

REPRESENTATIVE FOR PETITIONER: David Halperin, *pro se*

REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David Halperin,)	Petition Nos.: 71-026-19-1-5-00704-21
)	71-026-20-1-5-00705-21
Petitioner,)	71-026-21-1-5-00706-21
)	
v.)	Parcel No.: 71-08-01-134-003.000-026
)	
St. Joseph County Assessor,)	County: St. Joseph
)	
Respondent.)	Assessment Years: 2019-2021

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

January 23, 2022

FINAL DETERMINATION

The Indiana Board of Tax Review, 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. David Halperin seeks to lower his property's assessments for 2019-2021, while the Assessor asks us to raise those assessments. Although both sides rely primarily on valuation opinions from appraisers, neither appraiser's opinions are sufficiently reliable to be probative of the property's value. Halperin's appraiser made enormous adjustments to his comparable properties' sale prices that he did not adequately explain or support, while the Assessor's appraiser did not adequately account for the home's deteriorated

condition. Absent probative evidence of a different value, we order no change to the assessments.

Procedural History

2. Halperin contested the 2019-2021 assessments of his residential property located at 116 Peashway in South Bend. The St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the property as follows:

Year	Land	Improvements	Total
2019	\$45,100	\$87,600	\$132,700
2020	\$46,600	\$172,900	\$219,500
2021	\$67,200	\$163,300	\$230,500

3. Halperin disagreed with those determinations and filed Form 131 petitions with us for all three years. On August 24, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Halperin’s petitions. Neither he nor the Board inspected the property. Halperin, appraisers Jonathan Whitmer and Steve Sante, and County Assessor Rosemary Mandrici testified under oath.

4. Halperin submitted the following exhibits:

Petitioner Exhibit 1:	Appraisal of the subject property as of January 1, 2019, by Jonathan Whitmer,
Petitioner Exhibit 2:	Whitmer appraisal as of January 1, 2020,
Petitioner Exhibit 3:	Whitmer appraisal as of January 1, 2021,
Petitioner Exhibit 4:	2019 Form 130 petition,
Petitioner Exhibit 5:	2020 Form 130 petition,
Petitioner Exhibit 6:	2021 Form 130 petition,
Petitioner Exhibit 7:	2019 Form 134 report,
Petitioner Exhibit 8:	Email correspondence between Halperin and Jason C. Kane from August 18-19, 2021,
Petitioner Exhibit 9:	Audio recording of PTABOA hearing,
Petitioner Exhibit 10:	2019 Form 115 determination,
Petitioner Exhibit 11:	2020 Form 115 determination,
Petitioner Exhibit 12:	2021 Form 115 determination.

5. The Assessor submitted the following exhibits:

For 2019:

Respondent Exhibit 1:	Form 131 petition,
Respondent Exhibit 2:	Form 115 determination,
Respondent Exhibit 3:	Form 134 report,
Respondent Exhibit 4:	Form 130 petition,
Respondent Exhibit 5:	2020 subject property record card, ¹
Respondent Exhibit 6:	2019 ratio worksheet and neighborhood map,
Respondent Exhibit 7:	Appraisal of the subject property as of January 1, 2019, by Steve Sante,
Respondent Exhibit 8:	Memo List.

For 2020:

Respondent Exhibit 1:	Form 131 petition,
Respondent Exhibit 2:	Form 115 determination,
Respondent Exhibit 3:	Form 130 petition,
Respondent Exhibit 4:	2019 subject property record card,
Respondent Exhibit 5:	2020 ratio worksheet and neighborhood map,
Respondent Exhibit 6:	Sante appraisal as of January 1, 2020,
Respondent Exhibit 7:	Memo list.

For 2021:

Respondent Exhibit 1:	Form 131 petition,
Respondent Exhibit 2:	Form 115 determination,
Respondent Exhibit 3:	Form 130, petition
Respondent Exhibit 4:	2021 subject property record card,
Respondent Exhibit 5:	2021 ratio worksheet and neighborhood map,
Respondent Exhibit 6:	Sante appraisal as of January 1, 2021,
Respondent Exhibit 7:	Memo list.

6. The record also includes the following: (1) all petitions or other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

¹ The Assessor accidentally switched the 2019 and 2020 property record cards in her exhibits. The 2020 property record card is included in the 2019 packet, and the 2019 property record card is included in the 2020 packet.

