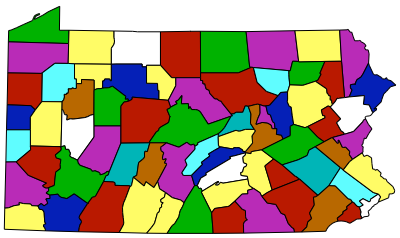

Pennsylvania Tax Reports

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PLANNED COMMUNITY COMMON ELEMENTS NOT TAXABLE

The Pennsylvania Supreme Court, in a divided opinion, affirmed the Commonwealth Court and held that certain common elements in a planned community were not taxable for real estate tax purposes. *Saw Creek Community Association, Inc. v. County of Pike*, No. 29 MAP 2003 (Pa. Jan. 19, 2005), *affirming* 808 A.2d 322 (Pa. Commw. 2002). The Pennsylvania Uniform Planned Community Act provides that real estate within a planned community can constitute a unit or common facilities. A unit is a portion of the community designated for private ownership or occupancy. Common facilities are any real estate owned by the association or leased to it, but do not include a unit. The Uniform Act states that no separate assessed value shall be attributed to and no separate real estate tax shall be imposed against common facilities. 68 Pa. C.S. § 5105(b)(1). In the appeal, the taxing authorities argued to avoid the plain language on the grounds that property owned by the association was leased to a commercial restaurant and to a sales office and therefore was taxable because the home owners did not have the free and unfettered access to the property and, consequently, did not constitute common facilities. The Supreme Court stated that there was no such exception from the prohibition against taxing common facilities, and therefore the plain language of the statute should be enforced. In any event, the facts were that the property was leased to the restaurant in order to provide a facility convenient to the unit owners, the restaurant was open to the public (which of course included the unit owners), and the unit owners were entitled to a 10% discount. The sales office was established for the convenience of those unit owners who might want to sell their units.

Two dissenters claimed that the rented common facilities should be taxable under the standards developed in case law dealing with exemptions from real estate tax. However, those authorities seem inapplicable. The Uniform Act does not exempt common facilities; rather, it guards against double taxation. The Act provides that each unit is separately taxed and assessed and that the value of the unit includes the value of the unit's pertinent interest in the common facilities. 68 Pa. C.S. § 5015(b). Thus, common facilities are not separately taxed because they are already taxed through inclusion pro tanto in the value of each unit. Therefore it should be immaterial whether the pertinent portions of the common facilities are rented out or not. In either case, each unit will be worth more or less depending on the value that the common facility adds to or subtracts from the value of the unit.

 For further discussion of Pa tax issues, the reader is referred to *J. Bright, Taxation*, 26-27 *Summary of Pa Jurisprudence 2d* (West Group).