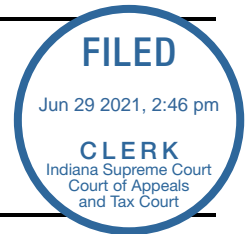


PETITIONER APPEARING PRO SE:
THELMA JEAN HATKE
Rockville, IN

ATTORNEYS FOR RESPONDENT:
MARILYN S. MEIGHEN
ATTORNEY AT LAW
Carmel, IN

BRIAN A. CUSIMANO
ATTORNEY AT LAW
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



THELMA JEAN HATKE,)

Petitioner,)

v.)

) Cause No. 20T-TA-00018

KATIE POTTER,)
PARKE COUNTY ASSESSOR,)

Respondent.)

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

**FOR PUBLICATION
June 29, 2021**

WENTWORTH, J.

Thelma Jean Hatke challenges the Indiana Board of Tax Review's final determination denying her exemption application for the 2019 tax year. Upon review, the Court affirms the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

Thelma Jean Hatke and her husband Richard own a house on .66 acres of lakefront land on Raccoon Lake in Rockville, Indiana. (See generally Cert. Admin. R. at

60-61, 74, 79.) The portion of their property abutting the lake (.38 acres) is subject to a United States Army Corps of Engineers' flowage easement. (See Cert. Admin. R. at 45-50, 64-68.) The flowage easement allows the Corps to flood that .38 acres owned by the Hatkes when necessary to manage Raccoon Lake's water levels. (See Cert. Admin. R. at 46, 55, 63.) Other than wire fencing, the Hatkes must receive the Corps' approval to add any structures on the land subject to the flowage easement. (See Cert. Admin. R. at 50-51.) (See also Cert. Admin. R. at 94 (indicating that the Hatkes received approval from the Corps to install two swings on that portion of her property).) The Hatkes, however, are free to mow and plant vegetation on the land subject to the flowage easement without the Corps' approval. (See Cert. Admin. R. at 94.)

For the 2019 tax year, the .38 acres subject to the flowage easement were assigned an assessed value of \$17,400. (See Cert. Admin. R. at 77.) The Hatkes subsequently filed a Form 136 "Application for Property Tax Exemption," claiming that this portion of their property should be exempt from taxation because the federal government completely controlled their use of it.¹ (See Cert. Admin. R. at 64-68.) The Parke County Property Tax Assessment Board of Appeals ("PTABOA") denied the exemption application, and the Hatkes subsequently appealed the ruling to the Indiana Board. (See Cert. Admin. R. at 1-4.)

The Indiana Board held a telephonic hearing on the Hatkes' appeal on July 30, 2020. (Cert. Admin. R. at 91.) On October 26, 2020, the Indiana Board issued a final determination affirming the PTABOA's denial of their exemption application. (See Cert.

¹ At approximately the same time, the Hatkes filed a second administrative appeal that challenged how her land subject to the flowage easement was valued. (See, e.g., Cert. Admin. R. at 14.) The Hatkes have not initiated an original tax appeal challenging that final determination. (See Cert. Admin. R. at 1-4.)

Admin. R. at 81-86.) In doing so, the Indiana Board stated that there was no provision in Indiana law exempting property from taxation because it is subject to a flowage easement. (See Cert. Admin. R. at 85 ¶ 16.) The Indiana Board further explained that the Hatkes had failed to demonstrate that they owned, occupied, and used the land subject to the flowage easement for educational, literary, scientific, religious, or charitable purposes that would qualify it for an exemption under Indiana Code § 6-1.1-10-16(a). (See Cert. Admin. R. at 85 ¶¶ 13-15.)

Thelma Jean Hatke initiated this original tax appeal. The Court conducted an oral argument on June 17, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Osolo Twp. Assessor v. Elkhart Maple Lane Assocs., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Thus, to prevail in her appeal, Hatke must demonstrate to the Court that the Indiana Board’s final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2021).

ANALYSIS

On appeal, Thelma Jean Hatke argues that because the Corps “completely controls” .38 acres of her land, the Indiana Board erred in determining that the land did not qualify for an exemption. (See Pet’r V. Pet. Jud. Rev. Final Determination Indiana

Bd. Tax Rev. ¶¶ 3-4; Oral Arg. Tr. at 6.) Hatke, however, misunderstands the law applicable to her exemption claim.

In Indiana, all tangible property is subject to taxation. IND. CODE § 6-1.1-2-1 (2019). Nevertheless, the Indiana Constitution provides that the Legislature may exempt certain categories of property from taxation. See IND. CONST. art X, § 1(c)-(d). Pursuant to that grant of authority, the Legislature has enacted several statutes that exempt from taxation property that is owned by the government. See, e.g., IND. CODE §§ 6-1.1-10-1 to -5 (2019). With respect to property that is privately owned, however, the Legislature determined that an exemption is allowed only if that property is owned, occupied, and used “for educational, literary, scientific, religious, or charitable purposes.” See IND. CODE § 6-1.1-10-16(a) (2019).

In order to receive the benefit of the exemption provided in Indiana Code § 6-1.1-10-16(a), Hatke was required to provide the Indiana Board with evidence that showed she and her husband used the .38 acres subject to the flowage easement for educational, literary, scientific, religious, or charitable purposes. The administrative record in this case reveals that Hatke presented no such evidence to the Indiana Board. (See Cert. Admin. R.) (See also Oral Arg. Tr. at 20-21 (demonstrating that Hatke admitted to the Court that she did not use the property for, let alone provide any evidence to the Indiana Board to

show, any of those purposes).² Hatke has therefore not demonstrated that the .38 acres of her land subject to the Corps' flowage easement is entitled to a property tax exemption.

CONCLUSION

For the foregoing reasons, Hatke has not demonstrated that the Indiana Board's final determination was erroneous. Accordingly, the Indiana Board's final determination is AFFIRMED.

² During oral argument, Hatke indicated to the Court that she apparently had misunderstood the legal meaning of an exemption and what she actually seeks is an assessed value so "discounted" that her land value effectively "zeroed out." (Oral Arg. Tr. at 7-8, 14-15, 17-19.) She explained further that the relief she seeks is the same tax treatment as another Raccoon Lake resident whose land is subject to the same flowage easement and that was discounted to zero on his property record card. (See Oral Arg. Tr. at 7-8, 14-15, 17-19; Pet'r Br. at 2.) While the Court acknowledges that Hatke made this valuation argument to the Indiana Board during her administrative hearing on her exemption appeal, (see Cert. Admin. R. at 105), she did not offer his property record into evidence during that hearing. (See Cert. Admin. R. at 42 (indicating what evidentiary documents she did offer).) Accordingly, that property record card is not included in the Indiana Board's certified administrative record in this matter. (See Cert. Admin. R.) In ruling on Hatke's appeal now, even if the Court were to find that his property record card was relevant to her exemption claim, this Court is limited to considering only those documents contained within the Indiana Board's certified administrative record. See, e.g., Switzerland Cnty. Assessor v. Belterra Resort Indiana, LLC, 101 N.E.3d 895, 904 (Ind. Tax Ct. 2018) (explaining that under the substantial evidence standard, this Court reviews the administrative record to determine whether, when viewed as a whole, it provides a reasonably sound basis of evidentiary support for the Indiana Board's decision), review denied. See also Starke Cnty. Assessor v. Porter-Starke Servs., Inc., 88 N.E.3d 814, 820 (Ind. Tax Ct. 2017) (defining substantial evidence as "more than a scintilla[;]" it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion).