STATE OF MICHIGAN

COURT OF APPEALS

CITY OF LANSING,

Petitioner-Appellee,

v

ANGAVINE HOLDING, LLC,

Respondent-Appellant.

FOR PUBLICATION
October 14, 2021
9:05 a.m.

No. 353784
Ingham Circuit Court
LC No. 19-000684-AA

Before: BECKERING, P.J., and SHAPIRO and SWARTZLE, JJ.

SWARTZLE, J.

The City of Lansing received an adverse decision by the State Tax Commission on whether property had been omitted from the city's general-property-tax assessment roll. The city appealed to the Ingham County Circuit Court, and Angavine Holding, LLC objected, arguing that the trial court did not have jurisdiction and the property had not been "omitted" within the meaning of MCL 211.154. The trial court rejected both arguments, and this appeal followed.

Our review of the record confirms that the State Tax Commission acted in a quasi-judicial capacity when it issued a final decision in this dispute. Even though the Commission's decision resulted in no change to the tax roll, its decision still "affect[ed]" a private right, triggering the right to judicial review found in Article 6, § 28 of Michigan's 1963 Constitution. As more fully explained below, the trial court had jurisdiction to hear the appeal from the Commission. Finding no other basis for reversal, we affirm.

I. BACKGROUND

Angavine owns commercial real estate located at 113 Pere Marquette in the City of Lansing. The company renovated its building in 2013, replacing office space on the first floor with eight apartments; Angavine received permits from the city for the renovation. The remodel did not alter the second floor, where 13 apartments were located. The property's first-floor remodel was assessed on the city's special-assessment roll before and after the remodel. The city did not, however, reassess the property's first floor for purposes of its general-property-tax assessment roll until 2019, leading to this dispute.

In November 2018, the city informed Angavine in writing that the remodeled space had not been included in the city's tax assessment for the property. The city explained that, based on its "income approach" to assessing property, Angavine should have paid additional taxes beginning in tax year 2014. Tax rules prohibited the city from seeking taxes over the entire period, however, so the city increased Angavine's tax liability for tax years 2016-2018. Angavine did not respond to the city's letter.

Given the lack of response, the city initiated proceedings before the State Tax Commission. Our Legislature has granted the Commission "general supervisory authority over the assessment of property for taxation." *Superior Hotels v Mackinaw Twp*, 282 Mich App 621, 632; 765 NW2d 31 (2009). A taxpayer or assessing authority can seek the Commission's correction of an assessment roll, MCL 211.152, and the Commission has jurisdiction to correct an assessment roll for omitted property, MCL 211.154.

After reviewing the parties' submissions, staff for the State Tax Commission concluded that the first-floor apartments constituted omitted property:

> The Assessor provided the record cards for the 2017 and 2018 tax years showing an income approach was used to value the subject property. Within the income approach, twelve one-bedroom and one two-bedroom apartments were identified. The 2017 and 2018 record cards submitted by the Assessor did not include any building area identified as ground-floor commercial office space or the eight flat apartments that are the subject of the Petition. Further, in examining the record cards, there is no indication of a change to the apartment count, size or quality as a result of building permits filed in 2011 for "interior tear-out" or "alterations for apartments." Similarly, in 2013, there is no indication of a change for eight plumbing, eight mechanical and eight electrical permits, nor was there a reduction given for the loss of office space in that tax year. Based on the information provided to-date, there is no indication that [the] disputed building area was valued for the 2017 and 2018 tax years.

The State Tax Commission dismissed the city's claim for tax year 2016 for lack of jurisdiction. With respect to tax years 2017 and 2018, despite the staff recommendation, the Commission concluded that the remodeled first-floor property did not qualify as omitted property.

In the letter informing the city of the decision, the State Tax Commission included boilerplate language informing the parties of their appellate rights:

> A person to whom property is assessed may appeal the State Tax Commission's determination within 35 days of the date of issuance to the Michigan Tax Tribunal. More information on how to file an appeal with the Michigan Tax Tribunal can be found at www.michigan.gov/taxtrib or by calling the Michigan Tax Tribunal at 517-335-9760. *Local taxing authorities may appeal* the State Tax Commission's determination within 21 days of the date of issuance *to the circuit court of the county where the local taxing authority is located, or to the Ingham County Circuit Court*. [Emphasis added.]

The city appealed to the Ingham County Circuit Court, challenging the State Tax Commission's decision with respect to tax years 2017 and 2018. Angavine responded, arguing, first, that the trial court lacked jurisdiction over the city's appeal and, second, that the State Tax Commission did not err. With respect to the first argument, the city replied that Michigan's 1963 Constitution guaranteed it a right of judicial appeal from the Commission's decision. As for the second argument, the city reiterated its earlier position that the first-floor apartments qualified as omitted property under the law.

The trial court concluded that it had jurisdiction over the city's appeal under Article 6, § 28 of Michigan's 1963 Constitution and § 631 of the Revised Judicature Act, MCL 600.101 *et seq*. On the merits of the city's claim that the remodeled property qualified as omitted property, the trial court agreed with the city that the latter's income-based evaluation system required a new assessment after the 2013 remodel. The fact that the first-floor apartments appeared on the special-assessment roll had no impact on the city's general-property-tax assessment roll. Accordingly, the trial court reversed the State Tax Commission's decision.

This appeal followed.

II. ANALYSIS

On appeal, Angavine raises the same claims that it raised below—(1) the trial court lacked jurisdiction to hear the city's appeal from the State Tax Commission; and (2) the first-floor remodel did not qualify as omitted property. We take up each claim in turn, and, as explained below, we conclude that each one is without merit.

A. STANDARD OF REVIEW

We review de novo questions of law, including issues involving constitutional and statutory interpretation. *Janer v Barnes*, 288 Mich App 735, 737; 795 NW2d 183 (2010); *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007). Our Supreme Court addressed the principles of constitutional interpretation in *Studier v Michigan Public School Employees' Retirement Board*, 472 Mich 642, 652; 698 NW2d 350 (2005):

> The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. This rule of "common understanding" has been described by Justice COOLEY in this way:
>
> > "A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it*. 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the instrument in the belief that that was the sense designed to be conveyed.' "

> In short, the primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified. [Citations omitted.]

When interpreting our Constitution, "we apply the plain meaning of each term used therein at the time of ratification unless technical, legal terms were employed." *Id.*

B. JURISDICTION

Angavine first challenges the trial court's jurisdiction to hear the city's appeal from the State Tax Commission. "Subject-matter jurisdiction concerns the right of an adjudicative body to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending." *Peterson Fin LLC v City of Kentwood*, 326 Mich App 433, 441; 928 NW2d 245 (2018) (cleaned up). Jurisdiction concerns itself about the nature of the case, not the truth or falsity of the allegations made by the respective parties. *Id.*

Angavine's jurisdictional argument is straight-forward: *First*, the State Tax Commission's decision maintained the status quo with respect to Angavine's tax assessment, and therefore its private right was not affected, i.e., changed. Because Angavine's private right was not affected, the constitutional right of judicial review under Article 6, § 28 of Michigan's 1963 Constitution was not implicated. *Second*, because § 28 was not implicated, the city did not have a constitutional right of judicial review under § 28, and thus the city's right of review, if any, would have to be found in statute. *Third*, the Tax Tribunal Act vests the Tax Tribunal with exclusive and original jurisdiction over appellate review of State Tax Commission's rulings involving assessments. *And fourth*, the General Property Tax Act only permits taxpayers, not taxing authorities like the city, to seek appellate review of the Commission's decisions with respect to omitted property.

1. CONSTITUTIONAL RIGHT OF JUDICIAL REVIEW

We begin our analysis by considering the constitutional right to appeal from an agency decision found in Article 6, § 28. The State Tax Commission is a state administrative agency, MCL 209.131, and the Legislature has expressly provided that, at the determination of the Commission, Article 6, § 28 "shall apply" "in all of its proceedings," MCL 211.152. The text of the provision states, in full:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.
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> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the

> administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

As should be clear from the text, this provision "is not an absolute guarantee of judicial review of every administrative decision." *Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich 83, 91; 803 NW2d 674 (2011). Rather, for there to be a right of judicial review, three requirements must first be met: "(1) the administrative decision must be a 'final decision' of an administrative agency, (2) the agency must have acted in a 'judicial or quasi-judicial' capacity, and (3) the decision must affect private rights or licenses." *Id.* Our review of the record confirms that the first two requirements have been met here, and the parties do not dispute either of these. See *id.* at 92.

