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

☐ Write solution

☒ profit

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Motion

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

Issues

1. Did this Tribunal make a palpable error when it ruled that normal repairs under MCL 211.27(2) should be considered if they were done in the year of a transfer, even if the repairs were done by the new owner and there was no sale after the repairs?
2. If this Tribunal's interpretation of MCL 211.27(2) is wrong, then would it be a palpable error for this Court to affirm the Tribunal's ruling anyway?

Facts

Before it was bought by Appellant, the subject house was owned by HUD (U.S. Dept. of Housing and Urban Development). MLS Listing (MTT Docket Line 32) (Appendix at 9). The house had been listed on the MLS on and off since April 2013; it's initial asking price was $29,900, but by the time Appellant bought the house, the asking price was $32,000, which was the price Appellant paid. MLS History (MTT Docket Line 33) (Appendix at 8).

Before the City of Wayne (Appellee/Respondent) granted Appellant a certificate of occupancy, it required numerous repairs. List of Repairs (MTT Docket Line 36) (Appendix at 10). "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable. Patru completed the required repairs on the property as of December 31, 2015." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547), p 1 (Appendix at 37).

I. First Appeal

Appellee assessed the subject property for 2016 at a true cash value of $50,400. Appellant appealed this assessment, arguing that the assessment valued the house after repairs as it was on December 31, 2015. Appellant contended that the repairs were normal repairs under MCL 211.27(2) and that the house must be valued at its before-repair value. "Petitioner claims that under MCL 211.27(2) we should not increase the subject's true cash value for normal repairs and maintenance until the subject is sold." *Patru 1*, p 2 (Appendix at 38) (quoting the Tribunal's POJ in the first appeal).

The Tax Tribunal referee ruled that MCL 211.27(2) nonconsideration did not apply because the property was in substandard condition.

This Court reversed, ruling that:

> The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because repairs were done to a property in substandard condition, they did not constitute normal repairs. . . . This was improper . . . 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 erred . . . See *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011) (stating that nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself).

Patru 1, p 5 (Appendix at 41).

Even though this court had determined that the Tribunal had erred, it could not fully resolve the case because the Tax Tribunal had not ruled that the Petitioner had performed the repairs listed on the spreadsheet. The spreadsheet had been submitted after the hearing, so the Tribunal had refused to consider it. Moreover, the referee had not established based on the hearing testimony that the repairs fell under the statute. So this Court remanded the case back to the Tribunal.

> 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 Mich App 735, 743; 415 NW2nd 297 (1987)(requiring rehearing when it was not clear whether the proofs submitted were sufficient to establish that repair expenditures were normal repairs).

Patru 1, p 5-6 (Appendix at 41–42).

II. Second Appeal

On remand, the Tribunal ruled that the repairs were normal, but it again found a reason not to apply MCL 211.27(2) nonconsideration. The Tribunal ruled that MCL 211.27(2) did not apply for repairs done in a year of a transfer, even if the repairs were done by the new owner. This Court has now affirmed this interpretation.

Also, contrary to previously undisputed finding, the Tribunal ruled that the property's before-repair condition was not substandard, but rather that the repairs "did not affect the assessed [true cash value] of the property . . .." Opinion at 1. This Court has now affirmed this finding also.

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).

Argument

I. This Court creates an unsupported exception to Mathieu Gast

This court reviews the Tax Tribunal's statutory interpretation de novo. *Briggs Tax Service, LLC v Detroit Pub. Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010).

In its previous decision in this case, this Court faulted the Tax Tribunal for violating the rule that "nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself." *Patru 1*, p 5 (Appendix at 41), quoting *Mich Ed*, 489 Mich at 218. By reading into MCL 211.27(2) an exception for repairs done in the year of a transfer but after the sale, this Court now makes the same error.

The statute specifies that repairs should not considered "*until* the property is sold." This clearly indicates that nonconsideration ends only if there is a sale after the repairs. Here there was no sale after Appellant's repairs. Instead this Court would use a sale before the repairs to end the nonconsideration period. This violates the plain words of the statute.

Besides violating the plain words of the statute, this Court's interpretation of Mathieu Gast violates the intent of the statute. By reading into the statute an

unwritten exclusion for the diligent homeowners who make repairs in the year of purchase, this Court transforms Mathieu Gast from a pure incentive for homeowners to repair their properties into a trap which punishes purchasers who, relying on the plain words of the statute, repair right away rather than waiting until the year after purchase.

