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Monday Jones & Albright

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney
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**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CIRCLE G SADDLE CLUB, INC.,)	Petition No.: 27-007-06-2-8-00001
))
Petitioner,)	Parcel No.: 0817-300-011.000-07
))
v.)	Grant County
))
GRANT COUNTY PROPERTY)	Monroe Township
TAX ASSESSMENT BOARD))
OF APPEALS,)	Assessment Year: 2006
))
Respondent.))
))

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

July 21, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Is the Circle G Saddle Club's real property, which includes land, a show ring, an announcer's stand, a refreshment stand, and a hall-type building with kitchen and restrooms, entitled to an educational or charitable tax exemption based on Ind. Code § 6-1.1-10-16? The short answer is no—the evidence fails to prove the subject property is predominantly used for educational or charitable purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Circle G Saddle Club, Inc. (Circle G) filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment year on April 10, 2006. At that time Circle G stated the property is used to operate a nonprofit saddle or riding club and claimed 100% exemption. This application did not indicate the claim was based on charitable or educational exemption pursuant to Ind. Code § 6-1.1-10-16.
2. The Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 29, 2006. The PTABOA concluded the property is 100% taxable.
3. Pursuant to Ind. Code § 6-1.1-11-7, Circle G filed a Petition for Review of Exemption (Form 132) on September 19, 2006.¹ This document also did not indicate the claim was based on charitable or educational exemption pursuant to Ind. Code § 6-1.1-10-16, but rather, it stated the property should be exempt because Circle G is a nonprofit club. The Form 132 included the following explanation:

Circle G is a nonprofit club. Owned by its members & maintained by its Board of Directors. The club is supported by donations & dues paid by its members. One Horse Show is put on a year to raise money for winter expenses.

At no time does the club generate a profit. All money goes back into the club for the enjoyment of its members & family.

Circle G was started in 1942 to provide education on horse safety & for the enjoyment of family with horses. This club still lives strong today because of the good things it provides its members....

¹ The original Form 132 Petition showed the year of appeal as 2007. The Petitioner revised the Petition on August 8, 2007, changing the assessment year under appeal from 2007 to 2006. The revised petition was received by the Grant County Assessor on August 9, 2007, and by the Board on August 15, 2007.

Hearing Facts and Other Matters of Record

4. The subject property is a horse riding club located at 1529 South 700 East, Marion, Indiana. It has approximately 10 acres of land. It also includes a hall-type block building with kitchen and restrooms, a refreshment stand, a ring, and an announcer's stand. There are no barns.²
5. Patti Kindler, the duly designated Administrative Law Judge, held the hearing in Marion on April 9, 2008. She did not conduct an on-site inspection of the property.
6. Circle G's President, Clifford Arnold, and its Treasurer, Nicole Scott, testified at the hearing. The Respondent did not present any witnesses.
7. Neither party offered any exhibits. Nevertheless, Circle G's attorney requested that the Board "consider" the documents submitted with the application, which she simply described as the bylaws and the corporate charter for this club. The Respondent made no objection and nothing further was said at the hearing regarding those documents. Bylaws for Circle G were among those attachments, but a corporate charter was not. And there were several additional attachments that nobody mentioned. They include what appear to be copies of the 2007 tax bills for the subject property (part A for \$355 and part B for \$355), the Notice Of Action On Exemption Application Form 120, the Notice Of Assessment Form 11 R/A, a "Business Entity Report" for Circle G dated May 30, 2007, the property record card, five pages of information about the subject property (including a photograph) from assessment records, and exemption records from Grant County Treasurer relating to the subject property for 2002, 2003, 2005, and 2006. The failure to lay a proper foundation, to offer the documents as exhibits, and to establish how they might relate to the case creates unfortunate, unnecessary ambiguity in the record. Under these circumstances, it is doubtful that the Board should "consider" such documents any further in reaching a determination on any case—if the Respondent had objected, it would not do so here. The process of properly offering exhibits as evidence is not a

² The Board gleaned the acreage from the tax bills, treasurer's exemption records and property record card attached to the Petition For Review. The rest of the description is based on Clifford Arnold's testimony.

useless, procedural trap. Identifying what a document is, proving that it is genuine, and establishing its relevance to the issues of a case are significant points that help to judge the credibility and weight that should be attached to it. Therefore, while the Board has “considered” the attachments, it determines they have little or no probative value on the exemption question in this case.

