Iowa 275, 278 (Iowa 1877)). Exemptions from taxation must be decided on a case-by-case basis. *South Iowa Methodist Homes, Inc. v. Bd. of Review*, 173 N.W.2d 526, 532 (Iowa 1970).

Iowa Code section 427.1(8)(a)<sup>1</sup> provides:

Property of religious, literary, and charitable societies. 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.

Hillside Bible argues the subject residence qualifies for tax exempt status under the last sentence section 427.1(8)(a), asserting the County Assessor failed to consider it during her deliberation. Despite the lack of the term ‘buildings’ in the last sentence, Hillside Bible argued it is meant to apply to all the church property.<sup>2</sup> The Board of Review argued the last sentence is not applicate to the case at hand as it only applies to land.

Our Supreme Court has stated the “goal in interpreting a statute is to give effect to the intent of the legislature.” *State v. Sailer*, 587 N.W.2d 756, 759-760 (Iowa 1998) (citing *Lockhart v. Cedar Rapids Community Sch. Dist.*, 577 N.W.2d 845, 847 (Iowa 1998)). This can be “shown by the words used in the statute.” *Id.* If there is no legislative definition or other particular meaning in law, “we give their words their plain and ordinary meaning.” *Id.*

We agree with the Board of Review that the last sentence of section 427.1(8)(a) does not apply to buildings, such as the subject. By using terms ‘grounds’ and ‘buildings’ in the first sentence of subsection 8, the legislature recognizes there is a

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<sup>1</sup> Formerly Iowa Code section 427.1(9).

<sup>2</sup> Hillside Bible appears to argue that the legislature intended to include buildings in the last sentence because it wanted to avoid subjecting religious institution property to taxation for incidental commercial uses. First, Hillside Bible did not provide any evidence suggesting that was the legislature’s intent. Second, incidental commercial uses of otherwise exempt property are addressed in section 427.1(14)(a). For this reason and because of the plain language of subsection 8, we find this argument is without merit.

distinction between them. Then, in the same subsection, it limits the application of the third sentence to 'grounds.' As a result, we find the language used by the legislature shows an intent to exclude buildings from exemption under the last sentence of section 427.1(8)(a). As it is, the Assessor has exempted all of Hillside Bible's property that commonly would be understood to be grounds.

Turning to whether Hillside Bible is entitled to a full exemption under the remainder of section 427.1(8)(a), the Court has held a taxpayer must prove each of the following factors by a preponderance of the evidence: (1) the subject property was used by a religious institution; (2) the subject property was not used with a view to pecuniary profit; and (3) the actual use of the subject property was solely for the appropriate objects of the religious institution. *Congregation B'Nai Jeshurun*, 301 N.W.2d at 756-57.

Both parties do agree the subject residence is owned by a charitable religious institution, and that it is not used for pecuniary profit. But they disagree regarding whether the subject residence's use is solely for the purpose and appropriate objects of the Church.

Iowa Courts have previously interpreted and applied the exemption statute to other church-owned residential properties. *Wisconsin Evangelical Lutheran Synod, A v. Regis* involved a home provided to a non-ordained, religious school teacher as part of his compensation. 197 N.W.2d 355 (Iowa 1972). The Iowa Supreme Court held the home was not used "solely for the appropriate objects of plaintiff religious institution" and does not qualify for tax exemption because it was private living quarters. *Id.* at 357. The Court noted the teacher was not required to perform any employment functions at the residence and the church must "do more than merely show the property is owned by the church and occupied by church personnel." *Id.*

In *Southside Church of Christ*, the Iowa Supreme Court denied an exemption for a home built and owned by a church, occupied free of rent by foster parents for the Church's purpose of providing a home for foster children. 243 N.W.2d 650. The Court noted Southside Church's property was similar to other private family foster homes, but for the fact it was owned by a church. *Id.* at 655. These private homes are not exempt, despite the fact they also provide a benefit to the community. *Id.* The Court stated that

“Where anything is devoted to a sole and particular use it must be used exclusively for such purpose.” *Id.*