This Court relies on MCL 211.27a(3), which discusses uncapping, and MCL 211.2(2), which defines tax day as December 31 of the previous year, to support its position that when uncapped, the true cash value of the property in the year after the transfer should be its fair market value as of December 31 in the year of the transfer, "regardless of any "normal repairs" made by petitioner in [the year of purchase]." Opinion at 5.

The Court errs in assuming that true cash value is simply the fair market value. Although there are many cases that make this assertion (this Court cites *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434-435; 830 NW2d 785 (2013)), this is actually just a useful approximation. True cash value is defined in MCL 211.27, which has eight subsections, which would span several pages if reproduced here. All of these subsections refine the meaning of true cash value. Subsection 1 uses the term "usual selling price" which means fair market value. This is good enough for most cases. But a three-word term cannot replace every aspect of a multiple page statute. For example, in this case, this Court should consider subsection 2 which specifies that the value due to normal repairs is not part of true cash value until the property is sold.

Furthermore, MCL 211.27(2), as part of the definition, or specification, of true cash value, is not dependent on the capped or uncapped status of the taxable value defined in the next section, MCL 211.27a. Anytime the true cash value is determined, MCL 211.27(2) operates to exclude from the true cash value the value of normal repairs unless the normal repairs have been followed by a sale of the property. This means that normal repairs cannot be considered when determining the assessed value, MCL

211.27a(1), or the taxable value when uncapped, MCL 211.27a(3), or capped, MCL 211.27a(2).

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 just the second, emphasized, sentence out of its context. The whole paragraph discusses when nonconsideration 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.

II. This Court should not sustain the Tribunal on the grounds that the repairs did not affect the true cash value

This Court accepts the Tax Tribunal's factual findings if they are supported by competent, material, and substantial evidence on the whole record. *Briggs*, 485 Mich at 75.

Besides ruling that MCL 211.27(2) was not applicable because of uncapping, the Tribunal also ruled that the repairs did not affect the property's true cash value. If this Court is convinced that uncapping is irrelevant to MCL 211.27(2), then it should not affirm the Tribunal on this alternative ground.

This Court in this opinion starts off the discussion of this issue by saying: "The

tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it." Opinion at 5. This mischaracterizes this issue as merely Appellant's argument. Throughout the first trip to this appeals Court until the Tribunal's last Final Opinion, all the actors in this case, the Appellant/Petitioner, the Appellee/Respondent, the Tribunal, and this Court assumed and were relying on the fact that the subject property was in substandard condition before the repairs. Indeed, the reason this case was first appealed to this Court was because "The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because the repairs were done to a property in substandard condition, they did not constitute normal repairs." *Patru 1*, p 5 (Appendix at 41). "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable. Patru completed the required repairs on the property as of December 31, 2015." *Id.* p 1. At the second hearing before the Tribunal, neither Appellant/Petitioner nor Appellee/Respondent presented evidence or took the position that the house was not in substandard condition before repairs. The Tribunal's reversal of a fact which was foundational to its first ruling was not based on new evidence. Therefore this Court should take a careful look at the Tribunal's reasoning that prompted it to so drastically reinterpret the evidence.

The Tribunal changed its mind based on pictures and the prior year's assessed value:

> 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." . . . It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000.

Opinion at 5. Regarding the photographs, the fact that they showed the house as livable and habitable must be considered in light of the fact that the City/Appellee/Respondent had inspected the house before it sold and deemed it not habitable; "the city required that the repairs be made." *Id.* p 2, quoting the Tribunal's first Proposed Opinion.

The spreadsheet listing the repairs also clearly shows that most of the repairs were required by the city. See List of Repairs (Appendix at 10). The fact that the realtor who put the pictures in the MLS had listed the property at $29,900 and then at $32,000, well below the market value of a repaired house, and that it took more than two years to sell, also raises doubts that the repairs did not add value.

Regarding the prior year's assessed value, Appellee/Respondent representative testified at the hearing that "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.*" Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ), p 4 (Appendix at21), emphasis addded. So the assessed value cannot be evidence of a property's before-repair value, because the assessed value is just the output of a mass appraisal computer program that assumes that all the properties are in average condition.

Therefore, when the whole record is considered, the Tribunal's finding that the repairs did not add value cannot be affirmed.

III. This Court should reverse the Tribunal because of the law of the case

This Court in this opinion says that 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.

