STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

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

Application for Leave to Appeal

Daniel Patru (P74387)
3309 Solway
Knoxville, TN 37931
(734) 274-9624
dpatru@gmail.com

Stephen J. Hitchcock (P15005)
John C. Clark (P51356)
Geoffrey S. Wagner (P70839)
Attorneys for Respondent-Appellee
Giarmarco, Mullins & Horton, P.C.
101 W. Big Beaver Road, 10 th floor
Troy, MI 48084
(248) 457-7024
sjh@gmhlaw.com

ORAL ARGUMENT REQUESTED

Checklist

☐ Follow the example of

- ☐ Morningside Community
- ☐ Mackinac Center Legal Foundation Application for Leave to Appeal and
- ☐ Pro Se Application.

☐ (6) A statement of facts that must be a clear, concise, and chronological narrative. All material facts, both favorable and unfavorable, must be fairly stated without argument or bias. The statement must contain, with specific page references to the transcript, the pleadings, or other document or paper filed with the trial court,

☐ (a) the nature of the action;

☐ (b) the character of pleadings and proceedings;

☐ (c) the substance of proof in sufficient detail to make it intelligible, indicating the facts that are in controversy and those that are not;

☐ (d) the dates of important instruments and events;

☐ (e) the rulings and orders of the trial court;

☐ (f) the verdict and judgment; and

☐ (g) any other matters necessary to an understanding of the controversy and the questions involved;

☐ (7) The arguments, each portion of which must be prefaced by the principal point stated in capital letters or boldface type. As to each issue, the argument must include a statement of the applicable standard or standards of review and supporting authorities, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions. Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court. Page references to the transcript, the pleadings, or other document or paper filed with the trial court must also be given to show whether the issue was preserved for appeal by appropriate objection or by other means. If determination of the issues presented requires the study of a constitution, statute, ordinance, administrative rule, court rule, rule of evidence, judgment, order, written instrument, or document, or relevant part thereof, this material must be reproduced in the brief or in an addendum to the brief. If an argument is presented concerning the sentence imposed in a criminal case, the appellant's attorney must send a copy of the presentence report to the court at the time the brief is filed;

☐ fix appendix references

☐ Make sure to show how each issue was preserved.

Table of Contents

Table of Authorities

Order Appealed From and Basis of Jurisdiction

Appellant seeks leave to appeal the Michigan Court of Appeals' order of March 31, 2020 denying a timely filed motion for reconsideration. Per MCR 7.305(A)(2), a copy of the order denying reconsideration as well as opinion are attached.

This filing is timely because it is filed within 42 days an order denying a timely filed motion for reconsideration per MCL 7.305(C)(2)(c). Under this Court's Administrative Orders 2020-4 and 2020-8, the time period for filing did not begin to run until June 8, 2020.

Questions Presented for Review

I. Absent new evidence or new law, may the trial court and the Court of Appeals change findings of fact and application of law which were settled in a previous appeal?

Appellant answers "No." Appellee answers "Yes." The Court of Appeals answered "Yes."

II. In addition to distiguishing repairs based on whether they were performed before or after a sale, does MCL 211.27(2) distinguish repairs based on if they were performed in the year of sale?

Appellant answers "No." Appellee answers "Yes." The Court of Appeals answered "Yes."

III. May the Tax Tribunal reject a sale of the subject property as evidence of its value based only on speculation that the seller, as government entity, may not have been motivated to receive market value for the property?

Appellant answers "No." Appellee answers "Yes." The Court of Appeals answered "Yes."

IV. If it finds that normal repairs were done under MCL 211.27(2), may the Tax Tribunal refuse to independently determine the before-repair value?

Appellant answers "No." Appellee answers "Yes." The Court of Appeals answered "Yes."

V. Was the Tax Tribunal's finding that $10,000 in normal repairs had no effect on the subject's value supported by competent, material, and substantial evidence on the whole record when the tribunal relied solely on MLS pictures and the prior year's assessed value (which assumed the property was in average condition) and ignored the MLS pricing information and the fact that the city required the repairs before it would issue a certificate of occupancy?

Appellant answers "No." Appellee answers "Yes." The Court of Appeals answered "Yes."

Facts and Material Proceedings

I. Background

Before it was bought by Appellant, the subject house was owned by HUD. MLS Listing (MTT Docket Line 32) (Appendix at 9). The house had been listed on the MLS on and off since April 2013; its initial asking price was $29,900, but by the time Appellant bought the house, the asking price was $32,000. MLS History (MTT Docket Line 33) (Appendix at 8).

Appellant bought the house for the asking price in August 2015.

The City of Wayne (Respondent/Appellee) required repairs before it allowed occupancy. 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).]

Appellee assessed the subject property for 2016 at a true cash value of $50,400. Appellant appealed, arguing that Appellee's assessment was the after-repair value as of December 31, 2015. Appellant contended that the before-repair value should be used. "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.

Appellant appealed to the Board of Review and then to the Tax Tribunal.

II. The First Appeal to the Tax Tribunal

The Tax Tribunal's Referee ruled that MCL 211.27(2) nonconsideration did not apply because the property was in substandard condition. Appellant objected to this in Exceptions and a Motion for Reconsideration, but the Tribunal's Judge affirmed.

Appellant appealed for the first time to the Court of Appeals.

III. The First Appeal to the Court of Appeals

In an unpublished decision, the Court of Appeals Court reversed:

> 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).

The Court noted that Appellant "submitted a spreadsheet detailing the repairs he completed, which . . . included repairs that, under MCL 211.27(2), constitute normal repairs." *Patru 1*, p 4 (Appendix at 40). However, the tribunal had not considered this evidence because it was submitted after the hearing.

Because this Court could not determine "whether the evidence Patru provided at the hearing was reflective of the information on the spreadsheet" this Court remanded the case back to the tribunal. *Id.* p 5.

IV. The Second Appeal to the Tax Tribunal

On remand, the tribunal ruled that the repairs were normal, but it again refused to apply MCL 211.27(2) nonconsideration, this time because the repairs were done in a year of a transfer. Opinion at 1. Also, the tribunal changed its previously undisputed finding that the property's before-repair condition was substandard. It now ruled that the repairs "did not affect the assessed [true cash value] of the property . . . ." *Id.* Appellant filed a motion for reconsideration, but the tribunal affirmed.

Appellant appealed for the second time to the Court of Appeals.

V. The Second Appeal to the Court of Appeals

In an unpublished decision, the Court of Appeals affirmed, agreeing with the Tax Tribunal on all the issues in dispute. (The details of the Court's ruling will be discussed in the Argument section below.) Appellant filed a motion for reconsideration, which was answered by Appellee, but the motion was denied without comment on March 31, 2020.

Appellant now asks this Court to review the case.

Grounds for Granting the Application

I. Granting question one (re. the law of the case) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

Per MCR 7.305(B)(2) the first issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the view of the law-of-the-case doctrine and the public is whether taxing authorities and tribunal judges[1] should be permitted to try again with a different theory after they have lost a dispute with a taxpayer at the Court of Appeals.

In this case, the Tax Tribunal first ruled that the house was in such *poor* condition before the repairs that the repairs were not normal repairs under the statute. Then, after the Court of Appeals rejected this theory, the Tax Tribunal tried a couple more theories. This time, on exact same evidence, the Tribunal ruled that the house was in such *good* condition before the repairs that that the repairs, worth $10,000, did not affect the value at all. In addition, the Tribunal ruled that because the repairs were done in the year when the property was purchased, that MCL 211.27(2)

[1]The City, appellant, has not advanced any written legal arguments at the tribunal level. Throughout this case, the conflict has been primarily between the taxpayer and the Tribunal Judges. All of the issues presented before this Court originate from the tribunal judges. This does not mean that the tribunal judges are biased or acting improperly, because they have a duty to make their own decisions, independent of positions put forth by the parties.

nonconsideration did not apply at all, a theory that could have been brought up in the first appeal. This necessitated another appeal to the Court of Appeals. The process so far has lasted more four years since the initial appeal at the 2016 March Board of Review. The process has required Appellant to file numerous lengthy documents. The only way Appellant could afford to do these appeals is because he did the appeals himself for "free." Appellant could not have afforded to pay a lawyer to do it for him.

Especially in cases like this, where the lone taxpayer is up against the unlimited resources of the government, the ordinary tax-paying public has an interest in the efficiency promoted by the law-of-the-case doctrine. The best arguments should be brought on the first appeal and arguments that are not brought, but could have been brought, should be barred. Likewise, facts determined in the first appeal should not changed. The taxing authority should not be allowed to keep trying new theories until it succeeds either on the merits or by exhausting the taxpayer.

Per MCR 7.305(B)(3) the first issue involves a legal principle of major significance to the state's jurisprudence. tk the law-of-the-case doctrine has been around for a long time and serves an important interest.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the first issue is clearly erroneous and will cause material injustice.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

II. Granting question two (whether there is a first-year exception to MCL 211.27(2)) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

Per MCR 7.305(B)(2) the second issue has significant public interest and the case is against one of the state's subdivisions.

There are two big-picture issues of this case from the point of MCL 211.27(2) nonconsideration and the public. Will industrious buyers of distressed homes be

penalized for making immediate repairs rather than waiting until the year after the sale? And, can ordinary members of the public rely on the plain language of the tax code and the guidance of the state tax commission, or must they take their chances that a Tax Tribunal Judge will make a novel interpretation of the tax code at odds with both the code's plain language and the STC?

Per MCR 7.305(B)(3) the second issue involves a legal principle of major significance to the state's jurisprudence, namely, plain language interpretation of statutes.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the second issue is clearly erroneous and will cause material injustice.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

III. Granting question three (rejecting a sale based on speculation) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

Per MCR 7.305(B)(2) the third issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question three and the public. Will all relevant evidence be considered fairly or will some evidence by excluded out of hand based on arbitrary per-se rules? Here the subject's actual sale was replaced with mls marketing pictures taken out of context and the previous year's assessed value which by the city's own admission assumed the point at issue.[2]

Per MCR 7.305(B)(3) the third issue involves a legal principle of major significance to the state's jurisprudence, namely, a correct determination of the true cash value of properties.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the third issue is clearly

[2]The Tribunal Judge himself in his final opinion says that the Appellant's representative testified that properties are assessed under the assumption that they are in average condition. Thus the assessed value cannot be used to prove the actual condition of the property.

erroneous and will cause material injustice. Violates *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) and prevent Appellant from receiving a fair hearing.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. *Jones & Laughlin*.

IV. Granting question four (determination of before-repair value) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

Per MCR 7.305(B)(2) the fourth issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question four and the public. Will STC's guidance by followed, or can assessors and tribunal judges just do their own thing?

Is this just another way to create a first-year exception? If the previous year's assessed value is used for the before-repair value, then in many cases in which the city has not noted the below-average condition of the property, the result will be indistinguishable from an explicit first-year exception.

Per MCR 7.305(B)(3) the fourth issue involves a legal principle of major significance to the state's jurisprudence, namely, independent determination by tax tribunal judges. tk where does this requirement come from?

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the fourth issue is clearly erroneous and will cause material injustice. Violates *Jones & Laughlin* and is a back-door way to implement an year-of-sale exception.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. *Jones & Laughlin*. *Id.*

V. Granting question five (no basis for finding no effect of repairs on value) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

Per MCR 7.305(B)(2) the fifth issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question five and the public: must Judges be disciplined in their factual findings or can they cherry-pick evidence, use "evidence" that begs the question, ignore evidence they don't like, etc?

Per MCR 7.305(B)(3) the fifth issue involves a legal principle of major significance to the state's jurisprudence, namely, correct even-handed evaluation of the evidence. No case will have exactly this evidence, but the manner in which evidence is handled can be the same. The Court needs to correct the Tribunal before this becomes a habit.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the fourth issue is clearly erroneous and will cause material injustice. This is clearly wrong here and results in higher taxes.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. Violates the rule for evidence which is cited in many appellate cases.

VI. The fact that this case is not published should not cause the Court to think that its bad practices and teaching won't spread if unchecked now

A. This is a case of first impression regarding the first year's exception to MCL 211.27(2), the per-se rule against bank sales or sales by government institutions, the obligation to independently determine the before-repair value, and the improper use of MLS pictures and previous-year assessed value. It is a precedent even if nonbinding.

Other cases will follow. The tendency will be follow the lead of this case, especially if the Supreme Court has refused to correct it. Why pay a lawyer to craft an appeal, when someone has already tried and been shot down?

Appellant himself is counsel for five pending cases which are on hold pending the resolution of the issues in this case.

For cases involving residential fixer-uppers, it unlikely that an owner will have the resources, know-how, and willingness to appeal even to the Court of Appeals. It is likely that many more abuses like in the present case before this Court has an opportunity to correct.

Argument

I. This Court should grant leave to appeal on question one under MCR 7.305(B)(2, 3, 5a, and 5b)

standard of review and preservation

A. Enforcing the doctrine of the law of the case serves a significant public interest in reducing the cost and length of tax appeals

Per MCR 7.305(B)(2) the first issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the view of the law-of-the-case doctrine and the public is whether taxing authorities and tribunal judges[3] should be permitted to try again with a different theory after they have lost a dispute with a taxpayer at the Court of Appeals.

In this case, the Tax Tribunal first ruled that the house was in such *poor* condition before the repairs that the repairs were not normal repairs under the statute. Then, after the Court of Appeals rejected this theory, the Tax Tribunal tried a couple more theories. This time, on exact same evidence, the Tribunal ruled that the house

[3]The City, appellant, has not advanced any written legal arguments at the tribunal level. Throughout this case, the conflict has been primarily between the taxpayer and the Tribunal Judges. All of the issues presented before this Court originate from the tribunal judges. This does not mean that the tribunal judges are biased or acting improperly, because they have a duty to make their own decisions, independent of positions put forth by the parties.

was in such *good* condition before the repairs that that the repairs, worth $10,000, did not affect the value at all. In addition, the Tribunal ruled that because the repairs were done in the year when the property was purchased, that MCL 211.27(2) nonconsideration did not apply at all, a theory that could have been brought up in the first appeal. This necessitated another appeal to the Court of Appeals. The process so far has lasted more four years since the initial appeal at the 2016 March Board of Review. The process has required Appellant to file numerous lengthy documents. The only way Appellant could afford to do these appeals is because he did the appeals himself for "free." Appellant could not have afforded to pay a lawyer to do it for him.

Especially in cases like this, where the lone taxpayer is up against the unlimited resources of the government, the ordinary tax-paying public has an interest in the efficiency promoted by the law-of-the-case doctrine. The best arguments should be brought on the first appeal and arguments that are not brought, but could have been brought, should be barred. Likewise, facts determined in the first appeal should not changed. The taxing authority should not be allowed to keep trying new theories until it succeeds either on the merits or by exhausting the taxpayer.

B. The doctrine of the law of the case is a legal principle with major significance to the state's jurisprudence because it helps make sure that the state's limited judicial resources are used efficiently.

Per MCR 7.305(B)(3) the first issue involves a legal principle of major significance to the state's jurisprudence. tk the law-of-the-case doctrine has been around for a long time and serves an important interest.

C. The Court of Appeals' decision clearly contradicts Michigan caselaw and has already caused material injustice

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the first issue is clearly erroneous and will cause material injustice. Per MCR 7.305(B)(5b) the Court of

Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

II. This Court should grant leave to appeal on question two under MCR 7.305(B)(2, 3, 5a, and 5b)

standard of review and preservation

A. The public has a significant interest in the plain language application of MCL 211.27(2) in particular and the tax law generally.

Per MCR 7.305(B)(2) the second issue has significant public interest and the case is against one of the state's subdivisions.

There are two big-picture issues of this case from the point of MCL 211.27(2) nonconsideration and the public. Will industrious buyers of distressed homes be penalized for making immediate repairs rather than waiting until the year after the sale? And, can ordinary members of the public rely on the plain language of the tax code and the guidance of the state tax commission, or must they take their chances that a Tax Tribunal Judge will make a novel interpretation of the tax code at odds with both the code's plain language and the STC?

Per MCR 7.305(B)(3) the second issue involves a legal principle of major significance to the state's jurisprudence, namely, plain language interpretation of statutes.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the second issue is clearly erroneous and will cause material injustice.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

B. The exception to MCL 211.27(2) is unsupported

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).

This Court previously 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. But this Court now makes the same error by reading into MCL 211.27(2) an exception for repairs done in the year of a transfer.

The statute requires nonconsideration "*until* the property is sold." The word until means that there must be a sale after the repairs for nonconsideration to end. This Court's refusal to apply nonconsideration where there is no sale after the repairs is a violation of the plain words of the statute.

This Court also frustrates the intent of the statute which is to promote repairs. In direct violation of the statute's plain language, this Court uses the interaction of at least two other statutes to exempt from nonconsideration the repairs of diligent buyers who start repairs right away. Under the Court's view, they should wait until the year after the purchase so that the before-repair value can be determined on tax day.

Where did this Court err? This Court is correct up to the proposition that the uncapped taxable value is based on the true cash value of the property in the year after the transfer.[4] But it errs in equating true cash value with fair market value "regardless of any "normal repairs" made by petitioner in [the year of purchase]." Opinion at 5.

True cash value is defined in MCL 211.27[5], which has eight subsections, which if

[4]The uncapped taxable value is the equalized assessed value (state equalized value). MCL 211.27a(3). The assessed value is one half of the true cash value. MCL 211.27a(1). The true cash value is always calculated as of tax day. "'true cash value' means the usual selling price . . . at the time of assessment," MCL 211.27(1). "The taxable status of . . . real . . . property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day," MCL 211.2(2).

[5]Internally MCL 211.27 may define true cash value in terms of itself. For example, MCL 211.27(2) uses "true cash value for assessment purposes" to distinguish from the "true cash value" that increased due to normal repairs. But outside of MCL 211.27, in the rest of the tax act, there is only one "true cash value" which incorporates all of MCL 211.27. For example, assessed value is defined in MCL 211.27a(1) as 50% of the true cash value. Obviously with respect to MCL 211.27(2) this means the "true cash value

reproduced here would span five pages. Courts have summarized true cash value as "fair market value," based on the term "usual selling price" in subsection one. But this shorthand is used only in cases where a more complex definition is not needed. There is no case, except this Court's opinion here, that holds that the caselaw-derived term "fair market value" overrides or invalidates an applicable subsection of MCL 211.27.

MCL 211.27(2), as part of the definition 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. Rather, the dependency goes the other way. MCL 211.27(2) always operates to exclude the value of normal repairs no matter if true cash value is used to establish the assessed value of MCL 211.27a(1) or the additions of MCL 211.27a(2)(b).

This Court's interpretation of Mathieu Gast is unsupported by the State Tax Commission. Its opinion on page 6 cites, with its own emphasis, 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.

This Court reads just the second, emphasized, sentence out of its context. The first sentence of the paragraph gives the topic: "The exemption . . . ends in the year after *the owner who made the repairs* . . . sells the property." In this context, the second sentence's "entire property" means the property with the seller's repairs considered. The buyer's repairs are not in the paragraph's scope.[6]

for assessment purposes." But, as it is outside of MCL 211.27, MCL 211.27a(1) uses the term "true cash value."

[6]The opinion at 6 uses this out-of-context quote to justify its holding that before-repair and after-repairs appraisals were not required. As this passage does not say what this Court thinks it says, this Court's holding on this point is without support.

C. The law of the case requires reversal

> 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. . . . [T]he doctrine is discretionary, rather than mandatory.

Bennett v Bennett, 197 Mich. App. 497, 499-500; 496 N.W.2d 353 (1992).

The opinion at 5 gives two reasons why the law of the case does not apply. First, this Court had not resolved whether "the repairs were normal repairs within the meaning of MCL 211.27(2)." This was not resolved because the existing record was insufficient. *Patru 1*, p 5 (Appendix at 41). But the opinion specified that if the Tribunal found that the repairs listed on the spreadsheet had been performed, these would constitute normal repairs and should not be considered as part of the true cash value:

> 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.

Id. So on remand, the tribunal should have applied nonconsideration after it found that the repairs as listed on the spreadsheet were normal repairs.

Instead, despite finding that the repairs were normal, the tribunal did not apply nonconsideration because of the second reason: it now thought that the transfer of ownership and uncapping created an exception. Opinion at 5.

In *Bennett*, this Court was asked to reverse its earlier ruling based on a law which it had not explicitly considered the first time. This Court refused, reasoning that even though 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." *Bennett*, 197 Mich. App. 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.*

Thus *Bennett* teaches that the law of the case precludes even correct arguments if they could have been brought up in the first appeal. This is so here. Thus even if this Court agrees with the tribunal's latest decision, it should still reverse and affirm its earlier ruling.

Logically, the tribunal's decision rests on two independent grounds:

1. MCL 211.27(2) does not apply in transfer years and the tribunal is not prohibited from considering this exception by the law of the case.
2. Even if nonconsideration is applied, the repairs did not affect value. Considering inflation, the before-repair value was essentially equal to the after-repair value. In particular, the subject's purchase price was not the before-repair value.

All of these propositions are proven false below. There is no exception to nonconsideration for transfer years. And even if there were such an exception, the law of the case requires that this should have been brought up on the first appeal. Second, the "fact" that the repairs did not affect value is not supported by the required evidence. And in particular, the tribunal did not properly consider the subject's purchase price.

III. Granting question three (rejecting a sale based on speculation) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

standard of review and preservation

Per MCR 7.305(B)(2) the third issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question three and the public. Will all relevant evidence be considered fairly or will some evidence by excluded out of hand based on arbitrary per-se rules? Here the subject's actual sale

was replaced with mls marketing pictures taken out of context and the previous year's assessed value which by the city's own admission assumed the point at issue.[7]

Per MCR 7.305(B)(3) the third issue involves a legal principle of major significance to the state's jurisprudence, namely, a correct determination of the true cash value of properties.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the third issue is clearly erroneous and will cause material injustice. Violates *Jones & Laughlin* and prevent Appellant from receiving a fair hearing.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. *Jones & Laughlin*.

A. This Court wrongly affirms the tribunal's rejection of the purchase price

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.

Contrary to this Court characterization, Appellant is not complaining that "the tribunal erred by rejecting his 2015 purchase price of the property as determinative of its TCV." Opinion at 6. Rather, Appellant's brief at 18-19 complains that the tribunal gave the sale price "no weight or credibility," Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35), contrary to the teaching of *Jones & Laughlin*, 193 Mich App at 353-354:

> [T]he price at which an item of property actually sold is most certainly relevant evidence . . . the tribunal's opinion that the evidence "has little or *no* bearing" on

[7]The Tribunal Judge himself in his final opinion says that the Appellant's representative testified that properties are assessed under the assumption that they are in average condition. Thus the assessed value cannot be used to prove the actual condition of the property.

> the property's earlier value suggests that the evidence was rejected out of hand. Such cursory rejection would be erroneous.

Emphasis in original. Appellant just wants the tribunal to consider the sale price and not reject it out of hand.

The opinion at 7 asserts that the tribunal "considered petitioner's evidence of the 2015 purchase price" and also "considered the nature of the sale," but there is no record of such consideration *involving the particular facts of this case.*[8] The Tribunal gave the sale price "no weight or credibility" because the seller was HUD.[9] This amounts to a per se rule which excludes from consideration the sale price of all HUD-owned homes. This is the kind of cursory rejection that *Jones & Laughlin* forbids. Especially troubling is that the tribunal justifies this per se rule with bare speculation: "Because the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property." Order Denying Reconsideration, p 2 (Appendix at 35).

IV. Granting question four (necessity of determinating the before-repair value) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

standard of review and preservation

Per MCR 7.305(B)(2) the fourth issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question four and the public. Will STC's guidance by followed, or can assessors and tribunal judges just do their own thing?

[8] In this case the tribunal could have considered, but did not, that the subject house (1) had been listed by an independent, licensed real estate broker on the MLS, (2) had sold more than two years after it was first listed, (3) had had several offers on it, (4) was not reduced in price to make it sell faster, (5) sold at a price consistent with the repairs that were required.

[9] In support of its rejection of the sale price, the tribunal also cites MCL 211.27(6), prohibiting assessors from presuming that the selling price is the true cash value. But *Jones & Laughlin*, 193 Mich App at 354, specifically considered and rejected this as justifying a cursory rejection.

Is this just another way to create a first-year exception? If the previous year's assessed value is used for the before-repair value, then in many cases in which the city has not noted the below-average condition of the property, the result will be indistinguishable from an explicit first-year exception.

Per MCR 7.305(B)(3) the fourth issue involves a legal principle of major significance to the state's jurisprudence, namely, independent determination by tax tribunal judges. tk where does this requirement come from?

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the fourth issue is clearly erroneous and will cause material injustice. Violates *Jones & Laughlin* and is a back-door way to implement an year-of-sale exception.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. *Jones & Laughlin*. *Id.*

A. If the Tribunal finds that normal repairs were made, it must determine the before-repair value.

The STC requires it.

The Court of Appeals misread the STC Bulletin

V. Granting question five (no basis for finding no effect of repairs on value) is proper under MCR 7.305(B)(2, 3, 5a, and 5b)

standard of review and preservation

Per MCR 7.305(B)(2) the fifth issue has significant public interest and the case is against one of the state's subdivisions.

The big-picture issue of this case from the point of view of question five and the public: must Judges be disciplined in their factual findings or can they cherry-pick evidence, use "evidence" that begs the question, ignore evidence they don't like, etc?

Per MCR 7.305(B)(3) the fifth issue involves a legal principle of major significance

to the state's jurisprudence, namely, correct even-handed evaluation of the evidence. No case will have exactly this evidence, but the manner in which evidence is handled can be the same. The Court needs to correct the Tribunal before this becomes a habit.

Per MCR 7.305(B)(5a) the Court of Appeals' handling of the fourth issue is clearly erroneous and will cause material injustice. This is clearly wrong here and results in higher taxes.

Per MCR 7.305(B)(5b) the Court of Appeals' decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. Violates the rule for evidence which is cited in many appellate cases.

A. The ruling that the repairs did not affect the value is unsupported

The tribunal's factual findings must be supported by "competent, material, and substantial evidence on the whole record." *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434; 830 NW2d 785 (2013). "Substantial evidence supports the Tribunal's findings if a reasonable person would accept the evidence as sufficient to support the conclusion." *Id.*

Besides ruling that MCL 211.27(2) did not apply, the tribunal also ruled that the repairs did not affect the property's true cash value, or equivalently, that the before-repair value was the same as the after-repair value. The opinion says at 5: "The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it."

But the property's substandard condition is not merely Appellant's argument. Throughout the first trip to this Court until the tribunal's last Final Opinion, all the actors in this case, the parties, the tribunal and this Court relied on the well-established fact that the subject property was in substandard condition before the repairs.

It is undisputed that, when he purchased the property, it was in substandard

condition and required numerous repairs to make it livable.

Patru 1, p 1 (Appendix at 37). This case was first appealed to this Court because:

> [t]he 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). The tribunal's reversal of a fact which was foundational to its first ruling was not based on new evidence: neither party argued that the house was not in substandard condition before repairs. Therefore this Court should take a careful look at the tribunal's reasoning for this drastic reinterpretation of the evidence.

The tribunal relied on MLS photographs 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. The tribunal misused the MLS evidence. While an MLS sale may be used to support or contest a valuation, no principle of appraisal allows what the tribunal does here: reject an MLS sale as evidence of value, but then use the MLS sale for its pictures to argue that the sale price should have been higher. The MLS sale on its face supports a value $32,000, but the tribunal says it supports a value of $48,000. Thus, as used by the tribunal, the MLS photographs are not competent, material, and substantial evidence.

Here, there is direct, uncontested evidence that contradicts the tribunal's opinion of the MLS photographs. After having actually examined the house, the city's inspectors did not think that the house was livable and habitable, but instead, they required repairs before they would allow occupancy.

Regarding the prior year's assessed value, Respondent/Appellee testified:

> [M]ass 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 at 21), emphasis added. The assessed value here is just the output of a mass appraisal computer program that assumes average condition. It is not evidence that the house was in average condition.

Also, by presuming that the assessed value was correct, the tribunal violates the teaching of *Pontiac Country Club*, 299 Mich App at 435-36: "The Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of true cash value when competent and substantial evidence supports doing so, *as long as it does not afford the original assessment presumptive validity.*" Emphasis added.

VI. The fact that this case is not published should not cause the Court to think that its bad practices and teaching won't spread if unchecked now

A. This is a case of first impression regarding the first year's exception to MCL 211.27(2), the per-se rule against bank sales or sales by government institutions, the obligation to independently determine the before-repair value, and the improper use of MLS pictures and previous-year assessed value. It is a precedent even if nonbinding.

Other cases will follow. The tendency will be follow the lead of this case, especially if the Supreme Court has refused to correct it. Why pay a lawyer to craft an appeal, when someone has already tried and been shot down?

Appellant himself is counsel for five pending cases which are on hold pending the resolution of the issues in this case.

For cases involving residential fixer-uppers, it unlikely that an owner will have the resources, know-how, and willingness to appeal even to the Court of Appeals. It is likely that many more abuses like in the present case before this Court has an

opportunity to correct.

Appellant in this case is perhaps unusual in being able to sustain an appellate review about a relatively small matter. There are many cases where the amount in controversy in terms of annual tax is too small to justify the cost of an effective advocate.

A long time may pass before this Court sees again the issues raised in this case. In the interim, the abuses represented by the issues raised here (assuming Appellant is correct on the issues) will continue and many injustices will be finalized before an appellate court, much less this Court has a chance to correct them. Therefore Appellant respectfully urges this Court to correct the issues in this case.

VII. Question

A. Ground for Application

Rule 7.305

(B) Grounds. The application must show that

(1) the issue involves a substantial question about the validity of a legislative act;

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves a legal principle of major significance to the state's jurisprudence;

(4) in an appeal before a decision of the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a 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 branches of state government is invalid;

(5) in an appeal of a decision of the Court of Appeals,

(a) the decision is clearly erroneous and will cause material injustice, or

(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.

Standard of Review

A motion for reconsideration "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." MCL 2.119(F)(3). 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). 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).

A. Legal Argument

Relief

Therefore because this Court's opinion contains palpable errors which completely undermine its logic, Appellant respectfully asks this Court to reconsider this case.

Respectfully Submitted,

/s/ Daniel Patru, P74387

June 12, 2020

Court of Appeals, State of Michigan

ORDER

Daniel Patru v City of Wayne

Docket No. 346894

LC No. 16-001828-TT

Karen M. Fort Hood
Presiding Judge

Jane M. Beckering

Mark T. Boonstra
Judges

The Court orders that the motion for reconsideration is DENIED.

Karen M. Fort Hood
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 3 1 2020
Date

Jerome W. Zimmer Jr.
Chief Clerk

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

DANIEL PATRU, Petitioner-Appellant,	UNPUBLISHED February 18, 2020
v	No. 346894 Tax Tribunal
CITY OF WAYNE, Respondent-Appellee.	LC No. 16-001828-TT

Before: FORT HOOD, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Petitioner challenges respondent's assessment of residential property in the city of Wayne for the 2016 tax year. Petitioner purchased the property in August 2015 for $32,000 and thereafter made approximately $10,000 worth of repairs to the property. For the 2016 tax year, respondent assessed the property as having a true cash value (TCV) of $50,400, and a taxable value of $25,200. Petitioner appealed these assessments to the Michigan Tax Tribunal, which issued a decision in January 2017 upholding the assessments. In a prior appeal, this Court noted that under MCL 211.27(2), an increase in TCV attributable to normal repairs cannot be considered by an assessor until property is sold, and because the record was insufficient to determine whether the repairs performed by petitioner qualified as normal repairs, this Court reversed and remanded for further proceedings "to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) ("*Patru I*"), p 5. On remand, the tribunal agreed that petitioner's repairs qualified as "normal repairs," but determined that respondent's assessment of the property's TCV was proper because of the 2015 change in ownership. The tribunal further found, however, that petitioner's repairs, which were intended primarily to ready the property as rental property, did not affect the assessed TCV value of the property in any event. Accordingly, the tribunal again established the TCV of petitioner's property at $50,400, and the taxable value at $25,200, for the 2016 tax year. Petitioner again appeals as of right, and we now affirm.

In *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010), our Supreme Court explained:

> The standard of review of Tax Tribunal cases is multifaceted. If fraud is not claimed, this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the Tax Tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo. [Footnotes omitted.]

A tax exemption statute must generally be narrowly construed in favor of the taxing authority, and this Court generally defers to the Tax Tribunal's interpretation of a statute it is charged with administering and enforcing, but these rules do "not permit a strained construction adverse to the Legislature's intent." *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007).

Petitioner argues that under MCL 211.27(2), the tribunal should have determined the TCV of his property without regard to any "normal repairs" he made to the property after he purchased it in August 2015. At the time relevant to this appeal, MCL 211.27(2) provided:[1]

> (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:
>
> (a) Outside painting.
>
> (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives.
>
> (c) Repainting, repairing, or replacing existing masonry.
>
> (d) Replacing awnings.
>
> (e) Adding or replacing gutters and downspouts.
>
> (f) Replacing storm windows or doors.

[1] MCL 211.27(2) was amended by 2019 PA 116, effective November 15, 2019, to add subsection (p), which addresses the installation, replacement, or repair of an alternative energy system.

(g) Insulating or weatherstripping.

(h) Complete rewiring.

(i) Replacing plumbing and light fixtures.

(j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner.

(k) Repairing plaster, inside painting, or other redecorating.

(l) New ceiling, wall, or floor surfacing.

(m) Removing partitions to enlarge rooms.

(n) Replacing an automatic hot water heater.

(o) Replacing dated interior woodwork. [Emphasis added.]

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 50% of its 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.[2] 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

[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).

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 50% of the property's TCV as of December 31 of the immediately preceding year (i.e., the 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

value as of December 31, 2015, regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property.

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

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.

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."

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.

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.

In sum, petitioner has not shown that the Tax Tribunal committed an error of law or that its decision is not supported by competent, material, and substantial evidence on the whole record. Accordingly, we affirm its decision.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

DANIEL PATRU, Petitioner-Appellant, v CITY OF WAYNE, Respondent-Appellee.	UNPUBLISHED May 8, 2018 No. 337547 Tax Tribunal LC No. 16-001828-TT

Before: SHAPIRO, P.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Petitioner, Daniel Patru, appeals by right the Tax Tribunal's order that established the true cash value (TCV) at $50,400 for the 2016 tax year on a certain residential property owned by Patru in Wayne County. For the reasons stated below, we reverse and remand for rehearing.

I. BASIC FACTS

In August 2015, Patru purchased a residential property in Wayne County for $32,000 in a bank sale. 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. Thereafter, respondent, the City of Wayne, determined that the TCV for his property was $50,400, rather than the $32,000 purchase price. Patru appealed the decision, first to the Board of Review, and then to the Tax Tribunal. Patru contended that under MCL 211.27(2), the City could not consider "the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance." In response, the City appears to have maintained that the TCV of the property reflected its value as a fully repaired property, and it presented a sales-comparison analysis that included no adjustments for the substandard condition of the property at the time of sale.

In October 2016, a hearing referee heard the parties' arguments and evidence in support of their respective positions. Relevant to this appeal, the referee found that the purchase price of $32,000 was not the presumptive true cash value, and it found that the seller *may* have been under financial duress, causing the property to sell for less than market value. The referee also recognized that the property was in need of repair when it was purchased. The referee concluded that:

> [T]he subject's purchase price reflected the condition of the subject property prior to the repairs and the repairs were completed by tax day. 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 property is sold. However, Petitioner even admitted that the subject was in substandard condition at the time of purchase and the city required that the repairs be made. Therefore, the Tribunal does not find that the repairs completed by Petitioner were normal repairs and maintenance as noted by the statute. Instead, the subject was in substandard condition at the time.

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.

Patru filed exceptions, arguing that the repairs he conducted were normal repairs and directing the Tribunal to the plain language of MCL 211.27(2). Patru also submitted a spreadsheet that detailed every repair he had performed on the property and the approximate cost of each. In reviewing the exceptions, however, the Tribunal focused on the fact that the spreadsheet was "new evidence" that had not been previously submitted to the Tribunal, refused to consider the new evidence, and concluded that, although the referee's statement of law was not necessarily correct, Patru had nevertheless failed to establish that the repairs he conducted were normal repairs within the meaning of the statute. Accordingly, the Tribunal upheld the referee's determination.

Patru moved for reconsideration, contending that he had presented sworn testimony and additional documentary evidence at the hearing in support of his argument that the repairs were "normal" repairs under MCL 211.27(2). The Tribunal denied the motion. In doing so, the Tribunal did not consider that Patru had offered evidence at the hearing in support of his argument that MCL 211.27(2) applied. Instead, the Tribunal stated that Patru had failed to establish the TCV for the property before repairs. The Tribunal reasoned that, as a result, it was "unable to conclude that the valuation adopted by the Hearing Referee in the Proposed Opinion and Judgment and the Tribunal in the Final Opinion and Judgment improperly includes value for normal maintenance and repairs."

This appeal follows.

II. MCL 211.27(2)

A. STANDARD OF REVIEW

Patru argues that the Tribunal erred by determining the TCV for his property to be $50,400 for the 2016 tax year. "Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). We review de novo the proper interpretation and application of a statute. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012). When construing a statute containing a tax exemption, we must construe it narrowly and in favor of the taxing authority. *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007). At the same time, we will not allow a "strained construction adverse to the Legislature's intent." *Id*. (quotation marks and citation omitted).

B. ANALYSIS

Under MCL 211.27(2), an assessor cannot 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." To aid the assessor in determining what constitutes a normal repair, the Legislature set forth a list of repairs that are "considered normal maintenance if they are not part of a structural addition or completion." See MCL 211.27(2).[1]

---

[1] In relevant part, MCL 211.27(2) provides:

> The following repairs are considered normal maintenance if they are not part of a structural addition or completion:
>
> (a) Outside painting.
>
> (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives.
>
> (c) Repainting, repairing, or replacing existing masonry.
>
> (d) Replacing awnings.
>
> (e) Adding or replacing gutters and downspouts.
>
> (f) Replacing storm windows or doors.
>
> (g) Insulating or weatherstripping.
>
> (h) Complete rewiring.
>
> (i) Replacing plumbing and light fixtures.

In this case, when Patru purchased the house it was in substandard condition and required numerous repairs to bring it into a livable condition. Moreover, it is undisputed that the repairs were actually completed. However, there is a question as to whether the repairs that were completed were normal repairs within the meaning of MCL 211.27(2). The record reflects that Patru provided evidence in support of his claim at the hearing before the referee, in support of his exceptions to the referee's proposed opinion and judgment, and in support of his motion for reconsideration. In particular, the referee's proposed opinion and judgment reflects that:

> At the hearing, [Patru] presented two pages of repairs that the city required to be completed. [Patru claimed that the] subject's purchase price reflected the fact that the subject needed repairs. [Patru] stated that he put approximately $10,000 into the subject property and did most of the work himself. The work involved carpentry, electrical, and cement. The repairs were completed and the property had a certificate of occupancy by December 31, 2015.
>
> * * *
>
> [Patru] stated that under MCL 211.27(2) the assessor shall not consider the normal repairs or maintenance until the property is sold. [Patru] presented two pages of repairs that the city required to be repaired on the subject property before allowing occupancy. [Patru] stated that about two weeks after moving in, the subject's basement flooded. [Patru] concluded by stating that the city cannot assess the repairs to the subject property until the property is sold pursuant to the statute.

Additionally, with his exceptions to the referee's proposed opinion and judgment, Patru submitted a spreadsheet detailing the repairs he completed, which, we note, included repairs that, under MCL 211.27(2), constitute normal repairs so long as they are not part of a structural addition or completion.[2]

> (j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner.
>
> (k) Repairing plaster, inside painting, or other redecorating.
>
> (l) New ceiling, wall, or floor surfacing.
>
> (m) Removing partitions to enlarge rooms.
>
> (n) Replacing an automatic hot water heater.
>
> (o) Replacing dated interior woodwork.

[2] For example, Patru repaired the roof, which is a normal repair under MCL 211.27(2)(b), repaired chimney masonry, which is a normal repair under MCL 211.27(2)(c), repaired a service

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. As a result, contrary to MCL 211.27(2), the referee *considered* the increase in value attributed to the repairs when determining the property's TCV. Stated differently, the referee's finding that the property's TCV was $50,400 was based on its assessment of the property's value after it had been repaired. This was improper because MCL 211.27(2) expressly provides that certain repairs constitute normal repairs so long as they are not part of a structural addition or completion. Nothing in MCL 211.27(2) provides that the repairs listed in subdivisions (a) through (o) 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 by interpreting and applying MCL 211.27(2). 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).

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).

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).[3]

Reversed and remanded for rehearing consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien

[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.