STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

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

Appellant's Reply to Answer to Leave to Appeal

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Table of Contents

Table of Authorities

Reply

- ☐ Review for content: incorporate the 750 words and keep notes into body.
- ☐ Review for accuracy: Read the answer, marking all assertions, and then make sure they are addressed in the reply.
- ☐ Write an introduction in the Reply section.
- ☐ Write a relief section.
- ☐ Review for structure. Can you make the argument clearer?
- ☐ Review for wording. Are you using the right words?
- ☐ Review for errors. Did you spell everything correct?
- ☐ Check references for accuracy.
- ☐ Send a copy for review to Tim and Delia.
- ☐ Efile it.

Summarize

I. This Court should review the Court of Appeals's New Approach to a Common Situation

Appellee's counter-statement of the question presented characterizes this case as "garden-variety." This is both right and wrong. It is right because the facts of this case do represent a common, three-step situation:

1. A house is allowed to fall into disrepair.
2. The house sells at a discount compared to similar but well-maintained houses.
3. The house is bought and repaired.

While the house is falling into disrepair, the taxing authority continues to assess the property as if it were in average condition.[1] The owner who is not able or willing to keep the house repaired often also fails to appeal the assessment, so the house's over-assessment is left unchallanged until the house is sold. It is the purchaser who buys and repairs the house who also appeals the assessment.

Thus the purchaser who has repaired the house has two contentions at appeal. First, the purchaser contends that the house in the unrepaired state was over-assessed. And second, that under Mathieu-Gast, the value added by the repairs should not be considered. These two contentions in a case involving Mathieu-Gast is why it is important that the tribunal make an independent determination of the before-repair value. The prior-year's TCV is often uncontested and wrong, reflecting, as it did here, the assumption that the house is in a repaired condition.

Appellant believes that this situation is common. While he doesn't have statistics, Appellant is currently counsel to five cases before the tax tribunal that are being held in abeyance pending the outcome of this case, because they involve this situation.[2]

Although the factual situation of this case is common, the approach taken by the tax tribunal is new. The way cases like this were usually handled is detailed in the Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act).[3] The bulletin at paragraphs 3 and 4 under the section "General Information" requires that assessors to determine the true cash value of repairs by performing before-repair and after-repair appraisals and subtracting them. This is the approach implied by the

[1]The assessor in this case testified that her assessments are done using mass appraisal which "does not account for properties one-by-one", but rather she "*assumes* that properties are in 'average' condition." Second Final Opinion and Judgment (FOJ 2, Tribunal entry 48, issued December 4, 2018), at 4 (emphasis added).

[2]Tax Tribunal cases 18-002532, 18-002661, 18-002570, 18-002662, and 18-002664 involve the same situation as this case and are currently being held in abeyance pending this case's resolution.

[3]STC Bulletin 7 of 2014 was superceded by STC Bulletin 7 of 2020 because the Mathieu-Gast Statute was amended to include alternative energy systems. Other than being updated to reflect the amended statute, the 2020 bulletin is the essentially same as the 2014 bulletin. (The only additional change is that the 2020 bulletin adds underlining to the third paragraph in the section "Calculating New and Loss for Assessment and Equalization Purposes" but does not change the wording.)

plain language of the statute, which requires a determination of the value added by the repairs. Appellant's Question Presented asks this Court to endorse this approach.

In this case, the tax tribunal has departed from the STC's guidance[4] and come up with several exceptions to the statute which avoid the STC's approach. The first exception was that the statute does not apply to properties in substandard condition. This was rejected by the court of appeals in *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) (Patru I) (Appendix at 37). On remand, the tribunal came up with several more exceptions which were then endorsed by the court of appeals in *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 346894) (Patru II). These exceptions include:

1. **The uncapping exception**: Mathieu-Gast does not apply to repairs done after a sale but before tax day (December 31) because the property's taxable value is uncapped for the tax year following a transfer.
2. **The prior assessment exception**: Mathieu-Gast does not apply if the prior year's assessed value supports the assessed value.

Both of these exceptions are new. Neither the tax tribunal nor the court of appeals nor Appellee cite any caselaw in support. Appellant believes that these new approaches are wrong and asks this Court to overrule them and confirm that application of Mathieu-Gast requires before-repair and after repair appraisals. The fact that this situation is a common one and likely to reoccur makes it important for this Court to hear this case now, while the errors are still in their infancy, rather than in several years, if ever, when the errors have been perpetuated and entrenched in

[4]Neither the tax tribunal nor explicitly acknowledged that they were departing from the STC's guidance but their opinions make it clear that they do. The tax tribunal addresses this in footnote 7 of its Order Denying Reconsideration of 2nd FOJ (MTT Docket Line 51, issued December 14, 2018) where it quotes STC Bulletin 7 of 2014 out of context and then asserts that "STC guidance lacks the force of law." The court of appeals asserts that it is in accord with the STC but as pointed out in Petitioner's Motion to the Court of Appeals to Reconsider (filed March 8, 2020), at 5, and Petitioner's Leave to Appeal (filed July 20, 2020), at 17, the court of appeals also reads the STC's bulletin out of context.

many cases, at least at the Tribunal level.

II. The uncapping exception violates the plain language of the statute

Appellee's defense of the uncapping exception is wrong both as a statement of law and as a summary of the argument of the court of appeals. Appellee writes that the court of appeals "correctly observed" that the statute's words, "The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs . . . until the property is sold," *requires* determination of the TCV "on the basis of its fair market value as of December 31, if the property was sold earlier that year." Appellee's Answer to Leave to Appeal (filed August 13, 2020), at 7.

To the contrary, the statute requires nonconsideration until the property is sold, that is, there must be a sale *after* the repairs to end nonconsideration. Ending nonconsideration because of a sale *before* the repairs violates the plain words of the statute. The court of appeals admits as much on pages 3-4 of its opinion, "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 transfered (i.e., the taxable value becomes uncapped), the statute must be read in conjunction with other provisions of the General Property Tax Act . . ."

Rather than relying on the plain words of the statute, the court of appeals ignores them and instead grounds its uncapping exception on a provision in the next section of the GPTA, MCL 211.27a(3), which implements Proposal A's uncapping, "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." *Patru II*, p 4. [5]

[5]As pointed out in the Leave to Appeal, at 18, and more extensively in the Motion to COA for Reconsideration, at 4-5, the court of appeals errs when it equates the equalized assessed value (state equalized value) of MCL 211.27a(3) with fair market value "regardless of any 'normal repairs' made by petitioner . . ." *Patru II*, p 5. True cash value is defined in MCL 211.27, which includes the Mathieu-Gast Statute, MCL 211.27(2). Thus the value due to normal repairs is not included in the true cash value until the property is sold.

III. The prior assessment exception violates the plain language of Mathieu-Gast and the tribunal's duty to make an independent determination

Appellee claims that the "repairs had no bearing, whatsoever, on respondent's assessment." Answer, at 8. This is a problem with the court of appeals's opinion, not a feature. Mathieu-Gast's plain language does not permit normal repairs to be ignored. Instead, the value of the repairs must be determined and "indicated on the assessment roll" and the pre-repair value must be used for assessment purposes until the property is sold.

The court of appeals relies on the prior year's assessed value to avoid Mathieu-Gast, what I have named "the prior assessment exception." The exception works by assuming that the prior year's assessment is correct and then ignoring Mathieu-Gast if the true cash value at issue is the same, adjusted for inflation. Contrary to Appellee's assertion at *Id*, this violates rather than meets the requirement that the tribunal make an independent determination.

This requirement was expressed in *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich. App. 379, 389-390 (1998)[6]:

> The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances. . . . The Tax Tribunal has a duty to make its own, independent determination of true cash value. . . . The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value. [cleaned up]

Thus an independent determination refers to using an appraisal approach that is "accurate and reasonably related to fair market value" such as capitalization-of-income,

[6]Appellant's Leave to Appeal, at 13-14, cites *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) which also lists the same three approaches to valuation at page 353 and also makes it clear that the tribunal violated its duty of independent determination when for it to "simply accepted respondent's assessment without discussing why the assessment reflected the true cash value of the property." *Id.* at 355-356.

sales-comparison, or cost-less-depreciation. The prior assessment exception is not such an appraisal approach.[7] Thus the tribunal's use of a prior assessment exception violated its duty to make an independent determination of the true cash value.

Not only is the prior assessment exception a violation of the duty of independent determination, but, as pointed out in Appellant's Leave to Appeal, at 15, it is also problematic in two other ways. First, an uncontested assessment not particularly reliable because it is determined by mass appraisal which, as the assessor testified in this case, "does not account for properties one-by-one", but rather "*assumes* that properties are in 'average' condition." FOJ 2, at 4 (emphasis added). And second, allowing a tribunal to start its analysis with a prior assessment and then simply adjusting for inflation would perpetuate error because by the time an petitioner files an appeal, the time for appealing the prior year's assessment has already passed.

IV. The Law of the Case

Appellee discusses the law of hte case at Answer, at 7. Although Appellant believes that *Patru II* violated the law of the case expressed in *Patru I*,[8] Appellant did not make this argument in his Leave to Appeal. Appellant believes that this Court's limited and valuable time would be best spent on laying out the correct application of Mathieu-Gast.

[7]The assessment is the *result* from a mass-appraisal computer program. A "mass-appraisal cost approach" can be a valid approach, but the record card for the relevant year and all the calculations must be provided. See Stephen Lasher, "STC - Defending your Assessment in a Tax Tribunal Small Claims Hearing", https://youtu.be/kPClBCIlW6U?t=315 (viewed August 25, 2020). Here no such documentation for the prior year's assessment was in evidence.

[8]As explained in his Motion to COA for Reconsideration, at 6-7, Appellant believes that *Bennett v Bennett*, 197 Mich. App. 497, 501; 496 N.W.2d 353 (1992) teaches that the law of the case precludes even correct arguments if they could have been brought up in the first appeal. Here the court in *Patru II* violated the law of the case because it accepted the tribunal's uncapping and prior assessment exceptions even though they could have been presented in the first appeal.

V. Other matters

Appellee asserts that the MTT's assessment would not cause material injustice because the amount in question here is a TCV increase of $2,400. Answer, at 6. Actually, the TCV in dispute is the difference between the unrepaired house ($32,000) and the repaired house ($50,400). The tax on the repaired house would be 57.5% more than on the unrepaired house.

VI. Conclusion: This case meets the Court's standard for review

Thus this Court should hear this case, despite Appellee's arguments to the contrary.

1. Although the factual situation of this case is fairly common, this is not reason not to take the case, but rather a reason to take it. This situation will occur again, in fact, several cases are already waiting for resolution of this case. And while the situation is common, the tax tribunal's approach in creating two new exceptions to Mathieu-Gast is new and at odds with the STC. Therefore it is important that this Court settle the law in this area.
2. The uncapping exception violates the plain language of Mathieu-Gast.
3. The prior assessment exception violates the tribunal's duty to make an independent determination, as laid out in *Jones & Laughlin* and *Great Lakes Div of Nat'l Steel Corp*.
4. Losing this case will cause Appellee material injustice through 57% higher yearly property tax.

VII. keep

Winifred answer

This is a normal tax case

Five other cases are being held in abeyance.

It's special because it highlights how the tribunal and coa mishandle mg

Its commonness is an argument for hearing the case and ensuring that the law is applied correctly in this case and in the many others like it.

P's question involves the correct application of mg. If this is understood, then the COA's mistakes will be apparent

Fn: r does not address this directly

First note the context: mcl 200.27 defining TCV

Mg temporarily removes from TCV the value from normal repairs

To ensure that the repairs are accounted for and not ignored, the statute requires that the value contributed by the repairs be noted in the assessment roll

Otherwise, mg does not change how TCV is determined, specifically mg does not excuse the tribunal from making its own independent determination of TCV per Jones . Also, if the house was over assessed before the repairs, the repairs should not prevent a correction of the over assessment.

Note that the stc bulletins agree with before and after appraisals and the tax tribunal explicitly claimed that it was not obligated to follow the stc's guidance. The coa misquoted the bulletin to make it appear that there was no conflict.

Applying this standard to this case, the errors become apparent

The COA's uncapping exception is a straight up violation of mg. It counts normal repairs because of a prior sale whereas mg explicitly requires non consideration until the property is sold.

Besides violations the plain language of the statute, the coa errs in failing to apply mg to help define TCV, essentially creating a custom definition which applied only m uncapping years

Secondly, the coa errs in ignoring normal repairs because of the prior years assessment. This violates mg's requirement to account for the value of the repairs in the assessment roll. It also violates Jones's requirement of independent determination. Mg does not change jones. Just as it would violate Jones if the tribunal began its

analysis by assuming the correctness of the prior years TCV in a regular case, so in a mg case, assuming the correctness of the prior year's TCV to determine the before repair value violates Jones.

Regarding law of the case, appellant has chosen not to allege the error to focus the case on clarifying the law regarding mg. But see motion for reconsideration which cites Bennett.

VIII. 750 words

Respondent in its brief characterized this case as a "garden-variety tax case." This is true. The situation in this case is quite common. In fact, Petitioner is counsel in five other cases before the Tribunal which are being held in abeyance pending the resolution of this case. The situation in these cases is this: a buyer buys a house at a discount because the house needs repairs. The house is worth less than its assessed value because the mass appraisal method used by assessors assumes that all the houses are in average condition.

Respondent, the Tax Tribunal, and the Court of Appeals believe that to gain the benefit of Mathieu-Gast, such a buyer must keep the house in disrepair, possibly vacant, until the New Year so that the buyer can obtain a lower assessment based on the poor condition of the house on Tax Day, December 31. After the New Year, the buyer can make normal repairs which, per Mathieu-Gast, will not be considered for assessment purposes until after the buyer sells the property.

The Tax Tribunal gave three reasons for this view. First, MG does not apply to a house in substandard condition. This was reversed by the first COA to hear the case. Second, MG contains a hidden, uncapping exception, which requires that normal repairs be considered on the first tax day after a sale. Third, if the property was assessed in normal condition in the year before the repairs, then an assessment valuing the property in normal condition satisfies MG because the assessor did not

need to consider the repairs for the assessment. The second COA upheld these last two reasons.

On the other hand, Petitioner believes that Mathieu-Gast allows such a buyer to make normal repairs right away and have those repairs "not considered" for assessment purposes in a tax appeal. He bases this first on the plain language of the statute which require nonconsideration "until the property is sold."

Relief

Therefore, under MCR 7.305(B)(3), MCR 7.305(B)(5a), and MCR 7.305(B)(5b), this Court should take up this case on appeal.

Respectfully Submitted,
/s/ Daniel Patru, P74387
August 26, 2020