

REPRESENTATIVE FOR PETITIONER: Mark C. Dely, Esq.

REPRESENTATIVE FOR RESPONDENT: Mark E. GiaQuinta, Sarah L. Schreiber,
Haller & Colvin, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

The X Count Properties, LLC,)	Petition No.: 02-073-20-2-8-00529-21
)	
Petitioner,)	
)	Parcel No.: 02-07-23-153-005.000-073
)	
v.)	
)	Assessment Year: 2020
Allen County Assessor,)	
)	
Respondent.)	

August 8, 2023

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:

I. INTRODUCTION

1. The Petitioner, The X Count Properties, LLC (“Properties”) is seeking a 100% exemption, claiming The X Count Inc. (“X Count”) exclusively uses the real and personal property subject to this appeal for charitable and educational purposes. Following the hearing in this matter, the parties memorialized a stipulation that the property should receive 5% charitable exemption. The remaining issue before the Board is whether the property is entitled to an educational exemption. We find Properties has failed to present sufficient evidence regarding the use of the property during the relevant time period to establish an educational use, and order the property be granted a 5% charitable exemption.

II. PROCEDURAL HISTORY

1. On June 19, 2020, X Count filed a Form 136 application seeking real and personal property exemptions for 2020 regarding property located at 5301 Merchandise Drive, Fort Wayne, Indiana pursuant to Ind. Code § 6-1.1-10-16. This was during the COVID-19 pandemic, and the Governor issued Executive Order 20-12¹ extending the deadline for submitting property tax exemption applications from April 1, 2020, until June 30, 2020.
2. Ultimately, the PTABOA issued a Form 120 denying X Count's exemption application. The Form 120 identified Properties, a wholly owned subsidiary of X Count, as the owner of the property.
3. On May 26, 2021, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") denied the exemption sought by X Count and found that the property was 100% taxable.
4. On July 7, 2021, Properties filed a Form 132 petition with the Board. Prior to the evidentiary hearing, the Assessor filed a motion to dismiss or, in the alternative, for summary judgment. Properties then filed its own motion for summary judgment. The Board denied both motions.
5. On August 9, 2022, the Board's designated administrative law judge, David Smith ("ALJ"), held a hearing on the appeal. Neither he nor the Board inspected the property.
6. Diane Rice, Mitchell McKinney, Daniel William Shanebrook, Frank Richard Baumgartner, Mark Dely, and Ronald D. Felger, were sworn as witnesses and testified.

¹ The Assessor asks the Board to take judicial notice of Executive Order 20-12, issued on March 26, 2020, in accordance with Rule 201(a)(2)(A) of the Indiana Rules of Evidence and 52 IAC 4-6-11. The Board takes judicial notice of the Executive Order as part of the record in this matter.