Findings of Fact

A. The Subject Property

7. The subject property contains a two-story home of between approximately 2,350 and 2,450 square feet, with four bedrooms, 1 ½ bathrooms, and an unfinished basement. It is in Harter Heights, which is located near the University of Notre Dame. The neighborhood has high demand and stable prices, regardless of economic conditions. *Sante testimony; Pet'r Exs 1-3; Resp't Ex. 6 (2019), 7 (2020-2021).*

8. The home was built in 1927 and has had few major alterations. The roof is original and near the end of its useful life. It has missing and loose shingles. The windows are also original. Some are broken and have rotting wood. Some ceiling areas have water damage from where the upstairs bathroom's shower and tub were leaking. The basement has water issues. Although the bathrooms and kitchen are not original, they are dated and suffer from deferred maintenance. The kitchen sink and full bath are not useable. The home has lead paint and pipes, and a boiler-type furnace. It does not have central air-conditioning. A covered porch at the rear of the home has rotting wood, and its roof is leaning. And both the front steps and a garage wall are deteriorating. *Whitmer testimony; Pet'r Exs 1-3; Resp't Exs. 6 (2019), 7 (2020-2021).*

B. Expert opinions

9. Each side hired an appraiser to appraise the property. Halperin hired Jonathan Whitmer, a residential appraiser with over 30 years of experience appraising in both St. Joseph County and Elkhart County. Whitmer had previously appraised Halperin's property in 2013, when Halperin was seeking a home-equity line of credit. The Assessor hired Steve Sante, an appraiser with 31 years of experience who holds MAI and SRA designations. *Sante testimony; Pet'r Exs 1-3; Resp't Exs. 6 (2020-2021), 7 (2019).*

1. Whitmer appraisal

10. Whitmer prepared a separate appraisal for each assessment date, in which he estimated the property's market value as of that date. He relied on the sales-comparison approach, which he also referred to as the "market approach." Based on the home's deferred maintenance, he viewed it as being in fair-to-poor condition. Whitmer therefore looked for sales of homes in similar overall condition that bracketed the property's amenities, while staying "within a reasonable distance" of the subject property. *Whitmer testimony; Pet'r Exs. 1-3.*

11. He found three different sales for each year. All were within two miles of the subject property, although several were not from Harter Heights. Their unadjusted sale prices fell into the following ranges:

2019	\$125,000 - \$185,000
2020	\$112,025 - \$249,900
2021	\$214,900 - \$250,000

Sante testimony; Pet'r Exs. 1-3.

12. Whitmer then considered adjusting the sale prices to account for transactional differences between those sales and the posited sale of the subject property as well as for differences in relevant physical characteristics between the properties. In considering adjustments for condition, he did not inspect the comparable properties but instead relied on information and photographs from the multiple listing service ("MLS"). Whitmer adjusted seven of the nine sale prices downward to account for the comparable homes' superior condition, with the only exceptions being one sale each from his 2019 and 2020 appraisals. The adjustments ranged from \$35,000 to \$100,000, with more than half being at least \$65,000. *Pet'r Exs. 1-3.*

13. Despite the size of Whitmer's adjustments for condition, his appraisal reports do not explain how he quantified those adjustments. At our hearing, Whitmer testified that he

did not use cost of repair as the basis for his adjustment, although he believed that the cost of addressing the subject home's deferred maintenance was more than \$230,000. Instead, he testified that he did paired-sales and linear-regression analyses. But while his appraisal reports have graphs showing linear regression analyses for four independent variables (gross living area, age, garage capacity, and full bathrooms), they do not include a graph for condition. And when pressed on cross-examination about his paired-sales analysis in the context of homes that sold for more than \$200,000, he acknowledged that he did not do one, saying instead:

The paired sales analysis was across the board. What I did was basically take the low, take the high, of similar-type properties on the high, on the low, and it indicated to me a percentage between them. And I took 40 [%] as that paired.

...

I used 40%. It wasn't necessarily a paired-sales analysis. I used six or seven comparables ranging from high to low based on overall condition, style.

...

I took six or seven comparables, maybe more, spread them out, and what happens in this scenario is we have a range of values. And with the ranges of values, we apply percentages to them, and that's where I came up with my factors. Whether you want to call that a paired-sales analysis, or you want to call it a more in-depth analysis, I'm fine with that.

Whitmer testimony.

14. Although Whitmer repeatedly referred to "40%" as the level of adjustment that he determined through the process he described, he did not make net or gross adjustments of 40% to any of his comparable properties' sale prices. Only two individual adjustments—an \$85,000 adjustment for condition to sale 2 from Whitmer's 2020 appraisal and a \$100,000 adjustment for condition to sale 3 from his 2021 appraisal—equaled approximately 40% of the property's unadjusted sale price. *Pet'r Exs. 1-3.*

15. As to his linear regression analyses, Whitmer first testified on cross-examination that his standard deviation was “3.1,” but he corrected himself, testifying that it was “31 to 42 per,” before acknowledging that he did not know what it was. *Whitmer testimony.*
16. In most instances, Whitmer ended up applying gross adjustments that were more than 50% of the comparable properties’ sale prices. He weighted the adjusted sale prices to arrive at an indicated value for each year. In each appraisal, he gave the greatest weight to the sale that was closest to the subject home’s condition and that required the lowest gross adjustment:

Year	Gross Adj. Range	Adj. Price Range	Indicated Value
2019	45.5% - 66.1%	\$96,001 - \$105,980	\$99,000
2020	18.9% - 58.7%	\$101,987 - \$128,246	\$112,000
2021	41.6% - 74.2%	\$105,136 - \$144,713	\$129,000

2. Sante appraisal

17. Sante inspected only the subject home’s exterior because Halperin did not allow him inside the home. It is unclear whether Halperin affirmatively denied Sante access or Sante simply decided against attempting to access the home because he had not been granted permission. In any case, Sante called Halperin twice and sent him a letter but did not receive any response. *Sante testimony; Resp’t Exs. 7 (2019), 6 (2020-2021).*
18. Based on his exterior inspection, Sante concluded that the home had minimal updating and that both the windows and the roof cover appeared to be near the end of their useful lives. He assumed that the home’s interior was in similar condition as its exterior, and he rated its overall condition as fair. After being shown a copy of Whitmer’s appraisal, Sante first testified that he would need more than postage-sized black and white photographs to determine whether the depiction of the home’s interior would change his opinion of value. But he then testified, “I mean, I see some broken windows, an old furnace—it’s possible.” *Sante testimony; Resp’t Exs. 7 (2019), 6 (2020-2021).*

19. Although Sante developed both the cost and sales-comparison approaches, he gave little weight to his conclusions under the cost approach due to the home's age and condition. For his sales-comparison analysis, Sante looked for sales of other properties from Harter Heights. Given the neighborhood's location near Notre Dame as well as its high demand and stable prices, he believed that using sales from outside the neighborhood would be unlikely to produce a true market value for the subject property. Sante also considered the condition, design, age, and size of homes in identifying comparable sales. *Sante testimony; Resp't Exs. 7 (2019), 6 (2020-2021).*

20. Sante settled on four sales each for his 2019 and 2021 appraisals and three sales for his 2020 appraisal. Their unadjusted sale prices fell into the following ranges:

2019	\$210,000 - \$285,000
2020	\$207,000 - \$290,000
2021	\$250,000 - \$347,000

Resp't Exs. 7 (2019), 6 (2020-2021).

21. Sante made few adjustments to his comparable properties' sale prices. He adjusted for differences in gross living area and basement "finish area" by estimating replacement cost less depreciation. He also adjusted a few sale prices where the properties had garages with different capacities than the subject property's garage, or in one instance, did not have a garage. He did not adjust for differences in number of bathrooms, because the data he had regarding that difference was unreliable. Because Sante mistakenly believed that the subject home had central air-conditioning, he did not adjust the comparable properties' sale prices to account for the fact that they all had central air-conditioning. He acknowledged that having central air-conditioning affects a home's value. *Sante testimony; Resp't Exs. 7 (2019), 6 (2020-2021).*

22. As for condition, Sante, like Whitmer, relied on MLS photographs of his comparable properties. On cross-examination, Sante acknowledged that, unlike the subject property, his comparable homes did not necessarily have roof covers and windows that were near

the end of their useful lives, although he speculated that their interiors might not have been as nice as the subject home's interior. And he acknowledged that roof covers and windows are costly to replace, which could substantially affect a property's value. *Sante testimony.*

23. In any case, Sante did not quantitatively adjust the sale prices for differences between the condition of the comparable homes and the subject home's condition, even for the four homes that he rated as being in average, rather than fair, condition. But he did consider condition, explaining in the addendum of his 2021 appraisal that three of the four sales involved homes in superior condition and that the subject property's value was likely below their adjusted sale prices. He made the opposite qualitative judgment in his 2019 appraisal for a home that he believed was in worse condition than the subject home. He also made other qualitative judgments in reconciling his adjusted sale prices to an indication of value. Sante ultimately arrived at the following conclusions of value:

Year	Gross Adj. Range	Adj. Price Range	Indicated Value
2019	1.8% - 18.1%	\$230,000 - \$280,000	\$280,000
2020	10.3% - 23.2%	\$255,000 - \$320,000	\$290,000
2021	1.4% - 10.3%	\$274,000 - \$351,000	\$300,000

Sante testimony; Resp't Exs. 7 (2019), 6 (2020-2021).

