

REPRESENTATIVE FOR PETITIONER: Thelma Hatke, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Esq.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Thelma & Richard Hatke,	)	Petition:	61-015-19-2-8-00398-19
	)		
Petitioners,	)	Parcel:	61-12-21-301-008.000-015
	)		
v.	)	County:	Parke
	)		
Parke County Assessor,	)	Assessment Year:	2019
	)		
Respondent.	)		

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**October 26, 2020**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

**INTRODUCTION**

1. The Hatkes sought an exemption for a portion of their property that was subject to a flowage easement. Because the Hatkes failed to demonstrate that the property was owned, occupied, and used for exempt purposes, we find it to be 100% taxable.

**PROCEDURAL HISTORY**

2. Richard and Thelma Hatke applied for an exemption for their property located at 8017 East Oak Drive in Rockville for the 2019 assessment year. The Parke County Property Tax Assessment Board of Appeals (“PTABOA”) found the property to be 100% taxable.
3. The Hatkes appealed to the Board. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on July 30, 2020. Thelma Hatke appeared *pro*

*se.* Marilyn Meighen represented the Parke County Assessor. Mrs. Hatke was sworn as a witness.

4. The parties submitted the following exhibits<sup>1</sup>:

Petitioner's Ex. A: 1959 US District Court Order-Barnaby, et. al.  
Petitioner's Ex. B: Record related to Deed, Flowage Easement Notes  
Petitioner's Ex. C: Plat of Crooks-Byers Subdivision (1977)  
Petitioner's Ex. D: Letter to Mrs. Hatke-US Army Corps  
Petitioner's Ex. E: Email regarding Flowage Easement  
Petitioner's Ex. F: Pages from Chapter 2, DLGF Guidelines  
Petitioner's Ex. G: Description of Flowage Easement  
Petitioner's Ex. H: Description of Servient and Dominant Easements  
Petitioner's Ex. I: DLGF Fact Sheet  
Petitioner's Ex. J: Property Assessment Detail  
Petitioner's Ex. K: Property Record Card-Subject  
Petitioner's Ex. L: Copy of Summary Email of PTABOA Meeting  
Petitioner's Ex. M: Email-Yearly Lake Levels  
Petitioner's Ex. N: Copy of Form 136  
Petitioner's Ex. X: 4 Emails from Mrs. Hatke—Lake Level Report, Lake Level Details, Background Information (To ALJ and Marilyn Meighen)

Respondent's Ex. A: Property Record Card 2019 (Subject Property)  
Respondent's Ex. B: Warranty Deed (Subject Property)  
Respondent's Ex. C: General Overview of Law on Exemptions

5. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

### **OBJECTIONS**

6. The Assessor objected to Petitioner's Ex. L, a summary of a PTABOA meeting, on the grounds that it was not relevant because it related to a year not at issue. The Hatkes argued that the exhibit demonstrated a lengthy history of tax issues with the subject property. We find the exhibit to be at least minimally relevant and overrule the objection.

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<sup>1</sup> The Assessor asked the Board to take notice that many of the Hatke's exhibits contained handwritten notes not present on the original documents. It is so noted.

7. The Assessor objected to several statements in Mrs. Hatke’s closing related to the subject property’s assessment on the grounds they were not relevant. We find they meet the minimum standard for relevance and overrule the objection.

#### **BURDEN OF PROOF**

8. Generally, a taxpayer seeking review of an assessing official’s decision has the burden of proof. 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). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Id.*

#### **FINDINGS OF FACT**

9. The subject property consists of a two-story house with approximately .66 acres of land located on Raccoon Lake. *Hatke testimony; Pet’r. Exs. B, D, E, M.*
10. The Army Corps of Engineers (“the Corps”) holds a flowage easement over a portion of the subject property. This easement gives the Corps the right to flood a portion of the subject property if needed to manage the lake. The easement also provides lake access for the Hatkes. *Hatke testimony; Pet’r. Exs. B, D, E, M.*
11. The Hatkes may plant vegetation on the flowage easement without permission from the Corps. They currently have two swings on this part of their property, both of which have metal tags that indicate the Corps has given permission to place a structure on the easement. The Hatkes also obtained preliminary approval from the Corps to build a shed on the easement. *Hatke testimony; Pet’r. Ex. D, E.*

## ANALYSIS

12. While property is generally taxable in Indiana, the legislature exempts certain types of properties from taxation. The taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket* at 654, 657. Property tax exemptions are strictly construed against the taxpayer. *Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218, 220-21 (Ind. Tax Ct. 1996).
13. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominately used and occupied for educational, literary, scientific, religious, or charitable purposes. See also Ind. Code § 6-1.1-10-36.3 (c) and *Sangrlea Boys Fund, Inc. v. State Bd. Of Tax Comm'rs*, 686 N.E. 2d 954, 959 (Ind. Tax Ct. 1997). These terms are to be defined and understood in their broadest constitutional sense. *State Bd. of Tax Comm'rs v. Methodist Home for Aged*, 241 N.E. 2d 84 (Ind. Tax Ct. 1968).
14. To receive an exemption from property tax, the property must be owned, occupied, and used for an exempt purpose more than 50% of the time during the year preceding the assessment date. When a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption then must compare the relative time of exempt and nonexempt use. See *Hamilton Cnty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017).
15. The Hatkes seek an exemption for the portion of their property that is subject to the flowage easement, but they failed to demonstrate that the property is used for any of the exempt purposes listed in Ind. Code § 6-1.1-10-16(a).
16. It is undisputed that a portion of the property is subject to a flowage easement. But the Hatkes failed to show how that fact entitles them to an exemption. As the Assessor points out, there is no basis in Indiana law for a property tax exemption for a flowage easement. The Board may only apply the law as written. It may not create new categories of exemptions. Only the legislature can change the law. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v.*

*Dep't of Local Gov't Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). Thus, because Indiana law does not provide for an exemption for flowage easements, it is not within the Board's authority to grant one.

### CONCLUSION

17. The Hatkes did not meet their burden of proof to show that their property was owned, occupied, and used for exempt purposes. Thus, we find the subject property to be 100% taxable.

ISSUED: October 26, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.