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

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, but rather, to separately indicate the value of the repairs on the assessment roll. The State Tax Commission (STC) requires that the value of the repairs be determined by before-repair and after-repair appraisals.

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 assessed the house at its after-repair value and did not exclude the value of the repairs from the true cash value nor indicate the value of the repairs on the assessment roll.

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

This Court reversed because the statute does not exclude repairs to a house in substandard condition. This Court remanded 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 Tribunal accepted the repairs as normal but still refused to apply nonconsideration because it believed that: 1) the assessor had not considered the repairs in the assessment, 2) a before-repair appraisal was not required, and 3) the selling price of the property was entitled to no weight or credibility.

Questions Involved

I. Did the Tribunal err when it refused to apply nonconsideration to normal repairs?

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

II. Did the Tribunal err when it refused to determine the before-repair value?

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

III. Did the Tribunal err when it gave the selling price of the property before-repair "no weight or credibility" based solely on the fact that the seller was HUD and speculation that the seller may not have been motivated to receive market value?

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

Facts

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

Appellant purchased the subject house in August 2015 for $32,000. The house was sold by the Department of Housing and Urban Development (HUD) through a real estate broker who had listed the house on the MLS. MLS Listing (MTT Docket Line 32) (Appendix at 9). At the time of purchase, the house needed numerous repairs, most of which were required by the City to obtain a Certificate of Occupancy. List of Repairs (MTT Docket Line 36) (Appendix at 10). By tax day, 12/31/2015, Appellant had repaired the house and rented it. FOJ, p 4-5 (Appendix at 21–22).

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 at 7).

Appellant contends that the best evidence of the house's before-repair value is its sale price of $32,000 when it was unrepaired. Id. The house was marketed in the normal way and for a sufficient time. Licensed real estate brokers listed the house on the MLS, initially for $29,900 on 4/3/2013 and later for $32,000 on 6/17/2015. Before Appellant bought the property there had been at least two accepted offers on the property that failed to close. MLS History (MTT Docket Line 33) (Appendix at 8).

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

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

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

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 in December 2018 before Tribunal Judge Marcus L. Abood. He ruled that the repairs were normal repairs, 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 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 at 22). 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 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 at 26). 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 at 35) contains the Tribunal's reasoning. In summary:

1. The Tribunal did not determine the before-repair value because:
   (a) the text of the statute does not plainly require a before-repair appraisal;
   (b) the situations in the second sentence of MCL 211.27(2) are not at issue;

(c) the STC guidance requires appraisal if the value of the repairs are on the assessment roll, and here they are not;

(d) STC guidance lacks the force of law; and

(e) Petitioner has the burden of proof and the Tribunal disagrees with Petitioner's evidence (the sale price is given no weight or credibility).

2. The Tribunal gave the property's sale price "no weight or credibility" because the seller was a government entity (HUD) who may not have been motivated to receive market value.

3. The Tribunal did not give nonconsideration treatment to the normal repairs because the assessment did not consider the repairs. The property's true cash value assessment was $48,000 in the year before the repairs and $50,400 after the repairs. The 5% change was due to inflation not repairs. Also, the pictures on the MLS showed the property in average condition.

Mathieu-Gast Statute – MCL 211.27(2)

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

For the purpose of implementing this subsection, the assessor shall not increase the construction quality classification or reduce the effective age for depreciation purposes, except if the appraisal of the property was erroneous before nonconsideration of the normal repair, replacement, or maintenance, and shall not assign an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction.

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

This subsection applies only to residential property.

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

Argument

I. The Tribunal erred when it refused to apply nonconsideration to normal repairs

The Tribunal violated MCL 211.27(2) when it refused to apply nonconsideration treatment to normal repairs. This is an error of statutory interpretation. In this case, the Tribunal's reasoning also lacks factual support. Both of these are addressed below.

A. The Tribunal misinterpreted MCL 211.27(2) in ignoring normal repairs

When reviewing 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).

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. . . . (emphasis supplied)

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 Tribunal found that the repairs were normal under the statute. FOJ, p 4 (Appendix at 21). Yet the 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 Tribunal's finding of normal repairs has not changed the true

cash value from what it would have been had MCL 211.27(2) not been part of the case.

The Tribunal appears to believe that if it can cherry-pick some evidence that the house was not in need of repair, the assessor is free to ignore normal repairs. In this case, that evidence was a) the assessed true cash value before and after the repairs changed by just 5%, due to inflation, not repairs, from $48,000 on 12/31/2014 to $50,400 on 12/31/2015 and b) the MLS marketing pictures taken before the house was sold show that the house was in average condition. Order Denying Reconsideration, p 2 (Appendix at 35). The Tribunal says that simply because it found this evidence, 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).

The Tribunal sees MCL 211.27(2) as being about the mind of the assessor. If the assessor subjectively bases her assessment on the effects of the repairs, then she violates the statute. But if her assessment is based on the prior year's assessment adjusted for inflation or on pictures that show the house well, then she can safely ignore normal repairs.

Under the Tribunal's interpretation the accuracy of the previous year's assessment controls whether the statute applies. If the assessor overassessed the property in the year before the repairs, as is the case here, then the home owner would not benefit from repairs taxwise because the assessment would be based not on the repairs, but on the previous year's inflated assessment. The statute however does not condition nonconsideration treatment on the assessment of the previous year. It does not say that normal repairs may be ignored if the previous year's assessed true cash value is the same as this year's. In particular, the third sentence of the statute requires that the value of the repairs must always be indicated on the assessment roll.

MCL 211.27(2) is not concerned with the minds of assessors. Instead, the statute is focused on making sure that the contribution of normal repairs are quantified, noted in the assessment rolls, and explicitly removed from the assessed value.

Contrary to the 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 exclude the contribution of repairs to assessed true cash value and must indicate the value of the repairs 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 the repairs is irrelevant. The first time this Court heard this case, the Tribunal referee had also 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:

> [C]ontrary 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).

There is no room in the statutory scheme for the Tribunal's idea that normal repairs can be found yet ignored: their value not determined, nor indicated on the assessment roll, nor excluded from the true cash value. This Court should reverse the Tribunal's ruling.

B. The Tribunal's assertion that the assessor believed that the property did not need repairs is not supported by the evidence

When reviewing Tribunal cases, this Court looks for misapplication of the law or adoption of a wrong principle. Factual findings must be supported by competent,

material, and substantial evidence on the whole record. *Briggs*, 485 Mich at 75; 780 NW2d at 757-758

The Tribunal asserts that the assessor did not consider normal repairs because she believed that the property was in average condition with a true cash value of $48,000 before Petitioner purchased the property. Order Denying Reconsideration, p 2 (Appendix at 35). There is no evidence that the assessor had a fact-based belief that the property was in average condition. The assessor testified that her assessments are done using mass appraisal which "does not account for properties one-by-one", but rather she "*assumes* that properties are in 'average' condition." FOJ, p 4 (Appendix at 21) (emphasis added). Thus the prior year's true cash value assessment of $48,000 was based on an assumption, not evidence.

Besides the assessor's assumption, the Tribunal's only other support for the $48,000 true cash value assessment is pictures: "the interior photographs depict a property in average condition before Petitioner acquired it." Order Denying Reconsideration, p 2 (Appendix at 35). The pictures are from the 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). Usually the sale price is used to determine value. Here the Tribunal ignores the sale price and uses the pictures.

The actual evidence in the case shows that the property required repairs. The City's own 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).

The first time the 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 not 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).)

Finally, there is no record in this case that the assessor claimed that she believed that the property was in average condition at the time of its sale. As noted above the assessor testified that she used mass appraisal and assumed the property was in average condition. Nor is there any record that the assessor relied on the MLS pictures to support a belief that the property did not need repairs. The Tribunal here appears to have gone hunting outside the arguments presented by the parties for evidence to support its conclusion.

Therefore, the Tribunal's argument as to why it can ignore normal repairs is both a wrong interpretation of the statute and also without factual support.

II. The Tribunal erred in not determining the before-repair value

The Tribunal has refused to determine the before-repair value because: 1) it believed that the STC's requirement of a before-repair appraisal is not required and 2) it disagreed with Appellant's evidence on the value of the property before repair. Order Denying Reconsideration, p 2 (Appendix at 35). Both of these are addressed below.

A. The Tribunal overruled the STC's guidance without cogent reasons

The Michigan Supreme Court has given the following standard for judicial review of an administrative agency's interpretation of a statute:

> 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. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259 (2008) (cleaned up).

Regarding normal repairs under MCL 211.27(2) the STC requires that "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." STC Bulletin at 2 (Appendix at 44). Also in its "Instruction to Assessor for Processing Form 865" the STC writes: "The assessor is required to estimate the true cash value of the property both before and after the expenditures." STC Form 865 Request for Nonconsideration (MTT Docket Line 35), p 2 (Appendix at 12).

Despite the clear instruction of the STC requiring before-repair and after-repair appraisals, the Tribunal states that "there is nothing in MCL 211.27(2) requiring 'before repair' or 'after repair' appraisals when determining whether an assessment includes the true cash value of normal repairs." Order Denying Reconsideration, p 2 (Appendix at 35). To support its interpretation of the statute against the STC's interpretation, the Tribunal in footnote 7 of the Order Denying Reconsideration, p 2 (Appendix at 35), has three arguments, none of which withstand scrutiny.

The Tribunal's first reason for departing from STC guidelines and refusing to determine the before-repair value is that situations in the second sentence of MCL 211.27(2) is not at issue:

> *footnote 7* MCL 211.27(2) allows an assessor to increase "construction quality classification or reduce the effective age for depreciation purposes" if the "appraisal of the property was erroneous before non-consideration of the normal repair." It also prevents an assessor from assigning an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction. Neither situation is at issue here. . . . Order Denying Reconsideration, p 2 (Appendix at 35).

The Tribunal quotes from the second sentence of MCL 211.27(2), then declares that the situations addressed by that sentence are not at issue. The second sentence of the statute does not prohibit the assessor or the Tribunal from determining the before-repair value. It only prohibits the assessor from increasing construction quality, reducing the effective age, and assigning a different economic condition factor in certain situations. The Tribunal does not explain why these prohibitions are relevant

to whether the Tribunal must determine the before-repair value. Thus the Tribunal's first reason for not determining the before-repair value is unpersuasive.

The Tribunal's second reason for departing from STC guidelines and refusing to determine the before-repair value is that the STC requires before-repair and after-repair appraisals only if the value of the repairs appear on the assessment roll:

> *footnote 7* . . . 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. . . . Order Denying Reconsideration, p 2 (Appendix at 35).

The Tribunal has misinterpreted the paragraphs 3 and 4 of STC Bulletin at 2 (Appendix at 44). Below is a fuller quote. The Tribunal's quote is italicized, and the words immediately after are bolded to clarify:

> 3. *If the true cash value of non-consideration items is shown on the assessment roll* **in the first year after the qualifying change is made**, 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. *If the true cash value of non-consideration items is shown on the assessment roll* **in years subsequent to the first year after the qualifying change**, 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 STC Bulletin distinguish between the two possible cases when repairs may be 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. In both cases before and after appraisals are used. Therefore the STC Bulletin does not support the Tribunal.

The Tribunal's third and final reason for departing from STC guidelines and refusing to determine the before-repair value is that "STC guidance lacks the force of

law. [*Rovas*, 482 Mich at 103; 754 NW2d at 267]." Order Denying Reconsideration, p 2 (Appendix at 35).

Rovas concerns the respect that judicial-branch courts should give to executive agency interpretations of law. The Tribunal is itself an executive agency as is the State Tax Commission. *Rovas* does not address an executive agency vis-a-vis another executive agency.

Although *Rovas* does not give the Tribunal authority to overrule the STC, it does teach that an executive agency's interpretation "is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." *Rovas*, 482 Mich at 103. Here the Tribunal relies on irrelevancies and out-of-context quotes to overrule the STC. Therefore, the Tribunal has not given cogent reasons for disregarding the guidance of the STC on before-repair and after-repair appraisals. This Court should reverse.

B. Failure of petitioner's proofs does not excuse the Tribunal from independently determining the true cash value

When reviewing 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.

Once a petitioner has presented evidence, the Tribunal must make an independent determination of the true cash value at issue, even if the evidence is unconvincing. In *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992), this Court reversed when the Tribunal violated 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 Tribunal has made the same error as the 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:

> To begin, there is nothing in MCL 211.27(2) requiring "before repair" and "after repair" appraisals when determining whether an assessment includes the true cash value of the normal repairs. Rather, in a proceeding before the Tribunal, Petitioner bears the burden of proof. Further, the Tribunal cannot conclude that the FOJ erred when it concluded that Petitioner's contentions concerning the purchase price, i.e. the true cash value before repairs, was entitled to no weight or credibility. The selling price of a property is not is presumptive true cash value. Despite Petitioner's assertions that the marketing efforts for the subject show that the sale was a "market sale," the home was being sold by the U.S. Department of Housing and Urban Development ("HUD"). Because the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property. Order Denying Reconsideration, p 2 (Appendix at 35) (footnotes omitted).

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 . . ." *Jones & Laughlin*, 193 Mich App at 354-356. Therefore this Court should reverse.

III. The Tribunal erred when it gave the selling price of the property "no weight or credibility" solely because the seller was HUD and speculation that the seller may not have been motivated to receive market value

When reviewing Tax Tribunal cases, this Court looks for misapplication of the law or adoption of a wrong principle. Factual findings must be supported by competent, material, and substantial evidence on the whole record. Statutory interpretation is reviewed de novo. *Briggs*, 485 Mich at 75; 780 NW2d at 757-758

In *Jones & Laughlin*, this Court reversed the Tribunal for cursorily rejecting the sale price of the subject property:

> The Tax Tribunal, however, erred as a matter of law in its treatment of petitioner's evidence regarding the sale. The tribunal held "A sale that occurs *after* the tax date has little or no bearing on the assessment made prior to the sale." (Emphasis in original.)
>
> We disagree. Unlike some situations involving assessments of industrial property for which no ready market exists and a hypothetical buyer must be posited, in this case the equipment was actually sold in a commercial transaction, albeit after the tax date. We believe that 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. *Jones & Laughlin*, 193 Mich App at 353-354 (cleaned up).

In this case the Tribunal has ruled that the sale price "is entitled to no weight or credibility" because the seller was a government entity and speculation that the seller may not have been motivated to receive market value. Order Denying Reconsideration, p 2 (Appendix at 35). The Tribunal does not cite evidence, facts, or authority to suggest that an otherwise market sale is not a market sale because the seller was HUD. Nor does does the Tribunal merely discount the weight of the evidence; it rules that the sale is entitled to *no* weight or credibility. Such a cursory dismissal of the sale price

based on speculation in contrary to the teaching of *Jones & Laughlin*. This Court should reverse and require that the Tribunal base its rulings on evidence and not cursorily reject the sale price.

Relief Requested

Applicant respectfully asks this Court to reverse the ruling of the Tribunal.

Proof of Service

On 3/30/2019, I served a copy of this Brief on Appellee's counsel by electronic service.

Respectfully Submitted,
/s/ Daniel Patru, P74387
3/30/2019