C. Sales and assessment data for the subject property's assessment neighborhood

24. Each year, the Assessor looks at sales disclosures and compares the sale prices to the properties' assessments to determine ratios. She then uses those ratios to develop factors that she applies to the entire neighborhood. In the year leading up to each assessment date, most properties from the subject property's assessment neighborhood had sale prices that were higher than their certified assessed values. The Assessor's hearing officer also calculated an average price per square foot of living area for each sale. When applied to the subject property, those average unit prices indicated rounded values of \$386,152, \$337,300, and \$474,100 for 2019, 2020, and 2021, respectively. *Mandrici testimony; Resp't Exs. 6 (2019), 5 (2020-2021).*

Analysis

A. Because we held the hearing on Halperin’s appeals after the Legislature repealed Ind. Code § 6-1.1-15-17.2, that specialized burden-of-proof statute does not apply.

25. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUALS at 3; 2021 REAL PROPERTY ASSESSMENT MANUALS at 3. A party seeking a different value has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cnty. Ass’r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
26. Apparently referring to Ind. Code § 6-1.1-15-17.2, which was repealed on March 1, 2022, the parties indicated that the Assessor had the burden of proof in these appeals. That statute, commonly known as the “burden-shifting statute,” created an exception to the general rule regarding the burden of proof and required an assessor to prove that a challenged assessment was “correct,” where, among other things, the assessment represented an increase of more than 5% over the prior year’s assessment. I.C. § 6-1.1-15-17.2(a)-(b) (repealed by 2022 Ind. Acts 174, § 32 effective on passage). We must apply the law as it existed at the time of our evidentiary hearing, which is the operative event that triggers the repeal’s application. *See Church v. State*, 189 N.E.3d 580 (Ind. 2022) (identifying defendant's act in seeking to depose a child victim as the operative event triggering application of a newly enacted deposition statute). Because the burden-shifting statute had already been repealed at the time we convened our hearing, it does not apply.² We therefore apply the general rule regarding the burden of proof.

² At the same time the Legislature repealed Ind. Code § 6-1.1-15-17.2, it enacted Ind. Code § 6-1.1-15-20. 2022 Ind. Acts 174, § 34. Although different from the old burden-shifting statute in some respects, the new statute also assigns the burden of proof to assessors in appeals where the assessment represents an increase of more than 5% over the prior year. LC. § 6-1.1-15-20(b). The new statute, however, only applies to appeals filed after its March 21, 2022 effective date. LC. § 6-1.1-15-20(h). It therefore does not apply to these appeals.

B. Neither appraiser's valuation opinions were sufficiently reliable to carry probative weight, and the Assessor's other evidence did not comply with generally accepted appraisal principles.

27. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 and 2021 MANUALS at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 and 2021 MANUALS at 2.
28. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
29. Halperin seeks to lower the subject property's assessment for each year, while the Assessor asks us to raise it. Each party offered an appraiser's opinion of the subject property's value for the three years at issue. The Assessor also offered sale-to-assessment-ratio worksheets and calculations from her hearing officer. But we find that none of that evidence is probative of the subject property's market value in use. Both appraisals suffered from flaws that make them too unreliable to carry probative weight, and the Assessor's other evidence does not comply with generally accepted appraisal principles for determining an individual property's value.

1. Whitmer made enormous adjustments to his comparable properties' sale prices that he did not adequately explain or support.
30. We begin with Whitmer's appraisal. While the Assessor criticized Whitmer's selection of sales from outside Harter Heights, Whitmer credibly justified his decision based on the difficulty of finding homes from that neighborhood that were in similarly deteriorated condition as the subject home. But we credit Sante's testimony about the uniqueness of Harter Heights and its effect on property values. And Whitmer neither adjusted for locational differences nor explained why he chose not to do so.
31. We are even more troubled by the adjustments that Whitmer did choose to make. While he made enormous gross adjustments to most of his comparable properties' sale prices, he failed to clearly explain or adequately support them. That is particularly troubling when it comes to his large adjustments for condition. Whitmer initially claimed to have used a paired-sales analysis, but later acknowledged that he had not. Indeed, it is not clear exactly what Whitmer did, other than look at the significant range between the sale prices for his comparable properties. While Whitmer's report contains graphs depicting his linear regression analyses for his other adjustments, his inability to answer questions about those analyses seriously undermines our confidence in those adjustments as well.
2. Sante did not adequately account for the subject home's lack of central air conditioning an deteriorated condition.
32. Sante's appraisals fare no better. First, Sante erred in valuing the subject home as if it had central air-conditioning, something that he admitted affects a property's value. More importantly, he failed to adequately address the home's significant deterioration. While Sante assumed that the home's interior condition was comparable to the condition of its exterior, he acknowledged that knowing the interior's actual condition possibly could have changed his valuation opinions. We find it is more likely than not that Sante would have come to different conclusions had he known the true extent of the subject home's deterioration. Indeed, he acknowledged (1) that unlike the subject home, his comparable homes did not necessarily have roof covers and windows that were nearing the end of

