

REPRESENTATIVE FOR PETITIONER: Reverend Hugh Nelson, *pro se*
REPRESENTATIVE FOR RESPONDENT: Ayn Engle, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Abyssinian Outreach Ministries,)	Petition: 45-004-20-2-8-00530-20
)	
Petitioner,)	Parcel: 45-08-03-352-005.000-004
)	
v.)	County: Lake
)	
Lake County Assessor,)	Assessment Year: 2020
)	
Respondent.)	

December 17, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

INTRODUCTION

1. Abyssinian Outreach Ministries appealed the partial denial of its exemption application, contending that the subject property should receive a 100% exemption.¹ But it failed to show that an unused parsonage building qualified for an exemption. Thus, we find for the Assessor and order no change to the subject property’s exemption status.

PROCEDURAL HISTORY

2. The subject property is a church facility and house/parsonage located at 795 Massachusetts Street in Gary, Indiana. Abyssinian applied for a 100% religious exemption for the 2020 assessment year. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) granted an 86% exemption, finding that the

¹ Abyssinian marked both “religious” and “charitable” exemptions in its petition with the Board but argued only the religious exemption. Thus, we only address its request for a religious exemption, as it provided no information about charitable activities.

house/parsonage was in such disrepair that it could not be used at all. For that reason, it determined that the 14% of the property's total square footage attributable to the house was taxable.

3. The Board's Administrative Law Judge, Jennifer Thuma ("ALJ"), held a telephonic hearing on September 21, 2021. Neither she nor the Board inspected the property.
4. Reverend Hugh Nelson, Reverend Otto Schulze, and Kathryn Smith, Deputy Assessor Laura Mercado, and Donna Melyon were sworn as witnesses.

RECORD

5. The record consists of the following:

Petitioner's Exhibit 1:	Photo of Church Exterior
Petitioner's Exhibit 2:	Photo of Church Interior
Petitioner's Exhibit 3:	Copy of Partial Historic Designation Application
Petitioner's Exhibit 4:	Pleading for Court— (one page)
Petitioner's Exhibit 5:	Communication to Mayor Prince-Request
Petitioner's Exhibit 6:	Articles of Incorporation
Petitioner's Exhibit 7:	Quitclaim Deed
Petitioner's Exhibit 8:	Tax Exempt Status Approval
Petitioner's Exhibit 9:	Business Report Filed with Secretary of State

Respondent's Exhibit A:	Copy of Form 115
Respondent's Exhibit B:	Copy of Form 136
Respondent's Exhibit C:	Copy of Exemption Application
Respondent's Exhibit D:	Copy of Form 132
Respondent's Exhibit E:	Copy of Letter from Assessor to Abyssinian
Respondent's Exhibit F:	Copy of Site Inspection Request & Photos
Respondent's Exhibit G:	Google Map Pictures
Respondent's Exhibit H:	Property Record Card
Respondent's Exhibit J ² :	Calculation Sheet & Property Details
Respondent's Exhibit K:	Copy of Tax Bills
Respondent's Exhibit L:	Copy of Computer & Handwritten Notes-Tax Sale
Respondent's Exhibit M:	2004 Quitclaim Deed
Respondent's Exhibit N:	2019 Quitclaim Deed
Respondent's Exhibit O:	Certified Copies of Abyssinian Business Reports
Respondent's Exhibit P:	Certified Copies of Abyssinian Business Reports
Respondent's Exhibit Q:	Copy of newspaper article

² The Assessor did not provide an Exhibit I, although she listed it on the exhibit cover page. The contents appeared to be combined with Exhibit J.

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders, and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

OBJECTIONS

7. The Assessor objected to Petitioner's Exhibits 4, 5, and 9 because she received them past the deadline in the Board's administrative rule, 52 IAC 4-8-1. It requires that copies of documentary evidence be exchanged at least five days before the hearing and that a witness list and exhibits be exchanged at least fifteen days before hearing. Exhibit 4 is an unstamped pleading Abyssinian may have filed in court regarding the property. Exhibit 5 is a partial copy of an email from Otto Schulze to an unnamed party with his argument as to why the property should be exempt. Exhibit 9 is a printed copy of a receipt from the Secretary of State acknowledging Abyssinian's filed business report. Because the Assessor received all three of the exhibits late, on September 19, long past the rule's deadline, we sustain the objection for all three exhibits. Exclusion of these exhibits, however, does not affect the outcome of this determination.
8. The Assessor objected to all testimony from two of Abyssinian's witnesses, Otto Schulze, and Kathryn Smith, because Abyssinian failed to provide the witness list to her fifteen days before the hearing. Instead, the Assessor received the Abyssinian's witness list on September 19, two days before the September 21 hearing. The Board's rule, 52 IAC 4-8-1, requires that parties provide witness lists to the opposing side fifteen days in advance of a hearing. We therefore exclude the testimony of Schulze and Smith. However, the exclusion of these witnesses does not affect the outcome of this determination.

FINDINGS OF FACT

9. The property consists of a church building, a small house formerly used as a parsonage but now in disrepair, and associated land. Abyssinian and the church's previous owner never used any part of the property for purposes other than religious worship in 2019 or 2020. Abyssinian holds Bible study meetings, choir practice, and religious services in the

church building. No part of the property is used to generate income or profit. *Nelson testimony; Mercado testimony; Pet'r. Exs. 1, 2, 8.*

10. Abyssinian is an Indiana nonprofit corporation. It took ownership of the subject property in November of 2019 from Abyssinian Baptist Church. Previously, Trinity, another church, transferred ownership to Abyssinian Baptist Church. *Nelson testimony; Pet'r. Ex. 6; Resp't. Exs. L, O, P,*
11. Abyssinian timely filed for a property tax exemption for 2020. A previous exemption lapsed in 2005, causing taxes to accrue on the property. As a result of this, back taxes of over \$300,000 are owed. Thus, the property has recently been sold in tax sales several times, but the sales were not finalized. The most recent sale is pending, awaiting the issuance of a tax deed from the local court. *Nelson testimony; Mercado testimony; Resp't. Ex. K, L, M, N.*
12. The parsonage is in extreme disrepair and is not in use. Abyssinian does not have the funds to tear it down. *Nelson testimony; Mercado testimony; Resp't. Ex. E, F, J, I.*

ANALYSIS

13. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Id.* at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.*

14. Indiana Code § 6-1.1-10-16(a) provides “All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious or charitable purposes.” The determination of whether a property should receive an exemption “for a particular assessment date must be based on the tangible property’s eligibility...on that assessment date.” I.C. § 6-1.1-11-1.5(b). The assessment date for 2020 was January 1, 2020. I.C. § 6-1.1-2-1.5(a)(2). In addition, I.C. § 6-1.1-10-36.3 provides that “property” that is predominantly used for exempt purposes by a church is totally exempt from taxation.

15. In addition, I.C. § 6-1.1-10-21 provides an exemption for parsonages. To receive this exemption, a church or religious society must submit an affidavit stating that the parsonage is being used to house one or more of the church’s or religious society’s “rabbis, priests, preachers, ministers, or pastors” and it is not being used to make a profit. I.C. 6-1.1-10-21(c).

16. We first note that the religious exception to the predominant use statute, I.C. § 6-1.1-10-36.3(c)(2), does not apply to the parsonage. That statute provides that a property that is predominantly used for exempt purposes by a church is totally exempt from taxation. But to take advantage of this provision, the church must first qualify for an exemption. Both the general religious exemption statute in I.C. § 6-1.1-10-16, as well as the church building exemption in I.C. § 6-1.1-10-21, refer to an exemption for a building, rather than a parcel. Thus, in these circumstances, the “property” referred to in I.C. § 6-1.1-10-36.3(c)(2), is the church building and associated land, not the parcel as a whole. A separate building must have its own independent grounds for exemption. This interpretation is confirmed by the parsonage statute, I.C. § 6-1.1-10-21. That statute provides specific restrictions on when a parsonage can receive an exemption. To read the predominant use statute as extending exemptions to any building located on a parcel that was predominantly used by a church building would render the parsonage statute meaningless. Because I.C. § 6-1.1-10-36.3 does not apply to the building in question in this case, we now turn to whether it is exempt under the parsonage statute.

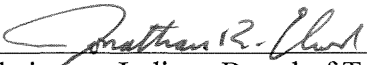
17. As discussed above, I.C. § 6-1.1-10-21, requires that a church or religious society submit an affidavit confirming that a parsonage is being used to house a member of the clergy in order to receive an exemption. As the Assessor points out, Abyssinian did not submit this affidavit. Nor could they have, given that the parsonage was not habitable as of the assessment date. Thus, the parsonage cannot receive an exemption under I.C. § 6-1.1-10-21.
18. Abyssinian argues that *Walz v. Tax Com. of N.Y.*, 397 U.S. 664 (1970) guarantees them a religious exemption from property taxes, but that interpretation is incorrect. *Walz* stands for the proposition that a state *may* grant property tax exemptions to religious organizations without violating the U.S. Constitution's establishment clause. It does not require that states do so. Abyssinian failed to show why the parsonage in question should be exempt from taxation under Indiana law. Thus, that property is ineligible for an exemption.
19. Finally, Abyssinian also asked the Board to waive all back taxes, arguing that the property had been continuously used for religious purposes. Regardless of the reasons for why the exemption was originally removed, the Board only has authority to consider years that have been timely appealed. In this case, the 2020 assessment year. As a creation of the legislature, the Board has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). No statute gives the Board authority to waive back taxes. Thus, we are unable to provide relief on this issue.³

CONCLUSION

20. Because Abyssinian failed to show that the parsonage qualified for an exemption, we order no change to the subject property's exemption status. It remains 86% exempt from taxation for the 2020 assessment year.

³ The record is silent as to whether Abyssinian has endeavored to avail themselves of the provisions of I.C. 6-1.1-11-3(h).

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the 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>>.