STATE OF MICHIGAN

COURT OF APPEALS

GOLDEN NUGGET RESTAURANT, STAGE COACH STOP USA, INC., LAWRENCE DOWLING, d/b/a DOWLING BUILDING, BAUER MANOR RESTAURANT, MICHAEL SAVCIE, ROSE SAVCIE, d/b/a SAND LAKE RESTAURANT, CRUISE INN RESTAURANT, and EVANS LAKE MOTEL,

Plaintiffs-Appellants,

v

CAMBRIDGE TOWNSHIP, CAMBRIDGE TOWNSHIP SUPERVISOR, FRANKLIN TOWNSHIP, and FRANKLIN TOWNSHIP SUPERVISOR,

Defendants-Appellees.

UNPUBLISHED
June 15, 2001

No. 216383
Lenawee Circuit Court
LC No. 97-007704-AW

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Appellants appeal as of right the trial court's dismissal of their complaint for a writ of mandamus. We affirm.

Appellants are property owners in either Cambridge Township or Franklin Township and are subject to a special assessment levied by the townships to defray the cost of constructing a new sewer system. Appellants filed a complaint which sought a writ of mandamus "directing [appellees to] comply immediately with the provisions of the ordinance at issue and re-evaluate the assessment applied to [appellants.]" [1] The trial court dismissed the complaint, ruling that it

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[1] The ordinance reads:

> The term "unit" or "units" shall be related to the quantity of sanitary sewage ordinarily arising from the occupancy of a structure by a single family of

(continued…)

lacked jurisdiction. The trial court concluded that appellants' complaint amounted to an attack on the special assessment, and therefore the tax tribunal had exclusive jurisdiction.

First, appellants claim that the matter was not subject to the exclusive jurisdiction of the tax tribunal because the assessments were based on water usage, not the value of property, and therefore were not levied "under property tax laws." We disagree.

The tax tribunal has exclusive jurisdiction over a "proceeding for direct review of . . . special assessments . . . under property tax laws." MCL 205.731(a); MSA 7.650(31)(a). "[S]pecial assessments levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act." *Wikman v City of Novi*, 413 Mich 617, 636; 322 NW2d 103 (1982). We find the instant case to present such a situation. The fact that the special assessment was not based on the valuation of property does not mean that it was not "under property tax laws."

Appellants also claim that the tax tribunal did not have exclusive jurisdiction over this matter because appellants are not seeking direct review of the special assessment, but are seeking to compel appellees to comply with the provisions of the ordinance which requires appellees to update and revise the methodology used to calculate the amount of the assessments. While we understand the distinction that appellants seek to make, "'this Court will not be bound by a party's choice of label for its action where to do so would not only put form over substance, but would invade the exclusive jurisdiction of the tax tribunal.'" *Netherlands Ins Co v Bringman*, 153 Mich App 234, 239; 395 NW2d 49 (1986), quoting *St Paul Fire & Marine Ins Co v Littky*, 60 Mich App 375, 378-379; 230 NW2d 440 (1975). In our opinion, the essence of appellants' complaint raises issues within the jurisdiction, and expertise, of the tax tribunal.

An attack on the methodology used to compute liability is a proper claim for the tax tribunal, see *Kostyu v Dep't of Treasury*, 170 Mich App 123, 129-130; 427 NW2d 566 (1988), and the question of whether an assessment was levied in proportion to the benefit received is best resolved by utilizing the experience of the tax tribunal. See *Wikman, supra* at 647. Further, the tax tribunal has the authority to require an adjustment of the assessment against a petitioner's property. See *Bates v Genesee Co Road Comm*, 133 Mich App 738, 751; 351 NW2d 248 (1984).

(…continued)

> ordinary size and the benefit derived therefrom and shall be defined or determined from time to time by the Township Board after consultation with the consulting engineers for the Township and the County. *Said determination of units shall be based upon the studies made relative to the quantity of sewage generated by and the benefit derived from different types of use and occupancy of premises and shall be kept up to date and revised as needed as new studies are made and through experience gained by the Township and County in actual operation*. [Emphasis added.]

On its face, appellants' complaint seeks a writ of mandamus ordering appellees to revise the methodology used to determine the amount of the special assessment levied on the property. However, inherent in, and at the essence of, appellants' complaint is the claim that there is a need for a revision. Appellants contend that the need for a revision is evidenced by the fact that the assessments are not in proportion to the actual benefit they received. In our opinion, whether this contention is correct is best determined by the utilization of the tax tribunal's expertise in this area. A review of the methodology used to establish the amount of the assessment, and a determination as to whether the benefit conferred corresponds to the assessment levied, are questions for the tax tribunal.

Appellants further claim that their complaint was properly filed in circuit court because they seek a writ of mandamus. We disagree.

First, the tax tribunal has the authority to issue "writs." MCL 205.732(c); MSA 7.650(32)(c). Second, even assuming the tax tribunal could not issue a writ of mandamus, as argued by appellants, the tax tribunal could find that the methodology used to compute the assessment was improper, and order an adjustment. If for some reason, appellees refused to comply with the ordered adjustment, appellants may then be able to seek equitable relief to enforce the order. See *Wikman, supra* at 648. We are of the opinion that the tax tribunal affords appellants an adequate remedy.

Finally, appellants claim that the assessment amounts to a tax that violates the Headlee Amendment[2] because it was not approved by the voters. Headlee Amendment claims may be brought, at the option of the party commencing the action, in the circuit court, or as original actions in this Court. See *Wayne Co Chief Executive v Governor*, 230 Mich App 258, 269-270; 583 NW2d 512 (1998). Appellants did not raise such a claim in the trial court. Therefore, the claim has not been properly preserved below. *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 295; 475 NW2d 366 (1991). In addition, this is an appeal as of right from the trial court's dismissal of appellants' complaint seeking a writ of mandamus. To allow appellants to raise a Headlee Amendment claim in this manner would be to allow appellants to raise this issue without properly initiating an original action. We decline to allow appellants to do so. This issue has not been properly preserved or presented, and will therefore not be addressed.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter

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[2] Const 1963, art 9, §§ 25-34.