

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

PAAB Docket Nos. 2019-077-00359R, 2019-077-00360R, 2019-077-00361R

High Pointe Church,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for consideration before the Property Assessment Appeal Board (PAAB) on January 3, 2020. Attorney Cameron Wright represented High Pointe Church (High Pointe) and asked that the appeal proceed without a hearing. Assistant County Attorney Dominic Anania represented the Polk County Board of Review.

High Pointe owns three adjoining parcels located at 7422 NE 38th Avenue, Altoona, Iowa. The following table summarizes the subject parcels' January 1, 2019 assessed values. (Exs. A, D, & G).

Parcel No.	Assessed Land Value	Assessed Building Value	Total Assessed Value
170/00086-000-000	\$53,400	\$83,900	\$137,300
170/00086-002-000	\$49,000	\$0	\$49,000
171/00184-750-253	\$100	\$0	\$100
		Total Assessed Value	\$186,400

High Pointe petitioned the Board of Review asserting the subject property is entitled to a tax exemption as it is used for religious purposes. Iowa Code § 441.37(1)(a)(3) (permitting a property owner to claim their property is exempt from taxes). The Board of Review denied the claim.

High Pointe then appealed to PAAB reasserting its claim.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). 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 701-126.2(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-b). 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).

Findings of Fact

Parcels 170/00086-002-000 and 171/00184-750-253 are unimproved 3.15-acre and 0.224-acre sites respectively. (Exs. D & G). Parcel 170/00086-000-000 is a 1.60-acre site improved with a one-and-a-half-story home built in 1900. The home has 1720 square feet of gross living area, no basement, and a porch. It is listed in normal condition with a 4-05 grade (average quality). There is also a two-car detached garage built in 1961 listed in poor condition; a small shed listed in normal condition; and a pole building built in 1970 and listed in poor condition. (Ex. A).

The subject properties are three adjoining residentially classified parcels operating as a unit and hereinafter collectively referred to as the subject property.

High Pointe signed a purchase agreement with Scott A. Powers for the subject property in September 2018; the transaction was recorded in November 2018 for \$360,000. (Exs. 3 & A, C, D, & G). The purchase agreement provided that the current occupant of the house, Anthony Powers, shall be permitted to remain on the property as a tenant with no payment of rent and use the house as a residence until April 15, 2019. (Ex. C). High Pointe and Anthony Powers signed a Dwelling Unit Rental Agreement contemporaneous to that time whereby High Pointe leased the subject property to Anthony Powers from November 2, 2018 to April 15, 2019 for \$0.00 per month. (Ex. C,

F & I). The lease provided the tenant shall be responsible for all utilities and the landlord shall have the right, subject to the tenant's consent, to enter the dwelling only for specified purposes. It also expressly states the lease will not be extended. The Board of Review asserts although the lease set a rental rate of \$0, it did not include an explanation as to the purpose of the lease or how its existence is solely for the appropriate objects of the religious institution. (Ex. J).

An affidavit from Lead Pastor Gregory Pollak states High Pointe Church is a non-profit religious institution. Pollak states that as of April 16, 2019, prayer services are conducted on a regular basis at the subject property and it has been used solely for religious purposes. (Ex. 1). A May 17 email to church members, however, indicated that work was needed to make the property more accessible, safe, and clean before the full church family could use it. Thus only the men's prayer meeting took place on the land. (Ex. 2) A review of the High Pointe weekly bulletin indicates all other activities took place elsewhere, but a weekly men's prayer occurred at the subject property on Saturday mornings. A photograph in the record suggests the prayer service is held near a tree on the property with tree stumps serving as seats. The September 9, 2019 email bulletin indicates High Pointe has established a building fund, which contained \$70,885.23 as of that date.

Pastor Chris Lenoir states it is High Pointe's intention to build a church on the subject property and as of May 23 they were in the fundraising and land development stages. (Ex. C). He also indicated in the meantime, they were holding prayers services at the property. We note Exhibit A indicates a permit was taken out to "remove/house" on May 13, 2019.¹ No other construction permits are noted.

The Board or Review acknowledged High Pointe is a religious institution and the property "is now being used, in part, for religious purposes..." (Ex. J).

Conclusions of Law

High Pointe asserts the subject property should be tax exempt under section 427.1(8) as property owned by a religious institution.

¹ High Pointe did not argue the dwelling's value should be removed from the assessment as a result of its demolition.

“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)² provides, in part:

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. [...] 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.

² Formerly Iowa Code section 427.1(9).

In its submissions to PAAB, High Pointe indicated it believed it qualified for exemption under the first and last sentences of section 427.1(8)(a). We start by addressing its eligibility under the last sentence.

In briefing requested by PAAB, the parties offered differing interpretations of the last sentence of section 427.1(8)(a). High Pointe argues that this language does not require a profit, it only requires that any profit made must be used by the religious institution for its appropriate objects and not for pecuniary profit. (High Pointe Brf. p. 2-3). It states, "The main goal of this paragraph of the statute is to ensure tax exemption is not being granted when the property is being used to make a profit." (High Pointe Brf. p. 2). Because High Pointe does not make a profit from leasing the land and therefore does not use any "profit" for a non-exempt purpose, then it argues it qualifies for a property tax exemption. High Pointe further argues that interpreting this provision to require a profit would punish it for not charging rent. (High Pointe Brf. p. 3). It believes it would be not be just, reasonable, or equitable to construe the statute to permit religious institutions who lease land for profit to receive a tax exemption, while denying a tax exemption to religious institutions who do not lease land for profit.

The Board of Review contends the meaning of section 427.1(8) is unambiguous. It states the first sentence of section 427.1(8)(a) does not permit a religious institution to lease ground for pecuniary profit, but that the last sentence of section 427.1(8) was adopted as an exception for property of less than fifty acres wherein the profit is used for the appropriate objects of the institution. As such, profit is a requirement for granting an exemption under the last sentence of section 427.1(8)(a). It asserts High Pointe is receiving no profit from the lease in place as of January 1, 2019, and therefore High Pointe does not qualify for the exemption.

Alternatively, the Board of Review argues that if PAAB finds the language ambiguous, interpreting the last sentence of section 427.1(8)(a) to not require a profit would undermine the purpose of the statute and result in absurd consequences. If no profit is required under the last sentence of section 427.1(8)(a), the Board of Review contends there will be no requirement that the use or lease of the property be solely for the institution's appropriate objects. This construction, it argues, would undermine the purpose of section 427.1(8) as a whole.

In its reply brief, High Pointe argues the zero-rent lease agreement was a necessary condition to the property's purchase. Any profit High Pointe realized was by virtue of a reduced purchase price or the inducement of the property owner to sell the property to High Pointe. It argues the lease agreement facilitated the purchase and was therefore for its appropriate objects.

In interpreting the last sentence of section 427.1(8)(a), our primary goal is to ascertain and give effect to the legislature's intent. *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). Intent is determined from the words the legislature chose, not what it should or might have said. *Id.* The statute's meaning may not be extended, enlarged or otherwise changed under the guise of statutory construction. *Id.* If the statute's meaning is plain and ambiguous, we need not engage in statutory construction. *Zimmer v. Vander Waal*, 780 N.W.2d 730, 733 (Iowa 2010). If reasonable people can disagree on a statute's meaning then it is ambiguous and we utilize the rules of statutory construction. *Id.*

The parties' briefs have informed our review of this relatively new statutory language. Having considered the parties' arguments, we believe the Board of Review's interpretation of the last sentence of section 427.1(8)(a) most accurately reflects legislative intent. It is most true to the plain language of the statute. The language used indicates it is an exception to the first sentence of section 427.1(8)(a) and permits a religious institution to lease property for profit, so long as those profits are used by the institution for appropriate objects. If, as High Pointe suggests, there is no requirement to profit from the lease, then the remaining language of the last sentence would more-or-less mirror the first sentence. In short, there is no inequitable treatment by construing a profit requirement from the last sentence because a religious institution leasing a property for no profit may still qualify under the first sentence.

As another matter, we do not believe High Pointe has demonstrated it made a profit from the lease agreement or sale. In its reply brief, High Pointe argues the lease agreement induced the sale or reduced the sale price, which served as a profit.³ Even if

³ We note some of the Church's arguments related to profit have been contradictory. In a filing dated January 3, 2020, it stated, "Appellant has received no monetary or in-kind profits from the lease or use of the subject real estate."

we could conclude that meets the definition of a profit, there is no evidence or testimony supporting High Pointe's argument that the sale or the sale price were affected by the lease agreement. For these reasons, we find High Pointe does not qualify for an exemption under the last sentence of section 427.1(8)(a).

We now turn to an analysis of High Pointe's eligibility under the first sentence of section 427.1(8)(a). In order for High Pointe to establish it is entitled to a full exemption under this provision, the Iowa Supreme 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. The Court noted the statute is "tightly drawn." *Id.*

The only point of contention is whether or not the lease or other use of the property was 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 v. Regis*, 197 N.W.2d 355 (Iowa 1972); *Southside Church of Christ*, 243 N.W.2d 650; *Congregation B'Nai Jeshurun*, 301 N.W.2d 755.⁴ In all of these cases, the Court denied a religious exemption for a residence used by non-ecclesiastical persons even where the persons were purportedly assisting with some type of church function, such as providing janitorial services or fostering children.

Also instructive is the case of *South Iowa Methodist Homes, Inc. v. Bd. of Review of Cass Cnty.*, 136 N.W.2d 488 (Iowa 1965). There, the Iowa Supreme Court considered a charitable exemption for a partially constructed home for the elderly. *Id.* at 489. The Court noted the decision "will have broad application to all buildings constructed by institutions and societies granted the exemption under the same section including, college classroom buildings, churches, and hospitals." *Id.* The Court

⁴ In *Congregation B'Nai Jeshurun*, the Court considered, for the sake of argument, whether the religious institution's use of a garage attached to the dwelling for religious storage purposes would qualify the property for the exemption. 301 N.W.2d at 759. The Court stated, "that use is not sufficient to render the residential property exempt in view of the custodian's occupancy of the dwelling and the 'solely' requirement." *Id.*

ultimately held “that property, which will be exempt under section 427.1(9) when a building erected thereon is completed and occupied, is also exempt during the construction period.” *Id.* at 492.

