

REPRESENTATIVE FOR THE PETITIONER: Michael F. Barden, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Zachary Price, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|--------------------------|---|----------------------------------------|
| Michael F. Barden, |) | Petition No.: - 20-001-24-1-5-01116-24 |
| |) | |
| Petitioner, |) | Parcel No.: 20-05-23-277-013.000-001 |
| |) | |
| v. |) | County: Elkhart |
| |) | |
| Elkhart County Assessor, |) | Township: Baugo |
| |) | |
| Respondent. |) | Assessment Year: 2024 |

APRIL 02, 2026

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:

INTRODUCTION

1. Michael Barden appealed the 2024 assessment of his property in Elkhart County. Both parties agreed this appeal falls under Indiana Code § 6-1.1-13-13, a unique statute that under certain circumstances limits an assessment’s increase from year to year to the application of the “annual adjustment factor.” Because neither party provided reliable evidence showing what the annual adjustment factor was, or how it should have been applied, we order no change to the assessment.

PROCEDURAL HISTORY

2. Michael Barden filed a Form 130 appeal with the county on May 3, 2024, appealing the 2024 assessment of his property located at 29017 County Road 118 in Elkhart.
3. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) held a hearing on October 22, 2024. On November 1, 2024, the PTABOA sustained the assessment at \$18,200 for land and \$69,000 for improvements for a total of \$87,200. Barden appealed to the Board on December 16, 2024.
4. On January 6, 2026, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Michael Barden testified under oath. The Assessor appeared only through her counsel, Zachary Price.
6. Barden offered the following exhibits:

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|------------------------|------------------------------------------------------------------------------------------------|
| Petitioner Exhibit 1: | Subject Property 2024 Form 11, |
| Petitioner Exhibit 3: | Subject Property 2024 Form 113, |
| Petitioner Exhibit 4: | Transcript of PTABOA hearing, |
| Petitioner Exhibit 5: | Recording of PTABOA hearing, |
| Petitioner Exhibit 7: | Petitioner’s worksheet showing 2023 & 2024 neighborhood factor calculation, |
| Petitioner Exhibit 13: | Petitioner’s worksheet showing 2023 subject property record card (“PRC”) proposed calculation, |
| Petitioner Exhibit 14: | Petitioner’s worksheet showing 2024 PRC proposed calculations, |
| Petitioner Exhibit 17: | 2023 subject PRC, |
| Petitioner Exhibit 18: | 2024 subject PRC, |
| Petitioner Exhibit 19: | Email from Ty Miller, Elkhart County to Michael Barden dated January 23, 2025, |
| Petitioner Exhibit 20: | 2024 subject PRC, |
| Petitioner Exhibit 21: | I.C. § 6-1.1-13-13. ¹ |

¹ The Petitioner also submitted Petitioner Exhibits 2, 6, 8-12, 15-16 and 22-35 but did not offer them into evidence.

7. The Respondent offered the following exhibits:

Respondent Exhibit B: 2024 subject PRC,
Respondent Exhibit C: 2023 subject PRC.²

8. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) the digital recording of the hearing.

MOTION TO DISMISS

9. Before turning to the merits of this appeal, we first address the Assessor's motion to dismiss. On June 19, 2025, the Assessor filed a Request for Entry to the subject property in order to allow her appraiser to view the interior. Barden objected to that request, and we ultimately granted the Assessor's motion on July 8, 2025.

10. The parties agreed the inspection would take place on July 29, 2025. Approximately 15 minutes before the inspection was scheduled to begin, and after the Appraiser was already on his way to the subject property, Barden e-mailed the Assessor's counsel cancelling the inspection. Barden later provided alternative dates for the inspection, including August 14, 2025. The Assessor's counsel confirmed that August 14 was acceptable, but Barden never responded. The Assessor made several additional attempts to confirm the date. After receiving no response to any of these inquiries, the Assessor elected not to attempt the inspection.

11. The Assessor now moves to dismiss or in the alternative impose sanctions. It is clear that Barden failed to cooperate with the Assessor in arranging the inspection. But because of the unique circumstances of this appeal, we find no sanctions are warranted. As discussed in more detail below, both parties agreed this appeal fell under I.C. § 6-1.1-13-13. Under that statute, market-based evidence such as an appraisal is irrelevant. Rather

² The Assessor submitted Respondent Exhibit A but did not offer it into evidence.

the only pertinent issue is what the annual adjustment factor was and how it was applied. Because an appraisal would not have been relevant, we cannot find that Barden's failure to cooperate in arranging the appraiser's inspection merits any sanctions. Thus, the Assessor's motion is denied.

FINDINGS OF FACT

12. The property under appeal consists of a one-story home of approximately 1,550 square feet with an unfinished basement built in 1998 with two utility sheds located on 0.91 acres in Elkhart. *Pet'r Ex. 18; Resp't Ex. B.*
13. In 2023, the subject property was assessed at \$75,200. In 2024, the year under appeal, the assessment increased to \$87,200. *Pet'r Exs. 17 & 18; Resp't Exs. B & C.*

PETITIONER'S CONTENTIONS

14. Barden argued that the increase in his assessment was incorrect under I.C. § 6-1.1-13-13. In particular, Barden argued that the Assessor:
 - Incorrectly applied the neighborhood factor to the land in addition to the improvements.
 - Applied the wrong obsolescence and depreciation.

Barden further argued that correcting these mistakes would yield a total assessed value of \$78,500. *Barden testimony; Pet'r Exs 13, 14.*

RESPONDENT'S CONTENTIONS

15. The Assessor argued that because I.C. § 6-1.1-13-13 applied to these appeals, Barden had the burden of proof and the assessment could not be increased except for the application of the annual adjustment factor. The Assessor observed that the neighborhood factor increased by 8.79% between 2023 and 2024. The Assessor (by counsel) then multiplied the 2023 improvement value of \$57,200 by 8.79% to arrive at an improvement value of

62,227. After adding in the land, this yielded a total requested assessment of \$80,400.
Resp't Exs. B & C.

ANALYSIS

16. Broadly speaking, I.C. § 6-1.1-13-13 sets up a regime where once a taxpayer successfully appeals an assessment that meets certain defined criteria, assessing officials are prohibited from increasing the property's assessment in succeeding years for any reason other than applying an "annual adjustment factor." I.C. § 6-1.1-13-13(b). The prohibition lasts until the "first year of the next four (4) year cyclical assessment cycle." *Id.* During that period, the taxpayer cannot appeal an increased assessment unless he "believes that the increased assessment is arbitrary and capricious and not made consistent with the annual adjustment factor used by the assessing official to adjust property values for a tax year." *Id.* In addition, the burden shifting provisions of Ind. Code § 6-1.1-15-20 do not apply to such appeals. *Id.* Here, both parties agreed that I.C. § 6-1.1-13-13 applied to this appeal and the Petitioner had the burden of proof. Because of the unique provisions of the relevant statute, we find that burden is not to prove the value of the subject property with market-based evidence as is the case in appeals claiming relief under I.C. § 6-1.1-15-20. Rather, it is the Petitioner's burden to show that the increased assessment was not consistent with the "annual adjustment factor" and what the value would be if the annual adjustment factor was correctly applied.
17. For that reason, we must examine the legal framework surrounding the annual adjustment factor. Indiana Code § 6-1.1-4-4.5(a) provides that the Department of Local Government Finance ("DLGF") shall adopt rules establishing a system for annually adjusting the assessed value of real property between reassessments. Those rules are found in 50 Ind. Admin. Code 27-5 and state that "[i]n the annual adjustment process the county assessor shall reevaluate the factors that affect value each year, express the interactions of those factors mathematically, and use mass appraisal techniques to estimate property values to reflect a property's market value-in-use." 50 IAC 27-5-1(a). In addition, adjustment

factors should be “based on criteria such as property class, type, location, size, and age.” 50 IAC 27-5-1(b). Assessors must also use time-adjusted sales and ratio studies as the basis for the analysis. 50 IAC 27-5. For each property, assessors must determine whether it is appropriate to apply the annual adjustment factor to both the land and improvements or only the land. 50 IAC 27-5-6(e). Finally, assessors must determine whether the annual adjustment factor should be applied to all of the improvements or only a portion. *Id.*

