

REPRESENTATIVE FOR PETITIONER: Edward R. Hannon, Attorney

REPRESENTATIVES FOR RESPONDENT: Lisa Garoffolo, Boone County Assessor
Jennifer Lasley, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

First Baptist Church of Lebanon	)	Petition No.:	06-001-17-2-8-01072-18
Indiana, Inc.,	)		06-001-18-2-8-01073-18
	)		06-001-19-2-8-01074-18
Petitioner,)		
	)	Parcel Nos.:	101-20453-00
v.	)		001-13340-02
)		
Boone County Assessor,	)	County:	Boone
)		
Respondent.	)	Assessment Years:	2017-2019

June, 18, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Where property is owned, occupied, and predominantly used by a church for religious purposes, it is entitled to a 100% exemption. First Baptist Church of Lebanon used its family-life center for church-related religious activities more than half the time it was in use in the years leading up to the 2018 and 2019 assessment dates. First Baptist is therefore entitled to a 100% exemption on that property, with the exception of some land rented to a farmer that it concedes is not exempt.

PROCEDURAL HISTORY

2. We begin with a brief procedural history outlining how the appeal came before us and what has happened since. Beginning in 2004, First Baptist received an exemption on vacant land that had been donated to it. The exemption was later revoked because First Baptist had not made sufficient progress toward building an exempt facility on the land. First Baptist's treasurer paid the taxes from that point forward. Perhaps owing to the fact that the land was assessed as agricultural and the taxes were low, nobody else at First Baptist knew exemption had been lost. *Reagan and Lasley testimony.*

3. In 2016, First Baptist began building a family-life facility, known as "Cedars Activity Center" on the property. It completed construction in early 2017. In the spring of 2018, First Baptist received a tax bill based on the 2017 assessment. On May 25, 2018, after trying to find out what had happened, Jennifer Reagan, a member of First Baptist's Cedars activity committee, filed a Form 136 application seeking a 100% exemption for land, improvements, and personal property. She spoke to Jennifer Lasley, a deputy assessor, who told her that the petition was untimely for 2018 and filled in "2019" on the line identifying the assessment year to which the application applied. After consulting with Barry Wood of the Department of Local Government Finance ("DLGF"), the Assessor determined that whatever the PTABOA decided for 2019 could also be applied to 2018.

4. The PTABOA issued two Form 120 determinations—one each for 2018 and 2019. For each year, it found the portion of land First Baptist rented to a farmer 100% taxable. It found the rest of the land, the improvements, and the personal property located at Cedars 50% exempt. Each determination also included a notation that "2017 pay 2018 is denied according to DLGF." First Baptist responded by filing Form 132 petitions with us for 2017 through 2019.

5. On March 20, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on First Baptist’s petitions. Neither he nor the Board inspected the property. The following people were sworn and testified:

For First Baptist: David Wright, pastor; David Tim Stonecipher, associate pastor; Jennifer Reagan; Matthew Stuteville; and Kevin Krulik.

For the Assessor: Boone County Assessor Lisa Garoffolo and her deputy, Jennifer Lasley.

6. The parties offered the following exhibits without objection:

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|--------------------------|---|
| Petitioner’s Exhibit 1: | First Baptist’s Certificate of Incorporation |
| Petitioner’s Exhibit 2: | First Baptist’s constitution |
| Petitioner’s Exhibit 3: | Development plan for new church |
| Petitioner’s Exhibit 3B: | PowerPoint slides |
| Petitioner’s Exhibit 4: | Documents from various capital campaigns |
| Petitioner’s Exhibit 5: | Real estate acquisition documents, including deeds |
| Petitioner’s Exhibit 6: | Photographs of church activities |
| Petitioner’s Exhibit 7: | Printouts from Cedars’ website |
| Petitioner’s Exhibit 8: | Copies of handouts and photograph of t-shirt given to renters at Cedars |
| Petitioner’s Exhibit 9: | Use charts and calendars for Cedars |
| Petitioner’s Exhibit 10: | First Baptist’s profit and loss statements |
| Petitioner’s Exhibit 11: | Form 11 notice, tax statement, Form 136 application hearing notice, and Form 120 determinations |
| Petitioner’s Exhibit 12: | Email correspondence with attachments |
| Petitioner’s Exhibit 13: | Information regarding exemptions and activities for Connection Pointe Christian Church and Faith Properties, Inc. |
| Respondent’s Exhibit 1: | Assessor’s 136 checklist |
| Respondent’s Exhibit 2: | First Baptist’s Form 136 application |
| Respondent’s Exhibit 3: | Power of Attorney |
| Respondent’s Exhibit 4: | Printout of rental packages from Cedars’ website |
| Respondent’s Exhibit 5: | Boone County Appeal Worksheet |
| Respondent’s Exhibit 6: | Property record card |
| Respondent’s Exhibit 7: | Email correspondence between Lasley and Reagan |
| Respondent’s Exhibit 8: | Email correspondence about rented farmland |
| Respondent’s Exhibit 9: | First Baptist’s Certificate of Incorporation and Articles of Incorporation |
| Respondent’s Exhibit 10: | First Baptist’s profit and loss statement and balance sheet |
| Respondent’s Exhibit 11: | Profit and loss statement for Cedars |

- Respondent’s Exhibit 12: Form 114 hearing notice
- Respondent’s Exhibit 13: Form 120 determinations, handwritten note regarding exemption history for parcel 001-13340-02, September 12, 2018 letter from Edward Hannon, and Hannon’s Notice of Appearance
- Respondent’s Exhibit 14: Form 132 petitions for 2018 and 2019
- Respondent’s Exhibit 15: IBTR hearing notice
- Respondent’s Exhibit 16: *Christ United Methodist Church v. Lake Cnty. Ass’r*, pet nos. 45-004-15-2-8-01655 etc. (IBTR Feb. 6, 2019)

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

OBJECTIONS

8. First Baptist made two objections, both of which the ALJ took under advisement. First, it objected to Respondent’s Exhibit 16—a determination from a different appeal—on grounds that the Assessor did not exchange a copy of that exhibit before the hearing. Second, it made a hearsay objection to testimony from Jennifer Lasley about a conversation between the Assessor and Barry Wood, a representative of the DLGF.

9. We overrule both objections. Our determination in the other appeal is not evidentiary; the Assessor cited to it in making legal argument. Providing a copy of the determination is simply a courtesy. As for Lasley’s testimony about the Assessor’s conversation with Wood, our procedural rules allow us to admit hearsay. But if the opposing party objects to hearsay and it does not fit within a recognized exception to the hearsay rule, we cannot base our determination solely on that evidence. 52 IAC 2-7-3. Lasley’s testimony merely provides background about why the Assessor and PTABOA addressed both the 2018 and 2019 assessment years. Thus, while we admit that testimony, we do not rely on it reaching our determination.

FINDINGS OF FACT

10. First Baptist is a church whose mission is “to know God and to make him known.” It has long owned a building in downtown Lebanon where it conducted its worship services and

other ministry activities. In 2002, a former pastor realized First Baptist was outgrowing that facility. In 2004, Kenny and Rosalie Limp donated to First Baptist land located approximately two miles from the downtown church. The Limps later donated additional contiguous land. *Stuteville and Wright testimony; Pet'r Ex. 5.*

11. First Baptist went through years of planning about what type of facility it would build on the donated land, although it always wanted a multi-purpose building where it could hold basketball games as well as worship services and everything in between. In 2016, it began construction on the first phase of its project, which is the Cedars facility. *Krulik testimony; Pet'r Ex. 3B.*
12. The Cedars building has more than 13,000 square feet, including a large multi-purpose gym with hardwood floors. First Baptist designed the gym's acoustics and lighting so that it could be used for purposes besides playing basketball, such as hosting Christian concerts, youth events, and vacation bible school. First Baptist has hosted various events in the gym and other multi-purpose rooms at Cedars. It began using the gym for Sunday worship services on some Sundays and is planning to begin moving all of its worship services from the downtown church to Cedars beginning in July 2019. It has also used the rooms for church activities, such as the Nehemiah Leadership Team, bible studies, Sunday school, family meals, men's and youth-group meetings and events, church board and committee meetings, vacation bible school, and church outreach events. *Krulik, Wright, and Reagan testimony; Pet'r Exs. 3B, 9; Resp't Exs. 2, 6.*
13. In addition to those church activities, First Baptist allows the public to use the facility for things like open gym, wedding receptions, and baby showers. Its written materials indicate that First Baptist charges rent for those uses, but its pastors explained that those rates are more in the nature of recommended donations. First Baptist does not turn people away if they cannot pay, and both staff and volunteers preface any reference to the rates with phrases emphasizing that they apply if the applicant's budget can afford them. First Baptist calculated the rates based on the costs of running the facility for the

events—not to make a profit. And they are all variations of the number three, which has religious meaning and is way to start a conversation about the Gospel. *Wright, Stonecipher, and Reagan testimony; Pet’r Ex. 7; Resp’t Ex. 4.*

14. In fact, First Baptist views the public uses as part of its ministry. They are a way to evangelize and bring people to God. Tim Stonecipher, an associate pastor with First Baptist, has a background in sports ministry. He has an office at Cedars and spends 40 to 50 hours there every week. He devotes much of that time to walking around and visiting with people who attend events at the facility with the purpose of building relationships so he can bring the Gospel to their hearts and minds. Church volunteers do the same thing. First Baptist makes pamphlets with religious messages available to attendees. It also gives attendees t-shirts with a religious message. *Stonecipher and Wright testimony; Pet’r Ex. 7.*
15. Pastor Stonecipher and his assistant prepared a chart showing the relative amount of time the facility was used for church activities compared to rental activities. In calendar year 2017, it was used approximately 525 hours for church activities versus 240 hours for rentals. In 2018, those uses were 927 hours for church activities and 667.5 hours for rentals. *Stonecipher and Reagan testimony; Pet’r Ex. 9; Resp’t Ex. 2.*
16. Finally, First Baptist rented a portion of the land to a farmer who raises crops on it. It concedes that the farmland is not exempt. *See Hannon opening and closing statements.*

CONCLUSIONS OF LAW

A. Procedural issues

17. As explained above, these appeals have an unusual procedural history. Initial questions over timeliness led the PTABOA to issue determinations for both 2018 and 2019 and arguably for 2017 as well. First Baptist therefore filed Form 132 petitions for all three years, although it concedes that, for its application to be timely for 2017, it would have

needed to receive an exemption for 2016. And it acknowledges that it did not receive an exemption for that year. Given that concession, we deny First Baptist's petition for 2017.

18. Several witnesses testified as to initial questions about the application's timeliness for 2018 when First Baptist filed it. But the Assessor concluded that whatever exemption the PTABOA found for 2019 could be applied to 2018. The PTABOA issued a determination granting a partial exemption for 2018, and the Assessor did not appeal it. Nor does she now argue that we should deny First Baptist's 2018 appeal based on the application not being timely. Thus, the timeliness of First Baptist's exemption application for 2018 is not before us. With that in mind, we turn to the merits of First Baptist's petitions for 2018 and 2019.

B. With the exception of the portion of the land rented to a farmer, the subject property is entitled to a 100% exemption for 2018 and 2019

19. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.* Exemption statutes are strictly construed against the taxpayer. Every exemption case stands on its own facts, and it is the taxpayer's duty to walk us through the analysis. *Id.*
20. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned, occupied, and exclusively or predominantly used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass'r*, 909 N.E.2d 1138, 1141 *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). That exemption generally extends to land on which an exempt building is situated and personal property contained therein. *See Jamestown* 909 N.E.2d at 1141; I.C. § 6-1.1-10-16(c), (e).

21. Property is predominantly used for exempt purposes if it is used for those purposes more than half the time it is used or occupied during the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Property is totally exempt if a church, religious society, or nonprofit school predominantly uses it for exempt purposes. I.C. § 6-1.1-10-36.3(c)(2). Where a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption must compare the time of exempt and non-exempt use. *See Hamilton Cnty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017). (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”).
22. With the exception of the land First Baptist rents to a farmer, which First Baptist concedes is not exempt, there does not appear to be any dispute that First Baptist used Cedars at least partly for religious purposes, including church activities. The dispute is over First Baptist’s rental of the facility. First Baptist argues that those rentals are part of its ministry and offer it the opportunity to evangelize, while the Assessor views them as akin to what any other commercial facility might do.
23. First Baptist offered extensive evidence tying the rental activities to its religious mission. We need not decide whether those rental activities qualify as religious, however. Even if we assume they were not religious, First Baptist’s usage logs and supporting testimony show that it used Cedars for religious, church-related activities more than half the time the facility was in use for the years ending on the 2018 and 2019 assessment dates. And the Assessor did nothing to rebut or impeach that evidence. Because First Baptist used Cedars predominantly for religious purposes, it was entitled to a 100% exemption for each year. I.C. § 6-1.1-10-36.3(c)(2).

CONCLUSION

24. In accordance with the above findings of fact and conclusions of law, we deny First Baptist’s Form 132 petition for the 2017 assessment year. For 2018 and 2019, we find

that the subject property is entitled to a 100% exemption, with the exception of the land rented to a farmer, which is not entitled to any exemption.

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