

REPRESENTATIVES FOR PETITIONER:
Robert Hendren, Hendren Law Office

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fraternal Order of Eagles #3988, Inc.,	)	Petition No.:	55-005-06-2-8-00001
)		
Petitioner,	)	Parcel No.:	55-01-25-485-001.000-005
)		
v.)		
	)	County:	Morgan
Morgan County Assessor,	)	Township:	Brown
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
Morgan County Property Tax Assessment Board of Appeals

December 9, 2011

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issues presented for consideration by the Board are whether the Petitioner was entitled to an exemption for charitable purposes pursuant to Indiana Code § 6-1.1-10-16(a) and § 6-1.1-10-36.3(a) and whether the Petitioner was entitled to an exemption pursuant to Indiana Code § 6-1.1-10-23 or § 27-11-7-4 as a fraternal beneficiary association for the 2006 assessment year.

PROCEDURAL HISTORY

2. The Fraternal Order of Eagles #3988, Inc. (the Lodge), filed a Form 136 Application for Property Tax Exemption with the Morgan County Property Tax Assessment Board of Appeals (PTABOA). The Morgan County PTABOA issued its determination denying the exemption on August 28, 2006. On September 25, 2006, the Lodge filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of its petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Carol Comer, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on August 23, 2011, in Martinsville, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:¹

Roy Finchum, Trustee, Eagles Lodge

¹ Mr. Kegley was sworn as a witness but did not present any testimony at the hearing. Mr. Steve Hedges was also present at the hearing, but he neither appeared as an attorney or as a witness in the above named case.

Paul Kegley, Trustee, Eagles Lodge

For the Respondent:

Brenda Brittain, Morgan County Assessor

5. The Petitioner submitted the following exhibits:²

- Petitioner Exhibit 1 – Petitioner’s exhibit list and Affidavit of Lloyd Donald Taylor,
- Petitioner Exhibit 1-1.1 – January through November 2005 monthly profit and loss statements,
- Petitioner Exhibit 1-1.2 – May 15, 2003, through March 10, 2006, donations,
- Petitioner Exhibit 1-1.3 – April 4, 2004, through March 24, 2005, donations, seven newspaper articles and two flyers announcing lodge activities,
- Petitioner Exhibit 1-1.4 – Return of Organization Exempt from Income Tax – Form 990 for 2003 and 2004,
- Petitioner Exhibit 1-2 – Affidavit of Mike Rogers,
- Petitioner Exhibit 1-2.1 – Usage Study, dated May 12, 2006,³
- Petitioner Exhibit 1-2.3 – By-laws, dated February 21, 2002,
- Petitioner Exhibit 1-3.1 – Certificate of Incorporation, dated March 29, 1999,
- Petitioner Exhibit 1-3.2 – Articles of Incorporation,
- Petitioner Exhibit 1-3.3 – Constitution of the Fraternal Order of Eagles,
- Petitioner Exhibit 1-4 – Exemptions acted on by the PTABOA,
- Petitioner Exhibit 1-5 – PTABOA notes on exemptions, dated July 23, 2004,
- Petitioner Exhibit 1-6 – 2004 Application for Property Tax Exemption – Form 136, dated May 13, 2004,
- Petitioner Exhibit 1-7 – 2004 Notice of Action on Exemption Application – Form 120, dated July 22, 2004,
- Petitioner Exhibit 1-8 – 100% Member Use Affidavit of Roy Finchum,
- Petitioner Exhibit 1-9 – Facilities Used by Other Non-Profits Affidavit of Roy Finchum,
- Petitioner Exhibit 1-10 – No Kitchen in Operation Affidavit of Mark A. Kivett,
- Petitioner Exhibit 1-11 – 100% Member Use Affidavit of Mark A. Kivett,
- Petitioner Exhibit 1-12 – Certificate of Existence, dated April 13, 2006,
- Petitioner Exhibit 1-14 – Deposition of Brenda Brittain
- Petitioner Exhibit 2 – PTABOA’s notes on 2006 exemptions,

² The Petitioner’s counsel did not submit Petitioner Exhibit 4 and Mr. Hendren withdrew Petitioner Exhibits 1-2.2, 1-13 and 1-15.

³ The Petitioner’s counsel submitted the usage study to the Board as post-hearing evidence on August 30, 2011.

- Petitioner Exhibit 3 – One page excerpt of the PTABOA’s notes on 2006 exemptions,
- Petitioner Exhibit 5 – The Petitioner’s 2006 Application for Property Tax Exemption – Form 136 with the Articles of Incorporation, By-laws, 2003 Edition of the Articles of Incorporation, Constitution and Statutes of Grand Aerie F.O.E., balance sheet and summary of income and expenses prepared by Steven G. Hedges, affidavits of Roy Finchum, Mark A. Kivett, Lloyd Donald Taylor and Mike Rogers, May 15, 2003, through March 10, 2006, donations, seven newspaper articles and two flyers on charitable activities and December 2005 profit and loss statement.

6. The Respondent submitted the following exhibit:

- Respondent Exhibit A – Floor plan of the Lodge building,
- Respondent Exhibit B – State Board of Tax Commissioners Instructional Bulletin 92-43, dated July 21, 1992,
- Respondent Exhibit C – Assessor’s Response to Usage Study.⁴

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petition with attachments,
- Board Exhibit B – Notice of Hearing on Petition, dated July 1, 2011,
- Board Exhibit C – Hearing sign-in sheet.

8. The property under appeal is a 10,500 sq. ft. lodge building, an 880 sq. ft. storage building and a parking lot located at 451 North Old State Road 67, Mooresville, in Brown Township, Morgan County.