7. The parties offered the following exhibits:

Petitioner Exhibit 1	The X Count Marketing Materials
Petitioner Exhibit 2	Core 40 Requirements for the State of Indiana
Petitioner Exhibit 3	U.S. Government Academic Standards for the State of Indiana
Petitioner Exhibit 4	2017 Version of the Indiana Academic Standards for Physical Education
Petitioner Exhibit 5	Photo of Carroll Letter Jacket
Petitioner Exhibit 6	Photo of Page 173 from the 2019-2020 Carroll High School Yearbook
Petitioner Exhibit 7	Email Dated 5/12/2020
Petitioner Exhibit 8	Sports Page of Bishop Dwenger High School's Web Page
Petitioner Exhibit 9	Photo of Tri-County Conference Championship Plaques
Petitioner Exhibit 10	Photo of State Championship Plaques
Petitioner Exhibit 11	Communications between Administration and the Secretarial Staff regarding Logistics
Petitioner Exhibit 12	NRA Eddie the Eagle Materials
Petitioner Exhibit 13	Photo—Outside of Building
Petitioner Exhibit 14	Photo of Lobby
Petitioner Exhibit 15	Photo of Classroom
Petitioner Exhibit 16	Photos of the Range
Petitioner Exhibit 17	Photos of the Range
Petitioner Exhibit 18	Photo of Target
Petitioner Exhibit 19	Photograph of the Monitor
Petitioner Exhibit 20	Calendar
Petitioner Exhibit 21	Summary of Hours for Various Months of the Different Activities
Petitioner Exhibit 22	Photograph of Carroll Letter Jacket
Petitioner Exhibit 23	Interrogatories
Respondent Exhibit A	June 28th, 2022, Cease and Desist from Northwest Allen County Schools
Respondent Exhibit B	7/5 Journal Gazette Article
Respondent Exhibit C	Email to the Athletic Director of Carroll High School
Respondent Exhibit F	Form 136 Application
Respondent Exhibit G	Certificate of Incorporation for The X Count, Inc.
Respondent Exhibit H	Form 132 Petition
Respondent Exhibit I	Secretary of State's Certificate of Organization for The X Count Properties, LLC
Respondent Exhibit J	The X Count Inc.'s 2019 990
Respondent Exhibit K	Pages from The X Count's Website
Respondent Exhibit N	Release Indemnification and Hold Harmless Agreement

8. Subsequent to the evidentiary hearing, the parties submitted a document entitled Joint Stipulations with the Board, stating in whole:

The Parties stipulate and agree that five percent of the subject property is used for charitable purposes.

In the State of Indiana, a system of public education was established in the State's Constitution at Article VIII. The Indiana Legislature has enacted statutes governing public education and has vested authority over public education in the State Board of Education. Local school districts administer public education at the local level. There are four (4) such districts in Allen County which have their own tax levies. Those levies fund debt service and certain non-educational operations. The local districts' educational operations are funded by the state sales tax and state income taxes. Allen County government does not fund any part of public education. These local school districts must provide physical education to students and instruction on the Indiana and the United States Constitution.

Joint Stipulations.

9. The official record also includes (1) all documents filed by the parties, (2) all orders and notices issued by the Board or ALJ, (3) a transcript of the hearing, and (4) the parties' post-hearing briefs.

III. OBJECTIONS

10. During the hearing, the ALJ ruled on several objections. We see no need to revisit those objections and we adopt our ALJ's rulings. However, the ALJ took some objections about the admissibility of certain evidence under advisement. We now turn to those objections.

A. The Assessor's objections.

11. The Assessor objected to Petitioner's Exhibit 7, an email dated 5/22/2020, on hearsay and relevance grounds. We begin by overruling the Assessor's hearsay objection. Our procedural rules allow us to admit hearsay, with the caveat that we cannot base our final

determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). However, we do not base our determination solely on the challenged exhibit.

12. The Assessor also objected to the admission of Petitioner's Exhibit 7 as irrelevant because no response to the email was provided to give context to the communication. Because we find the exhibit minimally relevant, we overrule the objection.
13. The Assessor made a hearsay objection to Petitioner's Exhibit 11, communications between administration and the secretarial staff regarding logistics. We overrule the objection. As previously noted, the Board's procedural rules allow us to admit hearsay, though our final determination cannot be based solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We do not base our determination solely on the challenged exhibit.
14. Additionally, the Assessor objected to Petitioner's Exhibit 23, which includes interrogatory responses provided by the Assessor. Although Assessor's counsel claimed that the responses did not reflect information that became available during litigation, counsel failed to provide a legal basis for the objection. Thus, we overrule it.
15. The Assessor made several hearsay objections regarding testimony provided by Ms. Rice. This testimony included a discussion she had with the principal of Bishop Dwenger, a meeting she attended with Carroll High School representatives, and a conversation she had with a member of the Fort Wayne Police Department. As our procedural rules allow us to admit hearsay to the extent we do not base a determination exclusively on the challenged testimony, we overrule the objections. 52 IAC 4-6-9(d).
16. The Assessor objected to testimony provided by Ms. Rice concerning the State of Indiana's graduation requirements contained in Petitioner's Exhibit 2. The Assessor argued that Properties failed to lay a foundation that the witness was qualified to testify regarding such matters. The Board overrules the objection. While Properties did not

provide a foundation regarding Ms. Rice's ability to express opinions regarding the graduation requirements, she could describe the requirements listed in the exhibit and discuss how X Count's programs relate to those descriptions.

17. The Assessor also objected to testimony provided by Ms. Rice concerning the burdens X Count's programs allegedly relieve, arguing that Properties failed to lay a foundation that the witness was qualified to testify regarding such matters. The Board overrules the objection. While Properties did not lay a foundation establishing that Ms. Rice could provide testimony in any legal or expert capacity, she may offer a general opinion about what burdens X Count's programs address. However, we will take the nature of such an opinion into account when deciding what credibility and weight to assign to the testimony.

B. Properties' objections.

18. Properties objected to Respondent's Exhibit A, which is a June 28, 2022, cease and desist letter from Northwest Allen County Schools ("NACS") to X Count. Properties argued that the Assessor failed to lay a foundation and that the exhibit contained hearsay. The Board overrules both objections. Mr. Felger, the president of the NACS Board, testified that he was involved in the circumstances that caused the letter to be drafted by legal counsel, and that he personally reviewed and approved the final draft before it was sent to X Count. As Properties correctly noted, the letter is still hearsay. Nonetheless, the Board's procedural rules allow it to admit hearsay to the extent that the Board cannot base its determination solely on hearsay that is properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d).
19. Properties made hearsay objections to Respondent's Exhibits B and C, which consisted of a newspaper article and emails between the athletic director of Carroll High School and X Count representatives. We overrule the objections. Again, the Board's procedural rules allow the admittance of hearsay if the final determination is not solely based on hearsay

that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d).

20. Finally, Properties objected to part of the Assessor's closing argument on grounds that Assessor's counsel described Mr. Felger as an expert although he was not qualified as an expert witness in this matter. We sustain the objection. The Assessor did not call Mr. Felger as an expert witness. Nor did she provide any qualifications that would allow us to designate him as such. Regardless of the objection, we do not rely on any assertions from the parties' opening or closing arguments that are not supported by evidence in the record.

IV. FINDINGS OF FACT

21. X Count is an Indiana not-for-profit corporation that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. It was organized in 2012 "exclusively for charitable, religious, educational, and scientific purposes...[t]he business activity for said organization is as follows: to encourage and promote the safe use of firearms." Properties is an Indiana limited liability company that is wholly owned by X Count. It was formed in 2018 and its "sole purpose is to have ownership of the property... to diminish risk." Properties acquired title to the real property on or around December of 2018. *Pet. Ex. 1; Resp. Exs. F, G, H, I, J; Rice testimony.*
22. The subject property is located at 5301 Merchandise Drive and was formerly owned by Smithfield Foods before being donated to X Count. The facility is an indoor rifle range for small bore target practice with air rifles and .22 rifles. It resembles a warehouse. *Rice testimony; Resp. Ex. K; Pet'r. Ex. 13.*
23. X Count operates an indoor rifle facility for competition shooting. It also offers gun safety courses and promotes the principles set forth in the Second Amendment of the U.S. Constitution. X Count additionally provides veteran and disabled shooting programs free

of charge. *Pet. Exs. 3,4; Resp. Exs. F, H; Rice testimony; Shanebrook testimony; Baumgartner testimony; Felger testimony.*

