

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ESTATE OF FLOYD B. LINN,

Petitioner,

v

TOWNSHIP OF MERIDIAN,

Respondent-Appellant,

and

MICHIGAN STATE TAX COMMISSION,

Respondent-Appellee.

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ESTATE OF FLOYD B. LINN,

Petitioner-Appellant,

v

TOWNSHIP OF MERIDIAN and  
MICHIGAN STATE TAX COMMISSION,

Respondents-Appellees.

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Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

UNPUBLISHED

October 3, 1997

Michigan Tax Tribunal

LC Nos. 213727;217768;  
217767

No. 193571

Michigan Tax Tribunal

LC Nos. 217727;217768;  
217767

Petitioner and respondent Township of Meridian appealed as of right the judgment of the Michigan Tax Tribunal setting the true cash value for two adjacent parcels of real estate located in the

township. Respondent has voluntarily withdrawn its appeal pursuant to MCR 7.218(A), and therefore only petitioner's claims remain before us. We affirm the decision of the tax tribunal.

This real property tax assessment appeal challenges the assessment for two agricultural parcels for the 1994 and 1995 tax years. The first parcel consisted of 48.5 acres and was assessed at \$110,000 for 1994 and \$89,000 for 1995. The second parcel consisted of 90.01 acres and was assessed at \$73,000 for 1994, and \$34,100 for 1995. The parcels are adjacent, and are located approximately two miles northeast of the Meridian Mall, bordered by Van Atta and Tihart roads. The smaller parcel contains a 115-year old farmhouse and outbuildings. The larger parcel has a portion that is currently being farmed, but also contains wetlands and flood plain.

At the hearing, petitioner submitted an appraisal prepared by Robert J. Vertalka and Daniel H. Kelley to estimate the market value of the property as of the April 2, 1994 date of the death of Floyd B. Linn. The appraisal concluded that the best use of the property was for agriculture. The appraisal also concluded that the market value of the two parcels was \$125,000 and \$195,000, respectively, for a total value of \$320,000.

The State Tax Commission submitted an appraisal prepared by Norman Daniels and Gary Schwab, which concluded that the highest and best use for the property was for development or investment. Based on sales of four comparable parcels adjusted for differences, the appraisal concluded that the developable land had a value of \$7,500 per acre. Based on two sales of swampland in the township, the appraisal concluded that the wetland had a value of \$1,500 per acre. The appraisal concluded that the market value of the parcels taken together was \$928,000.

In its opinion and judgment, the tax tribunal found that the highest and best use of the property was for development purposes, given that sales of land within the township showed that land is being sold primarily for development. The tribunal also concluded that the market data valuation approach was the best method for determining the true cash value of the parcels. The tribunal found that petitioner's use of sales from a different township did not represent the market value of the land. The tribunal accepted the tax commission's valuation rate per acre, but found that the acreage breakdown was inaccurate. The tribunal applied its own determination of the developable acreage, and held that the true cash value of the first parcel was \$406,110, resulting in an assessment of \$203,055 for both tax years; and, the second parcel had a true cash value of \$178,700, resulting in an assessment of \$89,350 for both years.

We initially note that, contrary to appellee tax commission's assertion, this Court has jurisdiction over this appeal. As appellee notes, *Shapiro Bag Co v City of Grand Rapids*, 217 Mich App 560; 552 NW2d 185 (1996), held that hearing officers are not authorized to decide motions for rehearing pursuant to MCL 205.762(3); MSA 7.650(62)(3). However, in tax tribunal matters, a petitioner is not required to exhaust remedies by moving for rehearing. Rather, a petitioner may appeal directly from the decision of the tribunal without moving for rehearing. MCL 205.753(2); MSA 7.650(53)(2). The fact that a motion for rehearing was improperly denied does not divest this Court of jurisdiction under the statute. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 39; 539 NW2d 526 (1995).

We further find that the tax tribunal's findings were supported by competent, material and substantial evidence. This Court reviews a decision of the tax tribunal to determine whether the tribunal made an error of law or adopted a wrong legal principle. *Samonek v Norvell Township*, 208 Mich App 80, 84; 527 NW2d 24 (1994). The factual findings of the tribunal will be upheld if they are supported by competent, material, and substantial evidence on the entire record. *Id.*

The tax commission's appraisal contradicted petitioner's appraisal that the property was best considered agricultural and that there was no pressure for development. The tax commission's appraisal found that the township was under considerable pressure to develop property, that the growth in the township had been rapid, that significant land transfers occurred in the past for developmental and investment purposes, and that there were no recent sales for agricultural purposes. The tax commission's appraisal thus provided competent support for the conclusions of the tribunal. The mere fact that the tax tribunal found the tax commission's appraisal and testimony more credible does not amount to an error of law. We further find that the tax tribunal set forth adequate findings of fact to support its opinion.

We also find that there was sufficient evidence to support the tribunal's determination that the highest and best use for the property was for development. To determine a proper use for taxation purposes, the tribunal must determine the property's highest and best use, and then apply the valuation method calculated to ascertain the property's fair market value. *Edward Rose Building Co v Independence Township*, 436 Mich 620, 633; 462 NW2d 325 (1990). The general property tax act defines developmental property at MCL 211.34c; MSA 7.52(3)(2)(c):

Developmental real property includes those parcels containing more than 5 acres without buildings or more than 15 acres and whose value in sale exceeds its present value in use. Developmental real property may include farm land or open space land adjacent to a population center or farm land subject to several competing valuation influences.

The appraisal presented by the tax commission indicated that the township experienced a growth rate of 23% between 1980 and 1990, and that nearly all recent purchases of larger acreage parcels were for investment and development; no recent purchases were made by active farmers. Moreover, the tribunal could properly discount petitioner's appraisal where it was based on the continued agricultural use of the property, and the comparable properties were all agricultural and located outside the township. We find no error.

Appellants also argue that the tax tribunal erred by failing to consider the lack of uniformity in assessment. Appellants, however, failed to raise this issue below, and failed to provide evidence of assessments for comparable properties to the tribunal. This Court therefore need not address this issue. *Long v Chelsea Community Hospital*, 219 Mich App 578, 588; 557 NW2d 157 (1996).

Affirmed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra