

REPRESENTATIVES FOR PETITIONER:

William W. Barrett and Daniel J. Layden, Williams Barrett & Wilkowski, LLP

REPRESENTATIVE FOR RESPONDENT:

Lester Need, Hendricks County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WHITELICK INDIANA AERIE NO. 3207,)	Petition Nos.: 32-012-13-2-8-00002
FRATERNAL ORDER OF EAGLES, INC.,)	32-012-14-2-8-00001
)	32-012-14-2-8-00002
Petitioner,)	
)	Parcel Nos.: 21-1-33-51E 400-016
)	06-1-33-51E 300-014
v.)	
)	County: Hendricks
)	
HENDRICKS COUNTY ASSESSOR,)	Township: Guilford
)	
Respondent.)	Assessment Years: 2013, 2014

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

June 20, 2016

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

STATEMENT OF THE ISSUES

1. Is the property under appeal entitled to exemption under Indiana Code § 6-1.1-10-23 on grounds it is owned by a fraternal beneficiary association?
2. Is the property, or a portion thereof, entitled to a charitable-purposes exemption under Indiana Code § 6-1.1-10-16?

PROCEDURAL HISTORY

3. Petitioner, Whitelick Indiana Aerie No. 3207, Fraternal Order of Eagles, Inc. (“Aerie No. 3207”), applied for real and personal property tax exemptions for its two parcels. The applications covered the 2013 and 2014 assessment years. The Hendricks County Property Tax Assessment Board of Appeals (“PTABOA”) denied those applications on August 29, 2013, and July 7, 2014, respectively, finding Aerie No. 3207’s real and personal property 100% taxable. Aerie No. 3207 then timely filed Form 132 petitions with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On November 17, 2015, our designated administrative law judge, Jacob Robinson (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the property.

5. The following people were sworn as witnesses and testified at the hearing: Wayland H. (Sam) Rankin;¹ Lori Hiatt;² and Lester Need.³

6. Petitioner submitted the following exhibits:

- Exhibit 1: Certificate of Incorporation and Articles of Incorporation
- Exhibit 2: Business Entity Reports
- Exhibit 3: Form 990 Returns
- Exhibit 4: Photograph of sign for Aerie No. 3207, assessment information for, and aerial photographs of, Parcel 21-1-33-51E 400-016 from Beacon website
- Exhibit 5: Assessment information for, and aerial photographs of, Parcel 06-1-33-51E 300-014 from Beacon website
- Exhibit 6: Form 132 Petitions to the Board of Tax Review for 2014
- Exhibit 7: Form 132 Petitions to the Board of Tax Review for 2013
- Exhibit 8: February 2014 cover letter from Charles Cunningham and Grand Aerie Articles of Incorporation, Constitution and Statutes; Ladies Auxiliary Rules and Regulations
- Exhibit 9: Suggested By-Laws of Aerie No. 3207
- Exhibit 10: Model Election Rules
- Exhibit 11: The Ritual of the Fraternal Order of Eagles
- Exhibit 12: Materials related to the activities of the Grand Aerie, Organization Membership, and activities of the Fraternal Order of Eagles
- Exhibit 13: May 3, 2012 letter from Charles Cunningham and selected organization minutes
- Exhibit 14: Materials related to the activities of Aerie No. 3207 and Quickbooks data

7. Respondent submitted the following exhibits:

- Exhibit A: 2013 Property Record Card for Parcel No. 21-1-33-51E 400-016
- Exhibit B: 2014 Property Record Card for Parcel No. 21-1-33-51E 400-016

¹ Mr. Rankin is a member of Aerie No. 3207 and the current President of the Indiana Fraternal Order of Eagles. During the years at issue, Rankin was the elected Secretary and a member of Aerie No. 3207. *Rankin testimony.*

² Ms. Hiatt is a member of the Ladies Auxiliary chapter associated with Aerie No. 3207. She is also a Past President of the Ladies Auxiliary and a member of the Past Presidents Club. *Hiatt testimony.*

³ The Assessor did not attend the hearing. Several members of the PTABOA attended, including Lester Need, who professed to represent the Assessor. There is no indication that he (or any of the other PTABOA members) was authorized to do so under our procedural rules. *See 52 IAC 2-2-4 (defining authorized representatives).* Aerie No. 3207 did not object to Need's appearance and the ALJ allowed him to proceed. Under those circumstances, and because we cannot absolutely rule out the possibility that Need might qualify as an authorized representative, we will proceed as if the Assessor had properly appeared. Doing so does not affect the outcome, because the case turns on the insufficiency of Aerie No. 3207's evidence to make a prima facie case for exemption rather than on any evidence offered by Need. We caution the Assessor that he must appear in person, by full-time employee, or by a duly authorized representative in order to offer evidence or argument in any future hearings before us.