24. Among the programs X Count provides are club rifle teams for Bishop Dwenger and Carroll High School students. X Count offers the teams training and a coaching staff. The training includes numerous activities, such as master classes, video instruction, balance exercises and stretching, practice to improve performance, the safe and proper way to handle firearms, and one-on-one meetings with coaches. Coaches, such as Greg Rice, a co-founder of X Count, are certified by the National Rifle Association (“NRA”), USA Shooting, and the International Shooting Sports Federation (“ISSF”) and provide the training. *Pet. Ex. 8; Rice testimony; Baumgartner testimony; Dely testimony.*
25. Other programs sometimes offered by X Count include an NRA program referred to as *Eddie the Eagle* that is intended to teach children about gun safety. This program is also taught by the Fort Wayne Police Department and offered in Fort Wayne City Schools and Allen County Schools. Such programs teach safe handling of firearms and other related practices intended to prevent firearm related accidents. *Pet. Ex. 12; Rice testimony; McKenney testimony.*
26. In addition to rifle programs offered during the school year, X Count provides summer training camps and clinics. Like the rifle teams, these camps and clinics provide training in the sport of precision rifle and gun safety. This includes basic and advanced training. Additionally, X Count offers coach certification clinics to train coaches on the proper instruction in the sport of precision rifle. Over the years, X Count has provided shooting and firearms education, including firearm safety, to the Boy Scouts, Girl Scouts, and American Heritage Girls. *Pet. Exs. 1, 20, 21; Rice testimony; Shanebrook testimony; Baumgartner testimony; Dely testimony.*
27. As part of its mission, X Count provides information concerning the U.S. Constitution. Although there are no structured or written materials, the U.S. Constitution and the 2nd Amendment are “displayed” at the facility and the topic is addressed in conversations and

by discussing “current events.” *Rice testimony; Shanebrook testimony; Baumgartner testimony; Felger testimony.*

28. X Count does not claim that the property is a school. Its programs are not affiliated with NACS or the Indiana Department of Education (“DOE”) and do not adhere to state guidelines or standards for physical education or government courses. Nor are X Count’s programs sanctioned by the Indiana High School Athletic Association (“IHSAA”). Moreover, the IHSAA does not recognize the conferences that X Count’s rifle teams compete in. *Resp. Ex. 1; Rice testimony; Felger testimony.*

29. X Count has no curriculum or textbooks related to its programs, nor has it submitted materials for approval to a state recognized educational institution to measure any academic or physical achievement. The programs do not align with the State of Indiana's Core 40 curriculum. *Rice testimony; Shanebrook testimony; Dely testimony; Felger testimony.*

30. NACS took proactive steps to prevent X Count from being construed as having official sanction from the school corporation. These steps included issuing a cease and desist letter to X Count demanding that it end its use of the Carroll High School logo and name in affiliation with X Count’s club rifle team for Carroll students. *Felger testimony; Resp. Ex. A.*

31. Through the *Eddie the Eagle* Program, children receive stickers, prizes, workbooks, and stuffed Eddie the Eagle toys. The program is neither approved nor mandated by the DOE. The program was the only safety program taught at the property in 2019, and the program was only offered ten (10) times for approximately thirty (30) minutes each session. *Rice testimony; McKinney testimony.*

32. Additionally, Properties failed to submit any time logs for the relevant timeframe. Although it presented a calendar and related time summary for 2019, the data does not include on the last four months during 2019. Further, the time summary was not created

contemporaneously with the events it purports to document. In addition to documenting various firearm events, the calendar also identifies other events, such as banquets and a wedding, which occurred during 2019. *Pet. Exs. 20, 21; Rice testimony.*

V. CONCLUSIONS OF LAW AND ANALYSIS

A. The effect of the parties' stipulation to a 5% charitable exemption.

33. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654,657 (Ind. 2010). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp, Inc. v. Dep't of Local Gov'r Fin*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). For a property to obtain an exemption, the owner must file a certified application for exemption. I.C. § 6-1.1-11-3 (a). If the owner does not comply with the statutory procedures for obtaining the exemption, the privilege of property tax exemption is waived, and the property is subject to taxation. I.C. § 6-1.1-11-1.

i. The Assessor has stipulated that the property is entitled to a 5% charitable exemption.

34. At the hearing, the attorneys discussed a joint motion filed by the parties that contained a stipulation and then read it into the record. However, the parties also noted the version recited on the record was inaccurate, and the ALJ directed the parties to submit a separate signed agreed stipulation for the record. The parties agreed to the ALJ's suggestion, and a stipulation was filed with the Board on October 24, 2022. It stipulated to a 5% charitable use for the property. In accordance with the stipulation, the Assessor requested the Board to find "the Property 95% taxable, as a matter of law." *Joint Stipulations; Tr. at 16-20; Allen Co. Assessor's Post-Hearing Br. at 21, 31; Allen Co. Assessor's Br. in Response to Pet'r.'s Post-Hearing Br. at 8.*

35. The Board will not inquire further into the stipulation and finds and concludes that 5% of the property is owned, occupied, and predominantly used for charitable purposes. The remaining 95% remains the only dispute.²

ii. The Assessor stipulated to the sufficiency of the Form 136 application by stipulating to the 5% charitable exemption.

36. The Assessor argues that the Board should dismiss this matter because the Form 136 was filled out by X Count rather than Properties, the property owner, and accordingly, its claims to an exemption are waived.

37. The Assessor is correct that it is the owner of a property who must seek an exemption:

An *owner* of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor[.]

Indiana Code § 6-1.1-11-3(a) (emphasis added). Further, “[i]f the *owner* does not comply with the statutory procedures for obtaining an exemption, he waives the exemption.” I.C. § 6-1.1-11-1 (emphasis added). While I.C. § 6-1.1-11-3(b) allows an owner to delegate authority to file an exemption application by executing a power of attorney, that did not occur in this matter.

38. Although Properties acknowledges that X Count listed itself as the owner of the property on the first page of the Form 136 application, it notes Properties was identified as the owner on the second page of the application as a real estate holding company wholly owned by X Count. This was recognized by the PTABOA, and its Form 120 denying the exemption request correctly identified Properties as the owner of the property. Properties then filed the Form 132 application seeking an exemption for the property in June of 2020. Properties asserts that because X Count identified Properties as the owner in the application, which the PTABOA acknowledged in its decision, it satisfied the statutory

² Properties did not provide any information, such as an itemized list or other description, concerning the personal property it is seeking to exempt. Nor did Properties provide evidence establishing ownership of the undocumented personal property. The Board finds the issue of an exemption on personal property waived. *Resp. Exs. F, H; Rice Testimony.*

requirements for seeking an exemption. Properties explained that X Count filed the Form 136 application because X Count is responsible for financial obligations and operating the programs.³ The Board interprets this as an argument of substantial compliance.

39. Properties also claims that the Assessor failed to timely raise the issue of the sufficiency of the Form 136. The Assessor originally raised the Form 136 application defect issue in its motion to dismiss or, in the alternative, for summary judgment. The motion was filed pursuant to 52 IAC 4-7-3, which allows a party to file a dispositive motion up to thirty (30) days before the evidentiary hearing. Additionally, the Assessor filed the motion in accordance with the agreed upon dispositive motion timeline set forth in the parties' Joint Case Management Plan. Although the Board denied the Assessor's motion, we conclude the Assessor timely raised the issue in the motion and again during the evidentiary hearing.

40. Nonetheless, Properties argues that the Assessor's attempt to raise the defective filing issue in the evidentiary hearing was improper. In support of this argument, Properties cites to *Packard v. Shoopman*, 852 N.E.2d 927 (Ind. 2006), where the Indiana Supreme Court affirmed the Tax Court's decision that failure to raise procedural deficiencies resulted in a waiver of such objections. *Id.* at 931-932. In *Packard*, the Tax Court considered whether the taxpayer timely filed its petition for judicial review after the respondent raised the issue during the appeal. The Tax Court's decision in *Packard* focused on the application of Tax Court Rule 5 that required the respondent to file a responsive pleading to a taxpayer's petition that identifies all affirmative defenses. *Id.* However, the respondent waited two years after the judicial review was initiated to file a pleading that included the alleged procedural error. *Id.* Given the length of time that had

