

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CRYSTAL LAKES HOMEOWNERS ASSOCIATION,

Petitioner,

v.

Civil Action No. 09-C-117

COPY

**Christopher G. Morris, State Tax Commissioner
of the State of West Virginia,**

RECEIVED

SEP 28 2009

**JEFFERSON COUNTY
CIRCUIT COURT**

AC

Respondent.

ORDER

This matter came before the Court the 10th day of September, 2009, upon the papers and proceedings formerly read and had herein, including the Order of this Court dated June 8, 2009, continuing the matter over to this day and date, and upon the appearance this day of the Petitioner Appellant, by Ann Kask, its President, and by its attorney, Braun A. Hamstead, and upon the appearance of the Respondent by Scott E. Johnson, Assistant Attorney General.

Whereupon, the Court did receive the Affidavit of the Tax Assessor which, pertinent to this proceeding, indicates in paragraph 8, that a Home Owner's Association vested with title to common areas is not to be taxed under circumstances such as those present. While a dispute may exist between the parties as to whether or not the taxes assessed the individual lot owners at fair market value already includes a pro-rata assessment attributable to the common areas, that dispute is not material to this case. The only question before the Court is whether or not the common areas are properly and separately taxed to the Home Owner's Association. The parties do agree that this matter has matured for a decision based on the pleadings, there being

essentially no factual disputes. Therefore, upon a mature review of the pleadings and the representations of the parties and their counsel in this case, the Court does make the following findings of fact:

1. Petitioner Crystal Lakes Homeowners Association, Inc., is a Home Owners Association vested with record title to certain common area real estate located in Jefferson County, West Virginia, comprised of 14.17 Acres being Parcels 88 & 89 and 4.15 Acres being Parcel 90.

2. The development has been sold out and there remains no reservation of any development rights by the "Declarant."

Upon consideration of the law applicable to this appeal, the Court concludes as follows:

1. The above said real estate constitute *common elements* in a planned community within the meaning of West Virginia Code §36B -1-105.

2. West Virginia Code §11-3-9(29) clearly exempts from *ad valorem* taxation "any other property or security exempted by any other *provision of law*."

3. West Virginia Code §36B-1-105(2), "Separate titles and taxation" (which pertains to taxation of planned communities), provides that "no separate tax or assessment may be rendered against any *common elements* for which a *declarant has reserved no development rights*."

4. The assessment against the Petitioner for the above mentioned common element constitutes a prohibited "separate tax or assessment" within the meaning of West Virginia Code §36B-1-105(2).

5. Therefore, the assessment over which this appeal is filed was made in error and should be set aside.

The Court notes that while the Petition prays for retroactive application of the appeal, Petitioner recognizes that it does not appear to be entitled to such retroactive application and therefore, no claim for reimbursement of back taxes is pursued at this time.

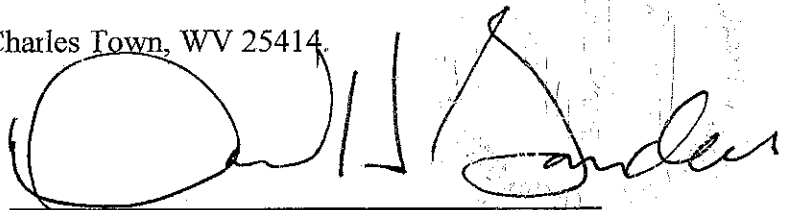
And therefore, in consideration of the above, it is HEREBY BY THE COURT

ADJUDGED AND ORDERED, that the appeal is granted, and the assessment against the Petitioner, Crystal Lakes Property Association, Inc., is hereby declared void and is set aside, commencing with the current calendar tax year, 2009.

The exceptions and objections of the Respondent are hereby noted and preserved.


There being nothing further to be done at this time, this matter shall be dismissed and retired from the Court's active docket and placed among causes ended.

The Clerk shall enter the foregoing as and for the day and date first hereinabove written and shall forward an attested copy of this Order to Braun A. Hamstead, Esquire, Hamstead & Associates, L.C., 1802 W. King Street, Martinsburg, WV 25401; Scott E. Johnson, Assistant Attorney General, Office of the Attorney General, Building 1, Room W-435, Charleston, WV, 25305 and Ralph Lorenzetti, PO Box 729, Charles Town, WV 25414.

A handwritten signature in black ink, appearing to read "David H. Sanders", written over a horizontal line.

The Honorable David H. Sanders
Circuit Court of Jefferson County, WV

Submitted by:



Braun A. Hamstead, Esquire
West Virginia State Bar ID No. 1568
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3cc

<B. Hamstead
- S. Johnson
- R. Lorenzetti
9/29/09
AW

A TRUE COPY
ATTEST:

LAURA E. RATTENNI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY Ashley Wimer
DEPUTY CLERK