



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Daniel Patru,
Petitioner,

MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

v

MAHS Docket No. 16-001828

City of Wayne,
Respondent.

Presiding Judge
David B. Marmon

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

On December 5, 2018, Petitioner filed a motion requesting that the Tribunal reconsider the Final Opinion and Judgment ("FOJ") entered in the above-captioned case on December 4, 2018. In the motion, Petitioner states, in pertinent part, that the Tribunal failed to apply MCL 211.27(2) as directed by the Court of Appeals. Application of MCL 211.27(2) requires before-repair and after-repair appraisals, and the only evidence of the before-repair value was the MLS listing sheet provided by Petitioner. The assessment of the property was not triggered by a sale as stated in the FOJ, that the photographs of the house make it look good does not mean Respondent may ignore MCL 211.27(2), and Petitioner provided evidence that his sale was a market sale.

The Tribunal has considered the Motion and the case file and finds that this case was heard on remand from the Court of Appeals.¹ The Court held that the Hearing Referee for the previous hearing erred in concluding that the repairs were not normal repairs because they were performed on a property in substandard condition.² The Court remanded to the Tribunal "to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)."³ The FOJ made a specific finding of fact that the repairs were "normal repairs" as stated in MCL 211.27(2).⁴ However, the Tribunal also made a finding of fact that "Respondent's 2016 assessment was *not* based on Petitioner's 'normal' repairs to the subject property."⁵ Rather, as noted in the FOJ, "the subject property's assessment for 2016 changed based on the sale transaction of the subject property in August 2015."⁶ Although the Tribunal concludes that the plain language of MCL 211.27(2) prevents an assessor from increasing the true cash value of a property "that is a result of expenditures for normal repairs," and does not speak to

¹ See *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547).

² *Id.* at 5.

³ *Id.*

⁴ Final Opinion and Judgment ("FOJ"), December 4, 2018, p 4.

⁵ FOJ, p 5 (emphasis added).

⁶ FOJ, p 5.

whether a property has been uncapped, the Tribunal nonetheless concludes that the FOJ did not commit palpable error in its final conclusion.

To begin, there is nothing in MCL 211.27(2) requiring “before repair” and “after repair” appraisals when determining whether an assessment includes the true cash value of the normal repairs.⁷ Rather, in a proceeding before the Tribunal, Petitioner bears the burden of proof.⁸ Further, the Tribunal cannot conclude that the FOJ erred when it concluded that Petitioner’s contentions concerning the purchase price, i.e. the true cash value before repairs, was entitled to no weight or credibility. The selling price of a property is not its presumptive true cash value.⁹ Despite Petitioner’s assertions that the marketing efforts for the subject show that the sale was a “market sale,” the home was being sold by the U.S. Department of Housing and Urban Development (“HUD”). Because the subject was being sold by a government entity, that entity’s motivation may not have been to receive market value for the property.

The Tribunal also concludes that it was not a palpable error to conclude that the assessment did not consider the “normal repairs.” This is supported by the fact that the property record card indicates that Respondent believed the true cash value of the subject to be \$48,000 *before Petitioner purchased the property*¹⁰ and \$50,400 as of December 31, 2015, after the repairs were complete. An increase of \$2,400 in true cash value (5%) is easily attributable to inflation and increases in the market. In addition, as stated by the FOJ, the interior photographs depict a property in average condition before Petitioner acquired it. Although not necessarily evidence of true cash value, this evidence supports the property’s assessment as a property in average condition both at the time Petitioner acquired it and after he completed the normal repairs. In other words, the record evidence supports the conclusion that the assessment did not consider the increase in true cash value that was the result of normal repairs.

⁷ MCL 211.27(2) allows an assessor to increase “construction quality classification or reduce the effective age for depreciation purposes” if the “appraisal of the property was erroneous before non-consideration of the normal repair.” It also prevents an assessor from assigning an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction. Neither situation is at issue here. Although State Tax Commission Bulletin No. 7 of 2014 requires “before” and “after” appraisals, such appraisals are only required “[i]f the true cash value of non-consideration items is shown on the assessment roll. . . .” As described herein, the true cash value of the non-consideration items is *not* shown on the assessment roll and the STC requirement does not apply. In addition, STC guidance lacks the force of law. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259, 267 (2008).

⁸ See *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998).

⁹ MCL 211.27(5).

¹⁰ In this regard, the Tribunal notes that the property record card shows an assessed value in 2015 of \$24,000, and because assessed value is 50% of true cash value, see MCL 211.27a(1), this means that Respondent believed the true cash value of the subject was \$48,000 as of December 31, 2014. See MCL 211.2(2).

Given the above, Petitioner has failed to demonstrate a palpable error relative to the FOJ that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected.¹¹ Therefore,

IT IS ORDERED that Petitioner's Motion for Reconsideration is DENIED.

This Order resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a claim of appeal with the Michigan Court of Appeals.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹² A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹³ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁴

By  _____

Entered: December 14, 2018
wmm

¹¹ See MCR 2.119.

¹² See MCL 205.753 and MCR 7.204.

¹³ See TTR 213.

¹⁴ See TTR 217 and 267.