³ Properties status as a wholly owned subsidiary of X Count does not change the fact that property owners are required to strictly adhere to statutory requirements when seeking an exemption. *Roller Skating Rink Operators Ass'n*, 853 N.E.2d at 1265. When considering if the statutory requirements have been satisfied, the Tax Court has explained it will not ignore the distinction between corporate entities regardless of the relationship between them. *St. Mary's Bldg. Corp. v. Redman*, 135 N.E.3d 681 (Ind. Tax Ct. 2019) "Their separate corporate identities cannot be disregarded, even if they are closely related entities." *Id.* at 688 (internal citations omitted). Accordingly, when considering an exemption request, the Board cannot simply disregard the fact that two separate entities were involved in ownership, occupancy, and use of the property. *But see also Wendy H Elwood Trust v. Bartholomew Co. Assessor*, Slip Op. n.7 (Ind. Tax Ct. 2023).

passed, the Tax Court determined that the respondent had waived its ability to raise the affirmative defense. *Id.*

41. Properties asserts that similar to *Packard*, the Assessor waived its right to raise the defective filing issue by failing to raise it before the PTABOA. Properties also claims that the Assessor waited until the current litigation was nearly complete, including the conclusion of discovery, to bring the issue to the Board's attention. The Assessor's delays in raising this issue after years of litigation is wasteful of judicial resources and results in unnecessary expenses for the parties. Additionally, Properties argues that permitting the Assessor to raise this procedural issue would act as an incentive to game the litigation process, encouraging parties to withhold issues until after the opposing party has fully developed its case and cannot properly respond.
42. Unlike *Packard*, there are no responsive pleadings to petitions filed with the Board. The appellate rules underlying the *Packard* decision have no applicability here. Another dissimilarity from *Packard* is the fact that the Assessor timely raised the defective filing issue in compliance with the Board's procedural rules and the parties' Joint Case Management Plan.
43. In any event, we need not decide whether Properties' Form 136 substantially complied with the exemption statute or whether the Assessor unduly delayed its challenge on these grounds. The Assessor has stipulated to the eligibility of the property to receive a 5% charitable exemption based on the Form 136 originally filed by Properties, and that bell cannot be unrung. By stipulating to the property's entitlement to an exemption, the Assessor has stipulated to the sufficiency of the exemption application upon which the exemption was granted.
44. We now turn to the evidence presented by Properties in support of its claim for an educational exemption.

B. Properties failed to present a sufficient record to conclude that its real and personal property were owned, occupied, and used for an educational purpose.

45. Indiana law contemplates an exemption for all or part of a building that is owned, and is exclusively or predominantly occupied and used, for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). That exemption extends to a tract of land on which an exempt building is situated, as well as to parking lots and other structures that serve the exempt building. I.C. § 6-1.1-10-16(c)(1)-(2). It also applies to personal property that is owned and used in a manner that would make it exempt if it were a building. I.C. § 6-1.1-10-16(e).

46. A taxpayer bears the burden of proving its property qualifies for an exemption.

Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin., 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Every exemption appeal “stand[s] on its own facts” and it is the taxpayer’s duty to walk us through the analysis. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass’r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Accordingly, a taxpayer who seeks an exemption pursuant to Indiana Code § 6-1.1-10-16(a) must demonstrate that the property was owned, occupied, and predominately used for an exempt purpose during the relevant tax year. *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Bd. of Appeals*, 878 N.E.2d 548,550. See also *State Bd. of Tax Comm’rs v. New Castle Lodge# 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002); *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004), review denied.