8. The following items are recognized as part of the record of the proceedings:

Board Exhibit A – Form 132 Petition with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Order Regarding Conduct of Exemption Hearing,
Board Exhibit E – Notice of Appearance from the Petitioner’s Attorney,
Board Exhibit F – Notice of Appearance from the Respondent’s Attorney.

Petitioner’s Contentions

9. Circle G is the oldest riding club in continual operation in the state. It requests a 100% exemption for land and improvements. Ind. Code § 6-1.1-10-16 allows exemptions for land and improvements used for charitable and educational purposes. The club participates in educational and charitable activities in its support of the local 4-H program. Those activities are enough to qualify for the exemption. *Albright argument, citing Sahara Grotto & Styx, Inc. v. State Bd. of Tax Comm’rs*, 261 N.E.2d 873 (Ind. Ct. App. 1970).

10. Circle G was founded as a not-for-profit entity in 1942. Its only income comes from membership dues and a single horse show that it sponsors each year. *Arnold testimony*.

11. “The Club is a non-profit organization, solely for the purpose of social and recreational activities for its members, their families, and their guests, and the benefits thereof.” *Bylaws at 1, attachment to Board Exhibit A*. The club’s treasurer testified to a somewhat expanded purpose: “Circle G is a club that was founded solely for the purpose of recreational and social activities for its members and the education and safety and well-being of horses.” *Scott testimony*.

12. Once a month Circle G has a “social” for members and guests. *Arnold testimony; Scott testimony.* “[B]y using horses to get kids involved you’re combining the families to get together and keeping the children involved with the animals in a way that they are busy with the animals and the socials and the activities that we have. It just gets the family more involved together instead of the parents off doing their own thing and the kids setting and watching TV.” *Scott testimony.* The club also has 2 or 3 campouts at different locations. *Arnold testimony.*
13. At least twice a year, Circle G offers educational clinics on safety and education. During the last couple of years there were 3 or 4. They stress safety for the person and the animal. The clinics provide education on the proper way of doing things that is beneficial to the participant and the animal. Members of 4-H clubs from Grant and neighboring counties are invited. Circle G serves breakfast and lunch to the 4-H members and offers the use of its meeting hall for 4-H programs. A few years ago, Circle G hosted a banquet for 4-H members where it gave trophies and ribbons to the kids. Circle G also donates the proceeds from a class at its annual horse show to the Grant County 4-H horse club. *Arnold testimony.*
14. The only income Circle G receives is from membership dues and revenue from its horse shows. *Arnold testimony.*
15. The denial of exemption came as a surprise. The club had always been exempt. It was never an issue with the county. *Arnold testimony.*

Respondent’s Contentions

16. The relevant exemption statutes are Ind. Code §§ 6-1.1-10-16 and 6-1.1-10-36.3. They require that a petitioner own, occupy and predominately use the property for an exempt (educational or charitable) purpose. Circle G must prove it qualifies. That burden is strictly construed. The lost revenue resulting from any tax exemption creates a burden

for other taxpayers. *Meighen argument, citing Monarch Steel Co., Inc., v. State Bd. of Tax Comm'rs*, 669 N.E.2d 199 (Ind. Tax Ct. 1996); *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

17. Exemption for an educational use requires a substantial equivalency to instruction offered in tax supported schools and institutions. *Meighen argument, citing Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262 (Ind. 2006). To get an exemption based on charitable or educational use of otherwise taxable property, the use must provide benefits society that justify the loss in revenue and it must be something different from the everyday acts of man. *Meighen argument, citing Indianapolis Osteopathic Hospital v. Dep't. of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004).
18. The support for 4-H and a few clinics are not enough to meet the “predominate use test” or prove Circle G relieves the government of an educational burden. The club’s activities are primarily social and recreational for its members, families and guests. It is well established that social and recreational use does not qualify for a charitable or educational exemption. *Meighen argument, citing Sahara Grotto & Styx v. State Bd. of Tax Comm'rs*, 261 N.E.2d 873 (Ind. Ct. App. 1970); *State Bd. of Tax Comm'rs v. Fort Wayne Sports Club*, 258 N.E.2d 874 (Ind. Ct. App. 1970). The subject property is not used predominantly for an exempt purpose. *Meighen argument.*

