

State of Michigan  
Department of Licensing and Regulatory Affairs  
Michigan Administrative Hearing System  
Michigan Tax Tribunal  
Small Claims Division

Daniel Patru,  
Petitioner,

MTT Docket No. 16-001828

v

2nd Motion for Reconsideration  
Proof of Service

City of Wayne,  
Respondent

TranInfo:4606 23283578-1 12/10/18  
Chk#: 4648 Amt: \$25.00  
ID: DANIEL PATRU

## 2nd Motion for Reconsideration

### **I. Failure to apply MCL 211.27(2)**

This Motion to Reconsider addresses the second Final Opinion in this case. The Michigan Court of Appeals, case no. 337547, reversed the first Final Opinion because it did not apply MCL 211.27(2). The Court of Appeals discussed the error this way on page 5:

The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because the repairs were done to a property in substandard condition, they did not constitute normal repairs. As a result, **contrary to MCL 211.27(2), the referee considered the increase in value attributed to the repairs when determining the property's TCV. Stated differently, the referee's finding that the property's TCV was \$50,400 was based on its assessment of the property's value after it had been repaired. This was improper because MCL 211.27(2) expressly provides that certain repairs constitute normal repairs so long as they are not part of a structural addition or completion.** Nothing in MCL 211.27(2) provides that the repairs listed in subdivisions (a) through (o) are not normal repairs in the event that they are performed on a substandard property. Thus, by reading a requirement into the statute that was not stated by the legislature, the trial court erred by interpreting and applying MCL 211.27(2). See Mich Ed Ass'n v Secretary of State (On Rehearing), 489 Mich 194, 218; 801 NW2d 35 (2011) (stating that nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself). (Emphasis mine.)

Like its predecessor this Final Opinion fails to apply MCL 211.27(2). Unlike the first Final Opinion, the second Final Opinion does not even attempt at a legal justification for ignoring the statute. It acknowledges that "Petitioner's repairs are 'normal' repairs" (Final Opinion page 4, Findings of Fact 7) and yet still adopts a valuation whose analysis is "devoid of any relationship to Petitioner's 'normal' repairs ... which occurred before ... tax day." (Final Opinion page 6, 2nd paragraph)

Petitioner respectfully asks that the Final Opinion be corrected to apply MCL 211.27(2).

## II. Miscellaneous Errors

Besides the failure to apply MCL 211.27(2), there are several other errors in the Final Opinion, some of which may be Petitioner's own fault or at least not the fault of the Judge. The hearing was conducted by phone, there was no transcript made, and it is possible that the Petitioner misspoke or was misunderstood.

### Listing History

The Final Opinion says that the listing price was \$29,900 when Petitioner bought it for \$32,000 (page 3 2nd paragraph from the bottom and page 4, Findings of Fact 5.)

Actually the property's MLS history sheet, submitted as evidence (Final Opinion page 3 evidence 4c) shows that Petitioner paid the current list price of \$32,000. The following table shows the MLS history:

Date	MLS History
4/3/2013	Listed for \$29,900 with Jeffrey Packer of Coldwell Banker
5/3/2013	Offer accepted
10/23/2013	No sale, Property withdrawn from market
6/17/2015	Listed for \$32,000 with Donald Castelli of Century 21 Castelli
6/29/2015	Offer accepted
7/03/2015	Back on the market
7/06/2015	Offer accepted
8/19/2015	Sold for \$32,000



## Relevant Statute

The Final Opinion says on page 3, last paragraph, that "On rebuttal, Petitioner referred to the relevant statute which says that the assessor cannot equate assessments with normal repairs made to the property." This makes no sense. The relevant statute, MCL 211.27(2), says, essentially, that the assessor cannot consider the value of normal repairs when determining the true cash value for assessment purposes.

## Relevance of Dates in Relation to Repairs

The Final Opinion on page 3, last sentence, says that "Further, Petitioner does not see the relevance of dates in relation to his repairs." When asked by the Tribunal Judge if he believes that his repairs "trumps" everything, including assessment dates and uncapping dates, Petitioner replied that the statute (MCL 211.27(2)) does not mention dates at all. (Whenever she is assessing, the assessor may not consider normal repairs until after the property is sold.)

## Petitioner's Rebuttal of Respondent's Evidence

The Final Opinion on page 3, Petitioner's Evidence, and page 5, Findings of Fact 11, does not mention that Petitioner explicitly said that he did not contest Respondent's after-repair valuation on Tax Day. Petitioner said that he really did not care what Respondent thought the property was worth after the repairs, because he should be taxed based on the property's before-repair value. Petitioner's letter of 9/6/2018 likewise says: "I am not arguing that the City's assessment of my house is wrong. My argument is that the city's assessment is an 'after-repair' appraisal which takes into consideration normal repairs performed after I bought the house." (last paragraph)

## Rent

The Final Opinion on page 5, Findings of Fact 9, says that the rent is \$950. The rent is \$930. Petitioner misspoke at the hearing.

## Respondent's Assessment Not Based on Normal Repairs

The Final Opinion on page 5, Findings of Fact 13, says "Respondent's 2016 assessment was not based on Petitioner's "normal" repairs to the subject property." This

is unclear because it could be interpreted to mean that that Respondent applied MCL 211.27(2). Petitioner suggests that Finding of Fact 13 be rewritten as: "Respondent's 2016 assessment did not apply MCL 211.27(2). The assessment considered only the value of the property in average or repaired condition, as it was on tax day."

### Value of the Property Before Repairs

The Final Opinion does not make a finding of fact as to the value of the property before it was repaired. This is important because application of MCL 211.27(2) requires before-repair and after-repair appraisals.

The only direct evidence in the case regarding the before-repair value is the MLS listing sheet and history of the property itself. This evidence was unrebutted. Respondent did not present evidence that the property's sale was not a market sale.

### Conclusions of Law

The Final Opinion's discussion of the Petitioner's case in the Conclusions of Law section is contained in one paragraph on pages 5 and 6. To support its conclusion that "Petitioner's contentions related to his purchase price and 'normal' repairs are given no weight or credibility in the determination of market value", the paragraph gives four reasons. In summary they are:

1. The property's assessment for 2018 changed based on the sale transaction in August 2015 and not based on Petitioner's repairs.
2. The assessment considered the property in average condition as it was on December 31, 2015, tax day.
3. The MLS photographs submitted by Petitioner show the property in average condition, not neglected or vandalized.
4. The property's sale was not "an arm's length sale transaction" because the Petitioner has not claimed it so and because the seller was HUD.

Reason one is wrong and irrelevant. Assessments are done yearly. They are not triggered by sales. "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 ..." MCL 211.2(2). Perhaps what is meant is "uncapping" instead of assessment. Petitioner has no issue with uncapping and this case is not about uncapping.



Petitioner is not contesting reason two. At both the hearing and in written evidence Petitioner has stated that the assessment on tax day was a valid after-repair assessment. But reason two does not invalidate MCL 211.27(2). When normal repairs have been done, the assessor must remove their contribution to the assessed value.

Reason three proves nothing relevant. The fact that MLS photos make the house look good does not mean 1) that the assessor may ignore MCL 211.27(2) (MLS photos do not determine the assessor's legislative duties), 2) that the house did not need repairs (Respondent, far from denying that repairs were needed, was the authority actually requiring the repairs), or 3) that the house was listed and sold for a non-market price by incompetent realtors (good photos are a sign of competence).

Reason four is defective. Regarding whether Petitioner claimed that the sale was specifically "an arm's length transaction", Petitioner does not remember whether he used those specific words, but whole point of providing evidence of professional marketing efforts is to show that the property sale was a market sale. Petitioner has contended this point at both hearings and in written evidence. Whether the sale was a fair market sale or an arm's length sale transaction or any equivalent term does not depend on pleading some magic phrase, but on the underlying evidence.

The professional marketing and sale of a property is evidence of a market sale. To overcome this evidence, some counter evidence should be presented. It is not enough to simply say the seller is HUD. No evidence has been presented that the sale was phony, or not arm's length, or that the licensed brokers and their agents who marketed the property were incompetent or unmotivated to do their professional duty to fetch the highest price for their client.

Even if reason four were true, and the sale was not a market sale, this does not excuse disobeying MCL 211.27(2). It would only make determining the before-repair value harder.

Therefore none of the reasons given in the Final Opinion's Conclusions of Law are valid to excuse the assessor from applying MCL 211.27(2) or to otherwise contradict Plaintiff's contentions regarding his purchase price, normal repairs, or correct assessed value.

## Footnote 12

The Final Opinion at footnote 12, page 5, says: "Petitioner's insistence that Respondent should have performed before and after valuations around Petitioner's repairs is **disingenuous** given Petitioner's faint reference to its own raw, unadjusted, unapplied sales data." (emphasis mine) Google shows synonyms of disingenuous as: insincere, dishonest, untruthful, false, deceitful, duplicitous, lying, mendacious; hypocritical. The idea of before and after appraisals is not Petitioner's invention. It comes directly from case law and the State Tax Commission. Petitioner would like this Tribunal Judge to explain why it is disingenuous for him to insist that Respondent follow the law.

Petitioner would also like an explanation as to what this Tribunal Judge means by "Petitioner's faint reference". Petitioner has submitted MLS data into evidence regarding the comparables used by Respondent to determine the after-repair valuation. This is Petitioner's regular practice in all his cases before the Tribunal. Assessors typically do not provide MLS data for their comparables and having this data has sometimes proved useful. But in the latest hearing Petitioner has not relied on the MLS data for comparables, and he has stated both in the hearing and in his letter of 9/6/2018 that he is not contesting Respondent's after-repair valuation. With respect to the before-repair valuation, Petitioner is relying solely on the actual sale of the subject property after it was well exposed in the MLS to the market by professional, state licensed brokers who have an ethical and legal obligation to obtain the highest price for the seller. So Petitioner has made either no use of MLS data (for after-repair valuation) or full use of MLS data (for before-repair valuation). Petitioner has not made "faint reference" to MLS data.

## III. Prayer for Relief

For the reasons stated above, Petitioner respectfully requests that the Tribunal reconsider and revise its Final Opinion.

### Proof of Service

I certify that on 12/5/2018 I served a copy of this motion upon Respondent by first class mail to:

City of Wayne, Assessments,, Attn. Sara Gilo  
3355 South Wayne Road  
Wayne, MI 48184

Respectfully submitted,  
/s/ Daniel Patru, P74387

*Daniel Patru*



FROM:

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Michigan Tax Tribunal  
PO BOX 30232  
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