With respect to whether the State Tax Commission's decision "affect[ed] private rights or licenses," however, the parties take divergent views. On this question, we first observe that this dispute does not involve a license. We also observe that the City of Lansing is a public municipal body and, in the context of its taxing authority as a subdivision of the state, the city does not have a "private" right or license. See *Oshtemo Charter Twp v Kalamazoo Co Rd Comm*, 302 Mich App 574, 582; 841 NW2d 135 (2013) ("A private right is a personal right, as opposed to the right of the public or the state.") (quotation marks omitted). In arguing to the contrary, the city points to Article 7, § 21 of our Constitution, which states in relevant part: "The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts." From this provision, the city draws the conclusion that it has the private right to levy ad valorem property taxes. Yet, unlike Article 7, § 29, which this Court has held to grant a private right to a municipality, see *id.*, it is clear that Article 7, § 21 is a *limitation* on, not a right with respect to, the authority of municipalities to levy ad valorem property taxes, see, e.g., *City of Detroit v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006); *Berkley v Royal Oak Twp*, 320 Mich 597, 601; 31 NW2d 825 (1948) (similar provision in 1908 Constitution). We are not aware of any other private right of a municipality that could be at issue here, and the city has likewise not pointed us to any such right. Accordingly, for Article 6, § 28 to be implicated in this case, it must be Angavine's own right that provides the constitutional hook upon which the trial court's jurisdiction hung.

Generally speaking, Angavine had the right to be subject to taxation under the relevant state and local laws, properly applied—as opposed to being subject to taxation under some inapplicable provision of the tax code, arbitrary chance, or the mere whim of a tax official. See *Orion Twp v State Tax Comm*, 195 Mich App 13, 17; 489 NW2d 120 (1992). As our Supreme Court has explained, "[T]axpayers have a private right to ensure that their property is taxed the same as similarly situated property." *Midland Cogeneration*, 489 Mich at 93; cf *Viculin v Dep't of Civil Serv*, 386 Mich 375, 387; 192 NW2d 449 (1971) ("One may not have a constitutional right to go to Baghdad, but the government may not prohibit one from going there unless by means consonant with due process of law.").

More concretely, with respect to its property taxes for tax years 2017 and 2018, Angavine had the right to be subjected only to those taxes for which it was lawfully liable under the relevant state and local tax laws, properly applied. The City of Lansing understood this liability to be higher than had been originally determined, Angavine disagreed, and the dispute went to the State Tax

Commission. Thus, there was a private right at issue in the proceeding before the Commission, as even Angavine concedes on appeal. (Appellant's Br at 5.)

And yet, Angavine maintains that the State Tax Commission's decision did not "affect" this right because the Commission concluded that the company was not required to pay additional taxes for those tax years. In effect, Angavine argues that, by denying the city any relief and thereby maintaining the status quo with respect to the company's tax liability, the Commission did not "affect" any private right of the company. To affect a private right means to change or alter it in some way, and to maintain the status quo necessarily means that the private right was not changed or altered, according to Angavine.

With this interpretation, however, Angavine takes too blinkered a view of our Constitution. Although the meaning of a constitutional or statutory word or phrase can sometimes be gleaned without the aid of a dictionary, *Bartalsky v Osborn*, __ Mich App __; __ NW2d __ (2021) (Docket No. 349317); slip op at 5, a dictionary can be helpful in situations like here where we focus on the core meaning of a word, rather than its interpretive boundaries, Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West, 2012), p 418. Moreover, regardless of whether a dictionary is consulted, context can often provide critical insight into the meaning of the word or phrase. See *Bartalsky*, slip op at 5; Scalia & Garner, p 418.

The current version of Article 6, § 28 was included in the original version of our Constitution when it was approved by Michigan voters in 1963. At that time (and still today), the verb "affect" was defined, in relevant context, "To make a material impression on; to act upon, influence, move, touch, or have an effect on." *The Oxford English Dictionary* (1933) ("*OED*"); see also *Webster's Seventh New Collegiate Dictionary* (1963) (defining the verb as "to produce an effect upon"). Similarly, *Black's Law Dictionary* (4th ed) defined "affect" as "To act upon; influence; change; enlarge or abridge" and "to act, or produce an effect upon." See also 2D *Words & Phrases* (2020) (identifying several judicial decisions from the 1960s and prior that understood "affect" as acting upon, influencing, concerning, and even "to determine a right or interest in"). The noun "effect" was commonly understood in 1963 (and still today) to mean an "operative influence." *OED*. Thus, the relevant "affect" provision in § 28 could be rewritten as follows: "All final decisions . . . of any administrative officer or agency . . . which . . . [have an effect (i.e., operative influence) on] private rights or licenses, shall be subject to direct review by the courts as provided by law."

On this reading, an agency's decision that denied relief or otherwise maintained the status quo vis-à-vis some private right would still be one that had an effect or operative influence on that right. The effect or operative influence in that case would be to keep the private right factually or legally preserved or unaltered in some relevant sense, as opposed to ordering a change that would disturb the factual circumstances or legal landscape. Stated differently, the effect or operative influence of the agency's decision would be that a sought-after change did *not* occur, and, it is important to recognize, that decision would likely have legal import with respect to, and could have substantial implications for, the specific private right at issue. As a rough analogy, when an appellate court affirms a trial court's ruling, that appellate ruling could, in one sense, be understood as merely preserving the status quo, though, in another sense, that ruling certainly has a legal effect or operative influence on the trial court's ruling as well as the parties' legal rights.

While the listing of "change" in the definition found in *Black's Law Dictionary* does provide some support for Angavine's position, we conclude that the better understanding is the one advocated by the city: to produce an effect on. This broader understanding reflects the commonsense observation that an agency's denial of relief—i.e., maintenance of the status quo—will often have a seriously negative impact on a party's rights or interests, and an agency should not be able to insulate itself from judicial review merely by denying relief.

Context further supports this reading. As written, the provision defines a broad set of agency decisions subject to appellate review: "*All* final decisions, findings, rulings and orders of any administrative officer or agency" that "are judicial or quasi-judicial" in nature and "affect private rights or licenses." Const 1963, art 6, § 28 (emphasis added). Our reading subjects this entire set of agency decisions to potential judicial review. It makes sense, therefore, that the provision is found in Article 6 of our Constitution, entitled "The Judiciary."

But under Angavine's reading, the center of this broad set of cases would be hollowed out like a metaphorical donut hole. Specifically, those cases where the agency denied relief or otherwise maintained the status quo would simply be beyond any constitutional right of judicial review. This would create something much more akin to a constitutional right *from* judicial review in that subset of cases, and one might have expected to find such a right in Article 1, "Declaration of Rights," rather than Article 6, "The Judiciary."

Moreover, as noted earlier, the Legislature specifically references Article 6, § 28 with respect to the State Tax Commission's proceedings involving assessments. See MCL 211.152(3). The Legislature cannot confer a constitutional right where none exists, but this reference in statute provides evidence that the Legislature has also recognized that this constitutional provision may be relevant during these types of proceedings.

Given all of this, we conclude that the State Tax Commission's decision affected Angavine's private rights under the tax laws, albeit in Angavine's favor. The decision was a final one made by an agency acting in a quasi-judicial capacity. Accordingly, the decision satisfies the prerequisites for judicial review under Article 6, § 28. See *Midland Cogeneration*, 489 Mich at 93; cf *Viculin*, 386 Mich at 389 (noting that " 'private right' is to be liberally construed in favor of review").[1]

[1] As an aside, we note that neither party has framed this dispute in terms of standing or aggrieved-party status. As we have explained, the State Tax Commission's decision affected a private right. Although the right affected by the decision was Agavine's, it was the city that appealed from that decision. Because the issue was not raised by the parties, we will not reach it *sua sponte*. With that said, our state's standing jurisprudence is more permissive than that found in federal courts. Compare *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010) with *Speech First, Inc v Schlissel*, 939 F3d 756, 763-764 (CA 6, 2019). In our courts, standing is a "limited, prudential doctrine," and "a litigant has standing whenever there is a legal cause of action." *Lansing Sch Ed Ass'n*, 487 Mich at 372. Our Supreme Court has explained that, even "[w]here a cause of action is not provided at law," a party might still have standing if that party

2. "AS PROVIDED BY LAW"

This does not, however, end our inquiry. Angavine points out that the judicial review available under § 28 is specifically subject to the proviso "as provided by law," and, according to Angavine, the Legislature has so provided with MCL 205.731(a) and MCL 211.154(7). The first section vests the Tax Tribunal with "exclusive and original jurisdiction over" appeals from the State Tax Commission involving, among other things, an "assessment . . . under the property tax laws of this state." MCL 205.731(a). The second section authorizes an appeal from the Commission to the Tax Tribunal with respect to the former's decision involving property omitted from an assessment roll, *but critically*, the appeal is limited to those by a "person to whom property is assessed under this section." MCL 211.154(7). A tax-assessing authority like the city does not qualify as a "person to whom property is assessed." See *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 435; 852 NW2d 650 (2014). Thus, under Angavine's reading of the tax laws, all appeals from the State Tax Commission involving omitted property must go to the Tax Tribunal, but only taxpayers have the statutory right to appeal to the Tax Tribunal. Angavine recognizes that, under its reading of the law, the city has no avenue to initiate judicial review, but it maintains that this statutory scheme satisfies § 28's requirement for such review "as provided by law."