18. Here, Barden argued that the neighborhood factor was incorrectly applied to the subject property’s land. Both Barden and the Assessor’s counsel imply that the neighborhood factor is synonymous with the annual adjustment factor. But neither provided any basis in law or fact for this assertion. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). While consideration of a property’s neighborhood is certainly part of the annual adjustment process, it is not the only thing assessors must consider. As discussed above, when developing an annual adjustment factor, an assessor must consider all components that affect the value of that particular property—not just its neighborhood. In addition, an assessor must exercise judgment in determining whether to apply the annual adjustment factor to both the land and improvements and to what particular components of the improvements.³
19. The record here is bereft of any evidence for how the Assessor developed the annual adjustment factor, what she determined that factor to be, or how she exercised her judgment under 50 IAC 27-5-6(e). For these reasons, we cannot find that Barden’s criticisms of the application of the neighborhood factor are sufficient to meet his burden

³ We recognize that it is possible that, after considering all the relevant requirements of 50 IAC 27-5, the Assessor determined that altering the neighborhood factor was the only necessary component for the annual adjustment of this property and this assessment year. But if that were the case, it would need to be established with reliable evidence, such as the testimony of a witness, which neither party did here.

of proof. Barden's claims about obsolescence and depreciation similarly fail, as he failed to show how those components related to the annual adjustment factor. To succeed, Barden needed to provide reliable evidence showing (1) what the annual factor was, and (2) how it should have been applied to the subject property—including how the Assessor exercised her judgment in that application. Because Barden did not provide reliable evidence establishing either of these components, his claim under I.C. § 6-1.1-13-13 cannot succeed.⁴

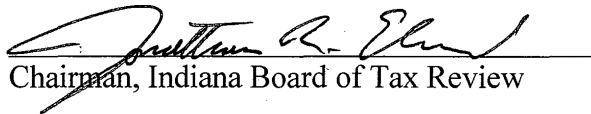
20. The Assessor's arguments suffer from similar deficiencies. The Assessor's counsel presented a mathematical calculation using a different application of the neighborhood factor than the original assessment, apparently based on the implied assertion that the neighborhood factor was synonymous with the annual adjustment factor. But arguments from counsel are not evidence and cannot be used to establish facts. *El v. Beard*, 795 N.E.2d 462 (Ind. Ct. App. 2003). The Assessor called no witnesses and presented no reliable evidence showing what the annual adjustment factor was or how it should have been applied. For these reasons, the Assessor has failed to make a case for any change in the assessment under I.C. § 6-1.1-13-13.

CONCLUSION

21. Both parties agreed this appeal fell under I.C. § 6-1.1-13-13. Under that statute, the Assessor was prohibited from increasing the property's assessment for any reason other than applying an "annual adjustment factor." Because neither party provided reliable evidence showing what the annual adjustment factor was or how it should have been applied, we order no change to the assessment.

⁴ To the extent Barden may have been making claims of mathematical errors outside the bounds of I.C. § 6-1.1-13-13, those claims cannot succeed because they are impermissible attacks on the methodology the Assessor used to develop the assessment rather than market-based evidence of value. *Piotrowski v. Shelby Cnty. Ass'r*, 177 N.E.3d 127, 133 (Ind. Tax Ct. 2021); *P/A Builders & Devs., LLC v. Jennings Cnty. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006).

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>.