- Exhibit C: Slides from the 2014 Indiana Assessor's Conference
- Exhibit D: Printout of Indiana Code § 6-1.1-10-16
- Exhibit E: Articles of Incorporation for White Lick Auxiliary No. 3207, Fraternal Order of Eagles, Inc. with portions highlighted
- Exhibit F: 2013 Form 120 Notice for Parcel No. 21-1-33-51E 400-016
- Exhibit G: Portion of Internal Revenue Service letter dated April 2007 regarding exemption of subordinate lodges under 501(c)(8)
- Exhibit H: 2013 Form 136 application for Parcel No. 21-1-33-51E 400-016 with attachments
- Exhibit I: 2014 Form 136 application for Parcel No. 21-1-33-51E 400-016
- Exhibit J: Suggested By-Laws of Aerie No. 3207
- Exhibit K: Portion of an attachment to Aerie No. 3207's 2014 Form 136 Application for Parcel No. 21-1-33-51E 400-016 with highlighting
- Exhibit L: Presentation for Parcel 21-1-33-51E 400-016
- Exhibit M: 2014 Form 120 Notice for Parcel No. 21-1-33-51E 400-016
- Exhibit 1: Presentation for Parcel 06-1-33-51E 300-014

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

- Board Exhibit A: Form 132 Petitions with attachments
- Board Exhibit B: Notices of Hearing
- Board Exhibit C: Hearing sign-in sheet

The record also includes all filings by the parties and all orders and notices issued by the Board or the ALJ.

OBJECTIONS

- 9. Aerie No. 3207 objected to portions of Respondent's Exhibit 1 and Exhibit L because the Assessor failed to exchange those materials in advance of the hearing as required by 52 IAC 2-7-1(b)(1). The ALJ preliminarily admitted pages 3-6, 12, and 26 from Exhibit 1 and pages 4-6 from Exhibit L. He excluded the remaining portions of both exhibits.
- 10. We adopt the ALJ's rulings, with the exception of his ruling excluding page 3 of Exhibit L, which Aerie No. 3207 did not object to. The excluded material is mostly non-evidentiary. Although there are some factual allegations, they appear to be largely undisputed, and in many cases are contained in other exhibits and testimony. In any case, the ALJ allowed the Assessor's purported representative and witness, Lester Need, to make those arguments and testify to any of the factual allegations referenced in the

exhibits. The parties were also given the opportunity to file post-hearing briefs, in which the Assessor was free to make any arguments he wanted.

11. Aerie No. 3207 also made numerous objections to Lester Need's testimony. Most were grounded on relevancy or because Need was testifying about documents that spoke for themselves. The ALJ sustained those objections, and we adopt his rulings. Aerie No. 3207 made other objections on grounds that Need was making legal arguments, offering legal conclusions, or misstating the law. The ALJ took those objections under advisement. We overrule them but note that we do not rely on any of the challenged testimony in reaching our own legal conclusions.

FINDINGS OF FACT

12. Aerie No. 3207 was incorporated in Indiana as a domestic, not-for-profit corporation, with no capital stock, for the following purposes:
 - (a) To strengthen the bonds of fraternity between local Aeries, State Aeries and the Grand Aerie of the Fraternal Order of Eagles;
 - (b) To promote the patriotic, humanitarian and fraternal teachings of the Fraternal Order of Eagles; and
 - (c) To inculcate among the members a sense of their individual obligation to their community, to their state and to their nation.

Pet'r Exs. 1-2; Rankin testimony.