In *Des Moines Coalition for the Homeless v. Des Moines City Bd. of Review*, 493 N.W.2d 860, 862 (Iowa 1992), the Court elaborated on the meaning of ‘under construction’ in section 427.1 and stated it also “include[s] renovation and repairs to charitable property.” Property that will be exempt “when renovations are completed and it is occupied, is also exempt during the renovation period.” *Id.*

The record reflects that until April 15, 2019, High Pointe leased the subject property’s residence to a third party and High Pointe’s ability to use the subject property was restricted by the terms of that lease. Only after the lease expired did High Pointe use a portion of the unimproved site area for men’s prayer services. It appears the residence may have been removed after the lease expiration. The evidence indicates construction on a church building is anticipated and is currently in the fundraising stage.

We have not been asked to decide whether the actions taken by High Pointe could be considered “under construction” for the purposes of section 427.1(8) and therefore do not reach that question. Rather, High Pointe contends the property has been solely used for appropriate religious purposes as of April 16, 2019, and therefore it believes it qualifies for exemption. By virtue of the lease that existed on the property until April 15, the Board of Review contends the property has not been solely used for the appropriate objects of a religious institution and any doubt must be resolved against granting the exemption.

We do not believe the existence of a short, rent-free lease immediately destroys High Pointe’s exemption eligibility, but it is a fact that must be considered. We must recognize that for roughly three-and-a-half months in 2019 no religious activities were taking place on the property. High Pointe admits it does not receive any monetary or in-kind profits resulting from the property’s use or lease. We do not believe it can reasonably be said, however, that the lease was solely for High Pointe’s appropriate objects. Even if, as High Pointe argues, the lease agreement was necessary to secure the purchase; the lease itself still serves a purpose with no bearing on High Pointe’s institutional objectives – it ensures housing for the prior occupant. Keeping in mind the

previously cited case law rejecting exemption claims for residential property housing non-ecclesiastical church personnel, it would stretch the bounds of reason to grant an exemption to church-owned property housing a person who appears to have no affiliation with the church. Acknowledging again, however, the short-term duration of the lease, we do not find the lease, by itself, fatal to High Pointe's claim. We consider other facts, along with the lease, in making our ultimate determination.

Problematically, the facts do not show that all or a majority of High Pointe's nearly five-acre property is being solely used for appropriate objects. While there appears to be some use of the property for religious services, it appears that use is presently limited to a weekly men's prayer service held near a tree on the property. Iowa Att'y Gen. Op. 1955 WL 78404 (vacant land held by religious institution for future church or parochial school and occasionally used by educational institution as a football practice field should not be exempt). Even accounting for egress and parking, it does not appear reasonable to assume High Pointe's religious use of the property encompasses the entire acreage of the three parcels. Aside from the area used for the prayer services, there has been no showing made that the remainder of the property is, in any way, used at all; let alone for religious purposes. *Mulroy v. Churchman*, 15 N.W. 583 (Iowa 1883) (finding the entirety of a forty-acre tract owned by a religious institution did not qualify for exemption when only one-half acre was used for burial purposes); *Aerie 1287, Fraternal Order of Eagles v. Holland*, 226 N.W.2d 22 (Iowa 1975) (rejecting taxpayer's claim to full exemption after concluding the entirety of property was not used solely for appropriate objects). We do not believe this limited use entitles the entirety of High Pointe's property to an exemption under section 427.1(8). While we could be persuaded to exempt that portion or those parcels of High Pointe's property used for the religious services, the record is not clear what portion or parcels are so used. § 427.1(14)(a) (providing for partial exemptions). The lack of evidence demonstrating that use is to High Pointe's detriment, as it bears the burden of proof.

We conclude the subject property is not solely used for the appropriate objects of High Pointe Church as of January 1, 2019 and we find it does not qualify for property tax exemption under the statute for the 2019 assessment.

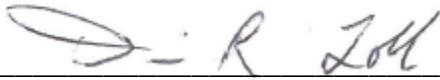
Order

PAAB HEREBY AFFIRMS the Board of Review action upholding the Assessor's determination that the subject property is not 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 (2019).

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 30 days of the date of this Order⁵ and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

Copies to:

Cameron Wright for High Pointe Church by eFile

Dominic Anania for the Board of Review by eFile

⁵ Due to the State Public Health Disaster Emergency caused by the coronavirus (COVID-19), the deadline for filing a judicial review action may be tolled pursuant to orders from the Iowa Supreme Court. Please visit the Iowa Judicial Branch website at <https://www.iowacourts.gov/iowa-courts/supreme-court/orders/> for the most recent Iowa Supreme Court orders.