

REPRESENTATIVES FOR PETITIONER: John Van Winkler and Becky Vander Kaay,  
Members, Kendallville Elks Lodge #1194

REPRESENTATIVES FOR RESPONDENT: Kim Miller, Noble County Assessor and Delbert  
Linn, Noble County Property Tax Assessment Board of Appeals (PTABOA)

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

KENDALLVILLE ELKS LODGE )	
#1194, )	Petition No.: 57-020-02-2-8-00009
)	
Petitioner )	County: Noble
)	
v. )	Township: Wayne
)	
NOBLE COUNTY PROPERTY )	Parcel No.: 57-07-32-200-239-000-020
TAX ASSESSMENT BOARD OF )	
APPEALS, )	
)	Assessment Year: 2002
Respondent )	
)	

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

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**November 26, 2003**

**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

### Issues

1. The issues presented for consideration by the Board were:

Issue 1:

Whether the PTABOA failed to correctly apportion the exemption for the real property owned by Kendallville Elks Lodge #1194 (Elks Lodge #1194).

Issue 2:

Whether the assessed value of the improvements is significantly overstated.

### Procedural History

2. The Elks Lodge #1194 filed a Form 136, Application for Property Tax Exemption, seeking exemption for the March 1, 2002 assessment date. Both parties agree the Form 136 application was timely filed.
3. The determination (Form 120 notice) of the Noble County Property Tax Assessment Board of Appeals (PTABOA) on the Form 136 application was postmarked on December 6, 2002. The PTABOA determined the following:

	% exempt	% taxable
Land	28%*	72%
Improvements	39%	61%
Personal Property	100%	

\*The PTABOA allowed an exemption on 15 acres of the land. The PTABOA shows this as 28% which is the 15 exempt acres divided by the total acres of 53.683.

4. Pursuant to Ind. Code § 6-1.1-11-7, Robert J. Bishop, Attorney at Law, filed a Form 132, Petition for Review of Exemption (Form 132 petition) on behalf of Elks Lodge #1194, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on January 6, 2003. Both parties agree the Form 132

petition was timely filed. The Elks Lodge #1194 is appealing the amount of exemption on the land and improvements only.

### **Hearing Facts and Other Matters of Record**

5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on August 27, 2003 in Albion, Indiana, before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
  
6. The following persons were present at the hearing:
  - For the Petitioner: John Van Winkle, Member, Elks Lodge #1194  
Becky Vander Kaay, Member, Elks Lodge #1194
  
  - For the Respondent: Kim Miller, Noble County Assessor  
Delbert Linn, Noble County PTABOA
  
7. The following persons were sworn in as witnesses and presented testimony:
  - For the Petitioner: John Van Winkle  
Becky Vander Kaay
  
  - For the Respondent: Kim Miller  
Delbert Linn
  
8. At the hearing, the Petitioner presented the following exhibits:
  - Petitioner's Exhibit 1 – Original envelope postmarked December 6, 2002, which contained the subject Form 120 notice sent by the Noble County Assessor.
  - Petitioner's Exhibit 2 – Copy of the subject Form 132 petition submitted by the Petitioner with facsimile date of January 6, 2003.
  - Petitioner's Exhibit 3 – Copies of real estate listings for four (4) comparable properties submitted by the Petitioner.

Petitioner's Exhibit 4 – Four pages of handwritten documents showing funds, utilization, and flow chart for Elks Lodge #1194.

9. The following additional items are officially recognized as part of the record of proceedings:
  - Board Exhibit A – Subject Form 132 Petition with attachments.
  - Board Exhibit B – Subject Notice of Hearing on Petition (Form 117).
10. The real property on appeal is located at 120 Weston Avenue, Kendallville (Wayne Township, Noble County). The Administrative Law Judge did not view the property.

### **Jurisdictional Framework**

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

### **State Review and Petitioner's Burden**

12. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
13. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
14. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

15. 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 State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999).  
['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
  
16. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case'. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997).  
[A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (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 State that it outweighs all evidence, and matter officially noticed in the proceeding, that is contrary to the petitioner's position.]

### **Constitutional and Statutory Basis for Exemption**

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
  
18. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
  
19. In Indiana, 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 Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501 (c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

20. 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.
21. The courts of some states construe constitutional and statutory tax exemption liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708 (Ind. Tax 1993).
22. All property receives protection, security, and services from the government, e.g. fire and police protection and public schools. This security, protection, and other services always 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
23. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 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 1990)).
24. 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 statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana*

*Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

25. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

### **Discussion of the Issues**

*Issue No.1: Whether the PTABOA failed to correctly apportion the exemption for the real property owned by Lodge #1194.*

26. The Petitioner claims the apportioned exemption determined by the PTABOA for the subject land and improvements does not fairly reflect the predominant use of the subject facility.
27. Based on the information provided by the Petitioner, the PTABOA allowed an exemption on 15 acres (28% of the total acreage) of the land and 39% of improvements. The PTABOA allowed 100% exemption for the personal property.
28. The applicable rules governing Issue No. 1 are:
- Ind. Code § 6-1.1-10-16**
- (a) 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.
- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:
- (1) a building which is exempt under subsection (a) or (b) is situated on it; and
  - (2) the tract does not exceed:
    - (A) one hundred fifty (150) acres in the case of:
      - (i) an educational institution;
      - (ii) a tract of that was exempt under this subsection on March 1, 1987; or

- (B) two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or
- (C) fifteen (15) acres in all other cases.

**Ind. Code § 6-1.1-10-36.3**

For purposes of this section, property is predominantly used or occupied for one (1) or more stated purpose, 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.

**Ind. Code § 6-1.1-10-23**

(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.

***State Board of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc., 765 N.E. 2d 1257 (Ind. 2002).***

The statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes.

29. Evidence and testimony considered particularly relevant to this determination includes the following:
- a. Mr. James Cook, Head Trustee for the lodge, developed a breakdown of the utilization of the facility for the PTABOA, which shows how the golf course and lodge interact with Elks activities. *Vander Kaay Testimony; Petitioner's Exhibit 4.*
  - b. The lodge's activities have dropped off in the past year. *Van Winkle Testimony.* If determined to be nonexempt, Elks Lodge #1194 will be burdened on what they can do for the community. *Id.* The Elks do a lot of good for the community, including: food drives, dinners for the hoop-shoot program, and a Junior Golf program. *Van Winkle Testimony.*
  - c. The Administrative Law Judge questioned whether Elks Lodge #1194 served food from the restaurant to the public in 2002. The Petitioner testified that food was served to the public in 2002, but other than bar food served to our members, food is not being served at the present time because of our income restrictions. *Van Winkle Testimony.*



- d. The Petitioner testified that the golf course is open to the public. *Van Winkle Testimony*. The Petitioner did not elaborate on the public vs. member golf usages.
- e. Financial statements, usage logs, calendars, and golf registration sheets were requested and reviewed by the PTABOA, in determining the allocation percentage of charitable use. *Linn Testimony; Attachments to Board Exhibit A*.
- f. The public golf course use, the number of times social hour was held, and the number of times the lodge was rented out to private parties (approximately 44 times in 2002), were reviewed to determine the percentage of non-exempt usage. *Miller Testimony*.
- g. The local officials have been instructed to look at the predominant use; the PTABOA broke down each room and each area to determine the percentage of the non-exempt usage. *Linn Testimony*. A copy of the PTABOA's breakdown of non-exempt activities was submitted to the Petitioner with the Form 120 notice for their review. *Id.*
- h. The PTABOA's determination is based on the information provided by the head trustee of the organization. *Linn Testimony*.
- i. As far as the exemption percentage allocated to the land, the statute only allows a maximum of fifteen (15) acres exempt status. The parcel contains 53.683 acres. *Miller Testimony*.
- j. The Petitioner contends the Elks Lodge located in Fort Wayne, Indiana, is 100% exempt. The Fort Wayne Elks Lodge has a golf course and swimming pool. *Van Winkle Testimony*.
- k. The Respondent questioned the Petitioner regarding how much money Elks Lodge #1194 gives for charitable donations in a year. The Petitioner did not bring any documentation of their charitable donations. *Van Winkle Testimony*.
- l. Last year was the first year that Elks Lodge #1194 did not show any kind of profit. *Van Winkle Testimony*.

#### Analysis of Issue No. 1

*Issue No. 1: Whether the PTABOA failed to correctly apportion the exemption for the real property owned by Elks Lodge #1194*

30. The PTABOA reviewed the exemption application filed by Elks Lodge #1194 and determined the parcel's land and improvements to be less than fifty percent (50%) exempt based on the predominant use of the parcel. Ind. Code § 6-1.1-10-36.3, indicates that property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax. Therefore, the Elks Lodge #1194 would not benefit from the percentage of exemption determined by the PTABOA because said percentages for both the land and improvements are less than fifty percent (50%).
31. The PTABOA determined 15 acres of the land to be exempt in accordance with Ind. Code § 6-1.1-10-16(c). The PTABOA shows this as a 28% exemption on land which was computed by dividing the 15 exempt acres by the total acres of 53.683.
32. The PTABOA reviewed the usage log and breakdown of activities provided by the lodge, and a room-by-room analysis of charitable activities. The PTABOA determined the lodge's kitchen to be seventy five (75%) percent taxable, the meeting room to be ninety five (95%) percent taxable, the social/bar room to be one hundred (100%) percent taxable, the golf course to be sixty five (65%) percent taxable, and the common areas were deemed entirely exempt. The PTABOA determined the predominant use of the improvements as a whole to be thirty nine (39%) percent exempt and sixty one (61%) percent non-exempt. This determination is based on use hours divided by the square footage of the overall improvements. *Board Exhibit A, Form 120 attachments.*
33. The Petitioner claims the apportioned exemption determined by the PTABOA, does not fairly reflect the predominant use of Elks Lodge #1194. The Petitioner argues that the social activities are necessary to help fund the donations and charitable functions that benefit the community. However, it is the predominant use, not monetary charitable contributions that determine a property's exempt status.
34. A "predominant use" test was adopted for determining whether property qualifies for exemption under Ind. Code Chapter 6-1.1-10. "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 for charitable purposes.” *State Board of Tax Commissioners v. New Castle Lodge # 147*, 765 N.E. 2d 1257, 1263 (Ind. 2002).