47. The predominant use test considers the use of the property “in the year that ends on the assessment date of the property.” I.C. § 6-1.1-10-36.3(a). For the relevant assessment date here, January 1, 2020, the time period at issue ran from January 1, 2019, to December 31, 2019. “[T]he predominant use test requires evidence of the amount of time the property was used for exempt purposes compared to the amount of time it was used for any purpose.” *Hamilton Cnty. Assessor v. Duke*, 69 N.E.3d 567, 571 (Ind. Tax Ct. 2017). Accordingly, “a failure to provide the Indiana Board with a comparison of the

relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption.” *Id.*

48. The Indiana Supreme Court has required that a taxpayer demonstrate an educational purpose that confers “a public benefit justifying the loss in tax revenue.” *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1265. A taxpayer demonstrates a “public benefit” by showing that it provides education that is the “substantial equivalent” to instruction offered in Indiana’s tax-supported institutions. *Id.* at 1266. While the closer the taxpayer’s activity is to traditional educational programs offered in public schools, the more obvious is the public benefit, a taxpayer need not offer courses that are directly analogous to courses taught in public schools; rather, the taxpayer’s courses simply need to be related to public-school offerings. *Id.* at 1262, 1266. (Citing *Trinity School of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)).
49. Property tax law has long established that recreational sports are not per se educational. In *State Bd. of Tax Com. v. Ft. Wayne Sport Club, Inc.*, 258 N.E.2d 874 (Ind. Ct. App. 1970) (interpreting the predecessor to I.C. § 6-1.1-10-16), a soccer club sought an exemption, and the court noted that “education,” as that term is broadly understood, can occur anywhere, including private homes. To avoid irrationally applying the exemption statute, a more “restrictive” definition was required. *Sport Club*, 258 N.E.2d at 881. The court held that any educational benefits of a soccer program are merely incidental to the social and recreational activities, and insufficient for an educational exemption. *Id.* at 882.
50. Based on the standard of review, we must find that Properties has failed to produce sufficient time usage reports, time logs, or other similar evidence to demonstrate that the property was predominantly used for educational purposes throughout 2019 as required by the Tax Court in *Duke*.

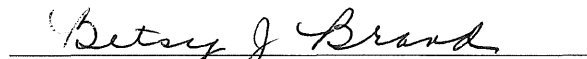
51. We start by noting that the programs at the property reveal a wide range of purposes: recreational target practice, competitive events, gun safety, Second Amendment education, disabled and veteran outreach, and private events such as a weddings and banquets. Each of these may have more or less compelling claims for an education exemption. Thus it is critical that the Board be presented with a detailed understanding of relative uses of the property.
52. The primary evidence of the use of the property came from Ms. Rice, the vice president of X Count, who, as stated by Properties' counsel, "testified in detail how the property was *typically* used," and she was "using 2020 *as an example.*" *Pet'r.'s Post Hearing Br. at 7 (emphasis added).*
53. The burden is on Properties to show the actual use in 2019, not a presumed use based on the actual use in 2020. The calendar admitted into evidence provided only September through December of 2019, less than half of the year. Some of the events related to activities out of state and not at the property. Likewise, the Use Summary included only four months for 2019. Neither of these items established the times for gun safety or Second Amendment educational uses.
54. While other witnesses discussed the specifics of particular programs or experiences as a member, none of them established the type of comparative log mandated by the Tax Court. Likewise, testimony established about 10 thirty-minute Eddie Eagle programs on gun safety occurred in 2019. But this falls short of the evidence necessary to establish a *prima facie* case for an educational exemption. It is duty of the parties to walk the Board through its case, and Properties has failed to present the Board with a sufficient understanding of the relative use of the property.
55. The evidence is simply insufficient to establish the comparable uses of the property such that the Board could determine whether the educational use might predominate over the recreational uses that are, by law, insufficient under *Fort Wayne Sports*. It may well be that Properties can establish an educational use for its rifle club that is beyond a typical soccer club. But it has failed to do so for the relevant time period at issue here.

VI. CONCLUSION

56. The parties have stipulated to a 5% charitable exemption, which is granted. The request for a 95% charitable exemption is denied.



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 of 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>.