In *Congregation B’Nai Jeshurun*, the Iowa Supreme Court denied a request for exemption for a house owned by a religious institution that was occupied by its janitor. 301 N.W.2d 755. It identified that a strict reading of the statute would practically confine the tax exemption to religious edifices themselves used for preaching, teaching and practicing religion; and under an expansive interpretation the requirement might be enlarged to include housing rabbis, priests, ministers and other personnel who make the church function. *Id.* at 759. Ultimately, the Court adopted a strict interpretation of the phrase “used solely for appropriate objects.” *Id.* It ruled that “housing of a religious institution or society, separate from a religious edifice itself and occupied by non-ecclesiastical personnel, does not qualify for property tax exemption.” *Id.* at 758

This conclusion is similar to that of an Attorney General’s Opinion issued in 1980. Property Tax Exemption Status of Church Owned Living Quarters, 1980 Iowa Op. Atty. Gen. 624, 1980 WL 25946 (March 13, 1980). In that Opinion, it was advised that allowing an individual to reside in a church-owned property rent-free in exchange for janitorial services would not qualify for property tax exemption under section 427.1(9) (now section 427.1(8)).

Acknowledging *Congregation B’Nai Jeshurun* does not support its position, Hillside Bible attempted to distinguish itself based on facts. In *Congregation B’Nai Jeshurun*, the occupants of a house on temple grounds paid rent through a payroll deduction and the temple did not pay the full cost of utilities. Hillside Bible argued that by permitting this family to reside at its property, it has prevented the family from becoming a public charge. While perhaps true, Hillside Bible’s action is similar to other non-exempt property owners who allow family, friends, or acquaintances going through difficult times to live with them for no-charge.

As more recently noted by the Iowa Court of Appeals in *Parson’s Inn, Inc. v. Mahaska Cnty. Bd. of Review*, the “occupancy must further the specific charitable goals of the institution.” 2006 WL 1408432 \*6 (Iowa Ct. App. May 26, 2006). In that case, the Court found Parson’s Inn had not demonstrated how a family’s on-site occupancy of a temporary housing and support facility furthered the institution’s charitable goals. *Id.*

The Court concluded there was some doubt as to whether the property was solely used for appropriate charitable objects and resolved that doubt against granting an exemption under section 427.1(8). *Id.*

Hillside Bible argued that allowing a needy family, who is a member of the Church, to live in the subject residence rent-free is solely a charitable purpose that meets the objects of the Church. But Hillside Bible's Restated Articles of Incorporation basically state its purpose is: to preach the Gospel of Jesus Christ, to provide a Christian education, to set a biblical standard, to establish missions, and to conduct activities that will further the stated purposes. While the family's occupancy of the subject provides general benefits to Hillside Bible, it is unclear how the family's occupancy of this property is an activity within the church's stated purpose or "fosters a specific program within the mission of the institution." *St. Ambrose Univ. v. Bd. of Review of City of Davenport*, 503 N.W.2d 406, 407 (Iowa 1993) (finding a university's childcare facility and the university's Vice President/Priest's residence should be exempt because they further the university's mission).<sup>3</sup>

We agree with the Board of Review it is laudable that Hillside Bible is helping this family by providing them housing during a time of need. But the subject residence is a distinct and separate structure from the Church's edifice and is used solely by non-ecclesiastical tenants for their (not the Church's) use and enjoyment. Accordingly, we conclude the subject property is not solely used for the appropriate objects of Hillside Bible and we find the subject residence does not qualify for property tax exemption under the statute.

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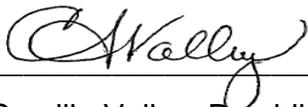
<sup>3</sup> *St. Ambrose* identifies that a less demanding "solely for their appropriate objects" test is used in cases like this, where the property is owned by "religious, educational, or charitable organizations who clearly qualify as such without regard to the use of the property at issue." 503 N.W.2d at 407. It states the very reason those institutions exist "is to carry on charitable, educational, and religious activities" and therefore "the use of their property for an activity within their mission will ordinarily be consistent with exempt status." *Id.* The Court notes, however, that *Congregation B'Nai Jeshurun* qualified "this conclusion with respect to uses that are only shown to generally benefit the institution and that do not foster a specific program within the mission of the institution." *Id.*

## Order

PAAB HEREBY AFFIRMS the Board of Review action upholding the Assessor's determination that the subject residence is no longer tax exempt under Iowa Code section 427.1(8).

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



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Camille Valley, Presiding Officer



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Karen Oberman, Board Member

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