Opinion at 5. A more complete quote from this Court's prior opinion (shown above at page 2) makes it clear that if this Court had decided that MCL 211.27(2) applied to this case, but, based on the incomplete record, could not decide if Appellant's repairs conformed to the specific categories of repairs listed in the statute.

> 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.

Patru 1, p 5 (Appendix at 41). On remand, this Court expected the Tribunal to make a determination about the whether the repairs fit the criteria of MCL 211.27(2), and then apply nonconsideration to those repairs, using before-repair and after-repair appraisals.

> 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 6 (Appendix at 42), footnote 3.

This Court explained the law of the case in *Bennett v Bennett*, 197 Mich. App. 497, 499-500; 496 N.W.2d 353 (1992):

> Under the doctrine of the law of the case, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question will not be differently determined in a subsequent appeal in the same case were the facts remain materially the same. The primary purpose of the law-of-the-case doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit.

In *Id*, the lower court had denied defendant's motion to terminate his child support early. While the case was on appeal, a law was enacted which supported the lower court's decision. The law took effect before the appeals court called the case. The appeals court reversed the lower court, but did not mention the new law. On remand, plaintiff asked the lower court to deny defendant a second time, based on the new law which the appeals court had not addressed. The lower court refused because of the law of the case. Plaintiff appealed.

The appeals court affirmed, reasoning that even though it though it thought that its first decision was wrong, by substituting its judgment for the prior appeals court

panel, it would be doing "the very activity the law-of-the-case doctrine is designed to discourage." *Id.* at 501. If the prior panel was not aware of the new law, the parties were at fault because "ultimately it is the responsibility of the parties to bring to this Court's attention that case law and those statutes that the parties wish the Court to consider in deciding the matter." *Id.*

Even if this Court agrees with the latest Tribunal's decision that MCL 211.27(2) does not cover this case, it should still reverse it and affirm its earlier ruling. As in Bennett, Appellee could have made its arguments (that MCL 211.27(2) does not apply if the repairs are made in the year of a transfer and that the property was in average condition before the repairs) before this Court on the first appeal.

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 v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 346894), p 5.

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

This Court's interpretation of Mathieu Gast violates the intent of the statute. By reading into the statute an unwritten exclusion for the diligent homeowners who make repairs in the year of purchase, this Court transforms Mathieu Gast from a pure incentive for homeowners to repair their properties into a trap which punishes purchasers who, relying on the plain words of the statute, embark on repairs right away rather than postponing them until the year after purchase.

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 STC Bulletin, 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 just the second, 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

i. MCL 211.27a(3)

This Court relies on MCL 211.27a(3), which discusses uncapping, and MCL 211.2(2), which defines tax day as December 31 of the previous year, to support its position that when uncapped, the true cash value of the property in the year after the transfer should be its fair market value as of December 31 in the year of the transfer, "regardless of any "normal repairs" made by petitioner in [the year of purchase]." Opinion at 5.

This Court is correct that the true cash value as of December 31 controls. However this Court's conclusion that the true cash value is simply the fair market value without

regard to normal repairs ignores the tax act's definition of true cash value found in MCL 211.27. This section contains eight subsections which would span several pages if reproduced here. All of these subsections refine the meaning of true cash value.

Subsection one of MCL 211.27 uses the term "usual selling price" which courts have concluded means the fair market value. Often, approximately defining true cash value as simply the usual selling price or fair market value is good enough to decide the case.

But this case involves normal repairs which MCL 211.27(2) excludes from the true cash value. So in this case, the Court must modify the simple, approximate definition of true cash value to exclude the value of the normal repairs.

MCL 211.27a(3), which sets the taxable value to the equalized assessed value, does not modify the definition of true cash value found in MCL 211.27.

ii. MCL 211.27a(2)(a)

This Court claims that Mathieu Gast applies only to additions to the capped taxable value (MCL 211.27a(2)(a)), but not to uncapped taxable value (MCL 211.27a(3). It tries to prove this by citing a Supreme Court case (*Toll Northville LTD v Twp of Northville*, 480 Mich 6, 12; 743 NW2d 902 (2008)) and referring to MCL 211.2(2), MCL 211.27a(1), and MCL 211.27a(3). Opinion at 4. But these references, at most, show that Mathieu Gast may be applied to exclude the considerations of the "additions" mentioned in MCL 211.27a(2)(a).