9. The ALJ did not conduct an on-site inspection of the property.

10. For 2006, the PTABOA determined the Petitioner’s real and personal property to be 100% taxable.

⁴ The Respondent’s counsel filed the Assessor’s Response to Usage Study on September 20, 2011, as a result of the Petitioner’s late submission of its 2006 Usage Study.

11. For 2006, the Petitioner contends its real and personal property should be 100% tax-exempt.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PETITIONER'S CONTENTIONS

20. The Petitioner's counsel contends that the Petitioner's real and personal property qualifies for an exemption as a charitable entity under Indiana Code § 6-1.1-10-16 and § 6-1.1-10-36.3 and as a fraternal beneficiary association under Indiana Codes § 27-11-7-4 and § 6-1.1-10-23. *Hendren argument; Petitioner Exhibit 5*. According to the Petitioner's evidence, the Lodge is an Indiana not-for-profit corporation, exempt under 501(c)(8) of the Internal Revenue Code as a fraternal beneficiary society, order or association. *Petitioner Exhibit 5*.

21. The Lodge is a local aerie instituted under the constitution and statutes of the Grand Aerie Fraternal Order of Eagles (Grand Aerie). *Petitioner Exhibits 1-3.3 and 5*. The Grand Aerie is an international, not-for-profit organization whose mission is:

To unite fraternally for mutual benefit, protection, improvement, social enjoyment and association, all persons of good moral character who believe in a Supreme Being to inculcate the principles of liberty, truth, justice and equality, to perpetuate itself as a fraternal organization and to provide for its government as its Constitution, Laws, Rituals, By-Laws or other rules and regulations may from time to time provide, and to promote the general welfare....To promote and raise funds for duly authorized Fraternal Order of the Eagles charities and contribute to worthwhile charitable causes.

Petitioner Exhibits 1-3.3 and 5. Mr. Finchum testified that the Lodge's motto is "people helping people." *Finchum testimony*.

22. Mr. Finchum testified that in 2005 and 2006 the Lodge had between 850 to 900 members. *Finchum testimony*. The Lodge has two types of membership: beneficial and non-beneficial. *Id*. Pursuant to the Lodge's by-laws, dues-paying members who were initiated into the Lodge prior to turning fifty-five years of age are entitled to funeral benefits upon their death, as well as to a floral arrangement or other form of tribute. *Petitioner Exhibits 1-2.3 and 5*. The funeral benefits range from \$150 to \$250, depending on the number of years of membership. *Finchum testimony; Id*. The benefit for the floral arrangement or other tribute is not to exceed \$50. *Id*.

23. Mr. Finchum testified that the Lodge is open year round. *Finchum testimony*. The normal business hours are Monday through Thursday from 11:00 a.m. to midnight and Friday and Saturday from 11:00 a.m. to 1:00 a.m. *Id.* The Lodge is also open one Sunday a month. *Id.*
24. The Lodge building has a “Social Room” with a raised platform and dance floor; an “Entertainment Room” with a dance floor; a “Lodge Room” with a bar, five televisions and three gambling ticket dispensers; a “Pool and Dart Room” with two pool tables and four dart machines; a kitchen, three storage rooms, four restrooms and two offices.⁵ *Finchum testimony; Petitioner Exhibit 1-2.1.* The Petitioner’s usage study shows the building contains a total of 10,500 square feet, which is broken down as follows: the Social Room is 2,910 sq. ft.; the Entertainment Room is 1,782 sq. ft.; the Lodge Room is 1,880 sq. ft.; the Pool and Dart Room is 560 sq. ft.; the kitchen is 304 sq. ft.; the offices total 496 sq. ft.; the storage rooms total 616 sq. ft.; the restrooms total 661 sq. ft.; and the corridors total 1,291 sq. ft. *Petitioner Exhibit 1-2.1.*
25. Mr. Finchum testified that normally only members use the Pool and Dart Room and Lodge Room.⁶ *Finchum testimony*. According to Mr. Finchum, members can watch television, and purchase alcoholic beverages, non-alcoholic beverages and pull-tab tickets sold by the bartender and wall dispensers in the Lodge room. *Finchum testimony; Petitioner Exhibit 1-2.1.* The Petitioner’s usage study shows that a “Dart League” and

⁵ The parties submitted two different schematic drawings of the Lodge building. *See Petitioner Exhibit 1-2.1; and Respondent Exhibit A.* The “Entertainment Room” identified in the usage study prepared for the Lodge by Mike Rogers is identified as the “Banquet Room” in the schematic drawing submitted by the Respondent. *Id.* Similarly, the “Pool & Dart Room” and the “Lodge Room” from the usage study are identified as the “Pool Room” and “Bar Room” in the Respondent’s schematic drawing. *Id.* For ease of reference, the Board will use the names set forth in Mr. Rogers’ usage study, unless otherwise indicated.

⁶ Mr. Finchum testified that members are only allowed to bring the same guest into the Lodge three times. *Finchum testimony*. After three visits, the guest must become a member in order to continue participating in the activities at the Lodge. *Id.*

“Pool Tournament” were held as weekly events, while the remainder of the time the room was open for the members’ enjoyment.⁷ *Id.*

26. Mr. Finchum testified that the Lodge also hosts karaoke. *Finchum testimony.* The Petitioner’s usage study shows that from March 2005 through February 2006, the Lodge hosted karaoke two nights per week in the Entertainment Room. *Petitioner Exhibit 1-2.1.* The Petitioner’s usage study shows no other use of the Entertainment Room. *Id.* Further, Mr. Finchum testified that the Lodge uses the Social Room to conduct trustee, officers, members and auxiliary meetings approximately seven times per month. *Finchum testimony; Petitioner Exhibit 1-2.1.* The Lodge also hosts dances for members on various holidays such as New Year’s Eve, Valentine’s Day and Halloween. *Id.*
27. Mr. Finchum testified that state regulations allow the Lodge to be open to the public once a month. *Finchum testimony.* On those occasions, Mr. Finchum testified, the Lodge frequently offers entertainment, such as bands. *Finchum testimony; Petitioner Exhibit 1-2.1.* The Lodge also hosted a St. Patrick’s Day Party, an Indianapolis 500 Race Day Party, “Monte Carlo” nights, a “Mash Ride” and a Susan G. Komen Breast Cancer fundraiser that were open to the public.⁸ *Id.* Similarly, Mr. Finchum testified, the Lodge hosts bingo games once a week in the Social Room. *Id.* The bingo games are open to the public. *Finchum testimony.* According to Mr. Finchum, the Lodge has a license to conduct bingo, which also covers all other gaming conducted on the premises. *Id.*
28. Mr. Finchum testified that the Lodge supports numerous charitable organizations by either making monetary donations, or allowing the organization to use the Social Room and Entertainment Room free of charge for fundraising. *Finchum testimony.* In support of Mr. Finchum’s testimony, the Petitioner’s counsel submitted a list of 2005 and 2006 donations, a number of newspaper articles and the Petitioner’s usage study. *Petitioner Exhibits 1-1.2, 1-1.3 and 1-2.1.* According to the Petitioner’s donation list, the Lodge

⁷ The Board notes that, contrary to the usage study, Mr. Finchum testified that there were no dart leagues or pool tournaments in 2006. *Finchum testimony.*

⁸ Mr. Finchum testified that normally flyers are distributed announcing the entertainment when the Lodge is hosting a fundraiser. *Finchum testimony; Petitioner Exhibit 1-1.3.*

made donations to organizations such as A Child's Wish Foundation, the Mooresville Police D.A.R.E. Program, the Susan G. Komen Breast Cancer Fund, Morgan County EMS, Relay for Life and Morgan County Humane Society. *Id.* Further, contributions were made to individuals to help with medical expenses, burial expenses or assistance after a fire. *Id.* The Lodge also awards educational scholarships. *Id.* From April 5, 2004, through March 10, 2006, the Lodge awarded a total of \$28,235.60 to approximately 57 benefactors. *Petitioner Exhibit 1-1.2.*

29. The Petitioner's counsel called the county assessor as a witness, who testified that the PTABOA examines all exemption applications filed. *Brittain testimony.* According to Ms. Brittain, the PTABOA considers the amount of time the buildings is open, what activities are conducted on the property, the amount of the organization's contributions and the charities supported. *Id.* Ms. Brittain testified that, prior to acting upon any application for exemption, the PTABOA reviews the State Board of Tax Commissioners' Instructional Bulletin 92-43, dated July 21, 1992. *Brittain testimony; Respondent Exhibit B.* According to Ms. Brittain the instructional bulletin provides guidance on how to calculate the time of a facility's charitable use in an assessment year. *Id.* In the case of the Lodge, Ms. Brittain testified, the PTABOA reviewed the use of the building, the Lodge's income and the amount of contributions made by the Lodge and determined that the Lodge primarily conducts social activities for the purpose of promoting a "good atmosphere" and "camaraderie" among its members. *Id.*
30. Finally, the Petitioner's counsel argues that the PTABOA did not address or act on the Lodge's claim for an exemption as a fraternal beneficiary association under Indiana Code § 6-1.1-10-23 or as a fraternal benefit society under Indiana Code § 27-11-7-4. *Hendren argument.* Despite failing to address the Lodge's fraternal benefit exemption, Mr. Hendron argues, the PTABOA granted the exemption application of several other fraternal organizations in Morgan County. *Id.; Petitioner Exhibit 2.* Thus, Mr. Hendren argues, the Lodge has been treated unfairly in the denial of their exemption application. *Hendren argument.*

RESPONDENT'S CONTENTIONS

31. The Respondent's counsel argues that the Petitioner is not entitled to an exemption in 2006. *Meighen argument*. According to Ms. Meighen, the PTABOA denied the Lodge's exemption application in 2002 and 2004 and as a result, the Petitioner filed for review before the Board. *Id.* The Board issued final determinations on January 8, 2004, and December 15, 2006, respectively, denying the Lodge's requests for tax exemption. *Meighen argument; Respondent Exhibit C at 2, citing Fraternal Order of Eagles #3988 v. Morgan County Property Tax Assessment Board of Appeals, Petition Nos. 55-005-02-2-8-00001 (January 8, 2004) and 55-005-04-2-8-00001 (December 15, 2006)*. According to Ms. Meighen, the relevant statutes have not changed and there is no new case law. *Id.* Thus, Ms. Meighen argues, because the Lodge's use has not changed since the 2002 and 2004 assessment years, the Lodge does not qualify to be exempt from taxation for the 2006 tax year. *Id.*
32. The Respondent's counsel further argues that the Lodge failed to meet its burden of proof because it did not walk the Board through a breakdown of the amount of time that the property is used for charitable and non-charitable activities. *Meighen argument; Respondent Exhibit C*. According to Ms. Meighen, the Petitioner's usage study lists non-exempt activities, such as bingo, a St. Patrick's Day party, a Haunted House and Monte Carlo nights. *Id.* It also list areas that are open to members only, such as the Lodge Room and Dart and Pool Room, which are used for "drinking, watching multiple televisions, playing wall mounted gaming machines (pull tabs) and also purchasing similar gaming cards from behind the bar." *Id.* Indiana courts have held that the use of facilities for social and recreational activities does not qualify as a charitable use for purposes of entitlement to tax exemption. *Id., citing Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 681 (1969) and *Sahara Grotto and Styx, Inc. v. State Board of Tax Commissioners*, 147 Inc. App. 471, 261 N.E.2d 873, 877 (1970).

33. Similarly, Ms. Meighen argues, the usage study does not identify the qualifications of its author to perform such a study. *Meighen argument; Respondent Exhibit C*. In addition, the author is entirely conclusory in asserting that the lodge building is devoted to 100% member usage and 100% charitable purposes. *Id.* The Respondent’s counsel argues that the Lodge cannot support its claim for an exemption based upon unsupported conclusions. *Id.*, citing *Whitley Products, Inc. v. State Board of Tax Commissioner*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998); *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329 (Ind. Tax Ct. 1999); and *Fraternal Order of Eagles, #2455 v. Noble County Property Tax Assessment Board of Appeals*, Petition No. 57-002-02-2-8-00002 (Ind. Bd. of Tax Rev., Nov. 17, 2003). *Id.*
34. While the usage study lists several organizations to which the Lodge donates money, Ms. Meighen argues that simply listing various organizations does not support the Lodge’s claim for exemption. *Meighen argument; Respondent Exhibit C*. According to Ms. Meighen, “although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income.” *Id.*, citing *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002). Further, while the usage study lists the purpose of the Lodge is “To unite fraternally for the mutual benefit, protection, improvement and social enjoyment, all persons as it ... may from time to time provide [with membership]” and “...to do and perform any and all other things as may be generally performed by a fraternal beneficiary society,” Ms. Meighen argues, it is not enough for an organization to conclude or declare its self charitable or fraternal, it must still meet the charitable purpose requirements. *Meighen argument; Respondent Exhibit C*, citing *Indianapolis Elks Building Corp.*, 251 N.E.2d at 682 and *National Association of Miniature Enthusiast v. State Board of Tax Commissioners*, 671 N.E.2d 218, 221 (Ind. Tax Ct. 1996); and *Elks Onyx Lodge #479 IBPOE v. Wayne County Property Tax Assessment Board of Appeals*, Petition No. 89-030-01-2-8-00003 (Ind. Bd. of Tax Rev., Mar. 27, 2002).

35. Ms. Meighen also argues that the Lodge does not qualify as a fraternal beneficiary association. *Meighen argument; Respondent Exhibit C*. According to the Respondent’s counsel, Mr. Rogers simply gives the definition of Indiana Code § 6-1.1-10-23 and quotes Indiana court cases on the definition of a fraternal benefit association. *Id.* Ms. Meighen argues that the Lodge has not shown it has a charitable purpose and provides benefits under the insurance laws of Indiana. *Id.*, citing Ind. Code § 6-1.1-10-23. Similarly, Ms. Meighen argues, the Lodge has not shown that by providing a maximum death benefit of \$250 and a maximum \$50 floral arrangement or other tribute upon the death of a member meets the statutorily defined “benefits” of fraternal benefit societies. *Meighen argument; Respondent Exhibit C, citing Fraternal Order of Eagles #3988 v. Morgan County Property Tax Assessment Board of Appeals*, Petition No. 55-005-04-2-8-00001 (Ind. Bd. of Tax Rev., Dec. 15, 2006).
36. Finally, the Respondent argues that the Petitioner was treated differently than other organizations such as the Veterans of Foreign Wars (VFW) and the American Legion, because those entities file under a different statute than the Lodge. *Brittan testimony*. In addition, Ms. Brittain testified, the other organizations cited by the Petitioner as exempt presented different evidence of their facilities’ use and activities to the PTABOA than the Petitioner presented. *Id.*

ANALYSIS OF THE ISSUE

37. Indiana Code § 6-1.1-10-16(a) provides that “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.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(a). “Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16 (e). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt

purpose. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

38. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
39. The test used to determine whether all or a portion of a property qualifies for an exemption is the “predominant use” test. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Indiana Code § 6-1.1-10-36.3(c) further provides that “[p]roperty that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property

bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3(c)(3).

40. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
41. Here, the Petitioner argues it is entitled to 100% exemption for 2006. Mr. Finchum testified the Lodge allowed charitable and community organizations to use the facility free of charge. *Finchum testimony; Petitioner Exhibit 1-2.1*. In addition, the Lodge’s members raise money for charitable donations and to pay expenses so that the facility can remain open as a community resource. *Finchum testimony*. Mr. Finchum testified that the Lodge raises money through activities such as dart and pool tournaments, karaoke, selling of alcoholic and non-alcoholic beverages, dances, pull-tabs and gaming tickets. *Id.* According to Mr. Finchum, monetary contributions were made to several organization and individuals, such as A Child’s Wish Foundation, the Mooresville Police D.A.R.E. Program, the Susan G. Komen Breast Cancer Fund, Relay for Life and the Morgan County Humane Society. *Id.; Petitioner Exhibits 1-1.2 and 1-1.3*. From April 5, 2004, through March 10, 2006, the Lodge awarded a total of \$28,235.60 to approximately 57 benefactors. *Petitioner Exhibit 1-1.2*. Thus, the Petitioner’s counsel argues, all of the Lodge’s “uses” support the Lodge’s overall charitable and fraternal mission. *Hendron argument*. Likewise, the Petitioner’s usage study claims that the Petitioner’s building is devoted to 100% member usage and charitable purposes. *Petitioner Exhibit 1-2.1*.
42. The Respondent acknowledges that there was some charitable use of the property during the relevant time period, but argues that the Lodge also devoted a significant amount of

time to use by its members for purposes of socializing, playing darts and pool, singing karaoke, watching television and wagering. *Meighen argument; Respondent Exhibit C*. The Lodge also invited members of the public to attend bingo, dances and parties. *Id.* According to the Respondent's counsel, such social activities are not charitable uses and the Lodge did not provide sufficient evidence from which to determine the relative percentage of time the property was devoted to charitable uses out of the total amount of time the property was in use as required by the predominant use test set forth in Indiana Code § 6-1.1-10-36.3. *Id.* Moreover, the Respondent's counsel argues, the Lodge cannot support its claim for an exemption based on unsupported conclusory statements. *Id.*, citing *Whitley Products, Inc. v. State Board of Tax Commissioner*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998); *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329 (Ind. Tax Ct. 1999); and *Fraternal Order of Eagles, #2455 v. Noble County Property Tax Assessment Board of Appeals*, Petition No. 57-002-02-2-8-00002 (Ind. Bd. of Tax Rev., Nov. 17, 2003).

43. The Indiana Court of Appeals has held that a fraternal organization's use of its facilities for purposes of the relaxation and recreation of its members is not a charitable use. See *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 251 N.E.2d at 673, 682. In *Indianapolis Elks Bldg.*, the Indiana Court of Appeals rejected the claim of a fraternal holding corporation that the predominately social activities for which its property was used were charitable because they promoted the purposes for which the fraternal organization using the property was formed, namely charity, brotherly love, justice, fidelity and Americanism. *Indianapolis Elks Building*, 251 N.E.2d at 682. The court explained its rationale, in part, as follows:

The appellant's facilities and activities undoubtedly suppress human want and suffering in addition to promoting brotherly love, justice, fidelity, etc. But these noble objectives can also be seen in the family home and at various other public and private establishments, all of which are not exempt from property tax. Both the record and the court's findings of fact plainly exhibit the fact that the property in question is used for drinking, eating, dancing, card games, swimming and general relaxation. These same activities exist at any good country club.

Id.; see also *Sahara Grotto et. al. v. State Board of Tax Commissioners*, 147 Ind. App. 261 N.E.2d 873, 878 (1970).

44. The *Indianapolis Elks Building* case does not necessarily answer the Lodge's contention that the social and recreational activities conducted at the property under appeal help to defray operational and maintenance costs required to preserve the facility as a community resource and to fund the Lodge's charitable donations. The Indiana Supreme Court, however, provided at least some guidance on that question when it issued its decision in *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.* 765 N.E.2d 1257 (Ind. 2002) (*Moose II*). In that case, the Court granted the State Board of Tax Commissioners' (the State Board) petition for review in order to examine the standards applicable to a non-profit organization's claim that its property was used predominately for charitable purposes. *Moose II*, 765 N.E.2d at 1259. The State Board had granted the taxpayer a sixty-seven percent exemption based upon its 1988 application, but rejected the taxpayer's 1992 application entirely, even though the hearing officer had found little change in the actual room-by-room use of the facility and had recommended granting a sixty-three percent exemption. *Id.* at 1260-62. In both instances, the State Board found that the taxpayer's charitable giving was of primary importance in determining whether the taxpayer was entitled to an exemption. *Id.* In 1988, the taxpayer had donated over seven percent of its gross revenue to charity; whereas in 1992 it had donated only four percent of its gross revenue to charity. *Id.*
45. In analyzing the case, the Indiana Supreme Court first explained that the General Assembly adopted a "predominant use" test for determining whether a property qualifies for a charitable use exemption when it enacted Indiana Code § 6-1.1-10-36.3 in 1983. *Moose II*, 765 N.E.2d at 1259. The Court then held that the State Board had misapplied the law by relying upon the percentage of gross revenues that the taxpayer donated to charity to determine that the taxpayer was eligible for an exemption. *Id.* In support of its holding the Court explained, although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been the

predominant use of the facility, not distribution of income for charitable purposes. *Id.* at 1263.

46. The Court agreed with the State Board's argument on appeal that the taxpayer had failed to meet its burden of proof under the predominant use test because it relied largely on anecdotal evidence regarding a few charitable projects and on a tax return listing some of its charitable donations. *Id.* at 1264. Nonetheless, the Court found that the taxpayer had done so in response to the State Board's declaration that charitable giving was of primary significance in determining whether a taxpayer is entitled to an exemption. *Id.* Given the unique circumstances of the case, including the fact that ten years had elapsed and that the hearing officer had prepared a table detailing the room-by-room usage of the facility, the Court remanded the case to the State Board to enter a determination based upon the recommendation of its hearing officer. *Id.* at 1265.
47. Thus, the Indiana Supreme Court squarely held that the actual use of a facility, rather than the taxpayer's charitable giving, is the controlling question in determining the taxpayer's entitlement to an exemption. *Moose II*, 765 N.E.2d at 1263. In fact, the Court's holding makes clear that a taxpayer's lack of charitable giving cannot be grounds for denying an exemption. It is also clear that, in some circumstances, charitable giving may serve to support a claimed charitable use of the facility, although the Court did not elaborate on that point. When actually faced with evidence of charitable donations made by the taxpayer in *Moose II*, however, the Court held that such donations related to the charitable use of the facility "only indirectly, if at all." *Moose II*, 765 N.E.2d at 1262.
48. Initially, the Board notes that the Lodge's social and recreational activities comprise a significant portion of the overall use of the property under appeal. According to Mr. Rogers' 2006 usage report and Mr. Finchum's testimony, the Lodge Room, Dart and Pool Room and the Kitchen were all used exclusively by members during the year preceding the Lodge's application for exemption. *Finchum testimony; Petitioner Exhibit 1-2.1*. Similarly, the Entertainment Room was devoted exclusively to karaoke, which occurred

two nights per week.⁹ See *Petitioner Exhibit 1-2.1 at 13 – 18*. Although the Social Room was used for Lodge meetings and for some designated fundraisers, it was also used for social and recreational activities. For example, the Lodge hired a band to play for members and guests in Social Room once or twice a month from 8:00 p.m. to 12:30 a.m.¹⁰ *Finchum testimony; Petitioner Exhibit 1-2.1 at 12-17*.

49. Mr. Finchum testified that the Lodge’s members raise money for charitable donations and to pay expenses so that the facility can remain open as a community resource. *Finchum testimony*. However, by using the revenue generated from the members’ recreational and social uses of the facility to defray maintenance and operating costs, the Board finds that the Lodge was preserving a social and recreational resource for its members as much or more than it was preserving a resource for the community. This is consistent with the Grand Aerie Constitution which states its mission is “To unite fraternally for mutual benefit, protection, improvement, social enjoyment and association...” of its members. *Petitioner Exhibits 1-3.3 and 5*.
50. The evidence shows that from April 5, 2004, through March 10, 2006, the Lodge awarded a total of \$28,235.60 to 57 benefactors. *Petitioner Exhibit 1-1.2*. The Board recognizes and commends the Lodge for its donations to charities. However, it is the predominant use of the subject property rather than the Lodge’s charitable giving that controls whether the Lodge is entitled to an exemption. In fact, the Board acknowledges that the property under appeal was devoted to charitable uses in some instances, such as when the Lodge provided access to various charities free of charge for community events or fundraisers. Had the Lodge seriously attempted to quantify the amount of time the subject property was used for those and other charitable purposes as a percentage of the facility’s total usage, it might have been entitled to at least a partial exemption. Instead,

⁹ The Board notes that the Petitioner’s witness, Mr. Finchum, testified that some events occurred in both the Social Room and in the Entertainment Room; whereas the usage study identified karaoke as the sole event occurring in the Entertainment Room.

¹⁰ According to Mr. Rogers’ sketch of the Lodge, the Lodge Room, Pool and Dart Room, Kitchen and the Entertainment Room encompasses 7,436 square feet, or approximately seventy-two percent of the total area of the building. Thus, even if the Social Room was used for no other purposes than charitable functions, the usage study fails to show the Petitioner’s building was “predominantly used” for charitable purposes.

the Board examines the Lodge's charitable giving solely in the context of whether that giving is sufficient to evince a charitable purpose behind otherwise social and recreational activities occurring at the Lodge, such as drinking, dancing, wagering, dart and pool playing and karaoke.

51. It is important to note that the Lodge does not offer evidence of its charitable giving to demonstrate a charitable purpose behind discrete activities, as would have been the case if the Lodge had presented evidence that it donated all of the net revenue from certain events, such as the 500 mile race or St. Patrick's Day parties, to specific charities. Under those circumstances, the donations might be sufficient to reveal a charitable purpose behind what otherwise would appear to be purely social activities. For example, Mr. Finchum testified that the Christmas Dance was held to raise money to buy Christmas presents and provide a holiday meal to seven low-income families. *Finchum testimony*. To the contrary, Mr. Finchum noted, the Lodge's New Year's Eve party was not intended to raise money for a needy family. *Id.* Beyond those two events, the Petitioner simply gives an overall view of its activities and asserts that all of its social and recreational activities were charitable because they were designed to generate revenue that the Lodge ultimately used to fund its charitable giving. In proffering such an argument, however, the Lodge makes charitable giving the primary focus of its exemption claim. That is precisely the approach rejected by the Indiana Supreme Court in *Moose II*.
52. Having found that the Lodge was owned, occupied and used both for charitable and non-charitable purposes, the Board must now determine whether the Lodge is entitled to a partial exemption. As explained above, charitable use exemptions are governed by the predominant use test set forth in Indiana Code § 6-1.1-10-36.3. Thus, the Board must determine whether the property under appeal was owned, occupied and used for charitable purposes at least fifty percent of the time that it was in use. Ind. Code § 6-1.1-10-36(a). To the extent that the Lodge has shown a predominant charitable use, the Lodge is entitled to an exemption for a portion of the property's assessment equal to the percentage of time that the property was devoted to an exempt use. *See* Ind. Code § 6-1.1-10-36.3(c)(3).

53. To that end, the Lodge submitted a usage study prepared by Mike Rogers.¹¹ *Petitioner Exhibit 1-2.1*. In his usage study, Mr. Rogers examined the use of each room contained in the Lodge for the year immediately preceding the assessment date under appeal. *Id.* Mr. Rogers concluded that the Lodge was owned, occupied and used one-hundred percent of the time for charitable purposes. This is true even though non-charitable uses occurred in the facility during the period examined by Mr. Rogers' usage study. Because it steadfastly maintains that the subject property was devoted to a charitable use one-hundred percent of the time, the Lodge does not attempt to break down the property's usage between charitable and non-charitable activities. The Board therefore finds that the Lodge failed to establish it was entitled to an exemption pursuant to Indiana Code § 6-1.1-10-16 and Indiana Code § 6-1.1-10-36.3.¹²
54. The Petitioner's counsel also claims that the PTABOA did not act on the Lodge's claim for an exemption as a fraternal beneficiary association under Indiana Code § 6-1.1-10-23 or as a fraternal benefit society under Indiana Code § 27-11-7-4. *Hendren argument*. Mr. Hendren argues that, because the PTABOA acted on and granted exemptions to several other fraternal organizations, the Lodge was not treated fairly in the denial of its exemption application. *Id.*
55. The Respondent's counsel, however, argues that the Petitioner failed to show it qualifies as a fraternal association. *Meighen argument; Respondent Exhibit C*. According to Ms. Meighen, the Petitioner has not shown that it has a charitable purpose and provides benefits under the insurance laws of Indiana as required by Indiana Code § 6-1.1-10-23.

¹¹ The Board notes that the Petitioner's counsel failed to identify Mike Rogers or describe his qualifications to perform a usage study. Moreover, the Petitioner failed to offer Mr. Rogers as a witness to explain his analysis. Although Mr. Hendron argues that Mr. Rogers was available for cross examination in the Petitioner's 2004 appeal, he was not made available here.

¹² The Lodge presented no evidence regarding the use of its personal property. In fact, the Lodge does not identify the personal property it seeks to exempt. Thus, even if the Board were to find that the Lodge was entitled to a partial exemption for portions of the building, the Lodge would not be entitled to any exemption for its personal property. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Id. Or that by providing a maximum death benefit of \$250 and a maximum \$50 floral arrangement or other tribute upon the death of a member meets the statutorily defined benefits of fraternal benefit societies as outlined in Indiana Code § 27-11-1-1 and § 27-11-6-1 or as cited in *Fraternal Order of Eagles #3988 v. Morgan County Property Tax Assessment Board of Appeals*, Petition No. 55-005-04-2-8-00001 (December 15, 2006).

56. Indiana Code § 6-1.1-10-23(a) provides that “Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if it is owned by a fraternal beneficiary association which is incorporated, organized, or licensed under the laws of this state.” Ind. Code § 6-1.1-10-23(a). “This exemption does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” Ind. Code § 6-1.1-10-23(b). Similarly, Indiana Code § 27-11-7-4 states “Every society organized or licensed under this article is declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate not occupied by a society in carrying on its business.” Ind. Code § 27-11-7-4.
57. While Indiana Code § 6-1.1-10-23 does not define the term “fraternal beneficiary association,” at least one case has defined the term in interpreting the predecessor statute to Indiana Code § 6-1.1-10-23. *See State Board of Tax Commissioners v. Fort Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874, 880 (1970). In *Fort Wayne Sports Club*, the court explained that the term “fraternal beneficiary association has a very limited and definitive meaning.” 258 N.E.2d at 880. The court applied the meaning set forth in Indiana Statutes Annotated § 39-4401(b), which was part of a larger statute governing the regulation of fraternal beneficiary associations under the Indiana Insurance Law. *See Id.* Indiana Statutes Annotated § 39-4401(b) provided, in relevant part:

The term ‘fraternal benefit society’ or ‘fraternal beneficiary association’ shall mean any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit and having a lodge system and representative

form of government, and which shall make provision for the payment of [death] benefits in accordance with this act.

Fort Wayne Sports Club, 258 N.E.2d at 880 (quoting Ind. Stat. Anno. § 39-4401(b)).

58. In many ways, the definition of “fraternal beneficiary association” set forth in Indiana Statutes Annotated § 39-4401(b) mirrors the language currently found in its successor statute, Indiana Code § 27-11-1-1, which identifies the types of fraternal organizations to which Indiana’s insurance laws apply.¹³ Although Indiana Code § 27-1-1 now refers to those organizations solely as “fraternal societies,” the legislative intent behind Indiana Code § 6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana insurance laws. That remains true despite the slight difference in terminology between Indiana Code § 27-1-1 and its predecessor statutes. *See United Ancient Order of Druids-Grove # 29 v. Wayne County Prop. Tax Assessment Bd. of Appeals*, 867 N.E.2d 296, 2007 Ind. Tax LEXIS 34 (Ind. Tax Ct., May 17, 2007) (unpublished decision) (applying the provisions of Indiana Code § 27-11 to a request for exemption under Indiana Code § 6-1.1-10-23).
59. Thus, in order to demonstrate it is entitled to an exemption under Indiana Code § 6-1.1-10-23, a taxpayer must prove (1) that it is an organization described in Indiana Code § 27-11-1-1, and (2) that it occupies and uses the property sought to be exempted exclusively for the purposes for which the taxpayer was organized or incorporated. The Lodge, however, presented no such evidence. The Petitioner’s counsel merely argued that the Petitioner “has for years provided public benefits to the county and county residents and recognized not-for-profit, recognized national organization, they provide traditional fraternal benefits, so as well as a lot of charitable work in the community” and pointed to the usage study which found that the building was 100% used for fraternal and member usage. Mr. Hendron then concluded “there is no question... there has apparently

¹³ Indiana Code § 27-11-1-1 provides “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article.”

been no question... but clearly they are a fraternal benefit organization... this is part of a national group and they operate for fraternal purposes and yet the county has not recognized their fraternal purpose.” Further, the Petitioner’s exemption application merely contends that

This is a fraternal benefit association as described in IC 6-1.1-10-23 and the related cases and Attorney General Opinions. This is also a fraternal benefit society as described in IC 27-11-1. This lodge is organized without capital stock, on a non-profit basis, operating on a lodge system with a ritualistic form of work, having a representative form of government, which is carried on solely for the mutual benefit of our bona fide Members.

60. The Board notes, however, that the requirements for a “fraternal benefit association” are specific. For example, to have a “representative form of government,” the organization must have “a supreme governing body” constituted in one of the following ways:

(A) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall meet at least once every four (4) years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(B) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four (4) years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) The officers of the society are elected either by the supreme governing body or by the board of directors.

(3) Only benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly.

(4) Each voting member shall have one (1) vote and no vote may be cast by proxy.

Ind. Code § 27-11-2-2. Because “it is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis,” the Petitioner failed to sufficiently show that it was entitled to an exemption under Indiana Code § 6-1.1-10-23 or Indiana Code § 27-11-1-1. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *see also United Ancient Order of Druids-Grove # 29* (unpublished decision) (finding that “Indiana Code § 27-11-2-2(2) is not ambiguous: it clearly states that a fraternal beneficiary association has a representative form of government when either the supreme governing body or the board of directors elects its officers. [] Grove # 29 has conceded that its local members elect its officers; therefore, it has not shown that it has a representative form of government as defined by Indiana Code § 27-11-2-2(2)”).

61. Moreover, the Lodge bears the burden of showing that it made provisions for payments of benefits in accordance with Indiana Code § 27-11. Thus, the Lodge was required to demonstrate that it acted as an insurer regulated by the Indiana Department of Insurance. The Lodge easily could have done so by presenting a copy of a certificate of authority authorizing it to transact business under Indiana Code § 27-11. In fact, such a certificate would have constituted prima facie evidence of the existence of the Lodge as a fraternal beneficiary association as of the date of that certificate. *See* Ind. Code § 27-11-4-6 (“Upon presentation of satisfactory evidence that the society has complied with all the provisions of the law, the commissioner shall issue to the society a certificate of authority authorizing the society to transact business under this article. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate.”). The Lodge failed to do so. Thus, the Lodge failed to meet its burden of proving that it is a fraternal beneficiary association within the meaning of Indiana Code § 6-1.1-10-23 or Indiana Code § 27-11-7-4.
62. The Lodge also contends that the PTABOA’s denial of its exemption application while granting the applications of other fraternal organizations denied the Lodge equal protection and due process of law. The Lodge, however, did not present any authority or cite to any relevant constitutional provisions to support its claim that PTABOA’s actions

in denying its application for exemption violated the Lodge's right to equal protection and due process of the law. Moreover, the Board notes that the Respondent testified that the American Legion and VFW were exempt under a different statute. And, in fact, both organizations are identified in Indiana Code § 6-1.1-10-25 as "miscellaneous organizations" whose property is exempt if owned by the organizations and used for the organizations purposes. Therefore, the American Legion and VFW do not need to make an independent showing under Indiana Code § 6-1.1-10-16 that their property is "owned, occupied, and used" for "educational, literary, scientific, religious, or charitable purposes." To the extent that the Petitioner contends other fraternal organizations were granted exemptions, the Board finds that the Petitioner presented no evidence that those organizations were identical to the Petitioner's organization. Mr. Hendron merely made the bald assertion that they were fraternal organizations. This falls far short of the showing a taxpayer must make to prove it was treated unequally. Further, the Respondent testified that the properties owned by those entities were used differently than the Petitioner's property. For example, Ms. Brittain testified that the Paragon Lions Club only meets once or twice a month for meetings and they do not have any other activities in the building such as drinking, gambling or socializing.

63. Finally, the Lodge claims that the PTABOA did not address or rule on its request for exemption under Indiana Code § 6-1.1-10-23 and Indiana Code § 27-11-7-4. *Hendren argument*. The Lodge also argues that the PTABOA failed to issue a new public notice or notify the Petitioner when it met on August 23, 2006, and denied the Lodge's exemption application. *Id.* In addition, the Lodge claims that the PTABOA failed to certify its exemptions to the Department of Local Government Finance (DLGF) by the August 1st deadline outlined in Indiana Code § 6-1.1-11-8. *Id.* As an initial matter, whether the PTABOA based its decision on the correct legal standard or committed the procedural errors alleged by the Petitioner is irrelevant to this appeal. Proceedings before the Board are *de novo*. See Ind. Code § 6-1.1-15-4(m) ("A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a

hearing before the county property tax assessment board of appeals.”); *see also* 52 IAC 2-5-3(a) (“The board may not limit the scope of the issues raised in the appeal petition to those presented to the PTABOA unless all parties agree to the limitation of issues.”).

64. The only claimed procedural error that might have affected the Board’s determination in this case is the Lodge’s contention that the PTABOA did not act on its application for an exemption under Indiana Code § 6-1.1-10-23 and Indiana Code § 27-11-7-4 because the Board would not have jurisdiction to address the Lodge’s claim regarding its entitlement to an exemption if the PTABOA had not first issued a determination on the Lodge’s application in that regard. *See* Ind. Code § 6-1.5-4-1 (providing the Board has jurisdiction to “conduct an impartial review of all appeals concerning ... exemptions that are *made from a determination by ... a county property tax assessment board of appeals*”) (emphasis added). The PTABOA, however, did issue a determination on the Petitioner’s entitlement to an exemption under both statutes. The Lodge claimed both charitable and fraternal exemptions on the Form 136 application it filed for the 2006 assessment year. The PTABOA clearly stated in its Form 120 notice of action “Application denied, failure to show that they qualified for the exemption claimed.” The Board therefore denies the Lodge’s claim that the PTABOA failed to act on its claim for an exemption as a fraternal benefit society.

SUMMARY OF FINAL DETERMINATION

65. The Petitioner failed to establish a prima facie case that it was entitled to an exemption under Indiana Code § 6-1.1-10-16, Indiana Code § 6-1.1-10-36.3, Indiana Code § 6-1.1-10-23 or Indiana Code § 27-11-7-4. The Board finds in favor of the Respondent and holds the Petitioner’s real and personal property is 100% taxable for the March 1, 2006, assessment year.

The 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

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.