STATE OF MICHIGAN
IN THE COURT OF APPEALS
DETROIT OFFICE

Daniel Patru, *Appellant,* v City of Wayne, *Appellee.*	Court of Appeals No. 346894 Lower Court No. 16-001828-TT **Appellant's Brief** **Proof of Service**
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ORAL ARGUMENT NOT REQUESTED

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Jurisdictional Statement

The Court of Appeals has jurisdiction over this claim of appeal under MCL 205.753(2) (allowing appeals from a final order of the Tax Tribunal) and MCR 7.204(A)(1)(b) (requiring appeals to be made within 21 days after the entry of an order deciding a motion for reconsideration). The Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ) from the Tax Tribunal was entered 12/04/2018. A motion for reconsideration was filed 12/05/2018. The order denying reconsideration was entered 12/14/2018. The claim of appeal for this case was filed 12/18/2018, within the 21 days required.

Introduction

This case concerns the application of the Mathieu-Gast Home Improvement Act, MCL 211.27(2), which instructs assessors to "not consider" the value of normal repairs when determining the true cash value of residential property for assessment purposes.

In 2015, Appellant bought a house for $32,000 and made about $10,000 in repairs to it. The house was repaired by tax day (12/31/2015) when the City of Wayne assessed the house at $50,400 true cash value.

The City's assessment did not apply Mathieu-Gast nonconsideration: it did not exclude the value of the repairs from the true cash value.

The Appellant has petitioned the Tax Tribunal to apply Mathieu-Gast nonconsideration, but so far the Tax Tribunal has refused. The Tax Tribunal first ruled that the repairs were not normal repairs because the house was in substandard condition when Appellant bought it.

This Court reversed, ruling that the condition of the house was statutorily irrelevant to whether repairs were normal repairs. This Court remanded the case for a rehearing because the hearing referee's misunderstanding of the statute made it impossible to determine whether Appellant had proved at the hearing that the repairs were normal.

After the rehearing, the Tax Tribunal accepted the repairs as normal but still refused to apply nonconsideration because it believed that:

1. The Tribunal was not required to determine the before-repair value if it disagreed with Appellant's evidence on that point; and
2. The assessor had increased the true cash value because of inflation, not repairs. There was some evidence to believe that the property had been in average condition all along: a) the city's assessment before Appellant purchased the house and after it was repaired differed by just 5% and b) the MLS marketing photos showed that the house was in average condition.

Questions Involved

I. Did the Tax Tribunal fail in its duty to independently determine the true cash value when it refused to determine the before-repair value because a) Appellant had the burden of proof and 2) the Tribunal disagreed with Appellant's proof?

Appellant answers yes. The Tax Tribunal answers no. The Appellee's answer is unknown.

II. Did the Tax Tribunal misinterpret MCL 211.27(2) when it ignored normal repairs because there was some evidence that the assessor did not need to consider repairs to justify the assessed value?

Appellant answers yes. The Tax Tribunal answers no. The Appellee's answer is unknown.

III. Did the Tax Tribunal err when it gave the selling price of the property "no weight or credibility" as to the market value of the property based solely on a) the fact that the seller was a government entity and b) speculation that the seller may not have been motivated to receive market value?

Appellant answers yes. The Tax Tribunal answers. The Appellee's answer is unknown.

Facts

I. Appellant buys a house, the City assesses it, and Appellant appeals

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 of Wayne as a condition of obtaining 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. FOJ, p 4-5 (Appendix at 21–22).

The City of Wayne determined that the true cash value of the house as of tax day was $50,400, 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) (Appendix at 6).

Appellant contends that the best evidence of the house's before-repair value is its sale price of $32,000 when it was unrepaired. The house was marketed in the normal way and for a sufficient time. Licensed real estate brokers listed the house on the Multiple Listing Service (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 repaired value of the

house as was on tax day with no adjustment for Appellant's repairs. City's Evidence (MTT Docket Line 11) (Appendix at 13).

II. The Tax Tribunal refuses to apply MCL 211.27(2) but the Court of Appeals reverses

The Referee who first heard the case at the Tax Tribunal ruled that MCL 211.27(2) did not apply. 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 v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547), p 2 (Appendix at 38).

The Court of Appeals 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.

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

III. On rehearing, the Tax Tribunal again refuses to apply MCL 211.27(2)

The rehearing was held in December 2018 before Tax Tribunal Judge Marcus L. Abood. He ruled that the repairs were normal repairs and that the repairs were worth approximately $10,000. FOJ, p 4 (Appendix at 21). 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 2018 changed based on the sale transaction in August 2015 and not based on Petitioner's repairs.
2. The assessment considered the property in average condition as it was on December 31, 2015, tax day.
3. The MLS photographs submitted by Petitioner show the property in average condition, not neglected or vandalized.
4. The property's sale was not "an arm's length sale transaction" because the Petitioner has not claimed it so and because the seller was HUD.

Judge Abood did not attempt to value 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. 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 at 23).

IV. Appellant files Motion for Reconsideration

Appellant responded to the FOJ with a motion for reconsideration. The motion points out that the Court of Appeals reversed the previous judgment of the Tax Tribunal because "contrary to MCL 211.27(2), the referee considered the increase in value attributed to the repairs when determining the property's TCV. Stated differently, the referee's finding that the property's TCV was $50,400 was based on its assessment of the property's value after it had been repaired." Motion for Reconsideration (MTT Docket Line 52), p 1 (Appendix at 26). Now the Tax Tribunal was repeating the

mistake, except this time after explicitly admitting that the repairs were normal repairs. Id., p 2.

The Motion for Reconsideration also pointed out that the Tax 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 assessments but rather are done yearly. The property *uncapped* as a result of the sale, but Appellant had no issue with uncapping. Id. at 4.
2. The FOJ claimed the assessment considered the property in average condition as it was on December 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. at 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. at 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. at 5.

V. The Tax Tribunal denies the Motion for Reconsideration

Tax Tribunal Judge David B. Markon, 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). Two paragraphs and a footnote on page 2 contain the Tax Tribunal's reasoning. In summary:

1. The Tax Tribunal believes that it did not have to make a before-repair appraisal because Petitioner has the burden of proof and the Tribunal disagrees with Petitioner's proof on this point. (The subject's sale is given no weight or credibility.)
2. The Tax Tribunal believes that MCL 211.27(2) is not violated if there is some evidence that the assessor did not need to consider repairs to justify the true cash value. Here the true cash value was just 5% more than the previous year's true cash value. The 5% change was due to inflation, not repairs. The assessor's property record card indicated that the property had been in average condition before its sale. Also, the pictures on the MLS showed the property in average condition.
3. The Tax Tribunal believes that MCL 211.27(2) does not require before-repair and after-repair appraisals because:
   (a) The text of the statute does not plainly require the appraisals.
   (b) The STC guidance requires repairs if the value of the repairs are on the assessment roll, and here they are not.
   (c) Even if the STC required the repairs, the Tax Tribunal is not bound by STC guidance.
4. The Tax Tribunal gave the property's sale "no weight or credibility" because the seller was a government entity (HUD) who may not have been motivated to receive market value.

Points 1, 2, and 4 are addressed in order in the Arguments. Point 3 is addressed in the discussion of point 2.

Argument

Following are three allegations of error, any of which is enough to cause a reversal.

I. The Tax Tribunal failed in its duty to independently determine the true cash value of the property when it refused to make a determination of the before-repair value because Appellant had the burden of proof and the Tribunal disagreed with Appellant's proof

When reviewing Tax Tribunal cases, this Court looks for misapplication of the law or adoption of a wrong principle. Statutory interpretation is reviewed de novo. *Briggs Tax Service, LLC v Detroit Pub. Schools*, 485 Mich 69, 75; 780 NW2d 753, 757-758 (2010).

Once a taxpayer has presented evidence, the Tax Tribunal must make an independent determination of the true cash value at issue, even if it finds the taxpayer's evidence unconvincing. In *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) this Court reversed when the Tax Tribunal did not follow this rule:

> The tribunal further erred in failing to make an independent determination of the true cash value of the property. The tribunal apparently believed that no such determination was necessary after it concluded that petitioner had failed to meet its burden of proof and dismissed petitioner's appeal. The tribunal correctly noted that the burden of proof was on petitioner, This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. The tribunal's decision, however, seems analogous to the entry of a directed verdict upon the failure of a plaintiff's proofs. To the extent this analogy may be accurate in this case, the entry of judgment against petitioner for its failure to provide sufficient evidence was erroneous because, while petitioner may not have met its burden of persuasion, it did meet its burden of going forward with evidence.
>
> Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination of the true cash value of the property. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value. . . . On remand, the tribunal shall make an independent determination of true cash value. *Jones & Laughlin*, 193 Mich

App at 354-356 (cleaned up).

In this case the Tax Tribunal has made the same error as the Tax Tribunal in *Jones & Laughlin*: it declined to determine the true cash value of the property at issue (by determining the before-repair value) because the Appellant bore the burden of proof and the Tribunal disagreed with Appellant's proof. Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35). The exact analysis of *Jones & Laughlin* quoted above applies. "Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination . . ." For this reason, this Court should reverse.

II. The Tax Tribunal misinterpreted MCL 211.27(2) when it ruled that normal repairs may be ignored if there is some evidence that the assessor did not need to consider repairs to justify the assessed value

When reviewing Tax Tribunal cases, this Court looks for misapplication of the law or adoption of a wrong principle. Statutory interpretation is reviewed de novo. *Briggs*, 485 Mich at 75; 780 NW2d at 757-758.

MCL 211.27(2) reads in relevant part:

> 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. . . . The increase in value attributable to [normal repairs] that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll. . . .

The State Tax Commission (STC) says that "Assessors are required to give non-consideration treatment to known qualifying changes to real property, regardless of whether the taxpayer has filed a form L-4293." Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act) at 2 (Appendix at 44).

In this case, the Tax Tribunal found that the repairs were normal under the statute. FOJ, p 4 (Appendix at 21). Despite this, the Tax Tribunal goes on to decide the

case as if there had been no normal repairs, essentially ignoring them. "Respondent's sale adjustment grid does not include a line-item entry for repairs. This comparative analysis is devoid of any relationship to Petition's 'normal' repairs to subject property . . ." FOJ, p 6 (Appendix at 23).

The Tax Tribunal appears to believe that the assessor is free to ignore normal repairs without violating MCL 211.27(2) as long as she has some evidence to believe that repairs are not necessary to justify the true cash value of the property. In this case, that evidence was a) the assessed value change of 5% from 12/31/2014 to 12/31/2015 which was due to inflation and b) the MLS marketing pictures taken before the house was sold which show that the house was in average condition. Order Denying Reconsideration, p 2 (Appendix at 35). The Tax Tribunal says that simply because this evidence existed, the assessor did not violate MCL 211.27(2):

> 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. Order Denying Reconsideration, p 2 (Appendix at 35).

In pointing to some evidence that the property was in average condition, the Tax Tribunal carefully avoids actually determining whether the property really was in average condition. Under the Tax Tribunal's interpretation of MCL 211.27(2) the objective facts do not matter; the assessor and the Tax Tribunal may ignore normal repairs as long as they have *some evidence* supporting the true cash value without having to subjectively consider (or appeal to) repairs.

Contrary to the Tax Tribunal's view, the plain language of the statute makes clear that normal repairs must be given non-consideration treatment. The statute uses the word "shall" to indicate that the assessor must determine the true cash value of the repairs and indicate it in the assessment roll.

MCL 211.27(2) is violated whenever the value of normal repairs is included

in the true cash value for assessment purposes. Whether the assessor subjectively thought about, or "considered", the repairs is irrelevant. The first time this Court heard this case, the Tax Tribunal referee had determined the true cash value to be the after-repaired value. This Court reversed because the after-repaired value included the value of the repairs:

> ... contrary to MCL 211.27(2), the referee *considered* the increase in value attributed to the repairs when determining the property's TCV. Stated differently, the referee's finding that the property's TCV was $50,400 was based on its assessment of the property's value after it had been repaired. This was improper because MCL 211.27(2) expressly provides that certain repairs constitute normal repairs so long as they are not part of a structural addition or completion. *Patru*, p 5 (Appendix at 41).

The way to ensure that the value of the repairs is not included in the true cash value is to first find the value of the repairs and then subtract the value of the repairs from the value of the after-repaired value. This is what the STC terms "non-consideration treatment" and it requires before-repair and after-repair appraisals. STC Bulletin at 2 (Appendix at 44).

The Tax Tribunal avoids determining the before-repair value by misinterpreting the statute to allow normal repairs to be ignored as long as some evidence exists which would allow the assessor to make an assessment without having to subjectively consider the repairs. In this case, the "evidence" was the prior year's assessed value and the MLS pictures.