This reading would, indeed, divest the city of any right to initiate judicial review of the State Tax Commission's decisions. One party to a contested matter would be blocked from judicial review, while the other party would not. This reading offends not only fundamental notions of due process and fair play, but it also offends an alternate reading of statutory law that is consistent with Article 6, § 28.

As our Supreme Court observed long ago, "No rule of construction is better settled in this country, both upon principle and authority, than that the acts of a state legislature are to be presumed constitutional until the contrary is shown . . . ." *Sears v Cottrell*, 5 Mich 251, 259 (1858). "In case of doubt, every possible presumption, not clearly inconsistent with the language and the subject matter, is to be made in favor of the constitutionality of the act." *Id.*

The Legislature does not have the authority to "eradicat[e] constitutional guarantees." *Oshtemo Charter Twp*, 302 Mich App at 590; see also *Coal Protecting Auto No-Fault v Mich Catastrophic Claims Ass'n*, 317 Mich App 1, 24; 894 NW2d 758 (2016); *Twp of Plymouth v Hancock*, 236 Mich App 197, 202; 600 NW2d 380 (1999). While our Constitution gives the Legislature the authority to enact the protections provided by Article 6, § 28, this just means that it can "dictate 'how,' 'when,' and 'what' type of appeal of an agency decision is permitted." *Midland Cogeneration*, 489 Mich at 94.

In line with its constitutional role, the Legislature has provided three avenues of judicial review of an agency's final decision. These are, in descending order of preference: (1) in accordance with the statutory procedure provided for the specific agency; (2) in accordance with

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has "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Id.*

the Administrative Procedures Act of 1969, MCL 24.201 *et seq*. (APA); and (3) in accordance with the catch-all provision of the Revised Judicature Act. *Morales v Mich Parole Bd*, 260 Mich App 29, 33; 676 NW2d 221 (2003). The latter catch-all provision has been recognized by courts as "a method of review 'provided by law' " specifically for purposes of Article 6, § 28. *Viculin*, 386 Mich at 394.

The first two avenues do not apply to the city. As we have seen, the General Property Tax Act does not authorize any appeal by the city in this circumstance. Moreover, there is nothing in the act making the APA applicable to appeals from the State Tax Commission, and, in fact, the Legislature specifically excluded APA procedures from contested cases before the Commission involving tax assessments. MCL 211.152(3). Thus, we turn to the catch-all option, the Revised Judicature Act.

MCL 600.631 of the Revised Judicature Act reads as follows:

> An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court.

The city's appeal fits squarely within this provision. The State Tax Commission is a state agency and has the authority to promulgate rules. MCL 209.131; 211.10d(10). The Commission issued a decision from which "an appeal or other judicial review has not otherwise been provided by law," at least with respect to the city. Thus, consistent with its constitutional role to "provide by law," we conclude that the Legislature created the catch-all provision of the Revised Judicature Act for just this type of circumstance—where a party would otherwise be excluded from the judicial review contemplated under Article 6, § 28.

Finally, we note that our courts have recognized in several decisions that, with the Tax Tribunal Act, MCL 205.701 *et seq.*, the Legislature intended to invest the Tax Tribunal with exclusive and original jurisdiction over appeals involving, among other things, tax assessments. See, e.g., *Peterson Fin*, 326 Mich App at 443. Read in a vacuum, these decisions could be viewed as supporting Angavine's position. These decisions did not, however, consider the precise question that we face here. The Legislature does not have the authority to foreclose a municipality from seeking any-and-all judicial review from a decision of the State Tax Commission, and we do not read its statutes as doing so. More to the point, by enacting the catch-all provision for judicial review in the Revised Judicature Act, the Legislature made plain that the city and similarly situated municipalities do have an available avenue for judicial review. Rather than declare that one or more provisions of the tax laws are unconstitutional, we read MCL 600.631 of the Revised Judicature Act as the Legislature's plainly expressed intent to resolve any statutory ambiguity or inconsistency in favor of judicial review.

Accordingly, we hold that the city was authorized to pursue its appeal before the Ingham County Circuit Court, and that court had jurisdiction to hear the appeal.

C. OMITTED PROPERTY

In addition to its jurisdictional challenge, Angavine also argues that the circuit court erred by concluding that the first-floor apartments qualified as omitted property.

The trial court noted at the outset of its analysis that its review of the State Tax Commission's decision was limited by Article 6, § 28 to matters involving "fraud, error of law or the adoption of wrong principles." There is no question of fraud here. Thus, "[a]n agency commits an error of law or adopts wrong principles when the agency's findings are not supported by competent, material, and substantial evidence on the whole record." *New Covert Generating Co, LLC v Twp of Covert*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 348720; 348721); slip op at 22.

With respect to the claim of omitted property, the trial court reviewed the applicable provisions of the General Property Tax Act. Specifically, the act provides that if property has been "incorrectly reported or omitted for any previous year," then "the corrected assessment value" is to be placed on the roll for "the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission." MCL 211.154(1). The act goes on to define "omitted real property" as "previously existing tangible real property not included in the assessment" and provides that "[t]he assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment." MCL 211.34d(1)(b)(*i*) (defining "omitted real property" for purposes of the subparagraph, but then also specifically referencing MCL 211.154).

The General Property Tax Act's definition of omitted real property is clear and unambiguous, so we must enforce it as-written. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 506; 778 NW2d 282 (2009). This Court has previously held that property qualifies as omitted real property if the taxing authority is aware of new construction, but fails to include that property when assessing a property's taxable value; the determinative factor is whether tangible property previously existed and, if so, whether it was included in the assessment. *Superior Hotels, LLC*, 282 Mich App at 638-639. Such is the case here. The property's first-floor apartments existed before tax year 2017, but they were not included in Lansing's general-property-tax assessment roll, the only assessment roll at issue in this case.

Angavine argues that the property's first-floor apartments do not qualify as omitted property because the property's first floor previously appeared on the district's special assessment of the property, and the city was aware of the apartments' existence. Although these two facts were established in the record, they are not dispositive here.

First, the General Property Tax Act's definition of "omitted real property" uses the definite article "the" instead of the indefinite "a" when referring to "the assessment." Thus, determining whether property qualifies as omitted real property requires examining the specific assessment in a given case, see *Massey v Mandell*, 462 Mich 375, 382 n 5; 614 NW2d 70 (2000), and here, as noted, at issue is the general-property-tax assessment, not the special assessment, see *Fluckey v City of Plymouth*, 358 Mich 447, 453; 100 NW2d 486 (1960) (explaining the distinction between a special assessment and a property tax levied to fund the general expenses of government).

Second, it is uncontroverted that the city was aware of the remodel. For instance, Angavine received work permits from the city, and the apartments appeared on the special-assessment roll. But the assessment at issue in this case assessed the property as having only the 13 second-floor apartments, as the State Tax Commission's own staff recognized. The first-floor apartments do not appear on the general-property-tax assessment roll at all. Consequently, the first-floor apartments constitute omitted property because they previously existed and were not assessed on the city's general-property-tax assessment roll. The trial court correctly concluded that the Commission legally erred by ruling otherwise.

Finally, Angavine argues, in essence, that the result in this case is unfair because the city knew about the first-floor renovations for years before the assessment leading to this case. But the Legislature already addressed this point by permitting taxing authorities to collect back-taxes for only the two years preceding a new assessment. MCL 211.154. The Legislature made a policy choice by doing so, and it is our role to implement the law as-written, not to implement whatever our own policy preferences may be. *D'Agostini Land Co LLC v Dep't of Treasury*, 322 Mich App 545, 601-602; 912 NW2d 593 (2018).

III. CONCLUSION

With respect to disputes involving omitted property under MCL 211.154, circuit courts have jurisdiction over a taxing authority's appeal of a decision of the State Tax Commission. In this case, the trial court did not err in concluding that Angavine's first-floor apartments qualified as omitted property. For the reasons set forth above, we affirm.

The City of Lansing, as the prevailing party, may tax costs under MCR 7.219.

/s/ Brock A. Swartzle
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro