STATE OF MICHIGAN
IN THE COURT OF APPEALS
DETROIT OFFICE

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

Court of Appeals No. 346894
Lower Court No. 16-001828-TT

Motion and Brief for Reconsideration

Proof of Service

Checklist

- Prep
  - ☑ Copy files in new directory
  - ☑ Clean up files
  - ☐ Read the rules, copying them and applying them
  - ☑ Reconsideration in Court of Appeals.
  - ☐ What are the required sections? In what order?
  - ☐ Where is SEV value defined?
  - ☐ What questions were presented in the original appeal?
- Write
  - ☐ mistake
  - ☐ Write solution
- Proof
  - ☐ A motion for reconsideration may be filed within 21 days after the date of the order or the date stamped on an opinion.
  - ☐ shall not exceed 10 double-spaced pages.
  - ☐ A copy of the order or opinion of which reconsideration is sought must be included with the motion.
  - ☐ Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3).
- example

☑ Frame the problem

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Motion

Petioner moves for reconsideration of the Final Opinion and Judgment (FOJ) under MCR 7.215(I).

opinion

This Court's decision is reasoned as follows:

I. Mathieu Gast does not apply for repairs done in the year of a transfer

MCL 211.27(2) did not prohibit the assessor from considering the impact of any "normal repairs" on the property's TCV for purposes of the 2016 tax year because there was a transfer of ownership of the subject property in 2015. *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 346894), p 3.

> Initially, we agree with the Tax Tribunal that because there was a transfer of ownership of the subject property in 2015, MCL 211.27(2) did not prohibit the assessor from considering the impact of any "normal repairs" on the property's TCV for purposes of the 2016 tax year.
>
> The taxable status of real property for a given tax year is "determined as of each December 31 of the immediately preceding year." MCL 211.2(2). Generally, property is assessed at 50its true cash value[.]" MCL 211.27a(1). However, the "taxable value" of property is subject to "capping," meaning it is limited to the property's taxable value in the immediately preceding year, subject to certain allowable adjustments. MCL 211.27a(2)(a); Const 1963, art 9, § 3. (footnote 2: "[B]efore ownership of property is transferred, its taxable value may increase no more than the lesser of the rate of inflation or five percent." Lyle Schmidt Farms, LLC v Mendon Twp, 315 Mich App 824, 831; 891 NW2d 43 (2016). Once ownership of the property is transferred, its taxable value is "uncapped," see id., and its taxable value for the year following the transfer is determined by the property's actual value, MCL 211.27a(3).)
>
> However, upon a transfer of ownership of property, the taxable value is "uncapped," meaning "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer." MCL 211.27a(3). The taxable value does not become capped again until the end of the calendar year following the transfer of ownership. MCL 211.27a(4); Michigan Props, LLC v Meridian Twp, 491 Mich 518, 530; 817 NW2d 548 (2012). Thus, because petitioner purchased the property in 2015 (i.e., there was a transfer of ownership), the property's taxable value for the 2016 tax year was to be determined by its actual assessed value as of December 31, 2015, without regard to any capping limitations.
>
> While MCL 211.27(2) does not expressly provide that it does not apply to "normal repairs" performed during a year when ownership of property is transferred (i.e., the taxable value becomes uncapped), the statute must be read in conjunction with other provisions of the General Property -4- Tax Act, MCL 211.1 et seq., and Const 1963, art 9, § 3. See Bloomfield Twp v Kane, 302 Mich App 170, 176; 839 NW2d 505 (2013) (statutes that relate to the same matter

are considered to be in pari materia and must be read together as a whole). It is apparent that MCL 211.27(2) was adopted to distinguish "normal repairs" or property maintenance from other improvements (e.g., "additions") that increase the value of property as long as the property is owned by the same party. In Toll Northville LTD v Twp of Northville, 480 Mich 6, 12; 743 NW2d 902 (2008), our Supreme Court, quoting WPW Acquisition Co v City of Troy, 466 Mich 117, 121-122; 643 NW2d 692 (2001), observed that the purpose of Const 1963, art 9, § 3, as amended in 1994 by Proposal A, is

> to generally limit increases in property taxes on a parcel of property, as long as it remains owned by the same party, by capping the amount that the "taxable value" of the property may increase each year , even if the "true cash value," that is, the actual market value, of the property rises at a greater rate. However, a qualification is made to allow adjustments for "additions."

As indicated, however, when property is sold, it becomes "uncapped" and the property's value for the following tax year is determined by its value as of December 31 of the preceding year. In other words, the property's TCV for the tax year following a transfer of ownership is determined by its value as of December 31 of the calendar year in which the transfer of ownership occurred. Accordingly, the restriction on consideration of "normal repairs" for purposes of calculating increases in TCV is intended to apply only while property is owned by the same party, and thus would not apply to repairs performed during a year in which ownership of the property is transferred. Rather, the taxable value of property for the tax year following a transfer of ownership would be 50the year there was a transfer of ownership). MCL 211.2(2); MCL 211.27a(1) and (3).

TCV "means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at a private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." MCL 211.27(1). TCV is synonymous with fair market value. Pontiac Country Club v Waterford Twp, 299 Mich App 427, 434-435; 830 NW2d 785 (2013).

Because petitioner purchased the subject property in August 2015, the taxable value of the property became uncapped between August 2015 and December 31, 2015, and, for the 2016 tax year, the assessor was required to determine the property's TCV as of December 31, 2015. Petitioner argues that under MCL 211.27(2), respondent can consider the value added by "normal repairs" only when petitioner sells the property, because the statute states that "[t]he assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold."While this interpretation may be correct with respect to repairs made during a tax year in which there is no transfer of ownership, it cannot apply to repairs made during a year in which there was a transfer of ownership because "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer," MCL 211.27a(3), which in turn is "determined as of each December 31 of the immediately preceding year," MCL 211.2(2). Thus, the tribunal correctly held that it was required to determine the TCV of the subject property on the basis of its fair market -5- value as of December 31, 2015, regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property.

II. The law of the case does not apply here

This case is not governed by *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) (Appendix at 37) because "this Court did not resolve whether petitioner's 2015 repairs to the property

could or could not be considered in determining the property's TCV for the 2016 tax year, but instead determined that "further proceedings are necessary to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." . . . More significantly, this Court did not address the effect of the property's transfer of ownership in 2015 on the tribunal's consideration of "normal repairs" under MCL 211.27(2) for purposes of the 2016 tax year. Because this issue was not actually addressed and decided in the prior appeal, the law-of-the-case doctrine does not apply." *Patru 2*, p 5.

III. The Tribunal did not err in finding that the repairs did not have bearing on the property's condition

Petitioner further argues that the tribunal erred by also finding that, regardless of the proper construction of MCL 211.27(2), petitioner's repairs did not have any bearing on the property's TCV, which was determined to be $50,400 as of December 31, 2015. We again disagree. The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it. The tribunal reviewed petitioner's Multiple Listing Service (MLS) printouts and photographs for both the subject property and comparable properties. The tribunal found that petitioner's MLS listing for the subject property showed a property in "average" condition, and that petitioner's photographs of the property, before any repairs, showed "a property that is livable and habitable with reasonable marketability and appeal." The tribunal noted that the purpose of petitioner's repairs was "to ready the property as a tenant rental." It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could be attributed to inflation and

increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property. The tribunal concluded that the "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,"and that "the assessment did not consider the increase in true cash value that was the result of normal repairs."

IV. The Law of the Case does not apply here

Petitioner seems to rely on the law-of-the-case doctrine to argue that under Patru I, the tribunal was required to determine whether petitioner's repairs qualified as "normal repairs" and was further prohibited from considering the impact of any "normal repairs" in determining the property's TCV for purposes of the 2016 tax year. In *Lenawee Co v Wagley*, 301 Mich App 134, 149-150; 836 NW2d 193 (2013), this Court explained:

> "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." New Props, Inc v George D Newpower, Jr, Inc, 282 Mich App 120, 132; 762 NW2d 178 (2009) (quotation marks and citation omitted). "[I]f an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." Id. (quotation marks and citation omitted; alteration in original). The doctrine is applicable "only to issues actually decided, either implicitly or explicitly, in the prior appeal." Grievance Administrator v Lopatin, 462 Mich 235, 260; 612 NW2d 120 (2000). "The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." Ashker v Ford Motor Co, 245 Mich App 9, 13; 627 NW2d 1 (2001).

In Patru I, this Court did not resolve whether petitioner's 2015 repairs to the property could or could not be considered in determining the property's TCV for the 2016 tax year, but instead determined that "further proceedings are necessary to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." Id., unpub op at 5. More significantly, this Court did not address the effect of the property's transfer of ownership in 2015 on the tribunal's consideration of "normal repairs" under MCL 211.27(2) for purposes of the 2016 tax year. Because this issue was not actually addressed and decided in the prior appeal, the law-of-the-case doctrine does not apply.

Petitioner further argues that the tribunal erred by also finding that, regardless of the proper construction of MCL 211.27(2), petitioner's repairs did not have any bearing on the property's TCV, which was determined to be $50,400 as of December 31, 2015. We again disagree. The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it. The tribunal reviewed petitioner's Multiple Listing Service (MLS) printouts and photographs for both the subject property and comparable properties. The tribunal found that petitioner's MLS listing for the subject property showed a property in "average" condition, and that petitioner's photographs of the property, before any repairs, showed "a property that is livable and habitable with reasonable marketability and appeal." The tribunal noted that the purpose of petitioner's repairs was "to ready the property as a tenant rental." It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could

be attributed to inflation and -6- increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property. The tribunal concluded that the "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," and that "the assessment did not consider the increase in true cash value that was the result of normal repairs." We reject petitioner's argument that the tribunal was required to calculate the property's TCV using a "before repairs" appraisal and an "after repairs" appraisal. Petitioner's reliance on the State Tax Commission's 2014 Bulletin No. 7 in support of this argument is misplaced. Indeed, page 3 of the Bulletin states:

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. In the year following a sale, the assessed value shall be based on the true cash value of the entire property. The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes. [Emphasis added.]

As already explained, because the taxable value of the subject property was uncapped due to the transfer of ownership in 2015, and respondent was permitted to assess the property on the basis of its actual TCV as of December 31, 2015, there was no need to determine the property's values before and after petitioner's "normal repairs" in 2015.

V. The tribunal made its own independent determination

Petitioner also argues that the tribunal erred by failing to make its own independent determination of the property's TCV. See Jones &Laughlin Steel Corp v City of Warren, 193 Mich App 348, 354-356; 483 NW2d 416 (1992). The record does not support this argument. The tribunal evaluated the evidence and proposed valuation methods offered by both parties. The tribunal found that "[r]espondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessment and 2016 uncapping of the subject property." The tribunal did not just automatically accept respondent's valuation. Rather, it analyzed respondent's sales-comparison data and found that "a reasoned and reconciled determination of market value is obtainable from Respondent's sales," which it concluded "supports the assessment and 2016 uncapping of the subject property."

VI. The Tribunal properly rejected the sale

Petitioner further argues that the tribunal erred by rejecting his 2015 purchase price of the property as determinative of its TCV. MCL 211.27(6) provides: Except as otherwise

provided in subsection (7), the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction. As used in this subsection and subsection (7), "purchase price" means the total consideration agreed to in an arms-length transaction and not at a forced sale paid by the purchaser of the property, stated in dollars, whether or not paid in dollars. -7- In this case, the tribunal considered petitioner's evidence of the 2015 purchase price for the property, but it also considered the nature of the sale, which involved a bank sale in which the grantor was the United States Department of Housing and Urban Development. The tribunal found that the seller was not necessarily motivated to receive market value for the property and that the property's purchase price was not presumptive of its TCV. The tribunal instead gave greater weight to the evidence submitted by respondent in support of its sales-comparison approach to valuation, which was based on sales of five properties similar in age and with comparable square footage, style, siding, and condition. The tribunal found that respondent's evidence provided "the most reliable and credible valuation evidence" and supported respondent's assessment of the subject property.

Issues

1. Does the subject's sale comform to the sales comparision approach, one of the three recognized methods of valuation?
2. Does MCL 211.27(6) bar the Tribnual from using the subject's sale to set its true cash value?
3. Where the Tribunal based its valuation on the subject's sale along with two other comparable sales, did the Tribunal err when did not discount the subject's sale price because of market decline even though it discounted the comparables?

4. Did the Tribunal err in relying on admittedly flawed analysis to reach its valuation?

Facts

I. Appellant buys the house, repairs it, and appeals its assessment

Appellant purchased the subject house in August 2015 for $32,000. The house was sold by the Department of Housing and Urban Development (HUD) through a real estate broker who had listed the house on the MLS. MLS Listing (MTT Docket Line 32) (Appendix at 9). At the time of purchase, the house needed numerous repairs, most of which were required by the City to obtain a Certificate of Occupancy. List of Repairs (MTT Docket Line 36) (Appendix at 10). By tax day, 12/31/2015, Appellant had repaired the house and rented it. Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ), p 4-5 (Appendix at21 – 22).

The City of Wayne assessed the house on tax day at $50,400 true cash value, rather than the $32,000 purchase price. Board of Review Decision (MTT Docket Line 2) (Appendix at 5).

Appellant appealed to the Board of Review and then to the Tax Tribunal. Appellant does not dispute that the house was worth $50,400 on tax day in its repaired condition. But he contends that under MCL 211.27(2) the repairs were normal repairs and that the true cash value for assessment purposes cannot include the value of the repairs. He contends that the correct true cash value is therefore the before-repair value. Explanatory Letter (MTT Docket Line 38), p 2 (Appendix at7).

Appellant contends that the best evidence of the house's before-repair value is its sale price of $32,000 when it was unrepaired. Id. The house was marketed in the normal way and for a sufficient time. Licensed real estate brokers listed the house on the MLS, initially for $29,900 on 4/3/2013 and later for $32,000 on 6/17/2015. Before Appellant bought the property there had been at least two accepted offers on the

property that failed to close. MLS History (MTT Docket Line 33) (Appendix at 8).

The City contends that the true cash value should be the after-repair value. City's Evidence (MTT Docket Line 11) (Appendix at 13).

II. The Tribunal refuses to apply nonconsideration but this Court reverses

The Referee who first heard the case at the Tribunal refused to apply nonconsideration. She held that the repairs were not normal repairs because the house was in substandard condition. "Thus, the referee determined that if a property is purchased in substandard condition, any repairs done on the property to bring it into good repair do not constitute normal repairs, maintenance, or replacement within the meaning of MCL 211.27(2), so the increase in TCV resulting from those repairs can be immediately considered in determining the TCV for assessment purposes." *Patru 1*, p 2 (Appendix at 38).

This Court reversed. "Nothing in MCL 211.27(2) provides that the repairs . . . 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 . . ." *Id.* p 5.

This Court remanded for a rehearing to determine if the repairs were normal repairs because "[t]he referee did not fully evaluate that evidence—which included testimony—because [she] misapprehended how to properly apply MCL 211.27(2)." *Id.*

III. On rehearing, the Tribunal again refuses to apply nonconsideration

The rehearing was held on 10/18/2018 before Tribunal Judge Marcus L. Abood. He ruled that the repairs were normal repairs, worth approximately $10,000. FOJ, p 4 (Appendix at21). However, he went on to rule on pages 5 and 6 of the FOJ that "Petitioner's contentions related to his purchase price and 'normal' repairs are given no weight or credibility in the determination of market value" because:

1. The property's assessment for 2016 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 12/31/2015, 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.

Judge Abood did not determine the property's before-repair value. Instead, he ruled that the property must be valued in its repaired condition because it was repaired before tax day. FOJ, p 5 (Appendix at22). He accepted the City's comparative sales analysis, writing: "Respondent's sales adjustment grid does not included a line-item entry for repairs. This comparative analysis is devoid of any relationship to Petitioner's "normal" repairs to subject property which occurred before the issuance of a certificate of occupancy and the December 31, 2015 tax day." FOJ, p 6 (Appendix at23).

IV. Appellant files a Motion for Reconsideration

Appellant responded to the FOJ with a motion for reconsideration. The motion points out that this Court reversed the previous judgment of the Tribunal because "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." Motion for Reconsideration (MTT Docket Line 52), p 1 (Appendix at26). The Tribunal was repeating the mistake, except this time after admitting that the repairs were normal repairs. Id. p 2.

The Motion for Reconsideration also pointed out that the Tribunal had not done before-repair and after-repair appraisals as required by MCL 211.27(2). Id. p 4.

The Motion for Reconsideration also pointed out flaws in the four reasons given in the FOJ for giving no weight or credibility to Appellant's contentions related to his

purchase price and normal repairs. Specifically:

1. The FOJ claimed the property's assessment changed based on the sale transaction. Appellant pointed out that assessments are not based on sales but rather are done yearly. The property *uncapped* as a result of the sale, but Appellant had no issue with uncapping. Id. p 4.
2. The FOJ claimed the assessment considered the property in average condition as it was on 12/31/2015, tax day. Appellant pointed out that this does not invalidate MCL 211.27(2) which requires the removal of the contribution of normal repairs to the assessed value. Id. p 5.
3. The FOJ claimed that the MLS photographs submitted by Petitioner show the property in average condition, not neglected or vandalized. Appellant pointed out that photos do not excuse performance of MCL 211.27(2); nor do they contradict the fact that the City itself inspected the house and required repairs; nor do the photos, put in the MLS by the real estate brokers who listed and sold the house, show that the house was listed and sold at a non-market price. Id. p 5.
4. The FOJ claimed that 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. Appellant pointed out that he had included MLS data to show that the property's sale was a market sale and that merely mentioning that the seller was HUD is not evidence that the sale was not a market sale. Id. p 6.

V. The Tribunal denies the Motion for Reconsideration

Tribunal Judge David B. Marmon, instead of Judge Abood, denied Motion for Reconsideration. He did not specifically rebut Appellant's points made in the motion. Instead he clarified why the Tribunal was not applying MCL 211.27(2). The Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at35) contains the Tribunal's reasoning. In summary:

1. The Tribunal did not determine the before-repair value because:
   (a) the text of the statute does not plainly require a before-repair appraisal;
   (b) the situations in the second sentence of MCL 211.27(2) are not at issue;
   (c) the STC guidance requires appraisal if the value of the repairs are on the assessment roll, and here they are not;
   (d) STC guidance lacks the force of law; and
   (e) Petitioner has the burden of proof and the Tribunal disagrees with Petitioner's evidence (the sale price is given no weight or credibility).
2. The Tribunal gave the property's sale price "no weight or credibility" because the seller was a government entity (HUD) who may not have been motivated to receive market value.
3. The Tribunal did not give nonconsideration treatment to the normal repairs because the assessment did not consider the repairs. The property's true cash value assessment was $48,000 in the year before the repairs and $50,400 after the repairs. The 5% change was due to inflation not repairs. Also, the pictures on the MLS showed the property in average condition.

Mathieu Gast Statute – MCL 211.27(2)

The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold.

For the purpose of implementing this subsection, the assessor shall not increase the construction quality classification or reduce the effective age for depreciation purposes, except if the appraisal of the property was erroneous before nonconsideration of the normal repair, replacement, or maintenance, and shall not assign 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.

The increase in value attributable to the items included in subdivisions (a) to (o) that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll.

This subsection applies only to residential property.

The following repairs are considered normal maintenance if they are not part of a structural addition or completion: [repairs (a)-(o) omitted]

Argument

I. This Court creates an unsupported exception to Mathieu Gast

This Court holds that Mathieu Gast does not apply if a home purchaser makes normal repairs in the year of the purchase.

> Initially, we agree with the Tax Tribunal that because there was a transfer of ownership of the subject property in 2015, MCL 211.27(2) did not prohibit the assessor from considering the impact of any "normal repairs" on the property's TCV for purposes of the 2016 tax year.

Opinion at 3. This interpretation of the law is contrary to the text of the statute, the intent of the law, the STC's interpretation, and the tax act as a whole.

A. This Court's interpretation of Mathieu Gast violates its plain meaning

This Court would disregard the meaning of the words of the statute, specifically the word "until." The Mathieu Gast statute, MCL 211.27(2), begins like this:

> The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs . . . in determining the true cash value of property for assessment purposes *until* the property is sold. [Emphasis added.]

The word "until" makes clear that the sale which allows the consideration of the normal repairs must happen after the repairs are made. This Court's interpretation of the statute allows consideration of normal repairs because of a sale completed before the repairs. This violates the plain meaning of the statute.

In a situation like the one in this case, where a purchaser makes repairs after the purchase but in the same year, application of Mathieu Gast is straightforward: the true cash value on December 31 of the year of purchase needs to:

1. include (consider) all the normal repairs that were done by the previous owner before the property sold, and
2. not include (not consider) all the normal repairs that were done after the property was sold, because those repairs were done by an owner who had not sold the property yet.

B. This Court's interpretation of Mathieu Gast violates the statute's intent

Mathieu Gast clearly gives a tax benefit to owners who perform normal repairs. The benefit lasts until the property is sold. This Court's interpretation reads this statute that encourages normal repairs as silently excluding from its benefits only those diligent homeowners who made repairs in the year they purchased their properties.

C. This Court's interpretation of Mathieu Gast is not supported by the STC

This Court's interpretation of Mathieu Gast is also not supported by the State Tax Commission, contrary to this Court's assertion. On page 6 of its opinion, this Court cites Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act), at 3 ((Appendix at 45)):

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. *In the year following a sale, the assessed value shall be based on the true cash value of the entire property.* The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes. [Emphasis added by this Court.]

This Court reads the emphasized sentence out of its context. The whole paragraph discusses when the exemption for normal repairs ends. The answer is given in the first sentence: the exemption ends "in the year after *the owner who made the repairs* . . . sells the property." The second sentence of this paragraph merely explains that after the repairer sells the property, the value of the previously exempt repairs is included in the assessed value. The second sentence does not create a major exception to the statute in the middle of an unrelated paragraph. There is no elephant in a mouse hole here.

D. This Court's interpretation of Mathieu Gast is unsupported by the rest of the tax act

This Court relies heavily on MCL 211.27a, which discusses uncapping, and MCL 211.2(2), which defines tax day as December 31 of the previous year, to support its position that:

> [Mathieu Gast nonconsideration] cannot apply to repairs made during a year in which there was a transfer of ownership because the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer, MCL 211.27a(3), which in turn is determined as of each December 31 of the immediately preceding year, MCL 211.2(2). Thus, the tribunal correctly held that it was required to determine the TCV of the subject property on the basis of its fair market value as of December 31, 2015, *regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property.* [Cleaned up. Emphasis added.]

Opinion at 4-5. It is true that a property's taxable value in the year after a transfer is based on its true cash value as of tax day, December 31 of the year of the transfer. The question is, what is the true cash value?

True cash value is defined in MCL 211.27. There are eight subsections in MCL 211.27. All of them relate to the determination of "true cash value" and none of them, including the second, Mathieu Gast, are in any way annulled by MCL 211.27a(2) which simply says that in the year following a transfer the taxable value is the state equalized value.

This Court's interpretation of Mathieu Gast essentially creates a bespoke definition of "true cash value" only for MCL 211.27a(3). This is inconsistent with the idea of reading the tax act as a whole.

II. This Court misapplies the law of the case doctrine

Besides misinterpreting Mathieu Gast, this Court has also misapplied the law of the case doctrine in two ways. First, it misapplied the doctrine in finding that this Court had left open the question in *Patru 1* as to whether Mathieu Gast applies for repairs done by a purchaser in the year of purchase. This Court had not left open this question. Instead, this Court, and the Tribunal before it, had assumed that there

was no such exception to Mathieu Gast. This point was not brought up in the first go-around. Instead, this Court had remanded solely on the question of whether normal repairs had been performed. It was assumed by all, the Petitioner/Appellant, the Respondend/Appellee, the Tribunal, and this Court, that once normal repairs were found, that the assessed value would be set at the pre-repair value.

> In its final opinion and judgment, the Tribunal recognized that the referee erred in its interpretation of MCL 211.27(2); however, it nevertheless upheld the determination of TCV. The Tribunal reasoned that because the spreadsheet detailing the repairs completed on the property had not been submitted before the hearing, it had no obligation to consider that evidence, so it concluded that Patru failed to establish that the repairs constituted normal repairs. However, as stated above, Patru did present evidence at the hearing in support of his claim that MCL 211.27(2) applied. The referee did not fully evaluate that evidence—which included testimony—because it misapprehended how to properly apply MCL 211.27(2). Further, because the hearing was not transcribed, we cannot determine whether the evidence Patru provided at the hearing was reflective of the information on the spreadsheet submitted with his exceptions. If the testimony provided was an oral recitation of the information included on the spreadsheet, then Patru presented testimony sufficient to establish that at least some of the repairs constituted normal repairs under MCL 211.27(2), and so the increase in TCV attributed to those repairs should not be considered in the property's TCV for assessment purposes until such time as Patru sells the property. However, if Patru merely testified that he did some carpentry, electrical, and masonry repairs and no further explanation of the work that was provided, then he would have arguably failed to support his claim. Either way, on the record before this Court, we cannot evaluate the sufficiency of the evidence presented at the hearing. Thus, we conclude that further proceedings are necessary in order to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2). Accordingly, we remand to the Tax Tribunal for a rehearing. Further, because the existing record is insufficient to resolve whether the repairs are normal repairs within the meaning of the statute, the parties shall be afforded further opportunity to submit additional proofs. See Fisher v Sunfield Township, 163
>
> walk and broken treads on front steps, which is a normal repair under MCL 211.27(2)(b), and repainted the interior, which is a normal repair under MCL 211.27(2)(k). -6- Mich App 735, 743; 415 n 297 (1987) (requiring rehearing when it was not clear whether the proofs submitted were sufficient to establish that repair expenditures were normal repairs). (footnote 3: We note that, on reconsideration, the Tribunal faulted Patru for failing to establish a pre-repair TCV. However, as the Tribunal must make its own, independent determination of TCV, Great Lakes Div of Nat'l Steel Corp v City of Ecorse, 227 Mich App 379, 389; 576 NW2d 667 (1998), we conclude that Patru's failure to persuade the Tribunal that the property's purchase price reflected the pre-repair TCV is irrelevant. The Tribunal independently had to evaluate all the evidence presented and, properly applying MCL 211.27(2), arrive at the property's TCV.)

Secondly, this Court failed to apply the law of the case doctrine in upholding the Tribunal's second ruling which was based on the second Tribunal's opinion that the subject property was is average condition at the time of purchase. The first Tribunal found the opposite, and indeed based its decision in part on the fact that the repairs were not normal because the property's condition was too poor.

> Thus, the referee determined that if a property is purchased in substandard condition, any repairs done on the property to bring it into good repair do not constitute normal repairs, maintenance, or replacement within the meaning of MCL 211.27(2), so the increase in TCV resulting from those repairs can be immediately considered in determining the TCV for assessment purposes. The referee then determined that the TCV for the property was $50,400.

In this case both the law and the facts were changed by the Tribunal in the 2nd go-around, contrary to the law of the case.

This case is not governed by *Patru 1* because "this Court did not resolve whether petitioner's 2015 repairs to the property could or could not be considered in determining the property's TCV for the 2016 tax year, but instead determined that "further proceedings are necessary to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." . . . More significantly, this Court did not address the effect of the property's transfer of ownership in 2015 on the tribunal's consideration of "normal repairs" under MCL 211.27(2) for purposes of the 2016 tax year. Because this issue was not actually addressed and decided in the prior appeal, the law-of-the-case doctrine does not apply." *Patru 2*, p 5.

> Further, because the hearing was not transcribed, we cannot determine whether the evidence Patru provided at the hearing was reflective of the information on the spreadsheet submitted with his exceptions. If the testimony provided was an oral recitation of the information included on the spreadsheet, then *Patru presented testimony sufficient to establish that at least some of the repairs constituted normal repairs under MCL 211.27(2), and so the increase in TCV attributed to those repairs should not be considered in the property's TCV for assessment purposes until such time as Patru sells the property.* However, if Patru merely testified that he did some carpentry, electrical, and masonry repairs and no further explanation of the work that was provided, then he would have arguably failed to support his claim. Either way, on the record before this Court, we cannot evaluate the sufficiency of the evidence presented at the hearing. Thus, we conclude that further proceedings are necessary in order to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2). Accordingly, we remand to the Tax Tribunal for a rehearing. Further, because the existing record is insufficient to resolve whether the repairs are normal repairs within the meaning of the statute, the parties shall be afforded further opportunity to submit additional proofs. See *Fisher v Sunfield Township*, 163 -6- Mich App 735, 743; 415 n 297 (1987) (requiring rehearing when it was not clear whether the proofs submitted were sufficient to establish that repair expenditures were normal repairs). (footnote 3 We note that, on reconsideration, the Tribunal faulted Patru for failing to establish a pre-repair TCV. However, as the Tribunal must make its own, independent determination of TCV, *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998), we conclude that Patru's failure to persuade the Tribunal that the property's purchase price reflected the pre-repair TCV is irrelevant. The Tribunal independently had to evaluate all the evidence presented and, properly applying MCL 211.27(2), arrive at the property's TCV.)

Patru 1, p 5-6 (Appendix at 41–42). Penultimate paragraph of the opinion.

Emphasis added.

III. This Court allows the Tribunal to improperly assume facts

This Court also erred when it endorsed the idea that Tribunal could use the previous year's uncontested assessed TCV to override the actual evidence presented in the case as to the subject property's pre-repair TCV.

> It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could be attributed to inflation and -6- increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property.

Patru 2, p 5-6.

The previous year's assessed value was not at issue, the time for its appeal having passed before Petitioner/Appellant had purchased the property.[1] At issue was the pre-repair value of the property which under *Id* requires the Tribunal to make an independent determination. The Tribunal cannot assume that City's previous-year's assessed TCV was correct.

> It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could be attributed to inflation and -6- increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property. The tribunal concluded that the "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," and that "the assessment did not consider the increase in true cash value that was the result of normal repairs."

The same error is present when this Court endorses the Tribunal's substitution of opinion for fact regarding the seller's motivation.

[1]If the previous year's assessed TCV is presumed to be the actual TCV of the property on the previous tax day, tax appeals could be settled simply by looking at property appreciation. But *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) teaches that the Tax Tribunal must independently determine the TCV at issue using primary evidence, sales studies and replacement cost estimates.

normal repairs must be considered when when an owner performs the repair in the same year as when the owner purchases the property.

they are performed in the same year as nonconsidered only when performed in

IV. This opinion meets the standards for publications, so it should be correct

> Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals
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> (A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name shall be published by the Supreme Court reporter of decisions. A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court. An opinion not designated for publication shall be deemed "unpublished."
>
> (B) Standards for Publication. A court opinion must be published if it: n (1) establishes a new rule of law;
>
> (2) construes as a matter of first impression a provision of a constitution, statute, regulation, ordinance, or court rule;
>
> (3) alters, modifies, or reverses an existing rule of law;
>
> (4) reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a reported decision since November 1, 1990;
>
> (5) involves a legal issue of significant public interest;
>
> (6) criticizes existing law; or
>
> (7) resolves a conflict among unpublished Court of Appeals opinions brought to the Court's attention; or
>
> (8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan Statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid.

Standard of Review

MCL 2.119(F)(3) says:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

A palpable error is a clear error "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Luckow Estate v Luckow*, 291 Mich App 417, 426; 805 NW2d 453, 453 (2011) (cleaned up).

"The palpable error provision in MCL 2.119(F)(3) is not mandatory and only provides guidance to a court about when it may be appropriate to consider a motion for rehearing or reconsideration." *People v Walters*, 266 Mich App 341, 350; 700 NW2d 424, 430 (2005).

"The rule [MCL 2.119(F)(3)] does not categorically prevent a trial court from revisiting an issue even when the motion for reconsideration presents the same issue already ruled upon; in fact, it allows considerable discretion to correct mistakes." *Macomb County Department of Human Services v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

Relief

Therefore because

Proof of Service

I certify that I served a copy of these Exceptions on Respondent's representative, Emily Pizzo, by email on the same day I emailed them to the Tribunal.

Respectfully Submitted,
/s/ Daniel Patru, P74387
February 27, 2020