Had the Tax Tribunal attempted a before-repair appraisal, it have found ample evidence that the prior year's true cash value assessment of $48,000, when the property was in need of repairs, was not correct. First, that assessment was based on a computerized mass appraisal which *assumed* that the property was in average condition. FOJ, p 4 (Appendix at 21). The previous-year's assessment is based on assumption, not an inspection. Second, the MLS pictures which appear to show the property in average condition come from an MLS listing which shows that the property

was on the market for $29,000 and then for $32,000 and that it sold for $32,000. MLS History (Appendix at 8). The MLS evidence as a whole does not support a market value of $48,000. Third, the City's inspectors had inspected the property and imposed repair requirements before they would issue a Certificate of Occupancy; the repairs were valued at approximately $10,000. List of Repairs (Appendix at 10). This evidence also does not support the notion that the property did not need repairs. Fourth, the first time the Tax Tribunal looked at this case, it ruled that the condition of the house was so substandard that any repairs to it could not be normal. (This Court corrected the legal reasoning but did not question the fact that the house needed repairs. "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable." *Patru*, p 1 (Appendix at 37).)

In the Order Denying Reconsideration, p 3 (Appendix at 36), footnote 7, the Tax Tribunal attempts to justify its refusal to perform before-repair and after-repair appraisals:

> 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.

The Tax Tribunal has misinterpreted the STC Bulletin. Below is a fuller quote of paragraphs 3 and 4 on page 2, referenced by the Tribunal. The Tribunal's quote is underlined, and I have bolded the words immediately after to clarify:

> 3. <u>If the true cash value of non-consideration items is shown on the assessment roll</u> **<u>in the first year after the qualifying change is made</u>**, then the true cash value of the item shall be calculated by performing "before" and "after" appraisals and then deducting the "before" true cash value from the "after" true cash value.
>
> 4. <u>If the true cash value of non-consideration items is shown on the assessment roll</u> **<u>in years subsequent to the first year after the qualifying change</u>**, then the true cash value of the item shall be calculated each year by performing "before" and "after" appraisals and then deducting the "before" true cash value from the "after" true cash value to determine the true cash value contribution of the item for that assessment year. The purpose of this approach is to reflect

> the current contribution, rather than the initial contribution, to true cash value which is provided by the item.

Paragraphs 3 and 4 of the Bulletin distinguish between two cases: if the repairs are accounted for in the first year or in years after the first year. The paragraphs detail *how* the repairs are to be valued not *if* they are to be valued. The statute itself and paragraph 2 of the bulletin quoted above makes it clear that once a normal repair is known, its value must be noted on the assessment roll. The fact that the repairs were not on the assessment roll does not excuse before-repair and after-repair appraisals, it is evidence that the statute was violated.

After misinterpreting the State Tax Commission's guidance, the Tax Tribunal brushes it aside by saying that STC guidance lacks the force of law, citing *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90; 754 NW2d 259 (2008). FOJ, p 2 (Appendix at 19). In *Rovas* the Michigan Supreme Court distinguished between administrative agencies (such as the Public Service Commission in that case, or the State Tax Commission and the Michigan Tax Tribunal in this case) and the judicial branch courts (the Court of Appeals). The Supreme Court affirmed that even though administrative agengies are entitled to the most respectful consideration, judicial courts must apply a de novo standard of review when reviewing statutory construction:

> The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. However, these are not binding on the courts, and while not controlling, the practical construction given to doubtful or obscure laws in their administration by public officers and departments with a duty to perform under them is taken note of by the courts as an aiding element to be given weight in construing such laws and is sometimes deferred to when not in conflict with the indicated spirit and purpose of the legislature. *Id.* at 103 (cleaned up).

Rovas does not support the proposition that the Michigan Tax Tribunal can brush aside the statuory interpretation of another administrative agency, the State Tax Commission, and allow a city assessor to ignore MCL 211.27(2). The Tax Tribunal

is an administrative agency, like the State Tax Commission. *Rovas* emphasized the power of judicial-branch courts, not agencies, to interpret the law de novo.

Furthermore, the purpose of *Rovas* was to allow courts to clarify the law. Here the Tax Tribunal is muddling it. In this case, the Tax Tribunal found that repairs were normal repairs under MCL 211.27(2), yet contrary to the statute, it did not require the assessor to indicate the value of the normal repairs in the assessment roll. "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." MCL 211.27(2) Third sentence. MCL 211.10d(7) requires that assessors certify the assessment roll "in the form prescribed by the state tax commission." The assessor cannot obey this statute if she cannot certify that the assessment roll conforms to STC guidelines.

Furthermore, *Rovas* teaches that the interpretation of administrative agencies "is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons," *Id.* at 103, yet the Tax Tribunal here has not given respectful consideration nor cogent (clear, logical, and convincing) reasons for overruling the guidance of the State Tax Commission. The Tax Tribunal's reasoning for overruling the State Tax Commission is contained in footnote 7 of page two of the Denial of the Motion for Reconsideration. There are three parts: 1) The Tax Tribunal quotes two irrelevant portions of the statute only to point out that they are irrelevant. It does not address the third sentence of the statute. (The third sentence requires that the value of the repairs be indicated on the assessment roll.) 2) The Tax Tribunal then quotes the STC Bulletin in a misleading way to imply that a before-repair appraisal is not required (this was discussed above). 3) Finally, the Tax Tribunal cites *Rovas* to say that STC guidance lacks the force of law. Here the Tax Tribunal has not followed the teaching of *Rovas* to give the administrative agency's interpretation "the most respectful consideration" and overrule it only with "cogent reasons."

This Court reversed the previous ruling of the Tax Tribunal in part because it had added its own conditions to the statute. The Tax Tribunal had ruled that the statute did not apply when the property was in substandard condition. Now the Tax Tribunal has ruled that the statute does not apply when there is some evidence that the assessor did not need to consider repairs. This condition is not in the words of the statute. This Court should reverse this ruling for the same reason.

III. The Tax Tribunal erred when it gave the selling price of the property "no weight or credibility" as to the market value of the property based solely on the fact that the seller was a government entity and speculation that the seller may not have been motivated to receive market value

The Tax Tribunal's factual findings are accepted as final by this Court "provided they are supported by competent, material, and substantial evidence. Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin*, 193 Mich App at 352-53 (cleaned up).

In *Jones & Laughlin*, the Tax Tribunal had ruled, "A sale that occurs *after* the tax date has little or no bearing on the assessment made prior to the sale." *Id.* at 354 (emphasis in original). This Court reversed holding:

> Evidence of the price at which an item of property actually sold is most certainly relevant evidence of its value at an earlier time within the meaning of the term 'relevant evidence.' MRE 401. Although the sale . . . occurred approximately nine months after the tax date, the lapse in time is important only with respect to the weight that should be given the evidence, not to the relevance of the evidence. While the tribunal correctly noted that the sale price of a particular piece of property does not control its determination of the value of that property, the tribunal's opinion that the evidence "has little or no bearing" on the property's earlier value suggests that the evidence was rejected out of hand. Such cursory rejection would be erroneous. *Id* (cleaned up).

As in *Jones & Laughlin*, the Tax Tribunal in this case cursorily rejected the sale of the property albeit for a different reason. In the FOJ this took just four sentences:

> 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*. [footnote cite to Dictionary of Real Estate Appraisal.] The grantor in this bank sale transaction was the 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. FOJ, p 6 (Appendix at 23) (emphasis in original).

The Order Denying Reconsideration is essentially the same except that it adds a speculation: "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." Order Denying Reconsideration, p 2 (Appendix at 35).

Besides being cursory, the Tax Tribunal's rejection of the sale is not based on any evidence or even logic, but rather solely on the fact that the seller was HUD along with the speculation that the seller's "motivation may not been to receive market value for the property." There is no proof offered for why this speculation may be true in the general case or in this instance. This does not meet the evidence standard of competent, material, and substantial.

Appellant complained of this issue the first time this case came before this Court. This Court chose to reverse on other grounds and did not address this issue. The Tax Tribunal has again rejected the sale of the property cursorily based on pure speculation. Appellant fears that the Tax Tribunal will continue to make cursory rejections until it is stopped by this Court. Therefore Appellant respectfully asks this Court to reverse on this ground as well as the others.

Relief Requested

Applicant has presented here three independent allegations error. He respectfully asks this Court to reverse the ruling of the Tax Tribunal.

Proof of Service

On 2/15/2019, I served a copy of the Brief on the Appellee, the City of Wayne, by first class mail to: 3355 S. Wayne Rd, Wayne, MI 48184.

Respectfully Submitted,

/s/ Daniel Patru

2/15/2019