

REPRESENTATIVES FOR PETITIONERS:

Larry A. Eichler, *Pro Se*
Joan K. Eichler, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Jennifer Becker, Steuben County Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Larry A. & Joan K. Eichler	)	Petition No.:	76-006-06-1-5-00162
)		
Petitioners,	)	Parcel No.:	760322320217000006
)		
v.	)	County:	Steuben
)		
Steuben County Assessor,	)	Township:	Jamestown
)		
Respondent.	)	Assessment Year:	2006

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

October 27, 2009

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

INTRODUCTION

1. Larry and Joan Eichler challenged the base rate used to assess their land on grounds that it differed for the rate used to assess other nearby properties on the same lake. The Eichlers, however, failed to make a prima facie case because they did not offer any market-value-in-use evidence.

PROCEDURAL HISTORY

2. On September 4, 2007, the Eichlers filed notice with the Steuben County Assessor contesting their property's 2006 assessment. On December 31, 2008, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination making no change to the Eichlers' assessment. As a result, on January 23, 2009, the Eichlers filed a Form 131 petition with the Board. The Board has jurisdiction over the Eichlers' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

3. On August 4, 2009, the Board's designated Administrative Law Judge, Jennifer Bippus ("ALJ"), held a hearing on the Eichlers' appeal. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn in as witnesses:

For the Petitioners:

Larry A. Eichler
Joan K. Eichler

For the Assessor:

Jennifer Becker, County Representative

5. The Petitioners submitted the following exhibits:

Petitioners' Exhibit 1 – Property record card ("PRC") for Ron Mercer,
Petitioners' Exhibit 2 – PRC for Entrust Administration, Inc.,
Petitioners' Exhibit 3 – PRC for the Eichlers' property,
Petitioners' Exhibit 4 – Photograph of lakefront properties with both \$5,400 and \$3,920 base rates,
Petitioners' Exhibit 5 – Photograph showing the front of the cottages,
Petitioners' Exhibit 6 – Photograph of lakefront properties,
Petitioners' Exhibit 7 – Photograph of lakefront properties,
Petitioners' Exhibit 8 – Photograph of lakefront properties,
Petitioners' Exhibit 10 – Photograph of garage for yellow cottage,
Petitioners' Exhibit 11 – Photograph of lakefront properties with the Eichlers' property on the far left,
Petitioners' Exhibit 12 – Photograph of lakefront properties with the Eichlers' property on the far right,
Petitioners' Exhibit 13 – Photograph of rear view of lakefront properties,

Petitioners' Exhibit 14 – Photograph of rear view of lakefront properties,
Petitioners' Exhibit 15 – Photograph of rear view of lakefront properties.

6. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1 – Respondent Exhibit Coversheet,
 - Respondent Exhibit 2 – Summary of Respondent Exhibits and Testimony,
 - Respondent Exhibit 3 – Power of Attorney for County Representation,
 - Respondent Exhibit 4 – Certification Power of Attorney is True and Correct Copy of Original,
 - Respondent Exhibit 5 – Subject 2006 PRC,
 - Respondent Exhibit 6 – Aerial Photograph Showing Subject Property Along With 3 Neighboring Sales,
 - Respondent Exhibit 7 – Spreadsheet Showing Front Foot Rate from 3 Sold Properties,
 - Respondent Exhibit 8 – Support Documentation for Information in Exhibit 8,
 - Respondent Exhibit 9 – Respondent Signature and Attestation Sheet.

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petition,
 - Board Exhibit B – Notice of hearing,
 - Board Exhibit C – Hearing sign-in sheet.

8. The subject property contains a home located at 100 Lane, 820B Snow Lake in Fremont, Indiana. The property fronts Snow Lake.

9. The PTABOA valued the subject property as follows:
Land: \$259,200 Improvements: \$39,000 Total: \$298,200.

10. On their Form 131 petition, the Eichlers requested the following values:
Land: \$188,160 Improvements: \$39,000 Total: \$227,160.