Appellant does not dispute that Mathieu Gast may operate to prevent normal repairs from being considered as additions under *Id.* But Mathieu Gast is not a single-use, disposable law. It is not used up simply because it applies to *Id.* (a). Mathieu Gast is a one section of eight in MCL 211.27which defines true cash value. It is meant to be used in every place of the tax act where it is applicable. This Court has not cited any authority to the contrary.

IV. This Court misapplies the law of the case doctrine

This Court also errs in its application of the law of the case. This Court in *Patru 1* was faced with a situation where the Tax Tribunal had ruled:

1. that the evidence showed that house was is substandard condition,
2. that its purchase price reflected its condition,
3. that because the house was in substandard condition, any repairs done to the property did not qualify under Mathieu Gast,
4. that the Tribunal was not convinced that the purchase price was the pre-repair TCV, and
5. because the Tribunal had refused to consider some written evidence, that the Petitioner/Appellant had not proved that his repairs actually qualified as normal repairs under Mathieu Gast.

This Court then reversed the Tribunal, ruling that it had erred in adding a condition to Mathieu Gast which was not in the statute. This Court then remanded the case back to the Tribunal with instructions to

1. evaluate the repairs and make a determination if the repairs were normal repairs under Mathieu Gast, and
2. exclude the value of the repairs if the repairs were found to be normal repairs under Mathieu Gast, making its own determination of the pre-repair value.

On remand, the Tribunal refused to fully obey this Court. Instead, after finding that the repairs were normal repairs under Mathieu Gast, the Tribunal

1. reversed its finding that the house had been in substandard condition at the time of sale,[1] and
2. ruled that Mathieu Gast did not apply if the buyer did not wait until the year after the purchase to make the repairs.

[1] same evidence, pictures in the MLS, previous year's assessed value (which was based on the assessor's unchallenged assumption that the property was in average condition, ignoring the property's sale history, and the city's own required list of repairs

This is the sort of thing that the doctrine of the law of the case is supposed to prevent. After a lower court has made findings of fact and proceeded under a certain legal theory, if the higher court corrects and says that the decision must go the other way, the lower court should not be allowed to make the opposite findings of fact (on the same evidence), and deny the appellant under a new legal theory which could have been used in the beginning.

were done by a buyer in the same year of also 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 *Id* 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.

V. 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.[2] At issue was the

[2]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 &*

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.

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

VI. 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
>
> (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;

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.

> (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*, 291 Mich App at 426; 805 NW2d at 453 (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." *Walters*, 266 Mich App at 350; 700 NW2d at 430.

"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*, 304 Mich App at 754.

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

March 3, 2020

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 2*, 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 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.

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.

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 (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 (Appendix at 10). By tax day, 12/31/2015, Appellant had repaired the house and rented it. 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 (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.

old issues

Appellant/Petitioner appealed this case alleging errors via three cascading questions[3]:

1. **Does Mathieu Gast apply?** The Tribunal said no because the repairs were made in the year of transfer. This Court in this opinion takes the same position. Appellant requests reconsideration because this Court's position violates the plain text of the statute, is based on a flawed interpretation of the tax act as a whole and STC's guidance on the subject, and violates the law of the case.
2. **If Mathieu Gast applies, does its application require before-repair and after-repair appraisals?** The Tribunal said no. The Tribunal admitted that the STC's interpretation of Mathieu Gast required before and after appraisals, but the Tribunal claimed the right to disagree. This Court in this opinion has not clearly taken a position. Appellant requests that this Court follow the law of the case and asks this Court to command the Tribunal below to perform before-repair and after-repair appraisals, as it did the first time.
3. **If a before appraisal is required, did the Tribunal properly determine the before-repair value?** Contrary to the previous Tribunal's ruling in the case,

[3]Appellant's appeal brief presents his case in roughly this way, except that part of the third question (whether the Tribunal properly found the before-repair value, is discussed in the brief with the first question, because the Tribunal Judge had ruled that Mathieu Gast did not apply because there was no increase in value due to the repairs. See the Table of Contents of Appellant's Brief (page ii); Argument I(B) is discussed here as part of the third question.

which found that the property was in substandard condition, the Tribunal relied on the property's previous year's TCV as determined by the Appellee/Respondent and MLS pictures to conclude that the property's value did not increase due to the repairs. The Tribunal dismissed the property's sale price because the seller was HUD. This Court in this opinion has not clearly ruled that the Tribunal's determination of the before-repair value was correct.

This Court in this opinion has ruled that Mathieu Gast does not apply here.

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?

Appellant/Petitioner appealed this case alleging errors via three cascading questions[4]:

1. **Does Mathieu Gast apply?** The Tribunal said no because the repairs were made in the year of transfer. This Court takes the same position.
2. **If Mathieu Gast applies, does its application require before-repair and after-repair appraisals?** The Tribunal said no. The Tribunal admitted that the STC's interpretation of Mathieu Gast required before and after appraisals, but the Tribunal claimed the right to disagree. This Court in this opinion has not

[4]Appellant's appeal brief presents his case in roughly this way, except that part of the third question (whether the Tribunal properly found the before-repair value, is discussed in the brief with the first question, because the Tribunal Judge had ruled that Mathieu Gast did not apply because there was no increase in value due to the repairs. See the Table of Contents of Appellant's Brief (page ii); Argument I(B) is discussed here as part of the third question.

clearly taken a position.

3. **If a before appraisal is required, did the Tribunal properly determine the before-repair value?** Contrary to the previous Tribunal's ruling in the case, which found that the property was in substandard condition, the Tribunal relied on the property's previous year's TCV as determined by the Appellee/Respondent and MLS pictures to conclude that the property's value did not increase due to the repairs. The Tribunal dismissed the property's sale price because the seller was HUD. This Court in this opinion has not clearly ruled that the Tribunal's determination of the before-repair value was correct.

This Court in this opinion has ruled that Mathieu Gast does not apply here. Thus, because the other two questions raised in this appeal depend on a finding that Mathieu Gast does apply, whatever this Court has said on the other two questions is at most non-binding dicta.

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]

briefs

I. CAF Investment v Saginaw - Supreme Ct 1981

After being reversed by the supreme court, the MTT issued essentially the same decision, only purporting to "consider" the supreme court's approach, but ultimately rejecting it. *CAF Investment Co. v. Saginaw Twp., 410 Mich. 428, 454*, 302 N.W.2d 164 (1981).

II. Locricchio

Locriccio

An exception to the law of the case is made where an appellate court has a constitutional duty to protect the first amendment in a public-figure defamation case.

III. Bennett - Good case - Court of Appeals 1992

> As plaintiff notes, the doctrine is discretionary, rather than mandatory. Id. Indeed, in *Locricchio v Evening News Ass'n*, 438 Mich 84; 476 NW2d 112 (1991), the Supreme Court concluded that this Court should not have relied upon the doctrine in declining a further, independent review of the case inasmuch as the constitutional rights of the parties were involved and those rights would be violated if a prior erroneous decision was allowed to stand under the doctrine.

Bennett, 197 Mich. App. at 500. In *Id* the court applied the law of the case doctrine and refused to overturn a prior court's decision, when the new law was in effect at the time of the first court's decision. The first court either considered that law, or the plaintiff's attorney was at fault for not bring it to the court's attention.

IV. Grievance Adm'r v Lopatin - Supreme Ct 2000

> We reject respondent's argument that our prior order denying the Grievance Administrator's application for leave to appeal constitutes the law of the case. Under the law of the case doctrine, "if 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." CAF Investment Co. v. Saginaw Twp., 410 Mich. 428, 454, 302 N.W.2d 164 (1981).[26] The appellate court's decision likewise binds lower tribunals because the tribunal may not take action

> on remand that is inconsistent with the judgment of the appellate court. Sokel v. Nickoli, 356 Mich. 460, 465, 97 N.W.2d 1 (1959). Thus, as a general rule, an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals. Webb v. Smith (After Second Remand), 224 Mich.App. 203, 209, 568 N.W.2d 378 (1997); see, generally, 5 Am. Jur. 2d, Appellate Review, Âğ 605, p. 300.
>
> Law of the case applies, however, only to issues actually decided, either implicitly or explicitly, in the prior appeal. Webb, supra at 209, 568 N.W.2d 378; Roth v. Sawyer-Cleator Lumber Co., 61 F.3d 599, 602 (C.A.8, 1995). In denying the Grievance Administrator's application for leave to appeal in this case, we expressed no opinion on the merits. See Frishett v. State Farm Mut. Auto Ins. Co., 3 Mich.App. 688, 143 N.W.2d 612 (1966) (order); cf. Teague v. Lane, 489 U.S. 288, 296, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) (the denial of a writ of certiorari imports no expression of opinion on the merits of the case). Therefore, the law of the case doctrine does not apply.[27] See Mirchandani v. United States, 836 F.2d 1223, 1225 (C.A.9,1988).
>
> In this case, the ADB was free on remand to consider and decide any matters left open by our mandate. See Sokel, supra at 465, 97 N.W.2d 1; cf. Quern v. Jordan, 440 U.S. 332, 347, n. 18, 99 S.Ct. 1139, 59 L.Ed.2d 358 (1979). We remanded in this case "for consideration of arguments by respondent concerning the appropriateness of the increased level of discipline ordered by the hearing panel, with the exception of arguments that the action exceeded the scope of remand." 456 Mich. 1206-1207, 572 N.W.2d 9 (1997). Thus, as in all cases in which it reviews a hearing panel order of discipline, the ADB could "affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline." MCR 9.118(D). Accordingly, the ADB erroneously concluded that 135*135 our order precluded it from increasing the level of discipline beyond the forty-five-day suspension imposed by the hearing panel.

Grievance Administrator v Lopatin, 462 Mich 235, 612 NW2d 260, _ (2000).

In particular: "In this case, the ADB was free on remand to consider and decide any matters left open by our mandate." *Id.* The Tribunal here backtracked, found facts contrary to the facts upon which *Patru 1* was decided, and also changed its interpretation of law to one which would not have made the decision in *Id* irrelevant. That is, the Court in *Id* would not have had to ask the Tribunal to find if the repairs were normal if the Mathieu Gast statute as a whole were inapplicable because the repairs were done in the same year of the property's transfer.

V. Ashker - Court of Appeals 2001

"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." *Ashker v. Ford Motor Co., 245 Mich.App. 9, 13*, 627 N.W.2d 1, 13 (2001).

The court in Ashker found that the lower court had erred on remand because it changed the law without the law having been not changed.

VI. Webb - Court of appeals 1997

The Court in , ebb v. Smith (After Second Remand), 224 Mich.App. 203, 209, 568 N.W.2d 378 (1997) was bound by the law of the case to reject Defendants' contention that they did not have notice, because they had previously determined that Defendants had had constructive notice. "The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision. MS Development, supra at 548, 560 N.W.2d 62." *Id.* at 381.

Id.

VII. MS Development - Court of Appeals 1996

"The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision. MS Development, supra at 548, 560 N.W.2d 62." *Id.* at 381.

In *MS Development*, Inc. v. Auto Plaza of Woodhaven (After Remand), 220 Mich.App. 540, 548, 560 N.W.2d 62 (1996), the court was bound to respect its previous decision, even though the court recognized that it had been mistaken when it reviewed the case the second time.

> However, despite our belief that defendants have stated a valid claim, we are constrained by this Court's prior decision. The law of the case doctrine states that a ruling by an appellate court regarding a particular issue binds the appellate court and all lower tribunals with regard to that issue. The doctrine applies to questions specifically determined in a prior decision and to questions necessarily determined to arrive at the decision. Int'l Union, supra. The law of the case generally applies regardless of the correctness of the prior decision.[6] Freeman v. DEC Int'l, Inc., 212 Mich.App. 34, 38, 536 N.W.2d 815 (1995). Thus, despite our view that this Court erred in affirming the trial court's summary dismissal of defendants' claims, we are bound by that decision.
>
> Thus, we hold that the trial court did not err in dismissing defendants' counterclaim pursuant to MCR 2.116(C)(7) because the claims raised were almost identical to those already rejected by this Court. However, we strongly urge the Supreme Court to address defendants' claims upon further appeal.

Id..

VIII. Int'l Union - Court of Appeals 1995

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL 6000 v. STATE OF MICHIGAN HAIK v. STATE OF MICHIGAN

This case is cited by

The doctrine applies to questions specifically determined in a prior decision and to questions necessarily determined to arrive at the decision. On the general applicability of the doctrine of law of the case our Supreme Court has written:

> The law of the case doctrine dispenses with the need for this Court to again consider legal questions determined by our prior decision and necessary to it. As generally stated, the doctrine is that if an appellate court has passed on a legal question 25*25 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. [CAF Investment Co v Saginaw Twp, 410 Mich 428, 454; 302 NW2d 164 (1981). Citations omitted.]

Int'l Union, UAW v. Michigan, 211 Mich.App. 20, 24-25; 535 N.W.2d 210 (1995).