



PA Condo/Planned Community Corner: Did You Know Common Elements Within Planned Communities and Condominiums Are Exempt From Real Estate Taxes?

By Carrie B. Nase

Pursuant to Section 5105 of the Pennsylvania Planned Community Act, common facilities are exempt from real estate taxation and assessment. Common facilities are defined under the Planned Community Act as real estate within a planned community that is owned by the association or leased to the association. Common facilities typically include open space, stormwater management facilities, private roadways, recreational facilities, etc. Common facilities do not include units. The assessment value of a unit in a planned community includes that unit's appurtenant interest in the common facilities. Therefore, there is no separate taxation of the common facilities since the value is included in the assessment of each unit. In *Locust Lake Village Property Owners Association, Inc. v. Monroe County Board of Assessment*, --- A.2d ---, 2007 WL 4615610 (Pa. Cmwlth. 2008), the Commonwealth Court determined that it is the association's burden to prove that the property meets the statutory requirements of a "common facility" and that an association is not entitled to a refund of real estate taxes that it did not previously appeal.

Locust Lake Village (the Community) is a planned community located in Monroe County. The common areas owned by the Locust Lake Village Property Owner's Association, Inc. (the Association) are made up of 36 parcels of land consisting of green space, access drives, parking, and an office building. The 36 parcels were individually assessed at values ranging from \$2,100 to \$5,000. On August 20, 2003, the Association filed an assessment appeal for tax year 2004, arguing that the 36 parcels were common facilities and, therefore, were exempt from taxation and assessment. As part of the assessment appeal, the Association requested a refund of the real estate taxes paid on the 36 parcels for tax years 2001 to 2003. The Association did not previously file an appeal to the assessment for the tax years 2001 to 2003. The Monroe County Board of Assessment Appeals (the Board) granted the appeal and gave a zero-assessment to the common facilities for tax years 2004 and forward. The Board did not decide the Association's claim for a retrospective refund for tax years 2001 to 2003.

The Association filed an appeal to the Court of Common Pleas requesting a retrospective refund of real estate taxes paid for the common facilities, with interest, for tax years 2001 to 2003, under the Tax Refund Law. Pursuant to the Tax Refund Law, a taxpayer may seek a refund of taxes paid to which a local taxing authority is not legally entitled within three years of payment. The taxing authorities filed preliminary objections to the appeal arguing that the Tax Refund Law does not authorize retrospective tax refunds in a case where a landowner has failed to challenge its assessment. The tax authorities base their argument on the fact that the Association could have filed an assessment appeal for the common facilities in the years they are now seeking tax refunds. The trial court sustained the preliminary objections and the Association filed an appeal to the Commonwealth Court of Pennsylvania. The Commonwealth Court affirmed the decision of the trial court.

Section 1 of the Tax Refund Law specifically provides that a taxpayer is entitled to request a refund of taxes paid in the previous three years to which a local taxing authority was not legally entitled; provided, however, the taxpayer cannot claim a refund where that taxpayer had or has a remedy under any other statute. The Commonwealth Court determined that the Association was not entitled to a refund since they had a specific remedy by the way of an assessment appeal. The Commonwealth Court noted that “it is the responsibility of the taxpayer to challenge an assessment in the year the assessment is issued in order to avoid the imposition of improper taxes.” The Commonwealth Court relied on the previous determination of the Pennsylvania Supreme Court that “if no appeal is taken from the assessment of taxes within the time allowed by law, it becomes binding and conclusive and neither the common pleas nor an appellate court can afford any relief.” *Lincoln Philadelphia Realty Associates I v. Board of Revision of Taxes of City and County of Philadelphia*, 758 A.2d 1178 (Pa. 2000).

The Association also claimed that it was entitled to a refund because the imposition of real estate taxes on the Association’s common facilities was based on the taxing authorities’ erroneous interpretation of the Planned Community Act. The Association argued that the taxing authorities had an affirmative obligation to reclassify common areas and adjust their assessments in accordance with the Planned Community Act. Although tax authorities may not tax properties that are considered common facilities under the Planned Community Act, the Commonwealth Court determined that it is the Association’s burden of proving that the property in question meets the statutory requirements of a common facility and, therefore, is exempt from taxation. The Commonwealth Court relied on the Pennsylvania Supreme Court’s determination that “the property of the taxpayer ... is presumed to be taxable and the affirmative burden, in the first instance, rests upon the taxpayer to prove entitlement to exemption.” *Alliance Home of Carlisle v. Board of Assessment Appeals*, 919 A.2d 206 (Pa. 2007). Therefore, the Commonwealth Court determined that the Association had the burden of proving that the common facilities were exempt from taxation and the Association was not entitled to a refund of taxes.

Based upon the decision of the Commonwealth Court in *Locust Lake*, it is important for the Declarant (if control of the Association has not yet been turned over to the homeowners) and/or the Association to confirm that the common facilities within its community are not being assessed for real estate taxes. If they are, the Declarant and/or the Association has the responsibility of filing an assessment appeal and proving to the taxing authorities that the common facilities are exempt from taxation and assessment under the Planned Community Act. It should be noted that common elements within a condominium are also exempt from taxation and assessment under the Pennsylvania Condominium Act and, therefore, the same analysis would apply.

For more information regarding this matter, please contact Carrie Nase at cnase@foxrothschild.com or 215.299.2030.



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