

STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS

DANIEL PATRU,

Petitioner/Appellant,

vs

COA Case No. 346894
MTT Docket No. 16-001828-TT

CITY OF WAYNE,

Respondent/Appellee.

APPELLEE’S APPENDIX

- | | |
|-----------|--|
| Exhibit 1 | Final Opinion and Judgment, December 4, 2018, Volume 1 |
| Exhibit 2 | Order Denying Petitioner’s Motion for Reconsideration, December 14, 2018,
Volume 1 |

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EXHIBIT 1

Respondent/Appellee's Brief on Appeal
Daniel Patru v City of Wayne
COA Case No. 346894

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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

MAHS Docket No. 16-001828

v

Case Type: Valuation

City of Wayne,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Location of Hearing: Pontiac, MI
Hearing Held on: October 18, 2018
Appearances on Behalf of Petitioner: Daniel Patru (telephonic)
Appearances on Behalf of Respondent: Sara Gilo (telephonic)

SUMMARY OF JUDGMENT

The subject property's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV"), for the tax year(s) at issue, shall be as follows:

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$50,400	\$25,200	\$25,200

PROCEDURAL HISTORY

Petitioner was required to protest the subject property's assessment to the Board of Review (BOR).

Petitioner protested the subject property's assessment to the 2016 March BOR.

Petitioner filed its Petition with the Tribunal on May 31, 2016, and Respondent filed its Answer on July 11, 2016. A hearing was conducted in this matter on December 1, 2016 and a proposed opinion and judgment (POJ) was rendered on December 1, 2016. Subsequently, Petitioner filed exceptions on December 21, 2016 and a FOJ was rendered on January 26, 2017. Petitioner then filed a Motion for Reconsideration on

February 16, 2017 and a MTT order denied Petitioner's motion on March 6, 2017. A Claim of Appeal was filed with the Court of Appeals (March 21, 2017) which remanded and reversed the MTT decision on May 8, 2017.

ISSUES AND APPLICABLE LAW

The issues in this matter are:

1. Whether the subject property is assessed in excess of 50% of its TCV.

"The petitioner has the burden of proof in establishing the true cash value of the property."¹

The assessment of real property in Michigan shall not exceed 50% of its true cash value.² "True cash value" means "the usual selling price" ³ "True cash value" means "fair market value."⁴

The Tribunal is required to make an independent determination of true cash value.⁵ "[T]he tribunal is not bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."⁶

The Tribunal is required to select the valuation methodology that is accurate and bears a reasonable relationship to the property's true cash value.⁷

2. Whether the TV exceeds the amount provided by MCL 211.27a.

MCL 211.27a provides that a property's taxable value is the lesser of the property's state equalized value or capped taxable value, and a property's capped taxable value is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year's taxable value, physical losses to the property, the lesser of the rate of inflation or 5%, and physical additions to the property, including omitted property (i.e., property not previously assessed).

SUMMARY OF EVIDENCE

A. Petitioner's Evidence

Petitioner's contentions of TCV, SEV, and TV:

¹ MCL 205.737(3); see also *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979).

² Michigan Const 1963, art IX, sec 3.

³ MCL 211.27(1).

⁴ *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁵ See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992).

⁶ *Id.* at 356.

⁷ See *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979).

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$32,000	\$16,000	\$16,000

Petitioner offered the following exhibits:

1. Evidence, filed on May 31, 2016
 - a. 2016 Board of Review Decision.
2. Evidence, filed on September 7, 2016
 - a. Sales history summary – subject property.
 - b. MLS print-out – subject property.
3. Evidence, filed on September 14, 2016.
 - a. MLS print-out – subject property.
 - b. Subject interior photographs.
 - c. Comparable Sales MLS print-outs with interior photographs.
4. Evidence, filed on September 6, 2018
 - a. List of Repairs.
 - b. MLS print-out – subject property.
 - c. Sales history summary – subject property.
 - d. STC Bulletin No. 7 dated June 11, 2014.
 - e. Request for Non-consideration of True Cash Value of Normal Repair, Replacement and Maintenance Expenditures.
 - f. List of Repairs.
 - g. City of Wayne – City Certification Guidelines.
 - h. Explanatory Letter dated September 6, 2018.

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner claims:

Petitioner referenced his evidence including a good explanatory letter as well as his list of repairs made to the property. Petitioner acknowledged that the property was listed in April 2013, that there were 2 offers which fell through and that the property then went off the market. The subsequent listing price was \$29,900 which was an increase from the original listing price. Petitioner noted that Respondent inspected the house as part of Petitioner's purchase of the property. Petitioner contends part of his repairs/expenses to the property were required by the city. Petitioner asserts this appeal is based on a Mathieu Gast issue of normal repairs to the property and referenced STC Bulletin No. 7.

On rebuttal, Petitioner referred to the relevant statute which says that the assessor cannot equate assessments with normal repairs made to the property. Petitioner believes Respondent must consider the property's value before repairs; Respondent should have before and after valuations of the property. Further, Petitioner does not see the relevance of dates in relation to his repairs.

B. Respondent's Evidence

The property's TCV, SEV and TV, as confirmed by the Board of Review, for the tax years at issue:

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$50,400	\$25,200	\$25,200

Respondent offered the following exhibits:

1. Evidence, filed on July 11, 2016
 - a. 2016 Subject Property Record Card.
 - b. Petition to Board of Review.
2. Evidence, filed on September 13, 2018
 - a. Sales Comparison Adjustment Grid.

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent claims:

Respondent argues that the change in the property assessment was not based on Petitioner's repairs but based on the purchase of the property in 2015 which uncapped the assessment for 2016. Respondent assessed the property as "average" condition as of December 31, 2015. The changes were not substantial and were based on the rate of inflation.

On rebuttal, Respondent argues mass appraisal does not account for properties one-by-one. In other words, properties are assessed uniformly and Respondent assumes properties are in "average" condition.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is located at 5073 Winifred Street, in the county of Wayne and within the city of Wayne.
2. The subject property is classified as Residential and has a principal residence exemption of 0% for the tax year at issue.
3. The average level of assessment in effect for the property's classification is 50%.
4. The subject property is developed with a 1.5-story, 1,020 square foot dwelling, no car storage.
5. Petitioner purchased the subject property in August 2015 for \$32,000 which was more than the listing price.
6. Petitioner made approximately \$10,000 of repairs to the subject property.
7. Petitioner's repairs are "normal" repairs as denoted by statutory reference.
8. Respondent granted a certificate of occupancy for the subject property before the December 31, 2015 tax day.

9. Petitioner rents the subject property for \$950 per month.
10. The subject's sale transaction in August 2015 uncapped the assessment for the 2016 tax year.
11. Petitioner submitted valuation evidence in the form of unadjusted, unapplied MLS sales print-outs.
12. Respondent submitted a valuation disclosure in the form of a sales comparison adjustment grid as well as a mass appraisal cost approach.
13. Respondent's 2016 assessment was not based on Petitioner's "normal" repairs to the subject property.

CONCLUSIONS OF LAW

1. The following authority and reasoned opinion supports the Tribunal's determination:

A proceeding before the Tax Tribunal is original, independent, and de novo.⁸ The Tribunal's factual findings are to be supported by competent, material, and substantial evidence.⁹

Further, "[i]t is the duty of the [T]ax [T]ribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case."¹⁰ In doing so, the Tribunal shall consider the three most common approaches to valuation - the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach.¹¹

As noted in the Findings of Fact, Petitioner's property assessment did not change by virtue of the repairs Petitioner made to subject property. To the contrary, the subject property's assessment for 2016 changed based on the sale transaction of the subject property in August 2015. Second, Respondent's determination of the subject's "average" condition was made as of December 31, 2015.¹² This date is completely separated from the issuance of the certificate of occupancy which was granted to Petitioner's property. The condition of the subject property (as of December 31, 2015) is integral to the market value as of that date. Petitioner undertook repairs to the property to comply with the city's ordinance and to ready the property as a tenant rental. Third, Petitioner's MLS print-out information for the subject and its comparable sales illustrate properties in "average" condition. Specifically, the subject and comparable sales' interior photographs do not depict neglected or vandalized properties. Further, the subject's interior photographs

⁸ MCL 205.735a(2).

⁹ See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

¹⁰ *Antisdale* at 277; citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966).

¹¹ See *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co*, *supra*.

¹² 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.

(before Petitioner's normal repairs) signify a property that is livable and habitable with reasonable marketability and appeal. Lastly, Petitioner did not contend that his purchase of the subject property was an arm's length sale transaction under the definition of *market value*.¹³ The grantor in this bank sale transaction was the U.S. Department of Housing and Urban Development (HUD). Petitioner's purchase price is not the presumptive determination of market value. Therefore, Petitioner's contentions related to his purchase price and "normal" repairs are given no weight or credibility in the determination of market value for the subject property.

Respondent's sales comparison adjustment grid is a conventional presentation for a comparative sales analysis. First, all five comparable sales are similar to the subject in dwelling square footage, style, year built, siding and condition. Second, adjustments to the sales are minimal; the most significant adjustment is for the difference in car storage. Sale 1 is similar to the subject in the lack of car storage. Sale 3 is similar to the subject in central air conditioning. Sale 4 is the closest sale to the December 31, 2015 tax day. Second, Respondent's sales adjustment grid does not include 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. Therefore, a reasoned and reconciled determination of market value is obtainable from Respondent's sales. Respondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessment and 2016 uncapping of the subject property.

2. Based upon the findings of fact and conclusions of law, the property's true cash, state equalized, and taxable values for the tax year(s) at issue are as listed in the Summary of Judgment section of this Final Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue shall be as set forth in the Summary of Judgment section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.¹⁴ To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

¹³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago, 6th ed, 2015), p 141.

¹⁴ See MCL 205.755.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

This Final Opinion and Judgment 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 motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁵ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹⁶ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁸

¹⁵ See TTR 261 and 257.

¹⁶ See TTR 217 and 267.

¹⁷ See TTR 261 and 225.

¹⁸ See TTR 261 and 257.

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 by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²¹

Entered: DEC 04 2018

By Maurice R. Wood

¹⁹ See MCL 205.753 and MCR 7.204.

²⁰ See TTR 213.

²¹ See TTR 217 and 267.

EXHIBIT 2

Respondent/Appellee's Brief on Appeal
Daniel Patru v City of Wayne
COA Case No. 346894

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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.