13. Aerie No. 3207 is a local chapter instituted by the authority of the Grand Aerie of the Fraternal Order of Eagles. *Pet'r Ex. 9; Rankin testimony.* The witnesses and various documents, including the association's articles of incorporation, constitution, and statutes, use the term "Grand Aerie" to refer to what appear to be two separate things: (1) the association itself, and (2) its supreme governing body. *See Rankin testimony; Pet'r Ex. 8.* We will refer to the association as the "Order" and to the supreme governing body as the "Grand Aerie."

14. According to its amended and restated articles of incorporation, the Order was organized for the following purposes:

To unite fraternally for the mutual benefit, protection, improvement and social enjoyment, all persons as it, by its Constitution, Laws, Rituals, By-Laws, or other forms of rules and regulations, may from time to time provide, and to make its members and subordinate bodies or units subject thereto;

To issue and revoke charters, or other evidences of organization and formation of Subordinate, Region, Zone, State, District, Provincial, and other “specialty” Aeries and Ladies Auxiliaries, or any such other units as it may from time to time charter, form or organize, no matter by what name the same may be known or called;

To enact, promulgate, amend or repeal, or provide for the enactment, promulgation, amendment or repeal of, Constitution, Laws, Rituals, By-Laws, rules and regulations, or any other form of legislation, for the government of the Grand Aerie, its Subordinate Aeries, Ladies Auxiliaries, State, District and Provincial Aeries, or any such other units and members thereof, as it may from time to time charter, form or admit, no matter by what name the same may be known or called;

To establish and maintain an insurance department under the control of a Board of Directors who shall prepare and promulgate certificates of insurance and provisions for death, old age disability and other benefits payable as provided for in the Laws of the Grand Aerie enacted for the government and administration of the insurance department; and,

To do any and all things necessary and incident to the development, progress, growth and welfare of the Grand Aerie, or any of its Subordinate units or bodies, or members thereof, and to do and perform any and all other things as may be generally performed by a fraternal beneficiary society.

Pet’r Ex. 8 at 1; Rankin testimony.

15. The Grand Aerie is the Order’s supreme governing body. Its powers are divided into legislative, executive and judicial departments. The legislative power is vested in “a Grand Aerie,” consisting of “[a]ll present and future Past Worthy Presidents who are in good standing in their respective Aeries,” and “[t]hose who have served their respective Aeries as Secretary for a period of not less than ten (10) years, while they remain in good standing in their Aerie.” The executive power is vested in the Grand Worthy President and the Board of Grand Trustees, which consists of five members. And the judicial

power is vested in a Grand Tribunal consisting of five members called Grand Justices who are elected for three-year terms. *Pet'r Ex. 8 at 3-4; Rankin testimony.*

16. With the exception of the Chairman of the Board of Grand Trustees and the Grand Justices, the Order's officers are elected annually under the following procedures:
 - (a) Each Past Worthy President shall be entitled to one (1) vote in his own name.
 - (b) Each Ten-Year Secretary, not a Past Worthy President, shall be entitled to one (1) vote in his own name.
 - (c) Each State or Provincial Aerie shall be entitled to one (1) vote, and an additional vote for each 5,000 members or major fraction thereof. The votes of the State or Provincial Aerie shall be cast by some Past Worthy President or Ten-Year Secretary as its accredited representative.
 - (d) Each Local Aerie in good standing shall be entitled to one (1) vote for each 100 members or major fraction thereof. The votes of the Local Aerie shall be cast by some Past Worthy President or Ten-Year Secretary as its accredited representative. If no such person is available, the Worthy President of the Local Aerie may be elected as its accredited representative and in such case he may cast the votes of the Local Aerie. **The accredited representative may cast the votes of one (1) Local or Dual Aerie.**

Pet'r Ex. 8 at 4 (emphasis in original).

17. The Order has approximately 850,000 individual members in the United States and Canada. All members of the organization are also members of local chapters known as local aeries. The Order's constitution and statutes prescribe the establishment of local aeries and allow for ladies' auxiliaries to be associated with them. Local aeries are instituted when people in a particular area are initiated into the Order. The Grand Aerie then assigns an organizer to an area to start an aerie. The local aeries are grouped into districts and zones within a state aerie, which in turn are grouped into regional conferences. *Rankin testimony.*
18. To become a member, an applicant must fill out an application from the Order and be sponsored by two members, interviewed by the local aerie, and approved by secret ballot of the local aerie. *Pet'r Exs. 8 at 63-69, 12; Rankin testimony.*

19. Members of Aerie No. 3207 must pay annual membership dues each May. Dues of both beneficial and non-beneficial members are \$30 per year. Dues of dual members (people who are members of more than one aerie) are \$15 per year. *Pet'r Ex. 9; Rankin testimony.*
20. The Order's constitution requires local aeries to adopt by-laws that the Grand Aerie must approve. Aerie No. 3207's revised by-laws were adopted on April 26, 2012 and were approved by the Grand Aerie on May 3, 2012. *Pet'r Exs. 9, 13; Rankin testimony.*
21. Aerie No. 3207's by-laws call for meetings to be held at its lodge on the second and fourth Thursday of every month. The meetings follow the prescribed format established by the Order and outlined in a book titled "The Ritual of the Fraternal Order of Eagles." Each meeting opens with scripted speeches by the officers, a recitation of the Pledge of Allegiance, and a prayer. Members then address any business, such as paying bills, discussing sick or distressed members, and renting the lodge to third parties. Potential new members may be nominated at a meeting and initiated at the following meeting. The initiation process is ritualized, with a scripted call-and-response format. Meetings conclude with a closing ceremony performed according to the Order's rituals. Aerie No. 3207 documents its meetings with minutes, which the secretary prepares and places in minute books that are kept in the lodge office. *Pet'r Exs. 9, 11, 13; Rankin testimony.*
22. Aerie No. 3207's members elect its officers. The Order's constitution and statutes call for each local aerie to have a board of trustees and officers, including a Worthy President, Worthy Vice-President, Chaplain, Conductor, Secretary, and Treasurer. Officers are nominated at the last meeting in April and elections are held annually at the first meeting in May. Aerie No. 3207 conducts its elections in accordance with the Order's statutes and model election rules. *Pet'r Ex. 8 at 77-89; Pet'r Exs. 9-10, 13; Rankin testimony.*
23. Under Sections 115.1 and 115.3 of the Order's statutes, local aeries may adopt by-laws providing sick or funeral benefits, or both, to their members. Aerie No. 3207's by-laws

provide for a funeral benefit ranging from \$150, if a member dies in his first year of membership, to \$300, if he dies in the tenth year of membership or thereafter. To qualify for the funeral benefit, the member must have been initiated into Aerie No. 3207 before his 55th birthday and be in good standing (be current with membership dues) at the time of death. Aerie No. 3207 pays funeral benefits out of its benefit fund, with no funds coming from the Order. During 2013, Aerie No. 3207 paid a \$300.00 funeral benefit to the surviving spouse of one deceased member. *Pet'r Ex. 8 at 99-101; Pet'r Exs. 9, 14; Rankin testimony.*

24. The Internal Revenue Service has recognized the Order and its subordinates, including Aerie No. 3207, as exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code. *See Pet'r Exs. 3, 6; Resp't Ex. G.*
25. The two parcels at issue are located at 5556 East U.S. Highway 40, Plainfield. The larger one (parcel 21-1-33-51E 400-016) is a 4.4-acre tract with a 7,560-square-foot lodge, a surface parking lot, a shelter house, horseshoe pits, and a playground, along with personal property associated with the real estate. Members gather at the property to socialize, enjoy themselves, and share common interests. The lodge has three main sections, each of which includes roughly 33% of the total building area: (1) a social room, (2) a banquet hall, and (3) offices, meeting rooms, and restrooms. There is also a kitchen, which Aerie No. 3207 alternately referred to as part of the social room and part of the office/meeting room section. *See Rankin testimony; Pet'r Exs. 4, 6.*
26. The social room has a restaurant and bar (and according to Rankin, a kitchen area) and is used exclusively by members. The banquet hall functions as a party room, bingo room, and ballroom. Aerie No. 3207 holds weekly bingo nights, which are open to the public, in the banquet hall. Non-members can rent the banquet hall for weddings, receptions, and similar events for \$300-\$400. Those rentals typically happen 8-10 times per year. Aerie No. 3207 also donates use of the banquet hall, meeting rooms, and outside facilities to various charities, local organizations, youth groups, and businesses, provided the

groups submit a written request to be read on the floor to members. It uses the offices exclusively for its own purposes. *Pet'r Exs. 4, 6, 13; Rankin and Hiatt testimony.*