ADMINISTRATIVE REVIEW AND THE PARTIES' BURDENS

11. A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

12. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
13. Once the petitioner makes a prima facie case, the burden shifts to the respondent to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. The Eichlers' contentions

14. The base rate used to value the Eichlers' property was higher than the base rate used for neighboring properties. *L. Eichler & J. Eichler testimony; Pet'rs Exs. 1-15*. The Entrust Administration property, which is just four doors down from the Eichlers' property, was assessed using a base rate of \$3,920, while the Eichlers' property was assessed with \$5,400 base rate. The same is true for Mr. Mercer's property, which is five doors down from the Eichlers' property. *L. Eichler testimony; Pet'rs Exs. 1-2*.
15. The Eichlers offered 12 photographs of neighboring properties. A property with a yellow cottage marks a dividing line—all of the properties to the right of that cottage were assessed using the \$3,920 base rate, while all the properties on the left, including the Eichlers' property, were assessed using the \$5,400 base rate. *L. Eichler & J. Eichler testimony; Pet'rs Exs. 4-15*. According to the Eichlers, the properties are all located near each other on the same lake and therefore should be assessed using the same \$3,920 base rate. *L. Eichler & J. Eichler testimony*.

B. The Assessor's contentions

16. The Assessor contends that the Eichlers did not offer any market-based evidence to show that their property's assessment was wrong. *Becker testimony*.

17. The Assessor's representative, Ms. Becker, offered a spreadsheet analyzing three sales from the Eichlers' neighborhood. *Becker testimony; Resp't Ex. 7*. The sales involved three properties next to the Eichlers' property. *Id.; Resp't Ex. 6*. Two of the three sales occurred in 2004 and 2005—the relevant timeframe for determining March 1, 2006, assessments. The third occurred in 2006, but Ms. Becker adjusted its sale price to account for that time difference. *Becker testimony; Resp't Ex. 7*. For each sale, Ms. Becker subtracted the value of the property's improvements to arrive at a land value. *Id.*
18. The land values from the three sales ranged from \$4,556 to \$6,756 per front foot, with a median of \$5,070. Thus, the sales support the \$5,400 base rate used to assess the Eichlers' property. *Becker testimony; Resp't Exs. 6-8*.
19. As for the dividing line between the properties assessed using the \$5,400 base rate and those assessed using the lower \$3,920 rate, Ms. Becker explained that every neighborhood and every taxing district has lines where values break. But the values are based on sales data. *Becker testimony*.

Discussion

20. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
21. A property's assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA*

Builders & Developers, LLC, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

22. By contrast, a taxpayer does not rebut the presumption that a property's assessment is accurate simply by contesting the assessor's methodology in computing it. *See Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
23. Here, the Eichlers did not offer any of the types of market value-in-use evidence that the Manual and Tax Court describe. The Eichlers instead took issue with the base rate used to assess their land. But that is precisely the type of methodology-based claim that *Eckerling* and like cases reject.
24. The Eichlers, however, appear to argue not so much that their property was assessed for more than its market value-in-use, but that assessments around the lake were not uniform and equal. Once again, however, the Eichlers' failure to offer any market-value-in-use evidence dooms their claim.
25. In *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court addressed a lack-of-uniformity-and-equality claim under Indiana's new market-value-in-use system. As the court explained, before the switch to our current system, true tax value was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable measurement

standard. *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 398 (Ind. Tax Ct. 2007). Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.*

26. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id.* at 399. Thus, the taxpayer in *Westfield* lost its lack-of-uniformity-and-equality claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* The Eichlers claim fails for the same reason.

SUMMARY OF FINAL DETERMINATION

27. Because the Eichlers did not offer any probative market value-in-use evidence, they failed to make a prima facie case. The Board therefore finds for the Steuben County Assessor.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.