Analysis

19. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1. But Ind. Code § 6-1.1-10-16(a) provides an exception: “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.” If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt purposes, then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt purposes, then it gets no exemption. Ind. Code § 6-1.1-10-36.3(b). “Predominant use” means more

than 50% of the time that a property is used during the year that ends on the assessment date. Ind. Code § 6-1.1-10-36.3(a).

20. Anyone who seeks an exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc v. Dep't of Local Gov't Fin.*, 818 N.E. 2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. Of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E 2d 936, 938 (Ind. Tax Ct. 1987).
21. In making its case, a taxpayer must explain how each piece of evidence is relevant to its claim. See *Indianapolis Racquet Club, Inc. v. Washington Twp. 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”).
22. Circle G’s status as a non-profit entity is undisputed. Both its original Form 136 Application and its Form 132 Petition to the Board indicate the non-profit status was the basis for the exemption claim, rather than educational or charitable use of the property. That status, however, does not help to determine this case because a non-profit status does not establish any inherent right to property tax exemption. See *Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1998); *Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct 1996).
23. Circle G donates the proceeds from a class at its horse show to the 4-H. While such a donation might be charitable giving, it also does not help to determine this case.³ The requisite statutory test for an exemption is the predominant use of the property, not the amount of charitable giving. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002).

³ No amount was specified for the donation. The record does not establish whether it was substantial or nominal. Consequently, even if the donation were relevant, it would be impossible to decide how much weight it carries in relation to the overall use of the property.

24. To repeat, this case must be decided based on the actual use of the subject property. The Respondent correctly observed that social and recreational use does not qualify for a charitable or educational exemption. *Sahara Grotto*, 261 N.E.2d at 878 (areas devoted to social activities not exempt); *Fort Wayne Sports Club*, 258 N.E.2d at 882 (not educational because property primarily used for recreational purposes). The evidence establishes some use that clearly does not qualify as either educational or charitable. Testimony about the monthly socials is consistent with the statement in the bylaws about the club being “solely for the purpose of social and recreational activities....” In addition, Circle G sponsors one horse show every year. Whether the subject property is used as the location for that show is unclear. If it is, there is no probative evidence that their horse show is charitable or educational. Circle G’s failed to establish how much of the total use of the property falls into the social and recreational category, but it is clear that the subject property is not used exclusively for exempt purposes. Consequently, the predominant use test applies. Ind. Code § 6-1.1-10-36.3.
25. At the hearing, Circle G understandably focused its case on the activities that arguably have educational or charitable character. Clearly Circle G provides some support for local 4-H groups and it has educational clinics on the property at least twice a year. Even assuming, *arguendo*, that those uses are educational or charitable, the exemption claim must be denied.
26. When the predominant use test applies, the evidence must prove that more than 50% of the total usage is for exempt purposes before *any* exemption is allowed. *Id.* Circle G failed to quantify the amount of time devoted to 4-H groups or educational clinics. Without sufficient evidence to determine the relationship between the amount of non-exempt and exempt use of the property, it is impossible to determine predominant use or grant any exemption.
27. Undisputed evidence established that the property received an exemption in prior years. The evidence does not establish the reasons for allowing exemption in the past. This record does not indicate any prior determination that the exclusive or predominant use of

the subject property was educational or charitable. In Indiana, each year and each assessment stands alone. The exempt status for prior years does not prove an educational or charitable use exemption for this case. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116 (Ind. Tax Ct. 1991).

28. The Petitioner failed to prove the subject property qualifies for any exemption.

SUMMARY OF FINAL DETERMINATION

29. The property is 100% taxable.

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

Commissioner, 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, 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>