

REPRESENTATIVES FOR PETITIONER:

James R. Ross, United Ancient Order of Druids – Grove #29.

REPRESENTATIVES FOR RESPONDENT:

Michael P. Statzer, Wayne County Assessor

Lisa J. Beach, Wayne County Deputy Assessor

Charles K. Todd Jr., Attorney for Wayne County Property Tax Assessment Board of Appeals

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

UNITED ANCIENT ORDER OF)	Petition No.: 89-014-02-2-8-00001
DRUIDS – GROVE #29,)	
)	County: Wayne
Petitioner,)	
)	Township: Wayne
v.)	
)	Parcel No.: 029-99437-00 & Personal Property
WAYNE COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	
APPEALS,)	
)	Assessment Year: 2002
Respondent.)	

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

April 16, 2004

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 issue presented for consideration by the Board was:

Whether the land, improvements, and personal property owned by United Ancient Order of Druids – Grove #29 should qualify for exemption as a fraternal benefit association pursuant to Ind. Code §6-1.1-10-23.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3 James R. Ross, club manager for United Ancient Order of Druids – Grove #29 (Grove #29) filed a Form 136 application for property tax exemption with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) on April 29, 2002. The County PTABOA denied the application on September 8, 2003, and gave the Petitioner proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 seeking a review of the PTABOA action by the Board. The Form 132 was filed on September 22, 2003.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was conducted on December 18, 2003, in Richmond, Indiana, before Patti Kindler, the duly designated administrative law judge authorized by the Board under Ind. Code § 6-1.5-3-3.
5. The following persons were present at the hearing:
 - For the Petitioner: James R. Ross, club manager
 - For the Respondent: Charles K. Todd, Jr., Attorney for the PTABOA
Michael P. Statzer, Wayne County Assessor
Lisa J. Beach, Wayne County Deputy Assessor
6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: James R. Ross

For the Respondent: Michael P. Statzer, Wayne County Assessor
Lisa J. Beach, Wayne County Deputy Assessor

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Summary of the history of the United Ancient Order of Druids organization.

Petitioner's Exhibit 2 – Copy of Petitioner's Certificate of Incorporation with attached Articles of Incorporation.

Petitioner's Exhibit 3 – Copy of Petitioner's Indiana Not-For-Profit Tax Registration Certificate.

Petitioner's Exhibit 4 – Copy of Petitioner's By-laws.

Petitioner's Exhibit 5 – Copy of Petitioner's 2002, pay 2003 fall tax statements, stamped as paid.

Petitioner's Exhibit 6 – Copy of a thank you from the Shrine Club for the Petitioner's 2002 charitable contribution.

Petitioner's Exhibit 7 – Copy of a note and check number for Petitioner's donation to Camp Ability.

Petitioner's Exhibit 8 – Copy of Ind. Code § 6-1.1-10-23 regarding Fraternal Benefit Associations.

Petitioner's Exhibit 9 – Post hearing evidence including: schedule of usage on a room-by-room basis; interior sketch of subject building; copies of the 2002 calendar of monthly events; and, the subject property record card.

For the Respondent:

Respondent's Exhibit 1 – Copy of the subject property record card.

8. Grove #29 was the only party to participate in the evidence exchange as required by Ind. Code § 6-1.1-15-4(1)(1) and proposed rule 52 IAC 2-7-1. The Respondent testified that prior to the Board's hearing, Grove #29 submitted Petitioner's Exhibits 1-8 to Wayne County in compliance with the evidence exchange provisions. Respondent did not provide either exhibits or summaries of testimony to the Petitioner. The Respondent claims that the reason he did provide evidence was because he was not offering any evidence that had not already been presented before the PTABOA.

9. The Administrative Law Judge requested additional evidence from Grove #29 regarding the breakdown of charitable usage of the property. The deadline for the submission was

December 30, 2003. *Board Exhibit C*. The additional evidence was date-stamped as received by the Board on December 23, 2003, and entered into the record as Petitioner's Exhibit 9.

10. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 132
Board's Exhibit B – Notice of Hearing on Petition
Board's Exhibit C – Request for Additional Evidence
Board's Exhibit D – Post-Hearing Submission Waiver

11. The assessed values under appeal are: Land: \$26,600
 Improvements: \$102,700
 Personal Property: \$4,510
12. The Administrative Law Judge did not view the property, which is located at 123 South 8th Street in Richmond, Wayne Township and Wayne County, Indiana.

Objections and Evidentiary Matters

13. Respondent objected to the Grove #29's request for a review of exemption under Ind. Code § 6-1.1-10-23 because the issue of exemption under Ind. Code 6-1.1-10-23 was not raised at the PTABOA hearing. *Todd argument*.
14. Respondent's objections to Grove #29's newly introduced evidence is governed by Ind. Code § 6-1.1-15-4(k), which allows a Petitioner to introduce evidence without regard to whether that evidence was introduced at the county PTABOA hearing. Respondent had the opportunity to review the new evidence prior to the Board hearing, and was made aware that Ind. Code § 6-1.1-10-23 was at issue. *See Pet'r Ex. 8; Ross testimony*. The Board overrules Respondent's objection to the issue and will review the validity of the Grove #29's claim for exemption under Ind. Code § 6-1.1-10-23.

Jurisdictional Framework

15. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
16. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

Administrative Review and Petitioner's Burden

17. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
18. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
19. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax Ct. 1999). ['De minimis' means only a minimal amount.]
20. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

21. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and proven, by a ‘preponderance of the evidence,’ both the alleged error(s) in the assessment and specifically what the assessment should be. *See Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

22. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Indiana Constitution, Article 10, § 1.
23. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
24. In Indiana, the use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep’t of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

25. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
26. 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 – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat’l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
27. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
28. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Miniature Enthusiasts*, 671 N.E.2d at 220; *Indiana Association of Seventh-Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Monarch Steel Co., Inc. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993)).

Discussion of the Issue

Whether the land, improvements, and personal property owned by United Ancient Order of Druids – Grove #29 should qualify for exemption as a fraternal benefit association pursuant to Ind. Code §6-1.1-10-23.

29. The Petitioner contends the subject real and personal property qualifies for 100% tax exemption pursuant to Ind. Code § 6-1.1-10-23 for fraternal benefit associations.

30. The Respondent contends Grove #29 claimed exemption on the Form 136 Application for Property Tax Exemption by checking the box for “other” in reference to their exempt purpose without citing the specific law as instructed on the application, and therefore, failed to meet their burden as to what specific exemption was applicable and what percentage of the property was used for charitable purposes.

31. The applicable statute governing this issue is:

Ind. Code § 6-1.1-10-23 fraternal beneficiary associations

(a) 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.

(b) The 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.

32. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The accountant who filed the Form 136 exemption application for Grove #29 erroneously checked the “other” box and listed fraternal order as the basis for exemption without citing a specific law to support the request. *Ross testimony; Attachment to Board Ex. A; Form 136.*
- b. As a result, the County PTABOA denied Grove #29’s exemption application because “the taxpayer failed to cite the specific law” under which the exemption was claimed and therefore failed to carry its burden to entitlement of exemption. *Attachment to Board Ex. A; Form 120, at 2.*
- c. At the Board hearing, Grove #29 requested a review of exemption under Ind. Code § 6-1.1-10-23 for fraternal benefit associations, stating that their accountant erroneously checked the box for fraternal exemptions under Ind. Code § 6-1.1-10-16 on the Form 132 Review of Exemption filed with the Board. *Ross testimony; Board Ex. A; Form 132, at 2.*
- d. A copy of Ind. Code § 6-1.1-10-23 in support of Grove #29’s claim for a specific exemption was included as part of the Grove #29’s evidentiary exchange materials given to the County. *Pet’r Ex. 8.*

- e. The history of the United Ancient Order of Druids, a benevolent order, dates back to 4000 B.C. during the Celtic wars. *Ross testimony*. The Grove #29 order in Richmond was opened as a benevolent society in the 1890's and incorporated in the state in 1984 as a nonprofit fraternal organization. *Ross testimony; Pet'r Ex. 2*.
- f. Grove #29, as well as other United Ancient Order of Druid associations was formed as a benevolent society for the purpose of uniting men together for mutual protection and improvement, to assist them socially and materially by timely counsel and instruction, to encourage business, to assist with obtaining employment, to foster the spirit of fraternity and good fellowship, and through membership dues, to provide relief for the sick and destitute, burial of the dead and protection of the widows and orphans of its deceased members. *Ross testimony; Pet'r Ex. 2*.
- g. Article XX of the Grove's Articles of Incorporation declares that a death benefit of \$100 and upward shall be paid to the deceased member's estate. *Pet'r Ex. 2*. Further, Articles XIX and XII state that Grove #29 shall have a sick committee to support, monitor and report the progress of any ill member, as well as, a funeral committee to inform all members of any member's death and funeral hours. *Id.*
- h. Grove #29's property is not open to the public for any reason. *Ross testimony*. Grove #29's meeting room, kitchen, utility, office, and social room are used by members only. *Ross testimony; Pet'r Ex. 9*. Private social events attended by members include: dances; bingo; euchre; pool; card games and fundraisers for charity. *Id.*
- i. Grove #29 supported several charitable causes within the community in 2002, including: collecting aluminum cans and tabs for the Shrine and Riley hospitals; making a donation to help support the local fireworks; donating to an Alzheimer patient; and, donating an organ to a local church. *Ross testimony*. The Petitioner estimated Grove #29 gave approximately \$1,200.00 in donations to various organizations in 2002. *Id.*
- j. The Respondents claim that case law indicates that the amount of contributions an organization makes is not relative to the awarding of an exemption. *Todd argument*. Rather, the Respondents assert the percentage of a facility's charitable

usage dictates whether or not the property is exempt and therefore, a break down of the subject facility's charitable use is required to determine its eligibility. *Id.*

- k. Grove #29 argues that according to Ind. Code § 6-1.1-10-23, a breakdown of charitable usage within the facility is not required. *Ross testimony; Pet'r Ex. 8.* Grove #29 claims the facility is used exclusively for its organized benevolent charitable purpose as a benevolent fraternal organization and that it is 100% charitable. *Ross testimony.*

Analysis

33. On the Form 132 Petition to the Indiana Board, the Grove #29 claimed 100% exemption under Ind. Code § 6-1.1-10-16 for fraternal organizations. *Board Ex. A.* However, at the subsequent Board hearing, Grove #29 testified that its accountant erred by indicating the claim for exemption under Ind. Code § 6-1.1-10-16 instead of checking the box for "other" and citing the appropriate statute of Ind. Code § 6-1.1-10-23. *Ross testimony.* Grove #29 established that its intent was to file under Ind. Code § 6-1.1-10-23. *Id.*

Definition of Fraternal Benefit Association

34. In order to meet the definition of a fraternal benefit association, as that term is used in Ind. Code § 6-1.1-10-23, the Petitioner must meet the definition in Ind. Code 27-11-1-1, which establishes particular statutory requirements applicable to fraternal benefit associations or fraternal benefit societies. *See State Bd. of Tax Comm'rs v. Ft. Wayne Sport Club, Inc.*, 258 N.E.2d 874, 880 (Ind. Ct. App. 1970) ("[I]n order to qualify as a fraternal beneficiary association, the particular entity making such claim must comply with each of the six statutory requisites set forth in [Ind. Stat. Anno. § 39-4401(b) (1969)¹]").

¹ This statute was recodified in 1985, and is now embodied in Ind. Code § 27-11-1-1.

35. Ind. Code § 27-11-1-1 “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.”² *Id.*

Qualification as a Fraternal Benefit Association

36. Petitioner has proven that it meets the first requirement by showing that it is incorporated in the State of Indiana. *Pet’r Ex. 2.* Similarly, Petitioner has shown that it is a not-for-profit entity. *Pet’r Ex. 3.*

37. Operation for benefit of members and beneficiaries is defined as: “(1) providing benefits as specified in IC 27-11-6-1; and (2) operating for one (1) or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members that may be also extended to others.” Ind. Code § 27-11-2-3. Grove #29 does provide death benefits to certain beneficial members as required by Ind. Code § 27-11-6-1(a)(1). *Pet’r Ex. 4 at 9.* Grove #29 clearly meets the second prong of this test, and has shown numerous charitable, benevolent, and social purposes carried out in its operations. *Ross testimony; Pet’r Ex. 6-9.*

38. The record reflects that Grove #29 is operated in a manner that meets the definition of “lodge system” as defined in Ind. Code § 27-11-2-1. *Pet’r Ex. 1; Ross testimony.* Specifically, the evidence shows that Grove #29 has a supreme governing body and subordinate lodges into which members are admitted in accordance with its rules and

² The six statutory requisites referred to in *Ft. Wayne Sports Club* are:

- (1) an incorporated society, order, or supreme lodge without capital stock, whether incorporated or not,
- (2) conducted solely for the benefit of its members and their beneficiaries, and
- (3) not-for-profit,
- (4) operated on a lodge system with ritualistic form of work,
- (5) having a representative form of government,
- (6) and that provides benefits in accordance with this article.

rituals. Grove #29 is a subordinate lodge that holds periodic meetings in furtherance of its purposes. *Pet'r Ex. 1, 4; Ross testimony.*

39. Grove #29 has not shown that it qualifies as having a representative form of government under Ind. Code § 27-11-2-2. Although it's supreme governing body, "the Grand Grove," appears to be organized in accordance with Ind. Code § 27-11-2-2-(1), the bylaws show that the officers of the society are elected by the general membership – rather than the supreme governing body or the board of directors as required by Ind. Code § 27-11-2-2-(2). Additionally, it appears that the officer positions are not limited to benefit members. *Pet'r Ex. 4; c.f., Ind. Code § 27-11-2-2-(3).*
40. Grove #29 has also failed to prove that it offers benefits in accordance with Ind. Code § 27-11 as required by Ind. Code § 27-11-1-1. The evidence shows the following departures from the requisites of IC § 27-11:
 - a) Grove #29's bylaws declare that every member (including its social members) shall vote on all questions – while IC § 27-11-3-1(b) specifically states that the society "may also admit social members who have *no voice or vote* in the management of the insurance affairs of the society." *Pet'r Ex. 4 at 7; c.f., Ind. Code § 27-11-3-1(b)* (emphasis added).
 - b) Ind. Code § 27-11-4-6 requires a fraternal benefit society to have a certificate of authority from the commissioner of the Department of Insurance in order to transact business. Grove #29 has not presented such a certificate to prove their qualification as a fraternal benefit society.
 - c) Ind. Code § 27-11-6-4 provides that "[e]very society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided." Grove #29 did not prove that it complies with this requirement. In fact, it is impossible to tell from Grove #29's presentation whether it actually has any beneficial members.

41. Finally, under Ind. Code § 27-11-9-4 certain societies are exempted from Title 27, Article 11 if certain conditions are met. The Petitioner did not present any evidence or testimony indicating that they would qualify under the provisions of this section to be exempt from that article.
42. The Board finds that the Petitioner did not present evidence sufficient to prove that it qualifies as a fraternal benefit association under Ind. Code § 27-11, and therefore, the subject property does not qualify for an exemption under Ind. Code § 6-1.1-10-23.

Summary of Final Determination

Whether the land, improvements, and personal property owned by United Ancient Order of Druids – Grove #29 should qualify for exemption as a fraternal benefit association pursuant to Ind. Code §6-1.1-10-23.

43. For the reasons discussed above, there is no change in the assessment as a result of this appeal. The decision of the Wayne County PTABOA, making the subject 100% taxable, stands.

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

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.