35. In the present case, the improvements in question have a kitchen, meeting room, bar, and golf course that are used for social purposes at times. Because the sole use of the building is not charitable, the improvements do not qualify for a 100% exemption. The parcel in question contains 53.683 acres, of which only 15 acres are eligible for exemption pursuant to the directives listed in Ind. Code § 6-1.1-10-16.
36. The subject property would qualify for partial exemption under Ind. Code § 6-1.1-10-36.3, if it were used more than fifty (50%) percent of the time for charitable purposes. If it was used for a charitable purpose more than fifty (50%) percent of the time, the subject will qualify for an exemption in that amount. If the subject is used for charitable purposes fifty (50%) percent of the time or less, then there can be no exemption applied.
37. According to the usage analysis study, based on the usage records submitted by Elks Lodge #1194, the PTABOA determined the majority of the lodge’s social activities to be non-exempt. Therefore, the land and improvements are ineligible for the benefit of exemption.
38. The Petitioner did not provide any probative evidence indicating the amount of exemption granted was incorrect. The Petitioner did not rebut the usage analysis, which was forwarded to them by the PTABOA with the Form 120 notice. The Petitioner did not present any evidence indicating the usage figures determined by the PTABOA were incorrect, or what the correct apportion percentage for the exemption would be.
39. The Petitioner testified that the Fort Wayne Elks Club and Golf Course which is similar, but superior, to the subject property is 100% exempt from taxation. The Petitioner did not offer any probative evidence to support their claims, nor was the comparability of the use of the two entities discussed.

40. Whether the Fort Wayne Elks Club properly qualifies for an exemption, or the propriety of a grant of exemption can only be determined after a hearing and full consideration of all the facts relevant to Fort Wayne Elks Club and its application. The propriety of the Fort Wayne Elks Lodge's qualification was not determined before the Indiana Board, and for these reasons, the Fort Wayne Lodge cannot be considered determinative to this decision.
41. The evidence does not support any changes to the partial exemptions initially granted by the Respondent. Worthwhile activities are not enough for property tax exemption. The Petitioner has the burden of proving that the property is entitled to the exemption.
42. Without any probative evidence submitted by the Petitioner to rebut the Respondent, the PTABOA prevails in their decision that the subject property is not used for an exempt purpose more than fifty (50%) percent of the time. Therefore, the partial exemption is less than fifty (50%) percent, which by virtue of Ind. Code § 6-1.1-10-36.3, mandates that property that is predominantly used or occupied for a purpose other than one of the stated purposes, is not exempt from any part of the property tax.
43. Therefore, for all the reasons stated above, the subject property is not entitled to an exemption.

*Issue No. 2: Whether the assessed value of the improvements is significantly overstated.*

44. The Petitioner claims the value of the improvements is significantly overstated. The Petitioner submitted four (4) income-producing properties located in northern Indiana as comparables.
45. The Petitioner appears before the Board via the Form 132 appeal process. The Form 132 is a direct appeal to the Board. The Form 132 appeal process is used by a taxpayer to appeal the determination of the PTABOA on an exemption application. The scope of the Form 132 appeal process is limited to whether or not property qualifies for exemption and the amount of the exemption.

46. To appeal the assessment of the property, the Petitioner must follow either the Form 130 or Form 133 appeal process. The Form 130 and Form 133 appeal processes are used to appeal the assessment of a property. The Form 130 and Form 133 appeal procedures are appeals to the local officials and PTABOA. After the PTABOA acts on the Form 130 and Form 133, the petitioner has the opportunity the appeal to the Board. The Petitioner must follow the proper administrative procedures to appeal the assessment of the property.
47. The Form 132 appeal process is not the proper avenue to appeal the assessed value of the property. Accordingly, there is no action by the Board on this issue.

### **Analysis of Issue No. 2**

*Issue No. 2: Whether the assessed value of the improvements was significantly overstated.*

48. Therefore, for all the reasons stated above, the Board will not address this issue.

### **Summary of Final Determination**

*Issue No. 1: Whether the PTABOA failed to correctly apportion the exemption for the real property owned by Elks Lodge #1194.*

49. The Petitioner did not offer any probative evidence to establish that the exemption was incorrectly apportioned. Further, the Petitioner failed to offer any evidence in support of what they consider the correct apportionment for the improvements to be. Accordingly, the property is determined to be 100% taxable.

*Issue No. 2: Whether the assessed value of the improvements is significantly overstated.*

50. The Form 132 appeal process is not the proper avenue to appeal the assessed value of the property. Accordingly, there is no action by the Board on this issue.

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

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Chairman, 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.**