27. The personal property associated with the lodge parcel includes kitchen equipment, tables (including banquet tables) and chairs, stations for the meeting room, and office furniture. *Rankin testimony; Pet'r Ex. 6.*
28. The other parcel (parcel 06-1-33-51E 300-014) is a 2.75-acre tract with a storage shed/garage. Aerie No. 3207 uses the shed to store its business records and personal property, such as lawn-maintenance equipment, and spare equipment. *Pet'r Ex. 5; Rankin testimony.*
29. Aerie No. 3207 generates most of its income through its restaurant, charity gaming, membership dues, and fundraisers. It uses that income to pay its operating expenses. It gives any funds not used for operations to charity. Aerie No. 3207 also collects donations for specific charitable causes, some of which are passed through to benefit the charitable endeavors of the State Aerie and the Order. *Pet'r Ex. 14; Rankin testimony.*
30. At various times during the years under appeal, the lodge and surrounding grounds were used for the following activities that produced income for Aerie No. 3207, at which donations for charitable causes were collected, or both:
 - Weekly bingo nights;
 - 52 Club drawings;
 - Annual Charity Ball/Sweetheart Dance;
 - Banquet hall rentals;
 - Eagles Riders Club raffles and charity rides;
 - Fundraising for the State Aerie and State Auxiliary projects;
 - Collecting goods for the Grand Aerie's Operation Eagle program.⁴

Pet'r Exs. 12-14; Rankin and Hiatt testimony.

⁴ Aerie No. 3207 also has a golf club that holds golf tournaments to raise funds for charity, but there is no indication that the lodge or other facilities were used in connection with the tournaments.

31. The lodge and surrounding grounds were also used for the following activities:
- Member’s funeral dinners;
 - Dart tournaments;
 - Real Estate Agency clothing drives and pork chop sales;
 - Chamber of Commerce meetings;
 - Veteran’s Day banquets and dinners;
 - Dinners for Local Police and Firemen;
 - Children’s Christmas programs;
 - Easter Egg hunts;
 - Halloween parties and dances;
 - Summer picnics;
 - Act of Faith’s Charity Car Show;
 - Fundraising event for Premier Academy of the Performing Arts Competition Team.⁵

Pet’r Exs. 13-14; Rankin and Hiatt testimony.

CONCLUSIONS OF LAW

A. Basis for Exemption and Burden of Proof

32. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10 § 1; I.C. § 6-1-1-2-1. Because property tax exemptions relieve properties from bearing their fair share of the cost of government services, exemptions are to be strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citation omitted), *review denied*. A taxpayer therefore always bears the burden of proving it is entitled to the exemption it seeks. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
33. Aerie No. 3207 seeks exemption under two statutes: Ind. Code § 6-1.1-10-23, which addresses property owned by fraternal beneficiary associations, and Ind. Code § 6-1.1-10-

⁵ Aerie No. 3207 also participates in a Child’s Advocacy Day held at local schools and the Fourth of July parade and Founder’s Day programs held in Plainfield.

16, which among other things, addresses property owned, occupied, and predominantly used for charitable purposes. We address each claim in turn.

B. Fraternal Beneficiary Association Exemption

34. Indiana Code § 6-1.1-10-23(a) provides:

(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) 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.

I.C. § 6-1.1-10-23(b).

35. That statute does not define “fraternal beneficiary association.” In interpreting a predecessor version of the statute, the Indiana Court of Appeals held that the term had “a very limited and definitive meaning,” which was laid out in the predecessor to part of Indiana’s insurance code. *State Bd. of Tax Comm’rs v. Ft. Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258, N.E.2d 874, 880 (1970); *see also, Fraternal Order of Eagles #3988, Inc. v. Morgan County Prop. Tax Assessment Bd. of Appeals*, 5 N.E.3d 1195, 1200 (Ind. Tax Ct. 2014). In its current form, the relevant section of the insurance code describes the following organizations:

[A]ny 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.

Ind. Code § 27-11-1-1.

36. Aerie No. 3207 showed that it meets at least some of those elements. For example, it does not have capital stock. Similarly, both it and the Order are not-for-profit, and they operate on a lodge system with significant ritual. The Order also arguably has a representative form of government.

37. But Aerie No. 3207 did not show that it operates for the benefit of members and their beneficiaries. Pursuant to Ind. Code § 6-1.1-2-3, “A society shall operate for the benefit of members and their beneficiaries by (1) providing benefits as specified in IC 27-11-6-1. . .” I.C. § 27-11-2-3. Indiana Code § 27-11-6-1, in turn, states, in relevant part, that “a society may provide the following contractual benefits in any form: (a)(1) Death benefits; . . . (7) such other benefits as authorized for life insurers and that are not inconsistent with [Ind. Code § 27-11-6].” I.C. § 27-11-6-1(a).
38. The Order’s constitution and statutes allow local aeries to provide sick or funeral benefits to their members. Arguably, Aerie No. 3207 provides funeral benefits to members in good standing. For purposes of this determination, we assume those equate to “death benefits,” or at least qualify as a benefit life insurers are authorized to provide. Nevertheless, Aerie No. 3027 does not provide *contractual* benefits as specified in Ind. Code § 27-11-6-1. Benefits authorized by Ind. Code § 27-11-6-1 are provided through “benefit contract[s].” I.C. § 27-11-1-3. And “every society authorized to do business in [Indiana] shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided,” which together with various other documents, including the application for membership and application for insurance, constitute the benefit contract. I.C. § 27-11-6-4. Although the Order’s articles of incorporation call for it to maintain an insurance department and to prepare and promulgate certificates of insurance, there is no evidence that it actually does those things. Aerie No. 3207 conceded it does not issue such a certificate to each of its benefit members. *Petitioners’ Post-Hearing Memorandum in Support of Appeal to the Indiana Board of Tax Review at 10.*
39. Aerie No. 3207 nonetheless argues that, because benefits are provided through it and other local aeries rather than through the Order, the following language exempts it from the certificate requirement:

(a) Nothing contained in this article shall be so construed as to affect or apply to:

- (1) grand or subordinate lodges of societies, orders, or associations doing business in Indiana that provides benefits exclusively through local or subordinate lodges.

I.C. § 27-11-9-4(a)(1).

40. Indiana Code § 27-11-9-4(a)(1) may exclude Aerie No. 3207 from being regulated under Ind. Code § 27-11. For example, it may not have to register with the Indiana Department of Insurance. But the exclusion does not excuse Aerie No. 3207 from having to prove that it qualifies as a fraternal beneficiary association for purposes of the relevant exemption statute—Ind. Code § 6-1.1-10-23. To qualify under that statute, an entity must show it operates for the benefit of members and their beneficiaries by providing contractual benefits contemplated under Ind. Code § 27-11-6-1.⁶ And that entails showing that it provides certificates of insurance. The record contains no evidence that Aerie No. 3207 does so.

41. Finally, we acknowledge that the Internal Revenue Service has recognized Aerie No. 3207 as exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code.⁷ But recognition under section 501(c)(8) “does not, by itself, establish that [the taxpayer] met all the definitional requirements contained in Indiana Code § 27-11-6-1.” *Eagles # 3988*, 5 N.E.3d at 1201. Indeed, although similar in some ways, section 501(c)(8) does not mirror the elements of Ind. Code § 27-11-6-1. For example, while section 501(c)(8) requires exempt entities to provide for the payment of life, sick, accident, or other benefits, it does not specify that those benefits be contractual or what the contracts must entail.

⁶ Because Aerie No. 3207 has not shown that it provides contractual benefits under Ind. Code § 27-11-6-1, it also failed to satisfy the last element of Ind. Code § 27-11-1-1 requiring it to provide “benefits in accordance with this article.”

⁷ Section 501(c)(8) exempts “Fraternal beneficiary societies, orders, or associations—(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association or their dependents.” 26 U.S.C. § 501(c)(8).

C. Charitable-purposes exemption

42. All or part of a building owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. *See* I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36; *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct.2009). That exemption extends to the land on which the building is situated and to personal property owned and used in such a manner that it would be exempt if it were a building. I.C. § 6-1.1-10-16(c) and (e). Property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3(a).
43. To prove a property is used for charitable purposes, a taxpayer must demonstrate that (1) through its use of the property, 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 that (2) the use provides a present benefit to the general public sufficient to justify the loss of tax revenue. *See Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990) (citation omitted).

Lodge Building Parcel

44. In its post-hearing brief, Aerie No. 3207 concedes that roughly 33%, of its lodge is used as a social club and is ineligible for a charitable-purposes exemption. But it argues that the rest of the building was used exclusively “to further its ongoing charitable endeavors.” *Petitioner’s Post-Hearing Memorandum at 12.*
45. We disagree. There is no evidence indicating that members were required to confine their social or recreational interactions to the social room. For example, dart games were held in the banquet hall. And people rented the banquet hall for weddings, receptions, and similar non-charitable events. While Aerie No. 3207 also sometimes used the lodge

for charitable purposes, like clothing drives and other fundraisers, the most one can say is that the area beyond the social room was used for a mix of charitable, fraternal, and social purposes. Under those circumstances, Aerie No. 3207 had to prove the non-social room portions of the lodge were *predominantly* used for charitable purposes, i.e. that they were used for charitable purposes more than 50% of the time they were in use during the year leading up to each assessment date at issue.

46. Aerie No. 3207 did not offer a time log, facility usage report, or any other evidence from which to make such a determination. See *Eagles #3988*, 5 N.E.3d at 1202 (holding that the taxpayer’s failure to provide a comparison of the amounts of time that the lodge was used for exempt and non-exempt purposes was fatal to its claim). Instead, it generally described some activities that took place at the lodge and on the surrounding grounds. As the Indiana Supreme Court has explained, “[t]axpayers may not avoid their burden of proof by ‘making a de minimis showing and then forcing the State Board to support its decisions with detailed factual findings.’” *New Castle Lodge #147*, 765 N.E.2d at 1264 (citation omitted).

47. We note that the facts of this case are nearly identical to the facts in *Eagles #3988*, 5 N.E.3d at 1197-98. In that case, the Court reviewed the eligibility of another Eagles facility that was likewise used for its own fraternal, social, and charity fundraising activities, and for meeting and event space for outside private and charitable purposes. Because there was no time-usage comparison, the Court held that the failure to provide such a comparison was “fatal to its claim for either a full or partial exemption.” *Id.* at 1202. The court was also very skeptical that even the claimed charitable activities differed from the “social activities common to all of society.” *Id.* n. 10. As already recited, the record does not support a claim that the remainder of the property was used solely for charitable purposes. Thus, the failure to provide a time usage report proves fatal to the claim for exemption. We are also not convinced that the dinners, dances, and children’s holiday parties are charitable in light of *Eagles #3988*.

48. Thus, Aerie No. 3207 failed to make a prima facie case for exempting any of the real estate on the lodge parcel. The same is true for the personal property associated with that parcel. Aerie No. 3207 did little to describe the personal property in question and even less to show it was used for charitable purposes. Indeed, based on those general descriptions, it appears some of the personal property was located in, or used for activities that occurred in, the social room.

Storage Shed/Garage Parcel

49. There is even less support for exempting the storage shed/garage. Once again, Aerie No. 3207 premises its claim on what it views as its inherently charitable nature. As explained above, that is insufficient to support an exemption. Aerie No. 3207 offered no evidence connecting the equipment or records stored in the building to any of the charitable activities that were held at the lodge beyond the fact that some of the records may relate to its charity gaming operations. Even if we were to attribute some charitable use to the storage shed/garage, Aerie No. 3207 once again failed to show that use predominated over non-exempt uses. Consequently, it failed to make a prima facie case that the real estate parcel, or any personal property associated with that parcel, was entitled to exemption.

CONCLUSION

50. Because Aerie No. 3207 failed to show it qualifies as a fraternal beneficiary association, it is not entitled to an exemption under Ind. Code § 6-1.1-10-23. It similarly failed to prove it predominantly used any of its buildings or personal property for charitable purposes as required for exemption under Ind. Code § 6-1.1-10-16. We deny Aerie No. 3207's exemption claims and find that its real and personal property is 100% taxable.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.