their useful lives, and (2) that those items are costly to replace, which could substantially affect a property's value. While he shrugged that off by speculating that the comparable homes' interiors might not have been as nice as the subject property's interior, we have no evidence to show that is the case. To the contrary, all we know is that the subject home's interior was significantly deteriorated. Indeed, the estimated cost to repair all the property's deferred maintenance was more than \$230,000.

33. We recognize that Sante was hampered by the fact that Halperin did not allow him to access the home's interior. But that does not somehow make Sante's valuation opinions reliable when it turns out his assumptions about the home's interior condition and air-conditioning were wrong. When informal efforts to have Sante inspect the home's interior proved fruitless, the Assessor could have served Halperin with a discovery request. *See* Ind. Trial Rule 34(A)(2) (allowing any party to serve another party with a request to enter land or other property for the purpose of, among other things, inspection and measuring); *See also*, T.R. 28(F) (entitling parties to use Rules 26 through 37 of the Trial Rules in administrative proceedings that involve adjudicatory hearings), 52 IAC 4-8-3(2) (allowing parties to use discovery methods from the Trial Rules to discover relevant non-privileged matter). Had Halperin still refused to permit Sante to inspect the home's interior, the Assessor could have asked for an order compelling Halperin to provide that access. And if Halperin did not comply with our order, the Assessor could have asked for an appropriate sanction. Absent those steps, however, we will not ignore Halperin's evidence of the home's substantial deterioration and lack of central air-conditioning.
34. We do not customarily find the opinions of experts to be so unreliable as to lack probative value. In this case, however, substantial omissions, the lack of support for adjustments, and the experts' own admissions lead us to find that their valuation opinions were not probative of the subject property's market value-in-use.

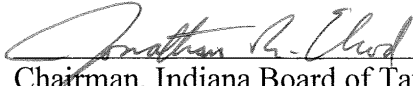
3. The Assessor's ratio-study worksheets and the hearing officer's calculations do not comply with generally accepted appraisal principles for valuing an individual property.
35. The Assessor's ratio-study worksheets and the hearing officer's computations similarly lack probative value. The Assessor offered no authority for using sale-to-assessment ratios to prove an individual property's market value-in-use. In fact, the International Association of Assessing Officers' Standard on Ratio Studies, which the DLGF has incorporated into its administrative rules, prohibits using ratio-study statistics for that purpose. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES (Approved April 2013) (Incorporated by 50 IAC 27-1-4(1) (filed Nov 2, 2020) ("[R]atio study statistics cannot be used to judge the level of appraisal of an individual parcel.")).³
36. The worksheets do contain raw data for properties from the subject property's assessment neighborhood that sold during the year leading up to each assessment date. And the hearing officer used that data to determine an average per-unit sale price, which the hearing officer then applied to the subject property. But simply taking the average sale price from a group of properties, without comparing characteristics of those properties to the property being valued and accounting for relevant differences, does not comply with case law or generally accepted appraisal principles. *See Long v. Wayne Twp. Ass'r*, 821 N.E. 2d466, 470-71 (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers did not explain how purportedly comparable properties compared to the property under appeal or how relevant differences affected value).

Conclusion

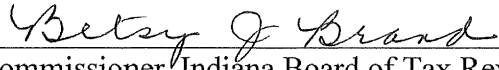
37. Because neither party offered probative evidence to show the subject property's market value-in-use, we order no change to the assessments.

³ The previous version of the IAAO Standard contained identical language. *See* INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES, Version 17.03 Part 2.3 (Approved by IAAO Executive Bd. 07/21/2007) (Incorporated by 50 IAC 27-1-4(1) (filed April 8, 2010))

We issue this Final Determination on the date first 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 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>>.